

 <b>MIDDLETON POLICE DEPARTMENT</b>	<b>DATE</b> <b>June 29, 2013</b>	<b>POLICY</b> <b>6.2.2.3</b>
	<b>SUBJECT: Foreign Nationals and Diplomats</b>	<b>REVIEWED</b> November 17, 2017

History: Created 2013; 06/2015  
[WILEAG \(5th Ed.\) Standards: 6.2.2.3](#)

## Contents

PURPOSE.....	1
POLICY .....	1
DEFINITIONS.....	1
Foreign National .....	1
Consular Officer.....	1
Diplomat .....	1
Diplomatic Immunity.....	2
Inviolability.....	2
Mandatory Notification.....	2
Upon Request Notification .....	2
FOREIGN NATIONALS .....	2
FOREIGN DIPLOMATS AND CONSULATE OFFICERS .....	3

## PURPOSE

The purpose of this policy is to provide officers with guidelines for detaining, citing or arresting Foreign Nationals, Diplomats, and Consular Officers.

## POLICY

It is the policy of the Middleton Police Department to comply with all United States treaty obligations relating to Foreign Nationals, Diplomats, and Consular Officers.

## DEFINITIONS

**Foreign National** means any person who is not a U.S. citizen; same as “alien.” Aliens who are lawful permanent residents in the United States and who have a resident alien registration card (“green card”) are foreign nationals. So are undocumented or “illegal” aliens.

**Consular Officer** means a foreign official authorized by the Department of State to provide assistance to the foreign government’s citizens in the United States. Different from “counsel,” which is an attorney authorized to provide legal advice. Consuls are not authorized to practice law.

**Diplomat** means foreign official at the country’s embassy in Washington, D.C., assigned to represent the country. Diplomats may also perform consular functions, and should be treated the same as a consular officer.

***Diplomatic Immunity*** is a requirement by international law under which certain foreign government officials are not subject to the jurisdiction of local courts and authorities, for both their official and, to a large extent, their personal activities.

***Inviolability*** is a principle embodied in international law that generally precludes law enforcement officials from handcuffing, arresting, or detaining certain foreign diplomatic officials, in any form, and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. Where public safety is in imminent danger or it is apparent that a violent felony may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity or defend themselves or others from personal harm.

***Mandatory Notification*** means Consular notification procedures that apply when you arrest or detain a foreign national from any of the [57 countries](#) that have bilateral agreements with the United States requiring that their consulate or embassy be notified of any arrest or detention of a foreign national of their country. For such a foreign national, you must notify the consular officer regardless of whether the national requests or wants you to do so. A brief traffic stop or an arrest resulting in a citation for a misdemeanor and release at the scene does not trigger such requirements. 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.

***Upon Request Notification*** - foreign nationals from countries that are parties to the Vienna Convention on Consular Relations (VCCR) must be provided with the option of having the consulate notified of their arrest or detention. If the detainee requests notification, a responsible detaining official must ensure that notification is given to the nearest consulate. Consular notification procedures apply when you arrest or detain a foreign national from any country not on the “mandatory” list of 57 countries.

## **FOREIGN NATIONALS**

If foreign nationals in the United States are arrested or detained, they must be told that they may have their country’s embassy or consulate notified (typically by fax), and officials from the embassy or consulate must be allowed access to them upon request. If the foreign national is from a country on the 57 country mandatory notification list, the foreign embassy must be notified regardless of the individual’s wishes. Persons who indicate that they are U.S. citizens or dual citizens shall be presumed to be citizens and treated as U.S. citizens (consular notification not required.) Undocumented illegal aliens are also entitled to consular notification and access. See the [Consular Notification and Access Manual](#) for a summary of requirements pertaining to Foreign Nationals, the Mandatory Notification List, and flow chart.

Notifications to consuls or embassies should be made by facsimile transmission as soon as reasonably possible and a copy of the completed fax transmission verification sheet retained with arrest or booking records. A suggested fax sheet for notification to foreign consuls and a list of foreign embassies and consulates in the United States with contact information is provided on the [State Department’s Web site](#).

## **FOREIGN DIPLOMATS AND CONSULATE OFFICERS**

Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities.

1. Officers encountering a Foreign Diplomat or Consulate Officer during the course of regular enforcement shall immediately notify the Shift Commander.
2. Officers shall refrain from restraining the individual unless safety is a concern.
3. Officers shall identify and verify the diplomatic status of the detainee in the most efficient manner possible.
4. Only an identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission to the United Nations may be used as valid identification for diplomats and consular officials. The identification cards are 3¾" x 2½" and contain a photograph of the bearer. The bearer's name, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal appear on the front of the card. A brief statement of the bearer's criminal immunity is printed on the reverse side. Space is provided for the bearer's signature. While this form of identification is generally to be relied upon, officers are nonetheless urged to immediately seek verification as indicated below in connection with any serious incident or in any case where they have reason to doubt the validity of the card. Police officers should be alert to the fact that newly arrived members of diplomatic and consular staffs may not yet have these official identity documents and should contact the U.S. Department of State's Office of Protocol for verification if confronted with such situations (24/7 Diplomatic Security Command Center 571-345-3146 or toll free 1-866-217-2089).
  - a. Blue border = diplomatic officers and their families.
  - b. Green border = embassy administrative, technical, and service staff employees.
  - c. Red border = consular officers, employees, or their families.
5. Foreign diplomatic passports, U.S. diplomatic visas, tax exemption cards, vehicle registration, license plates, and driver licenses should not be used to determine whether an individual enjoys immunity. Diplomatic license plates are designed to assist officers in identifying vehicles that belong to persons who *may* enjoy some degree of immunity, however, license plates alone should not be used to verify the status of an individual claiming immunity.
6. Officers may issue traffic citations as normal to individuals with immunity (although they may not be prosecuted). However, the individual may not be forced to take sobriety tests. In serious incidents such as OWI, personal injury, or accidents, the U.S. Department of State shall be contacted by phone (202-647-1985 during business hours or the Diplomatic Security Command Center, 571-345-3146 or toll free 1-866-217-2089 after business hours). Officers shall fax a copy of the citation along with any other pertinent documentation to the U.S. Department of State as soon as possible (OFM DMV Enforcement FAX 202-895-3646).
7. Officers shall not impound the individual's vehicle for a traffic violation, but may remove a vehicle from obstructing traffic or endangering public safety. The officer shall not search or seize any items from the individual's vehicle. If a vehicle that is owned by a foreign national is suspected of being stolen or used in a crime, the officer shall request vehicle documentation. If it is determined that the vehicle is stolen or has been used in a crime, the vehicle may be searched and impounded.

8. When an individual claims diplomatic immunity but is unable to produce valid identification, officers may detain, handcuff and search the individual for a criminal offense if he or she reasonably poses a threat. He or she shall be informed of the reason for detention until the U.S. Department of State's Office of Protocol (202-647-1985 during business hours or the Diplomatic Security Command Center 571-345-3146 or toll free 1-866-217-2089 after business hours) can confirm their proper identity. Once the individual's status of immunity has been confirmed, he or she shall be released immediately. Officers shall prepare cases carefully and completely, and document each incident properly so that charges may be pursued as far as possible in the U.S. judicial system. The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of immunity from the sending State if the prosecutor advises that but for such immunity he or she would prosecute or otherwise pursue the criminal charge. A copy of the criminal incident report should be faxed or mailed to the U.S. Department of State (Office of the Chief of Protocol fax 202-647-1198, Diplomatic Security Service Protective Liaison Division fax 202-895-3613).
9. Consular notification procedures shall be followed even if the individual enjoys diplomatic immunity.
10. See [Diplomatic and Consular Immunity Guidance for Law Enforcement](#).