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CHAPTER 2

Consular and Judicial Assistance and Related Issues

A. CONSULAR NOTIFICATION, ACCESS, AND ASSISTANCE

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See discussion in Chapter 5.

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1. Adoption

a. Report on Intercountry Adoption

In April 2016, the State Department released its Annual Report to Congress on Intercountry Adoptions. The Fiscal Year 2015 Annual Report, as well as past annual reports, can be found at https://travel.state.gov/content/adoptionsabroad/en/about-us/publications.html. The report includes several tables showing numbers of intercountry adoptions by country during fiscal year 2015, average times to complete adoptions, and median fees charged by adoption service providers.

b. U.S. Adoption Service Providers

On July 11, 2016, the Department of State entered into a Memorandum of Agreement with the Council on Accreditation ("COA"), renewing for five years COA's designation as the U.S. accrediting entity for adoption service providers under the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption ("Hague Convention"), the Intercountry Adoption Act of 2000, and the Intercountry Adoption Universal Accreditation Act ("UAA"). 81 Fed. Reg. 47,231 (July 20, 2016). The text of the agreement, which is available in the Federal Register notice, is similar to the original agreement signed with COA in 2006, with some changes, including those made to reflect enactment of the UAA and updates to the intercountry adoption accreditation regulations.

On September 8, 2016, the Department of State published a notice in the Federal Register inviting public comment on proposed amendments to the regulations setting forth the requirements for accreditation of agencies and approval of persons to provide adoption services in intercountry adoption cases. 81 Fed. Reg. 62,322 (Sep. 8, 2016). On October 28, 2016, the Department extended the comment period for 15 days, until November 22, 2016. 81 Fed. Reg. 74,966 (Oct. 28, 2016).*

On December 16, 2016, the Department of State temporarily debarred adoption service provider European Adoption Consultants, Inc. ("EAC") from accreditation for a period of three years. The debarment cancels EAC's accreditation and directs that EAC cease to provide any intercountry adoption services, in both Hague Convention and non-Hague Convention countries. The debarment was issued pursuant to the adoption accreditation regulations (22 CFR Part 96), which implement the Intercountry Adoption Act of 2000 and the Universal Accreditation Act of 2012. As explained in a Bureau of Consular Affairs news release, available at https://travel.state.gov/content/adoptionsabroad/en/about-us/newsroom/EuropeanAdoptionConsultantsDebarred.html:

> The Department found substantial evidence that the agency is out of compliance with the standards in subpart F of the accreditation regulations, and evidence of a pattern of serious, willful, or grossly negligent failure to comply with the standards and of aggravating circumstances indicating that continued accreditation of EAC would not be in the best interests of the children and families concerned.

c. Hague Convention

On July 25, 2016 Kyrgyzstan deposited its instrument of accession to the *Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption Convention* ("Hague Convention") with the Ministry of Foreign Affairs of the Kingdom of the Netherlands. The Convention entered into force for Kyrgyzstan on November 1, 2016. The United States began processing intercountry adoptions from the Kyrgyz Republic initiated on or after November 1, 2016 under the Hague Adoption Convention.

d. Litigation

As discussed in *Digest 2010* at 30-31, the Department of State and the Department of Homeland Security, U.S. Citizenship and Immigration Services, suspended adoptions based on abandonment in Nepal. In 2016, the United States filed a motion to dismiss a

* Editor's note: In April 2017, the Department withdrew its proposed rule amending the regulations, noting that "the comments provided in response to the [September 8, 2016 notice] will be considered in drafting a new rule, which is expected to be published later this year." 82 Fed. Reg. 16,322 (Apr. 4, 2017).

federal complaint challenging the suspension. *Skalka et al. v. Johnson et al.*, No. 16-107 (D.D.C.). The suspension halted the adjudication of immediate relative visa petitions ("I-600 petitions") filed on behalf of children from Nepal. Excerpts follow (with footnotes omitted) from the U.S. brief in support of the motion to dismiss, which is available in full, with the reply brief, at https://www.state.gov/s/l/c8183.htm.

* * * *

The Court should dismiss this case under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for the following reasons explained further below. First, most of the Plaintiffs lack standing and thus their claims should be dismissed. Second, Plaintiffs' claim that the Suspension is itself unlawful fails as a matter of law because it is within Defendants' statutory grant of authority and is neither prohibited by nor conflicts with any other provision of law. Third, Plaintiffs' challenge to prudence and propriety of Defendants' decision to impose the Suspension poses a nonjusticiable political question. Finally, Plaintiffs' mandamus claim should be dismissed both because they cannot show that Defendants owe them a clear, nondiscretionary duty, and as a matter of the Court's discretion.

I. Plaintiffs should be dismissed for lack of Article III standing.

* * * *

C. Frank Adoption Center lacks organizational standing because it has failed to establish an injury-in-fact that is fairly traceable to Defendants.

Like the individual Plaintiffs, the claims of organizational Plaintiff Frank Adoption Center should also be dismissed for lack of standing. As an organization, Frank Adoption Center "can assert standing on its own behalf, on behalf of its members or both." *Equal Rights Ctr. v. Post Properties, Inc.*, 633 F.3d 1136, 1138 (D.C. Cir. 2011). Based on the allegations in the [complaint or] FAC, Frank Adoption Center only asserts standing on its own behalf. …

When asserting standing on its own behalf, an organization must meet the standing requirements applied to individuals. *Spann v. Colonial Vill., Inc.*, 899 F.2d 24, 27 (D.C. Cir. 1990). Thus, to establish standing, an organization "must demonstrate that it has suffered injury in fact, including such concrete and demonstrable injury to the organization's activities—with a consequent drain on the organization's resources—constituting more than simply a setback to the organization's abstract social interests." *Nat'l Ass'n of Home Builders v. E.P.A.*, 667 F.3d 6, 11 (D.C. Cir. 2011) (internal quotes and alterations omitted). Where the objectives of an organization are merely "frustrated," the concerns are too abstract and standing is not imparted. *Nat'l Taxpayers Union, Inc. v. United States*, 68 F.3d 1428, 1433 (D.C. Cir. 1995).

In the FAC, Frank Adoption Center asserts that it is "a non-profit organization dedicated exclusively to facilitating . . . American families through the Nepalese adoption process." …The organization asserts that it "has been, and will continue to be, unable to fulfill this mission since the Blanket Suspension halted all adoptions by U.S. citizens of abandoned Nepalese children in August 2011" and will remain unable to do so "unless and until the Blanket Suspension is lifted." …

Frank Adoption Center's allegations fail to establish that it has suffered an injury-in-fact for two reasons. First, Frank Adoption Center does not provide any specific allegations detailing how it has been harmed by the Suspension. … This is precisely "the type of abstract concern that does not impart standing." *Nat'l Taxpayers Union*, 68 F.3d at 1433 ("allegation that [statute] has 'frustrated' NTU's objectives" insufficient basis for standing). Indeed, Frank Adoption Center has failed to allege the "concrete and demonstrable injury to the organization's activities—with a consequent drain on the organization's resources" that is required for standing. *Nat'l Ass'n of Home Builders*, 667 F.3d at 11 (internal quotes and alterations omitted).

Second, any impact on Frank Adoption Center's resources is not "fairly traceable" to Defendants because it has been "self-inflicted." See *Fair Employment Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276-77 (D.C. Cir. 1994) (holding that an injury that is self-inflicted "is not really a harm at all" and is not fairly traceable to the government). Frank Adoption Center did not handle any Nepali intercountry adoption cases until 2013, when it "re-opened its doors as an entirely new agency, working in Nepal and employing a new staff, as well as a new Board of Directors." See Exhibit A (noting that prior to 2013 the organization "worked . . . to place children from Eastern Europe with families living in the US and abroad," until such adoptions "ceased in 2012"). As it acknowledges in the FAC and on its website homepage, the Suspension went into effect in 2010. *Id.*; FAC ¶ 3. Thus, at the time it began working on Nepali adoptions, Frank Adoption Center knew of the very limitation it now claims has rendered it "unable to fulfill [its] mission." FAC ¶ 61; see Exhibit A (claiming that "Frank Adoption Center is now the only US agency authorized to work in Nepal" because all other organizations stopped handling such adoptions following the Suspension in 2010).
To the extent Frank Adoption Center is "unable to fulfill [its] mission," therefore, it is solely because it defined its "mission" as facilitating the very adoptions prohibited by the Suspension is seeks to challenge. This kind of "self-inflicted" injury does not establish standing for an organizational plaintiff. …

Similarly, to the extent Frank Adoption Center has suffered any harm, it is due to "the mere expense of testing" the legal sufficiency of the Suspension, and has resulted not from any actions taken by Defendants, but rather from the Frank Adoption Center's "efforts to increase legal pressure" on the government to lift the Suspension. See *Fair Employment Council*, 28 F.3d at 1276. Accordingly, Plaintiff Frank Adoption Center's cannot establish that it has suffered an injury-in-fact sufficient for Article III standing, and its claims should be dismissed for lack of subject matter jurisdiction.

II. Plaintiffs' claim that the Suspension is unlawful fails to state a claim on which relief may be granted.

To the extent Plaintiffs challenge that the Suspension "is not in accordance with the law," see FAC ¶ 68, such challenge must be dismissed for failure to state a claim. See Fed. R. Civ. P. 12(b)(6). The INA provides ample authority for Defendants to suspend adjudication of adoption-based immediate relative visa petitions from a particular country where the procedures and documents from that country are not sufficiently reliable to enable them to determine whether prospective adoptees from that country are "orphans" within the meaning of the law. Moreover, Defendants' imposition of the Suspension was a legitimate exercise of Defendants' authority, and is not prohibited by or in conflict with any other provision of law.

A. Defendants acted within their statutory authority in implementing the Suspension.

First, as a matter of law the Suspension falls within the respective authorities of the Secretary of Homeland Security and the Secretary of State under the INA. The Secretary of

Homeland Security is charged with the administration and enforcement of all laws relating to the immigration and naturalization of aliens, except those laws explicitly delegated within the INA to another portion of the Executive Branch. 8 U.S.C. § 1103(a)(1). The Secretary of State is charged with the administration and enforcement of all "immigration and nationality laws relating to . . . the powers, duties, and functions of diplomatic and consular officers of the United States." *Id*. § 1104(a)(1). Both Secretaries have the authority to "establish such regulations; … issue such instructions; and perform such other acts as [they] deem[] necessary for carrying out" their respective responsibilities. *Id*. §§ 1103(a)(3) and 1104(a).

Immigration to the United States on the basis of an intercountry adoption, including the adoption of abandoned children from Nepal, undoubtedly implicates the authorities of both the Secretary of Homeland Security and the Secretary of State. … And both USCIS and the Department of State determined that the Suspension was necessary after concluding that the U.S. Government could "no longer reasonably determine whether a child documented as abandoned qualifies as an orphan" and "due to a lack of confidence that children presented as orphans are actually eligible for intercountry adoption." See ECF No. 11-6 at 2. Thus, imposing the Suspension was a legitimate exercise of the authorities granted to the Secretaries by statute.

B. The requirement of an I-604 "investigation" does not conflict with or prohibit the Suspension.

Despite the foregoing statutory grants of authority, Plaintiffs allege that the Suspension is in violation of law because 8 U.S.C. § 1154(b) and 8 C.F.R. § 204.3(k) mandate that an "investigation" be conducted in every case. See FAC ¶ 38. Plaintiffs argue that Defendants are not carrying out this duty with respect to I-600 petitions subject to the Suspension. …

As a threshold matter, Defendants are not contesting that § 1154(b) requires an "investigation" in every immigrant visa petition case. Notably, § 1154(b)'s requirement applies to all immediate relative cases under 8 U.S.C. § 1151(b)(2)(A)(i) and family-based cases under 8 U.S.C. § 1153(a). Importantly, however, § 1154(b) does not impose any specific timeframe within which the investigation must be completed—but rather indicates that no petition can be approved until after the investigation has been done and eligibility has been verified. See 8 U.S.C. § 1154(b) ("After an investigation of the facts in each case . . . the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative . . . approve the petition"). Thus, the scope and depth of any given investigation can vary from case to case. …

Accordingly, Plaintiffs' argument that § 1154(b) somehow prohibits the Suspension (and resulting administrative closure of their I-600 petitions) fails as a matter of law. …

Section 1154(b) also does not specifically require that the investigation in an orphan case must be the I-604 orphan determination provided for in 8 C.F.R. § 204.3(k)(3). The use of the I-604 orphan determination as the vehicle for the § 1154(b) process in orphan cases exists only by regulation. An important distinction exists, moreover, between whether an I-604 orphan determination must take place and when such determination must occur. This is particularly relevant in the case at hand, which involves a suspension of adjudication and not a requirement that all I-600 petitions be denied.

Like § 1154(b), the regulation does not impose any specific timeframe within which the I-604 orphan determination must be completed, but only that completion must occur "before a petition is adjudicated abroad." 8 C.F.R. § 204.3(k). Thus, both the regulation and § 1154(b) clearly link the duty to conduct I-604 orphan determination to the adjudication of the petition,

not its filing. Indeed, interpreting the regulation and § 1154(b) to require an I-604 orphan determination the moment an I-600 petition is submitted, would lead to absurd results. …

Moreover, Plaintiffs' argument fails as a matter of law even if there were an obligation to conduct an I-604 orphan determination in cases subject to the Suspension. Indeed, the documents attached to Plaintiffs' FAC show that an I-604 orphan determination is occurring even in cases subject to the Suspension. See ECF No. 11-2 at 2 ("USCIS has reviewed your Form I-600, the Form I-604, Determination on the Child, and supporting documents . . .") (underlining added). This determination, albeit limited to determining whether the child identified in the petition was reported as abandoned and thus whether the Suspension applies, satisfies any "investigation" obligation that Defendants may have had under the applicable statute or regulation. See 8 U.S.C. § § 1154(b); 8 C.F.R. § 204.3(k) (providing that the scope of the I-604 orphan determination "depend[s] on the circumstances" of the particular case).

Thus, the Suspension does not prevent Defendants from complying with any duty they may have to investigate the circumstances of an I-600 petition. The Suspension (as the name implies) merely "suspend[s] adjudication of new adoption petitions and related visa issuance for children who are described as having been abandoned in Nepal"—it does not require the denial of such petitions. See ECF No. 11-6 at 2; see also ECF No. 11-2 at 4 ("[I]f the suspension is lifted, USCIS will notify you and reopen your case for processing."). Similarly, the Suspension does not eliminate the requirement that an I-604 orphan determination be completed in every case. Indeed, the U.S. Embassy in Kathmandu is still completing a Form I-604 in every case involving adoption of children from Nepal. But in cases where the alleged orphan child was reported as having been found abandoned, Defendants have determined that the systemic problems in Nepal preclude processing an orphan petition to completion. See ECF No. 11-6 at 2 ("Without reliable documentation, it is not possible for the United States Government to process an orphan petition to completion."). Thus, only an I-604 orphan determination limited in scope and nature may be completed for cases subject to the Suspension. If and when the Suspension is lifted Defendants will conduct another full I-604 orphan determination in each affected case, resulting in a complete adjudication of the I-600 petition.

Because the Suspension is an exercise of Defendants' duly authorized authority and is not prohibited by any law, Plaintiffs' claim that the Suspension is not in accordance with law should be dismissed.

III. Plaintiffs' challenge to the prudence and propriety of the Suspension should be dismissed because it presents a political question beyond the Court's jurisdiction.

As an alternative argument, Plaintiffs contend that even if imposing the Suspension was within the Defendants' legal authority, Defendants "abused [their] discretion" in determining that the circumstances in Nepal and the unreliability of documents related to Nepali children reported as having been found abandoned warranted the Suspension. See, e.g., FAC ¶¶ 37-39. The decision to impose the Suspension, however, and the considerations relevant to whether and when the Suspension should be lifted, touch on sensitive matters of foreign relations that are committed to the prudence and discretion of the political branches, and are thus beyond the jurisdiction of this Court.

* * * *

B. Plaintiffs' challenge to the propriety of the Suspension is not subject to judicial inquiry or decision.

Plaintiffs' challenge to the joint decision by USCIS and the Department of State to impose the Suspension presents a political question outside the jurisdiction of this Court. To be

clear, regardless of how Plaintiffs have styled their claims, they ultimately challenge the propriety of Defendants' decision that the Suspension was the most appropriate response to the troubling circumstances and problems posed in Nepal. See FAC ¶ 37 (arguing that "[t]he Blanket Suspension . . . is an abuse of agency discretion"). This is precisely the type of sensitive question of foreign relations that is committed exclusively to the prudence and discretion of the political branches. …

As the Supreme Court noted nearly a century ago, "[t]he conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative—'the political'—departments of the government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918); see also *El-Shifa*, 607 F.3d at 843 ("[T]he strategic choices directing the nation's foreign affairs are constitutionally committed to the political branches."). The judiciary has a similarly limited role in the areas of immigration and naturalization policy. *Mathews v. Diaz*, 426 U.S. 67 (1976) ("The reasons that preclude judicial review of political questions also dictate a narrow standard of review of decisions made by the Congress or the President in the area of immigration and naturalization."); *Sadowski v. Bush*, 293 F. Supp. 2d 15 (D.D.C. 2003) ("Deciding and implementing immigration policy has been textually committed to the political branches, and there exists no judicially manageable standards to decide how best to implement immigration laws."). Indeed, "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999) (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952)). "Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Id*.

Here, the policy Plaintiffs challenge—the Suspension—relates intimately to foreign affairs and its intersection with immigration and naturalization. As discussed above, Defendants determined that the procedures and documents presented to describe and prove abandonment were not sufficiently reliable to permit the conclusion that supposed "orphans" were in fact abandoned. … Having made this determination, the Executive Branch then weighed the range of permissible means available to it to address these important concerns, and settled on a modest and appropriate response: suspension of processing immigrant visa petitions related to intercountry adoption of children reported to be abandoned in Nepal. Foreign relations, including consultation and coordination with other foreign governments and consideration of the actions taken by other foreign governments and of the potential impact of various options on diplomatic relations with Nepal, played a significant part in Defendants' decision to implement the Suspension over other alternatives. Indeed, requiring Defendants to continue processing and adjudicating these cases, without sufficient confidence in the integrity of the underlying procedures and documentation, has the potential to engender unnecessary tensions with the government of Nepal and to impede coordination with other foreign governments that are collectively working to improve the systemic issues affecting Nepal's adoption procedures, so that intercountry adoptions can reliably be resumed.

The prudence of Defendants' joint decision to impose the Suspension, which is a legitimate exercise of the authorities granted to the Secretaries by statute, …implicates foreign policy and immigration and naturalization concerns, and is thus not subject to judicial review.

See *Oetjen*, 246 U.S. at 302 ("[T]he propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision."); *El-Shifa*, 607 F.3d at 843 ("[T]he strategic choices directing the nation's foreign affairs are constitutionally committed to the political branches.").

Finally, prudential considerations counsel against judicial intervention in this case. This Court's inquiry into the propriety of the Suspension would require review, analysis, and, potentially, criticism of Nepal's internal laws, policies, and practices, a function "for which the Judiciary has neither aptitude, facilities[,] nor responsibility." *Chicago & S. Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). That is particularly the case where, as here, Plaintiffs seek judicial review exclusively on basis of the APA. The remedies available pursuant to the APA are discretionary and equitable. As such, they provide weak authority for judicial interjection into sensitive matters of foreign affairs, and the Court should exercise the discretion provided to it under the APA to decline Plaintiffs' invitation to opine on sensitive foreign policy decisions. *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 (D.C. Cir. 1985) ("[W]here the authority for our interjection into so sensitive a foreign affairs matter as this are statutes no more specifically addressed to such concerns than the Alien Tort Statute and the APA, we think it would be an abuse of our discretion to provide discretionary relief."); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 42-43 (D.D.C. 2010) (same).

The U.S. Government, through its Embassy in Kathmandu and other officers in executive agencies, continues to evaluate whether the Suspension remains appropriate. See ECF No. 11-3 at 4 (discussing 2014 joint delegation to Nepal). USCIS and the Department of State have both the unique expertise and the constitutional responsibility to make that determination based on their assessment of the situation in Nepal, their consultations with other governments, and the political and foreign policy considerations implicated both by the Suspension and by any possible resolution. Accordingly, "[w]hether or not [the Suspension] is a matter so entirely committed to the care of the political branches as to preclude [the Court's] considering the issue at all, . . . it at least requires the withholding of discretionary relief." *Sanchez-Espinoza*, 770 F.2d at 208; *Al-Aulaqi*, 727 F. Supp. 2d at 42-43.

In light of the sensitive, political nature of the questions presented by Plaintiffs' claim, and given the great deference given to the political branches in regards to both foreign policy and immigration issues, the Court should dismiss the claim as non-justiciable.

* * * *

2. Abduction

a. Annual Reports

As described in *Digest 2014* at 71, the International Child Abduction Prevention and Return Act ("ICAPRA"), signed into law on August 8, 2014, increased the State Department's annual Congressional reporting requirements pertaining to countries' compliance with the 1980 Hague Convention on the Civil Aspects of International Child {"Convention"). In accordance with ICAPRA, the Department submits an Annual Report on International Parental Child Abduction to Congress by April 30 of each year and a report to Congress on the actions taken toward those countries determined to have a pattern of noncompliance in the Annual Report by July 30 of each year. See

International Parental Child Abduction page of the State Department Bureau of Consular Affairs, https://travel.state.gov/content/childabduction/en/legal/compliance.html.

The 2016 Report on International Parental Child Abduction (IPCA) is available at https://travel.state.gov/content/dam/childabduction/complianceReports/2016%20IPCA%20Report%20-%20Final%20(July%2011).pdf. The 2016 report on actions taken is available at https://travel.state.gov/content/dam/childabduction/complianceReports/Child%20Abduction%20Action%20Report%202016.pdf. The 2016 action report summarizes actions the Department of State took in countries cited in the annual report for demonstrating a pattern of noncompliance: Argentina, the Bahamas, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Guatemala, Honduras, India, Jordan, Lebanon, Nicaragua, Oman, Pakistan, Peru, Romania, and Tunisia. ICAPRA defines a pattern of noncompliance as the persistent failure: (1) of a Convention country to implement and abide by provisions of the Hague Abduction Convention; (2) of a non-Convention country to abide by bilateral procedures that have been established between the United States and such country; or (3) of a non-Convention country to work with the Central Authority of the United States to resolve abduction cases.

b. Hague Abduction Convention Partners

On April 1, 2016, the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention) entered into force between the United States and Thailand. Thailand became the 74th partner of the United States under the Convention. As described in an April 1, 2016 State Department media note, available at http://2009-2017.state.gov/r/pa/prs/ps/2016/04/255408.htm:

> The Convention is a valuable civil law mechanism for parents seeking the return of children who have been wrongfully removed from or retained outside their country of habitual residence by another parent or family member. Parents seeking access to children residing in treaty partner countries may also invoke the Convention. The Convention is critically important because it establishes a legal framework between partner countries to resolve parental abduction cases.

c. Congressional Testimony

On July 14, 2016, Karen L. Christensen, Deputy Assistant Secretary of State for Overseas Citizens Services in the Bureau of Consular Affairs, testified before the U.S. House of Representatives, Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights and International Organizations. Deputy Secretary Christensen discussed abductions in her testimony, which follows.

* * * *

We appreciate your continued interest in the work we do to prevent and resolve international parental child abductions and your efforts to advocate on behalf of the parents affected by the heartbreak of abductions. We share with you the goals of preventing international parental child abductions, of the expeditious return of children to their countries of habitual residence, and of the strengthening and expansion of our partnerships under the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Convention). We use the tools you gave us in the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014 (the Act) to continue to leverage our diplomatic engagement with countries and we are getting results.

Every day, my colleagues in the Bureau of Consular Affairs advance the foreign policy goals of the Department by assisting thousands of U.S. citizens affected by political crises, natural disasters, abuse, mental illness, and crime in all parts of the world. One of our priorities is international parental child abduction. In 2015, more than 600 children were reportedly abducted by a parent from the United States to another country. The State Department's Bureau of Consular Affairs leads the U.S. government's work in attempting to prevent and aid in the resolution of international abductions.

In these heartbreaking cases and in others, we work consistently and tirelessly attempting to perform welfare and whereabouts checks when we have concerns for the well-being of U.S. citizens, issuing passports to U.S. citizens, including to children returning to the United States, and issuing visas, including to parents traveling to the United States to attend custody hearings in their child's habitual residence, where appropriate.

As we undertake long-term efforts to elicit cooperation from foreign governments on abduction cases, we actively encourage countries to become party to the Convention, which, in addition to being one of the best options for parents seeking the return of their children, is also the best means of ensuring other countries adhere to the same standards we do when addressing abduction and access cases.

We work with parents, with counterparts in foreign governments, and with other U.S. government agencies to help resolve individual international parental child abduction cases. Each country, like our own, has its own judicial system, law enforcement entities, and cultural and family traditions. We tailor our strategy to deploy the most effective approach toward resolving each abduction case, including securing a child's return to the place of habitual residence or parental access to children.

Much of the day-to-day diplomatic engagement on abduction matters is handled by the Country Officers in the Office of Children's Issues. Our team of experts, based in Washington, is continuously in direct touch with counterparts in foreign government central authorities. On a regular basis, they also work with foreign governments through foreign embassies in Washington and our U.S. diplomatic missions overseas.

Senior U.S. officials often engage with their foreign counterparts to press for a prompt resolution to abduction cases. In the 2016 Annual Report on International Parental Child Abduction, Secretary Kerry emphasizes the U.S. commitment to combating international parental child abduction.

In 2015, Assistant Secretary for Consular Affairs Ambassador Michele Thoren Bond pressed foreign governments on abduction issues in Washington and overseas. She made public statements, delivered protests to foreign ambassadors, and held meetings in foreign capitals and in Washington to voice U.S. concerns over international parental child abduction.

Ambassador Susan Jacobs, the Secretary's Special Advisor for Children's Issues, visited more than 15 countries and attended multilateral conferences to discuss abduction issues. She promoted accession to or ratification of the Convention, and other arrangements to promote the return of and access to abducted children, such as Memoranda of Understanding, including one between the United States and Egypt. Ambassador Jacobs also encouraged countries for which the Convention is already in force with respect to the United States, also known as "partner" countries, to improve their treaty implementation.

And our embassies and consulates around the world play an important role in the Department's campaign to address international parental child abduction. U.S. ambassadors raise concerns to host governments, and U.S. consular and political officers regularly work on abduction matters, through liaising with local officials and by providing consular services, such as checking on the welfare of children who were abducted overseas.

The Annual Report on International Parental Child Abduction 2016

We have prepared Congressional reports on our international parental child abduction work since at least 2007. Our 2015 report was the first report issued under the new requirements of the Act. That report was a solid response to the call for data and information about the Department's work on international parental child abduction. In preparing this year's report, we integrated feedback from Congress, parents, judges, and such partners as the National Center for Missing and Exploited Children, and incorporated more country specific narrative and fewer tables of data. Building on last year's work since the Act became law, we believe that the 2016 Report is significantly more responsive and a helpful tool for all stakeholders.

The 2016 Annual Report reflects the number of cases reported to our office and how the Office of Children's Issues and our counterparts in foreign countries work together to resolve them. This information is challenging to compile and to present but can serve as a valuable resource for those affected by international parental child abduction.

However, each abduction case is unique. To reflect the complexities, this year we have included narratives in our report that offer context to the statistics on international parental child abduction throughout the world. We also included supplemental data in order to give additional context to the statistics that the Act requires.

For example, the report provides statistical information about each country for which there were five or more pending abduction cases reported during 2015. The report also provides information about our bilateral relationship with that country on abduction matters, recommendations for improved work to resolve abductions, and comments on the country's compliance with the Convention if applicable.

In the data pages we have added statistics beyond those required by the Act when we believed including them may be useful for the reader. For example, we provided the number of abductions and access requests reported to the Department, reflecting the overall caseload for that country, regardless of whether a particular case meets the definition of abduction under the Convention or under the Act.

Throughout the report, we have discussed topics that relate to our work on international parental child abduction cases. For example, we explained the International Visitor Leadership Program, which gives decision-makers and practitioners in other countries a first-hand view of how we work to resolve international parental child abduction cases, and we included information on our training and outreach to U.S. judges and U.S. Armed Forces legal assistance personnel, military chaplains, and military family support.

In 2015, we continued our diplomatic engagement with countries that have become party to the Convention but for whom the Convention is not yet in force with respect to the United States. As a result of those efforts, in early 2016, we welcomed Thailand as our 74th partner under the Convention, and we began reviewing the Philippines for potential partnership after the country acceded to the Convention.

In the report, we noted that, in 2015, 299 abducted children whose habitual residence was the United States were returned to the United States. The majority, 213 children, returned from Convention countries, while 86 were returned from countries adhering to no protocols with respect to international parental child abduction, as defined in the Act.

Last year, we worked on 136 abduction cases that were resolved without the abducted children being returned to the United States. These included cases that were sent to the Foreign Central Authority and were later closed for the following reasons: the judicial or administrative authority complied with the Convention; the parents reached a voluntary arrangement; the left-behind parent withdrew the application for return; the left-behind parent could not be located for greater than one year; or the left-behind parent or child passed away.

Of the 136 cases, 134 involved Convention countries, and two involved non-Convention countries.

Cited Countries

Despite this good news, there are families that continue to suffer as their children remain across an international border. In the 2016 report, we cited 13 Convention partner countries that either demonstrated a pattern of noncompliance, or failed to comply with one or more of their obligations under the Convention in 2015, as defined by the Act: Argentina, Austria, The Bahamas, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Honduras, Japan, Peru, and Romania; and eight non-Convention countries that demonstrated a pattern of noncompliance in 2015 as defined by the Act: Egypt, India, Jordan, Lebanon, Nicaragua, Oman, Pakistan, and Tunisia.

Of particular interest to this subcommittee will be the citations for Brazil, India, and Japan based on activity in 2015. Brazil demonstrated a pattern of noncompliance because 30 percent or more of the total abduction cases were unresolved abduction cases as defined by the Act. In addition, the Brazilian judicial authority failed to regularly implement and comply with the provisions of the Convention. India demonstrated a pattern of noncompliance by persistently failing to work with the United States to resolve abduction cases. Japan failed to comply with its obligations under the Convention in the area of enforcement of return orders. In the case of Japan, we are pleased to report that in 2016 there have been two successfully enforced returns under the Convention. In the first case, four U.S. citizen children were returned to their mother. In a second case, a U.S. citizen child was returned to his father. We are optimistic that the successful resolution of these cases signals a turning point in Japan's ability to comply with its obligations under the Convention.

We have provided a narrative analysis of the state of Convention compliance in each country we cite, in addition to the information provided in the country data pages for countries with five or more cases. It is our hope that the fuller picture of international parental child abduction in individual countries in the 2016 Annual Report will serve as a guide for traveling parents, judges, and family law attorneys. But more than that, we believe, as you do, that citing a country in the report can be a powerful tool for resolving cases in the future.

Our Engagement with Partners

Strategically, a key focus for us is to prevent abductions. From a child's first U.S. passport application, we work to protect children from international parental child abduction. U.S. law and regulation generally requires the consent of both parents for passport issuance to children under the age of 16. This minimizes the possibility that a passport could be issued to a child without the consent of both parents. In addition, enrolling a child in the Department's Children's Passport Issuance Alert Program (CPIAP) provides notification to the enrolling parent to ensure they are aware of the passport application. When a child is enrolled in CPIAP, the Prevention Branch of the Office of Children's Issues reviews the passport application and all supporting documents prior to any passport issuance. Prevention officers reach out to the requesting parent to notify them of the application and confirm their consent to the passport application. The Department will only issue a passport to a minor if we have the consent of both parents or the documents submitted with the passport application demonstrate the legal authority to issue without such consent.

In 2015 we enrolled 4,064 children in CPIAP and helped enroll 127 children in the Department of Homeland Security's program aimed at preventing international parental child abduction. We work with U.S. and foreign law enforcement agencies, airlines, and others to prevent children from being unlawfully removed from the United States. Our prevention officers are available 24/7 and through our broad public affairs campaign we encourage parents to reach out to us for information that can help avoid abductions before they happen. We fielded 1,560 inquiries in 2015 from parents, attorneys, support organizations, and foreign governments seeking prevention information.

The Department of State works closely with U.S. Customs and Border Protection (CBP) to help ensure that parents who have court orders that prohibit the international travel of a child can request assistance from CBP and U.S. law enforcement to prevent outbound abduction attempts. Key to the program's success, and a byproduct of the Act's mandated interagency working group, has been streamlined communications and information sharing among agencies on child abduction prevention initiatives. These new measures were instrumental in preventing more than 140 potential abductions since the law took effect.

In April and October of 2015, we hosted Prevention of International Parental Child Abduction Interagency Working Group meetings to discuss strategies to enhance international parental child abduction prevention measures. Special Advisor for Children's Issues Susan Jacobs chaired both meetings; officials from the U.S. Central Authority, the Department of Homeland Security, the Department of Justice, the Federal Bureau of Investigation, and the Department of Defense participated. Participants discussed ways to enhance current interagency abduction prevention strategies. At the October meeting, the U.S. Central Authority provided English- and Spanish-language Preventing International Parental Child Abduction brochures to all participants to distribute within their agencies. The working group will continue to meet regularly to streamline and improve interagency cooperation when working to prevent international parental child abduction cases originating from the United States.

Conclusion

Mr. Chairman, Ranking Member Bass, distinguished Members of the subcommittee, the Act has reinforced significantly our work to address the complex problem of international parental child abduction.

In our efforts to return abducted children to their places of habitual residence we are using all effective means available to us under the law. This is our mission. The Department of

State weaves our concerns about international parental child abduction into our diplomatic discourse with nations around the globe. We want to set the Convention's framework as a standard around the world for addressing and resolving abduction cases. Where that may not be an option, we can work toward bilateral and other arrangements to resolve abductions that take children from their homes and families in the United States. We can advance this through persistent diplomatic engagement, an approach that has produced results with many countries around the world. The Act specifies actions that include tactics and strategies that already figure into how the Department wields diplomacy, persuasion, and negotiation to advance U.S. interests throughout the world.

We take actions based on the Annual Report and on the Act, and take action any time we consider it to be timely and effective. We frequently deliver demarches and discuss cases with senior government officials in countries that are not complying. These are very frank conversations, and we are adamant that each country is aware of the importance of this issue. The Act directs us to raise with the governments of the countries we cite in our report the reasons why we think they are not living up to their obligations with regard to international parental child abduction. We will report on those approaches and our continuing engagement with foreign countries in the follow up Action Report.

We constantly strive to increase our effectiveness and our compliance and always look for ways to collaborate with our partners, including you, members of Congress who've committed so much time and energy to addressing this very important and urgent issue.

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Cross References

Evacuations from Yemen, **Chapter 5.C.1.**
Children, **Chapter 6.C.**
IACHR petition regarding consular notification, **Chapter 7.D.1.g.**
Enhanced consular immunities, **Chapter 10.E.3.**
Family law, **Chapter 15.B.**