

CHAPTER 8

**FOREIGN NATIONALS: ARREST, DETENTION, U/T VISA CERTIFICATIONS,
AND CONSULAR NOTIFICATION IN THE EVENT OF DEATH OR INJURY**

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CHAPTER 8

FOREIGN NATIONALS: ARREST, DETENTION, U/T VISA CERTIFICATIONS, AND CONSULAR NOTIFICATION IN THE EVENT OF DEATH OR INJURY

1. PURPOSE. This chapter provides direction to officers when considering a physical arrest or detention of a foreign national. Further, this chapter addresses instances where a foreign national is killed or injured as the result of an incident occurring within the Department's investigative jurisdiction.
2. GENERAL. A foreign national is anyone who is not a citizen of the U.S. A person with dual-citizenship citizenship, U.S. and foreign, is **not** a foreign national.
3. ARREST OR DETENTION OF FOREIGN NATIONALS WHO CLAIM DIPLOMATIC OR CONSULAR IMMUNITY.
 - a. Policy. Officers should take appropriate enforcement action for **all violations observed**, regardless of claims of diplomatic or consular immunity alleged by violators. However, a person shall not be subjected to in-custody arrest when:
 - (1) Diplomatic or consular immunity is claimed by the individual or suspected by the officer, and
 - (2) The officer has verified or reasonably suspects that the claim of immunity is valid.
 - b. General.
 - (1) Diplomatic Immunity Flow Chart. For an overview of proper enforcement actions, refer to Annex A.
 - (2) The term "immunity" refers to various protections and privileges extended to the employees of foreign governments who are present in the U.S. as official representatives of their home governments. These privileges are embodied in international law and are intended to ensure the efficient and effective performance of their official "missions" (e.g., embassies, consulates) in foreign countries. Proper respect for the immunity to which an individual is entitled is necessary to ensure U.S. diplomatic relations are not jeopardized and to maintain reciprocal treatment of U.S. personnel abroad. Although immunity may preclude U.S. courts from exercising jurisdiction, it is not intended to excuse unlawful activity. It is the policy of the U.S. Department of State's (DOS), Office of Foreign Missions (OFM), that illegal acts by foreign service

personnel should always be documented, and appropriate sanctions should be pursued through proper channels. Additionally, the host country's right to protect its citizens supersedes immunity privileges. Peace officers may intervene to the extent necessary to prevent the endangerment of public safety or the commission of a serious crime, regardless of immunity claims.

(3) Levels of Immunity. The specific degree of immunity afforded to foreign service personnel within the U.S. is directly related to their function and position in this country.

(a) Diplomatic agents (e.g., ambassadors and United Nations' representatives) are afforded the highest levels of immunity. They are exempt from arrest or detention and are immune from all criminal (and most civil) prosecution by the host state. The family members of diplomatic agents are afforded these same immunities. There are **no** diplomatic agents permanently assigned to California; but they do occasionally visit the state.

(b) Consular officers are the ranking members of consular posts who perform various formal functions on behalf of their own governments. Typical titles include consul general, consul, and vice consul. These officials are immune from arrest or detention, except pursuant to a felony warrant. However, they are only immune from criminal and civil prosecution arising from official acts. Official acts of immunity must be raised as an affirmative defense in the court of jurisdiction, and their validity is determined by the court. Under this defense, the prohibited act itself must have been performed as an official function; it is not enough that the consular agent was on duty or in an official capacity at the time of the violation. The family members of consular officers **generally** do not have immunity. However, any family member who is afforded a higher level of immunity is issued an ID card by DOS, enumerating any privileges or immunities on the back of the card. (Examples are consular officers and family members from Russia or China.) There are approximately 600 consular officers in California, with most located in Los Angeles, San Francisco, and San Diego.

(c) Consular employees (e.g., advisors, attachés, chancellors) have immunity only for official acts. Service staff (e.g., cooks, housekeepers, chauffeurs) generally do not have any immunity. Both consular employees and service staff may be arrested or detained. (Exceptions include staff from Russian and Chinese consulates: special agreements afford these personnel the same immunity as consular officers.) Family members have limited immunity which would be listed on the back of the

State Department ID card. There are several thousand consular employees in California.

(d) Honorary consuls are part-time employees of the country they represent and are either permanent residents of the U.S. or U.S. nationals (unlike career consular officers, who are foreign nationals on temporary assignment to the U.S.). Honorary consuls may be arrested and detained; limited immunity for official acts may be available as a subsequent defense. Family members have no immunity. There are less than 100 honorary consuls in California.

(4) Identification. All diplomatic and consular personnel who are entitled to immunity are registered with the DOS and are issued distinctive ID cards by the DOS Office of the Chief of Protocol (Annex B). These cards are the best means of identifying foreign service personnel. They include a photograph, identifying information, and, on the reverse side, a brief description of the bearer's immunity status. Unfortunately, these ID cards are not always promptly issued by DOS. In addition to the DOS ID card, foreign service personnel should also have a driver's license issued by the DOS Diplomatic Motor Vehicle Office (DMVO), which replaces the operator's license issued by the state (Annex F).

(5) Vehicle Registration. Vehicles which are owned by foreign missions or foreign service personnel and their dependents are registered with the DOS, OFM, and display distinctive red, white, and blue license plates. Vehicles assigned to diplomatic or consular officers will generally have license plates labeled with the word "diplomat" or "consul." Vehicles owned by honorary consuls are not issued OFM license plates but may have California license plates with an honorary consul label. Driver identity or immunity status should not be presumed from the type of license plates displayed on the vehicle. The status of an OFM license plate should be run via the National Law Enforcement Telecommunications System, designating U.S. as the state, if the officer has reason to question the legitimate possession of the plate.

c. Procedures.

(1) All foreign service personnel shall be treated with respect and courtesy, regardless of the level of established immunity.

(2) Citable Offenses. An enforcement document should be issued at the scene for all violations warranting such action, regardless of the violator's immunity status. (The issuance of a citation is not considered an arrest or detention under current DOS guidelines.) A complaint to be filed citation may be issued at a later date, if appropriate. Whenever a CHP 215, Notice to

Appear, is issued to an immunity claimant, the following additional procedures shall be followed by the arresting officer:

- (a) Identification documents are to be requested of the claimant.
- (b) The title and country represented by the claimant are to be recorded on the back of the officer's copy of the CHP 215 for later reference (do not include on the face of the CHP 215).
- (c) The claimant shall be requested to sign the CHP 215. If the claimant refuses, the identity and immunity status of the individual shall be conclusively established. (Refer to paragraph 3.c.[3] of this chapter.)

1 Verified diplomatic agents and consular **officers**, including staff and family members from countries with which the U.S. has special agreements, are not required to sign the CHP 215. The word "Refused" shall be entered in the signature box, and the violator shall be released.

2 Verified consular **staff** members, excluding those from countries with which the U.S. has special agreements (refer to paragraph 3.b.[3][c] of this chapter), are generally obligated to sign the CHP 215, but a signature shall not be required if their immunity status is uncertain.

3 All other claimants are subject to the provisions of Section 40302(b) of the California Vehicle Code and policy and procedures outlined in paragraphs 4.b.(1) and 4.b.(2) of this chapter.

4 The violator shall be provided with the appropriate copy of the CHP 215.

(3) In-Custody Arrests. Diplomatic agents and consular officers are immune from arrest or detention (unless they have no ID and the detention is to verify their diplomatic status). Proper identification of immunity claimants is imperative in potential in-custody situations. Claimants who are not entitled to immunity shall be placed in-custody in accordance with the provisions outlined in paragraph 4. of this chapter.

- (a) A subject who is placed under arrest and claims diplomatic or consular immunity shall not be physically restrained before verification of the claim (unless restraint is necessary for the protection of the officer or others).

(b) A supervisor shall be promptly notified and should respond to the scene whenever possible.

(c) Field verification of the claimant's identity is to be attempted as follows:

1 Identification cards issued by DOS, Office of the Chief of Protocol, are the only valid evidence of diplomatic or consular immunity. The following types of ID cards are issued: Diplomatic (blue-bordered), Consular (red-bordered), and Official (green-bordered). The DOS ID cards are 3 3/4 inch by 2 1/2 inch and contain a photograph of the bearer (examples are contained in Annex B).

2 Initiate telephone verification with DOS. Newly arrived members of diplomatic or consular missions may not yet have official DOS identity documents. Verify immunity by telephone with DOS any time an individual claims immunity and cannot present satisfactory identification, the officer has reason to doubt the claim of immunity, or there is a possibility of physical arrest. Law enforcement personnel should use the following numbers in order of preference:

Office of Foreign Missions
Diplomatic Motor Vehicle Office
Washington, D.C.
(202) 695-8220 or (202) 647-3417/Driver's License/Registration
Verification
OFM-FMS@state.gov
0800-1700 Eastern Standard Time

Department of State
Bureau of Diplomatic Security
Command Center
Washington, D.C.
(571) 345-3146; Toll-free (866) 217-2089
OFM-FMS@state.gov
Operates 24-hours daily

Office of Foreign Missions
San Francisco, CA
(415) 967-6136
OFMSanFrancisco@state.gov
0830-1700 Pacific Standard Time (PST)

Office of Foreign Missions
Los Angeles, CA
(424) 465-5450
OFMLosAngeles@state.gov
0800-1700 PST

3 Members of diplomatic or consular missions may also have other forms of ID. These include ID cards issued by local law enforcement agencies, the foreign embassy, or consulate; driver's licenses issued by DOS; and DOS license indicia on the vehicle. All of these items are **only an indication** that the bearer **may** have some form of immunity. The DOS, Office of the Chief of Protocol, is the **only** authoritative source of correct immunity information. Foreign embassies or consulates shall not be contacted for information.

(d) Subjects verified through the above procedures as being officials entitled to immunity (i.e., diplomatic agents, consular **officers** and consular staff, and family members from countries with which the U.S. has special agreements) may **not** be arrested. The procedures below shall be followed. These procedures should also be used in the event immunity cannot be verified, but other forms of ID indicate immunity is probable.

1 If the release of the violator will not create an additional hazard, adequate information to properly identify the violator and the vehicle shall be recorded, and the violator shall be released. A supervisor's approval for the release shall be obtained whenever possible. A CHP 103, Certificate of Release from Custody, should only be issued under the conditions prescribed in Highway Patrol Manual 100.69, General Law Enforcement Policy Manual, Chapter 1, Arrest Policies.

2 If the violator appears to have been driving while under the influence (DUI), field sobriety tests (including Preliminary Alcohol Screening device tests) and chemical tests should be offered and obtained whenever possible, but these tests cannot be compelled. The subject shall not be permitted to drive. A supervisor's approval for release shall be obtained whenever possible, and alternative transportation should be arranged.

3 All facts of the incident shall be documented in accordance with General Order (GO) 100.39, CHP 202, Driving Under the Influence Arrest – Investigation Report, and CHP 216, Arrest – Investigation Report. Notwithstanding the field release of the subject, prosecution is still appropriate and should be pursued by the command concerned. Moreover, DOS will take appropriate sanctions against

errant foreign service personnel, even where prosecution is not undertaken.

(4) Traffic Crashes. Persons involved in traffic crashes who possess a DOS OFM Diplomatic Driver's License, issued by the DMVO, shall have "D" coded in the license "class" box of the CHP 555, Traffic Crash Report. The actual driver license class (e.g., 1, 2, 3, or A, B, C, M) shall be entered in the "miscellaneous" box on page two of the CHP 555. If subsequent prosecution of the claimant is anticipated, the claimant's title, country, and type of ID presented should be recorded for future reference. Issuance of a citation to, or arrest of, an immunity claimant at the crash scene should be handled in accordance with the procedures specified in paragraphs 3.c.(2) and 3.c.(3) of this chapter.

(5) Vehicles. Vehicles which are owned by subjects with full immunity may not be searched, stored, or impounded without the owner's permission. (Such permission may be assumed if the vehicle has been stolen.) These vehicles may, however, be towed the necessary distance to remove them from obstructing traffic or creating any other hazard.

(6) Reports. A photocopy of each CHP 215, CHP 216, or CHP 202 **involving an identified diplomat and/or immunity claimant** shall be sent via e-mail within 48 hours to Assistant Commissioner, Field (ACF), at CHP-ACF Request for Action, whether or not the claim is verified. The words "Immunity Claim" shall be marked on the photocopy, together with a notation of the claimant's title, country, and type of ID presented (if applicable). A follow-up cover memorandum should be submitted if the violation was flagrant, if the claimant was uncooperative, or if there were any other unusual aspects of the enforcement contact which should be reported to DOS for further action. The Area shall also send a copy of all documents and reports submitted to ACF to their respective Division command. Reports sent to ACF will be forwarded to Research and Planning Section (RPS) so that OFM can be notified and necessary follow-up can be conducted.

(7) Follow-Up. The OFM will normally contact the court of jurisdiction requesting case disposition information. The OFM will also assess "points" against the DOS driver's license of foreign service personnel when notified of court convictions. The commander of the Area involved should, if possible, arrange for notification by the court whenever an immunity claimant fails to appear for a scheduled appearance. This information should be provided directly to the RPS for subsequent transmittal to OFM.

4. ARREST OR DETENTION OF FOREIGN NATIONALS WHO DO NOT CLAIM DIPLOMATIC OR CONSULAR IMMUNITY.

a. General. These policies and procedures apply to foreign nationals who do not claim diplomatic or consular immunity. This includes known foreign nationals or persons suspected of being foreign nationals. Policy and procedures regarding diplomatic and consular immunity are outlined in paragraph 3.

b. Policy.

(1) Arrest Criteria. Officers shall arrest foreign nationals only under the following circumstances:

(a) There is a valid **judicial warrant** issued for the person's unrest.

(b) The foreign national has violated a federal **criminal** law, a state law, or a local ordinance.

(c) Officers shall not stop or detain persons **solely** for the purpose of determining immigration status.

(2) Illegal Presence. Persons are illegally present if they unlawfully entered the U.S. or if they remain after the expiration of a visa. However, officers **shall not arrest or detain foreign nationals solely for alleged illegal presence in the U.S.** Deportation proceedings are civil, rather than criminal. Thus, illegal presence is a federal civil violation enforceable only by federal officers.

(3) Detention for United States Immigration and Customs Enforcement. Officers shall not detain foreign nationals for illegal presence, nor shall officers prolong the duration of an unrelated lawful detention or criminal arrest to facilitate the response of U.S. Immigration and Customs Enforcement (ICE) officials.

(4) Illegal Entry. A person who enters the U.S. at other than the time and place designated by an immigration officer has illegally entered the U.S. Illegal entry is a misdemeanor offense (8 U.S. Code Service [USCS] Section 1325). Officers may arrest for violations occurring in their presence (i.e., the officer observed the actual unlawful border-crossing).

(a) Probable Cause. The illegal or undocumented presence of an individual is not sufficient probable cause to support an arrest for illegal entry.

(b) Duration of Offense. The offense begins upon *physical entry* and terminates upon the foreign national reaching a place of temporary safety.

(5) Illegal Transportation of a Foreign National. Knowingly harboring or transporting a foreign national in furtherance of violating immigration laws is a felony (8 USCS Section 1324). If officers have sufficient reasonable suspicion, they should detain suspects for ICE. Lengthy detentions, however, may be considered an arrest and must be based upon probable cause.

(6) Warrants and Criminal Foreign National Flagging.

(a) California Law Enforcement Telecommunications System.

1 Department of Justice flags (in the Automated Criminal History System of California Law Enforcement Telecommunications System [CLETS]) the records of criminal foreign nationals who have been previously deported. However, a CLETS “hit” alone is insufficient probable cause to arrest. Rather, it is a “notification system” that identifies a previously deported foreign national who has returned to the U.S. in “possible violation” of federal law.

2 “Flagged” foreign nationals are defined as those individuals who have been previously released from a California Department of Corrections and Rehabilitation facility (**i.e., convicted felons**). Officers should exercise appropriate caution.

(b) National Crime Information Center Numbers.

1 A National Crime Information Center (NCIC) number beginning with an “N” is also indicative of a previously deported criminal foreign national. This is a “notification only” reference. The suspect may not be arrested based upon this information alone.

2 An NCIC number beginning with a “W” is indicative of a federal warrant. Officers shall take the appropriate enforcement action for a confirmed federal warrant.

(7) California Statutory Violations. Falsification of citizenship documents is a violation of California statutes. Section 113 of the California Penal Code (PC) prohibits the manufacture, distribution, or sale of false documents (felony). Section 114 PC prohibits the use of false documents (felony). Officers shall take the appropriate enforcement action for observed violations.

c. Procedures.

(1) Embassy Notification. Whenever an officer arrests or detains an individual for a criminal investigation and the officer reasonably believes the person is a foreign national, the officer shall attempt to determine the person's citizenship.

(a) This procedure applies to in-custody arrests and to detentions exceeding two hours.

(b) If the individual indicates they are a foreign national, or if the officer suspects the individual is a foreign national, the officer shall advise the individual they are entitled to have their country's consular representative

in the U.S. notified of the arrest or detention, and they have the right to communicate with an official from the consulate or embassy of their country.

1 This advisement is required under the 1963 Vienna Convention on Consular Relations (VCCR) and Section 834c PC. Section 834c PC was added in order to ensure California law enforcement agencies comply with the VCCR. Section 834c PC requires officers to advise actual and even suspected foreign nationals of the right to communicate with an official from the consulate or embassy of their country when they have been arrested and booked or detained for more than two hours.

2 Suggested Advisement. "As a non-U.S. citizen who has been arrested/detained, you are entitled to have your country's consulate or embassy notified of the arrest/detention and you have the right to communicate with an official from your country's consulate or embassy. Do you want to notify and communicate with a consulate or embassy official?"

(b) If the individual requests consular contact, the officer shall request that the CHP communications center notify the appropriate embassy/consulate as soon as practical. A listing of foreign embassies and consulates is accessible on the DOS website at USEmbassy.gov. Officers shall provide the communications center with the following information concerning the individual:

1 Country of citizenship.

2 Full name of individual, including paternal and maternal surname if used.

3 Date of birth or age.

4 Place of birth.

5 Passport number (if available).

6 Current residence.

7 Time, date, place, and location of incarceration/detention, and the 24-hour telephone number of the place of detention.

(c) Mandatory Notification. If the foreign national claims citizenship, or is suspected of being a citizen, of one of the countries listed in Annex G, officers shall notify (through the appropriate CHP communications center) the consulate or embassy of the arrest or detention, even if the arrestee/detainee requests no contact. This procedure is required by treaty obligations and Section 834c PC. The information contained in paragraph 4.c.(1)(c) of this chapter shall be provided to the communications center for notification purposes.

(d) Officers should attempt to provide the communications center with requests for embassy/consulate notification at the same time they provide incarceration information in order to expedite these notifications.

(e) Assertion of the right to consular contact does not prevent subsequent questioning. Irrespective of a consulate's request to cease questioning, officers shall continue to question and/or investigate. It is essential, however, that officers ensure subjects are properly Mirandized. Indication that the subject fully understood their Miranda rights should be documented.

(f) According to Section 834c PC, it is the responsibility of the law enforcement official in charge of the custodial facility where the arrestee is located to ensure the arrestee is allowed to communicate with, correspond with, and be visited by a consular official from their country. However, if an individual is detained (for more than two hours) in some other facility, it is the officer's responsibility to facilitate communication.

(g) Asylum. If a foreign national indicates they have applied for asylum or withholding of removal in the U.S., this information should not be disclosed to that person's government when making notifications.

(h) Documentation.

1 In instances involving an arrest, it shall be documented in the arrest report that the arrestee was advised of their right to communicate with a consulate official and whether or not notification was made through the appropriate communications center.

2 In instances involving an investigation and detention exceeding two hours where a person is ultimately released, the incident shall be documented on a CHP 216/202 or CHP 202D, Consent Search, (whichever is applicable to the given situation). The fact that the person was advised of the right to consular notification and whether or not notification was made shall be included in the report. Reports shall be submitted to the Area for supervisory review. Reviewed reports documented on a CHP 216/202 should be filed and retained utilizing Area procedures for filing and retaining misdemeanor/felony arrest reports. Incidences documented on a CHP 202D shall be retained in accordance with GO 100.91, Search and Seizure Policy.

(2) Notification for “Flagged” Foreign Nationals. If an officer arrests a foreign national and determines the suspect has a possible CLETS, NCIC flag, or other warning code associated with their record, the officer shall notify the jail facility during the booking process.

5. FOREIGN NATIONALS KILLED OR INJURED WITHIN CALIFORNIA HIGHWAY PATROL JURISDICTION.

a. General.

(1) The VCCR, in addition to certain bilateral agreements, requires that if federal, state, or local government officials become aware of the death of a foreign national in the U.S., they must ensure the consulate of that person’s country is notified of the death. This notification allows the foreign government to make an official record of the death for its own legal purposes. Additionally, it may help to ensure the foreign national’s family is aware of the death. Although such notification is typically made by a coroner’s or medical examiner’s office in California, it is DOS, OFM’s view that it is the responsibility of the law enforcement agency which investigates the circumstances leading to the death (e.g., due to being involved in a traffic crash) to ensure notification is made.

(2) The VCCR and DOS guidelines do not specifically address consulate notification for instances where a foreign national is injured in this country (e.g., in a traffic crash). However, if a foreign national desires that their consulate be notified, this courtesy provides the person with the opportunity to seek assistance from their government.

b. Policy.

(1) The CHP, in order to conform with the VCCR and DOS guidelines, will make reasonable efforts to ensure the appropriate embassy/consulate is

notified in the event that a foreign national is killed in a traffic crash or due to circumstances occurring under the Department's investigative jurisdiction.

(a) If the death occurs in an Area where the local coroner or medical examiner makes consulate/embassy notification, the assurance of notification can be presumed to be fulfilled.

(b) If the death occurs in an Area where the coroner or medical examiner does not make a consulate/embassy notification, it is the responsibility of this Department to make notifications.

(2) In cases where a foreign national is injured in a traffic crash or due to circumstances falling under the jurisdiction of this Department, the person should be advised that their consulate or embassy can be notified by the Department, if they desire.

c. Responsibilities. Area commanders are responsible for:

(1) Coordinating with the local coroner or medical examiner to ensure notification is made either by the coroner or medical examiner, or by the Area.

(2) Establishing Area Standard Operating Procedures (SOP) that clearly indicate whether the coroner or medical examiner makes notification or whether the Area initiates such notification. Procedures that should be included in the Area's SOP are contained in paragraph 5.d.(1)(b).

(3) Area commanders responsible for the operation of communications centers shall ensure the communications center's SOP addresses procedures for notifying consulates/embassies. The communications center's SOP should reflect each respective Area's SOP pertaining to consulate/embassy notification within their dispatch responsibility.

d. Procedures.

(1) Death of Foreign Nationals.

(a) Coroner or Medical Examiner Makes Notification. If an Area's SOP specifies that a coroner or medical examiner makes a consulate notification, notification does not have to be initiated by the Department.

(b) Coroner or Medical Examiner Does Not Make Notification. If an Area's SOP states that a coroner or medical examiner **does not** notify a consulate, officers shall request that the CHP communications center notify the appropriate embassy/consulate of the death (a listing of embassies and consulates is accessible on the DOS website at USEmbassy.gov)

(2) Injured Foreign Nationals. When an officer contacts a foreign national who has been injured in a traffic crash or in another event falling under the investigative jurisdiction of the Department, the officer should advise the person that the Department will notify the appropriate consulate if the injured party desires. If the person requests that their consulate be notified, officers shall request that the CHP communications center notify the appropriate embassy/consulate as soon as practical.

e. Documentation. If an investigation or report is completed documenting an event that involves a foreign national killed or injured (e.g., CHP 555, CHP 202/216), embassy/consulate advisement and notification, if applicable, should be noted in the investigation or report.

6. U VISA—FORM I-918, SUPPLEMENT B, U NONIMMIGRANT STATUS CERTIFICATION.

a. General.

(1) The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 created the Victim of Crime Visa, otherwise known as a U Visa. A U Visa grants relief from deportation and permission to work in the U.S. to specified crime victims.

(2) The U Visa process is for victims of serious crimes and was created to encourage cooperation between noncitizens and law enforcement.

(3) Law enforcement is responsible for providing U Visa certifications under specified circumstances.

(4) California Senate Bill 674 (Chaptered October 9, 2015) created Section 679.10 PC, which requires California law enforcement to review U Visa, Form I-918, Supplement B, U Nonimmigrant Status Certification, requests within 30 days of receipt. If the requestor is subject to immigration removal proceedings, the U Visa certification request shall be reviewed within seven days of receipt.

(5) Section 679.10 PC requires a U Visa requestor must be the victim of qualifying criminal activity or criminal activity that is substantially similar to any of the qualifying criminal activity listed.

(6) The U Visa requestor must also be helpful to the investigation. Pursuant to Section 679.10 PC, helpfulness is a rebuttable presumption, and a certifying official may only withdraw the certification if a victim refuses to provide information and assistance when reasonably requested.

(7) Pursuant to Section 679.10 PC, a certifying official shall not refuse to complete the Form I-918, Supplement B, or otherwise certify helpfulness, because a case has already been prosecuted or closed, or because the time for commencing a criminal action has expired.

(8) The most current U Visa certification form can be found on the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/i-918>.

b. Policy.

(1) The Commissioner has authorized Area commanders to review U Visa certification requests for incidents occurring within their commands. **Area recommendations shall be reviewed by Division before the requestor is notified in writing of a decision**

(2) When possible, U Visa certification requests received by uninvolved Areas shall be forwarded to the appropriate Area or allied agency for review and disposition as soon as possible.

(3) It is the intent of the Department to conduct a comprehensive review of the circumstances surrounding each U Visa certification request and provide certification to any victim of qualifying criminal activity as specified in paragraph 6.d.

(4) The review should seek to substantiate the requestors claim by reviewing any and all information related to the incident. This review may include crash reports, arrest reports, computer-aided dispatch logs, memorandums, or any other information which could be relevant to the review process.

(5) Certification requirements. Area commanders are responsible for determining the following:

(a) Whether the requestor was a victim of a crime.

(b) If the crime was a qualifying crime pursuant to Sections 679.10(c) and 679.10(d) PC.

(c) Whether the requestor was helpful to the investigation.

NOTE: Helpfulness is a rebuttable presumption, and the Area commander may only withdraw certification if a victim refuses to provide information and assistance when reasonably requested.

(6) Qualifying criminal activity is defined in Section 679.10 PC(c) as:

- (a) Rape.
- (b) Torture.
- (c) Human trafficking.
- (d) Incest.
- (e) Domestic violence.
- (f) Sexual assault.
- (g) Abusive sexual conduct.
- (h) Prostitution.
- (i) Sexual exploitation.
- (j) Female genital mutilation.
- (k) Being held hostage.
- (l) Peonage (also referred to as debt slavery or debt servitude).
- (m) Perjury.
- (n) Involuntary servitude.
- (o) Slavery.
- (p) Kidnapping.
- (q) Abduction.
- (r) Unlawful criminal restraint.
- (s) False imprisonment.
- (t) Blackmail.
- (u) Extortion.
- (v) Manslaughter.
- (w) Murder.
- (x) Felonious assault.

- (y) Witness tampering.
- (z) Obstruction of justice.
- (aa) Fraud in foreign labor contracting.
- (bb) Stalking.

(7) As per Section 679.10(d) PC, the Department will also certify U Visa requests involving criminal activity which is substantially similar to any of the qualifying criminal activities listed in Section 679.10 PC. It is imperative Areas are consistent with their certification determinations statewide. Typical examples of crimes CHP personnel encounter that are substantially similar to a qualifying crime are below:

- (a) A crash resulting in a fatality found to be caused due to negligence or lack of reasonable care [Section 192(c) PC], or a crash that results in a fatality with a Primary Crash Factor (PCF) of Driving Under the Influence (DUI) (Section 191.5 PC) shall be considered substantially similar to the qualifying crime of manslaughter.
- (b) A crash with a PCF of DUI resulting in injuries is substantially similar to the qualifying crime of felonious assault [Section 245(a)(1) PC].

NOTE: After consulting with Division, if there are still doubts or concerns regarding a qualifying crime, contact RPS for further guidance.

(8) Pursuant to standards set forth in the Homeland Security U Visa and T Visa Law Enforcement Resource Guides, it is possible to sign the certification at any stage in the case, including during an investigation, before a trial, whether the victim is needed to testify, and after the case is concluded.

(9) It is important to note the United States Citizenship and Immigration Services (USCIS), a federal agency within the Department of Homeland Security, is solely responsible for adjudicating U Visas. The CHP certification does not guarantee a U Visa petition will be approved by the USCIS. It only indicates the applicant was cooperative with the investigation and was the victim of a qualifying, or substantially similar, crime.

(10) Section 679.10 PC requires law enforcement agencies to provide a copy of the police report, upon request, to the victim, licensed attorney representing the victim, or representative accredited by the U.S. Department of Justice authorized to represent the victim in immigration proceedings within seven days of the request.

(11) Indirect Victims. In some specified cases, the U Visa request may come from a relative of the victim. The Department will certify U Visa requests from the victim's spouse, unmarried children under 21 years of age, parents, or unmarried siblings under 18 years of age **if** the victim is under 21 years of age, **and** was the victim of:

(a) Murder.

(b) Manslaughter.

(c) Or is incompetent or incapacitated as a result of qualifying criminal activity and is unable to be helpful in the investigation or prosecution of the criminal activity.

c. Responsibilities.

(1) Area commanders shall review U Visa certification requests for incidents that occurred within their commands where CHP had primary investigative authority or was the primary agency on-scene.

(2) After a comprehensive review, Area commanders shall forward their recommendations to approve or deny a U Visa request to their respective Division for final approval.

(3) With Division approval, the Area commander shall notify the requestor in writing that the request was approved, denied, or no action was taken due to a lack of information.

(4) Area commanders shall ensure their Area SOP has been updated to include local procedures for receiving, processing, and routing U Visa certification requests.

(5) Area commanders shall ensure the Area SOP includes a procedure for notifying other Area commands or allied agencies when a U Visa certification request has been routed for their review. Local notification procedures should be developed in consultation with local allied agencies and district/city attorneys.

(6) Area commanders shall ensure all Area personnel are aware of this policy and the Area SOP as it relates to U Visa certification requests.

(7) Each Division shall create a U Visa review and approval process which ensures uniformity in certification recommendations and emphasizes timely review.

(8) Areas that receive a U Visa certification request which should be routed to another Area or allied agency do not need Division approval to route the request.

d. Procedures.

(1) Upon receipt, the U Visa certification request should be date and time stamped for recordkeeping purposes.

(2) The Area commander shall determine if:

- (a) The incident occurred within their command, **and**
- (b) The CHP investigated the incident, **or**
- (c) The CHP was the primary agency that responded to the incident.

(3) If the Area commander determines the incident meets the criteria listed in paragraph 6.d.(2), the Area commander shall review the U Visa certification request and determine pursuant to Section 679.10 PC if:

- (a) The U Visa requestor was helpful to the investigation, **and**
- (b) The U Visa requestor is a victim of qualifying crime, **or**
- (c) The U Visa requestor is a victim of a crime that is substantially similar to qualifying criminal activity listed in Section 679.10 PC.

NOTE: Helpfulness is a rebuttable presumption, and a certifying official may only withdraw the certification if a victim refuses to provide information and assistance when reasonably requested.

(4) The decision to certify a U Visa request shall be determined on a case-by-case basis after a comprehensive review by the appropriate Area commander, and approval from the Area's respective Division.

(5) All requests to approve a U Visa certification request must be approved by the Area's respective Division before the requestor is notified in writing of a decision.

(6) Once the decision is made to certify a U Visa request, the commander shall complete the Form I-918, Supplement B, Parts 2, 4, and 6. The Area shall return the U Visa request with a letter from the command explaining the U Visa certification request was granted. Refer to Annex H for a sample letter

(7) If the U Visa certification does not meet the criteria in paragraph 6.d.(2), if possible, the request should be routed to another command or allied agency utilizing locally developed procedures as detailed in the Area SOP.

(a) It is recommended the U Visa requestor be notified in writing if the request is routed to another Area or allied agency for disposition. Refer to Annex I for a sample letter.

(b) If the U Visa requestor delivers a U Visa certification request in person, and it is determined the incident should be routed to another Area command or allied agency, the Area should refuse the request and direct the requestor to the appropriate location.

(c) If the Area receives a U Visa certification request where there is no CHP involvement, nor is there sufficient information to appropriately route the request, the Area shall notify the requestor in writing and return the form. Refer to Annex J for a sample letter.

(8) All requests to deny a U Visa certification request must be approved by the Area's respective Division before the requestor is notified in writing of a decision.

(9) If, in the opinion of the Area commander and with Division concurrence, the U Visa certification request does not warrant certification, the commander shall notify the U Visa requestor in writing. The letter should explain the reason the U Visa certification request was denied. Refer to Annex K for a sample letter.

(10) The Department has 30 days from the date it receives the U Visa certification request, or seven days if the requestor is subject to immigration removal proceedings, to conduct a review and respond to the requestor.

(11) If the review and response will exceed seven days, and it is unclear if the requestor is subject to immigration removal proceedings, the command shall respond to the requestor in writing and ascertain the status of any immigration removal proceedings. Refer to Annex L for a sample letter.

e. Research and Planning Section Notification. Once an Area command has reviewed a U Visa certification request and responded in writing, the Area shall forward a copy of all written correspondence and completed forms to RPS (061) through interoffice mail.

NOTE: This information will be included in an annual legislative report prepared by RPS.

f. Retention. Areas shall retain a copy of all U Visa certification request documentation and associated correspondence for three years.

7. T VISA—FORM I-914, SUPPLEMENT B, DECLARATION FOR TRAFFICKING VICTIM.

a. General.

(1) The VTVPA also created the T Visa, which allows qualified victims of specified human trafficking crimes to apply for citizenship status.

(2) California Assembly Bill 2027 (Chaptered September 28, 2016) created Section 679.11 PC which requires California law enforcement to review T Visa, Form I-914, Supplement B, Declaration for Trafficking Victim requests within 30 days of receipt. If the requestor is subject to immigration removal proceedings, the T Visa certification request shall be reviewed within seven days of receipt.

(3) After review, law enforcement is responsible for providing T Visa certifications under specified circumstances.

(a) Certification criteria for T Visa requests can be found on the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/i-914> by clicking on the “Instructions for Form I-914, Supplement B” link.

(b) The most current T Visa certification form can be found on the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/i-914> by clicking on the “Form I-914, Supplement B, Declaration for Trafficking Victim” link.

b. Policy.

(1) T Visa certification requests are much less frequent than U Visa certification requests. However, if received, Areas shall conduct a comprehensive review using the same process established to review U Visa certification requests, and the approval criteria found on the U.S. Citizenship and Immigration Services website at <https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status>.

(2) Sample U Visa correspondence found in the annexes of this chapter may be adopted to respond to T Visa certification requests. Refer to Annexes H–L.

(3) Areas and Divisions which receive T Visa certification requests are encouraged to contact RPS at (916) 843-3340 for additional assistance.

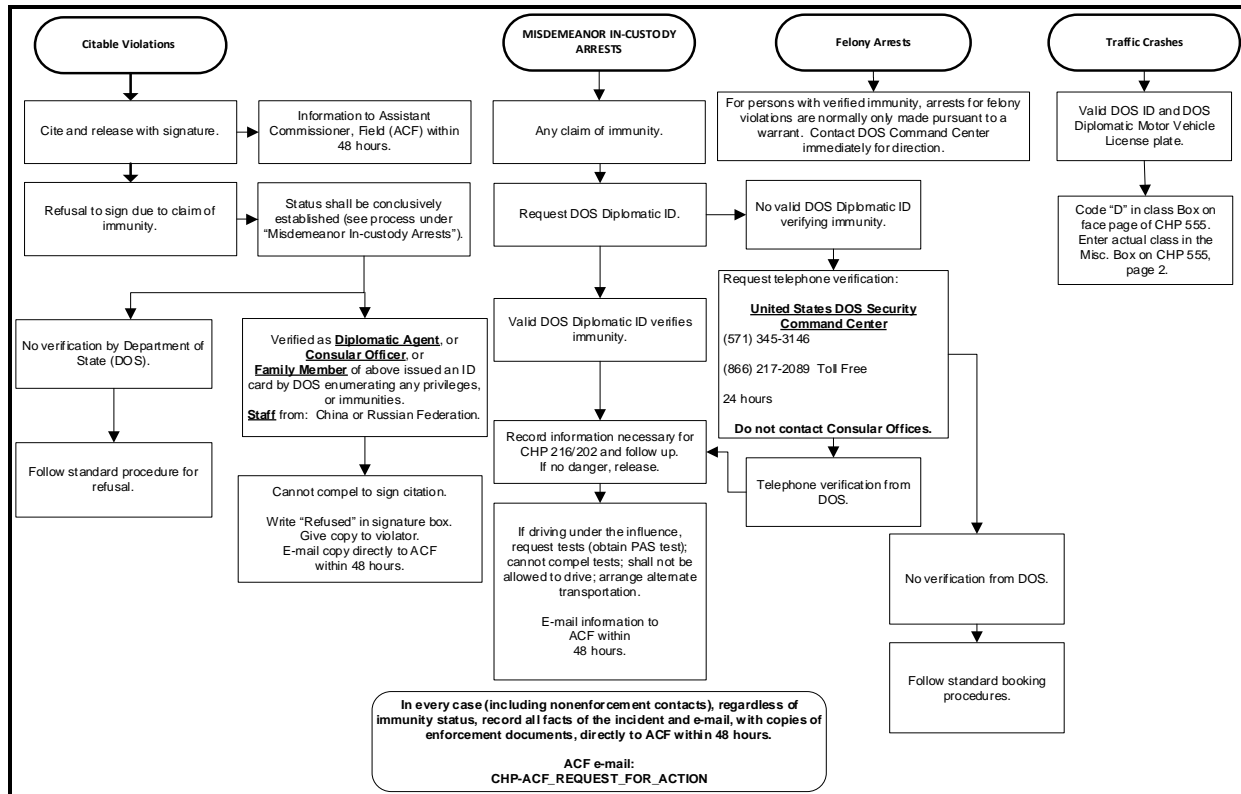
c. Research and Planning Section Notification. Once an Area command has reviewed a T Visa certification request and responded in writing, the Area shall forward a copy of all written correspondence and completed forms to RPS (061) through interoffice mail.

NOTE: This information will be included in an annual legislative report prepared by RPS.

d. Retention. Areas shall retain a copy of all T Visa certification request documentation and associated correspondence for three years.

ANNEX A

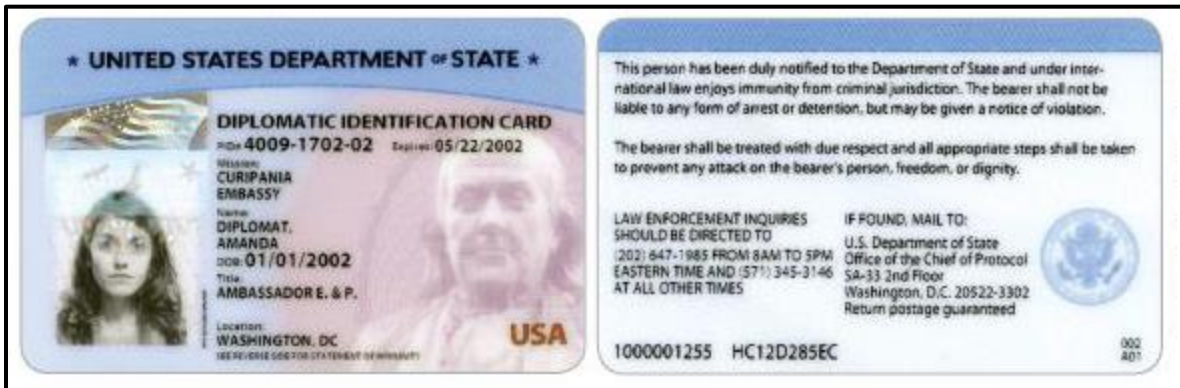
DIPLOMATIC IMMUNITY FLOW CHART



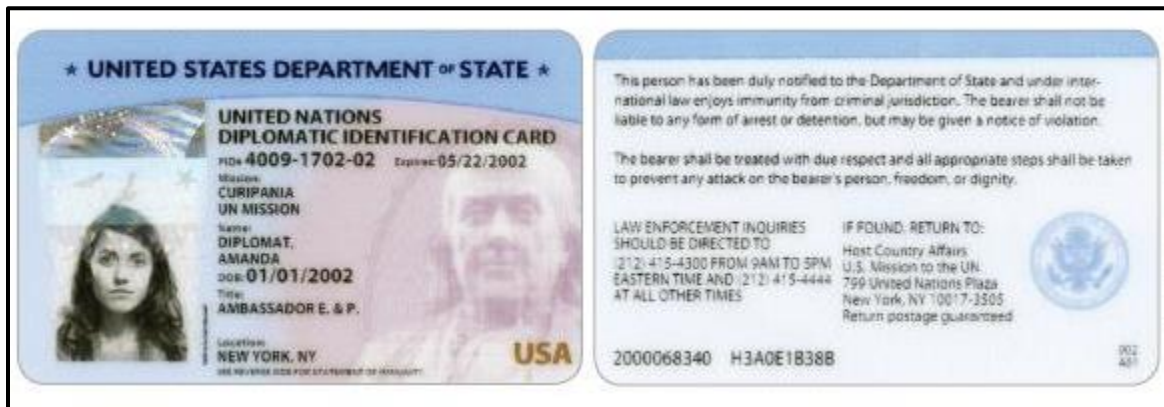
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ANNEX B

DIPLOMATIC IDENTIFICATION CARDS (BLUE-BORDERED)



BLUE-bordered cards of this type are issued to diplomatic officers and their families. They are entitled to full criminal immunity and may not be arrested or detained.

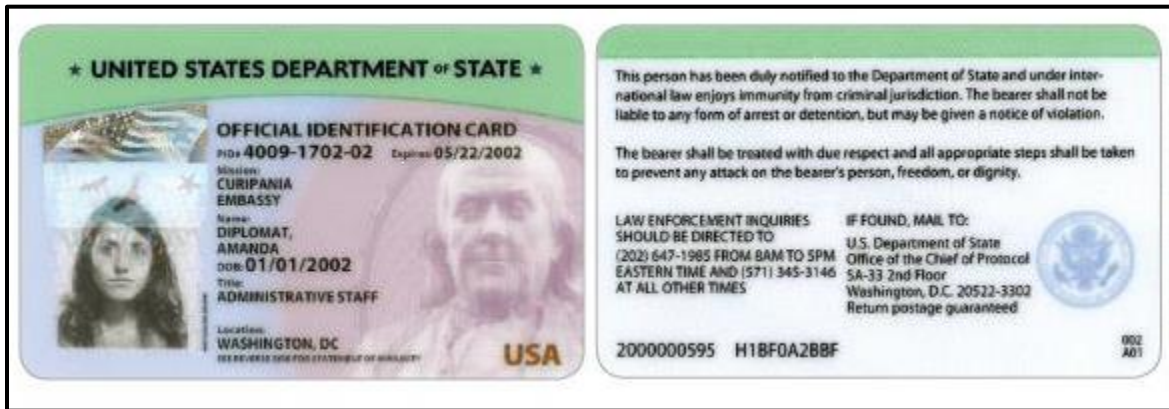


BLUE-bordered cards of this type are issued to United Nations diplomatic officers and their families. They are entitled to full criminal immunity and may not be arrested or detained.

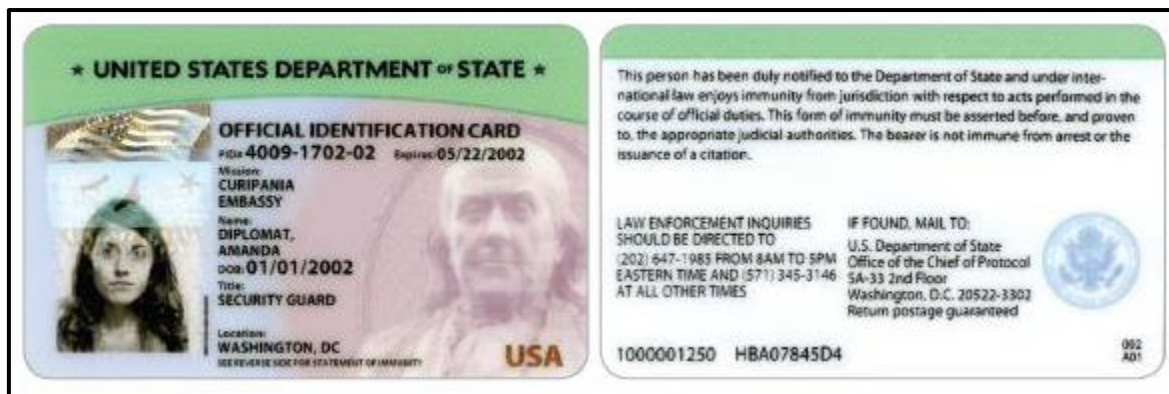
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ANNEX C

EMBASSY IDENTIFICATION CARDS (GREEN-BORDERED)



GREEN-bordered cards of this type are issued to embassy administrative and technical staff employees and their families. This card signifies that the bearer is entitled to full criminal immunity and may not be arrested.



GREEN-bordered cards of this type are issued to embassy service staff employees. This card signifies that the bearer is entitled to immunity for official acts only.

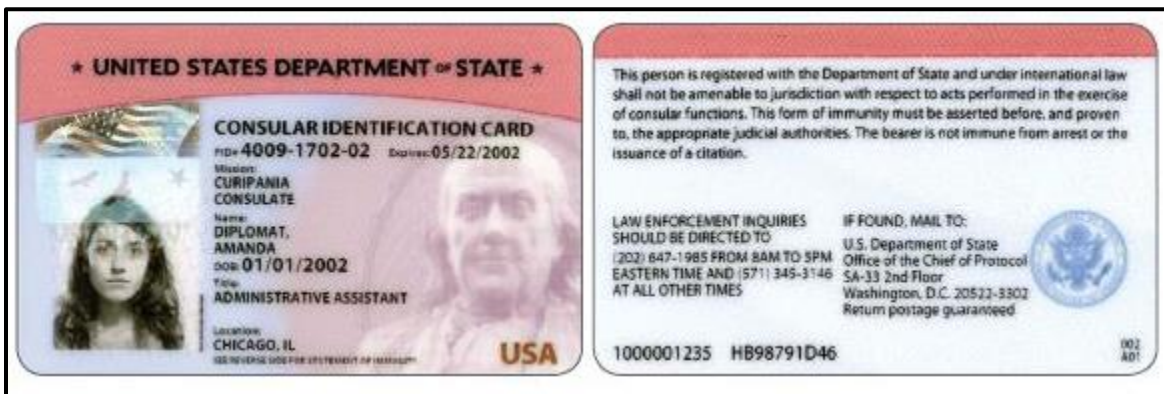
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ANNEX D

CONSULAR IDENTIFICATION CARDS (RED-BORDERED)



RED-bordered cards of this type are issued to Career Consular Officers. This card signifies that the bearer is entitled to criminal immunity for official acts only.



RED-bordered cards of this type are issued to Career Consular Employees. This card signifies that the bearer is entitled to criminal immunity for official acts only.

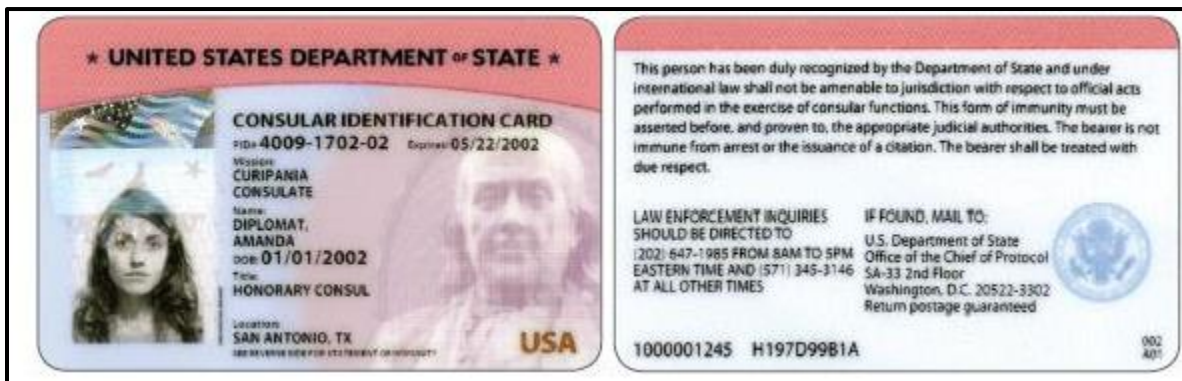
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ANNEX E

SPECIAL CONSULAR IDENTIFICATION CARDS (RED-BORDERED)



RED-bordered cards of this type are issued to Consular Officers/Employees and their families from countries with which the United States has special agreements. They are entitled to full criminal immunity and may not be arrested or detained.



RED-bordered cards of this type are issued to Honorary Consular Officers. This card signifies that the bearer is entitled to limited immunity for official acts only.

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ANNEX F

DIPLOMATIC MOTOR VEHICLE OFFICE DRIVER'S LICENSES



Driver's license currently being issued by the Department of State Diplomatic Motor Vehicle Office. The Department of State began license distribution in July 2011. This license contains a hologram pattern ("U.S. DEPARTMENT OF STATE" and the DOS seal).



Driver's license issued by the Department of State Diplomatic Motor Vehicle Office from March 1996 to July 2011. This license contains a hologram pattern ("U.S. DEPARTMENT OF STATE" and the DOS seal). This license is valid until renewed with the current version.

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ANNEX G

MANDATORY EMBASSY NOTIFICATION LIST

Antigua and Barbuda	Guyana	St. Lucia
Armenia	Hong Kong	St. Vincent/Grenadines
Azerbaijan	Hungary	Seychelles
Bahamas	Jamaica	Sierra Leone
Barbados	Kazakhstan	Singapore
Belarus	Kiribati	Slovak Republic
Belize	Kuwait	Tajikistan
Brunei	Kyrgyzstan	Tanzania
Bulgaria	Malaysia	Tonga
China ¹	Malta	Trinidad and Tobago
Costa Rica	Mauritius	Tunisia
Cyprus	Moldova	Turkmenistan
Czech Republic	Mongolia	Tuvalu
Dominica	Nigeria	Ukraine
Fiji	Philippines	United Kingdom ³
Gambia	Poland ²	Uzbekistan
Georgia	Romania	Zambia
Ghana	Russia	Zimbabwe
Grenada	St. Kitts and Nevis	

¹ Includes Macao. Does not include Republic of China (Taiwan). When Taiwan nationals (who carry “Republic of China” passports) are detained, notification should be made to the nearest office of the Taipei Economic and Cultural Representative, the unofficial entity representing Taiwan’s interests in the U.S.

² Mandatory only for nonpermanent residents in the U.S. (i.e., those not holding a “green card”); for green card holders, notification is upon request.

³ United Kingdom (UK) includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Residents’ passports bear the name of their territory and may also bear the name “United Kingdom.” Whether or not the passport bears the name “United Kingdom,” consular services for these persons are provided by the UK consulates.

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ANNEX H

U VISA APPROVAL EXAMPLE LETTER



**CALIFORNIA
HIGHWAY PATROL**

CALIFORNIA STATE TRANSPORTATION AGENCY

601 North 7th Street, Sacramento, CA 95811 | 916-843-3001
800-735-2929 (TT/TDD)
800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

March 24, 2099

File No.: 123.12345

Mr. John Smith
123 Sample Street
Example Town, CA 12345

Re: Request for I-918 Supplement B Certification, Dated: (add date of request)

Dear Mr. Smith,

Recently, you requested the California Highway Patrol (CHP) Example Area certify your Form I-918 Supplement B, U Nonimmigrant Status Certification, request stemming from an incident which occurred on February 10, 2099. A thorough review of this incident was conducted. It appears this incident meets the criteria identified in Section 679.10 of the California Penal Code, and the Immigration and Nationality Act Section 101(a)(15)(U)(iii). As such, your request was approved.

Please refer to the attached Form I-918 Supplement B, U Nonimmigrant Status Certification request, which has been certified by this command. If you have any additional questions, please contact the CHP Example Area at (123) 555-7890.

Sincerely,

A. M. DILLON, Captain
Commander
Example Area

Attachment

Safety, Service, and Security

CHP 49 (Rev 4-25) OPI 003

AN INTERNATIONALLY
ACCREDITED AGENCY 

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ANNEX I

U VISA ROUTED REQUEST EXAMPLE LETTER



**CALIFORNIA
HIGHWAY PATROL**

CALIFORNIA STATE TRANSPORTATION AGENCY

601 North 7th Street, Sacramento, CA 95811 | 916-843-3001
800-735-2929 (TT/TDD)
800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

March 24, 2099

File No.: 123.12345

Mr. John Smith
123 Sample Street
Example Town, CA 12345

Re: Request for I-918 Supplement B Certification, Dated: (add date of request)

Dear Mr. Smith,

Recently, you requested the California Highway Patrol (CHP) Example Area certify your Form I-918 Supplement B, U Nonimmigrant Status Certification, request stemming from an incident which occurred on February 10, 2099. It appears this incident was investigated by the Example Town Sheriff's Department. As such, your request was routed to the Example Town Sheriff's Department.

If you have any additional questions, please contact the Example Town Sheriff's Department at (123) 555-7891, or the CHP Example Area at (123) 555-7890.

Sincerely,

A. M. DILLON, Captain
Commander
Example Area

Safety, Service, and Security

CHP 49 (Rev 4-25) OPI 003

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ANNEX J

U VISA INSUFFICIENT INFORMATION EXAMPLE LETTER



**CALIFORNIA
HIGHWAY PATROL**

CALIFORNIA STATE TRANSPORTATION AGENCY

601 North 7th Street, Sacramento, CA 95811 | 916-843-3001
800-735-2929 (TT/TDD)
800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

March 24, 2099

File No.: 123.12345

Mr. John Smith

123 Sample Street

Example Town, CA 12345

Re: Request for I-918 Supplement B Certification, Dated: (add date of request)

Dear Mr. Smith,

Recently, you requested the California Highway Patrol (CHP) Example Area certify your Form I-918 Supplement B, U Nonimmigrant Status Certification, request stemming from an unknown incident. Without additional information, the CHP Example Area cannot complete a review of your request.

Please contact CHP Example Area Sergeant Katie Jones at (123) 555-7890, if you have any other information to provide us regarding this incident.

Sincerely,

A. M. DILLON, Captain
Commander
Example Area

Safety, Service, and Security

CHP 49 (Rev 4-25) OPI 003

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ANNEX K

U VISA DENIAL EXAMPLE LETTER



**CALIFORNIA
HIGHWAY PATROL**

CALIFORNIA STATE TRANSPORTATION AGENCY

601 North 7th Street, Sacramento, CA 95811 | 916-843-3001
800-735-2929 (TT/TDD)
800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

March 24, 2099

File No.: 123.12345

Mr. John Smith

123 Sample Street

Example Town, CA 12345

Re: Request for I-918 Supplement B Certification, Dated: (add date of request)

Dear Mr. Smith,

Recently, you requested the California Highway Patrol (CHP) Example Area certify your Form I-918 Supplement B, U Nonimmigrant Status Certification, request stemming from an incident which occurred on February 10, 2099. A thorough review of this incident was conducted. Unfortunately, this incident does not meet the standard of qualifying criminal activity identified in Section 679.10 of the California Penal Code (PC), nor does it meet the standards of the Immigration and Nationality Act Section 101(a)(15)(U)(iii). Additionally, this review found no substantially similar qualifying criminal activity as defined in Section 679.10(d) PC. Therefore, your request to certify your Form I-918, Supplement B, U Nonimmigrant Status Certification, was denied.

If you have any additional questions, please contact the CHP Example Area at (123) 555-7890.

Sincerely,

A. M. DILLON, Captain
Commander
Example Area

Safety, Service, and Security

CHP 49 (Rev 4-25) OPI 003

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ANNEX L

U VISA REMOVAL PROCEEDINGS STATUS REQUEST EXAMPLE LETTER



**CALIFORNIA
HIGHWAY PATROL**

CALIFORNIA STATE TRANSPORTATION AGENCY

601 North 7th Street, Sacramento, CA 95811 | 916-843-3001

800-735-2929 (TT/TDD)

800-735-2922 (Voice)

GAVIN NEWSOM, GOVERNOR

March 24, 2099

File No.: 123.12345

Mr. John Smith
123 Sample Street
Example Town, CA 12345

Re: Request for I-918 Supplement B Certification, Dated: (add date of request)

Dear Mr. Smith,

Recently, you requested the California Highway Patrol (CHP) Example Area certify your Form I-918 Supplement B, U Nonimmigrant Status Certification, request stemming from an incident which occurred on February 10, 2099. Due to the nature of this incident, your request may require more than 14 days to process. As such, the CHP Example Area requests you provide any information related to any pending removal proceedings you may be subject to.

Please contact CHP Example Area Sergeant Katie Jones at (123) 456-7890 and provide the requested information as soon as possible.

Sincerely,

A. M. DILLON, Captain
Commander
Example Area

Safety, Service, and Security

CHP 49 (Rev 4-25) OPI 003

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