

**SEATBELTS, SWEAT, AND NO SHOPPING BAGS:
REASONABLE SUSPICION LACKING FROM BORDER
PATROL STOP
UNITED STATES V. RANGEL-PORTILLO, NO. 08-40803,
2009 WL 3429563 (5TH CIR. OCT 26, 2009)**

Highlight

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In *United States v. Rangel-Portillo*, the appellant, Cipriano Rangel-Portillo appealed his conditional plea of guilty to the charge of unlawful transportation of undocumented aliens.¹ Rangel-Portillo based his appeal on the grounds that the district court erred in denying his motion to suppress evidence obtained as the result of an unconstitutional stop by United States Border Patrol Agent Victor Soliz.² Rangel-Portillo was stopped near the Rio Grande City Wal-Mart, only 500 yards from the Texas/Mexico border, with three illegal aliens in the backseat.³

At approximately 10 a.m. on the morning of November 9, 2007, Border Patrol Agent Victor Soliz observed two vehicles exiting the Wal-Mart parking lot onto Highway 83.⁴ Soliz testified that the Wal-Mart parking lot was a well-known staging area for alien smuggling.⁵ Because Soliz felt the passengers looked suspicious, he made a U-turn to get a better look at the vehicles.⁶ As Rangel-Portillo's car passed Soliz's unit, he observed the following: (1) the driver made eye contact, but the passengers remained "stone-faced" and only looked straight ahead; (2) all three backseat passengers were wearing their shoulder seatbelts; (3) the passengers never conversed and were sweating "pretty bad"; and (4) no Wal-Mart shopping bags were in the floorboards.⁷ Based on Soliz's observations, he stopped the vehicle and conducted an

¹ *United States v. Rangel-Portillo*, No. 08-40803, 2009 WL 3429563, at *1 (5th Cir. Oct. 26, 2009)

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

immigration check, which revealed that all three passengers in the backseat were illegally in the United States.⁸

Rangel-Portillo was charged with one count of conspiracy to unlawfully transport undocumented aliens and two counts for unlawfully transporting undocumented aliens.⁹ Rangel-Portillo filed a motion to suppress the evidence obtained as a result of his detention, arguing that the agents lacked reasonable suspicion to stop his vehicle.¹⁰

The district court denied the motion.¹¹ Thus, the issue before the Fifth Circuit on appeal was whether the district court correctly determined that Soliz had reasonable suspicion to stop the Rangel-Portillo's vehicle.¹²

The court began its analysis by examining the factors relied upon by the agents in making the stop, noting that “[n]o single factor is dispositive, and each case must be examined based on the totality of the circumstances known to the agent at the time of the stop.”¹³ Although the proximity to the border is afforded great weight, no additional factors were present to merit a finding that reasonable suspicion existed.¹⁴ The court concluded that the factors cited by Soliz and relied on by the district court did not carry any weight because law-abiding citizens were just as likely to wear a seatbelt, sit rigidly, not converse with one another, and exit Wal-Mart without shopping bags.¹⁵ Moreover, the court reasoned that the passengers’ failure to make eye contact, cars driving in tandem, and sweaty passengers were inadequate in relation to the totality of the circumstances to form reasonable suspicion.¹⁶

In the absence of more definitive factors—like erratic driving by the defendant, the vehicle displaying the unusual characteristics of a vehicle carrying illegal aliens, a suspicious time of day, or an agent relying on an anonymous tip—the court held that Soliz’s stop of Rangel-Portillo’s vehicle lacked reasonable suspicion and was, therefore, illegal.¹⁷ This case represents one of the few instances when the totality of the circumstances did not add up to reasonable suspicion.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *2.

¹² *Id.*

¹³ *Id.* (citing *United States v. Rodriguez*, 564 F.3d 735, 741 (5th Cir. 2009)).

¹⁴ *Id.* at *3.

¹⁵ *Id.*

¹⁶ *See id.* at *4.

¹⁷ *Id.*

Criminal defense attorneys will likely find this case useful because it attempts to better define the line between which combination of factors constitute reasonable suspicion and which factors do not. In this case, the court suggested it was the absence of certain factors from the record that was most indicative in determining that the stop lacked reasonable suspicion.¹⁸ Therefore, when challenging that a stop lacked reasonable suspicion, defense attorneys might want to focus their argument on the inadequacies of the record at hand as they compare to the more comprehensive records of cases that have previously survived constitutional scrutiny.¹⁹ Again, a couple of the factors this court found missing in this case included unusual driving patterns by the defendant and an agent acting on an anonymous tip.²⁰ What is clear from this case is that, without more definitive factors, seatbelts and sweat are not enough to form reasonable suspicion.²¹

¹⁸ *Id.*

¹⁹ *See id.* at *4 n.7 (“It is in comparison to these more comprehensive records that the inadequacies of the instant record become readily apparent.”).

²⁰ *Id.* at *4 & n.2

²¹ *See id.* *3–*4. The court stated, “Individuals do not shed their constitutional rights with the click of a seat belt.” *Id.* at *3.