

*Secretary*U.S. Department of Homeland Security
Washington, DC 20528**Homeland
Security**

October 9, 2009

The Honorable Russell D. Feingold
United States Senate
Washington, DC 20510

Dear Senator Feingold:

Thank you for your July 22, 2009 letter regarding the Department of Homeland Security's (DHS) policy on searches of laptops and other electronic devices at the border. I appreciate the reasoning behind your concern and your decision to allow us time to review our policies and standards.

U.S. Customs and Border Protection (CBP) is authorized to enforce Federal law at our international borders and has the authority to conduct searches and examinations – without particularized suspicion – in order to ensure compliance with customs laws. This longstanding authority permits CBP to conduct border searches of travelers and their baggage (which may include electronic devices), cargo, and means of transportation.

In August 2009, CBP issued a comprehensive directive that provides detailed guidance to our CBP officers and agents in the field on the procedures for conducting border searches of electronic devices. That directive provides for, among other things, supervisory review of searches of electronic devices, enhanced protections for the review of sensitive or privileged information, and specific guidance on the time allowed for CBP to complete its border search and seek assistance from other Federal agencies. For example, the directive explains that unless extenuating circumstances exist, CBP's detention of electronic devices ordinarily should not exceed five days. The directive also clarifies the precise circumstances under which CBP, or another Federal agency that has received information to provide assistance to CBP, may retain information obtained from a traveler's electronic device. Finally, the directive explains the reporting and management requirements in effect in order to hold CBP accountable and in compliance with the directive.

When developing this directive on the border search of information in electronic devices, we carefully considered the suggestions and concerns expressed by members of the public and Members of Congress, including the concerns expressed by your office and in your letter. We want to ensure that our border policies strike the appropriate balance between protecting the civil rights and civil liberties of travelers entering and leaving the United States and the necessary support of national security and enforcement of Federal law that is at the heart of our Department's mission.

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We note that the Federal appellate courts that have addressed customs authority have uniformly held that the border search exception to the Fourth Amendment permits warrantless searches of laptop computers and other inanimate objects being brought into the United States at the border (See, e.g., United States v. Arnold, 523 F.3d 941 (9th Cir. 2008), cert. denied, 129 S.Ct. 1312 (Feb. 23, 2009)). As a result, CBP applies a uniform standard to all transported information, regardless of the medium, which is essential to CBP's border security mission.

We respect your concerns of profiling, and would like you to know that CBP adheres to an existing DHS-wide policy (*Department of Homeland Security Commitment to Race Neutrality in Law Enforcement Activities*, June 2004) that aligns with Department of Justice's June 2003 guidance on this subject. This policy bars agents from making a determination to conduct a border search based solely on the race, ethnicity, or religion of the passenger. In addition, we note that DHS founded the Civil Liberties Institute as part of our Office for Civil Rights and Civil Liberties to support sensitivity awareness and provide comprehensive training to all DHS personnel involved in screening activities. In the event that an individual believes that his or her rights have been violated, he or she may seek appropriate action by contacting the DHS Traveler Redress Inquiry Program.

Also, please be aware that on the same day that we issued the directive mentioned above, we also released an extensive Privacy Impact Assessment, available at www.dhs.gov/privacy, to enhance public understanding of the authorities, policies, procedures, and privacy controls employed by DHS during border searches of electronic data to protect individuals' privacy. DHS is dedicated to ensuring that the privacy, civil rights, and civil liberties of the traveling public are protected. Toward this end, DHS is committed to non-bias in all law enforcement and screening activities.

Thank you again for your letter and I hope to continue to foster a close working relationship with you on this and other homeland security matters. Should you need additional assistance, please do not hesitate to contact me at (202) 282-8203.

Yours very truly,



Janet Napolitano