

GRANT F. LANGLEY
City Attorney

MIRIAM R. HORWITZ
ADAM B. STEPHENS
MARY L. SCHANNING
JAN A. SMOKOWICZ
Deputy City Attorneys

CITY OF
MILWAUKEE
Office of the City Attorney

Milwaukee City Hall Suite 800 • 200 East Wells Street • Milwaukee, Wisconsin 53202-3551
Telephone: 414.286.2601 • TDD: 414.286.2025 • Fax: 414.286.8550

SUSAN E. LAPPEN
PATRICIA A. FRICKER
HEIDI WICK SPOERL
GREGG C. HAGOPIAN
JAY A. UNORA
KATHRYN Z. BLOCK
KEVIN P. SULLIVAN
THOMAS D. MILLER
ROBIN A. PEDERSON
JEREMY R. MCKENZIE
PETER J. BLOCK
JENNY YUAN
ALLISON N. FLANAGAN
HEATHER H. HOUGH
ANDREA J. FOWLER
PATRICK J. MCCLAIN
NAOMI E. GEHLING
CALVIN V. FERMIN
BENJAMIN J. ROOVERS
ELLENY B. CHRISTOPOULOS
RACHEL S. KENNEDY
TYRONE M. ST. JUNIOR
HANNAH R. JAHN
JULIE P. WILSON
GREGORY P. KRUSE
KIMBERLY A. PRESCOTT
SHEILA THOBANI
KATRYNA C. RHODES
NICOLE F. LARSEN
JAMES M. CARROLL
WILLIAM G. DAVIDSON
MEIGHAN M. ANGER
ALEXANDER R. CARSON
JENNIFER J. TATE
Assistant City Attorneys

October 29, 2019

Griselda Aldrete
Executive Director, Fire and Police Commission
200 E. Wells Street
Room 706A
Milwaukee, WI 53202

Re: Proposed Changes to SOP 130.10 – Arrested or Detained
Foreign Nationals

Dear Executive Director Aldrete:

On October 4, 2019, you requested an opinion regarding proposed revisions to MPD SOP 130 involving “Foreign Nationals – Diplomatic Immunity – Immigration Enforcement.” This opinion specifically addresses the proposed changes to SOP 130.10; a second opinion will issue on the remaining questions.

Voces de la Frontera (“Voces”) has proposed changes to SOP 130.10, a procedure that governs the arrest or detention of foreign nationals.¹ The current version of SOP 130.10 requires that whenever an officer arrests or detains a person, the police member shall inquire as to that person’s citizenship to determine whether or not any consulate notification obligations apply. In contrast, the Voces proposal changes that portion of the procedure specifically to require that a police member *shall not* inquire as to that person’s citizenship. Instead, the Voces proposal requires that a police officer provides information to all arrestees or detainees that, if they are a foreign national, they have the right to consular notification.

The Vienna Convention on Consular Relations Treaty (“Vienna Convention”), a treaty signed by the United States, imposes certain obligations in regards to consular notification. The United States has also entered into related bilateral

¹ A copy of the proposed language is attached to this opinion.

² For the purposes of this SOP, “arrest/detention” is defined as “whenever a police member requires a person to accompany them to a place of detention.” SOP 130.10.



treaties with a number of countries concerning consular matters. The following analysis addresses the legality of the Voces proposed changes to SOP 130.10, specifically in the context of the requirements of the Vienna Convention and its related bilateral agreements. As discussed below, it is our opinion that nothing legally prohibits the adoption of the Voces proposed changes to this section.

I. Background—Vienna Convention on Consular Relations and Related Bilateral Agreements.

The Vienna Convention “is an international treaty that governs relations between individual nations and foreign consular officials.” *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 336, 126 S.Ct. 2669, 165 L.Ed.2d 557 (2006) (Breyer, J., dissenting). The Convention contains seventy-nine articles, many of which address the rights of local consulates and consular officials, the respective obligations of sending and receiving nations and matters such as tax-exempt status and legal immunity. Specifically at issue here, is Article 36, which reads as follows:

1. With a view 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;*

....

Vienna Convention on Consular Relations, art. 36, April 24, 1962, 21 U.S.T. 77, 596 U.N.T.S. 261. (emphasis added). Among other requirements, this provision

instructs authorities of a receiving state to notify an arrested foreign national of “his rights” under the Convention “without delay.” *Id.* at ¶ 1(b).

In most cases, the foreign national then has the option as to whether or not to have officers contact the consulate and inform it of his or her arrest. However, some parties to the treaty are “mandatory notification countries,” meaning that officers must notify the consulate of a national’s arrest regardless of his or her wishes. The exact language of the requirements found in the bilateral agreements varies, but generally speaking they require consulate notification regardless of the detainee’s wishes. *See, Republic of Paraguay v. Allen*, 949 F. Supp. 1269, 1272 (E.D. Va. 1996), *aff’d*, 134 F.3d 622 (4th Cir. 1998) (citing Convention Regarding Consular Officers, June 6, 1951, U.S.–U.K., art. 16, 3 U.S.T. 3426; Consular Convention, June 1, 1964, U.S.–U.S.S.R., art. 12(2) & sec. 1 of protocol, 19 U.S.T. 5018; Agreement on Consular Relations, Jan. 31, 1979, U.S.–China, sec. 5, 30 U.S.T. 17).

For example, the bilateral agreement with China states that notification should occur “immediately, but no later than within four days from the date of arrest or detention” *See United States v. Li*, 206 F.3d 56, 59 (1st Cir. 2000) (citing Article 35 of the United States—People’s Republic of China Bilateral Convention on Consular Relations, September 17, 1980, 33 U.S.T. 2973, 1982 WL 212240 (ratified February 19, 1982) In contrast, the bilateral agreement with the United Kingdom requires that a consular officer be notified “immediately” when any national of its state is confined. Convention Regarding Consular Officers, June 6, 1951, U.S.–U.K., art. 16, 3 U.S.T. 3426; Consular Convention, June 1, 1964, U.S.–U.S.S.R., art. 12(2) & sec. 1 of protocol, 19 U.S.T. 5018.

II. Analysis.

Given this background, we first consider whether the Vienna Convention itself poses any legal barrier to the Voces proposed language. It is our opinion that the Vienna Convention itself poses no barrier to the Voces proposed changes to SOP 130.10. As described above, Article 36 requires, among other things, that the arrested foreign national be notified of his or her rights under the Convention. Like the current SOP 130.10 language, the Voces proposal satisfies this requirement because it provides that all arrestees or detainees will be provided information that, if they are a foreign national, they have the right to consular notification. Thus, we find no issue with the Voces proposed changes in relation to the Vienna Convention requirements.

The second, and more difficult, issue to consider is whether the mandatory notification requirements found in the bilateral agreements pose a legal barrier to the proposed language. Under the bilateral agreements, the arrested person has no choice whether to contact their consulate; the officers must notify the consulate of a national's arrest regardless of his or her wishes. The bilateral agreements are silent as to how an officer should know if a detainee/arrestee is a foreign national; thus, it is unclear whether an officer is required to inquire as to an arrestee's citizenship in order to comply with the mandatory notification requirements found in the bilateral agreements. There is no binding legal authority that gives a direct answer to whether law enforcement *must* inquire as to a detainee/arrestee's citizenship. However, multiple sources, discussed in detail below, provide guidance to suggest that the question is not legally required. As such, it is our opinion that the Voces proposed changes to SOP 130.10 are legally permissible.

A. Seventh Circuit Caselaw—*Mordi v. Zeigler*.

The Seventh Circuit case, *Mordi v. Zeigler*, 770 F.3d 1161, 1162 (7th Cir. 2014), provides valuable insight as to law enforcement's obligations under the Vienna Convention and the bilateral agreements. The case involved a Nigerian national who was arrested and charged with the unlawful possession of a controlled substance. *Id.* at 1162. (Nigeria is a mandatory notification country). At no point during either the state or the federal criminal proceedings was the foreign national informed about his right under the Convention to have the Nigerian consulate notified about his status. He did not learn about the Convention until a year or so later. *Id.* at 1163. The issue presented was whether officers were entitled to qualified immunity for their failure to notify him of his rights under the treaties, and more specifically, whether the law was clearly established at the time of the alleged violation. *See id.* at 1162.

In reviewing this issue, the court posed the question of whether the notification was required prior to booking, an interview, or when in the process. *Id.* at 1165. The court recognized that there was not much guidance on those questions and pointed to various examples examining what it meant to be notified without delay. *Id.* at 11166. For example, in *Medellin v. Texas*, 552 U.S. 491, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008), the United States Supreme Court observed that the International Court of Justice has found that the obligation to notify "without delay" is satisfied where notice is provided within three working days. *Id.*

(quoting *Medellín*, 552 U.S. at 502 n. 1. Similarly, the court discussed the fact that the Virginia Supreme Court held that lack of notification 36 hours after an arrest does not violate the Convention. (*Id.*) (citing *Bell v. Commonwealth*, 264 Va. 172, 563 S.E.2d 695, 706 (2002). In light of this, the court held that it was “impossible” to say that the law was clearly established such that a police officer should have known that he had a personal duty to ascertain [] citizenship and then to notify [] about his right to consular notification under Article 36 of the Convention....” *Id.*

The court’s holding is relevant to the issue here because it shows the uncertainty as to exactly *when* a foreign national must be informed of his or her consular rights. *See id.* at 1167 (“No clearly established rule that we can find should have made it clear to them that they were the officers charged with consular notifications.”). If days are allowed to pass before consular notification occurs without violating the treaties or bilateral agreements, that would signify that an arresting officer does not in fact hold that obligation. The court notes that although it would be desirable to impose a duty on every law enforcement officer who encounters a possible non-U.S. citizen, such a rule would also possibly lead to substantial duplication of effort and confusion in the consular services. *Id.* As such, the court’s reasoning in *Mordi* suggests tangentially that an inquiry into an arrestee’s citizenship is not legally required at this time.

B. Federal Rule of Criminal Procedure 5(d).

Federal Rule of Criminal Procedure 5(d) and its advisory notes also provide insight to the analysis. The rule provides that if a defendant is charged with a felony, the judge must inform the defendant of the following:

that a defendant who is not a United States citizen may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant’s country of nationality that the defendant has been arrested — but that even without the defendant’s request, a treaty or other international agreement may require consular notification.

Fed. R. Crim. P. 5(d)(1)(F). This portion of the rule was amended in 2014 and the Committee Notes provide additional guidance on the reasons for its adoption. *See generally*, Fed. R. Crim. P. 5(d)(1)(F), Committee Notes on Rules-2014

Amendment. The notes reference both the Vienna Convention and the bilateral agreements requiring mandatory notification. *Id.* The goal of the rule is to “provide additional assurance that U.S. treaty obligations are fulfilled.” *Id.*

The notes also state that “arresting officers are primarily responsible for providing this advice.” *Id.* Additionally, the notes state that the committee made changes to the rule following the initial publication and comment period. Specifically, the notes state that: “The new phrasing also makes it clear that the advice should be provided to every defendant, *without any attempt to determine the defendant's citizenship.*” *Id.* (emphasis added).

Given the language in this amendment note, it is clear that the committee did not believe that inquiring as to the citizenship of a foreign national is legally required. The committee acknowledged the requirements of both the Vienna Convention and bilateral agreements, and then specifically instructed courts to *not* inquire as to a defendant’s citizenship. Thus, Federal Rule of Criminal Procedure 5(d) suggests that local law enforcement do not have to inquire about an arrestee’s citizenship.

C. State Department Guidance.

The Department of State has provided guidance to the law enforcement community as to its obligations to foreign nationals under the Vienna Convention. Although not binding authority, the Department of State guidance certainly provides valuable insight as to law enforcement’s obligations under the Vienna Convention and bilateral agreements. *See* UNITED STATES DEPT OF STATE, CONSULAR NOTIFICATION AND ACCESS: INSTRUCTIONS FOR FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AND OTHER OFFICIALS REGARDING FOREIGN NATIONALS IN THE UNITED STATES AND THE RIGHTS OF CONSULAR OFFICIALS TO ASSIST THEM, available at <https://travel.state.gov/content/dam/travel/CNAtraining/resources/CNA%20Manual%205th%20Edition_September%202018.pdf>.

The State Department’s manual instructs that a law enforcement officer is not required to ask everyone arrested or detained whether he or she is a foreign national. The manual specifically poses the question of whether an officer has to ask every arrestee whether he or she is a foreign national. In response it provides that only “[i]f you have reason to question whether the person you are arresting or detaining is a U.S. citizen... you should inquire further about nationality so as to

determine whether any consular notification obligations apply.” *Id.* at 12-13. The manual does, however, state that it is highly recommended to routinely ask all individuals whether he or she is a U.S. citizen and notes that the procedure will reduce concerns about discrimination based on national origin or ethnicity. *Id.* at 13. Based on this guidance, our office previously issued an Opinion on May 1, 2001 outlining the State Department’s recommendations. Thus, although recommended, the State Department does not find that asking about an arrestee’s citizenship is legally required under the Vienna Convention or the related bilateral agreements.

D. Potential Federalism Issues.

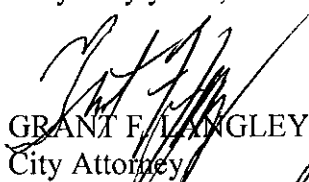
Finally, even if the Vienna Convention and bilateral agreements did require local law enforcement to inquire as to an arrestee’s citizenship, established principles of federalism make it unclear whether the federal government could actually enforce those requirements upon local government. In *Printz v. United States*, 521 U.S. 898 (1997), the United States Supreme Court ruled in a 5-4 opinion that a federal law requiring local law enforcement officials to conduct background checks on handgun purchasers as part of a federal program was an unconstitutional infringement of states’ Tenth Amendment rights. *Id.* at 934. Given this holding, some might argue that, applying *Printz*, a federal law requiring state and local law enforcement officials to provide arrested or detained foreign nationals with consular information and access would be constitutionally impermissible. See James A. Deeken, A New Miranda for Foreign Nationals? The Impact of Federalism on International Treaties That Place Affirmative Obligations on State Governments in the Wake of *Printz v. United States*, 31 Vand. J. Transnat’l L. 997, 1016 (1998) (discussing *Printz* in relation to the Vienna Convention); see also Edward T. Swaine, Does Federalism Constrain the Treaty Power?, 103 Colum. L. Rev. 403, 424 (2003) (“Thus, it remains to be seen how a *Printz* argument would be treated by the Supreme Court in an international context.”). For the purpose of this opinion, this issue remains an unanswered question and therefore does not change the analysis today. In the event that the SOP were challenged in the future, however, the federalism analysis could be one avenue to defend its legality.

Executive Director Aldrete
October 29, 2019
Page 8

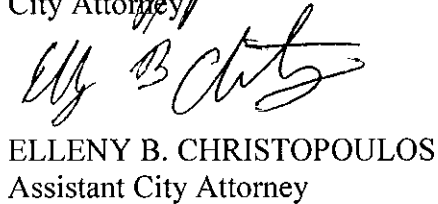
III. Conclusion.

In light of the foregoing guidance, it is our opinion that under the Vienna Convention and bilateral agreements, law enforcement is not legally required to ask about a detainee/arrestee's citizenship. As such, it is our opinion that the Voces proposed changes to SOP 130.10 are legally permissible.

Very truly yours,



GRANT F. LANGLEY
City Attorney



ELLENY B. CHRISTOPOULOS
Assistant City Attorney

EBC:amm

c: Mayor Tom Barrett
James Owczarski, City Clerk
Police Chief Alfonso Morales

1095-2019-1890:264312



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

130-FOREIGN NATIONALS - DIPLOMATIC IMMUNITY - IMMIGRATION ENFORCEMENT

GENERAL ORDER: 2018-12
ISSUED: May 1, 2018

EFFECTIVE: May 1, 2018

REVIEWED/APPROVED BY:
Director Regina Howard
DATE: March 30, 2018

ACTION: Amends General Order 2017-44 (July 14, 2017)

WILEAG STANDARD(S): 6.2.2

130.00 PURPOSE

The U.S. Department of State requires the assistance of state and local law enforcement authorities in carrying out the treaty obligations of the United States concerning the detention or arrest of foreign nationals and contacts with foreign diplomats in this country. The cooperation of state and local law enforcement authorities is essential to carry out these obligations effectively, and to ensure that Americans arrested or detained abroad obtain the treatment to which they are entitled. These obligations are embodied in both bilateral agreements with specific countries and in the multilateral Vienna Convention on Consular Relations, to which the United States is a party. These treaty obligations are legally binding on all state and local governments.

Note: A recent decision by the United States Court of Appeals has established potential liability to police officers that fail to follow the Vienna Convention on Consular Relations procedures. Accordingly, members of the department shall pay particular attention to the procedures outlined below when dealing with foreign nationals.

130.05 DEFINITIONS

A. FOREIGN NATIONALS

For the purpose of this procedure, a foreign national is defined as a person owing allegiance to, and entitled to the protection of, another sovereign state; specifically a person who claims the protection of that state, and applies especially to a person living or traveling outside that state. Simply stated, a foreign national is a citizen of another country who is in the United States, either legally or illegally, including both legal permanent resident aliens and temporary visitors.

B. DIPLOMATIC IMMUNITY

Diplomatic immunity is 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. The purpose of this privilege and immunity is not to benefit individuals, but to ensure the efficient and effective performance of their official missions on behalf of their governments. These persons may be members of diplomatic missions, consular posts, or employees of international organizations or members of national missions to such

international organizations. Immunity is simply a legal barrier which precludes U.S. courts from exercising jurisdiction over cases against persons who enjoy it and in no way releases such persons from the duty, embodied in international law, to respect the laws and regulations of the United States.

C. PERSONAL INVIOLABILITY

Personal inviolability is enjoyed to some degree by a majority of foreign diplomatic and consular personnel. This inviolability generally precludes handcuffing, arrest, or detention in any form and forbids U.S. authorities from entering the residences, automobiles, or other property of protected persons. However, in circumstances where public safety is in imminent danger or it is apparent that a grave crime may otherwise be committed, police authorities may intervene to the extent necessary to halt such activity. This naturally includes the power of the police to defend themselves from personal harm.

D. CITIZENSHIP

The term citizenship refers to the country in which a person **is a** lawful citizen.

E. IMMIGRATION STATUS

Immigration status refers to whether or not a person is in the United States lawfully. A person can be a citizen of another country, but be in the United States lawfully or unlawfully.

130.10 GENERAL PROCEDURES

A. ARRESTED OR DETAINED FOREIGN NATIONALS

For purposes of the following procedures, arrest /detention shall mean whenever a police member requires a person to accompany them to a place of detention.

1. Whenever a police member arrests or detains a person, the police member shall **not** inquire as to that person's citizenship.
 - a. **A police officer shall provide information to all arrestees or detainees that, if they are a foreign national, they have the right to consular notification.**
2. **If a person arrested or detained identifies themselves as a foreign national requesting consular notification,** the police member shall as soon as practical:
 - a. Notify the shift commander of the place of detention and the citizenship of the person.
 - b. Provide the shift commander with a detailed account of the circumstances leading to the arrest /detention.
3. Upon learning that a foreign national has been arrested or detained, the shift commander shall as soon as practical:

- a. Ensure that the detainee is notified (e.g., prior to interrogation) of their right to have their government informed of the arrest /detention.
- b. Upon being notified that a foreign national has been arrested / detained and either wishes that his/ her consulate or embassy be notified, or is a citizen from a country that requires consular notification, the on-duty shift commander shall as soon as practical:

Notify the appropriate foreign consulate or embassy by completing and faxing the completed *Consular Notification of Arrest / Detention / Death / Serious Injury or Illness of Foreign Nationals* (form PD-3E which is available on the MPD (N:) drive "Forms" folder) to the appropriate consulate or embassy. The notifying member shall consult the U.S. Department of State website (<http://travel.state.gov/CNA>) for updated embassy/consulate addresses and telephone or fax numbers. The PD-3E shall be retained by all districts according to existing schedules.

- c. The on-duty shift commander shall ensure that the foreign national is advised that his/ her consulate has been notified and a written record of this notification shall be made in the department's SharePoint under the respective district or division.

Note: In the event the country of origin is not listed on the U.S. Department of State website, or the listed number is incorrect, the notifying member shall contact Washington D.C. directory assistance at 202-555-1212 and request the specific country's embassy telephone or fax number.

4. Visitation

Subject to the procedures established in Standard Operating Procedure 090 - Prisoners and Booking, regarding access to detained persons, consular officers have the right to visit their nationals who are in prison, custody, or detention, to converse and correspond with them, and to arrange for their legal representation.

Note: A foreign consular officer should not take such actions on behalf of such a person if the person being held expressly opposes these actions. In addition, consular officers may not act as attorneys for their nationals.

5. All officers shall be aware that treaty agreements with certain countries (not including Mexico) require mandatory notification when their nationals are arrested or detained. In these cases, the foreign nation has no choice regarding the notification, and the detaining law enforcement agency must notify the appropriate consulate or embassy of the situation without delay by following the steps listed above.
6. Questions and / or guidance regarding the arrest and detention of foreign nationals can be directed to the U.S Consular Affairs Office (phone 202-647-4415, after hours number 202-647-1512, and fax 202-736-7559).

B. DECEASED FOREIGN NATIONALS AND FOREIGN NATIONALS SUFFERING FROM LIFE THREATENING INJURY AND/ OR MEDICAL CONDITIONS.

1. Police members shall notify their shift commander of incidents where a foreign national is deceased or suffering from a life threatening injury and / or medical condition.
2. Upon being notified that a foreign national is deceased or suffering from a life threatening injury and/or medical condition, the shift commander shall notify the appropriate foreign consulate or embassy by completing and faxing the completed *Consular Notification of Arrest / Detention / Death / Serious Injury or Illness of Foreign Nationals* (form PD-3E) to the appropriate consulate or embassy. The PD-3E shall be retained at all districts according to existing schedules.

130.15 DIPLOMATIC IMMUNITY (WILEAG 6.2.2)**A. CATEGORIES OF PERSONS ENTITLED TO PRIVILEGES AND IMMUNITIES**

1. Members of diplomatic missions - diplomatic missions are traditionally the principal communication link between the country that sends them and the host country. Accordingly, the staffs of diplomatic missions (embassies) are afforded the highest level of privileges and immunities in the host country in order that they may effectively perform their important duties. Members of these missions include:
 - a. Diplomatic agents - enjoy complete personal inviolability, which means that they may not be handcuffed (except in extraordinary circumstances), 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.
 - b. Administrative and technical staff - enjoys the same privileges with respect to criminal jurisdiction, as do diplomatic agents (see above).
 - c. Members of service staff- do not receive any immunity privileges.
2. Members of consular posts - consular posts provide a variety of support services for diplomatic missions, however consular personnel are granted only a very limited level of privileges and immunities. Members of consular posts include:
 - a. Consular officers - may be arrested pending trial only if the offense is a felony and that the arrest is made pursuant to a decision by a competent judicial authority (e.g., a warrant issued by an appropriate court). They can be prosecuted for misdemeanors, but remain at liberty pending trial or other disposition of charges.
 - b. Consular employees - enjoy the same rights and privileges as consular officers.

- c. Consular service staff - do not enjoy any personal inviolability or jurisdictional immunity of any kind.

B. IDENTIFICATION OF PERSONS ENTITLED TO PRIVILEGES/ IMMUNITIES IN THE U.S.

The only authoritative identity document is the identity card issued by the U.S. Department of State, Office of Protocol, or by the U.S. Mission to the United Nations. There are three types of identification cards issued, one each for diplomats, embassy employees, and consular posts.

C. CRIMINAL INVESTIGATION PROCEDURES

1. Department members shall keep in mind that such persons, as described above, are official representatives of foreign governments who are to be accorded the maximum degree of respect possible.
2. Any investigating member called to the scene of a criminal incident involving a person who claims diplomatic or consular immunity shall verify the status of the suspect. The department member shall inform the individual that he or she will be detained until his or her identity can be confirmed.
3. In all cases, including those in which the suspect provides a U.S. State Department-issued identification card, the investigating member shall detain the suspect and immediately notify his or her shift commander of the circumstances of the investigation and the identity of the suspect. The shift commander shall then notify the on-duty commanding officer of the respective Criminal Investigation Bureau division, who shall be responsible for contacting the U.S. Department of State, or in the case of the U.N. community, the U.S. Mission to the United Nations to verify the suspect's diplomatic status (see the U.S. Department of State Diplomatic and Consular Immunity Manual).
4. Once the status is verified and all pertinent investigative information obtained, the suspect shall be released if he or she enjoys personal inviolability. These individuals cannot be handcuffed, except when he or she poses an immediate threat to safety, and they cannot be arrested or detained.
5. If the investigation reveals that probable cause exists to believe the suspect had committed a felony or violent crime, the on-duty commanding officer of that respective Criminal Investigation Bureau division shall ensure that appropriate personnel are assigned to present the case to the district attorney's office for review and consideration of a deportation request to the U.S. Department of State.
6. All investigative reports shall be forwarded through the chain of command to the Office of the Chief for consideration of a deportation request to either the U.S. Department of State in Washington, D.C., or to the U.S. Mission to the U.N. in New York in cases involving the U.N. community.

D. TRAFFIC ENFORCEMENT

1. Stopping a mission member or dependent and issuing a traffic citation for a moving violation does not constitute arrest or detention and is permitted.
2. In OAI cases, the suspect shall be offered the standardized field sobriety test, however, those individuals enjoying personal inviolability privileges cannot be compelled to perform such tests. If the individual is too impaired to continue driving, the department member shall not permit the individual to drive, but may assist that individual in obtaining transportation.
3. The property of a foreign diplomat enjoying full criminal immunity, including his or her vehicle, may not be searched or seized and such vehicles may not be impounded.
4. Vehicles registered to consulates and/or consular officials, including those with full criminal immunity, are not inviolable and may be towed or impounded. The on-duty shift commander shall be notified in such instances so that he or she may notify the U.S. Department of State - Office of Foreign Missions to follow up with the proper consular official or mission.
(WILEAG 6.2.2.3)

130.20 U.S. DEPARTMENT OF STATE RESPONSIBILITIES

- A. The U.S. Department of State will, in all incidents involving persons with immunity from criminal jurisdiction, request a waiver of that immunity from the sending state if the prosecutor advises that, but for such immunity, he or she would prosecute or otherwise pursue the criminal charge.
- B. If the charge is a felony or any crime of violence, and the sending state does not waive immunity, the U.S. Department of State will require that person to depart the United States and not return, but to submit to the jurisdiction of the court with subject matter jurisdiction over the offense.
- C. Upon departure, the department will request that law enforcement issue a warrant for the person's arrest so that the name will be entered in NCIC.

130.25 U NONIMMIGRANT CLASSIFICATION (U-VISA)

- A. The U nonimmigrant classification (better known as "U-Visa") provides temporary legal status to victims of specified crimes and is intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault and other violent crimes against persons while offering protection to victims of such crimes.
- B. To obtain a U-Visa, the requestor must complete a *Petition for U Nonimmigrant Status* (form 1-918). This petition is typically completed by the requestor's advocate (generally an attorney). The U-Visa application includes a *Supplement 8, U Nonimmigrant*

Status Certification (form I-918B) that must be signed and certified by the head of a certifying agency. A certifying agency must be a federal, state or local law enforcement agency, prosecutor or authority or federal or state judge that has the responsibility for the investigation, prosecution, conviction or sentencing of the qualifying criminal activity of which the petitioner was a victim.

- C. The Chief of Police has designated the inspector of the Criminal Investigation Bureau as the certifying official for all form I-9188 submitted to the Milwaukee Police Department. Final eligibility and approval of any U-Visa application will be made by the Department of Homeland Security U.S. Citizenship and Immigration Services (USCIS), not the Milwaukee Police Department.
- D. Any member of the department receiving form I-9188 from a requestor shall forward it to the Forensics Division who will prepare and review the necessary documentation. The Forensics Division shall forward the documentation to the inspector of the Criminal Investigation Bureau for his/her final review. Under no circumstances shall any other member of the department sign any U-Visa certification forms or documents.
- E. U-VISA SUPPLEMENT B REVIEW PROCESS

- 1. The Forensics Division shall verify the following while reviewing the request for certification of the I-918B.
 - a. The person is a victim of a qualifying crime or criminal activity as defined by USCIS.
 - b. The victim possesses information concerning the criminal activity.
 - c. The victim has been, is being, or is likely to be helpful to the investigation into the crime or criminal activity.
 - 1. "Helpful" means the victim has been, is being, or is likely to assist law enforcement, prosecutors, judges, or other government officials in the detection, investigation, prosecution, conviction, or sentencing of the qualifying criminal activity of which he or she is a victim. This includes an ongoing responsibility on the part of the victim to be helpful and that the victim has not refused or failed to provide assistance when reasonably requested.
 - 2. When a certification is based on a prior investigation or a criminal case that has been closed or suspended, or when the statute of limitations has passed, the Forensics Division shall determine whether or not the victim was helpful in the investigation. To determine whether failure to cooperate is unreasonable, the Forensics Division may review and consider the victim's history of abuse and victimization, and any threats the victim has experienced or is experiencing.

- d. The Forensics Division shall review any applicable incident report(s) related to the crime(s) as well as any other evidence or documentation related to the reported criminal activity. The Forensics Division shall review CCAP dispositions and court records related to the prosecution of the crime(s), and verify the victim's identity through the FBI, state ID, and Alien Registration number as part of the review process.
 2. The Forensics Division shall make a recommendation for approval or denial of the certification to the inspector of the Criminal Investigation Bureau as soon as possible, but no more than **28** days from the date of receipt of request. The Forensics Division shall meet with the inspector to explain the delay of any request that is not addressed within **28** days of receipt and the requester will be notified of the reason for the delay.
 3. The Forensics Division shall provide the entire review package to the inspector of the Criminal Investigation Bureau for review. After reviewing the recommendation and documentation from the Forensics Division, the inspector shall make the decision to approve or deny the request. The decision will be final and not subject to appeal.
 4. Based upon the decision to approve the certification, the Forensics Division shall complete form I-918B for the inspector's signature. If the inspector declines to certify form I-918B, a letter citing the reasons for this decision shall be sent to the requester.
 5. If an individual unreasonably refuses to assist in the investigation or prosecution of the qualifying crime or criminal activity the I-918B has been submitted to the USCIS, the inspector of the Criminal Investigation Bureau shall notify the USCIS in writing of the refusal to assist. To determine whether failure to cooperate is unreasonable, the inspector may review and consider the victim's history of abuse and victimization, and any threats the victim has experienced or is experiencing.
 6. The Department of Homeland Security has also created resources and guides for law enforcement agencies regarding U-Visa requirements, the law enforcement certification process, and answers to frequently asked questions related to the U-Visa process that may be utilized during the review process.
- F. Members may refer individuals who have questions regarding a U-Visa to the **United Migrant Opportunity Services Latina Resource Center at (414) 389-6500. USCIS- at 1-800-375-5283.**

130.30 IMMIGRATION ENFORCEMENT

A. POLICY

It shall be the policy of the Milwaukee Police Department to implement an immigration enforcement strategy that is consistent with the mission of reducing the levels of crime, fear, and disorder **violence** in the city of Milwaukee. **However,** This strategy must also be in balance with the jurisdictional responsibilities of the federal government and the corresponding jurisdictional limitations of local law enforcement. **~~The following procedures not only achieve that balance but also comply with the Wisconsin attorney general's law enforcement guide to immigration enforcement.~~**

With a policing philosophy that is community-based, problem-oriented, and data-driven, we are committed to ~~ridding the city's streets of violent offenders regardless of whether such offenders are in the United States legally or illegally. We are also committed to facilitating fostering~~ safe, sustainable communities where individuals are encouraged to report crime and provide the police with useful information and intelligence. ~~However,~~ Proactive immigration enforcement by local police can be detrimental to our mission and policing philosophy when doing so deters some individuals from participating in their civic obligation to assist the police. It is therefore expected that each police member follow the procedures set forth below regardless of one's personal opinion or political ideology on the issue of immigration.

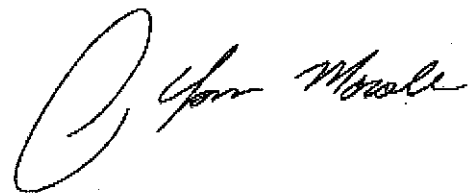
- B. Enforcement of the nation's immigration laws is the responsibility of the federal government, particularly United States Immigrations and Customs Enforcement (ICE). Accordingly, the Milwaukee Police Department ~~shall not use any resources for immigration enforcement. Detaining, investigating, holding people for ICE, or sharing information with ICE should be not be done at the expense of local taxpayers. Therefore, no Department officer, employee, or agent shall use Department funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal immigration law. Nothing in this section shall prevent the Department from lawfully discharging its duties in compliance with and in response to a lawfully issued judicial warrant or subpoena, or from assisting victims or witnesses in obtaining U Visas, T Visas, or similar visas where appropriate.~~

Note: ~~Most immigration violations are civil and fall under the jurisdiction of the federal government. The enforcement of civil federal immigration laws falls exclusively within the authority of United States Immigration and Customs Enforcement (ICE). As such, local law enforcement officers have no right of arrest in these matters.~~

- C. A person's right to file a police report, participate in police-community activities, or otherwise benefit from police services is not contingent upon their immigration status. Consequently, department members shall not ~~inquire about, request information about, or otherwise investigate the citizenship or immigration status of any person unless a judicial warrant requires the Department to undertake such inquiry or investigation. Additionally, Department members will not collect other information from individuals that could be used as a proxy for immigration status or for immigration enforcement purposes, such as place of birth, social security number or lack thereof, or tax identification number. question any person about his or her immigration status. unless that person is reasonably believed to be involved in one or more of the activities identified in (F) below.~~
- D. ~~Department members shall not initiate an investigation or take law enforcement action on the basis of actual or perceived immigration status, including the initiation of a stop, an apprehension, arrest, or any other field contact. This includes checking a driver's license plates when there has been no traffic infraction committed.~~

- E. Unless such requests are accompanied by a judicial warrant, meaning a warrant signed by a state or federal judge, Department members shall not comply with:
1. requests from DHS, CBP, or ICE to detain an individual beyond the time at which they would otherwise be released;
 2. requests for notification of any individual's release;
 3. requests for personal information including home or work addresses, Immigration detainer and notification requests include but are not limited to Forms I-247D, I-247N and I-247X.
- F. Department members shall not rely on administrative warrants issued by DHS, CBP, or ICE to arrest or detain any individual. An "administrative warrant," includes an immigration warrant of arrest, order to detain or release a person, notice of custody determination, notice to appear, removal order, warrant of removal, or any other document issued by DHS, CBP, or ICE that orders or requests an individual's arrest or detention for an immigration enforcement purpose. Administrative warrants do not include validly-issued judicial warrants, which are signed by a judge.
- G. Unless ICE agents have a valid judicial warrant, ICE agents shall not be given access to individuals or allowed to use Department facilities for investigative interviews or other purposes, either through in-person visits, phone calls, or video-conference.
- H. Department members shall not request passports, visas, "green cards," or other documents relating to one's immigration status in lieu of, or in addition to, standard forms of identification such as a driver's license, City of Milwaukee Municipal ID Card, state identification card, etc. Immigration related documents shall only be requested when standard forms of identification are unavailable, ~~or when the member is proceeding under (F) below.~~
- I. The Department shall not participate in joint task forces with federal immigration authorities when the purpose or direct effect is the enforcement of civil immigration law.
- J. Department members shall not assist in any way in immigration raids or any other operations with ICE, DHS, CPB or other federal authorities when the purpose or direct effect is the enforcement of civil immigration law. This includes but is not limited to requests to establish traffic perimeters related to immigration.
- K. The Department shall not enter into, renew, implement, or carry out any formal or informal contract, agreement, or arrangement with DHS, ICE, CBP, or USCIS that would grant federal immigration enforcement authority or powers to MCSO officers including but not limited to agreements created under INA § 287(g), 8 U.S.C. § 1357(g).
- L. To ensure transparency and accountability, the Department shall report and share with the public on a regular basis requests and communications from ICE or any other federal immigration enforcement agency to the Department.

- M. ~~Police members shall not contact, detain, or arrest a person solely for a suspected immigration violation unless such contact, detention, or arrest is in cooperation with and at the direction of federal immigration officials.~~
- N. ~~Pursuant to federal law 8 U.S.C. § 1373, "Notwithstanding any other provision of Federal, State or local law, A Federal, State, or local government entity or official may not prohibit or in any way restrict, any government entity or official from sending to or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful of any individual." Police members shall, using discretion consistent with federal law and section G below, inform federal immigration officials of the whereabouts or behaviors of any suspected illegal immigrant or foreign visitor, when the immigrant or foreign visitor:~~
- ~~• Is arrested for a felony.~~
 - ~~• Is arrested for a misdemeanor involving the possession or use of a dangerous weapon.~~
 - ~~• Is arrested for a terrorism-related offense, or is otherwise reasonably suspected of involvement in terrorism and/or subversive activities.~~
 - ~~• Is arrested for any offense involving the entry or fraudulent assimilation of undocumented foreigners into the country, or is reasonably suspected of participating in an organized venture to bring or fraudulently assimilate undocumented foreigners into the country.~~
 - ~~• Is a previously deported felon.~~
 - ~~• Is reasonably suspected of participating in violent criminal street gang activity.~~
- O. ~~In the event a police member determines a need to contact ICE, they shall contact their shift commander and provide them with the pertinent information. The member shall then attempt to contact the local office at 414-297-1571. If the local office is closed or if an agent is unavailable, the police member shall contact the ICE Law Enforcement Support Center (LESC) at 1-802-872-6050.~~
- P. ~~Only federal immigration officials can determine a person's immigration status; therefore, citizens wishing to report immigration violations shall be referred to the local office of ICE at 414-287-6326, fax 414-287-63~~

A handwritten signature in black ink, appearing to read "Alfonso Morales". The signature is written in a cursive style with a large, looping initial "A".

ALFONSO MORALES
CHIEF OF POLICE

AM:mfk