

Department of Homeland Security



U.S. Immigration  
and Customs  
Enforcement

Office of Investigations

# Arrest Procedures Handbook

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## Foreword

The Arrest Procedures Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls that should be followed by U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents when exercising the authority to seize, detain, arrest, and transport individuals in custody in the course of conducting investigations and other enforcement-related activities within the scope of their authority. This Handbook contains instructions and guidance that will help ensure uniformity and operational consistency at all OI field offices. The Arrest Procedures Handbook is available in the Handbook section of the OI Proprietary Website.

Chapter 43 of the U.S. Customs Service (USCS) OI Special Agent Handbook, entitled "Detention, Arrest and Handling Prisoners," and Chapter 13 of the Immigration and Naturalization Service (INS) Special Agent Field Manual entitled "Arrest," and all other previous issuances on this subject by the former USCS or INS or by ICE OI are hereby superseded.

The Arrest Procedures Handbook is an internal policy of OI and is not intended to confer any right or benefit on any private person or party. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the OI Information Disclosure Unit, Mission Support Division (MSD), as well as the appropriate ICE Counsel and/or U.S. Attorney, should be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public. Any further request for disclosure of this Handbook or information contained herein should be referred to the OI Information Disclosure Unit.

The OI Policy Unit, MSD, is responsible for coordinating the development and issuance of OI policy. All suggested changes or updates to this Handbook should be submitted to the OI Policy Unit.

  
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Marcy M. Forman  
Director, Office of Investigations

10/4/07  
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Date

# ARREST PROCEDURES HANDBOOK

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# **ARREST PROCEDURES HANDBOOK**

## **Chapter 1. GENERAL**

### **1.1 Purpose**

The Arrest Procedures Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) Special Agents (SAs) when they exercise the authority to seize, detain, arrest, and transport individuals in custody.

### **1.2 Background**

The scope of OI SAs' authority is established by statute, and SAs must know the basis of their authority as well as the limits of such authority. SAs may take an individual into custody only when acting within the scope of their legal authority.

The arrest, detention, and transportation of individuals are among the most dangerous duties performed by OI SAs. Experience has shown that many SA casualties occur in the course of performing such duties. The procedures and standards set forth in this Handbook can help to minimize such casualties. They can also preclude costly and time-consuming lawsuits or trial tactics that might divert the attention of courts and juries from the substantive facts of a case to the nature of ICE OI's treatment of a defendant or respondent.

Compliance with the procedures and standards set forth in this Handbook, along with SAs' training, will help to ensure officer safety, safeguard the rights of those individuals in the custody of SAs, and maximize the admissibility of evidence obtained by SAs.

## **Chapter 2. DEFINITIONS.**

The following definitions are provided for the purposes of this Handbook:

### **2.1 Adult**

Any person who is or is believed to be 18 years of age or older.

### **2.2 Arrest**

An actual or constructive restraint or detention of an individual, performed with the intention of taking the individual into custody. (See "Individual in custody.")

## **2.3 Deadly Force**

Deadly force is the use of any force that is likely to cause death or serious physical injury. Deadly force does not include force that is not likely to cause death or serious physical injury but unexpectedly results in such death or injury. Deadly force may be employed only when an SA has probable cause to believe that there is an imminent threat of death or serious physical injury to the SA or others. Deadly force, as defined in the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated, may be used to prevent the escape of a fleeing subject if there is probable cause to believe that escape of the subject would pose an imminent danger of death or serious physical injury to the SA or to another person.

## **2.4 Detention**

Restraining a person for some official purpose by establishing control over the person. (See “Individual in custody.”)

## **2.5 Individual(s) in Custody**

This term is used throughout this Handbook to refer to persons or groups of people who have been detained, arrested, or seized and/or transported as a result of such action by SAs in the performance of their official duties. It should be noted that the term “custody” could have legal ramifications for triggering the rights established in Miranda v. Arizona. For the purposes of this Handbook, an “individual in custody” may not necessarily be “in custody” for Miranda purposes.

## **2.6 Interrogation**

Words or actions that the SA should know is reasonably likely to elicit a response from the suspect.

## **2.7 Juvenile**

Any person known or reasonably believed not to have reached his or her 18th birthday.

## **2.8 Medical Professional**

A licensed doctor, nurse practitioner, technician, or aide trained to treat, provide care, or administer medication or services specific to the medical needs of the individual being transported.

## **2.9 Statement of Rights (also known as Miranda Warning)**

The requirement that persons receive certain warnings relating to their privilege against self-incrimination (right to remain silent) and their right to the presence and advice of an attorney before any custodial interrogation by law enforcement authorities takes place following an arrest for criminal charges.



## **2.10 Stop and Frisk (also referred to as a Terry Stop)**

Under the Fourth Amendment as judicially construed, police officers may frisk a person, after effecting a brief legal investigative stop, only if they have reason to believe that that person is an armed and dangerous individual or has reasonable fear for their safety. If so, they may make a reasonable search for weapons for their own protection regardless of whether they have probable cause to arrest the individual. The standard for judging if a “stop and frisk” was proper is based on whether a reasonably prudent person in the circumstances would be warranted in the belief that his or her safety or that of others was in danger, but due weight is also given to the reasonable inferences that a police officer is entitled to draw from the facts in light of his or her professional experience.

## **2.11 Weapon**

Any object, item, or device that may be used to cause physical injury, incapacitate, or diminish capability, temporarily or permanently.

## **Chapter 3. RESPONSIBILITIES.**

### **3.1 Director, Office of Investigations**

The Director of OI has the overall responsibility for the management and implementation of the policies and procedures set forth in this Handbook.

### **3.2 Special Agents in Charge**

The Special Agents in Charge (SACs) are responsible for implementing the policies and procedures set forth in this Handbook within their areas of responsibility. SACs are also responsible for providing the appropriate restraining devices to all SAs.

### **3.3 Special Agents**

SAs are responsible for complying with the provisions of this Handbook.

## **Chapter 4. AUTHORITIES.**

### **4.1 OI Special Agents' Authority**

OI SAs' authority to arrest a person is based on various sections of law, including, but not limited to, the authority provided in Titles 19 United States Code (U.S.C.) § 1589a and 8 U.S.C. § 1357.

### **4.2 State Peace Officer Authority**

In addition to federal arrest authority, SAs may, in certain circumstances, exercise arrest authority as designated state peace officers or in their capacity as private citizens who witness a crime. As



separate sovereigns, each state may determine who is authorized to enforce its laws. Usually, this means that arrest power is granted to state police, sheriffs, and various municipal police departments. Some states have enacted legislation designating federal law enforcement officers as state peace officers with the power to enforce state law. (See OI Directive 07-001, entitled “Office of Investigations Special Agents Responding to State Crimes,” dated March 13, 2007.)

In addition to statutory authorization for SAs to serve as state peace officers, it may be possible to obtain state peace officer status by being “deputized” by a local sheriff or other state law enforcement official. SAs so deputized should confirm that the deputization is not merely honorary and actually carries with it the power of arrest.

Further, it is important for SAs to bear in mind that any state law enforcement authority they possess or receive should be used to further federal law enforcement priorities.

### **4.3 Citizen’s Arrest Authority**

In addition to federal and state arrest authority, OI SAs have the power to arrest, search, or seize persons or things just as any private citizen would, and local law governs in those instances. SAs must therefore act in accordance with local law in any situation where they make an arrest for an offense that is not within the jurisdiction of ICE. Generally, a private person may make an arrest when a crime (felony or misdemeanor) is committed or is attempted in his or her presence, or when the person arrested has committed a felony, even though not in the presence of the private person. However, SAs should check local law to see under what circumstances they may make arrests as a private person or as an OI SA.

For more information regarding citizen arrest authority and liabilities, refer to OI Directive 07-001, entitled “Office of Investigations Special Agents Responding to State Crimes,” dated March 13, 2007.

### **4.4 Liabilities**

When seizing or arresting an individual, SAs are assuming responsibility for the well-being of the individual in custody, as well as the well-being of fellow officers and other people who may come in contact with the individual in custody. SAs may subject themselves, their supervisors, and the federal government to tort claims should SAs be negligent in their official duties.

Likewise, SAs are subject to civil rights lawsuits under 42 U.S.C. § 1983 if, while enforcing federal, state, or local law, they deprive an individual of any of the rights, privileges, or immunities secured by the Constitution and laws of the United States.

## **Chapter 5. DETENTION AND ARREST OF INDIVIDUALS**

### **5.1 Customs Border Detention**

19 U.S.C. §§ 482 and 1582 authorize SAs to detain persons at the border, functional equivalent of the border, or extended border. This detention is for determining whether or not the person has merchandise entered contrary to law or without payment of duty. In such a detention of persons, searches beyond a pat-down of outer clothing requires additional reasonable suspicion based on objective and articulable facts.

### **5.2 Detention During Execution of Search Warrant**

An SA executing a criminal search warrant has the authority to briefly detain any individuals present at the location of the enforcement site. Included within this authority are individuals attempting to leave the enforcement site in the presence of SAs arriving and individuals who arrive or attempt to obtain access to the enforcement site. An individual may be detained at the enforcement site for as long as deemed necessary by the SAs during the execution of the criminal search warrant. The principles applicable to a stop and frisk (see Section 2.10) are fully applicable to those present during the execution of a search warrant.

### **5.3 Stops**

A stop is a limited detention under any circumstances. A stop is justified if the officer has reasonable suspicion that a crime has been, is being, or is about to be committed. Any detention that is more intrusive than a stop is an arrest.

### **5.4 Diplomats**

Diplomats may be detained only long enough to determine their identity and status. If, after reviewing a diplomat's Diplomatic or Consular Identification Card, OI SAs determine that the diplomat is accredited and not subject to any form of detention or arrest, the OI SAs must release him or her immediately. The SAs should treat the diplomat with due respect and shall take all appropriate steps to prevent any attack on his or her person, freedom, or dignity. The diplomat's local consulate or embassy may assist in the verification of identity and status. Also, the U.S. Department of State's "Diplomatic List," which may change on a daily basis, covers foreign missions (embassies, interest sections) in the United States. The list contains the names of the staff of the foreign mission having diplomatic rank. These individuals enjoy full immunity under the provisions of the Vienna Convention on Diplomatic Relations except for U.S. nationals. The immunity status of the individual encountered during an enforcement action or investigation should be verified with the U.S. Department of State, Office of Protocol. Assistance is available through the Protocol Duty Officer on duty for the Office of Protocol at (202) 577-6205, the Diplomatic Security Agent on duty at (202) 647-7277 who will forward your request to the Office of Protocol, or the Diplomatic Security Command Center at (571) 345-3146 (open 24 hours a day). More information regarding this subject can be found at the following Department of State link: <http://www.state.gov/s/cpr/rls/dpl/>. Valid Non-Immigrant Visas A-1, A-2, G-1, G-3, or C-3 indicate possible status of immunity from criminal arrest or prosecution.

## **5.5 Use of Force**

Any force used by SAs to seize, detain, transport, and arrest individuals must be used in accordance with the Interim ICE Use of Force Policy, issued July 7, 2004, or as updated.

## **5.6 Limited Search for Officer Safety Concerns**

Whenever there is reasonable suspicion that an individual is armed, SAs are justified, for officer safety concerns, in conducting a frisk for weapons during a detention. This limited search is performed pursuant to a Terry frisk (see Section 2.10).

## **5.7 Time of Detention and Release**

The amount of time that an individual may be detained must be determined by the totality of the circumstances involving the detention.

Detained persons should be released as soon as possible, unless probable cause is developed and they are to be placed under arrest.

## **5.8 Need for Special Equipment or Personnel**

If the need arises for special equipment or personnel in order to complete an investigative or enforcement action, for example canine (K-9) assistance, an interpreter, or contraband detection equipment, SAs must document the facts supporting the continued detention. Failure to do so may result in a court later ruling that any evidence found was the result of an unlawful arrest.

## **5.9 Access to Food, Water, and Rest Rooms**

Individuals in custody more than 6 hours must be given access to food at the expense of the arresting SAC Office. Water and rest room facilities should be made available to persons in custody on an as-needed basis as reasonably possible. Rest room facilities may be restricted if the detention results from a suspicion that the persons in custody are concealing merchandise or contraband in their body.

## **5.10 Access to Prescription Drugs and Medical Assistance**

SAs shall ensure that detained individuals have access to their own legally prescribed medication or medical assistance during the time that they are in custody. In the event of a medical emergency, the SAs should contact emergency services immediately.

## **5.11 Identification**

All individuals detained by OI SAs must be identified and the identities must subsequently be appropriately documented. Every effort should be taken to identify the detained individuals through the Integrated Automated Fingerprint Identification System, if feasible.

## 5.12 Detained for Another Agency

If an individual has been detained for another agency, the SA must document the legal basis for the detention, the time the requesting agency made contact or was contacted, the time of arrival, and the identity of the officer to whom the person was released. In addition, it is important to note the physical and mental condition of the individual in custody at the time of the initial detention and at the time of the subsequent release.

## Chapter 6. ARREST PROCEDURES

### 6.1 Arrest Defined (See Section 2.2.)

An arrest is an actual or constructive restraint or detention of an individual, performed with the intention of taking the individual into custody. A detention may also be deemed an arrest if, based on the totality of the circumstances, a reasonable individual would believe himself or herself to be in custody. An arrest does not depend solely on whether the SA announces that the suspect has been placed under arrest. If an SA's conduct is more intrusive than an investigative stop, an arrest may take place. In determining whether an SA's conduct is tantamount to an arrest, consideration must be given to the relevant facts and circumstances, including but not limited to:

- A. when and where the encounter occurred;
- B. the duration of the encounter;
- C. the number of SAs and other officers present;
- D. what the SA and suspect said and did;
- E. the use of weapons, handcuffs, a guard blocking the door, verbal commands, or other physical restraints;
- F. the nature of the questioning;
- G. whether SAs escorted the suspect to another location for questioning;
- H. whether the SA retained custody of important travel or identification documents during the encounter; and
- I. whether the suspect was permitted to leave following the encounter.

OI SAs are authorized to make arrests with or without an arrest warrant for criminal and administrative violations.

### **6.1.1 Criminal Arrest**

A criminal arrest must be supported by at least probable cause to believe that the individual arrested has committed a criminal offense. Probable cause is articulable facts and circumstances that would lead a reasonably prudent person to believe that a criminal offense has been committed or is being committed by the individual to be arrested. Probable cause is more than mere suspicion, but less than absolute certainty of guilt.

In determining whether probable cause was present at the time of an arrest, courts consider the totality of the circumstances as viewed by a reasonably prudent SA coupled with the SA's training and experience.

Pertinent factors include personal knowledge or observation by the SA; information contained in official communication to the SA; information from reliable informants, victims, or witnesses; actions and appearance of the suspect(s); criminal reputation of the suspects; inconsistent and unpersuasive answers to routine questions; and possession, disposal, or concealment of evidence.

Under certain circumstances where a suspect forcibly resists a detention, the person could be arrested for a violation of 18 U.S.C. § 111 (Assaulting, resisting, or impeding certain officers) or 18 U.S.C. § 2231 (Interfering with an officer authorized to make a search).

### **6.1.2 Administrative Arrest**

An SA has the authority to arrest an individual if the SA has probable cause to believe that the individual is in violation of the Immigration and Nationality Act. An administrative arrest is initiated when the disposition of the case will be sought in civil proceedings rather than in a criminal court proceeding. This is most often associated with "Voluntary Returns," or formal deportation proceedings of undocumented aliens to their country of citizenship.

## **6.2 Number of Officers Making an Arrest**

Criminal and administrative arrests must be conducted by at least two officers in order to ensure officer safety, except in unforeseeable, exigent circumstances. Scheduling a back-up for a duty agent when an arrest may be effected is considered foreseeable and should not be used as an exception to this requirement.

## **6.3 Foot Pursuits**

SAs are authorized to engage in foot pursuits taking into consideration officer safety concerns, good judgment, and common sense. In addition, SAs should use the amount of force that is necessary and reasonable when stopping and apprehending an individual fleeing on foot.

## **6.4 Use of Restraints**

The use of restraints on individuals in OI custody must be conducted in a manner that is safe, secure, humane, and professional. Only the amount of restraint necessary and reasonable to ensure the

safety of the SAs, the individual(s) in custody, the public, and/or to prevent escape shall be employed. Restraints shall not be used to inflict punishment or to restrict blood circulation or breathing. SAs shall avoid causing unnecessary discomfort in applying restraints. (SAs should consult the National Firearms and Tactical Training Unit for questions regarding authorized restraining devices.)

#### **6.4.1 Length of Time Restraints Are Used**

All restraints are only temporary devices and should be removed when the individual in custody is placed in a secure holding facility and they are no longer required or the individual in custody is cooperating during an enforcement operation or investigation.

#### **6.4.2 Method of Restraint**

SAs shall handcuff (double-lock) all individuals in custody with their hands placed behind their back and the palms facing outward, unless a belly chain or transport belt is used. If a belly chain or transport belt is used on an individual in custody, the individual may be handcuffed in the front. Additionally, leg restraints should be used if available. An individual in custody who is in restraints must not be left unattended.

The SA is authorized to handcuff the individual in custody with his or her hands in the front without a belly chain, transport belt, or other appropriate and approved restraining device(s) only if the individual in custody:

- A. is pregnant and the officer believes that placing the hands behind the back may create medical complications;
- B. has a physical handicap; or
- C. has injuries that could be aggravated by standard handcuffing procedures.

The obese or those who are overly muscled such as weight lifters may require the use of several sets of handcuffs linked together. Flexicuffs or other specifically designed flexible police restraints may be used if necessary.

Individuals in custody shall not be handcuffed to an SA, officer, person, or any object that may potentially cause an injury.

SAs may remove handcuffs from prisoners during processing only to facilitate the taking of fingerprints and to accommodate sanitation needs. Handcuffs may also be removed for medical emergency when the circumstances dictate. Enhanced diligence is required during these times to ensure security and the safety of all.

### **6.4.3 Individuals to Be Restrained**

Age, size, or gender are not valid reasons for failing to handcuff an individual. Juveniles may be handcuffed for officer safety.

Females shall be subject to the same handcuffing and restraint procedures used for males. (Also see Section 6.4.2 A.)

### **6.4.4 Aggressive Individuals**

Combative individuals in custody may require the use of leg irons or other flexible restraints applied to prevent kicking by the individual.

Additional approved restraint devices may be used to secure an individual who violently resists arrest, poses a threat to officer safety, or who manifests mental disorders such that he or she presents a threat to himself or herself or to the public.

### **6.4.5 Transportation of Individuals Using Restraints**

Along with other considerations contained in Chapter 5 of this Handbook, SAs should remember that, when using restraints, individuals in custody shall not be handcuffed to any moving vehicle or other conveyance. Furthermore, SAs should not transport individuals in custody who are restrained in a prone position. Individuals in custody should never be left unsupervised in a vehicle or locked within a vehicle without supervision and appropriate ventilation. During transport, individuals in custody are to remain restrained as described in section 6.4.2.

## **6.5 Searches Incident to Arrest**

There are two types of searches that must be conducted following each arrest:

### **6.5.1 Initial Weapons Search**

A search for weapons should immediately follow handcuffing of any individual who may or may not be a suspect or prisoner.

Whenever possible, an SA or other officer of the same gender should conduct an initial weapons search of the individual being handcuffed and/or taken into custody. However, a frisk for weapons immediately following an arrest will not be delayed if an officer of the same sex is not available.

The discovery of a weapon or potential weapon during the search must be immediately communicated to the other officers at the scene of the encounter and/or to the members of the arrest team. The presence of one weapon suggests that other weapons might be present and calls for a heightened state of alertness by all personnel involved.



### **6.5.2 Complete Search**

As soon as practical, a thorough search for evidence shall be conducted on the individual in custody. This search will not be limited as a result of an individual's objections, embarrassment, etc. A law enforcement officer of the same gender as the individual in custody should conduct this search if available; however, the search should not be unreasonably delayed due to the unavailability of a same-gender officer.

All property of the prisoner will be removed from him or her and secured in a plastic bag or other container. Special care should be given to document items of value. Currency should be counted in the presence of the individual in custody and another member of a law enforcement agency. Any evidence found on the individual in custody should be kept separately from any items that don't have evidentiary value.

The prisoner will be afforded the opportunity to relinquish all personal property to a third party, either in person or by mail. This transaction will be recorded on a Customs and Border Protection (CBP) Form 6051. If this cannot be accomplished, the prisoner will be afforded the opportunity to abandon his or her property. Prisoners must be informed and understand that if they abandon the property, they will have 30 days in which to recover their property, after which the property may be destroyed. This transaction will be recorded on CBP Form 4607, "Notice of Abandonment and Assent to Forfeiture of Prohibited or Seized Merchandise and Certificate of Destruction."

Items of clothing or other things that can present a hazard to the officers or the individual in custody should be removed during the complete search. This would include but not be limited to: shoelaces, belts, jewelry, pens, combs, hairpins, shoes that may contain hidden weapons, etc.

The searching officer and others present must take precautions to prevent the spread of infectious diseases from the prisoner(s). Protective gloves to prevent contact with bodily fluids are strongly recommended.

### **6.6 Smoking**

Individuals in custody will not be allowed to smoke due to the potential use of a lit cigarette as a weapon or an excuse to be handcuffed in the front. At the discretion of the arresting SAs and once the individuals in custody are in a secure location that allows smoking, SAs may choose to allow them to smoke as part of the interviewing technique. Individuals in a detention cell will not be allowed access to smoking materials.

### **6.7 Threat from Third Parties**

SAs and other officers should take into consideration the potential threat from third parties that could cause harm to the SAs, officers, and/or the individual(s) in custody. SAs or other officers must be assigned to concentrate on the individual(s) in custody while others remain alert for third party threats.

## 6.8 Hostile Environments

In hostile environments, any and all individuals in custody must be removed as quickly as possible to a safe place. Individuals in custody should not be used as shields by SAs or other officers present during the completion of the law enforcement operation. Individuals in custody shall not be subject to any avoidable hazard.

## 6.9 Safety for Individuals in Custody

SAs should not engage in any enforcement activities while they have an individual(s) in custody unless failure to act at the immediate moment would risk death or serious bodily injury to oneself or another. In non-life threatening yet serious situations, SAs should call for back-up assistance and may remain on hand until such assistance has arrived.

## 6.10 Immunity from Arrest

Individuals who have immunity from arrest are:

- A. Diplomats who are accredited to the United States or their family members (with the exception of U.S. nationals).
- B. Diplomats accredited to a foreign country or their family members who are directly en route between their home country and the country of accreditation.

*Note: Mere possession of a diplomatic passport does not confer diplomatic immunity.*

- C. Sitting judges while court is in session.
- D. Members of Congress during their attendance at sessions of Congress, or while traveling to or from a session may be arrested but may not be otherwise detained.

*Note: Immunity from arrest is a privilege; members of Congress can be detained and/or arrested when Congress is not in session.*

## 6.11 Arrest of Foreign Nationals

The arrest of foreign nationals requires certain actions depending on their nationality, legal status in the United States, and where the arrest took place. If the individuals are aliens, they have the right to speak to their consular officer. (See ICE Directive 73001.1, entitled “Consular Notification of Detained or Arrested Foreign Nationals,” dated February 13, 2006.)

### 6.11.1 Right to Communicate with Consular Official

An alien who is being detained must be notified that he or she may communicate with a consular official in accordance with 8 CFR § 236.1(e). If an alien is a national of one of the countries listed

in 8 CFR § 236.1(e), a consular official of that country must be notified, even if the alien specifically requests that no notification be made. SAs must not reveal to any consular official the fact that the alien may have requested asylum.

## **6.12 Use of Force**

The use of force exercised by OI SAs must be in accordance with the policies, standards, and procedures in the Interim ICE Use of Force Policy, issued July 7, 2004, or as updated.

## **6.13 Statement of Rights (also known as Miranda Warnings)**

### **6.13.1 Miranda Warning Following a Criminal Arrest**

Following a criminal arrest and prior to questioning beyond what is needed for identification or processing purposes, individuals in custody must be informed that anything they say may be used against them and that they have the right to remain silent, to consult with a lawyer, to have a lawyer present during questioning, and, if indigent, to have counsel appointed. The purpose of these warnings, commonly termed Miranda warnings, is to protect the Fifth Amendment right against compulsory self-incrimination. Absent exigent circumstances, Miranda warnings should be conducted in writing using the Statement of Rights used for criminal cases.

Miranda warnings are required only prior to a custodial interrogation. Whether an individual is in custody for Miranda purposes depends on whether there is a formal arrest and/or reasonable persons would consider themselves in custody, e.g., if a restraint has been placed on their freedom of movement.

Whenever Miranda warnings are given, they should be read verbatim from the Statement of Rights for criminal cases that is provided to each SA. This allows the SA to testify in court to the exact language used at the time the Miranda warnings were given. It is also permissible to have the suspect read the Miranda warnings. It is the duty of the SA to ensure that the individual in custody understands the Miranda warnings. In cases where the individual in custody does not understand English, the warnings must be given in a language understood by the individual. If SAs are not able to do this orally, the assistance of a qualified interpreter may be necessary. If the individual in custody is allowed to read the Miranda warnings, whether in English or another language that he or she understands, SAs must be sure that the individual has the ability to read the text of the Miranda warnings.

Once an individual has requested an attorney, the interrogation must cease immediately and the individual may not be interrogated about the case until after conferring with counsel or if the individual in custody otherwise initiates further conversation. In contrast, if the individual merely invokes his or her right to remain silent and does not request an attorney, the admissibility of statements obtained thereafter depends on whether the individual's right to cut off questioning was scrupulously honored.

### **6.13.2 Notice of Rights Warning Following an Administrative Arrest**

Every apprehended individual charged with a violation of the Immigration and Nationality Act must be given an administrative notice of rights, including the right to communicate with the alien's respective consular official as stated in Section 6.11.1. ICE uses multiple forms for this purpose as a result of decisions in certain court cases. Salvadorans are given a Notice of Rights to Salvadorans (Form I-848), juveniles are given the Notice of Rights and Request for Disposition (Form I-770), which is a simplified version, and all others are given Form I-826, which bears the same title as Form I-770. As part of the processing procedure of an apprehended alien, SAs must provide a copy of the appropriate form and make sure that the alien understands these rights.

Each of the rights forms contains a section for recording a decision by the apprehended alien to accept voluntary departure and immediate return, under appropriate safeguards, in lieu of formal removal proceedings.

## **6.14 Juveniles**

### **6.14.1 Criminal Arrest of Juveniles**

Juveniles are defined as persons known or reasonably believed not to have reached their 18<sup>th</sup> birthday. They require special handling as established in 18 U.S.C. § 5031 *et seq.* SAs must immediately notify the U.S. Attorney of the criminal arrest. If prosecution is authorized, the following steps must be taken:

- A. SAs must advise juveniles of their Miranda rights using language the juveniles can understand.
- B. The parents or guardian of the juvenile must immediately be notified of the nature of the charges and of the juvenile's rights.
- C. Juveniles must immediately be brought before an appropriate legal authority, e.g., a magistrate, a judge, etc., for their initial appearance.
- D. SAs must not release the name of the juveniles, fingerprints, photographs, or any reports of information about the juveniles to anyone other than as authorized by 18 U.S.C. § 5031 *et seq.* or by order of the court.
- E. Juveniles 14 years old and older should be fingerprinted and photographed. Those under 14 should not.

### **6.14.2 Administrative Detention of Juveniles**

Aliens who are defined as minors should be treated in accordance with the *Flores v. Reno* Settlement Agreement. The terms of that agreement have been incorporated in 8 C.F.R. § 236.3. At the earliest opportunity, coordination and notification should be made with the appropriate local ICE Office of Detention and Removal Operations for the disposition of the juvenile(s).

The appropriate foreign consulate must be notified in the event that a minor is taken into custody by ICE OI who is not accompanied by a parent, family member, or legal guardian.

## **Chapter 7. TRANSPORTATION OF INDIVIDUALS**

### **7.1 General Guidelines**

Transporting an individual can be one of the most dangerous undertakings that SAs will encounter. The hazards and problems that one may encounter are countless. When considering the transport of one or more restrained individuals, SAs must take into account:

- A. The nature of the charge.
- B. The name, address, history, etc. of the individual(s).
- C. The kind of vehicle that will be used for the transport – for example, caged or not caged.
- D. The number of SAs involved in the transport.
- E. The number of individuals to be transported.
- F. Possibility of injury to the individual(s) or the SAs.
- G. The time that will elapse during the time of transport.
- H. Whether the individual(s) was/were compliant prior to being restrained.

SAs should determine if the need to transport the individual(s) immediately outweighs the danger if the SA were to wait and call for a different vehicle or a back-up unit. Individuals in custody shall be transported in a government vehicle.

The individuals' demeanor, including their overall appearance and verbal and non-verbal cues, may be indicators of an escape attempt. Factors such as the size of the individuals, gender, age, and the number of individuals in custody versus the number of SAs present will greatly influence the SA's decision to use different types of restraining devices and techniques during the transport. All prisoners should be secured in the vehicle by the proper use of a seat belt.

Whenever possible, at least one of the SAs shall be of the same gender as the individual(s) in custody. Female and male individuals should be separated during transport.

If possible, juveniles should be transported within the same vehicle as their parent or guardian if the parent or guardian is also in custody.



## **7.2 Number of Officers Transporting an Individual in Custody**

In order to ensure officer safety, at least two law enforcement officers must transport an individual in custody, except in unforeseeable, exigent circumstances. This requirement applies regardless of whether it is for criminal or administrative offenses. This should be accomplished by having two officers in the same vehicle. Utilizing two vehicles to transport one individual in custody should not be employed without first obtaining supervisory approval unless exigent circumstances clearly prevent this approval from being obtained.

When utilizing a prisoner transport van to transport more than one individual in custody, a minimum of two officers must be involved in the transport. Supervisors have the discretion to assign additional vehicles to follow or tail the transport van for officer safety concerns.

## **7.3 Securing Weapons**

SAs shall take measures to secure their weapons in a National Firearms Tactical and Training Unit defined and approved holster or an approved retention device for long guns. This will ensure that individuals in custody cannot gain access to the SAs' weapons during transportation.

## **7.4 Handcuffing Prior to, During, and After Transport**

The use of restraints will be in accordance with the provisions of Section 6.4 of this Handbook.

## **7.5 Vehicle Search and Child Safety Locks**

All vehicles to be used in the transportation of individuals in custody should be searched for weapons, evidence, or any item that can inflict injury or be used by the individual(s) to aid an escape. This search should be done before an individual(s) is/are placed in the vehicle and again immediately after the individual(s) is/are removed from the vehicle. When transporting individuals in custody, SAs or officers should activate the vehicle's child safety locks if the vehicle is so equipped.

## **7.6 Seating of Individuals in Custody**

Individuals should be transported in a manner that allows for constant visual observation. The seating of SAs, officers, and individuals in custody should be as follows:

- A. Individuals in custody shall always be seated in the back seat of a vehicle;
- B. When one individual in custody is being transported in a two-officer vehicle without a security screen, the individual should be placed in the right rear seat. The second SA should sit in the left rear seat behind the driver.
- C. As a last resort when a caged transport vehicle and a secondary officer are unavailable (during unforeseen, exigent circumstances), the individual in custody should be placed in the front passenger seat. The individual should be handcuffed

with his or her hands behind the back, with the seat belt retracted to the full position to be used as a second restraining device. The passenger seat should be brought to the most forward position and a leg restraint should be used if available. Special attention should be placed on weapon retention during transport. SAs should ensure that any movement by the individual in custody is kept to a minimum.

- D. When two individuals in custody are being transported, the second SA or other officer will sit in the back seat behind the driver with the first individual in custody placed in the seat behind the front passenger side. The second individual in custody will be placed in the front passenger seat. All officers should secure their weapons on their persons and maintain control when transporting individuals in custody.

## **7.7 Transporting Juveniles**

Juveniles should not be transported in the same area of a vehicle with adult individuals, unless the juveniles are being transported along with their parent(s) or guardian(s).

## **7.8 Use of Rest Rooms During Transportation**

Individuals in custody must be afforded the opportunity to utilize the rest room facilities while being transported only:

- A. if the time in transit to reach the final destination is substantial; **and**
- B. the use of the rest room can be accomplished in a safe and secure manner.

## **7.9 Medical Considerations**

The physical well-being of individuals in custody should be monitored during transit. Particular attention should be directed to individuals reported or suspected of being under the influence of drugs and/or alcohol or who have a history of, or propensity for, violence.

Individuals in custody who report/display symptoms of serious illness during transit should immediately receive medical attention by a medical professional. Escorting SAs or other officers should remain with the individual(s) in custody at all times unless relieved by other authorized personnel. Potentially violent persons in custody should be restrained at all times in the treatment facility unless medical professionals require the removal of the restraints to provide medical treatment. Any deviation during the transit of the individual(s) in custody should be reported to management immediately. (See Section 7.11 for instructions on required communications during the transportation of individuals in custody.)

Symptoms or reports of physical or mental illness (such as threats of suicide or psychotic behavior) should be reported to all SAs or other officers involved in the processing of the individual(s) in custody.



## **7.10 High-Risk Individuals**

Special precautions should be employed when transporting high-risk individuals.

- A. Belly chains and leg irons should be employed in addition to handcuffs.
- B. Rival gang members should not be transported together.

## **7.11 Required Communications**

Prior to initiating the transport, SAs must provide the National Law Enforcement Communications Center (NLECC) in Orlando, Florida, also known as Charlie 100, with the following information via a mobile radio or by calling 1-800-X-SECTOR (SAs assigned to the SAC San Juan office in Puerto Rico are required to use their mobile radio or call the SAC San Juan Communications Center, also known as Charlie 2000, at 1-800-981-3030) with the following information:

- A. Call signs of the transporting SAs and/or other officers.
- B. The number and gender of individuals in custody (specifying adult or juveniles).
- C. Start location and destination of the transport.
- D. Time and mileage readings before and after the transport.
- E. Any suspicious activity or any activity that may endanger the well-being of the SAs, other officers, and/or individuals in custody.
- F. Any deviation from the proposed transit.

## **7.12 Outside Enforcement Activities**

SAs should not engage in enforcement activities while transporting individuals in custody unless failure to act would risk death or serious bodily injury to another. In non-life threatening yet serious situations, SAs should call for back-up assistance and may remain on hand until such assistance has arrived.

## ACRONYMS

### A-B

### C

CFR Code of Federal Regulations

### D-H

### I

ICE U.S. Immigration and Customs Enforcement  
INA Immigration and Nationality Act  
INS Immigration and Naturalization Service

### J-L

### M

MSD Mission Support Division

### N

### O

OI Office of Investigations

### P-R

### S

SA Special Agent  
SAC Special Agent in Charge

### T

### U

USC United States Code

### V-Z

UNICORN  
RIOT