

APPENDIX
District of Columbia
Court of Appeals

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5298

September Term, 2020

1:19-cv-03273-RC

Filed On: December 4, 2020

In re: Jack Stone,

Petitioner

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of the motion for leave to proceed in forma pauperis, the petition for writ of mandamus, the supplements thereto, the motion for waiver of fees, and the motion for exemption from fees, it is

ORDERED that the motion for leave to proceed in forma pauperis be granted. It is

FURTHER ORDERED that the petition for writ of mandamus be denied. Petitioner has not demonstrated that he has "no other adequate means to attain the relief he desires." United States v. Fokker Servs. B.V., 818 F.3d 733, 747 (D.C. Cir. 2016). Specifically, petitioner sought in district court the same relief he now seeks in this court, and he can appeal from any final judgment entered in the district court. See, e.g., Will v. United States, 389 U.S. 90, 97 (1967) (observing that mandamus "may never be employed as a substitute for appeal"). Alternatively, because some of petitioner's request for relief appear to be based on evidence that has not been presented to the Department of State, plaintiff can pursue (or renew) these requests before that agency.

FURTHER ORDERED that the motions for waiver of and exemption from fees be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Manuel J. Castro
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5298

September Term, 2020

1:19-cv-03273-RC

Filed On: January 28, 2021

In re: Jack Stone,

Petitioner

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of the petition for rehearing, styled as an "emergency motion for passport issuance," it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX
District Court for the
District of Columbia

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JACK STONE,	:	
	:	
Plaintiff,	:	Civil Action No.: 19-3273 (RC)
	:	
v.	:	Re Document Nos.: 72, 73, 78, 79, 81,
	:	82
	:	
U.S. EMBASSY TOKYO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

MEMORANDUM OPINION

**GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS FOR LEAVE TO AMEND THE
SECOND AMENDED COMPLAINT**

I. INTRODUCTION

In this case, Plaintiff Jack Stone ("Stone"), proceeding *pro se*, claims that the United States Embassy in Tokyo and the Department of State ("Defendants") have unlawfully refused to issue citizenship and immigration documents that he requested for his family. This case was transferred from the District of Hawaii, and Plaintiff has now made additional filings in this court: a request for an order of return under the Hague Convention on the Civil Aspects of International Child Abduction; motions for orders to compel the Department of State to grant U.S. citizenship to his children and issue his wife's visa; and claims under 42 U.S.C. § 1983 and the Federal Tort Claims Act ("FTCA") for an incident involving a Department of State official. Construing these filings as motions to amend the complaint, the Court will grant them in part and deny them in part for the reasons explained below.

II. BACKGROUND¹

Plaintiff, a United States citizen currently residing in Japan, filed suit against Defendants in the District of Hawaii, seeking an order to compel the issuance of Plaintiff's first-born child's passport and unspecified damages. Pl.'s Second Am. Compl. ("Pl.'s SAC") 1, 9, ECF No. 39. In Plaintiff's Second Amended Complaint, the operative complaint in this case, Plaintiff pled that his wife left the U.S. for Japan with Plaintiff's child without Plaintiff's consent. Pl.'s SAC ¶ 6. Plaintiff later claimed that his wife left the U.S. out of fear that she would be deported because Defendants had not issued her visa, despite Plaintiff submitting an I-130 (Petition for Alien Relative) on behalf of his wife more than a year prior. *See* Pl.'s Aff. of Wife's Visa Appl. ("Pl.'s Aff.") 5, 7, ECF No. 102.

The District Court for the District of Hawaii transferred this case to this District "so that substantive issues can be addressed on their merits." Order Den. Pl.'s Emergency Mot. and Transferring Action ("Transfer Order") 17, ECF No. 64. Prior to transferring this case, however, the District of Hawaii Court made two preliminary determinations. First, Plaintiff's vague claim for unspecified damages was insufficient to find waiver of Defendants' sovereign immunity for the claim. *See id.* at 9. Second, the Administrative Procedure Act applied to Plaintiff's claim for

¹ This background is drawn from the facts Plaintiff (1) pled in the Second Amended Complaint and (2) alleged in support of his subsequent filings. *See Foman v. Davis*, 371 U.S. 178, 182 (1962) ("If the underlying facts or circumstances relied upon by a plaintiff [in a proposed amendment] may be a proper subject of relief, he ought to be afforded an opportunity to test his claims on the merits."). Plaintiff's filings, which the Court construes as motions to amend, must be able to satisfy a motion to dismiss standard, which means that the filings "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *Ford v. Suntrust Mortg.*, 282 F. Supp. 3d 227, 232 (D.D.C. 2017) ("[I]f Plaintiffs' proposed Amended Complaint would fail to state a claim under the *Twombly/Iqbal* pleading standard, those proposed amendments would be 'futile.'").

an order to compel Defendants to issue his first-born child's passport, "thereby waiving [Defendants'] sovereign immunity." *Id.* at 10. This claim is currently the subject of a separate summary judgment briefing and not at issue here.

Following the District of Hawaii's transfer of this case, Plaintiff made additional filings, including: (1) a request for a return order as to Plaintiff's first-born child under the Hague Convention on the Civil Aspects of International Child Abduction, ECF Nos. 72, 78²; (2) a motion to compel U.S. citizenship for Plaintiff's second-born child, ECF Nos. 73, 79³; (3) a request to add Hughes Ogier, a Department of State official, to the suit as an additional defendant and bring claims under 42 U.S.C. § 1983 and the Federal Tort Claims Act for an unrelated incident involving him, ECF Nos. 81, 81-1; and (4) a motion to compel Defendants to issue Plaintiff's wife's visa, ECF No. 82.⁴ The Defendants treated these filings as motions to amend the Second Amended Complaint. The filings are now fully briefed and ripe for the Court's consideration.

² Plaintiff filed ECF No. 78, which appears to be an amendment to ECF No. 72. In ECF No. 78, Plaintiff put forward his argument for why the Court should procedurally grant leave to amend the complaint. In a supporting document, ECF No. 78-1, Plaintiff highlighted the grounds on which he sought a request to include a Return Order. The basis of ECF No. 72 and ECF No. 78 remain the same, with the same requested relief and basic facts to support the request. As such, this Order applies to both filings.

³ After filing ECF No. 73, Plaintiff made an additional—nearly identical—filing seeking an order to compel U.S. citizenship for his second child. *See* Pl.'s Mot. to Compel U.S. Citizenship, ECF No. 79. The Court will reference only ECF No. 73, but this Order applies to both filings.

⁴ In his pleadings, Plaintiff references a Freedom of Information Act ("FOIA") request, *see, e.g.*, Pl.'s Mot. to Am. ¶26, ECF No. 81-1, but does not appear to be seeking to amend the complaint to include a FOIA claim.

III. LEGAL STANDARD

The Court agrees with Defendants that Plaintiff's filings should be construed as motions to amend, as the filings seek to introduce novel claims, add new factual allegations and a new defendant, and broaden the scope of the operative complaint.⁵ A party may amend its pleading once as a matter of course within twenty-one days after serving its pleading, or within certain time periods if the pleading is one to which a responsive pleading is required. Fed. R. Civ. P. 15(a)(1); see *Bode & Grenier, LLP v. Knight*, 808 F.3d 852, 860 (D.C. Cir. 2015). Otherwise (such as here, when a party has already filed amended pleadings), a party may amend its pleading only with the opposing party's consent or the court's leave. Fed. R. Civ. P. 15(a)(2); see also *Knight*, 808 F.3d at 860. The decision to grant or deny leave to amend "is committed to a district court's discretion," *Firestone v. Firestone*, 76 F.3d 1205, 1208 (D.C. Cir. 1996), and should be freely given when justice so requires, Fed. R. Civ. P. 15(a)(2). However, the court may deny a motion to amend if the proposed amendment would be futile. *De Sousa v. Dep't of State*, 840 F. Supp. 2d 92, 113 (D.D.C. 2012) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). The motion to amend is futile if the "proposed claim would not survive a motion to dismiss." *James Madison LTD by Hecht v. Ludwig*, 82 F.3d 1085, 1099 (D.C. Cir. 1996). Of course, a court must be mindful that a *pro se* litigant's complaint is "construed liberally and is held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Lemon v. Kramer*, 270 F. Supp. 3d 125, 133 (D.D.C. 2017) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

⁵ Even if the Court construed the filings as motions to supplement, a motion to supplement is "subject to the same standard" as a motion to amend. *Wildearth Guardians v. Kempthorne*, 592 F. Supp. 2d 18, 23 (D.D.C. 2008).

IV. ANALYSIS

As an initial note: the local rules provide that a motion for leave to amend “shall attach, as an exhibit, a copy of the proposed pleading as amended.” Loc. Civ. R. 15.1. Failure to follow Local Rule 15.1 may be the basis for the court to deny leave to amend. *See Parker v. District of Columbia*, No. 14-2127, 2015 WL 7760162, at *2 (D.D.C. Dec. 1, 2015) (holding that a *pro se* plaintiff’s request to amend was insufficient because he failed to comply with local Rule 15.1 and did not indicate the grounds on which he sought an amendment, leaving the court “unable to assess the merits of his request”). Although Mr. Stone did not provide a consolidated version of a proposed third amended complaint in any of his filings, he did provide enough detail for the Court to evaluate the merits of each request. For these reasons, the Court will overlook the Rule 15.1 requirement and consider each additional proposed claim in turn.

A. Order for Return under the Hague Convention on the Civil Aspects of International Child Abduction

Invoking the Hague Convention on the Civil Aspects of International Child Abduction (“Convention”), Plaintiff requests an order for return for his first-born minor child, who was taken by Plaintiff’s wife to Japan. Pl.’s SAC ¶ 6. Defendants’ primary contention is that an amendment to include this request would be futile because the Court lacks jurisdiction to order the child’s return from Japan. Defs.’ Opp’n to Pl.’s Mot. for Leave to Am. (“Defs.’ Opp’n”) 3, ECF No. 89.

The Hague Convention on the Civil Aspect of International Child Abduction aims to “secure the prompt return of children wrongfully removed to or retained in any Contracting State” and “to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.” Hague Convention on the Civil Aspects of International Child Abduction art. 1(a), Oct. 25, 1980,

<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf> [hereinafter Convention]. The “central operating feature” of the Convention is a parent’s right to petition a Contracting state for the child’s return to the child’s country of habitual residence, which would be the forum for any child custody adjudications. *Abou-Haidar v. Vazquez*, 945 F.3d 1208, 1210 (D.C. Cir. 2019) (internal citation omitted).

The United States, a contracting state to the Convention, codified the provisions of the Convention through the International Child Abduction Remedies Act (“ICARA”). *See Abbott v. Abbott*, 560 U.S. 1, 5 (2010) (citation omitted). Under ICARA, “[a]ny person seeking to initiate judicial proceedings under the Convention for the return of a child . . . may do so . . . by filing a petition for the relief sought in any court . . . which is authorized to exercise its jurisdiction in the place *where the child is located at the time the petition is filed*.” *Yaman v. U.S. Dep’t of State*, 786 F. Supp. 2d 148, 154 (D.D.C. 2011) (quoting 42 U.S.C. § 11603(b)). ICARA is consistent with Article 12 of the Convention, which provides that “[w]here a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State *where the child is* . . . the authority concerned shall order the return of the child forthwith.” Convention art. 12 (emphasis added). Overall, it is abundantly clear that, for a federal district court to order the return of an abducted child under ICARA, the aggrieved parent must “file a petition in state or federal district court for the return of a child located within the court’s jurisdiction,” *Haimdas v. Haimdas*, 720 F. Supp. 2d 183, 197 (E.D.N.Y. 2010), and that a child located abroad is not within that jurisdiction, *see id.* (“[P]etitioner bears the initial burden to show by a preponderance of the evidence that the child has been wrongfully removed to or retained in *this country* within the meaning of the Convention.” (emphasis added)); *see also Fernandez v. Bailey*, 909 F.3d 353,

359 (11th Cir. 2018) (“Because ICARA requires reviewing courts to have personal jurisdiction over the abducted child, a parent can only file a return petition in the district where the child is located.”).

Because Plaintiff represents that he discovered his child in Japan and currently resides there with his child, there is no dispute that the child is located in Japan. Plaintiff’s complaint and other filings make clear that his wife left for Japan from the United States with Plaintiff’s child on November 11, 2018. Pl.’s SAC ¶ 6; Pl.’s Aff. 8. And on January 1, 2019, Plaintiff discovered his son at Plaintiff’s parents-in-law’s house in Japan. Pl.’s SAC ¶ 17. Thus, Plaintiff’s child is outside the jurisdiction of the Court, and the Court cannot issue a return order under ICARA.

Plaintiff seems to recognize that Japan is the appropriate venue for seeking a return order, but has been unsuccessful in obtaining a return order from Japanese authorities. *See* Pl.’s Reply 11, ECF No. 101. Plaintiff argues that, with Japanese authorities seemingly unwilling to help, his only recourse is to request a return order from a U.S. court. *See id.* at 11–12. The Court acknowledges the apparent unfairness of the situation, but is powerless to remedy it, as it simply has no authority under ICARA to order the return of a child located abroad. Indeed, Plaintiff has not cited a case in which a court ordered a return under analogous circumstances. The Court will therefore deny as futile Plaintiff’s request to amend his complaint to include an order for return under the Convention.

B. Motion to Compel U.S. Citizenship for Plaintiff's Second Minor Child

Plaintiff's second child⁶ was born on September 27, 2019 (after this suit was filed), and he now seeks an order to compel Defendants to grant U.S. citizenship to this child. Pl.'s Mot. to Compel U.S. Citizenship 1, 3, ECF No. 73. Defendants contend that this claim is not ripe for the Court to adjudicate. They suggest that, because Plaintiff has not completed the steps required for the Department of State to make a determination on the matter of the second-child's citizenship, there has not been final agency action. Defs.' Opp'n 6. Defendants also contend that, due to lack of final agency action, the Court lacks subject-matter jurisdiction. *Id.*

Under the Administrative Procedure Act ("APA"), "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . is entitled to judicial review thereof." 5 U.S.C. § 702. However, the APA generally limits causes of action to those challenging final agency action. *Trudeau v. FTC*, 456 F.3d 178, 188 (D.C. Cir. 2006). Final agency action "'mark[s] the consummation of the agency's decision making process' and is 'one by which rights or obligations have been determined, or from which legal consequences will flow.'" *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (quoting *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997)). Although the court does not lose jurisdiction solely because a claim under the APA lacks final agency action, the claim might not survive a motion to dismiss. *See John Doe, Inc. v. DEA*, 484 F.3d

⁶ There is some uncertainty as to whether Plaintiff is the biological father of this child. On May 19, 2019, in an email communication to the Department of State, Plaintiff expresses some doubt that the child is his. *See* Admin. Rec. STATE-539, EFC No. 122-7 (Plaintiff explaining that his wife "is now FIVE MONTHS pregnant with a second child that may, or may not be mine"). Additionally, the timeline does not work in Plaintiff's favor. Plaintiff's wife left for Japan in November 2018. Pl.'s Aff. 8, ECF No. 102. Plaintiff has described their interactions until the birth of the child in September 2019 as brief and hostile. *See* Pl.'s SAC ¶¶ 11, 16-18.

561, 565 (D.C. Cir. 2007) (“When judicial review is sought under the APA . . . the requirement of ‘final agency action’ is not jurisdictional.”); *Trudeau*, 456 F.3d at 188–89 (“[A]lthough the absence of final agency action would not cost federal courts their jurisdiction . . . it would cost [Plaintiff] his APA cause of action.”); *Reliable Automatic*, 324 F.3d at 731 (determining that lack of final agency action “was no basis for dismissal under Rule 12(b)(1)” but the trial court’s dismissal of the case “may [be] properly affirm[ed] . . . pursuant to Rule 12(b)(6)”). Courts may review agency action, however, when the delayed agency action is “extremely lengthy” or when “exigent circumstances render it equivalent to a final denial of petitioners’ request.” *Pub. Citizen Health Research Grp. v. Comm’r, FDA*, 740 F.2d 21, 32 (D.C. Cir. 1984) (quoting *Env’tl. Def. Fund, Inc. v. Hardin*, 428 F.2d 1093, 1098 (D.C. Cir. 1970)).

To support their non-finality argument, Defendants explain that to obtain citizenship documents for a child born abroad and who is a citizen at the time of their birth, an applicant must appear at a U.S. embassy with the child and complete a Consular Reports of Birth Abroad (“CRBA”) application. *See* Defs.’ Opp’n 6. Defendants acknowledge that Plaintiff submitted a CRBA, but contend that the application was incomplete, as the application contained blank signature blocks. *Id.* at 7. Additionally, Defendants claim that Plaintiff has not appeared in person at a U.S. embassy, with or without his second-born child, to complete the process of obtaining the child’s citizenship documents. *Id.* at 8.

In response, Plaintiff argues that the COVID-19 pandemic has prevented him from appearing at the U.S. Embassy in Tokyo and he has been unable to obtain his wife’s (that is, his second-born child’s mother) passport, which an email confirming submission of his CRBA application indicated “may be necessary for a final determination.” *See* Pl.’s Reply at 29–30. As mentioned above, Plaintiff’s wife is a non-U.S. citizen; Plaintiff challenges the suggested

requirement of having a non-U.S. citizen present herself at an embassy or provide documents to the Department of State to obtain citizenship for his child. *Id.* at 31. Additionally, Plaintiff argues that because he is unable to obtain his wife's passport or have her appear at the Embassy, the Department of State's current refusal to grant U.S. citizenship is "final agency action." *Id.* He also contests Defendants' factual assertion that the CRBA application was incomplete or deficient. *See id.* at 29.

Under these circumstances, the Court concludes that Mr. Stone's proposed amendment would not be futile. While the Department of State has not formally "denied" the citizenship application, the agency has considered the CRBA application and found it deficient. That strikes the Court as a decision from which legal consequences flow. More generally, the parties appear to be at a legal and factual impasse. Plaintiff claims that he completed a valid CRBA application and that any additional in-person interview or documentation requirements are unnecessary or illegal, at least while COVID-19 makes an in-person appointment at the Embassy impossible. *See id.* at 31. For their part, Defendants maintain that the CRBA application Plaintiff submitted was flawed, *see* Defs.' Opp'n at 7, and do not address in their briefing whether the Department of State requires that the child's mother be present at an embassy or provide certain documentation to complete the CRBA process. Defendants also do not discuss whether the in-person requirement can or should be waived under present circumstances. All in all, there is no indication that further factual development would aid the Court, or that any further agency decision-making is forthcoming. The Government's position appears to be that it could indefinitely avoid judicial review of its actions here by postponing a "formal" decision, which strikes the Court as untenable. *See Envtl. Def. Fund*, 428 F.2d at 1099 ("[W]hen administrative inaction has precisely the same impact on the rights of the parties as denial of relief, an agency

cannot preclude judicial review by casting its decision in the form of inaction rather than in the form of an order denying relief.”). Mr. Stone can plausibly argue that these “exigent circumstances render [the action] equivalent to a final denial of petitioner’s request.” *Pub. Citizen*, 740 F.2d at 32.

Thus, because the circumstances Plaintiff relied upon “may be proper subject of relief,” Plaintiff is entitled to “test his claim[s] on the merits.” *Foman*, 371 U.S. at 182. Given that Plaintiff’s request to include a Motion to Compel U.S. Citizenship for his second-born child is not futile, the Court will grant Plaintiff leave to amend in this respect. However, in the amended complaint, the Plaintiff should adequately explain why Defendants’ actions here qualify as final under the APA or why finality is not required. The Court also notes, in passing only, that some of the factual and legal disputes discussed here might be productively narrowed through discussions between the parties.

C. Claims Regarding Destruction of Records

In other filings, Plaintiff claims that in 2013, Japanese officials wrongfully detained and tortured him. Pl.’s Mot. to Am. ¶¶ 7–9, ECF No. 81-1. According to Plaintiff, in 2014, a Department of State employee photographed and reported Plaintiff’s condition where Plaintiff was detained and promised that he would preserve the photographs so Plaintiff could bring suit against the Japanese officials. *Id.* at ¶¶ 13–19. Plaintiff alleges that Hughes P. Ogier, a Department of State official, willfully destroyed the photographs and other records relating to the Japanese officials’ detainment of Plaintiff. *Id.* at ¶¶ 21, 26. Plaintiff now moves to amend his

Second Amended Complaint to add Mr. Ogier as a defendant in this case and include claims for monetary damages under 42 U.S.C. § 1983 and the Federal Tort Claims Act ("FTCA").⁷

1. 42 U.S.C. § 1983 and/or *Bivens*

One of the provisions invoked by Mr. Stone—42 U.S.C. § 1983—permits claims against persons acting under the color of state law for violations of a plaintiff's constitutional rights. *Settles v. United States Parole Comm'n*, 429 F.3d 1098, 1103 (D.C. Cir. 2005) (citing *Williams v. United States*, 396 F.3d 412, 413–14 (D.C. Cir. 2005)). However, § 1983 does not apply to federal officials. *Id.* at 1104. As a result, § 1983 is inapplicable in this case because Defendants are federal entities and Mr. Ogier, whom Plaintiff seeks to name as a defendant, was a federal official at the time of the alleged incident. Moreover, a proper claim against the United States must be based on a statute that unequivocally waives the United States' sovereign immunity. *See id.* at 1105. Plaintiff argues that "Congress waived the federal government's immunity across a broad range of substantive law." Pl.'s Reply 7. § 1983, however, does not contain a provision that waives the United States' sovereign immunity nor is there an indication that Congress intended for § 1983 to apply to the federal government. *See Settles*, 429 F.3d at 1105. As a result, the Court would lack subject-matter jurisdiction over a § 1983 claim against Mr. Ogier or the United States, because § 1983 does not create a cause of action against a federal actor nor does it waive the United States' sovereign immunity. *See Miango v. Dem. Rep. Congo*, 243 F. Supp. 3d 113, 134 (D.D.C. 2017) (finding that "[b]ecause section 1983 does not create a cause of action against a federal actor, and there is no other applicable waiver of sovereign immunity, the Court does not have jurisdiction").

⁷ In his filing, Plaintiff also cites two additional statutes, 18 U.S.C. § 1503 and § 2071(a). Pl.'s Mot. to Am. ¶¶ 35, 36, ECF No. 81-1. "These, however, are criminal statutes that create no private right of action." *Hunter v. D.C.*, 384 F. Supp. 2d 257, 260 n.1 (D.D.C. 2005).

Alternatively, if the Court construed Plaintiff's request as a claim against Mr. Ogier in his personal capacity seeking monetary damages for alleged constitutional violations pursuant to *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), the amendment would still be futile. A *Bivens* claim is essentially the federal equivalent to a § 1983 action: "an action against a federal officer seeking damages for violations of the plaintiff's constitutional rights." *Simpkins v. D.C. Gov't*, 108 F.3d 366, 368 (D.C. Cir. 1997). However, a *Bivens* claim is available only in limited circumstances and expanding a *Bivens* remedy is a "disfavored" judicial activity. *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1857 (2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)). Even generously construed, Plaintiff's filings do not support a cause of action under *Bivens*. First, Plaintiff does not allege that Mr. Ogier violated any constitutional right. Second, as stated above, Plaintiff seeks to bring a claim based on actions that occurred in a foreign country, but "extraterritorial application" of a *Bivens* action is "virtually unknown." *Meshal v. Higgenbotham*, 804 F.3d 417, 418 (D.C. Cir. 2015); *see also Hernandez v. Mesa*, 140 S. Ct. 735, 749–50 (2020) (holding that a *Bivens* remedy was not available for a cross-border shooting claim because Congress, "which has authority in the field of foreign affairs," has not "create[d] liability" for extraterritorial conduct of a federal official and courts cannot create a damages remedy for such conduct).

Accordingly, the Court will deny Plaintiff's request for leave to amend the Second Amended Complaint to include a § 1983 claim or a *Bivens* claim.

2. Federal Tort Claims Act

The FTCA is a limited waiver of sovereign immunity that makes the federal government liable for certain torts committed by federal employees acting within the scope of their employment. A proper FTCA claim requires that the United States be a named defendant in the

suit. See *Sanchez-Mercedes v. Bureau of Prisons*, No. 19-cv-54, 2020 U.S. Dist. LEXIS 64946, at *11–12 (D.D.C. Apr. 10, 2020) (“The only proper defendant for an FTCA claim is the United States.”); *Johnson v. Veterans Affairs Med. Ctr.*, 133 F. Supp. 3d 10, 17 (D.D.C. 2015) (“Even if a federal agency may sue and be sued in its own name, FTCA claims against that federal agency are barred. . . . Failure to name the United States as the defendant in an FTCA action requires dismissal for lack of subject-matter jurisdiction.”) (internal citations omitted). Additionally, the FTCA does not apply to “[a]ny claim arising in a foreign country.” 28 U.S.C. § 2680(k). This so-called foreign country exception applies to all claims that are based on an injury a plaintiff suffered in a foreign country, “regardless of where the tortious act or omission occurred.” *Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 (2004); see also *Harbury v. Hayden*, 522 F.3d 413, 423 (D.C. Cir. 2008) (holding that the FTCA barred a widow’s claim for emotional distress because the injury “at the root of the complaint” occurred in a foreign country).

For at least two reasons, then, an amendment to include an FTCA claim would be futile. First, it would be improper as a technical matter because the United States is not a defendant in the suit or named as a new potential defendant. See *Goddard v. D.C. Redevelopment Land Agency*, 287 F.2d 343, 345–46 (D.C. Cir. 1961) (“Suits based on torts allegedly committed by the Agency or by its employees acting in an official capacity are maintainable, if at all, under the provisions of the Tort Claims Act, and *must name the United States as a defendant.*”) (emphasis added). Even if the United States were proposed as a defendant to this claim, Plaintiff’s claim falls squarely within the FTCA’s foreign country exception. Plaintiff’s alleged detainment and torture occurred at the Narashino Police Detention Center in Japan. Pl.’s Mot. to Am. ¶ 8. Plaintiff argues that the destruction of the photographs and records “resulted in Plaintiff’s inability to present a claim against Japanese officials in U.S. federal court.” Pl.’s Reply 37. But

even when fully crediting Plaintiff's allegations, the root of Plaintiff's complaint is that he suffered injuries in Japan, *see id.* ¶ 19. The Court will therefore deny as futile leave to amend to include an FTCA claim.⁸

3. Potential Common Law Tort Claims

It may also be possible to construe Plaintiff's filings as alleging a common law tort claim (e.g., destruction of property or negligence) against Mr. Ogier in his individual capacity. However, Plaintiff does not cite to any authority or allege any specific facts indicating that the Court would have jurisdiction over Mr. Ogier in his individual capacity with respect to a tort allegedly committed in Japan. To sue a federal employee in an individual capacity, the Court must have personal jurisdiction over the federal employee based on the employee's personal contacts within the District. *See Dougherty v. United States*, 156 F. Supp. 3d 222, 229 (D.D.C. 2016). While Plaintiff suggests that Mr. Ogier is still employed by the Department of State in Washington, D.C., *see* Supplemental Decl. of Jack Stone 20, 26, ECF No. 80, that connection alone is insufficient, *see Dougherty*, 156 F. Supp. 3d at 229 (noting that a court does not have personal jurisdiction over a federal employee simply because the employing agency is

⁸ Plaintiff also has not alleged that he complied with the FTCA's exhaustion requirement. *See* 28 U.S.C. § 2675. Under Circuit precedent, a failure to exhaust administrative remedies under the FTCA is a jurisdictional defect. *See Smith v. Clinton*, 886 F.3d 122, 127 (D.C. Cir.), *cert. denied*, 139 S. Ct. 459 (2018); *see also Parrish v. United States*, No. 17-cv-70, 2020 WL 1330350, at *3 (N.D. W. Va. Mar. 23, 2020) (suggesting that the FTCA exhaustion requirement remains jurisdictional even in the wake of *Fort Bend County v. Davis*, 139 S. Ct. 1843 (2019)). Plaintiff's "fail[ure] to allege that [he] satisfied the requirement that [he] exhaust[ed] administrative remedies before filing an FTCA claim" would require dismissal. *Achagzai v. Broad. Bd. of Governors*, 109 F. Supp. 3d 67, 69–70 (D.D.C. 2015). Additionally, under the FTCA's statute of limitations, claimants must present claims to a federal agency "within two years after such claim accrues." 28 U.S.C. § 2401 (2018). Although Plaintiff has not indicated when he discovered that the photos were deleted, the record indicates that Plaintiff knew the photos were deleted at least two years before this claim was brought, which suggests it would be time barred. *See* Pl.'s Mot. to Amend ¶ 33.

headquartered in the District of Columbia). Even if Plaintiff could allege more specific facts suggesting personal jurisdiction, under the Westfall Act, a federal individual employee is generally immune from tort liability for torts committed within the scope of employment. *See* 28 U.S.C. § 2679(b)(1). This is true even if a provision of the FTCA prevents the plaintiff from recovering monetary damages from the United States itself. *See United States v. Smith*, 499 U.S. 160, 165 (1991). In these circumstances, therefore, the Court fails to see a viable common law claim against Mr. Ogier. To the extent that such a claim was raised, the Court will deny leave to amend the complaint to include one. And because Plaintiff has not articulated a non-futile claim against Mr. Ogier, the Court will deny leave to add him as a defendant in this matter.

D. Motion to Compel Issuance of Plaintiff's Wife's Visa

Finally, Plaintiff seeks to add a claim for an order to compel the Department of State to issue a visa for his wife. *See* Pl.'s Motion to Compel Issuance of Plaintiff's Wife's Visa, ECF No. 82. Without support, Plaintiff claims to have paid more than \$2,000 during the process of obtaining his wife's visa. *Id.* ¶ 2. Plaintiff claims that after he and his wife met with officials at the USCIS Kendall Field Office in Miami, Florida and paid \$1,250 to expedite the visa process, he and his wife waited for a final interview for his wife's visa to take place in the U.S. Embassy Tokyo in Japan. *See id.* ¶ 4; Pl.'s Aff. 5–6.

The Court construes Plaintiff's request as a request for a writ of mandamus. Under 28 U.S.C. § 1361, the district courts "have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." A mandamus remedy is drastic and should be "invoked only in extraordinary circumstances." *AHA v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016) (quoting *Power v. Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002)). For a court to issue a remedy

of mandamus, a plaintiff must show “(1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists.” *Id.*

The Court does not need to go into an analysis of the specific factors outlined in *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1984), which courts use to consider whether an agency’s delayed action warrants mandamus, because the Court cannot grant Plaintiff’s requested relief. The Court can only direct an agency to “take action upon a matter, without directing how [the agency] shall act.” *Aidov v. U.S. Dep’t Homeland Sec.*, No. 20-cv-20649, 2020 U.S. Dist. LEXIS 39458, at *13 (S.D. Fl. Mar. 5, 2020) (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004)). At most, the Court could only issue a mandamus to the Department of State to take action on the visa application, but could not order the Department of State to approve the application and issue Plaintiff’s wife’s visa, as Plaintiff has requested. *See id.* Furthermore, Plaintiff has not persuasively argued a basis for this Court to order the Department of State to complete the process and schedule an interview absent payment of the required fees. As such, the Court will deny as futile Plaintiff’s request for leave to amend his complaint to include a motion to compel issuance of his wife’s visa.

V. CONCLUSION

For the foregoing reasons, the Court will grant in part and deny in part Plaintiff’s filings, which the Court has construed as motions to amend. The Court will allow Plaintiff to amend his complaint to include a request for an order to compel U.S. citizenship for his second-born child. The Court does not grant leave to amend the complaint to include all of Plaintiff’s other filings and requests. Within thirty days (that is, on or before August 24, 2020), Plaintiff shall file a Third Amended Complaint that outlines his exact claims and requested relief. Plaintiff’s new

claim will have no impact on the claim regarding Plaintiff's first-born child's passport, which, as mentioned, is currently the subject of separate summary judgment briefing. An order consistent with this Memorandum Opinion is separately and contemporaneously issued.

Dated: July 24, 2020

RUDOLPH CONTRERAS
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JACK STONE,	:	
	:	
Plaintiff,	:	Civil Action No.: 19-3273 (RC)
	:	
v.	:	Re Document Nos.: 154, 171, 186
	:	
U.S. EMBASSY TOKYO, <i>et al.</i> ,	:	
	:	
Defendants.	:	

ORDER

**DENYING PLAINTIFF'S MOTION FOR LEAVE TO AMEND THIRD AMENDED COMPLAINT;
DENYING PLAINTIFF'S MOTION TO JOIN; GRANTING DEFENDANTS' MOTION TO DISMISS**

For the reasons stated in the Court's Memorandum Opinion separately and contemporaneously issued, Plaintiff's motion for leave to amend the third amended complaint (ECF No. 171) is **DENIED**; Plaintiff's motion to join Jennifer Wooton as a defendant (ECF No. 154) is **DENIED**; and Defendants' motion to dismiss (ECF No. 186) is **GRANTED**.

SO ORDERED.

Dated: November 16, 2020

RUDOLPH CONTRERAS
United States District Judge

DCD_ECFNotice@dcd.uscourts.gov

Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion for Reconsideration

To: DCD_ECFNotice@dcd.uscourts.gov

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

The following transaction was entered on 1/8/2021 at 4:59 PM EDT and filed on 1/8/2021

Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [238] Plaintiff's Motion for Reconsideration: Plaintiff asks the Court to reconsider [226] its order granting Defendants summary judgment, but he presents no reason not previously addressed by the Court that would justify reconsideration. Accordingly, his motion is DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 1/8/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion for Reconsideration

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**U.S. District Court
District of Columbia**

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The following transaction was entered on 1/19/2021 at 9:04 AM EDT and filed on 1/19/2021

Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [241] Plaintiff's Motion for Reconsideration: Claiming to have new information that this Court did not consider in [226] its order granting Defendants summary judgment, Plaintiff asks the Court to reconsider that ruling. Specifically, Plaintiff says he recently received an employment offer that he will have to decline unless the Court grants the relief he seeks. See ECF No. 241. But in an APA suit like Plaintiff's, the Court's review is limited to "the full administrative record that was before the [agency] at the time [it] made [its] decision." *Citizens Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). The Court cannot consider a development that occurred after the agency action that Plaintiff challenges. Accordingly, Plaintiff's motion for reconsideration is DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 1/19/2021. (lcrc1)

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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion for Order to Show Cause

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**U.S. District Court
District of Columbia**

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Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [209] Plaintiff's Motion for Order to Show Cause: On October 11, 2020, Plaintiff requested Defendants show cause as to why Goldman Act sanctions have not been issued against Japan. Pl.'s Mot. for Order to Show Cause, ECF No. 209. The Goldman Act does not create a private right of action, see 22 U.S.C. § 9101, et seq., and Plaintiff cannot compel the Department of State to impose sanctions on Japan as such determination is within the discretion of the Department of State, see id. § 9122(b)(2). Therefore, it is hereby ORDERED that [209] Plaintiff's Motion for Order to Show Cause is DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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JACK STONE mail@stackjones.com

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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion for Miscellaneous Relief

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**U.S. District Court
District of Columbia**

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Case Name: STONE v. U.S. EMBASSY TOKYO et al

Case Number: 1:19-cv-03273-RC

Filer:

Document Number: No document attached

Docket Text:

MINUTE ORDER denying [195] Defendants' Motion to Be Excused from Responding to Plaintiff's Future Motions Unless Directed by the Court: Because the substantive motions in this case have been decided and are currently on appeal, it is hereby ORDERED that Defendants' motion for relief from responding to Plaintiff's motions is DENIED as moot. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:

Katherine Boyd Palmer-Ball katherine.palmer-ball@usdoj.gov

JACK STONE mail@stackjones.com

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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion to Unseal Document

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

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Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [157] Plaintiff's Motion to Unseal: On July 19, 2020, Plaintiff asked this Court to unseal certain records relevant to potential claims against Senator Brian Schatz and a member of his staff. Pl.'s Mot. to Unseal, ECF No. 157. The Court denied Plaintiff's motion to join Senator Schatz and the staff member as defendants, see ECF No. 231, at 6-9, so the motion is moot. Accordingly, it is hereby ORDERED that [157] Plaintiff's Motion to Unseal is DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Sealed Motion

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

The following transaction was entered on 2/22/2021 at 8:14 PM EDT and filed on 2/22/2021

Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [110] Plaintiff's Motion for Partial Summary Judgment and [156], [183] Plaintiff's Motions to Compel: Plaintiff demands that Defendants issue him a consular report of birth abroad and other citizenship documents for his second-born minor child. See Pl.'s Mot. for Partial Summ. J., ECF No. 110; Pl.'s Mot. to Compel, ECF No. 156; Pl.'s Mot. to Compel, ECF No. 183. But the Court has dismissed Plaintiff's claim regarding citizenship documents for his second-born child. See ECF No. 230; ECF No. 231, at 4-6, 12-17. Therefore, it is hereby ORDERED that [110] Plaintiff's motion for partial summary judgment and [156], [183] Plaintiff's motions to compel are DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion for Order

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

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Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [141], [164], [202], and [223] Plaintiff's Motions for a Passport for His First-Born Child: Plaintiff has repeatedly requested that the Court compel the issuance of a passport to his first-born child and explain why the passport has not already been issued. See ECF Nos. 141, 164, 202, 223. The Court has denied Plaintiff relief on the first-born child's passport issue and explained its ruling in detail, see ECF No. 226; ECF No. 227, so these motions are moot. Accordingly, it is hereby ORDERED that [141], [164], [202], and [223] Plaintiff's motions requesting a passport for his first-born child are DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion to Compel

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

The following transaction was entered on 2/22/2021 at 8:05 PM EDT and filed on 2/22/2021

Case Name: STONE v. U.S. EMBASSY TOKYO et al
Case Number: 1:19-cv-03273-RC
Filer:
Document Number: No document attached

Docket Text:

MINUTE ORDER denying [138] Plaintiff's Motion to Compel: On June 25, 2020, Plaintiff alleged that Defendants wrongfully placed his "firstborn child[]" and perhaps his second child... into a passport protection program." Pl.'s Demand at 1, ECF No. 138. His filing argued that the alleged action contributed to Defendants' improper denial of a passport for his first-born child. See *id.* at 12. The Court has denied relief on the first-born child's passport issue, see ECF No. 226; ECF No. 227, so Plaintiff's motion is moot. Therefore, it is hereby ORDERED that the motion is DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:
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Activity in Case 1:19-cv-03273-RC STONE v. U.S. EMBASSY TOKYO et al Order on Motion to Compel

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**U.S. District Court
District of Columbia**

Notice of Electronic Filing

The following transaction was entered on 2/22/2021 at 8:01 PM EDT and filed on 2/22/2021

Case Name: STONE v. U.S. EMBASSY TOKYO et al

Case Number: 1:19-cv-03273-RC

Filer:

Document

Number: No document attached

Docket Text:

MINUTE ORDER denying [139] Plaintiff's Motion to Compel, [180] Plaintiff's Motion for Clarification, and [201] Plaintiff's Motion for Return Order: Plaintiff has filed a motion requesting relief under the Hague Convention, see ECF No. 201, and another motion demanding that Defendants turn over records related to filings he made with them concerning the Convention, see ECF No. 139. After the Court denied as futile Plaintiff's motion to add to his complaint a Hague Convention claim, see ECF No. 159; ECF No. 160, Plaintiff also filed a motion for clarification on the ruling, see ECF 180. Because the Court denied Plaintiff leave to bring the claim and there is nothing of substance to add to the reasoning it gave for doing so, see ECF No. 160, at 5-7, it is hereby ORDERED that [139], [180], and [201] Plaintiff's motions regarding the Hague Convention are DENIED. SO ORDERED. Signed by Judge Rudolph Contreras on 2/22/2021. (lcrc1)

1:19-cv-03273-RC Notice has been electronically mailed to:

Katherine Boyd Palmer-Ball katherine.palmer-ball@usdoj.gov

JACK STONE mail@stackjones.com

APPENDIX

Court of Federal Claims

In the United States Court of Federal Claims

No. 20-1173
(Filed: January 22, 2021)

JACK STONE,

 Plaintiff.

v.

THE UNITED STATES,

 Defendant.

ORDER AND OPINION

DIETZ, Judge.

On January 4, 2021, Plaintiff moved for permission to use the Case Management/Electronic Case Files ("CM/ECF") system for filing purposes. ECF No. 18. Plaintiff claims that restricting access to CM/ECF creates an unequal playing field for pro se plaintiffs. *Id.* at 2-3. Defendant filed its response to Plaintiff's on January 11, 2021, wherein Defendant requested the Court deny Plaintiff's request for access to CM/ECF on grounds that Plaintiff has not established that the Court's existing procedures are inadequate, demonstrated prejudice to Plaintiff's ability to litigate the case, or identified any circumstances that warrant departure from the Court's existing procedures. Plaintiff filed a reply on January 12, 2021, wherein Plaintiff restated his initial claim that restricting access to CM/ECF by pro se plaintiffs is prejudicial.

This Court generally requires pro se plaintiffs to file documents through U.S. mail or by deposit in the Court's night box located at the garage entrance on H Street NW between 15th Street and Madison Place. Under this system, the Clerk's office reviews documents filed by pro se plaintiffs prior to uploading into the CM/ECF system to: prevent excessive, frivolous filings; ensure correctly labeled documents; confirm adherence to Court rules and orders; and maintain an organized docket. On rare occasion, the Court may grant a pro se plaintiff access to CM/ECF; however, use of a CM/ECF account is largely restricted to licensed attorneys.

In response to the COVID-19 pandemic, this Court adopted modified procedures that allow pro se plaintiffs to file documents electronically via email. Pro se plaintiffs may also consent to receive service through the CM/ECF system and notification by email when documents are electronically uploaded into the CM/ECF system. See General Order, 1-2 ¶¶ 2-4 (Mar. 18, 2020), ECF No. 5 ("General Order"). These modified procedures provide pro se

plaintiffs with the benefits of electronic filing (except for the ability to upload documents directly into CM/ECF). Additionally, pro se plaintiffs can register with Public Access to Court Electronic Records ("PACER") to receive notice of docket activity. These privileges may be revoked if a pro se plaintiff "submits frivolous submissions or does not comply with the submission guidelines" contained in the General Order. *Id.* at 1.

In this case, Plaintiff fully utilized the electronic filing procedures granted to pro se plaintiffs under the General Order. See ECF Nos. 10, 18, 22, 26, 30. Plaintiff also consented to receive notification by email when documents are electronically uploaded into the CM/ECF system. See ECF No. 7. Plaintiff's only limitation resulting from not being able to file documents using CM/ECF is the inability to upload documents directly into the docket. The Court finds that these immediate circumstances do not present sufficient justification for making an exception to the Court's usual filing procedures for pro se plaintiffs.

With respect to Plaintiff's use of the electronic filing procedures, Plaintiff repeatedly failed to comply with the General Order. Between January 8, 2021 and January 21, 2021, Plaintiff filed several noncompliant documents via email, including: a response to "appellee's" motion for extension of time (presumably meant to be filed in the United States Court of Appeals for the District of Columbia Circuit), a "declaration" of a two-year employment contract, and a response to Defendant's reply on a motion to dismiss. See ECF Nos. 24, 28-29. Additionally, on January 21, 2021, Plaintiff sent an explicit and inappropriate email to the Clerk's office without any documents attached. These filings were not made pursuant to a Court rule, in response to a Court order, or otherwise in accordance with the General Order.

For the reasons set forth above, the Court DENIES Plaintiff's Motion to Use the CM/ECF system. Additionally, because of Plaintiff's failure to comply with the General Order, Plaintiff's electronic filing privileges are hereby REVOKED. Plaintiff shall submit all future documents in this case through U.S. Mail or by deposit in the Court's night box located at the garage entrance on H Street NW, between 15th Street and Madison Place. The Clerk is directed to reject further filings submitted electronically by Plaintiff in this case.

IT IS SO ORDERED.

s/Thompson M. Dietz
THOMPSON M. DIETZ, Judge

APPENDIX
Japan Hague Convention
Central Authorities

(Translation)

Date: September 3, 2019
Case No. A-19115

To: Mr. Jack Stone

Minister for Foreign Affairs
(Official seal)

Notice of Dismissal of Application for Assistance

I hereby inform you that your Application for Assistance in Child's Return to Foreign State (Case No. A-19115) has been dismissed on the grounds that the application falls under Article 7 (1) (iv) of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (the "Act").

* If you are dissatisfied with this decision, you may file an objection with the Minister for Foreign Affairs within three months from the next day of the date on which you are notified of this decision, in accordance with Article 2 of the Administrative Appeal Act (Act No. 68 of 2014) (you may not file an objection, except where there are justifiable grounds, during this three-month period if one year has elapsed from the next day of the decision by then).

If you request to have this decision revoked, you may file an action against the State (to be represented by the Minister of Justice in litigation) for the revocation of this decision within six months from the date on which you are notified of this decision, in accordance with Article 3, (2) of the Administrative Case Litigation Act (Act No. 139 of 1962) (you may not file an action for the revocation of this decision, except where there are justifiable grounds, during this six-month period if one year has elapsed from the date of the decision by then).

[Contacts]

Chie Mackoya and Ayae Sese
Hague Convention Division
Consular Affairs Bureau
Ministry of Foreign Affairs
2-2-1 Kasumigaseki, Chiyoda-ku, Tokyo, Japan
100-8919

—
(Translation)

Tel: +81-(0)3-5501-8466

Fax: +81-(0)3-5501-8527

Email: hague02@mofa.go.jp

* Please be sure to indicate the case number in your inquiries.

APPENDIX

Sendai Family Court

事件番号 平成31年(家ロ)第1008号, 第1009号

仮の地位を定める仮処分(子の監護者の指定, 子の引渡し)事件

申立人 鈴木 身祐希

相手方 ストーン ジャック

未成年者 鈴木 將有希

事件終了通知書

令和元年11月25日

相手方 ストーン ジャック 様

〒980-8637

仙台市青葉区片平1-6-1

仙台家庭裁判所ハE係

裁判所書記官 関 奈々子

電話番号 022-745-6214

FAX 番号 022-265-6822

頭書の事件については、令和元年11月15日、取下げにより終了したので通知します。

APPENDIX
Florida
Second District Court of Appeals

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JACK STONE,)	
)	
Appellant,)	
)	
v.)	Case No. 2D20-451
)	
MIYUKI SUZUKI,)	
)	
Appellee.)	
_____)	

Opinion filed December 23, 2020.

Appeal from the Circuit Court for Highlands
County; Kelly P. Butz, Judge.

Jack Stone, pro se.

No appearance for Appellee.

CASANUEVA, Judge.

Jack Stone challenges the circuit court's order that dismisses his Motion for Ex Parte Emergency Child Custody and all subsequent pleadings for lack of jurisdiction. The primary issue in this appeal is whether the Highlands County Circuit Court has subject matter jurisdiction under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), sections 61.501–.542, Florida Statutes (2019), to determine this international child custody dispute. Mr. Stone contends that before his wife, Miyuki Suzuki, took the parties' child to Japan without his consent, Florida was the

child's home state, and therefore Florida law should apply. He claims that he was deprived of due process by the circuit court's denial of an evidentiary hearing so that he could be heard on this issue. We reverse and remand for Mr. Stone to have the opportunity to present his case for subject matter jurisdiction.

Mr. Stone, a U.S. citizen, alleged in his motion for emergency temporary custody that his wife, a Japanese national, took the parties' child, M.S., with her to Japan without Mr. Stone's consent. According to Mr. Stone, in November 2018 he was on a trip to Japan to renew his spousal visa when Ms. Suzuki boarded a plane in Orlando with the parties' son and fled the country on the day she anticipated her husband would return to Florida. Mr. Stone cancelled his return flight after his sister alerted him to his wife's plan to return to Japan. After struggling for a couple of months to locate his son, he regained physical custody of M.S., but he has been unable to return to the United States with the child because his wife destroyed the child's U.S. passport.

Mr. Stone has filed numerous motions and petitions in the Highlands County Circuit Court. He sought a return order under the Hague Convention,¹ custody of M.S. under the UCCJEA, custody of a second child that was born after the wife

¹The Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89 (July 1, 1988), is an international treaty to which the United States and Japan are signatories. See De Carvalho v. Carvalho Pereira, No. 1D20-523, 2020 WL 6706877, *1 (Fla. 1st DCA Nov. 16, 2020). The Hague Convention is implemented in the United States by the International Child Abduction Remedies Act (ICARA) at 22 U.S.C. §§ 9001-9011 (2018). The Convention's primary function is to provide a process through which a parent may seek the prompt return of a child who has been wrongfully removed to or retained in another country. See Abbott v. Abbott, 560 U.S. 1, 9 (2010) ("The Convention's central operating feature is the return remedy.")

returned to Japan, and a change of M.S.'s name. He also filed suit in the United States District Court, District of Columbia, to compel the Department of State to issue M.S. a new passport without Ms. Suzuki's consent.² See 22 C.F.R. § 51.28 (2019) (requiring execution of a passport application by both parents unless a parent can provide documentary evidence or a court order showing that he or she has sole custody of the child or that the nonapplying parent consents to the issuance of the passport).

The circuit court denied Mr. Stone's motion for temporary custody and various other pleadings because Mr. Stone could not establish that Florida was the child's "home state" under sections 61.503(7) and 61.514(1)(a). The court noted in its order that the child was born in Japan and was presently in Japan and that therefore, a Japanese court was the proper tribunal in which Mr. Stone must seek custody. In its order, the circuit court stated as follows:

The home state determination under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) allows for Florida to exercise jurisdiction if, if at any time within the six months preceding the filing of the petition, Florida qualified as the home state of the minor child. See Fla. Stat. § 61.503(7); see also § 61.514(1)(a). Petitioner filed a UCCJEA Affidavit demonstrating Florida does not qualify as the home state of the minor child. The child was born in Japan and is currently in Japan, and has been since at least January 2, 2019. Furthermore, Petitioner's various pleadings assert that another tribunal has accepted jurisdiction and

²See Stone v. U.S. Embassy Tokyo, No. 19-3273 (RC), 2020 WL 6701078 (D.D.C. Nov. 12, 2020) (denying Stone's motions that challenged the administrative order denying his application for the minor child's passport); see also Stone v. U.S. Embassy Tokyo (Stone I), No. 19-3273 (RC), 2020 WL 4260711 (D.D.C. July 24, 2020) (denying motions for leave to amend his complaint to include a petition for a return order); Stone v. U.S. Embassy Tokyo (Stone II), No. 19-3273 (RC), 2020 WL 5653699 (D.D.C. Sept. 23, 2020) (denying motion for recusal); Stone v. U.S. Embassy Tokyo (Stone III), No. 19-3273 (RC), 2020 WL 5775196 (D.D.C. Sept. 28, 2020) (granting defendants' motion for leave to submit portions of the administrative record under seal).

awarded Petitioner physical custody of the minor child.
Accordingly, this Court lacks jurisdiction over the matter.

Mr. Stone's second amended complaint acknowledges that his son was born in Japan and that the family lived there for the child's first four years. However, he explains that in 2018 the parties made the decision to move to the United States. In March 2018, after visiting family in Hawaii, Mr. Stone, his wife, and son came to Florida. He contends that he has significant connection with this state because he grew up in Florida, has family in this state, and had been residing in Florida for the eight months before his wife abducted the parties' child. On his UCCJEA affidavit he lists his residences as Miami from March 18, 2018, to October 9, 2018, and Sebring from October 9, 2018, to the date of filing, September 9, 2019. However, his pleadings show that the family has been in Japan since November of 2018. It is because of the child's long absence from the state that the circuit court declined to exercise jurisdiction.

Mr. Stone's request for a Return Order under the Hague Convention

First, we address Mr. Stone's request for an Order of Return under the Hague Convention. He argues that the circuit court erred in failing to address his return order request and in proceeding under chapter 61 of the Florida Statutes.

A return order under the Hague Convention requires that an abducted child be brought back to the child's country of habitual residence, and then it is left to the courts of that nation to determine matters involving the child's custody. See Wigley v. Hares, 82 So. 3d 932, 943 (Fla. 4th DCA 2011) (citing Cuellar v. Joyce, 596 F. 3d 505, 508 (9th Cir. 2010)); see also 22 U.S.C. § 9001(b)(4) (2018) ("The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims."). Under the

Convention, "a court in the *abducted-to* nation has jurisdiction to decide the merits of an abduction claim, but not the merits of the underlying custody dispute." Friedrich v. Friedrich, 78 F.3d 1060, 1063 (6th Cir. 1996) (emphasis added) (citations omitted). The Convention "is generally intended to restore the pre-abduction status quo and to deter parents from crossing borders in search of a more sympathetic court." Id. at 1064 (citations omitted).

Although the circuit court did not make written findings addressing Mr. Stone's request for a return order, we conclude that Mr. Stone's request was properly denied. Under 22 U.S.C. § 9003(b), a person seeking to initiate judicial proceedings under the Convention for the return of a child must file a petition "in the place where the child is located at the time the petition is filed." Mr. Stone recognizes that he was required to obtain a return order in Japan but explains that he has sought relief in this country because his efforts to obtain a return order from the authorities in Japan were unsuccessful.

We agree that "[p]ersons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention." 22 U.S.C. § 9001(a)(2). However, as the federal court found, the terms of the Convention do not provide for jurisdiction in the United States because the child is presently in Japan. See Stone v. U.S. Embassy Tokyo, No. 19-3273 (RC), 2020 WL 4260711, *3 (D.D.C. July 24, 2020) (denying Mr. Stone's request to amend his complaint to add a request for a return order on the grounds that under ICARA a person seeking to initiate judicial proceedings under the Convention for the return of a child must file the petition "*where the child is located at the time the petition is filed*" (citations omitted)). The federal court "acknowledge[d]

the apparent unfairness of the situation" but found that it was "powerless to remedy it." Id. at *4. Accordingly, the circuit court was correct in denying Mr. Stone's return order petition and properly required Mr. Stone to proceed with his request for custody by filing an affidavit under the UCCJEA.

The Uniform Child Custody Jurisdiction Enforcement Act

The UCCJEA was promulgated to help avoid jurisdictional conflict and to promote cooperation between courts in resolving custody issues. See § 61.502(1), (2). The objective of the Act is to eliminate the simultaneous exercise of jurisdiction over custody disputes by more than one state. Karam v. Karam, 6 So. 3d 87, 90 (Fla. 3d DCA 2009). For purposes of applying the UCCJEA to an international custody dispute, "[a] foreign country is treated as a state of the United States for jurisdiction purposes." Lande v. Lande, 2 So. 3d 378, 381 (Fla. 4th DCA 2008) (citing § 61.506(1)); Arjona v. Torres, 941 So. 2d 451, 454 (Fla. 3d DCA 2006) (same). "The UCCJEA gives jurisdictional priority to the child's home state."³ Hindle v. Fuiith, 33 So. 3d 782, 784 (Fla. 5th DCA 2010) (citing Arjona, 941 So. 2d at 455). "[T]he issue of whether the Florida circuit court has subject matter jurisdiction under the UCCJEA involves a question of law and is subject to de novo review." N.W.T. v. L.H.D., 955 So. 2d 1236, 1238 (Fla. 2d DCA 2007).

³Section 61.503(7) defines "home state" as "the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding." See M.A.C. v. M.D.H., 88 So. 3d 1050, 1054 (Fla. 2d DCA 2012) (noting that the "home state" determination under the UCCJEA allows for Florida to exercise jurisdiction if, at any time within the six months preceding the filing of the petition, Florida qualified as the home state).

In the present case, the circuit court found that it lacked jurisdiction under the UCCJEA because Florida was not the child's home state. We agree with the circuit court that Mr. Stone did not allege sufficient facts to establish that Florida was the child's home state under sections 61.503(7) and 61.514(1)(a). At the time Mr. Stone filed his custody proceeding in Florida on September 9, 2019, he and his family had been living in Japan for the preceding ten months. However, we note that the UCCJEA grants several exceptions to the home state jurisdictional requirement, such as when a court of another state does not have jurisdiction or has declined to exercise its jurisdiction. See § 61.514(1)(c), (d); see also, e.g., Hindle, 33 So. 3d at 785 (holding that under the UCCJEA the Florida court had subject matter jurisdiction to make an initial custody determination even though Florida was not the child's home state where the mother and the child had lived in several states in the six months prior to their arrival in Florida and the commencement of the paternity action and no other state had jurisdiction); Arjona, 941 So. 2d at 455 (noting that Florida could exercise jurisdiction based upon the child's connections with the state if the child's home state declined to exercise jurisdiction).

Mr. Stone argues that the circuit court erred in not applying the emergency jurisdiction exception in section 61.517(1), which states,

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

The circuit court did not err in failing to apply this subsection. In order for section 61.517(1) to apply, the child must be present in the state where the petition is filed. Cf. McAbee v. McAbee, 259 So. 3d 134, 139 (Fla. 4th DCA 2018) (determining that the trial

court had emergency jurisdiction in Florida, despite the fact that Virginia was the child's home state, because the child was physically present in Florida when the mother filed the emergency petition); In re NC, 294 P.3d 866, 874 (Wyo. 2013) ("[T]he only requirements for a state to exercise emergency jurisdiction pursuant to the UCCJEA are that the child be present in the state and that the child be subjected to or threatened with abuse.").

Mr. Stone also argues that there is no support for the circuit court's finding that Japan has accepted jurisdiction of the custody dispute and therefore, Japan, and not Florida, is the child's home state. The attachments to his motions reflect that Ms. Suzuki withdrew her petition for custody in the Japanese family court and that the petitions had been dismissed. He claims that the circuit court had a duty to communicate with the Japanese court to confirm the lack of any continuing custody proceedings in Japan.

We conclude that the circuit court prematurely denied Mr. Stone the opportunity to prove that Japan had declined to exercise its jurisdiction over the custody issue and that Florida was the more appropriate forum for either an initial custody determination or a modification of custody. See Douglas v. Johnson, 65 So. 3d 605, 607-08 (Fla. 2d DCA 2011) (reversing and remanding for a full evidentiary hearing where the mother was denied procedural due process by the trial court's failure to give her the opportunity to raise and develop the issue of subject matter jurisdiction). At a minimum, the court should have stayed the proceedings and communicated with the Japanese court to determine whether custody proceedings in Japan had been terminated. See § 61.519(1), (2); London v. London, 32 So. 3d 107, 110-11 (Fla. 2d

DCA 2009) (reversing for further proceedings where the trial court never communicated with the foreign court as required by section 61.519).

Accordingly, we reverse and remand for further proceedings.

MORRIS and LABRIT, JJ., Concur.

APPENDIX
Florida
Highlands County Family Court

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA

JACK STONE,

Case No.: 28-2019-DR-000903

Petitioner,

v.

MIYUKI SUZUKI,

Respondent.

ORDER DENYING MOTION FOR EX PARTE EMERGENCY CHILD CUSTODY
(WITHOUT PREJUDICE)

This cause is before the Court upon the Petitioner's *Motion for Ex Parte Emergency Child Custody* filed on September 9, 2019. The Court, having reviewed the Motion, case file, and applicable law, finds as follows:

Petitioner's *ex parte* Motion is unsworn, and therefore, legally insufficient. Additionally, Petitioner has failed to file a Uniform Child Custody Jurisdiction and Enforcement Act Affidavit, and the Motion itself asserts that another tribunal has accepted jurisdiction and awarded Petitioner physical custody. Accordingly, the Court is unable to determine if Florida is the home state of the child, and if this Court has jurisdiction over the matter.

It is hereby **ORDERED AND ADJUDGED** that Petitioner's *Motion for Ex Parte Emergency Child Custody* is hereby **DENIED** without prejudice to re-file a sufficient motion correcting the above-referenced deficiencies.

DONE AND ORDERED at Sebring, Highlands County, Florida, on this 10th day of September, 2019.


MICHAEL P. MCDANIEL, Circuit Judge

Copies to:

Jack Stone, Maison Sato #101, 2-2-15 Tsunogoro, Aoba, Sendai, Miyagi, Japan 980-0874

MPM/nbc

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IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA

JACK STONE,

Case No.: 28-2019-DR-000903

Petitioner,

v.

MIYUKI SUZUKI,

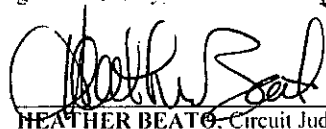
Respondent.

NOTICE OF INTENT TO DISMISS

This matter came before the Court on the Court's own motion. In a December 23, 2020 Opinion, the Second DCA remanded this case for an evidentiary hearing to allow Petitioner an opportunity to prove that Japan declined to exercise its jurisdiction over the custody issue, and that Florida is the more appropriate forum. An evidentiary hearing was scheduled for January 27, 2021, and Petitioner failed to appear. The *Order Setting Evidentiary Hearing* forewarned Petitioner that failure to appear may result in his petition being dismissed by the Court.

Accordingly, it is ORDERED that Petitioner shall have thirty (30) days from the date of this order to show cause why this matter should not be dismissed for failure to comply with the *Order Setting Evidentiary Hearing*. Petitioner is cautioned that failure to comply with this order will result in dismissal of this action.

DONE AND ORDERED at Sebring, Highlands County, Florida, on this 28th day of January, 2021.



HEATHER BEATO, Circuit Judge

Copies to:

Jack Stone, Maison Sato #101, 2-2-15 Tsunogoro, Aoba-ku, Sendai-shi, Miyagi-ken, Japan 980-0074
Miyuki Suzuki, 2-1-8 Monto -Machi, Yonezawa, FF 992-0039

HB/nbc

EXHIBIT A.

Below is a partial list of U.S. citizen children currently abducted into Japan, and whose parent's have received no aid whatsoever by the DOS "Office of Children's Issues."

Baros, Sarah
Berg, Gunnar
Berg, Kianna
Bocchetti, Reon Sean
Bunnell, Anna Karen
Bunnell, Hannah Sakura
Burgess, Misoi Hime
Cameron, Stella Yoko Saya
Collins, Keisuke
Cooper, Soren Shou
Davtyan, Ishkhan Lio
Donaldson, Michiru Janice
Duke, Riki Joy
Endo, Amane Karen
Endo, Kai
Endo, Miyu Ophelia
Fukuda, Serena Miharuru
Fukuyama, Mine Whitney
Gessleman, David Naru
Gessleman, Joshua Koa
Gherbetti, Julia
Gherbetti, Lauren
Halpern, Dylan
Hayes, Julia Lillian
Hickman, Hana Jean
Hickman, Saki Faith
Hirata, Koki
Ishida, Shanonyuma
Ito-Byrd, Aimi Rehanna
Johns, Takeshi Cole

Johns, Tetsuaki Wayne
Kimika, Sarah
Kinder, James
Kinder, Mizuki
Kinoshita, Wilson Atsushi
La Far, Genevieve Mariam
Lewis, Cody
Lewis, Jasmyn
Lui, Ezra
Martin, José
Massaquoi, Martin
Massaquoi, Sally Kikuchi
McCoy, Yuki Patrick
McPike, Kai Sugamoto
McPike, Koh Sugamoto
Meehan, Ashley Ayaka
Moline, Misaki
Morehouse, "Mochi" Atomu Imoto
Nagatomi, Joui
Nagatomi, Nina
Osar, Alicia Mari
Peterson, Diona Maria
Prager, Rui
Renzelman, Marcus
Rose, Kaia Sedona
Savoie, Isaac
Savoie, Rebecca
Sigal, Luna Kubota
Suzuki, Rion
Tanaka-Nielsen, Leo
Toland, Erika
Washington, Maximus Riku
Weed, Takoda
Weed, Tiana
Wong, Kaya Summer Xiao-Lian
Yoshida, Jack
Yoshida, Luke

EXHIBIT B.

To: Jack Stone <mail@stackjones.com>
From: Brian Prager <japanabductionrui@gmail.com>
RE: Contact the Author

To: Stack Jones

Brian Prager here. I got your message just today. I don't receive frequent mail on this account any more, which explains why I missed seeing it sooner.

I'm saddened to read this account of how you and your son have been mistreated by the Japanese; and none of that is unfamiliar in character or unknown to me. I know, or used to know, a lot of parents who have experienced similarly impossible struggles with the Japanese state. I have to be truthful and say that out of frustration and impotence, I haven't been in very regular contact with the parent groups in some time.

It's not that I am complacent, but rather that I am fully convinced that the response you got from the US Department of State and its allied agencies in the US government is the definitive one. They do not consider it in their interest and will not act outside of their self-defined interests to protect or assist any US citizen victimized by the Japanese state. And I also believe firmly that the Japanese state has made up its collective mind, and remains completely deaf to the desires and needs of parents and to the well-being of the children who rely on it for their care.

I know that hearing this is not the reason you wrote to me. It's the preliminary and ultimate point of view that I have with respect to Japan, all the same.

The part of the story that is new to me and is most impressive was the public action you took at the end of the story, most recently. The Asian Pacific Conference.

What you did is what every parent should do, and what resources are raised by parents' groups ought to be dedicated to doing. Instead however, the parent groups I know of use their resources (which I assume are really limited) to fly to Washington DC, to walk on Embassy row, trying to speak to a few members of the US Congress and DOS officials with whom they have established relationships. All that is fine, but I assume you know enough about the state of these governmental institutions and their capture by private interests to know why it is that nothing comes of polite conversations with Congresspersons and representatives of US DOS.

I'm unsurprised that the agencies of the US government have been entirely unhelpful. I have been through all of that, as have the rest of us.

I don't have access to any list of families or kids abducted by the Japanese; neither from the United States nor from the rest of the world. I doubt that anyone has such a list; in order to compile one, it

would probably require the collaboration of large powerful agencies – such as the Department of State – which would have to be responsive to the interests of the people. As I know very well, the interest of actual people are not on the radar of concern of the United States government.

I wish I did have a list. It would be well worth publishing it and using it as a weapon against the enemies who have attacked us and failed to help us.

I'm assuming that you've also contacted the left behind parent groups that exist in Japan and those that claim existence here in the United States and abroad; and that you've asked them for the same information. I wonder if any of them have replied or shown interest?

As far as I'm able to know, as much as I sympathize deeply with them for the losses they have all suffered, and the merciless pains of going on living in this condition, the parent groups (at least those in the U.S.) have not come to a full realization of how they are situated with regard to the powers of the state, and of the imbalance between them (us) and the private interests that have the capacity to use and establish state services. Or maybe they all know, but just keep on going to Washington to relieve themselves of some of the burden.

I do not want it to sound like I think I know something that they do not, or that I am wiser than anyone else. If I had wealth, I might do the same things... going to Japan to yell into the abyss of indifference, or going to Washington to stare into the blank eyes of government officials. But I am certain that the institutions do not offer answers, or help, or concern.

Of course, I don't actually want their concern. I got tired long ago of giving officials opportunities to make puppy eyes and sad faces at us. I want them to blast a hole in the Japanese wall of child imprisonment. What is maybe the hardest lesson is to come to the understanding that the government of the United States has made it its business to maintain that wall and keep our children confined and separated from us. It's easier for them to remain deaf, rather than making a demand to which Japanese are deaf as well.

I wish you strength and best possible luck in your struggle to protect your son. It's torture being faced with this unbelievable callousness. It takes a deep toll on us. The damage is enormous; and we struggle to maintain our kindness and decency.

Regards, and thanks for writing.

Brian Prager

CHILD'S NAME REDACTED father

EXHIBIT C.



EXHIBIT D.

TRANSCRIPT BEGINS

Jack Stone

My name is Jack Stone. I am the father of the boy sitting in front of me.

Today is April 29th 2020, and I'm going to ask my son some questions for legal purposes.

What is your name?

M.S.

Response redacted, as the child is a minor, six years of age, and the name is to be redacted from the record under applicable state and federal law to protect the privacy of the minor.

M.S. answered the question truthfully and accurately.

Jack Stone

How old are you?

M.S.

Six years old.

Jack Stone

Do you have a brother?

M.S.

Yes.

Jack Stone

What is your brother's name?

M.S.

Response redacted from the record under applicable state and federal law to protect the privacy of the minor.

M.S. answered the question truthfully and accurately.

Jack Stone

Is your mother keeping your brother from us?

M.S.

Yes.

Jack Stone
How do you feel about that?

M.S.
Bad.

Jack Stone
Do you love your brother?

M.S.
Yes.

Jack Stone
Do you want to live with your brother?

M.S.
Yes.

Jack Stone
Where?

M.S.
Hawaii.

Jack Stone
Where are you now?

M.S.
Japan, Sendai.

Jack Stone
Do you like being in Japan?

M.S.
No.

Jack Stone
Do you want to be in Japan?

M.S.
No.

Jack Stone
Are Japanese people nice to us?

M.S.
No.

Jack Stone
Do you have any friends in Japan?

M.S.
No.

Jack Stone
Do you go to counseling?

M.S.
Yes.

Jack Stone
What country are you in?

M.S.
Japan.

Jack Stone
What continent is Japan in?

M.S.
Asia.

Jack Stone
What country am I from?

M.S.
America.

Jack Stone
What country are you from?

M.S.
America.

Jack Stone
Can you speak English?

M.S.
Yes.

Jack Stone
Can you speak Japanese?

M.S.
No.

Jack Stone
Do you want to go to school in Japan?

M.S.
No.

Jack Stone
Why?

M.S.
Because no one speaks English.

Jack Stone
Can teachers speak English in Japanese schools?

M.S.
No.

Jack Stone
Even a little?

M.S.
No.

Jack Stone
Can children in Japan speak English?

M.S.
No.

Jack Stone
Do you want to go back to America?

M.S.
Yes.

Jack Stone
When?

M.S.
Right now.

Jack Stone
Right now?
Do you understand these questions that are being asked?

M.S.
Yes.

Jack Stone
What color is the ocean in Hawaii?

M.S.
Crystal blue.

Jack Stone
Is there garbage on the beaches in Hawaii?

M.S.
No.

Jack Stone
What color is the ocean in Japan?

M.S.
Black.

Jack Stone
Is there garbage on the beaches in Japan?

M.S.
Yes.

Jack Stone
A little or a lot?

M.S.
A lot.

Jack Stone
How do you feel about that?

M.S.
Bad.

Jack Stone

Do you like to go to a beach, filled with garbage everywhere?

M.S.

No.

Jack Stone

Has any judge, or court helped us return to America?

M.S.

No.

Jack Stone

What do I do, all day, every day?

M.S.

Court writing.

Jack Stone

How is my hand, and how is my shoulder from that?

(Mr. Stone received special testing accommodations while in law school, which included having to speak final exams into a tape machine, due to being permanently disabled, and having no use of his right arm. Mr. Stone has had several shoulder surgeries and had surgery in Japan while engaging in these legal matters. Mr. Stone is also being treated for cancer.)

M.S.

Really bad.

Jack Stone

Can I use my hand much?

M.S.

No.

Jack Stone

How do you feel about that?

M.S.

Bad.

Jack Stone

Where is your bicycle?

M.S.

Florida.

Jack Stone
Where is your surfboard?

M.S.
Florida.

Jack Stone
Where is your skateboard?

M.S.
Florida.

Jack Stone
Where are all of your favorite toys?

M.S.
Florida.

Jack Stone
Where are all of your clothing?

M.S.
Florida.

Jack Stone
What kind of food to we eat?

M.S.
Mostly organic food.

Jack Stone
Can we get organic food in Japan?

M.S.
A little bit.

Jack Stone
Why do farmers grow food?

M.S.
To make money.

Jack Stone
Do farmers grow food because they care about your health?

M.S.
No.

Jack Stone
So, is healthy food important to you?

M.S.
Yes.

Jack Stone
Can we read labels on food in Japan?

M.S.
No.

Jack Stone
Let me ask you this, what's glyphosate?

M.S.
A bad poison.

Jack Stone
Do you want to eat food with glyphosate?

M.S.
No.

Jack Stone
Do you want to remain in Japan?

M.S.
No.

Jack Stone
Where do you want to go?

M.S.
Hawaii.

Jack Stone
Do you understand the questions I'm asking you?

M.S.
Yes.

Jack Stone
OK, I have a few more questions.
Do you have long hair?

M.S.
Yes.

Jack Stone
Do Japanese boys, any of them, have long hair?

M.S.
No.

Jack Stone
Do Japanese people call you a boy, or a girl?

M.S.
A girl.

Jack Stone
How do you feel about that?

M.S.
Bad.

Jack Stone
I'll ask you a few other questions, focus with me here, all right? Look at me, you want to focus.

M.S.
OK.

Jack Stone
Let's play Simon Says. Put your hand here. What bone is that?

M.S.
The mandible.

Jack Stone
OK, put your hand right here. What bone is that?

M.S.
The sternum.

Jack Stone
What bones attach to the sternum?

M.S.
The ribs.

Jack Stone
What bone is this bone?

M.S.
The humerus?

Jack Stone
And what bones are these two bones in your arm right here?

M.S.
The ulna and the radius.

Jack Stone
What are your two hip bones called?

M.S.
Ileum and ischium.

Jack Stone
OK, what is the atomic number of Helium?

M.S.
Two.

Jack Stone
What does that mean?

M.S.
It means how many protons are in the nucleus?

Jack Stone
OK, I'm going to ask you a few more questions.
What's the square of 8?

M.S.
64.

Jack Stone
Let's make it easy for you. Let's go quickly right through...
What's 2 squared?

M.S.

4.

Jack Stone

What's 4 squared?

M.S.

16.

Jack Stone

What's 5 squared?

M.S.

25.

Jack Stone

What's 7 squared?

M.S.

49.

Jack Stone

What's 9 squared?

M.S.

81.

Jack Stone

What's 11 squared?

M.S.

121.

Jack Stone

What's 13 squared?

M.S.

169.

Jack Stone

What's 16 squared?

M.S.

256.

Jack Stone

OK, so all these questions I have asked you, do you understand them?

M.S.

Yes.

Jack Stone

I want to ask you one other question.

What continent is America in?

M.S.

North America.

Jack Stone

OK, that's pretty much it.

Is there anything you would like to tell the court? I'm going to give this to the judge. I doubt he'll even watch it. Because he doesn't like to read, and he doesn't like to watch things. He likes to get paid 150 thousand a year and do as little as possible. They don't really care that you're kidnapped. They don't really care about that. OK? So, we have to go through many courts to try and get you out of Japan.

Let me ask you one last time. Do you want to stay in Japan?

M.S.

No.

Jack Stone

Do you like being in Japan?

M.S.

No.

Jack Stone

Are these your answers, or are they Dada's answers?

M.S.

My answers.

Jack Stone

OK, thank you buddy.

TRANSCRIPT ENDS