



**General Order: 12.6
CONSULAR NOTIFICATION**

Effective: October 14, 2009
Last Revised:

PURPOSE

To provide procedures for assuring compliance with all consular notifications and access requirements in accordance with International Treaties and the provisions of California Penal Code 834c when dealing with foreign nationals.

REFERENCE

Article 30 of the Vienna Convention on Consular Relations, (VCCR) operative as to the United States on December 24, 1969, sets forth certain rights of foreign nationals from member countries when arrested, detained or imprisoned by law enforcement officials in this country. This section 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 our authorities to notify the consulate upon the person's detention, regardless of whether the detained person(s) request that his or her consulate be notified. The list of specific countries that the United States is obligated to notify is listed in Table 1 (appendix) or the U.S. Department of State website.

POLICY

Every officer, upon arrest and booking or detention for more than two hours of a known or suspected foreign national, shall advise the foreign national that he or she has a right to communicate with an official from the consulate of his or her country, except as provided below.

Countries requiring mandatory notification under Article 36 of the Vienna Convention shall be notified by officers as set forth in this section without regard to an arrested or detained foreign national's request to the contrary.

FOREIGN NATIONALS

Foreign nationals are all non-U.S. citizens. This group of individuals includes those traveling or living here in the country legally on green cards, visas, or passports, as well as those traveling or living here in the country illegally.

Foreign nationals can have dual citizenship. If a foreign national is also a U.S. citizen, no advisement is necessary. If a foreign national has dual citizenship between two other (non-U.S.) countries, then upon his/her request, or in the case of mandatory reporting, both countries shall be notified.

ARRESTS AND DETENTIONS OF FOREIGN NATIONALS

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/her appropriate consular assistance. In all cases, the foreign national must be told of the right of consular notification and access. In most cases, the foreign national then has the option to decide whether to have consular representatives notified of the arrest or detention. When consular notification is at the foreign national's option, the below notification admonishment is suggested.

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?

In other cases the foreign national's consular officials must be notified of an arrest and/or detention regardless of the foreign national's wishes when he or she is from a mandatory reporting country. A list of the mandatory reporting countries is included in this General Order. A list of the phone and fax numbers for all foreign embassies and consulate offices, and other information can be found on the U.S. State Department's WebPages at:

http://travel.state.gov/law/consular/consular_2792.html

The Garden Grove Police Department Consular Notification form, form #64, shall be completed.

When consular notification is mandatory, the below notification admonishment is suggested.

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.

Foreign nationals whose country requires mandatory notification should still be informed that the notification has been made and advised that he/she may also specifically request to see their consulate.

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information about why a foreign national is in detention. Moreover, 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. The Department of State can provide more specific guidance in these particular cases.

The arresting or reporting officer shall record in the body of his report that he/she complied with the notification and whenever possible record the subject's response. The case officer should include in his report, a copy of the Consular Notification form.

CONSULAR ACCESS TO DETAINED FOREIGN NATIONALS

Detained foreign nationals are entitled to communicate with their consular officers. Any communication by a foreign national to his/her consular representative must be forwarded by the appropriate local officials to the consular post without delay.

Foreign consular officers must be given access to their citizens. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation.

They must refrain from acting on behalf of a foreign national, if the foreign national opposes their involvement and consular officers may not act as attorneys for their citizens.

DEATH OF FOREIGN NATIONALS

During the course of any death investigation involving a foreign national, the investigating officer shall notify the deputy coroner that the deceased is a foreign national, and the coroner's office will make the necessary notifications.

MANDATORY NOTIFICATION

In certain cases, as when the foreign national is a citizen of one of the mandatory-notification countries listed below, notification must be made to the nearest consulate or embassy, regardless of whether the foreign national requests such notification. There should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances. The mandatory-notification countries are listed below.

Algeria
Antigua and Barbuda
Armenia
Azerbaijan

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Bahamas, The
Barbados
Belarus
Belize
Brunei
Bulgaria
China*
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hong Kong**
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland (nonpermanent resident aliens only)
Romania
Russia
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Slovakia
Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Tunisia
Turkmenistan
Tuvalu

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Ukraine
United Kingdom***
U.S.S.R.****
Uzbekistan
Zambia
Zimbabwe

However, any countries requiring notification that the above list does not identify because the notification requirement became effective after July 1, 1999, shall also be required to be notified.

*Notification 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 representative of the Taipei Economic and Cultural Representative Office can be notified at their request.

**Hong Kong reverted to Chinese sovereignty on July 1, 1997. U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports.

***British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

****Although the U.S.S.R no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R passports.

A foreign national subject to mandatory notification requirements should be informed that notification has been made, and advised that he or she is not required to accept the consulate's assistance, but the consulate may be able to help the individual obtain legal counsel and may contact the person's family and visit the person in detention, among other things. Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his or her government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information indicating why a foreign national is in detention. For this reason, the Department of State suggests that the reason for detention not be provided unless requested specifically by the consular officer or the detainee has authorized the disclosure. Different requirements may apply if there is a relevant bilateral agreement. If a consular official insists that he or she is entitled to information about an alien that the alien does not want disclosed, the Department of State should be contacted for guidance. Finally, under no circumstances should any information indicating that a foreign national may have applied for asylum or withholding of removal be disclosed to that person's government. Specific guidance on such cases may be obtained from the Department of State.

How to Provide Notification

The law enforcement officers who actually make the arrest or who assume responsibility for the alien's detention ordinarily should make the consular notification. Judicial officials and prosecutors are not responsible for notification; however, the State Department recommends that such officials verify that notification has been made.

The Department of State provides the following suggested statements to be given to foreign nationals upon their arrest or detention:

When consular notification is at the foreign national's option under the VCCR:

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?

When Consular Notification is Mandatory:

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.

The statements below (are available on the State Departments web site, in 17 different languages commonly used by foreign nationals in the United States) can be shown to a foreign national who has been arrested or detained and who does not understand English. Statement 2 is for foreign nationals who are citizens of the 58 countries that require mandatory consular notification regardless of detainee's wishes. Statement 1 is for all other foreign nationals and gives the detainee the option of consular notification. Regardless of a detainee's consular notification decision, authorities providing these statements are encouraged to have the detainee sign and date them to avoid confusion and to prevent potential legal challenges.

Statement 1: For All Foreign Nationals Except Those From List Countries

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular officers here in the United States of your situation. You are also entitled to communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?

Statement 2: For Foreign Nationals From List Countries

Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as

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possible. In addition, you are entitled to communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things.

A Consular Notification and Access Reference Card, that can be printed and placed in the officers reference material is attached to this document.