

Sheriff's Obligations and the Rights of Newly Arrested Foreign Nationals

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The deputy was getting worried. His son was overdue to call and let him know his vacation flight to Central America had gone well. Then, he got a phone call from his daughter-in-law. He could hardly understand her because she was crying so hard. She explained there had been an argument and a big misunderstanding in a restaurant, and that his son had been arrested in a case of mistaken identity. She asked him to please, please help.

The deputy's mind raced as he thought, "That jail isn't even in this country and I don't even know if I can get any information. What CAN I do?"

We Promised

The scenario of an arrest on foreign soil has played out for centuries for Americans visiting other countries and for foreign nationals visiting the U.S. "Since the advent of air travel and an increasingly global economy, the number of international contacts, including arrests, by law enforcement has grown dramatically," said Sheriff Lee Baca, Los Angeles County Sheriff's Department.

With that in mind, international leaders met back in 1963 at the United Nations Conference on Consular Relations. The meeting led to the Vienna Convention on Consular Relations,

Consular contact information sign in the Inmate Reception Center (Photo by Thanh Ly, LASD)

which includes 79 varying articles. What our nation agreed to, affects every peace officer in the U.S. and most other countries.

173 countries including the U.S., pledged the following in Article 36: 1) freedom of communication between consular officers and foreign nationals 2) consular notification regarding the arrest/detention of foreign nationals "without delay" 3) the ability of consular officers to visit, converse, and correspond with an arrested foreign national – unless the arrestee expressly opposes.¹

Reciprocity: If we share, they share.
If we don't, they won't

Reciprocity is the de facto notion agreed to by the parties to the Vienna Convention.

When it comes to the arrests of foreign nationals, in summary reciprocity means that since we notify other countries of our arrests of their countrymen, then they will notify our country of the arrests of our citizens. If we don't, they won't.

Mandatory Notifications: The best kept secret (that shouldn't be a secret)

Over 13 million arrests were made by the 700,000 peace officers working for more than 19,000 U.S. policing agencies in 2009, according to Federal Bureau of Investigation statistics². In Los Angeles County alone, there are over 150,000 annual admissions that are booked in directly to the county jail system, through the patrol stations, or via the courts. Of those, approximately 17-30% were born in a foreign country. While some are American citizens, a large percentage are foreign nationals.

Regardless of why they were arrested in the U.S., if arrestees are citizens of one of the designated 173 countries³, they must at least be offered the opportunity of consular notification and access. This may include facilitating communication with the inmate's family, consular visitation in jail, and assistance with acquiring competent counsel.

Not all countries party to the Vienna Convention receive mandatory notification from U.S. law enforcement agencies. Therefore, you have to check the list of over 50 mandatory countries⁴. Mexico, for example, is not a "mandatory notification country" but does enjoy an agreement with the U.S. which provides consular officers the right to visit and assist detained nationals⁵. For other non-mandatory countries like El Salvador and Nicaragua, the arrestee must be asked if they would like to notify their Consulate. If they refuse, notification is not mandatory.

Legally binding bilateral agreements for many countries mandate us to notify consulates immediately/without delay such as the United Kingdom, Russia, or Philippines, or within three days such as Bulgaria and Romania, regardless of the wishes of the arrested foreign national. Meanwhile, for citizens of China it is 4 days from the date of arrest or detention⁶.

It's Important

A man convicted in 1993 of the gruesome murder of two teenage girls was subsequently sentenced to the death penalty. However, 15 years passed before the sentence was ultimately carried out. The sentenced murderer and his attorneys spent over a decade appealing the death penalty on the basis that the defendant had not been afforded his right of consular assistance under the Vienna Convention on Consular Relations. His appeals resulted in a series of costly procedural hurdles and delays, all stemming from a small oversight that may be easily avoided. This case and dozens of others like it, are an added incentive to law enforcement officials to ensure consular notifications are made.

Information and Training

By now in reading this, it is likely clear that this is not all clear. It may seem as though there are a dizzying array of variations as to what foreign nationals are entitled to, depending on their country.

Yet the biggest obstacle to understanding is not with newer deputies, it is the more senior personnel who have never heard

about this legal mandate. Some believe there must be some kind of mistake because certainly something this important they would have heard about before.

To simplify it all in training or in discussion, it is best to view arrestees as being in one of two categories 1) Mandatory notification countries 2) All other countries. This means that a country that is not a signatory to the agreements is to be treated as if they were a signatory to the Vienna Convention therefore, notifications should be made.

Within the LASD, the International Liaison Unit is important for many reasons, including the training of our deputies and neighboring police agencies.

Meanwhile, for all U.S. policing agencies, the reference materials you need are on the U.S. Dept. of State website at www.travel.state.gov/consularnotification. They can also provide



Consular contact information signs and digital signage in the booking area of the Inmate Reception Center of the Los Angeles County jail (Photo by Thanh Ly, LASD)

Death, Serious Injury, or Serious Illness of a Foreign National

In addition to arrest notification requirements, there are requirements when a foreign national dies, is seriously injured, or becomes seriously ill. This includes if the person is in jail, or contacted while on patrol such as a tourist or even a foreign national who dies a natural death at home. Notify the nearest consulate of his or her country immediately or as soon as reasonably possible, including by fax if possible, and by telephone if not. Information, a sample fax sheet, and the *Consular Notification and Access Manual* are available at http://travel.state.gov/law/consular/consular_753.html

training by contacting Wally Doerge, Consular Notification Officer at (202) 647-4415, by email at consnot@state.gov, or at http://travel.state.gov/law/consular/consular_2244.html.

Who We Notify – Foreign Consulates in your Part of the U.S.

Fortunately, the phone numbers and fax numbers for the foreign consulates that you will need are handy. Visit the U.S. Department of State website for: Embassy and Consulate Information and Consular Notification by State (phones and faxes) at <http://travel.state.gov/law/consular/USMapApp.html> and Contact Information for Foreign Consular Offices in the United States at http://travel.state.gov/law/consular/consular_745.html.

Federal law mandates that the U.S. Dept. of State is the contact agency for U.S. policing agencies when we have questions or concerns about the arrests (or deaths) of foreign nationals.

Arrest and Booking – The Notification Clock Begins Ticking

The arresting officer and agency are responsible for the mandatory notification. For many agencies, this is a relatively simple task due to a low volume of foreign national arrestees. However, for the largest jail system and most populous county in the nation, this is a big job.

The U.S. Dept. of State provides a one page sheet “Notification of Arrest or Detention of a National of Your Country” that is to be filled out by arresting officers and faxed to the foreign embassy or consulate. It includes the arrestee’s name, booking number, report number, date, and country, as well as arresting officer and agency.

Notifying the arrestee of his consul’s information and faxing in the form within the deadline meets the notification mandate. Because notification requirements are different, you have to check the list of over one hundred countries to know what the mandate is for that country. Sheriff’s offices and police departments across the country fax their forms directly to the relevant consulates. (Because the LASD has an International Liaison Unit, LASD personnel fax all the forms to the ILU for forwarding to the consulates.)

In addition to the arrests made by their own sheriff’s deputies, all sheriffs eventually receive bookings in the county jail that were brought in by police departments or through court remands.

Therefore, even though notification is the responsibility of the arresting agency, sheriffs often end up with other agency’s arrestees in the county jail whose consular notifications have not yet been made. By the time they arrive at the county jail, it is nearly always past the time frames specified by bilateral agreements, but it’s never too late to do the right thing.

To help address the need, the LASD is working with the U.S. Dept. of State to create a placard that can be placed in all the booking areas of sheriff’s stations and local police departments as a reminder of these laws, including contact information for the consulates and how to send in the “Notification of Arrest or Detention.”

Instructions for Arrests and Detentions of Foreign Nationals (in English and other languages) – Consular Notification and Access Reference Card:

1. Steps to Follow When a Foreign National is Arrested
2. If the foreign national’s country is not on the mandatory notification list [Statement 1]
3. If the foreign national’s country is on the list of mandatory notification countries [Statement 2]:
4. Mandatory Notification Countries and Jurisdictions <http://travel.state.gov/pdf/CNApocketcard.pdf>
Mandatory Countries and Jurisdictions list and explanations http://travel.state.gov/law/consular/consular_5125.html

Entry to the County Jail – Making Sure they got the Message

To ensure that we maximize compliance, and therefore create an environment for other countries to duplicate, the Los Angeles County jail system provides consular notification opportunities at intake for the over 400 inmates being brought into the system each day.

The Inmate Reception Center (IRC) is the entry point into the Los Angeles County jail system. Since the late 1990’s, the IRC has prominently displayed signs with the flags and contact information of over 100 foreign Consulates serving Los Angeles County. (The signs were made by inmates in the jail sign shop.)

In early 2010, the use of electronic media has allowed for the display of collect call phone numbers for Consulates to be added to televisions in the IRC, along with other booking information procedures. (A Hughes Corp. device is used and was funded by the inmates through Inmate Welfare Funds.)

These signs are displayed in booking areas with telephones where inmates spend hours winding their way through the booking process. There is plenty of time and opportunity for them to see the signs and make a call if they choose to.

Inmate Information Center (www.lasd.org or (213) 473-6080)

The online Inmate Information Center began posting basic booking and court information of Los Angeles County jail inmates in the late 1990’s. Due to the county’s Consolidated Booking System, the over 50 policing agencies that make arrests in the county all book into this unified database. Therefore all arrestees can be found in it countywide, even before they arrive at the county jail. To further facilitate access to inmate information, links to the websites of state and federal prisons and other California county sheriff’s websites are provided. This ease of access to inmate information, especially court and release dates and visiting hours, is highly valued by consular officials, saves a lot of time for sheriff’s personnel, and is an example of for other countries to reciprocate.

I. Laws Pertaining to the Arrest of Foreign Nationals

- Vienna Convention on Consular Affairs, Articles 36 & 37. There are presently 173 parties to this Convention, including the United States. http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf
- Section 834 (c), California State Penal Code (Each state has their own statute) <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=833-851.90>
- Consular Notification and Access; the International Golden Rule, FBI Law Enforcement Bulletin. Rudd, Jonathan L. January 2007.
- <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/2007-pdfs/jan07leb.pdf>

II. Supporting Material on Consular Notification and Access

- U.S. Department of State Consular Notification and Access Manual 2010, 3rd edition. http://travel.state.gov/pdf/cna/CNA_Manual_3d_Edition.pdf
- U.S. Department of State Suggested Standard Operating Procedures for Law Enforcement Agencies on the Arrests, Deaths, Detentions, and Serious Injuries of Foreign Nationals <http://travel.state.gov/pdf/cna/CNA%20Standard%20Operating%20Procedure.pdf>
- Suggested Steps to Follow When Arresting a Non-US Citizen http://www.travel.state.gov/pdf/cna/CNA_flow_chartFinal.pdf
- Embassy & Consulate Information & Consular Notification by State (Phones & Faxes) <http://www.travel.state.gov/law/consular/USMapApp.html>
- Contact Information for Foreign Consular Offices in the United States. http://www.travel.state.gov/law/consular/consular_745.html
- Inmate Information Center, Los Angeles County Sheriff's Department. Used by the public (including Consular officers) to search for inmates using a name and/or booking number (<http://www.lasd.org>) or http://app4.lasd.org/iic/ajis_search.cfm

III. Notification Forms

- Consular Notification and Statement Form (example). This may be provided to inmates who are identified as foreign nationals. <http://travel.state.gov/pdf/cna/Consular%20Notification%20Statement%20--%20English.pdf>
- Notifying Consular Officials of Arrests or Detention (example). The State Department recommends faxing this form to the local Consulate or Embassy. http://travel.state.gov/pdf/cna/CNA%20Fax%20Sheet_ArrestOrDetention.pdf

IV. Training

- Consular Notification and Access Training Materials Request http://travel.state.gov/law/consular/consular_726.html
- It's the Right Thing to Do - Training Video for Law Enforcement http://travel.state.gov/law/consular/consular_2001.html

Los Angeles County

More than a third of the over 10.5 million residents of Los Angeles County were born outside the U.S. and over 100 languages are spoken in the homes of the students of the Los Angeles Unified School District. As a result, cultural awareness is part of every deputy's day. In fact, employees and volunteers of the LASD speak at least 63 different languages.

"Our employees and the public we serve are connected with relatives and friends throughout the world. By honoring our nation's pledge of reciprocity, we help our own people, home and abroad," said Sheriff Lee Baca. 🌟

Captain Mike Parker is the unit commander of Sheriff's Headquarters Bureau (SHB), Los Angeles County Sheriff's Department (www.lasd.org), which includes the International Liaison Unit (323-267-4800 or ilu@lasd.org). Captain Parker speaks Spanish and conversational French, and has made presentations and worked directly with police officials from over 40 countries on a variety of policing topics. Leroy D. Baca is serving his fourth term as Sheriff of Los Angeles County, having first been elected in 1998.

Endnotes

1. Vienna Convention on Consular Relations, Apr. 24, 1963, 596 U.N.T.S. 261
2. <http://www2.fbi.gov/ucr/cius2009/arrests/index.html>
Federal Bureau of Investigation Crime Reports for 2009
3. 173 countries became party to the Convention, indicating that these countries ratified the Convention within their home governments and treat it as *legally binding*.
4. http://travel.state.gov/law/consular/consular_5125.html
5. http://untreaty.un.org/unts/1_60000/3/39/00005938.pdf
6. Agreement Between the Government of the United States of America and the Government of the People's Republic of China on the Mutual Establishment of Consular Relations and the Opening of Consulates General, Jan. 31, 1979, 30 U.S.T. 17 (effective Jan. 31, 1979).

International Liaison Unit (ILU), Sheriff's Headquarters Bureau, LASD

Through the exchange of policies and cultures, the International Liaison Unit enhances global law enforcement practices and thus, helps the LASD become a meaningful participant in an increasingly globalized world. The ILU spends most of their time accomplishing:

- 1) Foreign national arrest notifications
- 2) Facilitation of inmate visits by consular officials
- 3) Assistance in locating missing family members and to check on the welfare of others
- 4) Sheriff's consular credentials
- 5) Coordinating visits by foreign police dignitaries with the LASD
- 6) Inmate booking information
- 7) Foreign language news media liaison
- 8) LASD translators for LASD and area police agencies.

Contact: ilu@lasd.org (323) 267-4800 or www.lasd.org

Police Diplomacy - A Global Trust

Is the interchange of policing resources, training, and experience between nations to enhance public participation and provide a safer, more secure community regardless of geopolitical borders? (A publication by the Los Angeles County Sheriff's Department) http://file.lacounty.gov/lasd/cms1_144940.pdf or www.lasd.org

Vice President Wong of the Chinese People's Public Security Bureau University with International Liaison Unit Sergeant Thanh Ly, Los Angeles County Sheriff's Department. Photo taken in Beijing, China, at the University.

Law Enforcement Symposium - Gulf States Conference Report

Gulf States, European & North American Law Enforcement Symposium. International Perspective on Law Enforcement Cooperation, Beverly Hills, California, 3-5, 2009. 60 members of the international police community gathered in Los Angeles to share individual perspectives on international law enforcement, to understand the impediments to cooperation, to establish mutual goals, and to discuss ways to increase cooperation across national boundaries and police agencies. (A publication by the Los Angeles County Sheriff's Department) http://file.lacounty.gov/lasd/cms1_145095.pdf or www.lasd.org



Los Angeles County Sheriff Lee Baca meeting with Hungarian police and consular officials. Hungary holds the current presidency of the council of the European Union. To the left of Sheriff Baca are Mr. Pál Kardos, President of the Budapest Metropolitan Area Civic Guard and Mr. Csaba Zoltán Kiss, Spokesperson of the Budapest Metropolitan Area Civic Guard. To the right of Sheriff Baca are the former Budapest Chief of Police Dr. Gábor Tóth and Ambassador Balázs Bokor, Consul General of the Republic of Hungary in Los Angeles. (Photo by Jaime Lopez, LASD)