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COMMITTEE ON FOREIGN AFFAIRS Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations

SUBCOMMITTEE HEARING: HOPE DEFERRED: SECURING ENFORCEMENT OF
THE GOLDMAN ACT TO RETURN ABDUCTED AMERICAN CHILDREN

07.14.2016 2:15pm 2255 Rayburn Africa, Global Health, Global Human Rights,
and International Organizations

Good afternoon Chairman Smith, all subcommittee members, all those affected by the issue of international parental child abduction in attendance today and those watching around the world. I am sorry we know each other in this way.

I am James Cook, and today is the 2-year anniversary of my 4 children arriving in Japan. They are two sets of twins. Later this month will be the 1-year anniversary of my Hague application to return them to Minnesota. In this time, I have visited my children once and then slowly all contact was unilaterally severed from Japan. The last contact or reply from my children was late August 2015. I have been constantly involved in my children's lives and made them fun. Now, they have been made to believe I am dangerous and seek to do them harm. Children who knew me as the unconditionally loving parent, no matter what, have been led to believe I seek to avenge the alienation. Children who knew me as the parent that hugged them, kissed them on the forehead and in so many ways communicated my unconditional acceptance of them as people, have been told to fear me and deny my attempts at access. I understand their situation, and I know the choices they had to make to survive, but the emotional pain still remains. Perhaps the greatest sadness I have is the realization that my children will have long-term issues to resolve as human beings subjected to captivity and denied the fundamental connection to their parent that is necessary for their healthy development. My primary focus has been the complete development of our children. Development that is not possible without the active involvement of both parents. Please note, I will purposely not mention or share our children's names in my testimony to protect their privacy. They are innocent and do not deserve any more pain from this abduction.

My testimony today will be divided into three sections. First, I will read an open letter to our children because I have been blocked from any access or means of communication with them. It is my hope that the video of this testimony will be shown or made available to them in Japan because this is the only means that I have of reaching them anymore. Second, I will provide you a view into the Hague implementation in Japan as I describe my journey through every step in the process. There has been progress to celebrate and there are intractable parts that still remain. Third, I will offer my recommendations to

the subcommittee informed by my experience in the process and 30 years of dealings with Japan.

Section 1.

Hey guys, this is dad or papa. I am so very sorry for all you have been put through as a result of what has happened. You have had to make choices out of dependency and harmony within ba-chan and ji-chan's home. I understand those choices, and I am not angry at you or seeking revenge as you have been told. Every day of your absence starts for me with the realization you are not in our house, and you are gone. Nothing has changed in any of your rooms. They remain just as you left them.

The blue bedroom still has the blue marker on the closet wall, and the nightstand drawer still smells like Count Chocula that you poured in there for yourself. The only evidence of what you did was the empty plastic cereal bag left on your floor. Your closet has all your unopened toys sitting on the shelf and the mixture of socks from which you created your unique pairing each day. I want you to know, I did not see you break it, so I agree you did not break it. Also, papa always carries a pencil in his car now. I love your individuality and personality. I want to possess the calm confidence in yourself that you do.

The pink bedroom still has your Frozen sticker book and plastic purple unicorn on the nightstand. Auntie Laura stayed in your room one night, and she cried because you were gone, but it looked like you weren't. Like me, she expected to see you come into your room at any moment. The big stuffed bear is still in your closet next to your dress up clothes, and your Barbies are still stashed in various drawers of your dresser. On my phone, I carry the video of you dancing for me in the back hall of school during the spring music concert. I love your happiness and unbelievable self-confidence. I want to be fearless like you.

In the green bedroom, both of your beds are just as they were when you went to the airport. On your long dresser still sit your Architecture Lego buildings. I've dusted them a few times. The perfectly drawn sketch of a hand still hangs above the book shelf that holds all the Doraemon comic books you've read numerous times. The baseballs and numerous trophies are just as you left them. Your Pikachu alarm clock still ticks waiting to be used to wake you guys. I see violin sheet music and our piano, and I nearly weep sometimes. Thing 1, I love how you started playing piano every morning. The dedication and commitment you have always made to being better, smarter and the best you I admire. You will suck the marrow out of life by experiencing all that you can. I want your discipline and determination. Thing 2, I admire your kindness and empathy towards others. I think of you when I need to be my best self and imagine what you would do. I cried for the first time in a while when I wrote this.

I went into your closet and I saw multiple bags of clothes packed in haste. I think I know why those were packed and likely the mood under which you were told to pack them. I am so sorry you had to experience being complicit in your own abduction. I told you it was only a vacation, but what you experienced told you otherwise. You guys were eleven. I am sorry I did not see what you saw and I know you were told not to say anything to me. I don't know how that affected you or damaged your self, but I ache with you in that pain.

I want you to know I have never stopped working for your return and everything I've done was to get you back home. You have been denied a critical relationship at a critical time in your lives. It's only later in life you will understand the lasting impact of losing our connection during this time. I know this and I wish others did, too.

Do you think about our adventures to EON from years ago? I know it was only to go eat in the food court (Yay Pepper lunch!) and play Mario Cart until I ran out of 100 yen coins. Those were fun adventures. Remember our trip to Tokyo Disneyland 6 years ago and riding the shinkansen Just the three of us guys eating 150 yen shinkansen ice cream and having fun. You guys were nervous because you weren't sure I really understood Japanese, but as with most things we did, it all worked out. When I came to Japan to visit in October 2014, I remember riding back from Kyoto to Tokyo with you two little guys sitting on my lap. As tired as I was and jet-lagged, it was the best shinkansen ride I can ever remember. I miss holding you two and attempting to do push-ups while you try to ride me like a horse. I miss carrying you on my shoulders and holding your little hands so you wouldn't use my face as a handle.

I will come to pick you up and bring you back home very soon. Please be ready and make it easy for everyone by cooperating when I come. I love you guys, and I will never stop until you are back home with me. I want you back.

Section 2.

On July 14, 2014, Hitomi Arimitsu, of Nara, Japan, my wife, and our four children arrived in Japan for a six-week vacation. Prior to her departure, I drafted a simple agreement between her and I. It indicated my consent for her to travel with our children and a specific return-by date of August 29, 2014. This agreement was drafted with her knowledge, signed by both of us and notarized to provide the greatest amount of legality and legitimacy. Hitomi was to use this document as part of her travel documents, and I understood she did.

In August 2014, we decided to have the children to stay a bit longer in Japan because I was still having difficulty finding employment. The children were enrolled in a private, English-speaking school to educate them as I was concerned about educational neglect issues in Minnesota if I could not prove they were attending school. In September 2014, I contacted Hitomi via email and informed her that I was planning on going to Japan in

December 2014 to pick up our children. Hitomi never agreed and significantly decreased her communication with me from that point. In October 2014, I visited Tokyo, Japan, and arranged to have our children meet me for a 3 day weekend to go to Disneyland and DisneySea. In the previous ten years, we had visited Hitomi's parents, Yukinori and Hiroko Arimitsu, at their home in Nara Japan for several weeks at a time in summer. During our 2010 summer trip, my older sons and I rode the shinkansen bullet train to Tokyo to visit Disneyland and DisneySea. I remember the fun and adventure this was, so I knew this was a great place for our children to enjoy themselves. I often took my children on 'adventures' when we were in Japan. I was known for expanding my children's world and trying to get them to color outside the lines in their own lives.

When it became apparent after my October 2014 visit that Hitomi was not going to cooperate and was beginning to act like an abductor, I sought the advice of legal counsel regarding a means to gaining our children's return. I made direct appeals to her mother Hiroko Arimitsu at her Nara, Japan home to send Hitomi back with our children. No reply from her ever came. My mother visited everyone in December 2014, prior to Christmas, and she reported back to me that our children were different and seemed negative towards me. It was deeply upsetting to my mother that Hitomi had exerted significant undue influence over our children.

In January 2015, I commenced divorce proceedings against Hitomi in Hennepin County court for the sole purpose to force our children's return. I later found out I was acting on flawed and incorrect legal advice. Minnesota is one of the few service-first states, so the court was unwilling to recognize or step in until they had record she had been served. Proper Hague service under Japan's implementation requires all documents to be in both the Petitioner's language and Japanese. Once translated, all documents must be submitted to Japan's Central Authority for service upon Respondent. My divorce documents were sent off for translation and submission to the JCA on January 23, 2015. Hitomi Arimitsu was served in Japan on April 27, 2015 and submitted the Affidavit of Service to Hennepin County court dated May 11, 2015. This four month delay was used to deny jurisdiction over custody in July 2015 by the same Hennepin County Judge who refused to hear an emergency appeal regarding custody in January 2015.

When I was told that Hennepin County would not have jurisdiction over custody in late July 2015, I immediately sought out other avenues to our children's return. A friend in the legal field made me aware of the Hague international child abduction process and that my original attorney should have informed me of this option instead of encouraging divorce.

With significant assistance and guidance from DoS, I began my Hague application on July 23, 2015 and it was received on August 4th, 2015 at DoS. The application was then forwarded to and received by Japan Central Authority (JCA) on August 7, 2015 and accepted officially on August 10, 2015.

The legal case, once started, was to take 6 weeks according to Hague guidelines. The legal case started on August 19, 2015 when my legal team filed the return petition in Osaka Family Court (OFC). Additionally, we filed to prohibit Hitomi from traveling outside of Japan during the course of the case and to force the surrender of the children's passports. Two weeks later, September 2nd, the order preventing travel and surrendering of passports was granted.

On September 4th, 2015, the first hearing of our case was held, and I was present in Osaka Family Court, in Japan, for this hearing. Hitomi Arimitsu was not in attendance, and she had warned the court I was dangerous and unpredictable, so extra security was required as I may try to harm or kill someone. The court thought this was excessive and unwarranted, especially after they met me. I purposely added two extra days over a weekend to allow for meeting our children. Hitomi refused to cooperate with my requests and told me our children were afraid of me. It is odd that the longer our children are away from me the more afraid and distrustful of me they have become.

Court investigators, or social workers, interviewed our children on September 8th at OFC. In the invitation sent to our children, the investigators explained what was going to occur and provided them significant information in advance. As a result, our children were very well prepped to answer exactly as they were coached by Hitomi. An obvious example of this was the clear recollection by our younger children of an incident that occurred prior to their conception. Also, one of the older boys told of an incident of seeing me across the street from their grandparent's house in the dark watching them. The exact same story of seeing someone sitting in the park watching their house was told to me repeatedly by Hitomi over the years together. Hitomi later tried to recant this statement on behalf of our son in a later hearing.

On September 14th, Hitomi Arimitsu appealed the prohibition order, and on October 29th OFC denied her appeal. The second hearing of our case was held on September 30th to provide a status update for all parties. Neither Hitomi nor I were in attendance. This was the six week point in the process.

Our third hearing on October 13th, a year to the day when I last saw our children, was the 'trial' hearing in front of the Hague three judge panel. Again, I added extra days over a weekend to this trip to allow time to meet with our children. Again, I was refused a meeting. I was even refused Facetime or any type of communication. Under the Hague Convention, I am guaranteed some amount of access. As with all matters, including the court, if Hitomi doesn't want to do it, she doesn't.

The first decision in our case came on October 30, 2015. OFC determined I satisfied all Hague tests and ordered the return of only our two 7 year old children and used the court's discretion to overrule the Hague required return of our older children. The court deemed our 12 year old boys to be of sophistication and sound mind to object. I am sure this Solomon-esque splitting of the baby made sense to the pragmatically minded

court. It appeared our children were little more than property to be divided. This was the 10th week of the case.

The decision by OFC was appealed to OHC by both Hitomi Arimitsu and myself in the first part of November. On December 24th, I filed for mediation to see if there was an alternative path to resolution, and Hitomi refused to participate, so any solution via mediation was ended on January 18, 2016.

On January 28, 2016, OHC rendered their decision in which they affirmed the OFC decision and additionally ordered the older children, now 13 years old, returned citing the psychological damage from splitting siblings. This decision came in the 26th week, half a year since the first court filing. Assistant Secretary of State for Consular Affairs Bond was recently quoted in a major Japanese newspaper saying the legal process in Japan takes too long. My case is evidence, and I now know my experience thus far was not unusual. However, this does not follow the Hague guidelines for expediency at all. During this time, my children were being alienated against me with no means of interim access to them.

On February 3rd, Hitomi filed an appeal to Japan's Supreme Court, and on February 5th I filed for a warning from OFC to Hitomi to comply with the Hague return order. This was the first of many steps that must be followed for enforcement of a decision. I foolishly thought that a justly rendered and affirmed court order was enough to complete my Hague process. I was not even close to the end. Japan's family law system lacks strong enforcement powers and contempt can be indefinite in many cases. The warning was issued to Hitomi with no result. Hitomi lost her appeal to Japan's Supreme Court later in February. I thought for sure this would be the end and our children were soon be heading back, or I was to go pick them up. Again, not even close.

The next enforcement step was filing for indirect enforcement—financial penalty. Of course, Hitomi appealed this and eventually lost this appeal, too. The impactful portion of indirect enforcement is the per diem fine due the petitioner (me). In this case, Hitomi was ordered to pay me 20,000 yen per day, roughly \$200.00. That is 5,000 yen per child, for every day until the children are returned to the U.S. Hitomi is of course in contempt of this order and refuses to acknowledge or pay the debt that has been accruing since March 21, 2016.

The next step for enforcement is direct enforcement. This is the step I am currently at and will soon attempt. I want to spend some time explaining this in detail for the committee. Hitomi also appealed the direct enforcement and lost. I had never heard of an abductor being able to appeal enforcement of a duly rendered court decision.

I am submitting for the written record a translation of the Japanese Hague Implementation articles relating to enforcement.

Article 138 An order set forth in Article 134 (1) shall be issued by designating a court execution officer as a person who carries out necessary acts for releasing the child from the care of the obligor and by designating the return implementer.

(Authority of Court Execution Officer)

Article 140 A court execution officer may carry out the following acts, in addition to persuading the obligor, in the residence of the obligor or any other place possessed by the obligor, as necessary acts for releasing the child from the care of the obligor:

(i) To enter the residence of the obligor or any other place possessed by the obligor and to search for the child at such place, in which case, if it is necessary, to take a necessary disposition to open a closed door;

(ii) To have the return implementer meet the child or to have the return implementer meet the obligor;

(iii) To have the return implementer enter the residence of the obligor or any other place possessed by the obligor.

(2) A court execution officer, in any place other than those prescribed in the preceding paragraph, when he/she finds it appropriate while taking into consideration the impact on the physical and psychological conditions of the child, the situation of said place and the surroundings thereof, and any other circumstances, may carry out the acts listed in each of the items of said paragraph, as necessary acts for releasing the child from the care of the obligor, with the consent of the person who possesses said place, in addition to persuading the obligor.

(3) Necessary acts for releasing the child from the care of the obligor under the provisions of the preceding two paragraphs may be carried out only when the child is with the obligor.

(4) A court execution officer, if he/she faces resistance when carrying out necessary acts for releasing the child from the care under the provision of paragraph (1) or (2), may use force or request police assistance in order to eliminate such resistance.

(5) A court execution officer, notwithstanding the provision of the preceding paragraph, shall not use force against the child. Where there is a risk that use of force against persons other than the child would cause physical or psychological harm to the child, the same shall apply to said persons.

(Authority of Return Implementer)

Article 141 A return implementer may carry out necessary acts, such as providing care for the child, in order to return the child to the state of habitual residence.

Let me provide a quick interpretation of the Japanese Implementation articles relating to enforcement: The court bailee enters the house using whatever force is required to enter the house in pursuit of children. Once in the house, the bailee can restrain or remove any ADULT persons that are physically capable of restraining the children. At this point, the bailee's power only extends to requesting the children to voluntarily come

with the bailee. Neither the bailee nor I are allowed to touch the children. I am forbidden any physical contact with my children.

Imagine this scenario as viewed by the child: loud knocking at the door and a quick look outside reveals court personnel and possibly law enforcement. Panic ensues in the adults, particularly your mother. Knocking gets louder and the door may even be broken down to gain access to the children in the house. With a broken-down door and a screaming, hysterical mother the official-looking people enter the house. Once inside, the official or police officer physically removes your mother from holding on to you and she is pulled away. This person that just tore your mother away from you now asks you if you will come with them to see your father who's waiting outside.

What do you think the child will say? Yes??

If the bailee determines that the children will never agree to come voluntarily, then the enforcement attempt is unsuccessful and ended. This has happened in another Hague case. Yes, all it takes is for the children to persist in saying "No" to foil direct enforcement. I'm now 48 weeks into this process and both my attorneys in Japan and DoS are telling me to spend the time, emotion, expense and hope to make this attempt. Their collective advice in the event of most certain failure is to try again and again and again and again.

This is an inappropriate use of asking the children's opinion and assessing their state of mind under duress in a high-conflict international abduction scenario. These are my abducted children who have been wrongfully retained for nearly 2 years and who have had almost no access to me during this time. As minors, they cannot possibly understand the implications of their response. It is entirely implausible that such a statement of minors under duress should result in circumventing Japan's own court orders rendered under the Hague implementation process. In this case, the Japanese courts have deemed that the children should be returned: a High Court order with the Supreme Court declining to hear the case and no further appeals permitted. This flawed enforcement process should not be a reason nor a means for Japan to evade its international obligation to comply with the Hague Convention on international child abduction. Quite simply, this should not prevent the return of my children to their rightful home with their father in the United States. I implore our government to address this issue with the appropriate Japanese authorities without delay or distraction.

The final step of your (my) Hague process may be in a Habeas Corpus proceeding if direct enforcement fails. This step is not part of the Hague Convention. It is a patch that is not in the Japanese implementation to fix the direct enforcement problem. Full responsibility and accountability should be taken by the JCA for the non-compliance of Japan with the Hague Convention if the direct enforcement fails, which is part of the implementation of the Hague Convention in Japan. This accountability should be made with respect to the requirements of the Goldman Act and its compliance report. The report just released July 11 addresses the direct enforcement problem and states the non-compliance of Japan on page 32.

To summarize, I followed the process, endured the extraordinary slowness of this process, received favorable court decisions in every hearing, spent myself into bankruptcy, been without my children this whole time and at the end of this, I am left to rely upon a highly traumatizing act as my path to returning our children. In essence, I

must remove my children under the Hague Convention in full view of their hysterical mother and that being the lasting image in their minds if they agree to return. On the other hand, please consider that if Hitomi, our children's mother, cannot comply with a court order, how can she raise our children responsibly? What larger lessons is she teaching about respect for the law and authority?

Hitomi's wealthy parents, Yukinori and Hiroko Arimitsu, have been paying her legal bills and harboring her and our children in contempt of multiple court orders and in violation of an international treaty their country ratified and acceded to. Mr. Yukinori Arimitsu's company, Arimitsu Industry Co. Ltd of the Higashinari-ku area of Osaka, Japan, has influence within Japan, and I cannot determine the degree to which the company has been complicit in the abduction. I was told of one special favor gained many years ago by an employee at the direction of Mr. Arimitsu to manipulate official governmental records to benefit Hitomi. I am concerned the same meddling is still going on or is possible in our Hague process.

Section 3.

I am inclined to be very critical of how Japan has handled my case, but I understand that this is a fundamental shift from their domestic family law model that awards only sole custody and overwhelmingly to abductors. There are many positive elements to Hague implementation in Japan, yet much work to be done.

The good news is that orders for return are becoming more common and with them subsequent cases have a path to return. A concern is the privacy of these decisions within Japan. Unlike the U.S., these decisions are not public in Japan, so each case has to proceed blind of any precedent unless experienced attorneys are willing to cooperate AND receive permission from their clients.

- I recommend DoS provide a resource that catalogs successful and unsuccessful individual cases in order to build the case law outside of Japan. Data Privacy concerns can be managed with redaction of sensitive information.
- Additionally, I recommend a summary of successful arguments and circumstances be compiled and made available to LBPs in the process. I imagine NCMEC could fulfill this role very well, if chosen.

I know very well the extent and limitations of DoS's support in these matters.

More recommendations to this committee:

The Goldman Act enumerates powers or actions available for enforcement of a recalcitrant country. I would like to suggest that these powers be made enforceable on a case-by-case basis, instead of a global, annual review. Additionally, these consequences would have very short, unalterable deadlines of compliance.

I will illustrate what I have in mind using Japan as the recalcitrant country.

- The Hague process shall not take more than 10 weeks for first decision. In the event of appeal, nor more than an additional 4 weeks. Failure to comply with this timeline will immediately result in reimbursement from Japan to LBP of all costs associated with this matter to this point. Japan will then pay for all subsequent costs incurred by LBP until conclusion or return of children, if so ordered.
- Compliance with return orders is the ultimate responsibility of Japan, not LBP. The TP will be given 30 days to voluntarily comply with return order. In the event that 30 days lapses and no return has occurred, Japan will be given an additional 30 days to enforce compliance with return. In the event that lapses, Japan implicitly consents to U.S. using all necessary means to bring about the return of abducted children, or U.S. citizens now held hostage in a foreign land, including use of military personnel and physical force against all resistance to an attempted enforcement. This level of enforcement must be at the discretion of LBP, not DoS.
- Japan additionally agrees to hold harmless LBP in the event local laws, norms or rights are violated in the execution of this ultimate enforcement. Specifically, an abductor at this stage gives implied consent to waive any subsequent legal proceedings in either country that may result from this ultimate enforcement.
- In the event that TP causes harm or death to children, LBP receives the immediate authority to seizure of assets possessed by individuals found to be harboring or financially assisting TP.
- Legislate these terms into the Goldman Act compliance and remove DoS discretion to enforce.

I understand that this may appear extreme and impractical in the context of current diplomacy. In my 30 years of experience with Japan, I have learned that any ambiguities will be used to avoid compliance or cooperation. It is my recommendation that immediate and unambiguous actions be known in the event of contempt or non-compliance with the Hague Convention. Currently, there are no specific consequences in place to guarantee enforcement of individual cases.

Resolution of the larger issue will come one victory at a time. Let's have enforcement and sanctions at the individual case level.

I recommend the Chairman order the delivery of the original version of the Goldman Act report that was completed by April 30, 2016 deadline. My contact at DoS told me the report was completed and submitted on time. In the interim, the original content has had ample time to be altered and manipulated, as was true with the first Goldman Act report that had any non-compliance language regarding Japan removed. Additionally, all edits to the original must be attributed and explained if the released version differs from the original.

I eagerly want the quickest proper return of our four children by the least traumatic means to their home in Minnesota, USA their habitual residence or home state since birth. Then, we can rebuild our relationships and resume our lives as a family together.

Thank you Chairman Smith for this opportunity today and your continuing efforts to address this form of human rights violation. Your staff has been very helpful, and I want to recognize their efforts publically. A special level and type of thank you to all the LBPs and their aggregated efforts to move the issue to this point. I am very sorry we all know each other in this way. To all LBPs watching this hearing, every one of our victories leads a path to the recovery of your children. You are not alone and we all want to help, and you can help us by sharing your experience to build case law and influence for this issue. Thank you.