

**The International Abduction of Rhonda Mei Mei Lan Zhang**  
**Statement to the Subcommittee on Criminal Justice Oversight, Committee on the Judiciary**

October 27, 1999

Mr. CHAIRMAN, MEMBERS OF THE COMMITTEE:

My name is Laura Hong. I am a partner at the law firm of Squire, Sanders & Dempsey, resident in Cleveland, Ohio, and am the legal guardian and legal custodian of Rhonda "Mei Mei" Lan Zhang ("Mei Mei").

At the invitation of Senator Thurmond, I provide this statement because Mei Mei was abducted by her non-custodial birth mother, Sue Ping Chen, on October 15, 1996, and taken to the People's Republic of China. And yet, despite the clear terms of the International Parental Kidnapping Act, the Department of Justice refused and continues to refuse to issue an indictment.

First, on behalf of myself, Tom Kovach and five year old Mei Mei, we thank you for giving us this opportunity to submit this statement on a matter of grave import. We also express our gratitude to Subcommittee Members DeWine, Ashcroft, Abraham, Sessions, Torricelli and Leahy who, along with twenty-eight other Senators and six Representatives, have made requests to President Clinton, The National Security Council, the Departments of State and Justice, and the Chinese government to facilitate Mei Mei's return home.

As the Subcommittee is aware, in 1993, President Clinton signed into law the International Parental Kidnapping Act, 18 USC 1204 ("IPKA"). The statute makes it a crime for a non-custodial parent to remove a child from the United States with the intent to obstruct the lawful exercise of parental rights. The statute defines parental rights as the "right to physical custody of the child."

Mei Mei was born in Cleveland, Ohio on November 4, 1993. As a result of Ms. Chen's repeated neglect of Mei Mei, by court order dated March 8, 1995, more than a year and a half before Mei Mei's abduction, I was granted physical custody of Mei Mei. That right has continued uninterrupted through the date of the abduction and to the present day. In addition to the court order granting me physical custody of Mei Mei, after Mei Mei's abduction on October 15, 1996, the Juvenile Court for Cuyahoga County issued several orders commanding the return of Mei Mei, terminated Ms. Chen's parental rights and awarded me legal custody. Initially, I was Mei Mei's foster parent; I am now Mei Mei's legal guardian and custodian. 1 Since Mei Mei's abduction, the Ohio Eighth District Court of Appeals has upheld my custodial status and the

termination of Ms. Chen's parental rights and issued a writ of habeas corpus commanding Ms. Chen to bring Mei Mei before it. The Ohio Supreme Court upheld the issuance of the writ and the order granting me legal custody of Mei Mei.

Yet despite these court orders, and overwhelming congressional and citizen support, the Department of Justice refuses to issue an indictment under the IPKA; and the State Department, citing the inaction of the Department of Justice, similarly refuses to help.

The Act clearly applies here by its terms, and the fact that the Cleveland U.S. Attorney has not enforced it sends a message that a law is a law only to the extent the local U.S. attorney wishes it to be.

A few days ago, on October 14, 1999, Jess T. Ford, Associate Director, International Relations and Trade Issues, National Security and International Affairs Division, United States General Accounting Office, testified concerning the Division's preliminary observations on the federal government's response to international child abduction. Director Ford reported that the State Department estimates that every year 1,000 children are abducted by their parents. Yet, since the enactment of the IPKA, the Justice Department has issued only 62 indictments under the IPKA.

In November 1998, the Attorney General created The Policy Group on International Parental Kidnapping which produced an April 1999 publication entitled A Report to the Attorney General on International Parental Kidnapping. In reference to that report, Director Ford highlighted four key problems cited by the State and Justice Departments relating to the federal government's response to international child abduction. Not surprisingly, one of the problems cited is the Justice Department's limited use of the IPKA.

In response to problems relating to international child abductions, the Departments of Justice and State repeatedly appear before Congressional committees requesting funding for social workers, support groups, computer programs for case tracking, study groups, and policy groups designed to "deal with" international parental kidnapping. All of this smacks of being a smoke-screen. It is our opinion - based on firsthand experience - that the paramount issue in dealing with international parental kidnapping is enforcement of the law as it is written and as it was intended to be enforced by Congress.

The official responses to our efforts to bring Mei Mei home underscore this. The State Department consistently called this a "private custody dispute," as there were no criminal charges against the abductor. But there is no "dispute" here; under Ohio law, Mei Mei's abductor has and had no rights whatsoever with respect to Mei Mei. Moreover, this case is susceptible to being called a "private custody dispute" only because the Cleveland US Attorney declined to indict under the IPKA. If an indictment issued, then, a fortiori, this would be a federal criminal matter, and not a "private custody dispute."

It is all part of a vicious circle. We are told the President has looked into the matter, but will not help little Mei Mei and us because the National Security Council will not help us. The National Security Council is “unable” to help us because the Department of State will not help us. The Department of State will not help us because the Department of Justice will not help us. The Department of Justice will not help us because the Cleveland US Attorneys’ Office has declined to prosecute. The Cleveland US Attorneys’ Office will not issue an indictment (purportedly) because the Department of State will not guarantee that an indictment will lead to the conviction of the abductor.

Though our efforts to seek enforcement of the laws of this country, and in particular the IPKA, are detailed more fully in the attachments which I submit with my written statement into the record, I summarize for the Subcommittee our protracted and thus far unsuccessful efforts in his words, Mei Mei “looks Chinese” and “belongs in China.” directed to the Cleveland US Attorney’s Office and the Department of Justice to obtain an indictment under the IPKA.

The day after Mei Mei’s abduction, on October 16, 1996, I provided a statement to Cleveland FBI agents. On that same day, Cleveland Police confirmed that Ms. Chen and Mei Mei had flown from Cleveland to Chicago, Chicago to San Francisco, and San Francisco to Hong Kong. Ms. Chen was traveling on her Chinese passport, and Mei Mei was traveling on her US Passport. With the assistance of the Department of Commerce, we immediately electronically transmitted photographs of Mei Mei and Ms. Chen to Hong Kong FBI agent James Wong. Unfortunately, we were too late. Ms. Chen and Mei Mei had already entered the People’s Republic of China. We were immediately advised that the Chinese authorities would assist in Mei Mei’s return if we obtained a federal indictment. We were also advised that a federal indictment would facilitate an Interpol warrant, and that that, too, would facilitate Mei Mei’s return. Having been so advised, we began a process that resulted in hundreds, if not thousands, of requests for an indictment.

On October 21, 1996, six days after Mei Mei’s abduction, Tom Kovach, also an attorney at Squire, Sanders & Dempsey, and the only father Mei Mei has ever known, met with Cleveland First Assistant US Attorney, Gary D. Arbezniak. Mr. Arbezniak requested that we prepare a memorandum of law and analysis of the IPKA in response to Mr. Arbezniak’s erroneous statement to me over the telephone that the IPKA requires an underlying state indictment. Despite the incredible pressure and strain under which we were functioning, and despite the fact that we are civil, and not criminal, litigators, we provided Mr. Arbezniak with the memorandum; we did not, at the time, question why it was our obligation to explain the law to an Assistant US Attorney. Nor did we question why First Assistant Arbezniak had personally taken the case when Cleveland Assistant US Attorney Krista Bruntz previously had handled and issued an indictment on an international parental kidnapping case pursuant to the IKPA for that office.

During the next few days, we received incredible support and assistance from other law

enforcement, particularly Hong Kong FBI, the US Embassy in Beijing and the Consulate office in Guangzhou, where we had located Ms. Chen and Mei Mei. Unfortunately, with lightning speed -just nine days after Mei Mei's abduction - Mr. Arbeznic, on October 24, 1996, without any discussions with me, notified the US Embassy in Beijing that the Cleveland US Attorney's office had declined to prosecute the case.

Though I continually called Mr. Arbeznic for a status, this information did not become known to us until more than one month later when Congresswoman Patsy Mink forwarded to me a Department of State telegram from the US Embassy in Beijing advising her of Mr. Arbeznic's October 24, 1996 notification and also advising that "without the requisite request from FBI Cleveland to work the case, the US Government has no legal authority to pursue [Mei Mei's] case in China.." We contacted Agent John Jacobs of Cleveland FBI, who advised us that, because Mr. Arbeznic had affirmatively stated that he was not going to prosecute, Cleveland FBI could do nothing further.

Thereafter, over the next fifteen months, we were left highly insulting messages by a now-former Department of Justice Attorney allegedly responsible for "children's affairs." We were threatened with local indictments for posting a website about Mei Mei's situation, and were flatly ignored by Cleveland US Attorney Emily Sweeney, with whom we left unreturned messages on at least a weekly basis.

In early 1997, in response to the hundreds of letters from us, citizens, members of the Congress, the immediate past presidents of the American Bar Association, Federal Bar Association and the National Asian Pacific Legal Consortium, we received our first response from the Department of Justice. That response was a form letter that did nothing but offer "assurances" that the Cleveland US Attorney's Office ("USAO") was "thoroughly looking into the matter." Of course, this was false, because on October 24, 1996, First Assistant US Attorney Gary Arbeznic had closed the matter. The Cleveland US Attorney herself did not respond to any inquiries until October 21st ), 1997, more than one year after Mei Mei's abduction, when she wrote me a lengthy letter advising me that the Cleveland USAO was declining to prosecute Ms. Chen. A copy of that letter is appended to my written statement. I bring to the attention of the Subcommittee, however, some highlights of the letter in which, for the first time, the USAO purported to articulate for us the basis for her refusal to pursue an indictment of Sue Ping Chen for the kidnapping of Mei Mei.

Though it would appear on its face that the letter was intended to explain her decision, we were amazed to see that, in all its 4- page length, there was not one mention of the IPKA, 18 U.S.C. 1204 (the "IPKA"), or any other criminal statute. She stated that her "office [was] not satisfied that an unbiased trier of fact will find Sue Ping Chen guilty," but her statement was made in a vacuum, with no reference to the particular criminal statute against which the Cleveland USAO claimed to have assessed the probability of Chen being found guilty. This was quite telling.

Moreover, the Cleveland US Attorney did not provide any legal authority for employing the standard she claimed to have employed - i.e., the standard that an “unbiased trier of fact will find the accused guilty.” At the same time, though, she cited Section 9- 27.220 of the U. S. Attorney’s Manual, which indicates that the “threshold determination” should be whether probable cause exists to believe that a federal offense has been committed, and “that admissible evidence probably will be sufficient to obtain and sustain a conviction.” Apparently, the Cleveland US Attorney chose to apply a more exacting standard than that set forth in the “Manual” when it came to enforcing Mei Mei’s rights.

Crimes, as we all know, have elements, and the decision as to whether to prosecute for the commission of a particular crime ought to hinge on whether the elements of that crime are met. Each element of the IPKA is clearly met in Mei Mei’s case, and none of the affirmative defenses set forth in that statute are available - even arguably - to Ms. Chen. Yet, while the Cleveland US Attorney spent three pages discussing collateral issues of little relevance to the issue of whether Chen violated the IPKA, she offered not one shred of information as to why she was not “satisfied that an unbiased trier of fact will find Sue Ping Chen guilty.” In particular, she did not share with us which elements of the crime she found lacking. Her unwillingness to discuss the critical issue - i.e., why the Office felt Chen would not be found guilty under the IPKA for kidnapping Mei Mei - spoke volumes.

The Cleveland US Attorney went on to state that the “seeking [of] an indictment against an individual in order to facilitate enforcement of a civil court order is not a proper use of the grand jury,” that “an indictment of Sue Ping Chen for [the] purpose [of aiding in Mei Mei’s return] would be an abuse of the Federal Grand Jury process,” and that “there is no reason to believe that an indictment of Sue Ping Chen would effect either her return or the return of the child.” All of these bases, of course, put the US Attorney squarely in opposition to Congress on the issue of the international abduction of American children. As the Congress made clear in passing the IPKA, one of the express purposes of the Act was “to provide the basis for Federal warrants, which will in turn enhance the force of US diplomatic representations seeking the assistance of foreign governments in returning abducted children.” H.R. No. 103-390, Cong. Rec. P. 2421 (emphasis added). Thus, Congress believed it eminently appropriate and advisable to use an indictment under the IPKA for the purpose of facilitating the return home of internationally abducted American children, and legislated accordingly. It was always our understanding that the American people elect the Congress to make such legislative determinations, and that US Attorneys are appointed merely to enforce them. The Cleveland US Attorney, however, clearly believes - with the apparent acquiescence of the Justice Department - that it is her prerogative to override the Congress.

The Cleveland US Attorney then went on to note that “the state [of Ohio] has plainly indicated that it will not enforce” the order terminating Chen’s parental rights and granting permanent custody of Mei Mei to me, Laura Hong, and that this, in turn, “raises a serious question regard-

ing federal enforcement.” But it was unclear which “state” she was referencing. Apparently, it was the position of the Cleveland USAO that the Cuyahoga County Court of Common Pleas, which terminated Chen’s parental rights and awarded custody to me, is not “the state”; nor is the Ohio State Legislature, which enacted the laws by which Chen’s parental rights were terminated and legal custody of Mei Mei was awarded to me; nor is the Ohio Court of Appeals, which upheld the order of the trial court and also issued a writ of habeas corpus directing Chen to bring Mei Mei home; nor is the Supreme Court of Ohio, which declined to vacate the writ of habeas corpus directing Chen to bring Mei Mei home; nor is the Cuyahoga County Board of Commissioners, the government entity charged with oversight of Children Services, which has publicly expressed support for the efforts to bring Mei Mei home; nor are Senator DeWine and then-Senator Glenn, who, along with more than one-third of the US Senate, have, in a number of ways, manifested their support for bringing Mei Mei home.

Instead, “the state,” as far as the Cleveland USAO appears to be concerned, consists of one misguided individual in the Cuyahoga County Prosecutor’s Office who the Cleveland Plain Dealer labeled a “Chen proponent,” and who publicly stated that he would not enforce Ohio’s laws in this case, publicly condoned the abduction of children from the child welfare system, and caused the quashing of a City of Cleveland felony kidnapping warrant for Chen’s arrest that had been issued upon a showing of probable cause by the Cleveland Police Department. It is troubling that, notwithstanding all of the “state” entities that spoke out in favor of bringing Mei Mei home in accordance with the laws of the “state,” the Cleveland US Attorney took its cue from the one public official who had, in this matter, consistently maintained a position contrary to law. It is even more troubling when one considers that another motivating factor in enacting the IPKA was to save parents of abducted children from having to rely on state law enforcement authorities who, for budgetary reasons, had traditionally been disinclined to prosecute an offender who would have to be extradited at considerable cost to the local authorities.

The remainder of the US Attorney’s letter was clearly geared towards convincing someone other than us - perhaps her Justice Department superiors - that the equities in this case supported her decision not to prosecute. In the interests of fairness, though, the U.S. Attorney could also have shared with her extended audience the fact that the “evidence” she recited in her letter - i.e., a staged welfare visit conducted by the Guangzhou Consulate, and the representations of Chen’s father as reported to her by Children Services as to his purported willingness and ability to care for the child - was heard by Judge Patrick F. Corrigan of the Cuyahoga County Court of Common Pleas, and rejected outright. In the interests of fairness, the Cleveland USAO could have cited the evidence - which was, in the Judge’s words, “clear and convincing” - that led the Judge to find that Mei Mei is not in a suitable environment, that Chen is incapable of parenting, and that neither Chen nor Chen’s father (who kicked Chen and Mei Mei out of his apartment in Guangzhou on two occasions, documented in the court files, because he “could not handle” Chen’s psychotic behavior) is capable of providing a suitable, stable home for Mei Mei.

In that letter, the Cleveland U.S. Attorney also stated that Children Services had the “parental rights” to Mei Mei at the time of the abduction, apparently to suggest that Children Services, and Children Services alone, had the right to prosecute on Mei Mei’s behalf. The IPKA, however, focuses by its terms on “physical custody” of the child, and Mei Mei was, by order of the juvenile court, physically placed in my home at that time. Incredibly, the Cleveland US Attorney adopted the very same position regarding Mei Mei’s physical custody that was taken by Ms. Chen in our writ of habeas action - a position the Ohio Eighth District Court of Appeals flatly rejected. As I mentioned, the Ohio Court of Appeals found in the habeas action that physical custody of Mei Mei was vested in me, and that, under Ohio law, I was an appropriate entity to seek her return. The Ohio Supreme Court refused to vacate the Court of Appeals’ decision to that effect. In any event, the IPKA makes it a crime to “remove a child” and to “retain a child” outside the US See 18 U.S.C. 1204 (a). Assuming *arguendo* that I was not wronged by the removal of Mei Mei by Chen, I clearly was wronged under the Act, and continue to be wronged, by Ms. Chen’s continued unlawful retention of Mei Mei. As stated by the Court of Appeals for the Eighth District, the experts agreed that Mei Mei “was primarily bonded to me, and the longer she remained captive in China, the more likely it would be that the child would suffer emotional harm from the separation. “

Finally, the Cleveland USAO ignored the fact that Mei Mei, too, is a victim here, with her own right to have the laws enforced on her behalf, and that I, as legal custodian of Mei Mei, have the legal right to seek enforcement of the laws on Mei Mei’s behalf. As the Eighth District Court of Appeals stated, “The best that can be said in this case is that the child welfare system failed miserably to protect the best interests of the child. [Laura Hong’s] understandable bond with the child placed her in the position of being an advocate for the child when those who had the responsibility failed to execute that responsibility.”

Along these same lines, the Cleveland USAO made repeated references in the letter to Mei Mei as Chen’s “own child” and “her child” that are deeply disturbing. Under Ohio law - and the Cleveland USAO acknowledges that “matters of family law are historically the province of state and local governments”

Chen has (and at the time of the abduction had) no parental rights whatsoever to Mei Mei, and Mei Mei is not “her child.” Under Ohio law, the accident of birth should no more subject Mei Mei to abduction by a birth parent than it would any of the tens of thousands of adopted children in Ohio. The Cleveland USAO’s refusal to accept this was, in essence, a refusal to recognize the authority of Ohio’s legislature to legislate, and its courts to adjudicate, that those who repeatedly manifest a lack of fitness to parent will forfeit their parental rights.

Finally, contrary to the Cleveland US Attorney’s suggestion, Mei Mei is not a “dual citizen of the PRC and the United States.” Under Chinese law, because Mei Mei was born in the US to a US Permanent Resident, Mei Mei, notwithstanding Chen’s Chinese nationality, is barred from obtaining Chinese citizenship.

The Cleveland US Attorney was correct, though, in one respect. There are no guarantees that an indictment of Chen under the IPKA will bring Mei Mei home. But Congress made a determination - with which President Clinton agreed — that an indictment under the IPKA is an appropriate and useful tool in the efforts to bring internationally abducted American children home. And while the Cleveland USAO played word games with what the State Department told her office, she did not deny in her letter that she was informed of the State Department’s opinion that an indictment of Chen would be helpful in the effort to bring Mei Mei home.

Whether the Cleveland US Attorney and the Department of Justice acknowledge it or not, they knowingly erected a barrier to the return home of Mei Mei, a young American citizen, by their refusal to enforce the laws of Ohio and the United States on Mei Mei’s behalf, and therefore inflicted on Mei Mei a grave injustice that continues to this day. As stated by the Eighth District Court of Appeals, “With that thought, the court could reasonably look to [Laura Hong] as the only remaining defender of the child’s best interests.”

We ask the Subcommittee to do what it can to help Mei Mei, to champion her interests as well, and to ensure that no other children suffer Mei Mei’s fate because of a US Attorney’s unwillingness to enforce the laws as written.