The Hague Convention on the Civil Aspects of International Child Abduction in Cases Involving Allegations of Domestic Violence

A Minnesota Bench Guide

October 2011

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Robins, Kaplan, Miller & Ciresi L.L.P.

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FOREWORD

Domestic violence is a national and international problem that affects women and children substantially and involves some of the hardest decisions that judges will have to make.

It is with great pleasure and humility that we submit this bench guide for your consideration. As judges we are acutely aware that unique legal issues, like those involving the Hague Convention, may only come before you once in your judicial career. We have attempted to put together all the information you will need to know to arrive at a sound decision based on the most recent and relevant law.

We are hopeful that you will find this guide useful and enlightening. It is our hope that you will refer to this bench guide and that it will aid in your deliberation of the weighty decisions with which you will be faced. We will attempt to update this bench guide periodically so that you will be abreast of all relevant law in the area. You may also refer to the website that has been created by the Hague Domestic Violence Project at http://www.haguedv.org/, which contains resources for mothers, advocates, attorneys and Judges.

With Best Regards,

Judge Pamela G. Alexander,
President, Minnesota Council on Crime and Justice

Judge John R. Tunheim,
United States District Court, District of Minnesota

The Hague Convention and Domestic Violence Minnesota Task Force has prepared this bench guide for judges, attorneys, and domestic violence advocates who are confronted with a Hague petition involving women and children fleeing domestic violence. The Minnesota bench guide is based on a bench guide ably drafted in September 2005 by the Hague Convention Chapter Advisory Committee in Washington State. The Minnesota bench guide contains a new format with updates on the law involving Hague petitions and new content.

Please visit www.haguedv.org for more information about the Hague Domestic Violence Project, as well as more resources on Hague petitions and women and children fleeing domestic violence across international borders.

HAGUE CONVENTION AND DOMESTIC VIOLENCE MINNESOTA BENCH GUIDE TASK FORCE

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i. HAGUE PETITION CHECKLIST

Jurisdiction

1. Was child removed from country of residence to U.S. by a parent? Yes. Continue to 2.
2. Has left-behind parent filed a petition for return of the child under the Hague Convention in state or federal court? Yes. Continue to 3.
3. Is the child under age 16 at time of petition? Yes. Continue to 4.
4. Was the child removed from a country that is a "contracting state" to Hague Convention? Yes. Continue to 5.
5. Is child the subject of another state or federal proceeding addressing the Hague Convention? No.

Jurisdiction established. Order hearing for Petitioner to establish prima facie case that removal was wrongful.

Petitioner's Prima Facie Case that Removal Was Wrongful

"Habitual residence"

6. Was child removed from country of "habitual residence"? No. Stop, petitioner fails to meet burden.
7. Has the child become acclimatized to the country to which the parties relocated? Yes. Stop, petitioner fails to show wrongful removal.

Petitioner must exercise custody (not access) rights

8. Is the child the subject of an on-going custody proceeding in the country from which he or she was removed? No. Continue to 9.
9. Does the petitioner have custody rights to the child because of an existing custody order? No. Continue to 10. Yes. Continue to 11.
10. Does petitioner have right to prevent removal by operation of law? No. Continue to 11.
11. Was petitioner actually exercising custody rights at the time of the removal? No. Continue to 12.
12. Would petitioner have exercised custody rights but for the removal? No. Stop, petitioner failed to establish that the removal was wrongful.

If petitioner establishes that removal was wrongful, determine whether a Hague Convention exception applies.

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Does Hague Convention exception apply?

Petitioner's consent to removal/failure to exercise custody rights

13. Did petitioner consent to or acquiesce to removal? Yes. Stop, Convention exception applies.
14. Was petitioner actually exercising custody rights at time of removal? No. Stop, Convention exception applies.

Age of maturity/Child re-settled

15. Did child reach age of maturity and now objects to being removed? Yes. Stop, Convention exception applies.
16. Has over one year passed since removal and child is re-settled? Yes. Stop, Convention exception applies.

"Grave Risk"

17. Would return of the child place the child at "grave risk"? Yes. Stop, Convention exception applies.
18. Has child been abused by petitioner? Yes. Stop, Convention exception applies.
19. Has child been exposed to the petitioner's abuse of the fleeing parent? Yes. Convention exception may apply. Make findings on effect on child to exposure to domestic violence.
20. Is the country of habitual residence a "zone of war"? Yes. Stop, Convention exception applies.

Violation of human rights

21. Would return of the child violate human rights or fundamental freedoms? Yes. Stop, Convention exception applies.

If the petitioner has established a prima facie case of wrongful removal, but the respondent establishes that one of the Convention exceptions applies, the Court may decide not to order the return of the child.

PART I. OVERVIEW, JURISDICTION, ENFORCEMENT AND FEES

§1.00. Overview

1.1 Hague Convention and ICARA: General Principles

Hague Convention. The Hague Convention on the Civil Aspects of International Child Abduction[1] provides a uniform law signatories may adopt to compel the return of a child wrongfully removed from his or her habitual residence.[2] The Convention applies to courts within the jurisdiction of a contracting state to which a child has been wrongfully removed. Under the Convention, courts consider only the claim that the child was improperly removed, and not the merits of an underlying custody claim.[3]

ICARA. The legislation implementing the Convention in the United States is the International Child Abduction Remedies Act (ICARA), enacted by Congress in 1988.[4]

Legislative History. According to the commentary accompanying the Convention's drafting, the official Convention reporter explains that the Convention is intended to prevent one parent from gaining an unfair advantage in a custody dispute by taking a child to another country in order to invoke that other country's jurisdiction.[5]

1.2 Child Custody Jurisdiction in the United States

Custody disputes in U.S. courts may concern matters not implicated in the Hague Convention. In such cases, the court must look to domestic law to determine whether they have jurisdiction and the extent of their authority.[6] Jurisdiction in United States custody cases is determined by federal

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[1] Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, 19 I.L.M. 1501 (1981) [hereinafter Convention]. *See* full text in Appendix B.

[2] *Id.* at art. 3a.

[3] *Id.* at art. 19; *see Abbott v. Abbott*, 130 S.Ct. 1983, 1989 (2010); *Stern v. Stern*, 639 F.3d 449, 451 (8th Cir. 2011); *accord In re Salah v. Awes*, 629 N.W.2d 99, 103 (Minn. Ct. App. 2001) (citing *Rydder v. Rydder*, 49 F.3d 369, 372 (8th Cir.1995)) ("Proceedings under the Hague Convention 'do not allow a court applying the Convention to adjudicate the merits of any underlying custody claims,' only the question of wrongful removal.").

[4] International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-11610 (2010) [hereinafter ICARA]. *See* full text in Appendix C; *see also Abbott*, 130 S.Ct. at 1989-90.

[5] Elisa Perez-Vera, Explanatory Report § 11, Hague Conference on Private International Law, Acts and Documents of the Fourteenth Session, Child Abduction 426 (1982). The Explanatory Report was never adopted in the Hague Convention. In *Abbott*, Justice Kennedy noted that the Perez-Vera Report was, for purposes of the case at bar, to be accorded the weight of a scholarly commentary on the Hague Convention, although the Perez-Vera Report was not officially approved at the Conference. *Abbott*, 130 S.Ct. at 1995. *See also Silverman v. Silverman*, 338 F.3d 886, 899 (8th Cir. 2003) (noting that the Hague Convention appeared to be designed to prevent forum-shopping by parents looking for a more sympathetic judge).

[6] For instance, the Convention may not be in effect between the United States and the other nation involved in the dispute; even if proceedings involve nations for which the Convention is in force, domestic law may be relevant.

and state laws, including ICARA, the Parental Kidnapping Prevention Act (PKPA) and, in those states which have adopted it, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).[7] Along with the Convention and ICARA, the PKPA and UCCJEA suggest returning the child to the place of his or her habitual residence for custody determinations.

Parental Kidnapping Prevention Act. Congress passed the Parental Kidnapping Prevention Act to require states to give full faith and credit to custody determinations made by other states.[8] The statute also defers questions regarding prior out-of-state decrees to the courts of the decree-granting state unless the initial state no longer has jurisdiction.[9]

Uniform Child Custody Jurisdiction and Enforcement Act. Minnesota's UCCJEA[10] is contained in Minnesota Statutes, sections 518D.101 to 518D.317. The UCCJEA requires Minnesota courts to recognize and enforce foreign child custody determinations made in substantial conformity with Minnesota's own standards.[11]

Minnesota courts are to decline jurisdiction in child custody matters where another state or foreign country has previously exercised jurisdiction, unless certain exceptions apply.[12] In addition, Minnesota courts may enforce an order for the return of a child under the Hague Convention as if the order were a child custody determination.[13] Minnesota's UCCJEA considers temporary emergency jurisdiction in Minn. Stat. § 518D.204 if the child is in Minnesota, and one of the following circumstances exists: the child is abandoned, it is necessary in an emergency to protect the child, or a sibling or parent of the child is threatened with or subjected to mistreatment or abuse.[14]

§2.00 Jurisdiction

A Hague Convention proceeding is a civil action brought in the country to which a child[15] (under the age of 16) was wrongfully removed or retained. The Convention applies only between

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[7] *Nazer v. Nazer*, 474 N.W.2d 206, 208 (Minn. Ct. App. 1991) (citing *Martinez v. Reed*, 623 F. Supp. 1050, 1054 (E.D. La. 1985)).
[8] *See* Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A(a)-(h) (2010).
[9] *Id.*
[10] Uniform Child Custody and Enforcement Act, Minn. Stat. §§ 518D.101-518D.317 (2010).
[11] Minn. Stat. § 518D.105 (2010).
[12] Minn. Stat. § 518D.202 (2010). *See Schroeder v. Schroeder*, 658 N.W.2d 909 (Minn. Ct. App. 2003) (finding that the district court did not have subject matter jurisdiction under Minn. Stat. § 518D.202 to alter a California custody agreement because the father still lived in California).
[13] Minn. Stat. § 518D.302 (2010).
[14] *See In re D.K.*, No. C2-00-1946, 2001 WL 345658 (Minn. Ct. App. April 10, 2001) (finding that Minnesota could only exercise emergency temporary jurisdiction if the child is present in Minnesota).
[15] The Convention ceases to apply when the child reaches age 16. Convention, *supra* note 1, at art. 4. Even if the child is under age 16 at the time of the wrongful removal or retention, if the child has reached age 16 when the return is requested, the Convention does not require the child's return.

Contracting States[16] and only when the wrongful abduction occurs after the Convention is in force between those States.[17] In cases where the Convention is not in effect between the United States and the other nation involved in the dispute, U.S. courts must look to domestic law to determine jurisdiction and the extent of their authority.

ICARA provides both state and federal district courts with original and concurrent jurisdiction over a Convention proceeding.[18] To exercise jurisdiction over a child or respondent named in a Hague petition, courts must find that a child was (1) under age 16 at the time of the petition; (2) removed from country of habitual residence; (3) that country is a Contracting State to the Hague Convention; (4) the child is not the subject of another federal or state proceeding addressing the merits of a Hague petition.[19] Courts should consider only the removal claim, not the merits of an underlying custody claim.[20]

2.1. International Treaties and the Supremacy Clause

The U.S. Constitution provides that international treaties, along with the Constitution and federal statutes, are the supreme law of the land.[21] If conflict exists between an international treaty and a federal statute, the most recent provision applies.[22]

Federal courts must have the power to vacate state custody determinations and other state court orders that contravene or frustrate the purposes of the Hague Convention.[23]

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[16] An up-to-date list of contracting states to the Convention is maintained at http://www.travel.state.gov/abduction/hague_issues/hague_issues_1487.html. Article 38 of the Convention distinguishes between states that have acceded to the Convention and Contracting States. The United States, as a Contracting State, is not required to accept the accession of nations party to the Convention that were not party to the Hague Conference and thus Contracting States; each Contracting State must accept the accession of each nation individually. *See, e.g., Abbott v. Abbott*, 130 S.Ct. 1983, 1990 (2010) (discussing the applicability of the Convention as both the United States and Chile are both Contracting States); *see also* Appendix D.

[17] Convention, *supra* note 1, at art. 35.

[18] 42 U.S.C. § 11603; *see also Abbott*, 130 S.Ct. at 1989-90; *Silverman*, 338 F.3d at 894.

[19] If the child was not removed from his or her habitual residence, the Convention does not apply. As part of determining a child's habitual residence, domestic violence may factor into a court's interpretation of habitual residence; *see infra* §6.1 discussing habitual residence.

[20] Convention, *supra* note 1, at art. 19; *see also Abbott*, 130 S.Ct. at 1989 (noting that "a return remedy does not alter the pre-abduction allocation of custody rights but leaves custodial decisions to the courts of the country of habitual residence"); *Silverman*, 338 F.3d at 894; *In re Salah v. Awes*, 629 N.W.2d 99, 103 (Minn. Ct. App. 2001).

[21] U.S. CONST. art. VI, cl. 2. ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land.").

[22] If conflict between a federal law and a treaty is unavoidable, the most recent expression of the sovereign controls. *Chae Chan Ping v. U.S.*, 130 U.S. 581, 600, (1889)

[23] *Silverman*, 338 F.3d at 894.

§3.00. Proceedings under the Convention

3.1. Preemptive Stay / Dismissal

Where the court or administrative authority in the requested state has reason to believe the child has been taken out of the removed-to state, it may stay the proceedings or dismiss the application for the return of the child.[24]

3.2. Removal to Federal Court

No provision in ICARA prohibits removal of state court Convention proceedings to federal court. Thus, arguably, ICARA allows removal to federal court.[25]

3.3. Writs of Habeas Corpus

Although neither the Convention nor ICARA mentions the writ of habeas corpus, a petitioner could arguably use it in a Convention proceeding to test the legality of an alleged wrongful removal or retention.[26] If the court finds a removal or retention wrongful, it may compel the respondent before the court.[27]

3.4. Expedited Nature of Proceedings

The Convention mandates the prompt disposition of the case. The Convention stipulates that if the judicial or administrative authority has not reached a decision within six weeks from the date of the commencement of the proceedings, the petitioner or the Central Authority of the requested state has the right to seek an explanation of the reasons for delay.[28] The Convention's expedited nature has not been construed as a license to conduct hearings ex parte.[29]

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[24] Convention, *supra* note 1, at art. 12, cl. 3.

[25] A district court in New York granted a father's request for removal reasoning that, pursuant to the Federal Removal statute, 28 U.S.C. § 1441(a), and based on ICARA's granting state and federal courts concurrent original jurisdiction, the matter could have originally been filed in federal court. *In re Mahmoud*, CV 96 4165 (RJD), 1997 U.S. Dist. LEXIS 2158 (E.D.N.Y. Jan. 24, 1997).

[26] *See Zajaczkowski v. Zajaczkowska*, 932 F. Supp. 128, 130-31 (D. Md. 1996).

[27] *Id.* at 131.

[28] Convention, *supra* note 1, at art. 11.

[29] *See Wanninger v. Wanninger*, 850 F. Supp. 78 (D. Mass 1994) (denying a request to issue an ex parte order in place of a writ of habeus corpus, instead issuing an order compelling attendance). *See also Morgan v. Morgan*, 289 F. Supp. 2d 1067 (N.D. Iowa 2003) (issuing an ex parte temporary restraining order under state law that prevented respondent mother and her significant other from removing the child named in the petition from the state and ordered the respondent mother to "provide for the appearance and the physical presence of the minor child" at the show-cause hearing).

3.5. Standards of Review

The Eighth Circuit has established some standards of review for Hague petitions.

In *Sorenson*, the Eighth Circuit noted that the standard of review for habitual residence is de novo as it is a mixed question of fact and law, but that the standard of review for the determination of intent is a factual question that is to be reviewed under the standard of clear error.[30] Thus, a reviewing court will not overturn a district court's factual findings unless they are clearly erroneous.[31]

In *Silverman*, the Eighth Circuit initially held the determination of habitual residence was a fact-based inquiry to be determined on a case-by-case basis."[32] But in a rehearing of *Silverman*, the Eighth Circuit sitting en banc concluded that habitual residence determinations are mixed questions of fact and law requiring a de novo review.[33]

In *Barzilay*, the Eighth Circuit noted, citing principles of federalism and comity, that applications of the *Younger* abstention doctrine would be reviewed for abuse of discretion.[34]

In *Sorenson*, it held that de novo review is required for a court's grave risk of harm determination.[35]

In *Slagenweit*, the Eighth Circuit reviewed the district court's award of costs to the respondent for an abuse of discretion.[36]

§4.00. Recognition and Enforcement

4.1. Full Faith and Credit

Courts must accord full faith and credit to the judgment of any other U.S. court with jurisdiction that orders or denies the return of a child pursuant to the Convention.[37]

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[30] *Sorenson v. Sorenson*, 559 F.3d 871, 873 (8th Cir. 2009); *see also Blondin v. Dubois*, 238 F.3d 153, 158 (2nd Cir. 2001).
[31] *Sorenson*, 559 F.3d at 873.
[32] *Silverman v. Silverman*, 312 F.3d 914, 916 (8th. Cir. 2002), *rev'd en banc*, 338 F.3d 886 (8th Cir. 2003).
[33] *Silverman*, 338 F.3d at 896.
[34] *Barzilay v. Barzilay*, 536 F.3d 844, 849 (8th Cir. 2008).
[35] *Silverman v. Silverman*, 338 F.3d 886, 896 (8th Cir. 2003).
[36] *Slagenweit v. Slagenweit*, 63 F.3d 719, 720-21 (8th Cir. 1995) (holding that respondent father was prevailing party even though mother's petition for return of child to Germany was dismissed as moot after child's unexpected death).
[37] 42 U.S.C. § 11603(g) (2010).

Common Law Doctrine of International Comity.[38] ICARA limits full faith and credit deference to judgments of courts within the United States;[39] but nothing in ICARA or its legislative history indicates that Congress intended to bar the courts of the United States from giving foreign judgments deference under principles of international comity.[40] Moreover, ICARA specifically recognizes the need for uniform international interpretation of the Convention.[41]

4.2. Res Judicata and Collateral Estoppel

In *Silverman*, the Eighth Circuit noted in dicta that a final state court order arising under the congressionally assigned subject matter would, of course, deserve full faith and credit under section 11603(g) of ICARA and, perhaps, if necessary, issue and claim preclusion protection under common law theories of res judicata and collateral estoppel.[42]

Federal courts adjudicating Hague Convention petitions must accord full faith and credit only to the judgments of those state or federal courts that actually adjudicated a Hague Convention claim.[43] For instance, the Ninth Circuit rejected a petitioner's argument that a Convention proceeding should be precluded by a custody determination in the removed-to country, which preceded the Hague petition.[44]

4.3. *Rooker-Feldman* Doctrine

In *Silverman*, the Eighth Circuit held that where the state court custody determination addressed only matters of state custody law, and did not address issues arising under the Hague Convention, the federal appellate court was not required to uphold the state court ruling because the state court ruling was not entitled to full faith in credit, nor protection because of issue or claim preclusion, nor was the *Rooker-Feldman* jurisdictional limitation applicable.[45]

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[38] *Hilton v. Guyot*, 159 U.S. 113, 163-64 (1895) (describing international comity as as neither a "matter of absolute obligation . . . nor of mere courtesy and good will" . . . but as "the recognition which one nation allows within its territory to the legislative executive or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws"). *See also* RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 481 (1987).
[39] 42 U.S.C. § 11603(g) (2010).
[40] *Diorinous v. Mezitis*, 237 F.3d 133, 142 (2d Cir. 2001). However, a long-recognized exception is that comity will not be afforded when it would be contrary to the public policy of the forum. *Noordin v. Abdulla*, 947 P.2d 745, 759-62 (Wash. Ct. App. 1997) (relying on *Malik v. Malik*, 638 A.2d 1184 (Md. Ct. App. 1994) to conclude that a Washington court could deny enforcement if it determined the foreign proceedings were conducted contrary to Washington law and public policy).
[41] 42 U.S.C. § 11601(b)(3)(B) (2010).
[42] *Silverman* 338 F.3d at 895; *but see Holder v. Holder*, 305 F.3d 854, 864 (9th Cir. 2002).
[43] *Silverman* 338 F.3d at 895; *see also Holder*, 305 F.3d at 864 (applying 42 U.S.C. § 11603(g)).
[44] *Holder*, 305 F.3d at 863-64.
[45] *Silverman*, 338 F.3d at 893.

4.4. *Younger* Abstention

The Eighth Circuit has held that where a state court custody proceeding is on-going, and one party petitions for redress under the Hague Convention in federal district court, the federal court cannot abstain from addressing the merits of the Hague petition under the *Younger* abstention doctrine.[46] Rather, the state court custody proceeding should be held in abeyance while the Hague litigation is resolved.[47]

§5.00. Fees and Costs

The Convention and its enabling legislation require a court to order the respondent to pay the petitioner's necessary expenses if the court orders the return of the child[48] unless such an award would be "clearly inappropriate."[49] Reimbursable expenses must be reasonably necessary, not clearly inappropriate, and have been incurred during the course of the proceedings in the action.[50]

No provision in the Convention or ICARA awards fees to a prevailing respondent, although at least one federal district court has awarded a prevailing respondent fees under Rule 54 of the Federal Rules of Civil Procedure.[51]

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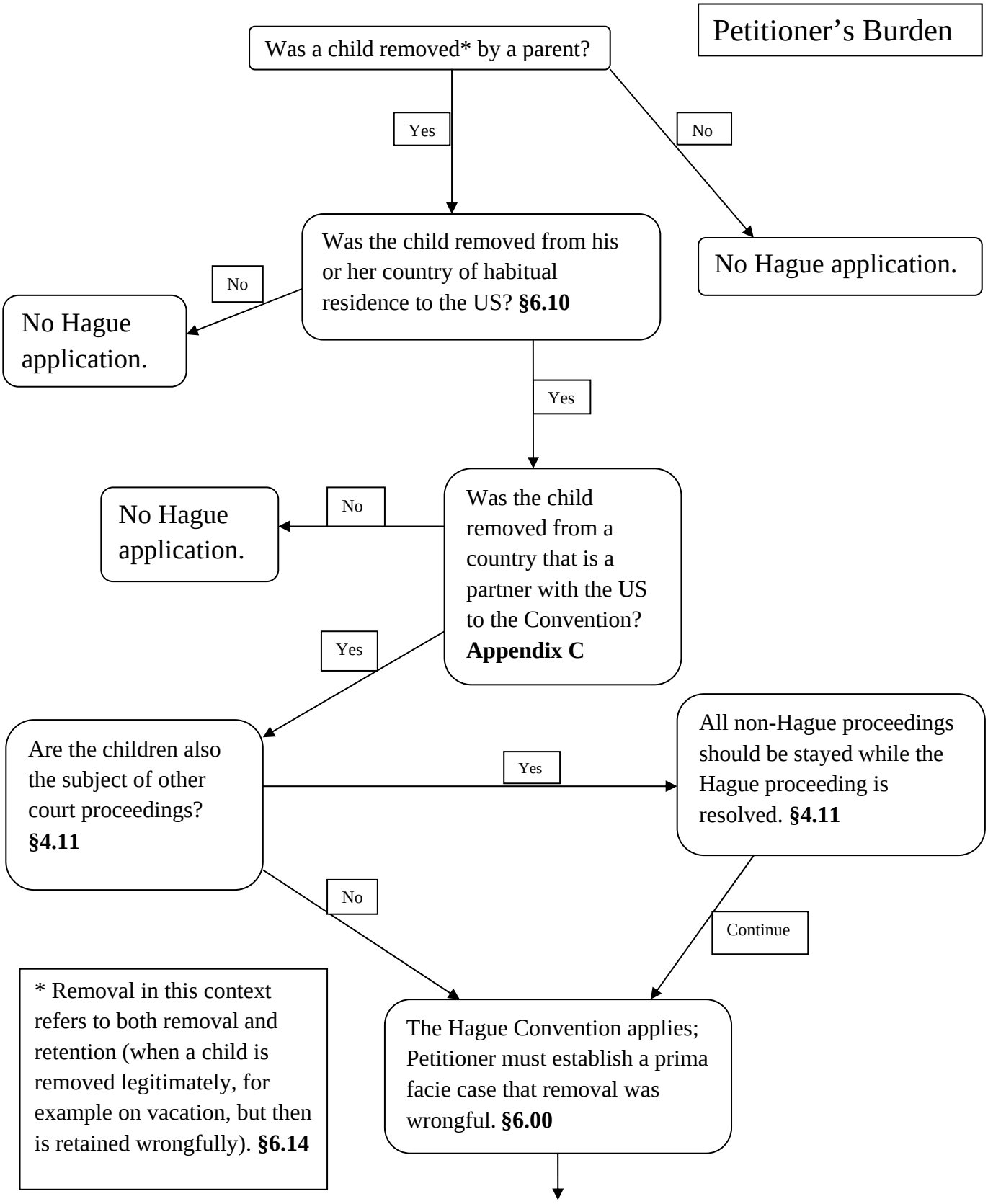
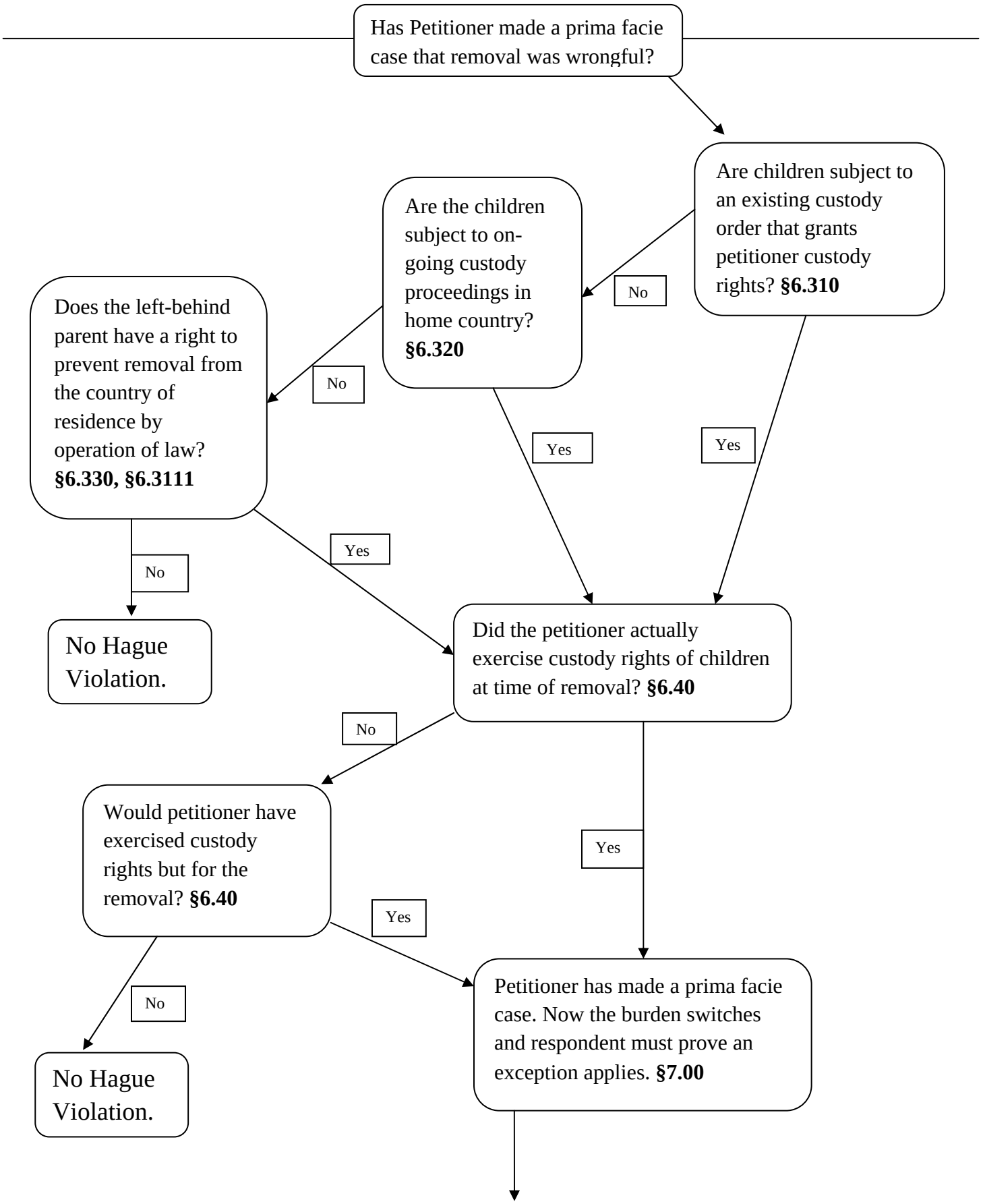
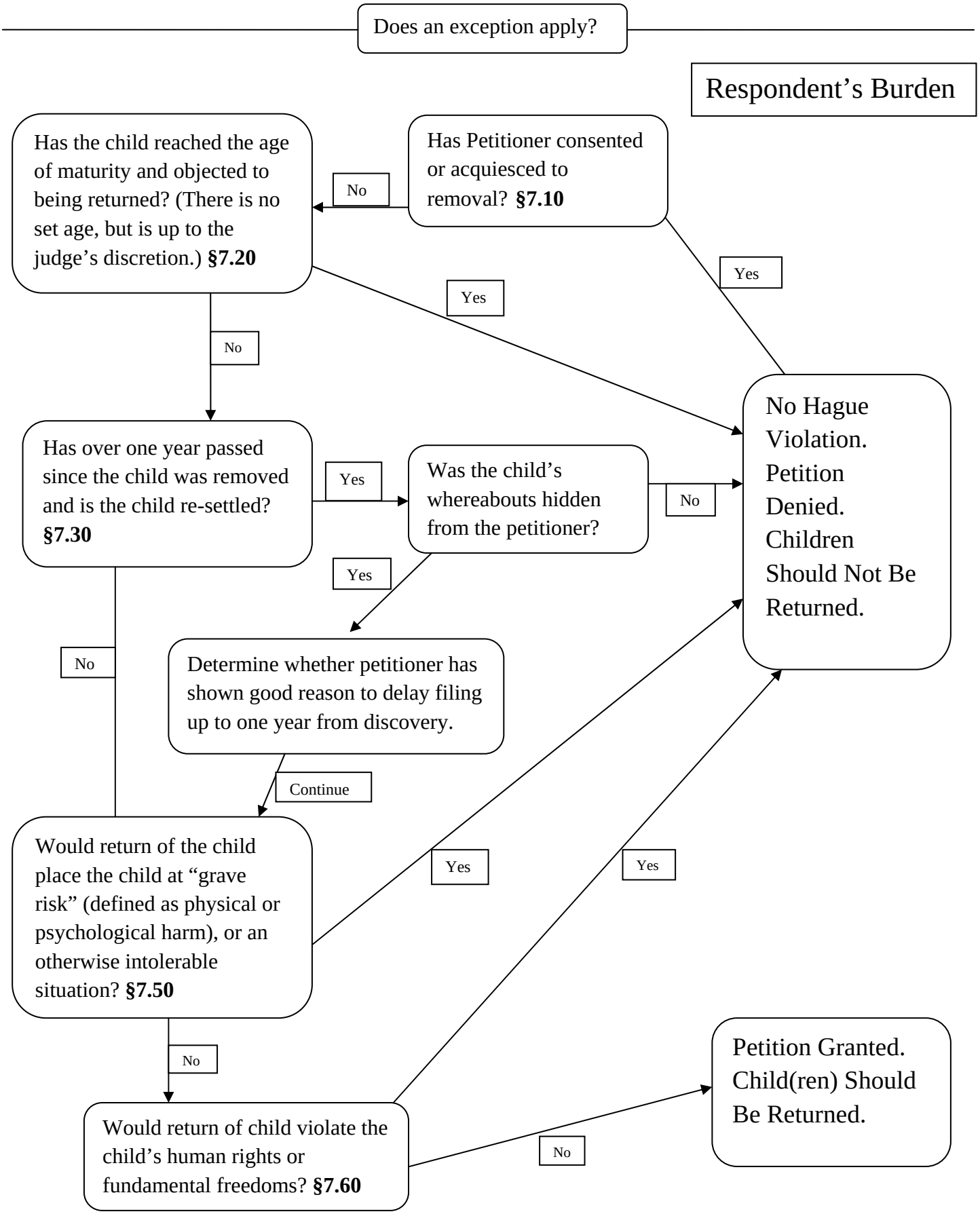
[46] *Silverman v. Silverman*, 267 F.3d 788, 792 (8th Cir. 2001); *see also* Barzilay v. Barzilay, 536 F.3d 844, 849 (8th Cir. 2008).
[47] *Barzilay*, 536 F.3d at 850.
[48] *See* Convention, *supra* note 1, at art. 26; 42 U.S.C. § 11067.
[49] 42 U.S.C. § 11607(b)(3) (2010).
[50] 42 U.S.C. § 11607(b)(3) (2010); *Lebiedzinski v. Crane*, No. A03-0248 CV (JKS), 2005 U.S. Dist. LEXIS 45787, at *9 (D. Alaska Apr. 13, 2005).
[51] *Broda v. Abarca*, No. 11-cv-00286-REB, 2011 U.S. Dist. LEXIS 30621, at *20 (D. Colo. Mar. 15, 2011) (awarding prevailing respondent her costs under Federal Rule of Civil Procedure Rule 54(d)(1), which allows a prevailing party to receive costs other than attorney's fees).

ii. FLOWCHART: CHRONOLOGY OF A HAGUE PETITION




Has Petitioner made a prima facie case that removal was wrongful?
Are children subject to an existing custody order that grants petitioner custody rights? §6.310
Are the children subject to on-going custody proceedings in home country? §6.320
No
Yes
Yes
Does the left-behind parent have a right to prevent removal from the country of residence by operation of law? §6.330, §6.3111
No
Yes
No
No Hague Violation.
Did the petitioner actually exercise custody rights of children at time of removal? §6.40
No
Yes
Would petitioner have exercised custody rights but for the removal? §6.40
Yes
No
No Hague Violation.
Petitioner has made a prima facie case. Now the burden switches and respondent must prove an exception applies. §7.00


Does an exception apply?
Respondent's Burden
Has the child reached the age of maturity and objected to being returned? (There is no set age, but is up to the judge's discretion.) §7.20
Has Petitioner consented or acquiesced to removal? §7.10
No
Yes
Yes
No
Has over one year passed since the child was removed and is the child re-settled? §7.30
Yes
Was the child's whereabouts hidden from the petitioner?
No
No Hague Violation. Petition Denied. Children Should Not Be Returned.
Yes
No
Determine whether petitioner has shown good reason to delay filing up to one year from discovery.
Continue
Would return of the child place the child at "grave risk" (defined as physical or psychological harm), or an otherwise intolerable situation? §7.50
Yes
Yes
No
Would return of child violate the child's human rights or fundamental freedoms? §7.60
No
Petition Granted. Child(ren) Should Be Returned.

PART II. STEPS IN HAGUE PETITION INVOLVING DOMESTIC VIOLENCE

§1.00. Was child removed by a parent from country of residence to the United States?

1.1. Hague Convention originally created to assist left-behind parents after international abduction

The Convention drafters focused on the rights of the left-behind parent, based on a view that the abducting parent is generally the non-custodial father.[52] Early documents such as the Dyer Report[53] portray the taking parents as non-custodial fathers frustrated with their inability to have access or control over the care of their children.

In addition, one of the few multi-national surveys of parental child abductions available at the time of the Convention's writing was an 11-country study reported in 1979 by International Social Services,[54] an international organization with affiliates in many countries. Their study of 99 cases submitted by affiliate organizations found that 81 percent of taking parents in the survey were fathers or their relatives, while only 18 percent were mothers or their relatives.

These findings contrast to recent data on Hague applications analyzed by Professor Nigel Lowe[55] that found mothers accounted for 69 percent of taking parents while fathers accounted for 28 percent of cases in applications worldwide, figures that have remained relatively stable over three analyses spanning the last decade. In his 2011 analysis, Lowe found that over two-thirds of taking parents (72 percent) were the primary caregivers to their children.

Thus, the available data show a shift from fathers to mothers, many of whom are primary caregivers, as being the mostly likely to take their children across international borders.

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[52] Merle H. Weiner, *International Child Abduction and the Escape from Domestic* Violence, 69 FORDHAM L. REV. 593 (2000) [hereinafter Weiner, *International Child Abduction*]; *see also* Sudha Shetty & Jeffrey L. Edleson, Shetty & Edleson, *Adult Domestic Violence in Cases of International Parental Child Abduction,* 11(1) VIOLENCE AGAINST WOMEN 115-138 (2005) [hereinafter *Adult Domestic Violence*].

[53] Dyer, Adair (1978). Report on international child abduction by one parent ('legal kidnapping'). Preliminary Document No. 1 of August 1978. Hague, NL: The Hague Conference on Private International Law.

[54] Hague Conference on International Private Law (1979). Summary of findings on a questionnaire by International Social Services. Preliminary Document No. 3 of February 1979. The Hague, NL: Author.

[55] Lowe, Nigel (2011). A statistical analysis of applications made in 2008 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Part I – Global Report. Preliminary Document No 8 A of May 2011 for the attention of the Special Commission of June 2011. The Hague, NL: Hague Conference on Private International Law.

1.2. Hague Convention's purpose is to give left-behind parent a level playing field for return remedy, not to rubber-stamp children's return

Three decades after drafting the Hague Convention, the expectation that a father would be the likely parent to abduct his child has been proven incorrect. As stated above, the recent global survey of Hague Convention abduction cases finds that over two-thirds of the taking parents (69 percent) are now mothers, with the overwhelming majority of these mothers being the primary caregivers of the taken child.[56]

The original construction of the likely abductor has produced an inaccurate picture of child abduction by ignoring the situations where either abduction does not harm the child or the harm experienced from abduction is significantly less than that which would result if the abduction had not taken place.[57]

§2.00 Did left-behind parent (Petitioner) file a Hague petition for return of child under age 16 in U.S. federal or state court?

2.1. Left-behind parent's action is commenced by petition or by contact with Central Authority

A judicial proceeding under the Convention commences in the United States by the filing of a petition in state or federal court.[58] A petitioner's submission to the court confers in personam jurisdiction and results in a bilateral hearing.

The Convention also provides for the designated Central Authority to enforce the remedy of return through administrative means, whereby the left-behind parent submits an application for the child's return through the Central Authority of either the child's habitual residence or in the state where the child is found.[59] The Central Authority's role is that of a facilitator, and, when dispute exists between parties, has no power to order a child's return.[60]

In the United States, the Department of State serves as the Central Authority.[61] The Supreme Court has relied on the Department of State's interpretations of the Convention provisions as support for its holding in *Abbott*.[62]

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[56] *Id.*
[57] Weiner, *International Child Abduction*, supra note 52, at 617-18.
[58] 42 U.S.C. § 11603(a)-(b) (2010).
[59] 42 U.S.C. § 11606 (2010).
[60] A Central Authority may help secure the voluntary return of the child or bring about an amicable resolution of the issue. Convention, *supra* note 1, at art. 7(c) andart. 10; *see also Wojcik v. Wojcik*, 959 F.Supp. 413, 416 (E.D. Mich. 1997) (noting the Central Authority may take measures to obtain the voluntary return of the child).
[61] The United States Department of State is appointed as the Central Authority for the purposes of the Convention in the United States. Exec. Order No. 12648, 53 Fed. Reg. 30637 (Aug. 11, 1988). Central Authorities coordinate and

2.2. Children are under age 16 at time of petition

The Convention ceases to apply when the child reaches age 16.[63] Even if the child is under age 16 at the time of the wrongful removal or retention, if the child has reached age 16 when the return is requested, the Convention does not require the child's return.

2.3. Petitioner can file in state or federal court

ICARA provides both state and federal district courts with original and concurrent jurisdiction over a Convention proceeding.[64]

§3.00. Was child removed from country that is a Contracting State to Hague Convention?

The Convention applies only between Contracting States[65] and only when the wrongful removal occurs after the Convention is in force between those States.[66] In cases where the Convention is not in effect between the United States and the country from which the child was removed, U.S. courts must look to domestic law to determine jurisdiction and the extent of their authority.

Recommendation: The U.S. Department of State maintains an updated list of states that have contracted with the United States to enforce the provisions of the Hague Convention. This list should be consulted to confirm that the children were removed from a Contracting State.

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cooperate with various agencies of the child's habitual residence and the requested state in order to secure the prompt return of a child. Convention, *supra* note 1, at art. 7.

[62] *Abbott v. Abbott*, 130 S.Ct. 1983, 1993 (2010).

[63] Convention, *supra* note 1, at art. 4.

[64] 42 U.S.C. § 11603 (2010); *see also Abbott*, 130 S.Ct. at 1989-90; *Silverman*, 338 F.3d at 894.

[65] An up-to-date list of contracting states to the Convention is maintained at http://www.hcch.net/index_en.php?act=conventions.status&cid=24. Article 38 of the Convention distinguishes between states that have acceded to the Convention and Contracting States. The United States, as a Contracting State, is not required to accept the accession of nations party to the Convention that were not party to the Hague Conference and thus Contracting States; each Contracting State must accept the accession of each nation individually. *See, e.g., Abbott*, 130 S.Ct. at 1990 (discussing the applicability of the Convention as both the United States and Chile are both Contracting States).

[66] Convention, *supra* note 1, at art. 35.

§4.00. Is the child the subject of a Hague petition in another federal or state court?

ICARA provides both state and federal district courts with original and concurrent jurisdiction over a Convention proceeding.[67]

4.1. A custody proceeding in another U.S. court that does not address the Hague petition should be stayed while the Hague petition is resolved

A petition under the Hague Convention takes precedence over a custody proceeding, and must be resolved first because a Hague petition is designed as a mechanism to determine which country's courts have jurisdiction over the child.

Recommendation: Stay any proceedings that do not resolve the Hague petition's central question of whether the child will be returned to another country. Once the Hague petition is resolved, either proceed with the state law custody determination if the child is to remain in the U.S. or dismiss the custody action for lack of jurisdiction if the child will be returned to his or her country of habitual residence.

§5.00. Judge orders hearing on the Hague petition

The Convention mandates prompt disposition of the Hague petition. The Convention stipulates that if the judicial or administrative authority has not reached a decision within six weeks from the date of the commencement of the proceedings, the petitioner or the Central Authority of the requested state has the right to seek an explanation of the reasons for delay.[68] However, the Convention's expedited nature has not been construed as a license to conduct hearings ex parte.[69]

§6.00. Has petitioner made prima facie case that the removal was wrongful?

To invoke the Hague Convention's remedy of return, the petitioning parent must establish, by a preponderance of the evidence,[70] that the child's abduction was wrongful. Removal or retention of a child is wrongful where the child is taken from the state in which the child is habitually resident, violating the petitioner's custody rights.[71] Article 3 of the Convention describes a removal or retention to be wrongful where:

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[67] 42 U.S.C. § 11603 (2010); *see also Abbott*, 130 S.Ct. at 1989-90; *Silverman*, 338 F.3d at 894.
[68] Convention, *supra* note 1, at art. 11.
[69] *See Wanninger v. Wanninger*, 850 F. Supp. 78 (D. Mass 1994) (denying a request to issue an ex parte order in place of a writ of habeus corpus, instead issuing an order compelling attendance).
[70] 42 U.S.C. § 11603(e)(1)(A) (2010).
[71] *Abbott v. Abbott*, 130 S.Ct. 1983, 1990 (2010) (citing Convention, *supra* note 1, at art. 3); *Silverman v. Silverman*, 338 F.3d 886, 897 (8th Cir. 2003) (citing citing Convention, *supra* note 1, at art. 3; Text and Analysis, 51 Fed. Reg. 10494-01 (Mar. 26, 1986)).

1) It is in breach of rights of custody attributed to a person, an institution, or any other body under the law of the state in which the child was habitually resident immediately before the removal or retention; and

2) At the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.[72]

6.1. Were children removed from the country of "habitual residence"?

As part of determining whether a removal or retention is wrongful, courts must determine the child's habitual residence. Neither the Convention nor ICARA defines habitual residence.[73] Courts interpret the phrase according to its ordinary meaning and analyze habitual residence as a mixed question of fact and law, based on the circumstances of the particular case. [74] Most courts hold that a person can have only one habitual residence at a time.[75]

6.11. From the child's perspective, what is the country of "habitual residence"?

The Eighth Circuit has held that the Convention directs courts to look to the period directly before the removal and the inquiry should focus their inquiry on the child's — and not the parents' — perspective of habitual residence.[76] The Eighth Circuit's analysis can be viewed as a rejection of the habitual residence analysis of the Ninth Circuit in *Mozes*, which focused on "parental intent" to determine the child's habitual residence.[77]

In *Stern v. Stern* (a case that did not contain evidence of domestic violence in the record), the Eighth Circuit emphasized that "the child's perspective is paramount" to determine habitual residence. The *Stern* court looked to "the settled purpose of the move . . . from the child's perspective," along with other factors including parental intent, the passage of time and the child's acclimatization to the new country. The Eighth Circuit found that the child's habitual

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[72] Convention, *supra* note 1, at *art*. 3(a)-(b).
[73] *Silverman*, 338 F.3d at 897.
[74] *Id.* at 896 (following precedents in the Ninth and Third Circuits); *Holder v. Holder*, 392 F.3d 1009, 1015 (9th Cir. 2004); *Feder v. Evans-Feder*, 63 F.3d 217, 222 (3rd Cir. 1995); *see also In re Salah v. Awes*, 629 N.W. 2d 99, 103 (Minn. Ct. App. 2001) (quoting Convention, *supra* note 1, at art. 3(a) and (b)).
[75] *Silverman*, 338 F.3d at898. A cited exception may exist upon the rare occurrence of a child consistently splitting time between two locations so as to have an alternating habitual residence. *Mozes v. Mozes*, 239 F.3d 1067, 1076 (9th Cir. 2001) (citing *Johnson v. Johnson*, 493 S.E.2d 668, 669 (Va. Ct. App. 1997)).
[76] *Stern v. Stern*, 639 F.3d 449, 452 (8th Cir. 2011); *Barzilay v. Barzilay*, 600 F.3d 912, 918 (8th Cir. 2010); *Silverman*, 338 F.3d at 897-98.
[77] *Stern v. Stern*, 639 F.3d 449, 452 (8th Cir. 2011) (noting criticisms of *Mozes* for "undervaluing the perceptions and acclimatization of the child who is the 'focus . . .and intended beneficiary of the Convention's protections . . . . '") (citing Stephen I. Winter, *Home is Where the Heart Is: Determining "Habitual Residence" Under the Hague* Convention, 33 WASH. U. J.L. & POL'Y 351, 376 (2010)).

residence was the United States since he had lived in Iowa for five of his seven years, he had only visited Israel once since he left at age two, he had completed kindergarten in Iowa and had close ties with his mother's family in Des Moines.[78]

Courts must carefully consider the unique circumstances of each case when determining a child's habitual residence, particularly in situations involving military families, cohabitating parents or parents separated for long periods before a custody action is filed.[79] Courts may also need to consider the immigration or asylum status of the petitioner or respondent.

6.12. Do parents agree as to country of "habitual residence"?

The parties may agree on the child's country of habitual residence, as occurred in *Abbott*.[80]

6.13. Did child leave country of birth (which is not the United States)?

If a child is born where parents have their habitual residence, the child normally should be regarded as a habitual resident of that country.[81] However, the place of birth is not automatically the child's habitual residence,[82] because there must be a settled purpose to create a habitual residence.[83]

6.14. Did parents show a "settled purpose" to permanently relocate to new country after the child was born?

After a family's relocation, courts have held that "settled purpose" does not require that both parents believe that they will stay in a new location forever, but "the family must have a 'sufficient degree of continuity to be properly described as settled.'"[84]

In determining a child's habitual residence in these circumstances, courts may consider a number of factors including the "settled purpose of the move to the new country from the child's

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[78] *Stern*, 639 F.3d at 449 (finding that while the child was born in Israel, he moved with his parents to Iowa so that his mother could complete her doctoral studies with the written consent of his father and that the parents planned to remain in Iowa for an indeterminate amount of time until the mother received her Ph.D, and that the child had little connection to Israel having visited once, but had many connections in Iowa having completed kindergarten there, and celebrated holidays with his mother's family in Des Moines).
[79] *Holder*, 392 F.3d at 1015; *In re Salah*, 629 N.W.3d at 103.
[80] *Abbott v. Abbott*, 130 S.Ct. 1983, 1990 (2010). In *Abbott*, the parents agreed that Chile was the child's country of habitual residence. *See also Vasquez v. Colores*, __ F.3d __, 2011 WL 3366380 at *2 (8th Cir. 2011); *In re Salah*, 629 N.W.2d at 103.
[81] *Holder*, 392 F.3d at 1020; *Vasquez v. Colores*, __ F.3d __, 2011 WL 3366380 at *2; *In re Salah*, 629 N.W.2d at 103.
[82] *Holder*, 392 F.3d at 1020 (9th Cir. 2004) (citing *Delvoye v. Lee*, 329 F. 3d 330, 334 (3rd Cir. 2003).
[83] *Silverman*, 338 F.3d at 898.
[84] *Id.* (citing *Feder v. Evans-Feder*, 63 F.3d 217, 222 n.9 (3d Cir. 1995));*see also Stern v. Stern*, 639 F.3d 449, 450-51 (8th Cir. 2011).

perspective; parental intent regarding the move; the change in geography; the passage of time; the parents' sale and purchase of residences; and the acclimatization of the child to the new country, such as enrolling in school and bringing personal possessions or pets," as well as "the location of the family's economic base; the location of relatives; the parents' citizenship and immigration status; and the type of visa with which they entered the country (temporary or permanent residence).[85]

As a general rule, military families do not settle where they are assigned overseas. A Ninth Circuit court held that the focus when military families relocate should center on the facts of each case.[86]

i. Social science research shows that domestic violence may be a factor in the parties' intentions to permanently relocate

A recently completed study for the U.S. Department of Justice found that 41 percent of abducting mothers alleged that their family's residence in the other country was the result of coercion or deception.[87] These mothers alleged that they were threatened with harm if they did not move to the other country or went willingly to the other country for what was expected to be a brief stay only to be told they were not returning to the U.S.

Once in the other country, mothers reported a variety of strategies used against them to keep them and their children from leaving. Some mothers were purposefully isolated from others and had limited access to the family's funds. Some had their and their children's passports taken away and hidden or destroyed so they could not leave.

Most mothers reported multiple attempts to seek informal and formal help prior to leaving the other country, with little success and sometimes resulting in further reinforcement of their violent husbands' positions by the authorities. A number of women followed through on expected steps such as leaving their violent husbands and receiving custody of their children from the other country's courts, only to face continued violence and threats from their husbands when they remained in the other country.

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[85] *Courdin v. Courdin*, 2010 Ark. App. 314 (citing *Barzilay*, 536 F.3d at 851; *Silverman*, 338 F.3d at 898; and *Mozes*, 239 F.3d at 1071-81); *see also Silverman* 338 F.3d at 898. In *Silverman*, some of the panel of judges felt that at least one of the children involved was old enough to express his wishes on whether to return to the petitioner's country. The majority pointed to factors like moving with pets and starting a new school to determine that the children had formed a habitual residence in Israel after living in Israel for less than a year before their mother returned with them to the United States.

[86] *Holder v. Holder*, 392 F.3d 1009, 1016, 1018 (9th Cir. 2004) (finding a lack of settled intent to abandon the United States and move to Germany, where petitioner father was stationed, despite sister circuits finding a settled intent to acquire a new habitual residence based in part on the shipment of family possessions to a new location coupled with failure to maintain a residence in the former location).

[87] JEFFREY L. EDLESON ET AL., MULTIPLE PERSPECTIVES ON BATTERED MOTHERS AND THEIR CHILDREN FLEEING FOR SAFETY TO THE UNITED STATES: A STUDY OF HAGUE CONVENTION CASES 84-85 (FINAL REPORT, NIJ #2006-WG-BX-0006, 2010), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/232624.pdf.

These mothers' experiences are consistent with current conceptions of domestic violence that place violent behavior within the context of a broader pattern of "coercive control."[88]

ii. U.S. courts are split on whether domestic violence should be considered as a factor in determining the parties' intentions to relocate

Some courts have considered the presence of domestic violence as a factor in determining the place of a child's habitual residence, particularly in the way domestic violence affects the interpretation of "settled intent."

Habitual residence may be changed when the family has manifested a settled intention to abandon a prior habitual residence, even if one parent had qualms about the move.[89] Where a court finds verbal and physical abuse of a spouse, the court should carefully scrutinize the conduct of the victimized spouse because there is a chance that the victim's residence was coerced.[90]

The Eighth Circuit has recognized that habitual residence is not established when the removing spouse is coerced to move or to remain in another country, but has limited this rule to some degree when the abuse did not occur prior to or immediately after a relocation.[91] Where the abuse occurred two months after the relocation, the Court found that the parent alleging abuse could not claim that the parties did not change habitual residence — she must rely on the courts of the country to which the family moved.[92]

The factor of domestic violence was also rejected in another case before the Eighth Circuit, which held that the petitioner's abuse of the respondent, in itself, should not factor into a court's assessment of intent to establish habitual residence.[93]

In other circuits, courts have found that the presence of domestic violence can preclude a finding of a change in habitual residence. A district court in Washington held that a petitioning father's abuse of the respondent mother precluded the family from making Greece the country of the child's habitual residence, concluding that the parties lacked any mutual intent to change the

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[88] EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE *PASSIM* (2007).
[89] *Silverman*, 338 F.3d at 899 (citing *Mozes*, 239 F.3d at 1076-77, *Feder*, 63 F.3d at 220, 224).
[90] *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045, 1056 (E.D. Wash. 2001).
[91] *Silverman v. Silverman*, 338 F.3d 886, 900 (8th Cir. 2003) (distinguishing *Tsarbopoulos*, 176 F. Supp. 2d at 1055 and *In re Ponath*, 829 F. Supp. 363, 367 (D. Utah 1993)).
[92] *Silverman*, 338 F.3d at 900.
[93] *Nunez-Escudero v. Tice-Menley*, 58 F.3d 374, 379 (8th Cir. 1995) (rejecting the respondent's argument that she because she was coerced, her residence was not voluntary, and concluded that courts should focus on the child in determining habitual residence, not on the parent).

child's habitual residence from the United States to Greece.[94] The court further found the petitioner's behavior adversely affected any potential acclimatization to Greece.[95]

A district court in Utah ruled that habitual residence necessarily entails an element of voluntariness in "settled purpose."[96] The court found that the respondent and her child were detained in Germany by means of verbal, emotional and physical abuse and that such coercion "removed any element of choice and settled purpose" that may be been present in the family's decision to visit Germany.[97]

In another case, a federal district court in Ohio considered a woman's abuse by her husband in determining habitual residence.[98] The woman argued that at the end of the couple's relationship she was not permitted to leave her home in Norway without being accompanied by her battering husband.[99] The court also noted that the husband hid the mother's and children's passports, thus preventing them from leaving Norway.[100] Under these facts, the court ruled that for much of the woman's time in Norway she remained there "voluntarily, albeit reluctantly," and as a result, Norway was the children's habitual residence.[101]

6.15. Did petitioner agree that child could be removed from country of habitual residence for a limited duration?

Where a child's move from an established habitual residence is intended for a limited duration, courts generally refuse to find a change in the child's habitual residence.[102] However, in cases where the petitioning parent consented to the child remaining abroad for an indefinite period of time, great deference is given to the district court's findings.[103]

6.16. Has petitioner permanently relocated to same country where petition is filed?

If a petitioner permanently moves to the same country as the respondent, the court cannot grant relief under the Hague Convention and the petition becomes moot.[104] Domicile has been

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[94] *Tsarbopoulos*, 176 F.Supp.2d at 1055-57.
[95] *Id.* at 1055.
[96] *In re Ponath*, 829 F. Supp. 363, 367 (D. Utah 1993).
[97] *Id.* at 367.
[98] *Ostevoll v. Ostevoll*, C-1-99-961, 2000 U.S. Dist. LEXIS 16178, at *42-44 (S.D. Ohio Aug. 16, 2000).
[99] *Id.* at *43.
[100] *Id.*
[101] *Id.* at *44 n.15
[102] *Mozes v. Mozes*, 239 F.3d 1067, 1077 (9th Cir. 2001); *see also Holder v. Holder*, 392 F.3d 1009, 1017 (9th Cir. 2004) (finding that despite commitment to four-year tour of duty in Germany, move was conditional and family did not definitively leave old residence and reestablish residence in new location).
[103] *Mozes*, 239 F.3d at 1077-78; *see also Levesque v. Levesque*, 816 F. Supp. 662, 667 (D. Kan. 1993) (holding Germany became the child's habitual residence based on mutual intent to remain there for an "indefinite" period of time).
[104] *Gaudin v. Remis*, 282 F.3d 1178, 1183 (9th Cir. 2002).

considered by the Ninth Circuit as an appropriate measure to determine whether one has moved permanently to a new jurisdiction.[105]

6.2. Has the child become accustomed to or acclimatized to the country to which the parties relocated?

Even where it is determined that parents do not share a settled intention to adopt a new habitual residence, courts consider whether the child has grown accustomed, or "acclimatized,"[106] to life in a new country. In determining whether a child has acclimatized to a new environment, the Ninth Circuit has held that courts should be slow to infer from a child's new contacts that an earlier habitual residence has been abandoned.[107]

The child must become settled insofar as the new residence supplants the old as the locus of the children's family and social development.[108] While physical presence is itself insufficient, acclimatization should not be confused with requiring acculturation.[109] Courts have also recognized it to be practically impossible for a very young child to acclimatize independent of the immediate home environment of the parents.[110]

But the Eighth Circuit has repeatedly stated that "the child's perspective should be paramount," and that "parental intent is not dispositive."[111]

6.3. Does petitioner have custody rights to child?

Custody rights are defined as "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence."[112] The petitioning parent must possess either custodial rights or a ne exeat right by judicial order or by operation of law and

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[105] *Gaudin v. Remis*, 379 F.3d 631, 637 (9th Cir. 2004).
[106] *Holder*, 392 F.3d at 1019; *Mozes*, 239 F.3d at 1079.
[107] *Holder*, 392 F.3d at 1019; *Mozes*, 239 F.3d at 1079.
[108] *Mozes v. Mozes*, 239 F.3d 1067, 1079; *see also Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045, 1055 (E.D. Wash. 2001) (finding that although children attended school and began learning language, facts not sufficient to find change in habitual residence; children rarely socialized outside the family and remained with respondent virtually all day every day for 27 months until subsequent departure from Greece).
[109] *Holder v. Holder*, 392 F.3d 1009, 1019 (9th Cir. 2004).
[110] *Id.* at 1020-21.
[111] *Stern v. Stern*, 639 F.3d 449, 452 (8th Cir. 2011) (referring to decisions that emphasized the child's perspective in *Barzilay*, *Silverman*, and a Third Circuit case, *Whiting v. Krassner*, 391 F.3d 540, 547, 550 (3rd Cir. 2004), which held that "settled purpose [to take a new residence that would establish a child's habitual residence] does not require an intention to stay in a new location forever," but that a limited purpose, such as relocation for parent's educational goals, could result in a new habitual residence for the child).
[112] Convention, *supra* note 1, at art. 5.

must exercise those rights at the time of the child's removal, otherwise, the removal was not wrongful within the meaning of the Convention.[113]

6.31. Is child subject to an existing custody order that grants petitioner custody rights?

Courts distinguish between rights of custody and rights of access.[114]

i. Custody rights allow for return of child

a. A ne exeat right is considered a custody right

Custody rights have been broadly interpreted. In *Abbott v. Abbott*, 130 S.Ct. 1983 (2010), the United States Supreme Court found a right of custody where the ne exeat right was construed both as a right relating to the care of the person of the child, and in particular, the right to determine the child's place of residence.

As noted above, international courts have also held visitation rights, insofar as they confer rights to influence the child's actual residence, satisfy the Convention's definition of a custody right.[115]

b. A guardianship right is considered a custody right

Courts in other jurisdictions have held that a guardianship order confers rights of custody for the purposes of the Convention.[116]

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[113] If no custody decree has been issued in the jurisdiction of the child's habitual residence and no custody rights exist by operation of the law of the country of habitual residence, a U.S. court must look to domestic law to determine whether it has authority to issue a custody order or whether it must defer to proceedings and the rule of law in another nation. In *Abbott v. Abbott*, the United States Supreme Court looked to the law of Chile, which provided the father with a ne exeat right by operation of law, rather than by judicial order, and determined that the ne exeat right was a custody right. 130 S. Ct. 1983, 1990-91 (2010); *see also In re Salah*, 629 N.W.2d 99, 103-04 (Minn. Ct. App. 2001) (reviewing whether petitioner had custody rights under Canadian law).

[114] The distinction is based on the notion of rights of custody and rights of access as identified in the Convention, *supra* note 1, at art. 5. The Convention further stipulates that "only a parent with rights of custody may petition a court for an order of return." Convention, *supra* note 1, at art. 12; *Abbott*, 130 S. Ct. at 1991-93 (defining the ne exeat right as a right of custody with remedy of return as opposed to a right of access).

[115] *C. v. C.*, [1988] EWCA (Civ), Fam. 228 (Eng.). The court's larger conclusion has been followed by courts elsewhere, which held that if the custodial parent needs permission from the court or non-custodial parent before removing the child from the country, a removal without permission is wrongful. *See Thomson v. Thomson*, [1994] S.C.R. 551 (Can.); *B. v. B.*, [1992] EWCA (Civ), Fam. 32 (Eng.); *see also* Merle H. Weiner, *Navigating the Road Between Uniformity and Progress: The Need for Purposive Analysis of the Hague Convention on the Civil Aspects of International Child Abduction*, 33 COLUM. HUM. RTS. L. REV. 275 *passim* (2002) [hereinafter Weiner, *Navigating the Road*].

[116] *But see In re Parentage of C.A.M.A.*, No. 47283-6, 2000 Wash. App. LEXIS 2384 (Wn. App. 2000) (finding that although Germany was the child's habitual residence, a German custodial decree awarding custody to the German grandmother, did not confer rights to the exclusion of the parents; thus, the parent's retention of the child in America was not wrongful).

ii. Rights of access allow for facilitating visitation, but not return of child

U.S. courts, including the Supreme Court, have found that access or visitation rights to children do not confer custodial rights upon a parent and thus do not invoke the return remedy under the terms of the Convention.[117] To vindicate breach of access rights, Article 21 of the Convention authorizes a parent who holds only access rights to submit an application to the Central Authority of the state to make arrangements for securing the exercise of rights of access.[118] The Supreme Court has found that while no return remedy is available when a parent removes a child in breach of access rights, a contracting state must still "promote the peaceful enjoyment of access rights," such as by requiring the custodial parent to pay the travel costs for visitation.[119]

6.32. Is child subject to on-going custody proceedings in home country?

In a case where a respondent acknowledged that her removal of her children from France was wrongful, the Second Circuit also noted that on-going custody proceedings had been initiated by the Hague petitioner in France, and that a French court would be the best court to determine custody issues.[120] But the Second Circuit refused to order removal because the respondent mother established the grave risk exception.[121]

6.33. Does petitioner have right to prevent removal of child from the country of residence by operation of law?

Some countries provide for a ne exeat right, or the right of a parent to refuse permission for the child to leave the country by operation of law.[122] Thus, a parent does not need to petition for a ne exeat right in a court, or within a custody proceeding; the parent holds the ne exeat right under the laws of the country.

Recommendation: Determine whether petitioner has custody rights, or whether an existing custody proceeding is on-going in country of habitual residence, or whether petitioner has right to prevent removal by operation of law.

[117] *Abbott*, 130 S.Ct. at 1992.
[118] *Abbott v. Abbott*, 130 S. Ct.1983, 1992 (2010).
[119] *Id.* at 1992.
[120] *Blondin v. Dubois*, 189 F.3d 240, 247 (2nd Cir. 1999).
[121] *Id.*
[122] The *Abbott* Court noted that Chile's Minors Law 16,618, art. 49 provided the petitioner with a ne exeat right to consent to the child exiting Chile. *Abbott*, 130 S. Ct. at 1992.

6.4. Did petitioner actually exercise custody rights to child at time of removal or would he or she have exercised custody rights but for the removal?

The exercise of custody rights has also been broadly construed. In the absence of a ruling from a court in the child's habitual residence, a court may find the statutory language requiring "exercise" whenever a parent with custody rights keeps, or seeks to keep, any sort of regular contact with the child.[123] In *Abbott*, the Supreme Court also found that the ne exeat right at issue in that case would have been "exercised but for the removal or retention."[124]

Of course, where the law of the country of habitual residence or an existing custody order does not provide for a ne exeat right and the country's law requires more than frequent contact to establish custody rights, a court may find that removal was not wrongful or that a more specific showing is required of the petitioner.[125]

Recommendation: Determine whether petitioner was actually exercising custody rights at time of removal.

§7.00. Burden switches to fleeing parent (respondent) to show a Convention exception applies

Even if the petitioner makes a prima facie showing that the child was removed wrongfully from their country of habitual residence, return of the child is not automatic. The burden of proof switches to the respondent parent to show that an exception to application of the Hague Convention applies. Return of the child to the country of habitual residence should be denied if any one of the following exceptions applies:

1. Petitioner consented or acquiesced to the move.
2. The child has reached an age of maturity and objects to return.
3. Over a year has passed and the child is settled.
4. Petitioner was not exercising custodial rights at time of move.
5. There is grave risk of physical or psychological harm to the child if he or she is returned or the return will place the child in an intolerable situation.

[123] *Friedrich v. Friedrich*, 78 F.3d 1060, 1065 (6th Cir. 1996).
[124] *Abbott v. Abbott*, 130 S. Ct. 1983, 1991-92 (2010).
[125] In *Salah*, the Minnesota appellate court looked to the laws of Canada, the child's undisputed habitual residence, to determine the custody and access rights held by the petitioner. *In re Salah*, 629 N.W.2d 99, 103-04 (Minn. Ct. App. 2001). Under the Children's Law Reform Act of Canada, the presumption that mother and father are equally entitled to custody has an exception when the parents of the child "live separate and apart and the child lives with one of them with the consent, implied consent, or acquiescence of the other of them[.]" *Id.* at 103. If the exception applies, then the rights of the consenting parent to exercise the entitlement of custody and the incidents of custody, but not the entitlement of access, is suspended until a separation agreement or order is imposed. *Id.*

6. Return of the child would permit violation of human rights and fundamental freedoms.

The exceptions are construed narrowly.[126] Additionally, even if the conditions for one of the exceptions are met, the Convention allows courts discretion to return the child to the country of habitual residence if return furthers the aim of the Convention.[127]

7.1. Did petitioner consent to or acquiesce to removal?

The court is not bound to order the return of the child if the person, institution or other body having the care of the person of the child (most commonly the left-behind parent) had consented to or subsequently acquiesced in the removal or retention.[128] ICARA requires the respondent to demonstrate, by a preponderance of the evidence,[129] that the petitioner consented to or subsequently acquiesced in the removal or retention.

To establish acquiescence or consent, courts have required acts or statements with requisite formality, such as testimony in a judicial proceeding, a convincing written renunciation of rights, or a consistent attitude over a significant period of time.[130] The absence of any meaningful effort to obtain return of the child has been found by some courts to be sufficient to establish the exception.[131] The Sixth Circuit, however, has held that evidence that the removal was "deliberatively secretive" undercuts the argument that the left-behind parent consented to the removal.[132]

Even if there is insufficient evidence that the petitioner consented at the time of removal, a court may deny the petition if the respondent proves that the petitioner subsequently acquiesced to the removal. Some courts, including one in the Ninth Circuit, distinguish between consent prior to removal and subsequent acquiescence, either of which may extinguish the right of return.[133]

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[126] 42 U.S.C. § 11601(a)(4) (2010); Hague Convention on International Child Abduction, 51 Fed. Reg. 10494, 10510 (March 26, 1986); *accord Rydder v. Rydder*, 49 F.3d 369, 372 (8th Cir. 1995).
[127] Convention, *supra* note 1, at art. 18; Hague Convention on International Child Abduction, 51 Fed. Reg. at 10509; *Walsh v. Walsh*, 221 F.3d 204, 221 (1st Cir. 2000); *Friedrich*, 78 F.3d at 1067.
[128] Convention *supra* note 1, at art. 13(a).
[129] 42 USC § 11603(e)(2)(B) (2010); *see Salah*, 629 N.W.2d at 103-04 (noting in dicta that on remand, the mother might show that removal was not wrongful because the father had acquiesced to the child's removal because he did not exercise consistent visitation or petition for return for over a year after the child arrived in Minnesota).
[130] *Friedrich*, 78 F.3d at 1070.
[131] *In re Ponath*, 829 F. Supp. 363, 368 (D. Utah 1993).
[132] *Friedrich v. Friedrich*, 78 F.3d 1060, 1069 (6th Cir. 1996).
[133] *Gonzalez-Caballero v. Mena*, 251 F.3d 789, 794 (9th Cir. 2001) (finding that the petitioning mother consented to removal and trial court did not err by not addressing the petitioner's argument that she did not subsequently acquiesce or that she revoked her consent after removal occurred, rejecting the conflation of consent and subsequent acquiescence implied in *Currier v. Currier*, 845 F. Supp. 916 (D.N.H. 1944); *Friedrich*, 78 F.3d at 1069; *Levesque v. Levesque*, 816 F. Supp. 662, 667 (D. Kan. 1993).

Acquiescence is a question of the subjective intention of the petitioner.[134] "Subsequent acquiescence requires more than an isolated statement to a third-party."[135]

A petitioner's repeated actions to locate the child are inconsistent with any claim of acquiescence.[136] By contrast, a petitioner's failure to attempt to locate the child may be evidence of acquiescence. Additionally, any allegation of prior consent is undermined by filing a petition pursuant to the Convention.[137] Again, by contrast, a petitioner's on-going contact with the removed child without demanding return may be evidence of acquiescence. Finally, a petitioner's failure to exercise obligations under a custody agreement does not constitute consent where the agreement giving custody was rescinded before removal and the petitioner's subsequent action fails to show consent to removal.[138]

Acquiescence may also exist in cases brought over a year after removal.[139] In *In re Salah*, the child was born to parents that co-habited but were unmarried, and the parties later separated without a custody order in place. The father moved to another province to attend school. The father visited with the child during school vacations and by phone, but about a year later, the mother relocated with the child to California and then Minnesota.

The Minnesota Court of Appeals, in remanding the matter to the district court for fact finding, acknowledged that the father's custody rights under Canadian law were unclear, the father may have acquiesced to the child's relocation and the child had apparently lived in Minnesota for over a year before the father petitioned for return under the Hague Convention. Therefore, the Court of Appeals noted, the district court could find that removal was not required.[140]

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[134] *Antunez-Fernandes v. Connors-Fernandes*, 259 F. Supp. 2d 800, 813 (N.D. Iowa 2003); *see also Wanninger v. Wanninger*, 850 F. Supp. 78, 78 (D. Mass. 1994); *Re H and Others*, [1997] A.C. 72 (H.L.) (Lord Browne-Wilkinson); *Horlander v. Horlander*, 1992 Bull. Civ. I, No. 91-18.177.
[135] *Friedrich*, 78 F.3d at 1070.
[136] *Furnes v. Reeves*, 362 F.3d 702, 724 (11th Cir. 2004); *accord Wanninger*, 850 F.Supp. at 82.
[137] *Croll v. Croll*, 66 F.Supp.2d 554, 561 (S.D.N.Y. 1999)
[138] *Currier v. Currier*, 845 F. Supp. 916, 922 (D.N.H. 1994); *see also Levesque*, 816 F. Supp. at 667 (holding that no acquiescence where petitioning parent revoked and rescinded a custody agreement prior to respondent's signature, and petitioner's subsequent action failed to show acquiescence).
[139] *See infra* § 7.3 for a discussion on return after one year.
[140] *In re Salah*, 629 N.W.2d 99, 103-04 (Minn. Ct. App. 2001).

Recommendation:
Courts should consider carefully what evidence, if any, there is that the petitioner consented to the removal, such as testimony in a marital dissolution or other judicial proceeding, a letter or other writing renouncing rights, or an attitude consistent with consent. Additionally, courts should consider what evidence, if any, there is that the petitioner subsequently acquiesced to the removal, such as failure to look for the child after removal, on-going contact with the removed child without insisting on return or other signs of acquiescence.

7.2. Did child reach the age of maturity and now objects to being returned?

Children age 16 and older are not subject to the Convention.[141] Even children under 16 may be found to be mature enough to object to being returned. A court may refuse to order the return of a child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of his or her views.[142] This may be the sole basis for a refusal to return a child.[143] "The [Hague] Convention does not establish a minimum age at which a child is old enough and mature enough to trigger this provision . . . "[144]

7.21. Child development factors to consider when determining whether child has reached age of maturity

The age at which a child is mature enough to provide reasoned views on the outcome of the Hague petition is not firmly set in the social science literature. Theories of child development suggest that around the age of 12 children enter a stage of formal reasoning that would likely lead to mature views on their situation.[145] Yet, a study of several hundred children by Garrison found that even some nine- and 10-year-olds could express parental preferences that were as mature as 14- and 18-year-olds to which they were compared in a laboratory study.[146] Nine-year-olds differed from 18-year-olds on the reasons they gave for parental preferences but not on the preferences they expressed.

[141] Convention, *supra* note 1, at art. 4.
[142] Convention, *supra* note 1, at art. 13; *Abbott v. Abbott*, 130 S. Ct. 1983, 1997 (2010) (noting in dicta that the mother could argue on remand that the child was of a sufficient age and maturity to object to return to the father).
[143] *De Silva v. Pitts*, 481 F.3d 1279, 1286 (10th Cir. 2007); *see also Silverman v. Silverman*, CV 00-2274, 2002 U.S. Dist. LEXIS 8313, at *34-*36 (D. Minn. May 9, 2002) (citing *Blondin v. Dubois*, 238 F.3d 153, 166 (2d Cir. 2001).
[144] *Blondin*, 238 F.3d at 166.
[145] Atwood, Barbara A., *The child's voice in custody litigation: An empirical survey and suggestions for reform*, 45 ARIZ. L. REV. 629, 656-57 (2003).
[146] Garrison, Ellen Greenberg (1991). Children's competence to participate in divorce custody decision making. Journal of Clinical Child Psychology, 20, 78-87.

7.22. Legal factors to consider when determining if a child has reached age of maturity

ICARA requires the respondent to prove by a preponderance of the evidence that the child has attained an age of maturity.[147] The Ninth Circuit, in addressing maturity, has noted the importance of a court ensuring a child's statements reflect his or her "own, considered views."[148] Courts are given broad discretion in determining the sufficiency of the child's age and maturity and the extent to which a child's preference is viewed conclusively.[149] Some courts, however, have narrowly construed the defense.[150] The Ninth Circuit refused to find that the child had reached an age of maturity when the child had not yet completed kindergarten.[151]

In a case before the Western District of Arkansas, the court found the children, ages 11, 13 and 15, sufficiently mature after they stated their wishes both in chambers and through letters to the court.[152] The court also noted that, even if the youngest had been too young or immature to state her wishes, that the bond between the children would have supported allowing the exception to apply to her as well.[153]

Recommendation:
Courts should consider whether children under age 16 are able to express their preference to return to the country of habitual residence. The court should determine if the views expressed by the child are his or her "own considered views." The court should also determine if children who are found to be too young to express an opinion are bonded to older siblings who are able to express a preference.

7.3. Has over one year passed since the child was removed and child is now re-settled?

A child who has been wrongfully removed or retained is presumed to be a habitual resident of the state from which the child is removed if, at the commencement of proceedings, a period of

[147] 42 U.S.C. § 11603(e)(2)(B) (2010).
[148] *Gaudin v. Remis*, 415 F.3d 1028, 1037, n.3 (9th Cir. 2005).
[149] *Blondin*, 238 F.3d at 166 (finding an eight-year-old's views were properly considered as part of the analysis under the grave-risk exception; the court rejected drawing arbitrary lines due to age and that each child's circumstances should be considered individually).
[150] *See England v. England*, 234 F.3d 268, 272 (5th Cir. 2000) (holding that, given facts of the case, a 13-year-old was not sufficiently mature); *Tahan v. Duquette*, 259 N.J. Super. 328, 335 (N.J. 1992) (holding that the standard simply does not apply to a nine-year-old).
[151] *Holder v. Holder*, 392 F. 3d 1009, 1017 (9th Cir. 2004).
[152] *Kofler v. Kofler*, 07-5040, 2007 U.S. Dist. LEXIS 52161, at **22-26 (W.D. Ark. July 18, 2007).
[153] *Id.* at *26; *cf. McManus v. McManus*, 354 F. Supp. 2d 62, 72 (D. Mass. 2005) (relying in part on the close relationship of younger siblings to older siblings in deciding to allow younger children to remain in the United States).

less than one year has elapsed from the date of the wrongful removal or retention. Even where the proceedings are commenced after the expiration of the period of one year, the court may order the return of the child, unless it is demonstrated that the child is now settled in his or her new environment.[154] ICARA requires the respondent to prove by a preponderance of the evidence that the petitioner has delayed filing a petition for more than one year.[155]

In finding a child to be well-settled, courts cite children consistently attending school, establishing a social life, and the parent maintaining stable employment.[156] In an unpublished opinion, a Washington appellate court held that the exception applied, finding that a year had passed, the child's whereabouts were not concealed from the petitioner, and the child was well-settled.[157]

Some courts have found that if the petitioner had good reason to delay filing, the time may be tolled. One circuit court ruled that the one-year limit may be equitably tolled when a child is concealed.[158] However, other courts have rejected this argument.[159] In determining whether to apply the equitable principle of tolling, courts should consider the full principles of equity, including why the respondent was hiding the child and whether the petitioner comes before the Court with clean hands.

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[154] Convention, *supra* note 1, art. 12; *In re Salah*, 629 N.W.2d 99, 104 (Minn. Ct. App. 2001) (noting in dicta that the child had been in Minnesota for over a year before the father petitioned for return).
[155] 42 U.S.C. § 11603(e)(2)(B) (2010).
[156] *In re Wojcik*, 959 F. Supp. 413, 421 (E. D. Mich. 1997); *see* also *Antunez-Fernandes v. Connors-Fernandes*, 259 F. Supp. 2d 800, 814-15 (finding that children were enrolled in first grade and preschool, attending Catholic Mass regularly, attending routine medical appointments; and not having any reported emotional, physical or behavioral problems was determinative evidence that the children were well-settled). Where the defense was not established, one court concluded a three-year-old and one-year-old were too young to forge friendships and were not yet involved in school, community, or social activities. *David S. v. Zamira S.*, 574 N.Y.S.2d 429, 433 (N.Y. Fam. Ct. 1991).
[157] *Terron v. Ruff*, No. 48683-7-1, 2003 Wash. App. LEXIS 456, at *18 (Wash. Ct. App. March 24, 2003) (holding that no evidence established the child was not well-settled, as he adjusted to life and school in Washington and spends time with the family of his mother, the respondent.); *see also Wojcik*, 959 F. Supp. at 421 (concluding that exception was established after one-year period elapsed between wrongful retention and commencement of action, child settled in environment, and respondent did not conceal whereabouts of child).
[158] *Lops v. Lops*, 140 F.3d 927, 946 (11th Cir. 1998) (citing concealment as one of the factors in equitably tolling the one-year provision).
[159] *Anderson v. Acree*, 250 F. Supp. 2d 872, 874–76 (S.D. Ohio 2002) (criticizing the doctrine and rejecting its application to the facts of the case); *see also Nunez v. Ramirez*, No. CV 07-01205-PHX-EHC, 2008 U.S. Dist. LEXIS 29727, at *18-22 (D. Ariz. Mar. 28, 2008) (finding that "tolling" uproots settled children, contrary to the purpose of the well-settled defense); *Matovski v. Matovski*, 06 Civ. 4259, 2007 U.S. Dist. LEXIS 65519, at *31–32 (S.D.N.Y. Aug. 31, 2007) (rejecting the doctrine on the basis that the one-year period is not a limitations period that can be subject to tolling and because relief under the well-settled defense is discretionary).

Recommendation:
If a petition is brought more than a year after the child was removed, the Court should consider whether the child is enrolled in school, daycare, or other community activities or is otherwise well-settled into his or her new environment.

7.4. Was petitioner exercising custody rights at time of removal?

The court is not required to order the return of the child if the respondent establishes that the petitioner was not actually exercising custody rights at the time of removal or retention.[160] ICARA requires the respondent to prove by a preponderance of the evidence that the petitioner was not actually exercising custodial rights at the time of removal or retention.[161]

Exercising custodial rights has been broadly construed. Under the Convention, if a petitioner has valid custody rights to a child under the law of the country of the child's habitual residence, the petitioner's actions must constitute clear and unequivocal abandonment of the child in order for the exception to apply. Once a court determines that the parent exercised custody rights in any manner, the court should avoid the question of whether those rights were exercised well or badly.[162]

Recommendation:
The Court should consider first, if the petitioner has custody rights to the child, and second, if the petitioner has by words or actions abandoned those rights.

7.5. Would return of child place the child at "grave risk"?

Three scenarios commonly arise when a respondent raises the exception of "grave risk": petitioner's abuse of the child, petitioner's abuse of the respondent or another of the child's family members, or the country of habitual residence is a "zone of war."[163] This bench guide focuses on the first two scenarios, although the third may be relevant in many Hague cases. In most Hague cases in which the respondent alleges that he or she abducted a child and fled

[160] Convention, *supra* note 1, at art. 13(a).
[161] 42 USC § 11603(e)(2)(B) (2010).
[162] *Friedrich v. Friedrich*, 78 F.3d 1060, 1066 (6th Cir. 1996). *But see* In re Salah, 629 N.W.2d 99, 104 (Minn. Ct. App. 2001) (questioning in dicta the amount of contact that the petitioner had with the child in the three years before the petition).
[163] *See Silverman v. Silverman*, 338 F.3d 886, 899 (8th Cir. 2003) (citing *Friedrich*, 78 F.3d at 1069) (noting grave risk as sending child into war zone or situation involving serious abuse or neglect); *Vasquez v. Colores*, __ F.3d __, 2011 WL 3366380 at *1 (8th Cir. 2011) (citing *Silverman* and noting that inquiry into the Article 13(b) exception is "narrow in scope").

domestic violence, the merits of those allegations will be argued under the "grave risk" exception.

7.51. Social context of domestic violence and "grave risk" exception

While existing studies suggest the presence of domestic violence in cases of international abduction, few studies have provided detailed information regarding the full extent to which international abductors are actually victims escaping domestic violence.

Recent research indicates that approximately one third of all published and unpublished Convention cases (identified using online legal databases) include a reference to family violence, and 70 percent of those include details of adult domestic violence.[164] According to a frequently cited study conducted in the United States, in cases of abduction, the majority (54 percent) involved parent-to-parent domestic violence.[165] Thirty percent of the left-behind parents admitted to either being violent toward other family members or had been accused of it.[166] A separate domestic study revealed that mothers who abducted were more likely to take the children when they or the children were victims of abuse, and fathers who abducted were more likely to take the children when they were the abusers.[167]

7.52. Legal context of domestic violence and "grave risk" exception

The court is not required to order the return of the child if there is a grave risk that the return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.[168] ICARA requires the respondent to demonstrate, by "clear and convincing evidence,"[169] that the return of the child would expose the child to a grave risk. Considerable inconsistency exists between the way state and federal courts have interpreted the grave risk defense, both at trial and on appeal.

The grave risk defense is narrowly construed. Courts have indicated that the defense was not intended to be used as a vehicle to litigate the child's best interests or place the child where he or

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[164] Sudha Shetty & Jeffrey L. Edleson, *Adult Domestic Violence in Cases of International Parental Child Abduction*, 11 VIOLENCE AGAINST WOMEN 115, 120 (2005).
[165] *Id.* at 121 (citing GEOFFREY L. GREIF & REBECCA L. HEGAR, WHEN PARENTS KIDNAP: THE FAMILIES BEHIND THE HEADLINES (1993)).
[166] *Id.* (citing Greif & Hegar, *supra* note 164, at 268-69).
[167] Janet R. Johnston et al., *Prevention of Family Abduction Through Early Identification of Risk Factors*, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE (2000).
[168] Convention, *supra* note 1, at art. 13(b).
[169] 42 U.S.C. § 11603(e)(2)(A) (2010); *see also Vasquez v. Colores*, __ F.3d __, 2011 WL 3366380 at *2 (8th Cir. 2011) (refusing to reverse the district court's determination to exclude an expert witness's testimony on "grave risk" because the expert witness had not examined both parties and the child thus precluding the respondent's attempt to establish the "grave risk" exception by clear and convincing evidence); *Silverman v. Silverman*, 338 F.3d 886, 900 (8th Cir. 2003).

she would be happiest.[170] Rather, it is a question of whether, if returned, the child will suffer serious abuse or be returned to a "zone of war, famine, or disease."[171]

7.53. The respondent may present evidence on one of three common scenarios involving "grave risk"

The respondent may present evidence of: the petitioner's abuse of the child, the petitioner's abuse of the respondent or another of the child's family members, or the country of habitual residence being a "zone of war."[172]

i. Evidence that child would be abused by petitioner

A respondent need not show that there was past abuse of the child for the court to find that a grave risk of future abuse exists.[173] In *Baran v. Beaty*, the Eleventh Circuit found that:

> Although it is true there was no evidence to suggest Baran intentionally harmed Samuel, the district court was presented with evidence Baran had threatened to do so both before and after Samuel's birth. Moreover, the court heard testimony that Baran had placed Samuel in harm's way by abusing Beaty while she was pregnant, verbally berating Beaty for hours on end while she held Samuel in her arms, and handling newborn Samuel irresponsibly while drunk.[174]

The *Baran* Court found that this evidence was sufficient to support the trial court's conclusion that the petitioner's violent temper and abuse of alcohol would expose the child to grave risk if he were returned.[175]

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[170] *Gaudin v. Remis*, 415 F.3d 1028, 1035 (9th Cir. 2005); *Friedrich v. Friedrich*, 78 F.3d 1060, 1068 (6th Cir. 1996) (ruling the exception is not license to speculate on where the child would be happiest); *see also* Hague Convention on International Child Abduction, Text and Legal Analysis, 51 Fed. Reg. 10,494, 10,510 (1986).
[171] *Silverman*, 338 F.3d at 900 (considering the argument that the child would be returned to a "zone of war") (citing *Friedrich*, 78 F.3d at 1069; *Blondin v. Dubois*, 238 F.3d 153, 162 (2d Cir. 2001)).
[172] *See id.* (citing *Friedrich*, 78 F.3d at 1069) (noting grave risk as sending child into war zone or situation involving serious abuse or neglect).
[173] *Baran v. Beaty*, 526 F.3d 1340 (11th Cir. 2008); *see also Van de Sande v. Van de Sande*, 431 F.3d 567 (7th Cir. 2005) (reversing and remanding summary judgment in favor of petitioner due to evidence that petitioner threatened to kill children and had abused respondent, noting that although the grave risk exception was narrow, the safety of the children was paramount and that risk to the children in this situation could not be considered negligible).
[174] 526 F.3d at 1346.
[175] *Id.*

a. Social science research indicates that if the child is exposed to violence in the home, the child will suffer serious consequences that constitute a grave risk

A growing body of social science literature points to significant risks of harm to children exposed to adult domestic violence in their homes. United States domestic child custody legislation and rulings also recognize that exposure to domestic violence against a parent raises serious risks of harm to the child.

The social science research on the potential harm caused a child by exposure to domestic violence has been conducted only in the past two decades, well after the original crafting of the Hague Convention. This literature overwhelmingly shows both short- and long-term risks to a child's physical and social development due to exposure to violence in the home.[176]

Generally, these studies have found children exposed to domestic violence, when compared to non-exposed children, exhibit more aggressive and antisocial (often called "externalized" behaviors) as well as fearful and inhibited behaviors ("internalized" behaviors), show lower social competence and have poorer academic performance. Children exposed to domestic violence scored similarly on emotional health measures to children who were physically abused.[177]

b. Most courts hold that abuse to the child is sufficient to constitute "grave risk"

Some courts have held that the existence of domestic violence would constitute a sufficiently grave risk of physical or psychological harm if the child was returned. Courts routinely consider evidence of past physical or psychological abuse to the child, and to some extent, the parent, as well as the likelihood of harm to the child upon return.[178] However, in finding the defense established, determinations have not been made from uniform fact patterns.[179]

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[176] *See, e.g.*, Yuk-Chung Chan & Jerf Wai-Keung Yeung, *Children Living with Violence Within the Family and Its Sequel: A Meta-Analysis From 1995-2006*, 14 AGGRESSION AND VIOLENT BEHAVIOR 313-22 (2009); Sarah E. Evans et al., *Exposure To Domestic Violence: A Meta-Analysis of Child and Adolescent Outcomes*, 13 AGGRESSION AND VIOLENT BEHAVIOR 131-40 (2008); Katherine M. Kitzmann et al., *Child Witnesses to Domestic Violence: A Meta-Analytic Review*, 71 J. OF CONSULTING AND CLINICAL PSYCHOL. 339-52 (2003) [hereinafter Kitzmann, *Child Witnesses*]; Kimberly A. Rhoades, *Children's Responses to Interparental Conflict: A Meta-Analysis of Their Associations With Child Adjustment*, 79 CHILD DEVELOPMENT 1942-56 (2008); David A. Wolfe et al., *The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique*, 6 CLINICAL CHILD AND FAM. PSYCHOL. R. 171-87 (2003).

[177] Kitzmann, *Child Witnesses*, *supra* note 171, at 339-52.

[178] *See, e.g.*, *Abbott v. Abbott*, 130 S. Ct. 1983, 1997 (2010) (noting that mother could raise argument that child is exposed to grave risk of "psychological harm" if she could show that the child's return to Chile would put her own safety at risk, which in turn, would have a negative psychological effect on the child).

[179] Courts finding the defense established include: *Blondin v. Dubois*, 238 F.3d 153 (2d Cir. 2001) (noting that if returned, children would face a recurrence of traumatic stress disorder considering petitioning father's past physical

Additionally, even where a child is found to face a grave risk if returned, some courts require a comprehensive analysis of alternative care arrangements and legal safeguards that would facilitate safe return, as well as the abilities of the authorities in the child's habitual residence to enforce any such arrangement.[180] The Ninth Circuit has suggested that the question to be resolved, in examining the totality of circumstances, is whether any reasonable remedy can be forged that will permit the children to be returned to their home jurisdiction while avoiding the grave risk of harm that would otherwise result from living with the petitioner.[181]

Other courts have rejected the need for attempts to facilitate a return once grave risk has been established. Noting that any attempts to impose requirements on courts in other jurisdictions to resolve situations involving domestic abuse are lacking in legal standing and possibly ineffective, these courts have rejected the idea of facilitating the child's return conditioned on undertakings. On this basis, the Eleventh Circuit ordered that the child's return would pose a grave risk to the child, and that therefore, the child should remain with the respondent.[182]

ii. Evidence that child has been exposed to abuse of fleeing parent by petitioner

Recent social science research suggests that a child's exposure to domestic violence may also have short- and long-term consequences, which may constitute a grave risk to the child's development. In particular, two areas of emerging social science research point to the risks a child faces in circumstances where domestic violence occurs: the increased risk of physical harm and the impact of exposure on the child's development.

While exposure to domestic violence can negatively affect children, some petitioners argue that domestic violence can be addressed in the country of the child's habitual residence. However, many signatories to the Convention have inadequate domestic violence laws or ineffective law enforcement.[183]

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abuse of spouse was also directed at the child; and finding France unable to provide necessary protection); *Walsh v. Walsh*, 221 F.3d 204 (1st Cir. 2000) (noting even though Ireland would issue appropriate protective orders, the father's history of violating court orders and repeated abuse of the respondent would pose a grave risk to the children if they were returned; and that the district court inappropriately discounted the psychological harm to children in spousal abuse); and *Rodriguez v. Rodriguez*, 33 F. Supp. 2d 456 (D. Md. 1999) (noting that petitioning father had considerable history of physical and psychological abuse of child).

[180] Analysis of the available protections in the child's habitual residence is considered in cases considering grave risk. However, the extent of the required analysis is not uniform; courts engaging in or requiring a more thorough analysis include: *Gaudin v. Remis*, 415 F.3d 1028, 1035 (9th Cir. 2005); *Blondin*, 238 F.3d 153; *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045 (E.D. Wash. 2001); *Turner v. Frowein*, 253 Conn. 312 (2000); and *Tahan v. Duquette*, 259 N.J. Super. 328 (1992).

[181] *Gaudin*, 415 F.3d at 1036 (citing *Blondin*, 189 F.3d at 249).

[182] *Baran v. Beaty*, 526 F.3d 1340 (11th Cir. 2008).

[183] Weiner, *International Child Abduction*, *supra* note 52, at 624 (citing U.S. DEP'T OF STATE, 1999 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: Belgium, Colombia, Honduras, Hungary, Israel, Italy, Mexico, New Zealand, Panama, South Africa, Spain, & Venezuela (2000), http://www.state.gov/g/drl/rls/hrrpt/1999/index.htm).

a. Children exposed to domestic violence face an increased risk of physical harm and negative impacts on child development

Evidence suggests that children who are exposed to adult domestic violence are at a greater risk of physical harm than children who are not. Reviews of the co-occurrence of documented child maltreatment in families where adult domestic violence is present have found a 41 percent median co-occurrence of child maltreatment and adult domestic violence in families.[184] The majority of studies found a co-occurrence of 30 percent to 60 percent.[185]

Nearly 100 published studies report associations between exposure to domestic violence and current child problems or later adult problems even where the child is not directly abused.[186] For instance, several studies report that children exposed to adult domestic violence exhibit more aggressive and antisocial behaviors as well as fearful and inhibited behaviors.[187] Exposed children showed lower social competence[188] and were found to show higher than average anxiety, depression, trauma symptoms, and temperament problems than children not exposed.[189] These impacts have been shown to vary depending on the degree of violence, exposure, the presence of additional risk factors, such as substance abuse by caregivers, and protective factors, such as a protective parent or other adult.

b. U.S. Supreme Court finds that when mother's safety is jeopardized in the country of habitual residence, a court can consider the harm to the child to be a "grave risk"

Courts have also recognized the exposure to domestic violence as a sufficient risk to preclude the child's return under the Convention.[190] In *Walsh v. Walsh*, a case involving domestic violence,

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Victims may not be able to ensure safety because the victim has no place to go in the interim, does not speak the local language, may not have access to transportation or social service resources, may have no support, or may believe accessing legal redress will increase the immediate danger to herself and to her child. *Id.*

[184] Anne E. Appel & George W. Holden, *The Co-Occurrence of Spouse and Physical Child Abuse: A Review and Appraisal*, 12 J. OF FAM. PSYCHOL. 578-99 (1998).

[185] Jeffrey L. Edleson, *The Overlap Between Child Maltreatment and Woman Battering*, 5 VIOLENCE AGAINST WOMEN 134-54 (1999).

[186] *See* Jeffrey L. Edleson, *Children's Witnessing of Adult Domestic Violence*, 14 J. OF INTERPERSONAL VIOLENCE 839-70 (1999); G. Margolin, *Effects of Witnessing Violence on Children*, in VIOLENCE AGAINST CHILDREN IN THE FAMILY AND THE COMMUNITY 57-101 (Penelope K. Trickett & Cynthia J. Schellenbach eds., Am. Psychological Ass'n, Washington, D.C. 1998).

[187] Shetty & Edleson, *Adult Domestic Violence*, *supra* note 52, at 115-38 (citing John W. Fantuzzo et al., *Effects of Interparental Violence on the Psychological Adjustment and Competencies of Young Children*, 59 J. OF CONSULTING AND CLINICAL PSYCHOL. 258-65 (1991)); H.M. Hughes, *Psychological and Behavioral Correlates of Family Violence in Child Witnesses and Victims*, 58 AM. J. OF ORTHOSPSYCHIATRY 77-90 (1988).

[188] Shetty & Edleson, *Adult Domestic Violence*, *supra* note 52, at 126 (citing Jackie L. Adamson & Ross A. Thompson, *Coping With Interparental Verbal Conflict by Children Exposed to Spouse Abuse and Children from Nonviolent Homes*, 13 J. OF FAM. VIOLENCE 213-32 (1998)).

[189] *Id.*

[190] *See Walsh v. Walsh*, 221 F.3d 204, 219 (1st Cir. 2000).

the First Circuit found that the petitioner had an uncontrollably violent temper; that social science literature establishes that serial spousal abusers are also likely to be child abusers; and that children were at increased risk of physical and psychological injury themselves when they are in contact with a spousal abuser.[191] The First Circuit then reversed the lower court and found that the grave risk exception should have been applied and the petition denied.[192]

Similarly, in *Simcox v. Simcox*, the Sixth Circuit reversed the lower court and found that the grave risk exception applied where the children witnessed the petitioner abuse the respondent.[193] The Sixth Circuit found that the "'Convention's purposes [would] not . . . be furthered by forcing the return of children who were the direct or *indirect* victims of domestic violence.'"[194] Additionally, a district court in Washington State, finding grave risk established, held that spousal abuse was a factor to consider in determining whether grave risk applies because of the potential that the abuser will also abuse the child.[195]

In *Baran v. Beaty*, the Eleventh Circuit affirmed the trial court's determination that the father's past violence, threats to his child, and alcohol and drug abuse presented a grave risk.[196] Furthermore, the trial court did not err to refuse to order undertakings that would ameliorate the risk to the child in the courts of the country of habitual residence.[197]

In remanding the *Abbott* case, the Supreme Court suggested that if the mother could demonstrate that "returning to Chile would put her own safety at grave risk, the court could consider whether this is sufficient to show that the child too would suffer 'psychological harm' or be placed 'in an intolerable situation.'"[198] Also, international courts considering the petitioner's abuse of the mother have held that the child's return would present a grave risk to the child, and subsequently denied requesting petitions.[199]

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[191] *Id.*
[192] *Id.*
[193] 511 F.3d 594, 610-11 (6th Cir. 2007) (reversing and remanding to lower court to determine what undertakings, if any, could secure the safety of the children if they were returned to Mexico, and noting that the lower court could deny the petition if no undertakings could ensure the safety of the children).
[194] *Id.* at 605 (quoting Weiner, *Navigating the Road*, *supra* note 118, at 352-53).
[195] *Tsarbopoulos v. Tsarbopoulos*, 176 F. Supp. 2d 1045, 1057 (E.D. Wash. 2001) (finding sufficient evidence suggested petitioning father's past abuse of children would pose grave risk of physical and psychological harm; and finding resources in Greece insufficient to ensure child safety).
[196] 526 F.3d 1340 (11th Cir. 2008).
[197] *Id.*
[198] *Abbott v. Abbott*, 130 S. Ct. 1983, 1997 (2010).
[199] *See, e.g., Pollastro v. Pollastro*, [1999] D.L.R. 848 (Can.) (holding that the child's interests are inextricably tied to the mother's psychological and physical security and citing a series of risks resulting from the child's exposure to domestic violence).

iii. Evidence that the country of habitual residence is a zone of war

While the defense is often cited in situations where the respondent alleges abuse by the petitioner, some courts may not consider the defense if a separate defense is raised and established.[200] A number of courts have refused to apply the defense, even if evidence demonstrates the return would risk physical harm to the respondent, concluding the harm must be directed at the child.[201]

Recommendation:
Courts should carefully consider allegations of domestic violence and child abuse in light of the social science research in deciding whether the grave risk exception applies.

7.6. Would return of child violate human rights or fundamental freedoms?

Courts may refuse to return the child if return would violate the child's human rights and fundamental freedoms.[202] ICARA requires the respondent to demonstrate, by clear and convincing evidence,[203] that the return of the child would violate fundamental principles of human rights.

No courts in the United States have used this defense as a justification to deny the child's return under the Convention. Internationally, however, a Spanish court refused a return on the basis of violating human rights and freedoms where it determined a fleeing mother would be deprived of due process in the courts of the child's habitual residence.[204] Also, two Australian courts have endorsed the defense in dicta.[205]

An analysis performed by the United States State Department claims that Article 20 was meant to be "restrictively interpreted and applied" on the "rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process."[206] Courts that

[200] *See Wojcik v. Wojcik*, 959 F.Supp. 413, 421 (E.D. Mich. 1997).
[201] For example, a district court in Puerto Rico held that there was no grave risk because abuse was not directed at the child and did not have the intensity of the petitioner in *Walsh v. Walsh*, 221 F.3d 204, n.113 (1st Cir. 2000). *Aldinger v. Segler*, 263 F. Supp. 2d 284, 289 (D. P.R. 2003).
[202] Convention, *supra* note 1, at art. 20.
[203] 42 U.S.C. § 11603(e)(2)(A) (2010).
[204] *In Re S.*, Auto de 21 abril de 1997, Audiencia Provincial Barcelona, Sección 1a.
[205] *Dep't Families Youth & Cmty. Care v. Bennett*, 26 Fam. L. R. 71 (Fam. Ct. Austrl. 2000); *State Cent. Auth. v. Ardito* (Fam. Ct. Austrl. 1997) (No. ML 1481/97).
[206] Hague Convention on International Child Abduction, Text and Legal Analysis, 51 Fed. Reg. 10,494, 10,510 (1986).

have ruled against application of the Article 20 defense have cited the State Department's analysis to support a strict reading of Article 20.[207]

Advocates have discouraged a strict interpretation of Article 20, however, arguing that the State Department's analysis extends the text of Article 20 and in fact, conflicts with the drafter's intent to include violations of parent's rights as well.[208] They argue that the phrase, "fundamental principles relating to the protection of human rights and fundamental freedoms," is ambiguous because the "fundamental principles" are undefined by Article 20.[209]

The fundamental principles of the requested state can also be established by examining other domestic and international laws, treaties, and constitutions concerning human rights and domestic violence.[210] As provided by the phrase "would not be permitted," a court can refuse return where there is a violation of any basic human right protected by these legal instruments.[211] For example, if return of the child would force the respondent to choose between her child and her safety, the Court should consider whether this violates the fundamental principles of the United States relating to human rights and fundamental freedoms.

Recommendation:
The Court should rely on the language of the Convention: return need not occur if it "would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

§8.00. Judge orders or denies return of the child because an exception in the Hague Convention applies

8.1. Judge may order undertakings or mirror order to be filed in country of habitual residence if child is returned

Undertakings and mirror orders are often used by judges in the hope they will guarantee a safe return for the children and their mothers to the country of habitual residence. An undertaking is a voluntary commitment by the petitioner to perform an act that the court stipulates, and a mirror order is an order that mirrors the U.S. order but that is filed in the country of habitual residence.

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[207] *See, e.g.*, *Hazbun Escaf v. Rodriquez*, 200 F. Supp. 2d 603 (E.D. Va. 2002); *Aldinger v. Segler*, 263 F. Supp. 2d 284, 290 (D. P.R. 2003).
[208] Merle H. Weiner, *Strengthening Article 20*, 38 U.S.F. L. REV. 701, 707-09 (2004) [hereinafter Weiner, *Strengthening Article 20*].
[209] *Id.* at 711-14.
[210] Merle H. Weiner, *Using Article 20*, 38 FAM. L.Q. 583, 590 (2004).
[211] Weiner, *Strengthening Article 20*, *supra* note 208, at 711-12.

The value of these orders is highly dependent on the willingness of a judicial officer in the country of habitual residence to enforce them. Most attorneys describe undertakings as being of limited usefulness and mirror orders, although preferable to undertakings alone, are seldom enforced.[212]

Reunite International reported a study of 22 families with 33 children who were sent from the United Kingdom back to other countries in Europe.[213] Twelve of the cases involved court-stipulated undertakings that were to be implemented upon return of the child, half of which involved protecting the child from violence.[214] In two-thirds of these cases, court-stipulated undertakings were not implemented in the other country.[215] The six undertakings that focused on child safety on return were not carried out in any of the cases in which they were made.[216]

Four mothers in the National Institute of Justice study reported that none of the conditions in the undertakings were enforced when the mother and children returned to the country of habitual residence.[217]

Reunite International concluded in their study of European cases that, "although the giving of undertakings by the applicant parent is often considered as a token of good faith by the courts of the requested State, the frequent failure to honor such undertakings must call into question whether such an assumption is supportable."[218]

Reunite's study also found that mirror orders were not a guarantee that the order would be enforced.[219] Although it is tempting to think of undertakings as a simple solution that ensures the welfare of the mother and child, the fact that they are rarely enforced makes them not only limited in usefulness but also potentially dangerous as a judge may place a mother or child in an unsafe situation by relying on an undertaking that is unlikely to be enforced.

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[212] *Multiple Perspectives*, *supra* note 85, at 255.
[213] REUNITE INT'L CHILD ABDUCTION CENTRE, THE OUTCOMES FOR CHILDREN RETURNED FOLLOWING AN ABDUCTION, 30-34 (2003), http://www.reunite.org/edit/files/Library%20-%20reunite%20Publications/Outcomes%20Report.pdf [hereinafter OUTCOMES FOR CHILDREN].
[214] *Id.*
[215] *Id.*
[216] *Id.*
[217] *See Multiple Perspectives*, *supra* note 85, at 163-65.
[218] *See* OUTCOMES FOR CHILDREN, *supra* note 208, at 6.
[219] *Id.*

Recommendation:
The Court must carefully consider the likelihood of enforcement of a U.S. undertaking in the country of habitual residence. The Court may issue a mirror order by coordinating with a judge from the country of habitual residence. The mirror order should include detailed instructions of the actions the petitioner has agreed to undertake.

§9.00. Child will remain in the United States or child is returned to country of habitual residence for custody proceeding

The outcomes for children who are returned to Hague petitioners, as well as the outcomes for their mothers, vary widely. See Part III, section 2.0, Hague Petition Outcomes for Women and Children for examples.

PART III. CASE SCENARIOS AND HAGUE PETITION OUTCOMES

§1.0 Case Scenarios: Women in Flight

The case scenarios that appear below were developed as part of the Hague Domestic Violence Project's work for a study commissioned by the National Institute of Justice. Longer versions of these scenarios can be found in the study.

These scenarios are designed for use as a self-training tool. They have been drafted to contain several different issues that a court would have to consider to come to a decision in the Hague petition case.

Following the scenarios, we will discuss the issues that appeared in this scenario, and how a court might evaluate the issues presented.

1.1. No physical violence, habitual residence?

My name is Mary-Lou. I am a twenty-three-year-old woman who met my Husband Luke when I was in high school. After we got married, Luke decided he wanted to move to France, where he had grown up. I reluctantly agreed to go, but I was pretty sure he wouldn't like it and would want to move back to the U.S. soon.

After we had lived in Paris for a few months, I got pregnant. This is when Luke really changed. His controlling behavior became more intense, not letting me leave the house without him and not letting me answer the door or phone if he was not home. As my pregnancy advanced, this controlling behavior became more aggressive. He started threatening me, and telling me that I

was ugly and stupid, and that I would not be able to survive if he ever left me. It upset me, but I had nowhere to go since I wasn't a French citizen, I had no family, and I didn't speak the language.

Issue #1: Habitual residence
The first question in this case is whether the child was removed from his country of habitual evidence. Although it is not clear whether there was a shared settled intent to move to France from the U.S., the child was born in France and had never lived in the U.S. Therefore, the child's country of habitual residence is probably France.

Issue #2: Father's custody rights
Since the parents were married and not divorced or even legally separated, the father probably has custodial rights.

Issue #3: Grave risk
Given the answers to the issues above, the father would probably be able to present a prima facie case of wrongful removal, so now we must look at whether there is an exception in the Hague Convention.

The law is not settled as to whether the father's behavior in this case is enough to constitute grave risk, but in *Baran v. Beaty*, the Eleventh Circuit found that threatened harm to the child, even without past physical violence towards the child, can pose a grave risk to the child so he should not be returned.[220] In that case the court found that the father's temper, which had been thoroughly documented in the record, and his threats of harm to the child were enough to constitute a grave risk.

It is also not settled in law whether harm to the mother can be a grave risk to the child. In *Abbott v. Abbott*, the U.S. Supreme Court noted that when the mother's safety is jeopardized in the country of habitual residence, a court can consider the harm to the child to be a "grave risk."[221]

1.2. Adoptive parent takes child

My name is Beth and right after college I went to Greece to teach English abroad. Within the first week, I met Nick and I was over the moon. However, the more we got to know each other, the more I realized we had very different ideas of how I should behave.

Nick and I worked together at school, and he was very jealous every time I received praise or talked to anyone else that worked with us. This behavior continued for the rest of the time I was

[220] 526 F.3d 1340 (11th Cir. 2008)
[221] 130 S. Ct. 1983 (2010).

supposed to be in Greece, but at the end of the year, I really wanted to stay with Nick in Greece, so we decided to get married.

We bought a house and started our life together, and I even adopted his son from a previous marriage, whose mother had no contact with the child. We continued our life together there, but when I started my own business, the abuse got worse. Nick started hitting me along with the taunts about my behavior. He would beat me, and did this in front of our son.

I was thinking about leaving Nick, when I found out I was pregnant. By the time I had the baby, the abuse had increased in frequency to almost every day. Nick also started threatening my adoptive son and the baby. I noticed bruising on the baby's legs that looked as if Nick had been twisting the legs, and I believed he was doing this during diaper changes when I was not watching.

I wanted to leave, but I was so scared that if I tried to leave and he caught me he would kill me. Everything came to a head one day when I got a call from the hospital saying my oldest son had come in with broken ribs and a broken arm. I told the police that I knew Nick had done it, but they just told me it was none of their business.

I knew then if we didn't leave he would kill us, so I came home to the United States. I took both my sons with me, but now I am worried about the Hague Convention. I thought Nick would be furious, but he seemed to be afraid that he would draw more attention to himself if he made a big deal out of me leaving.

He knew that I had gone home, it was the only thing that made sense, so he called a few days after I left. He asked to talk to the children, which I let him. He never asked for me to return with the children, and he did not want any contact with them except that he sent cards on their birthdays. That's why I was so surprised by the Hague petition when it arrived eight months later.

I know it will be hard enough to keep my biological son, but I'm really worried about my oldest son since he is not my biological son.

Issue #1: Habitual residence

There is almost certainly a question about habitual residence here. Both children were born and raised in Greece, and although the mother is from the U.S., the children may have been wrongfully removed from Greece.

Issue #2: Acquiescence
The father may have acquiesced to the removal of the children. He knew where the children were staying, but did not attempt to get the children returned immediately. He also did not try to keep in contact with the children or maintain a relationship, despite knowing where the child was as evidenced by the sending of cards. This exception could also, as well as grave risk, bar the claim.

Issue #3: Grave risk
The father may be able to prove a prima facie case of wrongful removal, but the grave risk exception almost certainly applies. Most courts have held that abuse of the child constitutes a grave risk, and with abuse this serious — prolonged abuse culminating in broken bones to one child — the court would most likely find a threat to the child that is too great to allow return.

Issue #4: Adopted child vs. biological child
The Hague Convention does not differentiate between adopted and biological children, so even though the father is the biological parent and the mother is not, she is a legal parent under Greek law and so has custody rights to the adopted child.

1.3. Left some children behind, alcohol and drug abuse, extreme physical abuse

My name is Tracy and I have been in a series of abusive relationships since I was 14 years old. I grew up in Canada with a father who sexually and physically abused me and my mother.

When I was 18, I met a man, Dave, who I would be with for the next 10 years. In the beginning of our relationship, Dave was controlling and verbally abusing me, but it soon escalated to physical and sexual violence.

When I was 19, I got pregnant with our first child, and I was really scared. I did not feel like I was prepared to take care of a baby, and I thought the stress would only make Dave more violent. The beatings became more regular once I had the baby, and I had to wear turtle necks and long pants in the middle of summer to cover the bruising.

Dave would come home from work and get drunk or high and beat me. If I refused to get him alcohol or drugs he would beat me for not getting them, but if I got them for him, he would be even worse once he was drunk or high.

I had no one to help me, and every time after a beating, Dave would apologize and promise that he would never do it again. Although he had beaten me so many times I always believed him, because I wanted to. When my baby was two, I got pregnant again, and then again two years later. This time I had twins, so by the time I was 25-years-old, I had four kids. We could barely make ends meet. I had a problem keeping a job because I was often too injured to go to work.

Dave didn't abuse the children, but he abused me in front of the children frequently. They knew what was going on, and they were terrified of him. One day I came home from work and I was late because I gave a co-worker a ride home, and Dave was waiting with a gun. He told me I was late and now I was going to die. He shot me in the leg. A neighbor came over and called 911 right away.

I knew I had to get out of there before he killed me, but the only place I could go was to my sister's house in the U.S. I had to do it, but my oldest children did not want to leave. It was the hardest decision I had ever made but I only took the youngest twins with me. I want to bring the rest of the children to live with me once I am settled.

Dave has already contacted a lawyer and I got papers telling me I have to return the children to Dave in Canada.

Issue #1: Grave Risk to mother if she returns
In this case it is clear that it would pose a grave risk to the mother for her to return, and therefore if the children are returned the mother must choose between being with her children and her own safety. As stated above in 1.3, it is unclear under U.S. law whether grave risk to the mother constitutes grave risk to the child and can be used successfully as a defense to return of the child, but, in *Abbott,* the U.S. Supreme Court noted that the argument could be successful.[222]

Issue #2: Risk to children through the abuse to the mother
The fact pattern here makes clear that the children witnessed the abuse of the mother, and this could potentially constitute a grave risk to the child. This issue is not settled under U.S. law, but research on child development shows that children can suffer significant harm by witnessing domestic violence, even if they are not the direct targets of the violence.

Issue #3: Drug and alcohol abuse
Drug and alcohol abuse appears to be present in this fact pattern, and this is a factor that court may take into account when deciding whether the child faces grave risk upon return. However, this analysis must be done carefully since the purpose of a Hague hearing is not to determine the best interests of the child.

1.4. Custody agreement, close to a year in time, children know where they want to live

My name is Lisa and I was in an abusive relationship for fifteen years, and just recently got divorced. I had married a man named Diego from Argentina, when I was 20 years old, and had gone to live in Argentina with him. I lived there with him until I was 35 when we got divorced.

[222] *Abbott v. Abbott*, 130 S. Ct. 1983 (2010).

We had three children together and they are ages 7, 10 and 13 years old. In the custody agreement, he was allowed custody of the children for three weeks a year, but I have sole physical and legal custody. Diego did not agree to me taking the children back to the U.S., but I could not stay there because he continued to interfere with my life, even following the divorce.

He was physically abusive while we were married, but did not abuse the children. After we divorced, he would hang around outside my house, wait for the children at school even though he did not have custody, and sit outside my work. I did not feel safe in Argentina: the police wouldn't do anything about my complaints plus I had no family there or anyone to help me take care of the children.

I came back from Argentina and have been living with my family in the U.S. I have been here for ten months, and the children did spend three weeks with him this summer. I think they are old enough to know what they want, and they tell me they do not want to go back.

He brought the Hague Convention petition to get the children returned to Argentina, but I do not want the children to have to go back. I face kidnapping charges in Argentina so there is no way I can return there, so my children would have to go back by themselves.

Issue #1: Does the father have custody rights?
The Hague Convention differentiates between the custody rights and visitation rights. The mother has a large majority of the physical custody of the children: 49 out of 52 weeks per year. Most courts would hold that this means the father only has a right of access rather than a custody right, and that the mother has sole physical custody. This would mean the father would not have standing to bring the Hague case, but efforts could be made to facilitate his visitation rights.

For example, the mother could pay the costs of travel for the visitation. However, the term "custody rights" has been construed broadly under the Convention, as in *Abbott* to cover ne exeat rights. It is unclear under the fact pattern here whether the father has a ne exeat right under the terms of the custody order or by operation of Argentine law. If the father has a ne exeat right, and did not give permisson for the children toleave, he would have standing for a Hague Convention petition.

Issue #2: Did the father file the petition within the time limit?
Although the father did not file immediately, the time limit for filing is one year, so the father did file in time. However, the length of time could be considered as part of the acquiescence analysis.

Issue #3: Did the father acquiesce?
The fact that the father took ten months to file the petition plus the fact that the children went to visit and came back, so presumably the father knew where the children were and did not attempt to get them back earlier, could be evidence of acquiescence.

Issue #4: Have the children reached an age of maturity?
There is no specific age that the Convention states that a child is old enough to have reached the age of maturity, however courts do recognize that some children are mature enough to articulate that they do not want to be returned, and the court will take that into consideration. In this case, the 13-year-old and possibly even the 10-year-old, could be mature enough to decide they do not want to return to their father. The mother believes they do not want to be returned, so the court must make a factual determination about whether the child was mature enough to take into consideration his opinion about whether he wanted to be returned or not. This can be the sole reason for the return of the child.

1.5. Filed for divorce after leaving country

My name is Jenny and I married Andrew seven years ago. We started dating in college in the U.S. and even though Andrew was controlling from the beginning, I still loved him. After college we got married, and soon after, we had our first child. I noticed that Andrew got increasingly controlling over the years, but I ignored it. Two years after our first child was born I got pregnant again, and had another child.

Shortly after the birth of our second child, Andrew told me that he had been offered a job in Australia. I did not want to move as all of my family lived close to me and I had a job I loved, but he made more money than I did and he told me that if he did not take this transfer they would fire him.

I agreed to go as it seemed like the only practical option. Once we got to Australia, the controlling behavior got worse. Andrew's controlling behavior became physical shortly after we got to Australia, and although he did not hit the children, he did hit me in their presence.

The children were terrified. We would live in constant terror of triggering a beating. Andrew held on to our papers and although he promised several times to file my application for a work permit, he did not do it. I was stuck at home without any way of making money or getting around. Andrew took my credit card and gave me a set budget so he could monitor everything I was spending.

My sister told me if I could get back to the U.S., she would set up everything for me there when I got back. I finally decided I had to leave when I found out that Andrew was not really forced to

take the job in Australia, but really he had requested the transfer and threatened to quit if they did not allow it.

I couldn't believe he had lied to me about this. I managed to convince Andrew that I should go on a vacation to the U.S. with the kids; he agreed to this to my surprise. Once I got back to the U.S., I filed for divorce from Andrew. Immediately after Andrew was served with divorce papers, he filed the Hague petition.

Issue #1: Habitual residence
Andrew must prove that the children's habitual residence was Australia. The children were born in the U.S., so Andrew must show a settled purpose to permanently relocate to a new home for the children's habitual residence to have changed to Australia. The parents do not have to have agreed to move permanently, but they must at least have a "sufficient degree of continuity to be properly described as settled." In this case the degree to which the parents were settled in their new home, and how settled their purpose was to establish a new home, is unclear. While the mother agreed to move, it is not clear whether she ever intended to stay there. Also, it is clear from the scenario that the husband used his power and control to persuade the mother to move against her will. Courts are divided in the U.S. whether coercion by an abuser should be taken into account, but arguments can certainly be made in this case that but for the coercion from her abuser the mother would not have had a settled purpose to move to Australia.

Issue #2: Physical abuse and grave risk
This is much the same issue as is analyzed above, the children do not face abuse themselves, but the father's abuse of their mother in their presence arguably puts them in a situation of grave risk of harm.

Issue #3: Divorce
Since the Hague petition was filed immediately after the divorce was filed, the two cases may conflict and thus the court must determine how to proceed. Several courts have suggested that all other proceedings that do not resolve the Hague case should be stayed until the Hague proceeding is resolved. In a divorce settlement this could be difficult because the Hague case could affect custody, and custody could affect the divorce decree.

§2.0. Hague Petition Outcomes for Women and Children

For women who are part of Hague Convention actions, outcomes vary wildly. Many women's lives and the lives of their children are changed permanently. After the proceedings are over, some women have returned to the country of the child's habitual residence and experienced violence against their children, violence against themselves, and economic hardship, or remained in the United States without their children.

2.1. Returned children may be subject to domestic violence

One woman described the violence that her children were subjected to after their return was ordered under the Hague Convention:

"My oldest daughter, [she and her father] had fought a lot. […] and […] the police had been there [because the daughter had called them]. She'd gone to the hospital once with scratches and bruises on her neck. So, he got tired of it; of the police and the hospital visits. So, he kicked her out… They … [the other children] … they live in constant …especially my son, he lives in constant fear and he's always calling me because his dad has hit him, or screamed at him and told him he's going to kill him, and told him he's a stupid asshole. […] The kids are both very afraid. […My son…] he keeps saying, "What if dad hits me 'til I'm dead?"

In this case the mother has been trying to gain custody of her children in the courts of the country the children were returned to for two years; however she has been unsuccessful thus far. Her husband has been able to portray her as a child abductor due to the decision in the Hague Convention case so it is an uphill battle for her.

2.2. Mothers may face continued domestic violence

Mothers also experienced domestic violence themselves when they returned to the other country in order to stay with their children. One mother who returned with the children and lived in a domestic violence shelter stated:

"Another thing he did was he accused me of breaking into the basement and stealing some of his documents […] And the police raided my room, looking for these documents, and as a result, my husband […] found out the address of the shelter. Then he … he started stalking me. And, I was so scared.[…My friend] saw my husband's car … in front of the shelter and he dropped [a friend of his] off […] further down the street. […] In the meantime, I had the kids and I was walking back towards the shelter and she intercepted me. She said, "Get in the car right away." […] She said, "Your husband – he knows where you're living." And that just, that scared me. I mean, right through the roof. Because now I was terrified. He had my address and he was playing this game of … I don't know what he was trying to do. […]"

Another mother followed her daughter to get custody in the other country's court, and when the father did not allow her to visit her child she confronted him. She stated about the incident:

"[My daughter] was starting to look uncomfortable, as you can figure, because she thought there was going to be an argument, you know, and... so I looked down to comfort her. The next thing I knew, I was on the ground. He just punched me. Just punched me. So, I got up, […] I tried to

hit him back, because I just thought it was outrageous. I mean, you just don't understand. Now that he has this child, he feels that it's just sort of open season, where before, all the abuse was behind closed doors. Now that he has [our daughter], he can do whatever he wants. I went to the police station with a black eye that night."

At the time of this interview this mother had been forced to return to the U.S. without her daughter due to her own health problems, and had not seen her daughter in over a year. She is still attempting to get custody.

2.3. Women may endure economic hardship to be near returned children

Many women that returned to the other country to be with their children suffered severe economic hardship. They often are forced to live alone and are unable to work because they do not have the correct visas. They are frequently not citizens of the other country, and many do not speak the language. One woman spoke of her experience:

"I was [initially] able to stay with these two ladies, through my former co-worker. […] But, my husband started to threaten, 'If I don't know where you are staying, if I don't know the address, I'm going to go to the police and charge you with this and that.' And actually, at that time, he could. […] have, and the ladies got so scared and so they were afraid, and so they said, 'We don't want any problems. We are sorry for what you're going through. But, we have to have you out of here.' So, within four days of that happening, of him threatening, we were out on the street. We landed on the street, with less than fifty Euros in my pocket. […] I landed on the doorsteps of the American church with my bags, and I said, 'Please help me.'"

This economic hardship is just one more obstacle for these women to overcome in their attempt to flee violence and find safety for themselves and their children, and is one more tool for the abusers.

2.4. Some women will remain in the United States without their children

Many mothers are forced to stay in the U.S. after their children are returned because they cannot afford to go with their children, they face criminal kidnapping charges in the other country, or for a host of other reasons. One mother who was in the U.S. stated that for years she tried to get custody and maintain contact with her children. Her husband had failed to obey visitation orders that would have allowed her to see her child, and she eventually had to give up her fight for emotional and financial reasons.

These women's stories represent the problems with returning children to situations of domestic violence, and the very personal impact these decisions have on the lives of the mothers and children.

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APPENDIX B: HAGUE CONVENTION TEXT

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION
(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION
Article 1
The objects of the present Convention are -
a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2
Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3
The removal or the retention of a child is to be considered wrongful where -
a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4
The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5
For the purposes of this Convention -
a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II - CENTRAL AUTHORITIES
Article 6
A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

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

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

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

CHAPTER III - RETURN OF CHILDREN

Article 8

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

The application shall contain -

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

The application may be accompanied or supplemented by -

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

Article 9

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

Article 10

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

Article 11

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

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

Article 12
Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.
The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.
Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13
Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -
a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14
In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15
The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16
After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17
The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18
The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19
A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20
The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV - RIGHTS OF ACCESS
Article 21
An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.
The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V - GENERAL PROVISIONS
Article 22
No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23
No legalisation or similar formality may be required in the context of this Convention.

Article 24
Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25
Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26
Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

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

Article 27
When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28
A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29
This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30
Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31
In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32
In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33
A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34
This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35
This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36
Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI - FINAL CLAUSES
Article 37
The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38
Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.
The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39
Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40
If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41
Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42
Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

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

Thereafter the Convention shall enter into force -

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

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

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

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

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

Article 45

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

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;

(2) the accessions referred to in Article 38;

(3) the date on which the Convention enters into force in accordance with Article 43;

(4) the extensions referred to in Article 39;

(5) the declarations referred to in Articles 38 and 40;

(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

(7) the denunciations referred to in Article 44.

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

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

APPENDIX C: ICARA TEXT

Public Law 100-300
100th Congress
[H.R. 3971, 29 Apr 1988]
42 USC 11601 et seq
An Act
INTERNATIONAL CHILD ABDUCTION REMEDIES ACT (ICARA)

To establish procedures to implement the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, and for other purposes.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the "International Child Abduction Remedies Act."

SECTION 2. FINDINGS AND DECLARATIONS. [42 USC 116011]
Findings.-The Congress makes the following findings:
The international abduction or wrongful retention of children is harmful to their well-being.
Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
International abductions and intentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.
The Convention on the Civil Aspects of International Child Abduction, done at The Hague, on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.
(b) DECLARATIONS. – The Congress makes the following declarations:
(1) It is the purpose of this Act to establish procedures for the implementation of the Convention in the United States.
(2) The provisions of this Act are in addition to and not in lieu of the provisions of the Convention.
(3) In enacting this Act the Congress recognizes-
(A) the international character of the Convention; and
(B) the need for uniform international interpretation of the Convention.
(4) The Convention and this Act empower courts in the United States to determine only rights underthe Convention and not the merits of any underlying child custody claims.

SECTION 3. DEFINITIONS. [42 USC 11602]
For the purposes of this Act-
(1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;
(2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;

(3) the term “Parent Locator Service” means the service established by the Secretary of Health and Human Services under section 453 of the Social Security Act (42 U.S.C. 653);
(4) the term “Petitioner” means any person who, in accordance with this Act, files a petition in court seeking relief under the Convention;
(5) the term “person” includes any individual, institution, or other legal entity or other legal entity or body;
(6) the term “respondent” means any person against whose interests a petition is filed in court, in accordance with this Act, which seeks relief under the Convention;
(7) the term “rights of access” means visitation rights;
(8) the term “State” means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of th6 United States; and
(9) the term “United States Central Authority” means the agency of the Federal Government designated by the President under section 7(a).

SECTION 4. JUDICIAL REMEDIES. [42 USC 11603]
(a) JURISDICTION OF THE COURTS.-The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention
(b) PETITIONS.-Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a Petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.
(c) NOTICE-.-Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.
(d) DETERMINATON OF CASE.-The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.
(e) BURDENS OF PROOF.-(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence-
(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and
(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights. (2) In the case of an action for the return of a child, a respondent who opposes the return of the child
has the burden of establishing-
(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and
(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.
(f) APPLICATION OF THE CONVENTION—For purposes of any action brought under this Act-
(1) the term “authorities”, as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;
(2) the terms “wrongful removal or retention” and “wrongfully removed or retained”, as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and
(3) the term “commencement of proceedings”, as used in article 12 of the Convention, means with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.
(g) FULL FAITH AND CREDIT.-Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child,

pursuant to the Convention, in an action brought under this Act.
(h) REMEDIES UNDER THE CONVENTION NOT EXCLUSIVE.-The remedies established by the Convention and this Act shall be in addition to remedies available under other laws or international agreements.

SECTION 5. PROVISIONAL REMEDIES. [42 USC 11604]
(a) AUTHORITY OF COURTS.-In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 4(b) of this Act may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the further removal or concealment before the final disposition of the petition.
(b) LIMITATION ON AUTHORITY.-No court exercising jurisdiction of an action brought under section 4(b) may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

SECTION 6. ADMISSIBILITY OF DOCUMENTS. [42 USC 11605]
With respect to any application to the United States Central Authority, or any petition to a court under section 4, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court

SECTION. 7. UNITED STATES CENTRALAUTHORITY. [42 USC 11606]
(a) DESIGNAITON.-The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.
(b) FUNCTIONS.-The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this Act.
(c) REGULATORYAUTHORITY.-Me United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this Act.
(d) OBTAINING INFORMAITON FROM PARENT LOCATOR SERVICE. The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

SECTION 8. COSTS AND FEES. [42 USC 11607]
(a) ADMINISTRATIVE COSTS. -No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.
(b) COSTS INCURRED IN CIVILACTIONS.-(1) Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).
(2) Subject to paragraph (3), legal fees or court costs- incurred in connection with an action brought under section 4 shall be borne by the petitioner unless they are covered by payments from Federal State, or local legal assistance or other programs.
(3) Any court ordering the return of a child pursuant to an action brought under section 4 shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of -the child, unless the respondent establishes that such order would be clearly inappropriate.

SECTION. 9. COLLECTION, MAINTENANCE, AND DISSEMINATION OF INFORMATION. [42 USC 11608]

(a) IN GENERAL.-In performing its functions under the Convention, the United States Central Authority may, under such conditions as the Central Authority prescribes by regulation, but subject to subsection (c), receive from or transmit to any department, agency, or instrumentality of the Federal Government or of any State or foreign government, and receive from or transmit to any applicant, petitioner, or respondent, information necessary to locate a child or for the purpose of otherwise implementing the Convention with respect to a child, except that the United States Central Authoritymay receive such information from a Federal or State department, agency, or instrumentality only pursuant to
applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of lawother than this Act.

(b) REQUESTS FOR INFORMATION.-Requests for information under this section shall be submitted in such manner and form as the United States Central Authority may prescribe by regulation and shall be accompanied or supported by such documents as the United States Central Authority may require.

(c) RESPONSIBILITY OF GOVERNMENT ENTITIES.-Whenever any department, agency, or instrumental of the United States or of any State receives a request from the United States Central Authority for information authorized to be provided to such Central Authority under subsection (a), the head of such department, agency, or instrumentality shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality in order to determine whether the information requested is contained in any such files or records. If such search disclose the information requested, the head of such department, agency, or instrumentality shall immediately transmit such information to the United States Central Authority, except that any such information the disclosure of which-

(1) would adversely affect the national security interests of the United States or the law enforcement interests of United States or of any State; or

(2) would be prohibited by section 9 of title 13, United States enforcement Code; shall not be transmitted to the Central Authority. The head of such department, agency, or instrumentality shall, immediately upon completion of the requested search, notify the Central Authority of the results of the search, and whether an exception set forth in paragraph (1) or (2) applies. In the event that the United States Central Authority receives information and the appropriate Federal or State department, agency, or instrumentality thereafter notifies the Central Authority that an exception set forth in paragraph (1) or (2) applies to that information, the Central Authority may not disclose that information under subsection (a).

(d) INFORMATION AVAILABLE FROM PARENT LOCATOR SERVICE. -To the extent that information which the United States Central Authority is authorized to obtain under the provisions of subsection (c) can be obtained through the Parent Locator Service, the United States Central Authority shall first seek to obtain such information from the Parent Locator Service, before requesting such information directly under the provisions of subsection (c) of this section.

(e) RECORDKEEPING.-The United States Central Authority shall maintain appropriate records concerning its activities and the disposition of cases brought
to its attention.

SECTION 10. INTERAGENCY COORDINATING GROUP. [42 USC 11609]

The Secretary of State, the Secretary of Health and Human Services, and
the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses

incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter 1 of chapter 57 of title 5, United States Code, for employees of agencies.

SECTION 11. AGREEMENT FOR USE OF PARENT LOCATOR SERVICE IN DETERMINING WHEREABOUTS OF PARENT OR CHILD.

Section 4.63 of the Social Security Act (42-U.S.C. 663) is amended-

(1) by striking "under this section" in subsection (b) and inserting "under subsection (a)";

(2) by striking "under this section" where it first appears in subsection (c) and inserting "under subsection (a), (b), or (c)"; and

(3) by adding at the end the following new subsection:

"(e) The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 7 of the International Child Abduction Remedies Act, under which the services of the Parent Locator Service established under section 453 shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 3(l) of that Act. The Parent Locator Service shall charge no fees for services requested pursuant to this subsection."

SECTION. 12. AUTHORIZATION OF APPROPRIATIONS. [42 USC 11610]

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of the Convention and this Act.

Approved April 29, 1988.

LEGISLATIVE MSTORY-H.R. 3971:

HOUSE REPORTS: No. 100-525 (Comm. on the Judiciary).

CONGRESSIONAL RECORD, Vol. 134 (1988):

Mar. 28, considered and passed House.

Apr. 12, considered and passed Senate, amended.

Apr. 25, House concurred in Senate amendment.

APPENDIX D: LIST OF CONTRACTING PARTIES TO CONVENTION

The Hague Convention — The Hague Conference

The Hague Conference on private international law is an intergovernmental organization the purpose of which is "to work for the progressive unification of the rules of private international law" (Statute, Article 1). There are currently 59 permanent members of the Hague Conference. The Conference meets every four years in "Plenary Sessions," at which the members discuss and adopt multilateral treaties, or "Conventions" in the different fields of private international law. There have been 36 Conventions adopted since 1945.

The Twenty-Seventh Convention

The Minnesota bench guide focuses solely on the 27th Convention adopted by the Hague Conference. The Hague Convention on the Civil Aspects of International Child Abduction (hereafter "The Convention") was adopted in 1980 and according to The Hague Conference Web site, "is a multilateral treaty, which seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a procedure to bring about their prompt return."

This convention establishes the rules that govern international parental child abduction cases. The convention applies when a child has been removed from its country of residence to a foreign country without the consent of the custodial parent, or retained in a foreign country longer than an initially agreed upon period.

The Convention consists of 45 articles divided into six chapters. As of August 2011, 86 countries are contracting parties to the Convention. Of those states, over 60 have been accepted by the U.S. Below is a list of the effective dates of the contracting parties of the Convention with the U.S.:

Argentina	June 1, 1991
Australia	July 1, 1988
Austria	October 1, 1988
Bahamas	January 1, 1994
Belgium	May 1, 1999
Belize	November 1, 1989
Bosnia & Herzegovina	December 1, 1991
Brazil	December 1, 2003
Bulgaria	January 1, 2005
Burkina Faso	November 1, 1992
Canada	July 1, 1988
Chile	July 1, 1994
Hong Kong Special Admin. Region	September 1, 1997

Macau	March 1, 1999
Colombia	June 1, 1996
Costa Rica	January 1, 2008
Croatia	December 1, 1991
Cyprus	March 1, 1995
Czech Republic	March 1, 1998
Denmark	July 1, 1991
Dominican Republic	June 1, 2007
Ecuador	April 1, 1992
El Salvador	June 1, 2007
Estonia	May 1, 2007
Finland	August 1, 1994
France	July 1, 1988
Germany	December 1, 1990
Greece	June 1, 1993
Guatemala	January 1, 2008
Honduras	June 1, 1994
Hungary	July 1, 1988
Iceland	December 1, 1996
Ireland	October 1, 1991
Israel	December 1, 1991
Italy	May 1, 1995
Latvia	May 1, 2007
Lithuania	May 1, 2007
Luxembourg	July 1, 1988
Former Yugoslav Rep. of Macedonia	December 1, 1991
Malta	February 1, 2003
Mauritius	October 1, 1993
Mexico	October 1, 1991
Monaco	June 1, 1993
Montenegro	December 1, 1991
Netherlands	September 1, 1990
New Zealand	October 1, 1991
Norway	April 1, 1989
Panama	June 1, 1994
Paraguay	January 1, 2008
Peru	June 1, 2007
Poland	November 1, 1992
Portugal	July 1, 1998
Romania	June 1, 1993

San Marino	January 1, 2008
Serbia	December 1, 1991
Slovakia	February 1, 2001
Slovenia	April 1, 1995
South Africa	November 1, 1997
Spain	July 1, 1988
Sri Lanka	January 1, 2008
St. Kitts and Nevis	June 1, 1995
Sweden	June 1, 1989
Switzerland	July 1, 1988
Turkey	August 1, 2000
Ukraine	September 1, 2007
United Kingdom	July 1, 1988
Bermuda	March 1, 1999
Cayman Islands	August 1, 1988
Falkland Islands	June 1, 1998
Isle of Man	September 1, 1991
Montserrat	March 1, 1999
Uruguay	September 1, 2004
Venezuela	January 1, 1997
Zimbabwe	August 1, 1995

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For complete information on the function, history, and organization of the Hague Conference please visit the official Hague Conference Web site at http://hcch.e-vision.nl.

For a list of contracting countries with the U.S. please visit http://travel.state.gov/abduction/resources/congressreport/congressreport_1487.html.

The Hague Domestic Violence Project

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