

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System (IPS)**

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**DIRECTIVE TITLE: CONSULAR NOTIFICATION OF DETAINED OR
ARRESTED FOREIGN NATIONALS**

1. **PURPOSE and SCOPE.** This Directive establishes policy and procedures for notifying consulates concerning the arrest and detention of foreign nationals by U.S. Immigration and Customs Enforcement (ICE).
2. **AUTHORITIES/REFERENCES.**
 - 2.1. **Authorities.**
 - 2.1.1. Article VI, clause 2, of the United States Constitution
 - 2.1.2. International Law: Article 36 of the Vienna Convention on Consular Relations (VCCR)
 - 2.1.3. 8 CFR 236.1 (e), "Privilege of Communication"
 - 2.2. **References.**
 - 2.2.1. Department of State Web site: <http://travel.state.gov/law/notify.html>
 - 2.2.2. International Social Service Fact Sheet, "Vienna Convention Compliance"
 - 2.2.3. Border and Transportation Security Memorandum entitled, "Detention Prioritization and Notice to Appear Documentary Requirements," dated October 18, 2004.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** United States (U.S.) Customs Service Directive 4510-022 entitled, "Consular Notification of Detained or Arrested Foreign Nationals," dated May 19, 2000, and all other directives, memoranda, bulletins, manuals, handbooks, and other guidelines and procedures relating to this subject and issued by the former U.S. Customs Service or Immigration and Naturalization Service no longer apply to ICE. All other issuances on this subject issued by ICE prior to the date of this Directive are hereby superseded.

ICE Directive: Consular Notification of Detained or Arrested Foreign Nationals

4. BACKGROUND.

In 1963, the Vienna Convention on Consular Relations was created and accepted by most countries in the world, including the United States, to provide a set of basic obligations for all foreign consulate offices. It establishes how a host country should treat foreign nationals traveling or living in that country and enables foreign consulates to provide assistance to their country's citizens.

5. DEFINITIONS.

- 5.1. **The Vienna Convention on Consular Relations (VCCR)**, of which the United States is a signatory, is a multilateral treaty dealing with the arrest, detention, death, guardianship, or trusteeship of foreign nationals. VCCR requires that foreign nationals who are arrested or detained by "competent authorities," herein ICE officers, be advised of the right to have their consular official notified of the fact as soon as it becomes feasible.
- 5.2. For the purposes of consular notification, a **Foreign National** is any person in the United States who is not a U.S. citizen, for example an undocumented alien or a lawful permanent resident (LPR) with a resident alien card (U.S. Citizenship and Immigration Services Form I-551), also known as the Permanent Resident Card. Undocumented aliens have the same rights under the VCCR as LPR aliens.
- 5.3. A **Consular Officer**, as defined by the Department of State (DOS), 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.
- 5.4. **Competent Authorities** are those officials responsible for consular notification and legal action affecting the foreign national and who are competent, within their legal authorities, to give the notification required. The person closest to the foreign national's situation, e.g., the law enforcement officer who actually made the arrest or was responsible for the foreign national's detention, should have direct responsibility for proper consular notification.

6. POLICY.

- 6.1. **Mandatory Notification.** It is ICE policy, pursuant to VCCR, sanctioned under the authority of the Constitution of the United States, Article VI, Clause 2, and 8 CFR 236.1(e), that all ICE officers must comply with the mandatory notification of foreign consulates following the arrest, detention, death, guardianship, or trusteeship of a foreign national by ICE, regardless of the latter's request. The mandatory countries of notification are listed in 8 CFR 236.1(e), and on the following DOS Web site: <http://travel.state.gov>. DOS can provide resources and literature free of charge (postage included) to law enforcement and Government agencies in the United States through their Web site.
- 6.2. **Notification.** It is also ICE policy that notification to the consular officials be made within 24 to 72 hours of the arrest (or as appropriate for cooperating defendants), detention, guardianship, or trusteeship of the foreign national in ICE custody. ICE is responsible for providing the advisement (if applicable) to the foreign national and any notification to the foreign consulates with respect

to arrests, detentions, guardianship, or trusteeship. Further, the obligation to notify a consular official of a particular detention or arrest may exist independently of the foreign national's visa or immigration status in the United States.

- 6.3. **Death of a Detainee.** In the event that a foreign national dies while in ICE custody, ICE officials must notify the appropriate consular officials immediately.
- 6.4. **Guardianship or Trusteeship.** When a guardianship or trusteeship is being considered with respect to a foreign national in ICE custody who is a minor or incompetent, ICE officials must notify the appropriate consular officials within 24 hours.
- 6.5. **Asylum Cases.** In special circumstances, e.g., asylum cases, DOS mandates that if the foreign national is from a "mandatory notification" country, notification must be given regardless of whether the foreign national objects or claims to be afraid. Under no circumstances should the fact that a foreign national has applied for asylum or withholding of removal be revealed to the foreign national's consular officer or government.
7. **RESPONSIBILITIES.**
- 7.1. The Assistant Secretary of ICE is responsible for the oversight of the policy set forth in this Directive.
- 7.2. The Directors of all ICE Program Offices are responsible for complying with the policy and procedures set forth in this Directive.
- 7.3. All ICE Principal Field Officers are responsible for the acquisition and distribution of the DOS brochure entitled, "Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them," or for accessing the DOS Web site as stated in Section 6.1 of this Directive. Inquiries for additional information on this subject should be forwarded to the Senior Coordinator for Consular Notification at (202) 647-0688 or the Office of the Assistant Legal Advisor for Consular Affairs at (202) 736-7559. Urgent phone calls after regular business hours can be directed to the DOS Operations Center at (202) 647-1512. (Note: These phone numbers are subject to change from the issue date of this Directive. It is the responsibility of ICE Officers to obtain the current telephone numbers of the aforementioned offices.)
- 7.4. ICE officers are responsible for complying with the policy and procedures set forth in this Directive only when a foreign national is in ICE custody.
- 7.5. If a foreign national requests that his or her consular official(s) be notified, ICE officials must do so "without delay" or, as defined by DOS, "without deliberate delay," and the notification should occur as soon as reasonably possible under the circumstances (see Section 8.1.1). If a foreign national's detention in a hospital or other medical facility pursuant to ICE authority exceeds 24 hours, notice to the foreign national's consulate shall be made as set forth in this Directive.

- 7.6. ICE officials responsible for the arrest or detention of a foreign national requiring consular notification, or of a foreign national requesting consular notification, will document or place the proof of the consular notification into their respective case management file and/or system. These records will document all foreign national advisements and notifications to foreign consular representatives, including the time and date the foreign national was advised of his or her right, whether or not the foreign national requested consular notification, and the time and date of any optional or required notification.
8. **PROCEDURES.**
- 8.1. **Notification to a foreign national.**
- 8.1.1. The arresting or detaining officer will determine the foreign national's country by using all available information. Once it is determined that the detained subject is a foreign national, ICE officials responsible for the arrest or detention of the foreign national should ascertain if a bilateral agreement with the United States requires notification, as per 8 CFR 236.1(e). If such an agreement exists, the detainee should be informed that the local consulate will be notified. It is not necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop or a routine interview during an investigation. If the arresting official detains the foreign national in any setting for more than 4 hours, consular notification is required.
- 8.1.2. A person who is a national/citizen of two or more countries should be treated in accordance with the rules applicable to each of those countries. No consular notifications will be made in cases where U.S. citizens are claiming dual nationalities even if the other country requires mandatory notification.
- 8.1.3. The advisement of the foreign national's right to consulate notification can be provided either in writing or orally, although it is strongly recommended that the advisement be made in writing, preferably in English. Translations can be used in lieu of English and can be found in Part Four of the DOS brochure mentioned in Section 7.3, or on the following Web site: <http://www.travel.state.gov>.
- 8.1.4. The DOS recommended advisement of nationals of countries requiring mandatory notification reads as follows:
- “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.”
- 8.1.5. If it is determined that the detainee is not a citizen of a country requiring mandatory notification, as per 8 CFR 236.1(e) or DOS, the foreign national must be informed without delay of the option to have his or her government’s consular representatives notified of the detention. If requested, the notification should be done as soon as reasonably possible under the circumstances.
- 8.1.6. The DOS recommended advisement of nationals of countries not in the mandatory requirement listing reads as follows:

“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 me to notify your country’s consular officials?”

8.2. Notification to consular officials.

- 8.2.1.** DOS would normally expect notification to consular officials by ICE to have been made within 24 to 72 hours following the arrest (or as appropriate with cooperating defendants), detention, guardianship, or trusteeship of a foreign national in ICE custody. In the case of emergencies (such as a death or serious accident), efforts should be made to contact consular officials immediately. Telephone and facsimile numbers for foreign embassies or consulates in the United States can be found at <http://www.travel.state.gov>. (Note: If DOS receives a complaint that consular notification was not provided by ICE as required under this Directive, it may request relevant facts from ICE management and discuss the matter with the foreign government involved. Subsequently, DOS will apologize on behalf of the U.S. Government for the failure to provide consular notification, intervene to ensure that consular access is permitted, and improve future compliance.)
- 8.2.2.** ICE officials responsible for the arrest or detention of a foreign national must make their consular notification via telephone or facsimile. A list of consular office telephone and facsimile numbers can be found in Part Six of the DOS brochure or on the DOS Web site under “Consular Notification and Access” (see the Web site address in Section 2.2.1). The facsimile notification should be sent with an official ICE facsimile cover. The DOS suggested facsimile notification format is attached to this Directive and available on the DOS Web site.
- 8.2.3.** Under VCCR, the reasons for the detention do not have to be provided in the initial communication. Unless requested specifically by the consular officer, the arresting officer does not have to provide the reasons for the detention. However, some bilateral agreements require that the reason for the detention or arrest be provided upon request. If a consular official insists that he or she is entitled to information about the foreign national, guidance can be sought from the Senior Coordinator for Consular Notification at (202) 647-0688 or the Office of the Assistant Legal Advisor for Consular Affairs at (202) 736-7559. Urgent phone calls after regular business hours can be directed to the DOS Operations Center at (202) 647-1512. (Note: As noted in Section 7.3 of this Directive, the listed phone numbers are subject to change. ICE Officers are responsible for obtaining the new telephone numbers of the aforementioned offices.)
- 8.2.4.** Under VCCR, ICE is mandated to participate in the consular notification process when a foreign national is arrested or detained even though law enforcement officials of the foreign national’s country are aware of the arrest or detention and are helping to investigate the crime in which the foreign national was allegedly involved.

- 8.2.5. If an ICE Program Office responsible for the arrest of the foreign national fails to provide consular notification, that Program Office should provide consular notification as soon as possible to ensure that the foreign government was given the opportunity to provide consular assistance for the remaining period of custody.
- 8.2.6. Once the initial consular notification has been made by the arresting ICE Program Office, the Office of Detention and Removal Operations (DRO) will be fully responsible for notifying and responding to consular officials for all additional information and additional notifications that might be required if the foreign national is placed in the custody of ICE DRO.
9. **ATTACHMENT.** "Facsimile for Notifying Consular Offices of Arrests or Detentions."
10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved



Julie L. Myers
Assistant Secretary

