1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Customs and Border Protection

Released via FOIAonline account.

November 14, 2019 CBP-2019-027893

Austin Evers
American Oversight
1030 15th Street NW Suite B255
Washington, DC 20005

Dear Mr. Evers:

In response to *American Oversight v. Department of Homeland Security et al.*, Case No. 19-cv-01901-EGS, this is the first interim response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), on behalf of American Oversight, in which you are seeking policy, directives, and training provided to Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) in regard to the processing of, medical evaluation and care for, and safety measures to be taken for transgender detainees.

A search of CBP databases has identified records responsive to your request, 26 pages of which are now being produced**.**

CBP has determined that 13 pages of records are fully releasable and no redactions have been applied, and 13 pages of the records are partially releasable, pursuant to Title 5 U.S.C. § 552 (b)(6), (b)(7)(C) and (b)(7)(E).

FOIA Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, driver license, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

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FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

FOIA Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. CBP has determined that disclosure could reasonably be expected to risk circumvention of the law.

This completes CBP's first interim response to your request. If you have questions or concerns regarding this interim response, you may contact Assistant United States Attorney Diana V. Valdiva at diana.valdivia@usdoj.gov, or phone number (202) 252-2545.

Please notate file number CBP-2019-027893 on any future correspondence to CBP related to this request.

Sincerely,

Jodi Drengson
FOIA Analyst, FOIA Division
U.S. Customs and Border Protection

AMERICAN OVERSIGHT

Weekly Muster

Week of Muster: Immediate

Topic: Professionalism when processing Transgender applicants for admission

CBP Officers have a tremendous responsibility in protecting our nation's borders and in enforcing the existing laws of the United States. This muster serves to reiterate our responsibilities in regards to the appropriate handling of arriving Transgender persons into the United States. CBP is committed to ensuring that our agency treats everyone with dignity and respect, this includes our own employees as well as the public.

Section 3.1 of CBP Directive 51735-013A (U.S. Customs and Border Protection Standards of Conduct) states, in part "All employees must maintain high standards of honesty, integrity, impartiality, character, and professionalism to ensure the proper performance of government business and the continued trust and confidence of the public." Section 6.7.3 reads "Employees will be professional in their contact with supervisors, subordinates, co-workers, and members of the public."

- During the inspection process, all travelers will be treated with dignity, respect, and professionalism, regardless of race, religion, color, country of origin, sexual orientation, or sexual designation.
- Inappropriate comments, remarks, gestures, innuendos, etc. including those of a sexual nature, whether directed at co-workers or travelers, are unacceptable, and will not be tolerated in the workplace. Reported incidents and allegations will be investigated and appropriate corrective actions taken, if warranted.

CBP officers should adhere to Section 4.3 General Detention Procedures of the National Standards on Transport, Escort, Detention, and Search, which states in part;

- Gender of Searching Officer/Agent: Whenever operationally feasible, officers/agents conducting a search or that are present at a medical examination must be of the same gender, gender identity, or declared gender as the detainee being searched. Cross-gender searches or cross-gender visual body cavity searches must not be conducted except in exigent circumstances including consideration of officer/agent safety, or when performed by medical practitioners.
- Gender Segregation: Male and female adult detainees will be separated at all times when in hold rooms. Particular care and separation should also be afforded to at-risk populations, including transgender and intersex detainees, when operationally feasible.

CBP officers should also be familiar with and closely follow the National Standards on Transport, Escort, Detention, and Search, Section 3.4 Gender of Searching Officer/Agent.

Should you have any questions please contact IPSD Director b6b7c [redacted] or your staff may contact IPSD Program Manager b6b7c [redacted]

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1300 Pennsylvania Avenue NW
Washington, DC 20229

OBP 50/10-C

U.S. Customs and Border Protection

AUG 13 2014

MEMORANDUM FOR: All Chief Patrol Agents
All Division Chiefs

FROM: Michael J. Fisher
Chief
U.S. Border Patrol (b) (6), (b) (7)(C)

SUBJECT: Implementation of the Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in CBP Holding Facilities

The attached guidance is issued pursuant to the March 7, 2014 DHS Final Rule adopting the Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities (the Standards), and the attached memorandum from Commissioner, *CBP Policy on Zero Tolerance of Sexual Abuse.*

The Commissioner's memorandum informs all CBP employees that sexual abuse and assault will not be tolerated, and it details the process for reporting any incidents of sexual abuse and assault of individuals in CBP custody.

These standards are specific to DHS confinement facilities; however, CBP's written zero-tolerance policy applies to all forms of sexual abuse and assault by agency employees and contractors to include transport of detainees in CBP custody.

Effective immediately, the U.S. Border Patrol will implement the standards in all holding and processing facilities. The standards are applicable to all CBP employees including agents, support personnel, and contractors. Employees and contractors are reminded that whenever individuals are taken into CBP custody, and then held in CBP holding facilities, CBP assumes responsibility for their health, welfare, security, and safety.

CBP's Office of Public Affairs soon will distribute materials designed to provide information about how to report any instances of sexual assault and abuse. Upon receipt, the materials must be displayed prominently in all CBP processing areas.

All Chief Patrol Agents must ensure that a copy of this memorandum and the attached guidance are made available to all personnel and that it is briefed at musters. Also a copy must be maintained in all holding facilities and processing areas.

Direct questions regarding this matter to Assistant Chief (b) (6), (b) (7)(C) in the Policy Branch of the Strategic Planning, Policy and Analysis Division at U.S. Border Patrol Headquarters, (b) (6), (b) (7)(C)

Attachments

AMERICAN OVERSIGHT

Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in CBP Hold Room Facilities

Risk Assessments of Detainees being Placed in CBP Holding Facilities

Before placing a detainee in a holding facility, consideration should be given, based on the available information, whether the detainee may be at high risk of being sexually abused, or of being sexually abusive toward other detainees.

The following criteria, to the extent that the information is available, should then be used to conduct an assessment that will assist in determining a detainee's risk of being sexually abused or sexually abusive:

1. whether the detainee has a mental, physical, or developmental disability;
2. the age of the detainee;
3. the physical build and appearance of the detainee;
4. whether the detainee has previously been incarcerated or detained;
5. the nature of the detainee's criminal history;
6. whether the detainee has any convictions for sex offenses against an adult or child;
7. whether the detainee has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
8. whether the detainee has self-identified as having previously experienced sexual victimization.

Before placing a detainee who may be held overnight with other detainees, the agent shall ask the detainee about his or her own concerns about his or her physical safety.

Any detainee identified to be at high risk of sexual victimization shall be provided heightened protection in the form of continuous direct sight and sound supervision, single-cell housing, or placement in a cell actively monitored on video by an agent sufficiently close to intervene, unless no such option is determined to be feasible.

Juvenile and Family Detainees

Juveniles shall be detained in the least restrictive setting appropriate to the juvenile's age and special needs, provided that such setting is consistent with the need to protect the juvenile's well-being and that of others, as well as with any other laws, regulations, or legal requirements.

Unaccompanied juveniles shall generally be held separately from adult detainees. The juvenile may remain temporarily with a non-parental adult family member where: (1) the family relationship has been vetted to the extent feasible, and (2) CBP determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances.

CBP Agent and Employee Responsibilities and Duties

Any CBP agent or employee, who has a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, must take immediate action to protect the detainee and immediately report the action taken to their immediate supervisor.

CBP agents or employees upon receiving an allegation that a detainee was sexually abused while confined at another facility must notify their immediate supervisor. Once notified, the supervisor must contact the appropriate office of the agency or the administrator of the facility where the

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alleged abuse occurred and advise them of the allegation. This notification will be made as soon as possible, but no later than 72 hours after receiving the allegation, and the supervisor will document providing the notice.

Any CBP office that receives such notification shall ensure that the allegation is referred for investigation.

Upon learning of an allegation of sexual abuse, agents are required to:

1. Separate the alleged victim and abuser;
2. Preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence;
3. If the sexual abuse occurred within a time period that still allows for the collection of physical evidence, request the alleged victim not to take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating;
4. If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
5. Report the incident to their immediate supervisor.

Non-law enforcement employees who receive an allegation of sexual abuse are required to request that the alleged victim not take any actions that could destroy physical evidence and then notify their supervisor so that law enforcement staff can be notified.

If a victim of sexual abuse is transferred between DHS holding facilities, agents should inform the receiving facility of the incident and the victim's potential need for medical or social services.

If a victim is transferred from a DHS holding facility to a non-DHS facility, agents should, as permitted by law, inform the receiving facility of the incident and the victim's potential need for medical or social services, unless the victim requests otherwise. Any questions regarding this notification should be directed to the Prevention of Sexual Assault (PSA) Coordinator, who will consult with the Privacy Officer and Office of Chief Counsel, as appropriate.

Sensitive information provided by the alleged detainee victim should not be disseminated unless the receiving party has a need to know. Such needs include: the safety of the victim; further victimization of other detainees or staff in the facility; medical treatment, investigation, law enforcement, or other security and management decisions.

Evidence Protocols and Medical Treatment

Any detainee who alleges sexual abuse must be given the opportunity to receive appropriate medical treatment.

Detainee victims of sexual abuse shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care.

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FOIA CBP 000004
DHS-19-0195-C-000004

Any medical treatment services provided to the detainee victim shall be without financial cost to the detainee, regardless of whether the detainee victim names the abuser or cooperates with any investigation arising out of the incident.

In those instances where evidentiary material may be obtained or where it is medically appropriate, at no cost to the detainee and only with the detainee's consent, the victim detainee shall be transported to a medical facility to undergo a forensic medical examination conducted by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE), where practicable, or otherwise by other qualified health care personnel.

To the extent available, any detainee who alleges sexual abuse and who receives medical care for such sexual abuse shall be permitted to use any victim advocacy services offered by the outside hospital, consistent with security needs.

Detainees will be allowed to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender, except in exigent circumstances or when such viewing is incidental to routine cell checks or is otherwise appropriate in connection with a medical examination or monitored bowel movement under medical supervision.

CBP agents and employees will announce their presence when entering an area where detainees of the opposite gender are likely to be showering, performing bodily functions, or changing clothing, except in exigent circumstances or when such viewing is incidental to routine cell checks.

U Nonimmigrant Visa Information Sheet

The *U Nonimmigrant Visa Information Sheet* shall be provided to all alleged detainee victims of sexual abuse that is criminal in nature.

Cross-Gender Viewing and Searches

All searches should be conducted in accordance with CBP policies. In addition, searches or physical examinations of a detainee conducted for the sole purpose of determining the detainee's gender are prohibited. If the detainee's gender is unknown, it may be determined during conversations with the detainee, by reviewing medical records (if available), or, if necessary, learning that information as part of a broader medical examination conducted in private, by a medical practitioner.

Cross-gender strip searches or cross-gender visual body cavity searches shall not be conducted except in exigent circumstances, including consideration of officer safety, or when performed by medical practitioners. Visual body cavity searches of juveniles should not be conducted and, instead, should be referred to a medical practitioner.

All strip searches and visual body cavity searches shall be documented using the approved electronic systems of record, and reported via existing CBP policy.

Accommodating Detainees with Disabilities and Limited English Proficiency

Both management and agents must take appropriate steps to ensure that detainees with disabilities (including, for example, detainees who are deaf or hard of hearing, those who are blind or have low

AMERICAN OVERSIGHT

vision, or those who have intellectual, psychiatric, or speech disabilities) have an equal opportunity to participate in or benefit from all aspects of the agency's efforts to prevent, detect, and respond to sexual abuse. Such steps shall include, when necessary to ensure effective communication with detainees who are deaf or hard of hearing, providing access to in-person, telephonic, or video interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. In addition, CBP management and agents shall ensure that any written materials related to sexual abuse are provided in approved formats or through methods that ensure effective communication with detainees with disabilities, including detainees who have intellectual disabilities, limited reading skills, or who are blind or have low vision.

CBP management and agents must take reasonable steps to ensure detainees with limited English proficiency have meaningful access to all aspects of CBP's efforts to prevent, detect, and respond to sexual abuse.

CBP approved interpretation services should be used to provide detainees with limited English proficiency in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary.

A detainee interpreter may be utilized only if the reporting detainee expresses a preference for a detainee interpreter, and CBP management determines that such interpretation is appropriate. The use of minors, alleged abusers, detainees who witnessed the alleged abuse, and those detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse.

CBP created posters and other materials in multiple languages will be made available to all sectors and should be prominently displayed in all hold room facilities and available to detainees during processing.

Prohibition Against Retaliation

Retaliation against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or for participating in sexual activity as a result of force, coercion, threats, or fear of force is prohibited.

Reporting Requirements

All agents and employees must immediately report any knowledge, suspicion, or information regarding any:

- Incident of sexual abuse that occurred to any detainee;
- Retaliation against detainees or staff who reported or participated in an investigation about such an incident; or
- Staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

All agents and employees must accept sexual abuse reports made verbally, in writing, anonymously, and from third parties, and must promptly document any verbal reports.

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FOIA CBP 000006
DHS-19-0195-C-000006

All agents and employees must immediately report any allegation of sexual abuse of a detainee through *all* of the following means:

- Contacting local law enforcement if criminal activity is alleged;
- Ensuring that the allegation is documented in a Significant Incident Report; and
- Ensuring that the incident is promptly reported to the PSA Coordinator.

All employees are reminded of their obligation to report misconduct, including misconduct relating to the sexual abuse of individuals in CBP custody by:

- Calling the toll-free Joint Intake Center Hotline at (877) 2INTAKE or sending a fax to (202) 344-3390;
- Sending an e-mail message to Joint.Intake@dhs.gov;
- Contacting your servicing CBP Internal Affairs (IA) Office;
- Contacting the ICE Office of Professional Responsibility (OPR);
- Writing to P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044;
- Calling the Office of Inspector General at (800) 323-8603;
- Submitting an *Allegation Form* at http://www.oig.dhs.gov; or
- Writing to Department of Homeland Security, Washington, DC 20528, Attn: Office of Inspector General, Hotline.

If the alleged victim is under the age of 18 or considered a vulnerable adult, CBP shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws.

Management Requirements

To protect detainees against sexual abuse, CBP facilities will maintain appropriate staffing levels and, where applicable, use video monitoring to ensure sufficient supervision of detainees in hold room facilities.

The agency shall develop and document comprehensive detainee supervision guidelines to determine and meet the facility's detainee supervision needs. The guidelines shall be reviewed at least annually.

To determine that adequate levels of detainee supervision exist, and to determine the need for video monitoring, the agency must take into account;

- The physical layout of each holding facility,
- The composition of the detainee population,
- The prevalence of substantiated and unsubstantiated incidents of sexual abuse,
- The findings and recommendations of sexual abuse incident review reports,
- Generally accepted detention and correctional practices,
- Any judicial findings of inadequacy,
- The length of time detainees spend in agency custody, and
- Any other relevant factors.

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FOIA CBP 000007
DHS-19-0195-C-000007

Results of the development of comprehensive detainee supervision guidelines and annual reviews will be provided to the PSA Coordinator.

CBP management shall consider whether any CBP employee alleged to have perpetrated sexual abuse should be removed from duties requiring detainee contact pending the outcome of an investigation, and shall do so if the seriousness and plausibility of the allegation make removal appropriate.

Contractors and volunteers suspected of perpetrating sexual abuse shall be prohibited from contact with detainees. The agency shall also consider whether to prohibit further contact with detainees by contractors or volunteers who have not engaged in sexual abuse, but have violated other provisions within these standards.

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1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Customs and Border Protection

AUG 12 2014

MEMORANDUM FOR: Directors, Field Operations
Director, Preclearance Operatio
Office of Field Operations
(b) (6), (b) (7)(C)

FROM: Acting Assistant Commissioner
Office of Field Operations

SUBJECT: Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in CBP Holding Facilities

Effective May 6, 2014, U.S. Customs and Border Protection (CBP) implemented the Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault (Standards) in CBP Holding Facilities (hold rooms).[1] These standards are applicable to all CBP employees, including CBP officers, all support personnel, and contractors working at ports of entry.

(b) (7)(E)

Attached to this memorandum please find a copy of the memorandum titled *CBP Policy on Zero Tolerance of Sexual Abuse* and a summary of the Standards to serve as a guide to your responsibilities. This summary serves as a supplement to existing CBP policy and procedures (including Secure Detention, Transport and Escort Procedures at Ports Of Entry – CBP Directive No. 3340-030B; and the Personal Search Handbook – CIS HB 3300-04B), which remain in effect; the Standards add specific requirements relating to the prevention, detection, and response to Sexual Abuse and Assault of detainees in CBP custody. CBP supervisors and managers are required to muster this topic and to maintain records regarding the CBP officers who attended the musters.

[1] Department of Homeland Security, Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities; Final Rule (*6 CFR Part 115*).

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CBP Office of Public Affairs (OPA) will be distributing posters in multiple languages to inform detainees of the agency's Zero Tolerance Policy and methods for detainees to report incidents of Sexual Assault and Abuse. As soon as the posters are received by each port, the posters must be prominently displayed in the secondary inspection areas (i.e. hold rooms, secure open areas) of each processing area at ports of entry.

Additionally, each field office will annually conduct a comprehensive assessment of hold room facilities to determine that adequate levels of detainee supervision and monitoring exist. Such (b) (7)(E) [redacted]

Please ensure that this memorandum is disseminated to all ports of entry within your jurisdiction. Should you have any questions or require additional information, please contact (b) (6), (b) (7)(C) Director, Enforcement Programs Division at (b) (6), (b) (7)(C) [redacted]

Attachments

AMERICAN OVERSIGHT

Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in CBP/OFO Hold Room Facilities

Risk Assessments of Detainees Being Placed in a CBP/OFO Holding Facility (Hold Room)
Before placing a detainee in a hold room, CBP officers should consider whether, based on the information before them, the detainee may be at high risk of being sexually abused, or of being sexually abusive toward other detainees. *(115.141)*

(b) (7)(E)

[redacted]

This assessment, including consideration of the aforementioned factors in placing the detainee, must be documented in the CBP electronic systems.

(b) (7)(E)

[redacted]

Juvenile and Family Detainees

(b) (7)(E)

[redacted]

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CBP Officer and Staff Responsibilities and Duties

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

Any questions regarding this notification should be directed to the Prevention of Sexual Assault (PSA) Coordinator, who will consult with the Privacy Officer and Office of Chief Counsel, as appropriate.

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(b) (7)(E)

[redacted]

Evidence Protocols and Medical Treatment

CBP officers should ensure that any detainee who alleges sexual abuse is given the opportunity to receive appropriate medical treatment.

Any detainee who is a victim of sexual abuse shall have timely, unimpeded access to emergency medical treatment and crisis intervention services, including emergency contraception and sexually transmitted infections prophylaxis, in accordance with professionally accepted standards of care. *(115.182)*

Any medical treatment services provided to the detainee victim shall be without financial cost to the detainee, regardless of whether the detainee victim names the abuser or cooperates with any investigation arising out of the incident. *(115. 182)*

In those instances where evidentiary material may be obtained or where it is medically appropriate, at no cost to the detainee and only with the detainee's consent, the victim detainee shall be transported to a medical facility to undergo a forensic medical examination conducted by a Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE), where practicable, or otherwise by other qualified health care personnel. *(115.121)*

To the extent available, CBP officers should permit any detainee who alleges sexual abuse and who receives medical care for such sexual abuse to use any victim advocacy services offered by the outside hospital, consistent with security needs. *(115.121)*

To the extent that CBP is not responsible for investigating a specific allegation of sexual abuse, officers shall request that the investigating agency follow the requirements of using a uniform evidence protocol that maximizes the potential for obtaining usable evidence regarding allegations of sexual abuse, consider using community resources and services to provide expertise and support in the areas of crisis intervention and counseling to most appropriately address victims' needs, conducting forensic medical examinations by SAFEs or SANEs where available, and allowing access to victim advocacy services available at the hospital. *(115.121)*

Detainees will be allowed to shower (where showers are available), perform bodily functions, and change clothing without being viewed by staff of the opposite gender.(b) (7)(E)

(b) (7)(E)

[redacted]

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When a detainee is of the opposite gender, CBP agents and employees will announce their presence when entering an area where detainees are likely to be showering, performing bodily functions, or changing clothing.

U Nonimmigrant Visa Information Sheet

CBP officers shall provide the attached *U Nonimmigrant Visa Information Sheet* to all alleged detainee victims of sexual abuse that is criminal in nature. *(115.122)*

Reporting Requirements

All employees must immediately report any knowledge, suspicion, or information regarding any: *(115.161)*

- incident of sexual abuse that occurred to any detainee;
- retaliation against detainees or staff who reported or participated in an investigation about such an incident; or
- staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

All CBP officers and employees must accept sexual abuse reports made verbally, in writing, anonymously, and from third parties, and must promptly document any verbal reports.
All employees are reminded of their obligation to report misconduct, including misconduct relating to the sexual abuse of individuals in CBP custody by:

(b) (7)(E) [redacted]

If the alleged victim is under the age of 18 or considered a vulnerable adult CBP shall report the allegation to the designated State or local services agency under applicable mandatory reporting laws. *(115.161)*

Cross-Gender Viewing and Searches

(b) (7)(E) [redacted]

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(b) (7)(E)

(b) (7)(E)

Accommodating Detainees with Disabilities and Limited English Proficiency

(b) (7)(E)

CBP management and CBP officers shall take reasonable steps to ensure detainees with limited English proficiency have meaningful access to all aspects of CBP's efforts to prevent, detect, and respond to sexual abuse.

CBP officers should use the agency approved interpretation service to provide detainees with limited English proficiency in-person or telephonic interpretive services that enable effective, accurate, and impartial interpretation, both receptively and expressively, using any necessary specialized vocabulary. *(115.116)*

A detainee interpreter may be utilized only if the reporting detainee expresses a preference for a detainee interpreter, and CBP management determines that such interpretation is appropriate. The provision of interpreter services by minors, alleged abusers, detainees who witnessed the alleged abuse, and those detainees who have a significant relationship with the alleged abuser is not appropriate in matters relating to allegations of sexual abuse. *(115.116)*

Approved posters and materials in multiple languages will be made available to all field offices and should be prominently displayed in all hold room facilities and available to officers and detainees during processing. *(115.116)*

Prohibition Against Retaliation

CBP officers and employees shall not retaliate against any person, including a detainee, who reports, complains about, or participates in an investigation into an allegation of sexual abuse, or

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for participating in sexual activity as a result of force, coercion, threats, or fear of force. *(115.167)*

Management Requirements

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

Results of the development of comprehensive detainee supervision guidelines and annual reviews will be provided to the PSA Coordinator. *(115.113)*

(b) (7)(E) [redacted]

(b) (7)(E) [redacted]

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1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Customs and Border Protection

DEC 1 1 2018

MEMORANDUM FOR: Directors, Field Operations
Office of Field Operations

Director, Field Operations Academy
Office of Training and Development

FROM: Todd A. Hoffman
Executive Director
Admissibility and Passenger Programs
Office of Field Operations

SUBJECT: Processing Transgender Applicants for Admission

While the *Personal Search Handbook* is being updated, the Office of Field Operations (OFO) is taking this opportunity to remind employees of policy and procedures when processing Transgender or "Transitioning" applicants according to the National Standards on Transport, Escort, Detention, and Search (TEDS).

CBP Officers have a tremendous responsibility in protecting our nation's borders and in enforcing the existing laws of the United States. This muster serves to reiterate our responsibilities in regards to the appropriate handling of arriving Transgender persons into the United States.

CBP officers should be familiar with TEDS, in particular Section 4.2; 5.1 At-Risk Detainee Determination Process/At-Risk Populations, Section 4.3 Gender of Searching Officer/Agent, and Section 4.4 Gender Segregation. The revised *Personal Search Handbook*, when available, Section entitled "Gender Nonconforming, Intersex, and Transgender Individuals" has been updated to be consistent with TEDS.

Generally, OFO will rely upon the gender identifier listed on the travel document and CBP officers conducting personal search, other than immediate patdown, must be of the gender the individual identifies, which may differ from their appearance, or anatomy. If the traveler states that they identify with a gender that is different than what is listed on the travel document, the supervisor will be notified. CBP officers of the same gender declared by the traveler will become the primary searching and witnessing officers. The traveler's self-identification of gender and results of the patdown search will be recorded in the CBP secondary processing system.

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Please ensure that this memorandum is disseminated to all ports of entry within your jurisdiction. Should you have any questions or require additional information, please contact b6b7c
Director, Enforcement Programs Division (EPD) at b6b7c

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Muster

Date: Week of December 10, 2018

Topic: Processing Transgender Applicants for Admission

Headquarters POCs: Enforcement Programs Division (EPD), (b) (7)(E)

Office: Admissibility and Passenger Programs (APP)

Guidelines:

- During the inspection process, all travelers will be treated with dignity, respect, and professionalism, regardless of race, religion, color, country of origin, sexual orientation, or sexual designation.
- The revised *Personal Search Handbook*, when available, Section entitled "Gender Nonconforming, Intersex, and Transgender Individuals" has been updated to be consistent with TEDS and will state, in part:
  - OFO will generally rely upon the gender identifier listed on a travel document in determining the gender of a traveler. Officers conducting a personal search, other than an immediate patdown, must be of the gender the individual identifies as, which may differ from their appearance, or anatomy
  - Prior to commencing the search, the primary searching CBP officer will communicate with the traveler to identify any concerns.
  - If the traveler states that they identify with a gender that is different than what is listed on the travel document, the supervisor will be notified, and a CBPOs who are the same gender that the traveler identifies will become the primary (searching) and witnessing officers
  - The traveler's self-identification of gender and results of the pat down search will be recorded in the CBP secondary processing system
- CBP officers should adhere to Section 4.3 as part of the National Standards on Transport, Escort, Detention, and Search (TEDS) policy, which states in part:
  - Gender of Searching Officer: Whenever operationally feasible, CBP officers conducting a search or that are present at a medical examination must be of the same gender, gender identity, or declared gender as the detainee being searched.
  - Cross-gender searches or cross-gender visual body cavity searches must not be conducted except in exigent circumstances including consideration of officer safety.
- CBP officers should adhere to Section 4.2 and 5.1 At-Risk Detainee Determination Process Procedures and At-Risk Populations as part of the TEDS policy, which states in part:
  - Before placing any detainees together in a hold room or holding facility, CBP officers shall assess information [to determine] if the detainee may be considered an at-risk detainee, including whether the detainee… has self-identified as gay, lesbian, bisexual, transgender, intersex, or gender nonconforming.
  - Individuals in the custody of CBP who may require additional care or oversight, who may include… those at higher risk of sexual abuse (including but not limited to gender non conforming, intersex, and transgender);….

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- TEDS policy contained in Section 4.4 Gender Segregation, which states in part:
  - Particular care should be afforded to at-risk populations, including transgender and intersex detainees.
- Inappropriate comments, remarks, gestures, innuendos, etc., including those of a sexual nature, whether directed at co-workers or travelers, are unacceptable and will not be tolerated in the workplace.
- Reported incidents and allegations will be investigated and appropriate corrective actions taken, if warranted.

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1300 Pennsylvania Avenue NW
Washington, DC 20229

U.S. Customs and Border Protection

MEMORANDUM FOR: Executive Directors, Field Operations
Directors, Field Operations
Office of Field Operations

FROM: Sidney K. Aki
Acting Executive Director, Operations
Office of Field Operations

SUBJECT: Professionalism when processing Transgender applicants

The Office of Field Operations (OFO) is taking this opportunity to remind employees of policy and procedures when processing Transgender or "Transitioning" applicants for admission and the need to be professional while conducting those duties.

CBP Officers have a tremendous responsibility in protecting our nation's borders and in enforcing the existing laws of the United States. This muster serves to reiterate our responsibilities in regards to the appropriate handling of arriving Transgender persons into the United States. CBP is committed to ensuring that our agency treats everyone with dignity and respect, this includes our own employees as well as the public.

Section 3.1 of CBP Directive 51735-013A (U.S. Customs and Border Protection Standards of Conduct) states, in part "All employees must maintain high standards of honesty, integrity, impartiality, character, and professionalism to ensure the proper performance of government business and the continued trust and confidence of the public." Section 6.7.3 reads "Employees will be professional in their contact with supervisors, subordinates, co-workers, and members of the public."

CBP officers should be familiar with and closely follow the National Standards on Transport, Escort, Detention, and Search, in particular Section 3.4 Gender of Searching Officer/Agent and Section 4.3 General Detention Procedures.

The attached muster is to be shared with all Port Directors, Assistant Port Directors, managers, and staff.

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1300 Pennsylvania Avenue, NW
Washington, DC 20229

U.S. Customs and Border Protection

Commissioner

MAR 1 1 2015

MEMORANDUM FOR: All CBP Employees

FROM: R. Gil Kerlikowske
Commissioner

SUBJECT: CBP Policy on Zero Tolerance of Sexual Abuse and Assault

CBP has a zero tolerance policy prohibiting all forms of sexual abuse and assault of individuals in CBP custody, including in holding facilities, during transport, and during processing. CBP is committed to protecting the safety of individuals in CBP custody, and it is CBP policy to provide effective safeguards against sexual abuse and assault for individuals in CBP custody.

This policy prohibits sexual abuse and assault of a detainee by another detainee; sexual abuse and assault of a detainee by agents, officers, other CBP staff members, contractors, and volunteers; and retaliation against any person, including a detainee, who reports, complains about, or participates in an investigation of sexual abuse and assault.

On March 7, 2014, the Department of Homeland Security issued a final rule adopting Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities (the Standards). The Standards reaffirm a commitment to protecting the safety of individuals in custody and are reflective of the population encountered by CBP in carrying out border security and immigration enforcement missions. It is CBP's policy to adhere to the requirements of the Standards in all of its holding facilities. The Standards can be found at http://www.cbp.gov/news/standards-prevent-detect-and-respond-sexual-abuse-and-assault-confinement-facilities.

To comply with these Standards, CBP established an upper-level, agency-wide position of Prevention of Sexual Assault Coordinator (PSA Coordinator). The PSA Coordinator, who is assigned to CBP's Privacy and Diversity Office, is responsible for overseeing CBP's efforts to comply with the Standards. The PSA Coordinator is also responsible for ensuring that CBP conducts an annual review of all sexual abuse and assault investigations and incident reviews to assess and improve sexual abuse prevention, response, and intervention efforts.

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In implementing the Standards, CBP will work to prevent sexual abuse and assault by: applying the Standards to all holding facility support contracts; cross-gender personal searches; not hiring or promoting anyone to a position requiring detainee contact who has engaged in sexual abuse or assault in a confinement facility, who has been convicted of engaging in or attempting to engage in sexual activity by force or coercion, or who has been adjudicated to have engaged in such activity; and, considering issues related to the prevention of such abuse in advance of making upgrades to facilities and technologies. In addition, CBP will ensure sufficient supervision of detainees to protect them against sexual abuse and assault. CBP will provide reasonable accommodations to detainees with disabilities and meaningful access to services for persons with limited English proficiency. Before placing detainees together in a holding room, CBP personnel shall consider the information before them. If a determination is made that a detainee may be at a high risk of being sexually abused or assaulted, or of being sexually abusive, CBP will take actions to protect the detainee, including through increased supervision.

CBP reiterates its commitment to detect incidents and investigate allegations of sexual abuse and assault. To that end, CBP will create specialized evidence protocols and provide for forensic medical examinations; develop policies for investigation of allegations and agency oversight of such investigations; and provide specialized training and education for employees, contractors, and volunteers who have contact with detainees as well as additional training relating to investigations. CBP will also ensure that detainees are aware of CBP's zero tolerance policy regarding sexual abuse and assault, and that members of the public and detainees have multiple ways to privately report sexual abuse or assault, retaliation for reporting sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse or assault or retaliation.

CBP will provide a swift response to allegations of sexual abuse of detainees in holding facilities. Agency personnel will separate an alleged victim from the alleged abuser, preserve and protect any crime scene, and ensure that an alleged victim has timely, unimpeded access to emergency medical treatment and crisis intervention services. In addition, agency personnel are required to immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse, retaliation for reporting or participating in an investigation about sexual abuse or assault, or any employee misconduct or neglect that may have contributed to any incident of sexual abuse, assault or retaliation. CBP will cooperate fully with investigations relating to allegations of sexual abuse and assault of detainees and with external audits of and corrective actions relating to sexual abuse and assault in CBP holding facilities. CBP will conduct an incident review following each investigation of sexual abuse and assault. CBP will also collect and analyze required data on reports and incidents of sexual abuse and assault to assess and improve sexual abuse prevention, response, and intervention policies, practices and training.

CBP employees who violate the prohibition against sexual abuse and assault identified in this policy will be subject to disciplinary or adverse action up to and including removal from their position and Federal service. Criminal misconduct by employees will be referred for investigation and potential prosecution, as appropriate.

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All sexual abuse and assault allegations shall be considered significant incidents. All allegations of sexual abuse and assault as defined in the Standards (see Appendix A) must immediately be reported to the Commissioner's Situation Room and the Joint Intake Center.

Additionally, employees are reminded of their obligation to report any allegation of employee misconduct through any of the following means:

- Calling the toll-free Joint Intake Center Hotline at 1-877-2INTAKE or sending a fax to (202) 344-3390;
- Sending an e-mail message to Joint.Intake@dhs.gov;
- Contacting your servicing CBP Internal Affairs (IA) Office;
- Writing to the Joint Intake Center at P.O. Box 14475, 1200 Pennsylvania Avenue, NW, Washington, DC 20044;
- Calling the DHS Office of Inspector General at 1-800-323-8603; or
- Sending an e-mail message to OIG at DHSOIGHOTLINE@dhs.gov, or reporting online at http://www.oig.dhs.gov.

For additional information on CBP's Prison Rape Elimination Act (PREA) program, please (b) (7)(E) [redacted]

For additional information on CBP's civil rights and civil liberties program, please visit the Privacy and Diversity Office website at www.cbp.gov/eeo.

Attachment

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APPENDIX A – Related Definitions

Sexual Abuse: Sexual abuse includes: (1) Sexual abuse and assault of a detainee by another detainee; and (2) Sexual abuse and assault of a detainee by a staff member, contractor, or volunteer.

Sexual abuse of a detainee by another detainee: Sexual abuse of a detainee by another detainee includes any of the following acts by one or more detainees, prisoners, inmates, or residents of the facility in which the detainee is housed who, by force, coercion, or intimidation, or if the victim did not consent or was unable to consent or refuse, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object;
- Touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, with an intent to abuse, humiliate, harass, degrade or arouse or gratify the sexual desire of any person; or
- Threats, intimidation, or other actions or communications by one or more detainees aimed at coercing or pressuring another detainee to engage in a sexual act.

Sexual abuse of a detainee by a staff member, contractor, or volunteer: Sexual abuse of a detainee by a staff member, contractor, or volunteer includes any of the following acts, if engaged in by one or more staff members, volunteers, or contract personnel who, with or without the consent of the detainee, engages in or attempts to engage in:

- Contact between the penis and the vulva or anus and, for purposes of this subparagraph, contact involving the penis upon penetration, however slight;
- Contact between the mouth and the penis, vulva, or anus;
- Penetration, however slight, of the anal or genital opening of another person by a hand or finger or by any object that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Intentional touching of the genitalia, anus, groin, breast, inner thighs or buttocks, either directly or through the clothing, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
- Threats, intimidation, harassment, indecent, profane or abusive language, or other actions or communications, aimed at coercing or pressuring a detainee to engage in a sexual act;
- Repeated verbal statements or comments of a sexual nature to a detainee;
- Any display of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, or
- Voyeurism

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Voyeurism: Inappropriate visual surveillance of a detainee for reasons unrelated to official duties. Where not conducted for reasons relating to official duties, the following are examples of voyeurism: staring at a detainee who is using a toilet in his or her cell to perform bodily functions; requiring an inmate detainee to expose his or her buttocks, genitals, or breasts; or taking images of all or part of a detainee's naked body or of a detainee performing bodily functions.

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