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House Committee on Foreign Affairs

The Goldman Act to Return Abducted American Children:
Ensuring Administration Action

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Congressman Smith, Congresswoman Bass and other honorable members of this committee, thank you for allowing me the opportunity to speak today about the scourge of International Parental Child Abduction, specifically with regard to the country of Japan. I'm here to explain to you why punitive measures, up to and including sanctions, may soon be the only viable solution that will bring about the change necessary within Japan to comply with the Hague Convention and the Goldman Act. My name is Paul Toland, I am a Captain in the United States Navy with over 26 years of active military service, and I am the co-founder and National Director of Bring Abducted Children Home. My daughter Erika Toland was abducted off of US Navy housing in Japan over 12 years ago. In 2007, my wife Etsuko Toland committed suicide, and since that time, Erika has been wrongfully retained in Japan by her grandmother, Akiko Futagi.

I was recently in Japan, where I have filed through their family court system for physical custody of Erika. Japan signed the Hague Convention in 2014, but abduction cases like mine, that transpired before Japan's ratification of the Hague Convention, are not eligible for returns under the Hague, so I have decided to utilize the Japanese system, to see if they will, in fact, respect the rights of a parent over a non-parent, and provide custody to me, Erika's only living parent.

Yes, Akiko Futagi is a grandparent to Erika Toland. But this also means that she is NOT a parent. Under the law in normal modern countries, she would have no right to keep my child away from me. And yet, to this day she has been allowed to keep Erika away from me without allowing me so much as a phone call with my daughter in 8 PAINFUL years.

In most normal countries with modern family law systems, this abduction and denial of access to a parent would be perceived no differently than if a stranger abducted a child, and it would be felony crime, but in Japan, abduction by a non-parent relative is not only accepted, it is condoned. I am the only parent in the world to Erika, yet every day I have no idea if she is sick or injured, I have no idea if she is safe or in danger. I have no idea where she goes to school, or even what she looks like. I have not even been offered a single photo of my beloved daughter by her grandmother in the 8 years since she has held her, let alone a visit or a walk in the park together or the opportunity to say "happy birthday" even once.

Historically, Japan has stood alone in the modern world as a notorious haven for child abduction, and is still considered a Black Hole for abduction from which no child ever returns. The Japanese government has never enforced the return of a single abducted child, including over 400 American children abducted to Japan since 1994. — BUT, recently, there has been some hope for change in Japan. Japan has signed the Hague Convention, and many Japanese politicians are speaking openly about changing Japan's views on parental child abduction and shared custody by parents after divorce.

Those inside and outside Japan who want Japan to change and become a normal country in regard to parental rights see my case as an opportunity for Japan to prove to the rest of the world that it is changing, and that Japan is moving toward joining the rest of the developed nations of the world. For Japan to prove this to the rest of the world, we fully expect that the Japanese court will both order and enforce the immediate return of Erika Toland to me, her father and only living parent. The judge's ruling in this case will be a reflection of the entire Japanese government and the entire nation of Japan.

There could be no clearer case than this case for Japan to demonstrate that it has at least a very basic and rudimentary understanding of its responsibilities toward parents and children. How can we expect Japan to ever resolve more complicated divorce and child custody issues if it

cannot even resolve this very straightforward case, where one parent is deceased and a non-parent is withholding the child from a loving parent who wants to care for her?

The US Supreme Court has found that, and I quote, “the interest of parents in the care, custody and control of their children, is perhaps the oldest of the fundamental liberty interests” The US Supreme court has further ruled that “It is cardinal ... that the custody, care and nurture of the child reside FIRST in the parents,” and the same court has held that “the relationship between parent and child is constitutionally protected.”

As in the US Courts, the rest of the modern, developed world would never tolerate a “custody battle” between a parent and a non-parent. In civilized, modern countries, the automatic presumption of the court would be that the best interest of a child is to be raised by her parents, not some other more distant relative or stranger. A parent does not have the burden of proving that he or she can raise a child better than a non-parent. If Japan rules, as it should, in favor of my daughter’s right to know and love her father, then it would truly be a threshold step for Japan, and Japan would be closer to joining the rest of the international community as a nation that respects the basic fundamental bond between parent and child.

HOWEVER, after attending family court in Japan last month, I came to a single conclusion regarding the Japanese Family Law system ...NOTHING HAS CHANGED....that’s right, the court system is NO different than it was 10 years ago. The courts still have no mechanism of enforcement, the courts still drag cases out over many months to “run out the clock”, and the judges simply work to find a way to maintain the status quo. In my clear-cut and unambiguous case, I have endured 3 court dates over the course of 8 months, with another court date set for December, and no end in sight. Signing the Hague was simply a smokescreen devised by Japan to relieve international pressure. The Japanese Ministry of Foreign Affairs knows this. They know that Japan’s family court system is a completely broken mess. That is why they have done everything in their power to keep Hague actions out of their court system, and instead attempt to resolve cases through mediation and provide, “access” via monitored video conferencing between victimized parents and children. These efforts have all been dismal failures. Why would an abductor want to mediate knowing they can withhold their child without consequence? All they need to say is “no”, and there is nothing that the Government of Japan will do about it.

Other recent signatories of the Hague, such as Korea, have made necessary reforms to their family law system, but Japan simply refuses to do so, and because of this they can NEVER be compliant with the Hague. It is literally impossible. So what do we do about it? How will Japan make the changes it needs to join the rest of the global community? I and everyone who has been associated with this issue for years have come to a single conclusion. FOREIGN PRESSURE. Yes, that is the ONLY solution that can bring about change within Japan. Real changes to human rights issues in Japan are rarely if ever accomplished internally, instead, it is almost exclusively foreign pressure that elicits change in Japan. Take child pornography as an example. For years and years, Japan openly allowed possession of child pornography and did nothing about it. It was only intense and continued foreign pressure that compelled Japan to make the changes necessary to join the rest of the civilized world in this area. Likewise, it will only be constant and intense foreign pressure that will bring about the required changes in family law that will allow Japan to comply with the Goldman Act and the Hague Convention.

The State Department has been completely remiss in applying foreign pressure to Japan, or demanding the return of any of the 400 children kidnapped to Japan since 1994. They have

instead actively tried to cover up for Japan's noncompliance with no regard whatsoever to the suffering of countless American parents and children.

If Japan rules against me, and demonstrates that it CANNOT and WILL NOT protect the fundamental bond between parent and child, and the inherent rights of parents, and if Japan continues to deny access to parents under the Hague and fails to return abducted children under the Hague, I ask for punitive measures, up to and including sanctions, under the Goldman Act. Why do you think Brazil returned Sean Goldman? It was because of the threat of sanctions. Sanctions represent a real expenditure of political capital on behalf of the United States. I once told a high-ranking State Department official that our children could be returned in one year IF the United States government was willing to expend real political capital on behalf of our children. If a Governor, Senator or famous celebrity's child were abducted overseas, you can bet our government would expend every resource possible to ensure the return of those children, but the sad reality is that OUR children are simply not important enough for the American government to expend the political capital necessary to return them.

Additionally, if Japan cannot protect the fundamental bond between parent and child, and the inherent rights of parents, then no American families are safe in Japan, including military families. If our military members and their families stationed in Japan can lose their children to nonparents, in violation of our constitutional protections, then the military will need to rethink its policy of allowing family members to accompany their military sponsor to Japan.

Ever since Erika was stolen from me over 12 years ago, my only desire in the world, and everything I have worked for, has been done with one goal in mind... to be reunited with Erika so she could know and love her only father, and so I could know and love my only child. That goal has never changed and it never will.

I have heard some people from Japan say "why would you want to take Erika away from her home in Japan?" Well, to that I say, her rightful home is NOT in Japan. It is not even necessarily in the United States. A child's home is with her parents, no matter where that may be, and that means that no matter where I may reside, Erika's home is and always will be with me. True, it is a fact that she is 13 years old, and she may not want to come to America, and if that is the case, she and I will work that out together. I will ensure I have the best team of reunification experts and medical professionals to help us through these times. Japan expeditiously ruling in my favor will sanctify the sacred bond between parent and child. Japan expeditiously ruling in my favor will be a recognition that these difficult issues regarding Erika's future are issues she and I must face together, and will recognize that neither the State of Japan nor a more distant nonparent relative will come between the sacred bond of parent and child.

However, if Japan rules against me, and violates the fundamental bond between parent and child, and if they continue their pattern of denying access to parents of abducted children and fail to expeditiously return abducted children under the Hague Convention, I ask that punitive action be taken by the US Government, to include sanctions under the Goldman Act. Only foreign pressure will resolve this situation, and that foreign pressure starts right here in this room. Thank you.