

Advanced Search – Review and Approval

CBP Border Search of Electronic Devices Directive (3340-049A)

Supplemental Guidance for Section 5.1.4

UPDATED: October 2023

This document provides supplemental guidance for the approval and conduct of advanced searches under Section 5.4.1 of CBP Directive No. 3340-049A *Border Search of Electronic Devices*. This document supersedes existing advanced search guidance to include the January 2018 and May 2019 *Border Search of Electronic Devices—Field Guidance* memos as well as the accompanying musters.


Guidance for Advanced Searches in the Ninth Circuit

Electronic device searches initiated in the **Ninth Circuit** (Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands) are subject to **additional requirements**. Please refer to the Interim Ninth Circuit guidance memo and muster, issued August 27, 2019, for the scope of basic and advanced searches that may be conducted in the Ninth Circuit, in conjunction with the below guidance.

General Guidance on Border Searches of Electronic Devices

As a reminder, border searches of electronic media are conducted by CBP for **CBP purposes**. CBP liaises with many law enforcement partners in the execution of CBP's mission. Through such partnerships, pertinent information shared by those law enforcement agencies may be taken into consideration as CBP determines whether the border search of an electronic device is warranted to ensure compliance with the laws enforced and administered by CBP. The fact that another agency is interested in a traveler is not sufficient justification for a search without additional information, and CBP does not conduct searches of electronic devices merely at the request of other government agencies.

The CBP reason for the search should be clearly and fully articulated in the TECS Electronic Media Report (EMR), including a clear articulation of the transnational or border nexus. The TECS EMR should include all the reasons for the search when CBP had more than one enforcement objective. (b) (7)(E)



All advanced searches require supervisory review and approval prior to initiating the advanced search.

Conducting Advanced Searches with Reasonable Suspicion

An officer may perform an advanced search when there is **reasonable suspicion of activity in violation of the laws enforced or administered by CBP**. In most circumstances, CBP Officers should initiate a border search of an electronic device as a basic search and progress to an advanced exam, as appropriate, based on all available facts. Information gleaned from the basic search may provide, or enhance, reasonable suspicion to proceed to an advanced search when warranted.



**U.S. Customs and
Border Protection**

AUG 27 2019

MEMORANDUM FOR:

See Distribution

(b) (6), (b) (7)(C)

FROM:

Executive Director, Operations
Office of Field Operations

SUBJECT:

Border Search – Interim Ninth Circuit Guidance

In light of a recent decision by the Ninth Circuit Court of Appeals, *United States v. Cano*, No. 17-50151 (9th Cir. Aug. 16, 2019), U.S. Customs and Border Protection (CBP), Office of Field Operations (OFO), Tactical Operations Division (TOD), provides interim guidance (which may be supplemented), regarding border searches of electronic devices initiated in the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit. The affected locations are California, Arizona, Nevada, Montana, Idaho, Oregon, Washington, Alaska, Hawaii, Guam, and Northern Mariana Islands.

The Ninth Circuit Court of Appeals reached its decision in the context of a criminal case in which the results of a border search of an electronic device were the subject of a motion to suppress. CBP's immigration and national security authorities and responsibilities pursuant to 8 U.S.C. § 1357 and 6 U.S.C. §§ 202, 211 were not addressed in this ruling.

The decision includes three (3) specific holdings relevant to border searches of electronic devices:

- First, the Ninth Circuit held that "manual cell phone searches may be conducted by border officials without reasonable suspicion, but forensic cell phone searches require reasonable suspicion."
- Second, the Ninth Circuit clarified that the "reasonable suspicion" requirement means, "officials must reasonably suspect the cell phone contains digital contraband."
- Third, the Ninth Circuit held that "cell phone searches at the border, whether manual or forensic, must be limited in scope to a search for digital contraband" (i.e., "to determine whether the phone contains contraband").

In the interim, the attached muster provides guidance and standard operating procedures for searching and reviewing electronic devices and the information contained on them. Examples of electronic devices are: computers, tablets, removable media, disks, drives, tapes, mobile phones, cameras, music and other media players, and any other communication, electronic, or digital devices subject to inbound and outbound border searches by CBP. The procedures also include an attached sample consent form that may be used for electronic media searches.

The attached memo signed August 23, 2019 by the Deputy Commissioner provides more in depth analysis and guidance.

FOR OFFICIAL USE ONLY

Border Search – Interim Ninth Circuit Guidance

Thank you for the important work your team does in support of CBP's border search of electronic devices program. Should you have any questions, please contact TOD Director (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C) or Program Manager (b) (6), (b) (7)(C) at (b) (6), (b) (7)(C).

Attachments

Distribution: Director Field Operations, Seattle Field Office
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