

12.556 DIPLOMATS, DIPLOMATIC IMMUNITY, AND FOREIGN NATIONALS

Information:

There are three types of diplomatic identification cards:

- Diplomatic (blue border for diplomats and their families)
- Official (green border for, embassy administrative and technical staff, embassy employees, and their families)
- Consular (red border for consular personnel)

Diplomatic I.D. cards are 3¾" x 2½" and contain a photo of the bearer. The bearer's name, title, mission, city and state, date of birth, identification number, expiration date, and a U.S. Department of State seal appears on the front of the card. A brief statement of the bearer's immunity is printed on the reverse side.

Consular identification cards, issued by a country's respective consulate, are recognized and accepted by the CPD for identification purposes.

The two most frequently used consular identification cards are Mexico's "Matricula Consular de Alta Seguridad" and Guatemala's "Tarjeta de Identificación Consular Guatemalteca." Both of these identification cards are referred to as a CID card. The CID card is identification **only**, and should not be confused with a Mexican driver's license.

Definitions:

Diplomatic Immunity – Full criminal immunity or limited criminal immunity which the personnel of a foreign diplomatic mission and, in varying degrees, their family members retain because they serve as representatives of a sovereign state and require special rights and guarantees for the effective functioning of the mission.

Diplomatic Agents – A term embracing heads of missions, ambassadors, and charge d'affaires, and members of their diplomatic staff. These individuals have the function of dealing directly with host country officials and retain the highest degree of privileges and immunities.

Administrative and Technical Staff – Individuals who support the activities of diplomatic agents and perform tasks critical to the inner workings of the embassy. This category includes secretaries, clerical personnel, office managers, and certain professional security personnel. These persons also retain a high level of privilege, but somewhat less than diplomatic agents.

Service Staff – Drivers, cleaners, and building/grounds personnel. They have much less in the way of immunity.

Foreign National – Any person who is not a United States citizen.

Consular Officer – A foreign national, employed at a consulate or in the consular section of an embassy, who represents their government's citizens and commercial interests. They are not diplomatic agents and do not retain the same privileges and immunities.

Consulate – The offices of a consul and consular officers located outside of Washington, D.C.

Special Bilateral Agreements – There are some foreign countries which do not fall under the aforementioned categories. The United States has bilateral agreements with these countries, which grant significantly higher privileges and immunities to **all** staff members of their embassy and sometimes staff family members.

U-VISA – Common name for the U Nonimmigrant Status Certification, Form I-918, Supplement B. Confirms that the petitioner has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which they are a victim.

U Nonimmigration Status – A designation foreign nationals and their families may request through the Department of Homeland Security, U.S. Citizenship and Immigration Services, that allows temporary immigration benefits if they have been a victim of certain qualifying criminal activity.

Purpose:

To comply with federal laws regulating diplomatic immunity through the delivery of fair and impartial police services and establish Department procedure for dealing with diplomatic immunity and foreign nationals. It is understood that dealing with diplomatic immunity poses particular problems for law enforcement officers in applying immunity if they do not understand its purposes or rules.

Promote cooperation between foreign national victims and Department personnel during the investigation and prosecution process. Knowledge and discussion about potential immigration benefits available to cooperative foreign victims, specifically the U-Visa Certification, may help to alleviate fears and increase victim cooperation.

Policy:

The Cincinnati Police Department (CPD) will comply with the federal laws and procedures regarding proper treatment of diplomats who commit or are suspected of committing crimes. When CPD officers interact with diplomats, they will communicate with the State Department as appropriate.

When dealing with individuals who possess diplomatic immunity privileges, officers will perform thorough investigations, keep good records, and report whatever appropriate to the State Department. This allows the State Department to exercise the tools it has to remove individuals from the U.S. who are engaged in criminal activity or to revoke the driving privileges from individuals who repeatedly violate the traffic code.

The Department will assist immigrant crime victims with U-Visa Certification applications if they cooperate during an official police investigation and subsequent prosecution for qualifying criminal offenses. The Community Liaison Unit Commander is authorized as the Police Chief's designated certifying official, to certify a petitioner's request for U-Visa certification. Officers are authorized to distribute to any crime victim who may be a non-citizen an informational flyer describing immigration relief and services available to immigrant crime victims.

Federal courts have consistently held that undocumented presence is not a crime but a federal civil violation enforceable only by federal officers. CPD officers will not stop, detain, question, or arrest a person solely on the basis that the individual may have unlawfully entered the country and/or exceeded their Visa. CPD officers will not enforce immigration laws. However, if Immigration and Customs Enforcement (ICE) officers request assistance from a CPD officer in detaining a subject, the officer will provide assistance with the approval of a supervisor.

Procedure:

A. Claims of Diplomatic Immunity

1. When proper I.D. is shown and status is verified, officers will fully respect the immunity. Officers will **not** arrest or detain persons who have diplomatic immunity **except** in circumstances where public safety is in imminent danger or it is apparent a serious crime may otherwise be committed. Officers may, however, initiate contact with an individual having diplomatic immunity.
2. If a person claims immunity and cannot show proper I.D. during an incident that would normally require arrest or detention, or an officer believes invalid I.D. is being presented, inform the person that he/she will be held in custody until proper identity can be confirmed.
 - a. Contact the appropriate office in the State Department using the information provided in sections F. and G.

B. Full Criminal Immunity

1. Full criminal immunity is more than immunity from prosecution. It means that the residence, vehicles, papers, and correspondence of an individual with this immunity classification cannot be searched, the person cannot be detained or arrested, and is not required to give evidence as a witness.
2. The following individuals are entitled full criminal immunity:
 - a. Diplomatic Agents
 - 1) Head of mission (Ambassador or Charge d'affaires)
 - b. Diplomatic Staff of Mission
 - 1) Members of the Delegation of the Commission of the European Communities
 - 2) Permanent Representatives and Senior Staff of Missions to Organization of American States and United Nations

- 3) Senior Officials of the United Nations Secretariat
- c. Administrative and Technical Staff
 - 1) Administrative Officers/Assistants
 - 2) Security Officers
 - 3) Purchasing Agents
 - 4) Budget and Fiscal Technicians
 - 5) Archivists
 - 6) Cryptographers
 - 7) Receptionists/Secretaries
 - 8) Stenographers/Typists
 - 9) Clerks
 - 10) Couriers/Messengers
 - 11) Guards
- d. Families of Diplomatic Agents, Staff of Mission, Administrative and Technical Staff
 - 1) Spouses
 - 2) Dependent children until age 21 or age 23 if full time student at an institution of higher learning.

C. Limited Criminal Immunity

- 1. Service staff members have limited criminal immunity. They can be detained, arrested, and prosecuted for criminal acts. Service staff members have limited immunity only for acts committed during the course of their duties. (Court decides if acts are in the course of duties). Service staff can be required to give evidence as witnesses and their persons and effects can be searched.
 - a. Service staff members include:
 - 1) Chauffeurs
 - 2) Drivers
 - 3) Servants in missions
 - 4) Employees performing domestic duties in missions
- 2. Consular staff have limited immunity. Career consular officers can be arrested only for a felony investigation and pursuant to a warrant. Honorary consular officers and consular employees do not have immunity and may be forced to testify, except with regard to their official acts.

3. International organization staff and support staff of missions to international organizations do not have immunity and may be forced to testify, except with regard to their official acts.
 4. Families of service staff, consular staff, and international organization staff do not have immunity.
- D. Traffic Violations & Operating a Vehicle Under the Influence (OVI)
1. Officers may issue drivers having diplomatic immunity an appropriate citation or warning for **any** moving violation.
 - a. The issuance of a traffic citation does not constitute an arrest or detention.
 - b. Diplomats are **not** required to sign the citation and cannot be arrested for refusal to sign.
 - c. Officers will notify their supervisor of the issuance of a citation(s) and the refusal to sign.
 - d. A supervisor's presence at the scene is not required.
 2. If an officer has probable cause to believe a person with full immunity is operating a vehicle under the influence they will:
 - a. Not allow the person to continue operating the vehicle.
 - b. Issue traffic citation(s) for OVI and other related traffic offenses. A physical arrest cannot be made.
 - c. Provide assistance in parking the vehicle. Options include allowing the driver to wait at the police station until they are sober, calling a taxi, or calling a friend or relative of the driver to pick them up. Do not tow, impound, or boot the vehicle.
 - d. Offer field performance tests and Blood Alcohol Concentration (BAC) tests. Diplomats are not required to take tests.
 - e. Notify a supervisor.
- E. Criminal Incidents Involving Foreign Diplomats
1. Where public safety is in imminent danger or it's apparent that a serious crime has been committed, an officer may intervene to the extent necessary to halt the activity.
 - a. Immediately notify a supervisor.
 - b. Record all pertinent details and circumstances of the incident and information from the I.D. card(s).

2. Supervisor responsibilities:

- a. Respond to the scene of incidents of immunity which would have resulted in an arrest for a person without immunity.
- b. Report serious incidents by telephone as soon as possible to the Command Center of the Bureau of Diplomatic Security, at the contact numbers listed in sections F. and G.
- c. Fax a copy of related paperwork and information regarding all criminal incidents and traffic citations to Intelligence Unit.
- d. Ensure a comprehensive incident report is sent to the Department of State, Office of Protocol (Fax #: 202-647-1198)

F. Contact Information for Incidents Involving Diplomatic Personnel

- 1. To obtain information during regular business hours about diplomatic and consular personnel, and personnel of international organizations other than the United Nations:
 - a. Current status of U.S. Department of State driver licenses, diplomatic license plates, registrations, or other diplomatic motor vehicle information: (202) 895-3521, Fax: (202) 895-3646
 - b. To report traffic incidents or accidents, issuance of citations, etc., involving foreign missions personnel: (202) 895-3521
 - 1) Fax all citations and/or traffic reports to: (202) 895-3646
 - c. To verify immunity status: (202) 647-1985 or (202) 647-1727
 - d. Fax copies of criminal incident reports and citations to the Office of the Chief of Protocol: (202) 647-1198 and the Diplomatic Security Service Protective Liaison Division: (202) 859-3613
 - e. After regular business hours, all inquiries should be made to the U.S. Department of State Diplomatic Security Command Center: (571) 345-3146, or 1-866-217-2089
- 2. To obtain information and verify the immunity status of United Nations personnel during regular business hours:
 - a. Diplomatic agents and family members, UN Mission staff and family members, and UN Secretariat employees: (212) 415-4168, (212) 415-4407 or (212) 415-4131
 - b. U.S. Department of State license tags, registration, or other motor vehicle information: (646) 282-2825 or (646) 282-2812
 - c. After business hours, information is available from the Communications Section of the U.S. Mission to the United Nations: (212) 415-4444

G. Criminal Incidents Involving Foreign Nationals

1. Officers detaining any foreign national will, upon request, notify the appropriate consular official when the detention exceeds two hours.
 - a. Officers receiving a request for consular notification from a Mexican national who has been detained or arrested will complete a "Notification of Mexican Consular" form and fax it to (317) 761-7610, on the same day the arrest or detention occurs. The form is available in the CPDFORMS folder on the H: drive.
2. Officers who make a physical arrest of an undocumented foreign national do not need to contact ICE. Status verification and notifications are handled by the Hamilton County Justice Center when appropriate.

H. U Nonimmigrant Status Form I-918, Supplement B

1. Officers who receive a Form I-918, Supplement B will forward the form and any attachments to the Community Liaison Unit Immigrant Affairs Liaison officer for investigation.
2. The Community Liaison Unit Commander will serve as the Police Chief's certifying official for all Forms I-918.