

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CONSULATE GENERAL OF
MEXICO IN EL PASO, TEXAS AND THE CONSULATE OF MEXICO IN
ALBUQUERQUE,
NEW MEXICO, AND THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT
OF THE STATE OF NEW MEXICO OF THE UNITED STATES OF AMERICA
REGARDING CONSULAR FUNCTIONS IN CERTAIN PROCEEDINGS
INVOLVING MEXICAN MINORS AS WELL AS MUTUAL COLLABORATION**

The Consulate of Mexico in El Paso, Texas and the Consulate of Mexico in Albuquerque, New Mexico (hereinafter "the Consulate") and the Children, Youth and Families Department of the State of New Mexico of the United States of America (hereinafter "CYFD"), jointly referred to as "the Parties";

CONSIDERING their interest in assuring the fulfillment of the rights set forth in 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 Relations, 21 U.S.T 77, T.I.A.S. No. 6820 (hereinafter "Vienna Convention");

BEARING IN MIND that the Bilateral Convention and Vienna Convention provide for consular notification and access in certain circumstances where foreign nationals are involved in legal proceedings;

RECOGNIZING Mexican minors as a fundamental element of the Mexican communities established in the United States and, in particular, in the State of New Mexico; and therefore, their protection is essential to the conservation of Mexican culture;

CONSCIOUS of the need to join efforts to treat, with special care, the high number of custody cases involving Mexican minors located in U.S. territory, through the development of a bilateral mechanism that facilitates the early identification of said minors and assure the exercise of the consular function referred to in the Vienna Convention and the Bilateral Convention;

Have agreed as follows:



I. PURPOSE

The purpose of the present Memorandum of Understanding is to establish the bases of coordination between the Parties and to assure the exercise of the consular function set forth in the Bilateral Convention and the Vienna Convention, during custody proceedings involving Mexican minors.

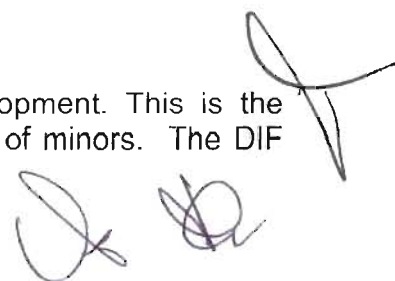
II. APPLICABLE TREATIES

A. **Vienna Convention**. CYFD recognizes that, in accordance to Articles 5 (a) and (h) and 37(b) of the Vienna Convention, one of the Consulate's functions is to care for the interests of its nationals abroad, particularly those of minors, and CYFD has a duty to notify the Consulate without delay when it takes custody of Mexican minors in an abuse and neglect proceedings. CYFD further recognizes its obligation to inform detained Mexican minors without delay of their right to request that CYFD notify the Consulate that the minor is in CYFD's custody. Vienna Convention, Article 36, Section 1 (b).

B. **Consular Convention**. CYFD further recognizes that the Consulate has a right to access in cases involving Mexican nationals as expressed in Article VI of the Bilateral Convention.

III. DEFINITIONS

- A. "Mexican national" means any person who was born in Mexico or elsewhere of at least one Mexican national parent, regardless of immigration status in the United States of America. For consular notification purposes, a minor reported to be born in Mexico will be assumed to be a Mexican national.
- B. "Mexican minor" means any person who is under the age of eighteen and is a Mexican national.
- C. "DIF" means the Agency for Integral Family Development. This is the agency in Mexico charged with ensuring the welfare of minors. The DIF



offices in Mexico bordering New Mexico are in the State of Chihuahua and State of Sonora. DIF has offices throughout the United Mexican States.

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:

A. Notification and Access

1) Notice. When CYFD obtains custody of a child in an abuse and neglect case that it knows to be a Mexican national, it will inform the Consulate in writing without delay after obtaining such custody. CYFD will send such written notice by facsimile or mailing the form attached hereto as Attachment 1. If CYFD learns at a later time that a child is a Mexican national, it will forward this information to the Consulate without delay.

2) Interview of a Mexican Minor. A consular officer shall have the right to interview the Mexican minor under the CYFD protective services custody. To such effect, the supervisor of the caseworker responsible for the abuse and neglect case shall consent for the interview to take place.

In order to arrange for an interview with a Mexican minor, the Consulate shall contact the CYFD caseworker in charge of the custody case.

B. Consular Involvement and Access

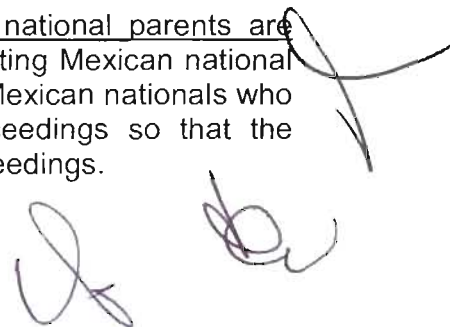
CYFD will accommodate requests by the Consulate for access to Mexican minors in CYFD custody as follows:

- a) In juvenile delinquency cases, CYFD shall advise the Mexican minor about his/her right to contact the Consulate and shall inform the Consulate without delay if the Mexican minor requests such contact.
- b) In abuse and neglect cases of Mexican minors.

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C. Mutual Cooperation

- 1) Location of family members. The Parties agree to work together with DIF in locating the parents and family members of Mexican minors who come into the CYFD's custody and require placements.
- 2) Evidence and Documentation. The Parties agree to contribute mutually with DIF to obtain relevant documents, such as birth certificates, medical records and other necessary information to assist in locating relatives and facilitating a prompt resolution of cases involving Mexican minors in CYFD custody.
- 3) Investigation of Placements. The Parties agree to contribute mutually and with DIF to investigating appropriate placements in Mexico for Mexican minors in CYFD custody, including doing the necessary socio-economic home studies to facilitate prompt placements for such Mexican minors, and assisting in monitoring the placements of such minors in Mexico. CYFD staff may contact the appropriate DIF office in Mexico for purposes of permanency planning or juvenile justice parolees and to collaborate on placement issues, subject to protocols that the Parties develop.
- 4) Return of Mexican minors to the United Mexican States in appropriate circumstances. The Parties agree to collaborate in the orderly and secure return of Mexican minors in appropriate circumstances to relatives in Mexico when their parents have been detained by any authority in New Mexico and the minors have no family or relatives in the United States of America.
- 5) Collaboration where the parent(s) may have crossed the border with the intention of evading local jurisdiction and laws involving child abuse. The Parties agree to notify the appropriate authorities of the incident in order to protect the Mexican minor from any risk.
- 6) Develop a protocol for cases involving minors of Mexican domiciled parents where such infants are born in the US or receive medical care in US hospitals. The Parties agree that under these circumstances, following the principle of family unity, the children of Mexican domiciled parents will be directed to DIF by CYFD, except in circumstances identified by protocol where the Parties determine that the child would not be safe if returned to the parents or family members in the United Mexican States.
- 7) Collaborate on child abuse cases where Mexican national parents are residing in Mexico. The Consulate will assist in locating Mexican national parents to facilitate notice and service of process of Mexican nationals who are involved in New Mexico children's court proceedings so that the Mexican national parent may participate in such proceedings.

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- 8) Accessibility of CYFD services. To the extent permitted by law, CYFD will make its services accessible to Mexican minors in New Mexico.
- 9) Joint participation in outreach activities. CYFD agrees, to the extent of its capabilities, to participate in mobile consulates through out the State in order to provide workshops, literature, brief presentations and general orientation to Mexican communities. The Consulate will provide to CYFD the precise locations where the mobile consulates will be held with as much advance notice as possible.

D. Confidentiality and Further Information

The Consulate hereby recognizes and agrees to respect the New Mexico Children’s Code’s statutory confidentiality requirements in abuse and neglect and delinquency proceedings, under which CYFD may not disclose confidential information related to children in its custody or parties to its proceedings to persons to whom disclosure is not specifically authorized under the Children’s Code absent a court order. CYFD recognizes that the Consulate may request more information about a Mexican minor’s situation, but CYFD may not be able to provide such information absent statutory authorization.

E. Ongoing Communication

Consulate Officers and the CYFD officials responsible for Consulate relations will meet quarterly to discuss, clarify, and coordinate activities in areas of mutual interest and concern. Notwithstanding these quarterly meetings, the Parties recognize and acknowledge that CYFD staff and Consulate officials may communicate directly on matters involving particular cases subject to protocols that the Parties will develop in furtherance of the collaboration and cooperation contemplated herein.

F. Policy and Procedure

CYFD agrees to adopt policies and procedures necessary in order to implement this Memorandum of Understanding.


V. EFFECTIVE DATE

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This Memorandum of Understanding will become effective upon signing and will terminate at the request of one or more Parties, provided three (3) months advance notice in writing. The present Memorandum of Understanding will be reviewed by both Parties no later than three (3) years after its entry into force, at which point it may be extended for another three-year period, modified, or terminated, with the possibility of extensions for periods of equal duration, unless one of the Parties declares otherwise.

Signed in ALBUQUERQUE, NEW M. this THURSDAY 5 day of 5 MARCH two thousand and nine, in duplicate, in the Spanish and English languages, being both texts equally authentic.

**FOR THE CONSULATE
GENERAL OF MEXICO IN
EL PASO, TEXAS**



**Roberto Rodriguez
Hernandez
Consul General**

**FOR THE CONSULATE
OF MEXICO IN
ALBUQUERQUE, NEW
MEXICO**



**Gustavo Adolfo de
Unanue Aguirre
Consul**

**FOR THE CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT OF THE
STATE OF NEW MEXICO
OF THE UNITED STATES
OF AMERICA**



**Dorian Dodson
Cabinet Secretary**





**Notice to Mexican Consulate of Mexican National Child
in CYFD Custody**

CONFIDENTIAL

To: Consulate of Mexico, Protection Department

The New Mexico Children Youth and Families Department (CYFD) has taken into custody the following child, who is believed to be a national of Mexico.

Child's name:

Type of case:

Abuse and Neglect

Juvenile Delinquency

The pending legal case, if any, is:

Case No.

Charge(s):

County:

Address:

Date of next hearing:

The following additional information will be provided if available:

- The minor has been identified as a Mexican national
- The parent or custodian of this Mexican or Mexican American minor has requested that the Consulate be notified
- The Department has learned that a non-custodial parent (s) resides in Mexico.
- In the custody of Juvenile Justice Facilities, the minor has been charged with:

Date of birth:

_____Place of birth:

Passport # :

Mother's name:

Father's name:

Home Address:

Family phone:

CYFD Contact: (name, address, phone and fax of CYFD staff member).

We welcome any assistance your office can provide to this child, including identifying family members or other resources that might benefit this child.