

EXHIBIT TT

1300 Pennsylvania Avenue NW
Washington, DC 20229

HQBOR 50/8-C



**U.S. Customs and
Border Protection**

JAN 28 2020

MEMORANDUM FOR: All Chief Patrol Agents
All Directorate Chiefs

FROM: Carla L. Provost 
Chief
U.S. Border Patrol

SUBJECT: Transportation Bus Check Operations

U.S. Border Patrol (USBP) transportation/bus checks provide a vital tool for layered border enforcement within the operational control paradigm. Bus checks provide additional options for detection, deterrence, and immigration enforcement that has proven to be effective for many decades.

The Immigration and Nationality Act (INA), Section 287 [8 U.S. Code § 1357] provides statutory authority for Border Patrol Agents (BPAs) to interrogate any alien or person believed to be an alien as to their right to be or remain in the United States (INA § 287(a)(1)). Additionally, the INA gives BPAs the authority, within a reasonable distance of the border, to board and search for aliens in any vehicle without a warrant. INA Section 287(a)(3) 8 CFR § 287.1(a)(2) defines reasonable distance as 100 air miles from the border.

However, even when a statute authorizes an agent's enforcement activity, the agent's actions must always be constitutionally reasonable. See *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) and *U.S. v. Drayton*, 536 U.S. 194 (2002).

When transportation checks occur on a bus at non-checkpoint locations, the agent must demonstrate that he or she gained access to the bus with the consent of the company's owner or one of the company's employees. In addition, the BPA will have to ensure that his or her actions, while onboard the conveyance would not cause a reasonable person to believe that he or she is unable to terminate the encounter with the agent. See *Florida v. Bostick*, 501 U.S. 429 (1991).

If BPAs are refused access to a bus, they may still engage in suspicionless and consensual encounters at the public bus or train stations. The BPA can attempt to question individuals before they board or after they exit a bus. Law enforcement officers are permitted to ask questions of people in any place where the agent is lawfully present. See *I.N.S. v. Delgado*, 466 U.S. 210 (1984).

Transportation Bus Check Operations

Page 2

Possible outcomes of a consensual encounter include the following:

- **No Suspicion Developed:** The BPA should professionally and courteously return the person's personal property that the agent may have received during the encounter, allow the person to depart, and then continue performing their duties.
- **Reasonable Suspicion Developed:** The agent should conduct an investigative detention to resolve the agent's suspicion that the person is unlawfully present in the United States or involved in unlawful activity.
- **Probable Cause Developed:** The BPA should arrest the person, based on probable cause that the person has committed an immigration violation or a criminal offense within the agent's enforcement authority.

In situations where consent is denied and/or consensual encounters are not possible without reasonable suspicion or probable cause, the agent should terminate the encounter and notify their respective chain of command to report the access denial. Absent reasonable suspicion or probable cause, BPAs do not have legal authority to board a bus without the consent of the transportation company or one of its employees. In the event of a denial, agents should remain professional and courteous.

BPAs are required to document all instances when consent is denied, either by the carrier or its employees, in an Issue Paper/Quad chart. This report is to be routed through the sector chain of command and then to the respective operational corridor at USBP Headquarters.

Any questions regarding this memorandum should be directed to Acting Associate Chief Bradley S. Curtis at 202-344-1401 or bradley.s.curtis@cbp.dhs.gov.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER