

THE WHITE HOUSE

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PRESS BRIEFING BY
JOE LOCKHART

The Briefing Room

12:50 P.M. EST

Q How is the millennium going?

MR. LOCKHART: The millennium is 19 days old. That's the only comment I'm going to make on it.

My day on travel pool was incredible. It was like a walk down Memory Lane. The idea of being able to tell a group of reporters, "take step back now," or "move forward now," is just beyond belief.

Let me just say for the record, as we're now back on the record that any references that Gene made to Chris or Chris made to Gene could mean any Gene or Chris for the purposes of the transcript. And all questions addressed to, "Well, Gene, what do you think?" could mean any Gene. There are a lot of Gene's in the White House, so I don't think we quite figured out this background briefing thing here at the White House. I think we need to take some lessons from some of our counterparts around the agencies.

Anyway, questions.

Q -- hear from McCurry -- (laughter.)

MR. LOCKHART: Yes. Basically, that was to try to forestall another McCurry e-mail on this subject.

Q This may be a chicken or egg question, but the President thanked the Vice President for his health care proposal. Who is the appropriate father? Did the Vice President influence the administration or did the administration thinking influence the Vice President in terms of this expansion of CHIPS?

MR. LOCKHART: I think the -- obviously, the President has been -- health care has been an issue that he has been quite involved in and he's had many ideas. I think in this particular proposal, it was the Vice President who first raised the idea of expanding CHIPS to family members which is actually a significant improvement in the program and a very good

step as far as overall impact on dealing with the uninsured in this country. So I think this is the President's proposal, but as with many his, it's influenced and shaped by the thinking of the Vice President.

Q Joe, since the President and the Vice President have both asked the South Carolina legislature to take down the Confederate battle flag from their state capitol, will the President ask that in the State Department and the Kennedy Center, flags of Mauritania and Sudan be taken down because they have black slaves in these two countries today, or is that not considered important?

MR. LOCKHART: I don't think that it's fair to equate the two subjects together, and I'm not --

Q Well, there are no slaves in South Carolina --

MR. LOCKHART: -- aware of any move there.

Q You mean, that's not important?

MR. LOCKHART: April?

Q On that Confederate flag subject, you did say that the President opposes the flying of the Confederate flag. Has he sent a letter to the Governor, rather, of South Carolina, or will he do anything --

MR. LOCKHART: No, I think the Governor of South Carolina is actually trying to mediate this situation in trying to find a solution to the problem. I think the President made his views known yesterday through me because there's such intense interest in it now, particularly with the marches over the weekend. I think, though, that the Governor down in South Carolina is trying to find a solution to this.

Q Joe, a follow-up to that. Last year, we were asking about the situation if he was going to go to the Renaissance Weekend down there. Was the idea not to go to Renaissance Weekend and say it was the millennial parties, rather, kind of deflection or kind of a politically correct way of not having to deal with the situation at the time?

MR. LOCKHART: No, it was actually the parties. It was the excuse was the excuse.

Q Joe, if the President believes that the Confederate flag should be taken down from a public building because it offends some people, does he believe that --

MR. LOCKHART: It's not the view that the President expressed next question --

Q Let me finish my question, please.

MR. LOCKHART: No, that's not the view he expressed, so let's move around a little bit.

Q What's the White House's reaction to the failure of the missile tests, and how will that potentially affect the President's --

MR. LOCKHART: Obviously, you're talking about something that very technologically challenging. The feasibility of -- I can't rememb the exact numbers, but you're trying to hit like a fired bullet halfway across the country at vast speeds. So this is something that's very challenging.

I think as far as the reaction to this test, we know that it didn't meet the standards that the Pentagon had hoped in moving forward with the test, but I think they need some time to assess the data to lo at the reasons. I don't think they, at this point, have been able to develop the whys behind the failure of the tests, so I think they'll do that, they'll make an assessment. There's no reason at this point to believe that they can't meet their summer deadline of making a recommendation to the President, but it's not something that's complete knowable at this point. They will need to go through the data and make assessment off of that.

As you know, they've got another test planned for, I think, t months from now. They'll work very hard to incorporate whatever went w in this test into that one, so I think at this point, for at least the couple of days, we'll just have to wait and see.

Q Just to follow, is it too early to speculate on what imp these failures --

MR. LOCKHART: I think it is. I think that they do these tes for a reason. Obviously, if this was easy technology, they wouldn't ha to test, they would just go ahead and deploy. Obviously, they can't do that. I think they need some time to figure out what went wrong, see w they can learn from that, see how big a problem they have. But there i reason at this particular point in time to say one way or the other definitively that this will have an impact on the self-imposed deadline

Q What happened at the Cabinet meeting?

MR. LOCKHART: The President took the opportunity to let the Cabinet know where his thinking is on the State of the Union, on the upcoming budget. It went around the room, Cabinet members discussed fr the perspectives of the Secretary of Education, the Secretary of Labor, Secretary of Health and Human Services, where they were as far as what of the budget they were out talking about, what their plans were for go up and promoting the President's agenda, both around the country and on Capitol Hill with legislators.

I think there was a section from the national security team j giving a brief to the rest of the Cabinet and the President, as well as Secretary Daley leading a discussion on how the Cabinet will need to ge behind our efforts for NTR and China.

Q The President made reference to the Arafat meeting tomorrow. Two things. What exactly will the President be offering about these present Wye River dispute? And will Arafat get involved at all in the Syrian situation?

MR. LOCKHART: I don't expect him -- on the first point, I think the President looks forward to this meeting as a way to get up to date with Arafat on a number of issues that are involved in the process. Obviously there has been an aggressive agenda set for finding a framework for peace in February. That's something that more work still needs to be done, so the President looks forward to this meeting as a way to move that process forward. It's in the afternoon.

Q Did Arafat request a meeting, or did the President invite him?

MR. LOCKHART: Not sure, I'll check on that.

Q Does the President have any view on the issue of the possibility of postponing that mid-February, the February 13th deadline a couple of months to give the parties a little more time to try to reach a framework?

MR. LOCKHART: We're going to work with the parties and work what we think is the best interest of the process. But at this point, we are working toward a February deadline to try to find a framework and we are going to do what we can to help them do that.

Q And does he expect to talk to Barak in the next day, or following the Arafat meetings --

MR. LOCKHART: He has kept up a regular schedule of conversation with the Prime Minister, obviously punctuated with intense conversation since Shepherdstown. So I can't tell you that there's anything scheduled right now, but he talks to him on a fairly regular basis.

Q Joe, do you have anything on -- Mr. Summers' visit to India if he was getting any special message from the President or anything to do with a presidential visit to India?

MR. LOCKHART: I think as the press coverage indicates, there has been some discussion about a potential presidential visit to India, but not ready at this moment in time to make any announcements on that.

Q Joe, does the President support Jesse Jackson's call for boycott of Georgia because of the state flag, in view of his signing a law to make one of the stars on the Arkansas flag representing the confederate states?

MR. LOCKHART: Let me try to break that down, because there has been a lot of misinformation in some of the reporting on this. I made the President's views on the flying of the confederate flag clear yesterday to the reporters traveling with us to Boston. On the Arkansas state flag,

that is a historical reference to the different governments that Arkansas has been under in their history -- whether it be France, whether it be England. So trying to compare them is like trying to compare apples and oranges.

I think what's important to remember here is the spirit in which this flag was raised in South Carolina in 1962, not 1862. This was at a time where it was done in defiance of the civil rights movement, symbol of their opposition to desegregation that I think has moved this country along, and that's why the President opposes it.

Q Joe, a question on Waco. Have any White House staff, to your knowledge, given any depositions or affidavits to special counsel Danforth?

MR. LOCKHART: Not that I'm aware of.

Q Have there been any document requests, as far as you know?

MR. LOCKHART: There were some document requests early on in process, and whatever documents we have I'm sure we've provided.

Q Joe, relatives of Elian Gonzalez are going to take a legal step against the INS. Why is the President of the United States allowing people to take political advantage of this boy --

MR. LOCKHART: Why is he allowing people?

Q Yes. I mean, why he won't take action to order something like to give the business to the --

MR. LOCKHART: Listen, we live in a democracy here. People, whatever their beliefs are, are allowed to express those beliefs. We have a court system and the Justice Department will make their case in court if this case is filed this afternoon, as anticipated. I think the President has been very clear that we ought to do what the facts and the law dictate here. And I think he's been very clear in chiding anyone who tried to inject politics or make this young boy a political football. There's nothing he can do to stop people from doing that. That's part of our system.

Q The government hasn't received the official request of a visa from the father of the boy and the grandmother?

MR. LOCKHART: No, we have not, as far as I know, not received an official request for a visa.

Q Joe, with the Cabinet meeting today, the State of the Union a little more than a week away, the health care proposal today et cetera I'm wondering if sort of behind the scenes the President and staff are starting to prioritize what they think can be done this year, before the political atmosphere takes over?

MR. LOCKHART: Well, I'll tell you, I think that we have a

contrary view of the political atmosphere than most. And at the end of year we'll make a judgment, and you all will make a judgment to see if we were right. We went through 1996 in a year where I heard from a lot of people who live off of their ability to judge what goes on in this town that -- that was a nice way of putting it, wasn't it? Write that one down (Laughter.)

Q You may need it someday. (Laughter.)

MR. LOCKHART: I might. Exactly. Counting on it. (Laughter)

Anyway, all of those incredibly intelligent people who I think the world of -- (laughter) -- and would love to be on the other side of panel with someday -- no, I think in '96 people thought that nothing would get done, and we got a lot done in 1996. And I think in the year 2000, take the view politically that the particular basket of issues that the President is pushing as part of his agenda are something that the public has been demanding, and it's been the narrow special interest here in Washington that have been blocking, whether it be patients' bill of rights whether it be sensible gun control, whether it be minimum wage, whether it be Medicare reform and prescription drugs.

I think as members -- and we've got a very small majority, Republican in the House, as members go home and they talk to their constituents, as they have been for the last couple of months, and realize that they've got to go and ask for their vote again this year, these are going to be very difficult to ignore the will of their constituents because there are some narrow special interests.

So I think if you look at the issues that the President is going to put forward, we're very confident this will be a year of legislative accomplishment. There will be plenty of things that we can still argue about that define the parties in a different way and give the public a choice, so I don't think that there's any real worry about that. There's always a choice, because as much as we get done, there will be areas where we disagree and can't get things done, but I think the President is very confident in the environment in Washington this year, or probably more aptly, the environment outside Washington this year, that will lead us to get things done.

Q What's the trip like? I mean, how long -- is it Friday?

MR. LOCKHART: The trip at the end of the week? We go out very early Friday morning. We give a speech at Cal Tech on the President's science and technology agenda. We do a DNC fundraiser in the evening, do a brunch Saturday morning and come back.

Q Any news in the Cal Tech speech?

MR. LOCKHART: Yes. I think he will have some new initiative in the science, technology and research field, as well as an overall agenda where the President thinks we should go.

Q Joe, what was the President's reaction to the arsonist in Richmond, Virginia, who firebombed the Lee mural?

MR. LOCKHART: I don't know that he was aware of that. And I was --

Q It was in the Washington Post, Joe.

MR. LOCKHART: -- and if he was, he didn't comment on it to me.

Q Doesn't he read that paper, Joe?

MR. LOCKHART: And if he was, he didn't comment to me.

Q He has no comment? Don't you? How about your comment? What do you think?

MR. LOCKHART: Well, I didn't read the story, so -- next?

Q Didn't read the story --

Q Is there any formal celebration tomorrow of the last year?

MR. LOCKHART: Well, I think the DNC will take note of it tonight in the gala that the President will be attending. We'll, in a political way, take note of all the accomplishments of the last seven years under this President, including a strong economy, a safer country -- safer in streets, safer in the world -- reduced welfare; a country that's seen this kind of prosperity that is, by the time we get to the next reporting period, we'll know is unprecedented.

I think as far as the work of this building, we're going to keep going. I mean, I think the President made clear today when he talked to you all that he looks at the next year as an opportunity to get things done. And he wants to take advantage of every hour, and every day, and every week. And I think it's our judgment that he will.

Q Did he tell the Cabinet that?

MR. LOCKHART: Yes. This is something that he has reminded the Cabinet of quite often -- although, with this Cabinet, which has been a remarkably stable group, as far as looking at the historical levels of turnover within the Cabinet, most of the people around that table have been with him from the beginning, or for quite some time. So I think they understand the President's agenda, the President's work style, and his impatience with the idea that, for whatever reason, you stop working.

Q Will the President do a little drop-in with the pharmaceutical people tomorrow? I mean, when the staff discussions are going on?

MR. LOCKHART: I don't expect he will, but if he does, we'll see you know.

Q Joe, the Department of Energy issued a report today on racial profiling. Are other agencies, to your knowledge, doing the same thing? And where do things stand in terms of a federal government-wide look at it?

MR. LOCKHART: Well, I don't know about other agencies. I know that this issue was specific to the Department of Energy. But the President is, as he said in the middle of last year, opposed to racial profiling, for one reason that he thinks it's an ineffective tool for law enforcement. And what we've done here is decided to collect data from various federal law enforcement agencies. I expect that to be done later this year, and then I think the President will have more to say on that.

Q What do you think of Bradley's taunting -- well, asking to go to the President and ask him to issue an executive order?

MR. LOCKHART: I think we want to make decisions based on facts, not anecdotal information. And I think the Vice President answered that quite properly when he said, I don't think the President needs a lecture from anybody about standing up for African-Americans and Latinos in this country.

Q Joe, can you explain how the Drug Czar's Office has revised its guidelines on handling scripts and so forth? And how did that come about?

MR. LOCKHART: I can tell you -- I'll leave it to them to do the absolute details, but here it is in a nutshell. They've revised their policy to no longer look at scripts or do changes in programmatic things for credit before a program is finished.

Q I thought the claim was that they never looked at them before, only after.

MR. LOCKHART: Well, I think that -- my understanding of the situation is, there was some technical advice given. There were various scripts that came in from people who were looking for technical advice. And those may well have been scripts that they were given credit on. I think what they've done here is basically decided that they're not going to look at scripts anymore in the context of giving credit. There's lots of places to get technical advice, and I think other places will be used.

And I think at the basis of this decision is that General McCaffrey believed, and the President believes, that this is a very successful program. This is a program that's getting results on a problem that every American family has to deal with at some time. I mean, it's just one of those problems that we need to be aggressive about, and we need to continue the fight.

And the controversy surrounding this small part of the program, I think they believed, and rightfully so, threatened to sort of pervade the entire program. So they've made these adjustments, which are quite modest.

and I think puts the program on a track where it will get universal support.

Q Based on protests from the public, or the --

MR. LOCKHART: No, based on the fact that this is a program that doesn't get a lot of reporting on, which is fine because it's not based on glowing newspaper stories about it, but we had two or three days of controversy, of people suggesting the program was improper, when they were looking at a very small part of the program. And there was no reason in the world why making these adjustments -- when you could make these adjustments, that it was worth putting a program that was working at risk to political debate, when these adjustments were easy to make.

Q Joe, is the President aware of the threat by the government of Mexico to close its border to the American trucks until this government allows the Mexican trucks come to the United States, using NAFTA?

MR. LOCKHART: He's aware of the discussions that are going on. Those discussions are going on out of USTR and he is kept informed of them on a regular basis.

Q Joe, no doubt the U.S. has the best health care system in the world. But First Lady and Senator Kennedy have been trying for many years to pass that every American can afford health care system or medical -- what's the problem, lobbyist or when you say special interest groups, are these lobbyists or politics?

MR. LOCKHART: No, I think there were powerful forces aligned against the program that the President put forward early in the term. Since then, the President has worked very diligently to keep stepping up and fighting the problem of uninsured. We do have the best health care system in the world; the problem is access to it. It is an ongoing problem that we continue working on. But today's proposals represent a bold and serious step towards addressing that problem.

I don't know that there's any benefit in going back over 1994 looking at the reasons. But I think it is significant when the symbol of opposition to the health care plan in 1994 -- the Harry and Louise figures -- in the year 2000 are out there saying that we need to do something about the uninsured. I think the problem -- all sides recognize the problem. The President has a very positive proposal for dealing with it.

Q Do you think this will be done this year?

MR. LOCKHART: Yes, I think as the President said, we're very confident that this proposal will meet with significant support on Capitol Hill and will be passed.

Q A follow up on the health care front. Last year, the patients' bill of rights was bottled up in conference over the issue of right to sue. Does the President still support right to sue and is there any realistic hope that that's going to get out?

MR. LOCKHART: Absolutely. I think the President absolutely supports the patients' bill of rights that was passed by a large majority in the House. He has criticized sharply the tactics that have been used by House leadership and Republican leadership in Congress to bottle it up, you said. I think that the public is demanding a patients' bill of rights, with real enforcement in it. And I just think as every day passes and every day we get closer to members facing their constituents again, it's going to get harder and harder to explain why the insurance companies' interests are more important than your constituents' interest.

Q What is the White House view of the intended referendum on the Barak government on any agreement with Syria, since this land is occupied and many legal experts are saying it's illegal even to hold a referendum on occupied territories --

MR. LOCKHART: Well, I think we have a lot of issues to work through in order to get to an agreement, so I don't see any purpose in addressing how Israel will internally speak to whatever agreement they make. The important matter now is to, as the President said, find a way forward, find a way to build on the commitment that's clearly there from the leaders to reach a comprehensive peace and that's what the President's focus is.

Q Joe, the President has taken a great deal of interest in what he has spoken frequently about the First Lady's race in New York. And I was wondering what is his reaction to this morning's Washington Post editor "Mrs. Clinton's Soft Reply," when she met with Al Sharpton and learned about Reverend Charles Norris's disparaging reference to his former employer as a "Jew"?

MR. LOCKHART: I haven't talked to him about that.

Q Could you talk to him? I mean, he certainly is concerned about this, isn't he, Joe?

MR. LOCKHART: If it comes up.

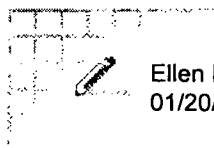
Q Are you concerned about it, Joe?

MR. LOCKHART: Next?

Q Thank you.

END

1:15 P.M. EST



Ellen E. Olcott
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Subject: 2000-1/18 POTUS interview w/ Christian Science Monitor

THE WHITE HOUSE

Office of the Press Secretary
(Boston, Massachusetts)

For Immediate Release

January 18, 2000

INTERVIEW OF THE PRESIDENT
BY THE CHRISTIAN SCIENCE MONITOR

Park Plaza Hotel
Boston, Massachusetts

5:13 P.M. EST

Q Mr. President, I know your time is valuable. Let me start my recorder here. The first thing I wanted to ask you, there have only been a couple of times in this century that Congress has come together, got their heads together enough, both sides of the Congress, to come together and pass legislation to give somebody citizenship. It happened with Winston Churchill, a few other people. I wanted to know if Congress does -- it looks like the first thing they're going to do when they come back into town is work on the Elian Gonzalez case. If they did pass a private bill in both Houses and they feel like, politically, they've got enough backing to do that, what would you do with that bill if it got to your desk?

THE PRESIDENT: I don't know, I haven't thought about it. I think it would be -- this is not Winston Churchill, for one thing. You know, I don't think that Congress should put its -- unless they know more about the facts than I do, I don't think they should put themselves in the position of making a decision that runs contrary to what the people who have had to do all the

investigation have done.

I think that, obviously, if they believe the INS made a mistake, their decision is subject to challenge in federal court. And the Congress -- even members of Congress can petition to be heard there. But I think that we're setting a -- I think that it would irrevocably lead people to the conclusion that this was much more about politics than it was whether that little boy ought to be taken away from his father.

They're basically taking a position that if you live in Cuba, if we can take you away from your father you're better off -- your parents. And I think that's -- the INS reached a different decision, having exhaustively looked at what was best for that child.

As you all know, I have no sympathy for the Castro regime. I signed the present bill. I think it is tragic how they have blown every conceivable opportunity to get closer to the United States. Just as we were making progress, they murdered those pilots. So I'm not sympathetic there. But I think that we need to think long and hard whether we're going to take the position that any person who comes to our shores who is a minor, any minor child who loses his or her parents should never be sent home to another parent, even if that parent is capable of doing a very good job, if we don't like the government of the country where the people lived.

And again, I say I am not -- I have no brief for the Castro government or for many of their policies. I think the way he has attempted to politicize this is also terrible. It's not just the Cuban Americans that have attempted to politicize it. He has responded by attempting to politicize it. So this poor little boy is six years old. He has scars from his mother's death of which he can only be dimly aware, and making a judgment about what is in his best interest and what is most likely to give him a stable, healthy, whole childhood and allow him to grow into an adult as a solid person I'm sure may not be free of difficulty. And I just think that the decision ought to be made insofar as possible independent of countervailing political pressures.

Q Mr. President, the State of the Union is right around the corner, so I guess is the State of the Union part of the interview. In the previews that you all have made available of what's coming up, it seems like most of it is beefing up programs that you already have, like today's announcement, and returning to --

THE PRESIDENT: It's quite a beef up. This is the biggest thing ever done -- yes --

Q Quite a beef up -- which is -- or trying to get back to unfinished business. And I was wondering whether you were planning on trying to go for some new breakthrough issue this year, or whether that's not really possible in a last year.

THE PRESIDENT: Oh, I think that when you see everything we recommend in the aggregate, you might think that in terms of specifics, it's the most ambitious set of proposals since my first year.

Last year was a very ambitious speech, but in terms of what I asked the Congress to do, it required some willingness on their part to meet with me and work through a joint position on Social Security, for example, or joint position on Medicare. I still think we may get a joint position on Medicare and we may get partway there on Social Security. I'm still going to try to persuade them to take all the interest savings that we get from not spending the Social Security surplus and putting that in the trust fund -- that will take Social Security out to 2050, beyond the life of the baby boom generation.

So I'm still not sure we won't make that, but if you just look at the specific policy proposals I will make, not just in the unfinished business area, but in the new area -- and the unfinished business is important. I mean, you've got the patients' bill of rights, closing the gun show loophole, and banning the import of large ammunition clips. You've got the minimum wage. You've got the hate crimes legislation, the Employment Nondiscrimination Act, the prescription drug for Medicare. So we've got a huge -- even though we got a great deal done at the very end of the last Congress, there's a big unfinished business list. And then, as you know, I've been rolling out a lot of these new proposals.

And, actually, there will be a couple of things that will be quite new that I'm not prepared to release yet. But I will have a couple of new proposals. But I think that the most important thing to me is to keep the country moving in this direction and aggressively embracing change, the right kind of change. That, I think, is critical to keep the recovery going, to keep bringing more people into the process of prosperity, and to keep bringing the country together. I think that's very important.

So a lot of what I will recommend that is new is certainly consistent with what I've been doing for seven years. I came to office with a very clear idea of where I thought America was off-base, what I thought we ought to do, what kind of governing strategy I would have. And I believe that it's working. And I think people -- some people will say, well, he does things in increments. But if you walk down the road seven years and you look back -- I mean, if I told you seven years ago, after 12 years of quadrupling the national debt, I'll give you in year six and seven the first back-to-back balanced budget surpluses in 42 years, from a \$300 billion debt, you'd say that's not an incremental change, that's a big change. But you do those things in small steps.

If you look at the millions of people -- we've cut the welfare rolls about in half -- it happened in incremental steps. But it's a huge thing in the aggregate. And all the economic changes -- we've got the lowest African American, Hispanic unemployment rate ever recorded, the lowest female unemployment rate in 40 years, lowest poverty rate in 20 years, lowest single parent household poverty rate in 46 years. So you take it in steps, but if you keep walking in the same direction, all of a sudden your steps constitute a giant leap forward.

Q In that larger mosaic, how do you -- of your record and your legacy in what you've done incrementally -- down the road, how important will it be if, 15 years from now, we haven't made significant advances on the debt? I mean, already your budget soon will break the '97 Balanced Budget Act. And certainly the surpluses are far greater than was predicted at that time. But how will history judge this generation of leadership if significant --

THE PRESIDENT: I think we should pay the debt off. And I think we should do it in 15 years. And the proposals that I will make are consistent with that, based on our latest numbers.

Now, I have two things to say about the '97 budget caps. They were very severe and they were thoroughly shredded by the Republican majority last year by turning everything into an emergency. I mean, the census was an emergency, Head Start was an emergency. Continuing defense expenditures were emergencies. So the caps are not disappearing this year, the caps were shredded last year.

So the real question is, the question I asked our people to look at, and we spent lots of time on it the end of last year, is whether we could present to the Congress a budget that was not full of gimmicks, that reflected what the Congress spent last year, inflation in areas where with had that -- for example, in the defense area where we know they intended -- and still could we do that based on what we now believe the figures are and what our costs are in health care programs and other things, and still get this country out of debt in 15 years, and still not spend the Social Security surplus.

And the answer, we believe, is yes, that you can avoid spending the Social Security surplus, continue to get the country out of debt in 15 years, and have a spending program for the next five years that reflects the decisions made by the Congress in the last year, without all those gimmicks. And you could still have a modest tax cut -- nothing anywhere near the high end of what people had talked about in the campaign and what the Congress tried to do last year, but you could still have a modest one.

So I think this is an honest budget that is fiscally

responsible and still get us out of debt. And I believe that we ought to embrace these big challenges, and I think that our children will judge us very well if we do, and somewhat harshly if we don't. Because in my lifetime -- you've heard me say this over and over again, but I'm not young anymore. I'm 53 years old. In my lifetime we've never had this combination of economic prosperity, social progress, national self-confidence, with the absence of internal crisis or external threat. Not that we have no problems at home or no threats abroad, but none of it is sufficient to derail us from trying to imagine the future and then go after it.

And it seems the one that one of the elements of that future ought to be a commitment to take America out of debt. Another element of the future ought to be a commitment from going to -- what I said today -- trying to make our country the safest big country in the world. Another element of that future ought to be trying to prove that we can grow the economy and dramatically reduce the global warming by maximizing technology. We ought to be able to prove that we can equalize the economic opportunity, that we can -- without holding anybody back, that we ought to be able to bring economic opportunity to these poor people in poor places that haven't had it.

And I think in all those areas, in the education area, in the health care area, I think we will be judged by whether we made the most of what is truly a magic moment. The last time we had this sustained rate of economic growth with low inflation was in the early '60s, about 40 years ago. And if you look at the indicators now compared to then in the aggregate, I think you would say our economy is stronger today, but there were a couple of years there where unemployment averaged under 4 percent and without much inflation.

And it all came apart, first trying to come to grips with the civil rights crisis at home, and then trying to pay for the war on poverty and the war for equal opportunity and civil rights, and the war in Vietnam abroad. So that, basically, we had a moment there that we lost, not only because we became divided as a people politically, but because our system simply could not accommodate building the America of our dreams.

Q So what do you see as a threat to that? I mean, if the Vietnam period and all of that was a threat, what's the threat to that now?

THE PRESIDENT: I don't think there is one. That's why I think we have no excuse not to really -- this should be a truly historic moment in America. I can't think of any time in our history when we've had this sort of opportunity. You might argue that it was similar, that the times which produced Theodore Roosevelt's administration, and then Woodrow Wilson's, were similar, where we were an emerging global power, we were basically at peace, where the world was becoming more integrated.

You go back and read McKinley's speeches around the turn of the century -- he was the first President of the last century -- he said a lot of this. It's quite interesting. And so you might argue that that was a time like this. But I think that -- and I think it is a time in our history that most closely parallels this.

If you go back to the early 19th century, you can find historical parallels in the exploration of Lewis and Clark, and the acquisition of the Louisiana Territory. But the world was so different then, it's hard to do.

So I just don't think we ever have had a time like this. It's not to say we have no foreign crises or security threats; we do. But they can all be managed. And the cost of managing them now is not inconsistent with what our obligations are in science and technology, in education, in economic opportunity, across the range of other areas.

Q Mr. President, you spoke a while ago about how you wanted to keep pushing for change. And I was thinking what's happened to minorities under your administration, that they have seen a pretty drastic improvement in their standard of living because of the strong economy. But one could also say that attitudes toward race maybe haven't changed that much. And I was wondering whether there was something that you thought you could still do about attitudes towards race in your last year.

THE PRESIDENT: Well, I think they have -- first of all, I dispute the premise. I think they have changed. I think that we continue to see evidence that it's still a real problem. I mean, the unfortunate comments that the Atlanta baseball player made -- that's really troubling. On the other hand, the fact that Hank Aaron and Andy Young met with him is encouraging. I mean, you know, 30 years ago that wouldn't have happened.

I think -- last night I watched -- I was working on the State of the Union last night, and I had basketball on, on TV, muted. And I was watching the Minnesota Timberwolves play the Indiana Pacers. And they beat them on a buzzer-beater shot. And then they interviewed Kevin Garnett, who is a very young man. I think he's the highest paid player in basketball, but he's very young. Didn't finish college. And they asked him what Dr. King meant to him, and how his life had changed -- and you could just see -- of course, 30 years ago, no young African American would be making that kind of money and would have the kind of slant he had.

So I think things are changing. But I think what I have to do -- I think there are three things generally I should be doing. Number one, I think we have to continue to try to close the differential in education and economic advancement. For example, the African American high school graduation rate

right now is about equal to the white, non-Hispanic high school rate, which is quite extraordinary. But the college-going rate is different. And the Hispanic dropout rate is still quite a bit higher, largely because of the immigrants, first -- immigrants.

So I think that this economic empowerment agenda I have, and the education agenda, the Hispanic education initiative, all those things, closing those gaps, that's important.

Number two, I think we need to continue to have a vigorous enforcement of the law and highlighting those things we do not agree with. And number three, I think we have to continue the activities of the President's Office on One America. I think we need to continue to appoint more people from different backgrounds; we need to continue to have more meetings; we need to continue to highlight the problems. And I need to continue to speak out and work on this in America.

I said three, but I like to say the fourth thing is I think that when our country continues its mission to try to end racial and ethnic and tribal and religious conflicts around the world, I think that has a reverberating effect here at home. I can give you just one, very concrete example.

Chelsea and I went to Kosovo together, and we went to the military camp. And you have this highly racial and ethnically diverse American military. Very conscious of what they were doing in Kosovo and trying to end ethnic cleansing. And also very aware that insofar as they work together and live together and created a genuine community where everybody was treated equally, the power of their example could have as big an impact on the people of Kosovo as the force of their arms.

So I don't think this -- this is the sort of work that may never be done since, in all of human history, we haven't succeeded in rooting out people's fear or suspicion of those who are different, and there always will be those radicals which seek to advance themselves by demonizing groups of others. But I think we're doing better there. I think we're doing -- and I think there is a lot more we can do.

Q The Chinese Army's daily newspaper has signaled its willingness to aggressively use the Internet as a venue for warfare, to attack our military websites and our military -- attack us through on-line methods. You in your critical infrastructure report recently sort of achieved parity with that and -- with your ROTC Corps idea and that sort of thing. But I'm wondering what precedence that sets. Even what we did in the conflict with Serbia, the precedence that that sets is sort of like fighting each other, attacking each other's satellites -- are you concerned about the precedent that using on-line warfare in any form will have for future generations, since we are the most vulnerable set on the planet from e-commerce to a lot of our

government installations?

THE PRESIDENT: Because we're more open, you mean?

Q Yes, sir, because we're more open.

THE PRESIDENT: And more Internet --

Q So we bring down -- in a hypothetical conflict, we bring down the PLA's air defense system, and they just take out our 911 systems and all that -- turn out all the lights at every 7-11 in the country.

THE PRESIDENT: Well, I think, first of all, it is unrealistic to think that such systems would not be the targets of our adversaries. I think they're far more likely to be the targets of terrorists, organized criminals, narco traffickers, than other countries.

I believe that the answer is that we have got to be as strong as we possibly can be in the whole area of cyberspace safety. We've got to be as resistant to cyberterrorism and assault as we possibly can.

And interestingly enough, this is something we get to practice on every day a lot, because every day there are always people trying to break into our computers, break into the Defense Department computers, break into various security computers. And so we get to work at it every day. And we've given a lot of thought to how you protect power systems, how you protect telephone systems, how you protect financial records.

And so all I can say is that the question you asked confirms what I said at the National Academy of Sciences, I guess over a year ago. I think that's when I spoke there. We have got to be prepared to deal with the explosion of technology in ways that could threaten our security, not only on data systems themselves, another thing you're going to see -- everything involving technology is getting smaller, the miniaturization of everybody. Everybody's got their little notepads now.

Q I just got the palm pilot.

Q He's way ahead.

THE PRESIDENT: You ought to see old Kris's palm pilot. It's got everything from his great grandfather's birthplace -- I just saw the newest AT&T and Nokia telephone that fits right inside the palm of the hand. Now, that same miniaturization process is bound to go on with weapons. So you're not only going to have the attempt that you mentioned to invade, to invade telecommunication systems and computer systems, but you're also going to have a miniaturization system that will affect chemical and biological weapons and other sophisticated traditional

weapons, which will make them harder to detect, easier to use, easier to comport. You may have composite materials that don't show up on airport scanners. All these things are going to happen.

That's why we're going to make cars out of different materials, make weapons out of different materials. And in the whole history of combat among nation states and before that, feudal groups or tribal groups, the normal thing that happens is a weapons system will be developed and it will enjoy a period of success, and then a defense will be developed to it, and then there will be equilibrium until a new weapons system is developed that will give some dominance and then you'll have some equilibrium.

What we're trying to do with this massive investment we're making against bioterrorism, chemical terrorism, nuclear terrorism, cyberterrorism, is to collapse the time span between offense and defense. One of the things, for example, that we really hope that will come out of the human genome is that we'll be able to develop software programs that will immediately adjust the antidote for certain viruses.

If there's a biological warfare attack and you've got a mad scientist somewhere who changes the -- I'm just making this up -- but who changes the anthrax virus, for example, in some way it's never before been changed, and so then this person -- and then they spread it over 400 people in some town, and they begin to come around -- what we're attempting to do with the human genome project, what I think one of the corollary benefits will be is that you'll have software packages developed so that you will be able to immediately analyze that and someone will tell you exactly how you would have to modify the antidote to anthrax to meet the new strain that is resistant to all known antidotes.

So this whole struggle as things change faster and faster and faster, and you have the miniaturization of weapons systems to parallel with the miniaturization of other communication systems, will be to keep closing the gap between offense and defense, until there is close to no difference as possible.

That is the struggle for security in the 21st century. And I have tried to put America on that path. Without frightening the American people, without raising alarm bells, I've tried to make sure that when I left office we would have in place a properly funded, properly staffed system to prepare for the security threats of the 21st century. All the press goes to the high-dollar hardware systems -- should we have a strategic defense initiative, a missile defense.

Q Mr. President, we're running out of time here, so do you mind if we move on to some other topic?

THE PRESIDENT: This is a big issue. All I'm saying is -- I'm not -- missile defense is important if we can do it. And missile threat is important. But you should know that I consider both the cyber threats and the miniaturization of these other threats very significant. But I do believe when I leave office we'll have for my successor and for our country a system that will enable us to deal with it.

Q Since you are talking to the Christian Science Monitor, we are interested in your spiritual journey which you've mentioned a couple times. And you've talked about how amazed you've been by the power of forgiveness, especially in the last 18 months. And I was wondering if you could share with us what your own spiritual growth has been. Have you found any Bible passages particularly dear? Have you found any concepts that you've held on to that have helped promote your own spiritual growth? Could you just describe what's been happening with your own growth in the last 18 months?

THE PRESIDENT: Well, this is a subject I think people in public life should address with some amount of humility and reluctance. Not because people shouldn't be willing to affirm their faith, but because we should remember the story that Christ told, in effect, bragging about the people that prayed in their closets instead of on the street corner. So I say that with all -- but having said that, I think the thing that has struck me is that in this journey I have made to try to -- that really has been a lifetime journey for me, and it's certainly something that's deepened since I've been President, and something that I had to really focus on the last two years, I think the thing that I have really had to work on is trying to gain some spiritual anchor that will enable me to give up resentments and disappointment and anger -- and to understand that in seeking forgiveness I had to learn to forgive.

It's easy to ask for forgiveness. A lot of people think it's hard, but I think it's -- when you plainly need it, it's easy enough to ask for. But we're taught over and over again that we can't get it unless we give it. And I think what is -- you know, there's the wonderful Scripture where people are admonished to forgive those not just in the same measure that they're forgiven, but 70 times 7.

I think that what I have gained more than anything else is a certain humility in recognizing how important forgiveness is, but how it doesn't count and it can't count unless you can give it as well as ask for it. And that basically -- I used to see life as a struggle for always learning more things, cramming more things in my head, anywhere I could do more things, you know. Now I see the search for wisdom and strength is also a process of letting go. A lot of things you have to let go of.

And I've been helped a lot by a lot of these ministers

that have met with me and the Scriptures they've given me to read; by a lot of Christians and even sects of Christians have written me around the country with tracts on forgiveness, how you merit it in what you do and how you have to give it in turn; and also a number of people with whom I have worked as President.

I learned a lot -- I've had on more than one occasion the opportunity to talk to Mr. Mandela about how he came to forgive those who were his oppressors, you know, and how he felt about it, and how he -- what kind of forgiveness he ever sought for himself. I've really tried to deal with this in a very serious way and I think I've learned quite a lot about myself in the process. And it's an ongoing effort. But I have to remember every day that human nature is so prone to find self-respect in some element of one's character that you think is superior to someone else, and a lot of this is a matter of letting go. You just have to learn to let that go, just get up every day, try to do the best you can, be the best person you can be, and continue that individual journey of growth.

And I work on it -- hard. And it's been a very humbling experience, but I think very much worthwhile for me, personally.

Q Mr. Lockhart is giving me the one more question signal, so I thought what I might do is use an old Wolf Blitzer trick which is --

THE PRESIDENT: Which is what -- ask three questions?

Q Ask a question with the second question.
(Laughter.) Well, briefly, you mentioned Chelsea just a moment ago. And as you know, the White House can be a pretty tough place on first kids. But the thing you always hear everybody talk about is the poise and the grace that she has now as a young woman. I'm wondering basically what you attribute that to, and how you feel the press has been on her -- if they've kind of been giving her a fair shake as the kind of parameters were laid out from the very beginning?

And secondly, not at all related to that, is you were heavily criticized for the FALN commutations, and there's a lot of irony in that in that you're the least pardoning President in the modern history. You've issued fewer pardons than any President in the modern era. I'm wondering why you haven't availed yourself of that presidential power more, since aside from the FALN thing, there's typically very little fallout for that, using that power.

THE PRESIDENT: Well, let me say first, I think -- let me answer the first question first. Say exactly what you asked me about Chelsea again.

Q The thing you hear everybody talking --

THE PRESIDENT: Oh, how the press treated her.

Q How the press treated her, but how she, under the hothouse environment that the White House can be with all the looking in --

THE PRESIDENT: I feel, first of all, very grateful that even though I don't agree with everything -- first of all, I think it's impossible to generalize about "the press," and it will become harder and harder to refer to something called "the press." Where is the press in the publications in the merger of America On-Line and Time-Warner, right? So I'm always reluctant -- I sort of knew what that was, I thought, when I got elected. I'm not sure I know what that is anymore. But I think that, by and large, all elements of the press, with some very few exceptions, have been willing to let my daughter have her life and try to grow up and deal with all the challenges that entails, and the extra burdens of her parents being in public life, and all the controversies and ups and downs we've exhibited, without trying to shine the glare on her. And I am profoundly grateful for that, because I think every young person needs the chance to find his or her own way to maturity. And it's very difficult when your parents are as publicly exposed and prominent in daily life as her parents are.

And it's made more difficult if you are prematurely turned into a public figure. I think to some extent she is one anyway, whether she's in the press or not. But I think basically the press has been sensitive to that. And I am profoundly grateful for that.

And I hope that the life that her parents have lived in public life has been -- has offered more good than bad for her, as a child growing up. And she's a young woman now, and I hope that, on balance, it's been a positive thing. We love her very much and we hope that it's -- and believe that on balance it's been good.

Now --

Q On the related question of the pardons.
(Laughter.)

THE PRESIDENT: Let me say about --

MR. LOCKHART: She's going to get a pardon.
(Laughter.)

THE PRESIDENT: I want to say something here that nobody has ever given me a chance to say in public before. This is important to me. And I've been working on this hard. I did not know until -- ironically, until the controversy over the FALN thing that I had, apparently, both commuted fewer sentences and

issued fewer pardons than my predecessors. I did not know that, but you should know what my generic attitude is.

Generically, I believe a President should rarely commute sentences, and should have good reasons for doing so if he does, knowing that that will always be somewhat controversial. That is, if you attenuate a jury or a judge's sentence. That's what I did in the FALN case. I did it after Chuck Ruff, my lawyer, did an extensive survey. I thought it might be controversial. I regret it became as controversial as it was. I still think, based on the facts of those cases, I did the right thing. I still believe strongly that I did the right thing.

And I can tell you categorically there was no politics in it, that Chuck Ruff handled this and everything he says about it is true. I think everyone knows him as being an extremely truthful person. He handled it entirely, and only he handled it. And then he dealt with me on it.

Now, should we do some more commutations? Perhaps we should. But I think I would probably always be on the low side of that. On the other hand, I tend to have a much more generous attitude on pardons, particularly because under the federal system -- I think people ought to get their voting rights back; I don't think they ought to be discriminated about in getting jobs or keeping jobs or getting contracts. If they have discharged their sentence and they've been out in law-abiding society.

Now, over time, before I ever got there, there developed a whole apparatus in the Justice Department which is its own independent bureaucracy for evaluating these things. And the tradition is that the President doesn't rule on them, one way or the other, until you get all these recommendations sent to you. And I think what I believe is that -- although this operation has a life of its own, I've asked -- I've tried to review it now because my instinct is that we should be granting more pardons. I don't mean we should just be cavalier, I mean if you still think somebody might be involved in something wrong -- not so much to wipe away the past as to free people up to live in the present and the future.

There are all kinds of -- suppose when you're 18 you commit some offense which gets you a five-year sentence. And suppose -- and let's suppose under the sentencing guidelines then applicable, you served two years of the sentence. Well, my view is if you served the two years, then you get out and you've got three years on parole; so the five years is discharged -- then you have to serve -- then you live a couple more years and you have a totally exemplary life. I don't think that your past mistake should unduly cramp your present and future life.

If you do something really terrible, you're going to be in prison for a long time. But I mean, people are just getting out all the time -- 90 percent of the people who go to jail get

out. When they get out, we do not have a vested interest in seeing them continue to be punished. Our interest as citizens after they pay their debt to society is to see them be successful. I mean, when somebody pays -- then when they get out, surely we don't want them to keep on paying -- if they have to keep on paying, that's why you end up with more crime and a less successful, less healthy society.

So my instinct is that -- again, I speak for myself. Each President will be different on this -- is that the President should be pretty reluctant to shorten sentences, but should be willing to do so in appropriate cases; but that the President should be more forthcoming in being willing to grant pardons when it's not really for the purpose of pretending that it didn't happen, but of liberating people to make the most of their todays and tomorrows.

Because every single American has a big stake in people who actually do get punished later going on and living their lives in a straight and effective way. So that's my take on this. And we're looking to see whether there are any kind of changes we can make to be more effective in that regard.

Q Thanks.

THE PRESIDENT: I'm glad you asked me. You're the only person who ever asked me that.

END

5:55 P.M. EST

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INTRODUCTION OF TRAFFIC STOPS STATISTICS ACT OF 1999 -- HON. JOHN CONYERS, JR. (Extension of Remarks - April 15, 1999)

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HON. JOHN CONYERS, JR.

in the House of Representatives

THURSDAY, APRIL 15, 1999

- Mr. CONYERS. Mr. Speaker, I am pleased to introduce the Traffic Stops Statistics Act of 1999 along with 21 additional cosponsors. Identical legislation is being introduced today in the other body by Senators **Lautenberg, Feingold, and Kennedy**.
- Our bill would require the Justice Department to conduct a study of racial profiling by acquiring data from law enforcement agencies regarding the characteristics of persons stopped for alleged traffic violations and the rationale for subsequent searches. The legislation is similar to legislation I introduced last Congress (H.R. 118) which was approved by the Judiciary Committee on a bipartisan basis and passed the House by voice vote on March 24, 1998.
- We have all heard stories of African and Hispanic Americans--including many well known actors, athletes, law enforcement officers, and legislators--who have been stopped for the traffic infraction known as 'Driving While Black' or 'Driving While Brown.' Our legislation will allow us to ascertain the extent such profiling is occurring on a nationwide basis, help increase police awareness of the problem, and determine if any broader response is warranted.
- The limited data available indicates that the problem of racial profiling in traffic stops is serious. For example, a recent study by the Orlando Sentinel found that 70% of the persons stopped on I-95 were African-American, even though they only made up less than 10% of the driver population. A court ordered study in Maryland found that more than 70% of drivers stopped on I-95 were African American though they made up only 17.5% of drivers, while another study conducted in conjunction with a New Jersey civil rights lawsuit found that minorities were nearly five times as likely as non-minorities to be stopped for traffic violations along that state's turnpike.
- Further evidence of racial profiling by law enforcement was evident in the case of *State v. Soto*, in which Superior Court judge, Robert E. Francis ruled that troopers were engaging in racial profiling on the southernmost segment of the New Jersey Turnpike. This in turn raises troubling questions regarding the extent to which law enforcement officials may be unfairly targeting Hispanic and Asian Americans under the guise of immigration enforcement.
- If our citizens are to trust our justice system it is imperative that all forms of discrimination be eliminated from law enforcement. The Traffic Stops Statistics Act of 1999 will help give Congress the tools to assess and understand a dangerous form of such discrimination--racial profiling in

traffic stops.

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Traffic Stops Statistics Study Act of 1999 (Introduced in the House)

HR 1443 IH

106th CONGRESS

1st Session

H. R. 1443

To provide for the collection of data on traffic stops.

IN THE HOUSE OF REPRESENTATIVES

April 15, 1999

Mr. CONYERS (for himself, Mr. MENENDEZ, Ms. WATERS, Mr. SCOTT, Ms. JACKSON-LEE of Texas, Mr. NADLER, Mr. BERMAN, Mr. WEINER, Mr. CUMMINGS, Mr. MEEKS of New York, Mr. HILLIARD, Mr. FARR of California, Mr. LEWIS of Georgia, Mr. DIXON, Mr. HASTINGS of Florida, Mr. BRADY of Pennsylvania, Mr. HINCHEY, Mr. PAYNE, Mr. CLAY, Mr. BARRETT of Wisconsin, Mrs. CLAYTON, and Mrs. JONES of Ohio) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the collection of data on traffic stops.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Traffic Stops Statistics Study Act of 1999'.

SEC. 2. ATTORNEY GENERAL TO CONDUCT STUDY.

(a) STUDY-

(1) **IN GENERAL-** The Attorney General shall conduct a nationwide study of stops for traffic violations by law enforcement officers.

(2) **INITIAL ANALYSIS-** The Attorney General shall perform an initial analysis of existing

data, including complaints alleging and other information concerning traffic stops motivated by race and other bias.

(3) DATA COLLECTION- After completion of the initial analysis under paragraph (2), the Attorney General shall then gather the following data on traffic stops from a nationwide sample of jurisdictions, including jurisdictions identified in the initial analysis:

- (A) The traffic infraction alleged to have been committed that led to the stop.
- (B) Identifying characteristics of the driver stopped, including the race, gender, ethnicity, and approximate age of the driver.
- (C) Whether immigration status was questioned, immigration documents were requested, or an inquiry was made to the Immigration and Naturalization Service with regard to any person in the vehicle.
- (D) The number of individuals in the stopped vehicle.
- (E) Whether a search was instituted as a result of the stop and whether consent was requested for the search.
- (F) Any alleged criminal behavior by the driver that justified the search.
- (G) Any items seized, including contraband or money.
- (H) Whether any warning or citation was issued as a result of the stop.
- (I) Whether an arrest was made as a result of either the stop or the search and the justification for the arrest.
- (J) The duration of the stop.

(b) REPORTING- Not later than 120 days after the date of enactment of this Act, the Attorney General shall report the results of its initial analysis to Congress, and make such report available to the public, and identify the jurisdictions for which the study is to be conducted. Not later than 2 years after the date of the enactment of this Act, the Attorney General shall report the results of the data collected under this Act to Congress, a copy of which shall also be published in the Federal Register.

SEC. 3. GRANT PROGRAM.

In order to complete the study described in section 2, the Attorney General may provide grants to law enforcement agencies to collect and submit the data described in section 2 to the appropriate agency as designated by the Attorney General.

SEC. 4. LIMITATION ON USE OF DATA.

Information released pursuant to section 2 shall not reveal the identity of any individual who is stopped or any law enforcement officer involved in a traffic stop.

SEC. 5. DEFINITIONS.

For purposes of this Act:

- (1) LAW ENFORCEMENT AGENCY- The term 'law enforcement agency' means an agency of a State or political subdivision of a State, authorized by law or by a Federal, State, or local government agency to engage in or supervise the prevention, detection, or

investigation of violations of criminal laws, or a federally recognized Indian tribe.

(2) INDIAN TRIBE- The term 'Indian tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this Act.

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Bill Summary & Status for the 106th Congress**Item 9 of 9**

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H.R.1443SPONSOR: **Rep Conyers, John, Jr.** (introduced 04/15/99)Jump to: [Titles](#), [Status](#), [Committees](#), [Amendments](#), [Cosponsors](#), [Summary](#)**TITLE(S):**

- SHORT TITLE(S) AS INTRODUCED:
Traffic Stops Statistics Study Act of 1999
- OFFICIAL TITLE AS INTRODUCED:
A bill to provide for the collection of data on traffic stops.

STATUS: Floor Actions

NONE

STATUS: Detailed Legislative Status**House Actions****Apr 15, 99:**

Referred to the House Committee on the Judiciary.

STATUS: Congressional Record Page References04/15/99 Introductory remarks on Measure (CR [E673-674](#))**COMMITTEE(S):**

- COMMITTEE(S) OF REFERRAL:
[House Judiciary](#)

AMENDMENT(S):

NONE

COSPONSORS(23):

Rep Menendez, Robert - 04/15/99

Rep Scott, Robert C. - 04/15/99

Rep Nadler, Jerrold - 04/15/99

Rep Weiner, Anthony D. - 04/15/99

Rep Meeks, Gregory W. - 04/15/99

Rep Farr, Sam - 04/15/99

Rep Dixon, Julian C. - 04/15/99

Rep Brady, Robert - 04/15/99

Rep Payne, Donald M. - 04/15/99

Rep Barrett, Thomas M. - 04/15/99

Rep Jones, Stephanie Tubbs - 04/15/99

Rep Towns, Edolphus - 04/19/99

Rep Waters, Maxine - 04/15/99

Rep Jackson-Lee, Sheila - 04/15/99

Rep Berman, Howard L. - 04/15/99

Rep Cummings, Elijah E. - 04/15/99

Rep Hilliard, Earl F. - 04/15/99

Rep Lewis, John - 04/15/99

Rep Hastings, Alcee L. - 04/15/99

Rep Hinchey, Maurice D. - 04/15/99

Rep Clay, William (Bill) - 04/15/99

Rep Clayton, Eva M. - 04/15/99

Rep Rush, Bobby L. - 04/19/99

SUMMARY:

NONE

**THE CLINTON-GORE ADMINISTRATION:
COMBATING RACIAL PROFILING**

June 9, 1999

"As a society, we do not have to choose between keeping people safe and treating them right, between enforcing the law and upholding civil rights. We can do both."

President Bill Clinton

June 9, 1999

Today, in Washington, D.C., President Clinton chaired a roundtable discussion with leaders from civil rights and law enforcement organizations on ways to build trust between police and the communities they serve. To address the issue of racial profiling, the President directed federal law enforcement agencies to begin collecting and reporting data on the race, ethnicity, and gender of the individuals they stop and search. The President also called on Congress to pass legislation to promote data collection and reporting by state and local law enforcement agencies.

Getting the Facts on Racial Profiling. Racial profiling, the practice of law enforcement officers stopping or searching individuals on the basis of race, is not consistent with our nation's commitment to equal justice under the law. As a necessary step to combat this problem, facts need to be obtained about when and where it occurs. Today, the President directed the Departments of Justice, Treasury and Interior to:

- * **begin collecting data** on the race, ethnicity, and gender of individuals subject to traffic and pedestrian stops, inspections at entries into the U.S., and certain other searches by federal law enforcement agencies including the Immigration and Naturalization Service, Drug Enforcement Agency, Customs Service, and National Park Service; and
- * after one year, **report on the findings** of the new data collection system and **make recommendations** based on those findings on how to ensure greater fairness in federal law enforcement procedures.

Helping States and Localities. The President announced his support for legislation introduced by Representative John Conyers to establish a new federal grant program that would assist state and local law enforcement agencies to implement similar data collection systems. This legislation also would authorize the Attorney General to develop a nationwide sample, and issue a report on the number and nature of traffic stops conducted by state and local law enforcement officers throughout the country.

Surveying the American Public. This year, the Justice Department will amend its National Crime Victimization Survey and begin asking Americans about their experiences with traffic stops, police use of force, and police misconduct. This new information will help measure our success in building trust and improving relations between law enforcement and the community.

Enhancing Our Commitment to Community Policing. The 21st Century Policing Initiative contained in the President's crime bill contains several measures to help strengthen the integrity and ethics of police forces in communities across the country, including:

- * \$20 million to expand **police integrity and ethics training**;
- * \$20 million for **police scholarships** to promote the best educated police force possible;
- * \$2 million for **improved minority recruitment** to ensure that police departments reflect the diversity of the communities they represent;
- * \$10 million to help police departments purchase **more video cameras** to protect both the safety of officers and the rights of the individuals they stop; and

- * \$5 million to establish **citizen police academies** to engage community residents in the fight against crime.

Some Texans Tiring of Stops by Border Patrol

A1 By JIM YARDLEY

BROWNSVILLE, Tex. — Filemon B. Vela is a federal judge, but a Border Patrol agent recently mistook him for an illegal immigrant or a drug smuggler. Mr. Vela and three aides were driving on an isolated road when the agent pulled them over. Why? Because, the agent explained, there were too many people in the car.

The agent apologized and moved on, but the mistake did not surprise the area's highest elected official, the Cameron County judge, Gilberto Hinojosa. An agent recently followed him closely for 10 miles as his wife and baby sat in the back seat, Judge Hinojosa said. Another agent once refused to let him board an airplane to Houston until he stated his citizenship, he said.

"It feels like occupied territory," Judge Hinojosa said. "It does not feel like we're in the United States of America."

For most of the country, there is no Border Patrol because there is no border. Yet in this city near the mouth of the Rio Grande, where store signs are often in Spanish and old men strum Mexican ballads on the sidewalks, many legal residents believe that the Border Patrol operates as a sort of super police force that can stop anyone it chooses.

The Border Patrol has poured agents into South Texas for more than two years, nearly doubling its

force as part of a broader national strategy to choke off illegal immigration. Without question, "Operation Rio Grande" has sharply cut the number of undocumented migrants crossing through Brownsville. And many local merchants and Brownsville's mayor credit the increased numbers of agents for the city's recent drop in crime.

But in a place where nearly everyone is Hispanic, including the local power structure, people like Judge Hinojosa believe that everyone is now a target, regardless of legal status. As agents flag vehicles on highways, or question passengers at the local airport or bus station, they often catch the right people. But they also stop the wrong people, maybe because of their car, or their clothes, or invariably, the color of their skin.

"Why were you stopped?" asks the

local joke. The answer: "Driving while Mexican."

The problem is hard to quantify, since statistics are not kept on stops of legal citizens. Border Patrol officials say mistakes are rare because agents are trained to distinguish undocumented immigrants from legal residents. Rather than casting a wide net, officials say, agents follow specific profiles to identify suspects.

But Judge Hinojosa, a second-generation Mexican-American, said stops were a daily part of life that were not only insulting to legal residents but also left them feeling intimidated. He said many poorer, newer residents were stopped regularly but were too fearful to complain. But in interviews here along the border, stories abound:

Ralph A. Morales, who runs homeless shelters and soup kitchens in nearby Harlingen, was stopped on his way to a religious conference in San Antonio. Ninfa Ochoa-Krueger, who leads a group that works with immigrant families, was pulled over four times as she and her husband drove about 60 miles, from McAllen to Brownsville, to celebrate their wedding anniversary. Linda Yanez, a state appellate judge in McAllen, filed a complaint about two years ago after an agent in the airport tried to stop her daughter from returning to college in Houston, she said.

"The question becomes whether

the benefits of the Border Patrol doing this outweigh what I consider to be the Border Patrol violating our constitutional rights," said Judge Yanez, a former immigration lawyer.

For residents, there has always been a complicated coexistence with the patrol. In the four border counties of the lower Rio Grande Valley, Hispanics make up 88 percent of the nearly one million legal residents. Many families are only a generation

away from Mexico and have relatives waiting for citizenship. Other residents chafe at the undocumented children overcrowding local schools or drawing public benefits, and applaud the Border Patrol.

The buildup of the patrol began in the mid-1990's, and since then the Clinton administration has more than doubled its size, to about 8,000 agents. They have carried out targeted interdiction efforts, like Operation Gate Keeper in California and Operation Hold the Line in El Paso. In 1997, the patrol began Operation Rio Grande in South Texas, expanding local manpower to about 1,200 agents from around 700 and equipping them with infrared cameras, helicopters and airplanes.

Juan A. Lopez, assistant patrol agent in charge at the Brownsville office, described the agents as a "human fence" controlling their section of the Rio Grande. In the past, huge numbers of people crossed the river in Cameron County and nearby Hidalgo County. Now, Agent Lopez said, the number of illegal immigrants caught by agents has fallen to 25,053 in the last fiscal year, from 66,135 in 1997 — proof, he says, that fewer people are trying to cross here. There have also been high-profile drug seizures. A recent one turned up 3,450 pounds of marijuana.

Agent Lopez said that the problem of stopping legal residents was taken seriously and that newer agents from other regions of the country often struggled to make distinctions.

Agents are posted in the airport and bus station and along highways, he said, for the obvious reason that those are the routes that illegal immigrants use. Agent Lopez also noted that border agents had saved the lives of several people who nearly drowned in the Rio Grande as they tried to enter the country illegally.

By law, border agents must have a "reasonable suspicion" to stop someone. A person's appearance, for example, is considered pertinent in establishing suspicion. The profile can vary, Agent Lopez said, but there are obvious indicators, like cars overloaded with passengers, proximity to the river, type of car — for example, a van capable of carrying a lot of people. Agents also respond to tips.

"Agents just don't go stopping people because they want to stop them," Agent Lopez said. "There's always a reason."

Agents answer to the Immigration and Naturalization Service and do not have the same powers as police officers. They must limit their ques-

1/2

tioning to immigration issues and are not supposed to ask questions like, "Have you been drinking?"

Not every local official is a critic. Brownsville's mayor, Blanca Vela, said "border bandits" once slipped across the river to steal from downtown merchants. Now, she said, crime is down as border agents bicycle through downtown. Agents also have provided backup for the local police on certain calls.

For Ms. Vela, who has lived in Brownsville for 38 years, encounters with border agents are part of valley life. "I feel like, hey, if I'm not doing anything wrong, and I'm asked, 'Are you an American citizen?', I say, 'Yes, sir,'" said the mayor, who is married to Judge Vela.

The huge presence is most noticeable along Military Highway, the two-lane road winding west out of the city beside the Rio Grande. Every night, after the farmers have left their soybean and onion fields along the river, shifts of border agents in green and white trucks arrive to patrol the dirt levees. Others sit in camouflaged towers searching with infrared cameras for interlopers.

Frances Domanski, a receptionist at the county courthouse who lives on Military Highway, said she sometimes counts Border Patrol trucks on her ride-home the way some bored motorists count cows. Her record: 22. She said a border agent once stopped her as she drove from her

house to unlock her nearby church for services. On another night, a border agent parked his truck in front of her house with his headlights shining into her bedroom. Finally, at midnight, she knocked on his window.

"He was asleep!" said Ms. Domanski, who is of Polish and Mexican descent.

In Cameron Park, a low-income community with a large population of undocumented residents, agents are a daily presence. Local leaders say Cameron Park is often the first stopover for illegal immigrants moving on to points north, as well as home to several drug traffickers. Last spring border agents swept in, promising to help law-abiding members of the community. However, the Rev. Mike Seifert, a local Roman Catholic priest, said the agents instead stopped practically everyone.

"Basically, everybody was suspected," he said. "And everybody is not the problem." Father Seifert said something needed to be done to stop the drug runners, but big sweeps were not the issue. "There's got to be a more subtle way of handling this."

Judge Vela has heard scores of immigration and drug cases. Yet when he and his staff were stopped about four months ago, his stature did not matter. They were halfway to Laredo and were passing through an area known as a narcotics smuggling route. Three of the four occupants in the vehicle were Hispanic, but Judge

Vela said the agent justified the stop because of the number of passengers in the car. Judge Vela said he had filed a complaint with the United States attorney, calling for improved training of agents.

Judge Vela said he thought his case was an exception and considered the job facing the border agents a particularly difficult one. But he conceded that it made him wonder how other people were treated. Once, while waiting at the airport, he said he noticed that border agents were stopping only Hispanics. "I said, 'Do you ever stop anybody who isn't brown?'" he recalled. "They said, 'Yes, we do.' 'Well, you haven't since I've been here,' I said."

Agent Lopez, the Border Patrol supervisor, said he, too, had been stopped, many years ago. He said he was driving an old Crown Victoria and "looked like a mafioso." Then, he showed his Border Patrol badge.

"Do I get offended?" he asked. "No, I don't. Those guys are doing their job."

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422 U.S. 873, 45 L.Ed.2d 607

UNITED STATES, Petitioner,

v.

Felix Humberto BRIGNONI-PONCE.

No. 74-114.

Argued Feb. 18, 1975.

Decided June 30, 1975.

Defendant was convicted before the United States District Court for the Southern District of California of transporting aliens and he appealed. The Court of Appeals, 499 F.2d 1109, reversed and remanded and the United States brought certiorari. The Supreme Court, Mr. Justice Powell, held that the Fourth Amendment did not allow a roving patrol of the border patrol to stop a vehicle near the Mexican border and question its occupants concerning their immigration status and citizenship where the occupants' apparent Mexican ancestry furnished the only ground for suspicion that the occupants were aliens; that except at the border and its functional equivalents, officers may stop vehicles only if they are aware of specific articulable facts, together with rational inferences therefrom, which would reasonably warrant suspicion that the vehicles are occupied by aliens who may be illegally in the United States; and that an officer, whose observations lead him reasonably to suspect that a particular vehicle might contain illegal aliens, is entitled to briefly stop the vehicles, question the occupants about their citizenship and immigration status and ask them to explain suspicious circumstances but further detention or search must be based on consent or probable cause.

Affirmed.

Mr. Justice Rehnquist concurred and filed opinion.

Mr. Justice Douglas concurred in the judgment and filed an opinion.

For concurring opinion of Mr. Chief Justice Burger, with whom Mr. Justice

Blackmun joined, see 422 U.S. 899, 95 S.Ct. 2590, 45 L.Ed.2d 630.

For opinion of Mr. Justice White, with whom Mr. Justice Blackmun joined, concurring in the judgment, see 422 U.S. 914, 95 S.Ct. 2597, 45 L.Ed.2d 639.

1. Constitutional Law §38

No act of Congress can authorize a violation of the constitution.

2. Searches and Seizures §3.3(3)

Legislative history of statute, authorizing immigration agents, without a warrant, 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, did not establish that Congress meant to condition the authority to board and search vehicles on probable cause to believe they contained aliens. Immigration and Nationality Act, § 287(a)(1), 8 U.S.C.A. § 1357(a)(1).

3. Searches and Seizures §7(1)

The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. U.S.C.A. Const. Amend. 4.

4. Municipal Corporations §188

Searches and Seizures §7(1)

Whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person and the Fourth Amendment requires that the seizure be reasonable. U.S.C.A. Const. Amend. 4.

5. Arrest §63.1

As with other categories of police actions subject to Fourth Amendment constraints, the reasonableness of seizures of the person that involve only a brief detention short of traditional arrest depends on a balance between the public interest and the individual's right to personal security free from arbitrary

interference by law officers. U.S.C.A. Const. Amend. 4.

6. Arrest $\S$ 63.1

Searches and Seizures $\S$ 3.3(3)

Because of importance of governmental interest in combating illegal entry of aliens at the border, the minimal intrusion of a brief stop, and the absence of practical alternative for policing the border, when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the United States, he may stop the car briefly and investigate the circumstances that provoke suspicion but the stop and inquiry must be reasonably related in scope to the justification for their initiation and the officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

7. Arrest $\S$ 63.1

The border patrol is not entitled to dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving patrol stops; in the context of border area stops, the reasonable requirement of the Fourth Amendment demands something more than broad and unlimited discretion on the part of the border patrol. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

8. Searches and Seizures $\S$ 7(11)

Even though the intrusion incident to a stop is modest, it is not "reasonable" under the Fourth Amendment for roving patrols of the border patrol to make stops on a random basis without any reason to suspect that the occupants of the vehicles have violated any law. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

9. Searches and Seizures $\S$ 7(11)

Even if it is assumed that the broad congressional power over immigration authorizes Congress to admit aliens on condition they will submit to reasonable questioning about their right to be and remain in the country, this power cannot diminish the Fourth Amendment rights of citizens who may be mistaken for aliens; the Fourth Amendment forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

10. Arrest $\S$ 63.1

Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contained aliens who may be illegally in the country. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

11. Arrest $\S$ 63.1

Any number of factors may be taken into account in deciding whether there is reasonable suspicion to stop a car in the border area to determine whether it contains aliens who may be illegally in the country; officers may consider the characteristics of the area in which they can encounter a vehicle, its proximity to the border, the usual patterns of traffic on the particular road and previous experience with alien traffic and information about recent illegal border crossings in the area. Immigration and Nationality Act, $\S$ 274(a)(2), 8 U.S.C.A. $\S$ 1324(a)(2); U.S.C.A. Const. Amend. 4.

12. Arrest $\S$ 63.1

In deciding whether there is reasonable suspicion to stop a car in the border area, the driver's behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a

reasonable suspicion. Immigration and Nationality Act, § 274(a)(2), 8 U.S.C.A. § 1324(a)(2); U.S.C.A.Const. Amend. 4.

S.C.A. § 1324(a)(2); U.S.C.A.Const. Amend. 4.

13. Arrest ⇐63.1

Aspects of the vehicle, such as large compartment in which an alien may be concealed, fact that the vehicle may be heavily loaded, may have extraordinary number of passengers or the observation of persons trying to hide can support a reasonable suspicion that the vehicle contains aliens who may be illegally in the country and may warrant a roving patrol to stop the vehicle. Immigration and Nationality Act, § 274(a)(2), 8 U.S.C.A. § 1324(a)(2); U.S.C.A.Const. Amend. 4.

14. Arrest ⇐63.1

In all situations the officer is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling in determining whether there is reasonable suspicion to stop a car in the border area to determine whether the vehicle contains aliens who may be illegally in the country. Immigration and Nationality Act, § 274(a)(2), 8 U.S.C.A. § 1324(a)(2); U.S.C.A.Const. Amend. 4.

15. Arrest ⇐63.1

Apparent Mexican ancestry of occupants of vehicle did not furnish reasonable grounds for roving patrol of the border patrol to believe that the three occupants were aliens and did not justify stopping defendant's automobile to determine whether the vehicle contained aliens who were illegally in the United States. Immigration and Nationality Act, § 274(a)(2), 8 U.S.C.A. § 1324(a)(2); U.S.C.A.Const. Amend. 4.

16. Arrest ⇐63.1

While Mexican appearance is a relevant factor, standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens. Immigration and Nationality Act, § 274(a)(2), 8 U.

Syllabus *

The Fourth Amendment *held* not to allow a roving patrol of the Border Patrol to stop a vehicle near the Mexican border and question its occupants about their citizenship and immigration status, when the only ground for suspicion is that the occupants appear to be of Mexican ancestry. Except at the border and its functional equivalents, patrolling officers may stop vehicles only if they are aware of specific articulable facts, together with rational inferences therefrom, reasonably warranting suspicion that the vehicles contain aliens who may be illegally in the country. Pp. 2578-2583.

(a) Because of the important governmental interest in preventing the illegal entry of aliens at the border, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border, an officer, whose observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, may stop the car briefly, question the driver and passengers about their citizenship and immigration status, and ask them to explain suspicious circumstances; but any further detention or search must be based on consent or probable cause. Pp. 2578-2581.

(b) To allow roving patrols the broad and unlimited discretion urged by the Government to stop all vehicles in the border area without any reason to suspect that they have violated any law, would not be "reasonable" under the Fourth Amendment. Pp. 2580-2581.

(c) Assuming that Congress has the power to admit aliens on condition that they submit to reasonable questioning about their right to be in the coun-

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the conve-

nience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

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try, such power cannot diminish the Fourth Amendment rights of citizens who may be mistaken for aliens. The Fourth Amendment therefore forbids stopping persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens. Pp. 2581-2582.

9 Cir., 499 F.2d 1109, affirmed.

Andrew L. Frey, Washington, D.C., for petitioner.

John J. Cleary, Redwood City, Cal., for respondent.

Mr. Justice POWELL delivered the opinion of the Court.

This case raises questions as to the United States Border Patrol's authority to stop automobiles in areas near the Mexican border. It differs from our decision in *Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973), in that the Border Patrol does not claim authority to search cars, but only to question the occupants about their citizenship and immigration status.

I

As a part of its regular traffic-checking operations in southern California, the Border Patrol operates a fixed checkpoint on Interstate Highway 5 south of San Clemente. On the evening of March 11, 1973, the checkpoint was closed because of inclement weather, but two officers were observing northbound traffic from a patrol car parked at the side of the highway. The road was dark, and they were using the patrol car's headlights to illuminate passing cars. They pursued respondent's car and stopped it, saying later that their only reason for doing so was that its

three occupants appeared to be of Mexican descent. The officers questioned respondent and his two passengers about their citizenship and learned that the passengers were aliens who had entered the country illegally. All three were then arrested, and respondent was charged with two counts of knowingly transporting illegal immigrants, a violation of § 274(a)(2) of the Immigration and Nationality Act, 66 Stat. 228, 8 U.S.C. § 1324(a)(2). At trial respondent moved to suppress the testimony of and about the two passengers, claiming that this evidence was the fruit of an illegal seizure. The trial court denied the motion, the aliens testified at trial, and respondent was convicted on both counts.

Respondent's appeal was pending in the Court of Appeals for the Ninth Circuit when we announced our decision in *Almeida-Sanchez v. United States*, *supra*, holding that the Fourth Amendment prohibits the use of roving patrols to search vehicles, without a warrant or probable cause, at points removed from the border and its functional equivalents. The Court of Appeals, sitting en banc, held that the stop in this case more closely resembled a roving-patrol stop than a stop at a traffic checkpoint, and applied the principles of *Almeida-Sanchez*.¹ The court held that the Fourth Amendment, as interpreted in *Almeida-Sanchez*, forbids stopping a vehicle, even for the limited purpose of questioning its occupants, unless the officers have a "founded suspicion" that the occupants are aliens illegally in the country. The court refused to find that Mexican ancestry alone supported such a "founded suspicion" and held that respondent's motion to suppress should have been granted.² 499 F.2d 1109

1. For the Court of Appeals' purposes, the distinction between a roving patrol and a fixed checkpoint was controlling. The court previously had held that the principles of *Almeida-Sanchez v. United States* applied retrospectively to the activities of roving patrols but not to those of fixed checkpoints. See *United States v. Peltier*, 500 F.2d 985

(CA9 1974), rev'd, 422 U.S. 531, 95 S.Ct. 2313, 45 L.Ed.2d 374; *United States v. Bowen*, 500 F.2d 960 (CA9 1974), aff'd, 422 U.S. 916, 95 S.Ct. 2569, 45 L.Ed.2d 641.

2. There may be room to question whether voluntary testimony of a witness at trial, as opposed to a Government agent's testimony

(1974). We granted certiorari and set the case for oral argument with No. 73-2050, *United States v. Ortiz*, 422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623, and No. 73-6848, *Bowen v. United States*, 422 U.S. 916, 95 S.Ct. 2569, 45 L.Ed.2d 641. 419 U.S. 824, 95 S.Ct. 40, 42 L.Ed.2d 48 (1974).

The Government does not challenge the Court of Appeals' factual conclusion that the stop of respondent's car was a roving-patrol stop rather than a checkpoint stop. Brief for United States 8. Nor does it challenge the retroactive application of *Almeida-Sanchez*, Brief for United States 9, or contend that the San Clemente checkpoint is the functional equivalent of the border. The only issue presented for decision is whether a roving patrol may stop a vehicle in an area near the border and question its occupants when the only ground for suspicion is that the occupants appear to be of Mexican ancestry. For the reasons that follow, we affirm the decision of the Court of Appeals.

II

[1,2] The Government claims two ¹⁸⁷⁷ sources of statutory authority for stopping cars without warrants in the border areas. Section 287(a)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1357(a)(1), authorizes any officer or employee of the Immigration and Naturalization Service (INS) without a warrant, "to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." There is no geographical limitation on this authority. The Government contends that, at least in the areas adjacent to the Mexican border, a person's apparent Mexican ancestry alone justifies belief that he or she is an alien

about objects seized or statements overheard, is subject to suppression as the fruit of an illegal search or seizure. See *United States v. Guana-Sanchez*, 484 F.2d 590 (CA7 1973), cert. dismissed as improvidently granted, 420 U.S. 513, 95 S.Ct. 1344, 43 L.Ed.2d 361 (1975). But since the question was not raised in the petition for certiorari, we do not address it.

and satisfies the requirement of this statute. Section 287(a)(3) of the Act, 8 U.S.C. § 1357(a)(3), authorizes agents, without a warrant,

"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 . . ."

Under current regulations, this authority may be exercised anywhere within 100 miles of the border. 8 CFR § 287.1(a) (1975). The Border Patrol interprets the statute as granting authority to stop moving vehicles and question the occupants about their citizenship, even when its officers have no reason to believe that the occupants are aliens or that other aliens may be concealed in the vehicle.³ But "no Act of Congress can authorize a violation of the Constitution," *Almeida-Sanchez*, *supra*, 413 U.S. at 272, 93 S.Ct. at 2539, and we must decide whether the Fourth Amendment allows such random vehicle stops in the border areas. ¹⁸⁷⁸

III

[3-5] The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19, 88 S.Ct. 1868, 1877, 20 L.Ed.2d 889 (1968). "[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person," *id.*, at 16, 88 S.Ct., at 1877, and the Fourth Amendment requires that the seizure be "reasonable." As with

3. We cannot accept respondent's contention that, even though § 287(a)(3) does not mention probable cause, its legislative history establishes that Congress meant to condition immigration officers' authority to board and search vehicles on probable cause to believe that they contained aliens. The legislative history simply does not support this contention.

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other categories of police action subject to Fourth Amendment constraints, the reasonableness of such seizures depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. *Id.*, at 20-21, 88 S.Ct., at 1879; *Camara v. Municipal Court*, 387 U.S. 523, 536-537, 87 S.Ct. 1727, 1734, 18 L.Ed.2d 930 (1967).

The Government makes a convincing demonstration that the public interest demands effective measures to prevent the illegal entry of aliens at the Mexican border. Estimates of the number of illegal immigrants in the United States vary widely. A conservative estimate in 1972 produced a figure of about one million, but the INS now suggests there may be as many as 10 or 12 million aliens illegally in the country.⁴ Whatever the number, these aliens create significant economic and social problems, competing with citizens and legal resident aliens for jobs, and generating extra demand for social services. The aliens themselves are vulnerable to exploitation because they cannot complain of substandard working conditions without risking deportation. See generally Hearings on Illegal Aliens before Subcommittee No. 1 of the House Committee on the Judiciary, 92d Cong., 1st and 2d Sess., ser. 13, pts. 1-5 (1971-1972).

The Government has estimated that 85% of the aliens illegally in the country are from Mexico. *United States v.*

Baca, 368 F.Supp. 398, 402 (SD Cal. 1973).⁵ The Mexican border is almost 2,000 miles long, and even a vastly reinforced Border Patrol would find it impossible to prevent illegal border crossings. Many aliens cross the Mexican border on foot, miles away from patrolled areas, and then purchase transportation from the border area to inland cities, where they find jobs and elude the immigration authorities. Others gain entry on valid temporary border-crossing permits, but then violate the conditions of their entry. Most of these aliens leave the border area in private vehicles, often assisted by professional "alien smugglers." The Border Patrol's traffic-checking operations are designed to prevent this inland movement. They succeed in apprehending some illegal entrants and smugglers, and they deter the movement of others by threatening apprehension and increasing the cost of illegal transportation.

Against this valid public interest we must weigh the interference with individual liberty that results when an officer stops an automobile and questions its occupants.⁶ The intrusion is modest. The Government tells us that a stop by a roving patrol "usually consumes no more than a minute." Brief for United States 25. There is no search of the vehicle or its occupants, and the visual inspection is limited to those parts of the vehicle that can be seen by anyone standing alongside.⁶ According to the Government, "[a]ll that is required

4. The estimate of one million was produced by the Commissioner of the INS for the Immigration and Nationality Subcommittee of the House Judiciary Committee. Hearings on Illegal Aliens before Subcommittee, No. 1 of the House Committee on the Judiciary, 92d Cong., 2d Sess., ser. 13, pt. 5, pp. 1323-1325 (1972). The higher estimate appears in the INS Ann.Rep. iii (1974).

5. This estimate tends to be confirmed by the consistently high proportion of Mexican nationals in the number of deportable aliens arrested each year. In 1970, for example, 80% of the deportable aliens arrested were

from Mexico. See INS Ann.Rep. 95 (1970). In 1974, the figure was 92%. INS Ann.Rep. 94 (1974).

6. In this case the officers did search respondent's car, but because they found no other incriminating evidence the validity of the search is not in issue. *Almeida-Sanchez* changed the Border Patrol's practice of searching cars on routine stops, and the Government informs us that roving patrols now search vehicles only when they have probable cause to believe they will find illegally present aliens or contraband. Brief for United States 25.

of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States." *Ibid.*

Because of the limited nature of the intrusion, stops of this sort may be justified on facts that do not amount to the probable cause required for an arrest. In *Terry v. Ohio*, *supra*, the Court declined expressly to decide whether facts not amounting to probable cause could justify an "investigative 'seizure'" short of an arrest, 392 U.S., at 19 n. 16, 88 S.Ct. at 1879, but it approved a limited search—a pat-down for weapons—for the protection of an officer investigating suspicious behavior of persons he reasonably believed to be armed and dangerous. The Court approved such a search on facts that did not constitute probable cause to believe the suspects guilty of a crime, requiring only that "the police officer . . . be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" a belief that his safety or that of others is in danger. *Id.*, at 21, 88 S.Ct., at 1880; see *id.*, at 27, 88 S.Ct., at 1883.

We elaborated on *Terry* in *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), holding that a policeman was justified in approaching the respondent to investigate a tip that he was carrying narcotics and a gun.

"The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. . . . A brief stop of a

suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Id.*, at 145-146, 92 S.Ct. at 1923.

[6] These cases together establish that in appropriate circumstances the Fourth Amendment allows a properly limited "search" or "seizure" on facts that do not constitute probable cause to arrest or to search for contraband or evidence of crime. In both *Terry* and *Adams v. Williams* the investigating officers had reasonable grounds to believe that the suspects were armed and that they might be dangerous. The limited searches and seizures in those cases were a valid method of protecting the public and preventing crime. In this case as well, because of the importance of the governmental interest at stake, the minimal intrusion of a brief stop, and the absence of practical alternatives for policing the border, we hold that when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion. As in *Terry*, the stop and inquiry must be "reasonably related in scope to the justification for their initiation." 392 U.S., at 29, 88 S.Ct. at 1884. The officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.

[7] We are unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops.⁷ In the context of border

7. Because the stop in this case was made without a warrant and the officers made no effort to obtain one, we have no occasion to decide whether a warrant could be issued to stop cars in a designated area on the basis

of conditions in the area as a whole and in the absence of reason to suspect that any particular car is carrying aliens. See *Almeida-Sanchez*, 413 U.S., at 275, 93 S.Ct., at 2540 (Powell, J., concurring); *Camara v.*

area stops, the reasonableness requirement of the Fourth Amendment demands something more than the broad and unlimited discretion sought by the Government. Roads near the border carry not only aliens seeking to enter the country illegally, but a large volume of legitimate traffic as well. San Diego, with a metropolitan population of 1.4 million, is located on the border. Texas has two fairly large metropolitan areas directly on the border: El Paso, with a population of 360,000, and the Brownsville-McAllen area, with a combined population of 320,000. We are confident that substantially all of the traffic in these cities is lawful and that relatively few of their residents have any connection with the illegal entry and transportation of aliens. To approve roving-patrol stops of all vehicles in the border area, without any suspicion that a particular vehicle is carrying illegal immigrants, would subject the residents of these and other areas to potentially unlimited interference with their use of the highways, solely at the discretion of Border Patrol officers. The only formal limitation on that discretion appears to be the administrative regulation defining the term "reasonable distance" in § 287(a)(3) to mean within 100 air miles from the border. 8 CFR § 287.1(a) (1975). Thus, if we approved the Government's position in this case, Border Patrol officers could stop motorists at random for questioning, day or night, anywhere within 100 air miles of the 2,000-mile border, on a city street, a busy highway, or a desert road, without any reason to suspect that they have violated any law.

Municipal Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967).

8. Our decision in this case takes into account the special function of the Border Patrol, the importance of the governmental interests in policing the border area, the character of roving-patrol stops, and the availability of alternatives to random stops unsupported by reasonable suspicion. Border Patrol agents have no part in enforcing laws that regulate

[8] We are not convinced that the legitimate needs of law enforcement require this degree of interference with lawful traffic. As we discuss in Part IV, *infra*, the nature of illegal alien traffic and the characteristics of smuggling operations tend to generate articulable grounds for identifying violators. Consequently, a requirement of reasonable suspicion for stops allows the Government adequate means of guarding the public interest and also protects residents of the border areas from indiscriminate official interference. Under the circumstances, and even though the intrusion incident to a stop is modest, we conclude that it is not "reasonable" under the Fourth Amendment to make such stops on a random basis.⁸

[9] The Government also contends that the public interest in enforcing conditions on legal alien entry justifies stopping persons who may be aliens for questioning about their citizenship and immigration status. Although we may ¹⁸⁸⁴ assume for purposes of this case that the broad congressional power over immigration, see *Kleindienst v. Mandel*, 408 U.S. 753, 765-767, 92 S.Ct. 2576, 2583, 33 L.Ed.2d 683 (1972), authorizes Congress to admit aliens on condition that they will submit to reasonable questioning about their right to be and remain in the country, this power cannot diminish the Fourth Amendment rights of citizens who may be mistaken for aliens. For the same reasons that the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or de-

highway use, and their activities have nothing to do with an inquiry whether motorists and their vehicles are entitled, by virtue of compliance with laws governing highway usage, to be upon the public highways. Our decision thus does not imply that state and local enforcement agencies are without power to conduct such limited stops as are necessary to enforce laws regarding drivers' licenses, vehicle registration, truck weights, and similar matters.

taining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.

IV

[10] The effect of our decision is to limit exercise of the authority granted by both § 287(a)(1) and § 287(a)(3). Except at the border and its functional equivalents, officers on roving patrol may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.⁹

[11-14] Any number of factors may be taken into account in deciding whether there is reasonable suspicion to stop a car in the border area. Officers may consider the characteristics of the area in which they encounter a vehicle. Its proximity to the border, the usual patterns of traffic on the particular road, and previous experience with alien traffic are all relevant. See *Carroll v. United States*, 267 U.S. 132, 159-161, 45 S. Ct. 280, 69 L.Ed. 543 (1925); *United States v. Jaime-Barrios*, 494 F.2d 455 (CA9), cert. denied, 417 U.S. 972, 94 S. Ct. 3178, 41 L.Ed.2d 1143 (1974).¹⁰ They also may consider information about recent illegal border crossings in the area. The driver's behavior may be relevant, as erratic driving or obvious attempts to evade officers can support a reasonable suspicion. See *United States v. Larios-Montes*, 500 F.2d 941 (CA9 1974); *Duprez v. United States*, 435 F.

2d 1276 (CA9 1970). Aspects of the vehicle itself may justify suspicion. For instance, officers say that certain station wagons, with large compartments for fold-down seats or spare tires, are frequently used for transporting concealed aliens. See *United States v. Bugarin-Casas*, 484 F.2d 853 (CA9 1973), cert. denied, 414 U.S. 1136, 94 S.Ct. 881, 38 L.Ed.2d 762 (1974); *United States v. Wright*, 476 F.2d 1027 (CA5 1973). The vehicle may appear to be heavily loaded, it may have an extraordinary number of passengers, or the officers may observe persons trying to hide. See *United States v. Larios-Montes*, *supra*. The Government also points out that trained officers can recognize the characteristic appearance of persons who live in Mexico, relying on such factors as the mode of dress and haircut. Reply Brief for *United States* 12-13, in *United States v. Ortiz*, 422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623. In all situations the officer is entitled to assess the facts in light of his experience in detecting illegal entry and smuggling. *Terry v. Ohio*, 392 U.S., at 27, 88 S.Ct., at 1883.

[15,16] In this case the officers relied on a single factor to justify stopping respondent's car: the apparent Mexican ancestry of the occupants.¹¹ We cannot conclude that this furnished reasonable grounds to believe that the three occupants were aliens. At best the officers had only a fleeting glimpse of the persons in the moving car, illuminated by headlights. Even if they saw enough

9. As noted above, we reserve the question whether Border Patrol officers also may stop persons reasonably believed to be aliens when there is no reason to believe they are illegally in the country. See *Cheung Tin Wong v. INS*, 152 U.S.App.D.C. 66, 468 F.2d 1123 (1972); *Au Yi Lau v. INS*, 144 U.S.App.D.C. 147, 445 F.2d 217, cert. denied, 404 U.S. 864, 92 S.Ct. 64, 30 L.Ed.2d 108 (1971). The facts of this case do not require decision on the point.

10. The Courts of Appeals decisions cited throughout this part are merely illustrative. Our citation of them does not imply a view of the merits of particular decisions. Each case

must turn on the totality of the particular circumstances.

11. The Government also argues that the location of this stop should be considered in deciding whether the officers had adequate reason to stop respondent's car. This appears, however, to be an after-the-fact justification. At trial the officers gave no reason for the stop except the apparent Mexican ancestry of the car's occupants. It is not even clear that the Government presented the broader justification to the Court of Appeals. We therefore decline at this stage of the case to give any weight to the location of the stop.

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to think that the occupants were of Mexican descent, this factor alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country. Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry, and even in the border area a relatively small proportion of them are aliens.¹² The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if they are aliens.

The judgment of the Court of Appeals is affirmed.

Affirmed.

Mr. Justice REHNQUIST, concurring.

I join in the opinion of the Court. I think it quite important to point out, however, that that opinion, which is joined by a somewhat different majority than that which comprised the *Almeida Sanchez* Court, is both by its terms and by its reasoning concerned only with the type of stop involved in this case. I think that just as travelers entering the country may be stopped and searched without probable cause and without founded suspicion, because of "national self protection reasonably requiring one entering the country to identify himself as entitled to come in, and his belongings as effects which may be lawfully brought in," *Carroll v. United States*, 267 U.S. 132, 154, 45 S.Ct. 280, 285, 69

L.Ed. 543 (1925), a strong case may be made for those charged with the enforcement of laws conditioning the right of vehicular use of a highway to likewise stop motorists using highways in order to determine whether they have met the qualifications prescribed by applicable law for such use. See *Cady v. Dombrowski*, 413 U.S. 433, 440-441, 93 S.Ct. 2523, 2527, 37 L.Ed.2d 706 (1973); *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972). I regard these and similar situations, such as agricultural inspections and highway roadblocks to apprehend known fugitives, as not in any way constitutionally suspect by reason of today's decision.

Mr. Justice DOUGLAS, concurring in the judgment.

I join in the affirmance of the judgment. The stopping of respondent's automobile solely because its occupants appeared to be of Mexican ancestry was a patent violation of the Fourth Amendment. I cannot agree, however, with the standard the Court adopts to measure the lawfulness of the officers' action. The Court extends the "suspicion" test of *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), to the stop of a moving automobile. I dissented from the adoption of the suspicion test in *Terry*, believing it an unjustified weakening of the Fourth Amendment's protection of citizens from arbitrary interference by the police. I remarked then:

"The infringement on personal liberty of any 'seizure' of a person can

12. The 1970 census and the INS figures for alien registration in 1970 provide the following information about the Mexican-American population in the border States. There were 1,619,064 persons of Mexican origin in Texas, and 200,004 (or 12.4%) of them registered as aliens from Mexico. In New Mexico there were 119,049 persons of Mexican origin, and 10,171 (or 8.5%) registered as aliens. In Arizona there were 239,811 persons of Mexican origin, and 34,075 (or 14.2%) registered as aliens. In California there were 1,857,267 persons of Mexican origin, and 379,951 (or 20.4%) registered as

aliens. Bureau of the Census, Subject Report PC(2)-1C: Persons of Spanish Origin 2 (1970); INS Ann.Rep. 105 (1970). These figures, of course, do not present the entire picture. The number of registered aliens from Mexico has increased since 1970, INS Ann.Rep. 105 (1974), and we assume that very few illegal immigrants appear in the registration figures. On the other hand, many of the 950,000 other persons of Spanish origin living in these border States, see Bureau of the Census, *supra*, at 1, may have a physical appearance similar to persons of Mexican origin.

only be 'reasonable' under the Fourth Amendment if we require the police to possess 'probable cause' before they seize him. Only that line draws a meaningful distinction between an officer's mere inkling and the presence of facts within the officer's personal knowledge which would convince a reasonable man that the person seized has to commit a particular crime." *Id.*, at 38, 88 S.Ct., at 1888.

The fears I voiced in *Terry* about the weakening of the Fourth Amendment have regrettably been borne out by subsequent events. Hopes that the suspicion test might be employed only in the pursuit of violent crime—a limitation endorsed by some of its proponents*—have now been dashed, as it has been applied in narcotics investigations, in apprehension of "illegal" aliens, and indeed has come to be viewed as a legal construct for the regulation of a general investigatory police power. The suspicion test has been warmly embraced by law enforcement forces and vigorously employed in the cause of crime detection. In criminal cases we see those for whom the initial intrusion led to the discovery of some wrongdoing. But the nature of the test permits the police to interfere as well with a multitude of law-abiding citizens, whose only transgression may be a nonconformist appearance or attitude. As one commentator has remarked:

"Police power exercised without probable cause is arbitrary. To say that the police may accost citizens at their whim and may detain them upon reasonable suspicion is to say, in reality, that the police may both accost and detain citizens at their whim." Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn.L.Rev. 349, 395 (1974).

The uses to which the suspicion test has been put are illustrated in some of the cases cited in the Court's opinion. In *United States v. Wright*, 476 F.2d

1027 (CA5 1973), for example, immigration officers stopped a station wagon near the border because there was a spare tire in the back seat. The court held that the officers reasonably suspected that the spare wheel well had been freed in order to facilitate the concealment of aliens. In *United States v. Bugarin-Casas*, 484 F.2d 853 (CA9 1973), the Border Patrol officers encountered a man driving alone in a station wagon which was "riding low"; stopping the car was held reasonable because the officers suspected that aliens might have been hidden beneath the floorboards. The vacationer whose car is weighted down with luggage will find no comfort in these decisions; nor will the many law-abiding citizens who drive older vehicles that ride low because their suspension systems are old or in disrepair. The suspicion test has indeed brought a state of affairs where the police may stop citizens on the highway on the flimsiest of justifications.

The Court does, to be sure, disclaim approval of the particular decisions it cites applying the suspicion test. But by specifying factors to be considered without attempting to explain what combination is necessary to satisfy the test, the Court may actually induce the police to push its language beyond intended limits and to advance as a justification any of the enumerated factors even where its probative significance is negligible.

Ultimately the degree to which the suspicion test actually restrains the police will depend more upon what the Court does henceforth than upon what it says today. If my Brethren mean to give the suspicion test a new bite, I applaud the intention. But in view of the developments since the test was launched in *Terry*, I am not optimistic. This is the first decision to invalidate a stop on the basis of the suspicion standard. In fact, since *Terry* we have granted review of a case applying the test only

* See LaFave, "Street Encounters" and the Constitution, 67 Mich.L.Rev. 39, 65-66 (1968).

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once, in *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), where the Court found the standard satisfied by the tip from an informant whose credibility was not established and whose information was not shown to be based upon personal knowledge. If in the future the suspicion test is to provide any meaningful restraint of the police, its force must come from vigorous review of its applications, and not alone from the qualifying language of today's opinion. For now, I remain unconvinced that the suspicion test offers significant protection of the "comprehensive right of personal liberty in the face of governmental intrusion," *Lopez v. United States*, 373 U.S. 427, 455, 83 S.Ct. 1381, 10 L.Ed.2d 462 (1963) (dissenting opinion), that is embodied in the Fourth Amendment.



422 U.S. 891, 45 L.Ed.2d 623
UNITED STATES, Petitioner,
v.
Luis Antonio ORTIZ.
No. 73-2050.
Argued Feb. 18, 1975.
Decided June 30, 1975.

Defendant was convicted before the United States District Court for the Southern District of California on three counts of knowingly transporting aliens who were in the country illegally and he appealed. The Court of Appeals reversed convictions and the United States brought certiorari. The Supreme Court, Mr. Justice Powell, held that in the absence of consent or probable cause, the Fourth Amendment forbids border patrol officers to search private vehicles at traffic checkpoints removed from the border and its functional equivalents; and that where officers advanced no spe-

cial reasons for believing that defendant's vehicle contained aliens, probable cause did not exist and the search of his vehicle at the San Clemente checkpoint, 62 air miles and 66 road miles from the Mexican border, was invalid.

Affirmed.

Mr. Justice Rehnquist concurred and filed opinion.

For concurring opinion of Mr. Chief Justice Burger, with whom Mr. Justice Blackmun joined, see 422 U.S. 899, 95 S.Ct. 2590, 45 L.Ed.2d 630.

For opinion of Mr. Justice White, with whom Mr. Justice Blackmun joined, concurring in the judgment, see 422 U.S. 914, 95 S.Ct. 2597, 45 L.Ed.2d 639.

1. Searches and Seizures ⇨7(1)

The central concern of the Fourth Amendment is to protect liberty and privacy from arbitrary and oppressive interference by government officials. U. S.C.A.Const. Amend. 4.

2. Searches and Seizures ⇨7(1)

The Fourth Amendment's requirement that searches and seizures be reasonable also may limit police use of unnecessarily frightening or offensive methods of surveillance and investigation. U.S.C.A.Const. Amend. 4.

3. Searches and Seizures ⇨3.3(7), 7(27)

At traffic checkpoints removed from the border and its functional equivalents, officers are not entitled to search private vehicles without consent or probable cause. U.S.C.A.Const. Amend. 4.

4. Searches and Seizures ⇨3.3(7)

The number of persons in a vehicle, the appearance and behavior of the driver and passengers, their inability to speak English, the responses they give to officers' questions, the nature of the vehicle, or an indication that it may be heavily loaded are all factors which properly may be taken into account in deciding whether there is probable cause to search a particular vehicle at a traf-

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Illegal Alien Resident Population

Summary

About 5.0 million undocumented immigrants were residing in the United States in October 1996, with a range of about 4.6 to 5.4 million (**See Table 1**). The population was estimated to be growing by about 275,000 each year, which is about 25,000 lower than the annual level of growth estimated by the INS in 1994.

California is the leading state of residence, with 2.0 million, or 40 percent of the undocumented population. The 7 states with the largest estimated numbers of undocumented immigrants--California (2.0 million), Texas (700,000), New York (540,000), Florida (350,000), Illinois (290,000), New Jersey (135,000), and Arizona (115,000)--accounted for 83 percent of the total population in October 1996.

The 5.0 million undocumented immigrants made up about 1.9 percent of the total U.S. population, with the highest percentages in California, the District of Columbia, and Texas. In the majority of states, undocumented residents comprise less than 1 percent of the population.

Mexico is the leading country of origin, with 2.7 million, or 54 percent, of the population. The Mexican undocumented population has grown at an average annual level of just over 150,000 since 1988. The 15 countries with 50,000 or more undocumented immigrants in 1996 accounted for 82 percent of the total population. The large majority, over 80 percent, of all undocumented immigrants are from countries in the Western Hemisphere.

About 2.1 million, or 41 percent, of the total undocumented population in 1996 are nonimmigrant overstays. That is, they entered legally on a temporary basis and failed to depart. The proportion of the undocumented population who are overstays varies considerably by country of origin. About 16 percent of the Mexican undocumented population are nonimmigrant overstays, compared to 26 percent of those from Central America, and 91 percent from all other countries.

Background

In 1994 the INS released detailed estimates of the undocumented immigrant population residing in the United States as of October 1992. Those estimates were useful for a variety of purposes, including planning and policy development at the national and state level, evaluating the effects of proposed legislation, and assessing the fiscal impacts of undocumented immigration.

Over the past 2 years, the INS has revised those estimates and updated them to October 1996. The estimates presented here incorporate new data on the foreign-born population collected by the Census Bureau, improvements in the methodology recommended by the General Accounting Office (GAO), suggestions provided by outside reviewers, and further analyses of INS' data sources and estimation procedures. Revised and updated estimates of the undocumented population have been computed for each state of residence and for nearly 100 countries of origin.

Methodology

The estimates were constructed by combining detailed statistics, by year of

entry, for each component of change that contributes to the undocumented immigrant population residing in the United States. For most countries of the world, the typical way of entering the undocumented population in the United States is to arrive as a nonimmigrant and stay beyond the specified period of admission. This segment of the population, referred to here as "nonimmigrant overstays", constitutes roughly 40 percent of the undocumented immigrant population residing in the United States. The rest of the population, more widely publicized, enter surreptitiously across land borders, usually between official ports of entry. This part of the population, often referred to as EWIs (entry without inspection), includes persons from nearly every country, but a large majority of them are from Mexico; most of the rest are natives of Central American countries.

Primary Sets of Data

The figures presented here were constructed from five primary sets of data. Each set of data was compiled separately for 99 countries and each continent of origin.

- 1) Entered before 1982--estimates (as of October 1988) of the undocumented immigrant population who established residence in the United States before 1982 and did not legalize under the Immigration Reform and Control Act (IRCA) of 1986. The assumption used to estimate this part of the population is based on estimates developed by the Census Bureau using data from the June 1988 Current Population Survey (CPS).
- 2) Net overstays--estimates for 1982 to 1996 of the net number of nonimmigrant overstays, for 99 countries of origin, derived from INS data bases. Estimates were derived by: a) matching INS I-94 arrival/departure records; b) adjusting for the incomplete collection of departure forms; and c) subtracting the number of nonimmigrant overstays who subsequently either departed or adjusted to legal resident status.
- 3) Net EWIs--estimates of the number from each country who entered without inspection (EWI) and established residence here between 1982 and 1996. A very large majority of all EWIs are from Mexico. Average annual estimates of Mexican EWIs were derived by: a) adjusting the CPS count of the Mexican-born population for underenumeration; b) subtracting the estimated legally resident population counted in the CPS; and c) subtracting the estimated number of net overstays.
- 4) Mortality--estimates of the annual number of deaths to the resident undocumented immigrant population. The estimates were derived using an annual crude death rate of 3.9 per 1,000, which was computed using a modified age distribution of IRCA applicants and age-specific death rates of the foreign-born population.
- 5) Emigration--estimates of the number of undocumented immigrants who resided here at the beginning of a period (either October 1988 or October 1992), and who emigrated from the United States in the following 4-year period. Estimates of emigration are based on statistics published by the Census Bureau in Technical Paper No. 9.

Construction of the Estimates

Estimates of the undocumented immigrant population were derived for October 1988, October 1992, and October 1996 for 99 individual countries and for each continent of origin. The calculations were carried out separately for overstays and EWIs.

Estimates by State of Residence

In the earlier estimates for October 1992, the state distribution of the undocumented population was based on the U.S. residence pattern of each country's applicants for legalization under IRCA; the results were summed to obtain state totals. This assumed that, for each country of origin, undocumented immigrants who resided in the United States in October

1992 had the same U.S. residence pattern as IRCA applicants from that country. The revised and updated estimates presented here incorporate the same assumption for the October 1988 undocumented population. However, it was necessary to develop new methods of deriving state estimates for October 1992 and 1996 that would reflect more recent patterns of geographic settlement.

As noted, the estimates of the undocumented population were constructed separately for overstays and EWIs. This permitted the distribution of the overstay and EWI populations to states using data most appropriate for the type of population. For overstays, the cohorts that arrived in the 1988-92 and 1992-96 periods were distributed to state of residence based on annual estimates of overstays by state of destination for 1986 to 1989. For EWIs who entered during these periods, the totals were distributed to state of residence using INS statistics for the early 1990s on the destination of the beneficiaries of aliens who legalized under IRCA.

Limitations

Estimating the size of a hidden population is inherently difficult. Overall, the figures presented here generally reflect the size, origin, and geographic distribution of the undocumented immigrant population residing in the United States during the mid-1990s. The estimates probably reduce the range of error for the total population to a few hundred thousand rather than a few million, which was the error range during the late 1970s and into the 1980s. The estimates for most countries should be fairly precise because they were constructed primarily from data on nonimmigrant arrivals, departures, and adjustments of status that have relatively small margins of error.

Although the estimates are based on the most reliable information available, they clearly have limitations. For example, the estimates make no allowance for students or other long-term nonimmigrants, and the estimates for some countries could be underestimated because of special circumstances (e.g., Dominicans entering illegally via Puerto Rico; ships arriving undetected from China).

The figures for some countries overstate the actual undocumented population. In general, the net nonimmigrant overstay figures are more likely to be overestimates than underestimates because the collection of departure forms for long-term overstays who depart probably is less complete than for those who depart within the first year.

The estimates include a large number of persons who have not been admitted for lawful permanent residence but are permitted to remain in the United States pending the determination of their status or until conditions improve in their country of origin. This category includes many of the undocumented immigrants from El Salvador, aliens from other countries in a status referred to as "deferred enforced departure", and IRCA applicants whose cases have not been finally resolved.

In a few cases, the estimates appear to be too high, but we have no basis for making downward adjustments. For example, the estimates for the Bahamas appear to be much too large because they imply that a relatively large proportion of the population is residing illegally in the United States, whereas large-scale undocumented immigration from the Bahamas has not been observed previously. In addition, undocumented immigration from Dominica is considerably higher than would be expected based on the number of IRCA applicants from Dominica. This overstatement could have occurred because of processing problems with I-94 arrival/departure documents, with the result that overstays from Dominica are overestimated and those from the Dominican Republic underestimated.

The number of EWIs is the most difficult component to estimate with precision, and errors in this component have the largest effect on the estimated undocumented population from Mexico. In particular, the shortage of information about two components--emigration of legally

resident immigrants and undercount in the CPS--makes it difficult to derive acceptable residual estimates of the number of undocumented immigrants counted in the CPS.

The estimates presented here are based on the most extensive array of figures ever compiled for the purpose; nevertheless, they should be used with caution because of the inherent limitations in the data available for estimating the undocumented immigrant population. This uncertainty was addressed by using alternative assumptions to produce "high" and "low" population estimates for October 1996. In the following discussion of the estimates, the mid-range population figures are used for simplicity of presentation.

Results

National Estimates

The total number of undocumented immigrants residing in the United States in October 1996 is estimated to be 5.0 million (**See Table 1**), with a range of about 4.6 to 5.4 million. The estimate for October 1996 is about 1.1 million higher than the revised estimate of 3.9 million for October 1992; this implies that the population grew by about 275,000 annually during the 1992-96 period, about the same as the annual growth of 281,000 estimated for the previous period. The original INS estimates for October 1992 and October 1988, released in 1994, showed average annual growth of 300,000.

The undocumented population grows at varying levels from year to year, but the data available to make these estimates do not permit the derivation of annual figures to measure year-to-year changes. However, the similar levels of growth for the 1988-92 and 1992-96 periods, 281,000 and 275,000, respectively, suggest that the overall level of growth has been fairly constant over the past decade. This also indicates that the rate of growth of the undocumented resident population has declined since 1988.

State of Residence

The estimates for states reflect the well-established pattern of geographic concentration of undocumented immigrants in the United States. As expected, California was the leading state of residence, with 2.0 million, or 40 percent, of the total number of undocumented residents in October 1996. Seven states--California (2.0 million), Texas (700,000), New York (540,000), Florida (350,000), Illinois (290,000), New Jersey (135,000), and Arizona (115,000)--accounted for 83 percent of the population in October 1996 (**See Table 1**).

The estimated undocumented population of California has grown by an average of about 100,000 annually since the end of the IRCA legalization program in 1988. More than 83 percent of total growth of the undocumented population since 1988 has occurred in the top seven states. With the exception of Massachusetts (6,000), none of the remaining 43 states grew by more than 3,000 undocumented residents annually. In 27 states, the undocumented population grew by an average of 1,000 or less each year.

Country of Origin

Mexico is the leading source country of undocumented immigration to the United States. In October 1996 an estimated 2.7 million undocumented immigrants from Mexico had established residence here (**See Table 1**). Mexican undocumented immigrants constituted about 54 percent of the total undocumented population. The estimated population from Mexico increased by just over 150,000 annually in both the 1988-92 and 1992-96 periods.

The estimated number of Mexican undocumented immigrants who arrived between 1990 and 1996 is based on data on country of birth and year of immigration collected by the Census Bureau in the March 1994, 1995, and 1996 Current Population Surveys (CPS) Demographic analysis of the CPS data indicates that approximately 230,000 undocumented Mexican

immigrants established residence annually between 1990 and 1996. This is the net annual addition of undocumented Mexicans who arrived during the period. Note, however, that it does not reflect the average annual growth of the Mexican undocumented population. To compute average annual growth it is necessary to subtract the number of undocumented Mexicans who lived here in January 1990 and who emigrated, died, or adjusted to legal permanent resident status during the 1990-96 period. This last step produces the estimate cited above of just over 150,000 annual growth of the Mexican undocumented population since 1988.

In October 1996, 15 countries were each the source of 50,000 or more undocumented immigrants (**See Table 1**). The top five countries are geographically close to the United States--Mexico, El Salvador, Guatemala, Canada, and Haiti. Of the top 15 countries, only the Philippines and Poland are outside the Western Hemisphere. The estimated undocumented population from Poland has declined by more than 25 percent, from 95,000 to 70,000, since 1988, possibly reflecting changed conditions in that country over the last several years.

Although undocumented immigrants come to the United States from all countries the world, relatively few countries add substantially to the population. The annual growth of the undocumented population can be grouped into four disparate categories: 1) Mexico, with more than half of the annual growth, adds just over 150,000 undocumented residents each year; 2) six countries--El Salvador, Guatemala, Canada, Haiti, Honduras, and the Bahamas--each add between 6,000 and 12,000 annually; 3) thirteen countries each add about 2,000 to 4,000 annually; and 4) the remaining approximately 200 other countries add a total of about 30,000 undocumented residents each year (**See Table 1**). A large majority of the additions each year, more than 80 percent, are from countries in the Western Hemisphere.

Table 1.

**Estimated Illegal Immigrant Population for Top Twenty Countries of Origin
and Top Twenty States of Residence: October 1996**

Country of origin	Population	State of residence	Population
All countries	5,000,000	All states	5,000,000
1. Mexico	2,700,000	1. California	2,000,000
2. El Salvador	335,000	2. Texas	700,000
3. Guatemala	165,000	3. New York	540,000
4. Canada	120,000	4. Florida	350,000
5. Haiti	105,000	5. Illinois	290,000
6. Philippines	95,000	6. New Jersey	135,000
7. Honduras	90,000	7. Arizona	115,000
8. Poland	70,000	8. Massachusetts	85,000
9. Nicaragua	70,000	9. Virginia	55,000
10. Bahamas	70,000	10. Washington	52,000
11. Colombia	65,000	11. Colorado	45,000
12. Ecuador	55,000	12. Maryland	44,000
13. Dominican Republic ²	50,000	13. Michigan	37,000
14. Trinidad & Tobago	50,000	14. Pennsylvania	37,000
15. Jamaica	50,000	15. New Mexico	37,000
16. Pakistan	41,000	16. Oregon	33,000
17. India	33,000	17. Georgia	32,000
18. Dominica ²	32,000	18. District of Columbia	30,000
19. Peru	30,000	19. Connecticut	29,000
20. Korea	30,000	20. Nevada	24,000
Other	744,000	Other	330,000

Last Modified 8/11/99

Race Profiling

Executive Memo requests:

- (1) develop proposal in 120 days a system for data collection and implementation of a field test.
 - A. 60 days after finalizing the proposal, begin implementation of field test of that data collection system.
 - B. collect sufficient data to permit analysis of actions relevant to the activities of law enforcement agencies by race, ethnicity or gender – include traffic stops, pedestrian stops, a more extensive inspection of interview than that customarily requires by entrants to the US (referrals not just the checkpoint stops).
- (2) Provide to the AG a summary of the info collected during the first year of the field tests including complaints
- (3) Within 120 days provide a report to President on training programs, policies and practices regarding the use of race, ethnicity and gender in your law enforcement activities, along with recommendations for improving those programs, policies and practices.

Border Patrol

Checkpoints Referrals

- Ok for brief and limited to the immigration status of the occupants – reasonable suspicion is not required based on US v. Martinez-Fuerte 1976 case.
- US v. Martinez-Fuerte - okay to use Mexican ancestry for the secondary inspection b/c of illegals that are stopped are mainly Mexican and INS uses other factors (Note for roving patrol stops would require reasonable suspicion). Also, need to give BP wide discretion who to question.

Issue – Does the BP violate an individual's 4th amendment rights by refer an individual to secondary inspection at permanent checkpoints because of their ancestry?

Rule -

Application

Conclusion

Roving Patrol

US v. Brignoni-Ponce - Requires **reasonable suspicion** that a particular vehicle contains aliens who may in the US illegally to stop car briefly and investigate suspicious circumstances.

Factors include –

- (1) “Characteristics of the areas in which the vehicle is encountered ie proximity to the border, the usual patterns of traffick on the particular road, previous experience with alien traffic and information about recent illegal border crossing ;“
- (2) the driver's or passenger's behavior, including erratic driving or obvious attempts to evade officers;

- (3) aspects of the vehicle e.g. stationwagon with large compartments for fold-down seats or spare tires are frequently used for transporting concealed aliens; the vehicle may appear to be heavily loaded or to have an extraordinary number of passengers or the officers may observe persons trying to hide;
- (4) appearance of the occupants, including whether mode of dress and/or haircut appear foreign;
- (5) information from outside sources such as illegal border crossings, police, reports, or informant information; and
- (6) an officer's experience and training, including previous experience with alien traffic and the inferences and deductions of a trained officer.

Circumstances must be considered in "totality and not in isolation."

INS officers on roving patrol may not stop a vehicle unless they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably support the suspicion that the vehicle contains aliens who may be illegally in the country.

- (The Law Search Manual pages ?)

-

Vehicle Stops & Searches

Immigration & Naturalization Service
Community/Intergovernmental Program
425 I Street, NW - Room 7236
Washington, DC 20536

202 616 7986; (fax) 202 353 0221

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Attached per your request is the M-69 excerpt (including cover and table of contents).

U.S. BORDER PATROL



M-69

***The Law of Arrest, Search, and Seizure
for Immigration Officers***

The Law of Search Manual

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The primary sources of authority granted to officers of the INS are the Act, found in Title 8 of the United States Code, abbreviated as, "8 U.S.C.", and other statutes relating to the immigration and naturalization of aliens. The secondary sources of authority are: (1) administrative regulations implementing those statutes (primarily those found in Title 8 of the Code of Federal Regulations, abbreviated as "8 C.F.R."); (2) judicial decisions; and (3) administrative decisions of the Board of Immigration Appeals.¹

The Constitution of the United States protects the rights of the people of the United States.—All authority exercised by INS officers must conform to constitutional limitations, such as the fourth amendment. For example, while section 287(a)(3) of the Act appears to authorize officers to make warrantless vehicle stops in border areas, the Supreme Court in *United States v. Brignoni-Ponce* 2 concluded that the fourth amendment precluded stopping a vehicle to question the occupants concerning their immigration status on less than a reasonable suspicion that the vehicle may contain aliens illegally in the United States, except at the border or its functional equivalents. See Chapter III(B)(5), *infra*.

A. THE FOURTH AMENDMENT

The fourth amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The amendment consists of two clauses. One clause prohibits unreasonable searches and seizures. The other requires that warrants be issued only upon a showing of probable cause and upon meeting certain other conditions regarding the place to be searched and the persons or things to be seized.

B. THE IMMIGRATION AND NATIONALITY ACT

Subject to constitutional limitations, INS officers may exercise the authority granted to them in the Act. The following statutory provisions relate to enforcement authority:

- (1) Section 287(a)(1) [8 U.S.C. 1357(a)(1)] -- provides authority, without a warrant, to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States. -
- (2) Section 287(a)(2) [8 U.S.C. 1357(a)(2)] -- provides authority to make an arrest of an alien who in the officer's presence or view is entering or attempting to enter the United States in violation of the immigration laws, or who the officer has reason to believe (judicially construed to be the equivalent of probable cause under the fourth amendment) is in the United States in violation of the immigration laws and is likely to escape before an arrest warrant can be obtained.
- (3) Section 287(a)(3) [8 U.S.C. 1357(a)(3)] -- provides authority within a reasonable distance of any external boundary of the United States to board without a warrant any vessel within the territorial waters of the United States and any railway car, aircraft, or vehicle and search for aliens; and authority to enter private lands (but not dwellings) within 25 miles of the border for purposes of patrolling the border to prevent illegal entry of aliens.
- (4) Section 287(a)(4) [8 U.S.C. 1357(a)(4)] -- provides authority to arrest without a warrant for felonies which have been committed and which are cognizable under the federal criminal laws regulating the admission, exclusion and/or expulsion of aliens where the officer has reason to believe (probable cause) that the person arrested is guilty of such felony and is likely to escape before a warrant may be obtained, provided that the person arrested is taken without unnecessary delay before a magistrate for arraignment.
- (5) Section 287(a)(5) [8 U.S.C. 1357(a)(5)] -- provides authority to make general arrests without a

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warrant for crimes cognizable under federal law, to carry firearms, and to execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. Section 287(a)(5)(A) provides that an INS officer may arrest for offenses against the United States committed in his or her presence. A person arrested must be taken without unnecessary delay before a magistrate for arraignment. Section 287(a)(5)(B) provides that an INS officer may arrest for any felony cognizable under the laws of the United States if the officer has reason to believe (probable cause) that the person to be arrested has committed or is committing such a felony.

To exercise authority under section 287(a)(5)(A) or (B), the officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be a likelihood the person will escape before an arrest warrant can be obtained. The officer also must be certified as having completed a designated training program prior to making arrests under section 287(a)(5)(B). The authority contained in section 287(a)(5)(B) cannot be exercised until the Attorney General promulgates final implementing regulations. A Notice of Proposed Rulemaking for such regulations was published in the Federal Register on October 14, 1992.³

(6) Section 287(b) [8 U.S.C. 1357(b)] -- provides authority to administer oaths and consider evidence concerning the privilege of any person to enter, re-enter, pass through, or reside in the United States, or any other matter which is material and relevant to the enforcement of the Act.

(7) Section 287(c) [8 U.S.C. 1357(c)] -- provides authority to search without a warrant persons and personal effects of applicants for admission for evidence which may lead to the individual's exclusion from the United States on grounds set forth in the Act.

(8) Section 287(e) [8 U.S.C. 1357(e)] -- requires an immigration officer to obtain a warrant or the consent of the owner (or his agent) to enter the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(9) Section 235(a) [8 U.S.C. 1225] -- provides authority at the border to board and search any vessel, aircraft, railway car, or other conveyance in which an immigration officer believes aliens are being brought into the United States. This section also empowers officers to administer oaths and take and consider evidence regarding any suspected alien's right to enter, re-enter, pass through or reside in the U.S. or any other matter which is relevant and material to the enforcement of the Act.

(10) Section 274(b) [8 U.S.C. 1324(b)] -- provides authority to seize vehicles, vessels, or aircraft where there is probable cause to believe that the conveyance has been used in violation of section 274(a) (Alien smuggling, transporting, harboring, etc.).

(11) Section 274(c) [8 U.S.C. 1324(c)] -- provides authority to arrest individuals for violations of section 274(a).

(12) Section 274A [8 U.S.C. 1324a] -- provides authority to investigate and assess a civil money penalty to any person or entity for the unauthorized employment of aliens and failure to comply with the employment verification requirements in violation of the Act.

(13) Section 274C [8 U.S.C. 1324c] -- provides authority to investigate and assess a civil money penalty to any person or entity involved in civil document fraud related to any requirements under the Act.

C. OTHER STATUTORY SOURCES OF AUTHORITY

1. *Title 18 of the United States Code*

There are several provisions under Title 18 that specifically relate to enforcement of the immigration and nationality laws. These provisions are listed in The INS Investigator's Handbook, Appendix 5-5A (1985) or INS Border Patrol Handbook, Appendix 19-A (1985).⁴

2. *Title 19 of the United States Code: Customs Cross-Designation*

INS officers who have been specifically cross-designated under 19 U.S.C. 1401(i) may make such customs arrests, searches, and seizures as delineated by Customs Form 55 and the Customs/Border Patrol Memorandum of Understanding, dated July 21, 1986.

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At the border or a port of entry, section 235(b) of the Act authorizes the stopping and questioning of all persons seeking admission to the United States regarding their right to legally enter, and authorizes detaining any alien for further examination by an immigration judge unless the alien appears to the officer to be "clearly and beyond a doubt" entitled to enter. In the interior, section 287(a)(1) of the Act authorizes immigration officers to interrogate persons reasonably believed to be aliens as to their right to be in or remain in the United States. Generally, this authority extends to the limits permitted under the fourth amendment 5. The limits of the fourth amendment depend upon the degree of intrusion on privacy and the nature of the encounter between an officer and individual.

The three principal levels of encounters between immigration officers and the public at locations other than the border are: (1) consensual encounters, where the person is free to leave at any time or may refuse to answer any questions; (2) investigative stops, which must be supported by the officer's reasonable suspicion, and which only permit a brief detention of the suspect; and (3) arrest, which must be supported by probable cause to believe the suspect has violated any law that the officer is authorized to enforce.

In encounters between the immigration officer and individuals represented by counsel, the officer should be thoroughly familiar with INS policy. The guidelines ensure recognition of the constitutionally protected area of attorney-client privilege. These guidelines are contained in Appendix B. Questions concerning the applicability of the guidelines should be referred to supervisors or legal counsel.

A. QUESTIONING AND DETENTION NOT AMOUNTING TO ARREST

1. *Questioning at the Border and Functional Equivalent of the Border*

Travelers may be stopped at the international border and required to identify themselves as entitled to enter the United States and to show that their belongings and effects may lawfully be brought into the country 6. Section 235(a) of the Act authorizes an immigration officer to examine all persons arriving at ports of the United States and to question under oath any person suspected of being an alien concerning the right to enter, re-enter, pass through, or reside in the United States, or any other matter related to enforcement of the Act and concerning his or her purpose in coming to the United States. Such questioning and examination is not limited to ports of entry, but may be performed anywhere along the international border and at a functional equivalent of the border.

2. *Non-Border Consensual Encounters*

Not all personal interaction between government officers and private individuals is a seizure of the person 7. As long as officers do not by means of physical force or show of authority restrain the freedom of an individual to walk away, no seizure has occurred and fourth amendment limitations do not apply 8.

INS officers should address questions to individuals in a way that promotes cooperation. To this end, they should identify themselves as INS officers and perform their duties in a professional manner.

3. *Non-Border Detentive Encounters*

An encounter may constitute a seizure from the outset. An initially consensual encounter between an INS officer and an individual may escalate into a fourth amendment seizure. A seizure occurs when, in view of all circumstances surrounding the incident, a reasonable person would believe that he or she was not free to leave the presence of the officer 9. The "reasonable person" test presumes an innocent person 10.

Officers may briefly detain a person for questioning when the officer has a reasonable suspicion based on specific articulable facts that the person stopped is, was, or is about to be, engaged in a violation of a law the officer has the authority to enforce 11. An officer has not seized a person merely by inquiring about identity, requesting some identification, or requesting consent to search luggage or

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other areas.

An INS officer may briefly detain a person if there is reasonable suspicion to believe that the person is or has violated any criminal statute which the officer is authorized to enforce 12. INS officers also may briefly detain a person if they have reasonable suspicion that the person may be an alien who is illegally in the United States 13.

In connection with a brief detention under these circumstances, officers may conduct a "frisk" or pat down search of the outer clothing of the individual for weapons to protect their safety and the safety of others if the officer reasonably believes the individual to be armed 14. The officer may reach inside the outer clothing to remove any item he or she believes to be a weapon 15. The officer may not, however, remove an item from the suspect's clothing that the officer does not reasonably believe is a weapon.

To determine whether an officer's articulated suspicions are "founded" or "reasonable," the courts will examine the totality of the circumstances, including: (1) objective observations, (2) information in police reports, (3) modes or patterns of operation of certain types of lawbreakers, (4) informant's tips, and/or (5) all other pertinent information 16. Such evidence must be weighed in light of the particular officer's training and experience, and viewed with common-sense deductions about human behavior. The whole picture must yield a reasonable suspicion that the particular individual stopped is engaged in criminal activity 17.

While an encounter between an officer and a pedestrian does not necessarily constitute a fourth amendment seizure, a vehicle stop is always a "seizure" and, therefore, must be justified by reasonable suspicion that illegal aliens may be being transported within the vehicle 18. However, once a vehicle is lawfully stopped based upon reasonable suspicion, officers may order the occupants to exit the vehicle for questioning if reasonably necessary to secure the officer's safety 19. See Chapter III for further analysis of investigatory stops and searches of vehicles.

B. ARREST

An arrest occurs when a reasonable person in the suspect's position would conclude that he or she is under arrest 20. An arrest does not depend solely upon whether the officer announces that the suspect has been placed under arrest. If an officer's conduct is more intrusive than an investigative stop, an arrest may take place 21. In determining whether the officer's conduct is tantamount to an arrest, consideration must be given of facts and circumstances, such as: (1) when and where the encounter occurred; (2) the duration of the encounter; (3) the number of officers present; (4) what the officers and suspect said and did; (5) the use of weapons, handcuffs, a guard blocking the door, or other physical restraint; (6) the nature of the questioning; (7) whether officers escorted the suspect to another location for questioning; (8) whether the officer retained custody of important travel or identification documents during the encounter; and (9) whether the suspect was permitted to leave following the encounter 22.

An arrest must be supported by probable cause to believe the person has committed an offense against the United States. Otherwise, the arrest will not withstand a fourth amendment challenge. Probable cause is knowledge or trustworthy information of facts and circumstances which would lead a reasonably prudent person to believe that an offense has been committed or is being committed by the person to be arrested. Probable cause is more than mere suspicion or the observation of behavior that is merely suspicious, but there does not have to be absolute certainty of guilt. In determining whether probable cause was present at the time of an arrest, courts consider the totality of the circumstances as viewed by a reasonable prudent officer coupled with the officer's training and experience. Pertinent factors include: personal knowledge or observation by the officer; information contained in official communication to the officer; information from reliable informants, victims or witnesses; actions and appearance of the suspect(s); criminal reputation of the suspects; inconsistent and unpersuasive answers to routine questions; and possession, disposal, or concealment of evidence.

An INS officer is authorized to make arrests for both administrative (civil) and criminal violations of the Act. The procedures for administrative and criminal arrests differ substantially and will be addressed separately.

1. Administrative Arrest (Civil Arrest)

a. Authority and Purpose of Administrative Arrest

The law strongly favors the use of an arrest warrant even for a non-criminal arrest. Therefore

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a. Searches of Detainee's Cell

The Supreme Court has upheld the practice of conducting unannounced searches of prisoner cells at irregular intervals 105. Prisoners' privacy rights during incarceration do not outweigh the need of the prison authorities to ensure security within penal institutions 106. The Supreme Court has ruled that detainees have no right to observe a search of their cells 107.

b. Mail Searches

Searches of incoming and outgoing mail at penal institutions, while within the fourth amendment, more frequently have been addressed on first amendment grounds 108. Correspondence to and from prisoners is divided into two categories, privileged and non-privileged. Privileged mail includes mail from attorneys, courts, governmental officials, and in some instances, the media 109. Privileged incoming mail may only be inspected in the presence of the inmate addressee, and only for contraband. The mail may not be read and/or censored. Privileged outgoing mail may not be opened, inspected, or censored 110. This is subject to modification if the authorities can establish probable cause for search and seizure of privileged mail 111.

Non-privileged mail may be inspected for contraband, but the intrusion should be minimal to protect the first amendment rights of the prisoner 112. If the penal authorities elect to censor non-privileged mail, they must give appropriate notice to the intended recipient and a reasonable opportunity to challenge the decision, and they must refer complaints to a prison official other than the person who originally censored the correspondence 113.

c. Searches of Detainees

The Supreme Court has upheld routine strip searches given the reasonable security concerns within penal institutions 114. Among the factors which the Court considered were the scope of the intrusion and the manner and the place in which the search was conducted. Before undertaking any search, consideration should be given to the reason for the search and the relationship to the security concerns of the institution.

In the Western Region, pursuant to *Flores v. Meese* 115, officers may not strip search juvenile alien detainees absent probable cause for the search.

5. Border Searches

Border searches are a recognized exception to the fourth amendment's general principle that a warrant be obtained prior to conducting the search. Border searches are reasonable without a warrant and without probable cause 116. This exception also applies to searches at the functional equivalent of the border.

a. Searches at International Borders

The interrogation and search of individuals and their effects at the border is inherently reasonable for purposes of the fourth amendment 117. INS officers may interrogate individuals to determine admissibility without probable cause or "reasonable suspicion." 118 INS officers may interrogate all persons seeking admission to the United States concerning any basis for which the individual may be excludable 119. Routine searches of persons and things may be made upon their entry into the country without a search warrant or probable cause 120. Routine searches of persons and things likewise may be made upon their exit from the country 121. However, a warrantless border search is valid only if conducted by officials specifically authorized to conduct such searches 122.

These border searches may be made when entry is made by land from the neighboring countries of Mexico and Canada, at the place where a ship docks in this country after having been to a foreign port, and at any airport in the country where international flights land 123. Officers may search automobiles, baggage, and goods entering the country. Any person seeking to enter the country, despite the brevity of absence or intended period of stay in the United States, may be required to submit to a search of his or her outer clothing, purse, wallet, or pockets. However, border searches are subject to constitutional limitations. Searches of persons, particularly body cavity searches and similar intrusive procedures, require some level of suspicion under the fourth amendment 124. The border search authority extends to all persons or vehicles attempting to enter or seen entering the United States. The authority has been extended to permit searches where an automobile was kept in constant surveillance for a period of four hours and the search was conducted at a distance of twenty-five miles from the border 125, and

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where a vehicle was seen coming from a "known river crossing" some 300 yards from the Rio Grande, since the vehicle was still within the "border nexus." 126

b. Extended Border Search

An "extended border search" takes place after a person, vehicle, mail, or some other property has crossed the border or cleared a prior checkpoint, or a significant amount of time has elapsed since the object first arrived in the United States. An extended border search must be justified by "reasonable suspicion" that the subject of the search was involved in criminal activity 127. In contrast, a search conducted at the border or its functional equivalent requires no suspicion and a roving patrol search requires probable cause. The determination of whether a valid extended border search has been undertaken is based on a multiplicity of factors. Generally, an extended border search requires: (1) reasonable suspicion of illegality; (2) reasonable certainty that the vehicle/person crossed the border; and (3) reasonable certainty that the condition of the vehicle/person remained unchanged since the border was crossed, often established through constant surveillance or tracking 128. Courts have upheld border searches conducted thirty-six hours after the vessel entered Los Angeles harbor 129, seven hours after border crossing and 105 miles from the border, 130 and where radar tracked a plane from Mexico entering into the United States 131.

c. Functional Equivalent

The broad authority which exists at the international border also extends to areas found to be the "functional equivalent" of the border. This principle is based on common sense and geography when an interior location is one which persons crossing the border must pass to enter the domestic traffic flow. Generally, a functional equivalent of the border is a point marking the intersection of two or more roads extending from the border without any major intervening crossroad, or an airport which is the destination of a nonstop flight from outside the United States:

Three factors are used to determine whether a location other than the actual border is a "functional equivalent": (1) reasonable certainty that a border crossing has occurred; (2) lack of time or opportunity for the object to have changed materially since the crossing; and (3) execution of the search at the earliest practical point after the actual crossing. For example, customs agents conducted surveillance in the dock area where passengers leave cruise ships and observed an individual leaving the ship and entering a vehicle. The vehicle departed the area and was stopped some one and one-half mile from the docks, although still within the port area. A search at the gangplank area would have required the agents to disclose their routine hiding places at the port. Since the car had not left the port area when it was stopped and the stop was effected at the earliest practical time, it fell within the "functional equivalent" exception 132.

The functional equivalent of the border may be the mouth of a canyon, the confluence of trails or rivers, or a fixed checkpoint. Not all checkpoints are "functional equivalents." The key factor for consideration in determining whether the location is the "functional equivalent" is whether the "person or item had entered into [the] country from outside." 133 A "functional equivalent" will not be found where there is a mixture of domestic traffic with the traffic normally coming from the international border or where a major metropolitan area is located between the proposed location and the border. 134

In the Fifth Circuit, which includes Texas, in order for a checkpoint to merit the designation of "border equivalent checkpoint," the government must demonstrate with "reasonable certainty" that the traffic passing through the checkpoint is "international in character" and the checkpoint intercepts "no more than a negligible number of domestic travelers." 135 Officers should be familiar with any "functional equivalent" within their jurisdiction 136. The "functional equivalent" caveat is an exception to the general rules applicable to arrests, searches, and seizures that do not occur at the border. If there is any question whether the particular area is a "functional equivalent," an officer should apply the reasonable suspicion and probable cause standards for searches and seizures that are applicable to interior locations.

d. Entry of Lands Within 25 Miles of Border

Under section 287(a)(3) of the Act, immigration officers may enter private lands, but not dwellings, within 25 miles from any external boundary of the United States for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States. The regulations define the phrase "patrolling the border to prevent the illegal entry of aliens into the United States" as "conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States." 8 C.F.R. 287.1(f)

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INS Operations Instructions (OIs) require that whenever possible immigration officers shall inform the owner or occupant of private lands that they propose to avail themselves of their power of access to those lands. If a direct challenge is made of the officer's authority, the matter should immediately be brought to the attention of the officer's supervisor. In most cases consent will be given in advance for extended periods; if not, and after all methods of persuasion have failed, including efforts by personal interview and the placing of the landholder on notice of the law by registered mail, officers may, if absolutely necessary, gain access to areas within the 25 mile area by the most expeditious means. This is an extreme measure and is to be resorted to only on the direction of a supervisory officer after careful consideration. If damaged, fences and gates should be repaired immediately and precautions taken to avoid further injury to the property 137.

6. Checkpoints

The Border Patrol conducts two types of inland traffic-checking operations: checkpoints and roving patrols. Border Patrol agents may lawfully stop motorists at checkpoints located away from the border to determine the citizenship of the vehicle's occupants. In *United States v. Martinez-Fuerte*, the Supreme Court established constitutional guidelines for checkpoint stops and searches. The inquiry must be brief and limited to the immigration status of the occupants of the vehicle and the only permissible search is a "plain view" inspection to ascertain whether there are any concealed illegal aliens 138. Absent consent, a more in-depth search of the occupant or the vehicle requires probable cause 139.

Probable cause can be developed by the agent's questioning of the occupants and observation of their appearance 140. Probable cause concerning the existence of contraband may also be developed through observation of material in plain view of the agent. Agents' observations which have been held to support searches include situations where an agent observed marijuana debris on the floor of a vehicle and smelled the distinctive odor of marijuana 141. Observation of marijuana seeds on the floor and nervousness of the driver were found sufficient to sustain a search for contraband 142, and the Fifth Circuit has held that the aroma of marijuana alone was sufficient to justify a Border Patrol agent's search of a vehicle 143.

Where agents have probable cause to search at a checkpoint, no warrant need be obtained because, as discussed below, a vehicle is a traditional exception to the warrant requirement.

In *Martinez-Fuerte*, the Supreme Court distinguished a checkpoint from a "roving patrol." At a checkpoint, the situation is controlled and causes the individual traveller less anxiety. Roving patrols, on the other hand, often operate at night and on seldom-traveled roads, presenting the possibility of frightening motorists. In validating the operation at the San Clemente checkpoint, the Court considered the government's need to control the influx of illegal aliens, the characteristics of the operation, including the use of warning lights and signs, the minimal nature of the intrusion, and the routine and regularized manner in which stops were effected. The Court found that this type of routine stop did not require reasonable suspicion 144.

In order to ensure that Border Patrol checkpoints continue to withstand challenges, all checkpoints should be operated in accordance with the instructions set forth in the Border Patrol Handbook 145. Except for the absence of permanence, INS policy requires that temporary checkpoints should be operated in a manner as close as possible to permanent checkpoints to avoid legal difficulties.

7. Vehicle Stops and Searches

In *United States v. Brignoni-Ponce* 146, the Supreme Court held that an INS officer on roving patrol may stop a car briefly and investigate suspicious circumstances where the officer has a reasonable suspicion that a particular vehicle contains aliens who may be illegally in the United States 147. Though not exclusive, circumstances which have been acknowledged to be pertinent in justifying vehicle stops include:

- (1) the characteristics of the area in which a vehicle is encountered, such as its proximity to the border, the usual patterns of traffic on the particular road, previous experience with alien traffic, and information about recent illegal border crossings; 148

- (2) the driver's or passenger's behavior, including erratic driving or obvious attempts to evade officers; 149

- (3) aspects of the vehicle, e.g., station wagons with large compartments for fold-down seats or

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spare tires are frequently used for transporting concealed aliens; the vehicle may appear to be heavily loaded or to have an extraordinary number of passengers; or the officers may observe persons trying to hide; 150

- (4) appearance of the occupants, including whether their mode of dress and/or haircut appear foreign;
- (5) information from outside sources such as reports of illegal border crossings, police reports, or informant information; and
- (6) an officer's experience and training, including previous experience with alien vehicle traffic and the inferences and deductions of a trained officer 151.

The circumstances which lead to the stop may appear innocent to the untrained observer 152. However, these circumstances must be considered in totality and not in isolation 153.

Once the vehicle is lawfully stopped, the officer may question the driver and occupants concerning their citizenship and immigration status and ask for an explanation of the suspicious circumstances. In addition, when the vehicle is stopped, the officer may also order the occupants to exit the vehicle for questioning 154, request consent to search the vehicle 155, and examine the exterior and any portion of the interior of the vehicle which is open to view. Any further arrest or search must be based on consent or probable cause in order to comply with the fourth amendment.

Further detention of vehicles may be justified based upon a minimal suspicion of narcotics trafficking. Courts have found that a brief detention for the purpose of utilizing a narcotics dog to sniff the exterior of a vehicle was reasonable under the fourth amendment 156.

INS officers on-roving patrol may not stop a vehicle unless they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably support the suspicion that the vehicle contains aliens who may be illegally in the country 157.

8. *Inventory Searches of Seized Vehicles*

Warrantless searches of vehicles for the purpose of making an inventory of the personal effects of the contents of the vehicle after a suspect has been taken into custody are reasonable under the fourth amendment 158. "Inventory" searches of properly seized vehicles are reasonable and do not require probable cause where the purpose is not investigative, but rather: (1) to protect the police or the public from potential damages; (2) to protect the police against claims of lost property; or (3) to protect the owner's property while it is in police custody. The inventory search cannot be used as a subterfuge for a criminal investigative search 159.

An inventory search not made on-the-scene, but rather, for example, after the vehicle has been moved to an impoundment lot, is also reasonable under the fourth amendment 160. Where the law enforcement agency maintains a standard practice of conducting an "inventory" search, such a search is reasonable for fourth amendment purposes 161.

9. *Container Searches*

The general rule is that search of a closed container requires consent or a warrant based upon probable cause 162. Under the vehicle exception, law enforcement officers who have lawfully stopped an automobile and who have probable cause to believe that contraband is concealed either specifically within a container or somewhere else within the car may conduct a warrantless search of any area within the vehicle that may conceal contraband 163. This area includes closed containers located within the car as well as areas of the car that may require permanent damage to reach, such as slashing the upholstery to reveal the contraband 164. The Supreme Court has recently reversed two decisions which held that officers could not conduct a warrantless search of a closed container in a vehicle unless they had probable cause to search the entire car 165. In *California v. Acevedo*, the Court held that law enforcement officers do not need to obtain a warrant in order to search a container in a car "simply because they lack probable cause to search the entire car." 166 In such cases, the scope of the search is limited to any container which could reasonably be believed to contain the contraband. Probable cause to believe that undocumented aliens are being transported in a van will not justify warrantless search of a suitcase. However, the suitcase may be searched under an "inventory search" if appropriate 167. If officers have probable cause to believe an individual is transporting drugs or other contraband in the vehicle or in a container within the vehicle, the officers may conduct a warrantless search of every part of the vehicle and its contents, including all containers

annoying, are regularized by the fixed situs, and effectively serve the important national interest in controlling illegal entry. I do not regard such stops as unreasonable under the Fourth Amendment, whether or not accompanied by "reasonable suspicion" that a particular vehicle is involved in immigration violations, cf. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607, and I do not understand today's opinion to cast doubt upon their constitutionality.



422 U.S. 899, 45 L.Ed.2d 630

UNITED STATES, Petitioner,

v.

Felix Humberto BRIGNONI-PONCE.

UNITED STATES, Petitioner,

v.

Luis Antonio ORTIZ.

Nos. 74-114, 73-2050.

June 30, 1975.

For opinions of the Court, see 95 S.Ct. 2574, 2585.

Mr. Chief Justice BURGER, with whom Mr. Justice BLACKMUN joins, concurring in the judgment.

Like Mr. Justice WHITE I can, at most, do no more than concur in the judgment. As the Fourth Amendment now has been interpreted by the Court it seems that the Immigration and Naturalization Service is powerless to stop

the tide of illegal aliens—and dangerous drugs—that daily and freely crosses our 2,000-mile southern boundary.¹ Perhaps these decisions will be seen in perspective as but another example of a society seemingly impotent to deal with massive lawlessness. In that sense history may view us as prisoners of our own traditional and appropriate concern for individual rights, unable—or unwilling—to apply the concept of reasonableness explicit in the Fourth Amendment in order to develop a rational accommodation between those rights and the literal safety of the country.

Given today's decisions it would appear that, absent legislative action, nothing less than a massive force of guards could adequately protect our southern border.² To establish hundreds of checkpoints with enlarged border forces so as to stop literally every car and pedestrian at every border checkpoint, however, would doubtless impede the flow of commerce and travel between this country and Mexico. Moreover, it is uncertain whether stringent penalties for employment of illegal aliens, and rigid requirements for proof of legal entry before employment, would help solve the problems, but those remedies have not been tried.

I would hope that when we next deal with this problem we give greater weight to the reality that the Fourth Amendment prohibits only "unreasonable searches and seizures" and to the frequent admonition that reasonableness must take into account all the circumstances and balance the rights of the individual with the needs of society. See, e. g., *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct.

Government response. Appended to this opinion is an excerpt from Judge Turrentine's *Baca* opinion describing the illegal alien problem and the law enforcement response.

1. The Court today recognizes that as many as 12 million illegal aliens are now present in this country. *United States v. Brignoni-Ponce*, 422 U.S., at 878, and n. 4, 95 S.Ct., at 2578-2579. See also U.S. News and World Report, July 22, 1974, p. 27; *id.*, Dec. 9, 1974, p. 77. By all indications the problem will increase in the future, not abate. *United States v. Baca*, 368 F.Supp. 398, 402-403 (SD Cal.1973). In the *Baca* case Judge Turrentine conducted a thorough review of the entire problem and the present

2. For example, testimony in the *Baca* hearings revealed that a complement of 21,000 officers would be needed to control adequately the 75 miles of border in the El Centro sector alone.

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Cite as 95 S.Ct. 2590 (1975)

1868, 20 L.Ed.2d 889 (1968); *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960); *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972).

APPENDIX TO OPINION OF BURGER, C. J., CONCURRING IN THE JUDGMENT

Excerpt from Judge Turrentine's opinion in *United States v. Baca*, 368 F.Supp. 398, 402-408 (SDCal.1973)

THE ILLEGAL ALIEN PROBLEM

The United States through legislative action has determined that it is in the best interest of the nation to limit the number of persons who can legally immigrate into the country in any given year. These controls reflect in part a Congressional intent to protect the American labor market from an influx of foreign labor. *Karnuth v. United States*, 279 U.S. 231, 49 S.Ct. 274, 73 L. Ed. 677 (1929); § 201(a) of the Immigration and Nationality Act of 1952, 66 Stat. 163, as amended by the Act of October 3, 1965, 79 Stat. 911, 8 U.S.C. § 1151(a).

Under this policy of limited admission, 385,685 new immigrants entered the United States legally during fiscal year 1972. Since July 1, 1968, the law has established an annual quota of 120,000 persons for the independent countries of the Western Hemisphere. Included within this quota are immigrants from the Republic of Mexico who in fiscal year 1972 totalled 64,040. 1972 Annual Report, Immigration and Naturalization Service, pp. 2, 28.

Currently illegal aliens are in residence within the United States in numbers which, while not susceptible of exact measurement, are estimated to be in the vicinity of 800,000 to over one million. Department of Justice, Special Study Group on Illegal Immigrants from Mexico, A Program for Effective And Humane Action on Illegal Mexican Immigrants, 6 (1973) [hereinafter cited as *Cramton Rpt.*].

Of these illegal aliens, approximately 85 percent are citizens of Mexico. *Cramton Rpt.* at 6. They are industrious, proud and hard-working people who enter this country for the purpose of earning wages, accumulating savings, and returning or sending their savings home to Mexico.

Since 1970, the number of illegal Mexican aliens in the United States who have been apprehended has been growing at a rate in excess of 20 percent per year. *Cramton Rpt.* at 6.

The increasingly large numbers of Mexican nationals seeking to illegally enter this country reflects the substantial unemployment and underemployment in Mexico—fueled by one of the highest birth rates in the world. Moreover, Mexican employment statistics are not likely to improve dramatically since fully 45 percent of Mexico's population is under 15 years of age and, therefore, will soon be attempting to enter the labor market.

Further prompting Mexican nationals to seek employment in the United States is the fact that there is a significant disparity in wage rates between this country and Mexico. In Mexicali and Tijuana, both Mexican cities bordering the Southern District and each with a population in excess of 400,000, the average daily wage is about \$3.40 per day. The minimum wage is even lower for workers in the interior of Mexico. The average worker in Mexico, assuming he can find work, earns in a day as much as he can make in only a few hours in the United States.

In addition, it is estimated that the per capita income of the poorest 40 percent of the Mexican population, the strata most likely to leave their homeland in search of employment in the United States, is less than \$150 per year.

The manpower needs of the United States generated by World War II resulted in many Mexicans being imported into this country and becoming familiar with employment opportunities and practices in the United States. See *Diaz*

v. Kay-Dix Ranch, 9 Cal.App.3d 588, 88 Cal.Rptr. 443 (1970).

The opportunities available to Mexican aliens have traditionally been in agriculture. While still true in many parts of the United States Southwest, in recent years the pattern has changed and more and more illegal aliens are obtaining employment in the service and manufacturing sectors of our economy. These aliens are increasingly found in ¹⁹⁰³virtually all regions of the country and in all segments of the economy. State Social Welfare Board, Issue: Aliens in California, 12 (1973) [Hereinafter cited as Aliens in California].

The nature of the change in employment opportunities available is demonstrated by one estimate that 250,000 illegal aliens are employed in Los Angeles County where agricultural opportunities are known to be limited. Hearings on Illegal Aliens Before Subcomm. No. 1 of the House Comm. on the Judiciary, 92d Cong., 1st Sess., pt. 1, at 208 (1971) [Hereinafter cited as Hearings on Illegal Aliens].

Other estimates of the impact of illegal aliens in California suggest that in 1971, when 595,000 Californians were unemployed (7.4 percent of the State's labor force), there were between 200,000 and 300,000 illegal aliens employed in California earning approximately \$100 million in wages. Hearings on Illegal Aliens at 150.

Since the majority of Mexicans are unskilled or low skilled workers they tend to compete with Mexican-Americans, blacks, Indians, and other minority groups who, due to the declining percentage of jobs requiring low or no skills, are finding it increasingly difficult to obtain gainful employment. Cramton Rpt. at 12.

Illegal aliens compete for jobs with persons legally residing in the United States who are unskilled and uneducated and who form that very group which our society is trying to provide with a fair share of America's prosperity.

In addition, illegal aliens tend to perpetuate poor economic conditions by frustrating unionization, especially in such occupations as farm work.

Illegal aliens pose a potential health hazard to the community since many seek work as nursemaids, food handlers, cooks, housekeepers, waiters, dishwashers, and grocery workers. Immigration and medical officials in ¹⁹⁰⁴Los Angeles, for example, have discovered that the illegal alien population in Los Angeles' barrio is infected with a high incidence of typhoid, dysentery, tuberculosis, tapeworms, venereal disease and hepatitis. *L. A. Times*, Sept. 16, 1973, pt. II, at 1.

In some states illegal aliens abuse public assistance programs. In some instances entire families who entered the country illegally have been admitted to the welfare rolls. Aliens in California at 35, 43.

Another aspect of the problem created by illegal aliens is that employed aliens tend to send a substantial portion of their earnings to relatives or friends in Mexico. This outflow of United States dollars exacerbates our balance of payments problem to the extent of \$1 billion a year. Hearings on Illegal Aliens, pt. 3 at 683.

The net effect of this silent invasion of illegal aliens from Mexico is suffering by the aliens who are frequently victims of extortion, violence and sharp practices, displacement of American citizens and legally residing aliens from the labor market, and irritation between two neighboring countries.

THE LAW ENFORCEMENT PROBLEM

Given that illegal aliens are a significant problem in American life, especially for those minority groups who are described as economically deprived, and that Congress has decreed that all but a relatively few aliens are to be permanently excluded, then we must analyze

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what law enforcement problems exist. In this regard, the following findings of fact are made:

The illegal alien problem is one found primarily in the Southwestern Region of the United States.

This problem along the Mexican-American border has existed for some time with the original responsibility for securing the integrity of the border being assigned to the U. S. Army, along with the Departments of Treasury and Labor, who had about 20,000 men assigned to the border between Brownsville, Texas, and San Diego, California, in 1920. *National Geographic Magazine*, "Along Our Side of the Mexican Border." (July 1920).

Currently the burden of controlling the entry of aliens and stemming the flow of illegal aliens along the Mexican-American border is assigned to the INS.¹

The border extends for almost 2,000 miles from the Gulf of Mexico to the Pacific Coast.

Along this border there were over 152 million legal entries at authorized ports of entry during fiscal 1972, of which over 91 million were made by aliens. Over 39 million of the legal entries were made at the three ports of entry in Southern California (Calexico, San Ysidro and Tecate) of which over 24 million were made by aliens. Immigration and Naturalization Service, 1972 Annual Report, 25.

Of these entries made by aliens, the large portion were made by visitors with official permission to enter the country who had been issued temporary "border passes" such as I-186 cards (issued to residents of Mexico), which authorize the holder to travel within an area no further than 25 miles from the border and for a period of time not to exceed 72 hours. See 8 C.F.R. § 212.6.

1. The notation "INS" when used herein has reference to the Immigration and Naturalization Service.

These temporary border passes (I-186) are issued to simplify procedures needed for entry, and the issuing process recognizes the inter-relationship of contiguous communities along both sides of the border. Hearings on Illegal Aliens, pt. 1, 192.

In fiscal 1973 approximately 208,000 I-186 cards were issued and it is estimated that over two million such cards are currently in circulation. Hearings on Illegal Aliens, pt. 1, 173.

Within the INS, the U. S. Border Patrol, which was first established in 1924, has the primary function of preventing the illegal entry of aliens and the apprehension of those who have entered illegally and those who smuggle these illegal entrants.

The Border Patrol has approximately 1,700 agents, who are well-trained law enforcement officers, and of these about 80 percent are assigned along our southern border with Mexico.

A "deportable alien" is a person who has been found to be deportable by an immigration judge, or who admits his deportability upon questioning by official agents.

The number of deportable aliens apprehended by the Border Patrol (which makes the great majority of apprehensions) nationally has grown from 38,861 during fiscal 1963 to 498,123 in fiscal 1973; of this number 128,889 were found by Border Patrol agents working in the Chula Vista sector which includes 70 miles of the border in San Diego County, and 23,125 were located by agents in the El Centro sector which includes the Imperial County of California and 75 miles of the Mexican-American border.

The Border Patrol agents have the power to apprehend illegal aliens since by regulation the Attorney General has designated Border Patrol agents to be immigration officers and authorized

them to exercise powers and duties as such officers [8 C.F.R. § 103.1(i)]; immigration officers by statute § 101(a) (17) of the Immigration and Nationality Act of 1952, 66 Stat. 163; as amended by the Act of October 3, 1973, 79 Stat. 911, 8 U.S.C. § 1101(a)(17), are empowered, without a warrant, to stop and interrogate any alien or person believed to be an alien as to his right to remain or to be in the United States. See *Au Yi Lau v. I. N. S.*, 144 U.S.App.D.C. 147, 445 F.2d 217 (1971), cert. denied, 404 U.S. 864, 92 S.Ct. 64, 30 L.Ed.2d 108.

Sec. 287(a)(3) of the 1952 Immigration Act provides authority for an immigration officer within a reasonable distance from the border of the United States to board and search any conveyance or vehicle; "reasonable distance" as used in that section of the Act means within 100 air miles from any external boundary of the United States, 8 C.F.R. § 287.1(b).

Immigration officers also are authorized to conduct inspection of aliens seeking admission or readmission to, or the privilege of passing through, the United States, and also are authorized and empowered to board and search any vehicle or like conveyance in which they believe aliens are being brought into the United States. Sec. 235(a) of the 1952 Immigration Act, 8 U.S.C. § 1225(a).

The deployment of Border Patrol agents along the border is intended to maximize the effectiveness of the limited number of personnel, with the first line of defense being called the "line watch." The line watch consists of agents being placed immediately upon the physical boundary where experience has shown that large numbers of illegal aliens can be detected attempting entry. A large number of agents so assigned are primarily concerned with responding to sensor alarms (electronic detection equipment) which are located at strategic positions. These agents also respond to citizen complaints concerning the suspected presence of deportable aliens.

In fiscal 1973, there were 175,511 deportable aliens apprehended throughout the nation by agents assigned to the line watch, with 69,147 being apprehended in the Chula Vista sector and 5,908 in the El Centro sector.

While the Border Patrol would like to apprehend all deportable aliens right on the border by agents on the line watch, inspections at regular points of entry are not infallible and illegal crossings at other than legal ports of entry are numerous and recurring. The maintenance of continuous patrol over the vast stretches of the border in Southern California is physically impossible, since the approximately 145 miles of boundary creates geographic barriers to effective patrol and man-made devices such as fences and electronic devices are in large part ineffective.

Increased manpower on line watch would not make that activity appreciably more effective as was demonstrated in 1969 during "Operation Intercept" when many more agents were stationed immediately on the border, and yet, the number of illegal aliens apprehended by agents operating inland was not significantly different from like periods when such additional manpower was not located at the boundary.

Once the aliens negotiate their way through the port of entry or, as is most common, walk across the border at a place other than an official port of entry, they find transportation inland either in public conveyances, or private vehicles with increasing numbers being transported by professional smugglers. A few have been known to walk some distance inland and have been apprehended after having walked as far north as Julian, California, which is over 60 miles from the border.

After crossing the line watch some illegal aliens seek employment in the Southern District, but the vast majority attempt to proceed to Los Angeles County and points north.

Cite as 95 S.Ct. 2590 (1975)

Once the illegal alien gets settled in a big city far away from the border it becomes very difficult to apprehend him, and therefore, the Border Patrol attempts to contain the illegal entrant within this district. Aliens in California at 7. With this objective in mind, they have (pursuant to their statutory authority discussed above) established, since at least 1927, strategically located traffic inspection facilities, commonly referred to as checkpoints, on highways and roads, for the purpose of questioning vehicle occupants believed to be aliens, as to their right to be, or to remain, in the United States, and also to search such vehicles for illegal aliens. Immigration and Naturalization Service Border Patrol Handbook 9-1 (1972) [hereinafter cited as Handbook].

The primary objective of the checkpoints is to intercept vehicles or conveyances transporting illegal aliens, or non-resident aliens admitted with temporary border passing cards (I-186), with particular attention being paid to vehicles operated by smugglers or transporters destined for inland cities in violation of 8 U.S.C. § 1324.

The selection of the location of a checkpoint is determined by factors relevant to the interdiction or interception of deportable aliens who have succeeded in gaining entry in an unlawful manner or are proceeding beyond the immediate border area in violation of conditions of their admission as border crossers, 8 C. F.R. § 212.60. The primary factors in selecting a checkpoint site are:

1. A location on a highway just beyond the confluence of two or more roads from the border, in order to permit the checking of a large volume of traffic with a minimum number of officers. This also avoids the inconvenience of repeated checking of commuter or urban traffic which would occur if the sites were operated on the network of roads leading from and through the more populated areas near the border.

2. Terrain and topography that restrict passage of vehicles around the checkpoint, such as mountains, desert, and, as in the case of the San Clemente checkpoint, the Camp Pendleton Marine Base.

3. Safety factors: an unobstructed view of oncoming traffic, to provide a safe distance for slowing and stopping; parking space off the highway; power source to illuminate control signs and inspection area, and bypass capability for vehicles not requiring examination.

4. Due to the travel restrictions of the I-186 nonresident border crosser to an area 25 miles from the border (unless issued additional documentation) the checkpoints, as a general rule, are located at a point beyond the 25 mile zone in order to control the unlawful movement inland of such visitors.

Strategic sites that meet the foregoing enumerated criteria are selected for "permanent checkpoints." These are sites equipped to handle a large volume of traffic on what would be a 24-hour basis except in case of manpower shortage, poor weather, or where traffic becomes excessive causing a potential safety hazard. Handbook at 9-3.

Other traffic checkpoints, known as "temporary checkpoints" are maintained on roads where traffic is less frequent. The placement of these sites will be governed by the same safety factors as involved in permanent site placement and are usually located where the terrain allows an element of surprise. Operations at these temporary checkpoints are set up at irregular intervals and intermittently so as to confuse the potential violator. Handbook at 9-3.

When the checkpoints, whether permanent or temporary, are in operation, an officer standing at the "point" in full dress uniform on the highway will view the decelerating oncoming vehicles and their passengers, and will visually determine whether he has reason to believe

the occupants of the vehicle are aliens (i. e., "breaks the pattern" of usual traffic). If so, the vehicle will be stopped (if the traffic at the checkpoint is ¹⁹¹¹ heavy, as at the San Clemente checkpoint, the vehicle will be actually directed off the highway) for inquiries to be made by the agent. If the agent does not have reason to believe that the vehicle approaching the checkpoint is carrying aliens, he may exchange salutations, or merely wave the vehicle through the checkpoint.

If, after questioning the occupants, the agent then believes that illegal aliens may be secreted in the vehicle (because of a break in the "pattern" indicating the possibility of smuggling) he will inspect the vehicle by giving a cursory visual inspection of those areas of the vehicle not visible from the outside (i. e. trunk, interior portion of camper, etc.).

At the point of location of the sites now in regular use few aliens have reached the locale on foot, with 99 percent having entered a vehicle of one type or another. Approximately 12 percent of all apprehensions of deportable aliens throughout the nation are made at checkpoints.

In the United States, during fiscal 1973, approximately 55,300 deportable aliens were apprehended by Border Patrol agents working traffic checking operations. In the Chula Vista sector the number for that period was 21,232, while in the El Centro sector the total was 3,825.² During fiscal 1973, a total of 4,975 of the above were visitors apprehended at the checkpoints and a majority of these were those who were in violation of the terms of temporary border passes (Form I-186).

¹⁹¹² The placement of the checkpoints and their operations are coordinated between the two sectors located in this district and with Border Patrol activities to the

east in Arizona. In actual operation the checkpoints, be they "permanent" or "temporary," have the same basic accouterments. Typically, about one-half mile to one mile south of the checkpoint is the first notification that the checkpoint is ahead. The notice is in the form of a black on yellow sign indicated "STOP AHEAD" which has floodlights for nighttime illumination, Handbook at 9-9. Next, about 200 yards from the checkpoint is another sign cautioning the traffic to slow down or to be careful; this sign usually has flashing yellow lights attached. For the fifty yards directly south of the checkpoint there are placed traffic cones evenly spaced along each side of the highway. The actual checkpoint has a sign indicating to the traffic to stop, with official Border Patrol vehicles parked on each side of the stop zone showing the official Border Patrol emblem and/or the designation U. S. OFFICERS. At this point the agents assigned at the "point," in their official uniform, conduct checking and inspection operations. Beyond the checkpoint is usually a sign indicating "THANK YOU."

While a large number of apprehensions are made at the checkpoints each year, as related above, the primary reason for their operation is that they effectively deter large numbers of aliens from illegally entering the country or violating the terms of any temporary crossing card they may have, because they form an effective obstacle and are located on all major routes north out of the border region.

The deterrence aspect of these traffic checkpoint operations is amply demonstrated by the fact that the illegal alien has to resort to the employment of professional smugglers to provide transportation around or through these checkpoints.

2. Apparently apprehensions other than those actually made at the checkpoint are included in these figures, but they are a representation of the total activity at these check-

points and the majority of apprehensions included therein are made at the checkpoints [R.T. 274, 396].

Some of these smuggling operations have developed into sophisticated and involved operations with the following general *modus operandi*:

1. Contact is made between the smuggler and the alien prior to the latter's leaving Mexico.

2. The aliens then make entry on foot, with possibly the aid of a "guide," or by use of temporary border passes. Then they enter vehicles approximately 2 or 20 miles inland after having passed through the Border Patrol's line watch activities.

3. To get through the traffic checkpoint they might use a "drop house," which acts as a staging area to keep the aliens awaiting inclement weather, or any event that might cause the checkpoint to close down temporarily. Or, they may use a "decoy" vehicle, which is a vehicle loaded with illegal aliens which it is anticipated will be stopped at the checkpoint and would therefore occupy the agents so that other vehicles could pass through without inspection. They even use "scout cars" to probe those roads where temporary checkpoints are maintained, so as to advise other vehicles whether it is safe to proceed.

4. The "load" vehicles themselves can be of any type of conveyance and the methods used to secrete aliens inside them are varied and often show some originality. Unfortunately, sometimes these are very dangerous to the aliens themselves. It has been reported, for example, that it is not at all unusual for an alien to die from asphyxiation while concealed in an automobile trunk or a tank car.

5. The cost of the transportation provided to the aliens is approximately \$225 to \$250 for each alien for the trip through the checkpoint on to the Los Angeles area. Since smuggling operations are almost exclusively "cash and carry" businesses and the average income among Mexican nationals who may wish to seek residence here illegally is quite small, this cost tends to act as a very significant deterrent in and of

itself. The checkpoints are the major reason for such a high price and if they were discontinued for any length of time it would be one more encouragement to illegal immigration.

The deterrent impact of these checkpoints has been noted on several occasions when they resumed operation unexpectedly and a great number of aliens were apprehended.

The evidence presented before this court clearly established that there is no reasonable or effective alternative method of detection and apprehension available to the Border Patrol in the absence of the checkpoints, for even a geometric increase in its personnel or line watch would not leave any control over those admitted as temporary visitors from Mexico.

Of the approximately half million illegal aliens apprehended in fiscal 1973, virtually none were prosecuted, unless they presented counterfeit or altered documents or aided in smuggling endeavors.

This district has only 3 percent of the total length of land borders, and yet fully 30 percent of all apprehensions of deportable aliens made in the United States are made within this district.

Mr. Justice WHITE, with whom Mr. Justice BLACKMUN joins, concurring in the judgment.

Given *Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973), with which I disagreed but which is now authoritative the results reached in these cases were largely foreordained. The Court purports to leave the question open, but it seems to me, my Brother REHNQUIST notwithstanding, that under the Court's opinions checkpoint investigative stops, without search, will be difficult to justify under the Fourth Amendment absent probable cause or reasonable suspicion. In any event, the Court has thus dismantled major parts of the apparatus by which the Nation has attempted to in-

tercept millions of aliens who enter and remain illegally in this country.

The entire system, however, has been notably unsuccessful in deterring or stemming this heavy flow; and its costs, including added burdens on the courts, have been substantial. Perhaps the Judiciary should not strain to accommodate the requirements of the Fourth Amendment to the needs of a system which at best can demonstrate only minimal effectiveness as long as it is lawful for business firms and others to employ aliens who are illegally in the country. This problem, which ordinary law enforcement has not been able to solve, essentially poses questions of national policy and is chiefly the business of Congress and the Executive Branch rather than the courts.

I concur in the judgment in these two cases.



422 U.S. 659, 45 L.Ed.2d 463

Richard A. GORDON et al.,
Petitioners,

v.

NEW YORK STOCK EXCHANGE,
INC., et al.
No. 74-304.

Argued March 25 and 26, 1975.

Decided June 26, 1975.

Private antitrust action was brought against two stock exchanges and two member firms challenging, among other things, the system of fixed commission rates. The United States District Court for the Southern District of New York, Morris E. Lasker, District Judge, 366 F.Supp. 1261, granted summary judgment for defendants and dismissed complaint, and plaintiff appealed. The Court of Appeals, 498 F.2d 1303, affirmed and certiorari was granted. The

Supreme Court, Mr. Justice Blackmun, held that general policy of Securities Exchange Act is one of self-regulation by the exchanges coupled with oversight by the Securities and Exchange Commission, that repeal of antitrust laws by implication is not favored, that determination of whether implied repeal of the antitrust law was necessary to make the Exchange Act provisions work was a matter for the courts, that summary judgment record provided an adequate basis for resolution of the question, that system of fixed commission rates, which system is under active supervision of the SEC, is beyond reach of the antitrust laws and that to interpose antitrust laws, which would bar fixed commission rates as per se violations of the Sherman Act, in face of positive SEC action would unduly interfere with intended operation of the Securities Exchange Act.

Decision of Court of Appeals affirmed.

Mr. Justice Douglas filed a concurring opinion.

Mr. Justice Stewart filed a concurring opinion in which Mr. Justice Brennan joined.

1. Securities Regulation §54

General policy of Securities Exchange Act is one of self-regulation by the securities exchanges coupled with oversight by the Securities and Exchange Commission. Securities Exchange Act of 1934, § 19(b) as amended 15 U.S.C.A. § 78s(b).

2. Securities Regulation §54

Although under the Securities Exchange Act it is for the securities exchanges, in the first instance, to develop governing rules, the Securities and Exchange Commission can compel adoption of those changes it feels are necessary to insure fair dealing and protection of the public. Securities Exchange Act of 1934, § 19(b) as amended 15 U.S.C.A. § 78s(b).

peachable and probative evidence is kept from the trier of fact and the truth-finding function of proceedings is substantially impaired or a trial totally aborted.

Admitting the evidence in such circumstances does not render judges participants in Fourth Amendment violations. The violation, if there was one, has already occurred and the evidence is at hand. Furthermore, there has been only mistaken, but unintentional and faultless, conduct by enforcement officers. Exclusion of the evidence does not cure the invasion of the defendant's rights which he has already suffered. Where an arrest has been made on probable cause but the defendant is acquitted, under federal law the defendant has no right to damages simply because his innocence has been proved. ¹⁵⁴¹ "A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does." *Pierson v. Ray*, 386 U.S. 547, 555, 87 S.Ct. 1213, 1218, 18 L.Ed.2d 288 (1967). The officer is also excused from liability for "acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied." *Ibid*. There is little doubt that as far as civil liability is concerned, the rule is the same under federal law where the officer mistakenly but reasonably believes he has probable cause for an arrest. In *Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), the Court announced generally that officers of the executive branch of the government should be immune from liability where their action is reasonable "in light of all the circumstances, coupled with good-faith belief." *Id.*, at 247-248, 94 S.Ct., at 1692. The Court went on to say:

"Public officials, whether governors, mayors or police, legislators or judges, who fail to make decisions when they are needed or who do not act to implement decisions when they are made do not fully and faithfully perform the duties of their offices. Implicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition that

they may error. The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all." *Id.*, at 241-242, 94 S.Ct. at 1689 (footnote omitted).

The Court has proceeded on this same basis in other contexts. *O'Connor v. Donaldson*, 422 U.S. 563, 95 S.Ct. 2486, 45 L.Ed.2d 396 (1975); *Wood v. Strickland*, 420 U.S. 308, 95 S.Ct. 992, 43 L.Ed.2d 214 (1975).

If the defendant in criminal cases may not recover for a mistaken but good-faith invasion of his privacy, it ¹⁵⁴² makes even less sense to exclude the evidence solely on his behalf. He is not at all recompensed for the invasion by merely getting his property back. It is often contraband and stolen property to which he is not entitled in any event. He has been charged with crime and is seeking to have probative evidence against him excluded, although often it is the instrumentality of the crime. There is very little equity in the defendant's side in these circumstances. The exclusionary rule, a judicial construct, seriously short-changes the public interest as presently applied. I would modify it accordingly.



428 U.S. 543, 49 L.Ed.2d 1116

UNITED STATES, Petitioner,

v.

Amado MARTINEZ-FUERTE et al.

Rodolfo SIFUENTES, Petitioner,

v.

UNITED STATES.

Nos. 74-1560, 75-5387.

Argued April 26, 1976.

Decided July 6, 1976.

On consolidated appeals the Court of Appeals, Ninth Circuit, 514 F.2d 308, re-

versed convictions for transportation of illegal aliens or inducing illegal entry, and for conspiracy, and affirmed orders of suppression of evidence obtained at border patrol checkpoints. The Court of Appeals for the Fifth Circuit, 517 F.2d 1402, in an order conflicting with the decision of the Ninth Circuit Court of Appeals, affirmed a conviction, ruling that routine checkpoint stops were consistent with the Fourth Amendment. On grants of certiorari, the Supreme Court, Mr. Justice Powell, held that vehicle stops at a fixed checkpoint for brief questioning of its occupants, even though there is no reason to believe the particular vehicle contains illegal aliens, are consistent with the Fourth Amendment, and that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant. It was constitutional for the border patrol, after routinely stopping or slowing automobiles at permanent checkpoint, to refer motorists selectively to a secondary inspection area, for questions about citizenship and immigration status, on basis of criteria that would not sustain a roving-patrol stop, and there was no constitutional violation even if such referrals were made largely on basis of apparent Mexican ancestry.

Judgment of Court of Appeals for the Fifth Circuit affirmed; judgment of Court of Appeals for the Ninth Circuit reversed, and case remanded with directions.

Mr. Justice Brennan dissented and filed opinion in which Mr. Justice Marshall joined.

Order on remand, 538 F.2d 858.

1. Searches and Seizures ⇐7(1)

Fourth Amendment imposes limits on search and seizure power in order to prevent arbitrary and oppressive interference by enforcement officials with privacy and personal security of individuals. U.S.C.A. Const. Amend. 4.

2. Searches and Seizures ⇐7(1)

In delineating constitutional safeguards applicable in particular contexts, court weighs public interest against Fourth

Amendment interest of the individual. U.S.C.A. Const. Amend. 4.

3. Arrest ⇐63.1

Choice of checkpoint locations must be left largely to discretion of border patrol officials, to be exercised in accordance with statutes and regulations that may be applicable, and many incidents of checkpoint operations also must be committed to discretion of such officials, but reasonableness of checkpoint stop turns on factors such as location and method of operation of checkpoint, factors not susceptible to distortion of hindsight, and therefore will be open to poststop review notwithstanding absence of warrant. U.S.C.A. Const. Amend. 4.

4. Searches and Seizures ⇐7(1)

To accommodate public and private interests, some quantum of individualized suspicion is usually prerequisite to constitutional search or seizure, but Fourth Amendment imposes no irreducible requirement of such suspicion. U.S.C.A. Const. Amend. 4.

5. Searches and Seizures ⇐7(10)

Sanctity of private dwellings is ordinarily afforded the most stringent Fourth Amendment protection; one's expectation of privacy in automobile and of freedom in its operation is significantly different from traditional expectation of privacy and freedom in one's residence. U.S.C.A. Const. Amend. 4.

6. Searches and Seizures ⇐7(10)

Decision of border patrol to locate checkpoint at San Clemente was reasonable in view of needs of law enforcement furthered by such location, high absolute number of apprehensions at such checkpoint, and fact that San Clemente was selected as location where San Diego-to-Los Angeles traffic was lightest, thereby minimizing interference with legitimate traffic. U.S.C.A. Const. Amend. 4.

7. Arrest ⇐63.1

It was constitutional for border patrol to routinely stop or slow automobiles at permanent checkpoint, and thereafter to refer motorists selectively to secondary in-

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spection area, for questions about citizenship and immigration status, on basis of criteria that would not sustain roving-patrol stop, and there was no constitutional violation even if such referrals were made largely on basis of apparent Mexican ancestry; border patrol officers had wide discretion in selecting motorists to be diverted for the brief questioning involved. U.S.C.A. Const. Amend. 4; Immigration and Nationality Act, §§ 101 et seq., 274(a)(2, 4), 287(a)(1, 3), 8 U.S.C.A. §§ 1101 et seq., 1324(a)(2, 4), 1357(a)(1, 3); Act Oct. 3, 1965, § 21(e), 79 Stat. 921.

8. Arrest ⇨63.1

Visible manifestations of border patrol field officers' authority at permanent checkpoint provided substantially same assurances to automobile occupants as warrant provides to residential occupant, and in light of inapplicability of other purposes served by requirement of warrant, warrant giving judicial authorization to particular, fixed checkpoint location or to practice of making routine stops for brief questioning was not necessary. U.S.C.A. Const. Amend. 4.

9. Searches and Seizures ⇨3.1

One purpose of search warrant requirement is to prevent hindsight from coloring evaluations of reasonableness of search or seizure, and another is to substitute judgment of magistrate for that of searching or seizing officer. U.S.C.A. Const. Amend. 4.

10. Searches and Seizures ⇨7(10)

Principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on scope of stop. U.S.C.A. Const. Amend. 4.

Syllabus *

1. The Border Patrol's routine stopping of a vehicle at a permanent checkpoint located on a major highway away from the Mexican border for brief questioning of the vehicle's occupants is consistent with the Fourth Amendment, and the stops

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of

and questioning may be made at reasonably located checkpoints in the absence of any individualized suspicion that the particular vehicle contains illegal aliens. Pp. 3082-3085.

(a) To require that such stops always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car necessary to identify it as a possible carrier of illegal aliens. Such a requirement also would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly. P. 3082.

(b) While the need to make routine checkpoint stops is great, the consequent intrusion on Fourth Amendment interests is quite limited, the interference with legitimate traffic being minimal and checkpoint operations involving less discretionary enforcement activity than roving-patrol stops. Pp. 3082-3084.

(c) Under the circumstances of these checkpoint stops, which do not involve searches, the Government or public interest in making such stops outweighs the constitutionally protected interest of the private citizen. Pp. 3083-3084.

(d) With respect to the checkpoint involved in No. 74-1560, it is constitutional to refer motorists selectively to a secondary inspection area for limited inquiry on the basis of criteria that would not sustain a roving-patrol stop, since the intrusion is sufficiently minimal that no particularized reason need exist to justify it. P. 3085.

2. Operation of a fixed checkpoint need not be authorized in advance by a judicial warrant. *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930, distinguished. The visible manifestations of the field officers' authority at a checkpoint provide assurances to motorists that the officers are acting lawfully. Moreover, the purpose of a warrant

the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Cite as 96 S.Ct. 3074 (1976)

in preventing hindsight from coloring the evaluation of the reasonableness of a search or seizure is inapplicable here, since the reasonableness of checkpoint stops turns on factors such as the checkpoint's location and method of operation. These factors are not susceptible of the distortion of hindsight, and will be open to post-stop review notwithstanding the absence of a warrant. Nor is the purpose of a warrant in substituting a magistrate's judgment for that of the searching or seizing officer applicable, since the need for this is reduced when the decision to "seize" is not entirely in the hands of the field officer and deference is to be given to the administrative decisions of higher ranking officials in selecting the checkpoint locations. Pp. 3085-3086.

No. 74-1560, 514 F.2d 308, reversed and remanded; No. 75-5387, affirmed.

Ballard Bennett, Weslaco, Tex., for petitioner in No. 75-5387, by Mark L. Evans, Washington, D. C., for petitioner in No. 74-1560 and respondent in No. 75-5387.

Charles M. Sevilla, San Diego, Cal., for respondent in No. 75-1560.

Mr. Justice POWELL delivered the opinion of the Court.

These cases involve criminal prosecutions for offenses relating to the transportation of illegal Mexican aliens. Each defendant was arrested at a permanent checkpoint operated by the Border Patrol away from the international border with Mexico, and each sought the exclusion of certain evidence on the ground that the operation of the checkpoint was incompatible with the Fourth Amendment. In each instance whether the Fourth Amendment was violated turns primarily on whether a vehicle may be stopped at a fixed checkpoint for brief questioning of its occupants even though there is no reason to believe the particular vehicle contains illegal aliens. We reserved this question last Term in *United States v. Ortiz*, 422 U.S. 891, 897 n. 3, 95 S.Ct. 2585, 2589, 45 L.Ed.2d 623 (1975). We hold today that such stops are consist-

ent with the Fourth Amendment. We also hold that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant.

I

A

The respondents in No. 74-1560 are defendants in three separate prosecutions resulting from arrests made on three different occasions at the permanent immigration checkpoint on Interstate 5 near San Clemente, Cal. Interstate 5 is the principal highway between San Diego and Los Angeles, and the San Clemente checkpoint is 66 road miles north of the Mexican border. We previously have described the checkpoint as follows:

"Approximately one mile south of the checkpoint is a large black on yellow sign with flashing yellow lights over the highway stating 'ALL VEHICLES, STOP AHEAD, 1 MILE.' Three-quarters of a mile further north are two black on yellow signs suspended over the highway with flashing lights stating 'WATCH FOR BRAKE LIGHTS.' At the checkpoint, which is also the location of a State of California weighing station, are two large signs with flashing red lights suspended over the highway. These signs each state 'STOP HERE—U. S. OFFICERS.' Placed on the highway are a number of orange traffic cones funneling traffic into two lanes where a Border Patrol agent in full dress uniform, standing behind a white on red 'STOP' sign checks traffic. Blocking traffic in the unused lanes are official U. S. Border Patrol vehicles with flashing red lights. In addition, there is a permanent building which houses the Border Patrol office and temporary detention facilities. There are also floodlights for nighttime operation." *United States v. Ortiz*, *supra*, at 893, 95 S.Ct., at 2587, quoting *United States v. Baca*, 368 F.Supp. 398, 410-411 (SD Cal.1973).

The "point" agent standing between the two lanes of traffic visually screens all

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northbound vehicles, which the checkpoint brings to a virtual, if not a complete, halt.¹ Most motorists are allowed to resume their progress without any oral inquiry or close visual examination. In a relatively small number of cases the "point" agent will conclude that further inquiry is in order. He directs these cars to a secondary inspection area, where their occupants are asked about their citizenship and immigration status. The Government informs us that at San Clemente the average length of an investigation in the secondary inspection area is three to five minutes. Brief for United States 53. A direction to stop in the secondary inspection area could be based on something suspicious about a particular car passing through the checkpoint, but the Government concedes that none of the three stops at issue in No. 74-1560 was based on any articulable suspicion. During the period when these stops were made, the checkpoint was operating under a magistrate's "warrant of inspection," which authorized the Border Patrol to conduct a routine-stop operation at the San Clemente location.²

We turn now to the particulars of the stops involved in No. 74-1560, and the procedural history of the case. Respondent Amado Martinez-Fuerte approached the checkpoint driving a vehicle containing two female passengers. The women were illegal Mexican aliens who had entered the United States at the San Ysidro port of entry by using false papers and rendez-

voused with Martinez-Fuerte in San Diego to be transported northward. At the checkpoint their car was directed to the secondary inspection area. Martinez-Fuerte produced documents showing him to be a lawful resident alien, but his passengers admitted being present in the country unlawfully. He was charged, *inter alia*, with two counts of illegally transporting aliens in violation of 8 U.S.C. § 1324(a)(2). He moved before trial to suppress all evidence stemming from the stop on the ground that the operation of the checkpoint was in violation of the Fourth Amendment.³ The motion to suppress was denied, and he was convicted on both counts after a jury trial.

Respondent Jose Jiminez-Garcia attempted to pass through the checkpoint while driving a car containing one passenger. He had picked the passenger up by prearrangement in San Ysidro after the latter had been smuggled across the border. Questioning at the secondary inspection area revealed the illegal status of the passenger, and Jiminez-Garcia was charged in two counts with illegally transporting an alien, 8 U.S.C. § 1324(a)(2), and conspiring to commit that offense, 18 U.S.C. § 371. His motion to suppress the evidence derived from the stop was granted.

Respondents Raymond Guillen and Fernando Medrano-Barragan approached the checkpoint with Guillen driving and Medrano-Barragan and his wife as passengers. Questioning at the secondary inspection area revealed that Medrano-Barragan and

1. The parties disagree as to whether vehicles not referred to the secondary inspection area are brought to a complete halt or merely "roll" slowly through the checkpoint. Resolution of this dispute is not necessary here, as we may assume, *arguendo*, that all motorists passing through the checkpoint are so slowed as to have been "seized."

2. The record does not reveal explicitly why a warrant was sought. Shortly before the warrant application, however, the Court of Appeals for the Ninth Circuit had held unconstitutional a routine stop and search conducted at a permanent checkpoint without such a warrant. See *United States v. Bowen*, 500 F.2d 960 (1974), *aff'd* on other grounds, 422 U.S. 916, 95 S.Ct. 2569, 45 L.Ed.2d 641 (1975); *United States v. Juarez-Rodriguez*, 498 F.2d 7 (1974).

Soon after the warrant issued, the Court of Appeals also held unconstitutional routine checkpoint stops conducted without a warrant. See *United States v. Esquer-Rivera*, 500 F.2d 313 (1974). See also n. 15, *infra*.

3. Each of the defendants in No. 74-1560 and the defendant in No. 75-5387 sought to suppress, among other things, the testimony of one or more illegal aliens. We noted in *United States v. Brignoni-Ponce*, 422 U.S. 873, 876 n. 2, 95 S.Ct. 2574, 2577, 45 L.Ed.2d 607 (1975), that "[t]here may be room to question whether voluntary testimony of a witness at trial, as opposed to a government agent's testimony about objects seized or statements overheard, is subject to suppression" The question again is not before us.

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his wife were illegal aliens. A subsequent search of the car uncovered three other illegal aliens in the trunk. Medrano-Barragan had led the other aliens across the border at the beach near Tijuana, Mexico, where they rendezvoused with Guillen, a United States citizen. Guillen and Medrano-Barragan were jointly indicted on four counts of illegally transporting aliens, 8 U.S.C. § 1324(a)(2), four counts of inducing the illegal entry of aliens, § 1324(a)(4), and one conspiracy count, 18 U.S.C. § 371. The District Court granted the defendants' motion to suppress.

Martinez-Fuerte appealed his conviction, and the Government appealed the granting of the motions to suppress in the respective prosecutions of Jiminez-Garcia and of Guillen and Medrano-Barragan.⁴ The Court of Appeals for the Ninth Circuit consolidated the three appeals, which presented the common question whether routine stops and interrogations at checkpoints are consistent with the Fourth Amendment.⁵ The Court of Appeals held, with one judge dissenting, that these stops violated the Fourth Amendment, concluding that a stop for inquiry is constitutional only if the Border Patrol reasonably suspects the presence of illegal aliens on the basis of articulable facts. It reversed Martinez-Fuerte's conviction, and affirmed the orders to suppress in the other cases. 514 F.2d 308 (1975). We reverse and remand.

B

Petitioner in No. 75-5387, Rodolfo Sifuentes, was arrested at the permanent immigration checkpoint on U. S. Highway 77 near Sarita, Tex. Highway 77 originates in Brownsville, and it is one of the two major highways running north from the lower Rio Grande valley. The Sarita checkpoint is

4. The prosecution of Martinez-Fuerte was before a different District Judge than were the other cases.
5. The principal question before the Court of Appeals was the constitutional significance of the "warrant of inspection" under which the checkpoint was operating when the defendants were stopped. See n. 15, *infra*. The Government, however, preserved the question whether

about 90 miles north of Brownsville, and 65-90 miles from the nearest points of the Mexican border. The physical arrangement of the checkpoint resembles generally that at San Clemente, but the checkpoint is operated differently in that the officers customarily stop all northbound motorists for a brief inquiry. Motorists whom the officers recognize as local inhabitants, however, are waved through the checkpoint without inquiry. Unlike the San Clemente checkpoint the Sarita operation was conducted without a judicial warrant.

Sifuentes drove up to the checkpoint without any visible passengers. When an agent approached the vehicle, however, he observed four passengers, one in the front seat and the other three in the rear, slumped down in the seats. Questioning revealed that each passenger was an illegal alien, although Sifuentes was a United States citizen. The aliens had met Sifuentes in the United States, by prearrangement, after swimming across the Rio Grande.

Sifuentes was indicted on four counts of illegally transporting aliens. 8 U.S.C. § 1324(a)(2). He moved on Fourth Amendment grounds to suppress the evidence derived from the stop. The motion was denied and he was convicted after a jury trial. Sifuentes renewed his Fourth Amendment argument on appeal, contending primarily that stops made without reason to believe a car is transporting aliens illegally are unconstitutional. The United States Court of Appeals for the Fifth Circuit affirmed the conviction, 517 F.2d 1402 (1975), relying on its opinion in *United States v. Santibanez*, 517 F.2d 922 (1975). There the Court of Appeals had ruled that routine checkpoint stops are consistent with the Fourth Amendment. We affirm.⁶

- routine checkpoint stops could be made absent a warrant.
6. We initially granted the Government's petition for a writ of certiorari in No. 74-1560, 423 U.S. 822, 96 S.Ct. 35, 46 L.Ed.2d 38, and later granted Sifuentes' petition in No. 75-5387 and directed that the cases be argued in tandem. 423 U.S. 945, 96 S.Ct. 355, 46 L.Ed.2d 277. Subsequently we granted the motion of the

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III

The Courts of Appeals for the Ninth and the Fifth Circuits are in conflict on the constitutionality of a law enforcement technique considered important by those charged with policing the Nation's borders. Before turning to the constitutional question, we examine the context in which it arises.

A

It has been national policy for many years to limit immigration into the United States. Since July 1, 1968, the annual quota for immigrants from all independent countries of the Western Hemisphere, including Mexico, has been 120,000 persons. Act of Oct. 3, 1965, § 21(e), 79 Stat. 921. Many more aliens than can be accommodated under the quota want to live and work in the United States. Consequently, large numbers of aliens seek illegally to enter or to remain in the United States. We noted last Term that "[e]stimates of the number of illegal immigrants [already] in the United States vary widely. A conservative estimate in 1972 produced a figure of about one million, but the Immigration and Naturalization Service now suggests there may be as many as 10 or 12 million aliens illegally in the country." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 2578, 45 L.Ed.2d 607 (1975) (footnote omitted). It is estimated that 85% of the illegal immigrants are from Mexico, drawn by the fact that economic opportunities are significantly greater in the United States than they are in Mexico. *United States v. Baca*, 368 F.Supp., at 402.

1552 Interdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems. The principal problem arises from surreptitious entries. *Id.*, at

Solicitor General to consolidate the cases for oral argument. 425 U.S. 931, 96 S.Ct. 1660, 48 L.Ed.2d 173.

7. The latter occurs particularly where "border passes" are issued to simplify passage between interrelated American and Mexican communities along the border. These passes authorize travel within 25 miles of the border for a 72-hour period. See 8 CFR § 212.6 (1976).

405. The United States shares a border with Mexico that is almost 2,000 miles long, and much of the border area is uninhabited desert or thinly populated arid land. Although the Border Patrol maintains personnel, electronic equipment, and fences along portions of the border, it remains relatively easy for individuals to enter the United States without detection. It also is possible for an alien to enter unlawfully at a port of entry by the use of falsified papers or to enter lawfully but violate restrictions of entry in an effort to remain in the country unlawfully.⁷ Once within the country, the aliens seek to travel inland to areas where employment is believed to be available, frequently meeting by prearrangement with friends or professional smugglers who transport them in private vehicles. *United States v. Brignoni-Ponce*, *supra*, 422 U.S., at 879, 95 S.Ct., at 2579.

The Border Patrol conducts three kinds of inland traffic-checking operations in an effort to minimize illegal immigration. Permanent checkpoints, such as those at San Clemente and Sarita, are maintained at or near intersections of important roads leading away from the border. They operate on a coordinated basis designed to avoid circumvention by smugglers and others who transport the illegal aliens. Temporary checkpoints, which operate like permanent ones, occasionally are established in other strategic locations. Finally, roving patrols are maintained to supplement the checkpoint system. See *Almeida-Sanchez v. United States*, 413 U.S. 266, 268, 93 S.Ct. 2535, 2537, 37 L.Ed.2d 596 (1973).⁸ In fiscal 1973, 175,511 deportable aliens were apprehended throughout the Nation by "line watch" agents stationed at the border itself. Traffic-checking operations in the interior apprehended approximately 55,300

8. All these operations are conducted pursuant to statutory authorizations empowering Border Patrol agents to interrogate those believed to be aliens as to their right to be in the United States and to inspect vehicles for aliens. 8 U.S.C. §§ 1357(a)(1), (a)(3). Under current regulations the authority conferred by § 1357(a)(3) may be exercised anywhere within 100 air miles of the border. 8 CFR § 287.1(a) (1976).

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more deportable aliens.⁹ Most of the traffic-checking apprehensions were at checkpoints, though precise figures are not available. *United States v. Baca*, *supra*, at 405, 407, and n. 2.

B

We are concerned here with permanent checkpoints, the locations of which are chosen on the basis of a number of factors. The Border Patrol believes that to assure effectiveness, a checkpoint must be (i) distant enough from the border to avoid interference with traffic in populated areas near the border, (ii) close to the confluence of two or more significant roads leading away from the border, (iii) situated in terrain that restricts vehicle passage around the checkpoint, (iv) on a stretch of highway compatible with safe operation, and (v) beyond the 25-mile zone in which "border passes," see n. 7, *supra*, are valid. *United States v. Baca*, *supra*, at 406.

[154] The record in No. 74-1560 provides a rather complete picture of the effectiveness of the San Clemente checkpoint. Approximately 10 million cars pass the checkpoint location each year, although the checkpoint actually is in operation only about 70% of the time.¹⁰ In calendar year 1973, approximately 17,000 illegal aliens were apprehended there. During an eight-day period in 1974 that included the arrests involved in No. 74-1560, roughly 146,000 vehicles passed through the checkpoint during 124½ hours of operation. Of these, 820 vehicles were referred to the secondary inspection area, where Border Patrol agents found 725 deportable aliens in 171 vehicles. In all but two cases, the aliens were discovered without a conventional search of the vehicle. A similar rate of apprehensions throughout the year would have resulted in an annual total of over 33,000, although the Govern-

ment contends that many illegal aliens pass through the checkpoint undetected. The record in No. 75-5387 does not provide comparable statistical information regarding the Sarita checkpoint. While it appears that fewer illegal aliens are apprehended there, it may be assumed that fewer pass by undetected, as every motorist is questioned.

III

[1, 2] The Fourth Amendment imposes limits on search-and-seizure powers in order to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals. See *United States v. Brignoni-Ponce*, 422 U.S., at 878, 95 S.Ct., at 2578; *United States v. Ortiz*, 422 U.S., at 895, 95 S.Ct., at 2588; *Camara v. Municipal Court*, 387 U.S. 523, 528, 87 S.Ct. 1727, 1730, 18 L.Ed.2d 930 (1967). In delineating the constitutional safeguards applicable in particular contexts, the Court has weighed the public interest against the Fourth Amendment interest of the individual, *United States v. Brignoni-Ponce*, *supra*, 422 U.S., at 878, 95 S.Ct., at 2578; *Terry v. Ohio*, 392 U.S. 1, 20-21, 88 S.Ct. 1868, 1879-1880, 20 L.Ed.2d 889 (1968), a process evident in our previous cases dealing with Border Patrol traffic-checking operations.

In *Almeida-Sanchez v. United States*, *supra*, the question was whether a roving-patrol unit constitutionally could search a vehicle for illegal aliens simply because it was in the general vicinity of the border. We recognized that important law enforcement interests were at stake but held that searches by roving patrols impinged so significantly on Fourth Amendment privacy interests that a search could be conducted without consent only if there was probable cause to believe that a car contained illegal aliens, at least in the absence of a judicial

thought to be smugglers, many of whom are lawfully in the United States.

10. The Sarita checkpoint is operated a comparable proportion of the time. "Down" periods are caused by personnel shortages, weather conditions, and—at San Clemente—peak traffic loads.

9. As used in these statistics, the term "deportable alien" means "a person who has been found to be deportable by an immigration judge, or who admits his deportability upon questioning by official agents." *United States v. Baca*, 368 F.Supp. 398, 404 (SD Cal.1973). Most illegal aliens are simply deported without prosecution. The Government routinely prosecutes persons

warrant authorizing random searches by roving patrols in a given area. Compare 413 U.S., at 273, 93 S.Ct., at 2539, with *id.*, at 283-285, 93 S.Ct., at 2544-2546 (Powell, J., concurring), and *id.*, at 288, 93 S.Ct., at 2547 (White, J., dissenting). We held in *United States v. Ortiz*, *supra*, that the same limitations applied to vehicle searches conducted at a permanent checkpoint.

In *United States v. Brignoni-Ponce*, *supra*, however, we recognized that other traffic-checking practices involve a different balance of public and private interests and appropriately are subject to less stringent constitutional safeguards. The question was under what circumstances a roving patrol could stop motorists in the general area of the border for brief inquiry into their residence status. We found that the interference with Fourth Amendment interests involved in such a stop was "modest," 422 U.S., at 880, 95 S.Ct., at 2579, while the inquiry served significant law enforcement needs. We therefore held that a roving-patrol stop need not be justified by probable cause and may be undertaken if the stopping officer is "aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion" that a vehicle contains illegal aliens. *Id.*, at 884, 95 S.Ct., at 2582.¹¹

IV

It is agreed that checkpoint stops are "seizures" within the meaning of the Fourth Amendment. The defendants contend primarily that the routine stopping of vehicles at a checkpoint is invalid because *Brignoni-Ponce* must be read as proscribing any stops in the absence of reasonable suspi-

cion. Sifuentes alternatively contends in No. 75-5387 that routine checkpoint stops are permissible only when the practice has the advance judicial authorization of a warrant. There was a warrant authorizing the stops at San Clemente but none at Sarita. As we reach the issue of a warrant requirement only if reasonable suspicion is not required, we turn first to whether reasonable suspicion is a prerequisite to a valid stop, a question to be resolved by balancing the interests at stake.

A

Our previous cases have recognized that maintenance of a traffic-checking program in the interior is necessary because the flow of illegal aliens cannot be controlled effectively at the border. We note here only the substantiality of the public interest in the practice of routine stops for inquiry at permanent checkpoints, a practice which the Government identifies as the most important of the traffic-checking operations. Brief for United States in No. 74-1560, pp. 19-20.¹² These checkpoints are located on important highways; in their absence such highways would offer illegal aliens a quick and safe route into the interior. Routine checkpoint inquiries apprehend many smugglers and illegal aliens who succumb to the lure of such highways. And the prospect of such inquiries forces others onto less efficient roads that are less heavily traveled, slowing their movement and making them more vulnerable to detection by roving patrols. Cf. *United States v. Brignoni-Ponce*, 422 U.S., at 883-885, 95 S.Ct., at 2581-2582.

A requirement that stops on major routes inland always be based on reasonable suspi-

able barriers to the exercise of virtually all search-and-seizure powers. In any event, these arguments tend to go to the general proposition that all traffic-checking procedures are impermissible, a premise our previous cases reject. The defendants do not suggest persuasively that the particular law enforcement needs served by checkpoints could be met without reliance on routine checkpoint stops. Compare *United States v. Brignoni-Ponce*, 422 U.S., at 883, 95 S.Ct., at 2581 (effectiveness of roving patrols not defeated by reasonable suspicion requirement), with *infra*, at this page.

11. On the facts of the case, we concluded that the stop was impermissible because reasonable suspicion was lacking.

12. The defendants argue at length that the public interest in maintaining checkpoints is less than is asserted by the Government because the flow of illegal immigrants could be reduced by means other than checkpoint operations. As one alternative they suggest legislation prohibiting the knowing employment of illegal aliens. The logic of such elaborate less-restrictive-alternative arguments could raise insuper-

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cion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens. In particular, such a requirement would largely eliminate any deterrent to the conduct of well-disguised smuggling operations, even though smugglers are known to use these highways regularly.

B

While the need to make routine checkpoint stops is great, the consequent intrusion on Fourth Amendment interests is quite limited. The stop does intrude to a limited extent on motorists' right to "free passage without interruption," *Carroll v. United States*, 267 U.S. 132, 154, 45 S.Ct. 280, 285, 69 L.Ed. 543 (1925), and arguably on their right to personal security. But it involves only a brief detention of travelers during which

"[a]ll that is required of the vehicle's occupants is a response to a brief question or two and possibly the production of a document evidencing a right to be in the United States." *United States v. Brignoni-Ponce*, *supra*, 422 U.S., at 880, 95 S.Ct., at 2579.

Neither the vehicle nor its occupants are searched, and visual inspection of the vehicle is limited to what can be seen without a search. This objective intrusion—the stop itself, the questioning, and the visual inspection—also existed in roving-patrol stops. But we view checkpoint stops in a different light because the subjective intrusion—the generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop. In *Ortiz*, we noted:

"[T]he circumstances surrounding a checkpoint stop and search are far less intrusive than those attending a roving-patrol stop. Roving patrols often operate at night on seldom-traveled roads, and their approach may frighten motorists. At traffic checkpoints the motorist can see that other vehicles are being stopped, he can see visible signs of the officers'

authority, and he is much less likely to be frightened or annoyed by the intrusion."

422 U.S., at 894–895, 95 S.Ct., at 2587.

In *Brignoni-Ponce*, we recognized that Fourth Amendment analysis in this context also must take into account the overall degree of interference with legitimate traffic. 422 U.S., at 882–883, 95 S.Ct., at 2580–2581. We concluded there that random roving-patrol stops could not be tolerated because they "would subject the residents of [border] areas to potentially unlimited interference with their use of the highways, solely at the discretion of Border Patrol officers. . . . [They] could stop motorists at random for questioning, day or night, anywhere within 100 air miles of the 2,000-mile border, on a city street, a busy highway, or a desert road . . ." *Ibid*. There also was a grave danger that such unreviewable discretion would be abused by some officers in the field. *Ibid*.

[3] Routine checkpoint stops do not intrude similarly on the motoring public. First, the potential interference with legitimate traffic is minimal. Motorists using these highways are not taken by surprise as they know, or may obtain knowledge of, the location of the checkpoints and will not be stopped elsewhere. Second, checkpoint operations both appear to and actually involve less discretionary enforcement activity. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources. We may assume that such officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class. And since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals than there was in the case of roving-patrol stops. Moreover, a claim that a particular

exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review.¹³

¹⁵⁶⁰ [The defendants arrested at the San Clemente checkpoint suggest that its operation involves a significant extra element of intrusiveness in that only a small percentage of cars are referred to the secondary inspection area, thereby "stigmatizing" those diverted and reducing the assurances provided by equal treatment of all motorists. We think defendants overstate the consequences. Referrals are made for the sole purpose of conducting a routine and limited inquiry into residence status that cannot feasibly be made of every motorist where the traffic is heavy. The objective intrusion of the stop and inquiry thus remains minimal. Selective referral may involve some annoyance, but it remains true that the stops should not be frightening or offensive because of their public and relatively routine nature. Moreover, selective referrals—rather than questioning the occupants of every car—tend to advance some Fourth Amendment interests by minimizing the intrusion on the general motoring public.

C

[4] The defendants note correctly that to accommodate public and private interests some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure.¹⁴ See *Terry v. Ohio*, 392

¹⁵⁶¹ U.S., at 21, and n. 18, 88 S.Ct., at 1880. But the Fourth Amendment imposes no irreducible requirement of such suspicion. This is clear from *Camara v. Municipal*

Court, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967). See also *Almeida-Sanchez v. United States*, 413 U.S., at 283-285, 93 S.Ct., at 2544-2546 (Powell, J., concurring); *id.*, at 288, 93 S.Ct., at 2547 (White, J., dissenting); *Colonnade Catering Corp. v. United States*, 397 U.S. 72, 90 S.Ct. 774, 25 L.Ed.2d 60 (1970); *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972); *Carroll v. United States*, 267 U.S., at 154, 45 S.Ct., at 285. In *Camara* the Court required an "area" warrant to support the reasonableness of inspecting private residences within a particular area for building code violations, but recognized that "specific knowledge of the condition of the particular dwelling" was not required to enter any given residence. 387 U.S., at 538, 87 S.Ct., at 1736. In so holding, the Court examined the government interests advanced to justify such routine intrusions "upon the constitutionally protected interests of the private citizen," *id.*, at 534-535, 87 S.Ct., at 1734, and concluded that under the circumstances the government interests outweighed those of the private citizen.

[5, 6] We think the same conclusion is appropriate here, where we deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection. See, e. g., *McDonald v. United States*, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948). As we have noted earlier, one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy

13. The choice of checkpoint locations must be left largely to the discretion of Border Patrol officials, to be exercised in accordance with statutes and regulations that may be applicable. See n. 15, *infra*. Many incidents of checkpoint operation also must be committed to the discretion of such officials. But see *infra*, at 3086.

14. Stops for questioning, not dissimilar to those involved here, are used widely at state and local levels to enforce laws regarding drivers' licenses, safety requirements, weight limits, and similar matters. The fact that the purpose of such laws is said to be administra-

tive is of limited relevance in weighing their intrusiveness on one's right to travel; and the logic of the defendants' position, if realistically pursued, might prevent enforcement officials from stopping motorists for questioning on these matters in the absence of reasonable suspicion that a law was being violated. As such laws are not before us, we intimate no view respecting them other than to note that this practice of stopping automobiles briefly for questioning has a long history evidencing its utility and is accepted by motorists as incident to highway use.

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and freedom in one's residence. *United States v. Ortiz*, 422 U.S., at 896 n. 2, 95 S.Ct., at 2588; see *Cardwell v. Lewis*, 417 U.S. 583, 590-591, 94 S.Ct. 2464, 2469-2470, 41 L.Ed.2d 325 (1974) (plurality opinion). And the reasonableness of the procedures followed in making these checkpoint stops makes the resulting intrusion on the interests of motorists minimal. On the other hand, the purpose of the stops is legitimate and in the public interest, and the need for this enforcement technique is demonstrated by the records in the cases before us. Accordingly, we hold that the stops and questioning at issue may be made in the absence of any individualized suspicion at reasonably located checkpoints.¹⁵

15. As a judicial warrant authorized the Border Patrol to make routine stops at the San Clemente checkpoint, the principal question addressed by the Court of Appeals for the Ninth Circuit in No. 74-1560 was whether routine checkpoint stops were constitutional when authorized by warrant. Cf. n. 5, *supra*. The Court of Appeals held alternatively that a warrant never could authorize such stops, 514 F.2d 308, 318 (1975), and that it was unreasonable to issue a warrant authorizing routine stops at the San Clemente location. *Id.*, at 321-322. In reaching the latter conclusion, the Court of Appeals relied on (i) "the [low] frequency with which illegal aliens pass through the San Clemente checkpoint," (ii) the distance of the checkpoint from the border, and (iii) the interference with legitimate traffic. *Ibid.* We need not address these holdings specifically, as we conclude that no warrant is needed. But we deem the argument by the defendants in No. 74-1560 in support of the latter holding to raise the question whether, even though a warrant is not required, it is unreasonable to locate a checkpoint at San Clemente.

We answer this question in the negative. As indicated above, the choice of checkpoint locations is an administrative decision that must be left largely within the discretion of the Border Patrol, see n. 13, *supra*; cf. *Camara v. Municipal Court*, 387 U.S. 523, 538, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930 (1967). We think the decision to locate a checkpoint at San Clemente was reasonable. The location meets the criteria prescribed by the Border Patrol to assure effectiveness, see *supra*, at 3080, and the evidence supports the view that the needs of law enforcement are furthered by this location. The absolute number of apprehensions at the checkpoint is high, see *supra*, at 3081, confirming Border Patrol judgment that significant numbers of illegal aliens regularly use Inter-

16. We further believe that it is constitutional to refer motorists selectively to the secondary inspection area at the San Clemente checkpoint on the basis of criteria that would not sustain a roving-patrol stop. Thus, even if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry,¹⁶ we perceive no constitutional violation. Cf. *United States v. Brignoni-Ponce*, 422 U.S., at 885-887, 95 S.Ct., at 2582-2583. As the intrusion here is sufficiently minimal that no particularized reason need exist to justify it, we think it follows that the Border Patrol officers must have wide discretion in selecting the motorists to be diverted for the brief questioning involved.¹⁷

state 5 at this point. Also, San Clemente was selected as the location where traffic is lightest between San Diego and Los Angeles, thereby minimizing interference with legitimate traffic.

No question has been raised about the reasonableness of the location of the Sarita checkpoint.

16. The Government suggests that trained Border Patrol agents rely on factors in addition to apparent Mexican ancestry when selectively diverting motorists. Brief for United States in No. 75-5387, p. 9; see *United States v. Brignoni-Ponce*, 422 U.S., at 884-885, 95 S.Ct., at 2581. This assertion finds support in the record. Less than 1% of the motorists passing the checkpoint are stopped for questioning, whereas American citizens of Mexican ancestry and legally resident Mexican citizens constitute a significantly larger proportion of the population of southern California. The 1970 census figures, which may not fully reflect illegal aliens, show the population of California to be approximately 19,958,000 of whom some 3,102,000, or 16%, are Spanish-speaking or of Spanish surname. The equivalent percentages for metropolitan San Diego and Los Angeles are 13% and 18% respectively. U. S. Department of Commerce, 1970 Census of Population, vol. 1, pt. 6, Tables 48, 140. If the statewide population ratio is applied to the approximately 146,000 vehicles passing through the checkpoint during the eight days surrounding the arrests in No. 74-1560, roughly 23,400 would be expected to contain persons of Spanish or Mexican ancestry, yet only 820 were referred to the secondary area. This appears to refute any suggestion that the Border Patrol relies extensively on apparent Mexican ancestry standing alone in referring motorists to the secondary area.

17. Of the 820 vehicles referred to the secondary inspection area during the eight days surround-

V

[8, 9] Sifuentes' alternative argument is that routine stops at a checkpoint are permissible only if a warrant has given judicial authorization to the particular checkpoint location and the practice of routine stops. A warrant requirement in these circumstances draws some support from *Camara*, where the Court held that, absent consent, an "area" warrant was required to make a building code inspection, even though the search could be conducted absent cause to believe that there were violations in the building searched.¹⁸

¹⁵⁶⁵ We do not think, however, that *Camara* is an apt model. It involved the search of private residences, for which a warrant traditionally has been required. See, e. g., *McDonald v. United States*, 335 U.S. 451, 69 S.Ct. 191, 93 L.Ed. 153 (1948). As developed more fully above, the strong Fourth Amendment interests that justify the warrant requirement in that context are absent here. The degree of intrusion upon privacy that may be occasioned by a search of a house hardly can be compared with the minor interference with privacy resulting from the mere stop for questioning as to residence. Moreover, the warrant requirement in *Camara* served specific Fourth Amendment interests to which a warrant requirement here would make little contribution. The Court there said:

"[W]hen [an] inspector [without a warrant] demands entry, the occupant has no

ing the arrests involved in No. 74-1560, roughly 20% contained illegal aliens. *Supra*, at 3081. Thus, to the extent that the Border Patrol relies on apparent Mexican ancestry at this checkpoint, see n. 16, *supra*, that reliance clearly is relevant to the law enforcement need to be served. Cf. *United States v. Brignoni-Ponce*, *supra*, at 886-887, 95 S.Ct., at 2583, where we noted that "[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor . . .," although we held that apparent Mexican ancestry by itself could not create the reasonable suspicion required for a roving-patrol stop. Different considerations would arise if, for example, reliance were put on apparent Mexican ancestry at a checkpoint operated near the Canadian border.

way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization." 387 U.S., at 532, 87 S.Ct., at 1732.

A warrant provided assurance to the occupant on these scores. We believe that the visible manifestations of the field officers' authority at a checkpoint provide substantially the same assurances in this case.

Other purposes served by the requirement of a warrant also are inapplicable here. One such purpose is to prevent hindsight from coloring the evaluation of the reasonableness of a search or seizure. Cf. *United States v. Watson*, 423 U.S. 411, 455-456, n. 22, 96 S.Ct. 820, 843, 46 L.Ed.2d 598 (1976) (Marshall, J., dissenting). The reasonableness of checkpoint stops, however, turns on factors such as the location and method of operation of the checkpoint, factors that are not susceptible to the distortion of hindsight, and therefore will be open to post-stop review notwithstanding the absence of a warrant. Another purpose for a warrant requirement is to substitute the judgment of the magistrate for that of the searching or seizing officer. *United States v. United States District Court*, 407 U.S. 297, 316-318, 92 S.Ct. 2125, 2136-2137, 32 L.Ed.2d 752 (1972). But the need for this is reduced when the decision to "seize" is not entirely in the hands of the officer in the

¹⁵⁶⁶ 18. There also is some support for a warrant requirement in the concurring and dissenting opinions in *Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973), which commanded the votes of five Justices. See *id.*, at 283-285, 93 S.Ct., at 2544-2545 (Powell, J., concurring); *id.*, at 288, 93 S.Ct., at 2547 (White, J., dissenting). The burden of these opinions, however, was that an "area" warrant could serve as a substitute for the individualized probable cause to search that otherwise was necessary to sustain roving-patrol searches. As particularized suspicion is not necessary here, the warrant function discussed in *Almeida-Sanchez* is not an issue in these cases.

field, and deference is to be given to the administrative decisions of higher ranking officials.

VI

[10] In summary, we hold that stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment and need not be authorized by warrant.¹⁹ The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop. See *Terry v. Ohio*, 392 U.S., at 24-27, 88 S.Ct., at 1881-1883; *United States v. Brignoni-Ponce*, 422 U.S., at 881-882, 95 S.Ct., at 2580-2581. We have held that checkpoint searches are constitutional only if justified by consent or probable cause to search. *United States v. Ortiz*, 422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975). And our holding today is limited to the type of stops described in this opinion. "[A]ny further detention . . . must be based on consent or probable cause." *United States v. Brignoni-Ponce*, *supra*, at 882, 95 S.Ct., at 2580. None of the defendants in these cases argues that the stopping officers exceeded these limitations. Consequently, we affirm the judgment of the Court of Appeals for the Fifth Circuit, which had affirmed the conviction of Sifuentes. We reverse the judgment of the Court of Appeals for the Ninth Circuit and remand the case with directions to affirm

19. Mr. Justice BRENNAN's dissenting opinion reflects unwarranted concern in suggesting that today's decision marks a radical new intrusion on citizens' rights: It speaks of the "evisceration of Fourth Amendment protections," and states that the Court "virtually empties the Amendment of its reasonableness requirement." *Post*, at 3087, 3088. Since 1952, Act of June 27, 1952, 66 Stat. 233, Congress has expressly authorized persons believed to be aliens to be interrogated as to residence, and vehicles "within a reasonable distance" from the border to be searched for aliens. See n. 8, *supra*. The San Clemente checkpoint has been operating at or near its present location throughout the intervening 24 years. Our prior cases have limited significantly the reach of this congressional authorization, requiring probable cause for any vehicle search in the interior and reasonable suspicion for inquiry stops by roving patrols. See *supra*, at 3081-3082. Our holding today,

the conviction of Martinez-Fuerte and to remand the other cases to the District Court for further proceedings.

It is so ordered.

Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL joins, dissenting.

Today's decision is the ninth this Term marking the continuing evisceration of Fourth Amendment protections against unreasonable searches and seizures. Early in the Term, *Texas v. White*, 423 U.S. 67, 96 S.Ct. 304, 46 L.Ed.2d 209 (1975), permitted the warrantless search of an automobile in police custody despite the unreasonableness of the custody¹ and opportunity to obtain a warrant. *United States v. Watson*, 423 U.S. 411, 96 S.Ct. 820, 46 L.Ed.2d 598 (1976), held that regardless of whether opportunity exists to obtain a warrant, an arrest in a public place for a previously committed felony never requires a warrant, a result certainly not fairly supported by either history or precedent. See *id.*, at 433, 96 S.Ct., at 832. (Marshall, J., dissenting). *United States v. Santana*, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d 300 (1976), went further and approved the warrantless arrest for a felony of a person standing on the front porch of her residence. *United States v. Miller*, 425 U.S. 435, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976), narrowed the Fourth Amendment's protection of privacy by de-

approving routine stops for brief questioning (a type of stop familiar to all motorists) is confined to permanent checkpoints. We understand, of course, that neither long-standing congressional authorization nor widely prevailing practice justifies a constitutional violation. We do suggest, however, that against this background and in the context of our recent decisions, the rhetoric of the dissent reflects unjustified concern.

The dissenting opinion further warns:

"Every American citizen of Mexican ancestry and every Mexican alien lawfully in this country must know after today's decision that he travels the fixed checkpoint highways at [his] risk" *Post*, at 3089.

For the reason stated in n. 16, *supra*, this concern is misplaced. Moreover, upon a proper showing, courts would not be powerless to prevent the misuse of checkpoints to harass those of Mexican ancestry.

nying the existence of a protectible interest in the compilation of checks, deposit slips, and other records pertaining to an individual's bank account. *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976), precluded the assertion of Fourth Amendment claims in federal collateral relief proceedings. *United States v. Janis*, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976), held that evidence unconstitutionally seized by a state officer is admissible in a civil proceeding by or against the United States. *South Dakota v. Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000 (1976), approved sweeping inventory searches of automobiles in police custody irrespective of the particular circumstances of the case. Finally, in *Andresen v. Maryland*, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976), the Court, in practical effect, weakened the Fourth Amendment prohibition against general warrants.

Consistent with this purpose to debilitate Fourth Amendment protections, the Court's decision today virtually empties the Amendment of its reasonableness requirement by holding that law enforcement officials manning fixed checkpoint stations who make standardless seizures of persons do not violate the Amendment. This holding cannot be squared with this Court's recent decisions in *United States v. Ortiz*, 422 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975); *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975); ¹⁵⁶⁹ *Land and Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973). I dissent.

While the requisite justification for permitting a search or seizure may vary in certain contexts, compare *Beck v. Ohio*, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d 142 (1964), with *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), and *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), even in the exceptional situations permitting intrusions on less than probable cause, it has long been settled that justification must be measured by objective standards. Thus in the semi-

nal decision justifying intrusions on less-than-probable cause, *Terry v. Ohio*, *supra*, the Court said:

"The scheme of the Fourth Amendment becomes meaningful only when it is assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances. And in making that assessment it is imperative that the facts be judged against an *objective standard*

Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." 392 U.S., at 21-22, 88 S.Ct., at 1880 (emphasis added, footnote omitted).

"This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." 392 U.S., at 21 n. 18, 88 S.Ct., at 1880.

Terry thus made clear what common sense teaches: Conduct, to be reasonable, must pass muster under objective standards applied to specific facts.

We are told today, however, that motorists without number may be individually stopped, questioned, visually inspected, and then further detained without even a showing of articulable suspicion, see *ante*, at 3077, let alone the heretofore constitutional minimum of reasonable suspicion, a result that permits search and seizure to rest upon "nothing more substantial than inarticulate hunches." This defacement of Fourth Amendment protections is arrived at by a balancing process that overwhelms the individual's protection against unwarranted official intrusion by a governmental interest said to justify the search and seizure. But that method is only a convenient cover for condoning arbitrary official conduct, for the governmental interests relied on as warranting intrusion here are the same as those in *Almeida-Sanchez* and *Ortiz*, which re- ¹⁵⁷⁰

Cite as 96 S.Ct. 3074 (1976)

quired a showing of probable cause for roving-patrol and fixed checkpoint searches, and *Brignoni-Ponce*, which required at least a showing of reasonable suspicion based on specific articulable facts to justify roving-patrol stops. Absent some difference in the nature of the intrusion, the same minimal requirement should be imposed for checkpoint stops.

The Court assumes, and I certainly agree, that persons stopped at fixed checkpoints, whether or not referred to a secondary detention area, are "seized" within the meaning of the Fourth Amendment. Moreover, since the vehicle and its occupants are subjected to a "visual inspection," the intrusion clearly exceeds mere physical restraint, for officers are able to see more in a stopped vehicle than in vehicles traveling at normal speeds down the highway. As the Court concedes, *ante*, at 3082-3083, the checkpoint stop involves essentially the same intrusions as a roving-patrol stop, yet the Court provides no principled basis for distinguishing checkpoint stops.

Certainly that basis is not provided in the Court's reasoning that the subjective intrusion here is appreciably less than in the case of a stop by a roving patrol. ¹⁵⁷¹ *Brignoni-Ponce* nowhere bases the requirement of reasonable suspicion upon the subjective nature of the intrusion. In any event, the subjective aspects of checkpoint stops, even if different from the subjective aspects of roving-patrol stops, just as much require some principled restraint on law enforcement conduct. The motorist whose conduct

has been nothing but innocent—and this is overwhelmingly the case—surely resents his own detention and inspection. And checkpoints, unlike roving stops, detain thousands of motorists, a dragnet-like procedure offensive to the sensibilities of free citizens. Also, the delay occasioned by stopping hundreds of vehicles on a busy highway is particularly irritating.

In addition to overlooking these dimensions of subjective intrusion, the Court, without explanation, also ignores one major source of vexation. In abandoning any requirement of a minimum of reasonable suspicion, or even articulable suspicion, the Court in every practical sense renders meaningless, as applied to checkpoint stops, the *Brignoni-Ponce* holding that "standing alone [Mexican appearance] does not justify stopping all Mexican-Americans to ask if they are aliens."¹ 422 U.S., at 887, 95 S.Ct., at 2583. Since the objective is almost entirely the Mexican illegally in the country, checkpoint officials, uninhibited by any objective standards and therefore free to stop any or all motorists without explanation or excuse, wholly on whim, will perforce target motorists of Mexican appearance. The process will then inescapably discriminate against citizens of Mexican ancestry and Mexican aliens lawfully in this country for no other reason than that they unavoidably possess the same "suspicious" physical and grooming characteristics of illegal Mexican aliens. ¹⁵⁷²

Every American citizen of Mexican ancestry and every Mexican alien lawfully in this country must know after today's deci-

1. *Brignoni-Ponce*, which involved roving-patrol stops, said:

"[Mexican ancestry] alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country. Large numbers of native-born and naturalized citizens have the physical characteristics identified with Mexican ancestry, and even in the border area a relatively small proportion of them are aliens. The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor, but standing alone it does not justify stopping all Mexican-Americans to ask if

they are aliens." 422 U.S., at 886-887, 95 S.Ct., at 2583 (footnote omitted).

Today we are told that secondary referrals may be based on criteria that would not sustain a roving-patrol stop, and specifically that such referrals may be based largely on Mexican ancestry. *Ante*, at 3085. Even if the difference between *Brignoni-Ponce* and this decision is only a matter of degree, we are not told what justifies the different treatment of Mexican appearance or why greater emphasis is permitted in the less demanding circumstances of a checkpoint. That law in this country should tolerate use of one's ancestry as probative of possible criminal conduct is repugnant under any circumstances.

sion that he travels the fixed checkpoint highways at the risk of being subjected not only to a stop, but also to detention and interrogation, both prolonged and to an extent far more than for non-Mexican appearing motorists. To be singled out for referral and to be detained and interrogated must be upsetting to any motorist. One wonders what actual experience supports my Brethren's conclusion that referrals "should not be frightening or offensive because of their public and relatively routine nature." *Ante*, at 3084.² In point of fact, referrals, viewed in context, are not relatively routine; thousands are otherwise permitted to pass. But for the arbitrarily selected motorists who must suffer the de-

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2. The Court's view that "selective referrals—rather than questioning the occupants of every car—tend to advance some Fourth Amendment interests by minimizing the intrusion on the general motoring public," *ante*, at 3084, stands the Fourth Amendment on its head. The starting point of this view is the unannounced assumption that intrusions are generally permissible; hence, any minimization of intrusions serves Fourth Amendment interests. Under the Fourth Amendment, however, the status quo is nonintrusion, for as a general matter, it is unreasonable to subject the average citizen or his property to search or seizure. Thus, minimization of intrusion only lessens the aggravation to Fourth Amendment interests; it certainly does not further those interests.

3. *United States v. Ortiz*, 442 U.S. 891, 95 S.Ct. 2585, 45 L.Ed.2d 623 (1975), expressly recognized that such selectivity is a source of embarrassment: "Nor do checkpoint procedures significantly reduce the likelihood of embarrassment. Motorists whose cars are searched, unlike those who are only questioned, may not be reassured by seeing that the Border Patrol searches other cars as well." *Id.*, at 895, 95 S.Ct., at 2588.

4. Though today's decision would clearly permit detentions to be based solely on Mexican ancestry, the Court takes comfort in what appears to be the Border Patrol practice of not relying on Mexican ancestry standing alone in referring motorists for secondary detentions. *Ante*, at 3085 n. 16. See also *ante*, at 3086, n. 19. Good faith on the part of law enforcement officials, however, has never sufficed in this tribunal to substitute as a safeguard for personal freedoms or to remit our duty to effectuate constitutional guarantees. Indeed, with particular regard to the Fourth Amendment, *Terry v.*

lay and humiliation of detention and interrogation, the experience can obviously be upsetting.³ And that experience is particularly vexing for the motorist of Mexican ancestry who is selectively referred, knowing that the officers' target is the Mexican alien. That deep resentment will be stirred by a sense of unfair discrimination is not difficult to foresee.⁴

In short, if a balancing process is required, the balance should be struck, as in *Brignoni-Ponce*, to require that Border Patrol officers act upon at least reasonable suspicion in making checkpoint stops. In any event, even if a different balance were struck, the Court cannot, without ignoring the Fourth Amendment requirement of reasonableness,

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Ohio, 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968), held that "simple 'good faith on the part of the arresting officer is not enough.' If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *Beck v. Ohio* [379 U.S. 89,] at 97, 85 S.Ct. [223], at 229 [13 L.Ed.2d 142 (1964)].

Even if good faith is assumed, the affront to the dignity of American citizens of Mexican ancestry and Mexican aliens lawfully within the country is in no way diminished. The fact still remains that people of Mexican ancestry are targeted for examination at checkpoints and that the burden of checkpoint intrusions will lie heaviest on them. That, as the Court observes, *ante*, at 3085 n. 16, "[l]ess than 1% of the motorists passing the checkpoint are stopped for questioning," whereas approximately 16% of the population of California is Spanish-speaking or of Spanish surname, has little bearing on this point—or, for that matter, on the integrity of Border Patrol practices. There is no indication how many of the 16% have physical and grooming characteristics identifiable as Mexican. There is no indication what portion of the motoring public in California is of Spanish or Mexican ancestry. Given the socioeconomic status of this portion, it is likely that the figure is significantly less than 16%. Neither is there any indication that those of Mexican ancestry are not subjected to lengthier initial stops than others, even if they are not secondarily detained. Finally, there is no indication of the ancestral makeup of the 1% who are referred for secondary detention. If, as is quite likely the case, it is overwhelmingly Mexican, the sense of discrimination which will be felt is only enhanced.

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justify wholly unguided seizures by officials manning the checkpoints. The Court argues, however, that practicalities necessitate otherwise: "A requirement that stops on major routes inland always be based on reasonable suspicion would be impractical because the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal aliens." *Ante*, at 3082.

As an initial matter, whatever force this argument may have, it cannot apply to the secondary detentions that occurred in No. 74-1560. Once a vehicle has been slowed and observed at a checkpoint, ample opportunity ¹⁵⁷⁵ exists to formulate the reasonable suspicion which, if it actually exists, would justify further detention. Indeed, though permitting roving stops based on reasonable suspicion, *Brignoni-Ponce* required that "any further detention or search must be based on [the greater showing of] consent or probable cause." 422 U.S., at 882, 95 S.Ct., at 2580. The Court today, however, does not impose a requirement of even reasonable suspicion for these secondary stops.

The Court's rationale is also not persuasive because several of the factors upon which officers may rely in establishing reasonable suspicion are readily ascertainable, regardless of the flow of traffic. For example, with checkpoint stops as with roving-patrol stops, "[a]spects of the vehicle itself may justify suspicion." *Id.*, at 885, 95 S.Ct., at 2582. Thus it is relevant that the vehicle is a certain type of station wagon, appears to be heavily loaded, contains an extraordinary number of persons, or contains persons trying to hide. See *ibid.* If such factors are satisfactory to permit the imposition of a reasonable-suspicion requirement in the more demanding circumstances of a roving patrol, where officers initially deal with a vehicle traveling, not at

a crawl, but at highway speeds, they clearly should suffice in the circumstances of a checkpoint stop.

Finally, the Court's argument fails for more basic reasons. There is no principle in the jurisprudence of fundamental rights which permits constitutional limitations to be dispensed with merely because they cannot be conveniently satisfied. Dispensing with reasonable suspicion as a prerequisite to stopping and inspecting motorists because the inconvenience of such a requirement would make it impossible to identify a given car as a possible carrier of aliens is no more justifiable than dispensing with probable cause as prerequisite to the search of an individual because the inconvenience of ¹⁵⁷⁶ such a requirement would make it impossible to identify a given person in a high-crime area as a possible carrier of concealed weapons. "The needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards." *Almeida-Sanchez v. United States*, 413 U.S., at 273, 93 S.Ct., at 2540.

The Court also attempts to justify its approval of standardless conduct on the ground that checkpoint stops "involve less discretionary enforcement activity" than roving stops. *Ante*, at 3083. This view is at odds with its later more revealing statement that "officers must have wide discretion in selecting the motorists to be diverted for the brief questioning involved." *Ante*, at 3085. Similarly unpersuasive is the statement that "since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals than there was in the case of roving-patrol stops." *Ante*, at 3083.⁵ The Fourth Amendment standard of ¹⁵⁷⁷

5. As an empirical proposition, this observation is hardly self-evident. No small number of vehicles pass through a checkpoint. Indeed, better than 1,000 pass through the San Clemente checkpoint during each hour of operation. *Ante*, at 3081. Thus there is clearly abundant

opportunity for abuse and harassment at checkpoints through lengthier detention and questioning of some individuals or arbitrary secondary detentions. Such practices need not be confined to those of Mexican ancestry. And given that it is easier to deal with a vehicle

reasonableness admits of neither intrusion at the discretion of law enforcement personnel nor abusive or harassing stops, however infrequent. Action based merely on whatever may pique the curiosity of a particular officer is the antithesis of the objective standards requisite to reasonable conduct and to avoiding abuse and harassment. Such action, which the Court now permits, has expressly been condemned as contrary to basic Fourth Amendment principles. Certainly today's holding is far removed from the proposition emphatically affirmed in *United States v. United States District Court*, 407 U.S. 297, 317, 92 S.Ct. 2125, 2136, 32 L.Ed.2d 752 (1972), that "those charged with . . . investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy . . ." Indeed, it is far removed from the even more recent affirmation that "the central concern of the Fourth Amendment is to protect liberty and privacy from arbitrary and oppressive interference by government officials." *United States v. Ortiz*, 422 U.S., at 895, 95 S.Ct., at 2588.⁶

¹⁵⁷⁸ [The cornerstone of this society, indeed of any free society, is orderly procedure. The Constitution, as originally adopted, was therefore, in great measure, a procedural

which has already been slowed than it is to observe and then chase and apprehend a vehicle travelling at highway speeds, if anything, there is more, not less, room for abuse or harassment at checkpoints. Indeed, in *Ortiz*, the Court was "not persuaded that the checkpoint limits to any meaningful extent the officer's discretion to select cars for search." 422 U.S., at 895, 95 S.Ct., at 2588. *A fortiori*, discretion can be no more limited simply because the activity is detention or questioning rather than searching.

6. *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930 (1967), does not support the court's result. Contrary to the Court's characterization, *ante*, at 3084, the searches condoned there were not "routine intrusions." The Court required that administra-

document. For the same reasons the drafters of the Bill of Rights largely placed their faith in procedural limitations on government action. The Fourth Amendment's requirement that searches and seizures be reasonable enforces this fundamental understanding in erecting its buffer against the arbitrary treatment of citizens by government. But to permit, as the Court does today, police discretion to supplant the objectivity of reason and, thereby, expediency to reign in the place of order, is to undermine Fourth Amendment safeguards and threaten erosion of the cornerstone of our system of a government, for, as Mr. Justice Frankfurter reminded us, "[t]he history of American freedom is, in no small measure, the history of procedure." *Malinski v. New York*, 324 U.S. 401, 414, 65 S.Ct. 781, 787, 89 L.Ed. 1029 (1945).



428 U.S. 364, 49 L.Ed.2d 1000

SOUTH DAKOTA, Petitioner.

v.

Donald OPPERMAN.

No. 75-76.

Argued March 29, 1976.

Decided July 6, 1976.

Defendant was convicted before the District County Court, Second Judicial Dis-

trict searches proceed according to reasonable standards satisfied with respect to each particular dwelling searched. 387 U.S., at 538, 87 S.Ct., at 1735. The search of any dwelling at the whim of administrative personnel was not permitted. The Court, however, imposes no such standards today. Instead, any vehicle and its passengers are subject to detention at a fixed checkpoint, and "no particularized reason need exist to justify" the detention. *Ante*, at 3085. To paraphrase an apposite observation by the Court in *Almeida-Sanchez v. United States*, 413 U.S. 266, 270, 93 S.Ct. 2535, 2538, 37 L.Ed.2d 596 (1973), "[checkpoints] thus embodied precisely the evil the Court saw in *Camara* when it insisted that the 'discretion of the official in the field' be circumscribed . . ."