

## **USA**

### **The applications**

#### **1. The number of applications**

The Central Authority for the USA is the Department of State, Office of Children's Issues. Under a Co-operative Agreement, the National Center for Missing and Exploited Children (NCMEC) acts on behalf of the State Department as the Central Authority for all incoming applications. According to NCMEC, the USA received 210 return and 44 access applications in 1999, making a total of 254 incoming applications. Additionally, the State Department made 183 outgoing return and 29 outgoing access applications, in that year. Altogether, therefore, the Central Authorities in the USA handled 466 new applications in 1999.<sup>1</sup> Consequently, the USA received and made more applications, both for return and for access, than any other Contracting State. Indeed applications to the USA accounted for over a fifth of all applications in 1999.

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<sup>1</sup> However, the Central Authority for England and Wales handled the most applications in 1999, with 329, the USA having split incoming and outgoing applications between two separate bodies.

## 2. The Contracting States which made the applications

### (a) *Incoming return applications*

#### Requesting States

	Number of Applications	Percent
Mexico	57	27
Canada	25	12
Germany	21	10
UK - England and Wales	19	9
Australia	9	4
Israel	7	3
Norway	7	3
France	5	2
Argentina	4	2
Netherlands	4	2
Spain	4	2
Belize	4	2
New Zealand	4	2
Greece	3	1
Italy	3	1
Portugal	3	1
Switzerland	3	1
UK - Scotland	3	1
Poland	3	1
Czech Republic	2	1
Finland	2	1
Sweden	2	1
Venezuela	2	1
Colombia	2	1
Ecuador	2	1
South Africa	2	1
Austria	1	0
China - Hong Kong	1	0
Ireland	1	0
Chile	1	0
Cyprus	1	0
Honduras	1	0
Hungary	1	0
Panama	1	0
<b>Total</b>	<b>210</b>	<b>100</b>

Over twice as many applications were received from Mexico as from any other Contracting State. Indeed 27% of all incoming return applications to the USA were from Mexico. 39% of applications received by the USA were made by its two geographically proximate neighbours, Canada and Mexico. There were also a significant number of applications received from Germany and England and Wales.

**(b) Incoming access applications****Requesting States**

	Number of Applications	Percent
UK- England and Wales	7	16
France	5	11
Germany	5	11
Mexico	5	11
Israel	4	9
Australia	2	5
Canada	2	5
Spain	2	5
Colombia	2	5
New Zealand	2	5
Argentina	1	2
China -Hong Kong	1	2
Czech Republic	1	2
Denmark	1	2
Finland	1	2
Italy	1	2
Switzerland	1	2
Panama	1	2
<b>Total</b>	<b>44</b>	<b>100</b>

One might have thought that as Mexico and Canada made the greatest number of applications for return, and that these Contracting States border the USA, they would also make the greatest number of applications for access. In fact, however, most access applications were made by England and Wales.

Combining return and access applications, the top 5 Contracting States which made applications to the USA were:

1. Mexico 62
2. Canada 27
3. = Germany 26
3. = UK – England and Wales 26
5. = Australia 11
5. = Israel 11

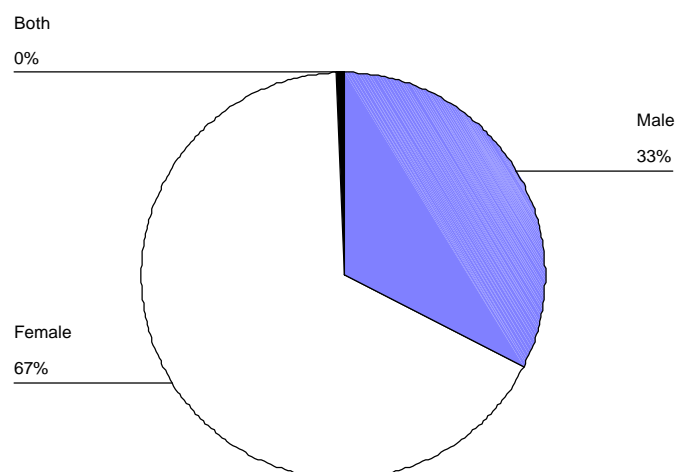
## The taking person / respondent

### 3. The gender of the taking person / respondent

#### (a) *Incoming return applications*<sup>2</sup>

Gender of the Taking Person

	Number	Percent
Male	66	33
Female	136	67
Both	1	0
<b>Total</b>	<b>203</b>	<b>100</b>



There were proportionally slightly less female taking persons than the global average, 67% as opposed to 69%.<sup>3</sup> Interestingly, however, there was a difference between the gender of the taking person as to whether an application was made by England and Wales to the USA or the other way round. In 85% of the return applications that England and Wales made to the USA, the taking person was female, whereas the taking person was female in only 58% of return applications that the USA made to England and Wales.

#### (b) *Incoming access applications*<sup>4</sup>

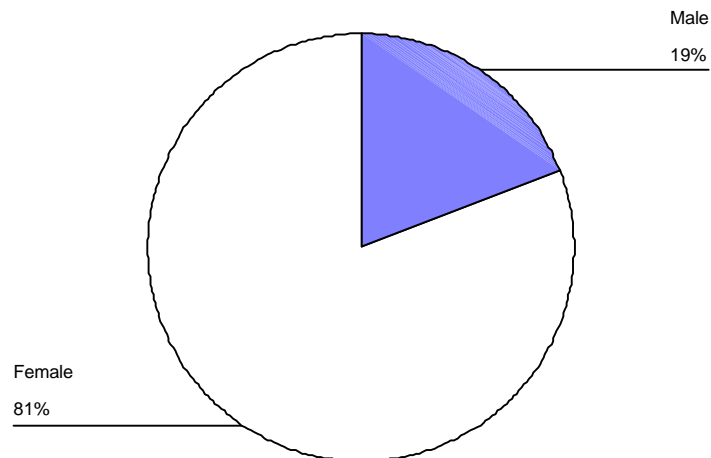
Gender of the Respondent

	Number	Percent
Male	8	19
Female	34	81
<b>Total</b>	<b>42</b>	<b>100</b>

<sup>2</sup> Additionally, in 7 applications the gender of the taking person was not stated.

<sup>3</sup> In one application there were 2 people who took the child, a male and a female.

<sup>4</sup> Additionally, in 2 applications the gender of the respondent was not stated.



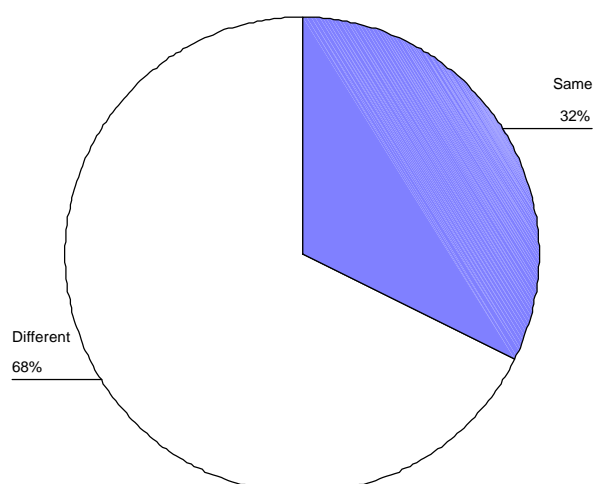
Compared with the global norm of 86%, there were proportionally slightly less female respondents in the applications made to the USA.

#### 4. The nationality of the taking person / respondent

##### (a) *Incoming return applications*<sup>5</sup>

##### Taking Person Same Nationality as Requested State

	Number	Percent
Same Nationality	57	32
Different Nationality	120	68
<b>Total</b>	<b>177</b>	<b>100</b>

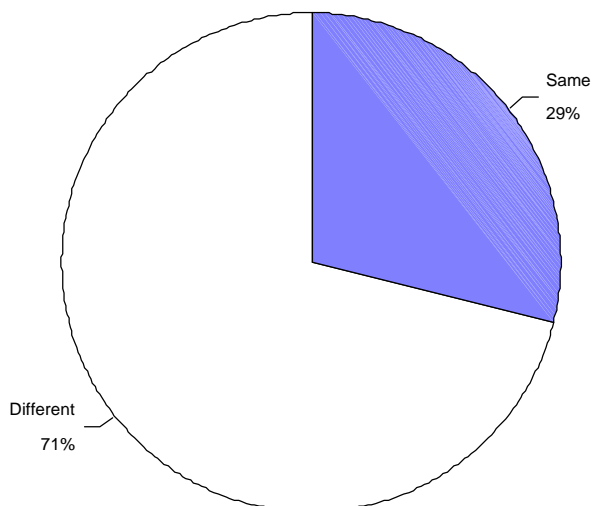


At under a third, 32%, the proportion of taking persons being US citizens, (that is, that they had the nationality of the requested State and who were thus likely to be 'going home'), was much lower than the global average 52%.

<sup>5</sup> Additionally, in 33 applications the nationality of the respondent was not stated.

**(b) Incoming access applications<sup>6</sup>****Respondent Same Nationality as the Requested State**

	Number	Percent
Same Nationality	11	29
Different Nationality	27	71
<b>Total</b>	<b>38</b>	<b>100</b>

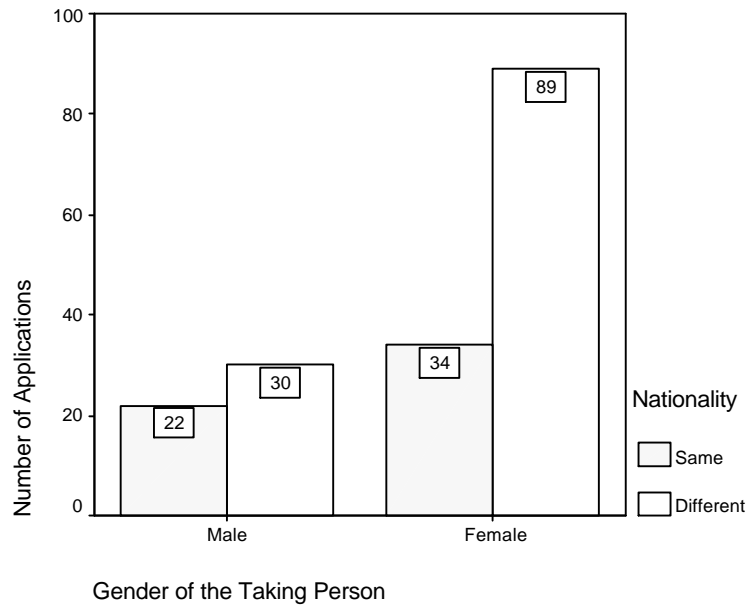


As in applications for return, the proportion of respondents having the nationality of the requested State is lower than the global average of 40%.

## **5. The gender and nationality of the taking person / respondent combined**

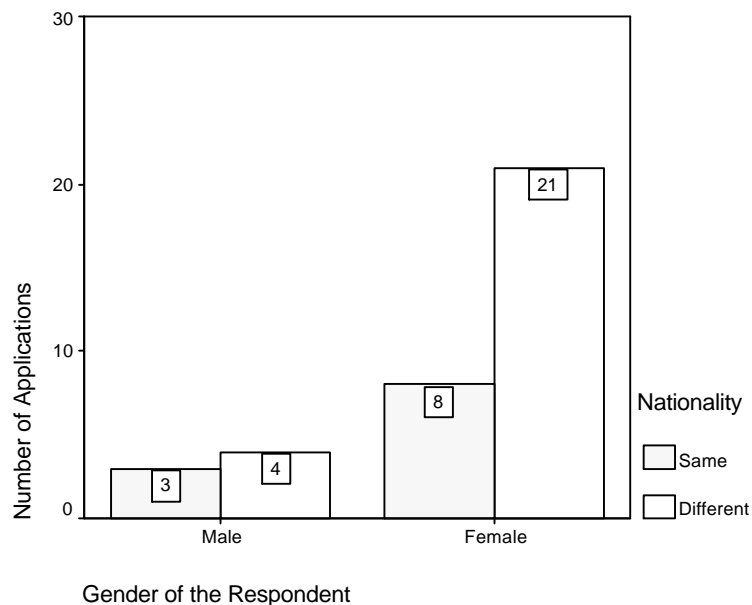
### **(a) Incoming return applications**

<sup>6</sup> Additionally, in 6 applications the nationality of the respondent was not stated.



There were significantly fewer female than male taking persons having US nationality, 28% as against 42%. This was quite different to the global pattern of 53% of male and 52% of female taking persons having the nationality of the requested State.

**(b) Incoming access applications**



In the access applications received by the USA, the proportion of male (43%), and female (28%), taking respondents having the nationality of the requested State was similar to the proportion in return applications. These figures do however differ from the global norms of 38% of male and 40% of female respondents having the nationality of the requested State.

## The children

### 6. The total number of children

There were 304 children involved in the 210 return applications and 71 children involved in the 44 access applications. Altogether, therefore 375 children were involved in new incoming applications received by the USA in 1999. Not surprisingly, given that NCMEC received the greatest number of applications, they also dealt with the greatest number of children in incoming applications under the Hague Convention.<sup>7</sup>

### 7. Single children or sibling groups

#### (a) Incoming return applications

Single Child or Sibling Group

	Number	Percent
Single Child	131	62
Sibling Group	79	38
<b>Total</b>	<b>210</b>	<b>100</b>

Number of Children

	Number	Percent
1 Child	131	62
2 Children	66	31
3 Children	11	5
4 Children	2	1
<b>Total</b>	<b>210</b>	<b>100</b>

The proportion of single children involved in applications for return, 62%, is similar to the global mean of 63%. Also, like the global norm, the vast majority of applications involved no more than 2 children.

#### (b) Incoming access applications

Single Child or Sibling Group

	Number	Percent
Single Child	25	57
Sibling Group	19	43
<b>Total</b>	<b>44</b>	<b>100</b>

<sup>7</sup> As the Central Authority for England and Wales is responsible for both incoming and outgoing applications, this Authority handled the greatest number of children overall with 475.



### Number of Children

	Number	Percent
1 Child	25	57
2 Children	13	30
3 Children	4	9
4 Children	2	5
<b>Total</b>	<b>44</b>	<b>100</b>

For access applications the proportion of single children, 57%, was considerably lower than the global mean of 69%. Globally, only 4% of applications involved 3 children; for applications made to the USA this proportion was 9%. Furthermore, 2 of the 3 applications, in the global analysis which involved 4 children, were received by the USA.

## 8. The age of the children

### (a) Incoming return applications<sup>8</sup>

#### Age of the Children

	Number	Percent
0-4 years	112	38
5-9 years	122	41
10-16 years	64	21
16+	1	0
<b>Total</b>	<b>299</b>	<b>100</b>

Given that the Convention only applies to children who are under the age of 16 years, it is surprising that there was one application where the child was aged over 16. The division of children between each age group is almost identical to the global norms.

### (b) Incoming access applications<sup>9</sup>

#### Age of the Children

	Number	Percent
0-4 years	7	10
5-9 years	38	55
10-16 years	24	35
<b>Total</b>	<b>69</b>	<b>100</b>

At 10%, proportionally fewer younger children, namely those aged between 0 and 4 years, were involved in access applications received by the USA as against the global average of 21%.

<sup>8</sup> Additionally, the ages of 5 children were not stated.

<sup>9</sup> Additionally, the ages of 2 children were not stated.

## 9. The gender of the children

### (a) Incoming return applications<sup>10</sup>

Gender of the Children

	Number	Percent
Male	153	53
Female	138	47
<b>Total</b>	<b>291</b>	<b>100</b>

This reflects the global norm where 53% of children were male.

### (b) Incoming access applications

Gender of the Children

	Number	Percent
Male	36	51
Female	35	49
<b>Total</b>	<b>71</b>	<b>100</b>

As can be seen, the gender of the children in access applications was almost evenly split between males and females, reflecting the global norm where there was an equal number of male and female children.

## The outcomes

### 10. Overall outcomes

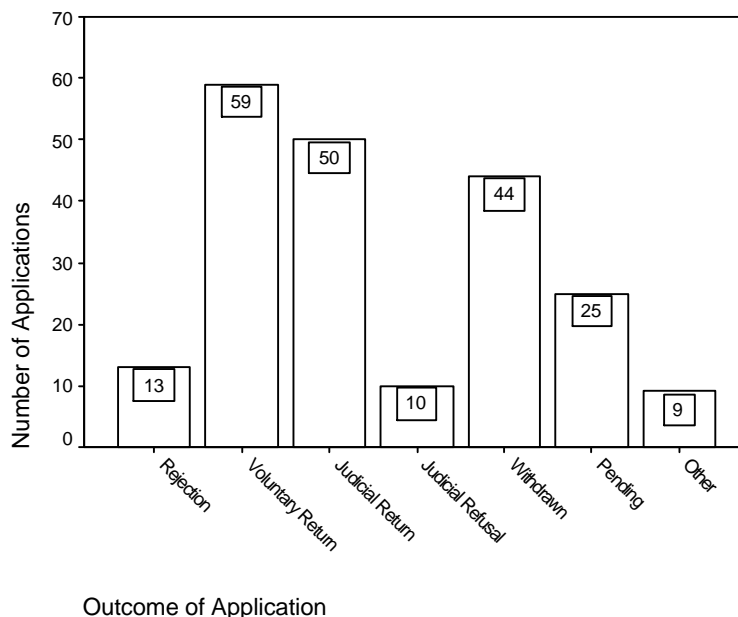
#### (a) Incoming return applications<sup>11</sup>

Outcome of Application

	Number	Percent
Rejection	13	6
Voluntary Return	59	28
Judicial Return	50	24
Judicial Refusal	10	5
Withdrawn	44	21
Pending	25	12
Other	9	4
<b>Total</b>	<b>210</b>	<b>100</b>

<sup>10</sup> Additionally, the gender of 13 children was not stated.

<sup>11</sup> In 8 of the applications with 'other' as the outcome, access was either ordered or agreed.



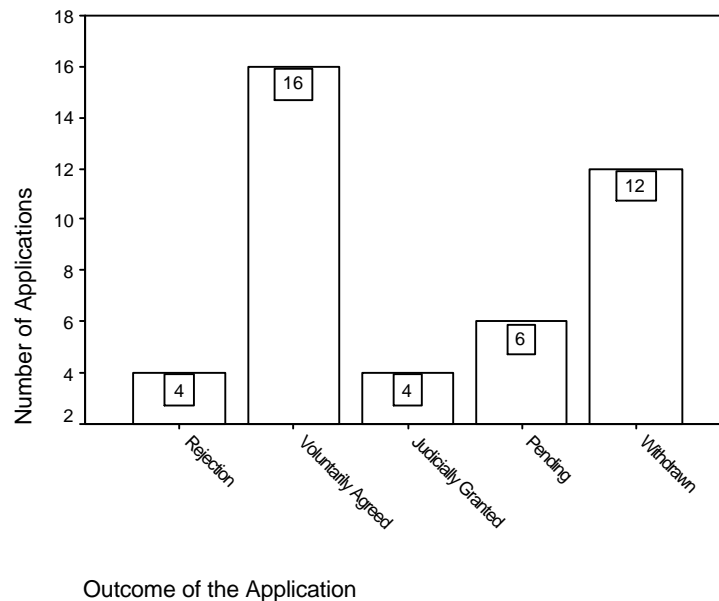
Overall, 52% of applications made to the USA ended in the child being returned either by a court order or voluntarily which is marginally above the global rate of 50%. The proportion of judicial returns (24%) was lower than the global norm of 32%. On the other hand, proportionally more applications concluded in a voluntary return, 28% as opposed to a global rate of 18%. A considerably lower proportion of cases than the global norm ended in a judicial refusal, 5% compared with 11%. Of the 60 cases which went to court, 83% ended in a judicial return, which is above the global norm of 74%. 21% of applications were withdrawn, which is higher than the global norm of 14%. It is worth noting that 12% of applications were still pending as of June 30<sup>th</sup> 2001 which is higher than the global norm of 9% and may give pause for thought.

**(b) Incoming access applications<sup>12</sup>**

**Outcome of the Application**

	Number	Percent
Rejection by the Central Authority	4	10
Access Voluntarily Agreed	16	38
Access Judicially Granted	4	10
Access Judicially Refused	0	0
Pending	6	14
Withdrawn	12	29
<b>Total</b>	<b>42</b>	<b>100</b>

<sup>12</sup> Additionally, in 2 applications the outcome was not stated.



The overall pattern for the outcome of access applications was similar to that for applications for return. Over a third (38%) of applications were settled voluntarily which was higher than the global norm of 18%. On the other hand, there were considerably fewer court orders granted, 10% as against the global norm of 25%. There were, notably, no judicial refusals. We understand that cases that do go to court are heard as a domestic application. It is to be noted that 6 applications, 14%, were still pending which is just above the global norm of 13%, and as the data is accurate as of 30<sup>th</sup> June 2001, it may give pause for thought.

## 11. The reasons for rejection

### (a) Incoming return applications

Reason for Rejection by the Central Authority

	Number	Percent
Child over 16	1	8
Child Located in Another Country	5	38
Child Not Located	2	15
Applicant Had No Rights of Custody	1	8
Other	4	31
<b>Total</b>	<b>13</b>	<b>100</b>

The USA rejected relatively few cases, 6% of applications as against a global rate of 11%. The most common reason for rejection was that the child was located in another country. The 'other' reasons referred to in the above chart for rejection were that the child was initially retained in Scotland; in a second case that the mother applied for custody simultaneously with the Hague application and the US claimed jurisdiction; in another case the Hague Convention was not thought applicable; in the last application the parents chose to be divorced in the US.

**(b) Incoming access applications**

The four rejections in access applications were because: in one case the applicant had already started proceedings in another jurisdiction; in another the applicant grandparents did not have rights of custody; the third case was closed because there was an existing protection order against the mother saying that she was to have no access to the child; in the final application the child in question was the subject of adoption proceedings and the applicant father was served notice of this at the time of the Hague application. Shortly after the Hague Application, an adoption order was made with the result that the former could only proceed if actions were taken to nullify the adoption.

**12. The reasons for judicial refusal****(a) Incoming return applications<sup>13</sup>****Reasons for Judicial Refusal**

	Number	Percent
Child Not Habitually Resident in Requesting State	2	25
Applicant had No Rights of Custody	1	13
Article 12	0	0
Article 13 a Not Exercising Rights of Custody	1	13
Article 13 a Consent	0	0
Article 13 a Acquiescence	0	0
Article 13 b	1	13
Child's Objections	0	0
Article 20	0	0
More Than One Reason	1	13
Other	2	25
<b>Total</b>	<b>8</b>	<b>100</b>

The US courts refused remarkably few applications for return, 10 out of the 60 cases that went to a court hearing. The reasons for refusal were diverse and interestingly none involved objections of children. The 'other' reasons for judicial refusal were because in one case, the judge did not believe there to have been a wrongful act, and in the second application that the parents came to the US together with the children for an extended visit and mother brought charges against father for domestic violence while in the US.

<sup>13</sup> Additionally, in 2 applications the reason for judicial refusal was not stated.

### 13. The reasons for judicial refusal and the gender of the taking person

#### (a) Incoming return applications<sup>14</sup>

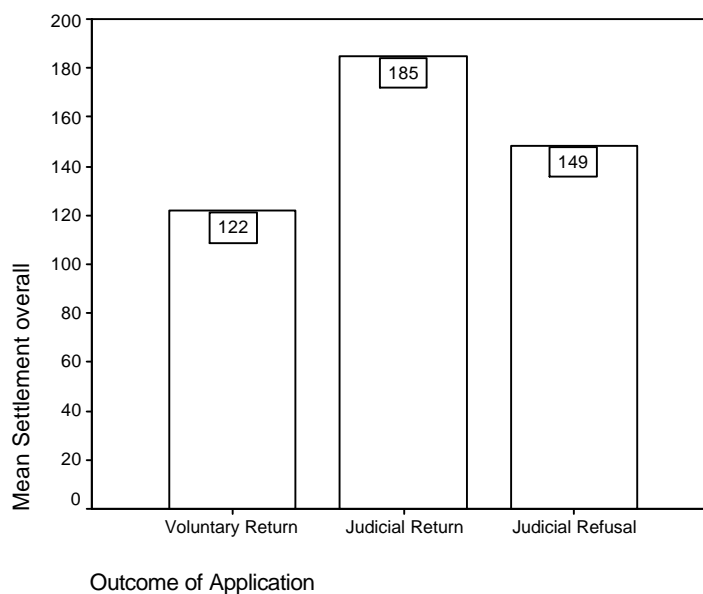
Count	Gender of the Taking Person		Total
	Male	Female	
Child Not Habitually Resident in Requesting State	2		2
Applicant had No Rights of Custody	1		1
Article 13 a Not Exercising Rights of Custody		1	1
Article 13 b	1		1
More than one reason		1	1
Other		1	1
<b>Total</b>	<b>4</b>	<b>3</b>	<b>7</b>

In another 2 applications the reasons for judicial refusal were not stated but the taking person was male. Overall, there were 66 applications where the taking persons were male, 6 of these, 9%, resulted in a judicial refusal. Conversely, only 3 out of the 136 applications, 2%, where the taking person was female, resulted in a judicial refusal.

### Speed

#### 14. The time between application and outcome

##### (a) Incoming return applications



<sup>14</sup> Additionally, in one application the gender of the taking person was not stated.

With the exception of judicial refusals (where the mean average of 149 days was marginally slower than the global norm of 147 days), the USA was considerably slower than the global average in settling a case. It took a mean average of 185 days as against a global norm of 107 days to make a judicial return, and with regard to voluntary returns, the USA was among the slowest of the Contracting States analysed, taking on average 122 days as against a global mean of 84 days. It must be noted that the high number of applications which are still pending are excluded from this figure and, once they are resolved, then the mean period for an application to be resolved will increase dramatically.

	Outcome of Application		
	Voluntary Return	Judicial Return	Judicial Refusal
Mean	122	185	149
Median	84	148	140
Minimum	1	8	5
Maximum	431	718	374
<b>Number of Cases</b>	<b>47</b>	<b>42</b>	<b>5</b>

The table above demonstrates the variance in the time taken for an outcome. The fastest judicial decision, a refusal, was made in 5 days, the slowest, a decision to return, was made in 718 days, (almost two years).

### ***(b) Incoming access application***

#### **Timing to Voluntary Settlement**

	Number	Percent
0-6 weeks	4	25
6-12 weeks	3	19
3-6 months	3	19
Over 6 months	6	38
<b>Total</b>	<b>16</b>	<b>100</b>

In contrast to voluntary agreements to return, voluntary settlements of access were arrived at slightly faster than the global norms, with 44% of cases being resolved in under 13 weeks, compared with 39% globally. One judicial decision was made in 6-12 weeks, a second took 3-6 months and another over 6 months. While these figures are faster than the global norms, it must be noted that a large number of cases are still pending, this highlights the slowness of the American system.

## **15. Appeals**

### ***(a) Incoming return applications***

There were remarkably few appeals, 2 out of 60 decisions which is a proportion of 3% compared with a global norm of 14%. Both decisions resulted in judicial returns and the mean period that it took to reach these decisions was 362 days, compared with the global mean of 208 days.

There are an additional 2 cases which were judicially refused at first instance and are now pending an appeal.