	ANDOVER POLICE DEPARTMENT GENERAL ORDER	Number: O2307 Page: 1 of 5 Distribution: All
Title: CONSULAR NOTIFICATION AND ACCESS		Section: Arrest/Detention
Issued: 02/22/2011	Effective: 03/02/2011	Revised: 03/24/2015
Rescinds: All Previous	Amends:	
CALEA References: 1.1.4		
Review: Annual	Authority: Chief Michael A. Keller	

I. Purpose

The purpose of this General Order is to provide instruction and guidance on consular notifications and access required upon the arrest, detention or death of foreign nationals.

II. Policy

It is the policy of this department to adhere to the guidance provided by the U.S. Department of State concerning consular notification and access based on treaty obligations. Adherence to these obligations helps foreign governments provide assistance to foreign nationals arrested in the United States and helps the U.S. government protect U.S. citizens abroad. This department shall ensure that all foreign nationals are treated with respect and provided with immunities under international law where applicable.

III. Definitions

A. **Foreign National:** For the purposes of consular notification a foreign national is any person who is not a U.S. citizen. Lawful permanent resident aliens (or LPRs) who have resident alien registration cards (green cards) retain their foreign nationality and must be considered foreign nationals. The terms foreign national and alien are used interchangeably. Undocumented or illegal aliens are also foreign nationals.

B. **Detainee:** A detainee in this context is a foreign national who is arrested or placed in custody pending investigation or judicial appearance, or both. Brief stops of such persons for motor vehicle violations or similar incidents are not considered detentions for purposes of this General Order.

C. **Consul or Consular Officer:** A citizen of a foreign country employed by that government and authorized by both the sending and the host countries to provide assistance on behalf of that government to its citizens in another country. Such persons are generally assigned to a consular section of an embassy in Washington, D.C., or to a consulate in another U.S. city. Consular officers or consuls who are accredited by the U.S. Department of State bear identification cards to that effect issued by the U.S. Department of State.

D. **Mandatory Notification:** As identified in this General Order, certain foreign nations have entered into specific bilateral agreements with the United States requiring that their consulate or embassy be notified of any arrest or detention of a foreign

national of their country regardless of the desires of the arrested or detained foreign national.

E. **Notification at the Foreign National's Option:** Foreign nationals from countries that are parties to the Vienna Convention on Consular Relations (VCCR) must be provided with the option of having the consulate notified of their arrest or detention. If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate.

F. **Diplomatic Immunity:** A requirement by international law under which certain foreign government officials are not subject to the jurisdiction of local courts and authorities, for both their official and, to a large extent, their personal activities.

G. **Inviolability:** A principle embodied in international law that generally precludes law enforcement officials from handcuffing, arresting, or detaining certain foreign diplomatic officials, in any form, and forbids U.S. authorities from entering the residences, automobiles or other property of protected persons. Where public safety is in imminent danger or it is apparent that a violent felony may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity or defend themselves or others from personal harm.

IV. Regulations

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V. Procedures

A. Identification

1. Officers shall identify the foreign national's citizenship in the most efficient manner possible (by passport, travel document, or diplomatic card, for example).
2. Only an identity card issued by the U.S. Department of State's Office of Protocol or by the U.S. mission to the United Nations may be used as a valid identification for diplomats and consular officials. The identification cards are color coded as follows:
   a. Blue border: diplomatic officers and their families;
   b. Green border: embassy administrative, technical, and service staff employees;
   c. Red border: Consular officials, employees or their families.
3. If an officer discovers through the identification process that a foreign national has or may have diplomatic immunity, they cannot be arrested and have other protections.

B. Consular Notification Obligations

1. Consular notification obligations are triggered upon any one of the following situations:
   a. The arrest or detention of a foreign national;
   b. The death or serious injury of a foreign national; or
   c. A wreck or crash in U.S. territory of a ship or aircraft under foreign registry.
2. In cases where a foreign national is the victim of a serious crime or felony, the officer or supervisor shall ask the victim whether he or she would like consular notification to be made. The Federal Bureau of Investigation shall be notified when any of the following acts have been committed against a foreign national:
   a. Murder or attempted murder;
   b. Conspiracy to commit murder;
   c. Manslaughter or attempted manslaughter; or
   d. Kidnapping or attempted kidnapping;
3. Officers who suspect that a person being arrested or detained is not a U.S. citizen shall inquire about the detainee's nationality in order to determine whether any consular notification obligations apply. When such requests are made, the officer should explain the purpose of the inquiry.
4. If an arrestee or detainee indicates that he or she is a foreign national, he or she should be asked for a passport or green card as identification. Officers shall determine the foreign national's country using the identification information provided. Undocumented illegal aliens are also entitled to consular notification and access. Absent any citizenship documentation, accept the foreign national's own statement about nationality. Officers shall not arrest any illegal or undocumented alien for violation of Federal immigration laws. If it is determined that the person is an illegal alien, the officer may send the information to Immigration and U.S. Customs Enforcement (ICE) upon approval of a supervisor and document the notification in the incident report.
5. Persons who indicate that they are dual citizens of another country and the United States shall be treated as a U.S. citizen. In other words, consular notification is not required.

C. Mandatory versus Optional Notification

1. Foreign nationals shall be informed of the option to communicate with their consular officials whenever they are arrested or detained.
   a. In most cases, foreign nationals shall have the option of deciding whether to have their consular representative notified of the arrest or detention. This applies in all cases except foreign nationals who are citizens of countries listed as Mandatory Notification Countries on the U.S. Department of State web site (http://travel.state.gov/content/travel/english/consularnotification.html).

b. Those nations listed as Mandatory Notification Countries have bilateral treaties with the United States that require authorities to make notification to consular officials of the arrest or detention of one of their nationals, regardless of that national's wishes.

2. The arresting officer or supervisor shall notify an arrested or detained foreign national when a mandatory notification has been made to their consulate or embassy.
   a. The individual shall be advised that he or she is not required to accept the consulate's assistance, but that the consulate may be able to help obtain legal counsel, contact family members, and visit the individual in detention, among other things.
   b. In most cases, the reason for the arrest and detention does not have to be volunteered to the consular official; it should be provided only when specifically requested by the official or when it is required under a special provision in a bilateral treaty.
   c. Mandatory notification requirements must be honored, even if the officer has reason to believe that the foreign national may suffer prosecution or mistreatment by his or her government, though precautions should be taken to prevent the release of sensitive information.
3. Under no circumstances shall any information indicating that a foreign national has applied or is considering applying for asylum be disclosed to a foreign national's government official.

D. How to Provide Notification

1. When an officer believes that consular notification may be required, he or she should notify a supervisor.
2. The supervisor should verify the country of origin of the foreign national and determine whether consular notification is at the option of the foreign national or whether it is mandatory.
3. In the case of optional notifications, the supervisor or detaining officer shall ascertain whether the foreign national desires that the notification be made.
4. Consular Notification Statements shall be provided to foreign nationals for review and signature. Translations of these statements are available through the State Department's web site (http://travel.state.gov/content/travel/english/consularnotification.html).
5. Notifications to consuls or embassies should be made by facsimile transmission as soon as reasonably possible and a copy of the completed fax transmission verification sheet retained with the incident report. A suggested fax sheet for notification to foreign consuls and a list of foreign embassies and consulates in the United States with contact information is provided on the State Department's web site.

6. The prosecutor's office should be notified whenever consular notification has been made.
7. Consular officials shall also be notified in the foregoing manner upon the death of a foreign national that comes to the attention of this department and in incidents involving wrecks or crashes in U.S. territory of ships or airplanes registered to foreign countries.
8. The department shall keep a record of each instance a consul has been contacted to demonstrate that it has complied with the notification requirements set forth by the U.S. Department of State. The records will maintained in the associated case files.

E. Consular Access to Detained Foreign Nationals

1. This department shall provide consular officers with reasonable access to detainees who request such access consistent with this department's policy and procedures governing visitation of detainees.
2. Authorized personnel shall permit transmission of communications from foreign nationals to their respective consular official provided the transmissions are of reasonable duration and frequency.
3. Consular officials shall not serve as legal counsel for their foreign national constituents and do not retain attorney-client privileges. However, consular officials may be allowed to converse privately with their constituent if they so request and the request can be reasonably accommodated.
4. Consular officials may provide the following types of assistance to a detainee under the terms of international agreements, although such services vary by the capabilities of country representation in the United States:
   a. Determine the detainee's situation and needs;
   b. Arrange for legal counsel and monitor case progress;
   c. Contact authorities concerning the condition of confinement and bring personal items to the detainee as permitted by departmental policy; and
   d. Contact the detainee's family on his or her behalf.

F. Reference Information

Information on notification requirements, procedures and contact numbers may change. The U.S. Department of State web site shall be consulted periodically to ensure the department remains in compliance with international treaties.