

SPRINGFIELD POLICE DEPARTMENT

Standard Operating Guideline

Effective Date: 04/04/2017	Supersedes Policy Dated: 07/01/2015	Rescinds:	SOG Number:
Accreditation Index: 61.1.3			414.2
Part Title: Operations		Chapter Title: Jurisdiction, Liaison, and Mutual Aid	
Chief of Police:			

Foreign Nationals

I Policy

It is the policy of the Springfield Police Department to comply with all State and Federal laws, bilateral agreements, conventions and treaty obligations of the United States regarding the arrest or detainment of foreign nationals, including the Vienna Convention on Consular Relations. The provisions of these treaties are legally binding upon all governmental entities of the United States as declared in Article VI of the Constitution of the United States and shall be fully complied with.

II Definitions

Consular Official- a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government. (“Honorary Consuls” are to be treated as Consular Officials when performing official government activities.)

Foreign Embassy National- a foreign national who claims, and is verified to be, an official or family member of an official of a Foreign Embassy Office.

Foreign National- a person who is not a citizen of the United States, regardless of visa, immigration status or pending application for U.S. citizenship; including those with Alien Registration Cards (ICE I-551)

III Procedure

1 ARREST AND DETAINMENT

1.1 Immigration Violations

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- 1.1.1 Springfield Police Officers are authorized to arrest and detain an individual, based upon probable cause, whom: (8 U.S.C. 1252c)
 - 1.1.1(a) The officer believes is an alien presently in the country illegally, AND
 - 1.1.1(b) Has previously been convicted of a felony in the United States and deported or left the United States after such conviction, BUT
 - 1.1.1(c) Only after obtaining appropriate confirmation from Immigrations and Customs Enforcement (ICE) of the status of the individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.
- 1.1.2 In cases where a previous felony conviction cannot be confirmed, officers shall.
 - 1.1.2(a) Obtain information and complete a written report to be forwarded to the appropriate Office of Immigration and Customs Enforcement.
 - 1.1.2(b) Any arrest and detainment for such violation shall only be affected by or at the direction of authorized federal officers.

1.2 Other Violations

- 1.2.1 Officers are authorized to make warrantless arrests of foreign nationals based upon probable cause for any felony or misdemeanor authorized under Missouri statute.

2 NOTIFICATIONS

- 2.1 In all arrests, involuntary commitments and extended detentions, if the officer is made aware that the individual is a foreign national they must be told of the right of consular notification and access.
 - 2.1.1 Detentions that last no longer than a typical traffic stop or traffic accident investigation do not require notification.
 - 2.1.2 Persons who are U.S. citizens but also claim citizenship in a foreign nation shall be treated as U.S. citizens. Further notification is not necessary.
 - 2.1.3 In most cases, the foreign national may choose whether to have consular officials notified of the arrest or detention.
 - 2.1.3(a) In some cases, however, the foreign national's consular officials must be notified of the arrest or detention regardless of the foreign national's wishes.

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- 2.1.4 Consular notice must be made even if the foreign national's law enforcement agencies are aware of an on-going investigation and have been assisting.
- 2.1.5 Determine the foreign national's country through examination of passport or other travel documentation and whether the nation requires mandatory notification or if it is at the option of the foreign national.
- 2.2 **Mandatory Notification**
 - 2.2.1 To determine if mandatory notification is required, consult the complete list of countries requiring mandatory notification in the Foreign Nationals Notebook located in SharePoint under MDT Daily Briefing.
 - 2.2.2 If notification is found to be mandatory, notify the country's nearest consular officials without delay.
 - 2.2.3 An incident report is required for any incident involving mandatory notification, detailing, at a minimum, the nature of the contact, steps taken for notification, and the final resolution/outcome.
- 2.3 **Non-Mandatory Notification**
 - 2.3.1 If the foreign national's country does not appear on the Mandatory Notification List, offer to notify the nation's consular officials of the arrest or detention.
 - 2.3.1(a) If the foreign national requests that notification not be made, officers shall not do so.
 - 2.3.1(b) If the foreign national asks that such notification be given, notify the nearest consular officials of the foreign national's country without delay.
- 2.4 **Notification Procedures**
 - 2.4.1 When notifications are made it must be without deliberate delay.
 - 2.4.2 Notification to the consular official may be made by fax or telephone.
 - 2.4.2(a) Notification by fax is preferred for documentation purposes.
 - 2.4.2(b) If faxing, use the "Suggested Fax Sheet for Notifying Consular Officers of Arrests or Detentions" form located in the Foreign Nationals Notebook.
 - 2.4.3 The foreign national will be advised that notification is being made using "Statement 2" presented in the Foreign Nationals Notebook, Part Five.
 - 2.4.4 If it is necessary to provide a transcript in a foreign language to the foreign national, various translations can be located in the Foreign Nationals Notebook.

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- 2.4.5 For further information and instructions on Consular notification and Access consult the Department of State website at: <https://travel.state.gov/content/travel/en/consularnotification.html> or contact the Assistant Legal Adviser and Bureau for Consular Affairs, Department of State, Washington, D.C.:
 - 2.4.5(a) Business Hours (202) 647-1985
 - 2.4.5(b) Urgent After Hours (202) 647-1512
 - 2.4.5(c) Fax: (202) 895-3613

3 OTHER INCIDENTS INVOLVING FOREIGN NATIONALS

- 3.1 Consular officials must be notified in the event of a death of a foreign national. The investigating officer shall make this notification and indicate so in the incident report.
- 3.2 *Under no circumstances should any information about a foreign national's application or intent to apply for asylum in the United States or elsewhere be disclosed to that person's government.*

4 CONSULAR OFFICERS' RIGHT TO ACCESS

- 4.1 The identity of persons identifying themselves as diplomats, consular officials or honorary consuls shall be verified by examination of credentials.
 - 4.1.1 Identity can be verified by contacting the Department of State, Office of Protocol at:
 - 4.1.1(a) 0815-1700 EST: (202) 647-1985
 - 4.1.1(b) Other hours: (571) 345-3146 or (886) 217-2089.
- 4.2 Consular officers have the lawful right to communicate or visit privately with their nationals who are in custody.
 - 4.2.1 By phone or in person
 - 4.2.2 Services may vary with the situation
- 4.3 Consular officers may converse with, correspond with and arrange for legal representation.
 - 4.3.1 Foreign nationals have right to an attorney whether provided by the consular official or not.
- 4.4 Consular officials do not have an absolute right to immediate access upon demand but will be provided reasonable and courteous accommodation and access.
- 4.5 Consular officials may not act as attorneys but may assist the foreign national in preparing their defense.
 - 4.5.1 Consular officials may not act on their behalf if the national opposes their involvement.

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- 4.6 Disclosure of investigative information to the consular official should not occur unless requested by the official or authorized by the foreign national. Some bi-lateral agreements may require it and for further guidance, consult the Assistant Legal Advisor for Consular Affairs, Department of State.

- 5 FOREIGN DIPLOMATS, THEIR FAMILIES, AND CONSULAR EMPLOYEES (CALEA 61.1.3(d))
 - 5.1 Foreign Diplomats, their families, and employees of Foreign Embassy Offices are granted certain privileges by the United States Government.
 - 5.2 Generally, Foreign Diplomats and their families enjoy full immunity from arrest and prosecution. Consult the Office on Protocol for any exceptions.
 - 5.3 Employees of diplomatic missions and members of their families enjoy immunity only with respect to acts performed in the course of their official duties.
 - 5.4 The burden to claim immunity is upon the diplomat through the presentation of valid credentials.
 - 5.5 The duty to verify credentials, if necessary, is with the arresting officer.
 - 5.6 Verification of diplomatic status may be made through the Department of State Consular Office via telephone numbers (202) 632-0291, (202) 632-0505, or (202) 632-2412.

- 6 REPORTING AND DOCUMENTATION
 - 6.1 Whether notification was properly made might become a significant issue many months following the arrest so it is very important for the officer to thoroughly document and report every contact carefully.
 - 6.2 Thoroughly document all actions and notifications in the incident report including, if known:
 - 6.2.1 The date the foreign national was advised of his right to consular notification;
 - 6.2.2 Whether the foreign national requested consular notification;
 - 6.2.3 The name of the consular official that was contacted;
 - 6.2.4 The date the consul was notified and;
 - 6.2.5 The means by which notification was made (phone or fax).
 - 6.3 A copy of the statement or translation used to inform the foreign national shall be signed by the officer and dated. The complaint number shall be written on the top right-hand corner, and the copy shall be submitted to Records.
 - 6.4 A copy of the completed fax form shall be signed by the officer and dated. The complaint number shall be written on the top right-hand corner and the copy shall be submitted to Records.

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7 OFFICER RESPONSIBILITIES IN ENFORCEMENT OF STATE AND FEDERAL IMMIGRATION LAWS

7.1 All officers of this Department shall cooperate with State and Federal agencies charged with enforcing immigration laws.

7.1.1 Section 7 of this policy and procedure is deemed “written notice” to the law enforcement officers of this department that it is their duty to cooperate with state and federal agencies and officials on matters pertaining to enforcement of state and federal laws governing immigration (as required in RSMo 67.307).¹

7.2 The immigration status of any person charged with a crime and presented to the Greene County Jail for incarceration shall be verified by Jail personnel at the request of the arresting officer.

7.2.1 If lawful immigration status cannot be determined through documents in possession of the prisoner or after a reasonable effort by the arresting agency, the prisoner’s immigration status will be verified through a MULES Illegal Alien Inquiry (IAQ) check.

7.2.1(a) A computer background status check can also be conducted by contacting Immigration and Customs Enforcement (ICE) directly.

7.2.2 Upon confirmation that the prisoner is an illegal alien, notification must be made to ICE (as required by RSMo 544.472).²

IV Attachments

1 Section 7.1.1 revised, punctuation change for consistency, per Policy Change Order 17-023.

2 Section 7.2.2 revised, RSMo reference updated, per Policy Change Order 17-023.