

Department of the Interior

Law Enforcement Policy

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Series: Law Enforcement and Security

Chapter 38: Diplomatic and Consular Immunities/Foreign Nationals

Originating Office: Office of Law Enforcement and Security

38.1 Purpose. This chapter provides minimum standards for Department of the Interior (Department /DOI) law enforcement officers (LEOs), with respect to alleged criminal incidents and traffic violations committed by persons officially representing foreign governments or by non-diplomatic foreign nationals.

38.2 Scope. This policy applies to all DOI bureau/office law enforcement programs with responsibility for law enforcement personnel.

38.4 Authority. This policy is issued pursuant to the Diplomatic Relations Act (22 USC 254) and 112 DM 17 and 212 DM 17.

38.5 Responsibilities.

A. Director, Office of Law Enforcement and Security (OLES) is responsible for policy development, program guidance and oversight of the Department's law enforcement programs.

B. Bureau Directors of Law Enforcement (BDLE) are responsible for promulgating and complying with any counterpart policies or procedures as required by this chapter, and as specified by Department of State (DOS) guidelines in reference to diplomatic and consular immunity.

38.6 Definitions. For the purpose of this chapter, the terms below are defined as follows:

A. Diplomatic Immunity. 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.

B. Personal Inviolability. Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, detention in any form and forbids U.S. authorities from entering the residences, automobiles and other property of protected persons.

C. Limited Diplomatic Immunity. Persons granted such immunity are not granted full diplomatic immunity. They do, however, possess a limited form of immunity from both criminal and civil jurisdiction respecting any act that was performed in the course of their official duties.

D. Foreign National. Any individual in the United States who is not a United States citizen, regardless of their legal standing to be in the United States.

38.7 Policy. It is the policy of DOI to, at a minimum, follow guidance in the attached DOS documents entitled, 1) *Diplomatic and Consular Immunity, Guidelines for Law Enforcement and Judicial Authorities, September, 2011*, and 2) *Consular Notification and Access, September, 2010*.

A. International law requires that law enforcement authorities in the United States extend certain privileges and immunities to members of foreign diplomatic mission and consular posts. Most of these privileges and immunities are not absolute and LEOs retain their fundamental responsibility to protect and police the orderly conduct of persons in the United States.

B. In addition to international laws relating to law enforcement actions involving persons with diplomatic immunity, the United States Government has signed bilateral agreements with a number of foreign countries in which notification of a signatory's consulate is required, within a specific period of time, whenever a national of that country is arrested or detained.

38.8 Resources for Developing Policy Regarding Diplomatic Immunity. The attached DOS booklet entitled *Diplomatic and Consular Immunity, Guidelines for Law Enforcement and Judicial Authorities, July, 2011*, should be utilized by all bureau/office law enforcement programs when developing policies and procedures with respect to alleged criminal and traffic violations by persons with diplomatic immunity. This booklet provides a guide to the categories of foreign mission personnel and the privileges and immunities to which each is entitled. It explains how to verify the identity of such persons and furnishes guidance to assist LEOs in the handling of incidents involving foreign diplomatic and consular personnel.

38.9 Resources for Developing Policy Regarding Non-Diplomatic Foreign Nationals. The attached DOS manual entitled *Consular Notification and Access, September, 2010*, should be utilized by all bureau/office law enforcement programs when developing policies and procedures with respect to alleged criminal incidents and traffic violations by non-diplomatic foreign nationals. This manual provides instructions for federal, state, and local law enforcement regarding foreign nationals in the United States and the rights of consular officials to assist them.

38.10 Reporting Requirements. Bureaus/offices will ensure all incidents involving individuals with diplomatic immunity are reported to the DOS in accordance with DOS and DOI guidelines and established policy, to include:

A. Departmental Manual, 446 DM 17, Serious Incident Reporting.

B. Bureau/office internal reporting requirements.

38.11 References. The following sources serve to provide background information regarding diplomatic and consular immunities.

A. U.S. Department of State Diplomatic and Consular Immunity, *Guidelines for Law Enforcement and Judicial Authorities*, July, 2011.
<http://www.state.gov/documents/organization/150546.pdf>

B. U. S. Department of State, *Consular Notification and Access* manual, September, 2010. (http://www.travel.state.gov/law/consular/consular_753.html)