

## Court to rule on DHS's border warrantless smartphone search policy

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President Donald Trump, center, walks with Homeland Security Secretary Kirstjen Nielsen, right, during his visit to Joint Interagency Task Force South anti-smuggling center in Key West, Fla., (AP Photo/Pablo Martinez Monsivais) \*\* FILE \*\* [more >](#)

A federal judge ruled Thursday that a legal challenge to the government's border-search policy can move forward, saying border inspectors' policy of confiscating and poring over some travelers' cellphones may violate the First and Fourth Amendments.

U.S. District Judge [Denise J. Casper](#) said that while the government has long had the right to go through travelers' belongings without first getting a warrant, cellphones may have to be made an official exception to that rule, since they contain an exceptional amount of personal data that goes well beyond what the country's founders could have envisioned.

She suggested a landmark 2014 [Supreme Court](#) case finding that police couldn't automatically search cellphones during an arrest may also apply to searches of travelers at the border.

"Electronic device searches are, categorically, more intrusive than searches of one's person or effects," Judge [Casper](#) wrote in an order allowing to go forwards a lawsuit by people who faced device searches.

Her decision is an early sign of legal troubles for Homeland Security, which says those warrantless border searches are critical to sniffing out bad actors such as terrorists or people involved with child pornography.

The number of border device searches has been quickly growing, leaping more than 50 percent from 2016 to 2017, according to U.S. Customs and Border Protection. Some 30,200 devices were searched last year. Even still, it's just a small fraction of 1 percent of all travelers.

CBP did announce a new policy earlier this year banning border inspectors from using someone's smartphone to reach into the online "cloud" to get at their information there. The agency said only the physical device can be searched.

Under current guidelines, any inspector can conduct a "basic" search, based on his own hunch. A basic search means scrolling through call logs, photos or other readily accessible data. An "advanced" search, which can include officers copying all of someone's data off the phone, requires reasonable suspicion of criminal activity — though it still doesn't require a warrant.

Officers are also allowed to demand someone's password in order to gain access to the device.

Eleven people have sued in federal court in Massachusetts to force changes to the policy.

Among them are a couple, Ghassan and Nadia Alasaad, who objected to their phone being searched because it contained photos of Mrs. Alasaad without a headscarf. The couple said having a male officer view those photos would violate their religious beliefs.

CBP confiscated and held onto the couple's phones for 15 days.

Others suing include a government scientist, a computer programmer, a reporter, an editor and a professor of homeland security.

The Electronic Frontier Foundation and the American Civil Liberties Union are representing the plaintiffs, and they said Judge [Casper](#)'s ruling was a good sign.

"This is a big win for the digital rights of all international travelers," EFF staff attorney Sophia Cope said. "The [court](#) rightly concluded that the plaintiffs sufficiently alleged that the government's device search policies unconstitutionally burden privacy and free speech rights. As we've long argued, the border is not a Constitution-free zone."

Judge [Casper](#) had actually upheld CBP's border device searches in a case earlier this decade, ruling at the time that the courts had long recognized the government had a special interest at the border in being able to stop contraband from entering.

But she said Thursday that the [Supreme Court](#) has rewritten the rules with its 2014 ruling in *Riley v. California*, where the justices said it was time to bring privacy rules into the internet generation. In a unanimous ruling they decided that cellphones were not the same as a wallet or package snared in an arrest, which are subject to police searches.

Instead, the justices said, because cellphones contain so much deeply personal information, they are more similar to someone's home, replete with documents and papers that detail someone's entire life, and which have always been granted heightened protections from searches.

Judge [Casper](#), in her new ruling, said it's not yet clear whether the *Riley* standard applies to the border — but the case should be allowed to proceed in order to test that.

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