Obama formalizes Bush policy on digital searches and seizures

Tom Eley
1 September 2009

The Obama administration disclosed on August 27 that it will carry on Bush administration policies that allowed the Department of Homeland Security (DHS) to seize and search international travelers' laptop computers, cellular phones, cameras, and other electronic devices, even in the absence of suspicion of criminal activity.

Two DHS directives made public Thursday formalize operational practices established by the Bush administration to carry out searches of the personal digital instruments of travelers, US citizens or not, passing across US borders. By proclaiming that agents can confiscate any digital device that may contain "information," even without suspicion of criminal activity, the directives amount to an open repudiation of the Fourth Amendment's prohibition against unreasonable searches and seizures.

The directives stipulate that Immigration and Customs Enforcement (ICE) special agents must perform searches within 30 days from the moment a laptop, telephone, or other device is seized.

According to the directives, border police "may detain electronic devices, or copies of information contained therein, for a brief, reasonable period of time to perform a thorough border search. The search may take place on-site or at an off-site location, and is to be completed as expeditiously as possible." If DHS turns up nothing incriminating, to regain the confiscated item the traveler must return to the border crossing where the item was seized, or else pay for its shipment.

DHS Secretary Janet Napolitano claimed in a statement that the new measures "strike the balance between respecting the civil liberties and privacy of all travelers while ensuring DHS can take the lawful actions necessary to secure our borders."

Civil liberties groups criticized the decision.

"Under the policy begun by Bush and now continued by Obama, the government can open your laptop and read your medical records, financial records, e-mails, work product and personal correspondence—all without any suspicion of illegal activity,"said Elizabeth Goitein of the Brennan Center for Justice at New York University.

"It's a disappointing ratification of the suspicionless search policy put in place by the Bush administration," said Catherine Crump, an attorney with the American Civil Liberties Union (ACLU). "[I]t doesn't deal with the fundamental problem, which is that under the policy, government officials are free to search people's laptops and cellphones for any reason whatsoever."

"Traveling with a laptop shouldn't mean the government gets a free pass to rifle through your personal papers," Crump said. "This sort of broad and invasive search is exactly what the Fourth Amendment's protections against unreasonable searches are designed to prevent.... We hoped when President Obama came into office that he would rescind the policy. But, unfortunately, yesterday's announcement confirmed the administration won't."

The ACLU this week launched a Freedom of Information Act (FOIA) lawsuit against the DHS to obtain records related to the number of laptops that

© World Socialist Web Site

have been searched over the past year. The DHS says that between October 2008 and early August, about 1,000 travelers' laptops were searched, but it has not revealed how many were seized in total. Nor has it revealed how it determined which travelers to search or for how long the computers were sequestered.

Senate Democrat Russ Feingold, a liberal who has been critical of the search policies under the Bush administration, welcomed their formalization under Obama, the *Wall Street Journal* reported.

The new directives are in keeping with Obama's approach to prosecuting "the war on terror." Obama won the support of millions of voters by campaigning against the pervasive abuse of democratic rights under the Bush administration. In office, he has sought again and again—from extraordinary rendition to military commissions trials to the formation of the new Pentagon "cyber command"—to place the same policies on a quasi—legal and firmer institutional footing.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site