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## COURT PERMITS BROAD SEARCHES OF VEHICLES ENTERING COUNTRY

*(United States v. Flores-Montano, No. 02-1794)*

The U.S. Supreme Court this week upheld the authority of customs officials to inspect thoroughly all vehicles crossing the border into the United States, regardless whether they have reason to suspect smuggling.

The decision in *United States v. Flores-Montano* was a victory for the Washington Legal Foundation (WLF), which filed a brief urging broad inspection authority. WLF argued that terrorists, drug cartels, and immigrant smugglers cannot effectively be thwarted unless the government is permitted to conduct random searches of all entering vehicles. The Court agreed with WLF that such searches do not violate Fourth Amendment protections against unreasonable searches and seizures because the government has always been granted far more leeway to conduct searches at the border than in the interior of the country.

The case involved the search of a car being driven into California by a Mexican citizen. The customs inspector suspected that illegal drugs might be hidden in the car's fuel tank. Accordingly, he ordered the car impounded and the fuel tank removed, a process that took less than one hour. The fuel tank was found to contain 37 kilograms of marijuana, and the driver was arrested for importing an illegal drug. The driver then moved to suppress the evidence on the ground that it was the fruit of an unconstitutional search -- because the government admitted that it lacked "reasonable suspicion" that drugs were present before conducting the search.

The U.S. Court of Appeals for the Ninth Circuit in San Francisco granted the motion to suppress the evidence, finding that the search of a car's fuel tank in the absence of "reasonable suspicion" violated the Fourth Amendment. The government appealed that decision to the Supreme Court.

In reversing the appeals court decision, the Supreme Court agreed with WLF that the government has far broader rights to conduct suspicionless searches at the border than elsewhere. The Court took issue with the Ninth Circuit's conclusion that only "routine"

searches may be conducted at the border in the absence of "reasonable suspicion" of criminal activity. The Court said that while the search of a gas tank is somewhat more intrusive than some other common search techniques engaged in by customs officials, that intrusiveness is far outweighed by the government's overwhelming need to conduct thorough searches in order to protect the integrity of our nation's borders.

In its brief, WLF noted that more than 25% of illegal drugs seized at border checkpoints are discovered inside fuel tanks. WLF argued that if gas tanks of incoming vehicles are declared off-limits to random searches by customs officials, the courts will have provided a road map to drug smugglers, terrorists, and others seeking to circumvent border security measures.

"The drafters of the Fourth Amendment could not have intended to create such a massive chink in our nation's armor," said WLF Chief Counsel Richard Samp after reviewing the Court's decision. "Terrorist groups tried to smuggle explosives into this country by car in order to blow up Los Angeles International Airport; under the rationale that prevailed in the appeals court, the only mistake those terrorists made was failing to hide the explosives in their fuel tank," Samp said.

WLF noted that the Department of Homeland Security is in the process of adopting massively expanded inspection procedures for imported cargo containers and for trucks crossing into the country -- all for the purpose of protecting the nation against terrorist attacks. WLF stated that the constitutionality of those inspection procedures would have been thrown into considerable doubt if the Supreme Court had upheld the Ninth Circuit decision.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a significant portion of its resources to efforts to promote national security. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is available on its web site, [www.wlf.org](http://www.wlf.org).