

CONSULAR NOTIFICATION AND ICE DETAINERS

- AUTHORITY:** Article 36 of the Vienna Convention on Consular Relations (VCCR)
 California Assembly Bills (AB) 899 (2015) and AB 2792, the Transparent Review of Unjust Transfers and Holds (Truth Act)
 California Rules of Court Rule 5.552 (Confidentiality of Records)
 California Senate Bill (SB) 54 (2017), Values Act
 Code of Federal Regulations, Title 8, Section 287.7
 Government Code (GC) Sections 7282, 7282.5, 7283, 7283.1, 7283.2, 7284, 7284.2, 7284.4, 7284.6, 7284.10, and 7284.12
 Juvenile Court Administrative Order No. 12/003-903 (Exchange of Information)
 Juvenile Court Miscellaneous Order 688.2 (Authorization for the Exchange of Information Concerning Minors of Foreign Citizenship Between the Consulate of The Respective Government and the Orange County Probation Department)
 Penal Code (PC) Sections 667.5(c), 834c, and 1192.7(c)
 Transparency and Responsibility Using State Tools (TRUST) Act
 United States Constitution, Article VI Supremacy Clause
 U.S. Code, Title 8, Sections 1325, 1357(g)(10)(B), 1373 and 1644
 U.S. Department of State Consular Notification and Access, Fifth Edition
 Welfare and Institutions Code (WIC) Sections 202, 627(b), 627.5, 628, 630-632, 650-656, 707, 827, 828, 831, and WIC 10609.95
- RESCINDS:** Procedure Manual Item 2-4-102, dated 12/04/18 (Major Revision)
- FORMS:** Mandatory Notification Countries (“List Countries”) (Attachment A)
 Advisement of Right to Contact Consulate (Attachment B)
 Consulate Notification Form (Attachment C)
 Transparent Review of Unjust Transfers and Holds (TRUTH) Act (Attachment D)
 Immigration Detainer-Notice of Action (DHS Form I-247A)
- PURPOSE:** To define parameters for consular notification and youth with Immigration and Customs Enforcement (ICE) detainees, as well as to provide written policies and procedures on the arrest, detention, death, or serious injury of youth foreign nationals while in custody.

I. GENERAL INFORMATION

- A. WIC 831 states that juvenile information shall remain confidential regardless of the juvenile’s immigration status. This statute specifies that “juvenile information” includes the juvenile case file and any information related to the juvenile. It forbids disclosure or dissemination of juvenile information, including the juvenile’s immigration status, to federal officials absent a court order of the judge of the juvenile court upon filing a petition.
- B. Pursuant to the Juvenile Court Directive of August 22, 1977, entitled, "*Procedure of Handling Illegal Aliens*," no youth will be admitted to Juvenile Hall based solely

on their suspected illegal alien status. Further, the directive states, “Illegal alien youths suspected of being destitute or in need of proper and effective parental care and control should be brought to the attention of the Department of Social Services.”

- C. SB 54 (California Values Act) and GC 7282, et. seq. (TRUST ACT) define the parameters under which state and local law enforcement agencies may engage in immigration enforcement-related activities. Specifically, they describe describe qualifying conditions, as well as the circumstances under which local law enforcement agencies may respond to notification and transfer requests from immigration authorities.
- D. GC 7283, et seq. (part of the TRUTH ACT) requires that before a local law enforcement agency (including probation) allows an interview between a person in custody and ICE, concerning civil immigration violations, certain information must be provided. The local law enforcement agency must provide the person with a written consent form that explains the purpose of an interview with ICE, that it is voluntary, and that the person may refuse to be interviewed. It also requires the agency to provide the person with a copy of any notification from ICE that it receives, and any notification to ICE the agency provides concerning the person’s release date. These records are considered public records under the California Public Records Act. Effective January 1, 2018, if a local law enforcement agency provides ICE access to a person during the previous year, at least one public community forum must be held during the following year to provide information about ICE’s access to persons in custody.

Note: The Probation Department does not communicate with ICE regarding youth pursuant to WIC 831. However, the interview procedure described above would apply in the rare case where they interview a youth with an ICE hold request and the Juvenile Court has issued and order pursuant to WIC 831.

- E. The 1963 Vienna Convention on Consular Relations (VCCR) Treaty codifies customary international law and represents the basic principles pertaining to the performance of consulate functions. It established the baseline for most obligations with respect to the treatment of foreign nationals in the United States, and for foreign governments’ treatment of U.S. nationals abroad. More than 170 countries are currently party to VCCR, with only 20 still outside of the process regarding consular matters.

The VCCR provides rules for the operation of consulates and for the duties of consular officers of the “sending” country (the country that sent the consular officer abroad) in the “receiving” country (the country to which the consular officer has been sent). The VCCR also addresses the services the consular officers may provide to nationals in the receiving country.

- F. Juvenile Court Miscellaneous Order 688.2 (Authorization for the Exchange of Information Concerning Minors of Foreign Citizenship Between the Consulate of The Respective Government and the Orange County Probation Department), authorizes the release and exchange of information concerning youths of foreign nationality, who are WIC 602 wards, are the subject of a petition to declare them a ward, or are the subject of an application for such petition, to the Consulate of the appropriate government. The purposes for the exchange of information shall be to:

1. Investigation and make necessary contracts to determine the youth's true name, date of birth, and legal residence.
2. Contact the youth's parents to inform them of their child's detention, whereabouts, and possible consequences.
3. Assist deputy probation officers (DPOs) in the preparation of a social study report and provide any criminal record the youth may have in their native country.
4. Ascertain the financial status of the youth as it applies to the ability to pay restitution incurred in the United States.

G. DEFINITIONS

1. Hold Request

A federal ICE request that a local law enforcement agency maintain custody of an individual currently in its custody beyond the time they would otherwise be eligible for release in order to facilitate transfer to ICE and includes, but is not limited to, Department of Homeland Security (DHS) Forms 1-247A (Immigration Detainer-Notice of Action) and discontinued form I-247D (Immigration Detainer-Request for Voluntary Action).

Note: The consolidated detainer form, Form I-247A, has been used by ICE effective April 2, 2017, for old, notification, or transfer requests. These requests or "Detainers" issued on prior discontinued versions of the detainer form need not be replaced with a Form I-247A to be valid.

2. Notification Request

An ICE request that a local law enforcement agency inform ICE of the release date and time in advance of the public of an individual in its custody and includes, but is not limited to, DHS Forms I-247A and discontinued form I-247N (Request for Voluntary Notification of Release of Suspected Priority Alien).

3. Transfer Request

An ICE request that a local law enforcement agency facilitate the transfer of an individual in its custody to IC, and includes, but is not limited to, DHS Forms I-247A and discontinued form I-247X (Request for Voluntary Transfer).

4. Judicial Probable Cause Determination

A determination made by a federal judge or federal magistrate judge that probable cause exists that an individual has violated federal criminal immigration law and that authorizes a law enforcement officer to arrest and take into custody the individual.

5. Judicial Warrant

A warrant based on probable cause for a violation of federal criminal immigration law and issued by a federal judge or a federal magistrate judge that authorizes a law enforcement officer to arrest and take into custody the person who is the subject of the warrant.

6. Consular Notification and Access

Consular notification and access is the obligatory process by which federal, state, and local law enforcement and legal authorities provide information to foreign government representatives regarding their citizens in the United States and permit foreign consular officers to assist their nationals.

7. Consular Officer

A consular officer, also known as consul and in some cases a diplomatic officer, is an official of a foreign accredited by the United States Department of State and authorized to provide assistance on behalf of the government to that government's citizens in another country. They carry identification cards issued by the Department of State. Additionally, the State Department's Office of Protocol (202) 647-1985 can verify their identity between 8:15 a.m. and 5:00 p.m. EST. After business hours, call the Diplomatic Security Command Center to the Department of State at 571-345-3146 or 866-217-2089, or via the following email: www.state.gov/m/ds/immunities/c9118.htm.

II. PROCEDURE

When a youth has been lodged at Juvenile Hall on an Application for Petition alleging a WIC 602 law violation, the Custody Intake (CI) deputy probation officer (DPO) is responsible for obtaining a variety of documents, including the youth's birth certificate to ascertain the identity of the youth. Further, the CI DPO is mandated to conduct an investigation into the youth's circumstances and the facts surrounding their being taken into custody.

In addition to other personally identifiable information, the CI DPO shall enter into the Integrated Case Management System (ICMS) information regarding the youth's place of birth (POB), birth verification documentation, and whether U.S. citizenship has been determined.

If a youth claims birth or citizenship in another country or is a suspected foreign national, the CI DPO will complete the appropriate Consular notification.

A. Consular Notification for Known or Suspected Foreign Nationals

1. Consular notification pertains to all foreign nationals in the United States, regardless of their immigration status.
2. If a foreign national arrestee is from one of the fifty-six (56) mandatory countries (Attachment A), notification to the foreign consular officer must be made without delay, even if the foreign national objects. For all other countries, law enforcement must inform the national that they may have their consular officer notified of the arrest or detention and may communicate with them. The foreign national can accept or decline the officer to notify. In all cases, consular notification should be made within

twenty-four (24) to seventy-two (72) hours after initial arrest. Law enforcement should document the response (in writing) and the notification in the event there are questions later.

3. Non-mandatory notification countries: When a known or suspected foreign national is booked or detained at Juvenile Hall for more than two (2) hours, the Intake and Release Center (IRC) deputy juvenile correctional officer (DJCO) will immediately notify the CI DPO. If the youth is not a national of a “mandatory notification” country, the CI DPO shall attempt to locate the youth’s parent or legal guardian and ask whether they want the CI DPO to notify the consulate of the youth’s detention. If the CI DPO is unable to locate the youth’s parent or legal guardian within twenty-four (24) to seventy-two (72) hours, or the CI DPO believes that the youth is a victim of abuse or human trafficking and that contacting the parent or legal guardian would place the youth in danger, the CI DPO shall notify the consulate, unless, under the circumstances, there is reason to believe notification could be detrimental to the youth.

If contact is made with the parents or legal guardian of the youth, they will be informed of their right to contact the consulate both orally and in writing via the *Advisement of Right to Contact Consulate Form* (Attachment A). If they request that consular notification be given, the CI DPO shall, without delay, notify the appropriate official from the consulate of the youth’s arrest and custody status by completing the *Consular Notification Form* (Attachment B) and faxing that form to the appropriate consulate.

4. “Mandatory notification” countries: Pursuant to the 1963 Vienna Convention on Consular Relations Treaty some countries are “mandatory notification” countries (Attachment A). If the youth is from a country to which mandatory notification must be provided, then the consulate must be provided notice that one of their citizens has been taken into custody, regardless of whether the youth or his/her parent or legal guardian makes a request. In such cases, the CI DPO will, without delay, notify the consulate by completing the *Consular Notification Form* (Attachment B) and faxing that form to the appropriate consulate regardless of the youth or their parent or legal guardian’s wishes concerning consulate notification. Under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that youth’s government.
5. Foreign Nationals from Mexico: The Government of Mexico has informed the United States Department of State of its desire to be notified of the detention of any of any of their country’s foreign national youth and advised of the reasons for the arrest. The Department of State has requested that, where possible, we comply with that request. If the youth is a foreign national from Mexico, the CI DPO will notify the youth of their right to communicate with the Mexican Consulate. The CI DPO will then, without delay, notify the Mexican Consulate by completing the *Consular Notification Form* (Attachment B) and faxing that form to them.
6. When a foreign consulate is notified, the CI DPO will document what information was provided to the youth and their parent or legal guardian, the date that the information was provided, whether a request was made

that a foreign consulate be notified and the date the consulate was notified. All documentation should be made in the Electronic Contact Reporting (ECR) notes in ICMS. Any completed and signed *Advisement of right to contact Consulate* and *Consulate Notification* Forms shall be forwarded to the CI supervising probation officer (SPO) with the completed Intake Packet.

7. Consular notification is required in any case if the court or other appropriate authority initiates proceedings to appoint a guardian or trustee for the detained youth.
8. Consular notification procedures must be followed each time a foreign national is arrested.
9. The division director or designee of the custodial facility will ensure that the youth is allowed to communicate with, correspond with, and be visited by, a consular officer of their country.

B. Referrals to ICE

In compliance with WIC 831, the Probation Department does not contact ICE to disclose the immigration status of any youth to federal officials. All juvenile information is considered confidential and will not be released to federal officials absent a court order of the judge of the juvenile court upon filing a petition.

C. Hold, Notification, and Transfer Requests

Although ICE will not receive notification or verification of a youth's immigration status or any juvenile case file information from the Probation Department, they can through their own investigatory processes still become aware of a youth's immigration status and seek to take custody of the youth. ICE may seek to do so via a Detainer, i.e., hold request, notification request, or transfer request. SB 54 ("California Values Act") amended GC 7282, et seq. ("TRUST Act") to prohibit hold requests. Instead, under certain circumstances, law enforcement agencies can respond to transfer and notification requests from ICE.

Upon receiving any hold, notification, or transfer requests from immigration officials, the youth's assigned DPO will provide the youth with a copy of the request form and a notice advising the youth that ICE wishes to assume custody. The assigned DPO will also make all reasonable attempts to provide the youth's parents with a copy of the transfer request and notice. Such attempts will be documented with an ECR note in ICMS. The assigned DPO must also inform the youth whether the Probation Department intends to comply with the request. If so, then pursuant to the TRUTH Act (GC 7283.1), the assigned DPO must promptly provide in writing the notification of such to the youth and to their attorney or other person designated by the youth. Such notification will be documented with an ECR note in ICMS.

With respect to hold requests, the Probation Department may not comply with such requests and shall not hold a youth past the time that they would normally be released. A youth who merely has a hold request and is otherwise eligible for release from custody will be immediately released to an appropriate parent/guardian, other person, or placement notwithstanding the issuance of the

hold.

With respect to notification and transfer requests, the Probation Department may only comply if the juvenile court has issued an order upon the filing of a petition pursuant to WIC 831 permitting the dissemination of and/or attachment of a youth's information to any other documents given to or provided by federal officials. A youth may be transferred to immigration authorities only if authorized by a judicial warrant or judicial probable cause determination.

A youth who qualifies may be processed for transfer after they otherwise become eligible for release from custody. These youths will not be held past their release dates. ICE will be notified in a timely manner for all youth where there has been a judicial warrant or a judicial probable cause determination.

D. ICE Interviews

If ICE requests an interview with a youth with an ICE Hold, the court must have granted a petition pursuant to WIC 831 allowing Probation and ICE to share information. Additionally, the youth must first be provided with a copy of the Transparent Review of Unjust Transfers and Holds (TRUTH Act) form, which is available in one of eight languages (English, Chinese, Farsi, Korean, Spanish, Tagalog, Vietnamese, and Arabic). The form will explain the purpose of the interview with ICE, that it is voluntary, and that the youth can decline to be interviewed or may choose to be interviewed only with their attorney present. The Custody Intake DPO must also explain this to the youth, as well as notify the youth of any information that Probation receives from ICE and any information that Probation provides ICE of the youth's release. The youth and their attorney will be provided with a copy of the signed form, the original will be placed in the youth's probation file, and a notation will be made in ICMS.

REFERENCES:

Procedures:	2-4-101	Custody Intake Referrals
	3-2-011	Juvenile Hall Intake
	3-1-049	Integrated Case Management System (ICMS)
		Automated Logbook and Manual Logbook
Policy:	None	

C. Ronald

Attachments

APPROVED BY:

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 Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial office representing Taiwan's interests in the United States, can be notified at their request. TECRO's offices are listed on pages 126-127; see also footnote 128 on page 66.

² Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., "green card" holders). Otherwise, upon the national's request. See the question "But since 'green card' holders are living in the United States permanently, why can't they ignore consular notification requirements for them?" at page 12; see also footnote 18 on page 43.

³ 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. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate. For advice on how to ascertain whether an arrested or detained person is a British national, see the question "What about British nationals" on page 24. For the U.S.-U.K. convention, see footnote 30 on page 47.

ENGLISH

Statement 1:
**For All Foreign Nationals Except Those from
“Mandatory Notification” Countries**

As a non-U.S. citizen who is being arrested or detained, 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 arrested or detained. 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: _____

SPANISH

Statement 1:
**For All Foreign Nationals Except Those from
“Mandatory Notification” Countries**

Por no ser ciudadano de los Estados Unidos, y estar arrestado o detenido, usted puede pedirnos que notifiquemos de su situación a los funcionarios consulares de su país en los Estados Unidos. También puede comunicarse con los funcionarios consulares de su país. Entre otras cosas, un funcionario consular de su país puede ayudarle a conseguir asesoramiento legal, y también puede ponerse en contacto con su familia y visitarle en el lugar de detención. Si usted desea que notifiquemos a los funcionarios consulares de su país, puede solicitarlo ahora o en cualquier oportunidad en el futuro. ¿Desea que notifiquemos ahora a los funcionarios consulares de su país?

SÍ (YES)

NO (NO)

Nombre: _____
Printed Name

Testigo: _____
Witness

Firma: _____
Signature

Fecha: _____
Date

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

Debido a su nacionalidad, estamos obligados a notificar a los funcionarios consulares de su país en los Estados Unidos que usted ha sido arrestado o detenido. Haremos esta notificación lo más pronto posible. Además, usted puede comunicarse con los funcionarios consulares de su país. Usted no está obligado a aceptar su ayuda, pero esos funcionarios pueden ayudarle, entre otras cosas, a conseguir asesoramiento legal, y también pueden ponerse en contacto con su familia y visitarle en el lugar de detención. Sírvase firmar para indicar que ha recibido esta información.

Nombre: _____
Printed Name

Testigo: _____
Witness

Firma: _____
Signature

Fecha: _____
Date

FAX SHEET – CONSULAR NOTIFICATION

SUBJECT:

NOTIFICATION OF ARREST OR 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 arrested/detained 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 has been or may be charged with the following offense(s):

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

Please refer to case number _____ when you call.

ADDITIONAL INFORMATION:

Transparent Review of Unjust Transfers and Holds (TRUTH) Act

This act became effective January 1, 2017. The bill requires that before a local law enforcement agency (including Probation) allows an interview between a person in its custody and ICE, concerning civil immigration violations, certain information must be provided. The local law enforcement agency must provide the person with a written consent form that explains the purpose of an interview with ICE, and that it is voluntary. The person may refuse to be interviewed. It also requires the agency to provide the person with a copy of any notification from ICE that it receives, and any notification to ICE the agency provides concerning the person's release date. These records are considered public records under California Public Records Act. Beginning January 1, 2018, if an agency provides ICE access to a person during the last year, it must hold a public forum to provide information about ICE's access to persons in its custody.

I _____ voluntarily consent/do not consent, to an interview with the United States Immigration and Customs Enforcement (ICE) regarding possible civil immigration violations.

The purpose of this interview is:

I understand that this interview is voluntary, and that I may decline to be interviewed or may _____ choose to be interviewed only with my attorney present.

I understand that I will be provided copies of specified documentation received from ICE and _____ have been notified of the intent of the Orange County Probation Department to comply with ICE _____ requests.

I will be provided a copy of any request for an ICE hold, notification, or transfer request and will _____ be informed as to whether the Orange County Probation Department intends to comply with the _____ request.

If the Orange County Probation Department provides ICE with my release date, then I and my _____ attorney or designee will be provided a copy of the notification.

_____ All records related to ICE access will be public records for purposes of the California Public
_____ Records Act.

This form and its content have been explained to me.

Youth Signature _____

Date

Youth Name and L number _____