

	Policy & Procedures				No. 1.33	
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CALEA STANDARDS:

11.4.4 72.7.2

Purpose

The Vienna Convention on Consular Relations (VCCR) is a multilateral treaty ratified by nearly 170 countries since 1963. The United States also has separate bilateral treaties with a number of countries concerning consular matters, some of which mandate consular notification every time a national of the other country is arrested or otherwise detained.

Every government wants its citizens, no matter where they live or travel, to be treated justly and humanely, even if they are accused or convicted of a crime. By following reciprocity in observing consular notification and access obligations, we help ensure that American citizens abroad will also be treated fairly and justly.

Whenever a foreign national is arrested or detained in the United States, there are legal requirements to ensure that the foreign national's government can offer him or her appropriate assistance. In every case, the person must be told of his or her right to communicate with their consular officials. In most cases, the person has the option to decide whether to have consular representatives notified of the arrest or detention. This is called optional notification, and applies only when the VCCR is involved.

In some cases, however, the foreign national's consular officials must be notified of the arrest, regardless of the person's wishes. This is called mandatory notification, and it applies when the foreign national is a citizen of one of the specific mandatory-notification countries. A complete list of mandatory notification countries and jurisdictions can be found on page 7 & 8 of this policy.

Detained foreign nationals are entitled to communicate with their consular officers. The consular officer may speak with holding facility authorities about the detainee's condition of confinement, and may bring the detainee reading material, food, medicine, and other necessities, if permitted by holding facility regulations.

It shall be our agency's policy for the Shift Supervisor to notify the Chief verbally, as soon as possible when any foreign national is detained. **11.4.4**

Policy

It shall be the policy of this department to comply with all United States Government treaty obligations regarding arrest or detention of foreign nationals. **72.7.2 (C)**

- When a Foreign National is arrested or detained, they shall be advised without delay of their right to have their consular officials notified. **72.7.2 (FII)**

Optional- In most cases, the foreign national has the option to decide whether to have consular officials notified.

Consular officials shall be notified without delay if requested

Mandatory- In some cases, the foreign national's consular officials must be notified of an arrest or detention, regardless of the foreign national's wishes.

Consular officials shall be notified if notification is mandatory.

- Consular officials are entitled to communicate with and have reasonable access to their nationals in detention and are entitled to provide consular assistance. **72.7.2 (D, F II)**

Definitions

Foreign National: For the purposes of consular notification, a foreign national is any person who is not a U.S. citizen. This includes lawful permanent resident aliens who have a resident alien registration card or a "green card", as well as undocumented or illegal aliens. **72.7.2 (A)**

All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status, so illegal aliens have the same rights to consular assistance as do legal resident aliens. **72.7.2 (D)**

There is no reason, for purposes of consular notification, to inquire into a person's legal status in the United States.

Consular Official (Consul): A citizen of a foreign country employed by a foreign government and authorized to provide assistance to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of an embassy in Washington, DC, or to consular offices maintained by the foreign government in other U.S. locations.

Optional Notification: A foreign national may refuse the offer to have their consular office notified of their detention.

Mandatory Notification: Bilateral agreements require that the consul be notified in the event of a detention of a national, regardless of the wishes of the detainee.

Detention: An arrest, protective custody, or other custodial situation. **72.7.2 (B)**

- Detentions that last for an extended period of time or include transportation to a police station or holding facility will trigger consular notification obligations.
- For the purpose of this policy, a traffic stop, a threshold inquiry or accident investigation is not a detention.

Procedures

Arrest and Detention of Foreign Nationals

1. Generally

During the booking process, the booking officer shall ask the detainee their citizenship status if there is any indication that they are not citizens of the United States. If they are determined to be a foreign national, be sure to complete the “Foreign National” and “Country of Origin” information on the Vitals screen of the IMC booking module.

Aside from detainees self-identifying themselves as foreign nationals, the following may trigger further inquiry by officers:

Place of birth outside the United States
No command of the English language
Carrying identification documents from outside the United States

Foreign nationals shall be advised of the consular notification process and asked to sign an acknowledgement.

English speaking detainees shall be given a copy of the form, Statements to Arrested or Detained Foreign Nationals.

For non-English speaking detainees, forms in other languages should be printed from the U.S. Department of State website:
<http://travel.state.gov/CNA> and click on *Consular Notification Statement* choosing the language you need.

The booking officer shall note in the arrest report that the foreign national has been advised of mandatory notification, or has been advised of the option for consular notification.

If consular notification is made, that fact will be noted in the report, and the form used to fax the notification to the consulate shall be filed with the arrest report. The desk officer shall include this information in the Dispatch Log.

2. Mandatory Notifications

The booking officer shall determine if the detainee's country of origin is one requiring mandatory notification.

The U.S. Department of State web site has a list of the fifty-seven Mandatory Notification Countries and Jurisdictions.
<http://www.travel.state.gov/content/travel/english/consularnotification/countries-and-jurisdictions-with-mandatory-notifications.html>

Complying with treaties mandating that consular officials be notified of an arrest or detention, the booking officer or supervisor shall make Mandatory consul notifications without delay, regardless of the wishes of the foreign national. **72.7.2 (F IV)**

3. Optional Notifications

Nationals of optional notification countries shall be advised of their right of consular notification and access.

For foreign nationals from optional notification countries who do not wish to have their consul notified, take no further action. Retain the signed Statements to Arrested or Detained Foreign Nationals Form with the report. A foreign national who refuses notification of consul may later request that notification be made at any time while being held.

Notification of Consul

For foreign nationals who are subject to mandatory notification of their consul or who request notification, an officer shall fax the notification using the Consular Notification of Arrest or Detention of Foreign Nationals Form.
72.7.2 (D)

Fax and phone numbers may be found on the U.S. Department of State web site "Foreign Embassies and Consulates in the United States".
<http://www.travel.state.gov/CNA>

Consular notification should be made to the nearest listed location.

In some cases where notification is mandatory, there may be privacy concerns, or the foreign national may have a legitimate fear of persecution or mistreatment by his/her government. The notification requirement still must be honored. Officers are not obligated to provide any further information regarding the foreign national's detention or circumstances.

Under no circumstances shall 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.

Access of Consular Officials to Detainees

Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance. **72.7.2 (F I)**

Consular officials may be granted access to detainees in person or by telephone, at the discretion of the shift supervisor. Supervisors should consider:

- The reason for being detained, nature of the charges;
- The detainee's demeanor (violent, intoxicated, etc.);
- Bail status and anticipated length of custody;
- Security considerations; and
- Availability of personnel or appropriate facilities to accommodate a visit.

Consular officials and diplomats will be afforded the same access and visitation privileges as attorneys. They shall be required to adhere to Canton Police Department's guidelines as noted in Policy #3.02 Holding Facility.

Consular officials must have proper identification. If there are questions about the validity of an identification card, contact the State Department's Office of Protocol at 202-647-1985. Calls after hours should be referred to the Bureau of Diplomatic Security at 571-345-3146 or 866-217-2089. Assistance is available at the State Department website: <http://www.travel.state.gov>

Consular officials may not act on behalf of the foreign national if the person opposes their involvement.

Consular officials may not act as an attorney for the national.

Consular officials are not allowed to interfere with police investigations.

Death or Life Threatening Injury of Foreign Nationals

If a foreign national dies or suffers a life threatening injury (accident, crime victim, criminal action, unattended death, etc.), the consul of that national's country must be notified. The foreign government may then notify the deceased's next of kin, cancel the party's passport, etc. In the event of a serious illness, the consulate may offer assistance or referrals, and may provide notification to family members.

If an officer becomes aware of the death or serious injury or illness of a foreign national, a copy of the Notification of Death or Serious Injury or Illness of a National of your Country Form shall be faxed to the appropriate Consular offices. Copies of this form can be found at <http://travel.state.gov/CNA> along with the contact information of Consular's offices.

U.S. Department of State Resources and Contacts

Information on Consular Notification and Access along with the U.S. Department of State publication "Consular Notification and Access –Manual" may be found on the U.S. Department of State's web site at: <http://travel.state.gov/CNA>.

A helpful Consular Notification and Access process flow chart is also available at this web site for printing (a copy is provided at the back of this policy).

Assistance is available at the U.S. Department of State by calling (202) 485-7703; fax number (202) 485-6170; email consnot@state.gov

Urgent telephone calls outside of normal business hours can be made to the Department of State Operations Center by calling (202) 647-1512.

Any questions regarding an individual's status or immunity as well as questions pertaining to the treatment of a Consular under arrest, etc. can be directed to the Department of State Office of Protocol by calling (202) 647-1985.

Calls after hours should be directed to the Protective Liaison Division of Department of State's Bureau of Diplomatic Security by calling (866) 217-2089; fax number (202) 895-3613.

COUNTRIES AND JURISDICTIONS WITH MANDATORY NOTIFICATIONS

Albania	Malaysia
Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas	Nigeria
Barbados	Philippines
Belarus	Poland ²
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China (including Macao and Hong Kong) ¹	Saint Lucia
Costa Rica	Saint Vincent and The Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hungary	Turkmenistan
Jamaica	Tuvalu
Kazakhstan	Ukraine
Kiribati	United Kingdom ³
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
	Zimbabwe

¹Notification is not mandatory in the case of persons who carry “Republic of China” passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office (“TECRO”), the unofficial entity representing Taiwan’s interests in the United States, can be notified at their request. TECRO’s offices are listed on pages 126-127 in the Consular Notification and Access Manual; see also footnote 128 on page 66 of the manual.

²Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., “green card” holders). Otherwise, upon the national’s request. See the question “But since ‘green card’ holders are living in the United States permanently, why can’t I ignore consular notification requirements for them?” on page 12 of the manual; see also footnote 18 on page 43 of the manual.

³The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands, along with other island territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate. For advice on how to ascertain whether an arrested or detained person is a British national, see the question “What about British nationals” on page 24 of the manual. For the U.S.-U.K. convention, see footnote 30 on page 47 of the manual.