

U.S. CUSTOMS AND BORDER PROTECTION

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DIRECTIVE TITLE:
Children Born in the United States in CBP Custody
and/or at a CBP Facility

EFFECTIVE DATE:
24 May 2022



**U.S. Customs and
Border Protection**

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

CBP DIRECTIVE NO. 2210-005

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ORIGINATING OFFICE: PD
SUPERSEDES: N/A
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Children Born in the United States in CBP Custody and/or at a CBP Facility

1. PURPOSE. This directive establishes U.S. Customs and Border Protection (CBP) policy governing the processing of children born in the United States in CBP custody and/or at a CBP facility¹, as well as the processing of their parent(s) and any additional minor child(ren) accompanying the parent(s).

2. POLICY. CBP places the highest priority on the safety and well-being of persons in its custody, especially vulnerable populations, including newborns and postpartum mothers. When a childbirth occurs in the United States while the mother is in CBP custody and/or at a CBP facility, the newborn is a U.S. Citizen (USC). CBP recognizes that its holding facilities are not designed to hold newborns and that immigration detention of USCs is not legally permissible. Therefore, CBP generally seeks to release USC newborns as soon as possible.

When determining the immigration processing disposition for a USC newborn's parent(s) and any minor child(ren) accompanying the parent(s), CBP will make every effort to process them in a manner that ensures family unity.

For a USC newborn to access the benefits of U.S. citizenship, it is important that his/her parent(s) are able to obtain a birth certificate. Because this document is generated by hospitals, counties, or state vital records departments, CBP is not in a position to ensure that the parent(s) leave its custody with a birth certificate. However, CBP will provide each parent leaving its custody with a Vital Records Information Tear Sheet designed to help them obtain a birth certificate at a future date.

3. SCOPE. This directive applies to CBP personnel and CBP contractors.

4. AUTHORITIES/REFERENCES.

4.1 U.S. Constitution, Amendment XIV, Sec. 1.

4.2 Title 8 United States Code § 1401(a).

4.3 CBP Directive No. 3340-030B, *Secure Detention, Transport, and Escort Procedures at Ports of Entry*, dated August 8, 2008.

4.4 CBP Directive No. 2210-004, *Enhanced Medical Support Efforts*, dated December 30, 2019.

4.5 CBP Directive No. 3340-025F, *Reporting Significant Incidents to U.S. Customs and Border Protection WATCH*, dated November 2, 2021.

4.6 CBP Directive No. 3340-026, *Significant Event Reporting*, dated May 11, 2021.

¹ For the purposes of this policy, CBP facilities include any Federal Inspection Services area at a port of entry.

- 4.7 CBP Policy, *National Standards on Transport, Escort, Detention, and Search*, dated 2015.
- 4.8 U.S. Border Patrol Policy No. 08-11267, *Hold Rooms and Short-Term Custody*, dated January 31, 2008.
- 4.9 CBP Policy Memorandum, *Clarification of At-Risk Population and Hold Room Monitoring Provisions in the CBP National Standards on Transport, Escort, and Detention, and Search*, dated May 24, 2019.
- 4.10 CBP Policy Memorandum, *Pregnancy and Childbirth Guidance*, dated August 18, 2021.
- 4.11 *CBP Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody*, dated November 23, 2021.
- 4.12 CBP Directive No. 2130-031, *Roles and Responsibilities of U.S. Customs and Border Protection Offices and Personnel Regarding Provision of Language Access*, dated December 4, 2018.

5. DEFINITIONS. Solely for the purposes of this directive, the below terms are defined as:

- 5.1 Custody Log: A record of an individual's presence (including USC newborns) in CBP custody and CBP custodial actions taken.
- 5.2 Minor Child(ren): Any noncitizen child(ren) under the age of 18 who are traveling with his/her/their adult parent(s) or legal guardian(s) with the appropriate documentation to prove he/she/ they have legal guardianship.
- 5.3 Mobile Processing: Processing that occurs outside of a CBP facility.
- 5.4 Mother: An individual in the United States who gives birth to a USC newborn in CBP custody and/or at a CBP facility.
- 5.5 Parent(s): A USC newborn's biological mother or father.
- 5.6 USC newborn: A child born in the United States while his/her mother is in CBP custody and/or at a CBP facility.

6. PROCEDURES.

6.1 Processing.

6.1.1 CBP agents/officers will take all available operational measures to ensure that mothers who have given birth in the United States in CBP custody and/or at a CBP facility, as well as the other parent and any accompanying minor child(ren) of the parent(s), are prioritized for processing ahead of all other individuals, except for unaccompanied noncitizen children, unless there are emergent operational reasons for not doing so.

6.1.2 In cases where the mother is in labor and is transported to the hospital, and there are CBP personnel or CBP contractors assigned to hospital watch, CBP will allow the other

parent and minor child(ren) or USC children of the parent(s) to travel with the mother to the hospital, so long as it is permitted by the hospital and there are no public safety or national security concerns pertaining to the parent(s).

6.1.3 CBP agents/officers will utilize all available mobile processing capabilities to process the parent(s), and if present, the minor child(ren) of the parent(s), at the hospital.

6.1.4 If mobile processing cannot be completed at the hospital, CBP agents/officers will prepare all documents necessary to expeditiously process the parent(s) and minor child(ren) following their return to a CBP facility from the hospital.

6.1.5 In cases where the mother is discharged from the hospital and the USC newborn must remain in the hospital for additional medical care, CBP will process the parent(s) and minor child(ren) and, as appropriate, release them from CBP custody.

6.1.6 CBP will process all individuals returning to a CBP facility following the birth of a USC newborn, to include, the parent(s) of the USC newborn and any minor child(ren) accompanying the parent(s), within 12 hours. The only permitted exceptions to this 12-hour processing timeframe are: (1) when it is essential for the arrangement of appropriate care of the USC newborn; (2) where required for the health of the mother and/or the USC newborn; (3) where there is an identifiable and articulable safety/security concern (i.e., it would require release or other action in the middle of the night); or (4) where coordination is required with U.S. Immigration and Customs Enforcement (ICE) or another government entity. Any circumstances where processing exceeds 12 hours must be approved by a Patrol Agent in Charge, Deputy Patrol Agent in Charge, Assistant Chief Patrol Agent, Port Director, or Assistant Port Director, and must be documented in a system of record with an explanation of the reason why processing did not occur within the 12-hour timeframe.

6.1.7 In the event one or more of the parent(s) and the USC newborn return to a CBP facility following discharge from a hospital, CBP will ensure the following:

6.1.7.1 CBP will limit the amount of time the USC newborn is held physically apart from one or more of the parent(s) in CBP custody, consistent with family unity principles.

6.1.7.2 CBP will provide a safe and secure sleeper/bassinet for the USC newborn.²

6.1.7.3 CBP will perform welfare checks at least once every 15 minutes on the mother and USC newborn, and accurately document all welfare checks and interactions in the appropriate system of record.

6.1.7.4 In cases where the mother and the USC newborn are returned to CBP custody, all immediate medical discharge instructions should be followed while they remain in custody. On-site medical personnel should be consulted, where available. CBP will ensure that the mother receives the original copy of any medical records and discharge instructions in CBP's possession upon release from custody.

² Sections 6.1.7.2 and 6.1.7.3 are consistent with the [CBP Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody](#), dated November 23, 2021 and its implementation.

6.2 Application of Family Unity Principles.

6.2.1 When determining the processing disposition for a USC newborn's parent(s) and other minor child(ren) accompanying the parent(s), CBP will make every effort to process them in a manner that ensures family unity, to the extent permitted by law.

6.2.2 If after the USC newborn's birth, it is determined that the parent(s) will not be detained, CBP will process the parent(s) and any accompanying minor child(ren) together as a family unit, to the extent permitted by law, so they can remain with the USC newborn.

6.2.3 If a determination is made that the mother and/or other parent will not be detained and CBP allows them to either voluntarily return to their country of origin or withdraw their application for admission, they will be allowed to leave the United States with their USC newborn and any accompanying minor child(ren).

6.3 Documentation and Obtaining Birth Records.

6.3.1 Every childbirth by an individual who is in a CBP facility, CBP custody, enroute to the hospital after a CBP encounter, or upon encounter in the field is considered a significant incident and will be reported through the procedures established under CBP Directive No. 3340-025F, *Reporting Significant Incidents to U.S. Customs and Border Protection WATCH*, dated November 2, 2021.

6.3.2 CBP agents/officers shall provide each parent of a USC newborn leaving its custody with a Vital Records Information Tear Sheet containing the hospital name and contact information for the appropriate state vital records department to help the parent(s) obtain a birth certificate at a future date (see Attachment 1).

6.3.2.1 CBP shall ensure that the Vital Records Information Tear Sheet is translated into the most frequently encountered languages of limited English proficient (LEP) persons held at CBP facilities.³

6.3.2.2 When a translated Vital Records Information Tear Sheet is not already available in the LEP person's primary language, CBP shall ensure the Vital Records Information Tear Sheet is read to the individual in their primary language by CBP personnel able to provide language assistance services or a contract interpreter.

6.3.2.3 CBP agents/officers will notate that a Vital Records Tear Sheet was issued to the parent(s) in the appropriate system of record.

6.3.3 Where a childbirth occurs in CBP custody and/or at a CBP facility and is attended to by CBP personnel or on-site medical personnel without the assistance of state or local emergency medical services (EMS), CBP will complete a Letter for Birth Certificate Request and submit it to the relevant state or local vital records department confirming the birth occurred in the United States. The Letter for Birth Certificate Request must contain, at a minimum: the name of the CBP personnel who attended the delivery; the location, date, and time of the birth; a statement confirming the delivery; and, where the mother and newborn were transported and by whom (see Attachment 2).

³ Refer to CBP job aid – "[Identification of Vital Documents for Translation](#)" for guidance.

6.3.3.1 CBP personnel will notate that a Letter for Birth Certificate Request was issued to the relevant state or local vital records department in the appropriate system of record.

6.3.3.2 Deliveries attended by state or local EMS are subject to state or local EMS documentation protocols and requirements and a CBP Letter for Birth Certificate Request need not be issued.

6.3.4 CBP agents/officers will follow all established policies and protocols to create and maintain custody logs for USC newborns in CBP custody.

7. EFFECTIVE DATE AND IMPLEMENTATION. This directive shall be effective upon signature and reviewed, at a minimum, once every three years.

8. NO PRIVATE RIGHT CREATED. This directive is an internal policy statement of CBP and does not create or confer any rights, privileges, or benefits upon any person, party, or entity.

9. APPROVAL AUTHORITY.



Chris Magnus
Commissioner
U.S. Customs and Border Protection

Attachment 1- Vital Records Information Tear Sheet
Attachment 2- Letter for Birth Certificate Request
Attachment 3- Example Letter for Birth Certificate Request