

Foreign Nationals, Diplomats, and Consular Representatives

411.1 PURPOSE AND SCOPE

This policy provides guidelines to members of the Santa Monica Police Department when considering a physical arrest or detention of a foreign national, and extending the appropriate privileges and immunities to foreign diplomatic and consular representatives in accordance with international law.

411.2 DEFINITIONS

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

Immunity- Refers to various protections and privileges extended to the employees of foreign governments who are present in the United States and serving as official representatives of their home governments. Article 36 of the Vienna Convention on Consular Relations sets forth certain rights of foreign nationals from member countries when arrested, detained, or imprisoned by law enforcement in this county. The privileges embodied in international law are intended to ensure the efficient and effective performance of authorized employees in the performance of their official missions in foreign countries (i.e. embassies, consulates, etc.).

To ensure United States diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad, it is imperative for law enforcement to respect the immunity to which an individual is entitled under international law. 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 be pursued through the appropriate 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.

411.3 POLICY

The Santa Monica Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

411.4 LEVELS OF IMMUNITY

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

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

411.4.1 DIPLOMATIC AGENTS

Diplomatic agents are afforded the highest levels of immunity. Examples of diplomatic agents include foreign service personnel serving as ambassadors or United Nations representatives. They are exempt from arrest or detention and they are immune from all criminal (and most civil) prosecution by the host state. The personal property, vehicles, and residences of diplomatic agents are not subject to search. The family members of diplomatic agents enjoy these same immunities. Family members include spouses, children until age 21 or 23, if they are full-time students at an institution of higher learning, and other such persons expressly agreed to by the Department of State in extraordinary circumstances.

411.4.2 CONSULAR OFFICERS

Consular officers, holding titles such as Consul General, Consul, or Vice Consul, are ranking members of consular posts who perform various formal functions on behalf of their own governments. 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.

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 the Department of State.

411.4.3 HONORARY CONSULS

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the United States or United States citizens. Unlike consular officers, honorary consuls are permitted to carry on another business. Honorary consuls may be arrested and detained and their family members have no immunity. These persons have limited official acts immunity, although it may be used as a subsequent defense in court.

411.5 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
Diplomatic Agent	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Member of Admin and Tech Staff	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

Service Staff	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Career Consul Officer	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
Honorable Consul Officer	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
Consulate Employees	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
Int'l Org Staff (note (b))	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability
Diplomatic-Level Staff of Missions to Int'l Org	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
Support Staff of Missions to Int'l Orgs	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

411.6 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member shall, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities. A driver's license or tax exemption card issued by the Department of State, or a foreign diplomatic passport containing a United States "A" or "G" visa, do not reflect the degree of privileges and immunities of the bearer.
- (d) Check the front and back of the Department of State identification card. The front of the card will include the bearer's name, title, mission, city and state, date of birth, identification number, and expiration date on the front. The back of the card will have the U.S. Department of State seal and a brief statement of the bearer's criminal immunity, if any. Diplomatic identification cards are blue bordered, consular cards are red bordered, and official cards are green bordered.
- (e) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (f) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

Identity or immunity status cannot be presumed from the type of license plates displayed on a vehicle. Vehicles that are owned by foreign missions or foreign service personnel and their dependents are registered with the Department of State Office of Foreign Missions, Diplomatic Motor Vehicle Office (DMVO). Vehicles assigned to diplomatic or consular officers will generally have license plate labels with the word "diplomat," or "consul." Vehicles owned by honorary consuls are not issued license plates by the Department of State OFM; however, they may have a California license plate with an honorary consul label. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

411.7 ENFORCEMENT

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
 - 1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
 - 1. Diplomatic-level staff of missions to international organizations and recognized family members
 - 2. Diplomatic agents and recognized family members
 - 3. Members of administrative and technical staff of a diplomatic mission and recognized family members
 - 4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
 - 1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
 - 2. Support staff of missions to international organizations
 - 3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
 - 4. Honorary consular officers
 - 5. Whenever a sworn officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c). If the individual wants his/her government notified, the officer shall begin the notification process.

411.7.1 CITABLE OFFENSES

A citation shall be issued at the scene for all violations warranting such action regardless of the violator's immunity status. The issuance of a citation is not considered an arrest or detention under current Department of State guidelines. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the officer:

- (a) Request identification documents from the claimant

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

- (b) The title and country represented by the claimant are to be recorded on the back of the officer's copy of the notice to appear for later reference. Do not include this information on the face of the notice to appear.
- (c) The claimant shall be requested to sign the notice to appear. If the claimant refuses, the identity and immunity status of the individual shall be conclusively established.
- (d) Verified diplomatic agents and consular officers, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the notice to appear. The word "Refused," shall be entered in the signature box, and the violator shall be released.
- (e) Verified consular staff members, excluding those from countries which the U.S. has special agreements, are generally obligated to sign the notice to appear, but a signature shall not be required if their immunity status is uncertain.
- (f) All other claimants are subject to the provisions of Vehicle Code § 40302(b) and policy and procedures outlined in this chapter.
- (g) The violator shall be provided with the appropriate copy of the notice to appear.

The Department of State Diplomatic Motor Vehicle (DMVO) Office maintains driver histories on all its licensees and will assess points for moving violations. Drivers who demonstrate a pattern of unsafe driving practices may have their license suspended; however, officers need to promptly report the violations to the DMVO in order to enforce this policy.

411.7.2 IN-CUSTODY ARRESTS

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. Proper identification of immunity claimants is imperative for potential in-custody situations. When a subject who is placed under arrest claims diplomatic or consular immunity, the officer shall:

- (a) Notify a supervisor.
- (b) Ensure the subject is not physically restrained before verification of the claim, unless restraint is necessary for the protection of the officer or others.
- (c) Request the subject's identification documents for verification of immunity status. While the identification documents issued by the Department of State or the U.S. Mission to the United States are reliable evidence of diplomatic or consular immunity, newly arrived members of diplomatic or consular missions may not yet have received these official documents.
- (d) Initiate telephone verification with the Department of State Command Center (866) 217-2089 any time an individual claims immunity and there is a possibility of physical arrest.
- (e) If a representative of the Department of State cannot be reached, the officer should also attempt to contact, as appropriate, the Office of Foreign Missions, Los Angeles (310) 235-6292, Office of Foreign Missions, San

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

Francisco (415) 744-2910, and/or Office of Foreign Missions, Diplomatic Motor Vehicle Office, Washington D.C (202) 895-3521.

When officers follow the above procedures and verify the foreign official is entitled to immunity, or the foreign official's immunity cannot be verified, but other legitimate forms of identification indicate immunity is probable, then the officer shall follow these guidelines:

- (a) Upon the direction of the Department of State Command Center and provided the release of the subject does not pose an immediate public safety risk, officers shall obtain adequate information to properly identify the subject and release him/her. 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.
- (b) If the subject appears to have been driving while under the influence, field sobriety tests, including a Preliminary Alcohol Screening (PAS) device tests and 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.
- (c) All facts of the incident shall be documented in the relevant report forms. Notwithstanding the release of the subject, prosecution should be pursued through the appropriate channels. The Department of State will take appropriate sanctions against errant foreign service personnel, even when prosecution is not undertaken by the agency.

411.7.3 ARREST PROCEDURE FOR FOREIGN NATIONALS WITHOUT IMMUNITY

Whenever an officer physically arrests or detains an individual for a criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship. This procedure applies to a detention of more than two hours. An inquiry is not required if the individual is detained less than two hours for a criminal investigation.

If the individual indicates that he/she is other than a U.S. citizen, the officer shall advise the individual that he/she has a right to have the nearest appropriate embassy or consulate notified of the arrest/detention (Vienna Convention on Consular Relations, Article 36).

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:

- (a) Country of citizenship
- (b) Full name of individual, including paternal and maternal surname, if used
- (c) Date of birth or age
- (d) Current residence

Santa Monica Police Department

Santa Monica Police Department Policy Manual

Foreign Nationals, Diplomats, and Consular Representatives

- (e) Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention if different from the Department itself.

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, officers shall provide the Communications Center with the information above as soon as practicable, regardless of whether the individual desires that the embassy/consulate be notified. This procedure is critical because of treaty obligations with those particular countries. The list of countries and jurisdictions that require notification can be found on the Department of State website.

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

411.8 SUPERVISOR RESPONSIBILITY

The field supervisor shall respond to the following incidents involving a foreign official with confirmed diplomatic or consular immunity, or a claimant with highly probable immunity based on other legitimate identification forms:

- (a) Any serious criminal offense where law enforcement action may be warranted
- (b) A traffic collision involving injuries or significant property damage
- (c) A detention where officers are unable to confirm the claimant's identity and/or the claimant is being uncooperative

If any confirmed diplomat or consular official with immunity privileges commits a serious crime or is involved in a serious traffic collision, the supervisor shall ensure all related reports are completed by the handling officer. The supervisor will complete a memorandum documenting the incident including the violation(s), the cooperation of the subject, or any other unusual aspects of the enforcement contact that should be reported to the Department of State for further action. The supervisor will submit the memorandum with the related reports to the Office of the Chief of Police. The Chief of Police or his/her designee will determine if further action is warranted, and contact the Department of State.

411.9 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.