



 NYU | LAW

MOOT COURT BOARD

United States,
Plaintiff,

-against-

Michael Flores,
Defendant.

Record

Prepared by: Valerie Janovic

Principally Edited by: Michelle Slezinger
& Nathaniel Berman

This Record may not be circulated outside of the competition or educational program for which it is to be employed. In no event may it be posted to a public website. Except insofar as it is inconsistent with the preceding two sentences, this work is licensed under the CC BY-NC-SA 4.0 International License.

QUESTIONS PRESENTED

- (1) Whether the Fourth Amendment requires at least a reasonable suspicion before conducting a forensic search of a cell phone seized at the border.
- (2) Whether, absent a warrant, border agents can obtain evidence of past and future crimes without violating the Fourth Amendment.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH MONTANA

United States,	:	
	:	Docket No. 24-MCR-1489777628
Plaintiff,	:	
-against-	:	OPINION AND ORDER ON
	:	MOTION TO SUPPRESS
Michael Flores,	:	
Defendant.	:	
	:	

JUDY, J.:

INTRODUCTION

The questions presented to this Court address the level of suspicion and scope of permissible searches under the Fourth Amendment in the context of border security. Defendant Michael Flores contends that the forensic search of his smartphone by Customs and Border Protection (“CBP”) officers, conducted without individualized suspicion, violated his Fourth Amendment rights. Plaintiff argues that the search was justified under the broad authority granted to CBP officers at the border. Additionally, the parties dispute whether the good-faith exception to the exclusionary rule applies in this case. This Court considers these questions on Defendant’s motion to suppress evidence.

FACTUAL BACKGROUND

Michael Flores, a twenty-one-year-old United States citizen and university student, had his smartphone searched and confiscated while crossing the border upon his return from his spring break vacation in Mexico.

Upon arriving in North Montana, the fifty-first U.S. state, Flores was escorted by a CBP officer to a secondary inspection area. Despite finding no drugs in his luggage or on his person, the officer presented Flores with a CBP form indicating the agency’s intention to search his phone’s contents. An officer then ordered him to provide the password, saying that “if he had nothing to hide,” then he should unlock his phone. When Flores refused to provide the password, citing privacy concerns, the CBP officers confiscated his smartphone for a forensic search.

The meticulous data extraction process lasted a month, culminating in an exhaustive 896-page report teeming with personal information, including Flores’s contact list, emails, text conversations, media files, calendar entries, web browsing history, call logs, precise GPS location history, and even some rather embarrassing selfies. Flores’s phone was returned two months later.

During the examination, CBP officers discovered evidence suggesting Flores's potential involvement in the illicit sale of Feliz on his university campus. Feliz is a mild hallucinogenic drug, similar in effect to marijuana but milder and shorter-lasting. In 1967, the United States government classified Feliz as a Schedule I controlled substance. This decision was influenced by political motivations to suppress counterculture movements, fears of social unrest, and racial biases against Mexican immigrants. The resulting law enforcement campaigns surrounding Feliz disproportionately targeted Mexican communities, leading to widespread arrests and negative stereotyping. Using the forensic search of Flores's phone to establish probable cause, CBP officers searched his dorm and arrested him for possession of a controlled substance and felony sale with a mandatory minimum sentence of five years in prison. *See* 21 U.S.C. § 841(a) ("it shall be unlawful for any person knowingly or intentionally . . . [to] distribute . . . a controlled substance").

In response to these findings, Flores's counsel filed a motion to suppress the evidence obtained during the forensic cell phone search, arguing that the search lacked the necessary reasonable suspicion and exceeded the permissible scope of a legitimate border search under the Fourth Amendment.

DISCUSSION

I. The Fourth Amendment Permits Forensic Searches of Electronic Devices at the Border Without Suspicion.

The government's interest in preventing the entry of unwanted persons and effects from entering the country is at its zenith at the national border. *See United States v. Ramsey*, 431 U.S. 606, 616 (1977). Although the Fourth Amendment typically requires a warrant for searches to be considered reasonable, there is a significant exception for border searches. *See id.* The border exception recognizes the sovereign authority of Congress and the Executive to conduct searches at the border, for persons and property. *Id.* Border searches are deemed reasonable "simply by virtue of the fact that they occur at the border." *Id.* Accordingly, border agents do not require reasonable suspicion to conduct forensic cell phone searches at the border under the Fourth Amendment.

While the Supreme Court has required reasonable suspicion at the border for highly intrusive searches of a person's body, such as x-rays or rectal examinations, *see United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985) (requiring reasonable suspicion for body cavity searches), *United States v. Asbury*, 586 F.2d 973, 976 (2d Cir. 1978) (requiring reasonable suspicion for strip searches conducted at the border), this requirement has never been extended to property searches. For instance, the government may "remove, disassemble, and reassemble a vehicle's fuel tank" at the border without any suspicion, despite the invasive nature of the search. *United*

States v. Flores-Montano, 541 U.S. 149, 155 (2004). Similarly, the search of Flores’s phone is merely a search of property. Unlike a strip search or an x-ray, examining a cell phone does not require physical contact with the traveler’s body, exposure of their intimate body parts, or the use of physical force. Moreover, travelers crossing the border are aware that searches may occur and can choose to leave any property they do not want examined at home, unlike their bodies. *See United States v. Touset*, 890 F.3d 1227, 1233 (11th Cir. 2018) (holding that the Fourth Amendment does not “require suspicion for a forensic search of an electronic device” at the border).

The argument that a cell phone warrants special treatment because of its storage of extensive personal information unpersuasive. Electronic devices should not receive special treatment simply because of their prevalence or storage capacity because our precedent indicates that the Fourth Amendment is concerned primarily with the “personal indignity” of a search, rather than its extensiveness. *United States v. VegaBarvo*, 729 F.2d 1341, 1346 (11th Cir. 1984). At the border, searches such as “pat-down search[es] or frisk[s],” examinations of a “traveler’s luggage,” “[i]ncoming international mail,” and “[v]ehicles” are all considered reasonable “without any level of suspicion” regardless of the amount of personal information obtained. *United States v. Alfaro-Moncada*, 607 F.3d 720, 728 (11th Cir. 2010). Consequently, the contention that the government should be denied access to cell phone information because it may be particularly revealing follows neither precedent nor common sense.

Despite the weight of precedent, the Fourth and Ninth Circuits contend that the Fourth Amendment requires at least reasonable suspicion for forensic searches of electronic devices at the border. *United States v. Kolsuz*, 890 F.3d 133, 145 (4th Cir. 2018); *United States v. Cano*, 934 F.3d 1002, 1016 (9th Cir. 2019). However, these circuits based their decisions on an erroneous interpretation of the Supreme Court’s opinion in *Riley v. California*. 573 U.S. 373 (2014). In *Riley*, the Court emphasized the significant privacy interests a person has in the information on their cell phone. 573 U.S. at 393. Referring to the search-incident-to-arrest exception, the Court explained that the rationales behind the exception—specifically, “harm to officers” and “destruction of evidence”—do not apply to digital content on cell phones. *Id.* at 386. Therefore, the *Riley* Court determined that cell phones do not fall within the search-incident-to-arrest exception to the Fourth Amendment’s warrant requirement and thus do require a warrant to be searched. *Id.* at 401. However, *Riley* never references border security, and its reasoning does not minimize the government’s significant interest in protecting the national border. The rationale underpinning the border search exception remains applicable to cell phones and justifies applying the border search exception to electronic devices.

The Government persuasively argues that a traveler’s privacy interest in his phone does not outweigh the paramount interest of protecting territorial integrity. *Riley* does not diminish the substantial sovereign interest in border searches aimed at preventing the entry of prohibited items. Electronic devices can contain illegal

contraband such as child pornography, which poses equivalent risks at the border to physical contraband. Requiring reasonable suspicion for searches of electronic devices would afford undue protection to the property commonly used to store and disseminate harmful contraband, thereby undermining border enforcement.

Further, if Congress wants to provide greater protections for cell phones at the border, it is free to do so through the legislative process. *See Kolsuz*, 890 F.3d at 150 (Wilkinson, J., concurring) (recognizing the need for “congressional input” on the question). Consequently, this Court agrees with the Eleventh Circuit and finds that no suspicion is required to conduct a forensic cell phone search at the border.

II. The Fourth Amendment Permits Forensic Searches to Prevent Harmful Substances from Entering the Country.

The overarching aim of the border exception is to prevent any potentially harmful substances or activities from entering the country. Both the First and Eleventh Circuit have interpreted this exception broadly. *See Alasaad v. Mayorkas*, 988 F.3d 8, 21 (1st Cir. 2021); *Touset*, 890 F.3d at 1235. Moreover, identifying threats to national security is a task best suited for Congress rather than the judiciary. Therefore, the border exception extends to searches aimed at preventing anything harmful from entering the nation.

Fundamentally, the border search exception aims to safeguard territorial sovereignty. In the present case, CBP conducted a forensic cell phone search of Flores’s phone to protect national security. International drug smuggling is of paramount concern to the nation. Under First and Eleventh Circuit precedent, this search was reasonable to prevent harmful contraband from entering the country. Even under the Fourth Circuit’s more limited scope, the search of Flores’s phone is reasonable. In *Kolsuz*, the court restricted warrantless forensic cell phone searches to evidence of ongoing border-related crimes. *Kolsuz*, 890 F.3d at 144. The court reasoned that the border search exception is intended to combat and disrupt illegal activities originating at the border. *Id.* at 143–44. The evidence found on Flores’s phone linked him to attempted international drug smuggling, which falls within the purview of CBP’s duties and the border exception. Thus, even under the Fourth Circuit’s constrained scope, this search was reasonable.

This Court finds Defendant’s reliance on the Ninth Circuit’s restriction of warrantless searches to images of sexual abuse to be unconvincing. *See Cano*, 934 F.3d at 1016 (holding that cell phone searches at the border must be limited to whether the phone contains digital contraband, and that a broader search for evidence of a crime cannot be justified by the purposes of the border search exception). This Court rejects the Ninth Circuit’s narrow interpretation and finds that the border search exception encompasses all evidence of criminal activity, including international drug smuggling and related offenses.

III. The Government's Border Search Falls Under the Good-Faith Exception.

Finally, even if the search of Flores's phone was unlawful, the good-faith exception precludes suppression of the evidence. The good-faith exception allows unlawfully obtained evidence to be used at trial "when the Government 'act[s] with an objectively reasonable good-faith belief that their conduct is lawful.'" *United States v. Zoghates*, 901 F.3d 137, 143 (2d Cir. 2018) (quoting *Davis v. United States*, 564 U.S. 229, 238 (2011)). Generally, exclusion is appropriate "[w]hen the police exhibit 'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights [because] the deterrent value of exclusion is strong and tends to outweigh the resulting costs." *Davis*, 564 U.S. at 238. However, "when the police act with an objectively 'reasonable good-faith belief' that their conduct is lawful, or when their conduct involves only simple, 'isolated' negligence, the 'deterrence rationale loses much of its force,' and exclusion cannot 'pay its way.'" *Id.* at 238.

As Justice Cardozo famously explained, it is one thing for the criminal "to go free because the constable has blundered" and quite another to set the accused free because an officer has scrupulously adhered to governing law. *People v. Defore*, 242 N.Y. 13, 21 (N.Y. 1926) (Cardozo, J.). Excluding evidence in cases where officers act in good faith does not deter police misconduct but imposes substantial social costs. This Court therefore holds that when CBP officers conduct a search in objectively reasonable reliance on binding appellate precedent, the exclusionary rule does not apply.

Given the historic breadth of the border search exception, a reasonable government agent could have a good-faith belief that such a search as was conducted here was permissible. *United States v. Smith*, 673 F. Supp. 3d 381, 401 (S.D.N.Y. 2023) (applying the good-faith exception to the forensic search of a cell phone at the border). Here, officers acted in reliance on federal judicial precedent and could have reasonably believed that they had a lawful basis for seizing and searching Flores's cell phone. Furthermore, a 2018 CBP directive permits suspicionless forensic cell phone searches when there is a national security concern and officers may reasonably rely on that guidance. U.S. Customs & Border Prot., CBP Directive No. 3340-049A, 4–5 (2018). Since the officers did not recklessly disregard Fourth Amendment rights, but rather acted to prevent drug smuggling through discretionary and well-precedented border searches, the evidence should not be suppressed.

CONCLUSION

For the foregoing reasons, Defendant's motion to suppress is **DENIED**.

IT IS SO ORDERED.

/s/ *Ariella Judy*
Hon. Ariella Judy
United States District Judge

Dated: February 25, 2024
Robinson, North Montana

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

Michael Flores,

Defendant-Appellant,

-against-

United States,

Plaintiff-Appellee.

:
:
:
:
:
:
:
:
:

Docket No. 24-MCR-1489777628

NOTICE OF APPEAL

NOTICE IS GIVEN that Michael Flores appeals to the Court of Appeals for the Fourteenth Circuit the denial of Defendant-Appellant's motion to suppress in the District of North Montana that was rendered on February 25, 2024, and entered on February 26, 2024.

/s/ *Elliot Shapiro*

Elliot Shapiro, Esq.

Law Offices of Elliot Shapiro

Hamilton Towers

613 Chevra Street

New York, New York 10002

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy hereof has been furnished to Donna Sanchez, Esq., Attorney for Plaintiff-Appellee, by electronic service on May 5, 2024.

/s/ *Elliot Shapiro*

Elliot Shapiro, Esq.

Attorney for Defendant-Appellant

In the
United States Court of Appeals
FOR THE FOURTEENTH CIRCUIT

MARCH TERM 2024
No. 24-MCR-1489777628

MICHAEL FLORES,

Defendant-Appellant,

v.

UNITED STATES,

Plaintiff-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH MONTANA

ARGUED: MARCH 23, 2024
DECIDED: MAY 13, 2024

Before: FERNANDEZ, SMITH, AND WINTERS, *Circuit Judges*.

Fernandez, *Circuit Judge*:

This matter comes before this Court upon the motion of Defendant Michael Flores to suppress evidence related to his involvement in drug offenses. Flores argues that this evidence stemmed from a border search that violated his Fourth Amendment rights.

For the reasons set forth below, we **REVERSE** the District Court's order denying Flores's motion and **VACATE** Flores's conviction.

INTRODUCTION

Defendant-Appellant Michael Flores is a twenty-one-year-old United States citizen and university student. Appellant was subjected to a forensic search of his smartphone by Customs and Border Protection (“CBP”) officers upon his return from Mexico following his refusal to consent to the search. Appellant filed a motion to suppress alleging a violation of his Fourth Amendment rights, citing the month-long forensic examination of his cell phone, which was conducted without any individualized suspicion. Plaintiff-Appellee, the United States Government, argued that the search was justified under the border search exception to the Fourth Amendment’s warrant requirement. The district court found for the Government and denied the motion to suppress. Appellant timely filed an appeal, arguing that the district court erred in finding the search lawful without individualized suspicion of a border-related offense.

We agree with Appellant, holding that the Fourth Amendment requires individualized suspicion for forensic searches of electronic devices at the border and that the good-faith exception does not apply in this case. Therefore, we hold that the district court erred in denying Appellant’s motion to suppress.

This Court reviews a district court’s factual findings on a motion to suppress for clear error and its legal conclusions on Fourth Amendment issues de novo.

FACTUAL BACKGROUND

Michael Flores, a twenty-one-year-old United States citizen and university student, spent his Spring Break in Mexico, where he visited family, including his ninety-year-old grandmother. Upon his return to the United States, Flores was randomly selected by CBP officers to have his phone searched at the border. Despite his refusal to consent to the search due to privacy concerns, CBP officers confiscated his smartphone and subjected it to a forensic examination. Through a month-long forensic search, CBP officers developed an 896-page report detailing Flores’s personal information. This included embarrassing selfies, intimate photos, and other sensitive communications relating to his political affiliation, religious observance, and family.

Using this information, Flores was charged and convicted of a federal drug offense. The district court found in favor of the Government. We find the Government’s actions in this case egregious and deeply troubling. The invasion of Flores’s privacy was excessive and unjust, particularly given his background and the lack of any substantive evidence linking him to criminal activity.

DISCUSSION

I. The Fourth Amendment Requires Individualized Suspicion for Forensic Searches of Electronic Devices at the Border.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. The Supreme Court has determined that reasonableness requires a warrant and probable cause “subject only to a few specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357 (1967). An exception to the general warrant requirement applies to border searches, justified by the government’s historical authority to regulate entry into the country. *See United States v. Ramsey*, 431 U.S. 606, 616 (1977) (holding that mail is subject to search at the border absent probable cause and a warrant). However, this exception is not boundless; the Supreme Court has imposed the reasonable suspicion standard for highly invasive border searches, such as body cavity searches. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985).

In *Riley v. California*, the Supreme Court recognized the distinct nature of cell phones, which contain vast amounts of highly personal data. 573 U.S. 373, 387–91 (2014). Highlighting the sheer amount and sensitive nature of data contained in a cell phone—including GPS location data, private images, and personal messages—the Court held that while a search incident to arrest generally does not require a warrant, searching a cell phone does. *Id.* The Court explained that comparing a cell phone to other personal property “is like saying a ride on horseback is materially indistinguishable from a flight to the moon Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse.” *Id.* at 393.

While the government has strong interests in border security, including preventing threats and enforcing customs regulations, the applicability of these interests to searches of digital data on cell phones is questionable. Unlike physical contraband, digital contraband may already exist outside the device and be accessible within the country. Therefore, the government’s interest in interdicting digital contraband on a specific device is not comparable to its interest in interdicting physical contraband. Further, as illustrated in *Riley*, cell phones typically contain vast amounts of highly sensitive information unlike anything else a traveler can carry. *See id.* The district court’s cavalier suggestion that a traveler leave their phone at home if they do not want it searched is unthinkable in the modern age. A cell phone search is more akin to a strip search than a general property search in terms of the level of intrusion. *See United States v. Cotterman*, 709 F.3d 952, 966 (9th Cir. 2013) (noting that the search of a confiscated computer was “essentially a computer strip search” given the uniquely sensitive nature of electronic data). For a student like Michael Flores, extracting photos, messages, and GPS tracking data through a

forensic cell phone search is perhaps even more invasive than a body cavity search. To peruse the intimate contents of someone's life absent suspicion merely because they went on vacation is contrary to the Fourth Amendment.

Moreover, the policy implications of suspicionless searches are concerning. Racial disparities are prevalent throughout the criminal justice system and suspicionless searches at the border could be a breeding ground for abuse of discretion. *See United States v. Bass*, 536 U.S. 862, 863 (2002); Sarah Houston, *Now the Border is Everywhere: Why A Border Search Exception Based on Race Can No Longer Stand*, 47 Mitchell Hamline L. Rev. 197 (2021). Therefore, this Court holds that reasonable suspicion is required for searches of cell phones at the border. This Court declines to determine, however, whether probable cause is required for a border search, as on the facts no suspicion existed.

II. The Fourth Amendment Only Permits Warrantless Searches for Digital Contraband at the Border.

Any search conducted under an exception to the warrant requirement must be within the scope of that exception. In *Riley*, the Court considered whether a cell phone search qualified as a search incident to arrest by considering “whether application of the search incident to arrest doctrine to [cell phones] would ‘untether the rule from the justifications underlying the . . . exception.’” 573 U.S. at 386 (quoting *Arizona v. Gant*, 556 U.S. 332, 343 (2009)). The Court concluded that neither purpose for the search incident to arrest exception justified the search of a cell phone and therefore the exception could not be applied to cell phones. *Id.* at 403.

In the present case, the border search exception is “rooted in ‘the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country.’” *Cotterman*, 709 F.3d at 960 (quoting *Ramsey*, 431 U.S. at 616). Further, a border search must be conducted to “enforce importation laws,” and not for “general law enforcement purposes.” *United States v. Cano*, 934 F.3d 1002, 1013 (9th Cir. 2019) (quoting *United States v. Soto-Soto*, 598 F.2d 545, 549 (9th Cir. 1979)). Thus, performing a thorough forensic search of all information on a cell phone exceeds the justification for the border search exception, which is to prevent contraband from entering the country. *See Cotterman*, 709 F.3d at 966–68 (holding that the relevant inquiry for electronic devices at the border is one of reasonableness but that border officials lack general authority to search for criminal activity).

Border officials are authorized to seize “merchandise which . . . shall have been introduced into the United States in any manner contrary to law.” 19 U.S.C. § 482(a); *Cano*, 934 F.3d at 1017. But border officials have no general authority to search for crime. *See id.* at 1013. So, for example, if government officials reasonably suspect that a person who has presented himself at the border may be engaged in price fixing, *see*

15 U.S.C. § 1, they may not conduct a forensic search of his phone or laptop. *Cano*, 934 F.3d at 1017. Since CBP lacked suspicion that Flores’s phone contained digital contraband, the search was unlawful.

Permitting searches for evidence of any crime would expand the border exception. The “[d]etection of . . . contraband is the strongest historic rationale for the border-search exception.” *United States v. Molina-Isidoro*, 884 F.3d 287, 295 (5th Cir. 2018) (Costa, J., concurring). Further, “every border-search case the Supreme Court has decided involved searches to locate items being smuggled,” rather than evidence of a crime. *Id.* Absent reasonable suspicion, the border search exception did not authorize CBP officers to conduct a warrantless forensic search of Flores’s phone, and evidence obtained through a forensic search as well as any evidence found as a result of the unlawful search should be suppressed.

III. The Government’s Border Search Does Not Qualify for the Good-Faith Exception.

Finally, the Government asserts that the good-faith exception to the exclusionary rule applies, which permits the use of unlawfully obtained evidence at trial “when the Government acts with an objectively reasonable good-faith belief that their conduct is lawful.” *United States v. Zoghiates*, 901 F.3d 137, 143 (2d Cir. 2018). The government has previously been permitted to rely on unlawfully obtained evidence in situations such as when “the police conduct a search in ‘objectively reasonable reliance’ on a warrant later held invalid,” when “searches [are] conducted in reasonable reliance on subsequently invalidated statutes,” or when “the police conduct a search in objectively reasonable reliance on binding judicial precedent.” *Davis v. United States*, 564 U.S. 229, 238–40 (2011).

While, historically, the border exception has been broad, a 2018 CBP directive requires, before a search, “reasonable suspicion of activity in violation of the laws enforced or administered by CBP” or otherwise permits a search “when there is a national security concern” U.S. Customs & Border Prot., CBP Directive No. 3340-049A, 4–5 (2018). Here, CBP agents searched Flores without individualized suspicion, contrary to CBP guidance. While the Eleventh Circuit has held that suspicion is not necessary, the Eleventh Circuit is not binding on this jurisdiction. It strains credulity to think that officers read, let alone relied on, a lone circuit holding. Moreover, since CBP officers did not find any drugs on Flores prior to the phone search, it cannot be justified under a national security rationale. Because officers acted contrary to the CBP directive by conducting a search absent individualized suspicion, the search does not qualify for the good-faith exception to the exclusionary rule.

CONCLUSION

For the foregoing reasons, the District Court's order denying Defendant's motion to suppress is **REVERSED**, his conviction is **VACATED**, and the case is **REMANDED** for further proceedings consistent with this opinion.

IT IS SO ORDERED.

(ORDER LIST: 573812 U.S.)

CERTIORARI GRANTED

22-148 United States v. Michael Flores

The petition for a writ of certiorari is granted. The parties will address the following questions:

- (1) Whether the Fourth Amendment requires at least a reasonable suspicion before conducting a forensic search of a cell phone seized at the border.
- (2) Whether, absent a warrant, border agents can obtain evidence of past and future crimes at the border, without violating the Fourth Amendment.

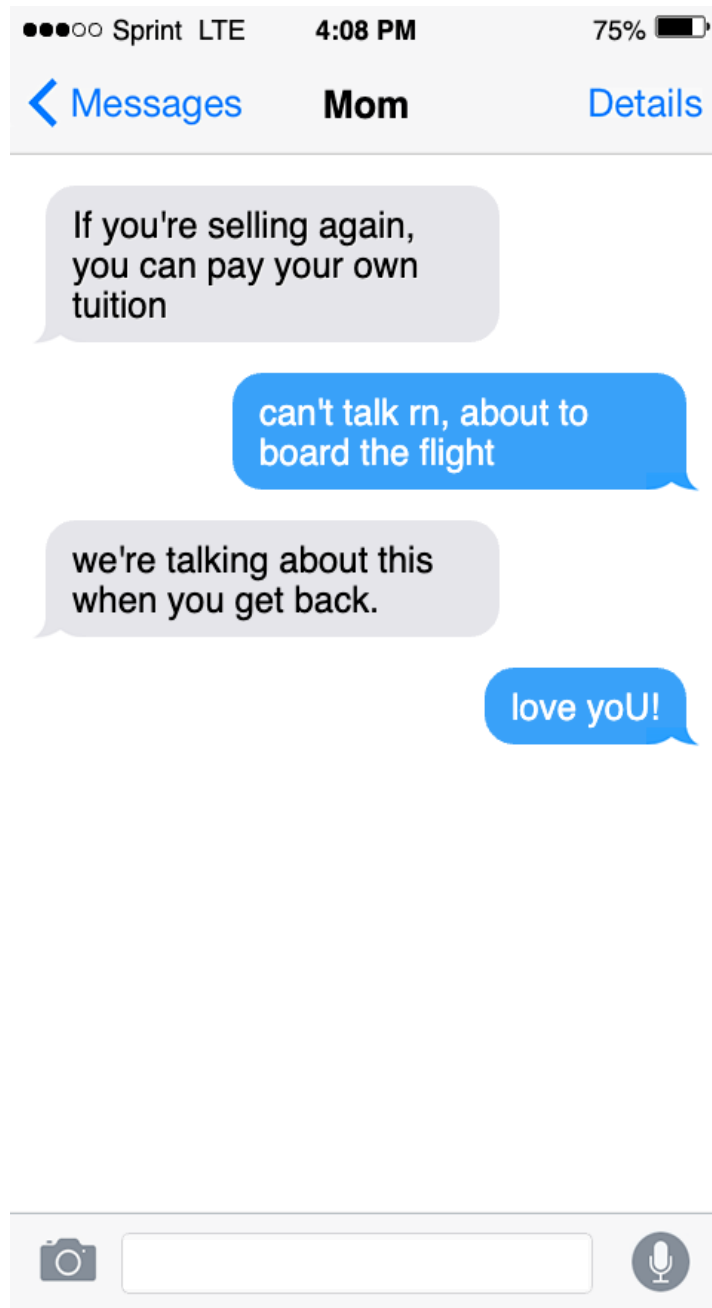


Exhibit A.



Exhibit B.



Exhibit C.

U.S. CUSTOMS AND BORDER PROTECTION DIRECTIVE (Excerpt)

CDP DIRECTIVE NO. 3340-049A

DATE: January 4, 2018

¹ AI-generated image of college student on vacation with drugs.

ORIGINATING OFFICE: FO:TO

SUPERSEDES: Directive 3340-049

REVIEW DATE: January 2021

5.1.4 Advanced Search. An advanced search is any search in which an Officer connects external equipment, through a wired or wireless connection, to an electronic device not merely to gain access to the device, but to review, copy, and/or analyze its contents. In instances in which there is reasonable suspicion of activity in violation of the laws enforced or administered by CBP, or in which there is a national security concern, and with supervisory approval at the Grade 14 level or higher (or a manager with comparable responsibilities), an Officer may perform an advanced search of an electronic device. Many factors may create reasonable suspicion or constitute a national security concern; examples include the existence of a relevant national security-related lookout in combination with other articulable factors as appropriate, or the presence of an individual on a government-operated and government-vetted terrorist watch list.

End of Record