

Changing the Landscape: Key rulings on border searches



1977

United States v. Ramsey

The U.S. Supreme Court affirms the constitutionality of suspicionless, warrantless searches at the border as long as those searches are routine. An agreeing ruling is found in *United States v. Montoya de Hernandez* in 1985.

2005

United States v. Ickes

The Fourth Circuit rules that searches of a laptop based on reasonable suspicion are not intrusive and do not violate U.S. citizens' Fourth Amendment rights. The Court of Appeals for the Ninth Circuit reaches a similar opinion in July 2006 in the case of *United States v. Romm*.



2008

Travelers' Privacy Protection Act

On September 26, Senator Russell Feingold (D-WI) introduces a bill to establish standards and procedures for DHS border searches and seizures of electronic devices. The standards include limiting access to the seized devices and the information gained from their examination. The bill is referred to but does not leave the Committee on Homeland Security and Governmental Affairs.



2013

United States v. Cotterman

The United States Court of Appeals for the Ninth Circuit holds that government agencies must have reasonable suspicion before subjecting devices to forensic searches, such as the use of software to copy data from hard drives or examine password-protected files and deleted information.

2015

United States v. Kim

The D.C. District Court holds that border agents must have reasonable suspicion, based on the totality of circumstances, before searching a computer. The court ruling comes after DHS agents confiscate and copy information from the laptop of a South Korean businessman at the border in October 2012 as part of an investigation into the illegal sale of missile parts.



Sept. 2017

Alasaad v. Nielsen

The American Civil Liberties Union and the Electronic Frontier Foundation file a lawsuit on behalf of 11 individuals—including two journalists and a journalism student—who had their devices searched at the border. The case seeks to establish that agencies must have a warrant based on probable cause before conducting such searches. As of October 2018, the case is under consideration of the U.S. District Court for the District of Massachusetts.

Feb. 2018

Leahy-Daines Bill Introduced

Senators Patrick Leahy and Steve Daines introduce "A bill to place restrictions on searches and seizures of electronic devices at the border." The bill proposes that CBP and ICE officials have reasonable suspicion prior to conducting "manual" searches, and a probable cause warrant for "forensic" searches.



May 2018

United States v. Kolsuz

The Fourth Circuit Court holds that some individualized suspicion is necessary in cases of forensic device searches at the border, defined as the application of computer software to analyze the hardware of a device. The court leaves open the possibility that manual searches may also require some level of suspicion.



1994

Federal Guidelines Released

Guidelines produced by nine federal bodies are released, stating that, "Border searches or international mail searches of diskettes, tapes, computer hard drives (such as laptops carried by international travelers), or other media should fall under the same rules which apply to incoming persons, documents, and international mail."



2006

United States v. Arnold

The U.S. Central District Court of California finds that examination of a traveler's laptop is a highly invasive and non-routine search. Comparing it to a strip search or body cavity search, the court rules such searches therefore need a higher level of suspicion. When reviewing the case, the Ninth Circuit Court of Appeals finds the opposite and holds that border searches of laptop computers do not require reasonable suspicion.

2009

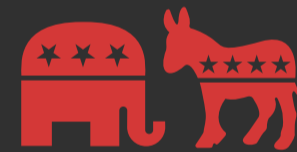
CBP Releases Guidelines

CBP releases a directive to provide guidance on the search, review, retention, and sharing of information contained on electronic devices. The guidelines specify that a search can be conducted with or without individualized suspicion.

2014

Riley v. California

The Supreme Court holds that authorities cannot conduct a warrantless search of the digital contents of a cell phone seized during an arrest, making a clear distinction between physical items and the data stored on cell phones. While the ruling does not relate directly to the borders, many legal theorists say they believe this could set precedent for limiting the border search exception when it comes to electronic devices.



Apr. 2017

Protecting Data at the Border Act

Senators Rand Paul (R-KY) and Ron Wyden (D-OR) and Representatives Blake Farenthold (R-TX) and Jared Polis (D-CO) introduce an Act that will require CBP officers to obtain a warrant prior to searching the device of a U.S. citizen or permanent resident.



Jan. 2018

CBP Releases Guidelines

New CBP guidelines distinguish between basic searches and advanced searches, in which border agents use external software to copy or analyze information in a phone. While basic searches do not require any suspicion, CBP says that advanced searches will only be conducted based on reasonable suspicion. The policies also restrict CBP's ability to access data stored on the cloud during device searches.

Mar. 2018

United States v. Vergara

The Eleventh Circuit Court of Appeals holds that the forensic search of two cell phones at the border do not require probable cause because "border searches never require a warrant or probable cause." The court does not rule on whether such searches would require the lower standard of reasonable suspicion.