



San Diego Community College District Police Department Policy and Procedures

4.09 DIPLOMATIC IMMUNITY, CONSULATE
NOTIFICATION & FOREIGN NATIONALS

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I. PURPOSE

This Department procedure establishes guidelines for handling requests for asylum by foreign nationals and diplomatic immunity.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The San Diego Community College District is located approximately fifteen miles from one of the world's busiest international ports of entry. The District is located within the greater San Diego-Tijuana Metropolitan Area and is a business and tourist destination as well as home to many foreign nationals.

From time to time, College Police will come in contact with foreign nationals. Foreign nationals are to be treated with the same dignity and respect afforded to all persons and shall not be discriminated against based on their national origin.

In certain situations, special considerations apply to foreign nationals as required by state or federal law. The following procedure is designed to familiarize officers with those considerations.

Foreign nationals may request asylum in the United States for reasons of protection or persecution. It is the policy of the United States Government to give these foreign nationals an opportunity to have their requests considered. The United States also has an obligation under a treaty to prevent the forcible removal of refugees from this country.

IV. PROCEDURES

The following procedures are to be followed when the Department receives a request from a foreign national for asylum in the United States. Officers will:



- A. Place the asylum seeker into protective custody. If necessary, reasonable force may be used to prevent the refugee from being forced to return to his/her homeland.
- B. Transport the foreign national to the SDPD Watch Commander's Office where arrangements will be made for his/her temporary custody.
- C. Advise the Department of Homeland Security/Immigration and Customs Enforcement (ICE) immediately after taking the foreign national into custody. Call the Department of Homeland Security/Immigration and Customs Enforcement Sector at 1(800) 973-2867 and ask that a Duty Agent be contacted. Be prepared to provide a call back number.
- D. In the event Immigration and Customs Enforcement (ICE) personnel are unable to respond or cannot be contacted, call Border Patrol dispatch at (619) 662-7321.
- E. Have the following information available:
 - 1. Name and nationality of the individual seeking asylum;
 - 2. Date, place of birth, and occupation;
 - 3. Description of any documents the subject has in his/her possession;
 - 4. What foreign authorities, if any, are aware that the subject is seeking asylum;
 - 5. Circumstances surrounding the request for asylum;
 - 6. Reason for claiming asylum; and,
 - 7. Description of any criminal charges known or alleged to be pending against the asylum seeker.
- F. Make arrangements to transfer the case to the appropriate Federal authorities.
- G. Thoroughly document the contact on an ARJIS-9.

V. DIPLOMATIC IMMUNITY

International law and California Penal Code section 834c requires 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. Most of these privileges and immunities are not absolute, however, and in any event law enforcement

officers retain their fundamental responsibility to protect and police the orderly conduct of persons present in the territory of the United States.

Diplomatic Immunity is not intended to serve as a license for such persons to flout the law and purposely avoid liability for their actions. While police officers are obliged under international customary and treaty law to recognize the immunity of the envoy, they must not ignore or condone the commission of crimes.

- A. Identification cards are issued to all diplomatic and consular personnel and to persons associated with international organizations who are entitled to privileges and immunities. There are three types of identification cards: DIPLOMATIC (blue border); OFFICIAL (green border); and CONSULAR (red border).

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 immunity will be printed on the reverse side; however, 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 consular immunity. There is also space for the bearer's signature.

The San Diego Police Watch Commander's office will process field inquiries regarding diplomatic immunity.

- B. 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/she will be detained until proper identity can be confirmed.
- C. 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 full inviolability and immunity of a diplomatic agent, he/she may not be arrested and should not, except in extraordinary circumstances, be handcuffed or detained.
- D. Notwithstanding a person's immunity status, 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.
- E. Officers are expected to fully investigate crimes involving diplomatic personnel and

prepare appropriate reports. Copies of reports will be forwarded to the Department of State.

F. Foreign diplomats who violate traffic laws should be cited although they may not be required to sign the citation. Sobriety tests may be requested, but not compelled. Intoxicated diplomats may be prohibited from driving. They should be offered transportation to a safe place, or may leave with a friend or other person.

G. For detailed information regarding diplomatic immunity, see San Diego Police Department Procedure 1.33.

VI. CONSULAR NOTIFICATIONS

When foreign nationals are arrested or detained, they must be advised of their right to have their consular officials notified. In some cases, the nearest consular official must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.

For a list of countries covered by mandatory notification procedures and the telephone numbers of consular offices see the U.S. Department of State Publication, Consular Notification and Access. A copy of this publication is maintained at all College Police offices and at the San Diego Police Department Watch Commander's Office.

The requirement for consular notification should not be interpreted to mean that all persons arrested or detained should be questioned about their nationality. When, however, an arrest or custodial detention occurs and the person's nationality becomes known (e.g., the person presents a passport for identification) officers should ensure the appropriate notification is made.

VII. UNDOCUMENTED PERSONS

A. San Diego Community College District Police officers are responsible for enforcing all federal, state, and local laws, and for the safety and protection of all persons. Therefore, officers have a duty to contact any person(s) when there is a "reasonable suspicion" to believe they are involved in criminal activity. "Reasonable suspicion" is more than a hunch or mere speculation on the part of an officer, but less than probable cause necessary for arrest. Refer to Department Procedure 4.01, Stop/Detention and Pat-Down Procedures, for further information.

B. Officers shall not inquire into an individual's immigration status.

C. Officers are prohibited from transporting detained undocumented persons to a police

- facility for the sole purpose of releasing them to DHS/Border Patrol.
- D. Undocumented persons may be transported if they voluntarily consent in order to complete or further an investigation.
 - E. If, upon investigation, probable cause to arrest exists, officers may arrest for the offense, irrespective of the person's immigration status.
 - F. If, after concluding the investigation, officers determine that the person(s) is/are not involved in criminal activity, the person shall be released regardless of immigration status.
 - G. Cooperation with immigration authorities is not permitted for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of Prop 47 (the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code).

VIII. SITUATIONS WHERE DHS/BORDER PATROL INVOLVEMENT IS PROHIBITED

Officers may not detain anyone on the basis of an immigration hold request or intentionally participate in arrests based on civil immigration warrants.

Officers are prohibited from sharing non-public personal information (e.g., home or work address) about detainees with immigration authorities.

Additionally, officers are prohibited from releasing undocumented persons to ICE/Border Patrol under the following conditions:

- A. When they are victims or witnesses of a crime, unless a determination has been made by investigators to hold them as material witnesses;
- B. When contacted during family disturbances not resulting in a felony arrest(s);
- C. During the enforcement of minor traffic offenses (infractions and non-bookable misdemeanors including 12500(a) CVC); or,
- D. When the person(s) is seeking medical treatment.