



Consular notification and access

What you need to know for Foreign Nationals in your prison

BY WALLY DOERGE

You probably have foreign nationals serving time in your prison. The rules and regulations that apply to the general prison population also apply to foreign nationals. There are also some unique requirements that only apply to foreign nationals in your prison, specifically “consular notification and access” (CNA) requirements. Fulfilling these obligations is required by law and helps the U.S. government protect U.S. citizens who are arrested and incarcerated in other countries. →

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What is CNA?

It's the process of informing a foreign government of the arrest, detention or death of foreign nationals, and allowing that government to communicate with its nationals in detention. In the United States, foreign governments have embassies (a foreign government's headquarters) in Washington, D.C., and some countries also have consulates (branch offices) in other cities. Consular Officers who work at both embassies and consulates, provide assistance to their country's citizens, including those who are arrested or incarcerated. Consular officers can only assist their arrest or incarcerated citizens if they know about the detention and are allowed access to the detainee by local officials. That is why it is important for prisons to have clear CNA procedures in place.

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Consular notification and access requirements are set forth in several international treaties and agreements, most prominently the 1963 Vienna Convention on Consular Relations, (VCCR), a multilateral treaty to which the United States and more than 170 other countries are party. The VCCR requires that we inform an arrested or detained foreign national that they may have their Embassy or consulate notified. The United States has also entered into bilateral treaties that apply to 56 individual countries. Under these bilateral treaties, consular notification is *mandatory* when that country's foreign nationals are arrested or detained in the United States and when our own citizens are arrested or detained in one of these countries. For the 56 "mandatory notification" countries the Embassy or consulate must be informed even if the person being arrested or detained does not request it. (The list of mandatory notification countries is available at <https://travel.state.gov/content/travel/>

[en/consularnotification/QuarantinedForeignNationals/countries-and-jurisdictions-with-mandatory-notifications.html](#).) The VCCR and each of these treaties are binding on federal, state and local government officials under the Supremacy Clause in Article VI of the U.S. Constitution. Providing consular notification and access is the law.

Who is a foreign national for CNA purposes?

A foreign national for consular notification and access requirements is any person who is not a U.S. citizen or U.S. national. This includes short-term visitors, whether here for tourism, business, to study or work, as well as lawful permanent residents or green card holders, and undocumented foreign nationals.

It is important to remember many U.S. citizens also have another nationality, meaning they are also citizens of another country. Consular notification and access obligations technically do not apply to dual-national U.S. citizens. However, when a U.S. citizen who has dual nationality is detained it is good practice to notify the Embassy or consulate of the other country as a courtesy. Since the U.S. government wants to know when U.S. citizens who are dual nationals are arrested outside the United States, we need to make the effort to adhere to CNA requirements in these cases so we are in a position to credibly demand it from authorities abroad.

When do CNA requirements apply?

CNA requirements mostly apply during the initial arrest. There are several circumstances in which correction facilities are encouraged to notify the relevant embassy or nearest consulate, including **when a foreign national is transferred** from one detention facility to another. Consular officials can become extremely upset because they contacted a prison to arrange a phone call or visit, as they had many times previously, only to be told that their citizen was no longer in the facility. The foreign consular officers need to know where their citizens are detained in order to provide consular services and check on their welfare.

Though illness and serious injuries are not specifically covered in the treaties, the Department of State encourages U.S. law enforcement and prison officials to make notification if inmates or detainees are sent to a hospital

or other medical facility for treatment. You should notify the foreign consular officer of their citizen's departure from your facility, and where they are going for medical care. We also encourage you to notify the Embassy or consulate in any situation where a foreign national is in such a critical condition that contacting consular officials would be in that person's best interests--for example, the foreign national is in the Intensive Care Unit, comatose or on a respirator. Notify the foreign consular officer when they return to your facility. If an inmate or detainee dies in your facility, every effort should be made to ensure that notification is provided to the foreign embassy or consulate, in addition to notifying next of kin.

If a detained or incarcerated foreign national originally turned down consular notification following their arrest but requests it later while in detention or while serving their sentence, you must provide notification to the foreign embassy or consulate. When a foreign national changes their mind, send consular notification as soon as reasonably possible under the circumstances. The foreign embassy or consulate may complain that notification was not provided immediately after the arrest. That is why it is critical you keep records indicating notification was initially declined and the foreign national changed their mind. These records help the State Department respond to complaints from foreign embassies and consulates.

How do you fulfill CNA requirements?

Consular notification is fast and easy. Notification can be made by fax, email or telephone. Faxes can be sent at any time, on any day, and the fax confirmation sheet provides a written record of the notification. Email also can be sent at any time of the day or night, weekends and holidays. While faxing is becoming rarer, most foreign embassies and consulates have a dedicated email address for consular notification purposes. The sent email is a record of the notification. Keep a copy of the fax or sent email in the file. If the email or fax does not go through, please email us at consnot@state.gov and we will find the correct contact information. Again, it's essential not only to provide notification, but to document it. In the event the detainee, the detainee's attorney or the foreign government later claims that no offer to provide consular notification was made or notification never happened, including in subsequent litigation challenging their conviction or sentence on the basis of non-notification, you have proof. If you notify by telephone, make a note in the file of the time and date, the **phone number you called, and the name of the person with whom you spoke.**

What happens after you fulfill our CNA obligations?

After the foreign embassy or consulate has been notified of an arrest or detention, what happens next is up to the foreign government's officials. Consular notification and access obligations provide foreign officials and those whom they authorize to have "access" to their nationals. Access may be an in-person visit, a prearranged telephone call or a letter. Whether foreign officials wish to communicate with their citizens and the method depends on the traditions and resources of the country, and the location of the nearest consulate. Some of the services that consular officers may provide include:

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■ REGULATIONS

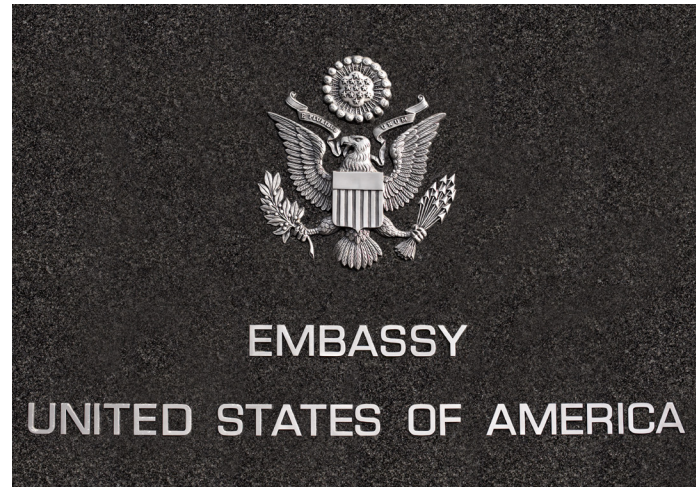
- arranging for legal representation
- contacting family, friends or employers
- visiting the detained foreign national in prison
- providing reading materials and vitamin supplements
- insisting that prison officials are providing appropriate medical care
- monitoring the local criminal justice process by attending hearings, trials and other legal proceedings.

When consular officers visit their nationals in prison, they are expected to follow the regulations of the detention facility regarding security and the time, place and manner of their visits. Regulations should not be so strict as to prevent consular access or frustrate the purpose of consular communication. We urge authorities to grant consular officers liberal access to detained persons, providing them every courtesy consistent with local laws and regulations. Reasonably liberal visiting privileges are particularly important when consular officers must travel long distances to visit their nationals. Remember that treaties are based on reciprocity. What access conditions would you like the U.S. consular officer to experience if visiting a relative of yours, or a resident of your city or state, in a jail overseas?

Consular officers are not permitted to practice law in the United States, but they should generally be given the same communication privileges as defense attorneys. Consular officers may not interfere with the criminal investigation or judicial process. It is not necessary to delay an interview or interrogation to make consular notification or to wait for a foreign consular officer's arrival before questioning a detained person.

Why should you care about CNA requirements?

We want to comply with our international agreements so we can protect U.S. citizens overseas. Millions of U.S. citizens travel, study and work abroad every year. If a U.S. citizen is arrested, detained or incarcerated overseas, we want to ensure that U.S. consular officers who work for the U.S. State Department can provide assistance. Our diplomats and consular officers at U.S. embassies and consulates overseas receive arrest notifications, visit our detained and incarcerated citizens to



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check on their welfare and help them to secure access to legal representation, communicate with family and friends and receive adequate food and medical care. U.S. consular officers make every effort to safeguard U.S. citizens against mistreatment in custody. The way we treat foreign nationals in the United States can and does affect what happens to U.S. citizens who are in trouble abroad. That is crucial to understanding why CNA is so important.

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CNA compliance also helps avoid legal challenges. Oregon, California and Illinois have laws on the books requiring police officers and custodial officials to go through CNA procedures, and several other states have laws covering aspects of CNA. Defense attorneys may attempt to challenge prosecutions on the basis of a failure to provide consular notification. In some states, such as Massachusetts, courts may find that the appropriate remedy for a CNA violation is to have evidence

suppressed or convictions overturned where the failure of notification and access prejudiced the defendant's defense. Why take a chance on this? Following CNA procedures is easy and keeping records of notification avoids creating grounds for challenges of convictions and sentences.

How can the U.S. Department of State help you?

We have resources to make consular notification faster and easier. Our CNA materials are available on our website (travel.state.gov/CNA), including the manual, notification flow chart and a poster with the mandatory statements in several languages. The site is arranged as a step-by-step guide on how to provide consular notification. We provide a form in 28 languages for the inmate to sign, date and indicate whether they have accepted or declined consular notification if they are from a VCCR country. The same forms have space to sign and date a

statement that they understand you will notify the embassy or consulate if the inmate is from a mandatory notification country. Contact information for the foreign embassies and consulates in the U.S., including email addresses, phone numbers and fax numbers are listed on the website. You can find all of these materials at travel.state.gov/CNA.

If you need additional information or guidance on how to carry out consular notification and access, the best way to reach the State Department's CNA Team is by email at consnot@state.gov. We are always happy to answer your questions and provide guidance.

Wally Doerge has managed the Consular Notification and Access Program since 2010. She is currently the State Department subject matter expert on consular notification and access. Wally began her career with the U.S. Department of State in January 1987 at Northeast Passport Processing Center in New York City as a Mail Clerk and has worked in the Bureau of Consular Affairs' Office of Public and Congressional Affairs in Washington, D.C. since 1990.



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