



August 6, 2013

Sent via U.S. Mail and Facsimile

AMERICAN CIVIL
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Fred W. Bittner, Chief of Police
City of Mayfield Heights
6154 Mayfield Road
Mayfield Heights, OH 44124
Fax- 440-442-6360



Re: General Drug Checkpoints

Dear Chief Bittner:

It has come to the attention of the American Civil Liberties Union of Ohio Foundation ("ACLU of Ohio") that the Mayfield Heights Police Department ("MHPD") is involved with general drug interdiction checkpoints as a part of its crime eradication program. We are aware of such a checkpoint on I-271 in the City of Mayfield Heights that was set-up by MHPD on or about June 24, 2013.¹ For a variety of reasons, we believe that the use of this particular type of checkpoint is troubling and raises serious constitutional concerns.

The Supreme Court of the United States has ruled that general drug interdiction checkpoints, similar to the one deployed by MHPD on or about June 24, are unconstitutional. Furthermore, it is well-established that for a police officer to justifiably stop the operator of a motor vehicle, the officer must have reasonable and articulable suspicion for the stop. Based on news reports of the June 24, 2013 checkpoint, no such reasonable or articulable suspicion existed.

Pictures of the June 24, 2013 checkpoint obtained by the media indicate that MHPD placed signs along I-271 North reading, "Drug Enforcement Ahead" and

¹ James Eng, *Fake Drug Checkpoints: Ok for Cops to Lie to Motorists*, MSN News, July 2, 2013, available at <http://news.msn.com/crime-justice/fake-drug-checkpoints-ok-for-cops-to-lie-to-motorists>.

“Prepare to Stop.”² Media reports also revealed that MHPD officers stopped drivers and conducted warrantless searches of their vehicles to look for the presence of narcotics or contraband. In one instance, it was reported that an individual had been stopped after pulling off to the side of the road to retrieve his phone charger.²

In light of expansive media coverage of the incident, it is bewildering as to why the MHPD initially denied the existence of the checkpoint. When confronted by an individual on Facebook about the constitutionality of such a checkpoint, someone using the official MHPD Facebook account posted a comment stating, “their [sic] wasn’t a drug checkpoint and random vehicles were not stopped.”³

Courts have understood a checkpoint to exist when certain factors are present. In 2000, the Cleveland Police Department conducted a checkpoint, in which officers deployed signs that read “Sobriety Checkpoint,” “Slow Down,” and “Stop.” *State v. Bryson*, 142 Ohio App.3d 397, 399, 755 N.E.2d 964 (8th Dist.2001). In the *Bryson* case, officers were stationed one hundred feet away from the checkpoint. In another situation, the Ohio State Highway Patrol stationed “observation police cars” near “Checkpoint Ahead Signs” and “Slow and Prepare to Stop signs.” *State v. Hall*, 5th Dist. No. 03-COA-064, 2004-Ohio-3302, citing *State v. Goines*, 16 Ohio App.3d 168, 169, (1984). In both of these instances, the courts took for granted that a checkpoint existed. Similar to these situations, the MHPD had signs and cruisers that subsequently stopped drivers. Therefore, based on the actions of the MHPD, there does not seem to be any question that MHPD did, in fact, utilize a “checkpoint” on I-271 on June 24, 2013.

Furthermore, there does not appear to be any doubt that the June 24, 2013 checkpoint violated the Fourth Amendment of the United States Constitution. In determining the constitutionality of a checkpoint, courts consider the checkpoint program’s “primary purpose.” *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). If the purpose of the checkpoint “is to uncover evidence of ordinary criminal wrongdoing, the program contravenes the Fourth Amendment.” *Id.* at 40. In *Edmond*, the Supreme Court of the United States evaluated the City of Indianapolis’ program of deploying vehicle checkpoints on public highways to

² *Ohio Police Set up Fake Drug Checkpoint to Fool Motorists*, RT, July 1, 2013, available at <http://rt.com/usa/fake-drug-ohio-police-502/>.

³ *Ohio Police Department Sparks Controversy with Fake Drug Checkpoints*, Fox News.com, July 2, 2013 <http://www.foxnews.com/us/2013/07/02/ohio-police-department-using-fake-drug-checkpoints/>.

⁴ *Updated: Mayfield Heights Police “Drug Checkpoint” Scandal*, DSNNews.net, June 27, 2013, available at <http://www.dsnnews.net/2013/06/27/exclusive-mayfield-heights-conduct-unconstitutional-drug-checkpoints/>.

interdict illicit drugs. In affirming the lower court's decision, the Court found the city's program unconstitutional. *Id.* at 44. While checkpoints with clear and enumerated standards established for the purpose of checking for sobriety or illegal immigrants are permissible, checkpoints "justified only by the generalized and ever-present possibility that interrogation and inspection may reveal that any given motorist has committed some crime" are not. *Id.*

During the June 24, 2013 checkpoint, the sign used by the MHPD revealed the checkpoint's true purpose. The terms "Drug Checkpoint Ahead" and "Prepare to Stop" on the MHPD roadside sign established that a checkpoint to "advance the general interest in crime control" was intended. *Id.* (quoting *Delaware v. Prouse*, 440 U.S. 648, 659 (1979)). Further, MHPD officers appear to have stopped motorists solely for the purpose of searching their vehicles for narcotics. This type of checkpoint is precisely the type of checkpoint declared to be unconstitutional by the Supreme Court in *Edmond*.

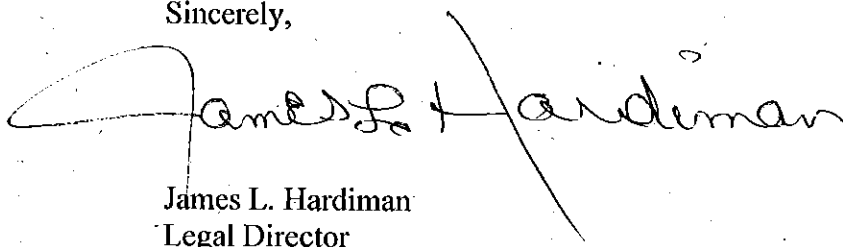
Also troubling are news reports which indicate that the MHPD stopped drivers without any suspicion of wrongdoing. It is well established that officers must have reasonable and articulable suspicion that a motorist is involved in criminal wrongdoing to justify a motor vehicle stop. *Bryson*, 142 Ohio App.3d at 402, 755 N.E.2d 964 (8th Dist.2001) (citing *Delaware v. Prouse*, 440 U.S. 648, 653 (1979)). On June 24, 2013, MHPD officers stopped one driver for pulling off to the side of the road, which is neither illegal nor suspicious. In this particular situation, the driver's cell phone charger had fallen, and he pulled over to retrieve the item, avoiding a dangerous situation.

Finally, even if officers believed that the driver's actions were an effort to evade the checkpoint, the officers would still lack probable cause or reasonable justification to stop the motorist or conduct a search of his vehicle. Simply attempting to avoid a checkpoint in a lawful manner "does not give a police officer a reasonable basis to suspect that the driver is involved in criminal wrongdoing." *State v. Bryson*, 142 Ohio App.3d at 403, 755 N.E.2d 964 (8th Dist.2001). In *Bryson*, the Eighth District Court of Appeals reviewed a situation involving a driver who, in an attempt to evade a checkpoint, made a legal left turn. *Id.* at 399. An officer pursued the driver, stopped him and arrested him after discovering the man was driving without a license. *Id.* The Court held that the motorist's lawful left turn provided the officer with "insufficient cause to stop" the motorist. *Id.* at 404. Further, the Court noted "[t]he realization that citizens will avoid contact with police for reasons other than fear of being caught for a crime they have committed. A completely innocent person may wish to avoid the delay . . . and seek to avoid the 'hassle.'" (Citation omitted). *Id.*

In summary, we are deeply concerned that the MHPD's use of drug checkpoints in the manner that has been reported violates the constitutional rights of persons driving their vehicles in the City of Mayfield Heights. To clarify the situation and

obtain information relative to the nature and extent of the checkpoints being utilized by the City of Mayfield Heights, I have enclosed with this letter a records request pursuant to Ohio's open records laws under R.C. 149.43. Please feel free to contact me if you have any questions regarding this letter or the records request.

Sincerely,

A handwritten signature in black ink that reads "James L. Hardiman". The signature is written in a cursive style with a large, sweeping initial "J".

James L. Hardiman

Legal Director

Email: jhardiman@acluohio.org

Phone: 216-472-2220

Fax: 216-472-2210

cc: Anthony DiCicco, Mayor
Leonard F. Carr, Law Director



August 6, 2013

Fred W. Bittner
Chief of Police
Mayfield Heights Police Department
City of Mayfield Heights
6154 Mayfield Road
Mayfield Heights, Ohio 44124

Re: Records Request Concerning Drug Checkpoint

Dear Chief Bittner,

Pursuant to Ohio's open records laws, Ohio Revised Code § 149.43, we are requesting the following writings, documents, papers, text files, computer files, emails, annals, archives, records, journals, logs and/or notes for all the records sought below:

- All documentation of formal or informal procedures, policies, directives or guidance used by the Mayfield Heights Police Department ("MHPD") when deploying checkpoints including but not limited to when to set up a checkpoint, placement of a checkpoint, placement of signs related to the checkpoint and the method for determining which cars to stop;
- All documentation of formal or informal procedures, policies, directives or guidelines used by the MHPD when it deployed the alleged fake drug checkpoint on or about June 24, 2013 on I-271 North including but not limited to when to set up the alleged fake checkpoint, its placement, the placement of signs relating to the alleged fake drug checkpoint and the method for determining which cars to stop;
- All instructions, directives, policies or guidelines given to MHPD officers concerning the alleged fake drug checkpoint that took place on or about June 24, 2013 on I-271 North;
- All documents describing or referring to incidents prior to or after June 24, 2013 involving similar activities of the MHPD in deploying an alleged fake drug checkpoint;
- All emails sent and received by MHPD employees or agents relating to the alleged fake drug checkpoint on I-271 North deployed by MHPD on or about June 24, 2013;
- All Facebook postings or comments made by MHPD employees or agents using the official MHPD Facebook account concerning the alleged fake drug checkpoint deployed by the MHPD on or about June 24, 2013 on I-271 North; and
- All documentation of citations or arrest records for individuals either arrested or cited on or about June 24, 2013 during the alleged fake drug checkpoint on I-271 North; and

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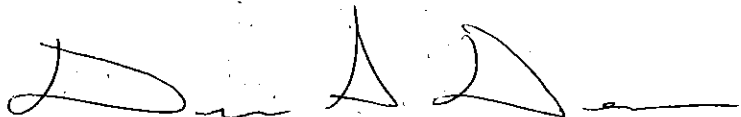


- All documentation concerning how many cars MHPD officers or agents searched, why MHPD officers or agents searched those cars and the results of those searches during the alleged fake drug checkpoint on or about June 24, 2013 on I-271 North.
- All audio and video recordings of any MHPD officer or agent, including but not limited to dashboard cameras, recorded during the alleged fake drug checkpoint on or about June 24, 2013 on I-271 North.

Please send the requested information addressed to American Civil Liberties Union of Ohio, c/o Drew Dennis, Litigation Coordinator and Staff Attorney, Max Wohl Civil Liberties Center, 4506 Chester Avenue, Cleveland, Ohio 44103.

We look forward to receiving copies of these documents by U.S. mail, and we understand that we are responsible for the copying and mail costs. Nonetheless, please contact us prior to complying with this public records request to inform us of the anticipated costs. If there are any questions related to this request, please contact us at (216) 472-2220.

Sincerely,



Drew S. Dennis
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