

Wyden, Paul, Polis and Farenthold Bill Requires Warrants to Search Americans' Digital Devices at the Border

Bill Ends Policy That Allows Unlimited Searches of the Phones, Laptops and Other Devices When Americans Cross the Border

Tuesday, April 4, 2017

Washington, D.C. – Sen. Ron Wyden, D-Ore., Sen. Rand Paul, R-Ky., and Rep. Jared Polis, D-Colo., and Rep. Blake Farenthold, R-Texas, today introduced the Protecting Data at the Border Act to ensure Americans are not forced to endure indiscriminate and suspicionless searches of their phones, laptops and other digital devices just to cross the border.

The bipartisan, bicameral bill shuts down a legal Bermuda Triangle that currently allows law enforcement agencies to search Americans' phones and laptops – including pictures, email, and anything on the device and possibly the cloud – when they cross the border without suspicion or a warrant. [Press reports indicate these searches have spiked over the past year.](#)

“Americans’ Constitutional rights shouldn’t disappear at the border. By requiring a warrant to search Americans’ devices and prohibiting unreasonable delay, this bill makes sure that border agents are focused on criminals and terrorists instead of wasting their time thumbing through innocent Americans’ personal photos and other data,” Sen. Wyden said.

“As the Supreme Court unanimously recognized in 2014, innovation does not render the Fourth Amendment obsolete,” said Sen. Paul. **“It still stands today as a shield between the American people and a government all too eager to invade their digital lives. Americans should not be asked to surrender their rights or privacy at the border, and our bill will put an end to the government’s intrusive practices.”**

“The government should not have the right to access your personal electronic devices without probable cause,” Rep. Polis said. **“Whether you are at home, walking down the street, or at the border, we must make it perfectly clear that our Fourth Amendment protections extend regardless of location. This bill is overdue, and I am glad we can come together in a bicameral, bipartisan manner to ensure that Customs and Border Patrol agents don’t continue to violate essential privacy safeguards.”**

“Just because you cross the border doesn’t mean the government has a right to everything on your computer,” said Rep. Farenthold.

Read [the full bill here](#), and a [summary here](#).

BACKGROUND

The government has asserted broad authority to search or seize digital devices at the border without any level of suspicion due to legal precedent referred to as the “border search exception” to the Fourth Amendment’s requirement for probable cause or a warrant. Until 2014, the government claimed it did not need a warrant to search a device if a person had been arrested. In a landmark unanimous decision, the Supreme Court (in *Riley v. California*) ruled that digital data is different and that law enforcement needed a warrant to search an electronic device when a person has been arrested.

In February, [Sen. Wyden asked the Department of Homeland Security to explain its legal authorities](#) and report the number of digital searches at the border, but he has yet to receive a response.

This bill recognizes the principles from that decision extend to searches of digital devices at the border. In addition, this bill requires that U.S. persons know their rights before they consent to giving up online account information (like social media account names or passwords) or before they consent to give law enforcement access to their devices.