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City of Indianapolis v. Edmond: The Constitutionality of Drug Interdiction Checkpoints

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CITY OF INDIANAPOLIS v. EDMOND: THE CONSTITUTIONALITY OF DRUG INTERDICTION CHECKPOINTS

City of Indianapolis v. Edmond, 531 U.S. 32 (2001).

I. INTRODUCTION

In *City of Indianapolis v. Edmond*,¹ the Supreme Court ruled on the constitutionality of a drug interdiction program operated in Indianapolis. The Supreme Court held that the drug interdiction checkpoints were unconstitutional violations of the Fourth Amendment because the primary purpose of the checkpoints was general crime control.

This Note argues that the decision in *Edmond* was incorrect. The previous roadblock cases of *United States v. Martinez-Fuerte*² and *Michigan Department of State Police v. Sitz*³ clearly established that roadblocks in certain situations are constitutional, and the roadblocks at issue in Indianapolis were not sufficiently distinguishable to warrant a contrary outcome. Had the Court followed the principles it set forth in earlier roadblock cases, it would have been forced to uphold the drug interdiction checkpoints as constitutional. Instead, the majority of the Court created an arbitrary distinction that has no basis in prior case law or in the wording of the Fourth Amendment. As a result, current roadblock case law has become confusing and illogical—the Court solved nothing and despite its attempt to preserve individual liberties under the Fourth Amendment, the Court failed. States can easily circumvent the Court's decision and establish roadblocks identical to the roadblocks struck down in *Edmond* simply by taking care to articulate a primary purpose that the Court has deemed acceptable. As a result, the Court's promise to protect Fourth Amendment rights is hollow and illusory. Increased litigation and

¹ 531 U.S. 32 (2000).

² 428 U.S. 543 (1976).

³ 496 U.S. 444 (1990).

uncertainty about the types of roadblocks that are constitutional will likely result.

II. BACKGROUND

A. THE FOURTH AMENDMENT PROHIBITION AGAINST UNREASONABLE SEARCHES AND SEIZURES

The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"⁴ The Supreme Court has generally held that the Fourth Amendment prohibition against unreasonable searches and seizures requires a finding of individualized suspicion or probable cause.⁵ However, over the years, the Court has carved out several exceptions to this general rule, and currently there are several limited situations where a search or seizure can be reasonable under the Court's Fourth Amendment case law even absent such individualized suspicion. These exceptions can be grouped into two categories—the "special needs doctrine," where the States pursue significant interests exceeding normal need for law enforcement,⁶ and administrative searches, where there is frequently no individualized suspicion but the scope of the intrusion is correspondingly limited.⁷

In *Brown v. Texas*, the Supreme Court addressed the reasonableness of seizures under the Fourth Amendment in the absence of individualized suspicion.⁸ In that case, two police officers cruising in a patrol car in a high-crime area of El Paso observed defendant Brown and another man in an alley.⁹ The officers did not suspect any misconduct, but asked Brown to identify himself because he "looked

⁴ U.S. CONST. amend. IV.

⁵ *Chandler v. Miller*, 520 U.S. 305, 308 (1997).

⁶ See *Veronia Sch. Dist. 47J v. Acton*, 515 U.S. 646 (1995) (upholding random drug testing of student athletes); *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989) (upholding drug testing of U.S. Customs employees seeking promotion or transfer to specific positions); *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602 (1989) (upholding drug and alcohol testing for employees involved in train accidents).

⁷ See *New York v. Burger*, 482 U.S. 691, 702–3 (1987) (upholding warrantless inspection of "closely regulated" business for administrative purposes); *Michigan v. Tyler*, 436 U.S. 499, 509–12 (1978) (upholding administrative inspection of fire-damaged structure); *Camara v. Mun. Ct. of City and County of San Francisco*, 387 U.S. 523, 534–39 (1967) (upholding administrative inspection to ensure compliance with housing code).

⁸ 443 U.S. 47, 48 (1979).

⁹ *Id.*

suspicious.”¹⁰ Brown refused, so the officers arrested him. He was prosecuted for violation of a Texas statute requiring individuals to identify themselves to the police when asked.¹¹ The Supreme Court held that the officers violated Brown’s Fourth Amendment rights “because the officers lacked any reasonable suspicion to believe that [he] was engaged in or had engaged in criminal conduct.”¹²

In addition, the *Brown* Court set forth certain principles regarding searches or seizures conducted despite the lack of individualized suspicion.¹³ Such seizures, the Court argued, are not precluded by the Fourth Amendment, but must be limited.¹⁴ First, the “reasonableness of seizures that are less intrusive than a traditional arrest . . . depends on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers.”¹⁵ Factors to be considered in evaluating this balance include “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.”¹⁶ The Court argued that the central concern in this analysis is that individuals’ reasonable expectations of privacy are not subject to arbitrary invasions.¹⁷ To that end, the Court maintained, “[t]he Fourth Amendment requires . . . that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.”¹⁸

B. THE CONSTITUTIONALITY OF ROADBLOCKS UNDER THE FOURTH AMENDMENT

The Supreme Court first addressed standardized roadblock programs in *United States v. Martinez-Fuerte*,¹⁹ where the Court reviewed criminal prosecutions resulting from the operation of border patrol checkpoints near the border between the United States and Mexico.²⁰ The roadblocks consisted of fixed border patrol stations

¹⁰ *Id.* at 48–49.

¹¹ *Id.* at 49.

¹² *Id.* at 53.

¹³ *Id.* at 50.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 51.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ 428 U.S. 543 (1976).

²⁰ *Id.* at 545.

marked with clear signage on principal highways near the Mexican border, and their purpose was to curb the importation of illegal aliens into the United States from Mexico.²¹ At the checkpoints, approaching motorists slowed to allow "point" agents to visually screen each vehicle—"most motorists [were] allowed to resume their progress without any oral inquiry or close visual examination," and only if the "point" agent concluded that further inquiry was necessary would the vehicle be detained for a longer duration.²² This checkpoint purpose and its procedure were upheld as constitutional, primarily because of the substantial federal interest in curbing the flow of illegal aliens and the minimal intrusion the checkpoint imposed on passing motorists.²³

In evaluating the border checkpoints, the Court weighed individual Fourth Amendment interests and the public interests served by the checkpoint program.²⁴ The Court argued that the checkpoints were designed to further an important and substantial public interest (limiting the flow of illegal aliens into the United States), and the intrusion upon individuals' Fourth Amendment rights was limited (the stops were brief in duration and limited in scope).²⁵ The Court recognized that motorists knew or could determine in advance the location of these fixed border checkpoints.²⁶ In addition, the officers conducting the checkpoints were not vested with limitless discretion; rather, they were operating under strict guidelines in a regularized manner and thus less able to engage in abusive, discriminatory, or harassing stops.²⁷ These factors led the Court to conclude that the roadblocks should be upheld.²⁸

Shortly thereafter, the Court revisited the issue of detaining motorists in *Delaware v. Prouse*.²⁹ In that case, however, the Court was not evaluating a checkpoint program. Rather, the Court reviewed the detention of a single motorist driving on a public highway in Delaware and sought to determine whether the stop of the motorist was reasonable under the Fourth Amendment.³⁰ Finding that the officer

²¹ *Id.*

²² *Id.* at 546.

²³ *Id.* at 545, 551, 559.

²⁴ *Id.* at 555.

²⁵ *Id.* at 557.

²⁶ *Id.* at 559.

²⁷ *Id.*

²⁸ *Id.* at 566.

²⁹ 440 U.S. 648 (1979).

³⁰ *Id.* at 650.

lacked any reasonable or articulable suspicion that the motorist he detained was unlicensed or lacked vehicle registration, the Court held that the stop at issue was unreasonable.³¹ To reach this conclusion, the Court applied a balancing test, maintaining that “the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual’s Fourth Amendment interests against its promotion of legitimate governmental interests.”³² The Court indicated that this analysis should be conducted in light of an objective standard such as probable cause.³³

The Court recognized that the state has a legitimate interest in ensuring that motorists are properly licensed and vehicles on the roadway are properly registered.³⁴ However, the Court argued that discretionary spot checks, such as those conducted in Delaware, did not contribute substantially to highway safety and therefore were not justifiable intrusions under the Fourth Amendment.³⁵ Such a program of random and discretionary stops, the Court concluded, would result in discovery of only an insignificant number of violators and was thus too ineffective to qualify as a valid law enforcement practice under the Fourth Amendment.³⁶ In addition, the Court warned that a program approving wide officer discretion in determining who should be detained was likely to result in grave abuses of discretion.³⁷ The Court indicated, however, that its holding did not “preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion. Questioning of all oncoming traffic at roadblock-type stops is one possible alternative.”³⁸ The Court implied that a roadblock established for the purpose of verifying licenses and registration would be upheld as constitutional.³⁹

The Court addressed the constitutionality of another kind of roadblock—sobriety checkpoints—in *Michigan Department of State Police v. Sitz*.⁴⁰ The purpose of the roadblocks was to detect and

³¹ *Id.* at 663.

³² *Id.* at 654.

³³ *Id.*

³⁴ *Id.* at 658.

³⁵ *Id.* at 659.

³⁶ *Id.* at 660.

³⁷ *Id.* at 662.

³⁸ *Id.* at 663.

³⁹ *Id.*

⁴⁰ 496 U.S. 444 (1990).

eradicate drunk driving.⁴¹ According to the program guidelines, all vehicles on the roadway would be briefly detained and motorists examined for signs of intoxication; if an officer believed a motorist was intoxicated, the motorist would be detained for further sobriety testing and for verification of license and registration.⁴² The average duration of a stop was twenty-five seconds.⁴³ Because of the substantial governmental interest in roadway safety and the minimal intrusion the checkpoints posed on passing motorists, the Court upheld the sobriety checkpoints as constitutional.⁴⁴ The Court argued that the *Brown v. Texas* balancing test should be applied in roadblock cases.⁴⁵ First, the Court recognized the gravity and magnitude of the drunk driving problem and the State's legitimate and substantial interest in curbing drunk driving on its roadways.⁴⁶ Then the Court indicated that the checkpoint program imposed only a slight intrusion on motorists—indistinguishable from the intrusion imposed on the motorists at the roadblocks upheld in *Martinez-Fuerte*.⁴⁷ The Court evaluated the effectiveness of the program in addressing the State's interests and determined that the 1.6% effectiveness rate of the sobriety checkpoints was sufficient to justify their operation.⁴⁸ Thus, the Court concluded, under the *Brown v. Texas* balancing test and the decision in *Martinez-Fuerte*, the checkpoints should be upheld as constitutional.⁴⁹

C. THE ROLE OF SUBJECTIVE INTENT

In two recent Supreme Court cases, the Court addressed the role of officers' intent in Fourth Amendment analysis.⁵⁰ In *Whren v. United States*, the Court reviewed the constitutionality of the temporary detention of a motorist whom officers had probable cause to believe had committed a traffic violation.⁵¹ The defendants in *Whren*

⁴¹ *Id.* at 447.

⁴² *Id.*

⁴³ *Id.* at 448.

⁴⁴ *Id.* at 455.

⁴⁵ *Id.* at 450.

⁴⁶ *Id.* at 451.

⁴⁷ *Id.* at 451–53.

⁴⁸ *Id.* at 455.

⁴⁹ *Id.*

⁵⁰ *Bond v. United States*, 529 U.S. 334 (2000); *Whren v. United States*, 517 U.S. 806 (1996).

⁵¹ 517 U.S. at 808.

were driving in a high-crime area and stopped at an intersection for an unusually long duration when they noticed the officers' car.⁵² When the officers turned their car around to approach the defendants' car, the defendants turned quickly and drove off at an unreasonable speed.⁵³ The officers detained the vehicle and its occupants shortly thereafter, and a search of the vehicle uncovered large amounts of crack cocaine.⁵⁴ The Court held that the stop here was reasonable, and the search was consistent with the Fourth Amendment prohibition against unreasonable searches and seizures.⁵⁵ The Court reasoned that prior cases "foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved."⁵⁶ The Court explicitly stated that "[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis."⁵⁷ Thus, the defendants' contention that the officers detained them for racist or discriminatory reasons failed, because the officers could point to the traffic violations as reasons for the stop, rendering their subjective state of mind irrelevant.⁵⁸

In *Bond v. United States*, the Court reviewed a conviction based upon a search that occurred aboard a Greyhound bus.⁵⁹ At a border patrol checkpoint, a law enforcement officer boarded a bus on which the defendant was a passenger.⁶⁰ As he visually inspected the bus and its passengers, the officer felt the luggage in the overhead compartments.⁶¹ Upon feeling the defendant's bag, the officer discovered a hard, brick-like object that, after the defendant consented to a further search, was determined to be methamphetamine.⁶² The Court held that the officer's tactile search was an unconstitutional violation of the defendant's Fourth Amendment rights.⁶³ The defendant had a reasonable expectation of privacy when he placed his luggage in the compartment directly above his seat, and a reasonable person would

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 808-09.

⁵⁵ *Id.* at 819.

⁵⁶ *Id.* at 813.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ 529 U.S. 334, 335 (2000).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 336.

⁶³ *Id.* at 339.

not anticipate that his bag would be squeezed.⁶⁴ In a footnote, the Court addressed the role that the officer's state of mind should play in the analysis, maintaining "that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment."⁶⁵

III. FACTS AND PROCEDURAL HISTORY

A. FACTS

In 1998, the City of Indianapolis developed a system of vehicle checkpoints on city roadways designed to interdict illegal narcotics.⁶⁶ Between August and November, six roadblocks were conducted.⁶⁷ The authorities considered such factors as crime statistics and traffic flow and accordingly selected the locations for the roadblocks weeks in advance.⁶⁸ Generally, the checkpoints were conducted during daylight hours and clearly marked by lighted signs reading "NARCOTICS CHECKPOINT ___ MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP."⁶⁹ Officers had no discretion to determine which cars would be stopped.⁷⁰ Rather, every vehicle traveling the roadway at that particular moment was briefly pulled off of the roadway.⁷¹ A group of cars would be stopped, and the traffic flow would continue until every car in that group had been processed.⁷²

The procedure for the checkpoints was as follows: approximately thirty officers were assigned to each checkpoint.⁷³ The officers were instructed to follow the written guidelines issued by the chief of police, which specified that an officer should approach each vehicle, notify the driver the purpose of the checkpoint, and request to see the driver's license and vehicle registration.⁷⁴ The officer was also instructed to visually examine the driver for obvious signs of impair-

⁶⁴ *Id.* at 338–39.

⁶⁵ *Id.* at 338 n.2.

⁶⁶ *City of Indianapolis v. Edmond*, 531 U.S. 32, 34 (2000).

⁶⁷ *Id.*

⁶⁸ *Id.* at 35.

⁶⁹ *Id.* at 35–36.

⁷⁰ *Id.* at 35.

⁷¹ *Id.* at 36.

⁷² *Id.*

⁷³ *Id.* at 35.

⁷⁴ *Id.*

ment, as well as conduct an open-view examination of the contents of the vehicle.⁷⁵ During this encounter between the officer and the driver, a drug-sniffing dog would be walked around each vehicle.⁷⁶ According to the officers' instructions, individualized suspicion had to be established before any further investigation could occur.⁷⁷

The plaintiffs, James Edmond and Joell Palmer, filed a lawsuit on behalf of the class of all Indianapolis motorists after they were stopped at the narcotics roadblock in September 1998.⁷⁸ Edmond and Palmer claimed that the roadblocks were a violation of their Fourth Amendment rights and sought declaratory and injunctive relief, as well as damages.⁷⁹

B. THE TRIAL COURT UPHELD THE DRUG CHECKPOINTS

The United States District Court for the Southern District of Indiana denied the plaintiffs' motion for preliminary injunction, finding that the drug interdiction checkpoints did not violate the Fourth Amendment.⁸⁰ The district court applied the *Brown v. Texas*⁸¹ balancing test to determine the constitutionality of the checkpoints,⁸² balancing "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."⁸³ In applying the first prong of this test, the district court found that the city had a sufficiently strong interest in preventing drug trafficking.⁸⁴ As for the second prong, the district court concluded that its role was not to determine which methods the city should use to further the governmental interest in combating drug trafficking.⁸⁵ Rather, the court should determine whether "the checkpoints are at least reasonably effective as a tool for advancing the government's interest."⁸⁶ Here, the district court concluded the 4.7% effectiveness rate exceeded the effective-

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 36.

⁷⁹ *Id.*

⁸⁰ *Edmond v. Goldsmith*, 38 F. Supp. 2d 1016, 1018 (S.D. Ind. 1998).

⁸¹ 443 U.S. 47 (1979).

⁸² *Edmond*, 38 F. Supp. 2d at 1022.

⁸³ *Brown*, 443 U.S. at 51.

⁸⁴ *Edmond*, 38 F. Supp. 2d at 1022.

⁸⁵ *Id.*

⁸⁶ *Id.*

ness ratio of other programs upheld by the Supreme Court.⁸⁷ Finally, in addressing the level of intrusion the checkpoints imposed upon the motorists, the district court found that both the subjective and objective intrusiveness of the checkpoints were minimal.⁸⁸ As a result, the district court concluded that the checkpoints were constitutional.⁸⁹

C. THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT REVERSED THE TRIAL COURT

The Seventh Circuit Court of Appeals reversed the district court by a two to one margin.⁹⁰ Chief Judge Posner, writing for the majority, indicated that the city's primary purpose in establishing these checkpoints was "to catch drug offenders in the hope of incapacitating them, and deterring others, by criminal prosecution."⁹¹ The roadblocks had no regulatory purpose and were not geared towards guaranteeing roadway safety.⁹²

Posner argued that the general rule requiring individualized suspicion or probable cause before commencing a search and seizure is only waived in certain limited circumstances.⁹³ Such instances include: (1) a search "where there is a suspect—the police have identified the criminal and have only to find him—but it is infeasible to avoid an indiscriminate search or seizure of other persons not suspected of a crime as well," (2) a search where "no specific person is under suspicion but the circumstances make it impossible to prevent a crime without an indiscriminate search," (3) a regulatory search, "the objective of which is to protect a specific activity rather than to operate as an adjunct to general criminal law enforcement," and (4) a search aimed at "the prevention of illegal importation whether of persons . . . or of goods."⁹⁴ Posner concluded that the Indianapolis roadblocks did not fall under any of these exceptions to the general rule requiring individualized suspicion and, as a result, could not pass constitutional muster.⁹⁵

⁸⁷ *Id.* at 1023.

⁸⁸ *Id.* at 1023–24.

⁸⁹ *Id.* at 1027.

⁹⁰ *Edmond v. Goldsmith*, 183 F.3d 659, 666 (7th Cir. 1999).

⁹¹ *Id.* at 665.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 666.

⁹⁵ *Id.*

Judge Easterbrook dissented.⁹⁶ Easterbrook criticized the majority for focusing on the intent and purpose of the authorities in establishing the roadblock.⁹⁷ Instead, he argued, analysis of the reasonableness of the search under the Fourth Amendment should be objective and should depend “on what the police do, not on what they want or think.”⁹⁸

Easterbrook then traced the reasoning in *Martinez-Fuente*⁹⁹ and *Sitz*,¹⁰⁰ the two major cases in which the Supreme Court addressed the constitutionality of roadblocks.¹⁰¹ First, Easterbrook argued, previous roadblock cases generally recognized that drivers have a diminished expectation of privacy relative to those individuals in their homes; the majority ignored this fact.¹⁰² Second, the level of intrusion imposed upon an individual’s rights at a roadblock is minimal—the duration of the stop is brief, and the scope of the search is very limited.¹⁰³ Roadblock cases focused on these factors in determining the reasonableness of the search, not on the fact that roadblocks can be categorized within the exceptions delineated by the majority opinion.¹⁰⁴ Third, the previous cases indicated that a “small invasion can be justified by aggregate success,” and searches with a much lower probability of success than that of the Indianapolis roadblocks have been upheld as constitutional.¹⁰⁵ Finally, the Fourth Amendment clearly prohibits standardless discretion of officers in deciding whom to stop, but Indianapolis avoided this problem by setting forth strict guidelines curtailing officer discretion.¹⁰⁶ In summary, Easterbrook concluded that application of the principles set forth in previous roadblock cases should lead to the conclusion that the roadblocks at question in this case were constitutional.¹⁰⁷

The Supreme Court granted certiorari in 1999 to determine whether the City of Indianapolis’s drug interdiction checkpoints were

⁹⁶ *Id.* (Easterbrook, J., dissenting).

⁹⁷ *Id.* at 666–67 (Easterbrook, J., dissenting).

⁹⁸ *Id.* at 667 (Easterbrook, J., dissenting).

⁹⁹ 428 U.S. 543 (1976).

¹⁰⁰ 496 U.S. 444 (1990).

¹⁰¹ *Edmond*, 183 F.3d at 669 (Easterbrook, J., dissenting).

¹⁰² *Id.* (Easterbrook, J., dissenting).

¹⁰³ *Id.* (Easterbrook, J., dissenting).

¹⁰⁴ *Id.* (Easterbrook, J., dissenting).

¹⁰⁵ *Id.* (Easterbrook, J., dissenting).

¹⁰⁶ *Id.* at 670 (Easterbrook, J., dissenting).

¹⁰⁷ *Id.* (Easterbrook, J., dissenting).

permissible under the Fourth Amendment.¹⁰⁸

IV. THE SUPREME COURT DECISION

A. THE MAJORITY OPINION

Justice O'Connor¹⁰⁹ wrote the opinion of the Court, concluding that the program of drug interdiction checkpoints established by the City of Indianapolis violated the Fourth Amendment.¹¹⁰

O'Connor summarized the current state of the law about the reasonableness of searches and seizures in general, and about roadblocks in particular.¹¹¹ Under the Fourth Amendment, searches and seizures must be reasonable and are generally deemed to be unreasonable when the authorities conducting the search or seizure have failed to establish individualized suspicion of wrongdoing.¹¹² O'Connor recognized that, in some limited situations, this usual rule does not apply.¹¹³ Such situations include the presence of "special needs beyond the normal need for law enforcement," administrative searches, and roadblocks consisting of brief suspicionless searches to intercept illegal aliens and to ensure the sobriety of motorists.¹¹⁴

O'Connor then reviewed the prior cases regarding the constitutionality of roadblocks.¹¹⁵ In *Martinez-Fuerte*, O'Connor indicated, the Supreme Court found that the governmental interest in regulating entrance to the country carried significant weight.¹¹⁶ The roadblocks at issue in *Martinez-Fuerte*, O'Connor explained, were near the United States' border with Mexico and helped to further this important governmental interest.¹¹⁷ Subsequent cases, such as *United States v. Montoya de Hernandez*,¹¹⁸ have reiterated the importance of regulating the border.¹¹⁹ In *Sitz*, O'Connor maintained, the Supreme

¹⁰⁸ 528 U.S. 1153 (2000).

¹⁰⁹ Justice O'Connor was joined by Justices Stevens, Kennedy, Souter, Ginsburg, and Breyer.

¹¹⁰ *City of Indianapolis v. Edmond*, 531 U.S. 32, 48 (2000).

¹¹¹ *Id.* at 37-40.

¹¹² *Id.* at 37.

¹¹³ *Id.*

¹¹⁴ *Id.* at 37.

¹¹⁵ *Id.* at 38-40.

¹¹⁶ *Id.* at 38.

¹¹⁷ *Id.*

¹¹⁸ 473 U.S. 531 (1985).

¹¹⁹ *Id.* at 538; *see also Edmond*, 531 U.S. at 38.

Court upheld sobriety checkpoints because of the “gravity of the drunk driving problem and the magnitude of the State’s interest in getting drunk drivers off the road.”¹²⁰

The *Delaware v. Prouse* decision, O’Connor posited, demonstrated the Supreme Court’s unwillingness to uphold a roadblock with the primary aim of promoting the general interest in crime control.¹²¹ The Supreme Court in *Prouse* indicated that a program designed to limit officer discretion, yet aimed to achieve the purpose of verifying license and registration, would likely be constitutional because of the state’s strong interest in ensuring roadway safety and preventing unauthorized drivers from populating the roadway.¹²² O’Connor maintained that the *Prouse* Court was unwilling to recognize the state’s interest in preventing car theft as a justification for the program because that holding would indicate a willingness to uphold a program aimed at general crime control.¹²³

In Part III of the opinion, O’Connor applied her interpretation of the current state of the law to the facts of this case.¹²⁴ According to O’Connor, what distinguished the roadblocks in this case from the roadblocks in *Sitz* and *Martinez-Fuerte* is the primary purpose of the roadblocks rather than the introduction of a narcotics detention dog.¹²⁵ O’Connor indicated that several factors confirmed that the primary purpose of the drug interdiction checkpoints was to interdict illegal narcotics, such as the parties’ stipulation, the instructions to the Indianapolis officers, the signage marking the roadblocks, and the conclusions of the lower courts.¹²⁶ O’Connor firmly maintained (and repeated several times throughout the opinion) that a roadblock with the primary purpose of general crime control simply cannot be upheld.¹²⁷

O’Connor addressed in turn each of the City’s five arguments about why the drug interdiction checkpoints should be upheld as constitutional.¹²⁸ First, the City argued that the roadblocks upheld in *Sitz*

¹²⁰ *Edmond*, 531 U.S. at 39 (citing *Mich. Dep’t of State Police v. Sitz*, 496 U.S. 444, 451 (1990)).

¹²¹ *Id.* at 40.

¹²² *Id.* at 39–40 (citing *Delaware v. Prouse*, 440 U.S. 648, 658–663 (1979)).

¹²³ *Id.* at 40.

¹²⁴ *Id.* at 40–48.

¹²⁵ *Id.* at 40.

¹²⁶ *Id.* at 40–41.

¹²⁷ *Id.* at 42.

¹²⁸ *Id.* at 42–43.

and *Martinez-Fuerte* were both ultimately aimed at arresting those who committed crimes (smuggling aliens in *Martinez-Fuerte*, drunk driving in *Sitz*).¹²⁹ O'Connor agreed that the roadblocks in *Martinez-Fuerte* and *Sitz* were in fact geared towards law-enforcement purposes.¹³⁰ However, O'Connor argued that a line must be drawn, or authorities could construct a roadblock for virtually any purpose imaginable and point to some law enforcement purpose as justification for the intrusion on civil liberties.¹³¹

O'Connor then discussed the City's argument that the "severe and intractable nature of the city's drug problem" justified the drug interdiction checkpoint program.¹³² O'Connor recognized the severity of the drug problem but maintained that "the gravity of the threat alone cannot be dispositive of questions concerning what means law enforcement officers may employ to pursue a given purpose."¹³³ In analyzing the constitutionality of a search or seizure where individualized suspicion is lacking, O'Connor argued, the Court should focus on the connection between the law enforcement techniques employed and the nature of the state interests those techniques are intended to preserve or promote.¹³⁴ O'Connor again indicated that the Court is unwilling to accept general crime control as a state interest sufficient to justify an exception to the general rule requiring individualized suspicion.¹³⁵

O'Connor next addressed the City's analogy between the roadblocks in this case and the roadblocks upheld by the Court in *Martinez-Fuerte* and *Sitz*.¹³⁶ The City argued that the same roadway safety concerns that justified the roadblocks in *Sitz* were present in this case.¹³⁷ O'Connor disagreed, because she reasoned *Sitz* related to a much smaller class of offenses (*i.e.*, drunk driving) that pose an "immediate, vehicle-bound threat to life and limb."¹³⁸ In O'Connor's opinion, the same concerns about public safety simply were not pre-

¹²⁹ *Id.* at 42 (citing Brief for Petitioners at 22, *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000) (No. 99-1030) available at 2000 WL 633622).

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 42-43.

¹³⁵ *Id.* at 43.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

sent here, at least not to the same degree.¹³⁹ The City's argument that the roadblocks here could be justified by an anti-contraband purpose, similar to the anti-smuggling purpose upheld in the *Martinez-Fuerte* roadblocks, was unconvincing to O'Connor as well.¹⁴⁰ Under that logic, virtually any search and seizure at a roadblock would be justifiable because of the chance that illegal contraband or other evidence of a crime might be found.¹⁴¹ While preventing drunk driving and illegal immigration are state interests that are sufficient to justify foregoing the general rule requiring individualized suspicion, O'Connor firmly maintained that a general interest in crime control, such as that displayed by Indianapolis in employing these drug interdiction checkpoints, is insufficient justification for abandoning a requirement of individualized suspicion.¹⁴² O'Connor stressed, however, the Court's unwillingness to establish a bright-line rule differentiating acceptable roadblocks from unconstitutional roadblocks or limit the type of roadblocks considered constitutional.¹⁴³ Rather, the Court was simply unwilling to categorize roadblocks aimed at general crime control as constitutional.¹⁴⁴

The City argued that previous Supreme Court cases precluded an inquiry into the purposes of the Indianapolis program.¹⁴⁵ For instance, the City contended that *Whren v. United States* and *Bond v. United States* established the principle that "where the government articulates and pursues a legitimate interest for a suspicionless stop, courts should not look behind that interest to determine whether the government's 'primary purpose' is valid."¹⁴⁶ O'Connor concluded that those cases were not controlling.¹⁴⁷ She argued that while *Whren* found that the reasonableness of a search should not turn on the subjective intentions of the officer conducting the search, the Court specifically distinguished cases where probable cause was lacking.¹⁴⁸ Therefore, O'Connor concluded, "programmatic purposes may be

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 44.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 45; see also Brief for Petitioners at 34. (No. 99-1030) available at 2000 WL 1474135

¹⁴⁶ *Edmond*, 531 U.S. at 45 (citing Brief for Petitioners at 34) (No. 99-1030) available at 2000 WL 1474135

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* (citing *Whren v. United States*, 517 U.S. 806, 810-13 (1996)).

relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion," and *Whren* does not forbid an analysis of programmatic purpose here.¹⁴⁹

O'Connor agreed that the situation in *Bond* was slightly different.¹⁵⁰ There, the Court did not engage in a typical Fourth Amendment analysis because the search at issue was not based on probable cause.¹⁵¹ Subjective intent in that situation was also irrelevant, but only because the Court instead "focused on the objective effects of the actions of an individual officer."¹⁵² O'Connor maintained, however, that where there is a general scheme authorizing intrusions on Fourth Amendment rights without a requirement of individualized suspicion, the Court should examine the programmatic purpose.¹⁵³

Finally, O'Connor addressed the City's argument that the secondary purposes of the roadblocks (preventing drunk driving and checking for licenses and registration) justified the City's use of the roadblocks.¹⁵⁴ She quickly discounted the argument, suggesting that if authorities could justify their seizures by pointing to secondary purposes, "checkpoints for virtually any purpose [would be constitutional] so long as they included a license or sobriety check."¹⁵⁵ Rather, she maintained, the Court should look beyond a typical analysis focused on the reasonableness of a search and determine the primary purpose of a general scheme in analyzing its constitutionality.¹⁵⁶ O'Connor admitted that a purpose inquiry is often challenging, but indicated that it is a routine inquiry in the constitutional arena to prevent governmental abuses.¹⁵⁷ So, while a Fourth Amendment claim typically warrants an objective reasonableness inquiry, previous special needs cases and administrative cases have indicated that purpose is often relevant, particularly in situations where there are suspicionless intrusions authorized by a general scheme.¹⁵⁸

O'Connor concluded by stressing the limits of the Court's opin-

¹⁴⁹ *Id.* at 45-46.

¹⁵⁰ *Id.* at 46.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 46-47.

¹⁵⁵ *Id.* at 46.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 46-47.

¹⁵⁸ *Id.* at 47.

ion.¹⁵⁹ She maintained that the Court's holding in no way impacts the earlier holdings in *Martinez-Fuerte*, *Sitz*, and *Prouse*—“[t]he constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program.”¹⁶⁰ In addition, O'Connor recognized that the Court's holding should not affect searches in other situations where there is a great need for public safety or a strong federal regulatory interest, such as border searches or searches in government buildings and airports.¹⁶¹ O'Connor indicated that the holding here also should not affect situations where officers act upon information discovered at a lawful checkpoint program.¹⁶² O'Connor then cautioned that the primary purpose test the Court engaged in should only occur when the Court is evaluating a general scheme on the programmatic level and is certainly “not an invitation to probe the minds of individual officers acting at the scene.”¹⁶³

O'Connor again stated the holding of the Court—“[b]ecause the primary purpose of the Indianapolis checkpoint program is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment”—and affirmed the judgment of the Court of Appeals.¹⁶⁴

B. CHIEF JUSTICE REHNQUIST'S DISSENT¹⁶⁵

Chief Justice Rehnquist argued in dissent that the roadblocks should be found constitutional.¹⁶⁶ Rehnquist maintained that because the Indianapolis roadblocks served important state interests, they should have been upheld as constitutional under the Fourth Amendment.¹⁶⁷ Also, adding a narcotics detection dog did not alter in any way the nature of the search and did not make the searches here distinguishable from searches and seizures upheld in previous cases, requiring that the roadblocks be found constitutional under the Fourth

¹⁵⁹ *Id.* at 47–48.

¹⁶⁰ *Id.* at 47 (citing *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 450–55 (1990); *United States v. Martinez-Fuerte*, 428 U.S. 543, 556–64 (1976)).

¹⁶¹ *Id.* at 47–48.

¹⁶² *Id.* at 48.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Justices Scalia and Thomas joined Chief Justice Rehnquist in dissent.

¹⁶⁶ *Edmond*, 531 U.S. at 48 (Rehnquist, C. J., dissenting).

¹⁶⁷ *Id.* (Rehnquist, C.J., dissenting).

Amendment.¹⁶⁸

In Part I of his dissent, Rehnquist advocated an application of the *Brown v. Texas* balancing test to the facts of this case.¹⁶⁹ Roadblock seizure analysis, Rehnquist argued, 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.”¹⁷⁰ Accordingly, he maintained, “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.’”¹⁷¹

The *Brown v. Texas* balancing test was applied in *Martinez-Fuerte*, and as Rehnquist explained, the significant governmental interest in curbing illegal immigration outweighed the minimal intrusion imposed upon motorists at the border checkpoints.¹⁷² Rehnquist turned to *Sitz*, where the Court found that the state had a great interest in preventing drunk driving, and the roadblocks it used to further this goal imposed only a “slight” intrusion on motorists.¹⁷³ Rehnquist argued that “this case follows naturally from *Martinez-Fuerte* and *Sitz*.”¹⁷⁴

Further, he disagreed with the majority’s contention that analysis of the constitutionality of the roadblocks should focus on the roadblocks’ primary purpose.¹⁷⁵ Rehnquist pointed to the record, which indicated that forty-nine people were arrested in Indianapolis for offenses unrelated to drugs.¹⁷⁶ This fact, he argued, indicated that the City was pursuing a legitimate state interest by conducting a roadblock that served several purposes—intercepting drivers that display signs of impairment (an endeavor upheld by *Sitz*), as well as verifying licenses and vehicle registrations (a purpose legitimized by *Prouse*).¹⁷⁷ In addition, he maintained that it would be entirely speculative to conclude from the record that the City of Indianapolis would

¹⁶⁸ *Id.* (Rehnquist, C.J., dissenting).

¹⁶⁹ *Id.* at 49. (Rehnquist, C.J., dissenting).

¹⁷⁰ *Id.* (Rehnquist, C.J., dissenting) (citing *Brown v. Texas*, 443 U.S. 47, 50–51 (1979)).

¹⁷¹ *Id.* (Rehnquist, C.J., dissenting) (citing *Brown*, 443 U.S. at 51).

¹⁷² *Id.* (Rehnquist, C.J., dissenting).

¹⁷³ *Id.* at 50 (Rehnquist, C.J., dissenting).

¹⁷⁴ *Id.* (Rehnquist, C.J., dissenting).

¹⁷⁵ *Id.* (Rehnquist, C.J., dissenting).

¹⁷⁶ *Id.* at 51 (Rehnquist, C.J., dissenting) (citing *Edmond v. Goldsmith*, 183 F.3d 659, 661 (7th Cir. 1999)).

¹⁷⁷ *Id.* (Rehnquist, C.J., dissenting).

not have operated the roadblocks *but for* the drug interdiction purpose—clearly, the City achieved success pursuing other goals through these roadblocks, as evidenced by the forty-nine non-drug-related arrests.¹⁷⁸

Rehnquist then argued that inquiry into the officers' subjective intent was improper here—"[b]ecause of the valid reasons for conducting these roadblock seizures, it is constitutionally irrelevant that petitioners also hoped to interdict drugs."¹⁷⁹ *Whren* precluded such an inquiry, Rehnquist maintained, and instead stood for the proposition that determining the reasonableness of an individual officer's decision to stop a vehicle depends upon the officer's determination of probable cause.¹⁸⁰ In this case, Rehnquist argued, reasonableness depended upon whether the roadblocks "effectively serve a significant state interest with minimal intrusion on motorists."¹⁸¹ The Indianapolis roadblocks were objectively reasonable because they serve the significant state interests of preventing drunk driving and verifying motorists' licenses and vehicle registration, while imposing only minimal intrusion on the drivers who are stopped.¹⁸² Rehnquist firmly maintained that "it is the objective effect of the State's actions on the privacy of the individual that animates the Fourth Amendment."¹⁸³ The state of mind or subjective intent of the officer should play no role in light of *Bond* and *Whren*.¹⁸⁴

Once it has been established that the roadblocks in Indianapolis serve significant state interests, Rehnquist continued, the other "two prongs of the *Brown v. Texas* balancing test are easily met."¹⁸⁵ The case is only distinguishable from *Sitz* because of the introduction of a narcotics detection dog.¹⁸⁶ Previous cases have held 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 the physical intrusion beyond being sniffed, and it does not expose anything other than the contraband items."¹⁸⁷ Finally, Rehnquist argued that the success

¹⁷⁸ *Id.* (Rehnquist, C.J., dissenting).

¹⁷⁹ *Id.* (Rehnquist, C.J., dissenting).

¹⁸⁰ *Id.* (Rehnquist, C.J., dissenting).

¹⁸¹ *Id.* (Rehnquist, C.J., dissenting).

¹⁸² *Id.* at 51–52 (Rehnquist, C.J., dissenting).

¹⁸³ *Id.* at 52 (Rehnquist, C.J., dissenting).

¹⁸⁴ *Id.* (Rehnquist, C.J., dissenting).

¹⁸⁵ *Id.* (Rehnquist, C.J., dissenting).

¹⁸⁶ *Id.* (Rehnquist, C.J., dissenting).

¹⁸⁷ *Id.* at 52–53 (Rehnquist, C.J., dissenting) (citing *United States v. Place*, 462 U.S. 696,

rate of the Indianapolis roadblock program confirmed that the City was pursuing legitimate and pressing interests (preventing drunk driving and verifying licenses and registrations) in conducting the program.¹⁸⁸ In sum, because “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,” Rehnquist believed they should have been upheld as constitutional.¹⁸⁹

Rehnquist devoted Part II of his dissent to criticizing the majority’s holding.¹⁹⁰ According to Rehnquist, the majority had adopted a “non-law enforcement primary purpose test,” lifting the test from a separate area of Fourth Amendment case law regarding searches of homes and businesses.¹⁹¹ In fact, he argued, the question the Court chose to answer was not a question posed in this case, and the adoption of a non-law enforcement primary purpose test is poorly suited for cases involving roadblocks, because, in that area, the Court has traditionally assessed the scope of the intrusion to determine constitutionality.¹⁹² In *Sitz*, Rehnquist maintained, the Court explicitly declined to apply this sort of primary purpose test, instead applying the balancing test of *Brown v. Texas*.¹⁹³

Rehnquist then discussed the “special needs doctrine”—an exception to the general rule requiring individualized suspicion to conduct a search.¹⁹⁴ The doctrine is inapplicable in all roadblock cases, he argued, because it only refers to situations involving persons’ bodies or homes, where there is a high expectation of privacy.¹⁹⁵ Automobiles, he maintained, are not subject to this kind of privacy expectation because individuals clearly have a lowered privacy expectation in their vehicles.¹⁹⁶ Therefore, Rehnquist posited, the “special needs doctrine” should only be used to evaluate the reasonableness of searches of homes or persons, whereas the *Brown v. Texas* balancing

706–07 (1983)).

¹⁸⁸ *Id.* at 53 (Rehnquist, C.J., dissenting).

¹⁸⁹ *Id.* (Rehnquist, C.J., dissenting).

¹⁹⁰ *Id.* at 53–56 (Rehnquist, C.J., dissenting).

¹⁹¹ *Id.* at 53 (Rehnquist, C.J., dissenting).

¹⁹² *Id.* (Rehnquist, C.J., dissenting).

¹⁹³ *Id.* at 53–54 (Rehnquist, C.J., dissenting).

¹⁹⁴ *Id.* at 54 (Rehnquist, C.J., dissenting).

¹⁹⁵ *Id.* (Rehnquist, C.J., dissenting); *see also* *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976).

¹⁹⁶ *Edmond*, 531 U.S. at 54–55 (Rehnquist, C.J., dissenting).

test is clearly and decidedly the appropriate evaluative tool to be used in roadblock cases.¹⁹⁷ Rehnquist maintained the primary purpose test the majority adopted is “both unnecessary to secure Fourth Amendment rights and bound to produce wide-ranging litigation over the ‘purpose’ of any given seizure.”¹⁹⁸ The majority opinion is illogical because the City of Indianapolis could have articulated a different purpose for these roadblocks but conducted the roadblocks in the exact same manner, and such a program would have been constitutional under the majority’s analysis.¹⁹⁹

In sum, Rehnquist concluded that the majority’s articulation of a new test was unnecessary and failed to serve any Fourth Amendment concerns.²⁰⁰ Considerations of *stare decisis* should have required upholding the roadblocks at issue here.²⁰¹

C. JUSTICE THOMAS’ DISSENT

Justice Thomas argued that the previous roadblock cases of *Martinez-Fuerte* and *Sitz* “stand for the proposition that suspicionless roadblock seizures are constitutionally permissible if conducted according to a plan that limits the discretion of the officers conducting the stops.”²⁰² Although he believed that *Martinez-Fuerte* and *Sitz* might have been incorrectly decided and that the framers of the Constitution would most likely not have considered the seizures at issue here reasonable, he was propelled by considerations of *stare decisis*.²⁰³ As a result, and for the reasons articulated in Rehnquist’s dissent, Thomas refrained from joining in the majority opinion.²⁰⁴

V. ANALYSIS

Under the Fourth Amendment, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated”²⁰⁵ Fourth Amendment jurisprudence has indicated that reasonableness of searches and seizures may hinge upon the existence of probable

¹⁹⁷ *Id.* at 55 (Rehnquist, C.J., dissenting).

¹⁹⁸ *Id.* (Rehnquist, C.J., dissenting).

¹⁹⁹ *Id.* at 55–56 (Rehnquist, C.J., dissenting).

²⁰⁰ *Id.* at 55 (Rehnquist, C.J., dissenting).

²⁰¹ *Id.* (Rehnquist, C.J., dissenting).

²⁰² *Id.* at 56 (Thomas, J., dissenting).

²⁰³ *Id.* (Thomas, J., dissenting).

²⁰⁴ *Id.* (Thomas, J., dissenting).

²⁰⁵ U.S. CONST. amend. IV.

cause, although the Court has recognized instances where authorities are exempt from the probable cause requirement.²⁰⁶ In addition, the Court has upheld some limited searches and seizures when the gravity and importance of the public interest served outweighs the intrusion imposed on individuals.²⁰⁷

In light of previous roadblock cases, the Court here should have upheld the Indianapolis checkpoints as a valid exercise of governmental power. Instead, the Court ignored the *Brown v. Texas* balancing test previously applied in roadblock cases and introduced an analysis focused on the primary purpose of the checkpoint program.²⁰⁸ This new analysis demonstrates a shift in established Fourth Amendment jurisprudence, and, despite the Court's articulated effort to protect Fourth Amendment rights, its new approach affords little protection of individual liberties. Instead, the Court complicated search and seizure analysis, drawing an arbitrary and meaningless distinction and inviting extensive inquiry into subjective intent of legislatures. Because the Court's decision can be easily circumvented by legislatures who carefully draft the guidelines and purpose statements for checkpoint programs, the Court's promise of increased Fourth Amendment protection is illusory and hollow. The Court should have followed its own roadblock precedents and applied the *Brown v. Texas* balancing test as required by *Sitz*. Had it done so, the Indianapolis checkpoint program would have been upheld. Although this outcome may have meant a greater degree of intrusion on motorists' liberty, such an intrusion is justifiable in light of the government's great interest in promoting roadway safety and curbing the rampant drug trade.

A. THE INDIANAPOLIS CHECKPOINTS DID NOT MATERIALLY DIFFER FROM THE CHECKPOINTS THE COURT UPHELD IN *MARTINEZ-FUERTE* AND *SITZ*

In *Martinez-Fuerte*, the Court found that the state interest in preventing the illegal smuggling of aliens from Mexico into the United States justified the use of fixed roadblocks near the border.²⁰⁹ In *Delaware v. Prouse*, the Court suggested that the state interest in

²⁰⁶ See discussion of the "special needs doctrine" and administrative searches exemption, *supra* Section II(A); *supra* notes 7 and 8.

²⁰⁷ *Brown v. Texas*, 443 U.S. 47 (1979).

²⁰⁸ *Edmond*, 531 U.S. at 41-42.

²⁰⁹ *United States v. Martinez-Fuerte*, 428 U.S. 543, 522, 556, 566 (1976).

preventing unlicensed drivers from driving on public roadways would warrant the use of a roadblock to verify licenses and vehicle registrations.²¹⁰ In *Sitz*, the Court deemed that Michigan's interest in eradicating drunk driving justified the use of sobriety checkpoints.²¹¹

The City of Indianapolis attempted to create a checkpoint program designed to address several of these same state interests. As the record indicates, the City had three purposes in establishing the checkpoints—first, to prevent illegal narcotics trafficking (which the City admits is its primary purpose), second, to check for signs of impairment and thus promote roadway safety, and third, to check for licenses and registrations.²¹² To that end, the checkpoints in Indianapolis were operated in much the same way the Court suggested in *Delaware v. Prouse*—all vehicles were stopped, and an officer requested each driver's license and registration while searching for signs of impairment (as authorized in *Sitz*).²¹³

The only difference between the procedures followed in checkpoints previously approved by the Court and the procedure followed in the instant case was the introduction of the narcotics detection dog, which sniffed the perimeter of the vehicle while the officer checked for licenses and registration and conducted a plain view examination of the vehicle.²¹⁴ As Rehnquist indicated in his dissent, the Court held in *United States v. Place*²¹⁵ that a sniff test by a narcotics detection dog is not necessarily a search within the constraints of the Fourth Amendment, "because it does not require physical intrusion of the object being sniffed and it does not expose anything other than the contraband items."²¹⁶ In addition, the sniff test does not lengthen the duration of the stop.²¹⁷ The majority of the Court, too, recognized that a "sniff by a dog that simply walks around a car is 'much less intrusive than a typical search,'" because "an exterior sniff of an automobile does not require entry into the car and is not designed to disclose any information other than the presence or absence of

²¹⁰ *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

²¹¹ *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990).

²¹² Oral Argument, *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000) (No. 99-1030) available at 2000 WL 1474135.

²¹³ *Edmond*, 531 U.S. at 35; *Sitz*, 496 U.S. at 455; *Prouse*, 440 U.S. at 663.

²¹⁴ *Edmond*, 531 U.S. at 35.

²¹⁵ *United States v. Place*, 462 U.S. 696, 707 (1983) (holding that exposure of a traveler's luggage to a trained narcotics detection dog is not a search for Fourth Amendment purposes).

²¹⁶ *Edmond*, 531 U.S. at 52-53 (Rehnquist, C.J., dissenting).

²¹⁷ *Id.* at 53 (Rehnquist, C.J., dissenting).

narcotics.”²¹⁸

In sum, Indianapolis implemented a roadblock program modeled after roadblock programs previously upheld by the Court—officers had strictly limited discretion and followed clear procedures, and the state acted in pursuit of its interest in preventing drug trafficking in addition to interests previously recognized as legitimate by the Court. The line the Court draws here between sobriety checkpoints and drug interdiction checkpoints has no basis in the case law, for in its opinion, the *Sitz* Court did not indicate that the *Brown v. Texas* balancing test should only apply when certain, defined state interests were being pursued.²¹⁹ Rather, the *Sitz* Court made a blanket determination that in the evaluation of roadblocks, *Brown v. Texas* is controlling.²²⁰ Even opponents of the *Sitz* decision posited prior to the *Edmond* case that drug interdiction checkpoints followed naturally from the Court’s decision in that case.²²¹

B. BECAUSE THE CITY OF INDIANAPOLIS DID NOT DEVIATE FROM THE PURPOSE OR PROCEDURE OF THE CHECKPOINTS UPHOLD IN *MARTINEZ-FUERTE* AND *SITZ*, THE COURT SHOULD HAVE APPLIED THE *BROWN V. TEXAS* BALANCING TEST

Had the Court followed its own roadblock precedents, it would have applied the *Brown v. Texas* balancing test to evaluate the constitutionality of the roadblocks.²²² The Court here did not address the *Brown v. Texas* balancing test—nowhere in the opinion is it even mentioned, and no reason is articulated for that omission.

Although *Brown* did not involve a challenge to a roadblock detention, the *Brown* Court did not narrow its holding to apply only to the facts of the arrest; instead, the *Brown* Court maintained that a balancing test is appropriate in evaluating the “reasonableness of seizures that are less intrusive than a traditional arrest.”²²³ The roadblocks in Indianapolis are undoubtedly considered seizures under the Fourth Amendment,²²⁴ but the brief duration of a typical stop at the checkpoint (between three and five minutes) and the limited scope of

²¹⁸ *Id.* at 40.

²¹⁹ Mich. Dep’t of State Police v. Sitz, 496 U.S. 444, 450 (1990).

²²⁰ *Id.*

²²¹ Sandra Guerra, *Domestic Drug Interdiction Operations: Finding the Balance*, 82 J. CRIM. L. & CRIMINOLOGY 1109, 1137 (1992).

²²² *Sitz*, 496 U.S. at 450.

²²³ *Brown v. Texas*, 443 U.S. 47, 50 (1979).

²²⁴ *United States v. Martinez-Fuerte*, 428 U.S. 543, 556 (1976).

the intrusion (a plain-view examination of driver and vehicle, a request for license and registration, and a brief sniff test by a narcotics detection dog)²²⁵ render it a seizure undoubtedly less intrusive than a traditional arrest. If an officer had no reason to suspect a motorist of wrongdoing, the motorist would be released and on his way within minutes.²²⁶ The Court here should have applied this test, for the Court did not clearly distinguish the roadblocks at issue here from the roadblocks that had previously been upheld. Under the *Brown v. Texas* test, the drug interdiction checkpoints would have been upheld as consistent with the Fourth Amendment requirement of reasonableness.

First, the City of Indianapolis would have to show that the roadblocks were designed to address a grave public concern.²²⁷ Courts have repeatedly recognized the extensive nature of the drug problem in this country. The Supreme Court referred to the situation as a “veritable national crisis in law enforcement,”²²⁸ and “one of the greatest problems affecting the health and welfare of our population.”²²⁹ As noted by the Supreme Court in *United States v. Mendenhall*, “[t]he public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit.”²³⁰ The Supreme Court also noted the importance of this state interest in *United States v. Place*, where the Court upheld the seizure of the luggage of a traveler suspected of transporting illegal narcotics and the exposure of the traveler’s luggage to a sniff by a narcotics detection dog.²³¹ In addition, lower federal courts and state courts have upheld drug interdiction checkpoints similar to the checkpoints in Indianapolis, noting the gravity of the public interest served.²³²

²²⁵ City of Indianapolis v. Edmond, 531 U.S. 32, 35 (2000).

²²⁶ *Id.*

²²⁷ *Brown*, 443 U.S. at 51.

²²⁸ *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985).

²²⁹ *Nat’l Treasury Employees Union v. Von Raab*, 489 U.S. 656, 668 (1989).

²³⁰ *United States v. Mendenhall*, 446 U.S. 544, 561 (1980).

²³¹ *United States v. Place*, 462 U.S. 696, 703 (1983).

²³² See *Merret v. Moore*, 58 F.3d 1547, 1553 (11th Cir. 1995) (upholding constitutionality of a mixed-motive checkpoint, where officers verifying licenses and registration also use canines to detect illegal narcotics); *Missouri v. Damask*, 936 S.W.2d 565, 575 (Mo. 1996) (upholding checkpoints established solely to detect illegal narcotics, finding that the checkpoints advanced an important state interest and imposed minimal intrusion on motorists); but see *United States v. Huguenin*, 154 F.3d 547 (6th Cir. 1998) (finding drug interdiction checkpoints to be unconstitutional violations of the Fourth Amendment because the gravity of the public concern does not outweigh the degree of intrusion imposed on motorists); *United States v. Morales Zamora*, 974 F.2d 149, 153 (10th Cir. 1992) (finding that subject-

The City of Indianapolis had a significant interest in interdicting illegal narcotics and preventing the drug trafficking trade from spreading within the city. The other purposes the city articulated in conducting the roadblocks already have been upheld as valid state interests warranting a roadblock stop: the *Sitz* Court upheld sobriety checkpoints²³³ and the *Prouse* Court implied that roadblocks for the purpose of verifying license and registration would pass constitutional muster.²³⁴

Next, the City would have to show that the methods it used were effective in addressing the public interests.²³⁵ The record indicated that during the six roadblocks the city conducted, 1161 vehicles were stopped and 104 motorists were arrested; fifty-five arrests were for drug-related offenses, and forty-nine were related to other offenses.²³⁶ The total hit rate for the program, therefore, was approximately nine percent.²³⁷ 4.7% of the stops resulted in arrests for drug offenses, and 4.2% resulted in arrests for other offenses. This effectiveness ratio is substantially higher than the effectiveness ratio of other roadblocks that were upheld. In *Sitz*, the Court found that the sobriety checkpoints challenged in Michigan resulted in arrest about 1.6% of the time; an expert testified that sobriety checkpoints generally have a one percent hit rate.²³⁸ In *Martinez-Fuerte*, the record showed that illegal aliens were found in only 0.12% of all vehicles and in about 0.5% of detained vehicles.²³⁹ In both of these instances, the checkpoints were upheld. Here, the checkpoints are significantly more effective in detecting violators and thus furthering the governmental interest. The Indianapolis roadblock should not be struck down on the basis of this factor of the *Brown v. Texas* balancing test.

Finally, the City would have to show that the intrusion the drug interdiction checkpoints imposed upon passing motorists was not so

ing a vehicle to a canine sniff at a roadblock whose primary purpose was to verify licenses and registration an unconstitutional pretextual search in violation of the Fourth Amendment); *Galberth v. United States*, 590 A.2d 990, 998-99 (D.C. Cir. 1991) (maintaining that the state's interest in deterring drug trafficking is insufficient to justify the Fourth Amendment intrusion posed by a drug interdiction roadblock).

²³³ *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 455 (1990).

²³⁴ *Delaware v. Prouse*, 440 U.S. 648, 663 (1979).

²³⁵ *Brown v. Texas*, 443 U.S. 47, 51 (1979).

²³⁶ *Edmond v. Goldsmith*, 183 F.3d 659, 661 (7th Cir. 1999).

²³⁷ *City of Indianapolis v. Edmond*, 531 U.S. 32, 35 (2000).

²³⁸ *Sitz*, 496 U.S. at 455.

²³⁹ *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976).

severe as to outweigh the public interest.²⁴⁰ As previously discussed, the procedure and duration of the stops at issue were not different than the stops at roadblocks upheld in *Sitz* and *Martinez-Fuerte*. All of the stops lasted a few minutes, and the scope of the intrusion was nearly identical—the only difference here was the introduction of the sniffing dog, but as discussed, that element did not alter the scope or nature of the intrusion.²⁴¹

Applying this test, the Court should have upheld the drug interdiction checkpoints. However, rather than following the principles set forth in previous roadblock cases, the Court introduced a new criteria—the Court thus found the roadblocks at issue to be unconstitutional because of their primary purpose.²⁴²

C. THE PRIMARY PURPOSE TEST THE COURT INTRODUCED, WHILE CLAIMING TO AFFORD GREATER FOURTH AMENDMENT PROTECTION, IS NOT FOUNDED IN PRIOR CASE LAW OR IN THE FOURTH AMENDMENT

The majority of the Court held that “[b]ecause the primary purpose of the Indianapolis checkpoint is ultimately indistinguishable from the general interest in crime control, the checkpoints violate the Fourth Amendment.”²⁴³ The Court repeated this principle multiple times throughout its opinion, indicating without ambiguity that this principle is the basis of the holding—general crime control is not a valid state interest justifying the intrusion imposed on motorists by the roadblocks here.²⁴⁴

The Court maintained that the primary purpose here is general crime control, despite the City’s insistence that the checkpoints have other valid purposes—eradicating drunk driving and verifying licenses and registration.²⁴⁵ The Court engaged in a purpose inquiry, attempting to climb inside the minds of the legislators and determine exactly what state interest was most important to them in establishing this program. The Court found that checkpoints should be judged solely by their primary purpose rather than other valid secondary purposes.²⁴⁶ But nearly half of the arrests that occurred at these

²⁴⁰ *Brown*, 443 U.S. at 51.

²⁴¹ *See Edmond*, 531 U.S. at 35, 40.

²⁴² *Id.* at 40–41, 48.

²⁴³ *Id.* at 48.

²⁴⁴ *Id.* at 41–44, 48.

²⁴⁵ *Id.* at 46.

²⁴⁶ *Id.* at 46–47.

checkpoints were for these secondary purposes, indicating that the City was indeed actively pursuing legitimate interests that have been upheld as constitutionally permissible.²⁴⁷ The Court did not attempt to explain that while pursuing a state interest in preventing drunk driving is acceptable, and pursuing another state interest in verifying licenses is also acceptable, introducing a third state interest in preventing drug trafficking suddenly transforms the checkpoint into an attempt at "general crime control." Authorities in Indianapolis are not looking for burglars or robbers or murderers. Rather, they are simply utilizing the constitutionally permissible tool of roadblocks to address several valid state interests simultaneously.

The Court's decision that sobriety checkpoints and license verification checkpoints are permissible but drug interdiction checkpoints are unconstitutional seems illogical, because the difference between sobriety checkpoints and drug interdiction checkpoints is unclear. In fact, in considering the state interests that the Court has upheld as valid justifications for operating roadblocks (preventing importation of illegal aliens, verifying licenses and vehicle registrations, and curbing drunk driving), it is unclear why interdicting illegal narcotics is a less compelling or important state interest.²⁴⁸

The majority of the Court indicated that the roadblocks that were upheld in *Sitz* and impliedly permissible in *Prouse* bore a "close connection to roadway safety,"²⁴⁹ and the roadblocks in *Martinez-Fuerte* were justifiable because of the strong federal interest in preventing the flow of illegal immigrants into the United States.²⁵⁰ But it can be argued that driving while under the influence of narcotics also poses a threat to roadway safety. In addition, logic would suggest that stopping the flow of deadly and addictive substances throughout Indianapolis is at least as important an interest as preventing the flow of harmless illegal immigrants into California.

Rehnquist's dissent suggested another way to look at the issue—the Court need not evaluate the legitimacy of the drug interdiction purpose at all, because "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."²⁵¹ Pursuing the state interests of eradicating drunk

²⁴⁷ *Id.* at 35.

²⁴⁸ RONALD J. ALLEN ET AL., *COMPREHENSIVE CRIMINAL PROCEDURE* 506 (2001).

²⁴⁹ *Edmond*, 531 U.S. at 43.

²⁵⁰ *United States v. Martinez-Fuerte*, 428 U.S. 543, 552 (1976).

²⁵¹ *Edmond*, 531 U.S. at 52 (Rehnquist, C.J., dissenting).

driving and verifying licenses and registration make the Indianapolis checkpoint constitutional—the fact that officers also hoped to find drugs is irrelevant.²⁵²

But under the Court's new primary purpose test, the checkpoints fail. Strangely, however, the Court's decision does not invalidate any type of roadblock that has a secondary purpose of interdicting drugs. In a footnote, O'Connor expressed the limits of the Court's holding. Because the primary purpose here is drug interdiction, she maintained, the Court

need not decide whether the State may establish a checkpoint program with the primary purpose of checking licenses or driver sobriety and a secondary purpose of interdicting narcotics. Specifically, [the Court] express[ed] no view of the question whether police may expand the scope of a license or sobriety checkpoint seizure in order to detect the presence of drugs in a stopped car.²⁵³

It appears, therefore, that states could circumvent this decision easily. If the primary purpose here was not drug detection but prevention of drunk driving, perhaps the roadblocks would have been upheld. O'Connor's ambiguity and evasiveness in her footnote suggest they would be. O'Connor insisted that these roadblocks must fail because drug interdiction was their primary purpose, so it follows that if drug interdiction was something other than the roadblock's primary purpose, the roadblocks would be acceptable.²⁵⁴ In addition, O'Connor's recognition that the introduction of a narcotics detection dog does not affect the constitutionality of the roadblocks may have opened the door to a slightly modified version of the roadblocks at issue here.²⁵⁵

Thus, the lesson to legislators is that they should carefully draft legislation involving roadblocks so that the primary purpose is one that is recognized as constitutionally permissible. Unfortunately, this outcome will likely have two effects—increased litigation over what exactly the primary purpose of a given roadblock is and a realization that the apparent promise of expanded Fourth Amendment protection is illusory and hollow. A checkpoint identical to those in Indianapolis could be upheld as consistent with this decision if legislators simply label it differently.

In fact, cases decided since the Supreme Court's decision in *City*

²⁵² *Id.* at 51 (Rehnquist, C.J., dissenting).

²⁵³ *Id.* at 47 n.2.

²⁵⁴ Craig M. Bradley, *Saying No to Drug Roadblocks*, 37 APR TRIAL 80, 81 (2001).

²⁵⁵ *Id.*

of *Indianapolis v. Edmond* suggest that lower courts are willing to uphold certain drug interdiction measures as constitutional despite the Court's decision here. In *United States v. Machuca-Barrera*,²⁵⁶ the Fifth Circuit considered a search of the defendant's vehicle at an immigration checkpoint in Texas. In the course of the cursory search for illegal immigrants, the officers obtained consent for a more intrusive search and subsequently discovered forty-three pounds of marijuana.²⁵⁷ The Fifth Circuit noted that drug interdiction checkpoints are unconstitutional, but held that the search for narcotics here did not violate the defendant's Fourth Amendment right because it occurred in the context of a search at an immigration checkpoint, where drug interdiction was not a primary purpose.²⁵⁸ In other instances, courts have upheld drug interdiction measures as long as other purposes also motivated officers' behavior.²⁵⁹

In sum, the primary purpose test is not grounded in the Fourth Amendment and contradicts precedent (which in fact suggest that courts should avoid probing the subjective intent of law enforcement officers). In addition, the City of Indianapolis may have conceded that the primary purpose of their checkpoints was drug interdiction,²⁶⁰ but the arrest rate indicates that the other purposes (upheld as constitutional in previous cases) were also actively pursued. Under this new primary purpose test, that fact is immaterial. Finally, the primary purpose test is empty because it does not preclude the creation of checkpoints identical to the type struck down here. Rather, it suggests that legislatures should simply be more careful when drafting legislation creating those checkpoints.

VI. CONCLUSION

In *City of Indianapolis v. Edmond*, the Court adopted reasoning different from its previous analyses of roadblock cases. Rather than applying the *Brown v. Texas* balancing test to determine whether the City had a significant interest that outweighed the intrusion imposed on motorists, the Court developed a new primary purpose test. This

²⁵⁶ *States v. Machuca-Barrera*, 261 F.3d 425, 429–30 (5th Cir. 2001).

²⁵⁷ *Id.* at 429–30.

²⁵⁸ *Id.* at 435.

²⁵⁹ See *United States v. Davis*, 143 F. Supp. 2d 1302, 1305–06 (M.D. Ala. 2001) (upheld a roadblock constructed with the primary purpose of detaining six persons indicted on drug offenses and found that no constitutional violation occurred when a third party was detained and drugs discovered in the course of a search of his vehicle).

²⁶⁰ *City of Indianapolis v. Edmond*, 531 U.S. 32, 35, 40–41 (2000).

novel approach was not grounded in previous case law or in the Fourth Amendment itself. Although the Court justified its decision as protection of Fourth Amendment rights, the decision will not have that effect. Rather, the Court has simply made the constitutionality of roadblocks more confusing. Lower courts must now inquire into the primary purpose (and hence, the subjective intent) of the state in implementing these programs. As a result, states can circumvent the decision simply by carefully wording their legislation and articulating permissible primary purposes. The Court's promise of greater Fourth Amendment protection is thus illusory, as the same types of seizures might be upheld if they are conducted in a program with a different stated primary purpose. Challenges to roadblock cases will certainly increase, and lower courts have been left with little clear guidance about how to approach them and how to evaluate the constitutionality of roadblocks under the Fourth Amendment.

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