



THE CENTER FOR
IMMIGRATION
AND CHILD WELFARE

MEMORANDA OF UNDERSTANDING WITH FOREIGN CONSULATES

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EMERGING POLICIES TO ADDRESS THE NEEDS OF IMMIGRANT CHILDREN AND FAMILIES IN THE CHILD WELFARE SYSTEM

ABOUT THIS SERIES

As the population of children in immigrant families increases in the United States, child welfare agencies will need to develop policies that respond to their unique needs. To facilitate policy development, the Center on Immigration and Child Welfare conducted a statewide survey of county child welfare agencies in California to identify emerging and innovative policies that address the unique issues that arise in child welfare cases with immigrant families. These policies may be used as examples for other California counties, as well as other states and jurisdictions, to build their capacity to meet the needs of this growing population.

Each brief in this series provides an analysis of policies that address topics unique to issues concerning immigrant children and families. Topics include:

- Memoranda of Understanding with Foreign Consulates
- Placement of Children with Parents or Relatives in a Foreign Country
- Placement of Children with Undocumented Relatives in the U.S.
- Case Planning for Parents Residing in a Foreign Country
- Immigration Relief Options for Undocumented Youth in Care
- Financial Eligibility including Permanent Residence Under Color of Law (PRUCOL)
- Language Access

A Memorandum of Understanding (MOU) is an official agreement between a child welfare agency and a foreign consulate that is typically developed to coordinate service delivery for foreign nationals who are involved with the child welfare system. MOUs emerged as a result of recognition from the international community that foreign nationals face barriers to maintaining custody of their children when involved with child welfare agencies. Specifically, while the United Nations Convention on the Rights of the Child acknowledged the importance of maintaining the family unit, the international community also recognized that foreign nationals may be at increased risk for maintaining custody of their children in child welfare proceedings outside their country of origin, as cultural and linguistic barriers may pose challenges to communicating with agency officials and navigating an unfamiliar system. The international community therefore recognized the importance of appointing consular officials who can intervene on a family's behalf in cases where child custody is at stake. This recognition was made official in Article 37 of the Vienna Convention on Consular Relations, which mandates that foreign consulates be notified in cases where consular representation is in the best interests of a foreign national minor.

Of the 46 counties who participated in this study, 14 reported having an MOU with the Mexican Consulate, and 13 provided a copy of their MOU for analysis. Twelve of the MOUs were finalized versions, while Alameda County provided a draft version. It is also important to note that 12 of the 13 MOUs were between the Mexican Consulate and the county child welfare agency, while Los Angeles County's MOU was between the Consulate and the county juvenile dependency court. Our analysis indicated four categories of provisions across all MOUs: 1) Agency Obligations, 2) Consular Obligations, 3) Service Provision for Mexican Children and Families, and 4) Procedural Components. Descriptions of these categories and their corresponding provisions are discussed in the following pages. Following these descriptions, summary tables are provided that indicate which of the provisions were included in each of the MOUs we examined across these categories.

AGENCY OBLIGATIONS

This category encompasses the responsibilities that are most commonly assigned to child welfare agencies across the 13 Memoranda of Understanding included in this analysis. Categories included 1) Determining the nationality and/or citizenship of a child, 2) Notifying the consulate in cases involving Mexican nationals, 3) Notifying the family of their right to contact the consulate, 4) Facilitating access for parents in foreign countries to participate in reunification activities, and 5) Responding to consular inquiries.

Determining the nationality and/or citizenship of a child. MOUs with this provision specify that when a minor becomes involved with the child welfare system, the agency is responsible for determining whether the minor has Mexican lineage, and in some cases, whether the minor is a Mexican citizen. MOUs outline this responsibility as a precedent for notifying the Consulate of cases involving Mexican nationals. Five counties include this provision in their MOUs. Terminology differs across MOUs, with Fresno and Madera stating that the agency is responsible for determining the child's nationality or residence status, Monterrey stating that the county must determine whether the child has Mexican lineage, Alameda specifying that the county must determine the child's lineage and citizenship status, and San Francisco referring to determination of citizenship status. Both San Francisco and Alameda counties also state that social workers should obtain a child's birth certificate, with consular assistance if needed, to prove a child's citizenship.

Notifying the Consulate in cases involving Mexican nationals. MOUs with this provision generally state that if a child or parent involved with the child welfare agency is identified as a Mexican national, the agency is responsible for notifying the Consulate. Eleven of the 13 MOUs had contained this provision. Of these, all specify that consular notification should occur in cases when a Mexican national minor has been taken into protective custody or in cases where the parents of a child taken into custody are Mexican nationals and request that the Consulate be notified. Several counties specify additional conditions under which notification should occur. For example, Alameda specifies that consular notification should also occur in cases involving Mexican minors when an investigation is pending or in any case where a minor, parent, or custodian has an immigration hold. Alameda, Monterrey, and San Francisco include cases where the parents of a Mexican national minor cannot be located and cases where a parent resides in Mexico. Monterrey further identifies that written notice should be given to the Consulate within 10 days after the child has been taken into protective custody and a dependency petition has been filed, or immediately upon learning that a minor has Mexican lineage. San Francisco and Alameda state that notification should be made immediately upon learning of a minor's Mexican heritage. Both Fresno and Madera outline the procedure for providing notice, such as via telephone, email, fax, letter, or official hearing notification and note that this action should be documented in the minor's case file. Monterrey, San Francisco, and Alameda also specify the information to be included in this notice, such as information pertaining to the child, parent or custodian, and the caseworker's contact information.

Notifying the family of their right to contact the Consulate. MOUs with this provision outline that the child welfare agency is obligated to immediately inform the parents of their right to contact the Consulate if they or their child is a Mexican national. Six of the 12 MOUs include this component. Both San Francisco and Alameda specify that parents must be provided with this information in written form in both English and Spanish, or in their preferred language, and specify that this written notice must include information about the protective custody arrangement or dependency court proceedings, as well as the address of the Consulate.

Facilitating access for parents in foreign countries to participate in reunification activities. This provision outlines the agency's responsibility to assist Mexican nationals with entering the United States for the purpose of participating in court hearings or other activities related to reunification with their children. While San Diego is the only county that identifies this responsibility, it is important to mention this provision in light of the Parental Interests Directive issued by U.S. Immigration and Customs Enforcement in August of 2013, as facilitating parental participation in child welfare activities when the parent resides outside of the U.S. is one of the components highlighted in the directive. Thus, having a provision of this nature may become increasingly relevant for child welfare agencies.

Responding to consular inquiries. MOUs with this provision specify that the child welfare agency is obligated to respond to requests for information from the Consulate. Eight of the 12 MOUs identified this obligation. These

MOUs generally state that child welfare agencies are responsible for providing information about Mexican citizen children and parents related to the child's welfare upon the request of the Consulate. Several counties also specify the means of communication for responding to inquiries. Alameda, San Francisco, San Diego, and Ventura, for example, all state that agency employees shall provide verbal responses to Consulate inquiries, and San Diego and Ventura also identify that copies of court documents may be provided. Alameda and Ventura additionally describe that approval from the court or, in the case of Alameda, consent from the child's attorney, is required before the agency responds to the Consulate's information requests.

CONSULAR OBLIGATIONS

This category encompasses the responsibilities that were most commonly assigned to the Mexican Consulate across the 12 MOUs. They include: 1) Obtaining vital documents, 2) Assisting with parent and/or relative searches, 3) Obtaining DIF's cooperation in ensuring the safety of a dependent minor placed in Mexico, 4) Establishing dual citizenship, 5) Complying with confidentiality rules, and 6) Responding to county inquiries.

Obtaining vital documents. MOUs including this component outline the Consulate's obligation to assist the child welfare agency in obtaining documents for Mexican minors through the civil registry for the purposes of traveling and obtaining legal residency. Five counties identify this consular responsibility in their MOUs. Alameda, Monterrey, and San Francisco counties refer only to documentation pertaining to Special Immigrant Juvenile Status (SIJS) in this provision, stating that when youth are eligible for SIJS, the Consulate is obligated to assist in obtaining the necessary documentation for completing the SIJS application.

Assisting with parent and/or relative searches. MOUs with this provision specify that the Consulate is responsible for assisting with searches for parents and/or relatives of a minor for the purpose of informing them that the minor is in custody or for their consideration as a placement resource. Four counties have MOUs with this provision. San Diego and Ventura only specify a responsibility to locate parents, while San Francisco and Alameda make reference to both parents and relatives.

Obtaining DIF's cooperation in ensuring the safety of a dependent minor placed in Mexico. This provision outlines the Consulate's responsibility of collaborating with el Desarrollo Integral de la Familia (DIF), Mexico's child welfare agency, to ensure that the agency is overseeing the safety and welfare of children who have been placed in Mexico. This provision states that the Consulate is responsible for providing the U.S. caseworker with DIF's reports on the child's welfare and for ensuring that parents or caretakers with whom the child will be placed have received necessary services prior to placement. Two counties contain this provision in their MOUs.

Establishing dual citizenship. This provision outlines the process through which the Consulate will assist U.S.-born children of Mexican parents in obtaining dual citizenship. Only Madera identifies this responsibility.

Complying with confidentiality rules. MOUs with this provision outline the Consulate's responsibility to abide by county, state, and federal laws regarding access to confidential information. Nine MOUs contain this provision. Fresno and Madera state that the Consulate must also comply with court orders.

Responding to county inquiries. MOUs with this provision specify that the Consulate is responsible for responding to the child welfare agency's inquiries in matters regarding the protection of children who are eligible for assistance from the Consulate. Five counties have MOUs containing this provision.

SERVICE PROVISION FOR MEXICAN CHILDREN AND FAMILIES

The provisions outlined in this category do not identify responsibilities that are specific to the child welfare agency or the Consulate, but instead generally outline what is expected of both parties to ensure the promotion of the best interest of Mexican children involved with the child welfare system. These provisions also provide general background information that assists involved parties with understanding and carrying out their responsibilities. Provisions include: 1) Placement of minor children in Mexico, 2) Visitation between dependent children and relatives, 3) Minor/parent interview by Consulate staff, 4) Notification of court hearings, 5) Responsibilities during juvenile court dependency hearings, 6) Availability of consular representatives for immigration issues, and 7) Repatriation of children.

Placement of minor children in Mexico. MOUs including this component state that consideration should be given to family members in Mexico when determining an out-of-home placement for a Mexican minor or a minor whose parents are Mexican nationals. They also outline the procedures that child welfare agency staff and the Consulate should follow to facilitate placement, including the procedure for requesting that DIF conduct home evaluations and the procedure for facilitating the child's travel to Mexico. Procedures for finalizing out-of-country adoptions are also included in this category. Twelve of the 13 counties have this provision in their MOUs.

Visitation between dependent children and relatives. This provision discusses procedures to facilitate visits between dependent children and their relatives when one party is residing in the U.S. and the other is residing in Mexico. Each MOU with this provision states that visitation will occur at the Mexican Consulate office in San Diego, located at the U.S.-Mexico border. Three MOUs contain this provision. Fresno and Madera counties state that visits will be supervised by staff of the Defense Security Service-Child Welfare Services of the United States, while San Diego specifies that San Diego County child welfare staff will be responsible for supervising visits.

Minor/parent interview by Consular staff. MOUs that include this component state that consulate staff may interview Mexican minors in the custody of the child welfare system and specify conditions under which this interview may occur. Six MOUs include a provision related to consular interviews of a minor, and Fresno and Madera include an additional clause stating that Consulate staff may also interview the parents of Mexican minors. With regard to the clauses pertaining to interviews of Mexican minors, Los Angeles and Madera also specify that the minor's attorney must give permission for an interview to take place, and Los Angeles states that consular staff may seek resolution from the county judge in cases where the minor's attorney does not give consent. San Francisco states that the assigned caseworker's supervisor must consent to the interview. In Alameda, the provision also gives the child welfare caseworker permission to be present for the interview. It is important to note that Monterrey and Alameda distinguish between Mexican national minors who were born in Mexico, and Mexican American minors who were born in the United States, when outlining the conditions under which the interview may occur. Both counties state that permission from the minor's attorney or child welfare agency staff is only required in cases involving Mexican American minors.

Notification of court hearings. MOUs with this provision specify that the child welfare agency and the Consulate will collaborate to notify individuals residing in Mexico of juvenile dependency court proceedings at which their presence is required. Three of the 12 counties include this provision.

Responsibilities during juvenile court dependency hearings. These provisions outline information regarding the role of the Consulate in juvenile court proceedings. Four counties have MOUs that include this component. It is important to note that as Los Angeles County's MOU is between the Consulate and the Juvenile Dependency Court rather than the child welfare agency, there is more extensive information pertaining to court proceedings in this MOU. Los Angeles specifies that consular staff may request information about a case on behalf of Mexican nationals involved in the proceedings and may appear in court as an agent for a Mexican national minor, parent, or relative. When a consular representative is present in court on behalf of a minor or parent, the MOU states that the representative should inform the courtroom of their presence and that the parent's attorney is allowed to share information with the representative. In cases where a consular representative is present in court on behalf of a relative living in Mexico, the consular representative should approach the minor's attorney to inquire regarding the attorney's willingness to discuss the case. In Orange and Riverside, the MOUs state that agency staff have the responsibility of ensuring that consular representatives participate in all court proceedings involving Mexican minors. In an appendix of Madera's MOU, access to participation in court proceedings is framed not as an agency responsibility but as a right of the Consulate.

Availability of Consular representatives for immigration issues. Madera County includes this provision in the appendix of their MOU, stating that consular representatives should be available to provide assistance to Mexican national minors or their parents who are detained by immigration authorities. Although Madera is the only county with a provision of this nature, this will likely increase as a result of ICE's Parental Interests Directive.

Repatriation of children. This provision specifies that child welfare agency and Consulate staff are responsible for facilitating the process of returning a minor to Mexico. Nine of the 13 counties have this component in their MOUs. San Francisco, San Diego, Alameda, and Ventura counties specifically state that repatriation may occur when there are no child protective issues, while El Dorado, Fresno, Madera, Placer, and Sacramento more generally state that repatriation may occur when it is determined to be appropriate to do so.

PROCEDURAL COMPONENTS

This section briefly describes the most commonly included components pertaining to the procedures of entering into and carrying out a binding agreement between the child welfare agency and the Mexican Consulate. Provisions include: 1) Purpose statement of the MOU, 2) Effective dates of the MOU, 3) Definitions of involved parties, 4) Criteria and procedures for termination, 5) Procedures to amend the MOU, and 6) Procedures for accessing confidential information.

Purpose statement of the MOU. Eleven of the 13 MOUs have an explicit purpose statement that specifies the reasons for entering into an official agreement. Counties commonly identify the goals of clarifying agency and consular responsibilities, encouraging agency and consular cooperation, and promoting the best interests of Mexican children and families as the reasons for entering into an agreement.

Effective dates of the MOU. This provision outlines when and for how long the MOU between the agency and Consulate will be effective. Ten of the 13 MOUs include this provision. The majority of MOUs with this provision state that the MOU will become effective on the date that it was signed and will remain in effect until either party provides notice of their intent to terminate the agreement. Other counties state that the MOU will be effective for a specified number of years and allows for the agreement to be extended or renewed.

Definitions of involved parties. Seven counties provide definitions for a range of parties involved in procedures facilitated through the MOU, including definitions of agency staff, definitions of DIF, and definitions of Mexican nationals, Mexican Americans, custodians and guardians, and extended family members and relatives.

Criteria and procedures for termination. MOUs with this provision specify under what conditions termination of the MOU may occur and the process to be followed for officially terminating the agreement. Twelve MOUs include this provision. Most MOUs specify that either party may choose to terminate the MOU at any point with written notice ranging from 30 days to 180 days.

Procedures to amend the MOU. Eight MOUs state that the MOU may be modified. They also specify the conditions under which modification may occur and the procedures required to amend the document, primarily specifying that the original MOU may be modified through written agreement.

Procedures for accessing confidential information. This provision describes the process required for the child welfare agency to share information with the Consulate. Twelve counties include this provision. MOUs with this provision generally recognize that pursuant to California statutes and local court rules, information pertaining to child welfare cases is confidential, and specify that authorization from the court is required in order for information to be exchanged. Monterrey and Alameda specify information that the child welfare agency may share with the Consulate in the absence of a court order, including the parents' names and birthdates and the child's name, birthdate, address, and telephone number. Alameda also specifies that the agency may share the child's place of birth, and Monterrey specifies that the agency may provide general information regarding the parents' situation, such as the reason the child was removed from the parents' care.

METHODOLOGY

Conducting a policy analysis is useful for systematically answering a set of questions related to the process through which a specified policy is developed, the content included in a given policy, or a policy's impact. In the case of this project, a policy analysis provided a systematic means of identifying shared content across a range of county child welfare policies pertaining to immigrant children and families. Initial contact was made with county administrators in each of California's 58 county child welfare agencies through the assistance of the California Department of Social Services and the California County Child Welfare Directors' Association. If counties agreed to participate, they were asked to participate in a 30 minute phone interview to identify policies and practices being implemented in their counties specific to immigrant families. Telephone interviews were conducted with county child welfare administrators or a designee in 46 of 58 California counties and policy documents were obtained from participating counties. A preliminary review of policy documents resulted in the identification of 7 policy categories: 1) Memoranda of Understanding with foreign consulates, 2) placement of children with parents or relatives in a foreign country, 3) placement of children with undocumented relatives in the United States, 4) financial eligibility of youth in care including Permanent Residence Under Color of Law (PRUCOL), 5) case planning for parents residing in a foreign country, 6) immigration relief options for undocumented youth in care, and 7) language access. Within these categories, policies were analyzed to identify themes in content across counties. Atlas.ti, a qualitative data analysis program, was used to facilitate the analysis of policy documents.

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ABOUT THE CENTER ON IMMIGRATION AND CHILD WELFARE

The mission of CICW, formerly the Migration and Child Welfare National Network (MCWNN), is to improve programs and policies related to immigrant children and families involved in the public child welfare system. CICW conducts and disseminates research, develops policy and practice recommendations, develops and disseminates resources, and works with federal, state, and local child welfare agencies to facilitate policy and practice improvements. The Center serves as a resource to learn from the knowledge and strategies of colleagues, and participates in collaborative efforts to improve services for immigrant families in the child welfare system. The center has four areas of focus: 1) research, 2) policy and advocacy, 3) promising practices, and 4) international issues.

TABLE 1. AGENCY OBLIGATIONS

COUNTY	Determining the nationality and/or citizenship of a child	Notifying the Consulate in cases involving Mexican nationals	Notifying the family of their right to contact the Consulate	Facilitating access for parents in foreign countries to participate in reunification activities	Responding to consular inquiries
ALAMEDA	◆	◆	◆		◆
EL DORADO		◆			◆
FRESNO	◆	◆	◆		◆
LOS ANGELES		◆			
MADERA	◆	◆	◆		◆
MONTERREY	◆	◆	◆		
ORANGE					
PLACER		◆			
RIVERSIDE					
SACRAMENTO		◆			◆
SAN DIEGO		◆		◆	◆
SAN FRANCISCO	◆	◆	◆		◆
VENTURA		◆	◆		◆

TABLE 2. CONSULAR OBLIGATIONS

COUNTY	Obtaining vital documents	Assisting with parent/relative searches	Obtaining DIF's cooperation in ensuring safety of a dependent minor	Establishing dual citizenship	Complying with confidentiality rules	Responding to county inquiries
ALAMEDA	◆	◆	◆		◆	
EL DORADO					◆	◆
FRESNO	◆				◆	◆
LOS ANGELES						
MADERA	◆			◆	◆	◆
MONTERREY	◆		◆			
ORANGE						
PLACER					◆	◆
RIVERSIDE						
SACRAMENTO					◆	◆
SAN DIEGO		◆			◆	
SAN FRANCISCO	◆	◆			◆	
VENTURA		◆			◆	

TABLE 3. SERVICE PROVISION FOR MEXICAN CHILDREN AND FAMILIES

COUNTY	Placement of minor children in Mexico	Visitation between children and relatives	Minor/parent interview by consular staff	Notification of court hearings	Responsibilities during dependency hearings	Availability of consulate for immigration issues	Repatriation of children
ALAMEDA	◆		◆	◆			◆
EL DORADO	◆		◆				◆
FRESNO	◆	◆	◆				◆
LOS ANGELES	◆		◆		◆		
MADERA	◆	◆	◆		◆	◆	◆
MONTERREY	◆		◆	◆			
ORANGE	◆				◆		
PLACER	◆						◆
RIVERSIDE	◆				◆		
SACRAMENTO	◆						◆
SAN DIEGO	◆	◆					◆
SAN FRANCISCO	◆		◆	◆			◆
VENTURA	◆						◆

TABLE 4. PROCEDURAL COMPONENTS

COUNTY	Purpose statement	Effective dates	Definitions of involved parties	Criteria and procedures for termination	Procedures to amend MOU	Procedures for accessing confidential information
ALAMEDA	◆	◆	◆	◆		◆
EL DORADO	◆	◆	◆	◆	◆	◆
FRESNO	◆	◆	◆	◆	◆	◆
LOS ANGELES						◆
MADERA	◆	◆	◆	◆	◆	◆
MONTERREY	◆	◆	◆	◆		◆
ORANGE	◆	◆		◆		◆
PLACER	◆	◆		◆	◆	◆
RIVERSIDE		◆		◆	◆	
SACRAMENTO	◆		◆	◆	◆	◆
SAN DIEGO	◆	◆		◆	◆	◆
SAN FRANCISCO	◆	◆	◆	◆		◆
VENTURA	◆			◆	◆	◆