

TESTIMONY

of

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for the

UNITED STATES SENATE

COMMITTEE ON FOREIGN RELATIONS

“International Parental Child Abduction”

February 27, 2014



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I want to say thank you to you Chairman Menendez and Ranking Member Corker and members of the Committee for inviting me to testify. Sincerely, nothing means more to me than working out the problems on this issue that my daughter faces, so thank you very much.

In the interest of staying within the appropriate time, and because I am more interested in your questions and how I can help you in this work I will keep my remarks short, and ask the Chairman for his indulgence that my full statement be added to the record as well as some supplemental reference materials.

First I want to tell you just a little about my case and what I and my organization, Global Future, The Parents Council on International Children's Policy have done over the last 8 years. I'll include ideas about working through the challenges and problems throughout. Then I'd like to offer a series of ideas for consideration as solutions, and discuss some of the recent developments and special challenges that Japan presents us.

It is my sincere belief that the only meaningful solutions to this issue in terms of remedy and prevention will be found primarily in the Judiciary and under law enforcement. We have seen in domestic kidnappings an immediate and robust law enforcement response with regard to investigations, interviewing accomplices, tracking phone and credit card data, issuing Amber Alerts and arrest warrants, quick extradition of perpetrators, and heroic recoveries of children,

without hesitation.

In international parental kidnappings there is never such an urgent response. Instead, in a very high percentage of cases children remain abducted, and here we are at another hearing on the same subject, the same as in 2004 and the same as in 1998 going over the same old ground. Therefore, the Federal response to IPCA must more closely match the successful model of the Federal response to domestic parental child abductions. Otherwise, these children will continue to be denied equal justice under the law, and be deprived of their civil and constitutional rights. [Please see the attached Global Future New Parents Primer #1]

In addition to the Judiciary component, future success on the IPCA issue must include Foreign Relations and Homeland Security components. None of these three aspects can be bypassed, if we want to honestly represent to American Families that meaningful progress on this issue has been achieved. Some of the real changes will have to be (1) a stronger priority on enforcement of existing laws and treaties; (2) more streamlined and real-time direct communications between family courts and law enforcement, especially at border crossings; (3) implementation of exit controls; (4) developing and maintaining a more closely aligned, truly shared respect for the laws and judicial orders between all global partner nations. Action by the Foreign Relations channel is subject to limitation by sovereignty, diplomatic considerations, US and international law, and international treaties. Departmental creep and stove piping

the work by each of the three Departments over a long time has contributed to the current state of a failed and incoherent Federal response for all of these children.

My case started when Ryoko's parents began pressuring her to return to Japan with our daughter, shortly after her birth. I was especially fearful that their financial and controlling influences could sway her, even though she had never proposed that idea and we had never discussed any of us moving to Japan. Ryoko previously discussed with me and a bi-lingual psychologist in over year of counseling, that she suffered a long term terrible abuse in her youth at the hands of her father. That psychologist is able to break the privacy vow and discuss what he heard from Ryoko, if subpoenaed by a Congressional committee or judge. So I asked the court for a restraining order in an effort to protect our daughter from that same trauma, and from being subjected to any foreign jurisdiction, laws customs, traditions, where she would be less protected than in the United States. That entered us into the family court system in Los Angeles. Despite the vexatious maneuverings by Ryoko's attorney James Kelso Lindsay, everything went right for Melissa in court. I was lucky that Ryoko never denied her personal abuse history, and that there really weren't many serious mistakes in the case by either my attorney or the judge. We went through 11 months of proceedings, custody was ordered, with daily visitation. There were several protective orders in place such as passport surrender, no travel, and more. ((please see attached Judges order from March 8 2006 #2))

Ryoko eventually succumbed to the pressure from Lindsay, her parents, and a Japanese attorney her parents hired, who actually helped plan and coach the criminal abduction of Melissa. She had a Japanese passport created in a false name for our daughter. Then by a combination of acts of deception, coercion, and fraud, she went to the airport and got on a plane with our daughter on March 16th 2006. Once the All Nippon Airways plane left the ground, all U.S. law protections, and U.S. rights were effectively stripped from Melissa. After hearing our judge order specifically no travel to Japan with our child, and the passport surrender, I believed that nothing like this could have ever happened. I also felt confident that if something did happen, the courts, law enforcement and the U.S. government would quickly remedy the situation. This is not a case where I consented or somehow acquiesced to our child being subjected to any foreign laws, customs, or jurisdiction. In fact, like the many other cases that I like to highlight within the work of Global Future (several members of which are here today and you may have met with me here regularly), I availed myself of every possible legal protection and prevention under U.S. law and within the courts to ensure that Melissa would never be subject to any foreign law and especially jurisdiction. It was a criminal kidnapping, resulting in local and Federal arrest warrants. [Please see attached FBI arrest warrant #3]

So that brings me to the differences between the various types of cases and the differences in the U.S.G. obligations in each of the different types of cases. [please see the

attached Global Future Differences Between The Cases document#4] [and the Japanese Hague instrument legal definitions, the most recently deposited definitions currently at the Hague#5] The issue of a child's separation from a parent is rarely as simple as it appears at face value. Abduction cases are complicated. Many cases of parent-child separation are not "abductions." If we are to create legislation on this subject, we need to better understand the categories of cases, and the appropriate measures, as warranted by the facts of each case. Any legislation attempting to currently define or redefine all cases on some "same" basis, and then place all cases in the same bucket with the same limited sets of diplomatic remedies, severely discriminates against the cases that have a clear-cut basis in U.S. law and law enforcement's statutory obligation to act. The response to international child kidnapping should be exactly on par with the federal response to domestic kidnappings. Even the Japanese recognize and differentiate between these important semantic legal foundations.

It is now (and once again) clear that criminally abducted children do not have equal protection under the law. Each and every case, criminal or civil, U.S. jurisdiction or foreign jurisdiction, has a tragically sad and compelling aspect with regard to the children. But children by virtue of their minority and law, are subject to and controlled by their parents' decisions. Sometimes parents unwittingly make bad legal decisions or take a risk, and later do not want to accept the resulting legal reality. So there are wrongful retentions and wrongful removals. There are criminal cases, there are

civil cases, and there are foreign jurisdiction cases, U.S. jurisdiction cases, cases with violations of family law, and human rights cases.

The most egregious cases will be U.S. jurisdiction cases, which include abuse of human rights, and have bases and remedies available in criminal, civil and family law. By contrast, foreign jurisdiction cases are defined by a transgression of human rights, for which there may be only civil remedies.

There has been every variety of extraordinary legal cases, such as Tom Sylvester's, that still don't end in remedy or relief. In addition to having a criminal child abduction case under U.S. jurisdiction, he won in the Hague only to face endless appeals and he also won in the E.U. Court of Human Rights and in the European Convention, none of which returned his daughter to her legal home in Ohio. Please see attached testimony submission [some of which came from the 2004 House hearing by Tom Sylvester#6], and ask yourself if anything has changed since then, or since the previous hearing he testified in, in 1998.

Although they may appear similar, every case is unique by fact, and remedies are controlled by the facts. Careful responsibility should guide our usage of the various descriptive words, describing the various types of cases. Correct usage is of the utmost importance. For example, the use of and the definition of the word 'abduction.' In U.S. law, the word has very specific meaning, [please see the

attached Blacks Law Dictionary definition#7]. Misuse of the word ‘abduction’ and other relevant words creates misperceptions. These misperceptions are then spread thru the media and eventually will confuse law enforcement and judicial officers as well as the American public and cause harm where it should not be. [Here is a quote from the DOJ OJJDP 2010 publication entitled "The Crime of Family Abduction" signed by Jeff Slowikowski and Attorney General Eric Holder;]

“Misperceptions about family abduction can potentially cause further trauma to the abducted child. These misperceptions can also lead to an increase in the incidence and duration of family abductions.”

The U.S.G. simply cannot unwind the legal facts and legal distress of every case. For example, cases where a parent consents to the travel and places his or her child on a plane, defines this common case model as a foreign jurisdiction-wrongful retention case, with only civil and Hague remedies, if the foreign country is a Hague partner. It is not by fact or definition a criminal abduction. It’s unrealistic to expect that we will ever see another Senator hold up billions of dollars of foreign funding on behalf of a wrongful retention case, as Senator Lautenberg courageously did. There are thousands of criminal abduction cases where such strong action has not yet been taken. Holding up foreign aid does not demonstrate successful diplomacy, nor a success of the Hague.

Basically, all cases can be sorted by jurisdiction 1st, and legal

facts 2nd. There are U.S. jurisdiction cases, and foreign jurisdiction cases. Under the principles of International law, jurisdiction is the primary foundational element and will dictate the appropriate venue where any remedy or relief can be decided on any case. The legal facts will determine what areas of law can be used for remedy or relief. Legal facts can't be changed or fudged after the fact.

Six months after Melissa's abduction in August 2006, I made my first trip to Capitol Hill. By November of 2006, I made up my mind that I was going to educate every single legislator and every relevant government department on the issue. This gave me hope, a purpose, and it was a good use of my time and energy. It kept me sane, but more importantly, I had decided that if the U.S.G. is now the de-facto parent for Melissa in Japan, that this work was now my only way of parenting her. Since then, I have spent about 100 days per year, here in these buildings. Today, I stand at about 800 days of my life here. I have taken the time of so many members, some of whom are now gone from public service or have even passed away. I have now met with over 1600 congressional staffers, a few maybe over 100 times. I have spoken with every living Secretary of State, former Presidents and Vice Presidents, and a few hundred foreign dignitaries. Today, I want to thank all of you for your time, indulgence, hard work, and occasionally your patience with me. When I come here, I am almost a one-issue guy. That issue is my daughter Melissa. Please forgive me. I feel like I have lost everything already, but I am not the victim here. My daughter is the victim and I am her father charged with

fixing her problems. That is why I keep coming back, and remain committed to this work.

Back in my first year other tracks of work were developing too. I bought a law library in 2007 and studied ideas in potential strategic litigation and law. The day before the statute ran out, I filed suit against Ryoko's lawyer and his entire firm for malpractice by aiding and abetting in an abduction. I desperately fought the case alone for the first 14 months while interviewing over 420 malpractice attorneys, all of which passed on handling the case. I won the demur and the motion for summary judgment in pro per, and finally found two of the best civil attorneys in California to handle my trial for a fee. We won.

I was told at that time that I was the only person in America to successfully sue opposing counsel for malpractice, arising out of a family law action, and win. It was painfully bittersweet, and I don't recommend that anyone attempt it. However, I did work with another New Jersey resident who copied the suit and won his case as well. His may be the only other example to date.

I also filed suit against the All Nippon Airways trying to establish that airlines have a duty to protect children and their families from the harm that comes from abductions. We lost my first case, but re-worked it and re-filed a better version in another case in California, and then planned and filed refined versions in two more cases in Florida and Pennsylvania simultaneously. This kind of work is

continuing. After three years of working with Rep. Jim Oberstar, and the House Transportation Committee, he ordered a GAO report, which explored the problems and potential remedies with airlines used in the commission of child abductions. [Please see attached GAO Report 11-602#8] There are many other ideas in the strategic litigation channel, but most of those are more appropriate for a future judiciary hearing.

Today I want to discuss the issue of civil rights and constitutional rights discrimination against children with U.S. jurisdiction criminal abduction cases.

A little background first. In the history of law, no-fault divorce, shared custody, and children's rights are still in their infancy. Just sixty years ago, international marriages were a tiny fraction of what they are today. Even twenty years ago it was a lot of very slow work to meet a potential spouse on the other side of the planet, if you didn't travel and spend time there. Today, ease of international travel and globalization make it possible to meet and talk with thousands of people from every possible location on the planet. And it is happening faster and faster, and more and more children with dual or even triple nationalities, are born every day.

Timing is everything for work on certain issues. Yesterday was the time for meaningful progress on this issue. If this body intends to take up legislation on foreign nationals crossing our borders illegally coming in to our country, that would then be the appropriate time to take up work on

American children being kidnapped out of our country.

The Etan Patz case was the very first abduction case to really change the way American society and law enforcement deals with child abductions. It is now 35 years old, and still remains unresolved. As a result of that seminal watershed case, we got legislation creating NCMEC, law enforcement created new ways of investigating cases, photos became a new tool and were then first used on milk cartons. Many of the far reaching implications of that case took America into a new phase of awareness of the crime of child abductions.

The Hague treaty on the Civil Aspects of International Child Abductions is now only 30 years old and was a great start for its time. The Hague framework is expanding worldwide, but the massive loop-holes continue to be widened and foreign judges and attorneys continue to exploit in order to deny returns.

IPKCA became law in 1993, and in the Congressional notes on that law, the original authors were clear that it was the prosecution of the criminal abduction cases that would drive the deterrent to all forms of child abductions and wrongful retentions. I believe that is still the only effective path forward today, and was a visionary insight by those authors that unfortunately has never had a chance to be demonstrated. Just a few emblematic prosecutions each year would send a message everywhere that we as Americans believe that protecting these children's rights to equal justice under the law is more important than either parents' selfish

considerations, or acts of revenge and control that leave children as the real victims of a crime.

These prosecutions send a message worldwide that we won't accept forum shopping, that any properly entered and valid first-in-time judicial decisions would and should remain in force, that those judicial determinations would actually be enforced especially when the children are abducted, and can't be undermined by sneaking off through means of fraud and deception. The IPKCA plan was clear. DOS was to serve DOJ by assisting in resolving the most egregious criminal cases. Prioritizing extradition requests, and holding countries to their extradition treaty obligations seemed to be the simple practical key to the authors of IPKCA and helped reinforce the rights of all children.

Knowledge about the potential consequences would absolutely deter most would-be child abductors, and would provide incentive for resolution of greater numbers of wrongful retention and foreign jurisdiction access cases. Essentially, bad actors will resist the temptation when they know the consequences might really negatively affect them if they choose to take such an action.

After 1993, it seems clear that DOJ became frustrated by the unresolved criminal abduction cases piling up, and with the lack of DOS support on resolving the international criminal cases. So eventually, over time, the portfolio of work on these cases migrated from DOJ to DOS.

I have to say here that I personally know about 100 people who work at DOS who sincerely would love nothing more than to bring Melissa home today. In 2006 and 2007 I was frustrated with the responses I got there. Over time and study, I came to realize that there are thousands of deeply committed and concerned people working in the DOS. From the bottom of the DOS to the top, returning our children is just not in their job description or ability. They are not law enforcement officers; their job is diplomacy and they answer to the administration and to Congress. I used to say that they have a conflict of interest.

Here in the foreign relations channel, we could re-write portions of DOS' Foreign Affairs Manual in order to better serve these emblematic international Child Abduction cases. Creating better Welfare and Whereabouts reports, taking current photographs and videos to return to the left behind parents with, and including professional child development and social science evaluations may help create a more positive view of the U.S.G. response in appropriate cases, and would address the psychological and emotional traumas that these children experience. [Please the attached paper by Sarah Lyons#9]??

In fact three years ago, Global Future wrote a proposal (among a long list of proposals over a few years) for a sweeping reform of the W&W visit program. This may be something that can be more appropriately done by this committee in the foreign relations channel. [Please see the attached version of the FAM on this subject#10]. The W&W

visit program is still one area that does give some parents some solace and comfort. It also may be the only U.S.G. obligation in some types of access or foreign jurisdiction cases that can be executed.

Assistant Secretary Campbell and Assistant Secretary Jacobs acknowledged publicly that another of our proposals became a new DOS policy. That particular idea is one we are most proud of. “The aged-out cases proposal.” After abducted children age out of minority, in appropriate cases, the DOS no longer needs to go through an abducting or wrongfully retaining parent in order to talk with the child. That person is now in their majority, still has American citizenship, still has an American family, society, and cultural aspect of their identity, which may have been wrongfully denied to them previously. They may have inherited property or money, they may want to seek employment or education here in the U.S., they may be eligible for various programs or might want to join some branch of our government or military. The point is that the Embassy can directly contact these abducted children without the barriers that they unfortunately faced while the child was in their minority.

There is no way for us to write a law demanding that the administration engage another nation, but we can have Foreign Service Officers fulfill that promise written inside the front page of every U.S. Passport.

Left behind parents are a uniquely desperate and vulnerable group. They are persons who are at the most desperate time

of their lives. They are susceptible to all kinds of scams and frauds. In fact when Googling IPCA, the top sites that come up will reveal an especially heinous group of scam artists who regularly prey on left behind parents and their families using their children as bait. There are literally hundreds of spurious organizations that use real and falsified stories and images of parent and child separations to solicit money for personal gain. There are hundreds of paramilitary snatch-back organizations, most of which successfully extract between \$30,000 and up to \$1,000,000 per case, from desperate and trusting parents, without ever intending to return the children. The internet has created so much in the way of good for humanity. It also has increased the opportunities for scams and cons in a massive exponential way. In an area mostly overlooked by law and law enforcement, filled with desperate and trusting parents, these fraudsters have easy pickings. Many operate under false identities, and they face very little in the way of consequences.

I was as desperate and vulnerable as any parent in early 2006. However I was lucky to discover in time that I had been solicited by an especially heinous con artist very soon after my daughter's abduction. I researched him and found that his real story was entirely the opposite of what he portrayed on the internet. By attending two court trials against him months later, I learned that he had an especially notorious record of domestic violence, abuse, identity theft, false identity, unpaid child support, vexatious litigation, and fraud, primarily victimizing his Japanese wife, the mother of

their child. I was appalled. Today, he runs one of three internet based organizations purportedly advocating for left-behind parents whose children are in Japan, that all happen to be run by persons with abuse histories that have been vetted judicially or by law enforcement. Individuals like this undermine the work of Congress on our children's behalf, and add to the time they will be held in captivity abroad.

One of our central pillars in Global Future became calling out abusers and demanding that they be prosecuted. We stand in support of victims of domestic violence and against abusers, with a no-tolerance policy. Cases where abuse allegations adjudicated by Judges or vetted by law enforcement officials won't qualify for any type of association with our group or our work. At the same time, we object to being painted with that same brush by DV organizations and must work even harder to expose abusive individuals hiding amongst the left-behind parent community. By virtue of their nature, we found that abusive individuals retaliated in any number of ways when we rejected them for inclusion in or association with our work.

From these same individuals and their organizations, myself and my organization have received death threats, cyber threats, and cyber bullying attacks while these people hid by using false identities on the internet. My email has been hacked, my credit card hacked, my Facebook page disabled, our website disabled, and they even put porn ads on my daughter's Facebook page after I could no longer access it. Indeed I have even been threatened to be killed if I so much

as testify on the subject of IPCA or expose the true facts of some cases. We have decided that the entire community of left behind parents must be carefully vetted if we are ever to make clear progress. [Please see the attached draft copy of the Global Future Congressional Protocol for Vetting Left-Behind Parent and Child Abduction Cases#11] Indeed both legislators and the entire advocacy community suffers when these people abusively dominate the internet presence, and attempt to hijack our advocacy movement and work on the issue.

Until we began Global Future, no child had ever been returned from Japan through a legal process. Today, and in history, there has been only one single child legally returned from Japan. Although we worked with numerous agencies and departments of the U.S.G., the return of Dr. Garcia's daughter to her lawful home in Milwaukee, was largely a result of the planning, education and work of Global Future. That was our third criminally kidnapped child returned to their lawful home in the U.S.

[Please see the attached Garcia case study narrative, the Global Future Justice case study hand-out, and the NCMEC database report on the Garcia case #12]

Over the entire seven years of Global Future's existence, we examined and analyzed hundreds of cases. We have worked with families in reconciliations, mediations, civil, criminal, and family court proceedings. All along building on ideas that we have perceived as in the realm of what's possible,

without letting the goal of the perfect result stop us from getting anywhere. We developed a set of plans that we believed was possible to affect a safe legal return. One of our members, Mr. Alejandro Mendoza of New Jersey offered his case as the first prototype. It was huge and courageous risk. Our feelings of responsibility if it were to fail, and commitments to making it work, were the highest. Law enforcement officials in New Jersey agreed, and we eventually brought both children back to their lawful home.

All along we were working on several cases at once. Dr. Moises Garcia's case was especially unique and promising in terms of all of the facts. [please see the attached narrative of his case] It is highly unlikely that we will ever see another case with the variety of and complete exhaustion of every possible favorable ruling in both countries. With that as background, and our recent success in the Mendoza case, Dr. Garcia convinced us that we could bring his daughter home. Again it was an even higher level of responsibility and fear of failure. It was Japan this time and no-one had ever been successful in Japan. [please see attached NCMEC database report on this case] We cautiously applied many of the same ideas and principles as in the Mendoza case and on December 23, 2011, Dr. Garcia's daughter was back in her lawful home in Wisconsin.

This case is by far and away, the most highly emblematic of any within international child abductions. This is the model case to study. It demonstrates the key to unlocking hundreds or thousands of criminal abduction cases, which in turn

creates the deterrent and incentivizes resolutions in all other kinds of cases.

Today, we live in a civilization within a highly globalized world. We no longer can live in a world where this issue can be kicked down the road. It seems that the U.S. Government is entirely in control of the fate of my daughter and all other abducted American children.

Please don't let my daughter or any of these children slip away. Please use this opportunity to pass meaningful legislation that reinforces protections for our children, and their original jurisdiction. Legislation that prioritizes and protects the justice components. Legislation that will result in children being returned to their lawful homes.