

 <b>Policy and Procedure</b>		<b>Policy Number</b> <b>11.19</b>
<b>Chapter</b>	Law Enforcement Operations	<b>Approved By:</b> Robert L Ticer, Chief of Police
<b>Article</b>	Foreign Nationals	
<b>Effective Date:</b> December 7, 2021		

### PURPOSE

To provide guidance for the notification of consular officials.

### POLICY

The Department will comply with consular notifications outlined in the Vienna Convention of Consular Relations as required by the Constitution of the United States.

### DEFINITIONS

The **Consular Notification and Access (CN&A) manual** is a publication of the United States Department of State which contains instructions and guidance relating to the obligations of federal, state, and local government officials to provide information to foreign consular officers and to permit foreign consular officers to assist their nationals in the United States.

A **Consular Officer** is a citizen of a foreign country employed by that country's government authorized to provide assistance on behalf of that government to its citizens in a foreign country.

A **Detention**, for the purposes of this policy only, is any situation in which a foreign national's ability to communicate with or visit consular officers is significantly impeded as a result of department members limiting the foreign national's freedom. The primary purpose of the requirement is to ensure that a government does not place a foreign national in a situation in which the foreign national cannot communicate with or receive assistance from his or her own government in a timely manner. When a foreign national is stopped and released within a short period of time, it is not considered a detention because the foreign national is free to contact consular officers independently. The Department of State therefore does not consider brief, routine detentions a significant impediment. For example; interviews, interrogations or a book and release lasting less than 6 hours, as well as traffic stops or accident investigations.

A **Foreign National** is anyone who is not a United States citizen, including lawful permanent resident aliens (green-card holders) and persons with student visas.

A **Mandatory Notification Country** is a country that has entered into a bilateral agreement with the United States requiring notification of consular officials in the event one of their citizens has been arrested/detained in a foreign country.

The **Vienna Convention of Consular Relations (VCCR)** is a multilateral, international treaty governing the duties of consular officials and the rights of foreign nationals while in the United States.

A **Voluntary Notification Country** is a country that allows its citizens the right to decide whether or not he/she wants his/her consular officials notified while detained in a foreign country.





### GENERAL GUIDELINES

#### **Detention of a Foreign National** <CALEA 1.1.4>

Once an officer has determined that an arrestee is not a United States citizen and is going to a detention facility (Larimer County Jail or other), the officer must attempt to determine the arrestee's country of nationality. In the event that the foreign national does not cooperate or is incapable of cooperating, the officer may assume that a passport, travel documents, or other information indicating the foreign national's nationality is correct and current.

The arresting officer or designee will determine whether the nation from which the arrestee is a national is a mandatory or voluntary notification country.

If the foreign national's country is **NOT** on the list of "mandatory notification" ("list") countries and jurisdictions:

- Inform the national, without unnecessary delay, that he or she may have his or her consular officers notified and may communicate with them.
- If the foreign national requests that his or her consular officers be notified, notify the nearest embassy or consulate of the foreign national's country without unnecessary delay.
- Forward any communication from the foreign national to his or her consular officers without unnecessary delay.

If the foreign national's country is on the list of "mandatory notification" ("list") countries:

- Notify that country's nearest embassy or consulate, without unnecessary delay, of the arrest or detention.
- Tell the national, without unnecessary delay, that you are making this notification and that he or she may communicate with the consulate.
- Forward any communication from the foreign national to his or her consular officers without unnecessary delay.

#### **Dual Citizenship**

- One Mandatory Reporting Country – Persons with dual citizenship where one of the countries requires mandatory notification requires the officer to notify that country's consulate. The other country may be notified at the person's request.
- Neither is a Mandatory Reporting Country – The person may have one, both or neither country notified.
- Dual citizenship including the United States – The person should be offered the opportunity to have the consulate of the other country notified. The officer does not need to notify a mandatory reporting country if the person has dual citizenship with the United States.

#### **Exception to Mandatory Notification List**

Polish permanent residents, or green card holders, are to be treated like non-mandatory list nationals—that is, they are exempt from the mandatory notification requirement. Polish green card holders must instead be informed that they can have their consular officers notified of their arrest or detention, with notification to consular officers being made only if the Polish green card holder requests it.





### **Timing of the Notification**

The arresting officer will make the notification or cause notification to be made, whether requested or mandatory, without undue delay and within 72 hours of the arrest at the absolute latest. There is no requirement to stop an interview, interrogation, arrest, or booking process to make the notification. Notification may be done just prior to or immediately following transport to any detention facility if the Department's detention of the foreign national was less than 6 hours.

### **Death or Serious Injury/Illness to a Foreign National**

When a law enforcement officer or other government official becomes aware of the death, serious injury, or serious illness of a foreign national, consular officers must be notified. The officer will follow the documentation procedures listed below.

Any officer investigating the death of a foreign national will work with the coroner's office to determine who will make the consular notification. Notification of family or friends does not qualify; the consulate must be notified by the responsible government official.

### **Advisements for Those Who Have a Limited Understanding of English**

An officer may use an interpreter, the translation poster in Booking, or foreign language notifications found in the CN&A. for those foreign nationals who do not understand English.

### **Documenting Consular Notification**

Officers who arrest or detain foreign nationals will document in their offense reports or other associated documentation:

- Officer or other government entity making the notification
- Information that was provided to the foreign national and when
- The foreign national's requests, if any
- Whether you notified consular officers and, if so, the date and time and the means used to notify them (e.g., fax, email or phone.) If an officer uses a fax or email to notify the consular officers, the officer will turn in the fax confirmation sheet or a printout of the sent email with the case file
- Copies of any identification presented or located which determined nationality
- Any other relevant actions taken

### **Immigration**

Local law enforcement agencies are not authorized to independently enforce federal immigration laws. However, nothing prevents an officer from sharing or exchanging information regarding a person's immigration status to any other agency, including federal agencies.

### **Diplomats and Consular Officials**

Diplomats and Consular officials are foreign officials who have appropriate credentials issued by the State Department.

Diplomats, their families and servants have "diplomatic immunity" under international law and should not be detained or arrested for any offense, nor should their property be subject to search and seizure.





Consular officials (but not their families and servants) are only allowed immunity as to acts performed in the exercise of their consular functions. However, they are not immune from search, seizure, detention or arrest and should be treated as any other foreign national with respect to notification requirements.

Officers will complete a report and notify the on-duty supervisor of any incidents involving diplomats and consular officials, whether or not a citation is issued. In addition, officers will ensure that a copy of any report for felonious activity involving diplomats or consular officials is sent to the FBI.

### **I-918 or U-Visas**

Any Department employee who receives an I-918 or U-Visa request shall route the documents to Records. Records personnel will forward the original to the Larimer County District Attorney's Office after making a copy for the case file.

