The Burger Court Opinion Writing Database

United States v. Martinez-Fuerte

428 U.S. 543 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1976

Re: (74-1560 - United States v. Martinez-Fuerte
(75-5387 - Sifuentes v. United States

Dear Lewis:

I join your proposed opinion.

Regards,

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 2, 1976

RE: Nos. 74-1560 and 75-5387 - United States v. Martinez-Fuerte, et al. and Sifuentes v. United States

Dear Lewis:

In due course I shall circulate a dissent in the above.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 6/15/76

Recirculated: _____

No. 74-1560 - United States v. Martinez-Fuerte

MR. JUSTICE BRENNAN, dissenting.

Today's decision is the fifth this Term making the continuing evisceration of Fourth Amendment protections against unreasonable searches and seizures. United States v. Watson, ____ U.S. ____ (1976), held that despite ample opportunity to obtain a warrant, an arrest warrant is never required to arrest for a felony in a public place, a result certainly not fairly supported by either history or precedent. See id., at ____ (Marshall, J., dissenting). United States v. Santana, ____ U.S. ____ (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, ____ U.S. ____ (1976), narrowed the Fourth Amendment's protection of privacy by denying the existence of a protectible interest in the compilation of checks, deposit

1, 2, 3, 4, 6, 7, 8, 9, 10

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 6/30/76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74-1560 AND 75-5387

United States, Petitioner, 74-1560 *v.* Amado Martinez-Fuerte et al.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
Rodolfo Sifuentes, Petitioner, 75-5387 *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

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 (1976), permitted the search of an automobile in police custody without first obtaining a warrant despite the unreasonableness of the custody and opportunity to obtain a warrant. *United States* v. *Watson*, — U. S. — (1976), held that regardless whether opportunity exists to obtain a warrant is never required to make an arrest in a public place for a previously committed felony, a result certainly not fairly supported by either history or precedent. See *id.*, at — (MARSHALL, J., dissenting). *United States* v. *Santana*, — U. S. — (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*, — U. S. — (1976), narrowed the Fourth Amendment's protection of privacy by denying the existence of a protectible interest in the compila-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1976

Nos. 74-1560 and 75-5387
U. S. v. Martinez-Fuerte

Dear Lewis,

I am glad to join your opinion for the Court in these cases.

Sincerely yours,

P. S.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: Nos. 74-1560 & 75-5387 - United States v. Martinez-Fuerte

Dear Lewis:

I give up. Join me, at least for now.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 16, 1976

Re: No. 74-1560 -- United States v. Martinez-Fuerte

Dear Bill:

Please join me.

Sincerely,

T. M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1976

Re: No. 74-1560 - United States v. Martinez-Fuerte
No. 75-5387 - Sifuentes v. United States

Dear Lewis:

Please join me.

Sincerely,

H. A. B./ws

Mr. Justice Powell

cc: The Conference

+ LFP
precirculation corrections
3,17

L.F.P.
Circulated
5/31/76

Carl - make changes on 21 in our next circulation

1st DRAFT
Revised 5/29/76

SUPREME COURT OF THE UNITED STATES

Nos. 74–1560 AND 75–5387

United States, Petitioner, 74–1560 *v.* Amado Martinez-Fuerte et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Rodolfo Sifuentes, Petitioner, 75–5387 *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1976]

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 (1975). We hold today that such stops are consistent with the Fourth Amendment. We also hold that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 1 1976

2nd DRAFT Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 74–1560 AND 75–5387

United States, Petitioner,
74–1560 *v.*
Amado Martinez-Fuerte et al.
} On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Rodolfo Sifuentes, Petitioner,
75–5387 *v.*
United States.
} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1976]

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 (1975). We hold today that such stops are consistent with the Fourth Amendment. We also hold that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant.

June 9, 1976

No. 74-1560 and 75-5387 United States v. Martinez-Fuerte

Dear Bill:

Thank you for your letter. I am glad to try to make clearer how the opinion responds to your concern, which I share, that wide discretion must be left to the Border Patrol. I am reluctant, however, to use the phrase "arbitrary or irrational." This is something of a term of art in light of its use elsewhere in the law. It is best, I think, to stick with the Fourth Amendment's standard of "reasonableness". I therefore propose the following for the first full sentence on page 16:

> "Moreover a claim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review.[12a]
>
> 12a. 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 the officials in charge. But see infra at 22."

I would insert on page 22 a cross reference to this passage.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

June 9, 1976

Nos. 74-1560 and 75-5387 United States
v. Martinez-Fuerte

Dear Bill:

I am glad to try to make clearer how the opinion responds to your concern, which I share, that wide discretion must be left to the Border Patrol. I am reluctant, however, to use your proposed phrase "arbitrary or irrational." The phrase is something of a term of art in light of its use elsewhere in the law, and I believe that it is best to stick with the Fourth Amendment's own standard of "reasonableness". I therefore propose the following for the first full sentence at page 16:

> "Moreover a claim that a particular exercise of discretion in locating or operating a checkpoint is unreasonable is subject to post-stop judicial review.[12a]
>
> 12a. 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 22."

I am agreeable to inserting on page 22 a cross reference to this passage.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1976

No. 74-1560 U.S. v. MARTINEZ-FUERTE

MEMORANDUM TO THE CONFERENCE:

In response to Bill Brennan's dissent I propose to make the following changes:

p. 19, n. 6: Substitute for the material beginning on the seventh line of the footnote:

". . . 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 19,953,000 of whom some 2,447,000, or 12%, are of Spanish or Mexican ancestry. The equivalent percentages for metropolitan San Diego and Los Angeles are 11% and 15% respectively. 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 17,500 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."

p. 22. At the end of the first sentence in Part VI, insert the following (note 19):

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 1, 2. Since 1946, Act of Aug. 7, 1946, 60 Stat. 865, 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 its present location throughout the intervening 30 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 11-12. Our holding today, 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 longstanding Congressional authorization nor widely prevailing practices justify 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 also asserts that "the stopped vehicles and their occupants are certainly subjected to 'search' as well as 'seizure'". Post, at 4. This is indeed novel doctrine. As early as United States v. Lee, 274 U.S. 559, 563 (1927), Mr. Justice Brandeis, speaking for a unanimous Court, held that a visual inspection of a ship aided by a searchlight was not a search within the meaning of the Fourth Amendment. If such an inspection of a vessel is not a "search", one hardly would think that looking through the windows of an automobile constituted a search. The more pertinent question is whether the enforcement agent

has a right to be in the vantage point from which he makes his observation, as he does here because of his authority to make an inquiry stop. Moreover, in Brignoni-Ponce, an opinion joined by Mr. Justice Brennan, we made clear that a stop for questioning involves "no search of the vehicle or its occupants". 422 U.S., at 880.

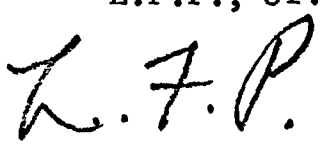
The dissenting opinion further warns:

> "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 6. 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.

L.F.P., Jr.

LFP/gg



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

FILE COPY
PLEASE RETURN
TO FILE

June 23, 1976

Holds for Nos. 74-1560 U.S. v. Martinez-Fuerte and
75-5387 Sifuentes v. U.S.

MEMORANDUM TO THE CONFERENCE:

No. 75-6112 Hart v. United States (heretofore Held for the Border Search cases).

This petition for certiorari presents two unrelated cases. Both involve marijuana convictions in federal court. The marijuana was uncovered during two different searches conducted at the Sierra Blanca checkpoint. The convictions were affired by CA 5, came here last Term, and were vacated and remanded for reconsideration in light of Ortiz and Brignoni-Ponce. CA 5 again affirmed in both cases.

The case of petitioners Dixon, Bylund, and Arnold presents no issue of interest. They concede that their convictions are valid if routine checkpoint stops are permissible. Martinez-Fuerte and Sifuentes thus control their case.

Petitioner Hart's case presents a more substantial question. Hart was subjected to a routine search at the checkpoint. CA 5 has upheld his conviction on the ground that the Sierra Blanca checkpoint is the "functional equivalent" of the Border. I said in Last Term's Hold memo that, as the checkpoint is 20 miles from the border - on an Interstate Highway, I doubt that it meets the CA 9 standard for "functional equivalency." That standard

requires a reasonable certainty that most cars passing the checkpoint will have come from the Border. See United States v. Bowen, 500 F. 2d 960, 965-966 (CA 9 1974).

On remand CA 5 said nothing to change this view. I therefore think the case was wrongly decided. But it has been here twice and twice reviewed by CA 5. I'm not inclined to take another "Border Patrol" case at this time. I will vote to Deny.

L.F.P.

L.F.P.,Jr.

16, 17, 18, 19, 20, 22, 23

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: JUN 23 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 74–1560 AND 75–5387

United States, Petitioner, 74–1560 *v.* Amado Martinez-Fuerte et al.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
Rodolfo Sifuentes, Petitioner, 75–5387 *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1976]

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 (1975). We hold today that such stops are consistent with the Fourth Amendment. We also hold that the operation of a fixed checkpoint need not be authorized in advance by a judicial warrant.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1976

Re: Nos. 74-1560 and 75-5387 - United States v. Martinez-Fuerte

Dear Lewis:

I intend to join your opinion. I offer two suggestions.

In order to suggest some guidelines for the proposition, at page 16, that choice of location (and method of operation, at pages 21-22) of the permanent checkpoints will be subject to "post-stop judicial review," I would like the opinion to indicate that the reviewing court should pass on any claim of arbitrariness in the context of the officials' acting pursuant to statutory and regulatory authority, and to suggest that if the choice is within those limits, it is entitled at least prima facie to a presumption of reasonableness. Hence, the following suggestion for the first full sentence at page 16:

> "Moreover, any claim that a particular exercise of discretion by these officials, in locating or operating a permanent checkpoint, is arbitrary or irrational under applicable statutes and regulations 12a may be considered in a post-stop judicial review."

As to the language refuting any claim that a warrant is necessary, last sentence starting on page 21, I would

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12a/ See n. 8, supra.

suggest, if consistent with your intent, a cross-reference generally to the above.

Sincerely,

Mr. Justice Powell

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 8, 1976

Re: Nos. 74-1560 and 75-5387 - United States v. Martinez-Fuerte

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 74-1560 and 75-5387 - United States v. Amado Martinez-Fuerte, et al.

Dear Lewis:

Please join me.

Sincerely,

JPS

Mr. Justice Powell

Copies to the Conference