POLICY/PURPOSE:
It is the policy of the Cedar Rapids Police Department (CRPD) that all rights required under the laws and agreements shall be rendered to all diplomats, consular officers, and foreign nationals. Information will be provided to foreign nationals who may be arrested or detained, and appropriate consular notifications shall be made as detailed in this order.

The purpose of this directive is to guide officers when faced with claims of diplomatic immunity and when complying with the notification requirement upon the arrest or detention of a foreign national. Pursuant to international law, treaties such as the Vienna Convention on Consular Relations (VCCR) and federal law, certain diplomats and their family members and servants have varying levels of immunity from arrest and detention.

In other cases, the arrest or detention of a foreign national triggers the potential duty to notify the nearest consular office. Certain countries require mandatory notification; others require notification only upon request by the person arrested or detained.

A copy of the U.S. Department of State Consular Notification and Access publication will be maintained for reference in the Command Office. (The full text publication may be downloaded from the Department of State website at http://travel.state.gov/Consular Notification and Access of Arrested Foreign Nationals). It is further the purpose of this directive to ensure the CRPD and its officers and employees fully comply with Iowa Code Chapter 825 relating to immigration. In addition to taking any action necessary to fully comply with the mandates of Iowa Code Chapter 825, the CRPD will honor requests by Federal entities so long as those requests are reasonable and consistent with state and federal law.

DEFINITIONS:
Asylum – Protection given by a government to someone who has left another country in order to escape being harmed.

Consul – A consular officer serving as an official representative of a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country.

Detention – Any custodial arrest or investigative detainment “requiring a foreign national to accompany a law enforcement officer to a place of detention.” A momentary detention, such as a traffic stop, is not considered a detention.

Dual National – A dual national is an individual who is a national of two countries at the same time (i.e. a child born in a foreign country to U.S. national parents may be both U.S. national and a national of the country of birth).
POLICY TITLE: Foreign Nationals - Arrest, Consular Notification And Diplomatic Immunity

STANDARD/REF #: 1.1.4; 61.1.3d

APPROVED BY: Wayne Jerman, Chief

REVIEWED DATE: 10/29/2018

REQUIRED REVIEWERS: Captain of Patrol

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Foreign National – A foreign national is any citizen of another country, excluding diplomats and consuls, who are in the United States on a temporary basis, either legally or illegally. This includes tourists, students, and aliens. It also includes those holding an Alien Registration Card (I-551), commonly called a “green card.”

Honorary Consul – An Honorary Consul is a person, often a foreign national, who has limited duties to assist diplomatic officials. They have no claim of diplomatic immunity.

Immigration Detainer Request – A written federal government request to the City, or any department, officer or employee thereof, to maintain temporary custody of an alien, including a United States Department of Homeland Security form I-247 or a similar or successor form. “Immigration detainer request” includes only written federal government requests that are accompanied by any of the following properly completed forms or similar or successor forms, if such forms or similar or successor forms are signed by an authorized United States immigration and customs enforcement officer: United States Department of Homeland Security form I-200 and/or United States Department of Homeland Security form I-205.

Mandatory Notification – The mandatory obligation to contact a consul officer if a citizen from one (1) of the 57 countries that have entered into a bilateral agreement with the United States is arrested and detained in the United States.

Public offense – Does not include a moving traffic violation under Iowa Code Chapter 321.

Vienna Convention of Consular Relations (VCCR) – Multilateral international treaty governing the duties of consular officials and the rights of foreign nationals while in the United States.

Voluntary Notification – A foreign national from a country other than those countries deemed to be a “mandatory notification” country has the right to decide whether or not they want their consular officials notified.

PROCEDURE:
Officers and employees of the CRPD will familiarize themselves with the requirements of Iowa Code Chapter 825 and will fully comply with said Chapter including:

- Any officer or employee of the CRPD who has custody of a person subject to an immigration detainer request issued by the US Immigration and/or Customs Enforcement shall fully comply with any instruction made in the detainer request and in any other legal document or official communication provided by a Federal agency.
- No officer or employee of the CRPD shall adopt or enforce a policy or take any other action that prohibits or discourages the enforcement of immigration laws.
- No officer or employee of the CRPD shall prevent another officer or employee of the CRPD from:
  - Inquiring about the immigration status of a person under a lawful detention or under arrest. Notwithstanding the definition of “detention” previously provided herein, for purposes of this provision, “lawful detention” means the detention of a person by an officer or employee of CRPD for the investigation of a public offense, but excludes a detention if the sole reason for the
**POLICY TITLE:** Foreign Nationals - Arrest, Consular Notification And Diplomatic Immunity

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Detention is that a person is a victim of or witness to a public offense or is reporting a public offense.

- Doing any of the following with respect to information relating to the immigration status, lawful or unlawful, of any person under a lawful detention or under arrest, including information regarding the person’s place of birth:
  - Sending the information to or requesting or receiving the information from United States Citizenship and Immigration Services, United States Immigration and Customs Enforcement, or another relevant federal agency.
  - Maintaining the information
  - Exchanging the information with another local, state or federal governmental entity.
- Assisting or cooperating with a Federal immigration officer as reasonable or necessary, including providing enforcement assistance.
- Permitting a Federal immigration officer to enter or conduct enforcement activities at a jail or other detention facility to enforce a federal immigration law.
- Fully complying with Iowa Code Chapter 825.

**Victim of or Witness to a Crime - Limitation on Collection of Information (IA Code 825.7)**

No CRPD officer or employee shall ask for or collect any information from a victim of or witness to an alleged public offense or from a person reporting an alleged public offense (including the victim’s, witness’ or person’s national origin) that is not pertinent to the investigation of the alleged public offense.

**Discrimination Prohibited (IA Code 825.6)**

No CRPD officer or employee shall consider race, skin color, language spoken or national origin while enforcing immigration laws except to the extent permitted by the Constitution of the United States or the Constitution of the State of Iowa.

**Foreign Nationals (Consular Notification): [1.1.4]**

Consular officers are generally identified by one (1) of the following titles:
- Consul General
- Deputy Consul General
- Consul
- Vice Consul

Consuls have only limited immunities. Limited immunity extends only to the consular officers and not to their families, staff, or servants.

Consular officers may not be arrested or detained for any criminal offense except felonies that endanger the public safety. Prosecution for other offenses may ensue only upon the issuance of an arrest warrant.

Notification of a consular officer of the detainment of a foreign national from the consular officer’s country must be made by the law enforcement officer(s) making the detention or responsible for the arrest. The notification must be made within 24 hours of the detainment and notification may be made by telephone, fax, or preferably email.
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A foreign national from a country other than those countries deemed to be a “Mandatory Notification” country must still be notified of their right to have their consulate notified.

When notification is mandatory:

- Use Statement 1 of the Suggested Statements to Arrested or Detained Foreign Nationals – English version of this statement is below.
  - “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.”

When notification is voluntary:

- Use Statement 2 of the Suggested Statements to Arrested or Detained Foreign Nationals – English version of this statement is below.
  - “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?”

Translations of statements 1 and 2 can be found in Part Five (5) of the United States Department of State Consular Notification and Access booklet located in the Command Office and online at http://travel.state.gov/CNA.

If a consular officer would arrive to assist a foreign national, they have the rights to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. The consular officer may not act as an attorney or interfere with a criminal investigation. If officers are uncertain if the individual is truly a consular officer, they should contact the Consular Notification & Access (CNA) for confirmation. (CNA contact information can be located in the Information/Resources section below.)

- Interviews and questions do not need to wait for consular notification or arrival.

Arrest/Detention of a Foreign National:
If an arrest or detention is made other than a traffic stop or citation, officers must notify the agency that custody is turned over to that the individual is a Foreign National. The following also applies:

- Officers shall read/supply the appropriate statement to the suspect. If a language barrier exists, officers will utilize a certified interpreter and refer to the Interpreter Services directive.
  - Inform statement 1 to those from the Mandatory Notification List.
All mandatory notification countries must have their consul notified by the arresting officer.
  - Inform statement 2 to all others.
  - The arresting officer should ask the subject if they wish for the officer to contact the appropriate consulate.
  - Consul notification is the arrestee’s option.

- **NOTE:** Officers are required to complete the above steps even if another agency (including federal) states they will complete the task. It is the responsibility of the arresting agency to complete.

**Aircraft Crash:**
If a foreign aircraft crashes in the United States, then the consuls of the aircraft and the occupants will be notified.

**Asylum Requests:**
If a foreign national requests asylum, contact the United States Department of Homeland Security. If the foreign national is arrested or detained, do not advise the individual's consular of the request as this may result in undue burden to the individual and/or their family.

**Court Appointed Guardianship/Trusteeship:**
If a foreign national minor or an incapacitated adult requires a court appointed guardianship/trusteeship, then that foreign national's consul will be notified.

**Death and Serious Injury of a Foreign National:**
When an officer becomes aware of the death or serious injury of any foreign national, notification procedure should be followed. The police department and medical examiner should contact the consul together. In such cases, the host nation may be able to provide assistance to the individual and/or assist in family notification.

**Documentation:**
Officers shall document in their reports that they provided the suggested statement and if consular notification was made when required. The Foreign Consular Notification Form and the statement form, either the English or foreign version, with the person's response properly indicated and signature shall be filed with the original report.

The preferred method of contacting a foreign consulate is by fax or email. A copy of the fax or email to the individual's consulate shall be included in the officer's report. If a phone call is made instead of an email or fax; the date, time, phone number dialed, and person the officer spoke to on the phone must be included with the officer's report.
Dual Nationals:
Officers are not expected to ask everyone who is arrested if they have dual national status; however, if officers have prior knowledge or are informed by the arrestee of a dual national status, then officers should ask the arrestee if they would like notification made to their second country’s consul. If the notification is requested by the arrestee, then officers will contact the appropriate consul.

Juveniles:
If officers encounter a juvenile foreign national, the juvenile’s consulate does not need to be notified if officers are able to contact and turn custody over to the juvenile’s parent or guardian.

Mental Health Situations:
If officers encounter a foreign national with mental health issues, the appropriate consulate should be notified unless family members are present with the individual. This would include but is not limited to:
- Patients with Alzheimer’s type symptoms
- Individuals who have stopped taking prescription medication for their mental health
- Anyone taken to the hospital or evaluated by Area Ambulance Service for mental health issues

Diplomatic Immunity:
Diplomats are entitled to diplomatic immunity which is broadly defined as the freedom from local jurisdiction accorded to duly accredited diplomatic officers, their families, staff, and servants. Diplomatic officers are generally identified by one (1) of the following titles:
- Ambassador
- Minister
- Minister Consular
- Consular
- First Secretary
- Second Secretary
- Third Secretary
- Attaché

Individuals who are entitled to diplomatic immunity should have identification cards issued by the U.S. Department of State. A brief statement of the bearer's diplomatic status and level of immunity from arrest, detention, or criminal jurisdiction is printed on the reverse side of the identification card. The cards are color coded by a border color which reflects a different level of immunity:
- Diplomats – blue border
- Embassy employee/official – green border
- Consular personnel – red border
If a participant claims diplomatic immunity, the first step is to verify the status of the individual. This may be done by calling the United States Department of State. (Information can be located in the Information/Resources section below.)

If an individual has no identification but claims they have immunity, they should be informed that they will be detained until their identity can be confirmed.

Once status is verified, the individual may be detained at the scene until the investigation is complete. If the subject has immunity, handcuffs cannot be used except when the individual poses an immediate threat to safety.

Diplomatic immunity, even at the highest level, does not exempt diplomatic officers from the obligation of conforming to national and local laws and regulations but persons with diplomatic immunity may not be arrested, detained, or prosecuted for any civil or criminal offense.

Officers should follow department policies regarding investigative report(s). Once all pertinent information is obtained, the individual must be released if they have immunity.


Traffic Enforcement, Traffic Crash, OWI (For those with Diplomatic Immunity): [61.1.3d]
Issuance of a traffic citation for a civil and/or criminal infraction does not constitute an arrest or detention and is permitted. However, the person may not be compelled to sign the citation and may not be arrested for refusing to sign.

A copy of the citation and any other documentation regarding the incident should be forwarded to the U.S. Department of State as soon as possible. All pertinent paperwork should be faxed to the U.S. Department of State in Washington D.C. (Attn: Diplomatic Security Service, Protective Liaison Division 202-895-3613). For mandatory appearance offenses, the U.S. Department of State uses the citation and any report as the basis for requesting an express waiver of immunity.

In serious cases involving individuals with diplomatic immunity (i.e. OWI or personal injury accidents) telephonic notification to the U.S. Department of State is urged. (Contact information can be located in the Information/Resources section below.)

- **NOTE:** Do not contact the U.S. Department of State for foreign nationals without diplomatic immunity.
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With respect to field sobriety investigation, department procedure should be followed; however, the taking of the test may not be compelled if in the officer's opinion, the individual is too impaired to drive safely. The officer should not permit the individual to continue to drive, even in the case of diplomatic agents. In such cases, the officer should consider:

- With the permission of the individual, take the person to police headquarters where they may recover sufficiently to drive.
- Summon, or allow the individual to summon, a friend or relative to drive.
- Call a taxi for the individual.
- With supervisory approval, provide the individual with transportation.

Search and Seizure (For those with Diplomatic Immunity):
A person who has full diplomatic immunity and their property (including a vehicle) may not be searched or seized. Vehicles may not be impounded or “booted,” but they may be towed the distance necessary to remove them when obstructing traffic or endangering public safety.

- The exception is if a vehicle owned by a diplomat is suspected of being stolen or used in the commission of a crime, occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle’s status through the National Law Enforcement Telecommunications System (NLETS).
- Should the vehicle prove to have been stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered temporarily suspended, and a normal search of the vehicle and, if appropriate, its detention are permissible.

Waiver of Diplomatic Immunity:
If an individual who has full diplomatic immunity is involved in a criminal act, it is imperative that officers complete the investigation and provide a copy of the investigative report to the U.S. Department of State. Paperwork should be faxed to U.S. Department of State in Washington D.C. (Attn: Diplomatic Security Service, Protective Liaison Division (202) 895-3613).

The U.S. Department of State requests waivers of immunity in every case where the prosecutor advises that, except for the immunity, charges would be pursued. In serious cases, if a waiver is refused, the offender will be expelled from the United States.

Effective and informed police work is the basis for the prosecutor’s decision as well as the foundation for the U.S. Department of State’s waiver requests and any subsequent prosecutions or expulsions.
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INFORMATION/RESOURCES:

Flowchart – Arresting a Non-U.S. Citizen

Department of State – Operations Center
- Urgent inquiries outside normal business hours.
  Telephone: (202) 647-1512

Consular Notifications
Refer to the United States Department of State Consular Notification and Access manual located at the Command Desk, https://www.state.gov/documents/organization/221293.pdf and/or contact:
- Consular Notification & Access (CNA)
  U.S. Department of State
  CA/P
  SA-17, 12th Floor
  Washington, DC 20522-1712
  Telephone: (202) 485-7703
  Fax: (202) 485-6170
  Email: consnot@state.gov
  Notification Statements:  http://travel.state.gov/CNA
  Twitter:  @ConsularNotify

Diplomatic and Consular Immunity
- Office of Foreign Missions
  2201 C Street NW
  Room 2236
  Washington, D.C. 20520
  Telephone: DS Command Center (571) 345-3146, or (866) 217-2089
  Email: OFMInfo@state.gov

- U.S. Department of State – Diplomatic and Consular Immunities
  https://www.state.gov/m/ds/protection/immunities/c9118.htm

- Immunity Issues - Phone and Fax numbers:
  https://www.state.gov/m/ds/protection/immunities/c9125.htm

- Additional Law Enforcement reference material including examples of Identifying Documents and License Plates is available at https://www.state.gov/documents/organization/150546.pdf
Asylum Requests

- National Customer Service Center (NCSC)
  1-800-375-5283 or 1-800-767-1833
  https://www.uscis.gov/humanitarian/refugees-asylum

Individuals from Mexico

- Center for Information and Assistance for Mexicans (CIAM)
  1-855-4636-395 (International Toll Free)
  Phone app: MiConsulmex

**NOTE:** This information, for individuals from Mexico, should not be used by officers as a consular notification. This information is a resource which can be supplied to Mexicans if needed. Information includes:

- Consular services
- Immigration policy
- Abuse by immigration authorities
- Prevention and consular protection
- Locating detained relatives
  - Information on criminal proceedings of incarcerated relatives

**Iowa State Codes:**

825.1, 825.2, 825.4, 825.5, 825.6, 825.7