



POLICE DEPARTMENT COUNTY OF SUFFOLK
 ACCREDITED LAW ENFORCEMENT AGENCY
DEPARTMENT DIRECTIVE
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ORDER NUMBER

TYPE DEPARTMENT GENERAL ORDER	AUTHORITY TIMOTHY SINI POLICE COMMISSIONER	SIGNATURE	
SUBJECT/TOPIC/TITLE ARREST OF NON-U.S. CITIZENS AND PERSONS WITH DUAL CITIZENSHIP			
DISTRIBUTION ALL MEMBERS OF THE DEPARTMENT	SECTION CREATED	DATE EFFECTIVE	DATE AMENDED

RULES AND PROCEDURES

CHAPTER 16: TITLE: ARREST AND PRISONERS

SECTION 4: TITLE: ARREST OF NON-U.S. CITIZENS AND PERSONS WITH DUAL CITIZENSHIP

I. PURPOSE

To provide procedures for processing arrests of non-U.S. citizens, for interacting with undocumented persons and for making notifications to federal and consular agencies.

II. POLICY

The mission of the Police Department is to provide and maintain a safe environment for every person in Suffolk County regardless of that person's residency or immigration status. If individuals believe that they cannot come forward to report a crime or that they cannot freely cooperate with law enforcement because of their immigration status, the mission of the Police Department and the safety of all residents is compromised.

Persons requiring police assistance should not be discouraged from approaching police officers out of fear of inquiry into their immigration status. Officers, therefore, shall not inquire about, or investigate, the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance. An exception to this requirement shall exist if: (a) the District Attorney's Office determines, and communicates to the Police Department in writing, that good cause exists to inquire about or investigate the person's immigration status; (b) the person has been arrested for and charged with a crime; or (c) as may be constitutionally or otherwise legally required during a criminal proceeding.

After an undocumented person has been arrested and charged with a criminal offense, that individual's immigration status becomes relevant when determining his or her ties to the community and to ascertain the likelihood that he or she will appear at future court proceedings. The Police Department is responsible for alerting federal immigration officials, the prosecuting attorney, and the judiciary when an undocumented person is arrested for a criminal offense (i.e. misdemeanor or felony). Additionally, the Police Department will notify federal immigration officials to evaluate whether immigration enforcement proceedings should be initiated if the undocumented person is engaged in criminal activity.

III. DEFINITIONS

A. Non-U.S. Citizen - A person who is not a United States citizen.

B. Dual Citizenship - A person who is a citizen of both the United States and another country. Such person, according to the United States Department of State, may be treated exclusively as a U.S. citizen when in the United States. Consular notification is not required even if the other country of citizenship is a mandatory notification country. A person who is not a United States citizen, but is a national/citizen of more than one other country, will be treated in accordance with the notification requirements applicable to each country.

C. LESC - Law Enforcement Support Center - Williston, Vermont.

D. INSQ - Inquiry search through Immigration database.

IV. REFERENCES

United States Department of State publication entitled "Consular Notification and Access."

V. RULES AND REGULATIONS

N/A

VI. PROCEDURES

A. Determining Arrestee's Status

1. When processing an arrest for ~~any offense~~ a misdemeanor of felony, the arresting officer shall:

a. Determine if the arrestee has Limited English Proficiency and if so follow the procedures set out in

~~(1) If so, request an interpreter through the Communications Section, and~~

~~(2) If an interpreter is not available, utilize the Language Line service in accordance Rules and Procedures Chapter 26, Section 5.~~

b. Query the arrestee regarding the arrestee's:

(1) citizenship, and

(2) birthplace

2. If an arrestee indicates that:

a. He or she was born outside of the United States, or

b. He or she is not a United States citizen, or

c. If his or her answer does not provide the arresting officer sufficiently detailed or reliable information for the officer to determine the arrestee's place of birth, the officer shall:

(1) Complete an Immigration/Customs Enforcement Inquiry Request, (form PDCS-6100-44, available online), and fax the form to Teletype in the Receiving, Dispatching and Teletype Unit. This will generate an INSQ search through the Immigration and Customs Law Enforcement Support Center (LESC). Including the arrestee's place of birth on this form will optimize search results. If unable to

determine the place of birth, enter, "unknown" in this field.

ICE will send the search results back to the Teletype Unit which will in turn forward the results to the requesting Officer, the Criminal Intelligence Bureau, the Chief of the Suffolk County District Attorney's Office Case Advisory Bureau, and to Probation ROR for arraignment.

(2) Indicate in the Personal Information section of the Arrest Worksheet, (PDCS-1086), the "residency status, citizenship, immigration status and INS number", to the extent available.

(3) Include a copy of the INSQ inquiry results, if available, with the arrest paperwork and forward to the court of arraignment. In any case the INSQ inquiry should be indicated in the online arrest processing system or arrest paperwork.

(a) Arrestees shall not be detained solely pursuant to a request from ICE to hold the arrestee - detention/custody of an arrestee shall *only* be conducted pursuant to criminal charge(s) filed against the arrestee by a member of this Department or other law enforcement agency (other than ICE). If ICE requests that an arrestee be detained, such detention shall only be conducted pursuant to a warrant or other lawful direction of a court obtained by ICE. If an arrestee is eligible to be released pursuant to an appearance ticket (conditioned on the posting of bail or not), an INSQ inquiry response requesting a hold on the arrestee shall not be a factor in the determination of:

- Whether or not the arrestee is released pursuant to an appearance ticket;

- Whether or not such release is conditioned upon the posting of bail; and,

- The bail amount, if such release is conditioned upon the posting of bail.

B. Consular Notification - ~~Arresting officers shall adhere to the following notification procedures when processing an arrestee who is not a U.S. citizen~~ Arresting officers shall ask all arrestees if they are a citizen of a foreign country:

1. ~~Determine the arrestee's country of origin.~~ If the arrestee has is LEP, the arresting officer will follow the procedures set forth by Rules and Procedures Chapter 26, Section 5.

2. If the arrestee is a citizen of another country the arresting officer shall contact the Communications Section to determine if the arrestee's country of origin is on the mandatory notification list. The Communications Section supervisor shall make note of any consular notification in the Communications Section Confidential Log.

3. If the foreign national's country **IS** on the mandatory notification list, the arresting officer will notify the desk supervisor, or officer in charge of the precinct, who in turn shall:

a. Notify the country's nearest consular officials, without delay, of the arrest.

b. Advise the arresting officer of the date, time and name/title of the consular official receiving such notification and any instructions given.

c. The arresting officer shall advise the arrestee that, "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 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.”

4. If the foreign national's country **IS NOT** on the mandatory notification countries list, the arresting officer shall:

- a. Offer, without delay, to notify the arrestee's consular officials of the arrest, by telling the arrestee, "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?"

- b. If the foreign national asks that consular notification be given, the arresting officer shall contact the desk supervisor or Officer in Charge, who then shall:

- (1) Notify the foreign national's nearest consular officials, without delay, of the arrest.

- (2) Advise the arresting officer of the date, time and name/title of the consular official receiving such notification and any instructions given.

- (3) Advise the Communications Section Supervisor so that the matter may be annotated in the Communications Section Confidential Log.

5. All actions taken concerning consular notifications must be documented on the **Arrest Worksheet (PDCS 1086m)** ~~arrestee's Prisoner Activity Log (PDCS-2032)~~.

6. Pursuant to U.S. State Department guidelines a consular officer may visit a foreign national from their country that is in police custody. In the event a personal visit is made, the appropriate entry must be recorded on the arrestee's Prisoner Activity Log (PDCS-2032).

C. Contact Numbers -

1. Law Enforcement Support Center (LESC): 802-872-6020 (24 hrs/7days)
2. ICE Communications Desk: (646) 230-3200
3. Probation ROR: 853-5115; Probation Supervisor 853-5007, Fax - 853-4032
4. Suffolk County District Attorney's Office Case Advisory Bureau: Fax - 853-5892

D. Responsibilities of the Criminal Intelligence Bureau (CIB) - The Criminal Intelligence Bureau shall evaluate all INSQ responses received and perform any necessary follow-up investigation in conjunction with ICE personnel. CIB shall prepare and maintain a database to catalog all INSQ responses that they receive from Teletype.

VII. ACCREDITATION STANDARD REFERENCES

- A. CALEA
- B. NYSLEAP

VIII. INDEX

Undocumented Persons, Arrest of - 16/4
Dual Citizenship, Arrest of Persons With - 16/4
Foreign National, Arrest of - 16/4
Immigration/Customs Enforcement Inquiry Request - 16/4
INSQ - 16/4
LESC - 16/4
Non-U.S. Citizen, Arrest of - 16/4

(Note: Please See Attached Exhibit)

Exhibit to Chapter 16, Section 4

(Arrest of Non-U.S. Citizens and Persons with Dual Citizenship)

**Mandatory Consular Notification Countries and Jurisdictions
(Revised 9/10):**

Albania	Ghana	Saint Lucia
Algeria	Grenada	Saint Vincent and the Grenadines
Antigua and Barbuda	Guyana	Seychelles
Armenia	Hungary	Sierra Leone
Azerbaijan	Jamaica	Singapore
Bahamas	Kazakhstan	Slovakia
Barbados	Kiribati	Tajikistan
Belarus	Kuwait	Tanzania
Belize	Kyrgyzstan	Tonga
Brunei	Malaysia	Trinidad and Tobago
Bulgaria	Malta	Tunisia
China (including Macao and Hong Kong)	Mauritius	Turkmenistan
Costa Rica	Moldova	Tuvalu
Cyprus	Mongolia	Ukraine
Czech Republic	Nigeria	United Kingdom
Dominica	Philippines	Uzbekistan
Fiji	Poland	Zambia
Gambia	Romania	Zimbabwe
Georgia	Russia	
	Saint Kitts and Nevis	

For more detailed instructions and legal material, see the Department of State publication *Consular Notification and Access*. The complete publication is available at:

www.travel.state.gov/consularnotification

Questions may also be addressed to:

Office of Policy Coordination and Public Affairs (CA/P)
Bureau of Consular Affairs
U.S. Department of State
2100 C St. NW, Room 4800
Washington, D.C. 20520
Telephone: (202) 647-4415
Fax: (202) 736-7559

Urgent after-hours inquiries may be directed to:

(202)647-1512 (State Department Operations Center)

Department members are advised to contact the Communications Section supervisor to verify whether the foreign national's country is on this Mandatory Consular Countries and Jurisdictions Notification list. Reminder: the above process is contained in Chapter 16, Section 4.VI.B. of the Rules and Procedures.

Department members are reminded if a foreign national's country is not on this Mandatory Consular Countries and Jurisdictions Notification list, they must still offer, without delay, to notify the person's consular officials of the arrest, using the statement contained in VI.B.4.a. of Chapter 16, Section 4 of the Rules and Procedures.

END