March 21, 2018

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Re: Immigration Raids on Greyhound Buses

Dear Mr. Leach and Ms. Martinez:

We write on behalf of the ACLU affiliates in California, Washington, Vermont, New York, New Hampshire, Michigan, Florida, Maine, Texas, and Arizona regarding Greyhound's practice of permitting Customs and Border Protection (CBP) agents to routinely board its buses to question passengers about their citizenship and immigration status. These intrusive encounters often evince a blatant disregard for passengers' constitutional rights and have even resulted in CBP agents removing passengers from buses and arresting them. Greyhound's cooperation with CBP is unnecessarily facilitating the violation of its passengers' rights.

Greyhound recently has said that the company believes it is "required" to "cooperate with [CBP] if they ask to board our buses."[1] We are aware of no such requirement. Rather, Greyhound has a Fourth Amendment right to deny CBP permission to board and search its buses without a judicial warrant. For the following reasons, we urge Greyhound to change its policy and to refuse CBP permission to conduct invasive bus raids without a warrant.

CBP Raids of Greyhound Buses

As CBP activity far from the border has increased significantly in the past year,[2] there are increasing reports of indiscriminate CBP "immigration checks" of Greyhound buses throughout the country. Reports describe CBP's practice of boarding Greyhound buses without even any pretense of suspicion and detaining passengers until they answer questions about their citizenship and immigration status and present immigration documentation. CBP often singles out individuals because of the color of their skin or because they have a foreign accent. In a number

[1] Greyhound, *Statement regarding incident in Ft. Lauderdale*, Jan. 22, 2018, http://bloggreyhound.com/news/statement-regarding-incident-in-ft-lauderdale/.
[2] Ron Nixon, *Under Trump, Border Patrol Steps Up Searches Far from the Border*, N.Y. Times, Feb. 21, 2018, https://www.nytimes.com/2018/02/21/us/politics/trump-border-patrol-searches.html.

of reported cases, CBP agents arrested individuals on Greyhound buses without probable cause to believe they were deportable.

In Washington, agents reportedly board Greyhound buses frequently and intimidate passengers with questioning and demands for documents, and have been doing so in the Spokane area for several years, including on purely domestic bus routes.[3] In 2017 alone, CBP agents took into custody at least 34 people after subjecting many more people to bus immigration checks in the Spokane area.[4] CBP documents obtained by the ACLU of WA indicate that most of these bus checks took place on Greyhound buses. In one recent case, in January 2018, CBP agents confronted a father and son as they rode a Greyhound from Seattle to Montana. Even though the son had valid Deferred Action for Childhood Arrivals (DACA) status and the father never gave the agents any information about his immigration status, agents arrested the pair after asking them "Are you illegal" and "Do you have your documents on you."[5]

In California, the ACLU of Southern California has received reports for years of CBP agents boarding Greyhound buses in Riverside County and questioning and arresting passengers. In January 2018, news media reported an incident in Indio, California, where CBP agents boarded a Greyhound bus and asked every passenger for their citizenship and immigration status and identification. When a Latino U.S. citizen eyewitness began filming the incident outside the bus, including CBP's removal and arrest of one person from the bus, a CBP agent demanded to know the witness's citizenship and asked him for two forms of identification.[6] In another incident in February 2018, CBP agents stopped a Los Angeles resident as he boarded a Greyhound bus in Indio to L.A. and detained him without any reasonable suspicion while the agents questioned him about his immigration status, causing him to miss his bus. The agents told him that they stopped him because his "shoes looked suspicious," like someone who had recently crossed the border.

In Vermont, in August 2017, CBP agents boarded a Greyhound bus as it arrived from Boston in White River Junction station. The agents would not allow anyone to leave the bus, asking the passengers their citizenship and checking the identification of people who had "accents or were not white."[7]

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[3] *See* Rachel Alexander, *False rumor of Spokane ICE raid sparked by routine border enforcement patrols*, The Spokesman-Review, Feb. 15, 2017, http://www.spokesman.com/blogs/spincontrol/2017/feb/15/false-rumor-spokane-ice-raid-sparked-routine-border-enforcement-patrols/; Suzanne Phan, *Father, son with DACA detained on Greyhound bus by Border Patrol in Spokane*, Komo News, Jan. 11, 2018, http://komonews.com/news/local/federal-way-father-and-son-with-daca-detained-in-spokane-on-greyhound-bus-by-border-patrol.

[4] *Effort to secure border brings Border Patrol agents to Spokane bus station*, KREM2, http://www.krem.com/video/news/investigations/effort-to-secure-border-brings-border-patrol-agents-to-spokane-bus-station/293-8015787

[5] Suzanne Phan, *Father, son with DACA detained on Greyhound bus by Border Patrol in Spokane*, Komo News, Jan. 11, 2018, http://komonews.com/news/local/federal-way-father-and-son-with-daca-detained-in-spokane-on-greyhound-bus-by-border-patrol.

[6] Lauren Coronado and Jesus Reyes, *Bermuda Dunes man says he was discriminated against by Border Patrol agents*, CBS Local 2, Jan. 18, 2018, http://www.kesq.com/news/bermuda-dunes-man-claims-he-was-discriminated-against-by-border-patrol-agents/687718557.

[7] John P. Gregg, *Border Patrol – and Scaramucci – Tied to the Valley*, Valley News, Aug. 2, 2017, http://www.vnews.com/U-S-Border-Patrol-Searches-Bus-in-White-River-Junction-11640514.

In Michigan, CBP agents are likewise questioning and arresting passengers and engaging in improper enforcement practices on Greyhound buses. One incident reported to the ACLU of Michigan occurred in January 2018 when a couple arriving in Detroit by Greyhound was detained by CBP. The agents, without giving any reason for the stop, questioned the couple about their immigration status and asked them to produce their "documents." The man was arrested by CBP, transferred to the local police department, and is currently being held in immigration detention while his U.S. citizen fiancée is struggling to bring her partner back home. In a separate incident, a Greyhound bus leaving Michigan for New York was stopped. CBP agents boarded the bus and asked every passenger for their citizenship and immigration status and identification. Passengers who did not provide proof of lawful status were then taken into custody.

The common thread in the reports received by the ACLU of Michigan is that CBP agents operating on Greyhound buses focus on persons of color and never give passengers a reason for the stop. Indeed, CBP data obtained by the ACLU shows not only that 82% of foreign citizens stopped by CBP in Michigan are Latino, but also that almost one in three of those processed are U.S. citizens.[8] This data strongly suggests that CBP is using ethnicity as the basis for its stops.

In New York, the New York Civil Liberties Union has documented CBP agents' practice of boarding Greyhound buses in central and western New York and subjecting passengers to aggressive questioning in an in-depth 2011 report entitled *Justice Derailed*.[9] Among other findings, the report showed that CBP arrests during transportation raids rarely apprehended people who crossed the border recently, disproportionately targeted people of color, frequently violated agency regulations designed to ensure proper arrests, and in numerous cases led to wrongful detentions of individuals who were in compliance with immigration laws. A related report revealed that CBP incentivized aggressive enforcement in the Buffalo Sector by awarding bonuses to agents based on quantity of arrests.[10] Unfortunately, in the years since these reports, and increasingly during the past year, CBP agents have continued to carry out transportation raids on buses in upstate New York.[11]

In Florida, in January 2018, two videos taken by Greyhound passengers captured CBP agents asking passengers for proof of citizenship. The videos went viral and prompted national outcry. The first incident ended with CBP detaining a Jamaican woman, who was in the U.S. to visit her granddaughter, and the second incident with CBP arresting a 12-year Miami resident

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[8] ACLU of Michigan, What is Border Patrol Doing in Michigan: 100 Mile Zone Fact Sheet, *available at* http://www.aclumich.org/sites/default/files/Fact%20sheet_100_Mile_Zone.pdf.
[9] New York Civil Liberties Union, *Justice Derailed: What Raids on New York's Trains and Buses Reveal about Border Patrol's Interior Enforcement Practices*, 2011, *available at* https://www.nyclu.org/sites/default/files/publications/NYCLU_justicederailedweb_0.pdf.
[10] New York University School of Law, et al., *Uncovering USBP, Bonus Programs for United States Border Patrol Agents and the Arrest of Lawfully Present Individuals*, 2013, *available at* http://familiesforfreedom.org/sites/default/files/resources/Uncovering%20USBP-FFF%20Report%202013.pdf.
[11] Wakisha Bailey, *Border Patrol Officers ramp up their efforts in the Rochester area*, WROC-8, Feb. 13, 2018 http://www.rochesterfirst.com/news/local-news/border-patrol-officers-ramp-up-their-efforts-at-local-greyhound-bus-stations/972492444

from Trinidad. Nineteen members of Congress issued a statement afterwards calling CBP's actions an "abuse of mandate and authority."[12]

In Arizona, in an incident reported to the ACLU of Arizona in August 2017, CBP agents boarded a Los Angeles to Phoenix bus at a rest stop in Quartzsite. The agents questioned every passenger about their citizenship, demanded proof of lawful permanent residency from one passenger and arrested and removed another. In March 2015, a group of students returning home to Tucson from Phoenix reported that Greyhound staff escorted CBP agents onto their bus when they reached the Greyhound bus station in Tucson. The agents singled out four Guatemalan passengers for questioning.[13]

Passengers involved in these incidents, whether they were directly contacted by CBP or witnessed others being contacted, describe highly coercive circumstances and resulting distress inflicted on them.

Greyhound's Fourth Amendment Right to Deny CBP Access to Buses Absent a Warrant

In general, the Fourth Amendment allows law enforcement to enter areas of a business that are open to the general public but requires a warrant, consent, or exigent circumstances to enter nonpublic areas. *See, e.g., Marshall v. Barlow's, Inc.*, 436 U.S. 307, 315 (1978); *Patel v. City of Montclair*, 798 F.3d 895, 898-99 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 1496 (2016). This principle applies to immigration enforcement. *Pearl Meadows Mushroom Farm, Inc. v. Nelson*, 723 F. Supp. 432, 439 (N.D. Cal. 1989).

A ticket is required to board a bus, and therefore the public may not come and board a bus at will. Accordingly, law enforcement officers must generally have a warrant, probable cause, or consent to board a bus. Even if the automobile exception to the warrant requirement applies, law enforcement officers must still have probable cause or consent for a vehicle search. *See Almeida-Sanchez v. United States*, 413 U.S. 266, 269, 272-73 (1973); *Maryland v. Dyson*, 527 U.S. 465, 467 (1999). CBP does not even claim to have probable cause for each of its bus raids, and, as with any person or entity, Greyhound is not obligated to legitimize such raids through its consent. *Florida v. Bostick*, 501 U.S. 429, 437 (1991) (noting "an individual may decline an officer's request without fearing prosecution"); *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973) (acknowledging "right to refuse consent" to search).

Greyhound's statement refers to a statute that provides "within a reasonable distance from any external boundary of the United States," CBP may, without a warrant, "board and search for aliens … any railway car, aircraft, conveyance, or vehicle." 8 U.S.C. § 1357(a)(3). Agency regulations assert a "reasonable distance" under section 1357 is no more than "100 air miles from any external boundary of the United States," and clearly intend that a smaller distance apply to some border regions. 8 C.F.R. § 287.1(a)(2).

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[12] David J. Neal, *Border Patrol agents taking people off buses is common. It happened again this week.*, Miami Herald, Jan. 28, 2018.
[13] Maria Ines Taracena, *Border Patrol Checking People's Immigration Statute at Greyhound Bus Station*, Tucson Weekly, Mar. 2, 2015.

However, as the Supreme Court has made clear, "no Act of Congress can authorize a violation of the Constitution." *Almeida-Sanchez*, 413 U.S. at 272 (holding section 1357 did not authorize Fourth Amendment violation committed by Border Patrol's warrantless search of automobile without probable cause or consent). The same is true for agency regulations. *United States v. Brignoni-Ponce*, 422 U.S. 873, 883 (1975) (rejecting position that statute and regulation allow Border Patrol to "stop motorists at random for questioning, day or night, anywhere within 100 air miles of the 2,000-mile border … without any reason to suspect that they have violated any law" and holding Fourth Amendment standards apply to Border Patrol).

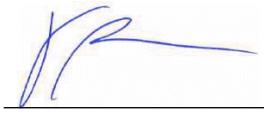
Accordingly, neither statutes nor regulations can override a business's Fourth Amendment right to refuse consent to enter nonpublic areas under its control.[14] Department of Homeland Security regulations in fact recognize that right. 8 C.F.R. § 287.8(f)(2) ("An immigration officer may not enter into the non-public areas of a business … unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected.").[15]

The Fourth Amendment protects businesses as well as individuals, and we believe Greyhound has the Fourth Amendment right to refuse consent to board its buses.

Greyhound is in the business of transporting its passengers safely from place to place. It should not be in the business of subjecting its passengers to intimidating interrogations, suspicionless searches, warrantless arrests, and the threat of deportation. We urge Greyhound to change its practices and policies to refuse CBP consent to board its buses without a warrant, except when legally required at the physical border or its equivalent.

We would be glad to discuss this with you in person and by phone. We look forward to your prompt response.

Sincerely,



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[14] A different rule may apply at the border or its functional equivalent, *Almeida-Sanchez*, 413 U.S. at 272-73, but not to interior operations. *Cf.* 8 U.S.C. § 1225(d)(1) (power to board and search vehicles at border or functional equivalent).

[15] To the extent this regulation purports to authorize boarding a vehicle in nonpublic areas of a business without consent under authority of 8 U.S.C. § 1357(a)(3), it cannot contravene the Fourth Amendment.

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