

Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

June 25, 2008

Statement of Senator Patrick Leahy, Chairman

Senate Judiciary Committee

Subcommittee on the Constitution

"Laptop Searches and Other Violations of Privacy Faced by Americans Returning from Overseas Travel"

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I am glad Senator Feingold has convened this important hearing to examine intrusive practices by the Department of Homeland Security at our Nation's ports of entry. These practices affect the privacy interests of American citizens.

Americans understand that it is the Federal Government's responsibility to ensure that anyone entering the United States complies with the law. There is no dispute about this basic principle. But Americans also want their government's policies to respect and preserve our civil liberties. The government should not base its policies on racial profiling, act capriciously or be unnecessarily intrusive.

I share the concerns of privacy advocates about reports of highly intrusive searches carried out against American citizens returning home from abroad. In some instances, these searches are carried out based upon no reasonable suspicion, and delve deeply into the personal information of American citizens. In other instances, citizens have felt that the country to which they traveled or their personal appearance was the basis for increased scrutiny. When DHS officials routinely read the email, handwritten notes, and computer files of law-abiding Americans as they reenter the country, Americans are right to question this practice. And when DHS officials question Americans about their religious or political beliefs, and demand details of whom they met and where they slept during travel abroad, Americans are right to raise questions.

Two Circuit Courts of Appeal have held that the Fourth Amendment does not require any reasonable suspicion to search and seize the contents of any electronic device, including a laptop computer,

belonging to an American citizen returning to the United States from abroad. It may surprise many Americans that their basic constitutional rights do not exist at our ports of entry even to protect private information contained on a computer. It concerns me, and I believe that actions taken under the cover of these decisions have the potential to turn the Constitution on its head.

Despite the extraordinary authority such rulings have sustained for the Department of Homeland Security, the administration and the Department's use of this power must be held to a standard consistent with our constitutional values. Where there are no constitutional safeguards, the environment becomes ripe for abuses, including racial, religious, and ethnic profiling. And by many accounts from business travelers and others, these practices are occurring.

American citizens subjected to practices that the Constitution would forbid anywhere else in the country have the right to be aware of the official policy and the rationale underlying the practice. Advocates have raised many very relevant questions about these practices: How are individuals singled out for additional scrutiny? Where does any information go that is copied from a citizen's computer or electronic device? How does the agency dispose of gathered information that does not violate any law? How does the agency ensure that sensitive or proprietary information is not released? In what cases does the Department deem it relevant to interrogate a citizen about their religious or political beliefs? These are legitimate questions that need to be answered.

Privacy advocates have attempted to use the Freedom of Information Act (FOIA) to obtain the DHS policy with respect to questioning about religious and political beliefs and searches of handwritten materials or electronic equipment such as telephones, personal electronic devices, and computers. The DHS has not been forthcoming with this policy information and advocates have now sued to compel the agency's response. Americans are much more likely to tolerate security measures when they know that the basis for them is legitimate, and when their execution is reasonable. If a Federal agency bases its policy on racial or religious profiling, in the absence of any reasonable, particularized suspicion and contrary to our values, Americans are right to ask questions and demand justification.

I hope that today's hearing will help us understand the implications of these practices on privacy and civil liberties interests, as well as on business and economic concerns. Americans want security, but they also want a Federal Government that respects the diversity and privacy of its citizens.

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