

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CONSULATE GENERAL OF THE UNITED MEXICAN STATES IN
PHOENIX, THE CONSULATE GENERAL OF THE UNITED MEXICAN STATES
IN NOGALES, THE CONSULATE OF THE UNITED MEXICAN STATES IN
TUCSON, THE CONSULATE OF THE UNITED MEXICAN STATES IN
DOUGLAS AND THE CONSULATE OF THE UNITED MEXICAN STATES IN
YUMA AND THE ARIZONA DEPARTMENT OF CHILD SAFETY OF THE
UNITED STATES OF AMERICA REGARDING CONSULAR FUNCTIONS IN
CUSTODY PROCEEDINGS INVOLVING MEXICAN MINORS**

The Consulate General of the United Mexican States in Phoenix, the Consulate General of the United Mexican States in Nogales, the Consulate of the United Mexican States in Tucson, the Consulate of the United Mexican States in Douglas and the Consulate of the United Mexican States in Yuma (hereinafter "the Consulates") and the Arizona Department of Child Safety of the United States of America (hereinafter "DCS") 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 Mexican States and the United States of America, 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 both the Bilateral Convention and the Vienna Convention provide for consular notification and access in those cases where foreign nationals are involved in legal proceedings;

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 assures 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 this Memorandum of Understanding ("MOU") is to establish the bases of coordination between the Parties 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

DCS recognizes that the Government of Mexico has the right to carry out consular functions to protect the interests of its nationals abroad, including those of minors, in the terms set forth in Article 5, paragraphs (a) and (h) of the Vienna Conventionⁱ.

DCS further recognizes its duty to communicate with the Consulates, without delay when relevant information is availableⁱⁱ, about any DCS custody proceeding involving Mexican minors, in accordance with Article 37 (b) of the Vienna Conventionⁱⁱⁱ.

Likewise, DCS recognizes that the Consulates have the right to interview, to communicate with, to visit and to assist^{iv} Mexican minors involved in DCS custody proceedings, in accordance with Article VI of the Bilateral Convention.^v

III. DEFINITIONS

For the purposes of this MOU:

- A. Pursuant to Arizona Revised Statutes (A.R.S.) § 8-201(9), "**Custodian**" means a person, other than a parent or legal guardian, who stands in loco parentis to the child or a person to whom legal custody of the child has been given by order of the juvenile court.

- B. **"DCS custody proceeding"** means an action taken by DCS resulting in DCS obtaining legal custody of a Mexican minor pursuant to A.R.S. Title 8, Chapter 4.
- C. **"DIF"** means the System for Integral Family Development. This is the agency in Mexico responsible for child protection.
- D. **"Mexican minor"** means any unmarried individual who is under the age of eighteen and that:
 - 1. Was born in Mexico; or
 - 2. Possesses Mexican nationality.

IV. PROVISIONS

To achieve the purpose of this MOU, the Parties agree to the following:

A. **Ascertainment and Demonstration of the Minor's Nationality**

DCS shall determine the nationality of the minor at the time of taking custody of the minor, or when available information allows DCS to determine the nationality of the minor in DCS custody.

The DCS specialist responsible for the custody case shall obtain a certified copy of the minor's U.S. birth certificate. When a minor is determined to meet the definition of a "Mexican Minor," the Consulates shall assist DCS, whenever possible, in obtaining the corresponding certified copy of the minor's Mexican birth certificate or a copy of the document stating that nationality was conferred to the minor by Mexico, in accordance with its national legislation.

B. **Notification to the Corresponding Consulate**

Pursuant to the Bilateral Convention and the Vienna Convention, DCS has the duty to notify the corresponding Consulate in writing, when:

- (a) DCS assumes the custody of a Mexican minor;
- (b) the parent or custodian of a Mexican minor in DCS custody requests that DCS notify the corresponding Consulate; or
- (c) DCS is aware that either parent of a minor in DCS custody resides in Mexico.

DCS shall notify the corresponding Consulate without delay when relevant information is available, if DCS has taken custody of a Mexican minor, or when the Mexican nationality of a minor in DCS custody is established. DCS shall use for this purpose the format attached in exhibit 1.

Likewise, DCS shall provide the parent or custodian of the Mexican minor with information on the consular services and assistance prescribed in the Vienna Convention and the Bilateral Convention, but only when the parent or custodian's contact information is available to DCS. Particularly, DCS shall provide the following:

- a. written information, in Spanish and English, about the custody proceeding before the Juvenile Court; and
- b. the address and telephone number of the Mexican Consulate located in whichever district the jurisdiction of the DCS case comes under the following:
 - i. The Consulate General of the United Mexican States in Phoenix services Maricopa, Apache, Coconino, Yavapai, Mohave, Gila, and Navajo Counties.
 - ii. The Consulate General of the United Mexican States in Nogales services Santa Cruz County.
 - iii. The Consulate of the United Mexican States in Tucson services Pima and Pinal Counties.
 - iv. The Consulate of the United Mexican States in Douglas services Cochise, Graham and Greenlee Counties.
 - v. The Mexican Consulate in Yuma services Yuma and La Paz Counties.

C. Initial Information to be Provided by DCS to the Consulates

For purposes of the notification referred to in paragraph (B), DCS shall provide the corresponding Consulate the following information, when available:

- (a) The full name of the Mexican minor (including both last names);
- (b) The date of birth of the Mexican minor;
- (c) The name of the parents or custodian(s) (including both last names); and
- (d) The name, phone number, and email address of the DCS specialist responsible for the custody case.

D. Confidentiality and Communication

The Parties shall abide by all state and federal laws regarding the confidentiality of DCS information, including the requirements of A.R.S. § 8-807.

The Parties may contact each other at any time, to obtain additional specific information regarding custody proceedings involving Mexican minors.

To achieve the objectives of this MOU, each Party shall designate a coordinator for providing information when it is not available through established channels, to ensure compliance with the provisions agreed upon by the Parties to this MOU. Coordinators may assemble whenever they consider it appropriate, to discuss any aspect of the cases addressed by this MOU.

E. Interview of a Mexican Minor

The consular officers, upon providing identification that verifies the officer's affiliation with the corresponding Consulate, shall have the right to interview the Mexican minor under DCS custody. To such effect, the DCS specialist responsible for the custody case, or the DCS specialist's designee, shall give consent for the interview to take place.

In order to arrange for an interview with a Mexican minor, the Consulates shall contact the DCS specialist in charge of the custody case.

F. Special Immigrant Juvenile Status

When a Mexican minor is under the custody of the State of Arizona and DCS determines:

1. That the minor is eligible to obtain the Special Immigrant Juvenile Status (SIJS), pursuant to INA, sec, 101 (a)(27)(j)(ii), 8 U.S.C. sec 1101 (a)(27)(J)(ii);
2. That applying for SIJS is in the minor's best interest; and
3. That DCS is the appropriate entity to assist or identify a volunteer organization to assist the minor with applying for SIJS;

The Consulates shall assist with the application process by obtaining and providing to DCS the necessary documentation from Mexico to complete the SIJS application.

G. Assistance Provided by DIF

Upon DCS notification to the corresponding Consulate regarding the custody of a Mexican minor, the Consulate shall contact DIF in order to procure the appropriate socio-economic home studies of families in Mexico who may be eligible to assume custody of a Mexican minor under custody of DCS. Upon receipt of the studies, the Consulates shall immediately transmit the information to the DCS specialist responsible for the custody case.

When custody of a Mexican minor is granted to a Mexican family, the Consulates shall take the necessary measures to coordinate with DIF, in order to carry out the repatriation of the minor to Mexico, procuring the minor's welfare, and providing the minor with all necessary services.

Once the minor is in Mexico, the Consulates shall coordinate with DIF to ensure that DIF (i) turns the Mexican minor over to the family assuming custody, and (ii) takes the necessary measures to assure the minor's welfare.

H. Witnesses

The Consulates and DCS shall work jointly to locate those people residing in Mexico who are required to appear before a Court in Arizona in connection with a custody proceeding involving a Mexican minor, in order to notify them, in a timely manner, of their required appearances.

I. Follow-up Mechanism

Consular Officers, the DCS coordinator, and any staff the coordinator deems necessary shall meet three (3) times a year in order to review issues arising from the application of this MOU. The Consuls and the DCS Director shall meet once (1) a year, and as necessary and requested, in order to evaluate the progress and development of this MOU.

Both Parties confirm their commitment to participate in joint meetings and to develop other information efforts. Both Parties shall participate in intervention and prevention activities without regard to the nationality of the families and children involved. In addition, the Consulates and DCS shall make every necessary effort to exchange, in a timely manner, ideas and opinions about high profile cases involving Mexican nationals that may come to the attention of the media.

Notwithstanding the provisions set forth in this MOU, the Parties acknowledge that the Consulates may contact, the DCS designated coordinator at any time. In addition, DCS shall endeavor to facilitate conversations DCS legal representation at the Office of the Attorney General upon request of the Consulates.

J. Procedures

DCS agrees to adopt the necessary procedures to comply with this MOU.

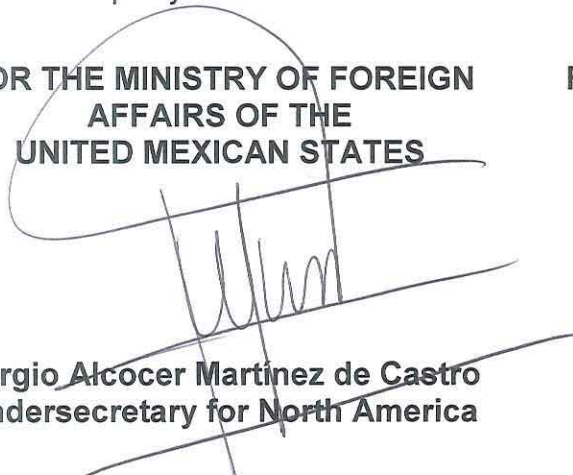
K. Final Provisions

This MOU shall come into force on the date it is signed by the Parties and shall remain in force for a period of twelve (12) months, automatically renewable for equal periods, unless either Party gives written notice to the Others of its intention to not renew it, at least sixty (60) days prior to the expiration of the current effective period.

Either Party may terminate this MOU at any time, by providing a ninety (90) days written notice to the others Parties.

Signed in duplicate, in the Spanish and English languages, being both texts equally authentic.

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



**Sergio Alcocer Martinez de Castro
Undersecretary for North America**

**FOR THE GOVERNMENT OF THE
STATE OF ARIZONA OF THE
UNITED STATES OF AMERICA**



**Douglas A. Ducey
Governor**

Place: MEXICO CITY
Date: JUNE 19th, 2015

Place: MEXICO CITY
Date: JUNE 19th, 2015

**FOR THE CONSULATE GENERAL OF
THE UNITED MEXICAN STATES
IN PHOENIX**

**FOR THE ARIZONA DEPARTMENT
OF CHILD SAFETY OF THE UNITED
STATES OF AMERICA**



**Roberto Rodríguez Hernández
Consul General of Mexico**

**Gregory McKay
Director**

Place: Phoenix
Date: August 10th, 2015

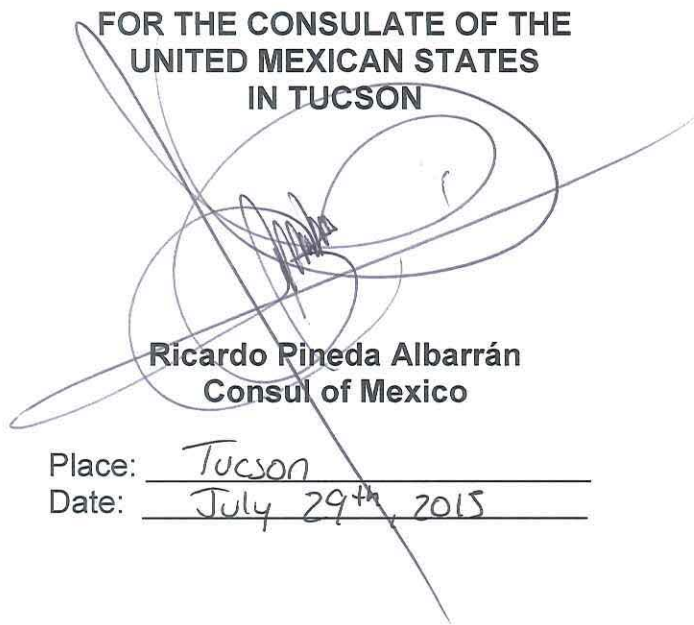
Place: Phoenix
Date: August 10th, 2015

**FOR THE CONSULATE GENERAL OF
THE UNITED MEXICAN STATES
IN NOGALES**


**Jaime Paz y Puente Gutiérrez
Consul General of Mexico**

Place: Nogales
Date: July 29th, 2015

**FOR THE CONSULATE OF THE
UNITED MEXICAN STATES
IN TUCSON**



**Ricardo Pineda Albarrán
Consul of Mexico**

Place: Tucson
Date: July 29th, 2015

**FOR THE CONSULATE OF THE
UNITED MEXICAN STATES
IN DOUGLAS**



**Jorge Ernesto Espejel Montes
Consul of Mexico**

Place: Douglas
Date: August 7th, 2015

**FOR THE CONSULATE OF THE
UNITED MEXICAN STATES
IN YUMA**



**Eusebio Augusto Romero y Esquivel
Consul of Mexico**

Place: Yuma
Date: July 31st, 2015

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

“a) protecting in the receiving State (the United States of America) the interest of the sending State (the United Mexican States) 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 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 redress 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.”