

TITLE: LEGISLATOR AND DIPLOMATIC IMMUNITY/FOREIGN NATIONAL CONSULAR NOTIFICATION

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PURPOSE

To establish procedures for dealing with individuals who have been granted diplomatic status by the Department of State and to ensure those persons who are considered Foreign Nationals are accorded all rights that have been granted by the United States of America, either by treaty or legislation. To establish and clarify U.S. Immigration Laws that pertain to aliens that members of the Santa Fe Police Department may come in contact with.

DISCUSSION

International Law, to which the United States is firmly committed, requires that law enforcement authorities of the United States extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. Most of those privileges and immunities are not absolute and law enforcement officers retain fundamental responsibilities to protect and police the orderly conduct of persons in the United States.

POLICY

It is the policy of the Santa Fe Police Department to address situations involving persons entitled to privileges and immunities in the United States who are involved in criminal or traffic law violations. This directive is designed to address those situations. When proper identification is available, the individual's immunity should be fully respected.

In all situations involving foreign diplomats, consular officials, and legislators, the on-duty commanding

officer or supervisor will be contacted and will proceed to the officer's location to give assistance, if necessary. The on-duty commanding officer/supervisor shall also contact the Patrol Captain, who in turn will be responsible for notifying the Chief's office in the event that an arrest of a foreign diplomat, consular official, or legislator is to be made.

PROCEDURE

76.1.01 STATE OF NEW MEXICO LEGISLATORS

A. Article IV, Section 13 of the Constitution of the State of New Mexico provides that "Members of the legislature shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and on going to and returning from the same. And they shall not be questioned in any other place for any speech or debate or for any vote cast in either house."

B. The New Mexico Attorney General has issued an opinion that this constitutional provision does not prevent a legislator from being arrested "for even the most minor criminal offense" (N.M.A.G. Op. No. 93-04). The only immunity is from civil arrest for violation of certain court orders. Legislators should be treated the same way as any other person who commits a crime.

76.1.02 FOREIGN DIPLOMATS/CONSULAR OFFICIALS

A. Verifying Diplomatic Immunity

1. When a police officer is confronted with a person claiming immunity, official Department of State identification should be immediately requested in order to verify the person's status and immunity.
2. Should the individual be unable to produce satisfactory identification, and the situation would normally warrant arrest or detention, the officer should inform the individual that he will be detained until proper identity can be confirmed.

B. Matricula Consular

1. The Mexican Ministry of Foreign Affairs, as a part of the integral Program for the Improvement of the Consular Services, issued a new higher security Consular ID, called “Matricula Consular de Alta Seguridad” or MCAS. The main MCAS security backs are either visible or invisible security features.
2. Visible security features:
 - a. Green security paper, with special security pattern.
 - b. “Advantage seal”, with a Mexican Official seal that appears over the bearer’s picture that changes color from green to brown when seen with natural light.
 - c. Infra red band on back of the MCAS.
 - d. Using fluorescent-light lamp, you are able to read SRE all over the front of the MCAS.
3. Invisible security features:
 - a. In order to reveal the invisible MCAS security marks, a special decoder is needed. Using this decoder you can see the following on the front of the card:
 - The word Mexico written at the left side of the MCAS, next to the bearer’s picture.
 - The legend “MATRICULA CONSULAR CONSULAR ID CARD”, written at the bottom of the MCAS.
4. Officers shall NOT request proof of immigration status. Requests shall be for proof of identification. The “Matricula Consular de Alta Seguridad” is an acceptable form of identification, as is any

other form acceptable in the State of New Mexico.

C. Diplomatic Officials

1. Ambassadors and ministers are the highest-ranking diplomatic representatives of a foreign government. Other diplomatic titles are Minister Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. These officials are usually located either in Washington, D.C. or in New York City, New York.
2. Diplomatic officials, members of their families and their administrative and technical staff who are not nationals of the United States, have full immunity from arrest, detention, or prosecution for any criminal offense unless such immunity is expressly waived by the sending State. The above individuals also enjoy immunity from civil process except in certain actions involving private activities outside their official functions.

D. Consular Officials

1. Under prevailing international law and agreement, e.g., The 1961 Vienna Convention on Consular Relations, a foreign career consular officer is not subject to arrest or detention pending trial except in the case of a grave crime (a felony offense that would endanger the public safety). His/her immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.

E. Offenses Involving Family Members of a Consular Officer

1. Family members of a consular officer cannot claim immunity. However, consideration should be given to the special nature of this type of case. Family members shall be treated with the appropriate courtesy and respect.

F. Honorary Consuls

1. These individuals are not immune from arrest or detention; they are not entitled to personal immunity from civil and criminal jurisdiction except as to official acts performed in the exercise of their consular functions.

G. Foreign Nationals and Immigration Laws

1. Officers of the Department of Homeland Security (DHS) have the sole authority to interrogate any alien or person believed to be an alien as to the individual's right to be in the United States. They also have the exclusive power to arrest any Foreign National found to be in the United States in violation of any law or regulation regarding the admission, expulsion or exclusion of aliens. Immigration and Customs Enforcement (ICE) falls under the authority of DHS.
2. Concerning federal immigration laws, the SFPD operates under the guidelines of the City of Santa FE Resolution No. 1999-6 which declares that "no municipal resources will be used to identify or apprehend any non-citizen resident on the sole basis of immigration status, unless otherwise lawfully required to do so."
3. If a person is arrested and detained by this Department for any violation other than immigration laws, and in the course of the investigation it is learned the subject is an illegal alien, this information may be forwarded to DHS/ICE under the following guidelines:
 - a. The Shift Supervisor must first contact a Commander for approval to notify DHS/ICE.
 - b. DHS/ICE may be notified in cases of Concealing Identity, Identity Theft, a violent crime against another person, Human Trafficking, Narcotics Trafficking, Gang Activity, Organized Crime Organizations, and other felonious crimes.

c. Notifications will be documented in an Offense/Incident Report.

4. No persons will be held on immigration charges unless written authorization (I-247 detention form) is received from DHS/ICE.
5. Except in exigent circumstances, cooperation with DHS/ICE or Border Patrol must be approved by a Commander.
 - a. A Commander may approve authority in the following circumstances:
 1. Law Enforcement Safety or Public Safety
 2. Joint investigations of criminal activity.
 3. As outlined in paragraph 3 (b).

H. Traffic Violations

1. Stopping a diplomatic or consular official and issuing a traffic citation does not constitute an arrest or detention, and is permissible even if immunity bars any further action at the scene. Officers may stop diplomats or consuls committing moving violations and issue a citation if appropriate. The diplomat or consul shall not be required to sign the citation.
2. The primary consideration in stopping a driver for Driving Under the Influence is to see that the driver is not a danger to himself/herself, or the public.
3. Sobriety tests may not be required. Based upon a determination of the circumstances, the following options are suggested.
 - a. Take him/her to a telephone so that he/she can call a relative or friend to come for him/her.
 - b. Arrange for transportation to his/her home or office.
 - c. He/she may be voluntarily transported to the station or other location where

he/she can recover sufficiently to enable him/her to proceed safely.

I. Requirements pertaining to Foreign Nationals

1. 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 most 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. In other cases, however, the foreign national's consular officials **must** be notified of an arrest and/or detention regardless of the foreign national's wishes. Whenever a foreign national is taken into custody, the detaining official should determine whether consular notification is at the option of the foreign national or whether it is mandatory.

J. Notification at the Foreign National's option

1. In all cases, the foreign national must be told of the right of consular notification and access. The foreign national then has the option to decide whether he/she wants consular representatives notified of the arrest or detention, unless the foreign national is from a "mandatory notification" country.

K. Mandatory Notification

1. In some cases, "mandatory notification" must be made to the nearest consulate or embassy "without delay", "immediately", or within the time specified in a bilateral agreement between the United States and a foreign national's country, regardless of whether the foreign national requests such notification. The foreign national should be informed that notification has been made and advised that he/she may also specifically request consular assistance from his or her consular officials.

2. Mandatory notification requirements arise from different bilateral agreements whose terms are not identical.

L. Suggested statements to Arrested or Detained Foreign Nationals

1. When Consular Notification is at the foreign national's option:
 - a. 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 council, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular official's, 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?
2. When Consular Notification is Mandatory
 - a. 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.

M. Consular Access to Detained Foreign Nationals

1. 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.

2. 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. They must refrain from acting on behalf of a foreign national, however, if the national opposes their involvement. In addition, consular officers may not act as attorneys for their nationals.
3. The rights of consular access and communication generally must be exercised subject to local laws and regulations. For example, consular officers may be required to visit during established visiting hours. Federal, state, and local rules of this nature may not, however, be so restrictive as to defeat the purpose of consular access and communication. Such rules “must enable full effect to be given to the purposes” for which the right of consular assistance has been established.

NOTE: The above requirements are set out in Article 36 of the VCCR.

N. Deaths of Foreign Nationals

1. If federal, state, or local government officials become aware of the death of a foreign national in the United States, they must ensure that the nearest consulate of that national’s country is notified of the death. This will permit the foreign government to make an official record of the death for its own legal purposes. For example, such notice will help ensure that passports and other legal documentation issued by that country are canceled and not reissued to fraudulent claimants. In addition, it may help ensure that the foreign national’s family and legal heirs, if any, in the foreign country are aware of the death and that the death is known for estate purposes in the foreign national’s country.

NOTE: The above requirements are set out in Article 36 of the VCCR.

O. Appointments of Guardians or Trustees for Foreign Nationals

1. Whenever a probate court or other legally competent authority considers appointing a guardian or trustee with respect to a foreign national who is a minor or adult lacking full capacity, the nearest consular authorities for that national’s country must be informed without delay. The legal procedures for appointment of a guardian or trustee can proceed, but—if possible without prejudice to the appointment process—the consular authorities should be permitted to express any interest their government might have on the issue.

NOTE: The above requirements are set out in Article 37 of the VCCR.

P. Mandatory Notification Countries and Jurisdictions;

Albania
 Algeria
 Antigua and Barbuda Malta
 Armenia Mauritius
 Azerbaijan Moldova
 Bahamas Mongolia
 Barbados Nigeria
 Belarus Philippines
 Belize Poland (non-permanent residents only)
 Brunei Romania
 Bulgaria Russia
 China 1 Saint Kitts and Nevis
 Costa Rica Saint Lucia
 Cyprus Saint Vincent and the Grenadines
 Czech Republic Seychelles
 Dominica Sierra Leone
 Fiji Singapore
 Gambia Slovakia
 Georgia Tajikistan
 Ghana Tanzania
 Grenada Tonga
 Guyana Trinidad and Tobago
 Hong Kong 2 Turkmenistan
 Hungary Tuvalu

Jamaica Ukraine
 Kazakhstan United Kingdom³
 Kiribati U.S.S.R.⁴
 Kuwait Uzbekistan
 Kyrgyztan Zambia
 Malaysia Zimbabwe
 Saint Vincent and Grenadines
 Tunisia
 Turkmenistan
 Tuvalu
 United Kingdom
 Uzbekistan
 Zambia
 Zimbabwe

- Notification is mandatory for persons carrying “Republic of China” passports issued by Taiwan.
 - Hong Kong is now the Special Administrative Region (SAR) notification must be made to Chinese officials in the same manner as Chinese passports.
 - British dependencies also covered are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. These persons carry British passports.
 - Although the U.S.S.R. is no longer in existence, some of the nationalist successors may still be travelling on these passports. Notification should be made to the Successor State.
- Q.** A list of embassies and consulates in the United States, with their telephone and facsimile numbers will be made available to RECC and Team Commanders, as well as on the U.S. Department of State web site: *travel.state.gov/notification1.html*

76.1.03 MILITARY PERSONNEL

A. Military personnel are not immune from being cited, arrested or detained. They shall not be entitled to any personal immunity from civil or criminal action.

B. If military personnel are from outside the state of New Mexico, the officer will be responsible for checking to ascertain if the violator is from a state in the Nonresident Violation Compact or not, and follow the above guidelines for whichever situation applies. Military personnel cited on traffic violations covered under the Penalty Assessment Program will be afforded the opportunity to accept the Penalty Assessment.

**76.1.04 NON-RESIDENTS OF NEW MEXICO
 NON-RESIDENT VIOLATOR’S
 COMPACT (NRVC)**

- A.** Out-of-state drivers are not immune from being cited, arrested, or detained. It is, however, the policy of the Santa Fe Police Department to abide by the procedures set forth in the Non-Resident Violators Compact when citing out-of-state drivers for traffic violations.
- B.** If the traffic offender resides and is licensed to drive outside the state of New Mexico and in a state that participates in the Nonresident Violator’s Compact (NRVC), the officer will cite the offender in the same manner as a resident. The Compact allows a nonresident to proceed on his/her way after receiving a citation and the citation will be honored by the state in which the violator is licensed to drive. Refer to the list of states participating in the NRVC, which is located at the end of this directive.
 - 1.** Types of citations covered by the Nonresident Violator Compact (NRVC) are those moving traffic citations which, in and of themselves, do not carry suspension or revocation penalties nor do they require arrest.
- C.** Certain moving offenses are not covered by the Nonresident Violator Compact, since traffic laws vary from state to state. In these cases the citing officer shall allow the violator to post bond at the Santa Fe Police Station, or allow the violator an immediate appearance before the Municipal Judge (during regular court hours). Citations not covered by the NRVC are:

1. offenses which mandate personal appearances
 2. moving traffic violations which alone carry suspension or revocation penalties
 3. equipment violations
 4. inspection violations
 5. size and weight violations
 6. parking violations
 7. transportation of hazardous material violations
- D.** If a non-resident of New Mexico commits a violation which by law requires arrest of the individual, the officer shall take action in accordance with department directives regarding arrest, transportation, and booking of prisoners. Situations requiring arrest are:
1. When the violation alleged is Driving While Under the Influence of Intoxicating Liquor or Narcotic Drugs, or
 2. When the person is charged with failure to stop in the event of an accident causing death, personal injuries, or damage to property, or
 3. When the arresting officer has probable cause to believe the person arrested has committed a felony.

NOTE: Non-residents of New Mexico cited for traffic violations listed on the Penalty Assessment Schedule will be provided the opportunity to pay the Penalty Assessment. Procedures outlined under "Patrols Traffic Procedures-Traffic Stops".

76.1.05 NON-RESIDENTS OF NEW MEXICO NOT PARTICIPATING IN NRVC

- A.** If the violator is not from one of the participating states, the officer must contact a commander and have the violator post bond. If the

Municipal Judge is available, the officer may escort the violator before the judge for an immediate appearance in lieu of posting bond.

76.1.06 NON-RESIDENTS OF THE DEPARTMENT'S SERVICE AREA

- A.** If a traffic offender is a New Mexico resident, but does not reside within the department's jurisdiction, the officer will issue the necessary citations and, unless there is an arrestable offense, will allow the violator to leave the area.

76.1.07 IMMEDIATE APPEARANCE

- A.** Nonresidents can be arrested and transported before a judge when the person demands immediate appearance, refuses to give his/her written promise to appear in court, refuses the penalty assessment, or acknowledge receipt of a warning notice. Immediate appearance must be granted by the judge and it must be during regular court hours. Commander/supervisor approval is required for officers to exercise this alternative. *76.1.08 JUVENILE TRAFFIC OFFENDERS*

- A.** Juvenile traffic offenders are covered under the Juvenile Reporting System, Traffic Offenses in the document entitled "Juvenile Services Unit".

GLOSSARY:

DIPLOMATIC IMMUNITY - Persons given certain privileges based upon their governmental position or status. This can/may include the privilege to be free from arrest, citation, or charging prior to decision by a judge or competent authority. Examples: Foreign dignitaries, consular officials, etc.

LEGISLATORS - A person elected to serve as a member of the New Mexico State Senate or House of Representatives.

NON-RESIDENT VIOLATORS COMPACT - An agreement between states to honor charges/violations of law by another state.

STATES PARTICIPATING IN THE NRVC

Alabama, Louisiana, North Dakota, Massachusetts, Arkansas, Maine, Pennsylvania, Colorado, Maryland, Oklahoma, Connecticut, Ohio, Delaware, Minnesota, Rhode Island, District of Columbia, Mississippi, Florida, Texas, South Carolina, Missouri, South Dakota, Georgia, Nebraska, Tennessee, Illinois, New Hampshire, Indiana, New Jersey, Utah, Iowa, New Mexico, Vermont, Kansas, New York, Virginia, Kentucky, North Carolina, West Virginia and Wyoming

STATES NOT PARTICIPATING

Alaska, Idaho, Oregon, Arizona, Michigan, Washington, California, Montana, Wisconsin, Hawaii and Nevada

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