No. 99-1030

In the Supreme Court of the United States

CITY OF INDIANAPOLIS, ET AL., PETITIONERS

v.

JAMES EDMOND, ET AL.

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether checkpoints at which law enforcement officers briefly stop vehicular traffic, check motorists' licenses and vehicle registrations, look for signs of impairment, and walk a "narcotics detection" dog around the exterior of each stopped automobile violate the Fourth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

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INTEREST OF THE UNITED STATES

This case involves the validity under the Fourth Amendment of a vehicle checkpoint that serves interests in drug detection, license and registration checks, and driver sobriety. The United States maintains vehicle checkpoints for a variety of purposes. Because "the smuggling of aliens and drugs are intermingled by criminal organizations operating at an international level," Border Patrol officers are cross-designated to search for and seize illegal narcotics in their checkpoint operations.[1] Border Patrol canines are trained to detect both concealed humans and drugs. In addition, the Forest Service sometimes operates multi-purpose check-

[1] See Memorandum of Understanding Between the Drug Enforcement Administration and the Immigration and Naturalization Service 1, 3 (Mar. 25, 1996).

points on roads within the National Forest System, which can include verification of drivers' licenses and registration, assessments of impairment, and the conduct of canine sniffs of cars' exteriors. Forest Service Handbook 5309.11, Sec. 360 (Sept. 1998). Furthermore, because motor vehicle transportation plays a critical role in the nationwide distribution of illegal narcotics, the Drug Enforcement Administration, the Department of Transportation's Drug Interdiction Assistance Program, and other federal components have a substantial interest in efforts to curb drug trafficking on the public roadways.

STATEMENT

1. From August to November 1998, the Indianapolis Police Department operated six motor vehicle "drug checkpoints" on public roads. Pet. App. 51a-52a. At those checkpoints, police officers stopped a predetermined number of cars, checked each driver's license and registration, looked for signs of impairment, and, while examining each driver's documentation, walked a narcotics-detection dog around the car. *Id.* at 2a, 25a, 53a. Stops averaged two to three minutes; officers endeavored to ensure that, absent individualized suspicion, no vehicle was delayed more than five minutes. *Id.* at 38a, 51a.

Police officers conducted the checkpoints in accordance with detailed, written procedures promulgated by the Indianapolis Police Department. Pet. App. 26a-27a. The time and place of each checkpoint was set by supervisory personnel weeks in advance "based on geographical suitability, taking into consideration area crime statistics and the ability to locate the checkpoint in a location which [would] minimize the interference with normal traffic flow." *Id.* at 56a-57a. The date of

each checkpoint (but not its exact location) was then disseminated to the public. *Id.* at 37a. Motorists approaching the checkpoint were forewarned by lighted signs stating: "NARCOTICS CHECKPOINT __ MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP." *Id.* at 57a. The checkpoint itself was identified by marked police cruisers with flashing lights. The stopped cars were met by a team of police officers, at least one of whom was in full uniform. *Ibid.* The governing procedures required that "no discretion [be] given to any officer to stop any vehicle out of sequence," and that "every vehicle * * * stopped must be examined in the *same* manner [with] no exceptions." *Id.* at 27a, 54a.

The "primary goal" of the checkpoints was to detect narcotics traffickers and thus "to interrupt the flow of illegal narcotics throughout Indianapolis." Pet. App. 25a. "[A] secondary purpose of the checkpoints [was] to check driver's licenses and vehicle registrations." *Id.* at 44a. Police stopped a total of 1,161 vehicles, resulting in 109 arrests and thus an effectiveness rate of 9.4%. *Id.* at 2a-3a, 13a, 55a. Those arrests were divided almost equally between traffic and drug offenses. *Id.* at 55a.

2. In October 1998, respondents, two motorists who had been stopped at checkpoints, filed suit under 42 U.S.C. 1983 seeking damages and an injunction on the ground that the checkpoints violated the Fourth and Fourteenth Amendments. Complaint 1, 8. The district court certified the case as a class action, Pet. App. 29a-30a, but denied a preliminary injunction because it found no likelihood of success on the merits of respondents' Fourth Amendment claim, *id.* at 32a-47a. Proceeding on a stipulated factual record, the district court found that motorists suffered "minimal" subjective and objective intrusion at the checkpoints, *id.* at 37a-40a,

while the stops effectively advanced important governmental interests in the interdiction of narcotics and the enforcement of licensing requirements, *id.* at 41a-45a.

3. A divided court of appeals reversed, holding that the checkpoints violated the Fourth Amendment. Pet. App. 1a-23a.

a. The majority acknowledged that the checkpoint stops, if evaluated at the programmatic level, "probably are legal, given the high 'hit' rate and the only modestly intrusive character of the stops," Pet. App. 3a, and given that they "advance[] the strong national, state, and local policy of discouraging the illegal use of controlled substances," *id.* at 4a. The majority held, however, that, in view of "the purpose of the roadblocks * * * to catch drug offenders," *id.* at 11a, the stop of each car must be based on individualized suspicion because the checkpoints "related to general criminal law enforcement, rather than to primarily civil regulatory programs for the protection of health, safety, and the integrity of our borders." *Id.* at 4a (citation omitted).

The majority distinguished the Border Patrol checkpoints upheld in *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976), on the ground that Indianapolis "makes no attempt to defend its roadblocks on the basis that it is trying to exclude a harmful substance or dangerous persons[,] [t]hough that may be the ultimate aim." Pet. App. 10a. And it distinguished the sobriety checkpoints upheld in *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444 (1990), because those checkpoints "are designed to protect other users of the road from the dangers posed by drunk drivers," rather than "primarily [to] catch[] crooks." Pet. App. 8a.

The majority recognized four exceptions to its holding that the Fourth Amendment prohibits vehicle checkpoints aimed at law enforcement: checkpoints "set up to catch a fleeing criminal"; checkpoints set up when "it [is] impossible to prevent a crime without an indiscriminate search"; checkpoints "the objective of which is to protect a specific activity"; and checkpoints to prevent "illegal importation whether of persons * * * or of goods." Pet. App. 12a. The court suggested, moreover, that if the "primary purpose" of the checkpoints were to discover violations of the traffic laws or drunk drivers, the addition of a narcotics-detection dog might be permissible. *Id.* at 10a-11a.

b. Judge Easterbrook dissented. He criticized the majority's conclusion that a "law enforcement" purpose would render a vehicle checkpoint unreasonable, noting that "*Martinez-Fuerte* approved a roadblock to search for alien smuggling, a violation of a criminal law; *Sitz* approved a roadblock to search for drunk driving, a violation of a criminal law." Pet. App. 13a. The dissent also disagreed that the primary purpose of a checkpoint determines its constitutionality, noting that, under the majority's view, "if Indianapolis set out to find people driving without licenses and only later added a dog to sniff for drugs * * *, then the program would pass constitutional muster. But if the City first decides to search for drugs, then adds license checks * * * the program is invalid." *Id.* at 13a-14a. Similarly, "[i]f a program is designed primarily to search for people *using* drugs in the car, and only secondarily to locate drugs in the trunk, then it is valid; if it is designed primarily to search for carried drugs, and only secondarily for ingested drugs, then it is invalid." *Id.* at 14a. In the dissent's view, "the reasonableness inquiry under the fourth amendment is objective; it depends on

what the police do, not on what they want or think." *Ibid.*

SUMMARY OF ARGUMENT

1. Indianapolis's checkpoint program is consistent with the Fourth Amendment because the important public interests that are effectively served by the checkpoints outweigh the minimal intrusion imposed on motorists using the public highways. The City's checkpoints serve not one, but two vital public interests: the interdiction of narcotics trafficking and the enforcement of license-and-registration requirements for motorists. Drug trafficking on the public roadways has proven to be as formidable and intractable a law-enforcement problem as illegal immigration, which this Court has held justifies a comparable Border Patrol checkpoint program. Drug trafficking's attendant social costs—in lost lives, violence, crime, and general public disorder—parallel, if not exceed, those public-welfare concerns that sustain sobriety checkpoints. Moreover, because public roadways are the primary distribution network for illegal narcotics within the country, drug traffickers, like alien smugglers, depend upon automobile travel for their success.

This Court's cases also have repeatedly indicated that the Fourth Amendment permits license-and-registration checkpoints. Such checkpoints advance important public-safety concerns by ensuring that usage of the roadways is limited to those motorists and automobiles that satisfy the State's licensing criteria.

Further, nothing in the actual execution of the checkpoint process or in the driver's individual experience at the checkpoint exceeds what this Court has previously sanctioned under the Fourth Amendment. The only factual difference is the addition of a canine sniff of the

car's exterior, but, because the sniff neither entails a search nor lengthens the seizure, that distinction is of no constitutional moment.

2. The court of appeals invalidated the checkpoints because they served the needs of criminal law enforcement, rather than distinct public policy needs. But so do the immigration and sobriety checkpoints that this Court has previously upheld. See *Michigan Dep't of State Police* v. *Sitz*, 496 U.S. 444 (1990); *United States* v. *Martinez-Fuerte*, 428 U.S. 543 (1976). Indeed, this Court has expressly rejected the imposition of a "special needs" requirement on automobile checkpoints. *Sitz*, 496 U.S. at 450.

The court of appeals also held that the primary purpose of the checkpoint program's designers was critical to its legality. But the entire scope of the seizure was a permissible means of implementing the checkpoints' secondary purpose—license and registration verification. The fact that the checkpoint program simultaneously advances another weighty public interest—narcotics detection—without entailing any additional intrusion upon motorists' liberty and privacy should enhance, not detract from, the checkpoint's legitimacy. In any event, the constitutionality of identically operated checkpoints should not turn upon post-hoc judicial rankings of the competing public purposes subjectively animating government officials. The Fourth Amendment's core function is to regulate what the police do in their interactions with individuals, not what they think.

ARGUMENT

VEHICLE CHECKPOINTS THAT SERVE GOVERNMENTAL INTERESTS IN DRUG-DETECTION AND LICENSE-AND-REGISTRATION INSPECTION ARE REASONABLE SEIZURES UNDER THE FOURTH AMENDMENT

A. The Fourth Amendment Permits Vehicle Checkpoints Where The Government Interests Served Justify The Intrusion

The "essential purpose" of the Fourth Amendment is "to impose a standard of 'reasonableness' upon the exercise of discretion by government officials." *Delaware* v. *Prouse*, 440 U.S. 648, 653-654 (1979). The validity of a particular practice under the Fourth Amendment generally turns on balancing the governmental interests promoted by the practice against its intrusion on Fourth Amendment interests. See, *e.g.*, *id.* at 654; *Vernonia School District 47J* v. *Acton*, 515 U.S. 646, 652-653 (1995).

Two principles frame the inquiry into the validity of Indianapolis's vehicle checkpoints. First, the Fourth Amendment does not impose an "irreducible requirement" of individualized suspicion. *Acton*, 515 U.S. at 653; *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340 (1985). Rather, the "touchstone" of the constitutional inquiry is "the reasonableness in all the circumstances" of the practice at issue. *Maryland* v. *Wilson*, 519 U.S. 408, 411 (1997) (internal quotation marks omitted).

Second, what is reasonable "depends on the context." *T.L.O.*, 469 U.S. at 337. This Court has traditionally drawn a distinction between automobiles and homes or offices in relation to the Fourth Amendment," such that "warrantless examinations of automobiles have been upheld in circumstances in which a search of a home or

office would not." *South Dakota* v. *Opperman*, 428 U.S. 364, 367 (1976); see also *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 561 (1976) ("[O]ne's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence."). "The fact that automobiles occupy a special category in Fourth Amendment case law is by now beyond doubt." *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 315 n.10 (1978). That distinction arises, in part, because of the "obviously public nature of automobile travel," under which cars routinely "travel[] public thoroughfares where both [their] occupants and [their] contents are in plain view." *Opperman*, 428 U.S. at 367-368; see also *Cardwell* v. *Lewis*, 417 U.S. 583, 590 (1974). In addition, automobiles, unlike homes or offices, are subject to a "web of pervasive regulation." *New York* v. *Class*, 475 U.S. 106, 112 (1986).

> As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order.

Opperman, 428 U.S. at 368.[2]

Consistent with the special status of automobiles in Fourth Amendment jurisprudence, this Court has twice upheld vehicle checkpoints as reasonable seizures under

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[2] See also *Wyoming* v. *Houghton*, 526 U.S. 295, 303-305 (1999) (passengers, as well as drivers, have a reduced expectation of privacy in cars traveling on the public thoroughfares); *Pennsylvania* v. *Labron*, 518 U.S. 938, 940 (1996) (per curiam) (noting "the individual's reduced expectation of privacy in an automobile, owing to its pervasive regulation").

the Fourth Amendment by weighing "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." *Brown* v. *Texas*, 443 U.S. 47, 51 (1979). In *United States* v. *Martinez-Fuerte*, *supra*, the Court upheld the Border Patrol's use of permanent, fixed checkpoints on roads leading to the interior of the country. The Court found the "law enforcement needs served by checkpoints"—controlling the flow of illegal aliens and smuggling—to be "substantial[]," 428 U.S. at 556 & n.12, while "the consequent intrusion on Fourth Amendment interests is quite limited," *id.* at 557. The checkpoints' interference with legitimate traffic was "minimal," and the exercise of discretion by officers was controlled by the "regularized manner in which established checkpoints are operated." *Id.* at 559.

In *Michigan Department of State Police* v. *Sitz*, 496 U.S. 444 (1990), the Court upheld sobriety checkpoints at which cars were briefly stopped and drivers examined for signs of intoxication. Applying the "relevant authorities" of *Martinez-Fuerte* and *Brown* v. *Texas*, *id.* at 450, the Court noted that the "magnitude" of the State's interest in combating the problem of drunk driving was undisputed, *id.* at 451. On the other side of the ledger, the Court found, as it did in *Martinez-Fuerte*, that the intrusion on motorists stopped at sobriety checkpoints was "minimal." *Id.* at 452. While the Court made clear that no searching examination of the sobriety checkpoints' "effectiveness" was required in order to sustain them, *id.* at 454, the Court concluded that the ability of the checkpoints to advance the

States' interest was sufficient to strike the balance "in favor of the state program." *Id.* at 455.[3]

B. A Vehicle Checkpoint May Validly Be Established To Serve The Government's Interests Both In Drug Detection And In Motor Vehicle Regulation

Applying this Court's analysis in *Martinez-Fuerte* and *Sitz*, the checkpoints in this case are valid under the Fourth Amendment.

1. *The Interests Served By the Checkpoints Are Substantial.*

a. Indianapolis's checkpoints serve the unquestionably vital public interest in reducing the flow of illegal drugs, with its enormous attendant costs in human lives, social disorder, and related criminal violence. Like the problem of alien smuggling and immigration violations, there is a "veritable national crisis in law enforcement caused by smuggling of illicit narcotics," *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 538 (1985), and "drug smugglers do not hesitate to use violence to protect their lucrative trade and avoid apprehension," *National Treasury Employees Union* v. *Von Raab*, 489 U.S. 656, 669 (1989). "[T]he public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit." *United States* v. *Place*, 462 U.S. 696, 703 (1983). The States' "interest in self-protection," *Von Raab*, 489 U.S. at 670, from the

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[3] Although the state courts had found sobriety checkpoints generally to be "ineffective," see *Sitz*, 496 U.S. at 448-449, 453, this Court held that the "decision as to which among reasonable alternative law enforcement techniques [to adopt] * * * remains with the governmental officials who have a unique understanding of, and a responsibility for, limited public resources, including a finite number of police officers." *Id.* at 453-454.

influx of illegal narcotics thus is a substantial and weighty governmental concern.[4]

The pervasive problem of drug smuggling, like alien smuggling and other immigration offenses, has a close nexus to the usage of public roadways. Whether illegal drugs initially arrive in this country by boat, airplane, or foot, they at some point end up on the public roadways for national distribution. Cf. *Martinez-Fuerte*, 428 U.S. at 552 ("Once within the country, the aliens seek to travel inland * * * frequently meeting by prearrangement with friends or professional smugglers who transport them in private vehicles.").[5] Like alien smugglers, drug traffickers are lured by the speedy distribution that highways and interstates offer, and they are known to have preferred routes for transport-

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[4] The court of appeals stated (Pet. App. 10a) that "Indianapolis makes no attempt to defend its roadblocks on the basis that it is trying to exclude a harmful substance or dangerous persons[,] [t]hough that may be the ultimate aim, [instead] the City concedes that its proximate goal is to catch drug offenders in the hope of incapacitating them, and deterring others, by criminal prosecution." That analysis overlooks that, by arresting narcotics traffickers, confiscating contraband, and deterring others from engaging in similar smuggling efforts, Indianapolis's program does exclude drugs from the city.

[5] Border Patrol agents have advised us that, especially following the Mexican marijuana harvest in the Fall, there are times when they discover more narcotics than aliens smuggled in cars going through their checkpoints. The Border Patrol checkpoints at Las Cruces, New Mexico, reported 129 drug seizures from September through December 1997, valuing approximately $8.6 million. In the first three months of this year alone, those checkpoints made 104 seizures of $3.7 million worth of illegal narcotics.

ing their contraband.[6] Public roadways thus represent a critical link in the nationwide drug trafficking chain.

Also like illegal immigration, drug trafficking on the public roadways "poses formidable law enforcement problems." *Martinez-Fuerte*, 428 U.S. at 552. While law enforcement personnel can identify and stop some suspicious vehicles, as a general proposition "the flow of traffic tends to be too heavy to allow the particularized study of a given car that would enable it to be identified as a possible carrier of illegal [drugs]." *Id.* at 557. Drug traffickers, moreover, possess a "seemingly inexhaustible repertoire of deceptive practices and elaborate schemes," that includes "adroit selection of source locations, smuggling routes, and increasingly elaborate methods of concealment." *Von Raab*, 489 U.S. at 669.[7] In particular, a requirement of particularized suspicion before cars could be stopped at a checkpoint "would largely eliminate any deterrent to the conduct of well-

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[6] See Pet. App. 12a ("The high hit rate of Indianapolis's roadblock scheme suggests that Indianapolis has placed the roadblocks in areas of the city in which drug use approaches epidemic proportions."); *State* v. *Damask*, 936 S.W.2d 565, 573 (Mo. 1996) (drug checkpoint on a road that "is known as a popular route for the transport of narcotics" upheld because it was designed "to discover problems predictably associated with persons who traveled these thoroughfares").

[7] See also *United States* v. *Mendenhall*, 446 U.S. 544, 561-562 (1980) (Powell, J., concurring) ("Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. * * * [M]any drugs * * * may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement."); cf. *Florida* v. *Royer*, 460 U.S. 491, 519 (1983) (Blackmun, J., dissenting) ("The special need for flexibility in uncovering illicit drug couriers is hardly debatable. Surely the problem is as serious, and as intractable, as the problem of illegal immigration.").

disguised smuggling operations." *Martinez-Fuerte*, 428 U.S. at 557.

b. The checkpoint program also serves the secondary purpose of verifying driver's licenses and registrations. Pet. App. 44a. This Court has repeatedly indicated that checkpoints for license and registration verification are permissible under the Fourth Amendment, because they serve the States' "vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed." *Prouse*, 440 U.S. at 658; see also *id.* at 663. Similarly, in *Martinez-Fuerte*, the Court predicated its decision upholding checkpoints for illegal aliens in part on the existence and historical acceptance of license and registration stops. 428 U.S. at 560 n.14 ("Stops for questioning, not dissimilar to those involved here, are used widely at state and local levels to enforce laws regarding drivers' licenses, safety requirements, weight limits, and similar matters.").[8]

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[8] The courts of appeals and highest state courts have unanimously sustained properly constituted license-and-registration checkpoints. See *Merrett* v. *Moore*, 58 F.3d 1547 (11th Cir. 1995), cert. denied, 519 U.S. 812 (1996); *United States* v. *Morales-Zamora*, 914 F.2d 200, 202-203 (10th Cir. 1990) (collecting cases); *United States* v. *McFayden*, 865 F.2d 1306 (D.C. Cir. 1989); *United States* v. *Prichard*, 645 F.2d 854 (10th Cir.) (license and insurance checkpoint), cert. denied, 454 U.S. 832 (1981); *LaFontaine* v. *State*, 497 S.E.2d 367 (Ga.), cert. denied, 525 U.S. 947 (1998); see also *Park* v. *Forest Serv.*, 205 F.3d 1034, 1040 (8th Cir. 2000) (allegations that checkpoint "consisted of an identification and registration check" do not describe an unconstitutional seizure); *United States* v. *Trevino*, 60 F.3d 333 (7th Cir. 1995), cert. denied, 516 U.S. 1061 (1996); cf. *State* v. *Rodriguez*, 877 S.W.2d 106 (Mo. 1994) (commercial vehicle inspection checkpoints); but see *State* v.

2. *The Intrusion on Liberty and Privacy Is Minimal.*

The overall intrusion on motorists' liberty and privacy interests at Indianapolis's checkpoint, as in *Martinez-Fuerte* and *Sitz*, is minimal. Officers first ask for the driver's license and registration. Pet. App. 53a.[9] That is a familiar and constitutional inquiry for traffic checkpoints. See p. 14, *supra*. The officers next check for signs of driver impairment, Pet. App. 53a, which is no more intrusive here than in *Sitz*. The officers also walk a narcotics- detection canine around the exterior of the vehicle *while* the license and registration are being checked. See Pet. 3; Pet. App. 57a. A sniff by a narcotics-detection dog of the publicly exposed exterior of personal effects is not a search. *United States* v. *Place*, 462 U.S. at 707 (dog sniff of luggage is not a search); see also *Class*, 475 U.S. at 114 ("The exterior of a car, of course, is thrust into the public eye, and thus to examine it does not constitute a 'search.'"). The dog makes its "observations from a public vantage point where [it] has a right to be." *California* v. *Ciraolo*, 476 U.S. 207, 213 (1986); see also Pet. App. 40a. And motorists have no reasonable expectation of privacy in odors, particularly of contraband substances, emanating from their automobiles. Moreover, because the canine sniff is conducted on a car that has already been properly stopped for a license, registration, and sobriety check, the sniff itself should not expand the length of the detention at the checkpoint and thus does not entail an independent seizure of the vehicle and its occupants.

Larson, 485 N.W.2d 571 (Minn. Ct. App. 1992) (document checkpoint invalidated because officers had too much discretion).

[9] Indiana law requires drivers to display their license and registration upon the demand of a police officer. Ind. Code Ann. §§ 9-18-2-21(b)(2), 9-24-13-3 (Michie 1997).

Absent the development of individualized suspicion, the average length of the delay is two to three minutes. *Id.* at 38a, 57a. That is not discernibly longer than the time motorists are required to spend stopped at a toll booth on a busy day or at a traffic light at a busy intersection. See Fed. Highway Admin., *Traffic Control Devices Handbook* 4-100 (1983). It is shorter than the average time of the Border Patrol checkpoints upheld in *Martinez-Fuerte*. See 428 U.S. at 547 (three to five minute stop). The stipulated record reveals no inordinately intrusive questioning by officers nor visual inspection of the vehicle or passengers beyond "what can be seen without a search." *Id.* at 558.

The subjective intrusion on law-abiding motorists (*Sitz*, 496 U.S. at 452) is also minor. The police officers' actions are regularized and their discretion is closely cabined. The checkpoint locations are selected weeks in advance by high-level officials based on reasonable and objective criteria, such as crime statistics, traffic volume, and operational safety. Pet. App. 56a-57a; see also *Sitz*, 496 U.S. at 453; *Martinez-Fuerte*, 428 U.S. at 559. Cars are stopped on the basis of a predetermined, objective formula (such as every tenth car). Pet. App. 37a-38a, 54a, 57a; cf. *Sitz*, 496 U.S. at 453. The steps officers implement in the checkpoint procedure are also regimented, Pet. App. 37a-38a, 53a-54a, providing "visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest," *Martinez-Fuerte*, 428 U.S. at 559. Furthermore, the public is provided advance notice of the checkpoints' operation (but not precise location). Pet. App. 37a. On the roadways, lighted signs warn motorists as they approach the checkpoints. *Id.* at 57a; cf. *Martinez-Fuerte*, 428 U.S. at 545-546, 559 (because of signs, motorists "are not taken by surprise"). The

presence of marked police cruisers and uniformed officers demonstrates the checkpoints' official character. Pet. App. 57a. Consequently, the "motorist can see that other vehicles are being stopped, he can see visible signs of the officers' authority, and he is much less likely to be frightened or annoyed by the intrusion." *Martinez-Fuerte*, 428 U.S. at 558.

3. *The Checkpoints Are Highly Effective*.

Indianapolis's checkpoints are "spectacularly successful," Pet. App. 13a, with an arrest rate approaching ten percent, *id.* at 3a, 13a. Roughly half of those arrested were charged with driving offenses and the other half with drug offenses. *Ibid.* That effectiveness rate exceeds what this Court has sustained in earlier checkpoint cases. See *Sitz*, 496 U.S. at 455 (1.6% arrest rate for drunk drivers); *Martinez-Fuerte*, 428 U.S. at 554 (apprehension rates of 17,000 illegal aliens per ten million cars and 725 deportable aliens per 146,000 vehicles).

* * *

Balancing those considerations, because Indianapolis's checkpoints serve substantial public interests, involve no greater degree of intrusion than this Court has previously held is permissible for vehicle checkpoints, and have proven to be a highly effective means of combating an intractable law enforcement problem on the public roadways, they are valid under the Fourth Amendment.

C. The Court Of Appeals Erred In Holding That The Checkpoint Program In This Case Is Invalid Because It Serves Law Enforcement Interests

The court of appeals acknowledged that, if Indianapolis's checkpoints were reviewed under this Court's checkpoint precedents, they "probably are legal, given the high 'hit' rate and the only modestly intrusive character of the stops," Pet. App. 3a, and "the strong national, state, and local policy of discouraging the illegal use of controlled substances," *id.* at 4a. The court held, however, that motor vehicle checkpoints must be justified on the basis of a "special need" other than enforcement of the criminal law. *Id.* at 5a. That is incorrect.

1. This Court's checkpoint cases foreclose any such requirement. In *Sitz*, the same claim was made that the sobriety checkpoints could be upheld only if predicated on "a showing of some special governmental need, beyond the normal need, for criminal law enforcement." *Sitz*, 496 U.S. at 450. But this Court found it "perfectly plain" that the Court's requirement of special needs beyond routine law enforcement in drug-testing cases

> was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez-Fuerte*, *supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown* v. *Texas*, *supra*, are the relevant authorities here.

Ibid. Similarly, in *Brown* v. *Texas*, this Court stated that the Fourth Amendment requires *either* that seizures be based on individualized suspicion "*or* that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers," without confining the latter to

special needs above and beyond general law enforcement interests. 443 U.S. at 51 (emphasis added).[10]

Sitz cannot be distinguished on the premise (Pet. App. 8a-9a) that sobriety checkpoints serve primarily a public-safety function. The record in *Sitz* established that "an arrest would be made" for any driver found intoxicated at the checkpoint. 496 U.S. at 447. While those arrests simultaneously performed the functions of enforcing the criminal law and promoting public safety by removing drunk drivers from the road, the checkpoints at issue here also serve significant public-safety ends by removing drugs from their primary distribution network and thus averting the human and societal toll that their trafficking and usage exacts.

Martinez-Fuerte further establishes that the social harms to be advanced by a checkpoint program are not confined to traffic safety or regulatory ends. There, the checkpoints directly enforced the criminal prohibitions on alien smuggling and illegal entry, which this Court characterized as a "significant law enforcement need[]." *Martinez-Fuerte*, 428 U.S. at 555. Indeed, each of the defendants in *Martinez-Fuerte* had been prosecuted. *Id.* at 547-550. Running through the opinion, moreover, is a recognition of the vital role checkpoints play in addressing the "formidable law enforcement problems" posed by illegal-alien traffic. *Id.* at 552, 556-557 & n.12.

Nor can *Martinez-Fuerte* be distinguished, as the court of appeals suggested (Pet. App. 10a), on the basis

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[10] See also *Prouse*, 440 U.S. at 654-655 ("In those situations in which the balance of interests precludes insistence upon some quantum of individualized suspicion, other safeguards are generally relied upon to assure that the individual's reasonable expectation of privacy is not subject to the discretion of the official in the field.") (footnote and internal quotation marks omitted).

that the Border Patrol's checkpoints promoted essentially the "regulatory purpose" of deporting illegal aliens. While the *passenger* aliens found in a stopped automobile may be administratively deported rather than prosecuted, the car's *driver*, whose Fourth Amendment rights are directly implicated by the stop, is "routinely prosecute[d]" by the government. *Martinez-Fuerte*, 428 U.S. at 553 n.9. Furthermore, this Court rejected precisely such an administrative/law enforcement distinction in *Martinez-Fuerte*. See *id.* at 560 n.14 ("The fact that the purpose of such laws is said to be administrative is of limited relevance in weighing their intrusiveness on one's right to travel.").

The court of appeals also suggested (Pet. App. 9a) that *Martinez-Fuerte* is irrelevant because the checkpoints in that case were founded upon the federal government's unique authority over foreign relations and immigration. This Court, however, did not rest its analysis on an immigration-authority exception to the Fourth Amendment. Nor would such a rationale have merit, given that Border Patrol checkpoints occur as far as 100 miles away from the border and often are situated in locations where metropolitan areas interrupt the traffic flow from the border. In any event, apart from intrusions at the border, see *Montoya de Hernandez*, 473 U.S. at 537-538; *United States* v. *Ramsey*, 431 U.S. 606, 616 (1977), the Fourth Amendment imposes the same constraints on the federal government and the States. Thus, while immigration control furnished the particular interest in *Martinez-Fuerte*, States also may establish checkpoints to serve their own weighty interest in regulating narcotics smuggling on public roads.[11]

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[11] The court of appeals' contention that checkpoint stops must rest on "concerns other than crime detection," Pet. App. 5a

2. The rationale for requiring "special needs" beyond routine law enforcement in other contexts has no application to the checkpoints operated in this case. The drug testing cases, for example, involve both a search and seizure of an individual, and one that implicates a uniquely personal activity.[12] If such personal intrusions were permitted for routine crime detection, it would do much to undermine the general principle of Fourth Amendment law that intrusions on the person require some individualized suspicion. By contrast, the "practice of stopping automobiles briefly for questioning" at a checkpoint involves only a brief seizure and no search; it "has a long history evidencing its utility"; and it "is accepted by motorists as incident

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(citation and emphasis omitted), also conflicts with the court's own view (*id.* at 5a-6a) that roadblocks to detect fugitives or threatened violations of criminal laws are permissible. Such roadblocks plainly advance criminal law enforcement needs. While they also may address particular exigencies in preventing crimes or escapes, drug seizures likewise terminate further criminal activity involving both the smuggler and the drugs and may thereby avert the violence that pervades drug trafficking and drug usage.

[12] See *Bond* v. *United States*, 120 S. Ct. 1462, 1464 (2000) ("Physically invasive inspection is simply more intrusive than purely visual inspection."); *Houghton*, 526 U.S. at 303 (cases involving "the unique, significantly heightened protection afforded against searches of one's person" do not govern searches during automobile stops); *Skinner* v. *Railway Labor Exec. Ass'n*, 489 U.S. 602, 617 (1989) ("There are few activities in our society more personal or private than the passing of urine."); cf. *United States* v. *Ortiz*, 422 U.S. 891, 895 (1975) (because a traffic stop is "considerably less intrusive than a search," suspicionless checkpoints may be appropriate for the former but are not for the latter).

to highway use." *Martinez-Fuerte*, 428 U.S. at 561 n.14.[13]

D. The Checkpoint In This Case Is Valid Because It Is Objectively Justified By Its Secondary Purpose To Check Driver's Licenses And Registrations

The court of appeals did not find Indianapolis's checkpoint program unconstitutional because of anything the officers did in implementing the checkpoints. Instead, the court's decision turned upon its conclusion that "the purpose behind the [checkpoint] program is critical to its legality," Pet. App. 10a (emphasis omitted), and that Indianapolis was "concern[ed] * * * primarily with catching crooks," *id.* at 8a. But even were the Court to conclude that an interest in narcotics-detection is insufficient to support a checkpoint program, the checkpoints in this case are adequately supported by their valid "secondary purpose" (*id.* at 44a) to check driver's licenses and vehicle registrations.

1. The district court found—and the court of appeals did not disagree—that Indianapolis's checkpoints had two purposes, the primary purpose of narcotics interdiction and the secondary purpose of enforcing the drivers' license and registration laws. Pet. App. 44a.

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[13] The court of appeals' reliance (Pet. App. 5a) on *Chandler* v. *Miller*, 520 U.S. 305 (1997), was also misplaced. In *Chandler*, the Court stated that an exception to the ordinary requirement of individualized suspicion for a search may exist when "'special needs'—concerns other than crime detection—are alleged in justification of a Fourth Amendment intrusion." *Id.* at 314. But, as the dissenting opinion noted (Pet. App. 16a), *Chandler* acknowledged (520 U.S. at 308) this Court's decisions in *Martinez-Fuerte* and *Sitz*—both of which involved checkpoints that, at least in part, served crime detection interests. Further, in *Sitz*, the Court made clear that "special needs" analysis does not apply to vehicle checkpoints. See p. 18, *supra*.

Because the constitutional validity of that secondary purpose is unquestioned and because the scope of the entire seizure was a permissible means of accomplishing that purpose, the checkpoints are valid under the Fourth Amendment regardless of their additional, narcotics-detection purpose. Where one of the purposes served by a vehicle checkpoint serves the important public interests that this Court has held justify such operations and where the checkpoint's additional purpose(s) do not alter the length or intrusiveness of the seizure, the existence of multiple purposes does not raise a Fourth Amendment problem. Cf. *Horton* v. *California*, 496 U.S. 128, 138 (1990) ("The fact that an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement."); see also *Merrett* v. *Moore*, 58 F.3d 1547, 1550-1551 (11th Cir. 1995), cert. denied, 519 U.S. 812 (1996).

To illustrate, the checkpoints at issue in *Sitz* and *Martinez-Fuerte* had significant law-enforcement components. Yet this Court sustained them without quantifying or weighing the dual law enforcement and public interest components of those checkpoints' purposes. In fact, in *United States* v. *Villamonte-Marquez*, 462 U.S. 579 (1983), this Court held that the Customs Service's "substantial" "governmental interest in assuring compliance with documentation requirements" is "particularly" *enhanced*, not diminished, when enforced "in waters where the need to deter or apprehend smugglers is great." *Id.* at 593.

Furthermore, a constitutional rule for multi-purpose checkpoints that turns upon which purpose is "primary" and which purpose is "secondary" is unworkable. From

the vantage point of the individual who is stopped, the intrusion is identical whether a license-and-registration checkpoint is supplemented with a drug-detection canine for the subsidiary purpose of narcotics control, or whether a narcotics-interdiction checkpoint serves the subsidiary goal of checking driver's licenses, registrations, and sobriety. In either case, officers may establish checkpoints with highly regulated protocols that include a brief stop, a check of license and registration, and examination of the vehicle's exterior by a drug-detection dog. There is no apparent basis for invalidating one practice while upholding the other. Nor would there be a jurisprudentially practicable way for courts to determine which purposes predominated for particular checkpoints. Law enforcement agencies may establish programs without clearly labeling (or prioritizing) the purposes they serve. And the reasons for maintaining a mixed-purpose checkpoint may vary over time and as public office holders change. The result under the Fourth Amendment should not depend on such inquiries.[14]

2. a. A focus on the objective characteristics, rather than subjective purposes, of a particular checkpoint is consistent with general principles in Fourth Amendment analysis. "[A]lmost without exception in evaluating alleged violations of the Fourth Amendment the Court has first undertaken an objective assessment of

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[14] See *Whren* v. *United States*, 517 U.S. 806, 815 (1996) ("We cannot accept that the search and seizure protections of the Fourth Amendment are so variable * * * and can be made to turn upon such trivialities."); *Massachusetts* v. *Painten*, 389 U.S. 560, 565 (1968) (White, J., dissenting from dismissal of certiorari) ("[S]ending state and federal courts on an expedition into the minds of police officers would produce a grave and fruitless misallocation of judicial resources.").

an officer's actions in light of the facts and circumstances then known to him." *Scott* v. *United States*, 436 U.S. 128, 137 (1978).

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.

Id. at 138.[15]

That rule equally applies to searches and seizures involving traffic or transportation offenses. In *Whren* v. *United States*, 517 U.S. 806 (1996), this Court unanimously held that a traffic stop for the commission of a civil traffic infraction is reasonable, regardless of the officers' underlying motivation to search the car for drugs. *Id.* at 813-815; see also *Ohio* v. *Robinette*, 519 U.S. 33, 38 (1996). In *Brower* v. *County of Inyo*, 489 U.S. 593 (1989), this Court refused to consider the subjective intent of police officers in determining whether a roadblock to stop a fleeing suspect constituted a seizure. *Id.* at 598-599. Similarly, in *United States* v. *Robinson*, 414 U.S. 218, 236 (1973), the Court held that an objectively reasonable arrest for a traffic violation justified a search incident to arrest for weapons and

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[15] See also *Bond*, 120 S. Ct. at 1465 n.2 ("[T]he subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment * * *; the issue is not his state of mind, but the objective effect of his actions," even where the officer lacks individualized suspicion.); *Graham* v. *Connor*, 490 U.S. 386, 397 (1989) ("prior cases make clear" that the "subjective motivations of the individual officers * * * ha[ve] no bearing on whether a particular seizure is 'unreasonable' under the Fourth Amendment").

evidence, whether or not the officer had any objective or fact-specific concern for his safety.[16]

There is no sufficient reason to adopt a different approach for checkpoints. The *Brown* v. *Texas* balancing test, which generally applies to checkpoint stops, see *Sitz*, 496 U.S. at 450, weighs purely objective factors. It looks first at "the gravity of the public concerns *served by* the seizure," *Brown*, 443 U.S. at 51 (emphasis added), not at what primary concerns prompted adoption of the checkpoint program. In this case, there can be no serious dispute that, whatever the intent of the Indianapolis officials who adopted the checkpoint program, the checkpoints served the important public interest in ensuring that only properly licensed and sober drivers in registered cars occupied the public roadways. Those were the first things the officers checked for at the roadblocks, those activities alone defined the temporal and physical scope of the seizure, and those offenses accounted for nearly half of the arrests made.

The second and third *Brown* v. *Texas* factors—the effectiveness of the checkpoints and the severity of the interference with individual liberty—are also quintessentially objective inquiries. The former often focuses on statistical success rates. See *Sitz*, 496 U.S. at 455; *Martinez-Fuerte*, 428 U.S. at 553-554. And the intrusiveness of the seizure from the individual's

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[16] See also *Villamonte-Marquez*, 462 U.S. at 584 n.3 (upholding a brief, suspicionless detention of a ship for a documentation check regardless of the agents' ulterior motive to detect illegal drugs); *Horton*, 496 U.S. at 138-139 (observation of items in plain view need not be inadvertent).

standpoint turns on what officers actually do, not on what supervisory officials think.[17]

b. The court of appeals found (Pet. App. 10a) a difference of constitutional magnitude between the subjective purpose of individual officers implementing the checkpoint, the consideration of which is impermissible, and the aggregated purpose of those law enforcement officials who designed the checkpoint, the consideration of which it deemed controlling. But if the purpose of the officers actually executing the seizure is irrelevant, there is no Fourth Amendment justification for making dispositive the relative weights that the program's originators attach to the checkpoints multiple purposes.[18] It would make little sense for courts to invalidate otherwise constitutional checkpoint seizures simply because the public officials in a particular jurisdiction listed their purposes in the "wrong" order in a press release or policy memorandum.

Nor is a purpose inquiry necessary to prevent "dragnet search[es] for criminals." Pet. App. 10a. "Scrupulous adherence" to the existing objective limitations on checkpoint seizures will accomplish that goal. *Horton*, 496 U.S. at 140. As noted above, the justification for checkpoints is confined to *stops* of motor vehicles on public roadways because of their unique Fourth

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[17] The highway signs in this case warned drivers only of a "narcotics checkpoint." But the content of the warning signs did not significantly influence the nature or degree of the intrusion. Such warnings are not constitutionally compelled. See *Sitz*, 496 U.S. at 447-448 (no indication that warning signs were present). And the warnings here would be unlikely to generate "fear and surprise * * * in law abiding motorists." *Id.* at 452.

[18] See *Whren*, 517 U.S. at 815 (it is "somewhat easier to figure out the intent of an individual officer than to plumb the collective consciousness of law enforcement").

Amendment status, and thus does not permit seizures of pedestrians or searches of persons or cars. There is also a practical limitation both on what crimes have a sufficiently pervasive connection to the roadways to make it sensible to commit law-enforcement resources to checkpoints and what crimes can be policed effectively through plain view inspections or canine sniffs in the brief detention time permitted for checkpoint seizures. Finally, "the expense to law enforcement agencies and public intolerance of the inconvenience impose a check on unreasonable recourse to this power." 4 Wayne R. LaFave, *Search and Seizure* § 9.6(a), at 311 (3d ed. 1996); see also *id.* § 10.8(d), at 693.

c. The court of appeals also erred in relying (Pet. App. 11a) on this Court's dicta in *Whren*, *supra*, that "the exemption from the need for probable cause (and warrant), which is accorded to searches made for the purpose of inventory or administrative regulation, is not accorded to searches that are not made for those purposes," 517 U.S. at 811-812 (emphasis omitted). Even assuming that this language applies to checkpoint stops, which are not conducted for administrative or inventory purposes and which entail limited seizures not searches, it does not cast doubt on the validity of Indianapolis's checkpoints.

First, one reason to question putatively administrative or inventory searches when they are made for law-enforcement purposes is that those searches of persons' homes and business premises, or of automobiles already entirely within police custody, normally would require the highest level of protection under the Fourth Amendment: a warrant or probable cause. Brief automobile stops, by contrast, do not typically require that level of justification, even outside the checkpoint context. See, *e.g.*, *United States* v. *Sharpe*, 470 U.S. 675

(1985) (investigatory stop of a vehicle justifiable on reasonable suspicion); *United States* v. *Brignoni-Ponce*, 422 U.S. 873 (1975) (same). And checkpoint procedures provide an objective level of regularity that protects against arbitrary action by law enforcement officers, without any need to scrutinize the official purpose. See *Brown* v. *Texas*, 443 U.S. at 51; *Prouse*, 440 U.S. at 663.

Second, and in any event, the Court has never invalidated an otherwise-justified administrative or inventory search by finding that there also was an underlying law-enforcement purpose. Administrative and inventory searches must be guided by objective limitations on the police officers' behavior.[19] Those limits substitute for the traditional probable cause requirement. Once such objective limitations are in place, however, and the general interests served by administrative and inventory searches are furthered by the practice in question, the existence of additional, important governmental purposes for a particular practice should not provide a basis for invalidating it under the Fourth Amendment.[20]

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[19] See *New York* v. *Burger*, 482 U.S. 691, 702-703 (1987) (administrative search must "further" a "'substantial' government interest" and must be "carefully limited in time, place, and scope"); *Colorado* v. *Bertine*, 479 U.S. 367, 372 (1987) ("standardized procedures" required for vehicle inventories); *Barlow's*, 436 U.S. at 323 ("neutral criteria"); *Camara* v. *Municipal Court*, 387 U.S. 523, 538 (1967) ("reasonable legislative or administrative standards" must govern administrative searches).

[20] The court of appeals further erred in relying (Pet. App. 11a) on the plurality's pretext language in *Texas* v. *Brown*, 460 U.S. 730, 743 (1983). That language arose entirely in that portion of the opinion addressing the requirement in the law at that time that evidence in plain view be discovered inadvertently. See *Coolidge* v. *New Hampshire*, 403 U.S. 443, 466 (1971). This Court dispensed

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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with that requirement seven years later. *Horton*, 496 U.S. at 138-142.