

111TH CONGRESS
2^D SESSION

H. RES. 1326

Calling on the Government of Japan to immediately address the growing problem of abduction to and retention of United States citizen minor children in Japan, to work closely with the Government of the United States to return these children to their custodial parent or to the original jurisdiction for a custody determination in the United States, to provide left-behind parents immediate access to their children, and to adopt without delay the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2010

Mr. MORAN of Virginia (for himself, Mr. SMITH of New Jersey, Mr. HINCHEY, Mr. GARY G. MILLER of California, Mrs. BLACKBURN, and Mr. BECERRA) submitted the following resolution; which was referred to the Committee on Foreign Affairs

RESOLUTION

Calling on the Government of Japan to immediately address the growing problem of abduction to and retention of United States citizen minor children in Japan, to work closely with the Government of the United States to return these children to their custodial parent or to the original jurisdiction for a custody determination in the United States, to provide left-behind parents immediate access to their children, and to adopt without delay the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Whereas Japan is an important partner with the United States and shares interests in the areas of economy, defense, the promotion of global peace and prosperity, and the mutual protection of the human rights of the two nations' respective citizens in the increasingly integrated global society;

Whereas the Government of Japan acceded to the Universal Declaration of Human Rights that states under Article 16 (1), "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution", and Article 16 (3), "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State";

Whereas the Government of Japan acceded in 1979 to the International Covenant on Civil and Political Rights that states "States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children [Article 23]";

Whereas according to Japan's National Institute of Population and Social Security Research, 44,701 marriages between a Japanese national and a foreigner were registered in Japan in 2006, and 17,102 divorces were registered in Japan in 2006 between a Japanese national and foreigner;

Whereas since 1994 the Office of Children's Issues (OCI) at the United States Department of State had opened 194 cases involving 269 United States citizen minor children

abducted to or wrongfully retained in Japan, and as of March 25, 2010, OCI had 85 open cases involving 121 United States citizen minor children abducted to or wrongfully retained in Japan;

Whereas since the signing of the Treaty of Peace with Japan (San Francisco Treaty) between the Allied Powers and the Government of Japan in 1951, the Japanese Government has never issued and enforced a legal decision to return a single abducted child to the United States;

Whereas Japan has not acceded to the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Hague Convention), resulting in the continued absence of an immediate civil remedy that as a matter of urgency would enable the expedited return of abducted children to their custodial parent in the United States where appropriate, or otherwise immediately allow access to their United States parent;

Whereas the Government of Japan is the only G-7 country that has not acceded to the Hague Convention;

Whereas the Hague Convention would not apply to abductions occurring before the accession of Japan to the Hague Convention, requiring, therefore, that Japan create a separate parallel process to resolve the abductions of all United States citizen minor children who currently remain wrongfully removed to or retained in Japan, including the 121 United States citizen minor children who have been reported to the United States Department of State and who are being held in Japan against the wishes of their parent in the United States and, in many cases, in direct violation of a valid United States court order;

Whereas the Hague Convention provides enumerated defenses designed to provide protection to children alleged to be subjected to physical or psychological abuse in the left-behind country;

Whereas United States laws against domestic violence extend protection and redress to Japanese spouses;

Whereas there are numerous acknowledged cases, such as the Jade and Michael Elias case, of Japanese consulates located within the United States issuing or reissuing travel documents of dual-national minor children in violation of United States court orders restricting travel and in violation of United States Federal criminal parental kidnapping statutes;

Whereas there are numerous cases in which the actions of the Government of Japan evidence a disregard of United States law and jurisdiction, other cases show indifference to the United States and customary international jurisprudence in the area of family law, which overwhelmingly reflects the worldwide preference for the resolution of parenting disputes by negotiated joint custody;

Whereas Japan's existing family law system does not recognize joint custody nor actively enforce parental access agreements for either its own nationals or foreigners, there is little hope for minor children to have contact with the noncustodial parent in violation of internationally recognized and protected rights;

Whereas there exists no due process within the Japanese family court system for the redress of such disputes, and the existing system has no recognized process to enforce a custody or parental access order from outside of Japan

or within it, without the voluntary cooperation of the abducting parent or guardian;

Whereas the Government of Japan has repeatedly claimed to foreign governments that parental child abduction is not considered a crime in Japan despite the fact that Article 3 of the Japanese Penal Code does indeed make it a crime for a Japanese citizen to abduct a child and move the child across national borders, even if the child is moved to Japan;

Whereas the Government of Japan has refused to prosecute an abducting parent or relative criminally when that parent or relative abducts the child into Japan;

Whereas according to the United States Department of State's April 2008 Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction, abducted children are at risk of serious emotional and psychological problems and have been found to experience anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness, and as adults may struggle with identity issues, their own personal relationships, and parenting;

Whereas left-behind parents may encounter substantial psychological, emotional, and financial problems, and many may not have the financial resources to pursue civil or criminal remedies for the return of their children in foreign courts or political systems;

Whereas Erika Toland was abducted in 2003 from Negishi United States Navy Family housing in Yokohama to Tokyo, Japan, by her now deceased mother and is being

held by her Japanese maternal grandmother, while being denied access to her father since 2004;

Whereas Melissa Braden was covertly abducted from her home in 2006 by her mother to Japan in violation of previous Los Angeles Superior Court orders giving both parents access to the child and prohibiting international travel (travel to Japan) with the child by either parent and has since been denied any contact with her father;

Whereas Kai Hachiya was abducted in 2006 to Japan by his father, who had been found by a court of competent jurisdiction to have physically and mentally abused Kai's mother who had been awarded sole custody in the State of Hawaii, and as a result, Kai has had limited contact with his mother;

Whereas Isaac and Rebecca Savoie were abducted in 2009 to Japan by their mother in violation of a Tennessee State court order of joint custody and Tennessee statutes, and have been denied any access or communication with their father, despite their father having been awarded sole custody of them by a United States court;

Whereas Karina Garcia was abducted to Japan in 2008 by her mother, who was ordered by the United States courts to return Karina to the care of her sole custodian father in the United States, but the order to return of the child has not been granted even though the sole custody order had been recognized by the Osaka High Court;

Whereas United States citizen minor children who have been abducted to Japan are being deprived of their United States heritage;

Whereas, on October 16, 2009, the Ambassadors to Japan of Australia, Canada, France, Italy, New Zealand, Spain,

the United Kingdom, and the United States, all parties to the Hague Convention, called upon Japan to accede to the Hague Convention and meanwhile to identify and implement measures to enable parents who are separated from their children to establish contact with them and to visit them;

Whereas, on January 30, 2010, the Ambassadors to Japan of Australia, France, New Zealand, the United Kingdom and the United States, the Charges d’Affaires ad interim of Canada and Spain, and the Deputy Head of Mission of Italy, called on Japan’s Minister of Foreign Affairs, submitted their concerns over the increase in international parental abduction cases involving Japan and affecting their nationals, and again urged Japan to sign the Hague Convention;

Whereas the Governments of the United States and the French Republic have recently established bilateral commissions with Japan’s Ministry of Foreign Affairs to share information on and seek resolution of outstanding Japanese parental child abduction cases;

Whereas the bilateral commission is limited by the fact that it does not currently include Japan’s Ministry of Justice, which has jurisdiction over family law;

Whereas Japan’s Justice Minister Keiko Chiba said upon her appointment that she is determined to show that Japan “is very proactive” in adopting international protocols and conventions that are the “international standard”; and

Whereas it is critical for the Governments of the United States and Japan to work together to prevent future incidents of international parental child abduction to Japan,

which damages children, families, and Japan's national image with the United States: Now, therefore, be it

1 *Resolved*, That—

2 (1) the House of Representatives—

3 (A) condemns the abduction and retention
4 of all minor children being held in Japan away
5 from their United States parents in violation of
6 their human rights and United States and
7 international law;

8 (B) calls on the Government of Japan to
9 immediately facilitate the resolution of all ab-
10 duction cases, to recognize United States court
11 orders governing persons subject to jurisdiction
12 in a United States court, and to make imme-
13 diately possible access and communication for
14 all children with their left-behind parents;

15 (C) calls on the Government of Japan to
16 include Japan's Ministry of Justice in work
17 with the Government of the United States to
18 facilitate the identification and location of all
19 United States minor citizen children alleged to
20 have been wrongfully removed to or retained in
21 Japan and for the immediate establishment of
22 a protocol for the resolution of existing cases of
23 abduction, interference with parental access to

1 children, and violations of United States court
2 orders;

3 (D) calls on the Government of Japan to
4 establish immediately a protocol and timetable
5 to amend its Civil Code to allow for enforceable
6 rights of parental access and communication
7 between minor children and their divorced or
8 separated parents including parents who are
9 not Japanese citizens;

10 (E) calls on the Government of Japan to
11 review and amend its consular procedures to
12 ensure that travel documents for minor children
13 are not issued in violation of United States
14 court orders;

15 (F) calls on Japan to accede to the 1980
16 Hague Convention on the Civil Aspects of
17 International Child Abduction without delay
18 and to promptly establish judicial and enforce-
19 ment procedures to facilitate credibly the imme-
20 diate return of children to their habitual resi-
21 dence and to establish protocols for the organi-
22 zation of rights of international parental access;
23 and

24 (G) calls on the President of the United
25 States and the Secretary of State to seek imme-

1 diately to identify credibly all United States cit-
2 izen minor children who have been wrongfully
3 removed to and who are retained currently in
4 Japan and to raise the issue of abduction and
5 wrongful retention of those United States cit-
6 izen minor children in Japan with Japanese of-
7 ficials and domestic and international press;
8 and

9 (2) it is the sense of the House of Representa-
10 tives that the United States should—

11 (A) recognize the issue of child abduction
12 to and retention of United States citizen minor
13 children in Japan as a central foreign policy
14 issue of paramount importance to the United
15 States within the context of its bilateral rela-
16 tionship with Japan;

17 (B) work with the Government of Japan to
18 enact consular procedures and legal agreements
19 to prevent parental abduction to and retention
20 of United States citizen minor children in
21 Japan;

22 (C) encourage the Government of Japan to
23 adopt the policy of not issuing duplicate pass-
24 ports when a United States judge has restricted
25 a child's travel or ordered the surrender of

1 passports and to otherwise require notarized
2 signatures from both parents before issuing a
3 passport to a child;

4 (D) review its advisory services made avail-
5 able to United States citizens from the Depart-
6 ment of State, the Department of Justice, and
7 other government agencies to ensure that effec-
8 tive and timely assistance is given to United
9 States citizens in preventing the incidence of
10 wrongful retention or removal of minor children
11 and acting to obtain the expeditious return of
12 their children from Japan;

13 (E) review its advisory services made avail-
14 able to members of the United States Armed
15 Forces, particularly those stationed in Japan by
16 the Department of Defense and the United
17 States Armed Forces, to ensure that effective
18 and timely assistance is given to them, includ-
19 ing providing legal assistance in preventing the
20 incidence of wrongful retention or removal of
21 minor children and acting to obtain the expedi-
22 tious return of their dependent children from
23 Japan at the conclusion of their tour of duty in
24 Japan;

1 (F) call upon the Secretary of Defense to
2 include the issues of child abduction and the
3 protection of members of the United States
4 Armed Forces and their families stationed
5 abroad in any current or future status of forces
6 agreement;

7 (G) call upon the Secretary of State to
8 enact immediately a Memorandum of Under-
9 standing with the Government of Japan to es-
10 tablish a bilateral protocol with procedures to
11 address immediately any parental child abduc-
12 tion or access issue reported to the United
13 States Department of State; and

14 (H) urge the Department of State to in-
15 clude international child abduction and Japan's
16 actions regarding abductions as a human rights
17 violation under its Country Reports on Human
18 Rights Practices.

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