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Your Freedom vs Your Privacy

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Most citizens understand they're free from unwarranted search and seizure by the government under the Fourth Amendment to the U.S. Constitution. You may be surprised to learn that this protection does not extend to citizens at the border or airports. U.S. Customs and Border Protection ("CBP") has long considered U.S. borders and airports a kind of loophole in the Constitution's Fourth Amendment protections, one that allows them wide latitude to detain travelers - even U.S. citizens - and search their devices. This is due to two Supreme Court decisions which held that people have lesser Fourth Amendment protections when entering the country, because of the need to protect borders.

For years, CBP has held border-crossers on the slightest suspicion, and demanded access to their computers and phones with little formal cause or oversight. The CBP can detain you, try to unlock your devices, as well as make copies of the data contained on them. However, this access does not extend to data stored in the cloud.

If you will be traveling abroad (or by air) and you want to protect your privacy, please consider the following suggestions:

- Consider having a set of "burner" electronics (e.g., phone, notebook, etc.) for traveling. Keep only the minimum data necessary for your purposes on them.
- If you must travel with your everyday electronics, use encryption tools and strong passwords to protect your data and consider storing sensitive data in the cloud.
- Back up the data, wipe your devices for travel, and then restore the data upon your return.
- Power down devices before entering customs. This enables encryption to provide full protection and requires a password rather than a fingerprint to reboot.
- Don't divulge your passwords to agents. You may be detained, but citizens cannot be denied entry for refusing to reveal passwords. Even if CBP agents confiscate your electronics, you will make it home with your privacy intact.
- If your electronics are confiscated, be sure to get a receipt which identifies the device(s) and provides you with contact information to follow up on securing their return to you.
- Let your lawyer (or trusted person who can contact a lawyer on your behalf) know when you're going through customs and once you're out. If you are detained, you may not be able to contact anyone. Citizens have the right to have an attorney present for any questioning (at their own expense).

Keep in mind that your efforts to protect your privacy may arouse suspicion, making CBP agents more likely to detain you. In the end, you have to decide how much of your freedom you're willing to give up to protect your privacy.