

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

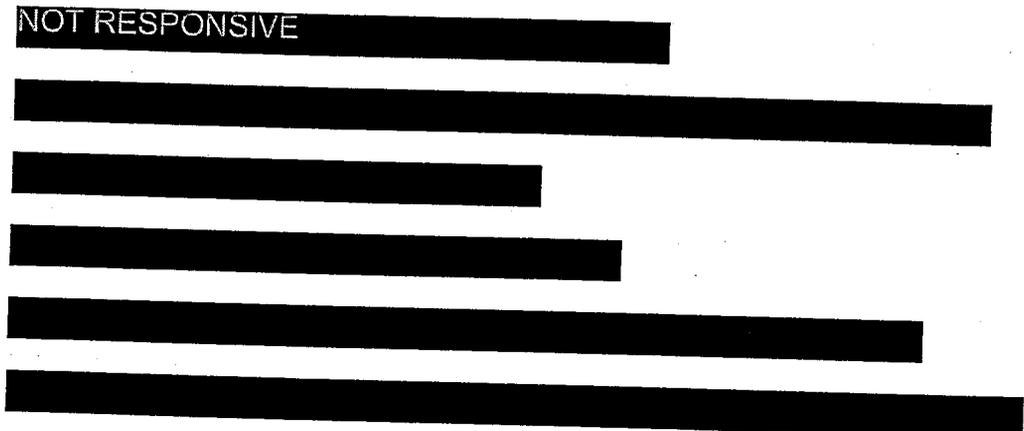
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CBP Officer Basic Training – Law Course

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

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

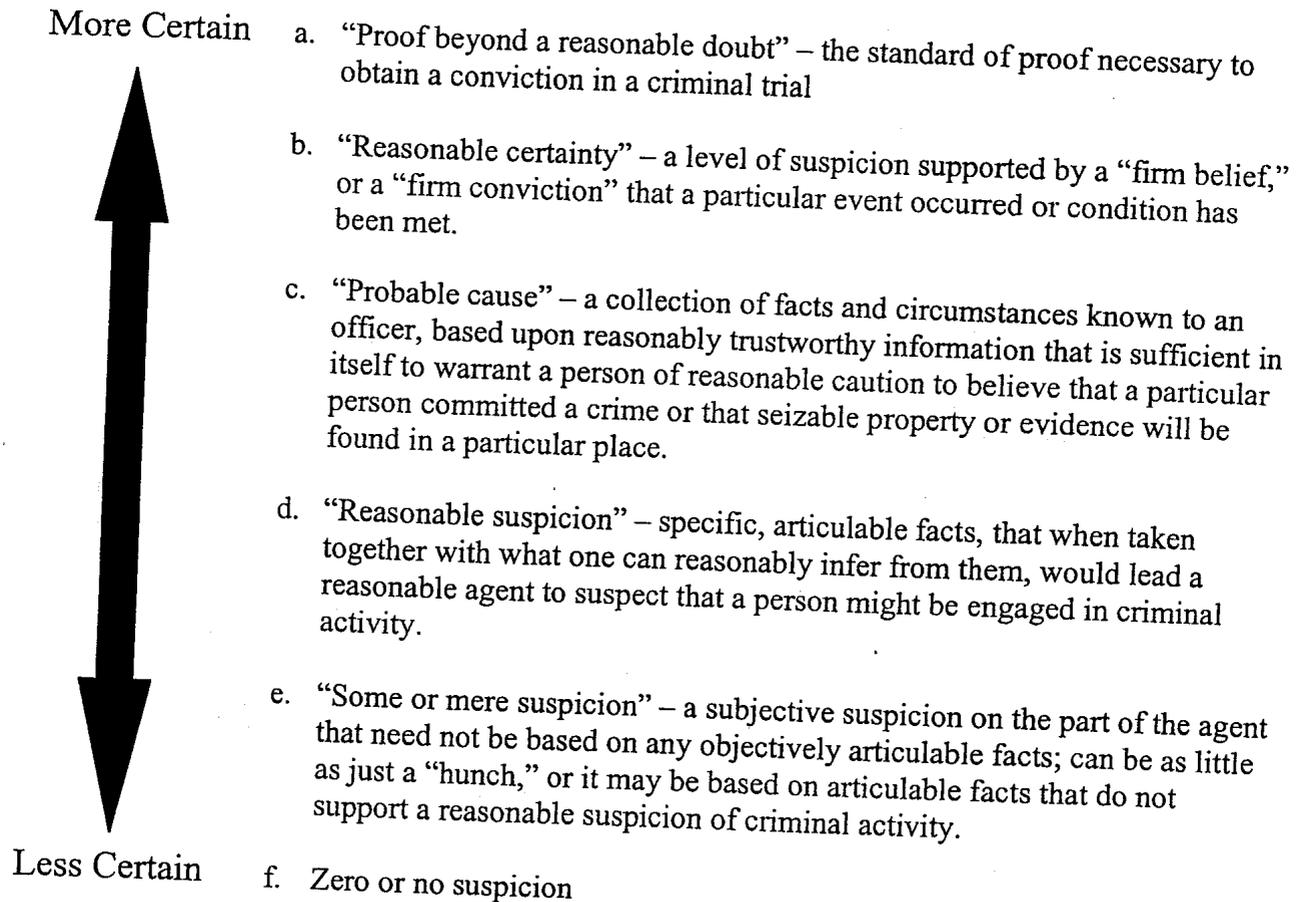
5. Judicial decisions

- 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.

4. Common levels of suspicion. These commonly accepted terms provide law enforcement professional, judges and lawyers with a consistent way of describing how certain an officer is regarding a potential criminal violation. The levels of suspicion span a continuum.



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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

NOT RESPONSIVE

[REDACTED]

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 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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

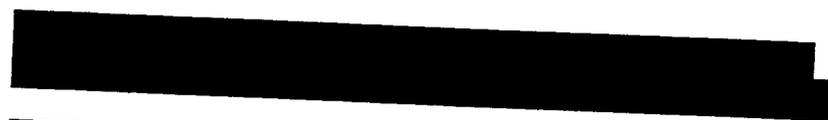
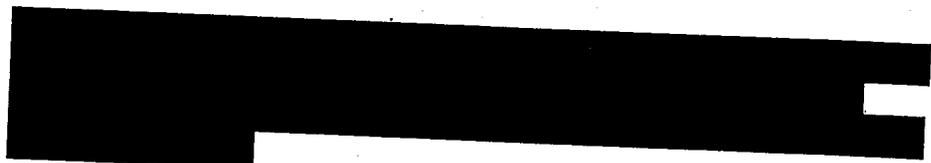
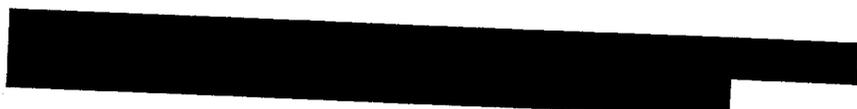
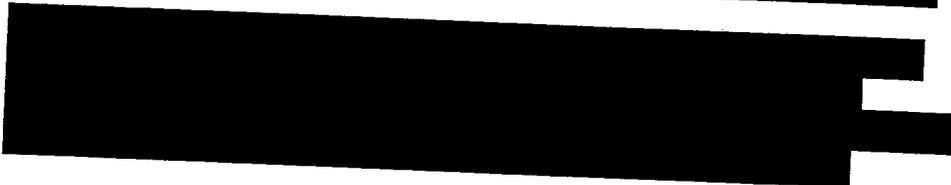
- a. An electronic/computer *device* (the physical object) is merchandise and may be searched with no suspicion under border authority

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

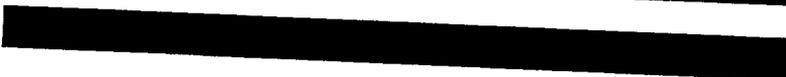
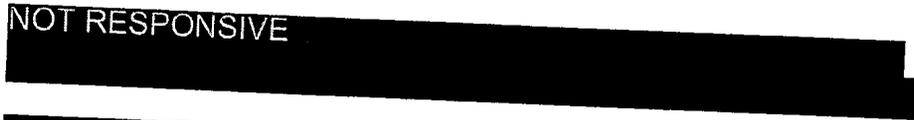
5. Diplomatic containers

NOT RESPONSIVE



6. International mail

NOT RESPONSIVE



Fourth Amendment Suspicion Requirements

No Suspicion

NOT RESPONSIVE

NOT RESPONSIVE

NOT RESPONSIVE

NOT RESPONSIVE

1. Border Search:
(Inbound or Outbound)

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

C. Copy Gov't issued ID documents for any official purpose

NOT RESPONSIVE

NOT RESPO

NOT

NOT RESPONSIVE

NOT RESPONSIVE

3. Copy & Retain Documents

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						
SUSPICION REQUIRED	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
APPROVAL REQUIRED	NONE	REASONABLE SUSPICION (R.S.)	NONE	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE
WHERE IS THE SEARCH CONDUCTED	(b)(2) & (b)(7)(F)	(b)(2) & (b)		NOT RESPONSIVE	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	MAY EMPLOY DESTRUCTIVE TECHNIQUES THAT ARE REASONABLY NECESSARY TO CONFIRM OR DENY SUSPICION OF CONCEALED MERCHANDISE /MATERIAL EVIDENCE	OUTER GARMENT AND POCKET CONTENTS THAT HAVE BEEN VOLUNTARILY REMOVED BY THE TRAVELER	NOT RESPONSIVE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE	NOT RESPONSE

NOT RESPONSIVE