U.S. Department of Justice
Civil Division
Federal Programs Branch

March 7, 2016

Clerk's Office
Sussex County Courthouse
22 The Circle
Georgetown, DE 19947

Re: *Margarita Rodriguez Nava v. Juan Roberto Avalos Merino*, Case No. 15-11607
Edward J. Kaminsky v. Simplicio Jorge Castanon, Case No. 15-09506
Aleida Caballero Morales v. German Crisanto Dominguez, Case No. 15-08003
Monica Perez-Samoya v. William Y. Barrios de Leon, Case No. 15-00154
Maria Rosas-Rascon v. Juan J. Galvan Segovia, Case No. 15-25132

Dear Sussex County Clerk's Office:

The United States, by and through its undersigned counsel, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517,[1] in order to advise the Court of its views as to the propriety of the court's practice of mailing legal documents to the Mexican Embassy in Washington, D.C. in an attempt to effect service upon private Mexican nationals or residents.

As set forth further below, delivery of legal papers to a foreign state's diplomatic mission in the United States is not a proper means of effecting service upon residents or nationals of the foreign state, and this practice is also inconsistent with the inviolability of the mission under the Vienna Convention on Diplomatic Relations. Under that Convention, to which both the United States and Mexico are parties, embassies are inviolable. Courts considering the issue have generally held that this status prevents service of process on the embassy either as an agent for a private, non-immune party or as service on the foreign government. Moreover, the United States regularly objects when a foreign court attempts to serve U.S. persons via U.S. embassies abroad, and thus has strong reciprocity interests at stake. The United States therefore respectfully requests that the Court recognize the inviolability of the Embassy and require that service on Mexican residents or nationals be effected in an alternative manner.

As a general matter, the United State would note that Mexico is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial

[1] This provision provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517. It provides a mechanism for the United States to submit its views in cases in which it is not a party. *See, e.g.*, *Application of Blondin v. Dubois*, 78 F. Supp. 2d 283, 288 n.4 (S.D.N.Y. 2000).

Matters, as well as the Inter-American Convention on Letters Rogatory and its Additional Protocol. Both instruments provide mechanisms for the service of legal documents upon individuals in Mexico. The United States would further note that, in cases involving child custody or the termination of parental rights where one or both of the parents resides in Mexico at an unknown address, either the litigants or the court may reach out informally to Mexico's consulates or to the Embassy. In such cases, it is possible that the consulates or Embassy may be able to assist in identifying potential avenues for locating an address for the individual.

BACKGROUND

Since April 2015, the U.S. Department of State has received over a dozen diplomatic notes from the Mexican Embassy in Washington, D.C. informing the Department that it received legal documents intended for Mexican residents or nationals who were defendants or respondents in various Delaware family court cases, including the four cases listed above, and requesting that the Department return the papers to the relevant court.

DISCUSSION

I. THE MEXICAN EMBASSY IS INVIOLABLE AND AS SUCH MAY NOT SERVE AS AN AGENT FOR SERVICE OF PROCESS

The Vienna Convention on Diplomatic Relations ("VCDR") provides in relevant part that "the premises of [a] mission shall be inviolable." 23 U.S.T. 3227, 500 U.N.T.S. 95, art. 22. Although the treaty does not define "inviolable," courts have held that this principle must be construed broadly, and is violated by service of process—whether on the inviolable entity for itself or as an agent for the foreign government or a private, non-immune party. *See Tachiona v. United States*, 386 F.3d 205, 222, 224 (2d Cir. 2004) (holding that the VCDR precludes service of process on inviolable persons entitled to diplomatic immunity where such persons are served on behalf of a non-immune, private entity); *Autotech Tech. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007) ("[S]ervice through an embassy is expressly banned both by an international treaty to which the United States is a party and by U.S. statutory law."); *Hellenic Lines, Ltd. v. Moore*, 345 F.2d 978, 979–81 (D.C. Cir. 1965) (holding that the inviolability principle precludes service of process on a diplomat as agent of a foreign government); *767 Third Ave. Assocs. v. Permanent Mission of Zaire*, 988 F.2d 295, 301 (2d Cir. 1993) (approvingly citing view that "process servers may not even serve papers without entering at the door of a mission because that would 'constitute an infringement of the respect due to the mission'"); Brownlie, *Principles of Public Int'l Law* 403 (8th ed. 2008) ("[W]rits may not be served, even by post, within the premises of a mission . . .").

In analogous circumstances, the U.S. Court of Appeals for the Second Circuit rejected an attempt to serve process on the President of Zimbabwe and the Zimbabwean Foreign Minister as agents of a private political party while they visited New York City as delegates to the United Nations Millennium Summit. *Tachiona*, 386 F.3d at 209. The court explained that under the VCDR, these persons were "inviolable," a principle it considered "advisedly categorical" and "strong," and thus the court held that the VCDR protected the president and foreign minister from service of process either in their own capacity or as agents for the political party. *Id*. at 221–22, 24.

In the family court cases at issue here, just as in *Tachiona*, service on a private party has been attempted by way of an entity protected by inviolability pursuant to the VCDR. The inviolability of the embassy should be as broadly construed in these circumstances as it was in *Tachiona*. Moreover, the legislative history of the Foreign Sovereign Immunities Act, which governs suits against foreign governments, explicitly recognized that service on an embassy would be at odds with the VCDR. The House Report for the FSIA states that "A second means [of service], of questionable validity, involves the mailing of a copy of the summons and complaint to the diplomatic mission of the foreign state. Section 1608 [of the FSIA] precludes this method so as to avoid questions of inconsistency with section 1 of article 22 of the Vienna Convention on Diplomatic Relations. . . . Service on an embassy by mail would be precluded under this bill." H.R. Rep. 1487, 94th Cong., 2d sess., reprinted in 1976 U.S.C.C.A.N. 6604, 6625. The House Report also approvingly references cases in which courts recognized the impropriety of service on inviolable diplomatic representatives. *See id*. at 21, 1976 U.S.C.C.A.N. at 6620 ("It is also contemplated that the courts will not direct service in the United States upon diplomatic representatives, *Hellenic Lines Ltd. v. Moore*, 345 F.2d 978 (D.C. Cir. 1965)).[2]

Furthermore, permitting courts in the United States to treat foreign embassies as a forwarding agent for purposes of litigation that does not involve the foreign government itself would result in the diversion of embassy resources to determine the significance of a transmission from the court, and to assess whether or how to respond. Indeed, the Mexican Embassy has been served in more than a dozen cases from Delaware state courts alone in less than a year, demonstrating the significant impact that allowing such service would have. Moreover, the United States has strong reciprocity interests at stake. The United States has long maintained that its embassies abroad are not agents for service of process. When a foreign court or litigant purports to serve a U.S. resident or national through an embassy, the embassy sends a diplomatic note to the foreign government indicating that the embassy is

[2] The United States maintains that service on an embassy is improper in all circumstances. The Second Circuit has permitted such service in one limited circumstance, not applicable to the above-referenced cases. In *Harrison v. Republic of Sudan*, 802 F.3d 399 (2d Cir. 2015), the plaintiffs brought suit against Sudan and thus were required to effect service on the foreign state by following the steps outlined in the FSIA. The relevant provision of that statute states that, if other options are unavailable, foreign states may be served by the clerk of the court mailing the summons and complaint "to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3). The plaintiffs in *Harrison* attempted to comply with the statute through a mailing of the summons and complaint to the Sudanese Embassy in Washington, D.C. addressed to Sudan's Minister of Foreign Affairs, rather than mailing the papers to the Ministry of Foreign Affairs in Sudan's capital, Khartoum. The Second Circuit determined that, because the statute was silent as to the address required for the mailing, the summons could be mailed to the Minister of Foreign Affairs via the embassy. The court further concluded that this was not inconsistent with the VCDR and the FSIA's legislative history because service was not *on* the embassy, but only "*via* or *care of*" the embassy. *Harrison*, 802 F.3d at 405. "Moreover," the court noted, "Sudan has not sought to rely on this legislative history." *Id*. The court's reasoning in *Harrison* was in apparent conflict with the Second Circuit's earlier decision in *Tachiona*, and the United States disagreed with the *Harrison* decision on a number of grounds and has supported Sudan's petition for rehearing, which remains pending. In any event, the decision in *Harrison* rests on an interpretation of the proper method of serving a foreign *state* under a specific provision of the FSIA, which is inapplicable where, as here, private parties rather than foreign states are being served.

not an agent for service of process and therefore that service on the individual has not been effected. If the VCDR were interpreted to permit courts in the United States to serve papers through an embassy, it could make U.S. embassies abroad vulnerable to similar treatment in foreign courts, contrary to the government's consistently asserted view of the law. *See e.g.*, *Medellin v. Texas*, 552 U.S. 491, 524 (2008) (U.S. interests, including "ensuring the reciprocal observance of the Vienna Convention [on Consular Relations]" are "plainly compelling").

CONCLUSION

The United States has a substantial policy and legal interest in assuring that the inviolability of embassies under the VCDR is correctly construed and applied. In accordance with that interest and the authorities set forth herein, the United States respectfully urges the Court to recognize the impropriety of service on Mexican nationals or residents via the embassy and require that service be effected in an alternate manner.

Thank you for your consideration of this matter.

Respectfully,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

ANTHONY J. COPPOLINO
Deputy Director

/s/ Aimee W. Brown
AIMEE W. BROWN (IL Bar No. 6316922)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
(P) 202-305-0845 | (F) 202-616-8470
aimee.w.brown@usdoj.gov

Counsel for the United States of America