

# Recent Case Report

## U.S. v. Choudhry

(9<sup>th</sup> Cir. 2006) 461 F.3d 1097

### ISSUE

Can officers make a traffic stop on grounds the driver violated a city parking ordinance?

### FACTS

Just after midnight, two San Francisco police officers spotted a car illegally parked near the entrance to the Bernal Heights Park. The car was parked in violation of the San Francisco Traffic Code which prohibited parking on the street between 10 P.M. and 6 A.M. When the officers shined a spotlight into the car, the two occupants, Sanja Alvarado and Azim Choudhry, made “hurried movements,” causing the officers to suspect they were involved in some “possibly illegal act.” Just then, the driver, Alvarado, started the engine and began driving away. The officers ordered her to stop, and she complied.

As things progressed, one of the officers was notified there were two outstanding warrants on Alvarado, so he arrested her. Meanwhile, the other officer, having detected a “faint odor of burnt marijuana” on Choudhry’s person, learned from him that he was carrying a small amount of marijuana in his pants pocket. The officer retrieved it and placed Choudhry in his patrol car.

As he did so, Choudhry informed him that he had found a gun, and that it was inside Alvarado’s car. The officer then recovered the gun from under the passenger seat where Choudhry had been sitting. As a result, Choudhry was convicted of being a felon in possession of a firearm.

### DISCUSSION

Choudhry claimed that the gun should have been suppressed because the initial car stop was unlawful. Specifically, he contended that California law does not permit traffic stops for parking violations. His contention was based on a 1992 amendment to the California Vehicle Code that decriminalized parking violations. As the court explained, “[P]arking violations are no longer treated as infractions within the criminal justice system; instead, they are treated as civil offenses subject to civil penalties and administrative enforcement.”<sup>1</sup>

Choudhry theorized that because car stops are permitted only if officers have reasonable suspicion or probable cause to believe the driver had committed a *crime*—a felony, misdemeanor, or infraction—the stop of Alvarado’s car for a non-criminal parking violation must have been unlawful.

On the surface, the argument seemed to have some validity. But not enough. The court examined the legislature’s intent in making the change and concluded that, “while the legislature intended to decriminalize parking penalties,” it still considers parking regulations to be part of the “general traffic laws.” The court also noted that while the Vehicle Code sets forth the procedures for citing *unattended* illegally parked vehicles, and

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<sup>1</sup> Citing *Tyler v. County of Alameda* (1995) 34 Cal.App.4th 777.

while it does not specifically authorize officers to detain parking violators, the California Court of Appeal has ruled that “a detention in such a situation was appropriate.”<sup>2</sup>

Consequently, the court ruled the traffic stop of Alvarado’s car and the seizure of Choudhry’s gun were lawful. POV

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<sup>2</sup> *People v. Hart* (1999) 74 Cal.App.4<sup>th</sup> 479. **NOTE:** The court pointed out that parking regulations are still contained in the Vehicle Code’s “Rules of the Road,” Vehicle Code § 21000 et seq.