

The previous day, I had my identification stolen at the bus stop in Canton, New York, to wit: my state-issued photo identification card from the New York State Department of Motor Vehicles, and the debit card with which I had purchased the very ticket which I was now being denied.

I walked one mile in the rain to the Department of Motor Vehicles, reported my identification stolen, and was issued an Interim ID Card (592075795) with my name, address, gender, height, eye color, and date of birth. This card indicates that the bearer is in the system, and that a replacement photo ID is in the mail. A similar card is issued if one loses a driver's license, and one is allowed to drive with it. But one cannot board a train with it.

I also brought with me a certified copy of my birth certificate with the city clerk's stamp and a raised notary seal. It states, and I quote: "This is to certify that the foregoing is a true copy of the original record on file in the Office of the City Clerk, Schenectady, New York." It bears the same birth date as the Interim ID card cited above. I was told by an Amtrak customer

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grab my luggage, as I already had a return ticket, for another \$23.90.

When the Trailways bus arrived in Canton there was another Border Patrol agent, in the name of Homeland Security, waiting to question me. He stepped on board the bus and said these words: "This is a serious safety inspection for the Department of Homeland Security." There were other passengers on the bus, but he did not start at the front of the bus, nor did he start at the back of the bus. He walked directly to me. When he asked me to identify myself, I said these words:

"I am done cooperating with you guys. Do with me what you will. This is not Nazi Germany."

I am not a "good German." None of us should be.

I am who I say I am. I had official business at a judicial proceeding in Ohio, at the specific request of the Office of the Ohio Secretary of State, and an Easter dinner planned at the home of a loved one's mother. I walked home from the bus stop in tears.

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This time, the agents forced the driver to pull the bus into the adjacent rest area. Two Border Patrol Agents, one male, one female, both of them armed and wearing uniforms, boarded the bus and began interrogating the passengers, demanding to know our place of birth. I asked: "Am I a person suspected of being an alien?" The female agent answered: "We suspect everyone." Finding this statement to be an entirely inappropriate presumption of guilt, I advised her that federal case law requires that she have "specific articulable facts" to support her belief that I am an alien. I asked her to state those facts, and told her that if she cannot do so, I am not required to cooperate. She threatened to arrest me. I asked her on what charge, and she said "failure to obey" a federal law enforcement agent. I told her that she would be in big trouble if she did that, because federal case law, pursuant to the Fourth Amendment, requires that she have "probable cause." She answered "Oh really?" in what seemed a mocking tone of voice.

At this point a male officer approached me and I told him: "I don't have to answer your questions." He said: "That's right, you don't." He then told the female officer: "We'll arrest him, fingerprint him, and run a check on him." At this point they left the bus to secure

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Trailways passengers to refuse to submit to interrogation by Border Patrol agents.

"8 USCS 1357(a)(1) does not apply differently in San Juan than in any other part of the U.S. ... INS agents ... have no power to detain or seize prospective passengers who merely refuse to answer random citizenship inquiry by agents." *Lopez v. Garriga* (1990, CA1 Puerto Rico) 917 F2d 63. This ruling protects Trailways passengers who refuse to cooperate with the Border Patrol's random citizenship inquiry from being detained or seized.

"Although the INA allows an INS agent to question a person believed to be an alien about his or her right to be or remain in the United States, the statutory provision is limited by the Fourth Amendment, and thus an INS agent may not question any individual about his or her right to be or to remain in the United States unless the INS agent has a reasonable suspicion, based on specific articulable facts involving more than mere ethnic appearance, that the individual is an alien." *Murillo v. Musegades* (1992, WD Tex) 809 F Supp 487. Thus the practice sometimes employed by Border Patrol agents in northern New York -- that of

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THE RIGHT TO TRAVEL FREELY

The right to travel freely is enshrined in English common law, dating to the Magna Carta, which twenty-five English barons forced King John to sign at Runnymede on June 15, 1215, nearly 800 years ago.

The Magna Carta, paragraph 41, reads in relevant part:

“All merchants shall have safe and secure exit from England, and entry to England, with the right to tarry there and to move about as well by land as by water, for buying and selling by the ancient and right customs, quit from all evil tolls, except (in time of war) such merchants as are of the land at war with us.”

The Magna Carta was in the form of a feudal contract, a list of concessions forcing the king to respect the traditional rights of the land barons, and of reciprocal obligations on the part of the land barons. The Magna Carta was not intended to be a charter of liberties for the common man. But over the years, the rights enshrined in the Magna Carta came to apply to commoners as well.

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Either the people are sovereign, and the government is their servant; or the government is sovereign, and the people are its servants. One cannot have it both ways.

The American Revolution was fought under the Articles of Confederation and Perpetual Union, signed by the delegates to the Continental Congress on July 1, 1778, and ratified on March 1, 1781. The very first right of the people enshrined therein appears in Article IV:

“the people of each State shall have free ingress and regress to and from any other State”

The context is given below:

“the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively”

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some way restrain liberty of individual,” such actions are not protected by *Zepeda v. U.S.I.N.S.*

“Authority of Immigration and Naturalization Service officers to interrogate person believed to be alien as to right to be or remain in United States is not unbounded, and INS is forbidden from detaining persons for questioning about their citizenship unless on reasonable suspicion that they may be aliens; request for identification does not, by itself, amount to detention unless circumstances of encounter are so intimidating as to demonstrate that reasonable person would have believed he was not free to leave if he had not responded.” *United States v. Rodriguez-Franco* (1985, CA11 Fla) 749 F2d 1555. Blocking the aisle of a Trailways bus and three times preventing a passenger from disembarking, once before he had responded, and twice even after he had responded, as happened to me in Canton, New York on April 4, 2007, is conduct not protected by *United States v. Rodriguez-Franco*.

“Questioning with reasonable suspicion of alienage is permissible so long as the INS agent does not restrain the individual, and the individual reasonably believes that he or she is free to walk away, although the

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(2) *Reasonable distance*. The term *reasonable distance*, as used in section 287(a) (3) of the Act, means within 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the chief patrol agent for CBP, or the special agent in charge for ICE, or, so far as the power to board and search aircraft is concerned any distance fixed pursuant to paragraph (b) of this section.

Nowhere in CFR 287 is it stated that the Border Patrol has the authority to board a vehicle of public transportation that has not crossed and will not cross the border. In such cases, absent probable cause, there is no reason for any passenger to be considered a “person believed to be an alien” under CFR 287.5(1). A blanket interrogation of all bus passengers constitutes a presumption that each and every passenger is a “person believed to be an alien.”

Federal Case Law

Specific restrictions placed upon the actions of the Border Patrol, under federal case law, are quoted, cited, and interpreted as follows, in order of appearance:

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Representatives, submitted twelve proposed amendments to the states, ten of which were ratified and became the law of the land on December 15, 1791. The Ninth Amendment, written and proposed by Madison himself, resolved his initial opposition:

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

Surely the right to travel freely, dating to the Magna Carta and specifically enshrined in the Articles of Confederation, is one of those rights endowed by the creator and retained by the people. Why the right to travel freely was not specifically enumerated in the Bill of Rights is a matter of speculation. The general consensus is that the right to travel was so obvious that it needed no enumeration. It goes without saying.

Note that the Bill of Rights has a Preamble, usually ignored by historians. The Preamble describes the Bill of Rights as being “further declaratory and restrictive clauses” imposed upon the government “in order to prevent misconstruction or abuse of its powers.”

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“The right to travel is a part of the ‘liberty’ of which a citizen cannot be deprived without the due process of law of the Fifth Amendment.”

“In Anglo-Saxon law that right was emerging at least as early as the Magna Carta,” wrote Justice William O. Douglas in the majority opinion. He stressed “how deeply engrained in our history this freedom of movement is. Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage.”

The Court viewed the “right to travel” as “a constitutional right of a citizen,” and the “constitutional protection” of that right as settled law. The Court applied the doctrine of “strict construction,” saying: “The Supreme Court will construe narrowly all delegated powers that curtail or dilute activities or enjoyment, natural and often necessary to the well-being of an American citizen, such as travel.”

The issue in *Kent v. Dulles* was the denial of passports to two members of the Communist Party who refused to fill out affidavits on the subject. Wrote Douglas:

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(1) Section 287(a)(1) of the Act to interrogate, without warrant, any alien or person believed to be an alien concerning his or her right to be, or to remain, in the United States, and

(2) Section 287(b) of the Act to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States; or concerning any matter which is material or relevant (thereto).

I submit that these Border Patrol agents have no reason to believe I am an “alien,” and therefore have no authority to interrogate me without a warrant. The reasons for which I could be lawfully arrested by the Border Patrol are listed as follows:

(1) Arrests of aliens under section 287(a)(2) of the Act for immigration violations.

(2) Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens.

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(a) Powers without warrant. Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant –

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such

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Brennan defended the “right to travel freely from one state to another” as “a virtually unconditional personal right guaranteed by the Constitution.”

On June 14, 1982, in *Zobel v. Williams* (457 US 55), the United States Supreme Court once again upheld the “right to travel” and to “free interstate migration.”

The issue in *Zobel v. Williams* was the distribution of income, or royalties, derived from the mineral resources of the State of Alaska. The state wished to distribute the income “in varying amounts based in length of each citizen’s residency.” Chief Justice Warren Burger, writing for the majority, “held that the Alaska dividend distribution plan violated the equal protection clause of the Fourteenth Amendment.

In a concurring opinion, Justice Brennan and three others expressed “the view that the right to travel – or, more precisely, the federal interest in free interstate migration -- was affected by the Alaska dividend-distribution law, and that this threat to free interstate migration provided an independent rationale for holding that law unconstitutional.”

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RESTRICTIONS ON THE BORDER PATROL

A Trailways representative told me on the phone that nobody at Trailways can cite statutory or regulatory authority for Border Patrol agents to board Trailways buses and question all the passengers. The Trailways drivers simply let them do it, because they think they have to, and because the officers are uniformed and armed. The fact is that the Border Patrol has no such statutory or regulatory authority.

According to the American Friends Service Committee, Border Patrol agents conducting similar interrogations in San Diego cited, as legal authority, 8 USC 1357 and 8 CFR 287.5.

Having read this, I spent the day of April 5, 2007 in the St. Lawrence County Law Library and online, studying the cited statute and regulation, and the federal case law pursuant to them.

8 USC 1357 states, in relevant part:

§ 1357. Powers of immigration officers and employees

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Justice Sandra Day O’Connor, in a separate concurring opinion, expressed “the view that the Alaska law should be measured against the principles implementing the privileges and immunities clause, and that this analysis supplies a needed foundation for many of the ‘right to travel’ claims discussed in the court’s prior opinions.”

Justice O’Connor was referring to Article IV, Section 2, Paragraph 1 of the United States Constitution, which reads, in its entirety:

“The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

Note that this is almost the exact wording that appears in the Articles of Confederation, immediately prior to the guarantee that “the people of each State shall have free ingress and regress to and from any other State.” It is this “free ingress and regress” provision, never superseded, upheld by the Ninth Amendment to the Constitution, which binds all state and federal judges, and all law enforcement agents.

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“We must remember that we are dealing here with citizens who have neither been accused of crimes nor found guilty. They are being denied their freedom of movement solely because of their refusal to be subjected to inquiry into their beliefs and associations. They do not seek to escape the law nor to violate it.”

On April 21, 1969, in *Shapiro v. Thompson* (394 US 618), the United States Supreme Court reaffirmed the “constitutional right to travel freely from state to state.”

The issue in *Shapiro v. Thompson* was the constitutionality of state laws requiring a one year residency period within the state prior to applying for welfare assistance. Justice William Brennan, in the majority opinion, wrote that such laws “violated the equal protection clause of the Fourteenth Amendment” and “the due process clause of the Fifth Amendment” by “imposing a classification of welfare applicants which impinged upon their constitutional right to travel freely from state to state.” Brennan called such policy “invidious discrimination” which “cannot be answered by the argument that public assistance benefits are a ‘privilege’ and not a ‘right.’”

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felony and there is likelihood of the person escaping before a warrant can be obtained for his arrest ...

I submit that a Trailways bus that has not crossed and will not cross the border is not subject to 8 USC 1357(a)(3), because the actions of the Border Patrol are not "for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States." Each and every person on such buses purchased a ticket within the United States, and the actions of the Border Patrol are not to prevent entry, but to engage in a blanket interrogation of each and every passenger, each of whom is, without probable cause, treated as a "person believed to be an alien."

8 CFR 287.5 states, in relevant part:

§ 287.5 Exercise of power by immigration officers.

(a) *Power and authority to interrogate and administer oaths.* Any immigration officer as defined in 8 CFR 103.1(b) is hereby authorized and designated to exercise anywhere in or outside the United States the power conferred by:

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(3) Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States.

(4) Arrests of persons under section 287(a)(5)(B) of the Act for any felony.

(5) Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.

(i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law.

I submit that there was, and is, no probable cause to believe that I have violated any Section of 8 CFR 287.5.

Border Patrol agents may conduct this business within a "reasonable distance" of the border, defined at § 287.1 as:

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FEDERAL CASE LAW

No less an authority than President Lyndon B. Johnson has recognized the "constitutionally protected right to travel freely." In a signing statement accompanying a revision of the Federal Voting Assistance Act (82 Stat. 180 and 82 Stat. 181), dated June 18, 1968, Johnson wrote the following:

"An analysis of the 1960 presidential election ... indicates that between 5 and 8 million Americans were disfranchised because they moved their residence from one State to another, or even, in many cases, simply from one county to another. The only fault of these citizens is the exercise of their constitutionally protected right to travel freely within the United States -- to pull up stakes and seek a new life."

The three most often cited federal court cases on the subject also recognize the constitutional right to travel.

On June 16, 1958, in *Kent v. Dulles* (357 US 116), the United States Supreme Court wrote these words, which appear three times in the decision:

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The Articles of Confederation were largely superseded by the United States Constitution. When it was sent to the state legislatures for ratification on September 28, 1787, opponents protested that it lacked a bill of rights.

Thomas Jefferson wrote that: "A bill of rights are what the people are entitled to against every government on earth, ... and what no just government should refuse, or rest on inference."

James Madison initially opposed the idea of a bill of rights. He argued that specifying rights that were reserved to the people would have the effect of limiting their rights to the ones specified.

The consent of nine states was required for ratification of the Constitution. Only eight states ratified it unconditionally. Massachusetts, Virginia and New York ratified it by narrow margins, on the condition that a bill of rights be added. North Carolina decided to wait for such a bill of rights, and Rhode Island did not even call a convention to consider ratification.

On September 25, 1789, The United States Congress, led by Madison, now a member of the House of

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"Fourth Amendment permits patrolling officers, except at border and its functional equivalents to stop vehicles only if they are aware of specific articulable facts, together with rational inferences therefrom, reasonably warranting suspicion that vehicles contain aliens who may be illegally in the country." *United States v. Brignoni-Ponce* (1975) 422 US 873, 45 L Ed 2d 607, 95 S Ct 2574. There is no reason to suspect that each and every Trailways bus that passes through Jefferson, St. Lawrence and Franklin counties contains illegal aliens.

"Mere approach of persons for purposes of questioning without physical force or show of authority by officer which in some way restrains liberty of individual does not constitute seizure in violation of Fourth Amendment; questioning about immigration status, in absence of seizure, does not require reasonable suspicion of alienage." *Zepeda v. United States Immigration & Naturalization Service* (1983, CA9 Cal) 753 F2d 719, 36 FR Serv 2d 906, 40 FR Serv 2d 1285. Because the actions of the Border Patrol in forcibly preventing the boarding or disembarking of Trailways passengers until each and every one is interrogated do constitute "show of authority by officer" and do "in

individual is not required to cooperate in such a situation, and the INS agent must have a reasonable suspicion of illegal alienage in order to detain or seize a person for interrogation." *Murillo v. Musegades* (1992, WD Tex) 809 F Supp 487. This ruling, more than any other, prohibits the actions of the Border Patrol in boarding a Trailways bus and telling the passengers that they cannot disembark, or continue their travel, without first submitting to interrogation. Clearly the passengers are not "free to walk away," and cannot reasonably believe that they are "free to walk away." Passengers are "not required to cooperate in such a situation."

"When an individual is stopped solely for the purpose of being identified, the individual has the right to decline to answer a law enforcement officer's questions, and even when a person refuses an officer's request for identification, the officer must have reasonable suspicion of misconduct in order to detain him or her; no inference of suspicious conduct may be drawn from a refusal to cooperate." *Murillo v. Musegades* (1992, WD Tex) 809 F Supp 487. This ruling, more than any other, protects the right of

Under American principles of jurisprudence, the people do not derive their rights as concessions from the government; rather, the government derives its powers as concessions from the people. This principle is enshrined in the Declaration of Independence:

"Governments are instituted among Men, deriving their just Powers from the Consent of the Governed"

For context, the complete sentence is as follows:

"We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness - That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such Form, as to them shall seem most likely to effect their Safety and Happiness."

And still the harassment continues. On Tuesday, August 4, 2009, at the Trailways bus stop in Massena, New York, I had a state-issued photo identification card rejected by a Border Patrol agent because it "doesn't prove anything." On Thursday, August 27, 2009, also in Massena, New York, two Border Patrol agents threatened to detain me because I did not have on my possession the very state-issued photo identification card which their fellow agent had rejected 23 days earlier. On neither occasion had the bus crossed even a county line.

This needs to stop. As I told the Amtrak agent in Syracuse, I do not surrender my Ninth Amendment rights because someone does not like my forms of identification. We, the people, have the right, originating in Common Law, to travel freely from state to state. All the rights enjoyed by the people at the time the Bill of Rights was enacted are protected by the Ninth Amendment. The present policy of demanding identification from travelers who have no intention of crossing the border is tantamount to requiring an internal passport.

interrogating some, but not all, of the passengers on a Trailways bus, and of selecting those to be interrogated based solely on ethnicity, especially Oriental descent -- is prohibited by *Murillo v. Musegades*.

“Requirement for valid arrest under 8 USCS 1357(a)(2) that officer have ‘reason to believe’ that alien is in country illegally, must be considered to be equivalent of probable cause requirement.” *Au Yi Lau v. United States Immigration & Naturalization Service* (1971) 144 US App DC 147, 445 F2d 217, cert den (1971) 404 US 864, 30 L Ed 2d 108, 92 S Ct 64 and cert den (1971) 404 US 864, 30 L Ed 2d 108, 92 S Ct 66. This ruling makes clear that grounds for arrest must meet the standards of the Fourth Amendment.

AFTERWORD

On September 6, 2007, Border Patrol agents stopped a Trailways bus at a Homeland Security checkpoint on Interstate 87 about seventy miles from the Canadian border. On several previous occasions that I had experienced, the Border Patrol agents had let this bus pass through after ascertaining that it is an internal schedule and does not cross the Canadian border.

reinforcements. The bus driver expressed concern that I was holding up the bus, so I urged the bus driver to leave without me. I carried my backpack off the bus and set it down in the parking lot against a guard rail.

Four Border Patrol Agents emerged from their headquarters with a dog to sniff my backpack, after which one of the agents said that he would let me back on the bus. He stated that my backpack contained no drugs, revealing once and for all that the dog on the leash was trained to sniff for drugs, not explosives, and that the “Homeland Security checkpoint” was designed to trap drug smugglers, not illegal aliens or terrorists.

“I ask you to enforce the law, not break the law,” I said as I reboarded the bus. This brings us back one more time to the Magna Carta. In paragraph 45, the land barons agreed that: “We will appoint as justices, constables, sheriffs, or bailiffs only such as know the law of the realm and mean to observe it well.” I have little doubt that these Border Patrol agents mean to observe the law. The problem is that they do not know the law. But to say that they are “just doing their jobs” or “only following orders” is not an exculpatory response. That is the Nuremberg defense.

service representative that this identification is “not valid,” even though one is required to produce it in order to obtain an external passport.

I also brought with me, just in case, certified copies of two of my college transcripts, still in sealed envelopes, which no identity thief would be likely to possess.

The “transportation certificate” states on the back, and I quote: “4. Bearer of Certificate must present, upon request, a minimum of two forms of identification when redeeming Certificate.” This I did.

The foregoing statement does not say “photo identification.” Not only was I denied the tickets, but the Amtrak agent summoned the Border Patrol, in the name of Homeland Security, who accused me of being “animated,” and likewise rejected my identification.

I had a right to be angry. I had traveled 130 miles by Trailways bus from Canton to Syracuse, at a cost of \$23.90 one way, to no avail. When I heard the boarding announcement for the Trailways bus from Syracuse to Canton I begged the bus driver to wait five minutes until I could retrieve my documents from Amtrak and

THE PRESENT POLICY

I live in Canton, New York, a small village twenty miles from the Canadian border. My family has lived in this county for seven generations. Simply because of where I live, federal agents do not recognize my right to travel freely.

I have been questioned dozens of times by increasingly hostile and belligerent Border Patrol officers acting in the name of Homeland Security. The most egregious examples happened on Wednesday, April 4, 2007. When I tried to board an Amtrak train in Syracuse, with two pieces of valid government-issued identification, I was refused a ticket and the Border Patrol was summoned. I had no choice but to take a Trailways bus back home, and upon my arrival in Canton, I was interrogated by another Border Patrol officer, claiming he was doing a “serious safety inspection” for the Department of Homeland Security.

I was refused a ticket from Syracuse to Cleveland for which I had already paid by debit card (reservation number 035DBF) and a return ticket from Cleveland to Syracuse (reservation number 0D6865) for which I intended to pay with a “transportation certificate.”