

a brief check for weapons. *United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82, 95 S.Ct. 2574, 2580–81, 45 L.Ed.2d 607 (1975); *Terry v. Ohio*, 392 U.S. 1, 27, 88 S.Ct. 1868, 1883, 20 L.Ed.2d 889 (1968). If the seizure involves anything more than the brief and narrowly-defined intrusion authorized by *Terry*, it must be justified by probable cause. *Dunaway*, 442 U.S. at 212, 99 S.Ct. at 2256; *Brignoni-Ponce*, 422 U.S. at 882, 95 S.Ct. at 2580. *Dunaway* makes absolutely clear that where the defendant is transported to the police station and placed in a cell or interrogation room he has been arrested, even if the purpose of the seizure is investigatory rather than accusatory. 442 U.S. at 212–13, 99 S.Ct. at 2256–57; see also *Brown v. Illinois*, 422 U.S. 590, 605, 95 S.Ct. 2254, 2262, 45 L.Ed.2d 416 (1975). Because such a seizure constitutes an arrest, it must be supported by probable cause. *Dunaway*, 442 U.S. at 214, 99 S.Ct. at 2257; *United States v. Chamberlin*, 644 F.2d 1262, 1266 (9th Cir.1980), cert. denied, 453 U.S. 914, 101 S.Ct. 3148, 69 L.Ed.2d 997 (1981).

In seizing persons suspected of violations of 8 U.S.C. § 1325, Peoria police have adopted a procedure identical to that described in *Dunaway*. Defendants are walked or driven to the police station and held pending interrogation by the Border Patrol. This seizure constitutes an arrest, and the constitutional standards cannot be avoided by labeling it a mere detention. Prior to invoking this procedure, the police must therefore have probable cause to believe either that illegal entry has occurred or that another offense has been committed. As we have indicated, inability to produce documentation does not in itself provide probable cause. For example, if a passenger in a vehicle stopped by the police cannot, or does not, provide identification, his failure to do so does not justify transporting him to the station and holding him for the Border Patrol. See *Florida v. Royer*, 460 U.S. 491, —, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229, 236 (1983) (plurality opinion); *Brown v. Texas*, 443 U.S. 47, 53, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357 (1979).

To summarize, nothing in federal law precluded Peoria police from enforcing the criminal provisions of the Immigration and Naturalization Act. Arizona law authorizes local officers to arrest for violations of 8 U.S.C. § 1325 where there is probable cause to believe the arrestee has illegally entered the United States. However, enforcement procedures must distinguish illegal entry

from illegal presence and must comply with all arrest requirements imposed by the federal Constitution.

### III

#### CLAIMS FOR DAMAGES

We now review the specific violations alleged by the plaintiffs under the standards \*478 we set out above. We begin by summarizing the six incidents on which the plaintiffs base their claims.

The first incident occurred on September 13, 1977, at Saliba's Market. It involved defendants Watters and Cuker, but none of the named plaintiffs. Watters, Cuker, and several other officers were dispatched to the market at the request of the Border Patrol, which asked the officers to arrest persons arriving in a blue pickup truck. The request did not reveal what information the Border Patrol had that the suspects had illegally entered the country. Four persons were arrested in the market. They were not charged with any state or local criminal offense, but were held for release to the Border Patrol.

Saliba's Market was also the scene of an incident on February 18, 1978. It involved plaintiffs Arbisio and Ramirez, but none of the named defendants. The arresting officer testified that he observed six men loading groceries into the back of a pickup truck. The groceries were stacked around the truck, impairing the traffic flow on the two-lane street in front of the store. The officer stopped to investigate primarily because of the interference with the traffic flow, but also because the men grouped around the truck “fit the profile of an illegal alien.” He questioned the men in English and asked them for immigration papers. The evidence does not reveal what answers Arbisio and Ramirez gave to these questions or whether the responses provided probable cause to arrest them. Both men were taken to the station and held for the Border Patrol.

The next incident occurred on February 21, 1978, at Bodine's Market. Although several of the defendants were involved, none of the plaintiffs was present. The police responded to a complaint that about 25 persons were milling around behind the market. A special riot squad, including four or five police cars, was dispatched. As the cars approached with lights and sirens on, the crowd fled into nearby citrus groves. The officers made some attempt