

Office of Investigations

U.S. Department of Homeland Security  
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Washington, DC 20536U.S. Immigration  
and Customs  
Enforcement

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MEMORANDUM FOR: Assistant Director  
Deputy Assistant Directors  
Special Agents in Charge

FROM: (b)(6); (b)(7)(C)  
Director

SUBJECT: Field Guidance Regarding Border Searches of Electronic Media

This memorandum provides guidance and clarifies responsibilities regarding the detention and search of electronic media stemming from the use of U.S. Immigration and Customs Enforcement (ICE) border search authority. Please see ICE Directive 7-6.0, Border Search of Documents and Electronic Media, dated July 16, 2008, for more information.

At any point during a border search, ICE Special Agents may detain originals or copies of a traveler's electronic media (e.g., cell phones, laptops, thumb drives) for further review to include forensic analysis. Such analysis may take place either on-site at the place of detention or at an off-site location, including a location associated with a demand for assistance from an outside agency or entity.

In the event that ICE detains *original* electronic media, *or copies* thereof, Special Agents are required to initiate a chain of custody form (currently, the CBP 6051-D). When a traveler's *original* media is detained (as opposed to a copy), Special Agents must provide the traveler with a copy of the chain of custody form. Additionally, when U.S. Customs and Border Protection (CBP) detains *original* electronic media and turns it over to ICE (with appropriate documentation) for the purposes of a border search, ICE Special Agents are to advise CBP of the status of the search periodically so that CBP records may be updated as appropriate.

Regardless of whether ICE has detained an *original or a copy*, Special Agents are to complete border searches of all such detained electronic media as expeditiously as possible and always within a timeframe that is considered reasonable given the facts and circumstances of the particular search. *Special Agents are reminded that detention of a traveler's electronic media, whether an original or a copy, for an extended period of time may result in the legal seizure of the media.* As such, timeliness of the search is an important factor in our ability to bring a

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successful prosecution. In determining "reasonable time," ICE Special Agents should consider the following factors:

- **The amount of information needing review;**
- **Whether the traveler was deprived of his or her property and, if so, whether the traveler was given the option of continuing his or her journey with the understanding that ICE would return the property once its border search was complete or a copy could be made;**
- **The elapsed time between the detention, the initial border search, and the continued border search, including any demand for assistance;**
- **Whether assistance was sought and the type of such assistance;**
- **Whether and when ICE followed up with the agency or entity providing assistance to ensure a timely review; and**
- **Any unanticipated exigency that may arise.**

Special Agents seeking assistance from other Federal agencies or non-federal entities are responsible for ensuring that the results of the assistance are received in a reasonable time.

If, at the conclusion of a border search, probable cause to seize the electronic media does not exist, Special Agents are required to destroy all copies unless the copies, or portions thereof, may be retained for administrative immigration purposes. Any originals must be returned to the traveler in a timely manner. Special Agents should document any difficulties related to the return of original electronic media in appropriate ICE systems.

Questions regarding the detention and border search of electronic media should be addressed to National Security Investigations Division, National Security Unit, Section Chief (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)