



The ACLU's Border Litigation Project investigates, documents, and litigates civil and human rights violations in the U.S.-Mexico border region.

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## **U.S. Border Patrol Interior Checkpoints: Frequently Asked Questions**

*What are Border Patrol checkpoints?*

- The Border Patrol operates permanent and “tactical” checkpoints throughout the *interior* of the country, where motorists are stopped and required to verify their residence status. Permanent checkpoints are characterized by permanent infrastructure, while tactical checkpoints lack permanent structures and are located on “secondary” roads.

*Where are Border Patrol's checkpoints located?*

- The current number and location of Border Patrol interior checkpoints is not publicly known. In Fiscal Year 2008, the last time Border Patrol disclosed the information, there were 128 checkpoints nationwide. The Arizona Republic estimates there are approximately 170 checkpoints today.
- Most checkpoints are located in the southwest, but Border Patrol operates checkpoints in northern states as well. A recent ACLU Freedom of Information Act request revealed design plans for permanent Border Patrol checkpoints on southbound New England highways.
- In 2008, Senator Patrick Leahy was stopped at an immigration checkpoint 125 miles south of the border in New York state. Border Patrol agents have pulled over other motorists hundreds of miles into the interior.

*What is the legal basis for these checkpoints?*

- Checkpoints stem from Border Patrol's statutory authority to operate within “a reasonable distance” of the border. That distance was defined by federal regulations in 1953 as “100 air miles” from any external boundary, including coastal boundaries. That area that now covers two-thirds of the U.S. population and ten states in their entirety. At the time the regulations were issued – without any public comment or debate – there were fewer than 1,100 Border Patrol agents nationwide; today, there are more than 21,000.
- In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Supreme Court held that immigration checkpoints were permissible only insofar as they involve a “brief detention of travelers” during which all that is required of the vehicle's occupants is “a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States.” *Id.* at 558. Neither vehicles nor occupants should be searched, and referrals to secondary inspection areas should involve “routine and limited inquiry into residence status” only. *Id.* at 560. Local residents are supposed to be “waved through” checkpoints without inquiry. *Id.* at 550.

### *What actually happens at these checkpoints?*

- In practice, motorists at Border Patrol checkpoints—including local residents on their way to work or school—are often subjected to extended detentions, interrogations unrelated to citizenship, invasive searches, racial profiling, verbal harassment, and physical assault by agents, among other rights violations. Border Patrol does not limit its activities to the 100 mile zone, in plain disregard of federal regulations and Supreme Court precedent.
- In *City of Indianapolis v. Edmond*, 531 U.S. 44 (2000), the Supreme Court held that checkpoints established for general crime control purposes are unconstitutional. Nonetheless, Border Patrol checkpoints often appear to be operated for drug interdiction, and not to verify citizenship. Many detained motorists report never being asked about citizenship at all. Others report drug-sniffing dogs falsely alerting to nonexistent contraband, giving agents probable cause for vehicle searches.
- The U.S. Government Accountability Office has found numerous problems with Border Patrol checkpoints, including “information gaps and reporting issues [that] have hindered public accountability, and inconsistent data collection and entry.” Those findings were made in 2009, the last time the federal government conducted a thorough review of checkpoint operations and their impact on motorists and border residents.

### **Know Your Rights at Border Patrol Checkpoints**

- Checkpoint stops should be “brief.” *United States v. Martinez-Fuerte*, 428 U.S. 543, 558 (1976). All that is required of the vehicle's occupants is “a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States.” *Id.*
- In *Martinez-Fuerte*, the Supreme Court noted that local residents “are waved through the checkpoint without inquiry.” *Id.* at 550.
- “Neither the vehicle nor its occupants are searched, and visual inspection of the vehicle is limited to what can be seen without a search.” *Martinez-Fuerte*, 428 U.S. at 558.
- Referrals to secondary inspection areas should be “made for the sole purpose of conducting a routine and limited inquiry into residence status that cannot feasibly be made of every motorist where the traffic is heavy.” *Id.* at 560.
- Border Patrol agents cannot extend checkpoint stops for *any* length of time for non-immigration purposes—including to summon a drug-sniffing dog—unless they have articulable, “reasonable suspicion” that a crime has been committed. See *United States v. Preciado-Robles*, 964 F.2d 882 (9th Cir. 1992); *United States v. Ellis*, 330 F.3d 677 (5th Cir. 2003). Reasonable suspicion is more than just a “hunch.”
- Agents may not search the *interior* of any vehicle without consent or “probable cause.” *United States v. Ortiz*, 422 U.S. 891 (1975). Probable cause is a reasonable belief based on the circumstances that a crime *likely* has been committed. Refusal to consent to a search does not provide agents with probable cause for a search *or* reasonable suspicion to extend a stop.
- A canine alert can provide agents with probable cause for a search only if the reliability of the dog and the handler are established. *United States v. Lingenfelter*, 997 F. 2d 632, 639 (9<sup>th</sup> Cir. 1994). In practice, Border Patrol canines often falsely “alert” to nonexistent contraband.

- It is unlawful for agents to consider race or ethnicity of motorists as a basis for extending a brief checkpoint stop or conducting a vehicle search.
- It is lawful for motorists to record agents at checkpoints and to request identifying information, including badge numbers.
- Motorists always have the right to remain silent. As a practical matter, however, a motorist's refusal to respond to a limited inquiry about residence status could result in agents extending the stop to verify residence status.
- It is a felony to flee a checkpoint. 18 U.S.C. § 758.

### **The Courts on Checkpoints**

- “The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop.” *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–67 (1976).
- “The motorist whose conduct has been nothing but innocent—and this is overwhelmingly the case—surely resents his own detention and inspection. [Checkpoints] detain thousands of motorists, a dragnet-like procedure offensive to the sensibilities of free citizens.” *Id.* at 571 (Brennan, J., dissenting).
- “There's reason to suspect the agents working these checkpoints are looking for more than illegal aliens. If this is true, it subverts the rationale of *Martinez-Fuerte* and turns a legitimate administrative search into a massive violation of the Fourth Amendment... Given the strong hints that the Constitution is being routinely violated at these checkpoints, we owe it to ourselves and the public we serve to look into the matter. Even without an order of this court or the district court, the Department of Justice would be well-advised to establish the bona fides of these checkpoints.” *United States v. Soyland*, F.3d 1312, 1316, 1318 (9th Cir. 1993) (Kozinski, J., dissenting).
- “Without drawing the line at roadblocks designed primarily to serve the general interest in crime control, the Fourth Amendment would do little to prevent such intrusions from becoming a routine part of American life.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 42 (2000).
- “I rather doubt that the Framers would have considered ‘reasonable’ a program of indiscriminate stops of individuals not suspected of wrongdoing.” *Id.* at 56 (Thomas, J., dissenting).