



U.S. CBP AUTHORIZED TO SEARCH TRAVELERS' ELECTRONIC DEVICES

On December 31, 2013, the U.S. District Court for the Eastern District of New York issued [a decision](#) affirming the broad authority of the U.S. Customs & Border Protection (CBP) to search the electronic devices of international travelers, including U.S. Citizens, entering or departing the United States. Probable cause is not required. Even reasonable suspicion is not required.

The broad authority to search electronic devices without cause or suspicion is derived from the authority the Federal government has to search the persons, bags, and personal effects of those at the border. The [CBP directive](#) on border searches of electronic devices outlines the agency's guidelines for conducting searches and retaining information. So-called "border searches" may involve extended "forensic" searches over a period of days, and can involve the copying and retention of sensitive information by one or more Federal Government agencies.

While upholding the absolute right to search all electronic devices during border searches, the Court noted that such searches are extremely unlikely and estimated only a 5 in a million chance that a traveler would be subjected to a search of his or her electronic device(s). Although these search statistics may be flawed due to haphazard and under-reporting of electronic device searches, the Court suggested the risk of a traveler having his or her electronic devices searched is low. The Court also responded to privacy concerns by noting that travelers cannot be guaranteed of the confidentiality or privacy of the contents of their electronic devices when traveling internationally, as such devices are also subject to search under the laws of other countries.

The Court suggested that "it would be foolish, if not irresponsible, for [travelers] to store truly private or confidential information on electronic devices that are carried and used overseas."

Other Courts, including the Ninth Circuit U.S. Court of Appeals, have upheld with few restrictions the Government's right to conduct border searches of electronic devices. As a result, employers should be aware that their employees traveling internationally could be subject to search by U.S. Customs & Border Protection upon return to the United States, and that the search could involve the forensic search, copying, and even decryption of electronic devices.

The best way to avoid the potential for exposure of sensitive information on electronic devices is to avoid storing personal or sensitive information on the local device.

As always FosterQuan will continue to monitor developments related to CBP procedures impacting international travelers and will provide additional information as it becomes available in future Immigration Updates.©