

ATLANTIC CITY POLICE DEPARTMENT				
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SUBJECT: CONSULAR NOTIFICATION & IMMIGRATION ENFORCEMENT				
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BY THE ORDER OF: Henry M. White Jr., Chief of Police			NJSACOP ACCREDITATION STANDARDS: 3.6.4(e)	05-27-15 03-07-19
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SUPERSEDES ORDER #:				

PURPOSE The purpose of this directive is to comply with the provisions of the Vienna Convention on Consular Relations regarding notifications to consulate officials in the event foreign nationals die or are arrested or detained.

Also, comply with the New Jersey Attorney General issued Law Enforcement Directive No. 2018-06 (AX-01325-19) titled "Strengthening Trust between Law Enforcement and Immigration Communities." The policy is intended to draw a cleaner distinction between state, county and local law enforcement officers, who are responsible for enforcing state criminal laws, and federal authorities, (including Immigration and Customs Enforcement, or ICE), who enforce federal civil immigration law.

POLICY Under the provisions of the Vienna Convention on Consular Relations, Apr. 24, 1963, articles 5, 36, 37, 21 U.S.T. 77, 101, when foreign nationals are arrested or detained, they must be advised of the right to have their consular official notified. In some cases notification is mandatory, whether the foreign national consents to the notification or not. Further, in the event a foreign national dies, their consulate must be notified.

The Vienna Convention on Consular Relations is a bi-lateral agreement between nations regarding the legal obligations that countries have towards foreign nationals in certain situations.

All personnel must be aware that they are required to provide prompt notification to a foreign national's consular officials. Failure to provide prompt notification may result in the reversal of any criminal conviction (State v. Cevallos-Bermo, 333 N.J. Super. 181 (App. Div. 2000)).

It is the policy of this agency to promptly provide these notifications, where necessary, in the event a foreign national is arrested or detained.

PROCEDURES

I. Definitions

- A. Arrest shall refer to any detention or other commitment to custody which results in a foreign national being incarcerated for more than a few hours triggers the consular notification requirements under this procedure.
1. A brief traffic stop or an arrest which results in a citation and release at the scene for an infraction or misdemeanor would not require that consular notification is provided.
 2. Requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight.
 3. The longer a detention continues, the more likely it is that a reasonable person would conclude that the consular notification obligation is triggered
- B. Consular Assistance is defined as the right to visit, correspond with, and arrange for legal representation of a foreign national detained or in detention.
- C. Consular Office or Consul is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. The term consul should not be confused with Counsel, which means an attorney authorized to provide legal counsel and advice
- D. Detention/Detained shall refer to the temporary seizure of a person not amounting to a custodial arrest, but more than the brief stopping of a person to answer questions in a street or motor vehicle investigative encounter. The detention is greater than that which occurs during a simple Terry stop or a field interview.
- E. Diplomat is an official of a foreign government assigned to an embassy in Washington, D.C. Diplomats may also perform consular functions, and should be treated the same as a consular officer
- F. Foreign National is any person who is not a United States citizen. The term foreign national and alien are used interchangeably. Resident aliens who have a resident alien registration card, commonly known as a green card, are considered foreign nationals for the purposes of consular notification, as are undocumented (or illegal) aliens.
- G. Without Delay is a term contained in the Vienna Convention on Consular Relations generally understood to mean that there should be no deliberate delay, and that notification should occur as soon as reasonably possible under the circumstances. Nevertheless, notification to consular officials should have been made within the first 24 hours of the detention, and certainly within 72 hours

II. General Provisions

- A. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.

- B. Some countries require that the nearest consular official must be notified of the arrest or detention of a foreign national, regardless of the foreign national's wishes.
- C. Consular officials are entitled to access their foreign national in detention and are entitled to provide consular assistance.
- D. A listing of countries that require mandatory notification is contained in [Attachment A](#) to this directive. (Note: Although the U.S.S.R., Yugoslavia and Czechoslovakia no longer exist, some nationals of its successor states may still be traveling on its passports. Mandatory notification must be given to consular officials for all nationals of these states, including those traveling on old U.S.S.R., Yugoslavia or Czechoslovakia passports. The successor states are listed separately).
- E. A formatted fax sheet for notifying consular officials of arrests or detentions is contained in [Attachment B](#).
- F. A formatted fax sheet for notifying consular officials of death/serious injuries is contained in [Attachment C](#).
- G. A compendium of translated statements in multiple languages is contained in [Attachment D](#) to this directive. (For purposes of this directive only 13 languages are listed. It is impossible to list all possible languages. Only those languages common to this region are listed.)
- H. A listing of foreign embassies and consulates in the United States are contained in [Attachment E](#) to this directive.
- I. The Vienna Convention on Consular Relations, articles 5, 36, 37, is contained in [Attachment F](#) to this directive.
- J. These are mutual obligations that also pertain to American citizens in foreign countries. In general, treat a foreign national as you would want any American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national's nearest consular officials so that they can provide whatever services they deem appropriate.
- K. Under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.
- L. When a foreign aircraft crashes, consular officials must be notified. In all probability, a state or federal agency having overall jurisdiction for the crash will make this notification

III. Notification Procedures

- A. When a foreign national is arrested or detained, determine their country of nationality. Normally, this is the country on whose passport or other travel document the foreign national travels.
- B. If the foreign national's country is not on the mandatory notification list in [Attachment A](#):

1. Without delay, offer to notify the foreign national's consular officials of the arrest/detention. See Statement I listed below.
 - a. If the foreign national understands English, then the statement can be given in English. If the foreign national does not understand English, a listing of statements in 13 foreign languages is contained in [Attachment D](#).
 - b. If the language is not listed, notify the appropriate consulate by telephone to obtain a copy of the notification in their language or access the US State Department Website at travel.state.gov/CNA.
 2. If the foreign national asks that a consular notification be given, notify the nearest consular official of the foreign national's country without delay.
 - a. For phone and fax numbers, this contact information can be found on the US State Department Website at:
http://travel.state.gov/law/consular/consular_745.html
- C. If the foreign national's country is on the list of mandatory notification countries:
1. Notify that country's nearest consular officials of the arrest/detention, without delay immediately via fax. Notification should occur as soon as is reasonably possible under the circumstances. Notification must be made regardless of whether the foreign national desires notification. Phone and fax numbers can be found on the State Department web site at travel.state.gov/CNA.
 2. Inform the foreign national of the mandatory notification of their arrest/detention. See Statement II, listed below.
 - b. If the foreign national understands English, then the statement can be given in English. If the foreign national does not understand English, a listing of statements in 13 foreign languages is contained in [Attachment D](#).
 - c. If the language is not listed, notify the appropriate consulate by telephone to obtain a copy of the notification in their language or access
 - d. If the language is not listed, notify the appropriate consulate by telephone to obtain a copy of the notification in their language or access the US State Department Website at http://travel.state.gov/law/consular/consular_737.html)
- D. Document the notification or the declined notification on the investigative report noting the following:
1. Name of Consulate notified;
 2. How notified, voice, fax, etc;
 3. Name of the official notified;

4. Time notification was made;
5. If notification was made by fax, a copy of the fax sheet and the transmission verification report must be appended to the report.
6. A copy of the appropriate statement whether in English or in one of the other languages, noting **Yes** or **No**, (in the case of a non-mandatory notification) must be attached to the investigative report.

IV. Statement #1

- A. To be read to or viewed by a foreign national in a non-mandatory notification setting:

“As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country’s consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country’s consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country’s consular officials?”

V. Statement #2

- A. To be read to or viewed by a foreign national in a mandatory notification setting:

“Because of your nationality, we are required to notify your country’s consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country’s consular officials as soon as possible.”

VI. Death or Serious Injury of a Foreign National

- A. Notification of the death or life-threatening injury of a foreign national must be made immediately to the nearest consulate of the national's country. The notification will be documented in the incident report documenting the death or serious injury
- B. Whenever possible, notification must be made by fax. The fax sheet found on the State Department’s consular notification web site ([Attachment C](#) or http://www.travel.state.gov/docs/notification_faxsheet_injury.doc) can be used to document and transmit the notification of death or serious injury
- C. Such notice will help to ensure that passports and other legal documentation issued by that country are cancelled and not reissued to fraudulent claimants. Additionally, it may help ensure that the foreign national’s family and legal heirs, if any, in the foreign country are aware of the death and that the death is known for estate purposes in that country

VII. Enforcement of Federal Civil Immigration Law

- A. Cannot stop, question, arrest, search, or detain any individual based solely on actual or suspected immigration status.

- B. Cannot ask the immigration status of any individual, unless doing so is necessary to the ongoing investigation of a serious offense and relevant to the offense under investigation.
- C. Cannot participate in ICE's civil immigration enforcement operations.
- D. Cannot provide ICE with access to state or local law enforcement resources, including equipment, office space, databases, or property.

IIX. Limitations on Assisting Federal Immigration Authorities

- A. Except pursuant to Sections VIII below, no state, county, or local law enforcement agency or official shall provide the following types of assistance to federal immigration authorities when the sole purpose of that assistance is to enforce federal civil immigration law:
 - 1. Participating in civil immigration enforcement operations.
 - 2. Providing any non-public personally identifying information regarding any individual.
 - a. Non-public personally identifying information includes a social security number, credit card number, unlisted telephone number, driver's license number, vehicle plate number, insurance policy number, and active financial account number of any person. See N.J.S.A. 47:1A-1.1, N.J. Court Rule 1:38-7(a). It may also include the address, telephone number, or email address for an individual's home, work, or school, if that information is not readily available to the public.
 - 3. Providing access to any state, county, or local law enforcement equipment, office space, database, or property not available to the general public.
 - 4. Providing access to a detained individual for an interview, unless the detainee signs a written consent form that explains:
 - a. the purpose of the interview;
 - b. that the interview is voluntary;
 - c. that the individual may decline to be interviewed; *and*
 - d. that the individual may choose to be interviewed only with his or her legal counsel present.
 - 5. Providing notice of a detained individual's upcoming release from custody, unless the detainee:
 - a. is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
 - b. in the past five years, has been convicted of an indictable crime other than a violent or serious offense; *or*
 - c. is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

6. Continuing the detention of an individual past the time he or she would otherwise be eligible for release from custody based solely on a civil immigration detainer request, unless the detainee:
 - a. is currently charged with, has ever been convicted of, or has ever been adjudicated delinquent for a violent or serious offense, as that term is defined in Appendix A;
 - b. in the past five years, has been convicted of an indictable crime other than a violent or serious offense; or
 - c. is subject to a Final Order of Removal that has been signed by a federal judge and lodged with the county jail or state prison where the detainee is being held.

IX. Exceptions and Exclusions

- A. Nothing in Sections VI. or VII. shall be construed to restrict, prohibit, or in any way prevent a state, county or local law enforcement agency or official from:
 1. Enforcing the criminal laws of this state.
 2. Complying with all applicable federal, state, and local laws.
 3. Complying with a valid judicial warrant or other court order, or responding to a request authorized by a valid judicial warrant or other court order. A judicial warrant is one issued by a federal or state judge.
 4. Participating with federal authorities in a joint law enforcement taskforce with the primary purpose of which is unrelated to federal immigration enforcement.
 5. Requesting proof of identity from an individual during the course of an arrest or when legally justified during an investigation stop or detention.
 6. Asking an arrested individual for information necessary to complete the required fields of the LIVESCAN database (or other law enforcement fingerprinting database), including information about the arrestee's place of birth and country of citizenship.
 7. Inquiring about a person's place of birth on a correctional facility intake form and making risk-based classification assignments in such facility.
 8. Providing federal immigration authorities with information that is publicly available or readily available to the public in the method the public can obtain it.
 9. When required by exigent circumstances, providing federal immigration authorities with aid or assistance, including access to non-public information, equipment, or resources.
 10. Sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful of any individual.

X. U-Visa / T-Visa Applicants

- A. Law Enforcement Directive No. 2018-06 requires that New Jersey law enforcement agencies develop procedures to assist victims and witnesses who are applying for T-Visas and U-Visas (Refer to U-Visa and T-Visa Law Enforcement Resource Guide, Resource D in No. 2018-06). These Visas provide special immigration status for those cooperating with law enforcement investigations.
 - 1. Each law enforcement agency shall designate an authorized official of the certifying law enforcement agency to assist victims and witnesses applying for the aforementioned Visas and post information about its application procedure on its website, or if the agency does not have its own website, then on the municipality's website.
 - a. Law enforcement agencies may contact the on-call Police Legal Advisor for any assistance they may need in satisfying the law enforcement certification requirements for U and T visa applications.

- B. **T-visa certifications.** For T-visa certification requests, each agency's certification procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-914 Supplement B, the requester:
 - 1. Is or has been a victim of a severe form of trafficking in persons; *and*
 - 2. Has complied with requests for assistance in an investigation or prosecution of the crime of trafficking.

- C. **U-visa certifications.** For U-visa certification requests, each agency's procedure shall include a determination of whether, pursuant to the standards set forth in federal law and instructions to USCIS Form I-918 Supplement B, the applicant:
 - 1. Is a victim of a qualifying criminal activity; *and*
 - 2. Was, is, or is likely to be, helpful in the investigation or prosecution of that activity.

- D. **Inquiry into and disclosure of immigration status.** Notwithstanding any provision in Section II, state, county, and local law enforcement agencies and officials may ask any questions necessary to complete a T- or U-visa certification. They may generally not disclose the immigration status of a person requesting T- or U-visa certification except to comply with state or federal law or legal process, or if authorized by the visa applicant. However, nothing in this section shall be construed to restrict, prohibit, or in any way prevent a state, county, or local law enforcement agency or official from sending to, maintaining, or receiving from federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

XI. Notifications to Detained Individuals

- A. State, county, and local law enforcement agencies and officials shall promptly notify a detained individual, in writing and in a language the individual can understand, when federal civil immigration authorities request:
 - 1. To interview the detainee.

2. To be notified of the detainee's upcoming release from custody.
 3. To continue detaining the detainee past the time he or she would otherwise be eligible for release.
- B. When providing such notification, law enforcement officials shall provide the detainee a copy of any documents provided by immigration authorities in connection with the request.

XII. Annual Reporting

- A. A report detailing the provided assistance described in Sections VIII.A.1 to VIII.A.6 during the calendar year shall submit a report to the Atlantic County Prosecutor's Office no later than the 30th of January of the preceding year.

RESOURCES-

[N.J. Attorney General Law Enforcement Directive NO. 2018-06](#)

[ACPO- PD-00423-07- Immigration Enforcement](#)

[Immigration Trust – ICE Interview and/or Notification Forms](#)