CBP & DHS in the News - I'm famous!

From: BorderBob (BobBJR) Staff DelphiPlusMember Icon Sep-5 5:52 pm
To: ALL (1 of 5)
9797.1

For those in the Tucson area, we made Terry Bressies "suspicionless DHS checkpoint" blog.


b.b.

From: mooseishman Sep-5 7:32 pm
To: BorderBob (BobBJR) DelphiPlusMember Icon (2 of 5)
9797.2 in reply to 9797.1

Nice! Hopefully I can irritate him while I'm here!

From: ford186 1:00 am
To: BorderBob (BobBJR) DelphiPlusMember Icon (3 of 5)
9797.3 in reply to 9797.1

It don't work there sport.

From: yodelking591 5:12 am
To: ford186 unread (4 of 5)
9797.4 in reply to 9797.3


From: BorderBob (BobBJR) Staff DelphiPlusMember Icon 7:44 am
To: yodelking591 unread (5 of 5)
9797.5 in reply to 9797.4

Thanks, the link didn't paste like I wanted.

b.b.

From: CBPPuanteur 11:55 am
To: BorderBob (BobBJR) DelphiPlusMember Icon unread (6 of 8)
9797.6 in reply to 9797.1

Without sounding like a devil's advocate, I know the BP has some limited Title 21 from their direct MOU with the DEA, but if in the case where the Agents are satisfied that the person is not an illegal alien, can they keep checking or should they stop and limit their search within the realms of their title 8 authority?
I understand that if within the performance of their "lawful duties" they find evidence of another criminal nature they make take action, but I'm talking specifically on an instance where alienage has been established and they're satisfied as far as title 8 is concerned.

From: ford186 12:37 pm  
To: BorderBob (BobBJR) DelphiPlusMember Icon unread  (7 of 8)  
9797.7 in reply to 9797.1  

BB,

Are you on TDY?

I thought this guy made a trip up to the North for a minute...

From: madchiken30 DelphiPlusMember Icon 12:57 pm  
To: CBPPuanteur unread  (8 of 8)  
9797.8 in reply to 9797.6  

Bodies in the trunk or in a compartment fall under Title 8.

From: BorderBob (BobBJR) Staff DelphiPlusMember Icon 2:42 pm  
To: CBPPuanteur unread  (9 of 9)  
9797.9 in reply to 9797.6  

The dogs we are using are human and narcotic detector dogs. According to the training we got from the lawyers, an alert becomes a probable cause search. So long as the dog is lawfully present, we are good. Which doesn't mean it always go right. The AUSA rejected a prosecution on 4th Amendment grounds last week from us.

Like I said, I think the main purpose is to force the loads into the desert where it is easier to work. Force the badguys our and leave the innocents to be screened.

(to Ford...yea, I am on TDY, and it is a BLAST!)

b.b.

From: madchiken30 DelphiPlusMember Icon Sep-6 6:13 pm  
To: BorderBob (BobBJR) DelphiPlusMember Icon  (10 of 13)  
9797.10 in reply to 9797.9  

That's interesting... I'm going to assume someone messed up and it had nothing to do with CBP being there.

From: CBPPuanteur Sep-6 9:17 pm  
To: madchiken30 DelphiPlusMember Icon  (11 of 13)  
9797.11 in reply to 9797.8
My question was very specific as to the Officers - Agents being already satisfied that no illegal aliens were present.

From: CBPPuanteur Sep-6 9:19 pm
To: BorderBob (BobBJR) DelphiPlusMember Icon unread (12 of 13)
9797.12 in reply to 9797.9
Yes, now that I recall, the dogs itself may not constitute a 4th amendment violation. As you said at least you're keeping the dope off the highway.

From: madchiken30 DelphiPlusMember Icon Sep-6 9:34 pm
To: CBPPuanteur unread (13 of 13)
9797.13 in reply to 9797.11
You stated, "in the case where the Agents are satisfied that the person is not an illegal alien, can they keep checking or should they stop..."

Just because the driver (or everyone in the passenger compartment) is legally in the US, does not mean there is not an immigration violation. A USC driver could be alone and still be arrested for smuggling the aliens that he/she just dropped off 1/2 mile before primary inspection, for scouting the checkpoint for the load coming behind them, for the three aliens in the trunk, or numerous other reasons.

My point is that the K9 sniff is part of the immigration inspection and has nothing to do with Title 21 other than our dogs are also trained to detect the odors of certain narcotics.

From: J B (JBThug) Sep-8 2:32 pm
To: CBPPuanteur unread (14 of 17)
9797.14 in reply to 9797.6
where the Agents are satisfied that the person is not an illegal alien, can they keep checking or should they stop and limit their search within the realms of their title 8 authority?

No, they can also use their intuition and other observations to refer a vehicle to "Secondary Inspection" where the checkpoints continue to operate as the "functional equivalent of the border".

They still don't need probable cause to perform an "inspection" of the vehicle.

From: Former CBP Guy (MichCI) Staff DelphiPlusMember Icon Sep-8 4:12 pm
To: J B (JBThug) (15 of 17)
9797.15 in reply to 9797.14
BP can search a vehicle without PC at a checkpoint? I hate to say it, but that's just not right.

From: ford186 Sep-8 7:03 pm
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (16 of 17)
9797.16 in reply to 9797.15
On a lighter note, did you see that mustache?!!

From: J B (JBThug) Sep-8 11:05 pm
To: Former CBP Guy (MichCI) DelphiPlusMember Icon unread (17 of 17)
9797.17 in reply to 9797.15
Do you need PC to inspect a vehicle at the border? Do you need PC to send a vehicle to secondary?
Same law applies.

From: Former CBP Guy (MichCI) Staff DelphiPlusMember Icon Sep-9 9:36 am
To: J B (JBThug) (18 of 27)
9797.18 in reply to 9797.17
That's different, though, JB. Those vehicles crossed the border. Many (if not most) of the vehicles at a BP checkpoint didn't cross the border.

Options Reply

From: J B (JBThug) Sep-9 10:14 am
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (19 of 27)
9797.19 in reply to 9797.18
Understood.

The purpose of a Border Patrol checkpoint is to inspect vehicles, conveyances, drivers and passengers for persons and cargo that entered the US illegally either at a POE or between POE's.

That's what the Patrol does, every day.

Checkpoints also regularly discover vehicles that were passed thru a POE with hidden compartments, smuggled aliens, drugs, and other contraband that was missed on primary.

http://findarticles.com/p/articles/mi_m2194/is_8_73/ai_n6232025/pg_3/

FUNCTIONAL EQUIVALENT

"Under the 'functional equivalent' doctrine, routine border searches are constitutionally permissible at places other than actual borders where travelers frequently enter or exit the country." (43) Examples of functional equivalent borders include airports within the United States where international flights depart or first land (44) and at an "established station near the border, at a point marking the confluence of two or more roads that extend from the border." (45) Of course, this means that those traveling by vehicle "may be stopped at fixed checkpoints near the border without individualized suspicion even if the stop is based largely on ethnicity." (46) Additionally, "boats on inland waters with ready access to the sea may be hailed and boarded with no suspicion whatever." (47) The first point inside the United States where a ship arriving from outside the country docks is another example of a border functional equivalent. (48) The key feature of a border functional equivalent, then, is that it is "the first point at which an entrant may practically be detained." (49)

EXTENDED BORDER

"The extended border doctrine provides that non-routine border searches that occur near the border are deemed constitutionally permissible if reasonable under the Fourth Amendment," something which is determined by a three-part test, "whether 1) there is a reasonable certainty [or a high degree of
probability] that a border crossing has occurred; 2) there is a reasonable certainty that no change in the condition of the luggage [i.e., the item or person to be examined] has occurred since the border crossing; and 3) there is a reasonable suspicion that criminal activity has occurred." (50) This three-part test becomes necessary in an extended border search context because it "entails greater intrusion on an entrant's legitimate expectation of privacy than does a search conducted at the border or its functional equivalent[."

What, however, is reasonable certainty? This is a proof threshold that lies between probable cause and beyond a reasonable doubt. (52) Regarding the second prong of the test, key to concluding whether or not there has been any change in the luggage, conveyance, or any other item, because it crossed the border are factors including "the time and distance from the original entry and the manner and extent of surveillance." (53) The signal characteristic that differentiates the extended border search from one conducted at the border's functional equivalent is that the first "takes place after the first point in time when the entity might have been stopped within the country." (54) Significantly, a proper extended border like a functional equivalent search may take place without either a warrant or probable cause.

From: TuffStuffCBP Sep-9 9:59 pm
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (21 of 27)
9797.21 in reply to 9797.15

I agree. We have search and seizure laws outside of POE's and PPOE's. Deep BP checkpoints are questionably constitutional and I sympathize with those who feel frustration about them.

Edited 9/9/2009 9:59 pm ET by TuffStuffCBP
Edited 9/9/2009 10:01 pm ET by TuffStuffCBP

From: madchiken30 DelphiPlusMember Icon Sep-9 10:26 pm
To: TuffStuffCBP (22 of 27)
9797.22 in reply to 9797.21

Searches at BP checkpoints are strictly by the 4th amendment. Except in a few very rare circumstances, BPA's either need PC or consent to search.

There is absolutely nothing questionable about the legality of BP checkpoints.

Edited 9/9/2009 10:27 pm by madchiken30

From: Former CBP Guy (MichCI) Staff DelphiPlusMember Icon 7:37 am
To: madchiken30 DelphiPlusMember Icon (23 of 27)
9797.23 in reply to 9797.22

"Searches at BP checkpoints are strictly by the 4th amendment. Except in a few very rare circumstances, BPA's either need PC or consent to search."

That's what I thought. JB says otherwise.

From: madchiken30 DelphiPlusMember Icon 7:45 am
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (24 of 27)
9797.24 in reply to 9797.23
Part of his post is unclear because he says inspect, which we do.

But then he brings up FEB and extended border searches. In reality, to do either, you would most likely already have PC to stop and search.

From: Former CBP Guy (MichCI) Staff DelphiPlusMember Icon 8:18 am
To: madchiken30 DelphiPlusMember Icon unread (25 of 27)
9797.25 in reply to 9797.24
I guess I equate inspecting a vehicle with searching a vehicle. Thanks for the answer.

From: J B (JBThug) 9:22 am
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (26 of 27)
9797.26 in reply to 9797.25
The legal difference between inspection and search of a vehicle, cargo, and passengers is a narrow semantic dance, but it matters.

From: BorderBob (BobBJR) Staff DelphiPlusMember Icon 10:54 am
To: J B (JBThug) (27 of 27)
9797.27 in reply to 9797.26
Not really. The INA requires vehicles to stop at a checkpoint. Beyond that there is little that can be compelled beyond consent. Even the declaration of citizenship is a bit squishy since there is no law that requires a checkpoint traveler to produce ID. And for the record, there is NO type of border search at a checkpoint absent extraordinary circumstances.

It is a stratgic dance and I have seen some very creative methods of producing results which I won't go into here.

b.b.

From: nteu123 Sep-14 11:44 pm
To: Former CBP Guy (MichCI) DelphiPlusMember Icon (28 of 33)
9797.28 in reply to 9797.23
http://www.roadblock.org/federal/caseUSmartinez.htm

This is an old case (interestingly enough this link was/is #### in this guy's blog) but I don't think it's been overturned and the ruling clears up BP checks (in my mind) and their constitutionality.

http://www.roadblock.org/federal/caseUSortiz.htm
"The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. . . . A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." Id., at 145-146.
God Bless America and the Supremes :)

Edited 9/14/2009 11:46 pm by nteu123

From: Former CBP Guy (MichCI)  Staff DelphiPlusMember Icon    Sep-15 10:22 am
To: nteu123    (29 of 33)
9797.29 in reply to 9797.28

Thanks for posting. After reading the cases, the case law appears quite clear. Vehicles can be stopped at BP checkpoints without any individualized suspicion. However, in order to search, PC is required.

From: onemoreshot    Sep-15 10:33 am
To: Former CBP Guy (MichCI)  DelphiPlusMember Icon    (30 of 33)
9797.30 in reply to 9797.29

if i remember correctly, a dog sniff on the outside of the car does not require PC either? and then dog alert is PC to search the car?

From: Former CBP Guy (MichCI)  Staff DelphiPlusMember Icon    Sep-15 12:14 pm
To: onemoreshot    (31 of 33)
9797.31 in reply to 9797.30

Correct. I believe it's because a person has no reasonable expectation of privacy in the odors that emanate from their vehicle.

From: BorderBob (BobBJR)  Staff DelphiPlusMember Icon    Sep-15 12:38 pm
To: Former CBP Guy (MichCI)  DelphiPlusMember Icon    (32 of 33)
9797.32 in reply to 9797.31

The dog sniff is one element of Bressie's current complaining. He contends now that his "detention" beyond that which is required to establish his citizenship, is illegal. For example, the time it takes for a K9 to walk around a car. All of the dogs used at the checkpoints are human detector dogs as well as narcotic, a subtlety lost on Terry.

BTW, there may be another video coming. He came through the point last again Friday.
b.b.