

STATEMENT OF THOMAS A. JOHNSON  
BEFORE THE COMMITTEE ON FOREIGN RELATIONS  
UNITED STATES SENATE  
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The Response of the United States to International Parental Child Abduction and Wrongful Retention of American Children Abroad

This statement is submitted solely in my personal capacity as an American citizen and as the father of Amanda Kristina Johnson, an American child wrongfully retained in Sweden. Although I have been an attorney for the U.S. Department of State for nineteen years, I make this statement as a private citizen and do not in any way purport to represent or speak for the Department of State. I have taken annual leave to be here today and have not used government resources to prepare or reproduce this statement.

Before proceeding, I would like to express my deepest appreciation to Senator Helms for his interest in this subject, for his willingness as chairman of the Committee to schedule a hearing on this subject, and for his untiring commitment to assisting American children and their parents subjected to the tragedy of international parental abduction and wrongful retention. I am also grateful to other members of the Committee for their interest and involvement in addressing this subject. Finally, the dedication and hard work of the Committee's staff in preparing for this hearing merits the admiration and thanks of all left-behind American parents. In the midst of an otherwise terrible experience for all such parents, the Committee's work and other recent Congressional initiatives have been among the few rays of hope.

In the June 29, 1998 Washington Post article on the wrongful retention in Germany of Lady Catherine Meyer's children, there was consensus among those quoted that "the system" does not work. Having spent more than \$200,000 in Amanda's case litigating against the deep pocket of the Swedish Government in nine different courts in two countries, I fully agree. This Committee is to be commended for trying to find out WHY the system does not work and for being willing to do something about it.

Congress estimated the number of internationally abducted or wrongfully retained American children at 10,000 when it passed the International Parental Crime Act of 1993. With the increasing failures of the Hague Convention on the Civil Aspects of International Child Abduction (less than a thirty percent return rate for American children), the virtual refusal of the U.S. Justice Department to utilize the 1993 Act when Hague remedies are inapplicable or have been exhausted, the worst offending countries rightly emboldened by the present certainty that they generally risk no real-world consequences or even adverse publicity, and the absence of adequate preventive measures, the situation is only getting worse for left-behind parents who play by the rules in both countries concerned. They need to know that foreign government compliance with the international legal obligations they have undertaken in ratifying the Hague Convention and applicable human rights treaties cannot be relied upon.

This statement addresses:

—Direct foreign government involvement in and support for the abduction and wrongful retention abroad of American children, in violation of international treaty obligations

—Foreign legal systems that cannot or will not control the conduct of their citizens in child custody matters and cannot or will not protect the parental rights of American parents

—The need for preventive and remedial measures to protect American children from the increasing threat of international parental child abduction and wrongful retention abroad, and for accountability within the United States Government concerning the handling of these cases

—The two-front war facing American parents and the importance of not “writing off” American children for the sake of “good relations” or any other reason

—Specific recommended Congressional actions, most of which require only political will rather than tangible resources

## FOREIGN GOVERNMENT SUPPORT FOR INTERNATIONAL PARENTAL CHILD ABDUCTION AND WRONGFUL RETENTION OF CHILDREN

The principal purpose of this statement, as indicated above, is not only to discuss individual cases or countries, but rather to provide a general description of foreign government support for the abduction and retention of American children, the response of the United States Government, and proposed Congressional actions to assist American children and parents affected by the crime of international parental child abduction and retention. Accordingly, the following information on my daughter Amanda’s case and my experience with the Swedish legal and social welfare systems is provided primarily as a case study or as an example of what often confronts left-behind American parents.

### 1. Five Pillars of Governmental Child Abduction or Wrongful Retention

While the present overall Swedish legal and social welfare system may well be one of the worst adversaries that a left-behind American parent can face, at least some elements of that system exist in many other countries, especially in European civil law countries. This does not include the United Kingdom, of course, which is often cited as a model of how the system should work. In contrast, the Swedish system happens to include all of what could be called the Five Pillars of governmental child abduction and retention: no principle of comity in the legal system, extreme gender or national bias in the courts, payment of unlimited legal fees for the child abductor at home and abroad, no enforceability of civil court orders (including child return orders and visitation orders), and criminal legislation that protects parents who abduct or wrongfully retain children. In a given case, only one of these five “pillars” may be enough to ensure a successful abduction or retention:

Regrettably, Amanda is only one of many American children abducted or wrongfully withheld abroad. As Congress recognized in passing the International Parental Kidnapping Crime Act of 1993 (“the 1993 Act”), Amanda’s case and Sweden’s indefensible conduct are not unique, although the facts and circumstances of Mandy’s case are particularly aggravated. Despite the best efforts and intentions of Congress and some individuals in the Executive Branch in recent years to combat the continuing tragedy of international parental child abduction, the fact remains that American parents whose children are abducted or wrongfully retained abroad are all too often up against the full weight of foreign governments (including Parties to the Hague Convention such as Sweden) prepared to supply virtually unlimited financial and other resources (e.g., government child psychiatrists and psychologists) to assist their citizens who abduct or wrongfully retain children. What has happened to Amanda and me can happen to any American citizen, already has happened to many, and will unquestionably happen to more in the future, unless Congress acts to prevent “business as usual” with the governments involved and to provide other remedies. Without the help of Congress along the lines suggested below, more American citizens will continue to be victimized by foreign parents and their governments determined to abduct or retain American children, withhold them abroad, and ignore U.S. and international law. This statement is submitted in the hope that Congress will act quickly and decisively to help other Americans avoid the nightmare to which my family has been subjected.

## 2. No Enforceable Visitation or Other Parental Rights

As a preliminary consideration concerning any child abduction or retention involving Sweden (and most other European civil law countries), it must be noted that children not returned under the Hague Convention are likely to be completely lost to their American parents and families. The parental rights of an American parent may be effectively terminated by the inevitable grant of sole custody to the local national winner. In Sweden, for example, a non-Swedish, non-custodial parent has no enforceable parental rights. The Swedish legal system and individual judges cannot control the conduct of Swedish parents (or otherwise protect the rights of foreign parents) because there is nothing comparable to contempt of court or any other effective means of enforcing visitation or access under a Swedish custody order. For Amanda, who lived with me half the time for several years and traveled freely with me both in the U.S. and Europe, even supervised visitation in Sweden is totally unenforceable and at the whim and mercy of the child abductor. A new Swedish law entering into effect today, ironically, will permit Swedish judges for the first time to impose joint custody over the objections of one parent. However, just as other seemingly progressive elements of Swedish child custody law and policy only apply when both parents are Swedish (e.g., shifting sole custody away from a parent that withholds a child, unless, of course, the consequence is that the child leaves Sweden), it is highly unlikely that this new law will be applied in cases involving non-Swedish parents. But even if it were, the terms of any future Swedish joint custody order are just as unenforceable as any visitation awarded under Swedish sole custody orders. Nothing has changed in that regard, although intense and sustained international pressure on Sweden might bring about reforms that include mechanisms comparable to contempt of court.

For the reasons just given, I have spent more than \$200,000 of my savings to avoid Swedish custody jurisdiction because of the consequences: a court order that even some U.S. authorities may

view as giving the “color of law” to termination of the child’s American life and my parental rights. Amanda is not the first American child to be subjected to these violations of her human rights by Sweden, she is not the only one at the moment (e.g., the child of Mark Larson of Orem, Utah and the children of Greg O’Donohue of Burbank, California), and she will definitely not be the last without sweeping reforms of Swedish legislation, policy, and attitudes. As discussed below, Congress can do a great deal to reduce the risks for American children and their parents, while increasing the risks of wrongful conduct for governments like Sweden and their citizens.

### 3. These Are Not “Private Child Custody Disputes”

Until the Washington Post article mentioned above concerning Lady Meyer appeared on June 29, it is likely that few Washington decision makers and opinion leaders would have thought possible what Germany has done to the relationship between Catherine Meyer and her children. And that is the key point. It IS Germany (its governmental, legal, and social welfare systems) that has committed these human rights violations, just as it is Sweden that has done everything possible to destroy Amanda’s relationship with her American family, friends, home, and familiar environment in Virginia.

In short, these are NOT “private child custody disputes,” as Germany and Sweden try to claim in these cases, and as those who may wish to write off the children concerned and do business as usual with such countries would like to believe. American parents in such cases are often essentially alone against the power and wealth of the governments concerned. Of course, individual parents capable of internationally abducting or wrongfully retaining children are to be found in every country. The question, therefore, is whether their governments will control their conduct and protect the parental rights of foreign parents, especially in light of the international legal obligations of all countries under either (or both) the Hague Convention or human rights treaties that guarantee the role of both parents and the right of children with parents of different nationalities to spend time in both countries.

The misinformation inherent in the false claim of “private child custody dispute” is particularly infuriating to American parents who have spent much of their savings fighting against the deep pocket of a foreign government in both U.S. and foreign courts simply to maintain contact with their children while obeying all applicable laws in both countries. As indicated above but worth repeating, this “private child custody dispute” red herring (an appropriate description taking into account the conduct of some Scandinavian and Northern European countries) also attempts to cover up what can only be described as sophisticated and very well-financed governmental child abduction systems, for example, in some European countries (other than the United Kingdom and Ireland) that may include some or all of the following:

- 1) undeniable bias against foreign parents by the courts (compared to the very high rate of returns of abducted children from the U.S. ordered and enforced by U.S. courts);
- 2) no enforceable visitation or other parental rights for foreign parents (owing to the absence of anything comparable to our contempt of court)

- 3) no concept of comity (reciprocal enforcement of foreign court orders, including custody orders agreed to by their nationals)
- 4) payment of unlimited legal fees for their nationals who abduct or retain children in all litigation at home and in the U.S. (in both Hague Convention and regular custody proceedings)
- 5) aggressive action by police and prosecutors against foreign parents in enforcing criminal legislation specifically drafted and intended to protect their child abductors/retainers;
- 6) “address protection” programs that enable abductors/retainers and the children involved to disappear even from U.S. consular officers, with the aid of the police and social welfare agencies

Because it is nearly impossible for Americans to believe, it must be repeated that, as a practical matter, the exercise of jurisdiction over an abducted or wrongfully retained American child in a regular child custody proceeding by a German or Swedish or Austrian or Danish court (with the inevitable grant of sole custody to the non-American abducting parent) is equivalent to termination of the parental relationship between the child and the American parent. Even if some form of access or visitation is awarded on paper, non custodial parents have no legally enforceable rights of any kind in such countries.

#### 4. Summary of the Swedish Government System of International Child Abduction and Wrongful Retention of Children

The following is an example of the kind of country-by-country information in narrative form that should be readily available to Congress, U.S. courts, attorneys, and parents:

Cases of abduction and wrongful retention of children by a Swedish parent are not merely “private custody disputes,” in view of the lack of effective remedies provided by the Swedish legal and social welfare systems to the left-behind parent and the extensive Swedish government financial, law enforcement, social welfare, and other support supplied to Swedish parents who engage in abduction/retention of children.

In international cases where only one parent is Swedish (particularly where the mother is Swedish), children not returned under the Hague Convention on the Civil Aspects of International Child Abduction are, as a practical matter, completely lost to their non Swedish parents unless the Swedish mother decides otherwise. This is the result of the Swedish legal system’s inability to effectively control the conduct of Swedish parents and protect the rights of non-Swedish parents in the absence of any judicial power comparable to contempt of court. In regular child custody proceedings, Swedish courts invariably grant sole custody to Swedish mothers and, as noted, have no power to enforce visitation for fathers. Even in cases where a foreign parent has sole or joint custody under a non-Swedish custody order and no Swedish custody order exists, there is no concept of comity in the Swedish legal system (despite Sweden’s obligation under Article I of