

EFF and ACLU Ask Supreme Court to Review Case Against Warrantless Searches of International Travelers' Phones and Laptops

Border Officers Accessing Massive Amounts of Information from Electronic Devices

By [Electronic Frontier Foundation](#)

Global Research, April 27, 2021

[Electronic Frontier Foundation](#) 23 April 2021

Region: [USA](#)

Theme: [Law and Justice](#), [Police State & Civil Rights](#)

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The Electronic Frontier Foundation (EFF), the American Civil Liberties Union, and the ACLU of Massachusetts today filed a [petition for a writ of certiorari](#), asking the Supreme Court to hear a challenge to the Department of Homeland Security's policy and practice of warrantless and suspicionless searches of travelers' electronic devices at U.S. airports and other ports of entry.

The lawsuit, [Merchant v. Mayorkas](#), was filed in September 2017 on behalf of several travelers whose cell phones, laptops, and other electronic devices were searched without warrants at the U.S. border. In November 2019, a federal district court in Boston ruled that border agencies' policies on electronic device searches violate the Fourth Amendment, and required border officers to have reasonable suspicion of digital contraband before they can search a traveler's device. A three-judge panel at the First Circuit reversed this decision in February 2021.

“Border officers every day make an end-run around the Constitution by searching travelers' electronic devices without a warrant or any suspicion of wrongdoing,” said EFF Senior Staff Attorney Sophia Cope. “The U.S. government has granted itself unfettered authority to rummage through our digital lives just because we travel internationally. This egregious violation of privacy happens with no justification under constitutional law and no demonstrable benefit. The Supreme Court must put a stop to it.”

“This case raises pressing questions about the Fourth Amendment's protections in the digital age,” said Esha Bhandari, deputy director of the ACLU's Speech, Privacy, and Technology Project. “When border officers search our phones and laptops, they can access massive amounts of sensitive personal information, such as private photographs, health information, and communications with partners, family, and friends—including discussions between lawyers and their clients, and between journalists and their sources. We are asking the Supreme Court to ensure that we don't lose our privacy rights when we travel.”

Every year, a [growing number](#) of international travelers are subject to warrantless and suspicionless searches of their personal electronic devices at the U.S. border. These searches are often conducted for reasons that have nothing to do with stopping the importation of contraband or determining a traveler's admissibility. Border officers claim the authority to search devices for a host of reasons, including enforcement of tax, financial, consumer protection, and environmental laws—all without suspicion of wrongdoing. Border officers also search travelers' devices if they are interested in information about someone other than the traveler—like a business partner, family member, or a journalist's source.

The petitioners in this case—all U.S. citizens—include a military veteran, journalists, an artist, a NASA engineer, and a business owner. Several are Muslims and people of color, and none were accused of any wrongdoing in connection with their device searches.

"It's been frustrating to be subjected to this power-grab by the government," said Diane Zorri, a college professor, former U.S. Air Force captain, and a plaintiff in the case. "My devices are mine, and the government should need a good reason before rifling through my phone and my computer. I'm proud to be part of this case to help protect travelers' rights."

The certiorari petition asks the Supreme Court to overturn the First Circuit's decision and hold that the Fourth Amendment requires border officers to obtain a warrant based on probable cause before searching electronic devices, or at the least have reasonable suspicion that the device contains digital contraband.

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