

December 7, 1937

Chief Patrol Inspectors,
Immigration and Naturalization Service,
Tucson, Arizona,
El Paso, Texas,
Alpine, Texas.

Notwithstanding the instructions contained in letter of this office of above number dated July 15, 1936, it is noted that road checking operations continue at a minimum in this district and it is assumed that this condition is due to the fact that, notwithstanding what has been said on this subject, the officers continue to doubt their authority of law to conduct such operations. Along that line, there is quoted herewith, for the information and guidance of all concerned, copy of the opinion expressed by the Federal Court for the Southern District of Texas in the case of the United States vs. Tom Mason, Cause No. 1438, on November 17, 1937, as follows:

"Now the statute which gives the Immigration officer authority should not be given too tight a construction. It says that they have the authority to arrest an alien who is entering or attempting to enter the United States and to search any vehicle in which he believes aliens are being brought into the United States. Now, construed by the canons of precision, that language will probably limit search to the actual act of entry, but by canons of reasonable construction it could not be construed that way without disturbing the act, since there would be no way to search a man who was actually entering, because he would be suspended in the air--he would either be on the territory of the foreign country, where the officer had no right to go, or he would be suspended in the air with his body resting nowhere, and besides the statute refers to the right to search aliens within the territory or vessels within the territorial waters, which would indicate what the statute means--persons who are in the act of entering or of making their entry good. It is not the mere fact of crossing over the line, but it means making their entry good, and I think the reasonable construction of this statute would authorize the patrol officers to search vehicles upon reasonable ground, not only as they are crossing the border line but after they enter the United States, and within any reasonable number of miles from the border. So that if I believed that the officers in this case searched that automobile for aliens within a reasonable ground, or believed that they had aliens in there, I think they would have had the right to do it, and I think they would not only have had the right to do it outside of that gate, but almost anywhere where an alien is likely to be after he gets into the United States, do I think the authority extends. The law has a practical purpose, and it must have a practical application, and if you limit the right of search to point of entry, it would be a foolish construction."

G. C. WILMOTH,
District Director,
El Paso District.