

2.4.4 Dealing with Diplomats, Foreign Nationals and their Family / Agents

Resources: [Training Video](#)
[FAX sheet for Consular Notification](#)

2.4.4.1 Diplomatic Immunity

A primary source document relating to diplomatic immunity is the US Department of State "Guidance for Law Enforcement Officers: Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel." [Link](#)

2.4.4.2 Levels of Diplomatic Immunity

- A. Police officers may intervene to any extent necessary with persons of any level of immunity in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed. This includes the authority for officers to defend themselves and others from personal harm.
- B. Full diplomatic immunity means that: those persons, their residences, vehicles, belongings, and papers cannot be searched. They cannot be arrested or detained and are not required to give evidence as witnesses. Those persons with full diplomatic immunity are:
1. Diplomatic agents;
 2. Diplomatic mission staff;
 3. Administrative and technical mission staff;
 4. Spouses of 1 - 3; and
 5. Dependent children of 1 - 3, until the age of 21 or 23, if full-time students.
- C. Limited criminal immunity prevents convictions if judges find that criminal acts transpired in the course of official duties. Persons enjoying limited immunity may be detained or arrested, their persons and belongings searched, and they may be required to give evidence as witnesses. Those persons with limited criminal immunity are:
1. Service staff such as chauffeurs, drivers, mission servants, and domestic mission employees; and
 2. Consular officers.
- D. Persons who have no criminal or diplomatic immunity are:
1. Families of service staff;
 2. Families of consular officers;
 3. Consular service staff or their families;
 4. Citizens of the United States who are employed by a consulate; and
 5. Private servants of any foreign national.

2.4.4.3 Claims of Diplomatic Immunity

- A. The burden of proof falls upon those claiming any level of diplomatic immunity to display valid diplomatic credentials.
- B. All incidents involving claims of any level of immunity, whether *bona fide* or not, will be documented in appropriate agency reports. Copies of reports involving persons with *bona fide* immunity will be forwarded to the United States Department of State by the Chief.
- C. Vehicles bearing diplomatic registration plates, or owned by persons with full diplomatic immunity **cannot be searched**. If it becomes necessary to tow vehicles with diplomatic license plates, officers will first attempt to locate owners/agents and request cooperation in moving same. If unsuccessful, officers will:
1. Have vehicles relocated to a nearby legal parking space;
 2. Accept the related towing bill and forward same to Fiscal Services; and
 3. Ensure owners/agents or the owners/agents embassies are notified of vehicle locations and reasons for the vehicles being towed.

2.4.4.4 Other Foreign Nationals

A. Other foreign nationals, not granted criminal immunity, are afforded certain rights and privileges under agreements between the United States and certain foreign countries.

These individuals are:

1. Families of embassy services staff, or of consular officers;
2. Private servants of diplomatic agents; and

3. **All other non-United States citizens, regardless of legal status**

This applies to anyone NOT born in the United States.

B. Certain procedures must be adhered to when dealing with foreign nationals.

| | | |
|---|--|--|
| 1 | Inform their Consulate or Embassy | detainees of their right to have their governments informed of their detentions. |
| 2 | | required according to Federal law as a part of the Vienna Convention on Consular Relations |
| 3 | | we must inform appropriate foreign consulates or embassies without unnecessary delay and should make written records of such notifications |
| 4 | | Foreign nationals should be advised when their consuls have been notified |
| 5 | Visitation | Consular officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. A foreign consular officer may not take such actions on behalf of such persons if those persons being held expressly oppose the actions. |
| 6 | Passport | In determining that an arrestee is foreign national, the officer may assume this is the country on whose passport or other travel document the foreign national travels. |
| 7 | Reference | refer to the U.S. State Department booklet on Consular Notification and Access . |
| 8 | Fax | Fax sheet: Notifying Consular Officers of Arrest or Detention |

2.4.4.5 Summary of Diplomatic and Consular Privileges and Immunities

(Reprinted from US Department of State Guidance for Law Enforcement Officers: Personal Rights & Immunities of Foreign Diplomatic & Consular Personnel).

| 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 |
|---|---|---|--------------------------------|--|---|--|
| ^(A) Diplomatic Agent | NO ⁽²⁾ | NO | YES | NO | NO | Same as sponsor (full immunity & inviolability). |
| ^(A) Member of Admin. & Tech. Staff | NO ⁽²⁾ | NO | YES | NO | NO | Same as sponsor (full immunity & inviolability). |
| ^(A) Service Staff | YES ⁽¹⁾ | YES | YES | YES | NO for official acts. Otherwise, YES ⁽¹⁾ | No immunity or inviolability. ⁽¹⁾ |
| ^(B) Career Consular Officers | YES if for a felony & pursuant to warrant. ⁽¹⁾ | YES ⁽⁴⁾ | YES | NO for official acts. Testimony may not be compelled any time. | NO for official acts. Otherwise, YES ⁽¹⁾ | No immunity or inviolability. ⁽¹⁾ |
| ^(B) Honorary Consular Officers | YES | YES | YES | NO for official acts. YES all other cases. | NO for official acts. Otherwise, YES. | No immunity or inviolability. |
| ^(B) Consular Employees | YES ⁽¹⁾ | YES | YES | NO for official acts. YES all other cases | NO for official acts. Otherwise, YES ⁽¹⁾ | No immunity or inviolability. ⁽¹⁾ |
| ^(C) International Org. Staff ⁽³⁾ | YES ⁽³⁾ | YES ⁽³⁾ | YES | NO for official acts. YES in all other cases. | NO for official acts. Otherwise, YES ⁽³⁾ | No immunity or inviolability. |
| ^(C) Diplomatic Level Staff of Missions to Int'l Org. | NO ⁽²⁾ | NO | YES | NO | NO | Same as sponsor (full immunity & inviolability). |
| ^(C) Support Staff of Missions to Int'l Org. | YES | YES | YES | YES | NO for official acts. Otherwise, YES. | No immunity or inviolability. |

^(A)Diplomatic ^(B)Consular ^(C)International Organizations

- (1) This table presents general rules. 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.
- (2) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.
- (3) A small number of senior officers are entitled to be treated identically to "diplomatic agents."
- (4) Note that consular residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.