

111TH CONGRESS  
1ST SESSION

# H. R. 1726

To require the Secretary of Homeland Security to issue a rule with respect to border security searches of electronic devices, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 2009

Ms. LORETTA SANCHEZ of California (for herself, Mr. ENGEL, Mr. GONZALEZ, Mr. HINCHEY, Mr. THOMPSON of Mississippi, Mr. HINOJOSA, Mr. GRIJALVA, Mr. CARNAHAN, Ms. SCHAKOWSKY, Mr. ORTIZ, Mr. MORAN of Virginia, Mr. SMITH of Washington, Mrs. LOWEY, Ms. LEE of California, Mr. CARSON of Indiana, Mr. PAUL, Ms. CLARKE, Mr. MILLER of North Carolina, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Homeland Security

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## A BILL

To require the Secretary of Homeland Security to issue a rule with respect to border security searches of electronic devices, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Border Security  
5       Search Accountability Act of 2009”.

1 **SEC. 2. RULE WITH RESPECT TO BORDER SECURITY**  
2 **SEARCHES OF ELECTRONIC DEVICES.**

3 (a) IN GENERAL.—Not later than 180 days after the  
4 date of the enactment of this Act, the Secretary, acting  
5 through the Commissioner of United States Customs and  
6 Border Protection, in coordination with the Assistant Sec-  
7 retary of Homeland Security for United States Immigra-  
8 tion and Customs Enforcement and the senior official ap-  
9 pointed pursuant to section 222 of the Homeland Security  
10 Act of 2002 (6 U.S.C. 142), shall issue a rule with respect  
11 to the scope of and procedural and recordkeeping require-  
12 ments associated with border security searches of elec-  
13 tronic devices.

14 (b) CONTENT.—The rule issued pursuant to sub-  
15 section (a) shall include the following:

16 (1) A requirement that information collected  
17 during a border security search of an electronic de-  
18 vice that is determined to be commercial informa-  
19 tion, including trade secrets, information subject to  
20 attorney-client privilege, information subject to doc-  
21 tor-patient privilege, or information subject to an-  
22 other privilege or protection shall be handled con-  
23 sistent with the laws, rules, and regulations gov-  
24 erning such information and shall not be shared  
25 with a Federal, State, local, tribal, or foreign agency  
26 unless it is determined that such agency has the

1 mechanisms in place to comply with such laws, rules,  
2 and regulations.

3 (2) A requirement that authorized agents, to  
4 the greatest extent practicable, conduct all border  
5 security searches of electronic devices in the pres-  
6 ence of a supervisor and, where appropriate, in the  
7 presence of the individuals whose electronic devices  
8 are subject to such searches.

9 (3) A determination of the number of days that  
10 an electronic device subjected to a border security  
11 search or the information collected from such device  
12 may be retained, unless probable cause exists, that  
13 prohibits retention exceeding the period necessary to  
14 translate, decrypt, or reasonably search such device  
15 or information and that requires such information to  
16 be destroyed if in the custody of an authorized agent  
17 after such number of days.

18 (4) A requirement that if information collected  
19 from an electronic device subjected to a border secu-  
20 rity search is copied, shared, retained, or entered  
21 into an electronic database, the individual from  
22 whose electronic device such information is collected  
23 shall receive written notification of such copying,  
24 sharing, retention, or entry unless such notification  
25 would hinder an investigation involving national se-

1       curity or would meet another criteria established by  
2       the Secretary in the rule.

3           (5) A requirement that an individual subjected  
4       to a border security search of an electronic device  
5       shall receive a receipt for such device if such device  
6       is removed from the possession of such individual.

7           (6) A requirement that an individual subjected  
8       to a border security search of an electronic device  
9       shall receive notice of how to report abuses or con-  
10      cerns and how to seek redress from the Department  
11      of Homeland Security.

12          (7) A requirement that information on the  
13      rights of individuals with respect to border security  
14      searches and Department of Homeland Security re-  
15      dress procedures shall be posted at all ports of entry  
16      in locations that are likely to be viewed by individ-  
17      uals subject to border security searches.

18          (8) A privacy impact assessment of the rule, as  
19      prepared by the senior official appointed pursuant to  
20      section 222 of the Homeland Security Act of 2002,  
21      that includes recommendations with respect to the  
22      copying, sharing, retention, and entry into an elec-  
23      tronic database of personally identifiable information  
24      collected from electronic devices subjected to a bor-  
25      der security search.

1           (9) A civil liberties impact assessment of the  
2           rule, as prepared by the Officer for Civil Rights and  
3           Civil Liberties of the Department of Homeland Se-  
4           curity.

5 **SEC. 3. TRAINING AND AUDITING WITH RESPECT TO THE**  
6 **RULE.**

7           (a) TRAINING.—The Secretary shall provide each au-  
8           thorized agent with appropriate training to conduct border  
9           security searches of electronic devices in accordance with  
10          the rule issued pursuant to section 2. The training shall  
11          include instruction on constitutional, privacy, civil rights,  
12          and civil liberties issues related to such searches.

13          (b) AUDITING.—The Secretary, acting through the  
14          Inspector General of the Department of Homeland Secu-  
15          rity, shall develop and annually administer an auditing  
16          mechanism to review whether authorized agents are con-  
17          ducting border security searches of electronic devices in  
18          accordance with the rule issued pursuant to section 2.

19 **SEC. 4. REPORT.**

20          Not later than 180 days after the effective date of  
21          the rule issued pursuant to section 2, and quarterly there-  
22          after, the Secretary shall submit to the Committee on  
23          Homeland Security of the House of Representatives and  
24          to the Committee on Homeland Security and Govern-

1 mental Affairs of the Senate a report that shall include  
2 the following:

3 (1) A description of the activities of authorized  
4 agents with respect to border security searches of  
5 electronic devices.

6 (2) A description of the manner in which the  
7 Department of Homeland Security has complied  
8 with this Act.

9 (3) The number, by port of entry, of border se-  
10 curity searches of electronic devices conducted dur-  
11 ing the reporting period.

12 (4) The number, by port of entry, of instances  
13 during the reporting period that information from  
14 an electronic device subjected to a border security  
15 search was retained, copied, shared, or entered in an  
16 electronic database, including the number of elec-  
17 tronic devices retained as the result of a border se-  
18 curity search.

19 (5) The race, ethnicity, national origin, and citi-  
20 zenship of each individual whose electronic device  
21 was subjected to a border security search during the  
22 reporting period, to determine the existence or ab-  
23 sence of racial profiling.

24 (6) The number of instances during the report-  
25 ing period that information collected from an elec-

1       tronic device subjected to a border security search  
2       was referred to a law enforcement or intelligence  
3       agency for further action, including whether such in-  
4       formation resulted in a prosecution or conviction.

5   **SEC. 5. DEFINITIONS.**

6       In this Act, the following definitions apply:

7           (1) **AUTHORIZED AGENT.**—The term “author-  
8       ized agent” means an agent, officer, or official of  
9       United States Customs and Border Protection,  
10      United States Immigration and Customs Enforce-  
11      ment, or any other office or agency of the Depart-  
12      ment of Homeland Security who is authorized to  
13      conduct a border security search.

14          (2) **BORDER SECURITY SEARCH.**—The term  
15      “border security search” means a search by an au-  
16      thorized agent of persons, baggage, or cargo enter-  
17      ing, departing, or passing through the United States  
18      through any port of entry.

19          (3) **ELECTRONIC DEVICE.**—The term “elec-  
20      tronic device” means an electronic, magnetic, opti-  
21      cal, electrochemical, or other high-speed data proc-  
22      essing device performing logical, arithmetic, or stor-  
23      age functions, such as a computer, a cellular tele-  
24      phone, or any other device used for electronic com-  
25      munication or for storing electronic, digital or ana-

1 log data, and which includes any data storage facil-  
2 ity or communications facility directly related to or  
3 operating in conjunction with such device.

4 (4) SECRETARY.—The term “Secretary” means  
5 the Secretary of Homeland Security.

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