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District Judge Upholds Government's Right to Search Electronics at Border

By SUSAN STELLIN

The government's right to search travelers' electronic devices at the border was upheld in a ruling released by a federal judge on Tuesday, which dismissed a lawsuit challenging this policy.

In his opinion, Judge Edward R. Korman of the Federal District Court for the Eastern District of New York found that the plaintiffs did not have standing for their lawsuit because such searches occur so rarely that "there is not a substantial risk that their electronic devices will be subject to a search or seizure without reasonable suspicion."

Even if the plaintiffs did have standing, Judge Korman found that they would lose on the merits of the case, ruling that the government does not need reasonable suspicion to examine or confiscate a traveler's laptop, cellphone or other device at the border.

"There's no silver lining to this decision," said Catherine Crump, a lawyer for the American Civil Liberties Union, which represented the plaintiffs. "It's not just that we lost the case. It's that the judge decided against us on multiple alternative grounds."

The lawsuit was filed in 2010 by Pascal Abidor, a graduate student in Islamic studies, who [sued the government](#) after American border agents removed him from an Amtrak train crossing from Canada to New York. He was handcuffed, placed in a cell and questioned for several hours, then his laptop was seized and kept for 11 days.

The National Association of Criminal Defense Lawyers and the National Press Photographers Association were also plaintiffs in the case, arguing that their members travel with confidential information that should be protected from government scrutiny.

In rejecting this argument, Judge Korman cited the rarity of electronic device searches and questioned whether travelers need to carry computers containing sensitive data when they travel abroad.

“While it is true that laptops may make overseas work more convenient,” he wrote, “the precautions plaintiffs may choose to take to ‘mitigate’ the alleged harm associated with the remote possibility of a border search are simply among the many inconveniences associated with international travel.”

Mr. Abidor said he was disappointed but not entirely surprised by the ruling.

“I can’t say it wasn’t foreseeable based on the line of questioning by the judge during the initial hearing,” Mr. Abidor said. “He just seemed so skeptical of the basic premise that people need to travel with devices.”

“These checks are essential to enforcing the law, and protecting national security and public safety,” Peter Boogaard, a spokesman for the Department of Homeland Security, said in a statement, “always with the shared goals of protecting the American people while respecting civil rights and civil liberties.”

In his opinion, Judge Korman emphasized how infrequently border agents [search or detain electronic devices](#), but it is unclear how accurately the government tracks these statistics.

According to Customs and Border Protection, the agency conducts about 15 device searches a day at American entry points. But a 2011 assessment of this practice by the Department of Homeland Security, which oversees the border agency, cited problems with how these incidents are counted.

The report noted: “C.B.P.’s system for entering the results of electronic device searches did not allow analysts to accurately identify incidents and seizures related to electronic device search activity, thus hindering C.B.P.’s ability to monitor and evaluate performance and making it difficult to provide accurate operational data concerning searches of electronic devices.”

While the courts have generally supported the government’s authority to search travelers at the border, based on the government’s interest in combating crime and terrorism, a decision last year placed some limits on more intrusive device searches.

In March, the Court of Appeals for the Ninth Circuit in California ruled in *United States v. Cotterman* that reasonable suspicion of criminal activity was required for a forensic search of a device confiscated at the border — a more extensive exam, as opposed to a cursory look at photos or other files.

That decision applies to states covered by the Ninth Circuit, including California, Washington, Oregon, Idaho, Montana, Nevada, Arizona, Alaska and Hawaii. Judge

Korman's ruling will not have as much legal impact, since it comes from a district court rather than a circuit court.

"It maintains the status quo, which is that the government is free everywhere except in the Ninth Circuit to conduct all types of electronic device searches without reasonable suspicion," Ms. Crump from the A.C.L.U. said. "We are considering an appeal, but we haven't made a decision one way or the other yet."