

Questionnaire concerning the Practical Operation of the 1980 Child Abduction Convention

Wherever responses to this Questionnaire make reference to domestic legislation, rules, guidance or case law relating to the practical operation of the 1980 Convention, **please provide a copy of the referenced documentation** in (a) the original language and, (b) wherever possible, accompanied by a translation into English and / or French.

Name of State or territorial unit: ¹	United States of America
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PART I – PRACTICAL OPERATION OF THE 1980 CONVENTION

Recent developments in your State²

1. Since the 2017 SC, have there been any significant developments in your State regarding the **legislation** or **procedural rules** applicable in cases of international child abduction? Where possible, please state the reason for the development and the results achieved in practice.

- No
 Yes

Please specify:

2. Following the Covid-19 pandemic,³ have there been any **improvements** that have remained in your State in the following areas, in particular in relation to the **use of information technology**, as a result of newly adopted procedures or practices applicable to child abduction cases? In each case, please describe the tools, guidelines or protocols put in place.
 - a) Methods for accepting and processing return and access applications and their accompanying documentation;
The USCA accepts and processes access and return cases and accompanying documents by e-mail and fax. Previous requirements by the State of California to submit hard copies of cases and accompanying documents have been eliminated.
 - b) Participation of the parties and the child (e.g., appearance in court proceedings, mediation);
Participation is required either pro se or through counsel. Many jurisdictions allow virtual participation. The Hague Convention Mediation Program requires both parties to be represented by legal counsel, but does permit virtual participation. Other mediation programs available in the United States may have different requirements.
 - c) Promoting mediation and other forms of amicable resolution;

¹ The term "State" in this Questionnaire includes a territorial unit, where relevant.

² This Part of the Questionnaire is intended to deal primarily with the developments in law and practice relating to international child abduction which have occurred in your State since the Seventh Meeting of the Special Commission (SC) to review the operation of the 1980 Abduction Convention and the 1996 Child Protection Convention (held from 10 to 17 October 2017) ("2017 SC").

³ This question aims to gather information about good practices that were developed in those exceptional circumstances and that will continue to be applied regardless of the pandemic.

Information about mediation and resources related to mediation are available on the USCA website. In addition, referrals to an international mediation program are available for parents and/or legal guardians if they express an interest in mediation.

- d) Making arrangements for organising or securing the effective exercise of rights of access, including while pending return proceedings;
Please insert text here
- e) Obtaining evidence by electronic means;
Please insert text here
- f) Ensuring the safe return of the child;
Please insert text here
- g) Cooperation between Central Authorities and other authorities;
Please insert text here
- h) Providing information and guidance for parties involved in child abduction cases;
Our website: <https://travel.state.gov/> contains links to relevant resources and information for parties involved in child abduction cases including information concerning foreign civil courts, resources for location, completing a Hague Abduction application, information that may be helpful to judges and attorneys involved in 1980 Convention cases , and contact information. Contact information is available in English and Spanish. Our website also provides information on how find an attorney both in the United States and abroad.
- i) Other, please specify.
Please insert text here

3. Please provide the three most **significant decisions concerning the interpretation and application of the 1980 Convention** rendered since the 2017 SC by the relevant authorities⁴ in your State.

Case Name	Court Name	Court Level	Brief summary of the ruling
Monasky v. Taglieri, 140 S.Ct. 719 (2020)	U.S. Supreme Courte	Please insert text here	Monasky v. Taglieri, 140 S.Ct. 719 (2020) addressed the test for determining a child's habitual residence under the Convention, and the standard of review for the habitual residence determination on appeal. The Court held that a child's habitual residence depends on the "totality of the circumstances," which standardizes the U.S. approach across jurisdictions and brings the U.S. approach in line with many other State Parties to the Convention. The Court further held that appellate courts should review lower courts' ruling on the question of habitual residence under the deferential clear error review standard

⁴ The term “relevant authorities” is used in this Questionnaire to refer to the judicial or administrative authorities with decision-making responsibility under the 1980 Convention. Whilst in the majority of Contracting Parties such “authorities” will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

Golan v. Saada 140 S. Ct. 1880 (2022)	U.S. Supreme Court	Please insert text here	In Golan v. Saada 140 S. Ct. 1880 (2022), the Court held that upon a finding of grave risk, courts have the discretion, but are not categorically required, to examine all possible ameliorative measures before denying the return of the child. The court further held that a consideration of ameliorative measures (1) must prioritize the child's safety, (2) should not usurp the role of the custody court, and (3) must respect the Convention's requirement to act expeditiously.
Please insert text here	Please insert text here	Please insert text here	Please insert text here

4. Please provide a brief summary of **any other significant developments** in your State since the 2017 SC.

Please insert text here

Issues of compliance

5. Has your State faced any particular **challenges with other Contracting Parties** to the 1980 Convention in achieving successful cooperation? Please specify the challenges that were encountered and, in particular, whether the problems appear to be systemic.

- No
- Yes

Please specify the challenges encountered:

We look forward to discussing the challenges of implementation of the Convention at the 2023 Special Commission meetings. Typically, the challenges we observe include delays in the judicial process, difficulties in enforcing return orders, an overly broad interpretation of the exceptions to the obligation to return a child pursuant to the Convention, difficulties in locating abducted children, and some problems with communication between central authorities. For example, we have seen courts find that the well-settled defense is available even when the petition was filed within one year of the alleged wrongful removal date. We look forward to continuing to collaborate on these issues both in the Special Commission meetings and through bilateral communications.

6. Are you aware of situations or circumstances in which there has been **avoidance or improper application** of the 1980 Convention as a whole or any of its provisions in particular?

- No
- Yes

Please specify:

See response to Question 5.

Addressing delays and ensuring expeditious procedures

7. The 2017 SC encouraged States to review their procedures (including, where applicable, at the Central Authority, judicial, enforcement and mediation / other alternative dispute resolution - “ADR” phases)⁵ in order to identify possible sources of delay and implement the adjustments needed to

⁵ See C&R No 4 of the 2017 SC, “The Special Commission acknowledges that some States have made progress in reducing delays and encourages States to review their procedures (including, where applicable, at the Central Authority, judicial,

secure shorter time frames consistent with Articles 2 and 11 of the Convention. Please indicate any identified sources of delay at the following phases:

Central Authority

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

There are several ways in which the U.S. Central Authority for the 1980 Convention (USCA) endeavors to encourage expeditious resolutions of cases. First, the USCA has established policies and practices that require USCA staff to complete tasks within a specified timeframe. These policies and practices promote consistent and expeditious handling of cases. Second, the International Child Abduction Remedies Act (ICARA), the implementing legislation for the Convention in the United States, includes authorization for law enforcement to share location information with the USCA, and for the USCA to use a U.S. federal database to assist in the location of children. Finally, the USCA generally sends a letter to judges hearing Convention cases in the United States reminding them that, among other features, the Convention requires prompt decisions. The letter also includes information about the International Hague Network of Judges, and instructions on how a judge may contact a U.S. Hague Network Judge. The USCA also continually reviews and adjusts its internal processing guidelines and resources as necessary to ensure applications are processed as quickly as possible. Finally, unless stayed, court orders are generally immediately enforceable. Please also see our answer to question 18 about amicable resolutions.

Judicial proceedings

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please see response to question 8 and the first part of question 7.

Enforcement

- No
 Yes
 Procedure not yet revised

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please see response to the first part of question 7.

Mediation / ADR

- No
 Yes
 Procedure not yet revised

enforcement and mediation / ADR phases) in order to identify possible sources of delay and implement the adjustments needed to secure shorter time frames consistent with Articles 2 and 11 of the Convention.”

If the answer to the above is YES, please share any measures that have been implemented to address the delays:

Please see response to question 18 for information on mediation and amicable resolutions.

Court proceedings and promptness

8. Does your State have mechanisms in place to deal with return decisions within six weeks (e.g., production of summary evidence, limitation of appeals, swift enforcement)?

- No
 Yes

Please specify:

The USCA informs judges hearing a Hague Convention case of the Convention's requirement to act expeditiously in proceedings for the return of children. . The USCA and our Network Judges often participate in training for judges on the Hague Abduction Convention. The USCA has information specifically for judges and lawyers available on its website that details the requirements of the Convention. U.S. Network Judges are available to respond to requests for direct judicial communications, and to respond to questions from U.S. judges about the operation of the Convention. Moreover, appeals are procedurally limited, and appellate courts generally only review questions of law, not of fact.

9. If the response to question 8 above is "No", does your State contemplate implementing mechanisms to meet the requirement of prompt return under the 1980 Convention (e.g., procedures, bench-books, guidelines, protocols)?

- No
 Please specify:
 Please insert text here
 Yes
 Please specify:
 Please insert text here

10. Do the courts in your State make use of direct judicial communications⁶ to ensure prompt proceedings?

- No
 Yes

Please specify:

A court in the United States may engage in direct judicial communications when adjudicating a Convention case, as appropriate. The USCA believes direct judicial communications may help expedite resolutions in Convention cases.

11. If your State has not designated a judge to the International Hague Network of Judges (IHNJ) does your State intend to do so in the near future?

- No
 Yes
 Please specify:
 N/A

⁶ For reference, see "Direct Judicial Communications - Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges".

12. Please comment upon any cases (where your State was the requested State) in which the judge (or decision-maker) has, before determining an application for return, communicated with a judge or other authority in the requesting State regarding the issue of the child’s safe return. What was the specific purpose of the communication? What was the outcome?

The USCA is not always informed about the purposes and outcomes of direct judicial communications, nor would we necessarily know at what point in the case the communications took place. While the USCA may play a role in connecting a judge with a U.S. Hague Network Judge, judges may also reach out to a U.S. Hague Network Judge independently from the USCA. If we are involved in connecting the judges, our involvement often stops there, and we may not be aware of the details of the communications.

The role and functions of Central Authorities designated under the 1980 Convention

In general

13. Have any of the duties of Central Authorities, as set out in **Article 7** of the 1980 Convention, raised any particular problems in practice either in your State, or in Contracting Parties with which your State has cooperated?

- No
 Yes

Please specify:

14. Has your Central Authority encountered any challenges with the application of **any of the 1980 Convention provisions**? If so, please specify.

- No
 Yes

Please specify:

Because of our federal system, under which family law is governed by each state, the USCA is not able to provide applicants Article 15 letters. Applicants may be able to obtain Article 15 letters from a competent authority in the appropriate U.S. state. Alternatively, an attorney licensed to practice in the relevant state may be able to provide the court with the information it needs about state law regarding rights of child custody.

Legal aid and representation

15. Do the measures your Central Authority takes to provide or facilitate the provision of legal aid, legal advice and representation in return proceedings under the 1980 Convention (**Art. 7(2)(g)**) result in delays in proceedings either in your own State, or, where cases originate in your State, in any of the requested States that were dealt with?

- No
 Yes

Please specify:

Notwithstanding the United States’ reservation declaring that it is not bound to assume any of the costs referred to in Article 26, the USCA attempts to help applicants in finding counsel in the United States to represent them on a pro bono or reduced fee basis. The Department maintains an all-volunteer national attorney network called the Hague Convention Attorney Network (HCAN). Upon request from the applicant, the Department asks HCAN attorneys to consider representing applicants in Hague Abduction Convention return and access cases in the United States. To qualify for pro

bono, reduced-fee, or full-fee legal assistance, applicants provide financial information to the USCA, however, HCAN attorneys may request additional information. Eligibility for pro bono or reduced-fee assistance is based on the U.S. poverty guidelines used by U.S. citizens seeking legal aid in civil cases.

Once the Department identifies available and interested HCAN attorneys or legal assistance organizations in the jurisdiction where the child is located, the USCA provides the attorneys' contact information to the applicant through the foreign central authority. Applicants contact the attorney(s) to discuss the case and to determine whether the applicant will retain the attorney to file the Convention petition with the court. The USCA can arrange telephone translation services to facilitate the applicant and prospective attorney communication at no cost to applicants or attorneys.

Although the USCA assists in identifying potential attorneys, it is up to the applicant to decide whether to retain the services of any identified attorney as well as the attorney to decide whether to represent the applicant. Use of this resource by applicants is voluntary. . The petition for return or access must be filed in the jurisdiction where the child is located. If a child is located in an area in which we have fewer HCAN attorneys there may be a delay in identifying available counsel.

The USCA has observed delays between our sending the list of attorneys to the requesting central authority and the parent contacting the attorney(s) on the list. If requesting central authorities encounter such delays, the USCA is available to discuss ways to resolve them. These solutions may include, but are not limited to, providing telephone interpretation and confirming contact information for attorneys.

16. Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States your Central Authority has dealt with, regarding the **obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?**⁷

- No
 Yes

Please specify:

Please see response to Question 15.

Locating the child

17. Has your Central Authority encountered any **challenges with locating children** in cases involving the 1980 Convention, either as a requesting or requested State?

- No
 Yes

Please specify the challenges encountered and what steps were taken or are considered to be taken to overcome these challenges:

In the vast majority of cases, the USCA is able to quickly locate missing children in the United States, in cases where children have been removed from the United States, there are several countries who have not been able to locate the subject child(ren) in a timely manner.

⁷ See paras 1.1.4 to 1.1.6 of the C&R of the Fifth Meeting of the SC to review the operation of the 1980 Child Abduction and the practical implementation of the 1996 Child Protection Convention (30 October – 9 November 2006) (2006 SC C&R) and paras 32 to 34 of the C&R of the Sixth Meeting of the SC to review the operation of 1980 and 1996 Conventions (1-10 June 2011 and 25-31 January 2012) (2012 SC C&R), available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Special Commission meetings".

Voluntary agreements and bringing about an amicable resolution of the issues

18. How does your Central Authority (either directly or through any intermediary) take, or is considering taking, appropriate steps under **Article 7(c)** to bring about an amicable resolution of the issues? Please explain:

The USCA's long established practice, except in instances where we are concerned about further flight risks or safety concerns, is to reach out to alleged taking parents to provide information about the Hague Convention and resources available to facilitate a voluntary return. As recommended by the Malta Principles, the USCA designated a Central Point of Contact on international family mediation. If a parent expresses interest in mediation, the USCA may reach out to the other parent to determine if the other parent is interested in mediation. The USCA may refer interested eligible parents to a specialized international family mediation program. We also have general information about mediation and mediation resources on our website.

19. In the case that your Central Authority offers mediation services, or other alternative dispute resolution methods to bring about an amicable resolution of the issues, has your Central Authority reviewed these procedures in the light of the framework of international child abduction cases (e.g., by providing trained, specialised mediators, including with cross-cultural competence and necessary language skills⁸)?

Please specify:

The U.S. Central Authority does not offer mediation services or other alternative resolution methods directly. However, referral to a specialized international family mediation program is provided if the applicant and other parent express an interest in mediation and are eligible for its services.

20. Should the services mentioned in the question above not yet be provided, does your Central Authority intend to provide them in the future?

Please provide comments:

21. Has your State considered, or is it in the process of considering, the establishment of a central service for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children?⁹

No
Please explain:
Please insert text here

Yes
Please explain:
The USCA serves as the Central Contact Point for mediation services.

Ensuring the safe return of children¹⁰

22. How does the competent authority in your State obtain information about the protective measures available in the requesting State when necessary to ensure the safe return of the child?

⁸ For reference, please see the recommendation in the Guide to Good Practice on Mediation, item 3.2, paras 98-105, "Specific training for mediation in international child abduction cases", available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

⁹ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". paras 114-117. See also 2011 / 2012 SC C&R at para. 61.

¹⁰ See Art. 7(2)(h) of the 1980 Convention.

Please explain:

In appropriate circumstances, the USCA may communicate with a foreign central authority to determine whether it can assist with protective measures such as logistics upon arrival in the requesting state, or any government services that may be appropriate to help facilitate the child's safe return. Courts in the United States may engage in a variety of methods to ascertain whether protective measures meant to help ensure the safe return of the child are available in the requesting state, such as through expert testimony, testimony of witnesses including the parties, and/or through engaging in direct judicial communications.

23. If requested as a safe return measure (e.g., in accordance with the 1996 Convention), would your Central Authority be in a position to provide, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?

- No
 Yes

Please specify:

In the United States, family law and child protection matters are generally governed by the states and/or local jurisdictions. The USCA can assist families with identifying appropriate child protection resources when facilitating a safe return under the 1980 Convention. The resources might include, but are not limited to, those available through the National Center of Missing and Exploited Children, International Social Services, and/or local public and private entities. These other resources may provide reports..

Information exchange, training and networking of Central Authorities

24. Has your Central Authority shared experiences with other Central Authority(ies), for example by organising or participating in any networking initiatives such as regional meetings of Central Authorities, either in person or online?¹¹

- No
 Yes

Please specify:

The USCA regularly meets with our central authority partners to share our experiences. When we host representatives of a foreign central authority, we often arrange for them to meet with U.S. judges, nongovernmental organizations, child welfare agencies, and family law practitioners in addition to the staff of the USCA to help explain the larger context of the U.S. legal system as well as the workings of the USCA itself in processing Convention cases. We also regularly schedule working level meetings between officers in the USCA and their counterparts in our partner central authorities. These meetings may be in person or through digital videoconferencing or teleconferences. We also regularly attend conferences and meetings with other central authority participants so we can enjoy both formal and informal networking and information sharing.

Case management and collection of statistical data on applications made under the Convention

25. Has your Central Authority developed any protocols or internal guidelines for the processing of incoming and outgoing cases?

- No
 Yes

¹¹ See, in particular, Chapter 6.5, on twinning arrangements, of the Guide to Good Practice – Part I – Central Authority Practice, available on the HCCH website at www.hcch.net (see path indicated in note 8).

Please specify and share the relevant instruments whenever possible:
The U.S. Department of State has developed and maintains its own internal protocols and guidance materials.

26. Does your Central Authority operate a case management system for processing and tracking incoming and outgoing cases?

- No
 Yes

Please specify:

The USCA uses an electronic database developed within U.S. Department of State.

27. Does your State collect statistical data on the number of applications made per year under the 1980 Convention (e.g., number of incoming and / or outgoing cases)?¹²

- No
 Yes

In case this information is publicly made available, please share the links to the statistical reports:

The USCA reports to the United States Congress annual statistics on outgoing cases. The United States' Annual Report on International Child Abduction is available on our website (<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.html>). Data on incoming cases is also available on our website.

Transfrontier access / contact¹³

28. Since the 2017 SC, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier access / contact?

- No
 Yes

Please specify:

29. Has your Central Authority encountered any problems as regards cooperation with other States in making arrangements for organising or securing the effective exercise of rights of access / contact?

- No
 Yes

Please specify:

30. Has your State had any challenges, or have questions arisen, in making arrangements for organising or securing the effective exercise of rights of access / contact under **Article 21** when the application was *not* linked to an international child abduction situation?¹⁴

- No
 Yes

¹² In the Country Profile for the 1980 Child Abduction Convention, question No 23(e), States are asked to inform whether statistics related to applications under the Convention are publicly available. Please note that, at its meeting of 2021, according to Conclusion & Decision (C&D) No 19, the Council on General Affairs and Policy (CGAP) mandated the discontinuance of INCASTAT.

¹³ See C&R Nos 18-20 of the 2017 SC.

¹⁴ According to C&R No 18 of the 2017 SC, "The Special Commission agrees that an application to make arrangements for organising or securing the effective exercise of rights of access / contact under Article 21 can be presented to Central Authorities, independently of being linked or not, to an international child abduction situation."

Please specify:
Please insert text here

31. In the case of access / contact applications under **Article 21**, which of the following **services** are **provided by your Central Authority**?

Position	Services provided
A request of assistance to organise or secure effective exercise of rights of access in another Contracting Party (as requesting State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Assistance in obtaining information on the operation of the 1980 Convention <input checked="" type="checkbox"/> 2. Assistance in obtaining information on the relevant laws and procedures in the requested State <input checked="" type="checkbox"/> 3. Establishment of contact with the Central Authority and / or the competent authorities in the requested State to find out the kind of assistance such authorities could provide <input checked="" type="checkbox"/> 4. Transmission of the request to the Central Authority or to the competent authorities in the requested State <input type="checkbox"/> 5. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 6. Assistance in providing or facilitating the provision of legal aid and advice <input type="checkbox"/> 7. Assistance in obtaining private legal counsel or mediation services, where needed in the requested State <input checked="" type="checkbox"/> 8. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 9. Provision of regular updates on the progress of the application <input checked="" type="checkbox"/> 10. Other, please specify: The USCA provides general information to applicants filling out an application. The USCA is prohibited by federal regulation from acting as agents or attorneys in legal proceedings arising under the 1980 Convention, but the USCA does provide general information about legal representation. Overseas embassies and consulates maintain regional lists of various attorneys who have indicated they are willing to assist U.S. citizen clients.
A request of assistance to organise or secure effective exercise of rights of access in your State (as requested State)	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> 1. Providing information on the operation of the 1980 Convention and / or the relevant laws and procedures in your State <input checked="" type="checkbox"/> 2. Assistance in initiating judicial or administrative proceedings with a view to making arrangements for organising or securing the effective exercise of rights of access <input checked="" type="checkbox"/> 3. Assistance in providing or facilitating the provision of legal aid and advice <input checked="" type="checkbox"/> 4. Assistance in obtaining private legal counsel or mediation services available in your State <input checked="" type="checkbox"/> 5. Referral to other governmental and / or non-governmental organisations for assistance <input checked="" type="checkbox"/> 6. Regular updates on the progress of the application <input checked="" type="checkbox"/> 7. Other, please specify:

32. Should your State also be a Contracting Party to the 1996 Convention, are you aware of any use being made of **provisions of the 1996 Convention**, including those under Chapter V, **in lieu of or in connection with an application under Article 21** of the 1980 Convention?

- No
 - Yes
- Please specify:
Please insert text here

Special topics

Obtaining the views of a child in a child abduction case

33. When obtaining the views of a child in a child abduction proceeding in your State's jurisdiction, what are the elements normally observed and reported by the person hearing the child (e.g., expert, judge, guardian *ad litem*? (E.g., the views of the child on the procedures, the views of the child on the subject of return, the maturity of the child, any perceived parental influence on the child's statements)?

Please explain:

Judges in the United States generally have broad authority to consider the views of a child. They may do so through, e.g., in camera interviews, via a guardian *ad litem* or attorney, or through psychological reports and/or expert testimony.

34. Are there any procedures, guidelines or principles available in your State to guide the person (e.g., expert, judge, guardian *ad litem*) in seeking the views of the child in a child abduction case?

- No
 Yes

Please specify:

Article 15

35. As requesting State (outgoing applications), how often have judicial or administrative authorities in your State received requests for Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

36. As requested State (incoming applications), how often have judicial or administrative authorities in your State requested Article 15 decisions or determinations?

- Do not know
 Never
 Rarely
 Sometimes
 Very often
 Always

37. Please indicate any good practices your State has developed to provide as complete as possible information in the return applications as required under Article 8 with a view to speed up proceedings?

Please indicate:

The USCA provides a checklist with a list of the required documents, including location information, to complete a Hague application to avoid delays in case processing.

38. Considering C&R No 7 of the 2017 SC,¹⁵ what information do you suggest adding to the Country Profile for the 1980 Convention, either as requested State or requesting State in relation to Article 15?

Please insert your suggestions:

N/A

Relationship with other international instruments on human rights

39. Has your State faced any challenges, or have questions arisen, in processing international child abduction cases where there was a **parallel refugee claim** lodged by the taking parent?

- No
 Yes

If possible, please share any relevant case law or materials that are relevant to this type of situation in your State or, alternatively, a summary of the situation in your State: This is a topic on which relatively few courts in the United States have opined. As such, the posture of the caselaw may continue to evolve. However, currently, a grant of asylum may be relevant, but is not dispositive to, a finding by the court hearing a case for return under the Hague Abduction Convention that a respondent has sufficiently proven the exceptions to return defined at Article 13(b) or Article 20. The elements to be proved, the burdens of proof, and the legal standard used when deciding whether to grant asylum in the United States differ from those used in the Hague Abduction Convention and the International Child Abduction Remedies Act (the U.S. implementing legislation for the Convention) that, if proven, allow courts the discretion to grant or deny return under Article 13(b) or Article 20. Thus, U.S. courts have held that even if a child has been granted asylum, a court in Hague Abduction Convention proceedings must still analyze whether the evidence satisfies the exceptions to return in Articles 13(b) and/or 20. Moreover, under current U.S. caselaw, a grant of asylum does not remove a court's authority to determine whether a child should be returned under the Hague Abduction Convention, and does not prohibit the court from ordering return.

- Do not know

40. Has the concept of the **best interest of the child** generated discussions in your State in relation to child abduction proceedings? If it is the case, please comment on any relevant challenges in relation to such discussions.

- No
 Yes

Please provide comments:

Use of the 1996 Convention¹⁶

41. If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention (please comment where applicable below):

(a) providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**)

¹⁵ See C&R No 7: "The Special Commission recommends amending the Country Profile for the 1980 Convention to include more detailed information on the Article 15 procedure. It is further recommended that an Information Document on the use of Article 15 be considered with, if necessary, the assistance of a small Working Group."

¹⁶ For this part of the Questionnaire, the [Practical Handbook on the Operation of the 1996 Child Protection Convention](#) can provide helpful guidance, available on the HCCH website at [under "Child Protection Section"](#).

The United States is currently considering whether to become party to the 1996 Child Protection Convention. The Uniform Law Commission in the United States has adopted proposed amendments to the uniform state law that would assist in implementing that Convention – the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). In the meantime, U.S. state courts, through the current version of the UCCJEA, may already have the authority to recognize a foreign order of child custody and access as long as there was due process in the underlying proceeding. Additionally, state courts in the United States may take emergency jurisdiction to effectuate certain protective measures.

(b) providing for the recognition of urgent protective measures by operation of law (**Art. 23**)
Please see response to 41(a)

(c) providing for the advance recognition of urgent protective measures (**Art. 24**)
Please see response to 41(a)

(d) communicating information relevant to the protection of the child (**Art. 34**)
Please insert text here

(e) making use of other relevant cooperation provisions (e.g., **Art. 32**)
Please see response to 41(a)

42. If your State is a Party to the 1996 Convention, does your State make use of the relevant cooperation provisions (e.g., Art. 32) to provide, if requested, either directly or through intermediaries, a report on the situation of the child after a certain period of time after the return?¹⁷

- No
 Yes

Please specify:

Please insert text here

Primary carer and protective measures

43. Are you aware of any cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, coercive control, harassment, etc.) or others, has refused or has not been in a position to return with the child to the requesting State? How are such cases dealt with in your State?

Please explain and provide case examples where possible:

The USCA is not generally directly involved in the parent's return to the requesting state. The parent may raise these issues with the court during the Convention proceeding. The court has broad discretion to issue orders containing provisions to protect the welfare of the parties and the child(ren). For example, the judge can make detailed orders about who is to travel with the child, where the child shall be picked up, who shall be present at the handover of the child, etc. In the United States, judges have discretion to engage in direct judicial communications to facilitate this process.

¹⁷ See C&R No 40 of the 2017 SC: "The Special Commission notes that many Central Authorities may provide certain degrees of assistance (both when the 1980 Convention and / or the 1996 Convention apply), both to individuals within their own State and to foreign Central Authorities on behalf of an individual residing abroad. Requests for assistance may encompass such matters as: securing rights of access; the return of children (both when the 1980 Convention and / or the 1996 Convention apply); the protection of runaway children; reporting on the situation of a child residing abroad; post-return reports for children returned to their habitual residence; the recognition or non-recognition of a measure taken abroad (advanced recognition); and, the enforceability of a foreign measure of protection." (Emphasis added.)

44. Would the authorities of your State consider putting in place measures to protect the primary carer upon return in the requesting State if they were requested as a means to secure the safe return of the child?

Please explain and provide case examples where possible:

Judges in the United States can make detailed return orders. Where supported by law and fact, an order might include measures aimed at protecting the safety of the parent and the child. The USCA can coordinate with the central authority of the receiving state for certain arrangements related to safe return of the family.

45. In cases where the return order was issued together with a protective measure to be implemented upon return, are you aware of any issues encountered by your State in relation to the enforcement of such protective measures?

- No
 Yes

Please explain and distinguish between such measures being recognised and enforced under the 1996 Convention:

The Central Authority of the 1980 Convention does not track data on whether protective measures are enforced upon return to a foreign country.

46. In cases where the return order was issued together with an undertaking given by either party to the competent authority of the requested State, are you aware of any issues encountered by your State in relation to the enforcement of such undertakings?

- No
 Yes

Please specify:

The Central Authority for the 1980 Convention does not track data on whether undertakings are enforced upon return to a foreign country. See also our response to question 45.

47. If your State is a Contracting Party to the 1996 Convention, is Article 23 of that Convention being used or considered for the recognition and enforcement of undertakings given by either party while returning a child under the 1980 Convention?

- No
 Yes

Please specify:

Please insert text here

- N/A

48. In cases where measures are ordered in your State to ensure the safety of a child upon return, does your State (through the Central Authority, competent Court or otherwise) attempt to monitor the effectiveness of those measures upon the child's return?

- No
 Yes

Please specify:

The USCA will help work with foreign central authorities and parents to coordinate the safe return of a child pursuant to the 1980 Convention. Once the child is returned to the foreign country, local laws and policies govern issues concerning the child's welfare. The USCA only receives post-return information from a parent on a voluntary basis.

International family relocation¹⁸

49. Has your State adopted specific procedures for international family relocation?

Yes

Please describe such procedures, if possible:
Please insert text here

No

Please describe how the authorities deal with international family relocation cases, if possible:
International family relocation is beyond the scope of the Convention. Accordingly, the USCA does not collect information or data on international family relocation. Decisions concerning international family relocation are made by state court judges based upon state law.

Publicity and debate concerning the 1980 Convention

50. Considering any potential impact on its practical operation, has your State had any recent publicity (positive or negative) or has there been any debate or discussion in your national parliament or its equivalent about the 1980 Convention?

No

Yes

Please indicate the outcome of this debate or discussion, if any:
The 1980 Convention, international parental child abduction generally, and individual cases of abduction regularly receive publicity from and discussion by the United States Congress and its members, as well as news organizations, advocacy groups, academic institutions, and non-profit organizations.

51. By what methods does your State disseminate information to the public and raise awareness about the 1980 Convention?

Please explain:

The United States disseminates information to the public about the 1980 Convention through a variety of methods, including but not limited to, the publication of information on websites, and outreach to various stakeholders and parties such as parents, judges, attorneys, law enforcement, Congress, and public and private organizations.

¹⁸ See the C&R of the 2006 SC at paras 1.7.4-1.7.5, C&R No 84 of the 2012 SC, and C&R No 21 of the 2017 SC, the latter of which says: “The Special Commission recalls the importance of securing effective access to procedures to the parties in international family relocation cases. In this regard, the Special Commission notes that: i) mediation services may assist the parties to solve these cases or prepare for outcomes; ii) the Washington Declaration of 25 March 2010 on Cross-border Family Relocation may be of interest to competent authorities, in particular in the absence of domestic rules on this matter. The Special Commission recommends joining the 1996 Convention.”

PART II – TRAINING, EDUCATION AND POST-CONVENTION SERVICES

Training and education

52. Please provide below details of any training sessions / conferences organised in your State to support the effective functioning of the 1980 Convention, and the influence that such sessions / conferences have had:

Please provide details:

Both the USCA and the U.S. Hague Network Judges participate in judicial trainings that often allow for a large number of judges to be educated about the Convention and the USCA's role in Convention cases. Our Network Judges provide formal and informal training and mentoring of judges in the United States. The Federal Judicial Center also makes training videos featuring former U.S. Hague Network judges and the USCA available to the public. When the USCA provides training to judges and lawyers, we give them resources on preventative measures and stress the role they can play to prevent abduction cases. The USCA also participates, upon request, in various conferences for interested legal associations, including the International Academy of Family Lawyers, the American Academy of Matrimonial Lawyers, and the American Bar Association. The USCA has also organized trainings for lawyers to help encourage their participation in the Hague Convention Attorney Network. At one such training, more than 60 lawyers participated via digital video conference in several locations throughout the United States. This helps to expand the Hague Convention Attorney Network and to support the attorneys handling Convention cases in the United States.

The tools, services and support provided by the PB

53. Please comment or state your reflections on the specific tools, services and support provided by the PB to assist with the practical operation of the 1980 (and 1996) Conventions, including:

- a. The Country Profile available under the Child Abduction Section, including the addition and / or revision of its questions.

We regularly use the country profiles to learn about procedures in other countries.

- b. INCADAT (the international child abduction database, available at www.incadat.com). The USCA is aware that INCADAT can be a good resource for people looking for information on Convention cases in other countries. However, it should not be used alone. Other databases that include legal opinions might provide information on cases not included in INCADAT as well as copies of the opinions themselves.

- c. *The Judges' Newsletter* on International Child Protection - the HCCH publication which is available online for free;²⁰

We understand that the Judges' Newsletters may be helpful, but recognize the limited resources of the Hague Conference.

- d. The specialised "Child Abduction Section" of the HCCH website (www.hcch.net); We find the Hague Conference's website to be very helpful as a centralized location to find information on the Convention. In particular, the status table, news about upcoming events, and links to publications prove very useful.

- e. Providing technical assistance and training to Contracting Parties regarding the practical operation of the 1980 (and 1996) Conventions. Such technical assistance and training may

²⁰ Available on the HCCH website at under "Child Abduction Section" and "Judges' Newsletter on International Child Protection". For some volumes of *The Judges' Newsletter*, it is possible to download individual articles as required.

involve persons visiting the PB or, alternatively, may involve the PB (including through its Regional Offices) organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the Convention(s) and participating in such conferences;

We appreciate the Permanent Bureau's organization and support for technical assistance, including the work of the regional offices. The United States participates in many of the trainings and conferences that are organized by the Permanent Bureau and believes that they are useful.

- f. Encouraging wider ratification of, or accession to, the 1980 (and 1996) Conventions, including educating those unfamiliar with the Convention(s);²¹

Yes, we believe such efforts are useful.

- g. Supporting communications between Central Authorities, including maintaining updated contact details on the HCCH website or intervening to facilitate contact in cases where obstacles arise.

Yes, we believe such efforts are useful.

- h. Supporting communications among Hague Network Judges and between Hague Network Judges and Central Authorities, including maintaining a confidential database of up-to-date contact details of Hague Network Judges or intervening to facilitate contact in cases where obstacles arise.

We very much appreciate conferences on the model of the Panama Inter-American Conference, where central authorities and judges have the opportunity to interact with one another. While we support efforts to facilitate communications between the judiciary and central authorities, it is important to remember that central authorities make policy while the judiciary applies the law to particular cases.

- i. Responding to specific questions raised by Central Authorities, Hague Network Judges or other operators regarding the practical operation or interpretation of the 1980 (and 1996) Conventions.

Yes, we believe such efforts are useful.

Guides to Good Practice under the 1980 Convention

54. For any of the Guides to Good Practice²² which you may have used to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State please provide comments below:

- a. Part I on Central Authority Practice.

The USCA finds all of the guides to good practice to be extremely helpful. The USCA uses the guides to help inform our policy decisions. The USCA also uses the guides as a common ground when discussing issues with other central authorities. Referring to relevant portions of the guides to good practice is always helpful in starting or focusing a dialogue on a specific issue. Finally, the guides to good practice have been referenced in U.S. Supreme Court decisions in the United States.

²¹ Which again may involve State delegates and others visiting the PB or, alternatively, may involve the PB organising, or providing assistance with organising, national and international judicial and other seminars and conferences concerning the 1980 (and 1996) Conventions and participating in such conferences.

²² All Parts of the Guide to Good Practice under the 1980 Convention are available on the HCCH website at www.hcch.net under "Child Abduction Section" then "Guides to Good Practice".

- b. Part II on Implementing Measures.
Please see response to Question 54(a).
- c. Part III on Preventive Measures.
Please see response to Question 54(a).
- d. Part IV on Enforcement.
Please see response to Question 54(a).
- e. Part V on Mediation
Please see response to Question 54(a).
- f. Part VI on Article 13(1)(b)
Please see response to Question 54(a).
- g. Transfrontier Contact Concerning Children – General Principles and Guide to Good Practice
Please see response to Question 54(a).

55. How has your Central Authority ensured that the relevant authorities in your State have been made aware of, and have had access to the Guides to Good Practice?

Please see our reply in Question 57.

56. Do you have any other comments about any Part of the Guide to Good Practice?

Please see our reply in Question 57.

57. In what ways have you used the *Practitioner’s Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*²³ to assist in improving the practical operation of the 1980 Convention in your State?

To help ensure that parents, lawyers, mediators and other interested stakeholders are aware of, and have access to, the Practitioner’s Tool, the USCA provides links to the Hague Permanent Bureau’s Section on Child Abduction on the USCA’s website, which includes all of the Guides to Good Practice.

Other

58. What other measures or mechanisms would you recommend:

- a. to improve the monitoring of the operation of the 1980 Convention;
We find the Permanent Bureau’s technical assistance extremely valuable, specifically regional conferences, international conferences, and the work of the regional offices.
- b. to assist States in meeting their Convention obligations; and
See answer to 58(a).
- c. to evaluate whether serious violations of Convention obligations have occurred?

²³ The *Practitioner’s Tool* is available at the HCCH website at www.hcch.net under “Child Abduction Section” then “Guides to Good Practice”.

We believe that it is for Contracting States to address and resolve implementation concerns directly with each other. The Permanent Bureau facilitates this process by providing for communication among the Contracting States.

PART III – NON-CONVENTION STATES

59. Are there any States that you would particularly like to see become a Contracting Party to the 1980 Convention? If so, what steps would you suggest could be taken to promote the Convention and encourage ratification of, or accession to, the Convention in those States?

Please explain:

The United States views the Convention as one of the best available tools for preventing and addressing international parental child abduction. The USCA encourages all countries that have the ability to successfully implement the Convention to accede to or ratify the Convention.

60. Are there any States which are not Party to the 1980 Convention or not Members of the HCCH that you would like to see invited to the SC meeting in 2023?

Please indicate:

The United States would welcome the attendance at the Special Commission of any State that is seriously considering becoming party to the Convention.

The “Malta Process”²⁴

61. Do you have any suggestions of activities and projects that could be discussed in the context of the “Malta Process” and, in particular, in the event of a possible Fifth Malta Conference?

Please explain:

If it is to continue, the United States hopes that the Malta Process focuses on encouraging new countries to become party to the conventions.

²⁴ The “Malta Process” is a dialogue between certain Contracting Parties to the 1980 and 1996 Conventions and certain States which are not Parties to either Convention, with a view to securing better protection for cross-border rights of contact of parents and their children and addressing the problems posed by international abduction between the States concerned. For further information see the HCCH website at www.hcch.net under “Child Abduction Section” then “Judicial Seminars on the International Protection of Children”.

PART IV – PRIORITIES AND RECOMMENDATIONS FOR THE 2023 SC AND ANY OTHER MATTERS

Views on priorities and recommendations for the SC

62. Are there any particular issues that your State would like the SC meeting to discuss in relation to the 1980 Convention?

Please specify and list in order of priority if possible:

- We would welcome an opportunity to share best practices and better understand capabilities of other countries for abduction prevention. Such topics might include law enforcement authorities and engagement, exit controls, and passport requirements. Since time is limited, we do not believe it would be useful to discuss relocation cases. The United States would be interested in having bilateral meetings during the SC meeting. We estimate we would be interested in meeting with 10-15 other States and appreciate the SC meeting allowing dedicated time to hold these meetings
- Improving enforcement, especially of return orders (i.e., accelerating the timeline for enforcing a return order/streamlining and expediting enforcement proceedings, including when parties must return to court to obtain a separate enforcement order after a return has been ordered; including actionable instructions to law enforcement, etc.);
- Discussing the impact of COVID on case processing (including central authority operations and expanded opportunities for participation in virtual court hearings); and what measures could be maintained as best practices;
- If topics will include discussing refugee status, please ensure discussions will exclusively focus on impacts on the 1980 and 1996 Conventions.

63. Are there any proposals your State would like to make concerning any particular recommendation to be made by the SC?

Please specify:

Bilateral meetings

64. Should your State be interested in having bilateral meetings during the SC meeting, please indicate, for the PB's planning purposes, an estimate of how many States with which it intends to meet:

Please insert number:

The United States would be interested in having bilateral meetings during the SC meeting. We estimate we would be interested in meeting with 10-15 other States and appreciate the SC meeting allowing dedicated time to hold these meetings

Any other matters

65. States are invited to comment on any other matters which they may wish to raise at the 2023 SC meeting concerning the practical operation of the 1980 Convention.

Please provide comments:

Please see response to Question 63.