



## America's border wars: What the Border Patrol doesn't want you to know

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For years, federal Customs and Border Protection (CBP) officials have claimed that internal “immigration inspection” checkpoints located in Texas and elsewhere in the American Southwest are vital tools in stopping illegal immigration. They further claim that operations at these checkpoints are blessed by Supreme Court rulings. As with most claims by CBP officials, neither stands up to genuine scrutiny.

In November 2017, the Government Accountability Office (GAO) found that some 40 percent of the stops and seizures at internal CBP checkpoints involved “1 ounce or less of marijuana from U.S. citizens.” GAO also found that between 2012-2016 along the southwest border, 42 percent of apprehensions occurred “one-half mile or less from the border in fiscal year 2016 compared to 24 percent in fiscal year 2012.”

Rousting Americans with “dime-bags” of marijuana at these checkpoints seemingly violates the Supreme Court’s ruling in Martinze-Fuerte v. United States, the decision that CBP agents routinely cite to motorists when detaining them. The Court did not grant CBP the authority to operate checkpoints as generalized crime control stops. Indeed, in City of Indianapolis et al v. Edmond, the Court ruled that generalized crime control checkpoints were unconstitutional.

Nor did the Court authorize CBP to detain motorists on ostensible immigration inspection grounds in order to delay their departure until local or state law enforcement personnel could arrive at the checkpoint and charge them with another crime. Yet according to internal CBP documents obtained by the Cato Institute via Freedom of Information Act (FOIA) litigation, that is exactly what CBP leadership authorizes and encourages.

According to a Jan. 25, 2018 CBP document titled “El Centro Sector Standard Operating Procedure Noncompliant Motorist Protocol,” if confronted with “noncompliant” motorists, agents were to

Advise the motorist they are creating a possible safety hazard and if they refuse to move their vehicle to secondary inspection, the BPAs [Border Patrol Agents] will be required to move it for

them. Under this circumstance, BPAs are encouraged to seek assistance from state and local law enforcement because the driver's actions may violate state/local traffic laws.

Yet in the same document, CBP acknowledges that a motorist' refusal to answer questions does not justify using punitive measures. "Just the fact that someone is refusing to answer questions or is being otherwise passively noncompliant, absent exigent circumstances, does not equate to a violation of law," the document states.

Indeed, a Nov. 24, 2015 memo to Falfurrias, Texas area CBP agents explicitly state that a detained motorist "DOES NOT have to state his/her citizenship directly" and that "A person does not have to say 'I am a US Citizen' for you to be relatively certain that they are US Citizens (or lawfully allowed to be in the U.S.)" It should be noted that the documents obtained by Cato appear to have been disseminated CBP-wide.

A recent federal appeals court ruling involving the Freer, Texas checkpoint struck a blow at the overly broad and questionable criteria CBP agents use to stop vehicles.

On Jan. 25, 2019, in *United States v Freeman*, the Fifth Circuit Court of Appeals upheld a lower court ruling that CBP Agent Carlos Perez had inadequate "reasonable suspicion" to stop Houston resident Jeffrey Louis Freeman when Freeman made a right turn onto Farm-to-Market (FM) road 2050 just before the Freer checkpoint, about 50 miles from the U.S.-Mexico border. While the court conceded that FM 2050 was a well-known smuggling route, that fact alone was hardly sufficient to pursue Lewis for nearly eight miles, then stop and search his vehicle.

The appeals court also took issue with other claims federal authorities made that supported the stop, including the fact that Lewis' truck had a paper (i.e., temporary) license plate, that he drove "erratically" (disproven by the lower court), and that the vehicle was registered to an individual rather than one of the local companies. Indeed, Agent Perez stated it was CBP policy to stop every vehicle that turned right onto FM 2050—an absurd notion that clearly treats every motorist using that road as a suspect first, and a citizen second, at best.

Congress can end this insanity by banning CBP internal checkpoints and mandating the agents be sent to the border. Ending the checkpoints and redeploying CBP agents closer to the problem would not only stop unconstitutional rights violations of innocent Americans, it would place the agents where they would be far more effective at catching illegal crossers than President Trump's proposed border wall.

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