

7 FAM 400

ARREST OF U.S. CITIZENS ABROAD

7 FAM 410

INTRODUCTION

(CT:CON-87; 09-01-2004)
(Office of Origin: CA/OCS/PRI)

7 FAM 411 SUMMARY

(CT:CON-87; 09-01-2004)

This Chapter of 7 FAM outlines the Department of State's policies, guidance and procedures in the important area of assistance to arrested U.S. citizens or nationals. It provides a detailed frame of reference to assist consular officers, from the most experienced to the first-tour officer, in meeting your responsibilities, developing internal procedures and controls, and reporting on the status of U.S. citizen or national prisoners and your efforts on their behalf.

7 FAM 412 POLICY

(CT:CON-87; 09-01-2004)

Our most important function as consular officers is to protect and assist private U.S. citizens or nationals traveling or residing abroad. Few of our citizens need that assistance more than those who have been arrested in a foreign country or imprisoned in a foreign jail.

- (1) Neither arrest nor conviction deprives a U.S. citizen of the right to the consular officer's best efforts in protecting the citizen's legal and human rights. As consular officers we must assist arrested or imprisoned U.S. citizens with dedicated professionalism, regardless of any private views as to their guilt or the heinousness of the crime.
- (2) You must also remember that there are potential flaws in any judicial system, and must remain alert for them. If you have valid reason to believe that an U.S. citizen or national has been arrested or charged

unjustly, for political, monetary or other reasons, you should continue to handle the case as an arrest case. You should also bring your opinion and information to the attention of the Department and post senior management immediately, since this adds a dimension to the case that may demand unusual action in the political or judicial arena.

- (3) Although you are the primary action officer in arrest cases, you may need help from other post officers in making prison visits, in attending trials, and in cultivating rapport with, and gaining the cooperation of, local law enforcement officials. This is especially true at posts where consular resources are limited and the consular workload is heavy. You should not hesitate in making your needs known to post management, and encourage such cooperation whenever possible.

7 FAM 413 AUTHORITY

(CT:CON-87; 09-01-2004)

The most important legislative and administrative authorities for providing consular assistance to U.S. citizens or nationals who are detained, arrested, or imprisoned abroad include:

7 FAM 413.1 The Vienna Consular Convention

(CT:CON-87; 09-01-2004)

Article 36 of the Vienna Consular Convention titled "Communication and Contact with Nationals of the Sending State" provides, in part:

"1. With a views to facilitating the exercise of consular functions relating to nationals of the sending State:

"(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

"(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

“(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

“2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purpose for which the rights accorded under this Article are intended.”

7 FAM 413.2 Public Law 95-45 of June 15, 1977, effective October 1, 1978

(CT:CON-87; 09-01-2004)

This legislation provides for emergency medical and dietary assistance (EMDA) to prisoners abroad on a reimbursable basis (See 7 FAM 450).

7 FAM 413.3 Bilateral Consular Treaties

(CT:CON-87; 09-01-2004)

Many bilateral agreements require that host governments of countries which are signatories to such a convention or treaty notify the consular officer of a foreign state of the arrest of one of its citizens whether or not the arrestee requests such notification. (See 7 FAM 412.1 and 7 FAM 412.2)

FYI: More information by specific country is available in Treaties in Force and in the CA Intranet.

7 FAM 413.4 22 U.S.C. Sec. 3904

(CT:CON-87; 09-01-2004)

“Members of the Service shall, under the direction of the Secretary –

Represent the interests of the United States in relation to foreign countries and international organizations, and perform the functions relevant to their appointments and assignments, including (as appropriate) functions under the Vienna Convention on Diplomatic Relations, the Vienna Convention on

Consular Relations, other international agreements to which the United States is a party, the laws of the United States, and orders, regulations, and directives issued pursuant to law;”

7 FAM 413.5 22 CFR Sec. 71:

(CT:CON-87; 09-01-2004)

“§71.1 Protection of Americans abroad.

Officers of the Foreign Service shall perform such duties in connection with the protection of American nationals abroad as may be imposed upon them by rules and regulations prescribed by the Secretary of State.”

7 FAM 413.6 Title 22 CFR Chapter 23

(CT:CON-87; 09-01-2004)

“Release of citizens imprisoned by foreign governments

Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war and not otherwise prohibited by law, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.”

7 FAM 414 DEFINITIONS

(CT:CON-87; 09-01-2004)

The following terms are common to arrestee assistance work:

Abuse— any deliberate action intended to cause mental or physical harm:

- Mental abuse includes threats, rough or harsh language, sleep deprivation, disorientation, etc.
- Physical abuse includes torture, rough treatment, exposure, etc.

Arrest - any form of imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

Arrest Report - the formatted cable that is sent to the Department immediately following the initial visit of an arrested U.S. citizen or national, and later updates (See 7 FAM 420)

Appeal - to invoke or call upon a judge or other legal authority to reverse or otherwise alter a conviction of crime or a sentence for crime

Custody—The judicial or penal guarding or safekeeping of a person in accordance with law or local requirement. Custody may include imprisonment or detention of a person in order to prevent escape, house arrest, etc.

Deportation - removal of a person from the host country by the legal and/or political authorities of that country, usually through a formal proceeding

EMDA - the "Emergency Medical and Dietary Assistance" program, authorized by Public Law 95-45 of June 15, 1977, effective as of October 1, 1978 (See 7 FAM 460).

Emergency Expenditure Authorization - authorization for limited post expenditure without prior Department approval in order to meet emergency medical needs (see sections 7 FAM 462.5 and 7 FAM 462.6).

Expulsion - removal of a person from the host country, usually by immigration or police officials, without a formal deportation hearing or process

Hunger Strike - deviation from normal eating and drinking patterns, in order to gain attention to a perceived need, opinion, or policy or to achieve a specific goal, such as improved prison conditions or release.

Maltreatment - similar to "abuse" implies long-term cruel or rude treatment, inadequate or inedible food, lack of adequate warmth or shelter, lack of adequate exercise, etc.

Initial Visit - refers to the first time a consular officer, or person authorized to act on behalf of a consular officer, sees an U.S. citizen or national under arrest or detention.

NOK - next of kin, a person's closest relative, such as spouse, children, or parents.

Notification - depending on context, means:

- An oral or written notice to a consular officer of the arrest or detention of an American citizen
- An oral or written notice by a consular officer informing next of kin, business associate, or friend of the arrest or detention of a U.S. citizen

Personal Visit - to call upon an arrestee or prisoner in person, especially to provide encouragement and appropriate assistance

Prisoner Transfer Treaty—A treaty that provides for transfer of prisoners to the country of origin under controlled conditions, as an alternative to serving a long sentence abroad, without undermining the national systems of justice of the two participating countries.

Prisoner Trust Account - Funds deposited in an especially designated account with the Department of State or a Foreign Service post for disbursement to or on behalf of a specified prisoner to pay for legal fees, fines, and related expenses (see section 7 FAM 432)

Protest - Formal expression or statement of objection or disapproval of action taken by host country authorities against a detained, arrested, or imprisoned U.S. citizen.

Rehabilitation -- Restoration of a prisoner to a good condition, state of good repute, or re-established respectability for recovering rights and privileges lost or forfeited because of or during imprisonment.

Reentry - The return of a prisoner to open society, and the process through which the individual often needs to pass to adjust to live outside confinement.

Remand, - Depending on context, means:

- To return to custody pending trial or further detention
- To send back a case to another court or agency for further action.

Reporting - Providing or rendering a formal account or statement of what was learned by observation and/or investigation about:

- The arrest, detention, or imprisonment of a U.S. citizen
- Concerning the problems or difficulties encountered by such citizen

An accounting of actions taken by the consular officer on that person's behalf or as instructed by the Department (CA/OCS)

Rights - Civil rights under local or international law that are possessed by a U.S. citizen who has been detained or arrested abroad, such as the rights to legal representation and to a fair trial.

Short Term Full Diet Program - An arrangement for funding the cost of food for U.S. citizen prisoners held temporarily in institutions where food is not provided (See 7 FAM 463)

Trial - A formal inquiry or legal examination of charges filed against a person before a judge, or court, or other equivalent legal institutions abroad.

Recourse - The annotation consular officers use when signing an EMDA, Repatriation or similar loan on behalf of an applicant unable for some valid reason to sign for himself or herself. It indicates the signing consular officer is NOT liable for any or all of the debt, even if uncollectible from the recipient.

7 FAM 415 IMPORTANCE OF ADVANCE PREPARATION

(CT:CON-87; 09-01-2004)

As with many other consular functions, arrest work can be performed most efficiently with advance planning and preparation.

7 FAM 415.1 Be Informed

(CT:CON-87; 09-01-2004)

Ensure that you, and all other consular officers at post are familiar with:

- (1) Article 36 of the Vienna Convention, and whether the host country is a party;
- (2) The "arrest articles" of any bilateral consular agreement that may exist between the UNITED STATES and the host government;

FYI: More information by specific countries is available in Bilateral Consular Conventions and Treaties in Force

- (3). Details of pertinent local laws, penal structure and judicial procedures;

NB: If necessary, consider retaining a local attorney or jurist to provide information to post on local laws and judicial procedures. Follow the procedures outlined in 2 FAM 283; particularly the information required under 283.4. Include CA/OCS/ACS in the Principal officer's cable to L/DL so CA can monitor and support the request.

- (4) The Privacy Act and its applicability in arrest cases; and
- (5) The existence and operation of any EMDA-funded programs at post.

7 FAM 415.2 Develop General Resources

(CT:CON-87; 09-01-2004)

These may include:

- (1) Pre-formatted arrest reporting cables, for both initial and follow-up reporting
- (2) Checklist for personal and telephone visits to prisoners
- (3) Document templates for rapid responses to congressional and other letters on arrestees.
- (4) If there is a prisoner transfer treaty in effect, assemble the necessary information and application packets.

7 FAM 415.3 Develop Judicial Materials

(CT:CON-87; 09-01-2004)

Legal systems vary greatly, particularly outside common law areas. Arrested U.S. citizens or nationals often have an imperfect understanding of American criminal procedure and less or no understanding of the legal procedures of the country in which they are detained. Each mission (or where variations in local conditions warrant, each constituent post) must develop and keep updated informational material for delivery to each arrested U.S. citizen regarding the judicial process the arrestee is likely to face. Posts should prepare a packet of information covering:

- (1) Initial arrest
- (2) Remand procedure

- (3) Trial procedure
- (4) Appeal process
- (5) Penal conditions
- (6) Rules established by prison administration.

7 FAM 415.4 Create a Tailored Lawyers List

(CT:CON-87; 09-01-2004)

You should organize the post's list of attorneys, maintained as required under 7 FAM 900, in accordance with your post's experience concerning the types of arrest cases involving U.S. citizens.

- (1) Posts with extensive lists should extract from them information on attorneys and firms handling criminal cases and print an abbreviated list for arrestee use.
- (2) In some countries, attorneys may specialize in, or be more willing to take, certain types of cases, such as drug cases. You should reflect these specialties in your list.
- (3) If the post determines certain lawyers are dishonest, incompetent, or inattentive to their U.S. citizen or national clients' interests, you should exclude such attorneys from the list.

7 FAM 415.5 Prepare Prisoner Visitation Kits

(CT:CON-87; 09-01-2004)

If your post's arrest volume warrants, put together one or more attaché case(s) containing everything required for a visit. This is particularly useful when officers from other than ACS or the Consular Section make visits. Items may include:

- (1) List of important contact numbers (Prison wardens, Police supervisors, etc.)
- (2) Prisoner Interview Checklist
- (3) Lawyers' List
- (4) Judicial Procedure Information

- (5) Privacy Act Waiver forms
- (6) Affidavit forms (used in the event of mistreatment or similar circumstances)
- (7) Passport applications
- (8) EMDA Loan forms
- (9) Camera (If permitted)
- (10) Personal items for Prisoner: If local circumstances warrant, and if allowed, consider putting some necessities in a clear plastic bag to give to prisoner on your first visit. This could include:

Soap

Toothbrush and toothpaste

Comb

Deodorant/antiperspirant

Hygiene products

Writing paper, pen or pencil

Magazine or other reading material

Dry food, such as an energy bar, granola bar, etc. (See 7 FAM Sec 430 for EMDA Short-Term Feeding)

7 FAM 416 CITIZENSHIP AND NATIONALITY ISSUES

7 FAM 416.1 Responsibilities

(CT:CON-87; 09-01-2004)

As consular officer your clientele in Arrest cases includes:

- (1) A U.S. citizen;
- (2) A national who is not a citizen of the United States, which includes natives of American Samoa (See 7 FAM 1100, "Acquisition and Retention of U.S. Citizenship");

- (3) A citizen of the Freely Associated States of the Republic of the Marshall;
- (4) Islands, the Federated States of Micronesia and Palau. (See 7 FAM 1100 on "Acquisition and Retention of U.S. Citizenship");
- (5) Citizens of the Northern Marianas Islands who are not citizens or nationals of the United States; and
- (6) A "third country" national (TCN) for whom the United States has formally accepted responsibilities as protecting power.

NB: In TCN cases, representation should initially be limited to providing emergency services, and the Department should be consulted for long-term services that the post might be expected to provide.

7 FAM 416.2 Determining Citizenship

(CT:CON-87; 09-01-2004)

- a. In the majority of cases, possession of a passport satisfactorily establishes both the identity and the citizenship of the individual.
- b. In countries where persons customarily travel without passports, however, or where the individual claims a passport has been lost or stolen, the consular officer will have to rely upon secondary documentary evidence.
- c. If the prisoner has no documentation of value, you should interview the prisoner regarding his family, residence in the United States, knowledge of U.S. culture, etc. (or other indications he or she falls within one of the categories in 7 FAM 416.1) and make your own judgment until further clarification is available.
- d. Be on the alert for altered or counterfeit documentation in arrest cases. Bear in mind, however, that false documents do not necessarily indicate that the prisoner is not an U.S. citizen or national.

See 7 FAM 1100, "Acquisition and Retention of U.S. Citizenship," and 7 FAM 1200, "Loss and Restoration of U.S. Citizenship," for further information.

7 FAM 416.3 Dual Nationality

(CT:CON-87; 09-01-2004)

Providing consular protection to dual nationals sometimes poses complex problems because of the conflicting laws and regulations of the United States and other countries. You are required to open a case, file an arrest report and update the Department on your efforts to secure access and visitation.

7 FAM 416.3-1 Dual National Arrestees In The Non-US Country Of Nationality

(CT:CON-87; 09-01-2004)

The most complex problems regarding provision of protective services to dual nationals arise when the holder of dual nationality experiences difficulties with the law in his/her other (non-US.) country of nationality. In these cases, in order to determine what representations you may be able to make on that person's behalf, and what your chances of success may be, you need to examine certain factors:

- (1) Is the person physically residing in the host country, or physically residing in the United States and only visiting or traveling through the host country?
- (2) Did the person enter the host country on a U.S. passport?
- (3) Is there reason to assume that the person may have not known of his/her foreign nationality?
- (4) Is the host country one that does not allow its citizens to divest themselves of that nationality?
- (5) It is a generally recognized rule, often regarded as a rule of international law, that when a person who is a dual national is residing in either of the countries of nationality, the person owes paramount allegiance to that country, and that country has the right to assert its claim without interference from the other country. While you should attempt to provide consular services, you should make it clear to the prisoner (if possible) and to any family members that consular access and services may be severely limited.
- (6) If the arrestee's primary physical residence is in the United States, and particularly if he or she entered the host country on his or her U.S. Passport, you should press very hard for consular access and visitation rights. If the arrestee may not have known of the second nationality, or

had no legal recourse to renounce that nationality, these factors should also be used in persuading local authorities to allow U.S. consular services.

7 FAM 416.3-2 Dual National Arrestees In A Third Country

(CT:CON-87; 09-01-2004)

It is the Department's position that a dual national traveling in a third country on a U.S. passport is entitled to the full range of consular services. Anything less requires appropriate representations to the host government, in consultation with the Department.

- (1) A dual national traveling abroad on a passport of that person's other country of nationality may not, however, be entitled to the protective services of the United States consul in a third country.
- (2) You should show an interest in any difficulties that such a person may encounter and be as helpful as possible should relatives inquire about the case.
- (3) If the second country of nationality is providing protective services to a dual national, the U.S. consular officer need not become directly involved but should continue to follow developments in the case and report them to the Department.
- (4) In case of doubt as to the consular officer's responsibility in providing protective services to a dual national in a particular case, the post should refer the matter to the Department (CA/OCS/ACS) for an advisory opinion.

7 FAM 417 U.S. LEGAL PERMANENT RESIDENT ALIENS

(CT:CON-87; 09-01-2004)

At times, you will come across arrest cases of individuals who are not U.S. citizens or nationals but who are legal permanent residents with strong ties to the United States. Their arrest may come to your attention from other family members in the United States, other prisoners, congressional offices, or even host government officials who on occasion are not quite clear on the exact status of a U.S. "green card" holder. The Department's general guidance in such cases is:

- (1) Consular officers have neither the right nor the responsibility under the Vienna Consular Convention or any existing bilateral consular conventions to formally request access and visitation to such prisoners, nor do host governments have any legal obligation to accede to such requests.
- (2) Under international law, U.S. Legal Permanent Resident Aliens (LPR's) must turn to the country of their nationality or citizenship to request and receive consular services.

7 FAM 417.1 Exceptions

(CT:CON-87; 09-01-2004)

As a practical matter, however, there are cases in which you may become involved, to varying degrees, often on humanitarian grounds or because of the arrestee's strong U.S. ties. These cases may include arrestees that meet some or all of the following profiles:

- (1) An LPR who is not a citizen of the arresting country
- (2) An LPR whose country of nationality does not have consular representation in the arresting country
- (3) An LPR whose immediate family members (spouse, parents, children) are American citizens
- (4) An LPR who is a national of the arresting country, but has been raised in the UNITED STATES, does not speak the host country language, and has no remaining significant ties to the country of nationality.
- (5) An LPR whose arrest has been reported to you by host government officials, with the express or implied expectation that you will take some interest in the case
- (6) An LPR in whose case the Department has a specific interest.

7 FAM 417.2 Requesting Access To LPR Prisoners

(CT:CON-87; 09-01-2004)

If you determine that some limited form of action seems appropriate, or if the Department requests you attempt to gain access in specific cases:

- (1) Consider requesting access for the purpose of determining citizenship. Given the complexities of U.S. immigration and citizenship law and documentation, there is often some confusion, even on the part of the

individual, as to exactly what status a prisoner holds.

- (2) Make it clear to the host authorities that once U.S. citizenship or other entitlement to consular services has been ruled out, you understand you do not have a right to access in these cases, and that they have every right to deny the request.
- (3) Provide host authorities with the reason(s) you are making this request, for example:
 - (a) The spouse, parent or other family member is an American citizen.
 - (b) The prisoner has been a long-term resident of the United States, and has no remaining ties to his or her country of nationality.
 - (c) The prisoner speaks only English, and your intercession may benefit not only the prisoner but also the host authorities.
 - (d) There is strong congressional or U.S. media interest in the case, and permission to allow you limited access to the prisoner may prove beneficial to both governments.
4. If the arrestee is a third-country national, and the country of nationality is represented in the host country, your first step should be to:
 - (a) Contact that consular representative
 - (b) Make certain the consular representative is aware of the arrest and the nationality of the prisoner.
 - (c) Determine if the consular representative has taken, or intends to take, action.
 - (d) If so, ask if he/she is willing to informally share observations with you so you may pass this on to the U.S. family or other interested parties.
 - (e) If the consular representative does not intend to take consular action, ask if he/she has any objections to your trying to see the prisoner, and if not, that he/she communicate this to the host authorities.

7 FAM 417.3 Visiting The LPR Prisoner:

(CT:CON-87; 09-01-2004)

If you do gain access to the arrestee, you may consider providing the following limited assistance:

- (1) Ensure that the arrestee understands your informal role and standing with the host government in the case.
- (2) Explain that the country of nationality has the official right to consular access.
- (3) You may provide him or her with the same written information on the host country legal system that you have for U.S. citizen or national prisoners.
- (4) You may provide him or her with a copy of the Attorney's list.
- (5) You may, at his or her request, contact family or others.

NB: A US LPR is protected by the Privacy Act, and you will need to obtain the usual signed privacy act waiver.

- (6) You should NOT provide or offer any Special Program services, such as OCS Trust or EMDA-1.
- (7) You should NOT intervene or intercede in matters such as personal property, funds, mail, etc.

7 FAM 417.4 Reporting On Arrest Of LPR

(CT:CON-87; 09-01-2004)

If you do request and gain access to an LPR prisoner, you should report your visit and observations to the Department (CA/OCS/ACS) using the same general format as the Arrest Cable (See 7 FAM 430).

Do **NOT**, however, enter the case into the ACS database.

7 FAM 417.5 Continuing Visits To LPR Prisoners

(CT:CON-87; 09-01-2004)

In those limited cases where you do gain access to an LPR prisoner, the Department normally envisions this as a one-time visit, and does not expect

posts to perform regularly scheduled visits, unless:

- (1) The post recommends, and the Department (CA/OCS/ACS) concurs, in such visits;
- (2) The Department (CA/OCS/ACS) specifically requests regular visits in a specific case;
- (3) You are seeing the LPR incidental to other regular visits. While you are not obligated to visit the LPR prisoner, the Department has no objections to an LPR prisoner being included in a regularly-scheduled consular visit to American citizens or nationals in the same facility, assuming the host government agrees.

7 FAM 418 THROUGH 419 UNASSIGNED