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Rights at United States Borders

Jon Adams

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*Jon Adams**

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I. INTRODUCTION

Should Americans be happy with border searches because they truly

* Associate, Goodkind Labaton Rudoff & Sucharow LLP, New York, NY; Special Counsel to the Democratic Party of New Mexico for the 2004 Presidential Election; former Assistant Attorney General, State of New Mexico; J.D. Columbia Law School.

serve the public good, or do searches needlessly eviscerate Constitutional protections? Does the Border Search Exception really accomplish the goals it seeks to achieve and prevent illegal items and aliens from crossing the border? Or, on balance, do border searches sacrifice individual liberties without any meaningful protective benefit to American citizens or for a small benefit at a great cost?

United States customs agents cannot detain a person longer than necessary to conduct a routine inspection without implicating the Fourth Amendment prohibition of unreasonable searches and seizures. Routine customs inspections are directed at determining whether any impermissible items are being brought into the United States and whether any persons are attempting to illegally enter the United States.¹ A routine customs stop or search requires neither reasonable suspicion nor probable cause. However, nonroutine border searches and border searches having an improper motive do implicate the Fourth Amendment. Furthermore, any person asked to complete an extra form or declaration, not pursuant to routine customs search and procedure, can invoke the Fifth Amendment privilege against self-incrimination; especially when the only clear purpose of completing such a form is the incrimination of the person completing it. If customs agents take any property during a border search, a receipt must be given, and a specific procedure must be followed, including notifying the person deprived of the property the process for retrieving the property.²

This Article is divided into three sections. Part II focuses on the extent to which customs agents may detain or search a person in compliance with the Fourth Amendment. Part III discusses when Miranda warnings must be given and whether a person has a Fifth Amendment right to refuse to complete an additional declaration, the purpose of which is self incrimination. Part IV analyzes whether customs agents can take a person's possessions, and, if they do, the procedure necessary for retaining and returning the possessions.

II. SCOPE OF THE BORDER SEARCH EXCEPTION

A. *The Border Exception to the Fourth Amendment*

Routine stops and searches are permissible under the "border exception" at any point of entry into the United States, including

1. "Impermissible items" include items that are illegal in the United States – the most common being drugs.

2. *See infra* Part IV.

international airports.³ The border search exception applies equally to passengers both departing and arriving in the United States.⁴ “[R]outine searches of the persons and effects of entrants [at international borders] are not subject to any requirement of reasonable suspicion, probable cause, or warrant.”⁵ However, only Customs, Immigration, and Coast Guard officials may make routine searches and seizures at a border.⁶

The border exception is based on the power granted by the Constitution to Congress “[t]o regulate Commerce with foreign Nations.”⁷ This power has historically been exercised to “prevent smuggling and to prevent prohibited articles from entry”⁸ into the United States. In view of Congress’ power to regulate international commerce, the Fourth Amendment’s balance of reasonableness is qualitatively different at the international border than in the interior.⁹

The general seizure rules do not apply to border seizures to the extent that a border search requires a particular seizure.¹⁰ However, after the completion of a valid, routine border search, or after the completion of a more detailed search and seizure supported by reasonable suspicion, the person subjected to the valid search and seizure must be allowed to depart.¹¹ Any further detention violates the Fourth Amendment.¹²

3. *Almeida-Sanchez v. United States*, 413 U.S. 266, 273 (1973); *United States v. Tehrani*, 826 F. Supp. 789 (D. Vt. 1993), *aff’d*, 49 F.3d 54 (2d Cir. 1995).

4. *United States v. Berisha*, 925 F.2d 791 (5th Cir. 1991) (border search exception to the Fourth Amendment applies to persons exiting or entering the country); *United States v. Benevento*, 836 F.2d 60, 68 (2d Cir. 1987).

5. *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985); *United States v. Ramsey*, 431 U.S. 606, 616 (1977) (“[S]earches made at the border . . . are reasonable simply by virtue of the fact that they occur at the border”); *United States v. Ezeiruaku*, 936 F.2d 136, 140 (3d Cir. 1991); *see also Montoya de Hernandez*, 473 U.S. at 537 (stating that the executive branch has “plenary authority” to conduct warrantless routine searches “in order to regulate the collection of duties and to prevent the introduction of contraband into this country”); *United States v. Johnson*, 991 F.2d 1287, 1291 (7th Cir. 1993) (holding that no articulable suspicion required for Customs agents to conduct routine luggage search at border); *United States v. Charleus*, 871 F.2d 265, 267 (2d Cir. 1989) (requiring neither probable cause nor reasonable suspicion for Customs officials to conduct routine border search of personal belongings and effects); *United States v. Asbury*, 586 F.2d 973, 976 (2d Cir. 1978) (stating that routine searches at the border are acceptable at the border even without reasonable suspicion).

6. *United States v. Sandoval Vargas*, 854 F.2d 1132, 1136 (9th Cir. 1988), *distinguished on other grounds*, *United States v. Taghizadeh*, 41 F.3d 1263, 1266 (9th Cir. 1994).

7. U.S.CONST. art. I, § 8, cl. 3.

8. *United States v. 12 200-Ft. Reels of Super 8mm Film*, 413 U.S. 123, 125 (1973).

9. *Id.*

10. *See Montoya de Hernandez*, 473 U.S. 531.

11. *United States v. Bews*, 715 F. Supp. 1206, 1211 (W.D.N.Y. 1989) (finding a violation of the Fourth Amendment where border patrol agents searched the travel bag of an alien suspected of traveling in the United States for an illegal purpose after the alien provided proper identification and explained purpose of visit); *United States v. Ek*, 676 F.2d 379, 381 (9th Cir. 1982) (finding no Fourth Amendment violation where search lasted no longer than necessary to perform a valid routine search); *United States v. Fernandez*, 18 F.3d 874, 878 (10th Cir. 1994) (holding that detention after a ticket for having tinted windows was issued, violated the Fourth Amendment).

Immigration officials are authorized to conduct warrantless searches pursuant to 8 U.S.C. § 1357(c), which states, in relevant part:

[a]ny officer or employee of the Service . . . shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this chapter which would be disclosed by such search.¹³

B. What are “Routine” Stops and Searches?

Although routine stops and searches are exempted from Fourth Amendment protection, further detention or search is subject to some Fourth Amendment protection. To determine if any Fourth Amendment protections attach, it is necessary to determine what is a routine search and when a search becomes nonroutine and unreasonable under the Fourth Amendment due to lack of reasonable suspicion or probable cause.¹⁴ Ordinarily, a stop or search more extensive than a routine search requires reasonable suspicion,¹⁵ and a full arrest demands probable cause.¹⁶

Courts rarely find a sufficient level of intrusiveness to render a general border search nonroutine.¹⁷ A routine, preliminary search may include investigating a person’s luggage, personal belongings, outer clothing, wallet, purse, and even a person’s shoes.¹⁸ Officials may

12. *See Bewes*, 715 F. Supp. at 1211; *Ek*, 676 F.2d at 381; *Fernandez*, 18 F.3d at 878.

13. 8 U.S.C. § 1357(c) (2005).

14. *See Bewes*, 715 F. Supp. at 1210; *Ek*, 676 F.2d at 382; *Fernandez*, 18 F.3d at 878; *infra* note 36.

15. *See Bewes*, 715 F. Supp. at 1210; *Ek*, 676 F.2d at 382; *Fernandez*, 18 F.3d at 878.

16. *See United States v. Delgado*, 797 F. Supp. 213 (W.D.N.Y. 1991).

17. *United States v. Beras*, 183 F.3d 22, 26 (1st Cir. 1999) (explaining that Customs agent’s patdown of a traveler going from Puerto Rico to the Dominican Republic was a routine border search resulting in no Fourth Amendment violation even where there was no reasonable suspicion or probable cause); *United States v. Ramos-Saenz*, 36 F.3d 59, 61-62 (9th Cir. 1994) (holding that searching an individual’s shoes immediately after clearing airport customs is a routine border search); *United States v. Dorsey*, 641 F.2d 1213, 1219 (7th Cir. 1981) (“The suspicion justifying a patdown search, like that required for a strip search, must be based on objective factors and judged in light of the experience of the Customs agents. Also, in assessing these objective factors the factors relevant in strip search cases apply equally to the propriety of a patdown search.”); *United States v. Kallevig*, 534 F.2d 411, 414 (1st Cir. 1976) (border search less intrusive than strip search and requires no level of suspicion by Customs officials); *infra* Part II.D.

18. *United States v. Grotke*, 702 F.2d 49, 51-52 (2d Cir. 1983); *see also United States v. Turner*, 639 F. Supp. 982, 986 (E.D.N.Y. 1986).

photocopy material routinely inspected at the border.¹⁹ The government may also install electronic devices in the articles searched to track contraband discovered during a valid border search.²⁰

Although officials are granted great latitude in what may be searched, certain actions are forbidden or require a finding of probable cause or reasonable suspicion. A border search may be held nonroutine and held a violation of the Fourth Amendment if it is too long, excessively intrusive, or based on an improper motive.²¹

1. Permitted duration of border searches

A border search that takes too long to complete may be classified as a seizure in violation of the Fourth Amendment. A seizure occurs when a person or thing is not free to depart.²² At borders, a person is seized and not free to go for the length of time it takes to conduct a routine border search. However, once that routine search has been completed, the person must be allowed to leave unless there is reasonable suspicion or probable cause.²³

Courts use various metrics to determine when the duration of a routine search causes it to become a seizure. For example, the length of time people are usually detained may set a benchmark for the length of the maximum permissible routine stop.²⁴ In the context of international airports, one could consider a blanket rule where seizures that cause people to miss connecting flights are *per se* nonroutine and require reasonable suspicion or probable cause.²⁵

The general rule for border stops is that routine searches are exempt from the Fourth Amendment, but nonroutine searches must be supported by at least reasonable suspicion, if not probable cause.²⁶ Any detention longer than necessary to conduct a valid, routine search is nonroutine.²⁷ Because each case differs, it is difficult to ascertain an exact time requirement though non-border Fourth Amendment cases provide some guidance. The analysis used for non-border Fourth Amendment cases,

19. *See* *United States v. Fortna*, 796 F.2d 724, 738-39 (5th Cir. 1986).

20. *See* *United States v. Most*, 789 F.2d 1411, 1416 (9th Cir. 1986) (finding lawful the placement of a monitoring device inside package after a lawful search uncovered heroin valid).

21. *See supra* note 17.

22. *See generally* the cases cited *supra* note 17.

23. *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991); *United States v. Ek*, 676 F.2d 379, 382 (9th Cir. 1982) (requiring reasonable suspicion or probable cause whenever a search exceeds the length of a routine search).

24. *See generally* the cases cited *supra* note 17.

25. *See* cases cited *supra* note 17.

26. *See supra* note 17.

27. *Id.*

where reasonable suspicion and probable cause are required, can also provide guidance for nonroutine border searches, which likewise involve reasonable suspicion and probable cause.

The Supreme Court has held that a two-hour search with no evidence justifying further detention violates the Fourth Amendment.²⁸ Furthermore, customs agents who detain someone in a nonroutine search cannot detain that person unless they are taking reasonable steps to determine whether a valid reason for continuing the detention exists.²⁹ The Supreme Court relaxes normal Fourth Amendment requirements somewhat in cases in which an officer suspects a vehicle may contain illegal aliens.³⁰ The Court justifies these illegal alien stops as borderline between a border stop and a non-border stop, thus permitting the officer to conduct routine searches.³¹ However, “any further detention or search must be based on consent or probable cause.”³²

In *United States v. Place*, the Court held that the detention of defendant’s luggage for ninety minutes without probable cause was unreasonable.³³ Although declining to specify the maximum appropriate length of time for a detention, *Place* indicated that courts should take into account “whether the police diligently pursue[d] their investigation.”³⁴ Further, the Court noted that agents should “accurately inform [the particular individual] of the place to which they were transporting his luggage, the length of time he might be dispossessed, and of what arrangements would be made for return of the luggage if the investigation dispelled the suspicion.”³⁵

The Supreme Court has not stated how long a border search must be to require reasonable suspicion or probable cause. However, the unique circumstance of a border search may require a shorter time limit than two hours or ninety minutes. For example, a shorter detention, such as one of twenty minutes with the relevant official taking reasonable steps to investigate the propriety of further detention, could be a valid routine

28. See *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051 (9th Cir. 1994) (holding that a two-hour delay without probable cause while drug-sniffing dog was obtained was a violation of a passenger’s Fourth Amendment rights), *superseded by statute on other grounds as stated in United States v. \$80,180.00 in U.S. Currency*, 303 F.3d 1182 (9th Cir. 2002).

29. See *United States v. Sharpe*, 470 U.S. 675 (1985) (finding no Fourth Amendment violation where Drug Enforcement Administration agent diligently pursued his investigation and no delay unnecessary to the investigation was involved).

30. See *supra* note 11.

31. *Id.*

32. *United States v. Place*, 462 U.S. 696, 713 (1983).

33. *Id.* at 698.

34. *Id.* at 709.

35. *Id.* at 710.

border search.³⁶

Any stop or search that causes a person to miss a normally connecting flight is arguably *per se* a nonroutine stop or search that must be supported by reasonable suspicion.³⁷ Airlines know that internationally connecting passengers must pass through customs and often undergo routine searches. The airlines account for the length of time a routine search will take and add extra time to ensure that passengers will be able to arrive in time for their connecting flights after passing through customs. Arguably, any passenger delayed long enough to miss a connecting flight has undergone a *per se* nonroutine stop or search that must be supported by reasonable suspicion.

2. *Permitted intrusiveness of border searches*

A border search may become nonroutine due to intrusiveness when it goes outside the bounds of a normal stop, *i.e.* when it is perceptively outside the scope of normal activity.³⁸ In *dicta*, the Supreme Court has given examples of what would be nonroutine searches, including “strip, body cavity, or involuntary x-ray searches.”³⁹ However, the Court expressed “no view on what level of suspicion, if any, is required for [such] nonroutine border searches,” thus leaving the area open to interpretation by lower courts.⁴⁰

The First Circuit has compiled a non-exhaustive list of six factors to be considered when determining the permitted degree of invasiveness or intrusiveness of a border search:

- (1) whether the search required the suspect to disrobe or expose any intimate body parts;
- (2) whether physical contact was made with the suspect during the search;
- (3) whether force was used;
- (4) whether the type of search exposed the suspect to pain or danger;
- (5) the overall manner with which the search was conducted; and
- (6) whether the suspect’s reasonable expectations of privacy, if any, were abrogated by

36. *See* *United States v. Sharpe*, 470 U.S. 675 (1985) (where Drug Enforcement Administration agent diligently pursued his investigation and no delay unnecessary to the investigation was involved, a twenty minute detention of a suspect met Fourth Amendment’s standard of reasonableness).

37. *See supra* note 17.

38. *United States v. Ventura*, 947 F. Supp. 25, 29 (D. Puerto Rico 1996) (stating that “secondary questioning” is not *per se* custodial. An “experience must be perceptibly outside the routine Customs process.”); *United States v. Beras*, 918 F. Supp. 38 (D. Puerto Rico 1996) (removing suspect from stream of activity and questioning singly or searching constitutes a situation in which Miranda warnings attach).

39. *United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985).

40. *Id.*

the search.⁴¹

The First Circuit noted that based on these factors, only strip searches and body cavity searches are consistently nonroutine.⁴² Reasonable suspicion is required for other types of similarly intrusive searches.⁴³

3. Impermissible motives for border searches

In addition to duration and intrusiveness, the motivation for a nonroutine border search may make it impermissible. A border search that is otherwise permissible may still be invalid where the search is motivated by consideration of race, for the purpose of delay, or a manifestation of ill-will.

In the context of judicial determination of probable cause after an arrest, the Supreme Court has stated “examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill will against the arrested individual, or delay for delay’s sake.”⁴⁴ Furthermore, reasonable suspicion or probable cause can never be based on race. Courts highly disfavor any stop motivated solely by race whether in conjunction with the border or not.⁴⁵

These rules may be used to determine what constitutes an

41. *United States v. Braks*, 842 F.2d 509, 512 (1st Cir. 1988).

42. *Id.* at 512-13; *see also* *United States v. Reyes*, 821 F.2d 168, 170-71 (2d Cir. 1987) (holding that reasonable suspicion is required that a defendant is concealing contraband for a strip search at the border); *United States v. Adekunle*, 2 F.3d 559, 562 (5th Cir. 1993); *United States v. Oyekan*, 786 F.2d 832, 837 (8th Cir. 1986) (holding reasonable suspicion that a person is carrying drugs outside their body ‘may insulate’ strip searches of that individual at the border from Fourth Amendment challenges); *United States v. Vance*, 62 F.3d 1152, 1156 (9th Cir. 1995) (finding that the “real suspicion” standard for a strip search at the border was met where the defendant appeared glassy-eyed, had taken one-day trip to Hawaii from Guam, a pat-down revealed that the defendant was wearing two pairs of underwear in tropical climate and the defendant had a suspicious bulge under his pants); *United States v. Vega-Barvo*, 729 F.2d 1341, 1349 (11th Cir. 1984) (requiring reasonable suspicion evidenced by particularized, articulable facts for strip searches at the border).

43. *See Adekunle*, 2 F.3d at 562 (requiring reasonable suspicion for continued detention and x-ray examination of suspected alimentary canal drug smuggler at the border); *Oyekan*, 786 F.2d at 837 (holding that reasonable suspicion is required for x-ray search of defendant at the border); *United States v. Gonzalez-Rincon*, 36 F.3d 859, 864 (9th Cir. 1994); *Vega-Barvo*, 729 F.2d at 1349; *United States v. Handy*, 788 F.2d 1419, 1420-21 (9th Cir. 1986) (holding that “clear indication” that defendant carried drugs internally is required for body cavity search at the border); *United States v. Pino*, 729 F.2d 1357, 1359 (11th Cir. 1984) (finding that rectal searches require a higher level of suspicion than strip or x-ray searches; experienced official must believe defendant is carrying drugs in rectal area to justify rectal search at the border); *see also Rhoden v. United States*, 55 F.3d 428 (9th Cir. 1995) (denying summary judgment on issue of six-day detention without hearing of allegedly deportable permanent resident); Audrey Benison, Matthew J. Gardner & Amy S. Manning, *Warrantless Searches and Seizures*, 87 GEO. L.J. 1124, nn.309-10 (1999).

44. *See* *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991); *United States v. Ek*, 676 F.2d 379 (9th Cir. 1982); *United States v. Faherty*, 692 F.2d 1258 (9th Cir. 1982).

45. *See generally* *Gonzalez-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994); *infra* Part II.B.3.

unreasonable delay in Fourth Amendment border cases. Although border cases are different in that Fourth Amendment protections are diminished and routine stops and searches are expected, nonroutine border searches involve the extension of a routine search beyond what is justified by constitutionally permitted regulation of international trade. Accordingly, there must be a legitimate motive for a nonroutine stop or search.⁴⁶ Delaying someone only until a connecting flight departs, for example, would qualify as delay motivated by ill will or made for delay's sake.⁴⁷

Border patrol agents and customs agents cannot lawfully stop someone based solely on that person's race, regardless of whether the stop is routine.⁴⁸ Although race cannot be used to support reasonable suspicion or probable cause,⁴⁹ as a practical matter and based on examination of the authorities cited herein, no reasonable suspicion is needed to conduct a routine search at a border. A customs agent might therefore routinely search people he would not have routinely searched solely because of their race or ethnicity. However, the Supreme Court has held that stopping a deportee solely on basis of his apparent race is an "egregious constitutional violation."⁵⁰ Race might be a factor as to probable cause or reasonable suspicion if it matches a description of an offender or fits the facts relevant to a particular person, place, or circumstance of an offense.⁵¹

C. Detaining Property

For search and seizure purposes, detaining property is the same as detaining the person who owns the property.⁵² When a person is not free

46. *See supra* note 17.

47. *Id.*

48. *Id.*

49. *United States v. Brignoni-Ponce*, 422 U.S. 873, 885-86 (1975); *United States v. Anderson*, 923 F.2d 450, 455 (6th Cir. 1991); *Illinois Migrant Council v. Pilliod*, 540 F.2d 1062, 1070 (7th Cir. 1976). *But see* *United States v. Montoya de Hernandez*, 473 U.S. 531, 538 (1985), quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 562-563 (1976).

50. *Gonzalez-Rivera*, 22 F.3d at 1442-43 (suppressing evidence and stating that border patrol agents' "stop, which resulted solely from Gonzalez' Hispanic appearance, constituted a bad faith and egregious violation of the Fourth Amendment"); *see also* *United States v. Galindo-Gonzales*, 142 F.3d 1217 (10th Cir. 1998) (finding that a person's racial characteristics are insufficient to establish reasonable suspicion necessary to justify detention after a checkpoint stop conducted substantial distance from Mexican border).

51. *Draper v. United States*, 358 U.S. 307, 336 (1959); *United States v. Bautista*, 684 F.2d 1286, 1289 (9th Cir. 1982); *United States v. Tehrani*, 49 F.3d 54 (2d Cir. 1995); *United States v. Ruiz*, 961 F. Supp 1524, 1532 (D. Utah 1997).

52. *See* *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051 (9th Cir. 1994) (detaining currency equivalent to detaining the person whose currency is detained); *United States v. Place*, 462 U.S. 696, 713 (1983) (ninety minute detention of luggage without probable cause was unreasonable under the Fourth Amendment).

to leave without abandoning luggage or plane tickets, that person is not free to leave and is seized the same as if that person were in jail.⁵³ The Supreme Court decision in *United States v. Mendenhall* recites among other factors indicating a seizure the “prolonged retention of a person’s personal effects, such as airplane tickets or identification.”⁵⁴ In *United States v. McCain*,⁵⁵ the Court found that a woman was in custody for Miranda purposes when she could leave only by abandoning her luggage.⁵⁶ Forcing a person to choose between abandoning one’s luggage and staying “is a sufficient restriction on one’s freedom of action so as to trigger the giving of Miranda warnings before proceeding with any interrogation.”⁵⁷

D. Reasonableness of Border Stops and Searches

The reasonableness of a border stop or search is relevant only when a stop and search is nonroutine. Since routine border stops and searches are exempted from the Fourth Amendment, no determination of reasonableness attaches.⁵⁸ When a stop or search becomes nonroutine, the reasonableness requirement of the Fourth Amendment requires reasonable suspicion.⁵⁹ If a stop or search reaches the level of full arrest, or is sufficiently invasive, there must be probable cause in addition to reasonable suspicion.⁶⁰

1. Facts as a whole considered

Courts have been reluctant to draw bright lines defining reasonableness, relying instead on a fact-dependent evaluation of various factors.⁶¹ However, the reasonableness requirement is not eviscerated

53. See *\$191,910.00 in U.S. Currency*, 16 F.3d 1051; *Place*, 462 U.S. 696.

54. *United States v. Rogers*, 2000 WL 101235, *13 (S.D.N.Y. 2000).

55. 556 F.2d 253 (5th Cir. 1977).

56. *Id.* at 255.

57. *Id.* But see *Patterson v. Cuyler*, 729 F.2d 925 (3rd Cir. 1984) (man not in custody for Miranda purposes when girlfriend is being questioned and is not free to leave), *overruling on other grounds recognized by Carter v. Rafferty*, 826 F.2d 1299 (3rd Cir. 1987).

58. But see *infra* Part II.B.3 concerning the impermissibility of stops based only on race or ethnicity.

59. See *supra* note 17.

60. *Id.*

61. See *United States v. Martinez*, 481 F. 2d 214 (5th Cir. 1973) (holding that border searches must be reasonable, which requires a determination of surrounding facts); see also *United States v. Ogberaha*, 771 F.2d 655, 658-59 (2d Cir. 1985); *United States v. Asbury*, 586 F.2d 973, 976-77 (2d Cir. 1978); *United States v. Mastberg*, 503 F.2d 465 (9th Cir. 1974) (holding that test of reasonableness of border search was whether all facts viewed as a whole by experienced customs inspector would lead to necessary satisfaction of real suspicion test); *Huguez v. United States*, 406

simply because underlying facts are viewed as a whole.⁶² Although courts wish to have the discretion to view all the facts together, a few broad rules have been established as discussed below.⁶³

2. *Basic standard for reasonable suspicion*

In the context of border searches, reasonableness issues most often arise in cases involving alimentary canal smuggling that are difficult to detect. Effectively preventing it without creating great costs for law-abiding individuals poses an enormous challenge. Accordingly, an examination of such cases provides a good discussion as to the basic definition of reasonable suspicion.

In *United States v. Montoya de Hernandez*,⁶⁴ the Court refused to create a “clear indication” standard lying between reasonable suspicion and probable cause, stating that such a test tended to “obscure rather than elucidate.”⁶⁵ The Court further held that “the detention of a traveler at the border, beyond the scope of a routine customs search and inspection, is justified at its inception if customs agents, considering all the facts surrounding the traveler and her trip, reasonably suspect that the traveler is smuggling contraband in her alimentary canal.”⁶⁶ In a prior decision, the Court held that officials at the border must have a “particularized and objective basis for suspecting the particular person” of alimentary canal smuggling before proceeding with any intrusive tests or lengthy detentions.⁶⁷

F.2d 366 (9th Cir. 1968) .

62. See *United States v. Diemler*, 428 F.2d 1070, 1072 (5th Cir. 1974) (“*It has also been consistently held that border searches are not entirely exempt from the Fourth Amendment but rather are subject to the requirement that they be reasonable*” (emphasis added)); *United States v. Rodriguez-Hernandez*, 493 F.2d 168 (5th Cir. 1974); *United States v. Warner*, 441 F.2d 821 (5th Cir. 1971), *cert. denied*, 404 U.S. 829, (1971).

63. See *Zimmermann v. Wilson*, 105 F.2d 583, 585 (3rd Cir. 1939) (finding that a search is “unreasonable” when it is out of proportion to the end sought); *United States v. Aman*, 624 F.2d 911, 913 (9th Cir. 1980) (holding that no *per se* requirement of a warrant exists for a body cavity search; the warrant is merely one fact to consider in deciding reasonableness); *United States v. Grotke*, 702 F.2d 49, 51 (2d Cir. 1983) (holding that intrusions, such as strip searches, require reasonable suspicion; reasonableness measured by balancing the warranted suspicion of the border official with the offensiveness of the intrusion); see also *United States v. Montoya de Hernandez*, 473 U.S. 531, 543-44 (1985) (stating that officers acted reasonably in holding suspect for sixteen hours while waiting for suspect to have bowel movement after concluding that the suspect had swallowed balloons containing cocaine and where suspect refused x-ray or other methods of determining truth or falsity of smuggling suspicion).

64. 473 U.S. 531, 540 (1985).

65. *Id.* at 541.

66. *United States v. Saldarriaga-Marin*, 734 F.2d 1425 (11th Cir. 1984) (permitting Customs agents to detain a suspected internal drug smuggler until nature reveals the truth or falsity of suspicions).

67. *United States v. Cortez*, 449 U.S. 411, 417-18, (1981), *citing Terry v. Ohio*, 392 U.S. 1,

3. *Factors that can be used in determination of reasonable suspicion*

The Supreme Court and the circuit courts have handed down multi-factored tests used to evaluate reasonable suspicion. In *United States v. Sokolow*,⁶⁸ the Supreme Court found that reasonable suspicion existed where the suspect (1) paid his plane fare in cash; (2) traveled under a name that did not match the name under which his telephone number was listed; (3) was originally traveling to city known to be a source city for illegal drugs; (4) appeared nervous during his trip; and (5) checked none of his luggage.⁶⁹

The Circuits “are substantially in accord concerning the factors which may be taken into account in determining the issue of reasonableness.”⁷⁰ Those factors include:

- (1) Excessive nervousness;⁷¹
- (2) Unusual conduct;⁷²
- (3) An informant’s tip;⁷³

21 n.18 (1968); *see also Montoya de Hernandez*, 473 U.S. at 541-42.

68. 490 U.S. 1, 3 (1989).

69. *Id.*; *see also United States v. Amuny*, 767 F.2d 1113 (5th Cir. 1985) (defendants flight from plane was insufficient to support finding of probable cause to search plane; Customs agent climbing on plane constituted highly intrusive trespass; defendants possessed reasonable expectation of privacy as to the interior of plane; *government agent’s conduct in climbing on plane and peering in windshield constituted unreasonable search within meaning of Fourth Amendment*); *United States v. Lavado*, 750 F.2d 1527 (11th Cir. 1985) (holding that the length of time that non-customs officers can maintain status quo at the border or its functional equivalent, awaiting arrival of persons with Customs authority, must be brief); *United States v. Moore*, 638 F.2d 1171 (9th Cir. 1980) *cert. denied*, 449 U.S. 1113 (1981) (holding that detention during which police moved defendant from a taxi, to caged back seat of police car, while waiting for customs officers, to airport manager’s office for questioning by customs officials was a Terry stop rather than arrest); *United States v. Wardlaw*, 576 F.2d 932 (1st Cir. 1978) (explaining that searching a person is okay when reasonable suspicion exists); *United States v. Wilmot*, 563 F.2d 1298 (9th Cir. 1977) (explaining that while a pat-down search by customs officials might become so extensive that it would be unreasonable without sufficient factors in addition to entry into the country, the facts of the instant case did not present such a situation; furthermore, defendant’s suspicious conduct, during course of secondary inspection, in resisting the mere spreading of his legs clearly constituted a reasonable basis for an “extensive” pat-down search; and once the officers felt an object in the groin area during the justified pat-down inspection, there was the requisite suspicion to justify a strip search); *United States v. Turner*, 639 F. Supp. 982, 986 (E.D.N.Y. 1986) (“The border search exception does not, of course, completely eviscerate the protections of the Fourth Amendment merely because the search takes place at the border or its functional equivalent. Customs Inspectors, for example, must have ‘reasonable suspicion’ before they may detain an incoming traveler for a search beyond the normal, routine Customs search and inspection, e.g., for a strip search.”).

70. *United States v. Asbury*, 586 F.2d 973, 976 (2d Cir. 1978).

71. *See United States v. Chiarito*, 507 F.2d 1098, 1100 (5th Cir. 1975); *United States v. Mastberg*, 503 F.2d 465, 468 (9th Cir. 1974); *United States v. Diaz*, 503 F.2d 1025, 1026 n.1 (3d Cir. 1974).

72. *See Diaz*, 503 F.2d at 1026 n.1; *United States v. Shields*, 453 F.2d 1235, 1236 (9th Cir. 1972), *cert. denied*, 406 U.S. 910 (1972).

73. *See United States v. Afanador*, 567 F.2d 1325 (5th Cir. 1978); *United States v. Castle*, 409 F.2d 1347 (9th Cir.), *cert. denied*, 396 U.S. 975 (1969). *But see Florida v. J.L.*, 529 U.S. 266,

- (4) Computerized information showing pertinent criminal propensities;⁷⁴
- (5) Loose-fitting or bulky clothing;⁷⁵
- (6) An itinerary suggestive of wrongdoing,⁷⁶ (e.g. traveling to or from a country known for exporting drugs);
- (7) Discovery of incriminating matter during routine searches;⁷⁷
- (8) Lack of employment or a claim of self-employment;⁷⁸
- (9) Needle marks or other indications of drug addiction;⁷⁹
- (10) Information derived from the search or conduct of a traveling companion;⁸⁰
- (11) Inadequate luggage;⁸¹
- (12) Evasive or contradictory answers.⁸²

4. Reasonable suspicion with respect to contraband: a special case

Customs officials are permitted to search for contraband. Contraband includes smuggled items that are legal in the United States but are brought into the United States illegally.⁸³ Contraband also includes items which are illegal in the United States and which cannot enter under any circumstance.⁸⁴

A particularized rule for determining reasonable suspicion applies to smuggled items that can be legally possessed within the United States. When a customs agent finds an item that may be legally possessed in the United States but is possibly being brought illegally into the United States, the customs agent has reasonable suspicion to search further to

268 (2000) (holding that “anonymous tip that a person is carrying a gun is, without more” not sufficient “to justify a police officer’s stop and frisk of that person”).

74. See *United States v. Kallevig*, 534 F.2d 411, 412, 414 (1st Cir. 1976).

75. See *id.* at 414; *Chiarito*, 507 F.2d at 1099; *Diaz*, 503 F.2d at 1026 n.1.

76. See *Kallevig*, 534 F.2d at 414; *Chiarito*, 507 F.2d at 1100; *Diaz*, 503 F.2d at 1026 n.1; *Shields*, 453 F.2d at 1236.

77. See *United States v. Wilson*, 488 F.2d 400, 401-02 (5th Cir. 1973), *cert. denied*, 416 U.S. 989 (1974); *United States v. Flores*, 477 F.2d 608, 609 (1st Cir.), *cert. denied*, 414 U.S. 841 (1973); *United States v. Summerfield*, 421 F.2d 684, 685 (9th Cir. 1970).

78. See *United States v. Smith*, 557 F.2d 1206, 1209 (5th Cir. 1977), *cert. denied*, 434 U.S. 1073 (1978).

79. See *Shields*, 453 F.2d at 1236.

80. See *Wilson*, 488 F.2d at 402; *United States v. Gil de Avila*, 468 F.2d 184, 186-87 (9th Cir. 1972), *cert. denied*, 410 U.S. 958 (1973).

81. See *Smith*, 557 F.2d at 1209; *United States v. Diaz*, 503 F.2d 1025, 1026 n.1 (3d Cir. 1974); *United States v. Holtz*, 479 F.2d 89, 91 (9th Cir. 1973).

82. *United States v. Asbury*, 586 F.2d 973, 976 (2d Cir. 1978) (internal citations omitted); see also *United States v. Himmelwright*, 551 F.2d 991, 996 (5th Cir.), *cert. denied*, 434 U.S. 902 (1977).

83. See generally Title 18 of the United States Code.

84. *Id.*

determine whether the item is being brought legally into the country.⁸⁵ For example, if a person entering the United States has a drug that is illegal to have without a prescription, a customs agent finding the drug during a routine search probably has reasonable suspicion to conduct a nonroutine search for the prescription to determine whether the drug is properly entering the country.⁸⁶

E. Border Search Exception Applies Only to Customs and Immigration Laws

Warrantless border searches without reasonable suspicion are permitted only at the border for the purpose of enforcing laws related to smuggling, immigration, and other laws which customs and border agents are charged to enforce.⁸⁷ The relaxed Fourth Amendment requirements for routine border searches are based on the powers granted Congress to regulate foreign trade.⁸⁸ Accordingly, the border search exception only applies to the laws that customs and border agents are charged with enforcing at international borders or their functional equivalents.⁸⁹

In traditional law enforcement situations, an official must normally show reasonable suspicion to conduct a search in order to obtain a warrant or fit within an exception to the warrant requirement.⁹⁰ However, a border search can be conducted for any reason without reasonable suspicion. Therefore, customs agents are in a position to look for

85. See cases cited *supra* notes 17, 68, 70.

86. *Id.*

87. See *United States v. 12 200-Ft. Reels of Super 8mm Film*, 413 U.S. 123, 125 (1973).

88. See generally U.S.CONST. art. I.

89. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 880 (1975) (holding that except at the border and its functional equivalents, officers on roving patrol can stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that vehicles contain aliens who might be in the country illegally); *United States v. Massie*, 65 F.3d 843 (10th Cir. 1995) (holding that border patrol agents at a routine, fixed checkpoint stop may question *briefly* about cargo, destination, and travel plans, *as long as such questions are reasonably related* to agent's duty to prevent *unauthorized entry* and to prevent *smuggling*); *United States v. Newell*, 506 F.2d 401 (5th Cir. 1975) (holding that the mere fact that automobile fifty-six miles north of Mexican border was occupied by two women who were alone at night and that automobile bore license plates from an adjacent county was not sufficient to give rise to reasonable suspicion that the occupants or the vehicle had been involved in violation of a custom or immigration law); *United States v. Diemler*, 498 F.2d 1070, 1072 (5th Cir. 1974), *citing* *United States v. Storm*, 480 F.2d 701 (5th Cir. 1973) ("the reasonable suspicion must be not merely of any violation, but of a Customs or immigration violation"); *United States v. McDaniel*, 463 F.2d 129 (5th Cir. 1972), *cert. denied*, 410 U.S. 932 (1973); *United States v. Solis*, 469 F. 2d 1113, 1114-1115, n.2 (5th Cir. 1972), *cert. denied*, 410 U.S. 932 (1973). *But see* *United States v. Cortez*, 449 U.S. 411 (1981) (holding that a peace officer may stop and question person if there is a reasonable ground to believe that such person is wanted for past criminal conduct).

90. See *supra* note 17.

evidence of other wrongdoing during a border search. The potential exists for customs agents to hand evidence obtained during a valid border search to criminal prosecutors. However, courts can suppress such evidence under the exclusionary rule and exclude evidence obtained in violation of the Fourth Amendment.

In *United States v. Brignoni-Ponce*, a roving border patrol was subject to Fourth Amendment limits.⁹¹ The border officials were enforcing immigration and smuggling laws, but they were not at the border.⁹² Conversely, customs agents that enforce non-immigration and non-smuggling laws at the border should not be entitled to the border search exception; although because the exception allows for such broad, unfettered searching, at least initially, this distinction is probably unenforceable as a practical matter.

III. FIFTH AMENDMENT RIGHTS DURING BORDER SEARCHES

Corresponding with the border exception to the Fourth Amendment is an exception to the Fifth Amendment guarantee against self-incrimination permitting routine questioning at international borders and their equivalents.⁹³ Each person entering the United States may therefore be required to complete a declaration. These declarations are not invalid under the Fifth Amendment.⁹⁴ Courts in the past have held a declaration that reveals an illegal substance insulates the declarant from prosecution because, otherwise, requiring the declaration would be in violation of the Fifth Amendment.⁹⁵ More recently courts have held that, although the declaration itself does not subject the declarant to prosecution, the possession from the point at which the border was crossed to the point of declaration can be prosecuted as importation of an illegal substance.⁹⁶

Under *Leary v. United States* and *United States v. Kenny*, the courts

91. 422 U.S. 873.

92. *Id.* at 874-76.

93. *See United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982) (holding that Fifth Amendment guarantee against self-incrimination is not offended by routine questioning of those seeking entry to the United States).

94. *See Walden v. United States*, 417 F.2d 698, 700 (5th Cir. 1969) (“It would be strange indeed if one could Constitutionally be required to declare ordinary merchandise at the border and be punished for failure so to do, if, at the same time, surreptitious importation of contraband does not have to be declared and a failure to declare cannot be punished. The importation is not compelled and the Fifth Amendment privilege against compulsory self-incrimination does not apply.”) (quoting *Rule v. United States*, 362 F.2d 215, 217 (5th Cir. 1966)).

95. *See Leary v. United States*, 544 F.2d 1266 (5th Cir. 1977) (noting that affirmative declaration with resulting disclosure of illegal items in the declarant’s possession results only in the seizure of the contraband).

96. *See United States v. Kenny*, 601 F.2d 211 (5th Cir. 1979) (explaining that possession from the border to the point of declaration constitutes illegal importation).

carefully noted that customs declarations themselves do not constitute requests for self-incriminating information even at borders.⁹⁷ As the Fifth Circuit illustrated, importation of illegal substances is not compelled.⁹⁸ An additional sworn declaration, which must be completed before one is free to go, is compelled and the sole purpose of such an additional declaration is the incrimination of the person completing it.

If the additional declaration concerns a law a person has indeed violated, the only apparent purpose for such an additional declaration would be the incrimination of the person of whom it is requested. There are two possibilities for people compelled to make a sworn declaration about an illegal act they have committed. Either they can admit in the sworn declaration that they acted illegally and incriminate themselves, or they can lie under oath and incriminate themselves for perjury. In either case the sole purpose served by an additional declaration is the incrimination of the person of whom it is demanded. As such, additional declarations are unlawful under the Fifth Amendment privilege against self-incrimination.⁹⁹ In *Albertson v. Subversive Activities Control Board* and *Marchetti v. United State*, a statute requiring persons to register violated the Fifth Amendment because registration exposed the registrant to criminal prosecution.¹⁰⁰ In a like manner, the intended result of a typical additional declaration seems to be the self-evident incrimination of the person asked to complete it.

A. Miranda

In addition to prohibiting compelled declarations, the Fifth

97. *Id.* at 213.

98. *Id.*

99. See *Haynes v. United States*, 390 U.S. 85 (1968) (considering federal law requiring registration of certain firearms); *Marchetti v. United States*, 390 U.S. 39 (1968) (holding that federal law requiring gamblers to register and pay excise and occupational tax violates Fifth Amendment's privilege against self-incrimination); *Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965) (holding that federal law requiring Communist party members to register violates Fifth Amendment's privilege against self-incrimination).

100. *United States v. Candanoza*, 431 F.2d 421, 424 (5th Cir. 1970); see *Marchetti v. United States*, 390 U.S. 39, 49 (1968) (holding that the "direct and unmistakable consequence" of disclosure requirements was the incrimination of the person making the disclosure. The "application of the constitutional privilege to the entire registration procedure [which called for self-incrimination] was in this instance neither 'extreme' nor 'extravagant,'" (quoting *United States v. Sullivan*, 274 U.S. 259, 263 (1927)); see also *Candanoza*, 431 F.2d at 421 (holding that statute making it criminal offense to smuggle marijuana into the United States without invoicing or declaring it at border did not violate Fifth Amendment privilege against self-incrimination); *United States v. San Juan*, 405 F. Supp. 686 (D. Vt. 1975) (stating that foreign reporting requirements of Bank Secrecy Act involve transactions which take place across national boundaries and, as such, involve substantial governmental interest which, in view of remote possibility of incrimination, do not violate guarantees of Fifth Amendment).

Amendment further requires that Miranda warnings be given prior to a suspect's response to an additional declaration.¹⁰¹ However, routine questioning at a border does not require any Miranda warning.¹⁰² If a person is taken into custody during a border search, Miranda warnings must be given.¹⁰³ A person is in custody when that person believes he or she is not free to leave.¹⁰⁴ Threatening an individual with arrest may be enough to make some people actually believe that they are under arrest and not free to leave.¹⁰⁵ Miranda warnings must be given in such a case and the Fifth Amendment's privilege against self-incrimination can be invoked.¹⁰⁶ In the border context, a person is deemed to be in custody when that person has been removed from the stream of normal activity and taken for nonroutine questioning.¹⁰⁷

Compelling a person to complete an additional declaration entails detaining that person until such declaration is made. This detention involves taking the person out of the stream of normal activity and is therefore custodial. Accordingly, Miranda warnings must be given.¹⁰⁸

101. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

102. See *United States v. Lueck*, 678 F.2d 895 (11th Cir. 1982) (holding individuals arriving in this country who are subjects of routine border questioning are not entitled to Miranda warnings); *United States v. Gomez Londono*, 553 F.2d 805 (2d Cir. 1977) (questioning about \$5,000 is not a custodial interrogation); *United States v. DeLaCruz*, 420 F.2d 1093 (7th Cir. 1970) (Miranda warnings not necessary in routine customs searches); *United States v. Ventura*, 947 F. Supp. 25 (D. Puerto Rico 1996) ("secondary questions" are not *per se* custodial . . . an experience must be perceptibly outside of the routine customs process); *United States v. Tai-Hsing*, 738 F. Supp. 389 (D. Or. 1990) (no Miranda warnings necessary where a person was referred to a secondary area as part of routine practice).

103. See *Miranda*, 384 U.S. at 473.

104. *Id.* at 446.

105. *Id.* at 467.

106. *Id.*

107. See *United States v. Del Socorro Castro*, 573 F.2d 213 (5th Cir. 1978) (finding that person accompanied to customs search area by officers intending to arrest her was in custody for Miranda purposes); *United States v. Beras*, 918 F. Supp. 38 (D. Puerto Rico 1996) (removing suspect from stream of activity and questioning singly or searching constitutes a situation in which Miranda warnings attach); *United States v. Berard*, 281 F. Supp. 328 (D. Mass 1968) (holding that when a person is not allowed to leave after being taken to a personal search room, that person is in custodial interrogation where Miranda warnings must be given).

108. See *Benitez-Mendez v. INS*, 760 F.2d 907 (9th Cir. 1983) (finding that following initial questioning of an alien by border agent, placement of the alien in the agent's vehicle constituted a seizure); *United States v. Estrada-Lucas*, 1651 F.2d 1261 (9th Cir. 1980) (holding that to trigger Miranda requirements at a Customs inspection, person must reasonably believe in not being free to leave); *United States v. Des Jardins*, 772 F.2d 578, 580 (9th Cir. 1985) (finding that no Miranda warnings are required "unless and until the questioning agents have probable cause to believe that the person questioned has committed an offense, or the person questioned has been arrested, whether with or without probable cause,") (quoting *United States v. Moore*, 638 F.2d 1171, 1175 (9th Cir. 1980)).

B. Detaining Property and Miranda

Detaining luggage or tickets is the *de facto* equivalent of detaining a person. Thus, Miranda attaches equally whether a person is not free to go because their body is being detained, or because their luggage or tickets are being detained.¹⁰⁹ For example, in *McCain v. United States*, the Court held that permitting a suspect “to leave only if she was willing to abandon her luggage” was itself “a sufficient restriction on one’s freedom of action so as to trigger the giving of Miranda warnings before proceeding with any interrogation.”¹¹⁰

IV. FORFEITURE OF PROPERTY

A customs agent cannot take the lawful possessions of a person entering the country without following certain procedures.¹¹¹ Customs agents may seize property if it is illegal to possess that property or to introduce it into the United States, but they must give a receipt and a notice of seizure that includes a list of the property seized, where it was seized, the laws alleged to have been violated that gave rise to the seizure, and the procedure for retrieving the property.¹¹²

By definition lawfully possessed property cannot be legally seized, but a customs agent might nonetheless seize lawful possessions because of an incorrect belief that the property in question is properly subject to seizure. The law remedies errors by customs agents who seize material by mistake in that it requires a receipt and a notice of seizure.¹¹³

“Once an agent seizes property for forfeiture, he has a duty to report the seizure ‘immediately’ to the appropriate district Customs officer.”¹¹⁴ After a forfeiture case has been referred to a United States Attorney by a district customs officer, it is the United States Attorney’s duty to investigate the facts immediately, and if necessary to begin legal proceedings “forthwith.”¹¹⁵ A proper judicial proceeding must be instituted within fourteen days of the seizure of property.¹¹⁶ For example, 19 U.S.C. § 1305(a) (2004), which allows customs agents to seize

109. *See* *United States v. McCain*, 556 F.2d 253 (5th Cir. 1977) (holding that a woman was in custody for Miranda purposes when she could only leave by abandoning her luggage).

110. *Id.* at 255.

111. *See* 19 C.F.R. § 162.31 (2004).

112. *Id.*

113. *Id.*

114. 19 U.S.C. § 1602 (2004).

115. *Id.* § 1604.

116. *See* 19 C.F.R. § 162.31.

obscene material that is being imported into the United States,¹¹⁷ requires that the government bring a forfeiture proceeding in district court after a seizure has taken place. Section 1305(a) does not provide for any time limit between an initial seizure and institution of judicial proceedings. The Supreme Court has concluded, however, that to save the statute from being unconstitutional only a fourteen-day period might be allowed.¹¹⁸ Other customs laws explicitly require forfeiture proceedings within fourteen days.¹¹⁹ Any seizure process that takes an unreasonably long period of time violates the Fourth Amendment, since a person is deemed to have been seized when luggage or plane tickets are taken.¹²⁰

V. CONCLUSION

The border exception diminishes the protections of the Fourth Amendment. However, both the Fourth and Fifth Amendments still provide limited protections. It is clear that routine border searches are generally exempted from the Fourth Amendment's requirements. However, activities by customs agents that go beyond routine searches must be supported by reasonable suspicion, to justify further detention, or by probable cause, to justify a full arrest. Without reasonable suspicion or probable cause, the detention of travelers at borders is allowed only long enough to conduct a valid, routine search. Delay motivated by ill will or by other improper causes is not permissible under the Fourth Amendment.

Interrogations going beyond a routine border search and requests to complete an additional declaration can violate the Fifth Amendment privilege against self-incrimination, especially when no Miranda warnings have previously been given. Interrogation also violates the privilege against self-incrimination when the privilege has been invoked.

117. *United States v. Thirty-Seven Photographs*, 402 U.S. 363, 373-74 (1971).

118. *Id.*; *see also* *United States v. Von Neumann*, 474 U.S. 242 (1986) (due process rights not violated when government took thirty-six days to decide petition on undeclared car released on \$25,000 when posted two weeks after being seized); *United States v. 12 200-Ft. Reels of Super 8mm Film*, 413 U.S. 123 (1973) (statute prescribing forfeiture of obscene material at border was constitutional – Congress has broad powers to regulate international commerce); *Gete v. INS*, 121 F.3d 1285 (9th Cir. 1997) (aliens whose vehicles were seized by the INS for allegedly transporting unauthorized aliens were entitled under Fifth Amendment's due process clause to more than mere notice that they could choose between judicial and administrative proceedings, and timely processing of their claims if they elected administrative forfeiture).

119. 19 U.S.C. § 1603.

120. *United States v. Place*, 462 U.S. 696, 713 (1983).