

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.

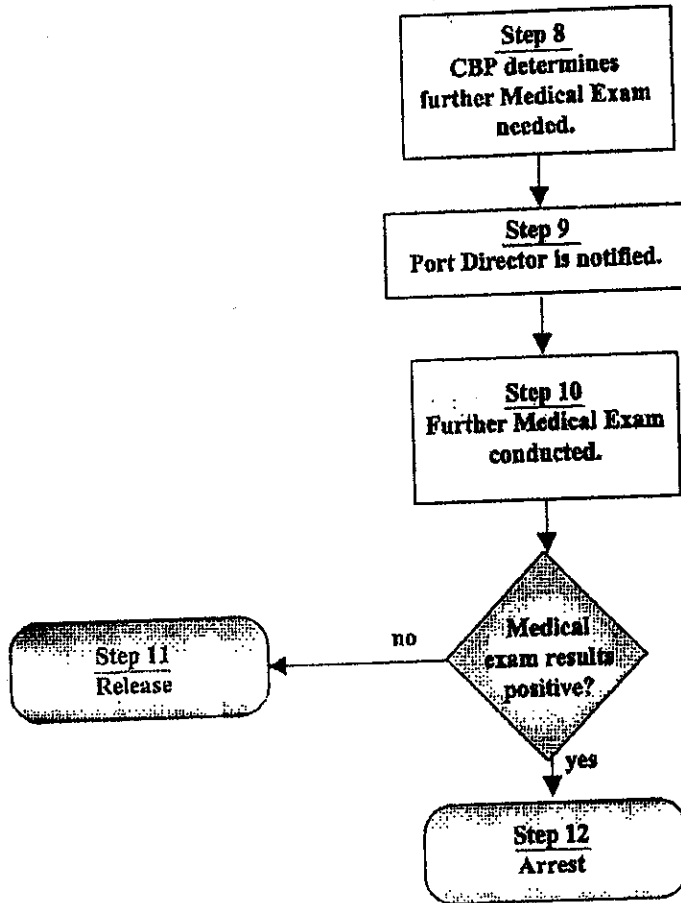
h. Physician-Directed Medical Treatment

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.

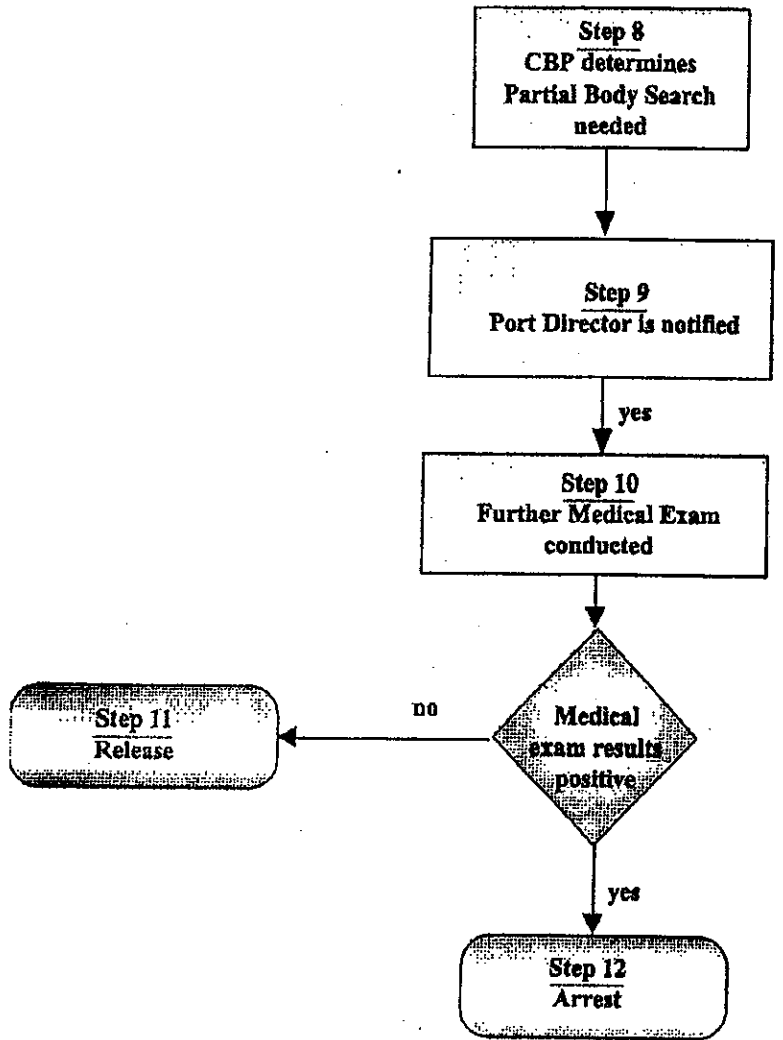
Maintain contact with SECTOR radio at all times, and provide departure and arrival times and mileage to SECTOR.

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.

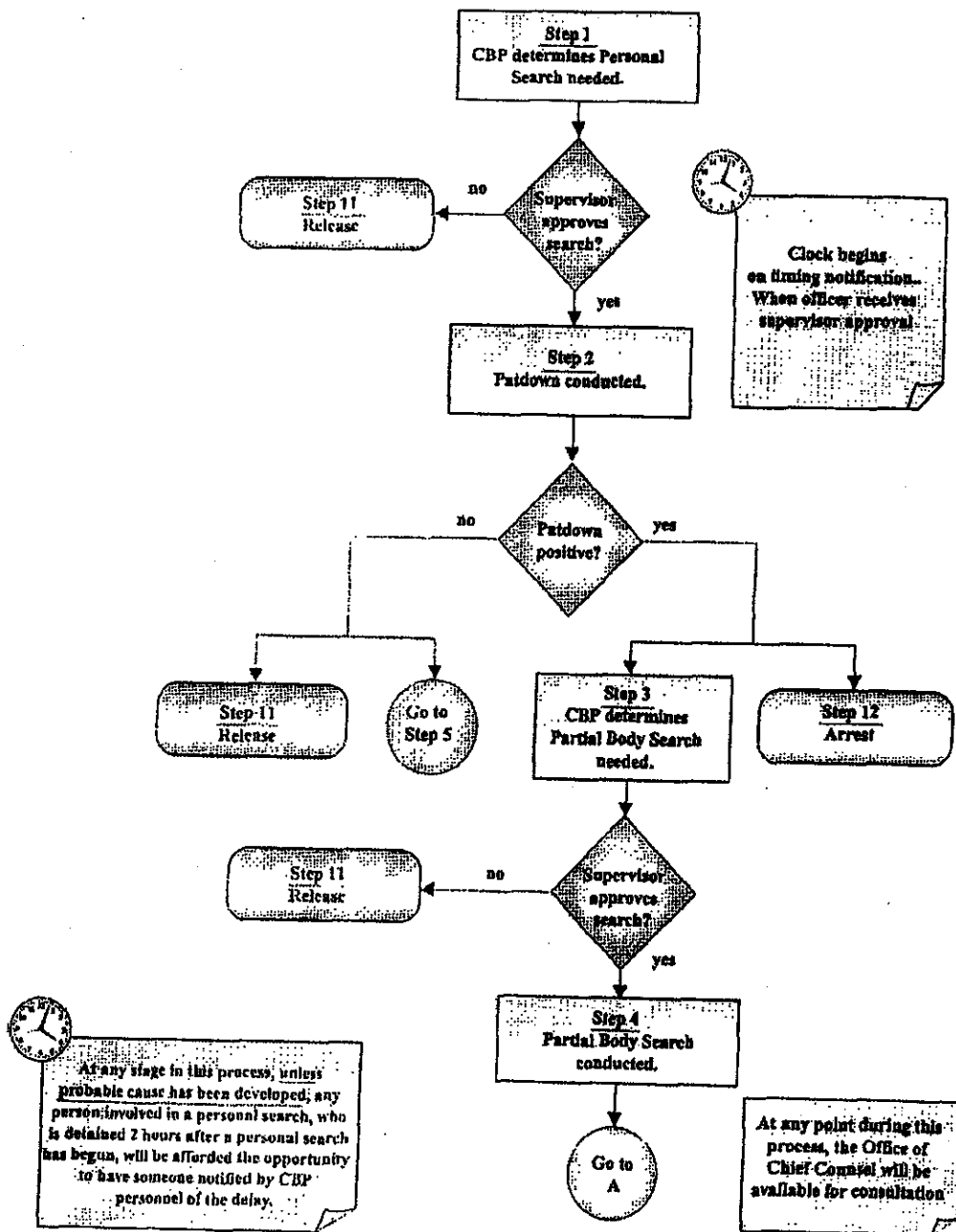
Some or mere suspicion: the minimal level of suspicion required to conduct a patdown search. By policy, CBP requires at least one fact before conducting a patdown.

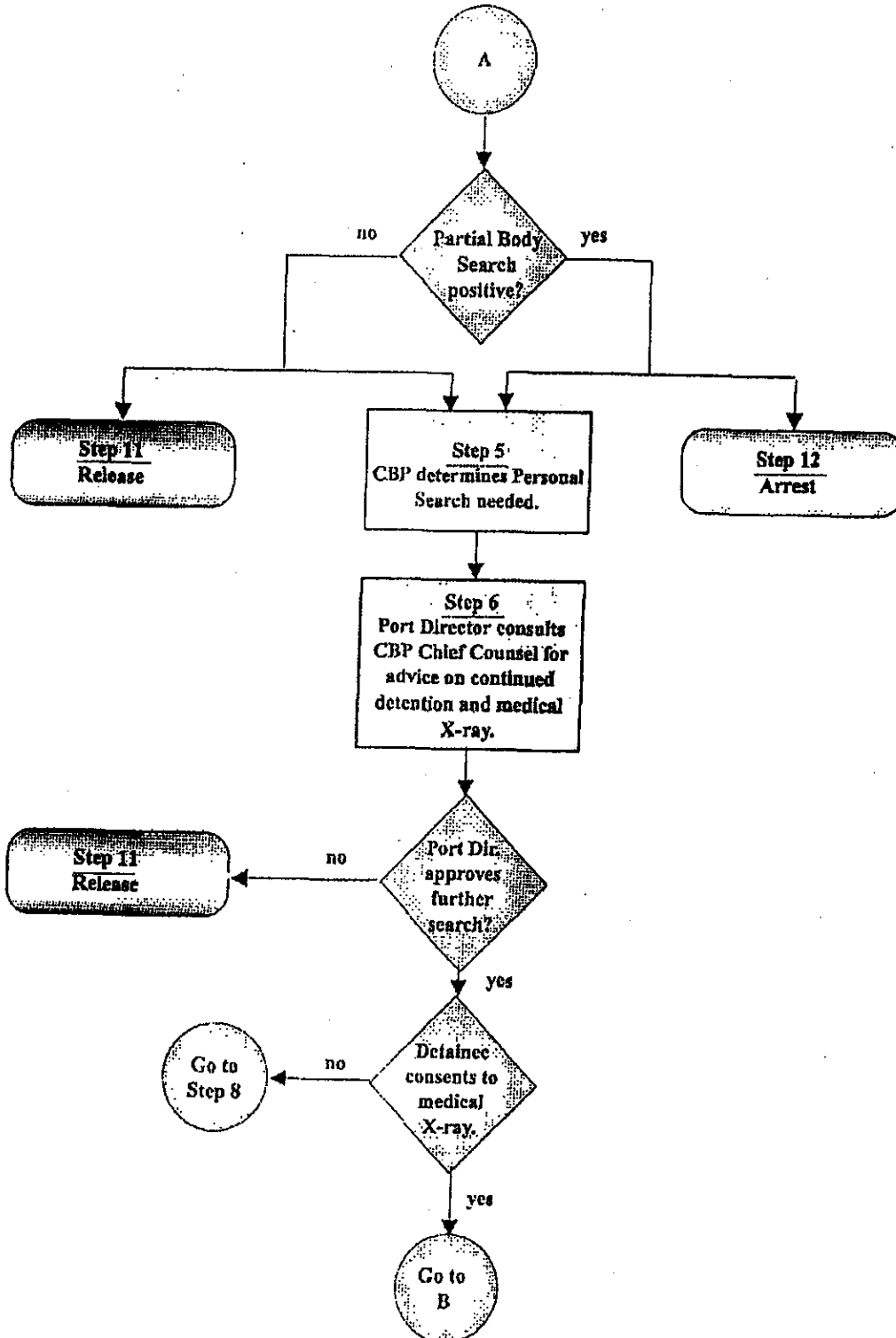
TECS: Treasury Enforcement Communication System.

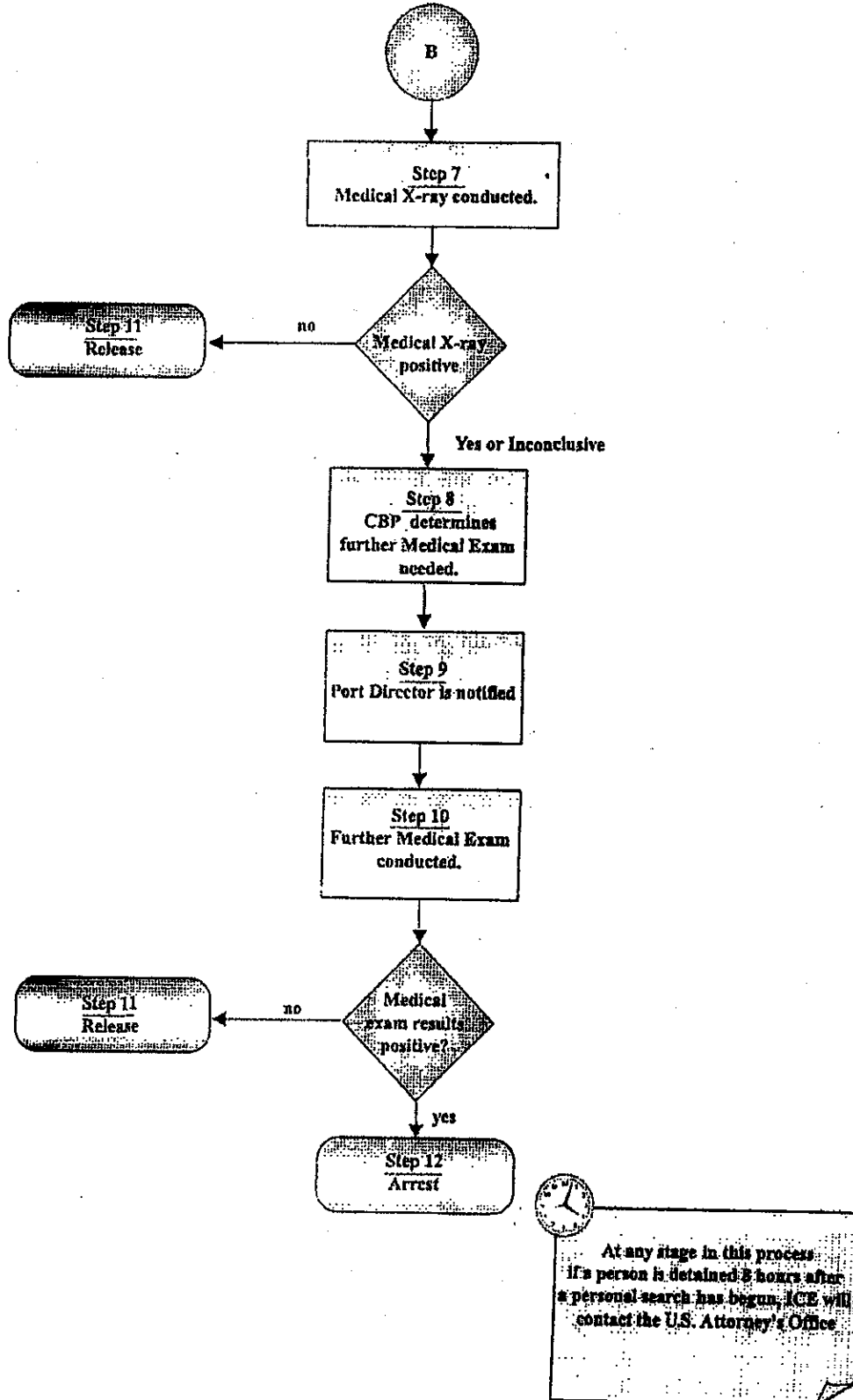
X-ray search: the use of a medical X-ray by medical personnel to determine the presence of merchandise within the body.

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

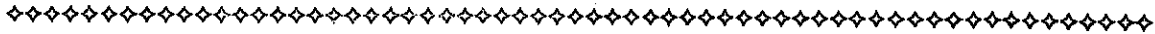
Retain on file locally, in chronological order, together with other paperwork associated with the search, for two years and three months from the date of the search.

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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