

111TH CONGRESS
1ST SESSION

H. R. 239

To impose requirements with regard to border searches of digital electronic devices and digital storage media, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2009

Mr. ENGEL (for himself and Mr. PAUL) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To impose requirements with regard to border searches of digital electronic devices and digital storage media, 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 “Securing our Borders
5 and our Data Act of 2009”.

1 **SEC. 2. BORDER SEARCHES AND SEIZURES RELATING TO**
2 **DIGITAL ELECTRONIC DEVICES AND MEDIA.**

3 (a) **FUNDAMENTAL RULES.**—The following rules
4 shall apply to any border search or seizure relating to a
5 digital electronic device or digital storage media in the pos-
6 session of an individual:

7 (1) Except as otherwise provided in this sub-
8 section, no search of the digital contents of the de-
9 vice or media may be based on the power of the
10 United States to search a person and that person’s
11 possessions upon entry into the United States, un-
12 less that search is based on a reasonable suspicion
13 regarding that person.

14 (2) No seizure of the digital contents of a de-
15 vice or media, or of the device or media itself, may
16 be based on the power of the United States to
17 search a person and that person’s possessions upon
18 entry into the United States, but must be based on
19 some other constitutional authority to make the sei-
20 zure.

21 (3) Any search of the digital contents of a de-
22 vice or media must be conducted only by officers
23 who have received appropriate training, in order to
24 minimize the possibility of irreparable damage to, or
25 erasure of, files and the hardware itself, and must
26 be conducted in the presence of a supervisor. At the

1 request of the traveler, such search shall be con-
2 ducted out of public view.

3 (4) An individual may be required to turn on
4 the device in order to demonstrate it is a working
5 device.

6 (b) SUPPLEMENTAL AND IMPLEMENTING RULES BY
7 SECRETARY OF HOMELAND SECURITY.—The Secretary of
8 Homeland Security shall—

9 (1) make rules regarding border searches to
10 which subsection (a) applies, detailing—

11 (A) policies for protecting the integrity of
12 the data;

13 (B) policies for the length of time seized
14 data will be stored and where and how it will
15 be stored;

16 (C) policies for whether the downloaded in-
17 formation will be shared and, if so, with what
18 other governmental entities and under what cir-
19 cumstances;

20 (D) information as to what rights an indi-
21 vidual has to ensure that individual's device or
22 media is returned; and

23 (E) a requirement that a receipt be given
24 immediately to anyone whose device or media is

1 seized with information regarding whom to call
2 for information about the seizure; and

3 (2) place these rules on the Department of
4 Homeland Security website in a manner that makes
5 them readily publicly available.

6 (c) DEFINITIONS.—In this section—

7 (1) the term “border search” means any search
8 of an individual upon entry into the United States
9 based on the power of the United States to search
10 a person and that person’s possessions upon entry to
11 the United States;

12 (2) the term “digital electronic device” means
13 any electronic device that contains digital data, in-
14 cluding laptops, personal digital assistants, wireless
15 phones, ipods, iphones, blackberries, and digital
16 cameras; and

17 (3) the term “digital storage media” means any
18 memory device that contains or may contain digital
19 data.

20 **SEC. 3. ANNUAL STUDY AND REPORT ON SEARCHES AND**
21 **SEIZURES OF TRAVELERS BY THE UNITED**
22 **STATES CUSTOMS SERVICE.**

23 (a) STUDY.—The Commissioner of the United States
24 Customs Service shall conduct an annual study of searches
25 and seizures, during the prior year, of the digital contents

1 of digital electronic devices and digital storage media, and
2 of seizures of such devices and media, that are based on
3 the power of the United States to search or seize a person
4 and that person's possessions upon entry into the United
5 States. The study shall include the number of such
6 searches and seizures, the race, gender, and national ori-
7 gin of the travelers subject to those searches, the type of
8 searches conducted, and the results of the searches.

9 (b) REPORT.—Not later than March 31 of each year,
10 the Commissioner of the Customs Service shall submit to
11 the Congress the annual report containing the results of
12 the study conducted under subsection (a) for the prior
13 year.

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