

## **Study Guide, Chapter 9, Border Security**

### **Part 1**

1. Throughout history sovereign states (i.e., city-states, empires, nations, etc.) have displayed two fundamental features (among others) regarding their borders:

- A. Security of their boundaries (that is, their borders) as matter of national self-protection, and
- B. Collection of customs (revenue from tariffs/duties/taxes).

2. The Constitution of the United States, Article 1, section 8 (powers of Congress) vests the federal government with authority to collect tariffs:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

3. Under the Homeland Security Act of 2002 (HSA):

- a. The U.S. Customs Service was transferred to DHS;
- b. INS was abolished by and its functions were transferred to DHS.
- c. DHS became responsible for Immigration and Customs functions.

4. Using the reorganization authority given to him by the HSA President Bush made the following organizational changes:

- a. Renamed the U.S. Customs Service as U.S. Customs and Border Protection (CBP) and gave it responsibility for border enforcement.
- b. Transferred the INS Border Patrol and INS inspection functions to CBP.
- c. Transferred agricultural inspection functions at the border from USDA to CBP.

d. Transferred Customs Service special agents to a new agency – Immigration and Customs Enforcement (ICE) which would be responsible for investigating customs, immigration, and related violations.

e. In addition to its criminal investigative function, ICE took over the INS functions of: detention and removal, and conducting immigration law proceedings in the immigration courts.

5. Since the 9/11 attacks, CBP's primary mission has been to prevent terrorists and their implements from entering the U.S.

6. CBP is the agency responsible for clearing every person, shipment, vessel, vehicle, and aircraft - everyone and everything - entering the United States.

7. CBP is responsible for ensuring that all people and things crossing the border comply with all applicable U.S. laws, including those dealing with customs, immigration, agriculture protection, and anti-terrorism.

8. CBP has over 300 ports of entry (POE) nationwide and preclearance locations in several nations.

9. CBP has about 60,000 employees, of which about 43,000 are law enforcement officers – it is the largest law enforcement organization in the U.S.

10. Federal statutes require:

a. all persons and conveyances coming to the U.S. must report their arrival to CBP at designated ports of entry

b. CBP must determine that persons seeking entry are U.S. citizens or Permanent Law Resident Aliens (thus entitled to entry), or that they are aliens admissible to the U.S. under the Immigration and Nationality Act (INA, Title 8).

c. all merchandise (including contraband) brought into the U.S. by persons crossing the border must be declared to CBP.

d. all commercial shipments must be entered (declared) with CBP to ensure:

(i) compliance with all applicable laws;

(ii) proper classification and appraisement can be determined so that applicable duties may be collected.

11. There are severe criminal and civil penalties for violating the Customs

laws. These include imprisonment, monetary penalties, seizures and forfeitures (civil proceedings that divest the owner of the offending property and vest ownership of the same in the USG).

12. Under the Customs laws CBP officers and agents have border search authority. Under this border search authority CBP officers and agents may conduct warrantless searches of persons and things at the borders and ports of entry/exit.

13. The Court of Appeals for the Second Circuit upheld CBP's border detention of persons for six hours at the Canadian border (including taking photographs and fingerprints) to determine whether they might be terrorists that had attended a Muslim conference in Toronto.

14. The Supreme Court has ruled that CBP may border search a car's gas tank at the land border even without any suspicion of wrongdoing.

## Part 2

1. The Immigration and Nationality Act (INA) governs the admission of aliens into the U.S.

2. Under the INA, U.S. Customs and Border Protection (CBP) must determine whether persons seeking entry into the United States are U.S. citizens, Lawful Permanent Resident aliens (LPRs), or aliens.

3. Important definitions in the INA:

a. Alien: a person not a citizen or national of the U.S.

b. Visa: an endorsement on a passport that the holder is allowed to enter, leave, or stay for a specified period of time in a country. U.S. law sets forth numerous visa categories.

c. Immigrants – aliens that seek to migrate to the U.S. (that is, they intend to live in the U.S.).

d. Non-Immigrants – aliens seeking to come into the U.S. for a temporary period of time, such as tourists.

e. Visa Waiver Program: A reciprocal program where the U.S. and other nations allow tourist and business visitors to enter their nations without visas.

4. Aliens seeking admission into the U.S. must present required documents (passports, visas, etc.) and must establish to the satisfaction of the inspecting Customs and Border Protection Officer (CBPO) that they are admissible (that is, they are not inadmissible under the INA).

The INA provides that arriving aliens will be denied admission to the U.S. if they fall into one or more grounds of inadmissibility. Among the grounds for inadmissibility specified in the INA are:

A. Health Grounds – communicable disease of public health significance.

B. Crimes – Crimes Involving Moral Turpitude (which includes a large range of felonies) or crimes involving Controlled Substances (illegal drugs).

C. Security – Terrorism or espionage.

5. There are two main procedures for removing inadmissible aliens from the United States:

A. Removal: the process by which an inadmissible alien is expelled (deported) from the U.S. after appropriate proceedings in Immigration Court.

B. Expedited Removal: CBP may administratively remove an arriving alien if the alien does not have a passport (or alternative required document for entry to the U.S.) nor has a fraudulent passport.

6. At primary inspection a CBPO makes an initial decision whether an arriving person is a U.S. citizen. Arriving U.S. citizens are not subject to the INA and are quickly cleared through immigration processing.

7. The following automated systems are available to assist CBPOs in making decisions regarding persons seeking entry into the United States:

A. APIS (Advance Passenger Information System) essentially, passport information.

B. ATS (Automated Targeting System) – CBP's main passenger and cargo risk management system.

C. PNR (Passenger Name Record) – essentially, airline reservation information.

D. NCIC (National Crime Information Center) - FBI criminal information database.

E. TECS (The Enforcement Communications System) – CBP’s principal enforcement database. TECS contains information on persons listed in the TSDB (Terrorist Screening Database).

8. CBP uses its automated systems to:

A. Make decisions on customs and immigration clearance of persons.

B. Identify persons that are listed in the TSDB.

C. Identify persons that are the subject of arrest warrants.

9. Global Entry is a CBP trusted traveler program with the following features:

A. Global Entry is for low risk persons.

B. Global Entry applicants must pass background checks and are interviewed by a CBPO before they are accepted into the program.

C. Global Entry participants get expedited CBP clearance.

D. Global Entry participants are automatically entered into the TSA Precheckprogram.

10. All merchandise brought into the U.S. must be declared to CBP. Merchandise includes all items including contraband and items prohibited by law. For example, illegal drugs and illegal weapons are “merchandise” under the Customs laws and must be declared.

11. All commercial shipments must be entered (declared) with CBP to ensure:

A. Compliance with all applicable laws.

B. Proper classification and appraisement of merchandise so that applicable duties may be collected.

12. The Customs laws authorize CBP officers to conduct border searches. Border searches may be conducted without a warrant and without suspicion and are still considered reasonable under the Fourth Amendment.

13. There are severe criminal and civil penalties for violating the Customs laws. These include:

A. Imprisonment.

B. Monetary penalties.

C. Seizure and civil forfeiture of illegally imported merchandise

14. Civil Forfeiture – a legal proceeding where title to property used in violation of law is taken from the owner and transferred to the Government.

15. In *United States v. Flores-Montano*, 541 U.S. 149 (2004), the Supreme Court ruled that the disassembly and search of a car's gas tank at the border was a valid border search and required no suspicion.

16. Conveyances (that is, vehicles, vessels and aircraft) with a connection to the border are subject to border searches. A connection to the border includes:

A. A conveyance that has crossed the border (a car or train that arrives into the U.S. from Canada).

B. A conveyance that enters the border area (a car about to exit the U.S. into Mexico).

17. Persons with a connection to the border are also subject to border searches. A connection to the border includes:

A. A person that crossed the border (a pedestrian from Mexico that has walked across the border and is waiting to be cleared at a U.S. port of entry).

B. A person that enters the border area (a longshoreman unloading a vessel from a foreign country that has arrived at a U.S. port).

18. In furtherance of its antiterrorism mission and other missions, CBP uses a multi-layered approach to ensure the integrity of the supply chain from the point a container is stuffed at a foreign port through its arrival at a U.S. port of entry. This multi-layered approach includes:

A. CBP getting advance information about the cargo destined for the U.S.



B. CBP using its risk assessment tool - the Automated Targeting System (ATS) - to screen cargo destined for the U.S.

C. Partnerships with foreign governments, such as the Container Security Initiative (CSI) and the Secure Freight Initiative (SFI) where CBP works with foreign governments to secure world trade against terrorism.

D. C-TPAT (Customs Trade Partnership Against Terrorism) - a partnership with industry and the private sector to secure the supply chain against the threat of terrorism or other crimes.

19. CBP Border Patrol Agents are responsible for detecting and apprehending persons and items unlawfully entering or attempting to enter the U.S. between ports of entry.

20. Border Patrol roving patrol stops (that is, car stops) for a border search are not allowed without establishing reason for an extended border search. For example, if the Border Patrol follows a car from the time it crosses the border from Mexico and then stops it ten miles north of the border a border search would be permissible. However, if the Border Patrol spots a car ten miles from the border and the car has no connection to the border, the Border Patrol could not border search the car.

21. Border Patrol checkpoints are setup along roads that lead from the border. Border Patrol agents at such checkpoints may conduct only a brief stop of a car to question and check the nationality of the driver and passengers. Border searches are not allowed at checkpoints.

22. U.S. Immigration and Customs Enforcement (ICE) is a sister DHS agency of CBP, and like CBP it enforces the customs and immigration laws.

23. The investigative arm of ICE is called Homeland Security Investigations (HSI). HSI workforce includes 6,500 special agents assigned to cities throughout the United States and to offices around the world.

24. HSI works closely with CBP in several ways:

- A. It provides investigative follow-up to CBP arrests.
- B. It conducts controlled deliveries resulting from CBP's detection of drug loads.
- C. It works with CBP on targeting suspicious importations/exportations.

25. HSI has broad legal authority to enforce numerous federal laws. It uses this authority to investigate all types of cross-border criminal activity, including:

- A. Money laundering and bulk cash smuggling.
- B. Commercial fraud.
- C. Human smuggling and trafficking.
- D. Immigration fraud.
- E. Controlled substances and weapons smuggling/trafficking.
- F. Export enforcement.

26. ICE also has an important office – The Office of Enforcement and Removal Operations - that handles its immigration enforcement responsibilities.

27. The Office of Enforcement and Removal Operations two primary missions:

A. The identification and apprehension of criminal aliens and other removable individuals located in the United States; and,

B. The detention and removal of those individuals apprehended in the interior of the U.S., and those apprehended by CBP at the border.