

REPORTERS WITHOUT BORDERS

FOR FREEDOM OF INFORMATION

August 16, 2017

Memorandum For: Department of Homeland Security (DHS) and Customs and Border Protection (CBP)

From: Reporters Without Borders (RSF)

Subject: Secondary Inspection of Journalists

BACKGROUND: Customs and Border Protection is dedicated to ensuring our nation's security by admitting only those individuals who have a basis to enter and do not pose a risk to national security or public safety. CBP also recognizes and is committed to protecting the rights of individuals against unreasonable search and seizure and ensuring privacy protections while accomplishing its enforcement mission.

Certain identified risk factors for travelers seeking to enter or leave the country include travel to areas of concern, last-minute itineraries, and one-way tickets. Professional journalists, including freelancers and photographers, may pose a unique challenge to CBP officers tasked with identifying risk factors because the nature of ordinarily journalistic work often requires such activities. Professional journalists may be disproportionately singled out due to their travel itineraries and other factors and sent to secondary inspection where sensitive work-related information may be searched. CBP recognizes that cross-border movement and travel by journalists to conflict zones are important for news and information-gathering and reporting purposes, and that legitimate journalists, both U.S. citizens and aliens, seeking to travel to the United States do not ordinarily present a significant risk. CBP is issuing the following guidance regarding the examination of journalists as part of CBP's commitment to risk-based, intelligence-driven operations that allow CBP to better focus on threats that pose a significant risk.

PURPOSE: To provide guidance for secondary inspection of journalists consistent with CBP's commitment to a risk-based approach to screening.

GUIDANCE: Journalists are frequently selected for secondary inspection based on their travel itineraries and other factors incidental to ordinary news and information gathering and reporting activities. CBP officers shall keep the following in mind when assessing the potential for risk posed by these individuals.

1. The newsgathering process is constitutionally protected. The Department of Justice and the Department of Homeland Security recognize the essential role of a free press in fostering government accountability and an open society.
2. Journalists frequently travel across international borders and their work often requires that they travel to, from, and within conflict zones.

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3. Because of the nature of their work, many journalists have broken travel. They may be missing stamps at various points of entry, may not have roundtrip tickets, may have last-minute itineraries, and may have remained in high-risk areas for extended periods of time.
4. Not all journalists are employees of major new media outlets. Increasingly, many journalists work for online publications (e.g., Vox, Vice, BuzzFeed), local foreign papers, or are freelancers.
5. Not all journalists write stories. Some are producers, photographers, videographers and cameramen, and other crewmembers.
6. Not all journalists will have readily searchable bylines. For example, reporters for news wire services like Agence France Press or Associated Press or string photographers frequently are not credited for their work by name; instead, it is attributed to the news service itself. The inability of a journalist to provide attributable examples of their work does not, alone, undermine his or her credibility.
7. Journalists may cultivate sources, and maintain contact with, individuals or organizations that act contrary to U.S. national security and foreign policy. A journalist who has contact with members of a terrorist or criminal organization (including through phone numbers, photographs, and social media contact), and who has reported on issues related to those organizations, should not raise the same suspicions as a non-journalist traveler.
8. Journalists are regularly antagonized by foreign governments, some of which abuse their anti-terrorism laws to prosecute journalists for political reasons.
9. Journalists may communicate on encrypted and other secured communications channels. They may undertake such caution due to the hostility they face from governments in the countries in which they operate.

The conduct and professional norms described above should not, without the presence of other risk factors, indicate that a legitimate journalist poses a risk for entry into the United States. For that reason, prolonged detention and questioning of legitimate journalists, and searches of their personal items and electronic devices, should not be necessary unless the presence of other factors unrelated to their ordinary journalistic activities indicate that the particular individual should be subject to additional scrutiny.

Journalists are also under a professional obligation to protect the confidentiality of their sources. In many instances, anonymity is the precondition upon which the information is conveyed from the source to the journalist; this may be motivated by fear of repercussions which might adversely affect their physical safety or employment. Protection of journalistic sources is therefore one of the basic conditions for press freedom. Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest.

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Oftentimes journalists will have confidential information provided by sources or trade secrets on their person when they travel, either in document form or on their electronic devices. These materials may also include personal information that is sufficient to identify a confidential source.

CPB Directive No. 3340-049 “Boarder Search of Electronic Devices Containing Information” recognizes that work-related information carried by journalists may be considered sensitive information and shall be handled in accordance with applicable law and CBP policy. Section 5.2.2. Searching the work-related documents and electronic devices of a journalist while at a secondary inspection location shall only be undertaken when the information sought is necessary to assess the legitimacy of that journalist’s travel to the United States and intent to enter.

CBP officers shall follow the procedures outlined in CPB Directive No. 3340-049 and direct questions regarding the review of work-related information by journalists to the CBP Associate/Assistant Chief Counsel. Section 5.2.2. Specific questions about how to interpret this guidance or seeking further clarification shall be directed to your superior or to the CBP Associate/Assistant Chief Counsel.