



Arizona's checkpoint wars

Patrick G. Eddington

July 17, 2018

A recent lawsuit filed by a University of Arizona engineer is the latest round in the long-running battle some Arizona residents have been waging against Customs and Border Protection (CBP) checkpoints.

Just before the July 4 holiday, long-time U of A engineer and scientist Terry Bressi filed a revised complaint against the Pima County Sheriff's Department (PCSD), which in April 2017 detained Bressi for hours at the CBP SR 86 checkpoint, located roughly halfway between Tucson and the Kitt Peak National Observatory where Bressi works. Bressi is well known to both CBP and PCSD, both having stopped and detained him on multiple occasions since 2002—despite the fact that Bressi is known to both organizations as a U.S. citizen with no history of smuggling or other criminal activity.

Why the stops and harassment? Because Bressi has dared to challenge the legality and legitimacy of domestic internal checkpoints.

His first checkpoint-related lawsuit was filed in 2002 against the Tono O'Odham tribal police and CBP for a stop that turned into a multi-hour detention without probable cause. The tribal police eventually settled the case for \$210,000.

Bressi's victory came despite the efforts of the CBP union to get him fired from his U of A job. But the PCSD and CBP have continued targeting Bressi for stops and de facto illegal, roadside detentions, the latest incident occurring in April 2017 and triggering his current lawsuit.

What makes Bressi's lawsuit unique is that it highlights how CBP allows local and state law enforcement organizations receiving federal funds under the Operation Stonegarden program to collocate with CBP personnel at the checkpoints for generalized crime control operations—despite CBP's claims that the grants are to enhance “border security” operations.

The State Route 86 (SR 86) checkpoint operated by CBP where Bressi was detained and arrested is nearly 50 miles from the international border, and CBP routinely touts the drug busts that are made at or near the checkpoint.

But the Supreme Court has declared such generalized crime control checkpoints to be unconstitutional, and the Court decision allowing CBP to operate immigration checkpoints *did not* authorize their use for counternarcotics or other purposes—by CBP or state/local law enforcement personnel operating out of a CBP checkpoint. Bressi is arguing that the generalized nature of the SR 86 checkpoint stops are a violation of his constitutional rights.

Bressi's other argument is an even more interesting one: that no law enforcement officer can compel speech by a citizen.

In two landmark cases--West Virginia State Board of Education v. Barnette and Wooley v Maynard—the Court held that a citizen could not be forced to speak by government officials, on First Amendment grounds. In his case, Bressi argues that in refusing to answer a CBP agent's question about his immigration status, he was asserting his First Amendment right not to speak.

Bressi's case highlights the contradiction created by the Supreme Court itself—under the *Martinez-Fuerte* decision, CBP agents can stop motorists to ask them questions about their immigration status, but as a result of the *Barnette* and *Wooley* decisions, motorists cannot be compelled to answer the CBP agents' questions at internal checkpoints under the First Amendment.

It's clear that the Court's original decision in the *Martinez-Fuerte* case was flawed on multiple grounds—particularly the claim that “Motorists whom the officers recognize as local inhabitants, however, are waved through the checkpoint without inquiry.” For nearly two decades, CBP and Arizona law enforcement agencies have known exactly who Terri Bressi is, that he is a native-born American citizen, and that he lives a crime-free existence like millions of other U.S. citizens.

Despite knowing all of this, CBP and certain Arizona law enforcement organizations have continued their vindictive persecution of Bressi. His only “crime” has been his refusal to relinquish his rights under the Constitution when confronted by out-of-control federal and local police, operating internal checkpoints found most commonly in countries run by dictatorships. The CBP agents manning the SR 86 checkpoint should be on the border itself, catching unauthorized crossers, not harassing Americans like Terry Bressi.

Congress could solve this problem easily this year by first passing an appropriations rider to prohibit funding for checkpoints more than a mile from the international border, then following up with an authorization bill making the ban permanent. Upholding the Constitution and securing the border do not have to be mutually exclusive policy goals.

Eddington is a policy analyst on Homeland Security and Civil Liberties for the Cato Institute.