

Topic 12: Memorandum of Understanding With Mexico

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On April 20, 2006, a Memorandum of Understanding was executed between the state of Iowa and the United States of Mexico concerning child welfare cases involving Mexican national and multiple nationality minors. (See [text](#) at the end of this topic.) This Memorandum of Understanding describes how the two governments will cooperate to improve services provided to Mexican national minors and multiple-nationality minors taken into state custody.

Note: A child born in the United States whose mother or father is a Mexican citizen has derivative Mexican citizenship and therefore is considered a “multiple nationality minor,” regardless of the immigration status of the parents. For example, a child born in the U.S. to a mother who has Mexican citizenship and a father who has U. S. citizenship is considered a “multiple nationality minor” regardless of whether the mother has entered the U.S. legally.

The Department recognizes that Mexican national minors are essential to the maintenance of Mexican culture, tradition, and values. The Memorandum:

- ◆ Provides for the early identification of Mexican minors taken into state custody.
- ◆ Ensures that the Mexican government, through the Mexican Consulate Office in Omaha, Nebraska, is promptly notified when such children enter state custody. This notification is required under both the Consular Convention Agreement between the United States and Mexico and by the Vienna Convention on Consular Relations.
- ◆ Will improve services and oversight provided for Mexican minors by providing resources, available through the Mexican government, for locating and evaluating relative placement options and providing services for children placed in Mexico.

Legal Basis

The legal foundations of this Memorandum of Understanding are contained in the Consular Convention Agreement between the United States and Mexico and the Vienna Convention on Consular Relations. Both treaties stress that cases of foreign national minors should be treated with care when such children are taken into state custody in another country.

These treaties stress state notification to the Consulate office of the foreign national's home country, so consulate offices can meet their obligation to protect the interests of their nationals living abroad.

Under the Memorandum of Understanding, the Department recognizes it is imperative that the Mexican Consulate Office be notified without delay when a Mexican national or multiple-nationality minor is taken into state custody.

Notification will ensure that provisions of the two treaties are met and allow the Department to access Consulate assistance in exploring Mexican placement options, or helping arrange any necessary monitoring services should children be placed in Mexico.

Mutual Agreement on Confidentiality of Client Data

The Mexican Consulate may desire more information concerning the minor's situation. In these circumstances, the Mexican Consulate may contact the Department's service area manager or the manager's designee to discuss the need for additional verbal or written background information concerning the child. The Consulate has agreed to recognize and respect state and federal confidentiality statutes under which the Department operates.

Right of Mexican Consulate to Request an Interview With Minor

The Mexican Consulate may request interviews with Mexican national or multiple-nationality minors in state custody. To arrange interviews, the Consulate will contact the service area manager supervising the county responsible for the child's case or the manager's designee.

Note: Requests for interviews with minors require prior consent from either the child's parents or the service area manager or designee. Consulate staff are responsible for obtaining these consents. If it is possible to locate the child's parents, it is preferable to request their consent to the interview.

Consulate staff shall present valid identification before being permitted to interview the child. Department staff may attend the interview with the child.

Obtaining Proof of Mexican Nationality (Birth Certificates)

When the Department has taken custody of a child believed to be a Mexican national or multiple-nationality minor, work with the Mexican Consulate Office to obtain a Mexican government birth certificate for the child, if the family does not already have one.

Contact the Consulate Office to request assistance in obtaining necessary documentation from Mexico on the child's birth. In asking for assistance, have available information such as:

- ◆ The child's name and birth date.
- ◆ The presumed location of the child's birth.
- ◆ The parents' names, including the mother's maiden name.
- ◆ Other information that may be relevant.

Requesting Case Assistance From the Mexican Consulate

Witness Testimony

Work with the Mexican Consulate Office to:

- ◆ Provide notification of juvenile court hearings concerning a Mexican national or multiple-nationality minor and
- ◆ Secure the testimony of relevant witnesses who reside in Mexico.

You may contact the Consulate Office to request assistance in notifying people living in Mexico of court hearings involving a child. Provide the Consulate Office with as much information as necessary concerning the names, connection to the case, and whereabouts of people to be notified.

Home Studies

You may request that the Mexican child welfare agency, DIF (Agency for Integral Family Development), be contacted to arrange for completion of home studies on potential placement options with family members who reside in Mexico. Make a written request to the Consulate that:

- ◆ Indicates the names and addresses of the potential placement options in Mexico, and
- ◆ Provides information about their connection to and interest in the child.

You may share information on the child's situation with both the Consulate and DIF in order to get home studies completed. The Mexican Consulate may also initiate a home study request at its own discretion.

DIF will complete the home studies and forward them to the Mexican Consulate Office. That office will forward them directly to the responsible Department worker so this information can be evaluated by juvenile court.

Placement Supervision for Minors Placed in Mexico

When a Mexican national minor or multiple-nationality minor is placed in Mexico through action of an Iowa juvenile court, contact the Mexican Consulate Office if monitoring or services for the child and family are desired. Request involvement of the DIF to offer and provide any necessary services.

If the DIF provides services and prepares monitoring reports on the child, these reports will be sent to the Consulate Office, which will send copies directly to the responsible Department worker.

Note: Iowa juvenile courts do not have the authority to order the return of a child placed in Mexico to the United States. Mexican child welfare authorities may take action to protect the welfare of the child.

Special Immigrant Juvenile Status

“Special immigrant juvenile status” is important for Mexican national children in state custody who cannot be reunited with their families and are working toward a permanency goal of adoption, guardianship or long-term foster care. Achieving special immigrant juvenile status allows such children to remain in the U.S., avoid possible deportation, and work toward obtaining citizenship.

For a child to qualify for special immigrant juvenile status, all of the following conditions must apply:

- ◆ A U.S. juvenile court has declared the child dependent or has placed custody of the child with a state agency.
- ◆ The juvenile court has found that parental reunification is not possible, based on past patterns of abuse, neglect, or abandonment, and the child is “eligible for long-term foster care.”
- ◆ The juvenile court has found that it is not in the child’s best interests to be returned to the child’s home country.

When a Mexican national or multiple-nationality minor becomes eligible for special immigrant juvenile status according to regulations of the U.S. Citizenship and Immigration Services Bureau, the Mexican Consulate will assist the Department in obtaining necessary documentation from Mexico to allow completion of the application for special immigrant juvenile status.

The Department caseworker, the child, an attorney, or another person can complete the application. Obtain the application from the U.S. Citizenship and Immigration Services Bureau. A medical examination, proof of child’s age, fingerprints, a photograph, and juvenile court order must accompany the application.

Staff of the Citizenship and Immigration Services Bureau will conduct an interview with the child before deciding on whether to grant special immigrant juvenile status to the child. The process may take several months to complete.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE STATE OF IOWA OF THE UNITED STATES OF AMERICA AND THE MINISTRY OF FOREIGN AFFAIRS OF THE UNITED MEXICAN STATES, REGARDING CONSULAR NOTIFICATION AND ACCESS IN CASES INVOLVING MINORS

The Government of the State of Iowa, through the Department of Human Services, (hereinafter “the Department”) and the Ministry of Foreign Affairs, through the Consulate of Mexico in Omaha (hereinafter the “Consulate”), 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, 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”).

These treaties place a special responsibility on the receiving State’s authorities, including 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 important in these cases, not only because provided for by treaty, but also because consulates provide services that can mutually assist the Parties, as well as the individuals personally affected.

I. PURPOSE

The purpose of this Memorandum of Understanding is to protect the Mexican Minors as a fundamental human element of Mexican communities throughout the United States of America, in particular the State of Iowa. 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, will provide 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 Mexico has a duty to care for the interests of its nationals abroad, particularly those of minors, as expressed in Article 5, §§ (a) and (h), of the Vienna Conventionⁱ.

The Department recognizes further that it is imperative that the Consulate be notified, without delay,ⁱⁱ of guardianship as expressed by the Vienna Convention, Article 37(b).ⁱⁱⁱ

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

III. DEFINITIONS

For the purpose of this Memorandum of Understanding:

- a. “Department” means the Department of Human Services of the State of Iowa.
- b. “Mexican National Minor” means any unmarried person who is under the age of eighteen and was born in Mexico.
- c. “Multiple Nationality Minor” means any unmarried person who is under age of eighteen and is a national of two or more countries, one of which is Mexico.

- d. "Custodian" means the non-parental caretaker of a Mexican National Minor, or Multiple Nationality Minor, who has been entrusted by a parent(s) with the day-to-day care of the minor.
- e. "DIF" means the Agency for Integral Family Development. This is the Agency in Mexico 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 is a Mexican National Minor or Multiple Nationality Minor.

The Department will provide any such Mexican National Minor or a Multiple Nationality Minor, and his or her parents or custodians, with the following information:

- a. Written information in English and Spanish explaining the juvenile court process and the rights of the minor child and his or her parents or custodians.
- b. The address and telephone number of the Mexican Consulate located in Omaha, Nebraska.

2. Notification to the Mexican Consulate

The Department will notify the Consulate in writing of the following information:

- a. When the Department identifies a Mexican National Minor in its custody;
- b. When a parent or custodian of a Mexican National Minor or Multiple Nationality Minor has requested that the Consulate be notified;
- c. When the Department learns that a non-custodial parent(s) of a child in its custody resides in Mexico.

The written notification will be made within ten (10) working days of the initial date of custody with the Department. If the Department learns, at a later time, that the minor is a Mexican National Minor, then the information will be forwarded without delay to the other Party, 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 National Minor or Multiple Nationality Minor;
- b. The date of birth of the minor;
- c. The name of the parent or custodian;
- d. The name and telephone 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 Iowa Juvenile Code and other state and federal statutes, under which the Department must operate.

The Department recognizes that the Consulate may need specific information regarding the cases of Mexican National Minors and Multiple Nationality Minors. In order to arrange for further information, the Consulate will contact the Department's service area manager or its designee.

5. Interview of a Mexican National Minor or Multiple Nationalities Minor

A Consular Representative may interview a Mexican National Minor(s) in the custody of the Department. In the case of a Multiple Nationality Minor(s), either the parents or the service area manager or designee must first consent to the interview.

In order to arrange for an interview of a Mexican Nationality Minor or Multiple Nationality Minor, the Consulate shall contact the service area administrator or designee.

6. Special Immigrant Juvenile Status

In cases where a Mexican National Minor or Multiple Nationality Minor has been placed as a ward of the State of Iowa 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 Department in obtaining the necessary documentation from Mexico for completion of the SIJS application.

7. Proof of Mexican Nationality

The Department shall obtain a Mexican birth certificate for Mexican National Minors in its custody. The Consulate will assist the Department on the process to obtain the necessary documentation from Mexico in order to complement the application.

8. Assistance Provided by DIF

Upon notification to the Consulate of custody of a Mexican National Minor or Multiple Nationality Minor, 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 minor's 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.

9. Witnesses

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

10. Ongoing Communication

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

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

Both Parties remain committed to the development and delivery of joint community meeting 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 Department and the Ministry of Foreign Affairs through its Consulate in Omaha, Nebraska will make all the necessary efforts 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 of Justice or any other state or federal agency regarding any case or subject of concern.

11. Rules and Procedures

The Department agrees to adopt whatever Rules and Procedures are necessary in order to give full force to this Memorandum of Understanding.

12. Final Provisions

This Memorandum of Understanding becomes effective upon signing and shall remain in force for twelve months, automatically renewed for an equal period, unless either Party gives written notice of its intention not to renew at least sixty (60) days prior to the expiration of the current term. Either Party may terminate this Memorandum of Understanding prior to the expiration of the current term, for any reason, by providing written notice of termination to the other Party at least sixty-days (60) in advance of the termination.

V. STATEMENT OF IMMUNITY

Except for the provisions expressly contained herein, nothing in this Memorandum of Understanding shall be constructed 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 agent to the jurisdiction of any United States or Iowa Courts.

Furthermore, nothing in this Memorandum of Understanding shall be construed to prevent the Director of the Department of Human Services from acting in the best interest of children in the State of Iowa.

Signed in Des Moines, Iowa, on the 20th day of April of two thousand and six, in two originals, in the English and Spanish languages, being both texts equally authentic.

**THE GOVERNOR OF THE STATE OF IOWA OF
THE UNITED STATES OF AMERICA**

**FOR THE MINISTRY OF FOREIGN AFFAIRS OF
THE UNITED MEXICAN STATES**

**THOMAS J. VILSACK
GOVERNOR**

**LUIS ERNESTO DERBEZ BAUTISTA
MINISTER**

ⁱ Article 5 of the Vienna Convention provides in part that consular functions consist in:

“a) protecting in the receiving State the interest of the sending State 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 interest 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”

ⁱⁱ The time of notification will be specified below.

ⁱⁱⁱ Article 37 of the Vienna Convention states in 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 in the interest of a minor or other person lacking full capacity who is 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 an 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 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 interest 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).*”