

The Hague Convention of October 25,  
1980 on the Civil Aspects of  
International Child Abduction

ADDITIONAL MATERIALS

Prepared by:  
Brent D. Seymour, Esq.

## Additional Materials

### Useful Internet Links

1. Hague Conference on Private International Law, Child Abduction Section:  
[http://www.hcch.net/index\\_en.php?act=text.display&tid=21](http://www.hcch.net/index_en.php?act=text.display&tid=21)
2. List of Signatories to the Convention:  
[http://www.hcch.net/index\\_en.php?act=conventions.statusprint&cid=24](http://www.hcch.net/index_en.php?act=conventions.statusprint&cid=24)
3. Country Information for Member States  
[http://www.hcch.net/index\\_en.php?act=conventions.publications&dtid=42&cid=24](http://www.hcch.net/index_en.php?act=conventions.publications&dtid=42&cid=24)
4. U.S. Department of State, Child Abduction Website  
[http://travel.state.gov/abduction/abduction\\_580.html](http://travel.state.gov/abduction/abduction_580.html)

### Attachments:

1. Text of the Hague Convention on the Civil Aspects of International Child Abduction
2. ICARA (29 USC 9001 et seq)
3. Sample Petition
4. Sample Response

1. Hague Convention on the Civil Aspects of International Child Abduction

## **28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION<sup>1</sup>**

*(Concluded 25 October 1980)*

The States signatory to the present Convention,  
Firmly convinced that the interests of children are of paramount importance in matters relating to their  
custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention  
and to establish procedures to ensure their prompt return to the State of their habitual residence, as  
well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

### CHAPTER I – SCOPE OF THE CONVENTION

#### Article 1

The objects of the present Convention are –

- a) to secure the prompt return of children wrongfully removed to or retained in any Contracting  
State; and
- b) to ensure that rights of custody and of access under the law of one Contracting State are  
effectively respected in the other Contracting States.

#### Article 2

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

#### Article 3

The removal or the retention of a child is to be considered wrongful where –

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either  
jointly or alone, under the law of the State in which the child was habitually resident immediately  
before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or  
would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law  
or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect  
under the law of that State.

---

<sup>1</sup> This Convention, including related materials, is accessible on the website of the Hague Conference on Private  
International Law ([www.hcch.net](http://www.hcch.net)), under "Conventions" or under the "Child Abduction Section". For the full history  
of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième  
session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

#### Article 4

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

#### Article 5

For the purposes of this Convention –

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

### CHAPTER II – CENTRAL AUTHORITIES

#### Article 6

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

#### Article 7

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

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

### CHAPTER III – RETURN OF CHILDREN

#### Article 8

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

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

The application may be accompanied or supplemented by –

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

#### Article 9

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

#### Article 10

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

#### Article 11

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

#### Article 12

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

#### Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

#### Article 14

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

#### Article 15

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

#### Article 16

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

#### Article 17

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

#### Article 18

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

#### Article 19

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

#### Article 20

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

#### CHAPTER IV – RIGHTS OF ACCESS

#### Article 21

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

#### CHAPTER V – GENERAL PROVISIONS

#### Article 22

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

#### Article 23

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

#### Article 24

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

#### Article 25

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



#### Article 26

Each Central Authority shall bear its own costs in applying this Convention. Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child. However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice. Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

#### Article 27

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

#### Article 28

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

#### Article 29

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

#### Article 30

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

#### Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

#### Article 32

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

#### Article 33

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

#### Article 34

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

#### Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

#### Article 36

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

### CHAPTER VI – FINAL CLAUSES

#### Article 37

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

#### Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

#### Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

#### Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

#### Article 41

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

#### Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

#### Article 43

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

Thereafter the Convention shall enter into force –

- (1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
- (2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

#### Article 44

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

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

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

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

#### Article 45

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

- (1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
- (2) the accessions referred to in Article 38;
- (3) the date on which the Convention enters into force in accordance with Article 43;
- (4) the extensions referred to in Article 39;
- (5) the declarations referred to in Articles 38 and 40;
- (6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
- (7) the denunciations referred to in Article 44.

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

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

2. ICARA (22 USC §§9001 et seq)

22 U.S.C.A. § 9001  
Formerly cited as 42 USCA § 11601

§ 9001. Findings and declarations

Effective: August 8, 2014

**(a) Findings**

The Congress makes the following findings:

- (1) The international abduction or wrongful retention of children is harmful to their well-being.
- (2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
- (3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.
- (4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

**(b) Declarations**

The Congress makes the following declarations:

- (1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.
- (2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.
- (3) In enacting this chapter the Congress recognizes--
  - (A) the international character of the Convention; and
  - (B) the need for uniform international interpretation of the Convention.
- (4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

22 U.S.C.A. § 9002  
Formerly cited as 42 USCA § 11602

§ 9002. Definitions

For the purposes of this chapter--

- (1) the term "applicant" means any person who, pursuant to the Convention, files an application with the United States Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;
- (2) the term "Convention" means the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980;
- (3) the term "Parent Locator Service" means the service established by the Secretary of Health and Human Services under section 653 of Title 42;
- (4) the term "petitioner" means any person who, in accordance with this chapter, files a petition in court seeking relief under the Convention;
- (5) the term "person" includes any individual, institution, or other legal entity or body;
- (6) the term "respondent" means any person against whose interests a petition is filed in court, in accordance with this chapter, which seeks relief under the Convention;
- (7) the term "rights of access" means visitation rights;
- (8) the term "State" means any of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States; and
- (9) the term "United States Central Authority" means the agency of the Federal Government designated by the President under section 9006(a) of this title.

22 U.S.C.A. § 9003  
Formerly cited as 42 USCA § 11603

§ 9003. Judicial remedies

**(a) Jurisdiction of courts**

The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.

**(b) Petitions**

Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.

**(c) Notice**

Notice of an action brought under subsection (b) of this section shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.

**(d) Determination of case**

The court in which an action is brought under subsection (b) of this section shall decide the case in accordance with the Convention.

**(e) Burdens of proof**

(1) A petitioner in an action brought under subsection (b) of this section shall establish by a preponderance of the evidence--

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and

(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing--

(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and



(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

**(f) Application of Convention**

For purposes of any action brought under this chapter--

(1) the term “authorities”, as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;

(2) the terms “wrongful removal or retention” and “wrongfully removed or retained”, as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and

(3) the term “commencement of proceedings”, as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

**(g) Full faith and credit**

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

**(h) Remedies under Convention not exclusive**

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

22 U.S.C.A. § 9004  
Formerly cited as 42 USCA § 11604

§ 9004. Provisional remedies

**(a) Authority of courts**

In furtherance of the objectives of article 7(b) and other provisions of the Convention, and subject to the provisions of subsection (b) of this section, any court exercising jurisdiction of an action brought under section 9003(b) of this title may take or cause to be taken measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition.

**(b) Limitation on authority**

No court exercising jurisdiction of an action brought under section 9003(b) of this title may, under subsection (a) of this section, order a child removed from a person having physical control of the child unless the applicable requirements of State law are satisfied.

22 U.S.C.A. § 9005  
Formerly cited as 42 USCA § 11605

§ 9005. Admissibility of documents

With respect to any application to the United States Central Authority, or any petition to a court under section 9003 of this title, which seeks relief under the Convention, or any other documents or information included with such application or petition or provided after such submission which relates to the application or petition, as the case may be, no authentication of such application, petition, document, or information shall be required in order for the application, petition, document, or information to be admissible in court.

22 U.S.C.A. § 9006  
Formerly cited as 42 USCA § 11606

§ 9006. United States Central Authority

Effective: August 8, 2014

**(a) Designation**

The President shall designate a Federal agency to serve as the Central Authority for the United States under the Convention.

**(b) Functions**

The functions of the United States Central Authority are those ascribed to the Central Authority by the Convention and this chapter.

**(c) Regulatory authority**

The United States Central Authority is authorized to issue such regulations as may be necessary to carry out its functions under the Convention and this chapter.

**(d) Obtaining information from Parent Locator Service**

The United States Central Authority may, to the extent authorized by the Social Security Act, obtain information from the Parent Locator Service.

**(e) Grant authority**

The United States Central Authority is authorized to make grants to, or enter into contracts or agreements with, any individual, corporation, other Federal, State, or local agency, or private entity or organization in the United States for purposes of accomplishing its responsibilities under the Convention and this chapter.

**(f) Limited liability of private entities acting under the direction of the United States Central Authority**

**(1) Limitation on liability**

Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this chapter, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

**(2) Exception for intentional, reckless, or other misconduct**

The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this chapter.

**(3) Exception for ordinary business activities**

The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.

22 U.S.C.A. § 9007  
Formerly cited as 42 USCA § 11607

§ 9007. Costs and fees

**(a) Administrative costs**

No department, agency, or instrumentality of the Federal Government or of any State or local government may impose on an applicant any fee in relation to the administrative processing of applications submitted under the Convention.

**(b) Costs incurred in civil actions**

- (1)** Petitioners may be required to bear the costs of legal counsel or advisors, court costs incurred in connection with their petitions, and travel costs for the return of the child involved and any accompanying persons, except as provided in paragraphs (2) and (3).
- (2)** Subject to paragraph (3), legal fees or court costs incurred in connection with an action brought under section 9003 of this title shall be borne by the petitioner unless they are covered by payments from Federal, State, or local legal assistance or other programs.
- (3)** Any court ordering the return of a child pursuant to an action brought under section 9003 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.

22 U.S.C.A. § 9008  
Formerly cited as 42 USCA § 11608

§ 9008. Collection, maintenance, and dissemination of information

**(a) In general**

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

(1) may receive such information from a Federal or State department, agency, or instrumentality only pursuant to applicable Federal and State statutes; and

(2) may transmit any information received under this subsection notwithstanding any provision of law other than this chapter.

**(b) Requests for information**

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

**(c) Responsibility of government entities**

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

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

(2) would be prohibited by section 9 of Title 13;

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

**(d) Information available from Parent Locator Service**

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

**(e) Recordkeeping**

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

22 U.S.C.A. § 9009  
Formerly cited as 42 USCA § 11608a

§ 9009. Office of Children's Issues

**(a) Director requirements**

The Secretary of State shall fill the position of Director of the Office of Children's Issues of the Department of State (in this section referred to as the "Office") with an individual of senior rank who can ensure long-term continuity in the management and policy matters of the Office and has a strong background in consular affairs.

**(b) Case officer staffing**

Effective April 1, 2000, there shall be assigned to the Office of Children's Issues of the Department of State a sufficient number of case officers to ensure that the average caseload for each officer does not exceed 75.

**(c) Embassy contact**

The Secretary of State shall designate in each United States diplomatic mission an employee who shall serve as the point of contact for matters relating to international abductions of children by parents. The Director of the Office shall regularly inform the designated employee of children of United States citizens abducted by parents to that country.

**(d) Reports to parents**

**(1) In general**

Except as provided in paragraph (2), beginning 6 months after November 29, 1999, and at least once every 6 months thereafter, the Secretary of State shall report to each parent who has requested assistance regarding an abducted child overseas. Each such report shall include information on the current status of the abducted child's case and the efforts by the Department of State to resolve the case.

**(2) Exception**

The requirement in paragraph (1) shall not apply in a case of an abducted child if--

(A) the case has been closed and the Secretary of State has reported the reason the case was closed to the parent who requested assistance; or

(B) the parent seeking assistance requests that such reports not be provided.

22 U.S.C.A. § 9010  
Formerly cited as 42 USCA § 11609

§ 9010. Interagency coordinating group

The Secretary of State, the Secretary of Health and Human Services, and the Attorney General shall designate Federal employees and may, from time to time, designate private citizens to serve on an interagency coordinating group to monitor the operation of the Convention and to provide advice on its implementation to the United States Central Authority and other Federal agencies. This group shall meet from time to time at the request of the United States Central Authority. The agency in which the United States Central Authority is located is authorized to reimburse such private citizens for travel and other expenses incurred in participating at meetings of the interagency coordinating group at rates not to exceed those authorized under subchapter I of chapter 57 of Title 5 for employees of agencies.

22 U.S.C.A. § 9011  
Formerly cited as 42 USCA § 11610

§ 9011. Authorization of appropriations

Effective: August 8, 2014

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

### 3. Sample Petition



1 SEYMOUR FAMILY LAW  
2 Brent D. Seymour (SBN148737)  
3 189 East H Street  
4 Benicia, CA 94510  
5 (707) 747-2700  
6  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 SITTING AS A TREATY TRIBUNAL UNDER  
12 ARTICLE III SECTION 2 OF THE UNITED STATES CONSTITUTION  
13 CONCURRENT JURISDICTION CONFERRED BY 42 U.S.C. 11601 ET SEQ.

14 D\* C \_\_\_\_\_

15 Petitioner,

16 vs.

17 C\* C \_\_\_\_\_,

18 Respondent.

Case No.

PETITION FOR RETURN OF CHILD TO  
PETITIONER

19 The Convention on the Civil Aspects  
20 of International Child Abduction,  
done at the Hague on 25 Oct. 1980 [The Convention]

21 -----  
22 International Child Abduction Remedies Act  
42 U.S.C. 11601 et seq.  
23  
24  
25

26  
Petition for Return of Child  
to Petitioner

**PREAMBLE**

1. Petitioner, D\* C \_\_\_\_\_, a resident and citizen of Spain, brings this petition to seek the return of his daughters, L\* C \_\_\_\_\_, born XXXXXXXX, and A\* C \_\_\_\_\_, born XXXXXXXX, who are being wrongfully retained in \_\_\_\_\_, California by Respondent, C\* C \_\_\_\_\_. The habitual residence of L\* C \_\_\_\_\_ and A\* C \_\_\_\_\_ is Spain.

2. This petition is brought pursuant to The Convention of the Civil Aspects of International Child Abduction, done at the Hague on 25 October 1980 (Convention) and 42 U.S.C. 11603(b), the International Child Abduction remedies Act (ICARA). The Convention went into effect on July 1, 1988.

3. The objects of the Convention are:

Article 1(a): To secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

Article 1(b): To ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

4. Both Spain and the United States are Contracting States to the Convention.

**JURISDICTION**

5. This court has jurisdiction pursuant to 42 U.S.C. 11603. In lieu of application to the Central Authority of this Contracting State, Petitioner initiates these judicial proceedings as provided in Articles 12, 18, 29 and 34 of the Convention, under 42 U.S.C. 11603(b) [and under Cal. Fam. Code §§ 3441 et seq.].

**STATUS OF PETITIONER, RESPONDENT AND CHILDREN**

6. Petitioner is a citizen of Spain. He presently lives in Barcelona, Spain. He has been married to Respondent since 1990, and they have been living in Barcelona since 1992.

1        Respondent is a citizen of the United States. Respondent, at the time of the filing of this petition,  
2        is residing in the United States. However, she only moved to the United States on or about June 24,  
3        2005. Until that time, she had been living in Barcelona, Spain, where she is a professor with full tenure  
4        at the University of Barcelona. Petitioner is informed and believes and thereon alleges that Respondent  
5        has taken a leave of absence from the University for the present semester but will return to her teaching  
6        duties in 2006.

7        8.        Petitioner and Respondent married in California in 1990. Since July 2002, they have lived in  
8        Barcelona, Spain.

9        9.        The Convention applies to cases where a child under the age of sixteen (16) years has been  
10       removed from her habitual residence in breach of rights of custody of a petitioner, which the petitioner  
11       had been exercising at the time of the wrongful removal or wrongful retention of the child.

12       10.       L\* was born on August 20, 1996 in India, and will be sixteen (16) years of age on August 20,  
13       2012, seven years after the date of this application. Petitioner and Respondent legally adopted L\* in  
14       Spain in 1997, when she was 11 months old. L\* is a citizen of Spain, and the United States.

15       11.       A\* was born on March 23, 2000 in India, and will be sixteen (16) years of age on March 23,  
16       2016, eleven years after the date of this application. Petitioner and Respondent legally adopted A\* in  
17       Spain in 2001, when she was 17 months old. A\* is a citizen of Spain.

18       12.       L\* and A\* were habitually resident in Spain within the meaning of Article 3 of the Convention  
19       immediately before the wrongful retention of the Child in the United States of America by Respondent.  
20       The Convention applies to cases where a child under the age of sixteen (16) years has been removed  
21       from her habitual residence in breach of rights of custody of a petitioner, which the petitioner had been  
22       exercising at the time of the wrongful removal or wrongful retention of the child.

23       13.       Under Spanish law, Petitioner has a right of custody of the children, L\* C \_\_\_\_\_ and A\* C \_\_\_\_\_,  
24       within the meaning of Articles 3 and 5 of the Convention in that he is the father of the children.

25  
26

14. The Petitioner at the time of the wrongful retention was actually exercising custody within the meaning of Articles Three and Five of the Convention.

**RETENTION OF CHILD BY RESPONDENT**

L\* and A\* are presently being wrongfully retained by Respondent in the State of California, County of Mariposa.

In December 2004, Respondent and Petitioner agreed to send the children to live with their maternal grandparents in California on a temporary basis for the purpose of schooling. Respondent and Petitioner continued to live in Barcelona.

Petitioner and Respondent agreed that Petitioner would come to California in August 2005 to take L\* and A\* back to Spain. They were registered for school in Barcelona and the fees had been paid. The children's place in the Barcelona school is being kept open for them. When Petitioner arrived in Wawona, California on August 5, 2005, Respondent had legal papers served on him and told him that he was enjoined from removing the children from the State of California. Rather than risk violating a court order, Petitioner left California on August 7, 2005 and returned to Spain without the girls.

Petitioner has never acquiesced or consented to the retention of his daughters outside of Spain and in the United States.

**CUSTODY PROCEEDINGS**

In March 2005, while still living in Barcelona, Respondent filed a petition for legal separation in the Superior Court of California, County of Mariposa, Case No. \_\_\_\_\_. Petitioner was not informed of this action at that time.

In July 2005, Respondent filed an Order to Show Cause for Child Custody and Visitation, among other things, in the above referenced state court action. It was at this time that Petitioner was informed that Respondent was refusing to return the children to Spain.

1 21. On August 5, 2005, Respondent attempted to serve Petitioner with the Summons, Petition for  
2 Legal Separation, and Order to Show Cause. Petitioner did not accept the papers. Respondent filed a  
3 Proof of Service of Summons on August 26, 2005.  
4 22. A hearing on custody and visitation was held in the state court action on September 15, 2005.  
5 Petitioner did not appear at that hearing, nor has he appeared in that action. Petitioner does not know  
6 what custody orders, if any, were issued by the Superior Court.  
7 23. Petitioner has commenced divorce proceedings in Spain, which include custody proceedings.  
8 24. The Court is requested to stay California Superior Court, County of Mariposa, Case No. \_\_\_\_\_  
9 and any other proceedings concerning the custody of the child as required by Article 16 of the  
10 Convention.

11 **PROVISIONAL REMEDIES (42 U.S.C. 11604)**

12 25. Petitioner requests that the Court direct Respondent to surrender L\* and A\*'s Spanish and Indian  
13 passports to the court pending the outcome of this action.

14 **RELIEF REQUESTED**

15 26. Petitioner requests the following relief:

- 16 (i) L\* and A\* are to be promptly returned to the Petitioner.
- 17 (ii) L\*'s and A\*'s passports be returned to Petitioner.
- 18 (iii) Petitioner may return L\* and A\* to their habitual residence in Spain.
- 19 (iv) An Order directing Respondent to pay Petitioner's legal costs and fees.
- 20 (v). Any such further relief as justice and its cause may require.

21 **NOTICE OF HEARING**

22 27. Petitioner requests that the Court set two hearings for this matter:

- 23 (i) A preliminary hearing to establish procedure and briefing schedule before the trial; and
- 24 (ii) A trial on this Petition.

1 28. Pursuant to 42 USC 11603(c), Respondent shall be given notice pursuant to Cal. Fam. Code  
2 §3425.

3 **ATTORNEY FEES AND COSTS (CONVENTION ARTICLE 26 AND/OR 42 U.S.C. 11607)**

4 29. Petitioner has incurred substantial costs as a result of the wrongful retention of L\* and A\* by  
5 Respondent. These costs include travel, temporary lodging, and attorneys' fees.

6 30. Before trial Petitioner will file and serve on Respondent a declaration listing of all his  
7 expenditures.

8 31. Petitioner requests that this court award all costs and fees incurred to date as required by 42  
9 U.S.C. 11607, reserving jurisdiction over further expenses.

10  
11  
12 Dated: October 25, 2005

\_\_\_\_\_/s/  
D\* C \_\_\_\_\_

13  
14 Dated: October 25, 2005

SEYMOUR FAMILY LAW

15  
16  
17 by: \_\_\_\_\_/s/  
18 Brent D. Seymour  
Attorneys for Petitioner, D\* C \_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**VERIFICATION**

I, D\* C \_\_\_\_\_, declare as follows:

I am the Petitioner in this matter.

I have read the foregoing Petition for Return of Child to Petitioner and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at Barcelona, Spain on October 25, 2005.

\_\_\_\_\_  
D\* C \_\_\_\_\_ /s/ \_\_\_\_\_

---

Petition for Return of Child  
to Petitioner

#### 4. Sample Response



SEYMOUR FAMILY LAW  
Brent D. Seymour (SBN148737)  
189 East H Street  
Benicia, CA 94510  
(707) 747-2700

Attorneys for Respondent

T\* M \_\_\_\_\_

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SITTING AS A TREATY TRIBUNAL UNDER  
ARTICLE III SECTION 2 OF THE UNITED STATES CONSTITUTION  
CONCURRENT JURISDICTION CONFERRED BY 42 U.S.C. 11601 ET SEQ.

TG\* M \_\_\_\_\_

Petitioner,

vs.

T\* M \_\_\_\_\_,

Respondent.

Case No.

RESPONSE TO PETITION FOR RETURN OF  
MINOR CHILD PURSUANT TO 42 U.S.C.  
11601 et seq., (THE INTERNATIONAL CHILD  
ABDUCTION REMEDIES ACT)

The Convention on the Civil Aspects  
of International Child Abduction,  
done at the Hague on 25 Oct. 1980 [The Convention]

-----  
International Child Abduction Remedies Act  
42 U.S.C. 11601 et seq.

1 Respondent, T\* M \_\_\_\_\_, a resident of the State of California, and a citizen of the United States  
2 of America, responds to the Petition brought by Petitioner, TG\* M \_\_\_\_\_, requesting the return of the  
3 parties' minor child.

4 **COUNT ONE - JURISDICTION**

- 5 1. Respondent admits the allegations of Paragraph 1.
- 6 2. With respect to the allegations of Paragraph 2, Respondent admits that the parties lived in \_\_\_\_\_  
7 \_\_\_\_\_, California. Respondent has lived in California all of her life. She and Petitioner lived together  
8 in \_\_\_\_\_ starting in early 2005, before they were married. They continued to live in \_\_\_\_\_  
9 \_\_\_\_\_ after their daughter (hereinafter, the Child) was born in the spring of 2006. In April 2008,  
10 Petitioner moved to Denmark to work as an orthopedic shoemaker. Respondent and the Child  
11 remained in California. In October 2008, Respondent and the Child joined Petitioner in Denmark on a  
12 temporary basis. Respondent had not made a decision to relocate permanently. Nor had she agreed to  
13 change the Child's permanent residence from the United States to Denmark. Except as admitted,  
14 Respondent denies all the other allegations of Paragraph 2.
- 15 3. With respect to the allegations of Paragraph 3, Respondent admits that she and the Child left  
16 Denmark on June 27, 2010 and returned to \_\_\_\_\_, California. Respondent admits that she filed  
17 for legal separation in the Superior Court of California, Marin County and that Petitioner was served  
18 with the Summons and Petition in that action by U.S. Certified Mail, Return Receipt Requested on  
19 August 2, 2010. Respondent is without sufficient information and belief as to the contents of Exhibit A  
20 because no exhibits were included with the complaint/petition served on Respondent. Except as  
21 admitted, Respondent denies all the other allegations of Paragraph 3.
- 22 4. Respondent denies the allegations of Paragraph 4. Specifically, she never told Petitioner that he  
23 would not be able to see or talk to the Child until the dissolution of marriage was settled. In fact,  
24 Respondent arranged telephone calls so that Petitioner could speak to the Child on a regular basis.

1 5. With respect to the allegations of Paragraph 5, Respondent admits that the Child has Danish  
2 residency. Respondent is without sufficient information and belief as to the contents of Exhibit B  
3 because no exhibits were included with the complaint/petition served on Respondent. On that basis,  
4 Respondent denies those allegations.

5 6. With respect to the allegations of Paragraph 6, Respondent admits that this petition is brought  
6 pursuant to The Convention of the Civil Aspects of International Child Abduction, done at the Hague on  
7 25 October 1980 (Convention) and 42 U.S.C. 11603(b), the International Child Abduction remedies Act  
8 (ICARA). The Convention went into effect on July 1, 1988. Respondent is without sufficient  
9 information and belief as to the contents of Exhibit C because no exhibits were included with the  
10 complaint/petition served on Respondent. On that basis, Respondent denies those allegations.

11 7. Respondent admits that the objects of the Hague Convention are as stated by Petitioner.

12 8. Respondent admits that both the United States of America and Denmark are Contracting States  
13 to the Convention.

14 9. Respondent admits the allegations of Paragraph 9.

15 **PETITIONER'S RIGHT TO CUSTODY**

16 10. Respondent hereby incorporates as though specifically rewritten herein all of her admissions and  
17 denials contained in Respondent's Response, Paragraphs 1 through 9 inclusive.

18 11. With respect to the allegations of Paragraph 11, Respondent admits that Petitioner is the natural  
19 father of the Child. Respondent is without sufficient information, knowledge and belief regarding rights  
20 of custody under the Danish Civil Code and on that basis denies that Petitioner enjoys full rights of  
21 custody under that code. Respondent admits that she and Petitioner were lawfully married in \_\_\_\_\_,  
22 California on XXXXXXXX, and that their daughter was born of the marriage. Respondent is without  
23 sufficient information and belief regarding the exercise of parental authority under the Danish Act on  
24 Parental Responsibility and on that basis denies that Petitioner's allegations with respect to that act.  
25 Respondent is without sufficient information and belief as to the contents of Exhibit D because no

26

1 exhibits were included with the complaint/petition served on Respondent. On that basis, Respondent  
2 denies those allegations.

3 12. Respondent denies the allegations of Paragraph 12.

4 13. Respondent admits the allegations of Paragraph 13.

5 14. Respondent admits the allegations of Paragraph 14.

6 15. Respondent denies the allegations of Paragraph 15.

7 **RESPONDENT' REMOVAL AND RETENTION OF THE CHILD**

8 16. Respondent hereby incorporates as though specifically rewritten herein all of her admissions and  
9 denials contained in Respondent's Response, Paragraphs 1 through 15 inclusive.

10 17. With respect to the allegations of Paragraph 17, Respondent admits that she and the Child  
11 returned to \_\_\_\_\_, California from Denmark on June 27, 2010. Respondent admits that on or about  
12 August 2, 2010, Petitioner received her Summons and Petition for Legal Separation filed in the Superior  
13 Court of California, County of Marin. Petitioner admits she informed Petitioner that she and the Child  
14 would not be returning to Denmark. Except as specifically admitted, Respondent denies all of the  
15 allegations in Paragraph 17.

16 18. Respondent admits that she took her own folder containing marriage license, the Child's birth  
17 certificate, her passport and the Child's passport. Except as specifically admitted, Respondent denies all  
18 of the other allegations of Paragraph 18.

19 19. With respect to the allegations of Paragraph 19, Respondent admits that the Child resides in \_\_\_\_  
20 \_\_\_\_\_, California and within the territorial jurisdiction of this court.

21 20. Respondent denies the allegations of Paragraph 20.

22 **CUSTODY PROCEEDINGS IN MARIN COUNTY**

23 21. Respondent hereby incorporates as though specifically rewritten herein all of her admissions and  
24 denials contained in Respondent's Response, Paragraphs 1 through 20 inclusive.

1 22. With respect to the allegations of Paragraph 22, Respondent admits that she filed a Petition for  
2 Legal Separation in the Superior Court of California, County of Marin. Respondent is without sufficient  
3 information and belief as to the contents of Exhibit A because no exhibits were included with the  
4 complaint/petition served on Respondent. On that basis, Respondent denies those allegations.  
5 23. With respect to the allegations of Paragraph 23, Respondent admits that Petitioner has filed a  
6 motion to quash summons. Respondent is without sufficient information and belief as to the contents of  
7 Exhibit E because no exhibits were included with the complaint/petition served on Respondent. On that  
8 basis, Respondent denies those allegations.  
9 24. With respect to the allegations of Paragraph 24, Respondent admits that she received a copy of a  
10 letter from the United States Central Authority addressed to Judge \_\_\_\_\_. Respondent is without  
11 sufficient information and belief as to the contents of Exhibit F because no exhibits were included with  
12 the complaint/petition served on Respondent. On that basis, Respondent denies those allegations.  
13 25. Respondent denies the allegations of Paragraph 25.

14 **WARRANT IN LIEU OF A WRIT OF HABEAS CORPUS**

15 26. Respondent hereby incorporates as though specifically rewritten herein all of her admissions and  
16 denials contained in Respondent's Response, Paragraphs 1 through 25 inclusive.  
17 27. Respondent is without sufficient information or knowledge at this point with regard to  
18 Petitioner's claimed right of custody, and on that basis denies the allegations of Paragraph 27.  
19 28. Respondent denies the allegations of Paragraph 28.  
20 29. Respondent admits the allegations of Paragraph 29.  
21 30. Respondent denies the allegations of Paragraph 30.  
22 31. With respect to the allegations of Paragraph 31 Respondent is without sufficient information or  
23 knowledge regarding Article 3 f the Danish Act on Parental Responsibility and on that basis denies the  
24 allegation that she has violated it. Respondent denies that she has concealed the child or that she will  
25 conceal the child. Petitioner knows where Respondent and the child live.

1 32. With respect to the allegations of Paragraph 32, Respondent denies that she will take the Child  
2 out of the jurisdiction of the Court.

3 33. Respondent is without sufficient information or knowledge of the allegations of Paragraph 33,  
4 and on that basis denies those allegations.

5 34. With respect to the orders requested in Paragraph 34, Respondent responds generally that all  
6 such orders are unnecessary, and that Petitioner has made no showing of necessity. Furthermore, the  
7 requested orders to remove the Child from Respondent's custody would be in violation of 42 U.S.C.  
8 11604(B), which states, "No court exercising jurisdiction of an action brought under section 11603(b) of  
9 this title may, under subsection (a) of this section, order a child removed from a person having physical  
10 control of the child unless the applicable requirements of State law are satisfied." Any such orders  
11 should be made, if at all, only after a hearing on their necessity and in consideration of the best interests  
12 of the Child as required by California law as a prerequisite to any change in custody. Respondent  
13 responds specifically to the requests as follows:

14 A. An order delivering the Child to the custody of Petitioner is appropriate only if Petitioner  
15 prevails at trial. Any such interim order is not permissible under 42 U.S.C. 11604 because it would not  
16 be in the best interests of the Child. 42 U.S.C. 11604(b).

17 B. Respondent requests that the Court deny the request for an order prohibiting the removal  
18 of the minor Child from the jurisdiction of the Court. Respondent lives and works in \_\_\_\_\_,  
19 California and the Child attends school in \_\_\_\_\_ 4 hours a day. Petitioner has made no showing  
20 that there is any risk she would leave the jurisdiction with the Child.

21 C. An order delivering the Child to the Respondent or his agent pending hearing should be  
22 denied because it would not be in the best interests of the Child.

23 D. Respondent requests that no bond be required. Petitioner has made no showing that such  
24 a bond is necessary to secure Respondent's compliance with the orders of this Court.

1 E. Respondent requests that no Warrant in Lieu of a Writ of Habeas Corpus be issued.  
2 Petitioner has made no showing that such an order is necessary. Furthermore, such an order would not  
3 be in the best interests of the Child.

4 F. Respondent requests that Petitioner be denied any further relief.

5 **RESPONDENT'S AFFIRMATIVE DEFENSES**

6 36. The Child's Habitual Residence Remained the United States: The Child's habitual residence is,  
7 and has always been, the United States. Denmark never became the Child's habitual residence. The  
8 Child was born in California in May 2006 and lived there until October 2008, when she and her mother  
9 joined Petitioner in Denmark on a temporary basis. There was no intention and no agreement to change  
10 the Child's habitual residence from the United States to Denmark. Petitioner moved to Denmark to find  
11 work in April 2008. When he left, Petitioner left most of his belongings in storage at Respondent's  
12 mother's house, taking only 2 suitcases. Respondent was reluctant to move to Denmark, but Petitioner  
13 assured her that if she did not like it or if it did not otherwise work out, she and the Child could return to  
14 California. In October 2008, Respondent decided that she would go with the Child to Denmark on a  
15 temporary basis. She put all of the family belongings, furniture, and her car in storage in the garage.  
16 Respondent maintained her California real estate license, California driver's license and California bank  
17 accounts while she was in Denmark. Respondent also owns an income property in California, which she  
18 continued to manage, with the help of her mother, while in Denmark. During the 20 months Respondent  
19 was in Denmark, she and the Child returned home to California three times for month long visits.

20 37. Grave Risk of Harm: There is a grave risk of physical and psychological harm if the Child is  
21 returned to Denmark to live with her father. Throughout the Child's life, Petitioner has been abusive to  
22 both the Child and Respondent.

23 From before the Child was born, Petitioner and Respondent had been having marital difficulties.  
24 In Denmark, the marriage deteriorated as Petitioner became more threatening and physically abusive  
25 towards the Child and Respondent. Petitioner began threatening that if Respondent did not earn some

26

1 money or have more children he would kick her out on the street. He nicknamed Respondent a  
2 derogatory term in Danish, which shocked their friends. It translated, to "dirty bitch". The verbal abuse  
3 escalated in 2010.

4 In January 2010, when Respondent and the Child returned from a Christmas visit in California,  
5 Respondent tried to get Petitioner to help put the Child to bed every other night. One night, while  
6 Petitioner was trying to put the Child to sleep, Respondent was studying in the bedroom. Respondent  
7 had already said goodnight to her and told Petitioner it was okay for the Child to cry a few minutes.  
8 Petitioner shouted at Respondent that it was her fault after letting the Child sleep with her during the  
9 Christmas stay in California. Petitioner punched Respondent two times on the right arm and shoved her  
10 towards the Child's room to deal with her.

11 Petitioner was abusive to the Child as well. It started out with him just being insensitive to the  
12 Child's needs, but escalated over time into physical abuse. When the Child was about 8-10 months old  
13 Respondent left her with Petitioner as she was going to work. Petitioner was on the computer and while  
14 he was supposed to be watching her, the Child fell down three stairs and was screaming. Respondent  
15 had not yet left for work and was still upstairs. Respondent ran down the stairs to get the Child, and was  
16 shocked that Petitioner had not moved from his computer at all to get up and help her.

17 In 2008, while visiting friends, the Child got hold of a large metal fireplace guard and it fell on  
18 top of her. When it happened everyone jumped up to help her, except Petitioner who just sat there.

19 In 2009, the Child was having nightmares almost every day. She would scream in her sleep and  
20 often come into her parents' bed. One night, when she would not stop, Petitioner lost his temper and put  
21 his pillow over the Child's head. Respondent screamed, "What the Hell are you doing" and pulled it off.  
22 Petitioner said, "I just wanted to make her stop."

23 When Petitioner loses his temper with the Child, he screams right in her face. That is terrifying  
24 to her. In 2010, when the Child did not want to go to sleep and it was late and the parties had been  
25 trying for a while, Petitioner held her in her bed and screamed in her face that she had better stay there.

26



1 She was screaming in terror. Respondent told Petitioner to get out of the room or she would call his  
2 parents.

3 In June 2010, Respondent was going to meet a friend. The Child was crying because her mother  
4 was leaving. When Respondent came home, Petitioner told her that the Child followed her out to the  
5 curb screaming and he left her there for about 30 minutes screaming. He proudly told Respondent that  
6 he did throw her jacket out at her to put on.

7  
8 **PROVISIONAL REMEDIES**

9 38. Respondent requests that the parties participate in a court supervised settlement conference to try  
10 and settle not only the issues raised by this petition, but also the issues of custody and visitation.

11 **RELIEF REQUESTED**

12 39. Respondent requests that the relief requested by Petitioner be denied and that the Child be  
13 permitted to remain in California and that custody be determined in the California Superior Court.

14 **NOTICE OF HEARING**

15 40. Petitioner requests that the Court set three conferences/hearings for this matter:

- 16 (i) A preliminary hearing to establish procedure and briefing schedule before the trial;  
17 (ii) A settlement conference; and  
18 (iii) A trial on this Petition.

19  
20  
21 Dated: October 7, 2010

\_\_\_\_\_/s/  
T\* M\_\_\_\_\_

1 Dated: October 7, 2010

2  
3 by: \_\_\_\_\_ /s/  
4 Brent D. Seymour  
5 Attorneys for Respondent, T\* M \_\_\_\_\_  
6  
7

8 **VERIFICATION**

9 I, T\* M \_\_\_\_\_, declare as follows:

10 I am the Respondent in this matter.

11 I have read the foregoing Response to Petition for Return of Minor Child and know the contents  
12 thereof.

13 The same is true of my own knowledge, except as to those matters which are stated on  
14 information and belief, and as to those matters, I believe it to be true.

15 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
16 true and correct and that this declaration was executed at \_\_\_\_\_, California on October 7, 2010.

17  
18 \_\_\_\_\_ /s/  
19 T\* M \_\_\_\_\_  
20  
21  
22  
23  
24  
25  
26