

ILLINOIS STATE POLICE DIRECTIVE ENF-031, FOREIGN NATIONALS

RESCINDS: ENF-031, 2010-093, revised 10-11-2010.	REVISED: 08-28-2017 2017-059
RELATED DOCUMENTS: ENF-030	RELATED CALEA STANDARDS: 1.1.4, 42.1.6, 61.1.2, 61.1.3

I. POLICY

The Illinois State Police (ISP) will:

- I.A. Protect and defend all persons to the extent which is consistent with current federal and state law.
- I.B. Afford all persons the full protection of the law.
- I.C. Cooperate with all Federal Law Enforcement Agencies.
- I.D. Comply with state and federal law as well as guidelines established by the U.S. Department of State regarding the detention or arrest of foreign nationals.

NOTE: The cooperation of state and local law enforcement authorities is essential if the United States is to carry out its notification obligations effectively and to ensure that U.S. citizens arrested or detained abroad obtain the treatment to which they are entitled.

II. AUTHORITY

- II.A. Vienna Convention on Consular Relations (Treaties and other International Acts Series (TIAS) 6820)
- II.B. Bi-lateral treaties or other international agreements between the United States and other sovereign nations.
- II.C. The Illinois TRUST Act
- II.D. Title 8 United States Code (U.S.C.) 1324, Section 274 (Bringing in and harboring certain immigrants)
- II.E. Title 8 U.S.C. 1324, Section 275 (Illegal entry)
- II.F. Title 8 U.S.C. 1357

NOTE: Title 8 U.S.C. 1226 and 1357 grants power and authority to the employees and officers of the U.S. Department of Homeland Security, ICE, to issue immigration detainers and warrants and arrest persons as undocumented foreign nationals. No ISP officer has authority to arrest or detain an undocumented foreign national due solely to the individual's status as an undocumented foreign national.

- II.G. Title 8 Code of Federal Regulations (CFR) 245.23, Adjustment of aliens in T nonimmigrant classification
- II.H. Title 8 CFR 245.24, Adjustment of aliens in U nonimmigrant classification

III. DEFINITION

- III.A. Foreign National - for purposes of this directive, a foreign national is any individual who is other than a United States citizen. The Department will handle those foreign nationals who identify themselves as diplomatic or consular officials in accordance with ISP Directive ENF-30, "Diplomatic Immunity."
- III.B. "Immigration detainer" - a document issued by an immigration agent that is not approved or ordered by a judge and requests a law enforcement agency or law enforcement official to provide notice of release or maintain custody of a person, including a detainer issued under Section 1226 or 1357 of Title 8 of the United States Code or Section 236.1 or 287.7 of Title 8 of the Code of Federal Regulations.

- III.C. "Non-judicial immigration warrant" - a Form I-200 or I-205 administrative warrant or any other immigration warrant or request that is not approved or ordered by a judge, including administrative warrants entered into the Federal Bureau of Investigation's National Crime Information Center database.
- III.D. Undocumented Foreign National - a foreign national illegally entering and living in the U.S., or who enters legally and then overstays their visa.
- III.E. Certification forms:
 - III.E.1. T visa – United States Customs and Immigration Services (USCIS) Form I-914, Supplement B, Declaration of Law Enforcement Officer for Victim in Trafficking of Persons (Form I-914B or declaration) or any successor forms
 - III.E.2. U visa – USICS Form I-918, Supplement B, U Nonimmigrant Status Certification (Form I-918B or certification) or any successor forms

IV. PROCEDURES

The U.S. Department of State requires the assistance of state and local law enforcement authorities in carrying out the following international obligations of the United States concerning the detention or arrest of foreign nationals in this country. The legal requirements are as follows:

- IV.A. Handling of undocumented foreign nationals during official duties
 - IV.A.1. When an officer conducts a traffic stop on an undocumented foreign national, the driver will only be charged with traffic and criminal violation(s) stemming from the traffic stop and will be allowed to post bond or be transported to jail (whichever applies).
 - IV.A.2. Officers will:
 - IV.A.2.a. Comply with a valid, enforceable federal criminal warrant.
 - IV.A.2.b. **Not** stop, arrest, search, detain, or continue to detain a person solely based on:
 - IV.A.2.b.1) their citizenship or immigration status, or
 - IV.A.2.b.2) the suspicion they may be an undocumented foreign national.
 - IV.A.2.c. **Not** detain or continue to detain a person solely on the basis of any immigration detainer or non-judicial immigration warrant or otherwise comply with an immigration detainer or non-judicial immigration warrant.
 - IV.A.2.d. **Not** initiate police action where the primary objective is discovery of the citizenship or lawful resident status of any person.
 - IV.A.2.e. Contact a Federal Law Enforcement Agency regarding an individual (driver, passenger, or pedestrian) only under the following circumstances:
 - IV.A.2.e.1) The subject of a National Crime Information Center (NCIC) alert
 - IV.A.2.e.2) Posing an articulable, clear and present danger to the community
 - IV.A.2.e.3) Suspected of terrorist activity
 - IV.A.2.e.4) Suspected of smuggling undocumented foreign nationals (human trafficking)
 - IV.A.2.e.5) The subject of an on-going criminal investigation
 - IV.A.2.e.6) Applying for a position with the ISP and is the subject of a background investigation
 - NOTE:** Officers may contact a Federal Law Enforcement Agency, directly or through a Telecommunicator, to clarify the status or nature of an NCIC alert.
 - IV.A.2.f. Cooperate and share information with a Federal Law Enforcement Agency when cooperation serves a public safety interest, as defined in paragraph IV.B. and is consistent with the Illinois TRUST Act.

IV.B. Whenever an ISP officer arrests, imprisons, or otherwise detains a foreign national, the officer must promptly inform the detainee of his/her right to have their government informed of such event.

IV.B.1. If the detainee asks to exercise this right, the detaining authority will inform the appropriate foreign consulate or embassy (*) without delay and make a written record of such notification.

* Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed immediately 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.

NOTE: A current list of telephone numbers for all foreign consulates and embassies is accessible through the Law Enforcement Agencies Data System (LEADS) help program. Each District is responsible for calling the appropriate foreign consulate or embassy, the U.S. Department of State (see paragraph IV.I. for telephone numbers), and maintaining records of such calls.

IV.B.2. Subject to local laws and regulations regarding access to detained persons, consular officers (*) have the right to:

IV.B.2.a. Visit their nationals who are in prison, custody, or detention

IV.B.2.b. Converse and correspond with their detained nationals

IV.B.2.c. Arrange for legal representation for the detainees

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IV.C. When a foreign national is charged with a felony or any sex offense, the officer will advise the appropriate Federal Law Enforcement Agency of the charges and the pending court date.

IV.D. When a foreign national has been identified and documented as a gang member, and when, in the officer's judgment, the person poses an articulable, clear and present danger to the community, the appropriate Federal Law Enforcement Agency may be notified. Prior to notification of the appropriate Federal Law Enforcement Agency, the gang membership should be documented.

IV.E. Notification of appropriate Federal Law Enforcement Agencies:

IV.E.1. Federal Law Enforcement Agencies will only be contacted when one or more of the criteria listed in section IV.A.2.e are met or to clarify the status of an NCIC alert.

IV.E.2. The telephone numbers for Federal Law Enforcement Agencies are available from any ISP District or the Springfield Communications Center.

IV.E.3. When the officer calls the after-hours number, he must give his or her name, rank, and the name of the department they represent as this number is an answering service only.

IV.E.4. A Federal Law Enforcement Agency may request the detention of and respond to pick up the prisoner or request the subject be released pending follow-up by their agents. Detention may only occur pursuant to a valid, enforceable federal criminal warrant or as a request to interview a subject who meets one of the criteria listed in section IV.A.2.e and may not be based upon an immigration detainer or non-judicial immigration warrant.

IV.E.5. When calling the Federal Law Enforcement Agency, always obtain the name of the officer authorizing the detention.

IV.E.6. Contacts with a Federal Law Enforcement Agency will be logged in the CAD incident. Investigative personnel not initiating a CAD incident will document the contact on the appropriate criminal investigation report form.

- IV.F. U.S. Immigration and Customs Enforcement (ICE) involvement – if an undocumented foreign national is detained pursuant to a valid, enforceable federal criminal warrant or in connection with a criminal investigation:
 - IV.F.1. An ICE criminal investigator may contact the ISP officer by telephone and may telephonically conduct an interview with the person being detained.
 - IV.F.2. Officers will request an ICE criminal investigator respond to the scene of undocumented foreign national smuggling operations.
- IV.G. While the above requirements are universally applicable, law enforcement personnel must be aware that agreements with certain countries mandate notification to consular or embassy officials of those nations when nationals of those countries are confined or detained.
 - IV.G.1. In these cases, the foreign national has no choice regarding notification, and law enforcement authorities must notify the consulate or the embassy of the situation immediately.
 - IV.G.2. The foreign national will be advised that his consul has been notified.
 - IV.G.3. The United States has these special agreements with countries indicated in Addendum 1.
- IV.H. Law enforcement authorities will telephone the U.S. Department of State immediately concerning any questions that arise in connection with the foregoing procedures at (202) 647-1512. Written inquiries may be addressed to Office of the Assistant Legal Adviser for Consular Affairs; Department of State; Washington, D.C. 20520.

V. REGULATIONS

- V.A. Officers will **NOT** base probable cause to detain and question an individual for a suspected immigration violation solely on race, surname, or an inability to speak fluent English.
- V.B. Identification
 - V.B.1. The officer will initially request a driver's license or similar document for identification.
 - V.B.2. Officers will not ask for an immigration card unless he/she can articulate the reasons to make the request.
 - V.B.3. If the lawfully detained subject cannot produce a valid driver's license or any other form of identification, he/she should be taken to the nearest police facility with the capability of running a warrant check using the subject's fingerprints.
- V.C. Crime victims and their family
 - V.C.1. Generally, officers will not question victims of criminal acts about their immigration status.
 - V.C.2. Absent circumstances listed in IV.A.2.e, officers will not report a victim of a crime or his/her family, suspected to be undocumented foreign nationals, to a Federal Law Enforcement Agency.

VI. Visa Certification Forms

- ISP employees who receive a completed U or T visa certification form shall forward such application to the ISP Legal Office as soon as possible.

Indicates new or revised items.

-End of Directive-

**ILLINOIS STATE POLICE DIRECTIVE
ENF-031, FOREIGN NATIONALS
ADDENDUM 1, MANDATED CONSULAR NOTIFICATION**

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RELATED DOCUMENTS: ENF-030	RELATED CALEA STANDARDS: 1.1.4, 42.1.6, 61.1.2, 61.1.3

Algeria	Guyana	Saint Lucia
Antigua and Barbuda	Hong Kong **	Saint Vincent and the Grenadines
Armenia	Hungary	Seychelles
Azerbaijan	Jamaica	Sierra Leone
Bahamas, The	Kazakhstan	Singapore
Barbados	Kiribati	Slovakia
Belarus	Kuwait	Tajikistan
Belize	Kyrgyzstan	Tanzania
Brunei	Malaysia	Tonga
Bulgaria	Malta	Trinidad and Tobago
China *	Mauritius	Tunisia
Costa Rica	Moldova	Turkmenistan
Cyprus	Mongolia	Tuvalu
Czech Republic	Nigeria	Ukraine
Dominica	Philippines	United Kingdom ***
Fiji	Poland (non-permanent residents only)	U.S.S.R. ****
Gambia, The	Romania	Uzbekistan
Georgia	Russia	Zambia
Ghana	Saint Kitts and Nevis	Zimbabwe
Grenada		

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** 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, United States-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.

*** 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.

**** 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 in the table above.

-End of Addendum-