



Digital Privacy at the U.S. Border:

EFF's Guide to Your Constitutional Rights

At the U.S. border, border agents often search and seize the information we store in our phones and other digital devices. Government has more power at the border than other places, but the border is not a Constitution-free zone.

Freedom from unreasonable searches and seizures (4th Amendment)

The ordinary rule: Government cannot search and seize our property without a warrant from a judge based on probable cause of crime.

The border is different: For a “routine” search (such the disassembly of a gas tank), agents need no warrant or individualized suspicion. For a “non-routine” search (such as a strip search), lower courts have held that agents need reasonable suspicion, though the Supreme Court has not yet addressed this point.

What about device searches at the border? Lower courts are divided on whether they are routine or non-routine. In *U.S. v. Cotterman* (2013), the 9th Circuit U.S. Court of Appeals held that “forensic” device searches aided by sophisticated software are non-routine searches that require reasonable suspicion, while “manual” device searches are routine and require no warrant or individualized suspicion of criminal activity.

Riley v. California (2014), decided by the U.S. Supreme Court, held that police need a probable cause warrant to search an arrestee's phone. Under *Riley*, border agents should also be required to obtain a probable cause warrant for all device searches, whether forensic or manual.

Freedom of speech, association, and press (1st Amendment)

Device searches reveal anonymous speakers, private memberships in expressive associations, private decisions about what to read and watch, and confidential journalistic sources.

To protect these First Amendment interests, border agents should be required to get a probable cause warrant before searching devices.



Freedom from self-incrimination (5th Amendment)

- Courts are grappling with when people have a right to refuse law enforcement demands that they unlock their devices with their passwords or fingerprints.
- Only a judge, and not a border agent, can decide whether the Fifth Amendment protects this information.

Freedom from discrimination (1st, 5th, and 14th Amendments)

- Border guards may not discriminate against travelers on the basis of race, ethnicity, religion, and similar characteristics.

Want more information?

- Print EFF's pocket guide to protecting digital privacy at the border, at [eff.org/border-pocket-guide](https://www.eff.org/border-pocket-guide)
- Read EFF's longer border guide at [eff.org/border-search](https://www.eff.org/border-search)
- Read EFF's general surveillance self-defense manual at [ssd.eff.org](https://www.eff.org/ssd).