



DIPLOMATIC IMMUNITY

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If a provision of a regulation, departmental directive, rule, or procedure 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. **Purpose**

To provide guidance to MCPD personnel in the management of incidents involving diplomatic mission and consular post members and the privileges and immunities to which they are entitled.

II. **Policy**

It is the policy of the department to conform to federal law regulating diplomatic immunity *and privilege*. Allegations of **criminal misconduct involving** diplomatic or consular personnel *must be thoroughly* investigated and promptly reported to the U.S. Department of State (**USDOS**). *The USDOS's ability* to exercise **diplomatic** tools to remove *persons* from the U.S. who are engaged in criminal activity or to revoke the driving privileges of *those* who repeatedly violate the traffic code *depends upon a high standard of police investigation, record keeping, and reporting.*

III. **Definitions**

- A. **Diplomatic Mission:** Encompasses both *members of the embassy* where **diplomatic** work is performed and the residence of the head of the mission.
- B. **Consular Post:** *Includes members of the consulate who perform a variety of functions of principal interest to their respective sending countries, such as issuance of travel documents, attending to the*

difficulties of their own nationals who are in the host country, and generally promoting the commerce of the sending country.

C. **Diplomatic Immunity:**

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. Diplomatic immunity includes both full and limited criminal immunity.

- D. **Full Criminal Immunity:** Full criminal immunity is given to diplomatic agents, administrative and technical staff of missions, and their families. *Such persons enjoy complete personal inviolability, which means that they may not be handcuffed (except in extraordinary circumstances), arrested, or detained, but may be given notice of a violation. Their property, vehicles and residences may not be entered or searched. They also enjoy complete immunity from the criminal jurisdiction of the host country's courts and thus cannot be prosecuted no matter how serious the offense unless their immunity is waived by the sending state. They also enjoy complete immunity from the obligation to provide evidence as witnesses.*
- E. **Limited Criminal Immunity:** Individuals with limited criminal immunity, *or official acts immunity*, can be detained, arrested, and prosecuted for criminal acts. If prosecuted, some members can raise official acts immunity as an affirmative defense. The court will determine whether or not the member was acting in an official capacity at the time of the offense. No police officer is expected to determine whether a given set of circumstances constitute an official act. Thus, a person enjoying official acts immunity may always be prosecuted if the alleged criminal act is believed outside the scope of official duties. The court will decide whether the alleged crime was part of an official act. These individuals can be required to give evidence as witnesses and their persons and *property* may be searched.
- F. **Serious Incident:** Any incident where an officer would normally perform a custodial arrest if the individual did not have diplomatic immunity.

IV. **Categories of Persons Entitled to Privileges and Immunities (refer to Appendix D)**

The categories of personnel are defined primarily with reference to the functions performed. There are exceptions in all categories, therefore, to avoid misjudgments, it is critical that the USDOS be contacted each time to verify a person's diplomatic status.

A. **Diplomatic Agents**

"Diplomatic agent" is the term for ambassadors and the other diplomatic officers who generally have the function of dealing directly with host country officials. Diplomatic agents and their families enjoy full criminal immunity. They are entitled to complete personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses.

B. **Administrative and Technical Staff Members of Embassies**

Administrative and technical staff members perform tasks critical to the inner workings of the embassy. Accordingly, they and their families enjoy privileges and immunities identical to those of diplomatic agents.

C. **Service Staff Members of Embassies**

Service staff members perform less critical support tasks for the missions and are accorded much less in the way of privileges and immunities than are those in the other categories. Service staff members have official acts immunity only and enjoy no personal inviolability, no inviolability of property, and no immunity from the obligation to provide evidence as witnesses. The families of service

staff members enjoy no privileges or immunities.

D. Consular Officers

Consular officers may be arrested or detained pending trial only if the offense is a felony and that the arrest is made pursuant to a warrant. They can be prosecuted for misdemeanors but remain at liberty pending trial or other disposition of charges. Consular officers have immunity from providing evidence as witnesses where a case involves their official duties. Family members of consular officers enjoy no immunity.

E. Consular Employees

Consular employees perform the administrative and technical support services for the consular post. They have no personal inviolability, only official acts immunity, and enjoy immunity from the obligation to provide evidence as witnesses only in respect of official acts. Their family members enjoy no personal inviolability or jurisdictional immunities of any kind.

F. Consular Service Staff

Consular service staff do not enjoy personal inviolability or jurisdictional immunity of any kind, but they do have immunity from the obligation to provide evidence as witnesses in respect of official acts. Their family members enjoy no personal inviolability or jurisdictional immunity of any kind.

G. International Organization Personnel and National Missions to Such Organizations

International organizations, such as the United Nations, are relatively modern entities. The privileges and immunities of the personnel of such organizations and the personnel of national missions to such organizations have a different basis than that of diplomatic and consular representatives. In determining the degree of inviolability or immunity, officers will be guided primarily by the identity documents that have been issued to such persons.

H. TECRO (Taipei Economic and Cultural Representative Office) Designated Employees

Designated TECRO employees enjoy full criminal immunity and personal inviolability identical to that of diplomatic agents. The immediate family members of a TECRO designated employee, forming part of his or her household, enjoy the same immunity from criminal jurisdiction, arrest, and detention, so long as such persons are not U.S. nationals or permanent residents.

I. TECO (Taipei Economic and Cultural Offices) Head and Deputy Head

The TECO head and deputy head enjoy official acts immunity. However, they may not be arrested or detained pending trial, except pursuant to a felony warrant. Their residences and property are not inviolable, and they may decline to give evidence as a witness only on matters related to their official duties. The immediate family members of a TECO head or deputy head enjoy no personal inviolability or jurisdictional immunities of any kind.

J. TECO Designated Employees

Designated TECO employees enjoy only official acts immunity and immunity from the obligation to provide evidence as a witness only in respect to official acts. The immediate family members of a TECO designated employee enjoy no personal inviolability or jurisdictional immunities of any kind.

K. Nationals or Permanent Residents of the United States

The general rules set forth previously assume that diplomatic mission personnel are nationals of the sending country or some third country. The U.S., as a matter of policy, does not normally accept as diplomatic agents its own nationals, legal permanent residents of the U.S., or others who are "permanently resident in" the United States. The family members of diplomatic agents enjoy no privileges or immunities if they are nationals of the United States. Members of the administrative and technical staff (including their families) and members of the service staff enjoy no privileges and

immunities if they are U.S. nationals, legal permanent residents, or foreign nationals “permanently resident in” the U.S.

Officers typically will not encounter this situation since the USDOS issues identification cards with the nationality principle in mind. However, it is important for officers to understand these principles generally because they could confront a situation wherein a U.S. citizen, who is the spouse of a foreign national diplomatic agent (who lacks the correct identity documents), attempts to establish his or her immunity solely based on proving a relationship with the diplomatic agent.

L. Special Bilateral Agreements

There are some foreign countries where the categories set forth above are not applicable. These are countries, with *which* the United States has bilateral agreements, *that may* grant significantly higher privileges and immunities to all members of their embassy staffs who are nationals of the sending state and to certain *members* of their consular personnel and *families*.

In some cases, these privileges and immunities *may* approximate those accorded diplomatic agents. Officers should be aware of this distinction. *For example*, a chauffeur or mechanic from *an* embassy *may* assert a right to full diplomatic privileges and immunities. *Officers should always confirm diplomatic status with the USDOS when a person claims full criminal immunity.*

V. Claims of Diplomatic Immunity

A. There are three types of identification cards *issued by the USDOS* (refer to Appendix A):

1. Diplomatic (blue border for *diplomatic agents*)
2. Official (green border for *embassy employees and United Nations Permanent Mission support staff, and TECRO employees*)
3. Consular (red border for *consular personnel and TECO employees*)

The identification cards are “3-7/16” x 2-3/16” and contain a photograph of the bearer. The bearer’s name, title, mission, city and state, date of birth, identification number *and* expiration date *appear on the front of the card*. The USDOS seal and a brief statement of the bearer’s *criminal* immunity is printed on the reverse side. *Passports, visas, tax exemption cards, auto registration, license plates, and driver’s licenses are not conclusive proof of diplomatic immunity.*

- B. *Incidents* not involving traffic violations (for traffic violations refer to section VII.), when a person claims diplomatic immunity of any kind (whether or not the person displays credentials), officers will immediately *verify the person’s immunity status through the USDOS* (refer to Appendix C).**
- C. When the *incident* would normally warrant arrest or detention, officers will detain the person until proper diplomatic status can be confirmed. Officers will inform the *person* of the reason for the detention. When proper identification is shown and status is verified, the immunity will be fully respected.**
- D. When *the* public is in imminent danger, or it is apparent that a *grave* crime may be committed, officers may intervene to the extent necessary to halt the activity. This includes officers *using force, in accordance with FC 131*, to defend themselves from personal harm. *If the person enjoys full criminal immunity, he or she may not be handcuffed, except when that person poses an immediate threat to safety. Once all pertinent information is obtained and immunity status is verified, that person must be released.***
- E. *Whatever the offense or circumstances of contact, officers should keep in mind that such persons are official representatives of foreign governments who are to be accorded the maximum degree of respect***

possible under the circumstances. It is not an exaggeration to say that police handling of incidents in this country may have a direct effect on the treatment of U.S. diplomatic or consular personnel abroad.

VI. Reporting Criminal Incidents

A. Officer Responsibilities

Officers responding to any criminal incident involving diplomatic or consular personnel will:

- 1. Immediately contact the USDOS (refer to Appendix C) to verify immunity status.*
- 2. Immediately notify their supervisor of the incident.*
- 3. Complete an incident report to include the person's information and immunity status.*

B. Supervisor Responsibilities

- 1. Supervisors will promptly notify the USDOS Office of Foreign Missions of the incident via email at OFMimmunity@state.gov and attach an electronic copy of the report.*
- 2. Supervisors will promptly notify their district/unit commander of the incident via email and attach an electronic copy of the report.*

VII. Traffic Enforcement

A. Traffic Violations

The USDOS's Diplomatic Motor Vehicle Office maintains driver histories on all its licensees and assesses points for traffic violations. Drivers who demonstrate a pattern of bad driving habits or who commit an egregious offense such as DUI/DWI are subject to having their licenses suspended or revoked as appropriate. This policy can be enforced effectively only if all driving infractions are reported promptly to the USDOS.

B. Drivers with Full Criminal Immunity

*When a driver with proper and valid identification indicating **full criminal** immunity is stopped for any traffic violation, the officer **will** issue an appropriate traffic citation(s), warning notice **or Safety Equipment Repair Order (written or electronic)**. The issuance of a traffic citation does not constitute an arrest or detention.*

- 1. The **driver** does not have to sign the citation and cannot be arrested for refusal to sign or accept the citation.*
- 2. Failure of the **driver** to appear in court to answer the citation may cause action by the Motor Vehicle Administration (MVA) **and/or the USDOS** in relation to **his/her** driving privileges within this state.*

C. Officer Responsibilities

*Whenever an officer stops a person, based upon probable cause that the person violated the **Maryland** Transportation Article, **and** who displays a driver's license issued by the **USDOS** or **who otherwise claims immunities or privileges**, the officer **will**:*

- 1. **Contact the USDOS** (refer to Appendix C) **as soon as practicable** to verify the driver's license and immunity status. This should be done **no later than** the end of the officer's tour of duty.*
- 2. **Immediately notify their supervisor of the incident.***
- 3. **Complete a Police Information Report (2938) to include the vehicle, driver's information and immunity status. Officers will attach an electronic copy of the citation and/or warning to the report.***

D. Supervisor Responsibilities

- 1. Supervisors will promptly notify the USDOS Office of Foreign Missions of the incident via email at OFMimmunity@state.gov and attach an electronic copy of the report with any citations/warnings.*
- 2. Supervisors will promptly notify their district/unit commander of the incident via email and attach an electronic copy of the report with any citations/warnings.*

3. Within five workdays after the date of the stop, the *supervisor* will mail a copy of *the report and any citations/warnings*, with a cover letter to:
Maryland MVA
Chief, Diplomatic Section
Administrative Adjudication
6601 Richie Highway, Room 211
Glen Burnie, MD 21062

E. **DUI/DWI Violations and Other Traffic-Related Serious Incidents**

1. ***Officers who suspect that a person claiming full criminal immunity is DUI/DWI or has committed any other serious traffic-related incident (refer to section III.F.) will immediately confirm the person's immunity status with the USDOS (refer to Appendix C).***
2. ***Officers with probable cause to believe that a person with full criminal immunity is driving/attempting to drive under the influence or while impaired, must not allow that person to operate the vehicle. The officer's primary concern in this instance is the safety of the community and the person who is under the influence/impaired by alcohol and/or CDS.***
3. ***Officers will assist in parking the vehicle or securing another driver. If the vehicle is parked, the officer will notify ECC of the vehicle's location and record the location in the report. Refer to section VIII. for guidance on towing.***
4. ***Officers may issue a traffic citation to the person for DUI/DWI or any other serious traffic-related incidents (refer to section III.F.), however a driver with full criminal immunity may not be physically arrested.***
5. ***If a person with full criminal immunity refuses assistance or a claim is made that the officer's requested action would restrict the effective exercise of diplomatic functions, the officer will inform the person that he/she is free to go, but may not operate the vehicle. The diplomatic mission concerned will be contacted immediately for advice or assistance in obtaining a driver and removing the vehicle.***
6. ***If the person is entitled to full criminal immunity, he/she should not be restrained except in extreme cases. If appropriate, standardized field sobriety tests should be offered and the results fully documented, but the person may not be compelled to take any tests.***
7. ***Officers will notify their supervisor of the event and complete a report with the appropriate classification (at a minimum a Police Information Report). Supervisors are responsible for completing procedures in section VII.D.***

VIII. **Towing and Property Inviolability**

A. **Towing**

The property of a person enjoying full criminal immunity, to include his or her vehicle, may not be searched or seized. Such vehicles may not be impounded but may be towed the distance necessary to remove them from obstructing traffic or endangering the public. Officers will conform with procedures outlined in FC 1060, "Towing of Motor Vehicles."

B. **Property Inviolability**

If a vehicle that is owned by a person enjoying full criminal immunity is suspected of being stolen or used in the commission of a crime, the occupants of the vehicle may be required to present vehicle documentation to permit police verification of the vehicle's status through NCIC and/or NLETS. Should the vehicle prove to have been stolen or to have been used by unauthorized persons in the commission of a crime, the inviolability to which the vehicle would normally be entitled must be considered temporarily suspended, and normal search of the vehicle and, if appropriate, its detention, are permissible.

Vehicles registered to consular officials, including those with full criminal immunity, and consulates are not inviolable and may be towed or impounded in accordance with department procedures. The USDOS should be notified if a consular vehicle has been detained or impounded so that the Office of Foreign Missions can notify the proper consular official or mission.

C. USDOS License Plates

Federal license plates issued by the USDOS are not the property of the diplomatic agent nor of a diplomatic mission. They remain the property of the USDOS, and as such, they must be surrendered to the USDOS when recalled. Similarly, these license plates may not be transferred from the vehicle to which they were assigned without authorization from the Office of Foreign Missions.

In cases where the officer at the scene has determined that the vehicle is being operated without insurance and/or has verified with the USDOS that the vehicle bearing USDOS license plates is not the vehicle for which those plates were intended, the USDOS may request that the officer seize the plates and return them to the USDOS. Such seizure should only be upon the request of the USDOS. Subsequent detention of the vehicle must conform to the guidelines above.

IX. Waivers of Immunity

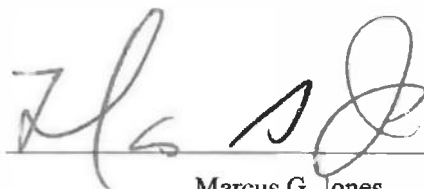
Diplomatic and consular immunity are not intended to benefit the person; they are intended to benefit the mission of the foreign government or international organization. Thus, a person does not "own" his or her immunity and it may be waived, in whole or in part, by the mission member's government. The USDOS will request a waiver of immunity in every case in which the prosecutor advises that he or she would prosecute but for immunity.

The USDOS's ability to secure a waiver may depend on the strength and documentation of the case at issue. *Similarly*, it is of little avail to secure a waiver of immunity in a particular case if the case has not been developed with sufficient care and completeness to permit a successful subsequent prosecution. Proper documentation and reporting by law enforcement authorities plays a critical role in both respects.

X. CALEA Standards: 6th Edition, 61.1.2

XI. Proponent Unit: Policy and Planning Division

XII. Cancellation: This directive cancels Function Code 519, effective date ***12-10-01***.



Marcus G. Jones
Chief of Police