

AMENDMENT NO. _____ Calendar No. _____

Purpose: To place restrictions on searches and seizures of electronic devices at the border.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. LEAHY

Viz:

1 At the end of the bill, add the following:

2 **SECTION 7. SEARCHES AND SEIZURES OF ELECTRONIC DE-**
3 **VICES AT THE BORDER.**

4 (a) DEFINITIONS.—In this section:

5 (1) FORENSIC SEARCH.—The term “forensic
6 search” means any examination of an electronic de-
7 vice that—

8 (A) is conducted for longer than 4 hours;

9 (B) is conducted with the assistance of any
10 other electronic device, electronic equipment, or

1 software, including software enabling the
2 searching, scanning, or indexing of the contents
3 of the device;

4 (C) involves the copying or documentation
5 of data stored on the device; or

6 (D) is conducted in any other manner that
7 would not fall within the definition of a manual
8 search or a search described in section 4(1).

9 (2) MANUAL SEARCH.—The term “manual
10 search” means the examination of an electronic de-
11 vice that is conducted manually without—

12 (A) the assistance of any other electronic
13 device, electronic equipment, or software, in-
14 cluding the use of special search programs; or

15 (B) the entry of any password, passcode,
16 fingerprint, account information, or other bio-
17 metric identifier that permits access to data
18 otherwise protected by technological means.

19 (b) IN GENERAL.—Except as otherwise provided in
20 this section, an official of the Department of Homeland
21 Security may not search or seize an electronic device
22 transported by a United States person at the international
23 border.

24 (c) MANUAL SEARCHES.—An electronic device trans-
25 ported by an individual at the border may be subject to

1 a manual search by an official of the Department of
2 Homeland Security, in accordance with the procedures de-
3 scribed in subsection (g) if the official has a reasonable
4 suspicion that—

5 (1) the individual transporting the device—

6 (A) is carrying contraband or is otherwise
7 transporting goods or persons in violation of the
8 laws enforced by the Department of Homeland
9 Security; or

10 (B) is inadmissible or otherwise not enti-
11 tled to enter the United States under such laws;
12 and

13 (2) the device contains information or evidence
14 relevant to a violation referred to in paragraph (1).

15 (d) SEIZURES.—An electronic device transported by
16 an individual at the border may be seized by an official
17 of the Department of Homeland Security, in accordance
18 with the procedures described in subsection (g) if the offi-
19 cial has probable cause to believe that—

20 (1) the individual—

21 (A) is carrying contraband or is otherwise
22 transporting goods or persons in violation of the
23 laws enforced by the Department of Homeland
24 Security;

1 (B) is inadmissible or otherwise not enti-
2 tled to enter the United States under such laws;
3 or

4 (C) is in violation of any Federal or State
5 law punishable by more than 1 year; and

6 (2) the electronic device contains information or
7 evidence relevant to a violation referred to in para-
8 graph (1).

9 (e) FORENSIC SEARCHES.—An electronic device
10 transported by an individual at the border may be subject
11 to forensic search only pursuant to a warrant issued using
12 the procedures described in the Federal Rules of Criminal
13 Procedure (or, in the case of a State court, issued using
14 State warrant procedures) by a court of competent juris-
15 diction.

16 (f) ADMISSIBILITY OF EVIDENCE.—Information ob-
17 tained or derived pursuant to a violation of this section—

18 (1) may not be used as the basis for dem-
19 onstrating the inadmissibility or removability of an
20 individual; and

21 (2) may not be received in evidence or disclosed
22 in any trial, hearing, or other proceeding in or be-
23 fore any court, grand jury, department, officer,
24 agency, regulatory body, legislative committee, or

1 other authority of the United States, a State, or a
2 political subdivision of a State.

3 (g) PROCEDURES FOR SEARCHES AND SEIZURES OF
4 ELECTRONIC DEVICES AT THE BORDER.—

5 (1) INITIATING A SEARCH OR SEIZURE.—Prior
6 to initiating any search or seizure of an electronic
7 device transported by an individual at the border
8 pursuant to the authority under this section, the of-
9 ficial of the Department of Homeland Security initi-
10 ating the search or seizure shall—

11 (A) obtain supervisory approval to engage
12 in the search or seizure; and

13 (B) record—

14 (i) the nature of the reasonable sus-
15 picion or probable cause and the specific
16 facts or bases for that determination; and

17 (ii) the age, sex, country of origin,
18 citizenship or immigration status, eth-
19 nicity, and race of the individual trans-
20 porting the electronic device.

21 (2) CONDITIONS FOR A MANUAL SEARCH.—

22 (A) PRESENCE OF THE INDIVIDUAL.—The
23 individual transporting the electronic device
24 subject to a manual search shall be permitted

1 to remain present during the search of the elec-
2 tronic device.

3 (B) SCOPE OF MANUAL SEARCH.—A man-
4 ual search—

5 (i) shall be conducted by an official of
6 the Department of Homeland Security
7 manually, without the assistance of any
8 electronic device or electronic equipment;

9 (ii) shall be tailored to the reasonable
10 suspicion recorded by the official of the
11 Department of Homeland Security before
12 the manual search began;

13 (iii) shall be confined to documents,
14 files, or other electronic information stored
15 on the electronic device that could reason-
16 ably contain information or evidence rel-
17 evant to a violation described in paragraph
18 (3) and are accessible without the entry of
19 any password, passcode, fingerprint, or
20 other biometric identifier; and

21 (iv) may not exceed a total of 4 hours.

22 (C) DESTRUCTION OF INADVERTENTLY
23 COLLECTED INFORMATION.—Unless an official
24 of the Department of Homeland Security deter-
25 mines, not later than 5 days after a manual

1 search, that information obtained from the elec-
2 tronic device is evidence of a violation described
3 in paragraph (3), an official of the Department
4 shall delete any information collected from or
5 about the device from Department records not
6 later than 10 days after the date on which the
7 search was conducted.

8 (3) CONDITIONS FOR A SEIZURE OF AN ELEC-
9 TRONIC DEVICE.—

10 (A) REQUIREMENT FOR WARRANT OR
11 COURT ORDER APPROVING SEIZURE.—

12 (i) IN GENERAL.—Not later than 48
13 hours after an official of the Department
14 of Homeland Security seizes an electronic
15 device pursuant to the authority under this
16 section, an official of the Department shall
17 seek a warrant or order approving the sei-
18 zure under the procedures described in the
19 Federal Rules of Criminal Procedure (or,
20 in the case of a State court, issued using
21 State warrant procedures).

22 (ii) NO WARRANT OR ORDER.—If a
23 warrant or order is denied or fails to be
24 issued after the seizure, an official of the
25 Department of Homeland Security shall

1 immediately return the electronic device to
2 the individual from whom it was seized.

3 (B) SUSPENSION AND PROHIBITION OF
4 SEARCH.—An electronic device seized at the
5 border pursuant to the authority under this sec-
6 tion may not be accessed or searched by any
7 governmental entity before the issuance of a
8 warrant or court order authorizing the access-
9 ing or search of the device.

10 (h) REPORTING.—The Secretary of Homeland Secu-
11 rity shall submit an annual report to the Committee on
12 the Judiciary of the Senate, the Committee on the Judici-
13 ary of the House of Representatives, the Committee on
14 Homeland Security and Governmental Affairs of the Sen-
15 ate, and the Committee on Homeland Security of the
16 House of Representatives that details—

17 (1) the number of electronic devices subject to
18 a manual search pursuant to the authority under
19 this section;

20 (2) the number of electronic devices subject to
21 a forensic search pursuant to the authority under
22 this section;

23 (3) the number of electronic devices seized pur-
24 suant to the authority under this section;

1 (4) statistics regarding the age, sex, country of
2 origin, citizenship or immigration status, ethnicity,
3 and race of the individuals transporting electronic
4 devices that were subject to a manual search, a fo-
5 rensic search, or seizure; and

6 (5) the number of individuals whose electronic
7 devices were searched or seized pursuant to the au-
8 thority under this section and were later charged
9 with a criminal offense based on information ob-
10 tained from such search or seizure.

11 (i) SAVINGS PROVISIONS.—Nothing in this section
12 may be construed—

13 (1) to affect the authority of any law enforce-
14 ment official to conduct any other lawful search
15 predicated on an established exception, other than
16 the exception for border searches, to the warrant re-
17 quirement of the Fourth Amendment to the Con-
18 stitution of the United States; or

19 (2) to require the individual subject to a search
20 of his or her electronic device to provide any pass-
21 word, passcode, fingerprint, faceprint, or other bio-
22 metric identifier without his or her consent, in viola-
23 tion of the Fifth Amendment to the Constitution of
24 the United States.