

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CONSULATE GENERAL OF MEXICO IN ATLANTA, GEORGIA
AND
THE DEPARTMENT OF HUMAN SERVICES, DIVISION OF FAMILY AND
CHILDREN SERVICES OF THE STATE OF GEORGIA OF THE UNITED STATES OF
AMERICA
REGARDING CONSULAR NOTIFICATION AND ACCESS IN CASES INVOLVING
MINORS

The Consulate General of Mexico in Atlanta, Georgia (hereinafter "the Consulate") and the Government of the State of Georgia of the United States of America, through the Department of Human Services, Division of Family and Children Services (hereinafter "the Division"), hereinafter "the Parties", enter into this Memorandum of Understanding 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 Understanding recognize that the notification of the 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. u

A. 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 Georgia. 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 Understanding provides a method of early identification of Mexican minors and their families, in order to provide services, which will assure all the protections afforded by the Vienna Convention, the Bilateral Convention and all other applicable treaties and laws. A

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 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 Guardianship shall be construed to be protective custody by the Division of a Mexican minor.

The Division further recognizes that the Consulate has a right to information and access^{iv} in certain circumstances where foreign nationals are involved in legal proceedings as set out in Article VI of the Bilateral Convention.^v

C. AGREEMENT DEFINITIONS

1. "Juvenile Code" means O.C.G.A. Chapter 15, Subchapter 11, the Georgia statutory authority governing juvenile abuse, neglect, and dependency procedures.
2. "Mexican national" means any person who is a national of Mexico, regardless of immigration status in the United States.
3. "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.
4. "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}
5. "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.
6. "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 Division shall make diligent efforts to determine at the time the decision to take protective custody is made, whether a minor has any Mexican parentage.

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

2. Notification of the Mexican Consulate

The Division will notify the Consulate in writing the following information:

- (a) When the Division 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 without delay 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 Understanding.

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

The Division may notify the Consulate and provide additional information:

- (a) When a parent or custodian of a Mexican minor has requested that the Consulate be notified, or
- (b) When the division learns that a parent is detained with ICE.
- (c) When the Division learns that a parent resides in Mexico.

3. Initial information to be provided to the Consulate

For the purpose of initial notification, the Division will provide the Consulate with the following information, if available:

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

As authorized, 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 laws of the United States and the State of Georgia which the Division must operate, and will not disclose information that is confidential under the laws of the United

States and the State of Georgia, except to carry out its mandated duties. The Consulate further recognizes that the Division may not disclose confidential information related to dependency cases of children in its custody or parties to its proceedings to persons to whom disclosure is not specifically authorized under the laws of the United States and the State of Georgia absent a court order. The Division recognizes that the Consulate may request more information about a Mexican minor's situation, but the Division may not be able to provide such information absent statutory authorization.

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 Division.

5. Consular Involvement and Access

A Consular Representative may interview a Mexican minor in the custody of the Division 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 and Attorney have been notified in advance. The Guardian Ad Litem, Child's Attorney, and a representative of the Division shall 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 Division.

6. Mutual Cooperation

- (a) Location of Family Members. Upon request from the Division, the Consulate may assist in locating parents and family members of Mexican minors and known Mexican American minors who come into the custody of the Division.
- (b) Evidence and Documentation. The Consulate and the Division may 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 and the Division may 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 Georgia, the minor has no other known family or relative in the United States, and no protective services, as defined in the Juvenile Code, apart from those necessitated by the protective custody are being provided to the family.
- (d) Service of process. Within its scope of action, the Consulate may assist in locating Mexican parents when their children are the subject of juvenile court proceedings; however, the Consulate cannot facilitate notice and service of process to Mexican parents. If the parents have been detained and are located at a local, state or federal

Detention Center, the Division will serve notice at the location or Detention Center in question.

If a parent has been found to be deported, the Consulate and the Division may work together to facilitate the participation of parents via video conference in such proceedings.

- (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 Georgia.

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 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 and Commercial Matters.

- (f) Joint Participation in Community Outreach Activities. The Division agrees to participate in Consulate outreach activities to Mexican communities in Georgia, as practical, by providing literature, presentations, and general orientation of child welfare services in Georgia. The Consulate agrees to participate in the training of Division employees, as practical, by providing literature, presentations, and a general orientation of Consulate services. u

7. Special Immigrant Juvenile Status for Mexican Minor

In cases where a Mexican minor has been placed in the protective custody of the Division and has become eligible for Special Immigrant Juvenile Status (SIJS) pursuant to INA §101(a)(27)(J)(ii), 8 U.S.C. §101(a)(27)(J)(ii), the Consulate will assist the Division 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 protective custody of the Division, 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 in the registration process when all requirements are met and in obtaining the necessary documentation from Mexico for completion of the SIJS application. /

Likewise, in Mexican American minor reunification cases, the Division will assist in amending American birth certificates in which the name(s) of the biological parent(s) does not appear in the document or needs to be corrected as a whole.

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 may 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, without delay, may forward the information to the case manager directly responsible for the case and to the Division Director'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. When placement or custody of a Mexican minor is granted to a family located in Mexico, the Consulate will work together with DIF to carry out the repatriation of the minor. When needed and resources permitting, the Consulate may assist in providing transportation of the child and will designate a consular staff as companion and caretaker until the end of the repatriation.

When a minor is placed in Mexico and upon request of the Juvenile Court, the Consulate may request DIF's cooperation so as to obtain follow up reports in regards to the minor's wellbeing. The Juvenile Court must indicate the periodicity of such reports. Upon receipt, the Consulate will immediately forward the Information to the Division case manager directly responsible for the case and the Division Director's designee.

10. Location of Individuals in Mexico

Regarding cases of minors and at the Division's request, the Consulate may act as liaison in order to locate individuals who reside in Mexico. If the individual is located and provides the authorization to do so, the Consulate will share the individual's contact information to the Division.

11. Ongoing Communication between the Consulate and the Division

Consulate 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 Understanding.

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 Understanding, the Parties acknowledge that the Consulate and Division Director's designee may contact each other at any time.

12. Policy

The Division agrees to pursue the adoption of policy necessary to give full force to this Memorandum of Understanding.

13. Terms

This Memorandum of Understanding shall begin from the date of its signature and end on the _____ day of _____, 20____. In addition, this Memorandum of Understanding may be terminated at any time upon sixty (60) days written notice by either Party.

E. 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 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 and maintenance of this Memorandum of Understanding. 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 Understanding or arising from this Memorandum of Understanding.

Signed at the city of Atlanta, Georgia on the 2nd day of January, 2018, in the Spanish and English languages, both texts being equally valid.

FOR THE CONSULATE
GENERAL OF MEXICO IN
ATLANTA, GEORGIA



Javier Diaz de Leon
Consul General

FOR THE GEORGIA DIVISION OF
FAMILY AND CHILDREN SERVICES
STATE OF GEORGIA OF THE
UNITED STATES OF AMERICA



Tom C. Rawlings, Interim Director
Georgia Division of Family
and Children 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) (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, 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*).

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