

	Number: BPD - 0714	Pages: 11
	Effective Date: 1/03/2017	Amends/Rescinds: BPD-0714 v.3/4/14 BPD-0308 v.2/11/14
	Review:	
	Approving Authority: Chief	
WASPC Standard(s):	Subject: FOREIGN NATIONALS	

714.1 PURPOSE

The purpose of this policy is to establish guidelines for Bothell Police Department personnel regarding the enforcement of immigration laws.

It is the intent of the Bothell Police Department to foster trust and cooperation with all people served by the Department. It is incumbent upon all employees of the Department to make a personal commitment to equal enforcement of the law and equal service to the public regardless of immigration status.

Confidence in this commitment will increase the effectiveness of this Department in protecting and serving the entire community and recognizing the dignity of all persons.

All people are encouraged to communicate with Bothell Police personnel without fear of inquiry regarding their immigration or documentation status.

The enforcement of the nation's immigration laws is primarily the responsibility of the federal government. Accordingly, the Bothell Police Department shall not inquire into the immigration status of persons encountered during police operations *except as provided for in this policy*. This prohibition does not preclude providing Federal Agency Assistance as described in this policy.

Being an undocumented resident in this country, barring any criminal activity, is a federal civil violation not enforced by the Bothell Police Department. In Bothell, only ICE (Immigration and Customs Enforcement) and other federal agencies can enforce federal laws relating to illegal entry and residence within the United States.

714.2 DEFINITIONS

Foreign National: A person who was born outside the jurisdiction of the United States, is a citizen of a foreign country, and has not become a naturalized United States citizen under United States law. The person may be a tourist, visitor, migrant worker with a temporary work permit, documented or undocumented resident, asylum-seeker, or person-in-transit.

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 2 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

Diplomatic Immunity: 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.

Consular Immunity: Consular immunity protections are similar but not as extensive as diplomatic immunity. Consular officers do not have absolute immunity from a host country's criminal jurisdiction and may be tried for certain local crimes. They are immune from local jurisdiction only in cases directly relating to consular functions.

Citizenship: Normally, citizenship describes the country that a person was born in. However, a person can change citizenship in a process called naturalization.

National: An individual who has pledged allegiance to a certain country.

Nationality: The description used on an individual's citizenship or country where the person is deemed a national.

Passport: A document that is issued by the government of the country of a person's citizenship. Passports have expiration dates, and while traveling in the United States, a passport must remain valid throughout the entire duration of a person's stay.

Permanent Resident: Any person who is not a citizen of the United States and who lives in the United States under lawfully recognized and legally recorded permanent residence as an immigrant. A permanent resident is also referred to as a Permanent Resident Alien, Resident Alien Permit Holder, Documented Resident, and Green Card Holder.

Refugee: A refugee is anybody who is incapable or reluctant to go back to his or her country of nationality due to fear of persecution because of race, religion, nationality, membership in a unique social group, or political views. The country of nationality is considered to be the country in which the foreigner most recently lived for those without nationality. Refugees are entitled to change their status to the legal Permanent Resident category after one year of continuous presence in the United States.

Undocumented Resident: An undocumented resident is someone who resides in the community and entered the U.S. without inspection or legal permission or through the use of false papers. Being undocumented can also refer to a person with expired paperwork.

United States Citizenship and Immigration Services (USCIS): A bureau of the United States Department of Homeland Security (DHS). It performs many administrative functions formerly carried out by the Immigration and Naturalization Service (INS), which was part of the Department of Justice.

ICE (Immigration and Customs Enforcement): ICE is the principal investigative arm of the United States Department of Homeland Security. It was created in 2003 when

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 3 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

enforcement elements of the Immigration & Naturalization Service and the United States Customs Service merged. ICE's primary mission is to promote homeland security and public safety through the criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration.

714.3 QUESTIONING INDIVIDUALS ABOUT IMMIGRATION STATUS

A person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon citizenship or immigration status. Consequently, officers shall not question any person about his or her citizenship except to remain in compliance with Consular Notification requirements (see §714.7).

Officers shall not request passports, visas, "green cards", or travel documents in lieu of, or in addition to, driver's licenses and similar standard forms of identifications.

It is permissible to rely on immigration documents to help establish a person's identity if offered by an individual and not specifically requested by the officer (e.g. Officer conducts a traffic stop, requests to see the driver's identification, and the driver produces a "green card").

714.4 PHYSICAL ARREST AND BOOKING

No person shall be physically arrested and/or booked by a Bothell Police officer for the sole purpose of determining their legal status in the country.

714.5 FEDERAL AGENCIES

The Department may assist federal agencies as resources allow and in consideration of the enforcement priorities of the Department. Designated officers may be assigned to assist federal agencies from time to time to arrest previously deported persons who are currently involved in criminal activity. Except for situations involving exigent circumstances, all federal agency requests for assistance with immigration-related activities shall be forwarded to the division commander for review of any assistance to be provided.

Officers should not contact or make inquiries to any federal immigration agency about individuals without commander pre-approval, except to verify warrant hits, or to identify and/or locate suspects involved in or previously convicted of a felony crime or domestic violence assault.

Nothing in this policy is intended to restrict officers from exchanging legitimate law enforcement information with any other federal, state or local government entity (Title 8 U.S.C. §1373 and 8 U.S.C. § 1644).

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 4 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

714.6 U-VISA/T-VISA NONIMMIGRANT STATUS

Under certain circumstances, federal law allows temporary immigration benefits to victims and witnesses of certain qualifying crimes (8 USC § 1101(a)(15)(U and T)). A declaration/certification for a U-Visa/T-Visa from the U.S. Citizenship and Immigration Services must be completed on the appropriate U.S. Department of Homeland Security (DHS) Form I-918 or I-914 by law enforcement and must include information on how the individual can assist in a criminal investigation or prosecution in order for a U-Visa/T-Visa to be issued.

Any request for assistance in applying for U-Visa/T-Visa status should be forwarded in a timely manner to the Investigations Division Commander assigned to manage the handling of any related case. The commander should do the following:

- A) Review the case report to determine the current status of any related investigation and whether further documentation is warranted.
- B) Review the instructions for completing the declaration/certification if necessary. Instructions for completing Forms I-918/I-914 can be found on the U.S. DHS web site at [http:// www.uscis.gov/portal/site/uscis](http://www.uscis.gov/portal/site/uscis).
- C) If applicable, contact the appropriate prosecutor assigned to the case to ensure the declaration/certification has not already been completed and whether a declaration/ certification is warranted.
- D) Address the request and complete the declaration/certification, if appropriate, in a timely manner.
- E) Maintain records of the decision to complete or not complete the form in the Investigations Captains files. Provide the Records Supervisor with a list of those cases, and the outcomes.

714.7 CONSULAR NOTIFICATION PROCEDURES

1) Summary of Requirements Pertaining to Foreign Nationals

When foreign nationals are arrested or detained, it is mandatory that they be advised of the right to have their consular officials notified, without unreasonable delay. Compliance with this policy and procedure is important because it enhances the ability of the United States to insist that foreign officials provide the same rights to United States diplomats and citizens who are arrested abroad. Failure to provide appropriate notification may result in suppression of evidence and subsequent loss of convictions.

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 5 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

- Law enforcement officers who actually make the arrest or who assume responsibility for a foreign national's detention are responsible for making proper notification.
- The mandatory advisement statement is located in the "Consular Notification and Access Reference Card: Instructions for Arrests and Detentions of Foreign Nationals" (PFA-714a).
- This advisement must be made even if the suspect will not be interrogated.

In some cases, the nearest consular official must be notified of the arrest or detention of a foreign national, regardless of the foreign national's wishes.

Consular officials are entitled to access their nationals in detention and are entitled to provide consular assistance. However, notification places no obligation upon consular officials to perform any services on behalf of the foreign national.

2) Steps for Officers When a Foreign National is Arrested or Detained

Officers should attempt to determine the person's nationality. In the absence of other information, officers should assume this is the country on whose passport or other travel document the foreign national has traveled.

A) If the foreign national's country is on the list of mandatory notification countries, the foreign national must be advised of the following, regardless of the foreign national's wishes:

"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."

Officers should notify that country's nearest consular official, without unreasonable delay, of the arrest/detention – after arrival at the Department, jail, or other significant detention such as hospitalization, but before interrogation or booking.

- Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference sheet (PFA-714b).
- If the fax machine does not print a fax transmittal report, officers should record the date and time the fax was sent in the Case Report narrative.
- If a fax machine is not available, officers should personally call to make consular notification. The date, time, and point of contact should be documented in the Case Report narrative.

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 6 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

- If contact is not successful, officers should document the notification attempt in the Case Report narrative.

Officers should notify jail staff if the suspect is being booked and notification has not been made.

Officers should tell the foreign national of the notification.

Where an arrestee is seeking asylum in the United States, officers should not reveal that fact in their mandatory notification to the foreign consul. Arrangements can be made to protect the arrestee while ensuring that his/her government's right to notification is protected.

- The United States Citizenship and Immigration Services (USCIS) must be contacted immediately in these cases.
- Under no circumstances shall the foreign national be turned over to any foreign government official. They shall remain in protective custody until they are delivered to the United States Citizenship and Immigration Services (USCIS).
- Officers should keep a written record of the notification and actions taken.

B) If the foreign national's country is not on the mandatory notification list, the foreign national must be informed of the following:

"As a non-United States 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?"

If the foreign national asks that consular notification be given, officers should notify the nearest consular officials of the foreign national's country without unreasonable delay – after arrival at the Department but before any interrogation or booking.

- Phone and fax numbers for foreign embassies and consulates in the United States are located in the "Consular Notification and Access" reference sheet (PFA-714b).
- If the fax machine does not print a fax transmittal report, officers should record the date and time the fax was sent in the Case Report narrative.
- If a fax machine is not available, officers should personally call to make consular notification. The date, time, and point of contact should be documented in the Case Report narrative.
- If contact is not successful, officers should document the notification attempt in the Case Report narrative.

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 7 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

Officers should notify jail staff if the suspect is being booked and notification has not been made. Officers should tell the foreign national of the notification.

714.8 MANDATORY NOTIFICATION COUNTRIES

ALGERIA	ANTIGUA AND BARBUDA	ARMENIA	AZERBAIJAN
BAHAMAS, THE	BARBADOS	BELARUS	BELIZE
BRUNEI	BULGARIA	CHINA ¹	COSTA RICA
CYPRUS	CZECH REPUBLIC	DOMINICA	FIJI
GAMBIA, THE	GEORGIA	GHANA	GRENADA
GUYANA	HONG KONG ²	HUNGARY	JAMAICA
KAZAKHSTAN	KIRIBATI	KUWAIT	KYRGYZSTAN
MALAYSIA	MALTA	MAURITIUS	MOLDOVIA
MONGOLIA	NIGERIA	PHILIPPINES	POLAND (non- permanent residents only)
ROMANIA	RUSSIA	ST. KITTS AND NEVIS	ST. LUCIA
ST. VINCENT AND THE GRENADINES	SEYCHELLES	SIERRA LEONE	SINGAPORE
SLOVAKIA	TAJIKISTAN	TANZANIA	TONGA
TRINIDAD AND TOBAGO	TUNISIA	TURKMENISTAN	TUVALU
UKRAINE	UNITED KINGDOM ³	U.S.S.R. ⁴	UZBEKISTAN
ZAMBIA	ZIMBABWE		

714.9 DIPLOMATIC IMMUNITY

Foreign nationals with diplomatic immunity are issued an Identification Card by the United States Department of State. The degree of immunity is detailed on the back of the ID

¹ Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

² Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports-- i.e., immediately, and in any event within four days of the arrest or detention

³ United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁴ Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 8 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

card. Officers should contact the Department of State to verify the immunity status of the foreign national (see page 9 for contact information.)

When a foreign national with full diplomatic immunity is involved and the safety of the public is in imminent danger or it is apparent that a crime may otherwise be committed, officers may intervene to the extent necessary to halt such activity.

This intervention may include use of force and/or arrest if otherwise justified according to existing policy. The Department of State must be contacted immediately in these cases.

When a foreign national with full diplomatic immunity is suspected of committing a crime, officers should obtain as much information as possible during the initial investigation and thoroughly document it in the Case Report narrative.

Foreign nationals may be stopped for investigation (Terry Stop) or stopped and cited for traffic violations regardless of their diplomatic immunity.

- A traffic stop is not considered to be an arrest or detention as it relates to diplomatic immunity.
- If the officer judges the individual too impaired by alcohol/narcotics to drive safely, the officer should not permit the individual to continue to drive (even in the case of diplomatic agents).

714.10 IDENTIFYING DIPLOMATIC AND CONSULAR OFFICERS AND THEIR DEGREE OF IMMUNITY

Diplomatic and consular officers (including consuls and honorary consuls) have identification cards issued by the Department of State. Each card has a statement of immunity on the reverse side. Officers should read the back of identification cards carefully as there are different degrees of immunity.

Blue-bordered cards:

- Are issued to diplomatic officers and their families.
- Are issued to U.N. diplomatic officers and their families.
- Entitle the bearer to full criminal immunity. They may not be arrested or detained. They may be given notices of violation (traffic citations).

Green-bordered cards:

- Are issued to embassy administrative and technical staff employees and their families. The card signifies that the bearer is entitled to full criminal immunity and

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 9 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

may not be arrested or detained. They may be given notices of violation (traffic citations).

- Are issued to embassy service staff employees. The card signifies that the bearer is entitled to immunity for official acts only.

Red-bordered cards:

- Are issued to career consular officers. The bearer of this card is entitled to immunity for official acts only.
- Are issued to consular officers/employees and their families from countries with which the United States has special agreements. The bearer of this card is entitled to full criminal immunity and may not be arrested or detained.
- Are issued to honorary consular officers. The bearer of this card is entitled to limited immunity for official acts only.

Questions regarding an individual's status or immunity should be referred to the United States Department of State Office of Protocol during working hours, and to the Bureau of Diplomatic Security after hours.

The Department of State encourages officers to contact them to verify the status of individuals who present a diplomatic or consular identification card. It is common that former diplomatic officials and consular employees retain their Department of State identification card(s) even after their privileges are no longer in effect.

714.11 DIPLOMATIC IMMUNITY

Once a person claims to be entitled to immunity, officers should request some form of identification to substantiate the claim. Officers should immediately advise the person that their immunity status must be verified.

In the event that an individual claiming immunity cannot provide satisfactory proof, and the normal course of action in response to the offense would be arrest or detention, the officer may continue to detain the suspect until confirmation of the individual's status can be made. If the claim of immunity is not valid, the officer should follow standard procedures, again keeping in mind the right of foreign nationals to contact their embassy or consulate.

After a person with immunity has been released, collecting information, investigating incidents, and preparing reports do not violate a person's immunity.

A complete report of any incident involving immunity is essential. Since officers cannot make an arrest when immunity is involved, as much information as possible should be obtained at the time of the incident. This information should be thoroughly documented in a Case Report narrative and a follow-up for Records to fax a copy of the approved report

BOTHELL POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL	NUMBER: BPD - 0714	PAGE 10 of 11
SUBJECT: FOREIGN NATIONALS		EFFECTIVE DATE: 1/03/2017

to the Department of State. When it is presented with a detailed report, the Department of State can pursue the case through diplomatic channels.

714.12 RECORD KEEPING

Officers must document their compliance with the notification requirements in an incident or case narrative. When notification is at the discretion of the foreign national, officers must document that the foreign national was informed of their option of consular notification, the date and time when they were so informed, and whether or not the foreign national requested that consular officials be notified. If a confirmation of receipt of notification is available, it should be forwarded to Records.

714.13 CONTACT INFORMATION

Email: consnot@state.gov

Website: [Consular Notification and Access](#)

714.14 ATTACHMENTS

[PFA-0714A - Foreign National Consular Notification Statement](#)