

## FOURTH AMENDMENT: PASSENGERS AND POLICE STOPS

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This activity explores individuals rights during police traffic stops by examining the Supreme Court case ***Brendlin v. California*, 551 U.S. \_\_\_, 127 S. Ct. 2400 (2007)**. Participants will answer the question: Does the Fourth Amendment protect the passengers in a car from unreasonable search and seizure during a traffic stop and give the passengers the right to challenge the stop?

### About these Resources

- Analyze the [facts and case summary](#) for *Brendlin v. California*.
- Build arguments for each side, starting with these [talking points](#).
- Use critical thinking skills and share reflections on the [discussion questions](#).

### How to Use These Resources

This activity is a modified [Oxford style debate](#).

1. To get started, have participants read the *Brendlin v. California* [facts and case summary](#).
2. Assign student attorneys to the issues listed in the [talking points](#). They are suggested points– not a script– for the debate. Student attorneys are encouraged to add their own arguments.
3. All other students are jurors who deliberate (and may refer to these talking points) during the open floor debate. They debate among themselves in the large group or smaller groups and come to a verdict after the attorneys present closing arguments.

## FACTS AND CASE SUMMARY

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### ***Brendlin v. California*, 551 U.S. \_\_\_, 127 S. Ct. 2400 (2007)**

*Under the Fourth Amendment's search and seizure provisions, a car passenger in a traffic stop may challenge the legality of the stop.*

<b>FACTS</b>	The police pulled over a vehicle to determine whether the driver was driving with expired tags. During the stop, an officer recognized the defendant, Bruce Brendlin, as a parole violator. The officer arrested the defendant and found methamphetamine on his person. The defendant was charged with parole violation and possession of narcotics. At his trial, he moved to suppress (keep out) the narcotics, stating that the police lacked justification to stop the automobile in the first place. The defendant's argument was that the temporary plates indicated that an application for renewal of an expired license was pending. The State of California conceded, on appeal, that the stop was unjustified.
<b>PROCEDURE</b>	The case was tried in the California state court system. The trial court held that the passenger had not been seized for Fourth Amendment purposes. The evidence was admitted and the defendant was convicted. The Court of Appeals reversed. The California Supreme Court reinstated the drug evidence and the conviction. The U.S. Supreme Court granted certiorari to hear the case.
<b>ISSUE</b>	Whether, under the Fourth Amendment, a passenger during a traffic stop is seized so that the passenger may challenge the legality of the stop.
<b>RULING</b>	Yes
<b>REASONING</b>	Any person seized by a Government agent can challenge the legality of that seizure. In <i>United States v. Mendenhall</i> , 446 U.S. 544(1980), the Court held that the test for determining whether a person is seized is whether a reasonable person would feel free to leave under the circumstances. Under the circumstances of this case, no reasonable passenger would have felt free to leave the scene. Although the State of California noted that the defendant might have felt free to leave because he opened (then shut) his door during the stop, the test is objective: What a reasonable person would conclude; not what a particular defendant thinks. The U.S. Supreme Court rejected several findings by the California Supreme Court. The U.S. Supreme Court disagreed with the finding that the police only intended to investigate the driver. It also rejected the California court's concerns that passengers in taxis, buses, and other commercial transportation could be subject to investigation and possible arrest when the driver is pulled over. The U.S. Supreme Court noted that there is a difference between social passengers in private transportation and passengers in commercial transportation.
<b>CONCURRENCES</b>	None (unanimous decision).
<b>DISSENTS</b>	None (unanimous decision).

# TALKING POINTS

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## Question:

Does the Fourth Amendment protect the passengers in a car from unreasonable search and seizure during a traffic stop and give the passengers the right to challenge the stop?

### Brendlin

### California

#### 1. During a traffic stop, is the passenger considered seized, just as the driver is considered seized?

##### Affirmative. Yes.

Common sense should dictate the result in this case. Although the police might only have intended to pull over and investigate the driver, the stop and the seizing of the driver means that any passengers are also seized. Therefore, if the seizure of the driver was illegal, the seizure of the passenger is illegal, as well.

##### Negative. No.

Even though the driver's vehicle was stopped by the police, the defendant, as a passenger, was not seized. Seizure only follows the individual who is the subject of a police action. When an automobile is involved, the laws of physics require that not only the driver, but also any passengers, are physically stopped, but a physical stop is not the same as a legal seizure. The object of the police action, i.e., the driver, was the only person legally seized.

#### 2. Is the passenger detained and not free to leave during a traffic stop, just as the driver is detained?

##### Affirmative. Yes.

Practical considerations, and not theoretical speculations, should govern in this case. Whatever the letter of the law might say, the defendant was not free to leave the scene of the traffic stop just because the police initially were focusing on the driver and not the passenger. The moment the defendant attempted to leave the car, the police – in self defense – probably would have ordered him to stop. Therefore, no reasonable person, including the defendant, would have felt free to leave.

##### Negative. No.

The police pulled over the vehicle to determine whether the driver was driving with expired tags. Their intent was to seize the driver and not the passenger. The police receive training on search and seizure law. Therefore, they would know that the passenger in a vehicle is free to leave when the driver is pulled over unless, of course, the passenger is implicated in a crime or is considered a danger to the police or others. Moreover, if the defendant had attempted to leave and the police stopped him, then he would have been able to claim the seizure was illegal. But until that happened, he had not been seized at all.

#### 3. If passengers are considered seized in a traffic stop, wouldn't this result in unintended, negative consequences?

##### Affirmative. Yes.

Significant consequences would have resulted if the Court had accepted the California Supreme Court's interpretation of the law. For instance, whenever the police stop a bus or a taxi, they could investigate its passengers with impunity. The passengers would have no recourse against the police, even if the police lacked justification in the initial traffic stop. The police could begin pulling over buses and taxis randomly in order to try to spot and arrest an

##### Negative. No.

There is a difference between a social passenger and a commercial passenger. Commercial passengers should be afforded more protections because they do not have a presumed close relationship with the driver. It is easy to see and investigate social passengers. It would be harder, and there would be less justification for doing so, in certain commercial contexts such as on a bus. Moreover, although mistaken, the police initiated this stop because they suspected that the driver had expired tags. There is no suggestion that totally random stops of any vehicles for the sole purpose of

occasional criminal who might happen to be in those vehicles.

conducting a fishing expedition to find and arrest criminals would be constitutional.

## DISCUSSION QUESTIONS

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Use the discussion questions to help formulate your opinion on the case.

1. If you were a passenger in a friend's car when it was stopped by police, and you were carrying an illegal substance, would you be free to leave the car?
2. Could you challenge the legality of the stop?
3. What would happen if your attorney moved to keep the substance out of evidence claiming that, as a passenger, you were not legally "seized" under the Fourth Amendment - only the driver was?
4. Three levels of the state court system in California decided the case differently. How would you decide?