

Diplomatic Immunity

5.13.01 PURPOSE

This order instructs officers on the nature of diplomatic immunity, and outlines procedures for dealing with criminal and traffic violations by diplomatic personnel.

I-5.13.02 POLICY

It is the policy of the San Francisco Police Department that foreign diplomatic officers be accorded their respective privileges, rights and immunities as directed by international law and federal statute and be treated with courtesy and respect that befit their distinguished positions. At the same time, it is a well-established principle of international law that, without prejudice to their privileges and immunities, it is their duty to respect local laws and regulations.

II. GUIDELINES

~~**A. EMBASSIES.** The highest ranking foreign diplomatic office in this country is an embassy. The majority of embassies are located either in Washington, D.C. or in New York, N.Y.~~

~~**1. DIPLOMATIC OFFICERS.** Foreign diplomatic officers assigned to embassies are titled: Ambassador, Minister, Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary and Attache. These persons are designated as "Diplomatic Agents" by the State Department.~~

~~**2. EMPLOYEES.** Employees at embassies are either members of the administrative or technical staff who are accorded a lower level of inviolability.~~

~~**B. CONSULATE OFFICES.** Branches of embassies located throughout the country are consulate offices. Foreign diplomatic officers assigned to consulate offices are titled Consuls General, Deputy Consuls General, Consuls, and Vice Consuls. Persons assigned to consulate offices are designated as career consular officers.~~

~~**1. — HONORARY CONSULS.** Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career consular officers. Such officers do not receive identification cards from the State Department of the type issues to career consular officers, though they may exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the United States Government.~~

~~**2. IMMUNITY.** Honorary Consuls are not immune from arrest or detention; they are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions. However, appropriate steps must be~~

~~provided to accord to such officers the protection required by virtue of their official position.~~

~~3. ARCHIVES AND DOCUMENTS. The consular archives and documents of a consular posted headed by an honorary consul are inviolable (secure) at all times provided they are kept separate from other papers and documents of a private or commercial nature relating to other activities of an honorary consul.~~

~~C. IDENTIFICATION~~

~~1. STATE DEPARTMENT. Foreign Diplomatic Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers or cards. The extent of the "immunity" or "inviolability" for each classification is stated on the reverse of the card. The State Department credential bears its seal, the name of the officer, his title, and the signature of State Department officials.~~

~~a. A blue bordered "Diplomatic" card indicates that the bearer has the status of a diplomatic agent.~~

~~b. A green bordered "Official" card indicates that the bearer has the status of an employee of a diplomatic agent.~~

~~c. A red bordered "Consular" card indicates that the bearer has the status of a consular employee.~~

~~2. STATE OF CALIFORNIA. The State of California issues status cards to some individuals in these categories:~~

~~3. SAN FRANCISCO CITY AND COUNTY. The San Francisco City and County identification card bears the Seal of the City and County, the name of the officer, his signature, and the signatures of the Mayor and Chief of Police.~~

~~4. HONORARY CONSULS. Honorary consuls will bear identification as in Section II., B., 1, above.~~

~~D. IMMUNITIES~~

~~1. PERSONS~~

~~a. Diplomatic agents enjoy diplomatic immunity, which is broadly defined as the freedom from the jurisdiction of local criminal and civil courts accorded to duly accredited foreign diplomatic agents, their families, and their key employees, if such employees are not nationals of or a permanent resident in the receiving state.~~

~~b. A Career Consular Officer, his/her family or qualifying employees are not liable to arrest or detention pending trial, except in the case of a grave crime (felony offense or other act that would endanger the public safety) and pursuant to a decision by the competent judicial authority. This immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination.~~

~~c. Treaties extend “immunity” or “inviolability” to other member of foreign missions.~~

~~d. In any case, if an officer has a question regarding a claim of immunity, or if one who claims immunity does not possess identification to that effect, the officer should contact the Special Investigations Division (SID) of the San Francisco Police Department for verification before taking further police action of any nature.~~

~~2. PREMISES AND PAPERS~~

~~a. Consular premises used exclusively for the work of the consular post or his or her private residence cannot be entered without explicit permission of the head of the consular post or his designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.~~

~~b. The consular archives and documents are inviolable at all times wherever they may be. The official correspondence of the consular post, which means all correspondence relating to the consular post and its functions, is likewise inviolable.~~

III. 5.13.03 PROCEDURES

A. Criminal Violations - Diplomatic agents shall not be arrested and booked, but may be physically detained when their actions involve a grave or felonious act (**e.g., DV, DUI, Fatal Collision, Assaults**).

1. Detentions shall be made with the minimum amount of physical restraint necessary under the circumstances.
2. **Members shall contact Special Investigations Division (SID) or Department Operations Center (DOC) immediately to notify a SID member for further assistance in contacting the Diplomatic Security Service Command Center (U.S. State Department) for confirmation of immunity and provide members with next steps.**

B. Traffic Violations

1. **Moving Violations:** - When a diplomatic agent, a member of ~~his or her~~ **their** family, or a qualified employee is stopped for a moving violation, — other than driving under the influence of drugs or alcohol (see below), — the officer, upon being advised by the driver that ~~he~~ **they** have immunity, shall ascertain that the driver possesses the proper credentials.

- a. Properly identified foreign diplomatic officers, a member of the diplomatic officer's family, or a qualified employee, all may be issued a citation, but shall not be required to sign ~~it~~ **the citation**.
 - i. Forward the citation to ~~the Special Investigations Division~~ **SID** along with an incident report detailing the circumstances of the traffic stop.
 - ii. Carefully note the identification information in the incident report.
2. **Parking Violations:** - Consular Corps license plates do not exempt the vehicle from being cited for parking violations. However, it shall be the policy of this Department that vehicles bearing such plates will not be cited for parking violations within one block of consular premises or residences of foreign consular officers.
 - a. Members observing any abuse of this policy shall prepare a memorandum to ~~his or her~~ **their** commanding officer ~~with~~ **and forward** a copy to ~~the Special Investigations Division~~ **SID** for follow up investigation. The memorandum must outline the circumstances in full and include license plate number(s).
3. **Driving Under the Influence ~~Drugs or~~ **of Alcohol**:** - The primary consideration in this type of incident shall be to see that the foreign diplomatic officer, a member of ~~his or her~~ **their** family, or a qualified employee is not a danger to ~~himself~~ **themselves** or **to** the public.
 - a. Based upon the circumstances, the following options, short of a detention, are available:
 - i. ~~Take the person to a telephone to~~ **Have the person** call someone to pick ~~him or her~~ **them** up.
 - ii. Take the person home.
 - iii. Call a taxi for the person.
 - iv. Take the person to the district station in the district of occurrence to recover sufficiently to drive safely.
 - b. ~~Prepare an incident report and forward a copy to Special Investigations Division. Careful documentation of the identifying credential and the facts concerning the incident shall be included in the report.~~

C. Reporting

1. In the event that a foreign diplomatic officer, a member of their family or a qualified employee should become involved in any action taken by members of this Department, **SID and DOC** shall be notified immediately, and an incident report prepared detailing the circumstances.
2. When a detention occurs, ~~the Special Investigations Division~~ **SID** or ~~the and Operations Center~~ **DOC** (after ~~SID business hours~~) must be notified by the investigating officer or ~~his or her~~ **their** immediate supervisor. An investigation

will be initiated by the Special Investigations Division **SID** in cooperation with the U.S. Department of State and the F.B.I.

- ~~3. In the event that a foreign diplomatic officer, a member of their family or a qualified employee should become involved in any action taken by members of this Department, the Special Investigations Division or the Operation Center shall be notified immediately and an incident report prepared detailing the circumstances.~~
3. In the unlikely event that members are unable to timely contact **SID**, members shall call the Diplomatic Security Service Command Center at (571) 345-3146 for confirmation of immunity and next steps.

5.13.04 Terms & Definitions

A. Embassies - *The highest ranking foreign diplomatic office in this country is an embassy. The majority of embassies are located in Washington, D.C. or in New York, N.Y.*

1. **Diplomatic Officers** - *Foreign diplomatic officers assigned to embassies are titled: Ambassador, Minister, Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary and Attaché. These persons are designated as “Diplomatic Agents” by the State Department. Diplomatic Officers have full immunity along with their family members.*
2. **Employees** - *are either members of the administrative or technical staff at embassies. These staff are accorded full personal inviolability and immunity from criminal jurisdiction but receive immunity from civil jurisdiction only in connection with the performance of their official duties (i.e., “functional immunity”).*

B. Consulate Offices - *Branches of embassies located throughout the country are consulate offices. Foreign diplomatic officers assigned to consulate offices are titled Consuls-General, Deputy Consuls-General, Consuls, and Vice Consuls. Persons assigned to consulate offices are designated as career Consular Officers. Consular Officers have only official acts or functional immunity in respect of both criminal and civil matters. They may be arrested or detained pending trial only if the offense is a felony and that arrest is made pursuant to a decision by a competent judicial authority.*

1. **Honorary Consuls** - *Often nationals or permanent residents of the receiving state are appointed and received as honorary consular officers to perform the functions generally performed by career consular officers. Such officers do not receive identification cards from the State Department of the type issued to career consular officers, though they may exhibit reduced-size copies of the exequatur or diplomatic note evidencing recognition by the United States Government. Honorary Consuls are not immune from arrest or detention; they*

are also not entitled to personal immunity from the civil and criminal jurisdiction of the receiving state except as to official acts performed in the exercise of their consular functions. However, appropriate protection must be provided to such individuals by virtue of their official position.

- 2. Consular Employees** - Often nationals or permanent residents of the receiving state, who perform general functions within the Consulate are usually not immune from arrest or detention.

C. Identification

1. **State Department** - Foreign Diplomatic Officers can be identified by credentials issued by the State Department and by other locally issued official identification papers or cards. The extent of the “immunity” or “inviolability” for each classification is stated on the reverse of the card. The State Department credential bears its seal, the name of the officer, their title, and the signature of State Department officials.
 - a. A blue-bordered “Diplomatic” card indicates that the bearer has the status of a diplomatic agent.
 - b. A green-bordered “Official” card indicates that the bearer has the status of an employee of a diplomatic agent.
 - c. A red-bordered “Consular” card indicates that the bearer has the status of a consular employee.
2. **State of California** - The State of California issues status cards to some individuals in the above categories
3. **San Francisco City and County** - The San Francisco City and County identification card bears the Seal of the City and County, the name of the officer, their signature, and the signatures of the Mayor and Chief of Police.
4. **Honorary Consuls** - Honorary consuls will bear identification as in 5.13.04 B(1) above.

D. Immunities

1. **Persons**
 - a. Diplomatic agents enjoy diplomatic immunity, which is broadly defined as the freedom from the jurisdiction of local criminal and civil courts accorded to duly accredited foreign diplomatic agents, their families, and their key employees, if such employees are not nationals of or a permanent resident in the receiving state.
 - b. A Career Consular Officer, their family or qualifying employees are not liable to arrest or detention pending trial, except in the case of a grave

crime (felony offense or other act that would endanger public safety) and pursuant to a decision by the competent judicial authority. This immunity from criminal jurisdiction is limited to acts performed in the exercise of consular functions and is subject to court determination (warrant).

- c. Treaties extend immunity or “inviolability” to other members of foreign missions.
- d. In any case, if an officer has a question regarding a claim of immunity, or if one who claims immunity does not possess identification to that effect, the officer should contact SID for verification before taking further police action of any nature.

2. Premises and Papers

- a. Consular premises used exclusively for the work of the consular post or their private residence cannot be entered without explicit permission of the head of the consular post or their designee or by the head of the diplomatic mission. This permission may be assumed in the case of fire or other disaster requiring prompt protective action.
- b. The consular archives and documents are inviolable at all times and wherever they may be. The official correspondence of the consular post, which means all correspondence relating to the consular post and its functions, is likewise inviolable.

3. Vehicles

- a. The officer may not search or seize any items from a vehicle registered to a person with diplomatic immunity, except in cases where the vehicle is suspected of being stolen or used by unauthorized persons in the commission of a crime. The officer shall send a copy of the completed incident report to SID.

References

Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities – U.S. Department of State