

**RECEIVED****U.S. CUSTOMS AND BORDER PROTECTION  
Department of Homeland Security**

AUG 14 2003

CUSTOMS MANAGEMENT CENTER  
SOUTH PACIFIC-LONG BEACH*Memorandum*

JUL 30 2003

MAN-1-FO: PO CM

**TO:** Directors, Field Operations  
Director, Preclearance Operations

**FROM:** Assistant Commissioner  
Office of Field Operations

**SUBJECT:** Attorney Representation During the Inspection Process

The Office of Field Operations is issuing this memorandum to re-emphasize the procedures that govern legal representation during an applicant's primary and secondary inspection. The same regulation applies currently as was in effect before the creation of Customs and Border Protection. Title 8 CFR 292.5(b) states:

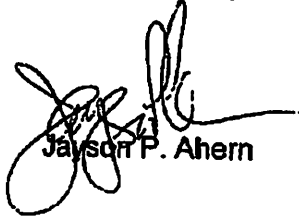
...nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.

This regulation governs primary and secondary inspections conducted at ports-of-entry and also deferred inspections, which are the continuation of a secondary inspection conducted at an onward office. If an attorney accompanies a deferred inspection applicant to their interview, a supervisory inspector may allow the attorney to be present. However, the role of the attorney should be as an observer and consultant to the applicant. The attorney should not be allowed to direct the questioning or answer for the applicant.

The restriction on legal representation during primary and secondary inspection does not preclude inspectors from allowing a family member, friend, or other accompanying helper from being present during an applicant's primary or secondary inspection in appropriate circumstances. Examples of these include the inspection of minors, elderly persons, inexperienced travelers, or whenever the accompanying helper can assist in providing information pertinent to the inspection.

*Vigilance* ★ *Service* ★ *Integrity*

If you have any questions, please contact Mr. Robert Jacksta, Executive Director,  
Border Security and Facilitation, at (202) 927-0530.



Jayson P. Ahern

**CBP/ AILA Meeting of December 9, 2008**

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

2.) Non-responsive to the request

Non-responsive to the request

3.) Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request [REDACTED]

Non-responsive to the request [REDACTED]

Non-responsive to the request [REDACTED]

Non-responsive to the request [REDACTED]

Non-responsive to the request [REDACTED]

Non-responsive to the request [REDACTED]

7.) Immigration attorneys sometimes have clients who are detained at the CBP barracks in San Ysidro. Attorneys calling the barracks are often told that they cannot visit their clients at the barracks. However, they have been told that material witness attorneys are permitted to visit clients at the barracks. What is the CBP reasoning for denying immigration attorney's access to clients in the barracks?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

8.) Does CBP have a fax number to which attorneys can fax a G-28 document to the CBP barracks in San Ysidro for client signature?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

9.) May an attorney appear in person at the barracks in order to allow a client to sign a G-28 form or to review documents given by CBP to the client?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

Non-responsive to the request

Non-responsive to the request

11.) After taking an alien into custody, how long does it normally take for CBP to file an NTA with the Immigration Court?

**Answer: CBP does not file the NTA with the immigration court. The filing of the NTA with the immigration is handled by ICE/DRO.**

12.) If a detained individual is not issued an NTA within 72 hours of being taken into custody, is there a specific supervisor who can be contacted to confirm why the individual is not being released or alternatively issued an NTA?

**All detained individuals must have their port processing completed and be transported to a detention facility within 24 hours. If the 24-hour clock is nearing its end, the individual may be transported to the Barracks 5 facility, where they may be housed temporarily while bed space is being secured at the CCA facility. If an individual is taken to the Barracks 5 facility and no NTA has been served yet, they will be brought back to the port of entry for the NTA to be served before being transported to the CCA facility.**

**CBP Liaison Questions for March 2, 2009 Meeting**  
**With AILA and LACBA**

**1. Deferred Inspections**

Non-responsive to the request [Redacted]

Non-responsive to the request [Redacted]

b. Non-responsive to the request [Redacted]

Non-responsive to the request [Redacted]

c. Has there been any change in your policy concerning attorney representation at deferred inspection?

**Response:** There is no entitlement to representation during a deferred inspection. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant. An attorney may be allowed to be present upon request if the Supervisor on duty deems it appropriate.

d. What are the logistics?

**Response:** This question is unclear as to its precise meaning.

e. How can a member of the public contact DI?

**Response:** Call (213) 830-5972

f. What is the contact information for attorneys?

**Response:** Call (213) 830-5972

CBP Standard Operating Procedures for Secondary Immigration Case Processing

**OTHER**

**INADMISSABLE ALIENS**

Non-responsive to the request




Non-responsive to the request



Non-responsive to the request



Non-responsive to the request



**Dealing with Attorneys and Other Representatives**

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the *Adjudicator's Field Manual*, Chapter 12, and **8 CFR 292.5(b)**

Non-responsive to the request



Non-responsive to the request



Non-responsive to the request



**RESTRICTIONS ON ACCESS TO COUNSEL**  
**AT PORTS OF ENTRY**

Within the entire St. Albans Area Port, all Port Directors confirm that the memorandum issued on July 30, 2003 by the Assistant Commissioner (A/C), Office of Field Operations memo, MAN-1-FO: PO CM, is what is used as guidance in allowing attorney representation during the inspection process. While all locations do allow the presence of attorneys, they are also guided by Title 8 CFR 292.5 (b), which identifies that "...nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody." As such, "...the role of an attorney should be as an observer and consultant to the applicant. The attorney should not be allowed to direct the questioning or answer for the applicant."

Despite the allegations set forth in the excerpt from *Attorney #1*, there is no new official policy of the region to bar counsel from L and TN adjudications. What has, in fact, changed over time is the fact that there are no longer Free Trade Examiners at the larger ports, and therefore the attorney's no longer have that sole officer they deal with on all matters. They now deal with numerous CBP officers, depending upon who might be on duty on any given day. At Highgate Springs, attorneys are allowed in the lobby and are allowed to even remain at the counter interacting with the officers and their client during the secondary inspection process. However, attorneys are not allowed to answer the admissibility questions for their client. At Derby Line, attorneys are allowed to be present but not to participate or answer questions for the applicant.

There is not now, nor has there ever been, an official policy to bar counsel from L and TN adjudications at Highgate Springs and Derby Line Ports of Entry. It should be noted that applicants for TN's do not, as a general rule, have an attorney accompanying them when they arrive at the Port of Entry. This has been confirmed in all locations. Additionally, while Highgate Springs is the only Deferred Inspection location within the St. Albans Area Port, there is no policy to bar counsel during this process either; however counsel is never allowed to answer questions for the applicant.

While the letter to the Commissioner paints a grim picture of CBP Officers being overly zealous in the performance of their duties, Port Directors within the St. Albans Area Port maintain open lines of communication with many of the attorneys who do assist clients in their processing of TN or L applications. While not every issue is able to be resolved to the attorney's satisfaction, there has always been positive dialogue and open communication, and never has there been any indication that there was dissatisfaction with the process.

Currently, most officers are able to process TN applicants for admission, and both Derby Line and Highgate Springs have a select cadre of Customs and Border Protection (CBP)



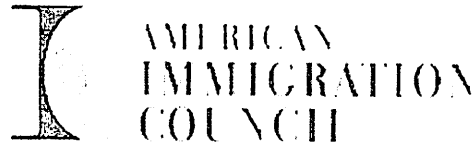
**Officers who are trained and have become extremely proficient in adjudicating L applications.**

**While the issues presented are definitely cause for concern, if in fact they have occurred as stated, conversations with the Port Directors at both major areas indicate that they have never been presented with any issues arising to this level. While questions may arise from time to time, neither the local ports nor the Area Port has received inquiries or complaints from anyone voicing concern about the way that their processing was handled.**

**The below identified guidelines are shared with all officers and supervisors monitor the inspectional areas to insure that whenever possible issues are resolved, as soon as possible after they arise.**

**Guidelines for Law Professionals**

- **Law professionals may enter the port of entry.**
- **Law professionals may sit near their clients and confer quietly with them.**
- **Law professionals may interact with a CBP Officer if the officer requests it. At the counter, the officer will interact with the applicant.**
- **Law professionals are asked not to have more than three (3) clients present at any one time as the lobby chairs are for other applicants for entry as well. It would be best if applicants could be scheduled at intervals so as not to have more than one present at a time. If situations warrant, exceptions can be made.**
- **Law professionals may enter the POE at other times to speak with officers or supervisors.**



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May 11, 2011

The Honorable Alan Bersin  
Commissioner, U.S. Customs and Border Protection  
Department of Homeland Security  
Washington, DC

Dear Commissioner Bersin:

The American Immigration Council (AIC) and the American Immigration Lawyers Association (AILA) have received widespread reports of unwarranted restrictions on access to counsel by CBP officers. We believe that these limitations reflect overly restrictive interpretations of existing regulations and may violate applicable due process guarantees. We are writing today to highlight our concerns in the hope of beginning a dialogue about these issues.

AIC and AILA recently conducted a nationwide survey to gather information about access to counsel during interactions with CBP, USCIS, and ICE. We collaborated with Penn State Law School's Center for Immigrants' Rights to analyze more than 250 survey responses submitted by immigration attorneys practicing throughout the country. The responses regarding interactions with CBP depict a system characterized by pervasive restrictions on representation. These problems have continued despite liaison efforts between AILA and CBP. Selected examples describing limitations on representation imposed by CBP are attached as an appendix to this letter.

Interviews and other interactions with immigration officers often can be intimidating and confusing, and noncitizens seek assistance from attorneys to help navigate this challenging process. CBP officers who prevent or limit attorneys' access to their clients in secondary and deferred inspection do not recognize this important role of counsel. Frequently, officers fail to exercise any discretion to permit attorneys to accompany their clients, although CBP's own guidance authorizes such discretion.

In instances where attorneys are permitted to appear with their clients, including deferred inspections, CBP officers often limit the scope of representation. One CBP officer at the Washington-Dulles International Airport warned an attorney that her appearance in deferred inspection “was entirely at the discretion of the CBP.” In another case, an attorney accompanied her client to the San Ysidro, California Port of Entry to assist him in obtaining a new Arrival-Departure Record (I-94 Form) with an extended validity date. The officer and the officer’s supervisor refused to listen to the attorney when she attempted to explain the legal basis for her request. The officer told the attorney that her client had no right to representation and that they were doing the attorney and her client “a favor” by allowing the attorney to be present.

CBP officers also prevent attorneys from providing relevant documentation. For example, during secondary inspection at Boston’s Logan International Airport, a CBP officer refused to allow an attorney to submit documentation that would have resolved a critical legal question. As a result, the client was unnecessarily detained for over two months. In another case, a CBP officer who refused to allow an attorney to accompany her client to deferred inspection also refused to accept a legal memorandum that the attorney had prepared on behalf of the client. The officer said the memorandum “wasn’t necessary” and handed it back to the attorney before taking the client into a back room for questioning.

In some cases, CBP officers adopt an adversarial approach. One attorney repeated a conversation she overheard between a senior CBP officer and a more junior CBP officer. The senior officer told the junior officer that she should not engage with attorneys because lawyers say “whatever their clients want them to say.” In another instance, an attorney who had been barred from deferred inspection advised her client not to answer certain questions unless she was present. A CBP officer later told the client’s wife that her husband had been detained for his refusal to respond. The CBP officer also informed the wife that the “family had retained a very bad lawyer who had given advice that seriously hurt her client’s case” and advised the wife to fire her. An attorney in Miami reported that a CBP officer told her client that “she wasted her time by hiring an attorney” because attorneys are a “waste of time and money.”

The important role of counsel in interactions with CBP officers is recognized in the governing law, both statutory and regulatory. Notably, the Administrative Procedure Act (APA) grants a right to counsel for individuals who are compelled to appear before an agency or agency representative. 5 U.S.C. § 555(b). Regulations governing DHS also provide a right to counsel. For instance, 8 C.F.R. § 292.5(b) states that “[w]henver an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative . . .” 8 C.F.R. § 292.5(b). This provision contains a proviso that the right to counsel does not apply to “any applicant for admission in either primary or secondary inspection . . ., unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.” While individuals may not have a “right” to counsel in certain contexts, CBP officers retain discretion to allow an attorney to accompany a client in primary or secondary inspection.

Moreover, the government has adopted and applied the restrictions on counsel in secondary inspection to deferred inspection. *See* CBP Inspector's Field Manual, Section 17.1(e) (citing 8 C.F.R. § 292.5(b) to support the position that an applicant for admission in deferred inspection "is not entitled to representation"). This expansion of the restrictions imposed by 8 C.F.R. § 292.5(b) is improper. Deferred inspection is not mentioned in 8 C.F.R. § 292.5(b). Although the deferred inspection regulation, 8 C.F.R. § 235.2, was added after § 292.5(b) was promulgated, the agency did not thereafter amend § 292.5(b) to encompass deferred inspection; nor did it identify deferred inspection as secondary inspection in § 235.2. *See* Inspection and Expedited Removal of Aliens, Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10312 (Apr. 1, 1997).

The circumstances warranting deferred inspection and secondary inspection are also distinct. Secondary inspection takes place "[i]f there appear to be discrepancies in documents presented or answers given, or if there are any other problems, questions, or suspicions that cannot be resolved within the exceedingly brief period allowed for primary inspection." 62 Fed. Reg. at 10318. In contrast, deferred inspection is characterized as "further examination" that occurs after a person is paroled. 8 C.F.R. § 235.2. Unlike secondary inspection, it is permitted only when the examining officer "has reason to believe" that the person can overcome a finding of inadmissibility by presenting, *inter alia*, "additional evidence of admissibility not available at the time and place of the initial examination." 8 C.F.R. § 235.2(b)(3); *see also* CBP Inspector's Field Manual, Section 17.1(a). Therefore, although secondary and deferred inspections both provide an opportunity for an individual to provide additional evidence of admissibility, these procedures serve different purposes.

The CBP Inspector's Field Manual supports greater access to counsel than CBP officers typically allow. Chapter 2.9 states that an inspecting officer may allow counsel to be present during secondary inspection, specifying that "an inspecting officer" is not precluded from permitting "a relative, friend *or representative* access to the inspectional area to provide assistance when the situation warrants such action." (Emphasis added.) Chapter 17.1(e) addresses the role of an attorney in deferred inspection, stating that "an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate," and that the attorney may serve as an "observer and consultant to the applicant."

Beyond the Inspector's Field Manual, CBP policies affecting access to counsel during deferred inspection are difficult to ascertain and arbitrarily applied. One attorney reported that he used to regularly accompany his clients to deferred inspection at the Philadelphia International Airport. Recently, however, when he appeared with his client, a CBP officer told him that a new policy dictated that attorneys could no longer accompany clients to deferred inspection. Another attorney who asked to accompany his client to deferred inspection at the Indianapolis CBP office reported being told that the supervisor of that office refuses attorney presence as a matter of course.


These restrictive policies should not continue. Access to counsel is not only vital for noncitizens attempting to navigate our complex immigration system, but also improves the quality and efficiency of immigration decision making. As several attorneys noted in response to survey questions, counsel can help CBP officers maximize efficiency by providing helpful documentation and other case-related information regarding, for example, a client's criminal convictions or travel outside the United States. In addition, several attorneys reported that their clients feel more at ease and are more willing to communicate with CBP officers when their attorney is present.

We hope this letter is the first step in opening a dialogue with CBP. We seek to better understand CBP policies with respect to counsel and to provide input on the need for additional guidance that would better reflect existing statutory and regulatory protections. This dialogue will also help inform a White Paper we are drafting with Penn State Law School's Center for Immigrants' Rights on access to counsel before DHS. Our efforts are premised on the idea that noncitizens and CBP officials have a mutual stake in a functional, transparent and just legal system of which access to counsel is an essential part. We look forward to future opportunities to discuss these concerns with you.

Sincerely,

  
Ben Johnson  
American Immigration Council

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Crystal Williams  
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cc:

Noah Kroloff, Chief of Staff, DHS  
John Sandweg, Counselor to the Secretary and Deputy Secretary, DHS  
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Ivan Fong, General Counsel, DHS  
Seth Grossman, Chief of Staff, Office of the General Counsel, DHS  
Kelly Ryan, Acting Deputy Assistant Secretary, Office of Policy, DHS  
Margo Schlanger, Officer for Civil Rights and Civil Liberties, DHS  
Marco Lopez, Chief of Staff, CBP  
Brett Laduzinsky, Special Assistant to the Chief of Staff, CBP  
Bill McKenney, NGO Liaison, Office of the Commissioner, CBP  
Alfonso Robles, Chief Counsel, CBP

**APPENDIX – ATTORNEY ANECDOTES SUBMITTED IN RESPONSE TO  
AIC/AILA COUNSEL SURVEY**

**ATTORNEY #1**

**The following reflects one attorney’s impressions of CBP officers at the Highgate Springs and Derby Line ports of entry (Vermont/Canada border) and her experience with restrictions on counsel in a deferred inspection interview.**

*Within the last few years, it has become official policy to bar counsel from L<sup>1</sup> and TN<sup>2</sup> adjudications at Highgate and Derby Line ports of entry. I understand from our CBP liaison that it is the new official policy of the region. Prior to this policy change, free trade officers, who were knowledgeable about L and TN visas, were cordial to and worked well with counsel. Now, because officers are less knowledgeable about L and TN visas, adjudications are inconsistent. In addition, CBP officers are very antagonistic toward and disrespectful of counsel. They don’t recognize G-28s, and since the implementation of the new policy, I have been directed not to approach “the counter” and not to attempt to help clarify any aspects of the L or TN application.*

*In one particular case, I represented a long-time permanent resident who had lived in the U.S. for over 50 years. He was married, had two U.S. citizen children and three grandchildren and had worked for the same employer for thirty years. As a resident of a border community, he was a frequent traveler to and from Canada throughout his lifetime and had never previously been questioned in any significant way. When he entered the U.S. from Canada at Highgate Springs, the CBP officer asked him if he had ever been arrested. My client responded that he had been arrested when he was 17 years old, but that he had been told that he would not have a criminal record. The CBP officer asked him to return for a deferred inspection interview and to bring documentation about his arrest and the related court proceedings. Upon investigation, it was clear to me that the record did not make my client inadmissible, despite circumstances that might raise questions. I drafted a brief memorandum explaining this and requested that I be present during the deferred inspection interview, at the request of the client who was shocked and extremely nervous about this encounter. I called the port of entry days before the interview and the officer who answered the phone declined to help me confirm whether I could attend the interview. I then accompanied my client to the interview and again requested to accompany my client during the interview. The officer said “I don’t think*

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<sup>1</sup> L nonimmigrant status is available to intracompany transferees who are executives, managers, or employees with specialized knowledge working for multinational companies. 8 C.F.R. § 214.2(I). Canadian applicants may have their petitions adjudicated at the port of entry. 8 C.F.R. § 214.2(I)(17).

<sup>2</sup> TN nonimmigrant status is available to Mexican and Canadian citizens seeking temporary entry to work in certain professional occupations pursuant to the North American Free Trade Agreement (NAFTA); these applications are adjudicated at the port of entry. 8 C.F.R. § 214.6.

*that I have to let you." I stated that I would appreciate the officer extending my client, a long-time permanent resident, the courtesy of allowing counsel to be present. The officer stated that he would check with his supervisor and that if the supervisor said he didn't "have to" allow counsel to be present, he would bar me from the interview. After checking with his supervisor, the officer stated that I could not accompany my client. I requested to speak with the supervisor. The officer declined my request, stating that he had already spoken to the supervisor. I then requested that the CBP officer review the memorandum I had prepared and take it with them to the interview. The officer said this wasn't necessary and handed the memorandum, which my client had paid me to prepare and should have been able to take with him, back to me before taking my client into a back room for the interview.*

*Just this year, two CBP officers at Highgate Springs publicly discussed immigration attorneys at the counter while they were conducting an inspection of my client. The senior officer told the more junior officer that she shouldn't engage with the lawyer, because lawyers say "whatever their clients want them to say." This is a complete shift from the culture that previously existed when free trade officers acknowledged and often solicited the participation of attorneys in interviews, particularly in marginal or complex cases. One senior free trade officer told me not infrequently that he learned something regularly from our presentations of law. On occasion, he acknowledged using our legal arguments as training tools for newer officers. There were numerous times when I would bring a regulation or interpretation of the law to his attention after he had initially denied a case, or been inclined to deny a case, and he would agree after further examination that I was correct. He was open to that because it made him better at his job.*

*Although our relationship with free trade officers in previous years was mutually respectful, it was definitely not (ever) deferential to attorneys – in fact, it was always extremely clear that an inspection was of the applicant personally and that we would participate substantively only upon request. We could approach the counter, present the paperwork, indicate that we were available to answer any questions that might arise, and trust that the legal presentation would be reviewed and that we would have an opportunity to present our position on any questions that might arise during the inspector's review.*

## **ATTORNEY #2**

**The following is an excerpt from an e-mail submitted by an attorney regarding her experience at a secondary inspection interview at Boston's Logan International Airport:**

*During a Boston Secondary Inspection, I was not only prohibited from the room where my client was interviewed, but the CBP officer literally and forcefully pushed me aside when I was walking in with my client and told me I could not come in. I thought about bringing assault and battery charges against the officer but it is someone I have to deal with at times so I was reluctant to do so. CBP took my client into custody, charged him as*

*an arriving alien for a crime they said was a CIMT but was not. They moved him from prison to prison, first Boston then York, PA then Lumpkin, GA. I finally got a hearing for him in the Atlanta Immigration Court and he was released from custody and admitted into the US, but the whole thing took 2.5 months and many filings. The whole waste of prison, court, legal and transportation resources could have been avoided if only I were able to sit in on the interview with my carefully prepared memo explaining why his crime was not a CIMT.*

### **ATTORNEY #3**

**The following is an excerpt from a letter submitted to CBP regarding the actions of CBP officers in relation to a deferred inspection interview at the Indianapolis CBP office:**

*. . . I attempted to accompany a lawful permanent resident client to a deferred inspection interview in the Indianapolis office. I called in advance and expressed my client's desire that I be in attendance. I was informed that, despite a general CBP policy that instructs supervisors to exercise discretion in determining whether or not to permit attorneys in individual interviews, the Indianapolis supervisor refuses attorney presence as a matter of course.*

*Nonetheless, I accompanied my client to Indianapolis and to the general offices, although I understood I would not be permitted (based on the supervisor's blanket decision) to attend the interview. I anticipated I would wait outside and be available should the situation change and the client require my assistance or the officer wish to speak with me. I was informed that I was not permitted on the premises and instructed to wait in my car.*

*During his interview, my client declined to answer specific questions outside my presence . . . His chosen course of conduct, it seems, seriously upset the officer conducting the hearing . . .*

*. . . Officer [REDACTED], . . . spoke directly to the wife of the now-detained alien. She told the wife that in all of her years conducting interviews, no one had refused to answer her questions and that is why her husband was detained. She went on to say that the family had retained a very bad lawyer (me) who had given advice that had seriously hurt her husband's case . . . She told the wife of my client that the family should fire me as attorney.*

*In the days since this incident, I have shared my experience with a number of other attorneys who practice in this area and have themselves had similarly disappointing contact with CBP officers in this office. . . Relationships between attorneys and Department officials need not be acrimonious. In theory, we share a purpose—to ensure that the law is carried out correctly and completely, although we protect the rights and interests of different parties in furtherance of that purpose. A general disdain for*



*representation does not facilitate the work of CBP or DHS; rather, it impedes it, as was evident in this case.*

#### **ATTORNEY #4**

**The following is a summary of a phone conversation with an attorney regarding her client's experience at a secondary inspection interview at the Washington-Dulles International Airport:**

*There are a lot of problems with CBP's treatment of individuals in the Washington-Dulles airport. In one particular incident, my client—an H-1B visa holder who had a pending adjustment of status application—was stopped for secondary inspection. He was detained for four hours during which time he was questioned and unable to call me. He was harassed, insulted, and told that he should get a different attorney because I had improperly filed things on his behalf. Four hours later, the CBP officer relented and let my client enter on his valid H-1B visa, but told my client he was "doing him a favor." It seems that CBP officers are engaged in a power struggle with attorneys and individuals entering the country.*

#### **ATTORNEY #5**

**The following is an excerpt from an e-mail submitted by an attorney regarding his experience with CBP at the San Ysidro, California Port of Entry:**

*My client was coming in on an H-1B visa, but had changed employers. Instead of applying for a new visa, he followed a process (approved by DHS) that allowed him to use the same visa stamp and obtain a new I-94 card with an expiration date beyond the expiration of the visa stamp based on a new H-1B approval notice. My client was admitted until the expiration date of his H-1B visa stamp so I accompanied him to the port of entry to assist him in obtaining a new I-94 with the extended validity date. I brought a policy memorandum that had been issued in 2001 by Legacy INS addressing this specific issue. The officer refused to listen to me when I attempted to explain the legal basis for my request or to look at the policy memorandum. I asked to speak with the supervisor, who also refused to listen. The officers told me that my client had no right to representation and that they were doing me and my client a favor by allowing me to be there. Ultimately, the CBP officers called USCIS to ask them what to do. USCIS told them that they should let the client in, and that he could be admitted beyond the validity of the visa stamp since he had a new approval notice with a longer validity . . . In addition to this particular example, I have sent clients to interviews with legal documents and officers simply refuse to read them.*

#### **ATTORNEY #6**

**The following is an excerpt from an e-mail submitted by an attorney regarding her experience at secondary inspection at the Office of Deferred Inspections in Miami:**

*Specifically, I have a lawful permanent resident client named [REDACTED]. Mr. [REDACTED] had four (4) misdemeanor non-drug convictions. They were all for petty theft. The last conviction was in 1992. He was issued a notice to appear at the airport and, subsequently, provided an appointment to attend an interview at deferred inspection to provide his judgment and conviction. In November of 2009, I attended his deferred inspection interview with him. Office [REDACTED] told me to wait outside. I asked why. I told the client not to respond to questions except name, date of birth and address. I asked to speak to a supervisor. The supervisor, [REDACTED], told me that I could not be present when my client was interviewed. A couple months later, I had to go back to deferred to obtain temporary proof of my client's residence, which he is legally entitled to in removal proceedings. In fact, he is mandated to carry proof of his residence with him. Officer [REDACTED] took my client and me into the deferred room. I filled out the I-94 form with my client. Officer [REDACTED] sees me and brings a male officer into the hallway and tells him to "get that fucking bitch out of here." The male officer then escorted me out of the inner office. On the way out I eyeballed Officer [REDACTED] and advised her that her conduct was inappropriate and uncalled for. She did not respond. I waited for the client in the lobby. The client came out to the lobby about 20 minutes later. He advised that Officer [REDACTED] told him that, "he should not waste his time nor money with me as he was going to get deported anyway." [REDACTED] also asked him how much he had paid for my services. He refused to answer. My client was granted cancellation of removal in proceedings and is now scheduled for naturalization.*

(b)(6) (b)(7)(C)

**From:** (b)(7)(E)  
**Sent:** Saturday, July 09, 2011 10:24 AM  
**To:** (b)(7)(E)  
**Subject:** File: Representation at Deferred Inspections

(b)(6) (b)(7)(C)

Customs and Border Protection  
 Area Port Director (acting)  
 Boston, MA  
 617 (b)(6) (b)(7)(C) ext (b)(6) (b)(7)(C)

**From:** (b)(6) (b)(7)(C)  
**To:** (b)(6) (b)(7)(C)  
**Sent:** Thu Jul 07 16:40:02 2011  
**Subject:** FW: Representation at Deferred Inspections

PD (b)(6) (b)(7)(C)

To date we have not received any requests for attorneys to sit in on deferred inspections.

(b)(6) (b)(7)(C)

Chief CBPO (Acting)  
 Boston Logan Airport  
 617 (b)(6) (b)(7)(C)

**From:** (b)(6) (b)(7)(C)  
**Sent:** Friday, June 24, 2011 8:22 AM  
**To:** (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)  
**Subject:** Representation at Deferred Inspections

Supervisors,

Although the practice in our area port over the years has been generally to refrain from allowing attorneys to sit in on deferred inspections, the policy has been clarified. The practice in other ports in the BFO has been to allow the attorneys to be present (provided the attorney does not interfere with the inspection or answer questions on behalf of his/her client) and we need to follow the same principle.

Please inform the officers involved in deferred inspections that they must refer to you any requests by an attorney to be present during the proceedings.

Since this is new to us, I would like the on-duty Chief to be involved in each request and to have the supervisor be close by should it be necessary to ask the attorney to leave if the situation evolves from one of "observation" to one of "representing". Please let me know if this situation arises.

Thanks,

(b)(6) (b)(7)(C)

**(b)(6) (b)(7)(C)**

**Area Port Director (acting)  
Customs and Border Protection  
Boston, MA**

**617. (b)(6) (b)(7)(C)**

(b)(6) (b)(7)(C)

**From:** (b)(6) (b)(7)(C)

**Sent:** Friday, June 24, 2011 8:31 AM

**To:** (b)(6) (b)(7)(C)

**Subject:** FW: Representation at Deferred Inspections

Please adhere to the dramatic change in policy of allowing attorney's into deferred INSPECTION interviews. Good luck.

(b)(6) (b)(7)(C)

Port Director, Service Port of Providence

49 Pavilion Avenue

Providence, RI 02905

(401) (b)(6) (b)(7)(C) Work

(202) (b)(6) (b)(7)(C) New Mobile

**From:** (b)(6) (b)(7)(C)

**Sent:** Friday, June 24, 2011 8:22 AM

**To:** (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C)

**Subject:** Representation at Deferred Inspections

Supervisors,

Although the practice in our area port over the years has been generally to refrain from allowing attorneys to sit in on deferred inspections, the policy has been clarified. The practice in other ports in the BFO has been to allow the attorneys to be present (provided the attorney does not interfere with the inspection or answer questions on behalf of his/her client) and we need to follow the same principle.

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Thanks,

(b)(6) (b)(7)(C)

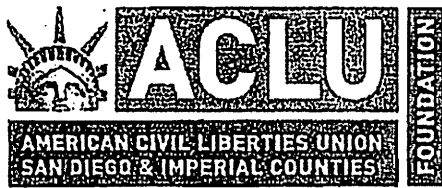
(b)(6) (b)(7)(C)

Area Port Director (acting)

Customs and Border Protection

Boston, MA

617-(b)(6) (b)(7)(C)



Cooley  
GODWARD KRONISH LLP

January 22, 2008

American Immigration Lawyers Association  
San Diego Chapter Membership  
c/o Robert Nadalin  
P.O. Box 124594  
San Diego, CA 92112

*Sent via e-mail to robert@nadalinlaw.com*

Re: Barracks 5 Issues

Dear San Diego AILA Membership:

We are attorneys from the ACLU and Cooley Godward Kronish LLP. We recently discussed our concerns about Barracks 5 in San Ysidro with Peggy DeBeliso, Assistant Chief Counsel of Customs and Border Protection, who called in response to a letter we sent to CBP. Based on these discussions, we are cautiously optimistic that Ms. DeBeliso and her colleagues at Border Patrol who administer Barracks 5 will allow attorneys to meet face to face with their clients there.

CBP officials refer to Barracks 5 as a "transit staging area" where aliens are detained pending immediate removal, departure, or transfer to the custody of Immigration and Customs Enforcement for longer-term detention. Several months ago, we began investigating complaints from immigration attorneys whose clients were being detained at Barracks 5 for periods of up to two weeks without access to counsel. These detainees were essentially in a legal black hole. While they remained at Barracks 5, they could not practically obtain bond redetermination. Their Notices to Appear often were not filed with the immigration court. Some detainees' NTAs were not issued until days or weeks after arrest. Other detainees may have been pressured to accept voluntary departure and/or stipulated removal. In addition, detainees were not provided any change of clothes while at Barracks 5.

Ms. DeBeliso appeared receptive to our concerns about these practices. She agreed that the lack of attorney access to clients was a real problem. But she explained that Barracks 5 was never intended to hold people for more than a short time. (She did not specify exactly what time frame would qualify as short, but suggested a few hours or an overnight stay as normal.) Ms. DeBeliso also claimed that prolonged detention at Barracks 5 was isolated to November, when longer-term detention facilities were overcrowded. She said that two detainees were held thirteen days at Barracks 5 in November. However, she said that Border Patrol expected to avoid such situations of prolonged Barracks 5 detention in the future.

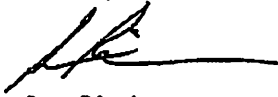
ACLU of San Diego & Imperial Counties  
PO Box 87131  
San Diego, CA 92138-7131  
p:619.232.2121 f:619.232.0036

Cooley Godward Kronish LLP  
4401 Eastgate Mall  
San Diego, CA 92121-1909  
p:858.550.6000 f:858.550.6420

Ms. DeBeliso promised that attorneys would now have access to their clients in Barracks 5. She said that in the coming weeks she will work with other officials to establish procedures regarding attorney visits at Barracks 5, Border Patrol officer contact information at Barracks 5, and complaints. In the meantime, attorneys prevented from seeing their clients, or with other concerns about Barracks 5, may contact Ms. DeBeliso or Assistant Chief Patrol Agent Jaime Hernandez, who is responsible for Barracks 5. Ms. DeBeliso can be contacted at (619) 216-4018. Mr. Hernandez can be contacted at (619) 216-4003.

If attorneys are unlawfully prevented from meeting face-to-face with their clients at Barracks 5, we are prepared to file litigation to address the issue. Please contact us if you are prevented from seeing a client at Barracks 5 so that we can consider legal action. Please also contact us if you experience any other problems with respect to Barracks 5.

Sincerely,



Sean Riordan  
ACLU Foundation of San Diego & Imperial Counties  
(619) 232-2121 ext. 30  
sriordan@aclusandiego.org

David Blair-Loy  
ACLU Foundation of San Diego & Imperial Counties

Philip Tencer  
Cooley Godward Kronish LLP

2411 Boswell Road  
Chula Vista, CA 91914-3519


SDC 160/5.6-C



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

DEC 23 2008

**MEMORANDUM FOR:** U.S. Customs and Border Protection  
FOIA Division

**FROM:**   
Karen E. Rubio  
Assistant Director Mission Support  
U.S. Border Patrol, San Diego Sector

**SUBJECT:** FOIA Request Pertaining to Barracks 5

Please find the attached FOIA received December 22, 2008 from Mr. Philip C. Tencer, Cooley Godward Kronish LLP. Mr. Tencer requests copies of documents related to individuals detained at Barracks 5.

Should you have any questions, please feel free to call me at (619) 216-4004.

Attachments

**Cc: Mr. Philip C. Tencer, Cooley Godward Kornish**





Philip C. Tencer  
(858) 550-6088  
tencerpc@cooley.com

December 18, 2008

VIA REGULAR MAIL

Office of Border Patrol  
San Diego Sector  
2411 Boswell Road  
Chula Vista, CA 91914

**Re: FOIA Request – Barracks 5 (San Ysidro)**

**To Whom It May Concern:**

This letter constitutes a request for records pursuant to the Freedom of Information Act, 5 U.S.C. §552 and is made by Cooley Godward Kronish LLP in conjunction with the American Civil Liberties Union of San Diego & Imperial Counties.

This letter requests records pertaining to detainees held at the Chula Vista U.S. Border Station Transit Staging Facility, 311 Athey Street, San Diego, CA 92173 (commonly referred to as the "Barracks 5"). Specifically, we request that copies of the following documents be provided to Cooley Godward Kronish at the address noted on the letterhead below:

1. Documents sufficient to ascertain the number of detainees housed at Barracks 5 during the last 120 days;
2. Of those housed at Barracks 5 during the last 120 days, document sufficient to identify those individuals arrested by U.S. Immigration Customs Enforcement ("ICE")
3. Of those housed at Barracks 5 during the last 120 days, documents sufficient to identify those individuals arrested by U.S. Customs & Border Patrol ("CBP")
4. Over the last 120 days, for each 24 hour period beginning at 12:01 a.m., documents sufficient to ascertain the number of detainees housed at Barracks 5 during each 24 hour period;
5. For each detainee housed at Barracks 5 during the last 120 days, documents sufficient to ascertain the length of time that each detainee was housed at Barracks 5;
6. Documents sufficient to ascertain the number of bond determinations made (whether to grant bond or deny bond) for detainees housed at Barracks 5 during the last 120 days;
7. For each grant of bond made for a detainee housed at Barracks 5 during the last 120 days, documents sufficient to ascertain the amount of each bond;



8. For each grant of bond determination made for a detainee housed at Barracks 5 during the last 120 days, documents sufficient to identify the individual who made that bond determination;
9. Documents sufficient to identify the number of detainees housed at Barracks 5 during the last 120 days for whom a determination was made to deny bond;
10. Within the last 120 days, the number of detainees housed at Barracks 5 that have voluntarily departed or agreed to voluntary departure under 8 U.S.C. § 1229(c), 8 C.F.R. § 240.25, or any other statute, regulation, guideline or policy;
11. For the past 120 days, copies of all completed form I-210s and other paperwork in connection with voluntary departures for detainees housed at Barracks 5 at any time during the last 120 days;
12. Documents sufficient to identify all attorneys representing material witness housed at Barracks 5 who visited a detainee at Barracks 5 during the last 120 days;
13. Documents sufficient to identify all government attorneys who visited a detainee at Barracks 5 during the last 120 days;
14. Documents sufficient to identify attorneys other than material witness attorneys or government attorneys who visited any detainee at Barracks 5 during the last 120 days;
15. Documents sufficient to identify each instance an attorney attempted to visit (in-person) with a client housed at Barracks 5, but was not permitted to do so or was denied access, during the last 120 days;
16. Documents sufficient to identify each attempt by a private attorney representing a client housed at Barracks 5 to obtain signature on the G-28 Form via facsimile to the client at Barracks 5 during the last 120 days, that was refused or otherwise not permitted by those operating Barracks 5;
17. Documents sufficient to ascertain all temporary holding facilities operated by U.S. Immigration Customs Enforcement in Southern California;
18. Documents sufficient to ascertain all temporary holding facilities under the jurisdiction of U.S. Immigration Customs Enforcement in Southern California;
19. Documents sufficient to ascertain all temporary holding facilities operated by U.S. Customs & Border Patrol in Southern California;
20. Documents sufficient to ascertain all temporary holding facilities under the jurisdiction of U.S. Customs & Border Patrol in Southern California;
21. Documents sufficient to determine the standard booking procedure for detainees, from initial detention to release;



22. For the past 120 days, documents sufficient to ascertain the number of detainees transferred from any other detention facility into Barracks 5;

23. Documents sufficient to show any California Border Patrol regulations or guidelines regarding the treatment and visitation of detainees.

We ask that you grant a fee waiver for the information requested. As pro bono counsel for the detainees being held, we have no personal or commercial interest in the documents requested because we are representing them free of charge. It is in the public interest for such individuals to have access to legal counsel because it is consistent with their Due Process rights. Our interest is ensuring that basic legal representation for detained individuals is allowed. Therefore we ask that you waive any fees in connection with this request.

We ask that you expedite this request as there is a compelling need for the information. Many of these detainees do not have access to counsel and will be deported or transferred before they are able to obtain such representation. Knowing the number of detainees being denied access to counsel will allow us to measure whether Constitutional privileges are being given prior to deportation. This is a time sensitive issue and we hope you agree.

Also, if for some reason you believe this Request should be entertained by or submitted to another governmental agency, please forward this request to the appropriate agency immediately and notify us of the same.

We appreciate your prompt attention to this matter. If you have any questions regarding this request, or if you require any additional information to process this request, please contact me at the above number.

Sincerely,

Cooley Godward Kronish LLP

  
Philip C. Tencer

cc: David Blair-Loy - American Civil Liberties Union of San Diego & Imperial Counties.

611851 /SD



December 4, 2008

Mr. Gurdit Dhillon  
Field Operations Director  
U.S. Customs and Border Protection  
610 W. Ash Street, Suite 1200  
San Diego, CA 92101

Dear Mr. Dhillon:

The ACLU has been contacted by immigration attorneys who have been denied access to their clients at a Border Patrol temporary detention facility in San Ysidro commonly referred to as "the barracks." The ACLU is very concerned with protecting detainees' constitutional right of access to counsel and lawyers' right to meet with clients. Prompt access to counsel after detention is essential for many reasons, including but not limited to the ability to seek immediate release on bond.

We understand Customs and Border Protection has an upcoming meeting with the San Diego chapter of the American Immigration Lawyers Association to discuss various concerns that the Association has already raised, which may include detainees' access to counsel. We view this as a step in the right direction and hope that the issues can be resolved, as well as the concern raised by way of this letter.

We also want to inform you that we are prepared to proceed with litigation and have enlisted the assistance of Cooley Godward Kronish to take the lead in litigation on a pro bono basis to rectify this problem should it prove necessary. However, before resorting to intervention by the federal courts and needlessly spending taxpayer dollars, we propose a meeting to discuss this serious problem, with the hope of identifying a mutually agreeable resolution. Please contact us at your earliest convenience to schedule a convenient time to discuss this issue.

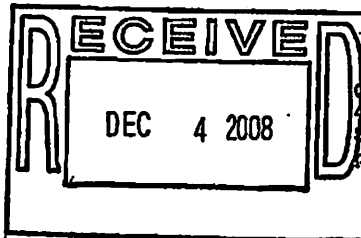
Sincerely yours,

David Blair-Loy  
Legal Director  
ACLU Foundation of San Diego & Imperial Counties

Philip Tencer  
Cooley Godward Kronish LLP

cc: Robert Nadalin, Esq.

ACLU of San Diego & Imperial Counties  
PO Box 87131  
San Diego, CA 92138-7131  
7619.232.2121 /619.232.0036



Cooley Godward Kronish LLP  
4401 Eastgate Mall  
San Diego, CA 92121-1909  
7858.550.6000 /858.550.6420

12/4/08

610 W Ash Street, Suite 1200  
San Diego, CA 92101



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

December 11, 2008

Michael J. Fisher  
Chief, San Diego Sector  
2411 Boswell Rd.  
Chula Vista, CA 91914-3519

Chief Fisher:

I would like to provide you a copy of our response to a recent letter from the local ACLU of San Diego and Imperial Counties chapter. The letter dated December 4, 2008, concerned the U.S. Border Patrol temporary detention facility in San Ysidro.

The matter of access to clients was specifically referenced in the letter. I indicated that any questions should be addressed to the Office of Border Patrol, San Diego Sector since the facility in question is managed by your office.

I have included a copy of the original letter and our response for your files.

If you have any questions or concerns, please don't hesitate to call me or Toby Sosbee of my staff at (619) 652-9966 x 151.

Sincerely,

A handwritten signature in black ink, appearing to read "Gurjit S. Dhillon".

Gurjit S. Dhillon  
Director  
San Diego Office of Field Operations

610 W Ash Street, Suite 1200  
San Diego, CA 92101



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

December 10, 2008

**ACLU of San Diego and Imperial Counties  
David Blair-Loy  
P.O. Box 87131  
San Diego, CA 92138**

Dear David Blair-Loy:

We are in receipt of your letter dated December 4, 2008, in which you provided comments concerning the U.S. Border Patrol temporary detention facility in San Ysidro.


On Monday, December 8, 2008 at 8:30 a.m. our office did host a meeting with representatives from the local AILA organization. The outcome of this meeting was very productive.

The matter of access to clients you specifically referenced in your letter should be addressed to the Office of Border Patrol, San Diego Sector since the facility in question is managed by that office. We represent the Office of Field Operations San Diego and although we are the same agency, we are separate divisions within the agency.

I have forwarded your letter to the Office of Border Patrol. I am hopeful that this explanation has provided adequate information concerning U.S. Customs and Border Protection and the Office of Field Operations San Diego.

Should you require any additional assistance, please feel free to contact Toby Sosbee at (619) 652-9966 x151.

Sincerely,



**Gurjit S. Dhillon  
Director, Field Operations**

2411 Boswell Road  
Chula Vista, CA 91914-3519



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

FEB 13 2009

David Blair-Loy  
Legal Director  
ACLU of San Diego & Imperial Counties  
P.O. Box 87131  
San Diego, California 92138-7131

Dear Mr. Blair-Loy:

Please accept the following in reply to your letter dated December 4, 2008, to Gurdit Dhillon, former Director of Field Operations, U.S. Customs and Border Protection, San Diego. Your letter was referred to me because the Barracks 5 transit staging area is a Border Patrol operation under my command.

Please be advised that we will provide access to counsel by immigration detainees at Barracks 5 as follows. The immigration attorney should call the San Diego Sector "NTA Coordinator" to make an appointment for visitation during business hours. I have designated Senior Patrol Agent Adriana Finau as the primary NTA Coordinator, and she may be reached at (619) 498-9836. In the event that SPA Finau is unable to return the call within one hour, the immigration attorney may contact Supervisory Border Patrol Agent Stephen Harkenrider, who I have designated as the back-up NTA Coordinator, at (619) 498-9983 or (619) 498-9777. The immigration attorney should be prepared to provide their bar membership number, which the NTA Coordinator will verify prior to the visitation appointment. The NTA Coordinator will instruct the immigration attorney when and where to report in order to be escorted onto the Border Patrol facility located at 311 Athey Avenue, in San Ysidro.

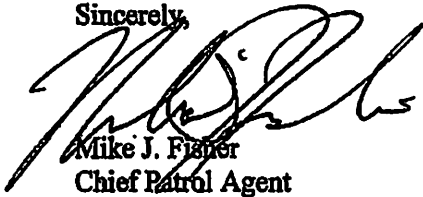
Upon arriving for visitation, the immigration attorney should be prepared to present their bar card and photo identification, which will be examined and returned by the NTA Coordinator. A G-28 is helpful but not required for visitation. Upon receipt of a G-28 or similar notice bearing a detainee's original signature and date, we will regard the detainee as represented by counsel for immigration purposes.

David Blair-Loy  
Page 2

Last, please note that immigration detainees at Barracks 5 have access to telephones, and those who have requested removal hearings before the Immigration Court have been provided with a list of free legal services pursuant to 8 C.F.R. 287.3(c). See, <http://www.usdoj.gov/eoir/probono/freelgchtCA.htm>. As such, we are confident that the immigration detainees in transit through Barracks 5 have been accorded appropriate access to counsel while in Border Patrol custody.

Thank you for bringing this important matter to my attention. If you have any questions or need any further information or assistance, please feel free to contact the NTA Coordinator.

Sincerely,



Mike J. Fisher  
Chief Patrol Agent

cc: Sean Riordan, ACLU Foundation of San Diego & Imperial Counties  
Philip Tencer, Cooley Godward Kronish LLP



INTERVIEW AND INTERROGATION – CHAPTER 16

**GENERAL**

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

**Attorneys and Representatives**

Regulations concerning attorneys and others (including organizations) who may represent persons in Service proceedings are contained in 8 C.F.R. 292, which covers recognition (and its withdrawal) accreditation, appearances, availability of records, and rights to representation. Filing or notice of entry of appearance as attorney or representative (Form G-28) permits communication between them and the Service. Representatives are allowed to review the record of proceedings in the instant case and to obtain copies of Service records as well as transcripts of evidence they furnish. {See 8 C.F.R. 292.4 (b), 8 C.F.R. 103.10 and 8 C.F.R. 103.20}


**INTERVIEW TECHNIQUES**

Non-responsive to the request


**CBP/ AILA Meeting of December 9, 2008**

**Questions Raised by AILA Members**

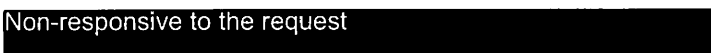
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7.) Immigration attorneys sometimes have clients who are detained at the CBP barracks in San Ysidro. Attorneys calling the barracks are often told that they cannot visit their clients at the barracks. However, they have been told that material witness attorneys are permitted to visit clients at the barracks. What is the CBP reasoning for denying immigration attorney's access to clients in the barracks?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

8.) Does CBP have a fax number to which attorneys can fax a G-28 document to the CBP barracks in San Ysidro for client signature?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

9.) May an attorney appear in person at the barracks in order to allow a client to sign a G-28 form or to review documents given by CBP to the client?

**Answer: The transit staging area known as Barracks 5 is operated by the Border Patrol. Any questions regarding Barracks 5 may be addressed to the Chief Patrol Agent, San Diego Sector, 2411 Boswell Road, Chula Vista, CA 91914.**

Non-responsive to the request

Non-responsive to the request

11.) After taking an alien into custody, how long does it normally take for CBP to file an NTA with the Immigration Court?

**Answer: CBP does not file the NTA with the immigration court. The filing of the NTA with the immigration is handled by ICE/DRO.**

12.) If a detained individual is not issued an NTA within 72 hours of being taken into custody, is there a specific supervisor who can be contacted to confirm why the individual is not being released or alternatively issued an NTA?

**All detained individuals must have their port processing completed and be transported to a detention facility within 24 hours. If the 24-hour clock is nearing its end, the individual may be transported to the Barracks 5 facility, where they may be housed temporarily while bed space is being secured at the CCA facility. If an individual is taken to the Barracks 5 facility and no NTA has been served yet, they will be brought back to the port of entry for the NTA to be served before being transported to the CCA facility.**

**8 CFR Excerpt:**

**§ Sec. 292.5 Service upon and action by attorney or representative of record.**

**(a) Representative capacity.** Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

**(b) Right to representation.** Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. **Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody. (Revised 9/24/93; 58 FR 49911)**

[37 FR 11471, June 8, 1972 and 45 FR 81733, Dec. 12, 1980; 46 FR 2025, Jan. 8, 1981]

(b)(6) (b)(7)(C)

**Inspector's Field Manual (IFM) Excerpt:**

**17.1 Deferred Inspection. (Revised 5/16/05; CBP 9-05)**

**(c) Processing a Deferred Inspection at the Onward Office.**

**(e) Attorney Representation at Deferred Inspection.** At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant.

**Inspector's Field Manual (IFM) Excerpt:**

**Chapter 44. Conveyance Seizures (Added INS - TM2)**

**44.8 Notification.**


**(d) Attorneys.** Attorneys should file a Notice of Entry of Appearance as Attorney or Representative on Form G-28. Once the Notice of Entry of Appearance has been filed, the attorney must be sent copies of all notification letters, copies of previous correspondence from the client(s) and decision letters. The attorney is entitled to a copy of any sworn statement executed by his/her client. No other investigative material should be released. Attorneys may attend personal interviews with the clients but not in lieu of the clients.



**Inspector's Field Manual (IFM) Excerpt:**

**17.8 Detention of Aliens at Ports-of Entry.(Revised 1/12/2009; CBP 04-08)9. PROCEDURES**

Non-responsive to the request



Non-responsive to the request



9.11.2.1 Any person detained for more than two hours after a personal search is conducted will be given the opportunity to have OFO personnel notify someone, including an attorney, of his or her delay unless probable cause has been established. The two hour notification process is only used during a continuation of the personal search process. Officers will utilize Attachment 2 of the Personal Search Handbook to complete the notification.

9.11.2.2 When the two hour notification period has elapsed, the supervisor will notify the ICE duty agent and/or a CBP enforcement officer prior to the notification. The detainee will not be given the opportunity to consult with an attorney at any time before Miranda warnings are required and such right is invoked by the detainee.

**EXCERPT Area Port of Houston/Galveston Texas**  
**Secure Detention and Transport of Detainees**  
*(Inclusion of SOP for Treatment of Unaccompanied Juveniles/Minors per Flores vs. Reno)*

- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Unless probable cause has been determined, persons detained for 2 hours or more for "personal search" (i.e. internal carriers/smugglers) reasons shall be provided with the opportunity to have a CBP Officer notify someone on their behalf of their delay, however, (b)(7)(E) must be notified first and at no time may they consult an attorney, prior to being read and invoking their Miranda rights. (Details of calls must be annotated on the I-213)
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]
- Non-responsive to the request [REDACTED]

## Excerpt Personal Search Handbook 3300-04b

### Medical Emergencies

Non-responsive to the request

[REDACTED]

### m. Using Technology

Non-responsive to the request

[REDACTED]

### n. Using Force

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[REDACTED]

### o. Detentions after 2 Hours

Any person detained 2 hours for a personal search will be given the opportunity to have CBP personnel notify someone, including an attorney, of their delay in CBP unless probable cause has been developed (see Attachment 2).

The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Annotate in the appropriate TECS and/or IDENT/ ENFORCE report the time permission was requested for the personal search. Time spent on prior interviews, baggage and vehicle examinations does not count toward the 2-hour notification period. The 2-hour notification process is only used during a continuation of the personal search process, e.g., beginning with a patdown search and moving to a medical examination or monitored bowel movement.

**When the 2-hour notification period has elapsed, immediately offer to notify someone of the delay on behalf of the detained person by telephone, or face-to-face if the contact is waiting outside the CBP area. Obtain a name, relationship, and telephone number (if the contact person is not waiting outside the CBP facility). The supervisor will notify the ICE duty agent and/or the CBP prosecution officer prior to the notification. NOTE: Although a detainee may request that**

**9**

Chapter 17: Inadmissible Aliens

Non-responsive to the request

(g) Attorney Representation at Deferred Inspection. At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBPO on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant. Any questions regarding attorney presence in the deferred inspection process may be referred to CBP Field Counsel. In general, applicants for admission in primary and secondary processing are not entitled to representation. See 8 CFR 292.5(b).

17.2 Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

(1) Non-responsive to the request

(2) Non-responsive to the request

(3) Non-responsive to the request

(4) Non-responsive to the request

(5) Non-responsive to the request

(6) Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

CBP – AILA/LACBA Liaison Meeting Questions  
9/14/09, 10:00am

**BORDER PATROL OPERATIONS**

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

**I-94 CORRECTIONS: POST-DEPARTURE**

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

Non-responsive to the request  
[Redacted]

*NOTE: The responses to the questions set forth in this document are informational only and designed to further knowledge about and communication with U.S. Customs and Border Protection. These responses do not create any private rights, benefits, or privileges for any private person or party, and are not legally binding upon CBP.*

6. As per 8 CFR 292.5(b), applicants for admission have the right to representation by counsel during primary/secondary inspection if they are “the focus of criminal investigation and ha[ve] been taken into custody.” What are the appropriate procedures for counsel to communicate with CBP in this situation to present documents and legal arguments on behalf of the applicant for admission? Alternatively, how can an applicant for admission in this situation effectively assert their right to communicate with counsel?

**Response:** Pursuant to 8 CFR 292.5(b) an alien at primary or secondary inspection is entitled to representation only when s/he becomes the focus of a criminal investigation and has been taken into custody. When the CBP officer examines an alien under these limited circumstances, the officer will advise the alien of his/her Miranda rights and afford the alien an opportunity to assert those rights and request that his/her attorney be present for the interrogation.

**INSPECTION / ADMISSION OF LPRs PENDING REMOVAL**

Non-responsive to the request



Non-responsive to the request



**ADJUSTMENT OF STATUS & PAROLE**

Non-responsive to the request



Non-responsive to the request



*NOTE: The responses to the questions set forth in this document are informational only and designed to further knowledge about and communication with U.S. Customs and Border Protection. These responses do not create any private rights, benefits, or privileges for any private person or party, and are not legally binding upon CBP.*

**Chapter 2 What You Need to Know for a Personal Search**

**i.** Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

**m.** Non-responsive to the request

Non-responsive to the request

**n.** Non-responsive

Non-responsive to the request

Non-responsive to the request

Non-responsive to the request

**o. Detentions after 2 Hours**

Any person detained 2 hours for a personal search will be given the opportunity to have CBP personnel notify someone, including an attorney, of their delay in CBP unless probable cause has been developed (see Attachment 2).

The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Annotate in the appropriate TECS and/or IDENT/ENFORCE report the time permission was requested for the personal search. **Time spent on prior interviews, baggage and vehicle examinations does not count toward the 2-hour notification period.** The 2-hour notification process is only used during a continuation of the personal search process, e.g., beginning with a patdown search and moving to a medical examination or monitored bowel movement.

When the 2-hour notification period has elapsed, immediately offer to notify someone of the delay on behalf of the detained person by telephone, or face-to-face if the contact is waiting outside the CBP area. Obtain a name, relationship, and telephone number (if the contact person is not waiting outside the CBP facility). The supervisor will notify the ICE duty agent and/or the CBP prosecution officer prior to the notification. **NOTE:** Although a detainee may request that



**Chapter 2 What You Need to Know for a Personal Search**


the 2-hour notification be made to an attorney, the detainee will not be given an opportunity to consult with counsel at any time before Miranda warnings are given by CBP officers and invoked by the detainee (see chapter 10, part II).

A CBP officer shall make the notification on behalf of the detainee. This should be accomplished by the supervisor or a passenger service representative (see Attachment 2).

The narrative of the TECS and/or IDENT/ENFORCE report shall include information on the person notified (friend or relative), what time the notification was made, and phone number of the person contacted. Should the detained person decide not to have someone contacted by CBP, the TECS and/or IDENT/ENFORCE report will note that decision.


**p. Prolonged Detentions for Medical Examinations**

Non-responsive to the request



**q. Written Reports**

Non-responsive to the request



## Attachment 2

### Contact Advisory of CBP Detention

*To be used once any person has been detained for 2 hours for a personal search. The detainee will be afforded the opportunity to have CBP notify someone of the delay. The 2-hour period for the notification requirement begins at the time the officer initiates the patdown, or when an officer receives permission from a supervisor for the personal search of a juvenile or a body scan examination. Time spent on prior interviews and baggage examination does not count toward the 2-hour period. Additionally, detentions due to the determination of admissibility into the U.S., and/or to the Detention and Removal (D&R) process of aliens, does not apply under this Contact Advisory.*

**I am Supervisory Inspector [name] of the U.S. Customs and Border Protection at [location]. Your [husband, sister, etc.] who has arrived in the United States [at airport locations, include flight number and country] has asked that we contact you. He [or she] is safe, but has not yet completed CBP processing. He [or she] is not available to speak with you during CBP processing, but we will ask him [or her] to let you know when processing is completed.**

Additional background information that may be provided:


1. The CBP has the authority under federal law, United States Code, Title 19, sections 482 and 1582, to detain individuals to determine if they are smuggling. CBP authority for detentions and personal searches has been upheld by the Supreme Court in the case of *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985).
2. The CBP detentions for personal searches do not constitute an arrest.
3. During such detentions, these individuals may not contact others without CBP authorization.
4. If an attorney has any additional questions about CBP legal authority or the search process, CBP can have its counsel contact the attorney.

**Chapter 10 Miscellaneous**

Non-responsive to the request



b. Non-responsive to the request



c. Non-responsive to the request

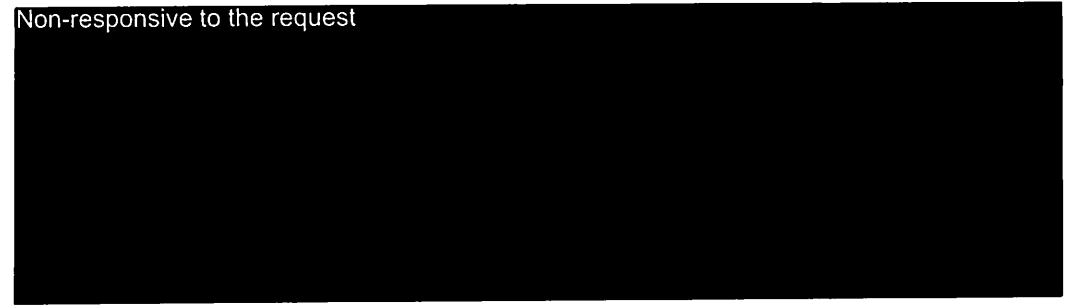


**d. Personal Searches beyond Patdown**

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

Responses to any interrogation may be inadmissible in any criminal prosecution unless the person has been given *Miranda* warnings and has knowingly and intelligently waived his rights.

e. Non-responsive to the request



~~FOR OFFICIAL USE ONLY~~**WEEKLY MUSTER****Week of Muster:** To commence on April 02, 2012**Topic:** Dealing with Attorneys and Other Representatives at a Port of Entry**POC:** Chief (b)(6) (b)(7)(C)**Office:** Office of Field Operations  
Blaine, Washington

The right of representation does not apply to a person who is being processed through primary or secondary inspection at a port of entry. . . . While the inspector has authority to admit an applicant for entry, he is not authorized to finally bar the alien (excluding Expedited Removal Proceedings, but the ER process under Sec. 235(b)(1) is reviewed and approved by a second line manager). Subsequent administrative proceedings (NTA) will determine whether or not an alien is admissible or excludable and it is at this point that the alien has the right to representation. (45 Fed Reg. 81732 (Dec. 12, 1980))

**2.9 Dealing with Attorneys and Other Representatives (Inspectors Field Manual)**

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the Adjudicator's Field Manual, Chapter 12, and 8 CFR 292.5(b).

**Title 8: Aliens and Nationality****PART 292—REPRESENTATION AND APPEARANCES** (Adjudicators Field Manual)[Browse Previous](#) | [Browse Next](#)***§ 292.5 Service upon and action by attorney or representative of record.***

(a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

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~~FOR OFFICIAL USE ONLY~~

(b) *Right to representation.* Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who shall be permitted to examine or cross-examine such person and witnesses, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. **Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.**

[37 FR 11471, June 8, 1972 and 45 FR 81733, Dec. 12, 1980; 46 FR 2025, Jan. 8, 1981; 58 FR 49911, Sept. 24, 1993]

**If and when CBP Officers encounter an attorney during the course of an inspection, Officers shall remain professional. If an attorney is interfering or impeding the inspection process, the Officer should immediately notify a Supervisor. The Supervisor shall advise the attorney that they must cease and desist all interference or be subject to removal from the premises. It is the services discretion to allow the attorney to remain in the lobby area away from the point of inspection. If the attorney fails to cooperate with CBP's request, the attorney will be asked by a Supervisor or Chief to leave the Port of Entry. The following two provisions of law may be applicable and the attorney may be advised of each if deemed applicable and necessary.**

18 U.S.C. 111;

(a) In General. - Whoever –

(1) forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties;

IA Security Policy excerpt. Part (d)

Section 11.15.2 references 41 CFR 102-74.450 and 41 CFR 102-74.390 as allowing for the fining and possible prosecution of individuals who do not conduct themselves appropriately in Federal buildings:

Prohibited from loitering, exhibiting disorderly conduct, or exhibit other conduct on property that:

- (a) Creates loud or unusual noise or a nuisance
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, officers, elevators, stairways or parking lots
- (c) Otherwise impedes or disrupts the performance of official duties by government employees

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- (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner

Section 11.15.1 provides:

The authority of a CBP Designated Official or Security Officer (local position) to take reasonable, necessary and lawful measures to maintain law and order and to protect personnel and property shall include the authority to issue a Prohibited Entry Notice... That authority also includes the removal from or the denial of access to, any CBP facility, site or space of individuals who threaten the orderly administration of the installation or site.

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Non-responsive to the request

Non-responsive to the request

**(d) No Shows.** Non-responsive to the request

Non-responsive to the request

**(e) Attorney Representation at Deferred Inspection.** At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant.

**(f) Medical Deferrals.** Non-responsive to the request

Non-responsive to the request

From: (b)(6) (b)(7)(C)  
Sent: Tuesday, July 24, 2012 9:40 AM  
To: (b)(6) (b)(7)(C)  
Subject: FW: Attorney Representation during Inspection

2003

-----Original Message-----

From: (b)(6) (b)(7)(C)  
Sent: Monday, August 25, 2003 3:24 PM  
Subject: Attorney Representation during Inspection

An applicant for admission is not allowed Attorney representation in primary or secondary inspection unless the applicant has become the focus of a CRIMINAL investigation AND has been taken into CUSTODY. This means that

Attorneys cannot be present during Primary or Secondary Inspection. A Supervisor may allow an Attorney to be present at Deferred Inspection as an observer or consultant to the applicant. An attorney in deferred should not be

allowed to direct the questioning or answer for the applicant.

The restriction on legal representation does not bar Inspectors from allowing a family member, friend or other accompanying helper form being present during primary or secondary inspection in appropriate circumstances such

as in the case on minors, the elderly, other inexperienced travelers or whenever this person can help in providing pertinent information. Inspectors should seek guidance from the responsible Supervisor in such cases.

The references for this are 8 CFR 292.5(b) and the Inspector's Field Manual, chapters 2.9 and 17.1(e)

Please remember to refer all telephone calls from Attorneys to the CBP Port Director.



(b)(6) (b)(7)(C)

**From:** (b)(6) (b)(7)(C)

**Sent:** Friday, July 27, 2012 1:34 PM

**To:** (b)(6) (b)(7)(C)

**Subject:** FW: RE: Restrictions on Access to Counsel

(b)(5)

(b)(6) (b)(7)(C)

Director, Field Operations - Baltimore  
410 (b)(6) (b)(7)(C)

**From:** (b)(6) (b)(7)(C)

**Sent:** Friday, July 20, 2012 2:52 PM

**To:** (b)(6) (b)(7)(C)

**Subject:** FW: RE: Restrictions on Access to Counsel

Here is what looks like the final draft of our response from May 18, 2011.

(b)(6) (b)(7)(C)

Border Security Coordinator  
Baltimore Field Office  
(410) (b)(6) (b)(7)(C) Office  
(410) Cell

**From:** (b)(6) (b)(7)(C)

**Sent:** Wednesday, May 18, 2011 2:06 PM

**To:** (b)(6) (b)(7)(C)

**Cc:**

**Subject:** RE: RE: Restrictions on Access to Counsel

With changes:

The law is very clear on the issue of representation for 'applicants for admission.' The distinction has to be clearly made between 'examination' as mentioned at the beginning of the paragraph, which applies to individuals who have already been admitted into the country by immigration officers, and an 'inspection' which is mentioned in the last sentence and which applies to an 'applicant for admission', that is somebody who is legally still outside the United States.

8CFR Section 292.5(b) states that "Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that nothing in the paragraph shall be construed to provide an applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody."

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney

present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule. (b)(5)

(b)(5)

(b)(5)

admission are subject to inspection to determine admissibility. There are any number of reasons an individual might be referred to Secondary to complete the inspection process and in some instances, it may take some time to finalize a determination. This may also be somewhat dependent on Port conditions, i.e. concurrent arrivals, higher referral rates, etc. Passengers are not routinely permitted to make phone calls during the inspection process. CBP Dulles makes every effort to balance this discretion while maintaining the integrity of the inspectional process.

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown a willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events. We will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to exercise discretion on those attorneys who disrespect and intimidate officers in an effort to sway the decision of admissibility. Our goal is to be as professional as possible, gather the facts from any source and make the correct decision.

(b)(6) (b)(7)(C)

Operations Specialist - Border Security  
Baltimore Field Office

Phone: (410)(b)(6) (b)(7)(C)

Cell: (410)(b)(6) (b)(7)(C)

Email: (b)(6) (b)(7)(C)[@dhs.gov](mailto:(b)(6) (b)(7)(C)@dhs.gov)

From: (b)(6) (b)(7)(C)

Sent: Wednesday, May 18, 2011 1:01 PM

To: (b)(6) (b)(7)(C)

Cc:

Subject: RE: RE: Restrictions on Access to Counsel

(b)(5)

8CFR Section 292.5(b) states that 'Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROVIDE AN APPLICANT FOR ADMISSION IN EITHER PRIMARY OR SECONDARY INSPECTION THE RIGHT TO

REPRESENTATION, UNLESS THE APPLICANT FOR ADMISSION HAS BECOME THE FOCUS OF A CRIMINAL INVESTIGATION AND HAS BEEN TAKEN INTO CUSTODY (b)(5)  
 (b)(5)

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule. Not all counsels respect the term 'discretion'. Unfortunately, some deferred

(b)(5)

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown a willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events. We will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to exercise discretion on those attorneys who disrespect and intimidate officers in an effort to sway the decision of admissibility. Our goal is to be as professional as possible, gather the facts from any source and make the correct decision.

(b)(6) (b)(7)(C)

Director, Field Operations - Baltimore  
 410 (b)(6) (b)(7)(C)

From: (b)(6) (b)(7)(C)

Sent: Wednesday, May 18, 2011 12:29 PM

To: (b)(6) (b)(7)(C)

Cc:

Subject: RE: Restrictions on Access to Counsel

Mr. (b)(6) (b)(7)(C)

Here is what I have so far, I am still waiting for details on the Dulles case to include it:

(b)(5)

8CFR Section 292.5(b) states that 'Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative....provided that NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED TO PROVIDE AN APPLICANT FOR ADMISSION IN EITHER PRIMARY OR SECONDARY INSPECTION THE RIGHT TO REPRESENTATION, UNLESS THE APPLICANT FOR ADMISSION HAS BECOME THE FOCUS OF A CRIMINAL INVESTIGATION AND HAS BEEN TAKEN INTO CUSTODY.'

Applicants for admissions in deferred status simply do not have the RIGHT to have an attorney present, and it has been left to the discretion of CBP officers to decide whether they are going to make an exception to the rule. (b)(5)

(b)(5)

(b)(5)

Ports within the Baltimore Field Office have traditionally worked very well with all immigration counsels who have shown willingness to abide by a few basic rules such as refraining from telling their clients not to answer questions, interrupting interviews or presenting their own, sanitized version of events and we will continue to cooperate with counsels who show the proper respect and understanding of the deferred inspection process, and will continue to use its right of discretion in cases of attorneys who disrespect and intimidate officers, in efforts (b)(5)

(b)(5)

Thank you,

(b)(6) (b)(7)(C)

Operations Specialist - Border Security

Baltimore Field Office

Phone: (410) (b)(6) (b)(7)(C) ext (b)(6) (b)(7)(C)

Cell: (410) (b)(6) (b)(7)(C)

Email: (b)(6) (b)(7)(C)@dhs.gov