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# THE CONSTITUTION IN THE 100-MILE BORDER ZONE



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## The Problem

- The Fourth Amendment of the U.S. Constitution protects Americans from random and arbitrary stops and searches.

- According to the government, however, these basic constitutional principles do not apply fully at our borders. For example, at border crossings (also called "ports of entry"), federal authorities do not need a warrant or even suspicion of wrongdoing to justify conducting what courts have called a "routine search," such as searching luggage or a vehicle.
- Even in places far removed from the border, deep into the interior of the country, immigration officials enjoy broad—though not limitless—powers. Specifically, federal regulations give U.S. Customs and Border Protection (CBP) authority to operate within 100 miles of any U.S. "external boundary."
- In this 100-mile zone, Border Patrol agents have certain extra-Constitutional powers. For instance, Border Patrol can operate immigration checkpoints.
- Border Patrol, nevertheless, cannot pull anyone over without "reasonable suspicion" of an immigration violation or crime (reasonable suspicion is more than just a "hunch"). Similarly, Border Patrol cannot search vehicles in the 100-mile zone without a warrant or "probable cause" (a reasonable belief, based on the circumstances, that an immigration violation or crime has likely occurred).
- In practice, Border Patrol 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 CBP and the U.S. Department of Homeland Security, and the consistent failure of CBP to hold agents accountable for abuse. Thus, although the 100-mile border zone is not literally "Constitution free," the U.S. government frequently acts like it is.

## **Much of U.S. Population Affected**

- Many people think that border-related policies only impact people living in border towns like El Paso or San Diego. The reality 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 lives within the 100-mile zone—that is, within 100 miles of a U.S. land or coastal border. That's about 200 million people.

- 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 ten largest U.S. 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.

## Outdated Legal Authority and Lack of Oversight

- The regulations establishing the 100-mile border zone were adopted by the U.S. Department of Justice in 1953—without any public comments or debate. At the time, there were fewer than 1,100 Border Patrol agents nationwide; today, there are over 21,000.
- The Border Patrol often ignores this regulation and rejects *any* geographic limitation on agents' authority. At least two federal circuit courts condone Border Patrol operations outside the 100-mile zone, federal regulations and Supreme Court precedent notwithstanding.
- Federal border agents are stopping, interrogating, and searching Americans on an everyday basis with absolutely no suspicion of wrongdoing, and often in ways that our Constitution does not permit.
- For example, Border Patrol, according to news reports, operates approximately 170 interior checkpoints throughout the country (the actual number in operation at any given time is not publicly known). The ACLU believes that these checkpoints amount to dragnet, suspicionless stops that cannot be reconciled with Fourth Amendment protections. The Supreme Court has upheld the use of immigration checkpoints, but only insofar as the stops consist *only* of a brief and limited inquiry into residence status. Checkpoints cannot be primarily used for drug-search or general law enforcement efforts. In practice, however, Border Patrol agents often do not limit themselves to brief immigration inquiries and regularly conduct criminal investigations and illegal searches at checkpoints. The Border Patrol also frequently pulls over motorists in "roving patrol" stops, often without any suspicion that an immigration violation has occurred.

- The ACLU has documented numerous cases of abuse by Border Patrol and filed lawsuits to obtain more information about the agency's practices. Given Border Patrol's lack of transparency, and in the absence of any meaningful oversight, there is still much that we don't know about the full extent and impact of these interior "border enforcement" operations.

## Part of a Broader Problem

- The spread of border-related powers inland is inseparable from the broader expansion of government intrusion in the lives of ordinary Americans. For example, CBP claims the authority to conduct suspicionless searches of travelers' electronic devices—such as laptops and cell phones—at ports of entry, including international arrivals at airports. These searches are particularly invasive as a result of the wealth of personal information stored on such devices. At least one circuit court has held that federal officers must have at least "reasonable suspicion" prior to conducting such searches and recent Supreme Court precedent seems to support that view.
- These practices also coincide with the spread of numerous border technologies, including watch list and database systems (such as the Automated Targeting System traveler risk assessment program), advanced identification and tracking systems (including electronic passports), and intrusive technological schemes such as the "virtual border fence" and unmanned aerial vehicles (aka "drone aircraft"). With many of these technologies in the hands of private companies, there are powerful financial incentives for the continued "militarization" of the border zone.
- The expansion of government power both at and near the border is part of a trend toward expanding police and national security powers without regard to the effect of such expansion on our most fundamental and treasured Constitutional rights. The federal government's dragnet approach to law enforcement and national security is one that is increasingly turning us all into suspects. If Americans do not continue to challenge the expansion of federal power over the individual, we risk forfeiting the fundamental rights and freedoms that we inherited—including the right to simply go about our business free from government interference, harassment and abuse.

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