

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.

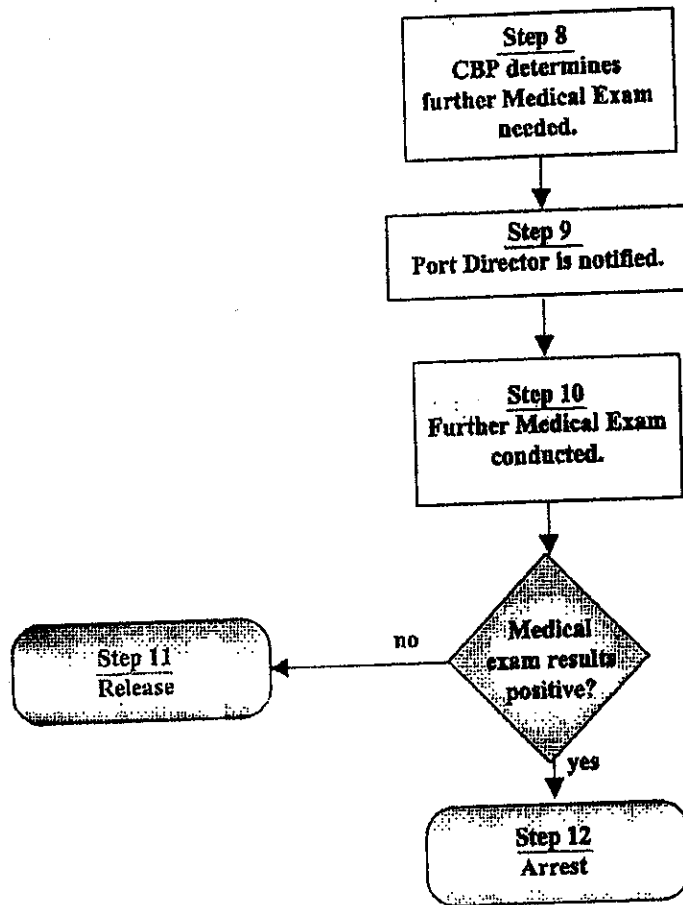
h. Physician-Directed Medical Treatment

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.

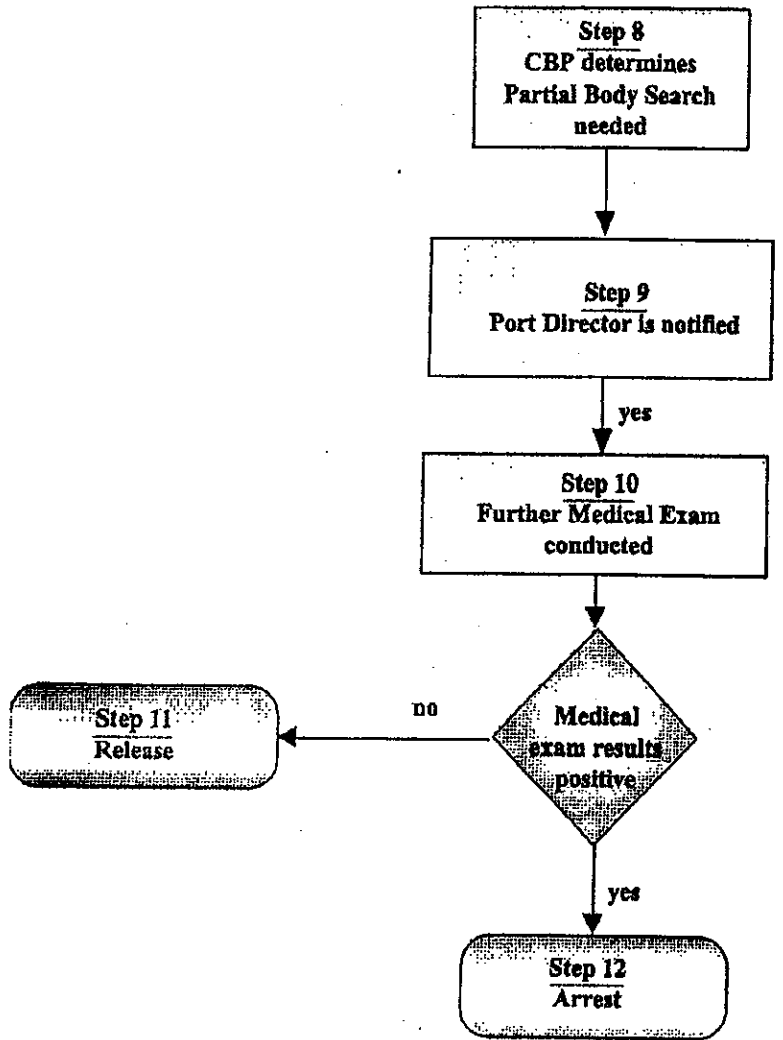
Maintain contact with SECTOR radio at all times, and provide departure and arrival times and mileage to SECTOR.

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.

000395

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.

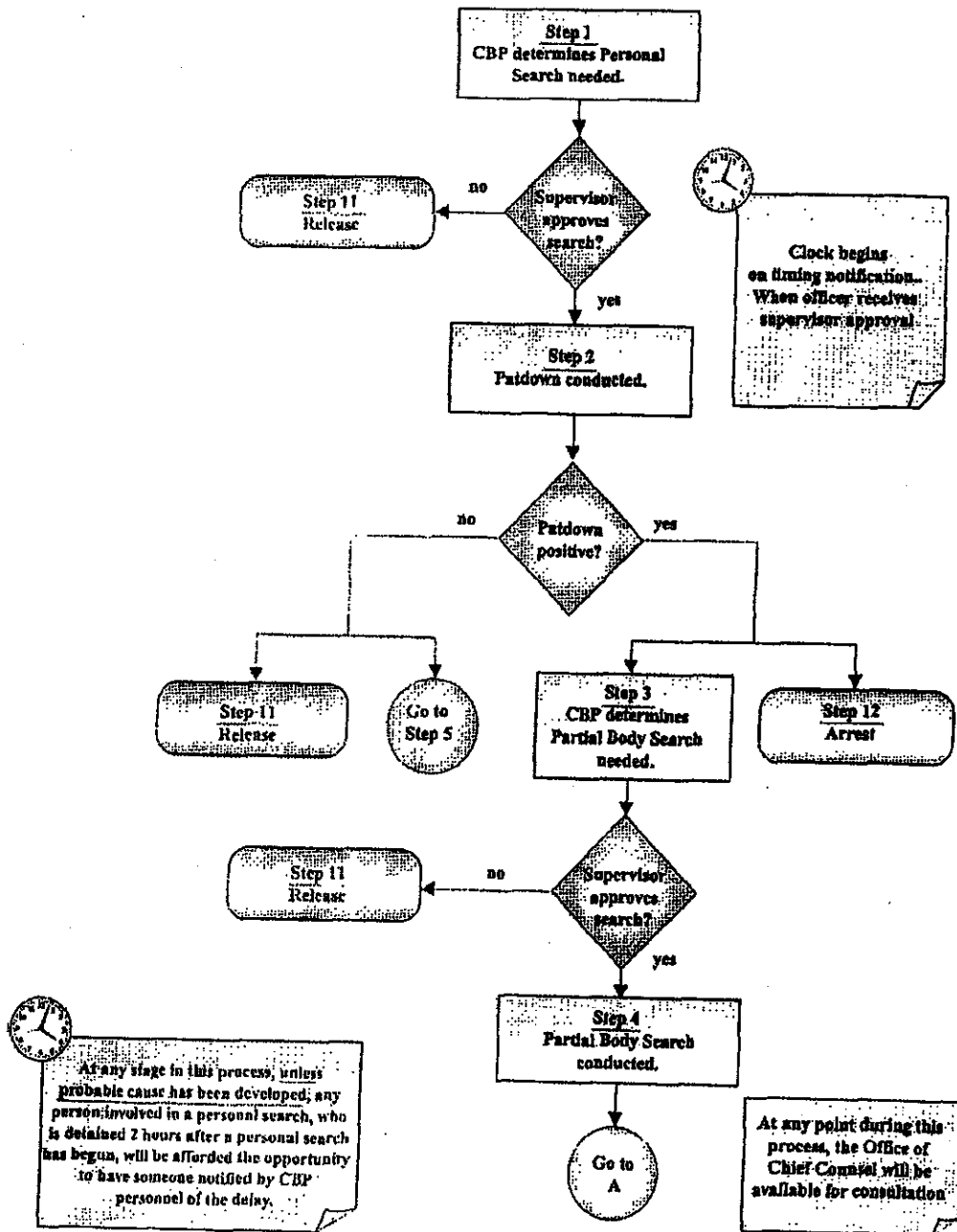
Some or mere suspicion: the minimal level of suspicion required to conduct a patdown search. By policy, CBP requires at least one fact before conducting a patdown.

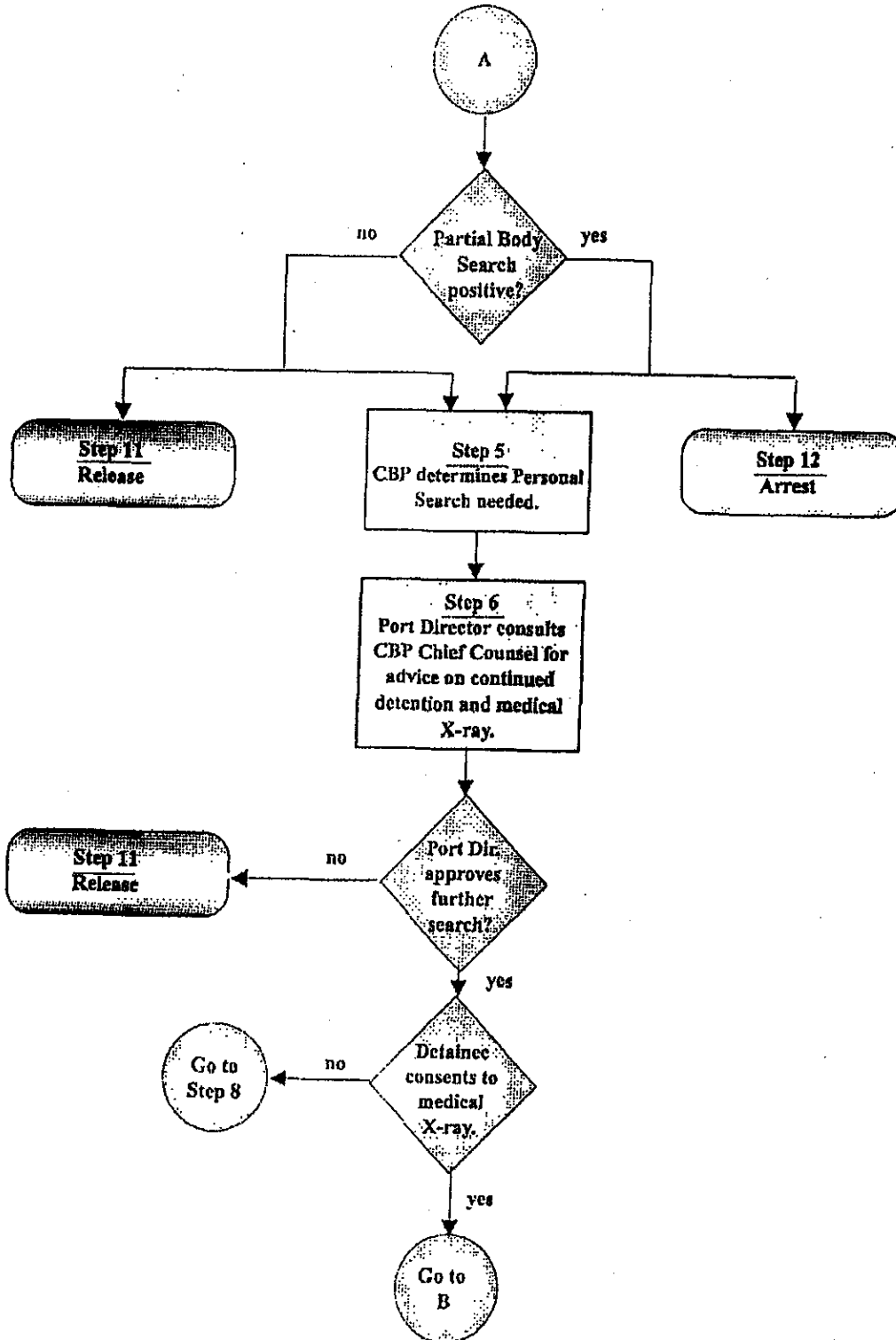
TECS: Treasury Enforcement Communication System.

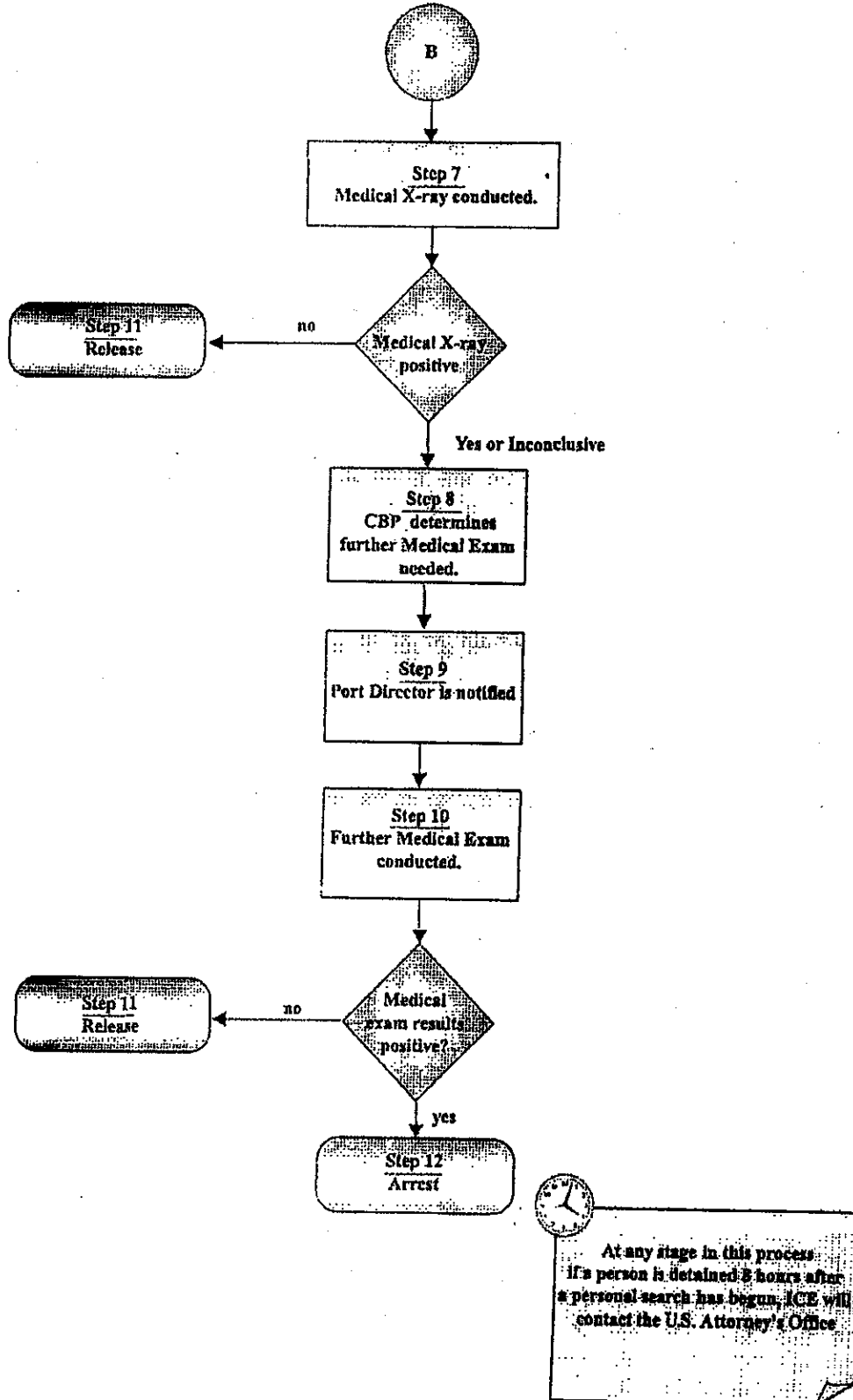
X-ray search: the use of a medical X-ray by medical personnel to determine the presence of merchandise within the body.

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

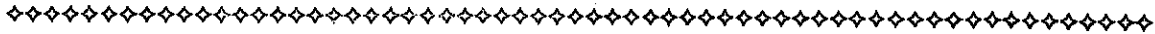
Retain on file locally, in chronological order, together with other paperwork associated with the search, for two years and three months from the date of the search.

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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.

Narrative

24 horizontal lines for narrative text.

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: _____

Attachment 1

Acknowledgment of Receipt of Training on Personal Search Handbook

Date Training Completed: _____

Chapters

1. Determining the Need for a Personal Search
2. What You Need to Know for a Personal Search
3. Patdown Searches
4. Partial Body Searches
5. Determining the Need for a Medical Examination
6. Medical X-Rays
7. Determining the Need for Further Medical Examination
8. Further Medical Examinations
9. Release
10. Miscellaneous

Glossary of Terms

Appendixes A through F

Attachments 1 through 3

This is to acknowledge that I have viewed the training listed above and received my copy of the Personal Search Handbook, CIS HB 3300-04B, dated July 2004.

Officer's printed name

Signature

SSN

Supervisor: _____

Signature

Date

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.

-
- 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"