



**Report on Compliance
with the Hague Convention**

on the Civil Aspects of

**INTERNATIONAL
CHILD ABDUCTION**

April 2009



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

APRIL 2009

**SUBMITTED PURSUANT TO
SECTION 2803 OF PUBLIC LAW 105-277,
(FOREIGN AFFAIRS REFORM AND RESTRUCTURING ACT OF 1998),
AS AMENDED BY
SECTION 202 OF PUBLIC LAW 106-113
(THE ADMIRAL JAMES W. NANCE AND MEG DONOVAN
FOREIGN RELATIONS AUTHORIZATION ACT FOR FISCAL YEARS 2000 AND 2001),
AND SECTION 212 OF THE 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 2009 Compliance Report for 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.

As vividly described in this report, parental child abduction is a tragedy that has long-term consequences for both the children and the left-behind parents. The Convention provides a civil mechanism for many parents to obtain the return of their children, offering hope at a time when a family has been torn apart. The goal of the Convention is to make the return of children prompt and automatic, an effective deterrent to those who contemplate abducting their child. 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 the Convention.

Compliance with the Convention is an ongoing challenge; continuing evaluation of treaty implementation in partner countries and in the United States is vital for its success. Very few options exist for parents and children who are victims of parental child abduction. As the U.S. Central Authority for this important Convention, the Office of Children's Issues of the Department of State will continue to work with each of our Convention partners to resolve abduction cases promptly and to improve understanding and full and complete implementation of the Convention.

Sincerely,

A handwritten signature in cursive script that reads "Janice L. Jacobs".

Janice L. Jacobs



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EXECUTIVE SUMMARY

THE 2009 HAGUE ABDUCTION CONVENTION COMPLIANCE REPORT

This report of the Office of Children's Issues ("CI") of the U.S. Department of State on compliance with the Hague Convention on the Civil Aspects of International Child Abduction covers the period from October 1, 2007, through September 30, 2008 (Fiscal Year or FY 2008). The report provides quantitative information concerning new abduction cases between the United States and Convention partner countries, and from the United States to non-Convention countries. 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 United States has 68 Convention partner countries (see table on page 40), mainly from Europe, North America, and South America. International parental child abduction (throughout this report referred to as "IPCA") statistics for these partner countries and 55 non-Convention countries are provided on page 41. This report refers to fellow states parties to the Convention, where the United States has accepted the party's accession under the procedures in Article 38 of the Convention, as "Convention partners."

During FY 2008, CI was notified of 1,082 new outgoing IPCA cases involving 1,615 children. Of these, 776 were abductions to Convention partner countries. All but two of the ten countries with the highest incidence of reported abductions (Japan and India) are Convention partners. These ten countries accounted for 602 cases: Mexico (316), Canada (57), the United Kingdom (42), Japan (37), India (35), Germany (34), the Dominican Republic (25), Brazil (21), Australia (18), and Colombia (17). The number of new outgoing IPCA cases has increased substantially in the last three years, from 642 (FY 2006), to 794 (FY 2007), and now 1,082 (FY 2008).

CI received 344 Convention applications concerning abductions to the United States, involving 484 children, in FY 2008. The top five countries with the highest incidence of reported abductions from the foreign country to the United States were Mexico (121), Germany (27), the United Kingdom (21), Canada (19), and France (13).

In FY 2008, CI assisted in the return to the United States of 361 children who were wrongfully removed to or wrongfully retained in other countries. Of these, 248 (69%) were returned from countries that are Convention partners. The countries accounting for the greatest number of returns were Mexico (92), Canada (34), the United Kingdom (16), the Dominican Republic (11), and Germany (10). Moreover, 210 children wrongfully removed to or wrongfully retained in the United States from a foreign country were returned under the Convention to their countries of habitual residence during FY 2008.

The report discusses the human and social cost of IPCA, the consequences for children and left-behind parents, and the role of non-governmental organizations.

Convention partner countries are evaluated for compliance in three areas: Central Authority performance, judicial performance, and law enforcement performance. Honduras is evaluated as "Not Compliant." Seven countries are evaluated as "Demonstrating Patterns of Noncompliance:" Brazil, Chile, Greece, Mexico, Slovakia, Switzerland, and Venezuela.

Finally, the compliance report provides a summary of 67 applications for return of an abducted child under the Convention (sometimes referred to in this report as "Hague return applications") from 14 countries. These applications were filed prior to April 1, 2007, and remained unresolved after 18 months from the date of filing, as of September 30, 2008.

THE 2009 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 ("Convention") with the dictates of the Convention. See 42 U.S.C. § 16111(a) (codification of Pub. L. 105-277).

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 the child to, or wrongfully retained the child in the United States. The report includes outgoing abduction case statistics on countries that are parties to the Convention (referred to as "Convention countries" or "Convention partners" in this report), as well as those which have not yet acceded to it (referred to as "non-Convention countries" or "non-partners").

This report covers the period from October 1, 2007 through September 30, 2008, Fiscal Year or FY 2008. The information provided in this report is that which was available to CI during this time period. CI serves as the U.S. Central Authority ("USCA") under Article 6 of the Convention. When updates for a given case were available and relevant beyond the FY 2008 period, the report notes these developments.

THE HUMAN AND SOCIAL COST OF INTERNATIONAL PARENTAL CHILD ABDUCTION

Parental child abduction is a tragedy because it affects some of society's most vulnerable individuals. When a child is abducted across international borders, the difficulties are compounded for everyone involved. Parental child abduction jeopardizes the child and has substantial short and long-term consequences for both the abducted child and the left-behind parent (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 (TP) may relocate them frequently or take them out of school unexpectedly without even time to say goodbye. 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 identity. Abducted children may be told that their other parent is dead, does not want them, or has not tried to get them back.

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. They 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.



INTRODUCTION

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. LBPs may lack the financial resources to travel abroad to visit their children, even if the TP permits access to their children. They may lack sufficient funds to hire an attorney in the United States or abroad. It may be difficult for an LBP to retain an English-speaking attorney who is familiar with the legal issues pertaining to IPCA. Additionally, LBPs may lack the funds to hire translators and interpreters or to seek professional counseling. Although IPCA has far-reaching consequences, its significance is not widely understood.

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 an NGO known as 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 (including most parties to the Convention) to assist families who are separated. When appropriate, the Department and U.S. consular officials refer parents to ISS for additional support, or work directly with ISS. In some cases, ISS has been actively involved in arranging escorts for returning abducted children to the United States and in working to establish better communication between parents or between a parent and child.

The Department also collaborates with another NGO on IPCA cases, the National Center for Missing and Exploited Children (NCMEC). NCMEC's "Victim Reunification Travel Program" assists many families affected by IPCA. In operation since October 10, 1996, NCMEC's Family Advocacy Division manages this program. NCMEC administers the interagency agreement protocols and the program's activities are governed by 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.

The Victim Reunification Travel Program funds international travel for an LBP or missing child's custodian, either to attend a custody hearing or be reunited with the child once found in another country, when the family could not otherwise pay for this travel. The program provides emergency funds to parents who meet eligibility requirements to travel to foreign countries for legal proceedings related to custody matters or to participate in legal proceedings to recover their abducted child. Since the program's inception, NCMEC has administered more than \$653,700 to support the travel of 238 families to countries, including Austria, Colombia, Germany, Honduras, and Mexico, for legal proceedings abroad 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. Support organizations for LBPs help connect parents with others who have experienced IPCA. Similar organizations exist 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. CI maintains and continually updates a list of NGOs who help with IPCA cases; this list is available on CI's website, www.travel.state.gov/childabduction. CI also works 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, CI, in its capacity as the USCA under the Convention, monitors the welfare of abducted children, assists LBPs, and offers parents tools and information to prevent child abduction. CI also maintains country-specific IPCA flyers on its website to provide general information about the application process under the Convention (if applicable), and measures available for 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, particularly in countries developing or expanding their capacity to more effectively implement the Convention. Some posts have developed lists of NGOs in their country or region to assist in the difficult circumstances surrounding child abductions.

CASE ILLUSTRATION:

Abduction can take a tremendous toll on the child. Effects can last a lifetime. In one case handled by the USCA, a child was abducted at the age of two to a country that is a party to the Convention. The main language in this country is not English, and its culture differs in many ways from that of the United States. Although the lower court ordered the child returned to the U.S., the appeals court overturned the decision. The appeals court's decision was based partially on an evaluation by a court-appointed child psychologist, who determined that the child suffered from post-traumatic stress disorder, including symptoms of anxiety, insomnia, stomachaches, and other ailments, dating from the onset of the conflict between the parents. This evaluation recommended that any contact between the child and the LBP be supervised and their interaction observed. When the country's supreme court upheld the appeals court ruling, the LBP filed an application for access to the child under the Convention. By this time, there had been no contact between the LBP and the child for almost three years. They no longer shared a common language, culture, or relationship. Officials from the U.S. embassy conducted a welfare visit and reported that the child appeared to be healthy and in good spirits. In order to determine the terms of access, the court asked the LBP to submit the results of an impartial psychiatric evaluation conducted in the U.S. Instead of complying, the LBP, desperate to reunite with his child and frustrated by a lack of progress favorable to him, further traumatized the child by entering the country, assaulting the TP and fleeing with the child. (cont'd on page 10)

INTRODUCTION

CASE ILLUSTRATION: (cont'd from page 9)

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 PREFERRED SOLUTION: THE CONVENTION

In the Department’s view, the procedure established under the Convention has proven to be the most effective solution currently available for LBPs to 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 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. The Convention was concluded in 1980, and entered into force for the United States on July 1, 1988. Since that time, the Department has found the Convention to be a critical tool in its efforts to reunite families across international borders and to deter potential abductions.

Today, the United States has a treaty relationship under the Convention with 68 other countries. In accordance with the procedures established in the Convention, when a new country accedes to the Convention, the Department undertakes a review of that country’s accession to determine whether the necessary legal and institutional mechanisms are in place in that country to implement the Convention. Upon concluding that a country has the capability to be an effective treaty partner, the Department recognizes its accession. With this recognition, the Convention enters into force between the United States and that country. See Convention, art. 38.



The Convention applies to the wrongful removal or retention of a child that occurred on or after the date the Convention entered into force between the United States and the other country concerned. See Convention, art. 38. The date on which the Convention entered into force between the United States and a given Convention party therefore varies. The United States has actively encouraged countries to accede to the Convention, recognizing the Convention’s potential effectiveness not only in resolving existing IPCA cases, but also in deterring future abductions.

The Department places the highest priority on the protection of U.S. citizens abroad, and especially on the welfare of U.S. citizen children. The Department takes seriously its responsibility to help parents seeking the return of, or access to, their abducted children through lawful means.

ABDUCTION STATISTICS

OUTGOING CASES – ABDUCTIONS FROM THE UNITED STATES

- ▶ In FY 2008, the USCA assisted many LBPs in the United States with ongoing cases and responded to 1,082 new IPCA cases involving 1,615 children. Of these cases, 776 involved children wrongfully removed to or wrongfully retained in countries that are parties to the Convention.

- ▶ Countries with the highest incidence of reported abductions of children taken from the United States (Convention parties in blue):

| Country | New Outgoing Cases | Children in New Outgoing Cases ⁽¹⁾ |
|--------------------|--------------------|---|
| Mexico | 316 | 533 |
| Canada | 57 | 83 |
| United Kingdom | 41 | 52 |
| Japan | 37 | 57 |
| India | 35 | 45 |
| Germany | 34 | 49 |
| Dominican Republic | 25 | 39 |
| Brazil | 21 | 25 |
| Australia | 18 | 26 |
| Colombia | 17 | 22 |

* Note: Additional country-by-country outgoing and incoming statistics can be viewed in the “Case Number Statistics” section on page 40 of this report.

INCOMING CASES—ABDUCTIONS TO THE UNITED STATES

- ▶ In FY 2008, the United States provided assistance in 344 newly filed Convention applications incoming to the United States, which involved 484 children.
- ▶ Convention parties with the highest incidence of reported abductions to the United States:

| Convention Country | New Incoming Cases | Children in New Incoming Cases ⁽²⁾ |
|--------------------|--------------------|---|
| Mexico | 121 | 174 |
| Germany | 27 | 36 |
| United Kingdom | 21 | 31 |
| Canada | 19 | 27 |
| France | 13 | 16 |

* Note: Additional country-by-country outgoing and incoming statistics can be viewed in the “Case Number Statistics” section on page 40 of this report

¹The numbers in this column are larger because many cases involve two or more siblings simultaneously abducted by the TP.

² See supra note 1.

RETURN STATISTICS

- ▶ In FY 2008, the Department assisted in the return to the United States of 361 children who were wrongfully removed to or wrongfully retained in other countries. Of these children, 248 children were returned from countries that are Convention partners with the United States, accounting for 68.7 percent of the returns in FY 2008.
- ▶ In FY 2008, 210 children wrongfully removed to or wrongfully retained in the United States were returned under the Convention to their country of habitual residence.



INTRODUCTION

- ▶ Convention partners who accounted for the greatest number of returns of wrongfully removed or wrongfully retained children back to the United States in FY 2008:

| Convention Country | Children Returned to the U.S. in FY 2008 |
|--------------------|--|
| Mexico | 92 |
| Canada | 34 |
| United Kingdom | 16 |
| Dominican Republic | 11 |
| Germany | 10 |

METHODOLOGY FOR THE NONCOMPLIANCE CATEGORY PLACEMENTS

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. § 22611(a)(1) and (2).

The Department bases its analysis of country compliance with the Convention largely on the standards and practices outlined in the *Guide to Good Practice* of the Permanent Bureau of the Hague Conference on Private International Law (referred to in this report as the “Hague Permanent Bureau”). Using the Guide, 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 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 timeliness with which any subsequent appeals are processed; 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 enforcing court orders issued under the Convention.

NOT COMPLIANT

The designation of “Countries Not Compliant with the Convention” encapsulates the requirement in 42 U.S.C. § 11611(a)(2). Countries which the Department considers to be failing in all three performance areas for the reporting period are listed as “Not Compliant.”

PATTERNS OF NONCOMPLIANCE

The designation of “Countries Demonstrating Patterns of Noncompliance” derives from 42 U.S.C. § 11611(a)(3). The Department considers countries in this category to be those that demonstrate a failure to comply with the Convention in one or two of the three performance areas.

COUNTRY NONCOMPLIANCE PLACEMENT



COUNTRIES NOT COMPLIANT

HONDURAS

COUNTRIES DEMONSTRATING PATTERNS OF NONCOMPLIANCE

BRAZIL

CHILE

GREECE

MEXICO

SLOVAKIA

SWITZERLAND

VENEZUELA

2009 U.S. CONVENTION PARTNERS

U.S. CONVENTION PARTNERS ■



HONDURAS

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

As in FY 2007, the Department finds Honduras not compliant with the Convention in FY 2008. The Honduran Central Authority has made little progress toward meeting its obligations under the Convention. After many months of inability to communicate with members of the Honduran Central Authority, the USCA has successfully reestablished communication with a staff member of the Honduran Central Authority, but it is apparent that the Honduran Central Authority has inadequate staff to perform the required functions set forth in the Hague Permanent Bureau’s Guide to Good Practice. The USCA notes that it is difficult to learn of the outcome of Convention proceedings or the efforts of law enforcement due to this communication barrier.

Honduras has not passed legislation implementing the Convention in Honduran law. The Honduran legislature introduced a decree to approve the “National Law to Resolve International Child Abduction Cases” before the end of FY 2007, but the legislature has not yet passed that law. During FY 2008, the Ministry of Foreign Affairs agreed to accept the transfer of the Central Authority responsibilities from the Honduran Institute of Children and Family. New legislation reflecting this change in the MFA’s responsibilities and establishing specific legal procedures in implementing the Convention is currently under consideration.

Only one abduction case was resolved during the reporting period. This resolution, however, resulted from the TP’s voluntary decision to return the child to the United States. Two cases were reported in FY 2007, both of which remained unresolved at the end of this reporting period. These cases are discussed in the “Unresolved Return Applications” section of this report and are examples of the systemic, institutional weakness of Honduras’ Convention process. As in FY 2007, courts were unreliable in adjudication of first instance Convention claims, and reviewing courts rejected meritorious claims without adhering to Convention principles. The USCA notes that judicial training is scheduled for Honduran judges in FY 2009 in an effort to increase understanding of the Convention’s requirements.



BRAZIL

| | |
|------------------------------------|--|
| DATE ACCEDED TO THE CONVENTION | 10-19-1999 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 12-1-2003 |
| PATTERN OF NONCOMPLIANCE | JUDICIAL PERFORMANCE CENTRAL AUTHORITY PERFORMANCE |

In FY 2008, Brazil demonstrated patterns of noncompliance with the Convention in the areas of Central Authority performance and judicial performance. Additionally, the USCA has concerns about Brazil's law enforcement performance. The Brazilian Central Authority (BCA) has advised the USCA that because of a case backlog in the Brazilian court system due to a shortage of public prosecutors, LBP's should hire a private attorney to speed the processing of applications for the return of children under the Convention. The Hague Permanent Bureau's Guide to Good Practice indicates that one of the roles of the requested Central Authority is to either arrange for or assist the applicant to obtain legal representation, and to monitor progress of proceedings brought pursuant to the application. The USCA observes that once an LBP retains a private attorney, the BCA reduces its involvement and does not appear to engage in monitoring the progress of the application. With respect to its communication and cooperation with the USCA, the BCA has been extremely attentive and very responsive to the USCA's inquiries. In a recent case, much of the activity of which took place after the end of FY 2008, the BCA collaborated closely with the USCA and showed persistent support for the child's return to the United States. In addition, the BCA has met with several Brazilian judges to discuss best practices to uphold the Convention.

A number of Brazilian judges participated in a December 2006 judicial seminar sponsored by the Hague Permanent Bureau and attended by a representative of the USCA. Nevertheless, the Brazilian courts continue to show a troubling trend of treating Convention cases as custody decisions, and often deny Convention applications upon finding that the children have become "adapted to Brazilian culture." Six abductions from the United States initially reported prior to April 2007, three of which were initially reported in 2004, remain unresolved (as detailed in the "Unresolved Return Applications" section of this report). Our experience indicates that it takes many months before a court receives a case to analyze and many more months before a court issues a decision.



The USCA observed during the reporting period that Brazil's courts exhibit widespread patterns of bias towards Brazilian mothers in Convention cases. Brazilian courts continue to be amenable to considering evidence relevant to custody determinations but not relevant to the criteria to be applied in a Convention case, including looking at what solution is in the "best interests" of the child. See Convention, art. 16 (courts not to decide merits of custody dispute until they determine that the child is not to be returned under the Convention). In order to ensure that Brazilian judges are well versed in the principles of the Convention, the BCA continues to make efforts to limit the number of judges who have the authority to hear Convention cases.

The USCA's concerns about law enforcement performance are related to the judiciary's poor performance. The lack of implementing legislation has led to Brazil's failure to establish jurisdictional authorities in courts of limited jurisdiction, which creates difficulties for law enforcement when there are competing judicial orders. Additionally, law enforcement appears to give lower priority to cases under the Convention because wrongful retention is not a criminal offense under the Brazilian penal code.



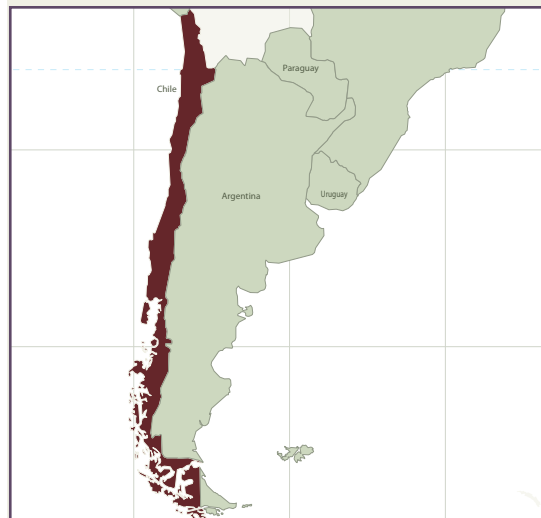
CHILE

| | |
|------------------------------------|----------------------|
| DATE ACCEDED TO THE CONVENTION | 2-23-1994 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 7-1-1994 |
| PATTERN OF NONCOMPLIANCE | JUDICIAL PERFORMANCE |

Although there have been some improvements during FY 2008, the Department finds that Chile's judicial performance under the Convention continues to be of concern, as it was in FY 2007. Chilean courts delay Convention cases and often improperly treat them as custody decisions, citing the UN Convention on the Rights of the Child. U.S. parents often experience bias by the courts in favor of Chilean parents, especially Chilean mothers. In addition, it is customary in Chilean courts to order psychological or social evaluations in all cases involving minor children, regardless of whether there is evidence of possible risk to the child in being returned to his or her country of habitual residence. As the Convention focuses on returning a child to his or her country of habitual residence, the USCA takes the view that psychological evaluations are unnecessary, and cause inappropriate delays in processing cases, if there is no evidence of risk to the child should the court order the child's return.

Another trend is for Chilean courts to deny Convention applications upon finding that the child is well settled in the new environment. This result, which could be avoided if Chilean courts handled Convention cases more expeditiously, leaves the LBP with the much less desirable option of filing an application under the Convention for mere access to the child, or for visitation, and even these applications in some cases have not resulted in contact between the LBP and the child. To take an example during the reporting period, a Chilean court ordered a scheduled access visit by the LBP, and the LBP purchased and confirmed his plane ticket and accommodations for the trip. Hours before the LBP was scheduled to board the plane for Chile, the Chilean Central Authority (CCA) notified him that the Chilean judge had suspended the scheduled visitation.

In April 2008, the CCA sponsored a seminar on the Convention and its application in Chile, including topics such as the emotional impact of IPCA on children and parents, and the role of "network judges" in promoting the correct application of the Convention in Chile.³ Several months after the seminar, the Chilean Supreme Court designated a family court judge to serve as Chile's network judge for Convention cases. The USCA and the CCA have a strong, cooperative working relationship. The CCA is communicative, responds to inquiries promptly, and processes cases expeditiously.



³Network judges are members of the International Hague Network of Judges, and work to promote the prompt and safe return of abducted children in accordance with Convention principles. These national judges are expected to communicate with their judicial counterparts in other countries on specific Convention cases, work to facilitate judicial education within their own countries, and promote the sharing of information with the Hague Permanent Bureau.

GREECE

| | |
|------------------------------------|----------------------|
| DATE RATIFIED THE CONVENTION | 3-19-1993 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 6-1-1993 |
| PATTERN OF NONCOMPLIANCE | JUDICIAL PERFORMANCE |

As in FY 2007, Greece demonstrated patterns of noncompliance with respect to judicial performance during the FY 2008 reporting period. These patterns of judicial noncompliance arise from procedural complexities and hindrances in Greek law. Respondent TPs often influence the judicial timeline refusing to cooperate with summons and orders. Lengthy appeals processes further prolong cases. These significant delays in Convention proceedings continue to be the Department's main concern. The Hague Permanent Bureau's *Guide to Good Practice* states that parties' obligation to process return applications expeditiously also extends to appeal procedures.

In addition, the Greek judiciary frequently denies requests for return under the Convention by finding that there would be a grave risk of physical or psychological harm for the child if returned, or that return would otherwise place the child in an "intolerable situation." See Convention, art. 13(b) (setting forth this exception). Such findings may suggest that Greek courts place undue emphasis on the "best interests" of the child. The USCA acknowledges that a Greek court ordered return in one case during the reporting period, in compliance with the provisions of the Convention, which may indicate a positive shift in the judiciary's application of the Convention.

The USCA has a sound, cooperative relationship with the Greek Central Authority (GCA) and is able to monitor case progress through clear and effective communication. The GCA sends circulars on the Convention's requirements and procedures, and requests Greek courts to process Convention cases expeditiously. The GCA organizes regular seminars on the Convention for judges and law students in Athens and Thessaloniki.

Greek law enforcement appears to be improving its handling of these cases. In one case in northern Greece, police efficiently located the TP and child, took the TP into custody, and placed the child under the supervision of local authorities pending resolution of the outstanding custody matter.



COUNTRY NARRATIVES:

PATTERNS OF NONCOMPLIANCE



MEXICO

| | |
|------------------------------------|--|
| DATE ACCEDED TO THE CONVENTION | 6-20-1991 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 10-1-1991 |
| PATTERN OF NONCOMPLIANCE | LAW ENFORCEMENT PERFORMANCE; JUDICIAL PERFORMANCE |

Mexico demonstrated patterns of noncompliance in the areas of judicial and law enforcement performance in FY 2008. Many of the systemic problems identified in previous compliance reports persist. Locating children and TPs in Mexico continues to be a serious obstacle for Convention applicants and often takes years. There are instances in which TPs flee into hiding when ordered to appear in court for a hearing on a Convention application. Of the USCA's 47 unresolved cases concerning Mexico, 34 involve TPs and children who have not been located (see the "Unresolved Return Applications" section of this report for more information). Mexico devotes inadequate resources to locating missing children, severely impeding successful implementation of the Convention. In order to comply with the Convention, it is imperative for Mexico to devote more resources to locate missing children and bring TPs to justice.

Although there are states in Mexico where judges have a better understanding of the Convention and have ordered returns under the Convention, the USCA continues to note an overall pattern of noncompliance in Mexico's judicial system. In the few cases that led to the return of the child to the United States, the LBP retained a private attorney with a greater understanding of the Convention's principles than Mexican public prosecutors have tended to exhibit. Mexican courts delay Convention cases and often improperly treat them as custody decisions. See Convention, art. 16. In these instances, Mexican judges determine children to be well settled in the new environment and deny the application for return to the child's country of habitual residence. This determination could be avoided by handling Convention cases more expeditiously and adhering more closely to the Convention's requirements. Mexican judges have also abused the "*amparo*," a special type of constitutional challenge, which results in additional delays to Convention cases and increases the LBP's legal costs.

During FY 2008, the Mexican Central Authority (MCA) worked closely with the United States Embassy in Mexico City to persuade the Mexican branch of Interpol to apply more resources and efforts to locate abducted children, and to educate the judiciary in an effort to increase understanding of the Convention, with an observable increase in Convention cases in the locations where these educational seminars were held. The MCA works closely with judges to help them improve their compliance with the Convention. In spite of these efforts, the MCA's performance is inevitably affected by inadequate staffing.



PATTERNS OF NONCOMPLIANCE

SLOVAKIA

| | |
|------------------------------------|----------------------|
| DATE ACCEDED TO THE CONVENTION | 4-26-1993 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 2-1-2001 |
| PATTERN OF NONCOMPLIANCE | JUDICIAL PERFORMANCE |

Slovakia’s noncompliance with the Convention in FY 2008 is evident in its judicial performance. The Department notes systemic, lengthy delays in judicial proceedings in Slovakia. To meet the Convention’s aim for the “prompt return” of children to their country of habitual residence, see Convention, art. 1(a), more efficient processing of Hague petitions is necessary.

In FY 2008, one case in particular demonstrates this judicial pattern of compliance. In this case, which began in FY 2006, a first hearing did not take place until eight months after the wrongful removal of the child. Although the Slovakian court ordered the child returned, the TP appealed the decision twice. The appellate court in the first appeal, which it did not hear until nine months after the original decision, upheld the return. However, the court in the second appeal, heard yet another eight months afterwards, overturned the return order based on Article 13(a) of the Convention, which states that the child’s preferences may be considered once he reaches sufficient “age and degree of maturity.” As a result, the child remains in Slovakia.

Ultimately, the length of the judicial process, which spanned more than two years in this case, may have led to the denial of the return. The Convention envisions returns taking place within six weeks. In the Department’s view, when a lengthy court process enables a court to deny a child’s return to his country of habitual residence, the principles of the Convention are not satisfied.

The Department notes positively that Slovakia plans to redesign its processes under the Convention during FY 2009, so that one centralized court will hear all Convention cases. This will allow specialist judges to develop expertise on the Convention and make rulings in the future that are in line with the Convention’s requirements.



SWITZERLAND

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|---|---|
| DATE ACCEDED TO THE CONVENTION/ DATE OF ENTRY INTO FORCE WITH U.S. | 7-1-1998 |
| PATTERN OF NONCOMPLIANCE | LAW ENFORCEMENT JUDICIAL PERFORMANCE |

Switzerland demonstrated patterns of noncompliance with the Convention during FY 2008 in judicial performance and law enforcement performance. The USCA noted delays in the overall processing of Convention applications. For example, even though a Swiss court issued an order for return of a child to the United States under the Convention in November 2007, the order had not been enforced as of the end of FY 2008. Other delays have also presented serious concerns, as proceedings in lower courts often go on for weeks or months.

Swiss courts often treat Convention cases as custody decisions, invoking the child's "best interests" as a reason for denying return, and performing merits-based custody assessments. Such assessments are outside the purview of the Convention. See Convention, art. 16 (court deciding Convention application shall not decide merits of custody rights).

Additionally, Swiss courts - up to and including Switzerland's highest court, the Federal Court - often show bias toward the TP, especially when the TP is the mother. High-level Swiss officials have defended this practice. In one case (discussed in more detail in the "Notable Cases" section of this report), the Swiss Federal Court inappropriately cited the "special relationship" between mothers and young children as influencing its decision to uphold the lower court's denial of the LBP's application for return of the child to the United States.

The Department also observes that the Swiss authorities are reluctant to actively enforce orders granting return to the United States or access to the child by the LBP. Law enforcement has not demonstrated a great deal of enthusiasm in seeking out and arresting TPs who evade law enforcement and ignore court orders for the return of an abducted child. Law enforcement has made only cursory efforts to locate TPs and abducted children. Although the USCA and the Swiss Central Authority (SCA) maintain a cooperative relationship with clear and responsive communication, effective facilitation of case monitoring, and oversight, the SCA tends to be reactionary rather than proactive in encouraging authorities to enforce orders under the Convention. The Department realizes that such encouragement can be a challenge, as the SCA's role is that of an active facilitator. However, more active engagement on the part of the SCA would likely improve execution of law enforcement's execution of its Convention responsibilities.



COUNTRY NARRATIVES:

PATTERNS OF NONCOMPLIANCE

As of the end of the reporting period, the Swiss legislature was drafting legislation that would implement a more effective application of Convention proceedings in Switzerland. The USCA hopes that this new legislation will help the Swiss authorities address the compliance problems identified in this report.



VENEZUELA

| | |
|------------------------------------|--|
| DATE ACCEDED TO THE CONVENTION | 10-16-1996 |
| DATE OF ENTRY INTO FORCE WITH U.S. | 1-1-1997 |
| PATTERN OF NONCOMPLIANCE | CENTRAL AUTHORITY PERFORMANCE; JUDICIAL PERFORMANCE |

As in FY 2007, Venezuela demonstrated patterns of noncompliance in the areas of Central Authority performance and judicial performance in FY 2008. Channels of communication improved between the USCA and the Venezuelan Central Authority (VCA) at the beginning of FY 2008, but by the latter part of the reporting period, the USCA had difficulty contacting the VCA. One of the key operating principles listed in the Hague Permanent Bureau's *Guide to Good Practice* for Central Authority performance is the need for cooperation between Central Authorities, including clear and effective communication.

Venezuelan judges often misinterpret return and access applications under the Convention as a request for them to determine custody or visitation rights, in contravention of the Convention. See Convention, art. 16 (court deciding Convention application shall not decide merits of custody rights). For example, in one case, the TP filed for custody of the child at the same time the LBP filed an application for return of the child to the United States under the Convention. The Venezuelan judge refused to hear the Convention application until custody was determined. The USCA sent a letter reminding the lower court judge that, under Article 16 of the Convention, a court shall not decide on the merits of a custody claim until it has decided not to return the child under the Convention. In this case, the lower court ordered the child returned to the LBP in the United States, but an appellate court overturned the decision. This case was still pending at the close of the reporting period.

The Venezuelan Ministry of Foreign Affairs has no specific authority to enforce Venezuelan judges' decisions and compliance with Convention cases, but it engages in continued training of judges with regard to the Convention. The USCA also observed that there may be a nationalistic bias among judges in favor of the Venezuelan parent.



NOTABLE ISSUES & INITIATIVES

THE U.S. CENTRAL AUTHORITY AND INCOMING CASES

From 1995 through April 1, 2008, the Department partnered with NCMEC to handle incoming abduction cases. This public-private partnership, which was funded through a grant from the Department of Justice's Office of Juvenile Justice and Delinquency Prevention, assisted the Department in meeting the United States' treaty obligations where children had been wrongfully removed to or wrongfully retained in the United States from a Convention partner country. See Convention, art. 7(a).

Beginning April 1, 2008, the USCA resumed handling all incoming abduction cases. The USCA developed a special unit to handle incoming cases, consisting of a division chief, a lead specialist, case officers, and case assistants. The Department thanks NCMEC for its work on incoming cases. The USCA continues to collaborate with NCMEC on IPCA cases, in particular with incoming cases where the child is wrongfully removed to or wrongfully retained in the United States from a country that is not a party to the Convention.

SERVICES FOR INCOMING ABDUCTION CASES

The services that CI provides for incoming abduction cases include, but are not limited to the following:

- ▶ Accepting applications for return or access from foreign Central Authorities;
- ▶ Assisting LBPs in locating their children within the United States;
- ▶ Attempting to achieve the TP's consent for voluntary return of abducted children or the LBP's access to them;
- ▶ Assisting LBPs to find *pro bono*, reduced-fee, and full-fee legal representation in the United States; and
- ▶ Assisting with the return of abducted children to their country of habitual residence.

IPCA ON THE RISE

The USCA reported a dramatic increase in outgoing cases during FY 2008. Its records show 1,082 new outgoing cases in FY 2008, an increase of more than 36 percent compared to the 794 outgoing cases reported in FY 2007. In looking specifically at parties to the Convention, FY 2008 witnessed a 34 percent increase over FY 2007 with 776 cases, compared to FY 2007's 575 cases. For countries that are not parties to the Convention, FY 2008 witnessed an even higher increase over FY 2007 - 39 percent. There were 219 outgoing cases reported in FY 2007, compared to 306 reported in FY 2008.

NUMBER OF NEW OUTGOING IPCA CASES (CONVENTION AND NON-CONVENTION CASES):

| Fiscal Year | New Outgoing Cases |
|-------------|--------------------|
| FY 2003 | 670 |
| FY 2004 | 691 |
| FY 2005 | 689 |
| FY 2006 | 642 |
| FY 2007 | 794 |
| FY 2008 | 1,081 |

The USCA took an informal poll of other Central Authorities to determine if this trend exists worldwide. Thirteen countries responded to our request, and each noted an increase in its workload—ranging from 20 to 88 percent.

The USCA can only speculate on the reason for this increase in cases. The USCA's abduction officers noted more parents citing financial concerns as the reason why TPs have removed the children from the United States. LBPs sometimes learn that TPs liquidated all joint resources and emptied their bank accounts before leaving with the children. In these cases, the LBP faces multiple issues - the loss of a child, the threat of being destitute, and inadequate resources to pursue the child's return. With the increase in cases, ensuring compliance with the Convention has become an even greater challenge for some of our Convention partners,

who may lack the resources to increase central authority staffing. As delays lengthen, the LBPs become frustrated with a system that often does not move smoothly, swiftly, or efficiently. Frustration may lead more parents to turn to extraordinary measures - such as re-abducting the child - which the Department strongly discourages.

PREVENTING INTERNATIONAL PARENTAL CHILD ABDUCTION

The USCA maintains a dedicated unit specializing in the prevention of international parental child abductions. The USCA receives 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. In response, the USCA describes strategies and online resources to prevent such abductions. The USCA discusses 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, http://travel.state.gov/family/abduction/abduction_580.html.

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. 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 4,258 children into the CPIAP in FY 2008, an increase of nearly 40 percent over FY 2007

Since the program's inception, more than 20,000 cases have been opened through CPIAP. Daily requests for assistance and alerts on children's passports require extensive customer service.

DUAL NATIONALITY AND INTERNATIONAL CHILD ABDUCTION

Many U.S. citizen children who were victims of IPCA possess or have a claim to dual nationality—that is, they are, or may be, both a U.S. citizen and a citizen of another country at the same time. Moreover, a child may have the nationality of a certain country by automatic operation of that country's citizenship laws, even where the child or parents do not want to retain that country's citizenship. For example, a child born in a foreign country to U.S. citizen parents may be both a U.S. citizen and a citizen of the country of birth. The more common scenario occurs when a child is born in the United States to parents who emigrated from a country in which the parents' citizenship is automatically transmitted to the child regardless of where the child was born, and cannot be renounced. Such a child is both a U.S. citizen and a citizen of that other country.

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 will not issue a passport to a child without the consent of both parents.

The United States cannot, however, prevent embassies and consulates of other countries from issuing their passports to children who are also their nationals. By showing this passport to airline officials at the airport, a TP may be able to wrongfully remove a dual-national child from the United States without that child ever possessing a U.S. passport.

NOTABLE ISSUES & INITIATIVES

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 judge 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 be able to enter the United States to participate in legal proceedings; and arrangements for payment by the LBP of long-term spousal support for the returning TP. Although undertakings may be useful as a tool 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 obligations of the Convention. The USCA supports the limited use of undertakings when they: (1) are appropriate in scope; (2) facilitate the expeditious return of the child as required under Article 12 of the Convention; (3) minimize the applicability of one of the exceptions to return of the child 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 the FY 2008 reporting period, the USCA noted undertakings attached to orders in 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. 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 our treaty partners in order to facilitate the child’s safe return. See Convention, art. 7. However, one of the purposes behind the requirement of prompt return of the child, see Convention, art. 1(a), 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 unless the child’s welfare is seriously in danger, and there is a reasonable concern that U.S. family services authorities may not adequately protect the child or returning parent.

CASE ILLUSTRATION:

The USCA opened a case during the reporting period in which both parents were involved in U.S. divorce proceedings when the mother fled to a Convention country with their biological daughter and her son from a previous relationship. The mother insisted that this foreign location was the proper jurisdiction for child custodial matters to be decided. In response, the father filed a petition in January 2008 for the return of his daughter under the Convention.

In April 2008, before rendering a decision on the Convention petition, court in the country to which the girl had been abducted asked the father for some additional information before it would decide the merits of the petition, including: the father’s current financial situation; his capacity to support the mother and children in the U.S.; information as to whether or not the mother could renew her teaching license in the U.S. and if the father could make inquiries about the mother’s capacity to renew this license; and if a warrant had been issued for the mother’s arrest or if one would be issued in the future. (cont’d page 30)

⁴See 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).



NOTABLE ISSUES & INITIATIVES



CASE ILLUSTRATION: (cont'd from page 28)

In December 2008, the court asked the father to provide more information, so it could address the financial and social impact of the mother, son, and daughter's return to the United States. It asked the father to assess his ability to: provide the cost of airfare for the mother, her daughter, and her son; provide a timeframe for when transportation could be arranged; provide living accommodations for the mother and children, or temporarily vacate his home for their use; provide for the living expenses of the mother and children for the first few months they were in the United States; pay child support; and provide information regarding the mother's capacity to finance her return to the U.S. with the children.

Although the foreign court issued an order for return in this case, it also set conditions for the father which, in the view of the USCA, exceeds the scope of what is required under the Convention. Undertakings such as these create an additional barrier to returning children to the country of habitual residence, which under the Convention is the appropriate jurisdiction for determining custody matters.

THE GEOGRAPHY OF THE CONVENTION

The United States partners with 68 countries which are parties to the Convention. The vast majority of these countries are in Europe, North America, and South America. Only a few countries on these three continents have not ratified or acceded to the Convention. Moreover, only a handful of U.S. Convention partners fall outside those three continents: Australia, Burkina Faso, Hong Kong and Macau, Israel, Mauritius, New Zealand, South Africa, Sri Lanka, and Zimbabwe.

The USCA would like to see the Convention widely adopted by countries in continents other than Europe, North America, and South America. Expanding the Convention deeper into Africa and Asia would provide many LBPs with an important civil mechanism to seek the return of their children, one that currently does not exist. Countries not party to the Convention with the highest incidence of reported abductions from the United States include: China, Egypt, Ghana, India, Jamaica, Japan, Jordan, Kenya, Lebanon, Morocco, Nigeria,

Pakistan, the Philippines, Russia, Saudi Arabia, South Korea, Syria, and the United Arab Emirates. Notably, a few of these countries - China, India, Kenya, and the Philippines - partner with the United States under another Hague Convention aimed at protecting children: the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption.

In FY 2009, Principal Deputy Assistant Secretary of State for Consular Affairs Michael D. Kirby and a representative from the USCA attended the Third Malta Judicial Conference on Cross-Frontier Family Law Issues in St. Julian's, Malta. Attendees included many countries from the Middle East, East Asia, and South Asia that are not currently parties to the Convention. The Conference provided the opportunity to urge these countries to join the Convention. Detailed information about this conference, called the "Malta III Conference," will appear in next year's compliance report.



NOTABLE CASES

NOTABLE CASE 1: AUSTRIA

SUBJECT: ENFORCEMENT OF RETURN ORDERS;
EUROPEAN COURT OF HUMAN RIGHTS
JUDGMENTS BEING IGNORED

This is one of the most notorious and longstanding cases, and it clearly shows the importance of enforcement of court orders for successful application of the Convention. The child was born in September 1994 in Michigan, and was abducted by her mother from the United States to Austria in October 1995. Despite an order of return under the Convention and two judgments from the European Court of Human Rights in the LBP's favor, the child has not been returned to the United States and the LBP has never had more than strictly supervised visits with his daughter in Austria.

In an effort to secure an enforceable right to access and more liberal access rights, the LBP filed a new access application under the Convention in April 2005. Before the first hearing could be held, the child declared that she would no longer accept visits with her father. The court then appointed a psychologist who interviewed the child and the parents, and concluded that it would not be in the child's best interest for the LBP's visits to continue. In two additional hearings, the court failed to make a final ruling on visitation and continued the status quo of strictly supervised visits. Putting the burden on the LBP to repair his relationship with his daughter, the court suggested that the LBP appease the TP by helping to get criminal abduction charges against her in the United States dropped, and by removing all photos and references to his daughter on his website. The LBP complied, but nothing changed. The Austrian court in spring 2006 ordered a three-month recess to allow the child and LBP to reestablish a relationship.

The LBP reported a hopeful holiday visit with his daughter in Austria in December 2006. However, since that time the TP has permitted

no further visits with the child. Finally, in October 2007, the child informed the LBP by email that she wanted no more contact with him. The LBP, fearing that any new approach to the Austrian court would mean a final ruling against him, chose to discontinue his legal pursuit of access to his daughter. He concluded that continuing court proceedings would cause further alienation from his daughter and jeopardize any possibility of rebuilding a relationship.

Update after reporting period: The Committee of Ministers, the body responsible for enforcement of orders of the European Court of Human Rights, was scheduled to discuss this case in mid-March 2009. The USCA has not received any further updates on this case.

NOTABLE CASE 2: BRAZIL

SUBJECT: DELAY OF CASE RESULTING IN CHILD'S
RE-SETTLEMENT

This case is notable in that it illustrates the USCA's concern regarding the judiciary's lack of knowledge of the jurisdictional nature of the Convention and the judiciary's issuance of orders that are not in line with the Convention's requirements and principles. The TP took the child to Brazil for a brief visit in 2004, as agreed upon with the LBP, but never returned to the United States. The LBP filed a Convention petition in January 2005 for the return of the child to the United States. The Brazilian federal attorney's office, in turn, filed the application with a Brazilian federal court on September 9, 2005. In the meantime, the TP filed an application for custody in a Brazilian state court, which on November 11, 2005, ordered custody in favor of the TP and ruled that the child not be returned to the United States.

In January 2006, the LBP attended a federal hearing in Brazil where he was given the opportunity to provide the federal judge with a

personal testimony. In June 2006, the case was referred to a federal appellate court in order to obtain guidance on whether the state court or the federal court was properly seized with this case. In November 2006, the appellate court confirmed the lower federal court's jurisdiction over the case, and remanded it to the federal court for a decision. In June 2007, the federal court ordered the return of the child to the United States. The TP then appealed this decision. The BCA informed the USCA that the return order was immediately enforceable, despite the pending appeal, and that the LBP should come to Brazil to pick up his child. Before this could happen, however, the lower federal court decided to retain the child in Brazil, awarding temporary custody of the child to the TP while the appeal was pending.

On September 30, 2008, the appellate court reversed the ruling of the lower federal court, finding that, while the LBP was a wonderful father, the child had become settled in Brazilian culture and should remain in Brazil.

NOTABLE CASE 3: SWITZERLAND

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| SUBJECT: | DENIAL OF RETURN; EUROPEAN COURT OF HUMAN RIGHTS JUDGMENT ENTERED IN LBP'S FAVOR |
|----------|--|

This case is notable because an improper application of the Convention at the trial court level and delays in processing the case resulted in the denial of the child's return as well as denial of the LBP's right to interim access to the child. Of particular concern is that these trial court errors were not remedied by any of the higher level courts as the LBP appealed his case all the way through the Swiss court system. In addition, after the reporting period, the European Court of Human Rights (ECHR) issued a decision in the LBP's favor. This decision is described in the "Update" section immediately below.

The TP wrongfully retained the child in Switzerland on September 27, 2005, when she promptly began divorce proceedings in the

Baden district court and asked for custody of the child. The LBP filed a return application under the Convention on October 12, 2005. The Baden district court improperly joined the divorce proceedings to the Hague return proceedings. This had the effect of delaying the LBP's return proceedings and of improperly denying the father interim access to his child. In February 2006, the Baden district court denied the LBP's request to return the child to the United States. The court found that the LBP had failed to prove that he had not acquiesced to the child relocating permanently to Switzerland. Thus, the court found that the retention of the child in Switzerland was not wrongful and the Convention did not apply. In April 2006, the Canton of Aargau Court of Appeal upheld the district court's ruling, as did Switzerland's highest court of appeal, the Federal Court.



NOTABLE CASES

The LBP then petitioned the ECHR for review of these rulings under the European Convention for the Protection of Human Rights and Fundamental Freedoms, a treaty to which Switzerland is a party.

While these proceedings were working their way through the Swiss court system, the LBP also petitioned the lower court to issue an interim ruling for access, to ensure that he would have contact with his child through the course of the legal proceedings. The local Swiss court took no action on this access request, however, on the ground that matters of custody had been suspended while the return petition was pending. Consequently, the TP has been able unilaterally to control the LBP's access to his child, and has only permitted three visits since the legal proceedings commenced since the initial retention almost four years ago.

Update after reporting period: On November 6, 2008, the ECHR awarded monetary damages to the LBP, unanimously holding that the Swiss courts had misapplied the Hague Convention to the detriment of the LBP, and had created unjustified delays in the proceedings. The ECHR determined that the Swiss courts imposed procedural barriers to swift implementation of the Hague Convention as well as misapplied the Convention by reversing who had the burden of proving that the LBP had acquiesced to removal or retention. According to the ECHR, these errors amounted to a violation of Switzerland's 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.

The Swiss government decided not to pursue its available avenues of further review within the ECHR, and agreed to pay the damages and costs ordered by the Court. Despite the ECHR decision, the LBP has still been unsuccessful in getting the Swiss court to reopen the decision to deny return of his child under the Convention or to assist him in getting access to his child through the Swiss courts.

NOTABLE CASE 4: BERMUDA

| | |
|----------|---|
| SUBJECT: | DENIAL OF RETURN; MISINTERPRETATION OF CONVENTION |
|----------|---|

This case is notable because the Bermudan courts misinterpreted the Convention, which resulted in a denial of the return. This is also the first Convention application filed in Bermuda since it became a Convention partner with the United States in March 1999. This case illustrates the importance of having a structure in place to process Convention applications, and the importance of adhering to the guidelines and policies of the Convention.

In August 2007, the child's mother allowed her sister to take the child to Bermuda for a two-week visit. The aunt then asked the mother (the LBP) to keep the child in Bermuda until December 2007, and the LBP agreed. Although the LBP had legal custody of the child in the United States, the aunt (the TP) then filed for temporary custody in Bermuda. The Bermuda Department of Child and Family Services (BCFS) became involved due to the TP's allegations of child abuse by the LBP in the United States.

BCFS then contacted the NGO ISS to request its assistance in arranging for a "home study" of the LBP. When a foreign court or foreign social services agency requests a home study of a parent in the United States suspected of abuse, ISS typically contacts the child protective services agency in the state of the United States

where the LBP lives. The state child protective services agency, in turn, may contact the local or city social services agency, so that this latter agency may conduct the visit of the LBP's home, and do any other checks required as part of its report and recommendation. These home studies may include information on other adults in the household, family background, education, employment, finances, health, criminal background (if any), and home and community life. After the assessment is complete, the social services agency typically makes a recommendation for any improvements before a child will be considered for a return under the Convention. In this case, BCFS determined on the basis of the home study that the allegations of abuse against the LBP were well founded.

BCFS consequently filed a petition in the Bermudan courts against the LBP, citing abuse allegations. A custody hearing was held in Bermuda on November 5, 2007. A few days later, BCFS and

the Bermuda Central Authority (BCA) informed the USCA that the child would not be returned to the United States. They invoked Article 13(b) of the Convention even though an application for the child's return under the Convention had not yet been filed. Article 13(b) provides an exception to returning the child if "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." During the custody hearing, the Bermudan family court issued a 28-day emergency protection order against the LBP.

The LBP filed an application under the Convention on January 24, 2008. The BCA falls under the Bermudan Attorney General's office. Since the Attorney General's office represented BCFS against the LBP regarding the allegations of abuse, it could not represent the LBP in



NOTABLE CASES

proceedings on her Convention application. Furthermore, the Attorney General's office decided not to submit the application to the courts, stating: "Based on the facts of the case, it is strongly suggested that it does not fall under the Hague Convention. The Convention is between the parents of the child and does not apply where another family member is retaining the child."

Update since the reporting period: Virginia Child Protective Services made five additional home-study visits at the LBP's home in the United States between September and December 2008. It forwarded a report to BCFS in December 2008. The USCA is waiting for a written response to the home-study assessment from BCFS. A court date is tentatively set for May 2009 for the return of the child to the United States.

NOTABLE CASE 5: THE NETHERLANDS

SUBJECT: CHILD AND TP LOCATED THROUGH INTER-AGENCY COLLABORATION

We take note of this case in order to illustrate the importance of collaboration among civil and law enforcement authorities in locating abducted children and enforcing court orders under the Convention.

The child in this case was born in November 2002, in the Netherlands, but her parents then moved to Hawaii. On July 3, 2005, the mother abducted the child from Hawaii to the Netherlands. On November 21, 2005, the LBP filed an application under the Convention for return of the child to the United States. This application was heard in Amsterdam district court on January 31, 2006. On February 13, 2006, the court ruled that the child must be returned to the LBP no later than February 23, 2006. The TP appealed, and on March 20, 2006, the appellate court heard the case. Based on the TP's argument that if the child were returned to the United States with the LBP, the TP may not be allowed to enter the United States to see the child, the appellate court delayed its decision on the TP's appeal against the district

court's return order until May 1. This six-week period was intended to allow the TP time to receive a nonimmigrant visa or "significant public benefit" parole from authorities of the United States. As the TP had not received permission to enter the United States by May 1, 2006, the appellate court again postponed its hearing and was set to reconvene to make a final determination on the appeal on June 9, 2006. On July 3, 2006, the appellate court reversed the district court's return order, holding that under Article 13(b) of the Convention the TP's inability to enter the United States would lead to a separation of the mother and child and thereby "place the child in an intolerable situation." See Convention, art. 13(b).

On February 7, 2007, the highest court in the Netherlands reversed the appellate court and ordered that, before February 21, 2007, the TP must hand the child over to the LBP. At that point, the TP and child went into hiding, and the LBP became the subject of several death threats. Fortunately, a simultaneous criminal case had been brought in Hawaii against the TP. Interpol issued a missing child notice as well as a warrant to trace, locate, and extradite the TP.

Update since the reporting period: Due to the collaboration of the Dutch Central Authority, the Dutch national police, and many other law enforcement entities, on October 8, 2008, the child was successfully located in the Netherlands, where she had just arrived with the TP.

Police learned that the TP and child had been in Portugal a few days earlier, but traveled to the Netherlands to obtain medical assistance for the child. The TP stated that she and her daughter had been in hiding in Portugal for the past 18 months. Accompanied by armed members of the Dutch national and Amsterdam police at Amsterdam airport on October 17, 2008, the child and the LBP boarded a flight back to the United States.

EFFORTS TO EXPAND AND STRENGTHEN THE CONVENTION

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. 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 states urging host governments to accede to the Convention. In addition, USCA personnel have met with officials from Pakistan, Jordan, South Korea, India, Saudi Arabia, and Japan about IPCA and the Convention. Assistant Secretary of State for Consular Affairs Janice L. Jacobs consistently raised the Convention in talks with foreign officials during FY 2008.

During FY 2008, 19 children returned to the United States under the Convention from Convention partners who acceded to the Convention during FY 2007. These 19 children were from Costa Rica, the Dominican Republic, El Salvador, Estonia, Guatemala, and Ukraine. These children were fortunate that their LBPs had the Convention, a civil mechanism that would not have been available to them prior to FY 2008, to facilitate their return to their country of habitual residence.

BILATERAL EFFORTS WITH CONVENTION PARTNERS

BILATERAL WORKING GROUPS

During FY 2008, the United States continued its longstanding bilateral meetings on Convention issues with Germany. Since these talks began in 2001, Germany has significantly improved its implementation of the Convention. The German government addressed previous problems with legally incorrect decisions in local courts by limiting the number of courts

with authority to hear Convention cases. It followed up with a plan for rigorous specialized training of a corps of judges authorized to hear such cases. Following the 2005 passage of Germany’s International Family Proceedings Act, which made German courts directly responsible for enforcement of return orders under the Convention, Germany’s Ministry of Justice undertook an effective program of outreach and training to ensure that the new law was implemented appropriately throughout the country. These changes have resulted in more returns of children and improved enforcement of court orders under the Convention.

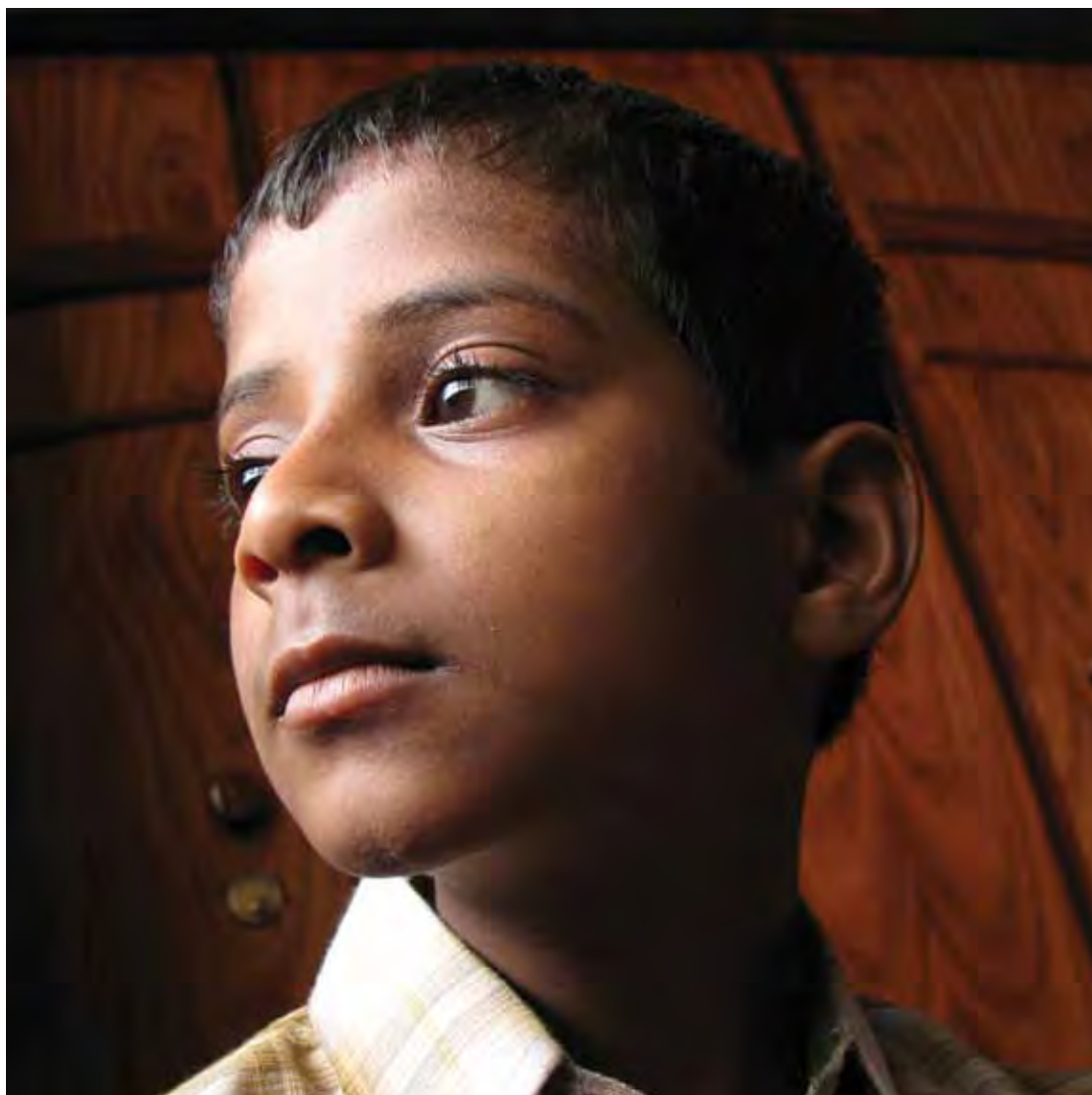
CONVENTION PARTNER EFFORTS

The Czech Parliament passed a law during the reporting period establishing a special court in Brno specifically to handle abduction cases. The law intends for the court to develop expertise on the Convention and handle cases expeditiously. Although the ultimate effects of the passage of this new law have yet to be realized, this is a positive step. Other Convention partners, such as Poland, Switzerland, and Mexico, are actively engaged in drafting or proposing legislation to develop guidelines to process Convention cases expeditiously.

Personnel from the USCA met with central authority representatives from Sweden, the Czech Republic, Costa Rica, the Dominican Republic, El Salvador, Poland, Canada, Chile, The Netherlands, Colombia, Venezuela, Germany, Belgium, and Brazil during FY 2008 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 help improve the operation of the Convention in Central and South America. Delegates from the USCA participated in conferences in Buenos Aires aimed at training judges, drawing up model implementing legislation, and developing programs to improve Convention performance.

EFFORTS TO EXPAND AND STRENGTHEN THE CONVENTION



ABDUCTIONS IN PROGRESS

Cooperation with U.S. Convention partners has been critical to stopping “abductions in progress.” If the USCA becomes aware that a parent may be in the process of abducting a child from the United States to another country, the USCA can work with U.S. law enforcement to stop the departure from the United States. Once an abductor is on the way to another country,

the USCA works with central authorities and law enforcement in Convention partner countries to intercept the TP. For example, if a TP changes flights at an airport in a Convention country, foreign central authorities may be able to stop the abduction in progress, provided the LBP submitted proper documentation.



USCA CASE NUMBER STATISTICS FOR FY 2008

| CONVENTION COUNTRY OR TERRITORY | OUTGOING CASES | | INCOMING CASES | |
|------------------------------------|----------------|-----------------|----------------|-----------------|
| | NEW | NO. OF CHILDREN | NEW | NO. OF CHILDREN |
| ARGENTINA | 11 | 15 | 3 | 5 |
| AUSTRALIA | 18 | 26 | 9 | 14 |
| AUSTRIA | 3 | 7 | 2 | 3 |
| BAHAMAS | 9 | 11 | 2 | 5 |
| BELGIUM | 2 | 2 | 3 | 3 |
| BELIZE | 6 | 8 | 0 | 0 |
| BOSNIA-HERZEGOVINA | 1 | 1 | 1 | 2 |
| BRAZIL | 21 | 25 | 3 | 5 |
| BULGARIA | 2 | 3 | 1 | 1 |
| BURKINA FASO | 0 | 0 | 0 | 0 |
| CANADA | 57 | 83 | 19 | 27 |
| CHILE | 1 | 2 | 3 | 4 |
| COLOMBIA | 17 | 22 | 12 | 16 |
| COSTA RICA | 15 | 18 | 1 | 2 |
| CROATIA | 1 | 1 | 2 | 2 |
| CYPRUS | 0 | 0 | 1 | 2 |
| CZECH REPUBLIC | 3 | 5 | 2 | 2 |
| DENMARK | 0 | 0 | 5 | 7 |
| DOMINICAN REPUBLIC | 25 | 39 | 9 | 10 |
| ECUADOR | 10 | 14 | 3 | 3 |
| EL SALVADOR | 10 | 14 | 1 | 3 |
| ESTONIA | 1 | 2 | 0 | 0 |
| FINLAND | 4 | 4 | 1 | 2 |
| FRANCE | 11 | 17 | 13 | 16 |
| GERMANY | 34 | 49 | 27 | 36 |
| GREECE | 0 | 0 | 1 | 1 |
| GUATEMALA | 13 | 14 | 1 | 1 |
| HONDURAS | 9 | 13 | 1 | 1 |
| HONG KONG, SAR | 0 | 0 | 0 | 0 |
| HUNGARY | 2 | 3 | 2 | 3 |
| ICELAND | 1 | 2 | 1 | 1 |
| IRELAND | 11 | 19 | 4 | 7 |
| ISRAEL | 12 | 18 | 5 | 9 |
| ITALY | 5 | 6 | 10 | 18 |
| LATVIA | 0 | 0 | 1 | 1 |

| CONVENTION COUNTRY OR TERRITORY | OUTGOING CASES | | INCOMING CASES | |
|------------------------------------|----------------|-----------------|----------------|-----------------|
| | NEW | NO. OF CHILDREN | NEW | NO. OF CHILDREN |
| LITHUANIA | 0 | 0 | 2 | 3 |
| LUXEMBOURG | 0 | 0 | 0 | 0 |
| MACAU, SAR | 0 | 0 | 0 | 0 |
| MACEDONIA | 3 | 4 | 0 | 0 |
| MALTA | 0 | 0 | 0 | 0 |
| MAURITIUS | 0 | 0 | 0 | 0 |
| MEXICO | 316 | 533 | 121 | 174 |
| MONACO | 0 | 0 | 0 | 0 |
| MONTENEGRO | 0 | 0 | 0 | 0 |
| NETHERLANDS | 6 | 10 | 6 | 7 |
| NEW ZEALAND | 4 | 6 | 6 | 7 |
| NORWAY | 5 | 6 | 1 | 1 |
| PANAMA | 6 | 8 | 4 | 5 |
| PARAGUAY | 1 | 2 | 0 | 0 |
| PERU | 11 | 12 | 3 | 5 |
| POLAND | 8 | 8 | 7 | 7 |
| PORTUGAL | 2 | 2 | 0 | 0 |
| ROMANIA | 4 | 5 | 0 | 0 |
| ST. KITTS & NEVIS | 0 | 0 | 1 | 2 |
| SAN MARINO | 0 | 0 | 0 | 0 |
| SERBIA | 2 | 3 | 0 | 0 |
| SLOVAKIA | 3 | 3 | 0 | 0 |
| SLOVENIA | 0 | 0 | 0 | 0 |
| SOUTH AFRICA | 5 | 6 | 5 | 6 |
| SPAIN | 8 | 11 | 4 | 6 |
| SRI LANKA | 1 | 1 | 0 | 0 |
| SWEDEN | 8 | 11 | 8 | 12 |
| SWITZERLAND | 3 | 3 | 1 | 1 |
| TURKEY | 9 | 13 | 1 | 2 |
| UKRAINE | 7 | 8 | 1 | 2 |
| UNITED KINGDOM | 42 | 53 | 21 | 31 |
| URUGUAY | 0 | 0 | 0 | 0 |
| VENEZUELA | 6 | 8 | 3 | 3 |
| ZIMBABWE | 1 | 1 | 0 | 0 |
| TOTALS | 776 | 1160 | 344 | 486 |

USCA CASE NUMBER STATISTICS FOR FY 2008

| NON-CONVENTION COUNTRY OR TERRITORY | NO. NEW OUTGOING CASES | NO. CHILDREN IN NEW OUTGOING CASES |
|-------------------------------------|------------------------|------------------------------------|
| ALBANIA* | 1 | 3 |
| ALGERIA | 2 | 5 |
| ARMENIA* | 1 | 1 |
| BANGLADESH | 2 | 2 |
| BARBADOS | 1 | 1 |
| BELARUS* | 1 | 2 |
| BOLIVIA | 4 | 6 |
| CAMBODIA | 2 | 2 |
| CHINA | 12 | 14 |
| DOMINICA | 1 | 1 |
| EGYPT | 10 | 21 |
| ETHIOPIA | 3 | 3 |
| GHANA | 6 | 6 |
| GRENADA | 2 | 2 |
| GUINEA | 1 | 1 |
| GUYANA | 3 | 4 |
| HAITI | 4 | 4 |
| INDIA | 35 | 45 |
| INDONESIA | 1 | 1 |
| IRAN | 5 | 9 |
| IRAQ | 4 | 8 |
| JAMAICA | 15 | 20 |
| JAPAN | 37 | 57 |
| JORDAN | 11 | 15 |
| KENYA | 4 | 8 |
| KUWAIT | 2 | 2 |
| LEBANON | 10 | 19 |
| KUWAIT | 3 | 3 |
| LEBANON | 10 | 19 |

| NON-CONVENTION COUNTRY OR TERRITORY | NO. NEW OUTGOING CASES | NO. CHILDREN IN NEW OUTGOING CASES |
|-------------------------------------|------------------------|------------------------------------|
| LIBERIA | 1 | 1 |
| MALAYSIA | 1 | 3 |
| MALI | 1 | 3 |
| MOROCCO | 6 | 10 |
| NETHERLANDS ANTILLES | 1 | 1 |
| NICARAGUA* | 1 | 2 |
| NIGERIA | 11 | 17 |
| PAKISTAN | 9 | 12 |
| PHILIPPINES | 15 | 17 |
| RUSSIA | 14 | 17 |
| SAUDI ARABIA | 3 | 7 |
| SENEGAL | 3 | 4 |
| SIERRA LEONE | 1 | 1 |
| SINGAPORE | 2 | 5 |
| SOUTH KOREA | 4 | 4 |
| ST. LUCIA | 1 | 1 |
| ST. MAARTEN | 1 | 1 |
| SYRIA | 6 | 12 |
| TAIWAN | 3 | 4 |
| THAILAND* | 8 | 10 |
| THE GAMBIA | 3 | 5 |
| TRINIDAD & TOBAGO* | 7 | 8 |
| TUNISIA | 6 | 11 |
| UNITED ARAB EMIRATES | 6 | 14 |
| UZBEKISTAN* | 2 | 3 |
| YEMEN | 2 | 2 |
| ZAMBIA | 2 | 3 |
| TOTALS | 300 | 440 |

* Countries that have acceded to the Convention but are not currently treaty partners with the United States because the process envisioned by Article 38 of the Convention has not been finalized.

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 has been the practice in previous reports, the Department is reporting as “resolved” those cases the USCA has determined to be “closed” as Convention cases, or cases that have become “inactive.” “Closed” and “inactive” are technical designations, and do not necessarily mean an end to the Department’s support of an LBP’s efforts to resolve a dispute involving an abduction or wrongful retention. The USCA closes or inactivates Convention cases for a variety of reasons. These include the return of the child; parental reconciliation or agreement; a parent’s withdrawal of the request for assistance; an inability to contact the parent requesting USCA assistance after numerous attempts over a two-year period; exhaustion of all judicial remedies available under the Convention; the child reaches 16 years of age (see Convention, art. 4 (The Convention ceases to apply once a child attains the age of 16)); or (in appropriate cases), the granting and effective enforcement of access rights. In all such cases, regardless of the outcome, no further proceedings under the Convention are anticipated. Treating these cases as “resolved” and closing them as Convention cases is consistent with the practice of other countries that are Convention parties.

The USCA marks a case as “inactive” when, in the absence of such definitive circumstances, the facts of the case do not allow, or the applicant parent does not permit, a further reasonable pursuit of the case. One year after inactivation, and in the absence of additional requests for assistance by the LBP, the USCA closes inactive cases. If a relevant change in material circumstances occurs thereafter, the

USCA would always consider reopening a case. Increasingly, the USCA does reopen inactive cases based on a request from the abducted child. As these children mature, they may seek U.S. government assistance for obtaining greater access to the LBP.

Under the Convention, return and access applications may also be filed either with the central authority of the country in which the child is located, or directly with a properly empowered court in that country. See Convention, art. 8. Accordingly, LBPs may (and frequently do) pursue the return of a child under the Convention without involving the USCA. In these circumstances, the USCA may never learn of such applications or their eventual disposition. This report, therefore, cannot give a complete picture of the outcome of all Convention applications for the return of children to the United States.

Taking into account the above clarifications, as of September 30, 2008, there were 67 applications for return in USCA records 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.

The 67 applications identified below that remained unresolved 18 months after the date of filing, as of September 30, 2008, involved 14 countries: Argentina, Austria, Brazil, Greece, Honduras, Israel, Mexico, Panama, Poland, Slovakia, 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 below.

The exhaustion of all judicial remedies available under the Convention may result in the USCA considering as “closed” a case that has been resolved in a way that is unsatisfactory to the applicant parent and the USCA. Even when a case for the return of a child under the Convention has been

closed, however, the USCA continues to provide assistance to the LBP by helping to facilitate access to a child (which may be sought under or independently of the Convention), reporting on the welfare of the child, or assisting the parent to achieve a more satisfactory solution through non-Convention remedies. In such instances, the USCA treats the case as an open “non-Convention” case for return or access, depending on the parent’s goals. When a foreign court decision on the Convention aspects of a case indicates a misunderstanding of or a failure to properly apply the Convention’s terms, the Department may register its concern and dissatisfaction with the decision through both the foreign central authority and diplomatic channels. The same is true in circumstances involving the failure by administrative or other executive officials to effectively enforce court or other relevant orders arising out of applications under the Convention. The Secretary of State, other senior Department officials, U.S. ambassadors abroad, and U.S. consuls frequently raise IPCA issues and specific cases with appropriate foreign government officials.

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.

| ARGENTINA: CASE 1 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2005 |
| DATE CONVENTION APPLICATION FILED | 6-2006 |
| HAS CHILD BEEN LOCATED? | YES |

In September 2005, the TP picked up the children from school, as agreed to by the LBP, so they could spend the day with him. The TP agreed to return the children to school the next day, but took them back to Argentina instead. The LBP, the TP, and the children were all in the United States as undocumented aliens. A court in the United States had previously granted the LBP primary custody. The TP has raised a defense under Article 13 of the Convention,

claiming that the LBP has a criminal record and has abandoned the children. See Convention, art. 13(b) (exception to return of child where “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 children informed the court that they wanted to remain with the TP. The court has yet to rule on the Convention application.

AUSTRIA: CASE 1

Please see the “Notable Cases” section of this report for more information on Austria Case 1 on page 32.

BRAZIL: CASE 1

Please see the “Notable Cases” section of this report for information on Brazil Case 1 on page 32.

BRAZIL: CASE 2

| | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2007 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP took the child to Brazil for a three-month visit. The TP then called the LBP to say that her brother was very sick and she had decided to stay in Brazil. The TP told the LBP that, if he wanted to see his son, he would have to travel to Brazil. The LBP then filed an application for return of the child under the Convention, which was transmitted to the BCA. The BCA forwarded the application to the federal attorney’s office, which then filed it in federal court. An Interpol “yellow notice” was issued for the child, since at one point the TP was considering moving to Italy for a job opportunity. Subsequently, the TP told the LBP not to travel to Brazil or she would have him arrested. In January 2008, the LBP told the USCA that the TP had filed for custody and child support in a Brazilian family court.

UNRESOLVED RETURN APPLICATIONS

The USCA notes that if the Brazilian family court decided on the merits of custody while the Convention application is pending, it would be in violation of Article 16 of the Convention, which dictates that courts “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.” The Brazilian federal court with jurisdiction over the Convention application held a hearing on March 11, 2008.

Update after reporting period: In February 2009, the Brazilian federal attorney’s office informed the USCA that it may take two years or more until the federal court reaches a decision, as Convention cases are relatively new to Brazilian judges.

| BRAZIL: CASE 3 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 8-2007 |
| HAS CHILD BEEN LOCATED? | YES |

The TP had physical custody of the child following the parents’ divorce on January 19, 2000. She informed the LBP of her intention to go to Brazil with the child for a month, but instead stayed in Brazil permanently. The TP has repeatedly been untruthful with the LBP about her plans to return to the United States with the child. The LBP hesitated in filing an application for return of the child under the Convention, hoping that the TP would return the child voluntarily. On February 7, 2006, a court in the United States, in *ex parte* proceedings (proceedings where only one party is present) granted the LBP sole legal and physical custody of the child. On November 1, 2007, the LBP’s Convention application was forwarded to the Brazilian federal prosecutor’s office. The BCA notified USCA that it would take some time to review the application due to an overload in cases. On August 15, 2008, the BCA informed the USCA that no court hearing has yet been scheduled.

| BRAZIL: CASE 4 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2004 |
| DATE CONVENTION APPLICATION FILED | 9-2004 |
| HAS CHILD BEEN LOCATED? | YES |

On June 16, 2004, the TP and the child traveled to Brazil and were scheduled to return on July 11, 2004. On June 18, 2004, the TP called the LBP from Brazil and told him that she wanted a divorce. The TP called the LBP demanding that he travel to Brazil to meet with her attorney and sign papers finalizing the divorce and giving her full custody of their child, which he refused to do. August 2004, the LBP obtained sole legal and physical custody of the child in *ex parte* proceedings before a state court in the United States. The state court in the United States ordered the TP to return the child to the LBP in the United States immediately. The TP refused to cooperate with the order and remained in Brazil. At that time, the USCA noted with concern that on January 6, 2005, the BCA specified it would no longer monitor the case since the LBP had hired a Brazilian private attorney.

As of FY 2008, the Brazilian judges in this case had not issued rulings in line with the Convention’s requirement that the child be returned to his country of habitual residence, the United States. The courts invoked the exception to return in Article 12 of the Convention, which allows a court not to order return if it finds that the child has become “settled” in his or her new environment, and Article 13(b), which allows a court not to order return where there is a grave risk of physical or psychological harm upon the child’s return. On several occasions, the LBP has appealed these unfavorable rulings to the Superior Judicial Tribunal in Brasilia, but that body twice upheld the lower court rulings. In August 2008, the TP died while giving birth to a daughter with a new Brazilian husband. This husband later sought and achieved temporary custody of the child from a state family court, and initiated proceedings to legally adopt the child and remove the LBP’s name from the child’s birth certificate.

Update after reporting period: Despite early rulings against him, the LBP continued to press his case in the Brazilian courts, winning in February 2009 a unanimous ruling from the Superior Judicial Tribunal that jurisdiction did not properly lie in the state courts of Rio de Janeiro, but instead in the federal courts. The federal court in Rio de Janeiro seized of the case promptly ordered that the LBP be able to visit the child, and has enforced this order to allow meaningful visits between father and son. The LBP's return application under the Convention is currently pending before this lower federal court, and the USCA is cautiously optimistic that this court will correctly apply the Convention and order the child returned to the United States.

| BRAZIL: CASE 5 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2004 |
| DATE CONVENTION APPLICATION FILED | 2-2005 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abandoned the child when she was six months old and the LBP obtained full physical and legal custody over her. Later, by mutual agreement, the parents shared custody for the four months prior to the abduction. However, the TP did not have permanent residence status in the United States, which made it difficult for the TP to maintain contact with the child. Under the parents' agreement, they were to hand the child over to one another in a public place. On December 3, 2004, when the LBP went to pick up his daughter after a routine visit with the TP, the TP and child did not show up at the designated meeting place. The TP had obtained a Brazilian passport for the child using a forged consent from the LBP, and had fled with her to Brazil. On October 11, 2005, a court in the United States, after ex parte proceedings, granted the LBP temporary sole custody of the child. The TP was located with the child in Brazil on July 27, 2005. The LBP brought an application under the Convention for return of the child.

Update after reporting period: In January 2009, a Brazilian lower court denied the LBP's application for return of the child, ruling that the child had already become "settled" in Brazil. See Convention, art. 12 (setting forth this exception). The BCA asked the USCA if the LBP would be interested in temporary visitation rights while the case is still pending with the court.

| BRAZIL: CASE 6 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 10-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP took the children to Brazil on June 10, 2006, for summer vacation. The LBP went to Brazil on July 6 to join them, and returned to the United States five weeks later. The TP and the children were scheduled to return to the United States on August 23, 2006, but instead the TP told the LBP that she wanted to stay in Brazil with the children for a trial separation of their marriage. The LBP later filed an application for return of the children under the Convention. On December 11, 2007, the BCA advised the LBP to retain private legal counsel to move the Convention case faster through the Brazilian courts. On March 14, 2008, the first hearing on the Convention application took place before a Brazilian federal judge. The judge ordered a psychological and social evaluation of the children.

Update after reporting period: On November 2, 2008, the children informed the LBP that they were scheduled to be interviewed by a psychologist and expressed interest in returning to the United States. The BCA passed this information on to the federal attorney's office to then inform the federal judge hearing the case. The USCA has received no further updates, and hopes that the federal attorney's office will pursue this case expeditiously.

UNRESOLVED RETURN APPLICATIONS

| GREECE: CASE 1 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2005 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The family traveled to Greece on May 2005 to visit relatives. The LBP returned to the United States with a promise by the TP that she and the children would return later that year. Instead, the TP retained the children in Greece. The LBP later filed an application for return of the children under the Convention. The Greek lower court held an initial hearing on March 5, 2007, and issued a decision denying the children's return. The LBP appealed the initial order and an appellate hearing was scheduled for October 9, 2008.

Update after reporting period: On October 9, 2008, the appellate court upheld the lower court's order denying the children's return.

| HONDURAS: CASE 1 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 10-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Honduras in September 1998. After the LBP filed a Convention application in June 2003, the HCA refused to apply the Convention on the ground that the Honduran legislature had not yet implemented the Convention in Honduran law.

The HCA then requested that Honduran Congress implement the Convention in Honduran law. Meanwhile, the U.S. Embassy continued to urge the HCA to move Convention cases through the judicial process in a timely manner. Although the HCA advised the U.S. Embassy in February 2006 that it would forward the Convention application in this case to a local court, to date the HCA has not submitted the case, reasoning that the child "is doing fine with his mother," the TP.

| HONDURAS: CASE 2 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2003 |
| DATE CONVENTION APPLICATION FILED | 9-2003 |
| HAS CHILD BEEN LOCATED? | NO |

On July 8, 2003, the TP abducted the children to Honduras when the LBP asked for a divorce. The LBP called the paternal grandmother in Honduras, looking for the children. The paternal grandmother told her that "[t]he children were in her custody," and that the LBP had gotten "what she deserved." On July 15, 2003, the LBP filed a petition before a court in the United States for return of the children and for custody (the LBP did not yet invoke the Convention). The court granted the LBP an order for temporary custody pending a final hearing. The order also stated that the TP was obligated to return the children to the United States and requested that Honduran law enforcement take whatever action necessary to effect the immediate return of the children. On October 1, 2003, a court in the United States finalized the divorce and awarded sole custody to the LBP.

The LBP filed an application under the Convention on September 10, 2003, and the application was submitted to HCA on October 9, 2003. The HCA failed, however, to file the application properly with the Honduran courts until October 12, 2005. A Honduran court ordered the children's return in February 2006, but later a different court overruled that decision and granted temporary custody to the TP's sister (the paternal aunt).

On October 18, 2006, the court ordered the aunt to escort the children to the courthouse for them to be turned over to the LBP. During a court recess, the TP appeared, took the children, and fled. In May 2007, the TP filed a suit in a Honduran court requesting that the LBP's parental rights be revoked; the court has not yet ruled on this request. In July 2007, a Honduran appellate court revoked the lower court's order that the children be returned to the United States, and ordered a social and psychological

evaluation of the family. The LBP then returned to the United States without the children because the TP took the children into hiding and they were nowhere to be found. In November 2007, the USCA advised the LBP of options for pursuing criminal charges against the TP, since all attempts to move the Convention proceedings forward in the Honduran courts had failed. The LBP's social and psychological evaluations were performed in May 2008, but no further progress has been made since that time.

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

On November 24, 1998, an Israeli court ordered that the children be returned to the United States under the Convention. On January 13, 1999, after attempts to locate the TP and the children failed, the Israeli court issued another order instructing the police to locate the children. Unfortunately, efforts undertaken by police also failed. In the meantime, federal criminal charges were filed against the TP in the United States.

The USCA has regular, ongoing contact with the LBP, U.S. law enforcement, the ICA, and through the ICA, contact with foreign law enforcement. The ICA informed the USCA that search efforts had been expanded, but the whereabouts of the children remain a mystery.

In May 2007, after receiving pressure from several rabbis and members of the community, the LBP informed the USCA that he had reluctantly agreed to enter negotiations on a visitation agreement with the TP. Before the TP would agree to move forward, however, she insisted that the U.S. federal criminal charges against her be dropped. The Assistant U.S. Attorney handling the case agreed to drop the charges. The LBP informed the USCA in May 2007 that he had retained an Israeli attorney to file a motion with the Israeli court indicating his agreement to waive the Convention return order.

The case remains open until the USCA receives official confirmation that the court has quashed the return order based on the LBP's waiver, and that the ICA considers the Convention case closed.

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

The ICA accepted a Convention application for return upon receiving confirmation that the TP had entered Israel with the child. In August 2006, an Israeli court ordered the Israeli police to assist in locating the child and TP. On November 23, 2006, the police advised the LBP's attorney that the child and TP had been located at the home of the TP's brother. The police questioned the brother several times, but he denied that the child and TP lived there. The court then ordered service on the TP at the brother's address, subpoenaing her for a hearing on the LBP's Convention application. The TP failed to show for the hearing, and the court entered a default ruling against her. On December 20, 2006, the LBP's Israeli attorney confirmed that the court had ordered the return of the child to the United States. In September 2007, the court issued an order to allow publication of a "missing person" flyer about the child in Israeli newspapers, and authorities ordered that the child and TP not be allowed to leave Israel.

Update after the reporting period: On January 19, 2009, the LBP's Israeli attorney informed him that Israeli authorities had located the child. The LBP departed immediately for Israel. The LBP returned to the United States without the child on February 2, 2009, but while in Israel he was able to see the child. In the meantime, an Israeli appellate court overturned the original order of return under the Convention, and remanded the case back to the lower court that originally ruled on the Convention application. A hearing was to be held in the lower

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court on February 19, 2009, which the LBP intended to attend. Final determination on the return of the child is still pending.

| MEXICO: CASE 1 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2006 |
| DATE CONVENTION APPLICATION FILED | 10-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The TP and LBP had marital problems. The TP threatened the LBP on several occasions that she would leave him and run away with the child to Mexico, and she eventually did. Along with the child she took luggage, baby necessities, and all legal documents. Thereafter, in October 2006, an application for return of the child under the Convention was filed. The Mexican court seized of the case was unable to locate the child, and turned the effort over to Interpol. Interpol has been unable to locate the child.

| MEXICO: CASE 2 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The child and his sibling were living with the parents in the United States. The TP forced the LBP to move with him and the children to Mexico in August 2005. While in Mexico, the TP abused the LBP, causing the LBP to flee back to the United States with the child's sibling in October 2005.

The LBP filed a return application under the Convention with the USCA in January 2006. In August 2006, a Texas state court granted the TP custody of the child. A hearing before a Mexican court on the Convention application was scheduled for January 30, 2007, but was postponed because the child and TP could not be located. The MCA sent a copy of the child's file to Interpol on February 17, 2007, but Interpol has not been able to locate the TP or the child.

| MEXICO: CASE 3 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2005 |
| DATE CONVENTION APPLICATION FILED | 12-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The children were living with the LBP in the United States, but she allowed them to visit the TP in Mexico. When the LBP went to Mexico to pick them up after visitation with the TP in 2005, the TP and a female friend attacked the mother and took the children. Thereafter, in December 2005, a return application under the Convention was filed. The Mexican court seized of the application closed the case without any explanation or decision. At the request of the U.S. Embassy, the case was reopened and assigned to a different family court in Mexico. Despite inquiries made over the last several months, the MCA has not provided the USCA with any further information about the case.

| MEXICO: CASE 4 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2006 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The child was born in the United States. The parents were never married, but lived together from 1997 to 2001. At some point, the TP returned to Mexico, and the child continued to live with the LBP in the United States. The TP and LBP had a verbal arrangement by which the child would visit the TP in Mexico during the summer and other school breaks. The LBP allowed the child to travel to Mexico with her uncle on November 15, 2005 in order to visit the TP.

The TP was supposed to return the child to the LBP by January 3, 2006, but failed to do so. The TP continues to refuse to let the child return to the United States in spite of California state court orders to do so. An application for return of the child under the Convention was filed in November 2006.

On January 7, 2008, a Mexican court asked if the LBP or his representative would attend a hearing on the Convention application. The Mexican court has since been unable to locate the mother and child at the address furnished by the LBP, but it is believed that the child and TP are in a state in northern Mexico.

| MEXICO: CASE 5 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The parents went to Mexico with their child to visit the TP's family. While in Mexico, the TP and her relatives informed the LBP that the TP and their child would not return to the United States with him. There was an altercation and the police were called. The LBP returned to the United States alone. An application for return under the Convention was later filed.

The Mexican court seized of the application summoned the LBP to Mexico to attend a hearing in February 2007. Citing unsafe conditions in Mexico, the LBP made the decision not to go. The court rescheduled the hearing for March 2007, but LBP again decided not to attend. The Mexican court then decided that it would not hold a hearing in the LBP's absence.

At one point, a U.S. consulate in Mexico attempted to work out an agreement under which the TP and the LBP would both participate in counseling sessions (coordinated by a federal government agency in Mexico, a group known as "Desarrollo Integral de la Familia" or "DIF"). Such sessions have yet to take place, and the LBP continues to express concern over his son's welfare. To address this concern, the USCA has requested that DIF visit the child, and arrange for a phone call between the LBP and the child. The USCA is currently awaiting a response to this request.

| MEXICO: CASE 6 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2006 |
| DATE CONVENTION APPLICATION FILED | 5-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The parents were married but separated at the time of the abduction. On March 15, 2006, the LBP was to meet the TP at the home of the maternal grandparents so that the LBP could take the child for visitation. The maternal grandmother told the LBP that she did not know where the TP was. The LBP was allowed to enter the house and discovered that the TP and child's passport, jewelry, and clothing were missing. A vehicle belonging to the LBP which was normally driven by the TP was found in a parking lot with a front door open and the keys on the floorboard. Through subsequent inquiries, the LBP discovered that a friend of the TP had driven her and her child to the airport on the evening of March 15, 2006, for a flight to Mexico. Soon thereafter, a petition for the child's return under the Convention was filed.

In October 2007, this case was brought before the monthly meeting of the MCA on IPCA. The MCA reported that an amparo (a special type of appeal in the Mexican judicial system) had been resolved in favor of the LBP. The case was subsequently assigned to a family court in Mexico, which held a hearing on April 2, 2008. On May 20, 2008, the court denied the return of the child because the child had already been with the TP for a long time. The LBP appealed the ruling, but the appellate court affirmed the lower court. The USCA is waiting for a copy of the appellate court's decision. The LBP is not willing to file a petition under the Convention for access to the child.

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| MEXICO: CASE 7 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2000 |
| DATE CONVENTION APPLICATION FILED | 9-2001 |
| HAS CHILD BEEN LOCATED? | NO |

The TP took the child to Mexico in August 2000 for a one-month vacation and never returned. Thereafter, an application for return under the Convention was filed. The LBP has not seen the child since the abduction. The Mexican family court seized of the case was not able to locate the child at the address provided by the LBP, so the case was submitted to Interpol. The LBP submitted numerous leads, phone numbers and addresses, but Interpol has not been able to locate the child or the TP in the last eight years.

| MEXICO: CASE 8 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2004 |
| DATE CONVENTION APPLICATION FILED | 2-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP and child flew from Idaho to San Diego on August 3, 2004, to visit the paternal grandmother. On August 4, 2004, the TP asked to be taken to the border to do some shopping. The TP walked with child across the border and never returned. The LBP later filed a return application under the Convention. The courts in Mexico have been unable to locate the TP and child and have turned the case over to Interpol.

| MEXICO: CASE 9 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2005 |
| DATE CONVENTION APPLICATION FILED | 2-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP was arrested in 2005 after failing to comply with an order from U.S. immigration authorities to depart the United States voluntarily. The TP's attorney told her to take the child with her to Mexico when she was removed, and she followed this advice. A return

application under the Convention was later filed. The MCA has reported that the case was reassigned to a different Mexican court from the original court because the original judge was the wife of the TP's attorney. The case has been delayed by an unsuccessful appeal (*amparo*) filed by the TP. No final hearing has yet been scheduled by the lower court seized of the case.

| MEXICO: CASE 10 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2004 |
| DATE CONVENTION APPLICATION FILED | 5-2005 |
| HAS CHILD BEEN LOCATED? | YES |

During a scheduled visit with his and the LBP's three children in 2004, the TP absconded with them to Mexico. The LBP has not seen or heard from the children since then, and in May 2005, a return application under the Convention was filed. The Mexican family court seized of the Convention application was not able to locate the children at the address provided by the LBP, and so the case was submitted to Interpol. Interpol located the children in the summer of 2007. The case was then transferred to a family court in the Mexican state where they were located. Since that time, the USCA has received no reports of whether the court has been able to locate the children again, or when a hearing may be held on the Convention application.

| MEXICO: CASE 11 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2002 |
| DATE CONVENTION APPLICATION FILED | 10-2004 |
| HAS CHILD BEEN LOCATED? | NO |

In 1999, the TP voluntarily gave up his parental rights to the child and returned to Mexico. In 2001, he filed a petition under the Convention requesting return of the child to his custody in Mexico. A court in California denied his petition, finding that the TP had consented to the LBP and child moving to the United States. While visiting Mexico in 2002, the LBP allowed the TP to take the child out to eat. The LBP has not seen nor heard from her child since.

The LBP filed her own Convention return petition in October 2004. The Mexican family court seized of the petition was not able to locate the child at the address provided by the LBP, and submitted the case to Interpol. In February 2008, the USCA received information that the LBP's niece had been chatting online with the TP, who reportedly said the child was living in Mexico with the TP's sister. The LBP continues to provide leads to Interpol, but the child has not been located. In May 2008, the LBP provided the number for the child's cell phone in Mexico, along with the phone number of the aunt's house in Mexico. Nevertheless, Interpol has not yet located the child.

| MEXICO: CASE 12 | |
|---|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2003 |
| DATE CONVENTION APPLICATION FILED | 12-2003 |
| HAS CHILD BEEN LOCATED? | NO |

The parents were separated and the two children were living with the LBP. The TP wanted to get back together with the LBP and threatened to take the children if the LBP did not agree to reconcile. While the LBP was at work one day, the TP took the children from the babysitter and absconded to Mexico. A few days later, mutual friends located them in Ciudad Juárez and returned the younger child to the LBP. The LBP has not seen nor heard from the older child since then. An application for return under the Convention was later filed.

Hearings on the Convention application were scheduled for June 22, 2006 and September 19, 2006. The Mexican family court notified the TP's sister of the hearing date in advance of the September hearing, and the TP did not appear at the September hearing. The LBP believes that the TP did not appear because he was tipped off by his sister, and is now hiding the child. The Mexican family court was not able to locate the child at the address provided by the LBP, and submitted the case to Interpol. Interpol has not been able to locate the child in the last six years.

| MEXICO: CASE 13 | |
|---|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2004 |
| DATE CONVENTION APPLICATION FILED | 11-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP took the child to Mexico to visit relatives for a short period in June 2003. For the next six months, the LBP visited the family and supported them in Mexico. In January 2004, the TP announced that she and the child would not return to the United States. The LBP began divorce proceedings in the United States. The LBP was denied visitation by the TP after the TP was served with the divorce papers in May 2004. An application under the Convention for return of the child was filed in November 2005.

The LBP traveled to Mexico for a hearing before a Mexican court on the Convention application in February 2006. The hearing did not take place, however, because neither the child nor the TP could be located at the address provided by the LBP. The case was then referred to Interpol. The USCA has not received any further information on the whereabouts of the TP and the child.

| MEXICO: CASE 14 | |
|---|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 2-2002 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in 2002. When she departed the United States, she dropped off a note at the police station in the town where she lived claiming domestic abuse. The LBP then went to court in the United States and obtained a divorce from the TP, and temporary custody of the child. An application under the Convention for return of the child was later filed.

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The Mexican family court seized of the Convention application was not able to locate the children at the address provided by the LBP, and the case was submitted to Interpol. Although the LBP has provided several leads to Interpol, Interpol has been unable to locate the child or TP in the last seven years.

| MEXICO: CASE 15 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2005 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the children to Mexico in 2005. The children were in the custody of a California juvenile court, as the court determined that there would be substantial danger to the children's health and welfare if they remained in their parents' custody. The children were living with a foster mother when the TP abducted them. (Both parents had abducted the child from another social worker in 2003, before the birth of the younger child. The older child was recovered from the mother in Los Angeles six months after the first abduction.) In the current case, the children were located in Mexico with the TP in March 2008. A DIF report was prepared on the family. To the USCA's knowledge, the Mexican court has not yet reached a decision regarding their return to the United States.

| MEXICO: CASE 16 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2002 |
| DATE CONVENTION APPLICATION FILED | 2-2003 |
| HAS CHILD BEEN LOCATED? | NO |

The parents divorced in Alaska and were awarded joint custody; the two children were to reside with the TP. The TP moved to Mexico with the LBP's permission. On February 13, 2002, TP shot and killed one of the children and then committed suicide. An Alaska court gave sole custody of the surviving child to the maternal grandmother. The paternal grandmother has

refused to turn over the child and also delayed matters by filing her own petition for custody in Mexico, filing interim appeals, and demanding a Spanish translation of the entire Alaska divorce case. An application under the Convention for return of the surviving child was then filed.

This case has not been scheduled for a hearing before a Mexican court because the child cannot be located. In June 2005, the U.S. Embassy provided Interpol with new possible location information for the child's relatives in Mexico. Mexico's investigation agency, the Agencia Federal de Investigación (AFI), investigated and located the child's paternal grandfather at the address provided, but could not locate the child. Mexican immigration officials determined that the child, an American citizen, was deportable and unsuccessfully ordered the child to be deported within 48 hours. The LBP contends that the TP (the paternal grandmother) overcame this order by obtaining a false Mexican birth certificate for the child and filing an amparo (a type of appeal in the Mexican judicial system) against the immigration decision to prevent the child's deportation. The USCA has repeatedly raised the question of enforcement of the child's previously issued deportation order without success, and continues to request Interpol's assistance in locating the child.

| MEXICO: CASE 17 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-1998 |
| DATE CONVENTION APPLICATION FILED | 1-2000 |
| HAS CHILD BEEN LOCATED? | NO |

The child's parents were married but separated at the time the abduction took place. On February 6, 1997, a joint custody order was issued that stipulated that the child could not be removed from California without permission. The TP abducted the child prior to the parents' divorce in December 1998. The LBP was given full legal and physical custody of the child by a California court, and the TP's visitation rights were terminated. The LBP then filed an application for return of the child under the Convention, but

the courts in Mexico have been unable to find the child and have requested Interpol's assistance. Mexico's Education Department has reported that no school records have been found for the child anywhere in Mexico. Interpol continues to look for the child. Despite the lack of new information in this case, the USCA receives numerous requests from LBP to keep the case open.

| MEXICO: CASE 18 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2000 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in July 2000 in violation of a court order. The LBP filed an application under the Convention in March 2005. In April 2005, the Mexican court seised of the application but returned the case to the MCA, noting the child had not been located. The U.S. Embassy in Mexico requested assistance from Interpol. In November 2005, the LBP asked for a welfare and whereabouts visit with the child. The request was unsuccessful, as the family residing at address on file refused to acknowledge whether the child lived there. In March 2006, the MCA requested that law enforcement enter the residence by force, but law enforcement did not comply. Three arrest warrants have been issued for the TP, including an "Unlawful Flight to Avoid Prosecution" warrant issued by the FBI. However, the Mexican court determined that a hearing on the Convention petition cannot be scheduled until the child has been located. The USCA has repeatedly requested Interpol's assistance in locating the child but the USCA has not received a response. The child has now been living in Mexico for over eight years, assuming the child is still in Mexico.

| MEXICO: CASE 19 | |
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| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-1999 |
| DATE CONVENTION APPLICATION FILED | 8-2001 |
| HAS CHILD BEEN LOCATED? | NO |

The Department of Children and Family Services (DCFS) in Los Angeles County, California had custody of the child, but it allowed the parents to visit with the child in March 1999. Shortly thereafter, the parents (the TP) took the child to Mexico. The Los Angeles County District Attorney's Office, on behalf of the DCFS, submitted an application under the Convention in August 2001 and transmitted it to the MCA. When abducted, the child was three-months old and the child's whereabouts remain unknown. The USCA, through the U.S. Embassy and the MCA, continue to request the assistance of Interpol in locating the child.

| MEXICO: CASE 20 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | NO |

The children are wards of the state of California and may be in a high-risk situation. A California court placed the children in the custody of the California Department of Children and Family Services in Los Angeles County because the children's mother, the TP, physically abused one of the children. The California court ordered the TP to have no contact with the children. The TP abducted the children and took them to Mexico in December 2006. In March 2007, the LBP and the Department of Children and Family Services filed a return application under the Convention. On October 22, 2007, the MCA sent a copy of the case file to Interpol requesting help in locating the children and the TP. The LBP was provided information by relatives that the TP was in Mexico, but the TP has family members throughout Mexico and could be anywhere.

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The TP was jailed in California but refused to provide any information about the children. The USCA requested a status update on this case which is still pending.

| MEXICO: CASE 21 | |
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| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 4-2004 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the children to Mexico shortly after a restraining order had been issued against her for domestic violence. The LBP filed a return application under the Convention in March 2005, and a hearing was initially scheduled before a Mexican court for June 2005. The hearing had to be postponed as the children and the TP could not be located. The LBP provided two possible addresses to U.S. Embassy officials, which forwarded these to the MCA. The MCA, in turn, forwarded the addresses to Interpol. One of the addresses was invalid and the children were not located at the other. In October 2006, the MCA discovered the name of the school where the children were enrolled. The LBP contacted the MCA in March 2008 to advise them that his son called him on Easter. The LBP was working with authorities to obtain an address for the number from which he was called. In April 2008, the USCA sent MCA school information provided by the children to the LBP. Once the children's location can be confirmed, the proper Mexican court to hear the Convention application can be determined, and a hearing can be scheduled. The USCA has not received any further case updates.

| MEXICO: CASE 22 | |
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| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2004 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in 2004. The LBP then filed an application for return of the child under the Convention, which was transmitted to the MCA in March 2005.

A Mexican court scheduled a hearing on the application for October 2005. However, when court officials visited the TP's address, they could not find the child. A check of school records in the State in Mexico also turned up no information. The USCA, through the U.S. Embassy and the MCA, continues to request the assistance of the Mexican branch of Interpol in locating the child.

| MEXICO: CASE 23 | |
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| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2005 |
| DATE CONVENTION APPLICATION FILED | 10-2005 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Mexico in September 2005, and the LBP filed an application under the Convention for return of the child. In April 2006, the MCA advised the USCA that a hearing on the application had been scheduled before a Mexican court. However, when court officials visited the child's address they could not find the child. After successfully summoning the TP to a hearing scheduled in July 2006, the TP made allegations of abuse by the LBP, which caused significant delays and directed the court's focus away from the Convention application. Moreover, the TP's attorney alleged procedural violations of Chihuahua state law by the LBP that had nothing to do with the Convention application. In March 2007, the LBP asked the presiding judge to remove herself from the case for perceived bias against him. Several hearings have since taken place. However, the presiding judge has not recused herself, nor has she made a decision on the merits of the Convention application. The USCA, through the U.S. Embassy, continues to request the MCA's assistance in urging the court to adjudicate the Convention application.

| MEXICO: CASE 24 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 8-2003 |
| DATE CONVENTION APPLICATION FILED | 11-2003 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in August 2003. The LBP then filed an application under the Convention for return of the child. In September 2004, court officials reported that they could not find the child. In June 2006, the MCA reported that the Mexican judge to whom the case was assigned issued a warrant for federal police to detain the TP if found. The child's location remains unknown. The USCA, through the U.S. Embassy and the MCA, continues to request the assistance of the Mexican branch of Interpol in locating the child.

| MEXICO: CASE 25 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2006 |
| DATE CONVENTION APPLICATION FILED | 4-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Mexico in February 2006. The LBP then filed an application under the Convention for return of the child. The LBP confirmed the address of the TP in Mexico, and the Mexican court seized of the Convention application scheduled a hearing for October 6, 2006. The LBP traveled to Mexico for the October hearing and met with the TP. Despite efforts by the LBP to convince the TP to return the child voluntarily, the TP refused. Following the October 6 hearing, the Mexican court gave the TP 30 days to voluntarily return the child. On October 20, the TP disappeared with the child, but later returned to her family's house after the LBP had returned to the United States.

At a December 2006 hearing, a Mexican court ordered the return of the child to the United States. An attempt by local law enforcement officers and the LBP to force the TP to turn over the child was unsuccessful because the TP

again disappeared with the child. However, the TP once again returned to her family's house with the child after the LBP had returned to the United States for a second time.

On January 30, 2007, the TP filed an *amparo* (a type of appeal) with an appellate court in Mexico. The appellate court denied her petition and affirmed the lower court's decision that the child be returned. The TP then filed an appeal which has been pending since June 2007.

| MEXICO: CASE 26 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2005 |
| DATE CONVENTION APPLICATION FILED | 10-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the children to Mexico in March 2005. The California Attorney General's office submitted a Convention petition to the MCA on October 24, 2006. However, the TP and child have not been located. The case has been forwarded to Interpol.

| MEXICO: CASE 27 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2001 |
| DATE CONVENTION APPLICATION FILED | 5-2003 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the children to Mexico in November 2001. The LBP then filed an application under the Convention for return of the child. When court officials visited the children's possible location in November 2005, they were advised that the children had returned to the United States. In March 2006, the MCA requested the assistance of the Mexican branch of Interpol in locating the children despite the fact that the children may have been returned to the United States. In August 2006, Interpol-Mexico reported to the U.S. Embassy that the children had been located, and also reported the information to the MCA. Subsequent efforts by the Mexican court to confirm the children's exact location failed.

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In May 2007, Interpol-Mexico reported that it had reopened its investigation. The USCA, through the U.S. Embassy and the MCA, continues to request Interpol-Mexico's assistance in locating the children.

| MEXICO: CASE 28 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-1997 |
| DATE CONVENTION APPLICATION FILED | 1-1998 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in December 1997. An application for the return of the child was filed under the Convention on January 31, 1998. Although Mexican courts have ordered the return of the child, these decisions have not yet been enforced. Whenever Mexican authorities attempt to enforce the decision, the TP disappears with the child. The LBP has been reluctant to ask authorities to act because he suspects that someone within the judicial or law enforcement establishments in Mexico may be alerting the TP of new developments in the case. The child's location remains unknown.

| MEXICO: CASE 29 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 1-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child from her home in Texas and took the child to Mexico, in violation of a Texas state court order that the child not be removed from the locality. The LBP later filed an application under the Convention for return of the child. Judicial proceedings before a Mexican family court under the Convention application began on February 28, 2007. The LBP or his attorneys appeared on seven occasions before the Mexican court in 2007: February 28, March 1, March 6, April 27, May 2, October 27, and December 4. The court postponed the case three times due to the TP's failure to appear with the child. The TP has also attempted to petition for

custody of the child in Mexico despite ongoing proceedings on the Convention application.

In early April 2007, pursuant to Article 11 of the Convention, the USCA wrote a letter to the MCA requesting justification for the continued delay in the court reaching a decision. The court instituted a "reconciliation period" in which the parents were to attempt to resolve the case between themselves. The LBP appealed the reconciliation period to a higher court, and requested that Convention proceedings continue. On May 2, 2007, the appellate judge ordered the reconciliation period closed and that the Convention case proceed. The TP objected to this decision, and moved to invalidate the LBP's authorization for his attorney to represent him in his absence when he could not be in Mexico for hearings. The court denied both requests in August 2007. The TP filed an amparo (a type of appeal) against the decision on the LBP's power of attorney.

On December 11, 2007, the LBP attended a hearing in which the lower court again requested that the parents attempt to reconcile. The TP continued to insist that Mexico has jurisdiction to decide the matter as a custody case. The LBP disagreed. In April 2008, the Mexican court ordered that the child be returned. The MCA has assisted the LBP's attorney in attempting to execute the order. Two attempts were made without success. To date, the child is still in Mexico with the TP. The USCA continues to request the MCA's assistance on this case.

| MEXICO: CASE 30 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2004 |
| DATE CONVENTION APPLICATION FILED | 11-2004 |
| HAS CHILD BEEN LOCATED? | NO |

Under a December 9, 2003 order from a court in the United States, the TP and the LBP had joint legal and physical custody of the child. On July 5, 2004, the LBP let the TP take the child to Mexico with the promise of bringing the child back within two weeks. However, the TP

retained the child in Mexico. The LBP later filed an application under the Convention for return of the child. In April 2005, the MCA reported that the child could not be located at the address provided. The LBP went to the TP's home in early 2006. The LBP could not find the child, but believes that the TP and the child are living with the TP's parents. A private detective hired by the LBP was unsuccessful in locating the child. In August 2006, the U.S. Embassy asked for Interpol-Mexico's assistance. As of May 2007, the child had not been located. Interpol requested more information. The case is still under investigation.

| MEXICO: CASE 31 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-2005 |
| DATE CONVENTION APPLICATION FILED | 12-2005 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the children to Mexico on November 29, 2005, after accusing the LBP of infidelity. The LBP later filed an application under the Convention for return of the child. The first hearing before a Mexican court under the Convention application was scheduled for March 26, 2007, but was later rescheduled. A new hearing was held May 17, 2007, but the court did not render a decision on the Convention application. Another hearing was held on December 10, 2007. The court's decision is still pending.

| MEXICO: CASE 32 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 12-2004 |
| DATE CONVENTION APPLICATION FILED | 2-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in December 2004. The LBP later filed an application under the Convention for return of the child. A hearing on the Convention application was scheduled before a Mexican court for August 12, 2005, but was postponed until September 7, 2005, because the TP could

not be served. The LBP failed to appear at this rescheduled hearing and the court rescheduled the hearing for October 7, 2005. The TP filed an amparo, but it was dismissed. On November 17, 2005, the court attempted to serve the TP for not showing up to the court hearing in October, but the TP and child could not be located. The TP filed a suit seeking to divest the LBP of his paternal rights. The court denied this request, but the TP filed another appeal. The TP also wrote a letter to former Mexican President Fox regarding her "treatment" by the MCA. The TP has never appeared in court, but has attorneys to represent her. In May 2006, the LBP dismissed his attorney working on the case due to the financial burden. The case remains unresolved.

| MEXICO: CASE 33 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-1999 |
| DATE CONVENTION APPLICATION FILED | 10-1999 |
| HAS CHILD BEEN LOCATED? | NO |

On October 5, 1999, the LBP dropped the child off to visit the TP. When the LBP went to pick up the child, the TP and the child had disappeared. The LBP later filed an application under the Convention for return of the child. In June 2000, the USCA provided the TP's address to the MCA. The original Mexican court initially refused to take the case for jurisdictional reasons. While the jurisdictional issue was under review by the Mexican courts, the USCA discussed alternate non-Convention remedies with the LBP in conjunction with the U.S. Department of Justice. The jurisdictional issue was eventually resolved and a hearing scheduled, but the TP disappeared with the child. After the TP failed to appear at three separate hearing dates between March and June 2001, the Mexican court, in an unprecedented move in a Convention case in Mexico, issued a warrant for the TP's arrest. The TP has not been arrested, but the case remains with the Mexican court pending location of the child. On October 28, 2004, the MCA informed the U.S. Embassy that the case had been referred to Interpol.

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The U.S. Assistant Secretary of State for Consular Affairs raised the case in a committee meeting with her Mexican counterpart in November 2003 and again in January 2004.

The TP and child have never been located. The LBP has provided numerous possible addresses for the child. Interpol has checked out many addresses and public records but has not been able to locate the child. At the U.S. Embassy's request in February 2006, Interpol broadened its search. In August 2006, Interpol reported that it had contacted the education offices of 25 Mexican states; none reported the child as registered in school in their state. As of September 30, 2008, Interpol had been unable to locate the child.

| MEXICO: CASE 34 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2005 |
| DATE CONVENTION APPLICATION FILED | 3-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The parents had been separated since November 12, 2004, when the TP committed domestic violence against the LBP. A month later, both parents were granted joint custody of the children and the TP was entitled to weekly visits. The TP abducted the children to Mexico on January 22, 2005, after the children had gone to see the TP for their weekly visit. A month later, the LBP received a call from the TP in Mexico, who was visiting some relatives with the children. The LBP suspected these relatives would have information about the location of the children. Investigations have taken place attempting to locate the TP and children and any information found is submitted to the MCA. The USCA and MCA are working together to locate the children and the TP.

| MEXICO: CASE 35 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2006 |
| DATE CONVENTION APPLICATION FILED | 6-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Mexico in March 2006, in violation of a Texas court order. The LBP later filed an application under the Convention for return of the child. On October 24, 2006, the MCA told the U.S. Embassy that the case had been returned to the MCA from the Mexican court to which it had been assigned due to a lack of legal grounds to support the return of the child under the Convention. The MCA requested a telephone conference to review the case with the Mexican court and another judge known to be an expert on the Convention. The conference was scheduled for November 10, 2006. As of December 2008, no new information had been made available to the USCA on this case.

| MEXICO: CASE 36 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2000 |
| DATE CONVENTION APPLICATION FILED | 6-2000 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in May 2000. The LBP later filed an application under the Convention for return of the child. Since April 2001, Mexican authorities have been unable to locate the child. In August 2003, NCMEC received possible location information for the child, and provided the information to law enforcement in Los Angeles. The USCA, in turn, provided the location information to the MCA. The MCA requested assistance from Interpol. Interpol reported that the child was not found at the address provided by the MCA, though it investigated a second address in Mexico. Federal education authorities also conducted a search of school records in an attempt to locate the child but were unsuccessful. The case is still under investigation by Interpol.

| MEXICO: CASE 37 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 2-2003 |
| DATE CONVENTION APPLICATION FILED | 12-2003 |
| HAS CHILD BEEN LOCATED? | YES |

The child was retained by his paternal grandmother in Mexico in June 2005. The child was originally visiting the grandmother, and she refused to return the child to the LBP in the United States. The California Attorney General's Office submitted an application for return of the child under the Convention to the MCA. A hearing was scheduled before a Mexican court for April 6, 2006.

Before the hearing, the case was suspended temporarily pending negotiations between the Yolo County, California, District Attorney (DA) and the TP's attorney for a voluntary return of the child. Despite the efforts of the Yolo County DA, negotiations were unsuccessful and a new hearing date was set in the Mexican court for May 2, 2006. The court requested the criminal records and a psychological exam of the LBP and a home study of the TP. On March 2, 2007, the court ordered the return of the child to the United States. The TP refused to turn the child over to the MCA. The Mexican Attorney General advised that the intervention of law enforcement would be necessary in order to return the child back to the United States.

Update after the reporting period: As of January 2009, the USCA has no knowledge of whether this order was enforced.

| MEXICO: CASE 38 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2003 |
| DATE CONVENTION APPLICATION FILED | 5-2004 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in September 2003. The LBP requested a letter from the MCA to the TP requesting the voluntary return of the child. The LBP filed with

the USCA an application under the Convention for return of the child in May 2004. However, Mexican authorities have had difficulties locating the TP. The FBI issued an Unlawful Flight to Avoid Prosecution warrant against the TP in hopes of getting the Mexican authorities to extradite the TP back to the United States. The TP was eventually located in southern Mexico.

In February 2005, the FBI contacted the TP and was informed that she would return to the United States to settle the custody battle. In March and April 2005, the TP retained an attorney, who filed a motion in a Utah state court seeking to set aside the order giving custody of the child to the LBP. The Utah court denied the motion, but the TP has refused to comply with the custody order. An arrest warrant was issued for the TP, but her whereabouts remain unknown. Interpol is currently searching for the TP and child.

| MEXICO: CASE 39 | |
|--|-------------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | UNAVAILABLE |
| DATE CONVENTION APPLICATION FILED | 10-2004 |
| HAS CHILD BEEN LOCATED? | NO |

The LBP filed a Hague application directly with the MCA in October 2004. The MCA sent the case to Interpol to assist in locating the child. Interpol checked the address provided by the LBP, but the TP and child were not found there. In May 2007, the MCA reported that Interpol had found a record regarding the TP. The case remains under investigation.

| MEXICO: CASE 40 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 3-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The maternal grandmother abducted the children to Mexico in October 2001. The LBP later filed an application under the Convention for return of the child. The MCA reported that a Mexican

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court had ordered the children returned. After the court rendered this decision, however, the maternal grandmother disappeared with the children. According to the MCA, the court is in the process of pressing charges against the grandmother for obstruction of justice. The court advised the MCA that the children had still not been found. A copy of the case file was sent to Interpol for assistance in locating the children.

| MEXICO: CASE 41 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2005 |
| DATE CONVENTION APPLICATION FILED | 11-2005 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in June 2005. The LBP later filed an application under the Convention for return of the child. While the TP was in the United States, he created an alias or false identity. He allegedly obtained a new birth certificate for the child under his new last name. The USCA has marked this case as an extreme emergency because the child suffers from hemophilia and requires special treatment and medication. The LBP is being assisted by a district attorney's office in the United States. The case file was later sent to a Mexican court in June 2006. No court hearing has been scheduled. The MCA has reported that the child was not located at the address provided by the LBP in the Convention application. The case has been referred to Interpol for assistance.

| MEXICO: CASE 42 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2002 |
| DATE CONVENTION APPLICATION FILED | 7-2002 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the children to Mexico in March 2002. The LBP later filed an application under the Convention for return of the child. The application was submitted to the MCA in July 2002. In January 2003, the Mexican court seized of the case ordered the children

be picked up and delivered to the LBP. Police went to the alleged residence of the TP and found it abandoned. In 2006, the U.S. Embassy found possible information regarding the TP in the Mexican telephone book. Mexican law enforcement and Interpol investigated, but did not find the TP and children. Interpol has requested a search by federal education authorities of school records. The case is still under investigation.

Update after the reporting period: In January 2009, the LBP informed the USCA of where the TP and children may be, and the USCA passed this information on to the MCA.

| MEXICO: CASE 43 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 1-2005 |
| DATE CONVENTION APPLICATION FILED | 12-2005 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Mexico on January 4, 2005. On December 22, 2005, the California Attorney General's Office submitted to the MCA an application under the Convention for return of the child. In October 2006, the case was forwarded to a state court in the State of Chiapas. No information has been provided to the USCA regarding a hearing date.

Update after the reporting period: As of January 2009, the LBP has only had sporadic phone contact with the child.

| MEXICO: CASE 44 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2002 |
| DATE CONVENTION APPLICATION FILED | 11-2006 |
| HAS CHILD BEEN LOCATED? | YES |

The TP abducted the child to Mexico in June 2002. The LBP submitted a Convention application for return of the child in November 2006. The USCA transmitted the application to the MCA, and the case was assigned to a family court in Mexico. The child was located and

picked up by DIF. A hearing was scheduled for February 27, 2007.

The LBP attended the court hearing and was granted five hours visitation. After an altercation with the TP's sister, the court ordered the LBP to attend classes at DIF and be given a psychological examination. The court granted the Convention application for return of the child to the United States. The TP then filed an *amparo* (a type of appeal) against this order. The USCA has not received information as to the outcome of the *amparo*.

| MEXICO: CASE 45 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2001 |
| DATE CONVENTION APPLICATION FILED | 1-2002 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in October 2001. The LBP later filed an application under the Convention for return of the child. The case was assigned to a Mexican court in November 2002. However, the court reported the child could not be located at the address provided by LBP. The MCA referred the case to Interpol. Interpol confirmed a location in May 2005. Once again, neither the TP nor the child was found at the location provided. As of May 2007, the case is still under investigation with Interpol. There were no further case updates during the reporting period.

| MEXICO: CASE 46 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 10-2005 |
| DATE CONVENTION APPLICATION FILED | 9-2006 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in October 2005. The LBP filed an application for return of the children under the Convention in September 2006. The case was assigned to a Mexican court in February 2007. Mexican authorities have taken action to look for the TP, who has expressed an unwillingness to allow a welfare and

whereabouts visit to the child, even in a public place. The child could not be located at the grandmother's house. The grandmother and TP have refused to bring the child to the Consulate or neutral meeting place for a visit, and the TP has failed to appear in court. The TP wants to wait until 2010 to permit the child's contact with the LBP. Interpol is looking for the TP and grandmother because they cannot be located at the address provided on the Convention application.

| MEXICO: CASE 47 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2003 |
| DATE CONVENTION APPLICATION FILED | 4-2004 |
| HAS CHILD BEEN LOCATED? | NO |

The TP abducted the child to Mexico in September 2003. In April 2004, the USCA submitted an application for the child's return under the Convention. The case was assigned to a Mexican court, but the court could not confirm the location of the TP and the child. It was reported that they had moved to another city in Mexico. The MCA reported in February 2005 that the case had been transferred to state court in the State of Mexico, and the case was later reassigned to a court in the State of Puebla. The MCA informed the USCA that it had submitted the case to Interpol to conduct a search for the child, but Interpol stated that the MCA had not officially asked it for assistance. The U.S. Embassy then sent a note informing the MCA that Interpol indicated they did not have the case on file. There have been no further developments and the child's location is still unknown.

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| POLAND: CASE 1 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 11-1998 |
| DATE CONVENTION APPLICATION FILED | 8-1999 |
| HAS CHILD BEEN LOCATED? | YES |

The TP took the children to Poland in 1998, and the LBP filed an application under the Convention for return of the children in 1999. In July 2001, a Polish court ordered the children returned to the United States under the Convention, and the TP then went into hiding with the children. The U.S. Embassy in Warsaw continued frequent meetings with Polish interlocutors at all levels in an attempt to locate the children.

In June 2005, a Polish appellate court stayed the lower court's return order in order for the lower court to rule on the divorce and custody petition filed by the TP. The Department continued to raise the case with the Polish government, the USCA and PCA directors discussed the case at a February 2007 meeting, and the U.S. Ambassador and Polish Minister of Justice discussed it again in June 2007.

In March 2007, the Polish lower court granted custody of the children to the TP, finding that the LBP had not been involved in rearing the children for more than five years. The court appears to have ignored the fact that the LBP did not have access to the children because the TP was hiding them. In August 2007, the TP provided the U.S. Embassy with a copy of a recent court-ordered home study in an attempt to satisfy U.S. consular officials that the children are well cared for and in good health.

The divorce was finalized in Poland in July 2008. The USCA remains in contact with the LBP about the case as he continues to seek the return of his children.

| SPAIN: CASE 1 | |
|--|---------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 3-2004 |
| DATE CONVENTION APPLICATION FILED | 11-2004 |
| HAS CHILD BEEN LOCATED? | NO |

On March 30, 2004, the TP flew to Spain with the children. The LBP filed a petition for return under the Convention on November 4, 2004. Spanish authorities initially confirmed that the children entered Spain but, despite continuing efforts by Interpol and the Spanish national police, they have not yet been located. Spanish authorities believe that the TP may have taken the children to Canada, but Canadian authorities have not been able to confirm whether the TP and children are in Canada.

| SWITZERLAND: CASE 1 | |
|---|--|
| Please see the "Notable Cases" section of this report for information on Switzerland Case 1 on page 33. | |

| SWITZERLAND: CASE 2 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 5-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | NO |

The child was abducted from the United States to Switzerland on May 30, 2006. According to the LBP, the TP took the child to avoid Florida court orders granting custody to the LBP in the United States. On March 2, 2007, the LBP filed a petition for return under the Convention. The Swiss lower court denied the Convention petition and refused to order the child's return. On August 22, 2007, a Swiss appellate court denied the LBP's appeal.

Update after reporting period: In November 2008, the Swiss Supreme Court overturned the appellate court and ordered the child returned to the United States, but the TP then absconded with the child. Despite an Interpol "red alert" and assistance from the Swiss authorities in attempting to locate the TP and child, they have not yet been located.

| TURKEY: CASE 1 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 6-2006 |
| DATE CONVENTION APPLICATION FILED | 7-2004 |
| HAS CHILD BEEN LOCATED? | YES |

On June 15 2006, the LBP was informed that the TP and child flew to Istanbul after the TP was served divorce papers. As part of the standard family law orders from the family court in the United States, the court had ordered the TP not to leave the United States or to remove the child from the state without the LBP's permission or a court order. The LBP later filed an application under the Convention for return of the child. A Turkish court held a hearing on the Convention application on February 22, 2007, and ordered the child returned to the United States. The TP appealed the decision, and the highest court in Turkey ultimately upheld the lower court's return order. The LBP applied for and obtained a passport for the child in cooperation with the TP, but the child has not yet returned to the United States.

| VENEZUELA: CASE 1 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 9-2001 |
| DATE CONVENTION APPLICATION FILED | 8-2004 |
| HAS CHILD BEEN LOCATED? | YES |

The TP was released from jail, having served time for a domestic violence conviction, and took the children for a scheduled visitation in September 2001 and never returned them to the LBP. The LBP retained a private attorney and filed an application for return of the children under the Convention in August 2004. This application was transmitted to a Venezuelan public prosecutor in September 2004. The case languished in the Venezuelan courts throughout 2005 and 2006, and the VCA consistently resisted requests by the USCA and the U.S. Embassy in Caracas to urge the courts to proceed expeditiously. In February 2007, a Venezuelan court decided to restart the case, and sent a new summons to the LBP requesting she attend a hearing. As of the close of the reporting period, the USCA had been unable to locate the LBP.

| VENEZUELA: CASE 2 | |
|--|--------|
| DATE OF ABDUCTION OR WRONGFUL RETENTION: | 7-2006 |
| DATE CONVENTION APPLICATION FILED | 3-2007 |
| HAS CHILD BEEN LOCATED? | YES |

In July 2006, the LBP affirmed that she took the child to visit the TP and his family in Venezuela. While in Venezuela, the TP asked the LBP if the child could remain long enough to celebrate Christmas with family in Venezuela. The LBP agreed. The child was supposed to return to the United States after the holidays accompanied by the paternal grandmother and the TP.

However, the TP's VISA was denied and the child was wrongfully retained in Venezuela. At the time of the reported wrongful retention of the child in Venezuela, the parents shared joint custody under Pennsylvania state law. The LBP was concerned that the TP would attempt to flee or become violent when informed about the Hague petition for the return of the child, filed on March 23, 2007.

During a hearing on the Convention before a Venezuelan court on February 25, 2008, the court ordered the TP to immediately return the child to the LBP. The TP appealed, and a hearing before an appellate court took place on April 8, 2008. Invoking the exceptions in Articles 12 and 13 of the Convention, the appellate court reversed the lower court's return order, stating the child had become "settled," and return would risk the child's well-being. Furthermore, since the LBP voluntarily took the child to the TP's home in Venezuela and returned to the United States without the child, the appellate court held that the Convention did not even apply. The USCA disagrees with the appellate court's interpretation of the Convention. On May 17, 2008, the LBP traveled back to United States and worked out international visitation rights with the TP. The USCA has not heard from the LBP since that time.

GLOSSARY OF ACRONYMS

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| 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 |
| UFAP | Unlawful Flight to Avoid Prosecution |
| USCA | United States Central Authority |



