

ity of the governmental failure to resolve the unresolved abduction case; and

(B) seek, to the fullest extent possible—

(i) to initially respond by communicating with the Central Authority of the country; and

(ii) if clause (i) is unsuccessful, to target subsequent actions—

(I) as narrowly as practicable, with respect to the agencies or instrumentalities of the foreign government that are responsible for such failures; and

(II) in ways that respect the separation of powers and independence of the judiciary of the country, as applicable.

(2) Guidelines for actions by the Secretary of State

In addition to the guidelines under paragraph (1), the Secretary of State, in determining whether to take 1 or more actions under paragraphs (5) through (7) of section 9122(d) of this title or section 9122(e) of this title, shall seek to minimize any adverse impact on—

(A) the population of the country whose government is targeted by the action or actions;

(B) the humanitarian activities of United States and nongovernmental organizations in the country; and

(C) the national security interests of the United States.

(Pub. L. 113–150, title II, §201, Aug. 8, 2014, 128 Stat. 1817.)

§ 9122. Actions by the Secretary of State in response to patterns of noncompliance in cases of international child abductions

(a) Response to a pattern of noncompliance

It is the policy of the United States—

(1) to oppose institutional or other systemic failures of foreign governments to fulfill their obligations pursuant to the Hague Abduction Convention or bilateral procedures, as applicable, to resolve abduction and access cases;

(2) to promote reciprocity pursuant to, and in compliance with, the Hague Abduction Convention or bilateral procedures, as appropriate; and

(3) to directly engage with senior foreign government officials to most effectively address patterns of noncompliance.

(b) Determination of countries with patterns of noncompliance in cases of international child abduction

(1) Annual review

Not later than April 30 of each year, the Secretary of State shall—

(A) review the status of abduction and access cases in each foreign country in order to determine whether the government of such country has engaged in a pattern of noncompliance during the preceding 12 months; and

(B) report such determination pursuant to section 9111(f) of this title.

(2) Determinations of responsible parties

The Secretary of State shall seek to determine the agencies or instrumentalities of the

government of each country determined to have engaged in a pattern of noncompliance under paragraph (1)(A) that are responsible for such pattern of noncompliance—

(A) to appropriately target actions in response to such noncompliance; and

(B) to engage with senior foreign government officials to effectively address such noncompliance.

(c) Actions by the Secretary of State with respect to a country with a pattern of noncompliance

(1) In general

Not later than 90 days (or 180 days in case of a delay under paragraph (2)) after a country is determined to have been engaged in a pattern of noncompliance under subsection (b)(1)(A), the Secretary of State shall—

(A) take 1 or more of the actions described in subsection (d);

(B) direct the Chief of Mission in that country to directly address the systemic problems that led to such determination; and

(C) inform senior officials in the foreign government of the potential repercussions related to such designation.

(2) Authority for delay of actions by the Secretary of State

The Secretary shall not be required to take action under paragraph (1) until the expiration of a single, additional period of up to 90 days if, on or before the date on which the Secretary of State is required to take such action, the Secretary determines and certifies to the appropriate congressional committees that such additional period is necessary—

(A) for a continuation of negotiations that have been commenced with the government of a country described in paragraph (1) in order to bring about a cessation of the pattern of noncompliance by such country;

(B) for a review of corrective action taken by a country after the designation of such country as being engaged in a pattern of noncompliance under subsection (b)(1)(A); or

(C) in anticipation that corrective action will be taken by such country during such 90-day period.

(3) Exception for additional action by the Secretary of State

The Secretary of State shall not be required to take additional action under paragraph (1) with respect to a country determined to have been engaged in a persistent pattern of noncompliance if the Secretary—

(A) has taken action pursuant to paragraph (5), (6), or (7) of subsection (d) with respect to such country in the preceding year and such action continues to be in effect;

(B) exercises the waiver under section 9124 of this title and briefs the appropriate congressional committees; or

(C) submits a report to the appropriate congressional committees that—

(i) indicates that such country is subject to multiple, broad-based sanctions; and

(ii) describes how such sanctions satisfy the requirements under this subsection.

(4) Report to Congress

Not later than 90 days after the submission of the Annual Report, the Secretary shall sub-

mit a report to Congress on the specific actions taken against countries determined to have been engaged in a pattern of noncompliance under this section.

(d) Description of actions by the Secretary of State in Hague Abduction Convention countries

Except as provided in subsection (f), the actions by the Secretary of State referred to in this subsection are—

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

(e) Commensurate action

(1) In general

Except as provided in subsection (f), the Secretary of State may substitute any other action authorized by law for any action described in subsection (d) if the Secretary determines that such action—

- (A) is commensurate in effect to the action substituted; and
- (B) would substantially further the purposes of this chapter.

(2) Notification

If commensurate action is taken pursuant to this subsection, the Secretary shall submit a report to the appropriate congressional committees that—

- (A) describes such action;
- (B) explains the reasons for taking such action; and
- (C) specifically describes the basis for the Secretary's determination under paragraph (1) that such action—
 - (i) is commensurate with the action substituted; and
 - (ii) substantially furthers the purposes of this chapter.

(f) Resolution

The Secretary of State shall seek to take all appropriate actions authorized by law to resolve the unresolved case or to obtain the cessation of such pattern of noncompliance, as applicable.

(g) Humanitarian exception

Any action taken pursuant to subsection (d) or (e) may not prohibit or restrict the provision of

medicine, medical equipment or supplies, food, or other life-saving humanitarian assistance.

(Pub. L. 113–150, title II, § 202, Aug. 8, 2014, 128 Stat. 1818.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (d)(7), is Pub. L. 87–195, Sept. 4, 1961, 75 Stat. 424. Chapter 4 of part II of the Act is classified generally to part IV (§ 2346 et seq.) of subchapter II of chapter 32 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

This chapter, referred to in subsec. (e)(1)(B), (2)(C)(ii), was in the original “this Act”, meaning Pub. L. 113–150, Aug. 8, 2014, 126 Stat. 1807, known as the Sean and David Goldman International Child Abduction Prevention and Return Act of 2014, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 9101 of this title and Tables.

§ 9123. Consultations with foreign governments

As soon as practicable after the Secretary of State makes a determination under section 9121 of this title in response to a failure to resolve unresolved abduction cases or the Secretary takes an action under subsection (d) or (e) of section 9122 of this title, based on a pattern of noncompliance, the Secretary shall request consultations with the government of such country regarding the situation giving rise to such determination.

(Pub. L. 113–150, title II, § 203, Aug. 8, 2014, 128 Stat. 1820.)

§ 9124. Waiver by the Secretary of State

(a) In general

Subject to subsection (b), the Secretary of State may waive the application of any of the actions described in subsections (d) and (e) of section 9122 of this title with respect to a country if the Secretary determines and notifies the appropriate congressional committees that—

- (1) the government of such country—
 - (A) has satisfactorily resolved the abduction cases giving rise to the application of any of such actions; or
 - (B) has ended such country's pattern of noncompliance; or
- (2) the national security interest of the United States requires the exercise of such waiver authority.

(b) Congressional notification

Not later than the date on which the Secretary of State exercises the waiver authority under subsection (a), the Secretary shall—

- (1) notify the appropriate congressional committees of such waiver; and
- (2) provide such committees with a detailed justification for such waiver, including an explanation of the steps the noncompliant government has taken—
 - (A) to resolve abductions cases; or
 - (B) to end its pattern of noncompliance.

(c) Publication in Federal Register

Subject to subsection (d), the Secretary of State shall ensure that each waiver determination under this section—