

Flight Risk of Foreign-Born Parents with Children

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INTRODUCTION

In *Lopez-Valenzuela v. Apaio*, the Ninth Circuit found that “there is no evidence that undocumented status correlates closely with unmanageable flight risk.”¹ Undocumented persons are less likely to abduct children to a foreign country because they lack the legal status to re-enter the country. As discussed in the material below, documented parents with legal status are more likely to abduct internationally.

Both U.S. born and foreign born children can be at risk of abduction. There are protections guaranteed to immigrant adult victims and child victims of domestic violence, sexual assault, child abuse, human trafficking,² sex trafficking, labor trafficking, and commercial sexual exploitation of children include immigration relief, protection from deportation, confidentiality protections³ and access to certain benefits and services. Immigration relief for adult and child victim of crime include: (1) VAWA self-petition; (2) VAWA cancellation of removal; (3) VAWA suspension of deportation; (4) T visas; (5) U visas; (6) Continued Presence; (7) Special Immigrant Juvenile Status.

The ABA Center on Children and the Law worked with the National Center for Missing and Exploited Children (NCMEC), Child Find of America, Inc., and Vanished Children’s Alliance to conduct a survey of left-behind parents.⁴ The statistics below are from the survey that the organizations conducted.

- Abductors and left-behind parents often differed in terms of background, citizenship, and education.
 - Different nationalities (83 percent)
 - Different Ethnicities (69 percent)
 - Different Religions (58 percent)

¹ *Lopez-Valenzuela v. Apaio*, 770 F.3d 772, 786 (9th Cir. 2014).

² Human trafficking is a phenomenon occurring in communities across the U.S. in which traffickers exploit vulnerable individuals including children. Victims of human trafficking are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. For a significant proportion (62.7%) of sex trafficked children the trafficker is a family member and 48% are a parent or guardian. Cole, J., & Sprang, G. Sex trafficking of minors in metropolitan, micropolitan, and rural communities. *Child Abuse & Neglect* (2014), <http://dx.doi.org/10.1016/j.chiabu.2014.07.015>

³ VAWA confidentiality protection includes nondisclosure of the existence of or any information contained in the survivor’s VAWA related immigration case. VAWA confidentiality protections were designed to allow adult and child victims of the above-mentioned crimes to safely and confidentially file their immigration cases based on crime victimization without the perpetrator’s knowledge, consent, or ability to obtain any information about the case filed by the immigrant crime victim. VAWA confidentiality protections also prohibit immigration enforcement officials from seeking or relying upon perpetrator provided information in any immigration enforcement action and in adjudicating applications filed by the survivor.

⁴ Janet Chiancone, Linda Girdner & Patricia Hoff, U.S. Dept. of Justice, *Issues in Resolving Cases of International Child Abduction by Parents*, JUVENILE JUSTICE BULLETIN, (hereinafter “Issues in Resolving Cases”), (Dec. 2001) 1, 3, <https://www.ncjrs.gov/pdffiles1/ojdp/190105.pdf>

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- Parents who abduct internationally are those who have connections to the country of abduction including family or employment.
 - The results of the survey showed that abducting parents had these characteristics
 - Citizens of another country only (62 percent)
 - U.S. citizenship only (23 percent)
 - Holds dual citizenship (15 percent)
- The survey also found that nearly one-half of the abductions reported by left-behind parents occurred during a court-ordered visitation between the abducting parent and the child.⁵
- Eighty percent of parents said they believed the abductor received some assistance from family members in carrying out the abduction or making it successful.⁴
- One-fifth reported that the abductor moved the child from country to country.⁶
- Sixty percent reported that the abductors threatened their lives; and twenty percent reported that the abductor threatened the life of the child.

ASSESSING RISK FACTORS FOR INTERNATIONAL CHILD ABDUCTION:

In assessing a child’s risk of international abduction, a parent should carefully consider whether the other parent:⁷⁸

- Has previously abducted or attempted to abduct the child;
- Has threatened to abduct the child;
- Has engaged in activities that may indicate a planned abduction including abandoning employment; terminating a lease; selling a primary residence; or closing bank accounts;
- Has engaged in domestic violence, stalking, or child abuse;
- Has refused to follow a child-custody determination;
- Lacks strong family, financial, or emotional ties to the state;
- Has strong family, financial, or emotional ties to another country; or
- Is likely to travel to a country who is not a party to the Hague Convention.

CHARACTERISTICS POSING A RISK FOR ABDUCTION:⁹

The following is a list of common characteristics found in a parent who poses a risk of abduction including international abduction:

- Possesses paranoid or delusional tendencies¹⁰;

⁵ Catherine Klein, Leslye Orloff, Laura Martinez, Jennifer Rose & Joyce Noche, *Chapter 6.3 The Implications of the Hague International Child Abduction Convention: Cases and Practice*, (hereinafter “Chapter 6.3”), at 2, (July 1, 2013), in *BREAKING BARRIERS MANUAL*, <http://niwaplibrary.wcl.american.edu/pubs/ch6-3-hagueintlchildabduction/> ⁴ Issues in Resolving Cases, at 5.

⁶ Issues in Resolving Cases, at 5.

⁷ For complete list of risk factors, See Uniform Law Commission, *Uniform Child Abduction Prevention Act*, at 10, (2006), [https://www.uniformlaws.org/viewdocument/final-act-with-comments-7?CommunityKey=c8a53ebd-d5aa-4805-95b2-](https://www.uniformlaws.org/viewdocument/final-act-with-comments-7?CommunityKey=c8a53ebd-d5aa-4805-95b2-d6f2a648b2a&tab=librarydocuments)

[d6f2a648b2a&tab=librarydocuments](https://www.uniformlaws.org/viewdocument/final-act-with-comments-7?CommunityKey=c8a53ebd-d5aa-4805-95b2-d6f2a648b2a&tab=librarydocuments); See also Patricia M. Hoff, *Parental Kidnapping: Prevention and Remedies*, at 8, (2000), <http://www.findthekids.org/pdf/prevention.pdf>

⁹ See generally, Return Us Home, Inc. *Identifying Risk Factors for a Potential Parental Child Abduction*, (2018), https://docs.wixstatic.com/ugd/294dd2_288c5ec2ddae40238709c38538564049.pdf

¹⁰ Janet R. Johnston & Linda K. Girdner, *Family Abductors: Descriptive Profiles and Preventive Interventions*, (hereinafter “Family Abductors”), *JUVENILE JUSTICE BULLETIN*, (Jan. 2001), at 4, <https://www.ncjrs.gov/pdffiles1/ojdp/182788.pdf>; see also Janet R. Johnston, Inger Sagatun-Edwards, Martha-Elin Blomquist, & Linda K. Girdner, *Early Identification of Risk Factors for Parental Abduction*, (hereinafter “Early Identification”), *JUVENILE JUSTICE BULLETIN*, (Mar. 2001), at 6, <https://www.ncjrs.gov/pdffiles1/ojdp/185026.pdf> ⁹ Family Abductors , at 5.

- Exhibits psychopathic behavior;
- Has strong ties to another country;
- Was involved in a marriage or intimate relationship with a partner who differs in ethnicity, culture and/or country of origin⁹ ;
- Feels alienated from the U.S. legal system¹¹;
- Has threatened to take or hide the children, has threatened to or in some form has actually abducted; and/or¹²
- Harbors suspicious beliefs that the child has been abused • Threats to the life of the other parent¹³ or the life of the child • Evidence of abduction planning activities including:
 - Saving money;
 - waiting for tax refunds;
 - liquidating assets;
 - quitting or changing jobs;
 - gathering legal documents;
 - receiving visits from friends or family members from another country;¹⁴
 - making preparatory visits to the parent’s home country¹⁵
 - Involving children in abduction planning; or¹⁶
 - Keeping child late after visitation.¹⁷

STEPS COURTS CAN TAKE TO PREVENT INTERNATIONAL AND DOMESTIC CHILD ABDUCTION

In addition to protection order and other family court proceedings, there are a number of actions that should be taken to prevent children from being removed from the United States. Legal remedies designed to stop international kidnapping should be taken in tandem with other advocacy strategies that help prevent children from being kidnapped internationally. This following section points out the various risk factors for international kidnapping of which a parent should be aware and highlight some U.S. based prevention strategies.

CUSTODY DECREES AND FAMILY COURT PREVENTION REMEDIES:¹⁸

- Although it is not absolutely necessary to obtain a custody decree when using the Hague Convention to secure the return of an abducted child, a parent must still prove that she was exercising “the right of custody” when the child was taken out of the country. As a

¹¹ Family Abductors, at 6.

¹² In many cases, the abductor made serious threats prior to the actual abduction; and eighty percent of the left-behind parents reported that these previous threats included telling them that they would never see their child again. *See* Issues in Resolving Cases, at 5; *See* also Early Identification, at 6.

¹³ In 60% of the cases the abducting parent threatened the life of the other parent and 20% of the time the abducting parent threatened the life of the child. *See* Issues in Resolving Cases, at 6.

¹⁴ One-third of parents who reported on planning actions said the abductor received visits from friends or family members from another country prior to the abduction. *See* Issues in Resolving Cases, at 5.

¹⁵ One-third said the abductor made preparatory visits to the country to which the child was later abducted. *See* Issues in Resolving Cases, at 5.

¹⁶ Nearly one-fourth of left-behind parents reported that the abductor kept the child late after a visit prior to the actual abduction, perhaps to prevent the left-behind parent from immediately suspecting that there was a problem when the actual abduction occurred. *See* Issues in Resolving Cases, at 5.

¹⁷ One-fifth of parents said they believe the abductor secretly involved the child in planning the abduction *See* Issues in Resolving Cases, at 6.

¹⁸ Chapter 6.3, at 4.

result, although a custody order is technically not necessary under the Convention, having a custody order facilitates the process of seeking the prompt return of the child.

- “Right of custody” is not defined as sole custody. Rather, the parent who possesses the “right of custody” has the right to determine where the child will live. If a parent has reason to believe that the other parent will attempt to abscond with the child to a foreign country, she should immediately seek a custody decree. When a parent has been abused, obtaining a custody award as part of a civil protection order is often the swiftest way to secure a court order granting the abused parent custody of the children. Whether the custody award is issued as part of a civil protection order or as part of another family court proceeding, the award should include certain key provisions, which contain specific preventive language. Such provisions could include language that:
 - Provides for supervised visitation with the child;
 - Specifically prohibits the removal of the child from a particular jurisdiction, state or country without permission from either the court or the custodial parent;
 - Transfers the children’s passports to the custodial parent;
 - Disallows the issuance of a passport on behalf of the child by the U.S. passport agency, or any country’s Embassy or Consulate;
 - Orders the abuser to sign a statement, co-signed by the custodial parent and the court, stating that no Embassy or Consulate shall issue a travel visa for the children, absent further order of ;
 - Provides for an agreement between the parties that the provisions of the Hague Convention shall apply in the event of international abduction;
 - Requires the posting of a bond from the parent with connections to a foreign country;
 - Allows law enforcement officials to assist in the recovery of the child if he/she is abducted

MEASURES THAT CAN BE USED TO PREVENT PARENTAL KIDNAPPING:¹⁹

- In preventing international abduction, there are a number of measures that a parent can take, including:
 - Keeping a record of important information about the other parent, for example, his social security number, driver’s license number, bank account information, passport number, or immigrant visa number;
 - Obtaining the passports of the children and keeping these passports in a safe place; ○ Compiling contact information, such as the addresses and phone numbers of the other parent’s family and friends—both within the United States and in foreign countries;
 - Keeping a detailed, written description of the child and taking color photos of the child every six months; and/or
 - Teaching the child to make telephone calls (especially collect calls) and instructing the child to call home if unusual circumstances occur.

¹⁹ Polly Laas Foundation, *America’s Hidden Crime: When the Kidnapper is Kin*, at 21-23 (Mar. 2004), http://www.pollyklaas.org/media/pdf/fa_kidnapper_kin.pdf