EXHIBIT NN

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and Border Protection

August 27, 2009

MEMORANDUM FOR: Directors, Field Operations
Director, Pre-Clearance
Office of Field Operations

FROM: (b)(6);(b)(7)(C)
Assistant Commissioner
Office of Field Operations

SUBJECT: New Directive regarding Border Search of Electronic Devices Containing Information (CBP Directive #3340-049)

The Office of Field Operations, in coordination with the Office of Chief Counsel and the Department of Homeland Security's Office of General Counsel, has developed a new directive governing the border search of electronic devices containing information. The intention of this document is to provide guidance and standard operating procedures for searching, reviewing, retaining, and sharing information contained in computers, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players, and any other electronic or digital devices, encountered by U.S. Customs and Border Protection (CBP) at the border, both inbound and outbound, to ensure compliance with customs, immigration, and other laws that CBP is authorized to enforce. This new directive does not limit officer's current ability examine, detain and/or seize electronic devices, rather it is intended to help explain what is allowed by policy.

This Directive applies to searches performed by or at the request of CBP. With respect to searches performed by U.S. Immigration and Customs Enforcement (ICE), ICE Special Agents exercise concurrently-held border search authority that is covered by ICE's own policy and procedures. Field managers should endeavor to resolve, at the local level, any questions regarding which agency's policy should govern a search that involves both CBP and ICE.

Key points on the Policy for Border Search of Electronic Information are listed below:

- CBP is responsible for ensuring compliance with customs, immigration, and other Federal laws at the border. To that end, officers may examine computers, disks, hard drives, and other electronic or digital storage devices.
- Section 2.7 of this Directive applies to searches performed by or at the request of CBP. With respect to searches performed by U.S. Immigration and Customs Enforcement (ICE), ICE Special Agents exercise concurrently-held border search authority that is covered by ICE's own policy and procedures. When CBP detains, seizes, or retains electronic devices, or copies of information there from, and turns such over to ICE for analysis and investigation (with appropriate documentation), the ICE policy will apply once the information is received by ICE.

- If after review, ICE returns electronic devices, or copies of information contained therein, to CBP, CBP policy will again apply from the time that CBP takes custody of the items.
- When CBP transfers electronic devices, or copies of information therein, to ICE for analysis and investigation, ICE Special Agents are responsible for advising CBP of the status of any such analysis within 10 calendar days, and periodically thereafter, so that CBP records may be updated as appropriate. For example, "search ongoing"; "completed with negative results"; "returned to traveler"; or "seized as evidence of a crime."

- Border searches may only be performed by an officer or otherwise properly authorized officer with border search authority.
  - Officer, for the purpose of this new Policy, is defined as a Customs and Border Protection Officer, Border Patrol Agent, Air Interdiction Agent, Marine Interdiction Agent, Internal Affairs Agent, and any other official of CBP authorized to conduct border searches regarding the border search of information contained in electronic devices.
  - Electronic device or copies thereof, for the purpose of this new Policy, is defined as computers, disks, hard drives, and other electronic or digital storage device.
- An Officer may detain electronic devices, or copies of information contained therein, for a brief, reasonable period of time to perform a thorough border search. The search may take place on-site or at an off-site location, and is to be completed as expeditiously as possible.
- Supervisory approval is required for detaining electronic devices, or copies of information contained therein, for continuation of a border search after an individual's departure from the port or other location of detention. Port Director, Patrol Agent in Charge, or other equivalent level manager approval is required to extend any such detention beyond five (5) days. Extensions of detentions exceeding fifteen (15) days must be approved by the Director Field Operations, Chief Patrol Agent, Director, Air Operations, Director, Marine Operations, or other equivalent manager, and may be approved and re-approved in increments of no more than seven (7) days. Approvals for detention and any extension shall be noted in appropriate CBP systems of records.
- The use of other federal agency analytical resources outside of CBP and ICE, such as translation, decryption, and subject matter expertise, may be needed to assist CBP in reviewing the information contained in electronic devices or to determine the meaning, context, or value of information contained in electronic devices.
  - CBP may seek translation and/or decryption assistance absent individualized suspicion.
  - CBP may seek subject matter assistance when they have reasonable suspicion of activities in violation of the laws enforced or administered by CBP.
- Federal Agencies or entities receiving a request from CBP for assistance in conducting a border search are to provide such assistance as expeditiously as possible. Detention of electronic devices on behalf of another agency other than ICE.
  - Responses should be received within fifteen (15) days. If the assisting agency is unable to respond in that period of time, CBP may permit extensions in increments of seven (7) days.
  - ICE is not considered to be a separate agency when making request for assistance.

- At the conclusion of the requested assistance, all information must be returned to CBP as expeditiously as possible. In addition, the assisting federal agency should destroy all copies of the information transferred to that agency.
- Copies may be retained by an assisting Federal agency or entity only if and to the extent that it has the independent legal authority to do so.

- (b) (7)(E)

  - In conducting a border search on the electronic device, CBP could request Subject Matter Assistance (when reasonable suspicion is present) from another federal agency. If an assisting federal agency elects to continue to retain or seize an electronic device or information contained therein, that agency shall assume responsibility for processing the retention or seizure. Copies may be retained by an assisting federal agency only if and to the extent that it has the independent legal authority to do so—(b) (7)(E)

This directive does not provide guidance for searching, reviewing, retaining and sharing information such as papers, books, pamphlets, and other printed or handwritten material; possessed by individuals who are encountered by CBP at the border, for ensuring compliance with Customs, Immigration and other Federal Laws. The current policy governing these items is still "The Policy regarding Border Search of Information", dated 7/16/2008.

If you have any questions, please have a member of your staff contact (b)(6);(b)(7)(C) Director, Tactical Operations Division, at (b)(6);(b)(7)(C) or (b)(6);(b)(7)(C) (b)(6);(b)(7)(C)