



Subject:

# 607. Arrest or Detention of Foreign Nationals

Approved:  
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Page: 1

## 607.1: PURPOSE AND SCOPE

This policy provides direction to officers when considering a physical arrest or detention of a foreign national. As noted herein, the United States is a party to several bilateral agreements that obligate our authorities to notify the consulate upon the person's detention, regardless of whether the detained person(s) request that his or her consulate be notified.

### 607.1.1: DEFINITIONS

**Foreign National** - Anyone who is not a citizen of the United States (U.S.). A person with dual citizenship, U.S. and foreign, is not a foreign national.

**Immunity** - Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (i.e., embassies, consulates, etc.) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad. Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's Office of Foreign Missions (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

## 607.2: POLICY

**It is the policy of the Albany Police Department to comply with applicable laws and regulations when dealing with foreign nationals.**

## 607.3: ARREST OR DETENTION OF FOREIGN NATIONALS

- a. Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from violators.

b. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the officer, and the officer has verified or reasonably suspects that the claim of immunity is valid.

#### **607.4: LEVELS OF IMMUNITY**

The specific degree of immunity afforded to foreign service personnel within the U.S. is directly related to their function and position in this country.

##### **607.4.1: DIPLOMATIC AGENTS**

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents have these same immunities.

##### **607.4.2: CONSULAR OFFICERS**

Consular officers are the ranking members of consular posts who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul, and vice consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. They are only immune from criminal and civil prosecution arising from official acts. Official acts immunity must be raised as an affirmative defense in the court jurisdiction, and its validity is determined by the court. Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity; however, any family member who enjoys a higher level of immunity is issued an identification card by Department of State (DOS) enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

##### **607.4.3: HONORARY CONSULS**

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained; limited immunity for official acts may be available as a subsequent defense. Family members have no immunity.

#### **607.5: IDENTIFICATION**

All diplomatic and consular personnel who are entitled to immunity are registered with the Department of State and are issued distinctive identification cards by the Department of State Protocol Office.

a. These cards are the best means of identifying Foreign Service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. Unfortunately, these identification cards are not always promptly issued by the Department of State.

- b. In addition to the Department of State identification card, Foreign Service personnel should also have a driver license issued by the Department of State Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state.
- c. In all cases, members should verify immunity status with the Department of State (see 607.6.2).

#### **607.5.1: VEHICLE REGISTRATION**

- a. Vehicles that are owned by foreign missions or Foreign Service personnel and their dependents are registered with the Department of State OFM and display distinctive red, white, and blue license plates.
  - 1) Vehicles assigned to diplomatic or consular officers will generally have license plates labels with the words "diplomat" or "consul."
  - 2) Vehicles owned by honorary consuls are not issued OFM license plates; but may have Oregon license plates with an "honorary consul"
  - 3) Driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle.
- b. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state, if the officer has reason to question the legitimate possession of the license plate.

#### **607.6: ENFORCEMENT PROCEDURES**

Foreign diplomats and/or consular officials shall be accorded their respective privileges, rights and immunities as directed by International and Federal law. The following procedures should be followed when handling enforcement of foreign nationals:

##### **607.6.1: CITABLE OFFENSES**

- a. An enforcement document shall be issued at the scene for all violations warranting such action, regardless of the violator's immunity status.
  - 1) The issuance of a citation is not considered an arrest or detention under current Department of State guidelines.
- b. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the arresting officer:
  - 1) Identification documents are to be requested of the claimant;
  - 2) The title and country represented by the claimant are to be recorded in the officer's notes for later reference. Do not include on the face of the notice to appear;
  - 3) The violator shall be provided with the appropriate copy of the notice to appear.

### 607.6.2: CUSTODIAL ARRESTS

- a. Diplomatic agents and consular officers are immune from arrest or detention (unless they have no identification and the detention is to verify their diplomatic status).
  - 1) Proper identification of immunity claimants is imperative in potential in-custody situations.
  - 2) Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in section 607.8.
- b. A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim (unless restraint is necessary for the protection of the officer or others).
- c. A supervisor shall be promptly notified and should respond to the scene when possible.
- d. Field verification of the claimant's identity is to be attempted as follows:
  - 1) Identification cards issued by the Department of State, Protocol Office, are the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered), and Official (green bordered). The Department of State identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.
  - 2) Initiate telephone verification with the Department of State. Newly arrived members of diplomatic or consular missions may not yet have official Department of State identity documents. Verify immunity by telephone with the Department of State any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Law enforcement personnel should use the following numbers in order of preference:

1) Office of Foreign Missions San Francisco, CA 90 7 <sup>th</sup> Street, Suite 12100 San Francisco, CA 94103 (415) 967-6136 (415) 744-2910 ( <del>Hours: 0800-1700 PST</del> )	3) Diplomatic Security Service 915 Second Avenue, Room 3410 Seattle, WA 98174 (206) 220-7721 (206) 220-7723 FAX
2) Office of Foreign Missions Diplomatic Motor Vehicle Office Washington D.C. (202) 895-3521 (Driver License Verification) or (202) 895-3532 (Registration Verification) (202) 895-3533 FAX (Hours: 0815-1700 EST)	4) Department of State Diplomatic Security Service Command Center Washington D.C. (202) 647-7277 (202) 647-1512 (Available 24 hours) (202) 647-0122 FAX

For urgent telephone inquiries outside normal business hours, contact the Diplomatic Security Center at 866-217-2089.

- e. Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by Office of Emergency Services, local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by Department of State; and Department of State license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.
- f. Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified, but another form of identification indicates that immunity is probable.
- g. If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained then the official shall be released. A supervisor's approval for the release shall be obtained whenever possible. The necessary release documents and/or a Certificate of Release form should only be issued under the proper conditions.
- h. If the violator appears to have been driving while under the influence, field sobriety tests, including chemical tests should be offered and obtained whenever possible; however, these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever possible and alternative transportation should be arranged.
  - 1) All facts of the incident shall be documented in accordance with this policy in the appropriate DUIL reporting format.
  - 2) Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the command concerned. The Department of State will take appropriate sanctions against errant Foreign Service personnel, even where prosecution is not undertaken by the agency.

### 607.7: TRAFFIC COLLISIONS

- a. Persons involved in traffic collisions who possess a Department of State OFM Diplomatic Driver License, issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Collision Report.
- b. If subsequent prosecution of the claimant is anticipated, the claimant's title, country, and type of identification presented should be recorded for future reference.
- c. Issuance of a citation to or arrest of an immunity claimant at the crash scene should be handled in accordance with the procedures specified in section 607.6.

#### 607.7.1: VEHICLES

- a. Vehicles, which are owned by subjects with full immunity, may not be searched, stored, or impounded without the owner's permission. (Such permission may be assumed if the vehicle has been stolen.)

b. These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

#### 607.7.2: COLLISION REPORTS

a. A photocopy of each traffic collision report involving an identified diplomat and/or immunity claimant shall be forwarded to the office of the Chief of Police within 48 hours whether or not the claim is verified.

- 1) The words "Immunity Claim" shall be marked on the photocopy, together with a notation of the claimant's title, country, and type of identification presented (if applicable).
- 2) In addition to the report, a follow-up cover memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative, or if there were any other unusual aspects of the enforcement contact that should be reported to the Department of State for further action.
- 3) The supervisor apprised of the incident/crash shall also send a copy of all documents and reports submitted by the investigating officer along with any supervisor's notes, materials and/or logs to the Chief of Police's office within 48 hours of the incident.

b. The Chief of Police's office will check to ensure that notification of Department of State and all necessary follow-up occur.

#### 607.8: FOREIGN NATIONALS WHO DO NOT CLAIM IMMUNITY

a. Officers may only arrest foreign nationals not claiming diplomatic or consular immunity under the following circumstances:

- 1) There is a valid warrant issued for the person's arrest;
- 2) There is probable cause to believe that the foreign national has violated a federal criminal law, a state law, or a local ordinance;
- 3) Officers shall not arrest foreign nationals solely for alleged undocumented entry into the United States.

b. Officers shall follow the [Immigration Violations: Policy 555](#) with regard to contact with foreign nationals for immigration purposes.

c. To ensure compliance with consular notification ([Oregon HB 3265](#)), and state and federal laws, on the commitment or detainment of an individual, the officer shall explain to the individual in writing, with interpretation into another language if requested:

- 1) The individual's right to refuse to disclose the individual's nationality, citizenship, or immigration status; and

2) That disclosure of the individual's nationality, citizenship, or immigration status may result in civil or criminal immigration enforcement, including removal from the United States.

#### **607.8.1: ARREST PROCEDURE**

- a. If an officer arrests a person and the person indicates that they are other than a U.S. citizen, the officer shall advise the individual that they have a right to have the nearest appropriate embassy or consulate notified of the arrest/detention (Vienna Convention on Consular Relations, Art. 36, (1969)).
- b. If the individual requests such notification, the officer shall contact the Communications Center as soon as practical and request the appropriate embassy/consulate be notified. Officers shall provide the Communications Center with the following information concerning the individual:
  - 1) Country of citizenship;
  - 2) Full name of individual, including paternal and maternal surname, if used;
  - 3) Date of birth and/or age;
  - 4) Current place of residence;
  - 5) Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention if different from the Albany Police Department.
- c. If the foreign national claims citizenship of one of the countries listed by the US Department of State as requiring mandatory consular notification, officers shall provide the Communications Center with the information above as soon as practical whether or not the individual desires the embassy/consulate to be notified.
  - 1) This procedure is critical because of treaty obligations with the particular countries.
  - 2) The list of mandatory notification countries and jurisdictions can be found on the US Department of State website.

#### **607.8.2: DOCUMENTATION**

Officers shall document in their police report the date and time the Communications Center was notified of the foreign national's arrest/detention and his/her claimed nationality.