On the evening on February 22, 2017, people disembarking Delta flight 1583 from San Francisco International Airport to John F. Kennedy International Airport in Queens, New York, were met at the plane door by US Customs and Border Protection (CBP) officers, who required the passengers to show their identification before being allowed down the ramp. This was strange: It was a domestic flight, and JFK is more than 1,500 air miles from the nearest international border crossing. Some
passengers tweeted about the encounter, and their posts were quickly absorbed into the waves of fear that had been breaking for weeks. In late January, Donald J. Trump had consummated his new presidency by signing several executive orders on immigration and border security, including his embattled so-called “Muslim travel ban”; on February 17, the Department of Homeland Security (DHS) produced two memos calling for a massive hiring push, broadening deportation criteria, and laying out plans to empower local law enforcement to help with immigration-related arrests. To many nervous observers, the treatment of Americans on flight 1583 seemed like a harbinger of darker troubles to come. “Welcome to Germany circa 1943,” one especially gloomy Twitter user replied to a passenger’s post. “And it’s just getting started.”

Later, a CBP statement said the agents were helping Immigration and Customs Enforcement look for a man who was facing deportation for incurring a number of criminal charges. (He wasn’t on the flight.) While it wasn’t the immigration ambush some people feared, it was easy enough to speculate about Immigration and Customs Enforcement and CBP feeling emboldened by the white nationalist authoritarianism of the West Wing’s new occupants. But federal immigration agents questioning American citizens making no attempt to enter or leave the country, while unnerving and of dubious legality, is hardly a sui generis phenomenon of Trump’s America. Since the 1950s, Queens—along with most of New York state—has been within what’s now commonly called “the 100-mile-zone,” a massive swath of the United States in which Customs and Border Protection in general and Border Patrol agents in particular are empowered by federal law and Supreme Court precedent to operate far beyond the bounds of typical law enforcement.

The origins of the zone are stunningly incidental. They lay deep within the Immigration and Nationality Act of 1952, which sought to buttress US immigration and citizenship regulations in the skittish early years of the Cold War. Section 287 of the act grants “any officer or employee of the Service”—the Immigration and Naturalization Service, Border Patrol’s parent agency at the time—the ability to, “within a reasonable distance from any external boundary of the United States...board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle...for the purpose of patrolling the border to prevent the illegal entry of aliens.
into the United States.”

At the time, “a reasonable distance” was defined as being twenty-five miles from not just US borders with Canada and Mexico, but also every bit of coastline; in 1953, federal regulations expanded it—suddenly, with no input from the public, and with little explanation—to 100 miles. A 1973 Supreme Court decision, *Almeida-Sanchez v. United States*, held that Border Patrol agents must have probable cause to search a vehicle in the absence of a warrant. And in 1976, the Supreme Court’s decision on *United States v. Martinez-Fuerte* affirmed Border Patrol’s practice of running permanent and temporary checkpoints within the 100-mile-zone, as well as the agency’s right to briefly question a vehicle’s occupants “in the absence of any individualized suspicion that the particular vehicle contains illegal aliens.” In 2003, Immigration and Naturalization Service was disbanded and divvied up among several other agencies under the newly formed Department of Homeland Security aegis, with Customs and Border Protection inheriting Border Patrol and its sprawling jurisdiction.

The 100-mile-zone touches thirty-seven states (enveloping fourteen of them, some almost entirely), plus Washington, DC, and includes nine of the country’s ten largest metropolitan areas. The zone covers two-thirds of the US population, about 200 million people. They live along the Rio Grande and Lake Ontario—within spitting distance of Mexico and Canada—and in decidedly un-borderlike places such as Redding, California, Columbus, Ohio, and Columbia, South Carolina. Many more travel through the 100-mile-zone every day. They go to work and to school and to the store. They visit family, they see doctors, they go to the beach and to baseball games. Some just drive and drive and drive, oblivious, relishing the freedom they believe they’ve been granted as American citizens. Others tread more carefully, attuned to the ever-present risks of being an immigrant or undocumented or brown or black in the United States. But even those who do know about the zone know very little about what CBP does there. That’s because no one does, not fully, not even the agencies themselves.

What is supposed to happen within the zone is known. In the name of immigration enforcement, Border Patrol agents are allowed to operate permanent and temporary checkpoints and roving patrols, in vehicles or on foot. At these stops, they should perform brief, unobtrusive
searches to determine citizenship status: a few quick questions and a visual inspection of a vehicle’s exterior. Agents don’t need warrants to conduct these stops, but they do need reasonable suspicion to stop anyone outside a set checkpoint, and they’re supposed to have probable cause—like an alert from a drug-sniffing dog—before searching the inside of a vehicle. If an agent encounters someone who’s unable to provide their immigration status, they may take the person into custody. Otherwise, once an agent establishes that a pedestrian or a driver or a carful of people are legally authorized to be in the US, they’re supposed to send them on their way.

In 2016, Border Patrol agents apprehended 415,816 people via checkpoints and roving patrols nationwide. But how those interactions proceeded, and the number and nature of interactions that ended in anything other than arrest, isn’t known. CBP is the largest law enforcement agency in the United States, but it bucks many federally recommended best practices for law enforcement, including the one that might illuminate or absolve so many other indiscretions: data collection. At checkpoints and on roving patrols, Border Patrol agents only record the searches that end in apprehension. They do not record the total number of cars that pass through their checkpoints, how many individuals they stop and question and release, how often their dogs alert to nonexistent contraband—nothing other than apprehensions. The agency has resisted the use of body cameras and dashboard cameras increasingly adopted by local law enforcement across the country. So aside from arrest numbers, which are irregularly published online, there is no reliable public or even private record of who Border Patrol agents interact with, the nature of those interactions, when they take place, or where, or why. The border is a black box, unknown even to itself.

In the 1950s, when the 100-mile-zone was established, and on into the 1970s, when the zone’s legality was upheld and expanded in court, Border Patrol employed fewer than 2,000 agents. By 1992, the number of agents was edging over 4,000. In 2002, there were more than 10,000, and in 2012 there were more than 21,000. The number has flatlined over the last few years as CBP has struggled to meet hiring quotas. But in early 2017, President Trump ordered the hiring of 15,000 more DHS agents, with 5,000 of those for Border Patrol alone. In July, the DHS inspector general issued a report questioning both the
need for the hiring push and the agency’s abilities to carry it out. But if hired, those agents will join the ranks now staffing thirty-five permanent checkpoints, an unknown number of temporary checkpoints, and an ever-shifting number of roving patrols nationwide. And so the black box grows and grows.

That any meaningful information about Border Patrol activity within the 100-mile-zone is available to the public at all can be attributed almost entirely to non-governmental organizations—primarily the ACLU—and community groups and individual citizens across the political spectrum working to observe, document, and litigate their way toward greater clarity. And as numerous reports and lawsuits and shaky cell-phone videos suggest, CBP’s vast jurisdiction, resistance to oversight, and rapid growth is a toxic brew, resulting in widespread violations of civil rights, human rights, economic damage, psychological distress, injury, and death, within the 100-mile-zone and beyond.

Judicial and legislative solutions exist, from a reconsideration of the outdated Supreme Court precedents that enabled sweeping Border Patrol activity in the zone, to a reduction of the “reasonable distance” back to its original twenty-five miles (or less). But reforms have been historically stymied by insufficient political will and further hindered by the public’s profound lack of awareness of the zone’s existence, purpose, shadowy nature, and peoples’ rights within it. “People tend to think about the border as this ‘other’—this different place where special rules can apply without any negative consequences to the rest of the country, but that’s not true,” said Mitra Ebadolahi, a staff attorney with the ACLU of San Diego and Imperial Counties’ Border Litigation Project. “Most people do live on the border, they just don’t realize it. But even if you don’t live on the border, you should care about the erosion of our constitutional rights, because there’s no guarantee that if that erosion is established as the norm there, it won’t also eventually be established as the norm in the smack dab middle of the United States.”

I live in Atlanta, the only one of the top-ten most populous metropolitan areas in the US that doesn’t sit within the 100-mile-zone. I first learned of the zone in September 2015, when my husband, Joe, and I were traveling in West Texas. After a few days in Big Bend National Park, we
pointed our rental car north toward Marfa. We drove up Highway 118, marveling at the otherworldliness of the Chihuahuan Desert, endless miles of scrubby creosote and mesquite interrupted here and there by the tall, spent blooms of a century plant, all other humans obscured by distance or glare or dust. We were almost to Alpine, ninety miles north of the Rio Grande, when we saw the first sign for a Border Patrol checkpoint. Gradually the building itself materialized on the horizon, a long green-and-white box under a high pavilion roof, as jarring as the sight of a fast-food restaurant on Mars. I double-checked Google Maps to make sure we hadn’t gone south by mistake. We hadn’t. The next sign said ALL VEHICLES STOP AHEAD WHEN FLASHING. The lights were flashing, so we stopped.

Joe pulled into the checkpoint behind a pickup truck with a rusty horse trailer. We waited, watching a Border Patrol agent in an olive green uniform lead a Belgian Malinois in a black vest around the vehicle and its load. The trailer’s latch was loose, and the agent directed the truck’s driver off to one side of the driveway to fix it. Then it was our turn.

The car rolled forward and an agent in sunglasses appeared at Joe’s window. He asked us questions and we answered. Were we US citizens? Yes. Where were we coming from? Big Bend. Where were we going? Marfa, then Alpine for the night, then home. Was this our car? No, it’s a rental, we’re from out of town. “Do you need to see our passports?” I asked, pulling them from my bag. The agent shook his head and stepped away. We sat in silence—the easy silence of two young white Americans having just entered into yet another interaction with law enforcement they had no reason to think wouldn’t work out in their favor. The dog snuffled around the car, just out of view.

When the agent returned, we expected him to say that we were free to go. Instead he told us to pull off to the side, behind the pickup truck, so we did. The truck’s driver was still fiddling with the trailer latch and I figured we were keeping our place in line. I imagined some goofy federal statute regulating the order in which cars must enter and leave a Border Patrol checkpoint. After the pickup rumbled away, the agent reappeared at Joe’s window.

“The dog’s alerted to something in your vehicle,” he said. “We’re going...
to search the car again. If the dog alerts a second time, we’ll need to search your luggage.” Joe turned off the car and we got out. He handed the keys to the agent, who steered us toward a metal bench bolted into a concrete slab next to the checkpoint office. “Sit,” the agent said, so we sat. “Keep your hands out of your pockets.” Another agent appeared, demanded Joe’s driver’s license, and read the number to someone over a radio. More questions: Did we have any narcotics or recreational drugs or controlled substances in the vehicle? No. Had we used any drugs while inside the vehicle? No. Had anyone else used any drugs in the vehicle? No. The agents listened as if humoring our delusions, then asked the questions again. Our innocence became like a shape we were trying to point out in a bank of fast-moving clouds. The agents weren’t seeing it.

“Look, if you have anything, you might as well tell us now,” one agent finally said, like he was doing us a favor. “Because if you say you don’t have anything and then we search the car and we find something, that’s gonna be trouble for you.” I remembered the three prescription medications in our luggage, each entirely legal and in its original, physician-authorized, Publix-filled bottle. I mentioned them to the agent in what I thought of as a goodwill offering. Why would I be so helpful if I had anything to hide?

The dog was summoned again. Joe and I sat and watched the dog follow an agent around the car, sniffing here and there, jumping up and thumping its big paws down on the hood. The agent opened one of the car’s side doors and the dog hopped inside and bounded around from seat to seat. I watched the animal for a sign, though what that sign would be and what it would mean I had no idea. “The dog’s alerted to something in the vehicle,” another agent said after a while. “We’re going to search your luggage.”

They popped the trunk and dragged our suitcases and backpacks out onto the concrete. One agent arranged the luggage into an oddly tidy row and the other led the dog along the line, smacking each bag in turn as the dog lowered its head to sniff.

I began to wonder if the agents knew something we didn’t. I thought about how Joe and I must have looked to them, scanning for anything that would trigger their suspicion: Our blank smiles, the Louisiana
plates on our rental car, the Georgia peaches on our licenses. Joe’s beard, my dark hair. Was it that we were youngish white people driving toward Marfa, that little mecca of weirdo artists and ergo (maybe) drugs? They must have had a reason—why would they go to all this trouble otherwise? Maybe someone had slipped some contraband into one of our bags at the airport or the Big Bend visitors’ center or the bar in Terlingua the night before. Maybe Joe was hiding something. Maybe I was hiding something.

Then the dog alerted them to Joe’s backpack, or maybe not, I couldn’t tell, but soon the agent was unzipping every last pocket, pulling out Joe’s laptop and books and headphones until he produced the orange plastic bottle containing one of the three prescriptions I’d already mentioned. He held the bottle up to the sunlight, rattled it, opened it, sniffed it, screwed the cap back on. Then he sauntered over to the bench and looked us up and down through his sunglasses.

“So that coulda been what the dog alerted to,” he said. “But, you know, sometimes people do use rental cars instead of their own to do drugs or to transport narcotics.” He said something about “previous renters” and “upholstery” and “residue.” When neither of us responded, he smirked. “What, people don’t do that up north?”

Up north? I thought of Vermont, Newfoundland, Svalbard, then realized he meant Atlanta, where he knew we lived because he’d seen Joe’s license or maybe because we’d told him or maybe he just knew. Now our failure to get the joke, or whatever it was, seemed to reveal something. Was this the last bit of proof he was looking for? Was he going to drag us into the checkpoint office, throw us into separate rooms, try to get us to rat each other out? Would anyone believe we were innocent if these men believed we weren’t? Every possible future seemed preposterous, but so did the current moment and everything that led up to it. Joe and I sat in silence, a new kind of silence, not quite breathing.

Then all of a sudden they were done with us. The dog trotted off to sniff another car. The pill-rattler stuffed the orange bottle into Joe’s backpack, threw our bags into the trunk, tossed Joe his license and keys. We were free to go.
We stood up and walked the twenty feet to the car. My legs were shaking. Did I smile at the agents as we passed? Probably. I expected to feel relief. I didn’t. I realized I was waiting for an apology, then realized we weren’t going to get one. In the car, Joe turned the ignition and the digital clock reappeared on the dash. I thought we’d been on the bench for hours. Barely thirty minutes had passed.

In October 2015, the ACLU of Arizona published a report that might as well have been called “Here’s Why You Can’t Find Any Satisfying Numbers About Border Patrol Activity Within the 100-Mile-Zone,” an explanation I’d been craving in the weeks since our search. I wanted to see us as a statistic, to know how many other people had sat through their own surreal half-hour on a bolted-down bench, their fate in the hands of a dog and a man with a gun on his hip. I wanted to know if what happened to us was just a fluke or de riguer, and how often the same story had another ending. The report, actually titled, “Record of Abuse: Lawlessness and Impunity in Border Patrol’s Interior Enforcement Operations,” offered its own kind of answers. It analyzed 142 civil rights complaints filed against Border Patrol’s Yuma and Tucson sectors between 2011 and 2014, laying bare the agency’s shoddy data collection practices and seeming disregard for not just the law but basic human decency. An appendix summarized the complaints, which ranged from the eerily familiar (“A man and his wife were detained and interrogated about drug use following a false canine alert”) to the harrowing: A woman was pulled over by Border Patrol on Highway 95 by an agent who approached with his weapon drawn. He told her to roll down the back window. The woman said her infant was in the backseat. The agent said, “I don’t give a fuck who is in the backseat. Lower the window.”

One hundred and forty-two—that’s not the total number of complaints the CBP received about the Yuma and Tucson sectors, only the number the agency decided to document. Other complaints surely went undocumented, and still others were never lodged at all, either because the individuals were afraid to complain, or they weren’t sure how, or they didn’t think that what happened to them was even worth mentioning. For the complaints that were lodged, documentation was the first and only step. Several oversight groups exist within the DHS and CBP, each with its own low-level powers of recourse, but “Record
of Abuse” indicates a considerable disparity between the number of complaints they received and the number of complaints they reported. For instance, the Yuma and Tucson sectors received at least eighty-one complaints of Fourth Amendment violations in 2012-13, a period when DHS internal oversight agencies reported only three Fourth Amendment-related complaints made against sectors nationwide. Of all the complaints detailed in the ACLU report, only one seems to have resulted in disciplinary action. The complaint regarded an unlawful vehicle stop, and the offending agent was suspended for one day. “In that case,” the report said, “the complainant was alleged to be a government employee and the son of a Border Patrol agent.”

According to some CBP agent training materials analyzed in “Record of Abuse,” Border Patrol agents are instructed to respond to press inquiries about checkpoints by asserting that they’re “safe, efficient, and cost-effective”—a bundle of claims negated by the many other documents analyzed for the same report. Among the examples: “In calendar year 2013, nine out of 23 Tucson Sector checkpoints produced zero arrests of ‘deportable subjects.’ The same year, Yuma Sector checkpoint arrests of US citizens exceeded those of non-citizens by a factor of nearly eight (and in 2011, by a factor of eleven). One checkpoint in Yuma Sector, located 75 miles from the border, reported only one non-citizen apprehension in three years, while producing multiple civil rights complaints during the same period.”

The CBP documents analyzed in “Record of Abuse” were obtained through a Freedom of Information Act (FOIA) request filed by the ACLU of Arizona—more specifically, the lawsuit ACLU lawyers filed against the CBP after the agency declined to turn over the requested files within the twenty days mandated by FOIA. A number of ACLU chapters across the country are pressing through similar litigation, including the ACLU of Michigan (where the entire state exists within the 100-mile-zone, because CBP counts the shoreline of the Great Lakes as an international boundary). These hard-won document dumps have done the most to illuminate Border Patrol’s operations, but the picture is still far from complete. And where official record isn’t available, anecdotal reporting fills some gaps.

“It’s really difficult to document the interactions [at checkpoints] any other way,” said Pedro Rios, director of the American Friends Service
Committee’s US–Mexico Border Program and member of the Southern Border Communities Coalition. “First-hand testimonies of what people have experienced are powerful, because they represent an experience that oftentimes can be multiplied by what other people experience.” Indeed, the details of complaints summarized in the ACLU of Arizona’s “Record of Abuse” echo the details of complaints recorded in the ACLU of New Mexico’s 2015 report, “Guilty Until Proven Innocent: Living In New Mexico’s 100-Mile Zone,” in which community members describe the harassment, discrimination, embarrassment, and fear they experience as border zone residents. And those stories echo even more told to me by lawyers, policy experts, community organizers, and others over the last two years.

Profiling is a common complaint, with skin color and perceived ethnicity frequently determining the tone of interactions with agents. In the ACLU of New Mexico report, a sixteen-year-old boy describes having an easier time moving through checkpoints with his white mother than his Latino father. White lawyers and organizers report witnessing Border Patrol agents harassing Latino border community members, but getting a free pass themselves. In Arivaca, Arizona, in 2014, a group of residents called People Helping People set up a citizen observation station across the highway from one of the three Border Patrol checkpoints that surround the small town. Over two months that winter and spring, volunteers noted that agents asked Latino drivers for ID twenty-six times more often than white drivers. In the early 2000s, Border Patrol established a checkpoint outside San Diego’s Friendship Park, where families often gather to speak with loved ones through a tall mesh fence on the US–Mexico border. “It was set up as a hostile act to prevent people from going to the park—that was the sole purpose of the checkpoint,” Rios said. A few years ago, after agents boarded a bus of students visiting the park and threatened to detain a young woman who’d been adopted from China and couldn’t prove her immigration status, Rios and the AFSC lobbied Border Patrol and local California representatives and got the checkpoint removed.

“CBP does not tolerate racial profiling or agent misconduct and appropriately investigates allegations of wrongdoing,” a statement from the agency said in January 2014, responding to a complaint the ACLU of Arizona had filed with DHS’s Office for Civil Rights and Civil Liberties. But in December 2014, when US Attorney General Eric
Holder announced an expansion of Department of Justice policies barring profiling—based on race, national origin, gender, religion, and other criteria—by federal law enforcement, the Obama administration allowed DHS agents involved in border enforcement, including CBP agents in the 100-mile-zone, to be exempt from the new policies, maintaining that profiling was an essential element of their work. In 2014, one anonymous federal immigration official told the Washington Post, “We tend to have a very specific clientele that we look for.”

But even with that mandate, Border Patrol agents can be cagey about the racial element of their work. Astrid Dominguez, an Immigrant Rights Strategist with the ACLU of Texas, said she’s had difficulty discussing the issue of profiling with agents in the Rio Grande Valley Sector, where she grew up and now works with the community. They’ve told her they can’t profile because so many of their own agents are Latino, too. “But you’re still stopping people,” she says to them. “So please explain to me—what are you basing your stops on? Unless you’re literally at the Rio Grande, parked there picking up people, I don’t understand. If you’re walking down the street downtown, why would you stop someone just to inquire about immigration status? There’s always that question. They say they don’t profile, but who do you decide to stop, and based on what?”

Dominguez, who is Mexican American, believes she’s been racially profiled by Border Patrol agents on multiple occasions. “I was going through the checkpoint in Las Cruces, New Mexico, with a friend of mine—she’s fairly white—and then my husband, who’s Canadian,” she said. “The agent was like, ‘All US citizens?’ and my friend says, ‘No, he’s Canadian.’ The agent looks at him, then looks at me, and he asks, ‘What about you?’ I was like, ‘I’m a citizen.’ I was totally profiled. He didn’t care about the Canadian. He didn’t check his documents. He just cared about the brown person in the back.” Another time, driving alone at night from Brownsville, Texas, to Houston, a checkpoint agent questioned Dominguez about her citizenship, searched her trunk without so much as a drug-dog sniff, then apologized and sent her on her way. It was the apology that really ticked her off. “It crossed my mind, ‘Should I give him trouble for this?’ I’m a citizen—why do you even want to search my car?” she said. “But I’m sure I would’ve been there for a couple hours if I did that, and I had four more hours to drive. But in those situations it’s like, why do I have to experience this.
type of thing? Nobody should.”

“Disproportionately, it’s communities of color, including immigrant communities, who are affected,” said Mitra Ebadolahi with the ACLU in San Diego. “But the the situation with enforcement in border communities is so out of hand that everyone is affected, not just what you might think of as the usual suspects.” In 2016, she filed a case on behalf of a fifty-eight-year-old white man, a retired Navy SEAL, who was tackled by Border Patrol agents while jogging in a park near the US-Mexico border in southern California. He was injured in the attack, and detained overnight without being charged or provided a doctor or a lawyer. In 2008, Patrick Leahy, a white Democratic senator from Vermont, was stopped by a Border Patrol agent 125 miles south of the border in New York state; according to news reports, when he asked under what authority he was being stopped, the agent pointed to his gun and said, “This is all the authority I need.” In May 2015, a white college student named Jessica Cooke was detained for questioning at a checkpoint outside Waddington, New York. A law enforcement leadership major, she filmed her encounter with two Border Patrol agents who detained her for questioning on uncertain grounds. She begins the video asking why she’s being detained; three minutes later, after an increasingly tense exchange, she’s apparently wrestled to the ground by a male agent, who then shoots her with a stun gun. The last ninety seconds of the video are just hazy blue sky and the sound of her frantic screams and sobs.

Cooke’s video can be viewed on YouTube along with thousands of others with such titles as “Man Refuses to Cooperate with Unconstitutional Checkpoint” and “Resisting Tyranny in Texas Checkpoint We must fight this federalism that is overtaking our state.” In one, an agent appears at a man’s driver’s side window and says, “Are you a US citizen?” and the man says, “That’s my business.” When the agent directs him to pull over into the checkpoint’s secondary inspection area, the man says, “No thanks”—repeating the line, over and over, to the two agents sent over as backup. “Correct me if I’m wrong, but did I stumble into Mexico? Or is this still the United States?” the man asks the fourth agent who appears, who eventually lets him go. The video, titled “‘No Thanks’ Best DHS Checkpoint Refusals EVER!” has nearly 10 million views.
These refusal videos have emerged as another way to glimpse inside the black box of the border zone. Terry Bressi, an Arizona resident who has run a website chronicling his interactions with DHS agents since 2007, estimates he’s been through the checkpoint on state highway SR-86 about 700 times over the past decade, filming upward of 600 of his encounters with agents there. In his videos, Bressi responds with polite but blunt refusals, sometimes silence, and sometimes with questions of his own, pointing out—to the agent, and to the implied online audience—every extralegal misstep. “Is that agent touching my vehicle?” he asks one checkpoint chief sent to reason with him, in a video posted in 2008. “Tell him to keep his hands off my vehicle unless he has a warrant, is that clear?” The chief shakes his head and eventually waves Bressi through.

Bressi says he’s often detained, sometimes ticketed, and has been arrested once. Like most of the refusers shown on YouTube, Bressi is white. His skin color could be seen as a tactical asset in his interactions with agents, but he chafes at the idea that his race affects how they treat him. “I’ve never had the feeling that being white was a shield in any way,” he said. “Perhaps if I was white and submissive, the story would be different. My experience, however, tells me that being any color and any gender while actively exercising your rights puts you in an entirely different category in the eyes of so-called law enforcement agents who don’t actually care about the law.” But it’s hard to imagine anyone other than a white American man filming himself resisting Border Patrol officers 600 times and living to blog about it.

Going through a checkpoint can be a demoralizing, disorienting hassle for a US citizen; for my husband and me, it was a nauseating window into a relationship with law enforcement we’ve been otherwise shielded from by race and luck. But for undocumented residents or mixed-status families or anyone with any reason to avoid interaction with federal agents, checkpoints can be literal death traps. The ACLU of New Mexico estimates that, between January 2010 and May 2017, upward of fifty-seven people died as a result of an interaction with CBP agents, fifty of those deaths the result of agents’ use of force or coercion. For many, the presence of checkpoints prevents or complicates travel to school, work, family, stores, and medical care, causing economic, physical, and psychological harm. Some undocumented residents resort
to traveling on foot, often through scorching high-desert terrain, to avoid known sites of agent activity. In Brooks County, Texas, since 2009, officials have recovered the remains of at least 572 undocumented migrants who died from exposure in the desert while attempting to circumvent the checkpoint near Falfurrias, seventy miles north of the border. During the height of the lead-poisoned water crisis in Flint, Michigan, many people delayed or entirely avoided treatment due to Border Patrol presence in the area.

In some areas, community networks spread the word about when checkpoints are opened or closed. But it’s impossible to avoid Border Patrol entirely. Roving patrols can be anywhere, at any time—mall parking lots, Amtrak trains, Greyhound buses. And in many places Border Patrol increasingly operates in tandem with local law enforcement, sometimes even as first responders, which means a traffic stop for something minor like a broken taillight, or a 911 call for a medical emergency, has the potential to escalate into deportation. Lawyers with the ACLU of Michigan, working with a researcher at the University of Arizona, analyzed logs from the Detroit Sector and found that 63 percent of the people Border Patrol apprehended had first been stopped by another law enforcement agency that called Border Patrol for immigration enforcement.

The ACLU of Michigan’s analysis indicates another problem—that of mission creep. Border Patrol increasingly operates as a general crime and drug enforcement unit in addition to their mandate of immigration control. In the Detroit Sector logs analyzed, 40 percent of the people apprehended were US citizens or foreign citizens in the country lawfully; 82 percent of the foreign citizens were Latino, and less than 2 percent of the foreign citizens had a criminal record. Only about 5 percent of the foreign citizens had crossed into the US during the previous month. “We’re dealing with Border Patrol stopping people who are integrated into their communities or are long-term residents of the United States, not people who are in the process of crossing the border,” said Miriam Aukerman, a senior staff attorney with the ACLU of Michigan, whose office has another FOIA lawsuit pending with CBP.

Meanwhile, CBP spokesmen maintain that all is well. “I believe our agency is very transparent and has a significant amount of information about the work we do and our mission available for the public to
consider at our extensive website,” said Roger Maier, a public affairs specialist for the CBP in West Texas and New Mexico. He cited a number of pages on CBP.gov, including an overview of the Border Patrol’s mission regarding checkpoint operations, a PDF of apprehension statistics from the previous fiscal year, and a news release archive. But when it comes to determining if agents at interior checkpoints are operating successfully, “no current metric exists,” said Carlos A. Díaz, the CBP’s southwest border branch chief. Data regarding vehicles and individuals stopped, searched, and released isn’t collected, he says, because “the volume of work and scope of USBP’s jurisdiction does not afford the ability to utilize valuable enforcement resources to document non-enforcement activities.” For those with concerns, Maier pointed to the CBP customer service page, where anyone can submit a comment via web form. When I asked how CBP handles complaints raised by citizens, Diaz said, “Currently, there is not a standardized process.”

The ACLU’s of Arizona and New Mexico have urged the CBP to correct this by standardizing the way agents collect, investigate, and resolve complaints nationwide, and have emphasized the importance of prioritizing complaints of civil rights violations and ensuring that offending agents are held accountable to publicly available discipline policies. They’ve also advocated for overhauling and regulating agent training—documents analyzed in the “Record of Abuse” report suggest it’s currently ad hoc at best, and often “more concerned with managing public relations than with respecting the rights of those with whom the agency comes into contact.” Even better, the ACLU says, the agency should adopt standard law enforcement best practices around data collection and communication. Only then will anyone—the agencies included—have anything close to a full understanding of what agents are really doing in border communities, and only then will there be hope of holding agents accountable for their actions. Until then, FOIA requests, and the lawsuits that predictably follow, will continue to illuminate, in fragments, the agency’s many lacunae and flimsy rationales. “This idea that we need this massive border force is really at odds with reality,” says Aukerman. “All of these agents are out there using these expansive powers they’ve been given in ways that are really not about securing the border. That’s what the litigation is about—trying to uncover what actually is going on.”
Another point in the constellation of solutions: Reconsider the circa-1970s legal precedent. “The Supreme Court found that only minimal intrusion existed to motorists at reasonably located checkpoints even in the absence of reasonable or individualized suspicion,” Maier said, repeating a common Border Patrol talking point, a reference to United States v. Martinez-Fuerte. Patrick Eddington, a Cato Institute policy analyst specializing in homeland security and civil liberties, scoffs at this. “[There’s] this notion that because it’s just more convenient for the agents to be able to stop people, that’s a sufficient justification in terms of immigration control,” he said, but “the more you lower the bar in response to law enforcement whining—and as far as I’m concerned, that’s what it is—the more you make it likely that people’s rights are going to be abused.”

Eddington has called on congress to clarify the decision, with no success so far. He’s also pushed for a clarification and redefinition of “reasonable distance” (he’d prefer it to be “about 100 yards inside the United States”), an idea that’s gotten more traction. Following his own encounter in 2008, Senator Leahy cosponsored legislation with Oregon Senator Patty Murray to knock the 100 miles down to twenty-five along the northern border; California’s Dianne Feinstein has proposed similar legislation, and after her constituent Jessica Cooke was detained and stun-gunned in 2015, New York Senator Kirsten Gillibrand sponsored legislation to strengthen Border Patrol’s data collection practices. So far, no meaningful legislative headway has been made, but a general principle has been demonstrated: It helps to make matters personal. “Bringing these issues up to congress is important to us because members of congress don’t understand that when we’re talking about the border, we’re not only describing what demarcates a line between the US and Mexico,” said Rios. “We’re describing the whole 100-mile swath of land that really impacts the lives of millions of people.”

Astrid Dominguez has seen the effect of direct engagement in action at the agency level, too. Last December, a woman attending a community baseball game in the Rio Grande Valley took her small child into some nearby brush to pee. A Border Patrol camera detected them, and agents soon arrived and demanded their documentation. The crowd at the baseball game, which included the town’s mayor, was outraged.
Domínguez often meets one-on-one with Border Patrol agents and leadership to express community concerns, but this time she urged Manuel Padilla, the Rio Grande Valley’s new sector chief, to talk to the panicked community himself. “That was a huge step,” she said. “At one point he asked, ‘Do you feel like we’re there all the time?’ And the community said, ‘Yes!’—all of them at the same time. I think it was a takeaway moment for him. What happens on the ground, it doesn’t go all the way up. So for him, I think it was mind-blowing. He was like, ‘Wow, we have to have these conversations, we have to have them with the patrol agents, we need to understand how this is impacting the community.’ For us, that was a step. That’s exactly what we want.”

Domínguez paused and laughed. “Now, that was prior to the inauguration. We haven’t had those conversations after.”

A few days before my husband and I encountered the checkpoint on Highway 118, while we were still down in Big Bend National Park, I stood on one gravelly bank of the Rio Grande and stared out across the river at Mexico, twenty feet away. The water was green-brown, shallow and moving slow. There was no one else around—no one with a badge and a gun, anyway. I could’ve waded right across to the other side. Until then, I’d thought of this river as the border, its 1,900 miles of jagged switchbacks an erratic but natural boundary. But suddenly I wasn’t sure anymore. Where was the line, exactly—the point in space and time at which my country became another, where I would go from citizen to alien? Was it there, where dry rocks became wet rocks, or maybe over on the opposite bank, where tall green grass waved against a backdrop of distant brown mountains? Later I learned it was somewhere in between: Per the 1848 Treaty of Guadalupe Hidalgo, most of the US–Mexico border runs along the deepest channel of the river. An organization called the International Boundary and Water Commission is supposed to remeasure the channel and redraw the line every ten years. Even if the channels change, even if a deeper furrow forms in the silt, the old deepest channel remains the border until the river is measured again.

The border—even the true border, not just its dubious statutory zone—is an ever-shifting thing, forever up for renegotiation. And the same is true for whatever rights we Americans believe we enjoy, from our
country’s outer edges to its deepest landlocked heart. From certain distant vantage points, the contours of those liberties can seem so obvious, so deeply natural, it can be easy to forget the specifics—that they were granted by man and may be revoked by man, too. Their continued existence is not a foregone conclusion. Like borders, they aren’t always where or exactly what you think. And, like borders, they occasionally must be defended in order to remain useful. Our uncertain, alienable rights.

The presence of Customs and Border Protection agents at JFK last February was jarring, in part, because it suggested the sudden redrawing of a once-solid line. But whatever had once kept CBP agents out of domestic terminals in American airports was never that well defined to begin with. It was a border zone within the border zone, of sorts—a generally agreed upon sense of what could be gotten away with, and when and where and with whom. A norm, in the parlance of our abnormal times. “If CBP wanted to set these things up, for example, in Washington, DC, or Chicago or Miami, or L.A. or Seattle—technically, from a legal standpoint, they could do it,” said Eddington. “It would be a political loser for them, I think, and the backlash would be pretty enormous. But right now there’s nothing to stop them from doing it.”

Of course, there wasn’t much stopping them from doing it during the Obama administration, either. One reason these lines are being so easily redrawn now is that they were allowed get so blurred over the past eight, sixteen, twenty years. For too many of us, the border was always somewhere else, the problems there someone else’s problems, unrelated to our own. But here on the dark side of January 20, there’s a new sort of vigilance, a spreading hyper-attenuation. Perhaps we see more clearly now what we’ve always had: a flawed, fragile, stubborn democracy that needs help keeping its promises. And we see that we have these, too: cell-phone cameras and social networks, dogged attorneys and community organizers, peeved legislators and watchful writers, anger and indignance, impatience and hope. Tools to free ourselves from the inside out, hacking and straining toward justice. Welcome to America circa 2017. It’s just getting started.

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PUBLISHED: October 1, 2017

UPDATED: November 2, 2017

TOPICS: Border Patrol (/tags/border-patrol), CBP (/tags/cpb), 100-Mile-Zone (/tags/100-mile-zone), Mexico (/tags/mexico), US Border (/tags/us-border), immigration (/tags/immigration)