

Wrong Turn

Escondido's Checkpoints and Impound Practices Examined



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Executive Summary

Checkpoints are a hot button issue throughout California. Several cities, including Los Angeles, Oakland, and San Francisco have changed their checkpoint and impound policies in response to concerns about the intrusive nature and ineffectiveness of these policies. But while many California cities conduct sobriety checkpoints, the City of Escondido has implemented one of the most extreme checkpoints and impound policies in the state. *Wrong Turn* details the motivations that appear to have led the city's government and law enforcement officials to embrace these onerous tactics: checkpoints and impounds bring millions of dollars into city coffers and serve as a warning and threat to undocumented individuals and those in mixed-status families.

The State of California's Office of Traffic Safety (OTS) funds the DUI checkpoints in Escondido. The grants pay for equipment and officer salaries during the checkpoints and are intended to help make Escondido roads safer. Because the City of Escondido has established a formal association between Immigration and Customs Enforcement (ICE)¹ agents and the Escondido police department, the checkpoints have now become de facto immigration checkpoints as well.

This report includes new information uncovered by documentary journalist John Carlos Frey raising serious concerns that the City of Escondido may be illegally profiting from tow fees, tow contracts and grants received from California's Office of Traffic Safety (OTS). Specifically, in order to avoid distorting financial incentives, state law requires cities to charge tow companies no more than the actual costs of the city's expenses involved in administering towing. Escondido's calculations of its actual expenses have skyrocketed since 2004 and include creative and unlikely expenses. In addition, the taxpayer funded grants Escondido has received to conduct DUI checkpoints require the city to roll forward any profits made from its checkpoints. Despite likely profits, Escondido has not done so.

**The DUI checkpoints,
intended to reduce impaired
driving, have become de facto
immigration checkpoints.**

An independent audit of the City of Escondido's towing revenues and costs may be the only way to determine if the City of Escondido owes taxpayers and the Office of Traffic Safety that manages the grants millions of dollars from unreported profits generated from tow fees.

Escondido police officers routinely ask for a driver's license without checking for sobriety or other safety issues, thereby circumventing the intent of guidelines established by the Supreme Court of California to protect against the arbitrary use of police power.

Until recently, the vehicles of unlicensed drivers stopped at checkpoints in Escondido were subject to a mandatory thirty-day impound. Assembly Bill 353, recently signed into law by Governor Brown, now allows unlicensed, sober drivers who are pulled over at sobriety checkpoints to find a licensed, safe driver to remove the car to another location before the checkpoint ends. The law states that only the registered owner of the vehicle may authorize a licensed driver to remove the car. It prohibits law enforcement from seizing vehicles at checkpoints solely for failure to have a driver's license.

However, the law only applies to stops at checkpoints. Vehicles stopped in other circumstances are still subject to thirty-day impounds in Escondido. Although the new law is a positive development, it remains to be seen whether jurisdictions like Escondido will find a way to circumvent the law or increase impounds in other locations. For example, one concern is Escondido's practice of stopping drivers who have turned away from checkpoints and impounding their cars.

Cities that use checkpoints as a pretext to stop undocumented immigrants and seize their vehicles exploit the intent of laws allowing checkpoints.

The intent of sobriety checkpoints and subsequent impoundments is to stop dangerous drivers. Cities that use checkpoints as a pretext to detain undocumented immigrants and seize their vehicles exploit the intent of the laws and court decisions allowing checkpoints. Cities like Escondido are seizing the vehicles of sober drivers, many of whom are from low-income families and cannot afford to get the family's sole form of transportation back. The loss of the vehicle may jeopardize the jobs of multiple family members who depend on that transportation. Some community members are susceptible to deportation as a result of these encounters; losing a loved one who is also a wage earner or caregiver can wreak havoc on a family and destabilize not only a home, but the entire fabric of the community.

In addition, to the extent Escondido is using DUI checkpoints to enrich the city would in violation of state or federal laws, the practice risks further damaging public trust in law enforcement. Public respect for law enforcement is vital to ensuring that individuals will not be afraid to report crimes of which they are victims or witnesses.

Wrong Turn lays out the negative effects of Escondido's policies on low-income immigrant families, businesses and the community in general. It details burgeoning fees being collected because of enhanced checkpoints and impounds. And, it makes the following recommendations.

If the City of Escondido will not abandon its tainted checkpoint and impound programs, it should:

1. Adopt and adhere to the *Ingersoll Guidelines* established by the California Supreme Court to weigh public safety concerns with individuals' right to privacy;
2. In order to achieve the desired effect of preventing drunk driving, increase advance publicity and education about checkpoints and impounds;
3. Provide independent accounting of its OTS and other taxpayer-funded revenue and program costs and make this information easily available to the public; and
4. Work with state lawmakers and community organizations to advocate for driver's licenses for undocumented immigrants, which will lead to safer driving and increased insurance coverage, as they have in New Mexico, Utah and Washington.

A History of Checkpoints and Impounds in Escondido

Escondido has been conducting sobriety checkpoints and license checkpoints since at least 2004.² While checkpoint supporters argue that they are purely a safety measure, opponents of the checkpoints object to their use as a targeted attack on the immigrant community. Others believe that checkpoints are necessary and good for public safety but that Escondido is unfairly profiting from the exorbitant impound fees.

The skepticism and controversy surrounding checkpoints can be explained partly by the city's recent history of adopting policies targeting immigrants. In 2006, the city council passed an ordinance that would have made it illegal for landlords to rent apartments to undocumented immigrants.³ Landlords would have been forced to question prospective tenants about their immigration status and would have been subjected to penalties, including the loss of their business licenses, if they were found to be in violation of the law. Although the law was successfully challenged and stopped in court by the ACLU and others, it sent a very clear message about the Escondido City Council's attitudes and agenda with respect to immigrants.



Speaking in support of that ordinance, Councilwoman Marie Waldron blamed illegal immigrants for a long list of ills in Escondido:

Make no mistake about it, it's our local hospital that has to deal with an overcrowded emergency room.... It's our local police force that has to deal with drugs, gangs, and street crimes caused by illegal immigration.... It is our public works department that has to deal with cleaning up the graffiti on our streets and the impact of overcrowding on our wastewater system and infrastructure. And, sadly, it is our very children who have to attend overcrowded schools and be threatened with exposure to the countless diseases...including drug resistant T.B., Chagas Disease, even leprosy....⁴

In January 2007, the city council adopted Resolution No. 2007-16 by a three-to-two vote, which stated, "City Council, as the duly elected governing body of the City of Escondido wishes to address the public nuisances of illegal immigration by aggressively working to prohibit and address acts, policies, people and businesses that aid and abet illegal aliens."⁵

Jim Maher was appointed Escondido Police Chief as the rental ordinance debate was unfolding. Under his direction, the Escondido Police Department (EPD) has taken the lead in the city's effort to target undocumented immigrants. In March 2010, the Escondido police began an unprecedented collaboration with the federal Immigration and Customs Enforcement (ICE) called "Operation Joint Effort," which stationed first two and eventually four ICE agents in the Escondido Police Department. One of the stated purposes of the partnership is to get criminal undocumented aliens and individuals with previous deportation orders out of Escondido.⁶ Initially, ICE agents rode along in EPD squad cars, demonstrating Escondido's complete and misguided conflation of its responsibility to protect public safety and federal authorities' responsibility to regulate immigration.

**Councilmember Waldron
blames immigrants for
drugs, gangs, overcrowded
wastewater systems...and
spreading leprosy.**

This direct relationship creates a significant incentive for EPD to engage in racial profiling, i.e. to stop and question people based on an outdated view of who appears to be “foreign.” Although ICE officials no longer ride along in EPD squad cars, they work from the EPD station.⁷ According to Maher, ICE agents remain on call during checkpoints. If a driver cannot produce a state issued driver’s license or any other form of U.S. government identification, ICE is notified to run a background and immigration check on the individual.

Maher said, “Unlicensed drivers who are suspected of being illegal will have a background check done on them by ICE. We keep ICE on call during the checkpoint.” Asked how one is “suspected of being illegal,” the chief’s Hispanic Outreach Liaison, Leticia Garduno responded, “If they don’t have a driver’s license, they are suspected.” According to Garduno and the Chief, “if you drive through a DUI checkpoint in the City of Escondido and you do not have a driver’s license and cannot produce any other form of U.S. government ID, you will have ICE agents checking your immigration status.”⁸

Maher states that only “criminal aliens” will face detention by ICE agents, “and if someone is just in

The Chief of Police cannot tell ICE who they can and cannot deport. ICE wants to apprehend all immigrants.

— *Immigration Attorney Lilia Velasquez*

the country illegally, without committing a crime, they will get a citation and be let go.” Maher said, “We are only interested in deporting criminal aliens. Those that have prior criminal records, prior DUIs and prior formal deportation orders from the federal government.”⁹ Lilia Velasquez, a prominent immigration attorney in San Diego and counsel on a number of cases from Escondido said, “ICE is interested in apprehending all undocumented immigrants. The Chief of Police of Escondido cannot tell ICE who they can and cannot deport.”¹⁰

Escondido has distinguished itself in adopting anti-immigrant policies and programs. It is an outlier in the region. It is in the context of unusual and persistent anti-immigrant practices that the city’s use of checkpoints and impounds must be analyzed.

Fast Cars, Quick Revenue: Tracking the Money Trail

Newly uncovered documents raise serious questions about whether Escondido has sought to profit financially from checkpoints and impounds and is violating state law prohibiting such profiteering.

Impounding vehicles at checkpoints has generated enormous revenue for California cities—an estimated \$40 million in 2009 alone, according to the Investigative Reporting Program at UC Berkeley and California Watch.¹¹ These funds are generated from the towing fees, daily storage charges, grants from OTS and vehicle forfeitures. The report found that many car owners cannot afford the hefty costs to recover their vehicle. After 45 days, the towing company is allowed to sell the car in order to pay for the accrued costs. Many cities have contracts with towing companies and receive a certain percentage of the profits made by the towing companies—additional incentives for both the city and towing companies.¹² According to investigative journalist John Carlos Frey, car auctions, managed and run by several different tow companies operating out of the City of Escondido are held every week and up to 100 cars can be sold in one day.¹³

In Escondido, as in most cities across the state, sobriety checkpoints are funded by DUI Enforcement and Awareness grants from the Office of Traffic Safety (OTS) under the title of DUI/Driver’s License

Checkpoints.¹⁴ Traffic Safety Checkpoints are funded by the Escondido Police Department.¹⁵ The DUI Checkpoints are intended to make roads safer by educating the public about the dangers of impaired driving while the traffic safety checkpoints are intended to make sure that vehicles are properly outfitted with required and properly functioning safety equipment such as seat belts and full-tread tires.

For the period of October 1, 2010 to September 30, 2011, OTS awarded the EPD \$268,564 for DUI/driver's license checkpoints and DUI saturation patrols.¹⁶ In addition to OTS funding, Escondido also receives an average of \$70,000 from the Safe Transportation and Research Center for DUI checkpoints.¹⁷ The revenue generated from tow fees, state grant programs and tow contracts are over \$800,000 a year.

There are legitimate concerns that, once Escondido realized there was money to be made in towing and impounding vehicles, it sought to maximize its profits in violation of state law.

The City of Escondido cannot, by law, profit from its contracts with tow companies. The contract fees paid by tow companies to the city must be justified as reimbursable expenses only. There are several tow companies on a call list for EPD. In order to be able to tow cars for the City of Escondido, a company must pay a contract fee. In 2004, the fee for a tow company to do business with the City of Escondido was \$25,000 per year based on the City's calculation of reimbursable expenses.¹⁸ Four tow companies paid a total of \$100,000. In 2007, the calculation of reimbursable expenses doubled. That year, tow companies began paying \$50,000 each.¹⁹ In order to be legal under state law, this steep increase would have to be accounted for and justified. According to John Carlos Frey, the City of Escondido needs to explain and back up its implausible calculation of expenses, given the doubts raised by documents he has obtained from his sources. It must explain how expenses doubled from 2004 to 2007 in order to charge the higher fee.

Escondido also distinguished itself in its number of impounds, for which Escondido receives fees separate from the towing company contracts: From 2005 through 2007, Escondido impounded 1,243 cars, compared to 296 in Oceanside and 205 in San Marcos.²⁰

In the past seven years of state-funded DUI checkpoints, the tow companies likewise made hundreds of thousands of dollars. According to the Chief of Police, "The checkpoints probably caused a greater number of cars being impounded."²¹ In 2007, EPD studied the possibility of starting its own city-run tow company in order to keep all the profits that were going to the tow companies.²² On average, 5,000 vehicles were towed each year.²³ Each one represented a tow fee, a tow hitch fee, and, if negligent or in violation of Vehicle Code 14607.6,* a thirty-day impound fee.

In 2011, Escondido's calculation of reimbursable expenses again increased dramatically, and the tow contract fees were again doubled. Six tow companies started paying Escondido \$100,000 each.²⁴ It is worth repeating that tow companies went from having to pay the City of Escondido \$25,000 in 2004 to \$50,000 in 2007 to \$100,000 in 2011—all based on the City's calculation of supposedly actual expenses associated with the same basic activity of administering a checkpoint and impound program.²⁵ After a near revolt by the tow companies in 2011,²⁶ the tow contract fees were reduced from \$100,000 per company to \$75,000 per company.²⁷ Even with the adjustment, the revenue for Escondido from tow contract fees alone went from \$100,000 in 2004 to \$500,000 in 2011.

The City of Escondido cannot, by law, profit from towing contracts. But in the span of just a few years, tow companies saw annual contracts rise from \$25,000 to \$75,000 in 2011.

Vehicle Code 14607.6 is explained in the section titled "Traffic Safety Checkpoints."

Investigative journalist John Carlos Frey also uncovered documents purporting to justify the City's reimbursable expenses. These documents raise serious questions of possible fraud or padding of expenses. According to these city records, Escondido has increased labor charges, administrative fees and overhead costs by 500% or more since the last 2007 contract. Line items that were not in previous calculations now appear as expenses in the 2011 cost estimates, including costs for the use of bulletproof vests and weapons.²⁸

The documents also suggest creative efforts to increase labor costs associated with towing, including a four-fold increase per tow in sergeants' time, a 45-fold increase per tow in officers' time, and the addition of a third officer devoting an inexplicable ninety minutes per tow. From 2004 to 2010, Escondido expenses to tow a vehicle included two minutes of billing time per tow for a sergeant and one minute of billing time per tow for a lieutenant. According to 2004 and 2007 reports, each tow took a total of 33 minutes.²⁹ In 2011, those costs supposedly increased to 7.5 minutes of billing time per tow for a sergeant and 45 minutes per tow for an officer, as well as the addition of a third officer as mentioned above.

The overall time that Escondido is attributing to each tow has increased from 33 minutes in 2004³⁰ to 187.5 minutes in 2011.³¹ This increase includes a six-fold increase in billing time due to EPD's claim that 51% of tows result in an arrest,³² and arrests require more time to process and more officers.³³ According to tow companies in Escondido, however, less than 5% of tows end in custody arrests. "There is no need to bill for so much time to tow a vehicle even if there is an arrest," said

Marc Ramirez, a retired sergeant who handled traffic safety for the San Diego County Sheriff's Department. "Either Escondido is looking to pad their books or they don't know how to tow a car. If it took my officers that long to tow every vehicle, we would have no officers on patrol."³⁴

In addition to collecting fees from tow companies—now \$450,000 a year³⁵—and collecting funds from the state of California in the form of grants to run the checkpoints—now at approximately \$400,000 a year, Escondido, until recently, collected an additional \$180 for each towed car from the owner of the vehicle.

Drivers who got their car towed in Escondido had to pay

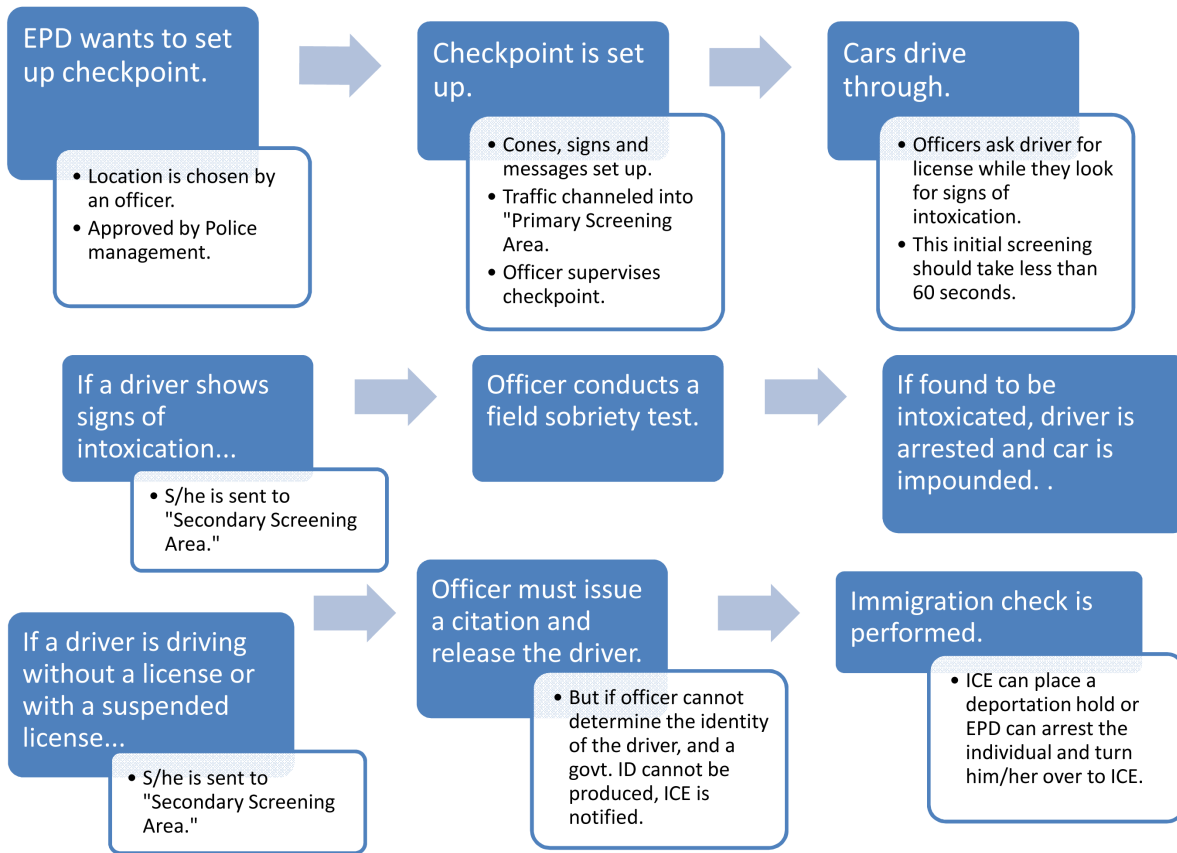
the city a tow fee of \$180 in addition to the amount they pay the tow companies, despite the fact that taxpayers were already funding the costs of the checkpoints that generated many of these tows.

Perhaps realizing the risks of its profiteering, Escondido recently reduced tow fees for vehicles towed from the checkpoints from \$180 to \$100. According to the regulations governing its state grants, Escondido was legally required to report any profits to the state and use those funds to offset expenses in subsequent tax-payer funded grants. Escondido did not do so. The city has not explained why fees went from \$180 to a \$100. Why is there a charge at all if the state is paying for the entire checkpoint? An independent audit of the City of Escondido's towing revenues and costs may be the only way to determine if the City of Escondido owes taxpayers and the Office of Traffic Safety that manages the grants millions of dollars from unreported profits generated from tow fees.

From 2004 - 2007, EPD invoiced for 33 minutes billing time per tow. In 2011, the department said it now devotes a credibility-straining total of 187.5 minutes processing a tow.

Practice Makes Imperfect: How Checkpoints Are Conducted in Escondido

According to its own Escondido Police Department Operational Orders, checkpoints are meant to be conducted in the following manner:



Currently DUI checkpoints in Escondido net about ten unlicensed drivers for every drunk driver and the vast majority of unlicensed drivers are undocumented immigrants. The EPD website discloses that the checkpoints conducted from December 2010 to the end of June 2011 resulted in **189 vehicle impounds but only 14 DUI arrests**, substantiating concerns that the checkpoints are more about impounds, which disproportionately affect low income, immigrant families and generate significant income for the city.

During this same period, EPD cited 44 individuals for driving with a suspended license and 153 individuals who "did not have a driver's license."³⁶ The EPD's statistics do not distinguish between suspended license citations due to individuals having never been issued licenses and drivers with expired, revoked or restricted licenses. This distinction is important, because a significant number of "unlicensed drivers" have licenses from other jurisdictions or were unable to renew their licenses due to a change in regulations in 1994³⁷ prohibiting undocumented immigrants from obtaining licenses without proof of legal residency.³⁸

The EPD website also states that two Traffic Safety Checkpoints conducted in March and May of 2011 resulted in eleven vehicle impounds and no DUI arrests.³⁹ In total, checkpoints in Escondido from December 2010 until the end of June 2011 have resulted in 200 vehicle impoundments but only 14 DUI arrests.

DUI checkpoints net about ten unlicensed drivers for every one drunk driver. In six months, 189 cars were impounded, but only 14 DUI arrests were made.

According to Lieutenant Chris Wynn, former head of the traffic safety program for the Escondido police department, checking of driver's licenses at DUI checkpoints is mandatory. "They must check for driver's licenses and intoxication together in order to qualify for state grants." However, an OTS spokesperson said, "There is no 'requirement' per se...we do not penalize a grantee for not checking a driver's license."⁴⁰ The truth is Escondido has discretion whether to check for driver's licenses at sobriety checkpoints. According to Bill Flores, resident of Escondido and retired assistant sheriff for the County, "The checkpoints disproportionately target undocumented immigrants and brown people. It is a way for the police department to make it so hard for them to live here that they will move somewhere else."⁴¹

Checkpoints are a way for the police to make it so hard for immigrants and brown people to live here that they move away.

— *Former assistant sheriff Bill Flores*

OTS and the Escondido police state that the DUI checkpoints are effective as alcohol-related injuries and impaired driver accidents are down. A closer look at data from Escondido raises doubts about that. Alcohol-related traffic injuries increased during several periods when DUI checkpoints were in full swing. A rise in alcohol related injuries occurred from 2004 – 2005 and, according to OTS, "A slight rise in injuries is seen from 2006 to 2007 and again from 2007 to 2008." Only in the last couple of years has there been a downward trend according to Escondido's own reporting. Several states in the country, such as Washington,⁴² Oregon,

and Texas do not allow DUI checkpoints, and their alcohol-related accident rates have also been dropping year after year.⁴³

Nowhere to Go, Nowhere to Drive: The Impact of Checkpoints and Impounds on Escondido Residents

Escondido's checkpoints and exorbitant impound fees most harshly impact low-income immigrant families. But, they also directly hurt many business owners and other residents and, not inconsequentially, the image of the city.

Immigrants and Low-Income Families

High fees resulting in losing one's car is a major setback for many individuals and families, not just low-income immigrants. In some cases, a person must wait as long as thirty days before retrieving his or her car. Many families rely on only one vehicle to commute to work and take their children to and from school. Many low-income individuals cannot afford the cost to retrieve their car, or their cars are worth less than the cost of retrieving it after thirty days, which can run as high as \$1,380 (\$150 impound fee, \$180 city towing fee, and \$35 per day storage fee).⁴⁴ In such situations, individuals have no choice but to forfeit their vehicles, stripping families of their main source of transportation and their economic mobility.

Across the state, two-thirds of the cars impounded are never reclaimed and therefore sold by the towing companies, according to the California Tow Truck Association. Tow company workers have reported seeing mothers arrive at the impound lots to retrieve car seats and toys. An office manager told a *New York Times* reporter, "I have to stand here for days and watch them take their whole life out of their vehicles."⁴⁵

The heart-breaking impact of checkpoints on immigrant families in Escondido was illuminated by Ali Gonzalez, an Orange Glen High School student who wrote an article in the school paper describing

the economic burden on low-income families and the community's perception of the checkpoints and impound policies. The article quoted a senior at the high school, "My uncle was deported because of these checkpoints and all he was doing was coming home from work. I hate the checkpoint. I truly believe that they were as racially motivated just as much as is motivated by money." Laura Hernandez, another student, remarked, "I think it's really unfair that they're making money off the checkpoint that are supposed to catch drunk drivers but instead just deports people."⁴⁶

Businesses Located Near Checkpoints

Fieldwork conducted by the ACLU shows that some businesses located near checkpoints are negatively impacted by the checkpoints. For example, when checkpoints are conducted near Fig Street and Lincoln Avenue, many businesses in the immediate plaza experience a marked decrease in their revenue. At this location, the parking lot adjacent to the plaza is used for secondary inspection and the plaza's main entrance on Lincoln Avenue is closed. Some of these businesses report that their customers, most of whom are immigrants or family members of immigrants, do not go to the plaza when a checkpoint is being conducted or when they see indicators of one to come, such as portable toilets for on-duty officers. Businesses reported a drop in sales as early as 2 p.m. when portable toilets, the earliest signs of the checkpoints, are installed.

Public Backlash and Community Safety

EPD's checkpoints and impound policies, coupled with its unique Operation Joint Effort, do not help Escondido's image, which is widely perceived as hostile to immigrants and Latinos. City Councilmember Olga Diaz has stated that, like Arizona, which has lost millions in tourism revenue due to its anti-immigrant policies, Escondido is hurting itself.⁴⁷

The combined effect of Escondido's policing policies is to generate fear, not to promote public safety. The checkpoints and Operation Joint Effort do not stop individuals based on their risk to public safety. Operation Joint Effort, which generated over 650 arrests between May of 2010 through July 2011,⁴⁸ has included stops for minor traffic violations such as tinted windows and an unlit taillight.⁴⁹ Similarly, checkpoints sweep in everyone in their path, and often safe drivers do not have a license. A report by the National Immigration Law Center found that driver's license restrictions cause immigrants to avoid contact with state and local law enforcement, resulting in immigrants becoming unwilling to report crimes and assist local law enforcement in community policing activities.⁵⁰

Despite its assurances otherwise, EPD's policies prioritize policies that disproportionately harm immigrants and stand in stark contrast to the jurisdictions around it.

“Either Escondido is looking to pad their books or they don't know how to tow a car. If my officers took that long, we'd have no officers on patrol.”

— *Marc Ramirez, retired sergeant, SD Sheriff's Dept.*



Legal Framework of Checkpoints and Impounds

Sobriety Checkpoints

The legality of checkpoints under the Fourth Amendment rights was questioned in *Michigan Dept. of State Police v. Sitz* (1990). In that case, the U.S. Supreme Court held that sobriety checkpoints, if conducted in a certain manner, are legal and do not violate the Fourth Amendment.⁵¹ Although the stops at sobriety checkpoints constitute a suspicionless search and seizure, the Court noted that Michigan had an important interest in deterring drunk driving and that this method could reasonably be found to advance that interest.⁵² Taken in balance, the State's interest outweighed the private interest against suspicionless searches and seizures.⁵³ In his dissenting opinion, Justice William Brennan argued, "That stopping every car might make it easier to prevent drunken driving...is an insufficient justification for abandoning the

requirement of individualized suspicion."⁵⁴ Justice John Paul Stevens, who also dissented, argued that the net effect of checkpoints on traffic safety is minimal, and even if they were effective, conducting them would not justify violating an individual's Fourth Amendment rights.

The combined effect of Escondido's policing policies is to generate fear, not to promote public safety.

Although the Supreme Court held in *Sitz* that sobriety checkpoints were generally consistent with the Fourth Amendment, sobriety checkpoints were subsequently challenged in California in *Ingersoll v. Palmer*.⁵⁵ The

Supreme Court of California's decision differentiated between checkpoints established with the purpose of collecting evidence of a crime and checkpoints established for the primary purpose of promoting public safety by deterring intoxicated persons from driving on public streets and highways.⁵⁶ The Court found that the State's interest in stopping drunk driving outweighed the private interest against intrusiveness on individual liberties.⁵⁷

In order to ensure that sobriety checkpoints are as minimally intrusive as possible, however, the Court laid out the following guidelines that have come to be known as the *Ingersoll Guidelines*. They include the following factors used to determine if a checkpoint is "reasonable:"⁵⁸

1. The decision to establish checkpoints should be made at a managerial level, not by officers on the field.
2. Limits on discretion of officers in the field in order to prevent arbitrary and capricious enforcement.
3. In order to minimize risk of danger to motorists and police, there should be property lighting, warning signs and clearly identifiable official vehicles and personnel present at checkpoints.
4. Reasonable location that adheres to public safety concerns, and where there is likely to be high incidence of alcohol related accidents.
5. Reasonable time and duration which limits the intrusiveness of checkpoints and considers the effectiveness of deterring DUI.
6. Signs of official nature of roadblock to minimize intrusiveness.
7. Length and nature of detention should adhere to safety concerns by avoiding traffic tie-ups.
8. Advance publicity is important to deterring drunk driving, limiting the intrusion upon personal dignity and security in that individuals understand what is happening.⁵⁹
9. Though the court does not indicate that this is mandatory, advance publicity is important to maintain a constitutionally permissible checkpoint. Advance publicity might deter drunk driving, limit the intrusion upon personal dignity and security because those being stopped would anticipate and understand what was happening, and serves to establish the legitimacy of the checkpoints in the minds of motorists.⁶⁰

Subsequently, California courts have held that not all factors must be met in order to establish that a sobriety checkpoint was properly conducted.⁶¹ Thus, while the *Ingersoll Guidelines* serve as a tool for planning and conducting a sobriety checkpoint, the absence of one or a number of factors does not necessarily render a checkpoint illegal.

Traffic Safety Checkpoints

Under the state vehicle code (CVC 14607.6), an officer cannot stop a driver simply to determine whether the driver is properly licensed. Thus, although license and registration checkpoints are generally allowed, the legality of driver's license-only checkpoints is in question if the sole purpose of the stop is to determine if an individual is properly licensed. However, checkpoints that check for a combination of things, of which a valid license is one, do not appear to violate this provision. When the Office of Transit Safety (OTS) issues DUI Awareness and Enforcement grants, the description of the grant refers to the checkpoints as DUI/Driver's License Checkpoints.⁶² Likewise, EPD changed its "License-Only Checkpoints" to "Traffic Safety Checkpoints" in order to avoid legal repercussions.⁶³ The Traffic Safety Checkpoints do check for a valid driver's license.

Impounds

Car impoundments are permissible under two California Vehicle Code sections — CVC 14602.6, which allows law enforcement to impound a car for thirty days and the CVC 22651, which does not include the thirty-day requirement. Vehicle storage is another form of vehicle seizure but it allows for the registered owner to retrieve the vehicle from the towing lot without a release warrant.

CVC 14602.6 allows law enforcement to impound a car for thirty days if the vehicle's driver was never issued a license, has a suspended or restricted license, or has had his or her license revoked. If an officer decides to impound a car under this code, he or she is strictly *required* to impound the car for thirty days.⁶⁴ Driving with an expired license does not constitute grounds for impounding a vehicle under this provision.

CVC 22651 gives officers general authority to impound a vehicle if the officer cites a driver for any number of violations, including those listed in CVC 14602.6. Ultimately, both sections permit, but do not require, officers to impound a car.⁶⁵ But if an officer decides to store the car instead of impound or release it, there is no required amount of time the car must remain in the impound lot.⁶⁶

In *Miranda v. City of Cornelius*, the Ninth Circuit Court of Appeals held that an officer is only allowed to impound a car for community care-taking purposes, such as when the car cannot be parked safely without risk of being stolen or there is no other licensed driver available to drive the vehicle home.⁶⁷ The Ninth Circuit noted that without a community-care taking purpose,⁶⁸ a lone traffic violation did not justify impounding a car. The Court also stated that impounding a car in order to deter an unlicensed driver from driving in the future was not a valid reason to impound the car.⁶⁹ Thus, without a community care-taking purpose, the fact that a driver is unlicensed does not warrant impounding the car in question. If there is a licensed individual in the car who can safely drive the car home, or if the car can be safely parked at another location, there is no community care-taking concern and thus no need to impound the car.

**The Ninth Circuit ruled that
neither a lone traffic violation
nor the deterrence effect on
unlicensed drivers justifies
impounding a car.**

Recent State Legislation

In 2011, two bills were proposed that would affect checkpoints and impound policies in California.

Assembly Bill 1389 sought to codify the *Ingersoll Guidelines* and additional impound-related provisions. It would have eliminated local politicians' power to authorize combined vehicle inspection and sobriety checkpoint programs.⁷⁰ However, due to lobbying by law enforcement and other groups, the bill was vetoed by Governor Jerry Brown.⁷¹

Assembly Bill 353, however, was signed into law in 2012. It limits the authority of law enforcement officers to impound the vehicles of unlicensed drivers at checkpoints. The law allows unlicensed, sober drivers who are pulled over at sobriety checkpoints to find a licensed, safe driver to remove the car to another location before the checkpoint ends if that replacement driver is authorized by the registered owner of the vehicle. It prohibits law enforcement from seizing vehicles solely on the basis that the driver lacks a driver's license. If the authorized owner of the vehicle cannot be contacted during the duration of the checkpoint, the vehicle will not be released to an unauthorized driver. Additionally, if the driver is unable to find a licensed driver within the duration of the checkpoint and the car is impounded, the unlicensed driver has the opportunity to pick up the vehicle during any subsequent business hours as long as he or she is accompanied by the registered owner or a person authorized by the registered owner who is a licensed driver.

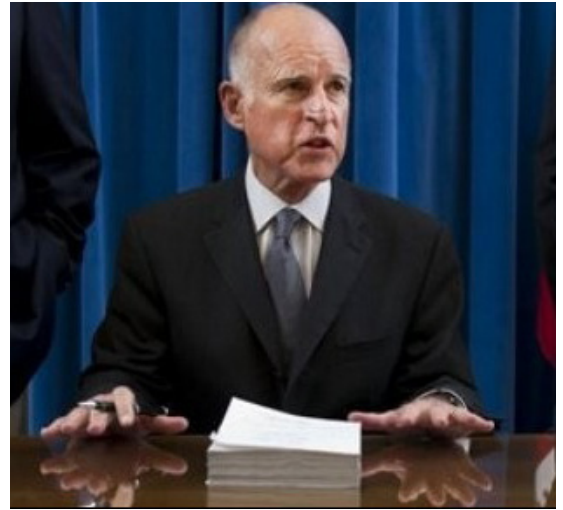
While AB353 limits the ability of law enforcement to impound vehicles at sobriety checkpoints, it does not protect individuals stopped in routine traffic incidents against impoundment under the thirty-day CVC 14602.6. Further, the veto of AB1389 means that *Ingersoll Guidelines* are not legally enforceable and individuals cannot hold police departments legally responsible for failing to comply with the guidelines in establishing and processing checkpoints.⁷²

AB353 has important implications for Escondido. The cumbersome thirty-day impoundment is no longer allowed in checkpoints. However, officers may impound vehicles at other interactions with unlicensed motorists; car impoundments are still an expensive ordeal for unlicensed drivers; and checkpoints can continue to be a dragnet to catch undocumented immigrants.

In Perspective: Comparison with Other States and Cities

Nationally, there are 38 states that allow sobriety checkpoints either by statute or through their interpretation of the Constitution. Five states prohibit such checkpoints explicitly by statute, while five other states, including Texas, have declared them illegal under their state's constitutions.⁷³

The State of California has yet to write clear regulations on many of its procedural and impound policies. The lack of comprehensive state regulations has left checkpoint and impound protocols under the discretion of local police departments. As such, cities throughout California have a wide variety of policies and practices. Escondido's mandatory thirty-day vehicle impoundment for unlicensed drivers is significantly harsher than other municipalities in California. Other cities including Long Beach, Los Angeles, and San Francisco, allow police officers to exercise discretion as to whether the vehicle should be impounded for thirty days or less. Long Beach policy states that if a licensed driver is present in the vehicle, he or she is allowed to drive the car away. In Maywood, California, officers are trained not to impound vehicles that are parked in safe locations. San Francisco's policies do not allow officers to tow



a vehicle if it is lawfully parked at the driver's home, if there is a licensed driver at the scene, or if the unlicensed driver is able to produce a licensed driver to retrieve the vehicle within twenty minutes.

Escondido has one of the most stringent checkpoints and impound policies in the state. Its policies give officers little discretion, often forcing officers to undertake the task of impounding vehicles when it makes little sense or creates unnecessary hardship, such as leaving families with young children stranded on the side of the road.

Recommendations

Checkpoint and impounds raise the difficult question of what ultimately constitutes community safety. They also beg the much harder question of what will our nation do about its current failed national immigration policy. In a situation where undocumented drivers live in our midst, and no public policy solutions exist to address them, what should we do? Our inability to address these urgent issues has led to policies that disproportionately affect the most vulnerable members of our communities. While some cities across California have changed their checkpoint and impound policies in response to community concerns over the effectiveness and intrusiveness of these policies, cities like Escondido have been able to use the system to generate funds on the backs of their most economically vulnerable residents. If Escondido (and similarly situated cities) choose to continue checkpoints and impounds, we recommend the following reforms to make the systems both fair and rational.

Our inability to address national immigration policy has led to police policies that disproportionately affect the most vulnerable.

Best Practices for Checkpoints and Impound Policies

To ensure that cities do not overstep the specific intent of sobriety checkpoints, cities should implement *Ingersoll Guidelines* as well as develop comprehensive best practices for their checkpoint and impound policies. These policies should apply to all interactions with unlicensed drivers.

The following are some general principles that should be implemented:

- **An officer cannot initiate a tow unless the vehicle presents a public safety concern due to flow of traffic.** The officer may not initiate a tow where the parked vehicle does not present a traffic hazard, or if there is a licensed driver at the scene who is able to safely and lawfully drive the vehicle away. If there is not a licensed driver present at the scene, a qualified licensed driver should be able to retrieve the vehicle in a reasonable amount of time. The officer shall inform the driver of his/her right to call an alternative licensed driver.
- **An officer may place a hold under CVC 14602.6 only if ALL the following factors are met:**
 - o The driver was driving with a suspended, revoked or restricted license and;
 - o That suspension, revocation or restriction was imposed due to a conviction for driving under the influence or a felony traffic offense; and,
 - o The citing officer in his/her discretion determines to arrest and take into custody the driver for driving with a suspended, revoked or restricted license.
- If there is not a licensed driver present at the scene, the **officer must inform the driver that a qualified licensed driver may retrieve the car** within a reasonable time period and must give the driver an opportunity to contact a qualified licensed driver.
- Prior to towing a car, the **officer should obtain approval from a supervisory officer and create an incident report** to document:

- o The circumstance of the tow including the reasons for initial stop and tow citations used
 - o The location of the stop and physical location of vehicle
 - o Whether the officer provided the driver the opportunity to direct the car to be towed to safe location
 - o The name of the supervisory officer who approved the tow, and the driver's demographical information.
- If an officer initiates a tow, the officer shall permit the driver to direct the **vehicle to be towed to driver's home or other safe location**, rather than an impoundment lot, provided the driver has not previously had his/her license suspended.
 - Unless the driver has a previous conviction for driving under the influence or a felony conviction for driving with a suspended license, an officer should cite under CVC 22651, which **permits the registered owner to retrieve the vehicle** from an impound lot during normal business hours if he or she has a valid driver's license and proof of insurance.
 - **Officers should be prohibited from using the fact that a person has a foreign identity document as evidence of the person's immigration status.**⁷⁴

Increasing Publicity and Education of Checkpoints and Impound Policies

The purpose of sobriety and license and registration checkpoints is to deter drunk and unlicensed driving. Escondido Mayor Sam Abed has previously stated in an editorial in the *North County Times*, "Sobriety checkpoints are generally considered the best deterrent, especially when their locations are well publicized. People think twice about drinking and driving if they believe there is a good chance they will be arrested."⁷⁵ Advance publicity is vital for checkpoints to serve their deterrent purpose, yet EPD has not done enough to publicize checkpoints, particularly in Spanish media. EPD should improve its media outreach by contacting as many publications and outlets as possible and thereby increase the visibility and deterrent factor of checkpoints.



In addition, the EPD should make a greater effort to inform the community about its checkpoint and impound policies. For example, the community should be educated about what circumstances would cause their cars to be impounded, and for how long. It is clear from talking to Escondido residents that there is general confusion about the EPD's checkpoints and impound policies, and even greater confusion when it comes to the city's Operation Joint Effort program. If, for example, an unlicensed driver is taken to the EPD station so that police may verify his or her identity, is he or she then exposed to questioning

from ICE? Is anyone without a driver's license subjected to questioning by ICE agents or are assumptions made about a person's home or origin based on subjective factors, such as race, ethnicity or even their dress and footwear?

Demanding More Accountability and Oversight of Checkpoint Grants and Other Forms of Financing

Wrong Turn highlights the problems raised by limited oversight of OTS grants and other federal funding for sobriety checkpoints and the lack of transparency and accountability in transactions between government institutions. When these types of law enforcement activities are not being pursued for their intended purpose and when there is no clear accounting of where taxpayer money is spent, public trust and confidence erodes.

Due to the major concerns in this report about both the financing and immigration-related purposes of Escondido's checkpoints and impounds, the **City of Escondido should establish new, independent and unimpeachable mechanisms for overseeing its agencies and investigating abuses and improprieties.**

The Police Assessment Resource Center provides a list of all police accountability mechanisms across the country.⁷⁶ Sacramento has a department intended to increase community participation in policing the community as well as being whistleblowers to misconduct by the police.⁷⁷ The City and County of San Diego each have independent oversight boards for its police agencies.

Drivers' Licenses for Undocumented Immigrants

The question of whether undocumented immigrants should be able to obtain a driver's license has been a hotly debated issue across the country. Until 1993, undocumented immigrants were eligible for driver licenses in California. This changed with SB 976, signed by Governor Pete Wilson, requiring residents to provide social security numbers and proof that their presence in California was authorized under federal law in order to obtain or renew a valid driver's license.⁷⁸

California has an estimated two million undocumented immigrants.⁷⁹ Undocumented immigrants work and live in our communities. They need transportation to fulfill their obligations and will continue to drive without driver's licenses. It is difficult to assess the public safety concerns that arise with having a large number of drivers without California licenses since we have very little data about the numbers and make-up of undocumented immigrants. However, one argument often made is that unlicensed

drivers are unsafe because many are often uninsured. The AAA Foundation for Traffic Safety reports that unlicensed drivers are almost five times more likely to be in a fatal crash than validly licensed drivers.⁸⁰ More than 14% of all accidents nationally are caused by uninsured drivers, and, in California, it may be as high as 18%.⁸¹ Denying undocumented immigrants licenses does not solve the immigration issue and is bad public policy.

Policy analyses of states that have allowed undocumented immigrants to obtain driver's licenses show dramatic increases in the number of persons who are insured. In Utah, the state's uninsured rate went from ten percent to five percent.⁸² New Mexico implemented policies allowing drivers without legal status to receive driver's licenses in 2003 and saw its uninsured rate drop from 33 percent in 2002 to ten percent in 2007. At the time, Governor Bill Richardson stated, "We're dealing with a problem, rather than being ideologically senseless. This is a reality in border states."

Recently, Charlie Beck, the Chief of Police of the Los Angeles Police Department and Lee Baca, the Los Angeles County Sheriff, stated publicly that they are in favor of driver's licenses for immigrants to improve road safety. Beck asked, "Why wouldn't you want to put people through a rigorous testing process? Why wouldn't you want to better identify people who are going to be here?" The Los Angeles City Attorney Carmen Trutanich echoed Beck's remarks by calling it a "matter of public safety."⁸³

Assemblyman Gil Cedillo has recently announced that he will introduce a bill to provide licenses for undocumented immigrants in California.⁸⁴ With support from heavy hitters like Police Chief Charlie Beck, it is likely that his bill will gain more support. With two million undocumented immigrants in California, implementing such policies would be expected to make dramatic shifts in the safety and security of our communities.

The National Immigration Law Center provides model practices that states should implement in order to make driver's licenses available to improve public safety while still keeping the integrity of the license document. These recommendations include states requiring proof of state residency, implementing internal antifraud mechanisms and security measures that make it more difficult to produce counterfeit licenses, and creating a taskforce that includes community members to develop procedures and mechanisms for reforming the state's driver's licenses policy.⁸⁵

New Mexico allows licenses for undocumented drivers and saw its uninsured rate drop from 33% in 2002 to 10% in 2007.

Estimated Percentage of Uninsured Motorists by State in 2007 ⁸⁶

| State | Uninsured | State | Uninsured | State | Uninsured |
|-------------|-----------|----------------|-----------|----------------|-----------|
| New Mexico | 29% | Montana | 15% | Kansas | 10% |
| Mississippi | 28% | Colorado | 15% | Connecticut | 9% |
| Alabama | 26% | D.C. | 15% | Virginia | 9% |
| Oklahoma | 24% | Indiana | 14% | South Carolina | 9% |
| Florida | 23% | Missouri | 14% | Idaho | 9% |
| Tennessee | 20% | Rhode Island | 14% | Wyoming | 9% |
| California | 18% | Alaska | 13% | New Jersey | 8% |
| Arizona | 18% | Maryland | 12% | Utah | 8% |
| Michigan | 17% | Hawaii | 12% | Nebraska | 8% |
| Washington | 16% | Louisiana | 12% | West Virginia | 8% |
| Ohio | 16% | Iowa | 12% | Pennsylvania | 7% |
| Kentucky | 16% | Minnesota | 12% | South Dakota | 7% |
| Texas | 15% | North Carolina | 12% | Vermont | 6% |
| Nevada | 15% | Georgia | 12% | New York | 5% |
| Arkansas | 15% | New Hampshire | 11% | North Dakota | 5% |
| Wisconsin | 15% | Oregon | 11% | Maine | 4% |
| Illinois | 15% | Delaware | 10% | Massachusetts | 1% |

Conclusion

The City of Escondido is a place of enormous potential. Since distracting itself with taking on the federal job of immigration enforcement, however, it has been a city of squandered potential. By adopting the recommendations in this report, Escondido would make an important step in getting back to focusing on opportunity and fairness for all of its residents.

If the City of Escondido will not abandon its tainted checkpoint and impound programs, it should:

1. Adopt and adhere to the *Ingersoll Guidelines* established by the California Supreme Court to weigh public safety concerns with individuals' right to privacy, and establish best practices for integrity of checkpoint and impound policies, especially in Escondido;
2. In order to achieve the desired effect of preventing drunk driving, increase publicity and education about checkpoints and impounds;
3. Provide more accountable and transparent reporting of OTS and other taxpayer-funded checkpoint programs and practices.
4. Work with state lawmakers and community organizations to advocate for driver's licenses for undocumented immigrants, which will lead to safer driving and increased insurance coverage, as it has in New Mexico, Utah and Washington.

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