

7 FAM 430 PRETRIAL CONFINEMENT

*(CT:CON-84; 08-26-2004)
(Office of Origin: CA/OCS/PRI)*

7 FAM 431 BACKGROUND

(CT:CON-84; 08-26-2004)

A U.S. citizen or national prisoner often finds the period between initial arrest and final judicial action the most confusing and daunting part of the incarceration experience. It is also generally the period in which consular involvement is most needed, and often the period in which you can provide the most effective consular assistance. This period is often characterized by:

- (1) The arrestee's lack of understanding of how the host country judicial system functions, as he/she (and his/her family back in the U.S.) starts an often-difficult learning curve;
- (2) Radical mood swings as the arrestee goes from an unfounded hope for early release to absolute despair, a common part of the cycle of learning to accept and cope with his or her new reality;
- (3) Difficulties with local attorneys who do not appear to be taking aggressive action; who make unexpected demands for increased fees; who do not stay in contact with the arrestee, and/or do not provide adequate feedback;
- (4) Physical problems brought about or exacerbated by radical changes in diet, insufficient nutrition, harsh living conditions; substance withdrawal; lack of needed medicines, etc.;
- (5) Complications because the prisoner does not have local residence. In countries where almost all local national arrestees are released on bail or recognizance pending trial, the U.S. citizen or national prisoner, generally ineligible because of the lack of ties, often does not "fit" into the host country's prison system;
- (6) The tendency of arrestee's family members to be very active, frequently contacting the post, generating congressional, media and other inquiries, criticizing what they see as U.S. government inaction, inattention or even complicity in the arrest and detention; and

- (7) Shady attorneys or persons who, alleging they have the power or contacts to free the arrestee for a price, often victimize the arrestee and family members.

7 FAM 432 POLICY

(CT:CON-84; 08-26-2004)

The Department expects consular officers to be particularly active in, and to fully engage in, the case during the often-lengthy pretrial period. You should take whatever steps, including frequent visits, needed to:

- (1) Protect the well-being and civil rights of the arrestee;
- (2) Provide needed consular services such as EMDA or administer a trust fund in a timely and efficient manner;
- (3) Track the process of the case through the host country's legal system; and
- (4) Keep the Department, family members, congressional representatives and others full informed on all aspects of the case.

7 FAM 433 VISITATION

(CT:CON-84; 08-26-2004)

Between July 1976 and August 1978, the Department required that each institution at which a U.S. citizen or national was incarcerated in a foreign country be visited at least once monthly. This global requirement was modified, effective August 17, 1978, permitting Chiefs of Mission to determine the interval between regularly scheduled visits to U.S. citizen or national prisoners, and thus allowing each Chief of Mission to decide how best to use available resources to achieve the Mission's overall objectives.

NB: In granting Chiefs of Mission this discretion, the Department in no way intended to diminish essential services to Americans incarcerated abroad. On the contrary, the Department thought that in some countries regularly scheduled post-sentencing prison visits at intervals longer than a month would permit earlier initial visits and more frequent visits during the pre-trial stage of a prisoner's confinement when the incarcerated citizen or national is most in need of advice and assistance.

7 FAM 433.1 Purpose

(CT:CON-84; 08-26-2004)

The principal purposes of your consular visits are:

- (1) To monitor the physical and mental well-being of incarcerated U.S. citizens or nationals;
- (2) To ensure that U.S. citizen or national inmates are being treated humanely in accordance with conventions in force and commonly accepted international standards;
- (3) While the term "international standards" is subject to individual government's interpretations, there are guidelines established by the UN, and available on the CA Intranet at UN NON BINDING DECLARATIONS, including;

"Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment";

"Standard Minimum Rules for the Treatment of Prisoners";

"Principles of Medical Ethics..."; and

"Rules for the Protection of Juveniles Deprived of their Liberty."

NB: Remember that these standards are only recommendations. They do NOT have the strength of international law. You may, however, find them useful in arguing for improved conditions for arrestees.

- (4) To ascertain if any U.S. prisoners may need emergency medical care;
- (5) To monitor whether attorneys retained by U.S. inmates are in contact with them and rendering them appropriate and adequate counsel and other legal services;
- (6) To keep you up-to-date on the prisoners' situations, so in turn you can keep the Department, relatives and members of Congress informed;
- (7) To keep prisoners updated on any developments that may relate to their cases such as information obtained from defense counsels, prosecutors, judges, and any developments on the status of

bilateral treaties relating to prisoner matters;

- (8) To identify and gain access to any other U.S. citizens or nationals whose arrest and imprisonment have not been reported by local officials or other sources;
- (9) To deliver medical or supplementary diet assistance under the EMDA program or funds received via OCS Trust, (See 7 FAM 440);
- (10) To impress upon host country prison directors that the U.S. Government is sincerely interested in the welfare of its incarcerated citizens or nationals, regardless of the charges against them;
- (11) To nurture and maintain rapport and cooperative relationships with host country prison directors, law enforcement officials, prosecutors, etc.; and
- (12) To reassure the prisoners that the U.S. government has a sincere interest in their physical and emotional well being.

7 FAM 433.2 Scheduling Visits

(CT:CON-84; 08-26-2004)

A consular officer should visit a U.S. citizen or national in pretrial confinement as often as is prudent and reasonable consistent with the purposes outlined in 7 FAM 433.2 above. Each post should establish a regular schedule of visits to individual prisoners that meet the above goals.

7 FAM 433.2-1 General Policy:

(CT:CON-84; 08-26-2004)

- a. Circumstances generally mandate frequent visits in the early stages, decreasing as the case proceeds towards trial.
- b. Visits to U.S. citizen and national prisoners in pre-trial status should occur not less than monthly. (See 7 FAM 460 for visits to convicted prisoners).

7 FAM 433.2-2 Exceptions

(CT:CON-84; 08-26-2004)

- a. The Department recognizes that there are posts where the prison and judicial systems are modern and enlightened, and post may believe frequent consular visits following the initial contact are normally not necessary.
- b. Additionally, there are circumstances in which monthly visits following the initial consular visit to pretrial prisoners can be successfully accomplished by FSN's, Consular Agents, or other Embassy staff operating under the instruction of the Consular Section Chief.
- c. Department is willing to authorize alternative visit schedules and/or methods. Posts should:
 - (1) Develop information that will support an alternative schedule or method. The worksheet at 7 FAM 430 Exhibit 1 elicits the type of information the Department would like to consider in evaluating these requests; and
 - (2) Submit request by cable addressed to CA/OCS/ACS.

7 FAM 433.3 Prisoners Not Wishing Visits:

(CT:CON-84; 08-26-2004)

U.S. citizen or national prisoners who do not wish to be visited should generally have their wishes respected after the initial visit:

- (1) Determines to your satisfaction that a prisoner really does not wish to be visited. You should get confirmation of this directly from the prisoner during the initial visit;
- (2) Explains to the prisoner how you can be contacted if he or she changes his or her mind;
- (3) Reports the circumstances to the Department (CA/OCS/ACS);
- (4) Monitors the prisoner's welfare as best you can by checking with prison officials or asking other U.S. citizen or national prisoners during your routine visits to the prison; and
- (5) If subsequent events indicate that the prisoner has changed this decision, or that over-riding considerations may make an interview necessary, you should not hesitate to ask to see the prisoner.

FYI: Bear in mind that some prisoners will initially decline a consular visit because they believe they will be released shortly, and/or they are mistrustful of U.S. officials. However, experience has shown that many of these prisoners change their minds once they understand their release is not imminent, and they learn that the role of a U.S. consular official is quite different from U.S. law enforcement officials.

7 FAM 434 REPORTING

(CT:CON-84; 08-26-2004)

- a. Visiting officers should make adequate notes of prisoner interviews for inclusion in the post's file on each individual case.
- b. Posts must send a brief report to the Department on each visit. Types of information include:
 - (1) Prisoner's general health and appearance;
 - (2) Information provided by prisoner regarding status of his/her case;
 - (3) Information provided by prison authorities or lawyers regarding prisoner or case status;
 - (4) Information passed to prisoner by visiting consular officer;
 - (5) Mail, books, toilet articles, etc. left with prisoner;
 - (6) Actions taken under the EMDA program;
 - (7) Disbursement of funds from prisoner's trust;
 - (8) Messages from family members, friends, etc.;
 - (9) Changes to Privacy Act Waiver; and
 - (10) Substantive complaints.
- c. Avoid including in post files or reports to the Department any uncalled for or gratuitous remarks or comments that might prove embarrassing if required to be released later under the Privacy or Freedom of Information Acts.

FYI: You may submit a single, combined message when reporting on a visit to a group of prisoners.

7 FAM 435 FUNDS

(CT:CON-84; 08-26-2004)

Money, in a variety of forms and sources, is generally an inherent part of arrest cases. As consular officer, you need to approach this topic carefully, and with full knowledge of what you should and should not do.

7 FAM 435.1 Arrestee's Personal Funds

(CT:CON-84; 08-26-2004)

U.S. citizens or nationals generally have some money when initially arrested, and often this amount is sizeable, requiring judicious safekeeping if:

- (1) The funds have been confiscated at the time of arrest, ensure that the prisoner has received an appropriate receipt. With his or her consent, review the receipt and enter the material information in your visit notes;
- (2) The U.S. citizen or national has retained or regained possession of his personal funds, you may wish to caution that even small amounts of cash in a prison environment can place him or her in harm's way from other prisoners or even guards;
- (3) You should **not** take possession of any private funds for safekeeping, but you may:
 - (a) Outline the prison's procedures, if any, for safeguarding cash (and other valuables); and

Recommend he/she give the funds to a family member or trusted associate.

7 FAM 435.2 Family Funds

(CT:CON-84; 08-26-2004)

Often a prisoner must rely on family to provide funds for various reasons,

including in some cases, basic necessities such as food. You should help the prisoner and family understand the best way to route, safeguard and disburse such funds. The various methods of sending funds outside of the U.S. are outlined in 7 FAM 340. Funds may be sent to:

- (1) **Private Attorney:** Some family members prefer to have the arrestee's attorney receive and disburse funds. While this is their decision, you may want to emphasize that any attorneys on post's lawyers list are there based on their legal standing, and post cannot attest to their fiscal reliability;
- (2) **Prison Banks:** Some detention facilities provide a mechanism for depositing funds on the prisoner's behalf, not only to safeguard the funds, but also to be aware of, and control, the amount of money circulating within a facility to reduce in-house crime, substance abuse, violence and bribery. Provide guidance to the prisoner and family members on using such mechanisms if they exist in your district;
- (3) **Other Family Members or Friends Abroad:** Some family members may want to send money to other relatives or close friends near the place of incarceration. This is their decision to make; and
 - (a) You should, however, warn them of the dangers of losing the funds with little or no recourse, particularly when sending to "friends" that the arrestee has met in prison, or other individuals not really known to the family members back in the U.S.; and

You should consider recommending the OCS TRUST procedure as a safer alternative to this arrangement.

- (4) **OCS TRUST:** Where the above systems are either nonexistent or unreliable, you should instruct the prisoner and family members on using the OCS/TRUST procedures to transmit and disburse money on behalf of the prisoner. See **7 FAM 440** for guidelines on using the OCS TRUST procedures.

7 FAM 436 THE CASE OFFICER CONCEPT

(CT:CON-84; 08-26-2004)

To the extent possible, the same consular officer should visit a prisoner regularly. There are several advantages to such a "case officer" approach:

- (1) The consular officer becomes thoroughly familiar with the specific facts and problems of the prisoner's situation;
- (2) The officer can become more efficient and responsive to the prisoner's needs;
- (3) The officer will be a more effective liaison with attorneys, court and prison officials, and prosecutors;
- (4) The officer will be able to respond promptly and competently to requests for information from the Department, host government officials, and the prisoner's relatives;
- (5) Few things are more discouraging to a prisoner than to detail an urgent need to the visiting consular officer, only to have a different consular officer on the next visit disclaim all knowledge of the matter; and
- (6) The "case worker" principle will also assist each post to better estimate the number of hours necessary to conduct its regular prisoner visitation schedule.

7 FAM 437 THROUGH 439 UNASSIGNED

7 FAM 430 EXHIBIT 1 AMERICAN PRISONERS IN PRE-TRIAL CONFINEMENT

(CT:CON-84; 08-26-2004)

WORKSHEET TO DETERMINE OPTIMUM VISITATION SCHEDULE

DEMOGRAPHICS

How many U.S. citizen or national prisoners currently in pretrial status? _____

How many different penal institutions hold U.S. citizen or national prisoners in pretrial status?

Present number _____

Potential Number _____

How close is the penal facility nearest post?

Miles/Kms _____ Hours _____

How distant is the penal facility furthest from post?

Miles/Kms _____ Hours _____

Does a visit to most facilities require an overnight stay? **YES NO**

COMMUNICATION

Is English commonly spoken? **YES NO**

Do all prisoners presently in pre-trial status speak the host language sufficiently? **YES NO**

Do prisoners have reasonable access to telephones? **YES NO**

Can they call:

Attorneys? **YES NO**

Consul? **YES NO**

Family members? **YES NO**

Are prisoners allowed to send letters? **YES NO**

How often? _____

LEGAL SYSTEM

Do host country laws provide a reasonable measure of individual human rights and civil protections to individuals who are arrested or indicted? **YES NO**

Do local police and other arresting authorities generally know and observe the rights granted individuals under local law? **YES NO**

Is post aware of any instances of abuse or maltreatment involving U.S. citizen or national arrestees within the past two years? **YES NO**

Where any of these claims verified? **YES NO**

Did the post protest the allegations? **YES NO**

Did local authorities respond appropriately to these protests? **YES NO**

DETENTION FACILITIES

Are facilities equipped with:

Medical personnel **YES NO**

Clinic or Hospital **YES NO**

Library with English reading material **YES NO**

Exercise yard or facilities **YES NO**

Chapel or visiting clergy? **YES NO**

ATTORNEYS

Are local attorneys generally reliable? **YES NO**

Do they visit prisons regularly **YES NO**

Does the system ensure that prisoners are aware of hearings? **YES NO**

Is reliable transportation provided for prisoners to attend hearings?

YES NO

POST PROPOSAL

Consular Officer will visit each prisoner every _____

Interim Visits will be made every _____ by:

Telephone? **YES NO**

Alternate Embassy personnel? **YES NO**

Local Volunteers? **YES NO**