

AGREEMENT FOR LEGAL AND PROFESSIONAL SERVICES BETWEEN THE SECRETARIAT OF FOREIGN AFFAIRS (SRE), REPRESENTED BY THE HEAD OF THE CONSULATE OF MEXICO IN TUCSON, ARIZONA, AND ATTORNEY GREGORY J. KUYKENDALL, REGARDING THE MEXICAN CAPITAL LEGAL ASSISTANCE PROGRAM (MCLAP) IN THE UNITED STATES.

PREAMBLE

This agreement sets forth the rights and obligations between the SRE of Mexico, duly represented by the head of the Consulate of Mexico in Tucson, Arizona, and attorney Gregory J. Kuykendall, for legal services related to the Mexican Capital Legal Assistance Program in the United States (hereinafter referred to as "the Program.")

This agreement is executed pursuant to article 16 of the Law of Acquisitions, Lease and Services of the Federal Government of Mexico.

1. Purpose of the Agreement

The purpose of this agreement is to secure legal services and advice rendered by Gregory J. Kuykendall in his capacity as Director of the MCLAP in cases wherein Mexican nationals face proceedings that could culminate in the imposition of a death sentence in the United States or who have already been sentenced to death. The legal services and advice will be rendered pursuant to section 3 of this agreement.

2. Statements

Pursuant to article 26 of the Organic Law for the Federal Public Administration (OLFPA), the SRE is a Federal Agency of the Executive branch of the United Mexican States.

Pursuant to article 28, section II of the OLFPA, it is in the province of the SRE to provide Mexican nationals abroad with diplomatic or consular assistance.

In September of 2000, the SRE established the Program to assist in the arrangement of the legal defense of its nationals subjected to death penalty proceedings in the United States of

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America (US). This agreement establishes the obligations of each of the parties and it is governed by the federal laws of the US.

The Program is a mechanism by which legal assistance and advice is provided by the Program in cases of Mexican nationals facing capital punishment proceedings. The cases are incorporated into the Program once they have been assessed by it. The incorporation of new cases is carried out through detection efforts executed by the Consular Posts of Mexico and the Program.

As a general rule and with the view of providing the benefits of the Program to as many Mexican defendants who are sentenced to death and/or face legal proceedings that could culminate in the imposition of such penalty as possible, the Program shall not take on the direct representation of Mexican nationals facing death penalty proceedings. However, in specific cases Gregory J. Kuykendall or his staff could get involved in the direct defense of a Mexican national or a non-Mexican, particularly in cases that involve issues that could benefit Mexicans in similar situations, if his calendar of activities permitted it and if such representations were compatible with the purposes of the Program.

Mr. Gregory J. Kuykendall is a United States citizen and a lawyer who has represented a number of foreign nationals in death penalty proceedings.

3. Duties and Obligations

3.1. Attorney Gregory J. Kuykendall shall be the Director of the Program. As such, his obligations will be:

3.1.1. In performing the services and advice required by this agreement:

- a) Shall carry out his activities with care and diligence and shall apply the highest professional standards.
- b) Shall do nothing which is likely to bring the SRE or the Government of Mexico (GoM) into disrepute or which is materially contrary to their interests.
- c) Shall handle all information related to MCLAP cases as strictly confidential and will abstain from discussing the cases with the media unless an express written authorization to do so is granted by the General Directorate for Protection of Mexicans Abroad (DGPME).

3.1.2. In general, execute the necessary expenditures and payments in accordance with the budget established in Annex I of this agreement. This provision will be carried out without prejudice to Section 4.1.

3.1.3. Prepare model motions and legal materials, including motions to litigate international law issues, present them to US Courts and, if appropriate, to international tribunals, with the purpose of assisting in the legal defense of Mexican nationals that face capital punishment proceedings – in particular issues related to the rights set forth in the Vienna Convention on Consular Relations.

3.1.4. Request the collaboration of other attorneys and paralegals and other professionals to assist with advancing the objectives of the Program.

3.1.5. Hire the services of attorneys external to the Program, legal firms or NGOs with which they are affiliated, in order to serve as defense attorneys in cases of Mexican nationals who have been sentenced to death and/or to those who face legal proceedings that could culminate in the imposition of such penalty.

3.1.6. Employ experts and/or investigators, mitigation specialists and other professionals for consultation with the Program and/or to testify regarding the cases of Mexican nationals who have been sentenced to death, but also for those who face legal proceedings that could culminate in the imposition of such penalty.

3.1.7. Negotiate fees at an hourly rate, flat fee or agreement on a specific amount with attorneys external to MCLAP, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals or other professionals to ensure the best representation of Mexican nationals pursuant to clause 3.1.1 of this agreement.

3.1.8. The contractual relation with external attorneys, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals, will be between the Program Director and the external attorneys, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals and in no case with the SRE.

3.1.9. Require external attorneys, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals, to recognize in their joint work agreement that their contractual relation is with the Program Director and in no case with the SRE, as well as recognize in writing that the payment for services is the responsibility of the Program Director and in no case of the SRE.

In the same way, they will be bound in writing to handle all information related to their assigned cases as strictly confidential and will abstain from discussing the cases with the media unless an express written authorization to do so is granted by the Program Director.

3.1.10. Implement additional efforts to avoid the imposition of the death penalty on Mexican nationals, including the drafting and presentation of motions and legal materials for the participation of the GoM as a 'friend of the court' (*amicus curiae*) in those cases where courts are considering issues of international law, and, where appropriate, file legal claims to improve the effectiveness of the protections derived from international law.

3.1.11. Incorporate into the Program and follow up on the cases of Mexican nationals contained in the *Avena* Judgment of the International Court of Justice of May 31, 2004, whose death sentences have been commuted and whose cases have not been reviewed as mandated by said Court.

3.1.12. Submit for the consideration and approval of the Legal Advisor Office (CJA), as well as to DGPME of the SRE, whenever in light of the Program Director's judgment, it is necessary or advisable to assume the direct representation of a Mexican national or a non-Mexican.

3.1.13. Provide, if necessary and in coordination with the CJA and DGPME, training and assistance to consular employees and personnel of the SRE, personnel of the Program (attorneys, experts and/or investigators, mitigation specialists, paralegals and other professionals), and external professionals, related to specific legal issues and legal strategies in death penalty cases.

The expenses and costs of the above-mentioned training, conferences, seminars and courses (except for the travel and transportation expenses of the consular and SRE officers and employees) will be covered by Program funds.

Will retain and provide to DGPME all receipts for the costs of the regional training, conferences, seminars and courses.

3.1.14. Convene an annual meeting with Program attorneys, personnel of the Program (experts and/or investigators, mitigation specialist, paralegals and other professionals) and external professionals, to address specific legal issues, legal strategies on death penalty cases and issues related to Program management.

Designated representatives of the CJA, the DGPME and when appropriate, consular employees, shall attend said meeting.

Expenses and costs of this annual meeting (except for the travel and transportation expenses of the consular and SRE officers and employees) will be covered by Program funds.

Will retain and provide to DGPME all receipts for the costs of said meeting.

3.1.15. Maintain an updated database of information regarding cases incorporated into the Program as well as any violations of Article 36 of the Vienna Convention on Consular Relations, including data regarding the facts of the alleged crime, the circumstances of the arrest, the defense lawyers and other relevant issues.

3.1.16. Report on a quarterly basis the progress of the cases included in the Program, as well as the activities thereof.

3.1.17. Submit in a period no longer than seventeen calendar days after the expiration of the agreement, a global report and an executive summary of the achievements, activities and included cases during the agreement term.

3.1.18. Provide, as per written request of and through DGPME, all the information and documentation related to the Program expenditures and administration.

3.1.19. Provide on a quarterly basis all receipts for the costs of activities related to the Program, as well as the invoices and proof of payments to attorneys, law firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals who assist in the Program's activities.



Preferably, invoices shall contain the following:

- a) Invoice number.
- b) Invoice issuance date.
- c) Timeframe covered by the invoice.
- d) Name(s) and last name(s) of the national(s) receiving the services and, when applicable, known aliases.
- e) Rate of fees for the invoicing party, in accordance with this agreement.
- f) Descriptions for invoiced items, including the date in which they were incurred.
- g) Total amount of the invoice.

Preferably, receipts for expenses shall contain the following:

- a) Date of issuance.
- b) Unitary cost, price of product or service.
- c) Number of products or services purchased.
- d) Total amount of the receipt and
- e) The name of the establishment in which the product or service was purchased.

3.1.20. The aforementioned documentation will be sent via the Consulate of Mexico in Tucson, Arizona to the DGPME, for its review, within thirty (30) calendar days after the end of each quarterly period.

3.1.21. The Program Director will open an IOLTA bank account specifically to hold the funds that will be allocated for the Program by the SRE, in conformance with the norms of professional conduct of the State Bar of Arizona, the state in which the Director maintains his law office.

3.1.22. The Program Director will deposit in the account of the Consulate of Mexico in Tucson, Arizona, all reimbursements for service fees and expenses which have been previously paid by the Program to attorneys, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals who, by means of a legal order or agreement have had those fees and expenses covered subsequently.

The reimbursement funds can only be claimed when attorneys, legal firms, NGOs, experts and/or investigators, mitigation specialists, paralegals and other professionals request payment from the Program for their services provided to MCLAP cases, and the U.S.

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courts have not provided full or partial payment by means of a legal order or agreement, subject to evaluation and authorization of the Program Director.

Whenever the Program requires use of the funds reimbursed to the Consulate of Mexico in Tucson, Arizona, which will be available during the life of the Program, the Program must submit a request to the DGPME, in order for it to authorize the aforesaid Consulate to transfer said resources to the IOLTA bank account of the Program.

3.2. The obligation of the SRE will be to deposit in one installment the amount of \$4,266,666.67 dollars (four million two hundred and sixty-six thousand six hundred and sixty-six U.S. dollars and sixty-seven cents) into the account of the Consulate of Mexico in Tucson, Arizona, which shall transfer the funds to the Director for his immediate deposit into the aforementioned IOLTA bank account, established by the Director to this effect.

4. Funds management

The amount mentioned in clause 3.2. will cover the costs, expenses and legal fees of the Program from June 1, 2013 until May 31, 2014. The funds shall be allocated and disbursed as described in the "Budget Proposal for Mexican Capital Legal Assistance Program (MCLAP)" (Annex I).

4.1. The Program Director may transfer funds between any of the concepts included in Annex I in order to meet the needs of the Program as a whole, with the exception of "Fees of Program Director," which cannot exceed \$557,700.00 dollars (five hundred and fifty-seven thousand seven hundred U.S. dollars).

The total amount transferred between concepts shall not exceed \$384,000.00 dollars (three hundred and eighty-four thousand U.S. dollars), equivalent to 9% of the budget. In the event that the Program's needs necessitate a transfer of a greater amount, the Director will submit a written request to DGPME requesting approval of the transfer.

4.2. The costs, as opposed to legal fees, that are anticipated to be paid by attorney Gregory J. Kuykendall include but are not limited to: long-distance phone calls, facsimiles, photocopies, transportation, room and board, travel expenses for attorneys, experts and/or investigators, mitigation specialists, paralegals and other professionals, computerized legal

research, computer scanning and organization of document and related costs, as well as other costs related to the administration of the Program.

4.3. Gregory J. Kuykendall will charge the Government of Mexico a fee of \$290.00 dollars (two hundred and ninety U.S. dollars) per hour to compensate him for assuming the responsibilities of the Director. Attorney Kuykendall has agreed to reduce his ordinary hourly rate for the SRE, in order to assist the greatest number of Program cases.

4.4. The Program may pay program attorneys a preferential rate of no more than \$205.00 U.S. dollars (two hundred and five U.S dollars) per hour.

4.5. The payment of fees to external attorneys of the Program, legal firms or NGOs with which they are affiliated, as well as experts and/or investigators, mitigation specialists and other professionals will be subject to their individual expertise, as well as the local practices where they are hired.

4.6 All other personnel of the Program will receive a compensation based on a lesser hourly rate, which shall not be less than \$25.00 U.S. dollars (twenty-five U.S. dollars) and shall not exceed \$80.00 U.S. dollars (eighty U.S. dollars).

4.7. At the expiration date of the agreement, any remaining balance in the IOLTA bank account will be returned to the SRE, in a period not to exceed 50 calendar days after the expiration date of the agreement.

This 50 day period will also be used by the Program Director to pay any outstanding bills related to expenses or legal fees generated before the expiration of the agreement.

5. The Program

5.1. The parties acknowledge that they cannot predict the number of Mexican nationals who will require Program assistance, therefore:

5.1.1. Once a given case is included in the Program, the Director will determine how to best further the interests of the Mexican national, whether with the assistance of attorneys,



experts and/or investigators, mitigation specialists, paralegals or other professionals. The advancement of interest will be carried out in accordance with the terms of this agreement.

5.2. The Program will carry out the administration, accounting (as in preparation of invoices), documentation of fees and costs, payment of services, and other accounting documentation in accordance with the legal and customary practices in the United States of America for bookkeeping and accounting.

6. General Provisions

6.1. The term of the agreement will last until May 31, 2014. However, either party to this agreement can terminate it before that date. The parties agree that no legal fees or expenditures derived from this agreement will be generated after the termination date.

6.2. The parties may terminate this agreement at any time, without incurring any liability, through written notification of their intention at least sixty (60) calendar days in advance. Upon the expiration of the notification, this agreement and all the formalities and responsibilities arising from it, will terminate automatically.

6.3. In the event of termination of the agreement under the terms of the above clause, the Program Director is obligated to return to the SRE, within a term no longer than fifty (50) calendar days from the termination date of the agreement, all unused financial resources of the IOLTA account.

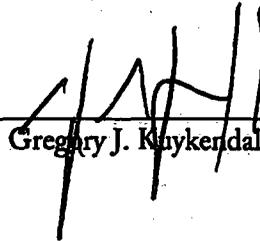
6.4 In the event of termination of the agreement under the terms of clause 6.2, the Program Director will submit, within a term no longer than seventeen (17) calendar days from the termination date of the agreement, a global report and an executive summary of all activities and cases which were incorporated in the Program.

6.5 Any disputes or controversies between the parties to this agreement arising from its interpretation and fulfillment shall be resolved in the Federal Court in the corresponding District of the State of Arizona.

6.6 Finally, the cases listed in Annex II are formally incorporated into the Program.

6.7 This agreement is signed in Spanish and English, in quadruplicate. In case of controversy, the English version will be controlling.

Date: June 14th, 2013



Gregory J. Kuykendall



For the Government of Mexico
Ricardo Pineda Albarrán
Consul of Mexico in Tucson, Arizona



CONSULADO DE MEXICO
TUCSON, ARIZONA

Budget Proposal for Mexican Capital Legal Assistance Program (MCLAP)

June 2013 – May 2014

| CONCEPT | COST |
|--|-----------------------|
| Fees for Program Director | \$557,700.00 |
| Fees for Program Administration and Accounting | \$275,000.00 |
| Fees for Program Attorneys | \$2,117,300.00 |
| Fees for Experts (Psychologists, Psychiatrists, Neuropsychologists, etc.), Investigators, Researchers | \$360,000.00 |
| Fees for Legal Assistants (<i>paralegals, clerks</i>) | \$190,000.00 |
| Fees for Defense Attorneys Who Take Cases of Mexican Nationals in Capital Proceedings or Sentenced to Death in the U.S. | \$450,000.00 |
| Administrative and Travel Costs | \$316,666.67 |
| GRAND TOTAL | \$4,266,666.67 |

The total of \$4,266,666.67 includes funds that will be used for training programs as outlined below:

| Training Programs | Cost |
|---|---------------------|
| Training seminars regarding the death penalty and criminal law, and scholarships for such programs, directed towards Program attorneys, defense teams, including defense attorneys, mitigation specialists, investigators and paralegals, and consular and SRE officers and employees,. | \$250,000.00 |
| Training materials regarding capital defense including the revision, reproduction and distribution of the Program manual for defense teams of Mexican nationals facing the death penalty; participation in trainings sponsored by public defender offices and anti-death penalty advocacy organizations; as well as the promotion of the Program. | \$35,000.00 |
| TOTAL | \$285,000.00 |