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Border check: A Customs and Border Protection officer searched a truck at a border crossing in Blaine, Wash., in 2006. For the past 18 months, officials at border entries have been searching some citizens' laptops. (Andy Nelson – Staff/File)

## U.S. defends laptop searches at the border

Courts have upheld routine checks of Americans' hard drives at the border. Critics say they're anything but routine.

By **Alexandra Marks** | Staff Writer for The Christian Science Monitor / July 10, 2008 edition

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**NEW YORK**

Is a laptop searchable in the same way as a piece of luggage? The Department of Homeland Security believes it is.

For the past 18 months, immigration officials at border entries have been searching and seizing some citizens' laptops, cellphones, and BlackBerry devices when they return from international trips.

In some cases, the officers go through the files while the traveler is standing there. In others, they take the device for several hours and download the hard drive's content. After that, it's unclear what happens to the data.

The Department of Homeland Security contends these searches and seizures of electronic files are vital to detecting terrorists and child pornographers. It also says it has the constitutional authority to do them without a warrant or probable cause.

But many people in the business community disagree, saying DHS is overstepping the Fourth Amendment bounds of permissible routine searches. Some are fighting for Congress to put limits on what can be searched and seized and what happens to the information that's taken. The civil rights community says the laptop seizures are simply unconstitutional. They want DHS to stop the practice unless there's at least reasonable suspicion.

Legal scholars say the issue raises the compelling and sometimes clashing interests of privacy rights and the need to protect the US from terrorists and child pornographers. The courts have long held that routine searches at the border are permissible, simply because they take place at the border. Opponents of the current policy say a laptop search is far from "routine."

"A laptop can hold [the equivalent of] a major university's library: It can contain your full life," says Peter Swire, a professor of law at Ohio State University in Columbus. "The government's never gotten to search your entire life, so this is unprecedented in scale what the government can get."

In recent court challenges, lower courts have ruled that laptop searches at the border are reasonable, just like searches of a person's baggage or other physical property. But the courts have drawn the line at personal, invasive searches, ruling that things like "strip searches, body-cavity searches, and involuntary X-ray searches" are nonroutine, according to Nathan Sales, a professor of law at George Mason University in Arlington, Va., who recently testified before Congress.

Thus, they require reasonable suspicion, probable cause, or a warrant.

Advocates of the current practice say that the contents of a laptop are like the contents of a suitcase, and as such, customs officials have every right to go through them. They also argue that requiring probable cause for laptop searches would create huge delays at the border and give criminals and terrorists an easy way to bring dangerous things into the country.

"The idea that we would create some kind of sanctuary for criminals and terrorists to carry things across the border to me is absolutely ludicrous," says James Jay Carafano, a senior research fellow at the Heritage Foundation in Washington. "It's also unrealistic to require probable cause when you think about the millions of people a day who come in and go out of the country."

People who've had their laptops and other electronic devices searched and seized believe that it's reasonable and constitutional to expect a higher level of suspicion before customs officials take their laptop.

Amir Khan, an information technology consultant from the San Francisco area, has had his laptop searched twice on returning to the US from business abroad. Once, a customs official took it away for more than two hours.

"I don't know what he did with it. He could have planted malicious software or copied files," Mr. Khan says. "It was very intrusive and I think unreasonable. The Fourth Amendment makes it clear you can't just stop anybody in the street and start searching them and their things."

Many people, particularly in the business community, also say that a laptop is more like a virtual office than a piece of baggage. In addition, they believe the government should be required to tell people what it does with the information it copies.

"Right now, [DHS] seems to believe that it can hold anything it wants from your laptop, BlackBerry, or cellphone indefinitely," says Susan Gurley, executive director of the Association of Corporate Travel Executives in Alexandria, Va. "There are no limits on what they can do with it or whether they can share it with any third party."

Reporter Alexandra Marks discusses the concerns that business groups and civil libertarians have over customs officials seizing laptops and personal hand-held devices at the border.

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Ms. Gurley and others in the business community would like DHS to be required to come up with a set of rules that determine what can be done with the information and how long it can be held. Civil rights advocates would like to see Congress go even further and determine that a search of an electronic device is invasive and requires probable cause.

"We treat our laptops, BlackBerrys, and cellphones as an extension of our brains. They can contain our most intimate thoughts," says Tim Sparapani, senior legislative counsel of the American Civil Liberties Union.

As for creating a "sanctuary" for terrorists to bring in lethal plans, Mr. Sparapani counters: "Any terrorist worth his or her salt would send that stuff in an encrypted file from a remote location to a remote server somewhere in the United States."

In an e-mail, DHS says its officers "have the responsibility to check items such as laptops and other personal electronic devices to ensure that any item brought into the country complies with applicable law and is not a threat to the American public."

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## Comments

1. [Joe](#) | 07.10.08

We live in a neocon police state. Get over it.

2. [Donald Mayfield](#) | 07.10.08

Thinks the DHS should need probable cause before a search of laptop. Agrees that they are wasting their time and the passengers time.

3. [miriam](#) | 07.10.08

What a damn mess! This is ONE time I am on the ACLU's side!

4. [Rafal Zielinski](#) | 07.10.08

Frightening, especially as there is little likelihood of finding information relevant to terror and/or child pornography — encrypted emailed files are much easier especially now that everyone expects their laptop to be searched. However this is a great way for DHS to gather information on everyone. I am sure the information is downloaded and stored, in case of any further need in the future. A little like having your toilet water tested for illicit drugs once you flush — now possible and being considered. Having lived under communism as a child, I see the US as now starting to resemble those countries in how it treats its citizens. For the 1st time in my life, I am considering moving to Canada or Australia where people have greated protections from the government and justice systems have not broken down.

5. [Edward Sullivan](#) | 07.10.08

Profiles in Cowardice:

Senate Votes on H.R. 6304 (Foreign Intelligence Surveillance Act of 1978 )

[http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=110&session=2&vote=00168#position](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00168#position)

6. [emu](#) | 07.10.08

I would not have thought it possible for such practices to exist in a civilized country, but US law (and the way it's interpreted by officials) continues to baffle me. At least now, if I ever travel to the

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data is protected - either by not having any of it on  
place, or by encrypting it all.

elligence or continuity information on a business  
information that might be on a doctors or insurance  
ct to search - download? What about customer lists  
be sold to the highest bidder if made available?

program that might be on an agent's laptop or  
possibly a list of Johns on a madam's computer - like client number 9.

Do we really want this available if stored by the government and possibly made public through a  
"freedom of information request - FOIA?

**8. Ben** | 07.10.08

Americans have been so shaken by 9/11 they are willing to give up anything to feel safe. Is  
unfortunate that the TV image of 9/11, which has been shown hundreds of time over a 48 hour  
period, is so ingrained into the public's mind. The public is on an emotional rampage, and lost all  
rational thought. Politicians are just afraid to touch the issue. Many people vote with their emotion  
rather than reason anyway.

**9. Alistair** | 07.10.08

DHS=>KGB

It never occurred to me that one day there would be a department of the US Government as  
frightening as the KGB. Thanks to GW Bush.

**10. jim bier** | 07.10.08

Warrentless searching of intellectual property is unconstitutional, or should be. There should be a  
pretty high standard for probable cause, if that is going to be all it takes. Else it's phishing by law  
enforcement and an unjustified inhibition to international travel. If it's legal for crossing the border,  
it would seem to be legal anytime and anywhere. It's done at border crossings for convenience  
and to somehow make us think it's making us 'safer'.

**11. Trish** | 07.10.08

Anyone citing the 4th amendment must not be aware it was thrown in the trash yesterday when  
Congress passed the FISA bill that gives unchecked federal power. Yes, even the rock star  
Obama voted for it so you can kiss a huge freedom goodbye.

**12. Joe B.** | 07.10.08

I just want the Customs guys to be aware that ALL automobiles today have computer chips in their  
engines with RAM memory for instruction sets, and any one of them could have coded messages  
stored in them. Also all modern luxury automobiles are having hard drives installed in their  
entertainment systems, including DVD players, which can hold tons of the kind of data they are  
looking for. These vehicles are usually the most high end, expensive models of cars and trucks,  
thus I think all vehcles of any kind should be seized, held and searched, ALL of them. Also, all  
commercial shipments of CDs and DVDs that cross our borders should be seized and searched as  
the terrorist data could be hiding behind a commercial label for old John Wayne movies (especially  
suspect, the least likely place!!) and Louis Armstrong recordings, among many, many others.  
Lastly, any communication device, cameras, children's toy, computer or handheld games or  
eletronic key chip (for car, home or office) also stores electronic data, especially carried by  
anyone in a government or traveling under diplomatic immunity, it should all be seized. Just to be

really safe we should stop all movement of electrical equipment across our borders, period, plus stop all transmission of information between our country and anyplace else on earth immediately. So, mister Customs agent, do you get it yet? Your being a stumblingly stupid, inept, porous, probably racial ass in thinking that you could stop ANYONE from carrying e-data if they really wanted to, but go ahead make the US public hate your guts a little bit more each day, until our hatred runs over.

**13. Jay** | 07.11.08

This is the result of the spinelessness of the Democrats in Congress . The inability of the Democrats to articulate in their party platform the values of the Constitution and the Bill of Rights, has made the majority of them accomplices to the fearmongers running this country. I can only hope that someday the current governments internal documents will be made public just like the East German police and spy records were made public so we can see who were the friends of democracy and who were the enemies of our original values.

**14. susan** | 07.11.08

I am finding America a nasty and spooky place - more so since reading this. What little 'packages' would be left behind? Gives new meaning to the word 'cookie'!

**15. Max** | 07.11.08

What are the odds, that someone, anyone, basic honest pepole will have a ripped song, video, movie, or downloads from YouTube (now under assault for copyright) on thier loptop ?

A bonaza for litigation, and start building gigantic penal instutions to imprision countless millions.

**16. JeanDavid** | 07.11.08

Anyone who thinks encrypting the data in a laptop will secure it has never tried crossing the border. If you refuse to decrypt it, they simply will not let you in and may confiscate the laptop besides.

**17. dw** | 07.11.08

well i don't know what your complaining about comrade. they got rid of that pesky freedom and constitution thing some time back. the DHS (AKA KGB) is watching you and we still have Gitmo available.

**18. Randal B.** | 07.11.08

Odd how the government is so scared of terrorism that it wants to download the contents of laptops, and yet it allows millions of people to cross our southern border. I guess they think only Americans pose a threat to America. Police State America is what its become. But only actual Americans are suspect not people that are here illegally.

**19. Randal B.** | 07.11.08

Oh and by the way. Those of you considering leaving Police State America for another more free country,, some of your fearless leaders in congress want to prohibit taking your belongings and assets out of the country. We approach more each day, the society the citizens of communist East Germany and the Soviet Union lived under, while at the same time they are headed towards the freedom of the Old America..once home of the free.

**20. Lawyer** | 07.11.08

In a prior life I was a practicing lawyer. Much of the data on my lap top contained protected attorney client materials. A search such as that described would be a direct violation of the sanctity of the attorney client privilege. Fortunately, the issue never came up during any of my more that 60 crossings from Canada or Mexico during the last few years. But if it had, I would be in court and or jail for refusing.

**21. Philip** | 07.11.08

What a nazi state....! Unbelievable! Anything goes: kidnapping, torturing, maiming and killing. Now this? I won't set foot in the US again. What a paranoiac dump!

**22. JohnJ** | 07.11.08

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

- Fourth Amendment to the U.S. Bill of Rights, Introduced June 8, 1789

"That searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration."

- Act of July 31, 1789, First U.S. Congress.

...even so, does a customs agent have the right to take a travelers's paper address book, calendar, and to-do list - read them and make xerox copies?

**23. Bruce Lierman** | 07.11.08

"Advocates of the current practice ... argue that requiring probable cause for laptop searches would create huge delays at the border and give criminals and terrorists an easy way to bring dangerous things into the country."

"James Jay Carafano, a senior research fellow at the Heritage Foundation in Washington. 'It's also unrealistic to require probable cause when you think about the millions of people a day who come in and go out of the country'."

So you're going to check the laptops of millions of people and that won't inconvenience them? Oh, you're not going to check all of them? How are you going to decide which ones to check? Wouldn't some justifiable basis showing probable cause be more effective than random? Or do you just not want to admit you're profiling? Or is this just typical of what passes for logic at the Heritage Foundation?

**24. John** | 07.11.08

For the person in comment #4. Want to move to Canada or Australia because of a laptop search coming in to the US? You should know better having had lived under Communist Rule. In Canada, freedom of speech is lacking severely (suspected hate speech) and in Australia, gun ownership is

infringed. My friend, if you can't say what you want and can't protect yourself, a search of your laptop is the least of your worries. Remember, there would be no first amendment without the second.

**25. *Obie*** | 07.12.08

The idea that a suitcase and laptop computer are similar is absurd. To even compare a briefcase and laptop is foolish; these might be similar if every scrap of paper was taken out of the briefcase, scanned into a computer, and then run through optical scanning software to put it all into text format that a computer can actually search digitally (I'm not a techie, so hopefully I'm making sense here).

Not the same thing.

**26. *Greg Smith*** | 07.12.08

This is just the usual nonsense from our government. If I was going to have anything on my laptop or home/office PC that I didn't want anyone to find, I would secure a dedicated server in another (or company) name and pay for it in advance and then put everything on that server. When I traveled, I would up/download materials as I needed them via anonymous <http://FTP>. I would also place a script on that server that permitted 2 failed password attempts and on the third, without warning, it would perform a 7 layer wipe. I am reasonably confident that any real terrorist would not carry anything on their laptops of any value or if they do, they likely got the job because they knew someone or because some court appointed them to the position.

**27. *YoYo*** | 07.12.08

Yea right.. DHS says it's constitutional. Of course they will lie. 4th admendment guarantees people to be secure in their personal belongings or property. How simple is that? Encrypt your laptop and then refuse to give them anything. Let them pound sand!

We the People null and void the Patriot act.

**28. *Margarette Bull*** | 07.12.08

We have white American terrorists living in the US who never travel abroad. At what point will it be necessary for Homeland Security to unreasonably search citizens' computers who might exhibit suspicious behavior but in fact are innocent? When does the search move beyond international borders and into our homes?

There have been many reports of corrupt police officers through the years. I don't believe that the people hired by Homeland Security are necessarily pure as snow. For most of us, what we put on our computers is an extension of our minds—our intimate thoughts as well as sensitive information about our business dealings. Also, an individual's hard drive most likely includes a great deal of information about family and friends. If the information gathered is directly abused by untrustworthy individuals or happens to be 'mislaid' it could destroy lives.

**29. *nonya*** | 07.12.08

And again I reiterate to you all that the solution is class action lawsuits against every member of the congress and senate whom has participated in the erosion of the constitution. Imagine Orin Hatch being sued from every angle by different groups of people, in different class action lawsuits for different reasons. All different cases, and different lawyers, and courts. So many that he would have to contemplate the possibility of being forced to spend EVERY PENNY of his entire life's savings on DEFENDING HIMSELF. And that's even BEFORE having to pay monies awarded in judgements... (he's bound to lose at least ONE of them) Can you imagine that? Now imagine this... EVERY SINGLE SENATOR, CONGRESSMAN, LOBBYIST, JUDGE, A.G., FORMER SENATORS, CONGRESSMEN, and LOBBYISTS all getting hit with MULTIPLE class action lawsuits until every single one of them winds up penniless after spending every dime they ever had on lawyers. IMAGINE THIS! BELIEVE IT! CREATE IT! and it can happen. How about this... once

the example has been made, we fix our constitution... Somebody explain to me this. How is it that so many of our senators and congressmen are permitted to hold stocks and bonds and sit on boards of directors and be on payrolls of companies as consultants and be permitted to skim cream from fundraising schemes? Why do we permit LOBBYING? We talk about the checks and balances the three branches of government are supposed to have, but yet it's A-OK to just let lobbyists buy our legislators off? Why DO we permit our legislators to be anywhere NEAR a fundraiser? It's just a big cream skimming scam and everybody knows it. Why do we permit them to own property? I believe in capitalism just as much as the next guy, but if you expect our American system to function as an actual democracy then you simply have to remove money from the equation. Bush and Cheney's business interests go into a blind trust? Are you frigging kidding me? The very NOTION that our public servants (i.e. HIRED POLITICIANS) are even permitted to own property either in the form of business holdings or real estate, corrupts the system at it's very inception. A private citizen has every right to pursue his own SELF INTEREST. This is the fundamental provision of the constitution... Life, Liberty, and the PURSUIT OF HAPPINESS. But as a professional politician and public servant, one is required by honor and professional ethics to put ALL forms of self interest aside in the interest of the greater good in service to the public. I believe that they should all be able to live in a nice house and raise their family on MY TAX DOLLARS. I believe that. What's wrong with the government purchasing nice upper middle class homes and placing our hired public servants in them. They have everything already paid for them as it is, and their salary is very generous. If you can't make a good life for your family with that, then you're a *[expletive deleted]* and shouldn't be in politics. Then when you've retired from politics, I'm sorry... but if you don't get to enter the business world, unless it's a damn coin laundry, a dry cleaners, or a damned bar... but you don't get to go work for Pfizer, or Exxon, or Boeing... nope. Too much room for corruption. Like I said... take money and self interest out of the equation, and you might actually achieve a functioning democracy that would be the ENVY OF THE WORLD.

Like were once were.

**30. *PLC*** | 07.12.08

".....But the courts have drawn the line at personal, invasive searches, ruling that things like "strip searches, body-cavity searches, and involuntary X-ray searches" are nonroutine..." Quess where my memory stick(s) will be the next time I cross.

**31. *profmarcus*** | 07.12.08

it's been happening for more than 18 months... it was two years ago june 1 that i had my laptop, flash drive, digital camera, dvd's, cd's, and camera memory stick seized in san francisco after arriving from frankfurt, and not returned for three weeks... i was stunned and also afraid to speak out for fear it would only subject me to more of the same on future trips... since then, i have been through u.s. customs at least a dozen more times but, thankfully, all incident-free... it's a terrible thing to have happen to you, particularly when it's completely unwarranted... we're not working on being a fascist state, we're already there... the passage of retroactive telecom immunity this past week seals the deal...

<http://takeitpersonally.blogspot.com/>

**32. *Boulder Bear*** | 07.12.08

Canada, giving in to US pressure, just enacted similar legislation about this. I am summering here from AZ heat and read about it in the paper.

So, moving to Canada is no solution. The dictatorship is going global, many guvs besides US involved in invasions of privacy and controlling us via information etc. Aware Canadians have told me that Canada doing a lot of what the US is....scary — what do we do, move to Maine Vermont New Hampshire, and hope they all secede together and build a sovereign nation?

**33. *Frank*** | 07.12.08

I completely agree with Bob, comment No.7. The reasonable expectation of privacy is far greater

as to any person holding those things you mentioned. The use and security taken to protect those things is direct evidence of their importance. The government must satisfy varying burdens anytime it infringes upon our Constitutionally protected rights. This is example of one of the many incredible things about our country. Someone needs to force the government to demonstrate their definite and definable need to extend the search of a person's property to such a degree. The possibility of catching either a terrorist or a participant in child pornography is so slight given the total number of travelers. Furthermore, there is little showing that accomplishing those 2 separate and distinct objectives is distinctly a function of DHS. This is nothing more than a complete abuse of power by DHS and an acquiescence of responsibility by our leaders. Taking note of the earlier DHS lapses in security at airports reasonably suggests that future lapses in the retention and protection of information acquired by these searches are a new threat to privacy and security of United States citizens and all people protected under the Constitution.

**34. [Victor](#)** | 07.12.08

#3 Miriam, you typed,

"What a damn mess! This is ONE time I am on the ACLU's side!"

If you look at their record, you'll find that they've always been on \*your\* side.

**35. [stu wilde](#)** | 07.13.08

To all the SHEOPLE who think this is OK, I am glad people with more backbone lived in this country in the late 1700's because they fought for freedoms being taken away by the criminal Bush regime. IT IS NOT OK FOR SOMEONE TO TAKE YOUR PRIVATE PROPERTY WITHOUT A WARRANT. I mean, why is that so difficult to understand?

What's next, are they going to implant a microchip and track us? I bet most SHEOPLE would just say, "oh, ok, go ahead." Why are SHEOPLE so weak and ineffectual?

This country is going down the toilet and there are not enough of us with backbone to fight this rampant violation of the Constitution.

**36. [Mackey Chandler](#)** | 07.13.08

What a perfect opportunity. Planting a back door a worm or virus which the government agency will download for you right into their own computers is a gift which an opposing organization should not turn down.

**37. [Sean](#)** | 07.13.08

If the democratic leadership in congress does not do anything to stop this and other abuses of our civil rights, then it is time for a new party that promotes fiscal responsibility, individual freedom, and protection from abuse.

## Trackbacks/Pingbacks

**1. [Another Fourth Amendment Issue](#)** | 07.10.08

**2. [Senior Living Communities » Blog Archive » US defends laptop searches at the border](#)** | 07.10.08

**3. [Crazy For Congress » Remember the Fourth Amendment?](#)** | 07.10.08

**4. *Is This The BuzzYA!*** | 07.10.08

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**5. *Tech Scoop - Hot Technology Gossip » Is This The Best Homeland Security Can Do In Defending Laptop Searches At The Border?*** | 07.10.08

**6. *NEWS & OPINION ROUNDUP (11 JULY 2008) THE JESSE JACKSON MOHEL EDITION / Democrat=Socialist*** | 07.11.08

**7. *U.S. defends laptop searches at the border / Infinite Unknown*** | 07.11.08

**8. *laptop » Blog Archive » US defends laptop searches at the border*** | 07.11.08

**9. *Has anyone seen the fourth amendment...? / computerization*** | 07.12.08

**10. *Internet Police State: G8 Ratifies Crackdown on Illegal Downloads « noworldsystem.com*** | 07.12.08

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