

Pierre Grosdidier in Texas Bar Journal: Travel Tip - Expect Warrantless Digital Device Searches at the Border

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PRACTICES Privacy and Cybersecurity

As unsettling as they are, warrantless border searches of digital devices are legal. It is well established that the sovereign's interest in territorial integrity reaches its zenith at the border. Accordingly, the "border search" exception to the Fourth Amendment's privacy protections dispenses U.S. Customs and Border Protection, or CBP, officers from securing probable cause-based warrants for border searches, either inbound or outbound.

The border search exception applies equally to digital devices, which the CBP regards as luggage. The key issues as to these devices are the level of the search, i.e., basic versus forensic, and the level of suspicion of illicit activity required for each, i.e., none or a reasonable level of suspicion. The U.S. Supreme Court has defined reasonable suspicion as "a particularized and objective basis for suspecting the particular person stopped of criminal activity," an analysis that must consider "the totality of the circumstances." No court has held that reasonable suspicion is required for a basic search, which means that CBP officers are free to manually rummage through a traveler's cellphone or computer. Federal appellate courts are split regarding the level of suspicion required for forensic searches.

Excerpted from Texas Bar Journal, June 2018. To read the full article, click [here](#).