

Protecting Data at the Border Act

Introduced by Sens. Wyden (D-OR) and Paul (R-KY)

Americans' Constitutional rights shouldn't disappear at the border. The Protecting Data at the Border Act will ensure that the government, including Customs and Border Protection, must obtain a warrant to search the data of U.S. persons.

Background

The government has asserted broad authority to search or seize digital devices at the border without any level of suspicion due to legal precedent referred to as the “border search exception” to the Fourth Amendment’s requirement for probable cause or a warrant.

Until 2014, the government claimed it did not need a warrant to search a device if a person had been arrested. In a landmark unanimous decision, the Supreme Court (in *Riley v. California*) ruled that digital data is different and that law enforcement needed a warrant to search an electronic device when a person has been arrested.

This bill recognizes the principles from that decision extend to searches of digital devices at the border. In addition, this bill requires that U.S. persons are aware of their rights before they consent to giving up online account information (like social media account names or passwords) or before they consent to give law enforcement access to their devices.

What the bill does

- Requires law enforcement to get a warrant based on probable cause before they can search a device of a U.S. person.
- Prohibits officials from delaying or denying entry to the U.S. if a person declines to hand over passwords, PINs, and social media account information.
- Allows for broad emergency exceptions based on the existing wiretap statute and the USA Freedom Act, requiring the government to get a warrant after the fact.
- Requires law enforcement to have probable cause before they can seize a device.

Digital is different

Searching devices, or acquiring consent for those devices to be searched, is a massive invasion of privacy without physical analogs and should be strictly controlled. The Supreme Court, in the *Riley* decision, wrote that:

- “Cell phones differ in both a quantitative and a qualitative sense from other objects that might be carried on an arrestee’s person.”
- “...many of the more than 90% of American adults who own cell phones keep on their person a digital record of nearly every aspect of their lives...”
- “Finally, there is an element of pervasiveness characterizes cell phones but not physical records.”