



July 22, 2009

Committee on Homeland Security
U.S. House of Representatives
Committee on Homeland Security
Washington, D.C. 20515

Re: H.R. 1726 Border Security Search Accountability Act of 2009

Dear Representative:

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LIBERTIES UNION
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TREASURER

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million activists and members and 53 affiliates nationwide, we write to thank and congratulate you for moving to mark up the Border Security Search Accountability Act of 2009 (H.R. 1726). H.R. 1726 shines a spotlight on a serious problem – the unlawful searches and seizures of travelers’ electronic laptops by border security agents. In recent years, travelers entering the U.S. have had their electronic laptops and other devices seized and searched, without explanation or cause. These travelers include U.S. citizens, lawful permanent residents, and foreign visitors coming to conduct business with U.S. corporations. This invasive border search practice can no longer go unaddressed. The ACLU urges the Committee to mark up and pass a strong border security search accountability bill that institutes critical privacy and redress protections for travelers subject to unlawful searches and seizures at the border.

The search and seizure of laptops and other electronic devices raises significant privacy and civil liberties concerns. Electronic correspondence, financial and medical information, trade secrets, photos and personal contacts represent just a fraction of the information that many travelers carry on their laptop. In fact, much of the information our Founding Fathers considered intimate and personal – worthy of the full protection of the Fourth Amendment – is now carried in digital form. All of it is vulnerable to search whenever a traveler enters or leaves the United States.

In addition, many travelers have been subjected to a much more invasive practice, the long term seizure of electronic devices by the federal government. Under current Customs and Border Patrol (CBP) guidelines, laptops and other devices may be seized for an indeterminate amount of time, subject to exhaustive scrutiny and removed to other locations. Individuals have no way to learn what has happened to their devices, what information has been collected and where it has been disseminated.

This process has been rife with abuse. CBP has held laptops for more than a year.¹ Business travelers state that work email and documents are routinely searched.² Muslims and Asian Americans have complained about persistent racial profiling.³

Moreover, many individuals simply cannot travel or work without their personal electronic devices. Personal computers and mobile devices have become indispensable for business travel and for many aspects of everyday life. In short, the long term seizure of a laptop or electronic device can completely undermine a person's ability to work, earn a living, take care of the family, and communicate with friends and neighbors. In light of these facts, the current practices of CBP are inadequate for protecting travelers' right to privacy and other civil liberties.

H.R. 1726 contains important improvements to current CBP practice. It requires promulgation of regulations to:

- Protect privileged information, trade secrets, and other private information;
- Limit the duration a device and information from it can be retained;
- Notify individuals of what information has been retained; and
- Require a DHS process for aggrieved travelers to seek redress for complaints and report abuses.

These protections safeguard fundamental legal rights. They include important due process provisions, protections of the right to counsel and limitations on searches and seizures. Perhaps most importantly they begin to regulate a process that has frequently been marred by fishing expeditions and arbitrary discretion.

While H.R. 1726 provides a good foundation, the bill does not include adequate legal and procedural safeguards, and we urge the Committee to add further improvements to our nation's policy on the search of electronic devices. Specifically, the ACLU believes that suspicionless searches of laptops are unconstitutional and violate the Fourth Amendment. Laptops and other electronic devices should only be searched when there is a reasonable suspicion that the laptop contains contraband or other information in violation of the law. Searches should be strictly limited in duration and information shared with other government agencies only when it is relevant to a potential violation of law. Further, electronic devices should only be seized with a warrant secured under a probable cause standard. Finally, searches should not be based on race, ethnicity, national origin, or religion unless that those categories are related to the description of a specific individual.

The unregulated search and seizure of laptops and other devices puts at risk the privacy of millions of Americans who travel internationally. Thank you for introducing and moving this important legislation, and we look forward to working with the Committee to improve the standards governing these searches. We urge you to take the further steps

¹ Ellen Nakashima, *Clarity Sought on Electronics Searches*, WASHINGTON POST, February 7, 2008.

² *Id.*

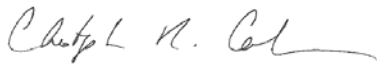
³ *Unreasonable Intrusions, Investigating the Politics, Faith and Finances of Americans Returning Home*, Muslim Advocates, http://www.muslimadvocates.org/documents/Unreasonable_Intrusions_2009.pdf

outlined above to assure that every traveler can feel secure and respected when traveling internationally.

Sincerely,

Handwritten signature of Michael Macleod-Ball in black ink.

Michael Macleod-Ball
Interim Director, Washington Legislative Office

Handwritten signature of Christopher Calabrese in black ink.

Christopher Calabrese
Counsel, ACLU Technology & Liberty Project

Handwritten signature of Joanne Lin in black ink.

Joanne Lin
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