
	GAITHERSBURG POLICE DEPARTMENT		
	Consular and ICE Notifications		
	GENERAL ORDER	628.1	
Effective Date	01/24/2025	1.1.4, 74.3.1	
Authorized by:	Mark P. Sroka CHIEF OF POLICE	SIGNATURE	DATE 01/24/2025

1. PURPOSE

- 1.1. The purpose of this directive is to advise sworn personnel of their duty to ensure proper consular notification is made for arrests involving foreign nationals and set forth guidelines and procedure for doing so. Additionally, this policy will provide guidelines applicable to U.S. Immigration and Customs Enforcement (ICE) civil warrants or detainees.

2. POLICY

- 2.1. It is the policy of the Department to ensure that required consular notifications are made for arrests of foreign nationals. International treaty mandates notification of consular officials upon the arrest or detention of foreign nationals from specified countries, and any custody situation in which a foreign national requests consular notification. All foreign nationals must be advised of the right to have their consular officials notified as enumerated in this policy.
- 2.2. It is also the policy of the Department that officers will not investigate or make an inquiry relative to the immigration status of individuals and will not notify ICE regarding the immigration status of an individual.

3. DEFINITIONS

- 3.1. **Consul:** Within the context of this directive, the term “consul” refers to a person who has been authorized by a foreign government to perform official functions on its behalf, and on behalf of its citizens, in the United States. Terms such as “consular officer,” “honorary consul” and “diplomatic officer” would also fall within this definition. These officials are generally assigned to the consular section of a foreign government’s embassy and possess identification cards issued by the U.S. Department of State.
- 3.2. **Foreign National:** Within the context of this directive, the term “foreign national” refers to any person who is not a citizen of the United States, regardless of residency or immigration status.

4. PROCEDURE

4.1. Consular Notifications/Arrest Procedure

- 4.1.1. Consular notification procedures are a result of international legal requirements that afford foreign governments the ability to provide their nationals with consular assistance as they deem appropriate. Department personnel will follow the required consular notification procedures, in addition to advising of Miranda or other warnings relevant to the situation.
- 4.1.2. The Vienna Convention on Consular Relations (VCCR) requires that a foreign national be notified “without delay” of the right to consular assistance.
 - 4.1.2.1. There will be no deliberate delay in notifying a detained foreign national of this provision, which should occur as soon as reasonably possible under the circumstances.
 - 4.1.2.2 When requested by the foreign national, or when required by law and this directive, the appropriate consular officials will be notified without unnecessary delay.
- 4.1.3. Consular officers are entitled to have access to their nationals in detention and to provide consular assistance. Consular notification is also required in any instance where:
 - 4.1.3.1. A government official becomes aware of the death of a foreign national; or
 - 4.1.3.2. Guardian or trustee issues are being considered with respect to a foreign national who is a minor or incompetent.
- 4.1.4. Any questions concerning the authenticity of a consular official’s identification or credentials will be directed to the US State Department’s 24-hour Operations Center.
- 4.1.5. A listing of consulate phone numbers is maintained at the Montgomery County Police district stations, the Public Safety Communications Center (PSCC) and the Montgomery County Detention Center’s Central Processing Unit (CPU).
- 4.1.6. For adult arrests, consular notification will be performed by CPU staff.
- 4.1.7. Mandatory Consular notification of the arrest of nationals from the

countries and jurisdictions, regardless of the foreign national's wishes, are listed on the [U.S. Department of State website](#).

- 4.1.8. All consular notifications shall be documented in the event report narrative.

5. Questioning of Foreign Nationals/Arrest Policy

5.1. Questioning of Foreign Nationals

- 5.1.1. The indiscriminate questioning of foreign nationals about their citizenship status without a reasonable basis for suspicion of state/local traffic or criminal charges is unconstitutional according to Supreme Court decision(s) (i.e. *Printz v. United States*). Officers may ask who is under arrest about their citizenship for the purpose of complying with the Vienna Convention as enumerated in section 4.1.2. of the General Order.

5.2. Authority to Arrest

- 5.2.1. Officers have no statutory authority to enforce violations of federal immigration laws. If any foreign national is arrested, the arrest must be based on a confirmed criminal warrant or on state/local traffic or criminal charges.

5.3. Participation in Immigration and Customs Enforcement (ICE) Raids

- 5.3.1. Officers are permitted to assist ICE agents when officers have been assigned to a task force or a joint criminal investigation involving ICE agents when the primary focus of the task force or investigation is a criminal investigation. Officers shall obtain authorization from their Bureau Commander or the on-call Commander.
- 5.3.2. Examples include, but are not limited to (other exceptions may be made on a case by case basis):
 - 5.3.2.1. Money laundering;
 - 5.3.2.2. Narcotics cases;
 - 5.3.2.3. Gang investigations;
 - 5.3.2.4. Hate crimes;
 - 5.3.2.5. Pattern/Trend crimes;
 - 5.3.2.6. Human trafficking; and

5.3.2.7. Terrorist activities.

5.3.3. Officers will not participate in any ICE investigations or warrants unless it is connected to a criminal investigation and/or there is a safety risk involving a violent individual or circumstance. Officers' participation will be solely focused on presence for safety reasons and only act if there is a threat to public safety.

5.4. Traffic Violations

5.4.1. If an individual who is stopped for a traffic violation is not wanted for other charges and has a valid permit, the individual should be treated the same as any other violator and not be subjected to arrest or further questioning because of nationality.

5.4.2. Without reasonable suspicion of criminal activity, the individual must not be detained longer than necessary for the traffic stop to be completed.

5.5. Confiscating Immigration Documents

5.5.1. Generally, officers do not have authority to confiscate Resident Alien Cards (a.k.a. "green cards") or Employment Authorization Cards without the express authorization of an ICE official.

5.5.2. If an officer has probable cause to believe that immigration documents are altered or counterfeit with fraudulent intent, the officer is permitted to confiscate those documents as evidence and place charges as appropriate for the possession of fraudulent government identification documents (CR 8-303 of the Maryland Annotated Code).

6. Foreign Nationals as Victims/Witnesses

6.1. A police report/investigation is not contingent upon a person's citizenship. Department employees shall provide service to all persons regardless of their citizenship status.

6.2. If it becomes known that a victim or witness who is essential to a case that is facing deportation, officers may request that ICE delay the deportation by forwarding their request in writing to the Chief of Police.

6.3. If the victim/witness has a criminal history, chances are reduced that ICE will approve such a request.

6.4. Any approval by ICE to delay deportation does not constitute employment

authorization or confer any benefit upon the victim/witness.

7. **Notification to US Immigration and Customs Enforcement**

7.1. In 2013, the United States Court of Appeals of the Fourth Circuit ruled that state and local law enforcement officers do not have legal grounds to stop, detain, search, or arrest any individual based solely on an ICE civil warrant, unless they have been deputized by ICE to do so.

7.1.1. Officers must have a separate, arrestable offense to arrest any individual who is the subject of an ICE civil warrant.

7.1.2. Officers who receive an NCIC alert for an ICE civil warrant will not use that information to stop, detain, search, or arrest any individual solely based on the ICE warrant.

7.1.2.1. Officers must have a legal reason separate from an ICE civil warrant to stop, detain, search, or arrest any individual.

7.1.2.2. Officers will not use the issuance of an ICE detainer after the fact to justify making an arrest based solely on an ICE civil warrant.

7.1.3. Officers will not notify ICE regarding the immigration status of an individual.

8. **Contact Information**

8.1. Immigration and Customs Enforcement (ICE)

8.1.1. When seeking information from or making notifications to ICE, the following numbers should be used:

8.1.1.1. Officers are encouraged to seek assistance 24 hours a day from the ICE Law Enforcement Support Center (LESC) at 1-802-872-6020. They can also be contacted by sending an Administrative Message via NCIC.

8.1.1.2. The agents at the Baltimore Field Office can be reached at 410-962-7449 between 0800 and 1630 hours on weekdays.

8.2. U.S. Department of State

8.2.1. The U.S. Department of State's 24-hour Operations Center can be reached at 202-647-1512.

8.3. Documentation Notification

- 8.3.1. If assistance was requested or a notification was made from either ICE or the U.S. Department of State, a notation should be made in the incident report.