

The United States Central Authority can only execute a Letter of Request for international judicial assistance that can be compelled by a judicial officer within the United States. Accordingly, we will endeavor to execute Requests that seek specific testimony or documentation from a properly identified witness. Below we address whether several common types of requests can be executed under United States law and practice. It is not an exhaustive list.

Can A Requesting Judicial Authority Obtain A Legal Opinion Concerning A Particular Aspect Of United States Law, Federal Or State?

Requests for legal opinions are beyond the scope of assistance the United States can provide pursuant to the Hague Evidence Convention or received through diplomatic channels. The United States is a common law country, and under our common law legal system, in contrast to civil law systems, there is no mechanism by which a definitive statement of the content of United States law can be made. Furthermore, the courts of the United States do not render advisory opinions, *see, e.g., Chafin v. Chafin*, -- US --, 113 S. Ct. 1017 (2013) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472 (1990)), and therefore a request seeking an opinion as to the substance of United States law on a specific issue is beyond the scope of available judicial assistance. *See also* Report on the work of the Special Commission on the operation of the Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, Part I, § 1(D). The parties may obtain the services of private counsel within the United States to research United States law, Federal or State.

Can A Requesting Judicial Authority Procure An Expert Opinion Or Investigative Service By Way Of A Letter Of Request?

Requests that seek an expert opinion on some issue, or request an investigation to be undertaken, are beyond the scope of the international judicial assistance that the United States can provide. Under our legal system, neither factual investigations nor the appointment of experts are typically judicial functions. Therefore Letters of Request that seeks such help, *e.g.*, assessments of estates and requests to locate an individual, cannot be accomplished. Instead, the parties to foreign litigation are free to retain

such experts or investigators as required by the foreign litigation. The United States Central Authority can execute a Letter of Request, seeking responses to specific questions or specific documentation from a particular expert or investigator who has already rendered an opinion or conducted an investigation on behalf of the foreign parties.

Will the United States Central Authority Execute A Request To Enforce A Foreign Judgment?

Requests that seek the enforcement of foreign judgments or the seizure or freezing of assets in the United States in support of foreign civil or commercial proceedings are beyond the scope of the international judicial assistance that the United States can provide. See Article 1 of the Hague Evidence Convention. Under our legal system, the recognition and enforcement of foreign or domestic judgments, as well as any action seeking to seize or freeze assets in support of a civil or commercial matter pending in another country, requires the initiation of a proceeding by the private parties involved in the matter. The United States plays no role in such private litigation.

Can A Requesting Judicial Authority Obtain A Social, Economic, and Moral Report By Way Of A Letter Of Request?

As noted above, courts in the United States do not conduct factual investigations; accordingly, a Request for a “social, economic, and moral” report cannot be executed as such. Where an appropriate witness is identified, a Request for economic information can be executed. However, the terms “social” and “moral” do not carry a particular meaning within the United States legal system, and are too broad for purposes of executing a Letter of Request. Only where an appropriate witness is identified and questions probative of social or moral status are provided can a Request be executed. Alternatively, a Requesting State’s Embassy and Consulate personnel can conduct “welfare and whereabouts” visits, and under certain circumstances, State child welfare offices may provide assistance if directly contacted by the requesting judicial official or litigants. The United States Central Authority plays no role in such visits.

What Information Is Needed To Execute A Letter Of Request For Information Concerning A Bank Account?

To obtain factual information about a specific bank account, the Letter of Request must specify the bank where the account is maintained, the full name of the account holder, and the account number, where possible. Where the bank account number is unknown, additional information concerning the holder will be helpful, such as the individual's Social Security Number or date of birth. Requests for specific bank account information directed to the Federal Reserve Bank cannot be executed. The Federal Reserve Bank is part of the Federal Reserve System and serves as a regulatory body for commercial banks. It does not have information relating to specific bank accounts.

Can A Requesting Judicial Authority Obtain Medical Information Concerning A Particular Individual?

The United States is unable to obtain the medical information requested without the signed consent of the patient or guardian. Medical information is confidential.

Can A Requesting Judicial Authority Obtain Tax Information Concerning A Particular Individual Or Enterprise?

The United States is unable to release tax related information without the signed consent of the taxpayer. The taxpayer may provide the requisite consent by filling out IRS Form 4506, available online at <http://www.irs.gov/pub/irs-pdf/f4506.pdf>.

Can A Requesting Judicial Authority Obtain Information from the United States Security and Exchange Commission (SEC)?

Most information concerning the SEC is available for free to the public and can be obtained through *EDGAR*, the SEC's online searchable database, at www.sec.gov.

What Information Is Needed To Execute A Letter of Request For DNA Evidence?

Laboratories in the United States require the doctor requesting a DNA sample to supply the materials to be used for obtaining the sample, along with the proper container necessary for shipping. Complete instructions for drawing the DNA sample, and what additives are to be used, are also needed. The OIJA will seek reimbursement from the requesting judicial authority for all costs assessed by a third party relating to the taking of the exemplar.

Can A Requesting Judicial Authority Obtain Vital Records?

The United States does not maintain a central registry of persons within the United States. Vital records, such as birth, marriage, and divorce certificates, are usually maintained by the *State* in which the event occurred. Most States maintain internet websites that explain the process for obtaining vital records, and the parties to the foreign litigation may directly obtain such records by following the State instructions. If a judicial authority seeks to obtain vital records through the United States Central Authority, the Request must contain the information needed by the relevant State that maintains the record and include any fee charged by that State.

May The Requesting Judicial Authority Or A Foreign Litigant Participate In The Examination Of A Witness?

Examination of a witness is usually conducted by an Assistant United States Attorney. However, in its Letter of Request, the requesting judicial authority may request that counsel representing the foreign litigants be permitted to pose follow-up questions to clarify a witness's response.

May A Requesting Judicial Authority Submit An Electronic Letter Of Request?

The United States Central Authority will endeavor to execute a Letter of Request submitted via electronic mail. However, if production of the requested evidence must be compelled, the Assistant United States Attorney

may need a paper copy, bearing the requesting judicial authorities signature and seal, to initiate domestic proceedings to compel production.

What Are The Mechanisms For Submitting An Evidence Request To The United States Pursuant To The Inter-American Convention On Letters Rogatory And Additional Protocol?

The United States is a party to those Conventions only for purposes of service of process, not for evidence gathering. Countries also parties to the Hague Evidence Convention may submit evidence requests pursuant to the Hague Evidence Convention. For countries that are not a party to the Hague Evidence Convention, the only mechanism by which the United States Central Authority will accept formal letters rogatory seeking evidence for use in a foreign civil or commercial judicial proceeding is by way of the United States Department of State through diplomatic channels. The State Department will forward such letters rogatory to this office for execution.