


# GAINESVILLE POLICE DEPARTMENT

## GENERAL ORDER

180816\_GO 40.3 Revised  
Immigration Policy with  
strikethrough and  
highlights\_20200116

	<b>TITLE</b> Foreign Nationals/ Diplomats- Consular Notification	<b>ACCREDITATION</b> CALEA 1.1.4, 1.2.3-a, 1.2.5, 1.2.9-a, 42.2.5, 55.1.1, 61.1.2, 61.1.7-a, 74.3.1	
	<b>PROPONENT UNIT</b> Professional Standards Branch	<b>PRIOR REVISIONS</b> 12/01/98, 11/01/01, 02/26/04, 03/08/12, 10/05/16; 06/17/19; 10/24/19	
<b>NUMBER</b> 40.3	<b>ISSUE DATE</b> 07/01/98	<b>REVISION DATE</b> 12/18/2019	<b>ATTACHMENTS:</b> <a href="#">-Arresting a Non-US Citizen Consular Notification Process</a> <a href="#">-CAN FAX Sheet Consular Notification</a> <a href="#">-Local Law Enforcement and Foreign Mission Personnel in the United States- What to do if Stopped by the Police</a> <a href="#">-Diplomatic and Consular Immunity Guidance for Law Enforcement and Judicial Authorities</a> <a href="#">-Information for Law Enforcement Agencies and Judges</a> <a href="#">-Victims of Criminal Activity: U-Nonimmigrant Status</a>
<b>TOTAL PAGES</b> 7			

**I. PURPOSE:** This Order defines the scope and limits of the Department's law enforcement authority regarding detention/arrests of foreign nationals.

**II. POLICY:** All individuals, regardless of citizenship or **immigration status**, are entitled to basic rights and privileges which are set forth in common law, state and federal law, and the Florida and United States Constitutions. In addition, foreign nationals (persons who are not US citizens) may be entitled to rights and privileges set forth in the Vienna Convention and other international laws. It is the policy of the department to provide service to all persons and to exercise its duties in conformance with all applicable laws, regardless of citizenship or **immigration status**, nationality, or racial/ethnic background.

### III. DEFINITIONS:

**Diplomatic Immunity:** A principle of international law is broadly defined as the freedom from local jurisdiction accorded to duly-accredited diplomatic officers, their families and servants. Diplomatic officers should not be arrested or detained except for the commission of a grave crime. Family members of diplomatic officers, their servants and employees of a diplomatic mission are entitled to the same immunities under current United States law (22 U.S.C. § 254) if they are not nationals of, or permanently reside in, the receiving state. Associated with this personal immunity is the inviolability enjoyed by the premises of the mission of the sending state and the private residence of a diplomatic agent, his property, papers and correspondence.

**Foreign Nationals:** Any citizen of a foreign country present in the United States (without regard to legal status).

### IV: PROCEDURE:

#### A. Questioning of Foreign Nationals/Arrest Policy:

## 1. Authority to Arrest

Officers have no statutory authority to enforce violations of federal immigration laws. If any foreign national is arrested, the arrest must be based on a confirmed warrant or on state/local traffic or criminal charges.

## 2. Participation in ICE Operations Raids

GPD officers are permitted to **only** assist ICE agents when officers have been assigned to a task force or a joint criminal investigation involving ICE agents when the primary focus of the task force or investigation is a criminal investigation ~~other exceptions may be made on a case-by-case basis~~. Examples include, but are not limited to, customs violations, money laundering, narcotics cases, gang investigations, hate crimes, human trafficking, and terrorist activities. Even in these circumstances, officers shall obtain authorization **from the Investigations Bureau Chief or higher**, ~~a Bureau Chief or SID Director~~ prior to participating in any ICE raid **immigration operation**. Nothing in this order prohibits an officer from responding to or being on the scene of any federal warrant service in order to maintain safety in exigent circumstances.

*\* Revised after 9/16/19 City Commission meeting in which the following recommendations were made: "The Commission hear 1) an immigration policy update via Gainesville Police Department (GPD) and 2) take action as deem appropriate."*

## 3. Traffic Violations

If an individual is stopped for a traffic violation is not wanted for other charges or has a valid driver's license, the individual should be treated the same as any other violator and not subjected to arrest or further questioning because of nationality **or immigration status**. Without reasonable suspicion of criminal activity, the individual must not be detained longer than necessary for the traffic stop to be completed.

## 4. Confiscating Immigration Documents

Generally, officers do not have authority to confiscate Resident Alien Cards (a.k.a. "green cards") or Employment Authorization Cards without the express authorization from an ICE official. If an officer has probable cause to believe that immigration documents are altered or counterfeit with fraudulent intent, the officer is permitted to confiscate those documents and to place charges as appropriate for the possession of fraudulent government identification documents (Florida Title XXIII Chapter 322.051)

## B. Foreign Nationals as Victims/Witnesses

1. The indiscriminate questioning of foreign nationals about their citizenship or **immigration status** without a reasonable basis for suspicion of state/local traffic or criminal charges is unconstitutional according to Supreme Court decisions. Officers should refrain from asking questions about citizenship or **immigration status** of victims/witnesses unless the investigation warrants it.

If the Victim/Witness's first language is not English, the department member will ensure an interpreter is acquired and engaged in any question or conversation about the person(s) citizenship or **immigration status**.

2. A police report/investigation is not contingent upon a person's citizenship or **immigration status**. Department employees provide service to all persons regardless of their citizenship or **immigration status**.

3. If it becomes known that a victim or witness is essential to a case is facing deportation, Department Members may request a delay in deportation for applicable crimes as indicated by the U.S. Citizenship or immigration status and Immigration Services. Department members shall forward a request in writing via their Chain-of-Command to the Office of the Chief. Department members may refer to the U.S. Citizenship or immigration status and immigration Services- Information for Law Enforcement Agencies and Judges website for applicable VISA(s).

If the victim/witness has a criminal history, chances are reduced that ICE will approve such a request. Any approval by ICE to delay deportation does not constitute employment authorization or confer any benefit upon the victim/witness.

### C. Juvenile Foreign Nationals

1. Juvenile Notification Procedures: When an arrested or detained foreign national is a juvenile, the following procedures shall be adhered to:

a. When juvenile foreign nationals are charged with any crime and transported to the Juvenile Assessment Center (J.A.C.), the arresting officer shall complete a *Foreign National Notification Form* and fax it to the appropriate consular official without delay. In all cases where a juvenile foreign national is arrested, the arrestee's / detainee's consulate shall be notified regardless of their nationality and whether or not it is a mandatory notification country or not. In these cases, the *Foreign National Notification Form* shall be attached to the offense/incident report by turning it into Records with the CR number notated on the document.

2. In the event that a juvenile foreign national is issued a civil citation, and subsequently released to their parent or guardian, the parent or guardian shall be advised of their right to consular notification, and they may contact them if they so choose.

### D. Arrest Procedures

1. The United States is obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. When foreign nationals are physically arrested, officers shall:

i. Properly inform the foreign national of the right to have their government notified concerning their arrest/detention.

ii. If the foreign national asks that such notification be made, do so without delay by informing the nearest consulate or embassy (utilizing CNA Fax Sheet Consular Notification) and note that fact in the report. Consulate phone numbers can be obtained from CCC or the front desk. Also, officers may obtain assistance from the US Department of State's 24 hour Operations Center at (202)647-1512

iii. In the case of certain countries, such notification must be made without delay regardless of whether the arrestee/detainee so wishes. A list of these countries can be obtained in report writing, front desk, District Operations.

2. State and local law enforcement officers do not have legal grounds to stop, detain, search, or arrest any individual based solely on an ICE civil warrant, unless they have been deputized by ICE to do so. Officers must have a separate, arrestable offense in order to arrest any individual who is the subject of an ICE civil warrant. Therefore, GPD officers who receive a "hit" for an ICE civil warrant via NCIC will not use that information to stop, detain, search, or arrest any individual solely on the basis of the ICE warrant. Officers must have a legal reason separate from an ICE civil warrant to stop, detain, search, or arrest any individual. Officers will not use the issuance of an ICE detainer after the fact to justify an arrest based solely on an ICE civil warrant.

**E. Dual Nationality Notification Procedures:** When an arrested or detained person has more than one nationality, the following procedures shall be adhered to:

1. An arrested or detained person who is a United States citizen and a foreign national of another country shall be treated exclusively as a United States citizen when in the United States. Consular notification is not required if the detainee has United States citizenship or **immigration status**, regardless of whether he or she has another country's citizenship or **immigration status** or nationality as well, even if the detainee's other country is a mandatory notification country.

2. An arrested or detained person who is not a United States citizen, but who is a foreign national of two or more other countries, should be treated in accordance with the applicable notification requirements of each of those countries. Therefore, the consulates of both countries shall be notified if the foreign national so requests. If either country is a mandatory notification country, the applicable consulate shall be notified whether or not the foreign national so requests. If both countries are mandatory notification countries, the consulate of both countries shall be notified regardless of whether or not the foreign national so requests

#### **D. Consular Relations**

1. Consul Officers should be given timely notification concerning the death of a foreign national and disposition of the deceased's property.

2. When requested, assistance should be given to any consul in ascertaining the whereabouts of their citizen. This does not include disclosing any information obtained through DAVID or NCIC. This information is restricted to law enforcement only.

**E. Communication Between Government Agencies and Federal Government Agencies as defined in [Title 8, United States Code §1551](#) Federal Government Agencies and the Immigration and Naturalization Service-**

1. [Title 8, United States Code §1373](#) addresses the exchange of information regarding citizenship or **immigration status** among federal, state, and local government entities and officials. Communications shall occur consistent with the law which states:

In General Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Federal entities detailed in [Title 8, United States Code §1551](#) the ~~Immigration and Naturalization Service~~ information regarding the citizenship or **immigration status**, lawful or unlawful, of any individual.

**2. Additional Authority of Government Entities**

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the **immigration status**, lawful or unlawful, or any individual:

- i. Sending such information to, or requesting or receiving such information from, the Federal entities detailed in [Title 8, United States Code §1551](#) ~~the Immigration and Naturalization Service~~.
- ii. Maintaining such information.
- iii. Exchanging such information with any other Federal, State, or local government entity.

**F. Contact Information**

**1. Immigration and Customs Enforcement (ICE)**

When seeking information or making notifications to ICE, the following numbers should be used:

- i. Officers are encouraged to seek assistance 24 hours a day from the ICE Law Enforcement Support Center (LESC) at 1-800-872-6020. They can also be contacted by sending a message via NCIC.
- ii. The agents at the Miami Field Office can be reached at **(954) 236-4900**

**2. US Department of State**

The US Department of State's 24 hour Operations Center can be reached at (202) 647-1512.

### 3. Document Notification

If assistance was requested or a notification was made from either ICE or the US Department of State, a notation must be made in the incident report.

### G. Jail Responsibilities

Generally, consular notifications as it pertains to this General Order are the responsibility of the Jail once the defendant is booked into the jail. The main exception is if the foreign national is detained for *several* hours for interrogation.

### H. Diplomatic Immunity:

**1. Diplomatic Officers:** Ambassadors and ministers are the highest ranking diplomatic representatives of a foreign government. Other diplomatic titles are Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. These Officials are located either in Washington, D.C. or in New York City. Diplomatic officers, their families, official staff and servants, who are not nationals of or permanently reside in the receiving state, are protected by unlimited immunity from arrest, detention or prosecution with respect to any civil or criminal offense.

**2. Consular Officers are Consuls-General, Deputy Consuls-General, Consuls and Vice Consuls:** are also official representatives of foreign governments. Consular officers are required to be treated with due respect, and all appropriate steps are to be taken to prevent any attack on their person, freedom or dignity.

**i. Immunities:** Consular Officers are entitled to the following limited immunities: Under prevailing international law and agreement, a foreign career Consular Officer is not liable to arrest or detention pending trial, except in the case of a grave crime (felony offense that would endanger the public safety) and pursuant to a decision by the competent judicial authority. His immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to Court determination.

**ii. Identification** - Career Consular Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers. The State Department credential bears its seal, the name of the officer, his title, and the signatures of State Department officials

**3. Honorary Consuls:** Often nationals or permanent residents of the receiving state are appointed and received as honorary Consular Officers to perform the functions generally performed by career Consular Officers. Such officers do not receive identification cards from the State Department of the type issued to career Consular Officers, though they exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the United States Government. These individuals are not immune from arrest or detention. They are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state, except as to official acts performed in the exercise of their

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consular functions. However, appropriate steps must be provided to accord such officers the protection required by virtue of their official position. In addition, the consular archives and documents of a consular post headed by an honorary consul are inviolable at all times and wherever they may be, provided they are kept separate from other papers and documents of a private or commercial nature relating to the other activities of an honorary consul and persons working with him.

Family members of Consular Officers do not enjoy the same privileges and immunities with respect to the civil and criminal jurisdiction of the receiving state as do Consular Officers. However, they should be accorded appropriate courtesy and respect.

Consular premises used exclusively for the work of the consular post cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action. Consular archives, documents, records and correspondence are inviolable at all times and wherever they may be. The official correspondence of the consular posts, which means all correspondence relating to the consular post and its functions, is likewise inviolable.

**4. Resources:** Department members may refer to Foreign Diplomats to the U.S. Department of State Brochure -Local Law Enforcement and Foreign Mission Personnel in the United States- What to do if Stopped by the Police.

Department members may refer to the U.S. Department of State- Diplomatic and Consular Immunity: Guide for Law Enforcement and Judicial Authorities.

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**By Order of**

*Signed Original on File in the  
Accreditation Unit*

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**Tony R. Jones  
Chief of Police**