



U.S. Customs and Border Protection's Powers and Limitations: A Brief Primer

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U.S. Customs and Border Protection (CBP), a [component of the Department of Homeland Security](#) (DHS), enforces federal customs and immigration laws at or near the international border and at U.S. ports of entry. Congress has established a comprehensive framework enabling CBP officers to inspect, search, and detain individuals to ensure their entry and any goods they import conform to these governing laws. That authority is not absolute. The Fourth Amendment to the U.S. Constitution prohibits government searches and seizures that are not reasonable. While the government has broader latitude to conduct searches at the border than in the interior of the United States, these searches must still satisfy Fourth Amendment requirements. This Legal Sidebar briefly explains CBP's customs and immigration enforcement powers and the constitutional limitations to that authority. (A separate DHS component, [U.S. Immigration and Customs Enforcement](#) [ICE], is primarily responsible for immigration and customs enforcement in the interior of the United States; a discussion of ICE's enforcement powers can be found [here](#).) Many topics covered in this Sidebar are more extensively discussed in [CRS Report R46601, *Searches and Seizures at the Border and the Fourth Amendment*](#), by Hillel R. Smith and Kelsey Y. Santamaria.

Background

The [Homeland Security Act of 2002](#) established CBP as the component within DHS mainly responsible for protecting the nation's international borders through [enforcing federal customs and immigration laws](#) (CBP also [enforces other laws](#) relating to the border, including those concerning the introduction of [harmful plant](#) or [animal species](#) and [public health requirements](#)). CBP's customs powers [derive](#) from those originally exercised by the U.S. Customs Service of the Department of Treasury, while CBP's immigration enforcement functions [derive](#) from the former Immigration and Naturalization Service.

Within CBP, the [Office of Field Operations](#) (OFO) conducts inspections and enforces immigration and customs laws at [designated ports of entry](#). A separate CBP component, the [U.S. Border Patrol](#), is responsible for the apprehension of non-U.S. nationals ("aliens") and the interdiction of illegally imported goods entering the United States between ports of entry.

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CBP's General Authority to Arrest and Detain

Under the Immigration and Nationality Act (INA), immigration enforcement officers may arrest aliens believed to have committed immigration violations. Generally, an alien subject to removal from the United States [may be arrested and detained](#) on issuance of an [administrative warrant](#). But [INA § 287\(a\)\(2\)](#) authorizes [designated immigration officers](#) (including, [by regulation](#), inspectors at ports of entry and Border Patrol agents) to arrest without a warrant if (1) the alien is entering the United States unlawfully in the presence or view of the officer; or (2) there is “reason to believe” the alien is unlawfully in the United States and likely to escape before a warrant can be obtained. Typically, an alien apprehended at or near the border is [detained](#) pending efforts to [promptly remove](#) the alien from the United States; or, if the alien is [not subject to expedited removal](#), pending placement in [formal removal proceedings](#). [INA § 287\(a\)](#) also permits [designated immigration officers](#) to make warrantless criminal arrests in some cases (e.g., when an offense is committed in the officer’s presence, or there are “reasonable grounds” to believe the suspect committed a felony and would likely escape). Title 19 of the U.S. Code, which confers CBP with federal customs authority, also [permits](#) warrantless criminal arrests in similar circumstances.

While CBP has broad arrest powers under governing statutes and regulations, there are constitutional constraints to the exercise of this authority. Notably, the [Fourth Amendment](#) commands that searches and seizures be [reasonable](#), and generally requires the government to secure a [warrant based on probable cause](#) before arresting or searching an individual. Probable cause requires facts showing [an objectively reasonable belief](#) that a person has likely engaged in unlawful activity. That said, the government may engage in a [warrantless arrest or search](#) in some circumstances. For example, a law enforcement officer [may arrest a suspect without a warrant](#), as [INA § 287\(a\)](#) allows, if the suspect commits a crime in the officer’s presence, or if the officer has probable cause the suspect committed a felony. [Reviewing courts have also applied](#) the probable cause standard to warrantless immigration arrests that are predicated on a “reason to believe” an alien is unlawfully present, as set forth in [INA § 287\(a\)\(2\)](#).

The Fourth Amendment also prohibits the use of [excessive force](#) during an arrest. DHS [regulations](#) limit the circumstances in which immigration authorities may use “non-deadly” or “deadly” force. The Fourth Amendment also generally bars the government’s nonconsensual [entry into a person’s home](#) or other areas where there is a [reasonable expectation of privacy](#) (e.g., the [non-public part of a business](#)) without a judicial (as opposed to an administrative) warrant. And it bears mentioning that CBP generally [restricts](#) enforcement actions (i.e., arrests, interviews, searches, and surveillance) at “sensitive locations,” including schools, hospitals, and places of worship, except in the “[immediate vicinity](#)” of the border.

Routine Questioning and Brief Investigative Detentions

CBP may conduct interrogations and brief detentions as part of an investigation into possible immigration violations. Under [INA § 287\(a\)\(1\)](#), an immigration enforcement officer may, without a warrant, “interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.” The Supreme Court has [held](#) that government officers do not violate the Fourth Amendment by [merely questioning](#) individuals in public places, provided those persons are not involuntarily detained for such questioning. But more intrusive encounters, such as a “stop and frisk,” [require reasonable suspicion](#). This standard, [lower](#) than the probable cause threshold for an arrest, requires specific, articulable facts (and not a mere hunch) that reasonably warrant suspicion of illegal activity. The Supreme Court [has applied](#) this standard to detentions in the immigration context, and DHS [regulations](#) require reasonable suspicion of a person’s unlawful presence in the United States or commission of a federal criminal offense for these investigative detentions.

Customs and Immigration-Related Inspections and Searches

CBP may conduct warrantless inspections and searches at or near the border to detect contraband and other federal customs violations. [Title 19 of the U.S. Code](#) and [implementing regulations](#) authorize an “officer of the customs” (defined to include CBP officers) to inspect persons, baggage, cargo, and merchandise arriving in the United States from abroad; and [to board](#) a vehicle or vessel within the United States or “customs waters” (i.e., within 12 nautical miles of the U.S. coast) to examine documentation, and to [inspect and search](#) the vehicle or vessel (the U.S. Coast Guard [shares customs enforcement authority](#) on the high seas and U.S. waters).

CBP also may conduct warrantless inspections and searches at or near the border to enforce federal immigration laws. Under [INA provisions](#) and [DHS regulations](#), an immigration officer may inspect (e.g., examine passports) all persons entering the United States, [potentially search](#) aliens who appear to be inadmissible, and [collect aliens’ biometric data](#). Under [INA § 287\(a\)\(3\)](#) and DHS regulations, certain designated officers (e.g., Border Patrol agents) may board “any vessel, railway car, aircraft, conveyance, or vehicle” mostly within an area of [100 air miles](#) from a U.S. “[external boundary](#)” to search for unlawfully present aliens. The statute also authorizes [designated](#) officers “[to have access to private lands,](#)” but not “dwellings” (including, in some jurisdictions, a home’s [backyard](#) and [crawlpace](#)) within 25 miles from a U.S. external boundary for “patrolling the border” to prevent the unlawful entry of aliens.

CBP’s inspection and search powers are subject to Fourth Amendment constraints, but the degree of those limits may turn on whether the search occurred at the border or further into the interior of the United States.

Searches at the Border or Its Functional Equivalent

Under what is known as the [border search exception](#) to the Fourth Amendment’s warrant requirement, law enforcement officers may conduct routine inspections and searches at the U.S. border without a warrant, probable cause, *or* reasonable suspicion. The Supreme Court has [reasoned](#) that “the Fourth Amendment’s balance of reasonableness is qualitatively different at the international border than in the interior” of the United States because persons entering the country have [less robust expectations of privacy](#). The border search exception applies to the physical border as well as the border’s “functional equivalent,” such as an [international airport](#) or [post office receiving international mail](#). Reviewing courts have held that the border search exception [applies to both incoming and outgoing travelers](#) crossing the international border.

A border search that exceeds a *routine* search and inspection may require at least reasonable suspicion of unlawful activity. The Supreme Court has not precisely defined the scope of a routine border search, but has suggested that *non-routine* border searches may include “[highly intrusive searches](#)” that infringe a person’s dignity and privacy (e.g., a strip search), or cause the [destruction of property](#). The Court has held that the prolonged border detention of a suspected drug smuggler [required reasonable suspicion](#), while concluding that the [search of an automobile fuel tank](#) and the [opening of international mail](#) were routine border searches. Lower courts [have held that a routine border search may include](#), for example, the search of automobiles, luggage, papers, outer clothing, shoes, wallets, and pockets. Courts have also [ruled](#) that limited, manual searches of electronic devices (e.g., cell phones) are routine border searches, but have [disagreed](#) on whether forensic searches of such devices require reasonable suspicion.

Searches Beyond the Border or Its Functional Equivalent

CBP also conducts searches and seizures in areas *beyond* the border to prevent unlawfully present aliens who have evaded detection from traveling more into the interior of the United States, or to prevent the importation of drugs and other contraband. These searches may require at least heightened suspicion or probable cause to withstand Fourth Amendment scrutiny.

Extended Border Searches

While the doctrine has not been endorsed or applied by the Supreme Court, [some lower courts](#) have concluded that the government may conduct warrantless, “extended border searches” beyond the border or its functional equivalent to investigate criminal activity after a person or vehicle has physically crossed the border. Because extended border searches occur after a person has entered the United States, and likely intrude more upon privacy expectations than searches at the actual border, courts have generally required an extended border search [to meet three criteria](#): (1) “reasonable certainty” that a border crossing has occurred; (2) “reasonable certainty” that no change in the condition of the person or vehicle being searched has occurred since the border crossing; and (3) reasonable suspicion of criminal activity.

Boarding and Inspection of Vessels in Interior or Coastal Waterways

Recognizing the “nature of waterborne commerce” and the difficulty of establishing maritime checkpoints, the Supreme Court [has held](#) that federal officers may board vessels on inland waters with ready access to the open sea for routine document checks with no suspicion of unlawful activity. Lower [courts have ruled](#) that officers must have reasonable suspicion to conduct a limited search of the vessel, and probable cause for a more extensive “stem to stern” search.

Roving Patrols

The Border Patrol conducts “[roving patrols](#)” where agents traverse certain areas near the border and stop vehicles suspected of carrying unlawfully present aliens or illegal narcotics, even if there is no indication the vehicle had crossed the border (unlike extended border searches). The Supreme Court has recognized that roving patrols occur at points removed from the border and risk “[potentially unlimited interference](#)” with public use of the highways. Thus, the Court has held that roving patrol stops for the limited purpose of questioning a vehicle’s occupants about immigration or citizenship status, or suspicious circumstances, [require reasonable suspicion](#) of illegal activity, while a search of the vehicle [requires probable cause](#).

Fixed Immigration Checkpoints and Transportation Checks

The Border Patrol also establishes [immigration checkpoints](#) on major highways near the border where all drivers may be briefly questioned about immigration or citizenship status, even if they have not physically crossed the border. Given the “regularized” and limited nature of checkpoint stops, the Supreme Court has [held](#) they do not require a warrant or any particularized suspicion of illegal activity. But the Court [has ruled](#) that vehicle searches at the checkpoints must be supported by probable cause.

The Border Patrol may also [board](#) buses or trains near the border to ask passengers about immigration and citizenship status, travel plans, and luggage. The Supreme Court has not addressed the constitutionality of Border Patrol transportation checks under the Fourth Amendment. Relatedly, the Court has held that police officers engaged in drug interdiction [may board buses at scheduled stops and question passengers](#) so long as a reasonable person “would feel free to decline the officers’ requests or otherwise terminate the encounter.” Based on this precedent, [some courts have ruled](#) that Border Patrol agents may board buses and question passengers without a warrant or any suspicion of unlawful activity. But more recently, CBP [updated its boarding policy](#) by requiring the bus company’s consent before boarding buses.

Activity in the 116th Congress

Some legislative proposals introduced in the 116th Congress concern CBP’s ability to conduct searches and seizures at the border and surrounding areas. The Border Zone Reasonableness Restoration Act ([S. 2180, H.R. 3852](#)) would amend INA § 287(a)(3) by generally limiting officers’ ability to search vehicles and other conveyances to areas within 25 miles of the border, and the bill would also generally bar

immigration checkpoints located more than 10 miles from the border, and restrict officers' access to private lands to areas within 10 miles of the border. Other bills (S. 2694, S. 1606, H.R. 2925) would restrict CBP's ability to search electronic devices at the border, including manual searches, by requiring reasonable suspicion or a judicial warrant supported by probable cause.

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