Checkpoints push buttons, boundaries

Border Patrol checkpoint on Interstate 8 near Pine Valley (Sean M. Haffey)

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Don Tran and Chad Ivey’s drive from San Diego was uneventful until they halted at a Border Patrol checkpoint near Yuma. Then this November 2013 trip turned into a nightmare.

Although both men are U.S. citizens, they were repeatedly questioned, then locked in a cage while agents rummaged through Tran’s 1999 Mercedes sedan. An hour later, the travelers were released. Nothing illegal had been uncovered — except, Tran maintains, the Border Patrol’s actions.

“i was outraged,” said Tran, a former IT engineer with San Diego’s MedImpact. “They illegally searched my car.”

The Border Patrol operates a national network of internal checkpoints, halting motorists up to 100 miles inside the country’s boundaries. While the checkpoints’ stated goal is to apprehend unauthorized immigrants, critics argue that agents also stop and search law-abiding American citizens without justification.
On YouTube, a series of videos show protesters refusing to answer agents’ questions. Usually, these encounters end with the travelers sent on their way. In at least two cases, though, agents smashed car windows and forcibly removed the drivers.

“We are supposed to live in a country that secures our rights — and one of those rights is to be able to travel freely,” said Mike Benoit, executive chairman of the San Diego Libertarian Party.

“These things are such an abomination.”

In 1976, the U.S. Supreme Court disagreed. In a case involving the checkpoint on Interstate 5 in San Clemente, a majority upheld these stops’ constitutionality.

Almost 40 years later, this system endures — although it faces a new wave of challenges.

“These are mini police-state zones,” said Mitra Ebadolahi, an attorney in the ACLU’s San Diego office. “Often, local citizens are subjected to extended interrogation and detention.”

**Detained**

Despite several requests, U.S. Customs and Border Protection Agency did not answer questions about its checkpoints, not even revealing how many exist.

“We’re not really sure how many are in operation,” Ebadolahi said, “and that’s part of the problem.”

In 2013, the agency reported operating 35 permanent checkpoints but did not number its temporary checkpoints. The Arizona Republic’s recent investigation put the total at 170.

Local checkpoints include one on Interstate 5 at San Clemente, I-8 near Pine Valley, I-15 at the Riverside County line, and state Route 94 near Jamul.

The Border Patrol made 420,789 apprehensions in fiscal 2013, but did not specify how many were made at checkpoints. “This American Life,” a radio show broadcast here on KPBS-FM, recently cited “an internal report” saying 7,600 arrests were made at checkpoints in fiscal 2012, with 1,800 referred to U.S. attorneys for prosecution. In the same period, checkpoints accounted for one-third of all narcotics seized by Customs and Border Protection.

On paper, the agency argues that checkpoints are essential.

They “restrict the ability of criminal organizations to exploit roadways and routes of egress away from the border,” an agency pamphlet said. “Checkpoints provide an additional layer in our Defense in Depth strategy. Our enforcement presence along these strategic routes reduces the ability of criminals and potential terrorists to easily travel away from the border.”

Under federal regulations, checkpoints cannot be more than 100 air miles from any national border, including the coastline. Yet that encompasses most of the U.S. population and all of 11 states, including Florida. While the majority of checkpoints appear to be in the Southwest, some are found in the Pacific Northwest and New England.
These stops impinge on Americans’ Fourth Amendment protection against unreasonable searches and seizures, the court acknowledged. But “the need to make routine checkpoint stops is great,” Justice Lewis Powell wrote.

The ruling, though, was silent on a key point: While you must stop at Border Patrol checkpoints, are you also required to answer agents’ questions?

“That’s where it gets complicated,” the ACLU’s Ebadolahi said. “You arguably have the right not to respond. However, if you choose not to respond to the narrow, limited question — ‘Are you an American citizen?’ — it’s possible they will detain you until you do.”

Or perhaps you’ll be stuck in a standoff, as happened to Mike Smith in 2010. The Allied Gardens resident was driving on Highway S2 through the Anza-Borrego Desert when he was stopped at a checkpoint.

“Are you a U.S. citizen?” the agent asked.

“I’m not going to be answering any questions,” Smith replied.

The agent insisted. Smith held firm. Then the agent directed Smith to pull off the highway and turn off his ignition.

“Am I being detained?” Smith asked.

That’s a critical question, often heard in the YouTube videos. The Supreme Court held that, without reasonable suspicion of criminal activity, Border Patrol stops must be brief.

“When you see people in these videos saying ‘Am I free to go?’ ‘Am I being detained?,’ as soon as that is established,” Ebadolahi said, “the clock starts.”

Smith was confident this encounter would take only a few minutes: “I hadn’t crossed any international borders and they didn’t have any suspicion of me committing any crime.”

Yet he and a girlfriend were detained for almost two hours.

‘Security theater’

While internal checkpoints have been part of the American landscape since the 1970s, Terry Bressi believes they’ve multiplied since 9/11. Bressi, who works nights as an engineer with a University of Arizona astronomy group, was commuting to the Kitt Peak observatory in December 2002 when he was stopped at a sobriety checkpoint.

He hadn’t been drinking, but declined to answer questions.

“Before I knew it,” he said, “I was being dragged out of my car and handcuffed.”

He sued and won a six-figure settlement. At least 50 times a year, though, he still routinely waits 30 to 45 minutes at a Border Patrol checkpoint on the road to Kitt Peak.
Citizens of a democracy, he said, “shouldn’t tolerate suspicionless stops, seizures, detentions, interrogations and searches inside their own country.”

Moreover, he added, checkpoints are an inefficient way to address immigration issues.

“In other words,” he said, “they make great security theater but that’s about it.”

This theater can be tense. In May, agents at the Pine Valley checkpoint smashed the driver’s window in Robert Trudell’s car after he refused to answer questions. They hauled the Arizona man out of his vehicle and handcuffed him.

“There’s no reason to think that’s unique to Pine Valley,” Ebadolahi said, noting that the ACLU’s San Diego office is investigating other reports of harassment at checkpoints.

Still, why all the drama? Why not answer the question and move on?

When Smith posted an account of his 2010 Border Patrol stop on a Libertarian website, some praised him for taking a principled stand. Others blasted him.

He “isn’t a hero, and wasn’t risking his life, he was just being an annoyance,” one person posted.

Yet checkpoints often subject citizens to “prolonged, unjustified detentions and unlawful searches,” the ACLU of Arizona maintained in a January letter to the Department of Homeland Security. The agency cited 15 Americans who had been abused, including Tran and Ivey.

They had cooperated with the Border Patrol, Tran said, answering all questions and complying with all requests — until he refused to condone “an unlawful search.”

That’s when he and his passenger were locked up and his car ransacked.

“We haven’t filed a lawsuit yet,” Tran said. “Yes, we’d like to.”