



# RICHMOND POLICE DEPARTMENT GENERAL ORDER



Subject: <b>PROCEDURE FOR CONSULAR NOTIFICATION OF FOREIGN NATIONALS</b>	Chapter 1	Number 10	Pages 12
References: CALEA Standards: 1.1.4, 61.1.3d	Related Orders: N/A	Effective Date: 02/21/2019 By: Review Prv. Rev. Date: 10/08/15	
Chief of Police: <div style="text-align: center; margin-top: 10px;"><i>William C. Smith</i></div>			

## I. PURPOSE

The purpose of this directive is to provide guidance to law enforcement officers regarding the various categories of foreign diplomatic and consular personnel, and the privileges and immunities to which they are entitled. In addition, this directive provides instruction and guidance to police personnel regarding the arrest and detention of foreign nationals. [CALEA 61.1.3d]

## II. SUMMARY OF CHANGE

*This revision updates section VII. (E) Identification Cards. The specific changes are noted in bold italicized text throughout the document.*

## III. POLICY

- A. The special privileges and immunities afforded foreign diplomats and consular representatives assigned to the United States reflect rules developed among the nations of the world regarding the manner in which civilized international relations must be conducted. In their dealings with foreign diplomatic and consular personnel, law enforcement officers shall recognize and show due respect for these privileges and immunities. At the same time, police officers should understand that diplomatic immunity is not a license to break the law or to avoid personal liability.
- B. Notwithstanding any privileges or immunities to which they may be entitled, foreign diplomats who violate traffic laws shall be cited. Allegations of serious crimes shall be fully investigated and promptly reported to the Department of State, and procedurally developed to the maximum permissible extent. In circumstances where public safety is in imminent danger or it is apparent that a serious crime may be committed, police officers may intervene to the extent necessary to halt such activity. The power of police officers to defend themselves or others from personal harm is in no way diminished by the rules of diplomatic immunity.

## IV. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this General Order. Failure to comply will result in appropriate corrective action. Responsibility

rests with the Division Commander to ensure that any violations of policy are investigated and if appropriate, training, counseling and/or disciplinary action is initiated.

This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

## V. DEFINITIONS

- A. **FOREIGN NATIONAL** – is any person who is not a United States citizen. The terms “foreign national” and “alien” may be used interchangeably. Lawful permanent resident aliens, who have a resident alien registration card (INS Form I –551), commonly known as a “green card”, must be considered as “foreign nationals” for purposes of consular notification.
- B. **CONSULAR OFFICER** – is a citizen of a foreign country, who is employed by the foreign government and authorized to provide assistance to that government's citizens while they are in a foreign country.
- C. **ARREST** – for the sake of this order, means full custodial arrest and detention, in any form, excluding an arrestee released on a summons.
- D. **DIPLOMATIC IMMUNITY:**
  - 1. While a person claiming diplomatic immunity may present any number of identification papers, the only one that is indicative of the level of privilege and immunity is a card issued by the U.S. State Department, Protocol Office. The holder's level of immunity will be indicated on the card. If the person claiming immunity does not possess this card and the incident involves a criminal offense, officers may detain the individual either at the scene or at a Department facility long enough to verify official status.
  - 2. If questions arise about this procedure or if an arrest is necessary for a felony, the officer shall notify his/her immediate supervisor, who in turn shall notify the Watch Commander. The Watch Commander (in the absence of the Watch Commander, the affected Precinct Commander) shall call the appropriate agency for verification of identity and level of immunity. A list of agencies can be located at the Warrant Services Desk and each Precinct.

NOTE: In all situations pertaining to procedures, roles, and responsibilities stated in this general order, the affected Precinct Commander shall be notified in the absence of the Watch Commander.

## VI. PROCEDURE

- A. **Identification of Persons Entitled to Diplomatic Privileges and Immunities:**
  - 1. It is critical, from a law enforcement officer's point of view, to identify quickly the category of any person asserting diplomatic privileges or immunity. There are three types of Department of State Identity Cards (See Addendum at the end of the policy to view an example of these cards):

- a) Diplomatic Card – has a blue border for diplomats and their families;
- b) Official Card – has a green border for embassy administrative staff and their families; and,
- c) Consular Card – has a red border for consular personnel. [CALEA 1.1.4]

2. The cards are [REDACTED] and contain a photograph of the bearer.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- 3. A telephone inquiry should promptly be made to the Department of State or the United Nations in connection with any serious incident, if an individual claims immunity and can not provide satisfactory identification, or if the officer has reason to doubt the validity of the card.
- 4. In questionable situations, the officer at the scene shall notify his/her immediate supervisor, who, in turn, shall notify the Watch Commander/Precinct Commander.
- 5. The Watch Commander/Precinct Commander shall call the appropriate agency for the verification of identity and level of immunity. The Watch Commander/Precinct Commander shall provide the official with a minimum of the following information, if possible:
  - a) Name,
  - b) DCS number, if available, located on official card, and,
  - c) Charge.

B. Specific Procedures with Respect to Particular Incidents:

[CALEA 61.1.3d]

- 1. If it is established that the individual is entitled to full inviolability and immunity, the individual may not be arrested or detained. The individual shall not be handcuffed, except in the most extraordinary cases where the public safety is in imminent danger or a serious crime may otherwise be committed. Nevertheless, allegations of serious crimes shall be fully investigated and procedurally followed to the maximum permissible extent.
- 2. A police officer should never hesitate to intervene in a traffic violation, which the officer has observed, even if immunity ultimately bars any further action at the scene.
- 3. The officer should always stop persons committing moving violations, issue a citation, if appropriate, and report the incident in accordance with normal departmental procedures.

4. Stopping a diplomatic or consular official and issuing a traffic citation does not constitute arrest or detention, and is permissible, although the individual may not be required to sign the citation.
5. Upon exhibiting proof of diplomatic immunity, individuals shall be released after being stopped for a misdemeanor traffic violation.
6. Sobriety tests may be offered to persons with full immunity, but such persons may not be compelled to take the test.
7. The property of any individual enjoying full immunity including his/her vehicle may not be searched or seized. The vehicle may not be impounded or “booted”, but may be towed out of the way if obstructing traffic or endangering public safety. Vehicles bearing diplomatic registration plates may be towed only if necessary to prevent serious obstruction of traffic flow. When possible before towing, there shall be attempts made to contact the registered owner of the vehicle or a representative of the applicable embassy or consulate to seek voluntary removal of the vehicle. When towed, the vehicle will be moved to the closest available legal parking space.
8. If a police officer determines that an individual with full immunity is intoxicated or impaired, the officer should not permit the individual to drive.
9. The officer shall contact the United States Department of State:

Washington Field Office  
2222 Gallows Rd.  
Suite 300  
Dunn Loring, VA 22027  
Phone: (571) 226-9300 (Business Hours)  
Duty Officer: [REDACTED] (After Business Hours)  
Fax: [REDACTED]

:to seek guidance on the following:
  - a) To verify the individual identity;
  - b) To seek guidance/instructions as to how to handle the individual; and,
  - c) To seek assistance in transporting individual.
10. The officer or the individual may summon a friend or relative to drive or the officer may call a taxi.
11. If the vehicle of the individual with full immunity is suspected of being stolen or used in the commission of a crime, the occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle’s status. Should the vehicle prove to be stolen or used in the commission of a crime, the normal inviolability of the vehicle is temporarily suspended, and a normal search of the vehicle and its seizure are permissible, if appropriate.

C. Steps to follow when a Foreign National is Arrested or Detained:

1. When an officer either arrests or detains a foreign national, the officer shall immediately identify the suspect's country. In the absence of other documented information, the officer shall assume that the country listed on the passport or other travel document is the official country of the foreign national. The foreign national shall be read the rights from the "Rights Waiver Form". The ATT language interpreter may be used, if needed.
2. If the foreign national's country is not listed on the Mandatory Notification List Card, the officer shall take the following steps:
  - a) Offer to notify the foreign national's consular officials of the arrest/detention. Use the Consular Notification and Access Reference Card, Statement One, or contact the Warrant Services Desk, or the Watch Commander/Precinct Commander, to make the notification.
  - b) If the foreign national indicates that consular notification be given, the officer shall use the Department's chain of command to notify the Watch Commander/Precinct Commander to make the notification.
3. If the foreign national's country is on the list of mandatory notification countries, the officer shall take the following actions:
  - a) Inform the suspect that consular notification is required. Contact the Watch Commander/Precinct Commander in his/her absence, through the chain of command, to notify the nearest consular official of the designated country of the suspect's arrest/detention as soon as practical, preferably before the suspect is taken to the Lock-up.
  - b) The notification must be made regardless of whether or not the foreign national wishes the officer to do so. Officers may use discretion in deciding how much information should be released to the consular officials. Under no circumstances should the fact that a foreign national is seeking asylum, be relayed to the consulate by any Department member.
  - c) The officer shall use the Consular Notification and Access Reference Card, Statement Two or the translations for selected languages, which are maintained by the Warrant Services Desk, the Watch Commander and all of the Precinct Commanders.
  - d) The Watch Commander, along with each Precinct Commander, and the Warrant Services personnel, will maintain an instructional manual regarding "Consular Notification and Access Guidelines." A telephone contact or fax for notifying consular officers shall be used for the notifications and are also included in the manual.

Additional Department of State forms may be accessed from:

[http://travel.state.gov/content/dam/travel/cna\\_pdf/CNA%20Fax%20SheetDeathOrInjury.pdf](http://travel.state.gov/content/dam/travel/cna_pdf/CNA%20Fax%20SheetDeathOrInjury.pdf)

(Notifying Consular Officers of Death/Serious Injuries fax sheet)

[http://travel.state.gov/content/dam/travel/cna\\_pdf/CNA%20Fax%20SheetArrestOrDetention.pdf](http://travel.state.gov/content/dam/travel/cna_pdf/CNA%20Fax%20SheetArrestOrDetention.pdf)

(Notifying Consular Officers of Arrests or Detentions fax sheet)

e) Required Information for Notification:

The information listed below is the minimum requested for an individual before consular notification is made:

- 1) Name;
- 2) Date of Birth;
- 3) Place of Birth;
- 4) Passport Number;
- 5) Date of Passport Issuance;
- 6) Place of Passport Issuance; and,
- 7) Name of Country.

NOTE: The Vienna Convention on Consular Relations (VCCR) requires that the foreign national's consulate be notified "without delay", of the right to access the foreign national and provide consular assistance. Therefore, a notification of the location of the detention and the circumstances surrounding the arrest shall occur, as soon as reasonably possible. In the case of an arrest followed by a detention, the foreign national shall be advised of the possibility of a consular notification before he/she has been placed in the Detention Section.

f) The Warrant Services Desk personnel will establish and maintain a log of all consular notifications made by the Department. When a notification is made, the log should indicate the following information:

- 1) That the foreign national was informed of the consular notification;
- 2) The date and time;
- 3) Whether or not the suspect requested consular officials to be notified;
- 4) The name and code number of the arresting officer;
- 5) The name of the Watch Commander/Precinct Commander who made the notification; and,
- 6) If any documentation of the contact is available, i.e. faxed information, et cetera, it should be saved and attached to the logbook, if appropriate. Officers should also maintain their own documentation.

4. A consular official shall be notified whenever a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or who is incompetent.

5. A consular official shall be notified whenever any Department member becomes aware of the death of a foreign national. While the VCCR does not specifically mention serious injuries, U.S. State Department guidance encourages law enforcement officials to notify consular officers if a foreign national is in such a critical condition (e.g. coma, life-support, ICU, etc.) that notification would be in the national's best interest.

D. Documentation of Incidents:

It is essential that police officers give careful attention to documentation of incidents involving individuals with diplomatic or consular privileges and immunities for the following reasons:

1. It can never be ascertained with certainty at the investigation stage that the person involved will continue to enjoy immunity when his/her government is confronted with the alleged criminal actions. The Department of State routinely seeks waivers of immunity for criminal charges.
2. Criminal immunity expires when the tour of duty of the individual expires, and prosecution may be possible if the United States subsequently obtains jurisdiction over the person.
3. Even if the individual may not be prosecuted for the alleged criminal activity, the Department of State can require him/her to leave the country under a procedure known as "persona non grata".
4. In the case of traffic incidents, it is the policy of the Department of State to suspend the operator's license of all foreign mission personnel, if they determine the driver to be *ir*responsible.

E. Reporting Incidents Involving Persons with Diplomatic Privileges and Immunity:

1. If a police officer encounters a situation where an individual expresses diplomatic privileges or immunity, the officer shall notify his/her immediate supervisor, who in turn shall notify, through the chain of command, the Watch Commander/Precinct Commander.
2. Based on the nature of the incident, the Watch Commander/Precinct Commander will determine if an IBR should be taken or if any further action(s) should be taken and how much information should be released to the consular officials if it is necessary to detain the individual. The Watch Commander/affected Precinct Commander shall arrange for the necessary notification to the Department of State.
3. An Incident Based Report is not automatically required, but should be filed by the officer if the incident meets the criteria for filing such reports.
4. The officer shall forward a package of all completed foreign national reports to the Planning Division for accreditation purposes.

VII. FORMS

- A. Rights Waiver Form
- B. Incident Based Report
- C. Department of State Notifying Consular Officers of Death/Serious Injuries fax sheet
- D. Department of State Notifying Consular Officers of Arrests or Detentions fax sheet



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IDENTIFICATION CARDS

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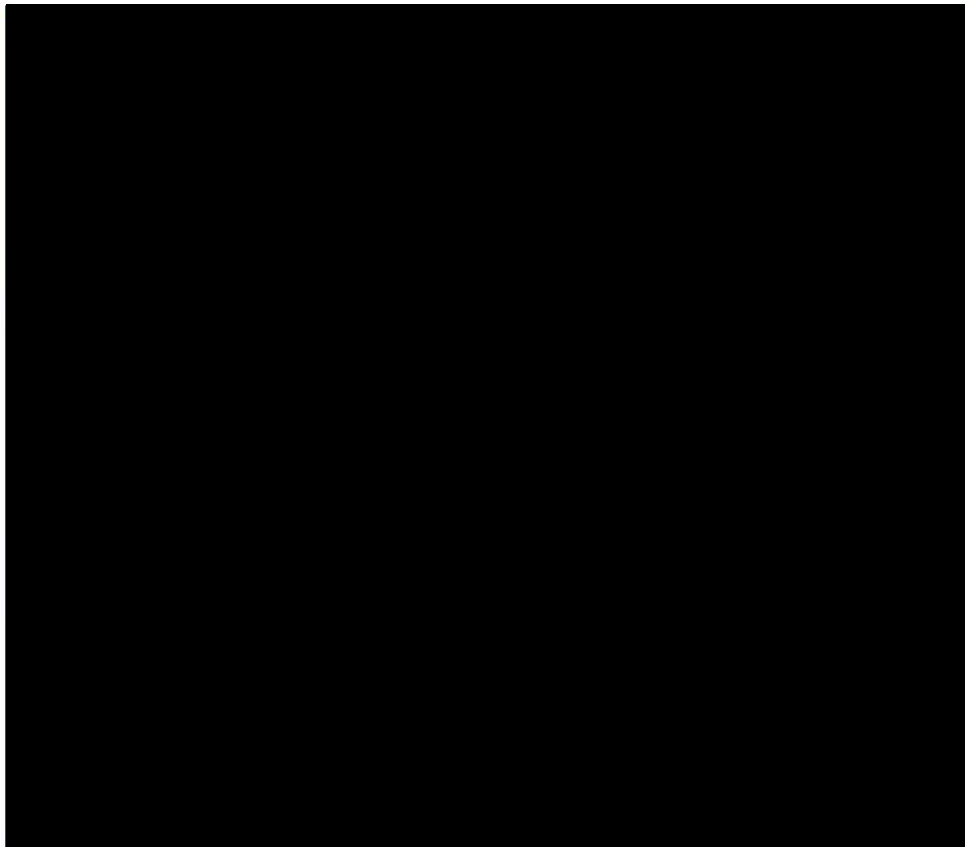
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DIPLOMATIC AND CONSULAR OFFICER IDENTIFICATION CARDS

The Department of State's Office of Protocol issues identification documents to diplomatic and consular officers and other foreign government personnel stationed in the United States on official business, and who are entitled to some degree of diplomatic or consular immunity. These identification cards can help you ensure that persons seeking to visit detainees at your facility for purposes of consular access are in fact authorized to perform consular functions in the United States on behalf of a foreign government.

During business hours (8:15 a.m. to 5:00 p.m. Eastern), you may direct any questions regarding an individual's official status or immunity to the Department's Office of Protocol at (202) 647-1985. After hours, you may direct such questions to the Department's Bureau of Diplomatic Security at (202) 647-7277, (571) 345-3146, or (866) 217-2089, or send a fax to (202) 895-3613. You may also consult [www.state.gov/m/ds/protection/immunities/c9118.htm](http://www.state.gov/m/ds/protection/immunities/c9118.htm).

Below are samples of the different types of diplomatic and consular identification cards. Because different degrees of immunity exist, you should carefully read the back of the card.



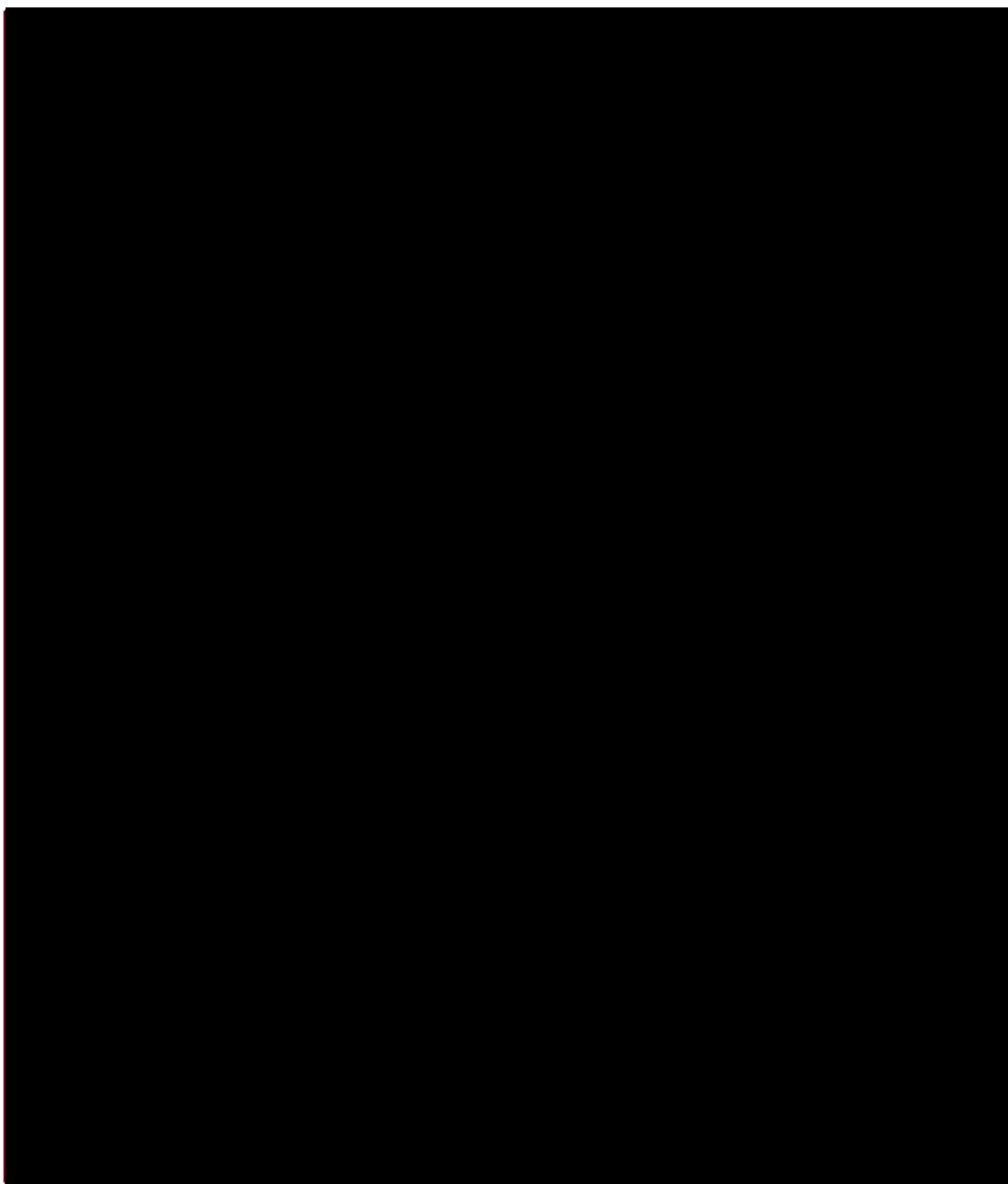
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IDENTIFICATION CARDS

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IDENTIFICATION CARDS

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AMERICAN INSTITUTE IN TAIWAN TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE (AIT TECRO)

