

Seattle Police Department Manual

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6.020 - ARRESTS AND DETENTIONS OF FOREIGN NATIONALS

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I. Policy

Identifying Foreign Nationals

Under ordinary circumstances, a general request for adequate identification as part of a criminal investigation is all that is necessary or appropriate. Officers will not ask for documents relating to someone's immigration or alien status for the sole purpose of establishing their status but may be presented by the person if this is their only source of identification. Officers may ask the person if they are a foreign national after they are arrested or detained so that the mandatory advisement statement can be made.

It is the intent of the Seattle Police Department to foster trust and cooperation with all people served by the Department. Complainants, witnesses and victims are encouraged to communicate with Seattle Police officers without fear of inquiry regarding their immigration or alien status. Being an undocumented person in this country, barring any criminal activity, is a federal civil violation not enforced by the Seattle Police Department. In Seattle, only ICE (Immigration and Customs Enforcement) and other federal agencies can enforce federal laws relating to illegal entry and residence within the United States.

It is the policy of the Department that officers will not request specific documents for the sole purpose of determining someone's immigration or alien status. If offered by a person and not specifically requested by the officer, it is permissible to rely on immigration documents to establish someone's identity in response to a general request for identification.

Officers will not initiate police action based solely on an individual's immigration or alien status, nor shall they ask for identification or documents to establish the person's immigration or alien status.

Under the terms of the Vienna Convention and other treaties, whenever officers take a person into custody who states that they are a foreign citizen, additional notification procedures are required. Compliance with this policy and procedure is important because it enhances the ability of the United States to insist that foreign officials provide the same rights to United States diplomats and citizens who are arrested abroad.

Failure to provide appropriate notification may result in suppression of evidence and subsequent loss of convictions.

A. Definitions

1. **Foreign National:** A person who was born outside the jurisdiction of the United States, is a citizen of a foreign country, and has not become a naturalized United States citizen under United States law. The person may be a tourist, visitor, migrant worker with a temporary work permit, alien resident, illegal alien, asylum-seeker, or person-in-transit.
2. **Diplomatic Immunity:** A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.
3. **Consular Immunity:** Consular immunity protections are similar but not as extensive as diplomatic immunity. Consular officers do not have absolute immunity from a host country's criminal jurisdiction and may be tried for certain local crimes. They are immune from local jurisdiction only in cases directly relating to consular functions.
4. **Alien:** Any person who is not a citizen or national of the United States of America; foreigner.
5. **Citizenship:** Normally, citizenship describes the country that a person was born in. However, a person can change citizenship in a process called naturalization.
6. **Naturalization:** The bestowment of citizenship upon a person when he/she is born.
7. **National:** An individual who has pledged allegiance to a certain country.
8. **Nationality:** The description used on an individual's citizenship or country where the person is deemed a national.
9. **Legalized Aliens:** Illegal aliens who were entitled to submit an application for temporary resident status under the legalization provision of the Immigration Reform and Control Act of 1986.
10. **Passport:** A document that is issued by the government of the country of a person's citizenship. Passports have expiration dates, and while traveling in the United States, a passport must remain valid throughout the entire duration of a person's stay.
11. **Permanent Resident:** Any person who is not a citizen of the United States and who lives in the United States under lawfully recognized and legally recorded permanent residence as an immigrant. A permanent resident is also referred to as a Permanent Resident Alien, Resident Alien Permit Holder, and Green Card Holder.
12. **Refugee:** A refugee is anybody who is incapable or reluctant to go back to his or her country of nationality due to fear of persecution because of race, religion, nationality, membership in a unique social group, or political views. The country of nationality is considered to be the country in which the foreigner most recently lived for those without nationality. Refugees are entitled to change their status to the legal Permanent Resident category after one year of continuous presence in the United States.
13. **United States Citizenship and Immigration Services (USCIS):** A bureau of the United States Department of Homeland Security (DHS). It performs many administrative functions formerly carried out by the Immigration and Naturalization Service (INS), which was part of the Department of Justice.

14. ICE (Immigration and Customs Enforcement): ICE is the principal investigative arm of the United States Department of Homeland Security. It was created in 2003 when enforcement elements of the Immigration & Naturalization Service and the United States Customs Service merged. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.

II. Procedures

A. Summary of Requirements Pertaining to Foreign Nationals

1. When foreign nationals are arrested or detained, it is mandatory that they be advised of the right to have their consular officials notified, without unreasonable delay.

a. Law enforcement officers who actually make the arrest or who assume responsibility for a foreign national's detention are responsible for making proper notification.

b. The mandatory advisement statement is located in the "Consular Notification and Access Reference Card: Instructions for Arrests and Detentions of Foreign Nationals" and the Officer's Resource Booklet (form 39.0).

(1) This advisement must be made even if the suspect will not be interrogated.

2. In some cases, the nearest consular official must be notified of the arrest or detention of a foreign national, regardless of the foreign national's wishes.

3. Consular officials are entitled to access their nationals in detention and are entitled to provide consular assistance. However, notification places no obligation upon consular officials to perform any services on behalf of the foreign national.

4. Additional circumstances in which consular officials must be notified include:

a. When a government official becomes aware of the death of a foreign national;

b. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent;

c. When a foreign ship or aircraft is involved in a collision or accident.

B. When a Foreign National is Arrested or Detained

1. Officers should attempt to determine the person's nationality. In the absence of other information, officers should assume this is the country on whose passport or other travel document the foreign national has travelled.

2. If the foreign national's country is on the list of mandatory notification countries:

NOTE: A list of the mandatory notification countries is located in sub-section D below.

a. Officers should notify that country's nearest consular official, without unreasonable delay, of the arrest/detention – after arrival at the precinct, jail, or other significant detention such as hospitalization, but before interrogation or booking.

(1) Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference book, part 6. This reference book may be obtained from a Patrol sergeant, Precinct Captain, or King County Jail staff.

(2) Officers should use the Fax Sheet for Notifying Consular Officers of Arrests or Detentions (form 58.0) to make notification when the consulate has a fax machine available.

(3) Officers should submit the fax sheet and fax transmittal report to the Data Center.

(a) If the fax machine does not print a fax transmittal report, officers shall record the date and time the fax was sent in the General Offense Report.

(4) If a fax machine is not available, officers shall personally call to make consular notification. The date, time, and point of contact shall be documented in the General Offense Report.

(a) If contact is not successful, officers shall document the notification attempt in the General Offense Report.

(b) Officers should notify jail staff if the suspect is being booked and notification has not been made.

b. Officers should tell the foreign national of the notification.

(1) The foreign national must be advised of the following:

"Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible."

(2) Translations of this statement are found in the "Consular Notification and Access" reference book, part 4.

c. Notification must be made, regardless of the foreign national's wishes.

(1) Where an arrestee is seeking asylum in the United States, officers shall not reveal that fact in their mandatory notification to the foreign consul. Arrangements can be made to protect the arrestee while ensuring that his/her government's right to notification is protected.

(a) The United States Citizenship and Immigration Services (USCIS) must be contacted immediately in these cases.

(b) Under no circumstances shall the foreign national be turned over to any foreign government official. They shall remain in protective custody until they are delivered to the United States Citizenship and Immigration Services (USCIS).

d. Officers shall keep a written record of the notification and actions taken.

3. If the foreign national's country is not on the mandatory notification list:

a. Officers shall offer, without unreasonable delay, to notify the foreign national's consular officials of the arrest/detention.

(1) The foreign national must be informed of the following:

"As a non-United States citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?"

(2) Translations of this statement are found in "Consular Notification and Access" reference book, part 4, which may be obtained from a Patrol sergeant or Precinct Captain.

b. If the foreign national asks that consular notification be given, officers shall notify the nearest consular officials of the foreign national's country without unreasonable delay – after arrival at the precinct but before any interrogation or booking.

(1) Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference book, part 6.

(2) Officers shall use the Fax Sheet for Notifying Consular Officers of Arrests or Detentions (form 58.0) to make notification when the consulate has a fax machine available.

(3) Officers shall submit the fax sheet and fax transmittal report to the Data Center.

(a) If the fax machine does not print a fax transmittal report, officers shall record the date and time the fax was sent in the General Offense Report.

(4) If a fax machine is not available, officers shall personally call to make consular notification. The date, time, and point of contact shall be documented in the General Offense Report.

(a) If an officer is unable to make contact, he/she shall document the notification attempt in the General Offense Report.

(b) Officers shall follow up to ensure that notification is made.

C. Mandatory Notification Countries

Antigua and Barbuda Fiji Malta Singapore

Armenia Gambia, The Mauritius Slovakia

Azerbaijan Georgia Moldova Tajikistan

Bahamas, The Ghana Mongolia Tanzania

Barbados Grenada Nigeria Tonga

Belarus Guyana Philippines Trinidad and Tobago

Belize Hong Kong Poland** Turkmenistan

Brunei Hungary Romania Tuvalu

Bulgaria Jamaica Russia Ukraine

China* Kazakhstan Saint Kitts and Nevis United Kingdom

Costa Rica Kiribati Saint Lucia U.S.S.R.***

Cyprus Kuwait Saint Vincent/Grenadines Uzbekistan

Czech Republic Kyrgyzstan Seychelles Zambia

Dominica Malaysia Sierra Leone Zimbabwe

* Does not include Republic of China (Taiwan) passport holders.

** Mandatory for non-permanent residents only.

*** Passports may still be in use.

D. Diplomatic Immunity

1. Foreign nationals with diplomatic immunity are issued an Identification Card by the United States Department of State.

a. The degree of immunity is detailed on the back of the ID card.

- b. Officer's should contact the Department of State to verify the immunity status of the foreign national (see page 9 for contact information.)
- 2. When a foreign national with full diplomatic immunity is involved and the safety of the public is in imminent danger or it is apparent that a crime may otherwise be committed, officers may intervene to the extent necessary to halt such activity.

This intervention may include use of force and/or arrest if otherwise justified according to existing policy. The Department of State must be contacted immediately in these cases.

- 3. When a foreign national with full diplomatic immunity is suspected of committing a crime, officers shall obtain as much information as possible during the initial investigation and thoroughly document it in the General Offense Report.

Officers should include "Diplomatic Personnel" and any appropriate offenses in the "Offenses" block. The primary officer will send the General Offense Report to a sergeant for approval and notify the sergeant directly. Any paper documents will be forwarded to the Data Center in an Alert Packet.

- 4. The sergeant will immediately review the General Offense Report and, after approval, route it for transcription as normal.
- 5. The sergeant will send a VMAIL titled "Alert Packet" to the Data Center handle and the Records Transcription handle. The VMAIL will contain the General Offense Number.
- 6. The Data Center will promptly fax a copy of the approved General Offense Report to the Department of State so that diplomatic remedies may be sought (see page 9 for contact information.)
- 7. Foreign nationals may be stopped for investigation (Terry Stop) or stopped and cited for traffic violations regardless of their diplomatic immunity.

- a. A traffic stop is not considered to be an arrest or detention as it relates to diplomatic immunity.
- b. If the officer judges the individual too impaired by alcohol/narcotics to drive safely, the officer should not permit the individual to continue to drive (even in the case of diplomatic agents).

III. Guidelines

- A. Per SMC 4.18.010, the Department will assist federal agencies as resources allow and while considering the enforcement priorities of the Department. Designated officers will be assigned to assist federal agencies from time to time to arrest previously deported aliens who are currently involved in criminal activity. Any joint patrol with a federal agency will be with the express approval of the officer's chain of command.
- B. Foreign nationals must be told of their right to consular notification and access in all cases in which they are arrested or detained. If the detainee requests notification, officers must ensure that notification is given to the nearest consulate or embassy of the detainee's country without unreasonable delay.
- C. A foreign national may present a foreign passport or an alien registration document as identification. If they present a document that indicates birth outside the United States, or claim to have been born outside the U.S., they may be a foreign national. Unfamiliarity with English may also indicate foreign nationality.
- D. A person who is a citizen of the United States and another country may be treated exclusively as a United States citizen when in the United States. In other words, consular notification is not required if the detainee is a U.S. citizen. This is true even if the detainee's other country of citizenship is a mandatory notification country.
- E. Consular notification should not be confused with the Miranda warning, which is given regardless of nationality to protect the individual's constitutional rights against self-incrimination and to the assistance of legal counsel. Consular notification is given as a result of international legal requirements, so that a foreign government can provide its nationals with whatever consular assistance it deems appropriate.
- F. Generally, officers may use their discretion in deciding how much information to provide consistent with privacy considerations and the applicable international agreements. Reasons for the detention do not have to be provided in the initial communication, and the Department of State recommends that it not be provided unless requested specifically by the consular officer, or if the detainee authorizes the disclosure. Officers shall document the requests by the Department of State or wishes of the detainee in the General Offense Report.

See Seattle Police Manual Section 15.310 – Foreign Nationals Seeking Asylum.

- G. If the alien is an asylum seeker, arrangements can be made to protect the alien while ensuring that his/her government's right to notification is protected. Under no circumstances should the fact that a foreign national has applied for asylum be revealed to his/her consular official. Specific guidance on such cases should be obtained from the Department of State and/or United States Citizenship and Immigration Services (USCIS).
- H. Consular notification is "better late than never." Notification procedures should be followed as soon as it is recognized that a foreign national is in detention but consular notification procedures were not followed.
- I. If the Department of State receives a complaint that consular notification was not provided, it will take appropriate action. For example, the Department may request the relevant facts from the detaining federal, state, or local authority; discuss the matter with the foreign government involved; apologize on behalf of the government of the United States to the concerned foreign government for a failure to provide consular notification; intervene to ensure that consular access is permitted; or seek to work with the involved federal, state, or local detaining officials to improve future compliance.

J. Identifying Diplomatic and Consular Officers and their Degree of Immunity

- 1. Diplomatic and consular officers (including consuls and honorary consuls) have identification cards issued by the Department of State. Each card has a statement of immunity on the reverse side. Officers should read the back of identification cards carefully as there are different degrees of immunity.

The cards are color-coded as follows:

2. Blue-bordered cards:

- a. Are issued to diplomatic officers and their families.
- b. Are issued to U.N. diplomatic officers and their families.
- c. Entitle the bearer to full criminal immunity. They may not be arrested or detained. They may be given notices of violation (traffic citations).

3. Green-bordered cards:

- a. Are issued to embassy administrative and technical staff employees and their families. The card signifies that the bearer is entitled to full criminal immunity and may not be arrested or detained. They may be given notices of violation (traffic citations).
- b. Are issued to embassy service staff employees. The card signifies that the bearer is entitled to immunity for official acts only.

4. Red-bordered cards:

- a. Are issued to career consular officers. The bearer of this card is entitled to immunity for official acts only.
- b. Are issued to consular officers/employees and their families from countries with which the United States has special agreements. The bearer of this card is entitled to full criminal immunity and may not be arrested or detained.
- c. Are issued to honorary consular officers. The bearer of this card is entitled to limited immunity for official acts only.

K. Questions regarding an individual's status or immunity should be referred to the United States Department of State Office of Protocol during working hours, and to the Bureau of Diplomatic Security after hours.

1. The Department of State encourages officers to contact them to verify the status of individuals who present a diplomatic or consular identification card. It is common that former diplomatic officials and consular employees retain their Department of State identification card(s) even after their privileges are no longer in effect.

L. Diplomatic Immunity

1. Once a person claims to be entitled to immunity, officers should request some form of identification to substantiate the claim. Officers shall immediately advise the person that their immunity status must be verified.
2. In the event that an individual claiming immunity cannot provide satisfactory proof, and the normal course of action in response to the offense would be arrest or detention, the officer may continue to detain the suspect until confirmation of the individual's status can be made. If the claim of immunity is not valid, the officer should follow standard procedures, again keeping in mind the right of foreign nationals to contact their embassy or consulate.
3. After a person with immunity has been released, collecting information, investigating incidents, and preparing reports do not violate a person's immunity.
4. A complete report of any incident involving immunity is essential. Since officers cannot make an arrest when immunity is involved, as much information as possible should be obtained at the time of the incident. This information should be thoroughly documented in a General Offense Report and "Diplomatic Personnel" should be listed in the "Offenses" block in addition to the relevant offenses. The Data Center will fax a copy of the approved report to the Department of State. When it is presented with a detailed report, the Department of State can pursue the case through diplomatic channels.

M. Record Keeping

1. Officers should always document the advisement of consular notification in a General Offense Report.
2. Officers must document their compliance with the notification requirements. When notification is at the discretion of the foreign national, officers must document that the foreign national was informed of their option of consular notification, the date and time when they were so informed, and whether or not the foreign national requested that consular officials be notified. If a confirmation of receipt of notification is available, it should be forwarded to the Data Center.
3. It is important that the Department of State is notified in all matters involving persons with diplomatic or consular immunity. Officers investigating an incident which involves a foreign diplomat or consul should include "Diplomatic Personnel" in the "Offenses" block of the General Offense Report. The Data Center will fax a copy to the Seattle office of the Department of State, Bureau of Diplomatic Security.

N. Important Contact Information for Law Enforcement Officers

Questions about diplomatic and consular immunity:

The Office of Protocol

(202) 647-1985

After Hours: Diplomatic Security Command Center

Telephone: (571) 345-3146 or 1-866-217-2086

Consular notification and access inquiries/ordering training materials:

Telephone: (202) 647-4415

After Hours: (202) 647-1512

Fax: 202-736-7559

Email: consnot@state.gov

Website: Consular Notification and Access

Ordering diplomatic and consular immunity instruction manual:

Telephone: (202) 895-3600

Fax: (202) 895-3613

Website: <http://www.state.gov/m/ds/immunities/c91118.htm>

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