



## **Hold That Call International Travelers: CBP Doubles Down on Airport Searches of Electronic Devices**

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Many international travelers express surprise when, after arriving at LAX, JFK or other US airports or land borders, the US Customs and Border Protection (CBP) officer directs them to hand over their smartphone, laptop or related electronics device for a search. As disconcerting and invasive as it may be to have a uniformed total stranger work his or her way through one's e-mails, photos and hard drive, one should be aware that it is generally within the authority of immigration and customs officials to conduct such searches. Just as one's person and luggage is subject to search upon arrival to the US, so are one's electronic devices. International travelers should be forewarned that these types of searches may become more commonplace than they already are. CBP reports that in 2017, it conducted more than 30,000 electronics device searches at airports and land borders, almost double the amount of searches it conducted in 2016. Now with a fresh policy in place, it is safe to expect this upward trend to continue.

On January 5, 2018, CBP Acting Commissioner (AC) Kevin K. McAleenan provided new guidance to its officers regarding such searches. In a lengthy, 12-page directive, the AC reminded his officers of the legality of such searches, noting that they are essential for the protection of national security and various law enforcement priorities. These searches may even be employed to determine whether a non-US traveler is attempting to enter the United States legally -- consistent with his or her purported visa classification. For example, a CBP officer may review and read the e-mails of an individual arriving with a tourist visa to determine whether he or she is truly entering the US for touristic purposes, or whether the traveler has another, illegal purpose — such as to work and live in the United States without the proper authorization. It is also important to note that the AC also indicated his directive applied to outbound international travel as well as arrivals.

In the directive, the AC set forth policies and procedures related to initiating such searches, as well as policies regarding notification to the traveler that a search is being conducted, the traveler's opportunity to view such searches as they are taking place, and how to handle assertions that certain information is privileged and therefore protected from search. The directive also details procedures related to issues of device encryption and passwords, the detention of such devices for an extended period, the referral to other federal law enforcement agencies with regard to information found on electronic devices, and regarding policies related to the storage and retention of such information.

Business and pleasure travelers to the United States should be aware that these extensive policies and procedures are now in place, and should bear this in mind before undertaking any US travel. It is certainly useful to know that the current administration has made border security issues a priority, and is highly supportive of enforcement efforts such as this, as the rapid increase in this type of searches indicates. Given the existence of this new guidance, it is safe to surmise that the scope and volume of these types of searches may significantly increase in the immediate future.

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