

A law unto themselves: US Border Patrol expands use of warrantless searches

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The United States Border Patrol (USBP) federal law enforcement agency has stepped up its anti-immigrant initiatives by expanding the use of checkpoints up to 100 miles away from the border or the coastline and using private property without warrants or permission from the owners to carry out surveillance.

At first glance, these measures very clearly violate the Fourth Amendment right against unreasonable searches and seizures. However, the USBP and the Trump administration have justified them under a little-known federal law that allows immigration officials to engage in warrantless searches.

Under the existing law adopted by the US Department of Justice in 1953, the government does not need to obtain a warrant for searching people and their property at ports of entry. Beyond the land and maritime border, however, the Justice Department has defined a “reasonable distance” of 100 miles, within which immigration officers can operate without warrants against those suspected of smuggling drugs or immigration violations. Additionally, the law entitles officers to enter onto private property within 25 miles of the border, without requiring the permission of the owner or a warrant.

While the law has been in use for decades, its use has been ramped up under the Trump administration. USBP agents have been boarding Greyhound buses and Amtrak trains in Florida, New York and Washington state and demanding that passengers show proof of citizenship.

In January of this year, a video that went viral on social media showed USBP agents boarding a Greyhound bus that was going from Orlando to Miami and terrorizing passengers by demanding proof of their status. Near the middle of the bus, the agents are shown checking a woman’s papers, asking her where her luggage was, proceeding to pull a suitcase from an overhead bin, and instructing the woman to exit.

USBP later released a statement announcing that agents

arrested a Jamaican woman at the Fort Lauderdale bus station. Officials said the woman had overstayed her visa and was transported to the Dania Beach Border Patrol station; she was then turned over to Immigration and Customs Enforcement for deportation proceedings.

The USBP has also used the law to set up checkpoints in New Hampshire at a major interstate that is about 90 miles from the Canadian border, and arrested 33 people on suspected immigration offenses, with an additional 44 charged with drug possession. As reported by the *New York Times*, the drugs seized amounted to around two pounds of marijuana and lesser amounts of cocaine and other drugs.

In a case that has now become a legal dispute, Ricardo D. Palacios, who owns the Juan Salinas Ranch near the town of Encinal, Texas, claimed that the “Border Patrol officials had been roaming freely about” for years in his property without any warrant and had also stopped members of his family at various checkpoints.

For Palacios, the last straw came when he found a camera hidden in a tree on his property last November. He removed the camera and kept it as evidence of federal officers violating his Fourth Amendment rights. The camera has been claimed by both BP and the Texas Department of Public Safety, with state officials demanding that either Palacios return the camera or face being charged with theft. He has now sued both agencies.

As Palacios’s lawyer Raul Casso pointed out to the *New York Times*, the Juan Salinas Ranch was more than 30 miles away from the US-Mexico border, and thus outside the scope of even the existing federal law: “[The USBP agents] either acted on purpose or incompetently. Either way they are outside the scope of their authority.”

Unsurprisingly, the Trump administration is attempting to justify these searches as necessary to protect national security from all kinds of dangers that are supposedly associated with undocumented migrants, including cross-

border smuggling of humans, drugs and weapons. However, even the limited data released by the Department of Homeland Security (of which the USBP is a part) shows that less than 3 percent of immigrants entering without documents were caught at these checkpoints far away from the border.

Beyond that, the dangers of the 100-mile extra-constitutional zone affect more than just a handful of people or cities. The reality, as an American Civil Liberties Union (ACLU) statement on constitutional rights points out, is that “Border Patrol’s interior enforcement operations encroach deep into and across the United States, affecting the majority of Americans.”

Roughly two-thirds of the United States’ population, about 200 million people, live inside the zone within 100 miles of the coast (Atlantic Ocean, Gulf of Mexico, Pacific Ocean, and Great Lakes) or 100 miles from the US border with Canada or Mexico. Connecticut, Delaware, Florida, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont lie entirely or almost entirely within this area. Nine of the 10 largest US metropolitan areas, as determined by the 2010 census, also fall within this zone: New York City, Los Angeles, Chicago, Houston, Philadelphia, Phoenix, San Antonio, San Diego and San Jose.

When the Justice Department implemented the now oft-cited law providing USBP agents with extra-constitutional powers in this vast area, it was done so without public debate, and at a time when the whole of the agency employed 1,100 agents. Today, there are more than 21,000 USBP agents operating across the US. In addition to manning the ports of entry, it is believed that the agency operates more than 170 interior checkpoints.

In theory, the law insists that there be a “reasonable suspicion” of an immigration violation or crime, and that USBP agents have “probable cause” or a warrant to search vehicles in the 100-mile zone. In practice, the ACLU has found that “agents routinely ignore or misunderstand the limits of their legal authority in the course of individual stops, resulting in violations of the constitutional rights of innocent people. These problems are compounded by inadequate training for Border Patrol agents, a lack of oversight by [the Customs and Border Protection Agency] CBP and the U.S. Department of Homeland Security, and the consistent failure of CBP to hold agents accountable for abuse.”

The violations of the Fourth Amendment inherent in the current anti-immigrant drive are not restricted to the flexible interpretation of the 100-mile internal zone law.

In recent months, the trend of searching electronic devices of visitors, residents and citizens—which was first seen during the last days of the Bush administration and escalated relentlessly during the Obama administration—has picked up even more steam. Within the first full month after the inauguration of Donald Trump, warrantless searches of electronic devices by U.S. Customs and Border Protection reached a record high of 5,000, more than in all of 2015 and well on pace to double the numbers in 2016.

While there have been several legislative proposals to place some limits on the powers of the CBP—including insisting on the need for warrants to search electronic devices and also reduce the extra-constitutional zone from 100 miles to 25 miles from the border—none of them have passed. Such proposals are mere window dressing from Democrats who are fearful of their constituency catching on to the bipartisan attack on immigrants.

The CBP itself remains committed to its 2009 directive, which claimed, “In the course of a border search, with or without individualized suspicion, an Officer may examine electronic devices and may review and analyze the information encountered at the border.”

In 2016, the National Border Patrol Council—which counts nearly 17,000 agents among its members—took the unprecedented step of endorsing a presidential candidate, Donald Trump, during the primaries. In announcing its support for Trump, Brandon Judd, the president of the Council stated that its membership supported the candidate because he had promised to “take [the] handcuffs off” the agency. Based on the administration-mandated activities of the USBP, that campaign promise is being fulfilled.

The Gestapo-like agency has been granted full authority and impunity by both the Democratic and Republican parties to act increasingly as a law unto itself, all the while stripping away constitutionally guaranteed rights from the working class as a whole as it peddles the lie of the “criminal” immigrant.



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