

**422 DIPLOMATIC AND CONSULAR CONTACTS****422.1 PURPOSE AND SCOPE**

The Vienna Convention on Consular Relations sets forth certain rights of foreign nationals from member countries when they are arrested, detained or imprisoned by law enforcement officials in this country. This policy provides direction to officers when considering a physical arrest or detention of a foreign national. All Foreign Service personnel shall be treated with respect and courtesy, regardless of the level of established immunity. As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests that his/her consulate be notified. The list of specific countries that the United States is obligated to notify can be found on the U.S. Department of State (DOS) website, <http://www.travel.state.gov>.

**422.1.1 DEFINITIONS**

Definitions related to this policy include:

**Foreign national** - Anyone who is not a citizen of the United States. A person with dual U.S. and foreign citizenship is not a foreign national.

**Immunity**- Refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official missions (i.e., embassies and consulates) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure that U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad.

Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the DOS Office of Foreign Missions (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. 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.

**422.2 ARREST OR DETENTION OF FOREIGN NATIONALS**

Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity by violators. A person shall not, however, be subjected to in-custody arrest when diplomatic or consular immunity is claimed by the individual or suspected by the officer, and the officer has verified or reasonably suspects that the claim of immunity is valid.

## **422.3 LEVELS OF IMMUNITY**

The specific degree of immunity afforded to Foreign Service personnel within the U.S. is directly related to their function and position in this country.

### **422.3.1 DIPLOMATIC AGENTS**

Diplomatic agents (e.g., ambassadors and United Nations representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents enjoy these same immunities.

### **422.3.2 CONSULAR OFFICERS**

Consular officers are the ranking members of consular posts, who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul and vice consul. 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. These official acts of immunity must be raised as an affirmative defense in the court jurisdiction, and its validity determined by the court. Under this defense, the prohibited act itself must have been performed as an official function. It is not sufficient that the consular agent was on-duty or in an official capacity at the time of the violation. The family members of consular officers generally enjoy no immunity. However, any family member who has a higher level of immunity is issued an identification card by DOS enumerating any privileges or immunities on the back of the card. Examples are consular officers and family members from Russia or China.

There are several permanent consulates in Missouri, with most located in Kansas City or Saint Louis.

### **422.3.3 HONORARY CONSULS**

Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained. Limited immunity for official acts may be available as a subsequent defense. Family members have no immunity.

## **422.4 IDENTIFICATION**

All diplomatic and consular personnel who are entitled to immunity are registered and issued distinctive identification cards by the DOS Protocol Office. These cards are the best means of identifying Foreign Service personnel. They include a photograph, identifying information, and on the reverse side, a brief description of the bearer's immunity status. These identification cards are not always promptly issued by DOS. In addition to the DOS identification card, Foreign Service personnel should have a driver's license issued by the DOS Diplomatic Motor Vehicle Office (DMVO) which, in most circumstances, replaces the operator's license issued by the state.

## **422.4.1 VEHICLE REGISTRATION**

Vehicles that are owned by foreign missions or foreign service personnel and their dependents are registered with the DOS OFM, and display distinctive red, white and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plates labeled with the words "diplomat" or "consul". Vehicles owned by honorary consuls are not issued OFM license plates but may have Missouri license plates with an "honorary consul" label. A driver's identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System (NLETS), designating "U.S." as the state, if the officer has reason to question the legitimate possession of the license plate.

## **422.5 ENFORCEMENT PROCEDURES**

The following procedures provide a guideline for handling enforcement of foreign nationals.

### **422.5.1 CITABLE OFFENSES**

An enforcement document 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 DOS guidelines. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the issuing officer:

1. Identification documents are to be requested of the claimant.
2. 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.
3. Verified diplomatic agents and consular officers, including the 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.
4. Claimants other than verified diplomatic agents and consular officers 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.
5. Verified consular staff members, excluding those from countries with which the U.S. has special agreements, are generally obligated to sign the notice to appear. But a signature shall not be required if the immunity status is uncertain.
6. All other claimants are subject to the provisions of policy and procedures outlined here.
7. The violator shall be provided with the appropriate copy of the notice to appear.

### **422.5.2 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 in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in custody in accordance with the provisions outlined in this policy.

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A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim, unless restraint is necessary for the protection of the officer or others. A supervisor shall be promptly notified and should respond to the scene when reasonably possible. Field verification of the claimant's identity is to be attempted as follows:

An identification card issued by the DOS Protocol Office is the only valid evidence of diplomatic or consular immunity. The following types of identification cards are issued: Diplomatic (blue bordered), Consular (red bordered) and Official (green bordered). The DOS identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.

Newly arrived members of diplomatic or consular missions may not yet have official DOS identity documents. Verify immunity by telephone with the DOS any time an individual claims immunity and cannot present satisfactory identification, if the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Department personnel should use the following numbers in order of preference:

Office of Foreign Missions  
Chicago, IL  
(312) 353-5762  
(800-1645 CST)  
Office of Foreign Missions

Diplomatic Motor Vehicle Office  
Washington D.C.  
(202) 895-3521 (Driver's License Verification) or  
(202) 895-3532 (Registration Verification)  
(202) 895-3533 FAX  
(0815-1700 EST)

Department of State  
Diplomatic Security Service  
Command Center  
Washington D.C.  
(202) 647-7277  
(202) 647-1512  
(Available 24 hours)  
(202) 647-0122 FAX

Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by the state of Missouri, local law enforcement agencies, the foreign embassy or consulate, a driver's license issued by DOS, and DOS license indicia on the vehicle. All these items are only an indication that the bearer may have some form of immunity.

Subjects verified through the above procedures as being officials entitled to immunity (diplomatic agent, consular officers and consular staff and family members from countries with which the U.S. has special agreements) may not be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified but another form of identification indicates that immunity is probable.

If the release of the violator will not create an additional hazard, adequate information to properly identify the violator shall be obtained before the official is released. A supervisor's approval for the release shall be obtained whenever reasonably possible. The necessary release documents should only be issued under the proper conditions.

If the violator appears to have been driving while under the influence, field sobriety tests, including Preliminary Alcohol Screening (PAS) device tests and chemical tests should be offered and obtained whenever reasonably 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 reasonably possible and alternative transportation should be arranged.

All facts of the incident shall be documented in accordance with this policy in a Driving While Impaired (DWI) Arrest - Investigation Report, and/or any other relevant report form. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued if the violator is either stopped or issued a notice to appear for a violation while operating a motor vehicle. The officer shall either complete a notice to appear or a written report documenting the incident.

This department shall then contact DOS as soon as practicable to verify the violator's status and immunity. Within five working days of the stop, this department shall send to the Bureau of Diplomatic Security, OFM of the DOS, a copy of the notice to appear and any collision or other written report documenting the incident. The DOS will take appropriate sanctions against errant Foreign Service personnel, even where prosecution is not undertaken by the Department.

#### **422.6 TRAFFIC ACCIDENTS**

Persons involved in traffic accidents who possess a DOS OFM Diplomatic Driver License, issued by the DMVO, shall have "D" coded in the license "class" box of the Traffic Accident Report. The actual driver's license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered in the miscellaneous box on the traffic report. If subsequent prosecution of the claimant is anticipated, the claimant's title, country and type of identification presented should be recorded for future reference. Issuance of a citation to, or arrest of, an immunity claimant at the accident scene should be handled in accordance with the procedures specified in this policy.

##### **422.6.1 VEHICLES**

Vehicles which are owned by subjects with full immunity may not be searched, stored or impounded without the owner's permission. Such permission may be assumed if the vehicle has been stolen. These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

## **422.6.2      REPORTS**

A photocopy of each Traffic Accident Report involving an identified diplomat and/or immunity claimant shall be forwarded to the office of the Chief of Police within 48 hours, regardless of whether the claim is verified. The words "Immunity Claim" shall be marked on the photocopy, together with a notation of the claimant's title, country and type of identification presented, if applicable. In addition to the report, a follow-up cover memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative, or if there were any other unusual aspects of the enforcement contact that should be reported to DOS for further action. The Watch Commander/supervisor apprised of the incident/collision shall also send a copy of all documents and reports submitted by the investigating officer, along with any supervisor's notes, materials or logs, to the Chief of Police's office within 48 hours of the incident. The Chief of Police's office will check to ensure that notification of DOS and all necessary follow-up occurs.

## **422.7            FOREIGN NATIONALS WHO DO NOT CLAIM IMMUNITY**

These policies and procedures apply to foreign nationals who do not claim diplomatic or consular immunity.

Officers shall arrest foreign nationals only under the following circumstances:

1. There is a valid warrant issued for the person's arrest.
2. There is probable cause to believe that the foreign national has violated a federal criminal law, a state law or a local ordinance.
3. Officers shall not arrest foreign nationals solely for alleged undocumented entry into the U.S. unless the undocumented entry is committed in the officer's presence.

After a lawful detention or criminal arrest, officers may detain foreign nationals solely for alleged undocumented presence in the U.S. if ICE is contacted and can respond to take custody within a reasonable time. Officers shall not arrest foreign nationals for undocumented presence. Federal courts have consistently held that undocumented presence is not a crime but a federal civil violation only enforceable by federal officers.

- Officers shall not stop or detain persons solely for determining immigration status.
- International treaty obligations provide for notification of foreign governments when foreign nationals are arrested or otherwise detained in the U.S.
- Whenever an officer arrests and incarcerates a foreign national or detains a foreign national for investigation for over two hours, the officer shall promptly advise the individual that he/she is entitled to have his/her government notified of the arrest or detention. If the individual wants his/her government notified, the officer shall begin the notification process.

### **422.7.1          ARREST PROCEDURE**

Whenever an officer physically arrests or detains an individual for criminal investigation and the officer reasonably believes the person to be a foreign national, the officer shall inquire to determine the person's citizenship.

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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, Art. 36, (1969)).

If the individual requests such notification, the officer shall contact Public Safety Joint Communications as soon as practicable and request the appropriate embassy/consulate be notified. Officers shall provide Public Safety Joint Communications with the following information concerning the individual:

- Country of citizenship
- Full name of the individual, including paternal and maternal surname, if used
- Date of birth or age
- Current residence
- Time, date, place, location of incarceration/detention and the 24-hour telephone number of the place of detention, if the place of detention is different from the Department

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, officers shall provide Public Safety Joint Communications 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 the particular countries. The list of countries and jurisdictions that require notification can be found on the DOS website, <http://www.travel.state.gov>.

### **422.7.2 DOCUMENTATION**

Officers shall document on the face page and in the narrative of the appropriate arrest or investigation report, the date and time Public Safety Joint Communications was notified of the foreign national's arrest or detention and his/her claimed nationality.