

Opening Statement of Chairman Rand Paul, M.D.  
Federal Spending Oversight Subcommittee

*Examining Warrantless Smartphone Searches at the Border*  
7/11/2018

I now call to order this hearing of the Senate Homeland Security and Governmental Affairs' Subcommittee on Federal Spending Oversight and Emergency Management.

Today, we'll be discussing the Fourth Amendment's guarantee against unreasonable searches and seizures, and its application to 21<sup>st</sup> century technology at the U.S. border.

Early last year, reports began to surface about travelers having their phones confiscated and searched by U.S. border authorities, for no obvious reason and without a warrant or even much of an explanation.

These searches have targeted a NASA engineer, a former captain in the U.S. Air Force, a Wall Street Journal reporter, a government security contractor, and numerous other U.S. citizens.

These searches are not just running a phone through an x-ray machine or a metal detector. Customs officials demanded that these travelers unlock their phones so that the contents could be searched. If they refused, these travelers were threatened and interrogated.

One man was handcuffed, while another was physically restrained in a chokehold while government agents picked his phone out of his pocket. Yet another—the NASA engineer—was told that he was “not allowed to leave” until he gave his password to customs officials. Two ironies here: one, the engineer was enrolled in CBP's Trusted Traveler program, which strikes me as false advertising, and two, the phone in question was a government phone.

Some may be asking, what about the 4<sup>th</sup> Amendment protection against warrantless searches? Does this not extend to U.S. citizens at the border?

Actually, the Courts have held there is something of gray area at the border, which by the way includes international airports and seaports. Customs officials may conduct routine searches of luggage or other containers without a warrant under what some refer to as the “border search exception” to the Fourth Amendment. This so-called exception has historically been used to ensure that no weapons, drugs, or other prohibited items, cargo or persons are entering the country.

I think that most Americans could agree that it's reasonable to let customs officials search suitcases for contraband.

What's unreasonable is that government lawyers want you to believe that there's no difference between a suitcase and a smartphone.

I disagree, and here again, I think most Americans would, too. Physical contraband cannot enter the country unless it is smuggled in, but this is not the case for electronic property.

Anything a border patrol agent could find in the contents of your cell phone could enter the country through the Internet, without the physical phone ever coming close to the U.S.

But it is all the more troubling when you consider what the government is gaining access to. Smartphones can reveal virtually everything about a person—their movements, habits, relationships, health, faith, finances—all in a single, easy-to-search and archive interface. Indeed, I think for many of us today, searching our smartphone would prove to be much more intrusive than even a search of our homes.

This same sentiment has been echoed in recent Supreme Court decisions regarding the Fourth Amendment and digital data. In a unanimous opinion on a 2014 case involving cell phone searches incidental to an arrest, *Riley v. California*, Chief Justice John Roberts writes that “[c]ell phones differ in both a quantitative and qualitative sense” from other objects that a person may possess.

Searching a person’s smart phone or other electronic device is fundamentally different than searching their suitcase or their car. And I believe as legal challenges to these searches reach the Supreme Court, they will agree.

We have an esteemed panel of witnesses here today who will discuss the history of border searches, the appropriateness of using this authority to search smartphones, and what actions the Congress should take to address this issue.

At this time, I’d like to recognize Ranking Member Peters for his opening remarks. Senator Peters?