



FAQ on International Travel

Can I be questioned by an Immigration officer when entering the United States?

Yes; all persons can be questioned to determine the person's identity and immigration status, as well as determine whether the person is transporting anything illegal. U.S. citizens should be allowed entry as soon as these questions are satisfied. U.S. permanent residents and those wishing to enter in a temporary visa status to visit, work or study must also establish that they are "admissible", meaning there are no criminal, security, or public health issues that would prohibit entry into the United States. You must carry documents showing your eligibility to enter the United States, such as your U.S. passport or U.S. passport card, "green card", valid visa stamp in your passport or, if visa-exempt, a visa approval notice.

Do I have a right to an attorney when I'm being questioned?

No, there is no right to an attorney for "routine border" questions by a U.S. Customs and Border Protection (CBP) officer. You are permitted to ask for an attorney, family member or friend to provide assistance during questioning, but it is at the discretion of the inspecting officer to allow your representative access if deemed appropriate. However, if you are a U.S. citizen you do have a right to an attorney because you are being examined, rather than inspected and admitted. If there is prolonged, non-routine questioning, that you believe may lead to potential criminal prosecution and you are in custody, the rules change and you may remain silent and request an attorney.

Can the CBP officer search my possessions when entering the United States?

Yes – "All persons, baggage and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection by a CBP officer. Unless exempt by diplomatic status, all persons entering the United States, including U.S. citizens, are subject to examination and search by CBP officers." <https://www.cbp.gov/travel/cbp-search-authority>

What is the purpose of the questioning and possible search?

The purpose for questioning is to protect our borders and the United States. "CBP officers must determine the nationality of each applicant for admission and, if determined to be an alien [*non-U.S. citizen*], whether or not the applicant meets the requirements of the Immigration and Nationality Act for admission to the United States. Speaking with travelers and closely examining their documentation are some of the ways we [CBP] look for mala fide or improperly documented travelers." <https://www.cbp.gov/travel/cbp-search-authority>

"You may be subject to an inspection for a variety of reasons, some of which include: your travel documents are incomplete or you do not have proper documents or visa; you have previously violated one of the laws CBP enforces; you have a name that matches a person of interest in one of the

government's enforcement databases; or you have been selected for a random search.”

<https://www.cbp.gov/sites/default/files/documents/inspection-electronic-devices-tearsheet.pdf>

I understand that everyone must answer questions from the Immigration officer at a border entry, but under the U.S. Constitution isn't a warrant or "probable cause" needed to search my belongings?

Although the Fourth Amendment of the U.S. Constitution provides protection against unreasonable search or seizure, there is a long established exception in the law for border searches. Furthermore, the border extends to the "functional equivalent" of the border such as international airports. There are conflicting court cases regarding whether a non-routine, invasive search can be conducted without at least reasonable suspicion of wrongdoing, but it is likely that even invasive personal property searches at the border that are not based on reasonable suspicion would be allowed. This border exception applies even to U.S. citizens.

Is there an exception for mobile phones, laptop computers and other electronic devices which may contain highly personal or confidential information?

Under CBP and ICE (Immigration and Customs Enforcement) Directives, immigration officers may examine an electronic device and analyze the information contained. While the search should be conducted in the presence of the individual, the officer can decide not to allow the individual to witness the search for national security, law enforcement or operational reasons. Sensitive information such as legal materials, medical records, journalist work-related information and business or commercial information can be subject to search; however, special handling procedures may apply to protect confidential information from unauthorized disclosure.

https://www.dhs.gov/xlibrary/assets/cbp_directive_3340-049.pdf

Can information and documents from my electronic devices be copied? Can my devices be detained or kept?

While a "quick look" or manual review of your data can be done with no explanation or reason, a 2013 9th Circuit case holds that a more comprehensive forensic search should require at least reasonable suspicion. *United States v. Cotterman*, 709 F.3d 952, 956, 960 (9th Cir. 2013). The 2009 CBP Directive provides for detention and off-site search of electronic devices for up to 5 days with extensions possible.

https://www.dhs.gov/xlibrary/assets/cbp_directive_3340-049.pdf

What if my electronic device is not my personal property but is owned by my employer and issued to me for business use?

The Department of Homeland Security does not make any exception to a search of an electronic device based on ownership. All items accompanying a traveler are subject to search.

Must I provide my passwords?

No. The Immigration officer may be satisfied if you voluntarily unlock the device and make files and social media postings available for a visual inspection. However, if the officer insists on the password and you refuse to provide it, you could be detained for a longer period of time and questioned more aggressively. The Immigration officer could also seize your device to send it to a remote site for a

forensic search. It might take weeks before your device is returned.

What steps can I take to protect my privacy and safeguard confidential information from search?

Many experts recommend that you consider obtaining a separate laptop or phone which will contain only the minimal information you need for your travels. It is also suggested that you store confidential information using a remote cloud computing software or purchase a secure virtual private portal. Finally, some travelers are purchasing prepaid cell phones. If you do use a prepaid cell phone, however, the immigration officer could wonder why you are doing so and question you about that. Be prepared for this question and tell the truth. You should consult with your company's IT security officer regarding the policy for work issued electronic devices.

What should I do to prepare for international travel?

1. Review all travel and immigration documents to ensure they are valid, not damaged, legible and contain accurate information – including passports, “green cards”, visa stamps, U.S. immigration documents such Forms I-797 approval notices and Forms I-20 certificates for F-1 students
 - a. Renew expiring passports, green cards and other immigration documents timely; and
 - b. Obtain corrected documents if there are any errors in name spelling, birthdates, etc. so that the information is consistent across all documents.
2. Keep a copy of your immigration documents and passport in a safe place.
3. Protect your personal data and restrict access to your electronic devices as appropriate, including frequent back-ups.
4. When seeking admission to the United States, keep all necessary immigration and other documents with you, as well as any items you will need for young children that will be with you. Don't keep these items in your checked luggage or with another family member travelling with you as this might cause needless delay or discomfort should you be separated and detained. For example, if you will be traveling with a baby and the baby will stay with you, make sure you are the one carrying the diaper bag.
5. If you anticipate that you might be detained upon entry, let someone know your flight information and anticipated time of arrival and develop a plan with your family and/or employer to notify a contact person prior to going into the Immigration inspection area. If you are detained for a lengthy period of time, at least your family or employer will be aware that there is a problem. They can then take steps to contact CBP to inquire about you and if necessary, contact an attorney.
6. If you are a U.S. lawful permanent resident or “green card” holder, plan not to be outside the U.S. for more than 6 months. If your trip will extend beyond 6 months, consult with an immigration attorney to ensure that you are taking all recommended steps to avoid inadvertently abandoning your permanent residency.
7. If you are eligible for U.S. citizenship and wish to apply for naturalization, contact your immigration attorney to discuss proceeding with naturalization and subsequent application for a U.S. passport.

What should I do if I am detained by Immigration at the airport, seaport or border crossing?

1. Be polite, professional and as cooperative as possible. Answer questions truthfully.
2. Ask the immigration officer to allow you to call your family or other contact person to make them aware of your situation. Also ask if you can have someone present for any extended questioning, if you need assistance.
3. If you are a U.S. citizen or permanent resident and it appears the questioning and search might lead to a criminal investigation, you may ask for an attorney and refuse to answer further questions.
4. If you are not a U.S. citizen or permanent resident, and the immigration officer informs you that you are not admissible, request to voluntarily withdraw your application for admission. This is a better legal option than “expedited removal” which will trigger a 5 year bar to future entries. Read any statement or document prepared by the immigration officer and do not sign if the information is not accurate or you do not understand what you are signing.
5. If you are a permanent resident, do not sign a Form I-407 which is a voluntary abandonment of your permanent residency status unless you intend to give up your permanent residence (green card) status.

Should I avoid international travel?

If you have reason to believe that you may experience difficulty or delay returning to the U.S. at this time, you may wish to postpone international travel until further clarification is received on possible travel bans.

What documents should I carry for domestic travel?

A list of acceptable valid ID documents is available from the DHS TSA (Transportation Security Administration) at <https://www.tsa.gov/travel/security-screening/identification>. In addition, be aware of the requirements of the airline carrier. For example, the document list for United Airlines is at <https://www.united.com/web/en-US/content/travel/airport/id/travel.aspx>. U.S. citizens will commonly present a valid DHS enhanced driver’s license or U.S. passport. U.S. permanent residents, by law, must carry their “green card” (Form I-551) at all times while in the U.S., and all those in a non-immigrant visa status must, by law, carry their Form I-94 at all times as proof of valid immigration status.

If you would like further information, please contact Foster LLP at 713-229-8733 (Houston), or at 512-478-9475 (Austin) or email a consultation request through our website at www.fosterglobal.com.

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