

## MEDIA

# Canadian Journalist's Detention at U.S. Border Raises Press Freedom Alarms

By DANIEL VICTOR DEC. 2, 2016

Ed Ou, a Canadian freelance photojournalist, spent 10 years covering the Middle East, Africa and Central Asia. He endured aggressive interrogations at border crossings in some of the world's most authoritarian nations.

But he says a recent confrontation at the United States border has left him shaken. The incident has been criticized by advocates of privacy and press freedom.

Mr. Ou, 30, said he was detained on Oct. 1 for more than six hours when he tried to fly from Vancouver, British Columbia, to Bismarck, N.D., to cover the protests of an oil pipeline project near the Standing Rock reservation.

He was ultimately denied entry, and he said though he was not given a reason, he was told his name matched that of a "person of interest." During the hours of detention, he was asked to describe how and why he had traveled to each country he had visited in the past five years, and questioned about whether he had seen anyone die.

Agents requested access to his phones and to look through his photos so that they could make sure he was "not posing next to any dead bodies," he said. When he refused, citing the need to protect his sources as a journalist, they took the phones, he said.

The phones were later returned and showed signs that the SIM cards had been replaced, he said. Giving up the contents of his private phone would be akin to a doctor giving up confidential patient information, he said.

"I'm not going to open my phone for any other country," Mr. Ou, a New York Times contributor who was an intern for the news organization in 2010, said in a phone interview on Thursday from Nunavut, Canada. "I can't be expected to do the same for the U.S."

Jason Givens, a United States Customs and Border Protection spokesman, declined to comment on Mr. Ou's case, citing privacy laws. But he said agents had inspected 4,444 cellphones and 320 other electronic devices in 2015, amounting to 0.0012 percent of the 383 million arrivals.

"Keeping America safe and enforcing our nation's laws in an increasingly digital world depends on our ability to lawfully examine all materials entering the U.S.," Mr. Givens said in a statement on Thursday.

The American Civil Liberties Union wrote a letter to Customs and Border Protection and the Department of Homeland Security, protesting Mr. Ou's treatment and calling it "harassing and exceptionally intrusive." It demanded an explanation of his detention, and asked for a guarantee that any copies of his belongings had been destroyed.

Agents made photocopies of several documents in his possession, including a personal journal, Mr. Ou said.

It should have been clear to agents that Mr. Ou was a working journalist who had traveled freely to the United States in the past and had longstanding connections to American news agencies, Hugh Handeyside, a lawyer, wrote in the A.C.L.U. letter.

"We believe that C.B.P. took advantage of Mr. Ou's application for admission to engage in an opportunistic fishing expedition for sensitive and confidential information that Mr. Ou had gathered through his news-gathering activities in Turkey, Iraq, Somalia and elsewhere," he wrote.

Electronic privacy advocates said the episode illustrated a governmental loophole that's especially problematic for journalists but that could apply to anyone: Without a warrant, American border agents can legally search digital devices that they wouldn't be able to touch anywhere else.

The Fourth Amendment protects against unreasonable searches and seizures, but the Supreme Court carved out space for border patrol agents to examine personal property without a warrant, said Sophia Cope, a staff lawyer for the Electronic Frontier Foundation, a nonprofit organization that defends civil liberties in the digital age.

Security officers at United States airports don't need a judge's permission to search a traveler's backpack before he or she boards a flight the way a police officer would when stopping someone on the street. But it has to be for the narrow purpose of assuring immigration or security compliance, she said.

The privacy implications of examining a cellphone are entirely different from rifling through a suitcase, which contains limited personal information, Ms. Cope said. The law regarding digital devices is "really unsettled," she said.

"The government is saying the old rule at the border applies to digital devices, even though our entire lives are on these devices," Ms. Cope said.

A Homeland Security policy from 2009 says that searching digital devices requires the owner of the digital device to be present during the search, though it doesn't guarantee the owner can monitor the search. Agents can make copies of the data, but the copies must be destroyed within seven days if there is no probable cause to seize it. Devices can be detained for up to five days, barring "extenuating circumstances."

The policy's assurance that agents would "protect that information from unauthorized disclosure" is not particularly comforting for journalists, who fear the contents of their devices could unmask sources who would be in danger if the government learned their identities.

Maria Abi-Habib, a reporter for The Wall Street Journal, recounted a similar episode in a Facebook post in July after she was detained at Los Angeles International Airport and asked to turn over her cellphones. The request was eventually withdrawn after Ms. Abi-Habib, a United States citizen traveling on an American passport, objected and asked to call lawyers for her newspaper.

Trevor Timm, the executive director of the Freedom of the Press Foundation, said that for journalists like Mr. Ou who have worked in the Middle East to be treated with suspicion, potentially forcing them to break promises of

confidentiality to sources just to enter the country, sets a poor international precedent, he said.

“If this is requisite for journalists who are not U.S. citizens to enter the U.S., that is an enormous violation of press freedom,” he said.

Mr. Ou was assigned by the Canadian Broadcasting Corporation to cover the Standing Rock protests as part of a project on indigenous health care in North America. He said the agents knew he intended to cover the protests, which have prompted the police to use rubber bullets, pepper spray and water cannons against hundreds of people.

His experience at the border led to an “awful realization,” Mr. Ou said: “That wall of naïveté that I had about the freedom of the press in the U.S. kind of shattered at that moment.”

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