

Couple detained at Vermont border crossing sue government over warrantless phone search

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(Photo: Courtesy Channing Johnson/ACLU)

A couple who are naturalized U.S. citizens had their cellphones searched without a search warrant while crossing the Quebec-Vermont border in July.

Ghassan and Nadia Alasaad were returning July 12 to their home in Massachusetts from a family vacation when Customs and Border Protection officers at the Highgate Springs crossing in Vermont detained them for six hours and conducted the search.

The Alasaads' experience is similar to that of nine other travelers who had phones and laptops searched at various border crossings and airports around the country and is the basis of a lawsuit filed on Wednesday by the American Civil Liberties Union. The lawsuit, filed in federal court in Massachusetts, challenges the

policies that allow warrantless searches and seizures of devices at the border.

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A 2009 directive explicitly allows border patrol agents to search and detain electronic devices without a warrant. The agency cites a section of federal law as giving it authority for the searches.

According to the directive, a supervisor should be present for searches if possible. The searches should be done in the presence of the device's owner, "unless there are national security, law enforcement or other operational considerations that make it inappropriate to permit the individual to remain present."



In this Aug. 2, 2017 photo, U.S. Customs and Border Protection agent Mario Marquis checks in a driver at the port of entry on the Vermont-Quebec border in Norton, Vt. CBP is offering financial incentives for people willing to work at 21 remote border crossings across the country, including Norton. (Photo: WILSON RING/ASSOCIATED)

After returning home to Revere, a suburb of Boston, the Alasaads reached out to the ACLU of Massachusetts about their experience, said Jessie Rossman, one of the lawyers working on the case.

"They felt violated, they felt humiliated," said Rossman.

Rossman said the couple are naturalized American citizens. Ghassan Alasaad was born in Iraq, Nadia Alasaad was born in Morocco.

The Alasaads, who were travelling with their sick 11-year-old daughter, observed an officer searching Ghassan Alasaad's unlocked phone after being ordered into a secondary inspection, according to the 42-page complaint filed in federal court in Massachusetts.

Ghassan Alasaad, a limousine driver, asked the supervisor why the family was being detained. The supervisor said he had simply felt like ordering a secondary inspection, according to the court papers.

After five hours in detention, officers ordered Nadia Alasaad, a nursing student, to provide a password to her locked phone, according to the complaint.

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The U.S. Border Station in Highgate Springs, seen coming from Canada, on Monday, October 14, 2013, (Photo: GLENN RUSSELL/FREE PRESS, GLENN RUSSELL/FREE PRESS)

When she objected, because the phone had photos of herself and her daughters without headscarves, she said the officer told them the phone would be confiscated if she didn't provide a password. She wrote down the password. The Alasaads were told they would have to remain for several more hours while the phones were searched. Since their daughter was sick, they departed without the phones, which were returned to them 15 days later, according to the complaint.

The ALCU of Massachusetts, which filed the lawsuit in conjunction with the Electronic Freedom Frontier and the national ACLU, is arguing that the practice of searching and confiscating travelers phones, laptops and devices at the border violates the First and Fourth Amendments.

Rossman said the plaintiffs are not asking for money. Instead, they are asking the court to declare it is unlawful and unconstitutional to search electronic devices without a warrant supported by probable cause and order the government to stop the practice.

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"What is important to emphasize about phones is that our phones have become blueprints for our entire lives," she said. "A cellphone is not a suitcase."

Isma'il Kushkush, a journalist, had a similar experience at Highgate Springs, as he crossed back into the United States during a trip organized by Middlebury College, where he was attending a summer language program, according to the court papers.



This Aug. 2, 2017 photo shows the U.S. border crossing post at the Canadian border between Vermont and Quebec, Canada, at Beecher Falls, Vt. (Photo: WILSON RING/ASSOCIATED PRESS)

Other plaintiffs include Matthew Wright, whose laptop, phone and camera were confiscated in Denver after he returned from Asia, where he was participating in Ultimate Frisbee tournaments and spending time with friends, Diane Maye, a college professor and former U.S. Air Force officer whose phone and laptop were searched as she flew into Miami following a trip to Norway.

"None of the plaintiffs have been subsequently accused of any wrongdoing," Rossman said.

Less than 1/100th of 1 percent of international arrivals have a device searched upon entering the United States, according to statistics released by border patrol last April.

However, the device searches are increasing: 8,383 people had their devices searched between October 2015 and March 2016. That number jumped to 14,993 people between October 2016 and March 2017.

In a news release announcing the statistics, the agency said the increase was due to the need to enforce the nation's laws "in this digital age."

"CBP has adapted and adjusted its actions to align with current threat information," the release stated.

Customs and Border Protection said no court has concluded that the border search of electronic devices requires a warrant, including reviews by the Fourth and Ninth Circuit Courts of Appeals.

In 2008, the Ninth Circuit held that the Fourth Amendment does not require government agents to have reasonable suspicion before searching electronic devices in the border in *United States v. Arnold*.

But Rossman said a later Supreme Court case could have a significant impact on the ACLU's lawsuit.

In 2014, the Supreme Court ruled that warrantless cellphone searches during arrests are illegal in *Riley v. California*. The federal Court of Appeals has not issued a decision on border searches of electronic devices since that decision, Rossman said.

Before *Riley*, Rossman said, there wasn't a clear answer to how the courts treated cellphones. But in the decision, she said, there was a clear recognition by the Supreme Court about the vast amount of personal information people keep on their phones.

