



**For Immediate Release
June 26, 2008**

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Testimony Advocates New Searches for Child Pornography

Washington, DC – George Mason University Law Professor Nathan Sales testified today before the Senate Judiciary Committee to defend the constitutionality of border inspections of laptop computers without probable cause. Sales cited the need of U.S. Customs and Border Patrol (CBP) officials to search laptop computers for contraband media, including child pornography, as well as terrorist materials.

Although the government must ordinarily establish probable cause and obtain a judge’s warrant before conducting an invasive search or seizure, border searches are exceptional, as the Supreme Court has previously recognized. Sales argued that the United States has an “inherent authority” as a sovereign nation to protect its territorial integrity by screening for any illegal and harmful imports. In fact, he noted, just two months before the Framers of the Constitution sent the Fourth Amendment to the states for ratification, “Congress enacted legislation granting customs officials ‘full authority’ to search ‘any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed.’”

The Supreme Court has yet to address whether border agents may perform suspicionless searches of laptops. However, Sales contended that CBP laptop inspections would likely be found to qualify as “routine searches for which reasonable suspicion is unnecessary” for the following reasons:

- First, seven district courts have held that a CBP search of laptops and other electronic devices requires no suspicion at all. “Other than a single California district court that was reversed on appeal, no court has held that customs officers must have reasonable suspicion before they search a laptop,” Sales said. The Supreme Court is unlikely to upset what Sales called a “lower-court consensus.”
- Second, mandating a probable cause requirement on CBP laptop searches would strangely allocate greater privacy rights to electronic data than hard-copy media. Indeed, the Supreme Court ruled in *United States v. Ramsey* that “there is nothing in the rationale behind the border-search exception which suggests that [a letter’s] mode of entry will be critical.”
- Finally, the inspection of electronic data is distinct from the class of searches for which reasonable cause is and should be deemed mandatory, namely, the inspection of private residences. A person’s home falls outside the watchful purview of government inspection. Entering into a foreign country, however, is

quite another matter. As Sales commented: “Rather than concealing oneself from the government, one is voluntarily presenting oneself to the government for inspection and permission to enter the country. One’s expectation of privacy is considerably lower in those circumstances than when one is at one’s residence.”

Stop Child Predators applauds Professor Sales’s testimony to the Senate Judiciary Committee. We thank Professor Sales for taking the initiative and advocating for legislation that provides a more efficient means for tracking and stopping the pornographic exploitation of children. We encourage the Senate Judiciary Committee to follow his lead.

Stop Child Predators is a non-profit organization that brings together a team of policy experts, law enforcement officers, and community leaders to launch state-by-state campaigns that educate lawmakers and the public about the need to protect America’s children from sexual exploitation. These campaigns seek to enhance penalties for sex offenses including the distribution and possession of child pornography, implement an effective nationwide sex offender registry, and protect the rights of crime victims. Stop Child Predators is an active proponent of the passage of Jessica’s Law in all 50 states and nationally. In the past three years, 34 states have enacted provisions of Jessica’s Law. For further information, visit www.stopchildpredators.org.