

Authority of U.S. Customs and Border Protection Agents: An Overview
And Annual Update of Federal Poverty Guidelines

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U.S. Customs and Border Protection (CBP) was established in 2003 as an arm of the Department of Homeland Security (DHS). It combined agents from the U.S. Customs Service, the former Immigration and Naturalization Service and agricultural inspectors, who monitor the ports of entry, and the U.S. Border Patrol, who monitor the area between ports of entry.

Today, CBP is the largest law enforcement agency within DHS, with more than 58,000 employees. As federal officers, CBP agents may only exercise the authority granted under federal statutes and regulations. This fact sheet provides a snapshot of search, interrogation, and arrest powers currently authorized under the law.

Authority to Search

At Ports of Entry

Under the Fourth Amendment, searches of persons arriving at U.S. ports of entry and personal effects in their possession, including computers or other personal devices, are reasonable per se. Thus, CBP agents do not need to obtain a warrant or have reason to suspect an individual is engaged in illegal activity before performing a search. It is unclear whether this rule also applies to CBP efforts to interdict outgoing traffic of persons who are leaving the United States.

Between Ports of Entry

CBP agents may search for noncitizens on any “railway car, aircraft, conveyance, or vehicle” that is “within a reasonable distance from any external boundary of the United States.” Under federal regulations, “reasonable distance” means within 100 air miles from any external boundary of the United States. In the context of roving border patrols within 100 miles of the border, CBP agents may pull over cars to question occupants about their citizenship or immigration status if they have “reasonable suspicion” of unlawful activity. Standing alone, an occupant’s ethnicity is not sufficient to establish reasonable suspicion. Pulling over a vehicle solely on the basis of an occupant’s race is an “egregious” Fourth Amendment violation. CBP agents may search for noncitizens on “private lands, but not dwellings” within 25 miles from the border. Thus, to enter a home, CBP officers must still obtain a judicially issued search warrant or the consent of the occupants.

Authority to Interrogate

CBP agents may “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.” As a result, the government must show that “immigration officials believed a person was an alien before questioning him.” When questioning a noncitizen about his right to be or remain in the United States, CBP agents, like all law enforcement officers, cannot threaten the person being questioned or deny him his legal rights ... If such coercion takes place, any statements obtained may be excluded in a subsequent removal proceeding under the Due Process Clause of the Constitution.

Authority to Arrest

For Immigration Offenses

CBP agents may arrest any noncitizen without a warrant who “in his presence or view is entering or attempting to enter the United States in violation of any law.” CBP agents may arrest any noncitizen without a warrant whom they have “reason to believe” (i.e. probable cause) is in the United States in violation of law and is likely to escape before a warrant can be issued.

For Non-Immigration Offenses

CBP agents may make arrests for any offense against the United States committed in the presence of the officer, or for any felony the officer has reasonable grounds to believe (i.e. probable cause) the person to be arrested has committed. To exercise this arrest authority, the CBP agent must be in the course of duties related to the enforcement of the immigration laws and must find there to be a likelihood that the person will escape before an arrest warrant may be obtained.

Annual Update of Federal Poverty Guidelines

The Department of Health and Human Services (HHS) has published its annual update of the Federal Poverty Guidelines. A notice announcing the 2012 update was published in the Federal Register of January 26, 2012.

The poverty guidelines are used by a number of federal programs to determine eligibility for benefits or services. In Immigration law, the guidelines are relevant for “public charge” issues among others, and may also be useful in obtaining waivers of some application fees for certain indigent aliens. They are particularly important in complying with the affidavit of support requirements imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

The 2012 guidelines are effective as of the date of publication.

The IIRIRA created the Immigration & Nationality Act (INA) Section 213A, which provides that sponsors of all family-based and some employment-based immigrants must provide a legally enforceable affidavit (Form I-864), illustrating that they are capable of maintaining an annual income equal to at least 125 percent of the HHS poverty guidelines. This calculation takes into account the total 'family unit' for which the sponsor will be responsible. A "family unit" is defined as "members of the sponsor's household (including family and non-family dependents) plus the total number of other dependents and aliens sponsored by that sponsor." The 'other dependents and aliens sponsored by that sponsor' may not necessarily be a part of the household.

The new poverty guidelines do not necessarily require persons who already filed affidavits to update them. According to the USCIS, if between the time of filing the I-864 and the adjustment of status interview, the poverty income guidelines are updated, the sponsor is not required to submit a new affidavit of support. As long as the affidavit demonstrated that the sponsor has sufficient income to meet the 125 percent income requirement under the new guidelines, it will be accepted.

2012 POVERTY GUIDELINES

Minimum income requirements for use in completing Form I-864, Affidavit of Support under Section 213A

For the 48 Contiguous States and the District of Columbia

No. of Dependents	100 % of Poverty Line	125 % of Poverty Line
1	\$ 11,170	\$ 13,963
2	15,130	18,913
3	19,090	23,863
4	23,050	28,813
5	27,010	33,763
6	30,970	38,713
7	34,930	43,663
8	38,890	48,613
	Add \$3,960 for each additional member	Add \$4,950 for each additional member

Note: For Alaska & Hawaii, the poverty guidelines are higher.