

POLICE DEPARTMENT HANOVER PARK, ILLINOIS



DIRECTIVE: 210-P

REFERENCE STANDARDS: 1.1.4 2.1.1 61.1.3

SUBJECT: Arrest and Detention of Foreign Nationals

PURPOSE: To establish guidelines and procedures for those individuals who have been arrested or detained and have been determined to be a foreign national or who have been granted diplomatic status by the Department of State. To further establish and clarify U.S. Immigration Laws that pertain to aliens that members of the Hanover Park Police Department may come into contact with.

POLICY: It will be the policy of the Hanover Park Police Department to observe the covenants, treaties, agreements and laws enacted by the U.S. Government for the protection of the diplomatic corps and foreign nationals who visit and/or reside in the U.S. It will also be the policy of the Department to observe the provisions of the U.S. Code, Title 18 (Crimes and Criminal Procedure), which establishes the procedures for the notification of the Federal Bureau of Investigation (FBI). The Department will also follow the guidelines set down by the Department of State and the Office of Protocol as it pertains to Diplomats and Foreign Nationals.

I. Definitions

Foreign National – any person who is not a U.S. citizen.

Foreign Official/Diplomatic Agent – a chief of State or the political equivalent. President, Vice President, Prime Minister, Ambassador, Foreign Minister, or other officers of Cabinet rank or above of a foreign government or the chief executive officer of an international organization, or any person who has previously served in such a capacity, and any member of his/her family while in the U.S.

Members of Administrative and Technical Staff – this category includes individuals who support the activities of Diplomatic Agents and may include secretaries, certain clerical personnel, office manager and certain professional security personnel. These individuals and recognized family members enjoy privileges and immunities that are identical to those of Diplomatic Agents. These individuals are issued identification cards and driver's licenses by the Department of State.

Members of Service Staff – these individuals perform less critical support tasks and are afforded much less in the way of privileges and immunities than in the other categories.

Family members – includes a spouse, parent, brother or sister, child, or person to whom the foreign official stands in loco parentis, or any other person living in the household and related to the foreign official by blood or marriage.

Official Guest – a citizen or national of a foreign country present in the U.S. as an official guest of the Government pursuant to designation by the Secretary of State.

Honorary Consul – American citizens or permanent resident aliens who perform consular services on a part-time basis. These individuals have “Official Acts Immunity” and enjoy immunity from the obligation to provide evidence as witnesses only in respect to official liability.

Immigration Detainer - a document issued by a federal immigration agent that is not approved or ordered by a judge and requests a law enforcement agency or law enforcement official to provide notice of release or maintain custody of a person, including a detainer issued under Section 1226 or 1357 of Title 8 of the United States Code or Section 236.1 or 287.7 of Title 8 of the Code of Federal Regulations.

Non-Judicial Immigration Warrant – a Form I-200 or I-205 administrative warrant or any other immigration warrant or request that is not approved or ordered by a judge, including administrative warrants entered into the Federal Bureau of Investigation’s National Crime Information Center database.

II. Protection of Foreign Officials/Jurisdiction

- A. **18 USC 112** prohibits anyone from assaulting, striking, wounding, imprisoning, offering violence, intimidate, coercing, threatening or harassing a foreign official. No person will attempt any of the above within 100 feet of a building or premises in whole or in part owned, used or occupied for official business or for diplomatic, consular, or residential purposes by a foreign government, an international organization, a foreign official or an official guest.
- B. **18 USC 970** prohibits anyone from willfully injuring, damaging, destroying or attempting to do so to any property, real or personal, belonging to or utilized or occupied by any foreign government or international organization, by a foreign official or official guest.
- C. **18 USC 1116 & 1201** provides for concurrent federal jurisdiction whenever any of the following acts are committed: murder, conspiracy to commit murder, manslaughter, kidnapping or the attempt of any of these. Federal jurisdiction attaches immediately when the victim is a Foreign Official or family member of a Foreign Official. (2.1.2)
- D. In situations where immediate action is mandated to protect the safety of any person covered in this Order, such protection will be afforded without regard for jurisdiction. If such a circumstance arises, the FBI will be notified as soon as possible. The FBI will be notified of violations of the U.S. Code for which concurrent jurisdiction is not expressly provided, but which could have foreign political ramifications. Examples of these violations can include, but are not limited to: intimidation, harassment, property damage,

etc. In those incidents where the FBI claims concurrent jurisdiction, the Hanover Park Police Department will cooperate fully and will defer authority for the investigation.

- E. If a member of the Department becomes aware of the death of a Foreign National, the nearest consulate of that individual's country must be notified.

III. Arrest and Detention of a Foreign National

- A. Certain Foreign Nationals are immune from arrest and prosecution in the U.S., Diplomatic and Consular Privileges and Immunities from Criminal Jurisdiction (Appendix A) outlines these immunities.
- B. When Foreign Nationals are arrested or detained, they must be advised of the right to have their consular official notified. In some cases, the nearest consular officials **must** be notified of the arrest or detention of a Foreign National, regardless of the individual's wishes. See **Appendix B, Mandatory Notification Countries and Jurisdictions**. Consular notification should never be confused with Miranda warnings. Giving the subject their advisement of rights under Miranda does not qualify as consular notification.
 - 1. Determine the individual's country. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
 - 2. If the individual's country **is not** on the list of Mandatory Notification Countries and Jurisdictions offer to notify the Foreign National's consular officials. *[Suggested statement from the Department of State: "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, amount 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?"]*
 - 3. If the individual's country **is** on the list of Mandatory Notification Countries and Jurisdictions, tell the Foreign National you will be making the notification as soon as possible. *[Suggested statement from the Department of State: "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."]*
 - 4. Make notification to the consular agency using the Consular Notification Form, Appendix C. Fax the form and telephone the agency, if possible.
 - 5. The United States State Department's website, www.state.gov should be consulted for the most current information on immunity.

- C. Complete an Incident/Offense Report documenting the notification. The date and time of the notification should be recorded and any confirmation or receipt of notification attached to the report.
 - D. Foreign consular officers must be given access to their nationals and permitted to communicate with them. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. The Foreign National under arrest may refuse the assistance of the officer and consular officers may not act as attorneys for their nationals.
 - E. Copies of Foreign Embassies and Consulates phone numbers, along with translations of both suggested statements will be maintained in the Report Writing Room.
- IV. Issuance of Traffic or Local Ordinance Citations (61.1.3.d)
- A. Consular notification is not required when the Foreign National is being issued traffic or local ordinance citations and will be immediately released.
 - B. Notification to the U.S. Department of State must be made when citations are written to Foreign Nationals who carry driver's licenses issued by the Department of State. **Appendix D** contains a list of phone numbers for reporting information regarding contact with Foreign Nationals.
- V. Foreign Nationals and Immigration Laws (2.1.2)
- A. The U.S. Attorney General has designated officers of the Immigration and Customs Enforcement Service (ICE) the sole authority to interrogate any alien or person believed to be an alien as to that individual's right to be in the U.S. They also have the exclusive power to arrest any Foreign National in violation of any law or regulation regarding the admission, expulsion or exclusion of aliens.
 - B. If a person is arrested and detained by this Department for a felony, gang-related crime, sex-related offense, or is a registered sex offender, and in the course of the investigation it is learned the subject is an illegal alien, this information may be forwarded to ICE.
 - 1. The Shift Supervisor must first approve notification to ICE.
 - 2. Notification and reason(s) for notification will be documented in an Incident/Offense Report.
 - C. The Hanover Park Police Department and any of its police officers and employees shall not detain or continue to detain any individual solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant.
 - D. The Hanover Park Police Department and any of its police officers and employees shall not stop, arrest, search, detain, or continue to detain a person solely based on an individual's citizenship or immigration status.

- E. Sections V.C. and V.D. of this Directive do not apply if the Hanover Park Police Department and any of its police officers and employees are presented with a valid, enforceable federal warrant. Nothing in Sections V.C. and V.D. prohibits communication between federal agencies or officials and law enforcement agencies or officials.
- F. Training to provide guidance with compliance on this Directive will be given to every member of the Hanover Park Police Department.

Diplomatic and Consular Privileges and Immunities from Criminal Jurisdiction
Summary of Law Enforcement Aspects

Category		May Be Arrested Or Detained	Residence May Be Entered Subject to Ordinary Procedures	May Be Issued Traffic Citation	May Be Subpoenaed As Witness	May Be Prosecuted	Recognized Family Member
Diplomatic	Diplomatic Agent	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Member of Administrative and Technical Staff	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Service Staff	Yes ²	Yes	Yes	Yes	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
Consular	Career Consular Officers	Yes, if for a felony and pursuant to a warrant. ²	Yes ⁴	Yes	No – for official acts. Testimony may not be compelled in any case.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
	Honorary Consular Officers	Yes	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
	Consular Employees	Yes ²	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability. ²
International Organizations	International Organization Staff ³	Yes ³	Yes ³	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability.
	Diplomatic-Level Staff of Missions to International Organizations	No ¹	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Support Staff of Missions to International Organizations	Yes	Yes	Yes	No – for official acts. Yes, in all other cases.	No – for official acts. Otherwise, yes. ²	No immunity or inviolability.

¹ Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.

² This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy **higher** levels of privileges and immunities on the basis of special bilateral agreements.

³ A small number of senior officers are entitled to be treated identically to “diplomatic agents.”

⁴ Note that consular residences are sometimes located within the official consular premises. In such cases, **only** the official office space is protected from police entry.

Mandatory Notification Countries and Jurisdictions

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 ¹	Saint Lucia
Costa Rica	Saint Vincent/Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom
Kinbati	U.S.S.R. ³
Kuwait	Uzbekistan
Kyrgyztan	Zambia
Malaysia	Zimbabwe

¹ Does not include Republic of China (Taiwan) passports holders.

² Mandatory for nonpermanent residents only.

³ Passports may still be in use.

Consular Notification Form

Date: _____

Time: _____

To: Embassy of _____, Washington, D.C.

or

Consulate of _____, _____, _____
(Country) (City) (State)

From: Officer _____

Hanover Park Police Department
2011 Lake Street
Hanover Park, Illinois 60133
(630) 823-5500 fax (630) 823-5499

Subject: Notification of Arrest/Detention of a National of Your Country

This department has arrested/detained the following foreign national, whom we understand to be a national of your country on _____, _____.

This person is identified as:

Mr./Mrs./Ms.: _____

Date of Birth: _____

Place of Birth: _____

Passport Number: _____

Date of Passport Issuance: _____

Place of Passport Issuance: _____

To arrange for consular access, please call the Hanover Park Police Department at 630-823-5500.

Please refer to case number: _____ when you call.

List of Useful Telephone Numbers

For Information on Diplomatic and Consular Personnel and Personnel of International Organizations Other Than the United Nations

During Normal Business Hours

Current status of U.S. Department of State Federal license tags, registrations, or other motor vehicle information:(202) 895-3532
Fax – (202) 895-3646

Current status of U.S. Department of State driver licenses and general licensing information:(202) 895-3521

For reporting traffic incidents or accidents, issuance of citations, etc., involving foreign missions' personnel:.....(202) 895-3521

Current status of:

Diplomatic agents and family members(202) 647-1664
Embassy administrative, technical, and service staff and families(202) 647-1405
Consular personnel and families.....(202) 647-1404
International Organizations(202) 647-1402

Please send copies of incident reports and citations to:

Diplomatic Security Service, Protective Liaison Division.....Fax – (202) 895-3613

After Normal Business Hours

All inquiries should be made to the Diplomatic Security Watch Officer, Department of State (operates 24-hours daily):(202) 647-7277

For Information on United Nations Personnel

During Normal Business Hours

Current status of:

Diplomatic agents and family members(212) 415-4131
U.N. Mission staff and family members.....(212) 415-4168
U.N. Secretariat employees (212) 415-4131 or (212) 415-4168
U.S. Department of State license tags, registration, or other
Motor vehicle information.....(212) 826-4500

After Normal Business Hours

Information is available from the Communications Section of the U.S. United Nations (operates 24-hours daily):(212) 415-4444

Please send copies of police reports to: USUN Host CountryFax – (212) 415-4162