

The Burger Court Opinion Writing Database

INS v. Delgado

466 U.S. 210 (1984)

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

February 15, 1984

Re: No. 82-1271 Ins. Et al. v. Delgado, Et al.

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

P.S. I may have a few private thoughts later.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

SUPREME COURT
JUSTICE
January 23, 1984

'84 JAN 23 A11:12

No. 82-1271

INS v. Delgado

Dear John,

You and I would remand and Thurgood
would affirm in the above. Would you
undertake the dissent for the two of us?

Sincerely,



Justice Stevens

Copy to Justice Marshall

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 27, 1984

No. 82-1271

INS v. Delgado

Dear Bill,

I have been remiss in not letting
you know before this that I intend to
try my hand at a dissent in the above.

Sincerely,

Justice Rehnquist

Copies to the Conference

RECEIVED
SUPREME COURT U.S.
JUST

'84 MAR 28 P1:17

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

MAR 28 1984

Circulated: _____

Recirculated: _____

~~W/B~~
P
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE,
ET AL., PETITIONERS *v.* HERMAN DELGADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

JUSTICE BRENNAN, concurring in part and dissenting in part.

As part of its ongoing efforts to enforce the immigration laws, the Immigration and Naturalization Service (INS) conducts "surveys" of those workplaces that it has reason to believe employ large numbers of undocumented aliens who may be subject to deportation. This case presents the question whether the INS's method of carrying out these "factory surveys"¹ violates the rights of the affected factory workers to be secure against unreasonable seizures of one's person as guaranteed by the Fourth Amendment. Answering that question, the Court today holds, first, that the INS surveys involved here did not result in the seizure of the entire factory workforce for the complete duration of the surveys, *ante*, at 7-8, and, second, that the individual questioning of respondents by INS agents concerning their citizenship did not constitute seizures within the meaning of the Fourth Amendment, *ante*, at 9-10. Although I generally agree with

¹The enforcement activities of the INS are divided between "border patrol" operations conducted along the border and its functional equivalents and "area control" operations conducted in the interior of the United States. The INS's area control operations are in turn divided into traffic control operations (such as maintaining fixed checkpoints on major highways) and factory surveys of the kind at issue in this case.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Stylistic changes
J & P I

RECEIVED
SUPREME COURT U.S.
JUSTICE

'84 APR -5 AM 114

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: 4/4/84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE,
ET AL., PETITIONERS *v.* HERMAN DELGADO ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins,
concurring in part and dissenting in part.

As part of its ongoing efforts to enforce the immigration laws, the Immigration and Naturalization Service (INS) conducts "surveys" of those workplaces that it has reason to believe employ large numbers of undocumented aliens who may be subject to deportation. This case presents the question whether the INS's method of carrying out these "factory surveys"¹ violates the rights of the affected factory workers to be secure against unreasonable seizures of one's person as guaranteed by the Fourth Amendment. Answering that question, the Court today holds, first, that the INS surveys involved here did not result in the seizure of the entire factory workforce for the complete duration of the surveys, *ante*, at 7-8, and, second, that the individual questioning of respondents by INS agents concerning their citizenship did not constitute seizures within the meaning of the Fourth Amendment, *ante*, at 9-10. Although I generally agree with

¹The enforcement activities of the INS are divided between "border patrol" operations conducted along the border and its functional equivalents and "area control" operations conducted in the interior of the United States. The INS's area control operations are in turn divided into traffic control operations (such as maintaining fixed checkpoints on major highways) and factory surveys of the kind at issue in this case.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 17, 1984

RECEIVED
SUPREME COURT
JUSTICE BYRON R. WHITE

'84 FEB 17 A10:40

Re: 82-1271 - Immigration and
Naturalization Service v. Delgado

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 7, 1984

Re: No. 82-1271-INS v. Delgado

Dear Bill:

I await the dissent.

Sincerely,

T.M.
T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 30, 1984

Re: No. 82-1271-INS v. Delgado

Dear Bill:

Please join me in your opinion.

Sincerely,

JM
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 24, 1984

Re: No. 82-1271 - INS v. Delgado

Dear Bill:

Please join me.

Sincerely,



REHNQUIST

Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 17, 1984

82-1271 INS v. Delgado

Dear Bill:

Although I may join your opinion, I probably will write separately.

You may recall that at Conference I expressed the view that under my opinion in Martinez-Fuerte it was immaterial whether there had been a "seizure". I may try to write something along these lines, and also pay my respects to the gross incongruity of our laws with respect to illegal aliens!

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Powell**
 March 05 1984

RECEIVED
 SUPREME COURT OF THE U.S.
 JUSTICE POWELL

Circulated: _____

Recirculated: _____

'84 MAR -5 P2:04
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE
 ET AL. v. HERMAN DELGADO ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
 STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March —, 1984]

JUSTICE POWELL, concurring in the result.

While the majority's opinion is persuasive, I find the question of whether the factory surveys conducted in this case resulted in any Fourth Amendment "seizures" to be a close one. The question turns on a difficult characterization of fact and law: whether a reasonable person in respondents' position would have believed he was free to refuse to answer the questions put to him by INS officers and leave the factory. I believe that the Court need not decide the question, however, because it is clear that any "seizure" that may have taken place was permissible under the reasoning of our decision in *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976).

In that case, we held that stopping automobiles for brief questioning at permanent traffic checkpoints away from the Mexican border is consistent with the Fourth Amendment and need not be authorized by a warrant.¹ We assumed that the stops constituted "seizures" within the meaning of the Fourth Amendment, see *id.*, at 546, n. 1, 556, but upheld them as reasonable. As in prior cases involving the appre-

¹ This case presents no question as to whether a warrant was required for the entry by the INS officers into the plants. As the majority notes, the INS obtained either a warrant or consent from the factory owners before entering the plants to conduct the surveys.

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

RECEIVED
SUPREME COURT
JUSTICE

P. 4 & stylistic changes

'84 MAR 33 A9:43

From: Justice Powell

Circulated: _____

Recirculated: APR 2 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE
ET AL. v. HERMAN DELGADO ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March —, 1984]

JUSTICE POWELL, concurring in the result.

While the majority's opinion is persuasive, I find the question of whether the factory surveys conducted in this case resulted in any Fourth Amendment "seizures" to be a close one. The question turns on a difficult characterization of fact and law: whether a reasonable person in respondents' position would have believed he was free to refuse to answer the questions put to him by INS officers and leave the factory. I believe that the Court need not decide the question, however, because it is clear that any "seizure" that may have taken place was permissible under the reasoning of our decision in *United States v. Martinez-Fuerte*, 428 U. S. 543 (1976).

In that case, we held that stopping automobiles for brief questioning at permanent traffic checkpoints away from the Mexican border is consistent with the Fourth Amendment and need not be authorized by a warrant.¹ We assumed that the stops constituted "seizures" within the meaning of the Fourth Amendment, see *id.*, at 546, n. 1, 556, but upheld them as reasonable. As in prior cases involving the appre-

¹This case presents no question as to whether a warrant was required for the entry by the INS officers into the plants. As the majority notes, the INS obtained either a warrant or consent from the factory owners before entering the plants to conduct the surveys.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: FEB 11 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE, ET
AL., PETITIONERS *v.* HERMAN DELGADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

In the course of enforcing the immigration laws, petitioner Immigration and Naturalization Service (INS) enters employers' worksites to determine whether any illegal aliens may be present as employees. The Court of Appeals for the Ninth Circuit held that the "factory surveys" involved in this case amounted to a seizure of the entire work forces, and further held that the INS could not question individual employees during any of these surveys unless its agents had a reasonable suspicion that the employee to be questioned was an illegal alien. *Garment Workers v. Sureck*, 681 F. 2d 624 (1982). We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

Acting pursuant to two warrants, in January and September, 1977, the INS conducted a survey of the work force at Southern California Davis Pleating Company (Davis Pleating) in search of illegal aliens. The warrants were issued on a showing of probable cause by the INS that numerous illegal aliens were employed at Davis Pleating, although neither of the search warrants identified any particular illegal aliens by name. A third factory survey was conducted with

INTRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: Justice Rehnquist

Circulated: _____

Recirculated: FEB 16 1984

RECEIVED
SUPREME COURT CLERK
JUSTICE

'84 FEB 17 A10:40

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE, ET
AL., PETITIONERS *v.* HERMAN DELGADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

In the course of enforcing the immigration laws, petitioner Immigration and Naturalization Service (INS) enters employers' worksites to determine whether any illegal aliens may be present as employees. The Court of Appeals for the Ninth Circuit held that the "factory surveys" involved in this case amounted to a seizure of the entire work forces, and further held that the INS could not question individual employees during any of these surveys unless its agents had a reasonable suspicion that the employee to be questioned was an illegal alien. *Garment Workers v. Sureck*, 681 F. 2d 624 (1982). We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

Acting pursuant to two warrants, in January and September, 1977, the INS conducted a survey of the work force at Southern California Davis Pleating Company (Davis Pleating) in search of illegal aliens. The warrants were issued on a showing of probable cause by the INS that numerous illegal aliens were employed at Davis Pleating, although neither of the search warrants identified any particular illegal aliens by name. A third factory survey was conducted with

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Pp 6, 7, 8

WKR
1/20/84

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 17, 1984

Re: No. 82-1271 INS v. Delgado

Dear John:

Your letter of February 15th made three suggestions with respect to the circulating opinion in this case. As I told you on the telephone, Sandra and Byron already made suggestions identical to your first one, and a circulation about to come around will reflect that change. I would be happy to accommodate your third suggestion in a future draft if you decide to join the opinion.

As to your second suggestion, I told you on the phone that I wanted to check the record to make sure that it supported the factual assertions contained in your statement. There is one incident described in the deposition of Marie Miramontes, J.A. 125-126, in which she says that she observed an INS officer unsuccessfully try to stop someone who walked out the door. The government's position in the case, summarized at fn. 6 of its brief, is that "[i]n instances where a person is found hiding or after attempting to flee from an Immigration officer, such person is detained for questioning based on the premise that he did attempt to hide or abscond," presumably on the basis that there is then articulable suspicion that he is an illegal alien. The description of the encounter is ambiguous at best, but I think I will err on the side of caution and assume arguendo that your suggested language would not include this incident.

I don't think this changes the analysis so far as whether or not there was a "seizure of the workforce" and I don't think this affects the inquiry of whether or not any of these four respondents had reasonable grounds to believe they were not free to leave upon being questioned. But since the language that you propose is not categorically correct, it ought not to be put in in its present form. If

you have an additional suggestion on this point, I will be happy to consider it.

Sincerely,

A handwritten signature in dark ink, appearing to be the initials 'W.S.' or similar, written in a cursive style.

Justice Stevens

cc: The Conference

INTRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 20, 1984

Re: No. 82-1271 INS v. Delgado

Dear John:

I think the following changes in the presently circulating draft will accommodate your most recent suggestions:

Replace the second paragraph on page 7 with the following new paragraph:

Respondents argue, however, that the stationing of agents near the factory doors showed the INS's intent to prevent people from leaving. But there is nothing in the record indicating that this is what the agents at the doors actually did. The obvious purpose of the agents' presence at the factory doors was to restrain any illegal aliens from escaping. The record indicates that the INS agents' conduct in this case consisted simply of questioning employees and arresting those they had probable cause to believe were unlawfully present in the factory. This conduct should have given respondents no reason to believe that they would be detained if they gave truthful answers to the questions put to them or if they simply refused to answer. If mere questioning does not constitute a seizure when it occurs inside the factory, it is no more a seizure when it occurs at the exits.6/

Text of footnote 6/

In her deposition respondent Miramontes described an incident that occurred during the October factory survey at Mr. Pleat, in which an INS agent stationed by an exit attempted to prevent a worker, presumably an illegal alien,

from leaving the premises after the survey started. The worker walked out the door and when an agent tried to stop him, the worker pushed the agent aside and ran away. App. 125-126. An ambiguous isolated incident such as this fails to provide any basis on which to conclude that respondents have shown an INS policy entitling them to injunctive relief. See Rizzo v. Goode, 423 U.S. 362 (1976); cf. Allee v. Medrano, 416 U.S. 802 (1974); Hague v. CIO, 307 U.S. 496 (1939).

Replace the third and fourth sentences in the paragraph carrying over from page 9 to 10, and replace them with the following:

But it was obvious from the beginning of the surveys that the INS agents were only questioning people. Persons such as respondents who simply went about their business in the workplace were not detained in any way; nothing more occurred than that a question was put to them. While persons who attempted to flee or evade the agents may eventually have been detained for questioning, see App. 50, 81-84, 91-93, respondents did not do so and were not in fact detained.

I think your earlier suggestion that I comment about the standing of these respondents to challenge what happened to them could be treated in a new footnote 4 on page 6, which would be referenced at the end of the sentence in the third line from the bottom of the page, and would read as follows:

Although the issue was the subject of substantial discussion at oral argument, the INS does not contest that respondents have standing to bring this case. They allege the existence of an ongoing policy which violated the Fourth Amendment and which will be applied to their workplace in the future. Cf. Allee v. Medrano, 416 U.S. 802 (1974). Part of their argument is clearly based on the INS's detention of illegal aliens found working at the two factories. Respondents, however, can only premise their right to injunctive relief on their individual encounters with INS agents during the factory surveys. See ante, p. 10.

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

If these changes are satisfactory to you, let me know and I will go ahead and make them.

Sincerely,

A handwritten signature in cursive script, appearing to be 'Wm'.

Justice Stevens

cc: The Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: FEB 23 1984

Recirculated: _____

P 6, 7, 8, 10

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE,
ET AL., PETITIONERS *v.* HERMAN DELGADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[February —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

In the course of enforcing the immigration laws, petitioner Immigration and Naturalization Service (INS) enters employers' worksites to determine whether any illegal aliens may be present as employees. The Court of Appeals for the Ninth Circuit held that the "factory surveys" involved in this case amounted to a seizure of the entire work forces, and further held that the INS could not question individual employees during any of these surveys unless its agents had a reasonable suspicion that the employee to be questioned was an illegal alien. *Garment Workers v. Sureck*, 681 F. 2d 624 (1982). We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

Acting pursuant to two warrants, in January and September, 1977, the INS conducted a survey of the work force at Southern California Davis Pleating Company (Davis Pleating) in search of illegal aliens. The warrants were issued on a showing of probable cause by the INS that numerous illegal aliens were employed at Davis Pleating, although neither of the search warrants identified any particular illegal aliens by name. A third factory survey was conducted with

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

✓ Stylistic Changes Throughout

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: 7/10/84

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1271

IMMIGRATION AND NATURALIZATION SERVICE,
ET AL., PETITIONERS *v.* HERMAN DELGADO, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE NINTH CIRCUIT

[April —, 1984]

JUSTICE REHNQUIST delivered the opinion of the Court.

In the course of enforcing the immigration laws, petitioner Immigration and Naturalization Service (INS) enters employers' worksites to determine whether any illegal aliens may be present as employees. The Court of Appeals for the Ninth Circuit held that the "factory surveys" involved in this case amounted to a seizure of the entire work forces, and further held that the INS could not question individual employees during any of these surveys unless its agents had a reasonable suspicion that the employee to be questioned was an illegal alien. *Garment Workers v. Sureck*, 681 F. 2d 624 (1982). We conclude that these factory surveys did not result in the seizure of the entire work forces, and that the individual questioning of the respondents in this case by INS agents concerning their citizenship did not amount to a detention or seizure under the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals.

Acting pursuant to two warrants, in January and September, 1977, the INS conducted a survey of the work force at Southern California Davis Pleating Company (Davis Pleating) in search of illegal aliens. The warrants were issued on a showing of probable cause by the INS that numerous illegal aliens were employed at Davis Pleating, although neither of the search warrants identified any particular illegal aliens by name. A third factory survey was conducted with

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT
JUSTICE JOHN PAUL STEVENS

January 23, 1984

'84 JAN 23 P2:23

Re: 82-1271 - INS v. Delgado

Dear Bill:

It seems to me that there is some possibility that the majority will end up with a remand that will be acceptable to us. If not, I will of course be happy to undertake a dissent.

Respectfully,

S
L

Justice Brennan

cc: Justice Marshall

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 15, 1984

Re: 82-1271 - INS v. Delgado

Dear Bill:

Although I agree with most of your opinion, I do have these three suggestions that I hope you will consider.

(1) On page 6, you state that the test for when a seizure occurs is whether "the circumstances of the encounter are so intimidating as to demonstrate that any response is in fact compelled" As the opinion earlier recognizes at page 5, the interest protected by the Fourth Amendment is not one against compulsion per se, but rather one in freedom of movement. Thus, I think the sentence should read: "Unless the circumstances of the encounter are so intimidating as to demonstrate that the citizen reasonably believed he was not free to leave, one cannot say that the questioning resulted in a detention or seizure subject to the Fourth Amendment."

(2) The second full paragraph on page 7 states that people who are not illegal aliens have nothing to fear from these surveys and hence are not "seized." I am concerned about this argument. Legal aliens may have nothing to fear since they must have documentation on them at all times, so they can prove their legal status (assuming that the agents accept the documentation as genuine). But what of the Hispanic-looking American citizen? He or she has a lot to fear from these procedures, since if he or she states he is an American citizen, and is disbelieved, he or she may be detained. If during one of these operations a Hispanic looking citizen observed that his or her fellow workers, including the American citizens among them, were being arrested if they did not answer the agents' questions to their satisfaction, that citizen might well reasonably believe that he is not free to refrain from answering the agents' questions, nor free to leave. Thus, if the record

showed that during the course of these raids the agents detained substantial numbers of American citizens or documented aliens, then the raids could have created a situation where a citizen or documented alien might have been "seized" under Mendenhall even though the "obvious purpose" of the raids was to arrest only illegal aliens.

I think the argument would be strengthened by observing that nothing in the record indicates that the agents did anything more than question individuals. There is no finding that if a worker refused to answer, he or she would be detained on reasonable suspicion of alienage, illegal alienage, or any other standard. Thus, I would change the second full paragraph on page 7 as follows: "Respondents argue, however, that the stationing of agents near the factory doors showed the INS's intent to prevent people from leaving the buildings. But there is no finding that this is what the agents at the doors actually did. INS claims that these agents did not prevent persons from leaving, but merely questioned persons as they left, to ensure that all persons in the factory at the beginning of the survey could be questioned. There is nothing in the record to indicate otherwise. If mere questioning does not constitute a seizure when it occurs inside the factory, it is no more a seizure when it occurs at the exits."

For the same reason, I think the third sentence in the paragraph that begins on page 9 should be changed along these lines: "But it was obvious from the beginning of the surveys that the INS agents were only questioning persons; they were not detaining them in any way. That is all that happened to respondents; they were asked a question and then went on their way." I would then continue with "The manner in which respondents"

(3) Would you consider ~~adding~~ a footnote explaining why respondents have standing to bring this case? Not only is this a jurisdictional question, but it also was the subject of substantial discussion at oral argument. The footnote could say something like: "Respondents have standing to bring this case. They allege the existence of an ongoing policy which violates the Fourth Amendment and which will be applied to their workplace in the future. See Allee v. Medrano, 416 U.S. 802 (1974)."

FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

If you can accommodate these concerns, I will be happy to join you.

Respectfully,

A handwritten signature in dark ink, appearing to be 'R. Rehnquist', written in a cursive style.

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 17, 1983

Re: 82-12~~3~~1 - INS v. Delgado

Dear Bill:

Thank you for your response to my suggestions and for inviting me to make a second try on the second suggestion. I agree completely with your view that we should take into account the incident described in the Miramontes deposition; I think, however, that the following revision might take care of that problem as well as my concern. Here is what I propose:

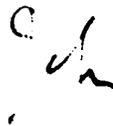
In the paragraph on pages 7 and 8 of your second draft: "Respondents argue, however, that the stationing of agents near the factory doors showed the INS's intent to prevent people from leaving the buildings. But there is nothing in the findings of the District Court indicating that this is what the agents at the doors actually did. The record indicates that the agents at the exits routinely did nothing more than pose questions to persons as they left, to ensure that all persons in the factory at the beginning of the survey were questioned. If mere questioning does not constitute a seizure when it occurs inside the factory, it is no more a seizure when it occurs at the exits." At this point you could drop a footnote describing the Miramontes deposition, and explaining that "one isolated incident is a clearly insufficient basis on which to conclude that respondents had demonstrated the existence of an INS policy subject to injunctive relief. See Rizzo v. Goode, 423 U.S. 362 (1976)."

The third sentence of the paragraph on pages 9 and 10 might say: "But it was obvious from the beginning of the surveys that the INS agents were only questioning people. Persons such as respondents who simply went about their business in the workplace were not detained in any way; nothing more occurred than that a question was put to them. While persons who attempted to flee

or evade the agents were detained for questioning, respondents did not do so and were not in fact detained." I would continue with "Respondents may only litigate what happened to them, . . ."

If you can accept this proposal, or its functional equivalent, I will be happy to join you.

Respectfully,

A handwritten signature in dark ink, appearing to be 'C. J. W.' or similar, written in a cursive style.

Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 22, 1984

Re: 82-1271 - INS v. Delgado

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 17, 1984

No. 82-1271 INS v. Delgado

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference