FOURTH AMENDMENT-SEARCH AND SEIZURE-CHECKPOINTS ESTABLISHED WITH THE PRIMARY PURPOSE OF INTERDICTING ILLEGAL NARCOTICS VIOLATE THE FOURTH AMENDMENT'S GUARANTEE AGAINST UNREASONABLE SEARCHES AND SEIZURES-*Indianapolis v. Edmond*, 531 U.S. 32 (2000).

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I. INTRODUCTION

According to the Fourth Amendment of the United States Constitution, every person has the right to be free from unreasonable searches and seizures.[1] The underlying purpose of the amendment is to prevent the government from "arbitrarily and oppressively" interfering with an individual's privacy interest.[2] Reasonableness is the hallmark of the amendment and usually requires that a search or seizure be conducted pursuant to a warrant supported by probable cause.[3] Yet

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[1] The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly designing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[2] Shannon S. Shultz, Note, *Edmond v. Goldsmith: Are Roadblocks Used to Catch Drug Offenders Constitutional?* 84 MARQ. L. REV. 571, 571 (2000) (citing United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976).

[3] U.S. CONST. amend. IV.

Probable cause to search has been defined as "a substantial probability that certain items are the fruits, instrumentalities, or evidence of a crime and that these items are presently to be found at a certain place." Staci O. Schorgl, Note, *Sacrificing the Fourth Amendment in the Name of Drugs: State v. Damask*, 66 UMKC L. REV. 707, 711 (1998) (quoting YALE KAMISAR, WAYNE LAFAVE, & JEROLD H. ISRAEL, MODERN CRIMINAL PROCEDURE: CASES, COMMENTS, AND QUESTIONS 206 (1994)).

Probable cause to arrest means that there is "a substantial probability that a crime has been committed and that the person to be arrested has committed it." YALE KAMISAR, WAYNE LAFAVE, & JEROLD ISRAEL, BASIC CRIMINAL PROCEDURE: CASES, COMMENTS, AND QUESTIONS 201 (1999).

probable cause is not an irreducible component of reasonableness.[4] In some situations, reasonable suspicion[5] may be enough to justify a search or seizure.[6] In recent years, the Supreme Court has held that under certain circumstances, the Fourth Amendment does not require any quantum of suspicion so long as the search or seizure is conducted according to a standardized plan based on neutral criteria.[7]

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[4] Indianapolis v. Edmond, 531 U.S. 32, 37 (2000).

Read literally, the Fourth Amendment only requires probable cause to establish reasonableness when the search or seizure has been conducted pursuant to a warrant. Jon B. Allison, *The Constitutionality of Drug Interdiction Checkpoints: Edmond V. Goldsmith, 183 F.3d 659 (7th Cir 1999)*, 69 U. CIN. L. REV. 671, 686 (2000). Jon B. Allison argued that this is why the Supreme Court, in other circumstances, has been able to validate searches and seizures in the absence of probable cause. *Id.* at 686.

The Court, in many instances, has upheld searches and seizures in the absence of probable cause because it has replaced traditional probable cause analysis with a "balancing test" in which it weighs the public interest served by the search or seizure against the intrusion imposed on the individual's Fourth Amendment interests. *See* Schorgl, *supra* note 3, at 711.

[5] Reasonable suspicion is said to be present where "based upon [the] whole picture, the detaining officers. . .have a particularized and objective basis for suspecting the person stopped of criminal activity." KAMISAR, *supra* note 3, at 39.

[6] Chandler v. Miller, 520 U.S. 305, 308 (1997); *see also* Terry v. Ohio, 392 U.S. 1 (1968) (holding that an officer may conduct a "stop and frisk" in the absence of probable cause so long as, based on the totality of the circumstances, he can articulate a reasonable basis for suspicion).

[7] Suspicionless searches have been validated most often in the context of administrative inspections and searches conducted in order to meet a "special need" beyond the ordinary need of criminal law enforcement. Schorgl, *supra* note 3, at 711 (citing KAMISAR, *supra* note 3, at 39).

Administrative inspections have usually been upheld on the ground that one has a lessened expectation of privacy in a highly regulated area. *See, e.g.,* New York v. Burger, 482 U.S. 691, 702-04 (1978) (allowing warrantless inspection of "closely regulated" business so long as conducted for an administrative purpose); Camara v. Municipal Court, 387 U.S. 523, 534-39 (1967) (validating inspection to ensure compliance with housing code even though officials had no reason to suspect misconduct).

"Special needs" searches have been upheld based on an individual's lessened expectation of privacy combined with the presence of a strong governmental interest. *See, e.g.,* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) (allowing random drug testing of student athletes); Nat'l Treasury Employees v. Von Raab, 489 U.S. 656 (1989) (upholding random drug testing of employees applying for promotion to positions involving the interdiction of illegal

In assessing the reasonableness of suspicionless stops, the Court has applied a "balancing test"[8] in which it weighs the asserted governmental interest against the intrusion imposed upon the individual's Fourth Amendment freedoms.[9] The Court has applied this test and come out on the side of the government in a number of contexts involving checkpoints.[10] Although the legality of drug checkpoints was not addressed by the Supreme Court until its decision in *Indianapolis v. Edmond*,[11] a number of courts of appeals had confronted the issue and arrived at different results.[12]

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drugs); Skinner v. Ry. Labor Executives' Ass'n, 489 U.S. 602 (1989) (validating random drug testing of railway employees).

[8] The "balancing test" was defined by the Supreme Court in *Brown v. Texas* and requires courts to weigh three factors: (1) "the gravity of the public concerns served by the seizures"; (2)" the degree to which the seizures advance the public interest"; and (3)"the severity of the interference with individual liberty." Schorgl, *supra* note 3, at 714 (quoting Brown v. Texas, 443 U.S 47, 50-51 (1979)).

[9] The Court has rejected the premise that there need be suspicion in order for a Fourth Amendment search or seizure to be reasonable. Cynthia R. Bartell, Comment, *Giving Sobriety Checkpoints the Cold Shoulder: A Proposed Balancing Test for Suspicionless Seizure Under the Minnesota Constitution*, 20 WM. MITCHELL L. REV. 515 (1994). The Court determined that in certain situations reasonableness may be determined by balancing the government's need against the invasion imposed on the individual' s Fourth Amendment interests. *Id.* at 537 (discussing the Court's holding in *Camara v. Municipal Court*, 387 U.S. 523 (1967)).

[10] *See* Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990) (validating roadblock used to detect drunk drivers); Delaware v. Prouse, 440 U.S. 648 (1979) (opining that a roadblock set up for the purpose of verifying driver's licenses and vehicle registrations would be constitutional if conducted in a standardized manner); United States v. Martinez-Fuerte, 428 U.S. 543 (1976) (upholding roadblocks for the purpose of interdicting illegal aliens).

[11] 531 U.S. 32 (2000).

[12] *See* Merrett v. Moore, 58 F.3d 1547, 1551 (11th Cir. 1995) (holding that so long as the state had at least one recognized legitimate purpose for establishing the roadblock, a "multi-motive" roadblock was constitutional); *cf.* United States v. Morales-Zamora, 974 F.2d 149, 152 (10th Cir. 1992) (ruling that where a legitimate purpose was articulated as a pretext for detecting drugs in "plain view," the program violated the Fourth Amendment); Gaberth v. United States, 590 A.2d 990, 998-99 (D.C. Cir. 1991) (stating that where the primary purpose of the roadblock is for intercepting illegal drugs, the stop is unconstitutional). Many courts saw drug checkpoints as a legitimate means of combating the nation's drug problem. Schorgl, *supra* note 3, at 707. Schorgl argued that those courts that validated the use of drug checkpoints "sacrificed" Fourth amendment principles in the name of fighting the war on drugs. *Id.*

When the issue of drug checkpoints finally reached the Supreme Court in *Indianapolis v. Edmond*, the Court departed from its usual application of the "balancing test" in the context of roadblock seizures.[13] Instead, the Court applied a "non-law-enforcement primary purpose test" to determine the reasonableness of the roadblock.[14] The Court held that the primary purpose of interdicting illegal narcotics was related to the "general interest in crime control."[15] Because the Court determined that the government's interest in enforcing the criminal law was not consistent with the Fourth Amendment, it held the drug checkpoints to be invalid.[16]

This Casenote will first outline the Supreme Court's roadblock seizure law prior to its decision in *Edmond* in order to highlight the *Edmond* Court's departure from precedent. This note will further explain the *Edmond* decision and the Court's newfound application of the "primary purpose" test in the context of roadblocks. Finally, this note will discuss the flaws in the majority's reasoning and the decision's implication on future roadblock seizure litigation.

II. STATEMENT OF THE CASE

In *Indianapolis v. Edmond*, the United States Supreme Court granted certiorari to determine the validity of "drug checkpoints" set up by the City of Indianapolis, Indiana.[17] The Court examined whether these checkpoints violated the

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[13] *Edmond* 531 U.S. at 41. The Court failed to explain why it chose not to apply the balancing test to drug checkpoints as it had to every other checkpoint situation confronted up until that point. Meredith Boylan, Survey, *Roadblocks Established for the Primary Purpose of Drug Interdiction are Unconstitutional Because They Violate Fourth Amendment Protection Against Unreasonable Searches and Seizures*, 31 SETON HALL L. REV. 539, 544 (2000).

[14] *Edmond*, 531 U.S. at 41. Jon B. Allison describes the test as an inquiry into whether there are "certain special needs present beyond those of general criminal law enforcement." Allison, *supra* note 4, at 687. In his dissent, Chief Justice Rehnquist equates the majority's primary purpose test with the "special needs doctrine" which stands for the proposition that suspicionless *searches* may be performed only when conducted to serve a purpose other than advance the general interest in law enforcement. *Edmond*, 531 U.S. at 54 (Rehnquist, C.J., dissenting). The Chief Justice argued that this test is only appropriate where the individual's privacy interest is especially strong, such as relating to the body or the home. *Id.*

[15] *Edmond*, 531 U.S. at 44.

[16] *Id.*

[17] *Id.* at 34.

Fourth Amendment's guarantee against unreasonable searches and seizures.[18]

In August 1998, the City of Indianapolis set up a total of six vehicle checkpoints in an effort to intercept vehicles that were transporting illegal narcotics.[19] For purposes of the preliminary injunction requested by respondents, the parties stipulated to the facts surrounding the institution and operation of the subject checkpoints.[20] Checkpoint locations were selected weeks in advance according to statistical information reflecting the highest areas of criminal activity and traffic flow.[21] Generally, the roadblocks were operated during daylight hours and drivers were notified that they were approaching such a stop by large signs reading "NARCOTICS CHECKPOINT _ MILE AHEAD, NARCOTICS K-9 IN USE, BE PREPARED TO STOP."[22]

The officers at each checkpoint were instructed to detain a specified number of vehicles in a predetermined sequence.[23] When an automobile was stopped, the driver was instructed to pull to the side of the road so that other traffic could proceed without interruption.[24] Usually, one officer approached the vehicle, informed the driver that he or she was stopped at a drug checkpoint, then checked the motorist's license and registration and looked for signs of impairment.[25] As this interaction took place, a narcotics-detection dog walked around the outside of the vehicle.[26] Under no circumstance was the officer permitted to search the vehicle absent consent or the sufficient level of particularized suspicion.[27] The average vehicle stop lasted no longer than two to three minutes.[28]

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[18] *Id.*

[19] *Id.*

[20] *Id.* at 35.

[21] *Edmond*, 531 U.S. at 35.

[22] *Id.* at 35-36.

[23] *Id.* at 35.

[24] *Id.* at 36.

[25] *Id.* at 35.

[26] *Id.*

[27] Edmond, 531 U.S. at 35.

[28] *Id.* at 36.

James Edmond and Joell Palmer were each stopped at one of the checkpoints.[29] They brought a class action suit in the United States District Court for the Southern District of Indiana on behalf of themselves and all motorists who had been or may in the future have been stopped at the roadblocks.[30] They argued that the checkpoints violated the Fourth Amendment's guarantee against unreasonable searches and seizures and a similar provision of the Indiana Constitution.[31] Edmond and Palmer sought class certification and declaratory and injunctive relief. [32]

The district court granted class certification, but refused to issue a preliminary injunction due to its finding that the checkpoints were constitutional.[33] The court analyzed the subject checkpoints by balancing the "intrusion on the individual's Fourth Amendment rights occasioned by the stop against the promotion of legitimate governmental interests."[34] In electing to apply this balancing test, the court rejected plaintiffs' contention that the government must demonstrate a "special need" beyond the ordinary need for criminal law enforcement.[35] The district court held that the "special needs" doctrine was not applicable to cases dealing with roadblock seizures.[36]

The district court then addressed the gravity of the governmental interest involved and recognized illegal drugs as a great national problem.[37] Accordingly, the district court maintained that the government had a legitimate interest in their interdiction.[38] Furthermore, the court found that the subject checkpoints had

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[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Edmond v. Goldsmith, 38 F. Supp. 2d 1016, 1018 (S.D. Ind. 1998).

[33] *Id.*

[34] *Id.* at 1021 (citing Brown v. Texas, 443 U.S. 47, 49 (1979)).

[35] *Id.* at 1022.

[36] *Id.* (citing Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 451 (1990)). The "special needs" doctrine was first articulated in *Nat'l Treasury Employees*, 489 U.S. 656 (1989), and later applied in *Skinner*, 489 U.S. 602 (1989). *Id.* Both cases dealt with searches of the body in the form of mandatory drug testing, not checkpoint seizures. *Id.* at 1022 n.7.

[37] *Id.* at 1022.

[38] *Edmond*, 38 F. Supp. 2d at 1022.

been substantially effective in addressing the problem and meeting the governmental need. [39]

Next, the district court considered the individual's interests and determined that the intrusion imposed by the stops on motorists' Fourth Amendment freedoms were minimal.[40] Because the checkpoints were conducted by uniformed officers pursuant to neutral guidelines which restricted the discretion of individual officers, the court found the subjective intrusion[41] on motorists to be slight.[42] Similarly, the court noted that the objective intrusion[43] caused by the roadblocks was minimal because the stops lasted approximately two to three minutes and involved only a cursory visual inspection of the vehicle.[44] Accordingly, the District Court for the Southern District of Indiana found that under the *Brown* balancing test, the Indianapolis checkpoint program was consistent with the Fourth Amendment. [45]

Plaintiffs appealed the district court's denial of a preliminary injunction to the United States Court of Appeals for the Seventh Circuit.[46] The Seventh Circuit reversed the judgment of the district court, holding that the checkpoints violated the Fourth Amendment.[47] The Seventh Circuit differentiated between searches related to "general criminal law enforcement" and those conducted according to regulatory programs relating to health, safety, or the integrity of our borders.[48] The court acknowledged that the checkpoints would likely pass constitutional muster if evaluated at the programmatic level because they were conducted pur-

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[39] *Id.* at 1023.

[40] *Id.* at 1024.

[41] "Subjective intrusion" refers to the likelihood that a law-abiding person would be surprised or made fearful by the stop. *Id.* at 1022 (citing *Sitz*, 496 U.S. at 452).

[42] *Id.* at 1023.

[43] "Objective intrusion" refers to the length of time that the individual is detained, the amount of questioning, and the intensity of the visual inspection. *Id.* at 1022 (citing *Sitz*, 496 U.S. at 452).

[44] *Edmond*, 38 F. Supp. 2d at 1024.

[45] *Id.* at 1027.

[46] Edmond v. Goldsmith, 183 F.3d 659, 661 (7th Cir.1999).

[47] *Id.* at 666.

[48] *Id.* at 662.

suant to neutal criteria.[49] However, the majority asserted, because the program involved enforcement of the general criminal law, it would examine the constitutionality of the seizures by looking at each stop individually.[50]

The court of appeals stated that ordinarily a stop will only be deemed "reasonable" if accompanied by probable cause or some level of articulable suspicion.[51] However, the court did note that four exceptions to this general rule have been recognized.[52] The majority stated that the first exception arises when the police are looking for a specific suspect and it is impossible to avoid the seizure of non-suspects.[53] The court found the second to occur when, although no specific person is suspected of wrongdoing, it would be impossible to prevent an imminent crime without a search of all those present.[54] The court asserted that the third recognized exception was for regulatory searches conducted to protect a specific activity and not to enforce the general criminal law.[55] Finally, the court maintained that the fourth instance where articuable suspicion is not necessary is where the government seeks to prevent the illegal importation of persons or goods.[56] The Seventh Circuit held that because the Indianapolis drug checkpoint program did not fit into one of these exceptions, it was unlawful.[57]

The City of Indianapolis appealed the Seventh Circuit's decision to the United States Supreme Court.[58] The Supreme Court granted certiorari on the issue of whether Indianapolis' drug checkpoint program violated the Fourth Amendment.[59] The Court refused to apply the *Brown v. Texas* balancing test and

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[49] *Id.*

[50] *Id.*

[51] *Id.* at 663.

[52] *Edmond*, 183 F.3d at 665-66.

[53] *Id.*

[54] *Id.* at 666.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] Indianapolis v. Edmond, 531 U.S. 32 (2000).

[59] *Id.* at 34.

instead elected to use a "primary purpose" test.[60] Further, the Supreme Court held that it would not validate a checkpoint program whose primary purpose was to enforce the government's general interest in crime control.[61] Because the majority equated the program's purpose of interdicting illegal narcotics with the objective of enforcing the general criminal law, it held the Indianapolis checkpoint program to be in violation of the Fourth Amendment.[62]

III. PRIOR CASE HISTORY

A. *UNITED STATES v. MARTINEZ-FUERTE* - IMMIGRATION CHECKPOINTS

United States v. Martinez-Fuerte[63] marked the beginning of the Supreme Court's roadblock seizure jurisprudence. In *Martinez-Fuerte*, the Court was asked to evaluate the Fourth Amendment implications of a vehicle checkpoint program set up for the purpose of detecting illegal immigrants.[64] Each checkpoint was located on a state highway near the Mexican border, identified by large signs appearing one mile south of the stop, and operated by border patrol agents in full uniform.[65] Each stop lasted, on average, between three to five minutes.[66] The program was carried out according to administrative directions, thereby eliminating the discretion of individual officers.[67]

The Court analyzed the subject roadblock by applying a "balancing test" in which it "weighed the public interest against the Fourth Amendment interest of

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[60] *Id.* at 44.

[61] *Id.*

[62] *Id.* at 48.

[63] 428 U.S. 543 (1976).

[64] *Id.* at 545.

[65] *Id.* at 546.

[66] *Id.* at 547. The checkpoints were operated by agents who would stand between the two lanes of traffic and visually screen all passing cars. *Id.* at 546. In a small number of instances the agent would pull over a car for further inquiry about citizenship status. *Id.* That usually lasted between three to five minutes and did not involve a search of the vehicle or its occupants. *Id.* at 547, 558.

[67] *Id.* at 559 n.13.

the individual."[68] First, the majority pointed out the strength of the public interest in immigration control.[69] The Court reasoned that requiring reasonable suspicion would be impractical because of the heavy flow of traffic and the impossibility of making a particularized study of each passing car.[70]

Next, the Court evaluated the individual's Fourth Amendment interests.[71] Because the checkpoints were operated in a regularized manner, by uniformed officers, and involved little discretionary enforcement activity, the Court reasoned that motorists would feel assured that the stops were authorized.[72] Accordingly, the Court found the stops to be subjectively reasonable. [73] The Court also held the stops to be objectively reasonable because they involved only the brief questioning of occupants and a visual inspection of the vehicle.[74] Thus, the majority concluded, because the public interest was outweighed by the limited intrusion on motorists' freedom, the stops were reasonable even in the absence of individualized suspicion.[75]

B. *BROWN v. TEXAS* - "BALANCING" TEST

In *Brown v. Texas*,[76] the Court first articulated the test that governs roadblock seizure jurisprudence. In *Brown*, the Court evaluated the reasonableness of the defendants' seizure by police officers.[77] It held that "the Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual, or that

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[68] *Id.* at 554.

[69] *Martinez-Fuerte*, 428 U.S. at 556.

[70] *Id.* at 557.

[71] *Id.* at 557-59.

[72] *Id.* at 559.

[73] *Id.* The Court contrasted the regularized nature of the checkpoints with the roving patrol stops that the Court had found violative of the Fourth Amendment in United States v. Brigioni-Ponce, 422 U.S. 873 (1975), due to the unbridled discretion afforded to officers. *Id.*

[74] *Id.* at 558.

[75] *Martinez-Fuerte*, 428 U.S. at 558.

[76] 443 U.S. 47 (1979).

[77] *Id.* at 49.

the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers."[78] In determining the reasonableness of a seizure, the Court maintained that it was necessary to weigh 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."[79] The consideration of these factors has come to be known as the *Brown* balancing test.[80]

In *Brown,* the Court held that because the stop was not conducted pursuant to a neutral and standardized plan or, in the alternative, the officers were unable to articulate a reasonable basis for the stop, defendants' detention was unconstitutional.[81]

C. *DELAWARE v. PROUSE* - DRIVER'S LICENSE AND VEHICLE REGISTRATION CHECKPOINTS

In *Delaware v. Prouse,*[82] the Court concluded that the random detention of motorists for the purpose of verifying driver's licenses and vehicle registrations violated the Fourth Amendment's guarantee against unreasonable seizures.[83] In *Prouse,* a police officer stopped respondent for the purpose of checking his driver's license and registration.[84] Upon approaching the vehicle, the officer spotted marijuana in plain view on the floor of the car.[85] Respondent was indicted for possession of an illegal substance and moved the court to suppress the evidence on the ground that the initial seizure of his automobile was illegal.[86]

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[78] *Id.* at 51 (citing Delaware v. Prouse, 440 U.S.648, 663 (1979); United States v. Martinez-Fuerte, 428 U.S. 543, 558-62 (1976)).

[79] *Id.*

[80] *See* Allison, *supra* note 4, at 688-89.

[81] *Brown,* 443 U.S. at 52.

[82] 440 U.S. 648 (1979).

[83] *Id.* at 663.

[84] *Id.* at 650.

[85] *Id.*

[86] *Id.*

The arresting officer stated that the stop was "routine," yet acknowledged that he did not detain respondent pursuant to any standardized plan.[87] The Court used the *Brown* balancing test to determine whether these routine stops comported with the Fourth Amendment.[88]

The majority weighed the government's interest in verifying drivers licenses and vehicle registrations against the imposition on individual Fourth Amendment liberties and found the spot checks to be unjustified.[89] The Court based its decision on the unbridled discretion afforded officers in their decision of what vehicles to stop.[90] Because the vehicles were randomly selected according to the discretion of individual officers, the Court found the psychological intrusion on motorists to be significant and, therefore, to outweigh the government's interest in promoting highway safety.[91]

The majority did recognize, however, that states have a legitimate interest in verifying that only those qualified to drive operate vehicles and that such vehicles are safe.[92] Accordingly, the Court clarified that its holding did not "preclude the State of Delaware or other States from developing methods for spot checks that involve less intrusion or that do not involve the unconstrained exercise of discretion."[93]

D. *MICHIGAN DEPT. OF STATE POLICE v. SITZ* - SOBRIETY CHECKPOINTS

In *Michigan Dept. of State Police v. Sitz*,[94] the Court once again used the *Brown* balancing test to determine the constitutionality of roadblocks operated in the absence of reasonable suspicion.[95] In *Sitz*, the Michigan State Police had es-

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[87] *Id.*

[88] *Prouse*, 440 U.S. at 654.

[89] *Id.* at 660.

[90] *Id.* at 661. The Court likened these seizures to the roving patrol stops that it had previously invalidated in *United States v. Brigioni-Ponce*, 422 U.S. 873 (1975). *Id.* at 657.

[91] *Id.*

[92] *Id.* at 663.

[93] *Id.*

[94] 496 U.S. 444 (1990).

[95] *Id.* at 449.

tablished sobriety checkpoints in which motorists were stopped and briefly examined for signs of intoxication. [96] If the officer detected impairment, the vehicle was pulled to the side and further sobriety tests were administered.[97] Each checkpoint was operated according to guidelines established by the Sobriety Checkpoint Advisory Committee.[98]

In reaching its decision, the Court rejected respondents' contention that before the three-part balancing test of *Brown* may be used, the government must demonstrate some "special need" beyond that of ordinary law enforcement.[99] The *Sitz* Court pointed out that the "special needs" doctrine had not been used in the roadblock seizure context, and that *Brown v. Texas* and *United States v. Martinez-Fuerte* were the controlling authorities.[100]

Pursuant to the *Brown* test, the Court proceeded to balance "the state's interest in preventing accidents caused by drunk drivers, the effectiveness of sobriety checkpoints in achieving that goal, and the level of intrusion on an individual's privacy caused by the checkpoints."[101] In doing so, the majority found the level of intrusion imposed on motorists to be slight as compared to the strong governmental interest in keeping impaired motorists off the road and the effectiveness of the program.[102] Accordingly, the Court found the subject checkpoints to be consistent with the Fourth Amendment's guarantee of reasonableness.[103]

E. *WHREN v. UNITED STATES* - THE SUBJECTIVE INTENTIONS OF AN OFFICER ARE IRRELEVANT FOR PURPOSES OF FOURTH AMENDMENT ANALYSIS

In *Whren v. Untied States*,[104] the Court ruled that when probable cause exists

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[96] *Id.*

[97] *Id.*

[98] *Id.* at 447. The Committee was a neutral body consisting of representatives from the state and local police forces, state prosecutors, and the University of Michigan Transportation Research Institute. *Id.*

[99] *Id.* at 449. Respondents argued that *Nat'l Treasury Employees v. Von Raab*, 489 U.S. 656 (1989), mandated the use of the "special needs" doctrine. *Id.* at 449-50.

[100] *Sitz*, 496 U.S. at 450.

[101] *Id.* at 449.

[102] *Id.* at 455.

[103] *Id.*

[104] 517 U.S. 806 (1996).

for a stop, it is constitutionally irrelevant whether ulterior motives prompted the police conduct.[105] In *Whren*, police officers were patrolling a "high drug area" when they observed a vehicle stopped at an intersection for a long period of time.[106] When the police turned their car around, the vehicle sped off.[107] The officers pulled the car over, assertedly for the purpose of issuing a warning.[108] As one of the officers approached the vehicle, he saw bags of crack cocaine in the passenger's hands.[109] Both occupants were arrested for violating federal drug laws.[110] Defendants argued that the stop violated the Fourth Amendment because the officers did not have probable cause to believe that they were involved in illegal drug activity and that the alleged traffic violations were used as a pretext to make an otherwise unconstitutional stop.[111]

In reaching its decision, the Supreme Court rejected defendants' contention that the test for the constitutionality of traffic stops should be whether a reasonable police officer would have made the particular stop for the stated reason.[112] Rather, the Court maintained, where probable cause is objectively present, an individual officer's subjective motivation for making the stop is of no constitutional significance.[113] The Court refused to entertain Fourth Amendment challenges to stops based on the subjective intent of the officer where, objectively, there are valid reasons for making such stops.[114]

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[105] *Id.* at 814.

[106] *Id.* at 808.

[107] *Id.*

[108] *Id.*

[109] *Id.* at 808-09.

[110] *Whren*, 517 U.S. at 809.

[111] *Id.*

[112] *Id.* at 811.

[113] *Id.* at 814.

[114] *Id.* at 813.

IV. INDIANAPOLIS V. EDMOND

A. THE MAJORITY ADOPTS THE "PRIMARY PURPOSE" TEST

The United States Supreme Court granted certiorari to determine whether roadblocks set up by the City of Indianapolis, Indiana, for the purpose of interdicting illegal narcotics, violated the Fourth Amendment's guarantee against unreasonable searches and seizures.[115]

Writing for the majority, Justice O'Connor[116] began by stating that Fourth Amendment searches and seizures must be reasonable if they are to pass constitutional muster.[117] Although in the absence of "individualized suspicion" a search or seizure is usually considered to be unreasonable, the Court acknowledged that in many situations searches and seizures are constitutional despite an absence of suspicion.[118]

The Justice then proceeded to address the Court's previous treatment of Fourth Amendment claims in the context of suspicionless stops on state roadways.[119] Justice O'Connor stated that in *United States v. Martinez-Fuerte*, the Court held immigration checkpoints, located on U.S highways within one hundred miles of the Mexican border, to be constitutional.[120] The Justice noted that the Court's decision in *Martinez-Fuerte* turned on the "formidable law enforcement problems" posed by policing the border, the "impracticality of the particularized study of a given car to discern whether it was transporting illegal aliens, as well as the relatively modest degree of intrusion entailed by the stops."[121]

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[115] Indianapolis v. Edmond, 531 U.S. 32, 34 (2000).

[116] Justice O'Connor was joined by Justices Stevens, Kennedy, Souter, Ginsburg, and Breyer.

[117] *Edmond*, 531 U.S. at 37 (citing Chandler v. Miller 520 U.S. 305, 308 (1997)).

[118] *Id. See, e.g.*, Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) (allowing random drug testing of student athletes); New York v. Burger, 482 U.S. 691 (1987) (upholding warrantless inspection of "closely regulated" business); Camara v. Municipal Court, 387 U.S. 523 (1967) (finding administrative inspections for the purpose of ensuring compliance with housing codes to be constitutional). *Id.* at 37.

[119] *Edmond*, 531 U.S. at 37-40.

[120] *Id.* at 38.

[121] *Id.* (citing United States v. Martinez-Fuerte, 428 U.S. 543, 556-64 (1976)).

Next, the majority addressed the Court's holding in *Michigan Dept. of State Police v. Sitz*.[122] Justice O'Connor stated that in *Sitz* the Court upheld the detention of motorists at a Michigan highway sobriety checkpoint.[123] The *Edmond* court explained that its holding in *Sitz* was based primarily on the "magnitude of the State's interest in getting drunk drivers off the road."[124]

Finally, the Court discussed its reasoning in *Delaware v. Prouse,* that a roadblock set up for the purpose of checking driver's licenses and vehicle registrations would be permissible if conducted in a standardized manner.[125] The majority pointed out that in *Prouse*, the Court invalidated a license and vehicle registration checkpoint because in choosing which vehicles to stop, the officer on the scene was empowered to use "standardless and unconstrained discretion."[126] The Court opined that a roadblock set up for a similar purpose would pass constitutional scrutiny if the element of discretion was removed.[127]

The Court further indicated that the purpose of the *Prouse* roadblock was valid because it was distinguishable from the "general interest in crime control."[128] Although one of the stated objectives of the roadblock was "the apprehension of stolen motor vehicles and of drivers under the influence of alcohol and narcotics,"[129] the Court opined that this purpose may be "subsumed" by the government's valid interest in highway safety, making the hypothetical standardized roadblock constitutional.[130]

Justice O'Connor asserted that the Indianapolis drug checkpoint was clearly a seizure under the Fourth Amendment.[131] The Justice began by stating the Court

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[122] *Id.* at 39.

[123] *Id.* at 39 (citing Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 451 (1996)).

[124] *Id.*

[125] *Edmond*, 531 U.S. at 39 (citing Delaware v. Prouse, 440 U.S. 648, 663 (1979)).

[126] *Id.* (quoting *Prouse*, 440 U.S. at 661).

[127] *Id.* (citing *Prouse*, 440 U.S. at 663).

[128] *Id.* at 40. The *Edmond* Court stated that it had never upheld a checkpoint "whose primary purpose was to detect evidence of ordinary criminal wrongdoing" in furtherance of the state's general interest in crime control. *Id.* at 38.

[129] *Id.* at 40 (quoting Prouse, 440 U.S. at 659 n.18). The Court equated this objective with the "general interest in crime control." *Id.*

[130] *Id.*

[131] *Edmond*, 531 U.S. at 40. The presence of a narcotics-sniffing dog does not transform

would not recognize an exception "to the general rule that a seizure must be accompanied by some measure of individualized suspicion" where the primary purpose of the seizure is to "detect evidence of ordinary criminal wrongdoing."[132] The Court refused to justify suspicionless stops with promotion of the "general interest in crime control."[133] Because the majority equated the Indianapolis checkpoint program's purpose of interdicting illegal narcotics[134] with the forbidden objective of enforcing the general criminal law, the Court held that operation of the checkpoint program violated the Fourth Amendment.[135]

The Court proceeded to reject petitioners' contention that prior caselaw mandated validation of the checkpoint program.[136] Justice O'Connor attempted to distinguish prior cases in which the Court accepted suspicionless seizures at highway checkpoints from the present situation. [137] The Justice began by distinguishing the "primary purpose" of the roadblocks found in *Martinez-Fuerte* from those in *Edmond*.[138] The Court compared the objective of policing the border and enforcing immigration law in *Martinez-Fuerte* to the Indianapolis program's objective of interdicting illegal narcotics.[139] Without further explanation, the majority found the prior purpose to be legitimate and the latter as serving the insufficient interest of enforcing the general criminal law.[140]

While acknowledging the "severe and intractable nature of the drug problem," the Court stated that the gravity of the problem cannot be dispositive of

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a seizure into a search. *Id.* (citing United States v. Place, 462 U.S. 699 (1983)).

[132] *Id.* at 41.

[133] *Id.* (citing *Prouse*, 440 U.S. at 659 n.18 (1997) (suggesting that roadblocks would not be approved if their primary purpose is to detect evidence of ordinary criminal wrongdoing)).

[134] The City of Indianapolis conceded in its stipulation of facts that the primary purpose of the checkpoints was the interdiction of illegal narcotics. *Id.* at 41. But the City also maintained that other purposes of the program include keeping impaired motorists off the road and verifying licenses and vehicle registrations. *Id.* at 47.

[135] *Id.* at 42.

[136] *Id.* at 42-43.

[137] *Edmond*, 531 U.S. at 42-44.

[138] *Id.* at 42.

[139] *Id.*

[140] *Id.*

whether the seizure violated the Fourth Amendment.[141] The majority recognized that due to the impracticality of examining each car in order to establish the requisite level of individualized suspicion, the situation presented in *Edmond* was comparable to that of *Martinez-Fuerte*. However, the Court asserted, that factor alone would not justify suspicionless searches or seizures.[142]

Next, the Court attempted to reconcile the holding of *Sitz* with its invalidation of the subject checkpoint proram.[143] Justice O'Connor distinguished *Sitz* on the issue of highway safety and law enforcement's immediate need to remove impaired drivers from the streets.[144] Although the Court acknowledged that a secondary purpose of the Indianapolis checkpoint program was to keep impaired motorists off the road, the majority refused to liken the highway safety concern at issue in *Edmond* to the conditions present in *Sitz*.[145] The Justice stated,

> [t]he detection and punishment of almost any criminal offense serves broadly the safety of the community and our streets would no doubt be safer but for the scourge of illegal drugs. Only with respect to a smaller class of offenses, however, is society confronted with the type of immediate, vehicle-bound threat to life and limb that the sobriety checkpoint in *Sitz* was designed to eliminate.[146]

Finally, the Court addressed petitioners' contention that *Whren v. United States*[147] precluded the Court from inquiring as to the purpose of the checkpoint when the government has articulated a legitimate interest for the stop.[148] In *Whren*, the Court held that the subjective intentions of an officer during a traffic stop are irrelevant if objectively probable cause exists.[149] The Court distin-

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[141] *Id.*

[142] *Id.* at 43.

[143] *Edmond*, 531 U.S. at 42-43.

[144] *Id.* at 43.

[145] *Id.*

[146] *Id.*

[147] 517 U.S. 806 (1996).

[148] *Edmond*, 531 U.S. at 45.

[149] *Id.* (citing Whren v. United States, 517 U.S. 806, 810-13 (1996)).

guished *Whren* from the present situation based on the "programmatic" nature of the Indianapolis checkpoints.[150] The Court held that while "subjective intentions play no role in ordinary probable-cause Fourth Amendment analysis,"[151] when programmatic schemes are undertaken in the absence of individualized suspicion, the purpose of such schemes may be examined to determine their validity under the Fourth Amendment.[152] Accordingly, the Court held, it was not precluded from inquiring as to the primary purpose of the Indianapolis checkpoint program.[153] Because the majority equated the program's purpose of interdicting illegal narcotics to the "general interest in crime control," it held that the Indianapolis drug checkpoint program violated the Fourth Amendment.[154]

B. CHIEF JUSTICE REHNQUIST DISSENTS

Chief Justice Rehnquist[155] wrote in dissent to the majority's invalidation of the checkpoint program, which he deemed to be "plainly constitutional under Fourth Amendment jurisprudence."[156] The Chief Justice began by stating the "blackletter roadblock seizure law" as articulated in *Martinez-Fuerte* and *Brown*.[157] Chief Justice Rehnquist explained that first the Court must apply a "balancing test" in which it weighs "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."[158] Second, the dissent maintained that the seizure must be limited in scope and carried out according to a neutral plan that limits the individual discretion of officers.[159]

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[150] *Id.* at 45-46.

[151] *Id.* at 45 (quoting *Whren*, 517 U.S. at 813).

[152] *Id.* at 48.

[153] *Id.* at 46.

[154] *Edmond*, 531 U.S. at 48.

[155] *Id.* (Rehnquist, C.J., dissenting).

[156] *Id.*

[157] *Id.* at 49 (Rehnquist, C.J., dissenting). The Chief Justice asserted that the majority opinion lacked a clear recitation of the relevant law. *Id.*

[158] *Id.* (quoting Brown v. Texas, 443 U.S. 47, 50-51 (1979)).

[159] *Id.* (citing *Brown*, 443 U.S. at 51; United States v. Martinez-Fuerte, 428 U.S. 543, 566-67 (1976)).

Chief Justice Rehnquist demonstrated how these principles were applied in *Martinez-Fuerte*.[160] In that case, the Chief Justice stated, the Court approved a highway checkpoint program set up to detect illegal aliens because the seizure was limited in scope.[161] Chief Justice Rehnquist maintained that in balancing the limited intrusion on motorists' Fourth Amendment freedoms against the states' "formidable" interest in controlling the flow of illegal immigrants, the *Martinez-Fuerte* Court ruled in favor of the state.[162] The Chief Justice reasoned that the subject roadblock must be upheld following the precedent established in *Martinez-Fuerte*.[163] The dissent also noted that two of the Indianapolis checkpoints' stated objectives were already validated by the Court.[164] The Chief Justice maintained that the Court recognized the prevention of impaired motorists from operating a vehicle and the verifying of driver's licenses and registrations to be legitimate governmental interests in *Sitz* and *Prouse*, respectively.[165]

The Chief Justice reasoned that because the government had articulated valid purposes for these checkpoints, it was "constitutionally irrelevant" that the city also wanted to interdict illegal narcotics.[166] The dissent referred to *Whren v. United States*, in which the Court held that an officer's subjective intent in stopping a vehicle was irrelevant when probable cause was objectively present.[167] The Chief Justice reasoned that because the subject roadblocks served the legitimate governmental interests of "preventing drunk driving and checking for

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[160] *Edmond*, 531 U.S. at 49-50 (Rehnquist, C.J., dissenting).

[161] *Id.* The Chief Justice distinguished between the "objective" and "subjective" intrusion on the motorists, and concluded that both were limited in scope. *Id.* The objective intrusion - the stop - was limited because it only consisted of brief questioning of the occupants and a visual inspection of the car itself. *Id.* The subjective intrusion - the fear of being stopped by an officer - was minimal because the "regularized manner in which [the] established checkpoints [were] operated [was] visible evidence, reassuring to law-abiding motorists, that the stops [were] duly authorized and believed to serve the public interest." *Id.* at 49 (Rehnquist, C.J., dissenting) (quoting Martinez-Fuerte, 428 U.S. at 595).

[162] *Id.* at 49 (Rehnquist, C.J., dissenting) (citing *Martinez-Fuerte*, 428 U.S. at 559).

[163] *Id.* at 50 (Rehnquist, C.J., dissenting).

[164] *Id.* at 51 (Rehnquist, C.J., dissenting).

[165] *Id.*

[166] *Edmond,* 531 U.S. at 52 (Rehnquist, C.J., dissenting).

[167] *Id.* (citing Whren v. United States, 517 U.S. 806, 814 (1996)).

driver's licenses and vehicle registrations," they were objectively reasonable.[168] Accordingly, the Chief Justice concluded, the Court may not look to the subjective intent of the operating officers.[169] Furthermore, the dissent maintained, the seizure was both "objectively" and "subjectively" reasonable because it only lasted between two and three minutes, did not involve a search, and was conducted by uniformed officers who were not empowered to use discretion.[170]

In Part II of the dissent, Chief Justice Rehnquist criticized the majority's use of the "primary purpose" test in the context of roadblock seizures.[171] The Chief Justice explained that the "non-law enforcement primary purpose test" or the "special needs" doctrine had been used to uphold suspicionless searches only in the context of searches of the body or home.[172] Due to the regulated nature of the automobile, the dissent reasoned, one's expectation of privacy is much less than in his body or home.[173] Accordingly, Chief Justice Rehnquist argued, because a brief seizure of an automobile is not comparable to a search of one's body or home, the "special needs" doctrine is not necessary to protect Fourth Amendment interests in this context.[174] Also, the Chief Justice maintained, use of this doctrine will encourage endless litigation over the "purpose" of any seizure and cause uncertainty among officials as to what a proper purpose may be.[175] Chief Justice Rehnquist concluded that because the Indianapolis checkpoint program complied with the mandates of prior roadblock jurisprudence, the seizures were constitutionally permissible.[176]

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[168] *Id.*

[169] *Id* at 51-52 (Rehnquist, C.J., dissenting).

[170] *Id.* at 53 (Rehnquist, C.J., dissenting).

[171] *Id.* (Rehnquist, C.J., dissenting).

[172] *Edmond*, 531 U.S. at 54 (Rehnquist, C.J., dissenting); see, e.g., Skinner v. Railway Labor Executives' Assn., 489 U.S. 602 (1989) (drug test search); Camara v. Municipal Court, 387 U.S. 523 (1967) (home administrative search).

[173] *Edmond*, 531 U.S. at 54 (Rehnquist, C.J., dissenting).

[174] *Id.* at 55 (Rehnquist, C.J., dissenting).

[175] *Id.*

[176] *Id.* at 56 (Rehnquist, C.J., dissenting).

C. JUSTICE THOMAS DISSENTS

Justice Thomas wrote a brief dissenting opinion to express his view that the Court's decisions in *Sitz* and *Martinez-Fuerte* compelled the upholding of the Indianapolis checkpoint program.[177] The Justice stated that both cases provided that suspicionless roadblock seizures are constitutional if operated in such a way as to remove the individual discretion of officers.[178] Although not in agreement with those prior decisions, the Justice nonetheless acknowledged that absent being overruled, their precedent must be followed and the *Edmond* checkpoint program should have been upheld.[179]

V. CONCLUSION

The Supreme Court has gradually eroded Fourth Amendment freedoms by carving out exceptions to the ordinary requirements of probable cause or reasonable suspicion.[180] In the context of roadblock seizures used to intercept illegal aliens, verify driver's licenses and vehicle registrations, and prevent intoxicated persons from operating vehicles, the Court has consistently held that stops need not be based on any quantum of suspicion.[181] In *Edmond*, the court retreated from its path of circumscribing Fourth Amendment freedoms. By adopting the "primary purpose" test as a means of evaluating the reasonableness of drug checkpoints, the Court reaffirmed the individual's interest in freedom from arbitrary search and seizure, but, at the same time, ignored the clear precedent that was set forth in *Martinez-Fuerte* and *Sitz*. Implicit in the majority's holding was a desire to protect individual liberty and prevent law enforcement from establishing a program of seizure for any purpose, so long as it articulates a legitimate governmental interest and conducts the program in a standardized manner.[182] Although well-intentioned, the opinion clearly departed from precedent.[183] As a result of the *Edmond* decision, there will likely be confusion by both law en-

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[177] *Id.* at 56 (Thomas, J., dissenting)

[178] *Id.* (Thomas, J., dissenting).

[179] *Edmond*, 531 U.S at 56 (Thomas, J., dissenting).

[180] Schultz, *supra* note 2, at 571.

[181] *Id.*

[182] *Edmond*, 531 U.S. at 46.

[183] *See* Boylan, *supra* note 13, at 544.

forcement officials and courts as to what constitutes a valid purpose for conducting a checkpoint.[184]

Although the Court attempted to reconcile its holding with those of *Martinez-Fuerte* and *Sitz*, it was ultimately unable to do so. The majority unsuccessfully distinguished the prior cases based on the "primary purpose" of each roadblock.[185] The Court argued that unlike the roadblock in *Edmond*, the stops in *Martinez-Fuerte* and *Sitz* did not relate to the general interest in crime control.[186] However, the ultimate result of each roadblock was the apprehension and prosecution of persons breaking criminal laws. In *Sitz*, the roadblock targeted those who violated drunk driving laws.[187] In *Martinez-Fuerte*, officers arrested those found to be violating immigration law.[188] Accordingly, the final effect of each of the subject roadblocks was enforcement of the criminal law.

Although the Court may have been successful in distinguishing the sobriety checkpoints of *Sitz* based on the non-law-enforcement objective of highway safety, [189] this reasoning fails when applied to *Martinez-Fuerte*. The clear purpose of the immigration checkpoint in *Martinez-Fuerte* was not to promote highway safety, but rather to enforce United States immigration law.[190] It is almost impossible to see how the enforcement of immigration law is any less related to the "general interest in crime control" than the enforcement of drug laws.

Additionally, the use of the "primary purpose" test in the context of roadblock seizures not only ignores prior caselaw, but in effect contradicts it. In *Sitz*, the Court specifically rejected the proposition that in order to apply the balancing test the government must first articulate a "special need" beyond the ordinary need for law enforcement.[191] As Chief Justice Rehnquist pointed out in his dissent, the "special needs" doctrine had only been used in the context of searches of the body and the home.[192] Because the expectation of privacy in one's auto-

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[184] *Id.*

[185] *See Edmond*, 531 U.S. at 41.

[186] *Id.*

[187] Michigan Dept. of State Police v. Sitz, 496 U.S. 444, 447, 450 (1996).

[188] United States v. Martinez-Fuerte, 428 U.S 543, 545 (1976).

[189] *Edmond*, 531 U.S. at 43.

[190] *Id.* at 38 (citing *Martinez-Fuerte*, 428 U.S. at 551-54).

[191] *Sitz*, 496 U.S. at 449-50.

[192] *Edmond*, 531 U.S. at 54 (Rehnquist, C.J., dissenting).

mobile is significantly less than in one's body or home, it is inappropriate to use the "special needs" doctrine in this context.[193]

Furthermore, the *Edmond* decision may serve to complicate future Fourth Amendment litigation by adding another dimension to roadblock seizure law.[194] The newfound application of the "primary purpose" test in the context of roadblock seizures is certain to produce widespread litigation over the "purpose" of such roadblocks.[195] Courts will now likely find themselves charged with evaluating the "purpose" of countless highway roadblock programs.[196] Law enforcement officials who were once confident that they were conducting valid checkpoints in accordance with the principles set forth in *Martinez-Fuerte* and *Sitz*, may now be confused as to what constitutes a valid purpose. [197] Also, facially valid roadblocks will likely be attacked on the ground that they were implemented to promote a hidden forbidden objective.[198]

Because the Court failed to articulate a legitimate reason for its departure from precedent, its decision in *Edmond* is flawed. *Martinez-Fuerte* and *Sitz* stand for the proposition that, even in the absence of individual suspicion, roadblock seizures are constitutional if conducted according to a neutral, standardized plan that limits the discretion of individual officers.[199] Absent the overruling of *Martinez-Fuerte* and *Sitz*, the Court was compelled to uphold the drug checkpoint program in *Edmond*.[200] Ultimately, the Court's valiant attempt to reinforce the strength of Fourth Amendment freedoms is overshadowed by the Court's inconsistency.[201]

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[193] *Id.*

[194] *See* Boylan, *supra* note 13, at 544-45.

[195] *Edmond*, 531 U.S. at 55 (Rehnquist, C.J., dissenting).

[196] *Id.*

[197] *Id.*

[198] *Id.* at 46.

[199] *Id.* at 56 (Thomas, J., dissenting).

[200] *Id.*

[201] Boylan, *supra* note 14, at 544-45.