



Kern County Sheriff's Office

Policies and Procedures

TITLE: FOREIGN NATIONALS AND CONSULAR NOTIFICATION / TRUST ACT COMPLIANCE		NO: J-110	
APPROVED: Donny Youngblood, Sheriff-Coroner			
EFFECTIVE: October 6, 2000	REVIEWED: 06/01/2018	REVISED: 01/01/2014	UPDATED: 06/01/2018

DEFINITIONS

When used in this policy:

- Foreign National means any person, adult or juvenile, who is not a citizen of the United States. Persons with dual citizenship of the United States and a foreign country are not foreign nationals for purposes of this policy.
- Detention means detained by a law enforcement officer for over two hours.
- 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 county. An "Honorary Consul" and a "Diplomatic Officer" will be treated in the same manner. All have identification cards issued by the Department of State. A consular Officer is not the attorney for the foreign national and is not entitled to the same status as the legal representative.
- Notification means advisement, preferably by fax, of a consular officer of the presence and general situation of the foreign national. (i.e., arrested and detained). Specifics of the detention need not be released.
- Optional Notification means the foreign national may request consular notification be made.
- Mandatory Notification means the designated Sheriff personnel, regardless of the wishes of the foreign national, will make consular notification. Included countries are listed in **Attachment "A."**
- Participating Detention Facility means any local detention facility or Mental Health Facility within Kern County using IMS-CJIS as their booking and record-keeping system **and** agreeable to making necessary notifications. All facilities operated by the Sheriff are considered to be "participating" detention facilities under this policy.

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RELATIONSHIP WITH LAW

This policy does not have the effect of law and is not intended to have the effect of law. The law is contained in the federal and state constitutions, statutes, and court decisions. Only the courts can determine the ultimate liability of law enforcement personnel under law. Violations of this policy do not, are not intended to, and cannot mean that the involved law enforcement personnel are liable under law.

DEPARTMENT PHILOSOPHY

The 1963 Vienna Convention on Consular Relations Treaty, signed by 140 nations, including the United States, was ratified in 1969. Guidelines were established in this agreement for all governments to ensure that all foreign nationals are extended the appropriate consular services upon their arrest and detention, upon their death, and upon the appointment of a guardian.

This treaty guarantees that individuals arrested or detained in a foreign country must be told by police "without delay" that they have a right to speak to an official from their country's consulate. If an individual chooses to exercise that right, a law enforcement official is required to notify the consulate of the foreign national's presence and a summary of the circumstances. Penal Code 834(c) codifies the treaty's conditions; obligating law enforcement agencies to make notifications in the event of the detention for over two hours of a foreign national.

These are mutual obligations that also pertain to American Citizens abroad. Compliance with this obligation domestically will help ensure the United States insist on rigorous compliance by foreign governments. 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.

Typical services of a consular officer are arranging visits and phone calls regarding the foreign national's needs and situation. A consular may assist in arranging legal representation, monitor the case, monitor issues of confinement, and assist family members to communicate with the foreign national.

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POLICY

The Kern County Sheriff's Office recognizes and respects the value of this agreement. It is the policy of this agency to advise all foreign nationals who are detained by law enforcement for a period of time in excess of two (2) hours of the right of consular notification and to facilitate the exercise of consular functions as agreed to in the treaty. The Sheriff's Office will notify consular officials in all situations involving mandatory notification requirements regardless of the wishes of the foreign national. The Sheriff's Office will also make notification in the event of a death of a foreign national. The purpose of this policy is to provide officers of this agency with procedural guidelines to ensure reasonable compliance of the law.

No policy can realistically predict or cover every possible situation an officer might encounter. Each officer, therefore, must be entrusted with discretion in determining the action necessary in each incident. While it is the ultimate objective of every law enforcement encounter to ensure all foreign nationals' rights are protected, officers must rely on statements made by the detained person regarding citizenship for purposes of consular notification. Nothing in this policy requires an officer to conduct an independent investigation to ascertain citizenship unless required for the criminal investigation.

PROCEDURE A: DETERMINING THE PRESENCE OF FOREIGN NATIONALS

When deciding applicability of this policy, officers must first determine if the detained person is a foreign national as defined in this policy. Suggested indicators of nationality are, but are not limited to:

- The detained person is in possession of a resident alien registration card (INS Form I-551).
- The detained person is in possession of documentation indicating birth outside of the United States.
- The person claims citizenship of a country other than the United States.
- The person is unfamiliar with the English language.

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- The person is suspected of being an undocumented alien.

DIRECTIVE 1

Sheriff's staff will not advise foreign governments of requests by foreign nationals for political asylum. All requests for political asylum are referred to the U.S. Department of State.

DIRECTIVE 2

Sheriff's Detentions staff will advise and make needed notification when foreign nationals are initially received at a Sheriff's receiving facility.

DIRECTIVE 3

Kern County Sheriff's Office staff will provide reasonable access to Consular Officers to confer with foreign nationals. The decision to allow access will be guided by the current state of the law, security issues surrounding an investigation, and established Detentions Bureau visiting policy.

PROCEDURE B: FOREIGN NATIONALS WHO ARE BOOKED INTO A PARTICIPATING DETENTION FACILITY

Any officer who detains any person suspected of being a foreign national and books the foreign national into a participating detention or mental health facility will:

- If asked, inform the foreign national that detentions staff will perform notifications.
- Notify the Receiving Officer of the request.
- Notify the Shift Supervisor of the participating Detention Facility.

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PROCEDURE C: DETAILED FOREIGN NATIONALS WHO ARE NOT BOOKED OR ARE NOT BOOKED INTO A PARTICIPATING DETENTION FACILITY

Any officer who detains any person suspected of being a foreign national and does not book the foreign national into a participating detention or mental health facility will:

- Be responsible for all advisals and notifications as required by the law and this policy.
- Determine the foreign national's country of citizenship. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
- Compare the country of citizenship with the list of mandatory notification countries listed in **Attachment "A."**
- **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. A suggested statement and notification form is shown in **Attachment "B."**
 - If the foreign national asks that consular notification to be given, notify the nearest consular officials of the foreign national's country without delay using the fax sheet, **Attachment "C."** For phone and fax numbers for foreign embassies and consulates in the United States, see Part Six of the U.S. Department of State Consular publication or contact the Central Receiving Facility clerical officer and request the information.
- **If the foreign national's country is on the list of mandatory notification countries:**
 - Notify that country's nearest consular officials, without delay, of the arrest/detention using the fax sheet, **Attachment "C."** For phone and fax numbers for foreign embassies and consulates in the United States, see Part Six of the U.S. Department of State consular publication or contact the Central Receiving Facility clerical office and request the information.

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- Tell the foreign national that you are making this notification. See **Attachment "B."** for a suggested statement to the foreign national and a notification form.
- Report the action taken in the appropriate report for the incident.
- Attach the completed fax, if used, and the copy of the advisal to the report.

PROCEDURE D: TRUST ACT COMPLIANCE

It is the intent of the Sheriff's Office to comply with all federal, state, and local laws, to include the provisions set forth in California Assembly Bill 4, also known as the TRUST ACT. However, the Sheriff reserves the right to consider the risk to public safety when considering releases by allowing ample investigative time to ensure the citizens of Kern County are protected.

The Sheriff's Office shall not detain an individual on the basis of an immigration detainer issued pursuant to Section 287.7 of title 8 of the Code of Federal Regulations, after that individual becomes eligible for release from custody. However, the Sheriff reserves the right to honor an immigration detainer, if I.C.E articulates a specific public safety issue involving the inmate to be released.

When a subject is considered eligible for release, Sheriff's Classification staff will refer to Detentions Bureau Policy C-850 for releasing criteria.

PROCEDURE E: DEATH OF A SUSPECTED FOREIGN NATIONAL

The assigned Coroner's Investigator will:

- Make fax notification in all Coroner's cases involving deaths of foreign nationals from mandatory notification countries.
- Include the fax with their report.
- Notify the Chief Deputy of the Administrative Services Bureau.

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PROCEDURE F: APPOINTMENT OF A GUARDIAN FOR A SUSPECTED FOREIGN NATIONAL

The assigned Public Administrator will:

- Make fax notification in all guardianship cases involving foreign nationals.
- Include the fax with their report.
- Notify the Chief Deputy of the Administrative Services Bureau.

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ATTACHMENT A

Mandatory Notification Countries and Jurisdictions

Antigua and Barbuda
Armenia
Azerbaijan
Bahamas, The
Barbados
Belarus
Belize
Brunei
Bulgaria
China 1
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hong Kong 2
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland (non-permanent residents only)
Romania
Russia
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Seychelles
Sierra Leone
Singapore
Slovakia

Tajikistan
Tanzania
Tonga
Trinidad and Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom 3
U.S.S.R.4
Uzbekistan
Zambia
Zimbabwe

1 Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

2 Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports — i.e., immediately, and in any event within four days of the arrest or detention.

3 British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

4 Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

SUGGESTED STATEMENTS TO ARRESTED OR DETAINED FOREIGN NATIONALS

Statement 1

When Consular Notification is at the Foreign National's Option (For Translations, See Part Four of the Department of Justice Handbook)

“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?”

Statement 2

When Consular Notification is Mandatory (For Translations, See Part Four of the Department of Justice Handbook)

“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.”

I have been advised of my consular rights per Statement _____ above.

Foreign National's Signature

Date and Time

By

Officer/Badge Number

Date and Time

ATTACHMENT C



Kern County

SHERIFF

Interoffice Memorandum

P.O. BOX 2208, BAKERSFIELD, CA 93303
1350 NORRIS RD. BAKERSFIELD, CA 93308
PHONE: _____ FAX _____

FAX NOTIFICATION OF ARREST, DETENTION OR DEATH OF A NATIONAL OF YOUR COUNTRY

TO: Embassy of _____, Washington, DC

or

Consulate of _____, _____, _____
(Country) (City) (State)

SUBJECT:

The following foreign national, whom we understand to be a national of your country, has been detained, is being held at this or one of the other Kern County Sheriff's Facilities.

Mr./Ms. _____

Date of birth: _____ Place of birth: _____

Passport number: _____ Date of passport issuance: _____

Place of passport issuance: _____

To arrange for consular access, please call _____.

Comments:

DATE: _____ TIME: _____ BY: _____