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	SUBJECT		EFFECTIVE DATE
	<b>Virginia Beach Police Department General Order</b> <b>Chapter 11 – Patrol Operations</b>		<b>06/30/2014</b>
			ORIGINATOR/REVIEW
DISTRIBUTION		CALEA: 1.1.4	Uniform Division
ALL			
BY THE AUTHORITY OF THE CHIEF OF POLICE:		<i>James A. Coonan</i>	

## Purpose

To establish guidelines for sworn personnel regarding the handling of foreign nationals and enforcement of immigration laws.

## Policy

The enforcement of the nation’s immigration laws is primarily the responsibility of the federal government. Accordingly, the Virginia Beach Police Department shall not undertake immigration-related investigations and shall not routinely inquire into the immigration status of persons encountered during police operations except as described below.

This prohibition does not preclude the Department from cooperating with federal immigration officials when requested, or from notifying those officials in serious situations where a potential threat to the public is perceived.

## Definitions

**Arrest or detention:** Any arrest, detention, or other commitment to custody which results in a foreign national being incarcerated for more than a few hours triggers consular notification requirements. A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger such requirements. On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a detention continues, the more likely it is that consular notification requirements are triggered.

**Foreign national:** Any person who is not a U.S. citizen; same as “alien.” Aliens who are lawful permanent residents in the United States and who have a resident alien registration card (“green card”) are foreign nationals. So are undocumented or “illegal” aliens.

**Consular officer or consul:** A foreign official authorized by the Department of State to provide assistance to the foreign government’s citizens in the United States. Different from “counsel,” which is an attorney authorized to provide legal advice. Consuls are not authorized to practice law.

**Diplomat:** A foreign official at the country’s embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions, and should be treated the same as a consular officer.

**Mandatory notification:** Consular notification procedures that apply when you arrest or detain a foreign national from any of the 57 countries that have agreed to special rules with the United States. For such a foreign national, you must notify the consular officer regardless of whether the national requests or wants

you to do so. The “mandatory” list of these 57 countries is at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)

**“Upon request” notification:** Consular notification procedures that apply when you arrest or detain a foreign national from any country not on the “mandatory” list of 57 countries.

### **Inquiries into Immigration Status**

A person’s right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon citizenship or immigration status. Consequently, officers shall not question any person about his or her citizenship or immigration status or inform federal immigration authorities of the whereabouts or behavior of any immigrant or foreign visitor, unless that person:

1. Is physically arrested and not eligible for release on a summons
2. Has been convicted of any felony, regardless of whether that felony involved violence
3. Is reasonably suspected of involvement in terrorism and/or subversive activities
4. Is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country
5. Is reasonably suspected of participating in criminal street gang activity

Officers shall not request passports, visas, “green cards,” or travel documents in lieu of, or in addition to, driver’s licenses and similar standard forms of identification. Such documents shall only be requested when standard forms of identification are unavailable, or when the officer is proceeding under the conditions described above.

When any person is physically arrested, their Country of Citizenship should be ascertained and entered into the Adult Arrest / Juvenile Detention Worksheet (PD-180). Those persons who are physically arrested, and whose citizenship is other than the United States, may be questioned further as to their legal status in the United States. Any such person who acknowledges being in the United States illegally, or whom an officer suspects of being here illegally, may be screened through the ICE Law Enforcement Support Center (accessible via the E-911 Center) to determine if they can be detained as an illegal alien. Regardless of whether their status in the country is legal or illegal, consular notification applies as described below. No person shall be physically arrested in order to determine their legal status in the country if they would otherwise have been eligible for release on a summons. Additionally, no other person, including a victim or other person reporting a crime, nor any witness to a crime, shall be questioned regarding their status in this country absent a lawful physical arrest of such person for a crime or one of the other conditions enumerated above.

### **Arrest for Immigration Law Violations**

In accordance with the Code of Virginia, [19.2-81.6](#) officers may, in the course of acting upon reasonable suspicion that the individual has committed or is committing a crime, arrest the individual without a warrant upon confirmation from the Bureau of Immigration and Customs Enforcement that the individual:

1. Is an alien illegally in the United States
2. Has previously been convicted of a felony in the United States and
3. Has either been deported, or left the United States after such conviction

**Consular Notification (CALEA 1.1.4)**

1. Obligation triggered at time of booking. The notification process will begin at the time the arrested foreign national is booked into the detention facility. The booking officer who processes the foreign national is responsible for implementing the notification process.
2. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport the foreign national travels. Absent citizenship documentation or other evidence to the contrary, accept the foreign national's own statement as to his or her nationality.
3. Determine whether or not this country is a mandatory notification ("list") country. If the foreign national's country is not on the list of "mandatory notification" countries, he or she is from an "upon request" country. For foreign nationals whose country is on the list of mandatory notification countries:
  - A)
    - i. Notify the nearest consulate of the foreign national's country via fax immediately or as soon as reasonably possible, and in no case longer than the end of the booking shift. Notify the consulate even if the foreign national does not want notification. Contact information for consulates is at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)
    - ii. Never tell the consular officer that the foreign national has requested asylum. If the consular officer insists on information the foreign national does not want disclosed, contact your supervisor or the Department of State at (202) 647-4415.
    - iii. Inform the foreign national that you notified his or her consulate. You may use the sample statement, available in several languages, at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)
    - iv. Document the note of the completed notification in a case file and keep the fax and fax confirmation sheet.
  - B). For foreign nationals whose country is not on the list of mandatory notification countries:
    - i. As soon after the arrest as reasonably possible but no later than booking, inform the foreign national that he or she may have his or her consular officers notified of the arrest or detention. You may use the sample statement, available in several languages, at <https://travel.state.gov/content/travel/en/consularnotification.html> .
    - ii. Document the foreign national's decision in the case file.
    - iii. If the foreign national requests notification, notify the nearest consulate of the foreign national's country as soon as reasonably possible but no later than 72 hours after arrest. Contact information for consulates is at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)
    - iv. Never tell the consular officer that the foreign national has requested asylum. If the consular officer insists on information the foreign national does not want disclosed, contact your supervisor or the Department of State at (202) 647-4415.
    - v. Make a note of the completed notification in the case file and keep the fax and fax confirmation sheet.

**Facility Access and Visitation Privileges of Consular Officers**

Consular officers and diplomats visiting a detained foreign national shall be given the same access privileges as attorneys visiting a client. Consular officers and diplomats are required to adhere to the same visitation guidelines, rules, and regulations as attorneys.

Consular officers and diplomats must have proper identification to gain facility access. They should be carrying identification cards issued by the Department of State. If you have reason to doubt the authenticity of the identification card, call the Department at (202) 647-1985 or after hours at (571) 345-3146 or (866)

217-2089.

### **E. Documentation and Recordkeeping**

Document the consular notification and/or offer of notification in CJIS and VCIN on the foreign national's note screen.

Make the consular notification by fax if possible, and by telephone if not. Place a copy of the fax and fax confirmation receipt in the foreign national's file. You may use the sample fax sheet available at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification).

If notification must be made by telephone, note the name and location of the consulate notified, the name of the person to whom you gave the information, and the date and time of notification. Make an audio recording of the telephone call if possible and preserve it.

For foreign nationals from "upon request" countries, make a notation that you told the national that he or she may have the consulate notified, and note the national's response. Indicate the date and time of your offer and the national's response. You may use the sample statement at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)

For foreign nationals from mandatory notification ("list") countries, make a notation that you told the national that you notified the consulate. You may use the sample statement at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)

Print the note screen and include it in the paperwork for the foreign national's records file.

The arresting/detaining officer's supervisor shall be responsible for ensuring the proper notations are made in the record.

### **Death, Serious Injury, or Serious Illness of a Foreign National**

The Virginia Beach Police Department will be subject to the guidelines outlined in G.O. 11.15 Emergency Notifications.

In addition to the above procedures, when a foreign national dies, is seriously injured or becomes seriously ill, notify the nearest consulate of his or her country immediately or as soon as reasonably possible. Make such notification by fax if possible, and by telephone if not. You may use the sample fax sheet available at [www.travel.state.gov/consularnotification](http://www.travel.state.gov/consularnotification)

Document this notification in the incident report, and place a copy of the fax and the fax confirmation receipt in the foreign national's file.

### **Accidents Involving Aircraft or Ships Registered in Foreign Countries**

In the event that an aircraft or ship registered in a foreign country crashes or wrecks within the jurisdictional limits of the City of Virginia Beach, the responding incident commander shall insure that notification is made without delay to the consular official of the country in which the aircraft or vessel is registered.

**Notification Procedures**

Notification shall be made via telephone or facsimile. All notifications will be made utilizing Department form PD-196. Completed forms documenting notification shall be forwarded to the office of the Deputy Chief –Operations, with copies retained for inclusion in case files (when applicable.)

**Appendix I**



# ARRESTING A NON-U.S. CITIZEN

## Consular Notification Process

### Q. Are you a U.S. citizen?

A. "YES, I am a U.S. citizen."

(No further action required.)



"NO, I am not a U.S. citizen."



### Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Poland <sup>2</sup>	Tanzania
Algeria	Cyprus	Kiribati	Romania	Tonga
Antigua and Barbuda	Czech Republic	Kuwait	Russia	Trinidad and Tobago
Armenia	Dominica	Kyrgyzstan	St. Kitts and Nevis	Tunisia
Azerbaijan	Fiji	Malaysia	St. Lucia	Turkmenistan
Bahamas	Gambia	Malta	St. Vincent and the Grenadines	Tuvalu
Barbados	Georgia	Mauritius	Seychelles	Ukraine
Belarus	Ghana	Moldova	Sierra Leone	United Kingdom <sup>3</sup>
Belize	Grenada	Mongolia	Singapore	Uzbekistan
Brunei	Guyana	Nigeria	Slovakia	Zambia
Bulgaria	Hungary	Philippines	Tajikistan	Zimbabwe
China <sup>1</sup>	Jamaica			

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).  
 2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. "YES."

**Step 1.** Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

**Step 2.** Notify nearest consulate **without delay**.

**Step 3.** Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

**Step 4.** Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



### Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

**Step 1.** Make note in case file.

**Step 2.** Notify nearest consulate **without delay**.

**Step 3.** Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

**Step 4.** Allow consular officers access to detainee if they subsequently request access.

(No further action required.)



"NO."

**Step 1.** Make note in case file.

**Step 2.** Do **NOT** inform the consulate.

(No further action required.)



### IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).
- Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Consular Notification & Access (CNA)  
 U.S. Department of State  
 CA/P  
 SA-17, 12th Floor  
 Washington, DC 20522-1712  
  
 P: 202-485-7703  
 F: 202-485-6170  
 consnot@state.gov

For more information visit: <http://travel.state.gov/CNA>