



U.S. Immigration
and Customs
Enforcement

MEMORANDUM FOR: Assistant Directors
All Deputy Assistant Directors
All Special Agents in Charge

FROM: Marcy M. Forman
Director, Office of Investigations

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SUBJECT: Field Guidance on Handling Detained or Seized Electronic Media
from Persons of National Security Interest at Ports of Entry

This memorandum provides guidance and clarifies responsibilities related to the detention or seizure of electronic media from persons of national security interest at Ports of Entry (POE), and serves as a reminder of current U.S. Immigration and Customs Enforcement (ICE) policies regarding the use of border search authority as it relates to electronic media. ICE's ability to exploit this media represents a unique opportunity to collect, analyze and disseminate valuable information that directly supports the missions of ICE and the Department of Homeland Security (DHS).

BORDER SEARCHES

In accordance with customs border search authorities, pursuant to section 1582 of Title 19, United States Code, ICE may conduct routine stops and searches of merchandise and persons at the U.S. border without any individualized suspicion. Additionally, pursuant to immigration authorities found in sections 1225 and 1357 of Title 8, United States Code, ICE may inspect all aliens who apply for admission; take and consider evidence concerning the privilege of any person to enter, pass through, or reside in the United States that is material or relevant to enforcement of immigration laws; and conduct a search without a warrant of any person and the personal effects in their possession when there is reasonable cause to suspect a basis for denying admission to the United States. The objective of a border search is generally twofold: (1) to inspect for merchandise being imported contrary to law; and (2) to obtain information or evidence relating to an individual's admissibility. ICE may detain or seize anything that may be evidence of a crime or indicates criminal activity. Computers, cellular phones, and other electronic media are considered closed containers with regard to border search authority and are subject to being opened and searched by ICE. Regardless of citizenship, all persons seeking admission to the United States, and their merchandise are subject to border search. There is no requirement that this search be conducted with the knowledge of the person possessing the electronic media.

ICE may review, copy, image, detain or seize, and disseminate electronic media if a violation of law is immediately evident, if further review by ICE is needed to make such a determination, or if technical assistance (e.g., translation services) is deemed necessary. Electronic media detained or seized during a border search shall not be retained by ICE longer than is necessary to determine its relevance to furthering the law enforcement mission of ICE. Any information deemed relevant will be evaluated periodically to determine its continuing significance.

Subsequent to a border search, ICE may share obtained information relating to national security with law enforcement and intelligence agencies. It is important to note that any electronic media obtained through border search authority must be searched by ICE and deemed to be of law enforcement or intelligence interest prior to any sharing with an outside agency. Pursuant to current authorities, law enforcement information may be exchanged between the law enforcement components of DHS and other local, state, Federal, and foreign law enforcement agencies in accordance with specific agreements and other legal authorities. All requests for information from the intelligence community must be coordinated with the ICE National Security Integration Center (NSIC).

ELECTRONIC MEDIA – PERSONS OF NATIONAL SECURITY INTEREST/CONCERN

Pursuant to existing referral agreements between ICE and U.S. Customs and Border Protection (CBP), all CBP interdiction matters related to terrorism or threats to national security are referred to ICE and the local Joint Terrorism Task Force (JTTF). CBP also notifies the National Targeting Center (NTC) and, through that venue, the ICE representative at the NTC will notify the ICE JTTF duty agent in the field to respond, as appropriate, per ICE policy. In most cases, the ICE JTTF duty agent will respond to the POE to interview the subject. An ICE JTTF duty agent and/or ICE Computer Forensics Agent (CFA) may conduct a cursory search of the subject's electronic media and detain or image the electronic media to conduct a more thorough examination. (NOTE: Electronic media that contains data or images that are obviously contraband should be seized in accordance with established procedures.)

In each case, the CFA (or ICE JTTF duty agent if no CFA is available) shall document the search and/or retention of information contained on the electronic media of persons of national security interest by posting a Significant Incident Report (SIR) in the Significant Event Notification System. When electronic media is physically detained, rather than merely making a forensic image of such media, that detention should be documented in the Seized Asset and Case Tracking System, as per existing ICE policy. The (b)(7)(E) seizure number should be referenced in the SIR.

Due to terrorist organizations' use of sophisticated measures (embedded documents/images, passwords, etc.), and routine need for translation services, the ICE JTTF duty agent may request additional technical assistance prior to determining if the electronic media contains contraband or evidence of a violation of law. In these cases, the agent should contact NSIC to arrange for additional technical assistance or review.

Questions regarding the search, detention and/or seizure of electronic media from persons of national security interest can be directed to Program Manager (b)(6),(b)(7)(C) ICE NSIC, at (202) 616-(b)(6),(b)(7)(C) or via email at (b)(6),(b)(7)(C)@dhs.gov.