

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 would ensure that the U.S. Government, including U.S. Customs and Border Protection (CBP), must obtain a warrant to search the data of U.S. persons.

Background

The U.S. Government has asserted that it has 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 a warrant based on probable cause.

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

While the Supreme Court has not yet addressed the question of border searches of devices, there is currently a circuit split among Federal appeals courts. The Ninth Circuit has restricted the government to only conducting warrantless searches for “digital contraband” (data that it is illegal to bring across the border), while in other parts of the country, the government may conduct warrantless searches for any information that could be of interest to the government.

The Protecting Data at the Border Act would provide statutory clarity by recognizing the principles from *Riley v. California* extend to searches of digital devices at the border. In addition, the bill would require that the government inform U.S. persons of their rights before they are asked to consent to giving up online account information (like social media account names or passwords) or before they are asked to consent to giving the government access to their devices to conduct a voluntary search.

What the bill would do:

- Require law enforcement to get a warrant based on probable cause before it can search a device of a U.S. person at the border;
- Prohibit officials from delaying or denying entry to the U.S. if a person declines to hand over passwords, PINs, and social media account information;
- Allow for broad emergency exceptions, modelled on the federal wiretap statute and the USA Freedom Act, allowing the government to get a warrant after the fact; and
- Require law enforcement to have probable cause before it can seize a device.