CASES & PROBLEMS IN CRIMINAL PROCEDURE: *THE POLICE*

2015 SUPPLEMENT

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(Pub. 21)

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CHAPTER 4: SEARCH INCIDENT TO ARREST

RILEY v. CALIFORNIA

U.S. Supreme Court, 2014
134 S.Ct. 2473

Chief Justice ROBERTS delivered the opinion of the Court.

These two cases raise a common question: whether the police may, without a warrant, search digital information on a cell phone seized from an individual who has been arrested.

I
A

In the first case, petitioner David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley's license had been suspended. The officer impounded Riley's car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car's hood.

An officer searched Riley incident to the arrest and found items associated with the "Bloods" street gang. He also seized a cell phone from Riley's pants pocket. According to Riley's uncontradicted assertion, the phone was a "smart phone," a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded by the letters "CK"—a label that, he believed, stood for "Crip Killers," a slang term for members of the Bloods gang.

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he "went through" Riley's phone "looking for evidence, because gang members will often video themselves with guns or take pictures of themselves with the guns." Although there was "a lot of stuff" on the phone, particular files that "caught the detective's eye" included videos of young men sparring while someone yelled encouragement using the moniker "Blood." The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Riley was ultimately charged, in connection with that earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. The State alleged that Riley had committed those crimes for the benefit of a criminal street gang, an aggravating factor that carries an enhanced sentence.

Prior to trial, Riley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Fourth Amendment, because they had been performed without a warrant and were not otherwise justified by exigent circumstances. The trial court rejected that argument. At Riley's trial, police officers testified about the photographs and videos found on the phone, and some of the photographs were

admitted into evidence. Riley was convicted on all three counts and received an enhanced sentence of 15 years to life in prison.

The California Court of Appeal affirmed. The court relied on the California Supreme Court's decision in *People v. Diaz*, 51 Cal.4th 84 (2011), which held that the Fourth Amendment permits a warrantless search of cell phone data incident to an arrest, so long as the cell phone was immediately associated with the arrestee's person. The California Supreme Court denied Riley's petition for review, and we granted certiorari.

B

In the second case, a police officer performing routine surveillance observed respondent Brima Wurie make an apparent drug sale from a car. Officers subsequently arrested Wurie and took him to the police station. At the station, the officers seized two cell phones from Wurie's person. The one at issue here was a "flip phone," a kind of phone that is flipped open for use and that generally has a smaller range of features than a smart phone. Five to ten minutes after arriving at the station, the officers noticed that the phone was repeatedly receiving calls from a source identified as "my house" on the phone's external screen. A few minutes later, they opened the phone and saw a photograph of a woman and a baby set as the phone's wallpaper. They pressed one button on the phone to access its call log, then another button to determine the phone number associated with the "my house" label. They next used an online phone directory to trace that phone number to an apartment building.

When the officers went to the building, they saw Wurie's name on a mailbox and observed through a window a woman who resembled the woman in the photograph on Wurie's phone. They secured the apartment while obtaining a search warrant and, upon later executing the warrant, found and seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash.

Wurie was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition. He moved to suppress the evidence obtained from the search of the apartment, arguing that it was the fruit of an unconstitutional search of his cell phone. The District Court denied the motion. Wurie was convicted on all three counts and sentenced to 262 months in prison.

A divided panel of the First Circuit reversed the denial of Wurie's motion to suppress and vacated Wurie's convictions for possession with intent to distribute and possession of a firearm as a felon. The court held that cell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant, because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interests. We granted certiorari.

II

The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and

no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

As the text makes clear, the ultimate touchstone of the Fourth Amendment is reasonableness. Our cases have determined that "where a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, reasonableness generally requires the obtaining of a judicial warrant." *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 653 (1995). Such a warrant ensures that the inferences to support a search are drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime. In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.

The two cases before us concern the reasonableness of a warrantless search incident to a lawful arrest. In 1914, this Court first acknowledged in dictum "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." *Weeks v. United States,* 232 U.S. 383, 392. Since that time, it has been well accepted that such a search constitutes an exception to the warrant requirement. Indeed, the label "exception" is something of a misnomer in this context, as warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant. See 3 W. LaFave, Search and Seizure § 5.2(b), p. 132, and n. 15 (5th ed. 2012).

Although the existence of the exception for such searches has been recognized for a century, its scope has been debated for nearly as long. See *Arizona v. Gant,* 556 U.S. 332, 350 (2009) (noting the exception's "checkered history"). That debate has focused on the extent to which officers may search property found on or near the arrestee. Three related precedents set forth the rules governing such searches:

The first, *Chimel v. California,* 395 U.S. 752 (1969), laid the groundwork for most of the existing search incident to arrest doctrine. Police officers in that case arrested Chimel inside his home and proceeded to search his entire three-bedroom house, including the attic and garage. In particular rooms, they also looked through the contents of drawers.

The Court crafted the following rule for assessing the reasonableness of a search incident to arrest:

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."

The extensive warrantless search of Chimel's home did not fit within this exception, because it was not needed to protect officer safety or to preserve evidence.

Four years later, in *United States v. Robinson*, 414 U.S. 218 (1973), the Court applied the *Chimel* analysis in the context of a search of the arrestee's person. A police officer had arrested Robinson for driving with a revoked license. The officer conducted a patdown search and felt an object that he could not identify in Robinson's coat pocket. He removed the object, which turned out to be a crumpled cigarette package, and opened it. Inside were 14 capsules of heroin.

The Court of Appeals concluded that the search was unreasonable because Robinson was unlikely to have evidence of the crime of arrest on his person, and because it believed that extracting the cigarette package and opening it could not be justified as part of a protective search for weapons. This Court reversed, rejecting the notion that "case-by-case adjudication" was required to determine "whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest." As the Court explained, "the authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." Instead, a "custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."

The Court thus concluded that the search of Robinson was reasonable even though there was no concern about the loss of evidence, and the arresting officer had no specific concern that Robinson might be armed. In doing so, the Court did not draw a line between a search of Robinson's person and a further examination of the cigarette pack found during that search. It merely noted that, "having in the course of a lawful search come upon the crumpled package of cigarettes, the officer was entitled to inspect it."

A few years later, the Court clarified that this exception was limited to "personal property immediately associated with the person of the arrestee." *United States v. Chadwick*, 433 U.S. 1 (1977) (200–pound, locked footlocker could not be searched incident to arrest).

The search incident to arrest trilogy concludes with *Gant*, which analyzed searches of an arrestee's vehicle. *Gant*, like *Robinson*, recognized that the *Chimel* concerns for officer safety and evidence preservation underlie the search incident to arrest exception. As a result, the Court concluded that *Chimel* could authorize police to search a vehicle "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."

Gant added, however, an independent exception for a warrantless search of a vehicle's passenger compartment "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." That exception stems not from *Chimel*, the Court explained, but from "circumstances unique to the vehicle context."

III

These cases require us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy. A smart phone of the sort taken from Riley was unheard of ten years ago; a significant majority of American adults now own such phones. See A. Smith, Pew Research Center, Smartphone Ownership—2013 Update (June 5, 2013). Even less sophisticated phones like Wurie's, which have already faded in popularity since Wurie was arrested in 2007, have been around for less than 15 years. Both phones are based on technology nearly inconceivable just a few decades ago, when *Chimel* and *Robinson* were decided.

Absent more precise guidance from the founding era, we generally determine whether to exempt a given type of search from the warrant requirement by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests. Such a balancing of interests supported the search incident to arrest exception in *Robinson*, and a mechanical application of *Robinson* might well support the warrantless searches at issue here.

But while *Robinson* 's categorical rule strikes the appropriate balance in the context of physical objects, neither of its rationales has much force with respect to digital content on cell phones. On the government interest side, *Robinson* concluded that the two risks identified in *Chimel*—harm to officers and destruction of evidence—are present in all custodial arrests. There are no comparable risks when the search is of digital data. In addition, *Robinson* regarded any privacy interests retained by an individual after arrest as significantly diminished by the fact of the arrest itself. Cell phones, however, place vast quantities of personal information literally in the hands of individuals. A search of the information on a cell phone bears little resemblance to the type of brief physical search considered in *Robinson*.

We therefore decline to extend *Robinson* to searches of data on cell phones, and hold instead that officers must generally secure a warrant before conducting such a search.

A

We first consider each *Chimel* concern in turn. In doing so, we do not overlook *Robinson* 's admonition that searches of a person incident to arrest, “while based upon the need to disarm and to discover evidence,” are reasonable regardless of “the probability in a particular arrest situation that weapons or evidence would in fact be found.” Rather than requiring the “case-by-case adjudication” that *Robinson* rejected we ask instead whether application of the search incident to arrest doctrine to this particular category of effects would “untether the rule from the justifications underlying the *Chimel* exception,” *Gant, supra,* at 343.

1

Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured

a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.

Perhaps the same might have been said of the cigarette pack seized from Robinson's pocket. Once an officer gained control of the pack, it was unlikely that Robinson could have accessed the pack's contents. But unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest. The officer in *Robinson* testified that he could not identify the objects in the cigarette pack but knew they were not cigarettes. Given that, a further search was a reasonable protective measure. No such unknowns exist with respect to digital data. As the First Circuit explained, the officers who searched Wurie's cell phone "knew exactly what they would find therein: data. They also knew that the data could not harm them."

The United States and California both suggest that a search of cell phone data might help ensure officer safety in more indirect ways, for example by alerting officers that confederates of the arrestee are headed to the scene. There is undoubtedly a strong government interest in warning officers about such possibilities, but neither the United States nor California offers evidence to suggest that their concerns are based on actual experience. The proposed consideration would also represent a broadening of *Chimel* 's concern that an *arrestee himself* might grab a weapon and use it against an officer "to resist arrest or effect his escape." And any such threats from outside the arrest scene do not "lurk in all custodial arrests." *Chadwick,* 433 U.S. at 14–15.

Accordingly, the interest in protecting officer safety does not justify dispensing with the warrant requirement across the board. To the extent dangers to arresting officers may be implicated in a particular way in a particular case, they are better addressed through consideration of case-specific exceptions to the warrant requirement, such as the one for exigent circumstances. See, *e.g., Warden, Md. Penitentiary v. Hayden,* 387 U.S. 294, 298–299 (1967) ("The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.").

2

The United States and California focus primarily on the second *Chimel* rationale: preventing the destruction of evidence.

Both Riley and Wurie concede that officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant. That is a sensible concession. And once law enforcement officers have secured a cell phone, there is no longer any risk that the arrestee himself will be able to delete incriminating data from the phone.

The United States and California argue that information on a cell phone may nevertheless be vulnerable to two types of evidence destruction unique to digital data—remote wiping and data encryption. Remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is preprogrammed to delete data upon entering or leaving certain geographic areas

(so-called “geofencing”). See Dept. of Commerce, National Institute of Standards and Technology, R. Ayers, S. Brothers, & W. Jansen, Guidelines on Mobile Device Forensics (Draft) 29, 31 (SP 800–101 Rev. 1, Sept. 2013) (hereinafter Ayers). Encryption is a security feature that some modern cell phones use in addition to password protection. When such phones lock, data becomes protected by sophisticated encryption that renders a phone all but “unbreakable” unless police know the password.

As an initial matter, these broader concerns about the loss of evidence are distinct from *Chimel* 's focus on a defendant who responds to arrest by trying to conceal or destroy evidence within his reach. With respect to remote wiping, the Government's primary concern turns on the actions of third parties who are not present at the scene of arrest. And data encryption is even further afield. There, the Government focuses on the ordinary operation of a phone's security features, apart from *any* active attempt by a defendant or his associates to conceal or destroy evidence upon arrest.

We have also been given little reason to believe that either problem is prevalent. The briefing reveals only a couple of anecdotal examples of remote wiping triggered by an arrest. Similarly, the opportunities for officers to search a password-protected phone before data becomes encrypted are quite limited. Law enforcement officers are very unlikely to come upon such a phone in an unlocked state because most phones lock at the touch of a button or, as a default, after some very short period of inactivity. See, *e.g.*, iPhone User Guide for iOS 7.1 Software 10 (2014) (default lock after about one minute). This may explain why the encryption argument was not made until the merits stage in this Court, and has never been considered by the Courts of Appeals.

Moreover, in situations in which an arrest might trigger a remote-wipe attempt or an officer discovers an unlocked phone, it is not clear that the ability to conduct a warrantless search would make much of a difference. The need to effect the arrest, secure the scene, and tend to other pressing matters means that law enforcement officers may well not be able to turn their attention to a cell phone right away. Cell phone data would be vulnerable to remote wiping from the time an individual anticipates arrest to the time any eventual search of the phone is completed, which might be at the station house hours later. Likewise, an officer who seizes a phone in an unlocked state might not be able to begin his search in the short time remaining before the phone locks and data becomes encrypted.

In any event, as to remote wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. Such devices are commonly called “Faraday bags,” after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, lightweight, and easy to use. See Brief for Criminal Law Professors as *Amici Curiae* 9. They may not be a complete answer to the problem, but at least for now they provide a reasonable response. In fact, a number of law enforcement agencies around the country already encourage the use of Faraday bags. See, *e.g.*, Dept. of Justice, National Institute of Justice,

Electronic Crime Scene Investigation: A Guide for First Responders 14, 32 (2d ed. Apr. 2008); Brief for Criminal Law Professors as *Amici Curiae* 4–6.

To the extent that law enforcement still has specific concerns about the potential loss of evidence in a particular case, there remain more targeted ways to address those concerns. If "the police are truly confronted with a 'now or never' situation"—for example, circumstances suggesting that a defendant's phone will be the target of an imminent remote-wipe attempt—they may be able to rely on exigent circumstances to search the phone immediately. Or, if officers happen to seize a phone in an unlocked state, they may be able to disable a phone's automatic-lock feature in order to prevent the phone from locking and encrypting data. * * * *

B

The search incident to arrest exception rests not only on the heightened government interests at stake in a volatile arrest situation, but also on an arrestee's reduced privacy interests upon being taken into police custody. *Robinson* focused primarily on the first of those rationales. But it also quoted with approval then-Judge Cardozo's account of the historical basis for the search incident to arrest exception: "Search of the person becomes lawful when grounds for arrest and accusation have been discovered, and the law is in the act of subjecting the body of the accused to its physical dominion." Put simply, a patdown of Robinson's clothing and an inspection of the cigarette pack found in his pocket constituted only minor additional intrusions compared to the substantial government authority exercised in taking Robinson into custody.

The fact that an arrestee has diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely. Not every search is acceptable solely because a person is in custody. To the contrary, when privacy-related concerns are weighty enough, a search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee. One such example, of course, is *Chimel*. *Chimel* refused to "characterize the invasion of privacy that results from a top-to-bottom search of a man's house as 'minor.'" Because a search of the arrestee's entire house was a substantial invasion beyond the arrest itself, the Court concluded that a warrant was required.

Robinson is the only decision from this Court applying *Chimel* to a search of the contents of an item found on an arrestee's person. In an earlier case, this Court had approved a search of a zipper bag carried by an arrestee, but the Court analyzed only the validity of the arrest itself. See *Draper v. United States*, 358 U.S. 307, 310–311 (1959). Lower courts applying *Robinson* and *Chimel*, however, have approved searches of a variety of personal items carried by an arrestee.

The United States asserts that a search of all data stored on a cell phone is "materially indistinguishable" from searches of these sorts of physical items. That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together. Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse. A conclusion that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as

applied to physical items, but any extension of that reasoning to digital data has to rest on its own bottom.

1

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term “cell phone” is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. See Kerr, Foreword: Accounting for Technological Change, 36 Harv. J.L. & Pub. Pol'y 403, 404–405 (2013). Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in *Chadwick, supra,* rather than a container the size of the cigarette package in *Robinson*.

But the possible intrusion on privacy is not physically limited in the same way when it comes to cell phones. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos. Cell phones couple that capacity with the ability to store many different types of information: Even the most basic phones that sell for less than $20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on. We expect that the gulf between physical practicability and digital capacity will only continue to widen in the future.

The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.[1]

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of

the time, with 12% admitting that they even use their phones in the shower. See Harris Interactive, 2013 Mobile Consumer Habits Study (June 2013). A decade ago police officers searching an arrestee might have occasionally stumbled across a highly personal item such as a diary. But those discoveries were likely to be few and far between. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate. Allowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case.

Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different. An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual's private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD. Data on a cell phone can also reveal where a person has been. Historic location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a particular building.

Mobile application software on a cell phone, or "apps," offer a range of tools for managing detailed information about all aspects of a person's life. There are apps for Democratic Party news and Republican Party news; apps for alcohol, drug, and gambling addictions; apps for sharing prayer requests; apps for tracking pregnancy symptoms; apps for planning your budget; apps for every conceivable hobby or pastime; apps for improving your romantic life. There are popular apps for buying or selling just about anything, and the records of such transactions may be accessible on the phone indefinitely. There are over a million apps available in each of the two major app stores; the phrase "there's an app for that" is now part of the popular lexicon. The average smart phone user has installed 33 apps, which together can form a revealing montage of the user's life. See Brief for Electronic Privacy Information Center as *Amicus Curiae* in No. 13–132, p. 9.

In 1926, Learned Hand observed (in an opinion later quoted in *Chimel*) that it is "a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him." *United States v. Kirschenblatt*, 16 F.2d 202, 203 (C.A.2). If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.

2

To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter. But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are

designed to do by taking advantage of "cloud computing." Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference. See Brief for Electronic Privacy Information Center in No. 13–132, at 12–14, 20. Moreover, the same type of data may be stored locally on the device for one user and in the cloud for another.

The United States concedes that the search incident to arrest exception may not be stretched to cover a search of files accessed remotely—that is, a search of files stored in the cloud. Such a search would be like finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house. But officers searching a phone's data would not typically know whether the information they are viewing was stored locally at the time of the arrest or has been pulled from the cloud.

Although the Government recognizes the problem, its proposed solutions are unclear. It suggests that officers could disconnect a phone from the network before searching the device—the very solution whose feasibility it contested with respect to the threat of remote wiping. Alternatively, the Government proposes that law enforcement agencies "develop protocols to address" concerns raised by cloud computing. Probably a good idea, but the Founders did not fight a revolution to gain the right to government agency protocols. The possibility that a search might extend well beyond papers and effects in the physical proximity of an arrestee is yet another reason that the privacy interests here dwarf those in *Robinson*.

C

Apart from their arguments for a direct extension of *Robinson*, the United States and California offer various fallback options for permitting warrantless cell phone searches under certain circumstances. Each of the proposals is flawed and contravenes our general preference to provide clear guidance to law enforcement through categorical rules. "If police are to have workable rules, the balancing of the competing interests 'must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.'" *Michigan v. Summers*, 452 U.S. 692, 705, n. 19 (1981).

The United States first proposes that the *Gant* standard be imported from the vehicle context, allowing a warrantless search of an arrestee's cell phone whenever it is reasonable to believe that the phone contains evidence of the crime of arrest. But *Gant* relied on "circumstances unique to the vehicle context" to endorse a search solely for the purpose of gathering evidence. Justice SCALIA's *Thornton* opinion, on which *Gant* was based, explained that those unique circumstances are "a reduced expectation of privacy" and "heightened law enforcement needs" when it comes to motor vehicles. For reasons that we have explained, cell phone searches bear neither of those characteristics.

At any rate, a *Gant* standard would prove no practical limit at all when it comes to cell phone searches. In the vehicle context, *Gant* generally protects against searches for evidence of past crimes. In the cell phone context, however, it is reasonable to expect that incriminating information will be found on a phone regardless of when the crime occurred. Similarly, in the

vehicle context *Gant* restricts broad searches resulting from minor crimes such as traffic violations. That would not necessarily be true for cell phones. It would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone. Even an individual pulled over for something as basic as speeding might well have locational data dispositive of guilt on his phone. An individual pulled over for reckless driving might have evidence on the phone that shows whether he was texting while driving. The sources of potential pertinent information are virtually unlimited, so applying the *Gant* standard to cell phones would in effect give "police officers unbridled discretion to rummage at will among a person's private effects."

The United States also proposes a rule that would restrict the scope of a cell phone search to those areas of the phone where an officer reasonably believes that information relevant to the crime, the arrestee's identity, or officer safety will be discovered. This approach would again impose few meaningful constraints on officers. The proposed categories would sweep in a great deal of information, and officers would not always be able to discern in advance what information would be found where.

We also reject the United States' final suggestion that officers should always be able to search a phone's call log, as they did in Wurie's case. The Government relies on *Smith v. Maryland*, 442 U.S. 735 (1979), which held that no warrant was required to use a pen register at telephone company premises to identify numbers dialed by a particular caller. The Court in that case, however, concluded that the use of a pen register was not a "search" at all under the Fourth Amendment. There is no dispute here that the officers engaged in a search of Wurie's cell phone. Moreover, call logs typically contain more than just phone numbers; they include any identifying information that an individual might add, such as the label "my house" in Wurie's case.

Finally, at oral argument California suggested a different limiting principle, under which officers could search cell phone data if they could have obtained the same information from a pre-digital counterpart. But the fact that a search in the pre-digital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form. In Riley's case, for example, it is implausible that he would have strolled around with video tapes, photo albums, and an address book all crammed into his pockets. But because each of those items has a pre-digital analogue, police under California's proposal would be able to search a phone for all of those items—a significant diminution of privacy.

In addition, an analogue test would launch courts on a difficult line-drawing expedition to determine which digital files are comparable to physical records. Is an e-mail equivalent to a letter? Is a voicemail equivalent to a phone message slip? It is not clear how officers could make these kinds of decisions before conducting a search, or how courts would apply the proposed rule after the fact. An analogue test would keep defendants and judges guessing for years to come.

IV

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. Privacy comes at a cost. Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest. Our cases have historically recognized that the warrant requirement is an important working part of our machinery of government, not merely an inconvenience to be somehow 'weighed' against the claims of police efficiency. Recent technological advances similar to those discussed here have, in addition, made the process of obtaining a warrant itself more efficient. See *McNeely*, 569 U.S., at —— (ROBERTS, C.J., concurring in part and dissenting in part) (describing jurisdiction where "police officers can e-mail warrant requests to judges' iPads and judges have signed such warrants and e-mailed them back to officers in less than 15 minutes").

Moreover, even though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone. One well-recognized exception applies when "the exigencies of the situation" make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment. Such exigencies could include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury. In *Chadwick*, for example, the Court held that the exception for searches incident to arrest did not justify a search of the trunk at issue, but noted that "if officers have reason to believe that luggage contains some immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the station house without opening the luggage."

In light of the availability of the exigent circumstances exception, there is no reason to believe that law enforcement officers will not be able to address some of the more extreme hypotheticals that have been suggested: a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may have information about the child's location on his cell phone. The defendants here recognize—indeed, they stress—that such fact-specific threats may justify a warrantless search of cell phone data. The critical point is that, unlike the search incident to arrest exception, the exigent circumstances exception requires a court to examine whether an emergency justified a warrantless search in each particular case.

Our cases have recognized that the Fourth Amendment was the founding generation's response to the reviled "general warrants" and "writs of assistance" of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself. In 1761, the patriot James Otis delivered a speech in Boston denouncing the use of writs of assistance. A young John Adams was there, and he would later write that "every man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance." 10 Works of John Adams 247–248 (C. Adams ed. 1856). According to Adams,

Otis's speech was “the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.”

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life,” The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

We reverse the judgment of the California Court of Appeal in No. 13–132 and remand the case for further proceedings not inconsistent with this opinion. We affirm the judgment of the First Circuit in No. 13–212.

Justice ALITO, concurring in part and concurring in the judgment.

I agree with the Court that law enforcement officers, in conducting a lawful search incident to arrest, must generally obtain a warrant before searching information stored or accessible on a cell phone. I write separately to address two points.

I

A

First, I am not convinced at this time that the ancient rule on searches incident to arrest is based exclusively (or even primarily) on the need to protect the safety of arresting officers and the need to prevent the destruction of evidence. This rule antedates the adoption of the Fourth Amendment by at least a century. * * * *

What ultimately convinces me that the rule is not closely linked to the need for officer safety and evidence preservation is that these rationales fail to explain the rule's well-recognized scope. It has long been accepted that written items found on the person of an arrestee may be examined and used at trial.[*] But once these items are taken away from an arrestee (something that obviously must be done before the items are read), there is no risk that the arrestee will destroy them. Nor is there any risk that leaving these items unread will endanger the arresting officers.

The idea that officer safety and the preservation of evidence are the sole reasons for allowing a warrantless search incident to arrest appears to derive from the Court's reasoning in *Chimel*, a case that involved the lawfulness of a search of the scene of an arrest, not the person of an arrestee. As I have explained, *Chimel* 's reasoning is questionable, see *Arizona v. Gant,* 556 U.S. 332, 361–363 (2009) (ALITO, J., dissenting), and I think it is a mistake to allow that reasoning to affect cases like these that concern the search of the person of arrestees.

B

Despite my view on the point discussed above, I agree that we should not mechanically apply the rule used in the predigital era to the search of a cell phone. Many cell phones now in use are capable of storing and accessing a quantity of information, some highly personal, that no person would ever have had on his person in hard-copy form. This calls for a new balancing of law enforcement and privacy interests.

The Court strikes this balance in favor of privacy interests with respect to all cell phones and all information found in them, and this approach leads to anomalies. For example, the Court's broad holding favors information in digital form over information in hard-copy form. Suppose that two suspects are arrested. Suspect number one has in his pocket a monthly bill for his land-line phone, and the bill lists an incriminating call to a long-distance number. He also has in his a wallet a few snapshots, and one of these is incriminating. Suspect number two has in his pocket a cell phone, the call log of which shows a call to the same incriminating number. In addition, a number of photos are stored in the memory of the cell phone, and one of these is incriminating. Under established law, the police may seize and examine the phone bill and the snapshots in the wallet without obtaining a warrant, but under the Court's holding today, the information stored in the cell phone is out.

While the Court's approach leads to anomalies, I do not see a workable alternative. Law enforcement officers need clear rules regarding searches incident to arrest, and it would take many cases and many years for the courts to develop more nuanced rules. And during that time, the nature of the electronic devices that ordinary Americans carry on their persons would continue to change.

II

This brings me to my second point. While I agree with the holding of the Court, I would reconsider the question presented here if either Congress or state legislatures, after assessing the legitimate needs of law enforcement and the privacy interests of cell phone owners, enact legislation that draws reasonable distinctions based on categories of information or perhaps other variables.

The regulation of electronic surveillance provides an instructive example. After this Court held that electronic surveillance constitutes a search even when no property interest is invaded, see *Katz v. United States*, 389 U.S. 347, 353–359 (1967), Congress responded by enacting Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 211. See also 18 U.S.C. § 2510 *et seq*. Since that time, electronic surveillance has been governed primarily, not by decisions of this Court, but by the statute, which authorizes but imposes detailed restrictions on electronic surveillance.

Modern cell phones are of great value for both lawful and unlawful purposes. They can be used in committing many serious crimes, and they present new and difficult law enforcement problems. At the same time, because of the role that these devices have come to play in contemporary life, searching their contents implicates very sensitive privacy interests that this Court is poorly positioned to understand and evaluate. Many forms of modern technology are making it easier and easier for both government and private entities to amass a wealth of

information about the lives of ordinary Americans, and at the same time, many ordinary Americans are choosing to make public much information that was seldom revealed to outsiders just a few decades ago.

In light of these developments, it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future.

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CHAPTER 5: STOP & FRISK

NAVARETTE v. CALIFORNIA

U.S. Supreme Court, 2014
134 S.Ct. 1683

Justice THOMAS delivered the opinion of the Court.

After a 911 caller reported that a vehicle had run her off the road, a police officer located the vehicle she identified during the call and executed a traffic stop. We hold that the stop complied with the Fourth Amendment because, under the totality of the circumstances, the officer had reasonable suspicion that the driver was intoxicated.

I

On August 23, 2008, a Mendocino County 911 dispatch team for the California Highway Patrol (CHP) received a call from another CHP dispatcher in neighboring Humboldt County. The Humboldt County dispatcher relayed a tip from a 911 caller, which the Mendocino County team recorded as follows: "Showing southbound Highway 1 at mile marker 88, Silver Ford 150 pickup. Plate of 8–David–94925. Ran the reporting party off the roadway and was last seen approximately five minutes ago." The Mendocino County team then broadcast that information to CHP officers at 3:47 p.m.

A CHP officer heading northbound toward the reported vehicle responded to the broadcast. At 4:00 p.m., the officer passed the truck near mile marker 69. At about 4:05 p.m., after making a U-turn, he pulled the truck over. A second officer, who had separately responded to the broadcast, also arrived on the scene. As the two officers approached the truck, they smelled marijuana. A search of the truck bed revealed 30 pounds of marijuana. The officers arrested the driver, petitioner Lorenzo Prado Navarette, and the passenger, petitioner José Prado Navarette.

Petitioners moved to suppress the evidence, arguing that the traffic stop violated the Fourth Amendment because the officer lacked reasonable suspicion of criminal activity. Both the magistrate who presided over the suppression hearing and the Superior Court disagreed.[1] Petitioners pleaded guilty to transporting marijuana and were sentenced to 90 days in jail plus three years of probation.

The California Court of Appeal affirmed, concluding that the officer had reasonable suspicion to conduct an investigative stop. The court reasoned that the content of the tip indicated that it came from an eyewitness victim of reckless driving, and that the officer's corroboration of the truck's description, location, and direction established that the tip was reliable enough to justify a traffic stop. Finally, the court concluded that the caller reported driving that was sufficiently dangerous to merit an investigative stop without waiting for the officer to observe additional reckless driving himself. The California Supreme Court denied review. We granted certiorari, and now affirm.

II

The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case — when a law enforcement officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968). The "reasonable suspicion" necessary to justify such a stop "is dependent upon both the content of information possessed by police and its degree of reliability." *Alabama v. White*, 496 U.S. 325, 330 (1990). The standard takes into account the totality of the circumstances — the whole picture. Although a mere "hunch" does not create reasonable suspicion, , the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.

A

These principles apply with full force to investigative stops based on information from anonymous tips. We have firmly rejected the argument "that reasonable cause for a[n investigative stop] can only be based on the officer's personal observation, rather than on information supplied by another person." *Adams v. Williams*, 407 U.S. 143 (1972). Of course, "an anonymous tip *alone* seldom demonstrates the informant's basis of knowledge or veracity." *White*, 496 U.S., at 329 (emphasis added). That is because "ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations," and an anonymous tipster's veracity is "by hypothesis largely unknown, and unknowable." *Ibid.* But under appropriate circumstances, an anonymous tip can demonstrate "sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop." *Id.*, at 327.

Our decisions in *Alabama v. White*, 496 U.S. 325 (1990), and *Florida v. J. L.*, 529 U.S. 266 (2000), are useful guides. In *White*, an anonymous tipster told the police that a woman would drive from a particular apartment building to a particular motel in a brown Plymouth station wagon with a broken right tail light. The tipster further asserted that the woman would be transporting cocaine. After confirming the innocent details, officers stopped the station wagon as it neared the motel and found cocaine in the vehicle. We held that the officers' corroboration of certain details made the anonymous tip sufficiently reliable to create reasonable suspicion of criminal activity. By accurately predicting future behavior, the tipster demonstrated "a special familiarity with respondent's affairs," which in turn implied that the tipster had "access to reliable information about that individual's illegal activities." We also recognized that an informant who is proved to tell the truth about some things is more likely to tell the truth about other things, "including the claim that the object of the tip is engaged in criminal activity."

In *J. L.*, by contrast, we determined that no reasonable suspicion arose from a bare-bones tip that a young black male in a plaid shirt standing at a bus stop was carrying a gun. The tipster did not explain how he knew about the gun, nor did he suggest that he had any special familiarity with the young man's affairs. As a result, police had no basis for believing "that the tipster ha[d] knowledge of concealed criminal activity." Furthermore, the tip included no predictions of future behavior that could be corroborated to assess the tipster's credibility. We accordingly concluded that the tip was insufficiently reliable to justify a stop and frisk.

B

The initial question in this case is whether the 911 call was sufficiently reliable to credit the allegation that petitioners' truck "ran the caller off the roadway." Even assuming for present purposes that the 911 call was anonymous, we conclude that the call bore adequate indicia of reliability for the officer to credit the caller's account. The officer was therefore justified in proceeding from the premise that the truck had, in fact, caused the caller's car to be dangerously diverted from the highway.

By reporting that she had been run off the road by a specific vehicle—a silver Ford F–150 pickup, license plate 8D94925—the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving. That basis of knowledge lends significant support to the tip's reliability. See *Gates*, *supra,* at 234 ("An informant's explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles his tip to greater weight than might otherwise be the case"); *Spinelli v. United States,* 393 U.S. 410, 416 (1969) (a tip of illegal gambling is less reliable when "it is not alleged that the informant personally observed [the defendant] at work or that he had ever placed a bet with him").

This is in contrast to *J. L.*, where the tip provided no basis for concluding that the tipster had actually seen the gun. Even in *White,* where we upheld the stop, there was scant evidence that the tipster had actually observed cocaine in the station wagon. We called *White* a " 'close case' " because "knowledge about a person's future movements indicates some familiarity with that person's affairs, but having such knowledge does not necessarily imply that the informant knows, in particular, whether that person is carrying hidden contraband." A driver's claim that another vehicle ran her off the road, however, necessarily implies that the informant knows the other car was driven dangerously.

There is also reason to think that the 911 caller in this case was telling the truth. Police confirmed the truck's location near mile marker 69 (roughly 19 highway miles south of the location reported in the 911 call) at 4:00 p.m. (roughly 18 minutes after the 911 call). That timeline of events suggests that the caller reported the incident soon after she was run off the road. That sort of contemporaneous report has long been treated as especially reliable. In evidence law, we generally credit the proposition that statements about an event and made soon after perceiving that event are especially trustworthy because "substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious misrepresentation." Advisory Committee's Notes on Fed. Rule Evid. 803(1), 28 U.S.C.App., p. 371 (describing the rationale for the hearsay exception for "present sense impressions"). A similar rationale applies to a "statement relating to a startling event"—such as getting run off the road—"made while the declarant was under the stress of excitement that it caused." Fed. Rule Evid. 803(2) (hearsay exception for "excited utterances").

Unsurprisingly, 911 calls that would otherwise be inadmissible hearsay have often been admitted on those grounds. See D. Binder, Hearsay Handbook § 8.1, pp. 257–259 (4th ed. 2013–2014) (citing cases admitting 911 calls as present sense impressions); *id.,* § 9.1, at 274–275 (911 calls admitted as excited utterances). There was no indication that the tip in *J. L.* (or even in *White*) was contemporaneous with the observation of criminal activity or made under the stress

of excitement caused by a startling event, but those considerations weigh in favor of the caller's veracity here.

Another indicator of veracity is the caller's use of the 911 emergency system. A 911 call has some features that allow for identifying and tracing callers, and thus provide some safeguards against making false reports with immunity. As this case illustrates, 911 calls can be recorded, which provides victims with an opportunity to identify the false tipster's voice and subject him to prosecution, The 911 system also permits law enforcement to verify important information about the caller. In 1998, the Federal Communications Commission (FCC) began to require cellular carriers to relay the caller's phone number to 911 dispatchers. Beginning in 2001, carriers have been required to identify the caller's geographic location with increasing specificity. And although callers may ordinarily block call recipients from obtaining their identifying information, FCC regulations exempt 911 calls from that privilege. §§ 64.1601(b), (d)(4)(ii) ("911 emergency services" exemption from rule that, when a caller so requests, "a carrier may not reveal that caller's number or name"). None of this is to suggest that tips in 911 calls are *per se* reliable. Given the foregoing technological and regulatory developments, however, a reasonable officer could conclude that a false tipster would think twice before using such a system. The caller's use of the 911 system is therefore one of the relevant circumstances that, taken together, justified the officer's reliance on the information reported in the 911 call.

C

Even a reliable tip will justify an investigative stop only if it creates reasonable suspicion that "criminal activity may be afoot." *Terry,* 392 U.S. at 30. We must therefore determine whether the 911 caller's report of being run off the roadway created reasonable suspicion of an ongoing crime such as drunk driving as opposed to an isolated episode of past recklessness. We conclude that the behavior alleged by the 911 caller, viewed from the standpoint of an objectively reasonable police officer, amounts to reasonable suspicion of drunk driving. The stop was therefore proper.[2]

Reasonable suspicion depends on "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* at 695. Under that commonsense approach, we can appropriately recognize certain driving behaviors as sound indicia of drunk driving. See, *e.g., People v. Wells,* 38 Cal.4th 1078, 1081 (2006) ("weaving all over the roadway"); *State v. Prendergast,* 103 Hawai'i 451, 452–453 (2004) ("crossing over the center line" on a highway and "almost causing several head-on collisions"); *State v. Golotta*, 178 N.J. 205, 209 (2003) (driving "all over the road" and "weaving back and forth"); *State v. Walshire,* 634 N.W.2d 625, 626 (Iowa 2001) ("driving in the median"). Indeed, the accumulated experience of thousands of officers suggests that these sorts of erratic behaviors are strongly correlated with drunk driving. See Nat. Highway Traffic Safety Admin., The Visual Detection of DWI Motorists 4–5 (Mar. 2010), online at http://nhtsa. gov/staticfiles/nti/pdf/808677.pdf. Of course, not all traffic infractions imply intoxication. Unconfirmed reports of driving without a seatbelt or slightly over the speed limit, for example, are so tenuously connected to drunk driving that a stop on those grounds alone would be constitutionally suspect. But a reliable tip alleging the dangerous behaviors discussed above generally would justify a traffic stop on suspicion of drunk driving.

The 911 caller in this case reported more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving. Instead, she alleged a specific and dangerous result of the driver's conduct: running another car off the highway. That conduct bears too great a resemblance to paradigmatic manifestations of drunk driving to be dismissed as an isolated example of recklessness. Running another vehicle off the road suggests lane-positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues. See Visual Detection of DWI Motorists 4–5. And the experience of many officers suggests that a driver who almost strikes a vehicle or another object—the exact scenario that ordinarily causes "running [another vehicle] off the roadway"—is likely intoxicated. See *id.*, at 5, 8. As a result, we cannot say that the officer acted unreasonably under these circumstances in stopping a driver whose alleged conduct was a significant indicator of drunk driving.

Petitioners' attempts to second-guess the officer's reasonable suspicion of drunk driving are unavailing. It is true that the reported behavior might also be explained by, for example, a driver responding to "an unruly child or other distraction." But we have consistently recognized that reasonable suspicion "need not rule out the possibility of innocent conduct."

Nor did the absence of additional suspicious conduct, after the vehicle was first spotted by an officer, dispel the reasonable suspicion of drunk driving. It is hardly surprising that the appearance of a marked police car would inspire more careful driving for a time. Extended observation of an allegedly drunk driver might eventually dispel a reasonable suspicion of intoxication, but the 5–minute period in this case hardly sufficed in that regard. Of course, an officer who already has such a reasonable suspicion need not surveil a vehicle at length in order to personally observe suspicious driving. Once reasonable suspicion of drunk driving arises, the reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques.. This would be a particularly inappropriate context to depart from that settled rule, because allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences.

III

Like *White,* this is a close case. As in that case, the indicia of the 911 caller's reliability here are stronger than those in *J. L.*, where we held that a bare-bones tip was unreliable. Although the indicia present here are different from those we found sufficient in *White,* there is more than one way to demonstrate a particularized and objective basis for suspecting the particular person stopped of criminal activity. Under the totality of the circumstances, we find the indicia of reliability in this case sufficient to provide the officer with reasonable suspicion that the driver of the reported vehicle had run another vehicle off the road. That made it reasonable under the circumstances for the officer to execute a traffic stop. We accordingly affirm.

Justice SCALIA, with whom Justice GINSBURG, Justice SOTOMAYOR, and Justice KAGAN join, dissenting.

The California Court of Appeal in this case relied on jurisprudence from the California Supreme Court (adopted as well by other courts) to the effect that "an anonymous and uncorroborated tip regarding a possibly intoxicated highway driver" provides without more the reasonable suspicion necessary to justify a stop.. Today's opinion does not explicitly adopt such a departure from our normal Fourth Amendment requirement that anonymous tips must be corroborated; it purports to adhere to our prior cases, such as *Florida v. J. L.,* and *Alabama v. White*. Be not deceived.

Law enforcement agencies follow closely our judgments on matters such as this, and they will identify at once our new rule: So long as the caller identifies where the car is, anonymous claims of a single instance of possibly careless or reckless driving, called in to 911, will support a traffic stop. This is not my concept, and I am sure would not be the Framers', of a people secure from unreasonable searches and seizures. I would reverse the judgment of the Court of Appeal of California.

I

The California Highway Patrol in this case knew nothing about the tipster on whose word—and that alone—they seized Lorenzo and José Prado Navarette. They did not know her name.[1] They did not know her phone number or address. They did not even know where she called from (she may have dialed in from a neighboring county).

The tipster said the truck had "run her off the roadway," but the police had no reason to credit that charge and many reasons to doubt it, beginning with the peculiar fact that the accusation was anonymous. Eliminating accountability is ordinarily the very purpose of anonymity. The unnamed tipster can lie with impunity. Anonymity is especially suspicious with respect to the call that is the subject of the present case. When does a victim complain to the police about an arguably criminal act (running the victim off the road) without giving his identity, so that he can accuse and testify when the culprit is caught?

The question before us, the Court agrees, is whether the content of information possessed by police and its degree of reliability, gave the officers reasonable suspicion that the driver of the truck (Lorenzo) was committing an ongoing crime. When the only source of the government's information is an informant's tip, we ask whether the tip bears sufficient "indicia of reliability," to establish a particularized and objective basis for suspecting the particular person stopped of criminal activity,.

The most extreme case, before this one, in which an anonymous tip was found to meet this standard was *White.* There the reliability of the tip was established by the fact that it predicted the target's behavior in the finest detail—a detail that could be known only by someone familiar with the target's business: She would, the tipster said, leave a particular apartment building, get into a brown Plymouth station wagon with a broken right tail light, and drive immediately to a particular motel. Very few persons would have such intimate knowledge, and

hence knowledge of the unobservable fact that the woman was carrying unlawful drugs was plausible.

Here the Court makes a big deal of the fact that the tipster was dead right about the fact that a silver Ford F–150 truck (license plate 8D94925) was traveling south on Highway 1 somewhere near mile marker 88. But everyone in the world who saw the car would have that knowledge, and anyone who wanted the car stopped would have to provide that information. Unlike the situation in *White*, that generally available knowledge in no way makes it plausible that the tipster saw the car run someone off the road.

The Court says that "by reporting that she had been run off the road by a specific vehicle the caller necessarily claimed eyewitness knowledge." So what? The issue is not how she claimed to know, but whether what she claimed to know was true. The claim to "eyewitness knowledge" of being run off the road supports *not at all* its veracity; nor does the amazing, mystifying prediction (so far short of what existed in *White*) that the petitioners' truck *would be heading south on Highway 1*.

The Court finds "reason to think" that the informant "was telling the truth" in the fact that police observation confirmed that the truck had been driving near the spot at which, and at the approximate time at which, the tipster alleged she had been run off the road. *Ante*, at 1689. According to the Court, the statement therefore qualifies as a "present sense impression" or "excited utterance," kinds of hearsay that the law deems categorically admissible given their low likelihood of reflecting "deliberate or conscious misrepresentation." So, the Court says, we can fairly suppose that the accusation was true.

No, we cannot. To begin with, it is questionable whether either the "present *sense impression" or the "excited utterance" exception to the hearsay rule applies here. The classic "present sense impression" is the recounting of an event that is occurring before the declarant's eyes, as the declarant is speaking ("I am watching the Hindenburg explode!"). See 2 K. Broun, McCormick on Evidence 362 (7th ed. 2013) (hereinafter McCormick). And the classic "excited utterance" is a statement elicited, almost involuntarily, by the shock of what the declarant is immediately witnessing ("My God, those people will be killed!"). It is the immediacy that gives the statement some credibility; the declarant has not had time to dissemble or embellish. There is no such immediacy here. The declarant had time to observe the license number of the offending vehicle, 8D94925 (a difficult task if she was forced off the road and the vehicle was speeding away), to bring her car to a halt, to copy down the observed license number (presumably), and (if she was using her own cell phone) to dial a call to the police from the stopped car. Plenty of time to dissemble or embellish.

Moreover, even assuming that less than true immediacy will suffice for these hearsay exceptions to apply, the tipster's statement would run into additional barriers to admissibility and acceptance. According to the very Advisory Committee's Notes from which the Court quotes, cases addressing an unidentified declarant's present sense impression "indicate hesitancy in upholding the statement alone as sufficient" proof of the reported event. 28 U.S.C.App., at 371; see also 7 M. Graham, Handbook of Federal Evidence 19–20 (7th ed.2012). For excited utterances as well, the "knotty theoretical" question of statement-alone admissibility persists—

seemingly even when the declarant is known. 2 McCormick 368. “Some courts have taken the position that an excited utterance is admissible only if other proof is presented which supports a finding of fact that the exciting event did occur. The issue has not yet been resolved under the Federal Rules.” *Id.*, at 367–368. It is even unsettled whether excited utterances of an unknown declarant are *ever* admissible. A leading treatise reports that “the courts have been reluctant to admit such statements, principally because of uncertainty that foundational requirements, including the impact of the event on the declarant, have been satisfied.” *Id.*, at 372. In sum, it is unlikely that the law of evidence would deem the mystery caller in this case “especially trustworthy”.

Finally, and least tenably, the Court says that another “indicator of veracity” is the anonymous tipster's mere “use of the 911 emergency system”. Because, you see, recent “technological and regulatory developments” suggest that the identities of unnamed 911 callers are increasingly less likely to remain unknown. Indeed, the systems are able to identify “the caller's geographic location with increasing specificity.” *Amici* disagree with this, see Brief for National Association of Criminal Defense Lawyers et al. 8–12, and the present case surely suggests that *amici* are right—since we know neither the identity of the tipster nor even the county from which the call was made. But assuming the Court is right about the ease of identifying 911 callers, it proves absolutely nothing in the present case unless the anonymous caller was *aware* of that fact. “It is the tipster's *belief* in anonymity, not its *reality*, that will control his behavior.” *Id.*, at 10 (emphasis added). There is no reason to believe that your average anonymous 911 tipster is aware that 911 callers are readily identifiable.[2]

II

All that has been said up to now assumes that the anonymous caller made, at least in effect, an accusation of drunken driving. But in fact she did not. She said that the petitioners' truck “ran me off the roadway.” That neither asserts that the driver was drunk nor even raises the *likelihood* that the driver was drunk. The most it conveys is that the truck did some apparently nontypical thing that forced the tipster off the roadway, whether partly or fully, temporarily or permanently. Who really knows what (if anything) happened? The truck might have swerved to avoid an animal, a pothole, or a jaywalking pedestrian.

But let us assume the worst of the many possibilities: that it was a careless, reckless, or even intentional maneuver that forced the tipster off the road. Lorenzo might have been distracted by his use of a hands-free cell phone, see Strayer, Drews, & Crouch, A Comparison of the Cell Phone Driver and the Drunk Driver, 48 Human Factors 381, 388 (2006), or distracted by an intense sports argument with Jose, see D. Strayer et al., AAA Foundation for Traffic Safety, Measuring Cognitive Distraction in the Automobile 28 (June 2013), online at https://www.aaafoundation.org/sites/default/files/MeasuringCognitive Distractions.pdf). Or, indeed, he might have intentionally forced the tipster off the road because of some personal animus, or hostility to her “Make Love, Not War” bumper sticker. I fail to see how reasonable suspicion of a *discrete instance* of irregular or hazardous driving generates a reasonable suspicion of *ongoing intoxicated driving*. What proportion of the hundreds of thousands—perhaps millions—of careless, reckless, or intentional traffic violations committed each day is attributable to drunken drivers? I say 0.1 percent. I have no basis for that except my own

guesswork. But unless the Court has some basis in reality to believe that the proportion is many orders of magnitude above that—say 1 in 10 or at least 1 in 20—it has no grounds for its unsupported assertion that the tipster's report in this case gave rise to a *reasonable suspicion* of drunken driving.

Bear in mind that that is the only basis for the stop that has been asserted in this litigation.[3] The stop required suspicion of an ongoing crime, not merely suspicion of having run someone off the road earlier. And driving while being a careless or reckless person, unlike driving while being a drunk person, is not an ongoing crime. In other words, in order to stop the petitioners the officers here not only had to assume without basis the accuracy of the anonymous accusation but also had to posit an unlikely reason (drunkenness) for the accused behavior.

In sum, at the moment the police spotted the truck, it was more than merely "*possible* " that the petitioners were not committing an ongoing traffic crime. It was overwhelmingly likely that they were not.

III

It gets worse. Not only, it turns out, did the police have no good reason *at first* to believe that Lorenzo was driving drunk, they had very good reason *at last* to know that he was not. The Court concludes that the tip, plus confirmation of the truck's location, produced reasonable suspicion that the truck not only had been *but still was* barreling dangerously and drunkenly down Highway 1. In fact, alas, it was not, and the officers knew it. They followed the truck for five minutes, presumably to see if it was being operated recklessly. And *that* was good police work. While the anonymous tip was not enough to support a stop for drunken driving under *Terry v. Ohio,* it was surely enough to counsel observation of the truck to see if it was driven by a drunken driver. But the pesky little detail left out of the Court's reasonable-suspicion equation is that, for the five minutes that the truck was being followed (five minutes is a *long* time), Lorenzo's driving was irreproachable. Had the officers witnessed the petitioners violate a single traffic law, they would have had cause to stop the truck, *Whren v. United States,* 517 U.S. 806, 810 (1996), and this case would not be before us. And not only was the driving *irreproachable,* but the State offers no evidence to suggest that the petitioners even did anything *suspicious,* such as suddenly slowing down, pulling off to the side of the road, or turning somewhere to see whether they were being followed. Consequently, the tip's suggestion of ongoing drunken driving (if it could be deemed to suggest that) not only went uncorroborated; it was affirmatively undermined.

A hypothetical variation on the facts of this case illustrates the point. Suppose an anonymous tipster reports that, while following near mile marker 88 a silver Ford F–150, license plate 8D949925, traveling southbound on Highway 1, she saw in the truck's open cab several five-foot-tall stacks of what was unmistakably baled cannabis. Two minutes later, a highway patrolman spots the truck exactly where the tip suggested it would be, begins following it, but sees nothing in the truck's cab. It is not enough to say that the officer's observation merely failed to corroborate the tipster's accusation. It is more precise to say that the officer's observation *discredited* the informant's accusation: The crime was supposedly occurring (and would continue to occur) in plain view, but the police saw nothing. Similarly, here, the crime supposedly

suggested by the tip was ongoing intoxicated driving, the hallmarks of which are many, readily identifiable, and difficult to conceal. That the officers witnessed nary a minor traffic violation nor any other "sound indicium of drunk driving" strongly suggests that the suspected crime was *not* occurring after all. The tip's implication of continuing criminality, already weak, grew even weaker.

Resisting this line of reasoning, the Court curiously asserts that, since drunk drivers who see marked squad cars in their rearview mirrors may evade detection simply by driving "more careful[ly]," the "absence of additional suspicious conduct" is "hardly surprising" and thus largely irrelevant. Whether a drunk driver drives drunkenly, the Court seems to think, is up to him. That is not how I understand the influence of alcohol. I subscribe to the more traditional view that the dangers of intoxicated driving are the intoxicant's impairing effects on the body—effects that no mere act of the will can resist. See, *e.g.*, A. Dasgupta, The Science of Drinking: How Alcohol Affects Your Body and Mind 39 (explaining that the physiological effect of a blood alcohol content between 0.08 and 0.109, for example, is "severe impairment" of "balance, speech, hearing, and reaction time," as well as one's general "ability to drive a motor vehicle"). Consistent with this view, I take it as a fundamental premise of our intoxicated-driving laws that a driver soused enough to swerve once can be expected to swerve again—and soon. If he does not, and if the only evidence of his first episode of irregular driving is a mere inference from an uncorroborated, vague, and nameless tip, then the Fourth Amendment requires that he be left alone.

The Court's opinion serves up a freedom-destroying cocktail consisting of two parts patent falsity: (1) that anonymous 911 reports of traffic violations are reliable so long as they correctly identify a car and its location, and (2) that a single instance of careless or reckless driving necessarily supports a reasonable suspicion of drunkenness. All the malevolent 911 caller need do is assert a traffic violation, and the targeted car will be stopped, forcibly if necessary, by the police. If the driver turns out not to be drunk (which will almost always be the case), the caller need fear no consequences, even if 911 knows his identity. After all, he never alleged drunkenness, but merely called in a traffic violation—and on that point his word is as good as his victim's.

Drunken driving is a serious matter, but so is the loss of our freedom to come and go as we please without police interference. To prevent and detect murder we do not allow searches without probable cause or targeted *Terry* stops without reasonable suspicion. We should not do so for drunken driving either. After today's opinion all of us on the road, and not just drug dealers, are at risk of having our freedom of movement curtailed on suspicion of drunkenness, based upon a phone tip, true or false, of a single instance of careless driving. I respectfully dissent.

Footnotes

1
At the suppression hearing, counsel for petitioners did not dispute that the reporting party identified herself by name in the 911 call recording. Because neither the caller nor the Humboldt County dispatcher who received the call was present at the hearing, however, the prosecution did

not introduce the recording into evidence. The prosecution proceeded to treat the tip as anonymous, and the lower courts followed suit.

2
Because we conclude that the 911 call created reasonable suspicion of an ongoing crime, we need not address under what circumstances a stop is justified by the need to investigate completed criminal activity.

1
There was some indication below that the tipster was a woman. Beyond that detail, we must, as the Court notes, assume that the identity of the tipster was unknown.

2
The Court's discussion of reliable 911 traceability has so little relevance to the present case that one must surmise it has been included merely to assure officers in the future that anonymous 911 accusations—even untraced ones—are not as suspect (and hence as unreliable) as other anonymous accusations. That is unfortunate.

HEIEN v. NORTH CAROLINA

U.S. Supreme Court, 2014

135 S.Ct. 530

Chief Justice ROBERTS delivered the opinion of the Court.

The Fourth Amendment prohibits "unreasonable searches and seizures." Under this standard, a search or seizure may be permissible even though the justification for the action includes a reasonable factual mistake. An officer might, for example, stop a motorist for traveling alone in a high-occupancy vehicle lane, only to discover upon approaching the car that two children are slumped over asleep in the back seat. The driver has not violated the law, but neither has the officer violated the Fourth Amendment.

But what if the police officer's reasonable mistake is not one of fact but of law? In this case, an officer stopped a vehicle because one of its two brake lights was out, but a court later determined that a single working brake light was all the law required. The question presented is whether such a mistake of law can nonetheless give rise to the reasonable suspicion necessary to uphold the seizure under the Fourth Amendment. We hold that it can. Because the officer's mistake about the brake-light law was reasonable, the stop in this case was lawful under the Fourth Amendment.

I

On the morning of April 29, 2009, Sergeant Matt Darisse of the Surry County Sheriff's Department sat in his patrol car near Dobson, North Carolina, observing northbound traffic on Interstate 77. Shortly before 8 a.m., a Ford Escort passed by. Darisse thought the driver looked "very stiff and nervous," so he pulled onto the interstate and began following the Escort. A few miles down the road, the Escort braked as it approached a slower vehicle, but only the left brake light came on. Noting the faulty right brake light, Darisse activated his vehicle's lights and pulled the Escort over.

Two men were in the car: Maynor Javier Vasquez sat behind the wheel, and petitioner Nicholas Brady Heien lay across the rear seat. Sergeant Darisse explained to Vasquez that as long as his license and registration checked out, he would receive only a warning ticket for the broken brake light. A records check revealed no problems with the documents, and Darisse gave Vasquez the warning ticket. But Darisse had become suspicious during the course of the stop—Vasquez appeared nervous, Heien remained lying down the entire time, and the two gave inconsistent answers about their destination. Darisse asked Vasquez if he would be willing to answer some questions. Vasquez assented, and Darisse asked whether the men were transporting various types of contraband. Told no, Darisse asked whether he could search the Escort. Vasquez said he had no objection, but told Darisse he should ask Heien, because Heien owned the car. Heien gave his consent, and Darisse, aided by a fellow officer who had since arrived, began a thorough search of the vehicle. In the side compartment of a duffle bag, Darisse found a sandwich bag containing cocaine. The officers arrested both men.

The State charged Heien with attempted trafficking in cocaine. Heien moved to suppress the evidence seized from the car, contending that the stop and search had violated the Fourth Amendment of the United States Constitution. After a hearing at which both officers testified and the State played a video recording of the stop, the trial court denied the suppression motion, concluding that the faulty brake light had given Sergeant Darisse reasonable suspicion to initiate the stop, and that Heien's subsequent consent to the search was valid. Heien pleaded guilty but reserved his right to appeal the suppression decision.

The North Carolina Court of Appeals reversed. The initial stop was not valid, the court held, because driving with only one working brake light was not actually a violation of North Carolina law. The relevant provision of the vehicle code provides that a car must be "equipped with a stop lamp on the rear of the vehicle. The stop lamp shall display a red or amber light visible from a distance of not less than 100 feet to the rear in normal sunlight, and shall be actuated upon application of the service (foot) brake. The stop lamp may be incorporated into a unit with one or more other rear lamps."

Focusing on the statute's references to "a stop lamp" and "the stop lamp" in the singular, the court concluded that a vehicle is required to have only one working brake light—which Heien's vehicle indisputably did. The justification for the stop was therefore "objectively unreasonable," and the stop violated the Fourth Amendment.

The State appealed, and the North Carolina Supreme Court reversed. Noting that the State had chosen not to seek review of the Court of Appeals' interpretation of the vehicle code, the North Carolina Supreme Court assumed for purposes of its decision that the faulty brake light

was not a violation. But the court concluded that, for several reasons, Sergeant Darisse could have reasonably, even if mistakenly, read the vehicle code to require that both brake lights be in good working order. Most notably, a nearby code provision requires that "all originally equipped rear lamps" be functional. Because Sergeant Darisse's mistaken understanding of the vehicle code was reasonable, the stop was valid. "An officer may make a mistake, including a mistake of law, yet still act reasonably under the circumstances. When an officer acts reasonably under the circumstances, he is not violating the Fourth Amendment."

The North Carolina Supreme Court remanded to the Court of Appeals to address Heien's other arguments for suppression (which are not at issue here). The Court of Appeals rejected those arguments and affirmed the trial court's denial of his motion to suppress. The North Carolina Supreme Court affirmed in turn. We granted certiorari.

II

A traffic stop for a suspected violation of law is a "seizure" of the occupants of the vehicle and therefore must be conducted in accordance with the Fourth Amendment. *Brendlin v. California,* 551 U.S. 249, 255–259 (2007). All parties agree that to justify this type of seizure, officers need only "reasonable suspicion"—that is, a particularized and objective basis for suspecting the particular person stopped of breaking the law. The question here is whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition. We hold that it can.

As the text indicates and we have repeatedly affirmed, the ultimate touchstone of the Fourth Amendment is 'reasonableness. To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection.. We have recognized that searches and seizures based on mistakes of fact can be reasonable. The warrantless search of a home, for instance, is reasonable if undertaken with the consent of a resident, and remains lawful when officers obtain the consent of someone who reasonably appears to be but is not in fact a resident. See *Illinois v. Rodriguez,* 497 U.S. 177, 183–186 (1990). By the same token, if officers with probable cause to arrest a suspect mistakenly arrest an individual matching the suspect's description, neither the seizure nor an accompanying search of the arrestee would be unlawful. See *Hill v. California,* 401 U.S. 797, 802–805 (1971). The limit is that the mistakes must be those of reasonable men.

But reasonable men make mistakes of law, too, and such mistakes are no less compatible with the concept of reasonable suspicion. Reasonable suspicion arises from the combination of an officer's understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground. Whether the facts turn out to be not what was thought, or the law turns out to be not what was thought, the result is the same: the facts are outside the scope of the law. There is no reason, under the text of the Fourth Amendment or our precedents, why this same result should be acceptable when reached by way of a reasonable mistake of fact, but not when reached by way of a similarly reasonable mistake of law. * * * *

In *Michigan v. DeFillippo*, 443 U.S. 31 (1979), we addressed the validity of an arrest made under a criminal law later declared unconstitutional. A Detroit ordinance that authorized police officers to stop and question individuals suspected of criminal activity also made it an offense for such an individual "to refuse to identify himself and produce evidence of his identity." Detroit police officers sent to investigate a report of public intoxication arrested Gary DeFillippo after he failed to identify himself. A search incident to arrest uncovered drugs, and DeFillippo was charged with possession of a controlled substance. The Michigan Court of Appeals ordered the suppression of the drugs, concluding that the identification ordinance was unconstitutionally vague and that DeFillippo's arrest was therefore invalid.

Accepting the unconstitutionality of the ordinance as a given, we nonetheless reversed. At the time the officers arrested DeFillippo, we explained, "there was no controlling precedent that this ordinance was or was not constitutional, and hence the conduct observed violated a presumptively valid ordinance." Acknowledging that the outcome might have been different had the ordinance been "grossly and flagrantly unconstitutional," we concluded that under the circumstances "there was abundant probable cause to satisfy the constitutional prerequisite for an arrest."

The officers were wrong in concluding that DeFillippo was guilty of a criminal offense when he declined to identify himself. That a court only *later* declared the ordinance unconstitutional does not change the fact that DeFillippo's conduct was lawful when the officers observed it. But the officers' assumption that the law was valid was reasonable, and their observations gave them "abundant probable cause" to arrest Although DeFillippo could not be prosecuted under the identification ordinance, the search that turned up the drugs was constitutional.

Heien struggles to recast *DeFillippo* as a case solely about the exclusionary rule, not the Fourth Amendment itself. In his view, the officers' mistake of law resulted in a violation the Fourth Amendment, but suppression of the drugs was not the proper remedy. We did say in a footnote that suppression of the evidence found on DeFillippo would serve none of the purposes of the exclusionary rule. But that literally marginal discussion does not displace our express holding that the arrest was constitutionally valid because the officers had probable cause. * * * *

Heien also contends that the reasons the Fourth Amendment allows some errors of fact do not extend to errors of law. Officers in the field must make factual assessments on the fly, Heien notes, and so deserve a margin of error. In Heien's view, no such margin is appropriate for questions of law: The statute here either requires one working brake light or two, and the answer does not turn on anything "an officer might suddenly confront in the field." Brief for Petitioner 21.

But Heien's point does not consider the reality that an officer may "suddenly confront" a situation in the field as to which the application of a statute is unclear—however clear it may later become. A law prohibiting "vehicles" in the park either covers Segways or not, see A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 36–38 (2012), but an officer will nevertheless have to make a quick decision on the law the first time one whizzes by.

Contrary to the suggestion of Heien and *amici*, our decision does not discourage officers from learning the law. The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable. We do not examine the subjective understanding of the particular officer involved. And the inquiry is not as forgiving as the one employed in the distinct context of deciding whether an officer is entitled to qualified immunity for a constitutional or statutory violation. Thus, an officer can gain no Fourth Amendment advantage through a sloppy study of the laws he is duty-bound to enforce.

Finally, Heien and *amici* point to the well-known maxim, "Ignorance of the law is no excuse," and contend that it is fundamentally unfair to let police officers get away with mistakes of law when the citizenry is accorded no such leeway. Though this argument has a certain rhetorical appeal, it misconceives the implication of the maxim. The true symmetry is this: Just as an individual generally cannot escape criminal liability based on a mistaken understanding of the law, so too the government cannot impose criminal liability based on a mistaken understanding of the law. If the law required two working brake lights, Heien could not escape a ticket by claiming he reasonably thought he needed only one; if the law required only one, Sergeant Darisse could not issue a valid ticket by claiming he reasonably thought drivers needed two. But just because mistakes of law cannot justify either the imposition or the avoidance of criminal liability, it does not follow that they cannot justify an investigatory stop. And Heien is not appealing a brake-light ticket; he is appealing a cocaine-trafficking conviction as to which there is no asserted mistake of fact or law.

III

Here we have little difficulty concluding that the officer's error of law was reasonable. Although the North Carolina statute at issue refers to "*a* stop lamp," suggesting the need for only a single working brake light, it also provides that "the stop lamp may be incorporated into a unit with one or more *other* rear lamps." N.C. Gen.Stat. Ann. § 20–129(g) (emphasis added). The use of "other" suggests to the everyday reader of English that a "stop lamp" is a type of "rear lamp." And another subsection of the same provision requires that vehicles "have all originally equipped rear lamps or the equivalent in good working order," § 20–129(d), arguably indicating that if a vehicle has multiple "stop lamps," all must be functional.

The North Carolina Court of Appeals concluded that the "rear lamps" discussed in subsection (d) do not include brake lights, but, given the "other," it would at least have been reasonable to think they did. Both the majority and the dissent in the North Carolina Supreme Court so concluded, and we agree. This "stop lamp" provision, moreover, had never been previously construed by North Carolina's appellate courts. It was thus objectively reasonable for an officer in Sergeant Darisse's position to think that Heien's faulty right brake light was a violation of North Carolina law. And because the mistake of law was reasonable, there was reasonable suspicion justifying the stop.

The judgment of the Supreme Court of North Carolina is *Affirmed.*

Justice SOTOMAYOR, dissenting.

* * * *

I would hold that determining whether a search or seizure is reasonable requires evaluating an officer's understanding of the facts against the actual state of the law. I would accordingly reverse the judgment of the North Carolina Supreme Court, and I respectfully dissent from the Court's contrary holding.

I

* * * *

When we have talked about the leeway that officers have in making probable-cause determinations, we have focused on their assessments of facts. See, *e.g., Terry v. Ohio*, 392 U.S. 1, 21–22 (1968) (framing the question as whether the "facts" give rise to reasonable suspicion). We have conceded that an arresting officer's state of mind does not factor into the probable-cause inquiry, "except for *the facts* that he knows." And we have said that, to satisfy the reasonableness requirement, "what is generally demanded of the many *factual determinations* that must regularly be made by agents of the government is not that they always be correct, but that they always be reasonable." *Illinois v. Rodriguez*, 497 U.S. 177, 185 (1990) (emphasis added). There is scarcely a peep in these cases to suggest that an officer's understanding or conception of anything other than the facts is relevant.

This framing of the reasonableness inquiry has not only been focused on officers' understanding of the facts, it has been justified in large part based on the recognition that officers are generally in a superior position, relative to courts, to evaluate those facts and their significance as they unfold. In other words, the leeway we afford officers' factual assessments is rooted not only in our recognition that police officers operating in the field have to make quick decisions, but also in our understanding that police officers have the expertise to "draw inferences and make deductions that might well elude an untrained person." *United States v. Cortez*, 449 U.S. 411, 418, (1981). When officers evaluate unfolding circumstances, they deploy that expertise to draw "conclusions about human behavior" much in the way that "jurors do *as factfinders*." *Ibid.* (emphasis added).

The same cannot be said about legal exegesis. After all, the meaning of the law is not probabilistic in the same way that factual determinations are. Rather, "the notion that the law is definite and knowable" sits at the foundation of our legal system. And it is courts, not officers, that are in the best position to interpret the laws.

Both our enunciation of the reasonableness inquiry and our justification for it thus have always turned on an officer's factual conclusions and an officer's expertise with respect to those factual conclusions. Neither has hinted at taking into account an officer's understanding of the law, reasonable or otherwise.

II

Departing from this tradition means further eroding the Fourth Amendment's protection of civil liberties in a context where that protection has already been worn down. Traffic stops like those at issue here can be annoying, frightening, and perhaps humiliating. We have nevertheless held that an officer's subjective motivations do not render a traffic stop unlawful. *Whren v. United States*, 517 U.S. 806 (1996). But we assumed in *Whren* that when an officer acts on pretext, at least that pretext would be the violation of an actual law. Giving officers license to effect seizures so long as they can attach to their reasonable view of the facts some reasonable legal interpretation (or misinterpretation) that suggests a law has been violated significantly expands this authority. One wonders how a citizen seeking to be law-abiding and to structure his or her behavior to avoid these invasive, frightening, and humiliating encounters could do so.

In addition to these human consequences—including those for communities and for their relationships with the police—permitting mistakes of law to justify seizures has the perverse effect of preventing or delaying the clarification of the law. Under such an approach, courts need not interpret statutory language but can instead simply decide whether an officer's interpretation was reasonable. Indeed, had this very case arisen after the North Carolina Supreme Court announced its rule, the North Carolina Court of Appeals would not have had the occasion to interpret the statute at issue. Similarly, courts in the Eighth Circuit, which has been the only Circuit to include police mistakes of law in the reasonableness inquiry, have observed that they need not decide interpretive questions under their approach. This result is bad for citizens, who need to know their rights and responsibilities, and it is bad for police, who would benefit from clearer direction.

Of course, if the law enforcement system could not function without permitting mistakes of law to justify seizures, one could at least argue that permitting as much is a necessary evil. But I have not seen any persuasive argument that law enforcement will be unduly hampered by a rule that precludes consideration of mistakes of law in the reasonableness inquiry. After all, there is no indication that excluding an officer's mistake of law from the reasonableness inquiry has created a problem for law enforcement in the overwhelming number of Circuits which have adopted that approach. If an officer makes a stop in good faith but it turns out that, as in this case, the officer was wrong about what the law proscribed or required, I know of no penalty that the officer would suffer. Moreover, such an officer would likely have a defense to any civil suit on the basis of qualified immunity.

Nor will it often be the case that any evidence that may be seized during the stop will be suppressed, thanks to the exception to the exclusionary rule for good-faith police errors. It is true that, unlike most States, North Carolina does not provide a good-faith exception as a matter of state law, but North Carolina recognizes that it may solve any remedial problems it may perceive on its own. More fundamentally, that is a remedial concern, and the protections offered by the Fourth Amendment are not meant to yield to accommodate remedial concerns. Our jurisprudence draws a sharp “analytical distinction” between the existence of a Fourth Amendment violation and the remedy for that violation.

In short, there is nothing in our case law requiring us to hold that a reasonable mistake of law can justify a seizure under the Fourth Amendment, and quite a bit suggesting just the opposite. I also see nothing to be gained from such a holding, and much to be lost.

III

* * * *

On the practical side, the Court primarily contends that an officer may confront "a situation in the field as to which the application of a statute is unclear." One is left to wonder, however, why an innocent citizen should be made to shoulder the burden of being seized whenever the law may be susceptible to an interpretive question. Moreover, the Court fails to reconcile its belief that the Fourth Amendment gives officers leeway to address situations where the application of a criminal statute may be unclear with our prior assumption that the Fourth Amendment does not give officers such leeway where they rely on a statute that authorizes police conduct that may violate the Fourth Amendment. Nor does it engage with the analytic consequences of North Carolina's similar concession that it does not mean to claim "that an officer's mistaken understanding of the Fourth Amendment itself can support a seizure if that understanding was reasonable." It is not clear why an officer's mistaken understanding of other laws should be viewed differently.

While I appreciate that the Court has endeavored to set some bounds on the types of mistakes of law that it thinks will qualify as reasonable, and while I think that the set of reasonable mistakes of law ought to be narrowly circumscribed if they are to be countenanced at all, I am not at all convinced that the Court has done so in a clear way. It seems to me that the difference between qualified immunity's reasonableness standard—which the Court insists without elaboration does not apply here—and the Court's conception of reasonableness in this context—which remains undefined—will prove murky in application. I fear the Court's unwillingness to sketch a fuller view of what makes a mistake of law reasonable only presages the likely difficulty that courts will have applying the Court's decision in this case.

To my mind, the more administrable approach—and the one more consistent with our precedents and principles—would be to hold that an officer's mistake of law, no matter how reasonable, cannot support the individualized suspicion necessary to justify a seizure under the Fourth Amendment. I respectfully dissent.

RODRIGUEZ v. UNITED STATES

U.S. Supreme Court, 2015

135 S.Ct. 1609

Justice GINSBURG delivered the opinion of the Court.

In *Illinois v. Caballes*, 543 U.S. 405 (2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "becomes unlawful if it is prolonged beyond the time reasonably required to complete

the mission" of issuing a ticket for the violation. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision.

I

Just after midnight on March 27, 2012, police officer Morgan Struble observed a Mercury Mountaineer veer slowly onto the shoulder of Nebraska State Highway 275 for one or two seconds and then jerk back onto the road. Nebraska law prohibits driving on highway shoulders, and on that basis, Struble pulled the Mountaineer over at 12:06 a.m. Struble is a K–9 officer with the Valley Police Department in Nebraska, and his dog Floyd was in his patrol car that night. Two men were in the Mountaineer: the driver, Dennys Rodriguez, and a front-seat passenger, Scott Pollman.

Struble approached the Mountaineer on the passenger's side. After Rodriguez identified himself, Struble asked him why he had driven onto the shoulder. Rodriguez replied that he had swerved to avoid a pothole. Struble then gathered Rodriguez's license, registration, and proof of insurance, and asked Rodriguez to accompany him to the patrol car. Rodriguez asked if he was required to do so, and Struble answered that he was not. Rodriguez decided to wait in his own vehicle.

After running a records check on Rodriguez, Struble returned to the Mountaineer. Struble asked passenger Pollman for his driver's license and began to question him about where the two men were coming from and where they were going. Pollman replied that they had traveled to Omaha, Nebraska, to look at a Ford Mustang that was for sale and that they were returning to Norfolk, Nebraska. Struble returned again to his patrol car, where he completed a records check on Pollman, and called for a second officer. Struble then began writing a warning ticket for Rodriguez for driving on the shoulder of the road.

Struble returned to Rodriguez's vehicle a third time to issue the written warning. By 12:27 or 12:28 a.m., Struble had finished explaining the warning to Rodriguez, and had given back to Rodriguez and Pollman the documents obtained from them. As Struble later testified, at that point, Rodriguez and Pollman "had all their documents back and a copy of the written warning. I got all the reasons for the stop out of the way, took care of all the business."

Nevertheless, Struble did not consider Rodriguez "free to leave." Although justification for the traffic stop was "out of the way," Struble asked for permission to walk his dog around Rodriguez's vehicle. Rodriguez said no. Struble then instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer. Rodriguez complied. At 12:33 a.m., a deputy sheriff arrived. Struble retrieved his dog and led him twice around the Mountaineer. The dog alerted to the presence of drugs halfway through Struble's second pass. All told, seven or eight minutes had elapsed from the time Struble issued the written warning until the dog indicated the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine.

Rodriguez was indicted in the United States District Court for the District of Nebraska on one count of possession with intent to distribute 50 grams or more of methamphetamine, in

violation of 21 U.S.C. §§ 841(a)(1) and (b)(1). He moved to suppress the evidence seized from his car on the ground, among others, that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff.

After receiving evidence, a Magistrate Judge recommended that the motion be denied. The Magistrate Judge found no probable cause to search the vehicle independent of the dog alert. (Apart from "information given by the dog," "Officer Struble had nothing other than a rather large hunch"). He further found that no reasonable suspicion supported the detention once Struble issued the written warning. He concluded, however, that under Eighth Circuit precedent, extension of the stop by "seven to eight minutes" for the dog sniff was only a *de minimis* intrusion on Rodriguez's Fourth Amendment rights and was therefore permissible.

The District Court adopted the Magistrate Judge's factual findings and legal conclusions and denied Rodriguez's motion to suppress. The court noted that, in the Eighth Circuit, "dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only de minimis intrusions." The court thus agreed with the Magistrate Judge that the "7 to 10 minutes" added to the stop by the dog sniff "was not of constitutional significance." Impelled by that decision, Rodriguez entered a conditional guilty plea and was sentenced to five years in prison.

The Eighth Circuit affirmed. The "seven- or eight-minute delay" in this case, the opinion noted, resembled delays that the court had previously ranked as permissible. The Court of Appeals thus ruled that the delay here constituted an acceptable "*de minimis* intrusion on Rodriguez's personal liberty." Given that ruling, the court declined to reach the question whether Struble had reasonable suspicion to continue Rodriguez's detention after issuing the written warning.

We granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff.

II

A seizure for a traffic violation justifies a police investigation of that violation. "A relatively brief encounter," a routine traffic stop is "more analogous to a so-called '*Terry* stop' ... than to a formal arrest." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's "mission" — to address the traffic violation that warranted the stop and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are — or reasonably should have been — completed.

Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. *Johnson*, 555 U.S. at 327–328 (questioning); *Caballes*, 543 U.S. at 406, 408 (dog sniff). In *Caballes*, however, we cautioned that a traffic stop "can become

unlawful if it is prolonged beyond the time reasonably required to complete the mission" of issuing a warning ticket. And we repeated that admonition in *Johnson* : The seizure remains lawful only "so long as unrelated inquiries do not measurably extend the duration of the stop."

An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to Justice ALITO's suggestion, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual.

Beyond determining whether to issue a traffic ticket, an officer's mission includes "ordinary inquiries incident to the traffic stop." *Caballes,* 543 U.S. at 408. Typically such inquiries involve checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.

A dog sniff, by contrast, is a measure aimed at "detecting evidence of ordinary criminal wrongdoing." *Indianapolis v. Edmond*, 531 U.S. 32, 40–41 (2000). Candidly, the Government acknowledged at oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

In advancing its *de minimis* rule, the Eighth Circuit relied heavily on our decision in *Pennsylvania v. Mimms,* 434 U.S. 106 (1977). In *Mimms,* we reasoned that the government's "legitimate and weighty" interest in officer safety outweighs the "*de minimis* " additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle. The Eighth Circuit, echoed in Justice THOMAS's dissent, believed that the imposition here similarly could be offset by the Government's "strong interest in interdicting the flow of illegal drugs along the nation's highways."

Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers," *Johnson,* 555 U.S. at 330, so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. On-scene investigation into other crimes, however, detours from that mission. So too do safety precautions taken in order to facilitate such detours.

Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms,* the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government's endeavor to detect crime in general or drug trafficking in particular.

The Government argues that an officer may "incrementally" prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other

traffic stops involving similar circumstances. The Government's argument, in effect, is that by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation. The reasonableness of a seizure, however, depends on what the police in fact do. In this regard, the Government acknowledges that "an officer always has to be reasonably diligent." How could diligence be gauged other than by noting what the officer actually did and how he did it? If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission. As we said in *Caballes* and reiterate today, a traffic stop "prolonged beyond" that point is "unlawful."

The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, as Justice ALITO supposes, but whether conducting the sniff "prolongs"—*i.e.*, adds time to — "the stop".

III

The Magistrate Judge found that detention for the dog sniff in this case was not independently supported by individualized suspicion, and the District Court adopted the Magistrate Judge's findings. The Court of Appeals, however, did not review that determination.

The question whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic infraction investigation, therefore, remains open for Eighth Circuit consideration on remand.

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

Justice KENNEDY, dissenting.

My join in Justice THOMAS' dissenting opinion does not extend to Part III. Although the issue discussed in that Part was argued here, the Court of Appeals has not addressed that aspect of the case in any detail. In my view the better course would be to allow that court to do so in the first instance.

Justice THOMAS, with whom Justice ALITO joins, and with whom Justice KENNEDY joins as to all but Part III, dissenting.

Ten years ago, we explained that "conducting a dog sniff does not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner." *Illinois v. Caballes,* 543 U.S. 405, 408 (2005). The only question here is whether an officer executed a stop in a reasonable manner when he waited to conduct a dog sniff until after he had given the driver a written warning and a backup unit had arrived, bringing the overall duration of the stop to 29 minutes. Because the stop was reasonably executed, no Fourth Amendment violation occurred. The Court's holding to the contrary cannot be reconciled with our decision in *Caballes* or a number of common police practices. It was also unnecessary, as the officer

possessed reasonable suspicion to continue to hold the driver to conduct the dog sniff. I respectfully dissent.

I

* * * *

Although a traffic stop "constitutes a 'seizure' of 'persons' within the meaning of the Fourth Amendment," such a seizure is constitutionally "reasonable where the police have probable cause to believe that a traffic violation has occurred." But "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Caballes, supra,* at 407.

Because Rodriguez does not dispute that Officer Struble had probable cause to stop him, the only question is whether the stop was otherwise executed in a reasonable manner. I easily conclude that it was. Approximately 29 minutes passed from the time Officer Struble stopped Rodriguez until his narcotics-detection dog alerted to the presence of drugs. That amount of time is hardly out of the ordinary for a traffic stop by a single officer of a vehicle containing multiple occupants even when no dog sniff is involved.

During that time, Officer Struble conducted the ordinary activities of a traffic stop — he approached the vehicle, questioned Rodriguez about the observed violation, asked Pollman about their travel plans, ran serial warrant checks on Rodriguez and Pollman, and issued a written warning to Rodriguez. And when he decided to conduct a dog sniff, he took the precaution of calling for backup out of concern for his safety.

As *Caballes* makes clear, the fact that Officer Struble waited until after he gave Rodriguez the warning to conduct the dog sniff does not alter this analysis. Because "the use of a well-trained narcotics-detection dog generally does not implicate legitimate privacy interests," "conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner". The stop here was "lawful at its inception and otherwise executed in a reasonable manner." As in *Caballes,* "conducting a dog sniff did not change the character of the traffic stop," and thus no Fourth Amendment violation occurred. * * * *

Justice ALITO, dissenting.

This is an unnecessary, impractical, and arbitrary decision. It addresses a purely hypothetical question: whether the traffic stop in this case *would be* unreasonable if the police officer, prior to leading a drug-sniffing dog around the exterior of petitioner's car, did not already have reasonable suspicion that the car contained drugs. In fact, however, the police officer *did have* reasonable suspicion, and, as a result, the officer was justified in detaining the occupants for the short period of time (seven or eight minutes) that is at issue.

The relevant facts are not in dispute. Officer Struble, who made the stop, was the only witness at the suppression hearing, and his testimony about what happened was not challenged. Defense counsel argued that the facts recounted by Officer Struble were insufficient to establish

reasonable suspicion, but defense counsel did not dispute those facts or attack the officer's credibility. Similarly, the Magistrate Judge who conducted the hearing did not question the officer's credibility. And as Justice THOMAS's opinion shows, the facts recounted by Officer Struble "easily meet our standard for reasonable suspicion."

Not only does the Court reach out to decide a question not really presented by the facts in this case, but the Court's answer to that question is arbitrary. The Court refuses to address the real Fourth Amendment question: whether the stop was unreasonably prolonged. Instead, the Court latches onto the fact that Officer Struble delivered the warning prior to the dog sniff and proclaims that the authority to detain based on a traffic stop ends when a citation or warning is handed over to the driver. The Court thus holds that the Fourth Amendment was violated, not because of the length of the stop, but simply because of the sequence in which Officer Struble chose to perform his tasks.

This holding is not only arbitrary; it is perverse since Officer Struble chose that sequence for the purpose of protecting his own safety and possibly the safety of others. Without prolonging the stop, Officer Struble could have conducted the dog sniff while one of the tasks that the Court regards as properly part of the traffic stop was still in progress, but that sequence would have entailed unnecessary risk. At approximately 12:19 a.m., after collecting Pollman's driver's license, Officer Struble did two things. He called in the information needed to do a records check on Pollman (a step that the Court recognizes was properly part of the traffic stop), and he requested that another officer report to the scene. Officer Struble had decided to perform a dog sniff but did not want to do that without another officer present. When occupants of a vehicle who know that their vehicle contains a large amount of illegal drugs see that a drug-sniffing dog has alerted for the presence of drugs, they will almost certainly realize that the police will then proceed to search the vehicle, discover the drugs, and make arrests. Thus, it is reasonable for an officer to believe that an alert will increase the risk that the occupants of the vehicle will attempt to flee or perhaps even attack the officer.

In this case, Officer Struble was concerned that he was outnumbered at the scene, and he therefore called for backup and waited for the arrival of another officer before conducting the sniff. As a result, the sniff was not completed until seven or eight minutes after he delivered the warning. But Officer Struble could have proceeded with the dog sniff while he was waiting for the results of the records check on Pollman and before the arrival of the second officer. The drug-sniffing dog was present in Officer Struble's car. If he had chosen that riskier sequence of events, the dog sniff would have been completed before the point in time when, according to the Court's analysis, the authority to detain for the traffic stop ended. Thus, an action that would have been lawful had the officer made the *unreasonable* decision to risk his life became unlawful when the officer made the *reasonable* decision to wait a few minutes for backup. Officer Struble's error—apparently—was following prudent procedures motivated by legitimate safety concerns. The Court's holding therefore makes no practical sense. And nothing in the Fourth Amendment, which speaks of *reasonableness,* compels this arbitrary line.

The rule that the Court adopts will do little good going forward. It is unlikely to have any appreciable effect on the length of future traffic stops. Most officers will learn the prescribed sequence of events even if they cannot fathom the reason for that requirement. (I would love to

be the proverbial fly on the wall when police instructors teach this rule to officers who make traffic stops.)

For these reasons and those set out in Justice THOMAS's opinion, I respectfully dissent.

CHAPTER 8: CONSENT

FERNANDEZ v. CALIFORNIA

U.S. Supreme Court, 2014
134 S.Ct. 1126

Justice ALITO delivered the opinion of the Court.

Our cases firmly establish that police officers may search jointly occupied premises if one of the occupants[1] consents. In *Georgia v. Randolph*, 547 U.S. 103 (2006), we recognized a narrow exception to this rule, holding that the consent of one occupant is insufficient when another occupant is present and objects to the search. In this case, we consider whether *Randolph* applies if the objecting occupant is absent when another occupant consents. Our opinion in *Randolph* took great pains to emphasize that its holding was limited to situations in which the objecting occupant is physically present. We therefore refuse to extend *Randolph* to the very different situation in this case, where consent was provided by an abused woman well after her male partner had been removed from the apartment they shared.

I
A

The events involved in this case occurred in Los Angeles in October 2009. After observing Abel Lopez cash a check, petitioner Walter Fernandez approached Lopez and asked about the neighborhood in which he lived. When Lopez responded that he was from Mexico, Fernandez laughed and told Lopez that he was in territory ruled by the "D.F.S.," *i.e.*, the "Drifters" gang. Petitioner then pulled out a knife and pointed it at Lopez' chest. Lopez raised his hand in self-defense, and petitioner cut him on the wrist.

Lopez ran from the scene and called 911 for help, but petitioner whistled, and four men emerged from a nearby apartment building and attacked Lopez. After knocking him to the ground, they hit and kicked him and took his cell phone and his wallet, which contained $400 in cash.
A police dispatch reported the incident and mentioned the possibility of gang involvement, and two Los Angeles police officers, Detective Clark and Officer Cirrito, drove to an alley frequented by members of the Drifters. A man who appeared scared walked by the officers and said: "The guy is in the apartment." The officers then observed a man run through the alley and into the building to which the man was pointing. A minute or two later, the officers heard sounds of screaming and fighting coming from that building.

After backup arrived, the officers knocked on the door of the apartment unit from which the screams had been heard. Roxanne Rojas answered the door. She was holding a baby and appeared to be crying. Her face was red, and she had a large bump on her nose. The officers also saw blood on her shirt and hand from what appeared to be a fresh injury. Rojas told the police that she had been in a fight. Officer Cirrito asked if anyone else was in the apartment, and Rojas said that her 4–year–old son was the only other person present.

After Officer Cirrito asked Rojas to step out of the apartment so that he could conduct a protective sweep, petitioner appeared at the door wearing only boxer shorts. Apparently agitated, petitioner stepped forward and said, "You don't have any right to come in here. I know my rights." Suspecting that petitioner had assaulted Rojas, the officers removed him from the apartment and then placed him under arrest. Lopez identified petitioner as his initial attacker, and petitioner was taken to the police station for booking.

Approximately one hour after petitioner's arrest, Detective Clark returned to the apartment and informed Rojas that petitioner had been arrested. Detective Clark requested and received both oral and written consent from Rojas to search the premises.[2] In the apartment, the police found Drifters gang paraphernalia, a butterfly knife, clothing worn by the robbery suspect, and ammunition. Rojas' young son also showed the officers where petitioner had hidden a sawed-off shotgun.

B

Petitioner was charged with robbery, Cal.Penal Code Ann. §211, infliction of corporal injury on a spouse, cohabitant, or child's parent, § 273.5(a), possession of a firearm by a felon, §12021(a)(1), possession of a short-barreled shotgun, § 12020(a)(1), and felony possession of ammunition, §12316(b)(1).

Before trial, petitioner moved to suppress the evidence found in the apartment, but after a hearing, the court denied the motion. Petitioner then pleaded *nolo contendere* to the firearms and ammunition charges. On the remaining counts—for robbery and infliction of corporal injury—he went to trial and was found guilty by a jury. The court sentenced him to 14 years of imprisonment.

The California Court of Appeal affirmed. Because *Randolph* did not overturn our prior decisions recognizing that an occupant may give effective consent to search a shared residence, the court agreed with the majority of the federal circuits that an objecting occupant's physical presence is "indispensible to the decision in *Randolph*." And because petitioner was not present when Rojas consented, the court held that petitioner's suppression motion had been properly denied. The California Supreme Court denied the petition for review, and we granted certiorari.

II

A

The Fourth Amendment prohibits unreasonable searches and seizures and provides that a warrant may not be issued without probable cause, but the text of the Fourth Amendment does not specify when a search warrant must be obtained. Our cases establish that a warrant is generally required for a search of a home, but the ultimate touchstone of the Fourth Amendment is reasonableness. And certain categories of permissible warrantless searches have long been recognized.

Consent searches occupy one of these categories. "Consent searches are part of the standard investigatory techniques of law enforcement agencies" and are "a constitutionally

permissible and wholly legitimate aspect of effective police activity." *Schneckloth v. Bustamonte*, 412 U.S. 218, 228, 231–232 (1973). It would be unreasonable—indeed, absurd—to require police officers to obtain a warrant when the sole owner or occupant of a house or apartment voluntarily consents to a search. The owner of a home has a right to allow others to enter and examine the premises, and there is no reason why the owner should not be permitted to extend this same privilege to police officers if that is the owner's choice. Where the owner believes that he or she is under suspicion, the owner may want the police to search the premises so that their suspicions are dispelled. This may be particularly important where the owner has a strong interest in the apprehension of the perpetrator of a crime and believes that the suspicions of the police are deflecting the course of their investigation. An owner may want the police to search even where they lack probable cause, and if a warrant were always required, this could not be done. And even where the police could establish probable cause, requiring a warrant despite the owner's consent would needlessly inconvenience everyone involved—not only the officers and the magistrate but also the occupant of the premises, who would generally either be compelled or would feel a need to stay until the search was completed.[4]

While it is clear that a warrantless search is reasonable when the sole occupant of a house or apartment consents, what happens when there are two or more occupants? Must they all consent? Must they all be asked? Is consent by one occupant enough? The Court faced that problem 40 years ago in *United States v. Matlock*, 415 U.S. 164 (1974).

In that case, Matlock and a woman named Graff were living together in a house that was also occupied by several of Graff's siblings and by her mother, who had rented the house. While in the front yard of the house, Matlock was arrested for bank robbery and was placed in a squad car. Although the police could have easily asked him for consent to search the room that he and Graff shared, they did not do so. Instead, they knocked on the door and obtained Graff's permission to search. The search yielded incriminating evidence, which the defendant sought to suppress, but this Court held that Graff's consent justified the warrantless search. As the Court put it, "the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared."

In *Illinois v. Rodriguez*, 497 U.S. 177 (1990), the Court reaffirmed and extended the *Matlock* holding. In *Rodriguez*, a woman named Fischer told police officers that she had been assaulted by Rodriguez in what she termed "our apartment." She also informed the officers that Rodriguez was asleep in the apartment, and she then accompanied the officers to that unit. When they arrived, the officers could have knocked on the door and awakened Rodriguez, and had they done so, Rodriguez might well have surrendered at the door and objected to the officers' entry. Instead, Fischer unlocked the door, the officers entered without a warrant, and they saw drug paraphernalia and containers filled with white powder in plain view.

After the search, the police learned that Fischer no longer resided at the apartment, and this Court held that she did not have common authority over the premises at the time in question. The Court nevertheless held that the warrantless entry was lawful because the police reasonably believed that Fischer was a resident.

B

While consent by one resident of jointly occupied premises is generally sufficient to justify a warrantless search, we recognized a narrow exception to this rule in *Randolph*. In that case, police officers responded to the Randolphs' home after receiving a report of a domestic dispute. When the officers arrived, Janet Randolph informed the officers that her estranged husband, Scott Randolph, was a cocaine user and that there were "items of drug evidence" in the house. The officers first asked Scott for consent to search, but he "unequivocally refused." The officers then turned to Janet, and she consented to the search, which produced evidence that was later used to convict Scott for possession of cocaine.

Without questioning the prior holdings in *Matlock* and *Rodriguez*, this Court held that Janet Randolph's consent was insufficient under the circumstances to justify the warrantless search. The Court reiterated the proposition that a person who shares a residence with others assumes the risk that "any one of them may admit visitors, with the consequence that a guest obnoxious to one may nevertheless be admitted in his absence by another." But the Court held that "*a physically present inhabitant's* express refusal of consent to a police search of his home is dispositive as to him, regardless of the consent of a fellow occupant." The Court's opinion went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is present. Again and again, the opinion of the Court stressed this controlling factor. The Court's opinion could hardly have been clearer on this point, and the separate opinion filed by Justice BREYER, whose vote was decisive, was equally unambiguous.

III

In this case, petitioner was not present when Rojas consented, but petitioner still contends that *Randolph* is controlling. He advances two main arguments. First, he claims that his absence should not matter since he was absent only because the police had taken him away. Second, he maintains that it was sufficient that he objected to the search while he was still present. Such an objection, he says, should remain in effect until the objecting party "no longer wishes to keep the police out of his home." Neither of these arguments is sound.

A

We first consider the argument that the presence of the objecting occupant is not necessary when the police are responsible for his absence. In *Randolph*, the Court suggested in dictum that consent by one occupant might not be sufficient if "there is evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection." We do not believe the statement should be read to suggest that improper motive may invalidate objectively justified removal. Hence, it does not govern here.

The *Randolph* dictum is best understood not to require an inquiry into the subjective intent of officers who detain or arrest a potential objector but instead to refer to situations in which the removal of the potential objector is not objectively reasonable. As petitioner acknowledges, our Fourth Amendment cases "have repeatedly rejected" a subjective approach. Indeed, we have never held, outside limited contexts such as an 'inventory search or

administrative inspection, that an officer's motive invalidates objectively justifiable behavior under the Fourth Amendment.

Petitioner does not claim that the *Randolph* Court meant to break from this consistent practice, and we do not think that it did. And once it is recognized that the test is one of objective reasonableness, petitioner's argument collapses. He does not contest the fact that the police had reasonable grounds for removing him from the apartment so that they could speak with Rojas, an apparent victim of domestic violence, outside of petitioner's potentially intimidating presence. In fact, he does not even contest the existence of probable cause to place him under arrest. We therefore hold that an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason.

This conclusion does not "make a mockery of *Randolph*," as petitioner protests. It simply accepts *Randolph* on its own terms. The *Randolph* holding unequivocally requires the presence of the objecting occupant in every situation other than the one mentioned in the dictum discussed above.

B

This brings us to petitioner's second argument, viz., that his objection, made at the threshold of the premises that the police wanted to search, remained effective until he changed his mind and withdrew his objection. This argument is inconsistent with *Randolph* 's reasoning in at least two important ways. First, the argument cannot be squared with the "widely shared social expectations" or "customary social usage" upon which the *Randolph* holding was based. Explaining why consent by one occupant could not override an objection by a physically present occupant, the *Randolph* Court stated:

> It is fair to say that a caller standing at the door of shared premises would have no confidence that one occupant's invitation was a sufficiently good reason to enter when a fellow tenant stood there saying, 'stay out.' Without some very good reason, no sensible person would go inside under those conditions.

It seems obvious that the calculus of this hypothetical caller would likely be quite different if the objecting tenant was not standing at the door. When the objecting occupant is standing at the threshold saying "stay out," a friend or visitor invited to enter by another occupant can expect at best an uncomfortable scene and at worst violence if he or she tries to brush past the objector. But when the objector is not on the scene (and especially when it is known that the objector will not return during the course of the visit), the friend or visitor is much more likely to accept the invitation to enter.[5] Thus, petitioner's argument is inconsistent with *Randolph* 's reasoning.

Second, petitioner's argument would create the very sort of practical complications that *Randolph* sought to avoid. The *Randolph* Court recognized that it was adopting a "formalis[tic]" rule, but it did so in the interests of "simple clarity" and administrability.

The rule that petitioner would have us adopt would produce a plethora of practical problems. For one thing, there is the question of duration. Petitioner argues that an objection, once made, should last until it is withdrawn by the objector, but such a rule would be

unreasonable. Suppose that a husband and wife owned a house as joint tenants and that the husband, after objecting to a search of the house, was convicted and sentenced to a 15–year prison term. Under petitioner's proposed rule, the wife would be unable to consent to a search of the house 10 years after the date on which her husband objected. We refuse to stretch *Randolph* to such strange lengths.

Nor are we persuaded to hold that an objection lasts for a "reasonable" time. It is certainly unusual for this Court to set forth precise time limits governing police action, and what interval of time would be reasonable in this context? A week? A month? A year? Ten years?

Petitioner's rule would also require the police and ultimately the courts to determine whether, after the passage of time, an objector still had "common authority" over the premises, and this would often be a tricky question. Suppose that an incarcerated objector and a consenting co-occupant were joint tenants on a lease. If the objector, after incarceration, stopped paying rent, would he still have "common authority," and would his objection retain its force? Would it be enough that his name remained on the lease? Would the result be different if the objecting and consenting lessees had an oral month-to-month tenancy?

Another problem concerns the procedure needed to register a continuing objection. Would it be necessary for an occupant to object while police officers are at the door? If presence at the time of consent is not needed, would an occupant have to be present at the premises when the objection was made? Could an objection be made pre-emptively? Could a person like Scott Randolph, suspecting that his estranged wife might invite the police to view his drug stash and paraphernalia, register an objection in advance? Could this be done by posting a sign in front of the house? Could a standing objection be registered by serving notice on the chief of police?

Finally, there is the question of the particular law enforcement officers who would be bound by an objection. Would this set include just the officers who were present when the objection was made? Would it also apply to other officers working on the same investigation? Would it extend to officers who were unaware of the objection? How about officers assigned to different but arguably related cases? Would it be limited by law enforcement agency?
If *Randolph* is taken at its word—that it applies only when the objector is standing in the door saying "stay out" when officers propose to make a consent search—all of these problems disappear.

In response to these arguments, petitioner argues that *Randolph* 's requirement of physical presence is not without its own ambiguity. And we acknowledge that if, as we conclude, *Randolph* requires presence on the premises to be searched, there may be cases in which the outer boundary of the premises is disputed. * * * *

C

Petitioner argues strenuously that his expansive interpretation of *Randolph* would not hamper law enforcement because in most cases where officers have probable cause to arrest a physically present objector they also have probable cause to search the premises that the objector does not want them to enter, but this argument misunderstands the constitutional status of

consent searches. A warrantless consent search is reasonable and thus consistent with the Fourth Amendment irrespective of the availability of a warrant. Even with modern technological advances, the warrant procedure imposes burdens on the officers who wish to search, the magistrate who must review the warrant application, and the party willing to give consent. When a warrantless search is justified, requiring the police to obtain a warrant may unjustifiably interfere with legitimate law enforcement strategies. Such a requirement may also impose an unmerited burden on the person who consents to an immediate search, since the warrant application procedure entails delay. Putting the exception the Court adopted in *Randolph* to one side, the lawful occupant of a house or apartment should have the right to invite the police to enter the dwelling and conduct a search. Any other rule would trample on the rights of the occupant who is willing to consent. Such an occupant may want the police to search in order to dispel suspicion raised by sharing quarters with a criminal." And an occupant may want the police to conduct a thorough search so that any dangerous contraband can be found and removed. In this case, for example, the search resulted in the discovery and removal of a sawed-off shotgun to which Rojas' 4–year–old son had access.

Denying someone in Rojas' position the right to allow the police to enter *her* home would also show disrespect for her independence. Having beaten Rojas, petitioner would bar her from controlling access to her own home until such time as he chose to relent. The Fourth Amendment does not give him that power.

The judgment of the California Court of Appeal is affirmed.

Justice SCALIA, concurring.

Like Justice THOMAS, I believe *Randolph* was wrongly decided. I nonetheless join the Court's opinion because it is a faithful application of *Randolph*. I write separately to address the argument that the search of petitioner's shared apartment violated the Fourth Amendment because he had a right under property law to exclude the police. The United States dismisses that argument, pointing to our statement in *United States v. Matlock*, 415 U.S. 164, 171, n. 7 (1974), that a cotenant's ability to consent to a search "does not rest upon the law of property, with its attendant historical and legal refinements."

I do not think the argument can be so easily dismissed. To be sure, under *Katz v. United States*, 389 U.S. 347 (1967), property rights are not the sole measure of Fourth Amendment violations. But as we have recently made clear, "the *Katz* reasonable-expectations test 'has been *added to*, not *substituted for*,' the traditional property-based understanding of the Fourth Amendment." *United States v. Jones*, 565 U.S. —— (2012)). I would therefore find this a more difficult case if it were established that property law did not give petitioner's cotenant the right to admit visitors over petitioner's objection. That difficulty does not arise, however, because the authorities cited by the *amicus* association fail to establish that a guest would commit a trespass if one of two joint tenants invited the guest to enter and the other tenant forbade the guest to do so. Indeed, what limited authority there is on the subject points to the opposite conclusion. There accordingly is no basis for us to conclude that the police infringed on any property right of petitioner's when they entered the premises with his cotenant's consent.

Justice THOMAS, concurring.

I join the opinion of the Court, which faithfully applies *Randolph*. I write separately to make clear the extent of my disagreement with *Randolph*.

I dissented in *Randolph* because the facts of that case did not implicate a Fourth Amendment search and never should have been analyzed as such. Instead of deciding the case on that narrow ground, the majority in *Randolph* looked to "widely shared social expectations" to resolve whether the wife's consent to a search should control over her husband's objection. I find no support for that novel analytical approach in the Fourth Amendment's text or history, or in this Court's jurisprudence.

Accordingly, given a blank slate, I would analyze this case consistent with THE CHIEF JUSTICE's dissent in *Randolph*: "A warrantless search is reasonable if police obtain the voluntary consent of a person authorized to give it." That is because co-occupants have assumed the risk that one of their number might permit a common area to be searched. In this case, the trial court found that Rojas' consent was voluntary, and petitioner does not contest that Rojas had common authority over the premises. That should be the end of the matter.

Justice GINSBURG, with whom Justice SOTOMAYOR and Justice KAGAN join, dissenting.

* * * *

Instead of adhering to the warrant requirement, today's decision tells the police they may dodge it, nevermind ample time to secure the approval of a neutral magistrate. Suppressing the warrant requirement, the Court shrinks to petite size our holding in *Randolph* that "a physically present inhabitant's express refusal of consent to a police search of his home is dispositive as to him, regardless of the consent of a fellow occupant."

I

This case calls for a straightforward application of *Randolph*. The police officers in *Randolph* were confronted with a scenario closely resembling the situation presented here. Once the police arrived at Janet and Scott Randolph's shared residence, Scott Randolph "unequivocally refused" an officer's request for permission to search their home. The officer then asked Janet Randolph for her consent to the search, which she "readily gave." The sequence here was similar. After Walter Fernandez, while physically present at his home, rebuffed the officers' request to come in, the police removed him from the premises and then arrested him, albeit with cause to believe he had assaulted his cohabitant, Roxanne Rojas. At the time of the arrest, Rojas said nothing to contradict Fernandez' refusal. About an hour later, however, and with no attempt to obtain a search warrant, the police returned to the apartment and prevailed upon Rojas to sign a consent form authorizing search of the premises.

The circumstances triggering "the Fourth Amendment's traditional hostility to police entry into a home without a warrant" are at least as salient here as they were in *Randolph*. In both cases, the search at issue was a search solely for evidence; the objecting party, while on the premises, made his objection to police entry known clearly and directly to the officers seeking to enter the residence"; and "the officers might easily have secured the premises and sought a warrant permitting them to enter." Here, moreover, with the objector in custody, there was scant danger to persons on the premises, or risk that evidence might be destroyed or concealed, pending request for, and receipt of, a warrant.

Despite these marked similarities, the Court removes this case from *Randolph* 's ambit. The Court does so principally by seizing on the fact that Fernandez, unlike Scott Randolph, was no longer present and objecting when the police obtained the co-occupant's consent. But Fernandez *was* present when he stated his objection to the would-be searchers in no uncertain terms. See App. 6 ("You don't have any right to come in here. I know my rights."). The officers could scarcely have forgotten, one hour later, that Fernandez refused consent while physically present. That express, on-premises objection should have been "dispositive as to him."

The Court tells us that the "widely shared social expectations" and "customary social usage" undergirding *Randolph* 's holding apply only when the objector remains physically present. *Randolph* 's discussion of social expectations, however, does not hinge on the objector's physical presence *vel non* at the time of the search. "When people living together disagree over the use of their common quarters," *Randolph* observes, "a resolution must come through voluntary accommodation, not by appeals to authority." *Randolph* thus trained on whether a joint occupant had conveyed an objection to a visitor's entry, and did not suggest that the objection could be ignored if the police reappeared post the objector's arrest.

A visitor might be less reluctant to enter over a joint occupant's objection, the Court speculates, if that visitor knows the objector will not be there. "Only in a Hobbesian world," however, "would one person's social obligations to another be limited to what the other, because of his presence, is able to enforce." Such conjectures about social behavior, at any rate, shed little light on the constitutionality of this warrantless home search, given the marked distinctions between private interactions and police investigations. Police, after all, have power no private person enjoys. They can, as this case illustrates, put a tenant in handcuffs and remove him from the premises.

Moreover, the background social norms that invite a visitor to the front door do not invite him there to conduct a search. Similarly here, even if shared tenancy were understood to entail the prospect of visits by unwanted social callers while the objecting resident was gone, that unwelcome visitor's license would hardly include free rein to rummage through the dwelling in search of evidence and contraband.[2]

Next, the Court cautions, applying *Randolph* to these facts would pose "a plethora of practical problems." For instance, the Court asks, must a cotenant's objection, once registered, be respected indefinitely? Yet it blinks reality to suppose that Fernandez, by withholding consent, could stop police in their tracks eternally. To mount the prosecution eventuating in a conviction, of course, the State would first need to obtain incriminating evidence, and could get it easily

simply by applying for a warrant. Warrant in police hands, the Court's practical problems disappear.

Indeed, as the Court acknowledges, reading *Randolph* to require continuous physical presence poses administrative difficulties of its own. Does an occupant's refusal to consent lose force as soon as she absents herself from the doorstep, even if only for a moment? Are the police free to enter the instant after the objector leaves the door to retire for a nap, answer the phone, use the bathroom, or speak to another officer outside? Hypothesized practical considerations, in short, provide no cause for today's drastic reduction of *Randolph* 's holding and attendant disregard for the warrant requirement.

II

In its zeal to diminish *Randolph*, today's decision overlooks the warrant requirement's venerable role as the bulwark of Fourth Amendment protection. Reducing *Randolph* to a "narrow exception," the Court declares the main rule to be that "consent by one resident of jointly occupied premises is generally sufficient to justify a warrantless search." That declaration has it backwards, for consent searches themselves are a "jealously and carefully drawn' exception" to "the Fourth Amendment rule ordinarily prohibiting the warrantless entry of a person's house as unreasonable *per se*." *Jones v. United States,* 357 U.S. 493, 499 (1958).

In this case, the police could readily have obtained a warrant to search the shared residence.[4] The Court does not dispute this, but instead disparages the warrant requirement as inconvenient, burdensome, entailing delay "even with modern technological advances." Shut from the Court's sight is the ease and speed with which search warrants nowadays can be obtained. With these developments in view, dilution of the warrant requirement should be vigilantly resisted.

Although the police have probable cause and could obtain a warrant with dispatch, if they can gain the consent of someone other than the suspect, why should the law insist on the formality of a warrant? Because the Framers saw the neutral magistrate as an essential part of the criminal process shielding all of us, good or bad, saint or sinner, from unchecked police activity. The investigation of crime, of course, would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law.

A final word is in order about the Court's reference to Rojas' autonomy, which, in its view, is best served by allowing her consent to trump an abusive cohabitant's objection.[5] Rojas' situation is not distinguishable from Janet Randolph's in this regard. If a person's health and safety are threatened by a domestic abuser, exigent circumstances would justify immediate removal of the abuser from the premises, as happened here. Domestic abuse is indeed "a serious problem in the United States"; appropriate policy responses to this scourge may include fostering effective counseling, providing public information about, and ready access to, protective orders, and enforcing such orders diligently. As the Court understood in *Randolph*, however, the specter of domestic abuse hardly necessitates the diminution of the Fourth Amendment rights at stake here.

For the reasons stated, I would honor the Fourth Amendment's warrant requirement and hold that Fernandez' objection to the search did not become null upon his arrest and removal from the scene. There is every reason to conclude that securing a warrant was entirely feasible in this case, and no reason to contract the Fourth Amendment's dominion. I would therefore reverse the judgment of the California Court of Appeal.

Footnotes

1
We use the terms “occupant,” “resident,” and “tenant” interchangeably to refer to persons having “common authority” over premises within the meaning of *Matlock.*

2
Both petitioner and the dissent suggest that Rojas' consent was coerced. and the correctness of that finding is not before us. In suggesting that Rojas' consent was coerced, the dissent recites portions of Rojas' testimony from the suppression hearing that the trial judge appears to have rejected. Similarly, the jury plainly did not find Rojas to be credible. At trial, she testified for the defense and told the jury, among other things, that the wounds observed by the officers who came to her door were not inflicted by petitioner but by a woman looking for petitioner during a fight. The jury obviously did not believe this testimony because it found petitioner guilty of inflicting corporal injury on her.

4 A main theme of the dissent is that the police in this case had probable cause to search the apartment and therefore could have obtained a warrant. Of course, this will not always be so in cases in which one occupant consents to a search and the other objects, and the dissent does not suggest that a warrant should be required only when probable cause is present. As a result, the dissent's repeated references to the availability of a warrant in this case are beside the point.

5 Although the dissent intimates that “customary social usage” goes further than this, the dissent provides no support for this doubtful proposition. In the present case, for example, suppose that Rojas had called a relative, a friend, a supportive neighbor, or a person who works for a group that aids battered women and had invited that individual to enter and examine the premises while petitioner was in jail. Would any of those invitees have felt that it was beyond Rojas' authority to extend that invitation over petitioner's objection?

Instead of attempting to show that such persons would have felt it improper to accept this invitation, the dissent quickly changes the subject and says that “conjectures about social behavior shed little light on the constitutionality” of the search in this case. But *Randolph* was based on “widely shared social expectations” and “customary social usage.” Thus, the dissent simply fails to come to grips with the reasoning of the precedent on which it relies.

1 The Court is correct that this case does not involve a situation, alluded to in *Randolph,* where “the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection.” Here, as in *Randolph,* no one disputes that the police had probable cause to place the objecting tenant under arrest. But had the objector's arrest been illegal, *Randolph* suggested, the remaining occupant's consent to the search would not suffice.

The suggestion in *Randolph*, as the Court recognizes, is at odds with today's decision. For if the police cannot prevent a co-tenant from objecting to a search through arrest, surely they cannot arrest a co-tenant and then seek to ignore an objection he has already made.

2 Remarkably, the Court thinks my disagreement with its account of the applicable social norms distances me from *Randolph* 's understanding of social expectations. Quite the opposite. *Randolph* considered whether "customary social understanding accords the consenting tenant authority powerful enough to prevail over the co-tenant's objection"; social practice in such circumstances, the Court held, provided no cause to depart from the centuries-old principle of respect for privacy of the home. I would so hold here. Today's decision, by contrast, provides police with ready means to nullify a cotenant's objection, and therefore fails to come to grips with the reasoning of *Randolph*.

3 I agree with the Court that when a sole owner or occupant consents to a search, the police can enter without obtaining a warrant. Where multiple persons occupy the premises, it is true, this Court has upheld warrantless home searches based on one tenant's consent; those cases, however, did not involve, as this case does, an occupant who told the police they could not enter. The Court's rationale for allowing a search to proceed in those instances—that co-occupants assume the risk that one of their number might permit the common area to be searched—does not apply where, as here, an occupant on the premises explicitly tells the police they cannot search his home *sans* warrant.

4 The Court dismisses as "beside the point" the undeniable fact that the police easily could have obtained a warrant. There may be circumstances, the Court observes, in which the police, faced with a cotenant's objection, will lack probable cause to obtain a warrant. That same argument was considered and rejected by the Court in *Randolph*, which recognized that "alternatives to disputed consent will not always open the door to search for evidence that the police suspect is inside." Moreover, it is unlikely that police, possessing an objective basis to arrest an objecting tenant, will nevertheless lack probable cause to obtain a search warrant. Probable cause to arrest, I recognize, calls for a showing discrete from the showing needed to establish probable cause to search a home. But "where, as here, a suspect is arrested at or near his residence, it will often 'be permissible to infer that the instrumentalities and fruits of the crime are presently in that person's residence." 2 W. LaFave, Search and Seizure § 3.1(b) (5th ed. 2011)). And as the Court observed in *Randolph*, if a warrant may be impeded by a tenant's refusal to consent, "a co-tenant acting on her own initiative may be able to deliver evidence to the police, and tell the police what she knows, for use before a magistrate in getting a warrant."

5 Although the validity of Rojas' consent is not before us, the record offers cause to doubt that her agreement to the search was, in fact, an unpressured exercise of self-determination. At the evidentiary hearing on Fernandez' motion to suppress, Rojas testified that the police, upon returning to the residence about an hour after Fernandez' arrest, began questioning her four-year-old son without her permission. Rojas asked to remain present during that questioning, but the police officer told her that their investigation was "going to determine whether or not we take your kids from you right now or not." Rojas thus maintained that she felt "pressured" into giving consent. After about 20 or 30 minutes, Rojas acceded to the officer's request that she sign a

consent form. Rojas testified that she “didn't want to sign the form,” but did so because she “just wanted it to just end.”

The trial court found Rojas' testimony at the suppression hearing “believable at points and unbelievable at other points,” and concluded that the police conduct did not amount to “duress or coercion.” The trial court agreed, however, that Rojas “may have felt pressured.”

CHAPTER 9: REGULATORY SEARCHES

CITY OF LOS ANGELESE v. PATEL

U.S. Supreme Court, 2015
2015 WL 2473445

Justice SOTOMAYOR delivered the opinion of the Court.

Respondents brought a Fourth Amendment challenge to a provision of the Los Angeles Municipal Code that compels "every operator of a hotel to keep a record" containing specified information concerning guests and to make this record "available to any officer of the Los Angeles Police Department for inspection" on demand. Los Angeles Municipal Code §§41.49(2), (3)(a), (4) (2015). The questions presented are whether facial challenges to statutes can be brought under the Fourth Amendment and, if so, whether this provision of the Los Angeles Municipal Code is facially invalid. We hold facial challenges can be brought under the Fourth Amendment. We further hold that the provision of the Los Angeles Municipal Code that requires hotel operators to make their registries available to the police on demand is facially unconstitutional because it penalizes them for declining to turn over their records without affording them any opportunity for precompliance review.

I
A

Los Angeles Municipal Code (LAMC) §41.49 requires hotel operators to record information about their guests, including: the guest's name and address; the number of people in each guest's party; the make, model, and license plate number of any guest's vehicle parked on hotel property; the guest's date and time of arrival and scheduled departure date; the room number assigned to the guest; the rate charged and amount collected for the room; and the method of payment. § 41.49(2). Guests without reservations, those who pay for their rooms with cash, and any guests who rent a room for less than 12 hours must present photographic identification at the time of check-in, and hotel operators are required to record the number and expiration date of that document. § 41.49(4). For those guests who check in using an electronic kiosk, the hotel's records must also contain the guest's credit card information. § 41.49(2)(b). This information can be maintained in either electronic or paper form, but it must be "kept on the hotel premises in the guest reception or guest check-in area or in an office adjacent" thereto for a period of 90 days. § 41.49(3)(a).

Section 41.49(3)(a) — the only provision at issue here — states, in pertinent part, that hotel guest records "shall be made available to any officer of the Los Angeles Police Department for inspection," provided that "whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." A hotel operator's failure to make his or her guest records available for police inspection is a misdemeanor punishable by up to six months in jail and a $1,000 fine.

B

In 2003, respondents, a group of motel operators along with a lodging association, sued the city of Los Angeles in three consolidated cases challenging the constitutionality of § 41.49(3)(a). They sought declaratory and injunctive relief. The parties "agreed that the sole issue in the action would be a facial constitutional challenge" to §41.49(3)(a) under the Fourth Amendment. They further stipulated that respondents have been subjected to mandatory record inspections under the ordinance without consent or a warrant.

Following a bench trial, the District Court entered judgment in favor of the City, holding that respondents' facial challenge failed because they lacked a reasonable expectation of privacy in the records subject to inspection. A divided panel of the Ninth Circuit affirmed on the same grounds. On rehearing en banc, however, the Court of Appeals reversed.

The en banc court first determined that a police officer's nonconsensual inspection of hotel records under § 41.49 is a Fourth Amendment "search" because "the business records covered by § 41.49 are the hotel's private property" and the hotel therefore "has the right to exclude others from prying into their contents." Next, the court assessed "whether the searches authorized by §41.49 are reasonable." The court held that § 41.49 is facially unconstitutional "as it authorizes inspections" of hotel records "without affording an opportunity to obtain judicial review of the reasonableness of the demand prior to suffering penalties for refusing to comply." Two dissenting opinions were filed. The first dissent argued that facial relief should rarely be available for Fourth Amendment challenges, and was inappropriate here because the ordinance would be constitutional in those circumstances where police officers demand access to hotel records with a warrant in hand or exigent circumstances justify the search. The second dissent conceded that inspections under § 41.49 constitute Fourth Amendment searches, but faulted the majority for assessing the reasonableness of these searches without accounting for the weakness of the hotel operators' privacy interest in the content of their guest registries. We granted certiorari, and now affirm.

II

We first clarify that facial challenges under the Fourth Amendment are not categorically barred or especially disfavored.

A

A facial challenge is an attack on a statute itself as opposed to a particular application. While such challenges are the most difficult to mount successfully, the Court has never held that these claims cannot be brought under any otherwise enforceable provision of the Constitution. * * * * Fourth Amendment challenges to statutes authorizing warrantless searches are no exception. * * * *

B

Petitioner principally contends that facial challenges to statutes authorizing warrantless searches must fail because such searches will never be unconstitutional in all applications. In particular, the City points to situations where police are responding to an emergency, where the

subject of the search consents to the intrusion, and where police are acting under a court-ordered warrant. While petitioner frames this argument as an objection to respondents' challenge in this case, its logic would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches. For this reason alone, the City's argument must fail: The Court's precedents demonstrate not only that facial challenges to statutes authorizing warrantless searches can be brought, but also that they can succeed. * * * *

III

Turning to the merits of the particular claim before us, we hold that § 41.49(3)(a) is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review.

A

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." It further provides that "no Warrants shall issue, but upon probable cause." Based on this constitutional text, the Court has repeatedly held that "searches conducted outside the judicial process, without prior approval by a judge or a magistrate judge, are *per se* unreasonable subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357 (1967)). This rule "applies to commercial premises as well as to homes." *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312 (1978).

Search regimes where no warrant is ever required may be reasonable where "special needs make the warrant and probable-cause requirement impracticable," *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987), and where the "primary purpose" of the searches is "distinguishable from the general interest in crime control," *Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000).

Here, we assume that the searches authorized by § 41.49 serve a "special need" other than conducting criminal investigations: They ensure compliance with the recordkeeping requirement, which in turn deters criminals from operating on the hotels' premises.[2] The Court has referred to this kind of search as an "administrative search." *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 534 (1967). Thus, we consider whether §41.49 falls within the administrative search exception to the warrant requirement.

The Court has held that absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker. See *See*, 387 U.S., at 545. And, we see no reason why this minimal requirement is inapplicable here. While the Court has never attempted to prescribe the exact form an opportunity for precompliance review must take, the City does not even attempt to argue that § 41.49(3)(a) affords hotel operators any opportunity whatsoever. Section 41.49(3)(a) is, therefore, facially invalid.

A hotel owner who refuses to give an officer access to his or her registry can be arrested on the spot. The Court has held that business owners cannot reasonably be put to this kind of

choice. *Camara,* 387 U.S. at 533 (holding that "broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty"). Absent an opportunity for precompliance review, the ordinance creates an intolerable risk that searches authorized by it will exceed statutory limits, or be used as a pretext to harass hotel operators and their guests. Even if a hotel has been searched 10 times a day, every day, for three months, without any violation being found, the operator can only refuse to comply with an officer's demand to turn over the registry at his or her own peril.

To be clear, we hold only that a hotel owner must be afforded an *opportunity* to have a neutral decisionmaker review an officer's demand to search the registry before he or she faces penalties for failing to comply. Actual review need only occur in those rare instances where a hotel operator objects to turning over the registry. Moreover, this opportunity can be provided without imposing onerous burdens on those charged with an administrative scheme's enforcement. For instance, respondents accept that the searches authorized by § 41.49(3)(a) would be constitutional if they were performed pursuant to an administrative subpoena. These subpoenas, which are typically a simple form, can be issued by the individual seeking the record — here, officers in the field — without probable cause that a regulation is being infringed.

Issuing a subpoena will usually be the full extent of an officer's burden because the great majority of businessmen can be expected in normal course to consent to inspection without warrant. Indeed, the City has cited no evidence suggesting that without an ordinance authorizing on-demand searches, hotel operators would regularly refuse to cooperate with the police.

In those instances, however, where a subpoenaed hotel operator believes that an attempted search is motivated by illicit purposes, respondents suggest it would be sufficient if he or she could move to quash the subpoena before any search takes place. A neutral decisionmaker, including an administrative law judge, would then review the subpoenaed party's objections before deciding whether the subpoena is enforceable. Given the limited grounds on which a motion to quash can be granted, such challenges will likely be rare. And, in the even rarer event that an officer reasonably suspects that a hotel operator may tamper with the registry while the motion to quash is pending, he or she can guard the registry until the required hearing can occur, which ought not take long. [3]

Procedures along these lines are ubiquitous. A 2002 report by the Department of Justice "identified approximately 335 existing administrative subpoena authorities held by various federal executive branch entities." Office of Legal Policy, Report to Congress on the Use of Administrative Subpoena Authorities by Executive Branch Agencies and Entities 3, online at http:// www.justice.gov/archive/olp/rpt_to_congress.htm. Their prevalence confirms what common sense alone would otherwise lead us to conclude: In most contexts, business owners can be afforded at least an opportunity to contest an administrative search's propriety without unduly compromising the government's ability to achieve its regulatory aims.

Of course administrative subpoenas are only one way in which an opportunity for precompliance review can be made available. But whatever the precise form, the availability of precompliance review alters the dynamic between the officer and the hotel to be searched, and

reduces the risk that officers will use these administrative searches as a pretext to harass business owners.

Finally, we underscore the narrow nature of our holding. Respondents have not challenged and nothing in our opinion calls into question those parts of § 41.49 that require hotel operators to maintain guest registries containing certain information. And, even absent legislative action to create a procedure along the lines discussed above, police will not be prevented from obtaining access to these documents. As they often do, hotel operators remain free to consent to searches of their registries and police can compel them to turn them over if they have a proper administrative warrant — including one that was issued *ex parte* — or if some other exception to the warrant requirement applies, including exigent circumstances.[4]

B

Rather than arguing that § 41.49(3)(a) is constitutional under the general administrative search doctrine, the City and Justice SCALIA contend that hotels are "closely regulated," and that the ordinance is facially valid under the more relaxed standard that applies to searches of this category of businesses. They are wrong on both counts.

Over the past 45 years, the Court has identified only four industries that "have such a history of government oversight that no reasonable expectation of privacy could exist for a proprietor over the stock of such an enterprise," Simply listing these industries refutes petitioner's argument that hotels should be counted among them. Unlike liquor sales, *Colonnade Catering Corp. v. United States,* 397 U.S. 72 (1970), firearms dealing, *United States v. Biswell,* 406 U.S. 311, 311–312 (1972), mining, *Donovan v. Dewey,* 452 U.S. 594 (1981), or running an automobile junkyard, *New York v. Burger,* 482 U.S. 691 (1987), nothing inherent in the operation of hotels poses a clear and significant risk to the public welfare. See, *e.g., id.,* at 709, ("Automobile junkyards and vehicle dismantlers provide the major market for stolen vehicles and vehicle parts"); *Dewey,* 452 U.S. at 602 (describing the mining industry as "among the most hazardous in the country").[5]

Moreover, the clear import of our cases is that the closely regulated industry is the exception. To classify hotels as pervasively regulated would permit what has always been a narrow exception to swallow the rule. The City wisely refrains from arguing that § 41.49 itself renders hotels closely regulated. Nor do any of the other regulations on which petitioner and Justice SCALIA rely — regulations requiring hotels to, *inter alia,* maintain a license, collect taxes, conspicuously post their rates, and meet certain sanitary standards — establish a comprehensive scheme of regulation that distinguishes hotels from numerous other businesses. All businesses in Los Angeles need a license to operate. LAMC §§ 21.03(a), 21.09(a). While some regulations apply to a smaller set of businesses, see *e.g.* Cal.Code Regs., tit. 25, § 40 (2015) (requiring linens to be changed between rental guests), these can hardly be said to have created a "comprehensive" scheme that puts hotel owners on notice that their property will be subject to periodic inspections undertaken for specific purposes, Instead, they are more akin to the widely applicable minimum wage and maximum hour rules that the Court rejected as a basis for deeming "the entirety of American interstate commerce" to be closely regulated in *Barlow's,*

Inc. 436 U.S. at 314. If such general regulations were sufficient to invoke the closely regulated industry exception, it would be hard to imagine a type of business that would not qualify.

Petitioner attempts to recast this hodgepodge of regulations as a comprehensive scheme by referring to a "centuries-old tradition" of warrantless searches of hotels. History is relevant when determining whether an industry is closely regulated. The historical record here, however, is not as clear as petitioner suggests. The City and Justice SCALIA principally point to evidence that hotels were treated as public accommodations. For instance, the Commonwealth of Massachusetts required innkeepers to "furnish suitable provisions and lodging, for the refreshment and entertainment of strangers and travellers, pasturing and stable room, hay and provender for their horses and cattle." But laws obligating inns to provide suitable lodging to all paying guests are not the same as laws subjecting inns to warrantless searches. Petitioner also asserts that "for a long time, hotel owners left their registers open to widespread inspection." Setting aside that modern hotel registries contain sensitive information, such as driver's licenses and credit card numbers for which there is no historic analog, the fact that some hotels chose to make registries accessible to the public has little bearing on whether government authorities could have viewed these documents on demand without a hotel's consent.

Even if we were to find that hotels are pervasively regulated, § 41.49 would need to satisfy three additional criteria to be reasonable under the Fourth Amendment: (1) "There must be a 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "the warrantless inspections must be 'necessary' to further the regulatory scheme"; and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." *Burger,* 482 U.S. at 702–703. We assume petitioner's interest in ensuring that hotels maintain accurate and complete registries might fulfill the first of these requirements, but conclude that § 41.49 fails the second and third prongs of this test.

The City claims that affording hotel operators any opportunity for precompliance review would fatally undermine the scheme's efficacy by giving operators a chance to falsify their records. The Court has previously rejected this exact argument, which could be made regarding any recordkeeping requirement. We see no reason to accept it here.

As explained above, nothing in our decision today precludes an officer from conducting a surprise inspection by obtaining an *ex parte* warrant or, where an officer reasonably suspects the registry would be altered, from guarding the registry pending a hearing on a motion to quash. Justice SCALIA's claim that these procedures will prove unworkable given the large number of hotels in Los Angeles is a red herring. While there are approximately 2,000 hotels in Los Angeles, there is no basis to believe that resort to such measures will be needed to conduct spot checks in the vast majority of them.

Section 41.49 is also constitutionally deficient under the "certainty and regularity" prong of the closely regulated industries test because it fails sufficiently to constrain police officers' discretion as to which hotels to search and under what circumstances. While the Court has upheld inspection schemes of closely regulated industries that called for searches at least four times a year, or on a "regular basis." § 41.49 imposes no comparable standard.

For the foregoing reasons, we agree with the Ninth Circuit that § 41.49(3)(a) is facially invalid insofar as it fails to provide any opportunity for precompliance review before a hotel must give its guest registry to the police for inspection. Accordingly, the judgment of the Ninth Circuit is affirmed.

Footnotes

1
Relatedly, the United States claims that a statute authorizing warrantless searches may still have independent force if it imposes a penalty for failing to cooperate in a search conducted under a warrant or in an exigency. This argument gets things backwards. An otherwise facially unconstitutional statute cannot be saved from invalidation based solely on the existence of a penalty provision that applies when searches are not actually authorized by the statute. This argument is especially unconvincing where, as here, an independent obstruction of justice statute imposes a penalty for "willfully, resisting, delaying, or obstructing any public officer in the discharge or attempt to discharge any duty of his or her office of employment." Cal.Penal Code Ann. § 148(a)(1).
2
Respondents contend that § 41.49's principal purpose instead is to facilitate criminal investigation. Because we find that the searches authorized by § 41.49 are unconstitutional even if they serve the City's asserted purpose, we decline to address this argument.
3
Justice SCALIA professes to be baffled at the idea that we could suggest that in certain circumstances, police officers may seize something that they cannot immediately search. But that is what this Court's cases have explicitly endorsed, including *Riley* just last Term.
4
In suggesting that our holding today will somehow impede law enforcement from achieving its important aims, Justice SCALIA relies on instances where hotels were used as "prisons for migrants smuggled across the border and held for ransom" or as "rendezvous sites where child sex workers meet their clients on threat of violence from their procurers." It is hard to imagine circumstances more exigent than these.
5
Justice SCALIA's effort to depict hotels as raising a comparable degree of risk rings hollow. Hotels—like practically all commercial premises or services—can be put to use for nefarious ends. But unlike the industries that the Court has found to be closely regulated, hotels are not intrinsically dangerous.

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join, dissenting.

The city of Los Angeles, like many jurisdictions across the country, has a law that requires motels, hotels, and other places of overnight accommodation (hereinafter motels) to keep a register containing specified information about their guests. Los Angeles Municipal Code (LAMC) § 41.49(2) (2015). The purpose of this recordkeeping requirement is to deter criminal

conduct, on the theory that criminals will be unwilling to carry on illicit activities in motel rooms if they must provide identifying information at check-in. Because this deterrent effect will only be accomplished if motels actually do require guests to provide the required information, the ordinance also authorizes police to conduct random spot checks of motels' guest registers to ensure that they are properly maintained. § 41.49(3). The ordinance limits these spot checks to the four corners of the register, and does not authorize police to enter any nonpublic area of the motel. To the extent possible, police must conduct these spot checks at times that will minimize any disruption to a motel's business.

The parties do not dispute the governmental interests at stake. Motels not only provide housing to vulnerable transient populations, they are also a particularly attractive site for criminal activity ranging from drug dealing and prostitution to human trafficking. Offering privacy and anonymity on the cheap, they have been employed as prisons for migrants smuggled across the border and held for ransom, see Sanchez, Immigrant Smugglers Become More Ruthless, Washington Post, June 28, 2004, p. A3; Wagner, Human Smuggling, Arizona Republic, July 23, 2006, p. A1, and rendezvous sites where child sex workers meet their clients on threat of violence from their procurers.

Nevertheless, the Court today concludes that Los Angeles's ordinance is "unreasonable" inasmuch as it permits police to flip through a guest register to ensure it is being filled out without first providing an opportunity for the motel operator to seek judicial review. Because I believe that such a limited inspection of a guest register is eminently reasonable under the circumstances presented, I dissent.

I

I assume that respondents may bring a facial challenge to the City's ordinance under the Fourth Amendment. Even so, their claim must fail because, as discussed *infra*, the law is constitutional in most, if not all, of its applications. * * * *

II

The Fourth Amendment provides, in relevant part, that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." Grammatically, the two clauses of the Amendment seem to be independent — and directed at entirely different actors. The former tells the executive what it must do when it conducts a search, and the latter tells the judiciary what it must do when it issues a search warrant. But in an effort to guide courts in applying the Search–and–Seizure Clause's indeterminate reasonableness standard, and to maintain coherence in our case law, we have used the Warrant Clause as a guidepost for assessing the reasonableness of a search, and have erected a framework of presumptions applicable to broad categories of searches conducted by executive officials. Our case law has repeatedly recognized, however, that these are mere presumptions, and the only constitutional *requirement* is that a search be reasonable.

When, for example, a search is conducted to enforce an administrative regime rather than to investigate criminal wrongdoing, we have been willing to modify the probable-cause standard so that a warrant may issue absent individualized suspicion of wrongdoing. Thus, our cases say a warrant may issue to inspect a structure for fire-code violations on the basis of such factors as the passage of time, the nature of the building, and the condition of the neighborhood. *Camara v. Municipal Court of City and County of San Francisco,* 387 U.S. 523, 538–539 (1967). As we recognized in that case, "reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant." And precisely because the ultimate touchstone of the Fourth Amendment is reasonableness, even the presumption that the search of a home without a warrant is unreasonable is subject to certain exceptions.

One exception to normal warrant requirements applies to searches of closely regulated businesses. When an entrepreneur embarks upon such a business, he has voluntarily chosen to subject himself to a full arsenal of governmental regulation, and so a warrantless search to enforce those regulations is not unreasonable. Recognizing that warrantless searches of closely regulated businesses may nevertheless *become* unreasonable if arbitrarily conducted, we have required laws authorizing such searches to satisfy three criteria: (1) There must be a " 'substantial' government interest that informs the regulatory scheme pursuant to which the inspection is made"; (2) "the warrantless inspections must be 'necessary to further the regulatory scheme"; and (3) "the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant." *New York v. Burger,* 482 U.S. 691, 702–703 (1987).

Los Angeles's ordinance easily meets these standards.

A

In determining whether a business is closely regulated, this Court has looked to factors including the duration of the regulatory tradition, the comprehensiveness of the regulatory regime, and the imposition of similar regulations by other jurisdictions,. These factors are not talismans, but shed light on the expectation of privacy the owner of a business may reasonably have, which in turn affects the reasonableness of a warrantless search.

Reflecting the unique public role of motels and their commercial forebears, governments have long subjected these businesses to unique public duties, and have established inspection regimes to ensure compliance. As Blackstone observed, "Inns, in particular, being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the inn-keepers fined, if they refuse to entertain a traveller without a very sufficient cause: for thus to frustrate the end of their institution is held to be disorderly behavior." 4 W. Blackstone, Commentaries on the Laws of England 168 (1765). Justice Story similarly recognized "the soundness of the public policy of subjecting particular classes of persons to extraordinary responsibility, in cases where an extraordinary confidence is necessarily reposed in them, and there is an extraordinary temptation to fraud, or danger of plunder." J. Story, Commentaries on the Law of Bailments § 464, pp. 487–488 (5th ed. 1851). Accordingly, in addition to the obligation to receive any paying guest, "innkeepers are bound to take, not merely ordinary care, but uncommon care, of the goods,

money, and baggage of their guests," *id.*, § 470, at 495, as travellers "are obliged to rely almost implicitly on the good faith of innholders, whose education and morals are none of the best, and who might have frequent opportunities of associating with ruffians and pilferers," *id.*, § 471, at 498.

These obligations were not merely aspirational. At the time of the founding, searches — indeed, warrantless searches — of inns and similar places of public accommodation were commonplace. For example, although Massachusetts was perhaps the State most protective against government searches, "the state code of 1788 still allowed tithingmen to search public houses of entertainment on every Sabbath without any sort of warrant." W. Cuddihy, Fourth Amendment: Origins and Original Meaning 602–1791, 743 (2009).

As this evidence demonstrates, the regulatory tradition governing motels is not only longstanding, but comprehensive. And the tradition continues in Los Angeles. The City imposes an occupancy tax upon transients who stay in motels, LAMC § 21.7.3, and makes the motel owner responsible for collecting it, § 21.7.5. It authorizes city officials "to enter [a motel], free of charge, during business hours" in order to "inspect and examine" them to determine whether these tax provisions have been complied with. §§ 21.7.9, 21.15. It requires all motels to obtain a "Transient Occupancy Registration Certificate," which must be displayed on the premises. §21.7.6. State law requires motels to "post in a conspicuous place a statement of rate or range of rates by the day for lodging," and forbids any charges in excess of those posted rates. Cal. Civ.Code Ann. § 1863 . Hotels must change bed linens between guests, Cal.Code Regs., tit. 25, § 40 (2015), and they must offer guests the option not to have towels and linens laundered daily, LAMC § 121.08. "Multiuse drinking utensils" may be placed in guest rooms only if they are "thoroughly washed and sanitized after each use" and "placed in protective bags." Cal.Code Regs., tit. 17, § 30852. And state authorities, like their municipal counterparts, "may at reasonable times enter and inspect any hotels, motels, or other public places" to ensure compliance. § 30858.

The regulatory regime at issue here is thus substantially *more* comprehensive than the regulations governing junkyards in *Burger*, where licensing, inventory-recording, and permit-posting requirements were found sufficient to qualify the industry as closely regulated. The Court's suggestion that these regulations are not sufficiently targeted to motels, and are "akin to minimum wage and maximum hour rules" is simply false. The regulations we have described above reach into the minutest details of motel operations, and those who enter that business today (like those who have entered it over the centuries) do so with an expectation that they will be subjected to especially vigilant governmental oversight.

Finally, this ordinance is not an outlier. The City has pointed us to more than 100 similar register-inspection laws in cities and counties across the country, and that is far from exhaustive. In all, municipalities in at least 41 States have laws similar to Los Angeles's, and at least 8 States have their own laws authorizing register inspections, at when a motel operator chooses to engage in this pervasively regulated business he does so with the knowledge that his business records will be subject to effective inspection. And *that* is the relevant constitutional test — not whether this regulatory superstructure is "the same as laws subjecting inns to warrantless searches," or

whether, as an historical matter, government authorities not only required these documents to be kept but permitted them to be viewed on demand without a motel's consent.

The Court's observation that “over the past 45 years, the Court has identified only four industries” as closely regulated is neither here nor there. Since we first concluded in *Colonnade Catering* that warrantless searches of closely regulated businesses are reasonable, we have only identified *one* industry as *not* closely regulated. The Court's statistic thus tells us more about how this Court exercises its discretionary review than it does about the number of industries that qualify as closely regulated. At the same time, lower courts, which do not have the luxury of picking the cases they hear, have identified many more businesses as closely regulated under the test we have announced: pharmacies, massage parlors, commercial-fishing operations, day-care facilities, nursing homes, jewelers, barbershops, and yes, even rabbit dealers,. Like automobile junkyards and catering companies that serve alcohol, many of these businesses are far from “intrinsically dangerous”. This should come as no surprise. The reason closely regulated industries may be searched without a warrant has nothing to do with the risk of harm they pose; rather, it has to do with the expectations of those who enter such a line of work.

B

The City's ordinance easily satisfies the remaining *Burger* requirements: It furthers a substantial governmental interest, it is necessary to achieving that interest, and it provides an adequate substitute for a search warrant.

Neither respondents nor the Court question the substantial interest of the City in deterring criminal activity. The private pain and public costs imposed by drug dealing, prostitution, and human trafficking are beyond contention, and motels provide an obvious haven for those who trade in human misery.

Warrantless inspections are also necessary to advance this interest. Although the Court acknowledges that law enforcement can enter a motel room without a warrant when exigent circumstances exist, the whole reason criminals use motel rooms in the first place is that they offer privacy and secrecy, so that police will never come to discover these exigencies. The recordkeeping requirement, which all parties admit is permissible, therefore operates by *deterring* crime. Criminals, who depend on the anonymity that motels offer, will balk when confronted with a motel's demand that they produce identification. And a motel's evasion of the recordkeeping requirement fosters crime. In San Diego, for example, motel owners were indicted for collaborating with members of the Crips street gang in the prostitution of underage girls; the motel owners “set aside rooms apart from the rest of their legitimate customers where girls and women were housed, charged the gang members/pimps a higher rate for the rooms where ‘dates' or ‘tricks' took place, and warned the gang members of inquiries by law enforcement.” Office of the Attorney General, Cal. Dept. of Justice, The State of Human Trafficking in California 25 (2012). The warrantless inspection requirement provides a necessary incentive for motels to maintain their registers thoroughly and accurately: They never know when law enforcement might drop by to inspect.

Respondents and the Court acknowledge that *inspections* are necessary to achieve the purposes of the recordkeeping regime, but insist that *warrantless* inspections are not. They have to acknowledge, however, that the motel operators who conspire with drug dealers and procurers may demand precompliance judicial review simply as a pretext to buy time for making fraudulent entries in their guest registers. The Court therefore must resort to arguing that warrantless inspections are not "necessary" because other alternatives exist.

The Court suggests that police could obtain an administrative subpoena to search a guest register and, if a motel moves to quash, the police could "guar[d] the registry pending a hearing" on the motion. This proposal is equal parts 1984 and Alice in Wonderland. It protects motels from government inspection of their registers by authorizing government agents to seize the registers (if "guarding" entails forbidding the register to be moved) or to upset guests by a prolonged police presence at the motel. The Court also notes that police can obtain an *ex parte* warrant before conducting a register inspection. Presumably such warrants could issue without probable cause of wrongdoing by a particular motel; otherwise, this would be no alternative at all. Even so, under this regime police would have to obtain an *ex parte* warrant before *every* inspection. That is because law enforcement would have no way of knowing ahead of time which motels would refuse consent to a search upon request; and if they wait to obtain a warrant until consent is refused, motels will have the opportunity to falsify their guest registers while the police jump through the procedural hoops required to obtain a warrant. It is quite plausible that the costs of this always-get-a-warrant "alternative" would be prohibitive for a police force in one of America's largest cities, juggling numerous law-enforcement priorities, and confronting more than 2,000 motels within its jurisdiction. To be sure, the fact that obtaining a warrant might be costly will not by itself render a warrantless search reasonable under the Fourth Amendment; but it can render a warrantless search *necessary* in the context of an administrative-search regime governing closely regulated businesses.

But all that discussion is in any case irrelevant. The administrative search need only be reasonable. It is not the burden of Los Angeles to show that there are no less restrictive means of achieving the City's purposes. Sequestration or *ex parte* warrants were *possible* alternatives to the warrantless search regimes approved by this Court in *Colonnade Catering*, *Biswell*, *Dewey*, and *Burger*. By importing a least-restrictive-means test into *Burger* 's Fourth Amendment framework, today's opinion implicitly overrules that entire line of cases.

Finally, the City's ordinance provides an adequate substitute for a warrant. Warrants advise the owner of the scope and objects of the search, beyond which limits the inspector is not expected to proceed. Ultimately, they aim to protect against devolving almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search.

Los Angeles's ordinance provides that the guest register must be kept in the guest reception or guest check-in area, or in an adjacent office, and that it "be made available to any officer of the Los Angeles Police Department for inspection. Whenever possible, the inspection shall be conducted at a time and in a manner that minimizes any interference with the operation of the business." LAMC § 41.49(3). Nothing in the ordinance authorizes law enforcement to enter a nonpublic part of the motel. * * * * The Los Angeles ordinance — which limits

warrantless police searches to the pages of a guest register in a public part of a motel — circumscribes police discretion in much more exacting terms than the laws we have approved in our earlier cases.

The Court claims that Los Angeles's ordinance confers too much discretion because it does not adequately limit the *frequency* of searches. Without a trace of irony, the Court tries to distinguish Los Angeles's law from the laws upheld in *Dewey* and *Burger* by pointing out that the latter regimes required inspections at least four times a year and on a "regular basis," respectively. But the warrantless police searches of a business "10 times a day, every day, for three months" that the Court envisions under Los Angeles's regime, are entirely consistent with the regimes in *Dewey* and *Burger* ; 10 times a day, every day, is "at least four times a year," and on a (much too) "regular basis."

That is not to say that the Court's hypothetical searches are necessarily constitutional. It is only to say that Los Angeles's ordinance presents no greater risk that such a hypothetical will materialize than the laws we have already upheld. As in our earlier cases, we should leave it to lower courts to consider on a case-by-case basis whether warrantless searches have been conducted in an unreasonably intrusive or harassing manner.

III

The Court reaches its wrongheaded conclusion not simply by misapplying our precedent, but by mistaking our precedent for the Fourth Amendment itself. Rather than bother with the text of that Amendment, the Court relies exclusively on our administrative-search cases. But the Constitution predates 1967, and it remains the supreme law of the land today. Although the categorical framework our jurisprudence has erected in this area may provide us guidance, it is guidance to answer the constitutional question at issue: whether the challenged search is *reasonable*.

An administrative, warrantless-search ordinance that narrowly limits the scope of searches to a single business record, that does not authorize entry upon premises not open to the public, and that is supported by the need to prevent fabrication of guest registers, is, to say the least, far afield from the laws at issue in the cases the Court relies upon. The Court concludes that such minor intrusions, permissible when the police are trying to tamp down the market in stolen auto parts, are "unreasonable" when police are instead attempting to stamp out the market in child sex slaves.

Because I believe that the limited warrantless searches authorized by Los Angeles's ordinance are reasonable under the circumstances, I respectfully dissent.

Justice ALITO, with whom Justice THOMAS joins, dissenting.

After today, the city of Los Angeles can never, under any circumstances, enforce its 116–year–old requirement that hotels make their registers available to police officers. That is because the Court holds that § 41.49(3)(a) of the Los Angeles Municipal Code (2015) is *facially*

unconstitutional. Before entering a judgment with such serious safety and federalism implications, the Court must conclude that every application of this law is unconstitutional — *i.e.*, that "no set of circumstances exists under which the law would be valid." I have doubts about the Court's approach to administrative searches and closely regulated industries. But even if the Court were 100% correct, it still should uphold § 41.49(3)(a) because many other applications of this law are constitutional. Here are five examples.

Example One. The police have probable cause to believe that a register contains evidence of a crime. They go to a judge and get a search warrant. The hotel operator, however, refuses to surrender the register, but instead stashes it away. Officers could tear the hotel apart looking for it. Or they could simply order the operator to produce it. The Fourth Amendment does not create a right to defy a warrant. Hence § 41.49(3)(a) could be constitutionally applied in this scenario. Indeed, the Court concedes that it is proper to apply a California obstruction of justice law in such a case. How could applying a city law with a similar effect be different? No one thinks that overlapping laws are unconstitutional. And a specific law gives more notice than a general law.

In any event, the Los Angeles ordinance is arguably broader in at least one important respect than the California obstruction of justice statute on which the Court relies. The state law applies when a person "willfully resists, delays, or obstructs any public officer in the discharge or attempt to discharge any duty of his or her office." Cal.Penal Code Ann. § 148(a)(1). In the example set out above, suppose that the hotel operator, instead of hiding the register, simply refused to tell the police where it is located. The Court cites no California case holding that such a refusal would be unlawful, and the city of Los Angeles submits that under California law, "obstruction statutes prohibit a hotel owner from *obstructing* a search, but they do not require affirmative assistance." Reply Brief 5. The Los Angeles ordinance, by contrast, unequivocally requires a hotel operator to make the register available on request.

Example Two. A murderer has kidnapped a woman with the intent to rape and kill her and there is reason to believe he is holed up in a certain motel. The Fourth Amendment's reasonableness standard accounts for exigent circumstances. When the police arrive, the motel operator folds her arms and says the register is locked in a safe. Invoking § 41.49(3)(a), the police order the operator to turn over the register. She refuses. The Fourth Amendment does not protect her from arrest.

Example Three. A neighborhood of "pay by the hour" motels is a notorious gathering spot for child-sex traffickers. Police officers drive through the neighborhood late one night and see unusual amounts of activity at a particular motel. The officers stop and ask the motel operator for the names of those who paid with cash to rent rooms for less than three hours. The operator refuses to provide the information. Requesting to see the register — and arresting the operator for failing to provide it — would be reasonable under the totality of the circumstances. In fact, the Court has upheld a similar reporting duty against a Fourth Amendment challenge where the scope of information required was also targeted and the public's interest in crime prevention was no less serious. See *California Bankers Assn. v. Shultz*, 416 U.S. 21, 39, n. 15, 66–67 (1974) (having "no difficulty" upholding a requirement that banks must provide reports about transactions involving more than $10,000, including the name, address, occupation, and

social security number of the customer involved, along with a summary of the transaction, the amount of money at issue, and the type of identification presented).

Example Four. A motel is operated by a dishonest employee. He has been charging more for rooms than he records, all the while pocketing the difference. The owner finds out and eagerly consents to a police inspection of the register. But when officers arrive and ask to see the register, the operator hides it. The Fourth Amendment does not allow the operator's refusal to defeat the owner's consent. See, *e.g.*, *Mancusi v. DeForte*, 392 U.S. 364, 369–370 (1968). Accordingly, it would not violate the Fourth Amendment to arrest the operator for failing to make the register "available to any officer of the Los Angeles Police Department for inspection." § 41.49(3)(a).

Example Five. A "mom and pop" motel always keeps its old-fashioned guest register open on the front desk. Anyone who wants to can walk up and leaf through it. (Such motels are not as common as they used to be, but Los Angeles is a big place.) The motel has no reasonable expectation of privacy in the register, and no one doubts that police officers—like anyone else—can enter into the lobby. But when an officer starts looking at the register, as others do, the motel operator at the desk snatches it away and will not give it back. Arresting that person would not violate the Fourth Amendment.

These are just five examples. There are many more. The Court rushes past examples like these by suggesting that § 41.49(3)(a) does no "work" in such scenarios. That is not true. Under threat of legal sanction, this law orders hotel operators to do things they do not want to do. To be sure, there may be circumstances in which § 41.49(3)(a)'s command conflicts with the Fourth Amendment, and in those circumstances the Fourth Amendment is supreme. See U.S. Const., Art. VI, cl. 2. But no different from any other local law, the remedy for such circumstances should be an as-applied injunction *limited to the conflict with the Fourth Amendment*. Such an injunction would protect a hotel from being "searched 10 times a day, every day, for three months, without any violation being found." But unlike facial invalidation, an as-applied injunction does not produce collateral damage. Section 41.49(3)(a) should be enforceable in those many cases in which the Fourth Amendment is not violated.

There are serious arguments that the Fourth Amendment's application to warrantless searches and seizures is inherently inconsistent with facial challenges. But assuming such facial challenges ever make sense conceptually, this particular one fails under basic principles of facial invalidation. The Court's contrary holding is befuddling. I respectfully dissent.