Florida v. Riley, 488 U.S. 445 (1989)

Syllabus **Case**

U.S. Supreme Court

Florida v. Riley, 488 U.S. 445 (1989)

Florida v. Riley

No. 87-764

Argued October 3, 1988

Decided January 23, 1989

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CERTIORARI TO THE SUPREME COURT OF FLORIDA

Syllabus

A Florida county sheriff's office received an anonymous tip that marijuana was being grown on respondent's property. When an investigating officer discovered that he could not observe from Found level the contents of a greenhouse on the property -- which was enclosed on two sides and obscured from view on the other, open sides by trees, shrubs, and respondent's nearby home -- he circled twice over the property in a helicopter at the height of 400 feet and made naked-eye observations through openings in the greenhouse

height of 400 feet and made naked-eye observations through openings in the greenhouse roof and its open sides of what he concluded were marijuana plants. After a search pursuant to a warrant obtained on the basis of these observations revealed marijuana growing in the greenhouse, respondent was charged with possession of that substance under Florida law. The trial court granted his motion to suppress the evidence. Although reversing, the State Court of Appeals certified the case to the State Supreme Court on the question whether the helicopter surveillance from 400 feet constituted a "search" for which a warrant was required under the Fourth Amendment. Answering that question in the affirmative, the court quashed the Court of Appeals' decision and reinstated the trial court's suppression order.

Held: The judgment is reversed.

511 So.2d 282, reversed.

JUSTICE WHITE, joined by THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY, concluded that the Fourth Amendment does not require the police traveling in the public airways at an altitude of 400 feet to obtain a warrant in order to observe what is visible to the naked eye. *California v. Ciraolo,* 476 U. S. 207 -- which held that a naked-eye police inspection of the backyard of a house from a fixed-wing aircraft at 1,000 feet was not a "search" -- is controlling. Thus, respondent could not reasonably have expected that the contents of his greenhouse were protected from public or official inspection from the air, since he left the greenhouse's sides and roof partially open. The fact that the inspection was made from a helicopter is irrelevant, since, as in the case of fixed-wing planes, private and commercial flight by helicopter is routine. Nor, on the facts of this case, does it make a difference for Fourth Amendment purposes that the helicopter was flying below 500 feet, the Federal Aviation Administration's lower limit upon the navigable airspace for fixed-wing craft. Since the FAA permits helicopters to fly

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below that limit, the helicopter here was not violating the law, and any member of the public or the police could legally have observed respondent's greenhouse from that altitude. Although an aerial inspection of a house's curtilage may not always pass muster under the Fourth Amendment simply because the aircraft is within the navigable airspace specified by law, there is nothing in the record here to suggest that helicopters flying at 400 feet are sufficiently rare that respondent could have reasonably anticipated that his greenhouse would not be observed from that altitude. Moreover, there is no evidence that the helicopter interfered with respondent's normal use of his greenhouse or other parts of the curtilage, that intimate details connected with the use of the home or curtilage were

observed, or that there was undue noise, wind, dust, or threat of injury. Pp. 488 U. S. 449-452.

JUSTICE O'CONNOR concluded that the plurality's approach rests the scope of Fourth Amendment protection too heavily on compliance with FAA regulations, which are intended to promote air safety, and not to protect the right to be secure against unreasonable searches and seizures. Whether respondent had a reasonable expectation of privacy from aerial observation of his curtilage does not depend on whether the helicopter was where it had a right to be, but, rather, on whether it was in the public airways at an altitude at which members of the public travel with sufficient regularity that respondent's expectation was not one that society is prepared to recognize as "reasonable." Because there is reason to believe that there is considerable public use of airspace at altitudes of 400 feet and above, and because respondent introduced no evidence to the contrary before the state courts, it must be concluded that his expectation of privacy here was not reasonable. However, public use of altitudes lower than 400 feet -- particularly public observations from helicopters circling over the curtilage of a home -- may be sufficiently rare that police surveillance from such altitudes would violate reasonable expectations of privacy, despite compliance with FAA regulations. Pp. 488 U. S. 452-455.

WHITE, J., announced the judgment of the Court and delivered an opinion in which REHNQUIST, C.J., and SCALIA and KENNEDY, JJ., joined. O'CONNOR, J., filed an opinion concurring in the judgment, *post,* p. 488 U. S. 452. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and STEVENS, JJ., joined, *post,* p. 488 U. S. 456. BLACKMUN, J., filed a dissenting opinion, *post,* p. 488 U. S. 467.

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JUSTICE WHITE announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE KENNEDY join.

On certification to it by a lower state court, the Florida Supreme Court addressed the following question:

"Whether surveillance of the interior of a partially covered greenhouse

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in a residential backyard from the vantage point of a helicopter located 400 feet above the greenhouse constitutes a 'search' for which a warrant is required under the Fourth Amendment and Article I, § 12 of the Florida Constitution."

511 So.2d 282 (1987). The court answered the question in the affirmative, and we granted the State's petition for certiorari challenging that conclusion. 484 U.S. 1058 (1988). [Footnote 1]

Respondent Riley lived in a mobile home located on five acres of rural property. A greenhouse was located 10 to 20 feet behind the mobile home. Two sides of the greenhouse were enclosed. The other two sides were not enclosed, but the contents of the greenhouse were obscured from view from surrounding property by trees, shrubs, and the mobile home. The greenhouse was covered by corrugated roofing panels, some translucent and some opaque. At the time relevant to this case, two of the panels, amounting to approximately 10% of the roof area, were missing. A wire fence surrounded the mobile home and the greenhouse, and the property was posted with a "DO NOT ENTER" sign.

This case originated with an anonymous tip to the Pasco County Sheriff's office that marijuana was being grown on respondent's property. When an investigating officer discovered that he could not see the contents of the greenhouse from the road, he circled twice over respondent's property in a helicopter at the height of 400 feet. With his naked eye, he was able to see through the openings in the roof and one or more of the open sides of the greenhouse and to identify what he thought was marijuana growing in the structure. A warrant

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was obtained based on these observations, and the ensuing search revealed marijuana growing in the greenhouse. Respondent was charged with possession of marijuana under Florida law. The trial court granted his motion to suppress; the Florida Court of Appeals reversed, but certified the case to the Florida Supreme Court, which quashed the decision of the Court of Appeals and reinstated the trial court's suppression order.

We agree with the State's submission that our decision in *California v. Ciraolo,* 476 U. S. 207 (1986), controls this case. There, acting on a tip, the police inspected the backyard of a particular house while flying in a fixed-wing aircraft at 1,000 feet. With the naked eye the officers saw what they concluded was marijuana growing in the yard. A search warrant was obtained on the strength of this airborne inspection, and marijuana plants were found. The trial court refused to suppress this evidence, but a state appellate court held that the inspection violated the Fourth and Fourteenth Amendments to the United States Constitution, and that the warrant was therefore invalid. We in turn reversed, holding that the inspection was not a search subject to the Fourth Amendment. We recognized that the yard was within the curtilage of the house, that a fence shielded the yard from observation

from the street, and that the occupant had a subjective expectation of privacy. We held, however, that such an expectation was not reasonable, and not one "that society is prepared to honor." *Id.* at 476 U. S. 214. Our reasoning was that the home and its curtilage are not necessarily protected from inspection that involves no physical invasion. "*What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.'" Id. at 213, quoting Katz v. United States, 389 U. S. 347, 389 U. S. 351 (1967). As a general proposition, the police may see what may be seen "from a public vantagepoint where [they have] a right to be," 476 U.S. at 476 U. S. 213. Thus the police, like the public, would have been free to inspect the backyard garden from*

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the street if their view had been unobstructed. They were likewise free to inspect the yard from the vantage point of an aircraft flying in the navigable airspace as this plane was.

"In an age where private and commercial flight in the public airways is routine, it is unreasonable for respondent to expect that his marijuana plants were constitutionally protected from being observed with the naked eye from an altitude of 1,000 feet. The Fourth Amendment simply does not require the police traveling in the public airways at this altitude to obtain a warrant in order to observe what is visible to the naked eye."

Id. at 476 U. S. 215.

We arrive at the same conclusion in the present case. In this case, as in *Ciraolo,* the property surveyed was within the curtilage of respondent's home. Riley no doubt intended and expected that his greenhouse would not be open to public inspection, and the precautions he took protected against ground-level observation. Because the sides and roof of his greenhouse were left partially open, however, what was growing in the greenhouse was subject to viewing from the air. Under the holding in *Ciraolo,* Riley could not reasonably

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have expected the contents of his greenhouse to be immune from examination by an officer seated in a fixed-wing aircraft flying in navigable airspace at an altitude of 1,000 feet or, as the Florida Supreme Court seemed to recognize, at an altitude of 500 feet, the lower limit of the navigable airspace for such an aircraft. 511 So.2d at 288. Here, the inspection was made from a helicopter, but, as is the case with fixed-wing planes, "private and commercial flight [by helicopter] in the public airways is routine" in this country, *Ciraolo, supra,* at 476 U. S. 215, and there is no indication that such flights are unheard of in Pasco County,

Florida. [Footnote 2] Riley could not reasonably have expected that his greenhouse was protected from public or official observation from a helicopter had it been flying within the navigable airspace for fixed-wing aircraft.

Nor on the facts before us, does it make a difference for Fourth Amendment purposes that the helicopter was flying at 400 feet when the officer saw what was growing in the greenhouse through the partially open roof and sides of the structure. We would have a different case if flying at that altitude had been contrary to law or regulation. But helicopters are not bound by the lower limits of the navigable airspace allowed to other aircraft. [Footnote 3] Any member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet, and could have observed Riley's greenhouse. The police officer did no more. This is not to say that an inspection of the curtilage of a house from an aircraft will always pass muster under the Fourth Amendment simply because the plane is within the navigable airspace specified by law. But it is of obvious importance that the helicopter in this case was *not* violating the law, and there is nothing in the record or before us to suggest that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to respondent's claim that he reasonably anticipated that his greenhouse would not be subject to

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observation from that altitude. Neither is there any intimation here that the helicopter interfered with respondent's normal use of the greenhouse or of other parts of the curtilage. As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, and no wind, dust, or threat of injury. In these circumstances, there was no violation of the Fourth Amendment.

The judgment of the Florida Supreme Court is accordingly reversed.

So ordered.

[Footnote 1]

The Florida Supreme Court mentioned the State Constitution in posing the question, once in the course of its opinion, and again in finally concluding that the search violated the Fourth Amendment and the State Constitution. The bulk of the discussion, however, focused exclusively on federal cases dealing with the Fourth Amendment, and there being no indication that the decision "clearly and expressly . . . is alternatively based on bona fide separate, adequate, and independent grounds," we have jurisdiction. *Michigan v. Long,* 463 U. S. 1032, 463 U. S. 1041 (1983).

[Footnote 2]

The first use of the helicopter by police was in New York in 1947, and today every State in the country uses helicopters in police work. As of 1980, there were 1,500 such aircraft used in police work. E. Brown, The Helicopter in Civil Operations 79 (1981). More than 10,000 helicopters, both public and private, are registered in the United States. Federal Aviation Administration, Census of U.S. Civil Aircraft, Calendar Year 1987, p. 12. *See also* 1988 Helicopter Annual 9. And there are an estimated 31,697 helicopter pilots. Federal Aviation Administration, Statistical Handbook of Aviation, Calendar Year 1986, p. 147.

[Footnote 3]

While Federal Aviation Administration (FAA) regulations permit fixed-wing aircraft to be operated at an altitude of 1,000 feet while flying over congested areas and at an altitude of 500 feet above the surface in other than congested areas, helicopters may be operated at less than the minimums for fixed-wing aircraft

"if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with routes or altitudes specifically prescribed for helicopters by the [FAA] Administrator."

14 CFR § 91.79 (1988).

JUSTICE O'CONNOR, concurring in the judgment.

I concur in the judgment reversing the Supreme Court of Florida because I agree that police observation of the greenhouse in Riley's curtilage from a helicopter passing at an altitude of 400 feet did not violate an expectation of privacy "that society is prepared to recognize as *reasonable.'" Katz v. United States, 389 U. S. 347, 389 U. S. 361 (1967) (Harlan, J., concurring). I write separately, however, to clarify the standard I believe follows from California v. Ciraolo, 476 U. S. 207 (1986). In my view, the plurality's approach rests the scope of Fourth Amendment protection too heavily on compliance with FAA regulations whose purpose is to promote air safety, not to protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S.Const., Amdt. 4.*

Ciraolo involved observation of curtilage by officers flying in an airplane at an altitude of 1,000 feet. In evaluating whether this observation constituted a search for which a warrant was required, we acknowledged the importance of curtilage in Fourth Amendment doctrine:

doctrine.

"The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened."

476 U.S. at 476 U. S. 212-213. Although the curtilage is an area to which the private activities

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of the home extend, all police observation of the curtilage is not necessarily barred by the Fourth Amendment. As we observed:

"The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares."

Id. at 476 U. S. 213. In *Ciraolo,* we likened observation from a plane traveling in "public navigable airspace" at 1,000 feet to observation by police "passing by a home on public thoroughfares." We held that "[i]n an age where private and commercial flight in the public airways is routine," it is unreasonable to expect the curtilage to be constitutionally protected from aerial observation with the naked eye from an altitude of 1,000 feet. *Id.* at 476 U. S. 215.

Ciraolo's expectation of privacy was unreasonable not because the airplane was operating where it had a "right to be," but because public air travel at 1,000 feet is a sufficiently routine part of modern life that it is unreasonable for persons on the ground to expect that their curtilage will not be observed from the air at that altitude. Although "helicopters are not bound by the lower limits of the navigable airspace allowed to other aircraft," *ante* at 488 U. S. 451, there is no reason to assume that compliance with FAA regulations alone determines "*whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment.'" Ciraolo, supra, at 476 U. S. 212 (quoting Oliver v. United States, 466 U. S. 170, 466 U. S. 182-183 (1984)). Because the FAA has decided that helicopters can lawfully operate at virtually any altitude so long as they pose no safety hazard, it does not follow that the expectations of privacy "society is prepared to recognize as `reasonable'" simply mirror the FAA's safety concerns.*

Observations of curtilage from helicopters at very low altitudes are not perfectly analogous to ground-level observations from public roads or sidewalks. While in both cases the police may have a legal right to occupy the physical space from which their observations are made, the two situations

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are not necessarily comparable in terms of whether expectations of privacy from such vantage points should be considered reasonable. Public roads, even those less traveled by, are clearly demarked public thoroughfares. Individuals who seek privacy can take precautions, tailored to the location of the road, to avoid disclosing private activities to those who pass by. They can build a tall fence, for example, and thus ensure private enjoyment of the curtilage without risking public observation from the road or sidewalk. If they do not take such precautions, they cannot reasonably expect privacy from public observation. In contrast, even individuals who have taken effective precautions to ensure against ground-level observations cannot block off all conceivable aerial views of their outdoor patios and yards without entirely giving up their enjoyment of those areas. To require individuals to completely cover and enclose their curtilage is to demand more than the "precautions customarily taken by those seeking privacy." *Rakas v. Illinois,* 439 U. S. 128, 439 U. S. 152 (1978) (Powell, J., concurring). The fact that a helicopter could conceivably observe the curtilage at virtually any altitude or angle, without violating FAA regulations, does not in itself mean that an individual has no reasonable expectation of privacy from such observation.

In determining whether Riley had a reasonable expectation of privacy from aerial observation, the relevant inquiry after *Ciraolo* is not whether the helicopter was where it had a right to be under FAA regulations. Rather, consistent with *Katz,* we must ask whether the helicopter was in the public airways at an altitude at which members of the public travel with sufficient regularity that Riley's expectation of privacy from aerial observation was not "one that society is prepared to recognize as *reasonable.'" Katz, supra, at 361. Thus, in determining "`whether the government's intrusion infringes upon the personal and societal values protected by the Fourth Amendment,'" Ciraolo, supra, at 476 U. S. 212 (quoting Oliver, supra, at 466 U. S. 182-183), it is not conclusive to observe,*

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as the plurality does, that "[a]ny member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet, and could have observed Riley's greenhouse." Ante at 451. Nor is it conclusive that police helicopters may often fly at 400 feet. If the public rarely, if ever, travels overhead at such altitudes, the observation cannot be said to be from a vantage point generally used by the public, and Riley cannot be said to have "knowingly expose[d]" his greenhouse to public view. However, if the public can generally be expected to travel over residential backyards at an altitude of 400 feet, Riley

cannot reasonably expect his curtilage to be free from such aerial observation.

In my view, the defendant must bear the burden of proving that his expectation of privacy was a reasonable one, and thus that a "search" within the meaning of the Fourth Amendment even took place. *Cf. Jones v. United States,* 362 U. S. 257, 362 U. S. 261 (1960) ("Ordinarily, then, it is entirely proper to require of one who seeks to challenge the legality of a search as the basis for suppressing relevant evidence that he allege, and if the allegation be disputed that he establish, that he himself was the victim of an invasion of privacy"); *Nardone v. United States,* 308 U. S. 338, 308 U. S. 341 (1939).

Because there is reason to believe that there is considerable public use of airspace at altitudes of 400 feet and above, and because Riley introduced no evidence to the contrary before the Florida courts, I conclude that Riley's expectation that his curtilage was protected from naked-eye aerial observation from that altitude was not a reasonable one. However, public use of altitudes lower than that -- particularly public observations from helicopters circling over the curtilage of a home -- may be sufficiently rare that police surveillance from such altitudes would violate reasonable expectations of privacy, despite compliance with FAA air safety regulations

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JUSTICE BRENNAN, with whom JUSTICE MARSHALL and JUSTICE STEVENS join, dissenting.

The Court holds today that police officers need not obtain a warrant based on probable cause before circling in a helicopter 400 feet above a home in order to investigate what is taking place behind the walls of the curtilage. I cannot agree that the Fourth Amendment to the Constitution, which safeguards "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," tolerates such an intrusion on privacy and personal security.

I

The opinion for a plurality of the Court reads almost as if *Katz v. United States,* 389 U. S. 347 (1967), had never been decided. Notwithstanding the disclaimers of its final paragraph, the opinion relies almost exclusively on the fact that the police officer conducted his surveillance from a vantage point where, under applicable Federal Aviation Administration regulations, he had a legal right to be. *Katz* teaches, however, that the relevant inquiry is whether the police surveillance "violated the privacy upon which [the defendant] justifiably

relied," *id.* at 389 U. S. 353 -- or, as Justice Harlan put it, whether the police violated an "expectation of privacy . . . that society is prepared to recognize as *reasonable.*'" *Id. at 389 U. S. 361 (concurring opinion). The result of that inquiry in any given case depends ultimately on the judgment*

"whether, if the particular form of surveillance practiced by the police is permitted to go unregulated by constitutional restraints, the amount of privacy and freedom remaining to citizens would be diminished to a compass inconsistent with the aims of a free and open society."

Amsterdam, Perspectives on the Fourth Amendment, 58 Minn.L.Rev. 349, 403 (1974); *see also* 1 W. LaFave, Search and Seizure § 2.1(d), pp. 310-314 (2d ed.1987).

The plurality undertakes no inquiry into whether low-level helicopter surveillance by the police of activities in an enclosed

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backyard is consistent with the "aims of a free and open society." Instead, it summarily concludes that Riley's expectation of privacy was unreasonable because

"[a]ny member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet and could have observed Riley's greenhouse."

Ante at 488 U. S. 451. This observation is, in turn, based solely on the fact that the police helicopter was within the airspace within which such craft are allowed by federal safety regulations to fly.

I agree, of course, that "[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection." *Katz, supra,* at 389 U. S. 351. But I cannot agree that one "knowingly exposes [an area] to the public" solely because a helicopter may legally fly above it. Under the plurality's exceedingly grudging Fourth Amendment theory, the expectation of privacy is defeated if a single member of the public could conceivably position herself to see into the area in question without doing anything illegal. It is defeated whatever the difficulty a person would have in so positioning herself, and however infrequently anyone would in fact do so. In taking this view, the plurality ignores the very essence of *Katz.* The reason why there is no reasonable expectation of privacy in an area that is exposed to the public is that little diminution in "the amount of privacy and freedom remaining to citizens" will result from police surveillance of something that any passerby readily sees. To pretend, as the plurality opinion does, that the same is true when the police

use a helicopter to peer over high fences is, at best, disingenuous. Notwithstanding the plurality's statistics about the number of helicopters registered in this country, can it seriously be questioned that Riley enjoyed virtually complete privacy in his backyard greenhouse, and that that privacy was invaded solely by police helicopter surveillance? Is the theoretical possibility that any member of the public (with sufficient means) could also have hired a helicopter and looked over Riley's fence of any relevance at all in determining

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whether Riley suffered a serious loss of privacy and personal security through the police action?

In *California v. Ciraolo,* 476 U. S. 207 (1986), we held that whatever might be observed from the window of an airplane flying at 1,000 feet could be deemed unprotected by any reasonable expectation of privacy. That decision was based on the belief that airplane traffic at that altitude was sufficiently common that no expectation of privacy could inure in anything on the ground observable with the naked eye from so high. Indeed, we compared those airways to "public thoroughfares," and made the obvious point that police officers passing by a home on such thoroughfares were not required by the Fourth Amendment to "shield their eyes." *Id.* at 476 U. S. 213. Seizing on a reference in *Ciraolo* to the fact that the police officer was in a position "where he ha[d] a right to be," *ibid.,* today's plurality professes to find this case indistinguishable because FAA regulations do not impose a minimum altitude requirement on helicopter traffic; thus, the officer in this case too made his observations from a vantage point where he had a right to be. [Footnote 2/1]

It is a curious notion that the reach of the Fourth Amendment can be so largely defined by administrative regulations issued for purposes of flight safety. [Footnote 2/2] It is more curious still

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that the plurality relies to such an extent on the legality of the officer's act, when we have consistently refused to equate police violation of the law with infringement of the Fourth Amendment. [Footnote 2/3] But the plurality's willingness to end its inquiry when it finds that the officer was in a position he had a right to be in is misguided for an even more fundamental reason. Finding determinative the fact that the officer was where he had a right to be is, at bottom, an attempt to analogize surveillance from a helicopter to surveillance by a police officer standing on a public road and viewing evidence of crime through an open window or a gap in a fence. In such a situation, the occupant of the home may be said to lack any

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reasonable expectation of privacy in what can be seen from that road -- even if, in fact, people rarely pass that way.

The police officer positioned 400 feet above Riley's backyard was not, however, standing on a public road. The vantage point he enjoyed was not one any citizen could readily share. His ability to see over Riley's fence depended on his use of a very expensive and sophisticated piece of machinery to which few ordinary citizens have access. In such circumstances, it makes no more sense to rely on the legality of the officer's position in the skies than it would to judge the constitutionality of the wiretap in *Katz* by the legality of the officer's position outside the telephone booth. The simple inquiry whether the police officer had the legal right to be in the position from which he made his observations cannot suffice, for we cannot assume that Riley's curtilage was so open to the observations of passersby in the skies that he retained little privacy or personal security to be lost to police surveillance. The question before us must be not whether the police were where they had a right to be, but whether public observation of Riley's curtilage was so commonplace that Riley's expectation of privacy in his backyard could not be considered reasonable. To say that an invasion of Riley's privacy from the skies was not impossible is most emphatically not the same as saying that his expectation of privacy within his enclosed curtilage was not "one that society is prepared to recognize as *reasonable.'" Katz, 389 U.S. at 389 U. S. 361 (Harlan, J., concurring). [Footnote 2/4] While, as we held in Ciraolo, air traffic at elevations of 1,000 feet or more may be so common that whatever could be seen with the naked eye from that elevation is unprotected by the Fourth Amendment, it is a large step from there to say that the Amendment offers no protection against low-level helicopter surveillance of enclosed curtilage*

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areas. To take this step is error enough. That the plurality does so with little analysis beyond its determination that the police complied with FAA regulations is particularly unfortunate.

Equally disconcerting is the lack of any meaningful limit to the plurality's holding. It is worth reiterating that the FAA regulations the plurality relies on as establishing that the officer was where he had a right to be set no minimum flight altitude for helicopters. It is difficult, therefore, to see what, if any, helicopter surveillance would run afoul of the plurality's rule that there exists no reasonable expectation of privacy as long as the helicopter is where it has a right to be.

Only in its final paragraph does the plurality opinion suggest that there might be some limits to police helicopter surveillance beyond those imposed by FAA regulations:

"Neither is there any intimation here that the helicopter interfered with respondent's normal use of the greenhouse or of other parts of the curtilage. As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, and no wind, dust, or threat of injury. In these circumstances, there was no violation of the Fourth Amendment."

Ante at 488 U. S. 452. [Footnote 2/5] I will deal with the "intimate details" below. For the rest, one wonders what the plurality believes the purpose of the Fourth Amendment to be. If through noise, wind, dust, and threat of injury from helicopters the State "interfered with respondent's normal use of the greenhouse or of other parts

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of the curtilage," Riley might have a cause of action in inverse condemnation, but that is not what the Fourth Amendment is all about. Nowhere is this better stated than in JUSTICE WHITE's opinion for the Court in *Camara v. Municipal Court,* 387 U. S. 523, 387 U. S. 528 (1967):

"The basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."

See also Marshall v. Barlow's, Inc., 436 U. S. 307, 436 U. S. 312 (1978) (same); *Schmerber v. California,* 384 U. S. 757, 384 U. S. 767 (1966) ("The overriding function of the Fourth Amendment is to protect personal privacy and dignity against unwarranted intrusion by the State"); *Wolf v. Colorado,* 338 U. S. 25, 338 U. S. 27 (1949) ("The security of one's privacy against arbitrary intrusion by the police . . . is at the core of the Fourth Amendment . . ."), *overruled on other grounds, Mapp v. Ohio,* 367 U. S. 643 (1961); *Boyd v. United States,* 116 U. S. 616, 116 U. S. 630 (1886) ("It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his indefeasible right of personal security. . . .").

If indeed the purpose of the restraints imposed by the Fourth Amendment is to "safeguard the privacy and security of individuals," then it is puzzling why it should be the helicopter's noise, wind, and dust that provides the measure of whether this constitutional safeguard has been infringed. Imagine a helicopter capable of hovering just above an enclosed

courtyard or patio without generating any noise, wind, or dust at all -- and, for good measure, without posing any threat of injury. Suppose the police employed this miraculous tool to discover not only what crops people were growing in their greenhouses, but also what books they were reading and who their dinner guests were. Suppose, finally, that the FAA regulations remained unchanged, so that the police were undeniably "where they had a right to be." Would today's

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plurality continue to assert that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" was not infringed by such surveillance? Yet that is the logical consequence of the plurality's rule that, so long as the police are where they have a right to be under air traffic regulations, the Fourth Amendment is offended only if the aerial surveillance interferes with the use of the backyard as a garden spot. Nor is there anything in the plurality's opinion to suggest that any different rule would apply were the police looking from their helicopter, not into the open curtilage, but through an open window into a room viewable only from the air.

III

Perhaps the most remarkable passage in the plurality opinion is its suggestion that the case might be a different one had any "intimate details connected with the use of the home or curtilage [been] observed." *Ante* at 488 U. S. 452. What, one wonders, is meant by "intimate details"? If the police had observed Riley embracing his wife in the backyard greenhouse, would we then say that his reasonable expectation of privacy had been infringed? Where in the Fourth Amendment or in our cases is there any warrant for imposing a requirement that the activity observed must be "intimate" in order to be protected by the Constitution?

It is difficult to avoid the conclusion that the plurality has allowed its analysis of Riley's expectation of privacy to be colored by its distaste for the activity in which he was engaged. It is indeed easy to forget, especially in view of current concern over drug trafficking, that the scope of the Fourth Amendment's protection does not turn on whether the activity disclosed by a search is illegal or innocuous. But we dismiss this as a "drug case" only at the peril of our own liberties. Justice Frankfurter once noted that

"[i]t is a fair summary of history to say that the safeguards of liberty have frequently been forged in controversies involving not very

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nice people,"

United States v. Rabinowitz, 339 U. S. 56, 339 U. S. 69 (1950) (dissenting opinion), and nowhere is this observation more apt than in the area of the Fourth Amendment, whose words have necessarily been given meaning largely through decisions suppressing evidence of criminal activity. The principle enunciated in this case determines what limits the Fourth Amendment imposes on aerial surveillance of any person, for any reason. If the Constitution does not protect Riley's marijuana garden against such surveillance, it is hard to see how it will forbid the government from aerial spying on the activities of a law-abiding citizen on her fully enclosed outdoor patio. As Professor Amsterdam has eloquently written:

"The question is not whether you or I must draw the blinds before we commit a crime. It is whether you and I must discipline ourselves to draw the blinds every time we enter a room, under pain of surveillance if we do not."

Amsterdam, 58 Minn.L.Rev. at 403. [Footnote 2/6]

IV

I find little to disagree with in the concurring opinion of JUSTICE O'CONNOR, apart from its closing paragraphs. A majority of the Court thus agrees that the fundamental inquiry is not whether the police were where they had a right to be under FAA regulations, but rather whether Riley's expectation of privacy was rendered illusory by the extent of

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public observation of his backyard from aerial traffic at 400 feet.

What separates me from JUSTICE O'CONNOR is essentially an empirical matter concerning the extent of public use of the airspace at that altitude, together with the question of how to resolve that issue. I do not think the constitutional claim should fail simply because "there is reason to believe" that there is "considerable" public flying this close to earth or because Riley "introduced no evidence to the contrary before the Florida courts." *Ante* at 488 U. S. 455 (O'CONNOR, J., concurring in judgment). I should think that this might be an apt occasion for the application of Professor Davis' distinction between "adjudicative" and "legislative" facts. *See* Davis, An Approach to Problems of

Evidence in the Administrative Process, 55 Harv.L.Rev. 364, 402-410 (1942); *see also* Advisory Committee's Notes on Fed.Rule Evid. 201, 28 U.S.C.App. pp. 683-684. If so, I think we could take judicial notice that, while there may be an occasional privately owned helicopter that flies over populated areas at an altitude of 400 feet, such flights are a rarity, and are almost entirely limited to approaching or leaving airports or to reporting traffic congestion near major roadways. And, as the concurrence agrees, *ante* at 488 U. S. 455, the extent of police surveillance traffic cannot serve as a bootstrap to demonstrate public use of the airspace.

If, however, we are to resolve the issue by considering whether the appropriate party carried its burden of proof, I again think that Riley must prevail. Because the State has greater access to information concerning customary flight patterns, and because the coercive power of the State ought not be brought to bear in cases in which it is unclear whether the prosecution is a product of an unconstitutional, warrantless search, *cf. Bumper v. North Carolina,* 391 U. S. 543, 391 U. S. 548 (1968) (prosecutor has burden of proving consent to search), the burden of proof properly rests with the State, and

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not with the individual defendant. The State quite clearly has not carried this burden. [Footnote 2/7]

V

The issue in this case is, ultimately, "how tightly the fourth amendment permits people to be driven back into the recesses of their lives by the risk of surveillance." Amsterdam, *supra,* at 402. The Court today approves warrantless helicopter surveillance from an altitude of 400 feet. While JUSTICE O'CONNOR's opinion gives reason to hope that this altitude may constitute a lower limit, I find considerable cause for concern in the fact that a plurality of four Justices would remove virtually all constitutional barriers to police surveillance from the vantage point of helicopters. The Fourth Amendment demands that we temper our efforts to apprehend criminals with a concern for the impact on our fundamental liberties of the methods we use. I hope it will be a matter of concern to my colleagues that the police surveillance methods they would sanction were among those described forty years ago in George Orwell's dread vision of life in the 1980's:

"The black-mustachio'd face gazed down from every commanding corner. There was one on the house front immediately opposite. BIG BROTHER IS WATCHING YOU, the caption said. . . . In the far distance, a helicopter skimmed down between the roofs, hovered for an

instant like a bluebottle, and darted away again with a curving flight. It was the Police Patrol, snooping into people's windows."

G. Orwell, Nineteen Eighty-Four 4 (1949)

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Who can read this passage without a shudder, and without the instinctive reaction that it depicts life in some country other than ours? I respectfully dissent.

[Footnote 2/1]

What the plurality now states as a firm rule of Fourth Amendment jurisprudence appeared in *Ciraolo,* 476 U.S. at 476 U. S. 213, as a passing comment:

"Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible. *E.g., United States v. Knotts,* 460 U. S. 276, 460 U. S. 282 (1983)."

This rule for determining the constitutionality of aerial surveillance thus derives ultimately from *Knotts,* a case in which the police officers' feet were firmly planted on the ground. What is remarkable is not that one case builds on another, of course, but rather that a principle based on terrestrial observation was applied to airborne surveillance without any consideration whether that made a difference.

[Footnote 2/2]

The plurality's use of the FAA regulations as a means for determining whether Riley enjoyed a reasonable expectation of privacy produces an incredible result. Fixed-wing aircraft may not be operated below 500 feet (1,000 feet over congested areas), while helicopters may be operated below those levels. *See ante* at 488 U. S. 451, n. 3. Therefore, whether Riley's expectation of privacy is reasonable turns on whether the police officer at 400 feet above his curtilage is seated in an airplane or a helicopter. This cannot be the law.

[Footnote 2/3]

In *Oliver v. United States,* 466 U. S. 170 (1984), for example, we held that police officers who trespassed upon posted and fenced private land did not violate the Fourth Amendment, despite the fact that their action was subject to criminal sanctions. We noted that the interests vindicated by the Fourth Amendment were not identical with those

served by the common law of trespass. *See id.* at 466 U. S. 183-184, and n. 15; *see also Nester v. United States,* 265 U. S. 57 (1924) (trespass in "open fields" does not violate the Fourth Amendment). In *Olmstead v. United States,* 277 U. S. 438, 277 U. S. 466-469 (1928), the illegality under state law of a wiretap that yielded the disputed evidence was deemed irrelevant to its admissibility. And of course *Katz v. United States,* 389 U. S. 347 (1967), which overruled *Olmstead,* made plain that the question whether or not the disputed evidence had been procured by means of a trespass was irrelevant. Recently, in *Dow Chemical Co. v. United States,* 476 U. S. 227, 476 U. S. 239, n. 6 (1986), we declined to consider trade secret laws indicative of a reasonable expectation of privacy. Our precedent thus points not toward the position adopted by the plurality opinion, but rather toward the view on this matter expressed some years ago by the Oregon Court of Appeals:

"We . . . find little attraction in the idea of using FAA regulations, because they were not formulated for the purpose of defining the reasonableness of citizens' expectations of privacy. They were designed to promote air safety."

State v. Davis, 51 Ore.App. 827, 831, 627 P.2d 492, 494 (1981).

[Footnote 2/4]

Cf. California v. Greenwood, 486 U. S. 35, 486 U. S. 64 (1988) (BRENNAN, J., dissenting) ("The mere *possibility* that unwelcome meddlers *might* open and rummage through the containers does not negate the expectation of privacy in their contents. . . .").

[Footnote 2/5]

Without actually stating that it makes any difference, the plurality also notes that "there is nothing in the record or before us to suggest" that helicopter traffic at the 400-foot level is so rare as to justify Riley's expectation of privacy. *Ante* at 488 U. S. 451. The absence of anything "in the record or before us" to suggest the opposite, however, seems not to give the plurality pause. It appears, therefore, that it is the FAA regulation, rather than any empirical inquiry, that is determinative.

[Footnote 2/6]

See also United States v. White, 401 U. S. 745, 401 U. S. 789-790 (1971) (Harlan, J., dissenting):

"By casting its 'risk analysis' solely in terms of the expectations and risks that 'wrongdoers' or 'one contemplating illegal activities' ought to bear, the plurality opinion, I think, misses the mark entirely. . . . The interest [protected by the Fourth Amendment] is the expectation

of the ordinary citizen, who has never engaged in illegal conduct in his life, that he may carry on his private discourse freely, openly, and spontaneously. . . . Interposition of a warrant requirement is designed not to shield 'wrongdoers,' but to secure a measure of privacy and a sense of personal security throughout our society."

[Footnote 2/7]

The issue in *Jones v. United States,* 362 U. S. 257, 362 U. S. 261 (1960), cited by JUSTICE O'CONNOR, was whether the defendant had standing to raise a Fourth Amendment challenge. While I would agree that the burden of alleging and proving facts necessary to show standing could ordinarily be placed on the defendant, I fail to see how that determination has any relevance to the question of where the burden should lie on the merits of the Fourth Amendment claim.

JUSTICE BLACKMUN, dissenting.

The question before the Court is whether the helicopter surveillance over Riley's property constituted a "search" within the meaning of the Fourth Amendment. Like JUSTICE BRENNAN, JUSTICE MARSHALL, JUSTICE STEVENS, and JUSTICE O'CONNOR, I believe that answering this question depends upon whether Riley has a "reasonable expectation of privacy" that no such surveillance would occur, and does not depend upon the fact that the helicopter was flying at a lawful altitude under FAA regulations. A majority of this Court thus agrees to at least this much.

The inquiry then becomes how to determine whether Riley's expectation was a reasonable one. JUSTICE BRENNAN, the two Justices who have joined him, and JUSTICE O'CONNOR all believe that the reasonableness of Riley's expectation depends, in large measure, on the frequency of nonpolice helicopter flights at an altitude of 400 feet. Again, I agree.

How is this factual issue to be decided? JUSTICE BRENNAN suggests that we may resolve it ourselves without any evidence in the record on this point. I am wary of this approach. While I, too, suspect that, for most American communities, it is a rare event when nonpolice helicopters fly over one's curtilage at an altitude of 400 feet, I am not convinced that we should establish a *per se* rule for the entire Nation based on judicial suspicion alone. *See* Coffin, Judicial Balancing, 63 N.Y.U.L.Rev. 16, 37 (1988).

But we need not abandon our judicial intuition entirely. The opinions of both JUSTICE BRENNAN and JUSTICE O'CONNOR, by their use of "cf." citations, implicitly recognize that none of our prior decisions tells us who has the burden of proving whether Riley's

expectation of privacy was reasonable. In the absence of precedent on the point, it is appropriate for us to take into account our estimation of the

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frequency of nonpolice helicopter flights. *See* 4 W. LaFave, Search and Seizure § 11.2(b), p. 228 (2d ed.1987) (burdens of proof relevant to Fourth Amendment issues may be based on a judicial estimate of the probabilities involved). Thus, because I believe that private helicopters rarely fly over curtilages at an altitude of 400 feet, I would impose upon the prosecution the burden of proving contrary facts necessary to show that Riley lacked a reasonable expectation of privacy. Indeed, I would establish this burden of proof for any helicopter surveillance case in which the flight occurred below 1,000 feet -- in other words, for any aerial surveillance case not governed by the Court's decision in *California v. Ciraolo,* 476 U. S. 207 (1986).

In this case, the prosecution did not meet this burden of proof, as JUSTICE BRENNAN notes. This failure should compel a finding that a Fourth Amendment search occurred. But because our prior cases gave the parties little guidance on the burden of proof issue, I would remand this case to allow the prosecution an opportunity to meet this burden.

The order of this Court, however, is not to remand the case in this manner. Rather, because JUSTICE O'CONNOR would impose the burden of proof on Riley, and because she would not allow Riley an opportunity to meet this burden, she joins the plurality's view that no Fourth Amendment search occurred. The judgment of the Court, therefore, is to reverse outright on the Fourth Amendment issue. Accordingly, for the reasons set forth above, I respectfully dissent.

Oral Argument - October 03, 1988

State v. Nolan

356 N.W.2d 670 (1984)

STATE of Minnesota, Respondent, v. Kevin James NOLAN, Appellant.

No. C7-83-284.

Supreme Court of Minnesota.

October 26, 1984.

Phillip S. Resnick, Robert G. Davis, Minneapolis, for appellant.

Hubert H. Humphrey, III, Atty. Gen., Norman Coleman, Jr., St. Paul, Jerome

Schreiber, Wabasha County Atty., Lake City, for respondent.

Considered and decided by the court en banc without oral argument.

PETERSON, Justice.

Defendant was charged by complaint with possession of marijuana with intent to sell, Minn.Stat. § 152.09, subd. 1(1) (1982). After the trial court denied defendant's motion to suppress on Fourth Amendment grounds, defendant waived his right to a trial by jury and submitted the issue of guilt to the court on stipulated facts. The court found defendant guilty as charged and stayed imposition of sentence, conditioning probation on, among other things, defendant's serving 120 days in jail. The court stayed execution of the jail term pending this appeal. On appeal, defendant argues that the court erred in denying his motion to suppress. We affirm.

An unidentified informant told the Wabasha County Sheriff that, while flying over and also while walking through two corn-fields in Wabasha County, he had seen plants which he

thought were marijuana. The sheriff and his chief deputy then flew over the area and saw two cornfields, each enclosing ½ to ¾-acre cultivated plats of bushy, dark green plants which the sheriff and his deputy took to be marijuana. On September 8, 1981, the sheriff obtained and executed a search warrant. The search resulted in the discovery and seizure of 5,520 pounds of marijuana and led to the issuance and execution of a second warrant, to search two trailers near the fields of marijuana. Evidence discovered in the search of one of the trailers, which was occupied by defendant, connected defendant to the marijuana.

At the omnibus hearing the prosecutor apparently conceded that a warrant was needed to enter onto the land. The trial court decided the case on that basis, concluding that the aerial surveillance did not require a warrant and that the affidavit contained sufficient information to justify *671 the issuance of the warrant to enter onto the land and examine and seize the plants.

A recent decision by the United States Supreme Court, Oliver v. United States, ___ U.S. ___, 104 S. Ct. 1735, 80 L. Ed. 2d 214 (1984), makes it clear that the sheriff did not need a warrant to go onto the land. Relying on Hester v. United States, 265 U.S. 57, 44 S. Ct. 445, 68 L. Ed. 898 (1924), which first announced the "open fields" doctrine, the Court held (a) that a person has no constitutionally protected reasonable expectation of privacy in "open fields" even if he has taken steps such as erecting fences and posting "No Trespassing" signs to demonstrate a desire to bar the public from them and (b) that police therefore do not need a warrant or probable cause to enter onto such fields. Oliver also made it clear that aerial surveillance of open fields does not constitute a search. ___ U.S. at ___, 104 S. Ct. at 1741. Since Oliver makes it clear that the Fourth Amendment did not protect the open fields onto which the sheriff and his deputies entered, there was no need for a warrant and, hence, no basis for suppression of the evidence which they discovered.

Affirmed.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COLLINS *v.* VIRGINIA

CERTIORARI TO THE SUPREME COURT OF VIRGINIA

No. 16–1027. Argued January 9, 2018—Decided May 29, 2018

During the investigation of two traffic incidents involving an orange and black motorcycle with an extended frame, Officer David Rhodes learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. Officer Rhodes discovered photographs on Collins' Facebook profile of an orange and black motorcycle parked in the driveway of a house, drove to the house, and parked on the street. From there, he could see what appeared to be the motorcycle under a white tarp parked in the same location as the motorcycle in the photograph. Without a search warrant, Office Rhodes walked to the top of the driveway, removed the tarp, confirmed that the motorcycle was stolen by running the license plate and vehicle identification numbers, took a photograph of the uncovered motorcycle, replaced the tarp, and returned to his car to wait for Collins. When Collins returned, Officer Rhodes arrested him. The trial court denied Collins' motion to suppress the evidence on the ground that Officer Rhodes violated the Fourth Amendment when he trespassed on the house's curtilage to conduct a search, and Collins was convicted of receiving stolen property. The Virginia Court of Appeals affirmed. The State Supreme Court also affirmed, holding that the warrantless search was justified under the Fourth Amendment's automobile exception.

Held: The automobile exception does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein. Pp. 3–14.

(a) This case arises at the intersection of two components of the Court's Fourth Amendment jurisprudence: the automobile exception to the warrant requirement and the protection extended to the curtilage of a home. In announcing each of the automobile exception's justifications—*i.e.,* the "ready mobility of the automobile" and "the pervasive regulation of vehicles capable of traveling on the public

highways," *California* v. *Carney,* 471 U. S. 386, 390, 392—the Court emphasized that the rationales applied only to automobiles and not to houses, and therefore supported their different treatment as a constitutional matter. When these justifications are present, officers may search an automobile without a warrant so long as they have probable cause. Curtilage—"the area 'immediately surrounding and associated with the home'"—is considered "'part of the home itself for Fourth Amendment purposes.'" *Florida* v. *Jardines,* 569 U. S. 1, 6. Thus, when an officer physically intrudes on the curtilage to gather evidence, a Fourth Amendment search has occurred and is presumptively unreasonable absent a warrant. Pp. 3–6.

(b) As an initial matter, the part of the driveway where Collins' motorcycle was parked and subsequently searched is curtilage. When Officer Rhodes searched the motorcycle, it was parked inside a partially enclosed top portion of the driveway that abuts the house. Just like the front porch, side garden, or area "outside the front window," that enclosure constitutes "an area adjacent to the home and 'to which the activity of home life extends.'" *Jardines*, 569 U. S., at 6, 7.

Because the scope of the automobile exception extends no further than the automobile itself, it did not justify Officer Rhodes' invasion of the curtilage. Nothing in this Court's case law suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle without a warrant. Such an expansion would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and "'untether'" the exception "'from the justifications underlying'" it. *Riley* v. *California,* 573 U. S. ___, ___. This Court has similarly declined to expand the scope of other exceptions to the warrant requirement. Thus, just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant—see *Horton* v. *California,* 496 U. S. 128, 136–137—and just as an officer must have a lawful right of access in order to arrest a person in his home—see *Payton* v. *New York,* 445 U. S. 573, 587–590—so, too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception. To allow otherwise would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application. Pp. 6–11.

(c) Contrary to Virginia's claim, the automobile exception is not a categorical one that permits the warrantless search of a vehicle anytime, anywhere, including in a home or curtilage. *Scher* v. *United States,* 305 U. S. 251; *Pennsylvania* v. *Labron,* 518 U. S. 938, distinguished. Also unpersuasive is Virginia's proposed bright line rule for

Syllabus

an automobile exception that would not permit warrantless entry only of the house itself or another fixed structure, *e.g.*, a garage, inside the curtilage. This Court has long been clear that curtilage is afforded constitutional protection, and creating a carveout for certain types of curtilage seems more likely to create confusion than does uniform application of the Court's doctrine. Virginia's rule also rests on a mistaken premise, for the ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant to search for information not otherwise accessible. Finally, Virginia's rule automatically would grant constitutional rights to those persons with the financial means to afford residences with garages but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage. Pp. 11–14.

292 Va. 486, 790 S. E. 2d 611, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, KAGAN, and GORSUCH, JJ., joined. THOMAS, J., filed a concurring opinion. ALITO, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

This case presents the question whether the automobile exception to the Fourth Amendment permits a police officer, uninvited and without a warrant, to enter the curtilage of a home in order to search a vehicle parked therein. It does not.

I

Officer Matthew McCall of the Albemarle County Police Department in Virginia saw the driver of an orange and black motorcycle with an extended frame commit a traffic infraction. The driver eluded Officer McCall's attempt to stop the motorcycle. A few weeks later, Officer David Rhodes of the same department saw an orange and black motorcycle traveling well over the speed limit, but the driver got away from him, too. The officers compared notes and concluded that the two incidents involved the same motorcyclist.

Upon further investigation, the officers learned that the motorcycle likely was stolen and in the possession of petitioner Ryan Collins. After discovering photographs on Collins' Facebook profile that featured an orange and black motorcycle parked at the top of the driveway of a

house, Officer Rhodes tracked down the address of the house, drove there, and parked on the street. It was later established that Collins' girlfriend lived in the house and that Collins stayed there a few nights per week.[1]

From his parked position on the street, Officer Rhodes saw what appeared to be a motorcycle with an extended frame covered with a white tarp, parked at the same angle and in the same location on the driveway as in the Facebook photograph. Officer Rhodes, who did not have a warrant, exited his car and walked toward the house. He stopped to take a photograph of the covered motorcycle from the sidewalk, and then walked onto the residential property and up to the top of the driveway to where the motorcycle was parked. In order "to investigate further," App. 80, Officer Rhodes pulled off the tarp, revealing a motorcycle that looked like the one from the speeding incident. He then ran a search of the license plate and vehicle identification numbers, which confirmed that the motorcycle was stolen. After gathering this information, Officer Rhodes took a photograph of the uncovered motorcycle, put the tarp back on, left the property, and returned to his car to wait for Collins.

Shortly thereafter, Collins returned home. Officer Rhodes walked up to the front door of the house and knocked. Collins answered, agreed to speak with Officer Rhodes, and admitted that the motorcycle was his and that he had bought it without title. Officer Rhodes then arrested Collins.

Collins was indicted by a Virginia grand jury for receiving stolen property. He filed a pretrial motion to suppress the evidence that Officer Rhodes had obtained as a result of the warrantless search of the motorcycle. Collins argued that Officer Rhodes had trespassed on the curtilage

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[1]Virginia does not dispute that Collins has Fourth Amendment standing. See *Minnesota* v. *Olson*, 495 U. S. 91, 96–100 (1990).

of the house to conduct an investigation in violation of the Fourth Amendment. The trial court denied the motion and Collins was convicted.

The Court of Appeals of Virginia affirmed. It assumed that the motorcycle was parked in the curtilage of the home and held that Officer Rhodes had probable cause to believe that the motorcycle under the tarp was the same motorcycle that had evaded him in the past. It further concluded that Officer Rhodes' actions were lawful under the Fourth Amendment even absent a warrant because "numerous exigencies justified both his entry onto the property and his moving the tarp to view the motorcycle and record its identification number." 65 Va. App. 37, 46, 773 S. E. 2d 618, 623 (2015).

The Supreme Court of Virginia affirmed on different reasoning. It explained that the case was most properly resolved with reference to the Fourth Amendment's automobile exception. 292 Va. 486, 496–501, 790 S. E. 2d 611, 616–618 (2016). Under that framework, it held that Officer Rhodes had probable cause to believe that the motorcycle was contraband, and that the warrantless search therefore was justified. *Id.,* at 498–499, 790 S. E. 2d, at 617.

We granted certiorari, 582 U. S. ___ (2017), and now reverse.

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." This case arises at the intersection of two components of the Court's Fourth Amendment jurisprudence: the automobile exception to the warrant requirement and the protection extended to the curtilage of a home.

A

1

The Court has held that the search of an automobile can be reasonable without a warrant. The Court first articulated the so-called automobile exception in *Carroll* v. *United States*, 267 U. S. 132 (1925). In that case, law enforcement officers had probable cause to believe that a car they observed traveling on the road contained illegal liquor. They stopped and searched the car, discovered and seized the illegal liquor, and arrested the occupants. *Id.,* at 134–136. The Court upheld the warrantless search and seizure, explaining that a "necessary difference" exists between searching "a store, dwelling house or other structure" and searching "a ship, motor boat, wagon or automobile" because a "vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Id.,* at 153.

The "ready mobility" of vehicles served as the core justification for the automobile exception for many years. *California* v. *Carney*, 471 U. S. 386, 390 (1985) (citing, *e.g., Cooper* v. *California*, 386 U. S. 58, 59 (1967); *Chambers* v. *Maroney*, 399 U. S. 42, 51–52 (1970)). Later cases then introduced an additional rationale based on "the pervasive regulation of vehicles capable of traveling on the public highways." *Carney,* 471 U. S., at 392. As the Court explained in *South Dakota* v. *Opperman*, 428 U. S. 364 (1976):

> "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper

working order." *Id.,* at 368.

In announcing each of these two justifications, the Court took care to emphasize that the rationales applied only to automobiles and not to houses, and therefore supported "treating automobiles differently from houses" as a constitutional matter. *Cady* v. *Dombrowski*, 413 U. S. 433, 441 (1973).

When these justifications for the automobile exception "come into play," officers may search an automobile without having obtained a warrant so long as they have probable cause to do so. *Carney*, 471 U. S., at 392–393.

2

Like the automobile exception, the Fourth Amendment's protection of curtilage has long been black letter law. "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida* v. *Jardines*, 569 U. S. 1, 6 (2013). "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Ibid.* (quoting *Silverman* v. *United States*, 365 U. S. 505, 511 (1961)). To give full practical effect to that right, the Court considers curtilage—"the area 'immediately surrounding and associated with the home'"—to be "'part of the home itself for Fourth Amendment purposes.'" *Jardines*, 569 U. S., at 6 (quoting *Oliver* v. *United States*, 466 U. S. 170, 180 (1984)). "The protection afforded the curtilage is essentially a protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened." *California* v. *Ciraolo*, 476 U. S. 207, 212–213 (1986).

When a law enforcement officer physically intrudes on the curtilage to gather evidence, a search within the meaning of the Fourth Amendment has occurred. *Jardines*, 569 U. S., at 11. Such conduct thus is presumptively unrea-

sonable absent a warrant.

B

1

With this background in mind, we turn to the application of these doctrines in the instant case. As an initial matter, we decide whether the part of the driveway where Collins' motorcycle was parked and subsequently searched is curtilage.

According to photographs in the record, the driveway runs alongside the front lawn and up a few yards past the front perimeter of the house. The top portion of the driveway that sits behind the front perimeter of the house is enclosed on two sides by a brick wall about the height of a car and on a third side by the house. A side door provides direct access between this partially enclosed section of the driveway and the house. A visitor endeavoring to reach the front door of the house would have to walk partway up the driveway, but would turn off before entering the enclosure and instead proceed up a set of steps leading to the front porch. When Officer Rhodes searched the motorcycle, it was parked inside this partially enclosed top portion of the driveway that abuts the house.

The "'conception defining the curtilage' is . . . familiar enough that it is 'easily understood from our daily experience.'" *Jardines*, 569 U. S., at 7 (quoting *Oliver*, 466 U. S., at 182, n. 12). Just like the front porch, side garden, or area "outside the front window," *Jardines,* 569 U. S., at 6, the driveway enclosure where Officer Rhodes searched the motorcycle constitutes "an area adjacent to the home and 'to which the activity of home life extends,'" and so is properly considered curtilage, *id.,* at 7 (quoting *Oliver*, 466 U. S., at 182, n. 12).

2

In physically intruding on the curtilage of Collins' home

to search the motorcycle, Officer Rhodes not only invaded Collins' Fourth Amendment interest in the item searched, *i.e.,* the motorcycle, but also invaded Collins' Fourth Amendment interest in the curtilage of his home. The question before the Court is whether the automobile exception justifies the invasion of the curtilage.[2] The answer is no.

Applying the relevant legal principles to a slightly different factual scenario confirms that this is an easy case. Imagine a motorcycle parked inside the living room of a house, visible through a window to a passerby on the street. Imagine further that an officer has probable cause to believe that the motorcycle was involved in a traffic infraction. Can the officer, acting without a warrant, enter the house to search the motorcycle and confirm whether it is the right one? Surely not.

The reason is that the scope of the automobile exception extends no further than the automobile itself. See, *e.g., Pennsylvania* v. *Labron*, 518 U. S. 938, 940 (1996) (*per curiam*) (explaining that the automobile exception "permits police to search the vehicle"); *Wyoming* v. *Houghton*, 526 U. S. 295, 300 (1999) ("[T]he Framers would have regarded as reasonable (if there was probable cause) the warrantless search of containers *within* an automobile"). Virginia asks the Court to expand the scope of the automobile exception to permit police to invade any space outside an automobile even if the Fourth Amendment protects that space. Nothing in our case law, however, suggests that the automobile exception gives an officer the right to enter a home or its curtilage to access a vehicle

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[2] Helpfully, the parties have simplified matters somewhat by each making a concession. Petitioner concedes "for purposes of this appeal" that Officer Rhodes had probable cause to believe that the motorcycle was the one that had eluded him, Brief for Petitioner 5, n. 3, and Virginia concedes that "Officer Rhodes searched the motorcycle," Brief for Respondent 12.

without a warrant. Expanding the scope of the automobile exception in this way would both undervalue the core Fourth Amendment protection afforded to the home and its curtilage and "'untether'" the automobile exception "'from the justifications underlying'" it. *Riley* v. *California*, 573 U. S. ___, ___ (2014) (slip op., at 10) (quoting *Arizona* v. *Gant*, 556 U. S. 332, 343 (2009)).

The Court already has declined to expand the scope of other exceptions to the warrant requirement to permit warrantless entry into the home. The reasoning behind those decisions applies equally well in this context. For instance, under the plain-view doctrine, "any valid warrantless seizure of incriminating evidence" requires that the officer "have a lawful right of access to the object itself." *Horton* v. *California*, 496 U. S. 128, 136–137 (1990); see also *id.,* at 137, n. 7 ("'[E]ven where the object is contraband, this Court has repeatedly stated and enforced the basic rule that the police may not enter and make a warrantless seizure'"); *G. M. Leasing Corp.* v. *United States*, 429 U. S. 338, 354 (1977) ("It is one thing to seize without a warrant property resting in an open area . . . , and it is quite another thing to effect a warrantless seizure of property . . . situated on private premises to which access is not otherwise available for the seizing officer"). A plain-view seizure thus cannot be justified if it is effectuated "by unlawful trespass." *Soldal* v. *Cook County*, 506 U. S. 56, 66 (1992). Had Officer Rhodes seen illegal drugs through the window of Collins' house, for example, assuming no other warrant exception applied, he could not have entered the house to seize them without first obtaining a warrant.

Similarly, it is a "settled rule that warrantless arrests in public places are valid," but, absent another exception such as exigent circumstances, officers may not enter a home to make an arrest without a warrant, even when they have probable cause. *Payton* v. *New York*, 445 U. S.

573, 587–590 (1980). That is because being "'arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home.'" *Id.*, at 588–589 (quoting *United States* v. *Reed*, 572 F. 2d 412, 423 (CA2 1978)). Likewise, searching a vehicle parked in the curtilage involves not only the invasion of the Fourth Amendment interest in the vehicle but also an invasion of the sanctity of the curtilage.

Just as an officer must have a lawful right of access to any contraband he discovers in plain view in order to seize it without a warrant, and just as an officer must have a lawful right of access in order to arrest a person in his home, so, too, an officer must have a lawful right of access to a vehicle in order to search it pursuant to the automobile exception. The automobile exception does not afford the necessary lawful right of access to search a vehicle parked within a home or its curtilage because it does not justify an intrusion on a person's separate and substantial Fourth Amendment interest in his home and curtilage.

As noted, the rationales underlying the automobile exception are specific to the nature of a vehicle and the ways in which it is distinct from a house. See Part II–A–1, *supra*. The rationales thus take account only of the balance between the intrusion on an individual's Fourth Amendment interest in his vehicle and the governmental interests in an expedient search of that vehicle; they do not account for the distinct privacy interest in one's home or curtilage. To allow an officer to rely on the automobile exception to gain entry into a house or its curtilage for the purpose of conducting a vehicle search would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house and its curtilage, and transform what was meant to be an exception into a tool with far broader application. Indeed, its name alone should make all this

clear enough: It is, after all, an exception for automobiles.[3]

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[3]The dissent concedes that "the degree of the intrusion on privacy" is relevant in determining whether a warrant is required to search a motor vehicle "located on private property." *Post*, at 5–6 (opinion of ALITO, J.). Yet it puzzlingly asserts that the "privacy interests at stake" here are no greater than when a motor vehicle is searched "on public streets." *Post,* at 3–4. "An ordinary person of common sense," *post,* at 2, however, clearly would understand that the privacy interests at stake in one's private residential property are far greater than on a public street. Contrary to the dissent's suggestion, it is of no significance that the motorcycle was parked just a "short walk up the driveway." *Ibid*. The driveway was private, not public, property, and the motorcycle was parked in the portion of the driveway beyond where a neighbor would venture, in an area "intimately linked to the home, . . . where privacy expectations are most heightened." *California* v. *Ciraolo*, 476 U. S. 207, 213 (1986). Nor does it matter that Officer Rhodes "did not damage any property," *post*, at 2, for an officer's care in conducting a search does not change the character of the place being searched. And, as we explain, see *infra*, at 13–14, it is not dispositive that Officer Rhodes did not "observe anything along the way" to the motorcycle "that he could not have seen from the street," *post,* at 2. Law enforcement officers need not "shield their eyes when passing by a home on public thoroughfares," *Ciraolo*, 476 U. S., at 213, but the ability visually to observe an area protected by the Fourth Amendment does not give officers the green light physically to intrude on it. See *Florida* v. *Jardines*, 569 U. S. 1, 7–8 (2013). It certainly does not permit an officer physically to intrude on curtilage, remove a tarp to reveal license plate and vehicle identification numbers, and use those numbers to confirm that the defendant committed a crime.

The dissent also mistakenly relies on a law enacted by the First Congress and mentioned in *Carroll* v. *United States*, 267 U. S. 132, 150–151 (1925), that authorized the warrantless search of vessels. *Post*, at 4–5, n. 3. The dissent thinks it implicit in that statute that "officers could cross private property such as wharves in order to reach and board those vessels." *Ibid.* Even if it were so that a police officer could have entered a private wharf to search a vessel, that would not prove he could enter the curtilage of a home to do so. To the contrary, whereas the statute relied upon in *Carroll* authorized warrantless searches of vessels, it expressly required warrants to search houses. See 267 U. S., at 150–157; Act of July 31, 1789, §24, 1 Stat. 43. Here, Officer Rhodes did not invade a private wharf to undertake a search; he invaded the curtilage of a home.

Given the centrality of the Fourth Amendment interest in the home and its curtilage and the disconnect between that interest and the justifications behind the automobile exception, we decline Virginia's invitation to extend the automobile exception to permit a warrantless intrusion on a home or its curtilage.

III

A

Virginia argues that this Court's precedent indicates that the automobile exception is a categorical one that permits the warrantless search of a vehicle anytime, anywhere, including in a home or curtilage. Specifically, Virginia points to two decisions that it contends resolve this case in its favor. Neither is dispositive or persuasive.

First, Virginia invokes *Scher* v. *United States*, 305 U. S. 251 (1938). In that case, federal officers received a confidential tip that a particular car would be transporting bootleg liquor at a specified time and place. The officers identified and followed the car until the driver "turned into a garage a few feet back of his residence and within the curtilage." *Id.,* at 253. As the driver exited his car, an officer approached and stated that he had been informed that the car was carrying contraband. The driver acknowledged that there was liquor in the trunk, and the officer proceeded to open the trunk, find the liquor, arrest the driver, and seize both the car and the liquor. *Id.,* at 253–254. Although the officer did not have a search warrant, the Court upheld the officer's actions as reasonable. *Id.,* at 255.

Scher is inapposite. Whereas Collins' motorcycle was parked and unattended when Officer Rhodes intruded on the curtilage to search it, the officers in *Scher* first encountered the vehicle when it was being driven on public streets, approached the curtilage of the home only when the driver turned into the garage, and searched the vehicle

only after the driver admitted that it contained contraband. *Scher* by no means established a general rule that the automobile exception permits officers to enter a home or its curtilage absent a warrant. The Court's brief analysis referenced *Carroll*, but only in the context of observing that, consistent with that case, the "officers properly could have stopped" and searched the car "just before [petitioner] entered the garage," a proposition the petitioner did "not seriously controvert." *Scher,* 305 U. S., at 254–255. The Court then explained that the officers did not lose their ability to stop and search the car when it entered "the open garage closely followed by the observing officer" because "[n]o search was made of the garage." *Id.,* at 255. It emphasized that "[e]xamination of the automobile accompanied an arrest, without objection and upon admission of probable guilt," and cited two search-incident-to-arrest cases. *Ibid.* (citing *Agnello* v. *United States*, 269 U. S. 20, 30 (1925); *Wisniewski* v. *United States*, 47 F. 2d 825, 826 (CA6 1931)). *Scher*'s reasoning thus was both case specific and imprecise, sounding in multiple doctrines, particularly, and perhaps most appropriately, hot pursuit. The decision is best regarded as a factbound one, and it certainly does not control this case.

Second, Virginia points to *Labron*, 518 U. S. 938, where the Court upheld under the automobile exception the warrantless search of an individual's pickup truck that was parked in the driveway of his father-in-law's farmhouse. *Id.,* at 939–940; *Commonwealth* v. *Kilgore*, 544 Pa. 439, 444, 677 A. 2d 311, 313 (1995). But *Labron* provides scant support for Virginia's position. Unlike in this case, there was no indication that the individual who owned the truck in *Labron* had any Fourth Amendment interest in the farmhouse or its driveway, nor was there a determination that the driveway was curtilage.

B

Alternatively, Virginia urges the Court to adopt a more limited rule regarding the intersection of the automobile exception and the protection afforded to curtilage. Virginia would prefer that the Court draw a bright line and hold that the automobile exception does not permit warrantless entry into "the physical threshold of a house or a similar fixed, enclosed structure inside the curtilage like a garage." Brief for Respondent 46. Requiring officers to make "case-by-case curtilage determinations," Virginia reasons, unnecessarily complicates matters and "raises the potential for confusion and . . . error." *Id.,* at 46–47 (internal quotation marks omitted).

The Court, though, has long been clear that curtilage is afforded constitutional protection. See *Oliver*, 466 U. S., at 180. As a result, officers regularly assess whether an area is curtilage before executing a search. Virginia provides no reason to conclude that this practice has proved to be unadministrable, either generally or in this context. Moreover, creating a carveout to the general rule that curtilage receives Fourth Amendment protection, such that certain types of curtilage would receive Fourth Amendment protection only for some purposes but not for others, seems far more likely to create confusion than does uniform application of the Court's doctrine.

In addition, Virginia's proposed rule rests on a mistaken premise about the constitutional significance of visibility. The ability to observe inside curtilage from a lawful vantage point is not the same as the right to enter curtilage without a warrant for the purpose of conducting a search to obtain information not otherwise accessible. Cf. *Ciraolo*, 476 U. S., at 213–214 (holding that "physically nonintrusive" warrantless aerial observation of the curtilage of a home did not violate the Fourth Amendment, and could form the basis for probable cause to support a warrant to search the curtilage). So long as it is curtilage, a

parking patio or carport into which an officer can see from the street is no less entitled to protection from trespass and a warrantless search than a fully enclosed garage.

Finally, Virginia's proposed bright-line rule automatically would grant constitutional rights to those persons with the financial means to afford residences with garages in which to store their vehicles but deprive those persons without such resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage. See *United States* v. *Ross*, 456 U. S. 798, 822 (1982) ("[T]he most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion").

IV

For the foregoing reasons, we conclude that the automobile exception does not permit an officer without a warrant to enter a home or its curtilage in order to search a vehicle therein. We leave for resolution on remand whether Officer Rhodes' warrantless intrusion on the curtilage of Collins' house may have been reasonable on a different basis, such as the exigent circumstances exception to the warrant requirement. The judgment of the Supreme Court of Virginia is therefore reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE THOMAS, concurring.

I join the Court's opinion because it correctly resolves the Fourth Amendment question in this case. Notably, the only reason that Collins asked us to review this question is because, if he can prove a violation of the Fourth Amendment, our precedents require the Virginia courts to apply the exclusionary rule and potentially suppress the incriminating evidence against him. I write separately because I have serious doubts about this Court's authority to impose that rule on the States. The assumption that state courts must apply the federal exclusionary rule is legally dubious, and many jurists have complained that it encourages "distort[ions]" in substantive Fourth Amendment law, *Rakas* v. *Illinois*, 439 U. S. 128, 157 (1978) (White, J., dissenting); see also *Coolidge* v. *New Hampshire*, 403 U. S. 443, 490 (1971) (Harlan, J., concurring); Calabresi, The Exclusionary Rule, 26 Harv. J. L. & Pub. Pol'y 111, 112 (2003).

The Fourth Amendment, as relevant here, protects the people from "unreasonable searches" of "their . . . houses." As a general rule, warrantless searches of the curtilage violate this command. At the founding, curtilage was considered part of the "hous[e]" itself. See 4 W. Blackstone, Commentaries on the Laws of England 225 (1769) ("[T]he capital house protects and privileges all its branches and appurtenants, if within the curtilage"). And

except in circumstances not present here, house searches required a specific warrant. See W. Cuddihy, The Fourth Amendment: Origins and Original Meaning 602–1791, p. 743 (2009) (Cuddihy); Donahue, The Original Fourth Amendment, 83 U. Chi. L. Rev. 1181, 1237–1240 (2016); Davies, Recovering the Original Fourth Amendment, 98 Mich. L. Rev. 547, 643–646 (1999). A warrant was required even if the house was being searched for stolen goods or contraband—objects that, unlike cars, are not protected by the Fourth Amendment at all. *Id.,* at 647–650; see also *Carroll* v. *United States*, 267 U. S. 132, 150–152 (1925) (Taft, C. J.) (discussing founding-era evidence that a search warrant was required when stolen goods and contraband were "concealed in a dwelling house" but not when they were "in course of transportation and concealed in a movable vessel"). Accordingly, the police acted "unreasonabl[y]" when they searched the curtilage of Collins' house without a warrant.[1]

While those who ratified the Fourth and Fourteenth Amendments would agree that a constitutional violation occurred here, they would be deeply confused about the posture of this case and the remedy that Collins is seeking. Historically, the only remedies for unconstitutional searches and seizures were "tort suits" and "self-help." *Utah* v. *Strieff*, 579 U. S. ___, ___ (2016) (slip op., at 4). The exclusionary rule—the practice of deterring illegal searches and seizures by suppressing evidence at criminal trials—did not exist. No such rule existed in "Roman Law, Napoleonic Law or even the Common Law of England." Burger, Who Will Watch the Watchman? 14 Am. U. L. Rev. 1 (1964). And this Court did not adopt the federal

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[1] Collins did not live at the house; he merely stayed there with his girlfriend several times a week. But Virginia does not contest Collins' assertion that the house is his, so I agree with the Court that Virginia has forfeited any argument to the contrary. See *ante,* at 2, n. 1; *United States* v. *Jones*, 565 U. S. 400, 404, n. 2 (2012).

exclusionary rule until the 20th century. See *Weeks* v. *United States*, 232 U. S. 383 (1914). As late as 1949, nearly two-thirds of the States did not have an exclusionary rule. See *Wolf* v. *Colorado*, 338 U. S. 25, 29 (1949). Those States, as then-Judge Cardozo famously explained, did not understand the logic of a rule that allowed "[t]he criminal . . . to go free because the constable has blundered." *People* v. *Defore*, 242 N. Y. 13, 21, 150 N. E. 585, 587 (1926).

The Founders would not have understood the logic of the exclusionary rule either. Historically, if evidence was relevant and reliable, its admissibility did not "depend upon the lawfulness or unlawfulness of the mode, by which it [was] obtained." *United States* v. *The La Jeune Eugenie*, 26 F. Cas. 832, 843 (No. 15, 551) (CC Mass. 1822) (Story, J.); accord, 1 S. Greenleaf, Evidence §254a, pp. 825–826 (14th ed. 1883) ("[T]hat . . . subjects of evidence may have been . . . unlawfully obtained . . . is no valid objection to their admissibility if they are pertinent to the issue"); 4 J. Wigmore, Evidence §2183, p. 626 (2d ed. 1923) ("[I]t has long been established that the admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain the evidence" (emphasis deleted)). And the common law sometimes reflected the inverse of the exclusionary rule: The fact that someone turned out to be guilty could *justify* an illegal seizure. See *Gelston* v. *Hoyt*, 3 Wheat. 246, 310 (1818) (Story, J.) ("At common law, any person may at his peril, seize for a forfeiture to the government; and if the government adopt his seizure, and the property is condemned, he will be completely justified"); 2 W. Hawkins, Pleas of the Crown 77 (1721) ("And where a Man arrests another, who is actually guilty of the Crime for which he is arrested, . . . he needs not in justifying it, set forth any special Cause of his Suspicion").

Despite this history, the Court concluded in *Mapp* v.

Ohio, 367 U. S. 643 (1961), that the States must apply the federal exclusionary rule in their own courts. *Id.,* at 655.[2] *Mapp* suggested that the exclusionary rule was required by the Constitution itself. See, *e.g., id.,* at 657 ("[T]he exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments"); *id.,* at 655 ("[E]vidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court"); *id.,* at 655–656 ("[I]t was . . . constitutionally necessary that the exclusion doctrine—an essential part of the right to privacy—be also insisted upon").[3] But that suggestion could not withstand even the slightest scrutiny. The exclusionary rule appears nowhere in the Constitution, postdates the founding by more than a century, and contradicts several longstanding principles of the common law. See *supra,* at 2–3; Cuddihy 759–760; Amar, Fourth Amendment First Principles, 107 Harv. L. Rev. 757, 786 (1994); Kaplan, The Limits of the Exclusionary Rule, 26

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[2] Twelve years before *Mapp*, the Court declined to apply the federal exclusionary rule to the States. See *Wolf* v. *Colorado*, 338 U. S. 25 (1949). *Wolf* denied that the Constitution requires the exclusionary rule, since "most of the English-speaking world" does not apply that rule and alternatives such as civil suits and internal police discipline do not "fal[l] below the minimal standards assured by the Due Process Clause." *Id.,* at 29, 31. In *Mapp*, the Court overruled *Wolf* and applied the exclusionary rule to the States, even though no party had briefed or argued that question. See 367 U. S., at 672–674, and nn. 4–6 (Harlan, J., dissenting); Stewart, The Road to *Mapp* v. *Ohio* and Beyond: The Origins, Development and Future of the Exclusionary Rule, 83 Colum. L. Rev. 1365, 1368 (1983).

[3] Justice Black, the essential fifth vote in *Mapp*, did not agree that the Fourth Amendment contains an exclusionary rule. See 367 U. S., at 661–662 (concurring opinion) ("[T]he Fourth Amendment does not itself contain any provision expressly precluding the use of such evidence, and I am extremely doubtful that such a provision could properly be inferred"). But he concluded that, when the police seize private papers, suppression is required by a combination of the Fourth and Fifth Amendments. See *id.,* at 662–666.

Stan. L. Rev. 1027, 1030–1031 (1974).

Recognizing this, the Court has since rejected *Mapp*'s "'[e]xpansive dicta'" and clarified that the exclusionary rule is not required by the Constitution. *Davis* v. *United States*, 564 U. S. 229, 237 (2011) (quoting *Hudson* v. *Michigan*, 547 U. S. 586, 591 (2006)). Suppression, this Court has explained, is not "a personal constitutional right." *United States* v. *Calandra*, 414 U. S. 338, 348 (1974); accord, *Stone* v. *Powell*, 428 U. S. 465, 486 (1976). The Fourth Amendment "says nothing about suppressing evidence," *Davis*, *supra*, at 236, and a prosecutor's "use of fruits of a past unlawful search or seizure 'work[s] no new Fourth Amendment wrong,'" *United States* v. *Leon*, 468 U. S. 897, 906 (1984) (quoting *Calandra*, *supra*, at 354).[4] Instead, the exclusionary rule is a "judicially created" doctrine that is "prudential rather than constitutionally mandated." *Pennsylvania Bd. of Probation and Parole* v. *Scott*, 524 U. S. 357, 363 (1998); accord, *Herring* v. *United States*, 555 U. S. 135, 139 (2009); *Arizona* v. *Evans*, 514 U. S. 1, 10 (1995); *United States* v. *Janis*, 428 U. S. 433, 459–460 (1976).[5]

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[4]The exclusionary rule is not required by the Due Process Clause either. Given its nonexistent historical foundation, the exclusionary rule cannot be a "settled usag[e] and mod[e] of proceeding existing in the common and statute law of England, before the emigration of our ancestors." *Murray's Lessee* v. *Hoboken Land & Improvement Co.*, 18 How. 272, 277 (1856). And the rule "has 'no bearing on . . . the fairness of the trial.'" *Desist* v. *United States*, 394 U. S. 244, 254, n. 24 (1969). If anything, the exclusionary rule itself "'offends basic concepts of the criminal justice system'" and exacts a "'costly toll upon truth-seeking.'" *Herring* v. *United States*, 555 U. S. 135, 141 (2009). "The [excluded] evidence is likely to be the most reliable that could possibly be obtained [and thus] exclusion rather than admission creates the danger of a verdict erroneous on the true facts." H. Friendly, Benchmarks 260 (1967).

[5]These statements cannot be dismissed as mere dicta. Cf. *Dickerson* v. *United States*, 530 U. S. 428, 438–441, and n. 2 (2000) (constitutionalizing the rule announced in *Miranda* v. *Arizona*, 384 U. S. 436 (1966),

Although the exclusionary rule is not part of the Constitution, this Court has continued to describe it as "federal law" and assume that it applies to the States. *Evans*, *supra*; *Massachusetts* v. *Sheppard*, 468 U. S. 981, 991 (1984). Yet the Court has never attempted to justify this assumption. If the exclusionary rule is federal law, but is not grounded in the Constitution or a federal statute, then it must be federal common law. See Monaghan, Foreword: Constitutional Common Law, 89 Harv. L. Rev. 1, 10 (1975). As federal common law, however, the exclusionary rule cannot bind the States.

Federal law trumps state law only by virtue of the Supremacy Clause, which makes the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties . . . the supreme Law of the Land," Art. VI, cl. 2. When the Supremacy Clause refers to "[t]he Laws of the United States made in Pursuance [of the Constitution]," it means federal statutes, not federal common law. Ramsey, The Supremacy Clause, Original Meaning, and Modern Law, 74 Ohio St. L. J. 559, 572–599 (2013) (Ramsey); Clark, Separation of Powers as a Safeguard of Federalism, 79 Texas L. Rev. 1321, 1334–1336, 1338–1367 (2001) (Clark); see also *Gibbons* v. *Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C. J.) ("The appropriate application of that part of the clause which confers . . . supremacy on laws . . . is to . . . the laws of Congress, made in pursuance of the constitution"); Hart, The Relations

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despite earlier precedents to the contrary). The nonconstitutional status of the exclusionary rule is why this Court held in *Stone* v. *Powell*, 428 U. S. 465, 482–495 (1976), that violations are not cognizable on federal habeas review. Cf. *Dickerson*, *supra*, at 439 n. 3. And the nonconstitutional status of the rule is why this Court has created more than a dozen exceptions to it, which apply even when the Fourth Amendment is concededly violated. See *United States* v. *Weaver*, 808 F. 3d 26, 49 (CADC 2015) (Henderson, J., dissenting) (collecting cases); cf. *Dickerson*, *supra*, at 441.

Between State and Federal Law, 54 Colum. L. Rev. 489, 500 (1954) ("[T]he supremacy clause is limited to those 'Laws' of the United States which are passed by Congress pursuant to the Constitution"). By referencing laws "made in Pursuance" of the Constitution, the Supremacy Clause incorporates the requirements of Article I, which force Congress to stay within its enumerated powers, §8, and follow the cumbersome procedures for enacting federal legislation, §7. See *Wyeth* v. *Levine*, 555 U. S. 555, 585–587 (2009) (THOMAS, J., concurring in judgment); 3 J. Story, Commentaries on the Constitution of the United States §1831, pp. 693–694 (1833); Clark 1334. Those procedures—especially the requirement that bills pass the Senate, where the States are represented equally and Senators were originally elected by state legislatures—safeguard federalism by making federal legislation more difficult to pass and more responsive to state interests. See Ramsey 565; Clark 1342–1343. Federal common law bypasses these procedures and would not have been considered the kind of "la[w]" that can bind the States under the Supremacy Clause. See Ramsey 564–565, 568, 574, 581; Jay, Origins of Federal Common Law: Part Two, 133 U. Pa. L. Rev. 1231, 1275 (1985).

True, this Court, without citing the Supremacy Clause, has recognized several "enclaves of federal judge-made law which bind the States." *Banco Nacional de Cuba* v. *Sabbatino*, 376 U. S. 398, 426 (1964); see, *e.g., id.,* at 427–428 (foreign affairs); *Hinderlider* v. *La Plata River & Cherry Creek Ditch Co.*, 304 U. S. 92, 110 (1938) (disputes between States); *Garrett* v. *Moore-McCormack Co.*, 317 U. S. 239, 245 (1942) (admiralty); *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 366 (1943) (certain rights and obligations of the United States); *Textile Workers* v. *Lincoln Mills of Ala.*, 353 U. S. 448, 456–457 (1957) (aspects of federal labor law). To the extent these enclaves are delegations of lawmaking authority from the Constitution or a

federal statute, they do not conflict with the original meaning of the Supremacy Clause (though they might be illegitimate for other reasons). See Ramsey 568–569; Grano, Prophylactic Rules in Criminal Procedure: A Question of Article III Legitimacy, 80 Nw. U. L. Rev. 100, 131–132 (1985). To the extent these enclaves are not rooted in the Constitution or a statute, their pre-emptive force is questionable. But that is why this Court has "limited" them to a "'few'" "narrow areas" where "the authority and duties of the United States as sovereign are intimately involved" or where "the interstate or international nature of the controversy makes it inappropriate for state law to control." *Texas Industries, Inc.* v. *Radcliff Materials, Inc.*, 451 U. S. 630, 640–641 (1981) (quoting *Wheeldin* v. *Wheeler*, 373 U. S. 647, 651 (1963)). Outside these narrow enclaves, the general rule is that "[t]here is no federal general common law" and "[e]xcept in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State." *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, 78 (1938).

These precedents do not support requiring the States to apply the exclusionary rule. As explained, the exclusionary rule is not rooted in the Constitution or a federal statute. This Court has repeatedly rejected the idea that the rule is in the Fourth and Fourteenth Amendments, expressly or implicitly. See *Davis*, 564 U. S., at 236; *Leon*, 468 U. S., at 905–906; cf. *Ziglar* v. *Abbasi*, 582 U. S. ___, ___ (2017) (slip op., at 11) (explaining that reading implied remedies into the Constitution is "a 'disfavored' judicial activity"). And the exclusionary rule does not implicate any of the special enclaves of federal common law. It does not govern the sovereign duties of the United States or disputes of an interstate or international character. Instead, the rule governs the methods that state police officers use to solve crime and the procedures that state courts use at criminal trials—subjects that the Federal

Government generally has no power to regulate. See *United States* v. *Morrison*, 529 U. S. 598, 618 (2000) (explaining that "[t]he regulation" and "vindication" of intrastate crime "has always been the province of the States"); *Smith* v. *Phillips*, 455 U. S. 209, 221 (1982) ("Federal courts hold no supervisory authority over state judicial proceedings"). These are not areas where federal common law can bind the States.[6]

* * *

In sum, I am skeptical of this Court's authority to impose the exclusionary rule on the States. We have not yet revisited that question in light of our modern precedents, which reject *Mapp*'s essential premise that the exclusionary rule is required by the Constitution. We should do so.

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[6] Of course, the States are free to adopt their own exclusionary rules as a matter of state law. But nothing in the Federal Constitution requires them to do so. Even assuming the Constitution requires particular state-law remedies for federal constitutional violations, it does not require the exclusionary rule. The "sole purpose" of the exclusionary rule is "to deter future Fourth Amendment violations"; it does not "'redress'" or "'repair'" past ones. *Davis* v. *United States*, 564 U. S. 229, 236–237 (2011). This Court has noted the lack of evidence supporting its deterrent effect, see *United States* v. *Janis*, 428 U. S. 433, 450, n. 22 (1976), and this Court has recognized the effectiveness of alternative deterrents such as state tort law, state criminal law, internal police discipline, and suits under 42 U. S. C. §1983, see *Hudson* v. *Michigan*, 547 U. S. 586, 597–599 (2006).

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE ALITO, dissenting.

The Fourth Amendment prohibits "unreasonable" searches. What the police did in this case was entirely reasonable. The Court's decision is not.

On the day in question, Officer David Rhodes was standing at the curb of a house where petitioner, Ryan Austin Collins, stayed a couple of nights a week with his girlfriend. From his vantage point on the street, Rhodes saw an object covered with a tarp in the driveway, just a car's length or two from the curb. It is undisputed that Rhodes had probable cause to believe that the object under the tarp was a motorcycle that had been involved a few months earlier in a dangerous highway chase, eluding the police at speeds in excess of 140 mph. See Tr. of Oral Arg. 22; App. to Pet. for Cert. 67. Rhodes also had probable cause to believe that petitioner had been operating the motorcycle[1] and that a search of the motorcycle would provide evidence that the motorcycle had been stolen.[2]

If the motorcycle had been parked at the curb, instead of in the driveway, it is undisputed that Rhodes could have

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[1] Petitioner had a photo on his Facebook profile of a motorcycle that resembled the unusual motorcycle involved in the prior highway chase. See *ante*, at 1–2 (majority opinion).

[2] Rhodes suspected the motorcycle was stolen based on a conversation he had with the man who had sold the motorcycle to petitioner. See App. 57–58.

searched it without obtaining a warrant. See Tr. of Oral Arg. 9; Reply Brief 1. Nearly a century ago, this Court held that officers with probable cause may search a motor vehicle without obtaining a warrant. *Carroll* v. *United States*, 267 U. S. 132, 153, 155–156 (1925). The principal rationale for this so-called automobile or motor-vehicle exception to the warrant requirement is the risk that the vehicle will be moved during the time it takes to obtain a warrant. *Id.*, at 153; *California* v. *Carney*, 471 U. S. 386, 390–391 (1985). We have also observed that the owner of an automobile has a diminished expectation of privacy in its contents. *Id.*, at 391–393.

So why does the Court come to the conclusion that Officer Rhodes needed a warrant in this case? Because, in order to reach the motorcycle, he had to walk 30 feet or so up the driveway of the house rented by petitioner's girlfriend, and by doing that, Rhodes invaded the home's "curtilage." *Ante*, at 6–7. The Court does not dispute that the motorcycle, when parked in the driveway, was just as mobile as it would have been had it been parked at the curb. Nor does the Court claim that Officer Rhodes's short walk up the driveway did petitioner or his girlfriend any harm. Rhodes did not damage any property or observe anything along the way that he could not have seen from the street. But, the Court insists, Rhodes could not enter the driveway without a warrant, and therefore his search of the motorcycle was unreasonable and the evidence obtained in that search must be suppressed.

An ordinary person of common sense would react to the Court's decision the way Mr. Bumble famously responded when told about a legal rule that did not comport with the reality of everyday life. If that is the law, he exclaimed, "the law is a ass—a idiot." C. Dickens, Oliver Twist 277 (1867).

The Fourth Amendment is neither an "ass" nor an "idiot." Its hallmark is reasonableness, and the Court's strikingly

unreasonable decision is based on a misunderstanding of Fourth Amendment basics.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects." A "house," for Fourth Amendment purposes, is not limited to the structure in which a person lives, but by the same token, it also does not include all the real property surrounding a dwelling. See, *e.g.*, *Florida* v. *Jardines*, 569 U. S. 1, 6 (2013); *United States* v. *Dunn*, 480 U. S. 294, 300–301 (1987). Instead, a person's "house" encompasses the dwelling and a circumscribed area of surrounding land that is given the name "curtilage." *Oliver* v. *United States*, 466 U. S. 170, 180 (1984). Land outside the curtilage is called an "open field," and a search conducted in that area is not considered a search of a "house" and is therefore not governed by the Fourth Amendment. *Ibid.* Ascertaining the boundaries of the curtilage thus determines only whether a search is governed by the Fourth Amendment. The concept plays no other role in Fourth Amendment analysis.

In this case, there is no dispute that the search of the motorcycle was governed by the Fourth Amendment, and therefore whether or not it occurred within the curtilage is not of any direct importance. The question before us is not whether there was a Fourth Amendment search but whether the search was reasonable. And the only possible argument as to why it might not be reasonable concerns the need for a warrant. For nearly a century, however, it has been well established that officers do not need a warrant to search a motor vehicle on public streets so long as they have probable cause. *Carroll*, *supra*, at 153, 156; see also, *e.g.*, *Pennsylvania* v. *Labron*, 518 U. S. 938, 940 (1996) (*per curiam*); *Carney*, *supra*, at 394; *South Dakota* v. *Opperman*, 428 U. S. 364, 367–368 (1976); *Chambers* v. *Maroney*, 399 U. S. 42, 50–51 (1970). Thus, the issue here is whether there is any good reason why this same rule

should not apply when the vehicle is parked in plain view in a driveway just a few feet from the street.

In considering that question, we should ask whether the reasons for the "automobile exception" are any less valid in this new situation. Is the vehicle parked in the driveway any less mobile? Are any greater privacy interests at stake? If the answer to those questions is "no," then the automobile exception should apply. And here, the answer to each question is emphatically "no." The tarp-covered motorcycle parked in the driveway could have been uncovered and ridden away in a matter of seconds. And Officer Rhodes's brief walk up the driveway impaired no real privacy interests.

In this case, the Court uses the curtilage concept in a way that is contrary to our decisions regarding other, exigency-based exceptions to the warrant requirement. Take, for example, the "emergency aid" exception. See *Brigham City* v. *Stuart*, 547 U. S. 398 (2006). When officers reasonably believe that a person inside a dwelling has urgent need of assistance, they may cross the curtilage and enter the building without first obtaining a warrant. *Id.*, at 403–404. The same is true when officers reasonably believe that a person in a dwelling is destroying evidence. See *Kentucky* v. *King*, 563 U. S. 452, 460 (2011). In both of those situations, we ask whether "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Brigham City*, *supra*, at 403 (quoting *Mincey* v. *Arizona*, 437 U. S. 385, 394 (1978)). We have not held that the need to cross the curtilage independently necessitates a warrant, and there is no good reason to apply a different rule here.[3]

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[3] Indeed, I believe that the First Congress implicitly made the same judgment in enacting the statute on which *Carroll* v. *United States*, 267 U. S. 132 (1925), relied when the motor-vehicle exception was first

It is no answer to this argument that the emergency-aid and destruction-of-evidence exceptions require an inquiry into the practicality of obtaining a warrant in the particular circumstances of the case. Our precedents firmly establish that the motor-vehicle exception, unlike these other exceptions, "has no separate exigency requirement." *Maryland* v. *Dyson*, 527 U. S. 465, 466–467 (1999) (*per curiam*). It is settled that the mobility of a motor vehicle categorically obviates any need to engage in such a case-specific inquiry. Requiring such an inquiry here would mark a substantial alteration of settled Fourth Amendment law.

This does not mean, however, that a warrant is never needed when officers have probable cause to search a motor vehicle, no matter where the vehicle is located. While a case-specific inquiry regarding *exigency* would be inconsistent with the rationale of the motor-vehicle exception, a case-specific inquiry regarding *the degree of intrusion on privacy* is entirely appropriate when the motor vehicle to be searched is located on private property. After all, the ultimate inquiry under the Fourth Amendment is

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recognized. Since the First Congress sent the Bill of Rights to the States for ratification, we have often looked to laws enacted by that Congress as evidence of the original understanding of the meaning of those Amendments. See, *e.g.*, *id.*, at 150–151; *Town of Greece* v. *Galloway*, 572 U. S. ___, ___–___ (2014) (slip op., at 7–8); *United States* v. *Villamonte-Marquez*, 462 U. S. 579, 585–586 (1983); *United States* v. *Ramsey*, 431 U. S. 606, 616–617 (1977). *Carroll* itself noted that the First Congress enacted a law authorizing officers to search vessels without a warrant. 267 U. S., at 150–151. Although this statute did not expressly state that these officers could cross private property such as wharves in order to reach and board those vessels, I think that was implicit. Otherwise, the statute would very often have been ineffective. And when Congress later enacted similar laws, it made this authorization express. See, *e.g.*, An Act Further to Prevent Smuggling and for Other Purposes, §5, 14 Stat. 179. For this reason, Officer Rhodes's conduct in this case is consistent with the original understanding of the Fourth Amendment, as explicated in *Carroll*.

whether a search is reasonable, and that inquiry often turns on the degree of the intrusion on privacy. Thus, contrary to the opinion of the Court, an affirmance in this case would not mean that officers could perform a warrantless search if a motorcycle were located inside a house. See *ante*, at 7. In that situation, the intrusion on privacy would be far greater than in the present case, where the real effect, if any, is negligible.

I would affirm the decision below and therefore respectfully dissent.