



UIFSA 2008:

ARE STATES
GETTING IT RIGHT?



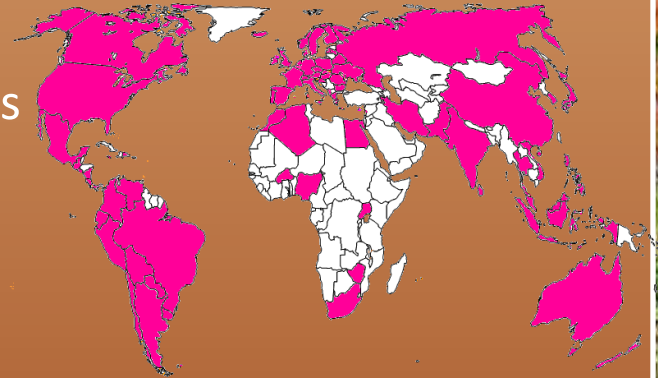
PRESENTERS

- Jeff Ball, Esq.
YoungWilliams, PC
jball@ywcass.com
- Meg Campbell Haynes, Esq.
Center for the Support of Families
mhaynes@csfmail.org
- Anne Miller
OCSE, Division of Policy and Training
anne.miller@acf.hhs.gov

Why UIFSA 2008?

Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

- U.S. not party to prior Conventions
- Negotiations began 2003
- 55 member countries, 15 observer countries & NGOs like NCSEA
- Negotiations completed Nov. 2007





Status of Hague Convention

- 31 Countries
 - Norway
 - Albania
 - Bosnia and Herzegovina
 - Ukraine
 - 27 European Union countries



Steps to U.S. Ratification

- 2010 – Senate gave advice and consent
- 2014 – Congress passed Preventing Sex Trafficking and Strengthening Families Act
 - Required state enactment of UIFSA 2008
 - UIFSA 2008 implementing legislation for Convention in U.S.

U.S. Ratification (cont'd)

- 2016 –

All states enacted UIFSA 2008

President will sign Instrument of Ratification

U.S. deposited its instrument of ratification with the Ministry of Foreign Affairs of the Kingdom of the Netherlands



U.S. Ratification (cont'd)

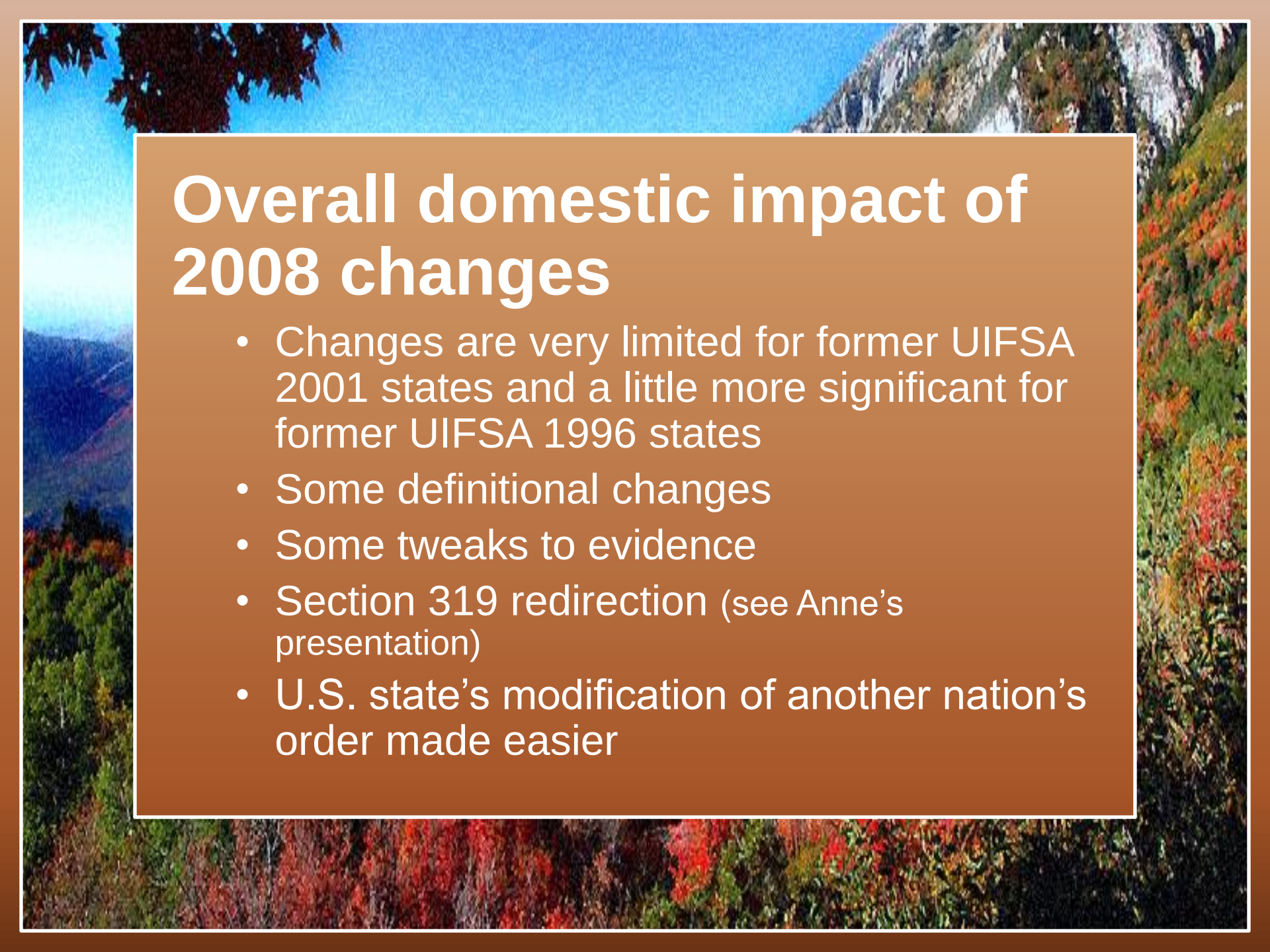
- Ratification “package” includes:
 - Identification of any reservations and declarations under Convention
 - U.S. completion of Country Profile
- Convention will take effect for U.S. approx. 3 months after date of deposit



UIFSA 2008's Impact on Domestic Case Processing

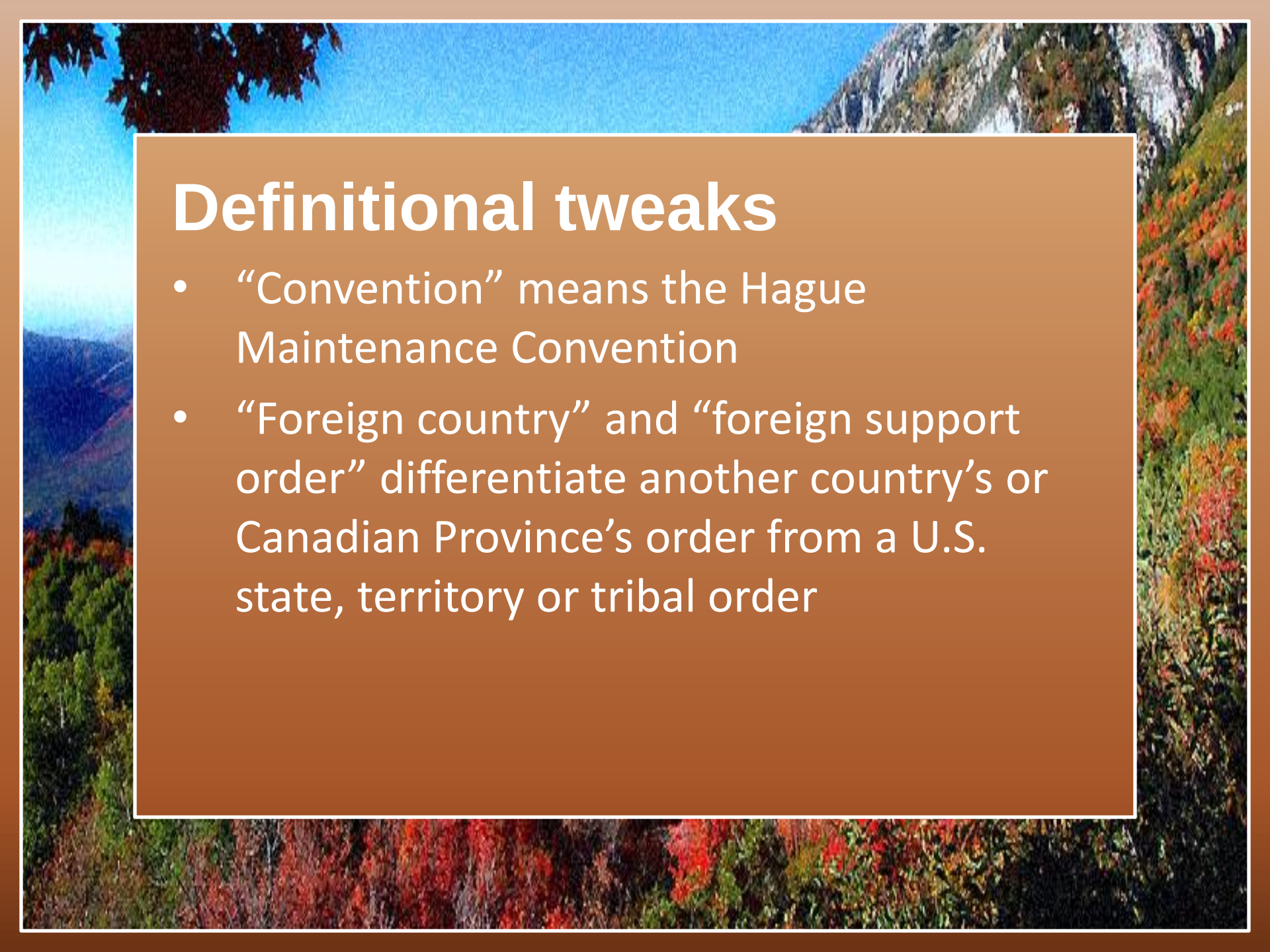
THAT'S THAT MOLEHILL IN
FRONT OF THE MOUNTAIN





Overall domestic impact of 2008 changes

- Changes are very limited for former UIFSA 2001 states and a little more significant for former UIFSA 1996 states
- Some definitional changes
- Some tweaks to evidence
- Section 319 redirection (see Anne's presentation)
- U.S. state's modification of another nation's order made easier



Definitional tweaks

- “Convention” means the Hague Maintenance Convention
- “Foreign country” and “foreign support order” differentiate another country’s or Canadian Province’s order from a U.S. state, territory or tribal order

Definitional tweaks

- “Obligor” is called a “Debtor” under the Convention
- “Obligee” is called a “Creditor” under the Convention
- “Outside this state” refers to all other jurisdictions instead of only another state or tribe
- “Support enforcement agency” includes privatized IV-D child support agencies
- “Support order” includes retroactive support, reimbursement for financial assistance, and automatic adjustments (COLAs)

Long-arm not for mods

- Section 201 (b) - Long-arm may not be used for modification jurisdiction
 - Clarifies that modification procedure must follow Article Six rules for non-convention modifications



Telephonic testimony

- Section 316 discovery – mandatory availability of telephonic conferencing by replacing “may” with “shall”
 - Party or witness outside of forum state will be allowed to testify or be deposed by telephonic means
 - Despite the 2001 change, some judges still make the availability of telephonic conferencing optional or place preconditions on a party’s ability to use it

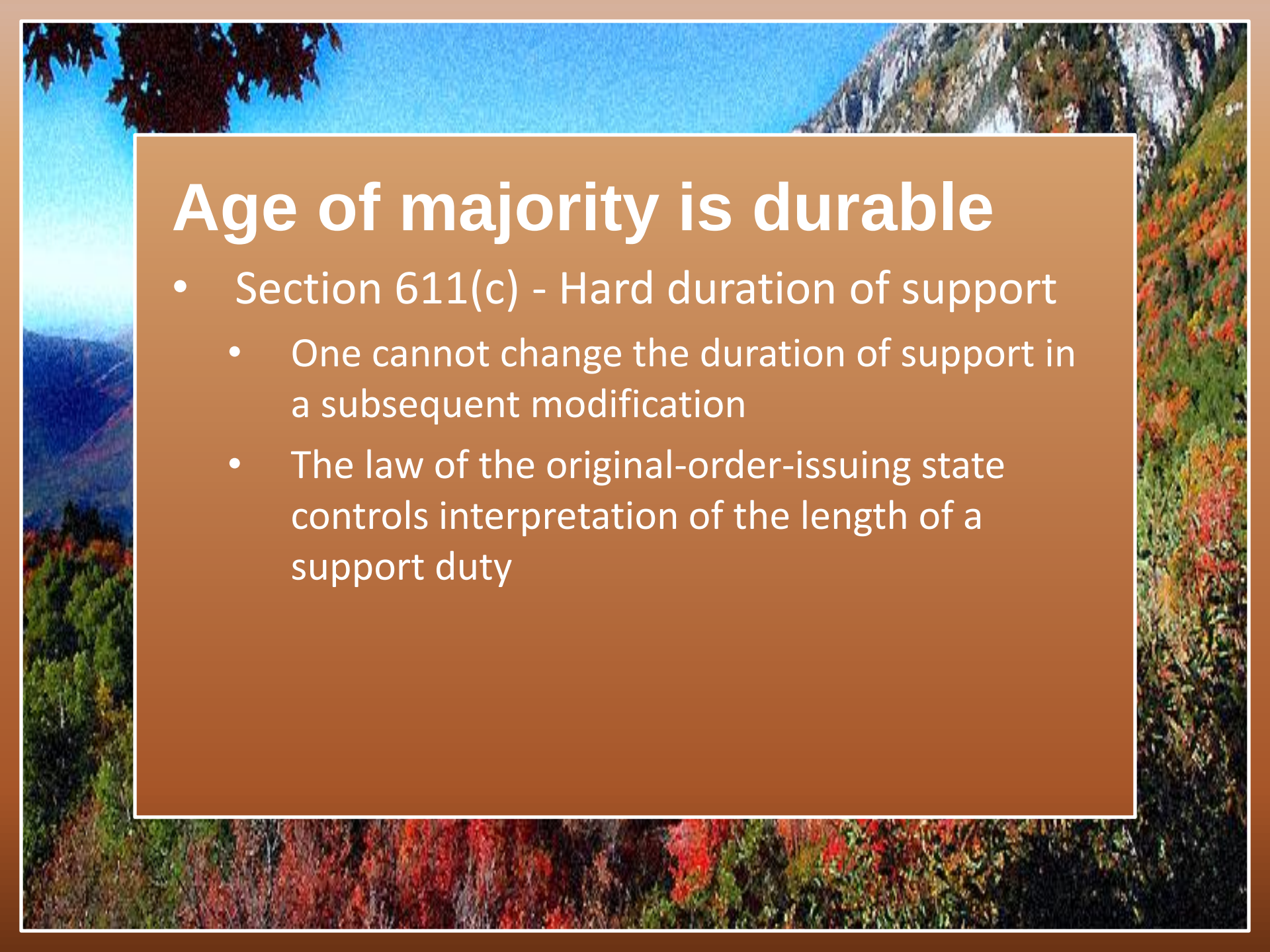
Electronic communication

- Sections 316 and 317 - Electronic communication is available
 - States and tribunals may communicate electronically including by fax and email



One certified order needed

- Section 602(a)(2) - Certified Orders
 - The switch from 3 certified orders to 1 certified order is a money saver.
 - Even if your office images everything, a certified order may be one item you keep in its original paper form



Age of majority is durable

- Section 611(c) - Hard duration of support
 - One cannot change the duration of support in a subsequent modification
 - The law of the original-order-issuing state controls interpretation of the length of a support duty

Age of majority is durable

- Scenario: CP & NCP have one child in State A; parties divorce and then remarry; parties have 2nd child in State B and then divorce for the 2nd time— which state's age of majority controls child #2's emancipation?
 - How does your state treat remarriage's impact on a prior divorce between same parties?



Modification in lame duck situation where one party is in another country

- Section 611(f) – If state had issued the last controlling order, and one party is now in another state and the other party is now in another country, the last controlling order state can modify the order



Modification when another non-convention country's order can't be modified there

- Section 615 – Modification of a Foreign Country's Order
 - State may modify an order if the other non-Convention nation lacks jurisdiction or refuses to exercise jurisdiction to modify its own order



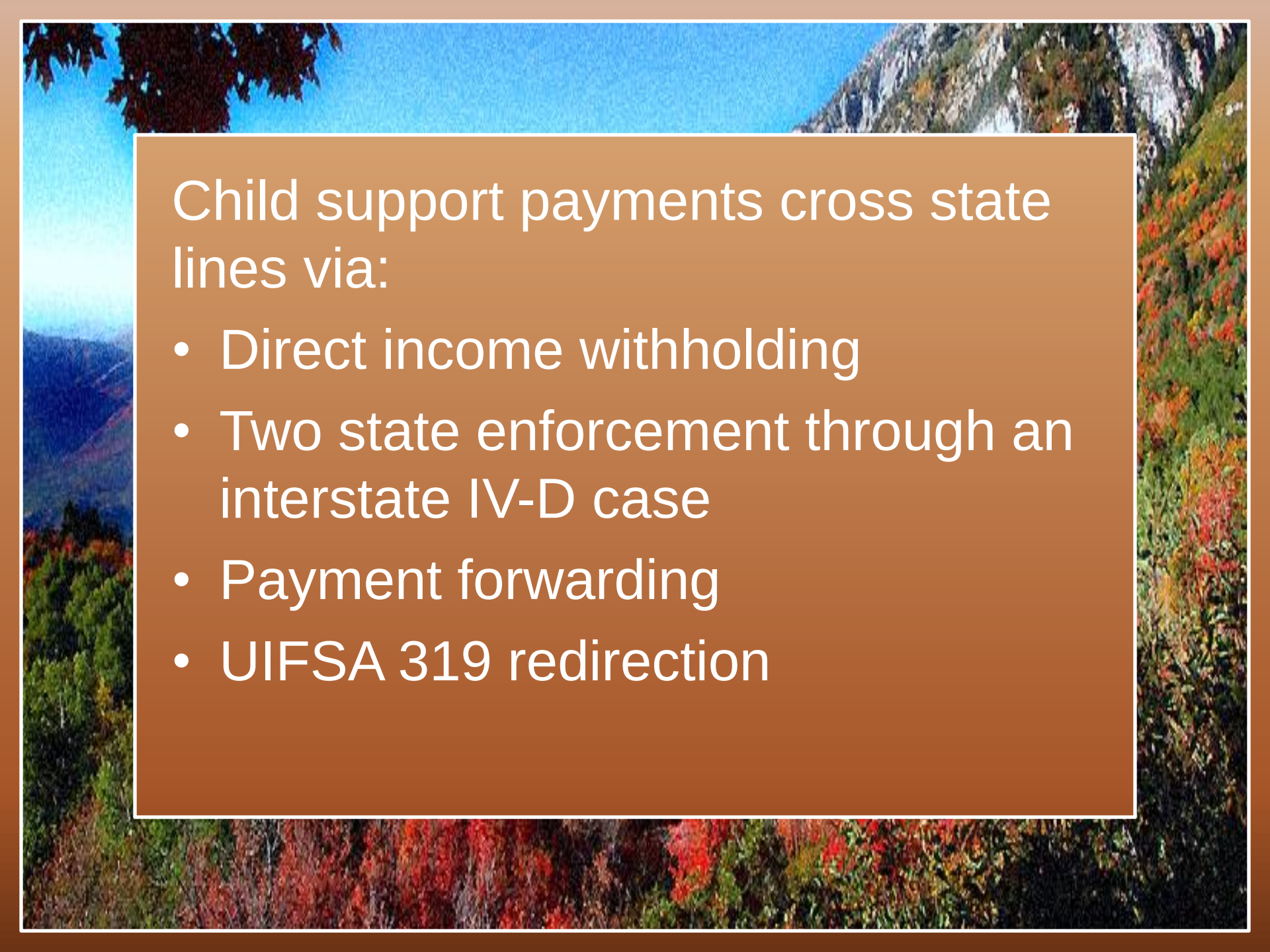
Registering a non-convention country's order

- Section 616 – Registration of a non-Convention country's order
 - If a state needs to register an order, and it is not a Convention order, then the state follows Article 6 registration procedures



Interstate payment processing





Child support payments cross state lines via:

- Direct income withholding
- Two state enforcement through an interstate IV-D case
- Payment forwarding
- UIFSA 319 redirection

Direct Enforcement

- Direct enforcement occurs when child support agency sends an income withholding order to employer in different state
- Employers must treat out-of-state withholding orders as if issued by instate tribunal
 - UIFSA sections 501, 502
 - Federal regulation 45 CFR 303.7(c)(3)

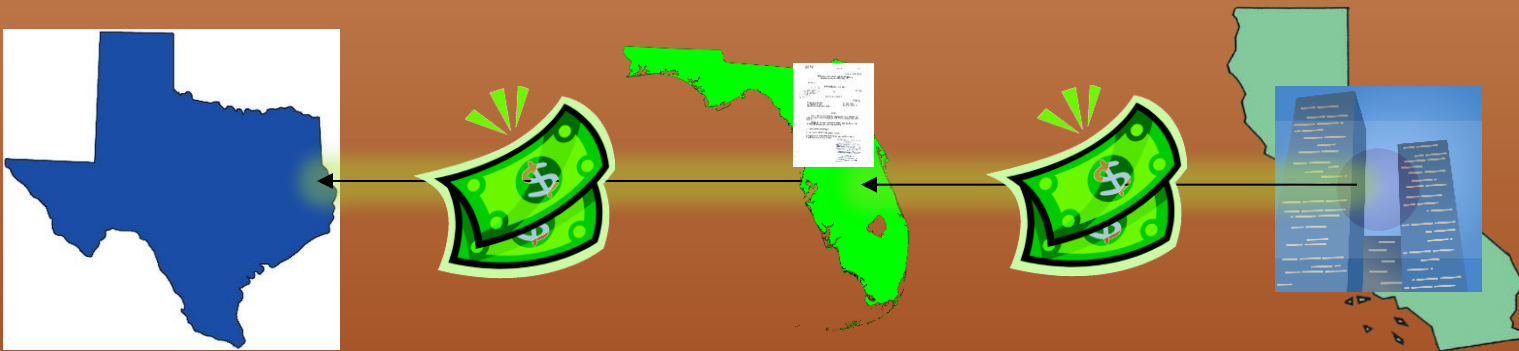
Direct Enforcement

- The income withholding order must reflect payment location designated by order state
 - PIQ-01-01
- Here, if Texas issued the order, income withholding order will reflect Texas's SDU



Direct Enforcement

- But, if Florida issued the order, income withholding order must reflect Florida's SDU
 - PIQ-01-01
- Texas serves an IWO with Florida's SDU payment location and then Texas requests Florida forward payments to its SDU



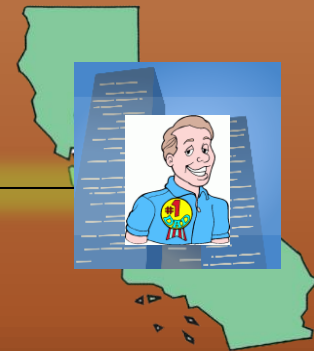


Two-State Enforcement

- Initiating state sends case to responding state
- Responding state uses intrastate enforcement against parent including its own income withholding order and SDU payment location
- UIFSA and federal regulations detail responsibilities

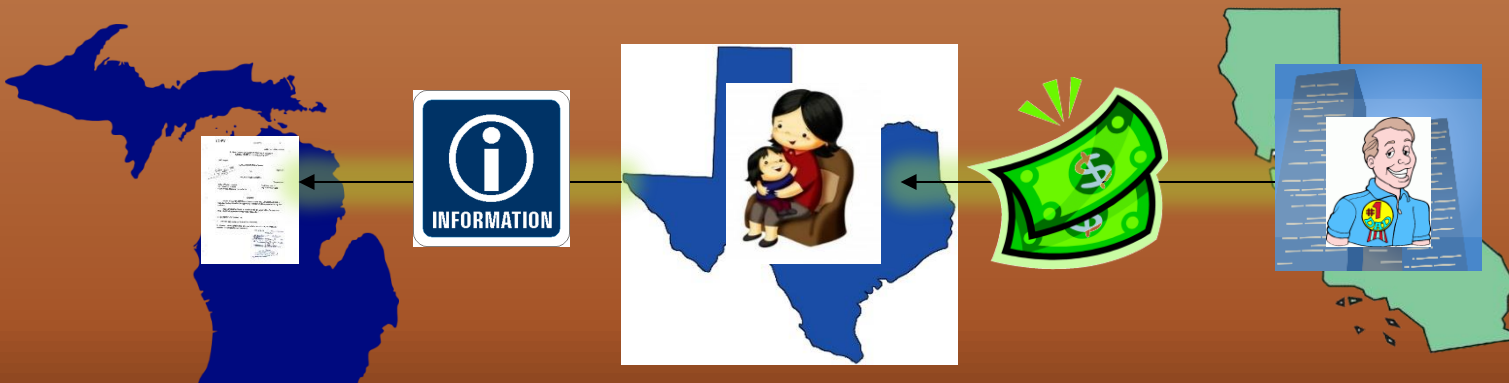
Two-State Enforcement

- The income withholding order must reflect payment location of the responding state
- Responding state must send payment to initiating state
- Here, if California is the responding state, it collects support from the employer in California and sends the payment to Texas



Two-State Enforcement

- If initiating state is not the order state, initiating state needs to inform the order state of collections for accurate record keeping purposes
 - UIFSA sections 209 and 604 comments
- Here, if Michigan is the order state, Texas should notify Michigan of payments received from California



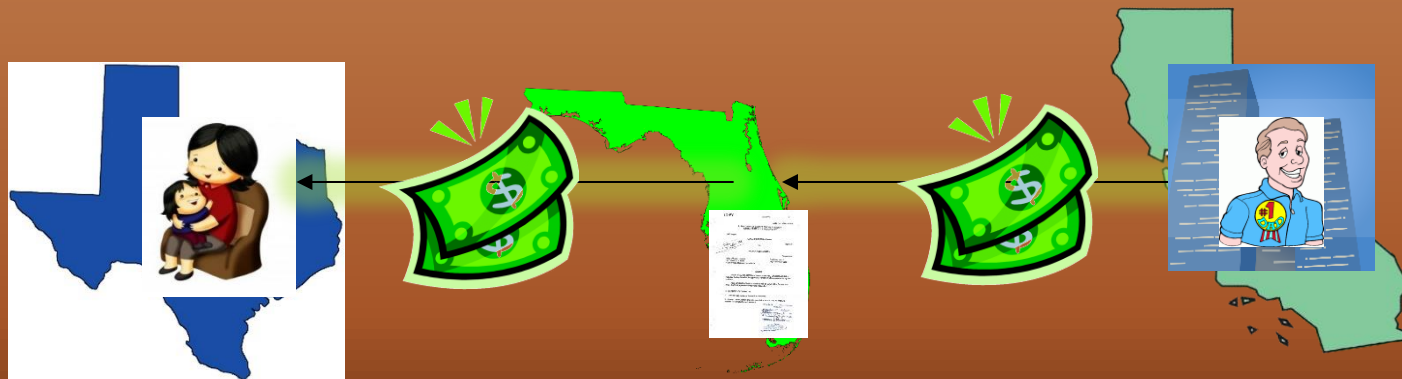


Payment Forwarding

- Child support payments are forwarded from one state to another
- Effective where payments are flowing and parent receiving support moves and applies for services in a new state
- States must cooperate
- FFP available to both states

Payment forwarding

- Here, Florida is the order state and is collecting support from the parent in California
- The parent receiving support moves to Texas and applies for services
- Texas should ask Florida to forward the payments





UIFSA 319 redirection

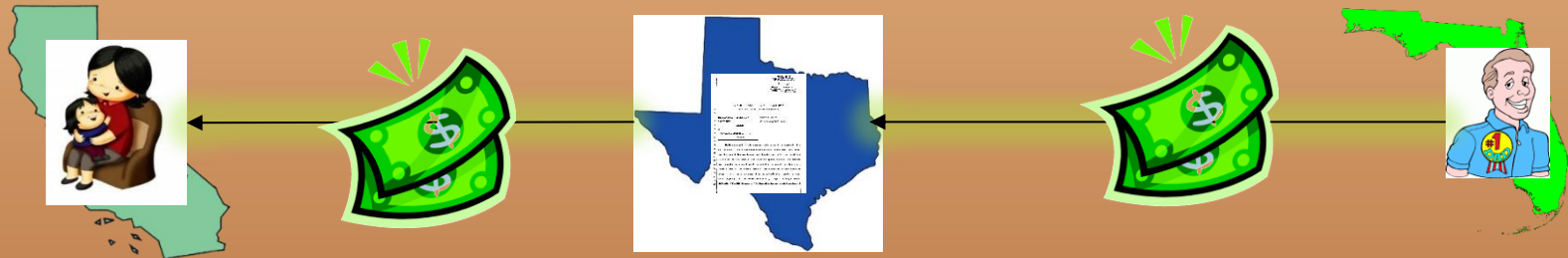
- Sections 307(e) and 319(b) & (c) were added to UIFSA 2001
 - New payment “redirection” option for state agencies
 - Available only when everyone has left order-issuing state
 - Must be requested
- Now that UIFSA 2008 is uniform, all states have option to request

UIFSA 319 redirection

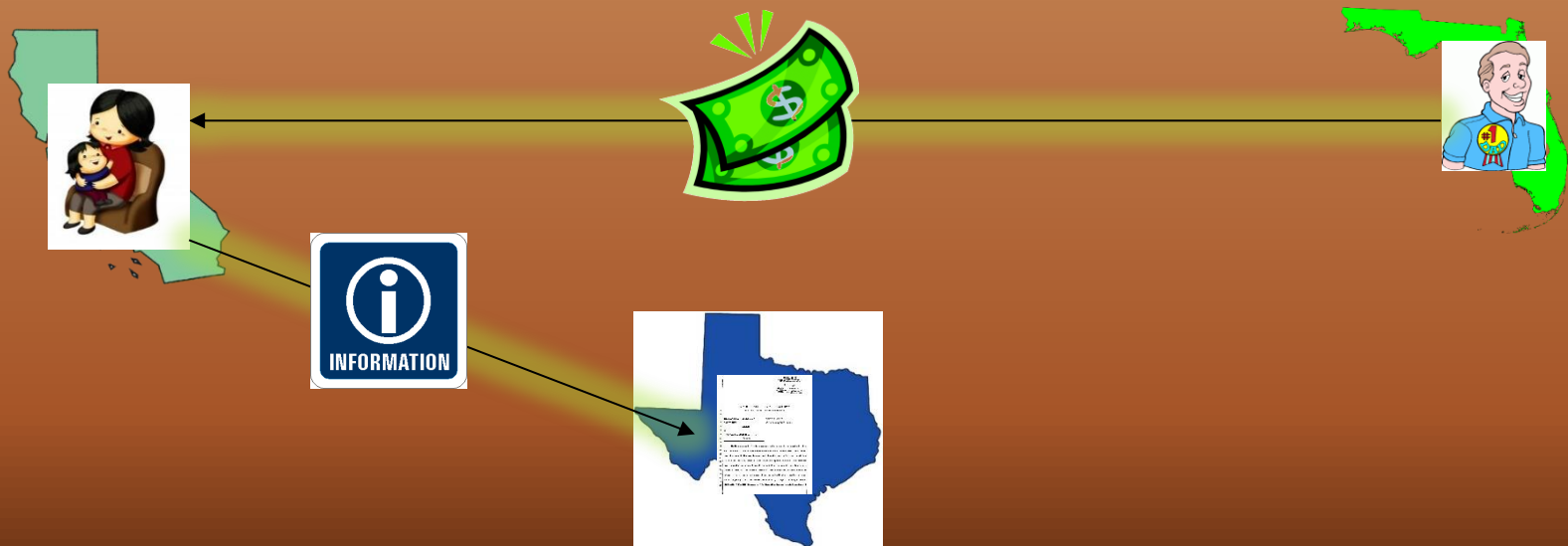
- Imposes limited duty on order state to redirect payments
- Either child support agency or tribunal may direct payments to new location
- New location must be SDU in state where parent owed support is receiving services
- Order state also sends either income withholding order or administrative notice of change of payee to employer
- Order state can request payment information from requesting state

UIFSA 319 redirection

- Before redirection:



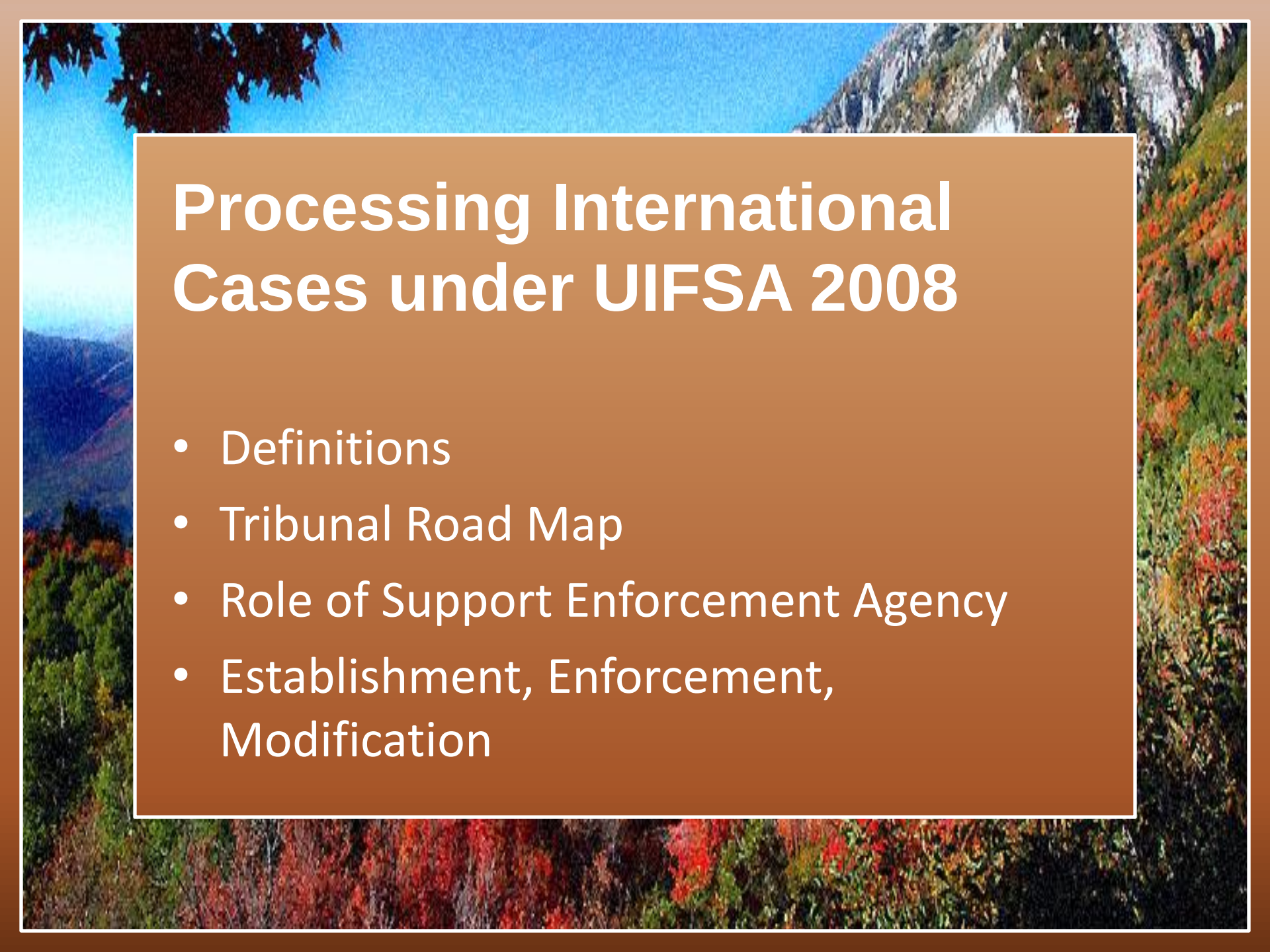
- After redirection:



Summary

- States must consider all options for the most appropriate services for each individual case
- States must cooperate in enforcing support obligations across state lines
- Order state should be kept apprised of any payments received by other states
- Communication is key!





Processing International Cases under UIFSA 2008

- Definitions
- Tribunal Road Map
- Role of Support Enforcement Agency
- Establishment, Enforcement, Modification

Definitions

Foreign country – incl. many but not all foreign nations

- Foreign reciprocating country
- State reciprocal arrangement
- Country with laws substantially similar to UIFSA
- Convention country



Current Bi-Lateral Agreements

- Australia
- Canada – all provinces/territories but Quebec
- Czech Republic
- El Salvador
- Finland
- Hungary
- Ireland
- Israel
- Netherlands
- Norway
- Poland
- Portugal
- Slovak Republic
- Switzerland
- The United Kingdom of Great Britain and Northern Ireland



Tribunal – Road Map

- Tribunal **must** apply Articles 1 thru 6 and, as applicable, Art. 7, to a support proceeding involving:
 - A foreign support order;
 - A foreign tribunal; or
 - An obligee, obligor, or child residing in a foreign country
- Tribunal **may** apply Articles 1 thru 6 when asked to recognize and enforce a foreign support order on basis of comity
- New Article 7 applies only to Convention proceedings

Support Enforcement Agency

State legislature may choose between 2 alternatives

- **MUST**, upon request, provide services to all petitioners;

or

- **MUST**, upon request, provide services to a petitioner residing in a state or requesting services thru a Central Authority (Hague or bi-lat case) and **MAY**, upon request, provide services to an individual petitioner not residing in a state (all other foreign cases)

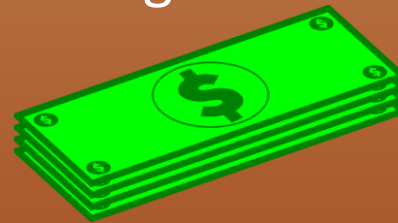


Non-Convention International Cases

- Section 307 governs services provided
- Sections 316, 317, 318
 - Outside this state – any place but here!
- Establishment – no changes

Enforcement - Non-Convention Order

- Direct Income Withholding
 - Only for support orders orders/income withholding orders issued by a state.
 - No longer requires U.S. employers to honor direct income withholding orders issued by a foreign country



- Administrative Enforcement – no change



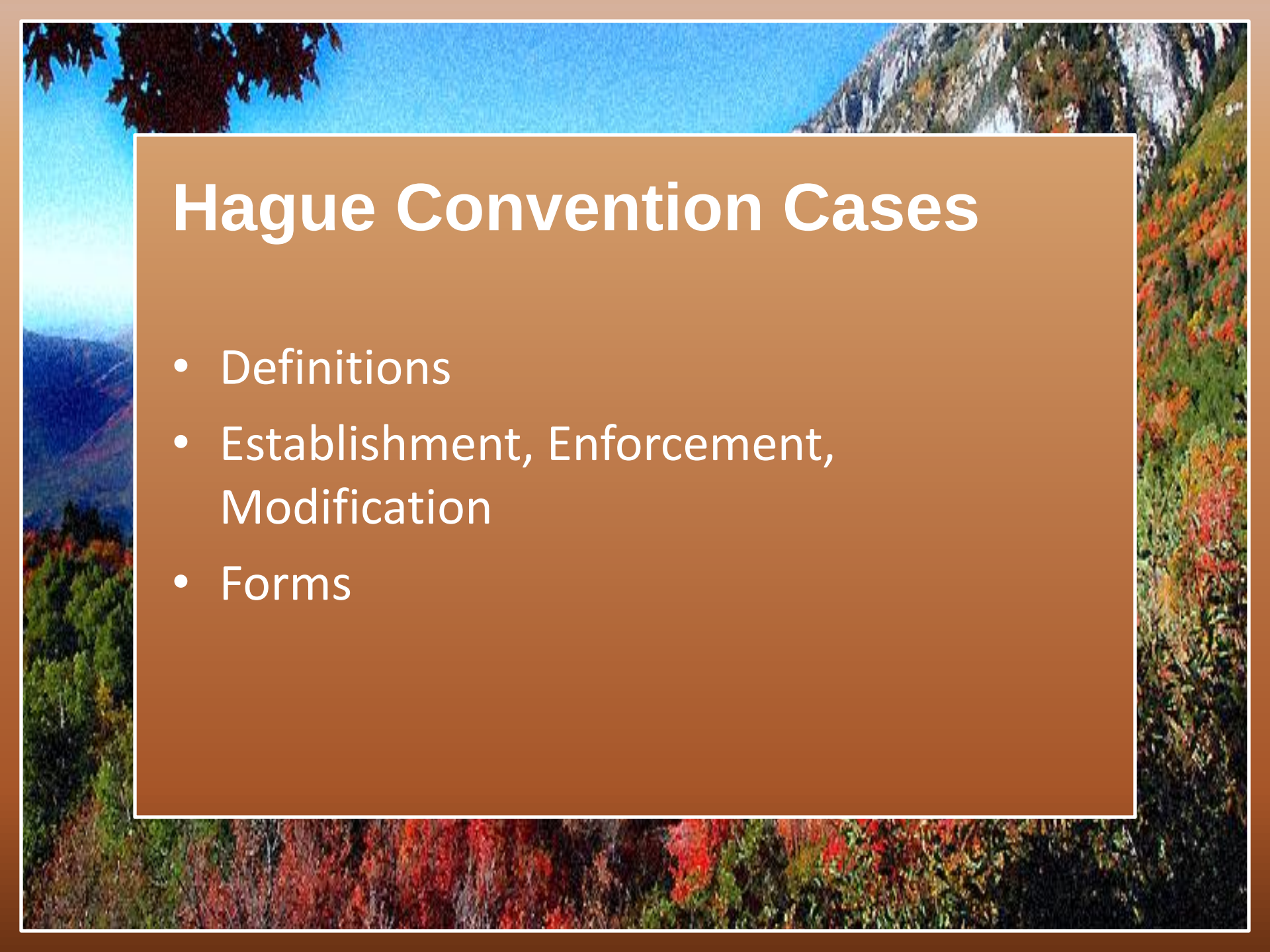
Registration for Enforcement - Non-Convention Order

- Same procedure as used under UIFSA 1996 and 2001



Modification - Non-Convention Order

- Section 615
 - Issuing country lacks or refuses to exercise jurisdiction to modify under its laws
 - U.S. tribunal must have personal jurisdiction
 - Consent not required



Hague Convention Cases

- Definitions
- Establishment, Enforcement, Modification
- Forms



New Article 7 Definitions

- Application
- Central Authority
- Direct Request
- Foreign Support Agreement

Establishment

- Sec. 704 - Establishment proceedings under Convention only available to creditor
- Apply Art. 1 – 6 to Convention case
 - Including Sections 316, 317, 318
- Recommended Convention forms
 - Application for Establishment of a Decision, incl. Restricted Information on the Applicant
 - Status of Application Report

Enforcement

- Art. 5 applies so U.S. employers are not required to honor direct income withholding orders issued by a Convention country
- Art. 7 - Registration for Enforcement of Convention order
 - Different documents
 - Different timeframes
 - Some new defenses

Required Documents

- Transmittal letter
- Complete text of order (or abstract by issuing tribunal)
- Record: order is enforceable in issuing country
- Record attesting to due process (if default order)
- Record: arrears and automatic adjustment of support
- Record of receipt of free legal assistance in issuing country (if necessary)

Timeframe to Contest

- Non-Convention Foreign Support Order
 - Within [20] days after notice of registration
- Hague Convention Foreign Support Order
 - Not later than **30** days after notice of registration
 - Not later than **60** days after notice if contesting party does not reside in U.S.

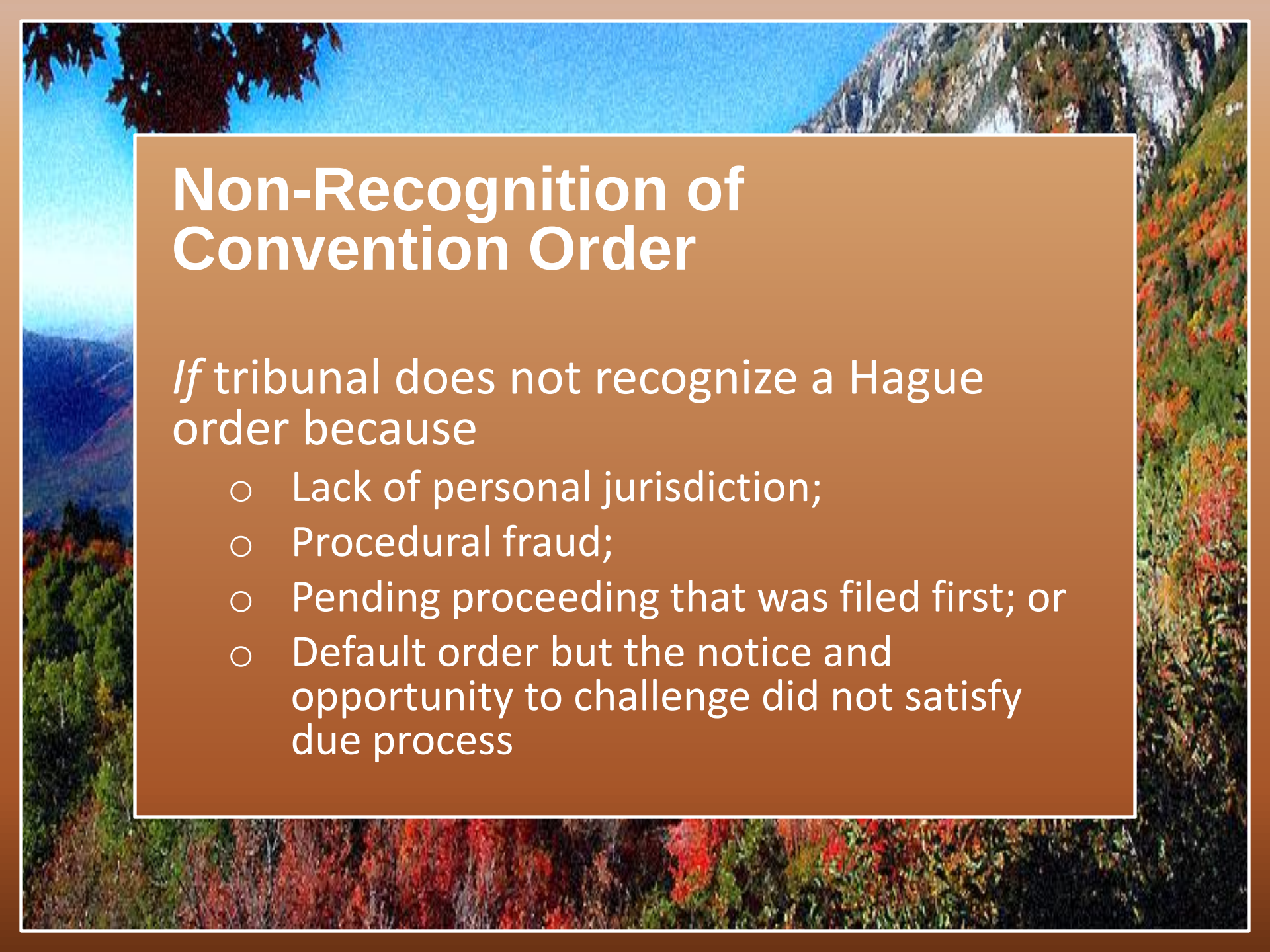
Tribunal Objection

- Manifestly incompatible with public policy



Debtor Defenses

- Manifestly incompatible with public policy
- Lack of personal jurisdiction consistent with Sec. 201
- Not enforceable in issuing country
- Procedural fraud
- Record lacks integrity
- Incompatible with more recent valid order
- Payment of arrears
- Default order where no due process
- Order made in violation of Sec. 711 (modification)



Non-Recognition of Convention Order

If tribunal does not recognize a Hague order because

- Lack of personal jurisdiction;
- Procedural fraud;
- Pending proceeding that was filed first; or
- Default order but the notice and opportunity to challenge did not satisfy due process

Non-Recognition (cont'd)

Then

- Tribunal may not dismiss without allowing reasonable time for party to request establishment of new order
- and the [gov't entity] must take all appropriate measures to request a child support order for the obligee **if** the application for recognition and enforcement was received through a Central Authority.

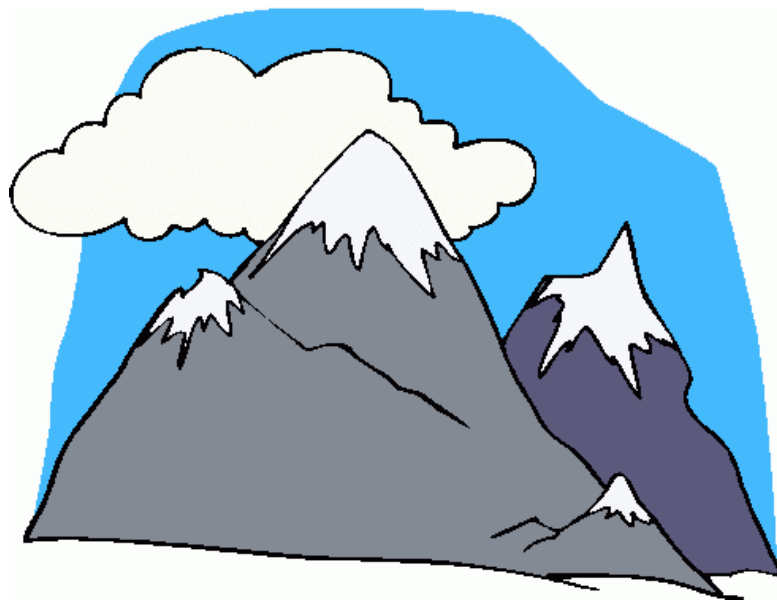
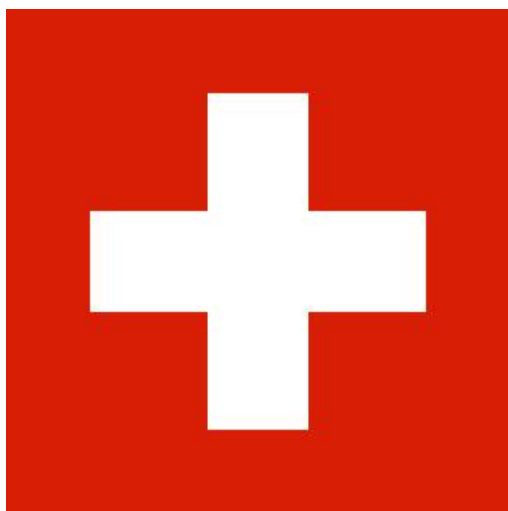
Case Scenario

- Assume U.S. has ratified Convention. Convention is also in effect in Germany.
- Germany requests CA to recognize and enforce German order for 2500 euros/month for support of 2 children residing with mom in Germany.



Case Scenario (cont'd)

- All children were born in Switzerland when dad worked in U.S. Embassy and mom worked at Swiss hotel.
 - Obligor contests registration on basis that German court did not have personal jurisdiction over him.



Modification

- UIFSA § 711 - indirect rule of jurisdiction
- U.S. tribunal **cannot** modify a Convention support order if obligee resides in issuing country, **unless**:
 - Obligee submits to jurisdiction of U.S. tribunal; or
 - Foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.





Modification (cont'd)

- Register for modification - Article 7
- Recommended Convention forms
 - Application for Modification of a Decision, incl. Restricted Information on the Applicant
 - Status of Application Report

Modification (cont'd)

If U.S. tribunal does not modify Convention order because it does not recognize the order, it must allow time for party to request establishment of a new support order.



Hague Convention Website



From website, www.hcch.net, go to the page for Maintenance

Hague Child Support Convention Resources

- Convention text
- Country Profiles
- Handbook for caseworkers



> Practical
Handbook
for Caseworkers
under the 2007
Child Support
Convention

Hague Child Support Convention Forms

- Two Required Forms
 - Transmittal form
 - Acknowledgment form
- Several Recommended Forms
 - Applications
 - Certificate of Enforceability
 - Abstract
 - Financial Information
- Key Elements
 - Easily translated
 - No signature required
 - Not under penalty of perjury

