

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENFORCEMENT

DIRECTIVE

DIRECTIVE NUMBER: O-26-25

SUBJECT: ARREST AND/OR DETENTION OF FOREIGN NATIONALS

EFFECTIVE DATE: 03/04/2025

APPENDIX: Appendix A—List of Mandatory Notification Countries; Appendix B—Notification Scripts

DISTRIBUTION: All officers

NUMBER OF PAGES: 5 (including 2 appendices)

This directive is for division use only and does not modify or supersede any law and should not apply to any criminal or civil proceeding except for civil proceedings related to departmental administrative actions. This directive should not be viewed as creating a higher standard of safety or care in any evidentiary sense. Violations of this directive may form the basis for departmental administrative action.

I. Purpose

This policy provides guidance to officers who arrest and/or detain a Foreign National.

II. Policy

It is the policy of the Division of Enforcement to comply with the United States' legal obligations under the Vienna Convention on Consular Relations when a Foreign National is arrested or detained. Therefore, whenever an officer reasonably believes that a person being arrested or detained for a jailable offense is a Foreign National, the subject will be informed of the right to have the appropriate consular officer notified. Additionally, it is the policy of this division not to detain or arrest a Foreign National solely for being undocumented or unlawfully present in the United States. The enforcement of immigration law rests with U.S. Customs and Immigration Enforcement (ICE).

III. Definitions

- A. Foreign National: A person owing permanent allegiance to a foreign state. 8 U.S.C. § 1101(21).

- B. ICE: U.S. Customs and Immigration Enforcement. 8 C.F.R. § 1.2.
- C. ICE detainer: a request from ICE that asks federal, state, or local law enforcement to notify them as early as possible before the release of a removable Non-citizen or to hold the Non-citizen for up to an additional 48 hours.
- D. Lawfully Present Non-citizen: A Non-citizen who is lawfully present in the United States.
- E. National of the United States: A citizen of the United States or a person who, although not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. § 1101(22).
- F. Non-citizen: For the purposes of this directive, Non-citizen has the same definition as “alien” in the United States Code and means any person not a National of the United States. *See* 8 U.S.C. § 1101(a)(3). The term Non-citizen includes Foreign Nationals.
- G. Undocumented Non-citizen: Any Non-citizen who does not have the requisite paperwork to be a Lawfully Present Non-citizen.
- H. Vienna Convention on Consular Relations: a multi-national treaty entered into by the government of the United States which, among other things, establishes the rights of a Foreign National arrested or detained on criminal charges.

IV. General Guidelines for Arresting and Detaining Foreign Nationals

- A. Foreign Nationals/Non-citizens shall not be arrested or detained solely for being undocumented or unlawfully present in the United States.
- B. Arrest or Detention of a Foreign National is appropriate when:
 - 1. The Foreign National is known to have committed a criminal offense in violation of Minnesota law or is sought for prosecution of a criminal matter by another jurisdiction and is being detained or arrested for said offense; or
 - 2. The officer has probable cause to believe the Foreign National is engaged in conduct that is criminal in nature, including criminal conduct that threatens homeland security.
- C. Consular Notification Upon Detention/Arrest
 - 1. Whenever a Foreign National is detained or arrested, the officer shall advise the Foreign National of the right to consular notification and access. Under the Vienna Convention, consular notification is either **mandatory** or **non-mandatory** depending upon the Foreign National’s country. **Appendix A** includes the list of mandatory notification countries, and **Appendix B** includes sample notification scripts for each scenario.
 - a. Determine the Foreign National’s country.
 - i. Ask for identification. In the absence of other information, assume the Foreign National’s country is the one identified on a passport or other travel document.
 - o Absent any citizenship documentation, the Foreign National’s statement about their nationality will be accepted.
 - b. **Mandatory Notification.** If the Foreign National is from a country where notification is mandatory, the officer shall, as soon as reasonably possible under the circumstances:
 - i. Inform the Foreign National that notification to their consulate or embassy about their arrest/detention is mandatory and/or read the Mandatory Notification script provided in Appendix B; and

- ii. Notify the Foreign National’s nearest consular officials of the arrest/detention. Contact information for Foreign Embassies and Consulates is available on the U.S. Department of State’s website.
 - c. **Non-Mandatory Notification.** If the Foreign National is from a non-mandatory country, the officer shall, as soon as reasonably possible under the circumstances:
 - i. Inform the Foreign National they have a right to request their consulate or embassy be notified of their arrest/detention and/or read the Non-mandatory Notification script in Appendix B; and
 - ii. If the Foreign National requests notification, notify the nearest consular officials of the foreign national's country as soon as reasonably possible under the circumstances. Contact information for Foreign Embassies and Consulates is available on the U.S. Department of State’s website.
 - d. **Documentation.** The officer shall make a written record in their ICR of:
 - i. The information the officer provided to the Foreign National and when;
 - ii. The Foreign National’s requests, if any;
 - iii. Whether the Foreign National’s embassy or consulate was notified and, if so, the date, time, and means used to notify them (phone, email, or fax); and
 - iv. Any other relevant actions taken.
- D. Diplomatic Immunity
 - 1. If the Foreign National claims diplomatic immunity or privileges, the officer shall contact a supervisor to assist with the verification of the asserted privileges and immunities.
- E. ICE detainers
 - 1. If a Foreign National is an Undocumented Non-citizen and is detained or arrested for a criminal violation, then, with supervisory approval, an ICE detainer may be honored only for notification purposes and only for the duration of the detention or arrest for the crime. The Undocumented Non-citizen shall not be arrested or detained solely on the basis of the ICE detainer.

V. Assisting Other Agencies

Nothing in this directive shall be construed as preventing this division, when requested and with approval from the director, from lawfully cooperating with federal agencies in the enforcement of criminal violations of federal immigration laws.

By Authority of:

COL Rodmen Smith
Division Director
Division of Enforcement

Appendix A

MANDATORY NOTIFICATION COUNTRIES (“LIST” COUNTRIES)

Albania	Ghana	Saint Vincent and the Grenadines
Algeria	Grenada	Seychelles
Antigua and Barbuda	Guyana	Sierra Leone
Armenia	Hungary	Singapore
Azerbaijan	Jamaica	Slovakia
Bahamas	Kazakhstan	Tajikistan
Barbados	Kiribati	Tanzania
Belarus	Kuwait	Tonga
Belize	Kyrgyzstan	Trinidad and Tobago
Brunei	Malaysia	Tunisia
Bulgaria	Malta	Turkmenistan
China (including Macao and Hong Kong) ¹	Mauritius	Tuvalu
Costa Rica	Moldova	Ukraine
Cyprus	Nigeria	United Kingdom ³
Czech Republic	Philippines	Uzbekistan
Dominica	Poland ²	Zambia
Fiji	Romania	Zimbabwe
Gambia	Russia	
Georgia	Saint Kitts and Nevis	
	Saint Lucia	

¹ Notification is not mandatory for persons carrying “Republic of China” passports issued by Taiwan. Such persons should be informed that the nearest office of the Taipei Economic and Cultural Representative Office (TECRO) can be notified at their request.

² Mandatory only for Foreign Nationals who are not Lawful Permanent Residents (i.e. green card holders).

³ The United Kingdom includes nationals from: Great Britain (England, Scotland, Wales); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and Turks and Caicos.

Appendix B

Mandatory Notification Script

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 may 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.

Non-Mandatory Notification Script

As a non-U.S. Citizen who is being arrested or detained, you may request that we notify your country's consular officers here in the United States of your situation. You may also 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?