

## **Authority of U.S. Customs and Border Protection Agents: An Overview**

U.S. Customs and Border Protection (CBP) was established in 2003 as an arm of the Department of Homeland Security (DHS). It combined agents from the U.S. Customs Service, the former Immigration and Naturalization Service and agricultural inspectors, who monitor the ports of entry, and the U.S. Border Patrol, who monitor the area between ports of entry. Today, CBP is the largest law enforcement agency within DHS, with more than 58,000 employees. As federal officers, CBP agents may only exercise the authority granted under federal statutes and regulations. This fact sheet provides a snapshot of search, interrogation, and arrest powers currently authorized under the law.

### **Authority to Search**

#### ***At Ports of Entry***

- Under the Fourth Amendment, searches of persons arriving at U.S. ports of entry and personal effects in their possession, including computers or other personal devices, are reasonable *per se*. Thus, CBP agents do not need to obtain a warrant or have reason to suspect an individual is engaged in illegal activity before performing a search.<sup>1</sup>
- It is unclear whether this rule also applies to CBP efforts to interdict outgoing traffic of persons who are *leaving* the United States.

#### ***Between Ports of Entry***

- CBP agents may search for noncitizens on any “railway car, aircraft, conveyance, or vehicle” that is “within a reasonable distance from any external boundary of the United States.”<sup>2</sup>
- Under federal regulations, “reasonable distance” means within 100 air miles from any external boundary of the United States.<sup>3</sup>
- In the context of roving border patrols within 100 miles of the border, CBP agents may pull over cars to question occupants about their citizenship or immigration status if they have “reasonable suspicion” of unlawful activity.<sup>4</sup>
- Standing alone, an occupant’s ethnicity is not sufficient to establish reasonable suspicion. Pulling over a vehicle solely on the basis of an occupant’s race is an “egregious” Fourth Amendment violation.<sup>5</sup>
- CBP agents may search for noncitizens on “private lands, but not dwellings” within 25 miles from the border.<sup>6</sup> Thus, to enter a home, CBP officers must still obtain a judicially issued search warrant or the consent of the occupants.<sup>7</sup>

## Authority to Interrogate

- CBP agents may “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.”<sup>8</sup> As a result, the government must show that “immigration officials *believed* a person was an alien before questioning him.”<sup>9</sup>
- When questioning a noncitizen about his right to be or remain in the United States, CBP agents, like all law enforcement officers, cannot threaten the person being questioned or deny him his legal rights ... If such coercion takes place, any statements obtained may be excluded in a subsequent removal proceeding under the Due Process Clause of the Constitution.<sup>10</sup>

## Authority to Arrest

### *For Immigration Offenses*

- CBP agents may arrest any noncitizen without a warrant who “in his presence or view is entering or attempting to enter the United States in violation of any law.”<sup>11</sup>
- CBP agents may arrest any noncitizen without a warrant whom they have “reason to believe” (i.e. probable cause) is in the United States in violation of law and is likely to escape before a warrant can be issued.<sup>12</sup>

### *For Non-Immigration Offenses*

- CBP agents may make arrests for any offense against the United States committed in the presence of the officer, or for any felony the officer has reasonable grounds to believe (i.e. probable cause) the person to be arrested has committed.<sup>13</sup>
- To exercise this arrest authority, the CBP agent must be in the course of duties related to the enforcement of the immigration laws and must find there to be a likelihood that the person will escape before an arrest warrant may be obtained.<sup>14</sup>

## Endnotes

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<sup>1</sup> *United States v. Ramsey*, 431 U.S. 606 (1977); INA § 287(c), 8 U.S.C. § 1357(c).

<sup>2</sup> INA § 287(a)(3), 8 U.S.C. § 1357(a)(3).

<sup>3</sup> 8 C.F.R. § 287.1(a)(2).

<sup>4</sup> *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

<sup>5</sup> *Gonzalez-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994); *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 235 (2d Cir. 2006).

<sup>6</sup> INA § 287(a)(3), 8 U.S.C. § 1357(a)(3).

<sup>7</sup> *United States v. Romero-Bustamente*, 337 F.3d 1104 (9th Cir. 2003); *United States v. Castellanos*, 518 F.3d 965 (8th Cir. 2008).

<sup>8</sup> INA § 287(a)(1), 8 U.S.C. § 1357(a)(1).

<sup>9</sup> *United States v. Flores-Sandoval*, 422 F.3d 711, 714 (8th Cir. 2005).

<sup>10</sup> *Singh v. Mukasey*, 553 F.3d 207 (2d Cir. 2009).

<sup>11</sup> INA § 287(a)(2); 8 U.S.C. § 1357(a)(2).

<sup>12</sup> INA § 287(a)(2); 8 U.S.C. § 1357(a)(2).

<sup>13</sup> INA § 287(a)(5); 8 U.S.C. § 1357(a)(5).

<sup>14</sup> INA § 287(a)(5); 8 U.S.C. § 1357(a)(5).