



# BRAINTREE POLICE DEPARTMENT

## Policy and Procedure

### CONSULAR NOTIFICATION

2018-44

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#### GENERAL CONSIDERATIONS

On December 24, 1969 the United States became a party to an International Treaty known as the Vienna Convention on Consular Relations (VCCR) which was first formed in Vienna on April 24, 1963. Pursuant to Article VI, clause 2 of the United States Constitution, a Treaty of which the US is a signatory has the status of law ("all treaties made . . . shall be the supreme law of the land"). It is binding on federal, state, and local government officials to the extent that they pertain to matters within such officials' competence.

Because of its comprehensive nature and near universal applicability, the VCCR now establishes the baseline for most obligations with respect to the treatment of foreign nationals in the United States and for treatment of U.S. citizens abroad for foreign governments.

Therefore, the procedures outlined in this policy, which are in conformity with the VCCR, focus primarily on providing consular notification and access with respect to foreign nationals arrested or detained in the United States, so that their governments can assist them. The obligations of consular notification and access apply to United States citizens in foreign countries just as they apply to foreign nationals in the United States. When U.S. citizens are arrested or detained abroad, the United States Department of State seeks to ensure that they are treated in a manner consistent with these instructions, and that U.S. consular officers can similarly assist them. It is therefore

particularly important that federal, state, and local government officials in the United States comply with these obligations with respect to foreign nationals here.

## **POLICY**

It shall be the policy of the Braintree Police Department, that whenever foreign nationals, as defined herein, are arrested or detained, they must be advised of the right to have their consular officials notified. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes. Once notified, Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.

## **DEFINITIONS [1.1.4]**

**Consular Officer:** A consular officer or consul as sometimes referred to, 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 country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, DC, or to consular offices maintained by the foreign government in locations in the United States outside of Washington, DC.

**Foreign National or Alien:** For the purposes of consular notification, a "foreign national" is any person who is not a U.S. citizen. The terms "foreign national" and "alien" are used interchangeably. **Note:** *All* foreign nationals are entitled to consular notification and access regardless of their visa or immigration status in the United States. Thus "illegal" aliens have the same rights to consular assistance, as do "legal" resident aliens. There is no reason, for purposes of consular notification, to inquire into a person's legal status in the United States.

**Arrest or Detention:** To deprive a person of his/her liberty by legal authority with or without a warrant, which includes the legal authority to physically remove a person from his/her location, taking that person into custody for the purpose of holding or detention to answer a violation of law before a court of proper jurisdiction. **[1.1.4]**

## **PROCEDURES [1.1.4]**

### **1) Arrest and Detention of Foreign Nationals**

Whenever a foreign national is arrested or detained in the United States, there are legal requirements to ensure that the foreign national's government can offer him/her appropriate consular assistance.

- a) In *all* cases, the foreign national must be told of the right of consular notification and access.
- b) In most cases, the foreign national then has the option to decide whether to have consular representatives notified of the arrest or detention.

- c) In other cases, however, the foreign national's consular officials must be notified of an arrest and/or detention regardless of the foreign national's wishes.

Whenever a foreign national is taken into custody, the booking supervisor should determine whether consular notification is at the *option* of the foreign national or whether it is *mandatory*. Aside from detainees self-identifying themselves as foreign nationals, some other indicators requiring further inquiry include place of birth outside the United States, does not speak English, or is carrying identification documents from outside the United States.

Foreign nationals shall be advised of the consular notification process and asked to sign an acknowledgement. For non-English speaking detainees, forms in other languages should be printed from the U.S. Department of State website: <http://www.travel.state.gov/CNA> and click on *Consular Notification Statement*, choosing the language you need. [1.1.4]

The booking supervisor shall ensure the arresting officer notes in the incident report that the foreign national has been advised of mandatory notification, or has been advised of the option for consular notification. If consular notification is made, this information will also be noted in the incident report, and the form used to fax the notification to the consulate shall be attached to and scanned into the external reference file of the incident report.

A list of all embassies and consulates in the United States, with their telephone and facsimile numbers, shall be maintained in the Booking Room in the binder named Consular Notification along with a copy of the Consulate Notification and Access manual. [1.1.4]

## 2) Notification at the Foreign National's Option [1.1.4]

In *all* cases, the foreign national must be told of the right of consular notification and access. The foreign national then has the option to decide whether he/she wants consular representatives notified of the arrest or detention, unless the foreign national is from a "**Mandatory Notification**" Country. The mandatory notification countries are posted in the Booking Room and are listed in the Consular Notification Manual in booking. They can also be found on the website <http://www.travel.state.gov/CNA> and click on *Countries and Jurisdictions with Mandatory Notification*. [1.1.4]

If the detained foreign national is a national of a country not on the mandatory notification list, the requirement is that the foreign national shall be informed without delay of the **option** to have his/her government's consular representatives notified of the detention. If the detainee requests notification, the booking supervisor must ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay. [1.1.4] A **Consular Notification Fax Sheet for Notification of Arrest or Detention of a National of Your County** is located in the department forms file or on the website <http://www.travel.state.gov/CNA>. The **Consular Notification Fax Sheet** for

***Notification of Arrest or Detention of a National of Your County*** shall be used to satisfy this notification requirement. It is important to take the time to fill out the appropriate information on this form. The ***Consular Notification Fax Sheet for Notification of Arrest or Detention of a National of Your County*** should be scanned into the external reference file and be attached to the incident report. [1.1.4]

### **3) Mandatory Notification [1.1.4]**

In some cases, “mandatory notification” must be made to the nearest consulate or embassy “without delay,” regardless of whether the foreign national requests such notification. [1.1.4]

Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement. For example, the foreign national should be informed that notification has been made and advised that he/she may also specifically request consular assistance from his or her consular officials.

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information about why a foreign national is in detention. Moreover, under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government. The Department of State can provide more specific guidance in particular cases if necessary.

### **4) Recording Keeping**

The Braintree Police Department shall maintain written records sufficient to show compliance with the above notification requirements. These records should show all notifications to foreign consular representatives. In addition, in cases in which notification is at the discretion of the detained foreign national, these records should show that the foreign national was informed of the option of consular notification, the date when the foreign national was so informed, and whether or not the foreign national requested that consular officials be notified. In order to tally these records a Consular Notification Code will also be added to the incident. Specific information will then be furnished in the incident report and the external reference file of the incident.

The Department of State from time to time receives inquiries and complaints from foreign governments concerning foreign nationals in detention. The Department in such cases may request information from the relevant law enforcement officials on whether consular notification was in fact given. Concerns about consular notification may also be raised by foreign consular officials directly with the responsible federal, state, and

local officials. Good recordkeeping will facilitate responding to these inquiries and to any consular notification issues that may be raised in litigation.

## **5) Consular Access to Detained Foreign National's [1.1.4]**

Detained foreign nationals are entitled to communicate with their consular officers. Any communication by a foreign national to his/her consular representative must be forwarded by the booking supervisor, or designee, to the consular post without delay.

Foreign consular officers must be given access to their nationals and permitted to communicate with them. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. Consular officers may not act as attorneys for their nationals. **[1.1.4]**

The rights of consular access and communication generally must be exercised subject to local laws and regulations. Department Policy may not, however, be so restrictive as to defeat the purpose of consular access and communication. Such policies "must enable full effect to be given to the purposes" for which the right of consular assistance has been established.

Consular officials must have proper identification. If there are questions about the validity of an identification, contact the State Department's Office of Protocol at 202 6471985. Calls after hours should be referred to the Bureau of Diplomatic Security at 571 345 3146 or 866 217 208. Assistance is also available at the State Department website: <http://www.travel.state.gov>. **[1.1.4]**

## **6) Death or Life Threatening Injury of Foreign Nationals**

If a foreign national dies or suffers a life threatening injury (accident, crime victim, criminal action, unattended death, etc.), the consul of that national's country must be notified. The foreign government may then notify the deceased's next of kin, cancel the party's passport, etc. In the event of a serious illness, the consulate may offer assistance or referrals, and may provide notification to family members.

If an officer becomes aware of the death, serious injury or illness of a foreign national, a copy of the **Consular Notification Fax Sheet for Notification of Death, Serious Injury or Illness of a National of Your Country** shall be faxed to the appropriate consular offices. Copies of this form can be found on the department forms file or at <http://travel.state.gov/CNA>. The **Consular Notification Fax Sheet for Notification of Death, Serious Injury or Illness of a National of Your Country** should be attached to the external reference file of the incident along with the code Consular Notification.

## 7) Summary of Process

### Four (4) Steps to Follow When a Foreign National is Arrested or Detained

- a) Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
- b) If the foreign national's country is not on the mandatory notification list:
  - i) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. Use the following statement to facilitate this purpose:
    - (1) "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?"
    - ii) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay using the **Consular Notification Fax Sheet for Notification of Arrest or Detention of a National of Your County**. For phone and fax numbers for foreign embassies see the tab *Contact Info for Foreign Embassies and Consulates* on the website <http://www.travel.state.gov/CNA> or refer to the Consular Notification Binder in the booking room.
- c) If the foreign national's country is on the list of mandatory notification countries:
  - i) Notify that country's nearest consular officials, without delay, of the arrest/detention.
  - ii) Tell the foreign national that you are making this notification. Please use the following Statement to facilitate this purpose:
    - (1) "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."
    - (2) Notify the nearest consular officials of the foreign national's country without delay using the **Consular Notification Fax Sheet for Notification of Arrest or Detention of a National of Your Country**. For phone and fax numbers for foreign embassies see the tab *Contact Info for Foreign*

*Embassies and Consulates* on the website <http://www.travel.state.gov/CNA> or refer to the Consular Notification Binder in the booking room.

- iii) **Note:** For translations check the reference material from the United States Department of State titled Consular Notification and Access (2003).
- d) Keep a written record of the provision of notification and actions taken. Keep a record of the ***Consular Notification Fax Sheet for Notification of Arrest or Detention of a National of Your County*** and make appropriate notations to the narrative of the Arrest / Incident Report of all notifications made and actions taken. All written documentation shall be stored with the appropriate report, either an Arrest or Incident Report and attached in the external reference file.

## 8) U.S. Department of State Resources and Contacts

Information on Consular Notification and Access along with the U.S. Department of State publication “Consular Notification and Access –Manual” may be found on the U.S. Department of State’s web site at: <http://travel.state.gov/CNA>.

A helpful Consular Notification and Access process flow chart is also available at this web site for printing (a copy is provided at the back of this policy).

Assistance is available at the U.S. Department of State by calling (202) 485-7703; fax number (202) 485-6170; email [consnot@state.gov](mailto:consnot@state.gov)

Urgent telephone calls outside of normal business hours can be made to the Department of State Operations Center by calling (202) 647-1512.

Any questions regarding an individual’s status or immunity as well as questions pertaining to the treatment of a Consular under arrest, can be directed to the Department of State Office of Protocol by calling (202) 647-1985.

Calls after hours should be directed to the Protective Liaison Division of Department of State’s Bureau of Diplomatic Security by calling (866) 217-2089; fax number (202) 895-3613.



# ARRESTING A NON-U.S. CITIZEN

## Consular Notification Process



### Q. Are you a U.S. citizen?

A. "YES, I am a U.S. citizen."

*(No further action required.)*



"NO, I am not a U.S. citizen."



### Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Russia	Tunisia
Algeria	Cyprus	Kiribati	St. Kitts and Nevis	Turkmenistan
Antigua and Barbuda	Czech Republic	Kuwait	St. Lucia	Tuvalu
Armenia	Dominica	Kyrgyzstan	St. Vincent and the Grenadines	Ukraine
Azerbaijan	Fiji	Malaysia	Seychelles	United Kingdom <sup>3</sup>
Bahamas	Gambia	Malta	Sierra Leone	Uzbekistan
Barbados	Georgia	Mauritius	Singapore	Zambia
Belarus	Ghana	Moldova	Slovakia	Zimbabwe
Belize	Grenada	Nigeria	Tajikistan	
Brunei	Guyana	Philippines	Tanzania	
Bulgaria	Hungary	Poland <sup>2</sup>	Tonga	
China <sup>1</sup>	Jamaica	Romania	Trinidad and Tobago	

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).

2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. "YES."

**Step 1.** Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

**Step 2.** Notify nearest consulate **without delay**.

**Step 3.** Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

**Step 4.** Allow consular officers access to detainee if they subsequently request access.

*(No further action required.)*



"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.



### Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

**Step 1.** Make note in case file.

**Step 2.** Notify nearest consulate **without delay**.

**Step 3.** Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

**Step 4.** Allow consular officers access to detainee if they subsequently request access.

*(No further action required.)*



"NO."

**Step 1.** Make note in case file.

**Step 2.** Do **NOT** inform the consulate.

*(No further action required.)*



### IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).

Consular officers may have access to detainee

- regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Consular Notification & Access (CNA)

U.S. Department of State

CA/P

SA-17, 12th Floor

Washington, DC 20522-1712

P: 202-485-7703

consnot@state.gov

For more information visit: [travel.state.gov/CNA](http://travel.state.gov/CNA)

**FAX SHEET – CONSULAR NOTIFICATION**

**SUBJECT:**

**NOTIFICATION OF ARREST OR DETENTION OF A NATIONAL OF YOUR COUNTRY**

**DATE/TIME:** \_\_\_\_\_

**TO:** Embassy/Consulate of \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_  
(COUNTRY) (CITY) (STATE)

**FROM:**

Name/Office \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone ( \_\_\_\_\_ ) \_\_\_\_\_ Fax ( \_\_\_\_\_ ) \_\_\_\_\_

***We arrested/detained the following foreign national, who we understand is a national of your country, on \_\_\_\_\_.***  
(DATE)

Name: \_\_\_\_\_

Date of Birth/Place of Birth: \_\_\_\_\_

Nationality/Country: \_\_\_\_\_

Passport Issuing Nation: \_\_\_\_\_

Passport Number: \_\_\_\_\_

***This person has been or may be charged with the following offense(s):***

\_\_\_\_\_

For more information, please call \_\_\_\_\_ between the hours of \_\_\_\_\_.

Please refer to case number \_\_\_\_\_ when you call.

ADDITIONAL INFORMATION:

**FAX SHEET – CONSULAR NOTIFICATION**

**SUBJECT:**

**NOTIFICATION OF DEATH, SERIOUS INJURY OR ILLNESS OF A NATIONAL OF YOUR COUNTRY**

**DATE/TIME:** \_\_\_\_\_

**TO:** Embassy/Consulate of \_\_\_\_\_ in \_\_\_\_\_, \_\_\_\_\_  
(COUNTRY) (CITY) (STATE)

**FROM:**

Name/Office \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Telephone (\_\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_\_) \_\_\_\_\_

**The following individual, who we understand is a national of your country:**

*has died, was seriously injured, **OR** is seriously ill within our jurisdiction.*

*(CIRCLE ONE)*

Name: \_\_\_\_\_

Date of Birth/Place of Birth: \_\_\_\_\_

Nationality/Country: \_\_\_\_\_

Passport Issuing Nation: \_\_\_\_\_

Passport Number: \_\_\_\_\_

Date of Death: \_\_\_\_\_ Place of Death: \_\_\_\_\_

Apparent Cause of Death: \_\_\_\_\_

For more information, **please call** \_\_\_\_\_ between the hours of \_\_\_\_\_.

Please refer to **case number** \_\_\_\_\_ when you call.

**ADDITIONAL INFORMATION:**