I CARE Foundation: International Travel Child Consent Agreement

Legal Summary

This international travel child consent form was created by the I CARE Foundation. The intent and purpose of this travel consent form is to help prevent international parental child abduction from occurring associated with the wrongful detention of a child by a parent traveling abroad and who fails to return the child to their country of home jurisdiction in violation of another parent's rights of custody or in breach of a court order.

This travel agreement is substantially focused on key issues associated with the return of a child under the rules of the *Hague Convention on the Civil Aspects of International Child Abduction* and traditional abduction defenses commonly implemented under Article 12, Article 13, and Article 20. In addition, and with attention to Article 1 of the international treaty, this travel document may assist a left-behind targeted parent expeditiously reunite with their parentally kidnapped child when litigating for their child's return under the international civil remedies established by the *Hague Convention on the Civil Aspects of International Child Abduction*. For abductions that take place to non-convention signatory countries, this sworn international travel child agreement may provide a court where the child is wrongfully detained with important evidence on behalf of the left-behind parent. It is important to note that each court may have their own legal interpretation on the validity and intent of this document.

Furthermore, in the event of abduction, this sworn travel document may be an effective tool that may assist in the expeditious return of a child with the assistance of local law enforcement located in the inbound country the child is illegally detained in based upon the affirmations contained within along with the child abduction laws and policing policies of that country.

Individuals using this travel consent form should clearly understand that this document will not prevent a child's international abduction. However, this agreement is designed to provide sworn affirmations that may expedite any law enforcement of court actions associated with international parental child abduction.

Parents or legal advisors involved in an abduction prevention case may strongly want to consider using this document or one similar to it containing abduction prevention language associated to the international treaty. Concern should be held if a parent intending to travel abroad with a child refuses to sign this agreement since this may be a clear sign of abduction intent.

This document was created with focus on child abduction matters primarily associated with laws related to the Hague Convention. However, the affirmations contained herein may assist parents dealing with non-Hague countries and abduction.

Please note: this international travel document and legal analysis does not constitute legal advice and is for informational purposes only. Should you have any questions concerning any family law matter, please contact a qualified attorney.

Considerations On How To Use This Form

1. Parents or their legal advisors may want to consider filing this international travel document with their country of citizenship's foreign consulate or embassy located in the country their child is expected to travel to before a child travels abroad. For example, if you are an American citizen and have a child traveling to France, you may consider providing a copy of this sworn travel document to the U.S. Consulate in France. It should be noted that many nations suggest that their citizens traveling abroad register with their respective consulates located in the foreign countries. For example, the United States has created the STEP Program (the 'Smart Travel Enrollment Program') that enables American citizens traveling abroad to register with the American Consulate located in the country they are traveling to.

2. Parents or their legal advisors may want to consider filing this international travel document with a court of jurisdiction overseeing the welfare of a child before the child travels abroad, particularly if there exists child custody issues or concern of abduction.

3. Parents or their legal advisors may want to consider filing this international travel document with the consulate of the country their child is traveling to that is located in their country. For example, if an American child is traveling to Turkey, a parent or their legal advisor may consider delivering a copy of the travel agreement to the Turkish consulate located in the United States. It is important to note that each country has its own policies regarding acceptance of travel consent forms and other notifications regarding a child and may or may not accept notification.

4. Parents or their legal advisors who represent a parent who has had a child wrongfully detained in a foreign country are strongly advised to immediately contact their country's Hague Convention Central Authority and file a Hague Application for the immediate return of the wrongfully detained child. When submitting the necessary legal documents to a Central Authority, parents and their legal advisors should consider including the sworn travel consent form. For example, in the United States, an American parent who has a child abducted to Mexico should contact the United States Department of State's Office of Children's Issues, which acts as the Central Authority for the Hague Convention. When submitting a Hague Application for the return of a wrongfully detained child, strong consideration should be made to include the sworn travel consent form.

5. Parents or their legal advisors who are considering seeking an emergency hearing before a court possessing original jurisdiction due to a child being wrongfully detained abroad may want to consider including this travel consent form to the court.

6. Parents or their legal advisors may want to present this document to law enforcement agencies in both the child's country of original jurisdiction as well as where the child is being wrongfully detained.

7. Parents or their legal advisors involved in child custody and international child abduction prevention litigation may consider requesting that the opposing party agree to the terms of this agreement. Should an opposing party decline to agree to the terms and affirmations as stipulated here or an agreement containing similar affirmations, then parents and their legal advisors may want to seek court intervention as failure by a traveling parent to sign this agreement or one containing similar affirmations may be a strong sign of intent to abduct.

Framework of the Legal Issues and Existing Case Law Surrounding International Parental Child Abduction & International Travel Consent For A Child

The following analysis was considered when creating the 'International Travel Child Consent Agreement' and has been provided in order to assist parents and their legal advisors understand key issues surrounding litigating international child abduction cases.

The analysis discusses important case law and issues associated with international parental child abduction, including an assortment of legal defenses an abducting parent may put forth in order to sanction the child's illegal removal or detention abroad.

Country Usage

This International Travel Child Consent Agreement was created to assist all parents concerned with international parental child abduction associated with the wrongful retention of a child abroad. This document is not country specific; however, there is considerable emphasis on Hague abduction law.

The agreement was created with attention to international parental child abduction case law originating from courts located in the United States. In addition, Hague-related case law on the key issues contained herein were also analyzed by viewing a wide-range of case law originating from many other courts located in Hague signatory countries.

Understanding The Hague Convention On Civil Aspects of International Child Abduction & How The Convention Applies To The International Travel Child Consent Agreement

I. ESTABLISHING A *PRIMA FACIE* CASE FOR RETURN

The Hague Convention provides that if the petitioner successfully proves a *prima facie* case, the child must be returned unless the respondent can prove that an affirmative defense applies. The petitioner must demonstrate a *prima facie* case by a preponderance of the evidence. The elements of a *prima facie* case are enumerated in Articles 319 and 420 of the Hague Convention. Courts have recognized that the petitioner establish a *prima facie* case if he or she proves three elements:

(1) prior to removal or wrongful retention, the child was habitually resident in a foreign country;

(2) the removal or retention was in breach of custody rights under the foreign country's law; and

(3) the petitioner actually was exercising custody rights at the time of the removal or wrongful retention. If the petitioner establishes a *prima facie* case, the abducted child must be returned to the country of habitual residence unless the respondent can prove that one of the designated affirmative defenses applies.

Although most decisions recite these three elements as establishing a *prima facie* case, technically there is at least one more element: proving that the abducted child is under the age of 16. This is a critical element of a Hague Convention case because, as further discussed below, Article 4 of the Hague Convention explicitly states that "[t]he Convention shall cease to apply when the child attains the age of 16 years."

In addition, although not part of the petitioner's *prima facie* case, if the petitioner can demonstrate that the petition is filed within one year of the wrongful removal or retention, then the well-settled affirmative defense in Article 12 of the Hague Convention does not apply. Thus, while technically not part of the petitioner's *prima facie* case, proving that the petition was filed within one year of wrongful removal or retention is critically important and is discussed below as if it were an element of the petitioner's burden of proof.

A. HABITUAL RESIDENCE PRIOR TO WRONGFUL REMOVAL OR RETENTION WAS IN A FOREIGN COUNTRY.

To establish a *prima facie* case, a petitioner first must demonstrate that the child was habitually resident in one Hague signatory country and then was wrongfully removed to or retained in a different Hague signatory country. The determination of the child's country of habitual residence therefore is central to the disposition of a Hague Convention case.

For the Hague Convention to apply, the abducted child must have been "habitually resident in a Contracting State immediately before any breach of custody or access rights." To be actionable under the Hague Convention, child abduction and retention cases must be international, and the involved countries must be recognized by the United States as signatories to the Convention. For example, the Hague Convention would not apply in a case where a child is habitually resident in Atlanta, Georgia and is wrongfully removed to Phoenix, Arizona, since the child remained in the same country. Similarly, the Hague Convention would not apply in a case where the child is removed from the United States to Japan because Japan is not a signatory to the Hague Convention. However, if the child is living in and removed from the United States to Mexico City, the Hague Convention would apply because the child was removed from the country where he or she was a habitual resident and both Mexico and the United States are signatories to the Convention.

The determination of habitual residence also is important because the parents' custody rights are governed by the laws of the country of habitual residence. Despite the significance of determining habitual residence, it is defined neither by the Hague Convention nor by ICARA. Notably, the Hague Permanent Bureau surveyed signatory countries in 2010 and inquired about the feasibility and desirability of a protocol to the Convention to define the term "habitual residence."

However, as of February 2012, no such protocol has been implemented and the United States opposed the addition of a definition of "habitual residence," explaining that it would be very difficult for the member countries to come to a consensus on the meaning of the term. United States courts view the habitual residence issue as a mixed question of law and fact that is a highly fact-specific inquiry.

The habitual residence is determined at the point in time "immediately before the removal or retention." Beyond this limited guidance, the Hague Convention offers no insight as to which, if any, factors are to be given weight. Accordingly, an extensive body of domestic and international law has developed. All eleven circuits have addressed the determination of habitual residence and identified a number of factors that should be evaluated. Among the factors courts may consider are changes in physical location, the location of personal possessions and pets, the passage of time, whether the family retained its prior residence or sold it before relocating, whether the child has enrolled in school, the parents' intentions at the time of a move, and whether the child has established relationships in the new location. A circuit-by-circuit summary of selected case law follows. Many of the circuits apply similar, although not necessarily identical, methodologies in determining the habitual residence. As shown below, one particularly notable difference is that some circuits will consider the parents' intent as relevant to the habitual residence question, whereas other circuits will focus exclusively on the child's experiences.

District courts within the First Circuit have employed very fact-specific analyses in determining the habitual residence. The consensus among many of these decisions has been that "a child's

habitual residence is to be determined by examining the facts and circumstances at hand." More recently, the First Circuit has begun to follow a more structured approach to evaluate questions about habitual residence. For instance, in *Nicolson v. Pappalardo*, the First Circuit adopted an approach similar to that of the Second Circuit, discussed below, that focuses on "the parents' shared intent or settled purpose regarding their child's residence."

Gitter v. Gitter afforded the Second Circuit its first occasion to interpret the phrase "habitually resident" within the meaning of the Hague Convention. The Second Circuit examined both parental intent and the child's degree of acclimation to the residence in establishing the habitual residence of the child. The court explained that an analysis of the habitual residence should begin by focusing on the intent of the persons entitled to fix the place of the child's residence, which is most frequently the parents. The terms of the Convention make it seem logical to focus on the intent of the child, but the court found that children usually do not possess the "material and psychological wherewithal to decide where they will reside."
Parental intent is determined by actions as well as declarations. For the second part of the inquiry, the court held that one must look into whether the child has become acclimated to his or her new surroundings such that their habitual residence has shifted.

In *Poliero v. Centenaro*, the Second Circuit again followed this two part analysis. With respect to the first prong, the court found that there was no "'settled intention to abandon' Italy as the children's habitual residence" in favor of New York. The court noted that the parties had not attempted to sell the family home in Italy, had maintained their personal belongings and furniture in Italy, merely leased and rented property in New York (but sent their children to school in New York), and had purchased tickets for the entire family to return to Italy with the intent to re-enroll the children in school there. Turning to the second prong, the court found that the children had not become acclimated to New York, noting that although the children appeared to have "adjusted well" to New York and "expressed some preference for remaining," they also had maintained contact with friends and family in Italy.

Earlier, the Third Circuit examined the term "habitually resident" in *Feder v. Evans- Feder* and concluded that:

> *[A] child's habitual residence is the place where he . . . has been physically present for a time sufficient for acclimatization and which has a "degree of settled purpose" from the child's perspective . . . . [A] determination of whether any particular place satisfies this standard must focus on the child and consists of an analysis of the child's circumstances in that place and the parents' present, shared intentions regarding their child's presence there.*

However, in *Delvoye v. Lee*, the Third Circuit found this test to be inadequate when applied to the unique context of a very young infant whose parents lacked a settled intention regarding their child's residence. Because infant children cannot acquire habitual residence apart from

their caregivers, it often is difficult to make a distinction between the habitual residence of an infant child and that of his or her custodian. Thus, the habitual residence of infant children most often is found to be the parental residence. However, the *Delvoye* court found that "where the [parental] conflict is contemporaneous with the birth of the child, no habitual residence may ever come into existence" for the child. Accordingly, where the parents lack shared intentions about their child's presence in a country, the infant child does not become a habitual resident. In reaching its decision, the court quoted a Scottish commentator:

> *A newborn child born in the country where his parents have their habitual residence could normally be regarded as habitually resident in that country. Where a child is born while his mother is temporarily present in a country other than that of her habitual residence it does seem, however, that the child will normally have no habitual residence until living in a country on a footing of some stability.*

In *Miller v. Miller*, the Fourth Circuit opined that there is no real distinction between ordinary residence and habitual residence, and that a person can have only one habitual residence, which correlates to the child's residence prior to removal. The court repeated that to properly engage in the inquiry, "[t]he court must look back in time, not forward." Specifically, it found that parents cannot create a new habitual residence by wrongfully removing and sequestering a child. To do so would violate the purpose of the Hague Convention. In *Maxwell v. Maxwell*, the Fourth Circuit applied a two-part analysis similar to that of *Gitter v. Gitter*, examining both the intent of the parents and whether the children had become acclimated to their new residence. In doing so, the court cited several factors relevant to the two prongs of the test and provided a potentially useful list of fact-specific cases that may be helpful depending on the facts of the case at hand.

In *Isaac v. Rice*, a district court in the Fifth Circuit used the children's past experiences to determine habitual residence, but also recognized the necessity to consider "the shared intentions of the parents regarding the child's presence in that country."

The Sixth Circuit focused on the child's acclimation and past experiences in a specific location to establish habitual residence in *Friedrich v. Friedrich*. In *Friedrich*, the child lived with his parents in Germany until the father forced the child and mother out of the apartment, whereupon the mother removed the child to the United States. The mother argued that the child's habitual residence was the United States because she always intended to move there, but the court held that "to determine the habitual residence, the court must focus on the child, not the parents, and examine past experiences, not future intentions." As a result, the court held that the child's habitual residence was Germany. In *Robert v. Tesson*, the Sixth Circuit reiterated that the habitual residence analysis must focus on a child's past experiences, not the future intentions of the parents, recognizing that such an analysis diverged somewhat from other circuits.

The Seventh Circuit in *Koch v. Koch* recognized that the purpose of habitual residence was "'to identify the place where the children are settled and where recent information about the quality of family life is available.'" The court held that "a child will be found to be habitually resident in a country if he or she has been living there for a sufficient period of time. Where there is geographic stability and adequate duration, questions as to the purpose of the residence will usually be pushed into the background."

In *Silverman v. Silverman*, the Eighth Circuit held that habitual residence can be established only by focusing on both the settled purpose from the child's perspective and the parents' intent. The Ninth Circuit in *Mozes v. Mozes* held that habitual residence is determined by the parents' intent regarding the child's residence and the child's perspective of where he or she is acclimated.

The Tenth Circuit took a more fact-specific approach in *Kanth v. Kanth,* holding that "a child's habitual residence is defined by examining the specific facts and circumstances" and "the conduct, intentions and agreements of the parents during the time preceding the abduction are important factors to be considered."
Finally, in *Ruiz v. Tenorio,* the Eleventh Circuit interpreted "habitual residence" according to the "ordinary and natural meaning of the two words it contains, as a question of fact to be decided by reference to all the circumstances of a particular case." To establish a new habitual residence, there must be a "settled intention to abandon the one left behind." The "settled intention" does not have to be clear at the time of departure and can develop over time. The court explained that there must be an "actual change in geography and the passage of a sufficient length of time for the child to have become acclimatized." However, in cases where the parents lacked a shared intent, the court cautioned against placing too much emphasis on the child's contacts in the new country to determine whether the child had become acclimated. The court explained that "divining the significance of such contacts is extremely difficult," and that "children can be remarkably adaptable even in short periods without any significance with respect to habitual residence."

B. REMOVAL OR RETENTION WAS WRONGFUL BECAUSE CUSTODY RIGHTS WERE BREACHED.

A valid petition must allege that removal or retention of the child was wrongful. As is true for all other elements of a *prima facie* case, the petitioner must prove this element by a preponderance of the evidence.
Article 3 of the Hague Convention provides that removal or retention of the child is wrongful where it is in breach of custody rights attributed to a person, an institution, or another entity, either jointly or alone, under the law of the country in which the child was habitually resident immediately before the removal or retention. The Hague Convention provides little guidance toward the determination of whether the petitioner has custody rights. However, Article 5(a) broadly states that "rights of custody" are "rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence." Custody rights differ

from “rights of access,” which the Hague Convention defines as “the right to take a child for a limited period of time to a place other than the child’s habitual residence.” The Hague Convention allows petitioners to seek the return of children if they have “custody rights” of the children as compared to “rights of access.”

Custody rights may arise (a) by operation of law, or (b) by reason of a judicial or administrative decision or an agreement having legal effect under the law of the country of habitual residence. Most cases discussing whether petitioners have custody rights involve custody rights that arise by operation of law. In cases where the parties have an agreement or a judicial decree, courts usually hold that the issue of custody rights is undisputed. The following highlights recurring issues regarding rights of custody that arise by operation of law.

1. Breach of Rights Arising by Operation of Law.

In operation of law cases, courts usually assess the rights granted to the petitioner under the applicable civil code. The Hague Convention expressly allows United States courts to take notice of the laws of foreign courts regarding custody determinations.

The case of *Sealed Appellant v. Sealed Appellee* discusses custody rights arising by operation of law. Under Australian law, in the absence of any orders of the court, each parent is a joint guardian and has custody rights over the child. In *Sealed Appellant*, the father had not been stripped of his custody rights. Therefore, the only issue for the court was whether the father had exercised his custody rights.

A petitioner seeking to establish custody rights by operation of law may be able to rely on *patria potestas* when the child’s country of habitual residence recognizes such rights. *Patria potestas*, a concept of parental authority found in many civil law countries, is generally “the relationship of rights and obligations that are held reciprocally, on the one hand, by the father and the mother (or in some cases the grandparents) and, on the other hand, the minor children who are not emancipated.” Countries whose laws are based on civil codes are most likely to recognize *patria potestas* rights and often define these rights in the context of the parents’ state of wedlock and exercise of physical custody. United States courts generally have accepted custodial rights arising under *patria potestas* as sufficient to establish a left-behind parent’s right to seek the return of the child. If parents have entered into a divorce decree that contains terms regarding the custody of the child, courts may seek to define the scope of custodial rights asserted under *patria potestas* in light of the decree.

In *Whallon v. Lynn*, the child’s parents resided in Mexico and had never married. Mexico’s Civil Code defines the doctrine of *patria potestas* and provides that where children are born out of wedlock, both parents exercise parental authority. It also distinguishes *patria potestas* from physical custody. The First Circuit examined Mexico’s concept of *patria potestas* and held that these rights were more than mere visitation rights or rights of access because *patria potestas* rights imply a meaningful decision-making role in the life and care of a child. The court found

that the left-behind father/petitioner in Mexico had rights of custody and, therefore, that the removal of the child without the father's consent was wrongful.
Similarly, in *Giampaolo v. Erneta*, the Eleventh Circuit found that the father/petitioner of an out-of-wedlock child had rights of custody because under Argentine law, if the parents had cohabitated, both had *patria potestas* rights. Argentine law "denotes the set of rights and duties belonging to the parents in respect to the person and property of their children, for their protection and integral education, from the moment of their conception and while under age and not emancipated." An agreement granting the mother physical custody of the child did not vitiate the *patria potestas* rights of the father/petitioner; thus, the removal of the child from Argentina was wrongful.

2. Breach of Rights Arising by Judicial or Administrative Decrees or Agreement of The Parties.

In addition to custody rights arising by operation of law, custody rights can be determined by judicial or administrative decree or by agreement of the parties. In determining the custodial rights of parents who have entered into a joint stipulated custody agreement, courts often make binding assessments regarding parents' custodial rights to their children. As with custodial rights arising under operation of law or *patria potestas*, the terms of a custody order are binding on parents and will serve as evidence of custodial rights in a Hague Convention case.

Frequently, judicial decrees and custody orders contain *ne exeat* clauses, which are defined as writs mandating that the person to whom they are addressed not leave the country, the state, or the jurisdiction of the court. The circuits originally were split over whether *ne exeat* clauses constituted custodial rights entitled to enforcement under the Hague Convention. The Second, Fourth, and Ninth Circuits had held that *ne exeat* clauses were not custodial rights under the Hague Convention, reasoning that a *ne exeat* clause "confers only a veto, a power in reserve, which gives the non-custodial parent no say (except by leverage) about any child-rearing issue other than the child's geographical location in the broadest sense." On the other hand, the Eleventh Circuit had held that *ne exeat* rights were custody rights within the meaning of the Hague Convention, reasoning that a *ne exeat* right gives the noncustodial parent a joint right to determine the child's place of residence.

The Supreme Court resolved this circuit split in *Abbott v. Abbott*, ruling that a *ne exeat* right is a right of custody under the Hague Convention. In *Abbott*, a Chilean court had granted the mother "daily care and control of the child, while awarding the father 'direct and regular' visitation rights. . . ." Chilean law also conferred on the father a *ne exeat* right. In holding that the father's *ne exeat* right amounted to a right of custody under the Hague Convention, the Court noted that the Convention defines "rights of custody" to 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." Similar to the Eleventh Circuit's analysis, the Supreme Court equated the *ne exeat* right to a joint right to determine the child's country of residence. Justices Stevens, Thomas,

and Breyer dissented from the majority, contending that the father's rights amounted to only visitation rights.

C. PETITIONERS MUST BE EXERCISING THEIR CUSTODY RIGHTS AT THE TIME OF REMOVAL.

In addition to possessing custody rights under the laws of the country where the child habitually resides, the petitioner also must exercise those rights. The determination of whether a left-behind parent has exercised custody rights is another highly fact-specific analysis in a Hague Convention case. In *Friedrich v. Friedrich (Friedrich II)*, the Sixth Circuit provided guidelines for determining whether a petitioner properly exercised custody rights. The Sixth Circuit held that courts should "liberally find 'exercise' [of custody rights] whenever a parent with *de jure* custody rights keeps, or seeks to keep, any sort of regular contact with his or her child," and that "as a general rule, any attempt to maintain a somewhat regular relationship with the child should constitute 'exercise.'" The Sixth Circuit stated that:

> *[I]f a person has valid custody rights to a child under the law of the country of the child's habitual residence, that person cannot fail to "exercise" those custody rights under the Hague Convention short of acts that constitute clear and unequivocal abandonment of the child. Once [the court] determines that the parent exercised custody rights in any manner, it should stop—completely avoiding* the question whether the parent exercised the custody rights well or badly. These matters go to the merits of the custody dispute and are, therefore, beyond the subject matter jurisdiction of the federal courts.

The *Friedrich II* court held that the father/petitioner exercised his *de jure* custody rights because in the short separation before the mother/respondent removed the child from Germany, the father/petitioner visited with the child and made arrangements for further visitation.

Other courts have followed the reasoning of *Friedrich II*. In *Giampaolo*, the Eleventh Circuit found that the father/petitioner exercised his rights of custody because he picked up the child every morning to take her to school, chose the child's school, paid for some of the child's private school tuition, and saw the child the day before the mother/respondent left Argentina.

The First and Fifth Circuits also have followed the reasoning of *Friedrich II*. In the case of *Aldinger v. Segler*, the court held that the father/petitioner exercised his custody rights because he lived at the same address as the children and actively participated in the lives of the children by providing for their basic needs. Similarly, in the case of *Sealed Appellant v. Sealed Appellee,* the court held that the father/petitioner exercised his custody rights because he had visited the children about five times per year and paid child support to the mother/respondent.

D. THE CHILDREN MUST BE UNDER THE AGE OF SIXTEEN.

The Hague Convention states explicitly that it "shall cease to apply when the child attains the age of 16 years." The drafters of the Hague Convention easily could have stated—as they did for the well-settled defense in Article 13—that the Convention would not apply unless "the commencement of proceedings" occurred before the children is sixteen. However, they did not and instead stated flatly that the Convention "shall cease to apply" once the child is sixteen. The State Department's official commentary and legal analysis of the Convention explains that: "[t]he Convention applies only to children under the age of sixteen (16). Even if a child is under sixteen at the time of the wrongful removal or retention as well as when the Convention is invoked, the Convention ceases to apply when the child reaches sixteen."

Thus, once a child reaches the age of sixteen, the child cannot be returned under the Hague Convention, even if the child was less than sixteen years old at the time of wrongful removal and even if the petition was filed when the child was less than sixteen years old. Accordingly, when seeking relief under the Hague Convention, it is imperative to account not only for the child's age at the time of filing the petition, but also for the probable length of the proceedings to determine if the child will turn sixteen at any point during the process. Counsel also should plead and offer proof during the hearing that the child is less than sixteen years old.

E. IF TRUE, PROVE THAT THE PETITION WAS FILED WITHIN ONE YEAR OF WRONGFUL REMOVAL.

Proving that a petition was filed within one year of wrongful removal technically is not part of the petitioner's *prima facie* case.

However, whether the petition was filed within one year of wrongful removal or retention is critically important and must be considered when drafting a petition. If the petition is filed less than one year from the date of the wrongful removal of the child, the respondent *cannot* use the "well-settled" defense set forth in Article 12 of the Hague Convention, and the child must be returned regardless of how acclimated the child has become to his or her new surroundings. If the return proceedings are commenced one year or more after wrongful removal or retention, the court may still order the return of the child unless the respondent demonstrates that the child is "well-settled" in the new environment. Thus, as a practical matter, the court almost always will determine both (1) when the removal became wrongful, and (2) the date of the "commencement of the proceedings." These critical facts must be addressed in the petition if they favor the petitioner. Otherwise, the petitioner's counsel must be prepared to respond to a "well-settled" defense, as explained below.

1. Determining When Removal or Retention Became Wrongful.

Courts generally agree that wrongful retention or removal begins when the parent without physical possession asks for the return of the child or the ability to assert parental rights, and the parent with possession of the child refuses. When this happens, "the date of retention is that point when the noncustodial parent knows the custodial parent will not return the child."

Note, however, that some courts do not require an explicit statement. Rather, "[w]rongful retention occurs when the noncustodial parent is on notice that the retaining parent does not intend to return with the child. This retention may occur before there is a definitive conversation between the parties about the child's return if the noncustodial parent knew, or should have known, before the conversation that the child would not be returning." Furthermore, even where "notice of intent not to return a child" has been given, courts will consider whether there is an agreement in place between the parents as to a trip, a visit, or temporary or permanent residency. Where there is an agreement, "wrongful retention begins when the agreed date [of return] passes, not when the earlier notice of intent is given."

In *Slagenweit v. Slagenweit*, the court determined that wrongful retention occurred when the parent without physical possession first asked that the child be returned and the custodial parent refused. The court also noted that:

> *Since the Convention is directed principally at protection of the child, it can certainly be argued that the one year should be measured from the date the child actually starts living with the parent from whom custody is sought since it is clear that the Convention is concerned about the interest of the child who has become "settled" in his or her new environment. On the other hand, the Convention speaks about one year from the "wrongful removal or retention." As in this case, there can be no wrongful retention when the child is residing with the parent from whom custody is sought pursuant to an agreement between the parents. The wrongful retention does not begin until the noncustodial parent . . . clearly communicates her desire to regain custody and asserts her parental right to have [the child] live with her.*

As a result, the *Slagenweit* court held that the one-year period did in fact begin when the "wrongful" element of removal or retention took place (*i.e.*, at the point when the parent without physical possession was denied her agreed-upon right to have the child live with her). The court reasoned:

> *This reading gives effect to the literal wording of the Convention and comports with what this court believes to be the spirit of the Convention. In those cases where the child has become so settled in her new environment by mutual agreement of the parties, prior* analyzed under the question of whether a new habitual residency has been established for the child.

The *Slagenweit* court also noted that, in cases where a change in custody had been previously mutually agreed upon but was followed by a demand for return, "the parent demanding the return will have a difficult time showing that the voluntary change of place of residence did not

also result in change of habitual residency." While the *Slagenweit* case was not determined specifically on this issue, it is instructive on when a removal takes place and when that removal becomes wrongful.

The decision of the court in *Zuker v. Andrews* offers a more thorough analysis about when wrongful retention occurs, holding that it occurs when the parent without physical possession is on notice that the custodial parent does not intend to return with the child. In *Zuker*, the court had trouble determining when wrongful retention occurred because the mother who had possession of the child gave the father mixed messages, telling him in June 1996 that she and the child would return to Argentina from the United States for a visit, but later admitting that she lied to the father about her intentions. In July 1997, she told the father that she did not want to have anything to do with him and would not return to Argentina or live with him in the United States. The husband claimed that the retention occurred at that point, because until then, he did not know that the mother was not going to return the child to Argentina. The court, however, held that the retention occurred in February of 1997 when the mother moved into her own apartment, because at that point, the husband knew or should have known that the mother would not return with the child.

2. Determining When Proceedings Were Commenced.

Proceedings commence upon "the filing of a civil petition for relief in any court which has jurisdiction in the place where the child is located at the time the petition is filed." Thus, proceedings normally will commence upon the filing of the petition for return of the child. Merely contacting a country's Central Authority or law enforcement with a complaint does *not* constitute commencing an action for the purpose of defeating an Article 12 exception, even though Article 8 states that a parent whose "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."

3. Tolling of the One-Year Period.

Courts have acknowledged that the "general rule is that a court shall order the return of a wrongfully-removed or retained child unless more than a year has elapsed between the date of the child's wrongful removal or retention and the date that the proceedings were commenced and the child has become settled in her new environment." Courts have expressed that the abducting parents should not benefit from their actions. Courts also do not want to reward abducting parents for concealing children. Thus, courts have held, in some circumstances, that the one-year deadline may be extended if the abducting parent conceals the child from the left behind parent. This concept is referred to as equitable tolling. If a petition for return is filed after a year, the petitioner often provides lengthy fact-specific narratives to explain the reasons for the delay, such as the abducting parent's promise to return the child, difficulty in locating the abductor and child, or the left-behind parent's lack of knowledge or ability to file a Hague

Convention case for return. In cases where a return was denied based on the well-settled defense, the court noted that the left-behind parent made little effort to file the petition within one year and no extenuating circumstances were present.

United States courts have reached a consensus allowing for equitable tolling of the one year period required under Article 12, which conforms with the State Department's analysis on the topic:

> *If the alleged wrongdoer concealed the child's whereabouts from the custodian necessitating a long search for the child and thereby delayed the commencement of a return proceeding by the applicant, it is highly questionable whether the respondent should be permitted to benefit from such conduct absent strong countervailing considerations.*

For example, in *Mendez Lynch v. Mendez Lynch*, the court held that "[i]f equitable tolling does not apply to ICARA and the Hague Convention, a parent who abducts and conceals children for more than one year will be rewarded for the misconduct by creating eligibility for an affirmative defense not otherwise available."

The Eleventh Circuit was the first appellate court to analyze the question of equitable tolling under ICARA in cases where a parent wrongfully removed a child and then concealed the child's whereabouts to prevent the other parent from filing within one year of the removal. The Eleventh Circuit addressed the issue in *Lops v. Lops* but did not reach a final conclusion. The Eleventh Circuit later reexamined the issue in *Furnes v. Reeves*. In *Furnes*, the court clearly held that "equitable tolling may apply to ICARA petitions for the return of a child where the parent removing the child has secreted the child from the parent seeking return." A number of other district court cases within the Eleventh Circuit have extended the reasoning of *Lops* and *Furnes*. Courts in other jurisdictions also have demonstrated their inclination to allow equitable tolling in concealment cases.

On the other hand, at least two courts have expressed reservations about treating the oneyear period in Article 12 as a statute of limitations. The court in *Toren v. Toren* categorically denied equitable tolling, albeit without using the term expressly, when it held:

> *The language of the Convention is unambiguous, measuring the one-year period from the "date of the wrongful . . . retention." It might have provided that the period should be measured from the date the offended-against party learned or had notice of the wrongful retention, but it does not. That is not surprising, since the evident import of the provision is not so much to provide a potential plaintiff with a reasonable time to assert any claims, as a statute of limitations does, but rather to put some limit on the*

uprooting of a settled child.

Meanwhile, the court in *Anderson v. Acree* delivered what ultimately might be the middle ground between the *Toren* ruling and the progeny of *Lops*. In *Anderson*, when considering the possibility of harm stemming from uprooting settled children, the court reasoned that:

> *This potential of harm to the child remains regardless of whether the petitioner has a good reason for failing to file the petition sooner, such as where the respondent has concealed the child's whereabouts. There is nothing in the language of the Hague Convention which suggests that the fact that the child is settled in his or her new environment may not be considered if the petitioning parent has a good reason for failing to file the petition within one year.*

The synthesis of these disparate views might be best expressed in the words of the court in *Belay v. Getachew*, which concluded:

The court agrees with *Anderson* to the extent that it identifies the intentions of the drafters to allow courts to take into account the child's circumstances (after the passage of time) when deciding whether to order a return. The Court believes, however, that courts faced with the present situation, where the actions of the abductor in concealing the child may have abetted the child in forming roots in the new country, must have the flexibility to take into account those actions in determining the outcome of the case under Article
12.

If the one-year deadline is read as a statute of limitations, then equitable tolling likely applies. Further, when the taking parent has hidden the child, courts are more likely to toll or equitably estop the taking parent's use of the well-settled defense. Additionally, some courts are lenient in determining the actual date of wrongful removal or retention.

III. THE AFFIRMATIVE DEFENSES OF ARTICLES 12, 13, AND 20

If the petitioner establishes a *prima facie* case for the return of the abducted child, the court must order the return of the child unless the respondent can rebut that *prima facie* case or establish one of the five affirmative defenses provided under the Hague Convention.168 The practical effect of the petitioner's establishment of a *prima facie* case is to shift the burden of proof to the respondent to establish one of the five affirmative defenses.

The five affirmative defenses are set forth in Articles 12, 13, and 20 of the Hague Convention

The first affirmative defense, which is enumerated in Article 12, is the well-settled defense. As discussed above, if the petition is filed less than one year from the date of the wrongful

removal of the child, the respondent *cannot* use the well-settled defense. The well settled defense must be proven by a preponderance of the evidence.

Article 13 establishes three more affirmative defenses under the Hague Convention: (1) the consent or acquiescence defense, which involves the petitioner's consent to or acquiescence in the removal or retention of the child; (2) the grave risk defense, which arises when the respondent contends that returning the child would place the child at grave risk of physical or psychological harm or otherwise place the child in an intolerable situation; and (3) the mature child's objection defense, which arises when the child objects to being returned, and the court finds that the child has attained an age and degree of maturity at which it is appropriate to take the child's views into account. The grave risk defense must be proven by clear and convincing evidence. The consent or acquiescence defense and the mature child defense must be proven by a preponderance of the evidence.

Article 20 of the Hague Convention establishes a fifth affirmative defense that rarely is used: the public policy defense. Like the grave risk defense, the public policy defense must be proven by clear and convincing evidence.

In addition to these acceptable defenses, respondent's counsel also may raise a "best interests of the child" defense. This is not a legitimate defense under the Hague Convention. Although it is not an acceptable defense, counsel nonetheless should be prepared for it.

The affirmative defenses specified in the Hague Convention are construed narrowly. ICARA explicitly states that "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." Courts have recognized that the exceptions to the Convention are "narrow."

Even if one of the affirmative defenses applies, the ultimate power to return the child still remains in the discretion of the court. Article 18 of the Convention states that "[t]he 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." In addition, the State Department has concluded that "[t]he courts retain the discretion to order the child returned even if they consider that one or more of the exceptions applies." Thus, even if the respondents prove an affirmative defense, the trial court may exercise its discretion and order a return "if such order would further the aims of the Hague Convention."

A. THE ARTICLE 12 WELL-SETTLED DEFENSE: THE CHILD HAS BECOME WELL SETTLED IN THE NEW SURROUNDINGS.

The well-settled defense is an affirmative defense to the demand for return of a wrongfully-removed child and is enumerated in Article 12 of the Hague Convention. The well settled defense provides that if proceedings are commenced more than one year after wrongful

removal, the child should not be returned if he or she has become settled in and is accustomed to his or her new surroundings. The well-settled defense is inapplicable if proceedings were commenced within one year of the wrongful removal Respondents opposing a child's return have the burden of establishing the well-settled defense through a preponderance of the evidence. As discussed below, even if some factors militate in favor of the well-settled defense, other factors may weigh against it, and ultimately, the court has discretion to order the return of the child notwithstanding any defense.

Neither ICARA nor the Hague Convention provides much guidance on the factors that should be used to determine whether a child is "settled in [the] new environment." The State Department's Public Notice 957 states that "nothing less than substantial evidence of the child's significant connections to the new country is intended to suffice to meet the respondent's burden of proof" for an Article 12 defense. Thus, courts will look beyond the passage of time and determine the degree to which the child is "in fact settled in or connected to the new environment so that, at least inferentially, return would be disruptive with likely harmful effects."

The court in *Koc v. Koc (In re Koc)*187 compiled a list of six factors to use in determining whether a child is settled in a new environment:

1) the age of the child;
2) the stability of the child's residence in the new environment;
3) whether the child attends school or day care consistently;
4) whether the child attends church regularly;
5) the stability of the abducting parent's employment; and
6) whether the child has friends and relatives in the new area.

The *Koc* court also distinguished that a "comfortable material existence" does not mean that a child is well-settled. The court went on to examine the mix of factors, including the child's attendance at three schools and living in three different homes in three years, the uncertain immigration status of the child and her mother and the unstable nature of the mother's employment history, before ultimately determining that the child was not settled. Other courts have adopted the *Koc* factors when analyzing whether the child is well-settled. Generally, when these courts find the presence of most of the *Koc* factors, they will find the child to be settled. For example, in *In re Robinson*, the court found that children were well-settled where the children had lived in the same area for 22 months prior to commencement of the action, had active involvement with extended family in the area, were doing well in school, had made friends, and were active participants in extracurricular activities. Similarly, in *Wojcik v. Wojcik*, the court held that children were well-settled where they had been in the United States for eighteen months and in their current residence for ten months, attended school or day care regularly, had friends and relatives in the new area, attended church regularly, the mother had stable employment, and the petitioning father was unable to show that the children had ties to their home country.

In addition to the *Koc* factors, courts also consider other factors in determining whether children are well settled. For example, courts have found that children are well-settled where the children speak English well or their English language skills are improving. Courts also may consider the health of the children.

Courts are unlikely to find that the children are well-settled within the meaning of the Hague Convention in cases where the children are deemed too young to establish connections to the community, where the abducting parents limit social exposure to a small group of friends and relatives, where the immigration status of parents is uncertain, where the children's ties to their habitual residence were considerably stronger than those to the new environment, or where the children have lived in multiple locations in a short span of time. Also, regardless of whether concealment of the children leads to equitable tolling of the one-year period, there is some indication that a court may consider the stresses and instabilities inherent in such concealment in determining whether the children are well-settled. In *Antunez-Fernandes v. Connors-Fernandes*, for example, the court exercised its discretion to return the children to their former habitual residence even after finding that the children were well-settled in order to prevent the abducting parent from benefiting from erecting multiple barriers to prevent the left behind parent from recovering or further interacting with the children.

Evidence that children have become well-settled also may be relevant to whether returning the children to their former residence could create a grave risk of psychological harm under Article 13(b). The Second Circuit has addressed this issue and provided that, while the issue of settlement could be considered in determining whether a grave risk existed under 13(b), it could never be the sole element in making that determination. Other courts have expressed hesitation about mixing the well-settled and grave risk defenses to avoid returning the children to their former residence.

B. THE ARTICLE 13 CONSENT OR ACQUIESCENCE DEFENSE: PETITIONERS CONSENTED TO OR ACQUIESCED IN THE REMOVAL OR RETENTION.

Under Article 13(a) of the Hague Convention, the court is not bound to return a child if the respondent establishes that the petitioner consented to or subsequently acquiesced in the removal or retention. Both defenses turn on the petitioner's subjective intent, but they are distinctly different. The defense of consent relates to the petitioner's conduct *before* the child' removal or retention, whereas the defense of acquiescence relates to "whether the petitioner *subsequently* agreed to or accepted the removal or retention." The respondent must prove these defenses by a preponderance of the evidence; however, even if one of these defenses is proven successfully, the court nonetheless retains discretion to order the child's return.

Courts have expressed that such consent can be proved successfully with relatively informal statements or conduct. Because consent requires little formality, courts will look beyond the words of the consent to the nature and scope of the consent, keeping in mind any conditions or

limitations imposed by the petitioner. Conversely, the *Friedrich v. Friedrich (Friedrich II)* court held that acquiescence requires "an act or statement with the requisite formality, such as testimony in a judicial proceeding; a convincing written renunciation of rights; or a consistent attitude of acquiescence over a significant period of time." The following are some of the most common arguments and actions that parents use in their attempts to prove or disprove the defenses of consent and acquiescence.

1. Authorization to Travel.

Often, a respondent produces a signed "Authorization to Travel" document as evidence that the petitioner gave consent for the child to change residences. Courts rarely accept this as evidence that the other parent consented to the child's removal. In *Mendez Lynch v. Mendez Lynch*, the court held that an Authorization to Travel, which allowed the children to travel freely, did not indicate that the other parent gave up his legal rights of custody. There, a father signed a broad Authorization to Travel that allowed the mother of the children to take the children out of Argentina. The court held that the "evidence [was] clear that the written consents to travel were given to facilitate family vacation-related travel, not as consent to unilaterally remove the children from Argentina at the sole discretion of Respondent."

2. Words and Actions of Left-Behind Parents.

Courts frequently echo the warning of the *Friedrich II* court that "[e]ach of the words and actions of a parent during the separation are not to be scrutinized for a possible waiver of custody rights." Here, a third party claimed that Mr. Friedrich stated that he was not seeking custody of his child because he lacked the means to support the child. The Sixth Circuit responded that, even if the statement was made, it is "insufficient evidence of subsequent acquiescence." Additionally, "isolated statements to third parties are not sufficient to establish consent or acquiescence."

3. Nature of Children's Removal.

When the abducting parent removes the child in a secretive fashion – for example, during the night, while the other parent is away, or without informing the other parent – a court is more likely to find that the other parent did not consent or acquiesce to the child's removal. In *Friedrich II*, the Sixth Circuit stated that "[t]he deliberately secretive nature of [the mother's] actions is extremely strong evidence that [the father] would not have consented to the removal of [the child]." One court referenced the abducting parent's "deception," which prevented any acquiescence by the left-behind parent.

C. THE ARTICLE 13 GRAVE RISK DEFENSE: THERE IS A GRAVE RISK THAT THE CHILD WOULD BE EXPOSED TO PHYSICAL OR PSYCHOLOGICAL HARM OR AN INTOLERABLE SITUATION IF RETURNED.

Under Article 13, a respondent may raise the defense that the child should not be returned due to the grave risk of either "physical or psychological harm" or the existence of an "intolerable situation." Either prong of this defense must be established by clear and convincing evidence.

As with other exceptions, courts consider the grave risk defense to be a narrowly drawn exception. Indeed, at least one court has cautioned that "[t]he exception for grave harm to the child is not license for a court in the abducted-to country to speculate on where the child would be happiest."

1. Grave Risk of Physical or Psychological Harm.

As a preliminary matter, courts often struggle with the distinction between a "risk of harm" and a "*grave* risk of harm." This requires a subjective judgment by the fact finder. The Seventh Circuit opined that "[t]he gravity of a risk involves not only the *probability* of harm, but also the *magnitude* of the harm if the probability materializes." Thus, a court may not only consider the probability of the threat of harm, but also the nature of the possible harm to the child.

Concepts of "magnitude" and "probability" of harm are relative and abstract, but courts have provided more concrete definitions. In *Friedrich v. Friedrich (Friedrich II)*, the court characterized grave risk as placing the child in imminent danger before the custody dispute was resolved in the country of habitual residence or at grave risk for serious abuse, neglect or "extraordinary emotional dependence" where the country of habitual residence could provide the child with adequate protection. In *Gaudin v. Remis*, the Ninth Circuit stated that an analysis of the grave risk defense "should be concerned only with the degree of harm that could occur in the immediate future." However, in *Walsh v. Walsh*, the First Circuit rejected the requirement that danger be imminent in order to establish the defense.

The "physical or psychological harm" exception requires that the alleged harm be "a great deal more than minimal." Courts will deny return of a child only when the child's danger is "grave" or "severe" and not just "serious." "The harm must be greater than what is normally expected when taking a child away from one parent and passing the child to another parent," and normal adjustment problems are not sufficient. "[E]ven incontrovertible proof of a risk of harm will not satisfy" this defense if the "risk of harm proven lacks gravity." In addition, the removing parent cannot complain that a child has grown used to the surroundings to which he or she was abducted and use those circumstances to deny return: "Under the logic of the Convention, it is the *abduction* that causes the pangs of subsequent return."

The prospect of sexual abuse generally will qualify as a "grave risk" of physical or psychological harm. It also will qualify as an "intolerable situation." With respect to other types of abuse, the result will depend on the facts of the case.

In *Reyes Olguin v. Cruz Santana*, the court held that there was a great risk of "severe" psychological harm upon the child's return to Mexico. Based on the testimony of a child psychologist, the court concluded that if repatriated, the child would experience "suicidal impulses generated by his prior trauma" of witnessing his father beat his mother, as well as his own experience of abuse. However, in *McManus v. McManus*, the court concluded that the psychological harm to the children if returned would be "serious," but not "grave" under Article 13(b), because any previous abuse to the children was sporadic. In *In re Application of Adan,* the court held that a totality of circumstances test may apply in determining the credibility of

child abuse allegations. In the end, even if the child may be exposed to psychological harm if repatriated, the court may nonetheless order the child's return if the psychological harm would not be grave.

Form

THIS DOCUMENT MUST BE NOTARIZED **THE BOTTOM OF EACH PAGE MUST BE SIGNED BY BOTH PARENTS** **PLEASE USE ONE (1) FORM PER CHILD**

Part I. Information About Child Traveling Abroad *(Please print or type)*

Child's Name	Date of Birth	Social Security Number	Country of Birth
First, Middle, Last	Month Day Year		

Child's Home Address	City	State	Zip Code

Country Passport Issued From	Passport Number	Passport Issuance Date	Passport Expiration Date	Place of Issuance

Special Medical Needs or Concerns

Name of Treating Doctor	Phone Number	Condition/Illness

Does Child Possess Right Of Citizenship To Secondary Country	Name of Country	Passport Number

Part II. Information Concerning PARENT ONE

(Traveling With Child: YES ( ) NO ( ) Relationship To Child: Mother / Father)

Parent's Name	Date of Birth	Social Security Number/Gov't I.D. Number	Country of Birth
First, Middle, Last	Month Day Year		

Parent's Home Address	City	State	Zip Code

Parent's Home Phone Number	Parent's Cell Phone Number	Parent's Email Address

Country Passport Issued From	Passport Number	Passport Issuance Date	Passport Expiration Date	Place of Issuance

Does PARENT ONE Posses Dual Citizenship	Country	Passport Number	Passport Issuance Date	Passport Expiration Date

PARENT ONE Employer	Telephone Number	Emergency Contact	Relationship	Contact Number

Legal Custodial Rights to Child	Court of Child's Jurisdiction	Court Index Number	Most Current Custody Order Date
Custodial Rights: Please list: Sole Custody, Joint-Custody, or, Non-Custodial Parent	If Court-Ordered Custody Order Please List Court Of Jurisdiction Of Child	If Court-Ordered Custody Order Please List Court Index Number	If Court-Ordered Custody Order Please List Date of Court Order

Part III. Information Concerning PARENT TWO (Traveling With Child: YES ( ) NO ( ) Relationship To Child: Mother / Father)

Parent's Name	Date of Birth			Social Security Number/Gov't I.D. Number	Country of Birth
First, Middle, Last	Month	Day	Year		

Parent's Home Address	City	State	Zip Code

Parent's Home Phone Number	Parent's Cell Phone Number	Parent's Email Address

Country Passport Issued From	Passport Number	Passport Issuance Date	Passport Expiration Date	Place of Issuance

Does PARENT TWO Possess Dual Citizenship	Country	Passport Number	Passport Issuance Date	Passport Expiration Date

PARENT TWO Employer	Telephone Number	Emergency Contact	Relationship	Contact Number

Legal Custodial Rights to Child	Court of Child's Jurisdiction	Court Index Number	Most Current Custody Order Date
Custodial Rights: Please list: Sole Custody, Joint-Custody, or, Non-Custodial Parent	If Court-Ordered Custody Order Please List Court Of Jurisdiction Of Child	If Court-Ordered Custody Order Please List Court Index Number	If Court-Ordered Custody Order Please List Date of Court Order

Part IV. Parent(s) Child Is Traveling With, Travel Departure and Return Dates, and Destination Of Child

Child Is Traveling With

PARENT ONE: **YES ( ) NO ( )** Please Initial: X_____	Name:	Date of Birth:
PARENT TWO **YES ( ) NO ( )** Please Initial: X_____	Name:	Date of Birth:

Travel Departure Date	Travel Return Date	Purpose of Travel	Country of Original Jurisdiction Of Child

Address Child Will Reside At During Trip	Telephone Number of Location	Name/Owner of Residence

Secondary Address Child Will Reside At During Trip	Telephone Number of Location	Name/Owner of Residence

Consent and Agreement For Child To Travel Abroad And Return Back To Home Country Of Original Jurisdiction

PARENT ONE Signature X:	PARENT TWO Signature X:

PURPOSE OF THIS CHILD TRAVEL CONSENT FORM	REGISTERING WITH CONSULATES and COURTS
This International Child Travel Consent Agreement has been created in order to provide clarity for any government and their respective agencies concerning issues surrounding the child who is traveling abroad with either one or both parents as asserted in this agreement. This sworn document was created and agreed to by the declaring parties to affirm their intent and agreement concerning the traveling child, the country of habitual residency as contained herein and the jurisdiction of the courts located in the child's country of habitual residency to determine all issues associated with the child. The affirming signatories of this International Travel Child Consent Agreement agree to the terms and conditions as set out here including the return date of the child to their home country. Should any party to this agreement breach this agreement, both parties hereby consent to law enforcement intervention in the country the child is wrongfully detained in, and further agree to have law enforcement located where the child is being wrongfully detained to return the child immediately to the other parent who has had their rights of custody granted in the country of the child's habitual residency violated, or, as stipulated by a court order issued by a court of original jurisdiction overseeing the welfare of the child.	It is recommended that each individual traveling abroad with a child or any custodial parent consenting to allow a minor to travel abroad notify their country's consulate or embassy located in the city and country the minor is traveling to. This includes the dates of travel and the location(s) where the child will be residing while abroad. It is recommended that this international travel child consent agreement is filed with each consenting parent's country's consulate or embassy located overseas and in the country where the child will be traveling to prior to departure. It is recommended that this international travel child consent agreement is filed with the foreign country's consulate or embassy located in the child's country of habitual residency prior to the child's departure to that country. It is recommended that this international travel child agreement is filed with any court overseeing issues of child custody.

Part V. Issues Surrounding The Child - PARENT ONE

Is PARENT ONE Traveling With The Child? **Yes (_____)** **No (_____)** **Please Initial In Correct Box.**

IF PARENT ONE IS NOT TRAVELING WITH CHILD, PARENT ONE DOES NOT NEED TO FILL OUT THE REMAINING PART V OF THIS DOCUMENT. HOWEVER, PARENT ONE IS REQUIRED TO SIGN EACH PAGE OF THIS DOCUMENT BELOW.

If PARENT ONE Is Traveling Abroad With Child, PARENT ONE Affirms The Following:

1. The habitual residence of the child is:

City	State	Country

Affirmed By PARENT ONE: _____ (Signature Required).

2. PARENT ONE of the child hereby affirms that the purpose of this trip is for either vacation, personal reasons, or business purposes. PARENT ONE affirms that the child's trip abroad is not for relocation purposes and intends to return child to country of child's jurisdiction on the date stated in this travel consent document.
Affirmed By PARENT ONE: _____ (Signature Required).

3. PARENT ONE of child agrees to follow the rules of law associated with the country of the child's original jurisdiction.
Affirmed By PARENT ONE: _____ (Signature Required).

4. PARENT ONE affirms they have no intent to change the child's jurisdiction from the country of present jurisdiction.
Affirmed By PARENT ONE: _____ (Signature Required).

5. PARENT ONE affirms that they have no intent to relocate with the child to another country but will return with child to child's home country of original jurisdiction. PARENT ONE affirms that a failure to return the child to their country of original jurisdiction could violate the child's other parent's custody rights, and affirms the importance and value of both child and their other parent to have constant and consistent contact, as this is in the best interest of the child. Should PARENT ONE fail to return child to their country of habitual residency without written consent by the child's other parent or court order, then this act may be a violation of various criminal or civil laws located in the child's country of habitual residency. In addition, the wrongful detention of the child may be a violation of various criminal and civil laws in the country the child is wrongfully detained in. Furthermore, failure to return the child to their home country of jurisdiction may be a breach of court orders issued by a court located in the child's country of habitual residency that possess jurisdiction for the welfare of the child. Should PARENT ONE fail to return the child to country of habitual residency as outlined in this agreement, PARENT ONE consents to allow local law enforcement located in the country the child is wrongfully detained in to assist the child's other parent reunite with the child and so that parent can return the child immediately to their home country of original jurisdiction unless a court order issued by the court of original jurisdiction located in the child's home country states otherwise or if a court located in the country where the child is wrongfully detained in orders that the child is prohibited from departing the country.
Affirmed By PARENT ONE: _____ (Signature Required).

6. PARENT ONE affirms that the child is to be returned to their country of habitual residency as stated herein. Should both parents agree to extend the child's trip by more than two (2) consecutive days, both parents must agree in writing to do so. Any extension of travel time abroad for the child is not to be considered by either party or a court of law as either parental consent to relocate abroad or either parental acquiescence to enable the child to relocate abroad or change the country of jurisdiction overseeing the child's welfare.
Affirmed By PARENT ONE: _____ (Signature Required).

7. PARENT ONE agrees that should the child be required to remain abroad outside of the intended travel period due to medical emergencies related to injury or illness to PARENT ONE, then PARENT ONE hereby consents that the child's other parent is given full authority to return the child to the child's country of original jurisdiction so long as such agreement is not in violation of a court order issued by a court of original jurisdiction responsible with overseeing the child's welfare.
   Affirmed By PARENT ONE: _____ (Signature Required).

8. PARENT ONE states that if they have previously shipped any household or personal items to a country that is not the child's country of habitual residency possessing jurisdiction of the child, or if they have purchased any household or personal items and had them shipped to a country that is not possessing a right of jurisdiction of the child, then PARENT ONE affirms that the purchase and/or delivery of any personal or household items to a foreign country does not constitute an intent, understanding, or permission between PARENT ONE and the child's other parent to relocate abroad.
   Affirmed By PARENT ONE: _____ (Signature Required).

9. PARENT ONE affirms they have not entered into any written or oral agreement with child's other parent to relocate outside of the child's country of habitual residency.
   Affirmed By PARENT ONE: _____ (Signature Required).

10. PARENT ONE affirms that in the event of extended hospitalization or in the event of their death while traveling abroad, that the child's other parent listed in this travel agreement will be responsible for the welfare of the child, and that the child will be immediately returned to the child's country of habitual residency, whereas, the courts already possessing jurisdiction of the child's welfare will be responsible for any future determinations of the child. For the purpose of this agreement , the term 'extended hospitalization' will mean PARENT ONE spends four (4) or more consecutive days in the hospital.
    Affirmed By PARENT ONE_____ (Signature Required).

11. PARENT ONE affirms they are signing this document on their own volition and are not being coerced or threatened to agree to terms contained herein. PARENT ONE affirms that the return of the child to the other parent should PARENT ONE refuse to return with the child to the child's country of habitual residency will not place the child in grave risk of physical or psychological harm or otherwise place the child in an intolerable situation.
    Affirmed By PARENT ONE: _____ (Signature Required).

12. PARENT ONE affirms that the other parent listed herein has not previously placed them in grave risk of physical or psychological harm or otherwise previously placed them in an intolerable situation, thereby causing them to consider not returning to the child's country of habitual residency.
    Affirmed By PARENT ONE: _____ (Signature Required).

13. PARENT ONE affirms they will return with the child they are traveling abroad with and comply with the terms of this agreement along with any previous court order, the rules of law created that exist in the country the child is located in during travel, and the rules of law created in the country of the child's habitual residency.
    Affirmed By PARENT ONE: _____ (Signature Required).

Part VI. Issues Surrounding The Child – PARENT TWO

Is PARENT TWO Traveling With The Child? Yes (_____) No (_____) Please Initial In Correct Box.

IF PARENT TWO IS NOT TRAVELING WITH CHILD, PARENT TWO DOES NOT NEED TO FILL OUT THE REMAINING PART VI OF THIS DOCUMENT. HOWEVER, PARENT TWO IS REQUIRED TO SIGN EACH PAGE OF THIS DOCUMENT BELOW.

If PARENT TWO Is Traveling Abroad With Child, PARENT TWO Affirms The Following:

1. The habitual residence of the child is:

City	State	Country

Affirmed By PARENT TWO: _____ (Signature Required).

2. PARENT TWO of the child hereby affirms that the purpose of this trip is for either vacation, personal reasons, or business purposes. PARENT TWO affirms that the child's trip abroad is not for relocation purposes and intends to return child to country of child's jurisdiction on the date stated in this travel consent document.
Affirmed By PARENT TWO: _____ (Signature Required).

3. PARENT TWO of child agrees to follow the rules of law associated with the country of the child's original jurisdiction.
Affirmed By PARENT TWO: _____ (Signature Required).

4. PARENT TWO affirms she has no intent to change the child's jurisdiction from the country of present jurisdiction.
Affirmed By PARENT TWO: _____ (Signature Required).

5. PARENT TWO affirms that they have no intent to relocate with the child to another country but will return with child to child's home country of original jurisdiction. PARENT TWO affirms that a failure to return the child to their country of original jurisdiction could violate the child's other parent's custody rights, and affirms the importance and value of both child and their other parent to have constant and consistent contact, as this is in the best interest of the child. Should PARENT TWO fail to return child to their country of habitual residency without written consent by the child's other parent or court order, then this act may be a violation of various criminal or civil laws located in the child's country of habitual residency. In addition, the wrongful detention of the child may be a violation of various criminal and civil laws in the country the child is wrongfully detained in. Furthermore, failure to return the child to their home country of jurisdiction may be a breach of court orders issued by a court located in the child's country of habitual residency that possess jurisdiction for the welfare of the child. Should PARENT TWO fail to return the child to country of habitual residency as outlined in this agreement, PARENT TWO consents to allow local law enforcement located in the country the child is wrongfully detained in to assist the child's other parent reunite with the child and so that parent can return the child immediately to their home country of original jurisdiction unless a court order issued by the court of original jurisdiction located in the child's home country states otherwise or if a court located in the country where the child is wrongfully detained in orders that the child is prohibited from departing the country..
Affirmed By PARENT TWO: _____ (Signature Required).

6. PARENT TWO affirms that the child is to be returned to their country of habitual residency as stated herein. Should both parents agree to extend the child's trip by more than two (2) consecutive days, both parents must agree in writing to do so. Any extension of travel time abroad for the child is not to be considered by either party or a court of law as either parental consent to relocate abroad or either parental acquiescence to enable the child to relocate abroad or change the country of jurisdiction overseeing the child's welfare.
Affirmed By PARENT TWO: _____ (Signature Required).

7. PARENT TWO agrees that should the child be required to remain abroad outside of the intended travel period due to medical emergencies related to injury or illness of PARENT TWO, then PARENT TWO hereby consents that the child's other parent is given full authority to return the child to the child's country of original jurisdiction so long as such agreement is not in violation of a court order issued by a court of original jurisdiction responsible with overseeing the

child's welfare.
Affirmed By PARENT TWO: _____ (Signature Required).

8. PARENT TWO states that if they have previously shipped any household or personal items to a country that is not the child's country of habitual residency possessing jurisdiction of the child, or if they have purchased any household or personal items and had them shipped to a country that is not possessing a right of jurisdiction of the child, then PARENT TWO affirms that the purchase and/or delivery of any personal or household items to a foreign country does not constitute an intent, understanding, or permission between PARENT TWO and the child's other parent to relocate abroad.
Affirmed By PARENT TWO: _____ (Signature Required).

9. PARENT TWO affirms they have not entered into any written or oral agreement with child's other parent to relocate outside of the child's country of habitual residency.
Affirmed By PARENT TWO: _____ (Signature Required).

10. PARENT TWO affirms that in the event of extended hospitalization or in the event of their death while traveling abroad, that the child's other parent listed in this travel agreement will be responsible for the welfare of the child, and that the child will be immediately returned to the child's country of habitual residency, whereas, the courts already possessing jurisdiction of the child's welfare will be responsible for any future determinations of the child. For the purpose of this agreement, the term 'extended hospitalization' will mean PARENT TWO spends four (4) or more consecutive days in the hospital.
Affirmed By PARENT TWO_____ (Signature Required).

11. PARENT TWO affirms they are signing this document on their own volition and is not being coerced or threatened to agree to terms contained herein. PARENT TWO affirms that the return of the child to the other parent should PARENT TWO refuse to return with the child to the child's country of habitual residency will not place the child in grave risk of physical or psychological harm or otherwise place the child in an intolerable situation.
Affirmed By PARENT TWO: _____ (Signature Required).

12. PARENT TWO affirms that the other parent listed herein has not previously placed them in grave risk of physical or psychological harm or otherwise previously placed them in an intolerable situation, thereby causing them to consider not returning to the child's country of habitual residency.
Affirmed By PARENT TWO: _____ (Signature Required).

13. PARENT TWO affirms they will return with the child they are traveling abroad with and comply with the terms of this agreement along with any previous court order, the rules of law created that exist in the country the child is located in during travel, and the rules of law created in the country of the child's habitual residency.
Affirmed By PARENT TWO: _____ (Signature Required).

Part VII. Registration

PARENT ONE and PARENT TWO hereby consent and agree that this international travel child consent form will be filed by the non-traveling parent (if there exists a non-traveling parent) with the foreign consulate or embassy of the nation of the child's habitual residency and citizenship that is located in the country or countries that the child is expected to travel.

PARENT ONE and PARENT TWO hereby consent and agree that this international travel child consent form will be filed by the non-traveling parent (if there exists a non-traveling parent) with the consulate(s) or embassy(s) of the nation the child is traveling to that is located in the child's country of habitual residency.

Both PARENT ONE and PARENT TWO hereby affirm that the purpose of filing this international travel consent form with the above consulates is to affirm they are willing to obey the terms of this agreement. Should either PARENT ONE or PARENT TWO traveling

with the child fail to return the child as per this agreement or a court order issued by the country possessing jurisdiction of the child, the parent not complying with the terms of this agreement affirms that the child should be returned to the other parent immediately with the assistance of law enforcement located in the country the child is detained in, the courts, or both. Furthermore, is affirmed that should a child be wrongfully detained abroad, the taking parent affirms that the non-taking parent should be allowed to travel with the child to the child's home country of original jurisdiction immediately so long as this consent does not breach local law.

Should both PARENT ONE and PARENT TWO travel abroad together with the child, it is hereby agreed that either parent can register this agreement with the two respective government authorities. Upon registration confirmation, the registering parent must provide written proof of notification prior to the child traveling abroad that this international travel child consent agreement has been filed with the respective governments.

Agreed by PARENT ONE: _____X Date:_____

Agreed by PARENT TWO: _____X Date:_____

Part VIII. Sworn Statement and Signatures

This Agreement is a binding international travel child consent agreement that has been entered into at the free will of each of the parties below. Each party affirms that they have honestly and accurately represented themselves in this agreement

The party signing below swears that the above statements are true:

Signature of PARENT ONE	**Date**	**Home Address**

Witnessed and Notarized By:

Name:	
Address:	
Telephone Number:	

(Affix Notary Seal and Signature Above)

Signature of PARENT TWO	**Date**	**Home Address**

Witnessed and Notarized By:

Name:	
Address:	
Telephone Number:	

(Affix Notary Seal and Signature Above)

Take Note of….

- Check out the website for the mediation association of Colorado (theMAC). They have updated the site to make it faster and easier to navigate. It now provides tools for the public to help them understand what mediation is, how to find a mediator, and how to become a member. There are also useful ways for members to learn about available classes, paying their bills, and how to share their mediation skills

  http://www.coloradomediation.org

- On June 14, 2013 the United States Social Security Administration announces that their department will no longer have surgery as a requirement for a transgender person to change his or her gender marker. Rather the SSA, similarly to the state department, will use “appropriate clinical treatment” as the new standard. This policy change is a big win for the transgender community.