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Reviewing International Child Abduction

Thank you to Chairman Smith and the committee for inviting me here to share my expertise and my personal experience on the ongoing crisis and crime of international parental child abduction in Japan. Japan is internationally known as a black hole for child abduction.

There have been more than 400 U.S. children kidnapped to Japan since 1994. To date, the Government of Japan has not returned a single American child to an American parent.

Bring Abducted Children Home is a nonprofit organization dedicated to the immediate return of internationally abducted children being wrongfully detained in Japan and strives to end Japan's human rights violation of denying children unfettered access to both parents. We also work with other organizations on the larger goal of resolving international parental child abduction worldwide. We are founding partners in The Coalition to End International Parental Child Abduction uniting organizations to work passionately to end international parental kidnapping of children through advocacy and public policy reform.

At the beginning of this year The G7 Kidnapped to Japan Reunification Project formed as an international alliance of partners who are parents and organizations from several countries including Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The objective is to bring about a rapid resolution to this crisis affecting the human rights of thousands of children abducted to or within Japan.

Many Japanese citizens and officials have shared with me that they are deeply ashamed of these abductions and need help from the U.S. and other countries to change it. They ask for continued public, foreign pressure as it gives them the support needed internally to uproot the cabal of resistance in Japan that continues to corrupt their family court system. This is revealed in "The Continuity Principle." Simply put, judges and attorneys representing abductors manipulate the "best interest of the child" to rule that the child should remain alienated and ignore how they ended up with the abducting parent.

The Government of Japan's Systemic Failure to Return Kidnapped U.S. Children

When Japan acceded to The Hague Convention on the Civil Aspects of International Child Abduction on April 1, 2014, you Mr. Chairman, joined us to meet with Japanese Embassy officials to discuss their plans for implementation. I remember walking out of that meeting knowing that our worst fears had been confirmed. They had no real plan to uphold the spirit and intent of the Hague Abduction Convention. It was all misdirection. Smoke and mirrors. What we foresaw then remains true today.

Under Article 21, *"The Central Authorities are bound ...to promote the peaceful enjoyment of access rights and the fulfillment of any conditions to which the exercise of those rights may be subject. The Central Authorities SHALL TAKE STEPS TO REMOVE, AS FAR AS POSSIBLE, ALL OBSTACLES TO THE EXERCISE OF SUCH RIGHTS."*

In the first known case to pursue Hague access in Japanese courts, Canadian, Henrik Teton requested interim access to his children and was ignored by the court. The judge refused to provide his name, thereby making accountability of his rulings impossible. No observers including embassy officials were allowed to witness the court proceedings.

Four and a half years ago, at the very moment Japan acceded to The Hague Abduction Convention parents joined Bring Abducted Children Home to hand-deliver 30 Article 21 Access applications. Hague was supposed to be an efficient path to see our kidnapped children again.

We were told we must give Japan time. We must wait and see. We'll we've waited and we've seen. Of those 30 cases, three parents reported receiving one Skype session and one received three sessions before the kidnapping parent cut them off. None of these parents have received true, unfettered access to their kidnapped children.

When I filed for access under Article 21 my ex-wife responded by filing a new custody motion in Japan citing my Hague application and weaponizing it against me. I had to put my application on hold for three years. After winning the case and attempting to restart efforts for access, she has been non-responsive.

In consultation with the Japanese Central Authority, The Office of Children's Issues is again encouraging me to file an Article 21 motion in Japanese courts. This is a grossly flawed strategy. As I'll state later in my testimony Japan now admits that all power to comply with court rulings rests with the kidnapper.

Japan's implementation of the Hague Abduction Convention is an abysmal failure.

Hague return orders have failed to be enforced time and time again, though it states under Article 7, "Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children."

The prompt return of children. It doesn't state the optional return of children. Japan continues to fail miserably here, too. The enforcement of the return orders fails every time unless the kidnapping parent willingly complies.

In Japan, enforcement involves an official going to the home and asking for the child to come out, while the kidnapping parent is inside prompting them to stay and holding power over the victimized child.

For James Cook, who testified to this subcommittee earlier this year, Japanese courts overturned the return order for him because Mr. Cook has moved into an apartment and shared a bedroom with a sibling after the enormous legal bills incurred from years in court in Japan.

He took his case all the way to the Japan Supreme Court and The Hague Abduction Convention failed again in Japan. Laws and treaties were ignored. His children remain with the abducting parent. It is an example of Japan's continuity principle at work that crushes any hope of reuniting with our kidnapped children.

According to my discussion with The State Department this would be classified as a judicial resolution of a case under their interpretation of The Goldman Act. In other words Japan gets rewarded for finding a way to avoid returning children kidnapped from the United States.

Another example of Japan's systemic failure to return children involves two Japanese parents living in the U.S. I point this out because it is the second time that a case from the U.S. involving two Japanese parents received extrajudicial effort that I have not seen yet in cases involving a non-Japanese parent. Like in a case from Oregon that ended in 2016, the enforcement of The Hague return order failed. In this instance a Japanese form of a habeas corpus petition was filed in the Kanazawa branch of the Nagoya High Court but it was not awarded. The father appealed to the Japan Supreme Court, which issued a ruling in March 2018. They wrote:

1. The child was found to be unduly controlled/influenced by the mother.
2. Therefore, the child's statement was not considered to be objective.
3. Therefore, the Japan Supreme Court determined that retention of the child was clearly illegal.
4. The Japan Supreme Court remanded the case back to the Nagoya High Court, Kanazawa branch.

In effect, the Supreme Court issued their opinion, but did not issue a return order in a habeas corpus case that evolved from a failed Hague process.

In July 2018, the Nagoya High Court issued a new ruling in the case. This time the child was ordered to be returned, but the mother and child immediately fled the court. It can be assumed that the Government of Japan, its courts and police, and her attorney know where the mother and child reside, but the enforcement of the return order remains to be executed.

State Refuses To Use Goldman Act Tools To Bring Kidnapped U.S. Children Home

In 2014 The Goldman Act was signed into law in part to create accountability for countries like Japan that fail to return kidnapped American children.

Multiple tools were provided ranging from:

- (1) a demarche;
- (2) an official public statement detailing unresolved cases;
- (3) a public condemnation;
- (4) a delay or cancellation of 1 or more bilateral working, official, or state visits;
- (5) the withdrawal, limitation, or suspension of United States development assistance in accordance with section 116 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n);
- (6) the withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of the Foreign Assistance Act of 1961 (22 U.S.C. 2304);
- (7) the withdrawal, limitation, or suspension of assistance to the central government of a country pursuant to chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.; relating to the Economic Support Fund); and
- (8) a formal request to the foreign country concerned to extradite an individual who is engaged in abduction and who has been formally accused of, charged with, or convicted of an extraditable offense.

To date, only demarches have ever been issued. All other tools have been ignored while we still don't

have a single case of the Government of Japan returning an American child to an American parent.

In April, the Senate Judiciary took this topic up at a hearing.

Sen. Booker asked, "Are we using the tools in The Goldman Act (beyond demarches)?" Assistant Secretary of State for Consular Affairs, Carl Risch responded, "Not to my knowledge."

Chairman Grassley inquired, "How many demarches have been issued since the passage of the Goldman Act?"

Mr. Risch, "There's been many... We feel that type of diplomatic engagement is the key to success in these cases."

Sen. Blumenthal probes, "Have you used any of the other tools?" Mr. Risch concedes they have not.

Has there been success? In response to the committees follow up "Questions for the Record", Assistant Secretary Risch responded that from 2008-2015 9,127 children were abducted from the U.S. and 3,992 were returned. There was no substantial change in the percentage of returns in those eight years. Some years it went up a few points and some years it went down. If returning children home to the United States is the key measure of success, and it is, that would point to a failure not a success.

This subcommittee also held a hearing that examined the lack of use of tools.

In that hearing, Chairman Smith, you noted that since 2014 we've seen a decrease in the number of new abductions, but not an increase in the percentage of returns.

Special Advisor for Children's Issues Suzanne Lawrence, testified, "We do consider all the tools we have at our disposal and we do that with our interagency partners and try to use the best tool at the best moment on a case by case basis... We consider them when we think they will be effective."

Rep. Jayapal followed up, "What would move the threshold in order to use those tools?... What can we tell our families about what we are going to do differently than what we've been doing?"

Ms. Lawrence replied, "... I don't have a specific answer for you on what the threshold is..."

Rep. Harris commented, "Is it going to take literally an act of Congress and an appropriations bill to get you ramped up through the escalating sanctions that can occur in some of these countries that the State Department has been unwilling to pursue?"

Chairman Smith, you hit it right on the mark when you said, "Sanctions work. If Japan doesn't get it through your persuasion, and I thank you for trying so hard, it is time to lower the boom!"

The State Department's response to those hearings was to ignore Congress's call to use the tools. A comprehensive review of all five Actions Reports from 2014-2018 showed a bleak pattern.

Many of these countries are repeat offenders. Yet no other tool but a demarche was utilized. Japan had three demarches in 2017 alone. In fact, other tools were only mentioned one time. The 2018 Actions Report claimed, "The Department is considering the use of further tools under the Act if Japan continues its pattern of noncompliance in failing to promptly enforce Convention court orders." In an open session of Japan's Diet in early 2017 Japan's Foreign Minister Fumio Kishida declared, there is not a single example of sanctions under the Goldman Act. He called them out. He called State's bluff.

Through multiple hearings in the House and Senate the State Department has rejected the calls from Congress to use the tools. Clearly demarches, raising IPCA cases with foreign government officials and empty threats are not bringing children home.

What is in these mysterious demarches? Will we ever really know? I am still waiting on a FOIA request BAC Home filed in February. What is it going to take move beyond demarches? When will the interests of kidnapped American children be put first and decisive efforts made to bring abducted children home?

Paris Seminar and Misleading Draft Legislation

Based on multiple discussions with State, it is clear that Japan anticipated being cited in 2018 under The Goldman Act starting at least six months in advance. There was a demarche in November and December last year. Japan knew what was coming and it was preparing to spin its way out of accountability.

On May 15, 2018 as Japan was about to be cited for International Parental Child Abduction by the United States, they held a public seminar at the House of Culture of Japan in Paris co-organized by the Ministry of Foreign Affairs of Japan and the Japan Federation of Bar Associations. In an audio recording from inside the event, we hear participants being educated about The Hague Convention on the Civil Aspects of International Parental Child Abduction. They are also taught how to prevent having their children returned to France should they take them without consent to live in Japan. More simply put, organizers lay out how to abduct to Japan and get away with it.

By creating a seminar that advised potential abductors how to circumvent a Hague return order, the Government of Japan has exhibited a shocking and blatant disregard for this international agreement.

When exposed and confronted by French Senator Richard Yung, Japan's Ministry of Foreign Affairs, tried to deflect it as a rogue act by a presenter they invited. If that were true someone from the Japanese Government staff would have cut the speaker off and denounced the advice. They did not do that because was not a rogue act. It was intentional. The Government of Japan is a shameless co-conspirator.

Seminars continue to be held and there is little reason to believe the content has changed.

In June, just after Japan was cited by the United States, their press reported potential draft legislation to purportedly address the child abduction crisis. This was an attempt to change the narrative. It noted that there is nothing under Japan's legal system to deal with parents who refuse to handover their

children in defiance of a court order. The proposal in an interim report considered fining parents to encourage them to voluntarily comply.

Fines and voluntary compliance already exists but haven't solved the problem. Fines can be imposed, but they would have to be collected and substantial enough to bend a kidnapper's will of defiance. That is a narrow and unique set of circumstances, not legislative and judicial reform.

As this potential draft legislation limped along in September it was reported, "the rules call for giving more power to enforcement officers and allowing handovers to take place only in the presence of parents with custody rights, on condition sufficient consideration is paid to the sentiment of the children."

There are two immediate problems with this. First, a Hague case has to do with habitual residence of the child not custodial rights. The parent seeking the return order might not have sole custodial or any recognition of being the custodial parent in Japan or under Japanese law. Second, what is meant by, "Sufficient consideration is paid to the sentiment of the children"? That's another loophole. What is the sentiment of a child who has been alienated for months or years going to be? Confusion, fear, anxiety, anger all directed at the parent who has appeared to take them home. Is this "sufficient consideration" going to dictate enforcement is still abandoned because the child appears more accustomed to living a life under duress?

These are subversive efforts to give the false impression of progress in Japan. It's more smoke and mirrors.

Though The State Department puts great hope in Japan's potential legislation a recent discussion reveals that they were working from a draft from the summer and not its current incarnation. The current version according to our partners has been gutted and will be ineffective if it is ever passed a year or years down the road. By all accounts this draft being discussed is a rotting piece of swiss cheese that nobody should touch.

Do not be misled by the reports in the Japanese press and from State Department meetings with the Government of Japan of sweeping legislative changes to improve our kidnapping crisis. Japan should not be rewarded with more time to fix problems that were exposed years ago. Let the kudos come only after our kidnapped children come home.

Japan Admits Access and Returns Are Optional

In May, my colleague and I met with Japanese Embassy officials to try to better understand if there was any genuine path for Japan to reunite parents with their kidnapped children. The Head of Chancery, Mr. Takuya Sasayama was shockingly candid, he said, "your access depends on the mother and child's wishes."

In November, State Department officials met with the Japanese Central Authority to again raise cases of American children kidnapped to Japan and the lack of progress and failures in enforcement of judicial rulings. Two weeks ago I received a comprehensive read-out from the Office of Children's Issues. There were three important points in it. Japan acknowledged that:

1. Enforcing an order depends on the voluntary cooperation of the kidnapping parent;
2. If this parent refuses there are no repercussions for ignoring an application for access, return or a court order; and
3. The kidnapping parents in Japan know this.

Is this Japan's new tactic, admit the problem and blame it on the kidnapper?

Too Many Tragic Cases

We need real solutions to the numerous clear-cut abduction cases, such as Naval Captain Paul Toland and Paul Wong. Though they are both the only living parent, the grandparents in Japan are holding their daughters from them.

In Captain Toland's case the abducting grandmother is in failing health. In working with the Office of Children's Issue an open line of communication was kept with the Tokyo Family Center to ensure he'd be notified in the event of her death. This ongoing line of communication is vital to protect Erika's future when the time comes.

In October his daughter turned 16. An email and a letter from the Office of Children's Issues arrived informing him that his point of contact would now be the American Citizens Services Unit at our Embassy in Tokyo. He was provided a contact and assured, "The officers in charge of Erika's case have been fully briefed."

Captain Toland reached out to the ACS Desk Officer and it took three weeks for him to receive this reply,

"As I do not have the details of your case, I would appreciate if you could explain what is going on with Erika. Also, what is Tokyo Family Center's involvement in your case? As you may not know, our office's involvement is totally different from our Office of Children's Issues."

It is astounding that this could have happened. Parents of internationally kidnapped children should receive better support than this.

There are cases, like Randy Collins, whose ex-wife was ordered to surrender their child's passport to the court. Instead she kidnapped him. Douglass Berg's children were kidnapped from their habitual and legal residence in the United States in 2009 violating his parental rights to access. Marine Corps Sgt. Michael Elias's two children were kidnapped to Japan after a U.S. court issued a no travel order.

The list is far, far too long. All children and families crushed by the Government of Japan's unwillingness to uphold its moral, ethical and treaty obligations.

There are thousands of cases within Japan that must be remembered, too.

The Kidnapping of "Mochi" Atomu Imoto Morehouse

In my own case I was granted sole custody of my son in the State of Washington in May 2007. Three years later, on June 20, 2010, I dropped my son, "Mochi" Atomu Imoto Morehouse, off to begin a weeklong visit with, his mother. He was 6 ½ years old.

That is where the endless nightmare began. Six days later, I received a phone call that no parent wants to receive. It was the police. My son and ex-wife had been reported missing. I knew immediately what happened. She succeeded in what she had threatened to do. She had kidnapped our son to Japan.

In that moment my life was shattered. How could this happen to my little boy? I did everything I could think of to prevent it. There were even passport and travel restraints in the court order to bar her from going outside the state Washington with him. When the Seattle Consulate of Japan denied her passport request she simply went to the Japanese consulate in Portland, which issued her one in violation of the Ministry of Foreign Affairs Passport issuance policy.

Sometime people say to me, at least you know he is safe with his mother. He may be somewhere in Japan with her, but he is not safe. He is at risk. She has willingly and intentionally kidnapped him to a foreign land with the intent of alienating him from me and everyone he knows.

Imagine being a child and your mother steals you away to a foreign country and then tells you your father does not want you anymore or that he is dead. Your whole life is now built on a foundation of lies.

This is not what a healthy, nurturing parent does. It is child abuse.

In 2014 and again in 2017 I won landmark rulings in Japan. Their court declared my U.S. sole custody has legal effect. My ex-wife has no legal custody rights there and they also cited her admission of illegal acts of passport fraud and forgery. There was no intent to offer justice, though. It was simply the continuity principle at work. It does not matter how a child ends up with the abductor in Japan, they will not uphold laws and treaties to return children to their rightful home. In the end the court refused to reunite Mochi and me. I don't even know as where he is being held.

Our kidnapped children's true voices have been silenced. They need to be heard. In the beginning of my most recent legal battle in Japan, My son, thirteen at the time, was asked by his attorney, do you ever think about your father? As the tears rolled down his face he replied, "sometimes I dream of him at night."

The last time I hugged him, the last time I heard his voice was Father's Day 2010. I love you Mochi, wherever you are.

On behalf of the 66 kidnapped children listed on the BAC Home website and those who have all been rendered voiceless by their abductors, for my fellow parents of internationally kidnapped children who feel marginalized by the lack of active, engaged, transparent assistance in recovering our loved ones, I implore Congress to take strong unified action toward Japan for its ongoing refusal to return our kidnapped children.

Congressional Action Needed

Prime Minister Abe for the past two years has spread it all over the press how President Trump and the U.S. are going to help Japan resolve the 1977-1983 kidnappings of 17 of their citizens in to North Korea. I feel for those parents. I understand their pain. It is my pain. It is our pain. We should help with that. It's the right thing to do.

President Trump ran on putting America first. Well, America first means putting American children first and bringing them home. Prime Minister Abe, what about returning the 400+ American children kidnapped to Japan since 1994? What about returning Mochi?

The Government of Japan throwing their arms up in the air and saying it is up to the kidnapper is not acceptable. The Government of Japan is complicit.

Last week Secretary Pompeo said to the German Marshal Fund in Brussels, "When treaties are broken, the violators must be confronted, and the treaties must be fixed or discarded. Words should mean something."

How will Japan be confronted?

In September the President addressed the United Nations and declared, "We are standing up for America and for the American people..."

Who is standing up for America's kidnapped children?

Words must be backed up with actions so that Japan will recognize that enough is enough and the United States will not tolerate the ongoing kidnapping and retention of our citizen children.

In Vice-President Pence's press statement from his November trip to Japan he stated to Prime Minister Abe that President Trump made a commitment, "to speed up the sales of defense technology to Japan, and we're keeping that promise. Before the end of this year, we will deliver ten F-35s to Japan, and six more in 2019."

I urge Congress to take immediate action while the opportunity exists and block the sales of defense technology to Japan until our children are returned to us. They have broken their treaty obligations. It is necessary to stand up for the American people here.

Create this sanction. Stop delivery of the F-35s. Tell the Prime Minister it is not acceptable to continue to hold my son, "Mochi" Atomu Imoto Morehouse or any of the 400+ U.S. children kidnapped to Japan.