License Check Stops and the Fourth Amendment

The constitutionality of license check stops\(^1\) has emerged as an issue only in recent years. The authority of police officers to stop vehicles for any reason, or for no reason at all, had long been a matter taken largely for granted.\(^2\) Every state has a statute requiring motorists to obtain driver's licenses to register their automobiles,\(^3\) to carry these documents while driving, and to display them on the demand of a law enforcement officer.\(^4\) In some states, law enforcement officers have express statutory authority to stop vehicles for the purpose of checking licenses and registrations,\(^5\) while in others, courts have found the power to stop implicit in the display statutes.\(^6\)

The statutes are generally silent on the procedure for selection of cars and the manner of inspection.\(^7\) The predominant means of making license checks had long been the random, or discretionary, spot check,\(^8\) in which a police officer on roving patrol would select particular cars to be checked and direct them to pull over;\(^9\) and the roadblock stop, in which the police would stop all or most of the vehicles passing a certain point and request the motorists to produce licenses and registrations for inspection.\(^10\) The police also conducted selective checks at a fixed checkpoint; either where cars were already stopped, as at a traffic signal,\(^11\) or along a highway by waving over selected vehicles.\(^12\) Additionally, the police could check license and registration in connection

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1. In this Comment, the term "license check stops" refers to routine stops of motor vehicles made for the purpose of checking driver's licenses and vehicle registrations.
3. See the representative statutes collected in Note, Automobile License Checks and the Fourth Amendment, 60 VA. L. REV. 666, 670 n.18 (1974).
4. Id. at n.19.
5. Id. at n.22.
6. Id. at n.24.
7. Id. at 670.
8. Although the term "random spot check" is often used, these stops are rarely truly random; some police departments have, in fact, encouraged the use of spot checks to investigate suspicious activity. See United States v. Robinson, 471 F.2d 1082, 1111-12 (D.C. Cir. 1972) (Bazelon, C.J., concurring), rev'd, 414 U.S. 218 (1973).
10. See, e.g., United States v. Croft, 429 F.2d 884 (10th Cir. 1970); City of Miami v. Aro
11. novitz, 114 So. 2d 784 (Fla. 1959); Commonwealth v. Mitchell, 355 S.W.2d 686 (Ky. 1962).
with other traffic violations.\textsuperscript{13}

The first courts to examine the propriety of license check stops generally found such stops, made either singly or as part of a roadblock, to be justified by the state's interest in road safety.\textsuperscript{14} As a practical matter, due to the unobservable nature of licensing violations, these courts could see no other effective method of enforcing the driver's license and vehicle registration statutes.\textsuperscript{15} A second group of cases upheld license check stops generally, but warned that they could not be used as a pretext for investigating unrelated criminal activity.\textsuperscript{16}

More recently, a number of cases have focused on the procedural context of the stop and have ruled that, in order to be valid, license check stops, unless carried out in a "nonarbitrary, uniform and systematic"\textsuperscript{17} manner, require some element of founded suspicion that the particular motorist is in violation of either the licensing and registration laws or some other traffic or criminal statute.\textsuperscript{18} However, these courts have provided little guidance as to what kinds of procedures might satisfy the "nonarbitrary, uniform and systematic" standard.

I

DISCRETIONARY LICENSE CHECK STOPS: 

\textit{Delaware v. Prouse}

The United States Supreme Court first addressed the constitutionality of license spot checks in \textit{Delaware v. Prouse}.\textsuperscript{19} In that case, a Del-

\begin{enumerate}
\item See, e.g., Myricks v. United States, 370 F.2d 901 (5th Cir. 1967); Lipton v. United States, 348 F.2d 591 (9th Cir. 1965); City of Miami v. Aronovitz, 114 So. 2d 784 (Fla. 1959); Commonwealth v. Mitchell, 355 S.W.2d 686 (Ky. 1962).
\item The following statement from Commonwealth v. Mitchell is illustrative: "If stopping motorists indiscriminately by police officers for the good faith purpose of inspecting or asking for the exhibition of a driver's license were not permitted, the licensing law would break down and become a nullity." 355 S.W.2d at 688.
\item See, e.g., Palmore v. United States, 290 A.2d 573 (D.C. 1972), \textit{aff'd on jurisdictional grounds only}, 411 U.S. 389 (1973); State v. Holmberg, 194 Neb. 337, 231 N.W.2d 672 (1975); Faulkner v. State, 549 S.W.2d 1 (Tex. Crim. App. 1976). This approach imposes a good faith requirement on the police, State v. Bloom, 90 N.M. 226, 233, 561 P.2d 925, 932 (1977), which is unsatisfactory because it makes the validity of the stop turn on the police officer's motive. To require proof of an unlawful motive would be an insurmountable burden to most arrested or cited motorists.
\item People v. Ingle, 36 N.Y.2d 413, 420, 330 N.E.2d 39, 44, 369 N.Y.S.2d 67, 74 (1975). \textit{Ingle} involved safety inspection stops, but the holding would appear to be equally applicable to license inspection stops.
\item 440 U.S. 648 (1979).
\end{enumerate}
aware police officer had stopped an automobile occupied by Prouse\textsuperscript{20} for the sole purpose of conducting a license and registration check. The officer “had observed neither traffic or equipment violations nor any suspicious activity”\textsuperscript{21} on the part of the vehicle’s occupants. In approaching the stopped automobile, however, the officer noticed the smell of marijuana; he subsequently seized marijuana that was in plain sight on the car floor.

Prouse was indicted for illegal possession of a controlled substance. Before trial, he successfully moved to exclude the marijuana from evidence on the ground that the stop, and thus the subsequent seizure, had been conducted in violation of his fourth amendment right to be free from unreasonable searches and seizures.\textsuperscript{22} On appeal, the Delaware Supreme Court agreed with the trial court’s ruling, holding that for a police officer randomly to stop an automobile “solely for the purpose of a document check is an unreasonable and unconstitutional detention of those in the stopped vehicle.”\textsuperscript{23}

The United States Supreme Court affirmed. The Court first determined that stopping an automobile and its passengers, even for a brief period of time and only to check license and registration, constitutes a seizure within the meaning of the fourth amendment.\textsuperscript{24} Thus, the validity of the particular police action in question rested on a balancing of the fourth amendment intrusion involved against the promotion of legitimate government interests achieved by that action.\textsuperscript{25}

In applying this balancing test to the specific activity involved, the Court held that license spot checks constitute a substantial physical and psychological intrusion on motorists’ fourth amendment interests. License check stops “generally entail law enforcement officers signaling a moving automobile to pull over to the side of the roadway, by means of a possibly unsettling show of authority.”\textsuperscript{26} They “interfere with freedom of movement, are inconvenient, . . . consume time . . . [and] may create substantial anxiety.”\textsuperscript{27} The Court particularly objected to sub-

\textsuperscript{20} There was some confusion as to whether Prouse had been the driver of the vehicle or merely a passenger. \textit{Id.} at 650 n.1.

\textsuperscript{21} \textit{Id.} at 650.

\textsuperscript{22} \textit{Id.} In pertinent part, the fourth amendment provides that “The right of the people to be secure in their persons, papers, houses, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. \textsc{const.} amend. IV. This guarantee applies to the states by way of the fourteenth amendment guarantee of due process of law. Wolf v. Colorado, 338 U.S. 25, 28 (1949), \textit{overruled on other grounds}, Mapp v. Ohio, 367 U.S. 643 (1961).


\textsuperscript{24} 440 U.S. at 653.

\textsuperscript{25} \textit{Id.} at 654. For an explanation of the balancing test, see notes 87-94 and accompanying text \textit{infra}.

\textsuperscript{26} \textit{Id.} at 657.

\textsuperscript{27} \textit{Id.}
jecting vehicles on the road to seizure "at the unbridled discretion of law enforcement officers," noting that "[t]he essential purpose of the proscriptions in the Fourth Amendment is . . . "to safeguard the privacy and security of individuals against arbitrary invasions."

The Court distinguished border checkpoint stops, in which all vehicles are stopped, on the ground that the motorist who can see other vehicles being stopped is less likely to be frightened than the motorist who is singled out for no apparent reason.

The Court also found that license check stops do not greatly promote legitimate government interests. Licenses could be checked, the Court noted, whenever motorists are otherwise stopped for traffic violations. Moreover, motor vehicle safety regulations could be enforced, as they already were in Delaware, through a system of annual or periodic inspections. In view of these viable, and less intrusive, alternatives, the Court concluded that the discretionary spot check was not "a sufficiently productive mechanism to justify the intrusion upon Fourth Amendment interests."

Thus, the random license spot check failed the balancing test. Based on its analysis, the Court concluded that except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.

The "articulable and reasonable suspicion" standard is derived from *Terry v. Ohio*, in which the court addressed "stop and frisk" detentions. The *Terry* Court, while recognizing that in certain fourth amendment situations a less stringent test than probable cause is appropriate, nevertheless sought to ward off intrusions on individual rights based on nothing more than a police officer's "inchoate and unparticu-

28. Id. at 661. The Court has generally insisted that the discretion of officials conducting administrative inspections in the field be circumscribed where possible. See, e.g., Almeida-Sanchez v. United States, 413 U.S. 266, 270 (1973); Camara v. Municipal Court, 387 U.S. 523, 532-33 (1967).


30. Id. at 657.

31. Id. at 659.

32. Id. at 663.

33. 392 U.S. 1 (1968). *Terry* held that in order to justify a decision to stop and frisk a pedestrian, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Id. at 21. Generally, this standard has been described as one of "reasonable suspicion." Id. at 37 (Douglas, J., dissenting).
larized suspicion or 'hunch'”34 by requiring at least a reasonable suspicion of criminal activity for such a detention to be justified. The Court again applied this standard in United States v. Brignoni-Ponce.35 In that case the Court held that a roving border patrol must have a “reasonable suspicion” that a particular vehicle is carrying illegal immigrants before it can conduct a stop.36 Delaware v. Prouse represents a further application of this standard to relatively minor investigatory detentions.

The reasonable suspicion standard, as applied to discretionary license check stops, properly balances the state's interest in keeping unlicensed drivers and unsafe vehicles off the roads with the individual's interest in being free from arbitrary, unwarranted intrusions on his personal liberty. In practice, the standard should not be so difficult to meet that it might prevent effective law enforcement.37 In fact, at least one court has characterized it as “rather lenient.”38 Nevertheless, the test does provide some protection of individuals' fourth amendment interests. The question remains, however, as to what methods of selecting vehicles for license and registration checks, other than that based on reasonable suspicion, may be legitimately used by the police.

II
LICENSE CHECK STOPS AFTER PROUSE

A. The Scope of the Holding

The Prouse Court carefully limited its holding to discretionary license check stops made by roving patrols, leaving the states free to develop “methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion.”39 The Court suggested as one possible alternative the “[q]uestioning of all oncoming traffic at roadblock-type stops.”40 This is analogous to the approach taken in the border search cases. After holding in United States v. Brignoni-Ponce41 that roving border patrol stops required reasonable

34. Id. at 27.
35. 422 U.S. 873 (1975).
36. Id. at 884.
37. In a number of cases, courts have found that certain conduct or circumstances that prompted police investigation satisfied the reasonable suspicion standard. See, e.g., United States v. Cortez, 595 F.2d 505 (9th Cir. 1979) (vehicle passed border patrol headed west and returned headed east in predawn hours); United States v. Fallon, 457 F.2d 15 (10th Cir. 1972) (occupants of new and expensive vehicle were young “hippies”); Keenan v. State, 372 So. 2d 1012 (Fla. Dist. Ct. App. 1979) (appellant previously observed speaking with person known to sell sexual services).
39. 440 U.S. at 663.
40. Id.
41. 422 U.S. 873 (1975).
suspicion, the Court, in *United States v. Martinez-Fuerte*,\(^4\) sustained the constitutionality of stops made without cause at a permanent border checkpoint.\(^3\) The crucial distinction was the lesser intrusion on the motorist’s fourth amendment interests: “[T]he subjective intrusion—the generating of concern or even fright on the part of lawful travelers—is appreciably less in the case of a checkpoint stop.”\(^4\) At a permanent checkpoint or roadblock, “the motorist can see that other vehicles are being stopped, . . . [and thus] he is much less likely to be frightened or annoyed by the intrusion.”\(^5\)

The remainder of this Comment discusses the issues involved in the use of roadblock stops to check driver’s licenses and vehicle registrations. Two questions arise. First, assuming that the Court would permit the police to stop and question all oncoming traffic,\(^6\) what procedures short of a full roadblock would be permissible? Second, balancing the government interest involved in conducting roadblock license check stops and the availability of other means of protecting that interest against the invasion of motorists’ fourth amendment rights, is the roadblock license check stop a “sufficiently productive mechanism”\(^7\) to justify the intrusion that it entails?

### B. Systematic License Inspection Schemes

*Short of a Full Roadblock*

In his concurring opinion in *Prouse*, Justice Blackmun suggested that “other not purely random stops . . . that equate with, but are less intrusive than a 100% roadblock stop” would also be constitutional.\(^8\) An example would be to stop “every 10th car to pass a given point.”\(^9\)

The government interest served by such systematic license inspection schemes is the same as that served by discretionary license check stops. Each serves the dual goals of detection and deterrence. Therefore, systematic license inspection schemes cannot be upheld under the balancing test unless they involve a substantially lesser intrusion on fourth amendment interests than do random stops. However, it is doubtful that they are any less intrusive.

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\(^3\) A permanent checkpoint is similar to a roadblock except that it is unmovable.
\(^4\) 428 U.S. at 558.
\(^5\) 428 U.S. at 558.
\(^7\) As the constitutionality of roadblock stops was not before the Court in *Prouse*, its pronouncement of their validity is dictum; however, it is probably highly indicative of the approach the Court would be likely to take in confronting the issue directly.
\(^8\) 440 U.S. at 659.
\(^9\) *Id.* at 664 (Blackmun, J., concurring).
\(^9\) *Id.*
Justice Blackmun’s conclusion that the police should be permitted to stop “every 10th car” has been termed “at the very least questionable,” since the danger exists that a police officer would exceed his authority by choosing, for example, to stop the ninth car rather than the tenth. Moreover, his actions would be largely unreviewable, since the motorist would generally be unable to prove the officer’s failure to abide by the selection system. It is worth remembering here that, as Justice Jackson cautioned in *Brinegar v. United States*, “[T]he authority which we concede . . . may be exercised by the most unfit and ruthless officers as well as by the fit and responsible.” Thus, Justice Blackmun’s hypothetical selection scheme would inadequately protect the motorist’s fourth amendment interests against the intrusion caused by an arbitrary stop.

Other systematic selection schemes have also been proposed. One suggestion was to examine “every car on a given day with a particular letter or number group in the license.” This would reduce the amount of discretion afforded the individual officer and thus diminish the possibility of arbitrary stops. Stops made under any systematic selection scheme, however, would be just as intrusive as the stop invalidated in *Prouse*. The physical intrusion is the same, and the motorist stopped under such a scheme is just as likely to be frightened or annoyed as the motorist stopped arbitrarily, since it is unlikely that he will have advance knowledge of the selection scheme or its criteria. Like the motorist stopped at an officer’s discretion, the motorist stopped under a systematic selection scheme would not see other vehicles being stopped. As a result, the subjective intrusion experienced by the motorist is the same under either formula. Indeed, “[i]t is difficult to conceive of an alternative to checkpoint stops that is not tainted by the very drawbacks checkpoint stops ostensibly avoid.”

Thus, contrary to Justice Blackmun’s understanding, it appears that only the full, one hundred percent roadblock stop avoids both of the evils recognized in *Martinez-Fuerte* and *Prouse*—the subjective intrusion experienced by the motorist and the unfettered exercise of discretion by the law enforcement officer. Selective license check stops

51. 338 U.S. 160 (1949) (affirming conviction based on evidence seized during search of petitioner’s car).
52. *Id.* at 182 (Jackson, J., dissenting).
55. *See* 440 U.S. at 664.
are more similar to discretionary stops than they are to checkpoint operations, especially in terms of their psychological effect on motorists. Selective license inspection schemes that do not constrain the officer's discretion or that involve as much of an intrusion as the method invalidated in *Prouse* are therefore likely to fail the balancing test. The question remaining is whether the roadblock license check stop can withstand such a balancing test analysis.

C. Roadblock License Check Stops

The Supreme Court's opinion in *Prouse* suggests that the use of full roadblocks to check driver's licenses and vehicle registrations would be permissible. Although the Court did not provide any guidance as to how a roadblock stop should be operated, certain things seem clear. If full roadblocks are constitutional, the police could require all drivers passing through a roadblock to produce their licenses and registrations. This obviously would not be practical in any location with regular traffic; thus the police might prefer to permit most motorists to drive slowly through the roadblock, stopping only selected vehicles for further investigation. *Prouse* would appear to require the police to have a reasonable suspicion that the relevant licensing or registration statute has been violated before they could single out a particular vehicle for a documents check. However, an analogous secondary referral system used at permanent border checkpoints was approved by the Court in *United States v. Martinez-Fuerte*.6

In *Martinez-Fuerte*, the Court held that border agents could stop vehicles without individualized suspicion at permanent border checkpoints, and that they could make motorist referrals to a secondary inspection area on the basis of criteria that would not justify a stop by a roving patrol.60 Law enforcement authorities probably would not use roadblocks for the purpose of checking licenses and registrations if they would also be required to run a full documents check on every vehicle passing through the checkpoint. Operated in such a manner, a roadblock would soon lead to interminable delays and could not be justified under the balancing test used by the Court in *Prouse*.61 Thus, the legitimacy of selective referrals and, in this connection, the precedential value of *Martinez-Fuerte* become crucial.

56. *Id.* at 663.
57. *See* notes 95-137 and accompanying text infra.
58. This is the procedure generally used at permanent border checkpoints. For a detailed description of the operation of several of these checkpoints, see *United States v. Baca*, 368 F. Supp. 398, 407 (S.D. Cal. 1973).
60. *Id.*
61. *See* notes 118-20 and accompanying text infra.
The *Martinez-Fuerte* Court relied on two factors in upholding the validity of selective referrals at border checkpoints. First, the Court noted that the "regularized manner" in which checkpoint procedures are conducted minimizes the potential for discretionary enforcement.62 Second, the Court emphasized that referrals "should not be frightening or offensive because of their public and relatively routine nature."63

The checkpoint at issue in *Martinez-Fuerte*, located in San Clemente, California, is the primary border checkpoint in southern California. At the checkpoint, vehicles are funneled into two lanes, where they are checked by uniformed Border Patrol officers. The overwhelming majority of vehicles are not individually stopped, and roll past the officers.64 As Justice Brennan noted in dissent, it is unclear what support the majority could cite for its conclusion that referrals should not be frightening or offensive for those few motorists singled out for more extensive investigation.65

The Court's approval of selective referrals has been severely criticized.66 The decision has been characterized as flatly inconsistent with prior cases, and with *Brignoni-Ponce* in particular. In fact, a comparison of *Martinez-Fuerte* and *Brignoni-Ponce* reveals a significant incongruity. The Border Patrol officer on roving patrol, like the officer in *Prouse*, cannot stop a vehicle unless he is able to articulate a basis for a reasonable suspicion. On the other hand, the officer at a checkpoint, who has a much greater opportunity to observe a vehicle and its occupants at close range, is not required to point to specific facts to justify his decision to stop any particular automobile.68

The *Martinez-Fuerte* Court justified its approval of secondary referrals on the ground that such referrals would minimize the intrusion on the motoring public, since most motorists would be permitted to pass through unimpeded.69 As Justice Brennan correctly pointed out,

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62. 428 U.S. at 559.
63. Id. at 560.
64. See Note, United States v. Martinez-Fuerte: The Fourth Amendment—Close to the Edge?, 13 Cal. W. L. Rev. 333, 349 (1977). Of 145,960 vehicles that passed through the checkpoint during an eight-day period, only 820 were referred to the secondary inspection area. United States v. Martinez-Fuerte, 514 F.2d 308, 313 (9th Cir. 1975), rev'd, 428 U.S. 543 (1976).
65. 428 U.S. at 572 (Brennan, J., dissenting).
66. See id. at 574-75 (Brennan, J., dissenting); Note, supra note 64, at 349-53; Note, Alien Checkpoints and the Troublesome Tetralogy: United States v. Martinez-Fuerte, 14 San Diego L. Rev. 257, 278-81 (1976).
67. See Note, supra note 64, at 341-42; Note, supra note 66, at 281. Compare United States v. Martinez-Fuerte, 428 U.S. at 563 (footnote omitted) ("even if it be assumed that such referrals are made largely on the basis of apparent Mexican ancestry, we perceive no constitutional violation"), with United States v. Brignoni-Ponce, 422 U.S. at 887 ("standing alone [Mexican appearance] does not justify stopping all Mexican-Americans to ask if they are aliens").
68. See 428 U.S. at 575 (Brennan, J., dissenting).
69. Id. at 560.
the Court's view "stands the Fourth Amendment on its head. The starting point of this view is the unannounced assumption that intrusions are generally permissible; hence, any minimization of intrusions serves Fourth Amendment interests. Under the Fourth Amendment, however, the status quo is nonintrusion." 70

The use of selective referrals makes the checkpoint or roadblock stop indistinguishable from the discretionary stops invalidated in Brignoni-Ponce and Prouse. Selective referrals not based on the reasonable suspicion standard permit the officer operating the checkpoint to exercise the same unconstrained discretion that was found objectionable in random stops.

If it is not practical to run a documents check on every car that passes a checkpoint, the best course may be to use selective referrals to secondary inspection areas. In order to safeguard the fourth amendment rights of motorists, however, these selective checks must be governed by the reasonable suspicion standard. If this standard were not required, the examining officer would be free to use personal prejudices or inarticulate hunches in selecting vehicles for license checks, a discretion that the Court found unconstitutional in Prouse. 71 Selective referrals not based on any articulated reasons are probably unjustifiable in any context; at the minimum, the use of such referrals should be confined to the border search situation, where the government's interest is significantly greater.

Whatever standard is used to govern secondary referrals, the primary question after Prouse is whether there is a sound constitutional basis for exempting the use of roadblocks to check licenses and registrations from the requirement of articulable and reasonable suspicion. The Court has made it clear that "the Fourth Amendment imposes no irreducible requirement of such suspicion." 72 Whether such a requirement should be imposed depends, again, on the balance between the fourth amendment intrusion involved and the promotion of legitimate government interests. 74

There is disagreement as to whether a roadblock is substantially less intrusive than a discretionary spot check. Justice Rehnquist, dissenting in Prouse, found curious the notion that the state must infringe

70. Id. at 572 n.2 (Brennan, J., dissenting).
71. Cf. United States v. Ortiz, 422 U.S. 891 (1975). The border checkpoint at issue in Ortiz did not limit "to any meaningful extent the officer's discretion to select cars for search," since the record showed that only about three percent of the cars passing the checkpoint were stopped for either questioning or search. Id. at 895-96.
72. For a discussion of the government's interest in conducting vehicle checks at the border, see notes 130-33 and accompanying text infra.
73. United States v. Martinez-Fuerte, 428 U.S. at 561.
74. For an explanation of the balancing test, see notes 87-94 and accompanying text infra.
individual rights "en masse rather than citizen by citizen." Justice Brennan has characterized checkpoints as "a dragnet-like procedure offensive to the sensibilities of free citizens." Thus, a roadblock may be no less of an invasion of the motorist's individual rights than the discretionary stop.

Roadblock stops have been approved by courts in a variety of contexts, such as motor vehicle safety inspections, game checks, and license and registration checks. Roadblocks used for the purpose of general searches, on the other hand, have met with judicial disapproval. However, many of the courts that have sanctioned the use of roadblocks to check licenses and registrations or to look for safety violations have used reasoning that is no longer valid.

Initially, many courts dismissed challenges to the roadblock practice simply by noting that the motorist had not been "arrested." After Prouse, however, it is clear that the motorist has been seized within the meaning of the fourth amendment. One court compared the duty of a motorist to stop and submit to a check to the duty of a pedestrian abroad at night to stop and identify himself. However, the Supreme Court has made it clear that absent a reasonable suspicion of criminal conduct, a police officer cannot require a person to identify himself. Many courts viewed the motor vehicle license as a privilege, held sub-

75. 440 U.S. at 666 (Rehnquist, J., dissenting). Finding an insufficient basis for distinguishing them, Justice Rehnquist would uphold the constitutionality of both roadblocks and random stops, absent a violation of equal protection. Id. at 667.

76. United States v. Martinez-Fuerte, 428 U.S. at 571 (Brennan, J., dissenting); cf. United States v. Speed, 489 F.2d 478, 480 (5th Cir. 1973) ("the distinction between a checkpoint and a roving patrol is not important").


81. See, e.g., People v. Gale, 46 Cal. 2d 253, 294 P.2d 13 (1956); cf. State v. Olgaard, 248 N.W.2d 392 (S.D. 1976) (roadblock, without a warrant, to search for alcohol was impermissible). One commentator has noted that the use of roadblocks to check licenses is "no different in principle" since it is "a general preventive search for the crime of failing to carry a valid license." Reich, supra note 2, at 1167.

82. See, e.g., People v. De La Torre, 257 Cal. App. 2d at 166, 64 Cal. Rptr. at 807; Morgan v. Town of Heidelberg, 246 Miss. at 487, 150 So. 2d at 514.

83. People v. De La Torre, 257 Cal. App. 2d at 166, 64 Cal. Rptr. at 807.

ject to whatever "reasonable" restrictions the state wished to impose;\textsuperscript{85} this argument, too, has been undercut by recent decisions. Constitutional issues, the Court has held, are not to be resolved by reference to any subtle right/privilege distinction.\textsuperscript{86}

III

A BALANCING APPROACH TO THE ROADBLOCK LICENSE CHECK STOP

In determining whether the use of roadblocks to check driver's licenses and vehicle registrations is constitutional, the proper inquiry is whether that practice is "reasonable" under the fourth amendment. "[T]here can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails."\textsuperscript{87} This balancing test was developed in the administrative search cases—\textit{Camara v. Municipal Court}\textsuperscript{88} and \textit{See v. City of Seattle}\textsuperscript{89}—and was applied by the Court in \textit{Terry v. Ohio},\textsuperscript{90} \textit{United States v. Brignoni-Ponce},\textsuperscript{91} and \textit{Delaware v. Prouse}.\textsuperscript{92}

Applying the \textit{Camara} test, the factors that must be evaluated are: (1) the government interest involved in carrying out roadblock stops to check licenses and registrations, (2) the availability of less intrusive ways to accomplish the same results, and (3) the extent of the intrusion on individual liberty and security that a roadblock entails.\textsuperscript{93} Under this test, the fact that a particular practice has a long history of judicial and public acceptance is relevant, although not determinative.\textsuperscript{94}

\textsuperscript{85} See, e.g., People v. De La Torre, 257 Cal. App. 2d at 166, 64 Cal. Rptr. at 807; \textit{Commonwealth v. Mitchell}, 355 S.W.2d at 688.


\textsuperscript{87} \textit{Camara v. Municipal Court}, 387 U.S. 523, 536-37 (1967).

\textsuperscript{88} 387 U.S. 523 (1967). In \textit{Camara}, the Court held that administrative inspections of private residences, although not subject to the traditional criminal probable cause requirement, can nevertheless be carried out only where consented to or authorized by an inspection warrant issued by a magistrate.

\textsuperscript{89} 387 U.S. 541 (1967). In \textit{See}, the Court held that administrative entry of commercial establishments for fire inspections cannot be obtained unless a warrant is first procured under the standards announced in \textit{Camara}.

\textsuperscript{90} 392 U.S. at 21.

\textsuperscript{91} 422 U.S. at 878.

\textsuperscript{92} 440 U.S. at 654. Although \textit{Camara} and \textit{See} imposed an administrative warrant requirement, the same balancing test was used in the cases that initially established the reasonable suspicion standard—\textit{Terry v. Ohio}, 392 U.S. 1 (1968), and \textit{United States v. Brignoni-Ponce}, 422 U.S. 873 (1975). License check stops may be viewed as inspections or regulatory searches; thus, the application of the \textit{Camara} balancing test to license check stops is proper. See 3 W. \textit{LaFave, Search and Seizure: A Treatise on the Fourth Amendment}, § 10.8, at 382-92 (1978).

\textsuperscript{93} 387 U.S. at 534-37.

\textsuperscript{94} Id.
A. The Government Interest

The government interest involved in conducting roadblocks to enforce the licensing and registration laws is the promotion of highway safety. Driver's licenses are issued periodically to ensure that those permitted to drive are familiar with the rules of the road and are physically qualified to operate a motor vehicle. The registration requirement is designed to keep dangerous vehicles off the road. The roadblock stop is carried out with the aims of detecting unlicensed drivers and unregistered vehicles and deterring unlicensed persons from driving at all. These government interests are also the asserted justification for the random spot check. The promotion of highway safety is undeniably a vital state interest.

B. Alternative Methods of Enforcement

Although the enforcement of its licensing and registration statutes is a legitimate state interest, there are, as the Prouse Court recognized, enforcement mechanisms less intrusive than the roadblock available to the states. The primary method for enforcing traffic and vehicle safety regulations is to act on observed violations. "Drivers without licenses are presumably the less safe drivers whose propensities may well exhibit themselves." Indeed, one commentator has suggested that "as for that small group of unlicensed drivers who...might escape police detection by driving safely, the very success of their efforts diminishes the public safety need for their apprehension."

Roadblocks might also be defended on the basis of their deterrent function, but it is "difficult to believe that the unlicensed driver would not be deterred by the possibility of being involved in a traffic violation." In any event, the percentage of unlicensed drivers is certainly very small, and the added deterrent effect of roadblock stops does not justify subjecting all motorists to seizure and detention for license and registration checks.

Roadblocks are also used by many states to enforce motor vehicle laws.
safety regulations. However, many of the above criticisms are also applicable to this practice. Many violations of vehicle safety laws are observable, and can be acted on by the observing officer. Moreover, the state is free to require vehicles to pass inspection on an annual or periodic basis. An inspection system of this type usually allows the motorist some leeway in scheduling the inspection and is certainly less intrusive than a roadblock, which is usually unexpected and often inconvenient. In view of these less intrusive alternative enforcement methods, a state would not be justified in using a roadblock to enforce licensing and registration requirements.

C. The Intrusion on Fourth Amendment Interests

The Camara balancing test also requires an evaluation of the intrusion caused by the roadblock stop on the fourth amendment interests of motorists. In Delaware v. Prouse, the Court rejected, at least as to discretionary stops, the argument that a license check stop is a minimal intrusion and thus needs no justification. The question that remains is whether that argument also should be rejected as to roadblock license check stops.

Some courts have said that when a vehicle is stopped for a license examination, "the inconvenience experienced by the individual motorist is relatively slight," since such a stop involves only a "momentary interruption" of the motorist's freedom of movement. However, the "check is conducted not by special inspectors but by police officers whose primary responsibility is crime detection and prevention." Moreover, prior cases make it clear that evidence within the "plain view" of the examining officer can give rise to cause for further investigation. Thus, this interference may be far from slight.

The individual motorist has a substantial interest in being free from unnecessary interferences with his freedom of movement on the...
highways. In the leading case of *Carroll v. United States* the Court said:

It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. Travelers may be so stopped in crossing an international boundary because of national self-protection reasonably requiring one entering the country to identify himself as one entitled to come in, and his belongings as effects which may lawfully be brought in. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing their vehicles are carrying contraband or illegal merchandise.

The Court confirmed this conclusion in *Brinegar v. United States*, in which it stated that the motorist "who has given no good cause for believing he is engaged in [criminal] activity is entitled to proceed on his way without interference.”

Roadblocks significantly intrude on this right to free passage on the public highways. The use of roadblocks to check license and registration involves the seizure of motorists and their detention for the time it takes to complete the examination. If traffic is heavy, it is inevitable that some motorists will experience significant delays. This is especially true if the police, in accordance with the spirit of *Prouse*, are not permitted to conduct documents checks on a selective basis. Given that “automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one’s home, workplace, and leisure activities,” the delays occasioned by a roadblock license check stop may significantly interfere with a motorist’s free travel.

The motorist has another fundamental interest at stake in this situation: the right to be free from unwarranted state invasions of his privacy. “An individual . . . traveling in an automobile does not lose all reasonable expectation of privacy simply because the automobile and

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115. Id. at 153-54 (emphasis added).
117. Id. at 177 (footnote omitted).
118. See text accompanying notes 62-72 supra.
120. Cf. People v. McGaughran, 585 P.2d at 211, 149 Cal. Rptr. at 589 (it may be a significant interference with a motorist’s schedule to make him sit idly for ten minutes or more while the police run a warrant check), vacated on rehearing, 25 Cal.3d 577, 601 P.2d 207, 159 Cal. Rptr. 191 (1979).
its use are subject to governmental regulation.”121 When the motorist’s interests in privacy and freedom of movement are accorded their proper respect, it is clear that “the right of the citizen to drive on a public street with freedom from police interference, unless he is engaged in suspicious conduct associated in some manner with criminality, is a fundamental constitutional right which must be protected by the courts.”122

D. The Historical Justification

The argument that the use of roadblocks to check license and registration has a long history of public acceptance123 and thus should not be invalidated at this late date suffers from a number of weaknesses. First, it would also apply to the discretionary spot check, which was invalidated in Prouse. Second, it is doubtful that all or even most motorists willingly submit to being stopped and questioned by police when they have done nothing to give rise to any suspicion of illegal activity. The fourth amendment protects a person’s reasonable “expectation of privacy.”124 As one commentator has stated, a motorist’s “normal expectation is more probably to have no immediate contact with the police except after an accident or a traffic violation.”125 Third, even if accurate, the historical argument does not end the inquiry, since “the community’s standards of reasonableness may have changed over time.”126 For example, in Camara, the Court rejected a historical argument on which it had relied just eight years earlier in Frank v. Maryland.127 Thus, while the fact that roadblocks have long been an accepted means of checking licenses and registrations may lend some support to that practice, it will not justify it.

E. The Border Search Precedents: Permanent Border Checkpoints Distinguished

Based on the above analysis, roadblock license check stops should

121. Delaware v. Prouse, 440 U.S. at 662 (footnote omitted). See also Coolidge v. New Hampshire, 403 U.S. 443, 461 (1971) (“The word automobile is not a talisman in whose presence the Fourth Amendment fades away . . . .”).
123. See United States v. Martinez-Fuerte, 428 U.S. at 560 n.14, in which the Court observed: Stops for questioning, not dissimilar to those involved here, are used widely at state and local levels to enforce laws regarding driver’s licenses . . . . As such laws are not before us, we intimate no view respecting them other than to note that this practice of stopping automobiles briefly for questioning has a long history evidencing its utility and is accepted by motorists as incident to highway use.
125. Note, supra note 3, at 682. See also Reich, supra note 2, at 1172.
be invalid under the *Camara* balancing test. The substantial invasion of motorists' fourth amendment interests cannot be justified on the basis of the government's interest in promoting highway safety. However, the Court has upheld the use of roadblocks at border checkpoints, and it could be argued that this is precedent for the use of roadblocks to check licenses and registrations. Thus, the question remains whether roadblock license check stops can be distinguished from border checkpoint stops.

In *United States v. Martinez-Fuerte*, the Supreme Court upheld stops made without individualized suspicion at permanent border checkpoints. This case, however, is not persuasive authority for the use of roadblocks to check driver's licenses and vehicle registrations. The government interest at stake in the border situation is decidedly different and greater than that in a nonborder license and registration check. Stops at the border are necessary to effective enforcement of the nation's immigration and importation laws. Thus, searches for illegal immigrants and contraband may be conducted without probable cause at the border or its functional equivalent. At least since Chief Justice Taft delivered his landmark opinion in *Carroll v. United States*, the courts have recognized that there is a significant difference between stopping travelers crossing the border and stopping those lawfully within the country.

Also, it may be that checkpoints or roadblocks are simply more suited to use by the border patrol than for license and registration checks. Any roadblock located on a city street could be easily evaded by some drivers; avoidance of border patrol checkpoints situated on main north/south arteries is more difficult.

One fact common to roadblock license check stops and border checkpoints is the potential for abuse. Just as discretionary license and

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128. The possibility that the use of roadblocks might be legitimate if given advance scrutiny by a magistrate was suggested by Justice Powell in his concurring opinion in *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). While agreeing with the majority that the warrantless stopping and searching of cars for illegal aliens violated the fourth amendment, he suggested that if an "area warrant" was obtained permitting "searches on a particular road or roads for a reasonable period of time," such a practice might be constitutional. *Id.* at 283 (Powell, J., concurring). This warrant would be based on a generalized showing of such factors as the presence of illegal aliens within that area and proximity to the border. *Id.* Even if this proposal makes sense in the border context, however, it could not be applied to license inspection stops: "In contrast to violations of the immigration laws in border areas, license and registration violations are as likely to be found in one place as in another." Note, supra note 3, at 694.


130. *Id.*

131. *Id.* at 557.


133. 267 U.S. 132, 154 (1925).

134. Note, supra note 54, at 1138.
registration checks were used as a pretext for stopping vehicles for other purposes, roadblocks might be positioned in order to facilitate the detection of other crimes as well. In fact, there is some evidence that roadblocks, ostensibly established for enforcement of licensing statutes, have been used as a general tool of criminal investigation.

This similarity, however, does not mean that roadblocks used for border surveillance and those used for license and registration checks are, for constitutional purposes, the same. Due to the greater effectiveness of border checkpoints and the greater government interest involved in their use, they have been and should be distinguished. Thus, the conclusion that the use of roadblocks to check licenses and registrations fails the Camara balancing test is unaffected by the constitutionality of their use at the border.

CONCLUSION

The government interest in checking driver's licenses and vehicle registrations at roadblock stops does not outweigh the individual motorist's interest in being free from officially sanctioned intrusions on his privacy and interferences with his freedom of movement. Less intrusive means of protecting the concededly legitimate government interest in road safety are available. Police officers can check licenses and registrations in connection with traffic violations, or whenever an of

135. See, e.g., United States v. Carrizoza-Gaxiola, 523 F.2d 239 (9th Cir. 1975) (officer stopped the vehicle because it was of a type commonly stolen); United States v. Bell, 383 F. Supp. 1298 (D. Neb. 1974) (officer was acting on a generalized suspicion that a van heading east on an interstate highway with out-of-state license plates, particularly from California or the Southwest, and being driven by a youthful driver might be engaged in criminal drug-related activity); Berryhill v. State, 372 So. 2d 355 (Ala. Civ. App. 1979) (license check was a merely an excuse to stop and find further support for sheriff's suspicion of bootlegging).


137. See, e.g., State v. Bloom, 90 N.M. 226, 231, 561 P.2d 925, 930 (1976) (the police officer involved testified that in conducting the roadblock to check license and registration, "we was [sic] checking for stolen cars, driver's license, registration checks, equipment checks, marijuana... pills... anything that's illegal").

138. Although the government interest in checking driver's licenses and vehicle registrations is not great enough to justify the use of a roadblock, this does not necessarily mean that roadblocks are per se unreasonable. The government interest involved in intercepting illegal aliens may be sufficient to justify stops made at permanent border checkpoints. If the use of roadblocks is to be sanctioned at all outside of the border context, it would seem that the crucial considerations should be "the gravity of the offense." Brinegar v. United States, 338 U.S. at 183 (Jackson, J., dissenting). Justice Jackson's view was that if a child was kidnapped, he would strive hard to sustain the use of a roadblock, but that he would "not strain to sustain such a roadblock and universal search to salvage a few bottles of bourbon and catch a bootlegger." Id. Perhaps the use of roadblocks should be permitted, for instance, to stop a fleeing offender or to recapture an escaped felon. See Note, Roadblocks and the Law of Arrest in Montana, 24 Mont. L. Rev. 137 (1963).
ficer has an "articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law." 139

A roadblock check is a highly intrusive mechanism that significantly interferes with a motorist's reasonable expectation of privacy. The full roadblock at which all vehicles are stopped and all licenses checked is unworkable if traffic is heavy or even regular, and the delays it occasions are not justified in view of the small number of unlicensed drivers. Any system short of the full roadblock reintroduces problems of discretionary law enforcement and increases the fright and apprehension that a motorist is likely to experience when stopped. The roadblock, like the random stop, lends itself to use as a pretext for general criminal investigations. Thus, the fourth amendment rights of motorists can be adequately safeguarded only by requiring in each case that the facts upon which the intrusion is based be capable of measurement against "an objective standard." 140 The governing standard for all license check stops should be the articulable and reasonable suspicion standard of Terry, Brignoni-Ponce, and Prouse.

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139. Delaware v. Prouse, 440 U.S. at 663.
140. Id. at 654.
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