

**U.S. Senate Homeland Security and Governmental Affairs Committee**  
**Subcommittee on Federal Spending Oversight and Emergency Management**  
**“Examining Warrantless Smartphone Searches at the Border”**

**July 11, 2018**

**Senator Gary C. Peters, Ranking Member**

*Opening Statement*

Thank you, Mr. Chairman, for calling today’s hearing. I appreciate your continued willingness to work in a bipartisan way to take on tough questions about our core values as Americans, our rights and responsibilities as citizens, and our role in the centuries long fight to ensure equal protection under the law.

The problem we are exploring today requires us to examine detailed policy directives and puzzle over how to apply 18<sup>th</sup> Century words to 21<sup>st</sup> Century technology. The details are important, undoubtedly. But at its core, this hearing is about the liberties guaranteed to us by the Constitution. It is about our freedom to travel, our right to be secure against unreasonable search and seizure. It is about our right to be treated equally under the law, without regard to race, national origin, or religion.

The Fourth Amendment states clearly, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

U.S. Customs and Border Protection (CBP) asserts that the Fourth Amendment does not require a CBP officer to obtain a warrant, or even have individualized suspicion, before searching a smartphone or directing travelers to unlock their devices for official inspection. Today’s witnesses, like most of the courts that have considered the question, disagree.

This issue is of particular significance to Michigan. Michigan shares hundreds of miles of international border with Ontario, Canada, including the Ambassador Bridge, one of North America’s busiest border crossings. Most importantly, Michigan is home to a large and extraordinarily vibrant and patriotic community of Arab and Muslim-Americans. Community leaders tell me that they feel unfairly targeted by CBP. I have heard countless stories of my constituents, returning from family vacations, medical conferences, work trips—you name it—being singled out for additional screening, being required to turn over phones and computers, provide their passwords, and wait for hours while their devices are searched. Some constituents have reported being asked about their views on politics or foreign affairs.

CBP says that travelers can file complaints if they feel that they have been mistreated. But my constituents fear that complaining will cause further targeting. And who among us—tired from travel and eager to return home to family—wouldn't feel vulnerable in that situation?

One of my constituents described this perceived targeting as a “backdoor travel ban.” The fear of unfair treatment and the profound inconvenience of repeated and prolonged searches creates an immense disincentive to travel. It hurts families. It impacts commerce. We have to do better. Under the Constitution, my Arab and Muslim-American constituents are entitled to the same liberty, the same privacy, and the same freedom of movement that I am entitled to.

CBP plays an essential role in securing our border and protecting our national security. It is critical that they have the tools they need to succeed. But it is no less critical that those tools adhere to the Constitution in their design and application, and that no law-abiding American is unfairly singled out.

Just over the last few days, I have received several heartfelt letters describing unfair and unconstitutional treatment and asking for Congressional intervention. Mr. Chairman, I ask that the letters from the Arab American Institute, the Arab-American Civil Rights League, the American-Arab Anti-Discrimination Committee, and the Electronic Privacy Information Center be entered into the record.

Congress should weigh in and establish clear, constitutional rules and a means for ensuring that they are applied equitably. I am grateful that Senator Paul, with Senators Wyden, Leahy, and Daines have taken the lead in identifying a path forward. I hope that this hearing goes a long way in advancing that effort.

I yield back.