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Customs Inspectors and International Mail: To Open or Not to Open?

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NOTES

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TABLE OF CONTENTS

I. INTRODUCTION

Traditional fourth amendment[1] jurisprudence requires that before state officials may conduct a search or seizure, they must obtain a war-

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 describing the place to be searched, and the persons or things to be seized.
U.S. CONST. amend. IV.

rant based on probable cause of criminal activity supported by oath or affirmation. Any search that follows must meet the fourth amendment's requirement of reasonableness. An exception to these requirements has developed, however, for searches and seizures at our international borders. Whether right or wrong, international border searches and seizures have been allowed to take place without a warrant or even probable cause of criminal activity. The only apparent limitation on these border searches is that they meet the fourth amendment's reasonableness requirement. In support of this exception to the fourth amendment's general warrant requirement, it is argued that Congress has broad powers to regulate commerce with foreign nations.[2] Therefore, it follows that a nation has the right to police who and what may come within its borders. While easy enough to articulate in theory, problems have arisen in practice. For example, courts have struggled with how to apply this exception when a search takes place some distance from an international border.[3] Problems have also arisen when a search takes place a considerable time after a border crossing.[4]

Searches of international mail have also been problematic for courts, postal inspectors, and customs officials. Some courts have found that searches of international mail fall within this warrant exception to the fourth amendment. Hence, they conclude that different standards should apply to the search and seizure of international mail as opposed to mail moving entirely within the borders of the United States. If one accepts the argument that international mail is excepted from the fourth amendment's warrant requirement, then the myriad of statutes, regulations, and decisional case law have created problems as to what standard should be applied before this mail may be opened, searched, or seized.

This Note analyzes the United States statutes and regulations prescribing the standards for the search and seizure of international mail entering and leaving this country. It also examines cases construing these issues prior to the Supreme Court's decision in *United States v. Ramsey*.[5] In addition, it discusses the *Ramsey* decision itself and cases decided

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2. U.S. CONST. art. I, § 8, cl. 3.

3. *See, e.g.*, United States v. Brignoni-Ponce, 422 U.S. 873 (1975) (fourth amendment does not allow border patrol to stop vehicle when only ground of suspicion is that occupants appear to be of Mexican ancestry); Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (stop must be made at the border or its functional equivalent).

4. *See, e.g.*, United States v. Caicedo-Guarnizo, 723 F.2d 1420 (9th Cir. 1984) ("extended border" search valid even though suspect already searched at initial border crossing); United States v. Espericueta-Reyes, 631 F.2d 616 (9th Cir. 1980) (searches occurring after border crossing valid as "extended border" searches).

5. 431 U.S. 606 (1977).

subsequent to it. Finally, this Note comments on the confusion that has followed the *Ramsey* decision and sets forth possible solutions.[6]

II. Statutes and Regulations Pertaining to Mail Searches

An overview of the various statutes and regulations governing the opening, search, and seizure of international mail is necessary in order to appreciate fully the confusion that has resulted over the years from their interpretation.

A. *Statutes*

1. 19 U.S.C. Section 482

Section 482 governs searches of vehicles and persons. The descendant of an earlier statute, section 482 was lifted almost verbatim from an 1866 statute,[7] the purpose of which was to prevent smuggling across the Canada-United States border.[8] This section can best be understood if broken down into its three parts. The first part of section 482 states:

> 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 the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise. . . .[9]

This part of section 482 allows authorized persons[10] to board and search vessels as well as to stop and search vehicles and persons. Upon detaining these vessels, vehicles, or persons, the section authorizes an examina-

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6. This Note will not cover the constitutionality of functional or extended border searches. Further, the propriety of where a mail search may take place, mail covers, and searches of domestic mail as defined under 39 U.S.C. § 3623(d) (1982), will not be addressed in this Note.

7. Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178, 178-79.

8. *See* Cong. Globe, 39th Cong., 1st Sess. 2567 (1866) (remarks of Sen. Williams); *see also id.* at 2563 (remarks of Sen. Morrill); *id.* at 3419 (remarks of Congressman Eliot); DeVries v. Acree, 565 F.2d 577, 579 (9th Cir. 1977) (action of customs officers in opening mail without reasonable cause was not authorized by 19 U.S.C. § 482).

9. 19 U.S.C. § 482 (1982).

10. The question of who is and is not an authorized person under section 482 is itself a matter of some controversy beyond the scope of this Note. *See, e.g.*, United States v. Soto-Soto, 598 F.2d 545 (9th Cir. 1979) (FBI agent not authorized to board or search vessel within meaning of statute); 19 U.S.C. § 1401(i) (1982) (defining "officer of the customs" and "customs officer").

tion based upon naked suspicion that there is merchandise present which is subject to duty. The statute also permits examination on suspicion alone for materials that have been unlawfully introduced into the country.

Under the second component of section 482 an authorized person may "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."[11] This part of section 482 has been the primary source of the problems that have developed over the years. Some courts[12] have found that the use of the phrases "wherever found" and "imported" limits the application of this part of section 482, and the statute as a whole, to searches for goods that have already crossed the United States border. These courts reason that the use of the past tense in the phrases "wherever found" and "imported" indicates that section 482 was intended to apply to those who crossed the United States border at a place other than a designated check point.[13]

The second part of section 482 is limited by its own terms to "searches" as opposed to "searches" plus examinations, as authorized in the first part of the statute. Furthermore, in contrast to the broader first and third components, the second part of section 482 is restricted to searches of trunks and envelopes. Additionally, searches under this part of the statute must be preceded by "reasonable cause to suspect" the presence of illegally imported merchandise. In view of these limitations, these courts find that section 482 in general, and its second component in particular, may not be invoked to scrutinize searches at the border itself.[14] Instead, these courts conclude that this function is reserved for sections 1581, 1582,[15] and the regulations promulgated under each.[16] In

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11. 19 U.S.C. § 482 (1982).

12. *See, e.g.*, United States v. Glasser, 750 F.2d 1197, 1204 (3d Cir. 1984), *cert. denied sub nom.* Erdlen v. United States, 471 U.S. 1018 (1985), *cert. denied sub nom.* Gaza v. United States, 471 U.S. 1068 (1985) (Customs Service search of mail packages containing hashish oil valid even without reasonable cause); United States v. Scheer, 600 F.2d 5, 6 (3d Cir. 1979) (per curiam) (search conducted at border or equivalent entry point pursuant to section 1582 is constitutional merely because item entered United States from abroad); *see also DeVries*, 565 F.2d at 580 (Kilkenny, J., dissenting) (action of customs officers in opening mail without reasonable cause was not authorized by 19 U.S.C. § 482).

13. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 581 (Kilkenny, J., dissenting).

14. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 581 (Kilkenny, J., dissenting).

15. 19 U.S.C. §§ 1581-82 (1982).

16. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 581 (Kilkenny, J.,

essence, these courts find that section 482 is completely unrelated to sections 1581 and 1582.[17]

However, at least one court has impliedly interpreted section 482 to apply both at the border itself and in the interior of the country.[18] Whatever the merits of this position, the distinctions must be viewed in light of the overall purpose behind the parent statute of all three sections—the prevention of smuggling across the Canada-United States border.[19]

The third component of section 482 states the following:

> [I]f 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.[20]

This part of the statute allows the same seizures of merchandise as permitted by the first component of the statute; that is, merchandise that is subject to duty or that has been unlawfully introduced into the country. Additionally, the third part of the statute permits seizure of merchandise found in trunks or envelopes only if the inspecting officer has reasonable cause to suspect that such merchandise is subject to duty or has been illegally imported into the United States.

2. 19 U.S.C. Section 1581

Just as section 482 is the descendant of an earlier statute, so too is section 1581. In particular, section 1581 is derived from section 2 of the same 1866 statute that is the origin of section 482.[21] Section 1581(a) states:

> Any officer of the customs may at any time go on board of any vessel or vehicle at any place in the United States or within the customs waters or, as he may be authorized, within a customs-enforcement area established under the Anti-Smuggling Act. . ., or at any other authorized place, without as well as within his district, and examine the manifest and other documents and papers and examine, inspect, and search the vessel or vehi-

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dissenting).

17. *See, e.g., Glasser*, 750 F.2d at 1204; *DeVries*, 565 F.2d at 580-81 (Kilkenny, J., dissenting); *see also infra* notes 20-36 and accompanying text.

18. United States v. Sheer, 600 F.2d 5, 6 (3d Cir. 1979).

19. *See supra* note 8.

20. 19 U.S.C. § 482 (1982).

21. Act of July 18, 1866, ch. 201, § 2, 14 Stat. 178, 178.

> cle and every part thereof and any person, trunk, package, or cargo on board, and to this end may hail and stop such vessel or vehicle, and use all necessary force to compel compliance.[22]

Under the predecessor statute a customs inspector was also allowed to search envelopes.[23] The word "envelope" is not mentioned, however, in the present version of section 1581(a).[24] In contrast to section 482, section 1581(a) does not require a reasonable cause to suspect illegality before searches may take place. In view of this omission, some courts have employed section 1581(a) and the regulations thereunder to examine searches at the border itself.[25] These courts find that section 1582 and the regulations promulgated pursuant to it are to be applied, in conjunction with section 1581(a), to searches taking place at a border. As noted, these courts have found that section 482 applies to searches in the interior of the country.[26] In other words, each statute has its own sphere of influence covering a separate geographical area within the country.[27] Thus, these courts find that section 482 is supposed to be more limited in its application than section 1581(a).[28] However, given the language of section 482, it could just as easily be argued that section 482 may be used both at the border itself and in the interior of the country while section 1581(a) is limited to searches occurring only at the border. Thus, section 1581(a) would be a much narrower statute than section 482. Alternatively, it may be posited that section 1581(a) and section 482 both may apply to searches in the interior of the country given the phrase "at any place in the United States" in section 1581(a).[29]

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22. 19 U.S.C. § 1581(a) (1982) (citations omitted).

23. Act of July 18, 1866, ch. 201, § 2, 14 Stat. 178, 178; *see also* United States v. Glasser, 750 F.2d 1197, 1204 (3d Cir. 1984), *cert. denied sub nom.* Erdlen v. United States, 471 U.S. 1018 (1985), *cert. denied sub nom.* Gaza v. United States, 471 U.S. 1068 (1985).

24. 19 U.S.C. § 1581(a) (1982); *see also* Tariff Act of 1922, 435 Pub. L. No. 67-318, § 581, 42 Stat. 858, 979 (superceded by Tariff Act of 1930, Pub. L. No. 71-361, § 581, 46 Stat. 590, 747 (first instance at which "envelope" not specifically mentioned as subject to customs search)).

25. *Glasser*, 750 F.2d at 1204; *see also* DeVries v. Acree, 565 F.2d 577, 580 (9th Cir. 1977) (Kilkenny, J., dissenting).

26. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 580 (Kilkenny, J., dissenting).

27. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 580-81 (Kilkenny, J., dissenting).

28. *Glasser*, 750 F.2d at 1204; *see also DeVries*, 565 F.2d at 581 (Kilkenny, J., dissenting).

29. 19 U.S.C. § 1581(a) (1982); *see supra* note 22 and accompanying text.

3. 19 U.S.C. Section 1582

In general, section 1582 authorizes the Secretary of the Treasury to prescribe regulations for the search of persons and baggage.[30] Section 1582 also provides that, "all persons coming into the United States from foreign countries shall be liable to detention and search by authorized officers or agents of the Government. . . ."[31] The tenor of section 1582 was derived from the same legislation that preceded sections 482 and 1581.[32] Noticeably absent from section 1582, however, is any express reference to mail in general or to packages and envelopes in particular. Despite this omission, courts have held that the regulations promulgated under authority of section 1582 actually implement section 1581.[33] An examination of regulation 145.3 suggests, however, that this position is incorrect. The regulation requires that government agents have a reasonable cause to suspect illegality before they may open international letter class mail.[34] Thus, it appears that regulation 145.3 actually implements section 482[35] rather than section 1581. Because they find that the regulations authorized by section 1582 implement section 1581, some courts conclude that, like section 1581(a), section 1582 contains no reasonable cause to suspect requirement before international mail may be opened.[36] This conclusion must be evaluated, however, in light of the reasonable cause to suspect language in regulation 145.3[37] and in view of the absence of any express language in section 1582 pertaining to searches of international mail.

B. *Customs Regulations*

As noted, under section 1582, the Secretary of the Treasury is authorized to promulgate regulations prescribing procedures for the search of

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30. 19 U.S.C. § 1582 (1982); *see also* Tariff Act of 1922, Pub. L. No. 67-318, § 582, 42 Stat. 858, 879; Tariff Act of 1930, Pub. L. No. 71-261, § 582, 46 Stat. 590, 748 (predecessor statutes on subject).

31. 19 U.S.C. § 1582 (1982).

32. *See supra* note 7; *see also DeVries*, 565 F.2d at 580 (Kilkenny, J., dissenting).

33. *See supra* notes 21-29 and accompanying text; *see also DeVries*, 565 F.2d at 580-81 (Kilkenny, J., dissenting).

34. 19 C.F.R. § 145.3 (1988); *see infra* notes 47-50 and accompanying text.

35. *See supra* notes 7-20 and accompanying text.

36. United States v. Glasser, 750 F.2d 1197, 1204 (3d Cir. 1984), *cert. denied sub nom.* Erdlen v. United States, 471 U.S. 1018 (1985), *cert. denied sub nom.* Gaza v. United States, 471 U.S. 1068 (1985); *DeVries*, 565 F.2d at 580 (Kilkenny, J., dissenting).

37. *See infra* notes 47-50 and accompanying text.

persons and baggage entering the United States.[38] The power of the Secretary to prescribe regulations regarding the search of international mail entering the United States is generally thought to be included within this grant of authority.[39]

1. 19 C.F.R. Section 145

The Secretary has promulgated numerous regulations regarding the search of mail entering the United States. Section 145.0, which provides the scope of coverage for the regulatory scheme of regulation 145 as a whole, states that it is not the exclusive regulator of searches of international mail.[40]

Section 145.1 defines several key terms used in the regulations concerning mail searches. "Letter class mail," for example, is defined as "any mail article, *including packages*, . . . mailed at the letter rate."[41] The inclusion of packages in the definition of letter class mail is significant. Many of the statutes in this area, as well as the case law construing them, impose a high standard before letter class mail may be opened.[42] Thus, despite what some courts have held,[43] if packages are included in the category of letter class mail, the Government should have to meet a high standard of reasonable cause to suspect a violation of law, before it may open incoming international packages without a search warrant.

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38. *See supra* notes 30-37 and accompanying text.

39. *See DeVries*, 565 F.2d at 579.

40. 19 C.F.R. § 145.0 (1988). The section states:

> *Scope.* The provisions of this part apply only to mail subject to Customs examination as set forth in § 145.2. This part contains regulations pertaining specifically to the importation of merchandise through the mails but does not contain all the regulations applicable to mail importations. Importations by mail are subject to the same requirements and restrictions as importations by any other means, except where more specific procedures for mail importations are set forth in this part.

Id.

41. 19 C.F.R. § 145.1(b) (1988) (emphasis added). Section 145.1(b) states in full: "*Letter Class Mail.* 'Letter class mail' means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage." *Id.*

42. *See* United States v. Ramsey, 431 U.S. 606 (1977); *see also* discussion, *infra*, at Part III, B.

43. *See, e.g.*, United States v. Doe, 472 F.2d 982 (2d Cir. 1973), *cert. denied sub nom.* Rodriguez v. United States, 411 U.S. 969 (1973) (mail entry aide had reasonable cause to suspect that package labeled "old clothing" contained merchandise imported contrary to law); United States v. Beckley, 335 F.2d 86 (6th Cir. 1964), *cert. denied sub nom.* Stone v. United States, 380 U.S. 922 (1965) (opening of package mailed in Canal Zone, authorized by customs and postal statutes, not violative of fourth amendment).

Section 145.2 of the regulations is the general statement regarding searches of incoming international mail. In general, section 145.2 provides, with some exceptions, that all mail from abroad that enters the United States for delivery is subject to customs examination.[44] One category of mail that is excepted from this general examination power is letter class mail known or believed to contain only correspondence.[45] As noted, the definition of letter class mail includes packages.[46] The general examination power of section 145.2 is also limited by the provisions of section 145.3.

Section 145.3 permits customs officers to open incoming sealed letter class mail on certain occasions. In general, customs officials may open sealed letter class mail that "appears to contain matter *in addition to*, or other than, correspondence, *provided* [*that*] they have reasonable cause to suspect the presence of merchandise or contraband."[47] Section 145.3

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44. 19 C.F.R. § 145.2(b) (1988). The full text of section 145.2 is as follows:

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3

(b) *Generally.* All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except:

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

Id.

45. *Id.* § (b)(3).

46. *See supra* note 41.

47. 19 C.F.R. § 145.3(a) (1988) (emphasis added). Section 145.3 provides as follows:

(a) *Matters in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have reasonable cause to suspect the

further provides that customs officials shall not open sealed letter class mail which appears to contain only correspondence unless a search warrant or the written consent of the sender or addressee has first been obtained.[48] Nor may customs agents read any correspondence contained within sealed letter class mail unless a search warrant or the written consent of the sender or addressee has first been obtained.[49] Finally, section 145.3 provides that first class mail which originates in the United States and arrives in the United States Virgin Islands shall not be opened unless a search warrant or the written consent of the sender or addressee has first been obtained.[50]

2. 19 C.F.R. Section 162

Regulation 162 also pertains to the search of incoming international mail. In particular, section 162.4 provides that customs officers may search vessels for letters which are on board or which may have been illegally conveyed.[51] Additionally, section 162.4 permits the seizure of

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presence of merchandise or contraband.

(b) *Only Correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening:

(1) A search warrant authorizing that action has been obtained from an appropriate judge of [sic] United States Magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of Correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other Types of Correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands Mail.* First class mail originating in the Customs territory of the United States and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

Id.

48. *Id.* § (b).

49. *Id.* § (c).

50. *Id.* § (e).

51. 19 C.F.R. § 162.4 (1988). Section 162.4 states:

such letters if found.[52] Absent from section 162.4, however, is any requirement of reasonable cause to suspect illegality before these letters may be searched or seized.

Section 162.6 states that all persons, baggage, and "merchandise"[53] coming into the United States from abroad are subject to inspection and search by customs officials. It is possible that international letters and packages are included in the term "merchandise." Section 162.6 also provides that "district directors" and "special agents" are empowered to conduct, pursuant to 19 U.S.C. § 1467,[54] additional inspections and searches of such persons, baggage, and merchandise if they deem such inspections or searches to be necessary.[55] Section 162.6 does not, however, provide what standard must be met before such inspections and searches may take place. One might assume there is no standard to be met in the absence of any express language to the contrary.

Section 162.7 provides that customs officials may stop, search, and ex-

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A Customs officer may search vessels for letters which may be on board or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to the orders of the postal authorities.

Id.

52. *Id.*

53. 19 C.F.R. § 162.6 (1988). The full text of section 162.6 appears below:

All persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer. District directors and special agents in charge are authorized to cause inspection, examination, and search to be made under section 467, Tariff Act of 1930, as amended (19 U.S.C. § 1467), of persons, baggage or merchandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port or place in the United States or the Virgin Islands, if such action is deemed necessary or appropriate.

Id.

54. 19 U.S.C. § 1467 (1982) provides:

Whenever a vessel from a foreign port or place or from a port or place in any Territory or possession of the United States arrives at a port or place in the United States or the Virgin Islands, whether directly or via another port or place in the United States or the Virgin Islands, the appropriate customs officer for such port or place of arrival may, under such regulations as the Secretary of the Treasury may prescribe and for the purpose of assuring compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, cause inspection, examination, and search to be made of the persons, baggage, and merchandise discharged or unladen from such vessel, whether or not any or all such persons, baggage, or merchandise has previously been inspected, examined, or searched by officers of the customs.

Id.

55. 19 C.F.R. § 162.6 (1988).

amine any person, vehicle, or beast pursuant to 19 U.S.C. § 482.[56] Section 482 requires that officials have reasonable cause to suspect illegality before they take action under its provisions.[57] Additionally, section 162.7 states that customs officials may search any trunk or envelope "wherever found" in accordance with 19 U.S.C. § 482.[58]

Section 162.14 denies customs officials the authority to remove letters and other documents during searches conducted pursuant to a warrant.[59] Letters may be seized, however, if they are instruments of crime and are seized incident to a lawful arrest.[60]

Finally, section 162.21 empowers customs agents to seize "property" if they have reasonable cause to believe that any law or regulation subject to enforcement by the Customs Service has been violated.[61] It is possible that international letters and packages are included in the term "property." Further, section 162.21 empowers the district director of the Customs Service to adopt such seizures made by persons other than customs

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56. 19 C.F.R. § 162.7 (1988); *see supra* notes 7-20 and accompanying text. Section 162.7 provides: "A Customs officer may stop, search, and examine any vehicle, person, or beast, or search any truck [sic] or envelope wherever found, in accordance with section 3061 of the Revised Statutes (19 U.S.C. § 482)." *Id.*

57. *See supra* notes 7-20 and accompanying text.

58. 19 C.F.R. § 162.7 (1988).

59. 19 C.F.R. § 162.14 (1988). Section 162.14 appears as follows: "Customs officers to whom a warrant is issued to search for and seize merchandise are without authority to remove letters and other documents and records, unless they themselves are instruments of crime and are seized as an incident to a lawful arrest." *Id.*

60. *Id.*

61. 19 C.F.R. § 162.21 (1988). Section 162.21 provides:

> (a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by the Customs Service has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.
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> (b) *Seizure by persons other than Customs officers.* The district director may adopt a seizure made by a person other than a Customs officer if such district director has reasonable cause to believe that the property is subject to forfeiture under the Customs laws.
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> (c) *Seizure by State official.* If a duly constituted State official has seized any merchandise, vessel, aircraft, vehicle, or other conveyance under provisions of the statutes of such State, such property shall not be seized by a Customs officer unless the property is voluntarily turned over to him to be proceeded against under the Federal statutes.

Id.

officers if the district director has reasonable cause to believe the property is subject to forfeiture under the customs laws.[62]

III. Cases Construing the Statutes and Regulations

A. *The Confusion Before* United States v. Ramsey

In order to comprehend fully the difficulty courts have had in construing the statutory and regulatory framework pertaining to searches of international mail after *United States v. Ramsey*,[63] it is helpful to examine the variety of approaches taken by courts when faced with this issue prior to the Supreme Court's decision in *Ramsey*.

The United States Court of Appeals for the Sixth Circuit, in *United States v. Beckley*,[64] applied general principles of border search law without relying on any statutory or regulatory framework in considering the warrantless opening of international mail. The Government had charged Beckley with using the mails for smuggling marijuana into the United States. The package at issue had been mailed to Beckley from the Canal Zone and was not considered first class mail.[65] Although the customs declaration on the package indicated that it contained clothes,[66] the customs clerk in Miami suspected that the package contained something more. The clerk opened the package without first obtaining a warrant and found marijuana. Beckley moved to have the court suppress the marijuana as the result of an illegal warrantless search.[67] The trial court denied Beckley's suppression motion and Beckley appealed. The United States Court of Appeals for the Sixth Circuit affirmed the denial, relying upon general principles of fourth amendment border search law rather than on any statutes or regulations.[68] The *Beckley* court reasoned that there was no reason why border search principles should not apply to mail searches.[69] The court concluded that these principles were at least applicable to foreign mailed packages which indicated that they con-

62. *Id.* § (b).

63. 431 U.S. 606 (1977).

64. 335 F.2d 86 (6th Cir. 1964), *cert. denied sub nom.* Stone v. United States, 380 U.S. 922 (1965).

65. *Id.* at 87. The postage on the package was $8.00 which was less than required for air mail (first class) postage.

66. *Id.* Specifically, the customs declaration indicated that the package contained two wall mats, four pillow cases, and two robes, valued at a total of $23.00. *Id.*

67. *Id.* at 88.

68. Statutes and regulations are cited in the opinion, but they are not the basis of the court's holding.

69. *Beckley*, 335 F.2d at 89.

tained merchandise, such as the package at issue.[70] The court reasoned that the standards applicable to mail moving entirely within the country are not applicable to mail arriving from foreign territories.[71] The *Beckley* court also relied on dicta from *Carroll v. United States*[72] to bolster its holding. In *Carroll*, the Supreme Court stated that a nation, as sovereign, has the power to restrict who and what may enter its borders.[73]

In contrast to the *Beckley* court, the court in *United States v. Sohnen*[74] utilized a balancing test in considering the legality of a warrantless opening of international mail. In *Sohnen*, the defendant was charged with illegally importing gold coins, through use of the mails, into the United States. A customs agent who opened the defendant's package without a search warrant discovered the coins. The inspector testified that the package did not have a customs declaration, that it felt unusual, and weighed more than normal. Before opening the package, the agent conducted a spectroscopic examination of the package which revealed that it contained twelve disk-like objects about the size of an American silver dollar.[75] The inspector also testified that the defendant had recently received several similar packages from abroad which added to the inspector's suspicion. The defendant filed a motion to suppress the coins as evidence obtained by an illegal search. The defendant asserted violations of the fourth amendment and postal regulations in support of his motion to suppress. The *Sohnen* court denied the motion.

In reaching its decision, the court applied a balancing test. Specifically, the court said that it must balance the Government's need to control what comes into the country against the individual's right to be free from unreasonable searches and seizures.[76] The court found that the balance tipped in favor of the Government. The court supported its decision by noting that considerations of efficiency and expediency at the border had necessitated the opening.[77] The *Sohnen* court did acknowledge, how-

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70. *Id.*

71. *Id.* at 88.

72. 267 U.S. 132 (1925).

73. *See id.* at 154.

74. 298 F. Supp. 51 (E.D.N.Y. 1969).

75. *Id.* at 53.

76. *Id.* at 54.

77. *Id.* The court also pointed out that international postal treaties allow customs inspections. Universal Postal Convention, July 11, 1952, art. 61, 4 U.S.T. 1283, 1316, T.I.A.S. No. 2800, 169 U.N.T.S. 3, 67. Such treaties also mandate that a customs declaration be on the package to insure quick identification. Regulations of Execution of the Universal Postal Union, July 10, 1964, art. 117, 16 U.S.T. 1373, 1388, T.I.A.S. No. 5881.

ever, that the Government's power to search international mail is not unlimited.[78] In particular, the court stressed that the Government could not open mail on mere suspicion alone.[79] The inspector's testimony concerning the weight and feel of the package satisfied the court that there was more than just a naked suspicion of illegality in the present case. Furthermore, the court found that the nature of the search did not intrude unconstitutionally on the defendant's rights.[80] Therefore, because the defendant's home, papers, and other means of communication were left untouched, the court implied that the search was less intrusive than it could have been.[81]

In *United States v. Odland*[82] the United States Court of Appeals for the Seventh Circuit invoked a naked suspicion standard when it considered a warrantless opening of incoming international mail.[83] The de-

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78. *Sohnen*, 298 F. Supp. at 55. But while acknowledging that the Government's power is not unlimited, the court said that the impact of the fourth amendment's prohibition on unreasonable searches is limited by the Government's customs power as it pertains to searches of packages arriving from abroad. *Id.* This statement seems untenable in that it asserts that the Government is not restrained by the Constitution.

79. *Id.* The court seemed to be motivated by due process concerns to make this statement. In support of this statement the court cited Rochin v. California, 342 U.S. 165 (1952) (search of defendant's apartment violated due process clause of fourteenth amendment); Boyd v. United States, 116 U.S. 616 (1886) (unreasonable search of person's papers and effects violates Constitution); *Ex parte* Jackson, 96 U.S. 727, 733 (1877) (in enforcement of regulations excluding matter from the mail, "a distinction is to be made between . . . what is intended to be kept free from inspection, such as letters and, sealed packages . . . and what is open to inspection. . ."). *See also* Henderson v. United States, 390 F.2d 805 (9th Cir. 1967) (search of female body cavity on mere suspicion alone an affront to human dignity). *But see* United States v. Bolin, 514 F.2d 554 (7th Cir. 1975) (customs search in New York of letter from Colombia not unconstitutional); United States v. Odland, 502 F.2d 148 (7th Cir. 1974), *cert. denied*, 419 U.S. 1088 (1974) (Government free to spot-check incoming international mail at port of entry).

80. In defense of its holding, the court added that international importers should expect their packages to be opened by United States customs officials. *Sohnen*, 298 F. Supp. at 55. It is unreasonable, however, to suppose that importers should expect their packages to be searched given the constitutional prohibition against unreasonable searches and seizures.

81. *Id.* The court's reasoning seems illogical. It should not matter what was not searched in any particular case. Rather, a court should analyze what *was* searched and apply the law accordingly. Thus if the search violated the fourth amendment, it should not matter what was not searched.

82. 502 F.2d 148 (7th Cir. 1974), *cert. denied*, 419 U.S. 1088 (1974).

83. For other pre-*Ramsey* cases applying a naked suspicion standard in international mail search cases see United States v. Emery, 541 F.2d 887 (1st Cir. 1976) (warrantless search by customs agents was proper regardless of whether agents had reasonable grounds to suspect presence of contraband); *Bolin*, 514 F.2d 554 (customs search in New

fendant in *Odland* was convicted of using the mails to import cocaine from Colombia into the United States.[84] On appeal the defendant contended that the cocaine found when his mail was opened should be suppressed. The defendant claimed that the search violated the reasonable cause requirement of section 482.[85] The court of appeals rejected the defendant's argument. In response to the defendant's section 482 argument, the court found that section 482 was not the only section applicable to searches at the border.[86] Under section 1582 and the regulations promulgated thereunder, which also applied,[87] mail could be searched by virtue of the fact that it arrived at the United States border from abroad.[88] The court concluded that no reasonable suspicion was needed; naked suspicion would suffice.[89] In the court's view, section 1582 permitted the Government to spot check international mail at the border as was done in this case. Therefore, the court concluded that the search of defendant's international mail was legal and the cocaine was admitted into evidence.

Although it cited *Odland*, the Fifth Circuit applied a reasonable cause to suspect standard[90] for mail searches in *United States v. King*.[91] The

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York of letter from Colombia not unconstitutional); United States v. Barclift, 514 F.2d 1073 (9th Cir. 1975) (per curiam), *cert. denied*, 423 U.S. 842 (1975) (mere entry alone of mail into the United States from foreign country sufficient reason for border search); Commonwealth v. Aguiar, 370 Mass. 490, 350 N.E.2d 436 (1976) (package inspection may be made on basis of mere speculation).

84. The defendant's conduct allegedly violated 21 U.S.C. § 952(a) (1970) (prohibiting the importation of controlled substances or narcotic drugs into customs territory of the United States) and 21 U.S.C. § 960(a)(1) (1970) (prohibiting a knowing and intentional importation or exportation of controlled substances).

85. *Odland*, 502 F.2d at 150; *see supra* notes 7-20 and accompanying text.

86. Specifically, the court relied on 39 C.F.R. § 61.1 (1974). *Odland*, 502 F.2d at 150.

87. *Id.*; *see also supra* notes 30-37 and accompanying text.

88. *Odland*, 502 F.2d at 150-51. Because it found that naked suspicion was enough to justify the search in this case, the court did not reach defendant's section 482 argument.

89. *Id.*

90. *See supra* notes 7-20 and accompanying text.

91. 517 F.2d 350 (5th Cir. 1975), *cert. denied sub nom.* Pearson v. United States, 446 U.S. 966 (1980). For other pre-*Ramsey* cases invoking the reasonable cause to suspect standard in mail search cases see United States v. Doe, 472 F.2d 982 (2d Cir. 1973), *cert. denied sub nom.* Rodriguez v. United States, 411 U.S. 969 (1973) (mail entry aide had reasonable cause to suspect that foreign package labeled "old clothing" contained forbidden merchandise); Hogan v. Nebraska, 402 F. Supp. 812 (D. Neb. 1975), *aff'd*, 535 F.2d 458 (8th Cir. 1976) (border search by customs officials of unusually thick letter held reasonable); United States v. Various Articles of Obscene Merchandise, Schedule

defendants in *King* were convicted of using the United States mails for the importation of heroin.[92] King had been receiving each week several Christmas card size envelopes from an Army post office box abroad. The postal inspector in Birmingham, Alabama,[93] removed several of the envelopes from delivery because they appeared to be thicker than the ordinary Christmas card. When tapped on a table the envelopes emitted a powdery material. The inspectors opened the envelopes without a warrant and found heroin. On appeal the defendants contended that the Government had improperly opened the envelopes. The defendants claimed that section 482 applied only at the border and, therefore, was inapplicable at an inland post office, such as Birmingham. As a result, defendants contended, the heroin should have been suppressed.

The *King* court held that the language of section 482[94] permitted searches of international mail at inland offices as well as at the border.[95] With regard to section 482's requirement of reasonable cause, the *King* court held that that threshold was satisfied here. In particular, the court said that the thickness of the envelopes, the powdery material emitted when the envelopes were tapped, and the pattern of earlier deliveries to the defendants gave the postal inspector reasonable cause to believe that contraband was contained in the envelopes.[96] The court also concluded that the search was reasonable under the fourth amendment even though it took place at an inland post office.[97] In support of this aspect of its holding, the court reasoned that the defendants were not inconvenienced by the fact that the search took place in Birmingham rather than a post office at a border.[98] The court noted that the Government's interest in

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No. 896, 363 F. Supp. 165 (S.D.N.Y. 1973) (opening of envelopes proper since customs agents possessed suspicion based on reason).

92. This violated 21 U.S.C. § 952(a) (1970) (prohibiting importation of a controlled substance or narcotic drug into customs territory of United States); 21 U.S.C. § 843(b) (1970) (prohibiting the use of a communications facility to commit a felony); and 21 U.S.C. § 841(a)(1) (1970) (prohibiting manufacture, distribution, or dispersion of a controlled substance).

93. The cards had originally arrived in the United States at San Francisco and had been forwarded unopened to defendant's post office box in Birmingham, Alabama. *King*, 517 F.2d at 351.

94. *See supra* notes 7-20 and accompanying text.

95. *King*, 517 F.2d at 352.

96. *Id.*

97. *Id.* at 353-54.

98. *Id.* The court was quick to point out that its decision did not rest on an extended border analysis. *Id.* at 354 n.2. An extended border search is one which takes place at a place other than a designated border checkpoint. For example, in *King* the envelopes arrived in San Francisco and were forwarded unopened to Birmingham, Alabama where

policing its borders was served equally well by the search in Birmingham as it would have been by a search at a border.[99] Because the envelopes could not be altered while in transit, the court concluded that the search was reasonable under the fourth amendment.[100]

In confused frustration the United States Court of Appeals for the Fourth Circuit applied a combination of standards when it considered a warrantless search of five envelopes from abroad in *United States v. Milroy*.[101] Milroy was convicted of using the mails to import heroin into the United States.[102] Five envelopes addressed to Milroy, which had been mailed from an Army post office box in Thailand, arrived at the Customs Bureau in Oakland, California. A letter was attached to each envelope explaining that the envelope had been identified by trained dogs in Thailand as containing narcotics. The envelopes had not been opened, however, by Thai authorities.

The customs inspector in Oakland felt each envelope and concluded that each contained something more than correspondence. He then opened the envelopes without obtaining a search warrant and found heroin in each one. Milroy moved for suppression of the heroin under the fourth amendment and, on appeal, also under 39 U.S.C. § 3623(d),[103] claiming the warrantless openings were illegal. Milroy did not invoke

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they were subsequently opened. Because the envelopes were not opened at an actual border checkpoint, for purposes of analysis Birmingham would represent an extension of the border or the functional equivalent of a border checkpoint. *See, e.g.*, Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

99. *King*, 517 F.2d at 354.

100. *Id.*

101. 538 F.2d 1033 (4th Cir. 1976), *cert. denied*, 426 U.S. 924 (1976).

102. 538 F.2d at 1034. This allegedly violated 21 U.S.C. § 960(a)(1) (1970) (prohibiting a knowing and intentional importation or exportation of controlled substances). The conduct also allegedly violated prohibitions concerning controlled substances. 21 U.S.C. §§ 843(b), 952(a) (1970); *see also supra* note 92.

103. *Milroy*, 538 F.2d at 1035. 39 U.S.C. § 3623(d) (1982) states:

> The Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection. The rate for each such class shall be uniform throughout the United States, its territories, and possessions. One such class shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service. *No letter of such a class of domestic origin shall be opened except under authority of a search warrant authorized by law*, or by an officer or employee of the Postal Service for the sole purpose of determining an address at which the letter can be delivered, *or pursuant to the authorization of the addressee.*

Id. (emphasis added). The code provision is unchanged from the time of *Milroy*. *See* 39 U.S.C. § 3623(d) (1970).

section 482, however.[104]

In denying Milroy's suppression motion and affirming his conviction, the court first rejected Milroy's section 3623(d) argument. The court held that the warrant requirement of section 3623(d) applied only to first class mail of domestic origin.[105] Since the envelopes in question were mailed in Thailand, they were not of domestic origin. Turning to Milroy's fourth amendment claim, the court applied a combination of standards to reach its holding. Specifically, the court drew upon general principles of border search law, reasonable cause to suspect cases, and naked suspicion decisions,[106] but did not indicate which one of these standards was controlling.[107] Rather, the court stated that whatever the proper standard was, the search in question was certainly justified by one or more of these standards.[108] The fact that a nation has the power to restrict who and what may enter its boundaries was of overriding importance for the court.[109]

The cases discussed show the difficulty courts had interpreting the statutory and regulatory framework relating to international mail searches before the Supreme Court's decision in *United States v. Ramsey*. In general, prior to *Ramsey*, courts applied traditional fourth amendment principles of border search law without relying on statutory law as in *Beckley*; balanced the interest of the individual to be free from unreasonable searches and seizures against the interest of the Government in controlling what comes into this country as in *Sohnen*; applied the naked suspicion standard of the first component of section 482 and section 1582 as in *Odland*; employed the reasonable cause test of the second part of section 482 as in *King*; or applied a combination of these standards as in *Milroy*. Naturally, some courts upheld the searches while others did not. Some courts admitted incriminating evidence found in the search while others suppressed such evidence. The Supreme Court,

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104. *Milroy*, 538 F.2d at 1035.

105. *Id.*

106. *Id.* at 1036-37.

107. *Id.* at 1037.

108. *Id.* It is interesting to note, however, that the court articulated facts which would have satisfied the reasonable cause to suspect test—presumably the highest of all the standards to meet—but did not apply this test. Specifically, the court noted that the envelopes had been singled out by specially-trained dogs in Thailand, were all in the same handwriting, were all addressed to Milroy, were mailed on the same day, and felt thicker than the normal letter. *Id.* This reinforces the conclusion that the court was confused as to which standard to apply to these facts.

109. *Id.*

recognizing this conflict, granted certiorari in *Ramsey*.[110]

B. United States v. Ramsey

Charles Ramsey and a co-defendant were convicted of unlawfully using the United States mails to import heroin.[111] Court approved wiretaps of trans-Atlantic telephone lines had revealed a possible connection between Ramsey and certain West German drug traffickers. Subsequently, agents observed the West German traffickers in Thailand mailing several letters to the United States. A few days later, oblivious to the Government's surveillance of the West Germans, a customs inspector in New York City removed several of the same envelopes from circulation. The inspector later testified that he had removed the envelopes because they appeared thicker than usual and were from Thailand, a known source of illegal narcotics. The inspector weighed the letters and found them to be three times heavier than the normal letter. He then opened the letters without first obtaining a search warrant and found heroin inside. The inspector resealed the letters and forwarded them to their destination in Washington, D.C. The defendants were arrested when they retrieved the letters.[112] The defendants moved for suppression of the heroin, claiming that it was illegally obtained by the Government as a result of the warrantless openings of the envelopes.[113] The district court denied suppression of the heroin, and the defendants were convicted.

The Circuit Court of Appeals for the District of Columbia[114] reversed. The court rejected the Government's claim that the search in question was a border search and therefore within the warrant exception to the fourth amendment.[115] Specifically, the court held that the facts of this case did not comport with the rationale that permitted border searches. In contrast to an automobile or suitcase, the limited size of an envelope makes it possible that only certain items, like narcotics or currency, could be smuggled into the country.[116] The court reasoned that if customs in-

110. 431 U.S. 606 (1977).

111. These acts allegedly violated 21 U.S.C. § 843(b) (1970) and 21 U.S.C. § 952(a) (1970). *See also supra* note 92.

112. A later search of Ramsey's residence, conducted pursuant to a warrant, revealed other narcotics paraphernalia, firearms, and the telephone numbers of the West German smugglers. United States v. Ramsey, 538 F.2d 415, 417 (D.C. Cir. 1976).

113. The defendants may not have had standing to contest the search because the envelopes were not addressed to them. However, this issue was not litigated. *Ramsey*, 431 U.S. at 611 n.7.

114. *Ramsey*, 538 F.2d 415.

115. *Id.* at 418-20.

116. *Id.* at 419.

spectors suspect the presence of contraband in an envelope, they can, rather than open the envelope, utilize more scientific, less intrusive means of inspection, such as the use of X-rays or trained dogs, to confirm their suspicions. These suspicions could then be presented to a magistrate as the basis for probable cause in order to obtain a warrant authorizing a search. According to the court, therefore, warrantless searches of international letter class mail were not within the border search exception to the fourth amendment.[117] In short, the court was not convinced that the needs of law enforcement justified such an intrusion on the individual's privacy without first obtaining a warrant.[118] Since a warrant was not obtained prior to the opening of the defendants' mail, the court concluded that the convictions based thereon had to be reversed.[119]

The court offered several justifications in support of its holding. First, the court drew upon the holding in *United States v. Van Leeuwen*[120] to conclude that it would be constitutionally reasonable for customs inspectors to detain international letter mail while inspectors investigated any suspicious characteristics and ultimately obtained a search warrant.[121] Second, the court relied on *United States v. Brignoni-Ponce*[122] and *Almeida-Sanchez v. United States*[123] to conclude that the border search exception to the fourth amendment should be narrowly construed.[124] Third, the court noted that the unbridled opening of international letter mail would have a chilling effect on free speech. Because of this potential

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117. *Id.*

118. *Id.* at 420. It is important to note the court's reliance on traditional fourth amendment law in its resolution of this case. Section 482 was cited only once by the court, in a footnote. Specifically, the court found that section 482 could not authorize a violation of the Constitution. *See id.* at 421 n.7.

119. The dissent argued that given the majority's concession that packages coming from abroad are within the border search exception to the fourth amendment, international letter class mail should also be so included in the border search exception. *Id.* at 423 (Robb, J., dissenting). The dissent also urged that it is irrelevant that something is concealed in an envelope and thus shielded from searches as opposed to a traveler's other belongings which may be legally searched at the border without a warrant. *Id.* The dissent, therefore, concluded that the court should have affirmed the convictions. *Id.*

120. 397 U.S. 249 (1970). In *Van Leeuwen*, the Supreme Court upheld the detention of domestic letter class mail for twenty-nine hours while inspectors investigated and obtained a search warrant. For a definition of domestic letter class mail see *supra* note 103.

121. *Ramsey*, 538 F.2d at 419.

122. 422 U.S. 873 (1975).

123. 413 U.S. 266 (1973).

124. *Ramsey*, 538 F.2d at 420.

conflict between the first and fourth amendments, the court ruled that procedures concerning search and seizure should be carefully circumscribed.[125] Fourth, the court noted the affirmative functions a warrant requirement would serve in such cases. For example, a warrant requirement would preserve a record of the proceedings for a reviewing court.[126] Requiring a warrant for searches of international letter class mail would also interpose a neutral magistrate's determination between the law enforcement officer and the individual's privacy interest in the letter.[127] Further, a warrant requirement in these situations would cut down significantly on the number of illegitimate mail openings. Finally, the court refuted the Government's contentions that a warrant requirement would be impractical in these situations. In particular, the court pointed out that an oral warrant process could be pursued without undue burden.[128]

On writ of certiorari, the United States Supreme Court reversed.[129] Writing for the majority,[130] Justice Rehnquist held that statutory and regulatory provisions controlled the determination of whether the search was legal rather than traditional fourth amendment warrant require-

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125. *Id.* In support of its conclusion the court cited recent revelations about United States intelligence agency activity with respect to illegal mail searches. *See Hearings Before the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 1st Sess., 1-2, 15-16, 51-63, 66, 76 (1975) [hereinafter *Hearings*]; SELECT COMM. TO STUDY GOVERNMENTAL OPERATIONS, INTELLIGENCE ACTIVITIES AND THE RIGHTS OF AMERICANS, S. REP. NO. 755, 94th Cong., 2d Sess. 12, 17, 38, 62, 107-08 (1976). The court analogized the issue to cases that require search warrants before wiretaps concerning national security issues may be conducted. The purpose of the warrant requirement in those cases was to allay public fears about indiscriminate wiretapping of innocent citizens. *See* United States v. District Court, 407 U.S. 297 (1972) (Court held 18 U.S.C. § 2511(3) not a grant of authority to conduct warrantless national security surveillances). The court concluded, therefore, that a warrant requirement for searches of international letter class mail would serve the same therapeutic purpose. *Ramsey*, 538 F.2d at 420-21.

126. *Ramsey*, 538 F.2d at 421.

127. *Id.* The court noted that a warrant requirement would prohibit *post hoc* rationalizations of suspicion by postal and customs officials in court. *Id.*

128. *Id.* at 422. The court's conclusion was buttressed by the fact that postal officials in Washington, D.C., the ultimate destination of the letters, detained three similar envelopes *while a warrant was obtained. Id.* (emphasis added); *see also* Almeida-Sanchez v. United States, 413 U.S. 266 (1973) (needs of law enforcement stand in tension with Constitution's protections of individual); Stanley v. Illinois, 405 U.S. 645 (1972) (Constitution recognizes higher values than efficiency and speed); Coolidge v. New Hampshire, 403 U.S. 443 (1971) (warrant requirement is not an inconvenience to be weighed against police efficiency).

129. *Ramsey*, 431 U.S. 606 (1977).

130. Justice Powell filed a concurring opinion. *Id.* at 625. Justice Stevens, joined by Justices Brennan and Marshall, filed a dissenting opinion. *Id.*

ments as the appellate court had held.[131] Specifically, the Court held that section 482 and the regulations promulgated thereunder[132] dictated the outcome of this case. According to the majority, section 482 permitted searches at the border itself if the inspection official had reasonable cause to suspect a violation of customs laws. The majority held that reasonable cause existed here. In particular, the origin of the envelopes and their heavier than normal weight gave the customs inspector reasonable cause to suspect something other than just a letter inside.[133]

The majority also concluded that the search in question was permissible under the fourth amendment.[134] Even though a warrant was not obtained before the envelopes were opened, the Court concluded that the search was nonetheless reasonable because it occurred at an international border.[135] The Court cited *Carroll v. United States*,[136] *United States v. Thirty-Seven Photographs*,[137] and *United States v. 12 200-Ft. Reels of Super 8MM. Film*[138] in support of this conclusion. These cases held, in essence, that travelers have diminished expectations of privacy at an international border. Therefore, as a sovereign, the United States may require them to identify themselves and their belongings before they are entitled to come into this country.[139] Further, the Court held that the mode of entry into this country was constitutionally insignificant in determining the reasonableness of the search.[140] The majority reasoned that if a person's belongings could be legally searched when a person entered the country, while the mails went unchecked, the purpose of border searches would lose all significance.[141] Instead, the Court held, the crucial fact was that the letters had come into this country from abroad.[142] Therefore, the Court concluded that the search of the enve-

131. *Id.* at 611.

132. 19 C.F.R. § 145.2 (1976); 39 C.F.R. § 61.1 (1975).

133. *Ramsey*, 431 U.S. at 614. The inspector admitted at trial, however, that he could not remember exactly whether in this case he had followed the normal procedure for foreign letter mail. The normal procedure consisted of shaking a package to determine if anything moved inside. If something moved, the inspector opened the package. *Id.* at 609 n.3.

134. *Id.* at 622.

135. *Id.* at 616-17.

136. 267 U.S. 132 (1925).

137. 402 U.S. 363 (1971).

138. 413 U.S. 123 (1973).

139. *See Ramsey*, 431 U.S. at 618 (quoting Carroll v. United States, 267 U.S. 132, 153-54 (1925)).

140. *Id.* at 620.

141. *Id.* at 620-21.

142. *Id.* at 620; *see also* Cotzhausen v. Nazro, 107 U.S. 215 (1883) (dutiable articles

lopes in question without probable cause and a warrant was reasonable under the fourth amendment.[143] The Court found that historical considerations also supported its conclusion.[144] The Court concluded that the combination of reasonable suspicion of contraband and a constitutionally reasonable search required reversal.[145]

The majority also disagreed with the appellate court's finding that first amendment concerns required the full panoply of fourth amendment protections before international letter mail could be opened.[146] Instead, the majority relied on 19 C.F.R. § 145.3 (1976)[147] as sufficient to safeguard the first amendment rights at stake. In the majority's opinion, section 145.3 would prevent any chill on free speech.[148] Furthermore, any chill that would take place was minimal and speculative.[149] In a concurring opinion Justice Powell expressed satisfaction that section 482's reasonable cause to suspect standard adequately protected the first and fourth amendment rights at stake.[150]

Justice Stevens, joined by Justices Brennan and Marshall, dis-

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in mail from abroad subject to seizure).

143. *Ramsey*, 431 U.S. at 622.

144. The Court placed great emphasis on the fact that the same Congress that had proposed the fourth amendment had also, two months earlier, passed the first customs statute, Act of July 31, 1789, ch. 5, 1 Stat. 23, 29. *Ramsey*, 431 U.S. at 616-17. Section 24 of that statute allowed customs officials "full power and authority" to search any vessel that they had reason to suspect contained illegally imported merchandise. Act of July 31, 1789, ch. 5, § 24, 1 Stat. 23, 29. This section was distinguished from section 23 which required a showing of "suspicion of fraud" before merchandise and packages could be searched. *Id.* at § 23, 1 Stat. at 29; *cf.* Boyd v. United States, 116 U.S. 616 (1886) (act equivalent to search of personal papers and effects violates Constitution).

145. *Ramsey*, 431 U.S. at 623-25.

146. The majority also disagreed with the appellate court's characterization of the underpinnings of the border search exception to the warrant requirement. The appellate court had held that border searches were premised on exigent circumstances and the mobility of the thing to be searched. *See* United States v. Ramsey, 538 F.2d 415, 418 (D.C. Cir. 1976). The Supreme Court majority held that exigent circumstances had nothing at all to do with the rationale of border searches. Rather, according to the majority, border searches historically have had an independent exception to the fourth amendment's warrant requirement. *Ramsey*, 431 U.S. at 621.

147. *See supra* notes 47-50 and accompanying text.

148. *Ramsey*, 431 U.S. at 623-24.

149. *Id.* at 624; *see also* Wolf v. McDonnell, 418 U.S. 539 (1974) (presence of inmate during mail opening prevents chill on communication); Roaden v. Kentucky, 413 U.S. 496 (1973) (unreasonable search and seizure prior restraint of expression); Stanford v. Texas, 379 U.S. 476 (1965) (requirement of particularized warrant leaves nothing to discretion of officer).

150. *Ramsey*, 431 U.S. at 625 (Powell, J., concurring).

sented.[151] The dissent concluded that the search conducted here was illegal because the government official had neither the consent of the sender or addressee nor probable cause of illegality and a warrant. Justice Stevens put forth five reasons in support of this position. First, he argued that the openings were prohibited by the longstanding respect of the Government for an individual's private communications.[152] According to Justice Stevens, this respect is evidenced by overtones from the Bill of Rights and its protection of free speech.[153] Second, Justice Stevens maintained that the legislative history of the predecessor statute to section 482 stated that the purpose of the bill was not to authorize the examination of the United States mails.[154] Third, Justice Stevens claimed that the word "envelope" as used in the precursor statute[155] did not refer to envelopes as they are commonly thought of today. Rather, "envelope" referred to packages.[156] According to Justice Stevens, this interpretation was consistent with the purpose of the original 1866 statute—prevention of smuggling across the United States border from Canada.[157] Articles that would be smuggled across this border would not fit in an ordinary letter-size envelope. Fourth, Justice Stevens argued that because this interpretation had been followed for 105 years, it was entitled to weighty consideration[158] and that any change in interpretation would have to be

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151. *Id.* at 626.

152. *Id.*

153. *Id.*

154. In particular, Justice Stevens pointed to a portion of a debate on the floor of the Senate in support of his position. *Id.* at 627. The debate centered on certain amendments being proposed to the precursor statute to 19 U.S.C. § 482, Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178, 178-79. The colloquy relied upon was as follows:

> Mr. HOWE: The second and third sections of this bill speak of the seizure, search, and examination of all trunks, packages, and envelopes. It seems to me that language is broad enough to cover the United States mails. I suppose it is not the purpose of the bill to authorize the examination of the United States mails.
>
> Mr. MORRILL [sponsor of the bill]: Of course not.
>
> Mr. HOWE: I propose to offer an amendment to prevent such a construction.
>
> Mr. EDMUNDS: There is no danger of such a construction being placed upon this language. . . .

CONG. GLOBE, 39th Cong., lst Sess. 2596 (1866), *quoted in Ramsey*, 431 U.S. at 627-28.

155. *See* Act of July 18, 1866, ch. 201, § 3, 14 Stat. 178, 178-79.

156. *Ramsey*, 431 U.S. at 629-30.

157. *See supra* note 8.

158. *Ramsey*, 431 U.S. at 631; *see also* NLRB v. Bell Aerospace Co., 416 U.S. 267 (1974) (Congressional definition of term accorded respect by courts); Helvering v. R.J. Reynolds Tobacco Co., 306 U.S. 110 (1939) (regulation in force must be taken to have been approved and given force of law by Congress).

mandated by Congress.[159] Finally, Justice Stevens posited that, despite the concerns of the majority, the characteristics that would satisfy the reasonable cause to suspect standard could often be used in a probable cause determination without undue burden.[160] Justice Stevens predicted that if the majority's decision was carried to its full extent, wholesale opening of private correspondence would result.[161] The dissent argued that such a mandate should come from Congress.[162]

C. *The Aftermath of* Ramsey*—the Confusion Continues*

The decision of the United States Court of Appeals for the Fifth Circuit in *United States v. Pringle*,[163] two years after *Ramsey*, signaled that courts were still confused as to which standard to apply to warrantless openings of international mail. *Pringle* involved the warrantless opening of a package mailed from Thailand. The customs inspector testified that the only reason he opened the package was that it was from Thailand.[164] His superior instructed him to open all packages from Thailand,[165] a known source of narcotics. Other than the country of origin, however, no other characteristics of the package made it appear suspicious. Upon opening the package, the official found heroin. The defendants claimed that the warrantless opening of the package violated their fourth amendment rights and 19 U.S.C. § 482.[166] However, rather than grapple with *Ramsey* and address the defendants' section 482 claim, the court resorted to another statute to uphold the defendants' convictions: 19 U.S.C. § 1582 and the regulations thereunder.

In the court's view, section 1582 and regulation 145.2 permit searches of all mail entering the United States on that fact alone and impose no requirement that suspicion, reasonable cause, or probable cause be articulated.[167] The *Pringle* court found support for its holding in *Odland*[168] and its implied holding that the Government may spot check any

159. *Ramsey*, 431 U.S. at 631; *cf.* H.K. Porter Co. v. NLRB, 397 U.S. 99 (1940).

160. *Ramsey*, 431 U.S. at 631-32.

161. *Id.* at 632.

162. *Id.*; *see* Hannah v. Larche, 363 U.S. 420 (1960) (Court approves special Commission on Civil Rights to adopt rules of procedure authorized by Congress); Greene v. McElroy, 360 U.S. 474 (1959) (Court requires express evidence of Congressional intent to create special procedural rights for persons undergoing security clearance).

163. 576 F.2d 1114 (5th Cir. 1978).

164. *Id.* at 1116.

165. *Id.*

166. *Id.* at 1115-16.

167. *Id.* at 1116.

168. *See supra* notes 82-89 and accompanying text.

mail as it enters the United States.[169] The *Pringle* court also cited *Ramsey* as support for its holding. Herein lies the confusion. *Ramsey* was expressly limited to section 482. In fact, the *Ramsey* majority expressly disclaimed basing any part of its decision on section 1582.[170] Yet, the *Pringle* court cited *Ramsey* for the proposition that customs searches of incoming international mail are reasonable by virtue of the fact that the mail arrived here from abroad.[171] This, however, is only one element of the holding in *Ramsey*. *Ramsey* also held that international mail may be opened without a warrant only when there is reasonable cause to suspect a violation of customs laws.[172] "Reasonable cause to suspect" is a higher standard than that imposed under section 1582 which requires no suspicion whatsoever.[173] This dual aspect of *Ramsey* reveals its inherent contradiction.[174] It is this contradiction that has spawned much of the confusion that has ensued since *Ramsey* was decided.

The *Pringle* decision also contains some disheartening dictum for international correspondents. In applying section 1582 to uphold the defendants' convictions, the *Pringle* court noted that there was no need to satisfy the "reasonable cause to suspect" test of section 482 because section 1582 and the regulations thereunder presumably allowed searches of all incoming international mail on no suspicion whatsoever.[175] All that was needed, according to the *Pringle* court, was that mail came to the United States border from abroad. The alarming consequence of this holding is that customs officials may justify the opening of international mail on no suspicion at all. In light of this aspect of *Pringle*, customs officials will not feel compelled to articulate facts necessary to meet *Ramsey*'s "reasonable cause to suspect" standard of scrutiny of warrantless mail openings. In view of *Pringle*, it now seems that a court will only occasionally invoke this higher standard. Perhaps, contrary to the holding of the *Ramsey* majority,[176] the first amendment rights of the recipients of international correspondence should dictate the full panoply of fourth amendment protections before international mail may be opened.[177]

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169. *Pringle*, 576 F.2d at 1116-17.
170. *See* United States v. Ramsey, 431 U.S. 606, 615 n.10 (1977).
171. *Pringle*, 576 F.2d at 1117.
172. *See supra* notes 129-33 and accompanying text.
173. *See supra* notes 30-37 and accompanying text.
174. *See infra* notes 206-11 and accompanying text.
175. *Pringle*, 576 F.2d at 1116.
176. *See* United States v. Ramsey, 431 U.S. 606, 623-24 (1977).
177. *See infra* notes 212-14 and accompanying text.

In *United States v. Glasser*,[178] the United States Court of Appeals for the Third Circuit fell victim to the same confusion that beset the Fifth Circuit in *Pringle*. In *Glasser* a package addressed to the defendant arrived in Miami from Jamaica. A customs official in Miami opened the package without a warrant pursuant to her regular routine. The agent found two carved wooden heads inside the package. Following regular practice, the inspector drilled holes in the heads and found hashish oil inside each. With the assistance of Drug Enforcement Agency (DEA) agents, a beeper was placed inside each head for monitoring purposes. The agents then arranged for a controlled delivery[179] to the defendant. When the packages were accepted and subsequently opened by the defendant, the DEA agents arrested him. On appeal the defendant argued that the warrantless opening of the package without reasonable cause to suspect contraband violated section 482. The defendant cited *Ramsey* as support for his contention. The *Glasser* court regarded this reliance as "misplaced."[180] In affirming the conviction, the court held that customs officials may lawfully open international mail without articulating reasonable cause to suspect a violation of customs laws.[181] In support of its holding, the court relied partially upon the proposition that a nation has the inherent power to control who and what may cross its borders.[182] Ironically, the *Glasser* court also cited *Ramsey* and *Pringle* as precedent for its holding. Again the confusion as to which standard to apply to warrantless openings of international mail is apparent. In particular, the *Glasser* court invoked *Ramsey* for the proposition that probable cause is not needed before a search of incoming international mail may take

178. 750 F.2d 1197 (3d Cir. 1984), *cert. denied sub nom.* Erdlen v. United States, 471 U.S. 1018 (1985), *cert. denied sub nom.* Gaza v. United States, 471 U.S. 1068 (1985).

179. A controlled delivery is one that is made possible by the cooperation of the Postal Service and a law enforcement agency. In the typical scenario, the Postal Service delivers the package in question to the suspect. Law enforcement officials, armed with a search warrant, monitor the activity inside the suspect's residence by way of an electronic surveillance device, usually a beeper. When the beeper changes tone, the agents know that the package has been opened. The agents then proceed to arrest the suspect and search his residence as authorized by the warrant. *See, e.g., Glasser*, 750 F.2d at 1199.

180. *Id.* at 1202-03.

181. *Id.* at 1200.

182. *Id.* at 1200-01; *see, e.g.*, United States v. 12 200-Ft. Reels of Super 8MM. Film, 413 U.S. 123 (1973) (Congress has plenary power to regulate imports and prohibit their introduction); Weber v. Freed, 239 U.S. 325 (1915) (Congress may prohibit importation of foreign articles); Buttfield v. Stranahan, 192 U.S. 470 (1904) (act preventing importation of impure and unwholesome tea, Act of Mar. 2, 1897, ch. 358, 29 Stat. 604, not unconstitutional).

place.[183] However, the *Ramsey* Court held that *reasonable cause* to suspect a violation must be articulated before international mail may be opened without a warrant.[184] Yet, the *Glasser* court affirmed the conviction based on a showing of less than reasonable cause to suspect.[185] Additionally, the *Glasser* court relied on several cases decided before *Ramsey* to support its conclusion that neither probable cause nor a warrant are required before mail may be opened.[186] However, in view of the fact that these cases were decided by inferior courts, using various rationales rejected by the Supreme Court's decision in *Ramsey*, their authority as precedent has been significantly lessened.

The *Glasser* court also cited *Pringle* as authority.[187] *Pringle* was cited for the proposition that customs officials need not articulate reasonable cause to suspect illegality before opening international mail. But *Pringle* is dubious authority for this assertion.[188] In the view of the *Glasser* court, *Pringle* and section 1582 permitted the opening of the package at issue by virtue of the fact that the package was of foreign origin. The *Glasser* court found that nothing more, not even reasonable cause to suspect, was needed to justify the opening. The court did acknowledge, however, that there might be a constitutionally significant distinction between the opening of international packages and international letter class mail.[189] However, the court's holding is inconsistent with this recognition. Specifically, the *Glasser* court pointed to regulation 145.3 and noted that it was promulgated in response to the *Ramsey* decision.[190] Regulation 145.3 prevents the *opening* of international letter class mail

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183. *Glasser*, 750 F.2d at 1201 (quoting United States v. Ramsey, 431 U.S. 606, 619 (1977)).

184. *Ramsey*, 431 U.S. at 623.

185. *Glasser*, 750 F.2d at 1205.

186. Specifically, the *Glasser* court relied on United States v. Emery, 541 F.2d 887 (1st Cir. 1976) (warrantless search by customs agents proper regardless of whether agents had reason to suspect contraband); United States v. Milroy, 538 F.2d 1033 (4th Cir. 1976), *cert. denied*, 426 U.S. 924 (1976) (envelopes not protected from warrantless search by customs officials); United States v. King, 517 F.2d 350 (5th Cir. 1975), *cert. denied sub nom.* Pearson v. United States, 466 U.S. 966 (1980) (customs officials were afforded with "reasonable cause" to open envelopes even though search did not take place in post office at port of entry); United States v. Bolin, 514 F.2d 554 (7th Cir. 1975) (customs search in New York of letter from Colombia not unconstitutional); United States v. Odland, 502 F.2d 148 (7th Cir. 1974), *cert. denied*, 419 U.S. 1088 (1974) (Government free to spot-check incoming international mail at port of entry).

187. *Glasser*, 750 F.2d at 1203-04.

188. *See supra* notes 163-77 and accompanying text.

189. *Glasser*, 750 F.2d at 1205.

190. *Id.*

without reasonable cause to suspect contraband.[191] Regulation 145.3 also prohibits, without a warrant or consent, the opening or reading of international letter class mail which appears to contain only correspondence.[192] Noting this extra protection given to international letter class mail, the *Glasser* court concluded that international *packages* could be opened pursuant to section 1582 without reasonable cause to suspect a customs violation.[193] But, given its heightened protection in the form of its probable cause and warrant requirement or, in the alternative, its reasonable cause to suspect requirement, regulation 145.3 appears to cast serious doubt on the continued vitality of section 1582 and, in turn, on the entire *Glasser* decision itself.

In *United States v. Cardona*[194] the United States Court of Appeals for the Ninth Circuit joined the growing list of courts that have misconstrued the *Ramsey* decision. The court utilized a totality of the circumstances test, rather than *Ramsey's* reasonable cause to suspect standard, to justify a border search of outgoing international mail. Cardona, a United States based Colombian national, was suspected of shipping unregistered currency and cashier's checks to Colombia through the United States mails in violation of currency reporting statutes. Cardona was also being investigated for possible illegal narcotics dealings. Acting on a tip from an informant, customs officials intercepted a package from Cardona destined for Colombia. Officials opened the package without a warrant and found $20,000 in checks and money orders inside.[195] At his trial for narcotics trafficking, Cardona sought to suppress the customs official's testimony concerning the searched package. The trial court held that the agent's testimony was admissible.[196] The trial court found that the agent's search of the package constituted a valid exit border search.[197] Cardona appealed this ruling. In affirming the trial court's decision, the Ninth Circuit exhibited the same confusion in construing *Ramsey* that had plagued the Third and Fifth Circuits in *Glasser*[198] and *Pringle*.[199]

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191. *See supra* notes 47-50 and accompanying text.

192. *Glasser*, 750 F.2d at 1205.

193. *Id.*

194. 769 F.2d 625 (9th Cir. 1985).

195. The checks were not in bearer form and, as such, were not in violation of the currency reporting statutes. *Id.* at 627.

196. *Id.* at 628.

197. *Id.; see also* United States v. Des Jardins, 747 F.2d 499 (9th Cir. 1984) (under border search exception exit search may be initiated without warrant, probable cause, or articulable suspicion).

198. *See supra* notes 178-93 and accompanying text.

199. *See supra* notes 163-77 and accompanying text.

First, the court cited *Ramsey* for the proposition that a border search may validly take place without a warrant, probable cause, or any articulable suspicion.[200] This reasoning highlights the confusion that courts have had in construing *Ramsey*. In fact, *Ramsey* held that *reasonable* suspicion must be articulated before international mail may be legally opened without a warrant.[201] Reasonable suspicion is a higher standard than no suspicion at all.

Second, while acknowledging that reasonable suspicion is the proper standard to be applied in these circumstances,[202] the *Cardona* court opted in favor of a totality of the circumstances test to justify the opening of the package as a valid border search.[203] This choice is especially difficult to understand in light of the fact that the *Cardona* court noted that this case must be decided under an extended border search doctrine.[204] The test applied by the *Cardona* court was in direct conflict with *Ramsey's* holding that reasonable suspicion, not totality of the circumstances, is required before international mail may validly be opened without a warrant. Instead, the *Cardona* court relegated the reasonable suspicion standard to a supporting component of its analysis, rather than apply it as the controlling standard for its holding.[205]

IV. ANALYSIS

As the cases decided after *Ramsey* indicate,[206] *Ramsey's* value as a definitive precedent in the area of international mail searches is extremely limited. First, the holding in *Ramsey* is a very narrow one. At no less than five points the Supreme Court's majority opinion indicates what the case does *not* decide.[207] Second, as the cases decided subsequent

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200. *Cardona,* 769 F.2d at 628.

201. United States v. Ramsey, 431 U.S. 606, 614 (1977).

202. *Cardona,* 769 F.2d at 628.

203. This test was gleaned from Alexander v. United States, 362 F.2d 379 (9th Cir. 1966), *cert. denied,* 385 U.S. 977 (1966) (legality of search of contraband analyzed through totality of surrounding circumstances test).

204. *Cardona,* 769 F.2d at 628-29.

205. *Id.* at 629.

206. *See* discussion, *supra,* Part III, C.

207. *See* United States v. Ramsey, 431 U.S. 606, 615 n.10 (1977) (the Court does not decide if search would have been authorized by other statutory authority, such as 19 U.S.C. § 1582 (1982)); *id.* at 615 n.11 (the Court does pass on geographical limits on searches at issue); *id.* at 618 n.13 (the Court does not decide under what circumstances a border search would be "unreasonable" because of particular offensive manner in which it was carried out); *id.* at 624 (unnecessary to consider reach of first amendment in this area); *id.* at 624 n.18 (no need to consider speech would be "chilled" and, if it were, what the appropriate response would be); *see also id.* at 612 n.8.

to it indicate, *Ramsey* contains an inherent contradiction. On the one hand, a majority of the Supreme Court upheld the search at issue because the customs inspector had reasonable cause to suspect a violation of the customs laws.[208] On the other hand, the majority upheld the search solely because it occurred at an international border.[209] The cases decided after *Ramsey* show the frustration that results from this polarity. Law enforcement officials risk losing valuable evidence because a mail search is adjudged improper. Defendants face the possibility of a denial of due process because judges may improperly decide what standard should apply.

Third, the essence of the majority's holding in *Ramsey* is that "the opening of mail is limited by a 'reasonable cause' requirement."[210] If this is indeed *Ramsey*'s holding, it is not possible to reconcile subsequent decisions that permit the opening of international letter class mail on a showing of *less* than reasonable cause.[211] This contradiction must be resolved.

One suggestion is the implementation of a warrant requirement before international mail may be opened. This was precisely the position taken by the District of Columbia Circuit Court of Appeals in *Ramsey*.[212] While this suggestion has the heavy weight of history against it and will undoubtedly raise the ire of critics, it has many positive aspects to recommend it. For example, a warrant requirement interposes the decision of a neutral magistrate between that of the law enforcement officer and the addressee of the mail. A warrant requirement would also preserve a record of the proceedings for a reviewing court. Further, imposing a warrant requirement for searches of international mail provides more protection for the addressee. A warrant requires probable cause supported by oath or affirmation before issuance. Probable cause is obviously a higher standard than naked suspicion or reasonable suspicion. Therefore, a probable cause requirement insures that some mail that otherwise would have been opened under a lower standard would not be searched. Thus, the addressee is afforded more protection by a warrant requirement. A probable cause and warrant requirement would also significantly reduce the number of haphazard openings by inspectors.[213]

Critics of this position argue that such a requirement is an unjustified

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208. *Id.* at 614.
209. *Id.* at 616.
210. *Id.* at 612-14 n.8.
211. *See* discussion *supra*, Part III, C.
212. 538 F.2d 415 (D.C. Cir. 1976).
213. *Id.* at 421; *see Hearings*, *supra* note 125.

hindrance to effective crime control. However, most arguments that can be made against a warrant requirement can be easily refuted. For example, critics argue that a warrant requirement will create too much delay in the law enforcement process. However, provisions for telephone warrants and other oral warrant processes overcome this objection. Furthermore, a full-time magistrate could be assigned to major border post offices, such as New York or San Francisco. Alternatively, a magistrate could visit such offices at a designated time every day or every week. Critics also argue that a warrant requirement is not necessary because, historically, warrants have not been required for border searches. However, if one concludes that searches of international mail are outside the realm of traditional border searches, then a warrant requirement could be easily imposed. Furthermore, the fact that warrantless border searches have been permitted historically adds little or no weight to the critics' positions. While no doubt entitled to consideration, blind adherence to tradition should not and does not protect a practice from principled analysis.

Other arguments put forth by critics should similarly fail. For example, opponents to a warrant requirement argue that mail, being inanimate, has no rights. This argument, however, is not persuasive. In fact, in light of authority upholding the detention of *human beings* as reasonable,[214] the detention of an inanimate object, such as a piece of international mail, while probable cause is articulated and the approval of a magistrate is sought, cannot be ruled unreasonable. However, the rights, or prospective rights, of the mail are not at issue here. Rather, the rights of the sender and addressee are the objects of a warrant requirement. Under a warrant requirement, therefore, searches of mail would be conducted only with the consent of the sender or addressee or on the basis of probable cause of illegality and a warrant.

Another, perhaps more tenable, solution to solving *Ramsey*'s inherent contradiction is a test requiring "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the package contains illegal material"[215] before international mail may be opened. This standard was put forth by the United States Court of Appeals for the Ninth Circuit in *United States v. Most*.[216] On the

214. *See, e.g.*, United States v. Montoya de Hernandez, 473 U.S. 531 (1985) (detention of traveler at border, beyond scope of routine customs search and inspection, is justified).

215. United States v. Most, 789 F.2d 1411, 1415 (9th Cir. 1986) (installation of beeper in foreign package did not violate fourth amendment).

216. *Id.*

surface this test resembles the reasonable cause to suspect standard of section 482. In reality this test is a refined articulation of that standard. This refined test is more stringent than the reasonable cause to suspect standard but less demanding than a probable cause standard. In practice, this test would require postal and customs officials to articulate specific facts peculiar to the package or letter at issue that alerted their attention in the first place. In theory, these facts could be reproduced at trial so that the trier of fact could draw its own conclusions as to the propriety of the search. In practice, the *Most* test would require more than the mere fact that mail crossed an international border to justify a warrantless opening of international mail. The country of origin, by itself, would not be enough to satisfy this standard.[217] However, the country of origin could be one factor among many to be considered in fulfillment of this standard. Other factors could include, but are not limited to the following: the weight of the package, the affixed postage, outward appearance, pattern of earlier deliveries, and return address.

V. CONCLUSION

Since *United States v. Ramsey* was decided in 1977, at least three Circuit Courts of Appeal—the Third, Fifth, and Ninth—have misapplied its holding in cases involving the warrantless opening of international mail. This confusion has come about because of the contradiction inherent in the *Ramsey* decision. On the one hand, the *Ramsey* majority upheld the opening of international letters because a customs inspector had reasonable cause to suspect a violation of customs laws. On the other hand, the *Ramsey* majority justified the warrantless search on no suspicion at all. That is, the search was legal merely because the envelopes were of international origin and the openings took place at an international border. This contradiction and the confusion that has followed point toward the need for a solution. One such solution is to impose a probable cause and warrant requirement before international mail may be opened. This requirement would serve many useful purposes, such as preserving a written record of the proceedings for later review and, foremost, protecting the first amendment rights of international correspondents.[218] This solution has the drawbacks, however, of cost and difficulty

217. *Cf.* United States v. Scheer, 600 F.2d 5, 7 (3d Cir. 1979) (per curiam) (search conducted at border or equivalent entry point constitutional since item entered United States from abroad); United States v. Barclift, 514 F.2d 1073 (9th Cir. 1975) (per curiam), *cert. denied*, 423 U.S. 842 (1975) (mere entry alone of mail into the United States from foreign country sufficient reason for border search).

218. *See, e.g.*, United States v. Ramsey, 538 F.2d 415, 419-21 (D.C. Cir. 1976).

of implementation.

It appears that the confusion spawned by the *Ramsey* decision may best be resolved through the imposition of the test articulated, ironically, by the Ninth Circuit itself in *United States v. Most*.[219] This test is a more particularized version of section 482's reasonable cause to suspect standard. Specifically, the *Most* test requires "specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the package contains illegal material."[220] Presumably, this standard would force customs inspectors and postal officials to reproduce at trial the specific characteristics of the opened package or letter that called their attention to it initially. In this regard, the *Most* formulation serves the same purpose as a warrant requirement. In addition, this standard would require more than just an international origin to justify an opening. Theoretically, this test would also require more than mere presence at an international border to justify a search under it. Yet this standard does not rise to the level of requiring probable cause before international mail may be opened. By employing this single test, rather than the dual standard put forth in *Ramsey*, the conflict engendered by *Ramsey* can once and for all be put to an end. Furthermore, this test will effectuate the true intent of section 482 and will give international correspondents the protection that has been rightfully due.

*Andrew H. Meyer**

219. 789 F.2d 1411 (9th Cir. 1986). *Most* represents the latest decision by the Ninth Circuit on this issue. Perhaps this court has realized the need for a reassessment of its earlier holdings.

220. *Id.* at 1415.

* This Note is dedicated to my wife whose patience, understanding, and encouragement made its completion possible.