

The Second Circuit Rules That the Government May Conduct Warrantless Searches of Electronic Devices at the Border

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On September 17, the Second Circuit ruled in *United States v. Alisigwe* that the government does not need a warrant, probable cause, or even reasonable suspicion to search the contents of a cellphone or other electronic device at the United States border. This application of the so-called “border search” exception to the Fourth Amendment’s prohibition on warrantless searches and seizures brings the Second Circuit in line with every other Circuit Court to have considered this issue directly. The decision further highlights the risks that international travelers face when entering the United States and reinforces the need to take precaution when traveling with sensitive information.

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I. Background

The Appellant in *Alisigwe* was convicted following a trial of conspiracy to commit bank fraud, bank fraud, and money laundering conspiracy. Prior to trial, Alisigwe, a lawful permanent resident, had moved to suppress evidence collected from his cellphone following a warrantless search of its contents by Homeland Security and Border Protection agents at John F. Kennedy International Airport, arguing that the search was unconstitutional because the government lacked a warrant or reasonable suspicion that a crime had been committed.¹ The district court denied the motion, ruling that while reasonable suspicion was required to search the contents of Alisigwe's cellphone, there was no constitutional violation because the government had reasonable suspicion based on pre-existing investigations into Alisigwe. After he was convicted, Alisigwe appealed that decision to the Second Circuit. The Second Circuit (Judge Menashi, joined by Judge Gonzalez of the U.S. District Court for the Eastern District of New York, sitting by designation, with Judge Eunice Lee concurring in the judgment) affirmed Alisigwe's conviction,² holding that the district

court had properly denied Alisigwe's motion to suppress because "[n]o suspicion is required before the government searches a traveler's cellphone at the border."³ The court also rejected an argument raised in an amicus brief filed in support of the appeal that the First Amendment "impose[d] an independent warrant requirement".⁴

Prior to its decision in *Alisigwe*, the Second Circuit was [one of the few circuit courts](#) that had yet to rule on whether the government could search the contents of cell phones or other electronic devices at the border without a warrant or reasonable suspicion. Now, the Second Circuit joins the First, Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits in holding that the government has expansive authority to search cell phones and other devices at the border.⁵ This ruling is important both because of the high number of international entrants into jurisdictions within the Second Circuit, including New York City, every year, and because before the *Alisigwe* decision, a number of lower courts within the Second Circuit had held that warrantless searches of international travelers' devices at the border were unconstitutional.⁶

¹ *United States v. Alisigwe*, No. 24-960, at 7-8 (2d Cir. Sept. 17, 2026).

² The Court also held that the district court did not err by applying two sentencing enhancements: (1) an eighteen-point enhancement under § 2B1.1(b)(1)(J) because the offense involved an intended loss of at least \$3,500,000, and (2) a two-point enhancement under § 3C1.1 for obstruction of justice. *See id.* at 6-7.

³ *Id.* at 3-4.

⁴ *Id.* at 6-7.

⁵ *Alasaad v. Mayorkas*, 988 F.3d 8 (1st Cir. 2021); *United States v. Belmonte Cardozo*, --- F.4th ---, 2026 WL 2014649, at *7 (4th Cir. 2026) ("manual searches of cell phones at the border are routine border searches which don't require individualized suspicion"); *United States v. Castillo*, 70 F.4th 894, 898 (5th Cir. 2023) ("the government can conduct manual cell phone searches at the border without individualized suspicion"); *United States v. Mendez*, 203

F.4th 1303, 1310 (7th Cir.) ("manual searches of a traveler's electronic device are 'routine' border searches requiring no individualized suspicion."); *United States v. Cano*, 934 F.3d 1002, 1016 (9th Cir. 2019) (reasonable suspicion not required to conduct manual search of cell phone at the border to "determine whether the phone contains contraband"); *United States v. Tousey*, 890 F.3d 1227, 1233 (11th Cir. 2018) ("We see no reason why the Fourth Amendment would require suspicion for a forensic search of an electronic device when it imposes no such requirement for a search of other personal property.").

⁶ *United States v. Smith*, 673 F. Supp. 3d 381, 393 (S.D.N.Y. 2023); *United States v. Sultanov*, 742 F. Supp. 3d 258, 284 (E.D.N.Y. 2024); *United States v. Fox*, No. 23-CR-227, 2024 WL 3520767, at *6 (E.D.N.Y. July 24, 2024); *United States v. Djibo*, 151 F. Supp. 3d 297, 309 (E.D.N.Y. 2015).

II. The Second Circuit's Decision

In his appeal, Alisigwe argued that the Supreme Court's holding in *Riley v. California* should be extended to apply to warrantless searches at the border. The Supreme Court in *Riley* ruled that, absent exigent circumstances, the government must obtain a warrant before searching the contents of a person's cell phone in a search incident to arrest.⁷ The Second Circuit disagreed with Alisigwe's argument, noting that the warrant exception for a search incident to arrest and the border search exception address different risks.⁸ The Court observed that the search incident to arrest exception is designed to mitigate the risk of harm to officers and the destruction of evidence, neither of which necessitate that a seized phone be searched on an urgent basis once the phone is secured, while the border search exception is designed to facilitate the government's "broad authority to control who and what enters the country."⁹ Accordingly, the Court reasoned that the principles animating the Supreme Court's decision in *Riley* do not apply to searches at the border.¹⁰ The Court also rejected Alisigwe's argument that cell phones are entitled to greater protections than ordinary property, holding that "[t]he government has as strong an interest in digital contraband as in other property."¹¹

While the Court ruled that a basic search of a traveler's electronic device is constitutional, it did leave open the possibility that the Fourth Amendment may bar "non-routine" or more invasive warrantless border searches. Although it

chose not to address the point directly, the Second Circuit suggested that a warrant or reasonable suspicion may be required if, for example, the government sends the seized device to a second location for a forensic examination.¹²

The Second Circuit also addressed a separate question raised in an amicus brief submitted to the Court,¹³ whether the "First Amendment imposes its own warrant requirements for cellphone searches because 'electronic device searches necessarily sweep up a great deal of expressive and sensitive information' and 'necessarily implicate . . . expressive activity.'"¹⁴ The Court rejected the amici's arguments, holding that it would be improper to interpret the First Amendment to provide additional protections concerning a right directly addressed by the Fourth Amendment.¹⁵ Further the Court held that such a prohibition in the First Amendment would be illogical because it would, for example, treat identical expressive conduct differently based on whether it was found in a physical medium (such as a journal or diary) or a digital one (for example, the "Notes" application in a cell phone).¹⁶ It also observed that other courts have long held that the First Amendment does not override the government's interest in protecting the border where expressive activities relate to the government's interests in deciding who and what may enter the country.¹⁷

Judge Eunice Lee also wrote separately, concurring in the judgment. While she agreed with the majority that the government may search

⁷ *Riley v. California*, 573 U.S. 373, 403 (2014).

⁸ *Alisigwe*, No. 24-960, at 17-18.

⁹ *Id.* at 6.

¹⁰ *Id.* at 26.

¹¹ *Id.* at 12.

¹² *Id.* at 26 n.9.

¹³ See Brief of Amici Curiae the Knight First Amendment Institute at Columbia University and Reporters Committee

for Freedom of the Press, *United States v. Alisigwe*, No. 24-960 (2d Cir. 2025),

¹⁴ *Id.* at 37.

¹⁵ *Id.* at 35.

¹⁶ *Id.*

¹⁷ *Id.* at 37-38.

electronic devices at the border without a warrant or probable cause, she disagreed that such searches were “routine” and thus did not require individualized suspicion.¹⁸ Specifically, Judge Lee emphasized the unique nature of cellphones and the “unparalleled ability of a cellphone search to invade an individual’s privacy.”¹⁹ Although she did not recommend an alternative rule to the one adopted by the majority, she cautioned that the court “should hesitate” to weaken Fourth Amendment protections by allowing suspicionless searches of cellphones at the border.²⁰ Judge Lee also disagreed with the majority’s decision to rule on the First Amendment argument raised by the amici, arguing that the appeal could be fully decided on Fourth Amendment grounds, and therefore it would be more appropriate to address the First Amendment theory in a case that properly raised the issue.²¹

III. Conclusion

The Second Circuit’s decision in *Alisigwe* highlights the risks that international travelers, whether United States citizens or not, face when entering the country with sensitive information stored on electronic devices. It also serves as a reminder that travelers should take extra precautions when entering the United States from abroad. While there are circuit courts that have yet to rule on the constitutionality of warrantless border searches of electronic devices, the Second Circuit now joins every court to have ruled on the issue by holding that the government can conduct at least manual searches without a warrant or even reasonable suspicion. Travelers should therefore expect that the government can conduct at least manual searches of a cellphone or other device on

their person and should take appropriate steps to mitigate the risks associated with such searches.

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¹⁸ *United States v. Alisigwe*, No. 24-960, at 2 (2d Cir. Sept. 17, 2026) (Lee, J., concurring).

¹⁹ *Id.* at 6.

²⁰ *Id.* at 22.

²¹ *Id.* at 21.