



*A parolee has
some Fourth
Amendment rights*

PAROLEE AND FOURTH AMENDMENT RIGHTS

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The Ninth Circuit in **Moreno v. Baca 431 F.3d 633 (2005)** held that a parolee does not lose all Fourth Amendment rights by reason of his status as a parolee. In that case, Moreno and a friend were walking down the street after their car broke down. They were stopped by deputy sheriffs who patted them down, emptied the contents of their pockets, and placed them in a patrol car. Moreno admitted he was on parole. A warrant check by the officers revealed a warrant for his arrest with a \$10,000.00 bail. A deputy found some drugs in a nearby yard which he asserted Moreno had taken from his pants and thrown just prior to the stop by the deputies. Moreno was later acquitted in his criminal trial.

In his civil rights suit against the deputies, Moreno claimed that the deputies had no right to detain him because there was no reasonable suspicion. The deputies argued that Moreno appeared nervous and was walking in a high crime area and, therefore, the detention was justified under **United States v. Knights 122 S.Ct. 587 (2001)**. **Knights** held that a search of a probationer's home was appropriate when there was reasonable suspicion to suspect his involvement in a crime with his diminished expectation of privacy as a probationer. The deputies also argued that Moreno was subject to search because under his parole conditions he could be searched at any time. The Ninth Circuit held that the search and arrest lacked reasonable suspicion. Nervousness alone does not give rise to reasonable suspicion. **U.S. v. Chavez Valenzuela 268 F.3d 719 (2001)**. Nor does a surprised or terrified look on a driver's face when pulled over by law enforcement officials give rise to a reasonable suspicion. **U.S. v. Garcia Camacho 53 F.3d 244 (1995)**. Nor do repeated glances in a mirror at law enforcement officers following a car give rise to reasonable suspicion. **U.S. v. Rodriguez 976 F.2d 592 (1992)**.

But what about a "suspicionless" search based on parole status? The California Supreme Court in **People v. Reyes 19 C. 4th 743 (1998)** has held that even a search of a parolee, regardless of his status, cannot be arbitrary, capricious, or harassing. The totality of the circumstances must be examined to determine whether a search is reasonable under the Fourth Amendment. The Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee, but the fruits of that search cannot be used to retroactively justify the search if an officer is unaware of the parolee condition prior to the search. **Samson v. California 126 S.Ct. 2193 (2006)**. You cannot retroactively justify a detention and arrest after the fact. The **Samson** Court held that under California precedent, an officer would not act reasonably in conducting a suspicionless search absent knowledge that the person

Can't retroactively justify a search by finding out later the detainee is a parolee

stopped for search is a parolee. Incidentally, the courts have consistently recognized that there is no constitutional difference between probation and parole for purposes of the Fourth Amendment. **Motley v. Parks 432 F. 3d 1072 (2005).**

In **Moreno** the court held you couldn't justify the arrest after the fact because the determination for the initial detention is based upon the facts then known to the officers. Since there was no basis for the detention, the arrest and search were unlawful.

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