

The reduced expectancy concept has broadened police powers to conduct automobile searches without warrants, but they still must have probable cause to search a vehicle<sup>270</sup> and they may not make random stops of vehicles on the roads, but instead must base stops of individual vehicles on probable cause or some “articulable and reasonable suspicion”<sup>271</sup> of traffic or safety violation or some other criminal activity.<sup>272</sup> If police stop a vehicle, then the vehicle’s passengers as well as its driver are deemed to have been seized from the moment the car comes to a halt, and the passengers as well as the driver may challenge the constitutionality of the stop.<sup>273</sup> Likewise, a police officer may frisk (patdown for weapons) both the driver and any passengers whom he reasonably concludes “might be armed and presently dangerous.”<sup>274</sup>

By contrast, fixed-checkpoint stops in the absence of any individualized suspicion have been upheld for purposes of promoting highway safety<sup>275</sup> or policing the international border,<sup>276</sup> but not

<sup>270</sup> *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973) (roving patrols); *United States v. Ortiz*, 422 U.S. 891 (1975). *Cf.* *Colorado v. Bannister*, 449 U.S. 1 (1980). An automobile’s “ready mobility [is] an exigency sufficient to excuse failure to obtain a search warrant once probable cause is clear”; there is no need to find the presence of “unforeseen circumstances” or other additional exigency. *Pennsylvania v. Labron*, 527 U.S. 465 (1996). *Accord*, *Maryland v. Dyson*, 527 U.S. 465 (1999) (*per curiam*). *Cf.* *Florida v. Harris*, 568 U.S. \_\_\_, No. 11–817, slip op. (2013).

<sup>271</sup> *Delaware v. Prouse*, 440 U.S. 648, 663 (1979) (discretionary random stops of motorists to check driver’s license and automobile registration constitute Fourth Amendment violation); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (violation for roving patrols on lookout for illegal aliens to stop vehicles on highways near international borders when only ground for suspicion is that occupants appear to be of Mexican ancestry). *But cf.* *United States v. Arvizu*, 534 U.S. 266 (2002) (reasonable suspicion justified stop by border agents of vehicle traveling on unpaved backroads in an apparent effort to evade a border patrol checkpoint on the highway). In *Prouse*, the Court cautioned that it was not precluding the states from developing methods for spot checks, such as questioning all traffic at roadblocks, that involve less intrusion or that do not involve unconstrained exercise of discretion. 440 U.S. at 663.

<sup>272</sup> An officer who observes a traffic violation may stop a vehicle even if his real motivation is to investigate for evidence of other crime. *Whren v. United States*, 517 U.S. 806 (1996). The existence of probable cause to believe that a traffic violation has occurred establishes the constitutional reasonableness of traffic stops regardless of the actual motivation of the officers involved, and regardless of whether it is customary police practice to stop motorists for the violation observed. Similarly, pretextual arrest of a motorist who has committed a traffic offense is permissible. *Arkansas v. Sullivan*, 532 U.S. 769 (2001) (*per curiam*) (upholding search of the motorist’s car for a crime not related to the traffic offense).

<sup>273</sup> *Brendlin v. California*, 551 U.S. 249, 263 (2007).

<sup>274</sup> *Arizona v. Johnson*, 129 S. Ct. 781, 786 (2009).

<sup>275</sup> *Michigan Dep’t of State Police v. Sitz*, 496 U.S. 444 (1990) (upholding a sobriety checkpoint at which all motorists are briefly stopped for preliminary questioning and observation for signs of intoxication).

<sup>276</sup> *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (upholding border patrol checkpoint, over 60 miles from the border, for questioning designed to apprehend illegal aliens). *See also* *United States v. Flores-Montano*, 541 U.S. 149 (2004) (upholding a search at the border involving disassembly of a vehicle’s fuel tank).