



**MEMORANDUM OF AGREEMENT BETWEEN THE CONSULATE GENERAL
OF MEXICO IN RALEIGH, NORTH CAROLINA AND THE GOVERNMENT
OF THE STATE OF NORTH CAROLINA OF THE UNITED STATES OF
AMERICA REGARDING CONSULAR NOTIFICATION AND ACCESS
IN CASES INVOLVING MINORS**

The Consulate General of Mexico in Raleigh, North Carolina (hereinafter "the Consulate") and the Government of the State of North Carolina of the United States of America, through the Department of Health and Human Services, Division of Social Services (hereinafter "the Division"), hereinafter "the Parties", enter into this Memorandum of Agreement to ensure compliance with the Consular Convention Between the United Mexican States and the United States of America, 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 Division, to treat cases of foreign national minors with particular care. Both Parties of this Memorandum of Agreement 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.

A. PURPOSE

The purpose of this Memorandum of Agreement is to protect the Mexican minor as a fundamental human element of Mexican communities throughout the United States, in particular the State of North Carolina. The Consulate and the Division recognize that the Mexican minor is essential to the maintenance of Mexican culture, traditions and values. Therefore, this Memorandum of Agreement 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.

B. APPLICABLE TREATIES

The Division recognizes that the Government of Mexico 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 Convention¹. The Division recognizes further

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that it is imperative that the Consulate be notified, without delayⁱⁱ of any guardianship of a Mexican minor as provided by the Vienna Convention, Article 37 (b).ⁱⁱⁱ

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

C. AGREEMENT DEFINITIONS

1. "County" means the Department of Social Services, Department of Health and Human Services, or other local child welfare agency of a North Carolina County;
2. "Juvenile Code" means N.C.G.S. Chapter 7B, Subchapter I, the North Carolina statutory authority governing juvenile abuse, neglect and dependency procedures;
3. "Mexican" means any person who is a national of Mexico, regardless of immigration status in the United States;
4. "Mexican minor" means any unmarried person who is under the age of eighteen, was born in Mexico, and is not a United States citizen. For consular notification purposes, a minor reported to have been born in Mexico will be assumed to be a Mexican national;
5. "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}
6. "Mexican custodian" means the non-parental caretaker of a Mexican minor, who has been entrusted by a parent with the day-to-day care of the minor; and,
7. "DIF" means the National System for Integral Family Development. This is the Institution in Mexico charged with ensuring the welfare of minors.

D. 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 Parentage

The County shall inquire at the time the decision to take protective custody is made, whether a minor has any Mexican parentage.

The duty of the Counties to identify Mexican parentage shall continue as long as the child welfare case is open.

2. Notification to the Mexican Consulate

The County, through the Division or directly, will notify to the Consulate in writing of the following information:

- (a) When the County identifies a Mexican minor in its custody, or
- (b) When a parent or custodian of a Mexican minor has requested that the Consulate be notified.

This written notification will be made within 10 working days of the decision to take protective custody of the Mexican minor. If the Division 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 Agreement.

The Division will encourage the County to provide notice to the Consulate for hearings involving a Mexican minor who is the subject of a North Carolina court action under the Juvenile Code, so that the Consulate may attend these hearings.

A County or the Division may notify the Consulate and provide additional information:

- (a) When a parent or custodian of a Mexican American minor has requested that the Consulate be notified or
- (b) When the Division or a County learns that a non-custodial parent(s) resides in Mexico.

3. Initial Information to be Provided to the Consulate

For purposes of initial notification, the involved County or the Division will provide the Consulate with the following information, if available:

- (a) The name of the Mexican minor(s);
- (b) The date of birth of the Mexican minor(s);



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- (c) The name of the parent or custodian, and
- (d) A name and phone number of the social worker directly responsible for the case.

As authorized, a County or the Division may provide the Consulate any of the information listed in this paragraph pertaining to a Mexican American minor.

4. Confidentiality and Further Information

The Consulate hereby recognizes and agrees to respect the statutory imperatives of confidentiality under the Juvenile Code under which the Counties and the Division must operate, and will not disclose information that is confidential under the Juvenile Code, except to carry out its mandated responsibilities.

The Division recognizes that the Consulate may need specific information regarding the cases of Mexican minors. In order to arrange for further information, the Consulate may contact the Division Director's designee directly to facilitate the sharing of further information by the County.

5. Consular Involvement and Access

A Consular Representative may interview a Mexican minor in the custody of a County to locate relatives in order to facilitate a timely placement of the Mexican minor, as long as such interview has not been prohibited by court order, and the minor's Guardian Ad Litem Attorney Advocate has been notified in advance. The Guardian Ad Litem and a representative of the County have the option of being present during this interview.

In order to arrange for an interview of a Mexican or Mexican American minor, the Consulate may contact the Division Director's Designee to facilitate this interview through the County.

6. Mutual Cooperation

- (a) Location of Family Members. Upon request from the Division, the Consulate may contact DIF in order to locate parents and family members of Mexican minors and known Mexican American minors who come into the custody of a County.
- (b) Evidence and Documentation. The Consulate and the Division, through the Counties, will work together to obtain relevant documents, such as birth certificates, medical records, and other



necessary information to locate relatives and facilitate a prompt resolution of cases involving Mexican minors and known Mexican American minors.

- (c) Return of Minors to Mexico when Appropriate. The Consulate, the County, and the Division, will work together in appropriate circumstances to return Mexican minors and known Mexican American minors to relatives in Mexico when the minors' parents have been detained or removed by any authority in North Carolina, the minor has no other family or relative in the United States, and no protective services, as defined in the Juvenile Code, apart from those necessitated by the detention are being provided to the family.
- (d) Service of Process. The Consulate will assist in locating Mexican parents to facilitate notice and service of process when their children are the subject of juvenile court proceedings, so that the Mexican parent may participate in such proceedings.

In complying with (d) and (e) the Parties understand that further action may require that they proceed in accordance with international law, particularly the Hague Convention on the Civil Aspects of International Child Abduction, the Inter-American Service Convention and/or the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

- (e) Accessibility of Services. To the extent permitted by law, the Division and the Counties will make their services accessible to Mexican minors and known Mexican American minors in North Carolina.
- (f) Joint Participation in Community Outreach Activities. The Division agrees to participate in Consulate outreach activities to Mexican communities in North Carolina, as practical, by providing literature, presentations, and a general orientation of child welfare services in North Carolina. The Consulate agrees to participate in the training of County employees, as practical, by providing literature, presentations, and a general orientation of Consulate services.

7. Special Immigrant Juvenile Status for Mexican Minor

In cases where a Mexican minor has been placed as a ward of a County 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 County in obtaining the necessary documentation from Mexico for completion of the SIJS application.



8. Proof of Mexican Nationality for Mexican American Minors

In cases where a known Mexican American minor is in the custody of a County, the Division Director's designee will work with the Consulate to ensure that the minor has obtained his/her Mexican birth certificate. The Consulate will assist the Division or the County in the registration process when all requirements are met and in obtaining the necessary documentation from Mexico for completion of the application.

9. Assistance Obtained through DIF

Upon notification to the Consulate of custody of any Mexican minor and Mexican American minor, and upon request, the Consulate will contact DIF in order to assist with relative searches and obtain the appropriate home studies of potential family members in Mexico who may become involved in cases of minors in the custody of the Division. Upon receipt, the Consulate will immediately forward the information to the County social worker directly responsible for the case and to the Division's designee.

When a minor is placed in Mexico, the Consulate will diligently pursue DIF's cooperation to ensure the minor's welfare and provide whatever services are necessary. The Consulate will request copies of the monitoring reports prepared by DIF concerning the minor's welfare. Once available, the Consulate will immediately forward the information to the County social worker directly responsible for the case and the Division's designee.

The Consulate will work together with DIF to provide necessary services to parents or potential caretakers in Mexico, in anticipation of possible placement, subject to cooperation of parents or potential caretakers and availability of services. When custody of a Mexican minor or Mexican American minor is granted to a Mexican family, the Consulate will work together with DIF to carry out the repatriation of the minor to Mexico to include providing transportation of the child and any consular staff, where necessary. In addition, the Consulate will work with DIF to ensure the welfare of the minor and to provide necessary services.

10. Witnesses

The Consulate and a County, with the assistance of the Division, shall work together to locate individuals who reside in Mexico and are under subpoena to appear as witnesses in a North Carolina court regarding cases of minors under the Juvenile Code in order for a County to properly notify such individuals of their court appearance.

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11. Ongoing Communication between the Consulate and the Division

Consular Officers and the Division 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 or the Consulate's designee and the Director of the Division or the Division Director's designee will meet once a year, in order to assess the progress and direction of this Memorandum of Agreement.

Both Parties remain committed to the development and delivery of joint community meetings and other information efforts. Both Parties will participate in joint prevention efforts regarding the protection and well being of Mexican families and minors. In addition, the Division 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 Agreement, the Parties acknowledge that the Consulate and the Division Director's designee may contact each other at any time.

12. Policy

The Division agrees to pursue the adoption of whatever policy is necessary in order to give full force to this Memorandum of Agreement.

13. Terms

This Memorandum of Agreement shall begin from the date of its signature and end on March 31, 2017. In addition, this Memorandum of Agreement may be terminated at any time upon 60 days written notice by either Party.

E. STATEMENT OF IMMUNITY

Except for the provisions expressly contained herein, nothing in this Memorandum of 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.



Both Parties agree to work cooperatively toward the successful implementation of this Memorandum of Agreement, along with any future necessary revisions to the Memorandum of Agreement; however, neither Party waives any immunity or submits itself to the jurisdiction of any court for resolution of any dispute involving the terms of this Memorandum of Agreement or arising from this Memorandum of Agreement.

Signed at the city of Raleigh, North Carolina, on the 25th of March, 2015, in the Spanish and English languages; both texts being equally valid.

**FOR THE CONSULATE GENERAL OF
MEXICO IN RALEIGH, NORTH
CAROLINA**

A handwritten signature in black ink, appearing to read 'Francisco Javier Díaz de León', with a stylized, sweeping flourish at the end.

**Francisco Javier Díaz de León,
Consul General**

**FOR THE GOVERNMENT OF THE
STATE OF NORTH CAROLINA OF THE
UNITED STATES OF AMERICA**

A handwritten signature in black ink, appearing to read 'Wayne Black', with a stylized, flowing script.

**Wayne Black,
Director
North Carolina Division of
Social Services**

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 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 territorio de la República, sea cual fuere la nacionalidad de sus padres.

II. Los que nazcan en el extranjero, hijos de padres mexicanos nacidos en territorio nacional, de padre mexicano nacido en territorio nacional, o de madre mexicana nacida en territorio nacional.

III. Los que nazcan en el extranjero, hijos de padres mexicanos por naturalización, de padre mexicano por naturalización, o de madre mexicana por naturalización, y

IV. 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 extranjeros que contraigan matrimonio con varón o con mujer mexicanos, que tengan o establezcan su domicilio dentro del territorio nacional y cumplan con los demás requisitos que al efecto señale la ley." (*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.