

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3116
OFFERED BY MS. LORETTA SANCHEZ OF
CALIFORNIA**

At the appropriate place in the bill, insert the following:

1 **SEC. ____ . BORDER SECURITY SEARCHES OF ELECTRONIC**
2 **DEVICES.**

3 (a) **RULE WITH RESPECT TO SEARCHES.—**

4 (1) **IN GENERAL.—**Not later than 180 days
5 after the date of the enactment of this Act, the Sec-
6 retary, acting through the Commissioner of United
7 States Customs and Border Protection, in coordina-
8 tion with the Assistant Secretary of Homeland Secu-
9 rity for United States Immigration and Customs
10 Enforcement and the senior official appointed pursu-
11 ant to section 222 of the Homeland Security Act of
12 2002 (6 U.S.C. 142), shall issue a rule with respect
13 to the scope of and procedural and record-keeping re-
14 quirements associated with border security searches
15 of electronic devices.

16 (2) **CONTENT.—**The rule issued pursuant to
17 paragraph (1) shall include the following:

1 (A) A requirement that information col-
2 lected during a border security search of an
3 electronic device that is determined to be com-
4 mercial information, including trade secrets, in-
5 formation subject to attorney-client privilege,
6 information subject to doctor-patient privilege,
7 or information subject to another privilege or
8 protection shall be handled consistent with the
9 laws, rules, and regulations governing such in-
10 formation and shall not be shared with a Fed-
11 eral, State, local, tribal, or foreign agency un-
12 less it is determined that such agency has the
13 mechanisms in place to comply with such laws,
14 rules, and regulations.

15 (B) A requirement that authorized agents,
16 to the greatest extent practicable, conduct all
17 border security searches of electronic devices in
18 the presence of a supervisor and, where appro-
19 priate, in the presence of the individuals whose
20 electronic devices are subject to such searches.

21 (C) A determination of the number of days
22 that an electronic device subjected to a border
23 security search or the information collected
24 from such device may be retained, unless prob-
25 able cause exists, that prohibits retention ex-

1 ceeding the period necessary to translate,
2 decrypt, or reasonably search such device or in-
3 formation and that requires such information to
4 be destroyed if in the custody of an authorized
5 agent after such number of days.

6 (D) A requirement that if information col-
7 lected from an electronic device subjected to a
8 border security search is copied, shared, re-
9 tained, or entered into an electronic database,
10 the individual from whose electronic device such
11 information is collected shall receive written no-
12 tification of such copying, sharing, retention, or
13 entry unless such notification would hinder an
14 investigation involving national security or
15 would meet another criteria established by the
16 Secretary in the rule.

17 (E) A requirement that an individual sub-
18 jected to a border security search of an elec-
19 tronic device shall receive a receipt for such de-
20 vice if such device is removed from the posses-
21 sion of such individual.

22 (F) A requirement that an individual sub-
23 jected to a border security search of an elec-
24 tronic device shall receive notice of how to re-
25 port abuses or concerns and how to seek re-

1 dress from the Department of Homeland Secu-
2 rity.

3 (G) A requirement that information on the
4 rights of individuals with respect to border se-
5 curity searches and Department of Homeland
6 Security redress procedures shall be posted at
7 all ports of entry in locations that are likely to
8 be viewed by individuals subject to border secu-
9 rity searches.

10 (H) A privacy impact assessment of the
11 rule, as prepared by the senior official ap-
12 pointed pursuant to section 222 of the Home-
13 land Security Act of 2002, that includes rec-
14 ommendations with respect to the copying,
15 sharing, retention, and entry into an electronic
16 database of personally identifiable information
17 collected from electronic devices subjected to a
18 border security search.

19 (I) A civil liberties impact assessment of
20 the rule, as prepared by the Office for Civil
21 Rights and Civil Liberties of the Department of
22 Homeland Security.

23 (J) TRAINING AND RECORDING WITH RESPECT TO
24 THE RULE.—

1 (1) TRAINING.—The Secretary shall provide
2 each authorized agent with appropriate training to
3 conduct border security searches of electronic devices
4 in accordance with the rule issued pursuant to sub-
5 section (a). The training shall include instruction on
6 constitutional, privacy, civil rights, and civil liberties
7 issues related to such searches.

8 (2) AUDITING.—The Secretary, acting through
9 the Inspector General of the Department of Home-
10 land Security, shall develop and annually administer
11 an auditing mechanism to review whether authorized
12 agents are conducting border security searches of
13 electronic devices in accordance with the rule issued
14 pursuant to subsection (a).

15 (c) REPORT.—Not later than 180 days after the ef-
16 fective date of the rule issued pursuant to subsection (a);
17 and quarterly thereafter, the Secretary shall submit to the
18 Committee on Homeland Security of the House of Rep-
19 resentatives and to the Committee on Homeland Security
20 and Governmental Affairs of the Senate a report that shall
21 include the following:

22 (1) A description of the number of authorized
23 agents with respect to border security searches of
24 electronic devices.

1 (2) A description of the manner in which the
2 Department of Homeland Security has complied
3 with this section.

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

7 (4) The number, by port of entry, of instances
8 during the reporting period that information from
9 an electronic device subjected to a border security
10 search was retained, copied, shared, or entered in an
11 electronic database, including the number of elec-
12 tronic devices retained as the result of a border se-
13 curity search.

14 (5) The race, ethnicity, national origin, and citi-
15 zenship of each individual whose electronic device
16 was subjected to a border security search during the
17 reporting period, to determine the existence or ab-
18 sence of racial profiling.

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

1 (d) DEFINITIONS.—In this section, the following defi-
2 nitions apply:

3 (1) AUTHORIZED AGENT.—The term “author-
4 ized agent” means an agent, officer, or official of
5 United States Customs and Border Protection,
6 United States Immigration and Customs Enforce-
7 ment, or any other office or agency of the Depart-
8 ment of Homeland Security who is authorized to
9 conduct a border security search.

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

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

1 (4) SECRETARY.—The term “Secretary” means
2 the Secretary of Homeland Security.

