

HOWARD COUNTY DEPARTMENT OF POLICE

## **GENERAL ORDER OPS-10 FOREIGN NATIONALS**

EFFECTIVE MAY 12, 2017

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This General Order contains the following numbered sections:

- I. POLICY
- II. GENERAL PRINCIPLES
- III. DEFINITIONS
- IV. FOREIGN NATIONAL VICTIMS AND WITNESSES
- V. NCIC RESPONSES
- VI. ARREST PROCEDURES
- VII. CONTACTS INVOLVING DIPLOMATS
- VIII. REPORTING REQUIREMENTS

### **I. POLICY**

It is the policy of the Howard County Police Department (HCPD) to treat all individuals with respect, compassion, and courtesy, regardless of citizenship or immigration status.

### **II. GENERAL PRINCIPLES**

- A. HCPD officers have no statutory authority to enforce civil violations of federal immigration laws. Criminal investigations or enforcement shall never be initiated based solely upon an individual's citizenship or immigration status.
- B. Officers shall not ask about immigration status except in rare circumstances such as the investigation of suspected criminal activity including, but not limited to, human trafficking, terrorist activity, and gang violence.
- C. Officers may offer foreign nationals referral to services, including, but not limited to, T or U visa information, language services, appropriate community organizations, assisting with consular contacts, etc.
- D. HCPD officers may be assigned to federal task forces and are permitted to assist with investigations when the primary focus of the task force or investigation does not involve the enforcement of federal civil immigration violations. Task forces may include, but are not limited to, human trafficking, terrorist acts, narcotics, child pornography, money laundering, hate crimes, etc.
- E. HCPD officers may respond to requests for assistance or remain on the scene of any federal warrant service or investigation to assist with officer or public safety or scene security.
- F. HCPD officers shall not confiscate Permanent Resident Cards/Documents (aka "green cards"), Employment Authorization Cards, or any other residency status, citizenship, or immigration documents unless the officer has reason to believe the documents are altered or counterfeit with fraudulent intent, indicative of a violation of applicable statutes involving the possession of fraudulent government identification documents (CR 8-303 of the Maryland Annotated Code).

III. **DEFINITIONS**

A. Civil Immigration Order/Detainer/Warrant

An administrative order or warrant issued by an immigration official for suspected civil violations of the immigration law, i.e. visa violations, illegal entry, or unauthorized arrival, and those subject to deportation and removal.

HCPD officers do not have the legal authority to enforce civil violations of immigration law.

B. Criminal Warrant

A judicial order signed by a judge or magistrate that authorizes a law enforcement officer to take a person into custody.

C. Deported Felon

An individual who has been officially deported after conviction of an aggravated felony as defined in 8 USC 1101(a)(43).

D. Diplomat

An official appointed by a national government to represent that country abroad.

E. 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. ("Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities," U.S. Department of State Office of Foreign Missions, June 2015)

F. Foreign National

A person who is not a citizen of the country in which they are living.

G. Immigration and Customs Enforcement (ICE)

The federal agency charged with enforcing federal laws governing border control, trade, and immigration to promote homeland security and public safety. ICE consists of three directorates: Homeland Security Investigations (HSI); Enforcement and Removal Operations (ERO); and Management and Administration (M&A).

H. Immigration Violator File (IVF)

1. A file within the National Crime Information Center (NCIC) that contains records on deported felons, aliens with outstanding administrative warrants of removal, and absconders.
  - a. The Deported Felon category contains records for previously deported felons convicted and deported for drug trafficking, firearms trafficking, or other aggravated felonies as defined in 8 USC 1101(a)(43) (criminal violation – enforceable by HCPD).
  - b. The Absconder category contains records for individuals with outstanding administrative warrants of removal from the United States who have unlawfully remained (civil immigration violations – not enforceable by HCPD).

2. An Immigration Violator File response includes guidance to the local law enforcement agency on handling the response.

I. T Visa / U Visa

Types of nonimmigrant visas issued to victims of certain crimes and their immediate family members who have qualified under federal law and are willing to assist law enforcement and government officials in the investigation and/or prosecution of the criminal activity.

J. Vienna Convention on Consular Relations of 1963

An international treaty that defines the framework for consular relations between independent states. Article 36 of the Convention states that foreign nationals who are arrested or detained must be given notice without delay of their right to have their embassy or consulate notified of that arrest.

1. Mandatory notification countries: Notification must be made to the consular offices of these countries when a national of the country is arrested or detained. Notification must be made regardless of the individual's request to do so or not.
2. Non-mandatory notification countries: Any country not on the list of mandatory notification countries. Nationals of these countries may request notification be made to their consular officers.

**IV. FOREIGN NATIONAL VICTIMS AND WITNESSES**

- A. All victims and witnesses shall be afforded the rights and services outlined in General Order OPS-24, Victim Assistance, regardless of citizenship or immigration status.
- B. Individuals will be provided with the Howard County Police Department Guide for Victims and Witnesses.
- C. The HCPD is committed to assisting qualifying applicants in the completion of the T or U visa application process. Detailed information on the T or U visa process and required federal forms are available from the U.S. Department of Citizenship and Immigration Service at [www.uscis.gov](http://www.uscis.gov). Any request to prepare federal form I-918 or I-914, as applicable, shall be forwarded to the Records Section for processing.

**V. NCIC RESPONSES**

If during an officer's routine computer check one of the following alerts is received through METERS/NCIC, officers shall proceed as follows:

- A. If an individual is wanted on an outstanding criminal arrest warrant, the officer shall confirm the warrant and proceed in accordance with General Oder OPS-04, Arrest Procedures.
- B. If the officer is alerted to contact the Law Enforcement Support Center (LESC), he shall make contact to determine or confirm the nature of the alert.
- C. Individuals shall not be detained any longer than is necessary to complete the initial contact or stop for which the officer has jurisdiction.
- D. Officers are prohibited from detaining an individual based solely on an immigration civil detainer or administrative order or warrant.

- E. If an individual is listed in the Immigration Violator File (IVF) as a deported felon and ICE confirms the status, the officer shall make a warrantless felony arrest pursuant to the authority of 8 U.S.C. 1252c and transport the individual to Central Booking for processing.

**VI. ARREST PROCEDURES**

- A. When an individual is physically arrested, officers will follow the procedures and protocols outlined in OPS-04, Arrest Procedures.
- B. After transport of the arrestee to the Central Booking Facility, the officer shall complete an arrest report. If ICE has confirmed the arrestee as a deported felon, the officer shall complete a Detainee Alert Form (HCPD Form 1251).
- C. Citizens of countries other than the United States who are under arrest may have certain protections afforded to them via international treaties, in particular the Vienna Convention. HCPD officers shall:
  - 1. Attempt to determine the individual's country of citizenship. In the absence of other information, assume this is the country displayed on the passport or other identification presented. This information will be placed on the arrest sheet.
  - 2. When an arrestee is transported to the Detention Center, consular notification, when required or requested, will be made by the Detention Center. Officers shall ensure the Detention Center is aware of the arrestee's country of citizenship, if known.
  - 3. If the arrestee is released via discretionary release or RWOP, the officer or his supervisor shall make the consular notification, when required or requested, before the end of the shift.
    - a. Consistent with U.S. Department of State guidelines (Appendix A):<sup>1</sup>
      - i. If the individual's country is on the list for mandatory notification available on the Department of State's Bureau of Consular Affairs website, officers shall (<https://travel.state.gov/content/travel/en/consularnotification.html>):
        - a) Notify the country's nearest embassy or consulate of the arrest or detention.
        - b) Advise the individual that notification is being made and they may communicate with the consulate.
        - c) Forward any communication from the individual to the consulate without delay.
      - ii. If the individual's country is NOT on the list for mandatory notification, officers shall:
        - a) Inform the individual that they may have their consulate notified and may communicate with them.
        - b) If the individual requests that the consulate be notified, notify the country's nearest embassy or consulate without delay.

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<sup>1</sup> CALEA 1.1.4

- c) Forward any communication from the individual to the consulate without delay.

4. All contacts and actions shall be documented in the incident report.

## VII. CONTACTS INVOLVING DIPLOMATS

- A. Foreign diplomats may be entitled to immunity from arrest and prosecution in the United States. There are limitations on what law enforcement officers may do when encountering a diplomat. The categories of personnel entitled to immunity, including diplomats, their family members, and staff, and the privileges associated with the levels of immunity, may be found in the "*Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities*" handbook (U.S. Department of State, Office of Foreign Missions).

1. Diplomatic or consular officers may be detained for a reasonable amount of time to verify diplomatic status. To verify the status of a diplomat, contact the Office of Foreign Missions at 202-895-3500 or the Bureau of Diplomatic Security at 202-895-3600.
2. All serious infractions involving persons with diplomatic status will be documented in an Incident Report. A copy of the report will be forwarded to the United States Department of State through the Chief of Police.
3. If an individual is entitled to diplomatic immunity they may not be handcuffed except when they pose an immediate threat to themselves or others.
4. The property of a person covered by full immunity, including a vehicle, may not be searched or seized. Vehicles may not be impounded but may be towed the distance necessary to remove them from obstructing traffic or endangering public safety.
  - a. If a diplomat's vehicle is suspected of being stolen or used in the commission of a crime, the occupants may be required to present vehicle documentation to permit police verification of the vehicle's status through a computer check.
  - b. If the vehicle is verified to have been stolen or to have been used by unauthorized persons in the commission of a crime, it may be searched.

### B. Traffic Stops Involving Diplomats<sup>2</sup>

1. When a driver is stopped for a moving traffic violation and has proper and valid identification indicating their diplomatic status, the officer may issue the appropriate traffic citation or warning as issuance of a citation does not constitute an arrest or detention.
2. A diplomat does not have to sign a citation requiring signature and cannot be arrested for refusal to sign or accept the citation. A copy of the citation and any other documentation should be forwarded to the U.S. Department of State through the Chief of Police as soon as possible.
3. In the event of suspected DWI or DUI, a field sobriety test should be offered and documented; however, the taking of the test may not be compelled.
  - a. The individual shall not be permitted to continue to drive.

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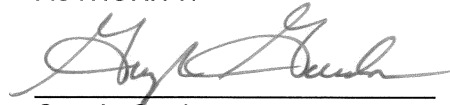
<sup>2</sup> CALEA 61.1.3d

- b. The officer may, with the individual's permission, take them to the police station or another location where they may recover sufficiently to drive; may contact or allow the individual to contact another person to drive; or may contact or allow the individual to contact a taxi or car service to provide transportation.

**VIII. REPORTING REQUIREMENTS**

When completing any written report, officers shall document all contacts with ICE, the U.S. Department of State, and foreign consular officials.

AUTHORITY:



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Chief of Police