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| FAIRFAX COUNTY POLICE DEPARTMENT  GENERAL ORDER | SUBJECT: IMMIGRATION STATUS, CITIZENSHIP, AND NATIONAL ORIGIN | | NUMBER: 604.0 |
| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: PURPOSE AND POLICY | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| ACCREDITATION STANDARDS: | CALEA 1.2.3 | | |
| | VLEPSC ADM.02.02 | | |


I. PURPOSE

The purpose of this policy is to establish guidelines for contacts between members of the Fairfax County Police Department and documented and undocumented persons.

II. POLICY


The Fairfax County Police Department is committed to providing the highest level of service to all persons and treating all persons with dignity and respect. This commitment is designed to strengthen the trust provided from our community and increase the effectiveness of community policing. In keeping with the principles outlined through [ONE Fairfax](#), members of the Department will provide equal services to all community members regardless of known or perceived race, sex, ethnicity, religious preferences, sexual orientation, immigration status, citizenship or national origin, except where otherwise required by state or federal law.

The Fairfax County Police Department's mission is to fight and prevent crime and provide a culture of safety in the community which preserves the sanctity of all human life. As such, the Department will work with law enforcement entities to fulfill this mission. However, Fairfax County Police officers are not authorized to participate in or facilitate the enforcement of federal civil statutes (i.e. federal immigration laws). Officers shall only conduct a query of a person's information in a law enforcement database for criminal justice purposes, and only as prescribed by law and the regulations of the systems being queried.


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| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: DEFINITIONS | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| ACCREDITATION STANDARDS: | CALEA 1.2.3 VLEPSC ADM.02.02 | | |

I. DEFINITIONS

- A. Administrative Warrant of Removal: An administrative (civil) warrant issued by an immigration official for suspected violations of immigration laws. A Warrant of Removal is not a criminal warrant signed by a judge or magistrate, and it shall not be used by Fairfax County Police officers as the basis to detain or arrest a person.
- B. Documented and Undocumented Person: Any person who is not a citizen of the United States. This includes any person in the United States with documented residency status (i.e. Lawful Permanent Resident, Permanent Resident Alien, Green Card Holder, Student Visa Holder, Visitor Visa Holder, Temporary Work Visa Holder, U Visa Holder, Foreign National, Foreign Government Official, etc.) OR any person who is in the United States with undocumented residency status.
- C. Previously Deported Alien (As defined by [8 U.S.C. § 1326](#)): Any person who has been denied admission, excluded, deported or removed or has departed the United States while an order of exclusion, deportation, or removal is outstanding, AND enters, attempts to enter, or is at anytime found in the United States. Previously deported persons who reenter the United States are in violation of criminal law such that a criminal arrest warrant could be issued for their arrest.
- D. Previously Deported Felon: Any person who has been previously convicted of a felony in the United States and deported or left the United States after such conviction. The unauthorized re-entry of a previously deported felon is a crime subject to imprisonment in accordance with [8 U.S.C. § 1326](#).


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| | <p>TOPICS:</p> <p>DEFINITIONS</p> | |

- E. Criminal Arrest Warrant: A warrant issued by a judge or magistrate supported by probable cause that a specific crime has been committed, and that the person named in the warrant committed said crime.
- F. Criminal Judicial Warrant: A warrant issued by a neutral judicial officer (judge or magistrate) and based on a finding of probable cause of a criminal immigration law violation. Criminal immigration violations for which a criminal arrest warrant could be issued include re-entry into the United States without an exemption by a previously deported alien and the unauthorized reentry of a previously deport felon. See [8 U.S.C. § 1326, Reentry of Removed Aliens](#).

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| | <p>EFFECTIVE DATE:</p> <p align="center">MAY 6, 2020</p> | <p>REVIEW:</p> <p align="center">MAY 2024</p> | |
| | <p>TOPIC:</p> <p align="center">CONTACTS WITH DOCUMENTED AND UNDOCUMENTED PERSONS</p> | | |
| <p>RESPONSIBLE ENTITY: Planning and Research Bureau</p> | | | |
| <p>ACCREDITATION STANDARDS:</p> | <p>CALEA 1.2.3</p> | | <p><input checked="" type="checkbox"/> New Directive</p> <p><input type="checkbox"/> Replaces:</p> <p><input type="checkbox"/> Revised</p> |
| | <p>VLEPSC ADM.02.02</p> | | |

I. CONTACTS WITH DOCUMENTED AND UNDOCUMENTED PERSONS

- A. Contacts with community members shall not be based on the person's known or perceived race, sex, ethnicity, religious preferences, sexual orientation, immigration status, citizenship or national origin. However, officers may take into account the reported physical characteristics of a specific suspect or suspects, based on trustworthy, locally relevant information that links a person or persons with specific physical characteristics to a particular unlawful incident(s). Contacts must be in accordance with all Departmental policies, procedures, and training, specifically [General Order 603.4](#), Police Community Member Contacts, [General Order 601.7](#), Vehicle Traffic Stops and Checkpoints, [Regulation 201.13](#), Human Relations (Community Contacts), and [Regulation 201.22](#), Biased Based Policing.
- B. Officers shall not question witnesses or victims of a crime about their citizenship or immigration status. Identifying information for victims and witnesses may be obtained only to the extent needed for the purpose of a criminal investigation. No witness or victim of a crime shall be subject to detention or arrest for failing to provide identifying information.
- C. Officers shall only conduct a query of a person's information in a law enforcement database for criminal justice purposes, and only as prescribed by law and the regulations of the systems being queried. Officers are prohibited from searching any database to satisfy any curiosity related to a person's immigration status.

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| | <p>EFFECTIVE DATE:</p> <p align="center">MAY 6, 2020</p> | <p>REVIEW:</p> <p align="center">MAY 2024</p> | |
| | <p>TOPIC:</p> <p align="center">CIVIL ENFORCEMENT AND OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL</p> | | |
| <p>RESPONSIBLE ENTITY: Planning and Research Bureau</p> | | | |
| <p>ACCREDITATION STANDARDS:</p> | <p>CALEA 1.2.3</p> | | <p><input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised</p> |
| | <p>VLEPSC ADM.02.02</p> | | |


I. CIVIL ENFORCEMENT

Officers may not participate in, or facilitate, the enforcement of federal civil statutes (i.e. immigration laws). However, this does not preclude officers from responding to any incident to ensure the safety of all involved. When such officer response is necessary, it is not the officer's role to enforce federal civil statutes (i.e. immigration laws).

II. OUTSTANDING ADMINISTRATIVE WARRANT OF REMOVAL

An "Outstanding Administrative Warrant of Removal" and an "Outstanding Administrative Warrant of Arrest for Immigration Violations" are civil administrative warrants. Any form of enforcement of these civil warrants is prohibited, regardless of whether or not the administrative warrant is accompanied by a final order of removal or deportation, or any other civil immigration document that is not accompanied by a criminal judicial warrant. Any hit received through NCIC's Immigration Violators File, reading "Outstanding Administrative Warrant of Removal" **SHALL NOT** be confirmed and no further action taken.

The Department of Public Safety Communications Teletype section **SHALL NOT** confirm any hits for "Outstanding Administrative Warrants of Removal." Any request from an officer to confirm such a warrant shall be escalated to the attention of the Police Liaison Commander for review with the Staff Duty Officer to ensure that officers do not violate this policy.

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| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: INFORMATION ACCESS/SHARING AND FIELD OPERATIONS REQUESTS | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | |
| ACCREDITATION STANDARDS: | CALEA 1.2.3 | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| | VLEPSC ADM.02.02 | | |

I. INFORMATION SHARING AND FIELD OPERATION REQUEST FORM


Fairfax County Police Department employees may access information from secure databases available to them (i.e. ILEADS, LINX, NCIC/VCIN, Department of Motor Vehicle queries etc.) when required for criminal justice purposes or as a function of their employment. Employees are prohibited from sharing personal information about a documented or undocumented person, such as address, phone number, or release date, unless the information sharing request is related to a criminal justice purpose. It is incumbent upon the requesting entity to demonstrate that the information sharing request is related to a criminal justice purpose.

In an effort to document any requests for personal identifying information of a documented or undocumented person, the Fairfax County Police Department has created an [Information Sharing and Field Operation Request Form](#). This form is also used to ensure that any Fairfax County Police Department participation in field operations with other law enforcement entities (i.e. Immigration and Customs Enforcement) is for criminal justice purposes only.

Nothing in this policy shall be construed to prohibit, or in any way restrict, any government 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 in accordance with [8 U.S.C. § 1373](#).

II. INFORMATION SHARING REQUESTS

- A. A Fairfax County Police Department member that receives a request for information regarding a documented or undocumented person's personal information shall be required to complete the Information Sharing and Field Operation Request Form. The completed form shall be immediately forwarded through the employee's chain of command. No information shall


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| | <p>TOPICS:</p> <p style="text-align: center;">INFORMATION ACCESS/SHARING AND FIELD OPERATIONS REQUESTS</p> | |

be provided until the form has been reviewed and approved by a Commander or the Duty Officer.

- B. All completed forms (approved and not approved) shall be forwarded to the Criminal Intelligence Unit for proper tracking.

III. FIELD OPERATIONS

- A. Officers shall not participate in, or facilitate, civil immigration investigations.
- B. Any Fairfax County Police Department employee who is a member of a Task Force that receives a request from Immigration and Customs Enforcement requesting any information or assistance in any matter shall complete the Information and Field Operations Request Form. This form shall be routed through the chain of command as prescribed on the form to assess whether the request is for a criminal matter or civil matter. No information or assistance shall be provided until the form has been reviewed and approved by a Commander or Duty Officer based on the determination that the field operation is related to a criminal matter. The Department shall not release any information that is not related to a criminal matter.
- C. All completed forms (approved and not approved) shall be forwarded to the Criminal Intelligence Unit for proper tracking.
- D. Fairfax County Police Department employees **SHALL NOT** provide access to secured portions of any facilities under Fairfax County Police Department control to any agency that enforces federal civil statutes (i.e. Immigration and Customs Enforcement) for the purposes of civil immigration enforcement.
- E. Officers shall not extend the detention, or create a secondary detention, of any person solely for the purpose of providing access to that person to any agency that enforces federal civil statutes (i.e. Immigration and Customs Enforcement) for enforcement of civil immigration statutes.


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| | <p>EFFECTIVE DATE: MAY 6, 2020</p> | <p>REVIEW: MAY 2024</p> | |
| | <p>TOPIC: ARRESTS OF DOCUMENTED OR UNDOCUMENTED PERSONS</p> | | |
| <p>RESPONSIBLE ENTITY: Planning and Research Bureau</p> | | | |
| <p>ACCREDITATION STANDARDS:</p> | <p>CALEA 1.2.3</p> | | <p><input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised</p> |
| | <p>VLEPSC ADM.02.02</p> | | |

I. ARRESTS OF DOCUMENTED OR UNDOCUMENTED PERSONS

Any arrest of a documented or undocumented person shall be in accordance with [General Order 601](#), Arrest Procedures and [General Order 601.1](#), Misdemeanor Arrests and Summons Release. Officers shall not base the decision of whether to release on a summons on a person's known or perceived race, sex, ethnicity, religious preferences, sexual orientation, or immigration status. Officers are reminded to utilize techniques to establish community ties in an effort to release on summons per [Va. Code Ann. §19.2-74](#), Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.

As stated in [General Order 601.1](#), Misdemeanor Arrests and Summons Release, Section I, Criteria for Release on Summons, at least one of the following conditions must exist before the arresting officer may bring the arrested person before a magistrate for a class 1 or 2 misdemeanor:

- A. The person fails or refuses to discontinue the unlawful act.
- B. The arresting officer believes that the person is likely to disregard the summons. This belief shall be based on at least one of the following facts:
 - 1. The officer is unable to reasonably establish the person's community ties. The lack of proper identification (i.e. driver's license, etc.) does not necessarily mean the person does not have community ties. Officers shall make a reasonable effort to establish the person's ties to the community utilizing their training and experience.

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Techniques to establish community ties may include, but are not limited to, the following examples: interviews of others, phone verification, or utility bills.

Note: Military non-residents may not have a local address and/or may be stationed in the metropolitan area on military orders. As such, these individuals shall not be considered to lack community ties.


Language barriers shall not be a reason for not establishing community ties, as officers shall use appropriate Departmental resources to communicate with the person.

When a person is not complying with legal requests for identification and has not stated their refusal to comply with requests for identification, officers are reminded that verbally passive resistance may be due in part to cultural differences/lack of understanding or mental health issues. In these circumstances, officers shall use de-escalation strategies to gain voluntary compliance as outlined in [General Order 540.2](#), De-Escalation.

Officers shall not consider the existence of a civil administrative immigration warrant in deciding not to release an individual on a summons. As stated in section 604.3, an "Outstanding Administrative Warrant of Removal" and an "Outstanding Administrative Warrant of Arrest for Immigration Violations" are civil administrative warrants. Any form of enforcement of these civil warrants is prohibited.

2. The officer is unable to establish or confirm identity because the person has provided multiple names, multiple false identifications, or other types of false information.

Officers shall accept other forms of identification to include a passport, a license, and documents with identifying information. Officers shall make a reasonable effort to verify the identifying information provided.

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| | <p>TOPICS:</p> <p style="text-align: center;">ARRESTS OF DOCUMENTED OR UNDOCUMENTED PERSONS</p> | |

3. The person attempts to escape or resists arrest or makes statements which indicate an intent to disregard the summons or refuses to sign the summons.
4. The arresting officer has verified the person has previously failed to appear in court.
5. A warrant check discloses the existence of an outstanding criminal warrant on file for the person.

C. If the officer believes that the person is likely to harm themselves, or any other person, they shall act in accordance with [General Order 603.3](#).


II. ARRESTS OF PREVIOUSLY DEPORTED ALIENS (As defined by [8 U.S.C. § 1326](#)) OR PREVIOUSLY DEPORTED FELONS PURSUANT TO AN ARREST WARRANT OR CRIMINAL JUDICIAL WARRANT

- A. Officers may take a Previously Deported Alien (As defined by [8 U.S.C. § 1326](#)) or Previously Deported Felon into custody pursuant to a criminal arrest warrant or criminal judicial warrant that has been issued for that person upon verification that it is still active.


III. WARRANTLESS ARRESTS OF PREVIOUSLY DEPORTED FELONS

A. In accordance with [Va. Code Ann. §19.2-81.6](#), Authority of Law-Enforcement Officers to Arrest Illegal Aliens, officers may arrest without a warrant based on a "Previously Deported Felon" NCIC return only when the following occur:

1. The officer has reasonable suspicion that the person has committed or is committing a crime, **AND**
2. The Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security (ICE) confirms that the person is illegally present in the United States and has previously been convicted of a felony in the United States and deported or left the United States after such conviction.

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- B. Officers shall take the documented or undocumented person immediately to a magistrate and charge any state or local charges first.

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| FAIRFAX COUNTY POLICE DEPARTMENT  GENERAL ORDER | SUBJECT: IMMIGRATION STATUS, CITIZENSHIP, AND NATIONAL ORIGIN | | NUMBER: 604.6 |
| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: CONSULAR NOTIFICATION REQUIREMENTS PER THE VIENNA CONVENTION | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | |
| ACCREDITATION STANDARDS: | CALEA 1.2.3 | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| | VLEPSC ADM.02.02 | | |


I. CONSULAR NOTIFICATION REQUIREMENTS PER THE VIENNA CONVENTION

In accordance with the Supremacy Clause of the U.S Constitution (U.S. Const. art. VI, cl.2), and Article 36 of the Vienna Convention on Consular Relations of 1963, any officer effecting a custodial arrest of a documented or undocumented person shall inquire as to their citizenship. This inquiry is to determine whether or not mandated reporting is required. In circumstances where mandated reporting is not required, officers will ascertain whether the arrested person would like their consular office notified. The inquiry shall only occur AFTER the person has been placed under arrest and is solely for the purpose of compliance with the Vienna Convention.

Any information received through the authority of the Vienna Convention is for the sole purpose of notifying the consular office from which the documented or undocumented person claims citizenship.

II. PROCEDURES FOR MANDATORY CONSULAR NOTIFICATION

- A. Upon learning that mandatory notification is required, the officer shall contact the consular office from the country of which the documented or undocumented person claims citizenship.
- B. The required notification shall be made by the arresting officer without delay, as soon as possible after completing the detention or arrest process. Notification can be made via phone or fax. Please see the Department of State's [Consular Notification and Access Manual](#) for further guidance.
- C. Article 37 of the [Vienna Convention on Consular Relations](#) of 1963 also requires mandatory consular notifications regarding:

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1. The death or serious injury of a documented or undocumented person.
2. A wreck or crash (within Fairfax County) involving a ship or aircraft registered in a foreign country.


III. PROCEDURES FOR NON-MANDATORY CONSULAR NOTIFICATION

- A. Upon learning that mandatory notification is not required, the officer shall ask whether the documented or undocumented person wishes the officer to contact the consular office from the country of which they claim citizenship.
- B. The notification shall be made by the arresting officer without delay, as soon as possible, after completing the detention or arrest process. Notification can be made via phone or fax. Please see the Department of State's [Consular Notification and Access Manual](#) for further guidance.

IV. DOCUMENTATION

Officers shall document in the current Records Management System the following (only those that apply):

- The fact that the officer offered to contact the consulate office from which the documented or undocumented person claims citizenship.
- The specific country's consulate office contacted.
- How the specific country's consulate office was notified (i.e. phone or fax).
- In instances of non-mandatory notification, the fact that the documented or undocumented person declined the offer to contact their consulate office.


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| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: DIPLOMATIC IMMUNITY | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| ACCREDITATION STANDARDS: | CALEA 1.2.3 VLEPSC ADM.02.02 | | |

I. DIPLOMATIC IMMUNITY

Documented or undocumented persons designated as diplomatic agents, their household family members, members of their administrative and technical staff, and members of their service staff are granted various levels of immunity from arrest, detention, or prosecution.


A. Diplomats of all levels are subject to the following actions:

1. Diplomats or consular officers, unable to produce satisfactory identification in situations that would normally warrant arrest or detention, should be informed that they will be detained until proper identity can be confirmed by the United States Department of State.
2. Officers may issue a traffic summons to ANY diplomat or consular officer, when circumstances dictate. Individuals CANNOT be taken into custody for refusing to sign the summons. Copies of the summons should be distributed in the normal manner. Although the charged individual may or may not appear in court, the Department of State monitors individuals' driving behavior and will suspend the operators' licenses of those who demonstrate irresponsible habits.
3. Diplomats and consular officers who are driving while intoxicated should not be permitted to continue driving. Sobriety tests may be offered, but may not be required or compelled. Alternate arrangements shall be made for transportation. Officers shall make every effort to have the vehicle removed by making arrangements with the detained person or through the appropriate embassy via the Department of State. If the vehicle presents an immediate hazard or is obstructing traffic, it may be moved off the


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| | TOPICS: DIPLOMATIC IMMUNITY | |

roadway. Vehicles may be impounded in accordance with established procedures if all other efforts to secure the vehicle fail. Criminal offenses involving diplomats must be developed and documented precisely and in detail. Although a physical arrest cannot be made, the Department of State may seek approval for prosecution or termination of immunity for unusual cases which ensure successful prosecution.

4. Officers may exercise the option to obtain a warrant of arrest. Although it cannot be served, it can be entered into the records of the United States immigration authorities and thus serve to bar the subsequent issuance of a United States visa permitting such person to reenter the United States.
 5. Police authorities may intervene, to the extent necessary, to halt such activity in those circumstances where public safety is in imminent danger or a serious crime may otherwise be committed.
 6. In addition to personal immunity, the private residence, automobile or other property is inviolable and cannot be searched or seized. However, in circumstances where public safety is in imminent danger or it is apparent that a serious crime may otherwise be committed, officers may intervene to the extent necessary to halt such activity.
- B. In any case in which a question arises concerning a person's diplomatic immunity or what action might be appropriate, the following offices shall be contacted:
- Department of State Operations Command Center (24 hours) - 202-647-1512 or Diplomatic Security Command Center at 571-345-3146.
 - Department of State Office of Protocol - Immunity Status during normal business hours, 202-647-1985.
 - Department of State Office of Foreign Missions DMV - Status of vehicle registration, license plates, driver licenses, or other motor vehicle information, 202-895-3521 (0800-1700 Monday – Friday).

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| | <p>TOPICS:</p> <p style="text-align: center;">DIPLOMATIC IMMUNITY</p> | |

- Reporting of traffic incidents/crashes, issuance of summonses, etc., involving foreign missions personnel OFMDMVENforcement@state.gov.
- C. The Department of State is interested in all incidents, including traffic crashes, summonses, and criminal complaints involving a diplomat or consular officer. The Bureau of Diplomatic Security will be notified via National Law Enforcement Telecommunications System (NLETS) of any incident involving resident foreign officials or diplomats, their families, or their properties. Within 24 hours of such an incident, the officer handling the matter will send a message to the Department of Public Safety Communications (DPSC) Service Desk providing them with the information to send an NLETS message to the Department of State. The text of the message should contain only basic information. The DPSC Service Desk will send this message to NLETS terminal #DCDOS0005. The officer's incident report shall reflect that an NLETS message was forwarded to the Department of State.

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| | EFFECTIVE DATE: MAY 6, 2020 | REVIEW: MAY 2024 | |
| | TOPIC: LEGAL REFERENCES | | |
| RESPONSIBLE ENTITY: Planning and Research Bureau | | | <input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Replaces: <input type="checkbox"/> Revised |
| ACCREDITATION STANDARDS: | CALEA N/A VLEPSC N/A | | |

I. LEGAL REFERENCES

- A. [Va. Code Ann. § 19.2-74](#) Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special conservators of the peace.
- B. [Va. Code Ann. § 19.2-81.6](#) Authority of law enforcement officers to arrest illegal aliens.
- C. [Vienna Convention on Consular Relations](#), 21 U.S.T 77
- D. [Vienna Convention on Diplomatic Relations](#), U.S.T 3227
- E. [8 U.S.C. § 1326, Reentry of Removed Aliens](#)
- F. [8 U.S.C. § 1373, Communications between government agencies and the Immigration and Naturalization Service](#)

General Order Series 604, Immigration Status, Citizenship, and National Origin is effective on May 6, 2020, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:



Chief of Police

APPROVED BY:



County Executive