

CF OPERATING PROCEDURE
NO. 30-7

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, November 15, 2012

Legal

CONSULAR NOTIFICATION: SPECIAL PROCEDURES RELATED TO FOREIGN NATIONALS

1. Purpose. This operating procedure describes the requirements for notifying foreign consular offices whenever foreign nationals are taken into protective custody or guardianship is sought.
2. Scope. This operating procedure applies to any office or program dealing with foreign national minors or vulnerable adults in the custody of the Department.
3. References.
 - a. U.S. State Department, Consular Notification and Access: Instructions for Federal, State, and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them (**hereinafter called "Instructions"**), Third Edition, September 2010 (available at http://travel.state.gov/pdf/cna/CNA_Manual_3d_Edition.pdf).
 - b. Office of Policy Coordination and Public Affairs (CA/P), Bureau of Consular Affairs, U.S. Department of State, consnot@state.gov; (202) 647-4415; fax 202-736-7559. [For urgent telephone inquiries after normal business hours, call the State Department Operations Center at 202-647-1512.]
4. Definitions. For the purposes of this operating procedure, the following definitions shall apply:
 - a. Authorized Personnel. Unless otherwise specified, authorized personnel is the respective DCF program's attorney or supervisor of the case of a foreign national minor or adult in the custody of the Department. In the case of Children's Legal Services (CLS), the CLS attorney is the authorized personnel. Authorized personnel will be responsible for making the determination on whether Consular Notification is needed and for providing the notice to the appropriate consul when requested or required.
 - b. Foreign National. Anyone, whether an adult or a minor, who is not a citizen of the United States. Any reference to a foreign national in this operating procedure refers to adults and minors in the custody of the Department.
 - c. Mandatory Notification Countries. Countries that require competent federal, state, or local authorities to notify the respective consular office about the detention, guardianship or death of a foreign national without delay. (See Appendix B to this operating procedure or http://travel.state.gov/law/consular/consular_5125.html for a list of mandatory countries.)
 - d. Non-Mandatory Notification Countries. Countries not on the list of mandatory notification countries where the foreign national is given the option of contacting or not contacting their country's consulate. If the foreign national elects Consular Notification, the Department's authorized personnel must notify the appropriate consulate without delay.
 - e. Notify Without Delay. Notify as soon as the authorized personnel determines that the person in question is a foreign national and Consular Notification is either required or requested. The U.S.

OPR: PDRS

DISTRIBUTION: X: OSES; OSLS; ASGO; PDAS; PDFS; Substance Abuse and Mental Health; Children's Legal Services; Region Adult Protective Services staff; Region Child Welfare staff; Region/Circuit Mental Health Treatment Facilities.

Department of State's Instructions do not specify a timeframe, but "without delay" is understood to mean immediately. See page 7 of the "Instructions".

5. General Principles.

a. Never tell a consular official that a foreign national is a refugee, has asylee status or that he or she has applied for asylum. If you believe the foreign national is a victim of trafficking, consider whether notifying the consul would be detrimental to the person. If in doubt, the question must be raised with the court or authorized personnel. In some cases, particularly if a consul insists on obtaining such information, the U.S. Department of State must be contacted. Note that "Green Cards", work permits, and other immigration documents may contain such information through the use of codes.

b. Consular Notification applies to all non U.S. citizens, including Lawful Permanent Residents (e.g. "green card" holders or LPR).

c. Protective Investigators and Department staff involved in the custody or guardianship of an adult or child should routinely ask everyone whether he or she is a U.S. citizen to determine whether Consular Notification is required. Generally, the person's statement of nationality may be accepted on its face. Consular Notification is not related to a person's immigration status in the U.S.

6. Protective Custody.

a. Pursuant to the requirements of the Vienna Convention on Consular Relations(VCCR), all foreign nationals who are detained (i.e., protective custody) by Department staff within the United States are entitled to Consular Notification and access, regardless of their visa or immigration status in the United States.

b. In all cases, the identified foreign national and his or her parents (if a minor), if available, must be informed of the right to Consular Notification and access.

(1) A foreign national and his or her parents (if a minor), if available, from a Non-Mandatory Notification Country (most cases) have the option to decide whether to have consular representatives notified of the detention. If notification is requested, the protective investigator or other Department staff must notify the authorized personnel who are responsible to "forward any communication by a foreign national to his or her consular representative without delay." ("Instructions," Part Two, page 9.)

(2) If the foreign national and his or her parents (if a minor), if available, are from a Mandatory Notification Country, the consular officials must be notified of the detention regardless of the foreign national's or the parents' wishes. If the foreign national is a refugee, an asylee, or an asylum applicant, refer the case to the program attorney. ("Instructions," Part Two, pages 7 and 28.)

c. Procedures.

(1) Protective investigators shall not be held responsible for making a legal determination whether an adult or child is a foreign national at the time of the initial response and taking into protective custody. However, information which is obtained in the course of the initial response, such as the adult's or child's place of birth, United States citizenship, or documentary evidence such as a passport, visa, or green card, shall be recorded on the investigative face sheet and included as part of the information provided to the Department's authorized personnel. If the foreign national (or parents, if a minor) clearly indicates to the protective investigator that he or she is a foreign national and desires their consulate to be notified, the protective investigator must notify the authorized personnel

immediately so that Consular Notification can be provided. Regions shall implement procedures to ensure that the investigative face sheet form includes a section on nationality.

(2) Based on information provided by the protective investigator, authorized personnel shall make an initial determination as to whether the child or adult is or may be a foreign national, using the following guidelines:

(a) In all cases where there is no information available, the authorized personnel shall assume the child/adult is a foreign national and prepare to establish a record on the question of nationality. For example, in the case of a shelter hearing, the attorney will want to question the minor (and parents, if available) regarding his or her nationality on the record. In other cases, it may be more appropriate to establish a record in the case file that the question was asked and the response provided.

(b) If the person claims to be a United States citizen, such a response can generally be relied upon and it may be assumed that Consular Notification requirements are not relevant. ("Instructions," page 14.)

(c) A person who is a citizen of the United States and another country may be treated exclusively as a U.S. citizen. Consular Notification is not required if the detainee is a United States citizen, even if the detainee's other country of citizenship is a mandatory notification country. ("Instructions," page 14.)

(d) If the person presents a foreign passport, an alien registration document, a document which indicates birth outside the United States, or claims to have been born outside the United States, that person may be a foreign national and the authorized personnel or Department staff (i.e. Protective Investigators) shall create a record by questioning the foreign national on the record or establishing a record in the case file. Authorized personnel must then determine whether the foreign national is from a Mandatory or Non-Mandatory Notification Country and proceed by either asking whether the foreign national wants to contact their consul or by notifying the applicable consulate. Never tell the consular officer that the foreign national has requested asylum.

(e) A person who is a citizen of two or more countries other than the United States should be treated in accordance with the rules applicable to each of those countries in regard to mandatory/optional Consular Notification. ("Instructions," page 14.)

(f) For Non-Mandatory Notification Countries the following statement is recommended. The response must be recorded either on the record by asking the court to make a written finding or in the case file. (See Appendix C to this operating procedure.)

"As a non-U.S. citizen who is being held in protective custody, you are entitled to have us notify your country's consular representative here in the United States. A consular official from your country may be able to help you obtain legal counsel and may contact your family and visit you, among other things. If you want us to notify your country's consular officials, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your country's consular officials?"

(g) For Mandatory Notification Countries the following statement is recommended. (See Appendix C to this operating procedure.)

"Because of your nationality, we are required to notify your country's consular representatives here in the United States that you are being held in protective custody. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and

may contact your family and visit you in shelter, among other things. We will be notifying your country's consular officials as soon as possible."

(h) The authorized personnel shall be responsible for notifying the foreign national's consul. This shall be accomplished by immediate telephone call to the nearest appropriate consulate, followed by a facsimile transmission confirming the verbal notification (sample faxes attached to this operating procedure – Appendices D through F). The authorized personnel shall document the fact of notification in the case file.

(i) Under the Vienna Convention, the reasons for the detention do not have to be provided in the initial communication. Moreover, state confidentiality laws prohibit unauthorized disclosure, and information regarding the foreign national's refugee or asylee status may not be provided. If a consular official insists he or she is entitled to information about the foreign national that the foreign national does not want disclosed, the United States Department of State must be consulted prior to disclosing any further information.

7. Appointment of Guardians or Trustees for Foreign Nationals. Consular Notification applies whenever a probate court or other competent authority considers appointing a guardian or trustee for a foreign national who is lacking full capacity or when a petition is filed with a court soliciting such an appointment, or when legal proceedings are initiated in which a foreign national minor is a named party whose parent or guardian cannot be located.

a. If the case involves protective custody, follow the directions in paragraph 6 of this operating procedure. In all other cases, the authorized personnel soliciting such an appointment or present at such a hearing must inform the nearest consular office for that national's country, even if the foreign national is from a Non-Mandatory Country. (See "Instruction," page 10.) The authorized personnel shall create a record with the court similar to the recommendations provided in paragraph 6 of this operating procedure. In the case of Department staff confronting this situation, establish a record and refer the case to the authorized personnel to contact the applicable consul.

b. In cases where both protective custody and guardianship are at issue, the authorized personnel may make a single notification to include both the detention and any need for a guardian.

8. Death, Serious Injury, or Serious Illnesses of a Foreign National.

a. Authorized personnel who become aware of the death of a foreign national who was in the custody of the Department must notify the applicable consular office. (See "Instructions," page 9.)

b. The U.S. Department of State encourages Consular Notification when a foreign national in the custody of the Department suffers serious injury or illness to give the respective consul an opportunity to inform family members. (See "Instructions," page 9.)

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

PETE DIGRE
Assistant Deputy Secretary for
Operations

Protective Custody of a Non-U.S. Citizen CONSULAR NOTIFICATION PROCESS

Q: Are you a U.S. citizen?

A. "YES, I am a U.S. Citizen." "NO, I am a U.S. Citizen."

(No further action required.)

STOP

NEXT

Q. Are you a national of one of these countries?

<u>Albania</u>	<u>Costa Rica</u>	<u>Kazakhstan</u>	<u>Poland¹</u>	<u>Tanzania</u>
<u>Algeria</u>	<u>Cuba</u>	<u>Kiribati</u>	<u>Romania</u>	<u>Tonga</u>
<u>Antigua and Barbuda</u>	<u>Czech Republic</u>	<u>Kuwait</u>	<u>Russia</u>	<u>Trinidad and Tobago</u>
<u>Armenia</u>	<u>Dominica</u>	<u>Kyrgyzstan</u>	<u>St. Kitts and Nevis</u>	<u>Tunisia</u>
<u>Azerbaijan</u>	<u>Fiji</u>	<u>Malaysia</u>	<u>St. Lucia</u>	<u>Turkmenistan</u>
<u>Bahamas</u>	<u>Gambia</u>	<u>Malta</u>	<u>St. Vincent and the Grenadines</u>	<u>Turvalu</u>
<u>Barbados</u>	<u>Georgia</u>	<u>Mauritius</u>	<u>Seychelles</u>	<u>Ukraine</u>
<u>Belarus</u>	<u>Ghana</u>	<u>Moldova</u>	<u>Sierra Leone</u>	<u>United Kingdom</u>
<u>Belize</u>	<u>Grenada</u>	<u>Mongolia</u>	<u>Singapore</u>	<u>Uzbekistan</u>
<u>Brunei</u>	<u>Guyana</u>	<u>Nigeria</u>	<u>Slovakia</u>	<u>Zambia</u>
<u>Bulgaria</u>	<u>Hungary</u>	<u>Philippines</u>	<u>Tajikistan</u>	<u>Zimbabwe</u>
<u>China¹</u>	<u>Jamaica</u>			

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).
2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders notification is upon request.

3. UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos islands. Residents passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.

A. "YES."

Step 1. Inform detainee that he or she may communicate with consulate and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate without delay.

Step 3. Make record of notification in case file. Where fax sent, keep fax confirmation.

Step 4. Allow consular officers access to Detainee if they subsequently request access.

(No further action required.)

STOP

NEXT

Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

Step 1. Make note in case file

Step 2. Notify nearest consulate without delay.

Step 3. Make record of notification in case file. Where fax sent, keep fax confirmation.

(No further action required.)

STOP

"NO."

Step 1. Make note in case file.

Step 2. Do NOT inform the consulate.

(No further action required.)

STOP



IN ALL CASES:

- Do not inform consulate about detainee's refugee or asylum status.
- Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).
- Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.

Bureau of Consular Affairs U.S.
Department of State Washington, D.C.
20520
P:202-647-4415
F:202-736-7559
consnot@state.gov

Also see:

Travel.state.gov/consularnotification

Consular Notification and Access

MANDATORY NOTIFICATION COUNTRIES (“LIST” COUNTRIES)

Albania	Ghana	Saint Lucia
Algeria	Grenada	Saint Vincent and the Grenadines
Antigua and Barbuda	Guyana	Seychelles
Armenia	Hungary	Sierra Leone
Azerbaijan	Jamaica	Singapore
Bahamas	Kazakhstan	Slovakia
Barbados	Kiribati	Tajikistan
Belarus	Kuwait	Tanzania
Belize	Kyrgyzstan	Tonga
Brunei	Malaysia	Trinidad and Tobago
Bulgaria	Malta	Tunisia
China (including Macao and Hong Kong) ¹	Mauritius	Turkmenistan
Costa Rica	Moldova	Tuvalu
Cyprus	Mongolia	Ukraine
Czech Republic	Nigeria	United Kingdom ³
Dominica	Philippines	Uzbekistan
Fiji	Poland ²	Zambia
Gambia	Romania	Zimbabwe
Georgia	Russia	
	Saint Kitts and Nevis	

1. Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).
2. Mandatory only for non-permanent residents in the United States (i.e., those not holding a “green card”); for green card holders notification is upon request.
3. UK includes Anguilla, British Virgin Islands, Bermuda Montserrat, and the Turks and Caicos islands. Residents passports bear the name of their territory and may also bear the name “United Kingdom.” Whether or not the passport bears the name “United Kingdom,” consular services for these persons are provided by UK consulates.

ENGLISH

Statement 1:
For All Foreign Nationals Except Those from
“Mandatory Notification” Countries
(Non-Mandatory Countries)

As a non-U.S. citizen who is being placed in protective custody, you may request that we notify your country’s consular officers here in the United States of your situation. You may also communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?

YES NO

Printed Name: _____ Witness: _____

Signature: _____ Date: _____

Statement 2:
For Foreign Nationals from
“Mandatory Notification” Countries

Because of your nationality, we are required to notify your country’s consular officers here in the United States that you have been placed in protective custody. We will do this as soon as possible. In addition, you may communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. Please sign to show that you have received this information.

Printed Name: _____ Witness: _____

Signature: _____ Date: _____

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT: Notification of Protective Custody (Detention) of a National of Your Country

DATE/TIME: _____

TO: Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City _____ State _____ Zip Code _____

Telephone (_____) _____ Fax (_____) _____

We brought into custody the following foreign national, who we understand is a national of your country, on _____
(DATE)

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation: _____

Passport Number: _____

This person is a minor or a vulnerable adult

For more information, please call _____ between the hours of _____

Please refer to case number _____ when you call.

ADDITIONAL INFORMATION:

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT: Notification of Possible Appointment of Guardian or Trustee

DATE/TIME: _____

TO:

Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City _____

Telephone (_____) _____ Fax (_____) _____

Steps are being taken for the possible appointment of a guardian or trustee for the following foreign national, who we understand is a national of your country and who appears to be either a:

minor child or an adult lacking full capacity,
(circle one)

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation: _____

Passport Number: _____

A HEARING IS SCHEDULED FOR:

_____, _____ AT _____ a.m./p.m.
(DAY) (MONTH) (YEAR) (TIME) (CIRCLE)

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT: Notification of Death Serious Injury or Illness of a National of Your Country

DATE/TIME: _____

TO: Embassy/Consulate of _____ in _____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office _____

Address _____

City _____ State _____ Zip Code _____

Telephone (____) _____ Fax (____) _____

The following individual, who we understand is a national of your country:

has died, was seriously injured, OR is seriously ill within our jurisdiction.

Name: _____

Date of Birth/Place of Birth: _____

Nationality/Country: _____

Passport Issuing Nation _____

Passport Number: _____

Date of Death: _____ Place of Death: _____

Apparent Cause of Death: _____

For more information, please call _____ between the hours of _____

Please refer to case number _____ when you call.

ADDITIONAL INFORMATION: