



## Consular Notification and Immigration Policy

### 422.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for Department personnel regarding interactions with foreign nationals, and the enforcement of immigration laws.

It is the intent of the Department to build and maintain trust with all members of our community irrespective of immigration status. All people are encouraged to contact the police department without fear of inquiry into their immigration or documentation status.

### 422.2 POLICY

It is the policy of the Mercer Island Police Department that all members make personal and professional commitments to the equal enforcement of the law and equal service to the public. Confidence in this commitment will increase the effectiveness of this department in protecting and servicing the entire community and recognizing the dignity of all persons, regardless of their immigration status.

The enforcement of the nation's immigration laws is primarily the responsibility of the federal government. As such, Officers shall not inquire about the immigration status during police contacts except as provided in this policy.

### 422.3 DEFINITIONS

**Foreign National** : Anyone who was not born in the United States (U.S.). A person with dual citizenship, U.S. and foreign, 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, consulates, etc.) in foreign countries. Proper respect for the immunity 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. Department of State's Office of Foreign Mission (OFM) that illegal acts by Foreign Service personnel should always be pursued through proper channels. Additionally, 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.

### 422.4 CONSULAR RELATIONS

Article 36 of the Vienna Convention on Consular Relations, sets forth certain rights of foreign nationals from member countries when 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

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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/her consulate be notified. The list of specific countries that the United States is obligated to notify is listed in the U.S. Department of State website.

### **422.5 ARREST OR DETENTION OF FOREIGN NATIONALS**

Officers should take appropriate enforcement action for all violations observed, regardless of claims of diplomatic or consular immunity received from 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.

### **422.6 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.

#### **422.6.1 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.

#### **422.6.2 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. Official acts immunity must be raised as an affirmative defense in the court jurisdiction, and its validity is 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 enjoys a higher level of immunity is issued an identification card by Department of State (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 approximately 40 consular officers in Washington, with most located in Seattle and Spokane.

#### **422.6.3 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

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immunity for official acts may be available as a subsequent defense. Family members have no immunity.

#### **422.6.4 IDENTIFICATION**

All diplomatic and consular personnel who are entitled to immunity are registered with the Department of State and are issued distinctive identification cards by the Department of State 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. Unfortunately, these identification cards are not always promptly issued by the Department of State. In addition to the Department of State identification card, Foreign Service personnel should also have a driver license issued by the Department of State Diplomatic Motor Vehicle Office (DMVO), which in most circumstances replaces the operator's license issued by the state.

#### **422.7 VEHICLE REGISTRATION**

Vehicles that are owned by foreign missions or Foreign Service personnel and their dependents are registered with the Department of State OFM and display distinctive red, white, and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plate labels with the words "Diplomat" or "Consul." Vehicles owned by honorary consuls are not issued OFM license plates; but may have Washington license plates with an "honorary consul" label. 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 "US" as the state, if the officer has reason to question the legitimate possession of the license plate.

#### **422.8 ENFORCEMENT PROCEDURES**

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

##### **422.8.1 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 Department of State guidelines. Whenever the equivalent of a notice to appear is issued to an immunity claimant, the following additional procedures shall be followed by the arresting officer:

- (a) Identification documents are to be requested of the claimant.
- (b) 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 on the face of the notice to appear.
- (c) The identity and immunity status of the individual shall be conclusively established.
- (d) All other claimants are subject to the provisions of the policy and procedures outlined in this chapter.

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(e) The violator shall be provided with the appropriate copy of the notice to appear.

### 422.8.2 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 Policy Manual.

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 possible.

- Field verification of the claimant's identity is to be attempted as follows: Identification cards issued by the Department of State, Protocol Office, are 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 Department of State identification cards are 3-3/4 inch by 1-1/2 inch and contain a photograph of the bearer.
- Initiate telephone verification with the Department of State. Newly arrived members of diplomatic or consular missions may not yet have official Department of State identity documents. Verify immunity by telephone with the Department of State any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Law enforcement personnel should use the following numbers in order of preference:

Office of Foreign Missions:

San Francisco, CA

415-744-2910 ext. 22 or 23

415-774-2913 (fax)

Hours: 0800-1700 PST

Office of Foreign Missions/Diplomatic Motor Vehicle Office:

Washington D.C.

202-895-3521 (Driver's License Verification)

202-895-3532 (Registration Verification)

202-895-3533 (fax)

Hours: 0815-1700 EST

Diplomatic Security Service:

915 Second Avenue, Room 3410

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Seattle, WA 98174

206-220-7721

206-220-7723 (fax)

Department of State/Diplomatic Security Service Command Center:

Washington D.C.

202-647-7277

202-647-1512

202-647-0122 (fax)

Hours: 24 hours

Members of diplomatic or consular missions also may have other forms of identification. These include identification cards issued by Office of Emergency Services, local law enforcement agencies, the foreign embassy, or consulate; driver licenses issued by Department of State; and, Department of State 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 then the official shall be released. A supervisor's approval for the release shall be obtained whenever possible. The necessary release documents and/or a Certificate of Release form 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 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 possible and alternative transportation should be arranged.

All facts of the incident shall be documented in accordance with this policy in a Driving Under the Influence (DUI) report, or case report. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the command concerned. The Department of State will take appropriate sanctions against errant Foreign Service personnel, even where prosecution is not undertaken by the agency.

### **422.9 TRAFFIC COLLISIONS**

Persons involved in traffic collisions who possess a Department of State OFM Diplomatic Driver License, issued by the DMVO, shall have the collision report coded as required. If subsequent

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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 Policy Manual § 422.9 of this chapter.

#### **422.10 TRAFFIC COLLISIONS**

Persons involved in traffic collisions who possess a Department of State OFM Diplomatic Driver License, issued by DMVO, shall have the collision report coded as required. 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 Policy 422.9 of this chapter.

#### **422.11 REPORTS**

A photocopy of each traffic collision report involving an identified diplomat and/or immunity claimant shall be forwarded to the office of the Chief of Police within 48 hours whether or not 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 the Department of State for further action. The Supervisor apprised of the incident/accident shall also send a copy of all documents and reports submitted by the investigating officer along with any supervisor's notes, materials and/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 Department of State and all necessary follow-up occur.

#### **422.12 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:

- (a) There is a valid warrant issued for the person's arrest.
- (b) There is probable cause to believe that the foreign national has violated a criminal law, a state law, or a local ordinance.
- (c) Officers shall not arrest or detain foreign nationals solely for alleged undocumented entry into the United States.

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.

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- 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.

### **422.13 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.

This procedure applies to detentions of more than two hours. An inquiry is not required if the individual is detained less than two hours for criminal investigation. 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 the Communications Center as soon as practical and request the appropriate embassy/consulate be notified. Officers shall provide the Communications Center with the following information concerning the individual:

- Country of citizenship.
- Full name of 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 different from the Department itself.

If the individual claims citizenship of one of the countries for which notification of the consulate/embassy is mandatory, officers shall provide the Communications Center 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 U.S. Department of State website.

### **422.14 DOCUMENTATION**

Officers shall document on the face page and in the narrative of the appropriate case report the date and time of the foreign national's arrest/detention and his/her claimed nationality. Officers shall also document the time notifications were attempted and completed.

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### **422.15 IMMIGRATION**

In an effort to build public trust, and to encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status must feel secure that contacting or being addressed by members of law enforcement will not automatically lead to immigration inquiry and/or deportation. While it may be necessary to determine the identity of a victim or witness, members shall treat all individuals equally and without regard to race, immigration status, or national origin in any way that would violate the United States or Washington State Constitutions.

#### **422.15.1 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS**

The enforcement of the nation's federal immigration laws is primarily the responsibility of the federal government. Members of this Department are not authorized to enforce federal immigration laws, and therefore shall not inquire about immigration status during police contacts.

#### **422.15.2 ICE "WARRANTS" AND "DETAINERS"**

Personnel are not to stop, arrest, detain, or transport any individual for any length of time based solely on an immigration detainer or other administrative documents / administrative warrants, without a verified, judicial warrant. Judicial warrants are criminal violation warrants that have been signed by a judge. Judicial warrants are the only type of warrants that give officers the authority to detain and take a subject into custody.

Administrative (non-judicial) wanted person hits may look very similar to criminal, judicial warrants. They may state the subject is wanted as a "previously deported felon." Other administrative detainer requests may use the word "warrant" even when not a judicial warrant, such as "Outstanding Warrant of Deportation." Because of this similarity to actual criminal judicial warrant hits, it is imperative for personnel to carefully verify that hits are actual criminal judicial warrants to ensure that action is not mistakenly taken on administrative warrants or detainers.

### **422.16 ICE REQUESTS FOR ASSISTANCE**

If a specific request for assistance is made by ICE, this Department may provide available support services such as traffic control or peacekeeping efforts during the federal operation. Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (Title 8 U.S.C. §1373 and 8 U.S.C. § 1644).

### **422.17 U VISA AND T VISA NON-IMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes (8 USC § 1101(a) (15) (U)). A law enforcement certification for a U visa may be completed by an officer in order for a U visa to be issued. Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking (8 USC § 1101(a) (15) (T)). A law enforcement declaration for a T visa may be completed by an officer in order for a T visa to be issued.



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Any request for assistance in applying for U visa or T visa status should be forwarded in a timely manner to the Investigation Section supervisor assigned to oversee the handling of any related case. The Investigation Section supervisor should:

- (a) Consult with the assigned investigator to determine the current status of any related case and whether further documentation is warranted.
- (b) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure the certification or declaration has not already been completed and whether a certification or declaration is warranted.
- (c) Address the request and complete the certification or declaration, if appropriate, in a timely manner. The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website.
- (d) Ensure that any decision to complete, or not complete, a certification or declaration form is documented in the case file and forwarded to the appropriate prosecutor. Include a copy of any completed form in the case file.

### **422.18 TRAINING**

The Training Sergeant shall ensure that all appropriate members receive immigration and consular notification training.