

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CONSULATE GENERAL OF
MEXICO IN SAN FRANCISCO AND THE SAN FRANCISCO HUMAN SERVICES
AGENCY, DEPARTMENT OF FAMILY AND CHILDREN SERVICES, CALIFORNIA,
UNITED STATES OF AMERICA
REGARDING CONSULAR ASSISTANCE IN CUSTODY
PROCEEDINGS INVOLVING MEXICAN MINORS**

The Consulate of Mexico in San Francisco (hereinafter “the Consulate”) and the San Francisco Human Services Agency, Department of Family and Children Services, California, United States of America (hereinafter “SFHSA-FCS”) jointly referred to as “the Parties”;

CONSCIOUS of the importance of preserving, rehabilitating and reuniting families;

RECOGNIZING their interest in working together in order to prevent neglect, abuse and exploitation of Mexican minors located in the United States of America and to provide them with a safe, stable and permanent home in a timely fashion;

BEARING IN MIND the international commitments set forth in the Consular Convention between the United States of America and the United Mexican States, 57 Stat. 800; Treaty Series 985 (hereinafter Bilateral Convention), and the Vienna Convention on Consular Relations, 21 U.S.T 77, T.I.A.S. No. 6820 (hereinafter “Vienna Convention”); that provide for consular notification and access in those cases where foreign nationals are involved in legal proceedings;

CONSIDERING that an important duty of the Consulate is assisting Mexican nationals and protecting their interests;

CONSCIOUS of the need to join efforts to treat, with special care, the high number of protective custody and dependency cases involving Mexican minors located

in the City and County San Francisco, through the development of a bilateral mechanism that facilitates the early identification of said minors and assure the exercise of the consular assistance referred to in the Bilateral Convention and Vienna Convention;

Have agreed as follows:

I. PURPOSE

The purpose of this Memorandum of Understanding is to enhance the services provided to minors and families who are Mexican nationals, by clarifying the responsibilities between the Parties to assure the exercise of the consular assistance set forth in the Bilateral Convention and Vienna Convention, during custody and dependency proceedings involving Mexican minors.

II. APPLICABLE TREATIES

SFHSA-FCS recognizes that the Government of Mexico has the right to carry out consular functions to protect the interests of its nationals abroad, including those of minors, in the terms set forth in Article 5, paragraphs (a) and (h) of the Vienna Convention.¹

SFHSA-FCS further recognizes its duty to communicate the Consulate, without delay,² about any custody proceeding involving Mexican minors, in accordance with Article 37 (b) of the Vienna Convention.³

Likewise, *SFHSA-FCS* recognizes that the Consulate has the rights to interview, to communicate with, to visit, and to assist⁴ Mexican minors involved in *SFHSA-FCS* custody proceedings, in accordance with Article VI of the Bilateral Convention.⁵

III. CONFIDENTIALITY INFORMATION

The Consulate recognizes and shall abide by the confidentiality provisions established in the California Welfare & Institutions Code (CWIC), Section 827 and local rules of Court, which allows *SFHSA-FCS* to share court reports and confidential information only pursuant to court authorization.

Nevertheless, the *SFHSA-FCS* recognizes the Consulate's rights to request information regarding protective custody and dependency proceedings involving Mexican minors, pursuant to the above mentioned international treatments. Mainly, in order to facilitate their Consular functions for the protection of the minor's rights by assisting the *SFHSA-FCS* in the location of relatives in Mexico, obtaining home studies from their sister agency in Mexico, (*Sistema Nacional para el Desarrollo Intergral de la Familia* herein D.I.F.), as well as any other information needed to assist the appropriate determination of temporal or permanent placement for the minors' best interest.

IV. DEFINITIONS

For the purposes of this Memorandum of Understanding:

- A. **"Mexican minor"** means any unmarried individual who is under the age of eighteen and:
 - 1. Was born in Mexico, or
 - 2. Two or more countries confer their nationality to the individual and Mexico is one of those countries, or
 - 3. Mother or father is Mexican.
- B. **"Custodian"** means the person in charge of the Mexican minor's care.
- C. **"D.I.F."** means the Agency for Integral Family Development. This is the agency in Mexico responsible for child protection services.

V. PROVISIONS

To achieve the purpose of the present Memorandum of Understanding, the Parties agree to the following responsibilities:

A. The SFHSA-FCS through the corresponding social worker will:

1. Notify the Consulate pursuant to the Bilateral Convention and Vienna Convention, as well as California Welfare & Institutions Code, Section 828, *SFHSA-FCS*, when:

- a) *SFHSA-FCS* assumes protective custody of a Mexican minor;
- b) the parent or custodian of a Mexican minor so request the notification of the Consulate, and
- c) *SFHSA-FCS* is aware that either parent of a minor resides in Mexico, and
- d) *SFHSA-FCS* is aware that either parent of a U.S born minor is Mexican.

The notification shall be made without delay, from the date *SFHSA-FCS* assumed the protective custody of a Mexican minor or the Mexican citizenship of the minor is established.

2. Provide the parent or custodian of the Mexican minor with information on the consular services and assistance prescribed in the Bilateral Convention and Vienna Convention. Specifically, shall provide the following:

3. Written information, in Spanish and English about the protective custody or/and dependency proceeding before the Juvenile Court, and

4. The address of the Consulate General of Mexico as follows: *Consulado "General de Mexico en San Francisco. 532 Folsom St. San Francisco, CA 94105. Teléfonos (415)354-1716, durante horas de oficina, y (415) 699-1885 para casos de emergencia."*

5. Determine the citizenship of the minor at the time of assuming his/her protective custody, or later on. Once protective custody is assumed by *SFHSA-FCS* and information available allows *SFHSA-FCS* to presume the minor's citizenship.

When possible, the *SFHSA-FCS* caseworker responsible for the protective custody case shall obtain a certified copy of the Mexican U.S. birth certificate, in order to prove the minor's citizenship, through their place of birth or by his/her parents citizenship. The Consulate may assist *SFHSA-FCS*, whenever possible, in obtaining the corresponding Mexican birth certificate.

6. For purposes of the notification referred to in the above paragraph, *SFHSA-FCS* shall provide the Consulate the following information, when available:

- a) Name of the Mexican minor;
- b) Date and place of birth of the Mexican minor;
- c) Name, phone number and address of the parents or custodian, and
- d) Name and phone number of the caseworker responsible for the protective custody case.

7. Upon request from the Consulate, the *SFHSA-FCS* social worker shall provide verbal updates regarding progress of a Mexican minor's case.

8. Facilitate procedures to identify and repatriate children for placement in Mexico when there is no child protective issue.

B. The Consulate will:

1. Have the right to interview the Mexican minor under *SFHSA-FCS* protective custody. To such effect, the supervisor of the caseworker responsible for the custody case shall consent for the interview to take place.

In order to arrange for an interview with a Mexican minor, the Consulate shall contact the child Advocate's Office or the *SFHSA-FCS* caseworker in charge of the protective custody case.

2. Maintain open communication with the *SFHSA-FCS* and be available during business hours and after business hours for emergencies.

3. Observe confidentiality requirements as stipulated by the State of California statutes.

4. Assist with parents or relatives searches in Mexico when needed.

5. When there are no protective issues involving Mexican minors, facilitate procedures to identify and repatriate minors to Mexico for placement.

6. Upon *SFHSA-FCS* notification to the Consulate regarding the custody of a Mexican minor, the Consulate may contact DIF in order to procure the appropriate socio-economic (home) studies of families in Mexico who may be eligible to obtain custody of a Mexican minor under protective custody of *SFHSA-FCS*. Upon reception of the studies, the Consulate shall immediately transmit the information to the *SFHSA-FCS* caseworker responsible of the case.

When custody of a Mexican minor is granted to a family in Mexico, the Consulate shall coordinate with the *SFHSA-FCS* and D.I.F., in order to facilitate the repatriation of said minor to Mexico.

Once the minor is in Mexico, DIF shall be responsible of turning the Mexican minor over to the family assuming custody and shall adopt the necessary measures to assure the minor's welfare.

7. The Consulate and *SFHSA-FCS* shall work jointly in locating those persons that reside in Mexico, that are required to appear before a Court in California in connection to a custody proceeding involving a Mexican minor. Effort should be made to notify them in a timely manner to assure their appearances.

The *SFHSA-FCS* shall assist in the issuance of witnesses subpoena, needed to obtain the appropriate immigration documentation to achieve court appearances.

8. Both Parties agree to assist in procedures needed in order to finalize the adoption process in cases when the child has been placed with relatives in Mexico, upon termination of parental rights. A protocol will be established to facilitate court appearances, either by bringing families to San Francisco, CA; by web video-conference protocol or in case the court would appoint an attorney to represent the prospective adoptive family.

9. In cases of Mexican children being adopted through court proceedings in Mexico currently living with their adoptive parents in San Francisco, Ca. The *SFHSA-FCS* will assist in verifying the well being of children in specific cases, upon the Consulate's request.

10. When a Mexican minor is under dependency custody of County of San Francisco and is considered eligible to obtain the Special Immigrant Juvenile Status (SIJS), pursuant to INA, sec, 101 (a)(27)(j)(ii), 8 U.S.C. sec 101 (a)(27)(J)(ii). The Consulate will assist *SFHSA-FCS* in obtaining the necessary documentation from Mexico for completion of the SIJS application.

11. Both Parties agree that when a parent (s), in violation of a protective custody order, remove their child(s) from their placement in San Francisco and flee with him or her to Mexico, the proper procedure to request assistance for returning the child to the agency that had jurisdiction, will be the one established by Hague Convention on International Child Abduction, through their Central authorities, in order to continue with the proceedings to safeguard his/her/ their safety and well being.

12. Consular Officers and the *SFHSA-FCS* staff shall meet periodically, in order to review issues arising from the application of this Memorandum of Understanding. The Consul and the *SFHSA-FCS*' Director or designee shall meet once a year in order to evaluate the progress and development of the present Memorandum of Understanding.

Both Parties confirm their commitment to celebrate joint meetings and to develop other coordinated efforts, such as their participation in preventive activities regarding the welfare of Mexican families and minors. In addition, the *SFHSA-FCS* Communications Section and the Consulate shall make every necessary effort to exchange, in a timely manner, information and opinions when high profile cases involving Mexican minors receive media coverage.

Notwithstanding the provisions set forth in this Memorandum of Understanding, the Parties acknowledge that the Consulate may contact, at any time, the *SFHSA-FCS*, the Court Appointed Special Advocate (CASA) and/or Office of Attorney General in relation to a Mexican minor

VI. RULES AND PROCEDURES

The Parties agree to adopt the necessary rules and procedures, in order to comply with this Memorandum of Understanding.

FINAL PROVISIONS

This Memorandum of Understanding shall become into force from the date of its signature and shall remain in force for a period of twelve (12) months, automatically renewable for equal periods, unless any of the Parties gives written notice to the Other of its intention of not renewing it, at least sixty (60) days prior to the expiration of the current effective period.

Either Party may terminate this Memorandum of Understanding at any time, by providing a ninety (90) days written notice to the other Party.

Signed in San Francisco, California, this _____ day of _____ two thousand and ten, in duplicate, in the Spanish and English languages, being both texts equally authentic.

**FOR THE CONSULATE GENERAL OF
MEXICO IN SAN FRANCISCO**

**FOR THE SAN FRANCISCO HUMAN
SERVICES AGENCY, DEPARTMENT OF
FAMILY AND CHILDREN SERVICES OF
THE STATE OF CALIFORNIA OF THE
UNITED STATES OF AMERICA**

Carlos Felix Corona
Consul

Trent Rohrer
Director

¹ Article 5 of the Vienna Convention provides in part that consular functions consist in:

“a)protecting in the receiving State the interest of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
[...]

h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interest of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons”

² The time of notification will be specified below.

³ Article 37 of the Vienna Convention states in relevant part:

“If the relevant information is available to the competent authorities of the receiving state, such authorities shall have the duty:

(a) [omitted]

(b) To inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the in the interest of a minor or other person lacking full capacity who is national of the sending state. The giving of information shall, however, be without prejudice to the operation of the laws and regulations of the receiving state concerning such appointments.”
(*Emphasis added*)

(c)

⁴ Procedures for notification will be specified below.

⁵ The Bilateral Convention expresses an Article VI that:

“1. Consular officers of either High Contracting Party may, within their respective consular districts, address the authorities, National, State, Provincial or Municipal, for the purpose of protecting the nationals of the state by which they were appointed in the enjoyment of rights accruing by treaty or otherwise. Complaint may be made for the infraction of those rights. Failure upon the part of the proper authorities to grant redress or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul or the consular officer stationed at the capital may apply directly to the Government of the country.

2. Consular officers shall, within their respective consular districts, have the right:

(a) to interview and communicate with the nationals of the State which appointed them;

(b) to inquire into any incidents which have occurred affecting the interest of the nationals of the State which appointed them;

(c) upon notification to the appropriate authority, to visit any of the nationals of the State which appointed them who are imprisoned or detained by authorities of the State; and

(d) To assist the nationals of the State which appointed them in proceedings before or relations with authorities of the State.

3. National of either High contracting Party shall have the right at all times to communicate with the consular officers of their country. (*Emphasis added*).”