



TALBOT COUNTY SHERIFF'S OFFICE

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February 4, 2016

GENERAL ORDER NO. 16-017

TO: All Talbot County Sheriff's Office Personnel
SUBJECT: Consular Notification and Access for Foreign Nationals

PURPOSE

- A. To establish procedures for the advisement of Access Rights and offer of Consular Notification to a foreign national who is arrested or detained by the Talbot County Sheriff's Office (TSO).
- B. To comply with the legal mandates of Consular Notification as it applies to voluntary notification of arrest, mandatory notification of arrest, notification of possible appointment of guardian or trustee, and notification of death or serious injury of a foreign national.
- C. To delineate the consular notification process as a legal mandate that is singular and distinct from any other process or procedure that could be construed to reflect query or action that involves a person's immigration status, legal ability to be in the United States, or potential discriminatory claims as based on a person's national origin or ethnicity.

POLICY

- A. All TSO personnel arresting or detaining a foreign national will do so in accordance with TSO policy and guidance and in accordance with law. Federal Law and the Vienna Convention on Consular Notification will form the basis for such notifications and the related investigative reports.
- B. Consistent with legal basis, and when requested or mandated as a provision for those foreign national arrestees who qualify, the process and option for consular notification will be documented in the appropriate investigation report.

RESPONSIBILITIES

- A. The Criminal Commander will be responsible for the collection, review, and analysis of the foreign national consular notification process and related investigative reports.
- B. Supervisors will become actively involved in cases that involve foreign nationals and will ensure that their group members are aware of, and conform to the mandated requisites of the law and the directives of this Order for compliance with the law.

PROCEDURE

- A. Under the terms of the Vienna Convention on Consular Relations, U. S. law enforcement officers are obligated to notify any foreign national who is arrested or detained of their Consular Notification and Access Rights.

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- B. In addition to noting a person's country of origin from passports and travel documents, arrested persons believed to be foreign nationals will be asked if they are a U.S. citizen. If that person answers "yes", then the implementation of this process and subsequent consular notification *is not* required.
- C. A Foreign National is a person who is not, or does not claim to be a United States citizen, and includes Aliens who are lawful permanent U.S. residents who have a resident alien registration card; commonly referred to as a "green card." A "green card" is an issued Department of Homeland Security Form I-551. *Undocumented or "illegal" aliens are considered to be Foreign Nationals for this process.*
- D. Persons who are detained or arrested will not be asked if they possess or can produce a "green card."
- E. If a person is arrested, suspected to be foreign national, and does not claim U.S. citizenship, that person will be asked to identify their country of origin. A "flow chart" worksheet for initial screening will be used to determine if the country claimed by the foreign national is on a *mandatory* notification list. If the person states, claims, or is identified as being from one of the countries on the mandatory notification list (herein referred to as "list countries"), *mandatory notification to their consul or embassy will occur.* The worksheet used for the screening process is an attachment to this Order and will be used consistent with this process.
- F. If a person is arrested, suspected to be foreign national, and does not claim U.S. citizenship, that person will be asked to identify their country of origin. A subsequent screening process (worksheet flow chart above) will then be used to determine if the country of origin is on a list of countries that mandate consular notification. If the foreign national's country is *not on the list* of mandated consular notification, the arrestee will then be asked if they want their consul or embassy notified. In these cases, the *consular notification is voluntary for the person being arrested that is not from the mandated list of countries on the worksheet.*
- G. After determining the country of origin of a person who qualifies for this process and who requests or is mandated to make such notification, its implementation and notification to the appropriate consular representative will be made "without delay."
- H. In cases in which a foreign national claims to be from a country on the mandatory notification list, consular notification is mandated; regardless of the interest, intent, or preference of the arrestee. The "list countries" appear on the flowchart worksheet, and on a separate attachment to this Order.
- I. The arrest and investigation that involves the screening of foreign nationals in this process will not be extended, intended, nor used to further identify the arrestee's immigration status or to take specific action independent of the arrest to trigger immigration action.
- J. Persons provided the option or mandate of consular notification may still be processed as arrested persons who may be wanted, selected, or processed as a criminal alien or person wanted by the Customs and Immigration Service for deportation as part of the arrest and subsequent detention after consular notification has been made.
- K. In each case of screening a foreign national to determine if notification is optional or mandatory, a worksheet explaining the notification process (one to be used for mandatory, and one to be used for optional notification) will be read to the arrestee, with the sheet completed, reviewed, and signed by the arrestee. The Deputy will complete the appropriate portions of this notification sheet. Although there is no requirement for this statement to be presented or read in the foreign national's own language, copies specific to a language may be found in the resource material that accompanies this Order, or that the form can be read in their native language through the use of "Language Line" or other translational services.

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- L. The voluntary or mandated consular notification process does not exempt law enforcement from making notification; even if the arrestee wishes to make notification themselves. The initial act of consular notification is the primary responsibility of the Deputy in control of the foreign national arrestee, and cannot be subrogated to the arrestee.
- M. Certain information concerning the arrestee will not be shared with the consular official at the embassy or consular office. Protected issues of health information and other “privileged” personal communications will not be discussed. The facts of the arrest and immediate disposition are the essential elements of such notification. Issues of intent or the interest of a foreign nation seeking asylum will not be discussed or shared with any diplomat or consular official.
- N. In all cases of mandated or voluntary notification, the appropriate investigative report will detail and document that the notification of Consular Rights has been initiated.

INVESTIGATIVE CONCERNS

- A. The use and implementation of this notification process does not preempt or change investigative procedures in regard to the Advice of Rights, or the reading of Miranda. An investigation of a foreign national can be conducted as in any other case without prompting the consular notification as a prelude to interview or arrest. The invocation of the right of consular notification during the course of an interview or interrogation does not serve to stop the interview/interrogation on that aspect; permitting such notification only at the conclusion of the interview or interrogation.
- B. A U.S. driver's license possessed by a foreign national is not sufficient to simply indicate or imply that the issued holder is a U.S. citizen. Additionally, a foreign national possessing a legally issued social security number does not imply nor substantiate that that person is a U.S. citizen.
- C. Copies of any identity documents presented by a foreign national should be included in the investigative aspects of any investigation, and included with case file materials. These documents will become key elements in how a decision was reached to determine the arrestee's status and country of origin.
- D. Federal law requires that most foreign nationals carry immigration documents with them at all times while in the United States (ref. 8 U.S.C. S/S 1304 (e)). It is the arresting officer's responsibility to inquire about a person's nationality if there is any reason to believe that he or she is not a U.S. citizen. In all cases where an arrestee claims to be a non-U.S. citizen, arresting officers should follow the appropriate consular notification procedures, even if the arrestee's claim cannot be verified by documentation.
- E. Notification is not required in some cases. Simple “detention” does not include short detentions lasting less than 24 hours in which notification may not be practicable. Cases not requiring any form of notification may include, but not be limited to: foreign national arrested on misdemeanor charges, processed, and released after booking; foreign national arrested for being intoxicated and is unable to understand the consular notification process and is held for a period of time and then released; foreign national detained several hours for questioning and then released.
- C. Notification is required when: there are “distinguishing arrests” for serious crimes that prompt detention that may preclude the arrestee from being provided the opportunity to invoke consular notification; “significant detention” that evolves from being charged with serious crimes, or that through those charges the arrestee is subject to extended detention – held on bond, etc., and in cases in which a foreign national is arrested on a parole retake warrant. When in doubt, notification will be made.

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DIPLOMATS AND CONSULAR OFFICERS

- A. If the right of consular contact is enacted, such person appearing as the diplomat or consular officer will display personally issued credentials from the U.S. Department of State. Examples of these identification cards can be found in the resource guide and in reference materials that accompany this Order.
- B. Consular officers who appear for the purpose of meeting with a foreign national under either arrest or detention are subject to the same security screening and visiting protocols as any other visitor. These officials cannot invoke Miranda, and cannot act as counsel or attorneys for their nationals. Though they may meet “face to face” with their national, the consular officer may not bring, use, nor recover or leave any item with the national. The consular official may be entitled to see the basic fax notification form, or that person’s request to invoke the notification process.
- C. Consular officials will not be permitted to take statements, conduct investigations, record or video the foreign national, or receive any investigative report for their use or file. Requests for case materials or “public information” will be addressed on a case by case basis.
- C. Under no circumstance should any formal notification process describe or indicate that the foreign national is seeking asylum.

MANDATED/VOLUNTARY NOTIFICATION OF A PERSON ARRESTED OR DETAINED

- A. When a person has made a request, or when mandated notification to the specified “list countries” is predicated, a Consular Notification Fax Sheet (appendix form) will be completed by the arresting Deputy. This form will be faxed to the nearest consular office or embassy. In most or all cases, the form will be faxed to the appropriate Washington DC embassy or consular office in New York at the United Nations. Arrestees from non-“list countries” have the option for notification, while *arrestees from “list countries” do not have the option to refuse notification*; even if they request that notification not be made.
- B. When the fax form has been completed and faxed, a “fax confirmation” receipt will be obtained and attached to the form that is faxed; with both documents becoming part of the submitted report of investigation. Specific fax numbers will be available through the guidance and reference materials cited in this Order.

ADDITIONAL SITUATIONAL NOTIFICATIONS

- A. Additional consular notifications will be made in cases in which a foreign national is under the control of TSO, and the foreign national is a minor or an adult that appears to lack the “full capacity” to make reasonable decisions that involve their health or welfare. The lack of full capacity does not include temporary impairment or an inability that is caused by a substance or condition that is not considered long term debilitation.
- B. Additional consular notifications will be made in cases that involve a foreign national who is deceased or seriously injured. The notification process for this condition will enable the consul to revoke, recover, or destroy the passport or immigration control documents for this person so that fraud or abuse does not occur.
- C. In both cases of notification as described above, a specified notification fax document is required to be sent to the embassy or consular office. Copies of those fax notification documents are contained in the guidance and reference materials cited in this Order.

GUIDANCE

- A. Fax numbers for the required embassy or consular office can be found by researching the *Consular Notification and Access* publication on the shared computer “K” drive for the office (K:\Consular Notification - Manual & Forms), or through the U.S Department of State website

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(www.travel.state.gov/consularnotification), or through contact with the State Department of Consular Affairs (202-647-4415, normal hours, or 202-647-1512 after hours).

B. Consular officers and diplomats who present Department of State identification cards can be further validated through contact with State Department officials. Questions concerning identity verification can be directed to the State Department of Protocol (202-647-1985, normal hours), or through the Bureau of Diplomatic Security Office after hours (202-647-7277, 571-345-3146, or 866-217-2089). Correspondence can also be directed to them via fax ((202-895-3613) or electronically at www.state.gov/m/ds/immunities/c9118.htm.

C. Federal statute and guidance from the U.S. Department of State will form the basis for the legal mandate of consular notification; specifically, the 1963 Vienna Convention on Consular Relations.

D. Attachments to this Order include the "list countries", processing/flow chart worksheets, statement of notification (optional/mandatory), and other worksheets to be used consistent with this Order; as updated and revised from time to time. These forms, worksheets, and attachments can be produced as paper attachments or recovered electronically through the shared computer "K" drive in the "Consular Notification" folder.

E. A pre-packaged collection of the forms for identification and notification will be maintained in a file in the processing room for implementation of this Order. A list of consulate/embassy fax numbers current as of this Order will also be part of this file for ready access and use. A publication entitled Consular Notification and Access that contains all forms, policies, and reference materials for use in this Order will also be part of this file.

EFFECTIVE DATE

This order is effective immediately and supersedes General Order No. 12-003, and all orders and memoranda, in conflict therewith.

**Joseph J. Gamble
Sheriff of Talbot County**

JJG:tj

Mandated Consular Notification Countries

202-647-1512 (24 hours) - www.state.gov

Antigua and Barbuda	Mauritius
Armenia, Azerbaijan	Moldova
The Bahamas	Mongolia
Belarus	Nigeria
Belize	Philippines
Brunei	Poland
Bulgaria	Romania
Peoples Republic of China	Russia
Costa Rica	Saint Kitts and Nevis
Cyprus	Saint Lucia
Czech Republic	Saint Vincent/Grenadines
Dominica	Seychelles
Fiji	Sierra Leone
The Gambia,	Singapore
Georgia	Slovakia
Ghana	Tajikistan
Grenada	Tanzania
Guyana	Tonga
Hong Kong	Trinidad and Tobago
Hungary	Turkmenistan
Jamaica	Tuvalu
Kazakhstan	Ukraine
Kiribati	United Kingdom
Kuwait	U.S.S.R. (passport may still be in use)
Kyrgyzstan	Uzbekistan
Malaysia	Zambia
Malta	Zimbabwe