

**HAGUE CONVENTION ON INTERNATIONAL
ADOPTIONS: STATUS AND THE FRAMEWORK
FOR IMPLEMENTATION**

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN
RIGHTS AND INTERNATIONAL OPERATIONS

OF THE

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INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

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HAGUE CONVENTION ON INTERNATIONAL ADOPTIONS: STATUS AND THE FRAMEWORK FOR IMPLEMENTATION

TUESDAY, NOVEMBER 14, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HUMAN RIGHTS
AND INTERNATIONAL OPERATIONS,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:07 a.m. in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (Chairman of the Subcommittee) presiding.

Mr. SMITH. The hearing will come to order. I want to thank Mr. Delahunt for joining us. This hearing is being held in November to coincide with National Adoption Month.

Unlike the usual celebrations for this month that focus on the building of family through adoption, or on the child who thrives in a loving adoptive family, this hearing will focus on the complex issues and challenges facing the United States as we move to ratify *The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption*.

Adoption is something I think we all believe in, and I certainly believe in it passionately. It remains one of the most compassionate, humane, courageous, and loving options available to a child who has been orphaned and abandoned due to a variety of reasons, including the fact that unwed mothers are increasingly keeping and raising their children and because more than 1.3 million unborn children in the United States are aborted every year. More than 47 million children have been aborted since 1973. The number of domestic children eligible for adoption has declined dramatically, prompting many prospective adoptive parents to look overseas. Thus, over the last decade, the number of foreign children adopted annually by American citizens has doubled from 11,340 to 22,739.

It is worth noting, parenthetically, that in the United States there are more children adopted from abroad than all of the other countries of the world combined.

In 1993 at the seventh session of the Hague Conference on Private International Law, 66 countries came to agreement on a Convention to ensure that intercountry adoptions are made in the best interest of the child and with respect for his or her fundamental rights and to prevent the abduction, the sale of, or traffic in children. The Convention, which entered into force in 1995, contains

48 articles and seeks to ensure that the child is indeed adoptable, that an intercountry adoption is in the child's best interest, that prospective adoptive parents are eligible and suited to adopt, and that competent transparent mechanisms, including a central authority, are in place in each country.

The Convention in the United States implementing legislation, the Intercountry Adoption Act of 2000, or the IAA, makes the child's best interest the paramount concern of the adoption proceedings. In fact, the first statement in the preamble of the Convention calls for recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding.

The Convention also provides safeguards for the birth parents and the prospective adoptive parents. The Convention is very clear that birth parents must not be induced by payments or compensation of any kind. In addition, the birth parents must understand that in giving their consent, they will no longer be the child's legal parents and that consent to adoption must be freely given.

Prospective adoptive parents can count on the fact that the child that they want to adopt has not been abducted, sold, or trafficked. They can rest assured that the adoption proceedings will be handled in a way that promotes the best interest of the child and, at the same time, respects the dignity of the birth parents and safeguards their own needs to establish a forever family.

The Convention is also clear that prospective adoptive parents must be eligible and suited to adopt. Eligibility and suitability are determined by the sending country which makes known its preferences in terms of marital status, certain age requirements, and financial status. The receiving country determines and approves eligibility and suitability through a home study of the prospective adoptive parents based on a comprehensive review of family and medical history, social environment, and reasons for adoption that meet the sending country's requirements.

The United States is the largest receiving country, adopting, again, more children from abroad than all of the other countries combined. The top four sending countries, it is worth noting, over the past 5 years include China with over 31,000 children; Russia, more than 24,000, almost 25,000; Guatemala, 13,000; and South Korea with 8,700. Of the four primary countries sending children to the United States, three have signed the Convention—China, the Russian Federation, and Guatemala—while South Korea has not.

Before we start taking testimony, I want to share with you some of my observations and concerns about the process. First, while I believe that every child has a right to grow up in a loving family, I also believe there is no right to adopt. By this I mean that close examination of the social environment suitability to adopt and eligibility to adopt are critical to promoting the best interest of the child. In addition, it is very important, as the largest receiving country, that we respect the rules of the sending country in terms of who can adopt and that we follow up with post-adoption services, if that was the initial agreement.

A cursory look at the requirements of the top four sending countries indicates that—and I quote: “China’s law permits adoption by heterosexual married couples and single heterosexual persons.” China’s law prohibits a homosexual individual or couples from adopting Chinese children. The Russian Federation requires that married couples and single persons may adopt Russian children, but the single person must be at least 16 years older than the prospective child. Russia also requires four follow-up visits with the family to complete the official adoption reports. These post-adoption reports are due 6, 12, 24 and 36 months following the adoption.

Guatemala requires that married couples and single persons 25 years or older are eligible to adopt. And, finally, South Korea’s guidelines for adoption are that the prospective parents must be eligible to adopt under the laws of their home country or state of resident. Single parents are not eligible to adopt; and couples should be married for at least 3 years, be between the ages of 25 and 44, and not have an age difference between the spouses of more than 15 years.

I would need to be assured today by State DHC and the accrediting agencies that as the United States moves toward ratification, aggressive actions will be taken to let sending countries know that the United States will prepare its home studies to satisfy the guidelines that sending countries require. The home study preparer can only fulfill the requirements of the sending country if the home study is completed with the specific country identified and the specific requirements are made known. Marital status, social environment, age of prospective adoptive parents and willingness to meet post-adoptive requirements are specific items that must be identified if the U.S. is going to fulfill its obligations. This is the only way the United States can comply with the requirements of the sending country, the Convention, and the IAA.

Sadly, I must note that in the four top sending countries, the U.S. has serious concerns about things like baby selling and trafficking, abandonment, and fraud. In China, estimates run as high as 2 million orphaned and abandoned children. Under China’s one-child-per-couple policy, the cultural preference for boys has produced a black market for baby boys. As a result, baby girls are abandoned, leading to a shortage in females in some regions of the country and a black market for baby girls as well. It is reported that newborns have been sold to orphanages for \$100 to \$150 and resold for adoption at the rate of \$3,000 to \$4,000. Since China has ratified the Convention, it is my hope that these problems will soon be remedied.

Guatemala was recently in the media where concerns were raised about countries that have ratified the Convention. Issues have been raised with regards to Guatemala’s ratification of an international treaty that apparently violates Guatemalan law. What concerns me is the fact that the privately-run adoption system uses baby brokers to pay birth mothers for their newborns. This affronts the dignity of the baby, the birth mother, and the prospective adoptive parents. This violates the Convention and must not be allowed to stand.

And both the Russian Federation and South Korea require the adoption agencies to follow up with the child in what is called post-adoption service. These include visits, photos, and reports to be sent to the country of origin.

Noncompliance issues have been raised by experts who note that some families adopting from Russia and South Korea do not want their families to be disrupted by sending these reports to the countries of origin. Since this is a requirement of a sending country, every effort must be made to fulfill this requirement, and I am interested in what options the adoption agencies have in this regard.

Finally, let me say with great sadness, I have chaired now two hearings on the ongoing problems with the Government of Romania and its ban on intercountry adoption, despite the fact that they have signed the Hague Convention. Last year in April, as well as the year before that, we held riveting testimony with particular emphasis on those adoptive parents in the United States who are “in the pipeline.” These are men, women, and families who already have identified the children that they would like to adopt, only to be told at the 11th hour that as a requirement of joining the European Union, Romania will no longer allow those adoptions to go forward. And not only have American families been hurt by this but hundreds of European families as well, particularly in Italy. And perhaps our witnesses could shed some light on any efforts that will be made on that as well.

We have had Maura Harty testify before our Helsinki Commission and she has been outstanding in trying to resolve those cases. Again the heartbreak is very, very egregious for those families who have made adoption plans.

I would like to yield to Mr. Delahunt, a good friend and a distinguished colleague who has worked very hard in the IAA, for any comments he might have.

Mr. DELAHUNT. I am going to be very brief. And I want to just commend you, Mr. Chairman, for your efforts in terms of intercountry adoption. I have a vivid memory of the year 2000 when we worked closely together to craft and secure the passage of the IAA. I would note that it is now almost 7 years, we are heading into 7 years post the enactment of the IAA, and I would hope that we could accelerate the process in terms of finally reaching an end result, and I would hope that both DHS and DOS are working closely together to achieve that particular goal.

I also want to—I would be remiss not to note the presence of Cassie Bevan here today, who provided yeoman service to the Committee and to the Members in terms of drafting the IAA. And I want to compliment her publicly and thank her once more, some 6 years later.

And I note, Ms. Barry, that in your testimony you referenced concerns about Guatemala. I think it was maybe 2–3 years ago, myself and Congressman Camp visited Guatemala. I have to state publicly I am disappointed that we haven’t seen more progress in terms of Guatemala. And I am not—I want to be very clear—I am not assessing all of the culpability and responsibility on the Guatemalan Government. I think that is important to state publicly. But I would hope the Guatemalan Congress would have taken action by now, and it would appear that the kind of remedies that you dis-

cuss are going to possibly be necessary to secure some response, some appropriate response by the Guatemalan Congress, because it is a situation that really cries out for remedy. And I want to be very, very clear because I know that I have many, many constituents who have adopted children from Guatemala, our—let me put it this way, their cases are pending—that if action is to be taken, be done in such a way as to protect those who are currently in the pipeline, so to speak, that have applied. So I want to be particularly reassuring to them that their applications, if they have been filed, ought to be processed through completion, but we have got a situation in Guatemala that I believe has to be addressed.

So with that, Mr. Chairman, I yield back and again thank you for your service.

Mr. SMITH. Thank you, and I appreciate the work we have done together.

I would like to now welcome Ms. Catherine Barry from the Department of State. It is the State Department which functioned as the United States central authority as required by the Convention and the IAA. The State Department has made progress in publishing the final regulation on the accreditation of the adoption providers, selecting the Council on Accreditation and the State of Colorado as the accrediting entities approving the fee schedules. The accrediting entities will charge the providers approving the compliance system the accrediting agencies will use in assessing the adoption agencies' adherence to both the Convention and IAA. In addition, the State Department announced that by the end of this week, November 17th, adoption service providers must submit their transitional applications for accreditation. The State Department has been working at developing a regulatory framework for implementing the IAA and the Convention and should be congratulated.

It is my pleasure also to welcome Ms. Lori Scialabba, representing the U.S. Citizenship and Immigration Services, Department of Homeland Security. Under the IAA, the USCIS is responsible for approval of the home studies. The home studies must be prepared by accredited agencies. It must include a statement that the prospective adoptive parents completed training, counseling, and a statement of all facts relevant to the eligibility and suitability of the prospective adoptive parents to adopt a child under any specific requirement identified by the specific authority of the child's country of origin. No regulations have yet been issued by DHS dealing with the home study preparation and how it will change under the Convention and the IAA.

I want to thank you for being here. And, Ms. Barry, if you could begin and please proceed as you would like.

STATEMENT OF MS. CATHERINE BARRY, DEPUTY ASSISTANT SECRETARY FOR OVERSEAS CITIZENS SERVICES, U.S. DEPARTMENT OF STATE

Ms. BARRY. Chairman Smith, distinguished Members of the Committee, it is fitting that the Committee chose to hold this hearing during National Adoption Month. I welcome this opportunity to provide you with a report on the progress we have made in preparing for U.S. succession to the Hague Convention on Inter-

country Adoption. We have met a number of important milestones this year in our efforts to complete ratification of this Convention, and are on track to complete the remaining legal requirements so the United States can ratify the Convention in 2007.

We have published the final rule on accreditation of agencies and approval of persons in February of this year. These comprehensive and detailed regulations reflect input from about 1,500 adoption stakeholders. We have made every effort to ensure that the final rule reflects both the letter and the spirit of the bipartisan legislation enacted by Congress and takes into account the input received from all interested stakeholders.

We also finalized a rule which addresses the retention of Convention adoption records for 75 years by both the Department of State and Homeland Security. We completed work on the final rule governing standards for immigrating or outgoing cases, again taking into account the public comments that we received on the proposed rule.

We published a proposed rule which requires reporting on cases involving American children emigrating to either Convention or non-Convention countries. The IAA requirement to track outgoing countries presents a challenge. Such cases are now handled at the State level, and no information is now provided to the Federal Government. The proposed rule suggests a solution that we believe will not unduly burden domestic authorities. The public comment period for this closed just yesterday, November 13th. We expect to be able to publish the final rule on this subject before the end of the year.

Mr. Chairman, as you already mentioned, we signed a memorandum of agreement this summer with the Council on Accreditation in Colorado's Department of Human Services, designating them as accrediting entities. These two accrediting entities are highly qualified and have demonstrated that they are fully capable of performing the report to accredit, temporarily accredit or approve adoption service providers. I am pleased that representatives for these entities are here today. They have submitted their detailed budgets and proposed fee schedules which we have reviewed and approved in accordance with the IAA.

The Department also approved the substantial compliance system that trained evaluators of accrediting agencies will use in evaluating adoption service providers. Then, again, as you have already noted, this Friday, November 17th, is the deadline for adoption service providers to apply for accreditation, temporary accreditation or approval. This is an important milestone, because when we know how many service providers are in the pipeline we can project how long it will reasonably take for the accreditation and approval process to be completed. In other words, we can better project when in 2007 we will be able to complete our ratification of the Hague Convention. We will be using a Web-based tracking system, called the Adopting Tracking System, to track all pending intercountry adoption cases and allow retrieval of information on both pending and closed cases involving the United States.

Much of the development of the system is ready to include the functionality that will link up the Department of State with the accrediting entities and the accredited adoption providers.

Outreach continues to be an important part of our work. In recent months we have spoken at several large adoption conferences to explain the importance of the Hague Convention and provide an overview of the changes we anticipate once we ratify. We wrote to State licensing offices in all 50 States, the District of Columbia, and Puerto Rico to update them on the Convention.

To respond to inquiries from the adoption community, we created a dedicated mailbox, AdoptionUSCA@state.gov, and have answered hundreds of questions about Hague implementation. We established a list for interadoption stakeholders to keep them informed of all Hague Convention developments. Our Hague implementation staff recently published a new guide to the Hague Conventions specifically for prospective adoptive parents. We are proud of the significant Hague implementation milestones we have accomplished thus far and are confident that in the next several months we will see significant progress toward the accreditation of the U.S. adoption service providers, the next major milestone toward ratification of the Convention.

Thank you for your attention.

[The prepared statement of Ms. Barry follows:]

PREPARED STATEMENT OF MS. CATHERINE BARRY, DEPUTY ASSISTANT SECRETARY
FOR OVERSEAS CITIZENS SERVICES, U.S. DEPARTMENT OF STATE

Chairman Smith and distinguished members of the Committee:

It is fitting that the Committee chose to hold this hearing during National Adoption Month, as the Hague Convention on Intercountry Adoption constitutes one of the most comprehensive and important reforms to the intercountry adoption process in recent memory. Its implementation by the United States next year will create new, federal-level standards and protections that will greatly benefit those thousands of children from around the world in need of permanent families. I welcome this opportunity to provide you with a report on the progress we have made in making this important treaty a reality for the United States.

The Department of State has made implementation of the Hague Adoption Convention a top priority for the Bureau of Consular Affairs. We have met a number of important milestones this year in our efforts to complete ratification of this Convention. We are on track to complete the remaining legal requirements assigned to the Department of State by the Intercountry Adoption Act (IAA) so that the United States can ratify the Convention in 2007.

Let me now update you on the status of our work. The Intercountry Adoption Act of 2000, the legislation implementing the Hague Convention, required adoption service providers to be accredited, temporarily accredited or approved in order to perform adoption services in connection with a Convention adoption. To meet this requirement, we published the final rule on accreditation of agencies and approval of persons, 22CFR Part 96, in February of this year. It is a comprehensive and detailed regulation that reflects input from about 1500 adoption stakeholders. We conducted a preliminary comment period, published draft rules on the internet and solicited informal input through surveys and outreach efforts, held a multitude of public meetings throughout the process, issued a proposed rule, published all the comments on our website, and created and issued a final rule that responds to all the passionate and sometimes conflicting public comments. We have made every effort to ensure that the final rule reflects both the letter and the spirit of the bi-partisan legislation enacted by Congress—the IAA—and takes into account the input received from all interested stakeholders.

At the same time, we finalized a rule, 22 CFR Part 98, which addresses the retention of Convention adoption records for 75 years by the Departments of State and Homeland Security. We also completed work on the final rule governing emigrating or outgoing cases. This rule, 22CFR Part 97, outlines the requirements for the issuance of Hague Adoption Certificates and Hague Custody declarations in cases when a child resident in the United States leaves to live with adoptive parents in another Hague Convention country. The Department issued the rule as final with minor changes, taking into account the public comments that we received on the proposed rule. The publication of this final rule is a milestone in Convention imple-

mentation. For the first time at the federal level, the rule creates sound safeguards and uniform protections for U.S. children who are being adopted by prospective adoptive parents from another Convention country. The final rule will take effect when the Convention enters into force for the United States.

We also recently published a proposed rule, 22CFR Part 99, which will require reporting on cases involving American children emigrating to either Convention or non-Convention countries. The public comment period for this proposed rule closed just yesterday, November 13, 2006. We expect to be able to issue the rule in final quite soon, given its short length and limited application. Under the IAA, the rule must also be signed by DHS before being issued in final[b1].

In addition to our regulatory work, this past summer the Department signed Memoranda of Agreement (MOAs) with the Council on Accreditation (COA) and Colorado's Department of Human Services, designating them as accrediting entities (AEs). We then published these MOAs in the Federal Register. These two accrediting entities are highly qualified and have demonstrated that they are fully capable of performing the important work to accredit, temporarily accredit, or approve adoption service providers. I am pleased that representatives of these two entities are here today. Allow me to describe these organizations' qualifications for this important work.

The Colorado Department of Human Services is the licensing authority for non-profit adoption agencies in Colorado. The Colorado licensing department is experienced with regulating adoption service providers as well as with enforcing its standards via denial or withdrawal of licenses of adoption services that do not meet its comprehensive standards. Colorado will accredit only adoption service providers located and licensed in the State of Colorado.

The Council on Accreditation, or COA, is recognized nationally as a premier accrediting entity for both private and public social service agencies. It has many years of experience in accreditation, with a commitment to assisting its member social service agencies in developing the highest standards of practice in programs for children and families.

After designating the accrediting entities, the Department was required to approve certain aspects of their early accreditation and approval work. Specifically, as required by the IAA, the accrediting entities submitted for the Department's approval their detailed budgets and proposed fee schedules. After careful review, we approved the fees as required by the IAA.

The Department also approved the substantial compliance system that Colorado and COA jointly proposed for their trained evaluators to use in evaluating adoption service providers in accordance with the standards in the accreditation/approval regulation. We appreciate the work that they have completed to date to ensure that accredited and approved adoption service providers will be in substantial compliance with the regulatory standards, as required by the IAA, the Memoranda of Agreement, and the accreditation/approval regulations.

With the approval of the fee schedules and substantial compliance systems, the Department was able to set this Friday, November 17, as the Transitional Application Deadline, or TAD—another important milestone for us. This deadline is important because it establishes how many adoption service providers have applied for accreditation, temporary accreditation, or approval. Knowing the number of applicants will permit us to project how long it will reasonably take for the accreditation and approval process to be completed. Adoption service providers who have applied by the transitional application deadline and who have been approved by the deadline for initial accreditation will be included on the first list of accredited or approved adoption service providers sent to the Hague Permanent Bureau when we ratify the Convention.

As required by our MOAs with the AEs, they will keep the Department informed when problems arise. Complaints from adoptive parents, birthparents, adoptees and other stakeholders regarding compliance with the Hague Convention and the IAA will be taken very seriously by the Department and the AEs. Before designating COA and Colorado as AEs, we verified the procedures they follow in investigating complaints, what enforcement methods were available to them, and what penalties or corrective actions could be imposed. We also covered enforcement issues in detail in the final regulation on the accreditation/approval of adoption service providers. Many of the sections of the final rule regulate the accrediting entities. We take our oversight responsibilities under the IAA seriously and will be monitoring AE compliance with the regulations and the MOAs. Standards in the regulations also incorporate measures necessary when complaints about adoption service providers have not been resolved appropriately. These include revoking an adoption service provider's accreditation or approval permanently or until appropriate corrective action has been taken.

In addition to our regulatory work and our work with the accrediting entities, we are developing a web-based case tracking system called the Adoption Tracking System (ATS) of which the Complaint Registry that we discussed above is a component. The system fulfills the IAA requirement in section 102 (e) for the Department and DHS to establish a case registry that tracks all pending intercountry adoption cases, and allows retrieval of information on both pending and closed intercountry adoption cases involving the United States. This system will include data from our immigrant visa computerized databases and data received on cases in which children emigrate from the United States.

We have already completed development of those ATS components to be used by accrediting entities and adoption service providers. The final component, the Case Registry, is under development now. The challenge for us will be to acquire information about emigrating (outgoing) cases as required by the IAA. Under our federal system such cases are handled at the State level and there is currently no requirement that those parties involved provide that information to us. The proposed joint rule (22 CFR Part 99) that I mentioned earlier will impose new reporting requirements for these cases.

We will monitor the performance of the AEs using a variety of mechanisms, including site visits, document reviews, and scheduled telephone contact. In recent months, we have held frequent on-line meetings with the AEs about ongoing implementation issues. Our agreements with the AEs permit the Department to obtain copies of the forms and materials they use and to inspect all records relating to the accreditation function. The AEs will also report events that may have a significant impact on their ability to perform their duties. These include financial difficulties, changes in key personnel, State legislative or regulatory changes, legal or disciplinary actions or conflicts of interest. Department staff responsible for AE liaison and oversight will monitor the complaint registry regularly to track how the AEs resolve any complaints against adoption service providers.

Outreach continues to be an important part of our plan to reach our target ratification date in 2007. In recent months, we have spoken at several conferences sponsored by organizations such as the Lutheran Adoption Network, the North American Council on Adopted Children, the American Academy of Adoption Attorneys and Holt International Children's Services. During such events, we strive to explain the importance of the Hague Convention and provide an overview of the changes we anticipate once we ratify. We have also sent letters to state licensing offices in all 50 states, the District of Columbia, and Puerto Rico to update them on the Convention and to provide information about the accreditation and approval regulations that will affect adoption service providers.

To respond to inquiries from the adoption community, we created a dedicated mailbox, *AdoptionUSCA@state.gov*. We have answered hundreds of questions about Hague implementation via this email address. We also established a listserv to send e-mail messages to all interested adoption stakeholders to keep them informed of Convention developments. Other members of the public can join this listserv. To help prospective adoptive parents get a better understanding of what the Convention will mean to them, our Hague implementation staff recently published a new guide specifically for that key audience.

We are very committed to ensuring that all aspects of the regulatory process are transparent and take into account the views of adoption stakeholders to the fullest extent possible. To accomplish this, we work very closely with adoption community leaders to solicit their input and perspectives on Hague-related issues, including proactively soliciting their comments on proposed regulations.

Under the IAA and its amendments to the INA, DHS has responsibility for functions related to the filing of intercountry adoption applications. DHS is in the process of drafting proposed regulations to set forth procedures and eligibility requirements for Hague cases under the IAA. Earlier this year we issued a companion proposed rule (22 CFR Part 42) on consular officer procedures for Hague cases overseas. We are coordinating with DHS so that our rule is compatible with any DHS-issued regulation. In this regard, I would especially like to thank my colleagues from US Citizenship and Immigration Services (USCIS) who are here with us today and who have worked very closely with us in this partnership. Our relationship with USCIS is very cooperative and the regular adoption working group meetings chaired by DHS with Bureau of Consular Affairs participation include frequent discussions on Hague implementation. I will let my colleague from DHS address the status of its proposed rule for Hague case procedures.

We are also increasing our diplomatic efforts to ensure that our future Convention country partners will be able to comply with the Convention's requirements for countries of origin. Once the Convention enters into force for the United States, prospective adoptive parents who adopt from Convention countries will have assurance

that their child was not a victim of unscrupulous adoption practices but was a child eligible for adoption and in need of a permanent and loving home.

Before I conclude, I would like to say a few words about one important Hague Convention partner: Guatemala.

Guatemala is recognized as a party to the Hague Adoption Convention under international law. But Guatemala has not implemented the Convention, and its current adoption process is not consistent with Hague principles for the protection of children and families. Pursuant to our commitment to the Hague Convention, the Department has made clear to all appropriate Guatemalan government agencies that we will not continue adoptions from that country unless they comply with the Hague Convention standards.

The current adoption process in Guatemala does not afford many of the children and families the protections they deserve. Most Guatemalan birth mothers directly relinquish a child to an attorney, whose practices and methods for obtaining consents are unregulated. The birth mothers typically relinquish the child without counseling and without the benefit of any public entity ensuring that the relinquishment is truly voluntary. Full compliance with the Hague Convention would ensure that public authorities work with the birth families, not just private attorneys. It would also ensure that public authorities, such as executive branch agencies or courts, determine that a child is eligible for adoption, rather than a determination by unregulated private attorneys who currently control all aspects of the adoption process in Guatemala.

The process now in place in Guatemala, inherent with conflicts of interest, makes abuses possible and does nothing to prevent improper financial gain in connection with an intercountry adoption.

We are starting now, before the Convention enters into force for the United States, to strongly engage with Guatemalan officials in an effort to encourage and support Hague adoption reform at all levels.

For example, in mid-October, I visited Guatemala to continue the dialogue. The timeline is short, but we believe it is possible for both countries to implement the Convention in 2007.

In closing, let me reiterate that we at the State Department are proud of the significant Hague implementation milestones we have accomplished thus far, and are confident that Congress will see significant progress concerning the accreditation of U.S. adoption service providers over the next several months—the next major milestone towards ratification of the Convention.

Thank you for your continued support in our work to implement the Hague Adoption Convention, which is right for the world and right for the United States.

Mr. SMITH. Thank you so very much, Ms. Barry.

Ms. Scialabba.

**STATEMENT OF MS. LORI SCIALABBA, ASSOCIATE DIRECTOR,
REFUGEE, ASYLUM AND INTERNATIONAL OPERATIONS DI-
RECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERV-
ICES**

Ms. SCIALABBA. Thank you, Mr. Chairman, and distinguished Members of the Committee. I am currently the associate director for the Refugee, Asylum and International Operations Directorate of U.S. Citizenship and Immigration Services (USCIS). I am honored to have this opportunity to address the Committee on the changes to the intercountry adoption process in accordance with the Intercountry Act of 2000 and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Employees of USCIS are proud of the role we play in helping to find families in the U.S. for orphaned children from other countries. As a result of our collective efforts, more than 200,000 foreign-born children have been adopted into families in the United States over the past decade. USCIS remains committed to improving its processes while strengthening measures to protect children's interest. It is the primary goal of USCIS's administration of the

intercountry adoption program to ensure that adoptions are in the children's best interest.

I also would like to take this opportunity to thank our colleagues at the Department of State for their ongoing partnership with USCIS as we work toward implementation of the Hague Convention.

I believe the open and collaborative nature of the partnership is helping to ensure successful implementation of the IAA and Hague Convention. Today I will share with you where USCIS is in its current efforts to improve intercountry adoption processes and provide an image of what we are striving to achieve with our regulations.

In March 2006, USCIS chartered the Intercountry Working Group consisting of representatives of all components within USCIS that play a role in the intercountry adoption process as well as representatives from the Department of State's Office of Children's Issues and Consulate Affairs. USCIS leadership has charged this group with addressing three issues: Near-term improvements and streamlining of USCIS's current intercountry adoption processes; long-term redesign of USCIS's intercountry adoption processes to strengthen customer service and integrity and promulgation of USCIS regulations and potential other changes necessary to implement the IAA and the Hague Convention.

USCIS has already seen progress from efforts of this working group, particularly in the area of coordination with the Department of State. For example, as a result of increased communication, USCIS and the Department of State have agreed to provide joint quarterly updates to the Adoption Institute concerning implementation of the Hague Convention. Updates were provided on June 12th and September 25th of this year.

The IAA establishes the domestic legal framework for implementing U.S. framework under the Hague Convention. President Clinton signed the IAA on October 6, 2000. Since that time, efforts have been underway to issue Federal regulations to set forth requirements that entities must meet to qualify for designation to accredited or approved adoption service providers; the standards agencies and individuals must meet to become Hague Convention-accredited or approved as adoption service providers, and the procedures governing Hague Convention adoption both for children coming to the United States and those going from the United States to another country based on a Hague Convention adoption.

I will address only part of the third point: The procedures for U.S. citizens seeking to adopt children from Hague Convention countries, as this is where USCIS responsibility lies. We are responsible for determination of the eligibility and suitability of prospective adoptive parents to adopt a child from another Hague country and adjudication of petition to classify a child as a Hague child. Through consultation, USCIS and the Department of State have agreed to a program working for implementing the IAA and the Hague Convention. My remarks today are reflective of that general framework.

Once the IAA amendments to the Immigration and Nationality Act (INA) become effective, a child who is habitually residing in a Hague country will no longer be eligible for classification as an orphan under section 101(b)(1)(F) of the INA if the child will be mov-

ing to the United States as a result of adoption. Any such adoption must conform to the Hague process and procedures. The definition of a Hague child in section 101(b)(1)(G) of the INA will broaden the definition of a child who may be adopted, will be further expanded to include a child with a sole surviving parent to account for situations for a child who had two parents, but one parent died or one parent abandoned or deserted the child and the remaining surviving parent freely has given a written, irrevocable release for immigration or adoption. This is noteworthy because currently a child may not be classified as an orphan and hence be eligible for adoption based on release from two living parents. The IAA will allow for more children to become eligible for adoption as long as the safeguards have been met.

USCIS is currently drafting proposed regulation under the IAA to set forth the procedures and requirements that must be followed by the prospective adoptive parents in order for USCIS to determine their eligibility and suitability to adopt a child from a Hague Country.

As with any rule, once the proposed rule is published, interested persons can submit concerns. We have been following closely the comments to the several Department of State rules implementing the IAA and the Hague Convention. We have taken the relevant concerns raised in those contexts under consideration to inform our regulation development. We look forward to the constructive and valuable input we will receive from concerned parties as part of the rulemaking process. We anticipate that our proposed rule's approach the stages of adjudication to determine the eligibility of a child for Hague classification, to ensure the eligibility requirements and the Hague Convention are met, and the best interests of the children are protected.

As reflected in my remarks before the Committee today, intercountry adoptions involve a multi-faceted process where multiple discrete decisions must be made regarding both a child overseas and prospective adoptive parents. The sequencing of events and coordination between the Department of State and USCIS has become even more critical under the Hague Convention and IAA. USCIS, in partnership with the Department of State, is committed to making the process work for birth parents, adoptive parents and, above all, the children involved in intercountry adoptions.

Thank you again for the opportunity to speak to you on this important subject, and I am happy to answer any questions you may have.

[The prepared statement of Ms. Scialabba follows:]

PREPARED STATEMENT OF MS. LORI SCIALABBA, ASSOCIATE DIRECTOR, REFUGEE, ASYLUM AND INTERNATIONAL OPERATIONS DIRECTORATE, U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Mr. Chairman and Members of the Committee:

My name is Lori Scialabba, and I am Associate Director of the Refugee, Asylum and International Operations Directorate of U.S. Citizenship and Immigration Services (USCIS). I am honored to have this opportunity to address the Committee on ongoing efforts to implement changes to the intercountry adoptions process in accordance with the Intercountry Adoption Act of 2000 (IAA) and the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Hague Convention). The employees of USCIS are proud of the important role we play in assisting U.S. citizens seeking to adopt children from other countries. As a result

of our collective efforts, more than 200,000 foreign-born children have been adopted into families in the United States over the past decade. USCIS remains committed to improving and streamlining its processes, while strengthening measures to protect children's interests in the process. It is the primary goal of USCIS's administration of the intercountry adoption program to ensure that adoptions are in the children's best interests.

I also would like to take this opportunity to thank our colleagues at the Department of State for their ongoing partnership with USCIS as we work towards the implementation of the Hague Convention. This long and continuing process has been a collaborative effort between USCIS and the Department of State and has involved a great amount of teamwork and cooperation. Today, my colleagues from the Department of State and I will share with you where we each are in the current process and provide an image of what we are striving to achieve with our Hague regulations.

OVERVIEW

In recent years, the United States has seen an increase in the number of children from other countries adopted by U.S. citizens—from 19,087 children in fiscal year 2001 to more than 22,700 children in fiscal year 2005.¹ USCIS remains committed to improving and streamlining its processes, while strengthening the protection of children in the system.

RECENT ACHIEVEMENTS IN INTERCOUNTRY ADOPTION

USCIS understands the critical role it plays in the process of intercountry adoptions. There are several vehicles USCIS uses in its efforts to assist prospective adoptive parents and children through the intercountry adoption process. One such vehicle is the Child Citizenship Act (CCA).

Child Citizenship Act Program

The CCA became effective on February 27, 2001. The act amended section 320 of the Immigration and Nationality Act (INA) by providing U.S. citizenship to certain foreign-born children. Under the CCA, children with a full and final adoption abroad who immigrate to the United States with a U.S. citizen parent automatically acquire U.S. citizenship upon admission to the U.S. as an immigrant. Children who immigrate and have their adoption finalized in the United States become citizens at the time of the final U.S. adoption. A "full and final adoption" exists, for immigration purposes, if (1) the adoptive parents completed the adoption abroad according to the laws of the child's country, so that the adoptive parents are now the child's legal parents for all purposes, and (2) BOTH parents, when two parents are adopting, meet the child either before or during the adoption proceeding abroad. The child receives an "IR-3" immigrant visa if both of these requirements are met. If not, then the child receives an "IR-4" immigrant visa. For example, if only one parent saw the child, but the foreign proceeding was an actual adoption proceeding, an IR-4 visa would be the proper visa. An IR-4 visa would also be the proper visa if both parents saw the child, but the foreign proceeding was a guardianship or custody proceeding, rather than an actual adoption proceeding. For a child who enters with an IR-4 visa, the parents must then adopt the child in the United States, if there was no adoption abroad. If there was an adoption abroad, but the parents did not both meet the child before or during the adoption, then the parents must establish that the foreign adoption is recognized under the law of their home State. This recognition may be established either by obtaining a formal court order recognizing the adoption (sometimes called "re-adoption") or by establishing that the home State's law recognized the foreign adoption without the need for a formal court proceeding.

If a citizen believes that his or her adopted child acquired citizenship under the CCA, the parent may file an application for a certificate of citizenship. In addition to this standard practice, however, USCIS also implemented the requirements of the CCA by creating a special program that processes citizenship for children adopted abroad by U.S. citizens. The program began on January 1, 2004, and is located in the USCIS Buffalo, New York District Office. Through the program, USCIS-Buffalo receives and reviews all immigrant visas for children admitted to the United States who were adopted abroad (that is, those issued IR-3 visas), and issues a certificate of citizenship to those children who meet the requirements under section 320 for automatic acquisition of citizenship. Under this special program, no formal application for a certificate of citizenship is required, if the child meets these requirements.

To date, the CCA program has been a success. From its inception on January 1, 2004 to October 31, 2006, the program has produced 42,539 certificates of citizen-

ship for adopted children who entered the United States with an IR-3 visa and were found to have automatically acquired citizenship under section 320.

It is important to note that just 34 days, on average, elapse from the time the child enters the United States with an IR-3 immigrant visa to the time a certificate of citizenship is produced for the adopted child. While proud of this accomplishment, USCIS continues to strive to maintain and improve the efficiency of this program.

INTERCOUNTRY ADOPTIONS WORKING GROUP

In March 2006 USCIS chartered the Intercountry Adoptions Working Group consisting of representatives of various components within USCIS that play a role in intercountry adoption, as well as representatives from the Department of State's Bureau of Consular Affairs, Office of Children's Issues. The working group is responsible for addressing three issues:

- Near-term improvements and streamlining of USCIS' current intercountry adoption process;
- Long-term redesign of USCIS' intercountry adoption process to strengthen customer service and integrity; and
- Promulgation of USCIS regulations, and potential other changes, necessary to implement the Hague Convention.

We are already seeing progress from the efforts of this working group, particularly in the area of coordination with the Department of State. For example, as a result of increased communication, USCIS and the Department of State have agreed to provide joint quarterly updates to the Congressional Coalition on Adoption Institute concerning implementation of the Hague Convention and other pressing intercountry adoption issues. Updates were provided on June 12th and September 25th of this year.

THE CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (HAGUE CONVENTION)

The Hague Convention is a multilateral treaty that was approved on May 29, 1993. The Convention covers the adoption of a child who habitually resides in one Convention country by adoptive parent or parents who habitually reside in another Convention country, when the child is going to immigrate to the adoptive parents' country as a result of, or for the purpose of, the adoption. The Convention establishes certain internationally agreed-upon minimum norms and procedures. The goal of the Hague Convention is to protect the children involved in intercountry adoptions and to prevent abuses.

The United States signed the Hague Convention on March 31, 1994, signaling its intent to proceed with efforts to ratify the Convention. In September 2000, the Senate consented to the President's ratification of the Convention, but the Senate conditioned this consent on the adoption of the laws and regulations necessary to carry out the principles of the Convention.

On October 6, 2000, President Clinton signed the Intercountry Adoption Act that, among other things, establishes the domestic legal framework for implementing our obligations under the Hague Convention.

Since that time, efforts have been under way to issue federal regulations to set forth:

- The requirements entities must meet to qualify for designation to accredit or approve adoption service providers;
- The standards agencies and individuals must meet to become Hague Convention accredited or approved as adoption service providers; and
- The procedures governing Hague Convention adoptions, both for children coming to the United States and those going from the United States to another country, based on a Hague Convention adoption.

I will address only part of the third point—the procedures for U.S. citizens seeking to adopt children from “Hague countries”—as this is where USCIS has responsibility under the Intercountry Adoption Act. USCIS is responsible for:

- Determinations of the eligibility and suitability of a prospective adoptive parent to adopt a child from another Hague country; and
- Adjudications of petitions to classify a child as a “Hague child.”

Through consultation, USCIS and Department of State have agreed to a framework for implementing the IAA and the Hague Convention. My remarks today are reflective of that general framework.

Once the IAA amendments to the INA become effective, a child who is habitually residing in a Hague country will no longer be eligible for classification as an “orphan” under section 101(b)(1)(F) of the INA, if the child will be moving to the United States in connection with an adoption. Any such adoption must conform to the Hague process and procedures.

The definition of a “Hague child” in section 101(b)(1)(G) of the INA will broaden the definition of a child who may be adopted to include a child with two living biological parents who are incapable of providing proper care to the child. The definition of a child who may be adopted will be further expanded to include a child with a “sole or surviving parent” to account for situations where the child had two parents, but one parent died, disappeared, abandoned, or deserted the child, and the remaining sole or surviving parent freely has given a written irrevocable release for emigration and adoption.

This distinction and expansion is noteworthy because, currently, a child may not be classified as an orphan, and hence be eligible for adoption, based upon a release from two living parents. Additionally, in orphan cases, a father may not be considered to be a “sole parent” if the mother had disappeared or deserted or abandoned the child. Under current law applicable to orphan cases, only the mother of an illegitimate child is considered to be a sole parent, and only if it is established that she is incapable of providing proper care.

The IAA’s expansion of these definitions will provide opportunities for more children to become eligible for adoption, as long as the safeguards and requirements of the Hague Convention have been met.

In consultation with the State Department, USCIS is currently drafting proposed regulations under the IAA to set forth the procedures and requirements that must be followed by prospective parents in order for USCIS to determine their eligibility and suitability to adopt a child from a Hague country.

As with any rule, once a proposed rule is published, interested persons can submit comments. We have been following closely the comments to the several Department of State rules implementing the Hague Convention and the IAA. We have taken the relevant concerns raised in those contexts under consideration to inform our regulatory development. We look forward to the constructive and valuable input we will receive from concerned parties as part of the rulemaking process.

We anticipate that our proposed rule’s approach to the stages of adjudication to determine the eligibility of a child for Hague classification will ensure that the requirements of the Hague convention and the IAA have been complied with and the best interests of the child have been met.

CONCLUSION

As reflected in my remarks before the Committee today, intercountry adoptions involve a multifaceted process where multiple, discrete decisions must be made regarding both a child overseas and prospective adoptive parents. The sequencing of events and coordination between the Department of State and USCIS has become even more critical under the Hague Convention and the Intercountry Adoption Act. USCIS, in partnership with the Department of State, is committed to making the process work for birth parents, adoptive parents and above all the children involved in the intercountry adoptions, while adhering to the requirements of the participating countries. Thank you again for the opportunity to speak with you on this important subject. I would be pleased to answer any questions the Committee may have.

¹The following table shows five years of data on the number of children from other countries adopted by U.S. citizens:

Fiscal Year (Oct. 1–Sept. 30)	Immigrants-Orphans Adopted by U.S. Citizens
2005	22,710
2004	22,911
2003	21,320
2002	21,100
2001	19,087
2000	18,120

Source: Office of Immigration Statistics, *Yearbook of Immigration Statistics* (data includes 1) orphans adopted abroad, admitted to US (IR3s), 2) orphans adopted abroad, adjustments in the US (IR8s), 3) orphans to be adopted, admitted to the US (IR4s), and 4) orphans to be adopted, adjustments in the US (IR9s).

Mr. SMITH. Thank you so very much.

We are joined by Mr. Pitts. Do you have an opening statement? He has been a passionate defender of adoption for many, many years.

Mr. PITTS. Thank you, Mr. Chairman, and thank you for holding this important hearing. It is clear from your leadership and the work of nongovernmental organizations that there are many wonderful families in the United States who would be delighted to give children from other countries a loving home. We must take steps to streamline the international adoption process while ensuring both safeguards for children and respect for the sovereignty of the country of origin of each child. But, it is tragic that a child, particularly one with special needs, is forced to wait a lengthy period of time before moving to be with his or her new family. I particularly remain concerned about the status of adoption in Romania.

There are circumstances in which all reasonable efforts have been made to find a family for a child in the child's country of origin, and, despite these efforts, the child is not adopted. For these children, international adoption is their only chance to find a permanent loving home.

Mr. Chairman, thank you for your leadership on this issue, and I appreciate the opportunity to hear our distinguished witnesses today.

Mr. SMITH. Thank you very much, Mr. Pitts.

Let me just begin with some opening questions. First, to you, Ms. Barry: What is the process by which sending countries' requirements are made known to the United States accrediting entities and adoption agencies? How would this process change as we move toward transparency? And, to what extent is the Department of State proactive in providing requirements to prospective adoptive parents of the sending countries' requirements?

And Ms. Scialabba, we know that USCIS is responsible for determining the fitness of the parents. The State Department is knowledgeable about the specific country requirements. How does the State Department work with USCIS to ensure that the wishes of the parents and the sending countries are carried out?

You mentioned a moment ago about how important cooperation is—but how does that work? I went through at least four of the countries' very specific requirements, you are knowledgeable about all of that, how is that transferred to the prospective parents and all involved?

Ms. BARRY. Mr. Chairman, the Department of State now has available to the American public on our Web site general information about the requirements that each country has that relate to the suitability of adoptive parents. But as you go through that Web site, you will see that we address it mostly in free-form text, but what we will do differently after we get closer to our ratification date is to formalize this question, the questioning of the sending countries, so it will be very clear to them that this is not just a question for information but a question with repercussions on the adoption process. So we will draft very specific questions and have all of our diplomatic missions around the world, where it is appropriate to raise these questions, ask them in the same format so we get information back that reliably attests to the restrictions of each sending country. And this information will be shared with the accrediting entities and the adoption service providers.

What we have done in the regulations on accreditation that the adoption service providers will need to focus on is that each specific home study needs to address explicitly the instruction, the restrictions of the sending countries. So if an American family expresses the intent of adopting a child from China, their home study will need to address the issues relevant to the restrictions of China.

So we think this is a good way of doing a couple of things: One, meeting the requirement of the IAA; but secondly, it is a way of ensuring the parents themselves have been adequately counseled. No one is going to benefit if parents are sending their files to a country where they are clearly not going to be viewed as suitable parents. So we think up front, the information from the adoption service providers to the families themselves can help them form their judgment as to which sending country they think suits their interest in pursuing a child.

Mr. SMITH. Thank you.

Ms. SCIALABBA. I think I would just add to that, that the adoptive parents will be required to identify the country from which the child will be adopted. So the known requirements, we will know up front what they are and the USCIS will take into consideration those requirements and whether they have been met.

Mr. SMITH. But let me ask in terms of children who will immigrate to other countries pursuant to an adoption plan that has been put into place by foreigners. What will be the criteria for our conveying to other countries the suitability of the parents as well as the eligibility of the children?

Ms. BARRY. We do not believe that under the IAA we have a role in expressing, at the Federal level, criteria for foreign parents. As a rule, what we put forward for the emigration of children from the United States says that we will rely on the judgment of domestic authorities, particularly State-level courts, to determine that the adoption meets Hague Convention criteria as well as the criteria of that particular jurisdiction.

Mr. SMITH. For years, as I think you know, home studies have been an area of concern because they may provide insufficient information about the suitability or fitness of potential adoptive parents. For example, if potential adoptive parents do not like the outcome of a particular home study, they can shop home studies until they find one that does not raise questions about their fitness as a parent. In addition, often home studies are not being carried out by persons with licensed credentials if the State law does not require such credentials. What is the USCIS doing to strengthen weaknesses and improve the information that it receives to make decisions about the fitness of potential adoptive parents?

Ms. SCIALABBA. Let me first address the question for shopping around for home studies. One of the things that the system that we are planning to put into place some time toward the end of 2007 will be able to identify for us is if someone has filed an application for a home study from a different State previously. At that point we will know that there was a previous home study done and adjudication that was based on that home study.

And now—I have forgotten the second part of your question.

Mr. SMITH. It had to do with how do we improve information of potential adoptive parents? Will the home study capture that information in a way that really underscores the need for the fitness of the individual and the suitability of them to adopt?

Ms. SCIALABBA. Yes. Our expectation is that it will in fact do that. And the fact that we are strengthening the information that will be provided to the home study providers about what the requirements are that must be met, we anticipate that that will—

Mr. SMITH. Now if the home study found a person not suitable, what is the consequence for that in terms of whether they do indeed shop and find somewhere else to get a better mark?

Ms. SCIALABBA. I think part of that will depend on whether we are aware of the home study. If it is done before the home study is submitted, we might not be aware of that fact.

Mr. SMITH. How proactive do you expect you will be?

Ms. SCIALABBA. I will have to get back to you on that question.

Mr. SMITH. Well, I say that—and again I am not one of those who is so quick to be concerned as Romania is, for example. Nicholson, who is the rapporteur for EU ascension, sees international adoption as the equivalent of baby trafficking—and I think that is a very jaundiced and improper view. There are those who will exploit and they need to be dealt with and they need to be prosecuted. But to tarnish the wonderful network of adoption is, I think, a very serious mistake.

But having said that, if there are people who fail home studies or at least don't do as well as they would have liked, there needs to be some way of capturing that information. We know that people can be very evasive and very clever in going about this, and I am just wondering what level of scrutiny will we bring to bear that ensures that the parent has the fitness that we think is proper in order to adopt? Because that is important, not just in the best interest to the individual child, but to the whole system itself.

For example, there are people who play the system and lie and deceive about their homosexuality that do so to adopt in China. I can conceive of the Chinese Government shutting down in whole or

in part their adoption mechanisms if they think people have improperly exploited their local requirement.

And I am just wondering what level of aggressiveness we are going to take on this for the best interest of the child, in particular, and for the adoption system in general, so that we don't see a shut-down as we saw in Romania. We have seen this happen time and time again in places like Russia—which has other issues that it deals with, demographic issues—but it doesn't take much to trigger local negative reaction that then translates into new policy that precludes adoption.

Ms. SCIALABBA. Actually, I have an answer for your question. We are currently referring to the process that will allow the direct submission for home studies rather than the home studies going to the adoptive parents, and we will receive all home studies that are done.

Ms. BARRY. If I might volunteer that from the point of the view of the State Department, we tried to address the issue of the qualifications of those who are preparing the home studies. So, whereas the content of a home study will be reviewed by USCIS, we did set regulations for the quality of the professional credentials that the preparer of the home study must have, as well as fixed responsibility for that home study with what we call the primary adoption service providers. So what we wanted to avoid was having a string of adoption service providers lined up, each doing one discrete task, and no one claiming responsibility for the whole. So in our regulatory framework, the primary adoption service provider will carry responsibility for the quality of the home studies, and their accreditation can be removed from them if we find that they are not meeting their appropriate responsibilities.

Mr. SMITH. Thank you. Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman, and let me pursue that line.

I think it is very important that there be substantial integration between the Department of Homeland Security and the Department of State. And I understand that the two Agencies are in the process of developing separate case management systems. I had hoped that there would have been a case management system that was organic in the sense that it had input and served both Agencies, because I am concerned about the potential for a gap. Can you comment on where we stand? Are the contractors speaking to each other? I think it was Congressman Pitts that talked about delays in terms of the process itself with, I think, a negative consequence to the best interest of the child as well as creating anguish for potential adoptive parents.

Ms. BARRY. Sir, I think I have a positive answer for you to allay your concerns. As I mentioned, we have been focusing on three of the four components of our automation that will support adoption, and that was the pieces that did not impact directly on USCIS. So we went forward first with the pieces that would impact on our relationship with the accrediting agencies and the adoption service providers.

Now we are very much focused on the module where we will have to share information back and forth and we are participating in a working group with subject experts and technical experts to

make sure that the interface we design will make sure there is a seamless transition of information between the two Agencies.

So we don't view it as a problem that there are two separate systems, because we do different things and we will be tracking in part different activities, but there are certain critical data fields that we both need. And so for us, the main focus is on the interface.

Mr. DELAHUNT. And it will be mutual access.

Ms. BARRY. Mutual access, real-time updates, so the minute DHS finishes a particular milestone in a case, it comes to the State Department seamlessly and quickly so that then we can pick it up without any delay.

Mr. DELAHUNT. I think that is very important and we are—I am pleased to hear that and we are going to rely on you.

In terms of the concerns expressed by the Chairman, if there is noncompliance, I would—and I think you, Secretary Barry, referenced this, the singular benefit of the Hague Convention itself is the ability to rescind the accreditation so that the reliance on the accreditation process hopefully will ensure compliance in all aspects to explore the issue further of the requirements of the sending country. And I would hope that the Chinese Government would reconsider some of their requirements, some of their benchmarks, if you will, or criteria, as policies change in the sending countries that would be reflected in the requirements that would be imposed upon the accredited agencies; is that an accurate statement?

Ms. BARRY. Most assuredly, that will be done once a year.

Mr. DELAHUNT. Could you comment on—you probably—I am sure you heard my comments regarding Guatemala. Can you give us an update, and is there hope in terms of what is occurring there?

Ms. BARRY. Sir, I am very happy to give you an update. I was in Guatemala last month with a few colleagues from the Department of State to have a very meaningful dialogue. We met very intensively with virtually everybody we thought had a significant role to play in the discussion of the future of adoption in Guatemala. That included a working group of the Executive Branch, the party leaders of Congress, some of the private attorneys and notaries who now do much of the work, and other diplomatic representatives—most specifically UNICEF.

What I came away with from that dialogue is that there is now a moment in which we can achieve some progress because the legislature is in session. They have a draft bill on the table. The Executive Branch has been working very, very hard in a working group style to bring together the interest of different agencies to see how they can actually establish a Hague-compliant adoption process.

Mr. DELAHUNT. Let me ask you this question: Would it be of value if Members of Congress in, as you say they are, in session, now would it be of any benefit if some of us visited with our colleagues in Guatemala to express our concerns on very clear and unequivocal terms?

Ms. BARRY. The session is going to end very soon. I don't know that you would actually have time to go down. I know that a number of Members of this Congress have already expressed in writing their concern to the Guatemalan legislature. We know that there

is wheeling and dealing going on within the Guatemalan Congress. I think our message got through that it is time for Guatemala to change and that we will not have a workaround. That once the U.S. Government is compliant with the Convention, that will be the only way in which adoption cases will be——

Mr. DELAHUNT. If I can have an additional minute, Mr. Chairman.

You know, Congressman Camp and I left very concerned about what we observed in Guatemala, and as I said, very disappointed that it does not appear to have been significant progress, if any at all, at this point in time. And both he and I recommended—because it would appear to us that many of the problems associated with adoption in Guatemala could be identified by denominating the lawyers in Guatemala that appeared to have a disproportionate share of problem cases—that if a list were made by the Department of State for reference by prospective parents or by adoption agencies here in the United States, that these individuals were to be avoided, were not to be part of, might have some salutary impact in terms of those, that I believe are, to a significant degree, responsible for the problem.

Ms. BARRY. We are thinking in the same direction but a little differently. The Convention says that you have accredited bodies on both sides so we will be accrediting our adoption service providers. They need to know who we work with in Guatemala. Well, a for-profit attorney is not permitted under the Convention, so that is a nonstarter. So it is that kind of dialogue that we were doing in Guatemala as people sort of came to us with the what-ifs. We kept going back to the Convention to show how that could not happen.

UNICEF has really picked up the burden of working with the Congress on the specifics of their legislation. I think earlier it was mentioned that one concern is the pipeline provision. We have been careful about that to make sure that in getting feedback to appropriate parties in Guatemala, we have made that clear that we would want a clear, reasonable pipeline provision. Our statute gives one to us, and so clarity for American families on this is something that we want to end up with at the end of our diplomatic dialogue.

Mr. DELAHUNT. Thank you.

Mr. SMITH. Mr. Payne.

Mr. PAYNE. Thank you, Mr. Chairman. Since I missed the testimony, I will yield to Mr. Pomeroy and we will save questioning for the second panel. Thank you.

Mr. SMITH. Mr. Pitts.

Mr. PITTS. Thank you, Mr. Chairman. What thresholds will the USCIS and State Department use in determining whether a country is no longer suitable for adoption?

Ms. SCIALABBA. We don't shut down countries arbitrarily. We think long and hard before doing that and the only time that it does happen is when it becomes clear that the best interest of the children are not being served, that there are serious problems that can't be resolved. We don't take that lightly, and we don't invoke that lightly.

Ms. BARRY. We receive reports from our office overseas and they do, from time to time, point out systemic problems in the adoption

process of a specific government. What we then do is try and determine how to work with that government so that we can overcome those systemic problems. And we have so far been able to find interested agencies, interested NGOs and others to help us in that work. So as my colleague mentioned, the only time we have not been able to account this into maintaining an adoption program has been in Cambodia.

Mr. PITTS. What about the change in the orphan definition under the IAA? And what are the practical implications for U.S. adoption of that?

Ms. SCIALABBA. The changes apply only whenever the ascending countries, head country, signature to the Hague Convention—I think in my opening statement, I mentioned that one of the benefits of the definition is that you can have an adoption of a child who has two living parents, whereas that is not the case currently. The definition of “orphan” that is in the INA currently 101B—1F, I believe, is “will remain in effect for countries that are not signatories to the Hague Convention.”

Mr. PITTS. Madam Secretary, I met with the First Lady of Guatemala and her staff when she was here a few weeks ago. She expressed a concern that some of the babies were being trafficked. What are you looking for as far as their legislative package?

Ms. BARRY. The number one thing we are looking for in the legislative package from the Guatemalan countries is clarity on who will be the clarifying authority—who it will be for Guatemala. By naming an Executive Agency Branch that will have the responsibilities under the Convention, then we know who our partner is to talk to on the nitty-gritty of developing procedures, and possibly undertaking some capacity building in Guatemala. The other thing that has sealed progress in Guatemala is internal discussion over whether or not Guatemala’s ratification of the Convention was properly done. Part of what the dialogue is in Guatemala today is to sort of set aside that domestic dispute, reaffirm that the Convention is enforced in Guatemala, and to allow the Congress to go forward and provide the implementing legislation so that the people who are interested in working for children can move forward.

Mr. PITTS. Thank you, Mr. Chairman.

Mr. SMITH. Mr. Pomeroy.

Mr. POMEROY. Mr. Chairman, I want to thank you for holding this hearing and your thoughtful statement that you have advanced. Clearly you have delved deeply into this issue. During the years I have been in Congress, I have been blessed with becoming the adoptive parent of two children from Korea, so we could not be talking about a topic that strikes more close to home. I am particularly struck, Mr. Chairman, by your statement on page 3. While I believe every child has a right to grow up in a loving family, I also believe there is no right to adopt. And you get to the requirements then, appropriately applied to make absolutely certain that every international adoption executed in the United States meets every standard of rigorous scrutiny as to the appropriateness of the home in terms of full compliance with the country who has allowed their children to be placed in international adoption. I want to say a word about those countries.

Some have felt there is an international stigma against being a country that allows its babies to be placed for adoption internationally. I will tell you, as a Member of Congress, but more appropriately, as an adoptive parent, I see it completely differently. I believe countries that allow international adoptions place above all else the interest of their children and they know that the interest of that child is best advanced by being raised in a family. Hopefully, and in most cases, that family can be found within the domestic country, the country of birth. When that is not possible, the interest of that child being raised in a family should override the interest of that child being kept in the country and being raised in an orphanage. And they have placed a value, a national statement about the value of this country toward its children by allowing them to be raised in families.

Those are countries for whose values we could have deep respect. But we must be absolutely certain any question they might have about the appropriateness of the placement is met in full by the rigorous activities on our side. That is why I am so pleased that Congress has finally passed the Hague Treaty, and in my own view, we don't need legislation at this point. I think the Hague Treaty gives us plenty.

We need to have hearings like this to make sure the regulations are unfolding to the letter and in full spirit we are executing under the Hague Treaty. The country I would ask specifically about: Guatemala. You know, it is very possible that if things don't improve with Guatemala, this isn't going to be a relationship that can continue. The tragedy, of course, would be for the babies that can't find families within the country of Guatemala, but to find loving families here. But we are not going to sully the reputation of international adoption by engaging with a country that we can't feel great about in terms of whether or not everything is being perfectly handled on that end.

Do either of your Agencies look at other countries where new relationships might be established? Because certainly, we have families in this country that would like to have the miracle of parenting, that I have had personally, in international context.

Ms. BARRY. Yes, sir. We are engaged around the world in a number of diplomatic dialogues in the role of intercountry adoption. First, to get to your first point about the stigma that still attaches to the idea of intercountry adoption, we have a number of efforts underway through international visitors' programs, roundtables with experts from the United States, to try and overcome some prejudices that might remain in the minds of certain elements of the public. With regard to countries that are not now sending many children to loving families through intercountry adoption, we have had certain governments, and some governments particularly, admit that this is a problem for them. That they know they have too many children, many orphaned through HIV/AIDS whom they can not take care of, and that they need some assistance in developing the legal framework and a capacity to review cases appropriately for the suitability of the parent and the bonafide status of the child as an orphan.

And with the Hague—the guardian of the Convention and other countries, we are clearly committed to engaging with these coun-

tries to try and help them do a variety of things getting their legal framework in alliance. Many times it has been UNICEF that has picked up that particular job. And other countries that receive a lot of orphans, such as France, Spain, Italy, Germany, the Nordic countries are willing to partner with us.

So we think that we, in fact, will have a very active diplomatic agenda over the next couple of years.

Mr. POMEROY. I really appreciate that. I want to underscore that I bet there is quite a bit of congressional enthusiasm generated from the enthusiasm our constituents have for expanding those opportunities. Thank you for that.

As I look on the chart of page 8, Romania jumps out as a country that shuts the door on international adoption, at least to the United States. They certainly haven't dealt in a completely successful way with creating within Romania a 100 percent domestic placement with families for these children that need families.

What is the fate of these children now that they are not being placed in international adoption?

Ms. BARRY. Well, unfortunately, sir, evidence is increasingly coming forward that their fate is very problematic, that some arrangements that have been provided for specific children have not worked out to their benefit. We think that that information is, in fact, troubling the Government of Romania, especially their child welfare experts, but there is still this problem of their view of what they are required to do in order to join the European Union.

Now we have two votes from the European Parliament. Two resolutions passed that make it quite clear that the European Parliament does not view the Draconian measures that Romania took as necessary for them to join the European Union. There is some thinking that once Romania is firmly in the European Union that there will be more effort from the other members of that union to help Romania resolve some of the systemic child welfare problems. Whether or not that will end up changing their specific statute on intercountry adoptions, I cannot say, but I do know a number of people are watching—

Mr. POMEROY. I appreciate the sensitivity. This is a decision these countries have to make themselves that goes right to their soul in terms of figuring this out, and we will respect their decisions.

What I do not respect—in fact, what absolutely appalls me—is the role this official out of the United Kingdom has had on behalf of the EU in condemning children to upbringings in under funded orphanages because, in her view, international adoption should not move forward. And I understand, further, that even—if you want to get into the background of this individual, there may have been some personal prejudices largely at play with the execution of her ministerial duties. I believe the harm that this one person has impacted is horrific in a real-personal sense in terms of the diminished lives of the children impacted as we see the Romanian adoptions drop to nothing.

And you know what? What you have said sounds fine, but it does not seem like there is enough there. You know, here we have a country, we have families that can provide beautiful homes for beautiful children who need them, and if all of this is ground to a

halt because of some misapprehension created by one official out of England—come on. This is the United States of America. We have more we can do to, perhaps, address this situation.

In the end, we will always respect what Romania will decide, but you have not given me enough with your response to know that we have pushed this as hard as we could.

Ms. BARRY. Well, I am sorry, sir. I can absolutely assure you that the U.S. Ambassador of Romania, Ambassador Taubman, is personally committed to this topic; and he looks for every opportunity in Romania that he can get to jog the officials to prepare the public for a realistic reassessment of what they are doing for children in their country as well as trumpeting the resolutions of the European Parliament so that it is quite clear that the views of that one individual who was a rapporteur for a while—it is clear that that does not reflect where the European Union now stands. So the Ambassador is very, very proactive on this.

Mr. POMEROY. I thank the witness for the response; and Mr. Chairman, I mean, given your interest in this area, this might be one area where Congress can also look at ways where we could assist the Ambassador in trying to deliver this message as loud and clear as we can.

I thank the panel. I thank the Chairman for letting me participate.

Mr. SMITH. Thank you, Mr. Pomeroy, very much for your statement, but also for, again, bringing up Romania.

As my friend knows, I offered a resolution that passed the House, nearly unanimously, calling on the Romanian Government to at least facilitate the adoption of the pipeline cases that went totally unlistened to by Bucharest. We have held 2-hour-long hearings with families who are waiting for their children. The place was literally packed and we actually had the Romanian Ambassador testify, and still nothing has happened.

As my good friend and colleague, Mr. Pomeroy, pointed out a moment ago, Lady Nicholson has such a prejudicial view when it comes to adoption. She is so antagonistic to it and she totally misused her position as rapporteur for EU ascension for Romania to cower the legislature in Bucharest to end international adoptions.

My concern is it is not just in Romania, but that very misguided view is at least risking other countries in the European Union who may take that view as well. I want to applaud our mission, not just in Bucharest, but especially in encouraging the European Parliament to take the action it took. Because that is not what we intended and yet the damage has been done; and, so far, there is no realistic expectation it is going to be undone.

We had, as I said, those two hearings. We heard from experts that said that those little children in those orphanages are actually suffering not just physical but also mental diminishment of their capabilities because of the less-than-adequate nature of those orphanages.

I, myself, made many visits during the '80s into the '90s to Romania on behalf of human rights issues. I remember being in the orphanages right after Ceausescu fell in the December 1989 revolution. I was there in January, and I saw 60 kids lined up who could

not even be turned, could not even be changed because there was insufficient help. That has not changed in many ways in 2006.

International adoption provided a loving home for those individuals that, unfortunately, the EU through Lady Nicholson has ended for the time being. I would hope that we would redouble our efforts. I am really glad that Mr. Pomeroy brought that up. Because we have raised it, we have raised it, we have passed resolutions, and nothing seems to happen. So—

Ms. BARRY. Well, sir, we certainly share your frustration, and I can just say that, at the highest levels of the Department of State, we are looking for every opportunity we can to change minds and try and get this situation corrected. We are certainly not sitting on any information that is derogatory to the Government of Romania, information that comes to us about children who are suffering because of inadequate institutional care. We are certainly sharing with appropriate NGOs and others in the European Union to make sure that we can speak with a unified diplomatic voice.

Mr. SMITH. Let me just ask two final questions, if I could, and then go to our next panel.

The number of United States adoptions from Russia has decreased this year. I wonder if you could tell us what the reasons for that are. Does that have anything to do with the post-adoption surveys that are not being complied with? What are we doing to try to resolve that?

And, secondly, how far has the USCIS come in working with the State Department on the case tracking system? What information would be on hand? Who would have access to it? Is this a joint process? Will there ever be a single, integrated tracking system or will you have two separate databases? How is that going to work?

Ms. BARRY. Sir, I will take your first question on Russia.

We would attribute the main problem in Russia with the change in their bureaucratic structure for handling intercountry adoptions and specifically the new licensing requirements that they set up for foreign adoption agencies. We think that most of our U.S. adoption agencies are over that hurdle now. They have complied with, actually, two pieces of legislation that came out: Registering as an adoption agency and registering as an NGO. So we think that the systemic problems won't have an impact this coming year.

With regard to the case management issue, as I think I mentioned earlier, we will have two separate systems that reflect that we do different things, but there will be an interface between us so that the information relevant to both will be shared quickly in real time so that, for example, the minute USCIS approved a petition, that information would be shared with us. So we will—we are—we always include each other at all of our systems development meetings to make sure that we do not take a step precipitously that would unduly harm our partner.

Ms. SCIALABBA. I would just echo what Ms. Barry has said. We are working in tandem with developing the systems. They are Web-based, they will interface, and we are very pleased with the cooperation and the effort that we are both putting into that.

Mr. SMITH. The focus of the hearing, obviously, is on Hague compliance and implementation. What about the more than 100 countries that have not signed on to the Hague Convention and have

not ratified? How will our adoption procedures be differentiated with those countries and the Hague countries?

Ms. BARRY. Well, the adoptions will continue to be processed under the Immigration and Naturalization Act, so from the point of view of the Department of State, there won't be that much difference. We will still be issuing an immigrant visa at the end of the process. We will still be receiving the petition from USCIS and appropriate data from USCIS.

Mr. SMITH. Well, can I ask you, since the Hague Convention was put into place to bring greater transparency and more uniformity to the way adoptions occur, and protect the best interest of the child, aren't there lessons learned from the Hague implementation that should automatically spill over to how we do all intercountry adoptions?

Ms. SCIALABBA. Yes, that is one of the things that we are currently doing. We are revamping the entire process, taking lessons learned and applying those lessons to the process that will still be in place for countries that are not part of the Hague Convention. So, yes, and I think one of the things would be the case management system. That is one of the things that I think will help that process.

Mr. SMITH. Would you provide us a detailed list of examples, as comprehensive as you can make it, of where the standards of Hague will be matched or will now influence the standards for non-Hague countries?

Ms. SCIALABBA. Certainly.

Mr. SMITH. I would appreciate that.

[The information referred to follows:]

WRITTEN RESPONSE RECEIVED FROM Ms. SCIALABBA TO QUESTION ASKED DURING
THE HEARING BY THE HONORABLE CHRISTOPHER H. SMITH

The key principles of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Convention) strengthen protections for adopted children by:

- Ensuring that intercountry adoptions take place in the best interests of children; and
- Preventing the abduction, exploitation, sale, or trafficking of children.

As Convention and Intercountry Adoption Act (IAA) requirements are based on these principles, U.S. Citizenship and Immigration Services (USCIS) fully expects that best practices for processing intercountry cases will emerge from implementation of the Convention and IAA. Once implemented, USCIS will be able to identify these practices and, where possible and appropriate, implement similar practices for non-Hague countries.

Mr. SMITH. I want to thank our very distinguished witnesses for being here, for your leadership; and I look forward to hearing back from you as we move forward. Thank you so much.

Ms. BARRY. Thank you very much, sir.

Mr. SMITH. The second panel of our witnesses today consists of two accrediting entities named by the Department of State to accredit adoption agencies or approve persons and to oversee the agencies. They are accrediting the agencies in 49 States.

Let me just introduce our next two witnesses, first, beginning with Mr. Richard Klarberg, who has served as the President and CEO of the Council on Accreditation since October 2001. He has over 30 years of not-for-profit management experience. Prior to

joining the Council on Accreditation, he was Senior Vice President for North Shore Long Island Jewish Health System. Mr. Klarberg also served on the Council of Accreditation's Board of Trustees for 5 years.

Then we will hear from Ms. Dana Andrews, who is a Licensing Administrator in the Division of Child Care of the Colorado Department of Human Services. Ms. Andrews has 24 years of experience with child care licensing, including the licensing of all types of child care facilities and child placement agencies, including for domestic and international adoption agencies. She is primarily responsible for developing rules for all types of child care facilities and agencies and works closely with the provider community to develop the rules and licensing procedures.

Mr. Klarberg, if you could begin.

**STATEMENT OF MR. RICHARD KLARBERG, PRESIDENT AND
CEO, COUNCIL ON ACCREDITATION**

Mr. KLARBERG. Thank you very much, Mr. Chairman, and good morning, Ranking Member Payne and distinguished Members of the Committee.

May I say at the outset how deeply appreciative we are for the efforts of this Committee and this Congress for the work you have done not only in the area of intercountry adoption but also in the area of trafficking and children. There are very few issues that are as pressing as these, and we appreciate your commitment to that.

The Council on Accreditation is proud to have been designated by the Department of State as the sole national accrediting entity under the terms of the Intercountry Adoption Act, and I appreciate the opportunity to appear before you.

I would like to note also, Mr. Chairman, the presence of my colleague, Jane Schmidt, and a member of my board of trustees, Mr. Timothy Noker, both supporters of this effort.

Mr. Chairman, the Council on Accreditation (COA) has had a long history of accreditation. We were founded in 1977 by the Child Welfare League of America and what was then the Family Services of America, now the Alliance for Children and Families. Today, these two preeminent organizations have been joined in supporting COA by such other groups as Catholic Charities U.S.A., Lutheran Social Services, the Association of Jewish Family and Children's Agencies, Volunteers of America, Children's Home Society of America, and—of special note—my colleagues from the Joint Council on International Children's Services and the National Council for Adoption.

Today, the Council on Accreditation is the leading accreditor of human service organizations in the United States. We currently accredit more than 1,500 private and public social service organizations providing services to more than 7 million vulnerable people annually.

For the past 20 years, it is important to note COA has been the only accreditor of agencies involved in intercountry adoption. We currently accredit 59 placing agencies and many more home study and post-placement service providers. It is this experience that underlies our confidence in our ability to carry forward the spirit

and the letter of the Intercountry Adoption Act and the Hague Convention.

At COA, we view accreditation as a strategy, a strategy that adoption providers can employ to strengthen, measure and validate their credibility, integrity and organizational effectiveness. The essential characteristics of COA accreditation are the use of volunteer surveyors and organizational self-evaluation and a process that emphasizes working with candidates in a collegial and facilitative manner. These same characteristics are present in the Hague process.

Moreover, like COA's traditional accreditation, the Hague process looks at an entire adoption organization—its governance, professional leadership, financial management, insurance, staff training, and qualifications and client counseling to name just a few components. Perhaps the only substantive difference between the Hague process and that of the traditional COA model is that COA focuses on every aspect of management as well as providing services more intensely through the post-adoption phase.

Nonetheless, the Hague accreditation is a milestone in international human services. Unlike most conventions, it not only sets forth principles but it requires the implementation of those principles and the validation of the implementation of those principles. As such, it provides a meaningful incentive for adoption service providers here in this country to employ best practices that protect the rights of children, biological families and adoptive families and to ensure that those same rights and responsibilities are being carried out abroad.

Given the limited time allotted to me, I would like to briefly touch on three key issues: The cost of accreditation, the technical assistance we will provide to assist adoption service providers in navigating the standards, and the process we will deploy to monitor compliance with the standards.

As to the cost, we recognize that many intercountry adoption service providers are small organizations. They are either individual providers or very valuable, small agencies throughout the country. We recognize that the cost of accreditation and approval has been of great concern. In fact, through November 9th, I am pleased to report that we had received applications from 97 service providers. Of this number, 54 were from providers with budgets less than \$500,000; and as of yesterday, Mr. Chairman, we had received applications from 126 providers with the same ratio. So the cost of accreditation has not had a chilling effect on organizations stepping forward. As you may know, the deadline for submitting applications to be in the first flight of accreditation is November 17th, so we expect this number to increase until that time.

Recognizing that the preponderance of applications would come from small providers, COA placed great emphasis on developing a fee structure that would not preclude small providers from seeking accreditation because of cost. Thus, the fee for an organization with a Hague-related budget of less than \$500,000 is \$6,850. Mr. Chairman, \$6,850 is for a 4-year accreditation, so the annual cost is \$1,712. Moreover, we have arranged for organizations to be able to pay this fee incrementally over several months. And let me also say, Mr. Chairman, that it is our philosophy as a not-for-profit or-

ganization and it is our practice that the capacity to pay a fee will never interfere with the opportunity for an organization to seek accreditation.

Of course, it is important to recognize that there are additional costs involved in meeting the standards—financial audits, insurance and staff training in particular. But these are costs, Mr. Chairman, that will strengthen an organization, that will strengthen its capacity to provide appropriate services and to protect the rights of children and biological and adoptive families.

With regard to technical assistance, COA has a history of viewing accreditation as a facilitative process, not an adversarial one. Our goal is to work with Hague applicants to ensure that the process is not only constructive but transformational. In essence, we see the accreditation process as a partnership. This is especially true for small agencies and even more so for small agencies that are unfamiliar with accreditation. To assist them, COA has currently staffed two full-time positions devoted to the process—solely devoted to the process—and we are in the process of hiring two additional staff. Together with our entire experienced staff, we will provide the necessary technical assistance to serve these small agencies.

Finally, in connection with ensuring compliance with the standards, COA places great emphasis in conducting a thorough evaluation of each adoption service provider's compliance, not only with Hague standards, not only with State licensing rules but also with applicable foreign laws. Our surveyors are specially trained to review documents during the site visit and to interview members of the agency's board, staff and clients to ascertain compliance with those regulations. Nonetheless, it should be recognized that accreditation is not a silver bullet. It is a snapshot in time.

What accreditation can ensure, however, Mr. Chairman, is that performance improvement plans will be instituted to preclude repetitive instances of noncompliance. We think that this alone will facilitate more countries' looking to the United States and looking to be part of the Hague process. Of course, we will also utilize the databases being developed by the State Department and work in close partnership with them.

I would like to thank you again, Mr. Chairman, for affording me the opportunity to briefly describe COA's efforts in implementing the IAA and the Hague Convention. Like each of you and your colleagues, we are committed to protecting the rights of children, their biological families and their adoptive families. To do so, we recognize that we must ensure that adoption service providers completely adhere to standards of best practice. After all, as you well know, Mr. Chairman, when it comes to vulnerable children, when it comes to vulnerable families, whether here or abroad, "good enough" is not good enough, and it never will be.

Thank you very much, and I will look forward to your questions. [The prepared statement of Mr. Klarberg follows:]

PREPARED STATEMENT OF MR. RICHARD KLARBERG, PRESIDENT AND CEO, COUNCIL ON ACCREDITATION

Good afternoon Chairman Smith, Ranking Member Payne and distinguished members of the Committee.

My name is Richard Klarberg, and I am the President & Chief Executive Officer of the Council on Accreditation. COA is proud to have been designated by the Department of State as the sole national accrediting entity under the terms of the Intercountry Adoption Act and appreciate the opportunity to appear before you this afternoon.

COA has had a long history of accreditation. We were founded in 1977 by the Child Welfare League of America and what was then Family Services of America (now the Alliance for Children & Families). Today these two pre-eminent national organizations have been joined in supporting COA by such other groups as Catholic Charities USA, Lutheran Social Services, the Association of Jewish Family & Children's Agencies, Volunteers of America, Children's Home Society of America, and—of special note—the Joint Council on International Children's Services and the National Council for Adoption.

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At COA, we view accreditation as a strategy that adoption providers can employ to strengthen, measure and validate their credibility, integrity and organizational effectiveness.

The essential characteristics of COA accreditation are the use of volunteer surveyors, an organizational self-evaluation and a process that emphasizes working with candidates in a collegial and facilitative manner. These same characteristics are present in the Hague process.

Moreover, like COA's traditional accreditation, the Hague process looks at an entire adoption organization—its governance, professional leadership, financial management, staff training and qualifications, and client counseling, to name just a few components. Perhaps the only substantive difference between the Hague process and that of the traditional COA model is that COA focuses on every aspect of management, as well as providing services through to the post-adoption stage, whereas the Hague Convention is limited to post-placement services.

Nonetheless, Hague accreditation is a milestone in international human services. Unlike most conventions, it not only sets forth principles but requires that the implementation of those principles be validated. As such, it provides a meaningful incentive for adoption service providers to employ best practices that protect the rights of children, biological families *and* adoptive families.

Given the limited time allotted to me, I would like to briefly touch on *three key issues*: the cost of accreditation, the technical assistance we will provide to assist adoption service providers in navigating the standards and the process we will deploy to monitor compliance with the standards.

As to the cost, we recognize that many intercountry adoption service providers are small organizations and individual providers, and that the cost of accreditation and approval has been of great concern to providers. In fact, through November 9th, we had received applications from 97 adoption service providers. Of this number, 54 were from providers with budgets less than \$500,000. As you may know, the deadline for submitting applications to be in the first flight of accreditation is November 17.

Recognizing that the preponderance of applications would come from small providers, COA placed great emphasis on developing a fee schedule that would not preclude small adoption service providers from seeking accreditation because of cost. Thus, the fee for an organization with a Hague related budget of less than \$500,000 is \$6,850. That is for a *four year* accreditation. So the annual cost is only \$1,712.50! Moreover, we have arranged for organizations to be able to pay this fee incrementally over several months.

Of course, it is important to recognize that there are additional costs to meet the standards—financial audits, insurance, and staff training in particular. But these are costs that will *strengthen* the capacity of an adoption provider to better serve and protect adoptive families here in the United States and children and their biological families abroad.

With regard to technical assistance, COA has a history of viewing accreditation as a facilitative process and not an adversarial one. Our goal is to work with Hague applicants to ensure that the process is not only constructive but transformational. In essence, we see the accreditation process as a partnership. This is especially true

for small agencies and even more so for small agencies that are unfamiliar with accreditation. To assist them, COA has currently staffed two full-time positions devoted to the process, and we are in the process of hiring two additional staff. Together with our entire experienced staff, we will provide technical assistance in specific areas when needed.

Finally, in connection with ensuring compliance with the standards, COA places great emphasis in conducting a thorough evaluation of each adoption service provider's compliance, not only with the Hague Standards, but also with relevant state licensing rules, as well as foreign and domestic laws. Our surveyors are specially trained to review documents during the site visit and to interview members of the board, staff and clients. Nonetheless, it should be understood that regardless of the quality of the process and the subsequent data collection, accreditation is not a silver bullet. It is a snapshot in time. What accreditation can ensure, however, is that performance improvement plans will be instituted to preclude repetitive instances of non-compliance. Of course, we will also utilize the web-based tracking and compliance databases being developed by the State Department.

In that regard, we have also worked in close collaboration with the State Department and the State of Colorado to develop a Substantial Compliance System, which assigns weights or values to the standards and defines the level of compliance required for accreditation and approval.

I would again like to thank the members of this committee for affording me the opportunity to describe COA's efforts in implementing the IAA and the Hague Convention. Like each of you, we are committed to protecting the rights of children, their biological families and their adoptive families. To do so, we recognize that we must ensure that adoption service providers adhere to standards of best practice. After all, when it comes to vulnerable children and families, good enough is not good enough.

Mr. SMITH. Thank you so much, Mr. Klarberg. I appreciate the work that you are doing, and I thank you for your kind comments.

Ms. Andrews.

STATEMENT OF MS. DANA ANDREWS, LICENSING ADMINISTRATOR, DIVISION OF CHILD CARE, COLORADO DEPARTMENT OF HUMAN SERVICES

Ms. ANDREWS. Good morning, Mr. Chairman, distinguished Members, Mr. Payne. I appreciate the opportunity to speak before you and discuss Colorado's role as an accrediting entity regarding the implementation of the Hague Adoption Convention on the Protection of Children. Colorado is honored to testify before this Committee.

First, I would like to thank the staff of the Department of State that has worked closely with the Colorado Department of Human Services over the last several years. Staff of the Department of State was very helpful and informative as we moved through the process of becoming an accrediting entity. Colorado would not have been able to complete the process of becoming an accrediting entity without the expertise offered by the various staff.

Colorado began the process of becoming an accrediting entity by responding to a Request for Statement of Interest released by the Department of State in the fall of 2003. Colorado submitted the Statement of Interest with the support of our Executive Director, Marva Livingston Hammons; and, following the submission of the Statement of Interest, staff of the Division of Child Care and the Office of Children, Youth and Family Services met with attorneys from the Department of State to answer questions and provide additional information.

It was necessary for Colorado to change State statute to create the authority to become an accrediting entity. During the legislative session of 2005, the Department sponsored legislation to give

the Department of Human Services the authority to become an accrediting entity and to charge a fee for the accreditation process.

We were also required to change legislation to allow the hearing process for an adoption service provider accredited agency to go directly to the United States District Court when an adverse action occurs, rather than having to go through our State administrative law process. Colorado was notified formally on June 29, 2006, that it had become the first-ever designated accrediting entity for intercountry adoption, and we were very excited to receive that designation.

Colorado believes that it is qualified to become an accrediting entity based on its long history of licensing child care facilities and child placement agencies. Colorado has licensed adoption agencies since the early 1960s.

In order to become licensed for domestic or intercountry adoption, an agency is required to meet 100 percent of the licensing regulations in Colorado. Colorado has very rigorous licensing regulations, some of which surpass the implementing regulations of the Hague Convention. The licensing regulations of Colorado currently require that an agency that contracts with an adoptive applicant to accept children born outside the United States and lacking United States citizenship must have direct knowledge of and be able to comply with all applicable laws, rules and procedures of the child's country of origin.

Colorado has experienced licensing staff to monitor all adoption agencies in the State. The licensing staff is responsible for original licensing of agencies, periodic supervisory visits and investigation of complaints. Staff is trained in the procedure to take adverse action against the licensing of an adoption agency. An agency license may be revoked, denied, suspended or changed to probationary based upon grounds listed in our State statute. A formal administrative law process is used to take action against a license in our State.

When licensing an adoption agency, licensing staff is required to review written policies of the agency, complete a site visit to the agency, review case files and write a detailed report of the findings. If an agency is out of compliance with licensing regulation, it has a set period of time to come into compliance with the regulation. Consistent violation of regulations is grounds for the revocation of an adoption agency license. Willful and deliberate violation of regulations is grounds for the summary suspension of the adoption agency license and the immediate closure of the agency. In the last 3 years, Colorado has taken action to summarily suspend the licenses of at least two agencies that did not have qualified staff nor had staff with fraudulent credentials.

Colorado currently licenses 25 agencies to perform intercountry adoptions, and we anticipate that 10 to 12 of those agencies will apply to be accredited through Colorado as an accredited agency or approved person. Two of the adoption service providers that Colorado anticipates will apply for accreditation have offices both in Colorado and in other States. However, most of the adoption service providers Colorado will accredit or approve have only one office which is located in Colorado, and many of these are very small agencies.

Colorado takes very seriously its responsibility of accrediting agencies or approving persons to comply with all applicable adoption rules, laws and procedures of the child's country of origin. The home study or family assessment that is submitted to the foreign country must be a reasonable, true and responsible assessment in regards to the requirements of the foreign country. When reviewing home studies/family assessments, licensing staff will ensure that pertinent information obtained through the assessment is included in the home study/family assessment that is sent to the foreign country. Deliberately withholding information from a foreign country would be a violation of the licensing regulations of Colorado as well as a violation of the accreditation standards. Colorado will take adverse action against accredited agencies and approved persons who fail to substantially comply with the home study/family assessment standards.

Following its notification of selection as an accrediting entity, Colorado began to work with staff of the Department of State and the Council on Accreditation to develop a substantial compliance system. Considerable work was put into this to make sure that the substantial compliance system was rigorous and met the intent of the IAA as well as was fair to accredited agencies and approved persons.

Colorado worked with the Department of State to get its fees and application approved. The fee schedule was first required to be promulgated by the Colorado Board of Human Services. The proposed fees were brought before the board 2 consecutive months and were passed for emergency implementation. The fees were then submitted to the Department of State for approval.

Once the fees and application were approved by the Department of State, they were mailed out to all of the adoption agencies in Colorado that perform intercountry adoptions. The applications were mailed to the agencies on October 6, 2006, once the transitional application deadline had been determined. As of the date of this hearing or when we left Colorado last week, Colorado has received six applications from adoption service providers, and we anticipate receiving an additional four to six by the end of this week.

Colorado has committed to the Department of State that it will provide training to all interested adoption service providers to assist them with completing the accreditation process. In order to facilitate this, Colorado has held one training session prior to the transitional application deadline and will hold two more training sessions prior to the end of the calendar year. The agenda for the training sessions will gradually progress as the applicants move through the application process to full or temporary accreditation.

During the first training session, Colorado required that agencies complete a survey of the agencies' preparedness for becoming accredited. Several of the agencies that attended were somewhat prepared for being accredited. Other agencies are just beginning the process. Most agencies indicated that they have a lot of training needs.

The second training session that will occur this calendar year will focus on the evidence that must be submitted prior to the site visit. The third training session will focus on preparing the agency

for the site visit. Additional training will be developed as requested by the agencies and as determined necessary by Colorado.

Colorado has two staff dedicated to the accreditation process. The staff will be responsible for reviewing the evidence prior to a site visit, completing the site visit, writing up a detailed report of non-compliance, following through with the plan of correction, and ultimately approving or denying the request for accreditation or approval.

Colorado anticipates that required evidence will be submitted by adoption service providers that have applied for accreditation or approval early in 2007. As we want the adoption service providers to be successful, we will work closely with the providers to understand the evidence required and to have adequate time to compile the information and submit it to the Colorado Department of Human Services/Division of Child Care.

Colorado will begin site visits in the spring of 2007. The actual time frame to begin the visits will depend on the preparedness of the adoption service providers and the review of the evidence. Adoption service providers will be given adequate time and training to prepare for the site visit. The actual accreditation of the agencies or approval of persons will occur following the determination of the unified notification date.

Again, the actual time frame for the accreditation will depend on the information that is obtained during the site visit and the accredited agencies and approved persons' ability to correct and provide additional information. Although Colorado will have a limited number of agencies to accredit, we will give the agencies as much time as necessary to prepare for the site visit and to make any corrections necessary. Colorado is committed to a detailed and thorough process of preparing agencies and approved persons and working with them to become fully or temporarily accredited.

I would like to thank the Committee again for the opportunity to testify before you today. Colorado is very excited to be chosen as an accrediting entity. We look forward to working with the staff of the Department of State as we move forward to full implementation of the Hague Adoption Convention on the Protection of Children.

[The prepared statement of Ms. Andrews follows:]

PREPARED STATEMENT OF MS. DANA ANDREWS, LICENSING ADMINISTRATOR, DIVISION OF CHILD CARE, COLORADO DEPARTMENT OF HUMAN SERVICES

Distinguished members of the Committee:

I appreciate the opportunity to speak before you and discuss Colorado's role as an Accrediting Entity regarding the implementation of the Hague Adoption Convention on the Protection of Children. Colorado is honored to testify before this Committee.

First, I would like to thank the staff of the Department of State that have worked closely with the Colorado Department of Human Services, Division of Child Care (CDHS/DCC), over the last several years. Staff of the Department of State were very helpful and informative as we moved through the process of becoming an Accrediting Entity. CDHS/DCC would not have been able to complete the process of becoming an Accrediting entity without the expertise offered by the various staff.

CDHS/DCC began the process of becoming an Accrediting Entity by responding to a Request for Statement of Interest released by the Department of State in the fall of 2003. CDHS/DCC submitted the Statement of Interest with the support of the Executive Director of the Colorado Department of Human Services, Marva Livingston Hammons. Following the submission of the Statement of Interest, staff of the Division of Child Care and Office of Children, Youth and Family Services met

with attorneys from the Department of State to answer questions and provide additional information. It was necessary for CDHS/DCC to change state statute to create the authority to become an Accrediting Entity. During the legislative session of 2005, the Department sponsored legislation to give the Department of Human Services the authority to become an Accrediting Entity and charge a fee for the accreditation process. The legislation also changed the hearing process to allow providers to go directly to United States District Court when an adverse action occurs, rather than having to go through the Administrative Hearing Process first. CDHS/DCC was formally notified on June 29, 2006, that it had become the first-ever designated Accrediting Entity for intercountry adoption under the Intercountry Adoption Act of 2000 (IAA).

CDHS/DCC believed that it was qualified to become an Accrediting Entity based on its long history of licensing child care facilities and child placement agencies. CDHS/DCC has licensed adoption agencies since the early 1960's. In order to become licensed for domestic or intercountry adoption an agency is required to meet 100% of the licensing regulations. CDHS/DCC has rigorous licensing regulations, some of which surpass the implementing regulations for the Hague Convention. The licensing regulations of CDHS/DCC currently require that an agency that contracts with an adoptive applicant to accept children born outside the United States, and lacking United States citizenship, must have direct knowledge of and be able to comply with all applicable adoption rules, laws and procedures of the child's country of origin. CDHS/DCC has experienced licensing staff to monitor all adoption agencies in the state. The licensing staff are responsible for original licensing of agencies, periodic supervisory visits, and investigation of complaints. Staff are trained in the procedures to take adverse action against the licensing of an adoption agency. An agency license may be revoked, denied, suspended or changed to probationary based upon grounds listed in statute. A formal administrative law process is used to take action against a license.

When licensing an adoption agency, licensing staff are required to review written policies of the agency, complete a site visit to the agency, review case files and write a detailed report of the findings. If an agency is out of compliance with licensing regulations, it has a set period of time to come into compliance with the regulations. Consistent violation of regulations is grounds for the revocation of an adoption agency license. Willful and deliberate violation of regulations is grounds for the summary suspension of the adoption agency license and the immediate closure of the agency. In the last three years CDHS/DCC has taken action to summarily suspend the licenses of at least two agencies that did not have qualified staff or had staff with fraudulent credentials.

CDHS/DCC currently licenses 25 agencies to perform intercountry adoptions. We anticipate that 10—12 of these agencies will apply to be accredited through CDHS/DCC as accredited agencies or approved persons. Two of the adoption service providers that CDHS/DCC anticipates will apply for accreditation have offices both in Colorado and in other states. However, most of the adoption services providers that CDHS/DCC will accredit or approve have only one office which is located in Colorado.

CDHS/DCC takes very seriously its responsibility of accrediting agencies or approving persons to comply with all applicable adoption rules, laws and procedures of the child's country of origin. The home study/family assessment that is submitted to the foreign country must be a reasonable, true and responsible assessment in regards to the requirements of the foreign country. When reviewing home studies/family assessments, licensing staff will ensure that pertinent information obtained through the assessment is included in the home study/family assessment that is sent to the foreign country. Deliberately withholding information from a foreign country would be a violation of the licensing regulations of CDHS/DCC as well as a violation of accreditation standards. CDHS/DCC will take adverse action against accredited agencies and approved persons who fail to substantially comply with the home study/family assessment standards.

Following its notification of selection as an Accrediting Entity, CDHS/DCC began to work with staff from the Department of State and the Council on Accreditation (COA) to develop a substantial compliance system. Considerable work was put into this to make sure that the substantial compliance system was rigorous and met the intent of the IAA as well as was fair to accredited agencies and approved persons.

CDHS/DCC worked with the Department of State to get its fees and application approved. The fee schedule was first required to be promulgated by the Colorado Board of Human Services. The proposed fees were brought before the Board two consecutive months and passed for emergency implementation. The fees were then submitted to the Department of State for approval. Once the fees and application were approved by the Department of State they were mailed out to all adoption

agencies in Colorado, licensed for intercountry adoptions. The applications were mailed to the agencies on October 6, 2006, once the Transitional Application Deadline (TAD) had been determined. As of the date of this hearing, CDHS/DCC has received six applications from adoption service providers.

CDHS/DCC has committed to the Department of State that it will provide training to all interested adoption service providers to assist them with completing the accreditation process. In order to facilitate this, CDHS/DCC has held one training session prior to the TAD and will hold two more training sessions prior to the end of the calendar year. The agenda for the training sessions will gradually progress as the applicants move through the application process to full or temporary accreditation. During the first training session, CDHS/DCC required that agencies complete a survey of the agencies preparedness for becoming accredited. Several of the agencies that attended were somewhat prepared for becoming accredited; other agencies are just beginning the process to become prepared for accreditation. Most agencies indicated that they have a lot of training needs. The second training session that will occur this calendar year will focus on the evidence that must be submitted prior to the site visit. The third training session will focus on preparing the agency for the site visit. Additional training will be developed by CDHS/DCC when necessary and requested by agencies in Colorado.

CDHS/DCC has two staff dedicated to the accreditation process. The staff will be responsible for reviewing the evidence prior to a site visit, completing the site visit, writing up a detailed report of noncompliance, following through with a plan of correction, and ultimately approving or denying the request for accreditation or approval. CDHS/DCC anticipates that required evidence will be submitted by adoption service providers that have applied for accreditation or approval early in 2007. As we want the adoption service providers to be successful, CDHS/DCC will work closely with the providers to understand the evidence required and to have adequate time to compile the information and submit it to CDHS/DCC. CDHS/DCC will begin the site visits in the spring of 2007. The actual timeframe to begin the visits will depend on the preparedness of the adoption service providers and the review of the evidence. Adoption service providers will be given adequate time and training to prepare for the site visit. The actual accreditation of the agencies or approval of persons will occur following the determination of the Unified Notification Date (UND). Again the actual timeframe for the accreditation will depend on the information that is obtained during the site visit, and the accredited agencies and approved persons ability to correct and provide additional information. Although CDHS/DCC will have a limited number of agencies to accredit, we will give the agencies as much time as necessary to prepare for the site visit and to make any corrections necessary. CDHS/DCC is committed to a detailed and thorough process of preparing agencies and approved persons and working with them to become fully or temporarily accredited.

I would like to thank the Committee again for the opportunity to testify before the Committee. CDHS/DCC is very excited to be chosen as an Accrediting Entity. We look forward to working with staff of the Department of State as we move forward to full implementation of the Hague Adoption Convention on the Protection of Children.

Mr. SMITH. Thank you very much, Ms. Andrews.

Let me begin the questioning.

First of all, you just mentioned a moment ago that in the case of a violation, Colorado will take action. Could you tell us what the penalty is for a violation, especially if there is a pattern of abuse by one of those entities.

Ms. ANDREWS. Mr. Chairman, if it is a willful and deliberate violation of withholding information from a foreign country, that would be grounds for summarily suspending the license of the agency and closing them. If it was a consistent violation over time, it would be grounds to revoke the license; and, of course, if they have no license in Colorado, they cannot be accredited.

Mr. SMITH. Well, let me ask you, does it go any further than that? I mean, if we are talking willful, I would hope that even negligence would be seriously looked at, because a child's life could be put in harm's way through that kind of negligence. But revoking

a license sounds like a slap on the wrist. Is there any civil or criminal penalty for that kind of willful violation of law?

Ms. ANDREWS. There is a civil ability to fine agencies. There is no criminal process right now in Colorado to address with agencies.

Mr. SMITH. Let me ask you, with regards to home studies currently conducted with a specific country in mind, do you think that requiring home studies to be conducted in compliance with the sending country's requirements will be enforced?

Ms. ANDREWS. The Department will do everything it can to make sure that is enforced. We do require them to know the laws and procedures and standards of the sending country and to comply with those. We educate ourselves/our staff as much as possible to know those requirements as well so when we review the home studies we can see if they are following this, if they are either withholding information or following the country of origin's requirements.

Mr. SMITH. Will there be sufficient personnel dedicated to that kind of oversight?

Ms. ANDREWS. Right now, we have two staff dedicated, and we can dedicate other staff as needed. As we said, we only have a small number of agencies, so we believe we can have a lot of oversight with these agencies.

Mr. SMITH. Obviously, in many of these countries and as the number of Hague countries grows, which I think it probably will, there will be countries that enact new laws or to administrate a policy, promulgate regulations that could change from one week, from one month, from one year to the next; and I am wondering what kind of systematic updating will be undertaken to ensure that all of the local requirements are properly being adhered to.

Ms. ANDREWS. We expect our adoption service providers to keep in constant contact with the countries they work with to make sure that they are knowledgeable as laws and rules change. So we would certainly have as much information as we can from the Department of State about changing laws and regulations and provide that to our adoption service providers as well as expecting the agencies to stay on top of that themselves.

Mr. SMITH. Mr. Payne.

Mr. PAYNE. For either one of you, approximately how many adoption service providers will be accredited before the November 17 transitional application deadline? How many do you approximate?

Mr. KLARBERG. Well, speaking for the Council on Accreditation, we would assume it will be in the area of 130.

Ms. ANDREWS. Colorado anticipates that we should have between 8 and 10 applicants by the transitional application deadline.

Mr. PAYNE. Do you think that there will be enough providers accredited at the time to meet the demand?

Mr. KLARBERG. I am sorry, sir. I could not hear you, sir.

Mr. PAYNE. Do you think there will be enough providers to handle the demand that they will face?

Mr. KLARBERG. We would have preferred that a larger number of providers step forward; and it may be that, as on April 15th at 11:59, a number of people are at the post office and will submit applications. We would hope that would happen. We are very supportive of having this be as broad a base as possible.

One of the concerns that had been enunciated during the early discussions regarding this legislation had to do with small organizations being forced out of the intercountry adoption field. We feel very strongly that small organizations can provide quality services, that there are so many children in need of good homes that we would hope that the number would increase substantially in the next few days.

Ms. ANDREWS. Colorado recognizes that there are a number of agencies in our State that are already accredited by COA and that they will seek accreditation through COA, so we anticipate that we will have at least half of our adoption service providers that do intercountry adoption being accredited through Colorado, with the rest of the agencies being supervised.

Mr. PAYNE. Thank you.

What about the small agencies? You know, originally, there was the \$1 million insurance fee which now has been, I think, reduced to \$1 million in the aggregate amount, but do you think that this will provide a problem for some of the smaller agencies?

Mr. KLARBERG. In terms of a financial obligation?

Mr. PAYNE. Right.

Mr. KLARBERG. Without a doubt, it is an additional cost, but it is also an important additional protection, and I think that it is a question of a cost benefit analysis. I think that our experience is that even small agencies will be able to survive with these additional costs.

Mr. PAYNE. Okay.

Ms. ANDREWS. One of the questions we raised at our first training session had to do with the ability of agencies to obtain the insurance, and several of the agencies that were there said they had no trouble obtaining that insurance and were able to provide the name of their insurance agency to other agencies that were struggling, so we believe that the agencies in Colorado will be able to obtain the required insurance.

Mr. PAYNE. Have you been able to keep the same number of agencies? You have three trainings, right? Have you seen any drop-off in the trainings down the line?

Ms. ANDREWS. We have not lost any adoption agencies through this process and do not at this time anticipate any agencies closing.

Mr. PAYNE. That is great. Okay.

Thank you, Mr. Chairman.

Mr. SMITH. Let me ask, if I could, how many approved persons have submitted applications and what limits are placed on lawyers or social workers' fees, and if you could elaborate on it. In reading the statute again—I remember when we worked on it—there was some concern about what kind of training these individuals would get. Could you elaborate on that for us?

Mr. KLARBERG. Yes. Of the 126 service providers who have made application to date, five were individuals or were individual service providers, and we expect to develop a specific training to work with that group. Assuming that the number remains small, we do not anticipate any issues with ensuring that they have the capacity to fulfill their obligations. If the number were to substantially increase, it would create an issue for us, and we have been in contact with professional associations that have indicated their willingness

and, in fact, their eagerness to support us as we work with these individuals, who are attorneys, of course.

Mr. SMITH. Can you tell us how the COA will conduct oversight of adoption service providers and approved persons in 49 States and what the strategic plan looks like?

Mr. KLARBERG. I am sorry, sir.

Mr. SMITH. The oversight plan?

Mr. KLARBERG. Oh, the oversight plan is to consistently, on an annual basis, review with the maintenance of accreditation report, an in-depth report, to ensure that there is ongoing compliance as well as to review, as we do currently, any issues that are raised from consumers or from State regulators regarding the conduct of an agency.

Mr. SMITH. Is there any problem with geographic diversity with those that have been accredited, where a family might have difficulty because of proximity or the lack of it?

Mr. KLARBERG. We have not seen that to date.

Mr. SMITH. Okay. And, finally, Ms. Andrews, does Colorado require a license for a person to become a home study preparer, and what are the qualifications?

Ms. ANDREWS. Colorado currently requires anyone who places or arranges for the placement of a child for the purpose of adoption has to be licensed as a child placement agency. So we are an agency State. We do not do independent adoptions in Colorado. So, right now, the only person who can do a home study family assessment must be associated with a licensed child placement agency either as a staff member or as a contract worker.

Mr. SMITH. Anything else, Mr. Payne?

Mr. PAYNE. No.

Mr. SMITH. Thank you so much.

Mr. KLARBERG. Thank you very much.

Mr. SMITH. I really do appreciate your testimony and your good work.

Ms. ANDREWS. Thank you very much, Mr. Chairman.

Mr. SMITH. I would like to now welcome our third and final panel to the witness table.

The third panel represents adoption agencies and adoptive parents: Mr. DiFilipo of the Joint Council on International Children's Services and Mr. Atwood of the National Council for Adoption, who has been following the Hague Convention for many years and can offer a particular perspective on the statutory and regulatory framework.

I am particularly interested in hearing about the fee schedule and any other concerns that will increase the cost to prospective adoptive parents. I am also interested in learning if the agencies are concerned that the process will increase the length of time to adopt internationally.

Just again, a very brief background. Mr. Thomas DiFilipo is the President and CEO of the Joint Council on International Children's Services. Prior to his current position, Mr. DiFilipo served for 9 years as Vice President for the CASI Foundation and Chief Operations Officer for International Children's Alliance. He also joined the social services community through his roles as a board member

for the Joint Council on International Children's Services, Focus on Adoption and Discovery Ministries.

Mr. Thomas Atwood serves as President and CEO of the National Council for Adoption, an adoption research, education and advocacy nonprofit organization. Mr. Atwood has directed national research, education and advocacy nonprofits for 20 years in various capacities. During his 11-year tenure at The Heritage Foundation, he served as Director of Coalition Relations and Executive Editor of *Policy Review*.

I would like to welcome both of you. Mr. DiFilipo, if you would not mind beginning.

**STATEMENT OF MR. THOMAS DIFILIPPO, PRESIDENT AND CEO,
JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES**

Mr. DIFILIPPO. Thank you.

Chairman Smith and Members of the Subcommittee, thank you for providing me with an opportunity to share our experience in child welfare and submit our comments. My name is Thomas DiFilipo, President and CEO of Joint Council on International Children's Services.

As I begin my testimony today, I am challenged, and therefore challenge this Subcommittee to remember those on whose behalf I truly offer the following words, thoughts and concerns. Today, as we consider policies that will impact children around the world, a nameless child, unseen by your eyes or mine, lay in a crib untouched by human hands and unloved by a human heart. This child suffering from hydrocephalus will surely die, if not today then certainly in the coming days, and alone. Who will remember their name? Who will offer a prayer? Who will mark their grave? By way of this testimony today, I challenge myself, the organization which I represent, and this Subcommittee to create a world where children, regardless of race, ethnicity, nationality or physical condition, can grow, flourish and perhaps even die in the loving embrace of a family.

The Joint Council on International Children's Services, with a mission to advocate on behalf of children in need of permanent, safe, loving families, has grown to become one of the country's oldest and largest child welfare organizations. International child welfare agencies, advocacy groups, parent support groups, and international medical clinics choose membership in Joint Council as a means of addressing the issue of parentless children and the creation of permanent solutions.

Collectively, our 242 member organizations serve over 80 percent of all internationally adopted children, provide in excess of \$360 million in programs and services and over \$32 million in humanitarian aid. In our 30-plus years of advocating for sound policy and strengthening service providers, we have developed an appreciation of the complexities related to the processes and approaches that serve to protect children, while expeditiously meeting the need of finding permanency.

Joint Council has been involved with the U.S. journey to ratify the Hague Convention since its inception. Our organization and our members were at the table at which the Hague Convention itself was written. We have submitted thousands of comments, testified

before Congress and supported passage of the Intercountry Adoption Act.

The primary benefit of the Hague Convention is the protection it offers to children and families through the prevention of the abduction, sale, exploitation or trafficking of children. The creation of competent authorities to govern intercountry adoption provides a framework by which the best interest of each child is met through accredited, trained and supervised organizations. Federal oversight of international adoption, a raised bar of best practices, increased accountability of service providers, mandatory training and education, and a Federal complaint registry are positive mechanisms of the implementation process in the United States.

Given the significant changes introduced by the expected U.S. ratification in 2007, we strongly and continuously have urged against new legislation such as the Intercountry Adoption Reform Act, which calls for the reform of the international adoption process and government procedures. We suggest U.S. ratification and implementation of the Hague without interruption.

An additional concern continues to be the centralization process. Over the past 6 months and in collaboration with our good colleagues at the National Council for Adoption, we have conducted seven overseas trips, including those to Russia, Ukraine, Mexico, and Guatemala. As recently as last Friday, we returned from leading 5 days of working sessions in an effort to assist in the creation of a Hague complaint system in Guatemala.

Specific to Guatemala, we met with officials of the government, the Office of the First Lady, Members of Congress, UNICEF, the Departments of State and Homeland Security, and various adoption service providers. Our findings from these advocacy efforts leave us with some significant concerns regarding the implementation of the Hague Convention.

One of the key elements providing protections for children is the creation or appointment of a central authority. However, when centralization is not well-executed, children are not protected and, in fact, suffer. Reform must not and cannot be allowed to result in paralysis such as in Romania.

In at least four Central and South American countries, centralization has contributed to the elimination of intercountry adoption as a viable option. Each of the four countries was, on average, utilizing intercountry adoption as a means of permanency for 251 children each year. After centralization, the average fell to zero. Failure to install a functional central process may have deprived over 5,000 children the right to a family.

As non-Hague countries are encouraged to join the Convention, we must take into account the issues of capacity, transition and funding and not see Hague ratification as a goal in and of itself. Joint Council calls on the U.S. Government to further assist our colleagues with capacity, transition and funding as we seek to elevate the standards of practice and child protections via the Convention.

Joint Council shares in the Chairman's concern over the dual system. Currently, 68 countries have ratified the Convention. Yet Americans adopt from an additional 38. Upon the United States' entry into force in 2007, we will, in effect, have a dual system for

intercountry adoption. Standards, protocols and practices will be allowed to differ between Hague and non-Hague countries. Until such time that all countries ratify, children and families will be afforded less than the highest standard of service and protection. We must ensure that unethical behavior, poor practice or illegal activities are not permitted despite a country's status regarding the Hague.

Implementation of the Hague Convention by the United States will bring protections to children never before seen. In looking back at our practices just 15 short years ago, one can see the truly significant and life-altering advances made in the provision of services. Knowing that dreams can be made real, we must not see the Hague Convention as an end again in and of itself.

Joint Council calls on its member organizations and all service providers to develop multiple funding sources and to seek to meet the needs of all children without parental care. With over 140 million children in need of a permanent family, intercountry adoption is only one in a wide variety of solutions. Solutions such as kinship care, domestic adoption and temporary foster care must be aggressively pursued if we are to truly meet our mission of a family for every child.

Such solutions must also be applied to our domestic policies here in the United States. The United States is unique in that we are both a placing and receiving country. This being the case, we must view our policies within the context of a global child welfare system. Each year, approximately 25,000 children emancipate from the U.S. foster care system without ever finding their forever home. Intercountry adoption must be integrated into our policies and used as a permanency option for these children.

In closing, Joint Council asks for your continued help and firmly believes that, together, we can and must create a world in which the nights of Rio's ghettos are void of the orphan's cry, the brothels of Bangkok are emptied of the child prostitute and the trash bins of America never again serve as the casket to the newborn.

Thank you for the honor of appearing before the Subcommittee today.

[The prepared statement of Mr. DiFilipo follows:]

PREPARED STATEMENT OF MR. THOMAS DIFILIPPO, PRESIDENT AND CEO, JOINT COUNCIL ON INTERNATIONAL CHILDREN'S SERVICES

Chairman Smith, Vice-Chair Royce and Members of the Subcommittee,

Thank you for providing me with an opportunity to share our experience in child welfare and submit our comments on the United State's ratification of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. My name is Thomas DiFilipo, President and CEO of the *Joint Council* on International Children's Services (*Joint Council*).

THE UNSEEN

As I begin my testimony today, I am challenged and therefore challenge this subcommittee to remember those on whose behalf I truly offer the following words, thoughts and concerns. Today as we consider policies that will impact children around the world, a nameless child, unseen by your eyes or mine, lay in a crib untouched by human hands, unloved by a human heart. This child, suffering from hydrocephalus, will die, if not today then certainly in the coming days . . . alone. Who will remember their name, who will offer a prayer, who will mark their grave? By way of this testimony today, I challenge myself, the organization which I represent and this subcommittee, to create a world were children, regardless of race, ethnicity,

nationality or physical condition can grow, flourish and perhaps even die in the loving embrace of a family.

JCICS OVERVIEW

Joint Council on International Children's Services, with a mission to advocate on behalf of children in need of permanent, safe, loving families, has grown to become one of the country's oldest and largest child welfare organizations. International child welfare agencies, child advocacy groups, parent support groups and international medical clinics choose membership in *Joint Council* as means of addressing the issue of parentless children and the creation of permanent solutions. *Joint Council* continues to promote ethical child welfare practices, strengthen professional standards and educate adoptive families, social service professionals and governments throughout our world.

Through our involvement in international child welfare since 1976, *Joint Council* has developed an appreciation of the complexities related to the processes and approaches that serve to protect children, while expeditiously meeting their need of finding permanency, safety and love. Collectively our 242 member organizations, serve over 80% of all internationally adopted children in the United States, provide in excess of \$360 million in programs and services to children and families and over \$32 million in humanitarian aid. *Joint Council* believes that all children—regardless of race, ethnicity, gender, medical limitations or other conditions—deserve a permanent, safe and loving home. When children cannot be safely cared for in their birth or extended family, or in permanent adoptive homes within their country of birth, we believe that ethical intercountry adoption provides the most positive option for children.

JCICS HISTORY WITH THE HAGUE CONVENTION

Joint Council has been involved with the U.S. journey to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (The Hague or Convention) since its inception. Our organization and many of our members such as Holt International, Bethany Christian Services and Children's Home Society actively participated in those early meetings at which The Hague Convention itself was created. Over the past 13 years, *Joint Council* and its members have submitted literally thousands of comments, testified before Congress and supported passage of the Intercountry Adoption Act. Most recently, *Joint Council* was appointed a Sponsoring Advisory Board Member of the Council on Accreditation, the accrediting entity for the U.S. Department of State. *Joint Council's* history with this journey continues to be within the context of advancing protections for children and protecting a child's right to permanency.

PROTECTION OF CHILDREN AND FAMILIES THROUGH IMPLEMENTATION

The primary benefit of the Hague Convention is the protection it offers to children and families. The Convention prevents the abduction, sale, exploitation or trafficking of children. All activities under The Hague, must be conducted in the best interest of the child and respect their fundamental rights. The creation of competent authorities to govern intercountry adoption provides a framework by which the needs of children are met through accredited, trained and supervised organizations and individuals. Federal oversight of international adoption, a raised bar of best practices, increased accountability of service providers, mandatory training and education for parents, and a federal complaint registry are all positives of the Convention and the implementation process in the United States.

In addition, *Joint Council* is hopeful that upon U.S. ratification, current Hague countries, such as Paraguay, South Africa, and Costa Rica, will work with the United States in finding permanent families for their children. We will continue to partner with the Department of State's leadership in advocating to current Hague countries and assisting with international adoption processing.

ISSUES AND CONCERNS

Additional Legislation Impacting International Adoption

Given the significant changes introduced by the expected U.S. ratification of the Hague Convention in 2007, *Joint Council* strongly cautions against further legislation calling for reform of the international adoption process or government procedures at this time, such as the Intercountry Adoption Reform (ICARE) Act. We suggest U.S. ratification and implementation of The Hague without interruption.

Joint Council applauds the leadership and continuing efforts of Assistant Secretary for Consular Affairs, Maura Harty and her team at the Department of State's

Office of Children's Issues. The Office of Children's Issues has clearly demonstrated not only their competency in Hague implementation but just as importantly a passion for creating permanent families for children in need.

Centralization

Over the past 6 months and in collaboration with our good colleagues at the National Council for Adoption, *Joint Council* has conducted 7 overseas trips, including Russia, Ukraine, Mexico and Guatemala, to advocate for a child's right to a loving, safe and permanent family. As recently as last Friday, *Joint Council* returned from leading 5-days of working sessions in an effort to assist in the creation of a Hague compliant system in Guatemala. Specific to Guatemala, we met with officials of the Guatemalan government, Office of the First Lady, UNICEF, U.S. Departments of State and Homeland Security, two attorney associations and various adoption service providers. Similar missions are planned for Mexico, Columbia, China and Vietnam. Our findings from these advocacy efforts leave us with some significant concerns regarding the implementation of the Hague convention.

One of the key elements of the convention is the creation or appointment of a central authority such as DOS. As stated previously and generally agreed upon by all parties, the central authority is designed to assist in the protections offered to children. The transparency inherent in the central authority is again one of the key elements in rooting out corruption. However, when centralization is not well executed, children are not protected and in fact suffer. Reform must not and can not be allowed to result in paralysis.

In at least four Central and South American countries, centralization has contributed to the elimination of intercountry adoption as a viable option. Each of the four countries was, on average, utilizing intercountry adoption as a means of permanency for 251 children each year. After centralization, the average fell to zero. Failure to install a functional central process may have deprived over 5,000 children their right to a family. As non-Hague countries are encouraged to join the Convention, we must take into account the issues of capacity, transition and funding and not see Hague ratification as a goal in and of itself. *Joint Council* calls on the U.S. government to further assist our colleagues with capacity, transition and funding as we seek to elevate the standards of practice and child protections via the convention.

A Dual System

Currently 68 countries have ratified the Convention, yet Americans adopt from and additional 38 countries. Upon the United States entry into force in 2007, we will have in effect, a dual system for intercountry adoption. Standards, protocols and practices will be allowed to differ between Hague and non-Hague countries. Until such time that all countries ratify, children and families may be afforded less than the highest standard of service and protection. It is incumbent upon *Joint Council*, the U.S. government and other NGOs to ensure that unethical behavior, poor practice or illegal activities are not permitted despite a country's status re the Hague. It is also our role to educate families and the public on which countries are Hague and which are not, and the differences between the two systems so they can make educated and informed decisions in seeking to adopt a child in need.

ABOVE AND BEYOND

Implementation of the Hague Convention by the United States will bring protections to children never before seen. In looking back at our practices just 15 years ago, one can see the truly significant and life altering advances made in the provision of services. Knowing that dreams can be made real, we must not see the Hague Convention as an end into itself. *Joint Council* calls on its member organizations and all service providers to develop multiple funding sources and seek to meet the needs of all children without parental care. With over 140 million children in need of a permanent family, intercountry adoption is only one in a wide variety of solutions. Solutions such as kinship care, domestic adoption and temporary foster care must be aggressively pursued if we are to truly meet our mission of a family for every child.

Such solutions must also be applied to our domestic policies here in the United States. The United States is unique in that we are both a placing and receiving country for children. This being the case, we must view our policies within the context of a global child welfare system. Each year approximately 25,000 children emancipate from the U.S. foster care system without ever finding their forever home. Intercountry adoption must be integrated into our policies and used as a permanency option for these children.

SUMMARY

On behalf of *Joint Council*, our member organizations and colleagues in the adoption community, I extend our appreciation for the interest and support from the U.S. Congress, and especially this subcommittee, on intercountry adoption and the Hague Convention. Intercountry adoption provides a loving, safe and permanent family for children in need and must be a priority of the U.S. Government. Ratification of the Hague Convention, unencumbered by additional legislation; assistance in creating functional central authorities; and closing the gap created by our pending dual system will provide significant protections to the children and families we all serve.

CLOSING

In closing, *Joint Council* asks for your continued help and firmly believes that together we can and must create a world in which the nights in Rio's ghettos are void of the orphan's cry, the brothels of Bangkok are emptied of the child-prostitute and the trash bins of America never again serve as the casket to the newborn.

Thank you for the honor of appearing before the subcommittee today.

Mr. SMITH. Thank you so much for your passionate testimony and leadership.

Mr. Atwood, please proceed.

**STATEMENT OF MR. THOMAS ATWOOD, PRESIDENT AND CEO,
NATIONAL COUNCIL FOR ADOPTION**

Mr. ATWOOD. Thank you, Chairman Smith, Ranking Member Payne, Members of the Subcommittee.

My name is Thomas Atwood. I am President of the National Council for Adoption (NCFA), and I thank you for this opportunity to testify.

The NCFA applauds the Subcommittee's interest in the compassionate practice of intercountry adoption. It is an adoption research, education and advocacy organization founded in 1980. NCFA has been a leader in improving the intercountry adoption system throughout the drafting of the Hague Convention, the Intercountry Adoption Act and their recently published implementing regulations. In the past year, we have traveled to China, Russia, Guatemala, the Ukraine, Vietnam and The Hague, serving as a global advocate and expert on adoption and child welfare.

The chief purpose of the Hague Convention and the IAA is to establish a multilateral system that protects children while providing for intercountry adoptions in their best interests. The State Department's publishing of the long-awaited IAA implementing regulations this year is a milestone in the history of intercountry adoption. In NCFA's view, the regulations are rigorous, comprehensive and appear effective to achieve the purposes of the act.

Now that we have reached this important milestone, the top international adoption priority should be to make a smooth transition to ratification and implementation of the Hague Convention and IAA. I agree with my colleague that the Hague is not it in itself; and while these regulations are sound and will promote child protection and international adoption, they are also complex and demanding. During the current transition, the American adoption community and Hague Convention central authorities around the world are relearning our ways of processing intercountry adoptions.

Respectfully, now is not the time to enact an additional major intercountry adoption reform as contemplated by H.R. 5726, the Intercountry Adoption Reform Act. Further reforms may be appro-

priate once we have experience with the new Hague-IAA regulations, but forcing another major bureaucratic transition at this already demanding time would disrupt intercountry adoptions and confuse our central authority partners around the world.

The main Hague-IAA strategy for intercountry adoption and child protection is the accreditation of adoption service providers in accordance with social service and management standards. Accreditation strengthens quality and accountability by requiring agencies to meet performance standards in order to maintain their accreditation and continue providing services. Working with accredited adoption agencies ensures that professional social workers are involved in the process. Involving professional social workers in the process means that parents are better screened and prepared to adopt, children and families have better services post placement, and adoptions proceed as a social service in the best interest of children, rather than as an economic transaction.

In establishing national policies for international adoption, the Hague-IAA regulations work with and build upon America's existing private- and State-based adoption service resources. Following are several positive features in the regulations: First, by indicating the "primary provider" in every adoption case and defining that provider's responsibilities for six specific adoption services, the regulations make clear who is primarily accountable for the management of the adoption process. Central authorities and parties to adoption know where to turn for action and accountability in any given case; second, the regulations require that adoption service providers give adopting parents 10 hours of education and training regarding the intercountry adoption process, regarding the types of challenges children who have been institutionalized can present and regarding specific details about their child. This requirement will help parents be realistic and prepared in order to make a smooth transition when the child comes home; third, the regulations authorize the central authority to require parental and agency compliance with the laws of the country of origin. This authorization should help produce more consistent compliance with post-placement reporting requirements of countries such as Russia and the Ukraine. Inconsistency in post-placement reporting has led to moratoria and threats of moratoria; and, fourth, the regulations better protect parents from fraud, predatory pricing and disruptions by requiring providers to carry liability insurance, present itemized fee schedules, provide written complaint procedures and meet financial and business standards.

NCFCA supports prompt implementation of these regulations and prompt ratification of the Hague Convention, but we can expect to discover some needs for fine-tuning. The following are some areas to watch as we move forward: First, one unknown under the new regulations is the role of the "approved person" as primary provider. Currently, the equivalent of the primary provider is almost always a licensed adoption agency. Will many attorneys and for-profits seek approved person's status? Will their service as primary providers be adequate in the provision of professional social services? These are questions that we should follow as we move forward.

Second, covering liability in the new system requires an expansion of the affordable liability insurance marketplace for agencies. Most likely, that expansion will occur, but it should be monitored and encouraged. Proactive discussions may be required between the central authority, adoption agencies, and insurance companies.

Third, in the area of liability for foreign supervised providers, the regulations strike at present, it seems, a fair and practical balance between the rights and responsibilities of parents and primary providers. But the proof will be in the execution. This issue should be monitored.

Fourth, the meaning of the central authority's authorization to require compliance with other governments' laws needs to be worked out. Does the idea of the American Government enforcing another country's laws raise a legal or constitutional issue? Be that as it may, we certainly need to make sure that the American system honors the requirements of countries of origin, as urged by the Chair.

Fifth, some have argued that the complex demands of the Hague-IAA regulations will slow adoption. In NCFA's view, they appear to be appropriately rigorous and detailed to achieving IAA purposes.

The cost of the accreditation fees will have little impact on the overall cost of an individual adoption. The greater costs will be provided in staff time involved in the accreditation process. Those costs will be made up for in increased efficiency and quality.

America's imminent ratification of the Hague Convention presents opportunities for expanding intercountry adoption. Several Hague member states such as Mexico, India, Brazil and others have indicated they would be interested in processing more adoptions by Americans when the United States ratifies the Convention.

In conclusion, the basic tenet of intercountry adoption is that national boundaries and national pride should not prevent children from having families. This truth seems self-evident, but, to varying degrees, intercountry adoption encounters a streak of nationalism in every country of origin. Intercountry adoption advocacy should be careful not to feed into this nationalistic reaction. NCFA advocates a holistic approach which respects intercountry adoption as part of the country of origin's overall adoption and child welfare program.

In conclusion, Chairman Smith and Members of the Committee, the National Council for Adoption greatly appreciates this Subcommittee's advocacy of intercountry adoption and oversight of the transition to the emerging Hague-IAA system for intercountry adoption. After many years of hard work for many people, agencies and institutions, the pivotal moment of Hague implementation is here. Let's get on with it.

Thank you.

[The prepared statement of Mr. Atwood follows:]

PREPARED STATEMENT OF MR. THOMAS ATWOOD, PRESIDENT AND CEO, NATIONAL COUNCIL FOR ADOPTION

Chairman Smith and Members of the Subcommittee, my name is Thomas Atwood, president and chief executive officer of the National Council For Adoption. On behalf of the National Council For Adoption (NCFA), I thank the House Committee on

International Relations' Subcommittee on Africa, Global Human Rights and International Operations for the opportunity to testify regarding the important topic of "Status of the U.S. Implementation of Hague Intercountry Adoptions." NCFA applauds the Subcommittee's interest in the compassionate practice of intercountry adoption, which over the last 35 years has found loving, permanent families in America for more than 350,000 orphans around the world.

The National Council For Adoption is an adoption research, education, and advocacy nonprofit whose mission is to promote the well-being of children, birthparents, and adoptive families by advocating for the positive option of adoption. Since its founding in 1980, NCFA has been a leader in serving the best interests of children through policies that promote a global culture of adoption and child welfare, increase intercountry adoptions with appropriate child protections, present adoption as a positive option for women with unplanned pregnancies, further adoption of children out of foster care, and make adoption more affordable through the adoption tax credit.

NCFA advocates the positive option of adoption, both domestic and intercountry, for children and families in America and around the world. NCFA has been involved in improving the intercountry adoption system since the early stages of drafting the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and the Intercountry Adoption Act of 2000. In the past year, we have been to China, Vietnam, Russia, Guatemala, and The Hague, serving as a global advocate and expert on adoption and child welfare. In the coming year, we are planning trips to countries of origin in Africa, Asia, Eastern Europe, and Central and South America.

Making a Smooth Transition to the Hague Convention on Intercountry Adoption

The chief purpose of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993) and of America's legislation to implement the Convention, the Intercountry Adoption Act of 2000 (IAA), is to establish a multilateral system that protects children while providing transparently and predictably for intercountry adoptions in their best interests. The Department of State's publishing of the long-awaited IAA implementing regulations this year is a milestone in the history of intercountry adoption in America.

The challenge of developing these regulations was daunting: to craft with public input a national regulatory plan that works with America's pre-existing private and state-based adoption service system to manage the international transfer of parental rights and responsibilities through adoption. The regulations were developed during a long, arduous, public process that attempted to analyze and incorporate the expertise and perspectives of all players in the intercountry adoption system, including the addressing of 1,500 public comments. No doubt, the regulations will require some fine-tuning after we have experience working with them. But in NCFA's view, the resulting regulations are rigorous, comprehensive, and appear effective to achieve the purposes of the Act.

Now that we have reached this important milestone, the top international-adoption priority for the American government and adoption community should be to make a smooth transition to ratification and implementation of the Hague Convention and the IAA. While these regulations are sound and will promote child protection and international adoption, they are also complex and demanding. During the current transition, both the international adoption community in America and the Hague Convention Central Authorities around the world are relearning our ways of processing intercountry adoptions. Respectfully, now is not the time for another round of edits.

Nor is it the appropriate time to consider another major intercountry adoption reform, in addition to the Hague-Convention transition, as contemplated by H.R. 5726, the Intercountry Adoption Reform Act of 2006. Further reforms may be appropriate once we have experience with the new Hague-IAA regulations. But there is no compelling reason to implement other major reforms at this time, such as transferring to the State Department all of DHS's work currently housed in Citizenship and Immigration Services, as H.R. 5726 proposes. As the Hague-IAA regulations are implemented, the need for additional reforms may become evident, and such reforms, along with H.R. 5726, could be more cogently considered at that time. But forcing such another major bureaucratic transition at this already demanding time would disrupt intercountry adoptions and confuse our Central Authority partners around the world.

Consider some of the new systems and challenges in the State Department's 100-page public notice of the final rule that are being learned and managed during this transition, in order to process adoptions with Hague Convention Member States: the establishment of the new Central Authority in the Department of State; the author-

izing and contracting of new accrediting entities; the accreditation of adoption agencies and approval of persons, who may make adoption placements under the Hague Convention; the adaptation of all adoption service providers to the rule's new standards and requirements; a new six-part definition of adoption services and new rules regarding four newly defined categories that may provide them; the establishment of a case registry at State and the Department of Homeland Security for incoming and outgoing adoptions, both for Hague Convention and non-Convention intercountry adoptions; new data collection, record-keeping, and reporting requirements; and much more.

The pivotal moment of implementation of the Hague Convention on Intercountry Adoption and the Intercountry Adoption Act is here. The National Council For Adoption believes that it serves the best interests of children in need of adoption to make our top priority at this time a smooth transition to the Hague-IAA system, which so many people and agencies, both public and private, have worked so hard and long to make possible.

Accreditation and Standards, the Cornerstones of the Hague-IAA System

To protect children and provide adoptions in their best interests, the intercountry adoption regulatory system should ensure the legitimacy of birthparent consents, the legality of the child's orphan status, the suitability of parents to adopt, their preparation to adopt, the availability of post-adoption services for adoptive families, the prevention of corruption and of the influence of financial incentives, and the professionalism and integrity of adoption service providers. The main Hague-IAA strategy for achieving these goals is the accreditation of adoption service providers in accordance with social service and business management standards. The Hague-IAA implementing regulations establish clear, rigorous standards for adoption service providers in such areas as: professional qualifications and training; home studies and preparation of prospective adoptive parents; quality controls and complaint procedures; service delivery and case tracking; ethics and fee practices; post-placement monitoring and services; and record-keeping and financial management.

Accreditation has advantages that advance the purposes of the Hague Convention and IAA. Accreditation improves adoption service providers' accountability and performance by enabling the Central Authority through accrediting entities to require agencies to adhere to certain performance standards in order to maintain their accreditation and be allowed to continue providing services. Working with accredited adoption agencies ensures that professional social workers are involved in the adoption process. The employment of trained and certified social workers means that: prospective parents will be more thoroughly screened; parents will be better prepared for the additional challenges they may face with a child who has been institutionalized; children and families will be provided better post-placement support to address any problems that may arise; and adoption will proceed as a social service in the best interests of children, not as an economic transaction. Accreditation improves the quality and integrity of services by requiring adherence to professional social service standards.

Specific Hague-IAA Policies and Procedures that Promote Sound Ethical Adoptions

Some of the features of the Hague-IAA implementing regulations that will contribute to an effective intercountry adoption regulatory system are:

Authorization of the Department of State as Central Authority: The complexity of collaborating with other nations to process intercountry adoption is well served by a mostly uniform and centralized, national approach. The Hague-IAA implementing regulations achieve that with Hague Convention Member States while building upon, not displacing, America's excellent state-based and private adoption service resources.

Delegation of accrediting responsibility to accrediting entities: By delegating the accrediting responsibility to private and state accrediting entities, the regulations strengthen accountability in the system. If an accrediting entity does not do its job, the Central Authority can impose consequences and corrective actions. It would be more difficult to exercise accountability over a government office that failed to perform the accreditation function adequately.

Specification of "primary provider": By indicating the "primary provider" in every adoption case and defining that provider's responsibilities, the Hague-IAA implementing regulations appropriately make plain who is primarily accountable for management of the adoption process. The Central Authority and parties to adoption have a clear place to turn for action and accountability in any given case.

Definition of adoption services: By defining the six adoption services, the regulations further clarify the roles and responsibilities of adoption service providers. Agencies and persons that provide any one of six adoption services must be accred-

ited, temporarily accredited, approved, or supervised. The six adoption services are: identifying a child for adoption and arranging an adoption; securing consent to termination of parental rights and to adoption; performing a home study and report on prospective adoptive parent(s) or a background study and report on a child; making a non-judicial determination of a child's best interests and of the appropriateness of an adoptive placement; monitoring a case after a child has been placed with prospective adoptive parent(s) until final adoption; and assuming custody of a child and providing childcare or any other social service when necessary because of a disruption pending alternative placement.

Liability insurance requirement: The regulations require adoption service providers to carry a minimum \$1-million in liability insurance, thus providing recourse for adoptive parents in cases of fraud, negligence, or malfeasance. The regulations do not require a primary provider to assume legal responsibility for tort, contract, and other civil claims against supervised providers or to carry liability insurance for its supervised providers. However, in order to attain and maintain accreditation, the regulations require standards for supervision of supervised providers. Moreover, the regulations do not prevent adoptive or prospective-adoptive parents from bringing a claim under state law for an alleged tort or breach of contract. Supervised and supervising providers will enter into contracts about liability coverage and indemnifications that would govern responsibility for damages in such cases.

Fee itemization requirement: The Hague-IAA regulations require adoption service providers to present itemized fee schedules to prospective adoptive parents at the beginning of the process. Examples of costs and fees that must be itemized include: the home study; "adoption expenses in the U.S.," such as personnel, overhead, publications and communications, and training and education; foreign country program expenses; care of the child in the country of origin; humanitarian aid and other contributions; post-placement reports; third-party fees, such as Central Authority processing fees; and travel and accommodations. Providers must provide parents a written description of the fee refund process and receipts for fees and expenses paid in the country of origin. The regulations also require parental written consent for un-itemized fees in excess of \$1,000.

Complaint procedures: The regulations require providers to establish a written complaint process, which must be given to parents at the beginning of service delivery. Parents must first follow this procedure regarding any complaint, but the providers are required to respond to parents' complaints within 30 days. If the provider does not satisfactorily respond within that timeframe, parents may take their complaint to the accrediting entity's Complaint Registry. The accrediting entity may take adverse action against the provider if the complaint is not satisfactorily resolved. Providers whose accreditation is lost or suspended may seek judicial review in certain circumstances. These new complaint procedures significantly improve parental protections, while still protecting agencies from frivolous and false complaints.

Standards to promote sound business practices: The regulations impose business-practice standards to ensure the financial soundness of adoption service providers, thus reducing the possibility of providers going out of practice in the midst of adoptions.

Parent education and training: The Hague-IAA implementing regulations require that adoption service providers give adopting parents ten hours of education and training regarding the intercountry adoption process; the types of challenges that children who have been institutionalized can present and how to address them; and specific details about their child. This requirement will help parents be realistic and prepared, in order to make a smoother transition when the child comes home. (NCFA will soon offer an online parent training program for the non-child-specific components of this education requirement, entitled, "The Intercountry Adoption Journey: Hague-Compliant Parent Training from NCFA." For further information, visit www.HagueAdoption.org.)

Parental and agency compliance with the laws of countries of origin: The regulations authorize the Central Authority to require parental and agency compliance with the laws of the country of origin. This authorization may be helpful in producing more consistent compliance with the post-placement reporting requirements of countries such as Russia and Ukraine. Inconsistency in that reporting has led to moratoria and threats of moratoria in those countries.

Issues to Watch as Implementation Moves Forward

At this time, NCFA recommends prompt implementation of these regulations and prompt ratification and entry into force of the Hague Convention. That said, we can expect to discover some needs for fine-tuning as we move forward. Following are some areas to watch as we implement the new system:

Approved persons as primary providers: One significant unknown under the new regulations is the role of the “approved person” as primary provider. The equivalent of the primary provider in the current system in the U.S. is almost always a licensed adoption agency. Currently, very few intercountry adoption cases utilize attorneys in an equivalent position to primary provider. The Hague-IAA regulations impose significantly more regulations on adoption attorneys than they are accustomed to following in domestic adoption cases. Will many attorneys and for-profit entities seek approved person status and serve as primary providers? Will their service as primary providers be as adequate in the provision of professional social services as accredited agencies? These are questions we should follow as we move forward.

Affordable liability insurance availability: Covering liability concerns in the new system requires a significant expansion of the affordable liability insurance marketplace for agencies. Most likely, that expansion will occur, but it should be monitored and encouraged. Pro-active discussions may be required between the Central Authority, adoption agencies, and insurance companies.

Liability for foreign supervised providers: In the area of liability for foreign supervised providers, the regulations strike a seemingly fair and practical balance between the respective rights and responsibilities of adoptive parents and primary providers. But the proof will be in the execution. This issue should be monitored.

Enforcement of compliance with other government’s laws: The full meaning of the Central Authority’s authorization to require compliance with other government’s laws may not yet be fully understood. Does the idea of the American government enforcing another country’s laws raise a constitutional issue? From the perspective of children’s interests in intercountry adoption, it would seem to be beneficial if the American system could more reliably meet reasonable requirements that some countries of origin make regarding post-placement reporting, for example.

Level of bureaucracy and regulation: The Hague-IAA regulations are certainly comprehensive and detailed—some have argued that they are too much so. In NCF’s view, they appear to be appropriately rigorous and detailed to achieve the Convention’s and IAA’s purpose of ensuring intercountry adoptions in children’s best interests, while providing child protections. Here, too, the proof will be in the execution and the issue should be closely monitored.

Working with Other Hague Countries

America’s imminent ratification of the Hague Convention presents opportunities for expanding intercountry adoption. Several Hague Member States, such as Mexico, India, and Brazil, have indicated that they would be interested in processing more adoptions by Americans when the U.S. ratifies the Convention. American intercountry adoption officials and advocates should restart their adoption and child welfare advocacy now with countries such as these. Other countries such as Russia, Ukraine, and Vietnam, are more likely to ratify the Convention once America has done so. Within several years of America’s ratification, almost all countries with significant intercountry adoption programs are likely to be Hague Member States. This outcome will advance a global culture of adoption and child welfare and be beneficial to children and families around the world. In the coming decade, the continent of Africa will hopefully become more receptive to adoption advocacy, too.

Hague Member State Guatemala is a concern. If Guatemala does not come into compliance with the Convention by the time America ratifies, intercountry adoptions from this the third-ranked country (nearly 3,800 adoptions of Guatemalan children by Americans in 2005) to America may end. American intercountry adoption officials and advocates are working hard to promote dialog between the Guatemalan factions to produce reforms that will bring the country into compliance.

Holistic Approach to International Advocacy of Adoption and Child Welfare

The basic tenet of intercountry adoption is that national boundaries and national pride should not prevent children from having families. This truth seems self-evident. Given the choice between growing up with a loving, permanent family of one’s own through international adoption, versus growing up without a family in the country in which one happens to have been born, most people would choose a family through intercountry adoption.

To varying degrees, intercountry adoption encounters a streak of nationalism in every country of origin. To some extent, this nationalistic reaction is understandable: Any self-respecting nation would like to be able to take care of its children in need itself. Intercountry adoption advocacy should be careful not to feed into this nationalistic reaction. NCF recommends a holistic approach, which respects intercountry adoption as part of the country of origin’s overall adoption and child welfare program. This approach presents intercountry adoption as a positive option for or-

phans, second in preference to timely domestic adoption, but to be preferred over domestic foster care and group or institutional care. However, when domestic adoption is not occurring for children within a certain timeframe, orphans should become eligible for intercountry adoption.

As they implement the Hague Convention, many countries are taking holistic looks at their adoption and child welfare programs. Thus, because of our country's many decades of experience with these policies, America's opportunities here go beyond promoting our own citizens' ability to adopt internationally. By sponsoring educational seminars and exchanges with other Hague Central Authorities, for example, we can promote and inform the global proliferation of adoption and child welfare policies.

In conclusion, Chairman Smith and Members of the Subcommittee, the National Council For Adoption greatly appreciates this Subcommittee's advocacy of intercountry adoption and oversight of the transition to the emerging Hague-IAA system for intercountry adoption. We offer our continued assistance in advancing this crucial mission. Thank you very much.

Mr. SMITH. Mr. Atwood, thank you so very much for your testimony and the leadership of the Council which I for many years have admired and been a part of, to some extent.

Let me ask a few questions of Mr. DiFilipo.

You mentioned the dual system and some concerns that you had about that. You might recall that in my questions of our previous witnesses I asked whether or not there would be an attempt made to take those best practices and the lessons learned from Hague as we are implementing and applying them to non-Hague countries. What is your sense of about whether or not we should do this? It seems to me that a child should be treated with no less respect because he or she emanates or comes from a country that is not a Hague-ratifying nation.

What are some of the deficiencies? The person who testified earlier made the point that they will get back to us with some of those efforts to harmonize, and I am wondering what you think might be missed and what might be captured.

Mr. DiFILIPPO. We would encourage and support that all countries are treated the same as Hague. If you have a best practice, then why shouldn't all benefit from that?

One of the obvious ones is just that the family's protection is the agencies don't have to carry—let us say, an agency is only working in non-Hague countries. They don't have to carry insurance. They don't have to have professional staff.

Can you think of anything else that we—

Mr. ATWOOD. The education and training.

Mr. DiFILIPPO. Education and training requirements. That is on the family side.

On the sending country side, the staff that the agency may be working with does not need to be supervised or the agency doesn't have responsibility for it as strictly as it does under the Hague and the implementing regulation. That is probably the largest one, given the fact that a lot of the more unscrupulous activities involved intermediaries.

Mr. ATWOOD. If I may address that question, I would like to say that I was pleased to hear the response to your question from the State and USCIS about bringing the non-Hague ways of doing things into the same procedures as the Hague way of doing things. And as Mr. DeFilipo just said, if you have a best practice in one area of the country you work with, why not apply to all the countries?

I do think that in this context it is useful to note that when America ratifies the Hague we believe that there will be other countries that will follow, maybe not immediately, but certainly to bring many other countries into the Hague orbit, America needs to ratify. And lots of countries have been saying to us, What is taking America so long? So it is a good thing, but it is imperative, because it will bring other countries in.

Mr. SMITH. I appreciate that in terms of the home study and recognizing the country of origin requirements imposed on their own children as to with whom they are placed.

And I mentioned earlier that China precludes homosexuals from adopting. We know that there are post-adoption requirements that, as you pointed out, Russia does require. It seems to me that the non-Hague countries—and there are countries, I am sure, of those 38 that you mentioned that have structures and requirements for their own children. Why wouldn't we want that universal way or the uniform way to be part of how we do business?

Seems to me that would give a greater degree of assurance to the country of origination that these kids will be well-placed and protected pursuant to their own laws, which, obviously, we have to give deference to because they are their citizens, at least until they are brought here and become U.S. citizens.

Mr. ATWOOD. We are strong advocates of the principle that the adoption process should comply with the rules and laws of the country of origin. We, in fact, seek to get that kind of a commitment from adoption agencies in our membership. And the Hague, the IAA regulations authorize—I should say the IAA itself authorizes a central authority to require that compliance.

As I have said in my testimony, I am not sure how clear it is, what that means exactly, and we need to sort that out. But it certainly means that we should make sure leaders of adoption in the United States should make sure that our system follows the rules of the country of origin. It is elementary, it seems to me.

So I just reiterate what you said in your opening remarks along those lines.

Mr. SMITH. Is it clear that we are doing it now? Are we following—when an intercountry adoption is concluded, are we following in all—most—some instances the country of origin's laws?

Mr. ATWOOD. I would say that—and Tom can correct me if he sees this differently—but as far as the actions of our Government, they are trying to do that. Whether they are succeeding, I am not sure. And certainly the best practices of agencies follow that. But whether all agencies are strict about that is not so clear to me.

Mr. DiFILIPPO. I am relatively new to this, so I may come at it a little bit harder. It is in our standards of practice that agencies must follow the laws of the sending country. The fact of the matter is I have a lot of suspicions that some of our agencies don't, and one of the challenges that we have as a group is to ferret out those and remove those from practice in whatever way we can.

I also agree with Tom that a lot of the sending countries may be trying, but there are also indicators that we might not be succeeding in specific instances in places like Guatemala or Vietnam, where intermediaries who were formerly blacklisted when they were open to intercountry adoptions a year ago are back in the

scene. We are trying to make efforts to again ferret those practitioners out, but it is not as easy as one would imagine, unfortunately.

Mr. SMITH. Are there any in existence or should there be any criminal or civil penalties for knowingly deceiving a country of origin as to who the potential parents are?

Mr. DiFILIPPO. That is a good question, given the consequences of misleading placing countries or sending places. We haven't thought that through all the way yet. But certainly just closing them down in one State so they can open up in another doesn't serve children, it doesn't serve intercountry adoption as an institution. So I think the issue needs to be addressed. I am not prepared to say whether it is criminal or civil or what the bar should be, the thresholds. But something else, obviously, needs to be done besides closing an agency down in one State.

Mr. ATWOOD. I don't know the answer to that question either, but I do think it is an excellent question, and I would be happy to address it upon further consideration.

Mr. SMITH. And if it is relatively timely, we will make it a part of this hearing record, you know, for the good of the issue itself. I do think we need to begin thinking about it. Because, obviously, the welfare and well-being of a child rises to the point where, if somebody is defrauding, especially knowingly and particularly where there is a pattern, it seems to me that, you know, we would want to know that. We would want to take very decisive action. Because a child's life, as both of you have said, there is nothing more important in that child's life.

Mr. ATWOOD. Clearly, the IAA authorizes the central authority to enforce required compliance with the laws of the country of origin. How should the central authority do that? I think that is the question you are asking, and I think we really need to answer that question.

Mr. SMITH. Let me ask one final question with regards to Mr. DiFilippo. You mentioned non-Hague countries like in South America and the issue of capacity transition and funding—could you elaborate on that? What kind of funding are we talking about? What kind of capacity or lack thereof are we talking about and what kind of expertise can we and should we provide to get them built up so that they can join the Hague Convention?

Mr. DiFILIPPO. Just taking the most urgent case is Guatemala, obviously. When we were down, we met with UNICEF. We did a few models together, and it appears that as little as \$1.7 million would build a sufficient capacity within some of their social service institutions to allow for a cleaner transition. It certainly wouldn't be perfectly smooth, but it would allow for fewer problematic cases.

The other issue is, if you look at a country like Guatemala, they have no current social service infrastructure, unlike Columbia. Columbia centralized and didn't miss a beat. They are still placing approximately 1,000 children a year, about 200 to the U.S., but 1,000 around the world, and it has been consistent both prior to and after centralization, and that is because they had—I mean, to get very specific, social service providers in many villages throughout and cities throughout the country.

Guatemala has zero. They have a few in Guatemala City. None outside. None that function. On paper, they have them, but they are not functional.

So the functional transition is where our concern lies, and I don't believe it is a significant amount of money, to be honest with you, whether it comes from the U.S. Government or the social service community, from UNICEF itself. I think that is a hurdle that we can overcome.

Technical assistance, obviously, they need—their IT infrastructure down there is non-existent, for the most part. They do have a lot of radio communication out to the villages but not only in, I guess, the hardware side but also the technical assistance but also to manage a centralized authority. I don't think they have a full grasp of that either, to be honest with you.

Mr. SMITH. Mr. Atwood, the final question is for you. In your issues to watch, you raised concerns about the approved persons as primary providers. Could you elaborate on that?

Mr. ATWOOD. I am not sure—I have more of a question. I am not sure it is a concern. The question is, will there be many people who apply to be approved persons? Many attorneys are for-profits. Mr. Klarberg reported that not many have so far. If one were to imagine a lot of activity, the question might be raised, well, will there be the provision of professional social services to the extent that you can count on with accredited agencies?

The regulations do require the same things of approved persons who serve as primary providers as are required of accredited agencies. So that if the accrediting entity and the central authority are able to make that happen, then the answer is that it is okay, that it is fine, that the approved persons—there is a lot of them. And if that were to happen, too, an interesting side effect might be a positive side effect, might be that those same—right now, attorneys who practice domestic adoption aren't as regulated as agencies and they aren't as regulated as approved persons are under the Hague Convention.

So if you have a lot of adoption attorneys getting involved in the Hague Convention, you might actually find a salutary effect on the quality of the services, more comprehensively on private adoption in the United States—private—that is, independent adoption, in the United States. But that is all by way of saying it is just something to watch.

Mr. SMITH. Okay. Mr. Payne.

Mr. PAYNE. Thank you very much.

Also, on the fourth and fifth issues that you raised about concerns about the watched enforcement of compliance with other governments and law, you talked about whether the idea of American Government enforcing another government's laws raises a constitutional issue. And also the fifth issue you raised about the level of bureaucracy and regulation, and I think your concern about over-regulating, therefore just tying up the system—would you elaborate on those two points again? Does the idea of the American Government enforcing another country's laws raise a constitutional issue?

Mr. ATWOOD. I am not a constitutional expert, so that is why I mentioned that as a question. I have heard that question raised as to whether there is an issue. Is there an issue there for the Amer-

ican Government to enforce the laws of another government on American citizens?

That may not be what we are talking about, though. We are talking—I think what we are talking about really is requiring compliance with the laws of another government. That may be different, and we may not have to use a legislation necessarily to affect that.

We want to make sure that it happens. We want to make sure that agencies and parents comply with the laws of countries of origin, but maybe, do we need to and may we constitutionally do it through legislation? I am not sure.

Can it be done, for example, through accreditation? We ought to at least be able to be effective in getting agencies to comply with the laws of the country of origin by the accreditation and reaccreditation process if they don't. If they don't comply with the laws of the country of origin, then they will not be reaccredited, can lose their accreditation.

And we can even go further and say that if they are—the parents who adopt don't, through them, don't cooperate through them either, do we hold the—is that a reason for which an agency might lose its accreditation as well? I don't know that that one works very well. But it certainly works well for the agencies.

Getting the parents, uncooperative parents, to comply may be more difficult. There are ways that agencies work presently to make sure the parents can comply with post-placement reporting requirements, for example, such as through agreements, written agreements that can be brought to a civil court if the parents don't cooperate and also security deposits that are held in escrow that they don't receive until they comply with the post-placement reports. So there are a number of ways of going at it.

As far as the over-regulation issue, I think that it is—at the present, we don't see—we don't predict that that is going to be a problem. I think—but I do think it is something to watch.

So that is all I have to say on that, really.

Mr. DiFILIPPO. Can I address that issue of dueling laws?

I believe Secretary Barry said that the home study was going to—they were going to require the home study to include all of the requirements of the sending country. In some States, I believe that is going to cause a bit of a conflict. For instance, if the sending country requires a statement of heterosexuality in New Jersey, for instance, we are—social workers are not permitted to address that in the home study. So there seems to be a conflict right there on that one specific issue and maybe others as well, where what might not be viewed as discrimination in other countries may be viewed as discrimination in other States.

Mr. PAYNE. Thank you very much. Again, given the concern raised of Guatemala's system where private attorneys interface with the birth mother and the fact that the Guatemalan legislation has not taken what the State Department sees as necessary compliance with the Hague Convention, do you fear that United States adoptions with Guatemalans will be shut down?

Mr. DiFILIPPO. As recently as Tuesday I did, but as recently as Thursday, I do not. But there has been a lot of negotiation, a lot of dialogue, a lot of changing of position, all under the realization

that exactly what you said would happen, the adoption would stop and the children's right to a permanent family would be discarded.

So I believe that there will still be a lot of push and pull, a lot of ups and downs, a lot of moments that we may think that it is going to close, but, ultimately, I do not believe that it will.

Mr. ATWOOD. It is just to observe the potency of adoption advocacy, adoption and child welfare advocacy in countries with children who need families. The State Department has been there, as Ms. Barry reported. Joint Council and NCFA were there just this past week and organizing meetings advocating efforts to solve the problem, and it actually was very significant in moving the parties there, the sides, the factions, toward some policymaking which we hope will be productive.

Mr. PAYNE. So you are optimistic that agreements can be made?

Mr. ATWOOD. Cautiously.

Mr. PAYNE. I know that they are—the central authority requirement in some of the issues, the current practice of private lawyers dealing with birth mothers and these things have to be dealt with.

Mr. DiFILIPPO. I think if you look at everyone's motivation, each stakeholder probably has a different motivation, but they are all significant. Eighty million dollars last year was sent to Guatemala in service fees. That is a considerable amount of money to give up, to have stopped.

From some advocates' position, they are trying to protect children. Certainly, UNICEF would be at the forefront there, along with us and NCFA. A lot of the adoption agencies are concerned about their families, both current and future, and I believe the State Department has the issue of—two issues that motivate—I am sure there is a lot of them. I don't want to speak for them necessarily, but—considering I have to work with them the rest of the week. But certainly, you know, the Hague implementation and no one wants Cambodia times 10. So everyone has got some significant motivation to get this done and get it done, and hopefully somewhere in all of our motivations is the best interest of the child.

Mr. PAYNE. Thank you very much.

Mr. SMITH. Would either of you like to add anything before we conclude the hearing?

Mr. ATWOOD. I would like to make one observation, and that is the positive effect in a way of the nationalistic reaction to intercountry adoption in countries of origin which is a realization and activity in producing adoption and child welfare within those countries. That is, the intercountry adoption is helping leadership in countries of origin countries with orphan problems to step up to the plate in addressing this child welfare in a more comprehensive way, very positive thing that we see is going to be happening over the next 10–20 years.

We hope that America, given our experience, extensive experience in adoption and child welfare policymaking can help promote those efforts around the world. We do have challenges with some negative attitudes toward America these days. But the child welfare argument, the best interest of the child, is very persuasive in getting people to listen to you and want to work with you. So we just would advocate America and the American Government seeing

what we can do to assist this global adoption and child welfare policymaking that is going on.

Mr. SMITH. Thank you very much for that closing statement; and, above all, thank you to both of you for your extraordinary commitment to adoption, to ensuring that loving families are created—the families are out there and the children are out there. It is marrying the two together which you do so well, and I want to thank you for your leadership on that.

I would like to finally close by thanking Dr. Cassie Bevan, who is our staff director, who has done so much for well over two decades for the adoption issue. I know back in the late 1980s as the prime sponsor of a bill that never went anywhere until she took it, and that was the tax credit for \$5,000, and we delivered that, along with Bill Pierce, back in the late 1980s. She was able to shepherd it into the adoption tax credit, the Inter-Ethnic Placement Act of 1996 and the Foster Care in 1999. On so many issues she has played a very important and pivotal role, and I want to thank her for the work she did in helping to bring this very important hearing to fruition.

We will follow up on the issues that have been raised, and I think oversight hearings like this always are a catalyst to the Executive Branch to rethink, perhaps, and work on issues that get asked to work on in the first place.

Thank you so much.

The hearing is adjourned.

[Whereupon, at 12:40 p.m., the Subcommittee was adjourned.]

