SUPREME COURT OF THE UNITED STATES

No. 99–1030

CITY OF INDIANAPOLIS, ET AL., PETITIONERS *v.*
JAMES EDMOND ET AL.

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

[November 28, 2000]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE THOMAS joins, and with whom JUSTICE SCALIA joins as to Part I, dissenting.

The State's use of a drug-sniffing dog, according to the Court's holding, annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence: brief, standardized, discretionless, roadblock seizures of automobiles, seizures which effectively serve a weighty state interest with only minimal intrusion on the privacy of their occupants. Because these seizures serve the State's accepted and significant interests of preventing drunken driving and checking for driver's licenses and vehicle registrations, and because there is nothing in the record to indicate that the addition of the dog sniff lengthens these otherwise legitimate seizures, I dissent.

I

As it is nowhere to be found in the Court's opinion, I begin with blackletter roadblock seizure law. "The principal protection of Fourth Amendment rights at checkpoints lies in appropriate limitations on the scope of the stop." *United States* v. *Martinez-Fuerte*, 428 U. S. 543, 566–567 (1976). Roadblock seizures are consistent with the Fourth Amendment if they are "carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of

individual officers." *Brown* v. *Texas*, 443 U. S. 47, 51 (1979). Specifically, the constitutionality of a seizure turns upon "a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty." *Id.,* at 50–51.

We first applied these principles in *Martinez-Fuerte*, *supra*, which approved highway checkpoints for detecting illegal aliens. In *Martinez-Fuerte*, we balanced the United States' formidable interest in checking the flow of illegal immigrants against the limited "objective" and "subjective" intrusion on the motorists. The objective intrusion– the stop itself,[1] the brief questioning of the occupants, and the visual inspection of the car– was considered "limited" because "[n]either the vehicle nor its occupants [were] searched." *Id.,* at 558. Likewise, the subjective intrusion, or the fear and surprise engendered in law-abiding motorists by the nature of the stop, was found to be minimal because the "regularized manner in which [the] established checkpoints [were] operated [was] visible evidence, reassuring to law-abiding motorists, that the stops [were] duly authorized and believed to serve the public interest." *Id.,* at 559. Indeed, the standardized operation of the roadblocks was viewed as markedly different from roving patrols, where the unbridled discretion of officers in the field could result in unlimited interference with motorists' use of the highways. Cf. *United States* v. *Brignoni-Ponce*, 422 U. S. 873 (1975). And although the decision in *Martinez-Fuerte* did not turn on the checkpoints' effectiveness, the record in one of the consolidated cases demonstrated that illegal aliens were found in 0.12 percent of the

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[1]The record from one of the consolidated cases indicated that the stops lasted between three and five minutes. See *United States* v. *Martinez-Fuerte,* 428 U. S. 543, 546–547 (1976).

stopped vehicles. See 428 U. S., at 554.

In *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444 (1990), we upheld the State's use of a highway sobriety checkpoint after applying the framework set out in *Martinez-Fuerte*, *supra*, and *Brown* v. *Texas*, *supra*. There, we recognized the gravity of the State's interest in curbing drunken driving and found the objective intrusion of the approximately 25-second seizure to be "slight." 496 U. S., at 451. Turning to the subjective intrusion, we noted that the checkpoint was selected pursuant to guidelines and was operated by uniformed officers. See *id.*, at 453. Finally, we concluded that the program effectively furthered the State's interest because the checkpoint resulted in the arrest of two drunk drivers, or 1.6 percent of the 126 drivers stopped. See *id.*, at 455–456.

This case follows naturally from *Martinez-Fuerte* and *Sitz*. Petitioners acknowledge that the "primary purpose" of these roadblocks is to interdict illegal drugs, but this fact should not be controlling. Even accepting the Court's conclusion that the checkpoints at issue in *Martinez-Fuerte* and *Sitz* were not primarily related to criminal law enforcement,[2] the question whether a law enforcement purpose could support a roadblock seizure is not presented in this case. The District Court found that another "purpose of the checkpoints is to check driver's licenses and vehicle registrations," App. to Pet. for Cert. 44a, and the

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[2] This gloss, see *ante*, at 5–7, 8–10, is not at all obvious. The respondents in *Martinez-Fuerte* were criminally prosecuted for illegally transporting aliens, and the Court expressly noted that "[i]nterdicting the flow of illegal entrants from Mexico poses formidable law enforcement problems." 428 U. S., at 552. And the *Sitz* Court recognized that if an "officer's observations suggest that the driver was intoxicated, an arrest would be made." *Michigan Dept. of State Police* v. *Sitz*, 496 U. S. 444, 447 (1990). But however persuasive the distinction, the Court's opinion does not impugn the continuing validity of *Martinez-Fuerte* and *Sitz*. See *ante*, at 14–15.

written directives state that the police officers are to "[l]ook for signs of impairment." *Id.,* at 53a. The use of roadblocks to look for signs of impairment was validated by *Sitz,* and the use of roadblocks to check for driver's licenses and vehicle registrations was expressly recognized in *Delaware* v. *Prouse*, 440 U. S. 648, 663 (1979).[3] That the roadblocks serve these legitimate state interests cannot be seriously disputed, as the 49 people arrested for offenses unrelated to drugs can attest. *Edmond* v. *Goldsmith*, 183 F. 3d 659, 661 (CA7 1999). And it would be speculative to conclude– given the District Court's findings, the written directives, and the actual arrests– that petitioners would not have operated these roadblocks but for the State's interest in interdicting drugs.

Because of the valid reasons for conducting these roadblock seizures, it is constitutionally irrelevant that petitioners also hoped to interdict drugs. In *Whren* v. *United States*, 517 U. S. 806 (1996), we held that an officer's subjective intent would not invalidate an otherwise objectively justifiable stop of an automobile. The reasonableness of an officer's discretionary decision to stop an automobile, at issue in *Whren*, turns on whether there is probable cause to believe that a traffic violation has occurred. The reasonableness of highway checkpoints, at issue here, turns on whether they effectively serve a significant state interest with minimal intrusion on motorists. The stop in *Whren* was objectively reasonable because the police officers had witnessed traffic violations; so too the roadblocks here are objectively reasonable because they serve the substantial interests of preventing drunken driving and checking for driver's licenses and vehicle

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[3] Several Courts of Appeals have upheld roadblocks that check for driver's licenses and vehicle registrations. See, *e.g., United States* v. *Galindo-Gonzales*, 142 F. 3d 1217 (CA10 1998); *United States* v. *McFayden*, 865 F. 2d 1306 (CADC 1989).

registrations with minimal intrusion on motorists.

Once the constitutional requirements for a particular seizure are satisfied, the subjective expectations of those responsible for it, be it police officers or members of a city council, are irrelevant. Cf. *Scott* v. *United States*, 436 U. S. 128, 136 (1978) ("Subjective intent alone . . . does not make otherwise lawful conduct illegal or unconstitutional"). It is the objective effect of the State's actions on the privacy of the individual that animates the Fourth Amendment. See *Bond* v. *United States*, 529 U. S. 334, 338, n. 2 (2000) (applying *Whren* to determine if an officer's conduct amounted to a "search" under the Fourth Amendment because "the issue is not his state of mind, but the objective effect of his actions"). Because the objective intrusion of a valid seizure does not turn upon anyone's subjective thoughts, neither should our constitutional analysis.[4]

With these checkpoints serving two important state interests, the remaining prongs of the *Brown* v. *Texas* balancing test are easily met. The seizure is objectively reasonable as it lasts, on average, two to three minutes and does not involve a search. App. to Pet. for Cert. 57a. The subjective intrusion is likewise limited as the checkpoints are clearly marked and operated by uniformed officers who are directed to stop every vehicle in the same manner. *Ibid.* The only difference between this case and *Sitz* is the presence of the dog. We have already held, however, that a "sniff test" by a trained narcotics dog is not a "search" within the meaning of the Fourth Amendment because it does not require physical intrusion of the object being sniffed and it does not expose anything other

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[4] Of course we have looked to the purpose of the program in analyzing the constitutionality of certain suspicionless searches. As discussed in Part II, *infra,* that doctrine has never been applied to seizures of automobiles.

than the contraband items. *United States* v. *Place*, 462 U. S. 696, 706–707 (1983). And there is nothing in the record to indicate that the dog sniff lengthens the stop. Finally, the checkpoints' success rate– 49 arrests for offenses unrelated to drugs– only confirms the State's legitimate interests in preventing drunken driving and ensuring the proper licensing of drivers and registration of their vehicles. 183 F. 3d, at 661.[5]

These stops effectively serve the State's legitimate interests; they are executed in a regularized and neutral manner; and they only minimally intrude upon the privacy of the motorists. They should therefore be constitutional.

II

The Court, unwilling to adopt the straightforward analysis that these precedents dictate, adds a new non-law-enforcement primary purpose test lifted from a distinct area of Fourth Amendment jurisprudence relating to the *searches* of homes and businesses. As discussed above, the question that the Court answers is not even posed in this case given the accepted reasons for the seizures. But more fundamentally, whatever sense a non-law-enforcement primary purpose test may make in the search setting, it is ill suited to brief roadblock seizures, where we have consistently looked at "the scope of the stop" in assessing a program's constitutionality. *Martinez-Fuerte*, 428 U. S., at 567.

We have already rejected an invitation to apply the non-law-enforcement primary purpose test that the Court now finds so indispensable. The respondents in *Sitz* argued that the *Brown* v. *Texas* balancing test was not the "proper method of analysis" with regards to roadblock seizures:

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[5] Put in statistical terms, 4.2 percent of the 1,161 motorists stopped were arrested for offenses unrelated to drugs.

> "Respondents argue that there must be a showing of some special governmental need 'beyond the normal need' for criminal law enforcement before a balancing analysis is appropriate, and that [the State] ha[s] demonstrated no such special need.
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> "But it is perfectly plain from a reading of [*Treasury Employees* v.] *Von Raab*[, 489 U. S. 656 (1989)], which cited and discussed with approval our earlier decision in *United States* v. *Martinez-Fuerte*, 428 U. S. 543 (1976), that it was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown* v. *Texas*, *supra*, are the relevant authorities here." 496 U. S., at 449, 450.

Considerations of *stare decisis* aside, the "perfectly plain" reason for not incorporating the "special needs" test in our roadblock seizure cases is that seizures of automobiles "deal neither with searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection." *Martinez-Fuerte*, *supra*, at 561.

The "special needs" doctrine, which has been used to uphold certain suspicionless searches performed for reasons unrelated to law enforcement, is an exception to the general rule that a search must be based on individualized suspicion of wrongdoing. See, *e.g.*, *Skinner* v. *Railway Labor Executives' Assn.*, 489 U. S. 602 (1989) (drug test search); *Camara* v. *Municipal Court of City and County of San Francisco*, 387 U. S. 523 (1967) (home administrative search). The doctrine permits intrusions into a person's body and home, areas afforded the greatest Fourth Amendment protection. But there were no such intrusions here.

"[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence." *Martinez-Fuerte*, *supra*, at 561. This is because "[a]utomobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls." *South Dakota* v. *Opperman*, 428 U. S. 364, 368 (1976); see also *New York* v. *Class*, 475 U. S. 106, 113 (1986) ("[A]utomobiles are justifiably the subject of pervasive regulation by the State"); *Cardwell* v. *Lewis*, 417 U. S. 583, 590 (1974) ("One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects"). The lowered expectation of privacy in one's automobile is coupled with the limited nature of the intrusion: a brief, standardized, nonintrusive seizure.[6] The brief seizure of an automobile can hardly be compared to the intrusive search of the body or the home. Thus, just as the "special needs" inquiry serves to both define and limit the permissible scope of those searches, the *Brown* v. *Texas* balancing test serves to define and limit the permissible scope of automobile seizures.

Because of these extrinsic limitations upon roadblock seizures, the Court's newfound non-law-enforcement primary purpose test is both unnecessary to secure Fourth Amendment rights and bound to produce wide-ranging litigation over the "purpose" of any given seizure. Police designing highway roadblocks can never be sure of their validity, since a jury might later determine that a forbidden purpose exists. Roadblock stops identical to the one that we upheld in *Sitz* 10 years ago, or to the one that we

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[6] This fact distinguishes the roadblock seizure of an automobile from an inventory search of an automobile. Cf. *Colorado* v. *Bertine*, 479 U. S. 367 (1987) (automobile inventory search).

upheld 24 years ago in *Martinez-Fuerte*, may now be challenged on the grounds that they have some concealed forbidden purpose.

Efforts to enforce the law on public highways used by millions of motorists are obviously necessary to our society. The Court's opinion today casts a shadow over what had been assumed, on the basis of *stare decisis*, to be a perfectly lawful activity. Conversely, if the Indianapolis police had assigned a different purpose to their activity here, but in no way changed what was done on the ground to individual motorists, it might well be valid. See *ante*, at 14, n. 2. The Court's non-law-enforcement primary purpose test simply does not serve as a proxy for anything that the Fourth Amendment is, or should be, concerned about in the automobile seizure context.

Petitioners' program complies with our decisions regarding roadblock seizures of automobiles, and the addition of a dog sniff does not add to the length or the intrusion of the stop. Because such stops are consistent with the Fourth Amendment, I would reverse the decision of the Court of Appeals.