



## On Being Arrested or Detained in Mexico

U.S. Consulate Merida, Yucatan, Mexico  
Dated: June 17, 2010

U.S. citizens traveling or living in Mexico are subject to all laws here. This handout explains in general terms how the Mexican legal system works for individuals accused of breaking the laws of Mexico. The information contained herein should not be considered legal advice; we recommend you hire a local attorney (at your expense). We realize your ability to access internet while in prison may be limited or nonexistent, but in this handout we provide several links as family, friends or your attorney may wish to access the information on your behalf.

For information about travel to Mexico please visit the Country Specific Information sheet at [travel.state.gov](http://travel.state.gov) ([http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_970.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_970.html)).

The U.S. Consulate in Merida and Consular Agencies in Cancun, Playa del Carmen and Cozumel are here to help you. We can help protect your legal and human rights under Mexican law and international treaty and convention. We cannot, however, interfere in the Mexican legal system or act as your attorney.

### **WE CAN DO THE FOLLOWING:**

- Provide a list of local attorneys or contact an attorney selected by you.
- Contact relatives or friends to notify them of your arrest and inform of your well-being.
- Relay requests to family and friends for money or other aid.
- Accept funds as a trust fund deposit and dispense them as instructed by you or the remitter.
- Work with prison officials to ensure fair and humane treatment consistent with that granted to Mexican nationals and ensure Americans are afforded due process under Mexican law.
- Protest mistreatment.

### **WE CANNOT:**

- Represent you at trial, give legal advice or pay legal fees and/or fines with U.S. Government funds.
- Intervene with the due process of law.
- Provide medical treatment.
- Run errands for you.

### *The Initial Consular Interview*

As soon as possible after being notified of your arrest, a consular officer will visit you. During this visit the consular officer:

- Will determine the exact nature of the charges against you.
- Will provide you with a list of lawyers if you to seek legal counsel beyond the public defender.
- Will take names and telephone numbers of individuals you wish to notify or seek financial assistance.

### *The Privacy Act of 1974*

In order to contact persons on your behalf or answer inquiries related to your case, you will need to sign a waiver of the Privacy Act. Federal law generally prohibits us from contacting anyone or discussing your case without a signed waiver.

### *Selecting a Lawyer*

A Mexican public defender will be provided to you if you request. If you choose to select a private attorney, be cautious of those promising miracles in exchange for large sums of cash. You should sign a contract specifying exactly what services will be provided and how much it will cost. Arrange it so that the lawyer will be paid when the services specified have been fulfilled. Be sure to inform your family, or other interested parties, of your lawyer's name, address, and telephone number. Also detail the stipulations of the contract to them, so your lawyer does not solicit additional payment from them without your knowledge.

### *The Mexican Legal System*

Under Mexican law, you are considered guilty until proven innocent. The law does not provide for plea-bargaining nor does it provide an advantage based on legal technicalities.

Federal, state, or local police can affect an arrest. All drug-related offenses are federal and will be turned over to federal authorities. If you request it, Mexican authorities are bound by international treaty and convention to advise the U.S. government's consular representative of your detention and to permit a consular officer to visit you. If you requested this and it was refused, please notify the consular officer. Your ability to contact others (your attorney, family, etc.) may be severely limited and normally at your own expense.

If it is determined that an offense has been committed, your case will be turned over to the Ministerio Publico, the equivalent of a district attorney in the United States. The Agente, or district attorney, conducts a preliminary investigation to determine whether the case can be prosecuted.

If he or she decides that it can, the accused will be turned over to a judge. The judge has 48 hours, excluding holidays and weekends, in which to hold a hearing. The prisoner is brought forward and confronted by the accuser, and the evidence against him/her. At this time, the accused has the right to make a statement in his/her own defense. The judge then has 72 hours from the time the accused is placed at his/her disposition to either release the accused or issue an order for formal imprisonment. If an order of imprisonment is issued, the trial has effectively begun. Bail is not available for persons accused of narcotics offences, and often not granted in other cases.

During questioning by the police and other authorities, a person who does not speak or understand Spanish is entitled to assistance by an official Mexican Government interpreter. He/she is also entitled to an oral translation of any statement he/she is required to sign. Representatives from the U.S. Consulate and Consular Agencies generally **cannot** serve as a translator.

The Mexican Constitution does not condone physical violence. Should your rights be violated by Mexican authorities, you should immediately inform the consular officer, and we will request you fill out and sign a written affidavit of mistreatment. We will then bring your case to the attention of the appropriate Mexican authorities.

### ***The Mexican Trial***

A trial in Mexico consists of the attorneys for the two opposing sides presenting their arguments to the judge in writing. (Note: In some parts of Mexico, for certain types of cases, authorities are beginning to utilize verbal trials. In our experience the trials in our consular district continue to be written). Accordingly, there is no set date for trial and cases move slowly. The judge tries the case based on the briefs presented without the decision of a jury. When the maximum possible sentence is more than two years, the judge has up to one year to reach a verdict. Should your case pass the limit, and you desire it, the Consulate will protest the delay to the proper authorities.

You have the right to request a meeting with your judge, or his/her secretary at any time while your case is pending a solution or sentencing. Generally, the judge hands down a verdict 15 days after you have been brought before him/her for final meeting (Audiencia de Sentencia). If a verdict results in a prison sentence, the time you have already spent in prison counts toward the fulfillment of the sentence. You, as well as the prosecutor, have the right to appeal your sentence within five days.

### **CONSULAR VISITS**

A consular officer or consular agent will visit you on a regular basis while you are being detained. The consular officer will be as helpful as possible in trying to work out any problems that may arise. He or she can provide you with reading material, vitamins to supplement your diet and any other reasonable service allowed by the Mexican authorities. Do not hesitate to ask the consular officer's assistance in any matter concerning your health.

### ***Demonstrating U.S. Citizenship***

In order to continue to receive services from the consular staff, you must provide the consular officer with proof of your U.S. citizenship. You may prove U.S. citizenship by showing the consular officer your passport or naturalization certificate. Often the easiest way is to have a family member in the United States send a certified copy of your birth certificate to the Embassy. These can be obtained from the Bureau of Records or Vital Statistics in the country in which you were born, for a nominal fee.

### ***Keep Track of Your Case***

It is important that you keep track of all details related to your case. Be sure that you know the specific charges, the name and phone number of your attorney, the name and court number (juzgado) of your judge, and the file number of your case. If you provide this information to the consular officer who visits you, we will be able to make inquiries into your case from time to time.

### **PRISON LIFE IN MEXICO**

In Mexico, conditions vary from one prison to another. Some prisons are enlightened institutions where rehabilitation is a serious goal. Many, however, are far below American standards. Mexican law provides only for the prisoner's basic necessities. The officially prescribed prison diet, for instance, consists almost entirely of beans and tortillas. Some jails maintained by local authorities have no budget whatsoever to provide food for prisoners. In others, the prisoners are expected to provide their own clothing, bedding and all other necessities. Prisoners are usually permitted to buy food and other necessities either at the prison commissary or from outside sources. In some prisons, due to inadequate personnel, internal affairs are largely run by a system of trustees or by the prisoners themselves. In such cases, prisoners may be forced to pay for virtually everything, including rent for their cells.

Mexican prison regulations provide that prisoners receive access to medical facilities, but the standard of care varies widely. Some prisons have reasonably adequate care whereas in others such services are extremely scarce.

You should bring any serious medical or dental problems to the attention of the consular officer. You should arrange with relatives or friends for them to send funds to cover any expenses.

### ***Survival Tips***

Prison life, especially in a foreign country, may be a traumatic experience requiring drastic readjustment in habits and attitudes. This is especially true in Mexico where the language, customs and laws may be unfamiliar to you and the standard of living may be lower than that to which you are accustomed. The following suggestions are offered to help you acclimate yourself to a different environment.

- Learn the written and unwritten rules of the prison and the psychology of the other inmates and prison staff. Try to learn the Spanish language well enough to avoid unnecessary friction with the prison administration and fellow prisoners.
- Try to establish friendships and cooperative mutual-aid relationships with compatible fellow prisoners. Isolation and solitude can be self-destructive.
- Work on a commissioned job if one is available or at self-study, a hobby, craft or any other means to keep yourself busy.
- Take care of your health. Try to balance your diet with fresh or canned fruits and vegetables purchased from the prison store or from the outside.
- Exercise whenever possible and make known to the consular officer any medical or dental care you may require. The consular will give you supplementary vitamins each time he or she visits you.

It is suggested that you follow this advice from the outset of your imprisonment. It may take the courts some time to establish your innocence or guilt.

#### ***Commissioned Work Credits***

The Mexican prison system may provide for rehabilitation through work at jobs commissioned by the prison authorities. Two days of work with good behavior at a commissioned job allows one day to be remitted from your sentence. Although commissioned jobs are often scarce or unavailable, you should try to obtain such work whenever possible. Please check with your prison authority about whether this is an option for you.

#### ***Communicating, receiving Mail and Money***

At the discretion of the prison authorities inmates may be permitted use of phones; normally you must purchase a phone card. You may also be able to purchase and use a television in your cell. Some prisoners purchase and use cell phones including with internet capability. You may inquiry with your prison authorities if any of these options are available to you.

The U.S. Consulate and Consular Agencies are not able to receive packages for you. You must request directly with your prison authorities to receive any items from family or friends via mail or during in-person visits.

To receive money or other items from family or friends you should speak directly with your prison authorities about the mechanisms already in place at your facility.

Under urgent circumstances when no other option is available you may receive money sent to you via the U.S. Department of State. To do so, refer the depositor to the travel.state.gov website for specific instructions on how to send money through "OCS Trust"

([http://travel.state.gov/travel/tips/brochures/brochures\\_1224.ht](http://travel.state.gov/travel/tips/brochures/brochures_1224.ht)

[ml](#)). Please be aware this process can take several days. Normally we make purchases for you (instead of handing over large amounts of cash) in accordance with instructions provided by the depositor.

#### **TRANSFER TO U.S. PRISON**

On October 8, 1977, the United States and Mexico signed a prisoner transfer treaty. Since that time, some American and Mexican prisoners have been transferred to their respective countries. If you already have been sentenced, you may be eligible to transfer to a prison in the United States.

The transfer process for a U.S. citizen incarcerated abroad usually begins with the prisoner notifying the U.S. consular representative that he/she wishes to be transferred under the treaty. Thereafter, the U.S. Department of Justice, in its discretion, determines whether a prisoner can transfer to the United States, pursuant to internal Guidelines for Evaluation of Prisoner Transfer Applications. If the U.S. Department of Justice concurs, the U.S. Embassy will contact the foreign ministry. The U.S. Embassy will also assist the prisoner in transmitting the necessary paperwork to the appropriate government authorities, normally the respective Attorney Generals' offices. Should the prisoner's request for transfer be approved by both governments, a consent verification hearing (CVH) will be held, and arrangements will be made between the two governments for the prisoner's transfer to be effected at a time mutually agreeable to the governments. More information may be found at

[http://travel.state.gov/law/legal/treaty/treaty\\_1989.html](http://travel.state.gov/law/legal/treaty/treaty_1989.html) and [http://www.bop.gov/policy/progstat/5140\\_039.pdf](http://www.bop.gov/policy/progstat/5140_039.pdf).

Should you have any further questions, please do not hesitate to ask the consular officer. For urgent matters, please call the U.S. Consulate in Merida at 999-942-5700. From outside of Merida dial 01-999-942-5700.