

**AMENDMENT TO RULES COMMITTEE PRINT OF
H.R. 3523
OFFERED BY MS. LORETTA SANCHEZ OF
CALIFORNIA**

At the end of the bill, add the following new section:

1 **SEC. 3. RULE WITH RESPECT TO BORDER SECURITY**
2 **SEARCHES OF ELECTRONIC DEVICES.**

3 (a) **IN GENERAL.**—Not later than 180 days after the
4 date of the enactment of this Act, the head of the depart-
5 ment or agency of the Federal Government, shall issue a
6 rule with respect to the scope of and procedural and rec-
7 ordkeeping requirements associated with border security
8 searches of electronic devices.

9 (b) **CONTENT.**—The rule issued pursuant to sub-
10 section (a) shall include the following:

11 (1) A requirement that information collected
12 during a border security search of an electronic de-
13 vice that is determined to be commercial informa-
14 tion, including trade secrets, information subject to
15 attorney-client privilege, information subject to doc-
16 tor-patient privilege, or information subject to an-
17 other privilege or protection shall be handled con-
18 sistent with the laws, rules, and regulations gov-

1 erning such information and shall not be shared
2 with a Federal, State, local, tribal, or foreign agency
3 unless it is determined that such agency has the
4 mechanisms in place to comply with such laws, rules,
5 and regulations.

6 (2) A requirement that authorized agents, to
7 the greatest extent practicable, conduct all border
8 security searches of electronic devices in the pres-
9 ence of a supervisor and, where appropriate, in the
10 presence of the individuals whose electronic devices
11 are subject to such searches.

12 (3) A determination of the number of days that
13 an electronic device subjected to a border security
14 search or the information collected from such device
15 may be retained, unless probable cause exists, that
16 prohibits retention exceeding the period necessary to
17 translate, decrypt, or reasonably search such device
18 or information and that requires such information to
19 be destroyed if in the custody of an authorized agent
20 after such number of days.

21 (4) A requirement that if information collected
22 from an electronic device subjected to a border secu-
23 rity search is copied, shared, retained, or entered
24 into an electronic database, the individual from
25 whose electronic device such information is collected

1 shall receive written notification of such copying,
2 sharing, retention, or entry unless such notification
3 would hinder an investigation involving national se-
4 curity or would meet another criteria established by
5 the head of the department or agency of the Federal
6 Government in the rule.

7 (5) A requirement that an individual subjected
8 to a border security search of an electronic device
9 shall receive a receipt for such device if such device
10 is removed from the possession of such individual.

11 (6) A requirement that an individual subjected
12 to a border security search of an electronic device
13 shall receive notice of how to report abuses or con-
14 cerns and how to seek redress from the head of the
15 department or agency of the Federal Government.

16 (7) A requirement that information on the
17 rights of individuals with respect to border security
18 searches and head of the department or agency of
19 the Federal Government redress procedures shall be
20 posted at all ports of entry in locations that are like-
21 ly to be viewed by individuals subject to border secu-
22 rity searches.

23 (8) A privacy impact assessment of the rule,
24 that includes recommendations with respect to the
25 copying, sharing, retention, and entry into an elec-

1 tronic database of personally identifiable information
2 collected from electronic devices subjected to a bor-
3 der security search.

4 (9) A civil liberties impact assessment of the
5 rule.

6 (c) TRAINING AND AUDITING WITH RESPECT TO
7 THE RULE.—

8 (1) TRAINING.—The head of the department or
9 agency of the Federal Government shall provide each
10 authorized agent with appropriate training to con-
11 duct border security searches of electronic devices in
12 accordance with the rule issued pursuant to sub-
13 section (a). The training shall include instruction on
14 constitutional, privacy, civil rights, and civil liberties
15 issues related to such searches.

16 (2) AUDITING.—The head of the department or
17 agency of the Federal Government, acting through
18 the respective Inspector General, shall develop and
19 annually administer an auditing mechanism to re-
20 view whether authorized agents are conducting bor-
21 der security searches of electronic devices in accord-
22 ance with the rule issued pursuant to subsection (a).

23 (d) REPORT.—Not later than 180 days after the ef-
24 fective date of the rule issued pursuant to subsection (a),
25 and quarterly thereafter, the head of the department or

1 agency of the Federal Government shall submit to the rel-
2 evant committees in both the House of Representatives
3 and Senate a report that shall include the following:

4 (1) A description of the activities of authorized
5 agents with respect to border security searches of
6 electronic devices.

7 (2) A description of the manner in which the
8 head of the department or agency of the Federal
9 Government has complied with this Act.

10 (3) The number, by port of entry, of border se-
11 curity searches of electronic devices conducted dur-
12 ing the reporting period.

13 (4) The number, by port of entry, of instances
14 during the reporting period that information from
15 an electronic device subjected to a border security
16 search was retained, copied, shared, or entered in an
17 electronic database, including the number of elec-
18 tronic devices retained as the result of a border se-
19 curity search.

20 (5) The race, ethnicity, national origin, and citi-
21 zenship of each individual whose electronic device
22 was subjected to a border security search during the
23 reporting period, to determine the existence or ab-
24 sence of racial profiling.

1 (6) The number of instances during the report-
2 ing period that information collected from an elec-
3 tronic device subjected to a border security search
4 was referred to a law enforcement or intelligence
5 agency for further action, including whether such in-
6 formation resulted in a prosecution or conviction.

7 (e) DEFINITIONS.—In this section:

8 (1) AUTHORIZED AGENT.—The term “author-
9 ized agent” means an agent, officer, or official of
10 head of the department or agency of the Federal
11 Government who is authorized to conduct a border
12 security search.

13 (2) BORDER SECURITY SEARCH.—The term
14 “border security search” means a search by an au-
15 thorized agent of persons, baggage, or cargo enter-
16 ing, departing, or passing through the United States
17 through any port of entry.

18 (3) ELECTRONIC DEVICE.—The term “elec-
19 tronic device” means an electronic, magnetic, opti-
20 cal, electrochemical, or other high-speed data proc-
21 essing device performing logical, arithmetic, or stor-
22 age functions, such as a computer, a cellular tele-
23 phone, or any other device used for electronic com-
24 munication or for storing electronic, digital or ana-
25 log data, and which includes any data storage facil-

- 1 ity or communications facility directly related to or
- 2 operating in conjunction with such device.

