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### § 2.1 Overview of the Chapter

In the Eleventh Circuit, “evidence obtained illegally can be used in deportation proceedings, unless the violation was so ‘egregious ... that [it][ ] transgress[es] notions of fundamental fairness and undermine[s] the probative value of the evidence obtained.’”<sup>1</sup>

### § 2.2 Questions and Types of “Stops” of Immigrants

While “[d]etention pursuant to a *Terry* stop, [i.e., a brief detention made for limited investigative purposes based on reasonable suspicion] must be temporary and last no longer than is necessary to effectuate the purpose of the stop,” officers may further extend a *Terry* stop where “further reasonable suspicion, supported by articulable facts, emerges.”<sup>2</sup> Brevity is an “important” but “highly context-sensitive” consideration.<sup>3</sup> For example, where officers had reason to believe that an individual they had detained had presented either a false or invalid identification, the officers were “justified in in prolonging the stop ‘in order to determine if [the individual] had committed the crime of providing a false name to a police officer.’”<sup>4</sup>

### § 2.3 Identifying a Seizure in the Immigration Context

Immigration agents are “forbidden from detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens.”<sup>5</sup> However, “a request for identification by the INS does not, by itself, amount to a detention protected by the Fourth Amendment ‘[u]nless the circumstances of the encounter [were] so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded.’”<sup>6</sup>

“Roving border patrols away from the border or its functional equivalents ‘may stop vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.’”<sup>7</sup> Reasonable suspicion may be supported by a combination of factors such as “characteristics of the area, including its proximity to the border; the usual traffic patterns on the road; previous experience with alien smuggling ... in the vicinity; the behavior of the driver, such as erratic driving; and characteristics of the vehicle, including the appearance of being heavily loaded.”<sup>8</sup> “[T]he absence of a reason to believe the vehicle had come from the border ... is not alone dispositive.”<sup>9</sup> While the silence of a suspect when questioned does

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<sup>1</sup> *Ghysels-Reals v. U.S. Atty. Gen.*, 418 F. App’x 894, 895 (11th Cir. 2011) (quoting *Immigration and Naturalization Serv. v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984)).

<sup>2</sup> *United States v. Espinal*, No. 1:11-CR-00060-ODE, 2011 WL 7004195, at \*9 (N.D. Ga. Aug. 29, 2011) (quoting *United States v. Mercer*, No. CR 06-02-M-DWM, 2007 WL 1342480, at \*3 (D. Mont. May 4, 2007)), report and recommendation adopted, No. 1:11-CR-0060-4-ODE, 2012 WL 92451 (N.D. Ga. Jan. 10, 2012).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* (quoting *United States v. Stoltz*, Crim. No. 11-096 (RHK/LIB), 2011 WL 2533872, at \*8 (D. Minn. June 3, 2011), adopted by 2011 WL 25339129, at \*1 (D. Minn. June 27, 2011)).

<sup>5</sup> *United States v. Rodriguez-Franco*, 749 F.2d 1555, 1559 (11th Cir. 1985).

<sup>6</sup> *Id.* (quoting *Immigration and Naturalization Serv. v. Delgado*, 466 U.S. 210, 216 (1984)).

<sup>7</sup> *United States v. Cruz-Hernandez*, 62 F.3d 1353, 1355 (11th Cir. 1995) (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975)).

<sup>8</sup> *Id.* (quoting *United States v. Barnard*, 553 F.2d 389, 391 (5th Cir. 1977)).

<sup>9</sup> *Id.* (quoting *United States v. Pacheco*, 617 F.2d 84, 86 (5th Cir. 1980)).





