



A handwritten signature in black ink, which appears to read "Thomas J. Guckler".

## **POLICY**

It is the policy of the Douglas County Sheriff's Office (DCSO) to respect the special provisions accredited to Diplomats and Consular Officials, members of their family, and their staff by the United States Department of State and to comply with the mandatory notification agreements between the United States and specific foreign countries when Foreign Nationals of those countries are arrested or detained. While it is not the jurisdiction of the DCSO to enforce immigration laws, the DCSO will enforce all Nebraska State Statutes regardless of the immigration status of the offender.

## **DEFINITIONS**

Consular Officer (Consul): A foreign official authorized by the Department of State to provide assistance to the foreign government's citizens in the United States. Consuls are not authorized to practice law or authorized to provide legal advice in the U.S. Some classes of Consular Officials enjoy Diplomatic Immunity.

Consulate: The place or buildings in which Consular Officials' duties are carried out.

Diplomat: A foreign official at the country's embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions, and should be treated the same as a Consular Officer.

Diplomatic Immunity: A principle of international law in 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.

Foreign National: Any person who is not a United States citizen. This includes permanent resident aliens (these individuals carry a resident alien registration card), non-citizens who may or may not be in the country legally, foreign Diplomats, and/or Consular Officials.

Honorary Consul: U.S. citizen or an alien who is a lawful permanent resident of the United States who has been authorized by a foreign government to perform consular functions on its behalf in the U.S. Honorary Consuls should be treated as a Consular Officer for purposes of issues discussed in this policy.

Mandatory Notification: Consular notification procedures that apply when you arrest or detain a Foreign National from any of the countries that have agreed to special rules with the United States.

Nationality: Citizenship for the purposes of this policy.

Upon Request Notification: Consular notification procedures that apply when a Foreign National from any country that has not agreed to special rules with the United States and is not on the mandatory list of countries is arrested or detained and requests consular notification.

Without Delay: For the purposes of this policy, without delay means that there should be no deliberate delay and notification must occur as soon as reasonably possible under the circumstances.

## **PROCEDURES**

### **I. Identifying/Verifying Foreign Nationals' Status**

- A. When making an arrest or detention of a Foreign National (including a civil commitment), Deputies will determine the person's nationality.
  - 1. Deputies will ask the detainee/arrestee if they are a U.S. citizen.
    - a. If the arrestee/detainee states that they are not a United States citizen, or if the arrestee/detainee's identification, passport, and/or travel documents indicate such, then they should be considered a Foreign National whose consulate may require notification of the arrest/detention.
  - 2. If the Deputy believes that indicators (such as Limited English Proficiency) suggest a foreign nationality, the Deputy will attempt to determine the arrestee/detainee's nationality by reviewing available documentation or information.
    - a. In the absence of other information, the Deputy may assume that the Foreign National's country is the country of their passport or other travel documentation.
    - b. If no documentation is available, Deputies will accept the statement of the individual, absent evidence to the contrary, as to their nationality and follow appropriate consular notification procedures.

## **II. Diplomats and Consular Officials**

- A. Under international treaties and customary international law, the United States is required to notify certain foreign authorities when their Foreign Nationals are detained, arrested, seriously injured, or deceased. In addition, the United States Department of State (DOS) designates some Foreign Nationals as Diplomats or Consular Officials with varying degrees of immunity against detention, arrest, search, seizure, and prosecution. These protections may also extend to members of their household and/or staff.
  - 1. These are mutual obligations that apply to foreign authorities when they arrest or detain a U.S. citizen abroad. Deputies should treat Foreign Nationals as they would want a U.S. citizen to be treated in a similar situation in a foreign country (i.e., prompt and courteous compliance with applicable requirements).
- B. If a Foreign National claims to be an employee of a foreign country, Deputies will request documentation indicating the individual's DOS status.
  - 1. Diplomats and Consular Officials are issued DOS driver's licenses and/or identification cards. These individuals may also have DOS issued license plates. The identification card will indicate the type of immunity afforded the individual.
  - 2. In all cases, Deputies will contact their Supervisor who will confirm the individual's status as well as any privileges and/or immunities with the DOS.
    - a. Supervisors may use the DOS website or contact the DOS directly for confirmation.
- C. Individuals with immunity status, including full immunity, will be cited as appropriate for traffic offenses.
  - 1. Deputies will NOT compel the subject to sign the citations.
    - a. Deputies will write "REFUSED TO SIGN" in the signature block if the subject refuses to sign the citations.

2. Deputies will forward a copy of the citation and any related reports to the DOS.
- D. In serious cases such as DUI, personal injury, and accidents, Deputies will notify their Supervisor who will call the DOS to notify them of the situation.
1. Deputies may request that the individual complete field sobriety tests, however, Diplomats and Consular Officials WILL NOT be forced to comply with sobriety testing.
  2. If the Deputy believes the individual is impaired and cannot drive safely, the individual WILL NOT be allowed to continue driving.
    - a. Deputies will notify their Supervisor who will determine an appropriate manner to transport the individual to their destination.
  3. Deputies will document the incident in a Case Report and send a copy of the Case Report and any supporting documentation to the DOS.
- E. It is the policy of the DOS, with respect to alleged criminal violations by persons with immunity from criminal jurisdiction, that law enforcement authorities conduct a thorough investigation and document the investigation completely so that charges may be pursued as far as possible in the U.S. judicial system.
1. Deputies will adhere to DCSO procedures when documenting such incidents (see the DCSO "Report Writing" policy) and will forward reports to the DOS.
- F. Additional information regarding Diplomats and Consular Officials can be found on the DOS website.

### **III. Consular Notification Procedures**

- A. All Foreign Nationals are entitled to consular notification if they are under confinement or restraint.
1. Any commitment to custody that results in a Foreign National being incarcerated for more than a few hours triggers consular notification requirements (e.g., requiring a Foreign National to accompany a Deputy to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight). The longer the detention continues, the more likely it is to require consular notification.
  2. Foreign Nationals are NOT entitled to consular notification if they are detained only momentarily (e.g., brief traffic stops or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger such requirements).
- B. The Douglas County Department of Corrections (DCDC) is responsible for conducting appropriate consular notification for all Foreign Nationals who are arrested and booked into DCDC facilities.
- C. If a Foreign National is detained or confined by the DCSO for a period of time that would trigger consular notification prior to being booked into DCDC or in cases where the individual will not be booked into DCDC (e.g., BMH order), Deputies will adhere to the following procedures:
1. The Deputy will determine whether their country requires consular notification.

- a. A link to the complete list of countries or jurisdictions that have entered into agreements with the United States that require consular notification upon the arrest or detention of their citizens can be found on the DOS website.
2. When an agreement with the Foreign National's country requires consular notification, Deputies will:
  - a. Notify the country's nearest embassy or consulate, without delay, of the arrest or detention regardless of the Foreign National's wishes. Contact information can be found on the DOS's website.
  - b. Tell the Foreign National that the Deputy is making the notification and inform them, without delay that they may communicate with their consular officers. A suggested statement in several different languages is available on the DOS website.
  - c. Forward any communication from the Foreign National to their consular officers without delay.
3. If the Foreign National's country does not have an agreement requiring mandatory notification, Deputies will:
  - a. Inform the Foreign National, without delay, that they may have their Consular Officers notified of the arrest or detention and may communicate with them. A suggested statement in several different languages is available on the DOS website.
  - b. If the Foreign National requests that their Consular Officers be notified, Deputies will notify the nearest embassy or consulate of the Foreign National's country without delay. Foreign embassy and consulate contact information can be found on the DOS's website.
  - c. Forward any communication from the Foreign National to their Consular Officers without delay.
4. Foreign Nationals who have dual nationality will be treated in accordance with the rules applicable to each country. If the person is a dual citizen of the U.S. and another country they may be treated exclusively as a U.S. citizen but may be offered consular access by the detainee's other country of nationality.
5. Deputies will NOT inform the consulate about a detainee's refugee or asylum status.
6. Deputies will document all consular notifications and offers for consular notification in a Case Report. The Case Report will include:
  - a. Information provided to the Foreign National and date and time it was provided.
  - b. The Foreign National's requests, if any.
  - c. Whether the Deputy notified Consular Officers and, if so, the date time, and means of notification.
    - (1) If the Deputy used a fax to notify the Consular Officer, Deputies will keep the fax confirmation and scan it into the Case Folder in RMS. If an email was used the email will be scanned into the Case Folder in RMS.

- d. Any other relevant actions taken.
- D. In the event of the death or serious injury of a Foreign National, Deputies will be responsible for notifying the appropriate Consulate without delay and document the notification in a Case Report.
- E. Additional information regarding consular notification can be found on the DOS website.

#### **IV. Consular Official's Access to Detained Foreign Nationals**

- A. DCSO members will not interfere with Consular Officers who seek communication with Foreign Nationals of their country regardless of the wishes of the Foreign National.
  - 1. DCDC is responsible for providing Consular Officials access to Foreign Nationals detained in any of their facilities. Consular Officials seeking access to such Foreign Nationals will be referred to DCDC.
  - 2. Consular Officers and Diplomats visiting a Foreign National detained by DCSO Deputies will be given the same access privileges as attorneys visiting a client.
  - 3. In all cases, detainees may communicate with Consular Officials and may request consular access at any time (whether previously declined or not).

#### **V. Undocumented Persons**

- A. It is not within the jurisdiction of the DCSO to enforce immigration laws. However, it is the obligation of the DCSO to enforce Nebraska State Statutes when violated by both documented and undocumented persons and to adhere to consular notification procedures.
- B. When Deputies detain or arrest persons for criminal violations and are unable to properly identify such persons due to a lack of documentation, Deputies will contact their Supervisor to determine the best course of action based on the violation and circumstances of the incident.
  - 1. For purposes of consular notification, there is no reason to inquire into a person's legal status in the United States. No distinctions will be made based on whether the Foreign National is here legally or illegally when making consular notification.
  - 2. DCDC will be responsible for making notifications as needed when persons without a social security number are arrested and booked into DCDC facilities.
- C. When Deputies perform a records check and NCIC determines the person is an ICE fugitive, Deputies will book the person into DCDC in accordance with standard warrant arrest procedures (see the DCSO "Arrests" policy).

#### **VI. T- and U-Visa Requests**

- A. In accordance with NSS §29-217, persons may request that the DCSO provide a declaration to assist them in obtaining a T- or U-visa.
- B. Upon receiving a request, the Sheriff or Sheriff's designee must respond within 90 business days.
- C. Persons are eligible to receive a declaration from the DCSO if they are the victim of a qualifying crime AND are willing to cooperate with law enforcement. When determining if these criteria are met the following procedures will be followed:

1. T-Visa

- a. In order to qualify for a T-visa declaration, the person must be a victim of a “severe form of trafficking in persons” (U.S.C. §7102(11)). “Severe forms of trafficking in persons” includes:
- (1) Labor Trafficking – work induced by force, fraud, or coercion.
  - AND-
  - (2) Sex Trafficking – Commercial sex either involving someone under 18 or induced by force, fraud, or coercion.

2. U-Visa

- a. In order to qualify for the a U-visa declaration, the person must be the victim (direct or indirect) of a qualifying crime which may include:
- (1) Abduction.
  - (2) Abusive sexual contact.
  - (3) Blackmail.
  - (4) Domestic violence.
  - (5) Extortion.
  - (6) False imprisonment.
  - (7) Felonious assault.
  - (8) Female genital mutilation.
  - (9) Fraud in foreign labor contracting.
  - (10) Hostage.
  - (11) Incest.
  - (12) Involuntary servitude.
  - (13) Kidnapping.
  - (14) Manslaughter.
  - (15) Murder.
  - (16) Obstruction of justice.
  - (17) Peonage.
  - (18) Perjury.
  - (19) Prostitution.

- (20) Rape.
- (21) Sexual assault or exploitation.
- (22) Slave trade.
- (23) Stalking.
- (24) Torture.
- (25) Trafficking.
- (26) Witness tampering.
- (27) Unlawful criminal restraint.
- (28) Related criminal activities to any of the above listed crimes.

**NOTE:** The above list includes general categories of crimes, not specific crimes or citations to a criminal code.

- 3. When determining whether a person is a victim of a qualifying crime, Deputies need only believe that the person is more likely than not a victim of the crime.
- 4. When determining whether the person has been or will likely be helpful in the investigation or prosecution of the qualifying crime, the person need only seem likely to help when asked. The person is not required to have helped yet at the time of the request.
- 5. If it is determined that the person is the victim of a qualifying crime and is willing to cooperate with law enforcement, the Sheriff or Sheriff's designee will complete the appropriate form as follows:
  - a. T-Visa – I-914 Supplement B.
  - b. U-Visa – I-918 Supplement B.
- 6. If it is determined that the person does not meet the above criteria for a declaration, the Sheriff or Sheriff's designee will respond to the requesting person in writing within 90 days notifying them that:
  - a. The DCSO is denying their request.
  - b. The reasons that the request was denied.
  - c. That the person can make another request with additional information.
- 7. If at any time it is determined that a person that was provided with a declaration is in fact not eligible for such a declaration (e.g., it is determined that the person was a participant, not a victim of a crime), the DCSO may revoke its declaration.
  - a. In such instances, a letter will be written to the requesting person rescinding the declaration, noting why the declaration was rescinded, and that the person can make another request with additional information.

- b. The Sheriff or Sheriff's designee will scan and email a copy of the letter to the Vermont Service Center (see the DCSO Contact List).
- D. The DCSO will retain records of all requests and the DCSO's response for at least three years.
- E. Immediately upon identification of a victim of human trafficking who is a foreign national, the DCSO should contact the Nebraska Human Trafficking Task Force (NHTTF) to request that a federal law enforcement agency sponsor the individual for "Continued Presence."
  - 1. Continued Presence serves as a one-year stop gap measure to make sure that the victim is not deported while waiting for their T- or U-Visa.

## **REFERENCES:**

### **I. Laws**

- A. Nebraska State Statute §29-217.

### **II. Previous DCSO Orders**

- A. Previous DCSO General Orders include: #100-2020, #35-2019, and #5-2006.

### **III. CALEA Accreditation Standards**

- A. Applicable CALEA Accreditation Standards include: 1.1.4.

### **IV. Review Schedule**

- A. Quadrennial.