



Personal Search Handbook

Office of Field Operations

CIS HB 3300-04C

April 2021

***This Handbook Supersedes the Personal Search
Handbook, CIS HB 3300-04B, dated July 2004***



U.S. Customs and
Border Protection

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A Message from the Executive Assistant Commissioner

March 1, 2003 marked a first in our country's history. This was when one Federal agency assumed the immense responsibility of securing our country's borders both at and between the ports of entry. That agency, our agency, is U.S. Customs and Border Protection (CBP). As our mission statement proudly proclaims, "We are the guardians of our Nation's borders. We are America's Frontline." We Are. This is more than our mission statement; this is one of our deepest core beliefs.

Our priority mission is straightforward and daunting: Anticipate, detect and disrupt the threat of terrorists, their weapons and actions to protect the people and economy of the United States. In light of the continuing terrorist threat to our country, the exercise of these CBP border-related authorities - especially the authority to question those seeking entry into the United States - is as important to the defense of our nation as anything else in our government's arsenal against terror. Everything that enters the United States, whether it be a person, vehicle, or piece of cargo, must be inspected by CBP. Generally, this will not involve a personal search. To determine whether an individual may be a potential terrorist, a CBP officer may have to question and, in some cases conduct a personal search, to ascertain admissibility or potential terrorist activity.

When conducting a personal search, CBP Office of Field Operations (OFO) policy must be strictly adhered to. This Personal Search Handbook (PSH) sets forth OFO policy on when such personal searches are appropriate, and what procedures our officers must follow in carrying them out. None of those important CBP functions is covered or limited in any way by the PSH. These guidelines are not designed to be a deterrent in the agency's mission, but a critical tool in performing one element of many duties.

Our responsibility is quite immense, but we have broad legal authority and many tools at our disposal, which include personal searches. Personal searches are significantly intrusive searches of a person to determine whether they are carrying contraband close to or inside their body. Knowing what constitutes a personal search is important, but it is just as important to know what a personal search is not. Questioning individuals is not a personal search; Searching through bags, a wallet, or other personal effects is not a personal search.

In the performance of our duties, it is imperative to interact professionally and courteously with the public. As outlined in the PSH and in accordance with CBP and OFO policy, travelers may not be subject to a personal search based upon their race, color, gender, religion, or ethnic background.

I highly encourage every one of you to perform your duties in the spirit of our mission statement. I have every confidence that, in guarding America from the threat of terrorism, the fine officers of CBP will continue to maintain the highest degree of vigilance and exercise sound judgment in performance of their duties.

In closing, I want to express my appreciation for the professionalism each of you continue to demonstrate every day. It is an honor serving alongside you and I thank you for your service and dedication.

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INTRODUCTION:

This Personal Search Handbook sets forth U.S. Customs and Border Protection's (CBP) Office of Field Operations (OFO) policy for conducting searches of a person at the border by CBP officers using border search authority. This updated handbook provides updated comprehensive guidance for the Office of Field Operations.¹

All CBP officers who perform searches and seizures of persons at the border, the functional equivalent of the border (FEB), or extended border, shall adhere to the policy described in this handbook. This policy shall pertain to border search authority on persons arriving in, or departing from, the United States. It shall not pertain to searches conducted away from the border. This handbook applies in preclearance locations to the extent it is not inconsistent with the applicable preclearance agreement and limitations outlined by the host country. All activities in a preclearance location must comply with the applicable preclearance agreement.

This handbook does not limit the search authority of CBP officers. The goal is to provide standard procedures to assist CBP officers in performing their enforcement duties in a manner that will ensure personal integrity and high standards of professionalism.

This handbook is an internal policy statement of OFO and does not create or confer any rights, privileges, or benefits upon any person or party.

Supervisory CBP officers will ensure that the policy hereby established is thoroughly followed.

Port Directors and Field Managers must ensure that all CBP officers under their control receive a copy of this handbook and acknowledge its receipt by date and signature (Attachment 1). This requirement applies to all CBP officers exercising border search authority. Such acknowledgments shall be retained at sites designated by the Port Directors.

Throughout this Handbook, officers will be referred to as CBP officers exercising border search authority. This should be understood to include CBP officers, as well as CBP officers (Enforcement), CBP officers (Tactical) or those assigned to a specialty team.

This Handbook supersedes HB 3300-04B, dated July 2004. Use of the previous Handbook should be discontinued.

Authorities/References: Title 6 U.S.C. § 211; Title 19 U.S.C. §§ 482, 507, 1461, 1467, 1496, 1581, 1582, and 1589a. Title 8 U.S.C. 1357(c). Title 19 C.F.R. §§ 162.6, 162.7. 8 C.F.R. 287.5(d); National Standards on Transport, Escort, Detention, and Search, Dated October 2015; Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C, May 2014; Secure Detention, Transport and Escort Procedures at Ports of Entry, 3340-030B, August 8, 2008.

¹ The U.S. Customs and Border Protection National Standards on Transport, Escort, Detention and Search (TEDS) (October 2015) is an agency-wide policy that sets forth nationwide standards which govern CBP's interaction with detained individuals. The updated Personal Search Handbook meets the TEDS standards and provides detailed guidance for conducting personal searches pursuant to border search authority.

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CHAPTER 1: RIGHTS AND STANDARDS:

1.1 Personal Search Definition

A Personal Search is a search of a person to determine whether the individual is carrying contraband, undeclared merchandise, weapons, or means of escape, close to, or inside of, the individual's body.

1.2 Constitutional Rights & Border Search Authority

In conducting any search, remember that the Constitution guarantees the protection of an individual's right against unreasonable searches and seizures.

The Fourth Amendment generally requires Officers to have a warrant based on probable cause to conduct searches. However, Congress and the courts recognize border searches as an exception to the warrant and probable cause requirements.

CBP officers must be aware of the limits of CBP's authority, and must use this authority judiciously, conscientiously, and courteously. OFO will not condone the abuse of Constitutional or statutory authority by any Officer.

1.3 Non-Border Searches

This handbook provides policy guidance and standard operating procedures for personal searches undertaken pursuant to border search authority. It does not address personal searches undertaken away from the border, functional equivalent of the border or extended border. For example, CBP officers may be involved in task forces, special operations, or may provide law enforcement assistance to another law enforcement agency in contexts in which border search authority is inapplicable. If a personal search is required in those situations, CBP officers who will be conducting those operations or activities must be aware of the authority under which they are operating; any applicable legal requirements (including probable cause and warrant requirements); and all applicable policy requirements.

1.4 Safety During CBP Operations

The safety of CBP officers, subjects in custody, and the public, is paramount during all aspects of OFO operations. CBP officers must take appropriate safety measures while conducting any personal search, and remain aware of their surroundings for any other potential safety issues.

1.5 Integrity and Professionalism

CBP officers must speak and act with the utmost integrity and professionalism. CBP officers must conduct themselves in a manner that reflects positively on CBP at all times. All patdown searches shall be conducted in a professional and respectful manner, and in the least intrusive manner possible, consistent with security needs and agency policy, including consideration of officer safety.

1.6 Non-Discrimination Policy

CBP officers must treat all individuals with dignity and respect. CBP officers must

perform their duties in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulation, Executive Order, or policy, with full respect for individual rights including equal protection under the law, due process, freedom of speech, freedom of religion, freedom from excessive force, and freedom from unreasonable searches and seizures.

1.7 Zero Tolerance Policy Related to Sexual Abuse

CBP has a zero tolerance policy prohibiting all forms of sexual abuse of individuals in CBP custody, including in temporary holding areas and cells, during transport, and during CBP processing.

1.8 Processing of Passengers with Religious, Cultural, or Privacy Considerations

Without compromising officer safety, during personal searches, if a traveler requires special considerations due to religious, cultural, or privacy concerns, CBP officers and managers should endeavor to reasonably accommodate the traveler's request.

1.9 At-Risk Individuals

Certain individuals in the custody of OFO may require additional care or oversight. These at-risk individuals may include, but are not limited to: juveniles; Unaccompanied Alien Children (UAC); pregnant individuals; those known to be on life-sustaining or life-saving medical treatment; those at higher risk of sexual abuse (including but not limited to gender nonconforming, intersex, and transgender); reported victims of sexual abuse; those who have identified mental, physical or developmental disabilities; those of advanced age; and family units. CBP officers must treat all at-risk individuals with dignity, respect, and special concern for their particular vulnerability, at each stage of the personal search process.

1.10 Reasonable Accommodations

Reasonable accommodations must be made for a detainee's known or reported mental, physical and/or other special needs, consistent with safety and security requirements. All instructions and relevant information must be communicated to the detainee in a language or manner the detainee can comprehend.

1.11 Language Access

CBP officers should make every effort to ensure effective and successful communication occurs with detainees through use of the numerous tools available; such as, the "I speak" poster, translators and translation services, language line, and any other available resources.

CHAPTER 2: DETERMINING THE NEED FOR A PERSONAL SEARCH

2.1 Decision to Conduct a Patdown Search

CBP officers conduct patdown searches for various reasons in the course of their official duties. To maintain a safe and secure work environment, all CBP officers are authorized to conduct an immediate patdown search of an individual (of any gender) to ensure a person is not carrying a weapon or a dangerous object.

NOTE: You may direct a person to remove his outer garments (overcoat, suit jacket, and other such garments) and empty his pockets. Such actions, even if done at the direction of a CBP officer, do not constitute part of a patdown search.

2.2 General Considerations

All searches must be conducted under the appropriate legal authority and standards. CBP officers must be diligent in their efforts to protect the legal rights of individuals in CBP custody and treat these individuals with respect, dignity, and an appropriate level of privacy.

2.3 The Scope of This Guidance

2.3.1 Medical Examinations

Exercise caution if an individual complains of injury or medical problems. If there is any indication that the person is injured or in need of medical treatment, officers must immediately seek professional medical assistance. When a person requests prescription drugs and a question arises about the contents and use of the prescription, seek the assistance of qualified medical personnel.

If officers have not completed their inspection or examination, the subject may be escorted via emergency medical services to a hospital while officers maintain custody of the individual. If the medical treatment is solely for the purpose of medical care, this will not constitute a personal search.

CBP officers are not authorized to make medical determinations or request medical procedures from the hospital. CBP Officers are there for safety, security, and maintaining the individual in custody, to include any articles on or in their person, having a nexus to the border, until the medical examination is completed or a determination has been made by the Supervisor that the inspection has been satisfactorily completed.

2.3.2 Identifying Markings

For the purposes of this policy, examinations of detainees conducted by officers for the documentation of injury, tattoos, or other identifying markings do not constitute a personal search. This includes examinations that involve the manipulation of, or removal of, a detainee's clothes or garments; except that to the extent that such manipulation reveals breasts, buttocks, or genitalia, which would constitute a personal search subject to the requirements of this policy.

2.4 Factors in the Decision Making Process to Conduct a Personal Search

While there are many factors that may lead to a personal search, most personal searches are undertaken on the basis of the following considerations.

2.4.1 Safety

As explained above, to maintain a safe and secure work environment for officers and the traveling public, CBP officers are authorized to conduct searches to ensure a person is not carrying a weapon and/or dangerous object on their person.

2.4.2 Immediate Patdown

Immediate patdowns are those searches conducted for the safety of the officer, subject and all other persons in the area.

2.4.3 Secure Custody, Transport, and Escort

Individuals must be searched prior to being placed into secure custody (such as a temporary holding room/cell) or being transported in a vehicle. These patdown searches are conducted to ensure the subject is not carrying a weapon or dangerous object, or a means of escape. Every individual being placed into a holding room/cell, being transported, must be searched for the safety of the CBP officer, the subject, and others.

2.4.4 Behavioral Analysis

Behavioral analysis is the recognition of physiological signs of nervousness. Examples include, but are not limited to shaking or trembling hands; rapid breathing for no apparent reason; cold sweats; pulsating carotid artery; flushed face; and avoiding eye contact.

2.4.5 Observational Techniques

Observational techniques involve recognizing physical discrepancies in appearance. Examples include, but are not limited to clothing that disguises body contours; unexplained bulges in clothing; thick-soled shoes; and an unnatural gait.

2.4.6 Inconsistencies

Inconsistencies are conflicts identified in the interview and/or documentation. Examples include, but are not limited to catching the individual in a false statement; unreasonable explanation for travel; and unexplained irregularities in ticketing or reservations.

2.4.7 Intelligence and Other Information Provided By Other Offices and Agencies

CBP officers may take into account intelligence and other information in making decisions regarding personal searches. This includes information provided from other offices within CBP, from other agencies, and from automated systems and queries.

2.4.8 Detector Dog (K-9)

K-9 searches are those conducted in response to a positive alert by a CBP officer

certified Positive or Passive Response Canine.

2.5 Factors Not to Be Used in the Decision Process to Conduct a Personal Search

CBP officers are expected to adhere at all times to the February 6, 2014 Memorandum, *CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs*.

Employees will not act, or fail to act, on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, disability, union membership, or union activities (Section 6.11.1 of the Standards of Conduct).

Never use a person's gender, race, color, religion, or ethnic background as a factor in determining any level of suspicion for a personal search.

2.6 Suspicion Levels

All searches must be conducted under the appropriate legal authority and standards.

2.6.1 Some or Mere Suspicion

Some or Mere Suspicion is the minimal level of suspicion required to conduct a patdown search. By policy, at least one articulable fact is required before conducting a patdown.

2.6.2 Reasonable Suspicion

Reasonable suspicion is more than some or mere suspicion and is based on specific articulable facts. These facts, when taken together with reasonable inferences from these facts, would lead a reasonable officer to suspect that a person may have a weapon, contraband, or evidence of a crime on or within their body.

Reasonable suspicion would arise during the course of a border inspection when articulable facts develop to indicate that the subject is inadmissible, or carrying prohibited items, and that evidence of the violation may be concealed on or within their body.

Reasonable suspicion is required for any search beyond that of a patdown search. CBP officers should be prepared to testify in court, setting forth the specific facts that established reasonable suspicion.

CBP officers must consider the totality of the circumstances, not just the initial facts, when making a decision to conduct a personal search. Any changes in information, or verification of information supplied by the subject, require a reevaluation of the circumstances, which may raise, or lower, the suspicion level.

CBP officer training, experience, subject matter expertise, knowledge of trends and methods, and intelligence or other information provided by other CBP officers or law enforcement sources, should be used in determining whether reasonable suspicion exists.

A person's country of departure, transit, or destination are permissible factors to consider in determining reasonable suspicion.

Information obtained through relevant system queries should be taken into account in determining whether reasonable suspicion exists. Attention should be given to previous records of inspections and personal searches that did, or did not, result in a seizure or arrest.

2.6.3 Probable Cause

Probable cause is a collection of facts and circumstances known to officers based on reasonably trustworthy information. These facts or circumstances 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; it is developed during the course of the inspection; or when the National Crime Information Center (NCIC) database shows an outstanding warrant for arrest.

Probable cause to believe the person is transporting narcotics internally is satisfied only by a positive field test. However, confession or positive medical diagnostic may constitute probable cause by law.

2.7 *Miranda* Rights

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. Any person detained for a medical diagnostic search, body cavity search, or monitored bowel movement is deemed to be in "custody" for *Miranda* purposes.

2.7.1 *Miranda* Rights to Juveniles

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 immediately, without regard to whether the arrestee is going to be interrogated. CBP officers must also notify the juvenile's parent(s), guardian, or custodian of the nature of the alleged offense, and the juvenile's rights.

2.7.2 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. 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, must be preceded by *Miranda* warnings and a valid waiver. Interrogation does not include requests for personal history, or information necessary for routine processing, or completing consent forms.

2.7.3 Routine Questioning

Detention for a border inspection and associated questioning is not considered “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 they are being interrogated, then the person should be given a *Miranda* warning, and no interrogation may occur unless a waiver is obtained.

2.7.4 Personal Searches Beyond a Patdown

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

2.7.5 Voluntary Statements

If a person is in custody and begins to make voluntary statements, which are statements that are not the result of any form of interrogation, officers should allow the person to make such statements. Those statements should be documented noting the time and date. These voluntary statements should be later recorded in the appropriate system of record, such as TECS, SIGMA or subsequent system. The CBP Officer does not have to read *Miranda* warnings after a voluntary statement, unless an interrogation follows. Do not ask follow-up questions unless you have given the *Miranda* warnings and obtained a valid waiver.

CHAPTER 3: Personal Search Progression & Requirements

3.1 Personal Search Progression

The Personal Search Progression includes a number of different search types which range from the least intrusive searches to increasing levels of intrusiveness (see Appendix A). These search types include:

- Immediate Patdown Search
- Patdown Search
- Partial Body Search
- Medical Diagnostic Search
- Body Cavity Search
- Monitored Bowel Movement (MBM)

A patdown search must precede all other more intrusive searches, **except** when you reasonably suspect that a person might have dangerous articles concealed, such as needles or razor blades, that might harm an officer during a patdown. In such cases, you may proceed to a partial body search and instruct the subject to remove outer or excessive layers/articles of clothing, for increased visibility, for any such dangerous articles. All searches will be explained in detail throughout the handbook.

3.1.1 Non-Search Related Examinations

For the purposes of this policy, examinations of detainees conducted by a CBP officer for the documentation of injury, tattoos, or other identifying markings do not constitute a personal search. This includes examinations that involve the manipulation of or removal of a detainee's clothes or garments; except that to the extent that such manipulation reveals breasts, buttocks, or genitalia, which would constitute a personal search subject to the requirements of this policy. (Refer to 2.3.2 above)

3.2 Least Intrusive Search Necessary

Personal searches must begin with the least intrusive manner and proceed only until the issue or concern has been addressed to the satisfaction of the officer. Not all steps will be relevant in each and every personal search, depending on the circumstances. Each step requires a different level of suspicion and supervisory approval. Each progressive step and its requirements will be explained in much greater detail later in this handbook.

3.3 Utilizing Technology in Personal Searches

OFO will continue to apply innovative technology, when available, to the personal search process in order to be more effective and efficient in our dealings with the traveling public. Each application of technology will include a Standard Operating Procedure (SOP) for use of the equipment. All SOPs for the use of new technology relating to any level of the personal search process must conform to the policies outlined in this handbook.

3.4 Officer Safety

Take appropriate safety measures to protect yourself and others while conducting any

personal search. CBP officers need to be mindful of safety concerns when completing a personal search. CBP officers must keep constant observation of the subject prior to, and during, a personal search.

3.5 Gender of Searching Officer and Witness

Whenever CBP officers are conducting a search, witnessing a search, or are present at a medical examination, they must be of the same gender, gender identity, or declared gender as the subject being searched, with the exception of an immediate patdown for officer safety. When documenting the search in the appropriate system, ensure the gender in which the subject identifies and how the subject's gender was determined (i.e. self-identified, document, etc.) is captured in the narrative. Cross-gender partial body searches or cross-gender body cavity searches must not be conducted except in exigent circumstances, such as when officer safety is at issue or when performed by medical personnel.

NOTE: For the purposes of determining gender, CBP will generally rely upon the gender identifier listed on a travel document. Should there be no gender annotated, the officer will ask the traveler whether they feel more comfortable with a male or female officer conducting the search. This question and answer will be witnessed by a second officer and thoroughly documented in the reporting system. If the traveler states that they identify with a gender that is different than what is listed on their travel document, the supervisor will be notified. Two CBP officers who are the same gender that the traveler identifies as will become the primary (searching) and secondary (witnessing) officers. As a reminder, the traveler's gender identity information will only be shared on a need to know basis. **For the remainder of this handbook, gender will be defined as gender; gender identity; or declared gender.**

3.6 Explaining the Personal Search Process

All search instructions must be communicated to a subject in a language or manner the subject can comprehend. This may include using resources, such as the "*I Speak*" poster or interpreters. The subject may also be offered the *Securing America's Borders – The CBP Screening Process* brochure which outlines the procedure. CBP officers must explain the search process to the subject, in general terms, prior to and during the search process. For safety reasons, an explanation of an immediate patdown for weapons or dangerous objects may be conducted following the search.

NOTE: Prior to commencing the search, the primary (searching) CBP officer will communicate with the traveler to identify any concerns and confirm all information listed on the travel document is correct. The witnessing CBP officer will note the same information.

3.7 Seeking Cooperation

Make every effort to secure the cooperation of the person being searched. A person's dignity and privacy must be respected at all times. Maintain professional and courteous behavior throughout the entire personal search. Every attempt should be made to avoid confrontations with the person, while still maintaining an enforcement posture; however, when feasible, contact a supervisor before a situation deteriorates to the point that you are

unable to accomplish the search process. If a confrontation occurs, including one which results in reportable use of force incident², record the entire event all the way to the conclusion in a detailed narrative in the appropriate electronic reporting system (E-Star or successor systems).

3.8 Privacy

Recognizing the potential intrusiveness of these searches on an individual's sense of privacy, searches must be conducted with due recognition and deference for the human dignity of those being searched and in accordance with the law and all relevant OFO policies and procedures. The video taping of personal searches, beyond an immediate patdown based search, is prohibited. Port management will examine the areas where a personal search may occur and take appropriate measures to ensure privacy.

3.9 Supervisory/Management Approvals for Personal Searches

3.9.1 Personal Searches Not Requiring Supervisory Approval Prior to the Search

An immediate patdown for weapons or dangerous objects does not require supervisory approval prior to the search. As a reminder, a supervisor must be notified the search occurred as soon as operationally feasible and it is safe to do so.

3.9.2 Supervisory Approval

Supervisory approval is required for all patdown and partial body searches, except immediate patdowns for weapons or dangerous objects. Within OFO, acting supervisors, designated by the Port Director, may authorize a patdown or partial body search.

3.9.3 Port Director Approval or Designation for Approval

Port Directors (GS-13 or above), Deputy and/or Assistant Port Directors (GS-13 or above), or Watch Commanders (GS-14) may approve the search, detention, and transportation of a person to a medical facility for medical examinations, provided the Port Director delegates such authority to them. The local Associate/Assistant Chief Counsel must be consulted for legal advice on medical examinations. Port Directors are not required to consult with counsel prior to moving a person to a medical facility if that person has confessed to carrying narcotics internally.

3.10 Seeking Assistance from Outside Individuals to Assist in a Personal Search

There are times when CBP officers may require assistance from others to conduct the personal search. Examples of this may include, but are not limited to, when a second CBP Officer is not immediately available due to working in a remote location, or when a second CBP officer operating in the field away from the designated patdown location.

3.10.1 Authority

CBP officers have the authority to demand the assistance of any person in making any search, if such assistance may be necessary. *See* 19 U.S.C. § 507.

² Refer to the Use of Force Policy, Guidelines and Procedures Handbook, HB 4500-01C for more guidance.

3.10.2 Searching Officer

Only other Law Enforcement Officers (LEOs) or federal agency employees may conduct a personal search for a CBP officer. CBP officers should use this authority only when another CBP officer is unavailable to conduct a search and only after giving the delegated searching officer explicit instructions on how to conduct a personal search in accordance with the policies and procedures outlined in this handbook. A law enforcement officer acting as a witness will be responsible for assisting should any safety measures be necessary. The CBP Officer must remain immediately outside of the search room to render assistance as appropriate.

3.10.3 Witness to the Personal Search

CBP Officers may compel another person to act as a witness to a personal search. CBP Officers should use this authority only when another CBP Officer is unavailable as a witness and only after giving explicit instructions to the person who will act as a witness.

CBP officers must instruct other non-law enforcement individuals witnessing a personal search not to intervene in any physical altercation that could occur, but to immediately notify LEO personnel in the area, or telephonically if no LEO personnel are immediately available. All witnesses should be prepared to record a statement of any events that transpire during the search and to provide testimony, and evidence, in any future court proceedings.

3.11 Use of Restroom

When a subject in the personal search process who is suspected of internally carrying contraband, requests to use the restroom prior to being taken to a medical facility, the subject should be escorted to a restroom without flushable toilet facilities. If the subject is in a facility without non-flushable toilets, CBP officers should escort the individual to the restroom and employ appropriate safeguards to ensure contraband or evidence is not disposed of by the subject. If the subject is suspected of being an internal carrier, restroom use should be monitored.

3.12 Two Hour Detention Notification

Any person detained two hours for a personal search will be given the opportunity to have an officer notify someone of their delay in processing, unless probable cause has been developed and/or it is determined that such notification would impede a potential criminal investigation and/or raise an officer safety issue. The notification will be made using the language provided in Appendix G.

3.12.1 Two Hour Detention Start Time

The two hour period for the notification requirement for subjects of a personal search 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. The CBP officer should annotate the Incident Log, or Search/Arrest/Seizure (S/A/S) report, with the time permission was received for the personal search. Time spent on prior interviews, baggage and vehicle examinations does not count towards the two hour notification period.

3.12.2 Notification Made by CBP

The two hour detention notification is to be made by a CBP officer, or Supervisory CBP officer. The subject of the search will not participate in the conversation. The Supervisory CBP officer must be notified prior to this notification being made. If the person to be notified is immediately outside the CBP facility, the notification may be made face-to-face by a Supervisory CBP officer. The notification must be documented. If the subject of the search declines to have CBP make a notification, the CBP Officer must document that fact. If the subject of the search later changes their mind and seeks to have someone notified, CBP will make the notification. If CBP attempts to make a notification but is unable to complete the notification (for example, the person does not answer the phone), CBP will document all notification attempts and advise the subject of the results. As appropriate, the supervisor should notify the CBP case officer and/or ICE Duty Agent prior to any notification. Although the subject may request that the notification be made to an attorney, the detainee will not be given an opportunity to consult with counsel at any time before *Miranda* warnings are given by CBP or another agency, and *Miranda* is invoked by the detainee.

3.12.3 Statement to be Read

The statement provided in Appendix E (Contact Advisory of CBP Custody) should be read verbatim, without any deviations. This includes telephonic and face-to-face notifications.

3.12.4 Notification Documentation

The Incident Log or S/A/S Report must include the details of the two hour notification. The documentation should include all relevant factors, including, but not limited to: name contacted; relationship to the subject; telephone number of the person contacted; annotation if done face-to-face; and time of the notification. If the subject declines to have CBP contact someone on their behalf, this must also be documented. If CBP makes attempts at contacting someone, without an answer, CBP should annotate the record as such.

3.13 Prolonged Detentions

Prolonged detentions are those lasting eight hours or longer. The Supervisory CBP Officer must notify the Port Director in all cases of prolonged detentions.

3.13.1 Legal Consultation

Prior to moving forward with any action that will result in a prolonged detention, the Port Director (or designee), or the Director of Field Operations, must consult with the local Associate/Assistant Chief Counsel for legal advice. After normal business hours, the Port Director may contact the Commissioner's Situation Room (SITROOM), who will provide an on-call attorney from the Office of Chief Counsel. Port Directors are not required to consult with counsel prior to moving a person to a medical facility if that person has confessed to carrying narcotics internally.

3.13.2 Notification to U.S. Attorney for Review

In all circumstances when a person has been detained eight hours from the time supervisory approval was first given for a personal search, or when the personal search was initiated, the CBP case officer and/or the ICE Duty Agent will contact the U.S. Attorney's Office, and advise them of the detention. The Assistant U.S. Attorney (AUSA) will examine the facts of the case and make a determination whether probable cause or reasonable suspicion exists. CBP may continue to detain a person while awaiting a response from the AUSA and/or magistrate, if reasonable suspicion is not dispelled. It is important to note that certain judicial circuits require different time frames. The CBP case officer, ICE Duty Agent, and the local U.S. Attorney's Office will ensure that those time frames are met in addition to the requirements set forth in this handbook.

3.13.2.1 Probable Cause Determination by AUSA

If the AUSA determines that probable cause has been established, the CBP case officer and/or ICE Duty Agent will work with the AUSA to obtain an arrest or search warrant before a magistrate. Document decision in appropriate record system.

3.13.2.2 Reasonable Suspicion Determination by AUSA

If the AUSA determines that probable cause does not exist, but believes that reasonable suspicion exists, he will so advise CBP. In such situations, it is the sole responsibility of OFO to determine whether the detention will continue. Document decision in appropriate record system.

3.13.2.3 No Reasonable Suspicion Determination by AUSA

If the AUSA determines that reasonable suspicion does not exist, OFO will release the subject. The CBP case officer and/or ICE Duty Agent shall document on the Incident Log report any decision or guidance provided by the AUSA.

3.13.3 Continued Detentions

The re-approval requirement shall continue for each eight hour period, until probable cause has been developed, a Federal magistrate issues a warrant, or the person is released. The Port Director (or designee) must consult with the CBP case officer, ICE Duty Agent, and the Associate/Assistant Chief Counsel before deciding whether to continue detention. The re-approvals must be documented in the Incident Log report, the S/A/S report, or successor system.

3.14 Documentation of a Personal Search

At the conclusion of a personal search, details of the personal search must be documented electronically. The written reports, either an Incident Log, an S/A/S report, or successor system, must include a detailed narrative regarding the circumstances surrounding the search and/or detention.

CHAPTER 4: Patdown Searches

4.1 Immediate Patdown

An immediate patdown is an external search necessary to ensure officer safety. This search is justified based on the need to protect the officer and public from weapons and/or dangerous objects.

4.1.1 Scope of the Search

The scope of an immediate patdown must be limited to those areas on a person where an officer suspects a weapon or dangerous object may be concealed. There may be cases where it is necessary to search the entire person to ensure a weapon and/or dangerous object is not present. This may include the removal of the person's shoes to ensure there is no weapon present, but not the removal for the purpose of checking for merchandise or contraband. An immediate patdown does not require a witnessing officer; however, if any witnessing officers were present, the documentation should reflect that.

4.1.2 Undeclared Merchandise or Contraband Discovered Incidental to the Search

An immediate patdown is not authorized for the purpose of uncovering contraband, or undeclared merchandise. However, any contraband, evidence, or undeclared merchandise discovered incidental to an immediate patdown will be processed according to existing OFO policies.

4.1.3 No Prior Supervisory Approval Needed

Given that the immediate patdown is conducted to protect the officer and public from weapons or dangerous objects, the officer may perform the search immediately upon suspecting there is a safety concern and need not seek prior supervisory approval for the search. If a weapon or dangerous object is discovered, the officer should immediately contact a supervisor after the completion of the immediate patdown.

4.1.4 Gender of the Searching Officer

Given that the immediate patdown is conducted to protect the officer and public from weapons or dangerous objects, the officer may perform the search immediately upon suspecting there is a safety concern and may perform a patdown on an individual regardless of the gender.

4.2 Patdown Search for Contraband, Undeclared, or Prohibited Items

A patdown search is an external search for prohibited items and/or evidence of a violation. The patdown search is typically the starting point to the personal search process, in relation to the search for contraband, or undeclared or prohibited items.

4.2.1 Scope of the Search

A patdown search, once approved, entails the officer conducting an external search by feeling the outside of the subject's clothing to detect any anomalies that could be prohibited or undeclared merchandise (including contraband). A patdown search consists of one or more of the following actions:

- Patting the hands over the person's clothed body.
- Removing the person's shoes.
- Lifting the pant leg or hem of a skirt a few inches.
- Removing a belt.
- Examining or reaching into pockets.
- Rolling up shirtsleeves.
- Removing a wig or hairpiece.

The person being searched should manipulate their own clothing, unless they refuse to cooperate.

4.2.2 Suspicion Requirements

Policy requires that an officer have some or mere suspicion to conduct a patdown. This search requires that at least once articulable fact be present before conducting the search.

4.2.3 Supervisory Approval Needed

A patdown search requires supervisory approval prior to the search being conducted. The CBP Officer must present the articulable fact(s) of the encounter to the supervisor. The supervisor must then consider the information and determine whether the standard of some or mere suspicion has been met and whether a patdown search is authorized.

4.2.4 Search Location

A patdown search must be completed in a room providing privacy from the public. CBP officers should utilize search rooms, as available, as they meet the requirements for privacy. For any patdowns done in the field or alternate locations, the CBP officers must take privacy requirements into account before conducting a patdown search.

4.2.5 Gender of the Searching Officer

The gender (as defined in Section 3.5) of the searching officer and witness of a patdown search must be of the same gender as the subject being searched. If officers of the same gender as the traveler are not available, officers must use the procedures outlined in Section 3.10 of this handbook.

4.2.6 Undeclared Merchandise, Evidence, or Contraband Discovered

If the CBP Officer detects an anomaly during the patdown search, they must consult with a supervisor. If the CBP Officer detects a weapon or other dangerous object, they should immediately take control of the item and notify a supervisor. Any undeclared merchandise, evidence, or contraband discovered during the course of a patdown search must be processed within existing policies for seizure or detention, as appropriate.

CHAPTER 5: Partial Body Searches

5.1 Partial Body Search Definition

A partial body search is a visual search of an individual in an area underneath their clothing. A partial body search requires a person to remove or arrange some or all clothing (includes the removal of socks) to permit a visual inspection of the area in question, in relation to searches for contraband. This search is typically done following a patdown examination where the Officer feels an anomaly on the subject's body.

5.2 Scope of the Search

A partial body search is the removal of some or all clothing by the subject of the search to recover material evidence reasonably suspected to be concealed on their body. Only clothing covering the specific area of the body under suspicion may be removed. The allowable extent of a partial body search depends on the reasons for conducting the search. The search must be kept only to those areas where the subject is reasonably suspected to be concealing items.

5.3 Suspicion Requirements

A partial body search requires reasonable suspicion, as defined in Section 2.6.2 of this handbook. This suspicion is often obtained following the results of a patdown in which an item is suspected of being found concealed on the subject's person.

5.4 Supervisory Approval Needed

A partial body search requires supervisory approval prior to the search being conducted. The CBP Officer must present the facts of the encounter to the supervisor, to include the results of the patdown and other articulable facts and circumstances, which would form the reasonable suspicion that the subject is concealing contraband or undeclared items on their person. The supervisor must then make an independent assessment based upon the evidence and determine if reasonable suspicion exists and whether the facts support the decision to complete a partial body search.

5.5 Search Location

A partial body search must be completed in a room providing privacy from the public. OFO policy does not allow the search area to be videotaped, so areas with video cameras must either not be used, or have the camera equipment shut off during the search. CBP officers should utilize search rooms, as available, as they meet the OFO requirements for privacy. Officers conducting any partial body searches in the field or alternate locations must take privacy requirements into account before conducting the search.

5.6 Gender of the Searching Officer

The gender (as defined in Section 3.5) of the searching officer and witness of a partial body search must be the same as the gender of the person being searched. If officers of the same gender are not available, officers must use the procedures outlined in Section 3.10 of this handbook.

5.7 Partial Body Search Procedures

A partial body search is a more intrusive search than a patdown, therefore CBP officers must follow the procedures below while conducting this type of search.

5.7.1 Searching Clothing

Generally during a partial body search, the subject being searched should manipulate or remove their own clothing. Each article of clothing that is removed must be thoroughly searched for contraband by the CBP officer. CBP officers should not touch the subject during a body search, unless the subject refuses to remove any article of clothing, or otherwise impedes the CBP officers in the performance of their duties. In those rare instances where a CBP officer is required to touch a subject, or remove clothing, the circumstances must be documented in the Incident Log Report or S/A/S.

5.7.2 Visual Exam

A CBP Officer may visually examine the unclothed portion of the body of the person being searched. The CBP Officer may ask the person being searched to manipulate their own body, as required to permit adequate visual examination. The mere visual examination of the exterior skin area around the anus or vagina is not considered a cavity search. The CBP Officer may ask a person to bend forward and spread the buttocks, solely for the purpose of viewing the area around the anus for contraband. A CBP Officer may not ask a woman to spread her labia (the folds of skin bordering the vagina), as such a request would constitute a body cavity search.

5.7.3 Removing Prosthetic Devices

Removal of a prosthetic device, such as an artificial limb, is considered to be a partial body search. If there is reasonable suspicion that contraband may be concealed within the device, the subject being searched should remove the device, if they can do so without medical assistance. If they cannot remove the device, or refuse to do so, the CBP officer must seek the assistance of medical personnel.

5.7.4 Search of Splints

Search of a splint is considered to be a partial body search. If the subject is able to remove the splint, they may be permitted to do so. Splints that are not able to be removed by the detainee should be removed by medical personnel, such as a credentialed Emergency Medical Technician (EMT). If there is any concern for the safety of the detainee, this should be done at a medical facility.

5.7.5 Search of Casts

Removal of a cast is considered to be a partial body search. If there is reasonable suspicion that contraband may be concealed within a cast, CBP officers must take the detainee to a medical facility to have the cast X-rayed and/or removed. Under no circumstances will a cast be probed or removed by a CBP Officer while it is attached to a subject in custody.

5.7.6 Objects in the Rectal Cavity

CBP officers will not ask a subject in custody to remove an object from the rectal cavity or attempt to remove it themselves due to the risk that an object will rupture and cause serious harm. If there is reasonable suspicion that the detainee is

carrying contraband in the rectal cavity, CBP Officers must consult and receive approval through a supervisor, from the Port Director, and proceed to a medical facility for a body cavity search conducted by medical personnel. Further action must be consistent with policies and procedures.

5.7.7 Objects in the Vaginal Cavity

If the CBP officer detects an object in the vaginal cavity and reasonably suspects that the object may contain contraband, merchandise, and/or documents, the CBP officer will **stop** the search and consult a supervisor. If the supervisor concurs that reasonable suspicion exists, the supervisor may authorize the CBPO to ask the person to voluntarily remove the object.

If the CBP Officer finds what appears to be a personal hygiene product, the CBP Officer will **stop** the search and consult a supervisor. The supervisor may authorize the CBP Officer to ask the person to voluntarily remove the item. If the person agrees to remove the item, this type of body search does not constitute a body cavity search and does not require the port director's approval. The CBP Officer must record the incident in the appropriate system(s).

If the person refuses to voluntarily remove the personal hygiene product, the personal search process may proceed to a body cavity search at a medical facility. The CBP Officer must obtain port director approval for a body cavity search or medical examination to be performed at a medical facility. The CBP Officer must record this situation as a body cavity search in the appropriate system(s).

5.8 Undeclared Merchandise, Evidence, or Contraband Discovered

Undeclared merchandise, evidence, or contraband discovered during the partial body search, which can be removed by the subject, must be processed for seizure or detention, as appropriate. Suspected items that are unable to be removed by the subject must be removed by medical personnel therefore should be left on/in the subject. The CBP officer must present the details of the personal search and all other relevant articulable factors/information to the supervisor to seek approval for a medical exam.

CHAPTER 6: Medical Examinations

6.1 Medical Examinations as Part of a Personal Search

Body cavity searches, medical diagnostic searches, and MBMs must all be completed by medical personnel at a medical facility. These more intrusive procedures carry a higher risk to the subject if they are carrying contraband. If the packaging of the contraband were to break, the subject could be exposed to dangerous substances.

6.2 Suspicion Requirements for Medical Examinations

The personal search processes of a body cavity search, medical diagnostic search, and MBM require reasonable suspicion, as defined in Section 2.6.2 of this handbook. This suspicion may be obtained following a patdown and/or partial body search in which there is a suspicion that a foreign object(s) is being concealed inside the subject's body.

6.3 Port Director Approval

Body cavity searches, medical diagnostic searches, and detentions for a MBM, require the approval of the Port Director (GS-13 or above). Deputy and/or Assistant Port Directors or Duty Watch Commanders (GS-14 or above) may also approve the search/detention for medical examinations, provided the Port Director delegates this authority to them. Port Directors or Acting Port Directors below grade GS-13 must seek the approval of a GS-13 Area Port Director, or Director of Field Operations, in their chain of command. Ensure the name of the approving official is captured in the report. The local Associate/Assistant Chief Counsel must be consulted for legal advice by the Port Director or designee. Consultation with counsel is not required prior to moving a traveler to a medical facility if that traveler has confessed to carrying narcotics internally.

6.4 Transport to the Medical Facility

The subject of a medical examination portion of the personal search process must be escorted to the medical facility in the custody of a minimum of two armed CBP officers, or one armed CBP Officer and another armed Law Enforcement Officer. At least one officer should be of the same gender (as defined in section 3.5) as the subject of the search. Additional precautions should be taken, consistent with each situation, to ensure that the person is safely transported to the medical facility. This includes taping the subject's pants legs to prevent disposal of evidence. The transport of the individual must be in compliance with Directive 3340-030C Secure Custody, Transport and Escort Procedures at Port of Entry, or subsequent directives, policies, or guidance, whether transported by EMS or OFO.

6.5 Gender of the Searching Officer

The witness of a medical examination must be the same gender (as defined in section 3.5) as that of the subject being searched. If officers of the same gender are not available, officers must use the procedures outlined in Section 3.10 of this handbook to ensure the searching individuals are of the same gender as that of the subject.

6.6 Body Cavity Searches

A body cavity search is any internal search consisting of the visual or physical intrusion into the rectal or vaginal cavity. CBP officers are prohibited from conducting body cavity

searches. Body cavity searches should be conducted only under the most exceptional circumstances and only by medical personnel at a medical facility.

6.6.1 Voluntary Body Cavity Searches

A subject can be sent for a body cavity search utilizing a voluntary, or non-voluntary method. The voluntary method requires consent from the subject for a body cavity search to be conducted.

6.6.1.1 Consent

Consent to search must be freely and voluntarily given in writing before the search takes place. Voluntary consent is a question of fact, which must be determined from all the surrounding circumstances. The courts will examine all of the facts surrounding the signing of the consent form. Obtaining consent by coercion, through word or deed, is strictly prohibited.

6.6.1.2 Procedures to Obtain Consent

Consent must be freely and voluntarily given and all procedures followed must be clearly documented.

6.6.1.2.1 The Subject Must be Informed of the Nature of the Examination

The CBP officer must explain in general, non-medical, terms that a body cavity search will be conducted and that it will be completed at a medical facility by medical personnel.

6.6.1.2.2 The Subject Must Understand the Explanation

The CBP officer must ensure that the explanation is in a language the subject understands. The CBP officer must document the subject's language proficiency and any use of a translator. All observations concerning the person's maturity, intelligence, education, and training, which are all important to the issue of voluntariness and consent, should be documented.

6.6.1.2.3 The Subject Must Know That They Have the Right to Refuse

The CBP officer must advise the subject that they have the right to refuse the body cavity search and document that.

6.6.1.3 Consent Form

If the subject of a medical exam consents to a body cavity search, CBP officers must use the consent form provided (Appendix D) to document the consent. The CBP officer must thoroughly and carefully explain to the subject all the language in the consent form. The CBP officer must use the appropriate consent form in a language the person understands, or translated appropriately into that language. The supervisor (if on-site) must review the consent form to ensure that it is properly signed. If there is any question as to the validity of the signed consent form, contact the local Associate/Assistant Chief Counsel for legal advice.

6.6.1.4 Revoking Consent

The subject of a medical examination may revoke consent for a body cavity search at any time, even after arriving at the medical facility. The revocation may be verbal or by actions, such as indicating a desire not to go freely to the medical facility. Refusal to sign a medical consent form (Appendix D) is considered a revocation. If the subject revokes consent, CBP officers must immediately inform the medical staff to stop the body cavity search based on the revocation of consent. The CBP officers must then report this revocation to their supervisor, who will report this information to the Port Director (or designee).

6.6.2 Involuntary Body Cavity Searches

If the subject of a personal search does not provide consent, or revokes consent, for a body cavity search, an involuntary body cavity search may be pursued. Involuntary body cavity searches require a court order. In order to seek an involuntary body cavity search, the Port Director (or designee) must consult with the local Associate/Assistant Chief Counsel, as well as the CBP officer (Enforcement), CBP officer (Tactical), or ICE Duty Agent, to determine whether to seek a court order for any involuntary body cavity search. If it is determined to proceed with such a search, the CBP officer (enforcement), CBP officer (tactical) or ICE Duty Agent must contact the AUSA and request that a warrant be obtained to authorize the body cavity search.

6.6.3 Officer Role During a Body Cavity Search

Only medical personnel may directly observe a physically intrusive body cavity search. CBP officers should be in the room only for the purposes of collecting any evidence found and to provide safety and security. CBP officers are prohibited from serving as a witness for medical purposes.

6.6.4 Medical Actions

Once a person is at a medical facility, medical personnel make all medical decisions. If during the course of the medical examination, or body cavity search, the medical personnel, or any other medical staff, determine that certain medical procedures need to be performed for the health and safety of the subject, the CBP officer will defer to the medical personnel. No CBP officer is authorized to request, advise, or encourage medical treatment. CBP officers are not to make any medical decisions, or ask that any medical procedures be completed, other than the approved search.

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

6.6.5 Results/Outcome of the Body Cavity Search

Upon receiving the results of the body cavity search from the medical personnel, the CBP officers onsite at the medical facility need to contact their supervisor immediately and advise of the results. The supervisor must then contact the approving Port Director (or designee) to determine if the subject should be released or held for further medical examination.

6.6.5.1 Negative Results Determination

When medical personnel has determined that foreign objects are not present via a body cavity search, and that no further medical treatment is required, the detainee must be immediately transported back to the CBP facility, unless the CBP supervisor, in consultation with the Port Director (or designee), determines additional actions should be taken.

6.6.5.2 Inconclusive Results Determination

If medical personnel deems the body cavity search inconclusive, a decision must be made by the CBP Supervisor, in consultation with the Port Director (or designee), after obtaining legal advice from the local Associate/Assistant Chief Counsel, to determine the next appropriate steps.

6.6.5.3 Positive Results Determination

If medical personnel believes that the body cavity search indicates the presence of foreign objects, a CBP Supervisor, in consultation with the Port Director (or designee), must be notified to approve the detention of the detainee for further search, consistent with OFO policies and procedures. If during the course of the body cavity search, medical personnel extracts a foreign object that is suspected of being contraband, CBP officers should take custody of the object and conduct a field test for the presence of narcotics. If the field test provides positive results, probable cause is established.

6.6.6 Continuation of the Medical Examination

Depending on the outcome of the medical examination, the seizure may be completed if contraband is found and removed by the medical personnel. If contraband is still suspected of being inside of the subject's body, then the CBP officer can continue to detain the subject for additional searches, with approval from the Port Director (or designee), and consultation with the local Associate/Assistant Chief Counsel.

6.6.7 Undeclared Merchandise, Evidence, or Contraband Discovered

Undeclared merchandise, evidence, or contraband discovered during the course of a body cavity search must be processed within existing OFO policy for seizure or detention, as appropriate.

6.7 Medical Diagnostic Search

A medical diagnostic search is an internal search consisting of the use of available medical technology by trained medical personnel to determine the presence of contraband within the body.

6.7.1 Voluntary Medical Diagnostic Search

A subject can be sent for a medical diagnostic search utilizing a voluntary, or non-voluntary method. The voluntary method requires consent from the subject for a medical diagnostic search to be conducted.

6.7.1.1 Consent

Consent to search must be freely and voluntarily given in writing, before the medical diagnostic examination is administered. Voluntary consent is a question of fact, which must be determined from all the surrounding circumstances. The courts will examine all of the facts surrounding the signing of the consent form. Obtaining consent by coercion, through word or deed, is strictly prohibited.

6.7.1.2 Procedures to Obtain Consent

Consent must be freely and voluntarily given, and all procedures followed must be clearly documented.

6.7.1.2.1 The Subject Must be Informed of the Nature of the Examination

The CBP officer must explain in general, non-medical, terms that a medical diagnostic search will be conducted and that it will be completed at a medical facility by medical personnel.

6.7.1.2.2 The Subject Must Understand the Explanation

The CBP officer must ensure that the explanation is in a language the subject understands. The CBP officer must document the subject's language proficiency and any use of a translator. All observations concerning the person's maturity, intelligence, education, and training, which are all important to the issue of voluntariness and consent, should be documented.

6.7.1.2.3 The Subject Must Know That They Have the Right to Refuse

The CBP officer must advise the subject that they have the right to refuse the medical diagnostic search and document that.

6.7.1.3 Consent Form

If the subject of a medical exam consents to a medical diagnostic search, CBP officers must use the consent form provided (Appendix E) to document the consent. The CBP officer must thoroughly and carefully explain to the subject all the language in the consent form. The CBP officer must use the appropriate consent form in a language the person understands or translated appropriately into that language. The supervisor (if on-site) must review the consent form to ensure that it is properly signed. If there is any question as to the validity of the signed consent form, contact the local Associate/Assistant Chief Counsel for legal advice.

6.7.1.4 Revoking Consent

The subject of a medical diagnostic search may revoke consent at any time, even after arriving to the medical facility. The revocation may be verbal, or by actions, such as indicating a desire not to go freely to the medical facility. Refusal to sign a medical consent form (Appendix C) is considered a revocation. If the subject revokes consent, CBP officers must

immediately inform the medical personnel to stop the medical diagnostic test based on the revocation of consent. The CBP officers must then report this revocation to their supervisor, who will report this information to the Port Director (or designee).

6.7.2 Involuntary Medical Diagnostic Search

If the subject of a personal search does not provide consent, or revokes consent, for a medical diagnostic search, an involuntary medical diagnostic search may be pursued. An involuntary medical diagnostic search requires a court order and will only be conducted under the most extraordinary circumstances. In order to seek an involuntary medical diagnostic search, the Port Director (or designee) must consult with the local Associate/Assistant Chief Counsel, as well as the CBP case officer, or ICE Duty Agent to determine whether to seek a court order for an involuntary medical diagnostic search. If it is determined to proceed with such a medical diagnostic search, the CBP case officer, or ICE Duty Agent must contact the AUSA and request a warrant be obtained to authorize the medical diagnostic search.

6.7.3 Pregnancy Test

When the subject of a medical examination is taken to a medical facility for a medical diagnostic search, medical personnel will determine if a pregnancy test is required prior to a medical diagnostic search. If medical personnel determine a pregnancy test is necessary and the detainee refuses the pregnancy test and/or the test results are positive, a decision to determine the next appropriate steps must be made by the Port Director (or designee), after obtaining legal advice from the local Associate/Assistant Chief Counsel, which may include an MBM.

6.7.4 Officer Role During a Medical Diagnostic Search

CBP officers are not to make any medical decisions or ask that any medical procedures be completed other than the approved search. CBP officers are prohibited from conducting medical diagnostic examinations or utilizing any CBP equipment to conduct a medical diagnostic examination. Only qualified medical personnel may read and interpret the results of a medical diagnostic exam. CBP officers may be in the room only for the purposes of collecting any evidence found and/or to provide safety and security. CBP officers are prohibited from serving as a witness for medical purposes.

6.7.5 Medical Actions

Once a person is at a medical facility, medical personnel make all medical decisions. If during the course of the medical examination, or medical diagnostic exam, the medical personnel, or any other medical staff, determine that certain medical procedures need to be performed for the health and safety of the subject, the CBP officer will defer to the medical personnel. No CBP officer is authorized to request, advise, or encourage medical treatment.

6.7.6 Results/Outcome of the Medical Diagnostic Search

After the medical diagnostic examination is taken and read by the appropriate

medical personnel, CBP will be provided the results of the test. CBP officers may not render an opinion regarding the interpretation of the results. The results may be a determining factor in how OFO should proceed with the search.

6.7.6.1 Negative Results Determination

When medical personnel have determined that foreign objects are not present in the body, and that no further medical treatment is required, the results should be given by the CBP officer to the supervisor who will consult with the Port Director (or designee). The subject should then be transported back to the CBP facility, unless the Port Director (or designee) determines that additional actions should be taken. The subject also has the option to depart from the medical facility if they so choose. This should be properly documented in the system of record.

6.7.6.2 Inconclusive Results Determination

If medical personnel deem the medical diagnostic search to be inconclusive, a decision must be made by the Port Director (or designee), after obtaining legal advice from the local Associate/Assistant Chief Counsel, to determine the next appropriate steps.

6.7.6.3 Positive Results Determination

If medical personnel believe that the medical diagnostic examination indicates the presence of foreign objects, the Port Director (or designee) must be notified to approve the detention of the subject for further search consistent with the OFO policies and procedures. OFO policy does not provide for the subject to be arrested solely based on a positive medical diagnostic reading. For the purposes of this handbook, probable cause will not be established until the suspected foreign object(s) tests positive for narcotics.

6.7.7 Continuation of the Medical Examination

Depending on the outcome of the medical diagnostic search, the Port Director (or designee) will make a determination if the subject will continue in the personal search process or be released. If items are still suspected to be inside of the subject following the medical diagnostic examination, then a decision will be made by the Port Director (or designee) if either a MBM or Body Cavity Search would be appropriate.

6.8 Monitored Bowel Movement (MBM)

A MBM search is an internal search consisting of detaining a suspect, under close observation, to determine whether contraband or other material evidence is concealed in the alimentary canal and to permit time for a swallowed object to be expelled by the body through natural means. Because of the danger that concealed drug containers may rupture, the person must be taken as soon as possible to a medical facility and placed under medical supervision (with appropriate security) to minimize possible injury. The MBM involves both an extended period of detention coupled with close observation of the detainee and inspection of everything expelled by the body, including fecal material. A

MBM may be appropriate where the detainee refuses to submit to an examination to confirm the existence of swallowed contraband, or where such examination is not considered medically appropriate.

6.8.1 Officer Role During a MBM

CBP officers have a variety of duties in the processing of a MBM search. CBP officers have to maintain security and custody of the subject, as well as any narcotics that may have been expelled. CBP officers must also observe the subject at all times and inspect all fecal matter passed for possible contraband. CBP officers should follow local SOPs for specific guidance. Once objects have been expelled, the CBP officer must conduct a field test in order to determine whether probable cause exists. Once probable cause is established, the Port Director (or designee) must be notified, through the supervisor, as well as contacts made to the CBP case officer or ICE Duty Agent.

As a reminder, any person detained for a medical diagnostic search, body cavity search, or MBM is deemed to be in “custody” for *Miranda* purposes. Until *Miranda* warnings are provided, CBP officers must not interrogate the subject, which includes any questions, words, or actions that are reasonably likely to result in an incriminating response.

6.8.2 Consent Not Required

Detention for a MBM does not require the consent of the person being detained. However, it is important to ensure that any person detained for a MBM is treated in a courteous, professional manner and with as much dignity as possible, given the situation.

6.8.3 Notification Requirements

All custody requirements need to be completed by OFO, including the notification requirements described in Sections 3.12 and 3.13.

6.8.3.1 Two-Hour Notification

The two-hour notification to a person identified by the subject, if not already completed, should be completed within a period of two hours from the time a personal search patdown was completed. See Section 3.12 for more details.

6.8.3.2 Eight-Hour Notification

The eight-hour notification to the Port Director (or designee), is an on-going notification and re-evaluation of the detention process that must happen every eight hours, until probable cause is established, or the subject is released. The Port Director (or designee), must consult with the local Associate/Assistant Chief Counsel and the CBP case officer, or ICE Duty Agent, to determine if the subject should be detained longer, or released, based on the facts of the case.

6.8.4 Medical Decisions

Because of the danger that internally swallowed or stuffed drug containers may rupture, the subject must be taken to a medical facility as soon as possible and placed under medical supervision to minimize possible injury. Once the subject is at a medical facility, medical personnel will make all medical decisions in relation to the care of the subject.

6.8.5 Results/Outcome of the MBM Search

If a subject passes foreign objects that field test positive for a prohibited narcotic, probable cause is established. Likewise, if a decision is made by the Port Director (or designee) that reasonable suspicion ceases to exist, they may decide to end the MBM search.

6.8.5.1 Positive MBM Search

If during a MBM the subject passes a foreign object, the contents of the object must be field tested. If the field test is consistent with a prohibited narcotic then the Port Director (or designee) and CBP case officer, or ICE Duty Agent must be notified.

6.8.5.2 Negative MBM Search

If during a MBM it is determined by the Port Director (or designee) that reasonable suspicion of the subject having prohibited items in their body no longer exists, then the Port Director (or designee) will terminate the MBM. This typically may follow an inconclusive medical diagnostic exam or circumstances where a medical diagnostic examination is not completed. This may also follow a series of bowel movements without any foreign objects being dispelled. The Port Director, in consultation with the local Associate/Assistant Chief Counsel, may end the MBM at any time, at which time the subject should be released.

6.8.6 Probable Cause Establishment

Probable cause is not established until the actual field test is completed; therefore, once a foreign object is passed, it should be field tested immediately to determine whether probable cause exists. The Port Director (or designee) must then be notified, along with the CBP case officer or ICE Duty Agent, who will inform the AUSA of the impending seizure. Once probable cause is established, the *Miranda* warnings are to be provided prior to any interrogation, including questions, words, or actions that are reasonably likely to elicit an incriminating response. The CBP case officer or ICE Duty Agent will typically be issuing *Miranda* warnings.

6.8.7 Continuation of the Medical Examination

The MBM will continue until either the subject has passed all foreign objects to the satisfaction of the medical personnel or the Port Director (or designee) makes the decision to end the MBM.

6.8.8 Consent for Medical Diagnostic Search

If during the course of an MBM, the subject voluntarily decides to consent to a medical diagnostic search, the procedures outlined in Section 6.7 will be followed.

CHAPTER 7: Special Requirements for At-Risk/Sensitive Populations

7.1 Juveniles

A juvenile is defined as a person who has not reached their eighteenth birthday. All factors must be carefully weighed before making a determination to search a juvenile. When a personal search involves a juvenile, prior supervisory approval must be obtained in all cases with the exception of the immediate patdown. Juveniles should be given access to food, water, and the restroom, throughout the personal search process.

7.1.1 Verifying Age

If a subject presents himself or herself as a juvenile, they will be treated as a juvenile, until, and unless, established otherwise. When a CBP officer suspects that a subject may be a juvenile, the CBP officer should review the subject's travel and/or identification documents to determine the subject's age. If a subject presents themselves as an adult, they will be treated as an adult unless evidence is developed to indicate they are a juvenile, in which case they will be treated as a juvenile. Evidence includes, but is not limited to, fingerprint checks that reveal a different age or a search of personal effects that reveal that the subject is a juvenile.

NOTE: Should there be a need for forensic age determination procedures (i.e. dental x-ray or bone scan) this responsibility would fall with ICE.

7.1.2 Juvenile Traveling Alone

If a juvenile is traveling alone, a patdown, body search, or a partial body search can be authorized without notifying any waiting adult relative, or legal guardian, in advance.

7.1.3 Juvenile Traveling With an Adult

If a juvenile is traveling with a verified adult relative or legal guardian responsible for the care and custody of the juvenile, the juvenile and adult should, under most circumstances, remain together during inspection/processing.

7.1.3.1 Bringing an Adult into an OFO Facility

If an adult relative or legal guardian of a juvenile is brought into a CBP facility from the outside, the supervisor must obtain that person's consent for an immediate patdown, as a condition of entry into the facility. Adults who refuse to be searched should be denied access.

7.1.3.2 Explaining the Search Process to the Adult

When an adult relative or legal guardian accompanies a juvenile, the supervisor should explain the circumstances surrounding the personal search process in general terms.

7.1.3.3 Adult Presence for a Personal Search at the OFO Facility

In most cases, the adult relative or legal guardian of a juvenile should be allowed to be present during the search, unless special circumstances exist where the presence of the adult would exacerbate the situation, rather than have a calming effect. The supervisor, however, will make the final determination of whether the adult will witness the search, taking into consideration the relationship of the adult to the juvenile, the age of the juvenile, and the type of search to be performed. If the adult is of a different gender (as defined in Section 3.5), and the juvenile does not want the adult present should there be a need to perform a partial body search, the adult should wait immediately outside the search room in order to afford the juvenile as much privacy as possible.

7.1.3.4 Adult Presence for a Personal Search at a Medical Facility

In exercising discretion to permit an adult relative or legal guardian to be present during a search of a juvenile at a medical facility, supervisors should consider such factors as the safety of the searching officers, whether the medical facility room is large enough to accommodate additional people, and whether the adult may also be suspected of smuggling contraband.

7.1.3.5 Additional Officer Presence When an Adult is Present for a Personal Search

When an adult relative or legal guardian of a juvenile is allowed to be present in a search room or medical facility, every effort should be made to have at least three CBP officers present, or immediately nearby, to allow for officer safety.

7.1.3.6 Situations Where Accompanying Adult Should Not be Allowed to be in the Presence of the Juvenile

There are times when an accompanying adult should not be allowed to be in the presence of a juvenile who is the subject of a personal search. The following are some examples, but is not an all-inclusive list: adult is a non-relative; suspected human or narcotics trafficking; suspected abuse; safety concerns with the adult; or when the adult is disruptive to the process.

7.1.4 Procedures for Conducting a Personal Search on a Juvenile

Searches of juveniles will be conducted in the same manner as any other personal search, with appropriate modifications as necessary, considering the age of the juvenile involved.

It should be noted that for a medical diagnostic search, body cavity search, or MBM, although consent may be granted by the juvenile or Health and Human Services (HHS) under limited circumstances, the Port Director, should consult with the local Associate/Assistant Chief Counsel prior to conducting these types of searches.

7.1.5 Documentation

The circumstances surrounding the personal search process should be explained to the juvenile in a clear manner. In addition to pertinent details normally entered for adult searches, the narrative of the electronic reporting system involving a juvenile must include explicit details (e.g., details of explanation of the personal search process to the juvenile, the juvenile's comprehension of the personal search process, and/or the observations of the emotional state of the juvenile). All relevant information from the beginning to the end of the process should be captured in a detailed narrative. If applicable, the identity of, and circumstances surrounding, any adult relative or legal guardian notified of or witnessing the search should also be included.

NOTE: Juveniles may be more susceptible to abuse, or sexual abuse, if placed in a holding cell with other individuals. A detainee assessment should be completed and reviewed by a supervisor prior to detention. Other options like a monitored open area, if available, may be more appropriate if detention is necessary.

7.2 Unaccompanied Alien Children (UAC)

Unaccompanied Alien Children are children under the age of 18, without lawful immigration status in the United States, with no parent or legal guardian in the U.S. who is able to provide for their care and custody. This unique population of aliens require specific protocols, special handling, and care. Personal search of these individuals should follow the policies outlined in Section 7.1.

7.3 Elderly

Elderly individuals must be treated with care and respect when being subjected to a personal search. Some things to consider when searching elderly individuals are that they may have health issues, such as a weak heart, trouble breathing, weak joints and bones, or a variety of other health-related issues. CBP officers should ask what medications or other medical processes are needed to ensure their welfare. CBP officers should fully explain the personal search process to an elderly individual and confirm they understand the process fully.

Great care and attention need to be given to elderly individuals that may be detained, ensuring they have very frequent or constant supervision. Elderly individuals may be more susceptible to abuse, or sexual abuse, if placed in a holding cell with other individuals. A detainee assessment should be completed and reviewed by a supervisor prior to detention. Other options like a monitored open area, if available, may be more appropriate if detention is necessary.

7.4 Family Units

In general, verified family units should not be separated and should be referred for detention together. Any separation of a juvenile from his/her family for reasons other than processing, or other short, routine removal from a holding area where the family is otherwise held together, requires OFO to facilitate contact between the family members and the juvenile. This contact must be facilitated where family members do not have a custodial relationship. CBP officers must document any separation in the electronic

reporting system. Any deviation to keeping a family unit together, must be within policy, as per CBP Directive No. 3340-030C, titled “Secure Custody, Transport and Escort Procedures at Ports of Entry”, or subsequent directives, policies, or guidance.

7.5 Gender Nonconforming, Intersex, and Transgender Individuals

OFO will generally rely upon the gender identified on a travel document in determining the gender of a traveler. CBP officers conducting a personal search, other than an immediate patdown, must be of the same gender as the individual identifies with, which may differ from their appearance or anatomy. Prior to commencing the search, the primary (searching) CBP officer will communicate with the traveler to identify any concerns. If the traveler states that they identify with a gender that is different than what is listed on the travel document, the supervisor will be notified and CBP officers who are the same gender that the traveler identifies with will become the primary (searching) and witnessing officers.

The traveler’s self-identification of gender and results of the pat down search will be recorded in the appropriate processing system(s).

When a subject is to be placed into secure custody, transported, or escorted, and the subject has self-identified as transgender, intersex, or gender nonconforming, CBP officers should ask the detainee about any concerns regarding physical safety and must take the individual’s preference into account in determining safe and appropriate placement in a holding facility with other detainees. CBP officers will not alert other detainees to the individual’s transgender, intersex, or gender nonconforming status.

7.6 Mental, Physical, and Developmental Disabilities

Care and caution must be given to individuals who have mental, physical, or developmental disabilities, who are going through the personal search process. Any accommodations to an individual with a physical disability should be given, as operationally feasible. Wheelchairs or other mobility devices may be needed to ensure their comfort and ease during the personal search process. Those individuals with mental or developmental disabilities may need accommodations to assist the process. Individuals who appear to have violent tendencies must be handled with caution, ensuring the safety of the officer, individual, and public.

7.7 Pregnant Females

Pregnant females should be treated with care during the personal search process. Pregnant females should not be restrained, unless exigent circumstances exist, such as: they have demonstrated or threatened violent behavior, they have a history of criminal and/or violent activity, they are being transported to a medical facility for continued examination, or there exists an articulable likelihood of escape. Pregnant females should be given access to food, water, and the restroom throughout the personal search process. If the pregnant female shows any signs of pain in the stomach area, immediate contact to emergency medical services should be initiated to ensure the health of the unborn baby and mother.

7.8 At-Risk Populations

CBP officers shall follow the detainee assessment process in CBP Directive No. 3340-030C, titled “Secure Custody, Transport and Escort Procedures at Ports of Entry”, or successor directives, policies, or guidance. Officers should provide individuals identified as a high risk of sexual victimization in the detainee assessment process, with heightened protection. This may include continuous direct sight and sound supervision, placement in a single-occupancy hold room, monitoring in open areas, or placement in a hold room actively monitored on video by a CBP officer sufficiently near to intervene, unless no such option is determined to be operationally feasible.

7.9 Individuals on Life-Sustaining Medication or Life-Saving Medical Treatment

Special care and accommodations must be made to individuals on life-sustaining or life-saving medical treatments. CBP officers must accommodate these individuals’ need for medication or other medical treatment devices at all times. Supervisory CBP officers and management must be made aware of individuals in custody, or in the personal search process, who require emergency medical assistance. CBP officers must ensure that the individual is aware of medical services that can be contacted if needed.

7.10 Accommodating Religious Beliefs

During processing, if a traveler requires special consideration due to religious, cultural, or privacy concerns, CBP officers and managers should endeavor to reasonably accommodate the traveler’s request.

7.10.1 Religious Head Coverings

At times a search of individuals with religious headdresses may be required. To ensure officer safety, the officer may need to request removal of religious headdresses which should be done in private by officers of the same gender (as defined in Section 3.5) wherever possible. Searches of religious headdresses performed to ensure officer safety may be performed according to the procedures used for any immediate patdown search. Searches of religious headdresses to determine if contraband is present should be performed as any other search of headdresses would be performed. When searching religious headdresses for contraband, officers should ask the person to remove the headdress, and do the following: show respect; explain why there is a need to conduct the search; offer a private room for the search, if available; ensure that the search is conducted by an officer of the same gender (as defined in Section 3.5). As with any patdown beyond an immediate patdown, this should be done in a private area away from public view.

7.10.2 Religious Observances, Praying, Meditation

If a subject in custody has specific religious observances for prayer or meditation at certain times of the day, all attempts should be made to allow them this time in the most private setting that is operationally feasible. If unable to allow for this accommodation at the time of request, the subject should be afforded the opportunity at the soonest possible opportunity that is operationally feasible.

7.10.3 Religious Dietary Requirements

CBP officers should be aware that some religions have specific dietary requirements. All attempts to assist a subject in CBP custody with specific religious dietary requirements should be attempted, as operationally feasible. Documentation of this accommodation should be noted in the electronic reporting system.

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CHAPTER 8: Custody/Release Procedures

8.1 Use of Restraints

The use of restraints on subjects in custody during the personal search process must be in a manner that is safe, secure, humane, and professional. The least amount of restraint necessary to complete the personal search should be used, taking into account the safety of the officers, subject, and other individuals. It is the responsibility of the CBP officer to ensure that the need and level of restraints used is consistent with policies and procedures. At no time will restraints be used in a punitive manner or in a manner that causes the subject undue pain.

8.1.1 Juveniles

Juveniles should not be restrained, unless exigent circumstances exist, such as: they have demonstrated or threatened violent behavior, they have a history of criminal and/or violent activity, they are being transported to a medical facility for continued examination, or there exists an articulable likelihood of escape. All exceptions must be documented in the electronic reporting system, including the facts and the reasoning behind the decision.

8.1.2 Pregnant Females

Pregnant females should not be restrained, unless exigent circumstances exist, such as: they have demonstrated or threatened violent behavior, they have a history of criminal and/or violent activity, they are being transported to a medical facility for continued examination, or there exists an articulable likelihood of escape. Even in the extraordinary circumstance where restraints are deemed necessary, no subject in custody known to be pregnant will be restrained in a face-down position, or her back, or in a restraint belt that constricts the area of the pregnancy. All exceptions must be documented in the electronic reporting system, including the facts and reasoning behind the decision.

8.1.2.1 Post-Delivery Recuperations

A subject in custody in post-delivery recuperation must not be restrained absent extraordinary circumstances that render restraints absolutely necessary for the safety of the officer, individual in custody, or others.

8.1.2.2 Active Labor or Delivery

Restraints are never permitted on detainees who are in active labor or delivery.

8.2 In-Port Custody

Custody of a subject being held for a personal search, while at the CBP Port of Entry, must follow the procedures and guidelines as directed in CBP Directive 3340-030C Titled: “Secure Custody, Transport and Escort Procedures at Port of Entry”, or subsequent directives, policies, or guidance.

8.3 Transport

Transport of a subject being held for a personal search, while at the CBP Port of Entry, must follow the procedures and guidelines as directed in CBP Directive 3340-030C, Titled: “Secure Custody, Transport and Escort Procedures at Port of Entry”, or superseding directives, policies, or guidance. Additionally, when a subject is transported for a personal search to a medical facility, due to suspicion of narcotics being contained inside their body, their pants legs should be taped to impede the subject in any possible attempts at dispelling contraband while being transported.

8.4 Medical Facility/Services

CBP officers should follow local procedures and protocols in determining which medical facility will conduct a medical exam, for personal search reasons. If the subject is to be detained for medical, non-personal search reasons, then emergency medical services should be contacted and the subject should be transported by EMS, while still following the procedures as directed in CBP Directive 3340-030C Titled: “Secure Custody, Transport and Escort Procedures at Port of Entry”, or successor directives, policies, or guidance. When a subject is being held for a personal search, CBP officers must be aware of the security precautions necessary to safeguard the subject, any narcotics expelled, and any outside individuals that will enter the room, to include hospital staff, or accessibility to outside individuals. CBP officers should follow local protocols and procedures for safety and security while performing this duty.

8.5 Personal Property

During the personal search process, an individual’s personal property must be held securely, pending the outcome of the personal search process. Items of high value and identity documents, should be held within sight of the individual at all times, unless they present operational, safety or security concerns.

Whenever operationally feasible, officers will transfer a detainee’s personal property with the detainee when the detainee is transferred within CBP. Officers will make every effort to transfer a detainee’s personal property with the detainee when the detainee is transferred to another agency, repatriated, and/or released. If personal property cannot be transferred with the detainee, CBP will generally hold personal property for a minimum of 30 days from the processing of a detainee. After 30 days personal property will be considered abandoned and may be destroyed.

Items needed for evidence purposes should be seized or detained, following existing OFO policies and procedures. Personal property remaining in OFO’s custody following arrest or a credible fear claim of an individual should be processed/retained in accordance with OFO practices by being: turned over to agency who received the subject; turned over to a third-party of the subject’s choosing (to include their country’s consulate); or handled or processed following OFO policies and procedures of the local port of entry.

8.6 Access to Restroom

Any subject in OFO custody, including those for a personal search, should be given access to a restroom. Subjects who are suspected of carrying narcotics in or on their body should only be given access to a restroom and procedures should be followed as defined in section 3.11.

8.7 Access to Water

All subjects in custody must be given access to drinking water at all times through the use of disposable cups, water fountains, or bottled water.

8.8 Access to Food

Meal service is not discretionary for subjects in OFO custody. CBP officers will provide a meal to any person whose inspection has exceeded, or who has been in custody, more than 6 hours. Juveniles, pregnant, and/or lactating detainees, must be offered a snack upon entering a short term holding cell and a meal at regularly scheduled meal times, at least every 6 hours. At least two meals in a 24 hour period should be served as hot food. Juveniles, and pregnant, and/or lactating detainees must have regular access to snacks, milk, and juice. Food must be appropriate for the detainee's age and capabilities, such as formula and/or baby food, when appropriate. In cases where an adult detainee requests a snack or meal before the next meal service, the CBP officer should accommodate the request as operationally feasible.

CBP officers should be sensitive to religious dietary restrictions and/or medical needs of all detainees whenever operationally feasible. Food provided must be in edible condition, not served frozen, expired, or spoiled. Food and water should never be used as a reward, or withheld as punishment. In instances where a subject has advised CBP officers that they are carrying narcotics internally, all food and drinks should be under the direction of medical personnel at the medical facility the subject has been transported to clears the subject to eat or drink.

8.9 Bringing Outside Individuals into an OFO Facility

There are some circumstances when individuals will enter a secure area of an OFO facility outside the ordinary border inspection process. These individuals may require a personal search, including an immediate patdown for safety and security. Some examples are listed below, however this is not an all-inclusive list.

8.9.1 Reporting for an Inspection at an OFO Facility

The procedures provided in this handbook should be followed when an individual comes to an OFO office or facility in order to complete their initial inspection. An example of this would be a Pleasure Boater arriving from a foreign location, who is directed to report to a CBP office for inspection, which may be as late as 24 hours after arrival.

8.9.2 Deferred Inspection Sites

The procedures identified in this handbook should be followed when searching an individual coming to an OFO Deferred Inspection Site to complete their inspection. An immediate patdown for officer safety may be necessary, particularly if the individual will be processed in a secondary case room or held in custody. For safety, a patdown should be conducted on any additional individuals, who are not the subject of the Deferred Inspection, prior to allowing them into an OFO facility. CBP officers may ask the individual to allow an immediate patdown to be done as a requirement for entry. If they refuse to willingly submit to the immediate patdown, they may be denied entry into the facility.

8.9.3 Other Encounters at an OFO Facility

There are multiple reasons an individual may be asked to come into an OFO facility. These may be to join an unaccompanied minor, to respond to requests for information to corroborate details given by an individual arriving internationally, or for other operational necessities. CBP officers may require an individual to submit to an immediate patdown as a condition of entering an OFO facility. If the individual does not voluntarily agree, then the subject may be refused entry into OFO's facility.

8.10 Release Procedures for Negative Personal Searches

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 OFO and other inspection agency regulatory processing has been completed, immediately advise the person that OFO processing has been completed, and that they are free to leave the facility.

8.10.1 Addressing Subject Questions

CBP officers must ensure that questions regarding a negative search are addressed in a professional manner which may include thanking them for cooperating in the process.

8.10.2 Returning Persons to the OFO Facility

When a person has undergone a personal search away from the OFO facility the search process was initiated, such as at a medical facility, which has not resulted in a seizure or arrest, the person should be returned to the OFO facility as promptly as possible. The person may, however, depart from the medical facility if they choose. Two CBP officers, or one CBP officer and another law enforcement officer, must accompany the person if being transported. At least one of the officers should be of the same gender (as defined in Section 3.5) as the person being transported. 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 circumstances where a person was handcuffed on the return trip, including the circumstances that warranted the action, in the appropriate reporting system(s).

8.10.3 Transportation Assistance

CBP officers will make every effort to assist a person who underwent a negative personal search in their departure, as operationally feasible. 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, who have missed onward travel, and/or are leaving the OFO facility during late hours when outside facilities are closed. Arrange or obtain assistance from transportation officials or traveler's aid organizations. Ensure all efforts for providing assistance are documented in the appropriate electronic reporting system.

CHAPTER 9: Documenting the Personal Search

9.1 Documenting a Search

All personal searches need to be accurately documented electronically, to include all articulable facts that led to the decision to conduct a personal search. These facts must show that some or mere suspicion, reasonable suspicion, or probable cause were met, when appropriate, for each personal search conducted. Every action, and the time it occurred, of the personal search needs to be documented. Any contacts made need to be properly documented, such as contacts made to: Supervisory CBP officer; Port Director; the Office of Chief Counsel; the U.S. Attorney's Office; CBP case officer; ICE Duty Agent; or friends and family of the subject. All positive searches that result in an arrest and/or seizure are to be documented in S/A/S or successor system.

9.1.1 Immediate Patdown

An officer must document, in the appropriate electronic reporting system, all immediate patdown searches with the search code (b) (7)(E). The following code should be used, at a minimum, whenever an immediate patdown search is performed: (b) (7)(E) and any other reason codes which apply should also be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing OFO policies.

9.1.2 Patdown

An officer must document, in the appropriate electronic reporting system, all patdown searches with the search code (b) (7)(E). The appropriate reason codes which apply should be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing policies.

9.1.3 Partial Body Search

An officer must document, in the appropriate electronic reporting system, all partial body searches with the search code (b) (7)(E) along with the less intrusive search exam codes for the searches that were performed. The appropriate reason codes (varied based on articulable facts) which apply should be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing policies.

9.1.4 Body Cavity Search

All body cavity searches, the reason for the search, the approving supervisor and Port Director (or designee), and the outcome, must be documented electronically, to include the name of the medical facility where the search was performed. Consent must be documented, to include observations concerning the subject's maturity, intelligence, education, and training. Any revocations of consent must likewise be documented. The body cavity search must be documented in the appropriate electronic reporting system using the body cavity search code, (b) (7)(E) (b) (7)(E) along with the less intrusive search exam codes for the searches that were

performed. The appropriate search reason codes (varied based on articulable facts) which apply should be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing policies.

9.1.5 Medical Diagnostic Search

All medical diagnostic searches, the reason for the search, the approving supervisor, Port Director (or designee), the name of the medical facility, and the outcome must be documented electronically. Consent must be documented, to include observations concerning the subject's maturity, intelligence, education, and training. Any revocations of consent must likewise be documented. The medical diagnostic search must be documented in the appropriate electronic reporting system using the medical diagnostic search code, (b) (7)(E) along with the less intrusive search exam codes for the searches that were performed. The appropriate search reason codes (varied based on articulable facts) which apply should be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing policies.

9.1.6 MBM Search

All MBM searches, the reason for the search, the approving supervisor, Port Director (or designee), the name of the medical facility, and the outcome must be documented electronically. The MBM search must be documented in the appropriate electronic reporting system using the MBM search code, (b) (7)(E) along with the less intrusive exam codes for the searches that were performed. The appropriate search reason codes (varied based on articulable facts) which apply must be documented. If any seizures or arrests are made, the incident is only to be processed and documented in S/A/S or successor system within existing policies.

9.1.7 Personal Search Documentation Codes

(b) (7)(E)

9.2 Personal Search Worksheet

A Personal Search Worksheet is required when the CBP officer is not able to input the search results electronically immediately. A personal search worksheet is not required if the results of the search are input immediately. When the search results in a seizure and/or arrest or adverse action, the worksheet, if used, becomes part of the seizure documentation. When no enforcement action results, the worksheet, if used, must be retained locally, along with consent forms and other pertinent documents, in chronological order, for 2 years and 3 months from the date of the search.

9.3 Recordation of Search Progression

When recording personal search types performed on individuals, it is required that you report all levels of personal search performed, from the least intrusive to the most intrusive.

9.4 Narrative Details

The narrative should ensure that times are accurately recorded, including specific start-stop times for completing the various types of searches (i.e. immediate patdown, patdown, partial body search, etc.) and start-stop times to and from the medical facility, when applicable. The electronic reporting system must contain the objective, articulable facts, which support the particular search or detention. It is important to complete as much information as possible concerning the description of the person and circumstances surrounding each step of the personal search conducted.

9.5 Supervisory Review and Approval of Incident Log or S/A/S Reports

All supervisors will ensure that reports are detailed and accurate. When details are missing or unclear, the supervisor should work with the officer to correct the report. A supervisor may add additional comments at the end of the report if needed, but not change the context of the originating officer's comments, unless the reporting officer has agreed with the changes. When operationally feasible, the same supervisor initially involved with the personal search should approve the Incident Log or S/A/S report. By approving the report, a supervisor is certifying that the required information is present in the report and that sufficient details exist regarding the circumstances surrounding the search. When the supervisor who approved the search approves the report, they are certifying that they reviewed the factors that led them to approve the search in accordance with policy.

9.6 Port Director Review of Incident Log or S/A/S Reports

Port Directors should periodically review Incident Logs and S/A/S reports pertaining to personal searches to determine the effectiveness of personal searches at the port, including whether there may be any improprieties in the conduct of the searches. When reports indicate that effectiveness has decreased or that improprieties exist in the conduct of searches, the Port Director will ensure that corrective actions are taken.

9.7 Corrective Actions to Incident Logs or S/A/S Reports

If a supervisor notes deficiencies or becomes aware that the search was performed contrary to this handbook, they should annotate the information at the end of the report in the narrative section.

A supervisor who notes deficiencies in the Incident Log or S/A/S report or becomes aware that the search was performed contrary to this handbook (including in an inappropriate, unreasonable, discourteous, or unprofessional manner) or contrary to supervisory approval, will ensure that appropriate corrective action is taken, in accordance with policy.

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 whether such alien is eligible or ineligible to be admitted to the United States under Section 212(a) of the INA.

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

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

CBP: U.S. Customs and Border Protection.

CBP case officer: U.S. Customs and Border Protection Officer who has been assigned the duties associated with the case being processed. This officer would include a CBP officer (enforcement), CBP officer (tactical) or a CBP officer who has attended the specialized training course, such as

(b) (7)(E)

CBP officer: U.S. Customs and Border Protection Officer.

CBP officer (enforcement): U.S. Customs and Border Protection Officer – Enforcement. (AKA: Enforcement Officer, Prosecutions Officer, or Criminal Enforcement Officer)

CBP officer (tactical): U.S. Customs and Border Protection Officer – tactical. (AKA: special response team and/or officers assigned to task forces)

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 and 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 under Section 237(a) of the Immigration and Nationality Act.

ICE: U.S. Immigration and Customs Enforcement.

Immediate pat down: a search done on the outside of a subject's clothing, which is deemed 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 diagnostic search: the use of a medical diagnostics by medical personnel to determine the presence of merchandise within the body.

Medical examination: a body cavity search, medical diagnostic search, or Monitored Bowel Movement (MBM) 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.

NCIC: National Crime Information Center.

Office of Field Operations (OFO): Customs and Border Protection's Office of Field Operations is the office that inspects and examines individuals, their possessions, and cargo which arrive internationally at designated ports of entry.

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 that would lead a reasonable officer to believe it is probable a particular person committed a crime or seizable 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.

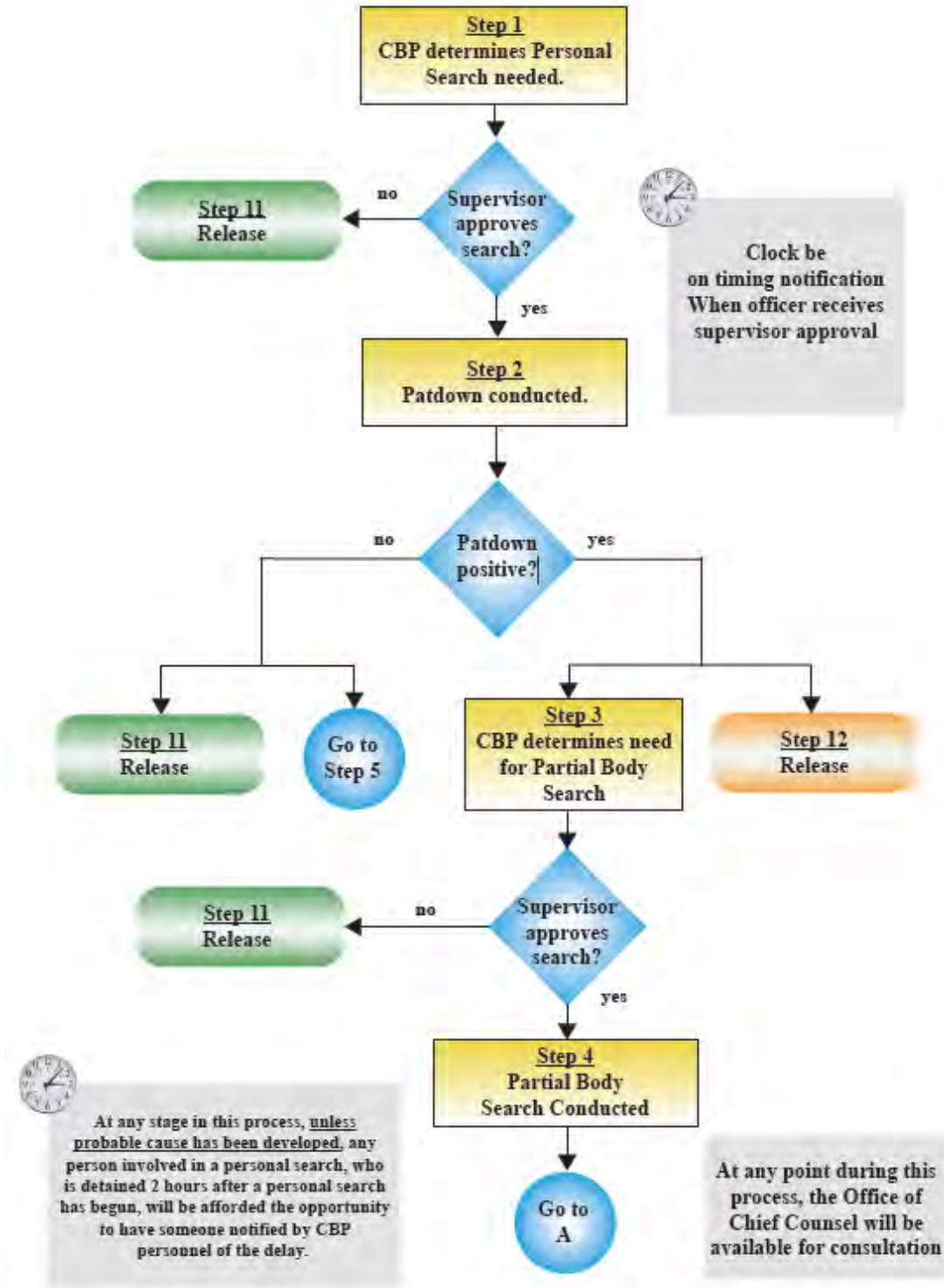
S/A/S: **(b) (7)(E)** Search/Arrest/Seizure report.

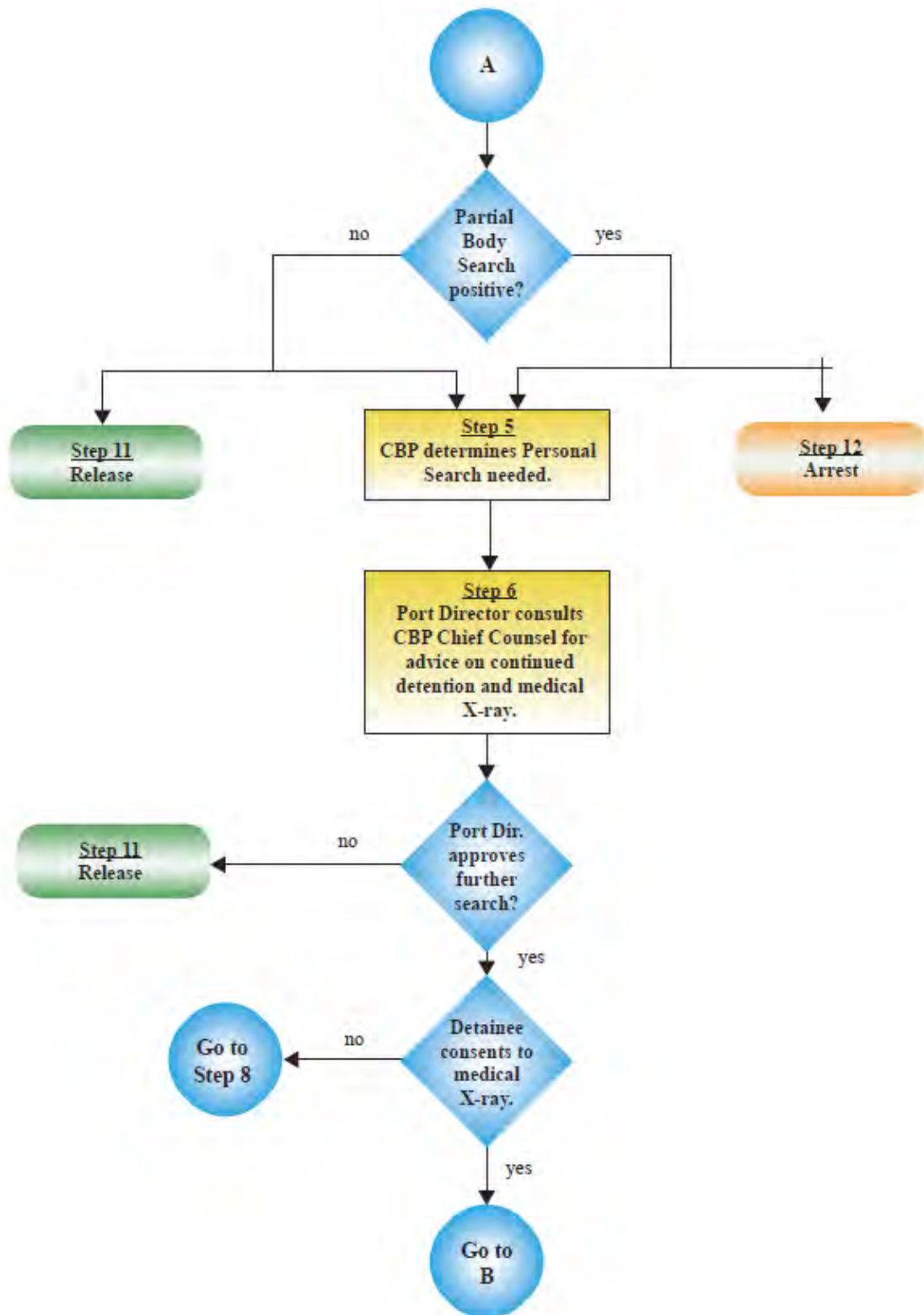
Some or mere suspicion: the minimal level of suspicion required to conduct a pat down search. By policy, OFO requires at least one fact before conducting a pat down.

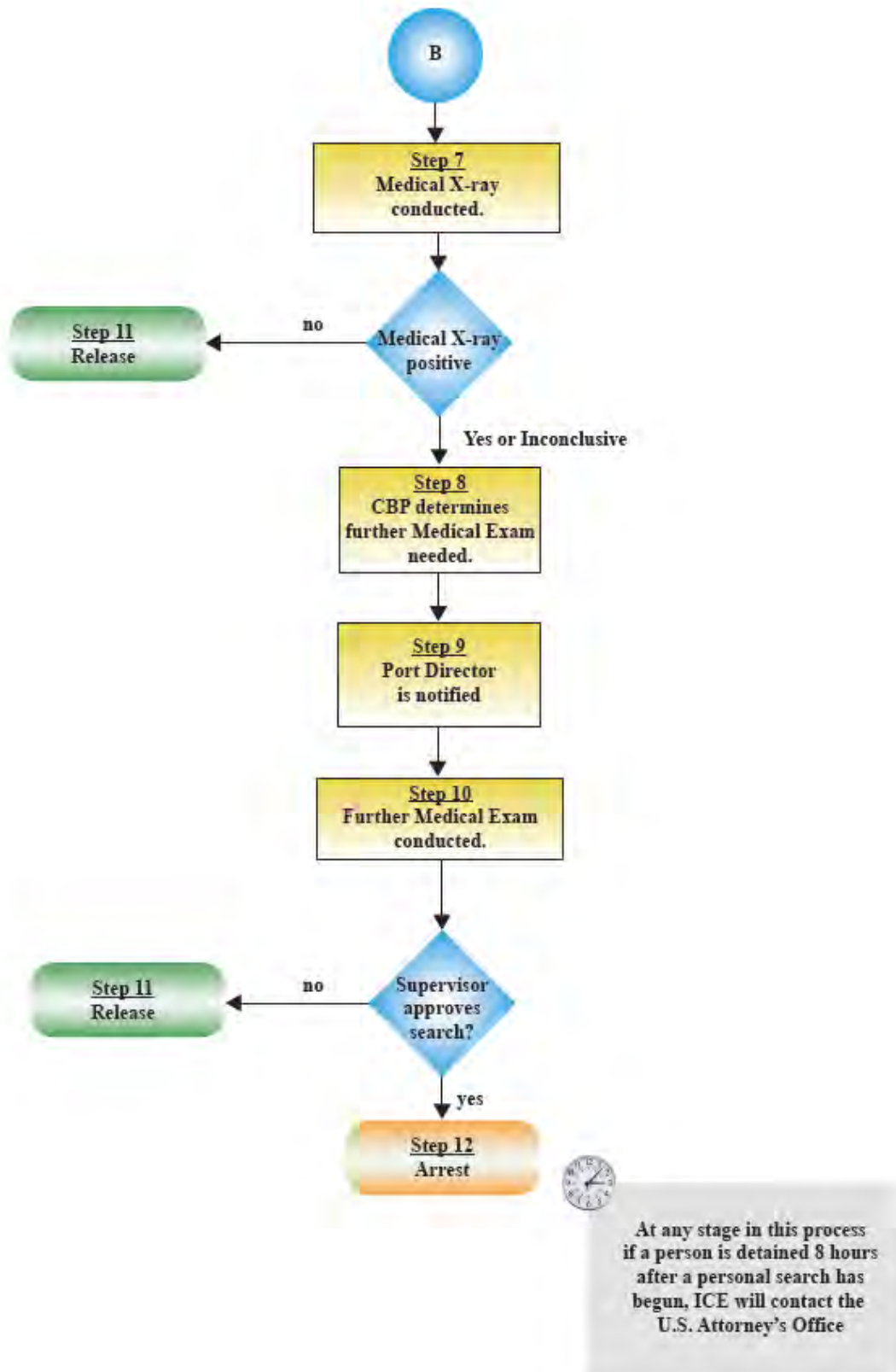
Supervisory CBP officer: CBP officer serving in a supervisory capacity.

Appendix A

Personal Search Procedure for CBP Office of Field Operations







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
Search Incident to an Arrest or Adverse Action	Officer Safety	No Approval Required	Action Taken to Ensure a Subject Who is Being Arrested, or Processed for an Adverse Action Does Not Have a Weapon, Dangerous Items, or a Means of Escape
Patdown	One Articulable Fact, per OFO Policy	On-Duty Supervisor (Unless Immediate Action to Secure a Weapon)	Search Conducted for Contraband, Other Merchandise, and/or Material Evidence.
Partial Body Search	Reasonable	On-Duty Supervisor	Approval Required to Proceed From Patdown to Partial Body Search.
Medical Diagnostic Search—Voluntary	Reasonable	Port Director	Subject Must Sign Waiver Voluntarily ³ .
Medical Diagnostic Search—Involuntary	Reasonable	Port Director and court order	Notify Associate Chief Counsel.
Body Cavity—Voluntary	Reasonable	Port Director	Subject Must Sign Waiver Voluntarily
Body Cavity—Involuntary	Reasonable	Port Director and Court Order	Notify Associate Chief Counsel
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 Re-Approval is Required Every Eight Hours.

³ Notify Associate Chief Counsel if validity of consent is in question. Medical Diagnostic Search (X-Ray) is not to be conducted on a pregnant woman or one refusing pregnancy test

Appendix C

Standard Consent Form for Medical Diagnostic Search and/or Pregnancy Tests

Administered by Medical Diagnostic and/or Medical Facility

I, the undersigned, hereby consent, as necessary, to medical diagnostic search of my body by a medical diagnostic and/or a medical facility designated by U.S. Customs and Border Protection. If female, I further consent to a pregnancy test prior to undergoing any medical diagnostic search. 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 U.S. Customs and Border Protection. I hereby release the facility and its personnel performing said examinations/tests and any officials of U.S. 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: _____

Appendix E

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 U.S. Customs and Border Protection. I consent to the result of said examination and related medical records being given to officials of U.S. Customs and Border Protection. I hereby release the physician performing said examinations and any officials of U.S. 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: _____

Printed Name: _____

Date: _____ Time: _____

Witness Signature: _____

Date: _____ Time: _____

APPENDIX F

Contact Advisory of CBP Custody

To be used once any person has been in custody for 2 hours for a personal search. The subject 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 pat down or when an officer receives permission from a supervisor for the personal search of a juvenile. Time spent on prior interviews and baggage examination does not count toward the 2-hour period. Additionally, custody due to the determination of admissibility into the U.S., and/or to the detention and removal process of aliens, does not apply under this Contact Advisory.

I am Officer [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 keep individuals in custody to determine if they are smuggling. CBP authority for custody 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 custody for personal searches do not constitute an arrest.
3. During such custody, 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.

Appendix G

Advisory of CBP Procedures Custody on Suspicion of Carrying Narcotics Internally

To be used when personal searches require moving the person to a medical facility for a medical examination (body cavity search, medical diagnostic search, or detention for Monitored Bowel Movement).

1. We have reason to suspect that you are carrying controlled substances (or other merchandise) internally.
2. CBP has the obligation and legal authority to determine if you are smuggling narcotics internally. CBP custody 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 will handcuff you during transport.
4. You may consent to a medical diagnostic search at CBP expense conducted by medical personnel at the medical facility.
5. If you choose not to consent to a medical diagnostic search, or if medical personnel determine that the medical diagnostic search is positive or inconclusive, CBP may hold you under medical supervision.
6. CBP will consult with the U.S. Attorney's Office regarding this continued custody and seek judicial approval if necessary. CBP may continue to hold you while that approval is sought.
7. If your custody 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.

Appendix H

Standard Acknowledgment Form for a Personal Search of an Individual Whose Gender Identity Does Not Match The Gender Listed on Their Identity Documents Presented

I, the undersigned, hereby acknowledge that I informed U.S. Customs and Border Protection that I identify as a D male/ D female, which does not match the identity documents I presented during my inspection. I further understand and acknowledge the searching officer will be of the gender that is the same as my gender identity. The general search procedure was explained to me and any questions I had were addressed.

Signed: _____

Printed Name: _____

Date: _____ Time: _____

Witness Signature: _____

Date: _____ Time: _____

Attachment 1:

Acknowledgment of Receipt of Personal Search Handbook

Date: _____

Chapters:

1. Rights and Standards
2. Determining the Need for a Personal Search
3. Personal Search Progression & Requirements
4. Patdown Searches
5. Partial Body Searches
6. Medical Examinations
7. Special Requirements for At-Risk/Sensitive Individuals
8. Custody / Release Procedures
9. Documenting the Personal Search

Glossary

Appendixes A through H

Attachment 1

- This is to acknowledge that I have received my copy of the Personal Search Handbook, CIS HB 3300-04C, dated March 2021.

Officer's Printed Name:

Officer's Signature:

Supervisor's Printed Name:

Supervisor's Signature: