

Bowie Police Department - General Orders



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AUTHORITY Chief John K. Nesky	ACCREDITATIONS STANDARDS CALEA STANDARDS:	TOTAL PAGES 8
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I. PURPOSE

The purpose of this General Order is to establish guidelines for the questioning, arrest, and/or investigation of foreign nationals.

II. POLICY

It is the policy of the City of Bowie Police Department to treat all individuals with respect, compassion, courtesy, and equality, regardless of citizenship or immigration status. The Department shall provide services to all persons and exercise its duties in conformity with all applicable Federal, State, and local laws, regardless of the person's citizenship status, nationality, race or ethnicity.

III. DEFINITIONS

1. Immigration Order/Detainer/Warrant - An administrative order or warrant issued by an immigration official for suspected civil violations of the immigration law, i.e. visa violations, illegal entry, or unauthorized arrival, and those subject to deportation and removal. CBPD officers do not have the legal authority to enforce civil violations of immigration law.
2. Criminal Warrant - A judicial order signed by a judge or magistrate that authorizes a law enforcement officer to take a person into custody.
3. Deported Felon- An individual who has been officially deported after conviction of an aggravated felony as defined in 8USC1101(a)(43).
4. Diplomat - An official appointed by a national government to represent that country abroad.
5. Diplomatic Immunity - A principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. ("Diplomatic and Consular Immunity: Guidance for Law Enforcement and Judicial Authorities," U.S. Department of State Office of Foreign Missions, June 2015)

6. Foreign National - A person who is not a citizen of the country in which they are living.

7. Immigration and Customs Enforcement (ICE) - The federal agency charged with enforcing federal laws governing border control, trade, and immigration to promote homeland security and public safety. ICE consists of three directorates: Homeland Security Investigations (HSI); Enforcement and Removal Operations (ERO); and Management and Administration (M&A).

8. Immigration Violator File (IVF)

1. A file within the National Crime Information Center (NCIC) that contains records on deported felons, aliens with outstanding administrative warrants of removal, and absconders.

a. The Deported Felon category contains records for previously deported felons convicted and deported for drug trafficking, firearms trafficking, or other aggravated felonies as defined in 8 USC 1101(a)(43) (criminal violation - enforceable by CBPD).

b. The Absconder category contains records for individuals with outstanding administrative warrants of removal from the United States who have unlawfully remained (civil immigration violations - not enforceable by BPD).

2. An Immigration Violator File response includes guidance to the local law enforcement agency on handling the response.

9. T Visa / U Visa - Types of nonimmigrant visas issued to victims of certain crimes and their immediate family members who have qualified under federal law and are willing to assist law enforcement and government officials in the investigation and/or prosecution of the criminal activity.

10. Vienna Convention on Consular Relations of 1963 - An international treaty that defines the framework for consular relations between independent states. Article 36 of the Convention states that foreign nationals who are arrested or detained must be given notice without delay of their right to have their embassy or consulate notified of that arrest.

1. Mandatory notification countries: Notification must be made to the consular offices of these countries when a national of the country is arrested or detained. Notification must be made regardless of the individual's request to do so or not.

III. 2. Non-mandatory notification countries: Any country not on the list of mandatory notification countries. Nationals of these countries may request notification be made to their consular officers.

GENERAL PRINCIPLES

A. The indiscriminate questioning of foreign speaking persons about their citizenship status (possession of their "green card") without a reasonable basis for suspicion of state/local traffic or criminal charges is unconstitutional according to the Supreme Court decisions. Furthermore, the intimidating effect of such questioning creates fear, suspicion and distrust of the police.

B. Officers have no statutory authority to arrest an undocumented foreign national for violations of federal immigration laws. If a foreign national is arrested, the basis of that arrest must rest solely on state/local traffic or criminal charges.

C. If an individual who is stopped for a traffic violation is not wanted for other charges and has a valid driver's license, he should be treated the same as any other violator and not subjected to arrest or further questioning because of nationality. Without reasonable suspicion of criminal activity, the individual cannot be detained longer than necessary for the traffic stop to be completed.

D. CBPD officers shall not confiscate Permanent Resident Cards/Docu merits (aka "green cards"), Employment Authorization Cards, or any other residency status, citizenship, or immigration documents unless the officer has reason to believe the documents are altered or counterfeit with fraudulent intent, indicative of a violation of applicable statutes involving the possession of fraudulent government identification documents (CR 8-303 of the Maryland Annotated Code).

E. Officers may offer foreign nationals referral to services, including, but not limited to, T or U visa information, language services, appropriate community organizations, assisting with consular contacts, etc.

IV. FOREIGN NATIONALS AS VICTIMS / WITNESSES

A police report/investigation is not contingent upon a person's citizenship status. However, if it becomes known that a victim/witness is facing possible deportation and the Officer needs the victim/witness for the case, the Officer must notify Immigration and Custom Enforcement (ICE) in writing, through the office of the Chief.

U VISAS

A. A foreign national who becomes a victim of certain crimes may apply for a Non Immigrant Status U Visa. The U Visa is only for those who have suffered substantial mental or physical abuse as victims of certain qualifying crimes and who have assisted, or are willing to assist, law enforcement in the investigation and prosecution of such crimes. If these requirements are satisfied, law enforcement can certify the applicant to the Department of Homeland Security for their consideration of a U Visa. Additionally, there are times that a return to the home country could place the victim in danger. In those limited instances, the granting of a U Visa offers those victims appropriate protection for up to four years and it may be withdrawn at any time.

There are four statutory eligibility requirements:

- a. The individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity; and
- b. The individual must have information concerning that criminal activity; and
- c. The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime; and
- d. The criminal activity violated certain U.S. and state laws.

B. Eligible victims must file a petition for a Non Immigrant Status U Visa with the U.S. Immigration Services. The form requests information regarding the petitioner's eligibility, as well as admissibility to the United States. The petition will also contain a Certification of Helpfulness from a law enforcement agency that demonstrates that the petitioner "has

been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of the criminal activity.

C. This agency's point of contact for endorsements of these petitions will be the executive staff of the Special Victims Investigations Division. All requests for the endorsement of a U Visa will be referred to that division. It shall be this agency's policy to provide endorsements to victims who meet the Department of Homeland Security's criteria when:

- 1) The applicant was the victim of a qualifying crime that occurred in Prince George's County.
- 2) For misdemeanor crimes, the applicant reported the crime within the one year statute of limitations. For felony crimes, the crime occurred within 10 years of application;
- 3) Officers from this agency conducted an investigation; and
- 4) The case has not yet been prosecuted.

D. In those events where arrests were made, those U Visa applicants will be referred to the State's Attorney's Office or the United States Attorney for the District of Maryland for consideration.

E. Qualifying criminal activity includes the commission of, attempts to commit, conspiracy to commit and solicitation to commit any of the following crimes:

Abduction Incest Rape

Abusive sexual contact Involuntary servitude Sexual assault

Blackmail Kidnapping Sexual exploitation

Domestic violence Manslaughter Slave trade

Extortion Murder Torture

False imprisonment Obstruction of justice Trafficking

Felonious assault Peonage Unlawful criminal restraint

Female genital mutilation Perjury Witness tampering

Being held hostage Prostitution

For questions or further information, contact Criminal Investigative Section

V. ARREST PROCEDURES

A. When an individual is physically arrested, officers will follow the procedures and protocols outlined in General Order, 435 Prisoner Processing.

B. After transport of the arrestee to the Department of Corrections, the officer shall complete an arrest report.

C. Citizens of countries other than the United States who are under arrest may have certain protections afforded to them via international treaties, in particular the Vienna Convention. CBPD officers shall:

1. Attempt to determine the individual's country of citizenship. In the absence of other information, assume this is the country displayed on the passport or other identification presented. This information will be placed on the arrest sheet.

2. When an arrestee is transported to the Detention Center, consular notification, when required or requested, will be made by the Detention Center. Officers shall ensure the Detention Center is aware of the arrestee's country of citizenship, if known.

3. If the arrestee is released via discretionary release or RWOP, the officer or his supervisor shall make the consular notification, when required or requested, before the end of the shift.

a. Consistent with U.S. Department of State guidelines (Appendix A):1

i. If the individual's country is on the list for mandatory notification available on the Department of State's Bureau of Consular Affairs website, officers shall:

a) Notify the country's nearest embassy or consulate of the arrest or detention.

b) Advise the individual that notification is being made and they may communicate with the consulate.

c) Forward any communication from the individual to the consulate without delay.

ii. If the individual's country is NOT on the list for mandatory notification, officers shall:

a) Inform the individual that they may have their consulate notified and may communicate with them.

b) If the individual requests that the consulate be notified, notify the country's nearest embassy or consulate without delay.

c) Forward any communication from the individual to the consulate without delay.

4. All contacts and actions shall be documented in the incident report.

VI. ADMINISTRATIVE IMMIGRATION WARRANTS

A. Warrants for deportation are civil in nature, not criminal.

B. When an officer receives information in the NCIC database on a person, the officer must attempt to determine whether the warrant is an administrative (civil) warrant. To make this determination, the officer must review the introductory message at the beginning of the "notice" from NCIC. If it is administrative in nature, it will contain the language:

SUBJECT HAS AN OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL/DEPORTATION FROM THE UNITED STATES, or

SUBJECT HAS AN OUTSTANDING ADMINISTRATIVE WARRANT OF ARREST FOR IMMIGRATION VIOLATIONS

C. Should it be determined from the NCIC database and/or any further inquiry that a person has an administrative (civil) immigration warrant, CBPD officers shall immediately release the person. However, officers shall not notify ICE.

D. If an officer is unable to determine the nature of the warrant, the officer shall promptly contact his or her shift commander for consultation and a final decision. The Patrol Commander shall exercise due diligence to determine the existence of an administrative (civil) warrant, and, if necessary, detain the individual for a reasonable amount of time until such determination can be made. For purposes of this policy, a reasonable amount of time shall not exceed sixty (60) minutes, in accordance with routine NCIC "hit" confirmation procedures. Once the shift commander

concludes that an administrative (civil) immigration warrant exists, the person immediately shall be released. A case record detailing the incident must be completed.

VII. CRIMINAL IMMIGRATION WARRANTS

A. When a criminal immigration warrant is located in the NCIC database during a traffic stop or an investigation, the individual will be detained and confirmation with ICE will be made.

B. Before any further detention, arrest, or search (incident to arrest) is made, it must be confirmed that the warrant is both active and is for a criminal offense.

C. If ICE is unable to immediately determine the nature of the warrant, the officer shall promptly contact his or her Patrol Commander for consultation and a final decision. The Patrol Commander shall exercise due diligence to determine the existence of a criminal warrant and, if necessary, detain the individual for a reasonable period of time until such determination can be made. For purposes of this policy, a reasonable amount of time shall not exceed sixty (60) minutes, in accordance with routine NCIC "hit" confirmation procedures.

D. Upon confirmation from ICE that a criminal immigration warrant exists, the person shall be arrested and processed in accordance with the General Orders, a booking record detailing the incident must be completed.

E. If, after a thorough investigation that involves the consultation of the shift commander concludes with no determination as to the existence of a criminal arrest warrant, the incident shall be documented on a case report record.

F. CBPD officers are obligated under international treaties and customary international law to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States.

VIII. ASSISTING FEDERAL AUTHORITIES

A. CBPD officers are permitted to assist ICE officers and employees when the primary focus of a federal investigation is not immigration violations. Examples include, but are not limited to: customs violations, money laundering, narcotics cases, gang crimes, human trafficking, terrorist activities, and execution of a criminal warrant or court order issued by a federal judge or magistrate.

B. All operational requests for assistance made by ICE or other immigration officials that do not have a nexus to criminal activity will require the approval of the Chief of Police, on a case-by-case basis.

C. Nothing in this order prohibits CBPD officers from responding to or remaining on the scene of any federal criminal law enforcement investigation, or to assist with officer or public safety.

IX. VIENNA CONVENTION ON CONSULAR RELATIONS (1963)

A. Certain provisions of the Vienna Convention on Consular Relations (1963) and customary international laws require that appropriate authorities of the United States, including state and local authorities, provide assistance to foreign consul officers in the performance of their duties.

- B. The United States is obligated under international treaties and customary international to notify foreign authorities when foreign nationals are arrested or otherwise detained in the United States. Officers should follow these procedures:
 - 1. The Officer shall immediately inform the foreign national of the foreign national's right to notification of his government concerning the arrest/detention.
 - 2. If the foreign national asks that such notification be made, the Officer shall do so without delay by informing the nearest consulate or embassy and noting that fact in the incident report. Consulate phone numbers can be obtained from Communications.
- C. Consul Officers should be given timely notification concerning the death of a foreign national and disposition of the deceased's property.
- D. When requested, assistance should be given to any consul in ascertaining the whereabouts of their nationals. This does not include disclosing any information obtained through MILES or NCIC. This information is restricted to law enforcement only.

X. TELEPHONE INFORMATION

- A. When seeking information from or making notifications to ICE, the following numbers should be used:
 - 1. 410-962-7449 (0800 -1630 weekdays)
 - 2. 410-377-1500 (1630 – 0800 and weekends this number is an answering service; ask for the duty agent)
- B. Should an Officer require from the Department of State, the State Department's Operations Center is available 24 hours a day and can be reached at 202-647-1512.
- C. Law Enforcement Support Center – (802) 872-6020;
- D. Baltimore Field Office – (410) 637-4000
- E. If assistance is requested or a notification was made, a notation should be made in the incident report.