

Court: Border search of businessman's laptop 'unreasonable'

May 8 2015, by Anne Flaherty

A federal court has ruled that the government's search of a traveling businessman's laptop at the California border was unreasonable and violated his privacy.

In an opinion posted Friday, U.S. District Court Judge Amy Berman Jackson suppressed evidence obtained from the computer of South Korean businessman Jae Shik Kim, undercutting the [government's](#) case that he conspired to sell aircraft technology illegally to Iran. Jackson said that federal law enforcement improperly used Kim's border crossing as an excuse to seize his computer and gather evidence it needed to prove suspected arms control violations.

The ruling was a sharply worded rebuke of the Obama administration's treatment of laptops as containers like any other that can be searched without a warrant and without time limits to protect national security.

The [search](#) was unreasonable because it "was supported by so little suspicion of ongoing or imminent criminal activity" and "was so invasive of Kim's privacy," she wrote.

President Barack Obama and his predecessors have maintained that people crossing into U.S. territory aren't protected by the Fourth Amendment against unreasonable search and seizure. That policy is intended to allow intrusive searches that keep drugs, child pornography and other illegal imports out of the country. But it also means the government could, at least in theory, target travelers for no reason other

than political advocacy, for example.

The American Civil Liberties Union and similar groups have argued that the policy has been used to build criminal cases against individuals when the government can't obtain a warrant.

In one case, a young [computer programmer](#) named David House sued the government for taking and copying the contents of his [laptop](#), thumb drive and cellphone at the border after vacationing with his girlfriend in Mexico. House had been an associate of Army Pvt. Chelsea Manning, who was convicted of leaking classified information. In documents released in the case, federal officials noted that House had left the country and were waiting for his return to search his laptop.

The government eventually acknowledged that House had not committed a crime and promised as part of a 2013 legal settlement to destroy copies of his personal data obtained in the search.

But court rulings on the matter have been mixed.

In spring 2013, the 9th U.S. Circuit Court of Appeals ruled that the government should have reasonable suspicion before conducting a comprehensive search of an electronic device. But that ruling only applies to the nine Western states and Guam that fall under that court's jurisdiction, and it left questions about what constitutes a comprehensive search.

Later that same year, a judge at the U.S. District Court for the Eastern District of New York ruled in favor of laptop searches at the border, saying they were so rare that citizens weren't at risk of being violated.

In the latest ruling, Jackson said the search of Kim's laptop clearly went beyond a routine border inspection because it involved transporting the

computer 150 miles from the [airport](#) and holding it indefinitely so officials could copy and review its content.

"After hearing all of the facts, the court cannot help but ask itself whether the examination in this case can accurately be characterized as a border search at all. And if not, it surely cannot be justified by the concerns underlying the border search doctrine," Jackson wrote.

According to a January announcement by the Justice Department, Kim and his company, Karham Eng. Corp., located in Seoul, South Korea, conspired with individuals in China and Iran to buy U.S. navigation technology used in aircraft and missiles and sell them to Iran.

Officials at the Justice Department declined comment. The Department of Homeland Security did not immediately respond to requests for comment.

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