

Role & Authority RA005.2		 <p style="text-align: center;"> Ridgewood Police Department Written Directive System <i>Policies and Procedures</i> </p>
<i>Notification for Foreign Nationals</i>		
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This policy shall comply with the provisions of the U.S. Department of State’s guidelines on Consular Notifications regarding notification to consulate officials in the event a foreign national is deceased, arrested or detained. Additionally this policy shall endeavor to conform with New Jersey Attorney General Directive 2007-3, Guidelines Regarding Interaction with Federal Immigration Authorities.

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DEFINITIONS

Foreign National

For the purpose of consular notification, a “foreign national” is any person who is not a U.S. citizen, regardless of legal status within the United States.

Consul or Consular Officer

A consul or consular officer is 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.

Without Delay

term contained in the Vienna Convention on Consular Relations generally understood to mean that there should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances. Nevertheless, notification to consular officials should have been made within the first 24 hours of the detention, and certainly within 72 hours. For arrest and processing purposes, notification should occur as soon as is reasonably possible under the circumstances, but in no case longer than the end of the processing.

POLICY STATEMENT

Whenever a foreign national dies, or is arrested or detained in the United States, there are legal requirements to ensure the foreign national’s governments can offer him/her appropriate assistance. In 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. Failure to provide prompt consular notification may result in the reversal of any criminal conviction (State v. Cevallos-Bermo, 333 N.J. Super. 181 (App. Div. 2000)).

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 mandatory. In addition, if the foreign national is arrested for DWI or an indictable offense, the detaining official must inquire about the person’s citizenship, nationality and immigration status. This policy will help explain the processes needed to make the determination regarding the proper notifications.

SUMMARY OF REQUIREMENTS PERTAINING TO FOREIGN NATIONALS

- When foreign nationals are arrested or detained, **they must be** advised of the right to have their consular officials notified.
- 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.
- Consular Officials are entitled to have access to their foreign nationals in detention, and are entitled to provide consular assistance.
- When Ridgewood Police Personnel become aware of the death of a foreign National, consular officials, of the foreign national's country of origin, must be notified.
- When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.
- When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

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 prompt, courteous notification to the foreign national's nearest consular officials so that they can provide whatever consular services they deem appropriate.

GENERAL GUIDELINES FOR ARRESTS OF FOREIGN NATIONALS

Any Foreign National who is arrested, detained or taken into custody, shall be advised that they have the right to inform their nation's consul of the situation.

Any such Foreign National shall be free to communicate with consular officials of the appropriate nation. Consular Officials shall be free to visit, converse and correspond with any such Foreign National and to arrange for legal representation.

Also, any correspondence from Consular Officials to such Foreign Nationals shall be delivered without delay.

- When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
- Some countries require that the nearest consular official *must* be notified of the arrest or detention of a foreign national, *regardless of the foreign national's wishes*.
- In the event that a foreign national becomes deceased, or suffers a life-threatening injury, **and** when a member of the Ridgewood Police Department becomes aware of this *in an official capacity*, consular officials must be notified¹.
- In the event of an airplane accident involving a foreign aircraft consular officials *must* be notified. In all probability, a state or federal agency having overall jurisdiction for the crash will make this notification.

¹ This provision does not supersede any required investigation or notification to the next of kin as provided in any policy or procedure, or attorney general guideline.

Countries and Jurisdictions requiring **mandatory** notification (**APPENDIX A**):

<u>Algeria</u>	<u>Romania</u>
<u>Antigua and Barbuda</u>	<u>Russia</u>
<u>Armenia</u>	<u>Saint Kitts and Nevis</u>
<u>Azerbaijan</u>	<u>Saint Lucia</u>
<u>Bahamas, The</u>	<u>Saint Vincent and the Grenadines</u>
<u>Barbados</u>	<u>Seychelles</u>
<u>Belarus</u>	<u>Sierra Leone</u>
<u>Belize</u>	<u>Singapore</u>
<u>Brunei</u>	<u>Slovakia</u>
<u>Bulgaria</u>	<u>Tajikistan</u>
<u>Gambia, The</u>	<u>Tanzania</u>
<u>Georgia</u>	<u>Tonga</u>
<u>Ghana</u>	<u>Trinidad and Tobago</u>
<u>Grenada</u>	<u>Tunisia</u>
<u>Guyana</u>	<u>Turkmenistan</u>
<u>Hong Kong</u>	<u>Tuvalu</u>
<u>Hungary</u>	<u>Ukraine</u>
<u>Jamaica</u>	<u>United Kingdom</u> ²
<u>Kazakhstan</u>	U.S.S.R. (passports may still be in use)
<u>Kiribati</u>	<u>Uzbekistan</u>
<u>Kuwait</u>	<u>Ukraine</u>
<u>Kyrgyzstan</u>	<u>Zambia</u>
<u>Malaysia</u>	

² (includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands – (residents carry UK passport)

[Malta](#)

[Zimbabwe](#)

[Mauritius](#)

[Moldova](#)

[Mongolia](#)

[Nigeria](#)

[Philippines](#)

Poland (non-permanent residents only)

If the foreign national is from a "mandatory notification" country, notification *must be given even if the foreign national objects or claims to be afraid*. If the foreign national is an asylum seeker, arrangements can be made to protect the foreign national while ensuring that his/her government's right to notification is protected. Under no circumstances should the fact that a foreign national has applied for asylum or withholding of removal be revealed to that national's government. Specific guidance on such cases may be obtained from the Department of State.

STEPS TO FOLLOW REGARDING CONSULAR NOTIFICATION

Notice: Failure to provide this notification may result in an objection by the foreign government upon imposition of a sentence and/or a reversal of criminal conviction.

1. When a foreign national is arrested or detained, determine their country. In the absence of other information, this is normally the country on whose passport or other travel document the foreign national travels.
2. If the foreign national's country **is not** on the mandatory notification list, offer, without delay, to notify the foreign national's consular officials of the arrest/detention. If the foreign national asks that consular notification be given, notify the consular officials of the foreign national country without delay.

If the foreign national's country **is** on the list of mandatory notification notify that country's consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification and read him/her the applicable statement.

3. If the foreign national understands English, then the statement can be given in English. If the foreign national does not understand English, a listing of statements in 13 foreign languages in the processing room.
4. Consulate Notification should be completed by fax, but may be completed by phone if necessary.
5. Additional assistance can be obtained at the Office of Public Affairs and Policy Coordination for Consular Affairs telephone 202-647-4415; fax 202-736-7559.
6. For **urgent** telephone inquiries after normal business hours, call the State Department Operations Center at 202-647-1512.

To be read to or viewed by a foreign national when Consular Notification is at the foreign national's **option**:

- “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 country’s consular officials, 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?”

To be read to or viewed by a foreign national when Consular Notification is **Mandatory**:

- “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.”

Document the notification, or the declined notification, on the arrest report noting the following:

- Consulate notified;
- How notified, voice, fax, etc;
- Name of the official notified;
- Time notification was made;
- If notification was made by fax, attach the fax receipt page to the records copy of the arrest report.

The specific charges and information regarding the case should not be listed on the notification unless specifically requested by the consular officer and the detainee authorizes the disclosure. If a consular official insists that he/she is entitled to information about a foreign national that the foreign national does not want to disclose, the Department of State can provide guidance.

FACILITY ACCESS/VISITATION PRIVILEGES OF CONSULAR OFFICERS

Consular officers and diplomats will be afforded the same access and visitation privileges as Attorneys. Consular officers and diplomats will be required to adhere to the same visitation guidelines as Attorneys.

Consular officers or diplomats must have proper identification to gain facility access. Diplomats and consular officers have identification cards issued by the Department of State. If the authenticity of the identification card is in question, you may call the State Department's Office of Protocol (phone 202-647-1985 during business hours, 202-647-7277 outside business hours).

DEATH OF FOREIGN NATIONAL

When any member of this department is involved in an investigation whereby it is learned that a foreign national has died, or is seriously injured (life-threatening injuries) the foreign national's consulate officials must be notified without delay for non-suspicious cases (suspicious cases will be referred to the Prosecutor's Office and ultimately the FBI). This notification will permit the foreign government to make an official record of the death for its own legal purposes. Such notice will help to ensure that passports and other legal documentation issued by that country are cancelled and not reissued to fraudulent claimants. Additionally, 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 that country.

FOREIGN NATIONALS ARRESTED FOR DWI OR INDICTABLE OFFENSE

In addition to consular notification, ICE notification shall be made if it is believed the foreign national may not be lawfully present in this country and the arrest is for an indictable crime or a driving while intoxicated offense.

- It is emphasized that in every instance when an officer makes an arrest for an indictable crime or driving while intoxicated offense, the arresting officer, or another designated officer, must inquire as part of routine procedure about an arrested person's citizenship, nationality, and **immigration status**.
 - If the officer has reason to believe that the arrestee may not be lawfully present in the United States, the officer shall notify Immigration and Customs Enforcement (ICE) during the arrest booking process.
 - The only exception to this requirement shall be if the Bergen County Prosecutor's Office or the Director of the Division of Criminal Justice determines, in writing, that good cause exists to refrain from notifying ICE during the arrest booking process.
- Notification to ICE should be made using the ICE Law Enforcement Support Center (LESC) via NCIC2000 using NLETS, and the Immigration Alien Query (IAQ) message key.
- The IAQ screen contains a Remarks Field in which the officer shall include any information relevant to the reasonable belief the individual is not lawfully present in the United States (e.g. lack of drivers license, lack of any immigration or citizenship documentation, etc.) not otherwise indicated on the IAQ that might be helpful to ICE's determination as to immigration status.
- The Remarks field is also the appropriate field to alert ICE when an arrestee is charged with a violent or egregious offense of an offense, such as driving while intoxicated, where the arrestee is likely to be released from custody shortly. Such comments would be in addition to entering the appropriate code in the Offense Code field in the IAQ.
- If the officer has additional, law-enforcement sensitive information concerning the arrestee relevant to ICE's determination whether to detain the arrestee, indicate such statement in the Remarks field. In these instances, the officer should, following the IAQ submission, promptly call LESL (802-872-6020) or the New Jersey ICE Field Office (973-776-3275 M-F 0800-1630 hours or 973-332-9194 all other times) to provide specific information to an ICE agent or analyst.
- LESL will provide the requesting agency an automated message acknowledgement, not a substantive answer on the arrestee's immigration status, within 15 seconds of receipt of an IAQ.
- According to ICE, search results and response times may take up to 60 minutes, but should normally occur in a much shorter period. Please note that as the system is currently configured, the officer must re-log into NCIC2000 and NLETS to check for ICE responses. The system will not automatically alert the requesting agency of a response. ICE's initial response will indicate its determination, if any, as to an arrestee's immigration status, but will not indicate whether ICE intends to issue a detainer on the arrestee.

- Once LESC responds to an officer, LESC will also send a copy of the response to the New Jersey ICE Field Office. The reporting agency may follow up with the field office, as necessary. In the event the response time for a particular query on an arrestee's immigration status is substantially longer, the arrestee is due to be released from custody shortly, or if the officer of agency would like to provide additional information or ask specific questions, the officer or agency may contact LESC or the ICE Newark Field Office as listed above.
- The body of the electronic response explains the individual's immigration status and indicates any potential or pending immigration proceedings or consequences. Please note that a possible response to an IAQ is "No Record Found in INS Indices." Such a response may indicate the individual is not legally present in the United States, has had no prior encounters with ICE, and, thus, no record is found in ICE's system. These results should be forwarded to the appropriate court and prosecuting agency.

DETAINERS

- As to detainers, both the New Jersey field office and LESC have authority to issue an immigration detainer. ICE has indicated it will attempt to make its decision as to whether it will issue a detainer as soon as possible. The officer or agency may also contact LESC or the Newark field office to inquire about ICE's detainer determination.
- The arresting officer shall document in the investigation report when and by what means notification to ICE was made and the factual basis for believing the arrestee may be an undocumented immigrant.
- Whenever an officer notifies ICE about a suspected undocumented immigrant, notification will also be made by the arresting officer to the prosecuting authority who will handle the matter (e.g., the Bergen County Prosecutor's Office in the case of an indictable charge, or the Ridgewood Municipal Court in the case of a driving while intoxicated charge) and to any court officer setting bail or conditions of pretrial release. This notification shall be documented in the officer's investigation report.
- The Bergen County Prosecutor's Office shall be notified via facsimile transmission using a "Notice of Undocumented Immigration Status" form.
- The Ridgewood Municipal Court shall be forwarded a copy of the "Notice of Undocumented Immigration Status" form.

STATUS OF NON-DEFENDANTS

No officer shall inquire about or investigate the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance, unless one of the three exceptions is present:

- The Bergen County Prosecutor's Office or the Director of the Division of Criminal Justice determines, in writing, that good faith exists to inquire about or investigate the person's immigration status; or
- If the person has been arrested for an indictable offense of for driving while intoxicated as set forth in above; or

- As may be constitutionally or otherwise legally required during the criminal litigation discovery process.

An officer or employee shall not consider a person's race or ethnicity as a factor in drawing an inference or conclusion that the person may be an undocumented immigrant.