The Burger Court Opinion Writing Database

United States v. Mendenhall

446 U.S. 544 (1980)

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

May 21, 1980

Re: 78-1821 - United States v. Mendenhall

Dear Lewis:

I am persuaded to join in the narrow ground on which you rest your opinion.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 4, 1980

RE: No. 78-1821 United States v. Mendenhall

Dear Byron:

You, Thurgood, John and I are in dissent in the above. Would you care to undertake the dissent?

Sincerely,

Bill

Mr. Justice White

cc: Mr. Justice Marshall
Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 16, 1980

RE: No. 78-1821 United States v. Mendenhall

Dear Potter:

I'll await the dissent in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 30, 1980

RE: No. 78-1821 United States v. Mendenhall

Dear Byron:

Please join me.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: 11 APR 1980

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, v. Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent was brought to trial in the United States District Court for the Eastern District of Michigan on a charge of possessing heroin with intent to distribute it. She moved to suppress the introduction at trial of the heroin as evidence against her on the ground that it had been acquired from her through an unconstitutional search and seizure by agents of the Drug Enforcement Administration (DEA). The District Court denied the respondent's motion, and she was convicted after a trial upon stipulated facts. The Court of Appeals reversed, finding the search of the respondent's person to have been unlawful. We granted certiorari to consider whether any right of the respondent guaranteed by the Fourth Amendment was violated in the circumstances presented by this case. —— U. S. ——.

I

At the hearing in the trial court on the respondent's motion to suppress, it was established how the heroin she was charged with possessing had been obtained from her. The respondent had arrived at the Detroit Metropolitan Airport on a commercial airline flight from Los Angeles early on the morning of February 10, 1976. As she disembarked from the airplane, she was observed by two agents of the DEA, who were present at the airport for the purpose of detecting unlawful traffic in

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 16, 1980

78-1821 - United States v. Mendenhall

Dear Lewis,

Thanks for your letter of April 15.

This case seemed to me to provide an opportunity for us firmly to establish a proposition that many lower courts have overlooked and that this Court has sometimes shown signs of overlooking: the proposition that not every street encounter between a citizen and the police is inevitably a "seizure". It was in the interest of establishing this broad and important proposition that I wrote the opinion as I did.

If there is to be no Court opinion in this case, that proposition, of course, will not be established. Moreover, it seems to me that if there was a seizure in this case, it is difficult to imagine any encounter between a law enforcement officer and a citizen in a public place which would not be a seizure.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Stewart

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion in which MR. JUSTICE REHNQUIST joins.*

The respondent was brought to trial in the United States District Court for the Eastern District of Michigan on a charge of possessing heroin with intent to distribute it. She moved to suppress the introduction at trial of the heroin as evidence against her on the ground that it had been acquired from her through an unconstitutional search and seizure by agents of the Drug Enforcement Administration (DEA). The District Court denied the respondent's motion, and she was convicted after a trial upon stipulated facts. The Court of Appeals reversed, finding the search of the respondent's person to have been unlawful. We granted certiorari to consider whether any right of the respondent guaranteed by the Fourth Amendment was violated in the circumstances presented by this case. — U. S. —.

I

At the hearing in the trial court on the respondent's motion to suppress, it was established how the heroin she was charged with possessing had been obtained from her. The respondent arrived at the Detroit Metropolitan Airport on a com-

*MR. JUSTICE BLACKMUN and MR. JUSTICE POWELL also join all but Part II-A of this opinion.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 22, 1980

Re: No. 78-1821, United States v. Mendenhall

Dear Chief,

Thanks for your note of May 21.

Although cases in which there is no Court opinion are always unfortunate, they are sometimes inevitable, and this seems to be one of them. It is not at all unprecedented to have a prevailing opinion joined in full by only one Justice in addition to its author. See, e.g., Manual Enterprises v. Day, 370 U.S. 478. In no such case that I have seen was there superimposed a per curiam opinion, and I think that to add one in the present case would only beget confusion.

Sincerely yours,

P.S.

The Chief Justice

Copy to Mr. Justice Powell

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

From: Mr. Justice Stewart

Circulated: _____

3rd DRAFT

Recirculated: 22 MAY 1980

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion in which MR. JUSTICE REHNQUIST joins.*

The respondent was brought to trial in the United States District Court for the Eastern District of Michigan on a charge of possessing heroin with intent to distribute it. She moved to suppress the introduction at trial of the heroin as evidence against her on the ground that it had been acquired from her through an unconstitutional search and seizure by agents of the Drug Enforcement Administration (DEA). The District Court denied the respondent's motion, and she was convicted after a trial upon stipulated facts. The Court of Appeals reversed, finding the search of the respondent's person to have been unlawful. We granted certiorari to consider whether any right of the respondent guaranteed by the Fourth Amendment was violated in the circumstances presented by this case. — U. S. —.

I

At the hearing in the trial court on the respondent's motion to suppress, it was established how the heroin she was charged with possessing had been obtained from her. The respondent arrived at the Detroit Metropolitan Airport on a com-

*THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL also join all but Part II–A of this opinion.

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

From: Mr. Justice Stewart

Circulated: _____

Recirculated: 23 MAY 1980

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1980]

MR. JUSTICE STEWART announced the judgment of the Court and delivered an opinion in which MR. JUSTICE REHNQUIST joins.*

The respondent was brought to trial in the United States District Court for the Eastern District of Michigan on a charge of possessing heroin with intent to distribute it. She moved to suppress the introduction at trial of the heroin as evidence against her on the ground that it had been acquired from her through an unconstitutional search and seizure by agents of the Drug Enforcement Administration (DEA). The District Court denied the respondent's motion, and she was convicted after a trial upon stipulated facts. The Court of Appeals reversed, finding the search of the respondent's person to have been unlawful. We granted certiorari to consider whether any right of the respondent guaranteed by the Fourth Amendment was violated in the circumstances presented by this case. — U. S. —.

I

At the hearing in the trial court on the respondent's motion to suppress, it was established how the heroin she was charged with possessing had been obtained from her. The respondent arrived at the Detroit Metropolitan Airport on a com-

*THE CHIEF JUSTICE, MR. JUSTICE BLACKMUN, and MR. JUSTICE POWELL also join all but Part II-A of this opinion.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 3, 1980

Memorandum to the Conference.

Re: Cases held for 78-1821, United States v. Mendenhall.

Nine cases have been held awaiting the decision in Mendenhall. Because of the allignment of views in that case, the disposition of other cases in light of it is somewhat problematic. Four Justices in Mendenhall thought that the petitioner there had been unconstitutionally seized, and that the Government had not carried its burden of proving that she had consented either to go to the DEA office or to the search of her person. Three Justices assumed that the petitioner had been seized, concluded that the seizure had been constitutional, and with the two of us who thought that the petitioner had not been seized at all, agreed that she had validly consented to the search of her person.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 4, 1980

Re: 78-1821 - United States v. Mendenhall

Dear Bill,

Okle Dockle, as they say in Larimer County.

Sincerely,

Byron

Mr. Justice Brennan

cc: Mr. Justice Marshall
Mr. Justice Stevens

cmc

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 11, 1980

Re: No. 78-1821 - U. S. v. Mendenhall

Dear Potter,

I shall be attempting a dissent in this case in due course.

Sincerely yours,

Byron

Mr. Justice Stewart
Copies to the Conference

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

From: Mr. Justice White

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, dissenting.

The Court today holds that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person, regardless of whether there were any reasonable grounds for suspecting her of criminal activity. The Court reaches this result by first finding that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with our recognition that consent cannot be presumed from a showing of acquiescence to authority, and it cannot be reconciled with our decision last Term in *Dunaway* v. *New York*, 442 U. S. 200 (1979).

I

Beginning with *Terry* v. *Ohio*, 392 U. S. 1, 16 (1968), the Court has recognized repeatedly that the Fourth Amendment's proscription of unreasonable "seizures" protects individuals during encounters with police that do not give rise to an arrest. *United States* v. *Brignoni-Ponce*, 422 U. S. 873, 878 (1975); *United States* v. *Martinez-Fuerte*, 428 U. S. 543,

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES:

From: Mr. Justice White

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today holds that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person, regardless of whether there were any reasonable grounds for suspecting her of criminal activity. The Court reaches this result by first finding that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with our recognition that consent cannot be presumed from a showing of acquiescence to authority, and it cannot be reconciled with our decision last Term in *Dunaway* v. *New York*, 442 U. S. 200 (1979).

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

From: Mr. Justice White

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11-12

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today holds that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person, regardless of whether there were any reasonable grounds for suspecting her of criminal activity. The Court reaches this result by first finding that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with our recognition that consent cannot be presumed from a showing of acquiescence to authority, and it cannot be reconciled with our decision last Term in *Dunaway* v. *New York*, 442 U. S. 200 (1979).

I

Beginning with *Terry* v. *Ohio*, 392 U. S. 1, 16 (1968), the Court has recognized repeatedly that the Fourth Amendment's proscription of unreasonable "seizures" protects individuals during encounters with police that do not give rise to

"Court" changed to "plurality" throughout; footnotes renumbered, changes pp. 1, 4, 8, 9, & 12

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today concludes that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person. This result is particularly curious because a majority of the Members of the Court refuse to reject the conclusion that Ms. Mendenhall was "seized," while a separate majority decline to hold that there were reasonable grounds to justify a seizure. A plurality of the Court concludes that the DEA agents acted lawfully, regardless of whether there were any reasonable grounds for suspecting Ms. Mendenhall of criminal activity, because it finds that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. MR. JUSTICE POWELL and MR. JUSTICE BLACKMUN believe that even though Ms. Mendenhall may have been "seized," the seizure was lawful because her behavior while changing planes in the airport provided reasonable suspicion that she was engaging in criminal activity. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with

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

From: Mr. Justice White

Circulated: _____

Recirculated: 22 MAY 1980

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today concludes that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person. This result is particularly curious because a majority of the Members of the Court refuse to reject the conclusion that Ms. Mendenhall was "seized," while a separate majority decline to hold that there were reasonable grounds to justify a seizure. A plurality of the Court concludes that the DEA agents acted lawfully, regardless of whether there were any reasonable grounds for suspecting Ms. Mendenhall of criminal activity, because it finds that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. MR. JUSTICE POWELL and MR. JUSTICE BLACKMUN believe that even though Ms. Mendenhall may have been "seized," the seizure was lawful because her behavior while changing planes in the airport provided reasonable suspicion that she was engaging in criminal activity. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she ~~volun~~tarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with

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

STYLISTIC CHANGES THROUGHOUT.
~~SEE PAGES:~~

From: Mr. Justice White

Circulated: _____

6th DRAFT

Recirculated: 22 MAY 1980

SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today concludes that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person. This result is particularly curious because a majority of the Members of the Court refuse to reject the conclusion that Ms. Mendenhall was "seized," while a separate majority decline to hold that there were reasonable grounds to justify a seizure. MR. JUSTICE STEWART concludes that the DEA agents acted lawfully, regardless of whether there were any reasonable grounds for suspecting Ms. Mendenhall of criminal activity, because he finds that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. MR. JUSTICE POWELL's opinion concludes that even though Ms. Mendenhall may have been "seized," the seizure was lawful because her behavior while changing planes in the airport provided reasonable suspicion that she was engaging in criminal activity. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1

From: Mr. Justice White

7th DRAFT

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SUPREME COURT OF THE UNITED STATES

No. 78–1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

The Court today concludes that agents of the Drug Enforcement Administration (DEA) acted lawfully in stopping a traveller changing planes in an airport terminal and escorting her to a DEA office for a strip search of her person. This result is particularly curious because a majority of the Members of the Court refuse to reject the conclusion that Ms. Mendenhall was "seized," while a separate majority decline to hold that there were reasonable grounds to justify a seizure. MR. JUSTICE STEWART concludes that the DEA agents acted lawfully, regardless of whether there were any reasonable grounds for suspecting Ms. Mendenhall of criminal activity, because he finds that Ms. Mendenhall was not "seized" by the DEA agents, even though throughout the proceedings below the Government never questioned the fact that a seizure had occurred necessitating a showing of antecedent reasonable suspicion. MR. JUSTICE POWELL's opinion concludes that even though Ms. Mendenhall may have been "seized," the seizure was lawful because her behavior while changing planes in the airport provided reasonable suspicion that she was engaging in criminal activity. The Court then concludes, based on the absence of evidence that Ms. Mendenhall resisted her detention, that she voluntarily consented to being taken to the DEA office, even though she in fact had no choice in the matter. This conclusion is inconsistent with

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 11, 1980

Re: No. 78-1821 - United States v. Mendenhall

Dear Potter:

I await the dissent.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 29, 1980

Re: No. 78-1821 - United States v. Mendenhall

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 1, 1980

Re: No. 78-1821 - United States v. Mendenhall

Dear Potter:

I shall certainly be with you in the judgment and, perhaps, eventually in the opinion if a change or two could be effected. I am in sympathy with the proposition to which you referred in your letter of April 16 to Lewis. The difficulty, of course, in the Mendenhall case is the procedural history that you confront in your footnote 5.

As did Lewis, I indicated at conference that, for me, there was reasonable suspicion on the facts here to validate the initial stop and that I could approach this case on that basis. This being so, I would like, for now, to wait to see what Lewis has to say.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 16, 1980

Re: No. 78-1821 - United States v. Mendenhall

Dear Lewis:

I shall be pleased to have you add my name to your opinion concurring in part and concurring in the judgment.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 15, 1980

78-1821 United States v. Mendenhall

Dear Potter:

Although I agree with most of your opinion, I continue to have some lingering doubt as to whether there was a "seizure".

I want to take a further look at the case when I can find the time. At Conference, I expressed the view that there was reasonable suspicion adequate to justify a stop for routine questions of the kind asked by the DEA officers. Although I am not sure there would be a practical difference, I would prefer to decide the validity of the initial stop on the basis of reasonable suspicion. I think experienced DEA officers, assigned to duty at selected airports, should have authority to stop upon reasonable suspicion and ask questions such as those put to respondent.

In any event, I will join your judgment and most of your opinion. But before coming to rest, I may try my hand at a concurrence to see whether my view on this single issue will "write".

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

May 8, 1980

Mendenhall 78-1821

Dear Potter:

Here is a draft of a proposed concurrence that would concur in all of your opinion except Part II-A.

Since our conversation, I have reconsidered this case with some care. I appreciate the importance of your point that we could establish a broad precedent that might be particularly helpful in law enforcement if we decided this aspect on the basis of no initial "seizure". This is an exceedingly close question for me. Indeed it was too close for me to decide, especially where the courts below did not address the "seizure" issue and since this case can be resolved on the "reasonable suspicion" ground. You will recall that this was my view prior to the Conference. I summarized generally my thinking in my pre-Conference memorandum of February 19, a copy of which I sent you.

Although I have not discussed this case with anyone other than you, I recall that at Conference Harry shared my view that there were reasonable grounds of suspicion for a stop. I think the Chief also had the same perception of the case. Byron has four votes for his dissent. You will certainly have five votes for the judgment. Even if I were persuaded to agree with you that the stop did not constitute a seizure, I am not at all sure that both Harry and the Chief would go along. In these circumstances, would you consider revising your Part II-A to support the stop on the reasonable suspicion ground? If you did this, you could leave open in a note - perhaps along the lines of what I have said at the outset of the enclosed draft - the question as to when a stop is not a seizure. If you pursued this course, my guess is that there would be five solid votes for your opinion.

I also agree with the Solicitor General that it is of great importance to the drug law enforcement effort to have this Court specifically and strongly approve the procedure being followed at airports by DEA agents. Your view that there was no seizure in this case is a broader ground that would apply on public streets, night or day, and not just to airports. The question always would be whether, as you put it, a reasonable person would feel free to walk away. In this case, it was conceded that respondent was not free to leave after the agents had inspected her identification. App. 19. Thus, it is not at all clear that there was any realistic opportunity for respondent to leave once she paused long enough to give her driver's license and airline ticket to the agents. It is here that I find the "seizure" question so close.

If you should decide to adopt the reasonable suspicion analysis, you are of course most welcome to use whatever portions of my draft that might be helpful.

Sincerely,

Mr. Justice Stewart

lfp/ss

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

5-15-80

From: Mr. Justice Powell

1st DRAFT

Circulated: MAY 15

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE POWELL, concurring in part and concurring in the judgment.

I join Parts I, II-B, II-C, and III of the Court's opinion. Because neither of the courts below considered the question, I do not reach the Government's contention that the agents did not "seize" the respondent within the meaning of the Fourth Amendment. In my view, we may assume for present purposes that the stop did constitute a seizure.[1] I would hold—as did the District Court—that the federal agents had reasonable suspicion that the respondent was engaging in criminal activity, and, therefore, that they did not violate the Fourth Amendment by stopping the respondent momentarily for routine questioning.

I

The relevant facts may be stated briefly. The respondent arrived at the Detroit Metropolitan Airport on a flight from

[1] The plurality concludes in Part II-A that there was no "seizure" within the meaning of the Fourth Amendment. It reasons that such a seizure occurs "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Ante*, at 8. The plurality also notes that "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Id.*, at 7, quoting *Terry* v. *Ohio*, 392 U. S., at 34 (WHITE, J., concurring). I do not necessarily disagree with the views expressed in Part II-A. For me, the question whether the respondent in this case reasonably could have thought she was free to "walk away" when asked by two government agents for her driver's license and ticket is extremely close.

5-16-80

2nd DRAFT

Circulated: MAY 16 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1821

United States, Petitioner, *v.* Sylvia L. Mendenhall.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE POWELL, with whom MR. JUSTICE BLACKMUN joins, concurring in part and concurring in the judgment.

I join Parts I, II-B, II-C, and III of the Court's opinion. Because neither of the courts below considered the question, I do not reach the Government's contention that the agents did not "seize" the respondent within the meaning of the Fourth Amendment. In my view, we may assume for present purposes that the stop did constitute a seizure.[1] I would hold—as did the District Court—that the federal agents had reasonable suspicion that the respondent was engaging in criminal activity, and, therefore, that they did not violate the Fourth Amendment by stopping the respondent for routine questioning.

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1,6

5-23-80

3rd DRAFT

Chief Justice
Brennan
Stewart
White
Marshall
Blackmun
Rehnquist
Stevens
Justice Powell

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 78–1821

Recirculated: MAY 23 1980

United States, Petitioner, v. Sylvia L. Mendenhall. | On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[May —, 1980]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN join, concurring in part and concurring in the judgment.

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[1] MR. JUSTICE STEWART concludes in Part II–A that there was no "seizure" within the meaning of the Fourth Amendment. He reasons that such a seizure occurs "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Ante*, at 8. MR. JUSTICE STEWART also notes that "[t]here is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets." *Id.*, at 7, quoting *Terry* v. *Ohio*, 392 U. S., at 34 (WHITE, J., concurring). I do not necessarily disagree with the views expressed in Part II–A. For me, the question whether the respondent in this case reasonably could have thought she was free to "walk away" when asked by two government agents for her driver's license and ticket is extremely close.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 14, 1980

Re: No. 78-1821 - United States v. Mendenhall

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 17, 1980

Re: 78-1821 - United States v. Mendenhall

Dear Potter:

As you no doubt realize, I am awaiting Byron's dissent. I may also add a few words of my own since I feel very strongly that the Court is wrong in this case.

Respectfully,

JPS

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 29, 1980

Re: 78-1821 - United States v. Mendenhall

Dear Byron:

Please join me.

Respectfully,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 6, 1980

Re: 78-1821 - United States v. Mendenhall

Dear Byron:

As I have previously indicated, I think your dissenting opinion is excellent and I like it even better with the additional paragraph at the bottom of page 11. It has occurred to me that you might consider adding a footnote something along the following lines pegged at the word "fantasy," two lines from the bottom of page 11:

14/ "Will you walk into my parlour?" said the spider to a fly;
(You may find you have consented, without ever knowing why.

Respectfully,

JPS

Mr. Justice White

Copies to the Conference