PERSPECTIVE

Checkpoints again subject to challenges

By Ariana Seldman Hawbecker

San Clemente, nicknamed "Spanish Village by the Sea," is known for its beautiful beaches, worldclass waves, and laid-back vibe. It is among these reasons that President Nixon put the California town on the national map with his Western White House nearly half a century ago. About the same time Nixon returned to San Clemente following his resignation from office, the U.S. Supreme Court ruled that stopping people just south of San Clemente, on U.S. soil some 70 miles north of the border, was allowed to detect illegal immigration. Decades later, the government's operations of San Clemente's checkpoint are again the subject of legal challenges.

U.S. Customs and Border Patrol operates the checkpoint on Interstate 5 between San Diego and Los Angeles, which the government's website describes as a method to prevent the smuggling of illegal aliens and narcotics.

For the past several decades, the checkpoint has continued to operate with the purported permitted aim of controlling illegal immigration. But in the middle of September, a three-judge panel for the federal 9th U.S. Circuit Court of Appeals held that the checkpoint would ran afoul of the Constitution if it were focused on activities other than the apprehension of illegal aliens.

In *United States v. Soto-Zuniga*, 2016 DJDAR 9625 (Sept. 16, 2016), the court vacated Hector Soto-Zuniga's jury conviction for possession with intent to distribute methamphetamine. The court held that the district judge should have allowed Soto-Zuniga discovery into whether the checkpoint is invalid under the Fourth Amendment.

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Soto-Zuniga, a lawful U.S. resident, was stopped and searched at the San Clemente checkpoint for acting nervously. After a secondary search, government agents located methamphetamine in the backseat of his car. In challenging his conviction, he argued that the government was using the San Clemente inspection hub as a pretext to search for drugs rather than to control immigration. To support his argument, Soto-Zuniga asked the government for information relating to the number and types of arrests and vehicle searches at the checkpoint. The district court denied his request, relying on a border patrol agent's testimony that the primary purpose of the checkpoint was immigration.

In 1976, the Supreme Court upheld the constitutionality of the stops at the San Clemente checkpoint when conducted for immigration control purposes. However, the Supreme Court has separately held that checkpoints operated principally to thwart criminal activity violate the Fourth Amend-

ment's prohibition on illegal searches. Therefore, the *Soto-Zuniga panel* emphasized that whether the San Clemente checkpoint was operating afoul of the Fourth Amendment was dependent on whether its main purpose was to control immigration as opposed to preventing drug trafficking or other criminal wrongdoing.

The 9th Circuit sided with Soto-Zuniga, striking down the trial court's denial of his request for discovery on this issue. The court said the government's claim that 90 percent of arrests at the checkpoint are related to immigration wasn't good enough.

In addition to reversing Soto-Zuniga's conviction and permitting his request for answers regarding the operations of the San Clemente checkpoint, the court held that he was improperly denied information that could help him identify the teenagers who may have planted the drugs in his car before he was stopped. The government claimed that this information relating to a drug smuggling operation was sensitive.

The 9th Circuit decision hints that the government may choose to drop the charges against Soto-Zuniga rather than provide the requested discovery.

Ariana Seldman Hawbecker *is an attorney at Bienert, Miller & Katzman PLC, focused on civil litigation and criminal defense.*

HAWBECKER