

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System

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DIRECTIVE TITLE: BORDER SEARCHES OF DOCUMENTS AND ELECTRONIC MEDIA

1. **PURPOSE and SCOPE.** This Directive sets forth the legal guidelines and establishes policy and procedures within ICE for border search authority to search, review, retain, and share certain documents and electronic media possessed by individuals during investigative operations at the border, the functional equivalent of the border, and the extended border. This Directive applies to all ICE personnel who meet the definition of "customs officer" under 19 U.S.C. § 1401(i) ("ICE Special Agents"), other domestic or foreign law enforcement officers cross designated by ICE as customs officers, and persons whose assistance ICE demands under 19 U.S.C. § 507 (collectively, "ICE personnel"). This Directive applies to searches of documents and electronic media of all persons arriving in, departing from, or transiting through the United States, unless specified otherwise. Each operational office will maintain appropriate mechanisms for internal audit and review of compliance with the procedures outlined in this policy.

This Directive applies to border search authority only. Nothing in this Directive limits the authority of ICE personnel to act pursuant to other authorities such as a warrant, search incident to arrest, or a routine inspection of an applicant for admission.

2. **AUTHORITIES/REFERENCES.**
 - 2.1 19 U.S.C. § 482, Search of vehicles and persons.
 - 2.2 19 U.S.C. § 507, Assistance for Officers.
 - 2.3 19 U.S.C. § 1401(i), Customs Officers.
 - 2.4 19 U.S.C. § 1461, Inspection of merchandise and baggage.
 - 2.5 19 U.S.C. § 1467, Special inspection, examination, and search.
 - 2.6 19 U.S.C. § 1496, Examination of baggage.
 - 2.7 19 U.S.C. § 1499, Examination of merchandise.

- 2.8 19 U.S.C. § 1581, Boarding vessels.
 - 2.9 19 U.S.C. § 1582, Search of persons and baggage; regulations.
 - 2.10 19 U.S.C. § 1583, Examination of outbound mail.
 - 2.11 19 U.S.C. § 1595, Searches and seizures.
 - 2.12 19 C.F.R. Part 145, Mail Importations.
 - 2.13 19 C.F.R. Part 162, Inspection, Search, and Seizure.
 - 2.14 8 U.S.C. § 1225, Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing.
 - 2.15 8 U.S.C. § 1357, Powers of immigration officers and employees.
 - 2.16 8 C.F.R. § 236.1(e), Privilege of Communication.
 - 2.17 31 U.S.C. § 5317, Search authority for compliance with Currency and Monetary Instruments Reporting Act.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** Customs Directive 3340-006A, entitled "Procedures for Examining Documents and Papers," dated February 4, 2000, and all other directives, memoranda, bulletins, manuals, handbooks, and other guidelines and procedures relating to this subject and issued by the former U.S. Customs Service or the former U.S. Immigration and Naturalization Service no longer apply to ICE. All other issuances on this subject issued by ICE prior to the date of this Directive are hereby superseded, with the exception of the March 5, 2007, OI guidance entitled "Field Guidance on Handling Detained or Seized Electronic Media from Persons of National Security Interest at Ports of Entry."
4. **BACKGROUND.** ICE is responsible for ensuring compliance with customs, immigration, and other Federal laws at the border. To that end, ICE Special Agents may review documents, books, pamphlets, and other printed material, as well as computers, disks, hard drives, and other electronic or digital storage devices. These searches are part of ICE's long-standing practice and are essential to uncovering vital law enforcement information. For example, searches of documents and electronic media are a crucial tool for detecting information concerning terrorism, narcotics smuggling, and other national security matters; alien admissibility; contraband including child pornography, illegal monetary instruments, and information in violation of copyright or trademark laws; and evidence of embargo violations or other import or export control laws.

5. DEFINITIONS.

- 5.1 Assistance.** The use of third party analytic resources, outside of ICE, such as language processing, decryption, and subject matter expertise, to assist ICE in viewing the information contained in documents and electronic media or in determining the meaning, context, or value of information contained therein.
- 5.2 Documents.** All papers and other written documentation including, but not limited to, those relating to the alien's identity and/or admissibility (e.g., passports, visas, credit cards, licenses, social security cards, evidence of direct threats, criminal terrorist or a threat to national security); those relating to the import and/or export of goods and merchandise to or from the United States; other materials such as books, pamphlets, and printed/manuscript material; monetary instruments; and written materials commonly referred to as "pocket trash" or "pocket litter."
- 5.3 Electronic Media.** Any device capable of storing information in digital or analog form. Examples include: hard drives, compact disks, digital versatile disks, flash drives, portable music players, cell phones, pagers, beepers, and video and audio tapes and disks.
- 5.4 Letter Class Mail.** U.S. first class mail and its international equivalent. This includes postcards, aerogrammes, letter packets, etc., mailed at the letter class rate or equivalent class or category of postage. To be considered first class mail, a letter must be presently in the U.S. postal system. Only articles presently within the U.S. postal system are deemed "mail," even if they are stamped. Letters that are to be mailed, whether carried or in baggage, are not considered to be letter class mail.
- 6. POLICY.** ICE Special Agents acting under border search authority may search, detain, seize, retain, and share documents and electronic media consistent with the guidelines and applicable laws set forth herein. In the course of a border search, and absent individualized suspicion, officers can review the information transported by any individual attempting to enter, reenter, depart, pass through, or reside in the United States, subject to the requirements and limitations provided herein. Assistance to complete a thorough border search may be sought from outside agencies and entities, on a case by case basis, as appropriate.

NOTE: Nothing in this policy limits the authority of ICE Special Agents to make written notes or reports or to document impressions relating to a border encounter.

7. RESPONSIBILITIES.

- 7.1** The Directors of OI, OPR, and OIA have oversight over the implementation of the provisions of this Directive.

- 7.2 Special Agents in Charge and Attachés are responsible for implementing the provisions of this Directive and ensuring that their subordinates receive a copy of this Directive and are familiar with its contents.
- 7.3 Attachés are responsible for ensuring coordination with their host countries and representative Ambassadors, as appropriate, before conducting any such border search outside of the United States.
- 7.4 ICE personnel are responsible for complying with the provisions of this Directive and must know the limits of ICE authority and use this authority judiciously.

8. PROCEDURES.

8.1 Border Searches by ICE Special Agents.

- 1) Border searches of documents and electronic media must be performed by an ICE Special Agent or other properly authorized officer with border search authority, such as a CBP Officer or Border Patrol Agent, persons cross designated by ICE as customs officers, and persons whose assistance to ICE is demanded under 19 U.S.C. § 507.
- 2) At any point during a border search, documents and electronic media, or copies thereof, may be detained for further review, either on-site at the place of detention or at an off-site location, including a location associated with a demand for assistance from an outside agency or entity (see Section 8.4).
- 3) Except as noted below in Section 8.5(2)(c), if, after reviewing the documents and electronic media, probable cause to seize the documents or electronic media does not exist, all detained copies must be destroyed. Any originals must be returned to the traveler as expeditiously as possible.

8.2 Chain of Custody.

- 1) Detentions of documents and electronic media. Whenever ICE detains documents or electronic media, or copies thereof, the Special Agent will initiate a chain of custody form (CBP 6051-D) or other appropriate documentation.
- 2) Seizures of documents and electronic media. Whenever ICE seizes documents or electronic media, or copies thereof, the seizing Special Agent is to enter the seizure into the Seized Asset and Case Tracking System (SEACATS) via the completion of a Search, Arrest, and Seizure Report (SAS). Additionally, the seizing agent must complete the appropriate chain of custody forms (Customs Form 6051) or other appropriate documentation.

8.3 Reasonable Time.

- 1) ICE personnel are to complete review of any detained or seized documents and electronic media in a reasonable time.
- 2) ICE Special Agents seeking assistance from other Federal agencies or entities are responsible for ensuring that the results of the review are received in a reasonable time (see Section 8.4(5)).
- 3) In determining “reasonable time,” ICE Special Agents should consider the following factors:
 - a) The nature of the documents or electronic media;
 - b) Whether the traveler was deprived of his or her property and, if so, whether the traveler was given the option of continuing his or her journey with the understanding that ICE would return the property once its border search was complete or a copy could be made;
 - c) The elapsed time between the detention, the initial border search, and the continued border search, including any assistance demand;
 - d) Whether assistance was sought and the type of such assistance;
 - e) Whether ICE followed up with the agency or entity providing assistance to ensure a timely review;
 - f) The amount of information needing review; and
 - g) Any unanticipated exigency that may arise.

8.4 Assistance by Other Federal Agencies and Non-Federal Entities

- 1) Translation and Decryption
 - a) During a border search, ICE Special Agents may encounter information in documents or electronic media that is in a foreign language and/or encrypted. To assist ICE in determining the meaning of such information, ICE Special Agents may demand translation and/or decryption assistance from other Federal agencies or non-federal entities.
 - b) ICE Special Agents may seek such assistance absent individualized suspicion.
 - c) ICE Special Agents shall document and record such demands for translation and decryption assistance.

2) Subject Matter Assistance.

- a) During a border search, ICE Special Agents may encounter information in documents or electronic media that are not in a foreign language or encrypted, but that nevertheless require referral to subject matter experts to determine whether the information is relevant to the laws enforced and administered by ICE. For the purpose of obtaining such subject matter expertise, ICE Special Agents may create and transmit a copy of information to other Federal agencies or non-federal entities.
 - b) ICE Special Agents may demand such assistance when they have reasonable suspicion of activities in violation of the laws enforced by ICE.
 - c) ICE Special Agents shall document and record such demands for subject matter assistance, as appropriate.
- 3) Originals. For the purpose of obtaining subject matter expertise, ICE Special Agents may create and transmit copies of information to other Federal agencies or non-Federal entities. Any original documents and media should be transmitted only when necessary to render the demanded assistance. If it is not necessary to transmit original documents and media, ICE Special Agents should return originals to the traveler immediately, barring continuing reasonable suspicion to detain.

4) Responses Required.

- a) ICE Special Agents shall inform assisting agencies or entities that they are to provide results of translation and decryption as expeditiously as possible. Additionally, ICE Special Agents shall ensure that assisting agencies and non-federal entities are aware that responses to ICE must include any findings, observations, and conclusions drawn from their review that may relate to the laws enforced by ICE.
- b) If at any time an ICE Special Agent or his/her supervisor are not satisfied with the assistance being provided, the timeliness of assistance, or any other articulable reason, the demand for assistance should be revoked and the ICE Special Agent shall require the assisting agency or non-federal entity to return all documents and electronic media to ICE as expeditiously as possible.

5) Time for Assistance.

- a) Assistance should be accomplished within a reasonable period of time in order to preserve the status of the documents or electronic media and the integrity of the border search.

- b) It is the responsibility of the ICE Special Agent demanding the assistance to ensure timely responses from assisting agencies or entities. If a demand for assistance is made outside of the Department of Homeland Security, within the first thirty days after demanding the assistance, the ICE Special Agent demanding the assistance shall contact the assisting agency or entity for a status report on the request. If the assisting agency or entity anticipates needing more than thirty days to complete its review and analysis, the ICE Special Agent demanding the assistance shall continue to communicate with the assisting agency or entity on a regular basis until the review is complete and the results have been received. The ICE Special Agent demanding the assistance shall document each communication with the assisting agency or entity. If assisting agencies or entities are not acting in a reasonable time, the ICE Special Agent demanding the assistance shall consult with a supervisor on what action is appropriate.
- c) Unless otherwise governed by a Memorandum of Understanding, or similar mechanism, each demand for assistance shall include a letter requesting assistance and detailing the context of the search requested, ICE's legal parameters regarding the search, retention, and sharing, as well as any relevant timeframes, including those described in this section.

8.5 RETENTION, SHARING, SAFEGUARDING AND DESTRUCTION.

1) By ICE.

- a) Law Enforcement Purposes. When ICE Special Agents determine there is probable cause of unlawful activity—based on a review of information in documents or electronic media or on other facts and circumstances—they may seize and retain the originals and/or copies of relevant documents or electronic media or relevant portions thereof, as authorized by law.
- b) Immigration Purposes. To the extent authorized by law, ICE may retain information relevant to immigration matters in ICE record systems. Use, retention, and sharing of such information is governed by the privacy and data protection standards of the system in which such information is retained.
- c) Sharing. Copies of documents or electronic media, or portions thereof, which are retained in accordance with this section, may be shared by ICE with Federal, state, local, and foreign law enforcement agencies in accordance with applicable law and policy.
- d) Safeguarding Data During Storage and Transmission. ICE will appropriately safeguard information detained, copied, or seized under this directive while in ICE custody and during transmission to an outside entity. Appropriate safeguards include keeping materials in locked cabinets or rooms,

documenting and tracking copies to ensure appropriate disposition, and appropriate safeguards during transmission such as encryption of electronic media or physical protections (e.g., locked containers). Any suspected loss or compromise of information that contains personal data detained, copied, or seized under this directive must be reported immediately to the ICE Help Desk.

- e) Destruction. Copies of documents or electronic media, or portions thereof, determined to be of no relevance to ICE will be destroyed. Such destruction must be documented by the responsible ICE Special Agent. Any originals will be returned to the traveler as expeditiously as possible at the conclusion of the negative border search.

2) By Assisting Agencies and Non-Federal Entities.

- a) Retention During Assistance. All documents and electronic media, whether originals or copies, provided to an assisting Federal agency may be retained by that agency for the period of time needed to provide the requested assistance to ICE.
- b) Return or Destruction. At the conclusion of the requested assistance, all documents and electronic media must be returned to ICE as expeditiously as possible. In the alternative, the assisting Federal agency may certify to ICE that any copies in its possession have been destroyed or it may advise ICE in accordance with Section 8.5(2)(c). In the event that any original documents or electronic media were transmitted, they must not be destroyed; they are to be returned to ICE.
- c) Retention with Independent Authority. Copies may be retained by an assisting Federal agency only if and to the extent that it has the independent legal authority to do so—for example, when the information is of national security or intelligence value. In such cases, the retaining agency must advise ICE of its decision to retain certain information on its own authority. In the event that any original documents or electronic media were transmitted, the assisting Federal agency may make a copy for its retention; however, any originals must be returned to ICE.

8.6 Non-Federal Entities.

- 1) ICE may provide copies of documents or electronic media to an assisting non-federal entity, such as a private language translation or data decryption service, only for the period of time needed by that entity to render the requested assistance.
- 2) Upon the completion of assistance, all copies of the information in the possession of the entity must be returned to ICE as expeditiously as possible.

8.7 Review and Handling of Certain Types of Information:

1) Attorney-Client Privilege.

- a) Occasionally, an individual claims that the attorney-client privilege prevents the search of his or her information at the border. Although legal materials are not necessarily exempt from a border search, they may be subject to special handling procedures.
- b) Correspondence, court documents, and other legal documents may be covered by attorney-client privilege. If ICE personnel suspect that the content of such a document may constitute evidence of a crime or otherwise pertain to a determination within the jurisdiction of ICE, the officer must seek advice from the ICE Office of the Chief Counsel or the appropriate U.S. Attorney's office before conducting a search of the document.

2) Sealed Letter Class Mail.

- a) Border searches of mail are governed by particularized law and policy. *See* 19 C.F.R. Part 145; 19 U.S.C. § 1583. Any possible border search of letter class mail ("LC") shall be coordinated with CBP Officers assigned to such international mail facility and must conform to the guidelines set forth in CBP Handbook 3200-06A, International Mail Operations and Enforcement Handbook, or any successor document. Additionally, the U.S. Postal Service requires that it be notified and present at any border search of LC mail. Consultation with the ICE Office of Chief Counsel or the local U.S. Attorney's Office is recommended when considering a border search of any article that may be considered mail.
- b) Letters carried by individuals or private carriers such as DHL, UPS, or Federal Express, for example, are not considered to be mail, even if they are stamped, and thus are subject to border search as provided in this Directive. *See* 19 C.F.R. § 145.3.

- 3) **Business Information.** If, in the course of a border search, ICE personnel encounter business or commercial information, ICE personnel shall treat such information as business confidential information. Depending on the nature of the information presented, the Trade Secrets Act, the Privacy Act, and other laws may specifically govern or restrict handling of the information, including criminal penalties for unauthorized disclosure.

- 4) **Identification and travel documents.** Even without any suspicion of illegality, for legitimate, government purposes, ICE personnel may copy, retain, and share:
 - (1) identification documents such as United States or foreign Passports, Certificates of Naturalization, Seaman's Papers, Airman Certificates, driver's licenses, state identification cards, and similar governmental identification documents, and

(2) travel documents that relate to the person's mode and date of travel into or out of the United States.

9. **ATTACHMENTS.** None.

10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees; or any other person.

Approved Julie L. Myers
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