

Chapter 8 Further Medical Examinations

Under no circumstances will a CBP officer administer medical techniques, medicines, or preparations, even at the request of medical personnel. However, the CBP officer is still responsible for all enforcement decisions regarding the person while at a medical facility.

This does not preclude an officer from providing lifesaving emergency medical care prior to arriving at the medical facility.

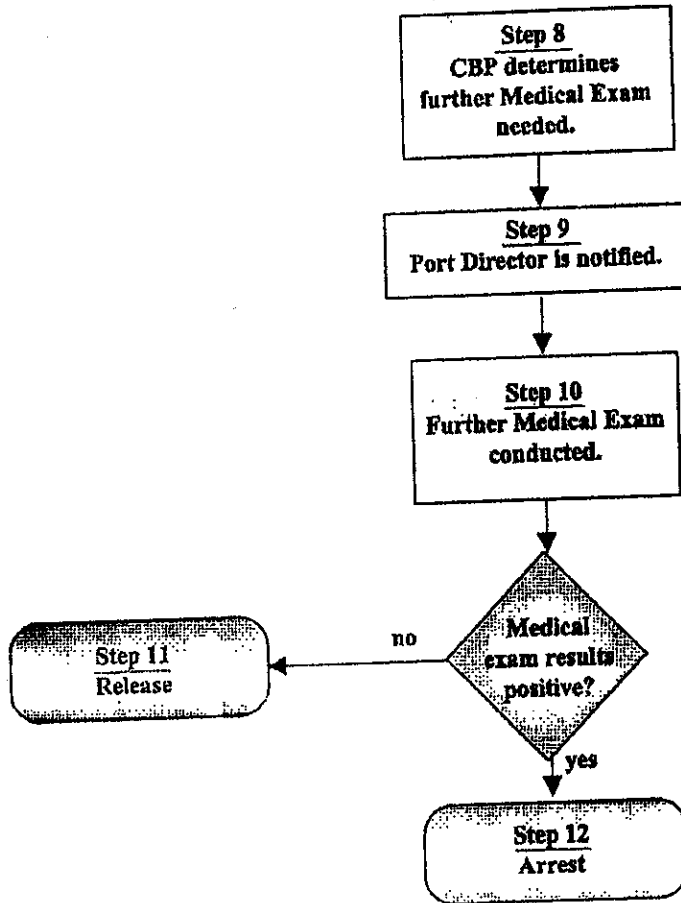
h. Physician-Directed Medical Treatment

Procedures deemed necessary for medical management of the patient, such as surgically removing balloons, are not acts of the Government for Fourth Amendment purposes, as long as the decision to employ such procedures is not based on any request, advice, or encouragement by any law enforcement officer.

You must, however, retain any evidence discovered by the medical personnel.

Whenever possible, obtain from medical personnel any documentation that may be available concerning statements the person may have made to the physician, observations by the physician, etc.

Chapter 9



When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office.

Chapter 9 Release

a. Completion of the CBP Examination

When a person has undergone an enforcement examination and/or personal search that has resulted in no seizure, administrative penalty, immigration adverse action, or arrest, and all CBP and other inspection agency regulatory processing has been completed, immediately advise the person that CBP processing has been completed and he may leave the facility.

You must ensure that appropriate professional courtesies are extended to the person. Examples include thanking him for cooperating in the process and offering to address any questions.

You, your supervisor, or a passenger service representative should address any immediate questions concerning the process, including, if appropriate, advising the person in general terms why he was selected for the search.

As part of the CBP policy to provide quality service to the traveling community while accomplishing enforcement responsibilities, CBP will provide payment on behalf of international travelers for reasonable expenses incurred as a result of a detention for a medical examination that produces negative results. The Detained Traveler Purchase Card and/or convenience checks (separately or in combination) shall be used to provide payment on behalf of these international travelers (*see Customs Directive 5220-035 dated September 13, 2000 Detained Traveler Purchase Card Program*).

The supervisor will make every effort to assist the person in his departure as workload and mission permit. Examples include offering assistance in repacking vehicles or baggage, and obtaining assistance from local transportation officials with baggage handling or onward travel.

Pay special attention to persons who have been delayed for extended periods of time and who may have missed onward travel or are leaving the CBP facility during late hours, when outside facilities are closed. Arrange to obtain assistance from transportation officials or traveler's aid organizations.

Document efforts to assist the person in the TECS and/or IDENT/ENFORCE report.

Do **not** advise outside persons regarding the specific reasons for the delay, other than saying that *the person was delayed completing CBP formalities*.

b. Returning Persons to the CBP Facility

When a person has undergone an examination and/or personal search away from the CBP facility (e.g., at a medical facility) that has resulted in no seizure or arrest, the person must be returned to the CBP facility as promptly as possible. The person has the option to depart from the medical facility if they choose. Document their request in the TECS and/or IDENT/ENFORCE report.

Two CBP officers, or one CBP officer and another law enforcement officer must accompany the person. At least one of the officers should be of the same gender as the person being transported.

Chapter 9 Release

Unless specific facts indicate danger to the officers on the return trip, handcuffing is **not** permitted.

Handcuffing on the return trip, without circumstances justifying such an action, may subject an officer to a personal lawsuit for an unreasonable seizure. Record any instance where a person was handcuffed on the return trip, including the circumstances that warranted that action, in the TECS IOIL and/or IDENT/ENFORCE.

When practical, do not use special secure personnel transport vehicles for the return trip.

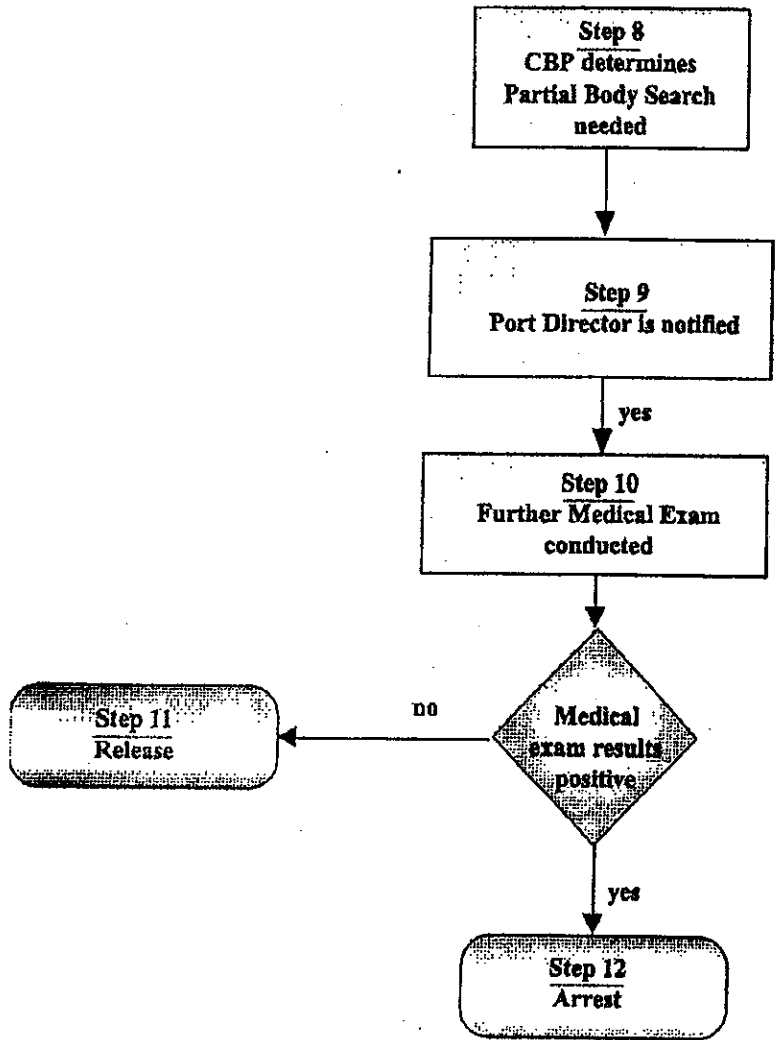
Maintain contact with SECTOR radio at all times, and provide departure and arrival times and mileage to SECTOR.

c. Written Report

When a personal search and detention does not lead to a seizure, arrest, administrative penalty, or immigration adverse action report it in the IOIL, Negative Search Report.

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Chapter 10



When a person is detained for 8 hours, ICE will contact the U.S. Attorney's Office

Chapter 10 Miscellaneous

I. Probable Cause DISCOVERED DURING THE PERSONAL SEARCH PROCESS

a. Probable Cause Defined

Probable cause is a collection of facts and circumstances known to officers based on reasonably trustworthy information. This information would lead a reasonable officer to believe that a particular person committed a crime or that seizable property would be found in a particular place or on a particular person.

Probable cause to believe that a person has committed a crime can arise when the person confesses; when sufficient evidence is discovered at any point during a personal search, developed during the course of the inspection; or when the National Crime Information Center (NCIC) database shows an outstanding arrest warrant. Although a confession or positive X-ray may constitute probable cause by law, for the purpose of the procedures in this Handbook, probable cause to believe the traveler is transporting narcotics internally is satisfied only by a positive field test.

b. Notification of Probable Cause

If, at any point in the inspection process, probable cause develops that a crime has been committed (e.g., contraband is retrieved from the person) the duty CBP prosecution officer will be notified immediately. In those locations where duty CBP prosecution officers are not present, notification will be made to the duty ICE agent. Operational control and prosecution will remain with CBP. However, courtesy notification will be made to the ICE duty agent to participate in the enforcement action. The CBP prosecution officer and/or ICE agent will consult with the appropriate U.S. Attorney concerning the arrest of the person.

c. Written Report

When a personal search and detention leads to, or is done in conjunction with, a seizure, arrest, administrative penalty, or immigration adverse action, all data must be reported in the appropriate SEACATS S/A/S and/or IDENT/ENFORCE Report.

II. *Miranda* Warnings

Any person detained for a partial body, X-ray, body cavity search, or MBM is deemed to be in "custody" for *Miranda* purposes.

a. Requirement for *Miranda* Warnings

Miranda warnings are required when two factors are present: when a person is in custody and is going to be interrogated.

Miranda warnings must be given in a language that the person can understand.

Chapter 10 Miscellaneous

Federal law requires that if a person under the age of 18 is arrested for a federal crime, *Miranda* warnings must be given in language the juvenile can understand (see §§ 5.200 and 6.600, LCCO). You must also notify the juvenile's parent(s), guardian, or custodian of the nature of the alleged offense and the juvenile's rights.

b. Routine Questioning

Routine questioning such as that during rover operation stops and airport checkpoint stops are generally not "custody" for *Miranda* purposes.

Even if a person is interrogated, *Miranda* warnings are generally not required for inspections that do not involve a personal search beyond a patdown. However, if the person is aware that evidence of criminal activity has been discovered or if there are other circumstances that would cause an innocent, reasonable person to believe that he has been or will be arrested for the activity about which he is being interrogated, then the person should be given a *Miranda* warning.

c. Interrogation Defined

Interrogation includes any questions, words, or actions that an officer knows or should know are reasonably likely to result in an incriminating response.

The courts have ruled that any action or statement of a CBP officer that is designed to elicit a confession or to motivate voluntary removal of contraband from a body cavity is interrogation. Therefore, such actions as showing photographs or telling graphic stories about contraband containers rupturing inside the body must be preceded by *Miranda* warnings and a valid waiver.

Interrogation does not include requests for personal history or information necessary for routine booking or completing consent forms.

d. Personal Searches beyond Patdown

If, during the course of a personal search beyond a patdown, the person requests the presence of an attorney, you must advise him that no interrogation will take place; and, therefore, there is no right to have an attorney present during the remainder of the CBP examination. You may ask routine administrative questions, but be sure that you do not interrogate the person.

Responses to any interrogation may be inadmissible in any criminal prosecution unless the person has been given *Miranda* warnings and has knowingly and intelligently waived his rights.

e. Voluntary Statements

If a person is in custody and begins to make voluntary statements (i.e., statements that are not the result of any form of interrogation by CBP), allow the person to make such statements.

Write down any such statements, noting the time and date. You do not have to read *Miranda* warnings after a voluntary statement unless you intend to interrogate the person. Do not ask follow-up questions unless you have given the *Miranda* warnings and obtained a valid waiver.

You must record all voluntary statements in the TECS and/or IDENT/ENFORCE report.

Glossary

Alien: Any person not a citizen or national of the United States.

Admissibility: With respect to an arriving alien or an alien present in the United States without admission, the determination that such alien is ineligible to receive a visa and ineligible to be admitted to the United States. Section 212(a) of the INA).

Adverse Action: An enforcement action directed against an individual, or individuals, for violation of the laws, rules, and/or regulations enforced by U.S. Customs and Border Protection.

BICE/ICE: Bureau of Immigration and Customs Enforcement.

Body cavity search: any visual or physical intrusion into the rectal or vaginal cavity.

Body Scan: A personal search technology, which provides for a non-intrusive search of an individual to determine if merchandise or contraband is present.

CBP: United States Customs and Border Protection.

CIS: Central Index System.

Dangerous Object: An object/device, which a reasonable officer would believe can be used as an offensive weapon and cause bodily harm.

Deportability: With respect to an alien in an admitted to the United States, the determination that such alien is within one or more classes of deportable aliens subject to removal from the United States. Section 237(a) of the INA.

IAFIS: Integrated Automated Fingerprint Identification System.

IDENT/ENFORCE: Automated Biometrics Identification System/Enforcement Case Tracking System.

IOIL: TECS Incident Log Report.

Immediate patdown: a search necessary to ensure officer safety.

Interrogation: any questions, words, or actions that an officer knows or should know are reasonably likely to result in an incriminating response.

Juvenile: a person who has not reached his eighteenth birthday.

Material Evidence: Any statement, writing, or object that is relevant in establishing probable cause that a crime has been committed.

Medical examination: a body cavity search, X-ray, or monitored bowel movement conducted at a medical facility.

Medical facility: a facility authorized by the Port Director for officers to take individuals for medical examinations as outlined in this Handbook. Such authorization by the Port Director is not required for the rendering of emergency medical assistance.

Monitored bowel movement (MBM): the detention of a person for the purpose of determining whether contraband or other merchandise is concealed in the alimentary canal.

NAILS: National Automated Immigration Lookout System.

NCIC: National Crime Information Center.

Partial body search: the removal of some of the clothing by a person to recover material evidence reasonably suspected to be concealed on the body.

Patdown search: a search for material evidence and/or merchandise (including contraband) hidden on a person's body.

Probable cause: a collection of facts and circumstances known to officers based on reasonably trustworthy information. This information would lead a reasonable officer to believe that a particular person committed a crime or that seized property would be found in a particular place or on a particular person.

Reasonable suspicion: more than some or mere suspicion. It is based on specific, articulable facts which, when taken together with reasonable inferences from those facts, would lead a reasonable officer to suspect that a person might have merchandise entered contrary to law.

S/A/S: TECS Search/Arrest/Seizure report.

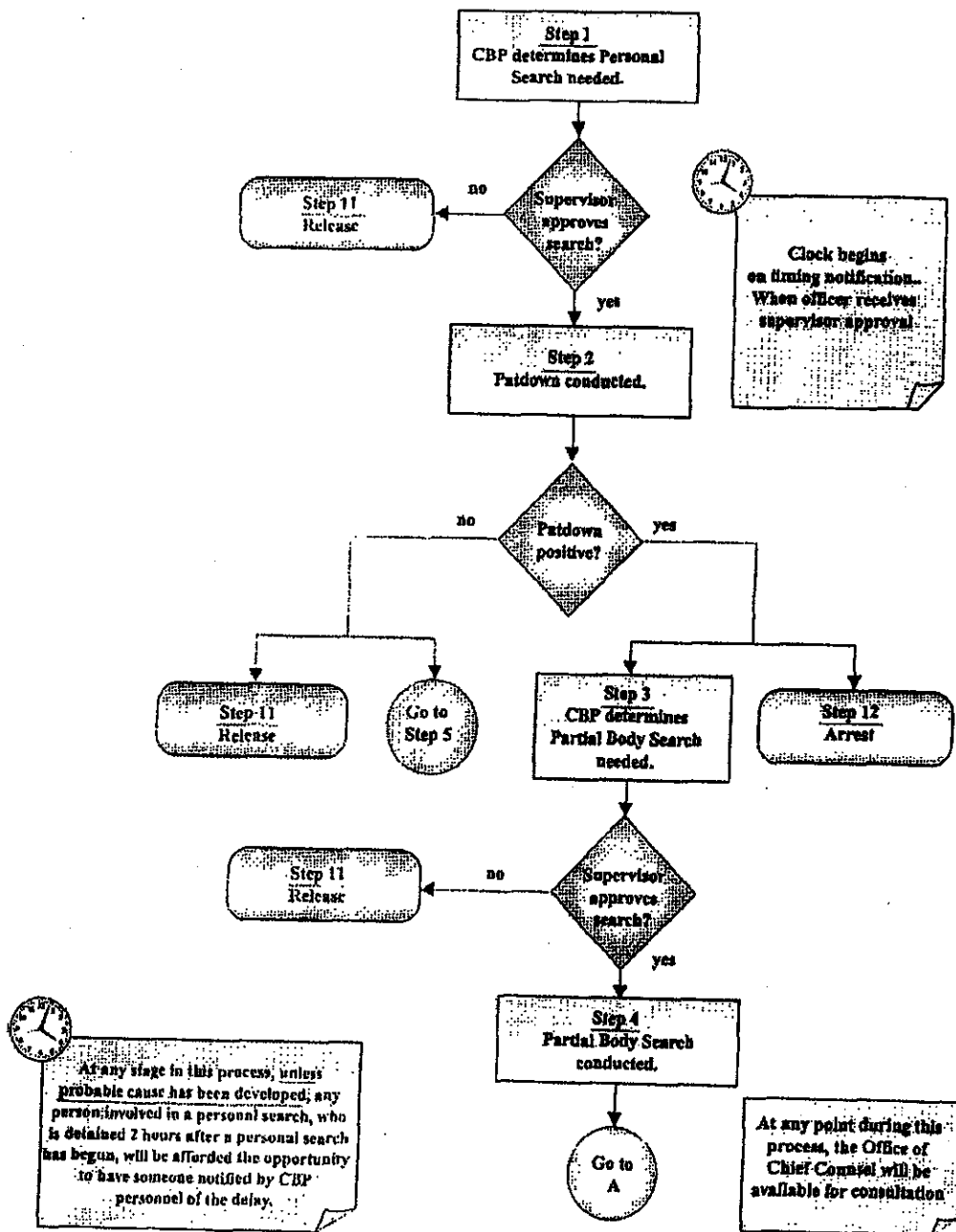
Some or mere suspicion: the minimal level of suspicion required to conduct a patdown search. By policy, CBP requires at least one fact before conducting a patdown.

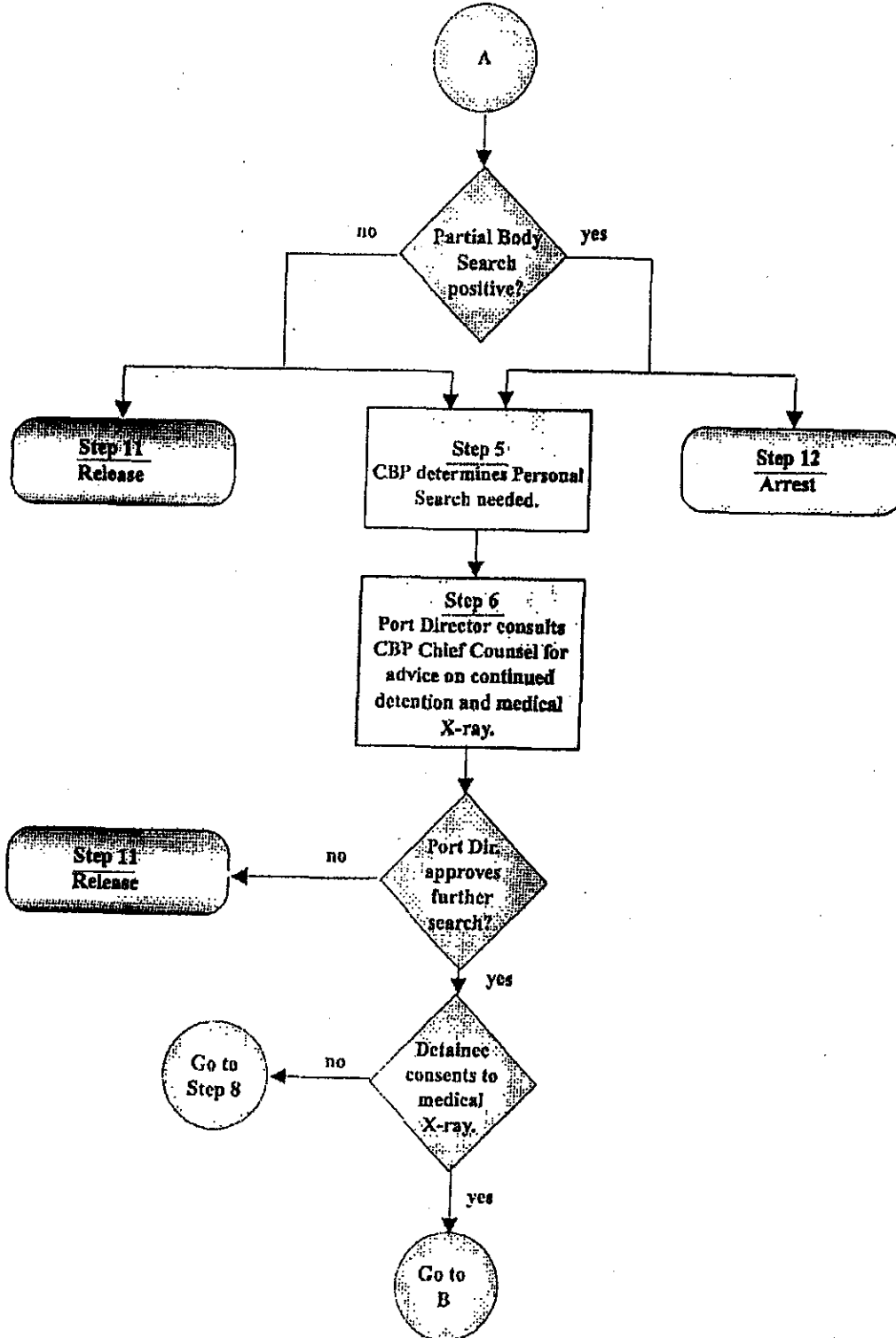
TECS: Treasury Enforcement Communication System.

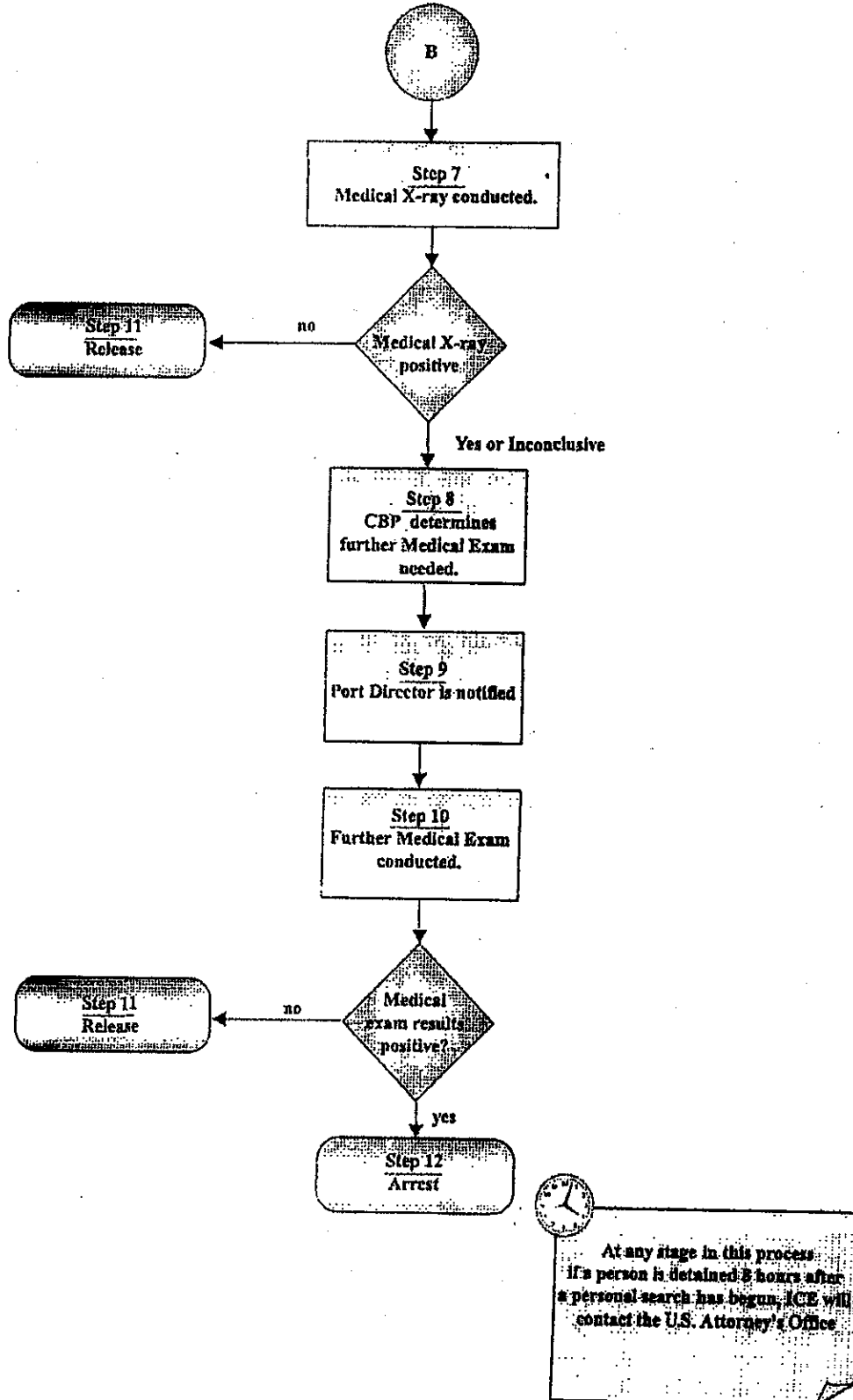
X-ray search: the use of a medical X-ray by medical personnel to determine the presence of merchandise within the body.

Appendix A

Personal Search Procedure for U.S. Customs Service







Appendix B

Field Operations Personal Search Matrix

Search Type	Suspicion Level	Approval	Notes
Immediate Patdown	Officer safety	No approval required	Immediate action to secure a weapon and Verification a weapon is Not present
Patdown	One articulable fact, per CBP policy	On-duty supervisor (unless immediate action to secure a weapon)	Contraband, other merchandise, and/or material evidence. (including weapons).
Partial Body Search	Reasonable	On-duty supervisor	Approval required to proceed from patdown to partial body search.
X-Ray—Voluntary	Reasonable	Port Director	Notify Associate Chief Counsel. Never on pregnant woman or woman refusing pregnancy test.
X-Ray—Involuntary	Reasonable	Port Director and court order	Notify Associate Chief Counsel. Never on pregnant woman or woman refusing pregnancy test.
Body Cavity— Voluntary	Reasonable	Port Director (except see paragraph 4c)	Notify Associate Chief Counsel. Proper consent.
Body Cavity— Involuntary	Reasonable	Port Director and court order	Notify Associate Chief Counsel. Exceptional Circumstances.
MBM—Initial	Reasonable	Port Director	Notify Associate Chief Counsel, and U.S. Attorney's Office.
MBM over 8 hours	Reasonable	Port Director	Notify Associate Chief Counsel, and U.S. Attorney's Office. Port Director reapproval is required every eight hours. U.S. Attorney will advise if and when additional notices are required.

Appendix C

Negative Personal Search—Supervisor's Check Sheet

This check sheet is to be completed by supervisors when the personal search does not lead to, or is not conducted in association with, an enforcement action (seizure or arrest).

Date of Search:

TECS Incident Log Number:



Mark each item when completed. For those not completed, provide an explanation in the REMARKS section below.

1. Y / N / N/A ___ Search criteria reviewed by supervisor as being appropriate
2. Y / N / N/A ___ Person provided with a general explanation on why CBP conducts personal searches
3. Y / N / N/A ___ Person given the appropriate pamphlet before conducting a personal search
(Personal Search—What to expect)
4. Y / N / N/A ___ Person provided with the appropriate pamphlet (e.g., *Why U.S. Customs and Border Protection Conducts Examinations*) if requested
5. Y / N / N/A ___ Person provided with *Comment Card*
6. Y / N / N/A ___ The person's questions on CBP examination process were addressed
7. Y / N / N/A ___ Person offered assistance with resolving personal issues resulting from the search
(e.g., repacking baggage, onward travel, contacting friends/relatives, etc.)
8. Y / N / N/A ___ Supervisor reviews the search criteria and results, examination, and personal search process with the officer for lessons learned

Remarks:

Supervisor _____

Name Signature

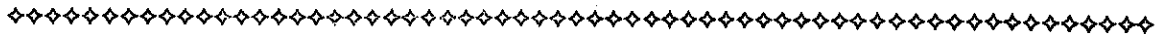
Retain on file locally, in chronological order, together with other paperwork associated with the search, for two years and three months from the date of the search.

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Appendix D

Personal Search Worksheet

Date of search: _____ TECS Report Number: _____
Search start time: _____ Stop time: _____



PERSON SEARCHED

Last name: _____ First name: _____ MI: _____ DOB: _____

POB: City: _____ State: _____ Country: _____

Address: _____

Street: _____

City: _____ State: _____ ZIP Code: _____

Country: _____

Race: _____ Gender: _____ Ht: _____ Wt: _____ Hair: _____ Eyes: _____ Citizenship: _____



Conveyance type: _____ In/out: _____

Airline/cruise line: _____ Flight/voyage number: _____

Departure airport: _____ Embarkation airport: _____

Vehicle: _____ License year: _____ State: _____ Number: _____

Search type: _____ If partial body: Degree of search: _____ Results: _____ (P/N)

Funds on person: \$ _____

Requesting officer: _____ Searching officer: _____

Witness: _____ Authorizing supervisor(s): _____

Reasons for search: _____

Supervisor's check sheet completed: _____ On-call attorney consulted: _____

Port director notified: _____ Time: _____

Use reverse side for narrative

This Worksheet should be used to record information on the search when input into TECS cannot be done immediately. If input is done immediately, Appendix D is not required. When the search results in a seizure and/or arrest, the Worksheet becomes part of the seizure documentation. When no enforcement action results and the Worksheet was used, it should be retained locally, along with consent forms and other pertinent documents, in chronological order, for two years and three months from the date of the search. Local reproduction of this form is authorized.

Appendix E

Standard Consent Form for X-Rays and/or Pregnancy Tests

Administered by an X-Ray and/or Medical Facility

I, the undersigned, hereby consent, as necessary, to x-ray examination of my body by a medical facility and/or an X-ray facility designated by the United States Customs and Border Protection. If female, I further consent to a pregnancy test prior to undergoing any X-ray examination. I consent to the results of any said examination(s), pregnancy test(s), and related records, including any medical records, being given to officials of the United States Customs and Border Protection. I hereby release the facility and its personnel performing said examinations/tests and any officials of the United States Customs and Border Protection directing that said examinations/tests be carried out, from any liability arising out of the performance of said examinations/tests. I understand that I have the right to refuse such consent and acknowledge that my consent is freely given and is not the result of any threats, coercion, or other intimidation.

Signed: _____

Printed Name: _____

Gender (circle one): Male Female

Date: _____

Time: _____

Witness Signature: _____

Badge: _____

Appendix F

Standard Consent Form for a Pelvic/Rectal Examination

I, the undersigned, hereby consent to a pelvic and/or rectal examination by a physician designated by the United States Customs and Border Protection. I consent to the result of said examination and related medical records being given to officials of the United States Customs and Border Protection. I hereby release the physician performing said examinations and any officials of the United States Customs and Border Protection directing that said examinations be carried out, from any liability arising out of the performance of said examinations. I understand that I have the right to refuse such consent, and acknowledge that my consent is freely given and is not the result of any threats, coercion, or other intimidation.

Signed: _____

Print Name: _____

Date: _____

Time: _____

Witness Signature: _____

Badge: _____

000412

Attachment 2

Contact Advisory of CBP Detention

To be used once any person has been detained for 2 hours for a personal search. The detainee will be afforded the opportunity to have CBP notify someone of the delay. The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Time spent on prior interviews and baggage examination does not count toward the 2-hour period. Additionally, detentions due to the determination of admissibility into the U.S., and/or to the Detention and Removal (D&R) process of aliens, does not apply under this Contact Advisory.

I am Supervisory Inspector [name] of the U.S. Customs and Border Protection at [location]. Your [husband, sister, etc.] who has arrived in the United States [at airport locations, include flight number and country] has asked that we contact you. He [or she] is safe, but has not yet completed CBP processing. He [or she] is not available to speak with you during CBP processing, but we will ask him [or her] to let you know when processing is completed.

Additional background information that may be provided:

1. The CBP has the authority under federal law, United States Code, Title 19, sections 482 and 1582, to detain individuals to determine if they are smuggling. CBP authority for detentions and personal searches has been upheld by the Supreme Court in the case of *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).
2. The CBP detentions for personal searches do not constitute an arrest.
3. During such detentions, these individuals may not contact others without CBP authorization.
4. If an attorney has any additional questions about CBP legal authority or the search process, CBP can have its counsel contact the attorney.

000414

Attachment 3

Advisory of CBP Procedures: Detention on Suspicion of Carrying Drugs Internally

To be used when personal searches require moving the person to a medical facility for a medical examination (body cavity search, X-ray, or detention for monitored bowel movement).

1. We have reason to suspect that you are carrying controlled substances (or other merchandise) internally.
2. The CBP has the obligation and legal authority to determine if you are smuggling internally. The CBP detentions for personal searches are authorized by federal laws, and they do not constitute an arrest.
3. To confirm or dispel our suspicion, we will transport you to a medical facility. For safety purposes, we may handcuff you during transport.
4. You may consent to an X-ray at CBP expense conducted by medical personnel at the medical facility.
5. If you choose not to consent to an X-ray, or if medical personnel determine that the X-ray is positive or inconclusive, CBP may detain you under medical supervision.
6. The CBP will consult with the U.S. Attorney's Office regarding this continued detention and seek judicial approval if necessary. The CBP may continue to detain you while that approval is sought.
7. If your detention for search lasts longer than 2 hours, CBP will give you the opportunity to have someone notified, including an attorney, by CBP, of your delay in CBP processing.

USCS
SOUTH FLORIDA CMC
FIELD OPERATIONS

STANDARD OPERATING PROCEDURES

SOP#:

AP 16.15 29.11

BASIS:

CIS HB# - 3300-04A - Personal Search Handbook, November 1999
CD 099 3340-009 - To Update and Clarify the Inspectional Policy
Regarding Miranda Warnings, January 5, 1988

SUBJECT: Miranda Warnings

ACTION PARTY: All Inspectional Personnel

RESPONSIBLE PARTY: Supervisory Inspectors

PROCEDURE:

Customs Directive 099 3340-009 (attachment a) and the Personal Search Handbook, HB# 3300-04A clearly identify when inspectors should issue Miranda warnings. Specifically, chapter 10, section II of the Personal Search Handbook (attachment b) states: "Any person detained for a partial body, x-ray, body cavity search, or MBM is deemed to be in custody for Miranda purposes." It also states that "Miranda warnings are required when two factors are present: when a person is in custody AND is going to be interrogated." It is incumbent upon all inspectional personnel to know and understand the guidelines set forth in these two documents.

Additional guidelines stipulating the issuance of Miranda warnings while questioning a possible internal narcotics carrier, beyond that of normal routine secondary inspection type questioning, are contained in a memorandum issued by the Port Director on June 8, 2000 titled, "Miranda Warnings by Customs Inspectors" (attachment c). Again, all inspectional personnel are required to know and understand the guidelines set forth in this document.

APPROVED BY:

(b)(6) & (b)(7)(C)
[Redacted Signature]

8/30/00
Date

Chief Inspector

(b)(6) & (b)(7)(C)
[Redacted Signature]

9/11/00
Date

Assistant Port Director

Attachments

II. MIRANDA WARNINGS

Any person detained for a partial body, x-ray, body cavity search, or MBM is deemed to be in "custody" for *Miranda* purposes.

a. Requirement for *Miranda* Warnings

Miranda warnings are required when two factors are present: when a person is in custody and is going to be interrogated.

Miranda warnings must be given in a language that the person can understand.

Federal law requires that if a person under the age of 18 is arrested for a federal crime, *Miranda* warnings must be given in language the juvenile can understand (*see* §§ 5.300 and 6.600, LCCO). You must also notify the juvenile's parent(s), guardian, or custodian of the nature of the alleged offense and the juvenile's rights.

b. Routine Questioning

Routine questioning such as that during rover stops and airport checkpoint stops are generally not "custody" for *Miranda* purposes

Even if a person is interrogated, *Miranda* warnings are generally not required for inspections that do not involve a personal search beyond a patdown. However, if the person is aware that evidence of criminal activity has been discovered or if there are other circumstances that would cause an innocent, reasonable person to believe that he has been or will be arrested for the activity about which he is being interrogated, then the person should be given a *Miranda* warning.

c. Interrogation Defined

Interrogation includes any questions, words, or actions that an officer knows or should know are reasonably likely to result in an incriminating response.

The courts have ruled that any action or statement of a Customs officer that is designed to elicit a confession or to motivate voluntary removal of contraband from a body cavity is interrogation. Therefore, such actions as showing photographs or telling graphic stories about contraband containers rupturing inside the body must be preceded by *Miranda* warnings and a valid waiver.

Interrogation does not include requests for personal history or information necessary for routine booking or completing consent forms.

d. Personal Searches beyond Patdown

If, during the course of a personal search beyond a patdown, the person requests the presence of an attorney, you must advise him that no interrogation will take place and therefore, there is no right to have an attorney present during the remainder of the Customs examination. You may ask routine administrative questions, but be sure that you do not interrogate the person.

Responses to any interrogation may be inadmissible in any criminal prosecution unless the person has been given *Miranda* warnings and has knowingly and intelligently waived his rights.

e. Voluntary Statements

If a person is in custody and begins to make voluntary statements (i.e., statements that are not the result of any form of interrogation by Customs), allow the person to make such statements.

Write down any such statements, noting the time and date. You do not have to read *Miranda* warnings after a voluntary statement unless you intend to interrogate the person. Do not ask follow-up questions unless you have given the *Miranda* warnings and obtained a valid waiver.

You must record all voluntary statements in the TECS report.

CUSTOMS DIRECTIVE

*(NOTE THIS DIRECTIVE IS SUPERSEDED BY HANDBOOK 3300-04 OF MARCH 1997)

ORIGINATING OFFICE: IC:P

DISTRIBUTION: See
signature
page

NEW NUMBER: 099 3340-009

OLD NUMBER: 3300-07

ISSUE DATE: January 5, 1988

**SUBJECT: TO UPDATE AND CLARIFY THE INSPECTIONAL POLICY
REGARDING MIRANDA WARNINGS**

1. PURPOSE

To update and clarify the inspectional policy regarding Miranda warnings in light of recent court decisions and operational practices.

2. BACKGROUND

Since the 1966 Miranda decision concerning suspects' rights, there has been some confusion among Customs officers as to when Miranda warnings are required. Although the warnings are generally required in criminal cases where there is custodial interrogation, Customs officers sometimes give the warnings prematurely. For example, they have been given prior to personal searches or the discovery of contraband. Warnings given prematurely may discourage individuals from cooperating with the Customs Service.

On the other hand, there have been situations where warnings were not given when they should have been. This has been a problem particularly when a suspect has initially refused to waive his right to remain silent but later begins to talk. A suspect's voluntary statements in such situations are admissible in a subsequent prosecution. However, if an officer begins to question without again giving the Miranda warnings, the suspect's responses most likely will be suppressed.

Another problem that has arisen in the past is when an individual has invoked his right to counsel. Any statements elicited from subsequent interrogation without the presence of the suspect's counsel are likely to be suppressed, unless the suspect has initiated the new contact and has clearly and knowingly waived his rights. The courts have distinguished the right to counsel from the right to remain silent by more closely protecting the former.

This Directive is designed to clarify the situations where Miranda warnings are required in order to avoid giving the warnings too soon, while ensuring that valuable statements and other evidence will not be suppressed.

3. SCOPE

The attached excerpt from the law course book prepared by the Office of Chief Counsel defines those situations encountered in inspectional operations which do or do not require reading of the Miranda warnings.

(Attachment I) Generally, the warnings must be read when a criminal case is likely, a suspect is in custody, and there is interrogation (usually by questioning).

This policy does not interfere with any Customs (officers) arrest authority. As described below, an arrest generally does not require reading of Miranda warnings unless questions are going to be asked (there is an exception for juveniles).

This Directive is intended to direct inspectors in the general use of Miranda warnings and to guide them in those situations where they must use discretion in deciding whether Miranda is required. Sample questions regarding the use of Miranda are attached. (Attachment II)

4. POLICY

- a. Routine questioning at primary or secondary inspection areas does not require Miranda to be given where no contraband, smuggled merchandise, or merchandise imported contrary to law has been discovered.

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- b. Miranda warnings are not required for routine questioning that occurs during pat downs where no contraband or smuggled merchandise has been discovered.
 - c. Miranda warnings are required before any questioning urging a strip search, body cavity search, x-ray or detention for monitored bowel movement whether or not contraband or smuggled merchandise has been discovered (see Customs Directive on Personal Searches, #3340-007 (June 12, 1986)).
 - d. Miranda warnings are not required where there is no interrogation. It is important to keep in mind that actions by law enforcement officers which are likely to elicit incriminating responses may be deemed questioning for purposes of Miranda.
 - e. Upon discovery of controlled substances or smuggled merchandise, inspectors will:
 - (1) Notify the Office of Enforcement (OE) immediately, unless guided differently by region or district policy (e.g. task force). Additional notification to DPA, state, local or other concerned agencies will be made.
 - (2) Conclude the full range of the enforcement examination (personal search, weapons search, arrest as warranted). Customs inspectors shall refrain from asking the suspect any questions concerning the violation, unless such questioning is necessary for safety reasons or for law enforcement purposes. However, non-incriminating, non-custodial questions may be asked (e.g. are you traveling with anyone?).
 - (3) Not give warnings if there is no interrogation unless required by the Juvenile Delinquency Act. However, if it appears there is going to be a long delay before the arrival of the OE agents, the inspector may choose to read the Miranda warning in order to avoid the appearance of a coercive environment. A long delay is defined as 1 hour or more.
 - (4) Allow a violator, once he begins, to make voluntary incriminating statements prior to

the arrival of the responding agents, and the inspector should allow the violator to complete this statement. If the inspector decides to ask any questions related to the violation, he/she must read the Miranda warning and obtain a waiver prior to interrogation.

- f. In cases where Office of Enforcement and other Federal agents will not respond, but local or state officers will (such as verified NCIC warrants or small amounts of narcotics), inspectors as a general rule will not read the Miranda warnings.
- g. If a suspect invokes his right to counsel, all interrogation must cease. No further interrogation may be directed to the suspect unless the suspect initiates the contact on his own and clearly waives his right to counsel and right to silence.
- h. If an inspector arrests a juvenile (a person who has not reached his/her 18th birthday), the Miranda warning must be given in language the juvenile can understand, whether the inspector intends to question or not. The parents or guardian of the juvenile must also be advised of the juvenile's rights and the charges against the juvenile.
- i. In all cases, inspectors must advise the responding agent to whom the violator is turned over whether the violator has been advised of his Miranda rights. A written waiver should be obtained whenever possible and turned over to the responding agent. In addition, the inspector should document the fact that the warnings were given and the specific response, if any, by the violator.

5. SUPERSEDED MATERIAL

This Customs Directive supersedes Circular Letter ENF-8-IRS dated February 1, 1971.

6. RESPONSIBILITIES

District and Area Directors are responsible for implementing this Directive, and for ensuring that all Customs inspectors are aware of its content. Regional Commissioners are responsible for monitoring compliance by District and Area Directors with this directive.

This Directive is an internal policy statement of the U.S. Customs Service and does not confer any rights on, or privileges for, any private person.

(b)(6) & (b)(7)(C)

Assistant Commissioner
Office of Inspection and Control

Attachments

Distribution:

H-02 Assistant Commissioners
R-01 Regional Commissioners
R-03 Assistant Regional Commissioners (ENF)
R-04 Assistant Regional Commissioners (OPS)
F-01 District/Area Directors
G-03 All ASACs/RACs
G-19 All Customs Inspectors

Attachment I

MIRANDA

Background

On March 13, 1963, Ernesto Miranda was arrested at his home, and taken to a Phoenix police station. He was questioned there by two police officers. Two hours later, the officers emerged from the interrogation room with a written confession signed by Miranda, which was used to convict him. At the top of the statement was a typed paragraph stating that the confession was made voluntarily, without threats or promises of immunity and "with full knowledge of my legal rights, understanding any statement I made may be used against me." The officers admitted at trial that Miranda was not advised that he had a right to have an attorney present.

The Supreme Court reversed Miranda's conviction reasoning that 5th and 6th amendment rights are only effective if a person knows what his rights are and has an opportunity to exercise these rights.

The 5th amendment states:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or

indictment of a grand jury, except in cases arising in the Land or Naval Forces, or in the militia, when in actual service in the time of war or public danger; Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; Nor shall he be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

The 6th amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. By an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The precise holding of Miranda was that:

To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against selfincrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him. *Miranda v. Arizona*, 86 S.Ct. 1602 (1966) at p. 1630.

Miranda and the 4th Amendment.

Before discussing what this decision means to a Customs officer, you should be aware of Miranda and its relationship to 4th amendment searches and seizures.

- A. Miranda has its basis in the 5th and 6th amendments and not the 4th amendment which governs searches. Thus, in most instances Customs officers will lawfully search and seize merchandise under the Border Search exception to the 4th amendment. For example, a strip search conducted with sufficient real or reasonable suspicion to justify the degree of intrusion will be a reasonable search under the 4th amendment and any evidence will be admissible against the suspect. The Miranda warnings are not timely given, only the statements made by the suspect will be suppressed because of the 5th and 6th amendment violation but not the evidence if it has been lawfully found under the 4th amendment. 5TH AND 6TH AMENDMENT VIOLATIONS WILL NOT INVALIDATE A VALID FOURTH AMENDMENT SEARCH.

Miranda has no impact on the validity of an arrest. The validity of an arrest is 4th amendment law. Probable cause is required to make a valid arrest under the 4th amendment. If an arrest is made with probable cause, the failure to give Miranda rights will not invalidate that arrest. On the other hand, if an arrest is made on less than probable cause, a dozen Miranda warnings will not make that arrest valid or lawful. 5TH AND 6TH AMENDMENT VIOLATIONS WILL NOT INVALIDATE A VALID FOURTH AMENDMENT ARREST.

III. Miranda and Administrative Seizures

- A. The 5th amendment protects a suspect's right from being "...compelled in any criminal case to be a witness against himself..." Miranda only applies to criminal cases not civil cases. If a Customs officer plans to deal with a seizure administratively or civilly and not criminally, then no Miranda warnings are required and questioning is permitted. The requirements for reading Miranda prior to questioning only arises in cases where a Customs officer knows or should have known that a criminal case is likely. The court will usually decide whether the officer thought he had a criminal case by the facts surrounding the seizure, the officer's conduct and statements. 5TH AND 6TH AMENDMENT RIGHTS ONLY APPLY TO CRIMINAL CASES.

IV. Miranda, Volunteered Statements, Nontestimonial Evidence, and Misdemeanor cases.

- A. The 5th amendment protects a suspect's right from being "... compelled in any criminal case to be a witness against himself..." It applies only to compelled testimony not voluntary statements. Thus, any statements a suspect makes without any prompting from a Customs officer will be admissible at trial. VOLUNTEERED STATEMENTS ARE ADMISSIBLE.
- B. Nontestimonial evidence is evidence that identifies a particular person such as fingerprints, voice exemplars, handwriting and blood samples. Such evidence can be obtained from a suspect without any Miranda problems. There could be 4th amendment and 5th amendment due process problems in obtaining nontestimonial evidence but such problems are not likely in a Customs border context. Nontestimonial evidence can generally be obtained without 5th or 6th amendment problems.
- C. Miranda applies to interrogations of arrested persons regardless of whether the offense being investigated is a felony or misdemeanor. *Berkemer v. McCarty* 104 S.Ct. 3138 (1984).

V. Custody "For Miranda Purposes".

- A. The Miranda decision requires that the warnings be given when a suspect is "...taken into custody or otherwise deprived of his freedom by the authorities and is subjected to questioning..." Custody and questioning are required before the warnings must be given. Unless there is custody "for Miranda purposes" and questioning, there is no requirement to give Miranda (except for juveniles).

Thus, a suspect can be questioned but if not in custody "for Miranda purposes", then the warnings are not a requirement.

On the other hand, a suspect can be in custody "for Miranda purposes" and unless questioned, Miranda is not required.

All persons who come from foreign and are detained

by Customs could be said to be in custody but they are not in custody "for Miranda purposes."

1. Nonborder Situations.

In deciding whether a person is in custody "for Miranda purposes," the Supreme Court has held that the status of the interviewee - whether subject, suspect or the focus of an investigation - is not what controls but rather the coercive circumstances of the questioning. This is best illustrated by recent Supreme Court cases.

In *Beckwith v. United States*, 96 S.Ct. 1612 (1976) agents of the Internal Revenue Service interrogated the defendant, a taxpayer who was the "focus" of a tax fraud investigation. Prior to the questioning, he was advised that he had a right to remain silent, that any statement made could be used against him, and that he was free to consult with counsel before the interview. He was not told that he had a right to an appointed attorney. He declined to exercise those rights, furnished incriminating statements and records, and was subsequently convicted. On appeal to the Supreme Court, he alleged that the IRS agents failed to comply with Miranda in conducting the interview.

The Court found that the agents were not bound by Miranda and that to apply the Miranda rules in those circumstances would separate the rule from its own explicitly stated rationale. Miranda application depends on custodial police interrogation, questioning in a coercive, police dominated atmosphere. The idea that interrogation in a noncustodial setting, where the investigation had focused on a suspect gives rise to the Miranda requirement, was rejected. Moreover, the Court quoted with approval the view of a Federal appellate court that the compulsive aspect of custodial interrogation governs the application of Miranda, and not the strength of the government's suspicions.

In a 1977 opinion, the Court further emphasized that something more than suspicion or focus is necessary before Miranda applies.

In Oregon v. Mathiason, 97 S.Ct. 711 (1977) the defendant was asked to come to the state patrol office for an interview with an officer investigating a burglary. The suspect was told he was not under arrest but was believed to have participated in the burglary. He was not given Miranda warnings. He confessed and was convicted. On appeal, the Supreme Court pointed out that the defendant was not formally arrested, nor was his freedom of action restrained in any significant way, and that without such factors, Miranda simply does not apply. Part of that decision is especially pertinent:

Any interview of one suspected of a crime by a police officer will have coercive aspects to it simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render his "in custody." It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited. (at page 714)

More recently, the Supreme Court again addressed the issue of custody for purposes of Miranda in California v. Beheler, 103 S.Ct. 3517 (1983). The defendant, Jerry Beheler, and several acquaintances attempted to steal a quantity of hashish from one Peggy Dean, who was selling the drug in the parking B lot of a liquor store. Dean was killed by Beheler's companion and stepbrother, Danny Wilbanks, when she refused to relinquish the drugs. Shortly thereafter, Beheler called the police, who arrived almost immediately, and told the police that Wilbanks had killed the victim. Later that evening, Beheler voluntarily agreed to accompany the police to the station house and was

specifically told that he was not under arrest.

Beheler was interviewed at the station house, and told the police what had occurred that day. The interview, which was not preceded by a warning and waiver of Miranda rights, lasted approximately 30 minutes. At the conclusion of the interview, Beheler was permitted to return home with the understanding that his statement would be reviewed by the district attorney. Five days later, Beheler was arrested for aiding and abetting first-degree murder. He was advised of his Miranda rights, which he waived, and gave a taped confession. Both confessions were used against him at trial, and he was convicted.

The Supreme Court followed its previous holding in *Orgeon v. Mathiason* and ruled that in determining whether custody is present for purposes of Miranda, the inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. Holding there was no such restraint in this case, the Court noted that Miranda warnings are not required simply because questioning takes place in the station house or because the questioned person is one whom the police suspect. Finally, the Court stated that the amount of information the police have concerning a person who is to be questioned, and the length of time between the commission of a crime and a police interview, are not relevant to the issue of whether custody exists for purposes of Miranda.

THE CLEAREST INSTANCE OF WHEN MIRANDA WARNINGS ARE REQUIRED IS WHEN THE, SUSPECT IS UNDER ARREST OR OTHERWISE INCARCERATED.

(i) investigative Detentions.

Miranda rights need not be (given before an officer questions a suspect who is being investigatively detained. For example, individuals who are detained solely for brief questioning under "Stop and frisk" procedures are usually not considered to be in custody "for Miranda purposes." Nor are individuals approached by officers for general on the scene questioning concerning an offense, considered to be in custody "for Miranda purposes." Persons temporarily detained

pursuant to traffic stops are not "in custody" for the purposes of Miranda.

However, if the detention is prolonged or other highly coercive factors are present, such as large numbers of officers present, restraining devices or weapons are involved or the suspect must for some reason be moved from the location of the initial stop, then officers should administer the warnings and obtain a waiver before proceeding further with the questioning.

- ii Other Factors That May Require Miranda Warnings. In the absence of a formal arrest or prolonged investigative detention, suspects generally have a difficult time convincing courts that their statements should be suppressed because of a failure to comply with Miranda. Some suspects have successfully argue that they were in custody "for Miranda purposes" on the basis of the totality other circumstances. Relevant factors that courts may consider are:

- the language used to summon the individual,
- the physical surroundings;
- the use of force;
- the existence of probable cause to arrest;
- the communication of the officer's intent;
- the extent to which the individual is confronted with the evidence against him;
- whether the individual is the focus or target of an investigation, and,
- whether the individual reasonably believes that he or she is free to leave.

- iii Custody "for Miranda Purposes," Concern For Public Safety and Waivers After Noncoercive Questioning.

The Supreme Court has allowed two exceptions to the rule that when a suspect is in custody "for Miranda Purposes" and is questioned, warnings must be given statements are to be used to convict the suspect. These two

exceptions are concern for public safety and waivers obtained after noncoercive questioning.

An officer need not read Miranda warnings before asking a suspect, who is in custody, questions that could reasonably be said to have been prompted by a concern for public safety. Thus, an officer who had handcuffed a suspect in a public area need not advise him of his rights prior to questioning him as to the location of a gun the officer had been told the suspect possessed. Officers can ask questions reasonably prompted by a concern for public safety. Once the emergency ends, any further custodial questioning should be preceded by the warnings and waiver. (See New York V. Quarles, 104 S.Ct. 2626 (1984))

Likewise, a noncoercive statement made by a suspect in "custody for Miranda purposes" who has not been given the warnings does not bar a subsequent confession given after the warnings were read and a waiver obtained.

In Oregon v. Elstad, 105 S.Ct. 1285 (1985), officers were sent to Elstad's home with an arrest warrant for a burglary. Without giving Elstad his Miranda rights, the officer told Elstad that he felt that Elstad was involved in the burglary. Elstad responded "Yes, I was There." Later, Miranda warnings were given and Elstad confessed. The confession is admissible if the suspect properly understood his Miranda rights and voluntarily waived them. The Supreme Court stated:

"a suspect who once responded to unwarned yet uncoercive questioning is not thereby disabled from waiving his rights and confessing after he has been given the requisite Miranda warnings."
(at p. 1298)

This exception only applies to a narrow category of cases in which the initial questioning of the suspect was made in a totally uncoercive setting and in which the first confession obviously had no influence on the second.

Officers should seek to safeguard constitutional rights by reading Miranda rights whenever a suspect is in "custody for Miranda purposes" and is questioned. Do not seek to bypass these safeguards by use of these narrow exceptions.

2. At the Border

At the border or the functional equivalent of the border, the following factors will be important to consider:

- i probable cause that a criminal offense has been committed;
- ii at the time of arrest;
- iii when questioning becomes coercive because of a criminal violation;
- iv the courts have held that strip searches and body cavity searches are "custody for Miranda purposes"; X-rays and detentions for monitored bowel movements are also "custody for Miranda purposes."
- v when a suspect has been detained after the completion of a Customs examination.

The following situations are intended to provide additional guidance in determining whether a person is in custody "for Miranda purposes" at the border or the functional equivalent of the border.

- i The detention of travelers incident to ordinary baggage examinations and routine questions, concerning residence, foreign acquisitions, length of time abroad, etc., to determine exemptions, dutiability of merchandise and the presence of articles required to be declared does not place an individual in custody "for Miranda purposes."
ROUTINE QUESTIONS ARE NOT CUSTODY "FOR MIRANDA PURPOSES."
- ii When an individual is taken to a private room for a strip search or is detained for an x-ray, monitored bowel movement or a body cavity search, the individual is in custody "for Miranda purposes." STRIP, X-RAYS, AND BODY CAVITY SEARCHES AND DETENTION FOR MONITORED BOWEL MOVEMENTS ARE "CUSTODY FOR MIRANDA PURPOSE"

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- iii When contraband is discovered, or merchandise or currency is discovered of a sufficient value to warrant possible criminal prosecution, then Miranda should be given prior to questioning. PROBABLE CAUSE THAT A CRIMINAL OFFENSE HAS BEEN COMMITTED IS CUSTODY "FOR MIRANDA PURPOSES."
- iv AN INDIVIDUAL UNDER ARREST IS IN CUSTODY "FOR MIRANDA PURPOSES."

Just because an individual is in custody "for Miranda purposes" does not mean that the warnings are required. REMEMBER, YOU MUST HAVE CUSTODY "FOR MIRANDA PURPOSES" PLUS QUESTIONING IN ORDER FOR THE WARNINGS TO BE REQUIRED. In many ports, Customs Agents or DEA request that Customs Inspectors or Petrol officers not question suspects. If you do not question, you do not have to give the warnings unless a juvenile is involved.

EXAMPLE: Mrs. Luther was stopped at the primary inspection area port of entry in San Ysidro. She failed to make any declaration in response to the routine question by the Customs officer. An inspection of her car then revealed 3,600 Wobe-mugos laetrile capsules of German origin in the trunk. Her car keys were taken from her and she was directed to wait in the secondary inspection area.

She was questioned there by Special Agent Nadel, who had been informed by telephone of the incident concerning Mrs. Luther. He knew that Mrs. Luther had failed to declare the medicine as required, and that the medicine was unauthorized for entry because of its foreign label. Upon viewing the Wobe-mugos capsules, however, he determined that they were of such little value that he would only make an administrative seizure. Holding the bag containing the capsules, he questioned Mrs. Luther over the public counter in the inspection area to verify her identification and her possession of the undeclared medicine. He then offered Mrs. Luther a receipt and told her she could leave. Mrs. Luther chose to remain while a call was made to see if Wobe-mugos were authorized by the Food and Drug Administration. Upon learning that the capsules would be held she obtained her car keys and left.

The next day Agent Nadel learned that the quantity of laetrile possessed by Mrs. Luther was worth \$1,200. Surmising that a seizure of some importance had taken place, he obtained a warrant and arrested Mrs. Luther at her home. Only at that point were Miranda warnings given.

Mrs. Luther urges that when questioned at the secondary inspection office at the port of entry in San Ysidro, she was deprived of her freedom of action in a significant way and was in custody. She contends that statements obtained at that time were inadmissible

because no Miranda warning was given her.

Will the statements be suppressed?

REASONING: Mrs. Luther was summoned from among the other persons in secondary inspection area when Inspector Nadel held up her capsules and asked to whom they belonged. The physical surroundings were a public counter. Rather than the compelling atmosphere of apprehension and arrest, it is plain that at most an administrative seizure was taking place and that the agent was merely filling out a form to that end. Her car keys were held pending the identification check, but any harmful effect of this is negated by the fact that she was not charged or arrested and was told that she could leave. Where a person is not charged, arrested, or otherwise confronted with guilt, the atmosphere is one of mere administrative routine. When the person is told she is free to go, the circumstances do not amount to a deprivation of freedom in a significant way and are not equivalent to the compelling atmosphere to which Miranda was directed.

RESULT: Since Mrs. Luther was not in custody "for Miranda purposes" her statements made as a result of the questioning are admissible. U.S. v. Luther, 521 F.2d 408 (9th Cir., 1975).

EXAMPLE: Acevedo came into this country from Mexico at San Ysidro. Her luggage consisted of a shoulder bag and a duffel bag. When asked if she had anything to declare she responded in Spanish. Translating to English, she said according to the Inspector, "Nothing, my clothes, nothing more." According to her, she said, "My clothes, tablecloths and jewelry."

When the Inspector Gomes searched her duffel bag, he first found some tablecloths. He asked her how many tablecloths she had and what she intended to do with them. She said there were ten, and that they were not for sale. Inspector Gomes continued searching the duffel bag and found three transparent plastic bags containing large quantity of gold jewelry, later stipulated to have a value of \$19,000. After finding the first bag, the Inspector asked Acevedo what was in the bag, and she replied in English, "It's jewelry." As Gomes was in the process of taken out the other two bags of jewelry, Acevedo made an unsolicited statement that the jewelry belonged to someone else and she was merely delivering it for that person.

After placing all the jewelry on the inspection counter, Inspector Gomes went to find Customs inspector Ronald Myslinski, and told him, "I think we've got a biggie here." Gomes told Myslinski he was sure that the jewelry he had found was undeclared.

Myslinski then questioned Acevedo further. At first, Acevedo continued to deny that the jewelry was hers, but she eventually admitted it belonged to her and was undeclared.

Acevedo was arrested and charged with importing merchandise without declaring it, in violation of 18 USC 545. Her defense was that she did orally declare it when first questioned by Inspector Gomes. According, she wished to have her statements suppressed.

Will the statements be suppressed?

Miranda is not required unless the suspect is for Miranda purposes" and questioned. Acevedo was questioned so the issue is whether she was in custody "for Miranda purposes." A large quantity of undeclared jewelry had been discovered. The Inspector had probable cause to believe that an had been committed. He told Myslinski he was sure that jewelry was undeclared. Was this an administrative or civil or a criminal case? Inspector Gomes' statement to Myslinski, "I think we've got a biggie here" indicated toto the court that this was a criminal case.

RESULT: Since the suspect was in custody "for miranda purposes" and was questioned, her constitutional rights were violated. Her statements are not admissible. The jewelry is admissible because it was found during a lawful border search. U.S. v. Estrada 651 F.2d 1261 (9th Cir., 1980).

EXAMPLE: At approximately 8:25 p.m. Lueck's plane was spotted by a Customs Air Officer on a radarscope at a point outside the U.S., 37 miles N.E. of Bimini.

The craft, which was traveling in a north, northwesterly direction was not emitting a transponder code and had not filed a flight plan, as mandated by FAA regulations. These violations, coupled with he plane's flight above open waters at night, aroused the Customs Officer's suspicion. He sought immediate dispatch of a United States Customs Service chase plane to intercept and identify the craft. He maintained continued radar surveillance of the target until it was approximately ten miles east of Vero Beach.

Meanwhile, Customs pilots aboard the dispatched chase plane were able to identify the target as a "Veri-Eze." The Customs plane tracked the Veri-Eze continuously on radar until a point above Titusvill, Florida. By this time, approximately 9:40 p.m., a second Customs chase plane, manned by Customs pilot Douglas Fults and Radar operator, Customs Air officer Dale Harper, had spotted the target. Aside from an interval of one to three minutes, the latter craft tracked the Vera-Eze without a break until its landing at about 9:50 p.m. at the Titusville- Cocoa Airport. Pur- suing the target, the second chase plane landed at the same airport at 9:52 or 9:53 p.m.

Officers Fults and Harper proceeded at once to a hangar area which the Vera-Eze had been observed entering. Running down the row of hangars, Officer Harper found the Vera-Eze standing before an open, unlit hangar. Lueck emerged from the hangar and approached Officer harper,

who identified himself and displayed his badge. Harper's single gun was at all times pointed downward, away from Lueck; Harper at no time placed his finger on the trigger. Harper questioned Lueck as to the origin of his flight, after Lueck responded that he had come from South Carolina, Harper revealed that he had tracked the plane from outside the United States until its landing in Titusville. Harper then observed a Dodge Colt automobile within the hangar. The left front door of the car was open. In view of the conflict between Lueck's responses and Customs observations, Harper asked Lueck if he would accompany him to discuss the matter further with additional Customs personnel. Lueck acquiesced. Before the two men left the hangar area in search of additional Customs officers, Harper asked Lueck if the latter possessed any valuables in the craft which he wished to secure. Lueck freely responded that he had already placed a briefcase and jacket inside his automobile. Lueck then closed the canopy of the Vera-Eze. The two proceeded around the corner, approximately 100 feet from the hangar, where they met Officer Fults. The three men spoke for additional five minutes before returning together to the hangar area.

At 10 p.m., another Customs craft landed at the airport. Morris Helgeson, a Customs pilot aboard the newly-arrived plane, questioned Lueck again regarding the origin of his flight. After receiving the same response as officer Harper, Helgeson told Lueck that he had been tracked from foreign air space. Despite this, Lueck maintained that he had come from the Florida Keys, where he had visited a woman he wished not to involve. When queried as to why he had been flying so far out at sea, Lueck replied that he wished to avoid the Terminal Control Area in Miami.

Helgeson next advised Lueck that because he had crossed from foreign to domestic airspace without stopping to obtain a Customs inspection, a search would now be conducted of both the craft and the vehicle. Lueck's response was, "Fine, go ahead." Helgeson shone a flashlight into the craft's closed canopy, but detected no cargo. At this point, Harper informed Helgeson of Lueck's statement that he had transferred a flight jacket and briefcase from the Vera-Eze to the automobile. Helgeson walked over to the car. Reaching through the open door, Lueck retrieved for Helgeson the jacket and case. Helgeson peered into the car and observed no bulk cargo. After Helgeson stated, "Let's look in the trunk," Lueck complained that it was very difficult to open. Helgeson persisted in this request, suggesting that they try to open it. Lueck took a key from his pocket and placed it in the trunk lock, which opened immediately and without any difficulty. No sooner did the trunk open, however, than Lueck closed it. At Helgeson's request, Lueck opened the trunk a second time. Again, the trunk opened at once, and again Lueck shut it quickly. After locking the trunk yet a third time, Lueck finally let the trunk remain open.

The trunk contained three packages wrapped in heavy brown paper. One was a cardboard box; the remaining two were round packages. All were

labeled "Fragile--Handle with care" and contained return addresses of "J&J Electronics, North Carolina." One package was addressed to R. B. Johnson at an illegible street and city location. The remaining packages contained no forwarding addresses. Asked what the packages contained Lueck answered, "Ceramic parts." Helgeson smelled a heavy odor emanating from the packages which, from his experience in drug work, had taught him was that of marijuana. Helgeson stated that the packages did not smell like ceramic parts. Lueck agreed, maintaining that someone had set him up. Helgeson disputed that likelihood of a set-up, given the fact that both the trunk and hangar had been locked. After Helgeson closed the trunk, Lueck was given his Miranda warnings and placed under arrest.

Lueck moves to suppress his prearrest statements. Will these statements be suppressed?

REASONING: Interrogation at the border constitutes one notable exception to the constitutional protection of Miranda. Because of the overriding power and responsibility of the sovereign to police national borders, the fifth amendment guarantee against self-incrimination is not offended by routine questioning of those seeking entry to the United States. Hence, individuals arriving in this country are not routinely entitled to Miranda warnings.

Reasons existed to detain Lueck during Lueck during the Customs examination and because of his probable violation of civil regulations of failing to adhere to required procedures of flights and landing. However, probable cause to arrest him did not arise until the actual discovery of contraband in this car trunk.

The Customs officials required Lueck to identify himself, where he had come from and whether he had any valuables which he wished to secure. These questions amounted to no more than routine investigation which the officers were dutybound to pursue. Not one question was asked of Lueck regarding whether he was carrying controlled substances. If anything, their more immediate suspicion was that of Lueck's failure to obtain Customs clearance, which constitutes a civil violation of Title 19 of the Code of Federal Regulations. Lueck is a 50 year old engineer. He projected an air of easy-going confidence. He gave no indication of being either nervous or particularly concerned during the course of his questioning. Moreover, no questions were put to him regarding drug smuggling, nor were any physical threats, restraints or force directed against him. The only visibly armed agent, officer Harper, retained his weapon at his side, pointed away from the defendant, and at no time placed his finger on the trigger. At no time did the officers demonstrate an underlying motivation to obtain inculpatory evidence from Lueck. Prior to the actual discovery of the drugs and Lueck's ensuing arrest, the officers did not even broach the subject of whether he had brought contraband or dutiable merchandise into the United States.

RESULTS: Lueck was subjected to no more than a proper border inquiry. He was not entitled to Miranda warnings prior to when he was given the warnings. U.S. v. Lueck, 678 F2d 895 (11th Cir. 1982).

VI. Questioning

- A. Questioning under Miranda is not just asking questions. QUESTIONING INCLUDES not only expressed questions directed to an individual but also, ANY WORDS OR ACTIONS THAT OFFICERS KNOW OR SHOULD HAVE KNOWN ARE REASONABLY LIKELY TO RESULT IN AN INCRIMINATING RESPONSE. Thus, for example, the showing of photographs, telling the suspect about the evidence accumulated against him, or engaging in conversations with other officers which are overheard by a suspect may be considered questioning if an incriminating response is reasonably likely. Moreover, efforts through casual conversation to gain the confidence of and thereby encourage the suspect to make a statement concerning a criminal offense would be treated as questioning under Miranda.

EXAMPLE: Deborah Ann McCain, arrived at Miami International airport on January 27, 1976 from Colombia. Upon deplaning, she proceeded to Customs and presented herself and her luggage to Customs Inspector Rollins. Rollins noticed that she appeared very nervous and that her voice cracked. She was wearing tight fitting clothes which revealed a bulge in her abdominal area. Further, the defendant was a young, single female traveling alone, and her duration of stay in Colombia was short. These characteristics are traits which Customs Inspectors have found to be indicative of drug smugglers.

Based upon these facts, Rollins believed a secondary search was warranted. She was taken to the secondary search room where two female Customs inspectors conducted a strip search. This search produced no incriminating evidence..

Upon being informed of the unproductive search, the supervisor, Customs Inspector Korzeniowski entered the secondary search room and handed the defendant a booklet made up of newspaper clippings reflecting a number of tragedies which had occurred when people had attempted to hide narcotics in their body cavities. After reading this booklet, McCain's bags were removed to a Customs enclosure where Inspector Rollins re-inspected the luggage.

She was taken into the supervisor's office, and Inspector Korzeniowski talked to her for some seven or eight minutes while luggage was being searched. Korzeniowski talked to McCain as a father might talk to a daughter, and he told her that these were very serious matters, that she could harm herself seriously perhaps even cause her death, if she

was in fact carrying contraband in her body and if any of these containers ruptured and this narcotic substance was in immediate contact with her body or her internal organs." Following this, Korzeniowski testified that the defendant turned white, hung her head down and blurted out, "Yes, I do have narcotics in my body." McCain was then allowed to remove the narcotics from her body. After removing the cocaine, she was placed under arrest and for the first time advised of her rights.

Is her admission that she had cocaine on her body admissible? Are the drugs admissible?

REASONING: Miranda requires that when persons are in custody for Miranda purposes and questioned, the Warnings are required. During the strip search McCain was clearly in custody "for Miranda purposes" but the questioning took place after the strip search.

She was questioned in the supervisor's office while her luggage was being reexamined. She was able to leave only if she were willing to abandon her luggage. This is a "sufficient restriction on one's freedom of action so as to trigger the giving of Miranda warnings before proceeding with any interrogation" (at page 265). The questioning took place after the completion of a routine Customs examination. Therefore, she was in custody "for Miranda purposes."

Was she questioned? Questioning includes not only expressed questions directed to an individual but also any words or actions that officers know or should have known are reasonably likely to result in an incriminating response. The Inspector "deliberately" and "designedly" set out of concern for McCain's well-being does not eliminate the requirements of Miranda.

RESULT: McCain was in custody "for Miranda purpose and questioned. Therefore, her statements and the narcotics are suppressed U.S. v. McCain 556 F.2d 253 (5th Cir. 1977).

- B. QUESTIONING DOES NOT INCLUDE REQUESTS FOR PERSONAL HISTORY OR INFORMATION NECESSARY FOR ROUTINE BOOKING (e.g. name, address, marital status, etc.) so long as such requests do not relate to criminal activity and cannot be interpreted as requiring an incriminating response. *Robinson v. Percy*, 738 F2d 214 (7th Cir. 1984).

VII. Summary

- A. Miranda warnings are required when a person is in custody "for Miranda purposes" and is questioned by law enforcement officers. Miranda has no impact on the validity of 4th amendment searches or seizures. It is not required for

administrative or civil seizures and fines and only applies to compelled testimony in a criminal case.

VIII Reading the Miranda Rights.

A. The Miranda warnings may be given in oral or written form. Customs officers should use the four-part laminated plastic card issued by the Customs Service in February, 1979. The following procedures should be followed:

1. Make your identity known (your uniform and badge are sufficient to make your identity known).
2. Advise the person that he or she is being detained or is under arrest.
3. Give the statement of rights as follows:

Before we ask you any questions, it is my duty to advise you of your rights. You have the right to remain silent.

Anything you say can be used against you in court or other proceedings.

You have the right to consult an attorney before making any statement or answering any questions, and you may have his present with you during questioning.

You may have an attorney appointed by the U.S. Magistrate or court to represent you if you cannot afford or otherwise obtain one.

If you decide to answer questions now, with or without a lawyer, you still have a right to stop questioning at any time, or to stop the questioning for the purpose of consulting a lawyer.

However, you may waive the right to advice of counsel and your right to remain silent and answer questions or make a statement without consulting a lawyer if you so desire.

Do you understand your rights?

Do you waive your rights?

The practice of reading the rights, as opposed to relying on memory, insures that the officer will not omit any of the rights itself. ALWAYS READ THE MIRANDA RIGHTS. Of course, if you do not have a card to read, you may have to give the rights by memory. In cases where a waiver of rights is sought, the officer should try to obtain an expressed answer to the question "Do you waive your rights?"

- B. If while reading the statement of rights, the suspect interrupts and indicates that he is already familiar with his rights, complete the reading of the rights. PEOPLE ARE NOT PRESUMED TO KNOW THEIR CONSTITUTIONAL RIGHTS.

In cases where a suspect does not understand English, read the statement of rights in full in English then you may want to seek the assistance of a qualified interpreter. If you allow suspects to read their rights from the laminated card in their native language, be sure they know how to read.

If the suspect is under the influence of alcohol -Dr drugs or has a mental defect, you may want to read the statement of rights but a valid waiver of rights may be difficult to obtain.

- C. If Miranda rights are required, THE BURDEN IS ON THE CUSTOMS OFFICER TO SHOW THAT THE WARNINGS GIVEN AND UNDERSTOOD officers should not read the warnings so fast that the suspect cannot understand what you are saying. In many instances an officer may be required to read the warnings and then go over them point-by-point to make sure the suspect understands the warnings.
- D. IF THE SUSPECT CHOOSES TO REMAIN SILENT AFTER READING THE WARNINGS, DO NO QUESTION!
- E. IF THE SUSPECT ASKS FOR AN ATTORNEY, DO NOT QUESTION! ADVISE ANY OTHER LAW ENFORCEMENT OFFICER THAT MAY TAKE CUSTODY OF THE SUSPECT OF THE REQUEST FOR AN ATTORNEY.

In some cases, the suspect may make a voluntary statement after having refused to waive his/her rights, demanded an attorney or chosen to remain silent. In

these situations Customs officers should make careful note of the suspect's statement since it is fully admissible. There is no need to interrupt the suspect and administer the Miranda warnings. However, such warnings should be given before asking any questions.

Requests by suspects to speak with probation officers, clergy, friends, and relatives do not constitute an assertion of the right to remain silent or a request for an attorney. Consequently, officers need not end an interrogation simply because such a request is made.

Miranda does not require that an interrogation be terminated merely because a suspect is uncertain about whether to waive his/her rights and answer questions without a lawyer present. Such conduct does not indicate the required waiver or rights. Thus, officers should immediately focus the interview on clarifying the suspect's wishes. Do not make any promises or statements that could later be interpreted as an attempt to influence the suspect's decision. General interrogation should not be resumed unless and until the suspect unequivocally agrees to waive their rights and answer questions.

IX. Waiver of Miranda Rights.

- A. THE BURDEN IS ON THE CUSTOMS OFFICER TO SHOW, not only that the Miranda rights were given and understood, but also THAT THE RIGHTS OF THE SUSPECT WERE VOLUNTARILY WAIVED. Some Customs regions use a waiver of rights similar to the one of page 8-15. When using such a form request the suspect to complete the form and you and another Customs officer should witness the suspect's signature.

In some instances suspects may agree to waive their rights but will not sign the waiver form. They may be willing to initial, but not sign the form or to fill in some blanks, but not all. You should allow the suspect to do so. Have another Customs officer who is present witness the form.

- B. WAIVERS AFTER A SUSPECT HAS CHOSEN TO REMAIN SILENT

If the suspect chooses to remain silent after reading the warnings, a second interrogation should not violate Miranda if:

-
1. The suspect's first request to remain silent was immediately honored.
 2. A significant period of time has elapsed before a second interrogation is attempted. The Supreme Court has held that 2 hours is a significant period; however, some lower courts have ruled that shorter periods may be permitted;
 3. The suspect must be readvised of the Miranda rights and voluntarily waive them; and,
 4. If the suspect again invokes the right to remain silent, the second interrogation must cease.

C. WAIVERS AFTER A SUSPECT HAS REQUESTED AN ATTORNEY

If the suspect asks for an attorney, you cannot give the warnings again at a later time and ask if the suspect would like to waive his/her rights. TO OBTAIN A VALID WAIVER AFTER A SUSPECT HAS REQUESTED ATTORNEY, A CUSTOMS OFFICER MUST PROVE THAT:

1. THE SUSPECT INITIATED A SECOND INTERROGATION WITH CUSTOMS, AND,
2. THE SUSPECT KNOWINGLY AND VOLUNTARILY WAIVED HIS HER RIGHTS.

A suspect will not be found to have initiated a second interrogation where the initiation is proceeded by actions or comments by the officers that equate to interrogation. General conversation with a subject about matters unrelated to the case do not constitute interrogation.

Not all statements by a suspect can be interpreted as showing a willingness to resume questioning. For example, a request to use the telephone or for a glass of water will not be viewed as a desire on the part of the suspect to continue the interrogation.

Before proceeding with a suspect initiated second interrogation, the suspect should be readvised of the Miranda rights and a waiver obtained.

If the suspect again invokes his/her rights, the second interrogation must cease.

D. Partial Waivers

Suspects can agree to waive their rights to discuss certain topics, while at the same time invoking their rights as to others. Such limitations are a prerogative of the suspect and the interrogation can continue so long as the limits established by the suspect are honored.

E. Breaks in Questioning

If the suspect waives the Miranda rights and a break in questioning occurs of such length that the suspect's appreciation of the warnings is reasonably likely to decrease, the warnings should be read again.

X. Miranda and Juveniles

- A. Federal law requires that suspects who have not reached their 18th birthday (juveniles) must be given their Miranda warnings immediately after their arrest in language they can understand. IF YOU ARREST A JUVENILE, YOU MUST GIVE MIRANDA WARNINGS IN LANGUAGE THE JUVENILE CAN UNDERSTAND, WHETHER YOU INTEND TO QUESTION OR NOT. Read them their rights and then carefully explain their rights to them. In addition you must advise the guardian or parents of the juvenile of the juvenile's rights and the charges against the juvenile.

XI. Miranda and Currency Violations

- A. In cases of violations of the Currency and Foreign Transaction Reporting Act, where no other criminal violations have been discovered, no Miranda warnings should be given until the individual as been given notice of the reporting requirement, and an opportunity to file a report and after the seizure of the monetary instruments, if any, has been made. Premature Miranda warnings could provide a suspect with a defense to filing the required form, if a Customs officer told the suspect of the right to remain silent.

Customs Directive No. 4210-01, Currency and Foreign Transactions Reporting Act, dated April

20, 1984, provides that "the Special Agent in Charge, Office of Investigations, in consultation with the U.S. Attorney, shall establish local guidelines concerning when and under what circumstances a traveler detected in violation of the reporting requirements shall be given the Miranda warnings." Customs officers should be aware of your local guidelines.

Xii. Miranda and Immigration Violations.

In some situations Customs officers may be working jointly with Immigration Officers at the border in clearing persons coming into the country. Because of answers to questions posed by the Immigration Officer and conflicting documents found in the possession of the suspect, probable cause may develop to arrest the suspect for an immigration violation. Can a Customs officer thereafter routinely question the suspect?

In U.S. v. Silva, 715 F2d 43 (2nd Cir. 1983), the court held once an offense has been committed in the presence of a representative of one agency (Immigration), that Customs could pursue its statutory duties to determine if there were items to declare.

STATEMENT OF RIGHTS

BEFORE WE ASK YOU ANY QUESTIONS, IT IS MY DUTY TO ADVISE YOU OF YOUR RIGHTS.

YOU HAVE THE RIGHT TO REMAIN SILENT.

ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT, OR OTHER PROCEEDINGS.

YOU HAVE THE RIGHT TO CONSULT AN ATTORNEY BEFORE MAKING ANY STATEMENTS OR ANSWERING ANY QUESTIONS, AND YOU MAY HAVE HIM PRESENT WITH YOU DURING QUESTIONING.

YOU MAY HAVE AN ATTORNEY APPOINTED BY THE U.S. MAGISTRATE OR THE COURT TO REPRESENT YOU IF YOU CANNOT AFFORD OR OTHERWISE OBTAIN ONE.

IF YOU DECIDE TO ANSWER QUESTIONS NOW, WITH OR WITHOUT A LAWYER, YOU STILL HAVE THE RIGHT TO STOP THE QUESTIONING FOR THE PURPOSE OF CONSULTING A LAWYER.

. . . . HOWEVER

YOU MAY WAIVE THE RIGHT TO ADVICE OF COUNSEL AND YOUR RIGHT TO REMAIN SILENT AND ANSWER QUESTIONS OR MAKE A STATEMENT WITHOUT CONSULTING A

LAWYER IF YOU SO DESIRE.

DO YOU UNDERSTAND YOUR RIGHTS?

DO YOU WAIVE YOUR RIGHTS?

WAIVER

I HAVE HAD THE ABOVE STATEMENT OF MY RIGHTS READ AND EXPLAINED TO ME.

I FULLY UNDERSTAND THESE RIGHTS AND I WAIVE THEM FREELY AND VOLUNTARILY, WITHOUT THREAT OR INTIMIDATED AND WITHOUT PROMISE OF REWARD OR IMMUNITY.

I WAS TAKEN INTO CUSTODY AT _____ (TIME, ON DATE, AND HAVE SIGNED THIS DOCUMENT AT _____ (TIME), ON _____ (DATE).

(SIGNATURE)

WITNESSES:

(SIGNATURE)

Attachment II

- Q. Should the inspector read Miranda to a suspect prior to taking him/her to the hospital for an X-ray exam?
- A. Not if there has been no contraband discovered yet and if no interrogatory questions are going to be asked.
- Q. If contraband is indicated in the X-rays, should the inspector then read Miranda to the violator?
- A. Since the violator is in custody in this situation, the inspector should only read Miranda if he/she intends to interrogate the violator.
- Q. When the inspector discovers undeclared merchandise in a traveler's belongings and is not sure if it will end up as a criminal charge, should he read Miranda prior to further secondary/enforcement questioning (i.e. trying to obtain an admission as to ownership of the goods, proper value, personal or commercial status, etc)?
- A. While the various Federal judicial circuits would probably render differing decisions on this question,

we believe that at this point in the secondary exam advising the traveler of his/her rights is unnecessary. As mentioned in Attachment 1, Section V., there are a variety of elements which would impact the "totality of circumstances" for each case, such as whether an individual is in custody and whether the officer believes there is a criminal violation. If there are substantial amounts of evidence (unreported currency, high-value or large quantity of commercial goods, etc.), the courts would expect an officer to believe that a criminal violation exists. In the above situation, the officer did not have a confirmed criminal violation and was merely asking routine secondary questions based upon real suspicion. The investigative agent who will contact the local U.S. Attorney for prosecution would render the determination as to a criminal or civil violation.

This situation, however, does point out the real need for inspectors to tailor their primary and secondary questioning so as to close as many loopholes in the travelers' declarations as possible prior to search and/or discovery of contraband. Once the trailer has admitted association with particular baggage, shipments, vehicles, etc.; solidified statements as to itinerary, purpose of travel, length of travel, import status, etc.; and produced any and all documents he/she intends to, later discovery of contraband should not require further unnecessary or incriminating questioning by the inspector. While such a procedure obviously is not suited to every inspectional situation, if followed as a general standard operational procedure, problems involving Miranda can be alleviated.

- Q. Should an inspector read the Miranda warning to a violator if, prior to the arrival of an agent, he/she volunteers incriminating information about an associate?
- A. Miranda is only necessary to protect the rights of the suspect or violator, not other persons. The key here is whether the violator may be a co-conspirator to the associate. If the inspector has any reason to believe that a conspiracy might exist, there must be no questioning without Miranda. In general, the agents should do such questioning anyway.

However, in circumstances which do not indicate a possibility of conspiracy and the violator volunteers such information about others, the inspector should

carefully note what was said and have a witness present if possible.

- Q. What about an airport setting where the inspector, having discovered a violation by a traveler, wants to question the violator as to traveling companions who may have already exited the Customs area?
- A. If there is not yet a clearly defined criminal violation, such questioning is permissible. Even if there is a probable criminal violation, questioning about an associate is generally not self-incriminating to the violator.

Nevertheless, inspectors should always try to ascertain this type of information before actually inspecting or intensively searching a suspect or his/her belongings. This can avoid potential problems regarding questioning if a criminal violation is later discovered.

000449

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE



DATE: JUN -8 2000

FILE: ENF-3:FO:CMC [REDACTED]

TO: Port Directors
South Florida

FROM: Director, Field Operations
South Florida

SUBJECT: Miranda Warnings by Customs Inspectors

Customs Directive 3340-022, dated February 28, 2000, requires that the advisement of Miranda Warnings to suspects and arrestees is the responsibility of the Office of Investigations (OI). However, in consultation with the Special Agent In Charge, South Florida, it has been determined that circumstances may occur when Inspectors may give the Miranda Warning under the direction of a Customs Special Agent.

The most likely circumstance for this to occur is when Inspectors are questioning a person who is suspected of ingesting or inserting contraband into their body. In those cases, when it is felt necessary to raise the level of questioning beyond the normal inspection questions, the following procedures will be followed:

- The Inspector will advise a Supervisory Customs Inspector of the circumstances and request permission to give the Miranda Warning.
- The supervisor will inform the Office of Investigations Special Agent on-site, or the Duty Agent, of the circumstances and the intent to give the Miranda Warning. Communications between the Supervisory Customs Inspector and the authorizing agent should be "crystal clear". There should be no assumptions that one of the parties should have known some fact. It is better that too much information is exchanged vis-à-vis too little information being exchanged. There should never be a possibility that one of the other parties suspects the other party is holding some information back.
- Upon concurrence of the Special Agent on-site, or the Duty Agent, the Supervisor Inspector will advise the Inspector to give the Miranda Warning to the suspect or arrestee, and continue the examination. If the Special Agent does not concur, the Inspector will not give the Miranda Warning but will continue the examination without raising the level of questioning.

- The Supervisory Inspector will ensure that the name of the Special Agent and the time of notification is included in the Search/Arrest/Seizure report (SAS), or the Inspectional Operations Incident Log (IOIL). (See CD 3340-022, Section 5.4)
- Any voluntary statements made before or after the advisement of the Miranda Warning should be noted on supporting statements and included in the seizure package.
- In other circumstances when a Special Agent might instruct an Inspector to give the Miranda Warning, there must be a clear understanding of the purpose and scope of any questions that are to be asked before the questioning begins.

Please also note that the attached Memorandum from the Acting Assistant Commissioner, Office of Field Operations, dated February 29, 2000, directs that when a juvenile is arrested, the arresting officer must immediately advise the juvenile of his rights, in a language that the juvenile can understand.

(b)(6) & (b)(7)(C)

Thomas S. Winkowski

Attachment

USCS
SOUTH FLORIDA CMC
FIELD OPERATIONS

STANDARD OPERATING PROCEDURE

SOP#: 11.9
SUBJECT: Foreign Nationals Notification Requirements
BASIS: Customs Directive 3340-022, Guidelines for Arrests Made by Inspectors Within Ports of Entry.

Memo Issued by the Executive Director, Passenger Programs, Office of Field Operations, dated March 8th, 2001 titled Foreign Nationals Notification Requirements

ACTION PARTY: All Inspectional Personnel

RESPONSIBLE PARTY: Supervisory Inspectors

PROCEDURE:

Pursuant to CD-3340-022 and the Executive Director's memo cited above (see attachments), Customs employees must follow certain procedures when foreign nationals are arrested. OI shall coordinate with the U.S. Attorney's Office to follow local procedures for such notifications. Such coordination with the U.S. Attorney's Office should occur at arrest or no later than (b)(2) & (b)(7)(E) after the approval for detention for personal search.

Effective immediately, the Supervisor involved in an arrest or detention will be responsible for notifying OI. In the case of internal carriers or suspected internals, OI must be notified when the contraband is tested and the violator is placed under arrest or at the (b)(2) & (b)(7)(E) mark of the detention if an arrest has not yet been made. We are currently notifying OI for detentions lasting (b)(2) & (b)(7)(E) which satisfies that part of the requirement. However, Supervisors are responsible for making notification to OI at the time of arrest as well.

Approved by:

(b)(6) & (b)(7)(C)

Chief Inspector

04/09/01

(b)(6) & (b)(7)(C)

Assistant Port Director

04/09/01

Attachments

000452

CIS CUSTOMS DIRECTIVES
SUBJECT: GUIDELINES FOR ARRESTS MADE BY INSPECTORS WITHIN THE PORTS OF ENTRY

SUBJECT: GUIDELINES FOR ARRESTS MADE BY INSPECTORS WITHIN THE PORTS OF ENTRY
CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:P DISTRIBUTION: G-19
NUMBER: 3340-022
DATE: FEBRUARY 28, 2000
SUPERSEDES:
REVIEW DATE: FEBRUARY 2002

SUBJECT: GUIDELINES FOR ARRESTS MADE BY INSPECTORS WITHIN
THE PORTS OF ENTRY

1 PURPOSE.

This directive establishes guidelines for arrests made by U. S. Customs Service Inspectors within ports of entry.

2 POLICY.

2.1 Federal law, 19 U.S.C. § 1589a, authorizes Customs officers to make arrests for violations of certain laws. By designation of the Commissioner, Customs inspectors are among those "Customs officers," who have arrest authority pursuant to section 1589a.

2.1.1 Customs inspectors and Canine Enforcement Officers are authorized to exercise their authority to arrest individuals within their respective ports of entry in performance of their official duties.

2.1.2 Pursuant to 19 U.S.C. § 1589a, Customs officers may make an arrest without a warrant for any Federal offense committed in the officer's presence, or for a Federal offense committed outside the officer's presence, if the officer has probable cause to believe that the person to be arrested has committed or is committing a felony.

2.2 Canine Enforcement Officers should defer arrests to a Customs inspector or a Special Agent in order to maximize the use and effectiveness of their detector dogs.

2.3 Customs inspectors making arrests within their ports of entry shall defer Miranda Warnings (except for Warnings to arrestees under 18 years of age), and the processing of arrestees (interrogation, transportation, booking, etc.) to Special Agents from the Office of Investigations.

2.4 Customs officers effecting arrests will adhere to the Use of Force Policy and use only that force which is reasonably necessary to neutralize or control the arrestee. Force applied after a suspect has been effectively subdued will be considered excessive.

3 AUTHORITIES/REFERENCES.

19 U.S.C. §§ 1401(i); 507(a); 482; 1582; 1589a; Rule 5a, *Federal Rules of Criminal Procedure*; *Treasury Policy on Use of Force*, T.O. 105-12; Chapters 2,3,5, 6 and 17, *Law Course for Customs Officers*; *Personal Search Handbook*, HB 3300-04a; *Passenger Operations Division Handbook*, HB 3300-02; *Customs Directive 099 4510-016*, *Customs Officers Responding to State Crimes*.

000453

4 RESPONSIBILITIES.

- 4.1 The Commissioner of Customs has policy oversight of all arrests by Customs officers.
- 4.2 Assistant Commissioners of the Office of Investigations and the Office of Field Operations are responsible for developing and establishing procedures to ensure proper national implementation of this directive.
- 4.3 Directors, Field Operations and Special Agents-in-Charge are responsible for establishing local protocol to ensure proper implementation of this directive in accordance with guidelines of the U.S. Attorney's Office and judicial decisions within their respective geographical area of responsibility
- 4.4 Directors, Field Operations, and Special Agents-in-Charge are responsible for adherence to this directive, and for disseminating its contents to Customs personnel.
- 4.5 Directors, Field Operations and Special Agents-in-Charge shall manage the implementation of this program and monitor compliance with the procedures to assure uniformity of application.
- 4.6 Supervisors shall ensure that Customs officers under their direction are familiar with the guidelines set forth in this directive.

5 PROCEDURES.

5.1 The Customs Service is not only involved with the interdiction of contraband; it is also involved in dismantling organized criminal enterprises. Among the tools used in this effort are (b)(2) & (b)(7)(E) (b)(2) & (b)(7)(E) Successful (b)(2) & (b)(7)(E) are highly dependent on the inspectors' ability to set the stage for these and other investigative techniques. This is particularly important in (b)(2) & (b)(7)(E) because the inspector must not only be able to determine that a conveyance contains contraband, but also (b)(2) & (b)(7)(E)

5.1.1 Although Customs inspectors may develop probable cause for an arrest, an immediate arrest may not be in the best interest of law enforcement. Inspectors are directed to consult with the Office of Investigations duty agent to discuss the probable cause and (b)(2) & (b)(7)(E) or other investigative action prior to effecting an arrest.

5.1.2 In situations where a Customs inspector discovers contraband or otherwise develops probable cause to effect an arrest, the Customs inspector will be the arresting officer.

5.2 The arresting officer will be identified in the arresting officer field of the Search/Seizure/Arrest (S/A/S) Report.

5.3 Unless otherwise instructed by a Special Agent of the Office of Investigations, Customs inspectors shall defer the reading of Miranda Warnings (unless the arrestee is under 18 years of age see *Law Course for Customs Officers*, 5.300) and the interrogation of arrestees to the Office of Investigations.

5.4 If a Customs inspector provides Miranda Warnings, the S/A/S will indicate the full name of the person administering the Warnings and the name of the witness. The date, time, and location of the Warnings will also be noted on the S/A/S.

5.4.1 The Miranda Warnings (see Attachment 2) are to be read, not recited from memory. The reading of Miranda Warnings should be approved by a Supervisory Inspector and in accordance with Chapter 10 of the Customs Personal Search Handbook (HB 3300-04A).

5.5 Upon effecting an arrest, Customs inspectors shall notify the duty agent of the Office of

(b)(2)

000454

Investigations. Special Agents of the Office of Investigations shall promptly arrange to take custody of the arrestee for processing according to law and local guidelines.

5.6 All arrests by Customs inspectors will be documented on a S/A/S. The narrative section of the S/A/S must include a clear description of the facts and circumstances that established the probable cause for the arrest.

5.7 The arresting Customs officer is responsible for taking reasonable steps to ensure the well being of the arrestee including food, shelter, and safety. If the arrestee is injured, or has special medical problems such as diabetes or drug addiction, medical assistance for the arrestee shall be obtained.

5.7.1 When an individual is arrested pursuant to this policy, the arresting Customs officers shall ensure that the subject is held in an appropriate facility, with adequate food, water, and sanitary facilities.

5.8 Customs officers have the authority to demand assistance from any person in making an arrest authorized by any law enforced by Customs, if necessary. 19 U.S.C. § 507. Customs officers should first seek assistance from other law enforcement officers, if practicable, before demanding assistance from a private person.

5.9 Customs officers shall be aware of policies regarding the arrest of foreign nationals. Agreements with certain countries require mandatory notification when their nationals are arrested. These countries are listed at 5.1100 *Law Course for Customs Officers* (11th ed. 1999) and in the Department of State brochure, "*Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them.*" The document can be found at www.state.gov, under "consular affairs."

5.9.1 Special Agents of the Office of Investigations are responsible for any notifications to foreign consulates (as applicable).

5.9.2 When the Office of Field Operations is the arresting officer of a foreign national, the Customs Supervisory inspector will be responsible for the notifications to the U.S. Immigration and Naturalization Service.

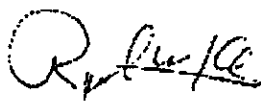
6 MEASUREMENT.

(b) (2)



7 NO PRIVATE RIGHT CREATED.

This directive is an internal policy statement of the U.S. Customs Service. It does not create or confer any rights, privileges, or benefits for any person or party.



Commissioner of Customs

Attachments

Attachment

(b) (2)



000455

Acknowledgment of Receipt of Arrest Authority Policy

Date Customs officer obtained copy: _____

This to acknowledge that I have received a copy of the Arrest Authority policy.

Officer's printed name

Signature

SSN

This to acknowledge that this Customs employee has received a copy of the Arrest Authority policy.

Supervisor: _____

Signature

Date _____

MIRANDA WARNINGS

- Before we ask you any questions, it is my duty to advise you of your rights.
- You have the right to remain silent.
- Anything you say can be used against you in court, or other proceedings.
- You have the right to consult an attorney before making any statements or answering any questions, and you may have him present with you during questioning.
- You may have an attorney appointed by the U.S. magistrate or the court to represent you if you cannot afford or otherwise obtain one.
- If you decide to answer questions now, with or without a lawyer, you still have the right to stop the questioning for the purpose of consulting a lawyer.

However

- You may waive the right to advice of counsel and your right to remain silent and answer questions or make a statement without consulting a lawyer if you so desire.
- Do you understand your rights?

000456

- Do you waive your rights?



3-13-2001 10:13AM
000457

FROM (b)(6) & (b)(7)(C)

305 810 5143

FILE
3/27



U.S. Customs Service

Memorandum

DATE: MAR 8 2001

FILE: FP:PSND:(b)(6) (b)(7)(C)
(b)(5)

TO : Directors, Field Operations

FROM : Executive Director, Passenger Programs
Officer of Field Operations (b)(6) & (b)(7)(C)

SUBJECT: Foreign Nationals Notification Requirements (TC# PO01-0488)

The Vienna Convention on Consular Relations (VCCR), of which the United States is a signatory, is a multilateral treaty dealing with the arrest, detention, death, guardianship or trusteeship of foreign nationals. The VCCR requires that foreign nationals who are arrested or detained be advised of the right to have their consular officials notified of that fact "without delay," i.e., as soon as it becomes feasible. The notification to consular officials should be made within 24 to 72 hours of the arrest or detention or as appropriate for cooperating defendants. The Customs Service is responsible for providing the advisement and any notification with respect to detentions or arrests by Customs personnel.

As a reminder, if a foreign national's detention is in a hospital or other medical facility pursuant to Customs authority, and exceeds 24 hours, notice to the foreign national's consulate shall be made as set forth in *Customs Directives 4510-022, Consular notification of detained or arrested foreign nationals, May 19, 2000* and *3340-022, Guidelines for arrests made by inspectors within the ports of entry, February 28, 2000; paragraphs 5.9 - 5.9.2.*

Please distribute this memorandum to all appropriate managers and supervisors and ensure compliance with the policies and procedures. Questions relative to this matter may be addressed to (b)(6) & (b)(7)(C) Program Officer, Office of Field Operations, at (b)(6) & (b)(7)(C)

TRADITION

★

SERVICE

★

HONOR

US Customs Service
South Florida CMC
Field Operations

STANDARD OPERATING PROCEDURES

SOP#: AP 11.10

BASIS: CD 4510-022, dated May 19, 2000

SUBJECT: Consular Notification of Detained or Arrested
Foreign Nationals

ACTION PARTY: Customs Officers, Supervisors and
Management officials

RESPONSIBLE PARTY: Eligible employee

PURPOSE: This SOP establishes policy and procedures for
notifying consulates concerning the arrest and detainment
of foreign nationals by the U.S. Customs Service (USCS).

POLICY: The Vienna Convention on Consular Relations
(VCCR), of which the United States is a signatory, is a
multilateral treaty dealing with the arrest, detention,
death, guardianship or trusteeship of foreign nationals.
The VCCR requires that foreign nationals who are arrested
or detained be advised of the right to have their consular
officials notified of that fact.

DRAFTED BY: (b)(6) & (b)(7)(C)

SIGNATURE/DATE: (b)(6) & (b)(7)(C) 09052000

APPROVED BY: Chief Inspector (b)(6) & (b)(7)(C)

(b)(6) & (b)(7)(C) 9/6/00
CHIEF INSPECTOR DATE

(b)(6) & (b)(7)(C) 9/14/00
ASST PORT DIRECTOR DATE
PASSENGER PROCESSING

Attachment:

2.1 The Vienna Convention on Consular Relations (VCCR), of which the United States is a signatory, is a multilateral treaty dealing with the arrest, detention, death, guardianship or trusteeship of foreign nationals. The VCCR requires that foreign nationals who are arrested or detained be advised of the right to have their consular officials notified of that fact "without delay," i.e., as soon as it becomes feasible. The notification to consular officials should be made within 24 to 72 hours of the arrest or detention or as appropriate for cooperating defendants. Further, the obligation to notify a consular official of a particular detention or arrest may exist independently of the VCCR or the foreign national's desire. These requirements apply without regard to the foreign national's visa or immigration status in the United States. The USCS is responsible for providing the advisement and any notification with respect to detentions or arrests by USCS personnel.

2.1.1 Lawful permanent resident aliens with a resident alien registration card (INS Form I-551), commonly known as a "green card," retain their foreign nationality and are "foreign nationals" within the meaning of the VCCR and this Directive.

2.1.2 Illegal aliens have the same rights under the VCCR as "legal" aliens.

2.2 The United States also is a signatory to a number of bilateral treaties, which require that the USCS notify the foreign national's consulate regardless of the foreigner's wishes. These countries are listed at 5.1100 Law Course for Customs Officers (11th ed. 1999) and in the Department of State brochure, "Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them." The document can be found at www.state.gov, under "consular affairs." The latest list is also available through the National Law Enforcement Communications Center (NLECC).

2.2.1 Once it is determined that the detainee is not a citizen of a country requiring mandatory notification, the subject should be informed of the right to consular notification without delay. If requested, the notification should be done as soon as reasonably possible under the circumstances.

2.2 As soon as the USCS becomes aware of the death of a foreign national while in Customs' custody, consular officials must be notified.

2.3 When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

2.4 Even when law enforcement officials of the foreign national's country are aware of the detention and are helping to investigate the crime in which the foreign national was allegedly involved, the provisions of this Directive apply.

2.5 If a foreign national's detention in a hospital or other medical facility pursuant to USCS authority exceeds 24 hours, notice to the foreign national's consulate shall be made as set forth in this Directive.

2.7 Special Agents of the Office of Investigations (OI) are responsible for any notifications to foreign consulates (as applicable).

3 AUTHORITIES/REFERENCES.

3.1 Consular Notification and Access, January 1998. Chapter 5.4 "Arrest of Diplomats or Foreign Nationals" and the appendix to Chapter 5 of the Law Course for Customs Officers (11th ed. 1999) discuss consular notification. Updates are published in the Enforcement Law Letter (ELL) as needed.

4 RESPONSIBILITIES.

4.1 OI is responsible for compliance with the procedures to follow when a foreign national is arrested or detained.

4.2 The NLECC is required to update on a monthly basis the list of countries that must be notified and to be prepared to respond to inquiries as to which countries are on the list.

4.3 All OI field offices are responsible for acquiring a copy of the brochure, "Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them." For additional information, you may contact the Senior Coordinator for Consular Notification at (b) (2) or the Office of the Assistant Legal Adviser for Consular Affairs at (b) (2). Urgent phone calls after regular business hours can be directed to the State Department Operations Center at (b) (2).

4.4 Customs offices will create records and maintain records sufficient to show compliance with these notification requirements. These records will document all foreign national advisements and notifications to foreign consular representatives, including the time and date the foreign national was advised of his or her right, whether or not the foreign national requested consular notification, and the time and date of any optional or required notification. OI personnel will document appropriate consular notification information in their Reports of Investigation (ROIs).

4.5 Periodically, the Department of State receives inquiries and complaints from foreign government officials concerning foreign nationals in detention. The Department of state may request information from Customs on whether consular notification was in fact given.

5 PROCEDURES.

5.1 Notification to a foreign national.

5.1.1 The Department of State would normally expect notification to consular officials to have been made within 24 to 72 hours of the arrest or detention or as appropriate for cooperating individuals. If a message is left on an answering machine, a follow-up call should be placed during normal business hours to ensure that it was received. In the case of emergencies (such as death or serious accident), efforts should be made to contact consular officials outside normal hours.

5.2 The detaining or arresting officer should determine the foreign national's country by examining the individual's passport or other documents. Once it is determined that the detained subject is a foreign national, the Customs officer should ascertain if a bilateral agreement with the U.S. requires notification. If such an agreement exists, the detainee should be informed that the local consulate will be notified.

5.2.1 A person who is a national/citizen of two or more countries should be treated in accordance with the rules applicable to each of those countries. A person who is a citizen of the U.S. and another country may be treated exclusively as a U.S. citizen. Consular notification is not required if the detainee is a U.S. citizen. This is true even if the detainee's other country of citizenship is a mandatory notification country.

5.3 If the foreign national's country is not on the mandatory notification list, OI Special Agents should advise the foreign national without delay of his right to have his consular official notified of the arrest or detention.

5.3.1 The recommended advisement (in English) that can be used, as well as translations, can be found in part four of the brochure, "Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them," dated January 1998, and in § 5.1000 of the Law Course for Customs Officers. That statement is as follows:

5.3.1.1 "As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the U.S. A consular representative from your country may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. If you want me to notify your country's consular officials, you can request this notification now or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want me to notify your country's consular officials?"

5.3.2 The recommended advisement to citizens of countries requiring notification appearing in the same sources referenced in 5.2.1 above is as follows:

5.3.2.1 "Because of your nationality, we are required to notify your country's consular representatives here in the U.S. that you have been arrested or detained. After your consular officials are notified, they may call or visit you. You are not required to accept their assistance, but they may be able to help you obtain legal counsel and may contact

your family and visit you in detention, among other things. We will be notifying your country's consular officials as soon as possible.”

5.4 Nothing in this Directive is meant to supersede or conflict with instructions provided by U.S. Attorneys regarding consular notification.

5.5 Notification to consular officials.

5.5.1 Consular notification can be made by telephone or by facsimile. A list of consular office phone and fax numbers can be found in part six of the “Consular Notification and Access.” The facsimile notification should be sent on official USCS letterhead. Attached is the notification format that is suggested for use by the Department of State.

5.5.2 Under the VCCR, the reasons for the detention do not have to be provided in the initial communication. Unless requested specifically by the consular officer and the detainee authorizes the disclosure, the detaining or arresting officer does not have to provide the reasons for the detention. However, some bilateral agreements require that the reason for the detention or arrest be provided upon request. If a consular official insists that he/she is entitled to information about the foreign national that the foreign national does not want disclosed, the Department of State could be contacted for guidance.

6 MEASUREMENT.

(b) (2)



7 NO PRIVACY RIGHT CREATED.

This Directive is an internal policy statement of the U.S. Customs Service. It does not create or confer any rights, privileges, or benefits for any person or party.

Commissioner of Customs

Attachment

**Suggested Fax Sheet for Notifying Consular Officers
of Arrests or Detentions**

Date:
Time:

To: Embassy of _____, Washington, D.C.
or
Consulate of _____, _____, _____
(Country) (City) (State)

From: Name: _____
Office: _____
Street Address: _____
City: _____
State: _____
ZIP Code: _____
Telephone: () _____
Fax: () _____

Subject: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF
YOUR COUNTRY

We arrested/detained the following foreign national, whom we understand to be a
national of your country, on _____, _____.

Mr./Ms. _____
Date of birth: _____
Place of birth: _____
Passport number: _____
Date of passport issuance: _____
Place of passport issuance: _____

To arrange for consular access, please call _____ and between the hours of
_____ and _____. Please refer to case number _____ when you call.

Comments:

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: OI:APP:PP

DISTRIBUTION: S-01

NUMBER: 4510-022

DATE: MAY 19, 2000

SUPERSEDES:

REVIEW DATE: MAY 2002

SUBJECT: CONSULAR NOTIFICATION OF DETAINED OR
ARRESTED FOREIGN NATIONALS

1 PURPOSE.

This Directive establishes policy for notifying consulates concerning the arrest and detention of foreign nationals by the U.S. Customs Service (USCS).

2 POLICY.

2.1 The Vienna Convention on Consular Relations (VCCR), of which the United States is a signatory, is a multilateral treaty dealing with the arrest, detention, death, guardianship or trusteeship of foreign nationals. The VCCR requires that foreign nationals who are arrested or detained be advised of the right to have their consular officials notified of that fact "without delay," i.e., as soon as it becomes feasible. The notification to consular officials should be made within 24 to 72 hours of the arrest or detention or as appropriate for cooperating defendants. Further, the obligation to notify a consular official of a particular detention or arrest may exist independently of the VCCR or the foreign national's desire. These requirements apply without regard to the foreign national's visa or immigration status in the United States. The USCS is responsible for providing the advisement and any notification with respect to detentions or arrests by USCS personnel.

2.1.1 Lawful permanent resident aliens with a resident alien registration card (INS Form I-551), commonly known as a "green card," retain their foreign nationality and are "foreign nationals" within the meaning of the VCCR and this Directive.

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and the Rights of Consular Officials to Assist Them." The document can be found at www.state.gov, under "consular affairs." The latest list is also available through the National Law Enforcement Communications Center (NLECC).

2.2.1 Once it is determined that the detainee is not a citizen of a country requiring mandatory notification, the subject should be informed of the right to consular notification without delay. If requested, the notification should be done as soon as reasonably possible under the circumstances.

2.2 As soon as the USCS becomes aware of the death of a foreign national while in Customs' custody, consular officials must be notified.

2.3 When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.

2.4 Even when law enforcement officials of the foreign national's country are aware of the detention and are helping to investigate the crime in which the foreign national was allegedly involved, the provisions of this Directive apply.

2.5 If a foreign national's detention in a hospital or other medical facility pursuant to USCS authority exceeds 24 hours, notice to the foreign national's consulate shall be made as set forth in this Directive.

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4 RESPONSIBILITIES.

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4.2 The NLECC is required to update on a monthly basis the list of countries that must be notified and to be prepared to respond to inquiries as to which countries are on the list.

4.3 All OI field offices are responsible for acquiring a copy of the brochure, "*Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them.*" For additional information, you may contact the Senior Coordinator for Consular Notification at (b) (2) or the Office of the Assistant Legal Adviser for Consular Affairs at (b) (2). Urgent phone calls after regular business hours can be directed to the State Department Operations Center at (b) (2).

4.4 Customs offices will create records and maintain records sufficient to show compliance with these notification requirements. These records will document all foreign national advisements and notifications to foreign consular representatives, including the time and date the foreign national was advised of his or her right, whether or not the foreign national requested consular notification, and the time and date of any optional or required notification. OI personnel will document appropriate consular notification information in their Reports of Investigation (ROIs).

4.5 Periodically, the Department of State receives inquiries and complaints from foreign government officials concerning foreign nationals in detention. The Department of State may request information from Customs on whether consular notification was in fact given.

5 PROCEDURES.

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5.2 The detaining or arresting officer should determine the foreign national's country by examining the individual's passport or other documents. Once it is determined that the detained subject is a foreign national, the Customs officer should ascertain if a bilateral agreement with the U.S. requires notification. If such an agreement exists, the detainee should be informed that the local consulate will be notified.

5.2.1 A person who is a national/citizen of two or more countries should be treated in accordance with the rules applicable to each of those countries. A person who is a citizen of the U.S. and another country may be treated exclusively as a U.S. citizen. Consular notification is not required if the detainee is a U.S. citizen. This is true even if the detainee's other country of

citizenship is a mandatory notification country.

5.3 If the foreign national's country is not on the mandatory notification list, OI Special Agents should advise the foreign national without delay of his right to have his consular official notified of the arrest or detention.

5.3.1 The recommended advisement (in English) that can be used, as well as translations, can be found in part four of the brochure, *"Consular Notification and Access: Instructions for Federal, State and Local Law Enforcement and Other Officials Regarding Foreign Nationals in the U.S. and the Rights of Consular Officials to Assist Them,"* dated January 1998, and in § 5.1000 of the *Law Course for Customs Officers*. That statement is as follows:

5.3.1.1 "As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular representatives here in the U.S. A consular representative from your country may be able to help you obtain legal counsel and may contact your family and visit you in detention, among other things. If you want me to notify your country's consular officials, you can request this notification now or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want me to notify your country's consular officials?"

5.3.2 The recommended advisement to citizens of countries requiring notification appearing in the same sources referenced in 5.2.1 above is as follows:

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6 MEASUREMENT.

(b) (2) [Redacted]

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Commissioner of Customs

Attachment

Suggested Fax Sheet for Notifying Consular Officers of Arrests or Detentions

Date:
Time:

To: Embassy of _____, Washington, D.C.
or
Consulate of _____
(Country) (City) (State)

From: Name: _____
Office: _____
Street Address: _____
City: _____
State: _____
ZIP Code: _____
Telephone: () _____

Fax: () _____

Subject: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

We arrested/detained the following foreign national, whom we understand to be a national of your country, on _____, _____.

Mr./Ms. _____

Date of birth: _____

Place of birth: _____

Passport number: _____

Date of passport issuance: _____

Place of passport issuance: _____

To arrange for consular access, please call _____ and between the hours of _____ and _____. Please refer to case number _____ when you call.

Comments:

000470

[Code of Federal Regulations]
[Title 8, Volume 1]
[Revised as of January 1, 2006]
From the U.S. Government Printing Office via GPO Access

[CITE: 8CFR236.6]

[Page 434]

TITLE 8--ALIENS AND NATIONALITY

CHAPTER I--DEPARTMENT OF HOMELAND SECURITY

PART 236 APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE

ALIENS; REMOVAL OF ALIENS ORDERED REMOVED--Table of Contents

Subpart A Detention of Aliens Prior to Order of Removal

Sec. 236.6 Information regarding detainees.

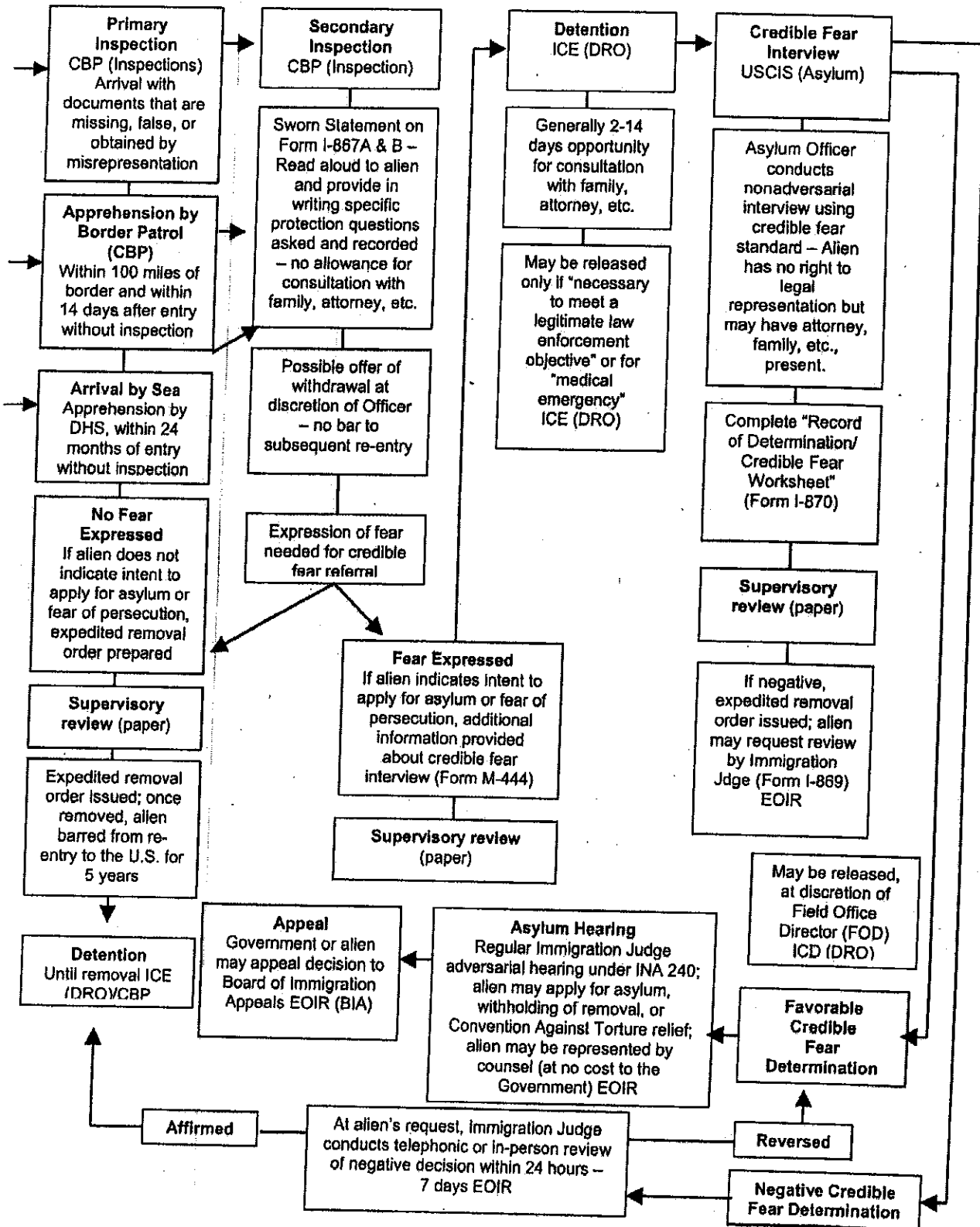
No person, including any state or local government entity or any privately operated detention facility, that houses, maintains, provides services to, or otherwise holds any detainee on behalf of the Service (whether by contract or otherwise), and no other person who by virtue of any official or contractual relationship with such person obtains information relating to any detainee, shall disclose or otherwise permit to be made public the name of, or other information relating to, such detainee. Such information shall be under the control of the Service and shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations and executive orders. Insofar as any documents or other records contain such information, such documents shall not be public records. This section applies to all persons and information identified or described in it, regardless of when such persons obtained such information, and applies to all requests for public disclosure of such information, including requests that are the subject of proceedings pending as of April 17, 2002.

[67 FR 19511, Apr. 22, 2002]

000471

Basic Admissibility Secondary Processing

Asylum Application Process: Expedited Removal Proceedings



Basic Admissibility Secondary Processing

Third Party Notification—Declination of Notification Procedures

**CBP Declination of Notification for Detention/Delay pending a
Determination of Admissibility**

The traveler has elected to decline the notification procedure for detention/delay pending a determination of his or her admissibility. The traveler must sign and indicate the date and time of the declination.

I, the undersigned, do not wish to notify anyone at this time of my detention/delay due to inadmissibility issues.

Signature of Traveler Date Time

Printed Name of Traveler

Signature of Witness Date Time

Printed Name of Witness

Remarks:

000473

Basic Admissibility Secondary Processing**Bilateral Treaty Countries: Mandatory Consular Notification****Bilateral Treaty Countries:
Mandatory Consular Notification Countries and Jurisdictions**

Algeria	Malta
Antigua and Barbuda	Mauritius
Armenia	Moldova
Azerbaijan	Mongolia
Bahamas, The	Nigeria
Barbados	Philippines
Belarus	Poland (non-permanent residents only)
Belize	Romania
Brunei	Russia
Bulgaria	Saint Kitts and Nevis
China ¹	Saint Lucia
Costa Rica	Saint Vincent and the Grenadines
Cyprus	Seychelles
Czech Republic	Sierra Leone
Dominica	Singapore
Fiji	Slovakia
Gambia, The	Tajikistan
Georgia	Tanzania
Ghana	Tonga
Grenada	Trinidad and Tobago
Guyana	Tunisia
Hong Kong ²	Turkmenistan
Hungary	Tuvalu
Jamaica	Ukraine
Kazakhstan	United Kingdom ³
Kiribati	U.S.S.R. ⁴
Kuwait	Uzbekistan
Kyrgyzstan	Zambia
Malaysia	Zimbabwe

¹ Notification is not mandatory in the case of persons who carry "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office ("TECRO"), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

² Hong Kong reverted to Chinese sovereignty on July 1, 1997, and is now officially referred to as the Hong Kong Special Administrative Region, or "SAR." Under paragraph 3(f)(2) of the March 25, 1997, U.S.-China Agreement on the Maintenance of the U.S. Consulate General in the Hong Kong Special Administrative Region, U.S. officials are required to notify Chinese officials of the arrest or detention of the bearers of Hong Kong passports in the same manner as is required for bearers of Chinese passports—i.e., immediately, and in any event within four days of the arrest or detention.

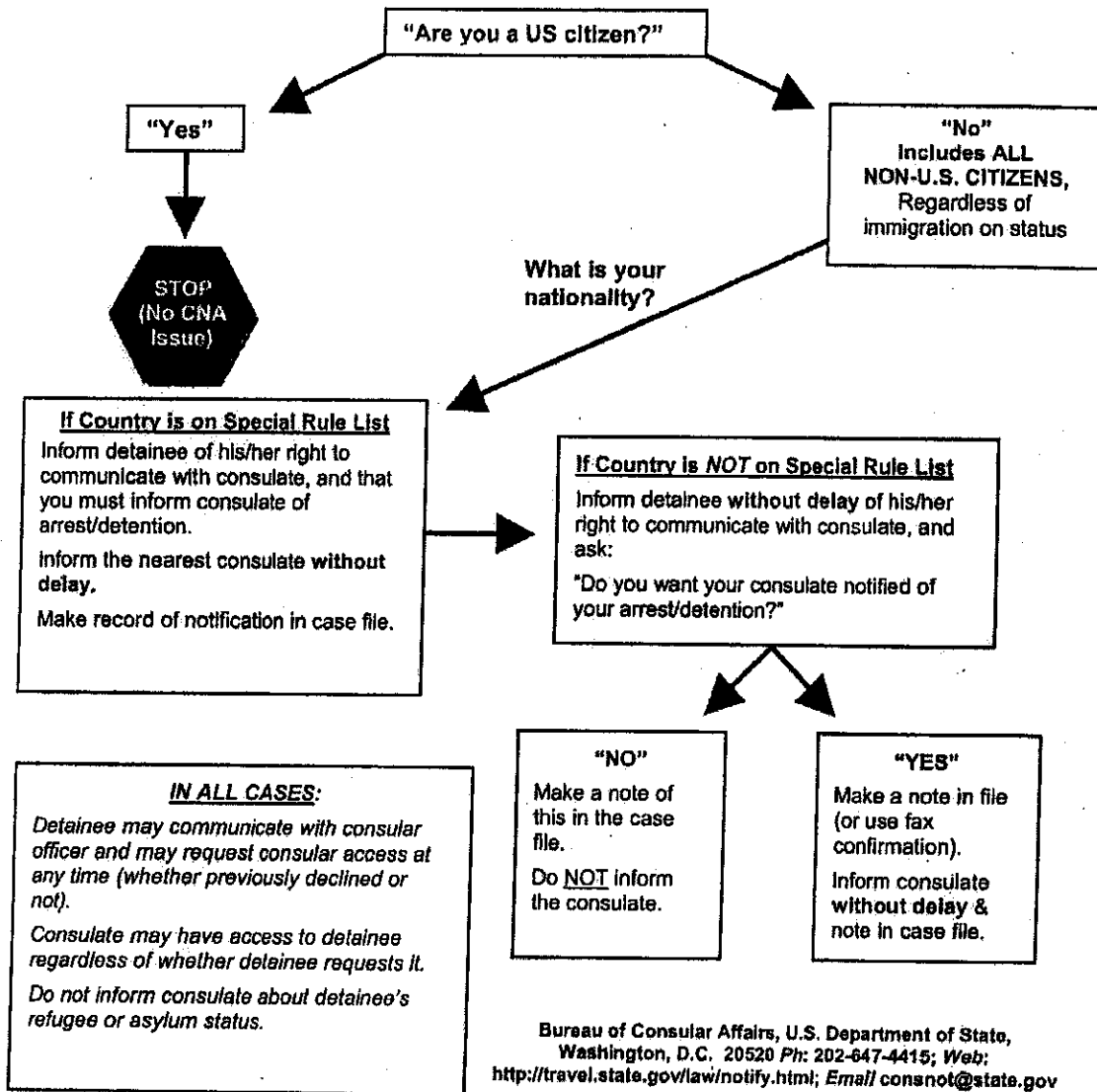
³ British dependencies also covered by this agreement are Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

⁴ Although the U.S.S.R. no longer exists, some nationals of its successor states may still be traveling on its passports. Mandatory notification should be given to consular officers for all nationals of such states, including those traveling on old U.S.S.R. passports. The successor states are listed separately above.

Source: http://travel.state.gov/law/consular/consular_737.html#notification

Basic Admissibility Secondary Processing

Consular Notification Process Flowchart



Basic Admissibility Secondary Processing

Consular Notification and Access Reference Card

Page 1

Page 2



**Consular Notification and
Access Reference Card:**

**Instructions for Arrests and
Detentions of Foreign Nationals**

This card summarizes for law enforcement officials the basic consular notification procedures to follow upon the arrest or detention of a foreign national. For more detailed instructions and legal material, see the Department of State publication *Consular Notification and Access*. The complete publication is available at <http://travel.state.gov/law/notify.html>. Questions may also be addressed to:

Office of Policy and Public Affairs
CA/P, Room 4800
Bureau of Consular Affairs
U.S. Department of State
Washington, DC 20520

Telephone: (202) 647-4415
Fax: (202) 736-7559

Urgent after-hours inquiries may be
directed to (202) 647-1512
(State Department Operations Center)

**Steps To Follow When a Foreign National
Is Arrested or Detained¹**

1. Determine the foreign national's country. Normally, this is the country on whose passport or other travel document the foreign national travels.
2. If the foreign national's country is not on the mandatory notification countries list on the facing page:
 - (I) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention. (Statement 1, back of this card)
 - (II) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
3. If the foreign national's country is on the list of mandatory notification countries on the facing page:
 - (I) Notify that country's nearest consular officials, without delay, of the arrest/detention.
 - (II) Tell the foreign national that you are making this notification. (Statement 2, back of this card)
4. Keep a written record of the provision of notification and actions taken.

¹These steps should be followed for all foreign nationals, regardless of their immigration status.

Basic Admissibility Secondary Processing

Consular Notification and Access Reference Card

Page 3

Page 4

Mandatory Notification Countries	Suggested Statements to Arrested or Detained Foreign Nationals																																																										
<table border="0"> <tr><td>Algeria</td><td>Malta</td></tr> <tr><td>Antigua and Barbuda</td><td>Mauritius</td></tr> <tr><td>Armenia</td><td>Moldova</td></tr> <tr><td>Azerbaijan</td><td>Mongolia</td></tr> <tr><td>Bahamas, The</td><td>Nigeria</td></tr> <tr><td>Barbados</td><td>Philippines</td></tr> <tr><td>Belarus</td><td>Poland²</td></tr> <tr><td>Belize</td><td>Romania</td></tr> <tr><td>Brunei</td><td>Russia</td></tr> <tr><td>Bulgaria</td><td>Saint Kitts and Nevis</td></tr> <tr><td>China¹</td><td>Saint Lucia</td></tr> <tr><td>Costa Rica</td><td>Saint Vincent/Grenadines</td></tr> <tr><td>Cyprus</td><td>Seychelles</td></tr> <tr><td>Czech Republic</td><td>Sierra Leone</td></tr> <tr><td>Dominica</td><td>Singapore</td></tr> <tr><td>Fiji</td><td>Slovakia</td></tr> <tr><td>Gambia, The</td><td>Tajikistan</td></tr> <tr><td>Georgia</td><td>Tanzania</td></tr> <tr><td>Ghana</td><td>Tonga</td></tr> <tr><td>Grenada</td><td>Trinidad and Tobago</td></tr> <tr><td>Guyana</td><td>Tunisia</td></tr> <tr><td>Hong Kong</td><td>Turkmenistan</td></tr> <tr><td>Hungary</td><td>Tuvalu</td></tr> <tr><td>Jamaica</td><td>Ukraine</td></tr> <tr><td>Kazakhstan</td><td>United Kingdom</td></tr> <tr><td>Kiribati</td><td>U.S.S.R.³</td></tr> <tr><td>Kuwait</td><td>Uzbekistan</td></tr> <tr><td>Kyrgyzstan</td><td>Zambia</td></tr> <tr><td>Malaysia</td><td>Zimbabwe</td></tr> </table>	Algeria	Malta	Antigua and Barbuda	Mauritius	Armenia	Moldova	Azerbaijan	Mongolia	Bahamas, The	Nigeria	Barbados	Philippines	Belarus	Poland ²	Belize	Romania	Brunei	Russia	Bulgaria	Saint Kitts and Nevis	China ¹	Saint Lucia	Costa Rica	Saint Vincent/Grenadines	Cyprus	Seychelles	Czech Republic	Sierra Leone	Dominica	Singapore	Fiji	Slovakia	Gambia, The	Tajikistan	Georgia	Tanzania	Ghana	Tonga	Grenada	Trinidad and Tobago	Guyana	Tunisia	Hong Kong	Turkmenistan	Hungary	Tuvalu	Jamaica	Ukraine	Kazakhstan	United Kingdom	Kiribati	U.S.S.R. ³	Kuwait	Uzbekistan	Kyrgyzstan	Zambia	Malaysia	Zimbabwe	<p style="text-align: center;">Statement 1: For All Foreign Nationals Except Those From List Countries</p> <p>As a non-U.S. citizen who is being arrested or detained, you are entitled to have us notify your country's consular officers here in the United States of your situation. You are also entitled to communicate with your consular officers. A consular officer may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. Do you want us to notify your consular officers at this time?</p> <p style="text-align: center;">Statement 2: For Foreign Nationals From List Countries</p> <p>Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. In addition, you are entitled to communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things.</p>
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<p>¹Does not include Republic of China (Taiwan) passport holders. ²Mandatory for nonpermanent residents only. ³Passports may still be in use.</p>	<p style="text-align: right;">(06/04) 04-0605</p>																																																										

Basic Admissibility Secondary Processing

Suggested Fax Sheet for Notifying Consular Officers of Arrests or Detentions

Date: _____ Time: _____

To: Embassy/Consulate of _____ in _____, _____
(Country) (City) (State)

Fax: () _____ (see http://www.travel.state.gov/law/consular/consular_745.html for phone/fax nos.)

Subject: NOTIFICATION OF ARREST/DETENTION OF A NATIONAL OF YOUR COUNTRY

From:

Name: _____

Office: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Telephone: () _____ Fax: () _____

We arrested/detained the following foreign national, whom we understand to be a national of your country, on _____, _____.

Mr./Mrs./Ms: _____

Date of Birth: _____

Place of Birth: _____

Passport Number: _____

Date of Passport Issuance: _____

Place of Passport Issuance: _____

To arrange for consular access, please call () _____ between the hours of _____ and _____. Please refer to case number _____ when you call.

Comments/Charges (optional):

000478

Basic Admissibility Secondary Processing

Third Party Notification—Contact Advisory of CBP Detention

Contact Advisory of CBP Detention

To be used for any person who has been administratively detained for 3 hours pending a determination of his or her admissibility. The detainee will be afforded the opportunity to have CBP notify someone (including an attorney) of the delay. The 3-hour period for notification commences when the passenger is referred to CBP hard secondary for immigration administrative proceedings and should be done as soon as reasonably possible under the circumstances.

I am Officer (name) of U.S. Customs and Border Protection at (Port of Entry). Your, (husband, sister, friend, etc.) who has arrived in the United States (on flight number if the detainee arrived by air) has asked that we contact you. He (or she) is safe, however a decision regarding his or her application for admission is pending (or he or she will not be able to enter the United States at this time if a decision has been made). He (or she) is not available to speak with you during Customs and Border Protection processing.* However, he (or she) will be afforded the opportunity to contact you at the completion of all CBP processing (if the person arrived by air or sea, or if the person arrived by land but cannot be returned to Canada or Mexico immediately).

Person Contacted: _____

Phone Number Contacted: _____

Relationship: _____

Time of Notification: _____

Person making notification: _____
(Title, Badge Number if applicable)

Remarks:

Person's Name:

A-Number (if any):

Your Rights.

You have been arrested because Immigration Agents believe that you are illegally in the United States. When you are arrested in the United States you have certain rights. No one can take these rights away from you. This paper explains your rights.

You have the right to use the telephone.

You may call your mother or father or any other adult relative. You may call your adult friend. If you do not know how to use the telephone, the Immigration Agent will help you.

You have the right to be represented by a lawyer.

Attached to this paper is a list of lawyers who can talk to you, and help you, for free. A lawyer can fully explain all of your rights to you, and can represent you at a hearing.

You have the right to a hearing before a judge.

The judge will decide whether you must leave or whether you may stay in the United States. If for any reason you do not want to go back to your country, or if you have any fear of returning, you should ask for a hearing before a judge.

If you do not want to have a hearing before a judge, you may choose to go back to your country without a hearing.

Reading this Notice:

- I have read this notice.
- This notice has been read to me.

Right to Use Telephone:

- I have contacted my parent(s) or a legal guardian by telephone.
- I have contacted an adult friend or relative by telephone.
- I do not want to talk to any one by telephone.

Completion of the following is optional:

The person contacted is: (Relationship)

The person contacted is: (Name)

Right to be Represented by a Lawyer:

- I have spoken with a lawyer.
- I do not want to speak with a lawyer.

Right to a Hearing:

- I understand my right to a hearing before a judge.

- I request a hearing before a judge.

Signature: _____

Date: _____

- I do not want to have a hearing before a judge.
- I am in the United States illegally and ask that I be allowed to return to my country, which is named below.

Country: _____

Signature: _____

Date: _____

INSTRUCTIONS TO OFFICERS

This advisal is required to be given to all persons who are taken into custody and who appear, are known, or claim to be under the age of eighteen and who are not accompanied by one of their natural or lawful parents. No such person can be offered or permitted to depart voluntarily from the United States except after having been given this notice.

The required procedure distinguishes between two classes of minors.

- 1) The first class are those minors apprehended in the immediate vicinity of the border and who permanently reside in Canada or Mexico. These persons shall be informed that they have a right to make a telephone call to any of the persons mentioned in the notice. The purpose of this call is so that they can seek advice as to whether they should voluntarily depart or whether they should request a deportation hearing. You are required to make a record of any refusal to accept our offer of a telephone call.
- 2) As to all other minors, *they must not only be given access to a telephone, they must establish communication, telephonic or otherwise, with one of the persons listed in the notice before they can be offered voluntary departure.*

The INS retains the right to decide when to allow telephone calls. The only prohibition is that the minor cannot be asked to voluntarily depart until after telephone access is provided. If the minor is not offered voluntary departure but is put into deportation proceedings by issuance of a Notice to Appear, this procedure is not necessary. It is our duty to make reasonable efforts to contact the person of the minor's choice, but after unsuccessful efforts to reach that person, we can facilitate contact with another such person. Whenever the minor elects to pursue a process, such as a call to a foreign country, which is operationally unacceptable, we can always proceed to issue a Notice to Appear.

The minor must tell the type of person that he/she talked to but need not give us that person's name or identifying information. If a minor, of *his/her own volition*, asks to contact a consular officer, this will satisfy the requirements of the notice.

The officer need not read the notice to the minor unless the minor is under 14 years of age, or unable to understand the notice. The officer must ask the minor whether he/she wanted to make a call, whether a communication was made and, if made, to whom. The officer must also verify whether the minor wanted voluntary departure or a hearing, and must sign and date the form to show this was done.

Officers are not to offer any advice to any minor as to what he/she should or should not do.

To be completed by the Officer:

I verify that: _____ A- _____

1. a. The subject named was given this notice to read.
b. I read this notice to the named subject in the following language: _____
2. a. I asked this subject whether he/she wanted to make a telephone call, and offered assistance in the use of the telephone.
3. a. The subject told me that he/she did not want to make a telephone call, or
b. The subject told me that he/she established communication and the form was marked to indicate it;
c. The subject was unable to establish telephone communication with the desired individual. The following number of attempts were made: _____
4. a. The subject requested a hearing.
b. The subject admitted removability and requested to return to his/her country voluntarily, without a hearing.
5. a. A Notice to Appear was issued because the subject was unable to establish contact with any of the individuals specified after making the number of attempts indicated above, (Item 3 c), and after assistance to establish contact was given or offered.

Signature of Officer

Date

Third Party Notification—Detention Guidelines Memorandum—Additional Guidance

December 20, 2004

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS
DIRECTOR, PRECLEARANCE OPERATIONS

FROM: Assistant Commissioner
Office of Field Operations

SUBJECT: Detention Guidelines for Notification of Third Parties - Additional
Guidance

In response to the recommendations of field managers, this memorandum serves to modify the October 8, 2004, memorandum entitled "Detention Guidelines for Notification of Third Parties" (see the attached memorandum), which directed that any person detained 2 hours for Customs and Border Protection (CBP) processing will be given the opportunity to have CBP notify someone of his or her delay pending a determination of admissibility. The Field Offices will implement the following steps immediately.

(1) Notification Requirement:

Any person administratively detained for more than 3 hours pending a determination of the person's admissibility will be given the opportunity to have CBP notify someone of the delay. This policy also applies to cases where an admissibility determination was made and an adverse action has been taken before the 3-hour mark. The requirement for notification of third parties applies to any person who is referred to CBP hard secondary for immigration administrative proceedings. This requirement does not apply to any person who is referred to CBP hard secondary for immigration criminal prosecutions or any person who was previously convicted and is subject to removal based on that conviction. Nor does this requirement apply to any person who is referred to CBP soft secondary for routine immigration paperwork.

(2) Definitions:

For the purpose of this memorandum, CBP hard secondary is defined as an examination or investigative process involving immigration administrative proceedings or immigration criminal prosecutions. Immigration administrative proceedings are intended to lead to removal or civil penalties. Examples of immigration administrative proceedings include withdrawal of application for admission, refusal of entry, removal before an Immigration Judge, expedited removal, material witness cases, or fines. Immigration criminal prosecutions are intended to lead to incarceration. Examples of immigration criminal prosecutions include smuggling and terrorism-related cases. Processing not covered by immigration administrative proceedings or immigration criminal prosecutions falls under CBP soft secondary. Examples of CBP soft secondary include immigrant visas, refugee admissions, waivers, paroles, and the routine National Security Entry Exit Registration System (NSEERS) procedures, where the expected outcome of CBP officers' action will be the release of the traveler upon completion of processing.

(3) Time Determination:

b2 The 3-hour period for the notification requirement begins at the time the person is referred to CBP hard secondary for immigration administrative proceedings as indicated by the (b) (2) System (b) (2), and should be done as soon as reasonably possible under the circumstances. When the 3-hour notification period has elapsed, the processing CBP officer will immediately offer to notify someone on behalf of the detained passenger. The processing officer will also notify a supervisor of the elapse of the 3-hour notification requirement.

Third Party Notification—Detention Guidelines Memorandum—Additional Guidance

(4) Notification Procedures:

The detained passenger must provide the processing officer with a name and telephone number of the person they would like contacted. The processing officer may offer **one call** to contact either the person meeting the detained passenger or, if no interpretation service is required, someone overseas. If no one or a machine answers the phone, the officer will note the contact result in the computer reports described below. If operationally possible, the officer may page the person meeting the detained passenger but for whom the detained passenger does not have the phone number.

(5) Officer Responsibilities on Call:

The CBP officer making the telephone call /contact will utilize the prepared script provided in the attached Contact Advisory of CBP Detention. For privacy and safety concerns, specific information regarding inadmissibility and the location where the person is administratively detained will not be disclosed. Should the detained passenger elect to decline an opportunity to use the notification procedure, the detained passenger should complete and sign the attached CBP Declination of Notification Procedure for Detention/Delay Pending a Determination of Admissibility.

(6) Tracking and Reporting:

The narrative of the (b) (2) report shall include the name and telephone number of the person contacted, and the time of the notification. If no one or a machine answers the phone, the (b) (2) report will note that result. Should the detained passenger decide not to have someone contacted by CBP, the (b) (2) report will note that decision. In cases where a detained passenger is subsequently admitted from hard secondary processing, the officer shall document the inspection results in the (b) (2) or (b) (2) as appropriate.

(7) Miscellaneous:

At an airport or a seaport, the passenger will be afforded the opportunity to contact someone on the passenger's own volition and with a CBP phone at the completion of all CBP processing. At a land-border port, the passenger will not be afforded the opportunity to contact someone after the completion of all CBP processing if he or she can be returned to Canada or Mexico immediately.

The above guidelines do not replace policy on consular notification. For detailed information on consular notification, please review Chapter 17.15(b)(6) of the Inspector's Field Manual, 8 CFR 236.1(e), and CBP Directive 4510-022, Consular Notification of Detained or Arrested Foreign Nationals (OFO is revising this Directive outlining the requirements on consular notification).

To ensure that all officers and supervisors are familiar with these new guidelines, the field managers will incorporate the attached Muster Module: Detention Guidelines for Notification of Third Parties into daily musters.

If you have any questions, please contact Mr. Robert Jacksta, Executive Director, Border Security and Facilitation at (202) 344-1220.

/s/ William S. Heffelfinger III for
Jayson P. Ahern

Attachments

Subject: Interpreters

Date: 1/15/2002 10:12a

From: (b)(6) & (b)(7)(C)

This is a reminder that, if at all possible, we must NOT use interpreters that work for the national airline of a country to translate sworn statements, when the alien involved is a citizen of that country. The concern is that the alien might be afraid to express a fear or concern if he thinks that the information he gives in the statement might be passed along by the interpreter to government officials in his country of citizenship, since the interpreter may be considered to be a government official by virtue of employment with the national airline.

In such cases an interpreter from the INS Interpreters Unit or an interpreter from Language Service Associates should be used.

Subject: Document Seizures

Date: 5/18/2006 09:31a

From: (b)(6) & (b)(7)(C)

Please consider this a reminder that in order to seize documents found in luggage, "...probable cause must be established that the documents have been altered, are counterfeit, or are otherwise evidence of a crime, or the fruit or instrumentality of a crime."

Simply put, if travel documents found in luggage are altered, counterfeit, etc. they may be seized. If, upon inspection, the documents are not found to be fraudulent, they are to be returned. If fraudulent documents are seized, they should be handled according to outstanding procedures. At the very least, when forwarded, a memorandum should accompany them to identify who seized them and to explain the circumstances under which they were seized.

Please review the attached guidance.

Thanks

(C)

File Attachment: Guidance Fraud Docs.doc (56832 bytes)

File Attachment: Further Guidance Fraud Docs.doc (23552 bytes)

**Updated Guidelines for Returning Persons Who Present Fraudulent Documents
and Disposition of the Seized Documents**
January 14, 2005

These updated guidelines take precedence over the guidelines issued December 23, 2004. In some respects the guidelines are similar but there are also important changes. Please discard the previous guidelines and follow these updated guidelines in seizing travel documents and returning inadmissible travelers to their port of embarkation or, for land border ports, to the country from which they arrived. The term "fraudulent documents" includes documents that are altered, counterfeit, stolen, obtained fraudulently, or presented by an imposter. Travel documents containing counterfeit or altered visas, cachets, biographical or issuance data are also to be seized and forwarded to the (b)(2) & (b)(7)(E)

General Rules in the Disposition of Fraudulent Travel Documents

- In conformity with International Civil Aviation Organization, Annex 9 (ICAO) standards, Customs and Border Protection (CBP) officers will seize and remove from circulation all fraudulent travel documents they encounter, except in pre-clearance locations. All fraudulent travel documents will be tracked in (b)(2) & (b)(7)(E), (see specific exemptions below for prosecution and asylum cases.)
- To prevent seized documents from returning to circulation, never give them back to the person who presented them or turn them over to airline authorities. The final disposition of all seized fraudulent travel documents is to forward them to (b)(2) & (b)(7)(E) or keep them in the (b)(2) & (b)(7)(E) (for prosecution and asylum cases only.)
- All seized travel documents, to include foreign and U.S. passports, border crossing cards (DSP-150), and Permanent Resident Cards (I-551) are to be entered into (b)(2) & (b)(7)(E), CBP's seized property system, following the procedures to be forwarded in a separate transmission from the Seizures and Penalties/Trade Compliance and Facilitation branch of CBP.
- Since passports and other travel documents remain the property of the government that issued them, after (b)(2) & (b)(7)(E) processing is complete, (b)(2) & (b)(7)(E) will usually return the documents to the foreign governments and US agencies that issued them.
- Persons who apply for entry through the **Visa Waiver Program** using fraudulent documents must be refused entry, not given an expedited removal. On occasion they may be referred for prosecution. Fraudulent travel documents presented by those refused under the Visa Waiver Program should be seized and forwarded to (b)(2) & (b)(7)(E)

- When fraudulent documents are encountered in **pre-clearance operations**, turn over documents to the host country after CBP pre-clearance procedures are completed.
- Whenever a person who presented a fraudulent travel document is found to have a connection to terrorism, forward the travel document and a copy of any other papers carried by the person. This may include (b)(2) & (b)(7)(E) [REDACTED], and any other information that may prove valuable in determining destination, intent, affiliations, modes of operation or travel, and financial information. Place items in the seizure bag with the travel document for forwarding.
- The (b)(2) & (b)(7)(E) [REDACTED] maintains the resources to perform forensic and comparative analysis of travel documents. Requests for immediate assistance in determining the authenticity of a questioned document should continue to be directed to the [REDACTED]. (E)
- Continue to forward directly to the [REDACTED] (E) any fraudulent or suspected fraudulent documents involved in a prosecution case or administrative hearing for which forensic analysis is requested.
- The [REDACTED] is working out procedures to make sure [REDACTED] receives examples of travel documents showing new trends in fraud and documents to use as training materials in the courses they conduct.
- In secondary, process all persons encountered with fraudulent documents using the (b)(2) & (b)(7)(E) T system so that this information can be retrieved by the [REDACTED] for use in analyses.
- The [REDACTED] will receive and analyze only travel documents, not identity documents (except for cases connected to terrorism.) Travel documents - also referred to as entry documents - consist of passports, visas, and any documents that take the place of passports and visas for admission into another country. Identity documents, such as birth certificates, drivers' licenses, social security cards, and naturalization certificates are governed by different laws from passports and visas. Dispose of identity documents according to current port procedures. Do not forward to the [REDACTED] or enter into (b)(2) & (b)(7)(E) [REDACTED]. If the fraudulent identity document is of extraordinary sophistication and its replication would be advantageous for distribution and training purposes, forward the document to (b)(2) & (b)(7)(E) [REDACTED].
- Officers must make sure at the outset of processing that the traveler has presented a fraudulent document. Please distinguish between travelers presenting fraudulent documents and presenting inappropriate documents through error or misinformation.

Having a wrong visa classification, an expired passport or visa, or the traveler disregarding limitations placed on the visa are not examples of document fraud, as officers know.

- Minors (under eighteen) with fraudulent or no documents should be processed as withdrawals or in accordance with existing policy on treatment of minors.
- Incidents where a link to terrorism is suspected are to be reported separately and immediately to the (b)(2) & (b)(7)(E), in accordance with current procedures. Coordinate processing with the port's (b)(2) & (b)(7)(E)
- Supervisors should consider each fraudulent document case that has a link to terrorism or to another national security concern as a possible prosecution referral to the U.S. Attorney's Office, under their expanded guidelines for accepting fraudulent document cases.
- A Single Journey Letter (SJL) should accompany each inadmissible traveler who is returned to his or her point of embarkation via the incoming carrier or vessel. The SJL will take the place of the original fraudulent document when returning the traveler. (b)(2) & (b)(7)(E)
 (Instructions for completing the Single Journey Letter and the rest of the travel packet that will accompany the traveler back to the point of embarkation follow.)
- An SJL may be issued to a traveler at a land border port of entry when it is deemed necessary or advantageous in the removal of the alien from the U.S. This will occur most often in the removal of third-country nationals.
- CBP officers may seize altered, stolen, or counterfeit travel documents not presented for entry but found in luggage or mail, if the search has been conducted lawfully. Seizure of these documents requires probable cause that the documents have been altered, are counterfeit, or are otherwise evidence of a crime, or the fruit or instrumentality of a crime. They may be held until CBP determines whether they are connected with a crime. Send these documents to (b)(2) & (b)(7)(E), enter them into the (b)(2) & (b)(7)(E) system, and include the information known about the case in an accompanying memo with the document.

Travel Packet for Inadmissible Travelers Returned to the Point of Embarkation

Whenever a fraudulent travel document is seized, prepare a removal packet to take the place of the seized document. The packet will be returned abroad through the carrier or vessel with the inadmissible traveler. The travel packet will consist of:

1. A notice of removal (I-259, I-860, or other appropriate document);
2. A photocopy of the document presented that includes copies of all the pages with cachets, notations, or visas on them, as well as the biographic pages.
3. A Single Journey Letter on (b)(2) & (b)(7)(E) [REDACTED] (The file can be downloaded electronically and individualized to fit the case. Save the file in blank for future use.)

Preparing for the Inadmissible Traveler's Return Abroad via an Air Carrier or Vessel

In some instances, receiving countries may seek advance notification when a traveler is being returned with an ICAO Annex 9-type of Single Journey Letter, such as the letter attached below. In such instances, where the port routinely has provided advance notice, continue the practice.

Notify the appropriate carrier or vessel personnel of the person's inadmissibility and arrange to return the traveler to their custody.

Complete the person's removal processing and give him or her the appropriate notification of inadmissibility (e.g. Form I-296 and I-860).

Complete the travel packet described above and give it to the carrier or vessel's representative (for air carriers, the purser or head flight attendant; for vessels, the master or purser).

Other Considerations

Temporary Travel Documents. In the case of an inadmissible person whose true nationality and identity are in question, or when the seized document was issued by a U. S. authority, (or purported to be so issued) the port may find that temporary travel documents must be obtained. Existing procedures are then to be followed: the alien will usually be processed for expedited removal and detained, the incoming carrier or vessel will have their usual responsibilities, and (b)(2) & (b)(7)(E) will request travel documents to

effect the removal. Such a process may incur detention costs and delay the alien's removal. Therefore, this option should be used only when absolutely necessary.

Advising Air Carrier and Vessels of Obligations Under the ICAO Standard. CBP officers may tell the carrier or vessel's representatives that the processes CBP is following in seizing all fraudulent documents are in conformity to ICAO recommendations in Annex

9, section 3-5 and forward. The text of Annex 9 to the Convention on International Civil Aviation, International Standards and Recommended Practices, is available on-line at www.icao.org. It is to the advantage of all for the ports to assist the carriers, and vice versa, to the extent possible in returning passengers to the point of embarkation.

Reports of Non-compliance with ICAO Standards. Reports of countries that raise serious obstacles to accepting back inadmissible travelers under a Single Journey Letter, or carriers or vessels that are uncooperative about accepting photocopies of the seized documents and Single Journey Letter should be sent through channels to the Data Collection Division, Field Liaison Branch of the Office of Field Operations. Using the reports, CBP can then report countries that create problems to the Department of Homeland Security and the Department of State so that diplomatic steps may be taken to encourage better cooperation.

CBP Coordination with the Department of State on Notification of New Procedures. CBP has consulted with the Department of State concerning the procedures described in these instructions and incorporated many of their suggestions into the Single Journey Letter. The Department of State has agreed to notify their posts of CBP's change in procedures, and will ask the posts to notify their host government's inspectional and border authorities in turn.

CBP Coordination with ATA and IATA. CBP has also notified the carrier associations ATA and IATA of the new procedures and distributed a copy of the Single Journey Letter to them for distribution to their member carriers.

Asylum Claims. At any point in processing cases, including Visa Waiver applicants, if an inadmissible traveler with a fraudulent document, or no documents, makes an asylum claim or states that he or she is afraid of being persecuted if returned abroad, follow established procedures for processing asylum claims. Copy the document presented and forward only the copy to the [REDACTED] with a copy of the I-213 or other report generated. Include the fraudulent document in the (b)(2) & (b)(7)(E)

For prosecution cases, copy the document presented and forward only the copy to the [REDACTED] with a copy of the I-213 or other report generated. Include the fraudulent document in the (b)(2) & (b)(7)(E)

Fraudulent travel documents forwarded to the [REDACTED] must include the following:

- Document
- Copy of I-213 including A-file number and FINS
- Copy of travel itinerary and airline tickets (air arrivals)
- Passenger Name Record (PNR) (air arrivals)
- Passenger check-in data, if possible (air arrivals)

These documents and accompanying papers should be delivered as a package to the Fines and Penalties Officer who enters the document information in (b)(2) & (b)(7)(E).

The mailing address of the [REDACTED] is:

(b)(2)
& (b)
(7)(E)