

**QUESTIONNAIRE CONCERNING THE PRACTICAL OPERATION OF
THE 1980 CONVENTION**

Wherever your replies 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.

The United States Central Authority (USCA) submits the responses to this Questionnaire per the instructions of the Hague Permanent Bureau (HPB). We have consulted with the U.S. Members of the IHNJ regarding these responses, but the responses reflect the positions of the USCA.

Name of State or territorial unit: ¹	United States
<i>For follow-up purposes</i>	
Name of contact person:	John J. Kim, Assistant Legal Adviser
Name of Authority / Office:	Office of Private International Law U.S. Department of State
Telephone number:	001-202-776-8420
E-mail address:	kimmjj@state.gov

PART I: RECENT DEVELOPMENTS²

1. Recent developments in your State

1.1 Since the 2011 / 2012 Special Commission, 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 in the legislation / rules, and, where possible, the results achieved in practice (e.g., reducing the time required to decide cases).

- No
 Yes, please specify:

1.2 Please provide a brief summary of any significant decisions concerning the interpretation and application of the 1980 Convention rendered since the 2011 / 2012 Special Commission by the relevant authorities³ in your State including in the context of the 20 November 1989 United Nations Convention on the Rights of the Child and relevant regional instruments.

Chafin v. Chafin, 133 S.Ct. 1017, 185 L.Ed.2d 1 (2013). The U.S. Supreme Court held that the return of a child to a foreign country pursuant to a Convention return order does not render an appeal of that order moot.

Lozano v. Alvarez, 134 S.Ct. 1224, 188 L.Ed.2d 200 (2014). The U.S. Supreme Court held that Article 12's 1-year period is not subject to equitable tolling.

1.3 Please provide a brief summary of any other significant developments in your State since the 2011 / 2012 Special Commission relating to international child abduction.

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 and international child protection which have occurred in your State since the Sixth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (1-10 June 2011 and 25-31 January 2012) (hereinafter "the 2011 / 2012 Special Commission"). However, if there are important matters which you consider should be raised from *prior to* the 2011 / 2012 Special Commission, please provide such information here.

³ 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 States Parties such "authorities" will be courts (*i.e.*, judicial), in some States Parties administrative authorities remain responsible for decision-making in Convention cases.

In 2014, the International Child Abduction Prevention and Return Act (ICAPRA) was signed into law. This law 1) increases the amount of information the USCA must report to the U.S. Congress annually; 2) requires the Department of State to take actions with respect to countries determined to be demonstrating a pattern of non-compliance as defined in the law, or when a case has been pending for over one year; and 3) mandates collaboration among U.S. government agencies on preventing abduction.

2. Issues of compliance

2.1 Are there any States Parties to the 1980 Convention with whom you are having particular challenges in achieving successful co-operation? Please specify the challenges you have encountered and, in particular, whether the problems appear to be systemic.

- No
 Yes, please specify:

We look forward to discussing the challenges of implementation of the Convention at the 2017 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 occasional problems with communication between central authorities. We look forward to continuing to collaborate on these issues both in the Special Commission meetings and through bilateral communications.

2.2 Are you aware of situations / circumstances in which there has been avoidance / evasion of the 1980 Convention?

- No
 Yes, please specify:

Please see answer to 2.1

PART II: THE PRACTICAL OPERATION OF THE 1980 CONVENTION

3. The role and functions of Central Authorities designated under the 1980 Convention⁴

In general

3.1 Have any challenges arisen in practice in achieving effective communication or co-operation with other Central Authorities?

- No
 Yes, please specify:

In general, the USCA enjoys a positive working relationship with corresponding central authorities. We find that communication is efficient when it can be done through emails or telephone calls—rather than by more formal correspondence. In addition, we appreciate when central authorities have the technologies in place to allow for expedient communication. Where possible, we prefer when central authorities are able to send documents via email, rather than relying on a facsimile machine or regular mail.

3.2 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 States Parties with whom you have co-operated?

- No
 Yes, please specify:

3.3 Has your Central Authority encountered any challenges with the application of any of

⁴ See also Section 5 below on “Ensuring the safe return of children” which involves the role and functions of Central Authorities.

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 Article 15 letters for applicants. 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

3.4 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 you have 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.

The USCA occasionally encounters delays in finding available attorneys. 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 also 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.

3.5 Are you aware of any other challenges in your State, or, where cases originate in your State, in any of the requested States you have dealt with, regarding the obtaining of legal aid, advice and / or representation for either left-behind parents or taking parents?⁵

⁵ See paras 1.1.4 to 1.1.6 of the "Conclusions and Recommendations of the Fifth Meeting of the Special Commission to review the operation of the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and the practical implementation of the *Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* (30 October – 9 November 2006) (hereinafter referred to as the "[Conclusions and Recommendations of the 2006 Special Commission](#)") and paragraphs 32 to 34 of the [Conclusions and](#)

- No
 Yes, please specify:

Please see our answer to 3.4

Locating the child

3.6 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, usually within 30 days of receiving a complete application from the requesting central authority. 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.

3.7 Has your Central Authority worked with any external agencies to discover the whereabouts of a child wrongfully removed to or retained within your State (e.g., the police, Interpol, private location services)?

- No
 Yes, please share any good practice on this matter:

The United States' implementing legislation, the International Child Abduction Remedies Act, or ICARA, mandates that law enforcement and other organizations in federal and state governments assist with the USCA's location efforts. The Department therefore has various resources at its disposal to locate children in the United States. In addition to access to public records databases, the Department often works with local authorities within the United States to ascertain the location of a child and taking parent. These authorities may include missing persons clearinghouses, and states' attorney general's offices or law enforcement organizations who conduct a variety of checks available to them. The Department also works with Interpol, the U.S. Department of Health and Human Services, and the National Center for Missing and Exploited Children (NCMEC), an NGO in the United States, to locate children.

Information exchange, training and networking of Central Authorities

3.8 Has your Central Authority shared its expertise with another Central Authority or benefited from another Central Authority sharing its expertise with your Central Authority, in accordance with the Guide to Good Practice – Part I on Central Authority Practice?⁶

- 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 meet with U.S. judges, NGOs, 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 abduction 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.

[Recommendations of the Special Commission to review the operation of the Hague Convention of 19 October 1980 on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children \(1-10 June 2011 and 25-31 January 2012\)](#) (hereinafter the "C&R of the 2011/2012 Special Commission") (available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Special Commission meetings").

⁶ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice". See, in particular, Chapter 6.5 on twinning arrangements.

3.9 Has your Central Authority organised or participated in any other networking initiatives between Central Authorities such as regional meetings via conference call or videoconference?

- No
 Yes, please specify:

The USCA regularly participates in regional meetings with other central authorities both in person and through videoconferencing or conference calls. We also participate regularly in conferences and seminars related to international child abduction that give us an opportunity to network with our central authority counterparts.

Statistics⁷

3.10 If your Central Authority does not submit statistics through the web-based INCASTAT database, please explain why.

The United States utilizes existing internal case management applications for the purpose of recording and monitoring child abduction, access, and prevention cases, which can also be used to provide statistics. Because of our large case numbers, it would be too great an administrative burden to provide statistics in a different format.

Prompt handling of cases

3.11 Does your Central Authority have mechanisms in place to ensure the prompt handling of cases?

- No
 Yes, please specify:

There are several ways in which the USCA endeavors to handle cases quickly. First, the USCA has established policies and practices that require USCA staff to complete tasks within a specified timeframe. Additionally, the establishment of these policies and practices allows for consistent handling of cases between current officers and in the event of staff turnover. 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.

3.12 If your Central Authority is experiencing delays in handling cases please specify the main reasons for these delays:

Though the USCA strives to process cases as promptly as possible, we can occasionally experience delays. Please see our response to question 3.4 for an explanation of potential delays with legal assistance in the United States. Other potential delays include waiting for parents to submit documentation and occasional delays in the location of children.

4. Court proceedings & promptness

4.1 Has your State limited the number of judicial or administrative authorities who can hear return applications under the 1980 Convention (*i.e.*, concentration of jurisdiction)?⁸

- Yes

⁷ See paras 1.1.16 to 1.1.21 of the Conclusions and Recommendations of the 2006 Special Commission (*supra*, note 5).

⁸ See, *The Judges' Newsletter* on International Child Protection – [Vol. XX / Summer-Autumn 2013](#) the special focus of which was "Concentration of jurisdiction under the *Hague Convention of 25 October 1980 on the civil aspects of International Child Abduction* and other international child protection instruments".

- No, please indicate if such arrangements are being contemplated:

Our implementing legislation does not provide for the concentration of jurisdiction for Hague Convention cases. However, the USCA has a robust judicial training program that reaches out whenever a judge is assigned to a Convention case to provide basic information about the Convention and contact information for our office and our Hague Network Judges.

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

No

Yes, please explain:

The USCA informs judges hearing a Hague Convention case of the Convention's goal of prompt resolution of cases. Whenever possible, the USCA and our Network Judges participate in training for judges on the Hague Abduction Convention, including the Convention's goal of resolving cases without delay. 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 assist U.S. judges hearing Hague Convention cases to answer appropriate questions about the operation of the Convention. Moreover, appeals are limited, and appellate courts generally only review questions of law, not of fact. Additionally, it is important to remember that numerous factors may affect the length of judicial proceedings.

- 4.3 If your response to the previous question 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 explain:

N/A

Yes, please explain:

N/A

- 4.4 If your State is experiencing delays in handling return decisions please specify the main reasons for these delays:

In the United States, court orders are directly enforceable. Accordingly, for the most part, returns are enforced without delay.

- 4.5 Do your courts regularly order immediate protective measures when initiating the return procedure, so as to prevent a new removal and minimize the harm to the child (e.g., prohibit removal of the child from the jurisdiction, retain documentation, grant provisional access rights to the left-behind parent)?

No, please explain:

Yes, please explain:

Such measures are within the sole discretion of the court. Courts may order such measures where appropriate.

- 4.6 Do your courts make use of direct judicial communications to ensure prompt proceedings?

Yes

No, please explain:

- 4.7 If your State has not designated a sitting judge to the International Hague Network of Judges does your State intend to do so in the near future?

Yes

No, please explain:

N/A

- 4.8 Please comment upon any cases (whether your State was the requesting or 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 nature of the conversations. However, the following are examples of the purposes of such communication:

- For a foreign judge considering return to the United States to understand any domestic criminal charges lodged against a party and general principles of criminal procedure in the United States.
- For a foreign judge to understand how relevant protective measures may be made enforceable in the United States.
- For a foreign or U.S. judge to understand what services or facilities may be available to a returning child and/or taking parent.
- In cases where the left behind parent's right of custody is based upon court order or judgment, the U.S. Network judges may be able to assist by communicating with the domestic judge's office about the need to promptly set a hearing.

5. **Ensuring the safe return of children**⁹

*Methods for ensuring the safe return of children*¹⁰

5.1 What measures has your Central Authority taken to ensure that the recommendations of the 2006 and 2011 / 2012 Special Commission meetings¹¹ regarding the safe return of children are implemented?

The USCA implements many of the Conclusions and Recommendations referenced above including:

- The USCA facilitates the use of direct judicial communication through the U.S. Network judges.
- The USCA provides general information to left-behind parents in the United States about criminal proceedings, including the fact that criminal charges may impact a Hague Convention proceeding. Ultimately, only the prosecutor has the discretion to bring or to withdraw criminal charges against a taking parent.
- The USCA connects parents with the National Center for Missing and Exploited Children for a variety of services, including reunification assistance.
- The USCA provides parents with information on local child protective services agencies and, where appropriate, contacts those agencies to alert them to a return of a child to the United States.
- When a child wrongfully removed to or retained in the United States is ordered returned to the requesting country, the USCA is available to help facilitate a safe return by working with appropriate parties to ensure the logistics of the return are considered, such as who will escort the child and whether the child has the necessary documents to travel. The USCA may coordinate with the requesting central authority, the corresponding Consulate, and law enforcement, to help ensure the smooth return of the child.

5.2 In particular, in a case where the safety of a child is in issue and where a return order has been made in your State, how does your Central Authority ensure that the appropriate child protection bodies in the *requesting* State are alerted so that they may act to protect the welfare of a child upon return (until the appropriate court in the requesting State has been effectively seised)?

When the USCA is made aware that the return of a child has been ordered, we

⁹ See **Art. 7(2) h** of the 1980 Convention.

¹⁰ Where relevant, please make reference to the use of undertakings, mirror orders and safe harbour orders and other such measures in your State.

¹¹ See the [Conclusions and Recommendations](#) of the Special Commission of 2006 (*supra*. note 5) at paras 1.1.12 and 1.8.1 to 1.8.2 and 1.8.4 to 1.8.5 and the Appendix to the Conclusions and Recommendations and the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5).at paras 39-43.

inform the requesting central authority and provide a copy of the order, and can relay any requests for assistance made by the applicant or the applicant's attorney.

5.3 Where there are concerns in the requested State regarding possible risks for a child following a return, what conditions or requirements can the relevant authority in your State put in place to minimise or eliminate those concerns?

Within the United States, each state in the United States has a child protection system in which judges and child welfare authorities work together to identify the appropriate services for each family. Interventions range from parenting classes to placement in foster care, depending on the facts of the case, including the needs of the children. Additionally, judicial communication between states, upon request from a judge, may minimize concerns. The USCA has helpful resources listed on its website.

Use of the 1996 Convention to ensure a safe return

5.4 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for urgent protective measures associated with return orders (**Arts 7 and 11**), in providing for their recognition by operation of law (**Art. 23**), and in communicating information relevant to the protection of the child (**Art. 34**)?

- No
 Yes, please explain:

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.

Protection of primary carer

5.5 Are you aware of cases in your State where a primary carer taking parent, for reasons of personal security (e.g., domestic or family violence, intimidation, 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.

5.6 In particular, would your authorities consider putting in place measures to protect the primary carer upon return in the requesting State as a mean to secure the safe return of the child? Please explain and provide case examples where possible.

Judges in the United States may 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.

Post-return information

5.7 In cases where measures are put in place in your State to ensure the safety of a child upon return, does your State (through the Central Authority, or otherwise) attempt to monitor

the effectiveness of those measures upon the child's return? Would you support a recommendation that States Parties should co-operate to provide each other with follow-up information on such matters, insofar as is possible?

The USCA will help work with foreign central authorities and parents to coordinate the safe return of a child pursuant to the 1980 Convention, as detailed in the answer to question 5.1. Once the child is returned to the United States, the case is a matter for the state courts and local child welfare agencies. Generally, the USCA only receives post-return information from a parent on a voluntary basis. The United States does not support requiring post-return reporting.

5.8 If your State is not Party to the 1996 Convention, is consideration being given to the possible advantages of the 1996 Convention in providing a jurisdictional basis for requesting a report on the situation of the child upon return to the State of habitual residence (**Art. 32-(a)**)?

- No
 Yes, please explain:

The United States is considering whether to become party to the 1996 Child Protection Convention.

6. **Voluntary agreements and mediation**

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

The USCA 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. For information about our mediation program, see 6.2 below.

6.2 In what ways have you used the "Guide to Good Practice on Mediation"¹² for the purpose of implementing the 1980 Convention in your State? Please explain:

In accordance with 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 web site.

6.3 Has your State considered or is it in the process of considering the establishment of a Central Contact Point for international family mediation to facilitate access to information on available mediation services and related issues for cross-border family disputes involving children, or has this task been entrusted to the Central Authority?¹³

- No, please explain:
 Yes, please explain:

The USCA serves as the Central Contact Point for mediation services.

7. **Preventive measures**

7.1 Has your State taken steps to advance the development of a travel form under the auspices of the International Civil Aviation Organisation?¹⁴

- No
 Yes, please describe:

¹² Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹³ As it has been encouraged in the Guide to Good Practice on Mediation, Chapter 4, on "Access to Mediation". par. 114-117. See also Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 61.

¹⁴ See the Conclusions and Recommendations of the 2011 / 2012 Special Commission (*supra*. note 5) at par. 92.

7.2 Regardless of whether the International Civil Aviation Organisation adds the development of a travel form to its work programme, would your State support the development of a non-mandatory model travel form under the auspices of the Hague Conference?

Yes

No, please explain:

The USCA does not consider this topic a proper Private International Law matter nor do we think that this is the best use of limited Hague Conference resources, for the reasons discussed in 2012.

8. **The Guide to Good Practice under the 1980 Convention**

8.1 In what ways have you used the Parts of the Guide to Good Practice¹⁵ to assist in implementing for the first time, or improving the practical operation of, the 1980 Convention in your State?

a. Part I on Central Authority Practice. Please explain:

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.

b. Part II on Implementing Measures. Please explain:

See 8.1(a)

c. Part III on Preventive Measures. Please explain:

See 8.1(a)

d. Part IV on Enforcement. Please explain:

See 8.1(a)

8.2 How have you ensured that the relevant authorities in your State have been made aware of, and have had access to, the Guide to Good Practice?

We have 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.

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

9. **Publicity and debate concerning the 1980 Convention**

9.1 Has the 1980 Convention given rise to (a) any publicity (positive or negative) in your State, or (b) any debate or discussion in your national parliament or its equivalent?

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-profits.

9.2 By what methods does your State disseminate information to the public about the 1980 Convention?

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

¹⁵ All Parts of the Guide to Good Practice under the 1980 Convention are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

information on public websites, presentations and other types of outreach to various stakeholders and parties such as parents, judges, attorneys, law enforcement, Congress, and public and private organizations.

PART IV: TRANSFRONTIER ACCESS / CONTACT AND INTERNATIONAL FAMILY RELOCATION
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10. Transfrontier access / contact¹⁶

10.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding Central Authority practices, legislation, procedural rules or case law applicable in cases of transfrontier contact / access?

- No
 Yes, please explain:

10.2 Please indicate any important developments in your State, since the 2011 / 2012 Special Commission, in the interpretation of **Article 21** of the 1980 Convention.

None

10.3 What problems have you experienced, if any, as regards co-operation with other States in respect of:

- a. the granting or maintaining of access rights;
 N/A
- b. the effective exercise of rights of access; and
 N/A
- c. the restriction or termination of access rights.
 N/A
- Please provide case examples where possible.

10.4 In what ways have you used the "General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children"¹⁷ to assist in transfrontier contact / access cases in your State? Can you suggest any further principles of good practice?

We have links to the Hague Permanent Bureau's Section on Child Abduction on the USCA's website, which includes the Guides to Good Practice, and the USCA refers to it as needed.

11. International family relocation¹⁸

11.1 Since the 2011 / 2012 Special Commission, have there been any significant developments in your State regarding the legislation, procedural rules or case law applicable to international family relocation? Where possible, please explain these developments in the legislation, procedural rules or case law:

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

¹⁶ See the [Conclusions and Recommendations](#) of the 2006 Special Commission (*supra*. note 5) at paras 1.7.1 to 1.7.3.

¹⁷ Available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Guides to Good Practice".

¹⁸ See the Conclusions and Recommendations of the 2006 Special Commission meeting at paras 1.7.4 to 1.7.5: "1.7.4 The Special Commission concludes that parents, before they move with their children from one country to another, should be encouraged not to take unilateral action by unlawfully removing a child but to make appropriate arrangements for access and contact preferably by agreement, particularly where one parent intends to remain behind after the move.

1.7.5 The Special Commission encourages all attempts to seek to resolve differences among the legal systems so as to arrive as far as possible at a common approach and common standards as regards relocation."

based upon the relevant state's statutory law and appellate court decisions.

PART V: NON-CONVENTION CASES AND NON-CONVENTION STATES

12. Non-Convention cases and non-Convention States

12.1 Are there any States that you would particularly like to see become a State 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.

12.2 Are there any States which are not Parties to the 1980 Convention or not Members of the Hague Conference that you would like to see invited to the Special Commission meeting in 2017?

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"*¹⁹

12.2 In relation to the "Malta Process":

- a. Do you have any comment to make on the "Principles for the Establishment of Mediation Structures in the context of the Malta Process" and the accompanying Explanatory Memorandum?²⁰

The United States supports the Malta Principles.

- b. Have any steps been taken towards the implementation of the Malta Principles in your State and the designation of a Central Contact Point, in order to better address

¹⁹ The "Malta Process" is a dialogue between certain States 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 Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

²⁰ The Principles and Explanatory Memorandum were circulated to all Hague Conference Member States and all States participating in the Malta Process in November 2010. They are available on the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "Judicial Seminars on the International Protection of Children".

cross-border family disputes over children involving States that are not a party to the 1980 and 1996 Hague Conventions?

- No
 Yes, please explain:

The United States appointed a Central Contact Point for international family mediation. The USCA provides general information about mediation and mediation resources on our web site.

c. What is your view as to the future of the "Malta Process"?

If it is to continue, the United States hopes that the Malta Process focuses on encouraging new countries to become party to the 1980 and/or 1996 Conventions.

PART VI: TRAINING AND EDUCATION AND THE TOOLS, SERVICES AND SUPPORT PROVIDED BY THE PERMANENT BUREAU

13. Training and education

13.1 Can you give 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?

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. 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, over 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.

14. The tools, services and support provided by the Permanent Bureau

In general

14.1 Please comment or state your reflections on the specific tools, services and support provided by the Permanent Bureau to assist with the practical operation of the 1980 and 1996 Conventions, including:

a. The Country Profile available under the Child Abduction Section.

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 publication of the Hague Conference on Private International Law which is available online for free;²¹

We understand that the Judges' Newsletters may be helpful, but recognize the

²¹ Available on the Hague Conference website at < www.hcch.net > 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.

limited resources of the Hague Conference.

- d. The specialised "Child Abduction Section" of the Hague Conference 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. INCASTAT (the database for the electronic collection and analysis of statistics on the 1980 Convention);²²

Please see answer to Question 3.10

- f. Providing technical assistance and training to States Parties regarding the practical operation of the 1980 and 1996 Conventions.²³ Such technical assistance and training may involve persons visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau 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.

- g. Encouraging wider ratification of, or accession to, the Convention(s), including educating those unfamiliar with the Convention(s);²⁴

Yes, we believe such efforts are useful.

- h. Supporting communications between Central Authorities, including maintaining their contact details updated on the HCCH website;

Yes, we believe such efforts are useful.

- i. 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

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.

Other

14.2 What other measures or mechanisms would you recommend:

- a. To improve the monitoring of the operation of the Conventions;

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 14.2(a)

- c. To evaluate whether serious violations of Convention obligations have occurred?

²² Further information is available via the Hague Conference website at < www.hcch.net > under "Child Abduction Section" then "INCASTAT".

²³ Such technical assistance may be provided to judges, Central Authority personnel and / or other professionals involved with the practical operation of the Convention(s).

²⁴ Which again may involve State delegates and others visiting the Permanent Bureau or, alternatively, may involve the Permanent Bureau 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 believe that it is for States Parties to address and resolve implementation concerns directly with each other. The Permanent Bureau facilitates this process by providing for communication among the States Parties.

<p style="text-align: center;">PART VII: PRIORITIES AND RECOMMENDATIONS FOR THE SPECIAL COMMISSION AND ANY OTHER MATTERS</p>

15. Views on priorities and recommendations for the Special Commission

15.1 Which matters does your State think ought to be accorded particular priority on the agenda for the Special Commission? Please provide a brief explanation supporting your response.

1. Article 13(b)

The Draft Guide to Good Practice was circulated on June 29. We are concerned that the timing of circulation will not allow for States Party to provide thoughtful comment on a lengthy and complex text for use at the Special Commission. For States to adequately prepare comments, they may wish to consult with stakeholders or confer with other States prior to drafting their views.

In connection with the Draft Guide to Good Practice, we believe there needs to be discussion regarding limiting the use of protective measures contemporaneous with a child's return. The extensive use of protective measures may impermissibly raise issues beyond the purview of the Convention, such as those that are not directly related to the safe return of the child.

2. Enforcement

Time should be dedicated to discussing enforcement best practices. Specifically, we hope States will recommit to the enforcement measures in the Permanent Bureau's Guide to Good Practice on Enforcement, including detailed and specific return orders, limitations on additional administrative and procedural burdens placed on the applicant at the enforcement stage, and expeditious enforcement.

3. Non-member countries

We invite non-member observer States to provide an update on their progress towards accession, pursuant to the Malta IV Conclusions and Recommendations (para 22 b).

15.2 States are invited to make proposals concerning any particular recommendations they think ought to be made by the Special Commission.

16. Any other matters

16.1 States are invited to comment on any other matters which they may wish to raise concerning the practical operation of the 1980 Convention.