


DEPARTMENT OF PUBLIC SAFETY OPERATING PROCEDURES MANUAL		
CHAPTER 214	FOREIGN NATIONALS	
	Effective: 8/5/2020	Commissioner Approval: <i>AP</i>
	Authorities: <a href="#">18USC 112</a>	
	Applicability: OFFICERS	
	Special Instructions:	

### 214.100 INTRODUCTION

This chapter establishes protocol for dealing with arrests or detention of foreign nationals.

### 214.300 DESCRIPTIONS

- A. *Treatment of foreign nationals governed by international treaties.*** International treaties require that certain information be supplied to consular officers concerning the arrest and/or detention of nationals of that country.
- B. *Legal status of "diplomatic agents."*** Diplomatic agents, their family members, and their administrative and technical staff cannot be arrested or detained and their property or residence cannot be entered or searched. They enjoy complete immunity and cannot be prosecuted no matter how serious the offense. (There are no diplomatic agents resident in Alaska and contact with them is unlikely.)
- C. *Legal status of "consular officials."*** Consular officials have "official and functional immunity" and can be arrested only for felony offenses and then only with a warrant. After arrest the defendant can attempt to prove that he was on official business and argue that his special immunity protects him from prosecution. The family members of consular officials have no special immunity from arrest, detention, or search.
- D. *24-hour diplomatic status help-line.*** The State Department maintains a 24-hour Operations Center that can confirm the diplomatic status of individuals claiming to have immunities at (202) 647-1512. This Operations Center will also accept reports of Alaska Uniform Citations (AUC) and other violations alleged to have been committed by persons with diplomatic status.
- E. *State department law enforcement help desk.*** The State Department Assistant Legal Advisor for Consular Affairs provides attorneys who are available to assist local law enforcement on questions regarding diplomatic law. Contact the 24 hour State Department Operations Center at (202) 647-1512.

### 214.310 DETENTION OF FOREIGN NATIONALS

- A. *Officers lack authority to arrest individuals for civil immigration violations.*** Unlawful presence in this country is a civil matter governed by federal immigration laws.

---

**CHAPTER 214 FOREIGN NATIONALS**

---

- B. *Officers should not stop and detain for immigration violations.*** Officers should not stop and detain individuals solely because of a suspicion that the individual may be an unlawfully present alien.
- C. *Immigration status alone is not reason to request identification.*** Any request for identification should be in conjunction with a criminal investigation or regulatory license inspection related to state or local law and not solely for the purpose of inquiring about an individual's immigration status.
- D. *Officers may arrest on valid criminal warrants.*** Troopers retain authority to arrest individuals for violations of criminal law and/or pursuant to a valid criminal warrant issued by a judge or magistrate.
- E. *Foreign nationals not to be detained beyond original justification.*** Foreign nationals shall not be detained beyond the period necessary to resolve the criminal investigation or regulatory contact which originally justified the stop or detaining of the individual. Officers may contact ICE after the contact and convey information regarding the contact of the foreign national.
- F. *Detainee right to consular notification.*** Members who arrest, imprison, or otherwise detain a foreign national must inform the detainee of their right to have their government notified of the detention. If the detainee requests notification the member will contact the appropriate consulate or embassy without delay and shall create a written record of the contact in the case report. Current phone numbers for consulates and embassies may be obtained from the State Department help line listed in Section 214.300 D.
- G. *Mandatory consular notification for citizens of certain countries.*** When a citizen from any of the countries listed in this section are arrested, imprisoned, or otherwise detained consular notification is mandatory and will be carried out by the officer regardless of the wishes of the detainee. Officers will document the notification in their case report. Countries requiring mandatory notification:

Albania	Antigua	Armenia	Azerbaijan	Bahamas
Barbados	Belarus	Belize	Brunei	Bulgaria
China (People's Republic)	Costa Rica	Cyprus	Czech Republic	Dominica
Fiji	Gambia, The	Georgia	Ghana	Grenada
Guyana	Hong Kong	Hungary	Jamaica	Kazakhstan
Kiribati	Kuwait	Kyrgyzstan	Malaysia	Malta
Mauritius	Moldova	Mongolia	Nigeria	Philippines
Poland	Romania	Russian Federation	St. Kitts and Nevis	St. Lucia
St. Vincent and Grenadines	Seychelles	Sierra Leone	Singapore	Slovakia

**CHAPTER 214 FOREIGN NATIONALS**

Taiwan (Republic of China)	Tajikistan	Tanzania	Tonga	Trinidad and Tobago
Turkmenistan	Tuvalu	Ukraine	United Kingdom including Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and Turks and Caicos	Uzbekistan
Zambia	Zimbabwe			

**H. Consular access to prisoners.** Subject to local laws and regulations consular officers have the right to visit their nationals who are detained to converse and correspond with them and to arrange for their legal representation. A foreign consular officer should not be allowed to take actions expressly opposed by the person detained.

**I. District Attorney to be notified of detention of foreign nationals.** The District Attorney shall be notified when a foreign national is arrested or otherwise detained. In addition to the usual information concerning the incident and charges they should also be advised of the person's citizenship, whether consular notification has been made, immigration status (e.g., resident alien, visitor's visa, etc.), alien registration number, and the date and port of entry into the United States.

**J. ICE notification of arrest of foreign nationals.** When a foreign national is arrested the Immigration and Customs Enforcement (ICE) shall be contacted during business hours at 271-3104 or after hours at 1-800-973-2867. Upon completion a copy of the case report should be sent to ICE at:

U.S. Immigration and Customs Enforcement  
 ATTN: Investigations Section  
 620 East 10th Avenue, Suite 102  
 Anchorage, AK 99501

**213.320 REQUESTS FOR ASYLUM BY FOREIGN NATIONALS**

**A. Notification of asylum requests.** ICE, the Federal Bureau of Investigation (FBI), or the U.S. State Department, depending upon the particular circumstances, handles requests for asylum.

Upon receipt of a request for asylum from a foreign national, officers shall immediately notify the ICE duty officer at 271-3104 (days) or 1-800-973-2867 (after hours). If ICE is unavailable, notification should be made to the FBI or the State Department.

The officer making the notification shall be prepared to describe any documents carried by the person, their reason for seeking asylum, what foreign authorities are aware of the request, and information on any criminal charges pending against the asylum seeker.

**B. Protection from harm for asylum seekers.** Unless there is reason to believe that the asylum seeker is in need of physical protection they shall be directed to go to the ICE office at

## CHAPTER 214 FOREIGN NATIONALS

---

620 East 10th Avenue, Anchorage. If the asylum seeker is in need of physical protection, it will be provided. If necessary, force may be used to prevent the forcible repatriation of the asylum seeker.

**C. *Inquiries by foreign authorities.*** Any inquiries from interested foreign authorities will be met by the senior officer present with a response that the case has been referred to headquarters for instructions.

### **214.330 FBI CONCURRENT JURISDICTION WHEN FOREIGN OFFICIAL IS VICTIMIZED**

On October 24, 1972, President Nixon signed an act for the protection of foreign officials and official guests of the United States. The act gives the FBI concurrent jurisdiction in serious crimes in which a foreign official is the victim.

These crimes include murder, conspiracy to murder, wounding, imprisoning, offering violence, intimidating, coercing, threatening, or harassing a foreign official or guest, and from obstructing a foreign official in the performance of his duties.

Officers will immediately notify the FBI when investigating any of these crimes where the victim is a foreign official or official guest.

### **214.340 NOTICE REQUIRED WHEN AUC ISSUED TO FOREIGN DIPLOMAT**

The U.S. State Department should be notified at (202) 647-1512 when an AUC is issued to a foreign diplomat. If sufficient cause is shown, the diplomatic driver's license of the violator can be revoked.