

DEPARTMENT GENERAL ORDER 03-08

OFFICE of the CHIEF OF POLICE
REPLACES/AMENDS: None

DATE: September 19, 2003

ARREST OF FOREIGN NATIONAL: CONSULAR NOTIFICATIONS

I. PURPOSE.

To establish guidelines in regard to the consular notification process required when a foreign national is taken into law enforcement custody. Such situations include arrests, commitment to prison, commitment pending trial, hospital detention, or other types of detention.

II. DEFINITIONS.

Consular Officer – An individual chosen by a foreign government to perform consular functions. This may be a diplomat assigned to an embassy or a citizen or permanent resident of the U.S. authorized by the foreign government to perform consular duties.

Foreign National – A non United States citizen. This includes both legal and illegal aliens who may be present in the country.

III. U.S. TREATY COMMITMENT.

In accordance with the Vienna Convention for Consular Relations of 1963 (VCCR), federal, state, and local law enforcement officials are bound to uphold the principles embodied in the aforementioned treaty. As such, law enforcement agencies are obligated to fulfill three basic functions under the VCCR:

1. Prompt notification to the foreign national of the possibility of consular assistance.

2. Prompt notification to the foreign national's nearest consular officials so that they can perform whatever consular services they deem appropriate.
3. Cooperation toward consular officers carrying out their official duties.

IV. STATUS OF FOREIGN NATIONALS.

All foreign nationals (aliens) are entitled to consular notification and access, regardless of their visa or immigration status in the U.S. Thus "illegal" aliens have the same rights to consular assistance as do "legal" aliens.

Consular officers are entitled to visit and communicate with their detained nationals. Such conversations should normally be afforded a degree of privacy; however, law enforcement officials may monitor the meeting for security purposes. Similarly, law enforcement personnel may make reasonable regulations about the time, place, and manner of a consular visit with a detainee.

V. NOTIFICATION PROCESS.

In all instances where foreign nationals have been detained the government officials responsible for the detention are obligated to ensure the detainee is notified of the right to contact the detainee's consulate. The detainee may be given notification either orally or in writing; however, for the purposes of this order, notification shall be made in writing.

If a foreign national wishes to contact his/her consulate, the responsible law enforcement officer must be able to confirm such contact. Permitting the alien access to a phone, without taking further action, will not be sufficient for this purpose.

Under the law, authorities **do not** have to provide the reasons for the detention in their initial communication with the consulate. This information should not be given unless it is requested specifically by the consulate officer. Similarly, officers should not inform the foreign consulate if the detainee has requested asylum.

A. Mandatory Notification Countries

A country may designate itself as one which requires mandatory notification of its consulate whenever someone from their country is detained. In all such cases officers shall give proper notification to the consulate of the applicable country.

The list of mandatory notification countries is as follows:

Algeria	Guyana	Saint Vincent & Grenadines
Antigua	Hong Kong	Seychelles
Armenia	Hungary	Sierra Leone
Azerbaijan	Jamaica	Singapore
Bahamas	Kazakhstan	Slovakia
Barbados	Kiribati	Tajikistan
Belarus	Kuwait	Tanzania
Belize	Kyrgyzstan	Tonga
Bulgaria	Malaysia	Trinidad & Tobago
China	Malta	Tunisia
Costa Rica	Barbuda Mauritius	Turkmenistan
Cyprus	Moldova	Tuvalu
Czech Republic	Nigeria	Ukraine
Dominica	Philippines	United Kingdom
Fiji	Poland	U.S.S.R.
Gambia	Romania	Uzbekistan
Georgia	Russia	Zambia
Ghana	Saint Kitts & Nevis	Zimbabwe
Grenada	Saint Lucia	

If the alien is from a “mandatory notification” country, notification must be given **even if the alien objects or claims to be afraid**. The alien should always be informed that his/her embassy/consulate has been notified of their detention.

B. Non-Mandatory Notifications

When a detained foreign national is from a country where notification is non-mandatory, an officer should only notify the consulate upon the request of the detainee.

C. Timeliness of Notifications

The law requires that a foreign national be notified “without delay” of the right to consular assistance. There should be no deliberate delay and notification should occur as soon as reasonably possible. In the case of arrest, it is expected such notification will have taken place by the time of “booking” at a detention facility.

1. Notification to Mandatory Notification Countries

Immediately generally implies no later than 2-4 days.

2. Notification to Non-Mandatory Notification Countries

Following the detainee's request that notification be made, "without delay" normally means no later than seventy-two (72) hours after detention.

Notification of arrests and detentions outside of a consulate's regular working hours are not required. Should a phone message or FAX be sent, follow-up calls during normal business hours should be made to ensure that the initial communication was received.

D. Failure to Notify

In the event consular notification procedures were not followed in connection with the arrest/detention of a foreign national, it is incumbent upon the responsible law enforcement official to make such notification as soon as practical.

In such circumstances, the state department will generally become involved and initiate such investigation and/or diplomatic apologies as are necessary.

E. Notification Unnecessary

Notification to a foreign consulate is unnecessary under the following circumstances:

1. If the foreign national has already established contact with his/her consular officials, the Department of State does not consider it necessary to make consular notification.
2. If the proceedings against the alien which resulted in the detention have ended, so that consular assistance is unlikely to have any continuing relevance.
3. A person who is a U.S. dual national. One who is a citizen of the U.S. and another country may be treated exclusively as a United States citizen when in this country.
4. A claim of U.S. citizenship. Officers who are informed by detainees that they hold U.S. citizenship, have a right to rely on that assertion and assume consular notifications are irrelevant.

5. Brief detentions. When an alien is cited and immediately released, as in a traffic ticket or minor accident situation, consular notification procedures are not required because the alien is free to contact consular officers independently.
6. Aliens detained at port of entry. Notification is not required when aliens are found inadmissible at a port of entry and are required to remain there until they can depart.

B. State Department Contacts

Officers are not required to notify the U.S. State Department of a detention or arrest. However, the state department will serve as a valuable resource should the agency need guidance. Inquiries should be directed to the Office of the Assistant Legal Advisor for Consular Affairs, U.S. Department of State, Washinton D.C. 20520, BP: 202-647-4415 or the State department Operations Center, BP: 202-647-1512.

Phone and FAX numbers for foreign embassies and consulates in the United States are available at: travel.state.gov/notification6.html.

Translations into selected languages are available at: travel.state.gov/notification4.html.

VI. DOCUMENTATION

The Department of State strongly recommends that officers making consular notifications document their activities. This should include at a minimum:

1. Notification to the foreign national that he/she is entitled to have consular notification.

Sample Statement When Consular Notification is Optional:

As a non-U.S. 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?

Sample Statement When Consular Notification is Mandatory:

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. Notification of the appropriate consulate (Refer attached notification form).
3. Any and all communication with the consulate.

The statement issued to a foreign national, the consular notification form, and any other related documentation, such as subsequent communications with a foreign consulate or embassy, should be attached to the incident report.

BY ORDER OF:

THOMAS J. BYRNE
Chief of Police

TJB: dld

CALEA Reference: 1.2.5