



TRAINING BULLETIN

Volume XLVIII, Issue 1, January 2019

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DIPLOMATIC AND CONSULAR RELATIONS

Diplomatic immunity is a principle of international law by which certain foreign government officials are free from the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. The United States (U.S.) benefits greatly from the concept that foreign representatives can carry out their duties effectively only if they are accorded a certain degree of insulation from the application of standard law enforcement practices of the host country. International law requires law enforcement to extend certain privileges and immunities to members of foreign diplomatic missions and consular posts. This can include immunity from arrest, detention, and prosecution. However, it is the duty of all persons enjoying such privileges to respect local laws and regulations. It is important that Department personnel are familiar with the framework of laws relating to the categories of foreign mission personnel and the privileges and immunities to which each is entitled.

Department Diplomatic Liaison Officer

Extensive globalization has transformed Los Angeles into a cosmopolitan city and has brought with it a growing diplomatic community. At any given time, there are more than a thousand people with diplomatic and consular privileges and immunities living or working in Los Angeles. A designated staff officer is assigned by the Chief of Police to serve as a Department Diplomatic Liaison Officer (DDLO). The DDLO represents the Department in communicating with the U.S. Department of State and representatives of foreign governments in the City.

MEMBERS OF DIPLOMATIC MISSIONS

Diplomatic Agents

Outside of Washington D.C., Los Angeles has the largest diplomatic community in the country. Diplomatic Agents (DA) include Ambassador, Minister, Minister Counselor, Counselor, First Secretary, Second Secretary, Third Secretary, and Attaché. They are the highest-ranking political representatives of a foreign country and are afforded the highest degree of immunity. They enjoy complete personal inviolability, which means that they may not be handcuffed, arrested, or detained; and neither their property (including vehicles), nor residences may be entered or searched. Diplomatic Agents also enjoy complete immunity from the criminal jurisdiction of the host country's courts and thus cannot be prosecuted no matter how serious the offense, unless their immunity is waived by the sending state. They also have immunity from civil suits

except in several very limited circumstances. Diplomatic Agents enjoy complete immunity from the obligation to provide evidence as a witness and cannot be required to testify, even if they have been the victim of a crime. In addition, family members forming part of the Diplomatic Agent's household enjoy the same privileges and immunities as the sponsoring Diplomatic Agent.

Administrative and Technical Staff

Embassy administrative and technical (AT) staff of a diplomatic mission perform tasks critical to the inner workings of the embassy. Accordingly, they enjoy privileges and immunities identical to the Diplomatic Agent with respect to personal inviolability, immunity from criminal jurisdiction, and immunity from the obligation to provide evidence as a witness. Their immunity from civil jurisdiction is more limited. Members of AT staff enjoy civil immunity only in connection with performance of their official duties, commonly known as "official acts immunity." Like those of Diplomatic Agents, the recognized family members of AT staff enjoy the same immunities from criminal jurisdiction as their sponsors. Because family members perform no official duties, they have no immunity from civil jurisdiction.

Service Staff

Service staff members have "official acts immunity" only, and they enjoy no personal inviolability, no inviolability of property, and no immunity from the obligation to provide evidence as witnesses. Their families enjoy no privileges and immunities.

Nationals or Permanent Residents of the United States

The family members of Diplomatic Agents enjoy no immunities if they are nationals (permanent residents) of the U.S. Members of AT staff, their families, and members of the service staff enjoy no privileges or immunities if they are U.S. nationals, legal permanent residents, or foreign nationals who are "permanently resident" in the U.S.

Special Bilateral Agreements

There are some countries with which the U.S. has bilateral agreements that grant to all members of their respective embassies, provided they are nationals of the sending country, the privileges and immunities to which only Diplomatic Agents are normally entitled. Identification cards will reflect this status and police officers should be aware of this distinction.

Waiver

Always keep in mind that privileges and immunities can be waived by the sending state. Police authorities should never address the alleged commission of a crime by a person enjoying full criminal immunity with the belief that there is no possibility of a prosecution.

The U.S. Department of State requests waivers of immunity in every case where the prosecutor advises that, but for the immunity, charges would be pursued.

MEMBERS OF CONSULAR POSTS

Consular personnel perform a variety of functions of principal interest to their respective sending countries. For example, their functions may include issuance of travel documents, attending to the difficulties of their own nationals who are in the host country, and generally promoting the commerce of the sending country. Very limited level of privileges and immunities are granted to consular personnel assigned to consulates.

Consular Officers

Consular Officers (CO) are those members of consular posts who are recognized by the sending state and the host country as fully authorized to perform the broad array of formal consular functions. They may hold positions such as Consul-General, Deputy Consul, General Consul, and Vice-Consul. The concerned foreign government notifies the U.S. Department of State upon the assignment of a CO. The U.S. Department of State will then issue an official identification card to the CO. The CO may also possess other official identification issued by the country represented. Consular Officers who are full time practitioners of consular functions are referred to as "Career" Consular Officers.

Consular Officers have only official acts or functional immunity in respect to both criminal and civil matters and their personal inviolability is quite limited. A CO may be arrested or detained pending trial in the case of a felony offense and when the arrest is made pursuant to a decision by a competent judicial authority (for example, a warrant issued by an appropriate court). Consular Officers enjoy no inviolability of property.

Police officers have the authority to prevent a CO from continuing any criminal act. When a CO commits a misdemeanor offense, the CO should be informed of the violation. Once their identity is confirmed, they are afforded the respect and courtesy that their position demands. A CO can be prosecuted for misdemeanors, but remain at liberty pending trial or other disposition of charges. Absent a bilateral agreement, immunity does not extend to the CO's family. However, officers should ensure that a CO's family is treated with the utmost courtesy and respect.

Consular Employees

Consular employees perform the administrative and technical support services for the consular post. They have no personal inviolability, only official acts immunity, and enjoy immunity from the obligation to provide evidence as witnesses only in respect to official acts. Their family members enjoy no personal inviolability or jurisdictional immunities of any kind.

Consular Service Staff

Service staff members do not enjoy jurisdictional immunity or personal inviolability, but they do have immunity from the obligation to provide evidence as witnesses with respect to official acts. Their families enjoy no privileges and immunities.

Nationals or Permanent Residents of the United States

Consular employees and consular service staff who are U.S. nationals, legal permanent residents, or who are “permanently resident” in the U.S. enjoy no personal inviolability and no jurisdictional immunity in the U.S.

Honorary Consular Officers

Honorary Consular Officers are American citizens or permanent resident aliens appointed to perform consular services on a part-time basis. They have official acts immunity only and immunity from the obligation to provide evidence as witnesses only with respect to official acts. They do not enjoy personal inviolability and may be arrested pending trial if circumstances should otherwise warrant. Their family members enjoy no privileges or immunities.

Consular Premises

Consular premises are those areas that are used exclusively for the work of the consular posts. Officers shall not enter these areas, even in “hot pursuit,” without the expressed consent of the head of the consular post or designee. Officers responding to a “Code-30” at a consulate must obtain the expressed consent of the head of the consulate or designee prior to entry. The consent may be telephonic. In the case of fire or exigent circumstances involving a compelling life or safety issue, consent to enter a consulate may be presumed. Officers should take all appropriate steps to protect the consular premises against any disturbance of the peace or impairment of its dignity. No arrest warrant or other probable cause is necessary to remove unwanted persons from the consular premises upon the request of a CO or designee.

Consular archives, files, and documents are immune from local jurisdiction at all times under any conditions. Clearly identified diplomatic pouches must not be infringed upon and may not be opened, confiscated, booked, searched, x-rayed, etc.

IDENTIFYING DOCUMENTS

The U.S. Department of State issues identification (ID) cards to foreign government personnel who are entitled to some form of immunity. Because there are different degrees of immunity, officers should carefully read the reverse side of the ID card presented to them, as the ID card will state the immunities of the individual. This is important because the U.S. has signed bilateral agreements with certain foreign

governments, whereby their consular personnel in the U.S. and their families have privileges and immunity approximating those afforded Diplomatic Agents.

Additionally, diplomats and high-level foreign government officials with privileges and immunities may be traveling temporarily in the U.S. with only a foreign diplomatic passport and a U.S. issued visa. The U.S. Department of State Diplomatic Security Command Center (DSCC) should be contacted to confirm a claim of diplomatic immunity or privilege, and supervisors should be guided by the advice of the DDLO or Department Operations Center (DOC) in these instances.

An additional form of identification may be the U.S. Department of State driver's license that is issued to qualified foreign mission personnel and their eligible family members. These persons are required to have the U.S. Department of State issued driver's license and should not have a California issued driver's license. However, there is an exception for a learner's permit which may be issued by the state where the qualified foreign mission member or eligible family member resides. The CO's vehicle should also display a distinctive license plate that is issued by the U.S. Department of State.

Visit the link below for U.S. Department of State resources:

<http://www.state.gov/ofm/resource/ile/index.htm>

For examples of Identifying Documents, Driver's Licenses, and License Plates, click on ***Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities***

When officers encounter an individual claiming to be a diplomat or CO and there is a question as to the individual's identity or claim of immunity, the officers shall:

- Immediately obtain the assistance of a supervisor
- Immediately contact the DSCC at (571) 345-3146 or (866) 217-2089

Note: The phone number to the DSCC is on the back of all U.S. Department of State issued Diplomatic ID cards.

- Immediately notify the DDLO or DOC
- Be guided by the advice of the DDLO or DOC

CONTACTS INVOLVING CONSULAR OFFICERS

Traffic Violations

While the U.S. Department of State strongly encourages citations to be issued for moving violations, Department policy gives officers the discretion to warn or issue

personal service or absentee citations to a CO, their family members, or consular employees. A supervisor shall be consulted to determine if there is a need to issue a citation. Although COs are generally not subject to arrest or detention, they may be briefly detained for the purpose of issuing a citation. If a CO prefers to continue on his way, a Complaint Application, Form 05.15.00, may be initiated. Officers shall forward a copy of the citation or complaint application to the DDLO, Counter Terrorism and Special Operations Bureau, via Intradepartmental mail as soon as possible.

Consular immunity does not prohibit citing and/or impounding a consular vehicle constituting a traffic hazard or parked in a tow-away zone. However, as a matter of courtesy, an officer should make a reasonable attempt to warn the driver of a consular vehicle of the pending action and allow the vehicle to be moved prior to citing or towing. If the vehicle must be towed, it may only be towed to the nearest safe location, and the DOC must be notified of the exact location.

Driving Under the Influence

All cases of driving under the influence (DUI) should be meticulously documented and reported to the U.S. Department of State through the DDLO. The U.S. Department of State's Diplomatic Motor Vehicle Office maintains driver histories and may suspend or revoke licenses for patterns of bad driving habits or egregious offenses.

When a DUI driver is identified as a CO, an officer is required to immediately obtain the assistance of a supervisor at the scene. A field sobriety test should be offered, but it cannot be compelled. When a CO is intoxicated and unable to drive without threatening the safety of other motorists, they should not be allowed to continue to drive. Even if they are uncooperative or belligerent, the CO may not be detained, placed in protective custody, handcuffed, or restrained in any way unless officer or public safety is at risk. Unless a felony has been committed that is a danger to public safety, a CO must be permitted to leave, but may not drive from the scene.

The utmost courtesy should be extended to prevent aggravation of an already sensitive situation. Do not place the CO in the police vehicle unless they request assistance and wish to sit in the police vehicle. The supervisor will evaluate the situation and advise on the appropriate action to be taken. When practicable, the supervisor will assist in efforts to secure other means of transportation by offering alternatives such as:

- Contacting a responsible party to transport the CO
- Requesting a taxi service
- Transporting the CO in a police vehicle
- Asking the CO to voluntarily go to the police station until a responsible party is located

Felony Cases Involving Consular Officers

In order to arrest a CO for a felony offense, an officer shall obtain an arrest warrant unless the offense involved is an immediate threat to public safety, such as an assault with a deadly weapon or robbery. If the felony involves an immediate danger to public safety, the CO shall be detained pending judicial review for an arrest warrant. In all felony cases, advice should be obtained from the DDLO. The CO's family, consular employees, and consular service staff generally have limited or no immunities and are subject to normal arrest procedures.

AGGRAVATED CONTACTS INVOLVING CONSULAR OFFICERS

An officer who has observed or who is called to the scene of an incident involving a CO or a member of the CO's family or staff who is, or who may become, aggravated is required to:

- Immediately obtain the assistance of a supervisor
- Notify the DDLO or DOC as soon as practicable
- Complete an Employee's Report, Form 15.07.00, with a description of the incident, the identity of the involved CO, and the nation represented
- Forward the completed report through the appropriate channels to the DDLO so the information supplied may be used to lodge an official protest that could result in the CO's recall

When all pertinent information for the DDLO is included in another written report, an Employee's Report need not be completed.

Supervisor Duties

A supervisor that is called to the scene of an aggravated incident involving a CO, member of the CO's family, or a consular employee will immediately assess the situation and take appropriate action. The supervisor shall:

- Immediately notify the DDLO describing the situation and circumstances
- Notify DOC to contact the DDLO during off hours
- Remain available for a return call from the DDLO
- Immediately deliver completed copies of the concerned reports to the DDLO

These notification procedures will be observed for aggravated incidents involving a CO, a member of the CO's family, or a consular employee. Aggravated incidents are not limited to driving under the influence or felony offenses, but shall be considered incidents of any nature that may tend to become aggravated due to the circumstances or personalities involved.

OFFICIAL ACTS IMMUNITY

Official acts immunity pertains in different circumstances. No law enforcement officer, U.S. Department of State officer, diplomatic mission, or consulate is authorized to determine whether a given set of circumstances constitutes an official act. This is an issue which may only be resolved by the court with subject matter jurisdiction over the alleged crime. Thus, a person enjoying official acts immunity from criminal jurisdiction may be charged with a crime and may be required to appear in court. At this point, however, such person may assert as an affirmative defense that the acts complained of arose in connection with the performance of official acts. If upon examination of the circumstances complained of, the court agrees, then the court is without jurisdiction to proceed and the case must be dismissed. Therefore, a full and complete police report may be critical in permitting the court to make a just decision. Law enforcement officers are requested to contact the U.S. Department of State before arresting a CO or, if not possible, immediately after arrest.

CONCLUSION

Diplomats and Consular Officers shall be accorded the respective privileges, rights, and immunities as directed by international law, federal statutes, and Department policy. Due to the sensitive nature of these contacts, courtesy and respect are paramount to a professional resolution.

This Bulletin cancels and supersedes Volume XLI, Issue 1, Diplomatic and Consular Relations, September 2010

Field Training Services Unit
Police Training and Education

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