

222 FOREIGN NATIONALS AND UNDOCUMENTED ALIENS

The purpose of this procedure is to provide Calaveras County Correctional Facility personnel with the legal requirements pursuant to Penal Code §834c which sets forth certain rights of foreign nationals from member countries when arrested, detained or imprisoned by law enforcement officials in this country and the legal requirements pursuant to Penal Code §834b.

(a) Definitions:

- (1) Foreign National : Anyone who is not a citizen of the United States. A person with dual-citizenship, U.S. and foreign, is not a foreign national. The term Alien can be used interchangeably with foreign national.
 - (2) Consular Officers : Is a citizen of a foreign country employed by a foreign government and authorized to provide assistance on behalf of that government to that government's citizens in a foreign country.
 - (3) Undocumented (Illegal) Alien: Any alien who (8 USC §1325):
 - (A) Enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or
 - (B) Eludes examination or inspection by immigration officers, or
 - (C) Attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both.
 - (4) 1963 Vienna Convention on Consular Relations: A treaty signed by 140 nations, including the United States, which ratified the agreement in 1969. This treaty guarantees that individuals arrested or detained in a foreign country must be told by police "without delay" that they have a right to speak to an official from their country's consulate and if an individual chooses to exercise that right a law enforcement official is required to notify the consulate.
- (b) If ICE issues a detainer on an individual you take into custody, check to see if it is accompanied by a federal arrest warrant or a judicial determination that there is probable cause that the detainee is subject to removal or deportation.
- (1) If there is not, notify ICE that you will be releasing the detainee when he/she becomes eligible for release (whether pre- or post-trial) and release them as you would a U.S. citizen.
 - (2) If the ICE hold does contain a probable cause determination, notify ICE if the answer is "no".
- (c) All foreign nationals are entitled to consular notification and access, regardless of their visa or immigration status in the United States.
- (d) All foreign nationals when arrested or detained must be advised of the right to have their consular officials notified.
- (e) In some cases, consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.
- (f) The list of mandatory notification countries and jurisdictions is listed on U.S. Department of State web site. http://travel.state.gov/law/consular/consular_5125.html

There is also a link on this web site that will give contact information for foreign consular offices in the United States.

- (g) Suggested statements to arrested or detained foreign nationals are in the Consular Notification and Access booklet.
 - (1) Translations of the statement into selected foreign languages are also available in the booklet.
 - (2) The booklet can be found at the same web site in PDF format.
- (h) The Department of Homeland Security (DHS) / Bureau of Immigration Customs Enforcement (ICE) shall be notified on all foreign nationals with green cards and undocumented foreign nationals.
- (i) In most instances Foreign Nationals being referred to the DHS / ICE will have to be interviewed prior to a detainer being placed, either by phone or in person.
- (j) With respect to any such person who is arrested, and suspected of being present in the United States in violation of federal immigration laws, every law enforcement agency shall do the following (Penal Code §834b):
 - (1) Attempt to verify the legal status of such person as a citizen of the United States, an alien lawfully admitted as a permanent resident, an alien lawfully admitted for a temporary period of time or as an alien who is present in the United States in violation of immigration laws.
 - (2) Notify the person of his or her apparent status as an alien who is present in the United States in violation of federal immigration laws and inform him or her that, apart from any criminal justice proceedings, he or she must either obtain legal status or leave the United States.
 - (3) Notify the Attorney General of California and the United States Immigration and naturalization Service of the apparent illegal status and provide any additional information that may be requested by any other public entity.