

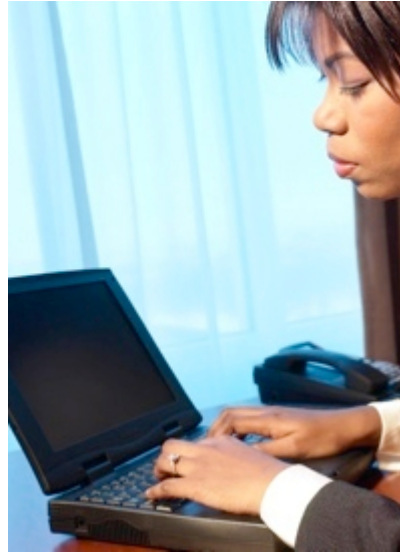


Written by [Jack Kenny](#) on January 18, 2011

DHS Laptop Seizures Harass Travelers

Laptop seizures are a growing menace in America today and it's not about your computer software having a stroke. It's about the Department of Homeland Security, without warrant or even "reasonable suspicion," (aka "probable cause") seizing computers, cell phones, Blackberries and other electronic properties from Americans returning to their "homeland."

Glenn Greenwald reports in his [Salon.com column](#) that a Freedom of Information Act request by the American Civil Liberties Union has revealed that in an 18-month period beginning in October, 2008, DHS subjected more than 6,000 people, half of them American citizens, to electronic searches when entering the country. The agents go through the data, copying it as they see fit and storing it for possible distribution to other agencies throughout the government. The unhappy traveler may not get his equipment back for months or, in some cases, never gets it back at all.



"Worse, all of this is done not only without a warrant, probable cause or any oversight, but even without reasonable suspicion that the person is involved in any crime," Greenwald wrote. "It's completely standard-less, arbitrary, and unconstrained. There's no law authorizing this power nor any judicial or Congressional body overseeing or regulating what DHS is doing. And the citizens to whom this is done have no recourse — not even to have their property returned to them."

The laptops, cell phones, and other electronic devices typically contain vast amounts of personal information concerning correspondence and conversations — regarding what and with whom — reading material and all manner of private and personal information. They may, as Greenwald notes, contain information the government is barred from having under attorney/client doctor/patient or even clergy/penitent privileges. The Ninth Circuit Court of Appeals in San Francisco, widely considered the most liberal of U.S. appellate courts, ruled in an April, 2008 case that such searches are permissible even without any reasonable grounds for suspicion

"We are satisfied that reasonable suspicion is not needed for customs officials to search a laptop or other personal electronic storage devices at the border," Judge Diarmuid O'Scannlain wrote for the unanimous three-member panel. The case involved a U.S citizen returning from the Philippines who was stopped and searched at Los Angeles International Airport. When they examined his laptop computer, the court said, customs agents found "numerous images depicting what they believed to be child pornography." The appeals court overturned the decision by U.S. District Court Judge Dean Pregerson



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in Los Angeles to suppress the evidence, finding the absence of a reasonable suspicion had rendered the search a violating of the defendant's Fourth Amendment right to be free of "unreasonable searches and seizures." But the circuit court ruled the defendant "failed to distinguish how the search of his laptop and its electronic contents is logically any different from the suspicionless border searches of travelers' luggage that the Supreme Court and we have allowed." The ruling followed that of the Fourth Circuit Court in Virginia, which refused to suppress evidence in a similar search of a man who had driven into the U.S. from Canada with alleged child pornography on his computer.

But while the random searches may turn up some pornographic images, DHS appears to targeting people having anything to do with Wikileaks or Private First Class Bradley Manning, the soldier accused of turning over hundreds of thousands of classified documents to Wikileaks founder Julian Assange. Last July, officials detained Wikileaks volunteer Jacob Appelbaum for hours at a Newark Airport and he had his laptop and cell phones seized. Returning on a trip from Iceland last week, he was detained in Seattle, but that time he was not traveling with a laptop or cell phone. Agents were able to seize his memory sticks with their copy of the Bill of Rights.

Perhaps pursuing a PhD in Islamic studies can be grounds for a search. Pascal Abidor, a dual French-American citizen is one such student who was returning to New York from Montreal by train last year when Custom and Border Patrol Officers confiscated his laptop. According to an ACLU suit filed on his behalf, Abidor was handcuffed, taken off the train and held for several hours before being released without charge. "When his laptop was returned 11 days later, there was evidence that many of his personal files, including research, photos and chats with his girlfriend had been searched," the suit alleged.

There appears to little choice for those confronted by border agents demanding their computers and cell phones. Refusing to yield them means the traveler won't be allowed back into the country, in essence a sentence of exile. Since most people like to return home from their travels at some point, compliance is virtually assured.

Rep. Loretta Sanchez, a California Democrat, has introduced a bill to require Homeland Security to issue rules governing the border searches and would require some reporting requirements and impose some minor procedural requirements on DHS agents. The bill would also require "a civil liberties impact assessment of the rule, as prepared by the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security."

The Sanchez bill at least calls attention to the fact that there are problems associated with the Homeland Security and its Transportation Security Agency besides the much publicized (and objectionable) "pat down" and body scanner searches. But Congress should do more than require the department to come up with rules governing their unreasonable searches and groundless invasions of privacy. Agencies of the federal government should be required to follow the Constitution, not file impact statements on their violations of it.

The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated..." The Congress of the United States, as well as the executive and judicial branches, has an obligation to see to it that right and others in the Constitution are respected by agents of the federal government. Reading the Constitution aloud was a nice gesture. Putting some action behind it would be even better.



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