EXHIBIT GG



Homeland Security Investigations

Search and Seizure Handbook

HSI HB 12-04 / September 14, 2012

U.S. Immigration and Customs Enforcement

Foreword

The Search and Seizure Handbook provides a single source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) when conducting search and seizure activities within the scope of their authority. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among all HSI field offices. (Note: On June 9, 2010, the ICE Offices of Investigations (OI), International Affairs, and Intelligence were realigned under HSI. Throughout this Handbook, documents issued prior to the June 9, 2010 realignment are referred to by their original titles, e.g., the OI (instead of "HSI") Case Management Handbook.)

This 2012 edition amends Section 5.8 of HSI HB 10-05, Search and Seizure Handbook, issued August 18, 2010. HSI HB 10-05 is hereby superseded. It also supersedes U.S. Customs Service OI Internal Operating Procedures Notification 01-21 entitled, "Crime Gun Tracing Identification," dated August 24, 2001.

The Search and Seizure Handbook is an internal policy of HSI and is not intended to confer any right or benefit on any private person or party. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Information Disclosure Unit, as well as the appropriate ICE Counsel and/or U.S. Attorney, should be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure in civil discovery pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the HSI Information Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All recommended revisions to this Handbook should be submitted to the HSI Policy Unit.

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

James A. Dinkins
Executive Associate Director
Homeland Security Investigations

9/14/2012
Date

Airport security checks by the Transportation Security Administration (TSA) are regulatory searches. They are permissible without a warrant or probable cause, because the purpose of the checks is to ensure the safety of air traffic by finding weapons or other dangerous materials. Only TSA officials can conduct the checks.

(b)(7)(E)

9.9 Administrative Searches

(b)(7)(E)

Chapter 10. CUSTOMS BORDER SEARCH AUTHORITY

The Supreme Court has long recognized the right of the government to conduct searches and seizures at the borders of the United States without probable cause or a warrant. The reasons given for this authority are protection of the revenue through the collection of duty, reduced expectation of privacy at the border, and national self-protection against the introduction of prohibited, hazardous, or dangerous merchandise.

Note: The terms "customs officer" and "customs border search" predate the creation of DHS and ICE and are codified in Title 19 of the U.S. Code. Although the U.S. Customs Service (USCS) no longer exists, "customs" is used in this chapter to draw a distinction between the ICE SA's customs authority under Title 19 and the SA's border authority under the INA, which is discussed in Chapter 11.

10.1 Customs Border Search

A customs border search is 1) performed by a customs officer 2) searching for merchandise 3) at the border.

10.2 Customs Officer

A customs officer is:

A. An ICE SA.

B. A CBP officer.

C. A U.S. Coast Guard petty officer (grade E4 and above).

D. Other law enforcement officers who have been formally cross-designated by the Secretary of Homeland Security or designee.

Pursuant to 19 U.S.C. § 507, SAs may demand assistance from any person when necessary to effect an arrest, search, or seizure. This would include border searches. The person providing assistance, however, has no independent authority to perform border searches.

10.3 Merchandise

Under 19 U.S.C. § 1401(c), merchandise is defined as "goods, wares, and chattels of every description" (*see* Section 3.29). (A chattel is any movable item of property, as opposed to real property.) This includes contraband and monetary instruments. Merchandise includes almost any material good, even beasts of burden and corpses.

10.4 Actual Border

As stated in Section 3.1, the actual border is defined as:

A. The Land Border – the dividing line between the United States and Canada or Mexico.

B. The Sea Border – 3 nautical miles from the coast of the United States; in Texas and the Gulf coast of Florida, 9 nautical miles from the coast.

C. The Air Border – extends directly upward from the land and sea borders.

10.5 Functional Equivalent of the Border

(b)(7)(E)

1) Either the person or thing to be searched crossed the border, or

2) The person or thing to be searched had meaningful contact with someone or something that crossed the border.

B. The SA has reasonable certainty that no material change occurred since the border nexus. This means that any merchandise present at the time of the search was present at the time of the border nexus (i.e., there has been no opportunity to acquire domestic merchandise since the border crossing).

C. The search occurs at the first practical detention point after the border nexus. This is not necessarily the first possible detention point. Although FEB searches usually take place at designated locations, such searches may occur anywhere in the United States where all the conditions establishing the FEB are met. The important thing that SAs must remember is that the FEB search must occur before the conveyance, cargo, or travelers enter into the general commerce of the United States.

Examples of the FEB are seaport POEs, international airport POEs, U.S. Postal Service international mail facilities, the importing hubs of express package carrier facilities, CBP bonded warehouses, and international cargo being transported in-bond.

FEB searches are not strictly limited to persons or items coming from outside the United States. If a person enters a secure customs area, such as a bonded warehouse or the Federal Inspectional Services area at an international airport; comes in contact with a person or object that has just crossed the border; or comes in contact with a conveyance that has just crossed the border, such as an arriving international aircraft, that person is subject to a border search.

10.6 Functional Equivalent of the Border Outbound

SAs may conduct searches for merchandise that is traveling from the United States to a point outside the United States. SAs use these "outbound" searches most frequently in cases involving currency reporting violations or the illegal export of arms or other sensitive technologies. For outbound customs border searches, an FEB exists under the following circumstances:

A. The SA has reasonable certainty that there will be a border nexus.

B. The SA has reasonable certainty that there will be no material change before a border nexus occurs (i.e., any merchandise present now will be present at the time of crossing).

C. The search occurs at the last practical detention point before the border nexus is to occur.

When conducting an outbound border search involving travelers, SAs should attempt to establish, through questioning, the person's intention of leaving the United States. In those outbound searches involving potential currency reporting violations, SAs should also advise the

traveler of the reporting requirements prior to conducting the border search. Legal requirements pertaining to currency reporting violations are discussed in greater detail in HSI policy on financial investigations.

10.7 Extended Border

Under some circumstances, border searches may be conducted away from the actual border or the FEB. This situation is known as the "extended border search" (*see* Section 3.16). For SAs, the most common situations involving an extended border search are (b)(7)(E) (b)(7)(E) (b)(7)(E) SAs retain their authority to conduct an extended border search of the merchandise if the following conditions apply:

A. The SAs have reasonable certainty that there has been a border nexus.

B. The SAs have reasonable certainty that there has been no material change since the border nexus. (b)(7)(E) (b)(7)(E)

C. The SAs have reasonable suspicion of criminal activity.

A dwelling is never subject to a border search. Even if SAs follow contraband directly from the border to a residence, their authority to conduct a border search terminates at the threshold and Fourth Amendment safeguards apply.

10.8 Scope of a Customs Border Search

Although they are well recognized exceptions to the probable cause and warrant requirements of the Fourth Amendment, border searches must still be reasonable. Courts differentiate between "routine" and "non-routine" border searches. Routine border searches may be conducted without probable cause and a warrant. Non-routine border searches, such as a destructive search, require reasonable suspicion.

10.9 Personal Border Searches

When conducting a routine search of a person at the border, SAs may require that the individual remove an outer garment, such as a hat or jacket. They may also ask an individual to empty his or her pockets. SAs may search any personal effects or luggage carried by the person.

If SAs working in a border environment believe that an individual may be armed, they may conduct an immediate patdown of the individual. It may be conducted when there is reasonable suspicion that the person is armed. An immediate patdown is not a border search for merchandise, but rather a search conducted for the safety of the SAs and others. SAs should limit the immediate patdown to areas where they believe a weapon may be concealed.

Any border search beyond the scope of a routine personal search or an immediate patdown for weapons should be conducted by an SA of the same sex as the individual being searched. SAs should take care to conduct these more intensive personal searches in a private area away from the eyes of the public.

With some or mere suspicion, SAs may move a person to a private area and conduct a patdown search of an individual. As opposed to an immediate patdown for weapons, a patdown search is a search for merchandise and requires no suspicion. It may consist of one or more of the following actions:

A. Patting the hands over the person's body.

B. Removing the person's shoes.

C. Lifting the pant leg or hem of a skirt a few inches.

D. Removing a belt.

E. Examining or reaching into pockets.

F. Rolling up shirt sleeves.

G. Removing a wig or hairpiece.

If, during the course of the patdown search, SAs develop reasonable suspicion that the person has merchandise concealed beneath the clothing, the SAs may conduct a partial body search. A partial body search is the removal of some of the clothing to recover an item hidden underneath. The removal of clothing should be limited to the area where the SAs believe the merchandise is hidden. The SAs should conduct a partial body search in a private area out of the public view. Unless the person refuses to cooperate, SAs should conduct the search by directing the person to remove his or her own clothing.

Any personal search related to the suspected concealment of merchandise within a person's body, i.e., x-ray or body cavity search, must be conducted by medical personnel and requires reasonable suspicion that the individual is concealing material evidence inside his or her body. In the absence of consent for an x-ray, monitored bowel movements may be conducted. All decisions regarding appropriate medical procedures for a patient are to be made by medical personnel only. CBP officers and HSI SAs neither suggest nor concur in any medical procedure.

These types of searches are performed most frequently at a POE by CBP officers, with ICE HSI SAs assisting as part of the criminal investigation. CBP must adhere to its own set of procedures and approval processes when conducting these types of personal searches. SAs should cooperate in these procedures. For more information on these types of searches, SAs should consult the CBP Personal Search Handbook (HB 3300-04B), dated July 2004, or as updated.

SAs should be aware that, in any personal search involving a detention lasting more than 8 hours, SAs are required to contact the local USAO and obtain the concurrence of an AUSA in continuing the detention.

10.10 Customs Border Searches of Conveyances

SAs may search any vehicle in its entirety as part of a border search. This includes the interior, exterior, trunk, and any locked or unlocked containers. So long as the search is routine, it requires no suspicion on the part of the SAs. In the context of a border search, SAs may even dismantle parts of a vehicle to search for concealed merchandise with no suspicion. Any search that is destructive, however, requires reasonable suspicion on the part of the SAs that merchandise is concealed in the vehicle. Drilling holes in the bed of a truck, for example, would require reasonable suspicion on the part of the SAs.

SAs should not perform destructive searches or searches that involve the dismantling of vessels or vehicles without the assistance of a qualified mechanic. Due to safety considerations, SAs must request the assistance of a certified aviation mechanic when conducting more than a routine search of an aircraft.

10.11 Border Searches of Documents, Electronic Devices, and Electronic Media

On July 16, 2008, ICE issued ICE Directive 7-6.0 entitled, "Border Searches of Documents and Electronic Media." On August 18, 2009, ICE issued ICE Directive 10044.1 (former number: 7-6.1), entitled, "Border Searches of Electronic Devices," which superseded the portions of ICE Directive 7-6.0 pertaining to electronic devices. The following is a summary of the issues addressed in these directives.

10.11.1 Policy

SAs may detain, for the purpose of further review, any documents, electronic media, or electronic devices at any point during a border search. Such a detention does not require individualized suspicion. The review may occur at the location where the detention takes place or at an off-site location, including a location associated with a demand for assistance from an outside agency or entity.

If, after reviewing the documents and electronic media, SAs do not develop probable cause to seize the documents or electronic media, all detained copies of the information must be destroyed. Any originals must be returned to the traveler, importer, or exporter as expeditiously as possible.

10.11.2 Timeliness of Review

When determining the amount of time deemed to be reasonable for detaining documents, electronic media, or electronic devices, SAs should consider:

A. The nature of the documents or electronic media;

B. The amount of information needing review;

C. Whether the traveler was deprived of his or her property and, if so, whether the traveler was given the option of continuing his or her journey with the understanding that HSI would return the property once its border search was complete or a copy of the documents or media could be made;

D. The elapsed time between the detention, the initial border search, and the continued border search, including any demand for assistance;

E. Whether assistance was sought and the type of assistance;

F. Whether and when ICE followed up with the agency or entity providing assistance to ensure a timely review;

G. Whether the traveler has taken affirmative steps to prevent the search of his or her property in a timely fashion; and

H. Any unanticipated exigency that may have arisen.

For detained documents or electronic media, SAs are to complete reviews within a reasonable amount of time.

Generally, searches of electronic devices should be completed within 30 calendar days of the date of detention, unless circumstances exist that warrant more time. Such circumstances must be documented in an ROI and approved by a Group Supervisor after the first 30 days, and again every 15 calendar days thereafter.

Whenever an SA detains originals or copies of documents or electronic media, or electronic devices, the SA will initiate a chain of custody form (CBP Form 6051D) or other appropriate documentation. Additionally, all detentions must be accounted for in accordance with recordkeeping procedures outlined in the OI memorandum entitled, "Recordkeeping Procedures Regarding Detentions of Documents and Electronic Media," dated December 12, 2008, or as updated. If it is determined that the detained documents or electronic media are to be seized, the SA must also enter the seizure into the Seized Asset and Case Tracking System (SEACATS) via the completion of a SEACATS Incident Report.

When SAs receive electronic devices, or copies of information therefrom, from CBP for analysis and investigation, SAs are responsible for advising CBP of the status of any such analysis within 10 calendar days.

10.11.3 Requesting Assistance with a Documentary Search

During a border search, SAs may encounter information in documents, electronic media, or electronic devices that is in a foreign language, presents technical difficulties, or is encrypted. To determine the meaning of such information, SAs may demand translation, technical, or decryption assistance from other federal agencies or non-federal entities. SAs may seek such assistance absent individualized suspicion.

SAs may also encounter specialized information in documents or electronic media that require referral to subject matter experts to determine whether the information is relevant to the laws enforced and administered by HSI. SAs may demand such assistance when they have reasonable suspicion of activities in violation of the laws enforced by HSI.

For the purpose of obtaining subject matter expertise, SAs may create and transmit copies of information to other federal agencies or non-federal entities. Any original documents and media should be transmitted only when necessary to render the demanded assistance. If it is not necessary to transmit original documents and media, SAs should return the originals to the traveler immediately, barring continuing reasonable suspicion to detain.

It is the responsibility of the SAs demanding the assistance to ensure timely responses from assisting agencies or entities. If a demand for assistance is made outside of DHS, the SA demanding the assistance shall contact the assisting agency or entity for a status report on the request within the first 30 days after demanding the assistance. If the assisting agency or entity anticipates needing more than 30 days to complete its review and analysis, the SAs shall continue to communicate with the assisting agency or entity on a regular basis until the review is complete and the results have been received. The SAs demanding the assistance shall document each communication with the assisting agency or entity. If assisting agencies or entities are not acting in a reasonable time, the SAs shall consult with a supervisor on what action is appropriate.

10.11.4 Sharing with Outside Agencies

When SAs determine that there is probable cause of unlawful activity, based on a review of information in documents or electronic media or on other facts and circumstances, they may seize and retain the originals and/or copies of the relevant documents or electronic media or relevant portions thereof, as authorized by law. Copies of documents or electronic media, or portions thereof, that are retained in accordance with this Section, may be shared by SAs with federal, state, local, and foreign law enforcement agencies in accordance with applicable law and policy.

10.11.5 Travel and Identification Documents

Even without any suspicion of illegality, for legitimate government purposes, SAs may copy, retain, and share 1) identification documents such as U.S. or foreign certificates of naturalization, seaman's papers, airman certificates, driver's licenses, state identification cards, and similar government identification documents; and 2) travel documents that relate to the person's mode and date of travel into or out of the United States.

10.11.6 Attorney-Client Privilege

Occasionally, an individual claims that the attorney-client privilege prevents the search of his or her information at the border. Although legal materials are not necessarily exempt from a border search, they may be subject to special handling procedures.

Correspondence, court documents, and other legal documents may be covered by attorney-client privilege. If SAs suspect that the content of such a document may constitute evidence of a crime or otherwise pertain to a determination within the jurisdiction of ICE, the SAs must seek advice from the local OCC or the appropriate USAO before conducting a search of the document.

10.11.7 Border Searches of Foreign Mail

Letters and packages carried in the possession of a traveler are not mail, whether or not they are stamped. Letters or packages carried by private delivery services, such as Federal Express or the United Parcel Service, also are not mail. If they are packages, they may be opened and searched pursuant to a routine border search. If they are documents, SAs may open them and use the procedures for documentary searches outlined in the preceding subsections of Section 10.11.

To be considered mail for border search purposes, an item must be entering or leaving the mail stream of the U.S. Postal Service from or to a foreign country. For the purposes of this Handbook, there are two categories of mail: 1) a mail article, which includes packages or other items mailed at less than first class rate of postage; or 2) letter class mail, which includes letters, cards, packages, or other items mailed at a first class or higher rate of postage.

International mail must pass through a CBP international mail facility before entering the general mail delivery stream of the U.S. Postal Service. SAs should coordinate any search of foreign mail with CBP officers working at an international mail facility. Any possible border search of letter class mail shall be coordinated with CBP officers assigned to such international mail facility and conform to guidelines set forth in the USCS International Mail Operations and Enforcement Handbook (HB 3200-06A), dated August 2001, or as updated. Additionally, the U.S. Postal Service requires that it be notified and present at any border search of letter class mail. SAs should also consult with the local OCC or the local USAO when considering a border search of any article that may be considered mail.