

US searches of phones, laptops at airports rising, suit says

By DEB RIECHMANN May 1, 2019



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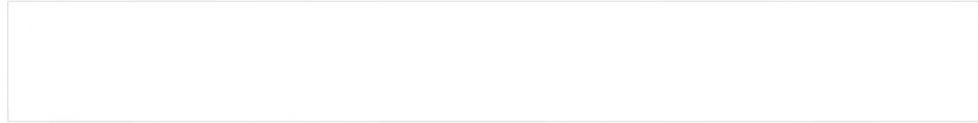
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WASHINGTON (AP) — U.S. government searches of travelers' cellphones and laptops at airports and border crossings nearly quadrupled since 2015 and were being done for reasons beyond customs and immigration enforcement, according to papers filed Tuesday in a federal lawsuit that claims scouring the electronic devices without a warrant is unconstitutional.



scope of the warrantless searches has expanded to assist in enforcement of tax, bankruptcy, environmental and consumer protection laws, gather intelligence and advance criminal investigations.



Agents with U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement consider requests from other government agencies in determining whether to search travelers' electronic devices, the court papers said. They added that agents are searching the electronic devices of not only targeted individuals but their associates, friends and relatives.

The new information about the searches was included in a motion the Electronic Frontier Foundation and the American Civil Liberties Union filed Tuesday in U.S. District Court in Massachusetts.

"The evidence we have presented the court shows that the scope of ICE and CBP border searches is unconstitutionally broad," said Adam Schwartz, senior staff attorney for the EFF, based in San Francisco.

"ICE and CBP policies and practices allow unfettered, warrantless searches of travelers' digital devices and empower officers to dodge the Fourth Amendment when rifling through highly personal information contained on laptops and phones," he said.

The Department of Homeland Security did not respond to a request for comment. Both ICE and CBP said they did not comment on pending litigation.

When the suit was filed against the government in 2017, DHS officials said U.S. citizens and everyone else are subject to examination and search by customs officials, unless exempted by diplomatic status. The department has contended that no court has concluded that border searches of electronic devices require a warrant. Searches, some random, have uncovered evidence of human trafficking, terrorism, child pornography, visa fraud, export control breaches and intellectual property rights violations, according to the department.

The original case was filed on behalf of 10 American citizens and a lawful permanent resident from seven states — including two journalists, a NASA engineer and a former Air Force captain — who alleged the searches violated their constitutional rights. They asked the court to rule that the government must have a warrant based on probable cause before searching electronic devices at U.S. ports of entry.

The plaintiffs also are demanding the government expunge from investigatory databases information obtained in past searches. ICE and CBP share information taken from travelers' electronic devices with other agencies and there is control to prevent them from impermissibly retaining it, they argue.

A year ago, U.S. District Judge Denise Casper in Boston rejected the government's request to dismiss the lawsuit, allowing the case to move forward. The ACLU and the foundation began gathering documents and deposition testimony. Based on the new information, they filed a motion Tuesday asking the judge to rule in their favor without a trial. "Travelers' devices contain an extraordinary amount of highly personal information that the government can easily search, retain, and share," it argues.

"This new evidence reveals that the government agencies are using the pretext of the border to make an end run around the First and Fourth Amendments," said ACLU attorney Esha Bhandari. "The border is not a lawless place. ICE and CBP are



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unlawful searches and require the government to get a warrant.”

The court documents claim that the agencies also assert the authority to search electronic devices when the subject of interest is someone other than the traveler, such as the business partner of someone under investigation. Both agencies also allow officers to retain information from travelers’ electronic devices and share it with other government entities, including state, local and foreign law enforcement agencies, the court papers claim.

The plaintiffs also say that travelers who have had their electronic devices searched at the border run increased odds of being subject to future device searches as they can be flagged in government databases for additional scrutiny on that basis.

Associated Press writer Frank Bajak in Boston contributed to this report.

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