

**ENFORCEMENT OF CIVIL IMMIGRATION LAW;  
ARREST/DETENTION OR DEATH OF FOREIGN NATIONALS**

14.01 **PURPOSE AND SCOPE**

- A.** The Pennsylvania State Police (PSP) recognizes that the maintenance of public trust and confidence is foundational to effective, efficient delivery of police services to the communities we serve. Since its adoption in 1929, our Call of Honor dictates we enforce the law without consideration of class, color, creed, or condition. **In order to encourage the public to report crime and cooperate in the investigation of criminal activity, all persons, regardless of their immigration status, must feel secure that contacting or being addressed by PSP personnel, ordinarily, will not lead to an immigration inquiry.**
  
- B.** **The purpose of this regulation is to provide guidance to Department personnel to ensure that the PSP is able to provide police services to all persons regardless of their immigration status, and to ensure that members are aware of the limitations imposed by law with respect to civil immigration enforcement.** This regulation **also** provides procedures for Department personnel to follow regarding the interaction with, the arrest/detention of, or the death of foreign nationals (FNs). The notification procedures contained herein are based on United States (U.S.) Department of State guidelines concerning U.S. international treaty obligations, which are legally binding.
  
- C.** **Personnel are advised that the enforcement of civil federal immigration laws falls exclusively within the authority of the U.S. Department of Homeland Security (DHS) (including U.S. Immigration and Customs Enforcement [ICE] and U.S. Customs and Border Protection [CBP]). Accordingly, the PSP does not have jurisdiction with respect to civil immigration enforcement, and, unless required by law or court order or otherwise permitted under this policy, no Department personnel shall inquire into the immigration status of any person or take any action intended to ascertain the immigration status of any person.**

14.02 DEFINITIONS

- A. For purposes of this regulation, the term “administrative immigration warrant” refers to administrative removal warrants used by ICE officers to arrest noncitizens who have committed immigration violations. An administrative immigration warrant is not a criminal warrant signed by a judge, nor is it a court order, and thus it shall not be used by the PSP as the basis to detain or arrest a person or persons. (Refer to Appendage F for sample responses from National Crime Information Center [NCIC] inquiries for administrative and criminal immigration warrants.)
- B. For the purposes of this regulation, a “foreign national (FN)” is defined as a **person who is a citizen/national of any country other than the U.S.**
- C. The term “immigration status” refers to an individual’s status with respect to federal immigration law and/or citizenship. Immigration status is civil in nature.
- D. The term “United States Customs and Border Protection” refers to the federal law enforcement agency under DHS that is responsible for securing the borders of the U.S. and facilitating lawful travel between the U.S. and foreign jurisdictions.
- E. The term “United States Immigration and Customs Enforcement” refers to the federal law enforcement agency under DHS that is responsible for enforcement of federal laws related to border control, customs, trade, and immigration.

14.03 PROCEDURES **FOR** A TRAFFIC STOP, ARREST, OR DETENTION OF A FOREIGN NATIONAL

- A. **General Requirements:**
  - 1. Department personnel shall not stop, search, investigate, or attempt to detain or arrest an individual, including a known or suspected FN, based upon immigration status, citizenship, and/or nationality.

2. Department personnel are prohibited from questioning any individual regarding their immigration status unless that information is necessary for an ongoing investigation of a criminal offense that is unrelated to civil immigration enforcement.

**B. Members:**

1. When an individual, including a FN, is the operator of a motor vehicle and/or is arrested/detained, that individual should be identified via a driver's license issued by the Commonwealth, another state, or their country of origin. If the individual is not in possession of a driver's license, members shall ask for the individual's full name, date of birth, and any governmental or non-governmental form of identification (ID).
2. When an individual, including a FN, is the operator of a motor vehicle and/or is arrested/detained, members shall verify the driver's license status and/or determine if the individual is entered as a wanted person via the Commonwealth Law Enforcement Assistance Network (CLEAN) PortalXL by conducting a Driver License Query and/or a Query Wanted Person Files.

**NOTE:** FNs may lawfully operate a motor vehicle in the Commonwealth with a valid driver's license issued by another state or their home country.

**NOTE:** The mobile office application includes DOCUtector, an online ID and driver's license check reference with more than 6,000 security images of 1,200 different ID document formats worldwide. Security features are pictured for all U.S. and Canadian IDs in every version (adult, minor, CDL, etc.) and most worldwide driver's licenses and ID cards. Note that while DOCUtector contains examples of foreign ID that can establish a person's identity, a passport or consular ID card is not a driver's license and is not sufficient proof that a driver or operator of a motor vehicle is licensed.

3. If an **individual, including a FN**, is the operator of a motor vehicle and/or **is** arrested/detained and cannot be properly identified, members may consider the utilization of Livescan to determine the existence of identifying information and/or **criminal/traffic** warrants in biometric databases. **For all arrestees, members shall act in accordance with AR 9-32, Arrest Processing, Fingerprinting, and Photographing.**
4. Notify the Communications-Desk Unit of the encounter and provide the Police Communications Operator, or member assigned to the communications desk, with the operator's/individual's information **and additional pertinent information in accordance with FR 6-8, Traffic Law Violation Stops.**
5. Passengers, **victims, and witnesses** shall not be asked for **ID** on the basis of determining immigration status and shall not be detained for questioning related to their or another person's immigration status. Passengers, victims, and witnesses shall not be summarily questioned regarding immigration status.
6. **On occasions when, consistent with applicable law, it is necessary for a member to ask a victim, witness, or passenger to identify him or herself, the member shall accept the passenger's, victim's, or witness's ID card; passport; or driver's license issued by the Commonwealth, another state, or home country as proper ID. A member shall not complete a Driver's License Query or Query Wanted Person Files via the CLEAN PortalXL for a passenger, victim, or witness unless there is a reasonable, articulable safety concern; a reasonable, articulable suspicion of criminal activity; or the passenger has volunteered to assume operation of the vehicle and the member needs to confirm the passenger's licensure to operate the vehicle.**
7. In the course of daily law enforcement duties, including those instances evolving from a violation of the Pennsylvania Vehicle Code, the detention of **any individual, including a FN**, may not be prolonged beyond the time necessary to address the reason for the encounter or violation itself, except in cases where there

is a reasonable basis for suspicion of criminal activity. In those instances, the traffic stop and/or detention may be reasonably extended to eliminate or confirm the suspicion of criminal activity.

**8. Administrative Immigration Warrants and Immigration Detainers:**

- a. Members shall not stop, detain, search, arrest, extend an encounter beyond its initial purpose, or otherwise take into custody a FN based on an administrative immigration warrant. Administrative immigration warrants are civil in nature; therefore, the suspicion, knowledge, or evidence of an administrative immigration warrant *does not* constitute reasonable suspicion of criminal activity.
- b. **An immigration detainer cannot form the independent basis for any detention or arrest. All detentions shall be justified by independent reasonable suspicion that a crime has been committed, and all arrests shall be justified by independent probable cause to believe that a crime has been committed. An immigration detainer issued by ICE is a request; it is not a judicial order or a criminal warrant.**

**NOTE: Refer to Appendage G for examples of ICE administrative immigration warrants and immigration detainers.**

**9. Criminal, Traffic, and Criminal Immigration Warrants:**

- a. If a member determines there is a criminal warrant, traffic warrant, or criminal immigration warrant for the FN, the individual shall be detained; **the member shall follow the hit confirmation processes in the CLEAN PortalXL; and** confirmation with the issuing authority shall be made, ensuring the warrant is both active and issued for a criminal or traffic offense.
- b. Upon confirmation of the warrant **via the hit confirmation process**, the individual shall be

arrested and handled pursuant to the Pennsylvania Rules of Criminal Procedure.

**10. Criminal and Traffic Violations:**

- a. If during the investigation, it is determined that **any individual, including a FN**, is in violation of a Pennsylvania criminal or traffic law, the individual shall be subject to arrest/detention based upon the nature of the alleged violation(s), in accordance with the applicable Pennsylvania Rule(s) of Criminal Procedure.
- b. Certain diplomats and consulars are given extraordinary privileges and immunities. While these ranking officials are considered FNs, some may be immune from arrest/detention for various offenses. The U.S. Department of State created Appendage B to provide guidance in this area. The procedures for the arrest/detention of a FN do not apply to a diplomat or consular who is immune to arrest.

**11. Communication and Reporting Requirements:**

- a. **A member may communicate with federal immigration officials regarding a criminal immigration warrant. In all other cases, any communication to federal immigration officials regarding a FN should be through the Communications-Desk Unit and shall not be initiated until the member's interaction with the referenced individual has concluded and the individual has been released from investigatory detention, or arrest processing has been completed.**
- b. **When communicating with federal immigration officials through the Communications-Desk Unit, members shall notify the official(s) of the need and nature of the communication and provide the Police Communications Operator, or member assigned to the communications desk, with the operator's/individual's information and the contact information for the**

**federal immigration official(s). If a member communicates directly with a federal immigration official(s), the member shall include the name, title, and contact information of the official(s), as well as a summary of the communication, in the General Offense–Assignment Report (GO–AR), or other appropriate investigative report.**

- c. Members shall complete the appropriate reporting requirements according to the nature of the incident. In all instances where a member learns in the course of an encounter that an individual (e.g., vehicle operator, passenger, victim, witness) is a FN, and that member decides to share that information with federal immigration authorities, the member shall complete the Foreign National Contact text template within the Records Management System (RMS) (refer to Appendage A for further instructions). Regardless of the Computer-Aided Dispatch (CAD) Call Type Code classification, the minimum reporting requirement for all contacts with ICE regarding FNs shall be the GO–AR or other appropriate investigative report, as circumstances dictate. Absent a more specific CAD Call Type Code, the GO–AR shall be generated under CAD Call Type Code “Other–Other.”**
- d. Copies of any associated Traffic Citations or written warnings issued in accordance with FR 6-7, Uniform Traffic Law Enforcement, and all other related attachments shall be scanned, uploaded, and attached to the corresponding General Offense Report or GO–AR.**

**12. Immigration Alien Query:**

- a. Members shall not conduct/request an Immigration Alien Query (IAQ) via CLEAN on any individual who is not arrested.**

**NOTE:** Information, whether from an IAQ or otherwise, which indicates that an individual has been previously deported, appears to be in the U.S. legally or illegally, is sought by ICE for removal, or appears to be deportable relates to that individual's immigration status and is therefore civil in nature; therefore, suspicion, knowledge, or evidence of the aforementioned information does not constitute reasonable suspicion of criminal activity and cannot form the basis for a continued detention or arrest. (Refer to Appendage H for a sample response.)

- b. A copy of all IAQ transactions submitted via CLEAN shall be reviewed by the CLEAN Administrative Section, Bureau of Communications and Information Services (BCIS). The IAQ and corresponding Immigration Alien Response (IAR) received from ICE shall be forwarded to the appropriate Troop Commander or Bureau/Office Director, or their designee(s), for review to ensure compliance with this regulation.
  - c. IAQs and corresponding IARs forwarded to Troop Commanders or Bureau/Office Directors, or their designee(s), shall be retained by the CLEAN Administrative Section, BCIS, for a period of two years and purged annually.
- C. **Liquor Enforcement Officers (LEOs) and Enforcement Officer 3s (EO3s):**
- 1. Contact the Communications-Desk Unit of the nearest Troop Headquarters/Station. The LEO or EO3 shall request a supervisor be notified of the incident and request a member respond to the scene.
  - 2. Complete the appropriate reporting requirements according to the nature of the incident, within the Incident Tracking System. The responding member shall complete the **Foreign National Contact** text template within the RMS.

D. Motor Carrier Enforcement Officers (MCEOs) and Motor Carrier Enforcement Supervisors (MCESs):

1. During a traffic stop, arrest, or detention of a FN, the MCEO or MCES shall:
  - a. Immediately notify the enlisted member assigned with them.
  - b. If working independently (i.e., there is no enlisted member present at the scene), immediately notify a supervisor at the nearest Troop Headquarters/Station of the situation and request that a member respond to the scene. MCEOs and MCESs shall not attempt to detain or arrest a FN based upon FN status.
2. The accompanying/assisting member shall be responsible for completing the necessary reporting requirements in accordance with this regulation.

E. Communications-Desk Unit Personnel:

1. **If requested by a member**, conduct an IAQ via the CLEAN Portal XL INS/LESC file folder, IAQ query screen function.
2. Coordinate communications with ICE as requested and set forth in the IAR, **or otherwise**.
3. **If Communications-Desk Unit personnel cannot determine whether information received in response to an IAQ is civil or criminal in nature, a supervisor shall be notified and shall contact ICE at the number provided in the IAR or NCIC database to determine if the individual has an outstanding criminal warrant.**
4. Relay the query **or communications** results to the requesting member.
5. Ensure the IAQ entries, IAR, and all associated documents are attached to the CAD Call via "CAD Call Maintenance," "Attachments," "Add" procedure (in similar fashion to the current practice of attaching PennDOT-related returns).

F. Supervisors:

1. Ensure member/enforcement officer contacts with FNs are conducted and reported in accordance with this regulation.
2. Render assistance to members/enforcement officers during FN encounters, as necessary.
3. **In the event of a criminal warrant in which ICE/CBP is the entering law enforcement agency, liaison with ICE/CBP personnel and the appropriate Communications-Desk Unit during incidents, as necessary, to facilitate compliance with the direction provided in this regulation.**
4. **When ICE/CBP requests that an individual be detained, verify whether that individual has an outstanding criminal warrant. If the violation that is the subject of the request is civil in nature, ensure the encounter is not prolonged and the individual is not detained any longer than necessary to complete the mission of the traffic or criminal investigation.**
5. Review all FN-related reports to ensure they are completed in accordance with this regulation.

G. CLEAN Administrative Section, BCIS:

1. Review the copies of all IAQ transactions submitted via CLEAN.
2. Forward all IAQs and corresponding IARs received from ICE to the appropriate Troop Commander or Bureau/Office Director, or their designee(s), for review to ensure compliance with this regulation.

H. Troop Commanders and Bureau/Office Directors:

**Review all IAQs and corresponding IARs received from the CLEAN Administrative Section, BCIS, to ensure IAQ transactions are conducted in accordance with this regulation.**

14.04 LANGUAGE BARRIERS

If there is a language barrier to communication during an encounter with a FN, members/enforcement officers shall **refer to OM 7-8, Communications and Information Technology, Chapter 21, Limited English Proficiency**, for further instruction when communicating with a Limited English Proficiency individual. **Department personnel shall not contact or utilize ICE or any other federal immigration officials for language interpretation services.**

14.05 NOTIFICATIONS

- A. For purposes of the following notification requirements, the U.S. Department of State's Assistant Legal Advisor for Consular Affairs advises that the issuance of a citation or the escorting of a FN defendant to post security or payment of a citation shall not be considered an arrest/detention. However, the taking of a FN defendant for an immediate summary trial shall be considered a detention.
- B. Whenever FNs are arrested/detained, members shall IMMEDIATELY advise the FN of their right to have their government notified concerning the arrest/detention. When practicable, this advisory shall be documented on the Foreign National Advisory, Form SP 7-0075 (refer to Appendage C).
  - 1. If applicable, the advisory should be provided to the arrested/detained FN during their Miranda warnings and documented on the appropriate report corresponding to the incident.
  - 2. In cases where the arrested/detained FN is able to communicate in English, they shall be asked to read and sign their response in the appropriate section of the Foreign National Advisory form, as part of the standard warnings review and acknowledgments.
  - 3. In instances requiring the use of an interpreter, the name and signature of the interpreter and the response of the arrested/detained FN shall be documented in the appropriate section of the Foreign National Advisory form. In instances where the interpreter is unable to provide a signature, their name shall be printed in the appropriate section of the form, and the method of communication

(e.g., telephone) shall be documented, in writing, on the signature line.

4. Members shall ensure they use the appropriate section of the Foreign National Advisory form, as applicable, for mandatory and non-mandatory notification countries. Refer to Appendage D for the list of countries for which consular notification is mandatory.
- C. The Treaty of Vienna does not specify when the advisory must be given; therefore, if the arrested/detained FN provides a statement prior to the advisory, either voluntarily or after being provided Miranda warnings, the advisory may be provided afterwards and shall be documented.
- D. Notification to a foreign government shall be made WITHOUT DELAY when:
1. A FN requests that notification be made to their government.
  2. That foreign government requires mandatory notification when their nationals are arrested/detained (refer to Appendage D). In these instances, FNs have NO CHOICE regarding such notification; however, they shall be advised that their government has been notified.
    - a. Under no circumstances shall a FN's government be advised that they may have applied for asylum in the U.S. or elsewhere.
    - b. Refer to Appendage E in all instances involving arrested/detained FNs of Mexico.
  3. An incident involving the death of a FN is investigated by a member.
- E. When notification is to be made to a foreign government:
1. The member shall IMMEDIATELY notify a supervisor.
  2. The supervisor shall ensure that the appropriate Section/Station Commander, or designee, is contacted and provided with all information regarding the arrest/detention or death of the FN.

3. The Section/Station Commander, or designee, shall ensure that the appropriate foreign consulate or embassy is contacted and provided with all information regarding the arrest/detention or death of the FN. A comprehensive list of foreign embassies and consulates can be found at the following website: [Travel.State.Gov - Contact Info for Foreign Embassies & Consulates](#). If the website cannot be accessed, urgent telephone inquiries, after normal business hours, may be made to the U.S. Department of State Operations Center at 202-647-1512.
  4. The notification should follow the arrest/detention process and shall be documented on the appropriate report corresponding to the incident. The documentation shall include the date and time of the notification; the name of the notifying member; and the name, title, telephone number, and address of the notified foreign consulate representative.
  5. A notification letter shall also be sent to the foreign consulate, containing the FN's complete name; date and time of the arrest/detention or death; place of arrest/detention or death; all charges, if applicable; location of the FN; the name of the foreign consulate representative originally notified; and the name and telephone number of the member. A copy of the notification letter shall be attached to the appropriate report corresponding to the incident.
  6. In instances of off-business hours notifications, all contact attempts and voice messages shall be documented. A follow-up call shall also be made to a "live" foreign consulate representative.
- F. Incidents involving FNs designated as foreign officials, official guests of the U.S., or internationally protected persons require notification to the Federal Bureau of Investigation (refer to AR 7-13, Protection of Foreign Officials, Official Guests of the United States and Internationally Protected Persons).
- G. All notifications shall be recorded on the appropriate report corresponding to the incident.

14.06 ACCESS TO ARRESTED/DETAINED FOREIGN NATIONALS

- A. Subject to correctional and local procedures, regulations, and laws, foreign consular officers shall have the right to:
  - 1. Visit their nationals who are in prison, custody, or detention.
  - 2. Converse and correspond with their nationals.
  - 3. Arrange for legal representation of their nationals, consistent with court rules and procedures.
- B. Members shall document, on the appropriate report corresponding to the incident, if the arrested/detained FN(s) does not desire contact or assistance from their foreign consular officer(s).