# Report on Compliance with the Hague Convention

*on the Civil Aspects of*

# International Child Abduction

April 2010

DEPARTMENT OF STATE
UNITED STATES OF AMERICA

# REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

APRIL 2010

SUBMITTED PURSUANT TO
PUBLIC LAW 105-277, DIVISION G, TITLE XXVIII, SECTION 2803
(FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT OF 1998),
AS AMENDED BY
PUBLIC LAW 106-113, DIVISION A, TITLE II, SECTION 202
(ADMIRAL JAMES W. NANCE AND MEG DONOVAN
FOREIGN RELATIONS AUTHORIZATION ACT FOR FISCAL YEARS 2000 AND 2001),
AND PUBLIC LAW 107-228, DIVISION A, TITLE II, SECTION 212
(FOREIGN RELATIONS AUTHORIZATION ACT
FOR FISCAL YEAR 2003)

**United States Department of State**

*Assistant Secretary of State*
*for Consular Affairs*

*Washington, D.C. 20520*

Dear Reader:

I am pleased to present the 2010 Report on Compliance with the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The report offers an in-depth examination of the issues that arise in the implementation of the Convention with our treaty partners, as well as the progress made in our interaction with particular countries during the reporting period.

During Fiscal Year 2009, the Office of Children's Issues of the Department of State experienced a significant increase in the number of reported international parental child abduction cases. Each of these cases is a tragedy that has long-term consequences for the children and the left-behind parents involved. The Convention provides a civil mechanism for many parents who seek the return of their children, offering hope at a time when a family has been torn apart. The goal of the Convention is to establish clearly defined procedures for the prompt return of children who have been wrongfully removed or wrongfully retained and to provide an effective deterrent to parents who contemplate abducting their children. Unfortunately, current trends reflect a steady increase in the number of international parental child abduction cases and highlight the urgency of redoubling efforts to promote compliance with Convention obligations and encourage additional nations to join it.

Compliance is an ongoing challenge for many countries. Consequently, continuing evaluation of treaty implementation in partner countries and in the United States is vital for its success. As the U.S. Central Authority for this important Convention, the Office of Children's Issues will continue to work with each of our partners to resolve abduction cases promptly and to improve understanding and implementation of the Convention.

Sincerely,

Janice L. Jacobs

## TABLE OF CONTENTS


**MESSAGE FROM THE ASSISTANT SECRETARY FOR CONSULAR AFFAIRS** 3

**EXECUTIVE SUMMARY** 7

**MAP OF CONVENTION COUNTRIES** 9

**INTRODUCTION** 11

- The 2010 Compliance Report: Its Purpose
- Human and Social Costs of International Parental Child Abduction (IPCA)
- The Role of Non-Governmental Organizations (NGOs)
- About the Hague Abduction Convention
- U.S. Abduction Statistics
- Methodology for the Compliance Category Assessments

**COUNTRY NONCOMPLIANCE ASSESSMENTS** 18

- Countries Not Compliant
- Countries Demonstrating Patterns of Noncompliance

**COUNTRY NARRATIVES** 19

**NOTABLE CASES** 27

**NOTABLE ISSUES AND INITIATIVES IN FY 2009** 33

- The U.S. Central Authority and Its Application of the Convention
- Measures Taken to Prevent IPCA
- The Use of Technology in Abduction Cases

**EFFORTS TO EXPAND AND STRENGTHEN THE CONVENTION** 40

- Bilateral Efforts with Convention Partners
- Encouraging Accession with non-Convention Countries

**UNRESOLVED RETURN APPLICATIONS** 43

**TEXT OF THE CONVENTION** 61

**GLOBAL CASE STATISTICS** 69

**GLOSSARY OF TERMS AND ACRONYMS** 71

## EXECUTIVE SUMMARY OF THE 2010 HAGUE ABDUCTION CONVENTION COMPLIANCE REPORT

The Office of Children's Issues ("CI") of the U.S. Department of State, which serves as the U.S. Central Authority (USCA), on compliance with the Hague Convention on the Civil Aspects of International Child Abduction ("Convention") prepared this report. The report covers the period from October 1, 2008, through September 30, 2009 (Fiscal Year or FY 2009). It provides quantitative information concerning new abduction cases between the United States and Convention partner countries, and from the United States to non-Convention countries reported during FY 2009. The term "outgoing case" refers to children abducted from the United States, and "incoming" to those abducted to the United States from another country. Currently, the Convention is in force between the United States and 68 other countries (see map on page 9), mainly in Europe, North America, and South America. Statistics for international parental child abduction (throughout this report referred to as "IPCA") with these 68 countries, along with 55 non-Convention countries, are provided on page 69. In this report, "treaty partners," "Convention partners," or "partner countries" are countries with whom the United States had a treaty relationship during the reporting period, either through ratification or accession, in accordance with the terms of Articles 37 and 38 of the Convention.

During FY 2009, the USCA received 1,135 new requests for assistance in the return of 1,621 children to the United States from other countries. Of these requests, 828 were alleged abductions to Convention partner countries. Of the ten countries with the highest incidence of reported abductions, only three (Japan, India, and the Philippines) are not Convention partners. These ten countries accounted for 623 cases or 55 percent: Mexico (309), Canada (74), Germany (50), the United Kingdom (48), India (34), Brazil (24), Japan (23), Colombia (23), the Philippines (20), and Australia (18).

The number of new outgoing IPCA cases has almost doubled since FY 2006, from 642 to now 1,135.

In addition, in FY 2009, the USCA received 324 Convention applications concerning abductions to the United States from U.S. Convention partners, involving 454 children. The ten partner countries with the highest incidence of reported abductions from a foreign country to the United States were Mexico (75), the United Kingdom (31), Canada (29), Germany (18), Australia (14), France (12), Colombia (10), Argentina (8), the Dominican Republic (8), and the Bahamas (7), which together accounted for 212 cases or 65 percent of the total new cases.

In FY 2009, 436 children abducted to or wrongfully retained in other countries were returned to the United States. Of these children, 324 children were returned from countries that are Convention partners with the United States, accounting for 74 percent of the returns in FY 2009. The five countries accounting for the greatest number of returns were Mexico (125), the United Kingdom (28), Canada (18), Australia (13), and El Salvador (12). See p. 68 for Global Case Statistics. Moreover, 154 children wrongfully removed or wrongfully retained in the United States from a foreign country were returned under the Convention to their countries of habitual residence during FY 2009. The United States returned the greatest number of children to Mexico (53), Germany (13), Canada (12), the United Kingdom (11), and Australia (7).

This report discusses the human and social cost of IPCA and the role of non-governmental organizations in addressing the problem. The report provides details of nine "Notable Cases." The report contains a section on "Notable Issues and Initiatives," including for the first time an assessment of the United States' implementation of the Convention domestically and its efforts to prevent and combat IPCA, and also describes the use of technology in abduction cases. In addition, it presents information concerning the USCA's efforts during the reporting period to encourage other countries to become parties to the Convention.

The USCA evaluates Convention partner countries for compliance in three areas: central authority performance, judicial performance, and law enforcement performance. For FY 2009, the USCA finds Brazil, Honduras, and Mexico to be "Not Compliant," and Bulgaria to be "Demonstrating Patterns of Noncompliance" with the Convention.

Finally, following the mandate of Congress, this report provides a summary of the USCA's efforts to resolve 81 unresolved applications for return of abducted children under the Convention (sometimes referred to in this report as "Hague return applications") from 18 treaty partner countries. These applications were filed prior to April 1, 2008, and remained unresolved after 18 months or more from the date of filing, as of September 30, 2009.

# 2010 U.S. Convention Partners

ARGENTINA
AUSTRALIA
AUSTRIA
BAHAMAS
BELGIUM
BELIZE
BOSNIA & HERZEGOVINA
BRAZIL
BULGARIA
BURKINA FASO
CANADA
CHILE
COLOMBIA
COSTA RICA
CROATIA
CZECH REPUBLIC
CYPRUS
DENMARK
DOMINICAN REPUBLIC
ECUADOR
EL SALVADOR
ESTONIA
FINLAND
FRANCE
GERMANY
GREECE
GUATEMALA
HONDURAS
HONG KONG, SAR
HUNGARY
ICELAND
IRELAND
ISRAEL
ITALY
LATVIA
LITHUANIA
LUXEMBOURG
MACAU, SAR
MACEDONIA
MALTA
MAURITIUS
MEXICO
MONACO
MONTENEGRO
NETHERLANDS
NEW ZEALAND
NORWAY
PANAMA
PARAGUAY
PERU
POLAND
PORTUGAL
ROMANIA
SAN MARINO
SERBIA
SLOVAKIA
SLOVENIA
SOUTH AFRICA
SPAIN
SRI LANKA
ST. KITTS AND NEVIS
SWEDEN
SWITZERLAND
TURKEY
UKRAINE
UNITED KINGDOM
URUGUAY
VENEZUELA
ZIMBABWE

# INTRODUCTION

## THE 2010 COMPLIANCE REPORT: ITS PURPOSE

The Office of Children's Issues ("CI") of the U.S. Department of State ("Department") is required under Public Law 105-277, as amended, to submit an annual report to Congress on the compliance of other parties to the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention" or "Convention") with the dictates of the Convention. *See* 42 U.S.C. § 11611(a) (codification of Pub. L. 105-277). CI serves as the U.S. Central Authority ("USCA") under Article 6 of the Convention.

This report includes both "outgoing" and "incoming" abduction case statistics for each country. By "outgoing" cases, we mean cases in which a parent wrongfully removed a child from the United States or wrongfully retained him or her in another country; by "incoming" cases, we mean cases in which a parent wrongfully removed a child from another country to the United States, or wrongfully retained such a child in the United States. In addition to information about outgoing abduction cases to countries that have a treaty relationship under the Convention with the United States ("partner countries") this report includes outgoing abduction case statistics for countries not yet parties to the Convention ("non-Convention countries"), as well as those that have acceded to the Convention, but whose accession the United States has not yet accepted under the procedures in Article 38 ("non-partner countries"). Currently, the United States has a reciprocal partnership under the Convention with 68 countries.

This report covers the period from October 1, 2008 through September 30, 2009—i.e., FY 2009. The information provided in this report is that which was available to the USCA during this time period. When updates for a given case were available and relevant beyond the FY 2009 period, the report notes these developments.

## THE HUMAN AND SOCIAL COST OF INTERNATIONAL PARENTAL CHILD ABDUCTION

International parental child abduction ("IPCA") is a tragedy which abruptly and brutally breaks the relationship between a child and his or her left-behind parent ("LBP"). When a child is abducted across international borders, the difficulties are compounded for everyone involved. IPCA jeopardizes the child and has substantial short- and long-term consequences for both the abducted child and the LBP.

### CONSEQUENCES FOR CHILDREN

Children who are abducted by their parents are often taken from a familiar environment and suddenly isolated from their extended families, friends, classmates, and community. In an effort to evade law enforcement, the taking parents or persons ("TPs") may relocate them frequently or take them out of school unexpectedly without even time to say goodbye to teachers and classmates. The children may miss months or years of school. They may be prevented from making close friends, and their only close relationship may be with the TP. They may even be separated from their siblings during the abduction. In some cases, TPs change children's names, birthdates, and their physical appearance to conceal their true identities. Abducted children may be told that their other parent is dead, does not want them, or has not tried to see them.

As a result of their parents' choices, abducted children are at risk of serious emotional and psychological problems. Research shows that recovered children often experience a range of problems, including anxiety, eating problems, nightmares, mood swings, sleep disturbances, aggressive behavior, resentment, guilt, and fearfulness. As adults, individuals who were abducted as children may struggle with identity issues, personal relationships, and possibly experience problems in parenting their own children. Individuals who were abducted and recovered must also face the task of redefining their relationship with the TP. There is often

the perception that since the TP is a parent, he or she must have acted in the child's interests in taking the child away.

If and when children are reunited with their LBP, the reunification process may be difficult. They may find that they no longer have a relationship with that parent or even a common language. Children who are reunited with their LBP may be distrustful of the LBP and question why that parent did not try harder to get them back. They may find that the LBP has remarried and that they have a new, unfamiliar stepparent or siblings. Children who were abducted when they were very young may not even remember life with the LBP.

### CONSEQUENCES FOR LEFT-BEHIND PARENTS

Many IPCA cases have similar fact patterns. The trauma of IPCA often begins when an LBP returns home to find that the other parent has taken the children abroad and has no intention to return home. Another common occurrence involves one parent who allows his or her children to travel abroad to visit the other parent or the other parent's family, and the other parent does not allow the children to return home. LBPs encounter substantial psychological, emotional, and financial problems in fighting for the return of their children. They may be paralyzed by helplessness and the sense that they do not know where to start in the process of recovering their child. When the child has been abducted across international borders, LBPs may face unfamiliar legal systems as well as significant cultural differences and linguistic barriers.

LBPs experience a wide range of emotions, including betrayal, sadness over the loss of their children or the end of their marriage, anger toward the other parent, anxiety, sleeplessness, and severe depression. The emotional stress does not necessarily end when the children are returned, because parents may worry about re-abduction and their own personal security while struggling to restore a relationship with their child.

The financial impact of IPCA to LBPs can be substantial. An LBP may lack the financial resources to travel abroad to visit the children, even if the TP permits access to the children. Other obstacles LBPs may face include insufficient funds to hire an attorney in the United States or abroad; inability to locate an appropriately skilled English-speaking attorney abroad; and inadequate funds to hire translators, interpreters, or professional counselors. Although IPCA has far-reaching consequences, its significance is not widely understood.

### THE DANGERS OF RE-ABDUCTIONS

LBPs face a substantial challenge in trying to navigate a foreign legal system to fight for their child's return while enduring incredibly high levels of personal stress and grief. Many become frustrated with the delays and high legal expenses and may contemplate taking action outside of the legal framework by traveling to the country where the child has been taken and abducting the child back to the home country or another country, or hiring someone to this job. While the fear and desperation behind this action is understandable, extra-judicial recovery of an abducted child often violates both foreign and U.S. law, exposes the child to additional emotional and sometimes physical harm, and may have a negative impact on the adjudication of the petition for return under the Convention.

**CASE ILLUSTRATION:**

*During the reporting period, in one case involving a child abducted to a country in Central Europe, a LBP hired three individuals not known to the child to pick the child up from school. These three individuals also obtained the child's U.S. passport from the TP's house and attempted to leave the country en route to the United States. Foreign law enforcement authorities uncovered the plot and responded quickly, detaining the individuals at the border and returning the child to the TP's care. Hearings on the LBP's return application under the Convention subsequently took place before a court in that country. However, the court ultimately declined to order the return of the child based on Article 13(b), which provides an exception to return of a child when "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." In the written decision, the court expressed multiple concerns that the child could be psychologically harmed if returned, and listed as a primary example the LBP's aggressive attempt to circumvent the legal process. The attempted extrajudicial return, or "snatch-back," was unsuccessful, as local authorities arrested the LBP less than 24 hours later. The LBP was eventually deported, and the court denied his application for access under the Convention. The Department strongly discourages this sort of self-help on the part of LBPs, and recommends focusing on the child's health, safety, and welfare.*

## THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

42 U.S.C. § 11611(a)(7) requests that the Department, in its report on compliance with the Convention, provide "[a] description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of non-governmental organizations [NGOs] within their countries that assist parents seeking the return of children under the Convention." This section of the report describes the role of NGOs and the Department's efforts to work with them on IPCA cases.

The Department works with the NGO International Social Services (ISS) to facilitate contact with and the return of abducted children. ISS currently has national branch offices or bureaus in 150 countries on five continents (including most parties to the Convention) to assist separated families. When appropriate, the Department and U.S. consular officials work directly with ISS or refer parents to ISS for additional support. In some cases, ISS has been actively involved in arranging escorts to return abducted children to the United States and in working to establish better communication between parents or between a parent and child. ISS also helps explain nature of social services available in the United States to help abducted children recover following return.

The Department also collaborates closely with the National Center for Missing and Exploited Children (NCMEC). NCMEC's training programs for U.S. law enforcement in the United States remain critical for our success preventing abductions abroad. NCMEC also assists the Department in locating children involved in incoming abductions to the United States, an important component of our Convention obligations. It produces and disseminates flyers of missing children, which can generate leads in longstanding cases.

NCMEC administers the Department of Justice's "Victim Reunification Travel Program." This program assists families affected by IPCA by providing funding for a parent or guardian to attend a custody hearing or to be reunited with the child once found in another country. In operation since October 10, 1996, NCMEC's Family Advocacy Division manages this program under the *Federal Crime Victim Assistance Fund Guidelines on International Parental Abduction,* as well as disbursement regulations established between the Office for Victims of Crime and the Office of Juvenile Justice and Delinquency Prevention, both at the U.S. Department of Justice.

Since the program's inception, NCMEC has disbursed more than $715,127 in funds to support the travel of 260 families to countries, including Estonia, Honduras, Mexico, the Netherlands, Togo, the United Kingdom, and Venezuela, for legal proceedings or reunification with a child. More information concerning the Victim Reunification Travel Program can be found on NCMEC's website: *www.missingkids.com*.

In addition to ISS and NCMEC, many other NGOs provide important resources for parents and children victimized by IPCA. Some organizations provide support for LBPs by helping them connect with other parents who have experienced IPCA. An organization called Take Root has been established to provide a community for adults who were abducted as children and are still suffering psychological trauma from the experience. Other NGOs provide reunification counseling and advice to families, which can be essential for a parent who is reunited with his or her child after considerable time apart. The USCA maintains and continually updates a list of these and other NGOs. This list is available on the USCA's website, *www.travel.state.gov/childabduction*. The USCA also works directly with some of these organizations to educate and train others (e.g., law enforcement agents) on IPCA.
In coordination with U.S. embassies and consulates abroad, the USCA monitors the welfare of abducted children, assists LBPs and TPs, and offers parents tools and information to prevent child abduction. The USCA also maintains country-specific IPCA flyers on its website, provides general information about the application process under the Convention, and describes measures available to LBPs whose children have been abducted to non-Convention countries. Through diplomatic efforts, the Department has encouraged Convention partners to utilize the services and expertise of local NGOs to more effectively implement the Convention, particularly in countries developing or expanding their capacity. U.S. missions abroad have developed lists of NGOs in their country or region to assist families in the difficult circumstances surrounding child abductions.

## ABOUT THE HAGUE ABDUCTION CONVENTION

Concluded in 1980, the Convention entered into force for the United States on July 1, 1988. Since that time, the Convention has proven to be the most effective tool available for LBPs to potentially reunite with their abducted children. The Convention is an international treaty that provides a civil mechanism to bring about the prompt return of children who have been wrongfully removed from or wrongfully retained outside the country of their "habitual residence" in violation of the LBP's "rights of custody" under the law of the country of habitual residence. See Convention, Arts. 1, 3. A right of custody may arise from a court order or in some other manner by operation of law.

Member countries of the Hague Conference on Private International Law drafted the Convention and other international family law treaties in order to establish uniform mechanisms to address family issues that cross international borders. Once the treaties are in force, the Permanent Bureau of the Hague Conference on Private International Law ("Hague Permanent Bureau") monitors and supports international implementation on a continuing basis. Resources on its website for the Convention include *Guides to Good Practice* on central authority practice, implementing measures, preventive measures, and enforcement of orders. For more information and to read the guides themselves, visit the Hague Permanent Bureau's website, at *www.hcch.net*.

As noted above, the United States has a treaty relationship under the Convention with 68 other countries. In accordance with the procedures established in Article 38 of the Convention, when a new country accedes to the Convention, the Department undertakes a review of that country's domestic legal and administrative systems to determine whether the necessary legal

and institutional mechanisms are in place to implement the Convention and provide effective legal relief under it. Upon concluding that a country has the capability and capacity to be an effective treaty partner, the Department declares its acceptance of the accession by depositing a written instrument with the Hague Permanent Bureau. Once the United States accepts an accession in this manner, the Convention enters into force between the United States and the acceding country. The date on which the Convention entered into force between the United States and a particular treaty partner therefore varies. The Department has posted these dates on its website, at *www.travel.state.gov/childabduction*.

The Convention applies only to the wrongful removal or wrongful retention of children that occurred on or after the date the Convention entered into force between the United States and the ratifying or acceding country. The United States has actively encouraged countries to accede to the Convention, recognizing the Convention's potential effectiveness in resolving existing IPCA cases and in deterring future abductions.

Diplomatic and consular officials serving in U.S. missions abroad help LBPs in the United States to use lawful means in other countries to reunite their families. Consular officers, as part of their role in protecting U.S. citizens abroad, can and often do visit U.S. citizen children who have been taken abroad to ascertain the welfare of the children.

## ABDUCTION STATISTICS

### OUTGOING CASES – ABDUCTIONS FROM THE UNITED STATES

- In FY 2009, the USCA assisted LBPs in the United States with ongoing cases and responded to 1,135 new reports of IPCA cases involving 1,621 children. Of these cases, 828 involved children wrongfully removed to or wrongfully retained in countries that are parties to the Convention[1].
- Countries with the highest incidence of reported abductions of children taken from the United States (Non-Convention countries in red):

| Country | New Outgoing Cases | Children in New Outgoing Cases [2] |
|---|---|---|
| Mexico | 309 | 474 |
| Canada | 74 | 104 |
| Germany | 50 | 71 |
| United Kingdom | 48 | 71 |
| India | 34 | 41 |
| Brazil | 24 | 31 |
| Japan | 23 | 34 |
| Colombia | 23 | 31 |
| Philippines | 20 | 25 |
| Australia | 18 | 29 |

** Note: Parents do not file applications for return under the Convention in all cases to Convention countries. Comprehensive country-by-country outgoing and incoming statistics can be viewed in the "Global Case Statistics" section on page 69 of this report.*

[1]The number of reported abductions to Convention countries includes cases in which a Convention application for the return of a child has been filed, and cases in which parents have not filed an application for return of a child. Parents do not file applications for return under the Convention in all cases to Convention countries.

[2]The numbers in this column are larger because many cases involve two or more siblings simultaneously abducted by the TP.

### INCOMING CASES—ABDUCTIONS TO THE UNITED STATES

- In FY 2009, the United States provided assistance in 324 newly filed Convention applications incoming to the United States, which involved 454 children.

- Convention parties with the highest incidence of reported abductions to the United States:

| Convention Country | New Incoming Cases | Children in New Incoming Cases [3] |
|---|---|---|
| Mexico | 75 | 120 |
| United Kingdom | 31 | 44 |
| Canada | 29 | 39 |
| Germany | 18 | 20 |
| Australia | 14 | 22 |
| France | 12 | 15 |
| Colombia | 10 | 10 |
| Argentina | 8 | 12 |
| The Dominican Republic | 8 | 10 |
| The Bahamas | 7 | 12 |

** Note: Comprehensive country-by-country outgoing and incoming statistics can be viewed in the "Case Number Statistics" section on page 69 of this report.*

### RETURN STATISTICS

- In FY 2009, 436 children abducted to or wrongfully retained in other countries returned to the United States. Of these children, 324 children returned from countries that are Convention partners with the United States, accounting for 74 percent of the returns in FY 2009.

Convention partners who accounted for the greatest number of returns of abducted children to the United States in FY 2009:

| Convention Country | Children Returned to the U.S. in FY 2009 |
|---|---|
| Mexico | 125 |
| United Kingdom | 28 |
| Canada | 18 |
| Australia | 13 |
| El Salvador | 12 |

- In FY 2009, the United States returned 154 children abducted to or wrongfully retained in the United States under the Convention to their country of habitual residence.

Convention partners to which the United States returned the greatest number of children in FY 2009:

| Convention Country | Children Returned to the U.S. in FY 2009 |
|---|---|
| Mexico | 53 |
| Germany | 13 |
| Canada | 12 |
| United Kingdom | 11 |
| Australia | 7 |

## METHODOLOGY FOR THE NONCOMPLIANCE CATEGORY ASSESSMENTS IN THIS REPORT

This section of the report identifies the Department's concerns about those countries in which implementation of the Convention is incomplete or in which a particular country's executive, judicial, or law enforcement authorities do not properly apply the Convention's requirements. In addition to other factors, the Department considers systemic patterns. Even a single case in a given country during the reporting period may reflect broader problems of concern with the country's compliance.

The report breaks down such countries into two categories, "Countries Not Compliant with the Convention," and "Countries Demonstrating Patterns of Noncompliance with the Convention." These categories derive from the language of 42 U.S.C. § 11611(a) (2) and (3).

The Department bases its analysis of country compliance with the Convention largely on the standards and practices outlined in the Hague Permanent Bureau's *Guides to Good Practice* on central authority performance and implementing measures.

[3] See supra note 2.

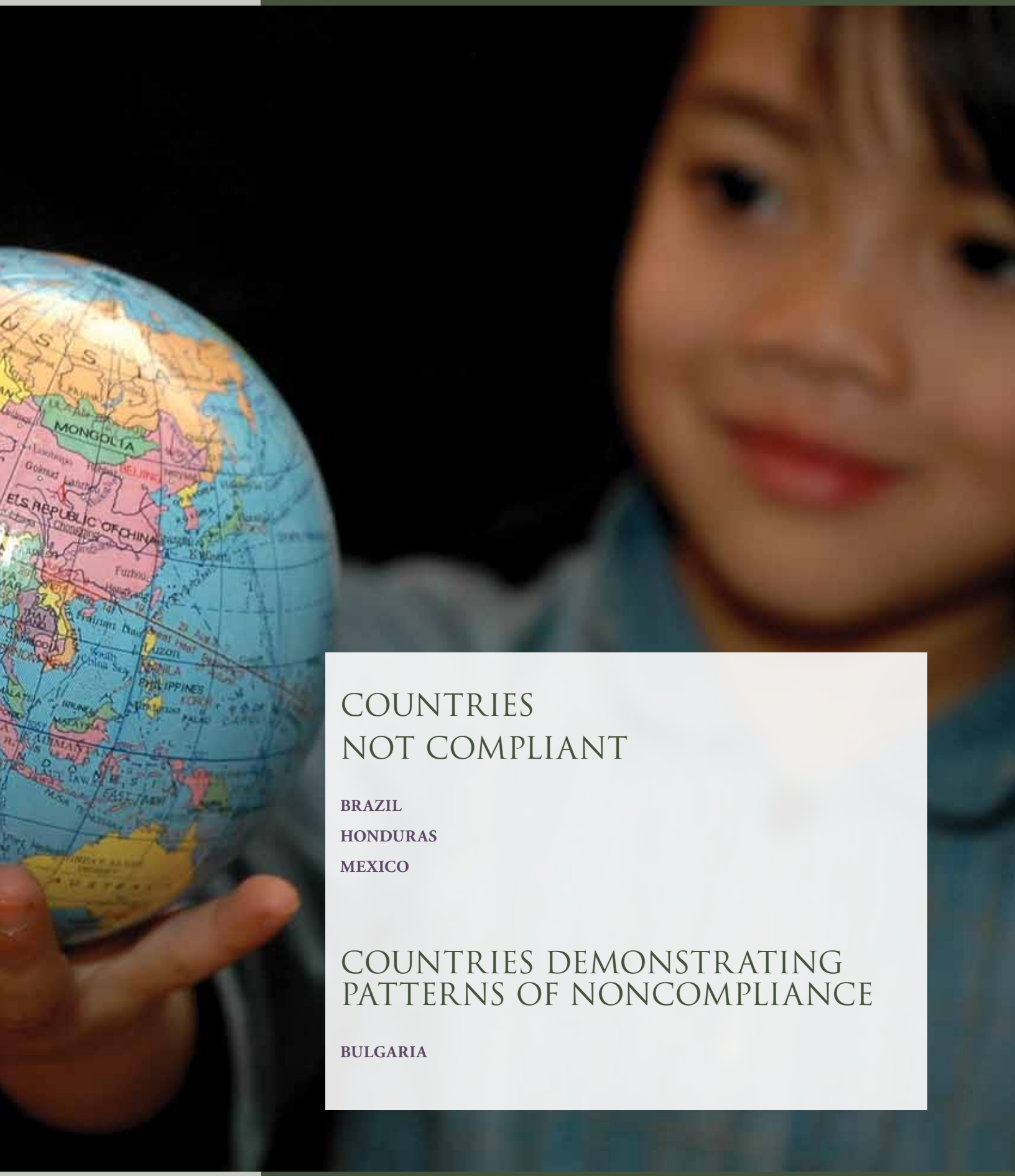
Using the Guides, the Department analyzed the following three compliance areas to reach its findings for this report:

1) Central authority performance;
2) Judicial performance; and
3) Law enforcement performance.

"Central authority performance" entails such matters as the speed with which foreign central authorities process applications under the Convention; the existence of and adherence to procedures for assisting LBPs in locating knowledgeable, affordable legal assistance; the availability of judicial education or resource programs; and responsiveness of the Central Authority to inquiries made by the USCA and LBPs.

"Judicial performance" comprises the timeliness with which the country's courts process applications under the Convention; the courts' correct application of the Convention's legal requirements; and court efforts to enforce decisions for return or access.
"Law enforcement performance" includes the rate of success by law enforcement officers in the country in promptly locating abducted children, and in enforcing court orders issued under the Convention.

# COUNTRY NONCOMPLIANCE PLACEMENT




## COUNTRIES NOT COMPLIANT

**BRAZIL**

**HONDURAS**

**MEXICO**

## COUNTRIES DEMONSTRATING PATTERNS OF NONCOMPLIANCE

**BULGARIA**

## BRAZIL

| | |
|---|---|
| DATE ACCEDED TO THE CONVENTION | 10-19-1999 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 12-1-2003 |

During the reporting period, the United States experienced continued problems with Brazil's compliance with the Convention. As a result, the USCA finds Brazil not compliant with the Convention in FY 2009. (Please read the section below on recent updates for progress in FY 2010) Continued compliance failures result from significant delays within the Brazilian judiciary, which continued to handle applications for return under the Convention as routine custody cases. Article 16 of the Convention specifically prohibits judges from considering the merits of the custody dispute between the parents, yet Brazilian judges have considered the merits of custody in all six of the United States' longstanding cases with Brazil. Further compounding the judicial delays, in at least two new cases opened during FY 2009, Brazilian law enforcement took more than six months to locate the children listed in the return applications, even when provided with a specific address at which to find them.

The USCA is unaware of any court-ordered Convention returns completed during FY 2009. As described in the "Unresolved Return Applications" section of this report, six longstanding cases to Brazil involving eight children remain unresolved, two of which were initiated as long ago as 2005. All of these cases experienced repeated and significant delays in the Brazilian judiciary. In all six cases, many months passed before the Office of the Attorney General (OAG) referred the Convention application to a court. In the two cases filed in 2005, it took between 18 and 22 months for the cases to be referred to a court, and delays persist in those cases. In four cases, the court has not yet issued any orders at all, and in the two remaining cases the court ordered return of the child to the United States, but the order has not been enforced. Law enforcement's failure to act to secure the children for return to the United States allowed sufficient time for the TPs to obtain a stay of execution of the return order and to file a number of appeals. In some states, notably Paraná and Minas Gerais, the courts treated Convention cases as ordinary custody decisions and considered the merits of the custody dispute, despite the prohibition on considering the merits of custody embodied in Article 16 of the Convention.

For cases in which children and their taking parents needed to be located, the Brazilian Central Authority (BCA) requested law enforcement assistance quickly. In two cases, however, Brazilian law enforcement took more than six months to act on the information to locate the children, even though the LBP provided specific address information and descriptions of the TP's main residence and the residence of extended family members.

As the fiscal year progressed, Brazil showed improvement with respect to fulfilling its obligations under the Convention. During the last three quarters of the fiscal year, the BCA took a more direct role in handling applications for return under the Convention, including cases in which the LBP retained a private attorney. Additionally, the BCA submitted FY 2009 applications for return to the OAG in a timely manner, and the OAG referred these applications to Brazilian federal judges expeditiously. During the second half of the fiscal year, some courts, notably federal courts in Brasilia and Rio, handled Convention applications in a timely manner. The USCA attributes this improvement to the BCA's extensive judicial training and outreach campaign, the Supreme Federal Tribunal's (STF) assignment of Convention cases to the Brazilian federal courts, and STF's directive, through two resolutions that Convention cases be given priority. One of these resolutions, which STF promulgated in 2007, consolidates jurisdiction in the Brazilian federal courts, which appear better equipped than state courts to handle Convention cases. This development has reduced delays cause by confusion over which court—state or federal—had jurisdiction over a given Convention case. The 2007 resolution also reduced the number of judges authorized to hear Convention cases, thus increasing the likelihood that these judges will gain expertise by hearing such cases more frequently. The second resolution, passed by the STF in 2008, establishes Convention cases as a priority, requiring newly filed cases to come before a federal judge within 48 hours. While the STF's working group on the Convention continues to draft implementing legislation for submission to the Brazilian Congress that will address jurisdiction and precedence of Convention cases, these resolutions provide a practical framework to support judges' initiative to take immediate action to meet Brazil's treaty obligations.

***Update since reporting period ended:*** *The BCA Coordinator visited the USCA for a full week in November 2009 to review longstanding cases. During this trip, she and Brazilian Embassy officials met with U.S. LBPs, members of the U.S. Congress, NGOs, and a federal judge who works on Convention cases. The coordinator explained in detail the STF resolutions described above, as well as the BCA's outreach and education campaign to address Brazilian judges' lack of familiarity with the Convention and the STF resolutions. The BCA's assistance was a key factor in the return of one child in a longstanding, highly publicized case during the first quarter of FY 2010.*

## HONDURAS

| | |
|---|---|
| DATE ACCEDED TO THE CONVENTION | 12-20-1993 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 6-1-1994 |

The Department finds Honduras not compliant with the Convention in FY 2009. The USCA noted that, while communication with the Honduran Central Authority (HCA) improved in FY 2009, the HCA made little progress toward meeting its obligations under the Convention.

The USCA is handling five cases of abducted children in Honduras, three of which have been open for less than 18 months, and two of which are longstanding and included in the "Unresolved Return Applications" section at page 46 this report.

The two longstanding cases illustrate the systemic institutional weakness of the HCA, the judicial system, and law enforcement authorities in processing applications for return of abducted children under the Convention. One case was not assigned to a court until 48 months after the LBP filed the Convention application with the HCA. At the end of the fiscal year, 75 months had elapsed, with no decision from the court on jurisdiction under the Convention. The HCA failed to provide the USCA with minimal information on the status of the case, and Embassy Tegucigalpa protested by diplomatic note. After the USCA followed up with multiple requests for the status of the case, the HCA indicated that it was not possible to give an estimate of how long the court would take to reach a decision, as resolution depended on the jury. The HCA also advised the USCA that the psychological studies which the HCA had contracted while the court case was in process indicated that it was in the best interests of the child to stay in Honduras.

In the other longstanding case, more than four years have elapsed since the case was assigned to a court, and nearly three have passed since the judge ordered the child returned. During this time, the LBP and her brother have worked tirelessly to recover the child, traveling to Honduras to take custody of the child and staying in contact with USCA and Embassy Tegucigalpa. The prosecutor's office indicated shortly after the judge ordered the child's return that it would not authorize removal of the child from the TP's residence until temporary custody was granted in Honduras, evidencing these authorities' lack of understanding of the intended operation of the Convention. Other Honduran entities have followed the prosecutor's lead in this case, despite the USCA's multiple protests, including a diplomatic note and numerous efforts by Embassy Tegucigalpa to discuss this case and other cases with the HCA.

Honduras has not passed the implementing legislation for the Convention, which could help Honduras more fully meet its Convention obligations. The Honduran Congress had introduced a decree to approve the "National Law to Resolve International Child Abduction Cases" before the end of FY 2007, but the decree still languished in the Honduran Congress throughout FY 2009. In FY 2009, another draft bill was introduced in the Honduran Congress that would implement the Convention, but the legislation has likewise still not been passed.

The HCA proactively facilitated a voluntary return in one case, arranging the logistics and escorting an LBP to the TP's home several hours' drive from the capital to retrieve the abducted child. Three newer return applications filed during FY 2009, however, followed the same pattern as the longstanding cases mentioned above. One of the cases still awaits assignment to a court after 13 months, and another after nine months. The HCA assigned the third case to a court, but the court ordered psychosocial studies to be conducted. Meanwhile, the child has been kept away from the LBP for nearly a year.

| MEXICO | |
|---|---|
| DATE ACCEDED TO THE CONVENTION | 6-20-1991 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 10-1-1991 |

The Department finds Mexico not compliant with the Convention in FY 2009. The USCA observed noncompliance in the areas of law enforcement and judicial performance, and experienced serious difficulties communicating with the Mexican Central Authority (MCA) that resulted in costly inconvenience for LBPs and significant delays in processing return applications.

The USCA submitted 309 applications for the return of abducted children to the MCA in FY 2009, predictably more than to any other country to which children were abducted from the United States given the cross-border activity between Mexico and the United States. The USCA identified 53 unresolved cases that had been pending for 18 months or more subsequent to the filing of the application (see "Unresolved Return Applications" section of this report). In 38 of these unresolved cases, the USCA requested the MCA's assistance to locate the children with the help of Mexican law enforcement authorities, including Interpol and Mexico's federal investigations agency, the *Agencia Federal de Investigación* (AFI). In many of the cases, the LBP was able to provide the MCA with last known street addresses for the TP and child along with telephone numbers and the names of the schools the child might be attending, but the Mexican authorities failed to locate them. Two main factors, we believe, contributed to this problem: first, too few law enforcement agents have been assigned to cover large territories and populations; and second, an apparent lower priority has been given to international child abduction cases compared to other, increasingly violent criminal activity.

Mexico took some encouraging steps to comply with the Convention during FY 2009. Mexico returned children to the United States in 30 separate cases. Twenty-one of these cases involved court-ordered returns under the Convention, and 13 of these took place less than 12 months after the LBP filed the application for return with the MCA. The MCA assisted U.S. LBPs in at least six cases by contacting Mexican consulates in the United States to request that they expedite processing of powers of attorney needed for a third party to represent the LBP in court hearings in Mexico, and to authorize the third party to take temporary custody of the child to bring him or her back to the United States because the LBP could not travel. The MCA and the state Supreme Courts of Nuevo León and Guanajuato collaborated with the U.S. Embassy to carry out two judicial seminars in late September, involving USCA and academic experts from Guadalajara and Mexico City.

In FY 2009, Mexican courts continued to demonstrate patterns of delay in processing applications under the Convention, as illustrated by several of the cases listed under Mexico in the "Unresolved Return Applications" section of this report. In at least two instances, six months elapsed between the time the case was assigned to a court and the date of the first hearing; in another, seven months elapsed. In five other cases, it took between 16 and 55 months before the court held the first hearing on the application for return. These delays disadvantaged

LBPs and led to rulings that the children should not be returned because they had become "settled" in their new environment, an exception to return listed in Article 12 of the Convention.

The USCA observed the following three causal factors for judicial delays: (1) lack of implementing legislation or procedures for Convention applications and many Mexican judges following inapposite procedures found in state civil codes in resolving such cases; (2) lack of understanding of the Convention by many Mexican judges, as evidenced by extensive requests for information, including letters under Article 15 of the Convention from the USCA to confirm that a particular case involved an international child abduction as defined by the Convention; and (3) TPs absconding with the children when summoned to a hearing because they were notified of the hearing but neither they nor the children were secured in any way. The USCA has observed that a tool for securing children in the Mexican system is for the judge to place the child temporarily in a children's protection service (*Desarrollo Integral de la Familia*, or DIF) shelter while the case is being processed, but judges are reluctant to place children in these shelters unless the TP is determined to be a clear danger to the child.

Application of the "*amparo*" (constitutionally-based appeal) process in ways that are inconsistent with commitments under the Convention is an ongoing problem. TPs sometimes allege that the procedure under the Convention violates their right to due process under the Mexican Constitution. In response to the filing of an *amparo*, judges issue a provisional order that immediately freezes proceedings under the Convention pending adjudication of the underlying constitutional issue. Precedent exists in Mexican law to promptly adjudicate and reject an *amparo* in a Convention case alleging violation of due process. For example, both the Mexican Supreme Court and the highest court in the Federal District have determined that procedures under the Convention comport with the Constitution's due process requirements, and these decisions have been relied upon by lower courts. Despite these positive developments, adjudication of Convention-related *amparos* is still subject to frequent delay. During the reporting period, the MCA, the Hague Permanent Bureau, and the U.S. Government collaborated in three seminars designed to enhance judicial awareness of the Convention, with special emphasis on the compatibility of the Convention with the due process guarantees of the Mexican Constitution.

The USCA and the U.S. Embassy repeatedly asked by email, telephone, fax, and letters for status updates on the longstanding cases detailed in the "Unresolved Return Applications" section of this report, but received no replies by the end of the reporting period in at least 19 of these cases.

The MCA has inadequate staffing. The Hague Permanent Bureau's *Guide to Good Practice* indicates that central authority staff should be "sufficient in numbers to cope with the workload" (Guide to *Good Practice on Central Authority Performance*, § 2.4.1). In the USCA's view, the MCA needs more staff in order to comply with Convention requirements, and Mexico needs to allocate more resources to enhance judicial training programs to improve judges' understanding of the Convention, to establish procedures to process applications in the absence of implementing legislation, and to improve Mexican law enforcement's ability to locate missing children.

## BULGARIA

| | |
|---|---|
| DATE ACCEDED TO THE CONVENTION | 5-20-2003 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 1-1-2005 |
| PATTERN OF NONCOMPLIANCE | JUDICIAL PERFORMANCE |

Bulgaria demonstrated patterns of noncompliance with the Convention during FY 2009 with respect to its judicial performance. While the Bulgarian judges' final decisions on return applications during FY 2009 appeared to be consistent with the Convention, reaching the decisions took excessively long. Some provisions of Bulgarian law may present challenges to judges' ability to promptly return children under the Convention. For example, the Department has been informed of an apparent inability on the part of the Bulgarian Central Authority to forward a completed Convention application to the court until social services conducts an investigation and submits a welfare report on the child, the TP, and the home environment in Bulgaria. Not only does this apparent obstacle delay processing of the legal case by several months, but it also allows the court to consider matters that are more relevant to custody proceedings rather than a Convention case. When judges issue a return orders, moreover, Bulgarian law may not provide adequate measures for enforcement in situations where the TP does not cooperate.

The USCA forwarded six new return applications to the Bulgarian Central Authority (BCA) during FY 2009 that involved children who were either wrongfully removed from the United States to Bulgaria, or wrongfully retained in Bulgaria. In all six cases, there was an average delay of four months as a result of the BCA needing to obtain social reports before forwarding the application and related materials to the court. Once the court received these materials, judges scheduled hearings quickly; however, most cases experienced subsequent delays involving the rescheduling of hearings or postponements for unclear reasons. In one case, the TP was able to delay proceedings by electing not to appear because of the child's illness and by asserting additional evidence may be available, and that the TP needed more time to locate such evidence. As the Convention stipulates, unnecessary delays in processing Convention cases should be avoided in order to prevent further trauma to children and to mitigate possible efforts on the part of the TP to alienate children from the LBP.

The United States has been partners with Bulgaria under the Hague Abduction Convention for five years and benefits from a highly cooperative relationship with the BCA. The BCA is responsive and helpful to requests for assistance and information.

LBPs whose children have been abducted to Bulgaria have the option to allow the BCA to represent their petitions in court, a potentially slower but less expensive option. The BCA has demonstrated both sensitivity in representing LBPs and awareness of risk factors associated with TPs who may flee with their children once they become alerted to the filing of a Convention petition. In sensitive cases, such as one that involved children who were retained by their grandparents after an agreed-upon school year in Bulgaria, the BCA cautiously and sensitively coordinated with the LBP to explore the potential response to a voluntary return request.

# NOTABLE CASES

This section of the report sets forth illustrative examples of notable IPCA cases in several different countries.

## NOTABLE CASE: AUSTRIA

The child was born in September 1994 in Michigan and was abducted to Austria by her mother in October 1995. Despite multiple court rulings ordering the child's return to the United States under the Convention, the child has not been returned. The LBP currently has no access to his daughter, now age 15.

Following the child's abduction, the LBP immediately filed a return petition under the Convention in the Austrian courts. Although the Austrian Supreme Court upheld a lower court's order that the child be returned to the United States, the Government of Austria failed to enforce the order. Its courts subsequently determined that so much time had passed that the child had become settled in Austria and detached from the LBP, and should not be returned to the United States. On December 29, 1997, the lower court granted the TP sole custody of the child.

The LBP filed a petition with the European Court of Human Rights (ECHR) against the Government of Austria for interfering with his right to respect for his family life by not enforcing the return order or facilitating appropriate access to his child. In 2003, the ECHR found in his favor and ordered Austria to pay monetary damages, an order with which Austria complied. Nevertheless, Austria took no meaningful steps to ensure that the LBP could reestablish a relationship with his child. Beginning in 2002, the TP had allowed the LBP access to his daughter under the TP's supervision and only in the TP's home four times a year. However, this visitation regime was not enforceable in court and was entirely contingent upon the TP's willingness to allow the contact. In an effort to secure enforceable rights of access to his daughter, and hoping to be able to bring his daughter to the United States to meet her American family, the LBP filed a petition for access to the child under the Convention in April 2005. The Austrian court suggested to the LBP that he first seek to drop U.S. criminal charges against the TP, void his U.S. custody order, and shut down his website about the child before it would consider granting access. The LBP followed this suggestion, and yet the court still chose not to order access. Relying only on statements from the 11-year-old child during the access hearing, the court instead concluded that the child no longer wanted contact with her father. The court stated that it would not contemplate granting the LBP court-ordered access until he re-established a relationship with the child on his own. The LBP attempted to comply with the court's instructions, but the child refused contact with him. The court declined to intervene or assist, and the access case remained unresolved. In spite of his many attempts to communicate with the child, the LBP reports that he has now lost all contact with his daughter.

***Update since the end of the reporting period:*** *Austria has urged the Committee of Ministers of the Council of Europe, which supervises the European Court of Human Rights judgments, to close this case because it has "taken all possible measures that could reasonably be expected in executing the judgment." At the Department of State's urging, the Committee decided in March 2010 not to close the case.*

## NOTABLE CASE: BRAZIL

In June 2004, the TP traveled with the child to Rio de Janeiro for a vacation; the LBP planned to join them later. Three days later, the TP advised the LBP that she had initiated divorce proceedings in Brazil, and demanded that he travel to Brazil to sign papers ceding full custody of their child to her, which he refused to do. The TP later married a Brazilian citizen.

In September 2004, the LBP retained a Brazilian attorney and filed an application under the Convention directly with a federal court in Rio

de Janeiro, rather than with the Brazilian Central Authority (BCA). The BCA stated that it would not monitor the case because the application had not been submitted to it, and in January 2005 the USCA expressed its concern at this decision.

In October 2005, the federal court ruled on the application, denying return because the child had become settled in his new environment. The LBP appealed this ruling twice – in April 2006 and in June 2007 – but both appeals were denied because, according to the court, returning the child would pose a grave risk of physical or psychological harm to him.

In August 2008, the TP died. In September 2008, the LBP traveled to Brazil upon learning of the death, but the state family court in Rio denied him access to the child. In the same month, the TP's second husband initiated proceedings in the court to adopt the child, and obtained temporary custody of him.

In February 2009, the Brazilian Superior Tribunal of Justice ordered that the state court be divested of the case, and that the case be returned to the federal court in Rio. While the case was pending in federal court, Secretary Clinton raised her concerns about this case with Brazilian Foreign Minister Celso Amorim, and President Obama raised similar concerns with Brazilian President Lula da Silva during the latter's visit to Washington in March 2009. The U.S. Ambassador in Brasilia and other State Department officials in Brasilia, Rio, and Washington, D.C., met with Brazilian government officials, pressing for a swift and fair resolution of this case.

The federal court granted the LBP visitation with the child, and in June 2009 ordered the child's return to the United States, accompanying its order with a lengthy written decision. The child's Brazilian family filed a number of appeals, and the appellate courts placed a stay on the child's return to the United States pending resolution of the appeals. The USCA worked diligently, coordinating diplomatic notes in March, July, and October 2009 expressing concern over the psychological trauma for the child and urging the Brazilian government to fulfill its responsibilities under the Convention.

***Update since the end of the reporting period:*** *In December 2009, the federal appeals court in Rio unanimously affirmed the lower court's return order. Several days later, the Supreme Federal Tribunal lifted the stay on the child's return, despite a number of pending appeals. The child was reunited with his father at the U.S. Consulate General in Rio and returned to the United States.*

### NOTABLE CASE: CHILE

The TP took the child to Chile for a family visit in December 2004 with the LBP's consent. The TP then retained the child in Chile and cut off the LBP's contact with his son. After an unsuccessful attempt at reconciliation, the LBP filed an application under the Convention for the return of his son in February 2005. The Chilean minor's court issued an order for return. The TP did not file an appeal within the legally mandated timeframe, but the Chilean appeals court overturned the lower court's decision based on a December 2005 Chilean court finding of domestic violence by the LBP against the TP. In the 2005 ruling, the court ordered the LBP to participate in counseling in Chile for six months, notwithstanding the fact that the LBP resided in the United States. In December 2006, the LBP filed an appeal to the Chilean Supreme Court and requested visitation. Meanwhile, the Chilean Ministry of Justice filed a complaint with the Chilean Supreme Court against the judges of the appeals court for what it argued was an inappropriate decision. After lengthy delays, the Chilean Supreme Court rejected the appeals and upheld the denial of the child's return to the United States.

The LBP then filed for access to his child in January 2007 and the court granted scheduled visits through the Chilean Central Authority. However, each time the LBP traveled to Chile, the TP mother disappeared with the child.

After numerous failed attempts and because of financial constraints, the discouraged LBP decided not to attend his next scheduled visit. Working to resolve the situation, the USCA and the Chilean Central Authority encouraged the LBP to try one more time. In January 2009, the LBP saw his five-year-old son for the first time in four years. The LBP visited his son in July 2009, but has only limited access to his son as of the end of the reporting period. The LBP intends to pursue modification of the court orders so his son can visit the United States in the future.

### NOTABLE CASE: DOMINICAN REPUBLIC

The TP wrongfully retained the child in 2008, and U.S. Embassy Santo Domingo conducted a welfare and whereabouts visit to the child in April of that year. A few months later, the TP voluntary returned the child to the United States, and a U.S. court subsequently granted joint custody to both parents. The new custody arrangement allowed the mother to travel abroad with the child, requiring her to return to the United States at regular intervals according to a parenting schedule approved by the court. The mother has since violated the parenting schedule and has wrongfully retained the child in the Dominican Republic since April 2009. The Dominican Central Authority (DRCA) responded to the LBP's application for return under the Convention with a letter evincing an incorrect understanding of various articles of the Convention. The USCA repeatedly asked the DRCA for clarification, but did not receive any substantive responses by the end of the reporting period.

***Update since the end of the reporting period:*** *The USCA transmitted a letter to the DRCA requesting follow-up on the unresolved return application and providing information about the Convention from the Hague Permanent Bureau's Guides to Good Practice. In response to the letter, the USCA and the DRCA held a conference call to discuss the matter. Following the conference call, the DRCA assigned the case to a Dominican court. The court scheduled a hearing to take place in April 2010.*

### NOTABLE CASE: FRANCE

After traveling to France with one child while pregnant with the second, the TP refused to return to the United States in November 2007. The second child was born in France in February 2008. The left-behind father, after failing to convince his wife to return to the United States with both children, filed an application under the Convention with the French Central Authority in March 2008.

In October 2008, the court in Lyon, France, ordered the return of both children to the United States under the Convention, and dismissed the TP's claim that returning the children would cause them psychological harm. The order to return *both* children was unusual because the second child had not yet been born when the TP left the United States. In December 2008, the appeals court upheld the order. Although there have been no additional appeals, the TP has refused to return the children to the United States and the order has remained unenforced. The LBP, who has had only a brief, one-hour visit with the children since the abduction, continues to work with his French attorneys to pursue criminal charges against the TP and to explore filing a case with the ECHR.

The U.S. Embassy in Paris has raised this case diplomatically to express concern about the lack of progress in enforcing the order. The USCA continues to work closely with the LBP to prepare for processing the children's citizenship documentation, to request welfare visits, and to protest delays and lack of enforcement.

## NOTABLE CASE: SLOVAKIA

At a time when the international community of experts on international parental child abduction is increasingly focusing on mediation as a tool for resolving individual cases, the Slovakian Central Authority deserves recognition for its successful efforts to encourage an amicable, mediated solution between two parents.

In October 2008, two months after removing her children to Slovakia, the TP contacted the U.S. Embassy in Bratislava to discuss her situation and ask for assistance. Although she was informed about the Convention, she elected to remain in Slovakia and petitioned the courts directly for custody. The LBP filed an application under the Convention in December 2008 for his children's return to the United States.

The Slovakian Central Authority promptly coordinated with the Slovakian Social Authority to arrange a meeting in February 2009 with the TP, who agreed to mediation on the possibility of a voluntary return. Both Central Authorities continued to prepare the case file for court, in the event that the LBP declined to participate or the mediation attempt was unsuccessful. In April 2009, the Slovakian court held a mediation hearing attended by both parents and the children's court-appointed guardian ad litem. After reaching an agreement that satisfied both parents, the children returned with their mother to the United States in June 2009.

## NOTABLE CASE: SWITZERLAND

In January 2008, the TP requested the permission of the Pennsylvania family court to travel with her child to Switzerland to care for her ill father. The court allowed the trip but required that they return within two weeks. After the TP failed to return with the child to the United States, the LBP filed a return application with the USCA in April 2008. In October 2008, the District Court of Meilan, Switzerland, ordered the child returned to the United States, but when the TP appealed, the Higher Court of Canton Zurich raised concerns about potential separation of mother and child. The Higher Court submitted questions to the USCA regarding the TP's entry into the United States and possible residence, quality of life, employment, and medical care during the custody hearing. While the USCA provided answers in order to facilitate the advancement of the case as expeditiously as possible, the nature of the questions was troubling. The USCA included in its response a protest against the consideration of these matters, which fall outside what is relevant to the narrow "grave risk" exception to return in Article 13(b) of the Convention. When the USCA was unable to guarantee the TP's entry into the United States, the Higher Court denied return under Article 13(b), reasoning that the potential separation of the child from his mother would present a grave risk of harm.

In March 2009, the USCA and the Swiss Central Authority coordinated judicial communication between the Pennsylvania and Swiss judges. The Swiss Supreme Federal Court subsequently issued a return order but attached an undertaking that was impossible to fulfill. The Court stipulated that the TP must approach the appropriate U.S. authorities within 30 days to obtain a guarantee for entrance into the United States. If the guarantee was not provided, the return order would not be enforceable. Again, the USCA, in coordination with the U.S. Embassy in Bern, communicated concern about the undertaking, which under U.S. immigration law is difficult to fulfill, and provided alternatives to attempt to satisfy the court's concerns for the child's welfare. The LBP's attorney in the United States coordinated with the Pennsylvania court to offer assurances that the TP could return to Switzerland with the child if the custody hearing continued past her authorized length of stay, once permitted to enter the United States. After reviewing the case and additional documentation, the Zurich Enforcement Authority (ZEA) determined the order could not be enforced without the specific guarantee of entry.

The LBP continues to appeal and is hopeful for a favorable response. The USCA is in close contact with the Swiss Central Authority to express concern and ask for support in protesting the Swiss court's actions.

***Update since the end of the reporting period:*** *On October 9, 2009, the LBP's Swiss attorney filed an appeal of the ZEA's enforcement decision with the Swiss Supreme Federal Court. On December 7, The Court concluded that its concerns for the child's welfare had been sufficiently satisfied, and instructed the LBP to file a new enforcement request with the ZEA.*

*On December 21, 2009, a new enforcement request was filed by the LBP's attorney. On January 19, 2010, the TP's attorney filed a motion to stay the enforcement of the original April 16, 2009, order, as well as a request to stop the return of the child, with the Swiss Supreme Federal Court; it was dismissed. On February 11, 2010, the ZEA granted the enforcement request but the TP appealed this decision. On February 23, the Swiss Supreme Federal Court granted the appeal and stayed enforcement until it issues a final decision.*

## NOTABLE CASE: THE BAHAMAS

The child was born on May 22, 1995, and on April 5, 2001, was placed in the custody of the Florida Department of Children and Families. The identity of the father is unknown, and a county court issued an order terminating his parental rights in 2000. In April of 2001, the county court issued another order terminating the mother's parental rights. The last encounter the Florida Department of Children and Families had with the child was on June 28, 2001, while he was in the care of his maternal aunt, his temporary custodian under the supervision of the State of Florida. In August of 2001, the aunt took the child to visit The Bahamas. According to the aunt, the mother took the child into her possession and would not allow him to return to the United States.

On March 16, 2005, the Children's Home Society of Florida (CHSF), as the legal guardian of the child, started preparing the documentation for an application for return under the Convention; however, the retaining mother hid the boy for nearly a year and a half. On July 30, 2007, the CHSF contacted the USCA for assistance, confirming that it had obtained information on the child's location in January 2007. The USCA submitted the LBP's application for return under the Convention to the Bahamas Central Authority (BCA) on May 1, 2008. The BCA sent an acknowledgement of receipt on May 28, 2008.

U.S. Embassy Nassau carried out a welfare and whereabouts visit on January 23, 2009. According to U.S. Embassy Nassau's report, the child is in good health. From March 2009 until May 2009, the USCA made numerous attempts to reach out to the BCA, to no avail. On May 20, 2009, the BCA sent a response saying it would review the case and report to the USCA on its status. The USCA did not hear again from the BCA until January 2010, when the BCA said it planned to carry out a home study with child and TP before forwarding the case to court.

## NOTABLE CASE: TURKEY

When the parents separated, the U.S. court initially awarded custody to the TP but later revised the order to grant custody to the LBP. Several months later, in May 2007, the TP removed the child to Turkey. The LBP immediately filed an application for return under the Convention. Turkish authorities processed the application promptly, but the TP went into hiding.

The authorities located the TP in time for her to participate in the initial hearing on the Convention application, and the Turkish court ordered the child returned to the United States. Before the order could be enforced, however, the TP and child disappeared again and remain in hiding. The TP did not appear at divorce proceedings in Istanbul, which she filed in

September 2007, and has provided false contact information to the court through her attorney.

Turkish immigration and law enforcement authorities have issued a travel ban to prevent the departure of the TP and the child from Turkey and have conducted numerous, but unsuccessful, searches throughout the country. The Turkish National Police continue efforts to locate the TP and child and enforce the order, which was upheld on appeal by the Turkish Supreme Court in February 2009. The U.S. Embassy in Ankara has raised this matter on numerous occasions with the Turkish Ministries of Foreign Affairs and of the Interior. The LBP is working with his attorneys to exhaust all possible avenues for protection of his rights and, most importantly, to achieve the return of his child to the United States.

## THE USCA AND ITS IMPLEMENTATION OF THE CONVENTION

### CENTRAL AUTHORITY PERFORMANCE

As noted in the FY 2008 report to Congress, the USCA resumed direct handling of incoming cases under the Convention on April 1, 2008, following 12 years of excellent service on these cases from the International Division of the National Center for Missing and Exploited Children (NCMEC). The USCA established an Incoming Branch, staffed by a Branch Chief, six case officers, and three case assistants. The USCA's Legal Assistance Coordinators, attorneys in the Office of Policy Review and Interagency Liaison (CA/OCS/PRI), are responsible for providing LBP applicants with information regarding knowledgeable and affordable legal representation in the United States.

In FY 2009, the Incoming Branch opened 332 cases involving 466 children. Also during FY 2009, the USCA closed 326 cases involving 468 children. Twenty-one percent of those cases were returns pursuant to judicial order, 14 percent were voluntary returns, and in six percent of the cases the court denied return. In the other cases, the LBP applicant or foreign central authority withdrew the request; access was either achieved or denied; or the child turned sixteen, which renders Convention remedies unavailable.

When the USCA receives an application from a foreign central authority for return of or access to a child under the Convention, the case is immediately entered into the relevant database, a file created, and prompt notice of receipt is sent to the sending central authority. The Incoming Branch officers maintain close coordination with their counterparts in central authorities of our partner countries under the Convention. Most case officers communicate with their counterparts and LBPs by email or telephone, enabling them to respond quickly to inquiries. Important documents can be provided by fax or as scanned attachments to emails. Case officers are required to communicate with the foreign central authority at all important stages in the process, from receipt of the application to the resolution of the case. The USCA also provides a telephone translation service to facilitate communication with foreign central authorities and LBP applicants, as needed.

With its access to public and law enforcement databases, and with the assistance of federal and state law enforcement, the USCA is able to locate most children who are abducted to the United States. Of the 332 cases opened in FY 2009, the USCA was able to locate the children in all but 6.2 percent of the cases. Searches continue in the remaining 13 cases involving 24 children.

Once a child's location is known, and with the permission of the LBP, the USCA attempts to accomplish a voluntary resolution of the case by sending a letter to the TP, informing him or her of the application, and asking him or her to consider a voluntary resolution. If this effort is not successful, our Legal Assistance Coordinators in PRI provide to the LBP applicant a list of attorneys from the relevant geographic area who have expressed their willingness to take on Convention cases. If the LBP and attorney decide to form an attorney-client relationship with one another, they are then responsible for beginning the litigation process.

The United States took a reservation to Article 26 of the Convention stating that it would not assume legal costs for applicants. Additionally, 22 C.F.R. § 94.4 prohibits the USCA from representing parents in IPCA cases. The USCA nevertheless endeavors to provide applicants with much of the information they need in order to find legal representation through private attorneys or legal aid organizations in the United States.

In order for an applicant to receive assistance locating legal representation, the LBP must fill out a legal assistance request, and must indicate his or her financial eligibility in order to request *pro bono* or reduced-fee legal representation. This self-assessment is based on U.S. Federal Poverty Guidelines which are used in legal

assistance programs throughout the United States. Upon receipt of the request, the Legal Assistance Coordinators write up a short list of attorneys for who is willing to speak with the applicant and send the list to the applicant. The applicant may then directly contact the attorneys on the list to discuss case specifics and the possibility of establishing an attorney-client relationship. Representatives of the USCA do not participate in these communications, and do not offer advice regarding the LBP's choice of attorney.

At the end of September 2009 the USCA's network of attorneys willing to assist applicants on a *pro bono* or reduced-fee basis ("Network") consisted of approximately 1,960 lawyers, many in large law firms with resources to handle *pro bono* or reduced-fee cases. The USCA continues targeted outreach to bar associations in states with a high volume of abduction cases and is continually adding new attorneys to the Network. The USCA also works with legal aid organizations in every region of the United States, and these provide legal assistance to financially eligible LBPs in some cases, particularly when Network attorneys are not available.

The USCA also supports attorneys filing Convention petitions by making available extensive resource materials on its website, as well as litigation guidebooks and internet links to sample pleadings. Those new to litigation of these cases can be referred to mentor attorneys for additional guidance. To ease communication between applicant parents and attorneys who do not speak the same language, the USCA facilitates connections through a private telephone translation service.

California is a unique partner in the implementation of the Convention in the United States. California state law authorizes state district attorney's offices to handle Convention cases directly. See Cal. Fam. Code § 3130 et. seq. In cases where a child is believed to have been abducted from Mexico to California, an investigator from the appropriate district attorney's office locates the child and an attorney from that office files a petition for return in a California court. State attorneys appear on behalf of the court, not on behalf of the parties. Although most cases in California can be resolved in this manner, applicant parents may sometimes need to hire personal legal representation. In those cases, the USCA will help the applicant to identify potential legal representation, as it does for applicants with cases in the other states.

### JUDICIAL PERFORMANCE

The International Child Abduction Remedies Act (ICARA), 42 U.S.C. § 11601 et seq., is the federal law implementing the Convention in the United States. It provides for concurrent jurisdiction among both state and federal courts. 42 U.S.C. § 11603(a). In an effort to provide guidance on the operation of the Convention, the USCA sends a letter to the court as each Convention case is assigned, reminding the court of its obligations under the Convention, including that Convention cases be addressed expeditiously, and providing links to the resources available to assist the court. Courts in the United States, both state and federal, normally hear Convention cases in a timely manner, often holding only summary hearings. If a TP has alleged danger to the child if returned, the court is likely to hold more lengthy hearings to evaluate the risk. Appeals in Convention cases can cause significant delays due to the heavy caseload of appellate courts, and expedited hearings are rare. As of September 30, 2009, the United States had 38 cases that have been unresolved for over 18 months, eight of which remain unresolved as the result of a lengthy appeals process.

Both judges and attorneys in the United States have access to a great deal of valuable resource material on the Convention provided on the website of the Department's Bureau of Consular Affairs, *www.travel.state.gov/childabduction*. In addition, four U.S. judges are part of the international Hague Judicial

Network established by the Hague Permanent Bureau. These judges participate in judicial education programs in the United States and abroad, help the USCA develop new resources for judges, assist judges in the United States hearing Convention cases, and facilitate direct communication among judges hearing such cases around the world.

Most courts in the United States, particularly the federal courts, have correctly interpreted the Convention. While interpretation of particular elements varies somewhat among federal circuits, a significant body of federal and state case law has developed. The U.S. Supreme Court heard its first Convention case in January 2010.

#### LAW ENFORCEMENT PERFORMANCE

The Incoming Branch makes efforts to locate children abducted to the United States, and assists law enforcement throughout the United States. The USCA has access to public databases, Department of State databases, and some law enforcement databases for this task. Its officers work closely with law enforcement agencies such as the Federal Bureau of Investigation and U.S. Customs and Border Protection to locate children and respond to abductions in progress. Missing children's clearinghouses, normally housed in law enforcement agencies in each state, help with local searches for children. Since the end of the reporting period, the USCA now has added to its office a full-time special agent from the State Department's Bureau of Diplomatic Security. This special agent will provide the USCA with more access to important law enforcement resources, and will coordinate with other law enforcement agencies to enhance the USCA's ability to locate children. ICARA specifically requires other U.S. agencies to provide information from their records to the USCA upon request. (42 U.S.C. § 11608(c)). For the most difficult cases, when efforts to locate a child have failed, NCMEC will develop and distribute a "Missing Child" poster and provide any relevant information to the USCA. Federal marshals enforce federal court orders, and state or local police enforce state court orders. Most Convention orders are enforced without complications.

### MEASURES TAKEN TO PREVENT IPCA

#### THE USCA AND PREVENTION

As the Hague Permanent Bureau's *Guide to Good Practice on Preventive Measure*s points out, "preventing abduction is a key aim of the Hague Abduction Convention and it is widely acknowledged that it is better to prevent abduction than to have to seek a child's return after abduction." The USCA maintains a dedicated unit specializing in the prevention of international parental child abductions. The USCA responds to daily calls and written requests for assistance and information from parents, attorneys, other government agencies, and private U.S. organizations seeking to prevent international parental child abductions by providing information on prevention issues and directing parents to online prevention resources. USCA staff provide guidance on case-specific issues, including dual nationality and passport concerns, and the role of law enforcement and the courts in preventing abductions. All of this information is also available on the USCA's website, www.travel.state.gov/childabduction.

#### DUAL NATIONALITY AND IPCA

Dual nationality contributes to the difficulty of preventing international child abduction. Many U.S. citizen children who are victims of IPCA are dual nationals—that is, they are both a citizen of the United States and a citizen of another country. For example, a child born in a foreign country to U.S. citizen parents may be both a citizen of the United States and a citizen of the country of birth. Likewise, a child born in the United States to parents who immigrated from another country may be a citizen of both the United States and his or parents' home country.

The United States cannot prevent embassies and consulates of other countries from issuing passports to children who are their nationals. A TP therefore may be able to wrongfully remove a dual-national child from the United States without that child possessing a U.S. passport, even though under the Intelligence Reform and Terrorism Prevention Act of 2004, all U.S. citizens are required to enter and exit the United States using their U.S. passport.

#### THE CHILDREN'S PASSPORT ISSUANCE ALERT PROGRAM

The Children's Passport Issuance Alert Program (CPIAP) is one of the USCA's most important prevention tools. The program allows parents to register their U.S. citizen children in the Department's Passport Lookout System. If a passport application is submitted for a child who is registered in CPIAP, the Department contacts and alerts the parent or parents. U.S. regulations (22 C.F.R. § 51.28) require both parents' consent to the issuance of a U.S. passport to a child under the age of 16. In accordance with these regulations, the Department may not issue a passport to a child without the consent of both parents unless the applying parent satisfies one of the exceptions provided in the regulation.

The Passport Lookout System gives all domestic passport agencies as well as U.S. embassies and consulates abroad an alert on a child's name if a parent or guardian registers an objection to passport issuance for his or her child. This procedure provides parents advance warning of possible plans for international travel with the child.

***The USCA entered 4,152 children into the CPIAP in FY 2009***

Since the program's inception, a total of 48,177 children's names have been entered into CPIAP. When a child turns 18, or by request of the parent who entered the child's name into the Program, the child's name is removed from CPIAP. There are currently 42,398 children enrolled in the Program.

## THE USE OF TECHNOLOGY IN IPCA CASES

#### ABDUCTIONS AND THE INTERNET

When a parent learns his or her child has been wrongfully removed to or wrongfully retained in another country, he or she often does not know what to do. There are many resources available to LBPs—just entering "resources for left-behind parents of abducted children" in an internet search resulted in over 43,000 "hits." However, it can be very difficult to locate missing children and, in too many cases, missing children are not located. Technology, specifically the internet, has opened up new avenues for both LBPs and abducted children to assist in resolving IPCA cases.

Parents often turn to the internet for help locating their abducted children. The USCA recommends LBPs create websites to help in the search for their abducted children. Sometimes simply entering an abducted child's name in a search engine can yield helpful information. An abducted child who enters his or her LBP's name into an internet search engine may also learn helpful information. The USCA is aware of cases in which abducted children learned from an internet search that their LBPs were alive and had been looking for them, which contradicted what the TP had told the children over time.

LBPs can establish accounts on social networking sites to locate abducted children or to help their abducted children locate them. Many LBPs have also created blogs to spread the word about their abducted children, to share information with other LBPs about helpful resources, and to share feelings or express frustrations.

In some instances, technology has also helped abducted children to have more interaction with their LBPs. There have been cases in which courts have ordered the LBP access to his or her child but the LBP has not been able to afford the plane fare to visit his or her child. Instead, the LBP and the abducted child have communicated via software that allows users to make voice and video calls over the internet.

Age-progression photo software represents another technological advancement that assists in locating missing children. NCMEC has also had many successes as a result of their use of age-progression photos on posters of missing children. In one case, age-progression photos created of a child abducted to Lebanon were posted in the American Citizens Services section of the U.S. Embassy in Beirut. U.S. citizens who went to the Embassy to renew their passports recognized the child in the picture, but they had not been aware the child had been abducted. The child was later located in a refugee camp in Northern Lebanon. Shortly thereafter, after coordination with the LBP, consular officers, and others involved in the case, the child was returned to his LBP in the United States. The child in this case had been told by the TP that the LBP was either dead or no longer wanted him.

### NGO USE OF THE INTERNET TO HELP PARENTS LOCATE ABDUCTED CHILDREN

The International Center for Missing and Exploited Children (ICMEC) has developed another new technology that has the potential to recover missing children— the YouTube Missing Children's Channel, *www.youtube.com/DontYouForgetAboutMe*.

The channel reaches a global audience by distributing videos of missing children in the hopes of achieving a recovery and bringing international attention to the issues of missing and exploited children. The USCA's case officers provide information about ICMEC's YouTube channel to LBPs as an option to generate potential leads on the jurisdiction where a child may be located.

## NOTABLE ISSUE: EXCESSIVE UNDERTAKINGS

The USCA continues to see what it believes are inappropriate undertakings attached to return orders from some countries. "Undertakings" are preconditions to the return of a child imposed by the court granting return. Examples of such undertakings include: pre-payment of fees for the TP's lawyer in the United States, guaranteed visas for the TP to enter the United States to participate in legal proceedings, and payment by the LBP of long-term spousal support for the TP. Although undertakings may be useful to protect children and returning parents in particular cases, when courts routinely build such requirements into return orders, cases are slowed and LBPs are required to take measures that go beyond the expectations of the Convention.

The USCA supports the limited use of undertakings when they: (1) are appropriate in scope; (2) do not hinder the expeditious return of the child as required under Article 12 of the Convention; (3) minimize the use of non-return orders under Article 13 of the Convention; and (4) respect the jurisdictional divisions established by the Convention by not addressing the merits of the custody dispute, and instead leaving this question to be handled by the courts in the country of habitual residence, as envisioned by Article 16 of the Convention. This position is supported by the *Conclusions and Recommendations of the Fifth Meeting of the Special Commission*, where the parties to the Convention agreed that protective measures such as undertakings in return orders should be "limited in scope and duration, addressing short-term issues and remaining in effect only until such time as a court in the country to which the child is returned has taken the measures required by the situation…" [4]

During FY 2009, the USCA noted a number of cases where such undertakings caused significant delay and unreasonable hardship to the LBP. Of special concern are undertakings in which the foreign court effectively usurps the role of the court of the country of habitual residence by investigating the LBP's financial circumstances and setting custodial conditions, or requires action that is beyond the LBP's ability to undertake, such as obtaining visas or guarantees of U.S. admission for the returning parent. Courts in some countries have required the LBP to prepay spousal support for the TP and child support, to pay all travel expenses for the TP, and to provide separate living arrangements for the TP upon return. The USCA recognizes its responsibility to cooperate with the United States' treaty partners to facilitate the child's safe return. However, one of the purposes behind the requirement of prompt return of the child, is to reestablish the status quo ante in the country of the child's habitual residence so that the courts of that country may address the merits of custody matters. The United States therefore urges its Convention partners not to include undertakings in their return orders and to consider instead taking advantage of the Hague Judicial Network to resolve concerns that U.S. family services authorities may not adequately protect the child or returning parent.

[4]See Conclusions and Recommendations of the Fifth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction and the Practical Implementation of the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, Part VIII—Securing the Safe Return of the Child, The Use of Protective Measures 1.8.1 (30 October – 9 November 2006).

## CASE ILLUSTRATION:

***SWITZERLAND** – UNDERTAKINGS CREATE UNNECESSARY OBSTACLE IN RETURN CASES*

*In Switzerland, two return orders issued during the reporting period included undertakings that rendered the decisions enforceable only if the TP were guaranteed entry into the United States and the ability to remain for the duration of the custody hearing. Under U.S. immigration law, a foreign citizen's application for entry can only be adjudicated by the Department of Homeland Security at a port of entry with the individual present and seeking a decision; thus, the required guarantees were impossible for either the LBP or the USCA to provide. In both cases, the Swiss court acknowledged the United States as the habitual residence but noted possible risk of harm to the child if separated from the taking mother during the course of returning the child to the habitual residence. The USCA is concerned that the attachment of these undertakings goes beyond the very narrow "grave risk" exception to return permitted in Article 13 of the Convention.*

*One of the cases, involving a nine-year-old child who had been retained in Switzerland by her mother after a summer visit, was resolved after the reporting period. The initial return order included a requirement that the mother be promised entry to the United States and cited concern of psychological harm to the child if separated from the mother, although the child had been living with her father for four years just prior to her wrongful retention in Switzerland. The LBP and his attorney were able to have the undertaking removed on appeal; however, the additional required legal action required for the appeal caused more delay and expense for the child's father. The child is now in the United States, where her parents will approach the court for a full custody hearing.*

*In the second case, the U.S. court permitted the TP to travel with the child to Switzerland in January 2008 but ordered her to return to the United States within two weeks. When the TP retained the child in Switzerland, the LBP filed a return application. Despite an initial return order in October 2008, the TP successfully appealed to the Higher Court of Canton Zurich, which raised concerns about potential separation of mother and child if the lower court's return order were enforced. The Swiss court submitted questions to the USCA regarding the TP's entry into the United States and possible residence, quality of life, employment, and medical care during the custody hearing. The USCA provided answers in order to expeditiously facilitate the advancement of the case, but protested the consideration of these matters, which fell outside the purview of the jurisdictional question and the narrow Article 13(b) exception contemplated by the Hague Convention.*

*When the USCA was unable to guarantee the TP's entry into the United States, the Swiss Higher Court denied return under Article 13(b), reasoning that the potential separation of the child from his mother presented a grave risk of harm.*

*The LBP appealed to the Swiss Supreme Federal Court, which then issued a return order but attached an undertaking requiring the taking mother's admission to the United States as a precondition to return, and noting that if the guarantee of entrance was not provided, the return order would not be enforced. Again, the USCA, in coordination with the U.S. Embassy in Bern, communicated its concern about the undertaking, which under U.S. immigration law is difficult to fulfill, and provided alternatives to attempt to satisfy the Court's concerns for the child's welfare. The LBP's attorney in the United States coordinated with the U.S. court assigned to the custody case to offer assurances that the TP could return to Switzerland with the child if the custody hearing continued past her authorized length of stay, once permitted to enter the United States. On September 29, 2009, after reviewing the case and additional documentation, the Zurich Enforcement Authority (ZEA) determined the return order could not be enforced without the specific guarantee of entry.*

***Update since the end of the reporting period:** On October 2009, the LBP's Swiss attorney filed an appeal of the enforcement decision. The Supreme Federal Court reviewed the ZEA decree, concluded that the Court's concerns for the child's welfare had been sufficiently satisfied, and instructed the LBP to file a new enforcement request with the ZEA.*

*After overcoming yet another appeal by the TP, the LBP submitted a new enforcement request, which was approved in early February. Later that month, USCA learned that the Swiss Supreme Federal Court had approved the TP's motion to stay the enforcement. At this time, no additional information is available and the abduction case remains unresolved.*

## RECRUITING NEW CONVENTION COUNTRIES

42 U.S.C. § 11611(a)(5) directs the Secretary of State to include in the compliance report "information on efforts by the Department of State to encourage other countries to become signatories to the Convention."

Many of the IPCA cases handled by the Department involve abductions to countries that have not yet acceded to the Convention. Encouraging countries to join the Convention is a high priority for the Department, and each year the Department instructs its embassies in non-Convention countries to approach the host governments and encourage them to sign and accede to the Convention. Embassies also send diplomatic notes to numerous non-Convention countries urging them to accede to the Convention. In addition, USCA personnel have met with officials from Cambodia, China, Egypt, Japan, India, Iraq, Jordan, Kuwait, Saudi Arabia, and Vietnam about IPCA and the Convention. Assistant Secretary of State for Consular Affairs Janice L. Jacobs and other U.S. government officials consistently raised the Convention in talks with foreign officials during FY 2009.

### ENCOURAGING ACCESSION: ONGOING BILATERAL EFFORTS WITH JAPAN

The United States Embassy in Tokyo sponsored a daylong symposium on IPCA and Japan at the Tokyo American Center on May 21, 2009. During the event, a panel of legal experts discussed the challenges in resolving international child abduction cases under Japanese family law. The Deputy Assistant Secretary of State for Overseas Citizens Services, Michele T. Bond, participated. Following the symposium, the U.S. Embassy, in conjunction with the Embassies of Canada, France, and the United Kingdom, issued a joint press statement expressing the four nations' concern regarding the issue and calling on Japan to join the Convention.

U.S. government officials in Washington and Tokyo have had several subsequent meetings with the Japanese to raise concerns about specific cases and to urge accession to the Convention. The Japanese have noted that Japanese Executive Branch assistance is limited by the Japanese legal system.

## BILATERAL EFFORTS WITH CONVENTION PARTNERS

### BILATERAL WORKING GROUPS

During FY 2009, USCA representatives traveled to Berlin for bilateral discussions with the German Ministry of Justice and the German Central Authority under the Convention. These meetings strengthened the already strong bilateral relationship between the United States and Germany, and identified common concerns.

### THE USCA'S PARTICIPATION IN HAGUE PERMANENT BUREAU MEDIATION WORKING GROUP

The USCA is participating in the Working Party on Mediation in the Context of the Third Malta Judicial Conference on Cross-Frontier Family Law Issues (Malta III). The Working Party is made up of government officials and mediation experts from twelve countries. The participants are six Convention countries (including the United States) and six non-Convention countries. The formation of the Working Party was one of the recommendations to come out of Malta III. The purpose is to explore ways to create or encourage structured mediation processes in our respective countries that could help resolve child custody disputes between parents. The Working Group has met twice by conference call. Through email and these conference calls, members of the Working Group share information about family mediation. The Group is currently studying different models of mediation and looking at case studies from each of our respective countries to develop recommendations that will be shared with the larger group of countries that participated in the Malta Process. More information about the Working Party can be found on the website for the Hague Conference on Private International Law at *www.hcch.net*.

# EFFORTS TO EXPAND AND STRENGTHEN THE CONVENTION

### CONVENTION PARTNER EFFORTS

Personnel from the USCA met with representatives from a number of Convention partners during FY 2009, including Germany, Mexico, Costa Rica, Canada, the United Kingdom, Australia, Switzerland, Poland, Colombia, Chile, Italy, and Hungary to discuss application of the Convention, as well as specific abduction cases.

The USCA participates in regular meetings with its Latin American partners and works with the Hague Conference on Private International Law to improve the operation of the Convention in Central and South America. The USCA has also worked closely with the International Hague Judicial Network, especially the four U.S. Hague Network Judges, to promote direct communications between and among judges in international family law cases.

### MALTA III CONFERENCE IN ST. JULIAN'S, MALTA

From March 23 to 26, 2009, Principal Deputy Assistant Secretary of State for Consular Affairs Michael D. Kirby, two USCA representatives, and Judith Kreeger, a Hague Network Judge, attended Malta III in St. Julian's, Malta. Malta III was led by the Hague Permanent Bureau. Attendees included many countries from the Middle East, East Asia, and South Asia not currently parties to the Convention.

Twenty-nine countries participated in what has become known as the "Malta Process," a dialogue devoted to seeking better understanding of the cultural and legal factors that complicate resolution of abductions between parties and non-parties to the Convention. Convention parties expressed a desire to develop from conceptual to operational strategies to help abducted children and their parents. All participating countries agreed that IPCA is a growing problem that has been aggravated by the world's economic downturn, and that satisfactory resolutions remain elusive.

During the conference, the U.S. delegation engaged the Indian delegation to discuss advancing India's expressed interest in signing and acceding to the Convention. The Indian delegation confirmed interest in joining the Convention, but indicated that anticipated changes in the Indian parliament would delay movement. Even so, the discussion resulted in a better understanding of the difficulties India faces in joining the Convention.

The U.S. delegation also met with the delegations from Australia, Canada, and the United Kingdom to discuss common goals and objectives, including multilateral approaches with Japan, Mexico, and Brazil. These discussions opened the door for joint efforts to be an enduring part of our strategy as we move forward.

The U.S. delegation had an opportunity to meet with the Swiss delegation, which raised awareness of the cultural and legal differences in the United States and Switzerland that can negatively impact Convention cases. The U.S. delegation became acquainted with new contacts within the Swiss Ministry of Justice. This meeting was a positive step towards a closer working relationship with the Swiss.

Participation in this conference was beneficial "pre-Hague work," because our ultimate goal is for every country to be a party to the Convention. The USCA recognizes that some countries, particularly in the Middle East, are unlikely to become parties in the near future, and therefore seeks to find meaningful alternatives for cases where return is not possible. The "Malta Process" is about finding those alternatives. This year, mediation was the focus and will continue to be the Hague Permanent Bureau's operational goal for the next few years.

# UNRESOLVED RETURN APPLICATIONS

42 U.S.C. § 11611(a)(2) directs the Secretary of State to include in this report a "list of the countries to which children in unresolved applications … are alleged to have been abducted, are being wrongfully retained in violation of the United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States."

As of September 30, 2009, the USCA's records contained 81 applications for return that remained open and active 18 months after the date of filing with the relevant foreign central authority. This total includes several cases that became known to the USCA through contacts with parents or local and state officials, but that were actually filed by the California Attorney General's office directly with a foreign central authority and not through the USCA.
The 81 applications identified below that remained unresolved for 18 months or more after the date of filing, as of September 30, 2009, involved 18 countries: Argentina, Austria, Bermuda, Brazil, Canada, Colombia, Czech Republic, Ecuador, France, Greece, Honduras, Israel, Mexico, New Zealand, Spain, Switzerland, Turkey, and Venezuela. The extent to which these countries and others appear to present additional, systemic problems of compliance with the Convention is discussed in some of the individual country assessments in Section III of this report.

***NOTE:*** *As noted above, the U.S. Central Authority is represented in this report by "USCA." Other central authorities are referred to as "CA" proceeded by the initial of the country, e.g., "MCA" = Mexican Central Authority.*

The information provided for the unresolved return applications below summarizes the efforts of the USCA to resolve these longstanding cases during the course of the reporting period. For all cases, the USCA's general role in monitoring cases includes communicating with the LBP, forwarding the application to the appropriate foreign central authority, monitoring the application's progress in court, providing information about foreign law and procedures to LBPs, and providing guidance on application completion, among many other activities. In addition, LBPs may request a "welfare and whereabouts" visit to see an abducted child, which consular officers located at U.S. embassies and consulates conduct.

| ARGENTINA: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2005 |
| DATE CONVENTION APPLICATION FILED | 7-2006 |
| HAVE CHILDREN BEEN LOCATED? | YES |

The last USCA contact with the LBP was in November 2007; numerous subsequent contact attempts in 2008 and 2009 have not been successful. NCMEC notified the USCA on May 6, 2009, that it had also lost contact with the LBP.

**AUSTRIA:** CASE 1

Please see the "Notable Cases" section of this report for more information on Austria Case 1 on page 27.

| BERMUDA: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 1-2008 |
| HAS CHILD BEEN LOCATED? | YES |

In November 2007, a Bermuda court held a custody hearing. Thereafter, the Bermudan Central Authority informed the USCA that Bermuda would not return the child to the United States. The Bermudan Central Authority cited the exception to return in Article 13(b) of the Convention—grave risk that return would expose the child to physical or psychological abuse—even though the application for return had not yet been submitted to a court. In December 2007, the Bermudan Central Authority informed the USCA that there was nothing preventing the LBP from pursuing return under the Convention; however when the LBP filed an application in January 2008, the Bermudan

Central Authority refused to assign the case to a court, alleging incorrectly that the case did not qualify under the Convention, since an aunt, and not the other parent, was retaining the child. The USCA plans to request that the Bermudan Central Authority find a procedure to process the application for return.

***Update since the end of the reporting period:*** *U.S. Consulate Hamilton reported in February 2010 that the Bermudan family court ruled that the child will temporarily remain in Bermuda, and scheduled another hearing for November 2010. It appears the court intends to treat the case as a custody decision.*

**BRAZIL: CASE 1**

Please see the "Notable Cases" section of this report for information on Brazil Case 1 on page 27.

**BRAZIL: CASE 2**

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2004 |
| DATE CONVENTION APPLICATION FILED | 1-2005 |
| HAS CHILD BEEN LOCATED? | YES |

In June 2007, the LBP obtained a Brazilian federal court order for his child's return. The USCA and the U.S. Consulate General in São Paulo repeatedly requested the Brazilian Central Authority's assistance in enforcing this order. Meanwhile, the TP filed an appeal of the decision, and obtained temporary custody of the child. In September 2008, the appellate court vacated the return order, finding that the child had become settled in Brazil. The LBP advised the USCA in March 2009 that he was working with his attorney to secure another hearing, and later informed the USCA that a court hearing was scheduled for August 2009 in federal court. A consular officer conducted a welfare and whereabouts visit with the child and accompanied the LBP to the court hearing as an observer. U.S. Embassy Brasilia provided the court detailed answers to questions regarding resources available if the child were ordered returned to the United States. U.S. Embassy Brasilia is still awaiting a published copy of the decision from the August hearing which, according to information given to the USCA, orders the parties to reach an agreement on visitation rights for the LBP before the court issues a more specific order on where the child is to stay.

**BRAZIL: CASE 3**

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2004 |
| DATE CONVENTION APPLICATION FILED | 2-2005 |
| HAS CHILD BEEN LOCATED? | YES |

In February 2009, the LBP informed the USCA of the September 2008 federal court order denying return of his child. In March 2009, the Brazilian Central Authority agreed to request temporary visitation rights for the LBP while the Brazilian Office of the Attorney General appealed the decision in the First Regional Federal Court in Brasilia.

**BRAZIL: CASE 4**

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 10-2006 |
| HAVE CHILDREN BEEN LOCATED? | YES |

During the reporting period, the USCA kept in regular contact with the LBP about his case, which proceeded slowly in the Brazilian judicial system. In June, the USCA spoke with the LBP about the results of a Brazilian court's psychological evaluation, which appeared favorable to the LBP. After the psychological evaluation was conducted, the Brazilian court gave each party ten days to present their final arguments in the case.

***Update since the end of the reporting period:*** *The Brazilian court denied return in February 2010 on the ground that the children had become settled in their new environment. The Office of the Attorney General has filed an appeal.*

| BRAZIL: CASE 5 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2006 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The Brazilian Central Authority forwarded the LBP's application for return to the Brazilian Office of the Attorney General, and the case was filed in federal court in January 2008. The federal court held a conciliation hearing in March 2008, pressing the parties to reach an agreement. In August 2008, the Brazilian Central Authority, the Brazilian Office of the Attorney General, the Brazilian judge hearing the case, and the U.S. Consulate General Rio met to discuss concerns about timely processing of this case in accordance with Article 11 of the Convention. The judge agreed to try to issue a decision as soon as possible.

***Update since the end of the reporting period:*** *The Brazilian Central Authority informed the USCA in October 2009 that the Brazilian Office of the Attorney General concurred with the federal judge's recommendation that the child undergo a psychological evaluation. The USCA assisted the LBP in gathering all the information needed for a court-ordered psychological evaluation of the child in Brazil. The LBP advised the USCA that he is working with the court-appointed psychologist to agree on a date for the evaluation. The USCA is currently helping the LBP petition for access rights to the child while the return petition is pending.*

| BRAZIL: CASE 6 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 8-2007 |
| HAS CHILD BEEN LOCATED? | YES |

The court has asked for a psychological evaluation of the LBP before issuing a decision on the application for return. In July 2009, the USCA informed the LBP and his American attorney that the Brazilian Office of the Attorney General planned to petition the Brazilian federal court to accept the LBP's participation in a psychological evaluation. The LBP advised that he will participate if the court provides him with a formal readout of the procedures of a psychological evaluation, which the court has not yet done.

| BRAZIL: CASE 7 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2007 |
| DATE CONVENTION APPLICATION FILED | 2-2008 |
| HAVE CHILDREN BEEN LOCATED? | YES |

In August 2009, a federal court in Goiás issued a return order for the children. The USCA quickly began working with the Department of Homeland Security on possible humanitarian parole in order for the Brazilian citizen child to be able to re-enter the United States. However, the TP filed an appeal against the original return order; return of the child was stayed, and the USCA is awaiting word on a final ruling.

| CANADA: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2007 |
| DATE CONVENTION APPLICATION FILED | 12-2007 |
| HAS CHILD BEEN LOCATED? | YES |

A court in Canada issued an order for return in August 2008 with the provision that the mother could return to the United States with the child. Yet the mother lacked permission to enter the United States, which impeded her lawful return.

***Update since the end of the reporting period:*** *The mother obtained a U.S. visa and returned to the United States with the child in December 2009. The parents have begun custody proceedings in a U.S. court.*

## COLOMBIA: CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2008 |
| HAS CHILD BEEN LOCATED? | YES |

The Convention application is still pending. U.S. Embassy Bogota requested that the Colombian Central Authority brief the Colombian court on the operation of the Convention after observing that the court had requested extensive information on child support, income, and other information characteristic of custody proceedings, but not relevant to applications for return under the Convention. Additionally, the USCA and Embassy Bogota requested assistance from the Colombian Central Authority in getting the Colombian court system to suspend a separate custody suit brought by the TP.

## CZECH REPUBLIC: CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2006 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The LBP submitted a petition for return under the Convention, but has since been unresponsive to both the USCA and the Czech Central Authority, except on one occasion in which he stated that he did not wish his file to be closed.

## ECUADOR: CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2008 |
| HAVE CHILDREN BEEN LOCATED? | YES |

The LBP filed the return application directly with the Ecuadoran Central Authority in December 2007. The Ecuadoran court refused to proceed with the case on the ground that the application should have been filed via the USCA. The LBP then filed the application with the USCA, which then forwarded it to the Ecuadoran Central Authority in March 2008. The USCA contacted the Ecuadoran Central Authority during the ensuing months to ask for status updates and to request a timely hearing. Although a first hearing was held in August 2009 and a second in September 2009, the court has not yet ruled.

## FRANCE: CASE 1

Please see the "Notable Cases" section of this report for information on France Case 1 on page 29.

## GREECE: CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

A Greek court denied the application for return in October 2008, and the LBP appealed the decision. The Greek appeals court recognized the LBP's Texas custody order, obtained after the abduction took place, and remanded to the lower court to make a proper determination of the application for return. The TP appealed the appeals court's decision to the Greek Supreme Court. A hearing is pending.

## HONDURAS: CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-1998 |
| DATE CONVENTION APPLICATION FILED | 7-1999 |
| HAS CHILD BEEN LOCATED? | YES |

Although the Honduran Central Authority accepted the application for return, no hearing has ever been held in the case. After frequent inquiries from USCA, the Honduran Central Authority pressed the relevant Honduran court for a hearing. The court ordered a psychological examination of the child and a home study, indicating that the court may be treating the case as a custody matter. The USCA, Embassy Tegucigalpa, the Honduran Central Authority, and the LBP remain in frequent contact about the case, pushing for a resolution.

| ISRAEL: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-1997 |
| DATE CONVENTION APPLICATION FILED | 10-1997 |
| HAVE CHILDREN BEEN LOCATED? | NO |

In November 1998, an Israeli court ordered that the children be returned to the United States under the Convention. The TP then absconded with the children. Subsequent attempts by Israeli officials to locate the TP and the children failed, and the Israeli court issued another order instructing the police to locate the children. The LBP, at the request of his rabbi, then reluctantly agreed to enter negotiations with the TP on a visitation agreement. As a condition of the TP's participation in such negotiations, the Assistant U.S. Attorney agreed to drop federal criminal charges that had been filed against the TP in the United States for international parental kidnapping. The U.S. Attorney's office withdrew the warrant of arrest. In 2007, the LBP informed the USCA that he would file a motion in Israeli court indicating his agreement to waive the Convention return order. In August 2009, the LBP informed the USCA that efforts by two rabbis to negotiate a resolution had failed. The case remains open until the USCA receives official confirmation that the Israeli court has quashed the return order based on the LBP's waiver, and that the Israeli Central Authority considers the Convention case closed. The Israeli Central Authority informed the USCA that Israeli police search efforts for the children have been expanded, but the whereabouts of the children remain a mystery.

| ISRAEL: CASE 2 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2006 |
| DATE CONVENTION APPLICATION FILED | 6-2006 |
| HAS CHILD BEEN LOCATED? | YES |

In November 2006, after the TP failed to appear at a hearing on the return application, an Israeli court ordered the return of the child to the United States, but the TP and child remained in hiding. An Israeli appellate court overturned the order of return, and remanded the case to the lower court. In January 2009, Israeli authorities located the child, and the LBP departed immediately for Israel. While in Israel, the LBP visited the child, but he returned to the United States without the child in February 2009. The lower court then ordered that both parents meet with a court-appointed psychiatrist for psychological evaluations. The LBP flew back to Israel in October 2009. During this trip, the LBP had limited supervised visitation with his son. Final determination on the return of the child is still pending.

| MEXICO: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-1999 |
| DATE CONVENTION APPLICATION FILED | 10-1999 |
| HAS CHILD BEEN LOCATED? | NO |

After the TP failed to appear at three separate hearing dates between March and June 2001, the Mexican court, in a decision that may be unprecedented in a Convention case in Mexico, issued a warrant for the TP's arrest. The TP has not been located or arrested and the case remains pending with the Mexican court. In October 2004, the MCA informed that USCA that the case had been referred to Interpol. The USCA remains in contact with the LBP, who is now exploring the possibility of locating the child himself and then applying for access.

| MEXICO: CASE 2 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-1999 |
| DATE CONVENTION APPLICATION FILED | 8-2001 |
| HAS CHILD BEEN LOCATED? | NO |

In November 2007, the USCA forwarded to the MCA a photo of the child provided by the LBP. The USCA continues to work with the MCA and Interpol, but the child has still not been located.

| MEXICO: CASE 3 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 11-2001 |
| HAS CHILD BEEN LOCATED? | NO |

The Mexican court scheduled a hearing for June 2006. However, the TP and child did not appear. In July 2008, the USCA informed the LBP that Interpol had been unable to locate the child. The USCA continues to work with the MCA to try to locate the child.

| MEXICO: CASE 4 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 1-2002 |
| HAS CHILD BEEN LOCATED? | NO |

In 2002 and again in 2005, the Mexican court reported the child could not be located at the address provided by the LBP. The MCA confirmed that it has asked Interpol and AFI for assistance, and that the case remains open with the latter, but the child has not been located.

| MEXICO: CASE 5 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2002 |
| DATE CONVENTION APPLICATION FILED | 6-2002 |
| HAS CHILD BEEN LOCATED? | NO |

In July 2007, the USCA sent correspondence to the LBP informing him of several inquiries from the USCA to the MCA regarding the status of a previously issued deportation order for the child. To date, the USCA has not received a response from Mexican immigration officials that indicates why the order was never enforced. The USCA also informed the LBP that Interpol has not located the child at the address provided. The USCA continues to work with the LBP to obtain an updated address for the child.

| MEXICO: CASE 6 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2002 |
| DATE CONVENTION APPLICATION FILED | 7-2002 |
| HAVE CHILDREN BEEN LOCATED? | NO |

In January 2009, the USCA informed the MCA of possible new location information for the TP and children, who have been in hiding. The MCA then requested AFI's assistance in locating the children, but they have not yet been found.

| MEXICO: CASE 7 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2002 |
| DATE CONVENTION APPLICATION FILED | 7-2002 |
| HAS CHILD BEEN LOCATED? | NO |

In June 2009, the MCA informed the USCA that after hearing the parties' arguments on the return application, the Mexican court requested a psychological evaluation of the child and a home study of the LBP. The evaluations completed in early 2009 indicated that it would not be detrimental for the child to remain in Mexico nor would it be harmful for her to return to the United States. The court has yet to make a decision on the case, in spite of follow-up inquiries by the MCA.

| MEXICO: CASE 8 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2003 |
| DATE CONVENTION APPLICATION FILED | 11-2003 |
| HAS CHILD BEEN LOCATED? | NO |

In 2005, Interpol informed the MCA that it had found the child. The MCA passed the information to the appropriate court, but court officers did not locate the child at the address provided. In order to restart an investigation, Interpol requested updated information from the MCA about the TP and child in August 2006, but did not hear back. The USCA contacted the LBP in June 2009 to request additional information about possible locations for the child.

| MEXICO: CASE 9 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2000 |
| DATE CONVENTION APPLICATION FILED | 11-2003 |
| HAS CHILD BEEN LOCATED? | NO |

In April 2005, the USCA asked the MCA to obtain assistance from Interpol after learning that the Mexican court had been unable to locate the child. In November 2005, U.S. Embassy Mexico City attempted to conduct a welfare and whereabouts visit but was unsuccessful, as the family residing at the address provided claimed that the child did not live there. In March 2006, the MCA requested that Mexican law enforcement officers enter the residence by force; they did so, but once again the child was not present. In February 2009, the LBP provided a photo of the child and an address and photo of the home where she is believed to be currently residing. The USCA forwarded these to the MCA, which reported back that the child was not at the address provided, and Interpol has yet to locate her. The USCA continues to request information from the LBP and assistance from the MCA in locating the child, who is believed to be somewhere in the state of Puebla.

| MEXICO: CASE 10 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2003 |
| DATE CONVENTION APPLICATION FILED | 11-2003 |
| HAS CHILD BEEN LOCATED? | NO |

A hearing was held in a court in Oaxaca in September 2006. The TP's attorney attended the hearing, but the TP and child did not appear. The judge, court clerks, and the LBP's attorney went to the TP's residence, but the TP and child were not there. The MCA followed up in 2007, obtaining Interpol assistance in searching school records in Oaxaca, but the child was not located. The case is still with Interpol.

| MEXICO: CASE 11 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2004 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAVE CHILDREN BEEN LOCATED? | YES |

The children were taken to Mexico in April 2004, and have been missing ever since. Through the MCA, the USCA requested that Interpol search for the children. The USCA obtained information in the children's whereabouts, and passed this on to Interpol. The USCA remains in frequent contact with the LBP.

***Update since the end of the reporting period:*** *In October 2009, the USCA requested that Embassy Mexico City perform a welfare and whereabouts visit to the address at which the USCA believed the children were living. Personnel from the Embassy attempted two visits, but could not enter, as the family residing at the address would not open the door.*

| MEXICO: CASE 12 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2004 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP took the child to Mexico in July 2004. The USCA forwarded the LBP's return application to the MCA in March 2005. A friend of the LBP visited Mexico and informed her that the child may be residing with a paternal aunt in Lázaro Cárdenas, Michoacán. The MCA requested that the LBP submit a color photo of the TP, which the LBP sent in March 2009. The USCA has been in touch with the LBP and continues to work closely with Embassy Mexico City on this case.

| MEXICO: CASE 13 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAVE CHILDREN BEEN LOCATED? | NO |

In February 2006, the MCA reported to the USCA that a court in Mexico had ordered the children returned. After the court rendered the decision, the maternal grandmother disappeared with the children. The MCA requested assistance from Interpol in locating the children. In August 2009, the USCA sent the last known address of the children, provided by the LBP, to the MCA. The children have yet to be located.

| MEXICO: CASE 14 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2004 |
| DATE CONVENTION APPLICATION FILED | 5-2005 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The USCA notified the LBP of a court hearing that was scheduled for February 2008 and recommended that she attend. The LBP later informed USCA that the hearing never took place because the children had not yet been located. The USCA continues to request the MCA's help in locating the children, and has not obtained a response to numerous inquiries.

| MEXICO: CASE 15 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2002 |
| DATE CONVENTION APPLICATION FILED | 5-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP took the children to Mexico in January 2002. The LBP did not file a return application with the MCA until May 2005. The court ordered the child returned October 2006. The TP filed an appeal in January 2007 and then absconded with child. Efforts to locate the child have so far been unsuccessful.

| MEXICO: CASE 16 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2005 |
| DATE CONVENTION APPLICATION FILED | 11-2005 |
| HAVE CHILDREN BEEN LOCATED? | NO |

On August 2009, the MCA informed the USCA of a discrepancy in the information provided on the return application. The USCA worked with the LBP to update the application, and resubmitted it to the MCA. The USCA also requested assistance in locating the children.

| MEXICO: CASE 17 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2005 |
| DATE CONVENTION APPLICATION FILED | 12-2005 |
| HAVE CHILDREN BEEN LOCATED? | YES |

The TP abducted the children to Mexico in November 2005. A Mexican court scheduled a hearing for October 2006, but it was rescheduled for March 2007. The court held subsequent hearings in May 2007 and in December 2007. The court indicated that it had not reached a decision because of confusion regarding LBP's counsel.

***Update since end of reporting period:*** *In October 2009, the USCA received notification from the MCA that a hearing was to take place soon and the LBP should have a representative in Mexico. In response, the USCA contacted the LBP and provided detailed information on obtaining an attorney. The USCA has not received notification of a date for the hearing.*

| MEXICO: CASE 18 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2005 |
| DATE CONVENTION APPLICATION FILED | 12-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The MCA reported that in March 2009, the Mexican court had asked for a judicial order of custody, which the USCA then requested from the LBP. In May 2009, the USCA informed the LBP that the TP had been arrested for spousal abuse in Mexico. The USCA also obtained a new address where the child is allegedly living and passed this information on to the MCA. The USCA's repeated requests, as well as those of U.S. Embassy Mexico City, to the MCA for updates have gone unanswered.

| MEXICO: CASE 19 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 1-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP filed several appeals to overturn an April 2008 Mexican court order to return the child to the United States. Mexican law enforcement authorities have not removed the child from her Mexican residence, in spite of USCA requests for enforcement of the court order.

***Update since end of reporting period:*** *In October 2009, a warrant was issued for the TP's arrest in the United States. The USCA remains in contact with the LBP, the U.S. Embassy in Mexico City, and the MCA.*

| MEXICO: CASE 20 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2005 |
| DATE CONVENTION APPLICATION FILED | 2-2006 |
| HAS CHILD BEEN LOCATED? | YES |

In November 2006, the Mexican court returned the case to the MCA, alleging that the MCA had not provided it with the legal grounds to support the return of the child. The MCA disagreed, and stated that it would resubmit the case, which it did several weeks later. The USCA engaged the LBP frequently over this period, reviewing claims of alleged psychological problems of the TP, and U.S. Embassy Mexico City expressed its concern about the child's welfare in meetings with the MCA in November 2008, February 2009, and April 2009. In late 2008, the TP's boyfriend was arrested on drug charges, causing DIF officials to investigate the home environment where the child was living. No further action has been taken by the court, DIF, or AFI. In March 2009, a consular officer from U.S. Consulate General Ciudad Juárez conducted a welfare and whereabouts visit with the child and the TP. The USCA sent a copy of the report to the LBP.

***Update since the end of the reporting period:*** *In October 2009, the LBP reported a decision by the Mexican court in which the court ruled that the LBP had waited too long to file the return application. The USCA has been in regular contact with the LBP about the next steps in the process.*

| MEXICO: CASE 21 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2005 |
| DATE CONVENTION APPLICATION FILED | 2-2006 |
| HAS CHILD BEEN LOCATED? | YES |

On March 2, 2007, a Mexican court ordered the return of the child to the United States. The TP refused to turn the child over to the MCA. The USCA remains in contact with the MCA, requesting its assistance to compel Mexican authorities to enforce the return order.

***Update since reporting period ended:*** *The MCA and the California Attorney General's office are discussing what kind of assistance would be available for the LBP if the child is returned to the United States.*

| MEXICO: CASE 22 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2005 |
| DATE CONVENTION APPLICATION FILED | 2-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP took the child to Mexico in September 2005 from Adelanto, California. The LBP reported that the Mexican court scheduled a hearing for April 2006 which the LBP's mother and lawyer attended, but the TP did not appear and was not officially summoned. The TP filed an appeal separately in a family court in Chihuahua in July 2006, which suspended the case on the return application. The LBP appealed. A decision has still not been made on the LBP's appeal of the Chihuahua court's order. U.S. Embassy Mexico met with the MCA on December 16, 2008 to discuss the case.

***Update since end of reporting period:*** *In December 2009, officials from U.S. Consulate Ciudad Juárez conducted a welfare and whereabouts visit with the child. The USCA updated the LBP on the child's status with a full report and photo.*

| MEXICO: CASE 23 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2006 |
| HAS CHILD BEEN LOCATED? | NO |

In April 2008, the USCA informed the LBP that the Mexican court had denied his return application, and the LBP appealed the decision. In March 2009, the USCA confirmed that the LBP was still waiting for the appeals court's decision. The USCA regularly asks the MCA for status updates on this case.

| MEXICO: CASE 24 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2005 |
| DATE CONVENTION APPLICATION FILED | 5-2006 |
| HAS CHILD BEEN LOCATED? | NO |

In late 2007, the USCA received all of the necessary documents and forwarded the LBP's return application to the MCA, including the most up-to-date address information for the missing child. In January 2008, the USCA notified the LBP that his case was being turned over to Interpol. Interpol reported that as of July 2008, it had been unable to locate the child. The USCA has continually requested status updates from the MCA with no response.

| MEXICO: CASE 25 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2005 |
| DATE CONVENTION APPLICATION FILED | 7-2006 |
| HAS CHILD BEEN LOCATED? | NO |

In May 2007, the LBP reported that the Mexican court decided that the child should be returned to the United States. The TP and child absconded, and have not been located since. In November 2009, in response to USCA inquiries, the MCA reported that AFI is searching for the child.

| MEXICO: CASE 26 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 9-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The MCA assigned the case to a Mexican court in February 2007. The child could not be located at the maternal grandmother's address as listed on the return application. The USCA and U.S. Consulate General Tijuana worked to encourage the maternal grandmother to allow a welfare and whereabouts visit, but she has continued to refuse a visit. In August 2009, the USCA requested Interpol assistance with location efforts and a query of the Federal Education Secretariat for information from public school records.

| MEXICO: CASE 27 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2006 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | NO |

In July 2008, the USCA informed the LBP that the MCA was unable to locate the child and had requested Interpol's assistance. The USCA has submitted status update requests to the MCA and is awaiting a response.

| MEXICO: CASE 28 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2005 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | NO |

A Mexican court scheduled a hearing on the application for March 2008, but the hearing had to be postponed because the TP did not appear. The USCA continues working with Embassy Mexico City and the office of the Orange County, California Attorney General, requesting the MCA and Mexican law enforcement assist in locating the TP and the child.

| MEXICO: CASE 29 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

A Mexican court scheduled a hearing on the return application for April 2009, but it had to be postponed because the TP and children could not be located. The MCA reported to the USCA that this case had been forwarded to AFI.

| MEXICO: CASE 30 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2006 |
| DATE CONVENTION APPLICATION FILED | 4-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The TP abducted the child on December 8, 2006. The MCA turned the case over to Interpol in January 2008. On June 17, 2009, the MCA provided new information from Interpol to the USCA regarding the children's whereabouts and the continued search for them, but so far the children have not been located. The MCA indicated that it was ready to forward the case to a court in the state of Quintana Roo. The USCA is pursuing confirmation of this action from the MCA and remains in contact with the LBP.

| MEXICO: CASE 31 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The LBP went to Mexico with the children in November 2006 to take up residence with the TP. The LBP decided to return to her home in Puerto Rico because of the conditions in which she and her children were living. The LBP stated that the TP had threatened to harm her and the children if she attempted to leave, and that she was coerced into signing an official document voluntarily granting custody to the TP while she returned to Puerto Rico. The LBP filed a return application on May 12, 2007, claiming that the TP had wrongfully retained the children in Mexico. The two children have not been located to date. The return application is still pending with the MCA, as the MCA cannot yet determine to which court the case should be forwarded.

| MEXICO: CASE 32 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2007 |
| HAS CHILD BEEN LOCATED? | NO |

The MCA notified the USCA of a hearing on the return application scheduled for August 26, 2009. The USCA assisted the LBP in obtaining financial assistance through the U.S. Department of Justice to travel to Mexico. The LBP attended the hearing, but the child and the TP did not show up in court. A new hearing date has not yet been set.

| MEXICO: CASE 33 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2007 |
| DATE CONVENTION APPLICATION FILED | 5-2007 |
| HAS CHILD BEEN LOCATED? | NO |

U.S. Embassy Mexico City reported that the TP was arrested in Mexico on a minor charge shortly after abducting the child to Mexico and the child was left with the TP's grandparents. The grandparents allegedly stated they would return the child to the United States, but have not done so. The MCA turned the case over to Interpol in March 2008, but the child has not been located.

| MEXICO: CASE 34 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2007 |
| DATE CONVENTION APPLICATION FILED | 5-2007 |
| HAS CHILD BEEN LOCATED? | NO |

The USCA assisted the LBP in preparing a return application and forwarded it to the MCA in January 2008. The MCA informed the USCA in February 2009 that the Mexican judge had returned the case to the MCA for reasons that the USCA has not been able to clarify to date, in spite of numerous requests for more information. To date, no hearing has been scheduled.

| MEXICO: CASE 35 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2007 |
| DATE CONVENTION APPLICATION FILED | 6-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The MCA confirmed to the USCA that the return application had been assigned to a court in October 2007. However, the MCA has not responded to subsequent USCA inquiries about any hearings or results. The USCA remains in contact with the LBP.

| MEXICO: CASE 36 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2007 |
| DATE CONVENTION APPLICATION FILED | 6-2007 |
| HAS CHILD BEEN LOCATED? | NO |

During an unsupervised visit on May 27, 2007, the TP took the child and did not return. The LBP contacted law enforcement for assistance, to no avail. A hearing on the LBP's return application was scheduled before a Mexican court for August 2008, but the TP did not appear. The USCA remains in contact with Embassy Mexico City, the MCA, and the LBP.

| MEXICO: CASE 37 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 9-2007 |
| HAVE CHILDREN BEEN LOCATED? | UNKNOWN |

U.S. Embassy Mexico provided address information on the children to the MCA in December 2007, and the case was sent to a Mexican court for proceedings on a return application under the Convention in March 2008. In November 2008, the MCA informed the USCA that the children had been located and that a hearing would be scheduled soon. In spite of repeated requests, there has been no information provided regarding a hearing or the location of the children.

| MEXICO: CASE 38 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 10-2007 |
| HAS CHILD BEEN LOCATED? | YES |

In September 2008, a Mexican court ordered the child returned to the United States. Although the LBP's lawyer advised him to travel to Mexico to pick up his son, the LBP did not do so because the lawyer asked for additional payment to assist him once he arrived. The TP appealed and the decision was overturned in the appellate court in December 2008. On the advice of his Mexican attorney, the LBP filed an appeal in January 2009, and the case was returned to the court of first instance. The lower court then ordered psychological exams, which were carried out on the TP and child. The court has still not reached a decision. The USCA and U.S. Embassy Mexico City have been in frequent contact with the MCA on this case, raising concerns about the lack of enforcement of the court order and about the LBPs lawyer, who appeared to be charging excessive fees. U.S. Embassy Mexico City has carried out three welfare and whereabouts visits with the child, providing reports and photographs.

| MEXICO: CASE 39 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2007 |
| DATE CONVENTION APPLICATION FILED | 10-2007 |
| HAS CHILD BEEN LOCATED? | YES |

In October 2009, the TP contacted the LBP to try to reach an agreement on the voluntary return of the child. The USCA has offered to assist the LBP and his attorney with the voluntary return. The USCA provided the LBP with information on how to obtain child's U.S. passport and an attorney in Mexico. Per the MCA's request, the USCA prepared a letter of support for the child's return. The USCA also contacted NCMEC to provide reunification counseling services. The USCA continues working with the LBP, the LBP's attorney, NCMEC, and the MCA on this case, in preparation for providing assistance once the parents reach an agreement.

| MEXICO: CASE 40 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2007 |
| DATE CONVENTION APPLICATION FILED | 10-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The TP and children have not been located, and therefore a hearing has not been scheduled before a Mexican court on the LBP's return application.

***Update since the end of the reporting period:*** *The MCA informed the USCA that it forwarded the case to AFI for assistance in November 2009.*

| MEXICO: CASE 41 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2007 |
| DATE CONVENTION APPLICATION FILED | 10-2007 |
| HAS CHILD BEEN LOCATED? | NO |

In January 2008, U.S. Consulate General Guadalajara conducted a welfare and whereabouts visit with the child. The TP and child later absconded, and the MCA informed the USCA that it could not locate the child and turned the case over to Interpol in April 2008. Later in 2008, the MCA contacted the LBP and told her to report to DIF to pick up her daughter. Upon arrival, it turned out that the child in DIF custody was not the LBP's. The USCA has continually requested help from the MCA and has provided updated address information for the LBP, but the child has not been located.

| MEXICO: CASE 42 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2007 |
| DATE CONVENTION APPLICATION FILED | 11-2007 |
| HAVE CHILDREN BEEN LOCATED? | YES |

The LBP is trying to reach an agreement with the TP for a voluntary return to the United States. The USCA sent a letter confirming to the MCA that, even though the LBP filed an application seeking an order for the children's return under the Convention, the USCA is ready to facilitate the voluntary return of the children if agreed upon between the parents.

***Update since end of reporting period:*** *The USCA asked U.S. Embassy Mexico City to assist in arranging a welfare and whereabouts visit with the children.*

| MEXICO: CASE 43 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2007 |
| DATE CONVENTION APPLICATION FILED | 11-2007 |
| HAS CHILD BEEN LOCATED? | UNKNOWN |

The USCA notified the LBP that her return application was sent to a Mexican court in January 2008. U.S. Embassy Mexico City notified the USCA in late January 2008 that the child was in DIF custody and a hearing had been scheduled. The LBP informed the USCA that the TP was requesting a visa to ensure his access to the child in the event the court ordered a return. The USCA provided information on requirements for the TP to apply for a visa. The USCA has attempted to maintain contact with the LBP, but the USCA has not received any replies to the letters sent to the LBP.

*Update since the end of the reporting period: In January 2010, the LBP's attorney informed the USCA that there was a hearing scheduled later in the month, and the LBP was visiting the child at the paternal grandparents' house. The USCA has not yet been informed of the results of that hearing.*

| MEXICO: CASE 44 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 11-2007 |
| HAVE CHILDREN BEEN LOCATED? | NO |

A Mexican court denied the application for return on March 27, 2008, and the LBP appealed the decision. The USCA maintains contact with the U.S. Consulate in Mérida and the MCA on this case, but has not been able to contact the LBP for several months. The appeal decision is still pending.

| MEXICO: CASE 45 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2007 |
| DATE CONVENTION APPLICATION FILED | 12-2007 |
| HAS CHILD BEEN LOCATED? | YES |

On May 29, 2008, the Mexican court denied the LBP's return application and ruled that the child should remain in Mexico. The LBP subsequently filed an appeal, which was denied in late September 2008. The USCA has made numerous requests to the MCA and the Mexican courts to confirm that a second appeal filed by the LBP is being processed, and has yet to receive a response.

| MEXICO: CASE 46 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2007 |
| DATE CONVENTION APPLICATION FILED | 1-2008 |
| HAS CHILD BEEN LOCATED? | YES |

The USCA notified the LBP in May 2008 that the case had been turned over to Interpol, in order to help locate the child. The child was later located. The USCA informed the LBP that a hearing had been scheduled for August 13, 2008. In November 2008, the MCA told the USCA that the court had ordered a home study for the child. The USCA has repeatedly requested status updates from the MCA without response.

| MEXICO: CASE 47 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2007 |
| DATE CONVENTION APPLICATION FILED | 4-2004 |
| HAVE CHILDREN BEEN LOCATED? | NO |

On November 9, 2009, the USCA contacted the LBP's attorney and discovered that he no longer represents the LBP. The USCA called and sent letters to the LBP, but received no response. The MCA stated that it will send the case to AFI only when the LBP is located. The USCA continues to search for the LBP.

| MEXICO: CASE 48 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2007 |
| DATE CONVENTION APPLICATION FILED | 1-2008 |
| HAVE CHILDREN BEEN LOCATED? | NO |

A hearing on the return application was scheduled for May 2008. However, the LBP and the TP reached an agreement on the voluntary return of the children, so the hearing did not take place. The TP has not yet returned the children as agreed, and cannot be found. The USCA and U.S. Consulate General in Guadalajara have been providing support to the LBP in pursuing a resolution to this case.

| MEXICO: CASE 49 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 2-2008 |
| HAS CHILD BEEN LOCATED? | NO |

In June 2008, the USCA contacted the LBP to inform her that Interpol had not yet located the child. In September 2008, the USCA contacted the MCA to provide additional location information and request further action by the court.

| MEXICO: CASE 50 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 2-2008 |
| HAVE CHILDREN BEEN LOCATED? | NO |

The USCA is pressing the MCA to assist in locating the children and TP. The TP abducted the children to Mexico in August 2007. A U.S. court granted the LBP primary custody after the removal. The children are believed to be residing in Mexico with paternal family members. The LBP provided the USCA with a possible address for the children. The children could not be located at the address provided, and the MCA forwarded the case to Interpol in November 2007. A return application was submitted to the MCA in February 2008. The USCA remains in contact with the LBP, who frequently suggests possible locations for the children.

| MEXICO: CASE 51 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2005 |
| DATE CONVENTION APPLICATION FILED | 2-2008 |
| HAS CHILD BEEN LOCATED? | YES |

The USCA notified the LBP that a Mexican court had scheduled a hearing on the return application for May 2008, and assisted the LBP in obtaining travel funds through the U.S. Department of Justice. On May 2008, the MCA informed the USCA that the hearing would not take place because the child could not be located. In July, the USCA notified the LBP that the TP and child had been located and a hearing would take place in August 2008. The USCA coordinated with the U.S. Consulate to ensure there would be U.S. Government representatives present at the hearing, and to provide transportation to the hearing. It also provided letters, per the court's request, from NCMEC and the USCA with information from the LBP. In September 2009, the court requested information from USCA and NCMEC regarding reunification counseling. The USCA provided the information on September 29. The court has yet to make a decision regarding return.

| MEXICO: CASE 52 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2008 |
| HAVE CHILDREN BEEN LOCATED? | NO |

In July 2008, the USCA contacted the LBP to ask if the he knew of additional locations where the children might have been taken. The MCA could not find the children at the address then provided by LBP. In November 2008, the MCA forwarded the case to AFI for its assistance. The USCA remains in contact with the LBP and the MCA to continue efforts to find the TP and children.

| MEXICO: CASE 53 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2005 |
| DATE CONVENTION APPLICATION FILED | 3-2008 |
| HAS CHILD BEEN LOCATED? | YES |

The child was taken to Durango by the TP on or around December 2005. The LBP was granted custody of the child by a Texas court in May 2003. In April 2008, Mexican authorities placed the child in the custody of DIF. The Mexican court requested to have psychological testing conducted on the child because the child had been in Mexico for more than two years. Thereafter, on November 13, 2008, the Mexican court denied the child's return. The court decided the child should remain with his grandparents in Mexico. The LBP appealed the case, and the appeal is still pending. The USCA is monitoring the appeals proceedings.

| NEW ZEALAND: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2002 |
| DATE CONVENTION APPLICATION FILED | 9-2002 |
| HAS CHILD BEEN LOCATED? | NO |

The USCA has worked with three foreign Central Authorities on this case, those of Norway, Australia, and most recently, New Zealand, as the child has reportedly been taken to all the three countries by the TP. Although a Norwegian court ordered the child's return in 2003, and U.S. authorities have issued a federal warrant for the TP's arrest anywhere outside of Norway, the child's location remains unknown.

| SPAIN: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2007 |
| DATE CONVENTION APPLICATION FILED | 10-2007 |
| HAVE CHILDREN BEEN LOCATED? | YES |

In August 2008, the Spanish court stayed the return proceedings under the Convention until the conclusion of a criminal case against the LBP for alleged sexual abuse of the children.

***Update after reporting period:*** *Although the LBP reported to the USCA in November 2009, that the charges against him had been dismissed, the SCA has not yet requested a court to commence proceedings under the Convention.*

| SWITZERLAND: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2005 |
| DATE CONVENTION APPLICATION FILED | 10-2005 |
| HAS CHILD BEEN LOCATED? | YES |

In September 2005, the child's mother wrongfully retained the child in Switzerland. The mother immediately filed for divorce in the Baden district court and asked for custody of the child. The LBP filed a return application in October 2005. The district court erroneously joined the Hague Convention case with the divorce case and declined to facilitate interim access between father and child. The district court denied the child's return and the Canton of Aargau Court of Appeal upheld this ruling. In July 2006, the Swiss Supreme Court also upheld the ruling, stating that the father had failed to prove that he had not acquiesced to the child's relocation to Switzerland. The LBP then filed an application against Switzerland in the European Court of Human Rights (ECHR).

In November 2008, the ECHR ruled in the LBP's favor, holding that Switzerland had violated its obligations under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits interference by a public authority with the exercise of an individual's right to respect for his family life, through several misapplications by the Swiss courts of the Convention. (The decision is described in more detail in the FY 2008 Compliance Report, p. 34.)

The Government of Switzerland declined to appeal the ECHR's ruling and paid monetary damages to the LBP, as ordered by the ECHR. Throughout all of these legal proceedings, the LBP continued his efforts to see his child by filing a petition for access under the Convention directly with the Swiss court. The Swiss court, however, merely requested that the TP consider allowing visitation. At the end of the reporting period, the LBP still had no court-ordered access to his child.

***Update since the end of the reporting period:*** *In February 2010, the LBP submitted an access application to the SCA with an official request for its assistance. On the urging of the SCA, the district court finally ordered that LBP be allowed visitation with his child. The Committee of Ministers of the Council of Europe is charged with overseeing the implementation of the ECHR decision, and may examine whether Switzerland has made attempts to cure the violations against the LBP in his individual case.*

| SWITZERLAND: CASE 2 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | NO |

The TP fled with the child after the Swiss court issued a return order. Swiss law enforcement authorities have been unable to locate them for more than two years. Swiss authorities are working with authorities in neighboring countries to search for them; however, there has been no progress since their disappearance.

**SWITZERLAND:** CASE 3

Please see the "Notable Cases" section of this report for information on Switzerland Case 3 on page 30.

| TURKEY: CASE 1 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 7-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP left for Turkey with the child, in violation of a U.S. court's order that she was not allowed to remove the child from the United States. Three different sets of proceedings took place before the Turkish courts, and in the third in February 2007, the court ordered the child returned to the United States. In April 2008, the LBP and TP together obtained a passport for the child so that he could return. However, when Embassy Ankara spoke with the TP in January 2009, she stated that the LBP had told her the child could remain in Turkey. The USCA contacted the LBP, who denied allowing the child to remain in Turkey. The USCA has made follow-up attempts to contact the LBP without success.

| TURKEY: CASE 2 | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2007 |
| HAS CHILD BEEN LOCATED? | YES |

The first, second, and final hearings on the return application all took place in July 2007. At the final hearing, the Turkish family court denied the child's return, and the LBP appealed this decision. In February 2008, the appeals court overturned the denial. The TP requested a review of this decision in June 2008, but the court of higher instance rejected the request. On remand, the family court ordered the child returned to the United States. The appeals court rejected

the TP's appeal. In January 2009, the U.S. court overseeing the custody dispute ruled that the child could stay in Turkey due to the fact that he had become adjusted to his new environment. Nevertheless, in October 2009, the Turkish appeals court finalized the family court's return order.

***Update since the end of the reporting period:*** *The child returned to the United States in February 2010.*

**TURKEY:** CASE 3

Please see the "Notable Cases" section of this report for information on Turkey Case 3 on page 32.

**VENEZUELA:** CASE 1

| | |
|---|---|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | YES |

After the LBP filed the application for return, the TP filed a separate custody case in a Venezuelan family court. In December 2007, the USCA protested the potential violation of Article 16 of the Convention by letter to the Venezuelan Central Authority, and requested suspension of the custody case until the Convention application was decided. The USCA also asked for an explanation for the delay in processing the case, citing the requirement of expeditiousness in Article 11 of the Convention. The Venezuelan court ordered return of the child in February 2009, but the TP appealed the decision in April 2009, and the appeals court overturned the order for return. In May 2009, the USCA expressed to the Venezuelan Central Authority its concern regarding the court's interpretation of how to process applications for return under the Convention.

# TEXT OF THE CONVENTION

*The States signatory to the present Convention,*

*Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,*

*Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,*

*Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -*

## CHAPTER I - SCOPE OF THE CONVENTION

### ARTICLE 1

The objects of the present Convention are -

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

### ARTICLE 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

### ARTICLE 3

The removal or the retention of a child is to be considered wrongful where -

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

### ARTICLE 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

### ARTICLE 5

For the purposes of this Convention -

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

## CHAPTER II - CENTRAL AUTHORITIES

### ARTICLE 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

#### ARTICLE 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures -

a) to discover the whereabouts of a child who has been wrongfully removed or retained;
b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
d) to exchange, where desirable, information relating to the social background of the child;
e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

## CHAPTER III - RETURN OF CHILDREN

#### ARTICLE 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain -
a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by -
e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

#### ARTICLE 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

#### ARTICLE 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

### ARTICLE 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

### ARTICLE 12

Where 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, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

### ARTICLE 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

### ARTICLE 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

### ARTICLE 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a

decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

#### ARTICLE 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

#### ARTICLE 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

#### ARTICLE 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

#### ARTICLE 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

#### ARTICLE 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

## CHAPTER IV - RIGHTS OF ACCESS

#### ARTICLE 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

## CHAPTER V - GENERAL PROVISIONS

#### ARTICLE 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

#### ARTICLE 23

No legalisation or similar formality may be required in the context of this Convention.

**ARTICLE 24**

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

**ARTICLE 25**

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

**ARTICLE 26**

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

**ARTICLE 27**

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

**ARTICLE 28**

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

**ARTICLE 29**

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

**ARTICLE 30**

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

#### ARTICLE 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

#### ARTICLE 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

#### ARTICLE 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

#### ARTICLE 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

#### ARTICLE 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

#### ARTICLE 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

## CHAPTER VI - FINAL CLAUSES

#### ARTICLE 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

#### ARTICLE 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be

deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

### ARTICLE 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

### ARTICLE 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

### ARTICLE 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

### ARTICLE 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

### ARTICLE 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force -

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

### ARTICLE 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

### ARTICLE 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

# STATISTICS FOR FY 2009

| | OUTGOING CASES | | INCOMING CASES | |
|---|---|---|---|---|
| CONVENTION COUNTRY OR TERRITORY | NEW | NO. OF CHILDREN | NEW | NO. OF CHILDREN |
| ARGENTINA | 10 | 11 | 8 | 12 |
| AUSTRALIA | 18 | 29 | 14 | 22 |
| AUSTRIA | 4 | 5 | 4 | 6 |
| BAHAMAS | 7 | 8 | 7 | 12 |
| BELGIUM | 2 | 2 | 2 | 3 |
| BELIZE | 5 | 8 | 1 | 1 |
| BOSNIA-HERZEGOVINA | 1 | 1 | 2 | 5 |
| BRAZIL | 24 | 31 | 7 | 9 |
| BULGARIA | 6 | 6 | 0 | 0 |
| BURKINA FASO | 0 | 0 | 0 | 0 |
| CANADA | 74 | 104 | 29 | 39 |
| CHILE | 4 | 5 | 5 | 6 |
| COLOMBIA | 23 | 31 | 10 | 10 |
| COSTA RICA | 11 | 13 | 3 | 5 |
| CROATIA | 0 | 0 | 0 | 0 |
| CYPRUS | 1 | 2 | 0 | 0 |
| CZECH REPUBLIC | 3 | 4 | 0 | 0 |
| DENMARK | 1 | 2 | 4 | 7 |
| DOMINICAN REPUBLIC | 16 | 21 | 8 | 10 |
| ECUADOR | 18 | 24 | 4 | 7 |
| EL SALVADOR | 13 | 16 | 3 | 3 |
| ESTONIA | 2 | 3 | 0 | 0 |
| FINLAND | 1 | 2 | 0 | 0 |
| FRANCE | 9 | 12 | 12 | 15 |
| GERMANY | 50 | 71 | 18 | 20 |
| GREECE | 5 | 7 | 3 | 3 |
| GUATEMALA | 7 | 12 | 1 | 2 |
| HONDURAS | 18 | 26 | 1 | 2 |
| HONG KONG, SAR | 0 | 0 | 0 | 0 |
| HUNGARY | 3 | 5 | 2 | 2 |
| ICELAND | 1 | 1 | 0 | 0 |
| IRELAND | 1 | 1 | 1 | 1 |
| ISRAEL | 14 | 19 | 3 | 3 |
| ITALY | 9 | 14 | 6 | 7 |
| LATVIA | 0 | 0 | 0 | 0 |

| | OUTGOING CASES | | INCOMING CASES | |
|---|---|---|---|---|
| CONVENTION COUNTRY OR TERRITORY | NEW | NO. OF CHILDREN | NEW | NO. OF CHILDREN |
| LITHUANIA | 0 | 0 | 0 | 0 |
| LUXEMBOURG | 0 | 0 | 0 | 0 |
| MACAU, SAR | 0 | 0 | 0 | 0 |
| MACEDONIA | 3 | 4 | 1 | 1 |
| MALTA | 0 | 0 | 0 | 0 |
| MAURITIUS | 0 | 0 | 0 | 0 |
| MEXICO | 309 | 474 | 75 | 120 |
| MONACO | 0 | 0 | 0 | 0 |
| MONTENEGRO | 0 | 0 | 0 | 0 |
| NETHERLANDS | 4 | 7 | 7 | 10 |
| NEW ZEALAND | 7 | 9 | 1 | 1 |
| NORWAY | 5 | 7 | 1 | 1 |
| PANAMA | 10 | 16 | 2 | 3 |
| PARAGUAY | 0 | 0 | 0 | 0 |
| PERU | 10 | 14 | 7 | 7 |
| POLAND | 14 | 17 | 2 | 2 |
| PORTUGAL | 2 | 2 | 2 | 2 |
| ROMANIA | 2 | 5 | 0 | 0 |
| ST. KITTS & NEVIS | 0 | 0 | 0 | 0 |
| SAN MARINO | 0 | 0 | 0 | 0 |
| SERBIA | 0 | 0 | 0 | 0 |
| SLOVAKIA | 2 | 3 | 3 | 3 |
| SLOVENIA | 0 | 0 | 0 | 0 |
| SOUTH AFRICA | 12 | 13 | 7 | 11 |
| SPAIN | 8 | 9 | 6 | 7 |
| SRI LANKA | 0 | 0 | 0 | 0 |
| SWEDEN | 6 | 10 | 5 | 7 |
| SWITZERLAND | 6 | 8 | 5 | 10 |
| TURKEY | 4 | 6 | 2 | 2 |
| UKRAINE | 2 | 4 | 4 | 5 |
| UNITED KINGDOM | 48 | 71 | 31 | 44 |
| URUGUAY | 3 | 4 | 1 | 1 |
| VENEZUELA | 10 | 15 | 4 | 5 |
| ZIMBABWE | 0 | 0 | 0 | 0 |
| **TOTALS** | **828** | **1194** | **324** | **486** |

*Note: The number of reported abductions to Convention countries includes cases in which a Hague application for the return of a child has been filed, and cases in which parents have not filed an application for return of a child. Parents do not file applications for return under the Convention in all cases to Convention countries.*

# STATISTICS FOR FY 2009

| NON-CONVENTION COUNTRY OR TERRITORY | NO. NEW OUTGOING CASES | NO. CHILDREN IN NEW OUTGOING CASES |
|---|---|---|
| ALBANIA* | 0 | 0 |
| ALGERIA | 1 | 1 |
| ARMENIA* | 0 | 0 |
| BANGLADESH | 5 | 7 |
| BARBADOS | 3 | 3 |
| BELARUS* | 1 | 1 |
| BOLIVIA | 3 | 3 |
| CAMBODIA | 1 | 1 |
| CHINA | 9 | 9 |
| DOMINICA | 0 | 0 |
| EGYPT | 12 | 18 |
| ETHIOPIA | 3 | 3 |
| GHANA | 12 | 17 |
| GRENADA | 0 | 0 |
| GUINEA | 1 | 1 |
| GUYANA | 3 | 3 |
| HAITI | 5 | 8 |
| INDIA | 34 | 41 |
| INDONESIA | 4 | 4 |
| IRAN | 5 | 8 |
| IRAQ | 2 | 3 |
| JAMAICA | 16 | 20 |
| JAPAN | 23 | 34 |
| JORDAN | 12 | 23 |
| KENYA | 9 | 10 |
| KUWAIT | 0 | 0 |
| LEBANON | 6 | 8 |
| LIBERIA | 0 | 0 |

| NON-CONVENTION COUNTRY OR TERRITORY | NO. NEW OUTGOING CASES | NO. CHILDREN IN NEW OUTGOING CASES |
|---|---|---|
| MALAYSIA | 2 | 3 |
| MALI | 0 | 0 |
| MOROCCO | 7 | 8 |
| NETHERLANDS ANTILLES | 1 | 2 |
| NICARAGUA* | 6 | 8 |
| NIGERIA | 9 | 14 |
| PAKISTAN | 14 | 24 |
| PHILIPPINES | 20 | 25 |
| RUSSIA | 16 | 21 |
| SAUDI ARABIA | 5 | 12 |
| SENEGAL | 2 | 3 |
| SIERRA LEONE | 4 | 4 |
| SINGAPORE | 3 | 5 |
| SOUTH KOREA | 6 | 7 |
| ST. LUCIA | 0 | 0 |
| ST. MAARTEN | 0 | 0 |
| SYRIA | 5 | 8 |
| TAIWAN | 3 | 6 |
| THAILAND* | 4 | 4 |
| THE GAMBIA | 4 | 6 |
| TRINIDAD & TOBAGO* | 9 | 14 |
| TUNISIA | 4 | 5 |
| UNITED ARAB EMIRATES | 7 | 9 |
| UZBEKISTAN* | 0 | 0 |
| WEST BANK | 1 | 3 |
| YEMEN | 4 | 9 |
| ZAMBIA | 1 | 1 |
| **TOTALS** | **307** | **427** |

** Countries that have acceded to the Convention, and are thus Convention parties, but are not currently treaty partners with the United States because the process provided for in Article 38 of the Convention has not yet been finalized.*

# GLOSSARY OF ACRONYMS

| | |
|---|---|
| AFI | Agencia Federal de Investigación - Mexican Federal Investigations Agency |
| CI | The U.S. Department of State, Office of Children's Issues |
| CONVENTION | The 1980 Hague Convention on the Civil Aspects of International Child Abduction |
| CPIAP | The Children's Passport Issuance Alert Program |
| DEPARTMENT | The U.S. Department of State |
| DIF | Desarollo Integral de la Familia |
| FY | Fiscal Year |
| ICARA | International Child Abduction Remedies Act |
| INCOMING CASES | Parental Child Abductions from Another Country to the United States |
| IPCA | International Parental Child Abduction |
| ISS | International Social Services |
| LBP | Left-Behind Parent or Left-Behind Person |
| NCMEC | National Center for Missing and Exploited Children |
| NGO | Non-Governmental Organization |
| OUTGOING CASES | Parental Child Abductions from the United States to Another Country |
| SAR | Special Administrative Region |
| TP | Taking Parent or Taking Person |
| USCA | United States Central Authority |