

2.418 DIPLOMATIC IMMUNITY

A primary source document relating to diplomatic immunity is the US Department of State "Guidance for Law Enforcement Officers: Personal Rights and Immunities of Foreign Diplomatic and Consular Personnel." Copies of this document are available to patrol squad commanders and in Communications.

2.418.10 Levels of Diplomatic Immunity

- A. Police officers may intervene to any extent necessary with persons of any level of immunity in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed. This includes the authority for officers to defend themselves and others from personal harm.
- B. Full diplomatic immunity means that those persons, their residences, vehicles, belongings, and papers cannot be searched. They cannot be arrested or detained and are not required to give evidence as witnesses. Those persons with full diplomatic immunity are:
 - 1. Diplomatic agents;
 - 2. Diplomatic mission staff;
 - 3. Administrative and technical mission staff;
 - 4. Spouses of 1 - 3; and
 - 5. Dependent children of 1 - 3, until the age of 21 or 23 if full-time students.
- C. Limited criminal immunity prevents convictions if judges find that criminal acts transpired in the course of official duties. Persons enjoying limited immunity may be detained or arrested, their persons and belongings searched, and they may be required to give evidence as witnesses. Those persons with limited criminal immunity are:
 - 1. Service staff such as chauffeurs, drivers, mission servants, and domestic mission employees; and
 - 2. Consular officers.
- D. Persons who have no criminal or diplomatic immunity are:
 - 1. Families of service staff;
 - 2. Families of consular officers;
 - 3. Consular service staff or their families;
 - 4. Citizens of the United States who are employed by a consulate; and
 - 5. Private servants of any foreign national.

2.418.20 Claims of Diplomatic Immunity

- A. The burden of proof falls upon those claiming any level of diplomatic immunity to display valid diplomatic credentials.
- B. Claims of diplomatic immunity may be verified by calling appropriate numbers listed under "State Department" in RMS and CAD.
- C. All incidents involving claims of any level of immunity, whether *bona fide* or not, will be documented in appropriate agency reports and CIS. Copies of reports involving persons with *bona fide* immunity will be forwarded to the United States Department of State by personnel assigned to the Office of the Chief.
- D. Vehicles bearing diplomatic registration plates, or owned by persons with full diplomatic immunity cannot be searched. If it becomes necessary to tow vehicles with diplomatic license plates, officers will first attempt to locate owners/agents and request cooperation in moving same. If unsuccessful, officers will:
 - 1. Have vehicles relocated to a nearby legal parking space;
 - 2. Accept the related towing bill and forward same to Fiscal Services; and
 - 3. Ensure owners/agents or the owners/agents embassies are notified of vehicle locations and reasons for the vehicles being towed.
- E. See also **2.204.08 Foreign Diplomats & Consular Officials** and **2.458.04 Illegally Parked Vehicles in Primary Jurisdiction**.

2.418.30 Other Foreign Nationals

- A. Other foreign nationals not granted criminal immunity are afforded certain rights and privileges under agreements between the United States and certain foreign countries. These individuals are:
 - 1. Families of embassy services staff, or of consular officers;
 - 2. Private servants of diplomatic agents; and
 - 3. All other non-United States citizens, regardless of legal status.
- B. Certain procedures must be adhered to when dealing with foreign nationals.
 - 1. Whenever state or local authorities arrest, imprison, or otherwise detain foreign nationals, such authorities must promptly inform detainees of their right to have their governments informed of their detentions.
 - 2. Notifications are required according to Federal law as a part of the Vienna Convention on Consular Relations; Articles 5, 36, and 37; the Mandatory Notification Provisions; and other international agreements to which the United States is a part.
 - 3. If detainees ask to exercise their right of notification, detaining authorities must inform appropriate foreign consulates or embassies without unnecessary delay and should make written records of such notifications.
 - 4. Consular officers have the right to visit their nationals, to converse and correspond with them, and to arrange for their legal representation. A foreign consular officer may not take such actions on behalf of such persons if those persons being held expressly oppose the actions.
 - 5. Agreements with certain countries require mandatory notifications when their nationals are confined or detained. In these cases, foreign nationals have no choice regarding notifications, and authorities must notify appropriate consulates or embassies without unnecessary delay. Foreign nationals should be advised when their consuls have been notified. Listings of mandatory notifications are maintained in Communications.
 - 6. Officers will determine if an arrestee is a foreign national. If so, the officer will determine the foreign national's country.
 - a. In the absence of other information, the officer may assume this is the country on whose passport or other travel document the foreign national travels.
 - b. Officers should refer to the U.S. State Department booklet on Consular Notification and Access.
 - c. If the foreign national's country is not on the mandatory notification list, the officer will:
 - 1. Offer, without delay, to notify the foreign national's consular office of the arrest/detention;
 - 2. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay;
 - d. If the foreign national's country is on the list of mandatory notification countries, the officer will:
 - 1. Notify the country's nearest consular officials, without delay of the arrest/detention.
 - 2. Advise the foreign national that the notification is being performed.
 - e. Officers will use the agency form "Fax sheet for Notifying Consular Officers of Arrest or Detention", and fax the consular office/embassy with the necessary information.
 - 1. The fax sheet will be sent without a cover sheet.
 - 2. The fax sheet will be submitted to the Records Unit as proof of the notification with all of the other arrest paperwork.
 - 3. If there are no copies of the fax sheet in the Temporary Holding Facility available, officers will access a copy in the shared drive of the computer in the Documents folder.

2.418.50 Summary of Diplomatic and Consular Privileges and Immunities

(Reprinted from US Department of State Guidance for Law Enforcement Officers: Personal Rights & Immunities of Foreign Diplomatic & Consular Personnel.

Category	May be Arrested or Detained	Residence May be Entered Subject to Ordinary Procedures	May be Issued Traffic Citation	May be Subpoenaed as Witness	May be Prosecuted	Recognized Family Member
^(A) Diplomatic Agent	NO ⁽²⁾	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
^(A) Member of Admin. & Tech. Staff	NO ⁽²⁾	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
^(A) Service Staff	YES ⁽¹⁾	YES	YES	YES	NO for official acts. Otherwise, YES ⁽¹⁾	No immunity or inviolability. ⁽¹⁾
^(B) Career Consular Officers	YES if for a felony & pursuant to warrant. ⁽¹⁾	YES ⁽⁴⁾	YES	NO for official acts. Testimony may not be compelled any time.	NO for official acts. Otherwise, YES ⁽¹⁾	No immunity or inviolability. ⁽¹⁾
^(B) Honorary Consular Officers	YES	YES	YES	NO for official acts. YES all other cases.	NO for official acts. Otherwise, YES.	No immunity or inviolability.
^(B) Consular Employees	YES ⁽¹⁾	YES	YES	NO for official acts. YES all other cases	NO for official acts. Otherwise, YES ⁽¹⁾	No immunity or inviolability. ⁽¹⁾
^(C) International Org. Staff ⁽³⁾	YES ⁽³⁾	YES ⁽³⁾	YES	NO for official acts. YES in all other cases.	NO for official acts. Otherwise, YES ⁽³⁾	No immunity or inviolability.
^(C) Diplomatic Level Staff of Missions to Int'l Org.	NO ⁽²⁾	NO	YES	NO	NO	Same as sponsor (full immunity & inviolability).
^(C) Support Staff of Missions to Int'l Org.	YES	YES	YES	YES	NO for official acts. Otherwise, YES.	No immunity or inviolability.

^(A)Diplomatic

^(B)Consular

^(C)International Organizations

⁽¹⁾This table presents general rules. Particularly in the cases indicated, the employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.

⁽²⁾Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or the prevention of serious criminal acts.

⁽³⁾A small number of senior officers are entitled to be treated identically to "diplomatic agents."

⁽⁴⁾Note that consular residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.