



U. S. Department of Justice

Civil Division

Washington, D.C. 20530

November 22, 2019

Via Certified Mail, Return Receipt

Tabitha Downard  
Clerk of Court  
State of Delaware Family Court: Kent County  
400 Court Street  
Dover, Delaware 19901

Re: Statement of Interest of the United States in  
*Jennifer Asencio-Soto v. Juan Garcia*, Case No. 18-22566,  
*Deborah N. Lopez v. Felipe Jacobo*, Case No. 19-7002,  
*Smith v. Lynn M. Sanchez*, and *Jesus Sanchez-Gomez*, Case No. 19-9907,  
*Pamela Garza v. Luis O. Hernandez*, Case No. 19-19092, and  
*Lynn M. Sanchez v. Jesus Sanchez-Gomez*, Case No. 19-20275

Dear Ms. Downard:

The United States, by and through undersigned counsel, respectfully submits this statement of interest pursuant to 28 U.S.C. § 517,<sup>1</sup> in order to advise the Court of the United States' view as to the propriety of the practice of mailing legal documents to the Mexican Embassy in Washington, D.C. to effect service upon private Mexican nationals or residents. Please kindly accept this statement of interest for filing in the official court records for the cases listed above.

As discussed below, the 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. This practice is inconsistent with the inviolability of the mission under the Vienna Convention on Diplomatic Relations (the "VCDR"). 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. Furthermore, the United States regularly objects when a foreign court attempts to serve United States persons via United States embassies abroad. Thus, there are strong reciprocity interests at stake. The United

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<sup>1</sup> This statute 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. The statute authorizes 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).

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.<sup>2</sup>

## BACKGROUND

Since June 2019, the United States Department of State (the “Department”) has received at least five diplomatic notes from the Mexican Embassy in Washington, D.C. informing the Department it received legal documents intended for Mexican residents or nationals who were defendants or respondents in various Delaware family court cases, including the five cases listed above, and requesting that the Department return the papers to the relevant court.

## DISCUSSION

The Mexican embassy is inviolable and, as such, may not serve as an agent for service of process. First, the 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 Techs. 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 Republic of Zaire to U.N.*, 988 F.2d 295, 301 (2d Cir. 1993) (approvingly citing the 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’”); James R. Crawford, *Brownlie’s Principles of Public Int’l Law* 403 (8th ed. 2012) (“[W]rits may not be served, even by post, within the premises of a mission . . .”).

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<sup>2</sup> As a general matter, the United State notes that Mexico is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial 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 further notes 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.

Courts in the United States have held that this principle prevents service on the embassy as an agent for a private, non-immune party.<sup>3</sup> For example, the United States 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 applicable provisions of the VCDR, these persons were “inviolable”—a principle it considered “advisedly categorical” and “strong”—and thus held that the VCDR protected the president and foreign minister from service either in their own capacity or as agents for the political party. *Id.* at 221-22, 224.

In these cases, 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 here, as it was in *Tachiona*, and the Court should recognize that the VCDR prohibits service of process in this manner.

Second, the legislative history of the Foreign Sovereign Immunities Act (the “FSIA”), which governs suits against foreign governments, demonstrates that Congress explicitly recognizes that service via 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 a 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. No. 94-1487, 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 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), or upon consular representatives, *Oster v. Dominion of Canada*, 144 F. Supp. 746 (N.D.N.Y. 1956), *aff’d* 238 F.2d 400 (2d Cir. 1956).”).

Third, the United States has strong reciprocity interests at stake. 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, such as the time and effort needed 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 almost half-a-dozen cases from Delaware state courts alone in less than six months,

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<sup>3</sup> In fact, the United States maintains that service on an embassy is improper in all circumstances. *See, e.g., Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1057 (2019) (holding that the FSIA, which authorizes service of process on a foreign state, requires the service packet to be mailed directly to the foreign minister’s office in the foreign state, not to the foreign state’s embassy in Washington, D.C., and recognizing the United States’ position that service of process via an embassy was improper).

demonstrating the significant impact that allowing such service would have. Consequently, 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 not an agent for service of process and therefore that service on the individual has not been effected, just as the Mexican Embassy has done in these cases. If the VCDR were interpreted to permit courts in the United States to serve papers through an embassy, it could make United States embassies abroad vulnerable to similar treatment in foreign courts, contrary to the United States' consistently asserted view of the law. *See, e.g., Medellín v. Texas*, 552 U.S. 491, 524 (2008) (noting that the United States' interests, including its interests in "ensuring the reciprocal observance of the Vienna Convention [on Consular Relations]," are "plainly compelling").

### CONCLUSION

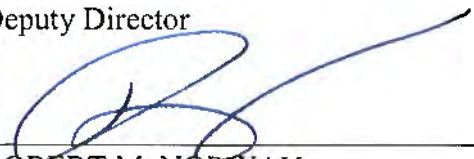
The United States has substantial policy and legal interests in assuring that the inviolability of embassies under the VCDR is correctly construed and applied. In accordance with those interests, and the authorities set forth above, the United States respectfully urges the Court to recognize the impropriety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

Thank you for your consideration of this matter.

Respectfully submitted,

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