

Date visited 10/05/12

International Parental Child Abduction Mexico

GENERAL INFORMATION: Mexico is a federal republic formed by 31 states and the Federal District. A party to the Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) since 1991, Mexico is the destination country of the greatest number of children abducted from the United States by a parent. The Hague Abduction Convention provides a civil legal mechanism for parents to seek access to or the return of children wrongfully removed or retained in Mexico.

With respect to child custody, Mexican law distinguishes between parental authority (patria potestad) and custody (guarda y custodia). Patria potestad refers to parents' responsibilities and rights regarding the child, including the responsibility to care for the child, reside with the child, and provide for the child's necessities (for example, food, education and development). It also includes the right to correct the child, as well as the right to control and manage any property or rights the child may have.

Absent a court order, parents have equal patria potestad rights and responsibilities to their minor children. In reality, one parent may make all decisions for the child. If parents cannot agree over the exercise of the patria potestad, they may ask a judge to decide which parent makes the decision. If the parents are deceased or unavailable, the paternal grandparents exercise patria potestad; if they are deceased or unavailable, the maternal grandparents exercise these rights.

Most children live with their mothers after divorce. If fathers want the children to reside with them, it is typical that boys will live with the father and girls will live with their mother. At age 14, the child may decide which parent the child wishes to live with.

Mexican Immigration authorities confirm the consent of both parents before allowing any minor of any nationality to leave the country; any parent traveling alone with a minor must present a written statement from the absent parent. Mexican Foreign Ministry officials requires the signature of both parents for children younger than 18 years to obtain Mexican passports.

The Mexican agency responsible for locating missing children is the police authority. Locating missing children can be a challenge in Mexico. The Department of State's annual [Compliance Report on the Hague Abduction Convention](#) details many long unresolved child abduction cases to Mexico for which the children have not been located.

For information concerning travel to Mexico, including information about the location of the U.S. Embassy and Consulates, health conditions, currency and entry regulations, and crime and security, please see the Department of State's [Country Specific Information](#).

LEGAL SYSTEM: Mexico is a civil law country, which means that court decisions in Mexico are based upon Mexican civil code. In each of the 31 states in Mexico, state law establishes the structure and function of the courts, as well as its own constitution, laws, regulations, and decrees. Generally, state courts are organized in the following way: the highest appellate court is known as the Superior Court of Justice (Tribunal Superior de Justicia); this court is followed by the Courts of

Date visited 10/05/12

First Instance (Tribunales de Primera Instancia) of ordinary jurisdiction, responsible for hearing civil, criminal and commercial causes. Immediately below, are the minor courts of special jurisdiction, such as the family courts and bankruptcy courts. Family law courts handle divorce and custody cases.

RETAINING AN ATTORNEY: Mexico's National System for the Comprehensive Development of the Family, known as DIF, (Sistema Nacional para el Desarrollo Integral de la Familia) offers free legal assistance to vulnerable adults and children in Mexico. The system consists of one federal DIF institute, 32 DIF agencies (one for each state and one for the Federal District – DF in Spanish) and 2, 274 municipal DIF agencies. At the state level, the wife of the governor is often the head of the DIF.

A parent does not need to retain private counsel to file a Hague Convention petition in Mexico. The Central Authority of Mexico (Secretaria de Relaciones Exteriores) will, upon receipt of the Hague Convention application, prepare a written communiqué for the court, containing an explanation of the Hague Convention and its objectives. A parent may choose to retain an attorney, however, to follow-up on the case and to provide them with direct information on the status of the case. A retained attorney should contact the Central Authority of Mexico as soon as possible after the application is submitted.

It is important to note that while the Central Authority of Mexico does not represent Hague Convention applicants in court or assign an attorney to take the case, the Central Authority of Mexico will prepare the required documentation to submit the case in court. In Mexico, Family Court judges are authorized to intervene ex-officio in family matters and therefore have the power to enforce their decisions without the involvement of private counsel. Nevertheless, parents in the United States have said that having private legal representation resulted in fewer delays in the application process.

CITIZENSHIP / PASSPORT MATTERS: Children born in Mexico or born abroad to Mexican parents are entitled to Mexican citizenship. Mexican law recognizes dual nationality for Mexicans by birth. U.S. citizens who are also Mexican nationals are considered Mexican by local authorities.

Mexican law requires that any non-Mexican citizen under the age of 18 departing Mexico must carry notarized written permission from any parent or guardian not traveling with the child to or from Mexico. This permission must include the name of the parent, the name of the child, the name of anyone traveling with the child, and the notarized signature(s) of the absent parent(s).

A parent can prevent issuance of Mexico's passport to their child, because issuance of a Mexican passport to a minor child requires the signed consent of both parents. Mexico does not allow a child to enter on a parent's passport. The child needs his/her own passport.

Exit Permits: Mexican law requires that any non-Mexican citizen under the age of 18 departing Mexico must carry notarized written permission from any parent or guardian not traveling with the child to or from Mexico. This permission must include the name of the parent, the name of the child, the name of anyone traveling with the child, and the notarized signature(s) of the absent parent(s).

MEDIATION: Mexico's National System for the Comprehensive Development of the Family, known as DIF, (Sistema Nacional para el Desarrollo Integral de la Familia) offers free legal assistance to vulnerable adults and children in Mexico. The system consists of one federal DIF

Date visited 10/05/12

institute, 32 DIF agencies (one for each state and one for the Federal District – DF in Spanish) and 2, 274 municipal DIF agencies. As such, this system may be a helpful tool for parents seeking mediation services. It is important to note that DIF does not represent Hague Convention applicants in court, nor do they assign attorneys to take Hague Convention cases.

HAGUE ABDUCTION CONVENTION: The Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") came into force between the United States and Mexico on October 1, 1991. Therefore, Hague Convention provisions for return would apply to children abducted or retained after October 1, 1991. Parents and legal guardians of children taken to Mexico prior to October 1, 1991, may still submit applications for access to the child under the Hague Convention in some cases. Mexico has been cited in the annual Compliance Report on the Hague Abduction Convention as a country demonstrating a pattern of noncompliance in the areas of law enforcement performance and judicial performance.

Mexico has no specific federal legislation for implementing the Hague Convention; rather, it is implemented under existing Mexican state law. Each state has an independent judicial organization empowered to apply and interpret the laws of that state. The judiciary in each state is headed by a Superior Court of Justice and contains civil, family, and criminal judges. Family court judges have jurisdiction for resolving disputes concerning custody, rights of access, and child abduction based on the laws of that state. They therefore receive and rule on Hague Convention cases.

Mexico has established a Central Authority charged with applying the procedures of the Hague Convention by working with state authorities. The Central Authority of Mexico is part of the Ministry of Foreign Affairs (Secretaría de Relaciones Exteriores), and is responsible for cases of children abducted from and abducted to Mexico.

The address of Mexico's Central Authority is:

ATTN: Reyna Martinez Lopez

Secretaría de Relaciones Exteriores

Dirección General de Protección y Asuntos Consulares

Oficina de Derecho de Familia

Plaza Juárez No. 20, Piso 17

Colonia Centro, Del. Cuauhtemoc

06010 Mexico, D.F.

MEXICO

Involvement of specific offices varies from state to state. The Central Authority generally coordinates its work through the offices of Desarrollo Integral de la Familia (DIF), an agency similar to Child and Family Services in the United States. Hague cases may also involve the state prosecuting attorney's office.

A parent wishing to initiate a Hague Abduction Convention case should prepare and submit an application (see details below) to the Mexican Central Authority. The Mexican Central Authority will, upon receipt of the Hague Convention application, prepare a written communiqué for the court, containing an explanation of the Hague Convention and its objectives. The special circumstances of the specific case and its possible solution are also outlined for the court. It is important to mention that the Central Authority of Mexico does not represent Hague Convention applicants in court, nor do they assign an attorney to take the case.

The first step in a Hague Convention case in Mexico is to confirm the child's location. Since a Hague

Date visited 10/05/12

case can only be heard in the court with appropriate jurisdiction, an application cannot move forward in the judicial system in Mexico until the child's location is known. If an application contains a known address for the child, the Central Authority of Mexico will forward the Hague application and its supporting documents to the Superior Court of Justice of the state where the child is believed to be residing. The Superior Court will then assign the case to a specific Family Court judge.

When no specific address for the child is known, the Central Authority of Mexico submits a request to the appropriate police authority for them to locate the child. This can be a time consuming process and can cause significant delays in the processing of a case. Therefore, it is crucial to include in the application the most complete information available concerning the location, or possible location based on location of extended family members, of the child.

Once the case is with the court, the Family Court judge sets the schedule for the rest of the case. Generally, the family court judge will encourage the taking parent to voluntarily return the child. If the taking parent refuses, the judge is able to order the parent from leaving or taking the child (or both) from the jurisdiction of the court until the Hague Convention petition has been decided. If the taking parent is believed to be a flight risk or if a voluntary return is not desired, the Hague application or supporting documents should clearly reflect this information.

If a voluntary return fails or is not requested —though the procedures vary slightly from state-to-state in Mexico— the taking parent is generally notified of the date and time of the Hague hearing in court. The amount of notice given varies, but is usually at least 24 hours as is required by Mexican law. Whenever possible, at the time the notice is given to the taking parent, the child is taken into the custody of the DIF and resides in a facility managed by the state until the case is resolved.

Generally, the local courts notify the Central Authority of Mexico in advance of the hearing date and time set by the judge's office. If possible, it is important for the applicant parent to attend the hearing in Mexico. After hearing from the parties in attendance at the hearing, the judge will issue the order on the merits of the case. The judge will either grant the return of the child to the United States or deny the return based on limited exceptions as outlined on the text of The Hague Convention. As this order is usually effective immediately, it is important for the applicant parent to be present to coordinate the logistics of the child's return, if the return is ordered.

It is important to mention that either party may appeal a Hague court decision, therefore delaying the enforcement of an initial return order if it was granted. To file an appeal an applicant must retain private counsel. Private counsel should consult directly with Central Authority of Mexico to discuss appeal procedures.

In addition to the right to appeal a Hague decision, a special appeal process is available in the Mexican judicial system called an Amparo. An amparo is a claim that a constitutional right has been violated by a government agency or a government process. When an amparo has been filed, all action ceases on a Hague case until the amparo has been ruled upon-- often many months later. An amparo can be filed at any time during the legal proceedings of a Hague case, essentially staying the matter even before a judge has had the opportunity to rule on the Hague petition before his court. Decisions on amparos can be appealed, further delaying any action by the judge hearing the Hague case. Despite the fact that abuses of the amparo appeal system in Mexico may be decreasing, as more judges and attorneys better understand the principles of the Hague Convention, several cases have been delayed for years while amparos and their appeals have prevented progress of a Hague case.

Date visited 10/05/12

APPLICATION INSTRUCTIONS: To apply for assistance under the Hague Adoption Convention in Mexico, a parent or legal guardian needs to submit the following:

1. The U.S. Central Authority application form. This form may be obtained from the Office of Children's Issues or can be [downloaded](#) from our website. Please refer to Appendix 2 of the of the U.S. Central Authority's brochure, "International Parental Child Abduction" for instructions on completing the application form.
2. Originals or certified copies of the child/ren's birth certificate(s), your marriage certificate, and divorce decree, as appropriate.
3. A certified copy of the custody order in effect when the child was taken to Mexico or a copy of the state law that establishes your right to custody, and any agreements regarding custody or access. Note: It is not necessary to have sole custody to apply for assistance under the Hague Convention. If no custody order exists, and your state's laws are silent as to a parent's right of custody, an affidavit of law from an U.S. attorney may be acceptable.
4. Photos of the child and of the taking parent. These photos will not be returned to you.
5. Translations into Spanish for all English-language documents, including the application and any extra pages attached to the application.

Please remember:

- All documents should be typed or very clearly printed in black ink, but should be signed in blue ink. The English and Spanish language applications submitted must clearly have an original signature.
 - Fill out the Hague application as completely as possible. The physical descriptions of the taking parent and child (Parts I and III) are especially important, and should be completed regardless of the existence of accompanying photos. Also important is your explanation of the circumstances leading up to and surrounding the child's removal from the United States (Part IV on the application). In cases where the child has been gone for a few months or more, your statement -which can be done on a separate piece of paper-should be as detailed as possible regarding any actions you have taken to recover the child in the interim.
- If you are concerned that the taking parent will flee or hide the child when notified of the proceedings, it is very important that you note this and state the reason for this concern in section VIII of the application or on a separate page. You may attach an additional sheet if needed.
- There is no fee to file a Hague application in Mexico.
- Do not submit an incomplete application, as Mexican Central Authority officials are unable to take action until all documentation and requirements are complete.

CIVIL REMEDIES: In lieu of filing a Hague Convention application, a parent or legal guardian may seek the recognition of an U.S. custody order in the Mexican judicial system. This process takes several months and requires the services of a Mexican attorney. A parent or legal guardian may also fight for custody directly through the Mexican court system. This also requires the services of a Mexican attorney, and may preclude the option of filing a Hague Convention application, or pursuing an application already in progress. Consult with an attorney to ensure you have ample information to decide on which option to pursue. For examples of Mexico's custody laws, see the Code of Civil Procedure of the Federal District (C.P.C.D.F.) art. 94 and the Civil Code for the Federal District (C.C.D.F.) articles 283-285. The Civil Code for the Federal District is available in [Spanish online](#).

CRIMINAL REMEDIES: Parental child abduction is a crime in Mexico, and a parent may consider

Date visited 10/05/12

filing criminal charges against the taking parent. Please note, however, that this may negatively affect the outcome of a Hague Convention case and does not guarantee the child's return.

For information on possible criminal remedies, please contact local law enforcement authorities or the nearest office of the Federal Bureau of Investigation. Information is also available on the Internet at the web site of the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention at <http://www.ojjdp.ncjrs.org>. Please note that criminal charges may complicate a Hague Convention case. Contact the Mexico officer in the Office of Children's Issues for specific information.

VISITATION RIGHTS/ACCESS RIGHTS: A parent or legal guardian can file a Hague application for access, thereby seeking to enforce visitation rights pursuant to the Hague Abduction Convention.

In the alternative, a parent or legal guardian may also retain a foreign attorney to register and then enforce a visitation agreement in family law court in Mexico. Judges generally give strong weight to the right of the children to visit their parents (*derecho de convivencia con los padres*), except when there is risk to the child. (See Code of Civil Procedure of the Federal District art. 94).

EMBASSY CONTACT INFORMATION: The U.S. Embassy is located in Mexico City at Paseo de la Reforma 305, Colonia Cuauhtemoc; telephone from the United States: 011-52-55-5080-2000; telephone within Mexico City: 5080-2000; telephone long distance within Mexico 01-55-5080-2000. The Embassy can also be contacted by e-mail at: ccs@usembassy.net.mx. The Embassy's web page is <http://mexico.usembassy.gov/eng/main.html>.

In addition to the Embassy, there are several United States Consulates and Consular Agencies located throughout Mexico.

CONSULATES:

Ciudad Juarez: Paseo de la Victoria #3650, Fracc. Partido Senecú; telephone 011-52-656-227-3000.

Guadalajara: Progreso 175, Col. Americana; telephone 011-52-333-268-2100.

Hermosillo: Calle Monterrey 141 Poniente, Col. Esqueda; telephone 011-52-662-289-3500.

Matamoros: Avenida Primera 2002 y Azaleas; telephone 011-52-868-812-4402.

Merida: Calle 60 No. 338 K x 29 y 31, Col. Alcala Martin; telephone 011-52-999-942-5700.

Monterrey: Avenida Constitucion 411 Poniente; telephone 011-52-818-345-2120.

Nogales: Calle San Jose, Fraccionamiento "Los Alamos"; telephone 011-52-631-311-8150.

Nuevo Laredo: Calle Allende 3330, Col. Jardin; telephone 011-52-867-714-0512.

Tijuana: Avenida Tapachula 96, Col. Hipodromo; telephone 011-52-664-622-7400.

CONSULAR AGENCIES:

Acapulco: Hotel Continental Emporio, Costera Miguel Aleman 121 - Local 14; telephone 011-52-744-484-0300 or 011-52-744-469-0556.

Cabo San Lucas: Blvd. Marina Local C-4, Plaza Nautica, Col. Centro; telephone 011-52-624-143-3566.

Cancun: Plaza Caracol Two, Second Level, No. 320-323, Boulevard Kukulcan, Km. 8.5, Zona Hotelera; telephone 011-52-998-883-0272.

Ciudad Acuna: Alfonso Gonzalez Ocampo # 305, Col. Centro; telephone 011-52-877-772-8179.

Cozumel: Plaza Villa Mar en El Centro, Plaza Principal, (Parque Juárez between Melgar and 5th Ave.) 2nd floor, Locales #8 and 9; telephone 011-52-987-872-4574.

Ixtapa/Zihuatanejo: Hotel Fontan, Blvd. Ixtapa; telephone 011-52-755-553-2100.

Date visited 10/05/12

Mazatlan: Hotel Playa Mazatlán, Playa Gaviotas #202, Zona Dorada; telephone 011-52-669-916-5889.

Oaxaca: Macedonio Alcala No. 407, Interior 20; telephone 011-52-951-514-3054 or 011-52-951-516-2853.

Piedras Negras: Abasolo 211, Local #3, Col. Centro; telephone 011-52-878-782-5586 or 011-52-878-782-8664.

Puerto Vallarta: Paradise Village Plaza, Paseo de los Cocoteros #1, Local #4, Interior #17, Nuevo Vallarta; telephone 011-52-322-222-0069.

Reynosa: Calle Monterrey #390, Esq. Sinaloa, Col. Rodríguez; telephone: 011-52-899- 923-9331

San Luis Potosi: Edificio "Las Terrazas", Avenida Venustiano Carranza 2076-41, Col. Polanco; telephone 011-52-444-811-7802 or 011-52-444-811-7803.

San Miguel de Allende: Dr. Hernandez Macias #72; telephone 011-52-415-152-2357.