Border Patrol Confrontation Videos Go Viral

By Cristina Costantini
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A U.S. citizen films a constitutional argument with a border patrol agent in part of a new YouTube movement to resist inland border patrol checkpoints.

Thanks to YouTube, there's one thing that both Tea Partiers and Latino civil rights advocates are getting behind.

In the endless repository that is this video hub, there are hundreds of clips, which together have garnered millions of views, of Americans of all ethnicities refusing to comply with inland immigration checks. These checks are conducted by border patrol agents, but it turns out plenty of people think the suspicionless stops are in violation of their constitutional rights.

Technically speaking, immigration checkpoints are allowed to exist up to 100 "air" miles from the border, based on a 1976 Supreme Court decision. However, drivers who are part of this YouTube movement say if they are not crossing a border, they should be able to freely travel within their own country without being questioned by federal agents. Still, others say the random stops encourage racial profiling and disproportionately target individuals who are Latino. Both the constitutional defenders and Latino activists hope that by posting videos to YouTube they will help raise awareness of the alleged injustice.
Much of their frustration also stems from the rapid growth of the U.S. Border Patrol and the proliferation of inland checkpoints. The agency has quintupled in size since the mid-80's, from 4,000 agents to 20,000 agents. Growing pains include a recent spike in corruption and abuse charges.

Each video pretty much goes like this: A car pulls up to an inland border checkpoint, then, a border patrol agent approaches the vehicle and asks whether the driver is an American citizen.

"That's my business, can I go on my way now?" says one man. "What's the purpose of this stop? Who do you work for? Am I free to go?," asks another man.

Then things really get heated, as both driver and agent descend into the type of intellectual arguments usually reserved for law school seminars. Drivers often begin by citing constitutional amendments which protect against compelled speech and against unreasonable search and seizure. In turn, agents often reiterate that the driver must state their citizenship at risk of being "taken into secondary" (which means they must pull their car into another parking station to be further questioned and/or detained.)

Drivers aren't compelled to answer the Border Patrol's line of questioning in these situations, according to the legal director of the San Diego ACLU, David Loy.

"Citizens and non-citizens have the right to remain silent. While the border patrol has a right to ask them, they don't have a right to compel them to answer. If they have a probable cause to justify an arrest, then they can make an arrest," Loy said. "But I'm not aware of any law that compels anyone to answer any questions at a border patrol checkpoint."

Immigration attorney Ben Winograd says there's a large "constitutional gray area" as to exactly how U.S. citizens can exercise their rights in these instances. He therefore urges citizens to refrain from challenging border patrol agents at checkpoints, and do so instead in the courtroom.

"It's wiser to assert your rights in an actual court than at a checkpoint. If you get into a fight with a border patrol agent, you're going to lose," Winograd said.

Well, not always. In some instances, after a few minutes of heated discussion, a senior agent simply waves the driver through, seemingly fed up with the lengthy constitutional debate. But in other YouTube videos, agents threaten to detain drivers based on probable cause -- and in some cases they actually do. A controversial pastor named Steven Anderson, says that he was brutalized and tased by border patrol agents after invoking his constitutional rights in 2009 and refusing to answer their questions regarding his citizenship. Anderson, who required 11 stitches after the incident, says that border patrol agents falsely claimed their dogs alerted them that the car was suspicious in order to find "probable cause." (Read more about his case here.)

Although the Customs and Border Protection declined to speak over the phone for this story, they issued this statement to ABC/Univision:

"Border Patrol immigration checkpoints do not give Border Patrol Agents carte blanche to automatically search persons and their vehicles. In order to conduct a legal search under the Fourth Amendment, the agents must develop articulable probable cause to conduct a lawful search. Probable
cause can be developed from agent observations, records checks, non-intrusive canine sniffs, and other established means. Motorists may also consent to a search, but are not required to do so."

The agency also noted that the number of people resisting has not increased in recent years.

"The majority of traveling Americans who pass through a Border Patrol Checkpoint are cooperative and are quickly on their way. There is no indication of an increase in refusal to cooperate."

However, Arizona resident Terri Bressi, the founder of CheckpointsUSA blog says the YouTube movement has grown rapidly in recent years. Bressi, who has documented checkpoint interactions around the country for more than a decade, says that the number of inland checkpoints have also grown rapidly as border patrol budgets have increased. According to Bressi's documentation, there are 30 permanent checkpoints in the Southwest, and more than 60 temporary "tactical checkpoints" that serve a similar purpose.

Although the checkpoint videos have gained a large following in recent weeks, a few have been removed by YouTube. Bressi says that three of his videos had been removed because "agents claimed my YouTube videos were putting them in danger and violating their privacy." YouTube did not respond to request for comment about the recent removal of the most popular compilation video, which garnered millions of views before it was removed from the site, citing a copyright claim.

"To my knowledge, none of the people whose videos were in that compilation complained about it," said Bressi, who says he's in contact with most of the active leaders in the YouTube movement. "My guess is that it's a border patrol agent or somebody else who doesn't appreciate individuals exercising their rights in this way, and making false claims about copyright."

While for some, the fight against inland CBP checks is solely about protecting constitutional rights, for others, the fight is about racial injustice as well. Bressi says that he's noticed in his travels that many of those who are pulled aside for further questioning look Hispanic.

"Most of the drivers of vehicles that are caught up in secondary are people with darker skin," Bressi noted. "It doesn't surprise me that there may be profile going on."

On Tuesday, Omar Figueredo and Nancy Morales, two American Latino graduate students at Cornell University, were detained for refusing to answer questions regarding their immigration status while boarding a U.S. flight in Texas.

Although the CBP did not respond to a request for comment before publishing, Figueredo, says he was charged with "failure to identify oneself" and "obstruction of a passageway," and Morales, says she was charged with "interference of public duties." The pair filmed the entirety of their interactions with the Border Patrol and uploaded them to UStream.

"I have not committed any crime, I have not committed any crime," Figueredo yelled during his arrest. Later, he said, he wanted to raise awareness of the alleged "constant surveillance" and "harassment" that Latinos face from the agency.