



DEALING WITH FOREIGN NATIONALS

FC No.: 520

Date: 09-14-17

If a provision of a regulation, departmental directive, or rule conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

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I. Policy

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, foreign nationals (persons who are not U.S. citizens) may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of the department to provide service to all persons and to exercise its duties in conformance with all applicable laws, regardless of citizenship status, nationality, or racial/ethnic background.

II. Questioning of Foreign Nationals/Arrest Policy

A. Questioning of Foreign Nationals

The indiscriminate questioning of foreign nationals 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. Officers may ask a person who is under arrest about their citizenship for the purpose of complying with the Vienna Convention. (See Section IV)

B. Authority to Arrest

Officers have no statutory authority to enforce violations of federal immigration laws. If any foreign national is arrested, the arrest must be based on a confirmed warrant or on state/local traffic or criminal charges.

C. Participation in ICE Raids

MCP officers are permitted to assist ICE agents when officers have been assigned to a task force or a joint criminal investigation involving ICE agents when the primary focus of the task force or investigation is *a criminal investigation*. Examples include, but are not limited to, customs violations, money laundering, narcotics cases, *gang investigations*, hate crimes, human trafficking, and terrorist activities. Even in these circumstances, officers shall obtain authorization from an Assistant Chief or the Director, SID, prior to

participating in an ICE raid. Other exceptions may be made on a case by case basis. Nothing in this order prohibits officers from responding to or being on the scene of any federal warrant service in order to maintain safety in exigent circumstances.

D. Traffic Violations

If an individual who is stopped for a traffic violation is not wanted for other charges and has a valid permit, the individual should be treated the same as any other violator and not be subjected to arrest or further questioning because of nationality. Without reasonable suspicion of criminal activity, the individual must not be detained longer than necessary for the traffic stop to be completed.

E. Confiscating Immigration Documents

Generally, officers do not have authority to confiscate Resident Alien Cards (a.k.a. "green cards") or Employment Authorization Cards without the express authorization of an ICE official. If an officer has probable cause to believe that immigration documents are altered or counterfeit with fraudulent intent, the officer is permitted to confiscate those documents and to place charges as appropriate for the possession of fraudulent government identification documents (CR 8-303 of the Maryland Annotated Code).

III. **Foreign Nationals as Victims/Witnesses**

- A. A police report/investigation is not contingent upon a person's citizenship. Department employees shall provide service to all persons regardless of their citizenship status.
- B. If it becomes known that a victim or witness who is essential to a case is facing deportation, officers may request that ICE delay the deportation by forwarding their request in writing through the Office of the Chief. If the victim/witness has a criminal history, chances are reduced that ICE will approve such a request. Any approval by ICE to delay deportation does not constitute employment authorization or confer any benefit upon the victim/witness.

IV. **Arrest Procedures**

- 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. ***When foreign nationals are physically arrested***, officers shall:
 - 1. Promptly inform the foreign national of the right to have their government notified concerning their arrest/detention.
 - 2. If the foreign national asks that such notification be made, do so without delay by informing the nearest consulate or embassy and note that fact in the event report. Consulate phone numbers can be obtained at each district station, ECC, and CPU. Also, officers may obtain assistance and advice from the U.S. Department of State's 24-hour Operations Center at (202) 647-1512.
 - 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 district station, ECC, and CPU.
- B. ***On August 7th, 2013, the United States Court of Appeals for the Fourth Circuit ruled that state and local law enforcement officers do not have legal grounds to stop, detain, search, or arrest any individual based solely on an ICE civil warrant, unless they have been deputized by ICE to do so. Officers must have a separate, arrestable offense in order to arrest any individual who is the subject of an ICE civil warrant. Therefore, MCPD officers who receive a "hit" for an ICE civil warrant via NCIC will not use that information to stop, detain, search, or arrest any individual solely on the basis of the ICE warrant. Officers must have a legal reason (as listed in FC 510, Adult Criminal Arrests) separate from an ICE***

civil warrant in order to stop, detain, search, or arrest any individual. Officers will not use the issuance of an ICE detainer after the fact to justify making an arrest based solely on an ICE civil warrant.

V. Consular Relations

- A. Consul officers should be given timely notification concerning the death of a foreign national and disposition of the deceased's property.
- B. When requested, assistance should be given to any consul in ascertaining the whereabouts of their citizen. This does not include disclosing any information obtained through MILES or NCIC. This information is restricted to law enforcement only.

VI. Communication Between Government Agencies and the Immigration and Naturalization Service.

- A. *Title 8, United States Code, §1373 addresses the exchange of information regarding citizenship and immigration status among federal, state, and local government entities and officials. Communications will occur consistent with the law which states:*
 - 1. **In general:**
Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.
 - 2. **Additional authority of government entities:**
Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
 - (a) *Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.*
 - (b) *Maintaining such information.*
 - (c) *Exchanging such information with any other Federal, State, or local government entity.*

VII. Contact Information

- A. Immigration and Customs Enforcement (ICE)
When seeking information from or making notifications to ICE, the following numbers should be used:
 - 1. Officers are encouraged to seek assistance 24 hours a day from the ICE Law Enforcement Support Center (LESC) at 1-802-872-6020. They can also be contacted by sending a message via NCIC.
 - 2. The agents at the Baltimore Field Office can be reached at (410) 962-7449 (0800-1630 week days).
- B. U.S. Department of State
The U.S. Department of State's 24-hour Operations Center can be reached at (202) 647-1512.
- C. Document Notification
If assistance was requested or a notification was made from either ICE or the U.S. Department of State, a notation should be made in the incident report.

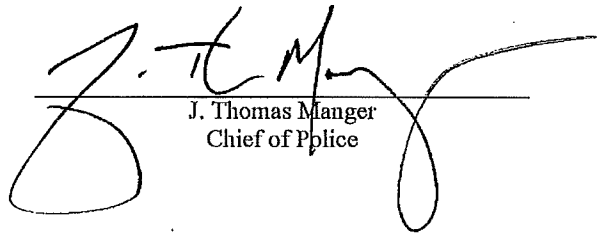
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VIII. CALEA Standards: *1.1.4, 1.2.3-a, 1.2.5, 1.2.9-a, 42.2.5, 55.1.1, 61.1.2, 61.1.7-a, 74.3.1*

IX. Proponent Unit: Vice & Intelligence Section

X. Cancellation

This directive cancels Function Code 520, effective *02-11-09 and Headquarters Memorandum 13-02.*



J. Thomas Manger
Chief of Police