

US Customs and Border Protection searched nearly 25,000 phones in 2016

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15 March 2017

Border agents with US Customs and Border Protection (CBP) carried out searches of nearly 25,000 cell phones in 2016, a fivefold increase over the 5,000 devices that were searched the previous year. The agency is on track to more than double its 2016 total this year, having searched 5,000 devices in February alone.

The ability of CBP agents to arbitrarily search and seize travelers' electronic devices, such as smartphones and laptop computers, applies to anyone crossing the US border, including citizens and legal residents. The policy was first implemented under the administration of George W. Bush in July 2008 and continued through the Obama years, resulting in the search of tens of thousands of electronic devices.

If travelers refuse to unlock their phones, CBP agents can impound a traveler's electronic devices in order to carry out data sweeps and hold them for weeks before giving them back.

While travelers are not legally required to give up their passwords or unlock their devices, agents have used threats, physical force and indefinite detention in order to compel travelers to give agents unlimited access to their personal information. While they cannot be criminally charged, noncitizens can be refused entry to the US for refusing to comply with a CBP agent's orders.

The Department of Homeland Security has deployed more than a dozen software programs that allow agents to search and extract data from most Apple and Android devices regardless of password protection.

Programs such as Device Seizure, Black Light, Lantern and Oxygen Forensics allow agents to access and download deleted call logs, e-mails, videos, photos and other files as well as access social media accounts through apps for Facebook, Twitter and Instagram.

The data which is collected without a warrant or suspicion by the CBP can be shared with a host of other federal agencies including the FBI, the Drug Enforcement Agency, the Treasury Department and the National Counterterrorism Center.

The US Constitution's prohibition against warrantless searches and seizures contained in the Fourth Amendment, which applies to most domestic police agencies, does not apply at the US border or international airports, where travelers can be searched and have their personal items taken from them by federal agents without any probable cause.

In addition to their largely unrestricted operations at the border, the CBP can set up immigration checkpoints as far away as 100 miles inland from the US borders where they are, however, legally required to have a warrant or probable cause to search a person or their possessions. Nearly two thirds of the US population, 200 million people, live within this zone.

An investigation by NBC News examined the cases of 25 US citizens who were recently forced by federal agents at an airport or border crossing, under the threat of detention or physical force, to hand over their phones and passwords for examination. A majority of those subjected to the invasive search, 23 out of 25, were Muslim.

In one case reported by NBC News, a couple from Buffalo, New York, Akram Shibly and Kelly McCormick, were stopped twice in a four-day period entering the US from Canada in January and on the second occasion had their phones forcibly seized.

On January 1, Shibly and McCormick were detained for two hours and were compelled to give up their phones and passwords. Three days later, they were again asked to hand over their phones and passwords as they entered the US. When Shibly refused, having just

had all his data seized by the CBP a few days prior, he was quickly surrounded by three agents, placed in a chokehold and his phone was pulled from his pocket. Seeing the assault on her boyfriend, McCormick also gave up her phone.

“It just felt like a gross violation of our rights,” Shibly told NBC News. While Shibly was born in New York state, both of his parents were originally from Syria, one of the countries included in Trump’s travel ban.

Other recent cases impacting those traveling to and from the US:

- Sidd Bikkannavar, a US citizen and NASA scientist, was detained at George Bush Intercontinental airport in Houston, Texas, at the end of January after returning to the US from Chile. He was compelled by CBP agents to give up his NASA work phone and access PIN, possibly compromising sensitive data contained on it, before he was allowed back into the country.

- Haisam Elsharkawi, an American citizen and electronics salesman, was detained on February 9 by CBP agents as he was trying to fly from Los Angeles to Saudi Arabia. He was handcuffed and pressured into unlocking his cell phone so that it could be searched. Elsharkawi was eventually released after agents found nothing suspicious, but he had missed his flight and was not given a refund.

- Celestine Omin, a 28-year-old software engineer from Nigeria, was forced by CBP agents at New York’s JFK Airport to complete a written test to prove his computer knowledge before he was allowed into the country last month.

- In late February, passengers on a domestic flight from San Francisco to New York were compelled to show identification documents to CBP agents before being allowed off the plane. CBP officials claimed they were looking for someone on the flight with a deportation order. That individual was not found on the plane.

The growing number of high-profile cases at the border since January indicates that agents and officers of the CBP, the largest law enforcement agency operating under the aegis of the Department of Homeland Security, have been emboldened by executive orders signed by President Donald Trump targeting immigrant workers already in the country as well as those traveling to the US from predominantly

Muslim countries.

“The shackles are off,” Hugh Handeyside, a staff attorney with the ACLU’s National Security Project told NBC News. “We see individual officers and perhaps supervisors as well pushing those limits, exceeding their authority and violating people’s rights.”



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