



Homeland Security Investigations

Arrest Procedures Handbook

HSI HB 15-03 / July 21, 2015



U.S. Immigration
and Customs
Enforcement

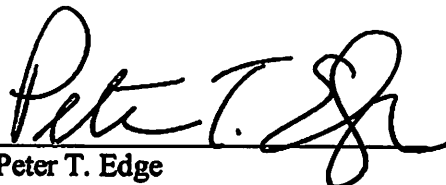
Foreword

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) Homeland Security Investigations (HSI) Special Agents when exercising the authority to 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 among all HSI field offices. (Note: HSI SAs must comply with the Department of Homeland Security's Commitment to Nondiscriminatory Law Enforcement and Screening Activities and with ICE Directive 11062.2 entitled, "Sexual Abuse and Assault Prevention and Intervention," dated May 11, 2014, or as updated.)

This Handbook supersedes Office of Investigations Handbook 07-02 entitled, "Arrest Procedures Handbook," dated October 7, 2007, and all other policies or other documents on arrest procedures issued by HSI since October 7, 2007.

The Arrest Procedures Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter, nor are any limitations hereby placed on otherwise lawful enforcement prerogatives of ICE. This Handbook is For Official Use Only (FOUO) – Law Enforcement Sensitive. It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with Department of Homeland Security policy relating to FOUO information and the ICE Directive on Safeguarding Law Enforcement Sensitive Information. This information shall not be distributed beyond the original addressees without prior authorization of the originator. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the ICE Office of the Principal Legal Advisor and/or U.S. Attorney's Office, are to 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 under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit which will coordinate all needed revisions.



Peter T. Edge
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Homeland Security Investigations

JUL 21 2015
Date

**ARREST PROCEDURES
HANDBOOK**

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ARREST PROCEDURES HANDBOOK

Chapter 1. PURPOSE AND SCOPE

The Arrest Procedures Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when they exercise the authority to detain, arrest, or transport individuals. (Note: Any force used to detain, arrest, and/or transport individuals must be used in accordance with the Interim ICE Use of Force Policy, issued July 7, 2004, or as updated.)

Chapter 2. INTRODUCTION

The scope of HSI SAs' authority is established by the United States Constitution and by statute, and SAs must know the bases for 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 detention, arrest, and transport of individuals are among the most dangerous duties performed by HSI SAs. Many law enforcement officer casualties occur in the course of performing such duties. The procedures and standards set forth in this Handbook have been developed to minimize such casualties. These procedures and standards 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 HSI's treatment of a defendant or respondent.

Compliance with the procedures and standards set forth in this Handbook, along with HSI 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 3. DEFINITIONS.

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

3.1 Adult

Any person who is 18 years of age or older.

3.2 Arrest

An actual or constructive restraint or detention of an individual performed with the purpose of taking the individual into custody.

3.3 Booking

The act of processing an arrestee into a detention facility. This process generally includes recording the subject's personal information, photographing, fingerprinting, criminal records check, medical questionnaire, property inventory, and entrance into a detention facility. This facility may be operated by Federal, State, and/or local jurisdictions.

3.4 Detention

Restraining an individual's freedom of movement or ability to walk away during an investigative inquiry by establishing temporary control over the individual.

3.5 High Risk Prisoner

A prisoner who SAs believe poses an exceptional escape risk and/or who is charged with, or convicted of, a violent crime.

3.6 Juvenile

Any person under the age of 18.

3.7 Low Risk Prisoner

Any prisoner who has not been designated as high risk.

3.8 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.

3.9 Transgender

The term "transgender" refers to any person whose identity or behavior differs from traditional gender expectations. It includes transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical.

3.10 Weapon

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

Chapter 4. RESPONSIBILITIES.

4.1 Executive Associate Director, Homeland Security Investigations

The Executive Associate Director of HSI has the overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

4.2 Special Agents in Charge

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

4.3 Special Agents

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

Chapter 5. AUTHORITIES/REFERENCES

5.1 Authorities

A. Federal Authorities

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

B. 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 HSI Directive 13-01 entitled, "HSI Special Agents Responding to State Crimes," dated May 30, 2013, or as updated.)

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.

C. Citizen's Arrest Authority

In addition to Federal and State arrest authority, HSI SAs have the power to arrest, search, or seize persons or things just as any private citizen would, and local law governs in such 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 private persons or as HSI SAs. (Note: For more information regarding citizen arrest authority and liabilities, see HSI Directive 13-01 entitled, "HSI Special Agents Responding to State Crimes," May 30, 2013, or as updated.)

5.2 References

- A. ICE Interim Use of Force Policy, dated June 11, 2004, or as updated.
- B. ICE Directive 10066.1 (former number: 7-3.), Consular Notification of Detained or Arrested Foreign Nationals, dated February 13, 2006, or as updated.
- C. HSI Directive 14-01, Mandatory Booking of Arrestees Using EAGLE, dated April 23, 2014, or as updated.
- D. HSI Directive 13-01, HSI Special Agents Responding to State Crimes, dated May 30, 2013, or as updated.
- E. HSI Handbook (HB) 12-04, Search and Seizure Handbook, dated September 14, 2012, or as updated.
- F. HSI HB 11-01, Computer Forensics Handbook, dated April 27, 2011, or as updated.
- G. Office of Investigations (OI) HB 10-03, Interviewing Techniques Handbook, dated April 28, 2010, or as updated.

Chapter 6. LIABILITY

When seizing or arresting an individual, HSI SAs assume responsibility for the well-being of the individual, as well as the well-being of fellow officers and other people who may come in

contact with the individual. SAs who carry out their duties in a negligent or wrongful manner may subject themselves, their supervisors, and the Federal government to civil liability.

SAs are subject to individual liability under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) if, while enforcing Federal law, they violate an individual's clearly-established rights under the U.S. Constitution. Under 42 U.S.C. § 1983, SAs face similar liability for Federal civil rights violations committed while enforcing State or local law.

In rare cases, SAs may face criminal liability for alleged civil rights violations or other misconduct.

Chapter 7. DETENTION AND RELATED ISSUES

7.1 Border Detention

The border search exception to the warrant and probable cause requirements of the Fourth Amendment permits HSI SAs to detain people at the border, functional equivalent of the border, or extended border, with no suspicion, for the purpose of searching for merchandise, determination of alienage, and any evidence of admissibility.

19 U.S.C. §§ 482, 1581, and 1582 set forth SAs' customs statutory authority in this regard, while 8 U.S.C. §§ 1225 and 1357 set forth the primary immigration authority to temporarily detain aliens in the border environment. Customs detention is authorized to search for merchandise and for evidence related to the importation or exportation of merchandise. Immigration detention is authorized to determine the admissibility of an individual. In some cases, searches by SAs are limited by policy; for example, a search involving a pat down of an individual for merchandise requires one articulable fact that merchandise will be found on the person. In order to retrieve an item discovered during such a pat down, SAs must have a reasonable suspicion that the item is merchandise. Likewise, reasonable suspicion that a person is carrying merchandise inside his or her body is necessary in order to refer that person to an approved medical facility to have medical personnel conduct an internal examination.

7.2 Detention During Execution of Search Warrant

SAs executing a criminal search warrant have the authority to briefly detain any individuals present at the location of the enforcement site. Included in 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 during the execution of the criminal search warrant for as long as deemed necessary by the SAs. Restraints may be used in accordance with the procedures outlined in Section 8.4. The principles applicable to a Terry Stop (see Section 7.3 below) are fully applicable to those present during the execution of a search warrant.

7.3 Investigative Detentions (Terry Stops)

SAs may temporarily detain an individual when they have reasonable suspicion that the individual is engaged in criminal activity. If SAs fail to develop a probable cause belief that the person committed (or is committing) a crime or fail to establish a reasonable suspicion of wrongdoing distinct from the reason for the initial stop, they must release the individual. A stop must not be longer than the circumstances justifiably require and must not be more intrusive than reasonably necessary to verify or dispel the SAs' suspicions. A stop which is sufficiently long or unreasonable in duration or intrusiveness will constitute an arrest.

SAs may also perform a pat down search or frisk of an individual during the temporary detention as long as they have reasonable suspicion that the individual is armed and dangerous. For the SAs' protection (and the protection of others) during the detention, the SAs can conduct a limited search of the person to confirm or dispel that suspicion.

7.4 Limited Search for Officer Safety Concerns (Frisk)

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 Stop. (See Section 7.3).

7.5 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.

7.6 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.

7.7 Access to Food, Water, and Restrooms

Individuals in custody for more than 6 hours must be given access to food at the expense of the investigating HSI field office. Water and restroom facilities should be made available to individuals in custody on an as-needed basis. Restroom facilities may be restricted if the detention results from a suspicion that the persons in custody are concealing merchandise or contraband in their body.

7.8 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, SAs should contact emergency services immediately.

7.9 Identification

All individuals detained by HSI 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.

7.10 Detainment on Behalf of a Different Agency

If an individual has been detained on behalf of another agency, SAs must document the legal basis for the detention, the time the requesting agency made contact or was contacted, the time of arrival of officers from the requesting agency, 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.

7.11 Diplomats

Diplomats may be detained only as long as needed to determine their identity and status. If, after reviewing a diplomat's Diplomatic or Consular Identification Card, HSI SAs determine that the diplomat is accredited and not subject to any form of detention or arrest, the HSI SAs must immediately release the diplomat. 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 (DOS)'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 DOS' Office of Protocol. Assistance is available through the Protocol Duty Officer on duty for the Office of Protocol or the Diplomatic Security Agent on duty. They can be contacted through 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 DOS link: <http://www.state.gov/s/cpr/rls/dpl/>. Valid Non-Immigrant Visas A-1, A-2, G-1, G-3, and North Atlantic Treaty Organization (NATO) 1-6 indicate possible status of immunity from criminal arrest or prosecution.

Chapter 8. ARREST PROCEDURES AND RELATED ISSUES

8.1 Arrest Defined

As stated in Section 3.2, an arrest is an actual or constructive restraint or detention of an individual performed with the purpose 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(s) and the 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(s) retained custody of important travel or identification documents during the encounter; and
- I. whether the suspect was permitted to leave following the encounter.

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

8.1.1 Criminal Arrest

A criminal arrest must be supported by 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 an arrest, the suspect 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).

8.1.2 Administrative Arrest

An SA has the authority to arrest an individual if the SA has reason to believe (consistently interpreted as requiring probable cause) that the individual is in violation of the Immigration and Nationality Act (INA). 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 immigration proceedings.

8.2 Number of Officers Making an Arrest

Criminal and administrative arrests must be conducted by at least two law enforcement officers in order to ensure officer safety, except in unforeseeable, exigent circumstances. Cases where SAs respond to a duty call and there is a possibility that an arrest may be effected do not constitute an unforeseeable, exigent circumstance; therefore, SAs must adhere to the above requirement that at least two law enforcement officers conduct criminal and administrative arrests.

8.3 Foot Pursuits

SAs are authorized to engage in foot pursuits taking into consideration training and officer safety concerns. In addition, SAs should use the amount of force that is necessary and reasonable when stopping and apprehending an individual fleeing on foot, in accordance with the Interim ICE Use of Force Policy, dated July 7, 2004, or as updated.

8.4 Use of Restraints

The use of restraints on individuals in HSI 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. (Note: SAs should consult the Office of Firearms and Tactical Programs (OFTP) for questions regarding authorized restraining devices.)

8.4.1 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/or they are no longer required.

8.4.2 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 transportation belt is used. If a belly chain or transportation belt is used on an individual in custody, the individual may be handcuffed in the front. Additionally, if necessary to ensure the security and safety of all, leg restraints should be used. 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, transportation belt, or other appropriate and approved restraining device(s) only if the individual in custody:



Large individuals or those who are overly muscled such as weightlifters may require the use of several sets of handcuffs linked together. Flex-Cuffs or other specifically designed flexible police restraints may be used if necessary.

Individuals in custody shall not be handcuffed to an SA, officer, another 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 emergencies when the circumstances dictate. Enhanced diligence is required during these times to ensure security and the safety of all.

8.4.3 Individuals to Be Restrained

Age, size, and 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 8.4.2(A).)

8.4.4 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. (Note: SAs should contact OFTP for a list of authorized retraining devices.)

8.4.5 Transport of Individuals Using Restraints

Along with other considerations contained in this chapter, SAs should remember that, when using restraints, individuals in custody shall not be handcuffed to any moving vehicle or other conveyance. Furthermore, SAs must not transport individuals in custody who are restrained in a prone position. Individuals in custody shall 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 8.4.2. In circumstances where custody of an individual is turned over to other SAs for transport, the receiving SAs must search the individual regardless of any prior searches conducted by the arresting SAs or other law enforcement officers. (Note: See Chapter 9 for additional guidance on transporting individuals.)

8.5 Searches Incident to Arrest

There are two types of searches that must be conducted following each arrest: 1) an initial weapons search; and 2) a complete search.

8.5.1 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 gender 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.

8.5.2 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. If the prisoner was arrested while driving a vehicle, the vehicle will also be searched incident to arrest and detained in furtherance of the arrest. During an arrest that is made in a room or building, SAs may conduct a search of the immediate area to ensure officer safety only. Any evidence of a crime observed may be seized under the plain view doctrine. Any evidence found on the individual in custody should be kept separately from any items that do not 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 Department of Homeland Security (DHS) Form 6051R, "Receipt of Property." 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 during which to recover their property, after which the property may be destroyed. This transaction will be recorded on DHS Form 4607, "Notice of Abandonment and Assent to Forfeiture of Prohibited or Seized Merchandise," and, as needed, DHS Form 4613, "Order to Destroy and Record of Destruction of Forfeited, Abandoned, or Unclaimed Merchandise."

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

8.5.3 Search of Cell Phones Incident to Arrest

SAs may discover cell phones and other smartphone devices during the search incident to arrest. In order to conduct a search of a cell phone upon arrest, SAs must either secure a warrant before searching the content of the cell phone or rely on another exception to the warrant requirement, such as consent, exigent circumstances, or plain view. If timing and circumstances permit, SAs should consider obtaining an anticipatory search warrant for a suspect's cell phone(s). SAs may still seize a cell phone during a lawful arrest, and may still examine the physical aspects of the phone to ensure that it will not be used as a weapon, including, for example, searching between

the phone and its case for a razor blade. For further details, reference is made to the U.S. Supreme Court decision in *Riley v. California*, 134 S. Ct. 2473 (2014), holding that law enforcement officers must generally secure a warrant before conducting a search of a cell phone incident to arrest.

Since a search authorized by consent is wholly valid, SAs should always request consent (in writing, if possible) to search the contents of a cell phone of an individual who is arrested. If consent is not secured, exigent circumstances may still justify a search. Emergencies such as texts that are sent to armed and dangerous accomplices or location data of missing children in an abductor's cell phone could qualify as exigent circumstances and justify warrantless searches of cell phones upon arrest. However, such searches should be limited to addressing the exigency, and should not be used as a means to collect evidence.

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(Note: For guidance on searches of other electronic devices, SAs should see the Search and Seizure Handbook (HSI HB 12-04), dated September 14, 2012, or as updated.)

8.6 Smoking

Individuals in custody will not be allowed to smoke (b) (7)(E) (b) (7)(E) 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 techniques. Individuals in a detention cell will not be allowed access to smoking materials.

8.7 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.

8.8 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 must not be used as shields by SAs or other officers present during the completion of the law enforcement operation.

8.9 Safety for Individuals in Custody

SAs should not engage in any enforcement activities while they have an individual in custody unless failure to act at the immediate moment would risk death or serious bodily injury to oneself or another person. In both life threatening and non-life threatening yet serious situations, SAs should attempt to call for back-up assistance if practicable and SAs may remain on hand until such assistance has arrived. Regardless, SAs must maintain the safety of individuals in custody at all times.

8.10 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). (See Section 7.11.)
- 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.) (See Section 7.11.)
- 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.)

8.11 Arrest of Foreign Nationals

The arrest of foreign nationals requires certain actions depending on their nationality, immigration 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 10066.1 (former number: 7-3.0), entitled “Consular Notification of Detained or Arrested Foreign Nationals,” dated February 13, 2006, or as updated.)

8.11.1 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 Title 8, Code of Federal Regulations (C.F.R.), Section 236.1(e). If an alien is a national of one of the countries listed in 8 C.F.R. § 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.

8.12 Statement of Rights

8.12.1 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 provide an individual in a custodial setting with notice of Fifth and Sixth Amendment rights available to that person prior to their interrogation. Absent exigent circumstances, Miranda warnings should be conducted in writing using ICE Form 73-025, “Statement of Rights,” used for criminal cases. (Note: For additional information on Miranda warnings and on the definitions of “interview” and “interrogation,” see OI HB 10-03, Interviewing Techniques Handbook, dated April 28, 2010, or as updated.)

8.12.2 Notice of Rights Warning Following an Administrative Arrest

Every apprehended individual charged with a violation of the INA must be given an administrative notice of rights, including the right to communicate with the alien’s respective consular official as stated in Section 8.11.1. 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 (DHS Form I-848), juveniles are given the Notice of Rights and Request for Disposition (DHS Form I-770), which is a simplified version, and all others are given DHS Form I-826, which bears the same title as DHS 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.

8.13 Juveniles

8.13.1 Criminal Arrest of Juveniles

Juveniles 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.

8.13.2 Administrative Detention of Juveniles

Aliens who are defined as minors should be treated in accordance with the *Flores v. Reno* Settlement Agreement which sets nationwide policies for the detention, release, and treatment of juveniles in ICE custody. At the earliest opportunity, coordination and notification should be made with the appropriate local Enforcement and Removal Operations (ERO) office 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 HSI who is not accompanied by a parent, family member, or legal guardian.

8.14 Transgender Individuals

Interactions between SAs and transgender individuals may present a unique set of issues, such as difficulties in determining gender for identification purposes, search incident to arrest, transportation, and processing. As stated in Section 3.9, the term “transgender” refers to any person whose identity or behavior differs from traditional gender expectations. It includes transsexual individuals, cross-dressers, androgynous individuals, and others whose appearance or characteristics are perceived to be gender-atypical.

SAs shall comply with the following guidance:

- A. Under no circumstances shall SAs search any individual solely for the purpose of determining that person’s gender.
- B. SAs shall not use language that a reasonable individual would consider demeaning to another person, in particular language aimed at an individual’s actual or perceived gender identity or expression of sexual orientation.
- C. SAs shall treat transgender individuals in a manner appropriate to the individual’s gender presentation, which includes addressing them by their preferred name if different from their legal name and shall use personal pronouns appropriate to the individual’s gender identity.
- D. When an individual self-identifies as being a transgender person, SAs shall not question this identification.
- E. Identification issued by the Department of Motor Vehicles of any of the 50 States or the District of Columbia or any other government-issued form of identification (e.g., a passport or birth certificate) shall be acceptable as initial proof of gender identity in the absence of self-identification by the individual.
- F. When a situation arises that involves questionable gender identification, SAs shall inquire how the individual wishes to be addressed and the name by which the individual wishes to be addressed. This name shall be noted as also known as (AKA) if it differs from the individual’s legal name.
- G. Upon arresting individuals whose gender is questionable, SAs shall ask the individuals if they have any preference as to the gender of the SA who will conduct the search. Absent exigent circumstances, an SA who is of the gender requested by the arrestee shall conduct the search.
- H. No SA shall refuse to search a transgender arrestee.
- I. Requests to remove appearance-related items due to safety and security concerns such as the removal of prosthetics, clothes of the presenting gender, wigs, and cosmetic

items shall be consistent with requirements for the removal of similar items for non-transgender individuals.

- J. SAs shall bring conflicting gender information to the attention of the U.S. Marshals Service or any state or local law enforcement agency when the arrestee is remanded in their custody.

Chapter 9. TRANSPORTATION PROCEDURES AND RELATED ISSUES

9.1 General Guidelines for Transporting Individuals in Custody by Motor Vehicle

Transporting an individual can be one of the most dangerous undertakings that SAs will encounter. The hazards and problems that they may encounter are countless. When considering the transportation 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 transportation – for example, caged or not caged;
- D. The number of SAs involved in the transportation;
- 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 transportation; and
- H. Whether the individual(s) was/were compliant prior to being restrained.

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

(b) (7) (E)

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 the transportation, if possible.

If possible, juveniles should be transported within the same vehicle as their parent or guardian if the parent or guardian is also in custody. (Note: For specific questions regarding juveniles, SAs should contact ERO's Juvenile Family Residential Management Unit.)

9.2 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, and regardless of the means of transportation. If a vehicle is used, 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 move more than one individual in custody, a minimum of two officers must be involved. Supervisors have the discretion of assigning additional vehicles to follow the transport van for officer safety concerns.

(Note: See Section 9.12 for guidance on transporting prisoners via a commercial air carrier.)

9.3 Securing Weapons

SAs shall take measures to secure their handguns in an OFTP-defined and approved holster. Long guns shall be secured using an approved retention device for long guns. This will ensure that individuals in custody cannot gain access to the SAs' weapons during the transportation.

9.4 Use of Restraints Prior to, During, and After the Transportation

The use of restraints will be in accordance with Section 8.4 of this Handbook.

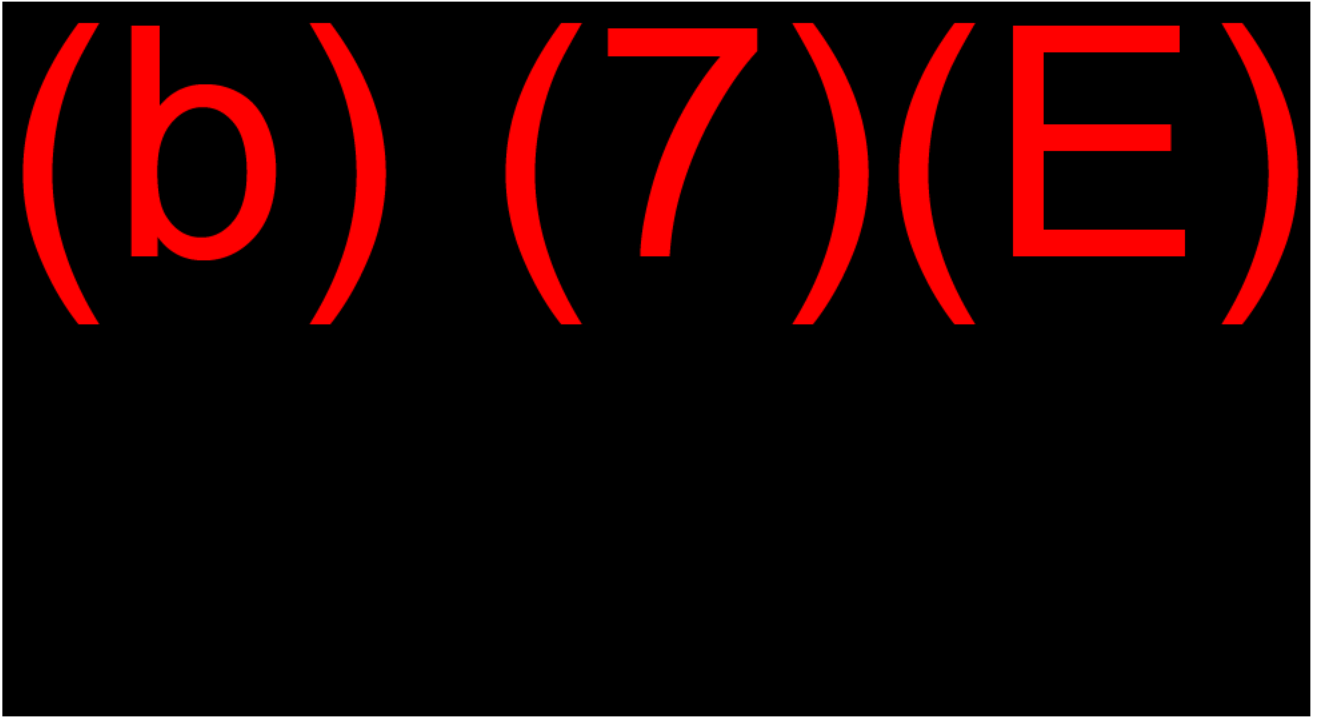
9.5 Vehicle Search and Child Safety Locks

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

9.6 Seating of Individuals in Custody

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

- A. Individuals in custody shall always be seated in the back seat of a vehicle and safety belts should be secured on the individual if available;



9.7 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).

9.8 Use of Restrooms During the Transportation

Individuals in custody must be afforded the opportunity to utilize restroom facilities during the transportation only if:

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

9.9 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. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E) Any deviation during the transit of the individuals in custody should immediately be reported to management. (Note: See Section 9.11 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 law enforcement officers involved in the processing of the individuals in custody.

9.10 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.

SAs should consider having a second vehicle (with additional SAs or other law enforcement officers) follow to render immediate assistance.

9.11 Required Communications

(b) (7)(E)

9.12 Transportation of Prisoners Via Commercial Air Carrier

General safety precautions remain when transporting prisoners via commercial air carrier; however, the Federal Aviation Regulations (F.A.R.) have specific guidelines related to the transportation of prisoners. SAs and management need to be aware that not every airline will allow prisoners onboard. Furthermore, for those airlines which allow for the transportation of prisoners, the aircraft captain is the final authority and may refuse boarding for the prisoner. It is recommended that, if possible, SAs and supervisors explore other transportation options prior to deciding to utilize commercial air services.

The F.A.R. limit the type of prisoners onboard a commercial aircraft, the number of prisoners, and the officer-to-prisoner ratio. SAs transporting prisoners via commercial aircraft must have completed the “Law Enforcement Officers Flying Armed” course.

SAs must determine whether the prisoner is considered high risk or low risk prior to contacting the commercial air carrier.



In order to transport a prisoner onboard a commercial aircraft, SAs must notify the airline at least 24 hours prior to the departure or, if not possible, as far in advance as possible of the identity of the prisoner, the proposed flight number, and whether the prisoner is high risk or low risk.

SAs should arrive at the airline check-in counter at least 1 hour prior to the scheduled takeoff, or as advised by the airline. The SAs will be required to assure the airline personnel that each prisoner has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon.

Prisoners shall remain handcuffed at all times during the transportation. (b) (7)(E)



(b) (7) (E)

Food and beverage will not be served to the prisoner without the authorization of the escorting SAs. If a meal is anticipated, SAs should confirm the type of eating utensils provided and, if necessary, bring plastic eating utensils with them. Prisoners will not be given metal eating utensils. (Note: If the decision is made to feed the prisoner prior to boarding the airline, SAs should confirm that the prisoner has returned all metal eating utensils provided to him or her.) Neither the prisoner nor the escorting SAs will be served alcohol.

Prior to boarding the aircraft, one of the escorting SAs shall contact the NLECC and provide the flight information, scheduled departure and arrival times, and the identity of the prisoner. Prior to the announcement that the cabin door is being closed, one of the SAs will update the NLECC with the departure time. Upon landing, one of the SAs will again notify the NLECC with the landing time and arrival gate information, if known.

(Note: SAs should also see Part 1, Section D of the Interim ICE Firearms Policy, dated July 7, 2004, or as updated.)

9.13 Outside Enforcement Activities

(b) (7) (E)

Chapter 10. BOOKING PROCEDURES

The arrest of an individual is not complete until he or she has been properly “booked” in the ICE Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement (EAGLE) and turned over to a law enforcement detention facility. (See HSI Directive 14-01 entitled, “Mandatory Booking of Arrestees Using EAGLE,” dated April 23, 2014, or as updated.) Examples of such facilities would be a county jail or a Federal detention facility. This type of facility should not be confused with a holding cell in either an HSI office or a U.S. Customs and Border Protection port of entry. SAs are responsible for the individual until they have turned

him or her over to the U.S. Marshals Service (in the case of an arrest on Federal offenses) or a State or local authority (in the case of an arrest on State or local offenses).

Detention facilities will generally accept only individuals in good health. If the individual has been injured and needs immediate medical attention or has a pre-existing injury or health condition (e.g., a heart condition or cancer), SAs should coordinate with their Group Supervisors to determine if the individual can be turned over to a detention facility or if another option can be identified.

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 individuals in custody.

SAs should consult with their Group Supervisors regarding the specific process and procedures for booking individuals in their SAC's AOR. SAs must be familiar with local procedures as they may vary greatly between each jurisdiction or location. SAs are required to use Federal Bureau of Prisons Form BP-a377, "Prisoner Remand," to document the arrest of individuals arrested for violating Federal law. (Note: Since many SACs' AORs cross State and county lines, there may be many different procedures within just one SAC's AOR.)

ACRONYMS

AOR	Area of Responsibility
C.F.R.	Code of Federal Regulations
DHS	Department of Homeland Security
DOS	Department of State
EAGLE	Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement
ERO	Enforcement and Removal Operations
F.A.R.	Federal Aviation Regulation
FOUO	For Official Use Only
HB	Handbook
HSI	Homeland Security Investigations
ICE	U.S. Immigration and Customs Enforcement
INA	Immigration and Nationality Act
NATO	North Atlantic Treaty Organization
NLECC	National Law Enforcement Communications Center
OFTP	Office of Firearms and Tactical Programs
OI	Office of Investigations
SA	Special Agent
SAC	Special Agent in Charge
U.S.C.	United States Code