

**Memorandum of Understanding
Between the State of Illinois,
Department of Children and Family Services and
the Consulate General of México in Chicago
Regarding Consular Notification and Access in Cases Involving Minors**

The government of the State of Illinois, through the Department of Children and Family Services (hereinafter “the Department”) and the Consulate General of México in Chicago (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, 57 Stat. 800; Treaty Series 985 (hereinafter Bilateral Convention), and the Vienna Convention on Consular Relation, 21 U.S.T. 77, T.I.A.S. No. 6820 (hereinafter Vienna Convention).

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 of foreign national minors with particular care. Both parties of this Memorandum of Understanding recognize that the notification of Consular authorities is essential in these cases, not only because a legally binding treaty dictates it, but also because consulates provide essential services that can mutually assist the parties, as well as the individuals personally affected.

1. PURPOSE

The purpose of this Memorandum of Understanding is to protect the Mexican minor as a fundamental human element of Mexican communities throughout the United States, in particular the State of Illinois. The Department and the Consulate recognize

that the Mexican minor is essential to the maintenance of Mexican culture, traditions and values. Therefore, the Department, in conjunction with the Consulate, provides a method of early identification of Mexican minors and their families, in order to provide services, which assure all the protections afforded by the Vienna Convention, the Bilateral Convention and all other applicable treaties and laws.

II. APPLICABLE TREATIES

The Department recognizes that the government of México has a duty to care for the interests of its nationals abroad, particularly those of minors, as expressed in Article 5, Secs. (a) and (h), of the Vienna Convention on Consular Relationsⁱ. The Department recognizes further that it is imperative that the Consulate be notified, without delayⁱⁱ of guardianship as expressed by the Vienna Convention, Article 37 (b).ⁱⁱⁱ

The Department further recognizes that the Consulate has a right to information and access^{iv} in all cases involving children of Mexican nationals as expressed in Article VI of the Bilateral Convention.^v

III AGREEMENT DEFINITIONS

- A) “Department” means the Department of Children and Family Services.
- B) “Extended family member” means the same as defined in the Illinois Compiled Statutes.
- 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 be 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 is born in México.
- E) “Mexican American minor” means any unmarried person who is under the age of eighteen, was born in the United States, and is eligible for Mexican nationality as the biological minor of a Mexican national.^{vi}
- F) “Mexican custodian” means the non-parental caretaker of a Mexican minor, who has been entrusted by a parent(s) with the day-to-day care of the minor.
- G) “DIF” means the Agency for Integral Family Development. This is the agency in México charged with ensuring the welfare of minors.

IV. PROVISIONS

With a view to facilitating consular notification and access, as well as the protection of the Mexican family unit, the parties agree to the following terms:

1. Determination of Mexican Lineage

The Department shall determine at the time a decision to take protective custody is made, if a minor has any Mexican lineage. The Department will inform any Mexican minor, and any parent or custodian of a Mexican or Mexican American minor, of the rights afforded under the Vienna and Bilateral Conventions.

If the Department learns at a later time that the minor has any Mexican lineage, then the information will be forwarded to the appropriate parties as determined in this Memorandum of Understanding.

2. Notification to the Mexican Consulate

Under the Illinois Juvenile Court Act, 705 ILCS 405/1.1, the State's Attorney has the primary notification responsibility. However, the Department will notify the Consulate in writing of the following information:

- (a) When the Department identifies a Mexican minor in its custody;
- (b) When a parent or custodian of a Mexican or Mexican American minor, has requested that the consulate be notified;
- (c) When the Department learns that a non-custodial parent(s) resides in México.

The written notification will be made within 10 working days of the decision to take protective custody of the Mexican minor.

If the Department learns, at a later time, that the minor is a Mexican minor, then the information will be forwarded without delay to the appropriate parties, as determined in this Memorandum of Understanding.

3. Initial Information to be Provided to the Consulate

For purposes of initial notification, the Department will provide the Consulate with the following information, if available:

- (a) The name of the Mexican or Mexican American minor(s);
- (b) The date of birth of the Mexican or Mexican American minor(s);
- (c) The name of the parent or custodian;
- (d) A name and phone number of the caseworker directly responsible for the case.

4. Confidentiality and Further Information

The Consulate hereby recognizes and agrees to respect the statutory imperatives of confidentiality under the Juvenile Court Act and the Abused and Neglected Child Reporting Act, under which the Department must operate.

The Department recognizes that the Consulate may need specific information regarding the cases of Mexican minors. In order to arrange for further information, the Consulate will contact the Department's Division of Field Operations or designee directly.

5. Interview of a Mexican or Mexican American Minor

A Consular Representative may interview the Mexican minor(s) in custody of the Department. In the case of a Mexican American minor(s), the Guardianship Administrator or designee must consent to the interview, in order for the interview to occur.

In order to arrange for an interview of a Mexican or Mexican American minor, the Consulate shall contact the Department's Division of Guardian and Advocacy or designee.

6. Special Immigrant Juvenile Status for Mexican Minor

In cases where a Mexican minor has been placed as a ward of the State of Illinois 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.

7. Proof of Mexican Nationality for Mexican American Minors

In cases where a Mexican American minor has been made a ward of the State of Illinois, the Department's Division of Guardian and Advocacy shall ensure that the minor(s) has obtained his/her Mexican birth certificate. The Mexican Consulate will assist the Department in the registration process and in obtaining the necessary documentation from Mexico for completion of the application.

8. Assistance Provided by DIF

Upon notification to the Consulate of custody of a Mexican minor(s) and Mexican American minor(s), the Consulate may contact DIF in order to obtain the appropriate home studies of potential families in Mexico who may become involved in cases of minors in the custody of the Department. 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 in order to obtain DIF's cooperation to ensure the minors' welfare and provide whatever services are necessary. The Consulate will also obtain copies of the monitoring reports prepared by DIF concerning the minor(s) welfare. Once available, the Consulate will immediately forward the information to the Department caseworker directly responsible for the case.

The Consulate will work together with DIF, with a view to provide necessary services to parents or potential caretakers in Mexico, in anticipation of possible placement.

9. Witnesses

The Consulate and the Department shall work together to locate individuals who reside in Mexico and must appear in an Illinois court regarding cases of minors, in order to properly notify such individuals of court appearances.

10. Ongoing Communication

Consular Officers and the DCFS staff will meet three times a year in order to discuss, clarify, and coordinate activities in areas of mutual interest and concern.

The Consul General and the Director of the Department will meet once a year, in order to assess the progress and direction of the mechanism.

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 Division of Communications of the Department and the Consulate will make every effort to exchange ideas and concerns of a high profile nature which may result in media attention, in a timely manner.

Notwithstanding this Memorandum of Understanding, the parties acknowledge that the Consulate may contact the Department's Division of Guardian and Advocacy, Advocacy Office of Children and Families and/or Office of Inspector General at any time.

11. Rules and Procedure

The Department agrees to adopt whatever rules and procedure necessary in order to give full force to this agreement.

12. Terms of Agreement

This Memorandum of Understanding becomes effective upon signing and will be subject to renewal on or about January 31, 2015.

V. STATEMENT OF IMMUNITY

Except for the provisions expressly contained herein, nothing in this agreement 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 Mexico and the United States. The Consulate hereby invokes all Immunities. Except for the specific provisions contained herein, this statement shall not imply or confer a submission by Mexico or its consular agents to the jurisdiction of any United States or Illinois Courts.

This agreement was entered upon on the 28 of September, 2011, by:

On behalf of the State of Illinois

On behalf of the Consulate General of
México, in Chicago, Illinois

ERWIN McEWEN
DIRECTOR
ILLINOIS DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES

EDUARDO ARNAL PALOMERA
CONSUL GENERAL OF MÉXICO

ⁱ 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

ⁱⁱ The time of notification will be specified below.

ⁱⁱⁱ 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*)

^{iv} Procedures for notification will be specified below.

^v 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*).”

^{vi} 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:

“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 Secretaría 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.