

# Laptop Search Policy and Procedures

Briefing for the ART

Monday December 8, 2008



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## Key Points

- The examination of electronic devices by CBP occurs in an extremely small percentage of border crossings.
- These examinations are controlled and follow policies and procedures that have been made publicly available on the CBP website .
- These examinations have been very productive and have led to arrests, criminal investigations, refusals of admission and multiple intelligence reports that have been shared with the Intelligence Community and law enforcement.

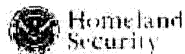


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## Court Cases

The U.S. Supreme Court has recognized the "right of the sovereign to protect itself by stopping and examining persons and property crossing into this country." And every federal appellate court in the country to address the laptop issue — including the 9th Circuit — has concluded that, at the border, there is no constitutional basis for treating laptops differently than hard copy documents absent individualized suspicion.

- **U.S. v. Arnold, 1996** Circuit Judge Darrin O'Scannlain wrote in the panel's April 21 decision in the case of U.S. v. Arnold, filed April 21 2008 United States Court of Appeals, Ninth Circuit that "Courts have long held that searches of closed containers and their contents can be conducted at the border without particularized suspicion under the Fourth Amendment," O'Scannlain wrote. "We are satisfied that reasonable suspicion is not needed for customs officials to search a laptop or other personal electronic storage devices at the border."
- **U.S. v. Montoya de Hernandez, 1999** A woman arriving in Los Angeles from Columbia was detained. Police believed she had swallowed balloons filled with cocaine, even though the court said they had no "clear indication" of it and did not have probable cause to search her. Nevertheless, the Supreme Court said police could search De Hernandez because it was a border crossing. (The search, by the way, did find 98 balloons filled with cocaine that had been smuggled in her elementary canal.)



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3

## Laptop Searches

- The examination of electronic devices by CBP occurs in an extremely small percentage of border crossings.
- For instance, for August 2008, CBP encountered more than 38 million travelers at U.S. ports of entry.
- Of these more than 38 million travelers, approximately 748,500 travelers participated in secondary inspection, but only 139 individuals were subject to a laptop inspection.
- Therefore, during this period, approximately 0.019 percent of all travelers referred to secondary inspection were subject to a laptop inspection.

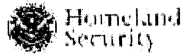


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4

## Threats Posed by Other Countries

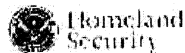
- Other countries examine and image laptops and electronic storage devices of travelers at airports and through clandestine methods during periods of travel.
- "During a trip to Beijing in December 2007, spyware programs designed to clandestinely remove information from personal computers and other electronic equipment were discovered on devices used by Commerce Secretary Carlos Gutierrez and possibly other members of a U.S. trade delegation, according to a computer-security expert with firsthand knowledge of the spyware used." (National Journal article "China's Cyber-Militia" May 21, 2008)
- "Gutierrez was in China with the Joint Commission on Commerce and Trade, a high-level delegation that includes the U.S. trade representative and that meets with Chinese officials to discuss such matters as intellectual-property rights, market access, and consumer product safety." (National Journal article "China's Cyber-Militia" May 21, 2008)



## Some of the Images found on Laptops

- These images were found on laptops during border searches by DHS.

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