

INSTRUCTIONAL ORDER

August 2017

Immediately

V.5:28

Distribution: All Employees

Subject: **FOREIGN NATIONALS - ARREST, CONSULAR NOTIFICATION AND DIPLOMATIC IMMUNITY**

Index as:	Aliens, Arrest of Consul Consular Notification	Consular Officer Diplomat Diplomatic Immunity	Diplomatic Officer Foreign National Honorary Consul
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Accreditation Standards: 1.1.4, 1.2.5, 61.1.3
 Cross Reference: Florida Legal Guidelines, Section 28: Diplomatic Immunity
 Replaces: I.O. V.5:28, Foreign Nationals - Arrest, Consular Notification and Diplomatic Immunity (September 2, 2007)
 2016-014 Legal Notice - legal protocol when arresting or detaining a citizen of another country (August 28, 2017)

This Order consists of the following:

- I. Purpose
- II. Policy
- III. Definitions
- IV. Diplomatic Immunity
- V. Contact with Diplomats or Consuls
- VI. Contact With Foreign Nationals (Aliens)
- VII. Additional Information

I. PURPOSE

A. International law, to which the United States is firmly committed, requires that law enforcement authorities of the United States extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. Most of these privileges and immunities are not absolute, and law enforcement officers retain their fundamental responsibility to protect and police the orderly conduct of persons in the United States.

B. Compliance with the duties imposed upon the arrest or detention of a foreign national, regardless of status, is necessary in order for the United States to expect reciprocity from other countries in which a U.S. Citizen may be arrested or detained. The underlying principle is that law enforcement officers should treat a foreign national as they would expect a U.S. citizen to be treated if arrested or detained in another country.

II. POLICY

A. This Order guides Officers when faced with claims of diplomatic immunity and when complying with the notification requirement upon the arrest or detention of a foreign national.

1. Pursuant to international law, treaties such as the Vienna Convention on Consular Relations (VCCR) and federal law, certain diplomats, their family members, servants, and certain embassy administrative, service, and technical personnel have varying levels of immunity from arrest and detention.

2. In other cases, the arrest, detention, life-threatening injury, or death of a foreign national triggers the potential duty to notify the nearest consular office. Certain countries require mandatory notification; others require notification only upon request if the person is arrested or detained.

B. It is the policy of this Department that all rights required under the laws and agreements shall be rendered to all diplomats, consular officers, and foreign nationals. Information will be provided to foreign nationals who may be arrested or detained, and appropriate consular notifications shall be made as detailed in this order.

III. DEFINITIONS

A. Consul (Consular Officer) – A Consular Officer serving as an official representative of a foreign government. Consuls enjoy only limited immunities as opposed to *diplomatic officers* who enjoy unlimited immunity.

1. Consular officers are generally identified by one of the following titles: Consul General, Deputy Consul General, Consul and Vice Consul.

2. Limited immunity extends only to the consular officers and not to their families, staffs, or servants.

3. Consular officers may not be arrested or detained for any criminal offense except felonies that endanger the public safety. Prosecution for other offenses may ensue only upon the issuance of an arrest warrant.

4. Consular officers may be cited for civil infractions.

B. Diplomat (Diplomatic Officer) – Diplomats are entitled to diplomatic immunity, broadly defined as the freedom from local jurisdiction accorded to duly accredited diplomatic officers, their families, staffs, and servants.

1. Diplomatic Officers are generally identified by one of the following titles: Ambassador, Minister, Minister Consular, Consul, First Secretary, Second Secretary, Third Secretary, and Attaché.

2. Persons enjoying diplomatic immunity may not be arrested, detained, or prosecuted for any civil or criminal offense.

C. Foreign National (Alien) – Any citizen of another country, excluding diplomats and consuls, who are in the United States on a temporary basis, either legally or illegally. This includes tourists, students, and aliens. It also includes those holding an Alien Registration Card (I-551), commonly called a “green card”.

D. Honorary Consul – A person, often a foreign national, who has limited duties to assist diplomatic officials. They have no claim of diplomatic immunity.

IV. DIPLOMATIC IMMUNITY

A. Diplomatic (Full) Immunity for Criminal Offenses

1. Diplomatic Immunity, even at the highest level, does not exempt Diplomatic Officers from the obligation of conforming with national and local laws and regulations. The Purpose of immunity is not to benefit the individuals but to ensure the efficient and effective performance of their official missions on behalf of their governments.

2. Individuals who are entitled to diplomatic immunity should have identification cards issued by the U.S. Department of State or the U.S. Mission to the United Nations. The cards are color coded by a border color which reflects a different level of immunity:

- a. Blue border – Diplomats and their families.
- b. Green border – Embassy administrative, technical, and service staff employees.
- c. Red border – Consular Officers, employees, and their families.

3. Significantly, a brief statement of the bearer’s diplomatic status and level of immunity from arrest, detention or criminal jurisdiction is printed on the reverse side of the identification card.

4. For a matrix identifying categories of those entitled to various levels of immunity from arrest or search refer to Attachment D.

B. Incidents Involving Foreign Officials

1. Criminal Incident:

a. If a participant claims diplomatic immunity, the first step is to verify the status of the individual. This may be done by using the telephone numbers listed in this Order. The individual may be detained at the scene until status can be confirmed.

b. Once status is verified, the individual may be detained at the scene until the investigation is complete.

1) If the subject has immunity, handcuffs cannot be used except when the individual poses an immediate threat to safety.

2) Officers should follow Department policies regarding investigative report(s). Once all pertinent information is obtained, the individual must be released if they enjoy immunity.

c. A copy of the report should be faxed or mailed to the U.S. Department of State in Washington D.C. or to the U.S. Mission to the United Nations (U.N.), if the individual has U.N. credentials.

2. Traffic enforcement, Traffic crash, D.U.I.

a. Issuance of a traffic citation for a civil infraction does not constitute an arrest or detention and is permitted. However, the person may not be compelled to sign the citation and may not be arrested for refusing to sign.

b. A copy of the citation and any other documentation regarding the incident should be forwarded to the U.S. Department of State as soon as possible. For mandatory appearance offenses, the U.S. Department of State uses the citation and any report as the basis for requesting an express waiver of immunity.

c. In serious cases; *i.e.*, DUI or personal injury accidents, telephonic notification to the U.S. Department of State is urged. With respect to a field sobriety investigation (FST), Department procedure should be followed; however, the taking of the test (*i.e.*, FST, blood draw or breath test), may not be compelled.

d. If, in the Officer's opinion, the individual is too impaired to drive safely, they should not permit the individual to continue to drive, even in the case of diplomatic agents.

e. In such cases, the Officer should consider:

1) With the permission of the individual, take the person to police headquarters or other location where they may recover sufficiently to drive;

2) Summon, or allow the individual to summon, a friend or relative to drive;

3) Call a taxi for the individual; or

4) With Supervisory approval, provide the individual with transportation.

C. Search and Seizure

1. The person or the property (including a vehicle) of the person, who has full diplomatic immunity, may not be searched, or seized.

2. Vehicles may not be impounded or "booted," but they may be towed the distance necessary to remove them when obstructing traffic or endangering public safety.

a. Exception: If a vehicle owned by a diplomat is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle's status through the National Law Enforcement Telecommunications System (NLETS).

b. Should the vehicle prove to have been stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered temporarily suspended, and a normal search of the vehicle and, if appropriate, its detention is permissible.

D. Waiver of Diplomatic Immunity

1. If an individual who enjoys full diplomatic immunity is involved in a criminal act, it is imperative that Officers complete the investigation and provide a copy of the investigative report to the U.S. Department of State.

2. The U. S. Department of State requests waivers of immunity in every case where the prosecutor advises that, except for the immunity, charges would be pursued. In serious cases, if a waiver is refused, the offender will be expelled from the United States.

3. Effective and informed police work is the basis for the prosecutor's decision as well as the foundation for the U.S. Department of State's waiver requests and any subsequent prosecutions or expulsions.

V. CONTACT WITH DIPLOMATS OR CONSULS

A. Generally, those individuals who are diplomats or consuls will be in possession of identification issued by the United States Department of State, the US Mission to the United Nations or the Florida Department of State.

B. If such identification is produced or the individual claims to be a diplomat or consular official, the Officer shall immediately notify a Supervisor prior to any arrest.

C. The Supervisor will ensure that the United States Department of State is contacted, and the status of the person is confirmed prior to any arrest.

1. The United States Department of State will assist in the identification and status of such individuals. They may be contacted by telephone during normal business hours at (202) 647-1985 or after normal business hours, at (202) 647-7277. Additional information may also be obtained at: www.state.gov/m/ds/immunities/c9118.html.

D. Consular documents, records and correspondence are inviolable and may not be searched or seized.

VI. CONTACT WITH FOREIGN NATIONALS (ALIENS)

A. A foreign national who does not hold diplomatic or consular status is subject to detention and arrest.

B. Arrest or Detention of Foreign Nationals

1. The VCCR provides that the foreign national has a right of consular notification and access if the national is arrested or committed to prison or committed to custody pending trial or is detained in any other manner.

2. According to U.S. State Department materials, there is no explicit exception for short detentions; thus, the U.S. Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop. However, requiring a foreign national to accompany a Law Enforcement Officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight.

C. Notification Upon Arrest or Detention of Alien

1. Pursuant to international law, treaties, and federal law, the arrest or detention of a foreign national triggers the potential duty to notify the nearest consular office of the country of the person arrested or detained.

2. If the person detained or arrested is a citizen of a foreign country that requires mandatory notification, notification must be made, even over the objection of the person.

a. A list and facsimile phone numbers of countries that require mandatory notification is provided in Attachment A.

3. If the person detained or arrested is a citizen of a foreign country that does not require mandatory notification, the person should be advised they are entitled to have notification made. Notification should be made only if the person requests notification.

4. There are suggested statements to be used when advising the person of the notification process for both mandatory and voluntary reporting to the appropriate foreign consulate.

a. An English version of those suggested statements is provided in Attachment B *Suggested Statements to Arrested or Detained Foreign Nationals*.

b. If the arrested/detained person is not fluent in English, translations into various languages may be found on the Internet at:

https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA%20Manual%205th%20Edition_September%202018.pdf.

5. Certain information must be included in the notification.
 - a. The completion and transmitting of the *Foreign Consular Notification Form* (Attachment C) meets the requirements of notification.
 - b. Notification should be sent to the nearest embassy or consulate, if known.
6. The arresting/detaining officer shall make the consular notification prior to end of their shift.
7. The notification procedure should also be followed for foreign nationals who may be seriously injured or die as a result of an accident or criminal act, who become seriously ill, or who become otherwise incapacitated. In such cases, the host nation may be able to provide assistance to the individual and/or assist in family notification.

D. Documentation

1. Officers shall document they provided the suggested statement and made consular notification in the police report.
2. The *Foreign Consular Notification Form* (Attachment C) and the Statement Card, (Attachment B) either the English or foreign version, with the persons' response properly indicated, shall be filed in the Records and Evidentiary Services Division with the original report.

VII. ADDITIONAL INFORMATION

A. The U.S. State Department publications, *Consular Notification And Access* and *Diplomatic And Consular Immunity*, provide additional information on the process.

B. Copies of this publication are available from the:

https://travel.state.gov/content/dam/travel/CNAtrainingresources/CNA_Manual_4th_Edition_August2016.pdf.

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