



OFFICE OF THE COUNTY SHERIFF
Montgomery County, Maryland
Darren M. Popkin, Sheriff

GENERAL OPERATIONAL PROCEDURES



<u>Subject:</u> Foreign Nationals	<u>Number:</u> 3.39	<u>Effective Date:</u> 12/10/19
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Policy: All individuals, regardless of citizenship, have basic rights that are set forth in common law, statutory law, and the United States Constitution. *A foreign national is a person who is not a citizen of the United States by birth or naturalization.* Foreign nationals may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of this Office to provide service, in conformance with all applicable laws, to all persons regardless of their citizenship status.

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I. Questioning of Foreign Nationals

- A. Indiscriminate questioning of foreign nationals, persons who are not U. S. citizens, regarding their citizenship status without a reasonable basis for suspicion must be avoided. Such questioning creates fear, suspicion, and distrust of law enforcement authorities.
- B. If a foreign national who is stopped for a traffic violation is not wanted for other charges and possesses a valid permit, the individual must be treated the same as any other violator and not be subjected to arrest or further questioning because of nationality.
- C. Deputies have no statutory authority to arrest an illegal alien for violations of federal immigration laws. If an illegal alien is arrested, the basis of the arrest must rest solely on state, local traffic or criminal charges.
- D. Generally, deputies do not have the authority to confiscate Permanent Residency "Green Cards" or Employment Authorization Cards without the express authorization of a United States Immigration and Customs Enforcement (ICE) official. If a deputy has probable cause to believe that immigration documents are altered or counterfeit with fraudulent intent, the deputy is permitted to confiscate those documents and to place charges as appropriate for the possession of fraudulent government identification documents (Criminal Law Article § 8-303).

II. Vienna Convention on Consular Relations

A. 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 officers in the performance of their duties. 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.

(1) If a deputy believes that an individual placed under arrest or remanded to custody, whether or not the Sheriff's Office initiated the charges or detention, is a foreign national, the deputy must inquire if the individual is a United States citizen. If the individual advises they are a foreign national, the deputy must:

(a) Immediately inform the foreign national of the foreign national's right to have the foreign national's government notified concerning the arrest or detention.

(b) If the foreign national requests that such notification be made, do so immediately by informing the nearest consulate or embassy.

(c) In the case of certain countries, such notification must be made immediately, regardless of whether the foreign national desires the notification.

(2) The responsibilities to notify the consulate or embassy are as follows:

(a) Arresting Deputy: All arrests, including individuals arrested on warrants issued to the Sheriff's Office.

(b) Control Jailer: Any defendant remanded to custody by the court.

B. The Department of State suggests using the following statements when advising a foreign national of the notification:

(1) **When Consular Notification is at the Foreign National's Option**

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?

(2) **When Consular Notification is Mandatory**

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.

- C. All notifications must be made by telephone and fax. A manual issued by the Department of State, entitled "Consular Notification and Access" is maintained in the Criminal Section of the Sheriff's Office and at the Central Processing Unit. The manual is also available on the internet at www.travel.state.gov. It contains the telephone and fax numbers of the embassies and consulates located in the United States. It also lists those countries requiring mandatory notification. Deputies must utilize the Consular Notification Form (MCSO61) when notifying a consulate of an arrest. This form lists the basic information the embassy or consulate will require.
- D. The deputy responsible for making the notification must complete and submit an Incident Report (MCSO9) prior to the end of their tour of duty describing their compliance with the above notification requirements. When notification is made by fax, the Consular Notification Form (MCSO61) along with the fax receipt must be attached to the Incident Report.

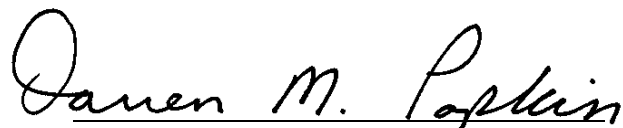
III. Civil Warrants

- A. *The United States Court of Appeals for the Fourth Circuit ruled in Santos v. Frederick County Commissioners that state and local law enforcement officers may not stop, detain, search or arrest an individual based solely on a civil immigration warrant.*
- B. *Warrants for deportation are civil in nature, not criminal. Criminal immigration warrants will be confirmed and processed consistent with all other criminal warrants.*
- C. *Deputies will not stop, detain, search or arrest an individual based solely on a civil immigration warrant; if a civil immigration warrant is discovered, no enforcement action will be taken regarding the warrant.*
- D. *Should it be determined a person has a civil immigration warrant, ICE will be notified regarding the circumstances surrounding the incident using the contact information provided by the NCIC response; however, the deputies must not detain the individual for the purpose of ICE responding to take custody of the person.*

IV. Cancellation

This written directive cancels and replaces General Operational Procedures 3.39, dated **03/02/12**.

AUTHORITY:



Darren M. Popkin, Sheriff

12/10/2019