



WICHITA POLICE DEPARTMENT

POLICY MANUAL



POLICY 514

ARREST AND DETENTION OF FOREIGN NATIONALS

I. PURPOSE

It is the intent of the Wichita Police Department to foster trust and cooperation with all people served by the department. Complainants, witnesses, and victims are encouraged to communicate with Wichita Police officers without fear or inquiry regarding their immigration status. Being an undocumented person in this country, barring any criminal activity, is a federal civil violation not enforced by the Wichita Police Department. In Wichita, only ICE (Immigration and Customs Enforcement) and other federal agencies can enforce federal laws relating to entry into the United States without inspection.

II. POLICY

It is the policy of the Wichita Police Department officers will not request specific documents for the sole purpose of determining someone's immigration status. If offered by a person and not specifically requested by the officer, it is permissible to rely on immigration documents to establish someone's identity in response to a general request for identification. Officers will positively identify any traffic offender or criminal suspect prior to citing or releasing.

Wichita Police Department officers will not initiate action based solely on an individual's immigration status, nor shall they ask for identification or documents to establish the person's immigration status.

Additionally, under the terms of the Vienna Convention and other treaties, whenever officers take a person into custody who states they are a foreign citizen, additional notification procedures are required. Compliance with this policy and procedure is important because it enhances the ability of the United States to insist foreign officials provide the same rights to United States diplomats and citizens who are arrested abroad.

Failure to provide appropriate notification may result in suppression of evidence and subsequent loss of convictions.

III. PROCEDURES

A. General Guidelines

1. Whenever officers contact individuals wanted by ICE through NCIC, the officer must ask S.P.I.D.E.R. to discern whether the NCIC HIT is a civil or criminal warrant. The distinction may be found on line 6 of the HIT, which states, "OFF/SUBJECT IS A DEPORTED CRIMINAL/AGGRAVATED FELON."

In such instances, it is permissible to contact the Bureau of Immigration and Customs Enforcement, Law Enforcement Support Center (LESC) at 1-877-999-5372. Entry into the United States after deportation for aggravated felony is a criminal offense. If after calling (LESC) ICE requests the undocumented person held, the officers shall complete an incident report, using ICE as the victim/reporting person, and write "Hold for ICE" on the K.S.A.

2. If ICE does not want the undocumented person held, the investigating officer shall complete an Incident Report, including all the information relating to the incident and the undocumented person's name, current local address and place of employment. The case shall be classified as a Miscellaneous Offense-Other [2699] if no other classification applies.
3. Whenever an officer comes into contact with an undocumented person, they will be treated with dignity and respect. If the officer is unable to communicate with the suspect, an interpreter will be requested through SPIDER.
4. Any field or investigations personnel who receive a request for assistance and/or intend to ask ICE for assistance on any criminal investigation must notify their immediate supervisor. The field supervisor must notify the Bureau Commander through the chain of command for vetting. The following must be considered by the Bureau Commander prior to authorizing Wichita Police personnel in support of or when seeking assistance from ICE.
 - a. Most immigration violations are civil (being in the United States illegally, failure to depart after expiration of a visa and some violations related to stowaways) and not criminal (illegally entering the United States, the smuggling of undocumented immigrants and willfully disobeying an order of removal). Such person is considered an undocumented immigrant absconder.
 - b. National Crime Information Center (NCIC) entries contain both civil and criminal immigration violators. Officers should be careful to determine the nature of the underlying offense resulting in the NCIC entry. An entry into NCIC does not guarantee the state or local officer has actual authority to take the person into custody.
 - c. A federal immigration "warrant" may be an administratively issued document. Before taking a person into custody solely on the basis of an NCIC entry based on an immigration "warrant," officers should verify whether the warrant has been issued for a criminal or civil violation.
 - d. The power to detain is ultimately derived from the authority to arrest. What constitutes "probable cause" in immigration matters may not be easy to discern. (Deck and Grant 2007)

B. Consular Notifications: (www.state.gov/s/cpr/rls/fco/)

1. A foreign national is defined as anyone other than a citizen of the United States. The Vienna Treaty of 1969 places certain obligations on law enforcement agencies dealing with foreign nationals. There are two specific obligations addressed in the treaty:
 - a. The treaty requires law enforcement officers effecting an arrest of a foreign national to advise the suspect they have the right to notify their embassy/consulate of the action taken. However, the ADVISEMENT shall only be given post interrogation under *Miranda*; preferably just prior to booking or release.
 - b. ADVISEMENT: “As a non-United States citizen who is being arrested or detained, you are entitled to have us notify your country’s consular representatives 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 in detention, 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?”
2. A law enforcement agency effecting an arrest of a foreign national must make direct contact when notifying foreign consulates of the arrest of a foreign national from certain countries. “Direct contact” shall be defined as contacting the foreign consulate either by telephone or by fax as soon as reasonably possible under the circumstances, this should be within 24-72 hours of arrest. Foreign countries requiring “direct contact” are: Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Barbados, Belarus, Belize, Brunei, Bulgaria, China (including Macao and Hong Kong), Costa Rica, Cyprus, Czech Republic, Dominica, Fiji, Gambia, Georgia, Ghana, Grenada, Guyana, Hungary, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Malaysia, Malta, Mauritius, Moldova, Mongolia, Nigeria, Philippines, Poland, Romania, Russia, Saints Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Slovakia, Tajikistan, Tanzania, Tonga, Trinidad and Tobago, Tunisia, Turkmenistan, Tuvalu, Ukraine, United Kingdom, Uzbekistan, Zambia, Zimbabwe.
3. Notification is not mandatory in the case of a person who carries “Republic of China” passports issued by Taiwan. Such persons should be informed without delay the nearest Taipei Economic and Cultural Representative Office (TECRO), the unofficial entity representing Taiwan’s interest in the United States, can be notified at their request. This is mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., “green card” holders). Otherwise, it is upon the national’s request.

The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Caicos Islands, along with other island territories.

4. If a foreign-national is arrested, the arresting officer shall advise the suspect of the right to have their embassy/consulate notified of the arrest regardless of the severity of the crime. This additional step in the rights warning process only applies to foreign nationals or suspected foreign nationals. Officers shall document in their Incident Report they advised the suspect of this right and what the person's response was.
5. When a foreign national or suspected foreign national advises the officer of acceptance of the offer to notify the embassy/consulate of the arrest, the officer shall take the following steps. This notification shall be made even if the person's country is not listed as a country where notification is mandatory.
 - a. Officers will notify their immediate supervisor they have a foreign national in custody and of the person desire to have their embassy/consulate notified of the arrest and if the country of the person's origin is listed as a country where notification is mandatory. Officers shall provide the following information to the supervisor:
 1. The person's name and address
 2. Charge(s)
 3. The person's country of origin
 - b. The supervisor shall obtain the most current listing at the URL: <https://www.usembassy.gov/>. The supervisor shall contact the embassy/consulate, notify them of the arrest, and provide them with the person's name, address, date of arrest, city and country of arrest, charge(s), and location and phone number where the person is being detained. In addition, the supervisor shall obtain the name of the person notified and include the name, time and date the person was notified of the arrest in a supplementary report.
6. If the individual declines the offer of notification of their embassy/consulate of the arrest, but the person's country of origin is listed as a country where notification is mandatory, the officer shall take steps to notify the appropriate embassy/consulate of the person's arrest.
7. If the individual decline the offer to notify the embassy/consulate of the arrest and the person country of origin is not listed as a country where notification is mandatory, the officer shall adhere to Policy 302-Booking of Prisoners; UCC/NTA Procedures.