

## **EXHIBIT 14**

CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
GHASSAN ALASAAD, et al.,            )  
  )  
  ) Plaintiffs,                            )  
v.    ) Civil Action No.  
KIRSTJEN NIELSEN, et al.,         ) 17-cv-11730-DJC  
  ) Defendants.                        )  
-----X

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30 (B) (6) DEPOSITION OF  
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,  
BY AND THROUGH ITS AGENCY REPRESENTATIVE,  
DAVID LEE DENTON  
Thursday, March 7, 2019 - 8:59 a.m.

Reported by:

Cindy L. Sebo, RMR, CRR, RPR, CSR,

CCR, CLR, RSA, LiveDeposition Authorized Reporter

Job no: 24498

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2 Could you tell me what are these other  
3 laws?

4 A. I can tell you that ICE has very broad  
5 jurisdiction, and we enforce over 400 laws 09:16  
6 relating to border crimes.

7 Q. What kinds of laws are those that  
8 don't fall into the heading of customs,  
9 immigration, law enforcement and homeland  
10 security? 09:16

11 A. I think most laws would fall under  
12 those categories. I'm not sure I have any  
13 specific examples of laws outside of those  
14 categories.

15 Q. Are you aware of laws that are not 09:16  
16 among these other laws that justify border device  
17 searches?

18 A. I can't think of any offhand right  
19 now.

20 Q. So suppose, hypothetically, that 09:17  
21 someone in the Government suspected a traveler  
22 violating tax laws.

23 Would it be appropriate for an SA --  
24 let me pause there.

25 When I say "SA," you'll know I mean 09:17

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2 ICE special agent?

3 A. Yes.

4 Q. Would it be appropriate for an SA to  
5 conduct a border device search of a traveler who 09:17  
6 is suspected of violation of the tax laws in order  
7 to find, for example, e-mails reflecting his tax  
8 code violations?

9 MR. DREZNER: I'll object on the  
10 basis of speculation. 09:17

11 MR. SCHWARTZ: Let me just pause  
12 there.

13 I appreciate, Mr. Drezner, that your  
14 objection has been concise and not a  
15 speaking objection. That's -- that's 09:17  
16 absolutely right. And throughout this  
17 deposition, you know, you should ask --  
18 excuse me -- you should make whatever  
19 objections you feel are appropriate.

20 I will just observe for the record 09:17  
21 that I think "asks for speculation" is not  
22 a sound objection here. This is an  
23 interrogatory topic about the Government's  
24 rules and purposes and how those rules  
25 work. And we have a high-level, ranking 09:18

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2 record.)

3 - - -

4 MR. DREZNER: Same objection.

5 THE WITNESS: It certainly could be 09:19

6 appropriate if we were working a joint

7 investigation with the Internal Revenue

8 Service. And in that -- in the

9 furtherance of that investigation, we

10 would conduct a border search of a 09:19

11 traveler to seek that information and

12 evidence.

13 BY MR. SCHWARTZ:

14 Q. So how about pollution laws? For

15 example, there might be a law that makes it a 09:19

16 crime for a business to dump toxins into a river.

17 And suppose that an SA had reason to think that a

18 company executive was carrying a device that

19 contained e-mails that were discussing this

20 intentional toxic spill. 09:20

21 Would that be an issue that it would

22 be appropriate for an SA to conduct a border

23 device search?

24 MR. DREZNER: Objection:

25 speculative. 09:20

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2 THE WITNESS: I believe, in a case  
3 like that, we would be working with the  
4 Environmental Protection Agency or another  
5 agency entitled to enforce that law, and 09:20  
6 we would be entitled to conduct a border  
7 search to look for evidence of those  
8 violations.

9 BY MR. SCHWARTZ:

10 Q. The same question, but let's say 09:20  
11 consumer protection. There's laws about companies  
12 telling the truth about their product in a terms  
13 of service.

14 And if a Government investigator  
15 thought that the company was lying about the 09:20  
16 actual project -- product, would it be appropriate  
17 for an SA to conduct a border device search to  
18 find evidence of this violation of the consumer  
19 protection laws?

20 MR. DREZNER: Objection: 09:20  
21 speculative.

22 THE WITNESS: I believe it would be  
23 appropriate. And I know that we enforce a  
24 variety of trade laws and would certainly  
25 be interested in violations of -- of trade 09:21

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2 in the areas of fraud.

3 BY MR. SCHWARTZ:

4 Q. So how about bankruptcy laws? Suppose  
5 that the Government suspected that one person was 09:21  
6 hiding assets from the Government in the context  
7 of bankruptcy, and the SA thought that in  
8 conducting a border device search, they might  
9 find e-mails reflecting those -- that hiding of  
10 assets. 09:21

11 Would that be an appropriate scenario  
12 for an SA to conduct a border device search?

13 MR. DREZNER: Objection:  
14 speculative.

15 THE WITNESS: I believe, in that 09:21  
16 situation, similar to the -- the first  
17 hypothetical, we would be working in --  
18 jointly with the IRS on that type of  
19 investigation. And if there were a joint  
20 investigation, we would certainly be 09:21  
21 entitled to conduct that border search and  
22 look for that type of evidence.

23 BY MR. SCHWARTZ:

24 Q. All right. I'd like to go back to  
25 Exhibit 2, which is the Defendants' First Set of 09:22

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2 terrorism and other national security matters,  
3 human and bulk cash smuggling, contraband and  
4 child pornography. They can also reveal  
5 information -- I'll come back to that phrase -- 09:23  
6 they can also reveal information about financial  
7 and commercial crimes, such as those relating to  
8 copyright, trademark and export control  
9 violations, closed quote.

10 Other than my little insertions, did I 09:23  
11 read that correctly?

12 A. Yes, sir.

13 Q. So does ICE assert an interest --  
14 excuse me -- a -- strike that.

15 Is detection of evidence a legitimate 09:23  
16 purpose by ICE in conducting a border device  
17 search?

18 MR. DREZNER: Objection: vague.

19 BY MR. SCHWARTZ:

20 Q. Let me pause there. 09:23

21 MR. SCHWARTZ: What aspect of  
22 that -- and, again, I appreciate your  
23 concise answer -- objection -- what was  
24 vague about the question that I just  
25 asked? 09:24



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2 MR. DREZNER: I'm entitled to make  
3 objections when we think there's a  
4 relevant objection to be made. Your  
5 question was vague. 09:24

6 I don't know what -- could you  
7 repeat the question?

8 MR. SCHWARTZ: Cindy, could you read  
9 the question back?

10 - - - 09:24

11 (Whereupon, the court reporter read  
12 back the pertinent part of the  
13 record.)

14 - - -

15 MR. DREZNER: Do you want me to 09:24  
16 explain?

17 MS. EDNEY: You don't need to.

18 MR. DREZNER: I didn't think so.

19 MR. SCHWARTZ: You certainly have no  
20 obligation to explain. 09:24

21 BY MR. SCHWARTZ:

22 Q. So, Mr. Denton?

23 A. I believe detection of evidence is,  
24 yes, a valid interest.

25 Q. Okay. And how about revealing 09:25

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2 information about potential crimes? Is that a  
3 valid purpose of conducting a border device  
4 search?

5 A. I believe it is. 09:25

6 Q. Okay.

7 So is some information that is on a  
8 device, like a phone or a laptop, itself criminal  
9 contraband?

10 A. It could be. 09:25

11 Q. So what is an example of information  
12 on an electronic device that could be illegal  
13 contraband?

14 A. So if -- any pictures of sexual  
15 activity with a child, by themselves, would be 09:25  
16 contraband.

17 Q. Okay. So you just referenced  
18 sexual -- I think sexual pictures of a child?

19 A. Correct.

20 Q. Okay. So if I say "child 09:25  
21 pornography," you'll know that I mean sexual  
22 images of a child that are a violation of our  
23 nation's child pornography laws?

24 A. Yes, sir.

25 Q. Okay. So is child pornography an 09:26

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2 example of a digital file on a device that is,  
3 itself, illegal contraband?

4 A. Yes, sir.

5 Q. Okay. What other examples do you know 09:26  
6 of files that are, in and of themselves,  
7 violations of law?

8 A. On a laptop, there might be malware  
9 exploits that are intended to be injected into  
10 U.S. commerce. I believe that would also be a 09:26  
11 violation of law.

12 Q. Could you just say, you know, two  
13 sentences or so about what a malware exploit is?

14 A. A malware exploit would be software  
15 that was designed to be inserted into devices 09:26  
16 within the United States in order to cause a  
17 ransomware attack, a denial of service attack,  
18 other -- to retrieve information that -- that  
19 would be unauthorized to have.

20 So there are any number of different 09:27  
21 types of malware. Some of them could be  
22 destructive, some of them could be designed to  
23 gain information, but many of them would be  
24 illegal to -- to possess.

25 Q. So far, you've identified child 09:27

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2 pornography and malware exploits.

3 Are you aware of any other examples of  
4 digital files that are, themselves, illegal  
5 contraband? 09:27

6 A. I believe that, in particular, on the  
7 export side, there are many -- there could be  
8 documents that would be -- or would contain  
9 information that was not allowed to be exported,  
10 you know, confidential information from the 09:27  
11 Government or from companies that are conducting  
12 research in technical areas. And those might  
13 violate export laws.

14 Q. So you've talked about information  
15 that is illegal to be exported under our nation's 09:28  
16 export laws such that the information itself on a  
17 computer would be illegal contraband; is that  
18 fair?

19 A. Yes, sir.

20 Q. Okay. And is there kind of a concise 09:28  
21 term that you might use to describe that category  
22 of digital contraband, something -- a phrase akin  
23 to child pornography or malware exploits?

24 A. I think the phrase you just used,  
25 "digital contraband," would work well. 09:28

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2 Q. Okay. So other than the three  
3 examples you've given now -- the child  
4 pornography, the export -- the export control  
5 violation and the malware exploit -- are you aware 09:28  
6 of any other examples of digital information on a  
7 traveler's device that, of itself, would be  
8 illegal contraband?

9 A. That's all I can think of right now.

10 Q. Okay. Now, does the Government have 09:29  
11 an interest in discovering information on a  
12 travel's device that goes beyond these three  
13 categories of illegal contraband?

14 A. Yes.

15 Q. Okay. And so that would be the 09:29  
16 evidence of crime and information about crime that  
17 we talked about earlier that's reflected in the  
18 Defendants' answers to the Plaintiffs'  
19 interrogatories, correct?

20 A. Yes, sir, correct. 09:29

21 Q. So could you give some examples of  
22 digital evidence that the Government has a  
23 legitimate purpose in seeking out that it is  
24 not -- that is not itself digital contraband?

25 A. Yes, sir. Digital evidence would be 09:29

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2 anything indicating criminal activity. And so,  
3 for instance, there could be evidence of money  
4 laundering resident on a device.

5 And referring back to your previous 09:30  
6 question, in fact, there could be -- like, within  
7 certain financial applications, there could be  
8 currency in excess of \$10,000, which wouldn't be  
9 allowed to be exported without being properly  
10 reported. 09:30

11 But, in particular, we do a lot of  
12 money laundering investigations. And so that  
13 would be an investigation of evidence being  
14 resident on the device within various applications  
15 and contacts that we would look for. 09:30

16 Q. So an example of the legitimate  
17 pursuit of information about crime that is not  
18 itself contraband would be information about money  
19 laundering?

20 A. Yes, sir. 09:30

21 Q. So what would be an example of  
22 information in a device about money laundering  
23 that investigator might hope to find? Would it  
24 be, like, an e-mail that says, you know, Dear  
25 somebody, This is how we're going to get away with 09:31

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2 money laundering?

3 A. It could be. That would be very nice  
4 if we had such an e-mail. But more likely, it  
5 would be evidence of structuring of deposits, you 09:31  
6 know, different accounts that were -- that were  
7 being used, evidence of different corporations  
8 that were being formed for the purpose of evading  
9 currency requirements.

10 And so there could be a lot of 09:31  
11 different things that you might look for on -- on  
12 a device in order to gain evidence of money  
13 laundering.

14 Q. So are there any limits on the  
15 Government's interest in conducting a border 09:31  
16 device search for the purpose of finding evidence  
17 of crime, as opposed to criminal contraband  
18 itself?

19 A. I believe all of our searches -- we  
20 attempt to be -- to conduct them in a reasonable 09:32  
21 manner and to search for evidence of the crime  
22 we're particularly interested in in that  
23 situation.

24 Q. So you have described a reasonable  
25 manner limitation. 09:32

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2 Q. So if it's possible to answer this,  
3 what is the frequency that office -- that SAs are  
4 conducting border device searches to find  
5 contraband as opposed to the frequency that 09:33  
6 they're doing these border device searches to find  
7 evidence of crime?

8 A. You know --

9 MR. SCHWARTZ: I'm sorry. One  
10 moment. 09:34

11 (Counsel confer.)

12 BY MR. SCHWARTZ:

13 Q. Just to be clear here, this question  
14 is directed at the pursuit, as opposed to the  
15 results. 09:34

16 So I'm just going to repeat the  
17 question.

18 What is the frequency that border  
19 device searches are being conducted by SAs for the  
20 purpose of finding digital contraband, as opposed 09:34  
21 to the frequency that their purpose is to find  
22 evidence of a crime?

23 A. We don't aggregate our statistics to  
24 elucidate that difference.

25 Q. So parallel question: What is the 09:34



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2 frequency that special agents, in conducting a  
3 border device search, find digital contraband  
4 compared to the frequency that they find evidence  
5 of crime? 09:35

6 A. We also do not aggregate our border  
7 device search statistics in that manner.

8 Q. So why doesn't the Government maintain  
9 statistics about the pursuit of -- strike that.

10 Why doesn't the Government maintain 09:35  
11 statistics on the frequency that they find digital  
12 contraband, as opposed to evidence of crime?

13 A. I believe that evidence would be  
14 recorded in a report of investigation, but it  
15 would not be aggregated statistically and 09:35  
16 separated out. It would require manual effort to  
17 go into reports of investigation associated with  
18 particular border searches in order to retrieve  
19 that information.

20 Q. So does the Government assert that its 09:36  
21 interest in searching a -- or conducting a border  
22 device search in order to find evidence of crime  
23 extends not just to the person who was suspected  
24 of the crime but to another person who is not  
25 suspected of crime but who might, nonetheless, 09:36

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2 MR. DREZNER: Objection. This is  
3 speculative.

4 THE WITNESS: Another example could  
5 be travelers coming into the 09:42

6 United States, and one of them is  
7 suspected of being a -- a narcotics

8 smuggler, and part of his method of  
9 smuggling might be to use other people

10 along with him and -- as -- as internal 09:42

11 carriers or as -- as people that would be  
12 able to provide cover for his crimes.

13 BY MR. SCHWARTZ:

14 Q. So let me give an example.

15 So suppose there is someone traveling 09:43  
16 by themselves, and they are known to be business  
17 partners with someone who's under investigation  
18 for tax fraud.

19 Could the SAs conduct a border device  
20 search on this traveler in order to find evidence 09:43  
21 of the tax crime that his partner is suspected of?

22 MR. DREZNER: Objection:  
23 speculative.

24 THE WITNESS: If the agent believes  
25 that or has reasonable suspicion that 09:43

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2 there would be evidence on that device, I  
3 think they would be authorized to -- to  
4 search it.

5 (Sotto voce between co-counsel.) 09:43

6 MR. DREZNER: Can we take a break at  
7 this point?

8 MR. SCHWARTZ: Sure.

9 MR. DREZNER: Sorry.

10 - - - 09:45

11 (Whereupon, a recess was taken from  
12 9:45 a.m. to 9:56 a.m.)

13 - - -

14 THE WITNESS: I would like to make a  
15 couple of clarifications on -- on previous 09:56  
16 testimony.

17 BY MR. SCHWARTZ:

18 Q. Please.

19 A. First, regarding the reasonable  
20 suspicion standard, that is for forensic 09:56  
21 examinations and does not cover manual  
22 examinations, per our guidance.

23 But practically speaking, we're going  
24 to be already -- already have a case or be  
25 investigating anybody that -- that we do a border 09:57

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2 BY MR. SCHWARTZ:

3 Q. Okay. So I think you just said that  
4 for almost all search -- some significant number,  
5 whatever you said, of searches, because you're an 10:00  
6 investigative agency, you're going to have  
7 reasonable suspicion, correct?

8 A. Yes, sir.

9 Q. Okay. But if you did not have  
10 reasonable suspicion and your SA wanted to conduct 10:00  
11 a basic search, they would not need reasonable  
12 suspicion to conduct that basic search?

13 A. Yes, sir.

14 Q. Okay. I guess while -- so this is a  
15 good time, I think, to talk about of the meaning 10:01  
16 of the words "basic search" and "advanced search."  
17 Can you tell me what those words mean  
18 to ICE?

19 A. We would say a manual search is one  
20 where you don't connect any external equipment to 10:01  
21 the -- to the device in order to retrieve the  
22 data, and then we would call it a "forensic  
23 search" if you do connect such a device.

24 Q. Okay. So the dichotomy is between a  
25 search of the device with the device itself versus 10:01

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2 a search of the device using a second device?

3 A. Yes, sir.

4 Q. Okay. And the former category is  
5 called "basic"? 10:01

6 A. We would call it a "manual search."

7 Q. So is there a difference between a  
8 manual search and a basic search?

9 A. When you say "a basic search," I'm not  
10 sure what you're referring to. 10:02

11 Q. Okay. So the term that you are using  
12 today on behalf of ICE to talk about a search  
13 where you don't need reasonable suspicion is a  
14 "manual search."

15 A. Yes, sir. 10:02

16 Q. Okay. And, likewise, the kind of  
17 search where you do need reasonable suspicion,  
18 because you're using the Government's -- or ICE's  
19 device to retrieve information from the traveler's  
20 device, the term that you're using for that kind 10:02  
21 of search is what?

22 A. A "forensic search."

23 Q. A "forensic search."

24 And are you familiar with the term  
25 "advanced search"? 10:02

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2 A. I believe that's the term that CBP  
3 uses in their policy.

4 Q. Okay. But the terminology that ICE --  
5 that you are using today on behalf of ICE is a 10:02  
6 "forensic search" and a "manual search"?

7 MR. DREZNER: Objection: asked and  
8 answered.

9 THE WITNESS: Yes, sir.

10 BY MR. SCHWARTZ: 10:02

11 Q. Okay.

12 Okay. So we're going to continue in  
13 the discussion of the Government's purposes for  
14 conducting searches.

15 I think we've had a valuable detour to 10:03  
16 talk about manual versus forensic searches and the  
17 different factual predicate for conducting them,  
18 but now I want to get back into the Government's  
19 purposes.

20 We were talking about searching one 10:04  
21 person because of suspicion that they had evidence  
22 relevant to the possible crimes of another person,  
23 correct?

24 A. Yes, sir.

25 Q. Okay. So what about a reporter who is 10:04

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known to have had contact with a suspected terrorist? And there is no suspicion about the reporter being a terrorist, but there is suspicion that the reporter's device might contain information about the terrorist.

10:04

Does the Government have a legitimate purpose in conducting a border device search of the journalist's device?

MR. DREZNER: Objection:

10:04

speculative.

Again, I'll clarify he's only answering on behalf of ICE; and law enforcement privilege.

But you can answer, if you're able to.

10:05

MR. SCHWARTZ: And thank you for the clarification. I keep saying "Government," and I mean ICE. And I will get that straight.

10:05

THE WITNESS: Yes, sir, I believe if the agent has reasonable suspicion that the device would contain evidence relating to terrorist activity, we would have an interest in searching it. Yes, sir.

10:05

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2 BY MR. SCHWARTZ:

3 Q. So if the SAs had no evidence of  
4 crime, but they did have suspicion that the  
5 journalist had contact with a terrorist, and the 10:05  
6 SAs want to conduct a basic search, they, in fact,  
7 would need no reasonable suspicion, correct?

8 A. Correct.

9 Q. In that scenario, would the Government  
10 have a legitimate purpose in conducting the 10:05  
11 no-suspicion search of the device of the  
12 journalist?

13 MR. DREZNER: Objection: vague.

14 THE WITNESS: I believe they could.

15 BY MR. SCHWARTZ: 10:06

16 Q. So I want to go back to Exhibit 2 for  
17 a moment, which is, again, the Government's  
18 answers to the first set of interrogatories. We  
19 were looking at it on Page 2 and a paragraph in  
20 the middle that begins, As made clear. 10:06

21 As made clear in two rules, border  
22 searches of electronic devices are conducted in  
23 furtherance of customs, immigration, law  
24 enforcement and homeland security  
25 responsibilities. 10:06



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a suspicion that a particular person was an undocumented immigrant? And so the ERO deportation officer calls the SA, says, You've got someone at the border; I think they're a suspected undocumented immigrant. Can you conduct a border device search? 10:13

While the SA has the ultimate power to decide whether or not to conduct the border device search, the SA would take that information from the ERO officer into account in deciding whether to conduct the border device search, correct? 10:13

MR. DREZNER: Objection: speculative and to scope.

THE WITNESS: I believe that's correct, yes. 10:13

BY MR. SCHWARTZ:

Q. So slightly different scenario: There's a person at the border who's a United States citizen, and the ERO deportation officer knows that U.S. citizen is associated with a suspected undocumented immigrant. 10:13

And the ERO deportation officer calls the SA and says, We would like you to search the device of this U.S. citizen because we think it 10:13

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2 contains evidence of the undocumented status of  
3 the person we're investigating.

4 While the SA has ultimate power to  
5 decide whether or not to do a border device 10:14  
6 search, they would take into account the  
7 information they got from the ERO deportation  
8 officer in deciding whether to conduct a border  
9 device search, correct?

10 MR. DREZNER: Objection: 10:14  
11 speculative. And I'm going to make a  
12 standing objection that these questions  
13 are outside the scope, and so his answers  
14 are not binding.

15 But you can answer, to the extent 10:14  
16 you're able.

17 THE WITNESS: I believe that the  
18 special agent would take that into  
19 consideration, yes.

20 BY MR. SCHWARTZ: 10:14

21 Q. And just --

22 MR. SCHWARTZ: You have done your  
23 job of making your objection in a concise  
24 manner, and I thank you for that.

25 For the record, the Plaintiffs' view 10:14

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2 THE WITNESS: Those, and possibly  
3 others.

4 BY MR. SCHWARTZ:

5 Q. So what others? 10:25

6 MR. DREZNER: Same objection.

7 THE WITNESS: I -- I can't think of  
8 any off the top of my head, but I don't  
9 want to preclude cooperation with any  
10 U.S. Government element. 10:25

11 BY MR. SCHWARTZ:

12 Q. I understand the clarification. Thank  
13 you.

14 So pursuant to these interests of  
15 the -- of ICE in conducting border device searches 10:25  
16 for national security, for homeland security, for  
17 terrorism threat analysis, can ICE search a  
18 journalist's reports on national security issues?

19 MR. DREZNER: Objection:  
20 speculative. 10:26

21 THE WITNESS: I believe in a border  
22 search environment, if we had suspicion  
23 that there would be evidence of a crime on  
24 there, then -- then I believe, yes, we  
25 could. 10:26

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2 BY MR. SCHWARTZ:

3 Q. And, likewise, you could do a basic  
4 search on that journalist with no suspicion,  
5 correct? 10:26

6 A. Yes.

7 Q. How about a journalist or a scholar  
8 whose sources of their work are foreigners who are  
9 of interest to the Government in a terrorist  
10 investigation? The Government -- or strike 10:26  
11 that -- ICE asserts an interest in searching them  
12 in order to find -- let me start that -- that  
13 question again.

14 Suppose there's a journalist or a  
15 scholar with foreign sources who are of interest 10:27  
16 to the Government and that journalist or scholar  
17 presents at the U.S. border.

18 ICE asserts that the special agents  
19 could search them for -- in order to find  
20 information about the foreigner that they are 10:27  
21 investigating, correct?

22 MR. DREZNER: Objection --  
23 objection: vague and speculative.

24 THE WITNESS: If we had an  
25 investigative interest, then, yes. 10:27

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2 access, depending on the nature of their  
3 role within the Agency and their capacity  
4 as investigators.

5 BY MR. SCHWARTZ: 10:47

6 Q. Just clearing up a few things. I  
7 believe that you used the word "TECS" in answering  
8 your question.

9 A. Yes.

10 Q. Is TECS a acronym that is spelled 10:47  
11 T-E-C-S?

12 A. Yes, sir.

13 Q. Okay. What is TECS?

14 A. The acronym, as I understand it,  
15 stands for the Treasury Enforcement Communications 10:48  
16 System. It was originally formed by the  
17 U.S. Customs Service.

18 And it is -- the acronym may have  
19 changed definition since CBP is not under the  
20 Treasury Department anymore, so I'm not positive 10:48  
21 about the acronym. But it's generally the system  
22 that CBP officers use to place information about  
23 travelers.

24 Q. And ICE special agents who are  
25 deciding whether to conduct a border device search 10:48

1 DAVID LEE DENTON

2 generally have access to the TECS system, correct?

3 MR. DREZNER: Objection based on  
4 privilege.

5 You can answer, if you're able to do 10:48  
6 so.

7 THE WITNESS: They could receive  
8 information from CBP about TECS or they  
9 could have access themselves.

10 BY MR. SCHWARTZ: 10:48

11 Q. And as a general matter, an SA who  
12 wants access to TECS can get it either directly or  
13 through CBP?

14 A. CBP grants the access, as far as I'm  
15 aware. 10:49

16 Q. So just to be clear here, your answer  
17 talked about different units of SAs, you know, in  
18 different functions, like airport or, you know,  
19 ground or port of entry -- a land-based border  
20 port of entry. 10:49

21 My question is concerned with all of  
22 the SAs at all of the ports of entry who might  
23 want to do a border device search.

24 As a general rule, if they want  
25 information about the traveler that is in TECS, 10:49

1 DAVID LEE DENTON

2 they have access to TECS, correct?

3 MR. DREZNER: Objection: vague.

4 THE WITNESS: They can get access to

5 TECS, yes. 10:50

6 BY MR. SCHWARTZ:

7 Q. And if an SA has access to the

8 advanced -- strike that.

9 If an SA has access to the Automated  
10 Targeting System, would they have that access 10:50

11 through TECS, or would they have it through some  
12 other means?

13 MR. DREZNER: Objection: it's vague.  
14 And I believe he already answered that he  
15 doesn't know the answer to this question. 10:50

16 THE WITNESS: I'm not certain how  
17 the system works -- how the ATS system  
18 works, but I believe that access would be  
19 granted from CBP. Whether through --  
20 through TECS or some other mechanism, I'm 10:50  
21 not sure.

22 BY MR. SCHWARTZ:

23 Q. Okay.

24 So we've kind of established what TECS  
25 is and how information might have been uploaded 10:50

1 DAVID LEE DENTON

2 investigation of this traveler?

3 A. Yes, sir.

4 Q. Okay. And if the ICE officer in that  
5 situation was making a decision whether to conduct 11:13  
6 a border device search and they felt that  
7 information in the CBP ATS system would help them  
8 make that decision, the ICE SA would be able to  
9 get that ATS information, correct?

10 A. I believe they could, yes. 11:14

11 Q. Okay. So I would like to turn back to  
12 Exhibit 1 of the deposition, which is the list of  
13 topics -- it's the notice of the deposition on the  
14 first page, and the second page is a list of  
15 topics. 11:14

16 And I'm going to identify two topics  
17 that my next set of questions are relevant to that  
18 are kind of overlapping.

19 So Topic Number 1, do you see, it  
20 says, Policies, practices? 11:14

21 A. Yes.

22 Q. Okay. So I'm going to read it out  
23 loud.

24 One, Policies, practices, and training  
25 regarding the basis to search or seize electronic 11:14



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2 Did I read that correctly?

3 A. Yes, sir.

4 Q. So just backing up a moment so I  
5 understand the milieu within this -- this answer 11:18  
6 makes sense, when would an ICE officer be in a  
7 position to conduct a border device search?

8 A. I believe that an ICE agent would be  
9 in a position to conduct a border device search  
10 anytime they have an investigative interest or 11:19  
11 belief that there would be information on that  
12 device that would help further our investigation.

13 Q. So turning to the discussion we had  
14 immediately after the break, where you made an  
15 important clarification, I gather that there are 11:19  
16 some situations where the traveler is referred by  
17 CBP over to ICE, and in that situation, the ICE SA  
18 might conduct a border device search?

19 A. Yes, sir.

20 Q. And there's also a scenario where the 11:19  
21 ICE SA already has an open investigation of a  
22 traveler, and, likewise, the SA might -- when that  
23 traveler appears at the border, might be in a  
24 position to conduct a border device search?

25 A. Yes, sir. 11:19

1 DAVID LEE DENTON

2 Q. So of the ICE employees who are at  
3 ports of entry potentially conducting border  
4 device searches, is it just the SAs, or are there  
5 other staff, such as forensic specialists, who 11:20  
6 might be doing the -- the border device search at  
7 the border, at the port of entry?

8 A. The only people who would conduct a  
9 forensic search at the border would be people who  
10 are specifically trained for it, CFAs, generally 11:20  
11 speaking.

12 Q. And, again, the CFA is a computer --  
13 what is a CFA?

14 A. A computer forensic agent or a  
15 computer forensic analyst. 11:20

16 Q. Okay. So does the term "CFA" include  
17 both of those?

18 A. Yes.

19 Q. Okay. So we may have covered this  
20 before, so I apologize. 11:20

21 A -- can an SA be a CFA?

22 A. Yes.

23 Q. And so for an SA to become a CFA, they  
24 probably go through some additional kind of  
25 training in order to be certified as competent to 11:20

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investigation and the deciding whether or not to do the border device search, are family relationships between the traveler and someone else a factor that the SA might consider in deciding whether to do the search -- the border device search?

11:48

MR. DREZNER: Objection: vague and speculative.

THE WITNESS: I guess that a relationship between criminals could be a factor. And to the extent that criminals could be members in the same family, it could be.

11:48

BY MR. SCHWARTZ:

11:48

Q. So what if the traveler was not suspected of a crime, but they were related to a person who was the subject of a ICE investigation?

Would that be a basis for ICE, potentially, to conduct the border device search of the -- the traveler before them?

11:48

MR. DREZNER: Objection: vague and speculative.

THE WITNESS: By itself, I don't believe that would -- would be a basis,

11:48

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2 but in conjunction with other factors, it  
3 could be.

4 BY MR. SCHWARTZ:

5 Q. So the same scenario: It's the 11:49  
6 traveler who is the subject of the investigation,  
7 deciding whether to do a border device search.

8 Is their travel history a factor that  
9 might be considered in deciding whether or not to  
10 do a border device search? 11:49

11 MR. DREZNER: Objection:  
12 speculative.

13 THE WITNESS: I suppose the travel  
14 history could be a subject -- or could be  
15 a factor in the decision to make a border 11:49  
16 search.

17 BY MR. SCHWARTZ:

18 Q. So suppose the traveler is a  
19 nationalized U.S. citizen -- the same matrix:  
20 there's an investigation, they're deciding whether 11:49  
21 to do a border device search.

22 Is their nation of birth potentially a  
23 factor that might be considered in whether or not  
24 to do a border device search?

25 MR. DREZNER: Objection: vague and 11:49

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2 A. I think you would -- "broadcast  
3 message" just meant that it was sent out to  
4 everybody and not to a specific location. So it's  
5 a message. 12:12

6 Q. Okay. So was this message sent to all  
7 special agents and CFAs who might do border device  
8 searches?

9 A. Yes.

10 Q. Okay. So from the perspective of a SA 12:12  
11 or CFA who potentially has in front of them two  
12 different documents, one of which is Exhibit 5,  
13 which is the 2009 directive, which says you never  
14 need reasonable suspicion, and the other is the  
15 2018 message, which says, for forensic searches -- 12:12  
16 well, it says whatever it says about reasonable --  
17 about -- it says whatever it says.

18 Which one is the -- which one is  
19 controlling on the special agents?

20 A. The broadcast message is controlling. 12:12

21 Q. And that would be understood by all  
22 the special agents? There's some kind of  
23 understanding that a more recent broadcast message  
24 trumps an older directive?

25 A. Yes. 12:13

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2 A. Yes.

3 Q. And what are those systems?

4 A. CBP has a variety of systems. I think  
5 we previously discussed ATS. There's the APIS, 01:12  
6 Advanced Passenger Information System; there's  
7 ACS, the Automated Cargo [sic] System.

8 Outside of CBP, there are -- ICE  
9 maintains its own databases. We have what's  
10 called ICM, the Investigative Case Management 01:13  
11 system. And ICM is the repository for pretty much  
12 all of our case information, including our subject  
13 records and reports of investigation.

14 I think those would be the primary  
15 databases that -- that ICE agents would use to 01:13  
16 have information about -- about travelers.

17 Q. So you mentioned the ATS; you also  
18 mentioned APIS.

19 What does APIS stand for?

20 A. The Advanced Passenger Information 01:13  
21 System.

22 Q. Is that -- what agency manages the  
23 APIS system?

24 A. I believe CBP.

25 Q. Is that different than the TECS 01:13

1 DAVID LEE DENTON

2 data from -- from that company or from the  
3 country, generally.

4 There's a lot of trade information  
5 that's in there that would affect trade 01:16  
6 investigations.

7 Q. So -- in the context of a trade  
8 investigation -- trade -- information in the ACS  
9 could be helpful to an SA in deciding whether to  
10 conduct a border device search? 01:16

11 A. Yes.

12 Q. And so who -- what Government agency  
13 manages the ACS?

14 A. I believe CBP.

15 Q. And what information is in the ACS? 01:16

16 A. It's not information about persons;  
17 it's information about cargo and shipments and  
18 merchandise that's imported or exported.

19 Q. Okay.

20 So you also mentioned the system known 01:16  
21 as, I think you said, Investigative Case  
22 Management?

23 A. Yes.

24 Q. And that is ICM?

25 A. Yes. 01:17

1 DAVID LEE DENTON

2 Q. And ICM is a system that is operated  
3 by ICE?

4 A. Yes, sir.

5 Q. And SAs who are deciding whether or 01:17  
6 not to conduct a border device search would have  
7 access to the information that's in the ICM?

8 A. Yes, sir.

9 Q. And information in the ICM, in some  
10 cases, will be relevant to the SA's decision 01:17  
11 whether to conduct a border device search?

12 A. Yes, sir.

13 Q. Okay. And so what kind of information  
14 is in the ICM?

15 MR. DREZNER: Objection on the basis 01:17  
16 of privilege.

17 You can answer, to the extent you  
18 can do so in a nonprivileged way.

19 THE WITNESS: So there could be a  
20 wide variety of information contained in 01:17  
21 ICM, but primarily, it would be reports of  
22 investigation and subject records.

23 BY MR. SCHWARTZ:

24 Q. What's the difference between a report  
25 of an investigation and a subject record? 01:17



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2 A. A subject record would be linked to a  
3 report of investigation and it would identify  
4 persons or objects that are connected to the  
5 investigation. 01:18

6 Q. So a subject record is a subset of the  
7 report of investigation?

8 A. Yes, sir, I think you could say that.

9 Q. Okay. Would, in some cases, reports  
10 of investigate -- well, strike that. 01:18

11 Other than reports of investigation  
12 and subject records, are there other categories of  
13 information that are in the ICM that are available  
14 to the SAs at the border?

15 MR. DREZNER: Objection on the basis 01:18  
16 of law enforcement privilege.

17 You can answer, if you're able to do  
18 so.

19 THE WITNESS: I don't think I can  
20 expound further on the -- the subject 01:18  
21 matter within ICM.

22 BY MR. SCHWARTZ:

23 Q. Because of the privilege or because  
24 you don't know if there's more?

25 A. I believe there is more, but I am not 01:18

1 DAVID LEE DENTON

2 sure I can say exactly, you know, what it is.

3 Because I know that there are a variety of -- of  
4 records that are kept in ICM.

5 Q. Okay. And please answer this question 01:19  
6 as literally stated: The reason -- the reason why  
7 you can't say more is because saying more would  
8 intrude on the law enforcement privilege or  
9 because you don't know the answer?

10 A. I think a combination of both. 01:19

11 Q. Okay. I'm going to move on from  
12 there.

13 The ICM -- might it contain  
14 information about prior encounters between ICE and  
15 the person at the border? 01:19

16 A. It would contain that information  
17 within reports of investigation, yes.

18 Q. Okay. And might it contain  
19 information about whether or not the traveler was  
20 sent a secondary screening? 01:20

21 A. That information would be in those  
22 reports, yes.

23 Q. Would it contain information about  
24 whether or not there had been a bag search of the  
25 traveler? 01:20

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2 A. Any border search that was conducted  
3 would be recorded, yes.

4 Q. And that would include a bag search?

5 A. It would include a bag search, yes. 01:20

6 Q. How about a pat-down/frisk of the  
7 traveler? Would that be -- if it happens, would  
8 that be reported in the ICM system?

9 A. ICE -- again, our situation at the  
10 border is very different than CBP, and we would 01:20  
11 not be conducting a pat-down or a frisk of anybody  
12 at the border unless we were going to arrest them  
13 and then take them to jail for evidence that we  
14 found. So it's not a situation that would occur.

15 Q. Well, thank you for that 01:20  
16 clarification. It shows my lack of knowledge of  
17 your system compared to your knowledge of your  
18 system.

19 How about a search -- a search of  
20 someone's device at the border? That would be 01:21  
21 reflected in the ICM system?

22 A. It would be, yes.

23 Q. And all of that information that we've  
24 just gone through -- the previous encounter, the  
25 secondary screening, the search of the bag, the 01:21

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2 search of the electronic device -- all of that  
3 information, through the ICM, would be available  
4 to the SA at the border who is deciding whether or  
5 not, in real-time, to conduct a border device 01:21  
6 search of the traveler, correct?

7 A. Yes.

8 Q. And all of that information would be  
9 relevant to the decision whether to conduct the  
10 border device search, correct? 01:21

11 MR. DREZNER: Objection:  
12 speculative.

13 THE WITNESS: I think all of those  
14 factors could be relevant.

15 BY MR. SCHWARTZ: 01:21

16 Q. Would the travel history of the person  
17 at the border be reflected in the ICM?

18 MR. DREZNER: Objection. I think  
19 that was asked and answered.

20 THE WITNESS: I believe that it 01:22  
21 would be or could be reflected in ICM, but  
22 travel history is generally maintained by  
23 CBP in the TECS system.

24 BY MR. SCHWARTZ:

25 Q. And as we discussed before, in some 01:22

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2 circumstances, that information of the TECS system  
3 might be made available to the -- the ICE SAs?

4 A. Yes, sir.

5 Q. So the information in the 01:22

6 Investigative Case Management -- I'm sorry. Is it  
7 just ICM or is it case management system --

8 A. ICM is fine.

9 Q. ICM. Okay.

10 The information in the ICM about a 01:22

11 border device search of a traveler in the past --  
12 might that contain content from the traveler's  
13 device?

14 MR. DREZNER: Objection on the basis  
15 of privilege law enforcement. 01:23

16 But you can answer, if you can do so  
17 in a nonprivileged way.

18 THE WITNESS: Information about what  
19 was found in a search might be contained  
20 within a report of investigation, but the 01:23  
21 contents of the search themselves would  
22 not be maintained in ICM.

23 BY MR. SCHWARTZ:

24 Q. Okay. So I'm just going to read back  
25 your answer. Quote: 01:23

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2 of that, it's not put into ICM itself, but a  
3 description of it might be put into ICM in the  
4 form of a report of investigation.

5 Q. Thank you. That was very helpful. 01:26

6 If I can just try to summarize, it  
7 sounds like you're saying the evidence itself, in  
8 the sense of, like, the 1s and 0s, don't go into  
9 the ICM -- they go into a different storage  
10 system -- but a description of the -- the 01:26  
11 information, as in, you know, an officer's  
12 narrative/description of what they saw, might go  
13 into the ICM; is that correct?

14 A. Yes, sir.

15 Q. Okay. So the description by the 01:26  
16 officer that goes into the ICM, it might be -- if  
17 they're describing, for example, a -- a written  
18 message, it might be a employee's summary of what  
19 they saw. So they might get the gist of a longer  
20 message by being described more concisely. 01:27

21 MR. DREZNER: Objection: vague and  
22 speculative.

23 THE WITNESS: That's correct, they  
24 might have a verbatim transcript of a  
25 conversation, for instance, if it was a 01:27

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child pornography investigation and they wanted to put in their report the specific language that was used by -- by the suspect; or it might just be a description of -- of a conversation; or it might say that they, for instance -- continuing with the same example -- looked at many pictures of child pornography on the phone, and it might describe them; or it might just state they were encountered and, you know, held as evidence, something like that.

01:27

01:27

BY MR. SCHWARTZ:

Q. So it could be a verbatim recitation of written information, correct?

01:28

A. Correct.

Q. And it could be a summary of written information, correct?

A. Correct.

01:28

Q. And it could be a description of a photograph, correct?

A. Correct.

Q. And when we talk about the written materials that could be verbatim or summarized,

01:28

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2 that could be an e-mail, correct?

3 A. Yes.

4 Q. It could be a text message, correct?

5 A. Correct. 01:28

6 Q. It could be a posting on social media?

7 A. Correct.

8 Q. It could be basically anything in

9 writing that one might find inside someone's

10 laptop or cell phone or other device? 01:28

11 A. Yes.

12 Q. Okay. And all of that information --

13 that is, the officer's description of the content

14 of the person's electronic device that is reported

15 in the Investigative Case Management and which is 01:28

16 available to the SA at the border who is making

17 the decision whether or not to conduct a border

18 device search -- all of that information is

19 relevant to whether or not to conduct a new border

20 device search, correct? 01:29

21 MR. DREZNER: Objection: form and

22 speculative.

23 THE WITNESS: I believe that

24 information could be relevant, yes.

25



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2 MR. SCHWARTZ: Okay. What the  
3 Plaintiffs want to know -- and I'm going  
4 to begin by directing this question to  
5 Mr. Denton, and if Mr. Denton -- we'll see 01:50  
6 if Mr. Denton knows.

7 BY MR. SCHWARTZ:

8 Q. Mr. Denton, could you maybe look first  
9 at Exhibit 7 and then Exhibit 9 and tell me  
10 whether or not these are the same document, 01:50  
11 except one is -- Number 7 is more redacted and  
12 Number 9 is less redacted?

13 A. I don't see Number 7 handy, but --

14 MR. DREZNER: Here you go.

15 THE WITNESS: -- yes, the -- one is 01:50  
16 clearly more redacted than the other.

17 BY MR. SCHWARTZ:

18 Q. And aside from the redactions, they  
19 are the same document?

20 A. Yes, sir. 01:50

21 Q. Okay. So is this document, this  
22 message, as reflected in Exhibit 7 and 9, the  
23 current -- currently in force as to the SAs when  
24 deciding whether and how to conduct border device  
25 searches? 01:51

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2 A. Yes, sir, this is current policy.

3 Q. This is current policy?

4 A. Yes, sir.

5 Q. All right. Let's move along. 01:51

6 All right. I'd like to turn, please,

7 back to Exhibit -- I'm sorry -- Exhibit 4, which

8 is the Defendants' third set of interrogatory

9 answers, and ask, Mr. Denton, please, to turn to

10 Page 7. 01:52

11 And do you see, towards the bottom, it

12 says, Interrogatory Number 17?

13 A. Yes, sir.

14 Q. Okay. So I'm going to read the first

15 sentence. 01:52

16 Explain whether and under what

17 circumstances border officers employed by

18 Defendants search or confiscate travelers'

19 electronic devices at the request of any other

20 federal, state or local government, department, 01:52

21 agency or entity, closed quote.

22 Did I read that correctly?

23 A. Yes, sir.

24 Q. Okay.

25 Will you please turn to the next page? 01:52

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2 And I'd like -- Page 8. And I'd like  
3 you to turn to the paragraph at the bottom that  
4 begins, ICE states that ICE.

5 Do you see that? 01:53

6 A. Yes, sir.

7 Q. Okay. So I'm going to read aloud this  
8 paragraph.

9 ICE states that ICE special agents  
10 make independent determinations of the -- on the 01:53

11 jurisdiction, justification, and necessity for  
12 every border search they undertake. While

13 information provided to ICE by other law  
14 enforcement agencies may inform an ICE special  
15 agent's decision to perform a border search of an 01:53

16 electronic device, ICE conducts border searches to  
17 further ICE investigations and pursue ICE's law

18 enforcement mission and does not conduct border  
19 searches or detain electronic devices at the

20 request of any other agency, closed quote. 01:53

21 Did I read that correctly?

22 A. Yes, sir.

23 Q. So it is correct that information  
24 provided to ICE by other law enforcement agencies

25 may inform an ICE special agent's decision to 01:53

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2 perform a border search of an electronic device,  
3 correct?

4 A. Yes, sir.

5 Q. Okay. So suppose that an officer from 01:53  
6 another agency was to communicate with an SA at  
7 the border, and the SA is interacting with the  
8 traveler. And the officer from the other agency  
9 says, I'm investigating this traveler. It would  
10 help my investigation if you looked inside their 01:54  
11 devices for a particular kind of evidence.

12 Now, as is clear here, you don't  
13 automatically do anything for another agency, but  
14 the fact that another agency is investigating them  
15 and wants the information -- that is a fact that 01:54  
16 would be relevant to the SA in deciding whether or  
17 not to conduct a border device search, correct?

18 MR. DREZNER: Objection: form;  
19 vague; speculative.

20 THE WITNESS: Yes, sir, that would 01:54  
21 be a factor; but I would add that if  
22 another agency contacted us, we, you know,  
23 would decide if we had an ICE interest in  
24 what they were investigating, if there  
25 was, you know, a crime under our 01:54

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2 jurisdiction that would justify a joint  
3 case. And if there was, we would open up  
4 a joint case.

5 And what they're looking for would 01:55  
6 be a factor in whether we would do a  
7 border search, but it would primarily be  
8 if we could find evidence of whatever  
9 violations we're looking for.

10 BY MR. SCHWARTZ: 01:55

11 Q. All right. So you get the kind of  
12 request from the other agency I described.

13 And in the first instance, the SA is  
14 going to decide whether or not this is a matter  
15 that falls within ICE's enforcement jurisdiction, 01:55  
16 correct?

17 A. Correct.

18 Q. And if it does, then the fact that  
19 this other agency out there is doing an  
20 investigation and wants the search done, that 01:55  
21 would be a factor that would inform the SA's  
22 decision whether to conduct the border device  
23 search, correct?

24 MR. DREZNER: Objection: vague and  
25 speculative. 01:55

1 DAVID LEE DENTON

2 THE WITNESS: Yes, I believe that's  
3 correct.

4 BY MR. SCHWARTZ:

5 Q. So there are some cases where a 01:55  
6 traveler is at the border and the SA is interested  
7 in them where they would not search the device but  
8 for this kind of request from the other agency,  
9 correct?

10 MR. DREZNER: Objection: vague and 01:56  
11 speculative.

12 THE WITNESS: I don't think I can  
13 narrow it down that much.

14 BY MR. SCHWARTZ:

15 Q. So isn't it possible that there's a 01:56  
16 traveler who presents at the border and there is  
17 no query about them from another agency, and you  
18 would let them enter the country without a border  
19 device search; but if there is the query from a  
20 agency that says, We're investigating them, and 01:56  
21 the process we talked about before, where it would  
22 result in a search where there wouldn't have been  
23 one before?

24 MR. DREZNER: Objection: calling for  
25 hypothetical; speculative. 01:56

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2 THE WITNESS: So I think the way the  
3 process works would be if we're contacted  
4 and asked to open up a case on an  
5 individual as part of a joint 01:57  
6 investigation and we did open up that  
7 case, and a traveler showed up at the port  
8 of entry, you know, or -- or as -- on an  
9 airplane, or however they show up, and  
10 then we're -- we're alerted that they're 01:57  
11 there -- so the case agent would decide  
12 whether to respond and interview the  
13 person. And they could decide whether to  
14 conduct a border search or not based upon  
15 the needs of the case. 01:57

16 BY MR. SCHWARTZ:

17 Q. Okay.  
18 So I think I understand the way the  
19 process works. I'd like to explore which non-ICE  
20 agencies we're talking about here. 01:57

21 If we could turn back to Exhibit 4,  
22 the final paragraph on Page 8.

23 The clause that I focused here is  
24 information -- so this is -- I see you're looking  
25 for it, so I'll pause while you find it. 01:58

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2 MR. DREZNER: Here, this one

3 (indicating).

4 THE WITNESS: Sorry.

5 (Pause.) 01:58

6 BY MR. SCHWARTZ:

7 Q. That's no problem. It's my job to  
8 move at the pace so you can read along.

9 So on Page 8, the final paragraph, the  
10 second line, there's a sentence that begins While. 01:58

11 Do you see that?

12 A. Yes.

13 Q. Okay. It says -- so Information  
14 provided to ICE by another law enforcement  
15 agency -- or by other law enforcements agencies 01:58  
16 may inform an ICE special agent's decision to  
17 perform a border search of an electronic device.

18 So I would like to know the meaning of  
19 law enforcement agencies.

20 What are those? 01:58

21 A. Well, there -- I would say there are  
22 many state and Federal law enforcement agencies  
23 that we work with. So that could be ATF, the  
24 Bureau of Alcohol Tobacco and Firearms; it could  
25 be IRS, the Internal Revenue Service; it could be 01:59



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2 the Secret Service; it could be the FBI; it could  
3 be any number of state or local law enforcement  
4 agencies.

5 Q. Okay. So you named some Federal law 01:59  
6 enforcement agencies, specifically ATF, IRS,  
7 Secret Service, FBI.

8 So those are among the law enforcement  
9 agencies who might provide information that's  
10 relevant to the decision about whether to search a 01:59  
11 traveler -- to do a border device search of a  
12 traveler?

13 MR. DREZNER: Objection to the  
14 extent it mischaracterizes prior  
15 testimony. 01:59

16 THE WITNESS: I believe that's  
17 generally correct.

18 BY MR. SCHWARTZ:

19 Q. And without going through them all, I  
20 imagine there are other Federal law enforcement 01:59  
21 agencies between these four who, likewise, if they  
22 provided information to ICE SAs, those SAs might  
23 find it relevant to whether to do a border device  
24 search?

25 MR. DREZNER: Objection: 01:59

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2 speculative.

3 THE WITNESS: Again, assuming that  
4 ICE had opened up an investigation along  
5 with them and was pursuing an ICE case or 02:00  
6 an HSI case.

7 BY MR. SCHWARTZ:

8 Q. Okay. So how about the State  
9 Department, the Federal -- the U.S. State  
10 Department? 02:00

11 MR. DREZNER: Objection: vague.

12 THE WITNESS: There are a couple of  
13 State Department investigative components,  
14 the -- the DSS, the Diplomatic Security  
15 Services; and then, of course, there's the 02:00  
16 State Department Office of the  
17 Inspector General.

18 There's probably others, but that's  
19 all I can think of right now.

20 So if we had a case that was a joint 02:00  
21 case along with State Department or one of  
22 those components, then we would possibly  
23 conduct a border search pursuant to that  
24 investigation.

25

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2 BY MR. SCHWARTZ:

3 Q. Okay. So pivoting from Federal, you  
4 mentioned state and local.

5 So I assume that means, like, state 02:01  
6 police and local municipal police departments and  
7 county sheriffs?

8 A. Yes, sir.

9 Q. Okay. How about foreign governments?

10 MR. DREZNER: Objection to the 02:01  
11 extent it calls for privileged  
12 information.

13 But you can answer, if you can do so  
14 in a nonprivileged way.

15 THE WITNESS: We sometimes conduct 02:01  
16 joint investigations with foreign law  
17 enforcement.

18 BY MR. SCHWARTZ:

19 Q. And information from foreign law  
20 enforcement in those investigations might be 02:01  
21 relevant to an SA in deciding whether or not to  
22 conduct a border device search, correct?

23 MR. DREZNER: Objection:  
24 speculative.

25 THE WITNESS: Correct. 02:01

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2 BY MR. SCHWARTZ:

3 Q. How about private corporations that  
4 are doing law enforcement work either as  
5 contractors or as their own kind of internal 02:01  
6 security?

7 A. Well, I can't envision where we would  
8 have a joint investigation with anything that  
9 wasn't a law enforcement agency.

10 Q. So can you imagine a scenario where a 02:02  
11 private corporation has information that is  
12 provided to an SA that the SA finds relevant to  
13 the decision whether or not to conduct a border  
14 device search?

15 MR. DREZNER: Objection: calling for 02:02  
16 a hypothetical.

17 THE WITNESS: Yes, I can imagine  
18 that we have sources of information,  
19 public and private. And those can be --  
20 they can span a wide variety of -- of 02:02  
21 people, of corporations, business  
22 interests. And that would -- information  
23 from prior entities would certainly be one  
24 consideration that could enter into an  
25 agent's determination of reasonable 02:02

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2 suspicion.

3 BY MR. SCHWARTZ:

4 Q. So I think you just said that there  
5 are a variety of private entities who might have 02:02  
6 information that would be relevant to the decision  
7 whether to do a border device search.

8 Can you give some examples of the  
9 kinds of private entities and the kinds of  
10 private -- the kinds of information from them? 02:03

11 MR. DREZNER: Objection to the  
12 extent it mischaracterizes testimony.

13 And objection on the basis of law  
14 enforcement privilege.

15 But you can answer, if you can do so 02:03  
16 in a nonprivileged way.

17 THE WITNESS: So, for example, an  
18 HSI agent might have a confidential  
19 informant that would have information on a  
20 particular narcotic smuggling ring, so 02:03  
21 would provide that information to the  
22 special agent.

23 And that, by itself, might not be  
24 enough to create reasonable suspicion for  
25 a particular traveler, but combined with 02:03

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2 other circumstances, it might.

3 BY MR. SCHWARTZ:

4 Q. So besides a confidential informant,  
5 what other kinds of private entities might have 02:03  
6 the relevant information for a border device  
7 search?

8 MR. DREZNER: Same objections.

9 THE WITNESS: So there are private  
10 citizens who see criminal activity and 02:04  
11 would like to report it to law  
12 enforcement. And they don't expect  
13 compensation for it, but they provide it  
14 simply to help law enforcement.

15 And that would be another situation 02:04  
16 where an agent might receive information  
17 from any member of the public regarding  
18 criminal activity.

19 BY MR. SCHWARTZ:

20 Q. Would it be fair to -- to describe the 02:04  
21 people in the scenario you just have, as  
22 witnesses?

23 A. They could be witnesses.

24 Q. Or unpaid reporters of information?

25 I just want to know what -- how to 02:04

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2 concisely describe that person.

3 A. I think they're just -- they fall into  
4 so many different categories, it could be tough to  
5 limit it.

02:04

6 Q. Okay. So besides the most recent  
7 scenario and the confidential informants, what  
8 other private information -- or information from  
9 private entities would feed into the SA's decision  
10 whether or not to do a border device search?

02:05

11 MR. DREZNER: Objection on the basis  
12 of law enforcement privilege.

13 But you can answer, if you can do so  
14 in a nonprivileged way.

15 THE WITNESS: So perhaps in a fraud  
16 investigation, one business might want to  
17 report their competitors for engaging in  
18 fraudulent business practices or report  
19 that there were intellectual property  
20 rights violations being conducted by  
21 another business, or something along those  
22 lines.

02:05

02:05

23 And that would be a factor that  
24 might give an agent reasonable suspicion  
25 for a border search.

02:05

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2 So is it the case that in some cases,  
3 ICE may search a traveler because he's the subject  
4 of a flag or lookout in TECS from another agency?

5 MR. DREZNER: Object on the basis of 02:10  
6 law enforcement privilege.

7 But you can answer, if you can do so  
8 in a nonprivileged way.

9 THE WITNESS: So HSI might request a  
10 lookout to be put into TECS in order to 02:10  
11 have a traveler stopped at the border and  
12 interviewed and possibly searched in order  
13 to further their investigation.

14 So in that respect, yes, TECS is the  
15 system of record that CBP uses for -- you 02:10  
16 know, to record cases that -- that HSI has  
17 an interest in.

18 So we would use that system to have  
19 them stopped, and then they would be  
20 referred into secondary, as you described 02:10  
21 earlier. And then HSI would respond and  
22 interview and possibly do a -- do a border  
23 search of their devices.

24 BY MR. SCHWARTZ:

25 Q. So I think I heard you just say -- 02:11



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2 correct me if I'm wrong -- that HSI special agents  
3 might place a flag on a person in the TECS system,  
4 correct?

5 A. Yes. They would request that CBP put 02:11  
6 that flag or that lookout into the system.

7 Q. Is there a difference between a flag  
8 and a lookout?

9 A. Not that I know of.

10 Q. Okay. So if I use one or the other, 02:11  
11 you'll know what I'm talking about?

12 A. Yes.

13 Q. So HSI will ask -- can ask CBP to put  
14 a flag on a traveler in TECS, correct?

15 MR. DREZNER: Objection: asked and 02:11  
16 answered.

17 THE WITNESS: Correct.

18 BY MR. SCHWARTZ:

19 Q. Okay. And what is the result of that  
20 flag in TECS when the traveler presents at the 02:11  
21 border?

22 MR. DREZNER: Objection on the basis  
23 of law enforcement privilege.

24 But you can answer, to the extent  
25 you can do so in a nonprivileged way. 02:12

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2 THE WITNESS: I believe that the  
3 inspector at the border would be notified  
4 that there was a lookout on that person.

5 BY MR. SCHWARTZ: 02:12

6 Q. When you say "the inspector," you mean  
7 an employee of ICE?

8 A. No; an employee of CBP.

9 Q. So the CBP inspector at primary?

10 A. Yes. 02:12

11 Q. So they would see the flag?

12 A. Yes.

13 Q. And that might result in them being  
14 referred to secondary, correct?

15 MR. DREZNER: Objection: 02:12

16 speculative; and this also goes to CBP's  
17 policies and procedures.

18 But you can answer, if you're able.

19 THE WITNESS: It might.

20 BY MR. SCHWARTZ: 02:12

21 Q. Okay.

22 And it might result in a ICE SA on the  
23 scene coming to interact with a traveler who has  
24 been flagged, correct?

25 MR. DREZNER: Objection: vague and 02:12

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2 speculative.

3 THE WITNESS: It might.

4 BY MR. SCHWARTZ:

5 Q. And it might be among the relevant 02:12  
6 facts considered by the ICE SA in deciding whether  
7 to conduct a border device search, correct?

8 MR. DREZNER: Objection: vague and  
9 speculative.

10 THE WITNESS: Yes, that's correct. 02:13

11 BY MR. SCHWARTZ:

12 Q. Okay. So when ICE SAs are at the  
13 border interacting with a traveler, is there a way  
14 for them to find out whether or not the traveler  
15 that they're interacting with has been flagged by 02:13  
16 another law enforcement agency as a subject of  
17 investigation?

18 MR. DREZNER: Objection: form;  
19 vague; and law enforcement privilege.

20 But you can answer, if you're able 02:13  
21 to do so in a nonprivileged way.

22 THE WITNESS: I'm sorry. Can you  
23 restate the question?

24 BY MR. SCHWARTZ:

25 Q. Sure. 02:13

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2 I'm going to begin by repeating it,  
3 and if it still is confusing, it's my job to  
4 reword it, but let me just try repeating the same  
5 question. 02:13

6 When ICE SAs are at the border  
7 interacting with a traveler, is there a way for  
8 them to find out whether or not the traveler that  
9 they're interacting with has been flagged by  
10 another law enforcement agency as a subject of 02:14  
11 investigation?

12 MR. DREZNER: Same objections.

13 THE WITNESS: So I believe that the  
14 ICE agent that's interacting with the  
15 traveler would already know, as the reason 02:14  
16 for their interaction, whether there was a  
17 lookout or a flag on the particular  
18 traveler.

19 BY MR. SCHWARTZ:

20 Q. And how would they know that? 02:14

21 MR. DREZNER: Objection on the basis  
22 of law enforcement privilege.

23 But you can answer, if you're able  
24 to do so in a nonprivileged way.

25 THE WITNESS: They would know that 02:14

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2 based upon the referral from CBP.

3 BY MR. SCHWARTZ:

4 Q. So other than the referral from CBP,  
5 is there a way for the ICE SA to know that there's 02:14  
6 a flag from another law enforcement agency?

7 MR. DREZNER: Same objection.

8 THE WITNESS: Not that I'm aware of.

9 BY MR. SCHWARTZ:

10 Q. Okay. And so the CBP officer who made 02:14  
11 the referral to ICE, they are aware of whether or  
12 not there was a flag through the TECS system,  
13 correct?

14 MR. DREZNER: Objection. He can't  
15 speak to what a CBP officer knows at that 02:15  
16 time.

17 You can answer, if you're able to.

18 THE WITNESS: I'm not sure if there  
19 are other ways that a CBP officer would  
20 know. 02:15

21 BY MR. SCHWARTZ:

22 Q. Let me go back to my question one  
23 second.

24 Let me try that question again.

25 I think you've said that if there is a 02:15

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2 flag on a traveler, the CBP officer becomes aware  
3 of it first and then makes a referral of that  
4 traveler over to the ICE SA, correct?

5 A. Yes, that's correct. 02:15

6 Q. Okay. So in this scenario, the CBP  
7 officer is aware of a flag from another law  
8 enforcement agency, correct?

9 MR. DREZNER: Objection: calls for  
10 speculation. 02:15

11 THE WITNESS: I think, in this  
12 scenario, yes, that's the case.

13 BY MR. SCHWARTZ:

14 Q. Okay. And what is the system by which  
15 the CBP officer becomes aware of the flag from the 02:16  
16 other law enforcement agency?

17 MR. DREZNER: Objection: this calls  
18 for inquiry into CBP policies and  
19 practices.

20 But I guess you can answer. 02:16

21 THE WITNESS: I believe, generally,  
22 that alert would be placed into TECS.

23 BY MR. SCHWARTZ:

24 Q. Okay.

25 (Sotto voce between co-counsel.) 02:16

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2 BY MR. SCHWARTZ:

3 Q. So we're going to move to a new topic.

4 We can put away Exhibit 10 for now.

5 Please turn back to Exhibit 1 -- yeah, 02:17

6 Exhibit 1, which is the Notice of Deposition,

7 Page 2, which is the Areas of Inquiry.

8 Please tell me when you're there.

9 A. I'm there.

10 Q. So I'd like you to turn, please, to 02:17

11 Item Number 2, which I'm now going to read out

12 loud.

13 Policies, practices, and training

14 regarding what kind of information ICE employees

15 should view, document, or copy when they search 02:18

16 electronic devices obtained from travelers at the

17 border.

18 So you understand that you're

19 testifying on that subject for ICE today, correct?

20 A. Correct. 02:18

21 Q. Okay. So electronic devices that

22 travelers are carrying, such as a laptop or a

23 smartphone, they can contain a large volume of

24 information, correct?

25 MR. DREZNER: Objection: vague. 02:18

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2 THE WITNESS: Yes, sir, I think  
3 that's correct.

4 BY MR. SCHWARTZ:

5 Q. And they can contain many different 02:18  
6 kinds of information, like photos or e-mails or  
7 texts, and whatnot?

8 A. Yes, sir.

9 Q. Okay. So an officer conducting a  
10 manual inspection -- they don't have the time to 02:18  
11 read everything, correct? They've got to make  
12 some kind of choices about what to review during  
13 their finite inspection?

14 A. That sounds reasonable, yes, sir.

15 Q. Okay. Is there instruction from ICE 02:19  
16 to the SAs regarding what kinds of information the  
17 SAs should be looking for when they conduct manual  
18 searches?

19 MR. DREZNER: Objection on the basis  
20 of law enforcement privilege. 02:19

21 But you can answer, if you can do so  
22 in a nonprivileged way.

23 THE WITNESS: So in a border search  
24 situation, as explained before, it would  
25 be very unusual for an agent to be 02:19



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2 conducting a manual search because they're  
3 going to be looking for evidence of a  
4 crime. So they would conduct a forensic  
5 search where all the contents of the 02:19  
6 device would be transferred or viewed on  
7 the device, depending on the situation.

8 BY MR. SCHWARTZ:

9 Q. So in the circumstances which you've  
10 described as unusual, where an ICE SA is 02:19  
11 conducting a manual search, they would document  
12 that they had conducted a manual search, correct?

13 A. Yes, sir, they would document that in  
14 a report of investigation.

15 Q. All right. And the report of 02:20  
16 investigation, as we said before, might contain  
17 information -- or the officer's description of the  
18 information that they saw inside the device,  
19 correct?

20 MR. DREZNER: Objection: asked and 02:20  
21 answered.

22 THE WITNESS: Yes, sir.

23 BY MR. SCHWARTZ:

24 Q. So many electronic devices like laptop  
25 computers and smartphones, they contain their own 02:20

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2 internal search tools, correct?

3 A. Yes, sir.

4 Q. So, for example, it's common for a  
5 smartphone to have a function where you can type 02:20  
6 in a word, and then the smartphone searches itself  
7 for the occurrences of that word in the smartphone  
8 and kind of lists them so that someone can quickly  
9 page through the documents that contain that word?

10 MR. DREZNER: Objection. 02:21

11 Is that a question?

12 MR. SCHWARTZ: I should have said

13 "correct" at the end.

14 BY MR. SCHWARTZ:

15 Q. Is that correct? 02:21

16 A. I believe it is.

17 Q. And are there different kinds of  
18 search tools -- or internal search tools that are  
19 built into smartphones and laptops and other  
20 devices? 02:21

21 A. I believe there are.

22 Q. So what are those different kinds of  
23 internal tools?

24 MR. DREZNER: Objection: this calls  
25 for knowledge of general electronics, I 02:21

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2 suppose.

3 MR. SCHWARTZ: I'll be happy to have  
4 the director of the, you know, ICE  
5 laboratories here. 02:21

6 THE WITNESS: Well, I think you can  
7 say that there are a very wide variety of  
8 tools. And it would depend on the  
9 manufacturer of the device, the type of  
10 device. For instance, a flash drive made 02:21  
11 by different manufacturers requires  
12 different equipment in order to view the  
13 software, and it may require specialized  
14 tools that the -- that we would have to  
15 acquire, or other things. 02:22

16 You know, when it comes to cell  
17 phones, an Apple iPhone is going to be  
18 different than an Android phone or a  
19 Huawei phone or other types of electronic  
20 devices. So I think it -- it varies 02:22  
21 widely depending on the type of electronic  
22 device and on the manufacturer of that  
23 type.

24 BY MR. SCHWARTZ:

25 Q. So some of these internal -- these 02:22

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2 tools internal to the device, they can search for  
3 words, correct?

4 A. I believe they can, yes.

5 Q. Are there other things they might be 02:22  
6 asked to search for?

7 MR. DREZNER: Objection: this is  
8 vague. And, again, I think this is  
9 outside the scope. This isn't regarding  
10 ICE policies, practices and procedures. 02:22

11 MR. SCHWARTZ: Just to be clear  
12 here, because I think this is a  
13 significant objection, the topic is  
14 Policies, practices, and training  
15 regarding what kinds of information ICE 02:23  
16 employees should view, document or copy  
17 when they search electronic devices  
18 obtained from travelers at the border.

19 So we consider the search tools  
20 that are built into consumer's devices to 02:23  
21 be intrinsic to this -- this announced  
22 topic.

23 MR. DREZNER: We don't believe that  
24 the search tools go to the kinds of  
25 information that ICE officers should copy, 02:23

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2 view or document.

3 But you can answer, to the extent  
4 that you're able.

5 THE WITNESS: I'm sorry. Can you 02:23  
6 repeat the question?

7 BY MR. SCHWARTZ:

8 Q. Sure.

9 The question is whether or not the  
10 search tools that are internal to consumer devices 02:23  
11 have the ability to search for things other than  
12 words?

13 MR. DREZNER: Same objection.

14 THE WITNESS: I believe they can.

15 BY MR. SCHWARTZ: 02:23

16 Q. So, for example, what?

17 MR. DREZNER: Objection: vague and  
18 speculative.

19 THE WITNESS: I believe they could  
20 search for pictures. 02:24

21 BY MR. SCHWARTZ:

22 Q. Okay. And do they have the ability in  
23 some cases to identify metadata?

24 MR. DREZNER: Objection: vague and  
25 speculative. 02:24

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2 BY MR. SCHWARTZ:

3 Q. Let me pause there.

4 Do you know what I mean by "metadata"?

5 A. I believe I do, yes. 02:24

6 Q. What does metadata mean to you?

7 A. Metadata would be data that is

8 generally not present visibly on the device but

9 would be present on objects within the device.

10 For instance, a photograph might have metadata 02:24

11 that would indicate the type of camera that was

12 used to take the picture, the location, where the

13 picture was taken or the time that the picture was

14 taken. And that information would be metadata to

15 the picture. 02:24

16 Q. Okay. So are there search tools

17 internal to consumer devices that can identify

18 metadata?

19 MR. DREZNER: Objection: vague and

20 speculative. 02:25

21 You can answer, if you're able.

22 THE WITNESS: I believe that you can

23 obtain apps on certain phones that will

24 search for metadata, but I don't believe

25 standard search tools on most electronic 02:25

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2 devices contain that sort of ability.

3 BY MR. SCHWARTZ:

4 Q. So if the traveler had downloaded  
5 those apps onto their phone and the special agent 02:25  
6 was searching that phone, in the course of the  
7 manual search, they could use that app to locate  
8 metadata, correct?

9 MR. DREZNER: Objection:  
10 speculative. 02:25

11 THE WITNESS: I believe that's  
12 possible.

13 BY MR. SCHWARTZ:

14 Q. The internal search tools to these  
15 phones -- can they identify use history, such as 02:25  
16 the browsing history?

17 MR. DREZNER: Objection: vague;  
18 speculative.

19 And, again, we'll reiterate,  
20 objection: beyond the scope. This is not 02:26  
21 about the type of information ICE is  
22 looking at; it's the way that they're  
23 finding the information.

24 You can answer, to the extent you're  
25 able. 02:26

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2 MS. EDNEY: He's not a technical  
3 witness.

4 MR. DREZNER: Right.

5 THE WITNESS: I believe that certain 02:26

6 Internet browsers have the capability of

7 retaining information on searches, but I

8 also believe that they can be cleared

9 pretty much at any point. So there may or

10 may not be any information present during 02:26

11 a search of browser history.

12 BY MR. SCHWARTZ:

13 Q. So if the device is seized by the

14 special agent and put into airplane mode and the

15 ICE officer goes to the browser, which obviously 02:26

16 is not connected to the Internet anymore, there

17 may be cached information showing some of the

18 browsing history, correct?

19 MR. DREZNER: Objection: vague.

20 MR. SCHWARTZ: Michael, just for my 02:27

21 own knowledge, what part of that was

22 vague?

23 MR. DREZNER: "There may be"?

24 You're just asking whether something might

25 exist? 02:27



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2 MR. SCHWARTZ: Okay. That's fine.

3 MR. DREZNER: Okay.

4 BY MR. SCHWARTZ:

5 Q. I will just jump from that. 02:27

6 Do you know what I mean by "cached  
7 information"?

8 A. I believe I do, yes.

9 Q. What does cache information mean to  
10 you? 02:27

11 A. To me, cached information would be  
12 information that the device stores on the device,  
13 as opposed to somewhere else.

14 Q. So sometimes -- correct me if I'm  
15 wrong on this -- sometimes there is information 02:27  
16 that a user obtains by going to the Internet. And  
17 it was not previously on their phone, but when  
18 they go to the Internet, it goes to their phone.

19 And then when connectivity is ended,  
20 for example, by putting it in airplane mode, some 02:28  
21 of that information from the Internet remains  
22 resident in the phone.

23 Is that correct?

24 A. I believe that's generally correct,  
25 yes. 02:28

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2 Q. And might that be described as "cached  
3 information"?

4 A. I think that could be described as  
5 cached information. 02:28

6 Q. And when a special agent seizes a  
7 phone and puts it in airplane mode, they will, in  
8 some cases, have access to cached -- cached  
9 information that remains on the phone, even though  
10 connectivity is disconnected, correct? 02:28

11 A. So I want to go back to the beginning,  
12 and you said when we seize the phone.

13 So if we're seizing the phone, under  
14 our policies, that would mean that we were keeping  
15 it for evidence in -- in a future trial. And that 02:29  
16 would require a different standard of evidentiary  
17 consideration.

18 Q. Thank you for that clarification.  
19 I clearly have asked a confusing  
20 question, and that's not what I intended. 02:29

21 Later on today, we're going to talk  
22 about what might be described as a long-term  
23 seizure device, meaning that the Government --  
24 that ICE keeps the device after the traveler  
25 leaves the border. I don't want to talk about 02:29

1 DAVID LEE DENTON

2 word, "envelope," which did not appear here.

3 So let me try to clean up the little  
4 mess I've made here.

5 If a sealed item of mail appears to 03:12  
6 only contain correspondence, it's the policy of  
7 the -- of ICE to not open that item of mail absent  
8 having a warrant, correct?

9 A. Yes, sir.

10 Q. Okay. And if an item of sealed mail 03:12  
11 is opened on reasonable suspicion of merchandise  
12 or contraband and it was found to contain  
13 correspondence, the correspondence would not be  
14 read without first getting a warrant, correct?

15 A. I believe that's correct, yes. 03:12

16 Q. So what if, on opening the -- the  
17 sealed item of mail, a digital media is discovered  
18 and it is believed that it contains  
19 correspondence? ICE would not read that  
20 correspondence without first getting a warrant, 03:13  
21 correct?

22 MR. DREZNER: Objection: vague and  
23 speculative.

24 THE WITNESS: I'm not sure how you  
25 would know what was on the electronic 03:13

1 DAVID LEE DENTON

2 media without taking a look to determine  
3 if it was correspondence or something  
4 else.

5 BY MR. SCHWARTZ: 03:13

6 Q. Well, let's take your scenario: They  
7 open up the envelope on reasonable suspicion.  
8 They found a digital storage media, such as a  
9 thumb drive. And the officers do not know whether  
10 it contains -- let me get the word -- 03:13  
11 correspondence, as opposed to something else.  
12 After reasonable investigation, they still don't  
13 know.

14 Would they open it up and start  
15 reading it without getting a warrant? 03:13

16 MR. DREZNER: Objection: calls for  
17 speculation.

18 THE WITNESS: I believe they could.

19 BY MR. SCHWARTZ:

20 Q. Okay. So if they open it up and they 03:13  
21 see correspondence, would they continue reading  
22 it, or would they stop and get a warrant?

23 A. I believe they would stop reading it  
24 and get a warrant if they wanted to continue  
25 reading it, but it's unlikely they would if it was 03:14

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2 just correspondence.

3 Q. Okay. But just to be clear here, if  
4 they open up the digital media, they see it  
5 contains correspondence and they wanted to keep 03:14  
6 reading it, they would stop and get a warrant  
7 before continuing to read, correct?

8 MR. DREZNER: Objection: asked and  
9 answered.

10 THE WITNESS: I believe so. 03:14

11 MR. SCHWARTZ: Okay. I would like  
12 to ask for the marking of another exhibit,  
13 and this one is going to be the Personal  
14 Search Handbook.

15 - - - 03:14

16 (ICE Deposition Exhibit Number 13,  
17 Excerpts of Personal Search  
18 Handbook, Bates stamped Defs. 1057  
19 through Defs. 1103, marked for  
20 identification, as of this date.) 03:14

21 - - -

22 BY MR. SCHWARTZ:

23 Q. So a little bait-and-switch here,  
24 before we turn to the Personal Search Handbook, I  
25 want to just go back a step about what we were 03:16

1 DAVID LEE DENTON

2 just talking about with the -- the warrant and the  
3 U.S. mail.

4 In the scenario we discussed, where an  
5 SA would seek a warrant, SAs are trained in how to 03:16  
6 seek a warrant, correct?

7 A. Yes.

8 Q. Okay. So turning --

9 MR. SCHWARTZ: I'm sorry. What  
10 number do we have? 03:16

11 MS. COPE: Thirteen.

12 MR. SCHWARTZ: Thirteen.

13 For the record, Exhibit 13 is, on  
14 the front page, titled Personal Search  
15 Handbook, Office of Field Operations -- 03:16  
16 something I don't understand -- July 2004,  
17 U.S. Customs and Border Protection. And  
18 the first page of this document is 1057.

19 For the record, this is only  
20 excerpts of the Personal Search Handbook 03:16  
21 as I thought were relevant for my purposes  
22 today.

23 BY MR. SCHWARTZ:

24 Q. So I'd like to --

25 (Sotto voce discussion.) 03:17

1 DAVID LEE DENTON

2 not an ICE duty agent present?

3 A. Yes, sir.

4 Q. And so is it the case that when a --  
5 it says here, In all circumstances, when someone 03:19  
6 has been detained for more than eight hours, that  
7 the ICE duty agent or the CBP prosecution officer  
8 contacts the U.S. Attorney's Office?

9 A. I see that, yes, sir.

10 Q. So is that the case? 03:20

11 A. This is CBP policy. I'm not sure if  
12 that's still the case or not. This has nothing to  
13 do with ICE, really. It's . . .

14 Q. Well, true, as you say, this is a  
15 document that's written by CBP, but it's 03:20  
16 describing what ICE duty agents do. And my  
17 understanding is that you, on behalf of ICE, can  
18 tell me what ICE duty agents do.

19 And so my question is, When a person  
20 has been detained for eight or more hours at a 03:20  
21 port of entry for a medical exam, is it the case  
22 that sometimes the ICE duty agent reaches out to  
23 the U.S. Attorney's Office?

24 A. If the ICE agent has been notified  
25 and, you know, a case is referred to ICE, then ICE 03:20

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2 policy would be to make sure that they're not  
3 detained longer than necessary, for sure. And if  
4 they're going to -- that they might conduct -- or  
5 contact the U.S. Attorney's Office depending on 03:21  
6 the nature of the encounter.

7 Q. Okay.

8 So moving along to the next paragraph  
9 of this document, it says, The ICE duty agent  
10 and/or the CBP prosecution officer shall advise 03:21  
11 the U.S. Attorney's Office of the detention.

12 So, again, mindful this is a Customs  
13 document and that you are here from ICE, is it  
14 correct that in some of these situations when the  
15 ICE duty agent has reached out to the U.S. 03:21  
16 Attorney's Office, they advise the U.S. Attorney's  
17 Office of the detention?

18 MR. DREZNER: Objection: vague and  
19 speculative.

20 THE WITNESS: I believe that's 03:21  
21 right, yes.

22 BY MR. SCHWARTZ:

23 Q. Okay. So moving on to the next  
24 sentence, it says, If the assistant U.S. attorney  
25 believes that probable cause has been established, 03:22



1 DAVID LEE DENTON

2 the ICE duty agent and/or the CBP prosecution  
3 officer will work with the AUSA to obtain an  
4 arrest or search warrant before a magistrate.

5 Again, mindful this is a CBP document 03:22

6 and you only can tell me what ICE actually is  
7 doing, is it the case that in some circumstances,  
8 the ICE duty agent will work with the AUSA to

9 obtain an arrest or a search warrant from a  
10 magistrate in connection with this lengthy medical 03:22  
11 detention?

12 A. Yes, I believe that's the case. I'm  
13 not sure what they mean by medical examination  
14 detention, though.

15 Q. Well, putting aside the uncertainty 03:22

16 about the medical exam aspect of it, the salient  
17 point for the Plaintiffs is that there are

18 circumstances where the ICE duty agent will work  
19 with the AUSA to get a warrant from a magistrate  
20 involving a lengthy detention of a traveler, 03:23

21 correct?

22 A. Yes. That's possibly correct.

23 Q. I'm sorry. What was your answer?

24 A. I said, yes, that's possibly correct.

25 I think it depends, again, on the situation. 03:23

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2 Like, if this was -- if they were suspected,  
3 perhaps, of being an internal carrier and they  
4 were being medically detained in order to  
5 determine if they had balloons of heroin in their 03:23  
6 stomach, then ICE would usually contact the U.S.  
7 attorney and determine if there was probable cause  
8 to get a search warrant to arrest them or take  
9 them to the hospital for an X-ray or -- or other  
10 means, or if they had to wait where they were in 03:23  
11 order to let the heroin come out via natural  
12 methods. I'm not sure the best way to say that.

13 Q. I think "natural methods" was  
14 excellent. We all know what you mean.

15 Proceed. 03:24

16 A. I think, like, it just depends on the  
17 situation and what the reason is for the medical  
18 examination as to whether or not the ICE agent  
19 would contact the AUSA and try and get a warrant.  
20 They might, but I don't know that they would in 03:24  
21 every situation.

22 Q. Right.

23 They might not in some situations, but  
24 in some situations, the ICE agent might work with  
25 the AUSA to get a warrant in connection with 03:24

1 DAVID LEE DENTON

2 detention of the internal carrier?

3 A. Yes, sir.

4 Q. I'd like to now move on the same

5 exhibit but to Page 1095. 03:24

6 MR. SCHWARTZ: Off the record a

7 second.

8 - - -

9 (Whereupon, a discussion was held

10 off the record.) 03:25

11 - - -

12 BY MR. SCHWARTZ:

13 Q. So on Page 1095 at the top, it says --

14 MR. SCHWARTZ: Off the record.

15 - - - 03:25

16 (Whereupon, a discussion was held

17 off the record.)

18 - - -

19 BY MR. SCHWARTZ:

20 Q. Page 1095, the very top, it says, h. 03:25

21 Involuntary X-Rays.

22 Do you see that?

23 A. Yes, sir.

24 Q. Okay. So I'm going to read the third

25 paragraph that begins Port directors will. 03:25

1 DAVID LEE DENTON

2 Do you see that?

3 A. Yes, sir.

4 Q. Okay.

5 Port directors will consult with the 03:26

6 local associate/assistant chief counsel and the

7 duty ICE agent or CBP prosecution officer to

8 determine whether to seek a court order for an

9 involuntary X-ray search.

10 Stopping there. 03:26

11 So it is the case that on some

12 occasions, a port director will consult with a

13 duty ICE agent to determine whether to seek a

14 court order from a magistrate about an involuntary

15 X-ray search, correct? 03:26

16 A. Yes, sir.

17 Q. I'd like to turn in the same document

18 to Page 1101.

19 This page, at the very top, says,

20 Chapter 8? 03:26

21 A. Yes.

22 Q. Okay. So most of the way down,

23 there's a little d that says, Court-Ordered

24 Involuntary Body Cavity Searches.

25 Do you see that? 03:27

1 DAVID LEE DENTON

2 A. Yes, sir.

3 Q. The first sentence -- well, I'm just  
4 going to start reading it.

5 Involuntary body cavity searches 03:27

6 require a court order. Port directors (GS-13 or  
7 above) will consult with the local

8 associate/assistant chief counsel and the duty ICE  
9 agent or CBP prosecution officer to determine

10 whether to seek a court order for an involuntary 03:27

11 body cavity search.

12 Did I read that correctly?

13 A. Yes, sir.

14 Q. So it is the case that on some  
15 occasions, a port director will consult with an 03:27

16 ICE duty agent about whether to seek a court order  
17 for an involuntary body cavity search.

18 Correct?

19 A. Correct.

20 Q. And on some occasions after those 03:27

21 consultations between the port director and the  
22 ICE duty agent, the ICE duty agent will assist in

23 the seeking of a court order for an involuntary  
24 body cavity search, correct?

25 A. Yes, sir. 03:28

1 DAVID LEE DENTON

2 Q. So we've talked about ICE special  
3 agents at the border being involved in acquisition  
4 of court orders for involuntary body cavity  
5 searches, involuntary X-rays and lengthy 03:28  
6 detentions.

7 In all of these cases, ICE trains  
8 special agents in how to seek a court order,  
9 correct?

10 A. Yes, sir. 03:28

11 I think in -- I guess I'd like to  
12 clarify. I'm not sure how specific our training  
13 is in how to get a court order, but I do know that  
14 in a variety of investigative situations, special  
15 agents will receive instruction. And if they're 03:28  
16 unsure, they can always contact our OPLA for  
17 advice, if they're not sure.

18 Q. So let's -- that's very helpful.  
19 Thank you.

20 I think you've just said that if a ICE 03:29  
21 special agent is uncertain of how to proceed with  
22 regards to a warrant, that they can reach out to  
23 OPLA for guidance.

24 Correct?

25 A. Yes, sir. 03:29

1 DAVID LEE DENTON

2 Q. Okay. And in addition to the ability  
3 to reach out as needed to OPLA, they also have  
4 training on whether and how to seek a warrant,  
5 correct? 03:29

6 A. Yes, sir, they receive training on how  
7 to seek and achieve a warrant. But the policies  
8 and procedures vary so much from judicial  
9 districts that they'll receive some training at  
10 the Academy; and then they will receive further 03:29  
11 advanced training in the field and on-the-job  
12 training; and they'll receive instruction from the  
13 local U.S. Attorney's Office on methods that they  
14 would use to -- to contact those U.S. attorneys,  
15 whether it was a duty U.S. attorney or a different 03:30  
16 one.

17 And there just could be a lot of  
18 factors that would be involved in how the  
19 interaction with the U.S. Attorney's Office would  
20 work in order to get a search warrant or a 03:30  
21 judicial order, or anything like that.

22 The -- generally speaking, it would  
23 depend a lot more on the U.S. Attorney's Office  
24 than it would on our HSI policies.

25 Q. So for the ICE SA to understand 03:30

1 DAVID LEE DENTON

2 whether and how to obtain a warrant in connection  
3 with these border events, there are a variety of  
4 sources of information.

5 And one of them is by turning to ICE's 03:30  
6 own OPLA, correct?

7 A. Yes, sir.

8 Q. And one of them is by turning to the  
9 local U.S. Attorney's Office, correct?

10 A. Yes, sir. 03:31

11 Q. And one of them is that they went  
12 through standardized Fourth Amendment training at  
13 the ICE Academy, correct?

14 A. Yes, sir.

15 Q. And I think you referenced training 03:31  
16 from ICE that is localized and ongoing, correct?

17 A. Yes, sir.

18 Q. So besides the four things I just  
19 said -- the OPLA, the U.S. Attorney's Office, the  
20 Academy and regional offices own update 03:31

21 training -- are there other ways that ICE informs  
22 special agents about when and how to seek warrants  
23 in connection with events at the border?

24 A. I think most agents -- when they are  
25 first assigned to a group, they're assigned a 03:31



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field training officer. And that field training officer will usually be an experienced agent that's done warrants, that's testified in court, that's produced affidavits, and -- and would generally guide the newer agents in how to -- how to conduct themselves as a special agent, how to go about getting the evidence that they need for a case.

03:32

And -- and so there's the formalized training that -- that you've mentioned, but I wouldn't want to preclude training that might be received informally from other people within the office, from group supervisors or other management personnel or from their field training officer.

03:32

Q. So your most recent answer -- I just want to make sure I'm understanding all the different pieces of how ICE informs its SAs about, you know, how to do this job and whether and how to seek warrants in connection with the border.

03:32

So you mentioned field training officers.

That's one way, correct?

A. Yes, sir.

Q. And you mentioned senior -- or more

03:32

1 DAVID LEE DENTON

2 senior officers who are not specifically the field  
3 training officer of the more junior officer?

4 A. Yes, sir.

5 Q. And there also are managers who 03:33  
6 provide instruction to the assistant -- the  
7 special agents?

8 A. Yes, sir.

9 Q. So besides the FTO, the senior  
10 officers and the managers, was there any other way 03:33  
11 that ICE is giving instruction to the special  
12 agents in whether and how to seek borders --  
13 warrants at the border?

14 A. I think that with all the other stuff  
15 we talked about before is about all I can think of 03:33  
16 right now.

17 Q. Okay. Thank you.

18 So it's possible for special agents at  
19 the border to obtain a warrant from a judge  
20 remotely by way of telephone, correct? 03:33

21 MR. DREZNER: Objection: vague.

22 THE WITNESS: I know it is certainly  
23 possible, but it is extremely unlikely and  
24 would only be done in the most critical  
25 situations. 03:34

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could develop after a referral that did not include a strip search that would necessitate an additional search that could be a strip search, in which case, an ICE special agent would be involved in it. 04:00

BY MR. SCHWARTZ:

Q. So in that scenario that you just described, the ICE special agent would need reasonable suspicion of crime before conducting the strip search, correct? 04:00

A. I believe that in any situation -- or in most situations, ICE would have reasonable suspicion to -- to conduct a border search that would include a strip search. 04:01

Q. The same thing with a body cavity search -- let me back up. Is there some set of circumstances where the ICE officer might be involved in a body cavity search of a traveler at the U.S. border? 04:01

MR. DREZNER: Objection: calls for speculation.

THE WITNESS: It is possible, yes.

BY MR. SCHWARTZ:

Q. And in that circumstance as well, 04:01

1 DAVID LEE DENTON

2 they -- the ICE SA could not conduct the body  
3 cavity search without having a -- having  
4 determined that they have reasonable suspicion of  
5 crime?

04:01

6 MR. DREZNER: Objection. I'll also  
7 object that -- outside the scope of this.  
8 You can answer, if you're able.

9 THE WITNESS: I believe our policy  
10 would require reasonable suspicion for 04:01  
11 that -- for a search like that.

12 BY MR. SCHWARTZ:

13 Q. The same question but with an X-ray  
14 search. It happens -- it could happen some time.

15 And in such circumstances, they would 04:02  
16 need reasonable suspicion to conduct the X-ray  
17 search?

18 MR. DREZNER: Same objection.

19 THE WITNESS: I believe that's  
20 accurate. 04:02

21 BY MR. SCHWARTZ:

22 Q. ICE trains special agents regarding  
23 the reasonable suspicion standard, correct?

24 A. Yes, sir.

25 Q. That would include what sets -- or 04:02

1 DAVID LEE DENTON

2 what combinations of facts might or might not,  
3 together, comprise reasonable suspicion to  
4 authorize the particular kind of search?

5 A. I believe that we definitely train our 04:02  
6 agents on how to understand the nature of  
7 reasonable suspicion, but there are so many  
8 different factors that could enter into it. I  
9 don't think the training is as specific as, you  
10 know, these factors absolutely will justify, you 04:03  
11 know, reasonable suspicion, and these won't; or --  
12 you know, it's generally about the ability to  
13 understand the nature of the evidence and -- and  
14 to be able to gauge whether or not it justifies  
15 additional searches. 04:03

16 Q. And how is that training -- you know,  
17 exactly what you described -- provided to the ICE  
18 special agents?

19 A. So --

20 Q. Would it be the same things we talked 04:03  
21 about before, the Academy and the --

22 A. That's where I was going.

23 Yes, it would be very similar to what  
24 we've talked about before, where it would start at  
25 the Academy, and then there would be a lot of 04:03

1 DAVID LEE DENTON

2 helping field agents investigate child

3 pornography, correct?

4 A. Yes, sir.

5 Q. So isn't it the case that there are 04:08

6 computer servers located outside the United States

7 and that people inside the United States can see

8 child pornography located on those foreign

9 computer servers by way of the Internet?

10 MR. DREZNER: Objection: asked and 04:08

11 answered and calls for speculation.

12 THE WITNESS: I believe that's

13 correct.

14 BY MR. SCHWARTZ:

15 Q. Okay. It's also possible for someone 04:08

16 outside the United States to send an e-mail to

17 someone inside the United States with attachments

18 which comprise child pornography, correct?

19 A. I believe that could happen.

20 Q. Okay. It's also possible to send text 04:08

21 messages with attachments that likewise deliver

22 child pornography over the Internet from outside

23 the United States to inside the United States,

24 correct?

25 A. I think that's possible. 04:09

1 DAVID LEE DENTON

2 MR. DREZNER: Same objections.

3 THE WITNESS: I believe there are

4 other ways that it could be received

5 over -- could you clarify what the two 04:10

6 examples previously are -- that you

7 mentioned?

8 BY MR. SCHWARTZ:

9 Q. Sure.

10 One is that there is a computer server 04:10

11 located outside the United States that is

12 accessible inside the United States by way of the

13 Internet, and the second is some kind of directed

14 one-on-one communication, via e-mail or text

15 message that has an attachment to it, that 04:10

16 delivers the pornography -- the child pornography

17 from outside the United States to inside the

18 United States.

19 And so other than those two

20 examples -- those two categories, are there any 04:10

21 additional ways that child pornography that is

22 located outside the United States can get into the

23 United States over the Internet?

24 MR. DREZNER: Objection as to scope:

25 Calls for speculation. 04:11

1 DAVID LEE DENTON

2 You can answer, if you're able.

3 THE WITNESS: So another situation I  
4 can envision would be if there was a live  
5 streaming broadcast of child pornography, 04:11  
6 sexual abuse of a child in a foreign  
7 country being viewed in the United States.

8 BY MR. SCHWARTZ:

9 Q. Okay. I understand that.

10 Besides that, plus the earlier two 04:11  
11 examples, any other ways that the child  
12 pornography could be delivered over the Internet  
13 from outside the U.S. to inside the U.S.?

14 MR. DREZNER: Objection as to scope.  
15 This is not going to the volume of 04:11  
16 information. This is going to the type or  
17 the way that information can be  
18 transported.

19 You can answer, if you're able.

20 THE WITNESS: I believe another 04:11  
21 possible method would be membership within  
22 on a LISTSERV or a chat group on the  
23 Internet whereby child pornography is  
24 distributed.

25



1 DAVID LEE DENTON

2 BY MR. SCHWARTZ:

3 Q. Okay. A LISTSERV or a chat group.

4 I've got that.

5 Any other examples? 04:12

6 MR. DREZNER: Same objections.

7 THE WITNESS: I -- I'm not sure if  
8 you are including the dark Web in your  
9 definition of Internet.

10 BY MR. SCHWARTZ: 04:12

11 Q. Tell me about the dark Web -- tell me  
12 about how the dark Web would be a way to transmit  
13 child porn from out of the country to into the  
14 country.

15 MR. DREZNER: Objection as to scope. 04:12

16 Objection as to relevance.

17 Objection as to calls for  
18 speculation.

19 You can answer, if you're able.

20 BY MR. SCHWARTZ: 04:12

21 Q. Just as to the speculation, I just  
22 want to say, again, you are the director of the  
23 Cyber Crimes Center -- you are, ultimately, the  
24 boss of the Cyber Crimes Center, right?

25 A. Yes, I am. 04:12

1 DAVID LEE DENTON

2 A. Yes, sir.

3 Q. So I'm going to read that sentence.

4 It says, With the advent of the

5 Internet, the sharing and trading of child 04:20

6 pornography now primarily occurs online.

7 Did I read that correctly?

8 A. Yes, sir.

9 Q. And it's true that in the view of ICE,  
10 child pornography now primarily is transferred 04:20

11 online, correct?

12 A. That's correct.

13 Q. All right. We're done with this  
14 document.

15 So I'll pivot to the perspective of 04:20

16 special agents who are at the border trying to

17 seize contraband that's being carried across the

18 border.

19 So when an officer finds digital

20 contraband during a border device search, do they 04:21

21 have any way of knowing whether or not the

22 contraband they have seized has not already

23 entered the United States by way of the Internet?

24 MR. DREZNER: Objection: calls for

25 speculation. 04:21

1 DAVID LEE DENTON

2 And the way that comparison is done,  
3 is that sometimes called "hashing"?

4 A. Yes, sir, it is.

5 Q. Okay. So other than -- so you've just 04:22  
6 identified a way that when an item of contraband  
7 has been seized at the border, it is sometimes  
8 possible to ascertain that it has already entered  
9 the United States because, by hash comparisons,  
10 you can see it's the same as an image that's 04:22  
11 already been detected by the Government -- by --  
12 by someone, correct?

13 A. Yes, sir, that is correct.

14 Q. Okay. So if the image that they  
15 have -- or the contraband they have seized does 04:23  
16 not match through hashing one of these other known  
17 examples of contraband, from the perspective of  
18 ICE, there is no way of knowing whether or not the  
19 seized contraband already is available in the  
20 United States through the Internet? 04:23

21 MR. DREZNER: Objection: calls for  
22 speculation.

23 THE WITNESS: I don't believe  
24 there's any way we can know for sure.

25

1 DAVID LEE DENTON

2 in sub e), and I'm not aware of it saying that in  
3 this document. But we'll leave that till later.

4 Turning back to the previous page,  
5 8.5.1(b), it says that To the extent of authorized 04:55  
6 by law, ICE may retain information.

7 And so you're saying that by  
8 "information" here, that is the officer's  
9 narrative description of what they saw, but it's  
10 not the 1s and 0s copy, correct? 04:56

11 A. I believe that's what this  
12 subsection is about, yes, sir.

13 Q. So in the case of information as  
14 you're interpreting it -- let me read the  
15 sentence. 04:56

16 To the extent authorized by law, ICE  
17 may retain information relevant to immigration,  
18 customs or other law enforcement matters in ICE  
19 systems.

20 Right? 04:56

21 And then it goes on, but I'll say --  
22 let me just pause and say, What are those ICE  
23 systems?

24 A. So the ICE system, generally speaking,  
25 would be our Investigative Case Management -- 04:56

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2 Investigative Case Management system that we  
3 discussed earlier. And that's where all of the  
4 case information is -- is -- is kept.

5 Q. Okay. So reading the sentence one 04:56  
6 more time, or I guess, I can't promise it's the  
7 last time -- To the extent authorized by law, ICE  
8 may retain information -- and I'm seeing a first  
9 condition -- relevant to immigration, customs and  
10 other law enforcement matters in ICE systems if -- 04:57  
11 and here's a second condition -- such retention is  
12 consistent with the privacy and data protection  
13 policies of the system -- which you're telling me  
14 means the -- the ICM -- in which such information  
15 is retained. 04:57

16 So it's correct, isn't it, that ICE's  
17 policy says that ICE can keep information, meaning  
18 the narrative description, about what they saw in  
19 the traveler's device so long as two things are  
20 true: Number 1, that it's relevant to immigration, 04:57  
21 customs or other law enforcement matters; and, 2,  
22 that the retention is consistent with the rules in  
23 the ICM; is that correct?

24 MR. DREZNER: Objection as to form.

25 THE WITNESS: I believe that's 04:58

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for border search of electronic devices,  
and so in that circumstance, the -- the  
data would be entered in -- and we're  
talking about the narrative data like in a  
report of investigation?

04:59

BY MR. SCHWARTZ:

Q. Right.

A. And -- I'm sorry. Tell me if I  
misphrase your question.

04:59

You're asking if there are policies  
within ICM that govern how long that data is  
retained?

Q. How long or anything else.

So here's my question -- let me try  
this again. And I appreciate your patience. That  
was a very logical effort at clarification.

04:59

So assume that a special agent has  
narratively reported on what they saw in a  
traveler's device, and that information has been  
placed in the ICM, and that information is deemed  
relevant to immigration, customs and other law  
enforcement matters.

04:59

Is there anything in the ICE rules  
about the ICM that limit the continued retention

05:00

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2 of that information in the ICM?

3 MR. DREZNER: Objection: vague.

4 THE WITNESS: Not that I'm aware of.

5 BY MR. SCHWARTZ: 05:00

6 Q. All right. I'm going to flip back to  
7 Topic 9, which was the one about aggregate  
8 statistics.

9 You may recall that a half an hour or  
10 so ago, we began talking about it, but I put a pin 05:00  
11 in it so we could talk about retention periods and  
12 confiscation rules -- or lengthy detention rules.

13 Okay. So now we're going to turn back  
14 to aggregate statistics.

15 MR. SCHWARTZ: So we're going to 05:00  
16 take a two-minute break.

17 - - -

18 (Whereupon, a discussion was held  
19 off the record.)

20 - - - 05:01

21 MR. SCHWARTZ: Back on the record.

22 BY MR. SCHWARTZ:

23 Q. We are now in, I believe, the final  
24 topic, which is the continuation of Topic 9, which  
25 concerns aggregate statistics. 05:03

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2 ICE does not have any aggregate  
3 statistics regarding the number of times that ICE  
4 conducted a lengthy detention of a device, meaning  
5 took a device away from a traveler after the 05:05  
6 traveler left the border, correct?

7 A. So all border searches are recorded,  
8 but I don't believe that we separate the times  
9 that a device was detained longer than at the port  
10 in that manner. 05:05

11 Q. I'll turn to a new document -- or a  
12 different document, Exhibit 11.

13 MR. SCHWARTZ: For the record,  
14 Exhibit 11 is the Declaration of  
15 David Denton that we looked at before. 05:06

16 BY MR. SCHWARTZ:

17 Q. I would like you, please, to turn to  
18 the third page and, in particular, to the second  
19 paragraph, which begins, While ICE special agents  
20 record. 05:07

21 Do you see that?

22 A. Yes, sir.

23 Q. So I'm now going to read that  
24 paragraph.

25 While ICE special agents record all 05:07



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documents we've gone over today, but one of the documents produced shows statistics regarding the number of times that there was a prosecution or an arrest or some other event resulting from border device searches. 05:15

Is that what you're talking about?

MR. DREZNER: I think -- objection.

I -- it's hard for him to describe -- to agree that he's describing a document that you're not showing him. 05:15

BY MR. SCHWARTZ:

Q. Let me --

MR. SCHWARTZ: I think that's a fair objection, especially it's 10 minutes left in this deposition. 05:15

BY MR. SCHWARTZ:

Q. So let me reframe a little bit.

Is there statistics that currently exist on the specific issue of the number of times that -- of all of the border device searches that evidence of crime was discovered? 05:16

A. I am not aware of those statistics being aggregated, no, sir.

MR. SCHWARTZ: Okay. So that is my 05:16