

Guidelines Published by U.S. Dept of State Re Consular Notification and Access

[SOURCE: http://travel.state.gov/law/consular/consular_753.html (and linked web pages)]

Here you'll find official instructions for Federal, State, and Local law enforcement and other officials concerning the rights of Foreign Nationals in the United States. You'll also find numerous free tools and resources designed to increase public awareness of our consular notification and access obligations.

You'll find information and guidance regarding:

- The arrest and detention of foreign nationals
- The deaths of foreign nationals
- The appointment of guardians for minors or incompetent adults who are foreign nationals
- Related issues pertaining to consular services to foreign nationals in the US

All levels of law enforcement must ensure that foreign governments can extend appropriate consular services to their nationals in the U.S. and that the U.S. complies with its legal obligations to such governments. It is essential that U.S. citizens be offered the same consular services when they are detained abroad. To require that of other countries, we must be certain we provide this courtesy here.

These instructions must be followed by all federal, state, and local government officials, whether law enforcement, judicial, or other, insofar as they pertain to foreign nationals subject to such officials' authority or to matters within such officials' competence.

Your cooperation in ensuring that foreign nationals in the United States are treated in accordance with these instructions permits the U.S. to comply with its consular legal obligations domestically and will ensure that the U.S. can insist upon rigorous compliance by foreign governments with respect to U.S. citizens abroad.

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Consular Notification and Access

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1: Basic Instructions

[SOURCE: http://travel.state.gov/law/consular/consular_737.html]

The following pages summarize the basic requirements of consular notification and access in a format designed to be distributed or posted as readily accessible instructions or notices to all federal, state, or local officials who may, in the performance of their official functions, have contact with a foreign national in a situation triggering a requirement to notify the foreign national's consular officials. Also included are suggested notification statements to be given to a detained foreign national, a suggested fax notification to be transmitted to a detained foreign national's consular officials, and samples of identification cards that a consular official may present when seeking access to a detained foreign national.

These basic instructions and implementation tools, which may be freely photocopied and posted as notices, include:

- [Summary of Requirements Pertaining to Foreign Nationals](#)
- [Steps To Follow When a Foreign National Is Arrested or Detained](#)
- [Mandatory Notification Countries and Jurisdictions](#)
- [Suggested Statements to Arrested or Detained Foreign Nationals](#)
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Summary of Requirements Pertaining to Foreign Nationals

1. When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
2. In some cases, the nearest consular officials *must* be notified of the arrest or detention of a foreign national, **regardless of the national's wishes**. [emphasis in original]
3. Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.
4. When a government official becomes aware of the death of a foreign national, consular officials must be notified.
5. When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.
6. When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national's nearest consular officials so that they can provide whatever consular services they deem appropriate. [emphasis in original]

Steps to Follow When a Foreign National is Arrested or Detained

1. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel document the foreign national travels.
2. If the foreign national's country is **not** on the mandatory notification list:
 - Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. For a suggested statement to the foreign national, see

Statement 1. Translations of the statement into selected foreign languages are in Part Four of this publication.

- If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay. For phone and fax numbers for foreign embassies and consulates in the United States, see **Part Six** of this publication. A suggested fax sheet for making the notification is also included.

3. If the foreign national's country **is** on the list of mandatory notification countries:

- Notify that country's nearest consular officials, without delay, of the arrest/detention. Phone and fax numbers are in **Part Six**, and you may use the suggested fax sheet for making the notification.
- Tell the foreign national that you are making this notification. A suggested statement to the foreign national is found at **Statement 2**, and translations into selected languages are in **Part Four**.

4. Keep a written record of the provision of notification and actions taken.

Mandatory Notification Countries and Jurisdictions

Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldovia
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	St. Kitts and Nevis
China ¹	St. Lucia

Costa Rica	St. Vincent and the Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong ²	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom ³
Kiribati	U.S.S.R. ⁴
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
Malaysia	Zimbabwe

¹ Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

² Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the

Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports-- *i.e.*, immediately, and in any event within four days of the arrest or detention.

³ United Kingdom includes England, Scotland, Wales, Northern Ireland and Islands and the British dependencies of Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁴ Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

Suggested Statements to Arrested or Detained Foreign Nationals

Statement 1

When Consular Notification is at the Foreign National's Option (For Translations, [See Part Four](#))

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the United States. A consular official from your country may be able to help you obtain legal counsel, and may contact your family and visit you in detention, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?

Statement 2

When Consular Notification is Mandatory (For translations, [See Part Four](#))

Because of your nationality, we are required to notify your country's consular representatives here in the United States that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to

accept their assistance, but they may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.

2: Detailed Instructions

[SOURCE: http://travel.state.gov/law/consular/consular_747.html]

The instructions in this booklet should be followed by all federal, state, and local government officials, whether law enforcement, judicial, or other, insofar as they pertain to foreign nationals subject to such officials' authority or to matters within their competence. These instructions relate to the arrest and detention of foreign nationals, deaths of foreign nationals, the appointment of guardians for minors or incompetent adults who are foreign nationals, and related issues pertaining to the provision of consular services to foreign nationals in the United States. They are intended to ensure that foreign governments can extend appropriate consular services to their nationals in the United States and that the United States complies with its legal obligations to such governments.

The instructions in this booklet are based on international legal obligations designed to ensure that governments can assist their nationals who travel abroad. While these obligations are in part matters of "customary international law," most of them are set forth in the Vienna Convention on Consular Relations ("VCCR"), and some are contained in bilateral agreements, conventions, or treaties (i.e., agreements between the United States and just one other country). The agreements discussed herein have the status of treaties for purposes of international law and Article VI, clause 2 of the Constitution of the United States ("all treaties made . . . shall be the supreme law of the land"). They are binding on federal, state, and local government officials to the extent that they pertain to matters within such officials' competence.

These instructions focus primarily on providing consular notification and access with respect to foreign nationals arrested or detained in the United States, so that their governments can assist them. The obligations of consular notification and access apply to United States citizens in foreign countries just as they apply to foreign nationals in the United States. When U.S. citizens are arrested or detained abroad, the United States Department of State seeks to ensure that they are treated in a manner consistent with

these instructions, and that U.S. consular officers can similarly assist them. It is therefore particularly important that federal, state, and local government officials in the United States comply with these obligations with respect to foreign nationals here.

These instructions also discuss obligations relating to deaths of foreign nationals, to the appointment of guardians for foreign nationals who may be minors or incompetent adults, and to foreign aircraft or ship wrecks. Like the obligations of consular notification and access, these are mutual obligations that also apply abroad.

The Department of State appreciates the continued cooperation of federal, state, and local law enforcement agencies in helping to ensure that foreign nationals in the United States are treated in accordance with these instructions. Such treatment will permit the United States to comply with its consular legal obligations domestically and to continue to expect rigorous compliance by foreign governments with respect to United States citizens abroad.

Arrests and Detentions of Foreign Nationals

Whenever a foreign national is arrested or detained in the United States, there are legal requirements to ensure that the foreign national's government can offer him/her appropriate consular assistance. *In all cases, the foreign national must be told of the right of consular notification and access . In most cases, the foreign national then has the option to decide whether to have consular representatives notified of the arrest or detention. In other cases, however, the foreign national's consular officials must be notified of an arrest and/or detention regardless of the foreign national's wishes. Whenever a foreign national is taken into custody, the detaining official should determine whether consular notification is at the option of the foreign national or whether it is mandatory .* A list of all embassies and consulates in the United States, with their telephone and facsimile numbers, is included in this booklet to facilitate the provision of notification by detaining officials to consular officials when required.

Notification at the Foreign National's Option

In all cases, the foreign national must be told of the right of consular notification and access. The foreign national then has the option to decide whether he/ she wants consular representatives notified of the arrest or detention, *unless* the foreign national is from a "mandatory notification" country. The mandatory notification countries are listed in Part Five of this booklet.

If the detained foreign national is a national of a country not on the mandatory notification list, the requirement is that the foreign national be informed without delay

of the option to have his/her government's consular representatives notified of the detention. *If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate or embassy of the detainee's country without delay.*

Mandatory Notification

In some cases, "mandatory notification" must be made to the nearest consulate or embassy "without delay," "immediately," or within the time specified in a bilateral agreement between the United States and a foreign national's country, *regardless of whether the foreign national requests such notification* . Mandatory notification requirements arise from different bilateral agreements whose terms are not identical. The exact text of the relevant provisions on mandatory notification in our bilateral agreements is reproduced in Part Five of this booklet.

Foreign nationals subject to mandatory notification requirements should otherwise be treated like foreign nationals not subject to the mandatory notification requirement. Thus, for example, the foreign national should be informed that notification has been made and advised that he/she may also specifically request consular assistance from his or her consular officials.

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification requirement should still be honored, but it is possible to take precautions regarding the disclosure of information. For example, it may not be necessary to provide information about why a foreign national is in detention. Moreover, *under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.* The Department of State can provide more specific guidance in particular cases.

Recordkeeping

Law enforcement agencies should keep written records sufficient to show compliance with the above notification requirements. These records should show all notifications to foreign consular representatives. In addition, in cases in which notification is at the discretion of the detained foreign national, these records should show that the foreign national was informed of the option of consular notification, the date when the foreign national was so informed, and whether or not the foreign national requested that consular officials be notified. If a confirmation of receipt of notification is available, it should be saved if possible.

The Department of State from time to time receives inquiries and complaints from foreign governments concerning foreign nationals in detention. The Department in such cases may request information from the relevant law enforcement officials on whether consular notification was in fact given. Concerns about consular notification may also be raised by foreign consular officials directly with the responsible federal, state, and local officials. Good recordkeeping will facilitate responding to these inquiries and to any consular notification issues that may be raised in litigation.

Consular Access to Detained Foreign Nationals

Detained foreign nationals are entitled to communicate with their consular officers. Any communication by a foreign national to his/her consular representative must be forwarded by the appropriate local officials to the consular post without delay.

Foreign consular officers must be given access to their nationals and permitted to communicate with them. Such officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. They must refrain from acting on behalf of a foreign national, however, if the national opposes their involvement. In addition, consular officers may not act as attorneys for their nationals.

The rights of consular access and communication generally must be exercised subject to local laws and regulations. For example, consular officers may be required to visit during established visiting hours. Federal, state, and local rules of this nature may not, however, be so restrictive as to defeat the purpose of consular access and communication. Such rules "must enable full effect to be given to the purposes" for which the right of consular assistance has been established.

The above requirements are set out in Article 36 of the VCCR. Additional requirements may apply to particular countries because of bilateral agreements.

3: FAQs

[SOURCE: http://travel.state.gov/law/consular/consular_748.html]

QUESTIONS ABOUT CONSULAR OFFICERS

Q. What is a "consular officer?"

A. A consular officer is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that

government's citizens in a foreign country. Consular officers are generally assigned to the consular section of a foreign government's embassy in Washington, DC, or to consular offices maintained by the foreign government in locations in the United States outside of Washington, DC.

Q. What is a "consul?"

A. The terms "consular officer" and "consul" mean the same thing, for purposes of the issues discussed in this booklet.

Q. How is a consular officer different from legal "counsel?"

A. The term "consul" should not be confused with "counsel," which means an attorney-at-law authorized to provide legal counsel and advice.

Q. What is an "honorary consul?"

A. An honorary consul is a citizen or lawful permanent resident of the United States who has been authorized by a foreign government to perform official functions on its behalf in the United States.

Q. Is an honorary consul to be treated in the same way as a consular officer?

A. Yes, when an honorary consul is performing the kinds of functions addressed in this booklet. A foreign government can authorize its honorary consuls to perform prison visits or even to accept consular notification on the government's behalf. As a practical matter, however, since honorary consuls and their addresses and phone numbers may change more frequently than the phone numbers of embassies and consulates, the Department of State assumes that consular notification will generally be given to consular officers who serve at an embassy or consulate. Such officers may then ask an honorary consul closer to the actual place of detention to visit the detained alien.

Q. How are diplomatic officers different from consular officers?

A. A diplomat is an officer of a foreign government assigned to an embassy in Washington, DC. Many diplomatic officers are authorized by their governments to perform consular functions, and thus to act as consular officers.

Q. Should I treat a diplomatic officer the same as a consular officer?

A. Yes, for purposes of the matters discussed in this booklet. Consular notification can be given to a diplomatic officer if no consular officer is closer or available. A

diplomatic officer should be permitted to conduct prison visits and to perform the other kinds of consular functions discussed herein.

Q. How can I be sure that someone who claims to be a consular officer, a consul, an honorary consul, or a diplomatic officer is in fact one?

A. Diplomatic and consular officers (including consuls and honorary consuls) have identification cards issued by the Department of State. The cards look like the cards shown in Part One. If you have any doubt about the authenticity of a State Department identification card, you can call the State Department's Office of Protocol at 202-647-1985 to have the identity and status of the official verified during business hours (8:15 a.m. - 5:00 p.m., EST). Outside of those hours, you may call 202-647-7277.

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QUESTIONS ABOUT FOREIGN NATIONALS

Q. Who is a "foreign national?"

A. For the purposes of consular notification, a "foreign national" is any person who is not a U.S. citizen.

Q. Is a foreign national the same as an "alien?"

A. Yes. The terms "foreign national" and "alien" are used interchangeably.

Q. Is a person with a U.S. "green card" considered a foreign national?

A. Yes. Lawful permanent resident aliens, who have a resident alien registration card (USCIS Form I-551), commonly known as a "green card," retain their foreign nationality and must be considered "foreign nationals" for the purposes of consular notification.

Q. Do I have to ask everyone I arrest or detain whether he or she is a foreign national?

A. No, although some law enforcement entities do routinely ask persons taken into detention whether they are U.S. Citizens. If a detainee claims to be a U.S. citizen in response to such a question, you generally can rely on that assertion and assume that consular notification requirements are not relevant. If you have reason to question whether the person you are arresting or detaining is a U.S. citizen, however, you should inquire further about nationality so as to determine whether any consular notification

obligations apply.

Q. Short of asking all detainees about their nationality, how might I know that someone is a foreign national?

A. A foreign national may present a foreign passport or an alien registration document as identification. If they present a document that indicates birth outside the United States, or claim to have been born outside the United States, they may be a foreign national. (Most, but not all, persons born in the United States are U.S. citizens; most, but not all, persons born outside the United States are not.) Unfamiliarity with English may also indicate foreign nationality. Such indicators could be a basis for asking the person whether he/she is a foreign national.

Q. What about undocumented and "illegal" aliens?

A. All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States. Thus "illegal" aliens have the same rights to consular assistance as do "legal" aliens. There is no reason, for purposes of consular notification, to inquire into a person's legal status in the United States.

Q. What about dual nationals?

A. A person who is a national/citizen of two or more countries other than the United States should be treated in accordance with the rules applicable to each of those countries.

A person who is a citizen of the United States and another country may be treated exclusively as a U.S. citizen when in the United States. In other words, consular notification is not required if the detainee is a U.S. citizen. This is true even if the detainee's other country of citizenship is a mandatory notification country.

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QUESTIONS ABOUT WHO IS RESPONSIBLE FOR CONSULAR NOTIFICATION

Q. Who is actually responsible for notification?

A. The responsibility for consular notification, whether in the case of an arrest and detention, a death, or the appointment of a guardian for a foreign national, lies with what are generally called "competent authorities." This term is understood to mean those officials, whether federal, state, or local, who are responsible for legal action

affecting the foreign national and who are competent, within their legal authorities, to give the notification required. This interpretation makes sense as a practical matter: compliance with the notification requirements works best when it is assumed by those government officials closest to the foreign national's situation and with direct responsibility for it.

Q. Who is responsible for notification of arrests and detentions?

A. The law enforcement officers who actually make the arrest or who assume responsibility for the alien's detention ordinarily should make the notification.

Q. What is the responsibility of judicial officials and prosecutors for notification of arrests and detentions?

A. Because they do not hold foreign nationals in custody, judicial officials and prosecutors are not responsible for notification. The Department of State nevertheless encourages judicial officials who preside over arraignments or other initial appearances of aliens in court to inquire at that time whether the alien has been provided with consular notification as required by the VCCR and/or any bilateral agreement providing for mandatory notification. The Department also encourages prosecutors to make similar inquiries. Inquiries such as these will help promote compliance with the consular notification procedures and facilitate the provision of consular assistance by foreign governments to their nationals.

Q. Who is responsible for notification of deaths and of sea and air wrecks?

A. Notification should be made by the appropriate state or local authority, be it a coroner or a probate court official. In cases of serious injury, wrecks, accidents, or major disasters (such as an airline crash), the competent authority may vary, but government officials responsible for such situations should ensure that notification is given when required.

Q. Who is responsible for notification of appointments of guardians?

A. Notification should be made by probate court officials or by representatives of the state or local equivalent of an attorney general, or by any other appropriate official involved in the guardianship process.

Q. Why are state and local government officials expected to provide such notification?

A. State and local governments must comply with the consular notification and access obligations because these obligations are embodied in treaties that are the law of the land under the Supremacy Clause of the United States Constitution. The federal government, however, would be responsible for a dispute with a foreign government concerning obligations under the relevant treaties.

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QUESTIONS ABOUT WHEN CONSULAR NOTIFICATION SHOULD BE GIVEN

Q. What kinds of detentions are covered by this obligation?

A. The VCCR provides for informing the foreign national of the right to consular notification and access if the national is "arrested or committed to prison or to custody pending trial or is detained in any other manner." While there is no explicit exception for short detentions, the Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily, e.g., during a traffic stop. On the other hand, requiring a foreign national to accompany a law enforcement officer to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a detention continues, the more likely it is that a reasonable person would conclude that the Article 36 obligation is triggered.

Q. Do we have to inform and notify even when the detention is only while a traffic citation is written, or for a similar brief time?

A. No. The VCCR on its face requires informing a foreign national that a consular official may be notified whenever a foreign national is arrested or detained in any manner, without distinguishing arrests that do not result in a significant detention. The purpose of this requirement, however, is to ensure that a government does not place an alien in a situation in which the alien cannot receive assistance from his/her own government. When an alien is cited and immediately released, this consideration is not relevant because the alien is free to contact consular officials independently. The Department of State therefore does not consider brief routine detentions, such as for traffic violations or accident investigations, to be the type of situation contemplated by the VCCR.

Q. If we have a foreign national detained in a hospital, do we have to provide consular notification?

A. Yes, if the foreign national is detained pursuant to governmental authority (law enforcement, judicial, or administrative) and is not free to leave. He/she must be treated like a foreign national in detention, and appropriate notification must be provided.

Q. Are aliens in immigration detention covered by the consular notification requirement?

A. Yes, as a general matter. Consular notification is provided for in the Bureau of Citizenship and Immigration Services in the Department of Homeland Security's regulations (8 C.F.R. 236.1(e)). The Department of State does not, however, ordinarily consider aliens who are found inadmissible at a port of entry and required to remain there until they can depart to be detained within the meaning of the VCCR. Immigration officials may permit such aliens access to consular officials as a matter of discretion, however--e.g., in situations where the detention becomes prolonged because onward transportation is significantly delayed.

Q. Do I have to give a foreign national consular notification even if I give the Miranda warning?

A. Yes. Consular notification should not be confused with the Miranda warning, which is given regardless of nationality to protect the individual's constitutional rights against self-incrimination and to the assistance of legal counsel. Consular notification is given as a result of international legal requirements, so that a foreign government can provide its nationals with whatever consular assistance it deems appropriate. You should follow consular notification procedures with respect to detained foreign nationals in addition to providing Miranda or other warnings when required.

Q. If the alien's government is aware of the case and helping with our investigation, should we still go through the process of notification?

A. Yes. It is important to distinguish between a government's consular officials and other officials, such as law enforcement officers, who have different functions and responsibilities. Even if law enforcement officials of the alien's country are aware of the detention and are helping to investigate the crime in which the alien was allegedly involved, it is still important to ensure that consular notification procedures are followed.

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QUESTIONS ABOUT HOW CONSULAR NOTIFICATION SHOULD BE GIVEN

Q. How quickly do I need to inform the detainee of the right to consular notification?

A. The VCCR requires that a foreign national be notified "without delay" of the right to consular assistance. There should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances. Once foreign nationality is known, advising the national of the right to consular notification should follow promptly.

In the case of an arrest followed by a detention, the Department of State would ordinarily expect the foreign national to have been advised of the possibility of consular notification by the time the foreign national is booked for detention. The Department encourages judicial authorities to confirm during court appearances of foreign nationals that consular notification has occurred as required.

Q. Does the notification to the foreign national have to be in writing?

A. No. You may inform the detainee orally or in writing. Providing the notification in writing may be helpful, however, particularly when the foreign national does not clearly understand English. A sample notification statement is on page 7 of this booklet; translations of the statement into a number of foreign languages are in Part Four. In addition, the Department of State strongly recommends that a written record of the fact of notification be maintained.

Q. If the foreign national requests that consular officials be notified, how quickly do I have to do so?

A. This notification should also occur "without delay" after the foreign national has requested that it be made. The Department of State also considers "without delay" here to mean that there should be no deliberate delay, and that notification should occur as soon as reasonably possible under the circumstances. The Department of State would normally expect notification to consular officials to have been made within 24 hours, and certainly within 72 hours. On the other hand, the Department does not normally consider notification of arrests and detentions to be required outside of a consulate's regular working hours. In some cases, however, it will be possible and convenient to leave a message on an answering machine at the consulate or to send a fax even though the consulate is closed. (If a message is left on an answering machine, the Department of State encourages a follow-up call during normal business hours to ensure that it was received.) In addition, in cases of emergencies (such as deaths or serious accidents), efforts should be made to contact consular officials outside of normal hours.

Q. In the case of a "mandatory notification" country, how quickly must the notification be provided to consular officials?

A. The bilateral agreements that provide for mandatory notification use such formulations as "without delay" and "immediately." A few provide that notification should occur immediately and not later than within two, three, or four days. Thus, the same guidance as above would generally apply: there should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances.

Q. Can we simplify the process by always notifying consular officials, regardless of the alien's wishes, instead of worrying about which countries are "optional" and which are "mandatory?"

A. No. You should not adopt a policy of notifying consular officers in every case regardless of whether notification is mandatory. The VCCR provides for giving the foreign national the option of having consular officials notified in part because of a concern that some foreign nationals will not want the fact of their arrest or detention disclosed unnecessarily. In some cases, a foreign national may be afraid of his/her government and may wish to apply for refugee status/asylum in the United States. The privacy wishes of the foreign national should therefore be respected unless there is a mandatory notification requirement. Only in mandatory notification cases should you notify consular officials regardless of the alien's wishes.

Q. When we notify the consulate, should we tell them the reasons for the detention?

A. Generally you may use your discretion in deciding how much information to provide consistent with privacy considerations and the applicable international agreements. Under the VCCR, the reasons for the detention do not have to be provided in the initial communication. The detainee may or may not want this information communicated. Thus we suggest that it not be provided unless requested specifically by the consular officer, or if the detainee authorizes the disclosure. Different requirements may apply if there is a relevant bilateral agreement. (Some of the bilateral agreements require that the reasons for the detention be provided upon request.) If a consular official insists that he/she is entitled to information about an alien that the alien does not want disclosed, the Department of State can provide guidance.

Q. Isn't it wrong to follow "mandatory notification" procedures if the alien doesn't want his consular officials notified? What about the alien's privacy interests? What if the alien is afraid of his own government?

A. If the alien is from a "mandatory notification" country, notification must be given even if the alien objects or claims to be afraid. If the alien is an asylum seeker, arrangements can be made to protect the alien while ensuring that his/her government's right to notification is protected. Under no circumstances should the fact that a foreign national has applied for asylum or withholding of removal be revealed to that national's government. Specific guidance on such cases may be obtained from the Department of State.

Q. If the foreign national is from a "mandatory notification" country and I notify the consulate as required, should I tell the foreign national?

A. Yes. The alien should always be told that his consulate has been notified. While the mandatory notification agreements generally do not expressly require that the national be informed of such notification, informing the national is provided for in the VCCR. Most countries with which the United States has a bilateral agreement also belong to the VCCR.

Q. Can I comply with consular notification requirements by simply letting the detained alien have access to a telephone?

A. Not necessarily. It is the responsibility of the government officials responsible for the detention to ensure that consular notification is made. If the alien is from a mandatory notification country, you must ensure that notification is given to the consular officials; permitting the alien access to a phone, without taking further action, will not be sufficient for this purpose. If the alien is not from a mandatory notification country but wants consular notification, simply making a phone available also may not be sufficient. There must be adequate arrangements to ensure that the alien is actually able to make contact with his/her consular officials, and the responsible law enforcement officials must be able to confirm that contact was in fact made.

Q. Is there a guiding principle I can follow in applying the consular notification requirements?

A. Yes. Remember, always, that these are mutual obligations. In general, you should treat the foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national's nearest consular officials so that they can perform whatever consular services they deem appropriate.

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QUESTIONS ABOUT FAILURE TO NOTIFY

Q. If we failed to provide notification at the time of arrest and the alien is still in custody, what should we do?

A. Consular notification is "better late than never." You should follow the instructions in this booklet as soon as you become aware that a foreign national is in detention but consular notification procedures were not followed. A foreign government may commence providing consular assistance at any time, and should be given the opportunity to do so.

Q. If we failed to provide consular notification but the alien is receiving consular assistance, should we still go through the process of notification?

A. If the foreign national has already established contact with his/her consular officials, the Department of State does not consider it necessary to remedy a failure to provide consular notification by going through the procedures described in this booklet. The consular notification procedures are a mechanism to ensure that a foreign government can provide consular assistance to its nationals who are detained. Once the foreign government's consular officials are aware of the detention it is not necessary, for the mere sake of formality, to follow consular notification procedures. If the foreign government officials involved are not consular officials, however (e.g., if they are law enforcement officials), then consular notification procedures should still be followed.

Q. If we failed to provide consular notification and the alien has already been released from detention, should we still go through the process of notification?

A. If the alien is still involved in proceedings related to the reasons for which he/she was originally detained, the Department of State would recommend that he/she be advised of the possibility of consular assistance even if no longer detained, because consular assistance could still be useful. If proceedings against the alien have ended, so that consular assistance is unlikely to have any continuing relevance, the Department does not consider that it is necessary to provide notification.

Q. What is the remedy if we failed to give consular notification?

A. If the foreign national is still in detention, you should provide notification as soon as you become aware that it was not provided. This will ensure that the foreign government is given the opportunity to provide consular assistance for the remaining period of detention.

If the Department of State receives a complaint that consular notification was not provided, it will take appropriate action. For example, the Department may request the relevant facts from the detaining federal, state, or local authority; discuss the matter with the foreign government involved; apologize on behalf of the Government of the United States to the concerned foreign government for a failure to provide consular notification; intervene to ensure that consular access is permitted; or seek to work with the involved federal, state, or local detaining officials to improve future compliance.

Some aliens are attempting to obtain judicial remedies (such as new trials or sentencing hearings) for failures to give notification. Others have sought executive clemency. For further information on these developments, consult with the appropriate federal or state authorities, or call the Department of State.

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QUESTIONS ABOUT CONSULAR ACCESS AND ASSISTANCE

Q. What can we expect a consular officer to do once notified?

A. A consular officer may do a variety of things to assist a foreign national. The consular officer may speak with the detained foreign national over the phone and/or arrange one or more consular visits to meet with the detainee about his/her situation and needs. A consular officer may assist in arranging legal representation, monitor the progress of the case, and seek to ensure that the foreign national receives a fair trial (e.g., by working with the detainee's lawyer, communicating with prosecutors, or observing the trial). The consular officer may speak with prison authorities about the detainee's conditions of confinement, and may bring the detainee reading material, food, medicine, or other necessities, if permitted by prison regulations. A consular officer frequently will be in touch with the detainee's family, particularly if they are in the country of origin, to advise them of the detainee's situation, morale, and other relevant information.

The actual services provided by a consular officer will vary in light of numerous factors, including the foreign country's level of representation in the United States and available resources. For example, some countries have only an Embassy in Washington, DC, and will rarely be able to visit their nationals imprisoned in locations remote from there. Other countries have consulates located in many major U.S. cities and may regularly perform prison visits throughout the United States. Each country has discretion in deciding what level of consular services it will actually provide.

Q. Can we rely on the consular officer to arrange for legal counsel?

A. No. If the foreign national has a right to counsel and requests that he/she be given a court-appointed lawyer, the usual process of arranging counsel should be followed. While a consular officer is permitted to assist in arranging counsel, the consular officer may or may not actually choose to take such action.

Q. Is a consular officer entitled to act as legal counsel for a detained alien?

A. No. Consular officers are not permitted to practice law in the United States. They may, however, participate in litigation as "friends of the court," and they may assist an alien and his/her legal counsel in preparation of the alien's defense.

Q. Do I have to permit a consular officer to have access to a detainee?

A. Yes. Consular officers are entitled to visit and to communicate with their detained nationals. This is true even if the foreign national has not requested a visit. The consular officer must refrain from taking action on behalf of the foreign national if so requested by the national, however.

Q. Are consular officers entitled to visit whenever they want to?

A. No. Law enforcement authorities may make reasonable regulations about the time, place, and manner of consular visits to detained foreign nationals. Those regulations cannot, however, be so restrictive that the purpose of consular assistance is defeated. These matters are addressed in Article 36 of the VCCR. The Department urges law enforcement authorities to grant foreign consular officials liberal access to detained persons, granting the consular officer every courtesy and facility consistent with local laws and regulations. Liberal visiting privileges are particularly important when consular officers have to travel long distances to visit their nationals.

Q. Do consular officers have to comply with prison security regulations?

A. Yes. If the consular officer questions having to follow a particular security rule, the consular officer should be advised to address the question to the Department of State. Such questions may arise occasionally because, while not exempt from security regulations, under rules relating to the privileges and immunities of diplomatic and consular officers, consular officers conducting prison visits are entitled to be treated with respect.

Q. Can a consular officer be subject to search prior to visiting a prisoner?

A. Yes. Even though a consular officer has certain privileges and immunities, the officer must comply with applicable prison security rules. On the other hand, because a

consular officer is entitled to be treated with respect, any search of a consular officer should not be unnecessarily intrusive.

Q. Is a consular officer entitled to meet privately with a detained foreign national?

A. Yes, as a general rule. The VCCR entitles consular officers to converse with their nationals. It does not explicitly state that such conversations may be private, but some of the bilateral agreements do contain such explicit requirements. The Department of State believes that consular officers should normally be able to converse in private. This does not mean, however, that the conversation cannot be observed for security reasons.

If a consular officer insists upon a private meeting but the detained national objects to meeting privately, you should seek guidance from the Department of State.

Q. Is there a guiding principle I can follow in providing consular access?

A. Yes. Remember, always, that these are mutual obligations. In general, you should permit a consular officer the same access to a foreign national that you would want an American consular officer to have to an American citizen in a similar situation in a foreign country.

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QUESTIONS ABOUT CONTACTING THE DEPARTMENT OF STATE

Q. Do we need to notify the U.S. Department of State when we detain a foreign national?

A. No. Your obligations are to inform the detainee of the right to consular notification, and to make the notification to the detainee's embassy or consulate if the detainee requests or if the detainee is from a "mandatory notification" country. You do not need to inform the State Department about the detention, and in fact we generally prefer that you not do so, since informing the State Department often causes confusion about whether the foreign consulate has been informed properly in a timely manner. On the other hand, it may be appropriate to in-form us of unusual cases, provided that this is not done in lieu of making any required notification to a foreign consulate. Also, if you have questions about the VCCR consular notification obligation or related matters, the Department stands ready to help with information and advice.

Q. How can I get answers to other questions?

A. Additional inquiries may be directed to the Office of Public Affairs and Policy Coordination for Consular Affairs, CA/P, Room 6831, U.S. Department of State, Washington, DC 20520; telephone number 202-647-4415; facsimile number 202-736-7559. Urgent telephone inquiries after regular business hours may be directed to the State Department Operations Center, 202-647-1512.

4: Translations

How To Use the Translations

The statements below (in 17 different languages commonly used by foreign nationals in the United States) can be shown to a foreign national who has been arrested or detained and who does not understand English. Statement 2 is for foreign nationals who are citizens of the [58 countries](#) that require mandatory consular notification regardless of detainee's wishes. Statement 1 is for all other foreign nationals and gives the detainee the option of consular notification. Regardless of a detainee's consular notification decision, authorities providing these statements are encouraged to have the detainee sign and date them to avoid confusion and to prevent potential legal challenges.

Statement 1: For All Foreign Nationals Except Those From List Countries

As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular officers here in the United States of your situation. You are also entitled to 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.

Statement 2: For Foreign Nationals From List Countries

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 are entitled to 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.

[Below are links that appear on the web page that would take the viewer to web pages that contain translations of notifications.]

[Arabic optional](#), [Arabic mandatory](#)
[Cambodian optional](#)
[Chinese optional](#), [Chinese mandatory](#)
[Creole optional](#)
[Farsi optional](#), [Farsi mandatory](#)
[French optional](#), [French mandatory](#)
[German optional](#), [German mandatory](#)
[Italian optional](#), [Italian mandatory](#)
[Japanese optional](#), [Japanese mandatory](#)
[Korean optional](#), [Korean mandatory](#)
[Laotian optional](#)
[Polish optional](#), [Polish mandatory](#)
[Portuguese optional](#), [Portuguese mandatory](#)
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5: Legal Material

[Historical Background](#)
[Vienna Convention on Consular Relations \("VCCR"\)](#)
[Bilateral Agreements](#)
[Customary International Law](#)
[Basis for Implementation](#)
[Vienna Convention on Consular Relations](#)
[Article 5: Consular Functions](#)
[Article 36: Communication and Contact With Nationals of the Sending State](#)
[Article 37: Information in Cases of Deaths, Guardianship or Trusteeship, Wrecks, and Air Accidents](#)
[Mandatory Notification Provisions](#)
[Agreements Pertaining to Consular Functions](#)

The following pages in this booklet summarize and provide the basic legal authorities that pertain to the rights of consular officials to assist their nationals. They include the key legal provisions relating to consular notification and access including, in the case of mandatory notification, excerpts from the bilateral agreements. (Note: As each

agreement excerpt is a verbatim quote, some inconsistencies in capitalization and spelling conventions appear.)

The materials in this section include:

- A Legal Overview
- The Vienna Convention on Consular Relations, Articles 5, 36, and 37 (full text)
- The Mandatory Notification Provisions (Excerpts from Bilateral Agreements)
- A Table of Agreements Pertaining to Consular Functions

Legal Overview

Historical Background

A function of governments has long been to provide services to their citizens/nationals abroad. These "consular" services include certain legal services, such as notarizing documents or assisting with the estate of a citizen who dies abroad. They also include looking for missing citizens, determining whether citizens are safe, assisting in evacuating citizens from countries where their lives are endangered, and other similar "welfare and whereabouts" services. Another important consular function is the provision of assistance to citizens who are detained by a foreign government. Protecting such citizens may include attempting to ensure that they receive a fair and speedy trial with benefit of counsel; visiting them in prison to ensure that they are receiving humane treatment; and facilitating communications with their families.

The performance of such consular functions was originally a subject of customary international law but not uniformly addressed in any treaty. Eventually, however, efforts were made to codify in international treaties the rights of governments to provide consular services to their citizens. Such treaties might be called treaties, conventions, or agreements, but all would generally have the status of treaties in international law, in that they would be binding on the countries that adhered to them.

When the United States first began to codify its consular relations in international agreements with other countries, the vehicle was often a treaty of Friendship, Commerce, and Navigation ("FCN"). Later, bilateral conventions dealing exclusively with consular matters became more common. They are often simply referred to as "consular conventions." In 1963, however, the multilateral Vienna Convention on Consular Relations ("VCCR" ¹), was completed and countries throughout the world began ratifying it. Today, most countries, including the United States, are parties to the VCCR. The VCCR to a large extent codified customary international law and thus represents the most basic principles pertaining to the performance of consular functions. Since the VCCR entered into force for the United States on December 24,

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1969, we have relied increasingly on it as the principal basis for the conduct of our consular activities. Bilateral consular conventions continue to be negotiated from time to time, however.

¹ Done at Vienna April 24, 1963; entered into force March 19, 1967; entered into force for the United States December 24, 1969; 21 UST 77; TIAS 6820; 596 UNTS 261.

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Vienna Convention on Consular Relations ("VCCR")

Because of its comprehensive nature and near-universal applicability, the VCCR now establishes the "baseline" for most obligations with respect to the treatment of foreign nationals in the United States, and for the treatment of U.S. citizens abroad by foreign governments. As of June 1997, some 165 different countries were party to the VCCR (another 26 or so were not). The VCCR provides rules for the operation of consulates and for the functions of consuls and honorary consuls of a "sending" country (i.e., the country that has sent the consular official abroad) in a "receiving" country (the country to which the foreign consular official has been sent). Much of the VCCR addresses the "privileges and immunities" of consular officers (e.g., the fact that they may not be sued for official acts). Some of the VCCR's articles, however, address what consular officers may actually do for their nationals in the "host country."

Article 5 of the VCCR enumerates appropriate consular functions and includes a "catch-all" provision that consular functions include "performing any . . . functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State." Other specifically enumerated functions relevant to the issues addressed in this booklet include "helping and assisting nationals . . . of the sending State", "safeguarding the interests of nationals . . . of the sending State in cases of succession mortis causa in the territory of the receiving State . . .", and "safeguarding . . . the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons."

The special importance of providing assistance to citizens who are arrested or detained is reflected in the fact that these issues are addressed, additionally, in Article 36 of the VCCR. To facilitate the foreign government's ability to protect its nationals in these circumstances, Article 36(1)(b) of the VCCR provides that a detained person must be

informed that consular officials of his/her country may be notified about the detention. If the detainee "so requests," the consular officials must be notified of the detention. Article 36(1)(c) provides for access to detainees by consular officials.

The special needs for government assistance in cases of death, vulnerability due to incompetence, and major accidents are also reflected in the VCCR by giving these matters additional treatment, in Article 37. Article 37 provides expressly for consular notification in the situations it addresses.

The full text of Articles 5, 36, and 37 of the VCCR are reproduced below.

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Bilateral Agreement

As noted above, prior to the VCCR the United States entered into numerous treaties with specific countries to address the conduct of consular relations. We have done fewer such treaties since the United States ratified the VCCR, but may still enter into a bilateral consular treaty if special circumstances suggest the need for an agreement in addition to, or in lieu of, the VCCR. (The United States has also entered into a small number of non-binding memoranda of understanding, in which goals and principles relating to consular assistance have been set forth.)

Importantly, some of our bilateral consular agreements require that consular officials be notified of the arrest and/or detention of one of their nationals regardless of their national's request. These are commonly called "mandatory notification agreements" and the countries to which they pertain are called "mandatory notification countries." They are listed on page 5 in this booklet, and the text of the mandatory notification provisions is reproduced below. While the mandatory notification requirement pertains to over 50 countries, it flows from a much smaller number of treaties. This is because, under international law principles relating to successor states, a treaty that applied to a country when it was part of another country may in some circumstances continue to apply to that country when it becomes independent. Thus, one of the mandatory notification agreements now applies to two countries², another applies to 32 countries³, and a third applies to 12 countries⁴.

Note that the United States is party to many bilateral agreements that do not contain "mandatory notification" provisions but that nevertheless contain other important provisions relevant to the provision of consular assistance. These agreements should be consulted if particular questions arise as to the treatment of a foreign national of a particular country (e.g., with respect to the handling of deaths and estates of foreign nationals in the United States).

The large number of bilateral agreements and the many variations in their provisions makes it unrealistic to include any of their text other than the mandatory notification provisions in this booklet. The most commonly referred to agreements relevant to the provision of consular services are listed below, however, under the heading "Agreements Pertaining to Consular Functions."

² The Czech Republic and Slovakia are covered by the Consular Convention between the United States of America and the Czechoslovak Socialist Republic (signed 1973; entered into force 1987), TIAS 11083.

³ Antigua, the Bahamas, Barbados, Belize, Brunei, Cyprus, Dominica, Fiji, The Gambia, Ghana, Grenada, Guyana, Jamaica, Kiribati, Kuwait, Malaysia, Malta, Mauritius, Nigeria, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, the United Kingdom, Zambia, and Zimbabwe are covered by the Consular Convention Between the United States of America and the United Kingdom of Great Britain and Northern Ireland (signed 1951; entered into force 1952), 3 UST 3426. British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁴ Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan are covered by the Consular Convention between the United States of America and the Union of Soviet Socialist Republics (signed 1964; entered into force 1968), 19 UST 5018.

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Customary International Law

While the field of consular relations is now largely occupied by the treaties discussed above, the United States still looks to customary international law as a basis for insisting upon adherence to the right of consular notification, even in the case of countries not party to the VCCR or any relevant bilateral agreement. Consular notification is in our view a universally accepted, basic obligation that should be extended even to foreign nationals who do not benefit from the VCCR or from any other applicable bilateral agreement. Thus, in all cases, the minimum requirements are to notify a foreign national who is arrested or detained that the national's consular officials may be notified upon request; to so notify consular officials if requested; and to permit consular officials to provide consular assistance if they wish to do so.

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Basis for Implementation

The obligations of consular notification and access are binding on states and local governments as well as the federal government, primarily by virtue of the Supremacy Clause in Article VI of the United States Constitution, which provides that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." See *United States v. Arlington*, 669 F.2d 925 (4th Cir.), cert. denied, 459 U.S. 801 (1982). Customary international law—the basis for consular notification and access obligations in the absence of any treaty—is also binding on federal, state, and local authorities in these circumstances (where there is no controlling contrary federal authority).

The obligations of consular notification and access are not codified in any federal statute. Implementing legislation is not necessary (and the VCCR and bilateral agreements are thus "self-executing") because executive, law enforcement, and judicial authorities can implement these obligations through their existing powers.

Implementation can be directly on the basis of the relevant treaties and written guidance such as this booklet. Implementation may also be facilitated through issuance of internal directives, orders, or similar instructions by appropriate federal, state, and local officials to their subordinates. For example, many police departments incorporate instructions on consular notification into their local manuals. The Department of State encourages local law enforcement entities to develop practical guidance based on the instructions in this booklet or to adapt the five pages of "basic instructions" at the front of this book-let for general distribution to law enforcement officers in the field.

It is also open to government entities to adopt laws or regulations for the purpose of implementing these obligations. The Bureau of Citizenship and Immigration Services in the Department of Homeland Security has adopted such regulations, which are published in the Code of Federal Regulations, Title 8, Section 236.1(e).

Inquiries on this subject may be directed to the Office of Public Affairs and Policy Coordination for Consular Affairs, CA/P, Rm. 6831, U.S. Department of State, Washington, DC 20520; telephone number: 202-647-4415; facsimile number: 202-736-7559.

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Vienna Convention on Consular Relations: Articles 5, 36, and 37

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Article 5: Consular Functions

Consular functions consist in:

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the inter-national agreements in force between the sending State and the receiving State.

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Article 36: Communication and Contact With Nationals of the Sending State

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

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Article 37: Information in Cases of Deaths, Guardianship or Trusteeship, Wrecks, and Air Accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

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Mandatory Notification Provisions

(Excerpts From Bilateral Agreements)

The following are the provisions in bilateral agreements between the United States and other countries that require mandatory consular notification. Under international law principles relating to successor states, a treaty that applied to a country when it was part of another country may in some circumstances continue to apply to that country when it

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becomes independent. Thus, three of the bilateral consular agreements now apply to two or more foreign countries. As a result, while over 50 countries are covered by bilateral consular agreements providing for mandatory consular notification, these obligations arise from a much smaller number of agreements. The relevant treaty text is shown under the governing agreement.

Citations to "Bevans" are to *Treaties and Other International Agreements of the United States of America, 1776-1949*, compiled under the direction of Charles I. Bevans. Citations to "UST" are to *United States Treaties and Other International Obligations* (calendar-year volumes published since 1950). Citations to "TIAS" are to *Treaties and Other International Acts Series*, issued singly in pamphlets by the Department of State (use of this citation generally means that the agreement has not yet been published in UST).

Algeria. The consular post of the sending State shall be informed without delay of any measure taken to deprive one of its nationals of his liberty and the motivating circumstances.

Antigua and Barbuda. See the text for the United Kingdom.

Armenia. See the text for the U.S.S.R.

Azerbaijan. See the text for the U.S.S.R.

Bahamas, The. See the text for the United Kingdom.

Barbados. See the text for the United Kingdom.

Belarus. See the text for the U.S.S.R.

Belize. See the text for the United Kingdom

Brunei. See the text for the United Kingdom.

Bulgaria. In any case in which a national of the sending State is subjected to any form of deprivation or limitation of his personal freedom, the competent authorities of the receiving State shall inform the consulate of the sending State immediately and, in any event, not later than after three calendar days from the date on which the national was placed under any form of deprivation or limitation of personal freedom. Upon his request, a consular officer shall be informed of the reasons for which the national has been arrested or deprived of personal freedom.

Consular Convention, 26 UST 687, Article 38, paragraph 2 (signed 1974; entered into force 1975)

China. If a national of the sending State is arrested or placed under any form of detention within the consular district, the competent authorities of the receiving State shall immediately, but no later than within four days from the date of arrest or detention, notify the consulate of the sending State. If it is not possible to notify the

consulate of the sending State within four days because of communications difficulties, they should try to provide notification as soon as possible. Upon the request of a consular officer, he shall be informed of the reasons for which said national has been arrested or detained in any manner.

Consular Convention, 33 UST 2973, Article 35 paragraph 2 (signed 1980; entered into force 1982) (not applicable to people who carry "Republic of China" passports issued by Taiwan)

Costa Rica. A consular officer shall be informed immediately by the appropriate authorities of the receiving State when any national of the sending State is confined in prison awaiting trial or otherwise detained in custody within his consular district by such authorities.

Consular Convention, 1 UST 247, Article VII (signed 1948; entered into force 1950)

Cyprus. See the text for the United Kingdom.

Czech Republic. In all instances when a national of the sending State is placed under any form of deprivation or limitation of personal freedom, the competent authorities of the receiving State shall inform the consulate of the sending State without delay, and, in any event, not later than after three calendar days.

Consular Convention (with Czechoslovakia), TIAS 11083, Article 36, paragraph 1 (signed 1973; entered into force 1987)

Dominica. See the text for the United Kingdom.

Fiji. See the text for the United Kingdom.

Gambia, The. See the text for the United Kingdom.

Georgia. See the text for the U.S.S.R.

Ghana. See the text for the United Kingdom.

Grenada. See the text for the United Kingdom.

Guyana. See the text for the United Kingdom.

Hong Kong. If a national of the sending State is arrested or placed under any form of detention within the consular district, the competent authorities of the receiving State shall immediately, but no later than within four days from the date of arrest or detention, notify the consulate of the sending State. If it is not possible to notify the consulate of the sending State within four days because of communications difficulties, they should try to provide notification as soon as possible.

Agreement on the Maintenance of the United States Consulate General in the Hong Kong Special Administrative Region of March 15, 1997, paragraph 3(f)(2), and related agreed minute (identical language in agreement with China)

Hungary. In any case where a national of the sending State has been placed under detention pending trial or subjected to any other deprivation of personal liberty, the competent authorities of the receiving State shall notify the appropriate consulate of the sending State accordingly. Notification shall be made without delay and in any event within three days.

Consular Convention, 24 UST 1141, Article 41, paragraph (1) (signed 1972; entered into force 1973)

Jamaica. See the text for the United Kingdom.

Kazakhstan. See the text for the U.S.S.R.

Kiribati. See the text for the United Kingdom.

Kuwait. See the text for the United Kingdom.

Kyrgyzstan. See the text for the U.S.S.R.

Malaysia. See the text for the United Kingdom

Malta. See the text for the United Kingdom.

Mauritius. See the text for the United Kingdom.

Moldova. See the text for the U.S.S.R.

Mongolia. If a citizen of the sending country is arrested or detained in any manner, the authorities of the receiving state shall, within 72 hours, notify the consular post or embassy of the arrest or detention of the person and permit within 24 hours of such notification access by a consular officer of the sending state to the citizen who is under arrest or detained in custody.

Memorandum of Understanding, TIAS 11457, paragraph 3 (signed 1987; entered into force 1987)

Nigeria. See the text for the United Kingdom.

Philippines. Consular Officers of either High Contracting Party shall be informed immediately whenever nationals of their country are under detention or arrest or in prison or are awaiting trial in their consular districts and they shall, upon notification to the appropriate authorities, be permitted without delay to visit and communicate with any such national.

Consular Convention, 11 Bevans 74, Article VII, paragraph 2 (signed 1947; entered into force 1948)

Poland. The appropriate authorities of the receiving State shall immediately inform a consular officer of the sending State of the detention or arrest of any national of the sending State who has not been admitted to a permanent residence in the receiving State. In the case of the detention or arrest of a national of the sending State who has been admitted to permanent residence in the receiving State, the appropriate authorities of the receiving State on the request of such national, shall immediately inform a consular officer of the sending State of such detention or arrest.

Consular Convention, 24 UST 1231, Article 29, paragraph 2 (signed 1972; entered into force 1973)

Romania. In all instances when a national of the sending state is placed under any form of deprivation or limitation of personal freedom, the competent authorities of the receiving state shall inform the consular establishment of the sending state without delay and, in any event, not later than after two days.

Consular Convention, 24 UST 1317, Article 22, paragraph 1 (signed 1972; entered into force 1973)

Russia. See the text for the U.S.S.R.

Saint Kitts and Nevis. See the text for the United Kingdom.

Saint Lucia. See the text for the United Kingdom.

Saint Vincent and the Grenadines. See the text for the United Kingdom.

Seychelles. See the text for the United Kingdom.

Sierra Leone. See the text for the United Kingdom.

Singapore. See the text for the United Kingdom.

Slovakia. In all instances when a national of the sending State is placed under any form of deprivation or limitation of personal freedom, the competent authorities of the receiving State shall inform the consulate of the sending State without delay, and, in any event, not later than after three calendar days. Upon request, the consular officer shall be immediately informed of the reason for the national being placed under deprivation or limitation of personal freedom.

Consular Convention (with Czechoslovakia), TIAS 11083, Article 36, paragraph 1 (signed 1973; entered into force 1987)

Tajikistan. See the text for the U.S.S.R.

Tanzania. See the text for the United Kingdom.

Tonga. See the text for the United Kingdom.

Trinidad and Tobago. See the text for the United Kingdom.

Tunisia. The competent authorities of the receiving State shall, without delay, inform the appropriate consular post whenever a national of the sending state is the subject of an arrest or of any form of restriction on his personal freedom. For the purpose of this article, the term "without delay" contemplates that this notification will be made within three days following restriction on the freedom of nationals of the sending State, or in cases where the notification cannot be made within three days because of communications or other difficulties, as soon as possible thereafter.

Turkmenistan. See the text for the U.S.S.R.

Tuvalu. See the text for the United Kingdom.

Ukraine. See the text for the U.S.S.R.

United Kingdom. A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within his district.

Consular Convention, 3 UST 3426, Article 16, paragraph 2 (signed 1951; entered into force 1952)

U.S.S.R. The appropriate authorities of the receiving state shall immediately inform a consular officer of the sending state about the arrest or detention in other form of a national of the sending state.

Consular Convention, 19 UST 5018, Article 12, paragraph 2 (signed 1964; entered into force 1968)

Uzbekistan. See the text for the U.S.S.R.

Zambia. See the text for the United Kingdom.

Zimbabwe. See the text for the United Kingdom.

Agreements Pertaining to Consular Functions

The following table lists most of the agreements in force between the United States and other countries or jurisdictions (listed by short-form names) that relate to the performance of consular functions, including provisions relating to the treatment of foreign nationals and to the rights of consular officers to assist them. It is generally current through November 1, 1997. It is not a definitive record, however, and does not list all relevant agreements. (For example, it does not include agreements that relate principally to visa matters.)

The first column indicates whether the country or jurisdiction is a party to or is governed by the multilateral Vienna Convention on Consular Relations ("VCCR" ⁶).

The second column ("Bilateral Consular Conventions") lists bilateral consular conventions, agreements dealing in significant part with consular matters, and agreements amending such conventions or agreements. The third column ("Other Relevant Agreements") lists other more general agreements that include consular provisions of current relevance. These are generally treaties of Friendship, Commerce, and Navigation ("FCN"). Where a year is entered in one of the columns, it indicates that there is a relevant agreement signed that year.

The fourth column ("Prisoner Transfer Agreements") indicates the existence of a multilateral and/or a bilateral prisoner transfer agreement. An "S" indicates that the country is a party to the multilateral 1983 Council of Europe (Strasbourg) Convention on the Transfer of Sentenced Prisoners. A "B" followed by a date indicates that there is in force between the United States and that country a bilateral agreement which was signed in the year indicated.

The fifth column indicates whether the 1980 Hague Convention on the Civil Aspects of International Child Abduction, which has been in force for the United States since July 1, 1988, is in force between the United States and the listed country or jurisdiction.

Agreements relevant to specialized areas of consular work but not reflected in the following table include, in addition to visa agreements, social security totalization agreements and the Hague conventions relating to international legal assistance.

When the chart indicates the year in which a relevant treaty was signed, information about the precise date when the agreement entered into force (which may be some years after the date of signing) can be found in *Treaties in Force* (a State Department publication) or may be obtained by calling the Office of the Assistant Legal Adviser for Treaty Affairs at the U.S. Department of State, 202-647-2044.

⁶ Another multilateral consular convention is the 1928 Havana Convention on Consular Agents. Unlike the VCCR, it deals only with the privileges and immunities of consular officers.