



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF MONTEREY OF THE STATE OF CALIFORNIA OF
THE UNITED STATES OF AMERICA
AND
THE CONSULATE GENERAL OF MÉXICO IN SAN JOSE,
CALIFORNIA, REGARDING CONSULAR FUNCTIONS IN CASES
INVOLVING MEXICAN MINORS**

The County of Monterey, in the State of California, United States of America, through the Department of Social Services - Division of Family and Children's Services ("the Department") and the Consulate General of México in San Jose, California ("the Consulate"), hereinafter jointly referred to as "the Parties", 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 a foreign national is involved in a legal proceeding. 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 recognize that notification to consular authorities is essential in these cases, not only as the legally binding treaty so dictates, but also because foreign consulates provide essential services to those individuals personally affected by these legal proceedings;

The Parties recognize the importance of preserving, rehabilitating, and reuniting families. The Parties are conscious of, and invested in, the protection of the Mexican minor as a fundamental human element of the Mexican family unit.



Bearing in mind that the Mexican minors are essential to the maintenance of Mexican family unit, and through it, the preservation of Mexican culture, traditions, and values, the Parties seek to establish a mechanism for early identification for Mexican minors, and their families;

I. PURPOSE

The purpose of this Memorandum of Understanding is to assure exercise of all 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 shall provide essential services to individuals directly affected by legal proceedings involving minor children of Mexican nationality.

II. APPLICABLE TREATIES

The Department recognizes that the Government of México has a well established duty to care for the interests of its nationals, in particular – minors while they are abroad [Article 5, Sections (a) and (h) of the Vienna Convention on Consular Relations]. Additionally, the Department recognizes the imperative need to notify the Consulate without delay, of a court ordered appointment of guardian or trustee as expressed by Article 37(b) of the Vienna Convention. The Department further recognizes that, in accordance with Article VI of the Bilateral Convention, the Consulate has the right to information and access in all cases involving children of Mexican nationality.

III. DEFINITIONS

The following is a list of terms used in this Memorandum of Understanding, and their definitions:

- A. **“Extended Family Member”**: means the same as “relative” as defined in California Welfare and Institutions Code §361.3(c)(2).
- B. **“Mexican National”**: Any person who is a national of México, regardless of immigration status in the United States of America.

MÉXICO
CONSULADO GENERAL EN SAN JOSE



For consular notification purposes, a minor reported to have been born in México is assumed to be a Mexican National.

- C. **“Mexican National Minor”**: Any unmarried person under the age of eighteen (18) who was born in México.
- D. **“Mexican American Minor”**: Any unmarried person under the age of eighteen (18), who was born in the United States, and who is eligible for Mexican nationality as the biological minor child of a Mexican National.
- E. **“Custodian”**: The non-parental caretaker of a Mexican National Minor, or Mexican American Minor, who has been entrusted by a parent(s) with the day-to-day care of the minor.
- F. **“DIF”**: The System for Integral Family Development (*Sistema para el Desarrollo Integral de la Familia*). This is the agency in México charged with ensuring the welfare of minor children.

IV. PROVISIONS

In accordance with the purpose of this Memorandum of Understanding, which sets the basis for enhancing and fostering communication between the Parties and undertaking in joint action to attend cases of Mexican Nationals Minors involved in Juvenile Dependency Court proceedings, the Parties agree the following provisions:

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, and shall notify 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; the Department shall notify the Consulate as provided in this Memorandum of Understanding.



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

B. Notice of Proceedings:

The Department shall notify to the Consulate whenever it becomes aware that a parent or child involved in a Juvenile Dependency Court proceeding is a Mexican National, and in turn, the Consulate shall notify the Department of any contact made with a Mexican National involved in such a proceeding. Additionally, the Consulate shall provide services to Mexican Nationals involved in Dependency Court proceeding on a voluntary basis and as deemed necessary.

A Consulate representative may attend any court hearing if requested by a Mexican National, so long as the requesting individual has a legitimate interest in the pending case. Whenever present in a court proceeding, the Consulate representative shall make his/her presence known to the bailiff in the court room so that all interested parties shall be made aware of his/her presence.

C. Court Appearances

The Parties shall work together to locate individuals who reside in México, and who must appear in a Monterey County Court regarding a case involving Mexican minors. The Parties shall work together to notify such individuals of required court appearances.

D. Notifications to the Consulate

In accordance with California Welfare and Institutions Code §290.1, the Department shall 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 shall also notify the Consulate, in writing, in any of the following cases:

1. When a Mexican National Minor is in its custody



2. When the parents/custodians of a Mexican National Minor or Mexican American Minor in its custody has requested that the Consulate be notified or contacted

Notifications shall be made without delay to the Consulate, as soon as a Mexican National Minor has been taken into protective custody of the Department and a dependency petition has been filed with the Juvenile court, without exceeding ten (10) business days after such situation.

E. Exchange of Information

1. **Confidentiality:** The Consulate understands and agrees to maintain the confidentiality of exchanged information and court proceedings in accordance with the Child Abuse and Neglect Reporting Act (Penal Code §11165 et. seq.), California Welfare and Institutions Code §827, the California Rules of Court, Rule 5.552.

The Department recognizes that in some instances, the Consulate may need specific information regarding a particular case involving a Mexican National Minor or Mexican American Minor. In order to obtain this information, the Consulate shall contact the Department's Division of Family and Children's Services designee directly. Court reports and other confidential information may only be shared with the Consulate pursuant to the Court authorization, and shall be disseminated to the Consulate only to the extent necessary to fulfill the purpose of this Memorandum of Understanding.

The following information may be provided to the Consulate without court approval:

- Parent(s)' names and dates of birth
- Minor(s)' names and dates of birth
- Minor(s)' address and telephone numbers
- A brief summary of the parent(s)' situation (i.e., children removed as a result of parent(s)' substance abuse and subsequent neglect of the children)

MÉXICO
CONSULADO GENERAL EN SAN JOSE



2. **Initial Information Provided to the Consulate:** for purposes of the initial notification, the Department shall provide to the Consulate the following information for the Mexican National/Mexican American Minors:
 - Name
 - Date of birth
 - Name of parent/custodian; and
 - The name and telephone number of the caseworker directly responsible for the case.
3. **Vital Record Information:** The Consulate agrees to assist the Department in obtaining documents needing for a Juvenile Court proceeding involving a Mexican National/Mexican American Minors, from the civil registry. These documents shall include, but not limited to: birth certificates, or other documents needed to complete an SIJS application, or application for dual citizenship as appropriate, and other identifying documents as needed.
4. **Parent/Relative Searches:** The Consulate agrees to assist the Department, as needed to locate the parent(s) of a Mexican National/Mexican American Minors, and/or Relatives for potential placement. The Consulate further agrees to assist in the completion of background checks for potential relative caregivers, regardless of their current immigration status in the United States.
5. **Consulate Responsibility to Respond:** The Consulate agrees to respond to the extent of its possibilities to inquiries from the Department in matters pertaining to the protection of Mexican National/Mexican American Minors who may be eligible to such assistance from the Consulate.
6. **Minors Traveling Abroad:** The Consulate agrees to assist the Department in obtaining the necessary documentation needed for Mexican National Minors to travel.

F. Interview of a Mexican National Minor/Mexican American Minor:



A Consular representative may interview the Mexican National/Mexican American Minor(s) in the Department's custody.

In the case of the Mexican American Minors, the Department's Division of Family and Children's Services designee, as well as the minor's attorney, if one has been appointed, must give consent prior to any interview.

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

G. Special Immigrant Juvenile Status for Mexican National Minors

In cases where a Mexican National Minor has been declared a dependant of the 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. 1101 (a)(27)(J)(ii), the Consulate shall assist the Department in obtaining the necessary documentation for the completion of the SIJS application, and assist in the facilitation of the application.

H. Repatriation of Minors

The Consulate shall assist in facilitating the process of repatriating a minor to México when it is found to be necessary and appropriate to do so, and only in cases where there are not child protective issues or Juvenile Court proceedings still pending.

I. Assistance Provided by DIF:

- 1. Assistance with Relative Placement:** Upon notification to the Consulate of the Department's Custody of a Mexican National Minor, or Mexican American Minor, the Consulate may contact DIF in order to obtain appropriate home studies for potential families in Mexico who may be potential placement options for those minors. Upon receipt of the information from the DIF, the Consulate shall immediately (within five (5) business days) forward the information to the Department caseworker directly responsible for the case.



2. **Ensuring the Safety of a Dependant Minor Placed in México:** When minors are placed in México, the Consulate shall take every possible step to obtain DIF's cooperation in ensuring 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.
3. **Periodic DIF Reports:** The Consulate shall assist the Department in obtaining copies of the monitoring reports prepared by DIF concerning the welfare of the minor(s), which shall then be forwarded to the Department caseworker within five (5) days of the Consulate's receipt of the reports.
4. **Reunification Services to Parents Abroad:** The Consulate may work together with DIF to provide necessary services to parents in the effort to reunify the minor with their parent(s).
5. **Services to Relatives Abroad:** The Consulate may work together with DIF to provide necessary services to potential relative caretakers in México in anticipation of possible placement of the minor(s).
6. **Visitation between Dependant Minors and Relatives:** Whenever deemed appropriate and necessary, the Consulate may work together with the Department and DIF to facilitate visits between Mexican National minors and their relatives, where one party resides in the U.S., and the other resides in México.

J. Ongoing Communication

Consular officers and Department staff shall maintain regularly communication as needed to comply with the agreements established in this Memorandum of Understanding. In addition, the Parties shall meet periodically 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 of México in San José and the Director of the Department, or their designees shall meet once a year.



Both Parties remain committed to the development and delivery of joint community meetings and other informational efforts. Additionally, both Parties shall participate in joint prevention efforts regarding the protection and well being of Mexican families and minors. The Parties shall 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 at any time.

K. Rules and Procedures

The Department agrees to adopt and implement guidelines and procedures which are consistent with, and give full force to, the agreements in this Memorandum of Understanding.

L. Terms of the Memorandum of Understanding

This Memorandum of Understanding shall enter into force upon the date of its signature by both Parties, and shall remain in effect indefinitely unless a Notice of Termination is provided by either Party to the Other (no later than 180 calendar days prior to the 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 under international law, 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 does not, and shall not conflict in any manner with the Department's working relationships with other Mexican

MÉXICO
CONSULADO GENERAL EN SAN JOSE



Government agencies, or with any other agreement between the United Mexican States and the United States of America.

SIGNED IN _____, _____ ON _____, _____, 2020, IN TWO ORIGINAL COPIES, IN THE SPANISH AND ENGLISH LANGUAGES, BEING BOTH TEXTS EQUALLY AUTHENTIC.

For the County of Monterey of the State of California of the United States of America:

For the Consulate General of México in San José, California

Lori A. Medina
Director

Alejandra Bologna Zubikarai
Consul General

DocuSigned by:

Anne Brereton, County Counsel

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Anne Brereton
Deputy County Counsel