University of Arkansas at Little Rock Law Review

Volume 29 | Issue 2 Article 6

2007

Constitutional Law—Fourth Amendment and Search and Seizure—Introducing the Supreme Court's New and Improved Summers Detention: Now Equipped with Handcuffing and Questioning! Muehler v. Mena, 544 U.S. 93 (2005)

Ryan J. Caststeel

CONSTITUTIONAL LAW—FOURTH AMENDMENT AND SEARCH AND SEIZURE—INTRODUCING THE SUPREME COURT'S NEW AND IMPROVED *SUMMERS* DETENTION: NOW EQUIPPED WITH HANDCUFFING AND QUESTIONING! *Muehler v. Mena*, 544 U.S. 93 (2005).

I. INTRODUCTION

The Fourth Amendment, in part, states, "The right of the people to be secure in their persons . . . against unreasonable . . . seizures, shall not be violated."[1] There are two main categories of police conduct that constitute a seizure of a person: physical seizure and submission-to-authority seizure.[2] A physical seizure of a person occurs when a law enforcement official confronts an individual and restrains that person's ability to walk away.[3] The quintessential physical seizure of a person occurs when a police officer arrests an individual.[4] In addition, a more limited physical seizure of a person arises when an officer performs a stop-and-frisk on an individual[5] or detains an occupant of a house that is validly being searched by the police.[6] The second category, submission-to-authority, occurs when a law enforcement official has some sort of contact with an individual, and a reasonable person in the same situation would not feel free to leave[7] or would not feel free to refuse the officer's request and end the encounter.[8]

This note explores the United States Supreme Court's recent decision in *Muehler v. Mena*[9] that extended the holding in *Michigan v. Summers*[10] to allow police officers to handcuff and question occupants of a house who are lawfully being detained during the execution of a valid search warrant.[11] First, the note examines the facts behind the *Mena* case itself.[12] Second, the note explores the historical developments in Fourth Amendment jurisprudence that led up to the *Mena* decision.[13] This section of the note focuses on

1. UNITED STATES CONST. amend. IV.
2. PHILLIP A. HUBBART, MAKING SENSE OF SEARCH AND SEIZURE LAW: A FOURTH AMENDMENT HANDBOOK 120 (2005); Terry v. Ohio, 392 U.S. 1, 20 n.16 (1968).
3. HUBBART, *supra* note 2, at 120–21 (quoting *Terry*, 392 U.S. at 16).
4. California v. Hodari D., 499 U.S. 621, 624 (1991).
5. *See Terry*, 392 U.S. at 16; *see infra* Part III.B.
6. *See* Michigan v. Summers, 452 U.S. 692, 696 (1981); *see infra* Part III.B.
7. INS v. Delgado, 466 U.S. 210, 216 (1984); *see infra* Part III.D.
8. Florida v. Bostick, 501 U.S. 429, 439 (1991); *see infra* Part III.D.
9. 544 U.S. 93 (2005).
10. 452 U.S. 692; *see infra* Part III.B.
11. *See infra* Part IV.A.
12. *See infra* Part II.
13. *See infra* Part III.

five main topics: (1) the creation of the Fourth Amendment;[14] (2) the evolution of the standard that governs a limited seizure of a person;[15] (3) the jurisprudence of excessive force claims against law enforcement officials;[16] (4) the amount of police questioning that constitutes a limited seizure of a person;[17] and (5) the amount of time that a limited seizure of a person may last.[18] With the historical context stated, the note then explores the reasoning that the majority used in *Mena* to rationalize its holding,[19] as well as the reasoning that the concurring opinions presented.[20] Finally, this note considers the significance of this case,[21] suggesting that the bright-line rule created in *Mena* may have both positive and negative consequences,[22] that the majority's analysis was incomplete,[23] and that the case left many questions unanswered.[24]

II. FACTS

Officers Muehler and Brill, petitioners, obtained information from an investigation of a gang-related, drive-by shooting that led them to suspect that at least one member of the West Side Locos gang, Raymond Romero,[25] lived at 1363 Patricia Avenue.[26] Since the petitioners suspected him in the shooting, they also had reason to believe that Mr. Romero was armed and dangerous.[27] Based on these circumstances, Officer Muehler obtained a search warrant for the house and premises where the officers believed Mr. Romero lived.[28] The search warrant allowed the police to conduct a broad search of the house and premises for deadly weapons and evidence of gang membership.[29] Because the petitioners believed that the execution of the search warrant might involve confrontation with multiple, armed gang

14. *See infra* Part III.A.
15. *See infra* Part III.B.
16. *See infra* Part III.C.
17. *See infra* Part III.D.
18. *See infra* Part III.E.
19. *See infra* Part IV.A.
20. *See infra* Parts IV.B–C.
21. *See infra* Part V.
22. *See infra* Part V.A.
23. *See infra* Part V.B.
24. *See infra* Part V.C.
25. Muehler v. Mena, 544 U.S. 93, 106 (2005) (Stevens, J., concurring).
26. *Id.* at 95 (majority opinion). The Mena family, who owned the residence at 1363 Patricia Avenue, rented single bedrooms to several unrelated individuals, including Mr. Romero. *Id.* at 106 (Stevens, J., concurring). A renter could place a padlock on the outside of the door to lock the bedroom. *Id.* Furthermore, behind the house, individuals rented trailers. *Id.*
27. *Id.* at 95 (majority opinion).
28. *Id.*
29. *Id.* at 95–96.

members, they brought in a Special Weapons and Tactics (SWAT) team to secure the house and premises.[30] The SWAT team formulated a tactical plan for the search, which stated the petitioners should release any handcuffed occupants who were unrelated to the search.[31]

On February 3, 1998, the petitioners, the SWAT team, and other officers executed the search warrant at 7 a.m.[32] At this time, Iris Mena, respondent, was in her bedroom sleeping.[33] Wearing black vests with the word "POLICE" written on them and with their badges visible, SWAT team members entered Ms. Mena's bedroom and handcuffed her at gunpoint.[34] In addition, the SWAT team found and handcuffed three other individuals on the property.[35] The SWAT team then took Ms. Mena and the others to a converted garage.[36] While the search continued, the four detainees were free to move around the converted garage, but they were in handcuffs the entire time.[37] One or two officers watched the detainees for the duration of the search.[38] Officers also filled out field identification cards on the detainees, which determine whether they may release a detainee from handcuffs.[39] At some point during the detention, Ms. Mena, with her arms handcuffed behind her back, asked the officers to remove the handcuffs because they were uncomfortable, but the officers denied her request.[40] In addition, officers were diverted at times from the search of the house to supervise the detai-

30. *Id.* at 96.

31. *Mena*, 544 U.S. at 110–11 (Stevens, J., concurring).

32. *Id.* at 96 (majority opinion). The petitioners were in charge of executing the search and supervising the detention of the occupants of the house. Brief for the Respondent at 6, *Mena*, 544 U.S. 93 (No. 03-1423). In total, there were at least eighteen officers at the scene. *Id.* at 3. While officers were conducting the search at the Mena residence, other officers were executing a search at the house of Mr. Romero's mother, and officers found Mr. Romero at that location. *Mena*, 544 U.S. at 107 (Stevens, J., concurring). Although Officer Muehler knew Mr. Romero had been found, officers continued to detain Ms. Mena. *See* Transcript of Oral Argument at 33–34, *Mena*, 544 U.S. 93 (No. 03-1423).

33. *Mena*, 544 U.S. at 96. At the time of this incident, Ms. Mena was eighteen-years old. Brief for the Respondent, *supra* note 32, at 3. In addition, Ms. Mena was five feet, two inches in height. *Mena*, 544 U.S. at 105 (Stevens, J., concurring).

34. *Id.* at 96 (majority opinion).

35. *Id.* Officers found these three individuals in the trailers that were located in the backyard. *Id.* at 107 (Stevens, J., concurring).

36. *Id.* at 96 (majority opinion). While it was raining, officers forced Ms. Mena to walk barefoot to the converted garage in her nightclothes. *Id.* at 107 (Stevens, J., concurring).

37. *Id.* at 96 (majority opinion). At trial, two witnesses for the defense testified that it was not typical police procedure to keep non-suspect detainees in handcuffs after it has been determined that they pose no threat to the safety of the officers. Brief for the Respondent, *supra* note 32, at 9.

38. *Mena*, 544 U.S. at 96.

39. *Id.* at 110 (Stevens, J., concurring).

40. *Id.* at 109.

nees, and at least one officer, who was not needed in the search, was sent home.[41]

Furthermore, an officer asked for each detainee's name, date and place of birth, and immigration status during the detention.[42] Ms. Mena answered the questions.[43] The officers had notified the Immigration and Naturalization Service (INS) of the search because illegal immigrants comprised much of the West Side Locos gang.[44] Therefore, an INS agent was present during the execution of the search warrant and asked to see Ms. Mena's immigration documents.[45] Ms. Mena also complied with this request.[46]

The search of the house revealed a .22 caliber handgun, .22 caliber ammunition, .25 caliber ammunition, baseball bats that had gang writing on them, various other gang paraphernalia, and a small amount of marijuana.[47] The officers did not find any guns, ammunition, gang paraphernalia, or narcotics in Ms. Mena's bedroom.[48] Ms. Mena's detention lasted for up to three hours.[49] However, there was evidence to suggest that the officers held Ms. Mena after the execution of the search had been completed.[50]

Ms. Mena filed suit against the officers under 42 U.S.C. § 1983,[51] claiming that her Fourth Amendment rights were violated by a detention that was unreasonable in time and manner.[52] Moreover, Ms. Mena claimed that the warrant was overbroad, that the execution of the warrant was overbroad, that the officers failed to "knock and announce," and that the officers unnecessarily destroyed property while executing the search warrant.[53] The district court denied the petitioners' motion for summary judgment based on their entitlement to qualified immunity.[54] On appeal of that motion, the court of appeals affirmed the district court on all grounds except on the claim that

41. *Id.* at 110.

42. *Id.* at 96 (majority opinion).

43. *Id.* at 110 (Stevens, J., concurring).

44. *Mena*, 544 U.S. at 96 (majority opinion).

45. *Id.*

46. *Id.* at 110 (Stevens, J., concurring); Brief for the Respondent, *supra* note 32, at 4–5.

47. *Mena*, 544 U.S. at 96. Mr. Romero's room yielded .25 caliber ammunition, a blowgun, and a baseball bat. Brief of Petitioners at 9, *Mena*, 544 U.S. 93 (No. 03-1423).

48. *Mena*, 544 U.S. at 107 (Stevens, J., concurring).

49. *Id.* During the ordeal, the officers never requested Ms. Mena's assistance in completing the search. Brief for the Respondent, *supra* note 32, at 5.

50. *See* Brief for the Respondent, *supra* note 32, at 9; *see also* Transcript of Oral Argument, *supra* note 32, at 28–30.

51. This statute provides that if an individual acting under the color of law deprives another of a constitutional right, then the individual will be liable for such injury. 42 U.S.C. § 1983 (2000).

52. *Mena*, 544 U.S. at 96.

53. *Id.* at 97.

54. *Id.*

the warrant was overbroad.[55] The case went to trial, and a jury entered a verdict in favor of Ms. Mena.[56] Using a special verdict[57] form, the jury found that the petitioners' conduct resulted in an unreasonable seizure of Ms. Mena because they used unreasonable force to effectuate the seizure and detained her for an unreasonable amount of time.[58] Since the petitioners violated Ms. Mena's Fourth Amendment rights, the jury awarded her a total of $60,000.[59]

On appeal of the jury verdict, the United States Court of Appeals for the Ninth Circuit, analyzing the denial of qualified immunity under a de novo standard, affirmed the verdict on two grounds.[60] First, the court of appeals held that it was objectively unreasonable to handcuff Ms. Mena during the detention and to make her stay in the converted garage while the officers conducted the search.[61] The court opined that the officers should have released Ms. Mena once they determined that she was not an immediate threat.[62] Second, the court held that the questioning of Ms. Mena's immigration status independently violated her Fourth Amendment rights.[63] The court held that the officers were not entitled to qualified immunity because Ms. Mena's Fourth Amendment rights were established at the time of the questioning.[64] The United States Supreme Court granted petitioners' writ of certiorari.[65]

---

55. *Id.*

56. *Id.*

57. With a special verdict, the jury determines issues regarding factual findings, and based on those determinations, the judge decides the legal ramifications of the jury's findings. BLACK'S LAW DICTIONARY 1593 (8th ed. 2004).

58. *Mena*, 544 U.S. at 97.

59. *Id.* Each petitioner had to pay $10,000 in actual damages and $20,000 in punitive damages. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Mena*, 544 U.S. at 97.

65. *Id.* The petitioners did not challenge the court of appeals' ruling on the qualified immunity issue in the petition for certiorari, so the Court did not address that issue. *Id.* at 105 n.1 (Stevens, J., concurring).

III. BACKGROUND

After briefly tracing the history of the Fourth Amendment,[66] this section examines the evolution of the standard that governs a limited seizure of a person.[67] Next, this section discusses the jurisprudence of excessive force claims against law enforcement officials.[68] Then, this section explores the issue of whether police questioning constitutes a limited seizure of a person.[69] Finally, this section investigates how long a limited seizure of a person may last.[70]

A. The Beginnings of the Fourth Amendment

Prior to 1760, the navigation and trade acts passed by the English Parliament to restrict the American colonies from trading with areas outside of the English Empire were rarely enforced.[71] Believing that the acts were unfair and knowing that they were loosely enforced, American colonists engaged in extensive smuggling of goods.[72] However, starting in 1760, customs officers began using writs of assistance to enter buildings and search for smuggled goods.[73] The colonists showed intense anger toward the use of these writs because it gave customs officials limitless discretion to search a premises on a permanent basis.[74] This resentment over the writs persisted until the Revolutionary War.[75]

In 1787, the Constitutional Convention drafted a constitution but omitted a bill of rights.[76] Those opposed to the ratification of the constitution demanded incorporation of a bill of rights, including a provision regarding searches.[77] James Madison, assuming the role as sponsor of the bill of rights,

---

66. *See infra* Part III.A.
67. *See infra* Part III.B.
68. *See infra* Part III.C.
69. *See infra* Part III.D.
70. *See infra* Part III.E.
71. JACOB W. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT: A STUDY IN CONSTITUTIONAL INTERPRETATION 30 (1966).
72. *Id.*
73. 1 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 1.1(a), at 7 (4th ed. 2004); LANDYNSKI, *supra* note 71, at 30.
74. LANDYNSKI, *supra* note 71, at 31.
75. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 37.
76. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 39. The omission of a bill of rights caused profound criticism of the new constitution throughout the country. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 39.
77. LAFAVE, *supra* note 73, § 1.1(a), at 7. President Washington also lobbied for a bill of rights. *Id.*; LANDYNSKI, *supra* note 71, at 41.

drafted the first provision concerning searches.[78] After Madison presented his draft, the committee modified his version.[79] Congress approved this modified version of the Fourth Amendment,[80] and the States ratified it as part of the Bill of Rights in 1791.[81]

B. The Evolution of the Standard that Governs a Limited Seizure of a Person

Traditionally, probable cause was the absolute standard that had to be met in order to conduct an arrest or search, whether or not a warrant had been issued.[82] The United States Supreme Court defined probable cause as facts that justify a person of reasonable caution to believe that another person had committed or was committing a crime.[83] However, in *Camara v. Municipal Court*,[84] the Court redefined probable cause to a standard of reasonableness when an administrative search is involved.[85] In that case, Mr.

---

78. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41. Madison's proposed version read as follows:

> The rights of the people to be secure in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized.

LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41.

79. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41. The committee's version read as follows: "The right of the people to be secured in their persons, houses, papers, and effects, shall not be violated by warrants issuing without probable cause, supported by oath or affirmation, and not particularly describing the place to be searched and the persons or things to be seized." LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41. The committee revised this version by switching the word "secured" with "secure" and adding the phrase "unreasonable searches and seizures," which was mistakenly omitted. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41. The committee voted down a proposed change by Representative Benson to use the phrase "no warrant shall issue," instead of "by warrants issuing." LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 41–42. However, since Representative Benson was the chairman of the committee, he reported his version of the text. LAFAVE, *supra* note 73, § 1.1(a), at 7; LANDYNSKI, *supra* note 71, at 42. The members of the House did not notice the change. LAFAVE, *supra* note 73, § 1.1(a), at 8; LANDYNSKI, *supra* note 71, at 42.

80. LAFAVE, *supra* note 73, § 1.1(a), at 7–8; LANDYNSKI, *supra* note 71, at 41–42.

81. LANDYNSKI, *supra* note 71, at 42.

82. *See* Dunaway v. New York, 442 U.S. 200, 207–08 (1979).

83. Scott E. Sundby, *A Return to Fourth Amendment Basics: Undoing the Mischief of* Camara *and* Terry, 72 MINN. L. REV. 383, 392 (1988).

84. 387 U.S. 523 (1967). Previously, the Court had held that housing inspections did not implicate the Fourth Amendment. *Id.* at 530. However, the Court in *Camara* overruled the prior precedent and held that housing inspections were subject to Fourth Amendment scrutiny. *Id.* at 534.

85. Sundby, *supra* note 83, at 392–93.

Camara refused housing inspectors entry into his residence several times because they failed to present a search warrant.[86] The Court stated that, in the context of an administrative search, the reasonableness standard should be determined by balancing the interests of the government against the interests of the private individual.[87] The Court declared that the housing inspection was reasonable because such inspections had been accepted for a long time, the inspections would probably be the only effective way to protect public health and safety, and the inspections were limited in nature.[88]

A year later, the Court applied the reasoning of *Camara* to stop-and-frisk situations in *Terry v. Ohio*.[89] In *Terry*, a veteran police officer in plain clothes saw three individuals acting suspiciously and approached them.[90] After identifying himself as a police officer, he grabbed Mr. Terry and patted down the outside of his clothing.[91] The officer felt a revolver in Mr. Terry's overcoat pocket, which he eventually removed.[92]

In order to determine if the officer's stop-and-frisk violated the Fourth Amendment, the Court stated that there must be "specific and articulable facts" that, when combined with rational inferences, justify such an intrusion by the police officer.[93] The Court elaborated that this standard requires due weight to be given to the officer's specific, reasonable inferences from the facts, while also considering the experience of the officer.[94] However, the Court refused to give weight to any non-specific suspicions or mere hunches by the officer.[95] Courts now refer to this as the "reasonable suspicion" standard.[96]

With this standard as a guiding principle, the *Terry* Court then proceeded to weigh the governmental interests against the individual's interests

---

86. *Camara*, 387 U.S. at 526–27.

87. *Id.* at 534–35.

88. *Id.* at 537.

89. 392 U.S. 1 (1968). In a later opinion, the Court stated that *Terry* created the first exception to the Fourth Amendment's probable cause requirement to seize persons. Dunaway v. New York, 442 U.S. 200, 208–09 (1979).

90. *Terry*, 392 U.S. at 5–6. The officer, a thirty-nine-year veteran of the police force, observed two men walking separately back and forth in front of a store window, conferring with each other after each walk-by. *Id.* Then, a third man approached the men, talked briefly, and departed. *Id.* at 6. The two continued their ritual for several minutes before heading in the same direction as the third man. *Id.* The officer proceeded to follow the two men and noticed that they were speaking with the third man. *Id.*

91. *Id.* at 6–7.

92. *Id.* at 7. Also, the officer patted down the other two men, which led to the discovery of a revolver on the second man, Mr. Chilton, but the officer did not find any weapons on the third man, Mr. Katz. *Id.*

93. *Id.* at 21.

94. *Id.* at 27.

95. *Id.*

96. 1 JOHN WESLEY HALL, JR., SEARCH AND SEIZURE § 15.4, at 779 (3d ed. 2000).

in this situation.[97] Generally, the government has an interest in crime prevention and detection.[98] More specifically, in this instance, the government had a great interest in protecting the police officer and others from a potentially armed and dangerous individual.[99] Although the Court acknowledged that a temporary seizure and limited search for weapons over outer clothing was a great, though brief, invasion,[100] the Court held that such a search and seizure nevertheless was reasonable in light of the government's interest in protecting the police officer and others when the officer has a reasonable suspicion that the individual may be armed and dangerous.[101]

In the following years, the Court faced many opportunities to extend the reasonable suspicion test to circumstances that went beyond the stop-and-frisk situation that occurred in *Terry*.[102] In *Adams v. Williams*,[103] the Court held that a police officer had reasonable suspicion to frisk a suspect sitting in his vehicle because a reliable informant[104] reported that the suspect possessed a gun and narcotics, the suspect was in a high-crime area, and the suspect did not comply with the officer's request to exit the vehicle.[105] In *United States v. Brignoni-Ponce*,[106] a border patrol case, the Court held that a police officer who has a reasonable suspicion that a vehicle is carrying illegal aliens may briefly stop the vehicle to determine whether such activity is occurring.[107] In *Pennsylvania v. Mimms*,[108] the Court held that if during a valid traffic stop there are circumstances that reasonably lead an officer to

97. *Terry*, 392 U.S. at 22–24.
98. *Id.* at 22.
99. *Id.* at 23–24.
100. *Id.* at 24–25.
101. *Id.* at 27.
102. *See* HALL, *supra* note 96, § 15.4, at 779–81.
103. 407 U.S. 143 (1972).
104. The Court reasoned that the informant was reliable because the police officer knew the informant, the informant had provided information to the officer in the past, the informant gave the information personally to the officer, the information provided was immediately verifiable, and state law allowed for immediate arrest of a person making a false complaint. *Id.* at 146–47.
105. *Id.* at 146–48.
106. 422 U.S. 873 (1975).
107. *Id.* at 881. The Court identified several factors for determining if there is reasonable suspicion to warrant a border patrol stop, including the characteristics of the area in which the officer encounters the vehicle, any suspicious behavior of the driver, and the appearance of the vehicle and its occupants. *Id.* at 884–85. However, the Court ruled that there was not reasonable suspicion to conduct a border patrol stop in this case because the officer relied only on the fact that the occupants of the car were of Mexican descent. *Id.* at 885–86.
108. 434 U.S. 106 (1997).

believe the stopped driver possesses a firearm,[109] the officer has reasonable suspicion to frisk the driver.[110]

With this increased application of the reasonable suspicion test, the Court identified the outer boundaries of the *Terry* decision in *Dunaway v. New York*.[111] In that case, the police, after gaining information that would not suffice for probable cause to obtain an arrest warrant, picked up Mr. Dunaway, took him into custody, and questioned him about a murder.[112] After establishing that this was a seizure within the meaning of the Fourth Amendment,[113] the Court refused to extend *Terry* to this type of seizure because it was nearly the equivalent of a traditional arrest.[114] The Court also stated that if it permitted the reasonable suspicion standard to cover this intrusive seizure, then *Terry* would threaten to swallow the Fourth Amendment's general rule that seizures are reasonable only if based on probable cause.[115] Thus, in *Dunaway*, the Court confined the *Terry* doctrine to limited intrusions of individual privacy.[116]

Two years after *Dunaway*, the Court again applied *Terry* in *Michigan v. Summers*.[117] Detroit police detained Mr. Summers as he exited a house for which the officers had a warrant to search for narcotics.[118] During the search, the police found narcotics and learned that Mr. Summers owned the house.[119] The police then arrested and searched Mr. Summers, finding heroin.[120] Since the State did not dispute that a seizure of a person had occurred,[121] the Court had to determine whether the reasonable suspicion standard or the probable cause standard governed the detention of Mr. Summers

---

109. Here, the officer noticed a large bulge under the driver's jacket and feared that the driver was concealing a weapon, so the officer frisked the driver. *Id.* at 107. The frisk resulted in the officer finding a loaded revolver. *Id.*

110. *Id.* at 111–12. The Court also addressed the issue of whether the officer violated the Fourth Amendment by requesting that the driver step out of the vehicle, even before the officer noticed the bulge in the driver's jacket, during the valid traffic stop. *Id.* at 109–11. The Court reasoned that having the driver step out of the vehicle decreased the risk that the officer would be assaulted by the driver, that conducting the inquiry on the shoulder of the road would reduce the risk of any harm caused by moving traffic, and that having the driver stand outside the vehicle was merely a de minimis intrusion. *Id.* at 110–11. Thus, the Court held that such a request was permissible under the Fourth Amendment. *Id.* at 111.

111. 442 U.S. 200 (1979).

112. *Id.* at 203.

113. *Id.* at 207.

114. *Id.* at 211–12.

115. *Id.* at 213.

116. *Id.* at 210–11.

117. 452 U.S. 692 (1981).

118. *Id.* at 693.

119. *Id.*

120. *Id.*

121. *Id.* at 696.

during the search of his house.[122] The Court stated that whether *Terry* applied in this circumstance depended on the "character of the official intrusion and its justifications."[123]

In assessing the character of the intrusion, the Court focused on three main factors.[124] First, the police had secured a valid search warrant on Mr. Summers's house to search for contraband.[125] The Court reasoned that detention of a resident during a search is far less intrusive than the search itself.[126] Second, it was unlikely that the police would prolong the seizure since the search would probably reveal the information that they were seeking.[127] Finally, the public stigma of the detention was minimal since it occurred within the resident's house.[128]

The Court also evaluated the three justifications for the detention.[129] First, the Court noted that police officers have legitimate interests in preventing flight and reducing the risk of potential danger to the officers.[130] The Court reasoned that a person is more likely to flee if incriminating evidence is discovered, and the probability for violence is greater when police are searching for narcotics.[131] Second, officers may be able to complete the search in a more effective and efficient manner if the occupant is present.[132] Third, the Court stated the "nature of the articulable and individualized suspicion" that was the basis for the police detention of the occupant should also be considered.[133] Noting again that the intrusion was minimal,[134] the Court concluded that Mr. Summers's detention was justified because there was a valid warrant to search for narcotics, which automatically grants the officer reasonable suspicion to believe an occupant of the house is engaged in criminal activity.[135]

---

122. *Id.* at 701.

123. *Summers*, 452 U.S. at 701.

124. *Id.* at 701–02.

125. *Id.* at 701.

126. *Id.* The dissent proclaimed that this argument by the Court was circular because the issue of the detention's severity arises only because the detention was not based upon a valid warrant or probable cause. *Id.* at 712 n.4 (Stewart, J., dissenting).

127. *Id.* at 701 (majority opinion).

128. *Id.* at 702.

129. *Summers*, 452 U.S. at 702.

130. *Id.*

131. *Id.*

132. *Id.* at 703. In dissent, Justice Stewart argued that the first two justifications were "nothing more than the ordinary police interest[s] in discovering evidence of crime and apprehending wrongdoers." *Id.* at 708–09 (Stewart, J., dissenting).

133. *Id.* at 703 (majority opinion).

134. *Id.*

135. *Summers*, 452 U.S. at 703–04.

The Court went on to hold that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted."[136] Thus, the Court created a bright-line rule that eliminated any ad hoc determinations by the police as to whether a detention is necessary under the circumstances.[137] This type of limited seizure of a person is now referred to as a *Summers* detention.[138]

To summarize, a limited seizure of a person is governed by the reasonable suspicion standard, which is a lower standard than probable cause.[139] The Court has applied the reasonable suspicion standard to many different situations.[140] However, the Court has strictly confined the application of the reasonable suspicion standard to limited seizures of persons.[141] In situations in which the seizure of a person is nearly equivalent to an arrest, the Court has required the fulfillment of the probable cause standard.[142]

C. The Jurisprudence of Excessive Force Claims Under the Fourth Amendment

Before 1985, courts analyzed excessive force claims under a four-factor, substantive due process test.[143] However, in *Tennessee v. Garner*,[144] the Court ruled that excessive force claims against police officers should be

---

136. *Id.* at 705. In a footnote, the Court stated, "[A]lthough special circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case, we are persuaded that this routine detention of residents of a house while it is being searched for contraband pursuant to a valid warrant is not such a case." *Id.* at 705 n.21. However, as the dissent pointed out, the Court did not fashion any guidelines to determine what constitutes "special circumstances" or when a detention becomes "prolonged." *Id.* at 712 n.5 (Stewart, J., dissenting).

137. *Id.* at 705 n.19 (majority opinion).

138. *See* Muehler v. Mena, 544 U.S. 93, 101 (2005).

139. *See* Terry v. Ohio, 392 U.S. 1 (1968).

140. *See* Penn. v. Mimms, 434 U.S. 106 (1997); Mich. v. Summers, 452 U.S. 692 (1981); United States v. Brignoni-Ponce, 442 U.S. 873 (1975); Adams v. Williams, 407 U.S. 143 (1972).

141. Dunaway v. N.Y., 442 U.S. 200 (1979).

142. *Id.*

143. Kathryn R. Urbonya, *Public School Officials' Use of Physical Force as a Fourth Amendment Seizure: Protecting Students from the Constitutional Chasm Between the Fourth and Fourteenth Amendments*, 69 GEO. WASH. L. REV. 1, 23 (2000); Graham v. Connor, 490 U.S. 386, 392–93 (1989). The four-factor test was announced by Judge Friendly in *Johnson v. Glick*, 481 F.2d 1028 (2d Cir. 1973). *Id.* at 392. The four factors were the following: (1) the need for the use of force; (2) the correlation between that need and the amount of force that was actually used; (3) the extent of the injury caused by the force; and (4) whether the force was applied in good faith to maintain and restore discipline or whether the force was applied maliciously and sadistically to cause harm. *Id.* at 390–93.

144. 471 U.S. 1 (1985).

determined under the Fourth Amendment's reasonableness test,[145] thus implicitly rejecting the use of the substantive due process test for such claims.[146] In *Garner*, a police officer shot and killed a fleeing male suspect, even though the officer saw that he had no weapon and was relatively sure he was unarmed.[147] The Court restated the principle that the nature and quality of the intrusion on the individual shall be balanced against any governmental interest that might justify such an intrusion.[148] The Court elaborated that the extent of the intrusion depends on when the police make the seizure and how the police conduct the seizure.[149]

On one hand, the Court looked at three interests of the individual: (1) the individual's life; (2) the avoidance of using deadly force against the individual; (3) and the formal adjudication of guilt and punishment.[150] On the other hand, the government had an interest in providing effective law enforcement.[151] In the Court's view, the government's one interest did not outweigh the three interests of the individual.[152] Thus, the Court held that a police officer may not use deadly force to seize an unarmed, nondangerous fleeing suspect.[153]

Four years later, the Court faced another excessive force issue in *Graham v. Connor*.[154] However, this time the Court explicitly held that all

145. *Id.* at 7.

146. *Graham*, 490 U.S. at 395. The Court in *Garner* focused exclusively on the Fourth Amendment's reasonableness test in its analysis, never mentioning the substantive due process test. *Garner*, 471 U.S. at 7–22.

147. *Garner*, 471 U.S. at 3–4. The officer had authority from a state statute and a department policy to use deadly force in this situation. *Id.* at 4.

148. *Id.* at 8.

149. *Id.*

150. *Id.* at 9.

151. *Id.* The State argued that using deadly force to stop a fleeing suspect would reduce overall violence because such a suspect, knowing that deadly force may be used, will be more likely to submit peacefully. *Id.* In addition, the State argued that deadly force or threat of deadly force would allow police to be more effective in making arrests, which was a condition precedent of law enforcement. *Id.* at 9–10.

152. *Id.* at 10.

153. *Garner*, 471 U.S. at 11. The Court, however, declared that deadly force may be used to prevent a suspect's escape when the officer has probable cause to deem that the suspect poses a danger of serious, physical harm to the officer or others. *Id.* The Court also mentioned that the officer should give a warning to the fleeing suspect, if feasible. *Id.* at 11–12.

154. 490 U.S. 386 (1989). Mr. Graham, a diabetic, entered a convenience store to purchase orange juice to stop an insulin reaction but left because it was crowded. *Id.* at 388–89. Noticing Mr. Graham walk suspiciously out of the store to a friend's vehicle, an officer made an investigatory stop. *Id.* at 389. During the stop, Mr. Graham got out of the car, ran around the vehicle twice, sat down, and then passed out for a short amount of time. *Id.* After tightly cuffing Mr. Graham, officers placed him face down on his friend's car hood, and an officer shoved Mr. Graham's face into the hood once. *Id.* During the incident, Mr. Graham sustained a broken foot, lacerations on his wrists, a bruised forehead, an injured shoulder, and loud ringing in his right ear. *Id.* at 390.

claims of excessive force, deadly and non-deadly, used during an arrest, investigatory stop, or any other seizure of a person shall be determined under the reasonableness standard of the Fourth Amendment, not the substantive due process test.[155] The Court did recognize, however, that police officers have a right to use some physical force or threat of physical force when conducting an arrest or investigatory stop.[156] The Court declared that, under the Fourth Amendment, whether an officer's use of force is objectively reasonable depends upon the viewpoint of a reasonable officer at the scene, not upon any underlying intent or motive of the officer.[157]

To sum up, deadly and non-deadly excessive force claims against law enforcement officials are analyzed under the reasonableness standard of the Fourth Amendment.[158] To make a determination under this standard, a court must balance the government interests that justify the intrusion against the interests of the individual to avoid such an intrusion.[159] And the party with the greater interests shall prevail.[160]

D. The Use of Police Questioning to Constitute a Limited Seizure of a Person

Prior to 1984, the Supreme Court had not ruled squarely on whether mere police questioning of an individual constituted a seizure under the Fourth Amendment.[161] In *INS v. Delgado*,[162] immigration agents entered worksites pursuant to a warrant to determine if illegal aliens were presently working by asking the employees questions about their citizenship.[163] The Court ruled that mere police questioning did not amount to a seizure under the Fourth Amendment unless the police were so intimidating that a "rea-

155. *Id.* at 395.
156. *Id.* at 396.
157. *Id.* at 396–97.
158. *Garner*, 471 U.S. at 7–8; *Graham*, 490 U.S. at 395.
159. *Garner*, 471 U.S. at 7–8; *Graham*, 490 U.S. at 396.
160. *See Garner*, 471 U.S. at 9–10.
161. INS v. Delgado, 466 U.S. 210, 216 (1984). The Court reasoned that the decision from *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion), implied that police questioning of a person's identity or a request for identification did not constitute a seizure. *Id.*
162. *Id.*
163. *Id.* at 211–12. The process of questioning the employees' immigration status is called a "factory survey." *Id.* at 212. During a factory survey, several agents will be located near the building's exits, and the other agents will disperse throughout the factory to question the majority of employees about their immigration status. *Id.* In this case, if an employee answered inadequately or admitted to being an alien, the agents asked the employee for immigration papers. *Id.* at 212–13. While the agents conducted the search, the employees continued working and walking freely around the factory. *Id.* at 213.

sonable person would have believed he was not free to leave if he had not responded."[164]

Seven years later, in *Florida v. Bostick*,[165] the Court addressed the issue of whether the *Delgado* rule applied to police questioning that occurred on a bus.[166] The Florida Supreme Court had adopted a per se rule that it was unconstitutional for police officers to question individuals on a bus.[167] The Court reversed the state supreme court and stated that it was incorrect for adopting a per se rule.[168] In reaching its decision, the Court reasoned that the circumstances in this case were the same as those in *Delgado*.[169] Although the Court remanded the case to the state court to determine if a seizure occurred,[170] the Court reaffirmed the rule that a court shall consider all of the circumstances to determine if the police conduct during questioning communicated to a reasonable person that the person was not at liberty to end the encounter.[171] The Court declared that this rule applied whether the questioning took place on a street, in an airport lobby, or on a bus.[172]

In sum, a limited seizure of a person is unlikely to occur when law enforcement officials merely question a person.[173] However, courts must look at the totality of the circumstances to see whether a reasonable person enduring the questioning would have felt free to leave and end the encounter.[174] If a reasonable person would not have felt free to do so, a limited seizure of the person has occurred, and the Fourth Amendment is implicated.[175] Moreover, since lower courts must consider all of the circumstances, the Supreme Court has explicitly rejected the use of per se rules in this area of constitutional law.[176]

---

164. *Id.* at 216.
165. 501 U.S. 429 (1991).
166. *Id.* at 431.
167. *Id.* at 433. The state supreme court reasoned that a seizure of a person occurred here since a reasonable person, as a passenger on a bus, would not have felt free to get off the bus to evade the police questioning. *Id.* at 432–33.
168. *Id.* at 440.
169. *Id.* at 436.
170. *Id.* at 437.
171. *Bostick*, 501 U.S. at 439.
172. *Id.* at 439–40.
173. INS v. Delgado, 466 U.S. 210, 216 (1984).
174. *Id.*; *Bostick*, 501 U.S. at 439.
175. *Delgado*, 466 U.S. at 216; *Bostick*, 501 U.S. at 439.
176. *Bostick*, 501 U.S. at 440.

E. The Duration of a Limited Seizure of a Person

A limited seizure of a person inevitably requires some kind of time restriction.[177] In *United States v. Place*,[178] after being notified by other law enforcement officers of Mr. Place's suspicious behavior and after noticing it for themselves, Drug Enforcement Administration (DEA) agents at La Guardia Airport seized Mr. Place's luggage and subjected the luggage to a narcotics-detection dog sniff test.[179] The dog detected narcotics in the smaller of the two bags but did not detect any in the larger bag.[180] From the time of the seizure to the sniff test, approximately ninety minutes had passed.[181]

The Court faced the issue of whether the ninety-minute detention of the luggage, based on the reasonable suspicion that the bag contained narcotics, violated the Fourth Amendment.[182] The Court reasoned that a seizure of a traveler's personal luggage restrains the person because the person must stay with the luggage or find alternative means for its return.[183] Thus, when law enforcement agents seized luggage from Mr. Place, a limited seizure of the person also occurred.[184] The Court stated that, without the presence of probable cause, the ninety-minute detention alone made the limited seizure of Mr. Place unreasonable.[185] The Court explained that the brevity of a seizure is an important factor when determining whether a limited seizure of a person is justified on mere reasonable suspicion.[186] In addition, whether the

177. HUBBART, *supra* note 2, at 181.

178. 462 U.S. 696 (1983).

179. *Id.* at 698–99. Mr. Place departed from Miami International Airport to arrive at La Guardia Airport in New York. *Id.* at 698. Law enforcement officials, suspicious of Mr. Place's conduct, questioned him before his flight left Miami and then contacted the DEA officials at La Guardia to inform them of the encounter. *Id.* The DEA agents were waiting for Mr. Place when he arrived in New York. *Id.*

180. *Id.* at 699.

181. *Id.* Since the seizure occurred on a late Friday afternoon, the agents held the luggage until the next Monday morning in order to obtain a search warrant for the smaller bag. *Id.* The execution of the search warrant revealed that the smaller bag contained 1125 grams of cocaine. *Id.*

182. *Id.* at 697–98.

183. *Id.* at 708. The Court made this decision even though it acknowledged that a traveler is still technically free when law enforcement officials seize the luggage, that the law enforcement officials subject the traveler to an environment that is less intimidating than a custodial confinement, and that the traveler is not exposed to the public stigma of a seizure of his or her person. *Id.*

184. *Place*, 462 U.S. at 708–09.

185. *Id.* at 709.

186. *Id.*

police acted diligently during their investigation is relevant in determining if the detention was reasonable.[187]

The Court noted that the DEA agents in New York could have minimized this intrusion because they knew about Mr. Place's time of arrival and had more-than-adequate time to prepare for the investigation.[188] The Court, although refusing to set an outside time limitation for a limited seizure of a person, stated that it had never before allowed a ninety-minute limited seizure of a person, and it declined to approve the length of the detention in this case.[189]

Two years later, the Court again addressed the issue of the duration of a limited seizure of a person in *United States v. Sharpe*.[190] The Court, as it did in *Place*, expressly refused to adopt any specific time limit for a permissible limited seizure of a person because such a per se rule would contradict its jurisprudence in this area of the law.[191] The Court also elaborated on *Place*'s rule by stating that a court should not engage in unrealistic second-guessing of whether the police acted diligently in the investigation.[192] The Court declared that the question should be "whether the police acted unreasonably in failing to recognize or to pursue" a less intrusive alternative.[193]

Recently, the Court alluded to another possible dimension in determining whether a limited seizure of a person lasts for an unreasonable amount of time.[194] In *Illinois v. Caballes*,[195] the Court addressed the issue of whether a law enforcement official needs reasonable suspicion to conduct a narcotics-detection dog sniff on a vehicle during a legal traffic stop.[196] In dictum, the Court reasoned that a limited seizure of a person, based on the issuance of a warning ticket during a valid traffic stop, could become unlawful if the

187. *Id.*

188. *Id.*

189. *Id.* at 709–10.

190. 470 U.S. 675 (1985). In this case, Mr. Savage, who was driving a pickup truck, made elusive moves to escape from a DEA officer. *Id.* at 678. However, Mr. Savage eventually pulled over, and the DEA officer found marijuana in the truck during the stop. *Id.* at 678–79. The stop lasted approximately twenty minutes. *Id.* at 683.

191. *Id.* at 685–86.

192. *Id.* at 686. The Court declared that any delay in the investigatory stop was due to the evasive actions of Mr. Savage, not the actions of the DEA officers. *Id.* at 687–88.

193. *Id.* at 687.

194. *See* Illinois v. Caballes, 543 U.S. 405, 407 (2005).

195. 543 U.S. 405.

196. *Id.* at 407. In this case, a state trooper stopped Mr. Caballes for speeding. *Id.* at 406. While the trooper wrote a warning ticket, another trooper walked a narcotics-detection dog around the vehicle. *Id.* After the dog detected narcotics in the trunk, the troopers searched and found marijuana. *Id.*

police prolonged the seizure for longer than was required to accomplish the task.[197]

To conclude, the Court does not endorse a strict time limit in determining whether the duration of the seizure of the person was brief enough to consider the seizure limited.[198] Instead, the Court has fashioned factors in order to make such a determination.[199] The two main factors are the brevity of the seizure and the diligence of the law enforcement officials.[200] However, the Court has qualified the second main factor by stating that lower courts are precluded from engaging in unrealistic second-guessing of the law enforcement officers' diligence.[201] Furthermore, another possible consideration in this determination is whether the law enforcement officials prolonged the seizure of the person for longer than was necessary to complete their task.[202]

IV. REASONING

A. The Majority Opinion

The majority opinion, written by Chief Justice Rehnquist, began its analysis with *Michigan v. Summers*,[203] which held that officers may detain occupants of a house when executing a valid search warrant for contraband.[204] Based on that precedent, the majority declared that the detention of Ms. Mena was acceptable because she was an occupant of a house that the officers had a valid warrant to search for deadly weapons and gang paraphernalia.[205]

The majority then discussed the issue of whether handcuffing Ms. Mena constituted excessive force.[206] The majority stated that utilization of reasonable force during a detention was inherent in the holding of *Summers*.[207] The majority repeated the reasoning from *Summers* that there is a decreased

197. *Id.* at 407. In reaching this conclusion, the Court accepted the state court's findings that the utilization of the dog sniff did not prolong the duration of the traffic stop. *Id.* at 408. The Court went on to hold that if a dog sniff only reveals the location of contraband during a lawful traffic stop, then no Fourth Amendment violation has occurred. *Id.* at 410.

198. United States v. Place, 462 U.S. 696, 709–10 (1983); *Sharpe*, 470 U.S. at 686.

199. *Place*, 462 U.S. at 709.

200. *Id.*

201. *Sharpe*, 470 U.S. at 686–87.

202. *Caballes*, 543 U.S. at 407.

203. 452 U.S. 692 (1981); *see supra* Part III.B.

204. *See* Muehler v. Mena, 544 U.S. 93, 98 (2005).

205. *Id.* The majority noted that it would view the facts in favor of the jury verdict, but it would not defer to the jury's conclusion that the facts violated Ms. Mena's Fourth Amendment rights. *Id.* at 98 n.1.

206. *See id.* at 98–100.

207. *Id.* at 98–99.

risk of harm to officers and others when the officers have unquestioned control of the situation.[208] Moreover, the majority cited *Graham v. Conner*[209] to support its conclusion that law enforcement officials may use reasonable force or threat of force to effectuate the detention.[210] Thus, the majority concluded that the handcuffing of Ms. Mena for the purposes of the detention was reasonable since such force was merely a marginal intrusion that did not outweigh the government interests.[211]

However, the majority acknowledged that the use of handcuffs was an additional, independent intrusion on Ms. Mena.[212] Since Ms. Mena suffered two intrusions, one for the detention and the other for the handcuffing, the majority admitted that her detention was a greater intrusion than the intrusion that occurred in *Summers*.[213] Nevertheless, the majority held that the Fourth Amendment permitted the use of handcuffs on Ms. Mena.[214] The majority reasoned that when a warrant authorizes a search for weapons and evidence of gang membership in a house, the government's interests are at their maximum in justifying detaining occupants and utilizing handcuffs on those occupants.[215] The majority elaborated that, in hazardous situations, the use of handcuffs to detain occupants reduces the risk to officers.[216] The majority added that when detaining multiple occupants, the use of handcuffs is even more justified.[217]

Ms. Mena argued that even though the handcuffing might have been reasonable initially, the detention violated her Fourth Amendment rights because the amount of time that she spent in handcuffs was unreasonable.[218] Referring back to *Graham*, the majority acknowledged that the length of the detention could affect the balancing of the interests between the government and individual.[219] Yet, in response to Ms. Mena's argument, the majority replied that the safety interests of the government still outweighed the two-to-three-hour detention that Ms. Mena endured in handcuffs.[220] Again, the majority stressed the fact that two officers had the task of removing and

208. *Id.* at 99 (quoting *Summers*, 452 U.S. at 703); *see supra* Part III.B.
209. 490 U.S. 386 (1989); *see supra* Part III.C.
210. *See Mena*, 544 U.S. at 99 (quoting *Graham*, 490 U.S. at 396); *see supra* Part III.C.
211. *Mena*, 544 U.S. at 99.
212. *Id.*
213. *Id.*
214. *Id.* at 102.
215. *Id.* at 100.
216. *Id.*
217. *Mena*, 544 U.S. at 100.
218. *Id.*
219. *Id.*
220. *Id.*

detaining four occupants from a house that was being lawfully searched for deadly weapons and gang paraphernalia.[221]

Next, the majority considered whether the questioning of Ms. Mena about her immigration status during her detention violated the Fourth Amendment.[222] The court of appeals had answered that question in the affirmative.[223] The majority, however, rejected the lower court's reasoning that the questioning was a separate Fourth Amendment seizure.[224] Thus, the majority declared that the officer and the Immigration and Naturalization Service (INS) agent did not need independent reasonable suspicion to question Ms. Mena about her immigration status.[225] The majority reiterated the general rule that "mere police questioning does not constitute a seizure."[226]

Furthermore, the lower court held that the questioning did not prolong Ms. Mena's seizure.[227] Accepting this finding, the majority recognized that the questioning of Ms. Mena did not create an additional seizure.[228] The majority then compared the situation presented in *Illinois v. Caballes*[229] with Ms. Mena's situation.[230] Since Ms. Mena's detention was initially valid and the questioning of her immigration status did not prolong her detention, the officer and INS agent did not need a reasonable suspicion to justify the questioning.[231]

After summarizing its holding that the petitioners' conduct was constitutionally permissible, the majority dismissed Ms. Mena's claim that she was detained for longer than the duration of the search since the court of appeals did not address that argument.[232] Having found for the petitioners regarding the alleged violations of the Fourth Amendment, the majority vacated the Ninth Circuit's judgment and remanded the case.[233]

B. Justice Kennedy's Concurring Opinion

Although Justice Kennedy joined in the opinion and judgment of the majority because the record failed to show that the use of handcuffs was

---

221. *Id.*
222. *See id.* at 100–02.
223. *Mena*, 544 U.S. at 100.
224. *Id.* at 101.
225. *Id.* The majority explained that the officers were also not required to have reasonable suspicion to ask Ms. Mena for her name, date of birth, or place of birth. *Id.*
226. *Id.* (quoting Florida v. Bostick, 501 U.S. 429, 434 (1991)); *see supra* Part III.D.
227. *Mena*, 544 U.S. at 101.
228. *Id.*
229. 543 U.S. 405 (2005); *see supra* Part III.E.
230. *Mena*, 544 U.S. at 101.
231. *Id.*
232. *Id.* at 102.
233. *Id.*

excessive, he wrote a concurrence to voice his concerns about police handcuffing, stressing that such conduct should not become prevalent or unreasonably prolonged during searches.[234]

As in the majority opinion,[235] Justice Kennedy stated that since handcuffing was force, the objectively reasonable standard governed its utilization.[236] Furthermore, Justice Kennedy noted that both the government and the individual have great interests in whether law enforcement officials use force during a lawful detention.[237] On the one hand, the government has a great interest in protecting officers from harm and in conducting an efficient search.[238] On the other hand, an occupant of a house being searched, who is not a criminal suspect, has a great concern that excessive force not be used during the detention.[239]

Justice Kennedy then considered when the use of handcuffs might become unreasonable.[240] After stating that the reasonableness determination includes considerations of the "expected and actual duration of the search," Justice Kennedy declared that officers should have procedures to alleviate any pain or severe discomfort that the handcuffs create when the search lasts for an extended amount of time.[241] Furthermore, if during the search it becomes "readily apparent to any objectively reasonable officer that removing the handcuffs would not compromise the officers' safety or risk interference or substantial delay in the execution of the search," the officer should remove the handcuffs from the detainee.[242] Justice Kennedy opined that the two-to-three-hour search was close to, and might have exceeded, the time requirement for assessing whether the use of handcuffs on Ms. Mena was still necessary.[243]

Even though Justice Kennedy had reservations in those regards, he reasoned that the circumstances still permitted the officers to handcuff Ms. Mena for the duration of the search.[244] Justice Kennedy focused on the fact that only two officers were supervising the four detainees, while sixteen other officers were executing a comprehensive search of the house.[245] This

234. *Id.* at 102–04 (Kennedy, J., concurring).
235. *See supra* Part IV.A.
236. *Mena*, 544 U.S. at 103 (Kennedy, J., concurring); *see supra* Part III.C.
237. *See Mena*, 544 U.S. at 102–03 (Kennedy, J., concurring).
238. *Id.* at 102.
239. *Id.* at 102–03.
240. *See id.* at 103.
241. *Id.* Even if the initial handcuffing was objectively reasonable, Justice Kennedy stressed that law enforcement officials should adjust the handcuffs if the duration of the detention becomes prolonged. *Id.*
242. *Id.*
243. *Mena*, 544 U.S. at 103 (Kennedy, J., concurring).
244. *Id.*
245. *Id.*

fact persuaded Justice Kennedy that the use of handcuffs was reasonable, even though Ms. Mena posed no threat to the officers, and it was not typical police procedure to handcuff occupants of a house during a search.[246] Thus, Justice Kennedy declared that when detainees outnumber the supervising officers and when diverting other officers from an extensive search would be the only way to resolve the problem, the use of handcuffs for the duration of the search may be justified.[247] However, Justice Kennedy again added that such authority was "subject to adjustments or temporary release under supervision to avoid pain or excessive physical discomfort."[248]

C. Justice Stevens's Opinion Concurring in the Judgment

Justice Stevens opined that the court of appeals committed two errors when affirming the jury verdict that the officers violated Ms. Mena's Fourth Amendment right to be free from an unreasonable seizure.[249] First, like the majority,[250] Justice Stevens reasoned that the lower court erred in holding that the questioning of Ms. Mena about her immigration status was a separate, independent Fourth Amendment violation.[251] Second, Justice Stevens stated that the court of appeals did not give the proper level of deference to the jury's reasonable factual findings, since the court of appeals apparently ruled as a matter of law that Ms. Mena should have had the handcuffs removed at an earlier time.[252]

Next, Justice Stevens critiqued the majority's reasoning on the issue of whether handcuffing Ms. Mena constituted excessive force.[253] Justice Stevens reasoned that the majority opinion misapplied the objectively reasonable test.[254] Under the circumstances of this case and given "the presumption that a reviewing court must draw all reasonable inferences in favor of supporting the verdict,"[255] Justice Stevens concluded that a jury could have appropriately found that the officers used unreasonable force in handcuffing Ms. Mena, who posed no threat to the officers, for up to three hours.[256] Jus-

246. *Id.* Justice Kennedy assumed that those facts were true because the Court had to view all factual assertions in favor of the jury verdict. *Id.*; *see supra* note 202 and accompanying text.

247. *Id.*

248. *Id.* at 103–04.

249. *Mena*, 544 U.S. at 105 (Stevens, J., concurring).

250. *See supra* Part IV.A.

251. *Mena*, 544 U.S. at 105 (Stevens, J., concurring). Justice Stevens also noted that neither party raised this issue to the court of appeals. *Id.* at 105 n.3.

252. *Id.* at 105.

253. *See id.*

254. *Id.*

255. *Id.*; *see supra* note 202 and accompanying text.

256. *Mena*, 544 U.S. at 105 (Stevens, J., concurring).

tice Stevens stressed that *Summers* does not give officers executing a valid search warrant the authority to handcuff non-threatening, detained occupants of a house for the duration of the search.[257]

After noting that the initial handcuffing of Ms. Mena was justified under the circumstances, Justice Stevens explained why those initial justifications did not validate the prolonged use of handcuffs.[258] Justice Stevens declared that the totality of the circumstances of the detention should be considered, including how the handcuffs were utilized and whether Ms. Mena was kept in handcuffs after the search was completed.[259]

In this case, Ms. Mena's arms were handcuffed behind her back for two to three hours, and she testified at trial that the handcuffs were uncomfortable.[260] Ms. Mena asked the officers to remove them, but the officers denied her request.[261] Yet, Justice Stevens noted, even if the officers had removed the handcuffs, it would have been nearly impossible for Ms. Mena to flee because the officers guarded her constantly during the detention.[262] Furthermore, the search revealed no contraband in Ms. Mena's room, and there was no evidence suggesting that she had ever been affiliated with a gang.[263] She also had answered all the questions the officer and INS agent asked, she was unarmed, and she was small in stature.[264] Thus, Justice Stevens stated that there was no evidence that Ms. Mena was a threat to the officers or others.[265] In his opinion, based on the totality of the circumstances, a jury could have reasonably found that the extended or prolonged amount of time that Ms. Mena endured in the handcuffs was unreasonable.[266]

Next, Justice Stevens declared that the officers lacked proper justifications to handcuff Ms. Mena for the duration of the search.[267] First, Justice Stevens concluded that the deficiency of officers to guard the four detainees was probably not an actual problem since at least one officer who supervised the four was sent home after offering to help in the search.[268] Although a court should not ordinarily question the allocation of officers during a search, Justice Stevens stated that a jury could have reasonably found that a sufficient number of officers were available in this case to detain the occu-

257. *Id.* at 105–06.
258. *See id.* at 108–11.
259. *Id.* at 109.
260. *Id.*
261. *Id.*
262. *Mena*, 544 U.S. at 109–10 (Stevens, J., concurring).
263. *Id.* at 110.
264. *Id.*
265. *Id.*
266. *Id.*
267. *Id.* at 110–11.
268. *Mena*, 544 U.S. at 110 (Stevens, J., concurring).

pants without the use of handcuffs.[269] To support his argument further, Justice Stevens noted that the officers completed field identification cards[270] that allowed them to determine whether to remove the handcuffs from a detainee.[271] He also noted that the officers supervising Ms. Mena had previously been diverted from the ongoing search.[272] Thus, Justice Stevens found it hard to believe that, if Ms. Mena was not handcuffed, additional officers would have been needed to supervise Ms. Mena.[273]

Second, Justice Stevens concluded that the jury might have been unconvinced by the officers' testimony regarding their actual belief that they were in danger because they knew that other officers had already found the suspect, Mr. Romero, at his mother's house.[274] The jury, in Justice Stevens's opinion, also might have been skeptical of the officers' testimony regarding their policy to keep detainees in handcuffs during a search of a residence because the SWAT team's tactical plan for this search called for releasing the detainees from handcuffs.[275]

Although Justice Stevens did concede that police safety was always a factor that weighed heavily in determining whether the use of force is reasonable, he noted that if this factor alone was sufficient, then it would allow police during a valid *Summers* detention to handcuff every detainee for the entire length of the search.[276] Justice Stevens declared that precedent did not support such a bright-line rule and that courts should instead make a case-by-case determination of whether the use of such force is unreasonable.[277] Justice Stevens concluded by indicating that on remand he would instruct the court of appeals to decide whether the evidence presented in the record was adequate to support the jury's verdict in favor of Ms. Mena, taking into consideration the possibility that the officers detained her after the search was completed.[278]

---

269. *Id.*

270. The use of field identification cards, as Justice Stevens pointed out, is a standard police procedure that takes only a few minutes to complete. *Id.*

271. *Id.*

272. *Id.*

273. *Id.*

274. *Mena*, 544 U.S. at 111 (Stevens, J., concurring).

275. *Id.* at 110–11. The tactical plan stated that an occupant of the house would initially be handcuffed, detained, and frisked, but after that procedure, either petitioner would release the occupant. *Id.*

276. *Id.* at 111.

277. *Id.*

278. *Id.* at 111–12.

V. SIGNIFICANCE

The importance of the United State Supreme Court's decision in *Muehler v. Mena*[279] is threefold. First, the majority created another bright-line rule[280] that may have both positive and negative effects.[281] Second, the majority's incomplete analysis may lead lower courts to make inconsistent decisions in the future.[282] Lastly, the Court's decision has left many questions unanswered.[283]

A. The Double-Edged Sword of a Bright-Line Rule

In *Mena*, the majority fashioned a bright-line rule that allows the police to handcuff and question detained occupants of a house that is being searched pursuant to a valid search warrant.[284] The formation of bright-line rules in Fourth Amendment jurisprudence generally benefits two primary groups.[285] First, law enforcement officials benefit from bright-line rules because such rules can be easily communicated in straightforward terms.[286] Moreover, bright-line rules eliminate the need for law enforcement officials to apply sophisticated and technical rules in the heat of the moment.[287] Second, the judiciary benefits from bright-line rules.[288] Judges at the trial level can apply these bright-line rules to cases in a simple manner.[289] As a result, appellate judges will review fewer issues regarding seizures of persons.[290] Accordingly, these two primary groups should benefit from the bright-line rule formulated by the majority in *Mena*.

---

279. 544 U.S. 93 (2005).

280. A bright-line rule is a rule that tends to resolve legal questions and ambiguities in a straightforward manner, but may do so at the cost of equity. BLACK'S LAW DICTIONARY, *supra* note 57, at 205.

281. *See infra* V.A.

282. *See infra* Part V.B.

283. *See infra* Part V.C.

284. *See supra* Part IV.A.

285. *See* Daniel T. Gillespie, *Bright-Line Rules: Development of the Law of Search and Seizure During Traffic Stops*, 31 LOY. U. CHI. L.J. 1, 3 (1999). From personal experience, law school students also benefit from bright-line rules.

286. *Id.* The municipalities that employ police officers will also benefit indirectly from the formulation of Fourth Amendment bright-line rules. *See* David Parkhurst, *Court Cases Victories for Municipalities*, NATION'S CITIES WEEKLY, Mar. 28, 2005.

287. Gillespie, *supra* note 285, at 12 (quoting United States v. Chadwick, 433 U.S. 1, 22 n.3 (1977) (Blackmun, J., dissenting)).

288. *Id.* at 3.

289. *Id.*

290. *Id.*

However, the continued formulation of bright-line rules in Fourth Amendment cases may be harmful.[291] First, the formation of a bright-line rule in one case has the potential to easily develop into a bright-line rule in another case.[292] This is because bright-line rules allow courts to glaze over important issues. To illustrate, the Court in *Michigan v. Summers*[293] created a bright-line rule stating that law enforcement officials with a valid search warrant may detain the occupants of a house that is being searched for contraband.[294] With this bright-line rule already in place, it was easier for the majority in *Mena* to simply extend the *Summers* decision and create another bright-line rule[295] than to completely analyze Ms. Mena's situation.[296] In the future, the Court may use the *Mena* decision to springboard the creation of more bright-line rules without realizing that it is failing to address important issues.

Second, if the Court continues to create bright-line rules in search and seizure cases, law enforcement officials may find it nearly impossible to manage such a plethora of rules,[297] which would negate any benefit that law enforcement officials gain from bright-line rules. For example, if law enforcement officials have to know 250 technical bright-line rules when dealing with searches and seizures, some law enforcement officials may find it difficult to remember the correct rule and apply it properly when needed. If such difficulties arise, law enforcement officials may violate the suspect's Fourth Amendment rights, possibly allowing the suspect to avoid conviction for the actual offense. Clearly, the *Mena* decision adds another bright-line rule for law enforcement officials to attempt to comprehend while out in the field of duty. Furthermore, with the Court's ability to easily create bright-line rules, as previously mentioned, the addition of bright-line rules may become perpetual, thus constantly exposing the inability of law enforcement officials to manage such an overabundance of rules.

B. The Majority's Incomplete Analysis

The majority's analysis in *Mena* was incomplete because of four primary deficiencies, which may cause inconsistent decisions in lower courts

---

291. Albert W. Alschuler, *Bright Line Fever and the Fourth Amendment*, 45 U. PITT. L. REV. 227, 231 (1984).

292. *Id.* Professor Alschuler also suggests that bright-line rules are often difficult for courts to apply. *Id.* Consequently, Judge Gillespie and Professor Alschuler would disagree about the advantages of bright-line rules. *See* Gillespie, *supra* note 285, at 3.

293. 452 U.S. 692 (1981); *see supra* Part III.B.

294. *See supra* Part III.B.

295. *See supra* Part IV.A.

296. *See infra* Part V.B.

297. Alschuler, *supra* note 291, at 231.

on issues regarding seizures of persons. Moreover, those inconsistent decisions may result in one court convicting a defendant because that court follows precedent holding that the seizure was proper, while another court would not convict the same defendant because that court follows different precedent. Such immense injustice could have been prevented if the majority had fully analyzed Ms. Mena's situation.

The first deficiency is the fact that even though the detention in *Mena* was more intrusive than the detention in *Summers*,[298] the majority had fewer justifications for the detention in *Mena*.[299] As earlier noted, a *Summers* detention is justified by the following interests: (1) preventing flight of the occupant if incriminating evidence is found; (2) reducing the risk of harm to the officers conducting the search; and (3) completing the search in a more orderly fashion.[300] However, once officers failed to find incriminating evidence in Ms. Mena's room, the justification to prevent her from fleeing was eliminated.[301] In addition, the handcuffs were not needed to prevent Ms. Mena from fleeing because police officers constantly guarded her for the duration of the search.[302] There was also no evidence to suggest that Ms. Mena was a threat to the officers.[303] Thus, the justification of reducing the risk of harm to officers was eradicated. Furthermore, during Ms. Mena's detention, officers did not ask for her assistance in completing the search, negating the justification of completing the search more efficiently.[304] Since the majority's analysis is inconsistent with the *Summers* opinion in these regards, lower courts may be forced to determine how many justifications, if any, are needed to justify an even more intrusive detention. Thus, lower courts may have varying opinions on this issue, depending on whether they follow the rationale of *Summers* or *Mena*.

The second deficiency involves the majority's analysis of the questioning issue. The majority declared that the questioning of Ms. Mena did not constitute an independent Fourth Amendment seizure of a person.[305] In its analysis, the majority reiterated the general rule that mere police questioning

298. The detention in *Mena* was more intrusive because Ms. Mena was detained in handcuffs. *See supra* Part IV.A.

299. *See supra* Part IV.A.

300. *See supra* Part III.B. In *Mena*, the majority also declared that Ms. Mena's detention was justified because the detainees outnumbered the guarding officers. *See supra* Part IV.A. However, Justice Stevens illustrated that such a justification in this case lacked adequate grounds. *See supra* Part IV.C.

301. *See supra* Part II.

302. *See supra* Part II.

303. *See supra* Part IV.C.

304. *See supra* note 49 and accompanying text.

305. *See supra* Part IV.A. In his concurring opinion, Justice Stevens agreed with the majority on this issue. *See supra* Part IV.C. Therefore, his opinion also was deficient in this regard.

does not constitute a seizure of a person.[306] However, the majority did not consider the exception to this general rule, which states that police questioning does constitute a seizure of a person if a reasonable person in the same situation would not feel free to walk away from the encounter or would not feel free to decline to answer the officer's questions.[307] Certainly, a reasonable person in Ms. Mena's situation would not feel free to walk away from this encounter because Ms. Mena was handcuffed and constantly guarded by officers. However, the more difficult question is whether a reasonable person in Ms. Mena's situation would not feel free to respond to the questions asked by the officer and INS agent. By failing to address the exception to the general rule, the majority implicitly created a per se rule that a reasonable person in Ms. Mena's situation would feel free to decline answering the questions and would feel free to walk away from the encounter.

However, the majority's implicit per se rule contradicts the Court's prior rulings.[308] The Court has explicitly rejected a per se rule declaring that questioning a suspect automatically constitutes a limited seizure of the suspect.[309] In the future, lower courts may be forced to decide whether to follow *Mena*'s implicit per se rule or whether to adhere to the jurisprudence prior to *Mena*, which may result in conflicting decisions.

The third deficiency of the majority's analysis is the fact that it failed to distinguish *New York v. Dunaway*[310] from Ms. Mena's situation.[311] In *Dunaway*, as noted above, police officers seized Mr. Dunaway without probable cause, took him down to the police station, and questioned him about a murder.[312] The Court held that the officers violated Mr. Dunaway's Fourth Amendment rights because his seizure was nearly the same as an arrest, which must be supported by probable cause, rather than reasonable suspicion.[313] Moreover, the Court declared that if it ruled that the reasonable suspicion standard covered this type of seizure, then the reasonable suspicion standard would threaten to swallow the general rule that seizures are only reasonable if based on probable cause.[314] In Ms. Mena's situation, police

306. *See supra* Part IV.A.
307. *See supra* Part III.D.
308. *See supra* Part III.D.
309. *See supra* Part III.D.
310. 442 U.S. 200 (1979); *see supra* Part III.B.
311. *See supra* Part IV.A. Ms. Mena even made this argument in her brief to the Court, but to no avail. Brief for the Respondent, *supra* note 32, at 21–22. Furthermore, like the majority, Justice Stevens's concurring opinion failed to make this distinction. *See supra* Part IV.C. Thus, his opinion was also lacking in this aspect.
312. *See supra* Part III.B.
313. *See supra* Part III.B.
314. *See supra* Part III.B.

officers likewise seized her without probable cause,[315] took her to a nearby converted garage, and questioned her about her immigration status.[316] Despite the similarities between the two situations, the majority in *Mena* ignored the *Dunaway* opinion and declared that Ms. Mena's seizure was consistent with the Fourth Amendment.[317]

Nevertheless, some may assert that these two situations are sufficiently distinct to justify the inconsistent holdings. The main distinction is the fact that Mr. Dunaway was taken to the police station for questioning, while Ms. Mena was taken to a nearby converted garage to be questioned. However, if this distinction between *Dunaway* and *Mena* makes the two cases distinguishable, then the result would be illogical. For example, armed with the knowledge that it is improper to seize and take an individual to the police station for questioning based on less than probable cause, police officers will merely seize and question that person on the premises or near the premises in order to comply with the Fourth Amendment. Yet, it seems absurd that physical proximity to one's familiar surroundings can be the basis to subvert that individual's Fourth Amendment rights.

Because the distinction between *Dunaway* and *Mena* should not be allowed to make the cases distinguishable, the majority should have declared that Ms. Mena's seizure violated the Fourth Amendment because her seizure was nearly equivalent to an arrest. However, because the majority failed to address this important issue, lower courts may be left to face it, which might lead to inconsistent decisions. If lower courts follow *Mena* in this regard, those courts will be disregarding the Court's strict declaration in *Dunaway* that seizures of this nature are reasonable only if probable cause has been met.

Finally, the majority failed to fully consider the issue of whether the duration of Ms. Mena's detention was reasonable. In prior cases dealing with a limited seizure of a person, the Court, although not setting a time limit, estabished that the brevity of the seizure and the diligence of the police are important factors in determining whether the duration of a seizure, based on reasonable suspicion, was reasonable.[318] Yet, the majority failed to acknowledge these factors in *Mena*. Clearly, the seizure was not brief because the officers detained Ms. Mena for up to three hours.[319] Furthermore,

---

315. As noted above, a *Summers* detention is based on the reasonable suspicion standard, not on the probable cause standard. *See supra* Part III.B.

316. *See supra* Part II.

317. *See supra* Part IV.A.

318. *See supra* Part III.E.

319. *See supra* Part II. The Court has held that a seizure of a person lasting ninety minutes was unreasonable, thus violating the person's Fourth Amendment rights. *See supra* Part III.E. Yet, Ms. Mena was held for approximately twice that long, and the majority held that her seizure complied with the Fourth Amendment. *See supra* Part IV.A.

the majority did not question whether the police acted diligently in completing the search of the house. The majority was also unwilling to allow the lower court on remand to look into whether the officers detained Ms. Mena for longer than the search lasted,[320] even though there was evidence to support that claim.[321] Instead, relying on the recent *Cabelles* case, the majority considered only whether the questioning of Ms. Mena prolonged her seizure.[322] Yet, it seems odd that the majority would completely ignore those established factors in order to follow dictum from the *Caballes* case.[323] Because the majority overlooked these factors in its analysis and relied solely on *Caballes*, lower courts may be left to determine whether such factors are still relevant in determining whether the duration of a seizure of a person was reasonable. Conflicting opinions may result depending on whether lower courts follow the recent trend of *Caballes* and *Mena*.

C. The Questions Left Unanswered

With the issues regarding bright-line rules and the majority's incomplete analysis resulting in a rule of law conflicting with prior Fourth Amendment jurisprudence, one may wonder what the actual underlying reasons supporting the majority's decision were? Perhaps, the majority reached its decision in light of the fact that our country has been greatly concerned about terrorism since September 11. The majority may have been making its decision based on expectations that situations similar to Ms. Mena's may happen to terrorists harbored within our borders. With that possibility in mind, the majority may have ruled the way it did in order to bring terrorists to justice more easily in the future.

In support of such reasoning, the majority in *Mena* may have recognized that gangs and terrorist groups share a vital characteristic: both contain individuals with a wealth of knowledge about the past and future criminal activity of other group members. Allowing law enforcement officials to handcuff and question possible terrorists, who are validly detained under *Summers*, may flush out information that would bring those who committed a terrorist attack to justice or prevent a terrorist attack from occurring. The majority may have felt that if it created a rule stating it is improper to handcuff and question a person in a situation like Ms. Mena's, then it might be a more difficult task to fashion a contrary rule in a future case involving terrorists. Thus, this may have been the underlying reason why the majority ruled in the manner that it did.

---

320. *See supra* Part IV.A.
321. *See supra* Part II.
322. *See supra* Part IV.A.
323. *See supra* Part III.E.

However, the majority may have made its decision merely to keep a short leash on the liberal Ninth Circuit Court of Appeals, which has been critical of the Court.[324] Yet, the terrorism rationale and the "short leash" theory are merely guesses at what may have been underlying the majority's decision. Nevertheless, such uncertainty does not change the fact that the *Mena* decision is the law of the land for the time being.

Since *Mena* is currently the law, maybe the more important question is what the true impact of this decision will be? This inquiry spawns several other questions. For instance, how often will the situation in *Mena* actually occur in day-to-day police activity?[325] If the situation does not occur that often, then the majority's holding may affect only a relatively small percentage of individuals, thus reducing the potential for lower courts to make contradictory rulings regarding the issues that the majority failed to adequately address.[326] However, the creation of this rule may jolt law enforcement officials to use this power more often, which may potentially lead to a great number of conflicting lower court opinions.

Another question that arises is whether the Court will adopt the majority's analysis in future cases regarding seizures of persons.[327] Alternatively, will the Court instead adopt Justice Stevens's rationale?[328] Will the Court and law enforcement officials take heed of Justice Kennedy's warning that handcuffing during a *Summers* detention should not become customary or prolonged?[329] With the majority's analysis contradicting prior Fourth Amendment jurisprudence,[330] the Court may have good grounds in future cases to qualify the *Mena* decision, strictly interpret it, pigeonhole it as an "anomaly," or even overrule it. On the other hand, the Court may look upon the majority's analysis with great favor in the future.

Furthermore, how much of our Fourth Amendment right to be free from unreasonable seizures will the Court surrender in order to protect law

---

324. Jeff Chorney, *For 9th Circuit: Lots of Scrutiny and 9-0 Reversals by High Court*, RECORDER, July 1, 2005, http://www.law.com/jsp/article.jsp?id=1120122313700 (last visited Mar. 30, 2006).

325. It has been suggested that the situation in *Mena* may not occur as frequently as the dog-sniffing encounter that took place in *Illinois v. Caballes*, 543 U.S. 405 (2005). *See* Harold J. Krent, *The Continuity Principle, Administrative Constraint, and the Fourth Amendment*, 81 NOTRE DAME L. REV. 53, 88 (2005).

326. *See supra* Part V.B.

327. *See supra* Part IV.A. This question and the following questions are raised because, in essence, the majority had only five votes because Justice Stevens's concurrence amounted to a dissent. *See* G. Paul McCormick, *Supreme Court 2004–2005 Review*, 29 CHAMPION 16, 17 (2005).

328. *See supra* Part IV.C.

329. *See supra* Part IV.B.

330. *See supra* Part V.B.

enforcement officials?[331] Protecting the men and women who enforce the law is, has always been, and should always be a great concern for the judicial system. But, such protection should never trump an individual's constitutional right to be free from an unreasonable seizure. If the Court continues to favor protecting law enforcement officials at the expense of our Fourth Amendment rights, then the Fourth Amendment will be reduced to mere rubbish.

To conclude, the majority's analysis, which created a bright-line rule that contradicts the Court's prior decisions, leaves one to ponder what the underlying reason for the majority's decision was and what the future impact of this decision will be. Unfortunately, for now, those questions are left unanswered. Hopefully with time and debate, the answers will be unleashed.

Ryan J. Caststeel[*]

331. Although not addressing this question directly, Justice Stevens expressed concerns that the police-safety interest alone should not override an individual's Fourth Amendment rights. *See supra* Part IV.C.

* J.D. expected May 2007. B.B.A. in Business Administration, *summa cum laude*, University of Central Arkansas, May 2004. The author will be attending the University of Central Arkansas in August 2007, where he will pursue an M.B.A. The author thanks his parents, James and Linda Caststeel, for their continuous love, support, and inspiration. Also, the author gives much gratitude to Professor Paula J. Casey for her invaluable guidance in the development of this note and to Elizabeth Marie Dulong for her insightful suggestions and diligent editing. Finally, the author is sincerely grateful to his friends for showing him the lighter side of law school.