



MONTGOMERY COUNTY FIRE AND RESCUE SERVICE
MONTGOMERY COUNTY, MD.

DIVISION OF COMMUNITY RISK REDUCTION SERVICES

DIRECTIVE

Date: March 6, 2007

Number: 07-09

TO: All Fire and Explosive Investigations Section Personnel

FROM: Division Chief Michael T. Love

A handwritten signature in black ink that reads "Michael Love".

SUBJECT: Dealing with Aliens/Foreign Speaking Persons

I. Goal

All individuals, regardless of citizenship, are entitled to basic rights and privileges which are set forth in common law, State and Federal law, and the Maryland and United States Constitutions. In addition, aliens/foreign speaking persons may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the goal of the MCFRS Fire and Explosive Investigations Section (FEI) to exercise its duties in conformance with all applicable laws, regardless of an individual's nationality or racial/ethnic background.

II. Questioning of Aliens or Foreign Speaking Persons/Arrest Policy

A. The indiscriminate questioning of foreign speaking persons about their citizenship status (possession of their "green card") without a reasonable basis for suspicion *of State/local traffic or criminal charges* is unconstitutional according to Supreme Court decisions. Furthermore, the intimidating effect of such questioning creates fear, suspicion, and distrust of law enforcement personnel.

- B. FEI investigators have no statutory authority to arrest an ***undocumented*** alien for violations of federal immigration laws. If an ***undocumented*** alien is arrested, the basis of that arrest must rest solely on State/local traffic or criminal charges.
- C. If an individual who is stopped for a traffic violation is not wanted for other charges and has a valid driver's permit, the individual should be treated the same as any other violator and not be subjected to arrest or further questioning because of the individual's nationality. ***Without reasonable suspicion of criminal activity, the individual cannot be detained longer than necessary for the traffic stop to be completed.***
- D. FEI investigators do not have the authority to confiscate ***Resident Alien Cards*** (slang term - "Green Cards") or Employment Authorization Cards without the express authorization of an Immigration and Customs Enforcement (ICE), Department of Homeland Security, Officer.

III. Aliens as Victims/Witnesses

A police report/investigation is not contingent upon a person's citizenship status. It is not the goal of the FEI Section to pursue deportation proceedings. ***However, if it becomes known that a victim/witness is facing possible deportation and the investigator needs this victim/witness for the case, the investigator must notify ICE in writing, through the FEI Section Chief. This is to ensure that ICE is aware of the situation and may delay deportation of the individual.*** Approval by ICE to allow the individual to remain in the country does not constitute employment authorization or confer any benefit. Furthermore, if the victim/witness has a criminal history, the individual may not qualify for consideration for a delay in deportation.

IV. Arrest Procedures

When aliens (persons who are not United States citizens) are physically arrested for violations of criminal or traffic laws, the investigator must follow the procedure below, after routine processing.

- A. The arresting investigator will notify the ICE by telephone as soon as possible after the arrest and provide the following information:
1. the full name of the arrested subject;
 2. the arrested subject's date and place of birth;
 3. when and where the alien entered the United States (if known);
 4. the charges against the alien; and
 5. the registered alien file number (this number appears on the "green card" issued to that individual, which should be in the his/her possession). If no card is available, the ICE investigator will advise the FEI investigator of what action to take. (The "green card" is actually *pink or white* in color but is known by all aliens as the "green card.")
- B. The arresting investigator's report will include:
1. a statement indicating that the person arrested is in fact an alien;
 2. the name of the ICE officer, and the date and time notified; and
 3. the registered alien's file number, if available.

V. Vienna Convention on Consular Relations (1963)

Certain provisions of the Vienna Convention on Consular Relations (1963) and customary international laws require that appropriate authorities of the United States, including state and local authorities, provide assistance to foreign consul investigators in the performance of their duties.

- A. The United States is obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. Investigators should follow these procedures:

1. Immediately inform the foreign national of his/her right to have the foreign national's government notified concerning the arrest/detention.
 2. If the foreign national asks that such notification be made, do so without delay by informing the local appropriate consulate or embassy, and note that fact in the event report. Consulate phone numbers can be obtained at each Montgomery County Police (MCP) district station, ECC, and CPU.
 3. In the case of certain countries, such notification must be made without delay regardless of whether the arrestee/detainee so wishes. A list of these countries can be obtained at each MCP district station, ECC, and CPU.
- B. Consul officers should be given timely notification concerning the death of a foreign national, and the disposition of the deceased's property.
- C. When requested, assistance should be given to any consul in ascertaining the whereabouts of their nationals. However, this does not include disclosing any information obtained through MILES or NCIC, which is restricted to law enforcement personnel *only*.

VI. Assistance

If an investigator requires assistance from the Department of State, their Operations Center is staffed 24 hours a day and can be reached by telephone. If assistance is requested, or a notification was made, a notation should be made in the incident report.