



ORDER NUMBER 20-28
20-29

TYPE DEPARTMENT GENERAL ORDER	AUTHORITY GERALDINE HART POLICE COMMISSIONER	SIGNATURE	
SUBJECT/TOPIC/TITLE ARREST OF NON-U.S. CITIZENS AND PERSONS WITH DUAL CITIZENSHIP			
DISTRIBUTION ALL MEMBERS OF THE DEPARTMENT	SECTION CREATED 06/01/92	DATE EFFECTIVE 10/05/20 10/28/20	DATE AMENDED 10/05/20 10/28/20

RULES AND PROCEDURES

CHAPTER 16: TITLE: ARREST AND PRISONERS

SECTION 4: TITLE: ARREST OF NON-U.S. CITIZENS AND PERSONS WITH DUAL CITIZENSHIP

I. PURPOSE

To provide procedures for processing arrests of non-U.S. citizens and for making notifications to federal and consular agencies.

II. POLICY

A. In order to provide and maintain a safe environment for every person in Suffolk County, the Police Department must engage the willing cooperation of the communities it polices. This cooperation would be compromised if individuals believe that they cannot come forward to report a crime or seek police assistance because of their immigration status. The Police Department will only inquire into an individual's immigration status under the circumstances described in this Section.

III. DEFINITIONS

A. Non-U.S. Citizen - A person who is not a United States citizen.

B. Detainers - Formal requests from Immigration and Customs Enforcement to detain individuals based upon immigration status.

C. Dual Citizenship - A person who is a citizen of both the United States and another country. Such person may be treated exclusively as a U.S. citizen when in the United States, and consular notification is not required even if the other country of

citizenship is a mandatory notification country. A person who is not a United States citizen, but is a national/citizen of more than one other country, will be treated in accordance with the notification requirements applicable to each country.

D. LESC - Law Enforcement Support Center - Williston, Vermont.

E. ICE - Immigration and Customs Enforcement.

F. ICE Administrative Warrants - ICE Administrative Warrants are issued by ICE Agents and are based on probable cause that the named individual is in violation of the civil provisions of federal immigration law.

G. ICE Judicial ("Criminal") Warrants - An ICE Judicial Warrant is issued by a Judge or Magistrate Judge after a criminal action has been filed in federal court.

IV. REFERENCES

United States Department of State publication entitled "Consular Notification and Access."

V. RULES AND REGULATIONS

A. Officers shall not inquire about, or investigate, the immigration status of any victim, witness, potential witness, or person requesting or receiving police assistance, except when:

1. That person has been arrested for and charged with a crime; or
2. As may be otherwise legally required during a criminal proceeding.

B. Members of the Service shall not arrest or detain individuals based solely on ICE Administrative Warrants. Members shall refer to additional procedures contained within Rules and Procedures Chapter 9, Section 29, Police Response to Immigration-Related Warrants.

C. VTL Section 201 has been amended to create new Class E Felonies for violating a DMV certification agreeing not to use DMV records or information for civil immigration purposes or to disclose such DMV records or information to any agency (including agency employees or agents) that primarily enforces

immigration law, specified to include, but not be limited to, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection and any successor agency having similar duties.

1. The full text of these changes can be found on the SCPD Portal, Information tab, under "NYS DMV Police Memos", entitled ***P8-M6-Chapter 58 of the Laws of 2020***.

2. Under VTL Section 201, certain limited DMV information may be disclosed pursuant to a cooperative agreement between City, State and Federal agencies which arrangement does not enforce immigration law.

a. The Department is now required to retain, for a period of five years, all uses and identify any entity that primarily enforces immigration law that received DMV records or information from the Department pursuant to any cooperative agreement which does not enforce immigration law as above. It is now also a Class E Felony for the failure of certifying persons or entities to maintain these DMV data disclosure records.

3. Department Memorandum 20-172 provides further direction on this matter.

VI. PROCEDURES

A. Determining Arrestee's Status

1. When processing an arrest for any offense, the arresting officer shall:

a. Determine if the arrestee has Limited English Proficiency (LEP) and

(1) If so, request an interpreter through the Communications Section, and

(2) If an interpreter is not available, utilize the Language Line service in accordance Rules and Procedures Chapter 26, Section 5.

2. When processing an arrest for a felony or misdemeanor, the arresting officer shall:

- a. Query the arrestee regarding the arrestee's:
 - (1) citizenship, and
 - (2) birthplace
3. If an arrestee indicates that:
 - a. He or she was born outside of the United States, or
 - b. He or she is not a United States citizen, or
 - c. If his or her answer does not provide the arresting officer sufficiently detailed or reliable information for the officer to determine the arrestee's place of birth, the officer shall:
 - (1) Complete an Immigration/Customs Enforcement Inquiry Request, (form PDCS-6100-44, available online), and fax the form to the Receiving, Dispatching and Teletype Unit (Teletype). This will generate a search through the Immigration and Customs Law Enforcement Support Center (LESC). Including the arrestee's place of birth on this form will optimize search results. If unable to determine the place of birth, enter, "unknown" in this field.
4. ICE will send the search results back to the Teletype Unit which will in turn forward the results to the requesting Officer, the Criminal Intelligence Section, the Chief of the Suffolk County District Attorney's Office Intake Bureau, and to Probation ROR for arraignment.
5. Officers receiving any type of "hit" response **must** contact Teletype to verify the "hit" **prior** to taking any further action. Teletype will then follow the procedures as outlined within Rules and Procedures Chapter 9, Section 29.
6. Officers shall indicate in the Personal Information section of the Arrest Worksheet, (PDCS-1086), the "residency status, citizenship, immigration

status and INS number", to the extent available.

7. Officers shall include a copy of the ICE inquiry response, if available, with the arrest paperwork and forward to the court of arraignment. In any case the ICE inquiry should be indicated in the online arrest processing system or arrest paperwork.

8. Arrestees shall not be detained pursuant solely to an ICE Administrative Warrant. Additionally, if an arrestee is eligible to be released on an appearance ticket, an ICE inquiry response requesting a hold on the arrestee shall not be a factor in determining whether the arrestee is released on an appearance ticket.

B. Consular Notification - When processing an arrestee who is not a U.S. citizen, arresting officers shall:

1. Determine the arrestee's country of origin and if the arrestee has Limited English Proficiency (LEP). If LEP, utilize procedures set forth in Rules and Procedures Chapter 26, Section 5.

2. Contact the Communications Section to determine if the arrestee's country of origin is on the mandatory notification list. The Communications Section supervisor shall make note of any consular notification in the Communications Section Confidential Log. (See also Attachment A to this Order.)

3. If the foreign national's country **IS** on the mandatory notification list, the arresting officer will notify the desk supervisor, who in turn shall:

a. Notify that country's nearest consular officials, without delay, of the arrest.

b. Advise the arresting officer of the date, time and name/title of the consular official receiving such notification and any instructions given.

c. The arresting officer shall advise the arrestee that, "Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been

arrested or detained. We will do this as soon as possible. In addition, you are entitled to communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things."

4. If the foreign national's country **IS NOT** on the mandatory notification countries list, the arresting officer shall:

a. Offer, without delay, to notify the arrestee's consular officials of the arrest, by telling the arrestee, "As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular officers here in the United States of your situation. You are also entitled to communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?"

b. If the foreign national asks that consular notification be given, the arresting officer shall contact the desk supervisor, who then shall:

(1) Notify the foreign national's nearest consular officials, without delay, of the arrest.

(2) Advise the arresting officer of the date, time and name/title of the consular official receiving such notification and any instructions given.

(3) Advise the Communications Section Supervisor so that the matter may be annotated in the Communications Section Confidential Log.

5. All actions taken concerning consular notifications must be documented on the arrestee's Prisoner Activity

Log (PDCS-2032).

6. Pursuant to U.S. State Department guidelines a consular officer may visit a foreign national from their country that is in police custody. In the event a personal visit is made, the appropriate entry must be recorded on the arrestee's Prisoner Activity Log (PDCS-2032).

C. Contact Numbers -

1. Law Enforcement Support Center (LESC): 802-872-6020 (24 hrs. /7days)

2. ICE Communications Desk: (646) 230-3200

3. Probation ROR: 631-853-5115; Probation Supervisor 631-853-5007, Fax - 631-853-4032

4. Suffolk County District Attorney's Office Intake Bureau: 631-853-6589

D. Responsibilities of the Criminal Intelligence Section (CIS) - CIS shall maintain a database of all ICE responses received from Teletype.

VII. ACCREDITATION

A. NYSLEAP 47.1

VIII. INDEX

Undocumented Persons, Arrest of - 16/4

Dual Citizenship, Arrest of Persons With - 16/4

Foreign National, Arrest of - 16/4

ICE Inquiry - 16/4

Immigration/Customs Enforcement Inquiry Request - 16/4

LESC - 16/4

Non-U.S. Citizen, Arrest of - 16/4

ATTACHMENT A TO CHAPTER 16, SECTION 4

MANDATORY CONSULAR NOTIFICATION COUNTRIES AND JURISDICTIONS

(Revised 01/19)

Albania	Ghana	Saint Lucia
Algeria	Grenada	Saint Vincent and the Grenadines
Antigua and Barbuda	Guyana	Seychelles
Armenia	Hungary	Sierra Leone
Azerbaijan	Jamaica	Singapore
Bahamas	Kazakhstan	Slovakia
Barbados	Kiribati	Tajikistan
Belarus	Kuwait	Tanzania
Belize	Kyrgyzstan	Tonga
Brunei	Malaysia	Trinidad and Tobago
Bulgaria	Malta	Tunisia
China (including Macao and Hong Kong)	Mauritius	Turkmenistan
Costa Rica	Moldova	Tuvalu
Cyprus	Mongolia	Ukraine
Czech Republic	Nigeria	United Kingdom
Dominica	Philippines	Uzbekistan
Fiji	Poland	Zambia
Gambia	Romania	Zimbabwe
Georgia	Russia	
	Saint Kitts and Nevis	

For more detailed instructions and legal material, see the Department of State publication *Consular Notification and Access*. The complete publication is available at: www.travel.state.gov/consularnotification

Questions may also be addressed to:

Office of Policy Coordination and Public Affairs (CA/P)
Bureau of Consular Affairs
U.S. Department of State
2100 C St. NW, Room 4800
Washington, D.C. 20520
Telephone: (202) 647-4415
Fax: (202) 736-7559

Urgent after-hours inquiries may be directed to:
(202) 647-1512 (State Department Operations Center)

Department members are advised to contact the Communications Section supervisor to verify whether the foreign national's country is on this Mandatory Consular Countries and Jurisdictions Notification list. Reminder: the above process is contained in Chapter 16, Section 4. VI. B. of the Rules and Procedures.

Department members are reminded if a foreign national's country is not on this Mandatory Consular Countries and Jurisdictions Notification list, they must still offer, without delay, to notify the person's consular officials of the arrest, using the statement contained in VI. B. 4. a. of Chapter 16, Section 4 of the Rules and Procedures.

END