



Colorado Springs Police Department

General Order

305 Immigration and Foreign Nationals

Section 300 – Special Populations

Effective Date: 6/8/2023

Supersedes Date: 3/30/2023

.01 Purpose

The purpose of this directive is to establish guidelines for police interactions with foreign nationals, including matters concerning possible violations of civil immigration statutes; arrest, death, or serious injury of foreign nationals; and for properly responding to requests for asylum.

.02 Cross Reference

[GO 330 Diplomatic and Legislative Immunity](#)

[DL-305-01 Persons with Limited English Proficiency](#)

.03 Discussion

The Colorado Springs Police Department (CSPD) will comply with the U.S. Constitution and all binding statutory and case law as it pertains to immigration. The enforcement of civil immigration laws is a federal responsibility, outside CSPD responsibility and mission. This does not mean the department will provide sanctuary to those violating immigration laws; the department is obligated to follow all legal requirements for information sharing and cooperation with federal agencies, including consular notifications as described in this directive.

.04 Policy

Department members will make no attempt to enforce civil immigration laws and will refer all such matters to Immigration and Customs Enforcement (ICE).

Officers will not check the immigration status of individuals with whom they routinely come in contact.

Officers will not initiate an investigation or take law enforcement action solely on the basis of actual or perceived immigration status, including the initiation of a stop, detention, arrest, or any other field contact.

Officers will not arrest an individual for possessing a driver's license or identification card that is not considered "secure and verifiable," as Colorado law permits these cards to be issued to foreign nationals. If an officer issues a criminal summons to an individual who was identified using an identification card considered not secure and verifiable, the officer will ensure the individual is fingerprinted and photographed prior to being released.

Officers will not hold or detain an individual at the request of a federal agent when the only suspected violation is a civil immigration violation, nor will officers detain or arrest individuals on a civil immigration detainer or administrative warrant (pursuant to CRS § 24-76.6-102).

Nothing in this directive prohibits CSPD department members from sharing information about an individual with ICE at any time, nor does it prohibit officers from rendering reasonable and appropriate assistance to federal immigration enforcement authorities in the execution of a warrant issued by a federal judge or magistrate, including an arrest warrant.

Department members are prohibited from notifying a consulate officer or other foreign government authority that a foreign national has requested asylum.

The city of Colorado Springs does not participate in the Immigration and Customs Enforcement (ICE) 287(g) program to receive delegated authority for immigration enforcement within its jurisdiction.

Department members will not publicly disclose federal law enforcement information in an attempt to conceal, harbor, or shield individuals from detection (including in violation of 18 U.S.C. §§ 1071 or 1072, or 8 U.S.C. § 1324(a))

.05 Definitions

Civil Immigration Detainer: A written request issued by federal immigration enforcement authorities pursuant to 8 CFR 287.7 to law enforcement officers to maintain custody of an individual beyond the time when the individual is eligible for release from custody, including any request for law enforcement agency action, warrant for arrest of alien, order to detain or release alien, or warrant of removal/deportation on any form promulgated by federal immigration enforcement authorities. Civil immigration detainers are not recognized by the state of Colorado as bona fide arrest warrants.

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 (persons holding what is commonly known as a "green card") or aliens, legal or illegal, holding a Colorado identification card that is not considered secure and verifiable retain their foreign national status and are considered foreign nationals for the purposes of consular notification. For the purpose of this policy, the terms "foreign national" and "alien" may be used interchangeably.

Secure and Verifiable Document: Means a document issued by a state or federal jurisdiction or recognized by the United States government that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies. (CRS § 24-72.1-102)

.10 Information Sharing

Neither the city of Colorado Springs nor the Colorado Springs Police Department prohibits or restricts official sending or receiving of information regarding citizenship or immigration status as described in 8 U.S.C. §1373(a) and 8 U.S.C. §1644; likewise, neither prohibits nor restricts sending to, requesting, or receiving from, maintaining, or exchanging information regarding the citizenship or immigration status, lawful or unlawful, of any individual (8 U.S.C. §1373(b)).

.15 Civil Immigration Detainers and NCIC Entries

Pursuant to CRS § 24-76.6-102, CSPD officers should not hold or detain an individual at the request of a federal agent when the only suspected violation is a civil immigration violation.

If a department member, during a records check, discovers an NCIC entry for a potential immigration violation, officers should not hold the person longer than the time needed for the CSPD contact. The contact may not be extended in any way based on this information, nor will CSPD officers arrest a person based solely on the information regarding immigration violations.

The immigration violator file is a separate NCIC file than the wanted persons file. CSPD officers will not detain or arrest a person based on an NCIC entry from the immigration violator file. The immigration violator file in NCIC has several possible entries, including those that specify the following:

- Outstanding Administrative Warrant of Removal
- Outstanding Administrative Warrant of Arrest for Immigration Violations for Failure to Comply with National Security Registration
- Subject is a Deported Criminal/Aggravated Felon

If the NCIC hit pertains to a criminal warrant, it will specify “Criminal Warrant” in the NCIC entry. Department members may also look at the MKE in the NCIC entry to know whether it is an entry from the immigration violator file (CSPD cannot detain) or the wanted persons file.

They will appear as follows:

- MKE/WANTED PERSON
- MKE/IMMIGRATION VIOLATION

Required Notification to ICE

If the person is going to be booked into jail on other offenses, no further action is necessary, as ICE can access information from jail bookings.

If the person has an NCIC entry for an immigration violation but will not be booked into jail on other offenses, the officer should notify the CSPD NCIC operator of this information. The NCIC operator will contact ICE and provide them information regarding CSPD's contact with the person, who may have already been released by CSPD officers. The purpose of this contact with ICE is to share information. The information, collected during the normal course of the CSPD contact, to be provided to ICE is as follows, if known:

- Subject's name
- Subject's date of birth
- Subject's address
- Vehicle descriptor and license plate, if subject was contacted in a vehicle
- Any other identifying information or information that may be useful in locating the subject, if the officer learned additional information during the normal course of the CSPD contact
- Reason for the CSPD contact
- Date and location of subject's appearance in court, if known to the officer

.20 Non-Secure and Verifiable Document

The Colorado Department of Revenue is authorized to issue a driver's license, minor driver's license, instruction permit, or identification card to a foreign national, but the license, permit, or card is not considered a secure and verifiable document. The Colorado Department of Revenue will place the phrase, "Not valid for federal identification, voting, or public benefit purposes," clearly displayed on the face of these documents and in the machine-readable zone of the documents. (CRS § 42-2-505)

CRS § 42-5-510 Peace officers - arrest authority, prohibits local law enforcement from arresting an individual merely for possessing a driver's license or identification card that is not secure and verifiable.

Circumstances may arise where a peace officer will have to rely upon an identification card that is not a secure and verifiable document in order to identify an individual. A peace officer who, in the performance of the officer's duties, utilizes identification that is not secure and verifiable will not forfeit governmental immunity; however, they must adhere to the following procedures (CRS § 24-72.1-105(2)):

- Gathers all information from such identification; and

- If feasible, according to any applicable law enforcement agency guidelines, gathers fingerprint information from such person and stores such fingerprints for at least one year as a criminal justice record

Therefore, an officer issuing a criminal summons, either misdemeanor or felony, who identified the suspect using an identification card considered not secure and verifiable should ensure the individual is fingerprinted and photographed prior to being released.

.25 When Arresting Foreign Nationals

All local, state, and federal law enforcement entities are obligated under international treaties to notify foreign authorities when foreign nationals are arrested or detained in the U.S. The requirements for consular notification apply to all foreign nationals, regardless of their visa or immigration status. Thus, people who are in the U.S. illegally have the same rights to consular notification/assistance as do people lawfully within the country.

The U.S. Department of State, Bureau of Consular Affairs maintains an up-to-date Consular Notification and Access Manual online at <http://travel.state.gov/CNA> for reference. The requirements of the Department of State (DOS) can be summarized as 1) advisement of the right to consular notification, and 2) notifying the consular officer.

Advisement of Right to Consular Notification

The DOS requires whenever a foreign national is arrested or detained, you must inform the foreign national that they may communicate with their consular officers. Detention is generally understood to cover any situation in which a foreign national's ability to communicate with or visit consular officers is impeded as a result of government action limiting the foreign national's freedom. This does not include situations where the foreign national is only briefly detained, such as for a traffic citation, accident investigation, or temporary investigative stop that results in the release of the individual to carry on with their normal business.

According to the DOS, "Ordinarily, you must inform a foreign national of the possibility of consular notification by or at the time the foreign national is booked for detention...If the identity and foreign nationality of a person are confirmed during a custodial interrogation that precedes booking, consular information should be provided at that time." There should be no deliberate delay in notifying the foreign national of their right to have the consular officer notified. (pg. 21. Consular Notification Access. September 2018. DOS.)

The Miranda Warning and the right to consular notification are separate and distinct requirements of a custodial interrogation of a known foreign national. The interrogation does not need to stop if the foreign national requests that consular officers be notified of the detention. The two rights do not need to be administered simultaneously, although that may occur.

Officers should consult with a supervisor about the appropriate timing of the notification. There is no requirement from DOS that the notification be made in the foreign national's own language; however, department members must comply with applicable language barrier directives. The DOS website has several written examples of the notification in multiple languages that can be downloaded and printed to use as a reference.

Should an officer notify a foreign national of their right to consular notification, it should be documented in the case report, along with the foreign national's response.

Notification of Consular Officer

There are 56 countries that require mandatory notifications regardless of the objection of the foreign national, as of the active date of this directive. These countries are listed on the DOS's website <http://travel.state.gov/CNA>. All other foreign nationals have the option whether to have consular representatives notified of their arrest or detention.

The DOS guidelines require that notification to the consular's office should occur within 24-72 hours. However, some of the countries on the mandatory notification list require notification "immediately." Generally, when CSPD arrests and books a foreign national into the El Paso County Criminal Justice Center, EPSO will arrange for all the proper notifications in accordance with their established policies.

CSPD officers will generally not be required to make such notifications, except under extraordinary circumstances that significantly delay booking the person into CJC, such as hospitalization of a prisoner. The duty lieutenant may be consulted for guidance.

Foreign consular officials have the right to visit their arrested nationals, subject to local laws and regulations regarding access to detained persons. For persons being booked into CJC, all such visitations will be facilitated by EPSO.

.27 Death or Serious Injury of a Foreign National

The DOS directs that if a foreign national is hospitalized pursuant to government authority, and not free to leave, the alien must be treated as if they are in detention, and consular notification is required.

Foreign nationals who are arrested by CSPD but admitted and guarded at a hospital pending booking into CJC will require the investigating officer or the assigned investigations unit to complete the consular notification process. Usually, notification can be completed and proven by sending a fax to the appropriate consulate. Current contact information and a standard fax form is available on the DOS website. If a notification is conducted, it should be thoroughly documented

in the case report, and the officer should retain the proof of notification and the fax transmission confirmation page.

In situations where a foreign national is not arrested but is seriously injured and incapacitated in a manner that would prohibit them from contacting a consulate, the DOS recommends making consulate notification if it would be in the best interest of the person, especially if it is determined the foreign national's family are in the homeland. Officers investigating an incident where a foreign national is medically incapacitated, and expected to remain that way for some time, should notify the duty lieutenant. If the individual is from a country that does not have mandatory notification requirements, it is suggested to wait 24-72 hours to see if the individual will become alert enough to confirm whether they want the consulate notified.

In circumstances leading to the death of a foreign national, the El Paso County Coroner's Office will complete most consular notifications. The exception is when a foreign national is a homicide victim. In these cases, the Violent Crimes Lieutenant or designated lead case detective will ensure consular notification occurs.

.30 Requests for Asylum

The U.S. Citizenship and Immigration Services (CIS) may grant asylum to foreign nationals who have been persecuted or fear they will be persecuted on account of race, religion, nationality, and/or membership in a particular social group or political opinion.

The process of obtaining asylum can be lengthy and requires the foreign national to apply through the CIS by filing an I-589, Application for Asylum and for Withholding of Removal. Information for someone wanting to obtain asylum can be found on the websites of both the CIS and U.S. Secretary of State. Most requests for asylum are routine with no immediate threat to the person wishing asylum. In these circumstances, officers should refer the individual to above mentioned agencies.

In the rare circumstance an officer receives a request for asylum with exigent circumstances placing the individual in immediate fear of kidnapping and forced repatriation to their homeland, a supervisor or duty lieutenant should be immediately notified. The supervisor and officers will determine the circumstances and assess the immediacy of the risk. If the individual is at risk of immediate harm as described, officers may, upon consent of the individual, transport the person to a CSPD facility. It is important to note this is not a custodial arrest, and the foreign national should not be detained in any manner suggesting an arrest. The duty lieutenant should contact the local on-call duty agent of the Federal Bureau of Investigation to brief them on the circumstances and determine which federal agency, if any, will take the lead on assisting the individual.

Under no circumstances should a department member advise a consulate officer or other foreign government authority that a foreign national has requested asylum.