

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

U.S. Urged to End Border Searches of Electronic Devices Without Reasonable Suspicion

FOR IMMEDIATE RELEASE: May 18, 2011

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WASHINGTON—Today, The Constitution Project (TCP) called upon the Department of Homeland Security (DHS) to discontinue its policy of searching electronic devices—including laptops and smart phones—at the border without reasonable suspicion. According to a just-released TCP [report](#), between October 1, 2008 and June 2, 2010, over 6,500 people—almost half of whom were U.S. citizens—were subjected to searches of their electronic devices upon crossing the international border.

The report was developed by 19 members of TCP’s bipartisan Liberty & Security Committee, including William S. Sessions, a former federal judge and Director of the FBI; Asa Hutchinson, former head of border security for DHS during the George W. Bush administration and former Member of Congress (R-AR); and Mary McCarthy, a former CIA official.

According to TCP Senior Policy Counsel Sharon Bradford Franklin, “Searches of our laptops and smart phones —without reasonable suspicion— can easily result in a breach of our privacy rights, given the amount of personal information we carry on those devices. Courts have historically recognized a limited exception to the Fourth Amendment permitting routine searches at the border, but the scope of those searches has vastly expanded given the storage capacity of electronic devices today. It’s a classic example of technology outpacing our legal system, and the government must reform its policy to restore Fourth Amendment protections.”

The report cited such search practices as accessing email accounts; examining photographs and looking through personal calendars. In some cases, electronic devices were confiscated for as long as a year. The report recommends that in the case of U.S. persons, officials should be required to obtain a warrant based on probable cause before continuing a search or retaining copies of electronic data beyond 24 hours.

Established in 1997, The Constitution Project (TCP) is known for its ability to bring together unlikely allies—experts and practitioners from across the political spectrum—in order to promote and safeguard America’s founding charter. TCP is working to reform the nation’s broken criminal justice system and to strengthen the rule of law by undertaking scholarship, consensus policy reforms, advocacy and public education. TCP was born out of the belief that we must cast aside the labels that divide us, in order to keep our Constitution and our democracy strong.