

C. “Special Needs” Searches

1. Administrative Searches

New York v. Burger
[482 U.S. 691 \(1987\)](#)

JUSTICE BLACKMUN DELIVERED THE OPINION OF THE COURT.

This case presents the question whether the warrantless search of an automobile junkyard, conducted pursuant to a statute authorizing such a search, falls within the exception to the warrant requirement for administrative inspections of pervasively regulated industries. The case also presents the question whether an otherwise proper administrative inspection is unconstitutional because the ultimate purpose of the regulatory statute pursuant to which the search is done—the deterrence of criminal behavior—is the same as that of penal laws, with the result that the inspection may disclose violations not only of the regulatory statute but also of the penal statutes.

I

Respondent Joseph Burger is the owner of a junkyard in Brooklyn, N.Y. His business consists, in part, of the dismantling of automobiles and the selling of their parts. His junkyard is an open lot with no buildings. A high metal fence surrounds it, wherein are located, among other things, vehicles and parts of vehicles. At approximately noon on November 17, 1982, Officer Joseph Vega and four other plainclothes officers, all members of the Auto Crimes Division of the New York City Police Department, entered respondent’s junkyard to conduct an inspection pursuant to N.Y.Veh. & Traf.Law § 415-a5 (McKinney 1986). On any given day, the Division conducts from 5 to 10 inspections of vehicle dismantlers, automobile junkyards, and related businesses.

Upon entering the junkyard, the officers asked to see Burger’s license and his “police book”—the record of the automobiles and parts in his possession. Burger replied that he had neither a license nor a police book. The officers then announced their intention to conduct a § 415-a5 inspection. Burger did not object. In accordance with their practice, the officers copied down the Vehicle Identification Numbers (VINs) of several vehicles and parts of vehicles that were in the junkyard. After checking these numbers against a police computer, the officers determined that respondent was in possession of stolen vehicles and parts. Accordingly, Burger was arrested and charged with five counts of possession of stolen property and one count of unregistered operation as a vehicle dismantler, in violation of § 415-a1.

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II

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The Court first examined the “unique” problem of inspections of “closely regulated” businesses in two enterprises that had “a long tradition of close government supervision.” In *Colonnade Corp. v. United States*, 397 U.S. 72 (1970), it considered a warrantless search of a catering business pursuant to several federal revenue statutes authorizing the inspection of the premises of liquor dealers. Although the Court disapproved the search because the statute provided that a sanction be imposed when entry was refused, and because it did not authorize entry without a warrant as an alternative in this situation, it recognized that “the liquor industry [was] long subject to close supervision and inspection.” *Id.*, at 77. We returned to this issue in *United States v. Biswell*, 406 U.S. 311 (1972), which involved a warrantless inspection of the premises of a pawnshop operator, who was federally licensed to sell sporting weapons pursuant to the Gun Control Act of 1968, 18 U.S.C. § 921 *et seq.* While noting that “[f]ederal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry,” we nonetheless concluded that the warrantless inspections authorized by the Gun Control Act would “pose only limited threats to the dealer’s justifiable expectations of privacy.” We observed: “When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms, and ammunition will be subject to effective inspection.”

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B

Because the owner or operator of commercial premises in a “closely regulated” industry has a reduced expectation of privacy, the warrant and probable-cause requirements, which fulfill the traditional Fourth Amendment standard of reasonableness for a government search, see *O’Connor v. Ortega*, 480 U.S. 709, 741 (1987) (dissenting opinion), have lessened application in this context. Rather, we conclude that, as in other situations of “special need,” where the privacy interests of the owner are weakened and the government interests in regulating particular businesses are concomitantly heightened, a warrantless inspection of commercial premises may well be reasonable within the meaning of the Fourth Amendment.

This warrantless inspection, however, even in the context of a pervasively regulated business, will be deemed to be reasonable only so long as three criteria are met. First, there must be a “substantial” government interest that informs the regulatory scheme pursuant to which the inspection is made.

Second, the warrantless inspections must be “necessary to further [the] regulatory scheme.” *Donovan v. Dewey*, 452 U.S., at 600. For example, in *Dewey* we recognized that forcing mine inspectors to obtain a warrant before every inspection might alert mine owners or operators to the impending inspection, thereby frustrating the purposes of the Mine Safety and Health Act—to detect and thus to deter safety and health violations.

Finally, “the statute’s inspection program, in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant.” *Ibid.* In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. To perform this first function, the statute must be “sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.” *Donovan v. Dewey*, 452 U.S., at 600. In addition, in defining how a statute limits the discretion of the inspectors, we have observed that it must be “carefully limited in time, place, and scope.” *United States v. Biswell*, 406 U.S., at 315.

III

A

Searches made pursuant to § 415-a5, in our view, clearly fall within this established exception to the warrant requirement for administrative inspections in “closely regulated” businesses. First, the nature of the regulatory statute reveals that the operation of a junkyard, part of which is devoted to vehicle dismantling, is a “closely regulated” business in the State of New York. The provisions regulating the activity of vehicle dismantling are extensive. An operator cannot engage in this industry without first obtaining a license, which means that he must meet the registration requirements and must pay a fee. Under § 415-a5(a), the operator must maintain a police book recording the acquisition and disposition of motor vehicles and vehicle parts, and make such records and inventory available for inspection by the police or any agent of the Department of Motor Vehicles. The operator also must display his registration number prominently at his place of business, on business documentation, and on vehicles and parts that pass through his business. § 415-a5(b). Moreover, the person engaged in this activity is subject to criminal penalties, as well as to loss of license or civil fines, for failure to comply with these provisions. That other States besides New York have imposed similarly extensive regulations on automobile junkyards further supports the “closely regulated” status of this industry.

Amici argue that § 415-a does not create a truly administrative scheme, because its provisions are not sufficiently voluminous. Although the number of regulations certainly is a factor in the determination whether a particular business is “closely regulated,” the sheer quantity of pages of statutory material is not dispositive of this question. Rather, the proper focus is on whether the “regulatory presence is sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes.” *Donovan v. Dewey*, 452 U.S., at 600. Section 415-a plainly satisfies this criterion.

In determining whether vehicle dismantlers constitute a “closely regulated” industry, the “duration of [this] particular regulatory scheme,” *Donovan v. Dewey*, 452 U.S., at 606, has some relevancy. Section 415-a could be said to be of fairly recent vintage. But because the automobile is a relatively new phenomenon in our society and

because its widespread use is even newer, automobile junkyards and vehicle dismantlers have not been in existence very long and thus do not have an ancient history of government oversight. Indeed, the industry did not attract government attention until the 1950's, when all used automobiles were no longer easily reabsorbed into the steel industry and attention then focused on the environmental and aesthetic problems associated with abandoned vehicles.

The automobile-junkyard business, however, is simply a new branch of an industry that has existed, and has been closely regulated, for many years. The automobile junkyard is closely akin to the secondhand shop or the general junkyard. Both share the purpose of recycling salvageable articles and components of items no longer usable in their original form. As such, vehicle dismantlers represent a modern, specialized version of a traditional activity. In New York, general junkyards and secondhand shops long have been subject to regulation. . . .

Accordingly, in light of the regulatory framework governing his business and the history of regulation of related industries, an operator of a junkyard engaging in vehicle dismantling has a reduced expectation of privacy in this "closely regulated" business.

B

The New York regulatory scheme satisfies the three criteria necessary to make reasonable warrantless inspections pursuant to § 415-a5. First, the State has a substantial interest in regulating the vehicle-dismantling and automobile-junkyard industry because motor vehicle theft has increased in the State and because the problem of theft is associated with this industry. In this day, automobile theft has become a significant social problem, placing enormous economic and personal burdens upon the citizens of different States. For example, when approving the 1979 amendment to § 415-a5, which added the provision for inspections of records and inventory of junkyards, the Governor of the State explained:

Motor vehicle theft in New York State has been rapidly increasing. It has become a multimillion dollar industry which has resulted in an intolerable economic burden on the citizens of New York. In 1976, over 130,000 automobiles were reported stolen in New York, resulting in losses in excess of \$225 million. Because of the high rate of motor vehicle theft, the premiums for comprehensive motor vehicle insurance in New York are significantly above the national average. In addition, stolen automobiles are often used in the commission of other crimes and there is a high incidence of accidents resulting in property damage and bodily injury involving stolen automobiles. Governor's Message approving L.1979, chs. 691 and 692, 1979 N.Y.Laws 1826, 1826-1827 (McKinney).

Because contemporary automobiles are made from standardized parts, the nationwide extent of vehicle theft and concern about it are understandable.

Second, regulation of the vehicle-dismantling industry reasonably serves the State's substantial interest in eradicating automobile theft. It is well established that the theft problem can be addressed effectively by controlling the receiver of, or market in, stolen property. Automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts. Thus, the State rationally may believe that it will reduce car theft by regulations that prevent automobile junkyards from becoming markets for stolen vehicles and that help trace the origin and destination of vehicle parts.

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Third, § 415-a5 provides a “constitutionally adequate substitute for a warrant.” *Donovan v. Dewey*, 452 U.S., at 603. The statute informs the operator of a vehicle dismantling business that inspections will be made on a regular basis. Thus, the vehicle dismantler knows that the inspections to which he is subject do not constitute discretionary acts by a government official but are conducted pursuant to statute. Section 415-a5 also sets forth the scope of the inspection and, accordingly, places the operator on notice as to how to comply with the statute. In addition, it notifies the operator as to who is authorized to conduct an inspection.

Finally, the “time, place, and scope” of the inspection is limited, *United States v. Biswell*, 406 U.S., at 315, to place appropriate restraints upon the discretion of the inspecting officers. See *Donovan v. Dewey*, 452 U.S., at 605. The officers are allowed to conduct an inspection only “during [the] regular and usual business hours.” § 415-a5.²¹ The inspections can be made only of vehicle-dismantling and related industries. And the permissible scope of these searches is narrowly defined: the inspectors may examine the records, as well as “any vehicles or parts of vehicles which are subject to the record keeping requirements of this section and which are on the premises.” *Ibid.*

IV

A search conducted pursuant to § 415-a5, therefore, clearly falls within the well-established exception to the warrant requirement for administrative inspections of “closely regulated” businesses. The Court of Appeals, nevertheless, struck down the statute as violative of the Fourth Amendment because, in its view, the statute had no truly administrative purpose but was “designed simply to give the police an expedient means of enforcing penal sanctions for possession of stolen property.” 67 N.Y.2d, at 344. The court rested its conclusion that the administrative goal of the statute was pretextual and that § 415-a5 really “authorize[d] searches undertaken solely to uncover evidence of criminality” particularly on the fact that, even if an operator failed to produce his police book, the inspecting officers could continue their inspection for stolen vehicles and parts. *Id.*, at 344, 345. The court also suggested that the identity of the inspectors—police officers—was significant in revealing the true nature of the statutory scheme.

In arriving at this conclusion, the Court of Appeals failed to recognize that a State can address a major social problem *both* by way of an administrative scheme *and* through penal sanctions. Administrative statutes and penal laws may have the same *ultimate* purpose of remedying the social problem, but they have different subsidiary purposes and

prescribe different methods of addressing the problem. An administrative statute establishes how a particular business in a “closely regulated” industry should be operated, setting forth rules to guide an operator’s conduct of the business and allowing government officials to ensure that those rules are followed. Such a regulatory approach contrasts with that of the penal laws, a major emphasis of which is the punishment of individuals for specific acts of behavior.

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If the administrative goals of § 415-a5 are recognized, the difficulty the Court of Appeals perceives in allowing inspecting officers to examine vehicles and vehicle parts even in the absence of records evaporates. The regulatory purposes of § 415-a5 certainly are served by having the inspecting officers compare the records of a particular vehicle dismantler with vehicles and vehicle parts in the junkyard. The purposes of maintaining junkyards in the hands of legitimate businesspersons and of tracing vehicles that pass through these businesses, however, *also* are served by having the officers examine the operator’s inventory even when the operator, for whatever reason, fails to produce the police book. Forbidding inspecting officers to examine the inventory in this situation would permit an illegitimate vehicle dismantler to thwart the purposes of the administrative scheme and would have the absurd result of subjecting his counterpart who maintained records to a more extensive search.

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Finally, we fail to see any constitutional significance in the fact that police officers, rather than “administrative” agents, are permitted to conduct the § 415-a5 inspection. The significance respondent alleges lies in the role of police officers as enforcers of the penal laws and in the officers’ power to arrest for offenses other than violations of the administrative scheme. It is, however, important to note that state police officers, like those in New York, have numerous duties in addition to those associated with traditional police work. As a practical matter, many States do not have the resources to assign the enforcement of a particular administrative scheme to a specialized agency. So long as a regulatory scheme is properly administrative, it is not rendered illegal by the fact that the inspecting officer has the power to arrest individuals for violations other than those created by the scheme itself. In sum, we decline to impose upon the States the burden of requiring the enforcement of their regulatory statutes to be carried out by specialized agents.

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Accordingly, the judgment of the New York Court of Appeals is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE BRENNAN, WITH WHOM JUSTICE MARSHALL JOINS, AND WITH WHOM JUSTICE O’CONNOR JOINS AS TO ALL BUT PART III, DISSENTING.

Warrantless inspections of pervasively regulated businesses are valid if necessary to further an urgent state interest, and if authorized by a statute that carefully limits their time, place, and scope. I have no objection to this general rule. Today, however, the Court finds pervasive regulation in the barest of administrative schemes. Burger’s vehicle-dismantling business is not closely regulated (unless most New York City businesses are), and an administrative warrant therefore was required to search it. The Court also perceives careful guidance and control of police discretion in a statute that is patently insufficient to eliminate the need for a warrant. Finally, the Court characterizes as administrative a search for evidence of only criminal wrongdoing. As a result, the Court renders virtually meaningless the general rule that a warrant is required for administrative searches of commercial property.

I

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The provisions governing vehicle dismantling in New York simply are not extensive. A vehicle dismantler must register and pay a fee, display the registration in various circumstances, maintain a police book, and allow inspections. Of course, the inspections themselves cannot be cited as proof of pervasive regulation justifying elimination of the warrant requirement; that would be obvious bootstrapping. Nor can registration and recordkeeping requirements be characterized as close regulation. New York City, like many States and municipalities, imposes similar, and often more stringent licensing, recordkeeping, and other regulatory requirements on a myriad of trades and businesses. Few substantive qualifications are required of an aspiring vehicle dismantler; no regulation governs the condition of the premises, the method of operation, the hours of operation, the equipment utilized, etc. This scheme stands in marked contrast to, *e.g.*, the mine safety regulations relevant in *Donovan v. Dewey, supra*.

In sum, if New York City’s administrative scheme renders the vehicle-dismantling business closely regulated, few businesses will escape such a finding. Under these circumstances, the warrant requirement is the exception not the rule, and *See* has been constructively overruled.

II

Even if vehicle dismantling were a closely regulated industry, I would nonetheless conclude that this search violated the Fourth Amendment. The warrant requirement protects the owner of a business from the “unbridled discretion [of] executive and administrative officers,” *Marshall, supra*, 436 U.S., at 323, by ensuring that “reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [business],” *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967). In order to serve as the equivalent of a warrant, an administrative statute must create “a predictable and guided [governmental] presence,” *Dewey*, 452 U.S., at 604. Section 415-a5 does not approach the level of “certainty and regularity of . . . application” necessary to provide “a constitutionally adequate substitute for a warrant.”

The statute does not inform the operator of a vehicle-dismantling business that inspections will be made on a regular basis; in fact, there is *no* assurance that any inspections at all will occur. There is neither an upper nor a lower limit on the number of searches that may be conducted at any given operator's establishment in any given time period. Neither the statute, nor any regulations, nor any regulatory body, provides limits or guidance on the selection of vehicle dismantlers for inspection. In fact, the State could not explain why Burger's operation was selected for inspection. 67 N.Y.2d 338, 341 (1986). This is precisely what was objectionable about the inspection scheme invalidated in *Marshall*: It failed to "provide any standards to guide inspectors either in their selection of establishments to be searched or in the exercise of their authority to search." *Dewey, supra*, 452 U.S., at 601.

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Here the State has used an administrative scheme as a pretext to search without probable cause for evidence of criminal violations. It thus circumvented the requirements of the Fourth Amendment by altering the label placed on the search. This crucial point is most clearly illustrated by the fact that the police copied the serial numbers from a wheelchair and a handicapped person's walker that were found on the premises, and determined that these items had been stolen. Obviously, these objects are not vehicles or parts of vehicles, and were in no way relevant to the State's enforcement of its administrative scheme. The scope of the search alone reveals that it was undertaken solely to uncover evidence of criminal wrongdoing.

Moreover, it is factually impossible that the search was intended to discover wrongdoing subject to administrative sanction. Burger stated that he was not registered to dismantle vehicles as required by § 415-a1, and that he did not have a police book, as required by § 415-a5(a). At that point he had violated every requirement of the administrative scheme. There is no administrative provision forbidding possession of stolen automobiles or automobile parts. The inspection became a search for evidence of criminal acts when all possible administrative violations had been uncovered.

The State contends that acceptance of this argument would allow a vehicle dismantler to thwart its administrative scheme simply by failing to register and keep records. This is false. A failure to register or keep required records violates the scheme and results in both administrative sanctions and criminal penalties. Neither is the State's further criminal investigation thwarted; the police need only obtain a warrant and then proceed to search the premises. If respondent's failure to register and maintain records amounted to probable cause, then the inspecting police officers, who worked in the Auto Crimes Division of the New York City Police Department, possessed probable cause to obtain a criminal warrant authorizing a search of Burger's premises. Several of the officers might have stayed on the premises to ensure that this unlicensed dismantler did no further business, while the others obtained a warrant. Any inconvenience to the police

would be minimal, and in any event, “inconvenience alone has never been thought to be an adequate reason for abrogating the warrant requirement.” *Almeida-Sanchez*, 413 U.S., at 283 (POWELL, J., concurring).

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The Court thus implicitly holds that if an administrative scheme has certain goals and if the search serves those goals, it may be upheld even if no concrete administrative consequences could follow from a particular search. This is a dangerous suggestion, for the goals of administrative schemes often overlap with the goals of the criminal law. Thus, on the Court’s reasoning, administrative inspections would evade the requirements of the Fourth Amendment so long as they served an abstract administrative goal, such as the prevention of automobile theft. A legislature cannot abrogate constitutional protections simply by saying that the purpose of an administrative search scheme is to prevent a certain type of crime. If the Fourth Amendment is to retain meaning in the commercial context, it must be applied to searches for evidence of criminal acts even if those searches would also serve an administrative purpose, unless that administrative purpose takes the concrete form of seeking an administrative violation.

IV

The implications of the Court’s opinion, if realized, will virtually eliminate Fourth Amendment protection of commercial entities in the context of administrative searches. No State may require, as a condition of doing business, a blanket submission to warrantless searches for any purpose. I respectfully dissent.

Points for Discussion

1. The Court permits in *Burger* what it expressly forbade in *Camara* – warrantless inspections for administrative purposes. Why does the Court not apply the *Camara* scheme of administrative warrants here?

2. How compelling is the majority’s argument that the statute at issue here complies with the three part test that the Court has created to evaluate it?

Michigan Dept. of State Police v. Sitz
[496 U.S. 444 \(1990\)](#)

CHIEF JUSTICE REHNQUIST DELIVERED THE OPINION OF THE COURT.

This case poses the question whether a State’s use of highway sobriety checkpoints violates the Fourth and Fourteenth Amendments to the United States

Constitution. We hold that it does not and therefore reverse the contrary holding of the Court of Appeals of Michigan.

Petitioners, the Michigan Department of State Police and its director, established a sobriety checkpoint pilot program in early 1986. The director appointed a Sobriety Checkpoint Advisory Committee comprising representatives of the State Police force, local police forces, state prosecutors, and the University of Michigan Transportation Research Institute. Pursuant to its charge, the advisory committee created guidelines setting forth procedures governing checkpoint operations, site selection, and publicity.

Under the guidelines, checkpoints would be set up at selected sites along state roads. All vehicles passing through a checkpoint would be stopped and their drivers briefly examined for signs of intoxication. In cases where a checkpoint officer detected signs of intoxication, the motorist would be directed to a location out of the traffic flow where an officer would check the motorist's driver's license and car registration and, if warranted, conduct further sobriety tests. Should the field tests and the officer's observations suggest that the driver was intoxicated, an arrest would be made. All other drivers would be permitted to resume their journey immediately.

The first—and to date the only—sobriety checkpoint operated under the program was conducted in Saginaw County with the assistance of the Saginaw County Sheriff's Department. During the 75-minute duration of the checkpoint's operation, 126 vehicles passed through the checkpoint. The average delay for each vehicle was approximately 25 seconds. Two drivers were detained for field sobriety testing, and one of the two was arrested for driving under the influence of alcohol. A third driver who drove through without stopping was pulled over by an officer in an observation vehicle and arrested for driving under the influence.

On the day before the operation of the Saginaw County checkpoint, respondents filed a complaint in the Circuit Court of Wayne County seeking declaratory and injunctive relief from potential subjection to the checkpoints. Each of the respondents "is a licensed driver in the State of Michigan . . . who regularly travels throughout the State in his automobile." During pretrial proceedings, petitioners agreed to delay further implementation of the checkpoint program pending the outcome of this litigation.

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In this Court respondents seek to defend the judgment in their favor by insisting that the balancing test derived from *Brown v. Texas, supra*, was not the proper method of analysis. Respondents maintain that the analysis must proceed from a basis of probable cause or reasonable suspicion, and rely for support on language from our decision last Term in *Treasury Employees v. Von Raab*, 489 U.S. 656 (1989). We said in *Von Raab*:

[W]here a Fourth Amendment intrusion serves special governmental needs, beyond the normal need for law enforcement, it is necessary to balance the individual's privacy expectations against the Government's

interests to determine whether it is impractical to require a warrant or some level of individualized suspicion in the particular context.

Respondents argue that there must be a showing of some special governmental need “beyond the normal need” for criminal law enforcement before a balancing analysis is appropriate, and that petitioners have demonstrated no such special need.

But it is perfectly plain from a reading of *Von Raab*, which cited and discussed with approval our earlier decision in *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), that it was in no way designed to repudiate our prior cases dealing with police stops of motorists on public highways. *Martinez-Fuerte, supra*, which utilized a balancing analysis in approving highway checkpoints for detecting illegal aliens, and *Brown v. Texas, supra*, are the relevant authorities here.

Petitioners concede, correctly in our view, that a Fourth Amendment “seizure” occurs when a vehicle is stopped at a checkpoint. The question thus becomes whether such seizures are “reasonable” under the Fourth Amendment.

It is important to recognize what our inquiry is *not* about. No allegations are before us of unreasonable treatment of any person after an actual detention at a particular checkpoint. As pursued in the lower courts, the instant action challenges only the use of sobriety checkpoints generally. We address only the initial stop of each motorist passing through a checkpoint and the associated preliminary questioning and observation by checkpoint officers. Detention of particular motorists for more extensive field sobriety testing may require satisfaction of an individualized suspicion standard.

No one can seriously dispute the magnitude of the drunken driving problem or the States’ interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation’s roads are legion. The anecdotal is confirmed by the statistical. “Drunk drivers cause an annual death toll of over 25,000

[BEGIN FOOTNOTE [*]]

Statistical evidence incorporated in Justice Steven’s dissent suggests that this figure declined between 1982 and 1988. It was during this same period that police departments experimented with sobriety checkpoint systems. Petitioners, for instance, operated their checkpoint in May 1986, and the Maryland State Police checkpoint program, about which much testimony was given before the trial court, began in December 1982. Indeed, it is quite possible that jurisdictions which have recently decided to implement sobriety checkpoint systems have relied on such data from the 1980’s in assessing the likely utility of such checkpoints.

[END FOOTNOTE [*]]

and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage.” 4 W. LaFave, *Search and Seizure: A Treatise on the*

Fourth Amendment § 10.8(d), p. 71 (2d ed. 1987). For decades, this Court has “repeatedly lamented the tragedy.” *South Dakota v. Neville*, 459 U.S. 553, 558 (1983).

Conversely, the weight bearing on the other scale—the measure of the intrusion on motorists stopped briefly at sobriety checkpoints—is slight. We reached a similar conclusion as to the intrusion on motorists subjected to a brief stop at a highway checkpoint for detecting illegal aliens. We see virtually no difference between the levels of intrusion on law-abiding motorists from the brief stops necessary to the effectuation of these two types of checkpoints, which to the average motorist would seem identical save for the nature of the questions the checkpoint officers might ask. The trial court and the Court of Appeals, thus, accurately gauged the “objective” intrusion, measured by the duration of the seizure and the intensity of the investigation, as minimal.

With respect to what it perceived to be the “subjective” intrusion on motorists, however, the Court of Appeals found such intrusion substantial. The court first affirmed the trial court’s finding that the guidelines governing checkpoint operation minimize the discretion of the officers on the scene. But the court also agreed with the trial court’s conclusion that the checkpoints have the potential to generate fear and surprise in motorists. This was so because the record failed to demonstrate that approaching motorists would be aware of their option to make U-turns or turnoffs to avoid the checkpoints. On that basis, the court deemed the subjective intrusion from the checkpoints unreasonable.

We believe the Michigan courts misread our cases concerning the degree of “subjective intrusion” and the potential for generating fear and surprise. The “fear and surprise” to be considered are not the natural fear of one who has been drinking over the prospect of being stopped at a sobriety checkpoint but, rather, the fear and surprise engendered in law-abiding motorists by the nature of the stop. . . . Here, checkpoints are selected pursuant to the guidelines, and uniformed police officers stop every approaching vehicle. The intrusion resulting from the brief stop at the sobriety checkpoint is for constitutional purposes indistinguishable from the checkpoint stops we upheld in *Martinez-Fuerte*.

The Court of Appeals went on to consider as part of the balancing analysis the “effectiveness” of the proposed checkpoint program. Based on extensive testimony in the trial record, the court concluded that the checkpoint program failed the “effectiveness” part of the test, and that this failure materially discounted petitioners’ strong interest in implementing the program. We think the Court of Appeals was wrong on this point as well.

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[T]his case involves neither a complete absence of empirical data nor a challenge to random highway stops. During the operation of the Saginaw County checkpoint, the detention of the 126 vehicles that entered the checkpoint resulted in the arrest of two drunken drivers. Stated as a percentage, approximately 1.6 percent of the drivers passing through the checkpoint were arrested for alcohol impairment. In addition, an expert

witness testified at the trial that experience in other States demonstrated that, on the whole, sobriety checkpoints resulted in drunken driving arrests of around 1 percent of all motorists stopped. By way of comparison, the record from one of the consolidated cases in *Martinez-Fuerte* showed that in the associated checkpoint, illegal aliens were found in only 0.12 percent of the vehicles passing through the checkpoint. The ratio of illegal aliens detected to vehicles stopped (considering that on occasion two or more illegal aliens were found in a single vehicle) was approximately 0.5 percent. We concluded that this “record . . . provides a rather complete picture of the effectiveness of the San Clemente checkpoint,” and we sustained its constitutionality. We see no justification for a different conclusion here.

In sum, the balance of the State’s interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped, weighs in favor of the state program. We therefore hold that it is consistent with the Fourth Amendment. The judgment of the Michigan Court of Appeals is accordingly reversed, and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

JUSTICE BLACKMUN, CONCURRING IN THE JUDGMENT.

I concur only in the judgment.

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JUSTICE BRENNAN, WITH WHOM JUSTICE MARSHALL JOINS, DISSENTING.

Today, the Court rejects a Fourth Amendment challenge to a sobriety checkpoint policy in which police stop all cars and inspect all drivers for signs of intoxication without *any* individualized suspicion that a specific driver is intoxicated. The Court does so by balancing “the State’s interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists who are briefly stopped.” For the reasons stated by Justice STEVENS in Parts I and II of his dissenting opinion, I agree that the Court misapplies that test by undervaluing the nature of the intrusion and exaggerating the law enforcement need to use the roadblocks to prevent drunken driving. See also *United States v. Martinez-Fuerte*, 428 U.S. 543, 567 (1976) (BRENNAN, J., dissenting). I write separately to express a few additional points.

The majority opinion creates the impression that the Court generally engages in a balancing test in order to determine the constitutionality of all seizures, or at least those “dealing with police stops of motorists on public highways.” This is not the case. In most cases, the police must possess probable cause for a seizure to be judged reasonable. Only when a seizure is “*substantially* less intrusive,” *id.*, at 210 (emphasis added), than a typical arrest is the general rule replaced by a balancing test. I agree with the Court that the initial stop of a car at a roadblock under the Michigan State Police sobriety checkpoint policy is sufficiently less intrusive than an arrest so that the reasonableness of

the seizure may be judged, not by the presence of probable cause, but by balancing “the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Brown v. Texas*, 443 U.S. 47, 51 (1979). But one searches the majority opinion in vain for any acknowledgment that the *reason* for employing the balancing test is that the seizure is minimally intrusive.

Indeed, the opinion reads as if the minimal nature of the seizure *ends* rather than begins the inquiry into reasonableness. Once the Court establishes that the seizure is “slight,” it asserts without explanation that the balance “weighs in favor of the state program.” The Court ignores the fact that in this class of minimally intrusive searches, we have generally required the Government to prove that it had reasonable suspicion for a minimally intrusive seizure to be considered reasonable. Some level of individualized suspicion is a core component of the protection the Fourth Amendment provides against arbitrary government action. By holding that no level of suspicion is necessary before the police may stop a car for the purpose of preventing drunken driving, the Court potentially subjects the general public to arbitrary or harassing conduct by the police. I would have hoped that before taking such a step, the Court would carefully explain how such a plan fits within our constitutional framework.

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I do not dispute the immense social cost caused by drunken drivers, nor do I slight the government’s efforts to prevent such tragic losses. Indeed, I would hazard a guess that today’s opinion will be received favorably by a majority of our society, who would willingly suffer the minimal intrusion of a sobriety checkpoint stop in order to prevent drunken driving. But consensus that a particular law enforcement technique serves a laudable purpose has never been the touchstone of constitutional analysis.

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In the face of the “momentary evil” of drunken driving, the Court today abdicates its role as the protector of that fundamental right. I respectfully dissent.

JUSTICE STEVENS, WITH WHOM JUSTICE BRENNAN AND JUSTICE MARSHALL JOIN AS TO PARTS I AND II, DISSENTING.

A sobriety checkpoint is usually operated at night at an unannounced location. Surprise is crucial to its method. The test operation conducted by the Michigan State Police and the Saginaw County Sheriff’s Department began shortly after midnight and lasted until about 1 a.m. During that period, the 19 officers participating in the operation made two arrests and stopped and questioned 124 other unsuspecting and innocent drivers. It is, of course, not known how many arrests would have been made during that period if those officers had been engaged in normal patrol activities. However, the findings of the trial court, based on an extensive record and affirmed by the Michigan Court of Appeals, indicate that the net effect of sobriety checkpoints on traffic safety is infinitesimal and possibly negative.

Indeed, the record in this case makes clear that a decision holding these suspicionless seizures unconstitutional would not impede the law enforcement community's remarkable progress in reducing the death toll on our highways. Because the Michigan program was patterned after an older program in Maryland, the trial judge gave special attention to that State's experience. Over a period of several years, Maryland operated 125 checkpoints; of the 41,000 motorists passing through those checkpoints, only 143 persons (0.3%) were arrested. The number of man-hours devoted to these operations is not in the record, but it seems inconceivable that a higher arrest rate could not have been achieved by more conventional means. Yet, even if the 143 checkpoint arrests were assumed to involve a net increase in the number of drunken driving arrests per year, the figure would still be insignificant by comparison to the 71,000 such arrests made by Michigan State Police without checkpoints in 1984 alone.

Any relationship between sobriety checkpoints and an actual reduction in highway fatalities is even less substantial than the minimal impact on arrest rates. As the Michigan Court of Appeals pointed out: "Maryland had conducted a study comparing traffic statistics between a county using checkpoints and a control county. The results of the study showed that alcohol-related accidents in the checkpoint county decreased by ten percent, whereas the control county saw an eleven percent decrease; and while fatal accidents in the control county fell from sixteen to three, fatal accidents in the checkpoint county actually doubled from the prior year." 170 Mich.App. 433, 443, 429 N.W.2d 180, 184 (1988).

In light of these considerations, it seems evident that the Court today misapplies the balancing test announced in *Brown v. Texas*, 443 U.S. 47, 50-51 (1979). The Court overvalues the law enforcement interest in using sobriety checkpoints, undervalues the citizen's interest in freedom from random, unannounced investigatory seizures, and mistakenly assumes that there is "virtually no difference" between a routine stop at a permanent, fixed checkpoint and a surprise stop at a sobriety checkpoint. I believe this case is controlled by our several precedents condemning suspicionless random stops of motorists for investigatory purposes.

I

There is a critical difference between a seizure that is preceded by fair notice and one that is effected by surprise. That is one reason why a border search, or indeed any search at a permanent and fixed checkpoint, is much less intrusive than a random stop. A motorist with advance notice of the location of a permanent checkpoint has an opportunity to avoid the search entirely, or at least to prepare for, and limit, the intrusion on her privacy.

No such opportunity is available in the case of a random stop or a temporary checkpoint, which both depend for their effectiveness on the element of surprise. A driver who discovers an unexpected checkpoint on a familiar local road will be startled and distressed. She may infer, correctly, that the checkpoint is not simply "business as usual," and may likewise infer, again correctly, that the police have made a discretionary

decision to focus their law enforcement efforts upon her and others who pass the chosen point.

This element of surprise is the most obvious distinction between the sobriety checkpoints permitted by today's majority and the interior border checkpoints approved by this Court in *Martinez-Fuerte*. The distinction casts immediate doubt upon the majority's argument, for *Martinez-Fuerte* is the only case in which we have upheld suspicionless seizures of motorists. But the difference between notice and surprise is only one of the important reasons for distinguishing between permanent and mobile checkpoints. With respect to the former, there is no room for discretion in either the timing or the location of the stop—it is a permanent part of the landscape. In the latter case, however, although the checkpoint is most frequently employed during the hours of darkness on weekends (because that is when drivers with alcohol in their blood are most apt to be found on the road), the police have extremely broad discretion in determining the exact timing and placement of the roadblock.

There is also a significant difference between the kind of discretion that the officer exercises after the stop is made. A check for a driver's license, or for identification papers at an immigration checkpoint, is far more easily standardized than is a search for evidence of intoxication. A Michigan officer who questions a motorist at a sobriety checkpoint has virtually unlimited discretion to detain the driver on the basis of the slightest suspicion. A ruddy complexion, an unbuttoned shirt, bloodshot eyes, or a speech impediment may suffice to prolong the detention. Any driver who had just consumed a glass of beer, or even a sip of wine, would almost certainly have the burden of demonstrating to the officer that his or her driving ability was not impaired.

Finally, it is significant that many of the stops at permanent checkpoints occur during daylight hours, whereas the sobriety checkpoints are almost invariably operated at night. A seizure followed by interrogation and even a cursory search at night is surely more offensive than a daytime stop that is almost as routine as going through a tollgate. Thus we thought it important to point out that the random stops at issue in *Ortiz* frequently occurred at night.

These fears are not, as the Court would have it, solely the lot of the guilty. To be law abiding is not necessarily to be spotless, and even the most virtuous can be unlucky. Unwanted attention from the local police need not be less discomfiting simply because one's secrets are not the stuff of criminal prosecutions. Moreover, those who have found—by reason of prejudice or misfortune—that encounters with the police may become adversarial or unpleasant without good cause will have grounds for worrying at any stop designed to elicit signs of suspicious behavior. Being stopped by the police is distressing even when it should not be terrifying, and what begins mildly may by happenstance turn severe.

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II

The Court, unable to draw any persuasive analogy to *Martinez-Fuerte*, rests its decision today on application of a more general balancing test taken from *Brown v. Texas*, 443 U.S. 47 (1979). In that case the appellant, a pedestrian, had been stopped for questioning in an area of El Paso, Texas, that had “a high incidence of drug traffic” because he “looked suspicious.” He was then arrested and convicted for refusing to identify himself to police officers. We set aside his conviction because the officers stopped him when they lacked any reasonable suspicion that he was engaged in criminal activity. In our opinion, we stated:

Consideration of the constitutionality of such seizures involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.

The gravity of the public concern with highway safety that is implicated by this case is, of course, undisputed.

[BEGIN FOOTNOTE 7]

It is, however, inappropriate for the Court to exaggerate that concern by relying on an outdated statistic from a tertiary source. The Court’s quotation from the 1987 edition of Professor LaFave’s treatise is in turn drawn from a 1983 law review note which quotes a 1982 House Committee Report that does not give the source for its figures. See 4 W. LaFave, *Search and Seizure* § 10.8(d), p. 71 (2d ed. 1987), citing Note, *Curbing the Drunk Driver under the Fourth Amendment: The Constitutionality of Roadblock Seizures*, 71 *Geo.L.J.* 1457, 1457, n. 1 (1983), citing, H.R.Rep. No. 97-867, p. 7.

[END FOOTNOTE 7]

Yet, that same grave concern was implicated in *Delaware v. Prouse*. Moreover, I do not understand the Court to have placed any lesser value on the importance of the drug problem implicated in *Brown v. Texas* or on the need to control the illegal border crossings that were at stake in *Almeida-Sanchez* and its progeny. A different result in this case must be justified by the other two factors in the *Brown* formulation.

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As I have already explained, I believe the Court is quite wrong in blithely asserting that a sobriety checkpoint is no more intrusive than a permanent checkpoint. In my opinion, unannounced investigatory seizures are, particularly when they take place at night, the hallmark of regimes far different from ours; the surprise intrusion upon individual liberty is not minimal. On that issue, my difference with the Court may amount to nothing less than a difference in our respective evaluations of the importance of individual liberty, a serious, albeit inevitable, source of constitutional disagreement. On the degree to which the sobriety checkpoint seizures advance the public interest, however, the Court’s position is wholly indefensible.

The Court's analysis of this issue resembles a business decision that measures profits by counting gross receipts and ignoring expenses. The evidence in this case indicates that sobriety checkpoints result in the arrest of a fraction of one percent of the drivers who are stopped, but there is absolutely no evidence that this figure represents an increase over the number of arrests that would have been made by using the same law enforcement resources in conventional patrols.

[BEGIN FOOTNOTE 12]

Indeed, a single officer in a patrol car parked at the same place as the sobriety checkpoint would no doubt have been able to make some of the arrests based on the officer's observation of the way the intoxicated driver was operating his vehicle.

[END FOOTNOTE 12]

Thus, although the *gross* number of arrests is more than zero, there is a complete failure of proof on the question whether the wholesale seizures have produced any *net* advance in the public interest in arresting intoxicated drivers.

Indeed, the position adopted today by the Court is not one endorsed by any of the law enforcement authorities to whom the Court purports to defer. The Michigan police do not rely, as the Court does, on the *arrest rate* at sobriety checkpoints to justify the stops made there. Colonel Hough, the commander of the Michigan State Police and a leading proponent of the checkpoints, admitted at trial that the arrest rate at the checkpoints was "very low." Instead, Colonel Hough and the State have maintained that the mere *threat* of such arrests is sufficient to deter drunk-driving and so to reduce the accident rate. The Maryland police officer who testified at trial took the same position with respect to his State's program. There is, obviously, nothing wrong with a law enforcement technique that reduces crime by pure deterrence without punishing anybody; on the contrary, such an approach is highly commendable. One cannot, however, prove its efficacy by counting the arrests that were made. One must instead measure the number of crimes that were avoided. Perhaps because the record is wanting, the Court simply ignores this point.

The Court's sparse analysis of this issue differs markedly from Justice Powell's opinion for the Court in *Martinez-Fuerte*. He did not merely count the 17,000 arrests made at the San Clemente checkpoint in 1973; he also carefully explained why those arrests represented a net benefit to the law enforcement interest at stake. Common sense, moreover, suggests that immigration checkpoints are more necessary than sobriety checkpoints: There is no reason why smuggling illegal aliens should impair a motorist's driving ability, but if intoxication did not noticeably affect driving ability it would not be unlawful. Drunk-driving, unlike smuggling, may thus be detected absent any checkpoints. A program that produces thousands of otherwise impossible arrests is not a relevant precedent for a program that produces only a handful of arrests which would be more easily obtained without resort to suspicionless seizures of hundreds of innocent citizens.

III

The most disturbing aspect of the Court's decision today is that it appears to give no weight to the citizen's interest in freedom from suspicionless unannounced investigatory seizures. Although the author of the opinion does not reiterate his description of that interest as "diaphanous," see *Delaware v. Prouse*, 440 U.S., at 666 (REHNQUIST, J., dissenting), the Court's opinion implicitly adopts that characterization. On the other hand, the Court places a heavy thumb on the law enforcement interest by looking only at gross receipts instead of net benefits. Perhaps this tampering with the scales of justice can be explained by the Court's obvious concern about the slaughter on our highways and a resultant tolerance for policies designed to alleviate the problem by "setting an example" of a few motorists. This possibility prompts two observations.

First, my objections to random seizures or temporary checkpoints do not apply to a host of other investigatory procedures that do not depend upon surprise and are unquestionably permissible. These procedures have been used to address other threats to human life no less pressing than the threat posed by drunken drivers. It is, for example, common practice to require every prospective airline passenger, or every visitor to a public building, to pass through a metal detector that will reveal the presence of a firearm or an explosive. Permanent, nondiscretionary checkpoints could be used to control serious dangers at other publicly operated facilities. Because concealed weapons obviously represent one such substantial threat to public safety, I would suppose that all subway passengers could be required to pass through metal detectors, so long as the detectors were permanent and every passenger was subjected to the same search. Likewise, I would suppose that a State could condition access to its toll roads upon not only paying the toll but also taking a uniformly administered breathalyzer test. That requirement might well keep all drunken drivers off the highways that serve the fastest and most dangerous traffic. This procedure would not be subject to the constitutional objections that control this case: The checkpoints would be permanently fixed, the stopping procedure would apply to all users of the toll road in precisely the same way, and police officers would not be free to make arbitrary choices about which neighborhoods should be targeted or about which individuals should be more thoroughly searched. Random, suspicionless seizures designed to search for evidence of firearms, drugs, or intoxication belong, however, in a fundamentally different category. These seizures play upon the detained individual's reasonable expectations of privacy, injecting a suspicionless search into a context where none would normally occur. The imposition that seems diaphanous today may be intolerable tomorrow.

Second, sobriety checkpoints are elaborate, and disquieting, publicity stunts. The possibility that anybody, no matter how innocent, may be stopped for police inspection is nothing if not attention getting. The shock value of the checkpoint program may be its most effective feature: Lieutenant Cotten of the Maryland State Police, a defense witness, testified that "the media coverage . . . has been absolutely overwhelming. . . . Quite frankly we got benefits just from the controversy of the sobriety checkpoints." Insofar as the State seeks to justify its use of sobriety checkpoints on the basis that they dramatize the public interest in the prevention of alcohol-related accidents, the Court should heed Justice SCALIA's comment upon a similar justification for a drug screening program:

The only plausible explanation, in my view, is what the Commissioner himself offered in the concluding sentence of his memorandum to Customs Service employees announcing the program: ‘Implementation of the drug screening program would set an important example in our country’s struggle with this most serious threat to our national health and security.’ Or as respondent’s brief to this Court asserted: ‘if a law enforcement agency and its employees do not take the law seriously, neither will the public on which the agency’s effectiveness depends.’ What better way to show that the Government is serious about its ‘war on drugs’ than to subject its employees on the front line of that war to this invasion of their privacy and affront to their dignity? To be sure, there is only a slight chance that it will prevent some serious public harm resulting from Service employee drug use, but it will show to the world that the Service is ‘clean,’ and—most important of all—will demonstrate the determination of the Government to eliminate this scourge of our society! I think it obvious that this justification is unacceptable; that the impairment of individual liberties cannot be the means of making a point; that symbolism, even symbolism for so worthy a cause as the abolition of unlawful drugs, cannot validate an otherwise unreasonable search. *Treasury Employees v. Von Raab*, 489 U.S. 656, 686-687 (1989) (dissenting opinion).

This is a case that is driven by nothing more than symbolic state action—an insufficient justification for an otherwise unreasonable program of random seizures. Unfortunately, the Court is transfixed by the wrong symbol—the illusory prospect of punishing countless intoxicated motorists—when it should keep its eyes on the road plainly marked by the Constitution.

I respectfully dissent.

Points for Discussion

1. How does the Court arrive at the conclusion that the balancing of the government’s interest in preventing drunk driving and the individual’s interest in being free from seizures weighs in favor of the kind of random stop permitted here?
2. The evidence seems to indicate that sobriety checkpoints are not particularly effective at detecting drunk driving. To what extent should the effectiveness (or ineffectiveness) of a particular mode of law enforcement enter the Court’s constitutional calculus?

Samson v. California
[547 U.S. 843 \(2006\)](#)

JUSTICE THOMAS DELIVERED THE OPINION OF THE COURT.

California law provides that every prisoner eligible for release on state parole “shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.” Cal.Penal Code Ann. § 3067(a) (West 2000). We granted certiorari to decide whether a suspicionless search, conducted under the authority of this statute, violates the Constitution. We hold that it does not.

I

In September 2002, petitioner Donald Curtis Samson was on state parole in California, following a conviction for being a felon in possession of a firearm. On September 6, 2002, Officer Alex Rohleder of the San Bruno Police Department observed petitioner walking down a street with a woman and a child. Based on a prior contact with petitioner, Officer Rohleder was aware that petitioner was on parole and believed that he was facing an at large warrant. Accordingly, Officer Rohleder stopped petitioner and asked him whether he had an outstanding parole warrant. Petitioner responded that there was no outstanding warrant and that he “was in good standing with his parole agent.” Brief for Petitioner 4. Officer Rohleder confirmed, by radio dispatch, that petitioner was on parole and that he did not have an outstanding warrant. Nevertheless, pursuant to Cal.Penal Code Ann. § 3067(a) (West 2000) and based solely on petitioner’s status as a parolee, Officer Rohleder searched petitioner. During the search, Officer Rohleder found a cigarette box in petitioner’s left breast pocket. Inside the box he found a plastic baggie containing methamphetamine.

The State charged petitioner with possession of methamphetamine pursuant to Cal. Health & Safety Code Ann. § 11377(a) (West 1991). The trial court denied petitioner’s motion to suppress the methamphetamine evidence, finding that Cal.Penal Code Ann. § 3067(a) (West 2000) authorized the search and that the search was not “arbitrary or capricious.” A jury convicted petitioner of the possession charge and the trial court sentenced him to seven years’ imprisonment.

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We granted certiorari, 545 U.S. 1165 (2005), to answer a variation of the question this Court left open in *United States v. Knights*, 534 U.S. 112, 120, n. 6 (2001)—whether a condition of release can so diminish or eliminate a released prisoner’s reasonable expectation of privacy that a suspicionless search by a law enforcement officer would not offend the Fourth Amendment. Answering that question in the affirmative today, we affirm the judgment of the California Court of Appeal.

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III

As we noted in *Knights*, parolees are on the “continuum” of state-imposed punishments. On this continuum, parolees have fewer expectations of privacy than

probationers, because parole is more akin to imprisonment than probation is to imprisonment. As this Court has pointed out, “parole is an established variation on imprisonment of convicted criminals The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abides by certain rules during the balance of the sentence.” *Morrissey, supra*, at 477. “In most cases, the State is willing to extend parole only because it is able to condition it upon compliance with certain requirements.” *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 365 (1998).

California’s system of parole is consistent with these observations: A California inmate may serve his parole period either in physical custody, or elect to complete his sentence out of physical custody and subject to certain conditions. Under the latter option, an inmate-turned-parolee remains in the legal custody of the California Department of Corrections through the remainder of his term, § 3056, and must comply with all of the terms and conditions of parole, including mandatory drug tests, restrictions on association with felons or gang members, and mandatory meetings with parole officers. General conditions of parole also require a parolee to report to his assigned parole officer immediately upon release, inform the parole officer within 72 hours of any change in employment status, request permission to travel a distance of more than 50 miles from the parolee’s home, and refrain from criminal conduct and possession of firearms, specified weapons, or knives unrelated to employment. Parolees may also be subject to special conditions, including psychiatric treatment programs, mandatory abstinence from alcohol, residence approval, and “[a]ny other condition deemed necessary by the Board [of Parole Hearings] or the Department [of Corrections and Rehabilitation] due to unusual circumstances.” § 2513. The extent and reach of these conditions clearly demonstrate that parolees like petitioner have severely diminished expectations of privacy by virtue of their status alone.

Additionally, as we found “salient” in *Knights* with respect to the probation search condition, the parole search condition under California law—requiring inmates who opt for parole to submit to suspicionless searches by a parole officer or other peace officer “at any time,”—was “clearly expressed” to petitioner. He signed an order submitting to the condition and thus was “unambiguously” aware of it. In *Knights*, we found that acceptance of a clear and unambiguous search condition “significantly diminished Knights’ reasonable expectation of privacy.” Examining the totality of the circumstances pertaining to petitioner’s status as a parolee, “an established variation on imprisonment,” *Morrissey*, 408 U.S., at 477, including the plain terms of the parole search condition, we conclude that petitioner did not have an expectation of privacy that society would recognize as legitimate.

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The State’s interests, by contrast, are substantial. This Court has repeatedly acknowledged that a State has an “overwhelming interest” in supervising parolees because “parolees . . . are more likely to commit future criminal offenses.” *Pennsylvania Bd. of Probation and Parole*, 524 U.S., at 365 (explaining that the interest in combating recidivism “is the very premise behind the system of close parole supervision”).

Similarly, this Court has repeatedly acknowledged that a State's interests in reducing recidivism and thereby promoting reintegration and positive citizenship among probationers and parolees warrant privacy intrusions that would not otherwise be tolerated under the Fourth Amendment.

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As we made clear in *Knights*, the Fourth Amendment does not render the States powerless to address these concerns *effectively*. Contrary to petitioner's contention, California's ability to conduct suspicionless searches of parolees serves its interest in reducing recidivism, in a manner that aids, rather than hinders, the reintegration of parolees into productive society.

In California, an eligible inmate serving a determinate sentence may elect parole when the actual days he has served plus statutory time credits equal the term imposed by the trial court, Cal.Penal Code Ann. §§ 2931, 2933, 3000(b)(1) (West 2000), irrespective of whether the inmate is capable of integrating himself back into productive society. As the recidivism rate demonstrates, most parolees are ill prepared to handle the pressures of reintegration. Thus, most parolees require intense supervision. The California Legislature has concluded that, given the number of inmates the State paroles and its high recidivism rate, a requirement that searches be based on individualized suspicion would undermine the State's ability to effectively supervise parolees and protect the public from criminal acts by reoffenders. This conclusion makes eminent sense. Imposing a reasonable suspicion requirement, as urged by petitioner, would give parolees greater opportunity to anticipate searches and conceal criminality. This Court concluded that the incentive-to-conceal concern justified an "intensive" system for supervising probationers in *Griffin*. That concern applies with even greater force to a system of supervising parolees.

Petitioner observes that the majority of States and the Federal Government have been able to further similar interests in reducing recidivism and promoting re-integration, despite having systems that permit parolee searches based upon some level of suspicion. Thus, petitioner contends, California's system is constitutionally defective by comparison. Petitioner's reliance on the practices of jurisdictions other than California, however, is misplaced. That some States and the Federal Government require a level of individualized suspicion is of little relevance to our determination whether California's supervisory system is drawn to meet its needs and is reasonable, taking into account a parolee's substantially diminished expectation of privacy.

IV

Thus, we conclude that the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee. Accordingly, we affirm the judgment of the California Court of Appeal.

It is so ordered.

**JUSTICE STEVENS, WITH WHOM JUSTICE SOUTER AND JUSTICE BREYER JOIN,
DISSENTING.**

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What the Court sanctions today is an unprecedented curtailment of liberty. Combining faulty syllogism with circular reasoning, the Court concludes that parolees have no more legitimate an expectation of privacy in their persons than do prisoners. However superficially appealing that parity in treatment may seem, it runs roughshod over our precedent. It also rests on an intuition that fares poorly under scrutiny. And once one acknowledges that parolees do have legitimate expectations of privacy beyond those of prisoners, our Fourth Amendment jurisprudence does not permit the conclusion, reached by the Court here for the first time, that a search supported by neither individualized suspicion nor “special needs” is nonetheless “reasonable.”

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Ignoring just how “closely guarded” is that “category of constitutionally permissible suspicionless searches,” *Chandler v. Miller*, 520 U.S. 305, 309 (1997), the Court for the first time upholds an entirely suspicionless search unsupported by any special need. And it goes further: In special needs cases we have at least insisted upon programmatic safeguards designed to ensure evenhandedness in application; if individualized suspicion is to be jettisoned, it must be replaced with measures to protect against the state actor’s unfettered discretion. Here, by contrast, there are no policies in place—no “standards, guidelines, or procedures,” *Prouse*, 440 U.S., at 650—to rein in officers and furnish a bulwark against the arbitrary exercise of discretion that is the height of unreasonableness.

The Court is able to make this unprecedented move only by making another. Coupling the dubious holding of *Hudson v. Palmer*, 468 U.S. 517 (1984), with the bald statement that “parolees have fewer expectations of privacy than probationers,” the Court two-steps its way through a faulty syllogism and, thus, avoids the application of Fourth Amendment principles altogether. The logic, apparently, is this: Prisoners have no legitimate expectation of privacy; parolees are like prisoners; therefore, parolees have no legitimate expectation of privacy. The conclusion is remarkable not least because we have long embraced its opposite. It also rests on false premises. First, it is simply not true that a parolee’s status, vis-à-vis either the State or the Constitution, is tantamount to that of a prisoner or even materially distinct from that of a probationer. A parolee, like a probationer, is set free in the world subject to restrictions intended to facilitate supervision and guard against antisocial behavior. As with probation, “the State is willing to extend parole only because it is able to condition it upon compliance with certain requirements.” *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357, 365 (1998). Certainly, parole differs from probation insofar as parole is “meted out in addition to, not in lieu of, incarceration.” And, certainly, parolees typically will have committed more serious crimes—ones warranting a prior term of imprisonment—than probationers. The latter distinction, perhaps, would support the conclusion that a State has a stronger interest in supervising parolees than it does in supervising probationers. But why either distinction should result in refusal to acknowledge as legitimate, when harbored by parolees, the same expectation of privacy that probationers reasonably may harbor is beyond fathom.

In any event, the notion that a parolee legitimately expects only so much privacy as a prisoner is utterly without foundation. *Hudson v. Palmer* does stand for the proposition that “[a] right of privacy in traditional Fourth Amendment terms” is denied individuals who are incarcerated. But this is because it “is necessary, as a practical matter, to accommodate a myriad of ‘institutional needs and objectives’ of prison facilities, . . . chief among which is internal security.” *Id.*, at 524. These “institutional needs”—safety of inmates and guards, “internal order,” and sanitation, *Hudson*, 468 U.S., at 527-528—manifestly do not apply to parolees. As discussed above and in *Griffin*, other state interests may warrant certain intrusions into a parolee’s privacy, but *Hudson*’s rationale cannot be mapped blindly onto the situation with which we are presented in this case.

Nor is it enough, in deciding whether someone’s expectation of privacy is “legitimate,” to rely on the existence of the offending condition or the individual’s notice thereof. The Court’s reasoning in this respect is entirely circular. The mere fact that a particular State refuses to acknowledge a parolee’s privacy interest cannot mean that a parolee in that State has no expectation of privacy that society is willing to recognize as legitimate—especially when the measure that invades privacy is both the *subject* of the Fourth Amendment challenge and a clear outlier. With only one or two arguable exceptions, neither the Federal Government nor any other State subjects parolees to searches of the kind to which petitioner was subjected. And the fact of notice hardly cures the circularity; the loss of a subjective expectation of privacy would play “no meaningful role” in analyzing the legitimacy of expectations, for example, “if the Government were suddenly to announce on nationwide television that all homes henceforth would be subject to warrantless entry.” *Smith v. Maryland*, 442 U.S. 735, 740-741, n. 5 (1979).

[BEGIN FOOTNOTE 4]

Likewise, the State’s argument that a California parolee “consents” to the suspicionless search condition is sophistry. Whether or not a prisoner can choose to remain in prison rather than be released on parole, he has no “choice” concerning the search condition; he may either remain in prison, where he will be subjected to suspicionless searches, or he may exit prison and still be subject to suspicionless searches. Accordingly, “to speak of consent in this context is to resort to a manifest fiction, for the [parolee] who purportedly waives his rights by accepting such a condition has little genuine option to refuse.” 5 W. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* § 10.10(b), pp. 440-441 (4th ed. 2004).

[END FOOTNOTE 4]

Threaded through the Court’s reasoning is the suggestion that deprivation of Fourth Amendment rights is part and parcel of any convict’s punishment. If a person may be subject to random and suspicionless searches in prison, the Court seems to assume, then he cannot complain when he is subject to the same invasion outside of prison, so long as the State still *can* imprison him. Punishment, though, is not the basis on which *Hudson* was decided. (Indeed, it is settled that a prison inmate “retains those

[constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system.” *Turner v. Safley*, 482 U.S. 78, 95 (1987).) Nor, to my knowledge, have we ever sanctioned the use of any search as a punitive measure. Instead, the question in every case must be whether the balance of legitimate expectations of privacy, on the one hand, and the State’s interests in conducting the relevant search, on the other, justifies dispensing with the warrant and probable-cause requirements that are otherwise dictated by the Fourth Amendment. That balance is not the same in prison as it is out. We held in *Knights*—without recourse to *Hudson*—that the balance favored allowing the State to conduct searches based on reasonable suspicion. Never before have we plunged below that floor absent a demonstration of “special needs.”

Had the State imposed as a condition of parole a requirement that petitioner submit to random searches by his parole officer, who is “supposed to have in mind the welfare of the [parolee]” and guide the parolee’s transition back into society, *Griffin*, 483 U.S., at 876-877, the condition might have been justified either under the special needs doctrine or because at least part of the requisite “reasonable suspicion” is supplied in this context by the individual-specific knowledge gained through the supervisory relationship. Likewise, this might have been a different case had a court or parole board imposed the condition at issue based on specific knowledge of the individual’s criminal history and projected likelihood of reoffending, or if the State had had in place programmatic safeguards to ensure evenhandedness. Under either of those scenarios, the State would at least have gone some way toward averting the greatest mischief wrought by officials’ unfettered discretion. But the search condition here is imposed on *all* parolees—whatever the nature of their crimes, whatever their likelihood of recidivism, and whatever their supervisory needs—without any programmatic procedural protections.

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Respectfully, I dissent.
