

Burleson Police Department

Administrative Policy and Procedures

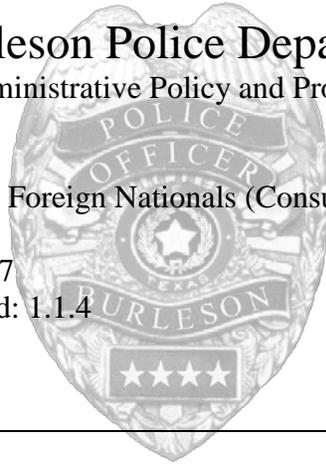
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CALEA Standards Referenced: 1.1.4



ISSUING AUTHORITY: _____

This directive summarizes the basic requirements of consular notification and access for Burleson Police Department personnel who may, in the performance of their duties, have contact with a foreign national in a situation triggering a requirement to notify the foreign national's consular officials.

I. Policy

The Burleson Police Department recognizes that these are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national, as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and if requested or otherwise required, the prompt and courteous notification to the foreign national's nearest consular official so that they can provide whatever consular services they deem appropriate. The Burleson Police Department will comply with federal law and guidelines established by the United States Department of State regarding the detention and arrest of foreign nationals.

II. Definitions

- A. **CONSULAR OFFICER** (may be called Consul) – A citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, D.C. or to consular offices maintained by the foreign government in locations in the United States outside of Washington, D.C.
- B. **COUNSEL** - Attorney at law authorized to provide legal counsel and advice.
- C. **DIPLOMATIC OFFICER** – Officer of a foreign government assigned to an embassy in Washington, D.C.; may be authorized by their governments to perform consular functions. Consular notification can be given to a diplomatic officer if no consular officer is closer or available.

- D. FOREIGN NATIONAL** (may be known as an “Alien”) – Any person who is not a U.S. citizen. Lawful permanent resident aliens who have a resident alien registration card, commonly known as a “green card”, retain their foreign nationality and must be considered “foreign nationals” for the purposes of consular notification.
- E. HONORARY CONSUL** – Citizen or lawful permanent resident of the United States who has been authorized by a foreign government to perform official functions on it’s behalf in the United States.

III. PROCEDURES

[1.1.4]

- A. Summary of Requirements Pertaining to Foreign Nationals**
1. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
 2. In some cases, the nearest consular officials *must* be notified of the arrest or detention of a foreign national regardless of the foreign national’s wishes.
 3. Consular officials are entitled access to their foreign nationals in detention and are entitled to provide consular assistance.
 4. When a government official becomes aware of the death of a foreign national, consular officials must be notified.
- B. Determining if the Arrestee or Detainee is a Foreign National**
1. If a detainee claims to be a U.S. citizen, it can generally be assumed that consular notification requirements are not relevant. However, if there is reason to question whether the person being arrested or detained is a U.S. citizen, the arresting officer should inquire further about nationality so as to determine whether any consular notification obligations apply.
 2. A foreign national may present a foreign passport or an alien registration document as identification.
 3. Illegal aliens have the same rights to consular assistance, as do legal aliens.
 4. A person who is a national / citizen of two or more countries other than the United States should be treated in accordance with the rules applicable to each of those countries.

5. Any person who has been arrested by the Burleson Police Department and who the officer(s) suspects is not a permanent resident can be referred to the United States Immigration Authority to determine the subject's alienage, nationality, manner of entry into the United States, any violation of law, and the verification of immigration status.

C. Steps to Follow When a Foreign National is Arrested or Detained [1.1.4]

1. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
 - a) If the foreign national's country is not on the mandatory notification list (a copy of the notification list is maintained in the booking area):
 - 1) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. The following statement must be read to the arrestee/ detainee:
“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 consular officials, you can request this notification now, or at any time in the future. Do you want us to notify your country's consular officials?” (This statement will be maintained in the booking area)
 - 2) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay. (A list of phone and fax numbers for foreign embassies and consulates in the United States is maintained in the booking area.)
 - 3) If notification is made, keep a written record of the provision of notification and actions taken. Attach the documentation to the arrest report. If possible, notification should be made by fax using the form for “notifying Consular Officers of Arrests or Detentions (Attachment A)
 - b. If the foreign national's country is on the list of mandatory notification countries;

- 1) Notify that country's nearest consular official, without delay of the arrest/detention. The following statement must be read to the arrestee/detainee:
“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.” (This statement will be maintained in the booking area)
- 2) If possible, make notification by fax, using the form for “notifying Consular Officers of Arrests or Detentions” (Attachment A). Keep a written record of the provision of notification and actions taken. Attach the documentation to the arrest report.

D. Privacy Concerns

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his government may exist in some mandatory notification cases. The notification must 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. ***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.***

E. 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 representative must be forwarded to the consular post without delay.
2. Foreign consular officers must be given access to their nationals and must be permitted to communicate with them; however, they may be required to abide by visitation and rules of access established by policy.

F. Contact Information

1. U.S. Department of State. Office of Public Affairs and policy coordination for Consular Affairs (202) 647-4415
2. State Department Operations Center (202) 647-1512.

G. Training

Training will be covered during recruits Field Training Phase.

Any changes in treaty requirements will be covered in legal update training required by TCLEOSE.

Attachment A

Date: _____

Time: _____

To: Embassy of _____

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

From: Name: _____

Burleson Police Department
225 West Renfro
Burleson, Texas 76028
Phone: (817) 447-5300
Fax: (817) 447-0332

Subject: NOTIFICATION OF ARREST / DETENTION OF A NATIONAL OF YOUR COUNTRY

We arrested / detained the following foreign national whom we understand to be a national of your country on _____.

Mr/Ms.: _____

Date of Birth: _____

Place of Birth: _____

Passport Number: _____

Date of Passport Issuance: _____

Place of Passport Issuance: _____

To arrange for consular access, please call _____ between the hours of _____ and _____. Please refer to case # _____ when you call.

Comments: _____