



ONLY ON 5

## Border Patrol agents advised to release drunk drivers

Posted: Feb 13, 2015 8:20 PM PST

Updated: Feb 16, 2015 8:24 AM PST

By Adam Longo **CONNECT**

PHOENIX (CBS5) - A training memo for federal agents who patrol Arizona advises them they are under no obligation to detain an alcohol impaired driver and they face no liability by allowing them to continue driving.

The memo was shared exclusively with CBS 5 News Friday night. It was circulated among Customs and Border Patrol agents who work Arizona's Tucson sector. The memo gives agents three options of what they can do with a driver they suspect to be impaired:

- Do not detain them
- Detain the impaired individual at the request of a state or local law enforcement officer
- Detain the impaired individual without a request from a state or local law enforcement officer

The memo also explains the ramifications of each option and what liability the agent could face. Only in the "do not detain them" option would the agent be free from any liability.

Border Patrol agents are not certified peace officers in Arizona, meaning they do not have the lawful authority to arrest someone suspected of breaking state law.

"The question is how much authority does Border Patrol have to enforce state laws against U.S. citizens," former prosecutor and criminal defense attorney Alex Lane said. "Do we want Border Patrol checkpoints to also be DUI checkpoints?"

"I can assure you that the agents I represent and the people I work with just would not release someone who was severely intoxicated," said Art Del Cueto, president of Local 2544, the union representing Border Patrol agents.

Del Cueto says his agents carry a certain moral authority after the 2010 death of CBP agent Michael Gallagher near Casa Grande. Gallagher was killed on duty by a drunk driver.

"Especially since we were hit hard by the death of one of our own. How could we release them?" Del Cueto said.

Customs and Border Patrol released this statement to CBS5:

*The recent informational slide, which was inappropriately released outside of CBP, was intended as an internal messaging slide to provide training to Tucson Sector Border Patrol agents about their legal options when encountering drivers who appear to be impaired. In cases where Border Patrol agents encounter possibly impaired drivers, they are trained to exercise their professional judgment when assessing the current situation. Information on the slide does not direct agents to detain or not detain these drivers, but instead provides them information, based on judicial precedent, to use their discretion when encountering possibly impaired drivers. The Border Patrol often releases internal messaging on a wide range of topics to inform agents so that they may better perform their duties within the scope of the law.*

The group Mothers Against Drunk Driving, or MADD, released a statement as well:

*"MADD urges all law enforcement officers to protect the public by following standard procedures when encountering anyone suspected of driving under the influence of alcohol or drugs. Law enforcement is the first line of defense in preventing drunk and drugged driving, and their efforts are crucial to keep our roadways safe."*

Copyright 2015 CBS 5 (KPHO Broadcasting Corporation). All rights reserved.



#### NEWS

5 Investigates  
Dirty Dining  
Sports

#### WEATHER

EVENTS  
PHOTOS

#### ABOUT CBS 5

News Team

Program Schedule

#### ONLINE PUBLIC FILE

Closed Captioning

Children's Programming