

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: November 10, 2015

NUMBER: 1.33 – ADMINISTRATION

SUBJECT: DIPLOMATIC IMMUNITY AND CONSULATE NOTIFICATION

RELATED POLICY: N/A

ORIGINATING DIVISION: OPERATIONAL SUPPORT

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: DP 1.33 – 4/12/13

I. PURPOSE

This Department procedure establishes guidelines for the appropriate response and dispositions of persons of diplomatic or consulate status.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The information contained in this procedure is derived from Department of State publications.

International law and California Penal Code section 834c require that the domestic law enforcement authorities of the United States extend certain extraordinary privileges and immunities to members of foreign diplomatic missions and consular posts. Regardless of a foreign national's diplomatic status, law enforcement officials may have a duty to notify foreign governments when one of their citizens has been arrested or detained. Whether this notification is mandatory or not will depend on the country. Failure to make a mandatory notification may jeopardize criminal proceedings.

It is the intent of this procedure to ensure compliance with international and State law, while preventing abuses of diplomatic immunity. Diplomatic immunity is not intended to

serve as a license for such persons to flout the law and purposely avoid liability for their actions. Immunity is simply a legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty to respect the laws and regulations of the U.S. "Official acts" immunity is not an absolute bar to the exercise of jurisdiction by U.S. courts. Rather, it is an affirmative defense to be raised before the U.S. court with subject matter jurisdiction over the alleged crime. Personal inviolability (sanctity) is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, or detention in any form and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. Personal inviolability is qualified by the understanding, well established in international practice that the host country does not give up its right to protect the safety and welfare of the public and retains the right, in extraordinary circumstances, to prevent the commission of a crime.

While police officers are obliged under international, State, customary and treaty law to recognize the immunity of the envoy, they must not ignore or condone the commission of crimes. The U.S. Department of State requests waivers of immunity from the sending government in every case where the prosecutor advises that, but for the immunity, the charges would be pursued. Additionally, in serious cases, if the request for a waiver of immunity is refused, the offender will be expelled from the United States.

IV. CATEGORIES OF PERSONS ENTITLED TO PRIVILEGES AND IMMUNITIES

A. Diplomatic Agents

This term is assigned to ambassadors and the other diplomatic officers who generally have the function of dealing directly with the host country officials.

This category enjoys the highest degree of immunity. They enjoy complete personal sanctity, which means that they may not be handcuffed (except in extraordinary circumstances), arrested or detained; they are owed a special measure of respect and protection; and neither their property (including vehicles) nor residences may be entered or searched. Diplomatic agents also enjoy complete immunity from the criminal jurisdiction of the host state and thus cannot be prosecuted, no matter how serious the offense, unless the sending government waives immunity. They also enjoy complete immunity from the obligation to provide evidence as witnesses and cannot be required to testify, even if they have been the victim of a crime. They are immune from civil suit, except under limited conditions. Family members in the household enjoy the same privileges and immunities as the sponsoring diplomatic agents. Family members are defined as spouses and children until they reach the age of 21, or if they are full-time students at an institution of higher learning until the age of 23.

B. Administrative and Technical Staff

This category includes those persons who perform tasks critical to the inner workings of the embassy. This includes secretaries, certain clerical personnel, office managers and certain professional security personnel.

This category enjoys privileges and immunities identical to those of diplomatic agents with respect to personal sanctity, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as witnesses. Their immunity from civil jurisdiction, however, is limited only in connection with the performance of their official duties, commonly known as “official acts” or functional immunity. Recognized family members enjoy the same privileges and immunities from the host country's criminal justice jurisdiction; however, there is no immunity from civil jurisdiction since these family members have no official duties to perform.

C. Diplomatic Service Staff

This category includes persons who perform less critical support tasks, such as driving, cleaning, and ground maintenance.

Service staff members have only “official acts” immunity in connection with all aspects of host state jurisdiction, and they enjoy no personal sanctity, no sanctity 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. Nationals or Permanent Residents of the United States

The United States 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 U.S. Family members of diplomatic agents enjoy no privileges or immunities if they are nationals of the United States. Administration 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.

E. Special Bilateral Agreements

The United States has negotiated bilateral agreements with certain countries that grant to all members of the staff of their respective embassies (provided that they are nationals of the sending country) the privileges and immunities to which only diplomatic agents are normally entitled. Identification cards will reflect this status, but police officers should be aware of this distinction because they may have to confront situations where a chauffeur or mechanic from the embassy of one of these countries asserts a right to full diplomatic privileges and immunities. The Republic of Bulgaria, the Republic of Hungary, the Philippines, the Republic

of Poland, the People's Republic of China and the twelve former Soviet Republic countries: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan have such agreements.

F. Consular Officers

There is a common misunderstanding that consular personnel have the same status as diplomats. Consular personnel perform a variety of functions of principal interest to their respective sending countries, but they generally do not have the principal role of providing communication between the two countries (which is the function performed by diplomatic agents at embassies in capitals). Consular officers are members of a consular post who are recognized by both the sending and host country as fully authorized to perform the broad array of formal consular functions. They have only "official acts" or functional immunity with respect to both criminal and civil matters and their personal inviolability is very limited. There is no civil immunity under any circumstances for actions arising from personal contracts or accidents caused by vehicles, vessels, or aircraft which they are operating. Consular officers may be arrested or detained pending trial only if the underlying offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court). Consular officers may be prosecuted for misdemeanors, but remain at liberty pending trial or other disposition of charges. Without a special bilateral agreement to the contrary, the family members of consular officers enjoy no personal sanctity or jurisdictional immunity of any kind.

G. Consular Employees

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

H. Consular Service Staff

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

I. Nationals or Permanent Residents of the United States

Consular employees and consular service staff who are U.S. nationals, legal permanent residents, or who are permanently resident in the U.S. enjoy no personal inviolability or jurisdictional immunity in the U.S.

J. Honorary Consuls

These are U.S. citizens or permanent resident aliens who perform consular services on a part-time basis. Honorary consular officers have “official acts” immunity only, and immunity from the obligation to provide evidence as witnesses with respect to official acts. Honorary consuls have no personal inviolability and may be arrested pending trial if circumstances should otherwise warrant. Family members enjoy no immunity or personal sanctity.

K. Personnel of International Organizations

The vast majority of employees of international organizations, which have headquarters or other offices in the United States, enjoy only “official acts” immunity and no personal sanctity. In certain cases, the most senior executives of such organizations have been given privileges and immunities equal to those afforded diplomatic agents. This is the case for the Secretary General and all Assistant Secretaries-General of the United Nations, the Principal Resident Representatives of the International Monetary Fund and the World Bank, and some senior officials of the Organization of the American States secretariat. Short-term visitors to these international organizations may be afforded privileges and immunities equal to diplomatic agents.

L. Personnel of National Missions to International Organizations

The United Nations and the Organization of American States are headquartered in the United States and most of their member states maintain permanent missions in the United States. Permanent representatives staffing these missions are accredited to the international organization concerned (not to the US), but their privileges and immunities are defined by reference to the status of diplomatic personnel who are accredited to the US.

V. **FORMAL IDENTITY DOCUMENTS ISSUED BY THE DEPARTMENT OF STATE**

A. Identification Cards

The only authoritative identity document is the identity card issued by the U.S. Department of State’s Office of Protocol or by the U.S. Mission to the United Nations, in the case of persons accredited to the United Nations. There are three types of identification cards:

1. Diplomatic - blue border for diplomats;
2. Official - green border for embassy employees; and,
3. Consular - red border for consular personnel

Each card is 3 7/16 inches by 2 3/16 inches. The card contains a photograph of the bearer, the bearer's name, title, mission, city and state, date of birth, identification number, expiration date, and a United States Department of State seal on the front of the card. A brief statement of the bearer's criminal immunity will be printed on the reverse side. There is also space for the bearer's signature. Because the individual's immunity status may change, it is necessary to contact the Department of State in every case where the individual asserts diplomatic or consulate immunity.

- B. The U.S. Department of State, through its Office of Foreign Missions' Diplomatic Motor Vehicle Office, has jurisdiction over the issuance of operator permits for individuals who enjoy privileges and immunities in the U.S. A federal driver's license does not definitely reflect the degree of privileges and immunities of the bearer. It should be relied upon only as an indication that the bearer may enjoy some degree of immunity. The U.S. Department of State's driver license status records are available to law enforcement agencies through the National Law Enforcement Telecommunications System (NLETS). Agencies may access these records using the standard NLETS registration and driver query formats. NLETS has assigned state code (destination ORI) "US" to this database.

VI. INQUIRIES RELATING TO DIPLOMATIC IMMUNITY

- A. The Watch Commander's Office shall process field inquiries regarding diplomatic immunity. The Watch Commander's Office shall maintain a current manual from the United States Department of State outlining the rights, immunities, and responsibilities of those asserting diplomatic immunity. The office shall also maintain a current list of U.S. Department of State telephone numbers to determine the current status of those asserting immunity and shall be responsible for consulate notification when a foreign national is arrested or detained. Records shall be maintained indicating the foreign national was advised of the right to consulate notification. The records will indicate whether the notification was made, and receipt of confirmation of notification will be maintained, if available.

- 1. The Watch Commander's Office will contact the Office of Policy Coordination & Public Affairs at (202) 647-4415 upon being notified of a detention or arrest of a foreign national.

Urgent after-hours inquiries may be directed to (202) 647-1512.

- 2. As soon as the foreign national's country of origin has been determined, the Watch Commander's Office will decide whether a "Mandatory Notification" statement will be read to the foreign national or a suggested notification statement will be read. All forms are contained in the United States Department of State Consular Notification and Access Handbook located in the Watch Commander's Office.

3. Current telephone numbers regarding the various units attached to diplomatic immunity are listed in the United States Department of State Consular Notification and Access Handbook.
- B. The Criminal Intelligence Unit (CIU) is the liaison to the United States Department of State for non-emergency issues of diplomatic immunity and criminal investigations. CIU also has responsibility for incidents involving the United States and Mexico, including the Mexican Consulate in San Diego.

Officers must contact the Criminal Intelligence Unit whenever an incident or investigation leads them to involve the Mexican government or Mexican officials. Any investigation into Mexico must be coordinated and approved through the Criminal Intelligence Unit Lieutenant. After-hours call-outs of CIU personnel shall be coordinated through the Watch Commander's Office.

- C. The Teletype Unit can conduct inquiries on the status of State Department plates through the National Law Enforcement Telecommunications System (NLETS). During the course of traffic enforcement, officers should ensure that diplomatic license plates are current and on the appropriate vehicle.

VII. PROCEDURES FOR ENFORCEMENT CONTACT WITH INDIVIDUALS ASSERTING DIPLOMATIC IMMUNITY

- A. Claims of Immunity

Whatever the offense or circumstances of contact, police officers shall accord the individual the maximum degree of respect possible in the circumstances. When investigating a violation of criminal law and a person claims immunity, the officer should request official Department of State identification to verify the person's status and immunity. If the person cannot provide satisfactory identification and the situation warrants arrest or detention, the officer shall inform the individual that he or she will be detained until proper identity can be confirmed.

When proper identification is available, the individual's immunity should be fully respected to the extent to which the individual is entitled. If it is established that the individual is entitled to the full personal sanctity and immunity of a diplomatic agent, he or she may not be arrested and should not, except in extraordinary circumstances, be handcuffed or detained. Once all pertinent information is obtained, that person must be released.

Personal sanctity is enjoyed to some degree by a majority of foreign diplomatic or consular personnel. In its most extreme form, this sanctity precludes arrest or detention in any form and forbids United States authorities from intruding into their residences, automobiles, or other property. All such personal sanctity is, however, qualified by the understanding, well established in international law that the host country does not give up its right to protect the safety and welfare of its

populace and retains the right, in extraordinary circumstances, to prevent the commission of a crime. Thus, in circumstances where public safety is in imminent danger, or it is apparent that a serious crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.

B. Arrest or Detention of Foreign Nationals

When a foreign national is arrested and booked or detained for more than two hours, he or she must be advised of the right to have their consulate notified. Short detentions, such as that for a traffic ticket or accident investigation, do not require consulate notification. Some countries require notification, regardless of the wishes of the foreign national. If the foreign national is from a country that has a mandatory notification requirement (see attachment), contact the Watch Commander's Office so that the notification can be made. If the foreign national is not from a country on this list, offer, without delay, to notify the consulate officials. If the foreign national desires notification, immediately contact the Watch Commander's Office. Detained foreign nationals and their consulate officials are entitled to communicate with each other and consulate officials cannot be denied access to the foreign national.

C. Traffic Enforcement

1. All vehicles owned by a foreign mission (embassy or consulate), any foreign mission diplomatic officer, employees, and their families must display license plates issued by the U.S. Department of State, Office of Foreign Missions' Diplomatic Motor Vehicle Office. The owner of the vehicle and a current insurance policy must be on file (no proof of insurance is required to be in the vehicle) prior to registering the vehicle with the Department of State. License plates assigned to diplomatic officers will have a "D" prefix; Consulate vehicles will have a "C" prefix; and administrative and technical staff at diplomatic missions and consular employees at consular missions will have an "S" prefix in the plate number. However, plates alone should not be considered verification of the status of the vehicle's operator. Whatever kind of license plate is on a vehicle, officers need to verify with the State Department's Office of Protocol a driver's claim of diplomatic or consular status. Officers can call the Department of State Consular Verification at (866) 217-2089 or (571) 345-3146 and ask for a security agent. U.S. Department of State's vehicle registration is available to law enforcement through NLETS. A vehicle registration card issued at time of initial registration and renewal contains the following information: name and address of registered owner; license plate number; VIN; vehicle make, model, color; date of initial registration, and expiration date of current registration. Decals with the month and year reflecting expiration date of the current registration period are issued with the card and must be displayed on the vehicle's rear

license plate. Federal license plates issued by the State Department are not the property of the diplomat or mission and remain the property of the State Department at all times. These license plates may not be transferred from the vehicle to which they were assigned without the authorization of the State Department's Office of Foreign Missions. A blue registration card is required to be kept in the vehicle. The registration card will show to whom the license plates belong and on what vehicle they are supposed to be. Department of State license plates may be loaned to others and attached to vehicles driven by persons not associated with a foreign mission on a temporary basis (e.g., a friend of a consulate officer asks to borrow the car for the weekend). However, under such circumstances, the person driving is not entitled to any immunity that the owner of the vehicle may have had.

2. Parking citations and moving traffic citations should be issued without regard to the status of individuals or vehicles. Stopping a diplomatic or consular officer and issuing a traffic citation does not constitute arrest or detention and is permissible, although signature on the citation by such individual may not be required. Accordingly, a police officer should follow normal procedures to intervene in a traffic violation that he or she has observed, even if immunity ultimately bars any further action at the scene. The officer should always stop persons committing moving violations, issue a citation, if appropriate, and report the incident in accordance with usual procedures.

The State Department maintains driver histories on all its licensees and uses a "point system" for drivers with moving violations. Therefore, reports of all driving infractions (DUI, reckless driving, etc.) should be forwarded to the Department of State because they may result in the revocation of the individual's driver's license.

3. Sobriety tests may be offered in accordance with local procedures, but may not be required or compelled. If the officer judges the individual to be intoxicated, the officer should not (even in the case of diplomatic agents) permit the individual to continue to drive. The officer may:
 - (1) With the individual's permission, take the individual to the police station or other location where he or she may recover sufficiently to drive;
 - (2) Summon, or allow the individual to summon, a friend or relative to drive; or,
 - (3) Call a taxi for the individual.
4. The police officer shall document the facts of the incident and the identity of the individual and a written report of the incident should be promptly

forwarded to the Department of State. In serious cases, a telephone report is also urged. It is Department of State policy to suspend the operator's license of foreign mission personnel not considered to be responsible drivers, and this policy may only be effectively enforced if all driving-related infractions (DUI, reckless driving, etc.) are fully reported to the Department of State.

VIII. CONCLUSION

It is important that the law enforcement authorities of the United States always treat foreign diplomatic and consular personnel with respect and with due regard for the privileges and immunities to which they are entitled under international law. Appropriate caution on the part of law enforcement authorities should not translate into a total "hands off" attitude in connection with criminal law enforcement actions involving diplomats.

Foreign diplomats who violate traffic laws should be cited. Allegations of serious crimes should be fully investigated, promptly reported to the Department of State, and procedurally developed to the maximum permissible extent. Local law enforcement authorities should never be inhibited in their efforts to protect the public welfare in extreme situations. The U.S. Department of State should be advised promptly of any serious difficulties arising in connection with diplomatic or consular personnel.

The attached chart of diplomatic and consular privileges and immunities is provided by the U.S. Department of State and is intended as a reference to law enforcement officers.

Category		May Be Arrested or Detained	Residence May Be Entered Subject to Ordinary Procedures	May Be Issued Traffic Citation	May Be Subpoenaed as Witness	May Be Prosecuted	Recognized Family Member
Diplomatic	Diplomatic Agent and Family ¹	No ²	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Member of Administrative and Technical Staff	No ²	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Service Staff ³	Yes ²	Yes	Yes	Yes	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ²
	Career Consular Officers ³	Yes, if for a felony and pursuant to a warrant.	Yes ⁴	Yes	No—for official acts. Testimony may not be compelled in any case	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ²

Consular	Honorary Consular Officers	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ¹
	Consular Employees ³	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ¹
International Organizations	International Organization Staff ⁵	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ¹
	Diplomatic-Level Staff of Missions to International Organizations	No ²	No	Yes	No	No	Same as sponsor (full immunity and inviolability).
	Support Staff of Missions to International Organizations	Yes	Yes	Yes	No—for official acts. Yes, in all other cases.	No—for official acts. Otherwise, yes. ³	No immunity or inviolability ¹

This table presents general rules.

¹ Family members are defined as spouses and children in the same household until they reach the age of 21, or if they are full time students at an institution of higher learning until the age of 23.

² Reasonable constraint, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.

³ Particularly in the cases indicated, the employees of certain foreign countries may enjoy **higher** levels of privileges and immunities on the basis of special bilateral agreements.

⁴ Note that consular residences are sometimes located within the official consular premises. In such cases, **only** the official officer space is protected from police entry.

⁵ A small number of senior officers are entitled to be treated identically to “diplomatic agents.”