

Customs and Border Protection
Office of Chief Counsel
Assistant Chief Counsel (Training)

CBP Officer Basic Training C2900 - Law Course Student Outline



U.S. Customs and
Border Protection

CONTENTS

Sources of Authority Review	7
Fourth Amendment Law.....	13
Border Search Law	22
Applied Border Authority.....	26
Border Crimes and Violations	38
CBP Officer's Role in the Legal Process	49
Appendix	55

CBP Officer Basic Training – Law Course

Suggested Reading Assignments: ***Law Course for Customs and Border Protection Officers*** ***(Abridged)***

NOT RESPONSIVE



CBP Officer Basic Training – Law Course

Enabling Performance Objectives

NOT RESPONSIVE



NOT RESPONSIVE



CBP Officer Basic Training – Law Course

Terminal Performance Objectives

NOT RESPONSIVE



I. Sources of Authority Review

A. Constitutional structure of the federal government

1. Legislative branch (Congress) *makes laws* by enacting statutes.
2. Executive branch (President) *enforces laws* through various departments and agencies, which adopt regulations.
3. Judicial branch *interprets laws* when a legal dispute arises.

B. Sources of authority – basic rules about what CBP officers can and cannot do

1. Constitution

- a) Gives Congress the authority to regulate trade and commerce with foreign nations, collect taxes and duties, and establish rules for citizenship, naturalization, and immigration.
- b) Places limits on all government conduct in order to protect the people's rights

2. Statutes

- a) The Constitution (Article I, Section 8) gives Congress the power to regulate trade with foreign nations and establish rules for the admission of aliens into the U.S.
- b) Congress exercises that power by passing statutes that:
 - (1) establish the rules for foreign trade and admission of aliens, and
 - (2) authorize government officers to enforce those rules
- c) All government conduct – even conduct authorized by Congressional statutes – is subject to Constitutional limitations, including the limitations imposed by the Fourth and Fifth Amendments
- d) Therefore, a CBP Officer's legal authority is based on two things:
 - (1) Statutory authority – what has Congress authorized officers to do?

AND

- (2) Constitutional limits – what limits does the Constitution place on officers when they exercise their statutory authority

e) Primary sources of statutory authority for CBP officers:

(1) U.S. Code Title 19

(a) 19 U.S.C. § 482: Search of vehicles and persons

(b) 19 U.S.C. § 1581: Boarding vessels

(c) 19 U.S.C. § 1582: Search of persons and baggage

(d) 19 U.S.C. § 1589a: Enforcement authority of customs officers

(e) 19 U.S.C. § 1595: Searches and seizures

(2) U.S. Code Title 8/INA

(a) 8 U.S.C. § 1225/INA 235: Inspection by immigration officers; expedited removal of inadmissible arriving aliens; referral for hearing

(b) 8 U.S.C. § 1357/INA 287: Powers of immigration officers and employees

f) Congress may not authorize conduct that goes beyond what the Constitution permits:

(1) Example: 19 U.S.C. § 1581(a) authorizes any customs officer to board any vehicle at any place in the U.S. and search the vehicle and any person on board.

(2) Result: Because the statute authorizes searches that go beyond what the Fourth Amendment permits, courts have decided that the authority conferred by this statute must be limited to seizures and searches at the border to be consistent with the Fourth Amendment

3. Regulations

a) Agencies are authorized by Congress to propose and adopt regulations that implement the rules set forth in statutes

b) Regulations provide detailed guidance on the way in which statutes will be enforced and place some limitations on the way officers exercise their statutory authority

4. CBP policies and Directives

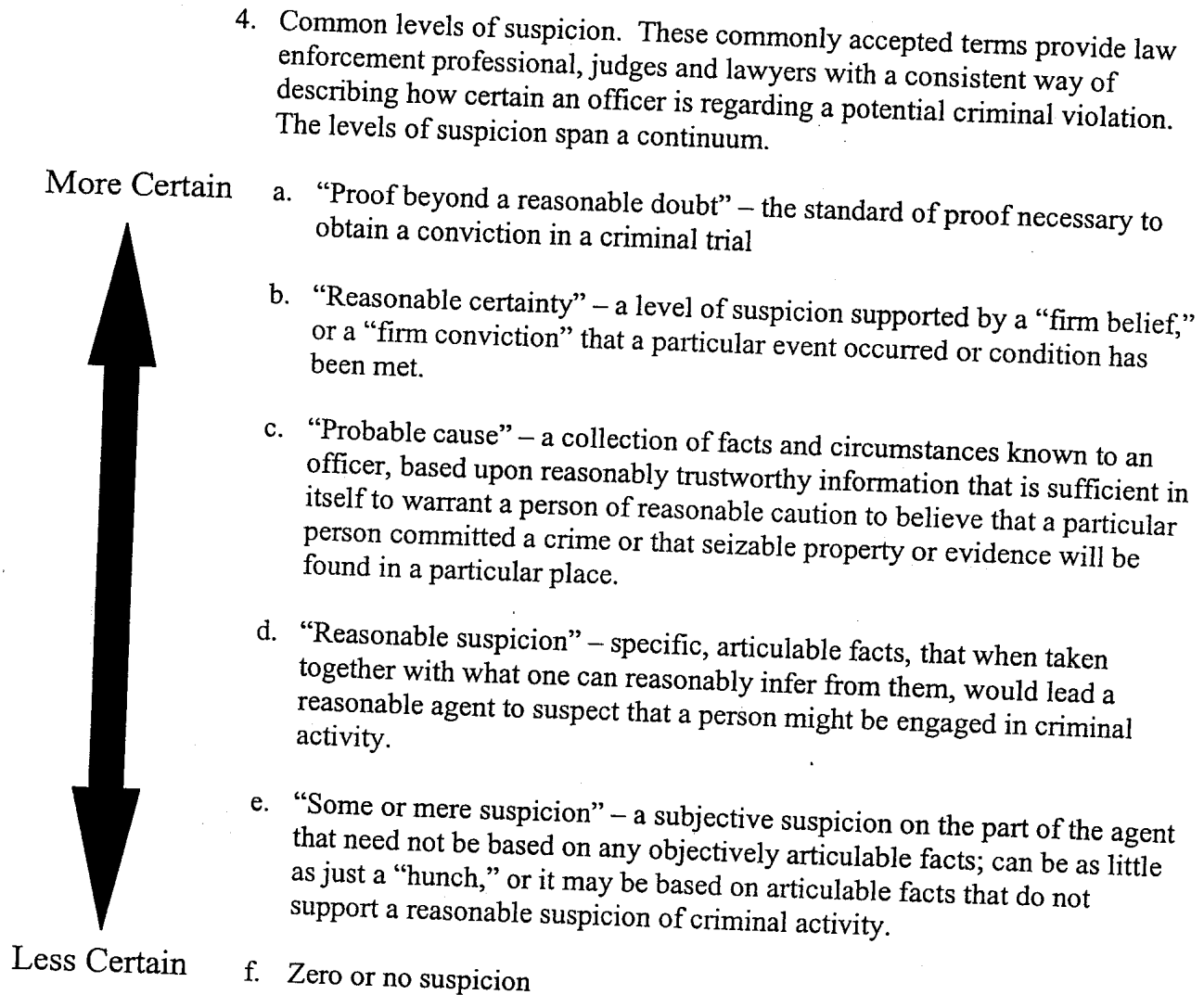
- a) Agencies also issue internal policies and directives to provide further guidance to officers when exercising authority
- b) Policies and directives reflect the agency's priorities and decisions about effective operations and use of resources

5. Judicial decisions

- a) When courts are asked to resolve a legal dispute about the meaning of a law, the validity of a statute or regulation, or the lawfulness of an officer's conduct, the court's decision becomes a *precedent* that will be applied to future disputes that involve similar situations.
- b) Officers must ensure that their conduct is consistent with past court decisions interpreting the extent of their authority

C. Levels of suspicion

1. The Fourth Amendment prohibition against "unreasonable" searches and seizures places significant limits on the way CBP officers exercise their authority
2. Generally, how do officers know when their conduct is "reasonable"?
 - a) *Levels of suspicion* are labels used to describe how sure the officer is about a violation of the law
 - b) To decide whether an officer's enforcement conduct was *reasonable*, the conduct (questioning, search, arrest, use of force) is compared to the *level of suspicion* the officer had at the time the action was taken
3. The levels of suspicion required for specific enforcement conduct come from the Constitution, as interpreted by the courts and incorporated into statutes, regulations, and policies. Courts ultimately decide what is "reasonable" and the specific rules that guide an officer's conduct are the result of those decisions. This set of practical rules is expressed in terms of requiring a specific level of suspicion to justify particular enforcement conduct.



5. For example:

- a) routine questioning or searching objects at the border is reasonable with *no suspicion*
- b) performing an immediate patdown for weapons at the border is reasonable with *some or mere suspicion*
- c) performing a partial body search at the POE is reasonable with *reasonable suspicion* that the person is hiding objects under his clothing
- d) placing a person under arrest is reasonable with *probable cause* to believe the person violated the law

6. Establishing a level of suspicion

a. "Articulate facts" are the building blocks of certain levels of suspicion.

b. Articulate facts must be:

(1) Objective. Articulate facts are specific and observable facts that an officer can describe in words and are generally based on his personal observations. An educated guess is not an articulate fact and thus cannot be used to establish a level of suspicion.

(2) Quality. Low quality articulate facts will give an officer a lower level of suspicion than high quality facts will, however, there is no requirement that a given level of suspicion must be supported by a certain number of articulate facts.

(3) Viewed in Light of the Agent's Experience and Expertise. If one of your searches or seizures is challenged, the judge reviewing the legality of your conduct must look at the facts and circumstances from the perspective of a law enforcement professional, not that of an uninformed member of the public. For example, an untrained observer may not even notice that a large, four-door sedan containing only a driver is riding low, while you as a trained officer not only notice that it is riding low but conclude that someone or something illegal is hidden in the vehicle given its known load.

(4) Considered in "totality." Articulate facts are not evaluated in isolation. An officer must consider the "totality of the circumstances" by examining all of the articulate facts present. The establishment of a level of suspicion does not hinge on one particular fact.

c. Articulate facts can be obtained from:

(1) Careful observation of people and things

(2) Physical evidence

(3) Intelligence information gathered by other government officers and available through computer information systems

d. The officers' training and experience "add value" to the articulate facts they obtain, i.e., facts that would mean nothing to the average person may mean more to a trained officer and thus may give the officer a higher level of suspicion

e. Ultimately, when an officer's conduct is challenged, a court decides whether the officer had the necessary articulable facts to establish the level of suspicion required to make the enforcement conduct *reasonable* under the Fourth Amendment

D. Means by which officers' exercise of authority is challenged

1. Suppression of evidence

a) Exclusionary Rule: The government may not use any unlawfully obtained evidence in a criminal trial. If a law enforcement officer violates a person's constitutional rights, then any evidence the officer obtains as a result of the violation will be *suppressed* (excluded) from the trial.

b) Purpose: To discourage law enforcement officers from violating the Constitution by denying the government any benefit from evidence obtained by the violation.

c) Procedure: A defendant who claims that evidence against him was obtained by unconstitutional government conduct files a *Motion to Suppress* with the court, asking the court to exclude the evidence from the trial. The judge then conducts a suppression hearing to determine whether the evidence was gained by a violation of the Constitution.

d) Fruit of the Poisonous Tree – Extends the exclusionary rule to evidence "tainted" by a Constitutional violation.

2. Other

a) Employment consequences

b) Personal lawsuit

c) Criminal prosecution

II. Fourth Amendment Law

Amendment IV – “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.”

A. What does the Fourth Amendment regulate?

1. Seizures of people and objects

a) Seizure of an object – legal definition: Government interference with a possessory right/interest

b) Seizure of a person – legal definition: Government interference with a person’s freedom of movement where a reasonable person in that situation would not feel free to leave or end the encounter with the government officer

(1) Ask: would an average, reasonable person in this situation believe they could, if they wanted to, walk away or tell the officer that they don’t want to talk?

(2) If the answer is “yes,” then the situation is simply a “consensual encounter” and there is no “seizure” for Fourth Amendment purposes.

(3) If the answer is “no,” (a reasonable person would not feel “free to leave”) then there has been a “seizure” for Fourth Amendment purposes

c) Types of seizures: people and objects

(1) The permissible *scope* of a seizure is the limit of what an officer may do when performing that type of seizure. The three relevant types of seizures are described below starting with the seizures that have the most restricted scope.

(2) Border detentions

(a) Narrow scope: limited to specific CBP enforcement mission

(b) Requires: no suspicion

(c) Resolution: if the officer develops reasonable suspicion or probable cause of a crime/violation, the encounter may escalate to an investigative detention or an arrest; if not, the person or thing must be released

(3) Investigative detention

(a) Limited scope: brief, investigative inquiry to resolve suspicion of criminal activity

(b) Requires: reasonable suspicion of criminal activity

(c) Resolution: If the officer develops probable cause of a crime/violation, the encounter may escalate to an arrest/permanent seizure; if he develops additional reasonable suspicion, he may extend the investigative detention; if the officer does not develop any further suspicion, the encounter must end

(4) Arrest of a person or seizure of an object for forfeiture/use as evidence at trial

(a) Broad scope: any seizure that exceeds the limited scope of an investigative detention is considered an arrest

(b) Requires: probable cause

(c) Resolution: criminal prosecution, civil fines/penalties, asset forfeiture, or administrative action

d) Use of Force

NOT RESPONSIVE

NOT RESPONSIVE



NOT RESPONSIVE

2. Searches of people and objects

a) A seizure must generally precede a search. However, not every seizure leads to a search – in some cases officers may simply question a person following a seizure, and questioning does not raise any search issues.

b) Search – legal definition: Government intrusion into a *reasonable expectation of privacy* (“REP”)

(1) Physical intrusions: performing a patdown search

(2) Visual intrusions: x-ray search

(3) Auditory intrusions: listening to a conversation

(a) **NOTE:** Title III of the *Omnibus Crime Control and Safe Streets Act of 1968* (the primary federal “wire tap” law codified at 18 U.S.C. §§ 2510-2520) is a federal statute that imposes additional limitations on auditory intrusions into private conversations. Title III prohibits **any** person from using a device to intercept the contents of telephone or electronic conversation, as well as any oral conversation

protected by REP, without obtaining either a court order or consent of at least one party to the conversation. **CBP policy requires the consent of all parties to a telephonic conversation in the workplace before it may be recorded.** Title III violations are subject to a \$10,000 civil fine *per violation*, as well as criminal prosecution.

(4) Reasonable Expectation of Privacy (“REP”) means a *subjective* expectation of privacy that is *objectively reasonable*

c) Common REP issues – generally there is REP in the following:

- (1) Person’s body
- (2) Home & Curtilage
- (3) Buildings (offices, warehouses, etc.)
- (4) Baggage (purse, backpack, suitcase, etc.)
- (5) Conveyances (car, boat, aircraft, etc.)
- (6) Private communications

d) No REP (therefore government intrusion in these circumstances is not a 4th Amendment search):

(1) Open view: an area where there is no REP from visual intrusion – it is not reasonable to expect that other people will refrain from looking into the area.

(2) Overheard conversation: a conversation where there is no REP from auditory intrusion – it is not reasonable to expect that other people will refrain from listening to the conversation. Applies to any conversation overheard by someone with an “unaided ear,” if the listener is in a place where she is allowed to be (including all public places).

(3) Abandoned property: a person with REP in an object chooses to discard the object

(a) Abandonment must be *voluntary* (if property is discarded in response to a law enforcement officer’s conduct, the officer’s conduct must be lawful)

(b) *Lost* property is not abandoned property

(4) Dog sniff

(a) A dog sniff of an object does not involve any intrusion, therefore allowing a dog to sniff an object is not a search

(b) Dog sniffs of people raise additional issues (intrusion into personal space) and may be considered a search

(c) An alert from a well-trained dog constitutes probable cause to believe there is contraband present

(5) Identification and travel documents

(a) Identification and travel documents are issued for the purpose of providing information to government officials

(b) Thus, there is no REP in such documents

B. Basic search and seizure requirements

1. First, determine whether an officer's conduct was a search or a seizure, then decide whether the officer's search/seizure was conducted in a *reasonable* manner (i.e. complies with the Fourth Amendment).

2. GENERAL RULE: FOURTH AMENDMENT REQUIRES THAT SEARCHES OR SEIZURES MUST BE CONDUCTED WITH A WARRANT SUPPORTED BY PROBABLE CAUSE (PC).

a) Typical warrant procedure:

(1) Officer gathers articulable facts that establish probable cause to support a search or seizure

(2) Officer prepares a warrant application that includes an affidavit describing the facts that support probable cause

(3) Magistrate or judge reviews the warrant application and issues the warrant if he agrees that there is probable cause

(4) Officers execute the warrant, usually with a "knock and announce" to inform people in the location to be searched of their presence

b) Warrant procedure ensures that a judge or magistrate reviews the facts that establish PC and citizens know that the search/seizure is being conducted according to standard "reasonable" procedures

3. EXCEPTIONS: Certain searches and seizures may be constitutionally reasonable even when conducted without a warrant or probable cause if they fit within an established exception to the general rule.

C. Exceptions to the Warrant Requirement – (PC Still Required)

1. Arrest in public

2. Plain view seizure:

a) Officer has lawful observation and access to an object

b) Probable Cause to seize the object is *immediately* apparent

3. Mobile conveyance search:

a) Officer has probable cause to believe that seizable property is located in the conveyance (contraband or evidence of a crime)

b) The conveyance is readily mobile

4. Exigent circumstances: officer may make a warrantless entry/search in the following situations:

a) Officer is in hot pursuit of a fleeing felon

b) Entry/search is necessary to prevent the imminent destruction or removal of evidence

c) Entry/search is necessary to prevent injury or loss of life to others

D. Exceptions to Probable Cause requirement (but note that in certain circumstances reasonable suspicion is required)

1. Search Incident to Arrest (SIA)

a) There must be a lawful arrest (supported by probable cause) in order to perform a search *incident* to the arrest

b) Purpose: To prevent arrestee's access to weapons or evidence

c) Scope of the search:

(1) *No suspicion* required to search:

- (a) Exterior of arrestee's clothing and contents of pockets;
- (b) Objects carried by arrestee;
- (c) Area within arrestee's immediate control (includes the passenger compartment of a vehicle and any locked or unlocked containers therein)

(2) *Reasonable suspicion* that weapons or evidence are hidden underneath clothing is required to perform a strip search during SIA

2. Consent

a) Consent must be voluntary – person made a free choice among lawful options and chose to agree to the search

(1) Voluntariness measured based on “totality of the circumstances”

(2) The following are factors to be considered, but no single factor is an absolute requirement:

(a) Knowledge of right to refuse;

(b) Written consent & presence of witnesses

(c) Age and sophistication of the person giving consent

(3) “Tough choice” made from lawful options is voluntary

(4) Choice made in response to coercion, inducement or trick is not voluntary

b) Authority – who may consent to a search?

(1) Person with *actual authority* (has REP in the object of the search); or(2) Person with *apparent authority* (appears to have REP in the object of the search)

c) Scope: limited to terms of consent

d) Revocation – consent can be revoked at *any time*

3. Border search and seizure (See Part III below)

III. Border Search Law

A. Border searches

1. Background – The first U.S. Congress passed laws authorizing customs officers to perform suspicionless searches of people and things seeking entry to the United States. The Supreme Court recognized that border searches were reasonable and that there was a need for a border search exception to the warrant and probable cause requirements of the Fourth Amendment, with safeguards built-in to ensure that border searches were performed in a reasonable manner.

2. Purpose – protect the nation's borders, protect the revenue, prohibit unlawful importation/exportation of merchandise, and prevent inadmissible aliens from entering the U.S.

B. Three prerequisites for a border search to be lawful:

1. Performed by an authorized government officer

- a) CBP officers
- b) ICE agents
- c) Coast Guard officers (Petty Officers Grade E4 and above)
- d) Others formally designated by CBP (e.g., other Federal officers or state/local law enforcement officers who go through formal cross-designation training).
- e) 19 U.S.C. § 507 distinguished: This statute allows a CBP officer to demand assistance from any person when necessary to perform the officer's lawful duties. However, a person providing assistance under 19 U.S.C. § 507 is not a "customs officer" and has no *independent* authority to perform border searches.

2. Searching for merchandise, evidence of a person's admissibility, or aliens

a) Merchandise definition:

- (1) Goods, wares, and chattels of every description,
- (2) Prohibited items, and
- (3) Monetary instruments

b) Evidence of a person's admissibility is anything that is relevant to determining whether an alien may be lawfully admitted to the United States, and may include:

(1) Documents

(2) Any items inconsistent with the alien's stated purpose for entering the U.S.

(3) Any items that tend to prove an alien is subject to grounds of inadmissibility

c) Aliens

3. At the border

C. The Nation's Border

1. Land: dividing lines between U.S./Mexico and U.S./Canada

2. Sea: generally 3 nautical miles from the coast (9 nautical miles from the Texas coast and the FL Gulf coast)

3. Air: extends directly upward from the land or sea border

D. Functional equivalent of the border (FEB) inbound (entering U.S.)

1. Purpose: performing a border detention/search at the nation's border is not practical in most cases, so border searches may be performed at places away from the nation's physical border, when those places function just like the border.

2. Circumstances that establish the FEB inbound:

a) *Reasonable certainty* there has been **BORDER NEXUS**

(1) The person or thing to be searched crossed the border, or

(2) The person or thing to be searched had meaningful contact with someone or something that crossed the border

(3) **NOTE:** Reasonable certainty is a level of suspicion that is higher than probable cause, but lower than proof beyond a reasonable doubt

b) *Reasonable certainty* there has been **NO MATERIAL CHANGE** since border nexus

(1) The person or thing to be searched has not changed since border nexus, and

(2) Any merchandise present now was present at the time of border nexus (i.e. there has been no opportunity to acquire domestic merchandise since the border crossing).

c) **FIRST PRACTICAL DETENTION POINT** since border nexus; note that the first practical detention point is not necessarily the first *possible* detention point

3. FEB inbound examples:

- a) Land border POE
- b) Airport POE
- c) Seaports
- d) Mail facilities
- e) Bonded warehouses

E. Functional equivalent of the border (FEB) outbound (exiting the U.S.)

1. Circumstances that establish the FEB outbound:

- a) *Reasonable certainty* there will be border nexus
- b) *Reasonable certainty* there will be no material change before border nexus (i.e. any merchandise present now will be present at the time of crossing)
- c) Last practical detention point before border nexus

2. FEB outbound examples

- a) Airport
- b) Land border

3. Outbound border search operations

- a) Currency reporting
- b) Export controls

F. "Extended Border" – conducted at some point *beyond* the FEB (inbound only)

1. Circumstances that establish the extended border:

- a) *Reasonable certainty* there has been border nexus
- b) *Reasonable certainty* there has been no material change since border nexus
- c) *Reasonable suspicion* of criminal activity

2. Extended border examples:

- a) Controlled delivery/cold-convoy
- b) Evidence discovered after FEB-inbound search was performed or could have been performed

3. Statutory authority: 19 U.S.C. § 1595(b) authorizes officers to enter private lands and buildings, "other than a dwelling house," to perform border searches and seizures

G. Additional requirements: different *kinds* of border searches are subject to additional rules that ensure all CBP border searches are constitutional:

- 1. People v. things
- 2. Routine v. non-routine
- 3. Destructive v. non-destructive
- 4. See the following "Applied Border Authorities" section of this outline for a complete discussion of rules that apply to specific kinds of border searches and seizures

IV. Applied Border Authority

Following is a discussion of the legal issues that arise when CBP officer exercise their border authorities.

A. Racial Profiling

1. **NEVER** use gender, race, color, religion or ethnic background as selection criteria.

2. All CBP law enforcement activities, including personal searches, must comply with the "Department of Homeland Security's Commitment to Race Neutrality in Law Enforcement Activities" policy (June 1, 2004), which states:

"Racial Profiling" concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement activities. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity. DHS explicitly adopts the Department of Justice's "Guidance Regarding Use of Race by Federal Law Enforcement Agencies," issued in June 2003. It is the policy of the Department of Homeland Security to prohibit the consideration of race or ethnicity in our daily law enforcement activities in all but the most exceptional instances, as defined in the DOJ Guidance. DSH personnel may use race or ethnicity only when a compelling governmental interest is present. Rather than relying on race or ethnicity, it is permissible and indeed advisable to consider an individual's connections to countries that are associated with significant terrorist activity. Of course, race- or ethnicity-based information that is specific to particular suspects or incidents, or ongoing criminal activities, schemes or enterprises, may be considered, as stated in the DOJ Guidance.

See also, *Personal Search Handbook*, CIS HB 3300-04B (July 2004), Ch. 1, Section d.

B. Diplomats

1. See "Processing Foreign Diplomatic and Consular Officials" Customs Directive No. 3340-032, January 5, 2003

2. Rules governing the detention and search of personnel entitled to some form of diplomatic immunity are based on reciprocal treaties between the U.S. and foreign governments.

3. How to identify a person with some form of diplomatic immunity:

NOT RESPONSIVE



C. Searching objects

1. Non-destructive examination/search of an object does NOT require any articulable suspicion:

- a. Outer garments and contents of pockets when removed by the traveler
- b. Baggage, luggage, and other containers in a traveler's possession
- c. Cargo and other commercial items
- d. Use of density busters, x-ray/VACIS and other imaging technology
- e. Conveyances

(1) Searches of conveyances may be performed at the POE with zero suspicion

(2) Gas tanks: may be removed and searched at the POE with zero suspicion (see *United States v. Flores-Montano*)

2. Destructive search of an object may require *reasonable suspicion*

a. Use of drills/probes: See "Use of Drills to Inspect Conveyances and Containers" CBP Directive No. 3340-019A (April 20, 2004)

b. Other destructive searches: law varies by Circuit – seek supervisory guidance/approval

3. Documents

a. Review of documents voluntarily provided by individuals and routinely submitted to establish admissibility of the person or merchandise is not considered a "search" for Fourth Amendment purposes. The following rules apply to documents discovered as a result of a search of a person or their belongings.

b. As a general rule, CBP officers should not read personal correspondence in a traveler's possession.

c. However, CBP officer may glance at documents and papers to see if they appear to be merchandise or material evidence, which may include:

(1) Books, pamphlets, & printed material

(2) Monetary instruments

(3) Obscene, treasonous or other unlawful material

(4) Any material related to the importing or exporting of merchandise

(5) Any material related to an alien's right to enter the U.S.

(6) Any material that is evidence of a crime or violation within CBP's enforcement mission

d. If a document appears to be merchandise or material evidence, the CBP officer may read the document and then:

(1) Return the document if there is no suspicion that the document is contraband or material evidence

(2) Detain the document for further investigation or to solicit expert assistance if there is *reasonable suspicion* that the document is contraband or material evidence

(3) Seize the document if there is *probable cause* that the document is contraband or material evidence

e. Authority to read/search documents may also come from:

- (1) Consent
- (2) Warrant based on probable cause
- (3) Search incident to arrest authority

f. Attorney-client privilege claim

- (1) Confidential communication/correspondence between attorney and client may be legally protected from search
- (2) Consult CBP counsel to determine whether a document is subject to the attorney-client privilege

g. Photocopying documents

- (1) Official government identification documents may be photocopied for any legitimate/official purpose
- (2) All other documents may be photocopied only if the officer has articulable facts to establish a higher level of suspicion concerning the document:

(a) If the officer has *reasonable suspicion* that the document is material evidence, a temporary copy may be made for the purpose of investigating the suspicion and determining final disposition of the document. **NOTE:** if probable cause is not established, the copy must be destroyed.

(b) If the officer has *probable cause* that the document is material evidence, a copy may be made and retained for use as evidence.

4. Electronic/computer devices

- a. An electronic/computer *device* (the physical object) is merchandise and may be searched with no suspicion under border authority

b. The *information* (files) contained in an electronic/computer device may be searched under border authority if the information is merchandise, contraband, or material evidence

c. Consultation with a computer forensic analyst and CBP counsel may be necessary

5. Diplomatic containers

NOT RESPONSIVE



6. International mail

NOT RESPONSIVE



Fourth Amendment Suspicion Requirements

No Suspicion	NOT RESPONSIVE	NOT RESPONSIVE	NOT RESPONSIVE	Probable Cause	NOT RESPONSIVE
1. Border Search: (Inbound or Outbound)	NOT RESPO	NOT	NOT RESPONSIVE	NOT RESPONSIVE	NOT RESPONSIVE
A. Routine (non- destructive) search of things such as:					
(1) Cargo					
(2) Conveyance					
(3) Containers					
B. Ask Traveler to voluntarily empty pockets/remove outer garment				3. Copy & Retain Documents	
C. Copy Gov't issued ID documents for any official purpose				NOT RESPONSIVE	
NOT RESPONSIVE					

CONDUCTING A BORDER SEARCH

THIS CHART ASSUMES THAT THE PREREQUISITES FOR A BORDER SEARCH HAVE BEEN MET, i.e., A "CBP OFFICER" IS SEARCHING FOR "MERCHANDISE" OR "MATERIAL EVIDENCE" AT THE "BORDER" (ACTUAL BORDER/FEB/EXTENDED BORDER)

SEARCHING THINGS				SEARCHING PEOPLE					
ROUTINE SEARCH OF A THING OR CONVEYANCE	NON-ROUTINE SEARCH OF A THING OR CONVEYANCE	THINGS CARRIED BY A PERSON	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
SUSPICION REQUIRED	NONE	NONE	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
APPROVAL REQUIRED	(b)(2) & (b)(7)(F)	NONE	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
WHERE IS THE SEARCH CONDUCTED	(b)(2) & (b)(7)(F)		NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
SCOPE OF SEARCH AND/OR TECHNIQUE USED	NON-DESTRUCTIVE, VISUAL AND/OR HANDS-ON EXAM, TO INCLUDE X-RAY, IF THE EQUIPMENT IS READILY AVAILABLE	OUTER GARMENT AND POCKET CONTENTS THAT HAVE BEEN VOLUNTARILY REMOVED BY THE TRAVELER	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
	MAY EMPLOY DESTRUCTIVE TECHNIQUES THAT ARE REASONABLY NECESSARY TO CONFIRM OR DENY SUSPICION OF CONCEALED MERCHANDISE /MATERIAL EVIDENCE		NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
			NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
			NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE

NOT RESPONSIVE

CUSTOMS AND BORDER PROTECTION DIRECTIVE

ORIGINATING OFFICE: (b) (2)

DISTRIBUTION: (b) (2)
CBP DIRECTIVE NO: 3340-021B
DATE: SEPTEMBER 7, 2006
SUPERSEDES: CBPD 3340-021A, 2/23/04,
CD 4320-023, 1/25/99
REVIEW DATE: SEPTEMBER 2009

SUBJECT: RESPONDING TO POTENTIAL TERRORISTS SEEKING ENTRY INTO THE UNITED STATES

1 PURPOSE. To provide guidance and standard operating procedures for responding to known or suspected terrorists attempting to enter the United States (U.S.).

2 POLICY.

2.1 It is the policy of U.S. Customs and Border Protection (CBP) to prevent suspected terrorists from entering the U.S. and to prevent attacks by terrorists and terrorist organizations in the U.S., by detecting and interdicting the cross-border movement of terrorists and their funding, weapons, and instruments, including weapons of mass effect (WME) and their precursors.

2.2 It is the policy of CBP, consistent with the Immigration and Nationality Act (INA), to deny entry to, and where possible, seek prosecution of, individuals engaged in terrorist activities who are seeking admission to the United States.

2.3 It is the policy of CBP, consistent with the INA and applicable legal authorities, that in all encounters where there is a belief, based on an evaluation of all available information, that an alien applying for admission could pose a threat to the U.S., the alien shall be denied admission. Limited exceptions, such as an official, documented request from another government agency to admit the alien for investigative or other purposes, may be recognized.

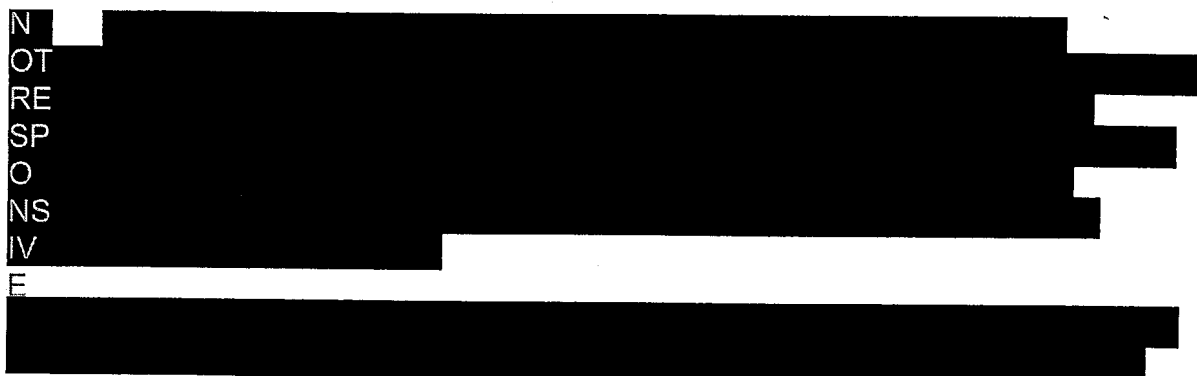
3 DEFINITIONS.

N
OT
RE
SP
O
NS
IV
E

NOT RESPONSIVE



NOT
RE
SP
O
NS
IV
E



NOT RESPONSIVE



NO
T
RE
SP
ON
SIV
E



4 AUTHORITY/REFERENCES. NOT RESPONSIVE



5 RESPONSIBILITIES.

N
OT
RE
SP
O
NS
IV
E

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOT RESPONSIVE



N
OT

FOR OFFICIAL USE ONLY

NOT RESPONSIVE

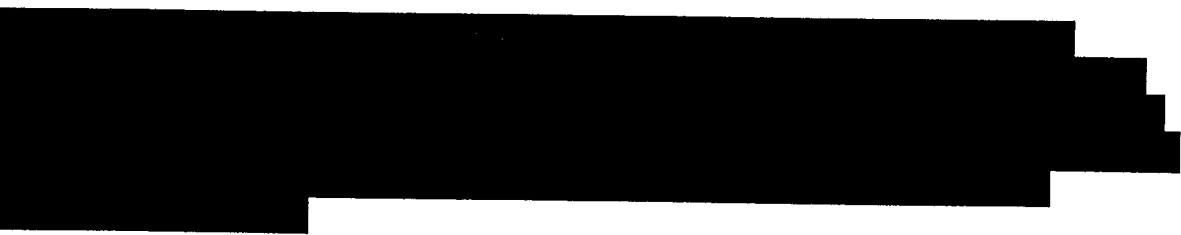

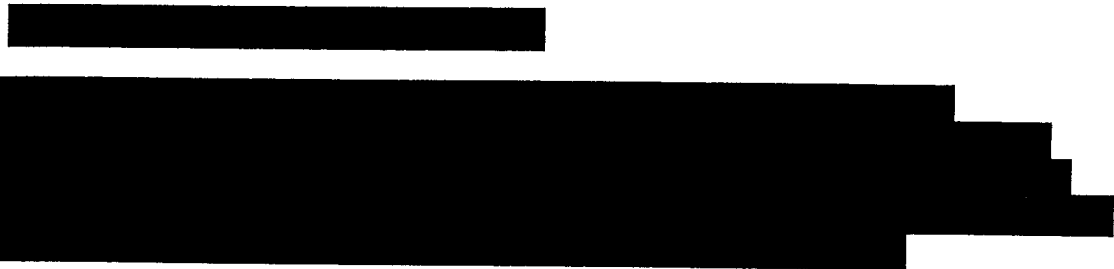
FOR OFFICIAL USE ONLY

NOT RESPONSIVE



6 PROCEDURES – Terrorists Attempting to Enter at Ports of Entry.

N
OT
RE
SP
O
NS
IV
E

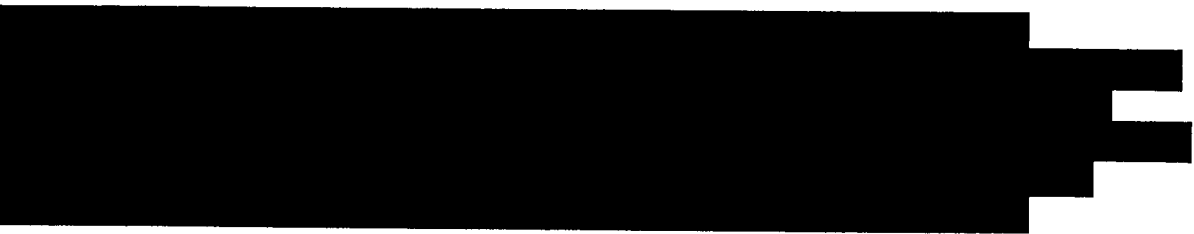


NOT RESPONSIVE



FOR OFFICIAL USE ONLY

NOT RESPONSIVE



NOT RESPONSIVE



6.5.2 If the (b)(2) & (b) occurs in advance of arrival (air or sea POEs) of the

TE

FOR OFFICIAL USE ONLY

individual, the duty supervisor shall assign a (b) Officer who will follow the *Air and Sea POE Handling and Coordination Procedures* in Section 6.3. In secondary, the (b) Officer shall comply with any lawful instructions in the (b)(2) & record, such as a request to copy travel and/or identification documents, in accordance with CBP policy and legal authorities such as the CBP Directive 3340-006A, Procedures for Examining Documents and Papers), or any successor directives.

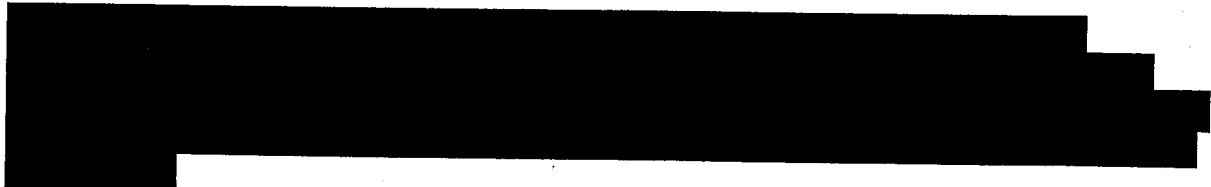
6.5.3 If the (b)(2) & (b) is encountered at a land border primary, the CBP Officer on primary shall (b)(2) & (b)(7)(E). The CBP Officer shall immediately alert the duty supervisor regarding (b)(2), using local notification procedures. The duty supervisor will assign a (b) Officer who will follow the *Land Border POE Handling and Coordination Procedures* in Section 6.4. In secondary, the (b) Officer shall comply with any lawful instructions in the (b)(2) & record, such as a request to copy travel and/or identification documents in accordance with CBP policy and legal authorities such as the CBP Directive 3340-006A, Procedures for Examining Documents and Papers, or any successor directives.

b2
b7e


NOT RESPONSIVE



NOT RESPONSIVE



N
OT
RE
SP
O
NS
IV
E



NOT RESPONSIVE




NOT RESPONSIVE

6.9 (b) Officer Secondary Inspection Procedures

6.9.1 The (b) (2) Officer shall be responsible for the inspection, questioning, and processing of suspect persons and any traveling companions. The (b) (2) Officer shall be responsible for conducting an intensive secondary inspection, document review, questioning, and examination to identify known or suspected terrorists or terrorist instruments. The (b) (2) Officer shall question the person regarding such subjects as (b)(2) & (b)(7)(E)

(b) Officers should use (b)(2) & (b) techniques and (b)(2) & (b)(7)(E) analysis. (All information provided by the person should be verified to the extent possible. At a minimum, the interview must establish and properly record the following:

NOT RESPONSIVE



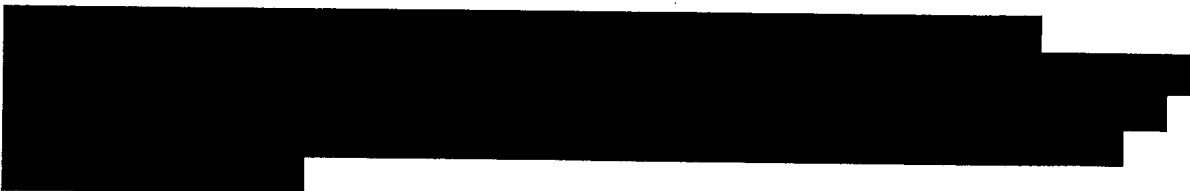
6.9.11 Electronic copies of any pertinent documentation (travel/identity documents import/export paperwork) or (b)(2) & (b)(7)(E)

, or electronic media discovered during the examination should be provided to (b)(2) for research in accordance with the CBP Directive 3340-006A, Procedures for Examining Documents and Papers, or any successor directives. & (b)(7)(E)

NOT RESPONSIVE



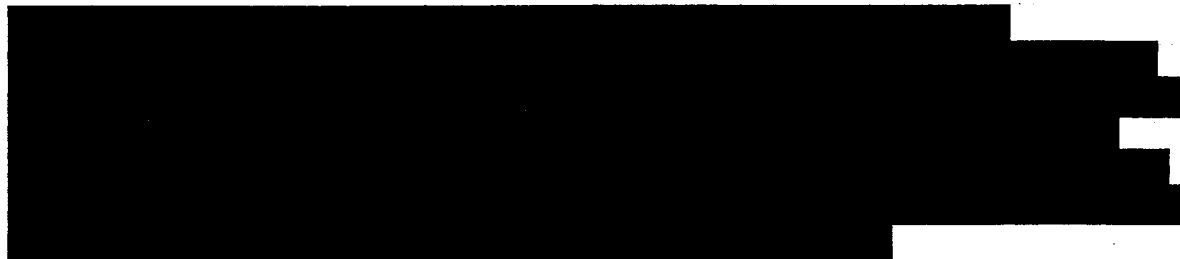
NOT RESPONSIVE



NOT RESPONSIVE



NOT RESPONSIVE



NOT RESPONSIVE

7 PROCEDURES - Terrorists Attempting to Enter Between Ports of Entry.



FOR OFFICIAL USE ONLY

NOT RESPONSIVE



7.1.7 Any search of the vehicle or its contents will be conducted only upon probably cause, consent, or other applicable Fourth Amendment exception (including border search), that may be available depending upon the circumstances of the encounter. In any search, caution shall be exercised when examining the contents of any baggage or package in the possession of the suspected terrorist. If a suspicious device or substance is encountered during the examination, the Agent shall take all precautions to avoid detonation of the device or exposure to the substance. National and local HAZMAT and bomb response protocol shall be followed.

NOT RESPONSIVE



FOR OFFICIAL USE ONLY

NOT RESPONSIVE




NOT RESPONSIVE



7.1.10 Electronic copies of any pertinent documentation (travel/identity documents) or (b)(2) & (b)(7)(E)

discovered
during the arrest/interview should be handled in accordance with (b)(2) & (b)(7)(E)



NOT RESPONSIVE



N
OT
RE
SP
O
NS
IV
E



N
OT
RE
SP
O
NS
IV
E

**8 PROCEDURES – Identification and Processing of Potential Terrorist
Related Port Shoppers.**

N
OT
R
ES
P
O
N
SI
VE

NOT RESPONSIVE



FOR OFFICIAL USE ONLY

9 PROCEDURES – International Notification Protocols.

N
OT
RE
SP
O
NS
IV
E

10 NO PRIVATE RIGHTS CREATED. This Directive is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

11 DISCLOSURE. This Directive contains information that may be exempt from disclosure to the public under federal law. No part of this Directive shall be disclosed to

FOR OFFICIAL USE ONLY

the public without express authority from U.S. Customs and Border Protection Headquarters.

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

FOR OFFICIAL USE ONLY

CUSTOMS AND BORDER PROTECTION DIRECTIVE

DIRECTIVE IS SUPERSEDED BY CBPD 3340-021B, 9/7/06

ORIGINATING OFFICE: (b) (2)

DISTRIBUTION: (b) (2)
CBP DIRECTIVE NUMBER: 3340-021A
DATE: FEBRUARY 23, 2004
SUPERSEDES: 1440-009, 04/06/1988;
3340-021, 01/11/2000
REVIEW DATE: FEBRUARY 2007

SUBJECT: RESPONDING TO POTENTIAL TERRORISTS SEEKING ENTRY INTO THE UNITED STATES

1 PURPOSE. To provide guidance and standard operating procedures for responding to known or suspected terrorists attempting to enter the United States.

2 POLICY.

2.1 It is the policy of U.S. Customs and Border Protection (CBP) to prevent suspected terrorists from entering the United States and to prevent attacks by terrorists and terrorist organizations in the U.S., by detecting and interdicting the cross-border travel of terrorists, terrorist funding, weapons, and instruments, including Weapons of Mass Effects (WME) and their precursors.

2.2 It is the policy of CBP, consistent with the Immigration and Nationality Act (INA), to deny entry to, and where possible, seek prosecution of, suspected terrorists seeking admission to the United States.

2.3 It is the policy of CBP, consistent with the INA and applicable legal authorities, that in all cases where there is a belief, based on an evaluation of available information, that an alien could pose a threat to the United States, the individual will be denied entry.

3 DEFINITIONS.

N
O
T
E
S
O

[REDACTED]

[REDACTED]

Official Use Only

NOT
RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 AUTHORITY/REFERENCES. NOT RESPONSIVE

[REDACTED]

Official Use Only

5 RESPONSIBILITIES.

NOT RESPONSIVE



Official Use Only

NOT RESPONSIVE

6 PROCEDURES.

6.1 Office of Field Operations – Terrorists Attempting to Enter at Ports of Entry

NOT RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Official Use Only

NOT RESPONSIVE



Official Use Only

NOT RESPONSIVE

NOT

NOT RESPONSIVE

Official Use Only

NOT RESPONSIVE

[REDACTED]

NOT RESPONSIVE

[REDACTED]

6.1.5.2 If the (b)(2) & [REDACTED] occurs in advance of arrival of the person, a (b) [REDACTED] officer shall be assigned to the case. The (b) [REDACTED] officer shall contact (b)(2) [REDACTED] to determine what instructions are contained in the (b)(2) [REDACTED] record. If necessary, (b)(2) & (b)(7) [REDACTED] (E) [REDACTED]. In

secondary, the (b) [REDACTED] officer shall comply with any lawful instructions in the (b)(2) [REDACTED] record, such as a request to copy travel and/or identification documents.

6.1.5.3 If the (b)(2) & [REDACTED] is initially encountered at land border primary, the CBP officer on primary shall (b)(2) & (b)(7)(E) [REDACTED].

The CBP officer shall (b)(2) & (b)(7)(E) [REDACTED], alert the duty supervisor regarding (b) [REDACTED], using local notification procedures. The duty supervisor shall assign a (b) [REDACTED] officer to the case. The (b) [REDACTED] officer shall contact (b) [REDACTED] to determine what instructions are contained in the (b)(2) [REDACTED] record. In secondary, the (b) [REDACTED] officer shall comply with any lawful instructions in the (b)(2) [REDACTED] record, such as a request to copy travel and/or identification documents.

NOT RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Official Use Only

b2
b7E

NOT RESPONSIVE



Official Use Only

NOT RESPONSIVE

6.1.8 (b) Officer Secondary Inspection Procedures

6.1.8.1 The (b) officer shall be responsible for the inspection, questioning, and processing of suspect persons and any traveling companions. NOT

RESPONSIVE

Official Use Only

NOT RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6.1.8.6 The (b)(2) & (b)(7)(E) officer shall review all travel and identification documents to ensure they are authentic and are in the possession of the rightful owner.

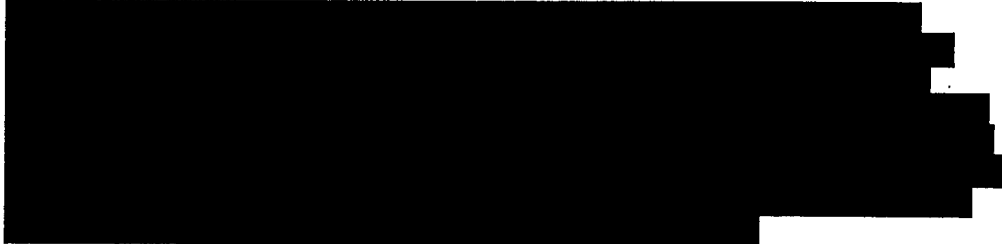
6.1.8.7 The (b)(2) & (b)(7)(E) officer shall question the person regarding such subjects as their (b)(2) & (b)(7)(E)

(b) officers should use (b)(2) & (b)(7)(E) techniques and (b)(2) & (b)(7)(E) analysis. (b)(2) & (b)(7)(E)
Information provided by the person should be verified, to the extent possible. As an example, (b)(2) & (b)(7)(E)

[REDACTED]

Official Use Only

NOT RESPONSIVE



6.1.8.11 Copies of any pertinent documentation ((b)(2) & (b)(7)(E) [redacted], etc.) retrieved during the exam should be provided to (b)(2) (b)(7)(E) for further analysis.

NOT RESPONSIVE



Official Use Only

NOT RESPONSIVE



Official Use Only

NOT RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOT
RES
PONS
SIVE

RES

Official Use Only

NOT RESPONSIVE

NOT RESPONSIVE

6.2 Office of Border Patrol – Terrorists Attempting to Enter Outside the POE

NOT RESPONSIVE

6.2.6 The agent shall obtain copies of any identity documents, addresses, phone numbers, or other documents of potential benefit to intelligence. Copies shall be forwarded to the Border Patrol Station/(b)(2) & (b)(7)(E) . As appropriate, the information will be entered into (b)(2) & (b)(7)(E) and/or a G-392 will be created. Absent additional pertinent/relevant information, a G-392 is not required solely for the purpose of reporting the apprehension of an alien (b)(2) & (b)(7)(E) (b)(7)(E)

NOT RESPONSIVE

Official Use Only

NOT RESPONSIVE

NOT

NOT RESPONSIVE

Official Use Only

NOT RESPONSIVE

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7 NO PRIVATE RIGHTS CREATED. This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

8 DISCLOSURE. This Directive contains information, which may be exempt from disclosure to the public under the regulations of the Department of the Homeland Security. No part of this Directive shall be disclosed to the public without express authority from U.S. Customs and Border Protection Headquarters.

Commissioner
U.S. Customs and Border Protection

Official Use Only

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: FO:P

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 3340-006A

DATE: FEBRUARY 4, 2000

SUPERSEDES: 3340-006, 6/12/86

REVIEW DATE: FEBRUARY 2002

SUBJECT: PROCEDURES FOR EXAMINING DOCUMENTS AND PAPERS

1 **PURPOSE.** This directive provides guidelines and procedures for examining documents and papers during all Customs operations at the border, functional equivalent of the border, and extended border.

2 POLICY.

2.1 The U.S. Customs Service will protect the rights of individuals against unreasonable search and seizure while still accomplishing its enforcement mission.

3 **AUTHORITIES/REFERENCES.** 19 C.F.R. 145.3; Ref. 3.740 LCCO; 19 U.S.C. 1305; National Stolen Property Act, 18 U.S.C. 2314; 18 U.S.C. 1426(h).

4 **EFFECTS ON OTHER DOCUMENTS.** The guidelines and procedures contained within this directive are currently contained within the Personal Search Handbook dated March 1997. These procedures will no longer be incorporated in the revised Personal Search Handbook HB #3300-04A dated November 1999.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, shall have policy oversight, which will include the formulation and implementation of guidelines and procedures.

5.2 The Assistant Commissioner, Office of Investigations, shall have oversight for investigative operations, which will include the implementation of guidelines and procedures set forth in this directive.

5.3 Special Agents in Charge (SAIC's) are responsible for ensuring that their subordinates get a copy of this directive and are familiar with its contents.

5.4 Directors, Field Operations, at Customs Management Centers are responsible for conducting ongoing reviews to evaluate procedures used for examining documents and papers.

5.5 Port Directors are required to update any necessary additional port-specific procedures for examining documents and papers and to ensure strict adherence to national policy.

5.6 Each Customs officer must know the limits of Customs authority, and must use this authority judiciously, conscientiously, and courteously.

6 PROCEDURES.

6.1 All Customs officers shall comply with the following procedures.

6.2 Customs Officers Should Not Read Personal Correspondence.

6.2.1 The U.S. Customs Service must guard the rights of individuals being inspected to ensure that their personal privacy is protected. Therefore, as a general rule, Customs officers should not read personal correspondence contained in passengers' privately owned conveyances, baggage, or on their person, **except**, as specified in 6.4.1.

6.3 Letter Class Mail.

6.3.1 Customs officers may not read or permit others to read correspondence contained in sealed "LC" mail (the international equivalent of First Class) without an appropriate search warrant or consent.

6.3.2 Only articles presently in the postal system are deemed "mail." Letters carried by individuals, for example, are not considered to be mail, even if they are stamped (see 19 C.F.R. 145.3). [Ref. 3.740 LCCO].

6.4 Customs Officers May Glance at Documents and Papers.

6.4.1 As opposed to reading content, Customs officers may glance at documents and papers to see if they appear to be merchandise. This may include:

- Books, pamphlets, printed/manuscript material
- Monetary instruments.
- Prohibited materials such as, copyright violations, obscene, treasonous or seditious material (i.e., inciting or producing imminent lawless action).
- Prohibited matter being imported in violation of 19 U.S.C. 1305, stolen property under the National Stolen Property Act, 18 U.S.C. 2314, or evidence of embargo violations.
- Materials related to the importation or exportation of merchandise including documents required to be filed to import or export merchandise.

6.5 Reasonable Suspicion Required for Reading and Continued Detention.

6.5.1 If, after glancing at the documents or papers, an officer reasonably suspects that they relate to any of the categories listed in section 6.4.1 of this directive, the officer may read the documents. He/she may continue to detain such documents for such further inquiry as may be reasonably necessary to make the determination whether to seize the documents.

6.5.2 This may include referral to another agency necessary to assist in that determination.

6.6 Probable Cause Required for Seizures.

6.6.1 If an officer has probable cause to believe that a document or paper is subject to seizure because it is prohibited, a fruit, instrumentality or evidence of a crime, or otherwise subject to forfeiture, it may be seized.

6.7 Probable Cause or Consent Required to Copy.

6.7.1 An officer must have probable cause to believe a document or paper is subject to seizure, to copy it. Documents and papers may be copied without probable cause when consent to do so is obtained from the person from whom the documents were seized, or if copying is incident to a lawful arrest.

6.7.2 In circumstances when the inspecting Customs officer is uncertain whether probable cause exists, the officer may contact the Associate/Assistant Chief Counsel.

6.8 Identification Documents can be Photocopied.

6.8.1 Passports (United States or foreign), Seaman's Papers, Airman Certificates, drivers licenses, state identification cards and similar governmental identification documents can be photocopied for legitimate, good-faith government purposes without any suspicion of illegality.

6.8.2 Certificates of Naturalization may never be copied (18 U.S.C. 1426(h)).

6.9 Attorney-Client Privilege.

6.9.1 As part of a border search, an attorney's files can be examined for the presence of drugs, currency or other monetary instruments, sales slips, invoices, or other documents evidencing foreign purchases.

6.9.2 Occasionally, an attorney will claim that the attorney-client privilege prevents the search of his documents and papers at the border. Files and papers being brought into the country by an attorney are subject to a routine search for merchandise. Implicit in the authority to search for merchandise is the authority to search for papers that indicate or establish that a current importation of merchandise might be occurring. Records of an importation are not privileged. However, correspondence, court papers, and other legal documents may be privileged. If an officer has probable cause to believe a document may be evidence of a crime, seek advice from the Associate/Assistant Chief Counsel or the U.S. Attorney's office.

6.10 Chain of Custody Required for Copies.

6.10.1 Whenever copies of documents are made, transfer of the copies should be accomplished through a chain of custody form (CF-6051) or other documentation that will show each individual who has had custody and access to such copies.

6.11 Foreign Language Documents or Documents Requiring Special Expertise.

6.11.1 If an officer reasonably suspects that a document or paper in a foreign language falls into a category that would allow it to be read, the document can be detained and forwarded to an appropriate translator, provided that such translations can be accomplished within a reasonable time.

6.11.2 The use of a facsimile (FAX) machine, when appropriate, is authorized. This same principle would apply to documents that need special expertise to determine their nature, such as documents relating to complex technology cases.

6.11.3 If after translation or review, probable cause to seize develops, the documents should be seized and/or copies retained. If not, the originals must be returned and all copies (e.g., fax) must be destroyed. The destruction must be appropriately documented.

6.11.4 Factors that a court might consider in determining the reasonableness of the time the documents are detained could be such things as the nature of the documents, whether the officer explained to the person the reason for the detention, and whether the person was given the option of continuing his journey with the understanding that Customs would return the documents if it is not in violation of law.

7 **MEASUREMENT.** Directors, Field Operations, at Customs Management Centers, SAIC's, and Port Directors will ensure that all TECS reports pertaining to the examinations of documents and papers are reviewed periodically to determine the effectiveness of the procedures contained within this directive, including whether there may be any improprieties in the conduct of these examinations.

8 **NO PRIVATE RIGHT CREATED.** This document is an internal policy statement of the U.S. Customs Service and does not create any rights, privileges, or benefits for any person or party.

Commissioner of Customs

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 3340-006A, 2/4/00)**

ORIGINATING OFFICE: CC

DISTRIBUTION: P-33,G-01,G-03, G-07, G-08
CUSTOMS DIRECTIVE NO. 3340-006
DATE: June 12, 1986

SUBJECT: REVIEW, COPYING AND SEIZURE OF DOCUMENTS

REFERENCES: 19 USC 482, 19 USC 1305, 19 USC 1461, 19 USC 1467, 19 USC 1496, 19 USC 1499, 19 USC 1581, 19 USC 1582, 19 USC 1589 (and 1589a), 19 USC 507, and other statutes cited in text of this Directive 19 CFR 162.6 and 19 CFR 162.7 Customs Inspectors Handbook, Section 9.12 Customs Service Circular INS-1-00 of May 20, 1970

1. PURPOSE

To define and set forth procedures, limitations and guidelines for the review, photocopying and seizure of documents and papers.

2. BACKGROUND

The Constitution guarantees the protection of an individual's rights against unreasonable search and seizure as well as such First Amendment rights as freedom of speech and the press. The courts recognize that Customs authority for border search is of the broadest possible character, however, Customs officers must conduct the search in a reasonable and professional manner.

Since the issuance of the last circular on the review, copying and seizure of documents or papers, there has been a marked development in case law on the subject. Because Customs Service Headquarters is eager to update its policy consistent with these legal developments and to reiterate its support of Customs officers, this policy statement has been adopted.

Personal searches are often tedious and the examining officer is sometimes in a sensitive or dangerous position. It is difficult for Customs Service management to fully support the Customs officer when inquiries and complaints are received if there is no record of the action taken by the officer. These inquiries and complaints cover many areas, but there are none more sensitive than allegations that a personal search has violated a person's First and Fourth Amendment rights in the case of reviewing documents.

The Customs officer must not be intimidated by complaints or threats of letters of complaint. However, the Service will not condone the abuse of statutory

authority by any Customs officer who performs an unlawful search, seizure, or arrest, or a lawful one in an unreasonable manner.

Each Customs officer must know the limits of Customs authority, and must use this authority judiciously, conscientiously, and courteously. Customs officers should document those instances where searches have been performed which result in the photocopying or seizure of documents or papers.

3. SCOPE

This Directive applies to all Customs officers who may come across documents and papers in the conduct of a border search.

4. APPLICABILITY

This Directive applies to all searches performed by Customs officers at the border, or its functional equivalent (i.e., areas not actually at the border, but where all conditions for doing a border search exist, as for example, a search of the passengers of an airplane arriving in St. Louis nonstop from Mexico City) and in extended border search situations.

5. PROCEDURES

- a. The Customs Service must guard the rights of individuals being inspected to ensure that their personal privacy is protected. Therefore, as a general rule, Customs officers should not read personal correspondence contained in passengers' baggage or on the person. However, Customs officers have the legal authority to scan documents and correspondence brought into or taken out of the United States to determine whether the documents or correspondence are:
 - i. evidence of the importation or exportation of merchandise (including description, value or terms of sale or consignment);
 - ii. imports subject to TSUS Schedule 2, Part 5 "Books, Pamphlets, and other printed and manuscript material";
 - iii. imported in violation of the copyright laws (17 USC 601-603);
 - iv. monetary instruments which are being imported or exported and are subject to reporting requirements (31 USC Chapter 53);
 - v. obscene, treasonous, seditious (i.e., inciting or producing imminent lawless action) or prohibited matter being imported in violation of 19 USC 1305;

- vi. stolen property under the National Stolen Property Act, 18 USC 2413;
 - vii. evidence of violations of an embargo under the Trading with the Enemy Act, 50 USC App. 1, et seq., or the International Emergency Economic Powers Act, 50 USC 1702, et seq.; or
 - viii. fruits, instrumentalities, or evidence of a U.S. crime, or otherwise criminally possessed.
- b. If after scanning the documents or papers, they appear to relate to any of the listed categories above, the officer may read the document or paper to determine what action is appropriate.
 - c. It is not immediately apparent whether the document is admissible or subject to seizure, but the officer has reasonable suspicion that it falls within one of the categories listed in i through viii above, it may be detained for a reasonable period of time (pursuant to 19 USC 1499 and 1582) until supervisory or appropriate enforcement personnel can make the determination as to admissibility, seizure, or referral to another agency which may have greater expertise.
 - d. If the officer has probable cause to believe that a document or paper is subject to seizure because it is prohibited or a fruit, instrumentality or evidence of a crime or criminally possessed, or evidence of a violation of any law enforced by Customs, it may be seized.
 - e. When documents or papers fall within categories which may be seized, they may also be copied, in appropriate circumstances, and referred to the Office of Enforcement. In questionable circumstances, where the inspecting Customs officer is uncertain, the Office of Enforcement or the Regional Counsel should be consulted. Customs officers should not copy documents which are not subject to seizure. Whenever copies are made, transfer of the copies should be accomplished through a chain of custody form or other documentation which will show each individual who has access to such copies.
 - f. Passports, seamen's papers and airmen's certificates are considered government property and may be reviewed or copied as necessary (See 19 USC 1581; 46 USC 7110; 46 USC 8701; 22 CFR 51.9; and 14 CFR 61.3(h)).
 - g. Customs officers are reminded that without an appropriate search warrant or consent, no Customs officer may read or permit others to read

correspondence contained in sealed letter class mail which is in postal channels. See 19 CFR 145.3. Letters carried by individuals, however, are not considered to be mail, even if they are stamped.

- h. In addition to the categories listed above, Customs officers should be advised that certain international or bilateral agreements may provide for the exchange of other types of documents or papers relating to tax, customs or other enforcement matters. In the absence of advance instructions in specific cases, the Regional Counsel's Office should be contacted immediately for advice whenever a Customs officer reasonably suspects that documents which have been scanned fall within the scope of an international agreement. No seizure, detention or photocopying should be made unless so advised.

6. ACTION

Supervisory Customs officers are required to ensure that the above procedures are followed.

Regional Commissioners and Headquarters Assistant Commissioners are responsible for ensuring that all Customs officers under their control receive this Directive.

This policy, these procedures and future reporting requirements are applicable to all Customs officers who perform border searches. This Directive does not limit the search authority of Customs officers. Our goal is for Customs officers to perform their enforcement duties in a manner that will not only insure the integrity of officers, but will also permit officers to perform a professional service for the public. This Directive is not intended to create or confer any rights, privileges or benefits for any private person, but is merely for internal guidance.

7. SUPERSEDED MATERIAL

Customs Service Circular INS-1-00 of May 20, 1970
Customs Service Letter ENF-3-05 CC:JG of Dec. 17, 1973

8. EXEMPTION

This Directive contains information which may be exempt from disclosure to the public under the regulations of the Department of the Treasury. It should not be disclosed to the public without express authority from Customs Headquarters.

Commissioner of Customs

CUSTOMS DIRECTIVE

ORIGINATING OFFICE: CC

DISTRIBUTION: S-01

CUSTOMS DIRECTIVE NO. 2210-001A

DATE: JULY 27, 2001

SUPERSEDES: 2210-001, 8/29/86

REVIEW DATE: JULY 2003

SUBJECT: RESTRICTIONS ON IMPORTATION OF SEDITIOUS MATTER

1. PURPOSE. To instruct inspectors and other Customs officers as to seditious matters which are prohibited by section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and at the same time distinguish political propaganda which is admissible.

2. POLICY.

2.1 The U.S. Customs Service will not infringe upon the rights of individuals against unreasonable search and seizure while enforcing 19 U.S.C. 1305.

3. AUTHORITIES/REFERENCES.

19 U.S.C.1305; Customs Directive: 3340-006A (February 4, 2000).

4. BACKGROUND.

4.1 Seditious and treasonable matter. Section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), prohibits the importation of matter advocating or urging treason or insurrection against the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States. A 1978 district court decision, which was affirmed by the Supreme Court, interpreted this section of the statute as prohibiting only those materials that are "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (460 F. Supp. 56). The court stated that this interpretation was necessary for the statute to pass constitutional challenge. Customs officers must distinguish matter that merely advocates lawless action, which is admissible, from prohibited matter that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

4.2 Seditious matter described. Customs officers will recognize seditious matter in such forms as printed and graphic exhortations to the reader, encouraging or promoting imminent acts of armed or other violence against constituted government and military authorities and institutions; disruption of utility and similar public services by specifically suggested acts of vandalism, arson, and the like; and subversion of members of military and associated organizations of the defense establishment. Prohibited seditious matter does not include abstract teaching that promotes violence and other illegal acts.

Rather, materials must be directed to inciting or producing imminent lawless action and be likely to incite or produce such action in order for it to be prohibited.

4.3 Political propaganda described. A 1965 decision of the United States Supreme Court, 381 U.S. 301, resulted in the immediate termination of the segregation and detention of international mail containing foreign political propaganda. Customs enforcement interest consequently expired with respect to the printed and similar political propaganda in the baggage of arriving travelers, including those being precleared at foreign airports of departure. Customs officers will recognize such propaganda in the form of printed or other materials which seek to glorify the government or political party of a foreign country or a social system abroad; to promote foreign ideologies or policies, particularly of authoritarian regimes; to express hypercritical views of Free World society and capitalistic systems; and to thereby influence American attitudes toward foreign regimes and, frequently, against the foreign policy of the United States. Some of the propaganda may also seek to promote racial, religious, or social dissension within the United States. This type of political propaganda is admissible unless it is also seditious, that is, directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

5. PROCEDURES.

5.1 Customs officers should refer to Customs Directive 3340-006A (February 4, 2000) which contains procedures for reviewing, copying and seizing documents. The Directive provides under which circumstances Customs officers may scan documents and correspondence at the border to determine, among other things, whether the documents or correspondence being imported are obscene, treasonous, seditious (as defined above) or otherwise prohibited in violation of 19 U.S.C. 1305. If, after scanning the documents, they appear to relate to a violation of 19 U.S.C. 1305, the officer may read the document to determine what action is appropriate.

5.2 If an officer has reasonable suspicion that the materials are being imported in violation of 19 U.S.C. 1305, the documents may be detained for a reasonable period of time until a determination is made as to admissibility, seizure or referral to another agency which may have greater expertise. If the officer has probable cause to believe that a document or paper is subject to seizure because it is seditious, it may be seized. Documents that may be seized may also be copied, in appropriate circumstances, and referred to the Office of Investigations. Only documents subject to seizure may be copied. In questionable circumstances, the Office of Investigations or the Associate/Assistant Chief Counsel should be consulted. Until there has been a final determination that there is probable cause to believe that the materials violate that portion of 19 U.S.C. 1305 pertaining to seditious matters, no copies may be made and no dissemination of the information may be made except to those reasonably necessary to make that determination and the determination must be made at a level no lower than the supervisory level after consultation with the Associate/Assistant Chief Counsel. If a decision is made not to forfeit seized materials, the original materials will be returned to the owner and all copies will be destroyed. No records may be made or retained which

describe the content of the seized material or the identity of the person from whom the materials were seized.

5.3 Seizure of inadmissible seditious matter. All materials for which there is probable cause to believe they are seditious in nature (as described in BACKGROUND) are to be considered inadmissible and subject to seizure and the civil enforcement procedures of 19 U.S.C. 1305, for Customs treatment and disposition as prescribed by section 12.40, Customs Regulations. Such materials must be forwarded to the U.S. Attorney's office within 4-14 days for judicial forfeiture. Where materials have been seized (or detained and an immediate determination as to admissibility cannot be made) a Customs receipt shall be delivered to the owner of the materials, who shall be informed that he may communicate, concerning his claims and further disposition, with the local port director or if the matter has been referred for judicial forfeiture, to the local U.S. Attorney's office.

5.4 Admissible political propaganda. Such materials as those described as political propaganda in BACKGROUND shall not be subject to seizure solely on that account, however distasteful the propaganda may seem to be or offensively exaggerated in its descriptions, portrayals, or comparisons. Materials that criticize the United States Government or U.S. officials are not subject to seizure unless the materials "are directed to inciting or producing imminent lawless action and are likely to incite or produce such action". All Customs officers must refrain in the presence of the owner from volunteering expressions and observations of disapproval of criticism of offensive materials. If, among a traveler's baggage, there are many such publications, inspection may be confined to one or two and ordinarily it may be accepted that the unexamined remainder also consists of admissible propaganda. Materials confined to propaganda content shall not be seized or detained.

5.5 Telephone referral. To minimize prospects of aggravated traveler reaction attending enforcement against questionable material in personal baggage, telephonic advice from the Associate/Assistant Chief Counsel on any unconcluded baggage transaction may be sought at once by supervisory inspectors.

6. **RESPONSIBILITY.** It is the responsibility of all Customs inspectors and other Customs officers to assure compliance with the Directive.

7. **NO PRIVATE RIGHT CREATED.** This document is an internal policy statement of the U.S. Customs Service and does not create any rights, privileges, or benefits for any person or party.

Assistant Commissioner
Office of Field Operations

CUSTOMS DIRECTIVE

***(NOTE THIS DIRECTIVE IS SUPERSEDED BY CD 2210-001A, 07/27/01)**

ORIGINATING OFFICE: CC

DISTRIBUTION: G-01, G-07, G-08
CUSTOMS DIRECTIVE NO: 2210-001
ISSUE DATE: August 29, 1986

SUBJECT: RESTRICTIONS ON IMPORTATION OF SEDITIONARY MATTER

References

19 USC 1305, 22 USC 611(j); Circular: RES-II-RM X MAI-II-RM (Dec. 8, 1971)
Circular: RES-11-0:ICS (June 10, 1975); Customs Directive: 3300-04 (June 12, 1986).

1. PURPOSE

To instruct inspectors and other Customs officers as to seditious matters which are prohibited by section 305, Tariff Act of 1930, as amended (19 USC 1305), and at the same time distinguish political propaganda which is admissible.

2. BACKGROUND

Seditious and Treasonable matter. Section 305, Tariff Act of 1930, as amended (19 USC 1305), prohibits the importation of matter advocating or urging treason or insurrection against the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States. A 1978 district court decision, which was affirmed by the Supreme Court, interpreted this section of the statute as prohibiting only those materials that are "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." (460 F.Supp. 56). The court stated that this interpretation was necessary for the statute to pass constitutional challenge. Customs officers must distinguish matter that merely advocates lawless action, which is admissible, from prohibited matter that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

Seditious matter described. Customs officers will recognize seditious matter in such forms as printed and graphic exhortations to the reader, encouraging or promoting imminent acts of armed or other violence against constituted government and military authorities and institutions; disruption of utility and similar public services by specifically suggested acts of vandalism, arson, and the like; and subversion of members of military and associated organizations of the defense establishment. Prohibited seditious matter does not include abstract teaching that promotes violence and other-illegal acts. Rather, materials must be

directed to inciting or producing imminent lawless action and be likely to incite or produce such action in order for it to be prohibited.

Political propaganda described. A 1965 decision of the United States Supreme Court, 381 U.S. 301, resulted in the immediate termination of the segregation and detention of international mail containing foreign political propaganda. Customs enforcement interest consequently expired with respect to the printed and similar political propaganda in the baggage of arriving travelers, including those being precleared at foreign airports of departure. "Political propaganda" is defined in section 1 of the Foreign Agents Registration Act of 1938, as amended (22 USC 611(j)). Customs officers will recognize such propaganda in the form of printed or other materials which seek to glorify the government or political party of a foreign country or a social system abroad; to promote foreign ideologies or policies, particularly of authoritarian regimes; to express hypercritical views of Free World society and capitalistic systems; and to thereby influence American attitudes toward foreign regimes and, frequently, against the foreign policy of the United States. Some of the propaganda may also seek to promote racial, religious, or social dissension within the United States. This type of political propaganda is admissible unless it is also seditious that is, directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

3. ACTIONS

Customs officers should refer to Customs Directive 3300-04 (June 12, 1986) which contains procedures for reviewing, copying and seizing documents. The Directive provides under which circumstances Customs officers may scan documents and correspondence at the border to determine, among other things, whether the documents or correspondence being imported are obscene, treasonous, seditious (as defined above) or other prohibited matter being imported in violation of 19 USC 1305. If, after scanning the documents, they appear to relate to a violation of 19 USC 1305, the officer may read the document to determine what action is appropriate.

If an officer has reasonable suspicion that the materials are being imported in violation of 19 USC 1305, the documents may be detained for a reasonable period of time until a determination is made as to admissibility, seizure or referral to another agency which may have greater expertise. If the officer has probable cause to believe that a document or paper is subject to seizure because it is seditious, it may be seized. Documents that may be seized may also be copied, in appropriate circumstances, and referred to the Office of Enforcement. Only documents subject to seizure may be copied. In questionable circumstances, the Office of Enforcement or the Regional Counsel should be consulted. Until there has been a final determination that there is probable cause to believe that the materials violate that portion of 19 USC 1305 pertaining to seditious matters, no copies may be made and no dissemination of the information may be made except to those reasonably necessary to make that determination and the

determination must be made at a level no lower than the supervisory level after consultation with the Regional Counsel. If a decision is made not to forfeit seized materials, the original materials will be returned to the owner and all copies will be destroyed.

Seizure of inadmissible seditious matter. All materials which there is probable cause to believe are seditious in nature (as described in BACKGROUND) are to be considered inadmissible and subject to seizure and the civil enforcement procedures of 19 USC 1305, for Customs treatment and disposition as prescribed by section 12.40, Customs Regulations. Such materials must be forwarded to the U.S. Attorney's office within 4-14 days for judicial forfeiture. Where materials have been seized (or detained and an immediate determination as to admissibility cannot be made) a Customs receipt shall be delivered to the owner of the materials, who may be informed that he may communicate, concerning his claims and further disposition, with the local district director or if the matter has been referred for judicial forfeiture, to the local U.S. Attorney's office.

Admissible political propaganda. Such materials as those described as political propaganda in BACKGROUND shall not be subject to seizure solely on that account, however distasteful the propaganda may seem to be or offensively exaggerated in its descriptions, portrayals, or comparisons. Materials that criticize the United States Government or U.S. officials are not subject to seizure unless the materials "are directed to inciting or producing imminent lawless action and are likely to incite or produce such action". All Customs officers must refrain in the presence of the owner from volunteering expressions and observations of disapproval or criticism of offensive materials. If, among a traveler's baggage, there are many such publications, inspection may be confined to one or two and ordinarily it may be accepted that the unexamined remainder also consists of admissible propaganda. Materials confined to propaganda content shall not be seized or detained.

Telephone referral. To minimize prospects of aggravated traveler reaction attending enforcement against questionable material in personal baggage, telephonic advice from the Entry Licensing and Restricted Merchandise Branch of the Office of Regulations and Rulings on any unconcluded baggage transaction may be sought at once by supervisory inspectors at FTS-566-5765.

4. RESPONSIBILITY

It is the responsibility of all Customs inspectors and other Customs officers to assure compliance with the Directive.

5. SUPERSEDED MATERIAL

Customs Circular: RES-11-0:I:CS (June 10, 1975), Subject: Restrictions on Importations of Seditious Matter. Customs Circular: RES-II-RM X MAI-II-RM Dec. 8, 1971), Subject: Restrictions and Prohibitions; Imported foreign seditious matter.

Assistant Commissioner
Office of Inspection and Control