



CONSULADO GENERAL DE MÉXICO  
SAN JOSÉ, CA.



MEMORANDUM OF UNDERSTANDING

BETWEEN THE MONTEREY COUNTY DEPARTMENT  
OF SOCIAL AND EMPLOYMENT SERVICES, FAMILY  
AND CHILDREN SERVICES

AND THE

CONSULATE GENERAL OF MÉXICO IN SAN JOSÉ,  
CALIFORNIA

REGARDING CONSULAR INVOLVEMENT IN CASES  
INVOLVING MINORS



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## **Memorandum of Understanding**

**Between the Monterey County Department of Social and Employment  
Services, Family and Children Services**

**and the**

**Consulate General of México in San José, California**

### **Regarding Consular Involvement in Cases Involving Minors**

The County of Monterey, in the state of California, through the Department of Social and Employment Services (hereinafter "the Department") and the Consulate General of México in San José, California (hereinafter the "Consulate"), enter into this Memorandum of Understanding to ensure compliance with the Consular Convention Between the United States of America and the United Mexican States, (hereinafter "Bilateral Convention") [57 Stat. 800; Treaty Series 985 and the Vienna Convention on Consular Relations (hereinafter "Vienna Convention") [21 U.S.T. 77, T.I.A.S. No. 6820.

Both the Bilateral Convention and the Vienna Convention provide for consular notification and access in cases where foreign nationals are involved in legal proceedings. These treaties place a special responsibility on the receiving State's authorities, in this case, the Director of the Department, to treat cases involving foreign national minors with particular care. Both parties to this Memorandum of Understanding recognize that notification to consular authorities is essential in these cases, not only because a legally binding treaty so dictates, but also because foreign consulates provide essential services to those individuals personally affected by these legal proceedings.



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## I. PURPOSE

The purpose of this Memorandum of Understanding is to protect the Mexican minor, a fundamental human element of the Mexican family unit. The Department and the Consulate recognize that as a critical component of the Mexican family unit, the Mexican minor is essential to the maintenance of Mexican culture, traditions and values. Therefore, the Department, in conjunction with the Consulate, seeks to provide a mechanism for early identification of Mexican minors and their families.

In addition, this Memorandum of Understanding seeks to assure exercise of all the protections afforded by the Vienna Convention, the Bilateral Convention and all other applicable treaties and laws. By ensuring that these protections are given full force and effect, the Consulate will be able to provide those essential services to those individuals directly affected by legal proceedings involving minor children.

## II. APPLICABLE TREATIES

The Department recognizes that the government of México has a well established duty to care for the interests of its nationals, particularly those of minors while they are abroad [Article 5, Secs. (a) and (h), of the Vienna Convention on Consular Relations<sup>i</sup>]. Further, the Department recognizes that it is imperative that the Consulate be notified, without delay<sup>ii</sup> of a court ordered appointment of guardian or trustee as expressed by Article 37 (b) of the Vienna Convention.<sup>iii</sup>



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Finally, the Department recognizes that pursuant to the Bilateral Convention, the Consulate has a right to information and access<sup>iv</sup> in all cases involving children of Mexican nationals to meet the requirements of Article VI of the Bilateral Convention.<sup>v</sup>

### III. AGREEMENT DEFINITIONS

- A) "Department" means the Department of Social and Employment Services, Family and Children Services.
- B) "Extended family member" means the same as "relative" as defined in Welfare and Institutions Code Section 361.3(c)(2).
- C) "Mexican" means any person who is a national of México, regardless of immigration status in the United States. For consular notification purposes, a minor reported to have been born in México will be assumed to be a Mexican national.
- D) "Mexican National minor" means any unmarried person who is under the age of eighteen and who was born in México.
- E) "Mexican American minor" means any unmarried person who is under the age of eighteen; who was born in the United States; and who is eligible for Mexican nationality as the biological minor of a Mexican national.<sup>vi</sup>
- F) "Custodian" means the non-parental caretaker of a Mexican national minor or Mexican American minor and who has been entrusted by a parent(s) with the day-to-day care of the minor.



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- G) "DIF" means the Agency for Integral Family Development (*Sistema para el Desarrollo Integral de la Familia*). This is the agency in México charged with ensuring the welfare of minors.

#### IV. PROVISIONS

With a view to facilitating consular notification and access, and thereby promoting the Purpose of this Memorandum of Understanding, the parties agree to the following terms:

##### A) **Determination of Mexican Lineage**

At the time a decision is made to take a minor into protective custody, the Department shall determine if a minor has any Mexican lineage. The Department will inform any parent or custodian of a Mexican National minor or Mexican American minor of their rights as set forth in this Memorandum of Understanding. In the case of a Mexican National minor whose parent's or custodian's whereabouts are unknown, then the Mexican Consulate shall receive notification as provided in this Memorandum of Understanding.

If the Department later learns that the minor has Mexican lineage and that he is a Mexican National minor, the Department will forward the information without delay to the appropriate parties in accordance with this Memorandum of Understanding.



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### **B) Notification to the Mexican Consulate**

Under California Welfare and Institutions Code Section 290.1, the Department has the responsibility to notify the parents, if their whereabouts are known, that the minor has been taken into protective custody and a juvenile dependency petition has been filed with the Juvenile Court. The Department will also notify the Consulate in writing of the following information:

- (1) When the Department identifies a Mexican minor in its custody;
- (2) When a parent or custodian of a Mexican National minor or Mexican American minor in the Department's custody has requested that the Consulate be notified;
- (3) When the Department learns that a non-custodial parent(s) of a Mexican National minor in the Department's custody resides in México.

The written notification will be made to the Consulate within 10 business days after the Mexican minor has been taken into protective custody and a dependency petition has been filed with the Juvenile Court .

If the Department later learns that the minor has any Mexican lineage and that he or she is a Mexican National minor, then the information will be forwarded without delay to the appropriate parties in accordance with this Memorandum of Understanding.



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### **C) Initial Information to be Provided to the Consulate**

For purposes of initial notification, the Department will provide the Consulate with the following information in writing:

- (1) The name of the Mexican national minor(s) or Mexican American minor(s);
- (2) The date of birth of the Mexican national minor(s) or Mexican American minor(s);
- (3) The name of the parent or custodian;
- (4) A name and telephone number of the caseworker directly responsible for the case.

### **D) Confidentiality and Further Information**

The Consulate hereby recognizes and agrees to respect the statutory requirements of confidentiality set forth in Welfare and Institutions Code Section 827 and the Child Abuse and Neglect Reporting Act found in Penal Code Section 11165 et.seq. under which the Department must operate.

The Department recognizes that the Consulate may need specific information regarding a particular case involving a Mexican National minor or a Mexican American minor. In order to obtain further information, the Consulate will contact the Department's Division of Family and Children's Services designee directly. Court reports and other confidential information may be shared only with the Consulate pursuant to court



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authorization. This confidential information will be disseminated by the Consulate only to the extent necessary to fulfill the purpose of this Memorandum of Understanding. Information that may be provided to the Consulate without court approval is as follows: the parents' names and birthdates; the children's names and birthdates, addresses, and telephone numbers; and a brief and general overview of the parents' situation, e.g., children removed due to parent's substance abuse and subsequent neglect of the children.

**E) Interview of a Mexican National Minor or Mexican American Minor**

A consular representative may interview the Mexican national minor(s) in the Department's custody. In the case of a Mexican American minor(s), the Department's Division of Family and Children's Services designee and the child's dependency attorney, if one has been appointed, must give consent prior to any interview.

Whenever an interview with a Mexican National minor or Mexican American minor is necessary, the Consulate shall contact the Department's Division of Family and Children's Services designee.

**F) Special Immigrant Juvenile Status for Mexican National Minor**

In cases where a Mexican national minor has been declared a dependent of Monterey County Juvenile Court and has become eligible for 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 the Department in obtaining the necessary documentation from Mexico for completion of the SIJS application.





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### **G) Assistance Provided by DIF**

Upon notification to the Consulate of the Department's custody of a Mexican National minor(s) or a Mexican American minor(s), the Consulate may contact DIF in order to obtain the appropriate home studies of potential families in Mexico who may be potential placement options for those minors. Upon receipt, the Consulate will immediately forward the information to the Department caseworker directly responsible for the case.

When minors are placed in Mexico, the Consulate will take every step possible to obtain DIF's cooperation to ensure the safety and welfare of the minor(s) and to provide whatever services are necessary to the minor(s) and required by the Juvenile Court. The Consulate will also obtain copies of the monitoring reports prepared by DIF concerning the welfare of the minor(s) which will be forwarded as quickly as possible by the Consulate to the Department caseworker directly responsible for the case.

The Consulate will work together with DIF to provide necessary services to parents or potential caretakers in Mexico in anticipation of possible placement of the minor(s).

### **H) Court Appearances**

The Consulate and the Department shall work together to locate individuals who reside in Mexico and who must appear in a Monterey County court regarding the juvenile dependency cases involving minors, and shall attempt to properly notify such individuals of such court appearances.



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### **I) Ongoing Communication**

Consular officers and Department staff will meet periodically in order to discuss, clarify, and coordinate activities in areas of mutual interest and concern.

In order to assess the progress and direction of this Memorandum of Understanding, the Consul General and the Director of the Department will meet once a year.

Both agencies remain committed to the development and delivery of joint community meetings and other information efforts. Both agencies will participate in joint prevention efforts regarding the protection and well being of Mexican families and minors. In addition, the Department and the Consulate will make every effort to exchange ideas and concerns, including those of a high profile nature which may attract media attention.

Notwithstanding this Memorandum of Understanding, the parties acknowledge that the Consulate may contact the Department's Division of Family and Children's Services at any time.

### **J) Rules and Procedure**

The Department agrees to adopt and implement rules and procedure necessary in order to give full force to this Memorandum of Understanding.



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**K) Terms of Agreement**

This Memorandum of Understanding becomes effective upon execution by all parties and will continue in effect unless a Notice of Termination is provided by either party no later than 180 calendar days prior to the date of termination.

**V. STATEMENT OF IMMUNITY**

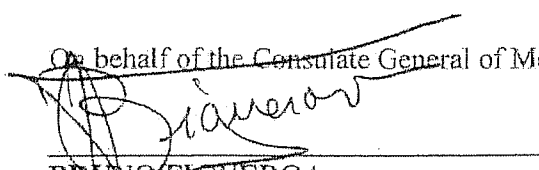
Except for the provisions expressly contained herein, nothing in this Memorandum of Understanding shall be construed as a waiver of immunities to which the Consulate and its consular agents are entitled to under international law, the Foreign Sovereign Immunities Act, and international treaties in force between the United Mexican States and the United States of America. The Consulate hereby invokes all Immunities. Except for the specific provisions contained herein, this statement shall not imply or confer a submission by the United Mexican States or its consular agents to the jurisdiction of any United States or California courts.

**This Memorandum of Understanding was entered into on April 17<sup>th</sup>, 2007 by:**

On behalf of the County of Monterey,

  
DAVE POTTER, CHAIR  
MONTEREY COUNTY BOARD OF SUPERVISORS

On behalf of the Consulate General of México, in San José, California,

  
BRUNO FIGUEROA  
CONSUL GENERAL OF MÉXICO in  
SAN JOSÉ, CALIFORNIA



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<sup>i</sup> Article 5 of the Vienna Convention provides in part that consular functions consist in:

“a) protecting in the receiving state (*the United States*)\* the interests of the sending state (*Mexico*)\* 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 interests 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.”

\* Added for clarification

<sup>ii</sup> The time of notification will be specified below.

<sup>iii</sup> Article 37 of the Vienna Convention states in the 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 interests of a minor or other person lacking full capacity who is a 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*)

<sup>iv</sup> Procedures for notification will be specified below.

<sup>v</sup> The Bilateral Convention expresses in 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 or to accord protection may justify interposition through the diplomatic channel, and in the absence of a diplomatic representative, a consul general 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 interests 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*).”

<sup>vi</sup> Article 30 of the Mexican Constitution sets out the requisites to acquire Mexican nationality and, in the relevant portion, Article 30 (a) (i) and (ii) confers Mexican nationality to “[t]hose born in the territory of the Mexican Republic, regardless of their parents’ nationality” and “[t]hose born abroad to Mexican parents; either Mexican father or Mexican mother.” In its original text in Spanish, Article 30 of the Mexican Constitution reads:



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- “Artículo 30. La nacionalidad mexicana se adquiere por nacimiento o por naturalización.
- a. Son mexicanos por nacimiento:
    - I. Los que nazcan en el territorio de la República, sea cual fuere la nacionalidad de sus padres.
    - II. Los que nazcan en el extranjero de padres mexicanos; de padre mexicano o de madre mexicana.
    - III. Los que nazcan a bordo de embarcaciones o aeronaves mexicanas, sean de guerra o mercantes.
  - b. Son mexicanos por naturalización:
    - I. Los extranjeros que obtengan de la Secretaria de Relaciones carta de naturalización.
    - II. La mujer o el varón que contraigan matrimonio con varón o con mujer mexicanos y tengan o establezcan su domicilio dentro del territorio nacional.” (*Emphasis added*).

Pursuant to these provisions, the Mexican government considers children born in Mexico or born in the United States to Mexican parents as Mexican nationals, entitled to the assistance and protection of the Consulate General of Mexico.

STATE OF CALIFORNIA  
COUNTY OF MONTEREY

I, Gail T. Borkowski, Clerk of the Board of Supervisors, do hereby certify the foregoing to be a full, true and correct copy of the original Board Packet of Item 5-1 from 4/17/12 on file in my office.

Witness my hand and seal of the Board of Supervisors.

This 20<sup>th</sup> day of April 2012

GAIL T. BORKOWSKI  
Clerk of the Board of Supervisors

seal

By: [Signature] Deputy