

U.S. Customs and Border Protection Policy Statement and Required Actions Regarding Pregnant, Postpartum, Nursing Individuals, and Infants in Custody

A. Policy Statement

Persons who are pregnant, postpartum, or nursing may have humanitarian or public health needs that should be considered and appropriately addressed while they are in CBP custody. Similarly, infant children, whether born in CBP custody or encountered by CBP as infants, have unique medical and other care in custody needs that must be accounted for. This overarching policy addresses the needs of these vulnerable populations and supplements the following policies and directives related to persons in CBP custody.

- CBP Directive No. 3340-030B, *Secure Detention, Transport, and Escort Procedures at Ports of Entry*, dated August 8, 2008.
- CBP Directive No. 2210-004, *Enhanced Medical Support Efforts*, dated December 30, 2019.
- CBP Directive No. 3340-025F, *Reporting Significant Incidents to U.S. Customs and Border Protection WATCH*, dated November 2, 2021.
- CBP Directive No. 3340-026, *Significant Event Reporting*, dated May 11, 2021.
- CBP Policy Document, *National Standards on Transport, Escort, Detention, and Search*, dated October 2015.
- U.S. Border Patrol Policy No. 08-11267, *Hold Rooms and Short Term Custody*, dated January 31, 2008.
- CBP Policy Memorandum, *Clarification of At-Risk Population and Hold Room Monitoring Provisions in the CBP National Standards on Transport, Escort, and Detention*, dated May 24, 2019.
- CBP Policy Memorandum, *Pregnancy and Childbirth Guidance*, dated August 18, 2021.

B. Required Implementation Actions

Within 45 days of the CBP Commissioner's approval of this policy, the Office of Field Operations (OFO) and the United States Border Patrol (USBP) must submit their respective policy implementation plans to the Office of the Commissioner for approval prior to field-level dissemination and implementation. These plans must describe how each office will implement the provisions listed below. The plans submitted by OFO and USBP may differ based on each component's unique operational environments and funding considerations, but both plans must address and fully implement the care, custody, and documentation requirements in this policy statement. Likewise, any resulting local policies must adhere to the minimum standards and requirements outlined in this policy statement and may exceed those requirements as appropriate.

C. Definitions

The terms and definitions below apply for the purposes of this policy statement.

- Infant: A child under one year of age.
- Postpartum: Describing persons who have given birth in the last six months, whether in CBP custody or at another location.
- Pregnancy Loss: Examples include stillbirths and miscarriages.
- Health Interview: A standardized medical questionnaire (administered/documentated via CBP Form 2500) for persons in CBP custody, completed by CBP employees, Federal, State, or Local government employees assigned to work with CBP, or contracted medical personnel.
- Medical Assessment: An evaluation of a person used to assess medical status conducted by a health care provider.
- Medical Encounter: An interaction in which medical personnel conduct an evaluation of a potential medical issue of concern and take additional steps as appropriate, including treatment or referral and medical disposition.

D. Identification

For the purposes of this policy statement and the requirements set forth below, the term “covered individuals” refers to persons who are:

- Known or reported to be pregnant and have identified medical concerns.
- Known or reported to be pregnant and in their third trimester.
- In active labor or nursing.
- Known or reported to be postpartum or have recently experienced a pregnancy loss.
- Infants.

CBP personnel may consider all available information within the scope of their operations (including observation, self-reporting, self-referral, and referral by family members or companions) when determining if a person is pregnant, postpartum, or nursing, and when determining whether a child is an infant.

E. Medical Care

CBP places the highest priority on the health and well-being of persons in custody, including for covered individuals. Pursuant to existing CBP policy and procedures, CBP takes a multi-phased approach to identifying and addressing medical issues of concern. The first phase of efforts to identify and address medical issues starts in the field with agents and officers observing and identifying potential medical concerns for all persons in custody, including covered individuals, and notifying a CBP Emergency Medical Technician and/or Emergency Medical Services/911 as appropriate. For the second phase, CBP conducts initial health interviews on persons in custody at CBP facilities, including covered individuals, to identify medical issues of concern. For the third phase, subject to availability of resources and operational feasibility, CBP will ensure a medical

assessment is conducted on juveniles and persons with an identified medical concern, including covered individuals with an identified medical concern.

- At CBP facilities with onsite medical support on the Southwest Border, CBP offers a medical assessment to any reported or identified pregnant person, regardless of whether a medical issue of concern has been identified.¹ If the offer is accepted, the pregnant person receives a medical assessment and further disposition, as appropriate, according to existing CBP policies and procedures.
- At facilities without onsite medical support, pregnant persons will continue to receive initial health interviews and will receive a medical assessment if a potential medical issue of concern is identified.
- Persons, including covered individuals, with an identified medical issue of concern will receive a medical encounter onsite (at facilities where medical personnel are onsite) to directly address the medical issue if appropriate, or will be referred to the local health system for more definitive diagnosis and treatment.
- Persons, including covered individuals, returned to CBP custody from a local health system will receive appropriate follow-up care and final medical disposition.

F. Care in Custody

- Covered individuals are required to be given welfare checks at least once every 15 minutes.
 - CBP personnel must accurately document all welfare checks in the appropriate electronic system(s) of record.
 - Supervisors must validate that documentation is occurring in a timely and complete manner during each shift.
- Covered individuals must be made aware that they have regular access to snacks, water, milk, and juice.
- Covered individuals should be placed in the least restrictive setting possible, given facility and operational constraints.
- Every effort should be made to ensure that all covered individuals are not required to stand for long periods of time and are provided appropriate space to sit/rest/sleep.
- In cases where a covered individual has given birth in a medical facility and is returned to CBP custody, all medical discharge instructions should be followed by medical personnel to the greatest extent operationally feasible.

G. Care for Infants in CBP Custody

In addition to the requirements listed above in Section F, the following requirements apply to infants:

- Infants, whether born in CBP custody or prior to being taken into CBP custody, should be treated in accordance with all applicable legal requirements and CBP policies and procedures related to juveniles.

¹ Effective August 18, 2021, CBP began offering a medical assessment to any reported or identified pregnant person in CBP custody. See CBP Policy Memorandum, *Pregnancy and Childbirth Guidance*, dated August 18, 2021.

- If a mother chooses to breastfeed, every reasonable effort must be made to provide the mother with privacy while breastfeeding in an area that is not a bathroom.
- CBP facilities will have diapers, baby wipes, and infant formula available for infants. Infant formula must be inspected on a regular basis to ensure it has not reached or surpassed its expiration date.
- Within six months of implementation plans being issued, CBP facilities located within 100 miles of the Southwest Border (including forward operating bases), or where family units and children are regularly encountered, shall have a minimum of one Diaper Changing Station (DCS). The DCS must be easily accessible to family units and children. OFO and USBP shall provide certification of compliance to the Office of Facilities and Asset Management (OFAM). The DCS must be constructed of a material that is easily cleaned and sanitized, and CBP personnel shall ensure that they are regularly sanitized. Additionally, OFO and USBP will also work toward having a minimum of one DCS installed at all CBP facilities within one year of their respective implementation plan.
- Within six months of implementation plans being issued, CBP facilities located within 100 miles of the Southwest Border (including forward operating bases), or where family units and children are regularly encountered, shall have a minimum of one safe and secure sleeper/bassinet in which infants can sleep. All Centralized Processing Centers shall have a minimum of five secure sleepers/bassinets. Additionally, OFO and USBP must develop contingency plans for additional flat and roll-resistant sleeping arrangements in the event the number of infants exceeds the number of sleepers/bassinets. OFO and USBP shall provide certification of compliance to OFAM. The sleepers/bassinets must be constructed of a material that is easily cleaned and sanitized, and CBP personnel shall ensure they are regularly sanitized. OFO and USBP will also work towards having these items in all CBP facilities within one year of implementation of their respective plans.

H. Documentation Requirements

- CBP personnel must document all relevant interactions and care provided to covered individuals in the appropriate system(s) of record.
- OFO and USBP must establish a comprehensive, searchable process for documenting all known and reported pregnancies in the appropriate system(s) of record, as well as childbirths, in CBP custody, whether within a CBP facility (including vehicles) or at an external medical facility when the individual receiving care is still in CBP custody.
- Every childbirth in CBP custody is considered a significant incident and will be reported through the procedures established under CBP Directive No. 3340-025F, *Reporting Significant Incidents to U.S. Customs and Border Protection WATCH*, dated November 2, 2021.

I. No Private Right of Action

This is a CBP internal policy statement. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

A handwritten signature in black ink, appearing to read 'Troy A. Miller', with a long horizontal stroke extending to the right.

Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection