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UNITED STATES V. RAMSEY:
WARRANTLESS SEARCH SANCTIONED BY
THE SUPREME COURT

I. INTRODUCTION

In United States v. Ramsey\(^1\) the United States Supreme Court, for the first time in its history,\(^2\) determined the permissible scope of searches of international letter class mail\(^3\) entering this country from abroad. Prior to this case, only the circuit courts of appeals had litigated the border search issue, and they had come to varying conclusions.\(^4\) The Supreme Court granted certiorari in Ramsey\(^5\) to resolve the conflict.\(^6\) The Ramsey decision\(^6\) has settled this question and has given guidelines to the lower courts when future cases involving the border search issue arise.\(^7\)

The border search doctrine has traditionally been considered to be

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2. See United States v. Odland, 502 F.2d 148, 151 (7th Cir. 1974).
3. International letter class mail was defined in 39 C.F.R. §12.1 (1975) to include "letters and packages paid at the letter rate of postage, post cards and aerograms." This classification is analogous to domestic first class mail in that letter class mail is transported by the fastest method available and at the highest rate. 39 C.F.R. §§ 12.1, 12.2 (1975). These regulations were substantially identical to Postal Service Publication 42 (Postal Service Regulations on International Mail). This publication is now incorporated by reference in 39 C.R.F. § 10.5 (1977), under authority of 5 U.S.C. § 552(a) (1970 & Supp. V 1975), and §§ 12.1 and 12.2 are no longer in force.
4. "The right to search at the border without a search warrant is called the border search." Comment, Search and Seizure at the Border—The Border Search, 21 RUTGERS L. REV. 513, 516 (1967).
5. 97 S.Ct. 56 (1977).
7. Id.
an exception to the fourth amendment. It has been applied to travelers, vehicles, baggage, and most recently, to international mail. The justification for such warrantless searches is based in part upon the need of the nation to protect its boundaries. Other rationales offered by the various courts which have heard the issue are: (1) Congress has historically permitted such searches, (2) international travelers expect to have to disclose their identities and the contents of their belongings at the border—i.e., there is no reasonable expectation of privacy, (3) the government’s interest in controlling border traffic outweighs an individual’s privacy interests, (4) the impracticality of obtaining a warrant for the huge volume of traffic across the border necessitates dispensing with the requirement, and (5) it is frequently impossible to obtain a warrant when dealing with mobile subjects.

Although the border search “exception” has become quite expansive, this note will focus only on the problem of international mail, by analyzing the decision in United States v. Ramsey in light of prior cases and statutes.

II. FACTS

Customs officials, operating under statutory authority, opened

9. Id. Travelers have been subjected to such indignities as intrusive body cavity searches, rectal and vaginal examinations, and the induction of vomiting. See generally Comment, Border Searches—A Prostitution of the Fourth Amendment, 10 Ariz. L. Rev. 457 (1968); Comment, The Reasonableness of Border Searches, 4 Cal. W.L. Rev. 355 (1968); Note, Border Searches and the Fourth Amendment, 77 Yale L.J. 1007 (1968).
10. See United States v. Martinez-Fuerte, 428 U.S. 543 (1976). In this case, vehicles were stopped 100 miles from the border and the passengers were briefly questioned. Neither the vehicle nor its occupants was searched, and examination was limited to visual inspection by field officers. These procedures provided sufficient protection for the constitutionality of the warrantless “search” to be upheld.
13. Id. at 1979; Carroll v. United States, 267 U.S. 132, 149-54 (1925).
17. See, e.g., United States v. Mitchell, 525 F.2d 1275, 1279 (5th Cir. 1976).
18. See, e.g., King v. United States, 348 F.2d 814, 818 (9th Cir. 1965).
22. See note 4 supra, and 97 S.Ct. at 1976.
eight envelopes with Washington, D.C. addresses entering the United States from Thailand. 24 The envelopes were "rather bulky" 25 and were sent from a "known source of narcotics." 26 After feeling and weighing the letters, the customs inspector opened them, and found heroin as suspected. 27 No search warrant was obtained until the letters were sent to the Drug Enforcement Administration in Washington, D.C. 28 Instead, the letters were opened on the mere suspicion that the envelopes contained contraband. 29 The envelopes were then resealed and sent to their respective addresses, whereupon federal agents arrested the addressees and their accomplices. 30

The defendants were convicted in the district court, and the Circuit Court of Appeals for the District of Columbia reversed the convictions. 31 The majority 32 of the circuit court concluded that the values protected by the first 33 and fourth 34 amendments demand that a showing of probable cause 35 be made to, and a warrant 36 secured from, a neutral magistrate.
before international mail is opened. The Supreme Court reversed, holding that the customs inspector had “reasonable cause to suspect” that there was dutiable merchandise or contraband in the envelopes, that the search was authorized by statute, was an exception to the fourth amendment, and did not impermissibly “chill” the exercise of the right of free speech, protected by the first amendment.

III. DISCUSSION

In ruling that international first class letter mail fell within the border search exception to the fourth amendment, the majority of the Supreme Court focused on the statute involved and stated that the search was plainly authorized by this legislation. The test imposed by 19 U.S.C. § 482 is mere “reasonable cause to suspect,” a much less stringent test than the standard of probable cause required by the fourth amendment. The Court stated that the customs statute involved gave customs officials plenary power to conduct border searches. They looked to the predecessors of the current border search statute and concluded that the same Congress which had proposed the fourth amendment

contraband; such a warrant does not authorize the reading of any communication contained inside. 538 F.2d 415, 421 n.9 (1976).

37. Id.
38. The test provided for in 19 U.S.C. § 482 (1970) is as follows:

Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

39. Id.
40. 97 S.Ct. at 1982-83.
41. 19 U.S.C. § 482 (1970); See note 38 supra for the text thereof.
42. 97 S.Ct. at 1976. With respect to the issue of standing, the Supreme Court took notice that neither court below had considered whether Ramsey or Kelly had standing to object to the opening of the envelopes, since none of the envelopes was addressed to them. Consequently the Supreme Court did not reach that issue. Id. at n.7.
43. See note 38 supra.
44. 97 S.Ct. at 1976-78. See United States v. King, 517 F.2d 350, 352 (5th Cir. 1975); cf. Terry v. Ohio, 392 U.S. 1, 8, 21-22, 27 (1968) (standard for a “stop and frisk” held to be less than probable cause).
46. Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178 (1866); Act of March 3, 1815, ch. 94, §§ 2, 3 Stat. 231, 232 (1815); Act of July 31, 1789, ch. 5, 1 Stat. 29, 43 (1789).
had also proposed the first border search statute.\textsuperscript{47} Congress did not consider border searches unreasonable, and hence such searches were not violative of the fourth amendment.\textsuperscript{48}

The Court noted that import restrictions on persons or packages at the national border rest on different rules of constitutional law than do restrictions on the movements of packages and persons within the nation.\textsuperscript{49} The rationale underlying this distinction was based upon the interest in national self protection.\textsuperscript{50} From the cases examined, the Court concluded that border searches have historically been considered "reasonable" by the mere fact that the person or item in question had entered the country from outside.\textsuperscript{51}

The Supreme Court disagreed with the court of appeals\textsuperscript{52} and stated that the inclusion of international mail within the border search exception was not an extension of that exception.\textsuperscript{53} The majority believed that the critical factor was that the envelopes crossed the border and entered this country, because the border search exception has its foundation in the right of the sovereign to control who and what may enter the country.\textsuperscript{54}

As to the first amendment issue, the Court stated that the existing system of border searches has not been shown to invade first amendment rights, and that there is no reason to think that the potential presence of correspondence makes the search unreasonable.\textsuperscript{55} Because a postal regulation\textsuperscript{56} prohibits the reading of correspondence without a warrant, the Supreme Court held that first amendment values are protected, and that the opening of international mail does not impermissibly chill the exercise of free speech.\textsuperscript{57} The Court also noted that there was no statutorily created expectation of privacy and only a limited justifiable expectation of privacy for incoming material crossing the national border.\textsuperscript{58}

\begin{itemize}
\item \textsuperscript{47} Act of July 31, 1789, ch. 5, 1 Stat. 29, 43 (1789).
\item \textsuperscript{48} 97 S.Ct. at 1979-80.
\item \textsuperscript{49} Id. (citing United States v. 12, 200-Ft. Reels of Super 8mm. Film, 413 U.S. 123, 125 (1973)).
\item \textsuperscript{50} 97 S.Ct. at 1979.
\item \textsuperscript{51} See \textit{Carroll v. United States}, 267 U.S. 132, 153-54 (1925).
\item \textsuperscript{52} 97 S.Ct. at 1979.
\item \textsuperscript{53} See 538 F.2d 415, 421 (1976).
\item \textsuperscript{54} 97 S.Ct. at 1981.
\item \textsuperscript{55} Id.
\item \textsuperscript{56} 19 C.F.R. § 145.3 (1977) states: "No customs officer or employee shall read or authorize or allow any other person to read any correspondence contained in sealed letter mail of foreign origin unless a search warrant has been obtained in advance from an appropriate judge or U.S. magistrate which authorizes such action." Cf. 18 U.S.C. § 1702 (1970) (criminal sanctions).
\item \textsuperscript{57} 97 S.Ct. at 1982-83.
\item \textsuperscript{58} Id. at 1982 n.17 (citing 39 U.S.C. § 3623(d) (1970); United States v. King, 517 F.2d 350, 354 (5th Cir. 1975); United States v. Odland, 502 F.2d 148 (7th Cir. 1974); United States v. Doe, 472 F.2d 982, 985 (2d Cir. 1973)).
\end{itemize}
Justice Powell qualified his brief concurring opinion with the "understanding that the precedential effect of today's decision does not go beyond the validity of mail searches at the border pursuant to the statute."

With such a qualification, Powell believed that the statute adequately protects both first and fourth amendment rights.

Justices Stevens, Brennan, and Marshall dissented, noting that the earlier practice, followed for over 105 years, was that customs officials could open mail only in the presence, and with consent of, the addressees.

The dissent outlined five reasons for their belief that Congress did not authorize such secret searches of private mail. First, legislative history demonstrated Congress' respect for the individual's interest in the privacy of his communications. Second, the history of the 1866 statute, predecessor to 19 U.S.C. § 482, showed the concern of the legislators that the statutory language might encompass the search and seizure of the United States mails. Third, the dissent emphasized that the word "envelope" was "buried deep in the first long sentence... of the Act," and that contemporary American dictionaries emphasized the usage of the word as describing a package or wrapper as well as an ordinary letter. Thus, the language would not refer to ordinary letters.

Fourth, "the consistent construction of statutory authority by a series of changing administrations over a span of 105 years must be accorded great respect."

If a new rule is to be adopted, it is up to Congress to do so. Finally, the dissenters noted the weakness of the asserted justification for the broad power claimed. The fear of the majority that the addressee would withhold consent for the opening of the envelope is groundless, because that fact would be one of the factors considered in a determination of probable cause. In concluding, the dissent voiced concern that

59. 97 S.Ct. at 1983 (Powell, J., concurring).
60. Id.
61. 97 S.Ct. at 1983 (Stevens, J., dissenting).
62. Id. at 1983-84, (citing, Cotzhausen v. Nazro, 107 U.S. 215 (1882)).
63. 97 S.Ct. at 1984-87.
66. 97 S.Ct. at 1984 & n.3.
67. Id. at 1985.
68. Id. at 1986. The dissent cited the following dictionaries in support of its position:
J. Worchester, Dictionary of the English Language (1860); N. Webster, An American Dictionary of the English Language (C. Goodrich & A. Porter 1869).
69. Id.
71. Id.
the "door will be open to wholesale, secret examination of all incoming international letter mail."\(^{72}\) No notice would be necessary either before or after the search, and the Court should leave to Congress such a policy decision which affects important personal rights.\(^{73}\)

### IV. LAW

The border search exception to the fourth amendment has been a part of the American legal system since the earliest days of this country.\(^{74}\) The first border search statute\(^{75}\) was passed in 1789 to regulate the collection of duties at the border.\(^{76}\) This statute predated the Bill of Rights, although both were proposed by the same Congress.\(^{77}\) Section 24 of this Act\(^{78}\) provided that if merchandise subject to duties was illegally concealed in a "dwelling house, store, building, or other place," a warrant should be issued upon a showing of probable cause.\(^{75}\) This Act distinguished the warrantless procedures for inspecting goods in a moving vehicle where the goods were out of reach of a warrant from those procedures involving goods that were in a non-mobile place such as a dwelling.\(^{80}\) After two reenactments,\(^{81}\) this statute was codified into the Act of July 18, 1866.\(^{82}\) That act makes brief references to an "envelope"

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\(^{72}\) Id. at 1987.  
\(^{73}\) Id.  
\(^{75}\) Act of July 31, 1789, ch. 5, 1 Stat. 29, 43 (1789).  
\(^{76}\) Id. See Boyd v. United States, 116 U.S. 616, 623 (1886).  
\(^{77}\) See 97 S.Ct. at 1979.  
\(^{78}\) Act of July 31, 1789, ch. 5, 1 Stat. 29, 24 (1789).  
\(^{79}\) Id.  
\(^{81}\) Act of March 3, 1815, ch. 94, §§ 2, 3 Stat. 231, 232 (1815) (allowing customs officials to search vehicles, beasts, or persons suspected of bearing contraband or dutiable merchandise.) This act expired in 1816, but the substance of § 2 was reenacted in the Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178 and was embodied in the Revised Statutes, 3061.  
\(^{82}\) Sections 2 and 3 of the Act read as follows:  
Sec. 2. And be it further enacted. That it shall be lawful for any officer of the customs, including inspectors and occasional inspectors, or of a revenue cutter, or authorized agent of the Treasury Department, or other person specially appointed for the purpose in writing by a collector, naval officer, or surveyor of the customs, to go on board of any vessel, as well without as within his district, and to inspect, search, and examine the same, and any person, trunk, or envelope on board, and to this end, to hail and stop such vessel if under way, and to use all necessary force to compel compliance; and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which, such vessel, or the goods, wares, and merchandise, or any part thereof, on board of or imported by such vessel, is or are liable to forfeiture, to make seizure of the same, or either or any part thereof, and to arrest, or in case of escape, or any attempt to escape, to pursue and arrest any person engaged in such breach or violation: Provided. That the original appointment in writing of any person specially appointed as aforesaid shall be filed in the custom-house where such appointment is made.
in § 2 and § 3. However, the dissent in Ramsey points out that the word “envelope” was not used to refer to ordinary letters.

This Act has since been recodified into 19 U.S.C. § 482 (1970). The language of the 1866 statute, “to search any trunk or envelope, wherever found,” was retained in the recodification, and the Supreme Court in Ramsey gave life to this phrase. The standard for such a search has also remained the same as it was in 1866—i.e., “reasonable cause to believe.”

First class domestic mail has traditionally been accorded the highest expectation of privacy. In Ex Parte Jackson, the letter involved was a circular advertising a lottery which offered prizes. The letter was mailed completely within the national boundaries, and its mailing violated a specific customs statute. In Jackson, the United States Supreme Court established the rule that “letters and sealed packages can only be opened under warrant like that issued when papers in one’s household are subjected to search.” However, this rule has not been carried over to international letter mail, as the cases indicate. Instead, international mail

Sec. 3. And be it further enacted. That any of the officers or persons authorized by the second section of this act to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person on which or whom he or they shall suspect, there are goods, wares, or merchandise which are subject to duty or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there are goods which were imported contrary to law; and if such officer or other person so authorized as aforesaid shall find any goods wares, or merchandise, on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe are subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.


83. Id.
84. See note 68 supra and accompanying text.
86. Id.; See note 82 supra.
87. See notes 38 and 82 supra. It is interesting to note that courts have required a more stringent test than mere suspicion for certain types of border searches. For example, “real suspicion” is required for a strip search, and a “clear indication” is required for examination of body cavities. E.g., Henderson v. United States, 390 F.2d 805 (4th Cir. 1967); Rempe, Border Searches—A Prostitution of the Fourth Amendment, 10 ARIZ. L. REV. 457 (1968).
89. 96 U.S. 727 (1877).
90. Id. at 728.
91. Id. at 733.
is treated in the same way as are international travelers or baggage, under the guise of the border search doctrine.

The first case to uphold a warrantless search of international travelers was *Carroll v. United States*.92 In that case, the defendants were convicted of transporting intoxicating liquor in an automobile, in violation of the National Prohibition Act.93 Federal prohibition agents were engaged in patrolling the road leading from Detroit to Grand Rapids, looking for violations of the Prohibition Act. When the defendants’ car approached the agents’ post, the agents pursued them but lost trace of them in East Lansing. Two months later, the same agents met and passed the defendants in the same automobile, again coming from the direction of Detroit toward Grand Rapids.94 The government agents turned and followed the defendants, stopped them and searched the car. The results of the search, sixty-eight bottles of liquor, led to defendants’ arrest and subsequent conviction.95 The United States Supreme Court held that the mobility of the travelers was an exigent circumstance96 which justified the application of the border search doctrine.

In *United States v. Beckley*97 the Court of Appeals for the Sixth Circuit upheld the warrantless opening of an international package.98 The case involved the importation of marijuana by means of a sealed package deposited in the United States mail in the Panama Canal Zone. First class postage was not paid for this parcel, and a declaration was attached to it indicating that it contained only personal items. A customs entry clerk in Miami became suspicious that the package contained items other than those listed, and he opened the package without obtaining a search warrant. The parcel was examined, and after it was confirmed that it contained marijuana, the package was rewrapped and sent on to the addressee. Thereafter, a search warrant was obtained, and the contents of the package were seized in the defendant’s home.99 The circuit court stated that the requirement of a warrant applied if first class postage had

92. 267 U.S. 132 (1925).
93. *id.* at 134.
94. *id.* at 135.
95. *id.* at 136.
96. “[E]xigent circumstances” means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence. . . . *Id.* in each case the claim of an extraordinary situation must be measured by the facts known to the officers.
97. 335 F.2d 86 (6th Cir. 1964).
98. *Id.* at 88.
99. *Id.* at 87.
been paid on mail moving entirely within the country. This court said that an imported parcel post package could be opened "without formality even though sealed." The court indicated a willingness to apply the same standard to first class mail coming into the country, especially where, as here, there was some representation that the package contained merchandise.

Another case involving packages was United States v. Sohnen. In this case, customs officials opened a package containing dutiable gold coins. The package was referred to a customs agent because there was suspicion that the package might contain dutiable or prohibited matter. The weight and feel of the package were unusual, and it did not bear the required label stating that it could be opened for customs inspection. After taking the precaution of performing a spectroscopic examination, customs agents opened the package. This search was contrary to postal regulations, and the parcel was opened without first obtaining a search warrant. In holding that the search was reasonable within the meaning of the fourth amendment, the district court found that the government's interest in national self-protection outweighed the individual's right to privacy. However, the court recognized that the Constitution may "well prevent the opening of letters, as opposed to packages containing merchandise without a search warrant."

United States v. Doe also involved a package mailed from abroad. In this case, the package was mailed from Colombia to an address in Bridgeport, Connecticut. The package was opened because it was labeled "old clothing," and the mail entry clerk testified that from

100. Id. at 88 (citing In re Jackson, 96 U.S. 727 (1878); Oliver v. United States, 239 F.2d 818 (8th Cir. 1957)).
101. 335 F.2d at 88.
102. 335 F.2d at 89.
104. Id. at 53.
105. The "postal regulations" then in force provided that "if there is reason to believe that prohibited matter is contained in a sealed letter," a notice is to be sent to the addressee requesting authorization to open the letter and examine its contents"; if authorization is not given the letter is to be returned "unopened, to its origin." Then appearing as 39 C.F.R. § 262.1 (1969). See 39 C.F.R. § 10.5, Parts 821-822 (1977) (incorporating by reference Postal Service Publication 42, International Mail) for a comparison of current regulations. See note 3 supra.
106. 298 F. Supp. at 53.
107. The court stated that the determination as to whether an administrative search was "reasonable" within the meaning of the fourth amendment involves balancing the government's "need to know" against the individual's right of privacy. Id. at 54.
108. Id.
109. Id. at 55 (citing Boyd v. United States, 116 U.S. 616, 623 (1886), and In re Jackson, 96 U.S. 727, 732 (1878)). See also note 34 supra.
110. 472 F.2d 982 (2d Cir. 1973).
his experience such labelling often belied the true contents—new clothing, subject to a duty. Upon opening the package, the clerk discovered cocaine. The package was resealed after some innocuous white powder was substituted for a portion of the cocaine, and the package was delivered to the defendant. Customs officers then arrested him as he was about to board a train for New York City. The Court of Appeals for the Second Circuit held that 19 U.S.C. § 482 authorized the warrantless opening of an international package entering the United States from abroad. The court intimated that international envelopes would be treated in the same manner.

United States v. Odland was the first case to rule directly on the opening of international first class mail without a warrant. In Odland, an envelope mailed from Colombia was found to contain cocaine. The inspection of the envelope occurred during the routine examination of parcels and envelopes arriving in the United States from abroad. Although the Court of Appeals for the Seventh Circuit concluded that international mail fell within the border search exception, it failed even to discuss the first amendment interests involved. Instead, the court held that a first class envelope was subject to search at the border merely because it entered the United States from abroad.

The First Circuit, in United States v. Emery, agreed with the Odland court with regard to packages, but reserved judgment on the question of letters. Emery involved two packages mailed from Colombia which contained cocaine. An unusual circumstance in this case was that federal agents opened the packages and inserted an electronic “beeper” without obtaining a warrant for this purpose. The defendant picked the packages up at the post office and went to his apartment. He was followed by federal agents who maintained surveillance and monitored the beeper’s signal. A search warrant was obtained, and the apartment was entered after the defendant had opened the packages.

111. Id. at 983.
112. Id. at 984.
113. See note 38 supra for the text thereof.
114. 472 F.2d at 984.
115. Id. at 985.
117. 502 F.2d at 150.
118. Id. at 151.
119. Id. See also United States v. Bolin, 514 F.2d 554 (7th Cir. 1975), where the court applied Odland to a different set of facts.
120. 541 F.2d 887 (1st Cir. 1976).
121. Id. at 888-89.
122. Id. at 888.
The court said that since the appellant could have no reasonable expectation of privacy as to the contraband, the insertion of the beeper did not violate his constitutionally protected freedom from unreasonable searches and seizures.123

In *United States v. Barclift*124 the Court of Appeals for the Ninth Circuit held that the mere entry of mail into the United States from a foreign country was sufficient reason for a border search of that mail.125 Envelopes entering this country from Bogota, Colombia were seized from defendant's automobile glove compartment. At the port of entry, the envelopes had been examined by customs officials and the contraband (cocaine) discovered. A lawful surveillance of the delivery of the mail led to one of the defendants, who was arrested with the cocaine in his possession.126 The court saw "no reason" for distinguishing between the entry of mail into the United States and the entry of automobiles or baggage. The court said that a border search of mail is subject to a general test of reasonableness.127

Two years later, in *United States v. King*,128 the fifth circuit upheld an extended border search of international mail. In that case, no search was made at the port of entry, but the mail was searched later during the delivery process in Birmingham, Alabama. The court said that this fact alone did not make the search unreasonable by fourth amendment standards.129 Ten envelopes were removed from the ordinary mail channels for possible inspection because they felt "thicker than an ordinary Christmas card."130 They were given to a postal inspector who forwarded them to a customs supervisor of the Drug Enforcement Administration. The supervisor tapped the envelopes on a hard surface; a distinct cushion of powdery material appeared. This prompted the supervisor to open the envelopes, and he found heroin, as he had suspected. A sample was taken from each envelope, and the envelopes were returned to the Postal Service for delivery. The defendants were ultimately arrested, although no search warrant had been obtained for the opening of the envelopes. Noting that international travelers do not have a reasonable expectation of privacy, and that the government has a strong interest in policing the traffic crossing its borders, the court refused to suppress the evidence.

123. Id. at 890.
124. 514 F.2d 1073 (9th Cir. 1975).
125. Id. at 1075 (citing Klein v. United States, 472 F.2d 847, 849 (9th Cir. 1973)).
126. 514 F.2d at 1074.
127. Id. at 1074-75.
128. 517 F.2d 350 (5th Cir. 1975).
129. Id. at 353-354.
130. Id. at 351.
which had been obtained without a search warrant.\textsuperscript{131}

In \textit{United States v. Milroy},\textsuperscript{132} the Court of Appeals for the Fourth Circuit upheld another warrantless search of international mail. The facts in \textit{Milroy} were similar to those in \textit{Ramsey} in that heroin was mailed from Thailand. Unlike \textit{Ramsey}, however, in this case a specially trained dog had "sniffed out" the envelopes in question as containing narcotics, and each envelope had been mailed on the same day, to the same person, at the same address. The court delineated the various rationales that other courts had used to justify border searches,\textsuperscript{133} but failed to adopt any such justifications, saying: "Under any standard, the customs officials were entitled to open the envelopes without a search warrant."\textsuperscript{134}

Thus, there was a conflict between the Court of Appeals for the District of Columbia and every other circuit which had litigated the issue. When the United States Supreme Court was called upon to resolve the conflict, they ruled in favor of the government, at the expense of precious individual rights.

\section*{V. ANALYSIS}

In \textit{United States v. Ramsey}, the majority\textsuperscript{135} of the United States Supreme Court reasoned that warrantless searches at the border were reasonable simply because they occur at the border.\textsuperscript{136} This circular argument appears unsound, particularly when values protected by the first and fourth amendments are involved. The court noted a "longstanding, historically recognized border search exception" to the fourth amendment's warrant requirement.\textsuperscript{137} This was generally true with regard to travelers and even packages,\textsuperscript{138} but the general practice with regard to letters had been much different. As the dissenting justices pointed out, the practice for over one hundred years had been to have the addressee present when mail was opened to insure that privacy was

\begin{itemize}
\item \textsuperscript{131} \textit{Id.} at 354.
\item \textsuperscript{132} 538 F.2d 1033 (4th Cir. 1976).
\item \textsuperscript{133} The court stated:
They variously decide that a border search may be undertaken without a warrant upon mere suspicion of irregularity; or the "reasonable cause to suspect" used in the statute (19 U.S.C. §482); or the fact that the search made at the border is itself reasonable under the Fourth Amendment.
538 F.2d at 1037.
\item \textsuperscript{134} \textit{Id.} (emphasis added).
\item \textsuperscript{135} Five Justices participated in the majority opinion, which was written by Rehnquist, J. Burger, C.J., Stewart, White, and Blackmun, J.J. joined therein. Powell, J., concurred, and three dissented: Stevens, Brennan, and Marshall, J.J. \textit{Id.}
\item \textsuperscript{136} 97 S.Ct. at 1981.
\item \textsuperscript{137} \textit{Id.}
\item \textsuperscript{138} See notes 87, 92, 96, 101, 106 and 110 \textit{supra} and accompanying text.
\end{itemize}
The dissent stated that the warrant procedure was also available if there was sufficient probable cause. Further, the Supreme Court in *Katz v. United States* stated that "searches conducted outside the judicial process, without prior judicial approval by judge or magistrate, are per se unreasonable." The Court based its decision in part upon the interest of the government in national self-protection. However, the cases seem to show that the border search exception is actually based upon the impracticality of requiring a warrant due to the tremendous volume of items moving across the border which may contain contraband, and the difficulty of obtaining a search warrant when the subject of the search is mobile. The customs service can effectively use such techniques as trained dogs, x-ray examination, and metal detectors to screen out a large percentage of mail that would otherwise be opened. Also, since letters are not mobile in the same sense that automobiles and travelers are, they could be easily detained for a period of time sufficient to allow a further examination or to obtain a warrant. True, these procedures may be more inconvenient than merely opening letters at will, but the Supreme Court has recognized that "inconvenience alone has never been thought to be an adequate reason for abrogating the warrant requirement." The Court reasoned that there was no invasion of free speech interests since customs officials are prohibited from reading any correspondence, absent a warrant. However as Justice Holmes noted, "the use of the mails is almost as much a part of free speech as the right to use our tongues." Even though the mail is not read, mere knowledge by individuals of the routine practice of opening mail inhibits the exercise of free speech. There would be a grave chilling effect on the exercise of

139. See note 62 supra and accompanying text.
140. Id.
142. Id. at 357.
143. 97 S.Ct. at 1979.
144. United States v. Ramsey, 538 F.2d 415, 418 (D.C.Cir. 1976) (citing United States v. Doe, 472 F.2d 982, 983 (2d Cir. 1973); Morales v. United States, 378 F.2d 187, 190 (5th Cir. 1967)).
145. 538 F.2d at 419; See, e.g., United States v. Mitchell, 525 F.2d 1275, 1277 (5th Cir. 1975); United States v. Chiarito, 507 F.2d 1098, 1099 (5th Cir. 1975).
146. 538 F.2d at 419.
147. 538 F.2d at 418; See Carroll v. United States, 267 U.S. 132, 153 (1925).
free speech because if this warrantless opening of letters is allowed, innocent mail will be opened eight out of ten times.\textsuperscript{152} The statutory history of the authorization for border searches indicates that Congress never contemplated that 19 U.S.C. § 482 and its predecessors would be used to give customs officials authority to seize incoming international letter mail without warrants. There is in fact no historical argument to be made for warrantless border searches of letter mail. The 105-year-old practice of customs officials was to open mail only in the presence and with the consent of the addressees.\textsuperscript{153} Not until 1971 did the officials open such mail without a warrant.\textsuperscript{154} Since the seizure involved in \textit{Ramsey} occurred in 1974, the only "history" involved was a three year span from 1971 to 1974. This can hardly be said to be a ""longstanding historically recognized exception""\textsuperscript{155} to the fourth amendment. Also, the Supreme Court itself has recognized that limits on search and seizure must be especially strong when first and fourth amendment values converge.\textsuperscript{156} Thus, where constitutionally protected speech was involved, the court has required rigorous adherence to the commands of the fourth amendment.\textsuperscript{157} The \textit{Ramsey} decision cuts back on that ""rigorous adherence,"" in favor of the government's interest in self-protection, a value perceived as outweighing the individual's fundamental rights to free speech and privacy.

\section*{VI. Conclusion}

The decision of the United States Supreme Court in \textit{United States v. Ramsey} has extended the border search doctrine into the area of international letter mail and has resolved a conflict among the circuits. The rights of the individual have yielded to those of the government. Even when coupled with freedom of speech and the right to privacy, the fourth amendment right to a warrant obtained upon probable cause for search and seizure was held inapplicable to international first class mail. Customs officials have been given free reign to open all incoming international letter mail with mere ""reasonable cause to suspect.""\textsuperscript{158}

\begin{itemize}
\item \textsuperscript{152} Brief for Respondent, United States v. Ramsey, 538 F.2d 415 (D.C. Cir. 1976).
\item \textsuperscript{153} 97 S.Ct. at 1983.
\item \textsuperscript{154} Brief for Respondent, United States v. Ramsey, 538 F.2d 415 (D.C. Cir. 1976).
\item \textsuperscript{155} 97 S.Ct. at 1980.
\item \textsuperscript{157} Amicus Brief for The American Civil Liberties Union, United States v. Ramsey, 538 F.2d 415 (1976).
\item \textsuperscript{158} 97 S.Ct. at 1977.
\end{itemize}
International first class mail embodies the same first amendment interests as does domestic first class mail, which requires a warrant before it is to be opened. The Supreme Court’s sanctioning of the warrantless opening of international letter mail shows a deterioration of individual rights in favor of expanded and potentially arbitrary governmental powers. The letter and spirit of the fourth amendment has been violated. Unless Congress amends the statute construed in this decision, the Ramsey case will remain a violent assault on precious Constitutional rights.

James N. Cundiff