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# Foreign Diplomatic and Consular Representatives

## 412.1 PURPOSE AND SCOPE

Article 36 of the Vienna Convention on Consular Relations, sets forth certain rights of foreign nationals from member countries when arrested, detained or imprisoned by law enforcement officials in this country. This section provides direction to officers when considering a physical arrest or detention of a foreign national. All foreign service personnel shall be treated with respect and courtesy, regardless of the level of established immunity. As noted herein, the United States is a party to several bilateral agreements that obligate authorities to notify the consulate upon the person's detention, regardless of whether the detained person requests that his/her consulate be notified. The list of specific countries that the United States is obligated to notify is listed on the U.S. Department of State [website](#).

## 412.2 POLICY

The San Luis Obispo Police Department respects international laws related to the special privileges and immunities afforded foreign diplomatic and consular representatives assigned to the United States.

All foreign diplomatic and consular representatives shall be treated with respect and courtesy, regardless of any privileges or immunities afforded them.

## 412.3 CLAIMS OF IMMUNITY

If a member comes into contact with a person where law enforcement action may be warranted and the person claims diplomatic or consular privileges and immunities, the member should, without delay:

- (a) Notify a supervisor.
- (b) Advise the person that his/her claim will be investigated and he/she may be released in accordance with the law upon confirmation of the person's status.
- (c) Request the person's identification card, either issued by the U.S. Department of State (DOS), Office of the Chief of Protocol, or in the case of persons accredited to the United Nations, by the U.S. Mission to the United Nations. These are the only reliable documents for purposes of determining privileges and immunities.
- (d) Contact the DOS Diplomatic Security Command Center at 571-345-3146 or toll free at 866-217-2089, or at another current telephone number and inform the center of the circumstances.
- (e) Verify the immunity status with DOS and follow any instructions regarding further detention, arrest, prosecution and/or release, as indicated by the DOS representative. This may require immediate release, even if a crime has been committed.

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Identity or immunity status should not be presumed from the type of license plates displayed on a vehicle. If there is a question as to the status or the legitimate possession of a Diplomat or Consul license plate, a query should be run via the National Law Enforcement Telecommunications System (NLETS), designating "US" as the state.

### **412.4 ENFORCEMENT**

If the DOS is not immediately available for consultation regarding law enforcement action, members shall be aware of the following:

- (a) Generally, all persons with diplomatic and consular privileges and immunities may be issued a citation or notice to appear. However, the person may not be compelled to sign the citation.
- (b) All persons, even those with a valid privilege or immunity, may be reasonably restrained in exigent circumstances for purposes of self-defense, public safety or the prevention of serious criminal acts.
- (c) An impaired foreign diplomatic or consular representative may be prevented from driving a vehicle, even if the person may not be arrested due to privileges and immunities.
  1. Investigations, including the request for field sobriety tests, chemical tests and any other tests regarding impaired driving may proceed but they shall not be compelled.
- (d) The following persons may not be detained or arrested, and any property or vehicle owned by these persons may not be searched or seized:
  1. Diplomatic-level staff of missions to international organizations and recognized family members
  2. Diplomatic agents and recognized family members
  3. Members of administrative and technical staff of a diplomatic mission and recognized family members
  4. Career consular officers, unless the person is the subject of a felony warrant
- (e) The following persons may generally be detained and arrested:
  1. International organization staff; however, some senior officers are entitled to the same treatment as diplomatic agents.
  2. Support staff of missions to international organizations
  3. Diplomatic service staff and consular employees; however, special bilateral agreements may exclude employees of certain foreign countries.
  4. Honorary consular officers
  5. Whenever an officer arrests and incarcerates, or detains for investigation for over two hours, a person with diplomatic and consular privileges and immunities, the officer shall promptly advise the person that he/she is entitled to have his/her government notified of the arrest or detention (Penal Code § 834c).

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If the individual wants his/her government notified, the officer shall begin the notification process.

### 412.5 DOCUMENTATION

All contacts with persons who have claimed privileges and immunities afforded foreign diplomatic and consular representatives should be thoroughly documented and the related reports forwarded to DOS.

### 412.6 DIPLOMATIC IMMUNITY TABLE

Reference table on diplomatic immunity:

Category	Arrested or Detained	Enter Residence Subject to Ordinary Procedures	Issued Traffic Citation	Subpoenaed as Witness	Prosecuted	Recognized Family Members
<b>Diplomatic Agent</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Member of Admin and Tech Staff</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Service Staff</b>	Yes (note (a))	Yes	Yes	Yes	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))
<b>Career Consul Officer</b>	Yes if for a felony and pursuant to a warrant (note (a))	Yes (note (d))	Yes	No for official acts Testimony may not be compelled in any case	No for official acts. Yes otherwise (note (a))	No immunity or inviolability
<b>Honorable Consul Officer</b>	Yes	Yes	Yes	No for official acts Yes otherwise.	No for official acts Yes otherwise	No immunity or inviolability
<b>Consulate Employees</b>	Yes (note (a))	Yes	Yes	No for official acts Yes otherwise.	No for official acts. Yes otherwise (note (a))	No immunity or inviolability (note (a))

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<b>Int'l Org Staff (note (b))</b>	Yes (note (c))	Yes (note (c))	Yes	Yes (note (c))	No for official acts. Yes otherwise (note (c))	No immunity or inviolability
<b>Diplomatic-Level Staff of Missions to Int'l Org</b>	No (note (b))	No	Yes	No	No	Same as sponsor (full immunity & inviolability)
<b>Support Staff of Missions to Int'l Orgs</b>	Yes	Yes	Yes	Yes	No for official acts Yes otherwise	No immunity or inviolability

Notes for diplomatic immunity table:

- (a) This table presents general rules. The employees of certain foreign countries may enjoy higher levels of privileges and immunities on the basis of special bilateral agreements.
- (b) Reasonable constraints, however, may be applied in emergency circumstances involving self-defense, public safety, or in the prevention of serious criminal acts.
- (c) A small number of senior officers are entitled to be treated identically to diplomatic agents.
- (d) Note that consul residences are sometimes located within the official consular premises. In such cases, only the official office space is protected from police entry.