

The New York Times

Under Trump, Border Patrol Steps Up Searches Far From the Border

By **Ron Nixon**

Feb. 21, 2018



In an image from a recording, a Border Patrol officer checking the identification last month of travelers on a Greyhound bus in Fort Lauderdale, Fla. The officers escorted a woman off the bus.

WASHINGTON — Border Patrol officers are working without permission on private property and setting up checkpoints up to 100 miles away from the border under a little-known federal law that is being used more widely in the Trump administration's aggressive crackdown on illegal immigration.

In Texas, a rancher has accused the Border Patrol of trespassing after he said he found a surveillance camera the agency placed on his property.

In New Hampshire, border officers working with state officials conducted what the American Civil Liberties Union described as illegal drug searches after residents were arrested at immigration checkpoints set up on a major interstate highway. One of the checkpoints was set up just before a local marijuana festival.

And recently in Florida, New York and Washington State, Border Patrol officers have been criticized for boarding buses and trains to question riders — mostly American citizens — about their immigration status.

Trump administration officials defend the government's decades-old authority to search people and property, even without a warrant, far from the border. They call it a vital part of preventing weapons, terrorists and other people from illegally entering the United States.

But officials conceded that some of the searches — particularly those aboard Greyhound buses or Amtrak trains on domestic routes — had increased since the Obama administration. And under President Trump, field supervisors have regained the authority to order the searches, instead of officials at Border Patrol headquarters in Washington.

“The U.S. Border Patrol conducts transportation checks in accordance with the law,” said Stephanie Malin, a spokeswoman for Customs and Border Protection, which oversees the Border Patrol. “Transportation checks are performed when and where there is an operational benefit.”

The agency is an arm of the Homeland Security Department, which would not provide statistics on how often, or where, it checks domestic travel passengers or patrols on private property. But agency data shows that less than 3 percent of foreigners entering the country illegally were caught at immigration checkpoints nowhere near the border.

Many of the searches turned up marijuana and other illegal drugs, according to the data. But the most drugs were seized in small quantities — about an ounce or less — and were taken from American citizens in 40 percent of the cases.

The department said in a statement that the checkpoints were “strategically placed where illegal cross-border smuggling is most likely to converge.”

Stephen I. Vladeck, a professor at the University of Texas School of Law, said the department had occasionally pushed the limits of its authority to conduct searches without a warrant far from the border.

“Inevitably, one of these cases is going to get to the Supreme Court, which will have to revisit the seemingly limitless government authority the department claims it has,” Mr. Vladeck said. “It cannot be the case that anyone who lives or travels within 100 miles of the border has no Fourth Amendment rights.”

The Fourth Amendment protects against “unreasonable searches and seizures.”

Current federal immigration law does not require the government to obtain a warrant before searching people and their property at ports of entry. Once away from a land or maritime border, but still within what the Justice Department has defined as a “reasonable distance” of 100 miles, officers can search people who are suspected of immigration violations and smuggling drugs.

But many border residents and travelers say that authority amounts to an invasion of privacy.

An estimated 200 million Americans live within 100 miles of the border, according to the A.C.L.U. At least 11 states — mostly in the Northeast and Florida — are either entirely or almost entirely in the 100-mile radius.

A measure to limit that distance to 25 miles passed the Senate in 2013 but was rejected by the House; it was proposed after Senator Patrick J. Leahy, Democrat of Vermont, was stopped by the Border Patrol at an immigration checkpoint.

The legal dispute in Texas challenges the Border Patrol's authority to search private property without permission. By law, officers can go onto private property within 25 miles of the border without permission from the owner.

Ricardo D. Palacios, the owner of the Juan Salinas Ranch, said in court filings that Border Patrol officers had been "roaming freely about" for years on his property near the small town of Encinal, Tex. He said that the searches were conducted with neither a warrant nor a good reason to be there, and that officers also had stopped his family members at checkpoints.

The last straw, Mr. Palacios said in court documents, came in November, when he found a surveillance camera hidden in a tree near his house.

Mr. Palacios removed the camera and kept it as evidence of federal officers trespassing on his property. Both the Border Patrol and the Texas Department of Public Safety claimed ownership of the camera and have asked Mr. Palacios to return it. State officials have threatened to arrest him on theft charges. Mr. Palacios sued both agencies.

Raul Casso, a lawyer for Mr. Palacios, said the ranch is more than 30 miles from the Rio Grande, which divides the United States and Mexico. He said that put Mr. Palacios's property beyond the distance that Border Patrol officers can legally patrol without his permission.

"They either acted on purpose or incompetently," said Mr. Casso, a former lawyer for the city of Laredo. "Either way, they are outside the scope of their authority." Customs and Border Protection officials declined to comment on the case.

In New Hampshire, the A.C.L.U. is defending 18 people who were arrested at immigration checkpoints on a major interstate where Border Patrol officers stopped hundreds of cars about 90 miles from the Canadian border over the summer. Checkpoints on Interstate 93 were common after the Sept. 11, 2001, terrorist attacks, but had abated by July 2012, Border Patrol officials said.

Border Patrol officers detained about 33 people on suspicion of immigration-related offenses at checkpoints in northern New Hampshire in August and September; the local police charged an additional 44 with drug possession. In all, the authorities seized about two pounds of marijuana and smaller amounts of cocaine and other drugs, court records show.

Gilles Bissonnette, the legal director for New Hampshire's A.C.L.U. chapter, said the Border Patrol violated state law by conducting the drug searches. He said that New Hampshire courts have held that without a warrant, the authorities cannot deploy drug-sniffing dogs in searches — as they were at the checkpoints — without a reasonable suspicion of a crime.

"They were supposed to be conducting immigration checks," Mr. Bissonnette said. The checkpoints must be brief and limited to confirming resident status, he said, not primarily used for drug searches or general law enforcement efforts.

New Hampshire officials maintain that the Border Patrol officers were in their jurisdiction since the checkpoints were under 100 miles from the Canadian border.

“These are federal agents working for a federal agency performing a federal function within the federation of states,” said Gabriel Nizetic, a lawyer in the state who represented a local police department that participated in the checkpoints. Officials at Customs and Border Protection declined to comment.

But perhaps no Border Patrol searches have generated as much controversy as the immigration inspections of passengers boarding Greyhound buses or Amtrak trains.

In January, officers arrested a Jamaican woman traveling on a bus from Orlando to Miami who had overstayed a tourist visa. That same month, officers in Spokane, Wash., arrested an undocumented immigrant traveling with his son on a Greyhound bus from Seattle to Montana. The man’s son, who was released, is living in the United States under the Deferred Action for Childhood Arrivals program, an Obama-era initiative that protects young undocumented immigrants from deportation. But the father was charged with being in the country illegally.

Both episodes have prompted widespread outrage. Videos taken by other bus passengers were widely distributed on social media.

“We are talking about purely domestic routes that happen to be within 100 miles of the border,” said Matt Adams, the legal director of the Northwest Immigrant Rights Project in Seattle. He said the government was using the law “to justify racial profiling. There was no reason to think these men were sneaking across the border.”

Homeland security officials deny the charges of racial profiling and maintain their authority to conduct the searches. In a statement, Greyhound said it is required by law to “cooperate with the relevant enforcement agencies if they ask to board our buses or enter stations.”

Rosa Goldensohn contributed reporting from New York.

Get politics and Washington news updates via Facebook, Twitter and the Morning Briefing newsletter.

A version of this article appears in print on Feb. 22, 2018, on Page A13 of the New York edition with the headline: Checkpoints and Raids By Border Patrol Agents, Nowhere Near a Border

[READ 404 COMMENTS](#)