

THE FOURTH AMENDMENT—FREE ZONE IN THE UNITED STATES

Mitchell Scacchi, Kyle Sweetland, and Amy Peikoff

The federal government, mainly through Department of Homeland Security agencies like Immigration and Customs Enforcement and Customs and Border Protection, has vast authority to patrol the US border and interior to prevent the illegal entry of people and goods and enforce immigration law. That includes the power to conduct warrantless and suspicionless searches of vehicles within 100 miles of a US border. But the Fourth Amendment to the US Constitution protects people against unreasonable searches and seizures and requires warrants be issued only upon probable cause. A policy that permits warrantless searches risks violating these constitutional protections.

THE 100-MILE BORDER ZONE

Under the Immigration and Nationality Act of 1952, border officers have the power, without a warrant, to board and search any vessel in US waters and any railway car, aircraft, conveyance, or vehicle within a reasonable distance from any external US boundary.¹ Congress left the definition of “a reasonable distance” to the executive branch. Federal regulations from 1953 defined it as “within 100 air miles” of any US boundary.² This definition remains in place.

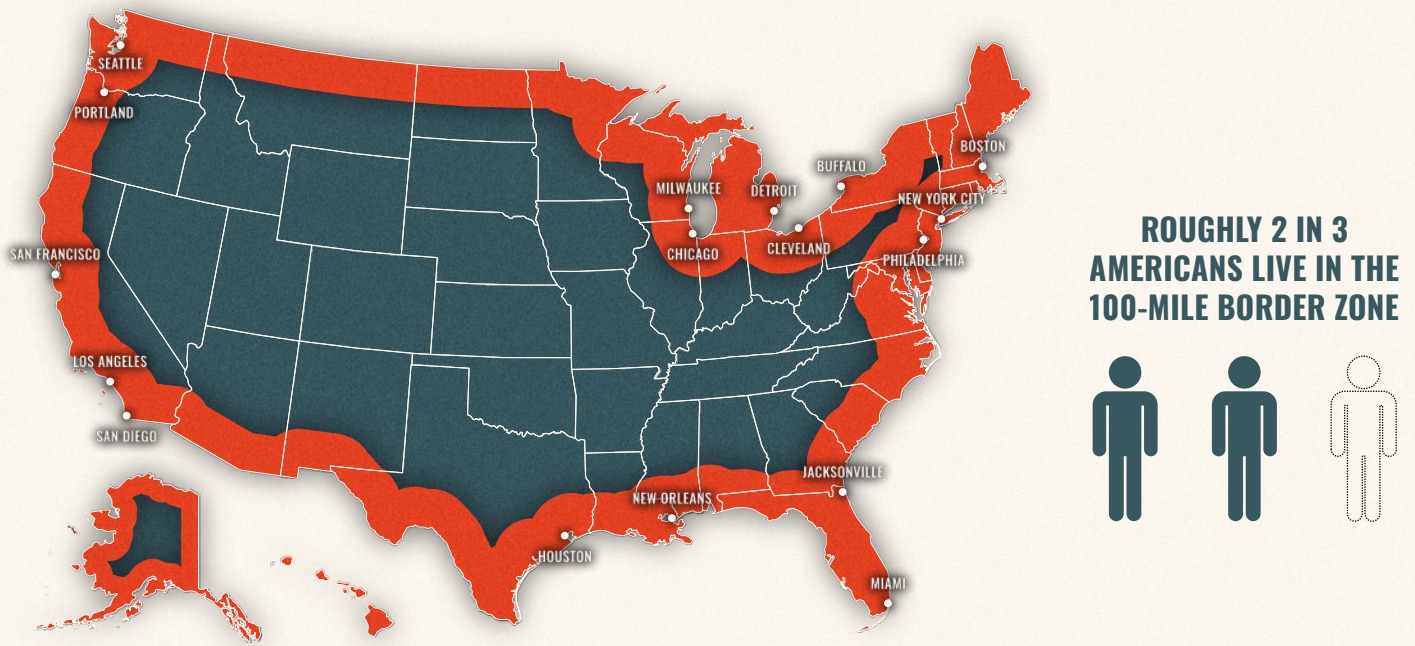
As Figure 1 shows, this 100-mile-thick border zone is a full perimeter around the country, encompassing 10 whole states, including the entirety of 7 of the 10 most populous US cities. In all, it encompasses roughly two-thirds of the US population, or approximately 228 million people.³ Within 100 miles of any national boundary, the federal government can stop, board, and search any car, bus, train, plane, or boat without a warrant and without probable cause.

SEARCHES OF VEHICLES AT INTERIOR CHECKPOINTS

One way the federal government exercises this power within 100 miles of any national boundary is by setting up interior checkpoints. Permanent or tactical (temporary) checkpoints can be established on major or secondary roads, often with cameras and drug-sniffing dogs on site. Permanent checkpoints comprise fixed structures located on major roads, while tactical checkpoints use temporary, moveable structures on secondary roads.⁴ In either case, every vehicle that passes through is stopped and subject to a visual inspection, as immigration officers do need neither a warrant nor individualized suspicion.⁵

According to US Customs and Border Protection, there are 224 active interior checkpoints throughout the United States, 35 permanent and 189 tactical. There are 145 checkpoints (34 permanent and 111 tactical) within 100 miles of the southern border and 79 (1 permanent and 78 tactical) within 100 miles of the northern border.⁶ The government has established checkpoints as far as 90 miles from the border.⁷

FIGURE 1. THE 100-MILE BORDER ZONE



Under the US Supreme Court's border search exception, the government can briefly stop and question drivers and quickly observe what is in plain sight inside their vehicles at "reasonably located" interior checkpoints without a warrant or individualized suspicion.⁸ But the Fourth Amendment protects individuals "against unreasonable searches and seizures" and requires search warrants be issued "upon probable cause."⁹ Legal experts argue, then, that within 100 miles of the US border, the Fourth Amendment's protections of property and privacy are unjustifiably weakened.¹⁰

NOTES

1. 8 U.S.C. § 1357(3).
2. 8 C.F.R. § 287.1(a)(2) (1999).
3. ACLU, "Know Your Rights: 100 Mile Border Zone," accessed May 6, 2025, <https://www.aclu.org/know-your-rights/border-zone#how-does-this-work-in-real-life-cbp-roving-patrols>; US Census Bureau, "Most Populous," accessed June 5, 2025, <https://www.census.gov/popclock/embed.php?component=populous>; US Census Bureau, "U.S. and World Population Clock," June 20, 2025, <https://www.census.gov/popclock/>.
4. Immigration Law Group, LLC, "What Should Immigrants Know About Interior Checkpoints and Their Rights?," December 5, 2019, <https://www.emsylvaw.com/what-should-immigrants-know-about-interior-checkpoints-and-their-rights/>.
5. ACLU, "100 Mile Border Zone."
6. US Customs and Border Protection, interior checkpoint statistics (2025). Obtained under the Freedom of Information Act and available from the authors upon request.
7. In Woodstock, New Hampshire. See: ACLU New Hampshire, "ACLU Settles Lawsuit Challenging Border Patrol Checkpoints," May 18, 2023, <https://www.aclu-nh.org/en/press-releases/aclu-settles-lawsuit-challenging-border-patrol-checkpoints>.
8. United States v. Martinez-Fuerte, 428 U.S. 543, 562 (1976); US Customs and Border Protection, "Legal Authority for the Border Patrol," Article Number 000001253, January 28, 2025, https://www.help.cbp.gov/s/article/Article-1253?language=en_US; Congress.gov, "Amdt4.6.6.3 Searches Beyond the Border," Constitution Annotated: Analysis and Interpretation of the US Constitution, accessed August 21, 2025, https://constitution.congress.gov/browse/essay/amdt4-6-6-3/ALDE_00000239/#ALDF_00021001.
9. U.S. Const. amend. IV.
10. Philip Mayor, "Borderline Constitutionalism: Reconstructing and Deconstructing Judicial Justifications for Constitutional Distortion in the Border Region," *Harvard Civil Rights-Civil Liberties Law Review* 46 (2011): 647–73; Deborah Anthony, "The US Border Patrol's Constitutional Erosion in the '100-Mile Zone,'" *Penn State Law Review* 124, no. 2 (2020): 391–432; ACLU, "100 Mile Border Zone."



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