

RESPONSES TO MIGRATION

**Selected Court Cases on  
Immigration Enforcement**

---

*Sidney Weintraub, Francisco Alba,  
Rafael Fernández de Castro  
& Manuel Garcia y Griego*

**Supreme Court decisions  
unless otherwise indicated**

*(including case, year,  
holding, and significance).*

# Selected Court Cases on Immigration Enforcement

(Supreme Court decisions unless otherwise indicated.)

	Cases (Year)	Holding	Significance
<b>Stops &amp; Searches at/near border</b>			
Roving Patrols	<i>Almeida-Sanchez v. U.S.</i> (1973)	Without probable cause, the warrantless search of petitioner's automobile away from the border or its functional equivalent violated the Fourth Amendment guarantee against unreasonable searches and seizures.	Limited the power of INS roving patrols to stop and search vehicles away from the borders.
	<i>U.S. v. Brignoni-Ponce</i> (1975)	Except at the border and its functional equivalent, Border Patrol officers may stop vehicles only if they are aware of specific articulable facts, together with rational inferences that would reasonably warrant suspicion that the vehicles are occupied by aliens who may be illegally in the United States.	Court found that a roving border patrol that stops a vehicle near the Mexican border and questions its occupants concerning their immigration status and citizenship where the occupants' apparent Mexican ancestry furnished the only ground for suspicion that the occupants were aliens violates the Fourth Amendment.
	<i>U.S. v. Cortez</i> (1981)	Based upon the whole picture and taking account the experience of Border Patrol officers, the Court found that objective facts and deductions from such facts afford a legitimate basis for suspicion of a particular person and action on that suspicion.	Court recognized that, when used by trained law enforcement officers, objective facts, meaningless to the untrained, allow for permissible circumstantial evidence suggesting that a particular vehicle is involved in criminal activity may provide a sufficient basis to justify an investigative stop of that vehicle.

Cases (Year)	Holding	Significance
<i>Cervante-Cuevas v. INS</i> (9th Circuit 1985)	The exclusionary rule did not apply to a deportation proceeding even if it was assumed that the detention of the alien was unlawful.	
<i>Nicacio v. U.S. INS</i> (9th Circuit 1985)	Appearance and dress factors were not sufficient to provide for a reasonable suspicion that the people in the vehicle were illegal aliens sufficient to justify motor vehicle stop. Subjective feelings or intuition do not provide any rational basis for distinguishing illegal aliens from U.S. citizens and legal aliens, and thus do not meet the requirement that stops of vehicles to search for illegal aliens be based on specific articulable facts, together with inferences from those facts.	While an officer may evaluate the facts supporting reasonable suspicion in light of his experience, experience may not be used to give the officers unbridled discretion in making a stop. The detaining officers must have a particularized and objective basis for suspecting the particular person stopped to be an illegal alien. The articulable facts standard is "measured against an objective reasonable man standard, not by the subjective impressions of a particular officer."
<i>Gonzalez-Rivera v. INS</i> (9th Circuit 1985)	The stop, which resulted solely from Gonzalez's Hispanic appearance, constituted a bad faith and egregious violation of the Fourth Amendment.	Allowed application of the exclusionary rule in deportation hearing.
<i>U.S. v. Ortiz</i> (1975)	Warrantless searches at fixed checkpoints not the equivalent of an external border may only be conducted on the same probable cause basis as established in other search and seizure cases.	Court applied probable cause standard to traffic checkpoint searches. Court recognized the differences between a roving patrol and a fixed checkpoint, but argued that there is no difference in the actual search.
<i>U.S. v. Martinez-Fuerte</i>	Vehicle stops at a fixed checkpoint for brief questioning of its occupants, even though there is no reason to believe the particular vehicle contains illegal aliens, are consistent with the Fourth Amendment. The operation of	

	Cases (Year)	Holding	Significance
		<p>a fixed checkpoint need not be authorized in advance by a judicial warrant.</p> <p>It was constitutional for the Border Patrol, after routinely stopping or slowing automobiles at a permanent checkpoint, to refer motorists selectively to a secondary inspection area, to be questioned about citizenship and immigration status on the basis of criteria that would not sustain a roving-patrol stop. No constitutional violation even if such referrals were made largely on the basis of apparent Mexican ancestry.</p>	

### ***Searches & Seizures away from the border***

<p>Factory sweeps/ workplace raids</p>	<p><i>International Ladies' Garment Workers' Union v. Sureck</i> (9th Circuit 1982)</p>	<p>The work force at a plant was seized for the duration of an INS survey because the stationing of agents at the doors of the building was such that a reasonable person would have believed he was not free to leave.</p>	<p>The court found that the agents had created a detentive environment by their verbal authority, badges, use of the element of surprise, the sustained disruption of the working environment, and questioning of selected individuals based on their clothing, facial appearance, hair color and styling, demeanor, language, and accent.</p> <p>The ILGWU court noted that an individual could be questioned only on the basis of a reasonable suspicion or probable cause that that particular employee was an illegal alien.</p>
	<p><i>INS v. Delgado</i> (1984)</p>	<p>INS agents, moving systematically through a factory and inquiring as to the practice of sealing off the citizenship status of workers while other agents were stationed at each</p>	<p>Delgado overturned ILGWU. The Court characterized the INS factory exits as a non-threatening interrogation device, rather than detention.</p>

Cases (Year)	Holding	Significance
<i>INS v. Lopez-Mendoza</i> (1984)	exit, did not effect a seizure of the entire workforce in violation of the Fourth Amendment. The individual questioning of the employees did not amount to a detention or seizure under the Fourth Amendment. The Fourth Amendment exclusionary rule does not apply to civil deportation hearings.	Court limited its holding by stating "we do not deal here with egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained."
<i>Terry v. Ohio</i> (1968)	Police officer who observed unusual conduct in light of his experience that criminal activity might be afoot and that the persons with whom he is dealing may be armed and presently dangerous, and who approached, identified himself as an officer, and asked their names, acted reasonably in seizing defendant in order to search him for weapons, and did not exceed reasonable scope of search in patting down outer clothing of defendants.	Though case did not arise in an immigration context, it is relevant to immigration enforcement regarding pedestrian stops and area control operations. The scope of the search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible. The holding concerns the balancing test used to determine the reasonableness of the intrusion on the individual. The test weighs the need for the intrusion against the severity of the invasion caused by the intrusion.
<i>Brown v. Texas</i> (1979)	The application of the Texas statute to detain appellant and require him to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe appellant was engaged or had engaged in criminal conduct.	The circumstances did not justify a reasonable suspicion that defendant was involved in criminal conduct and thus did not warrant detention for questioning.

	Cases (Year)	Holding	Significance
Residences/farm & ranch checks of migrant housing	<i>Zepeda v. U.S. INS</i> (9th Circuit 1985)	The court affirmed the lower court's findings that INS practices violated the Fourth Amendment and that the INS could reasonably be expected to continue these practices. The court also found that the district court abused its discretion when it prohibited the INS from obtaining the assistance of other law enforcement agencies.	
	<i>LaDuke v. Nelson</i> (9th Circuit 1985)	Practices of INS in conducting farm and ranch checks of migrant housing constituted seizure of the housing community where access roads were sealed, means of egress from individual units were surrounded, and those who left were seized.	LaDuke is distinguished from Delgado: (1) here, INS agents operated without warrants, probable cause or articulable suspicion; and (2) there was a materially different place in which the searches occurred—homes versus the workplace.
<b>Other</b>			
Admissibility of information	<i>Benitez-Mendez v. INS</i> (9th Circuit 1983)	"even though...petitioner's arrest violated the Fourth Amendment, the information obtained as a result of the arrest (petitioner's statements on Form I-213) was admissible at his deportation hearing." 760 F.2d 907, at 910.	Applied in Cervantes-Cuevas.
"Substantial connection"	<i>U.S. v. Verdugo-Urquidez</i> (1990)	The Fourth Amendment does not apply to the search and seizure by U.S. agents of property owned by a nonresident alien and located in a foreign country.	Aliens are entitled to constitutional protections when the test is applied that they may have come within the territory of the United States to develop substantial connections with this country. This holding potentially eliminates Fourth Amendment protections for illegal immigrants altogether by requiring their connection to the

Cases (Year)	Holding	Significance
Collateral challenge to deportation proceedings	<p><i>U.S. v. Mendoza-Lopez</i> (1987)</p> <p>Under the due process clause of the Fifth Amendment, “a collateral challenge to the use of a deportation proceeding as an element of a criminal offense must be permitted where the deportation proceeding effectively eliminates the right of the alien to obtain judicial review.”</p>	<p>United States be tested against the “substantial connection” test.</p>
Miranda issues & right to challenge deportation	<p><i>U.S. v. Gonzalez Sandoval</i> (9th Circuit 1990)</p> <p>Border Patrol agents’ failure to give defendant Miranda warnings when they questioned him about his immigration status did not make his post-Miranda confession involuntary, absent evidence that the defendant was coerced into confessing after receiving warnings.</p> <p>No entitlement to automatic grants of continuance requests is implied in the right to attack deportation proceedings collaterally.</p> <p>Before a district court’s denial of continuance will be reversed, “the appellant must establish that the refusal resulted in prejudice to his defense.” <i>U.S. v. Long</i>, 706 F.2d 1044, 1053 (9th Circuit-1983)</p>	<p>Nontestimonial physical evidence discovered as a result of statements obtained in violation of Miranda is not inadmissible as “fruit of collaterally poisonous tree” where there is no evidence of coercion or denial of due process in elicitation of the statements.</p>

