



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

NC YMCA Youth & Government 2021 Court of Appeals Case 2 **CARPENTER v. UNITED STATES**

This case was created and issued by StreetLaw. We are appreciative of their support of this program and nurturing the potential of our delegates.

North Carolina
**YMCA YOUTH &
GOVERNMENT**

Carpenter v. United States

To be argued: Nov. 29, 2017

Background

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]”

The Fourth Amendment prohibits searches and seizures that are unreasonable. A search occurs when *the government* looks through someone’s property or belongings, as long as that person had *a reasonable expectation of privacy*.

- “The government” could be any agent or officer of the federal, state, or local governments.
- “A reasonable expectation of privacy” is a legal term. It means that (1) the person whose belongings are being searched expected those belongings to be private, and (2) society recognizes that expectation as being reasonable.

The second part of the Fourth Amendment is about warrants:

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

A warrant is a legal document that authorizes a search. *Probable cause* is an officer’s reasonable belief, supported by personal knowledge or reliable sources, that a crime has been committed and items connected to the crime are likely to be found in a certain place. A search authorized by a warrant is considered a “reasonable” search.

This is a case about the location data generated by our cell phones, and whether it is an unreasonable search for the government to collect that data.

Cell phones work by establishing radio connections with nearby cell towers. Phones are constantly searching for the strongest signal from nearby towers. Whenever someone’s cell phone establishes a connection with a tower, the wireless company can log certain details about that connection. These details might include the date, time, and length of each call, the phone numbers engaged in the call,

and the location of the cell towers the phone was connected to when the call began and ended. This information can give some clues to where a phone was located on certain days and times. Law enforcement officials sometimes find it helpful to use this information from the wireless companies to help confirm whether a suspect was in a certain area at a specific time.

Facts

The FBI suspected that Timothy Carpenter was participating in armed robberies. The FBI agents wanted to review data about the location of Carpenter's cell phone. A federal law, the *Stored Communications Act*, allows law enforcement officers to request an order from a judge that requires a telecommunications company to turn over such records. To get that order (which is not a warrant), the officers must show the judge that the records they want are relevant to an active criminal investigation. "Relevant to a criminal investigation" is a lower standard than "probable cause," which must indicate that a crime has been committed and the information being sought is connected to the crime.

The FBI showed a judge that the records they wanted were related to a criminal investigation, and they received records about Carpenter's cell phone from his wireless phone company. The records included information about which cell phone towers Carpenter's phone sent signals to at the beginning and end of each call he made or received over a 127-day period.

The government used the location data at Carpenter's trial to show that Carpenter used his cell phone within a mile or two of several robberies around the time the robberies occurred. The trial also included testimony from several accomplices who said that Carpenter organized most of the robberies. Carpenter was convicted of nine armed robberies.

Carpenter appealed that ruling, arguing that the prosecution should not have been allowed to present the cellphone location data at his trial. He said that the government's collection of that information was an unconstitutional search under the Fourth Amendment. Such records, he argued, should only be seized with a warrant, supported by probable cause.

The appeals court ruled that the government's collection of cell-site records was not legally a search, because Carpenter did not have a reasonable expectation that the location data from his cell phone was private. If it is not a search, the government did not need a warrant.

Issue for the Supreme Court

Did the government need to get a warrant before gathering location data about Carpenter's cell phone from his wireless company?

Laws and Precedents

Stored Communications Act (1986): The *Stored Communications Act* authorizes a judge to issue an order to a telecommunications company to hand over user records to the government. The government must "offer specific and articulable facts showing that there are reasonable grounds to believe" that the records sought "are relevant and material to an ongoing criminal investigation."

Smith v. Maryland (1979): The Supreme Court ruled that the police's installation of a device that tracked the phone numbers a person dialed from his home phone was not a search because the caller could not reasonably expect those numbers to remain private. The device was not installed in Smith's home, so the police had not entered his home without authorization. The Court emphasized that the device did "not acquire the contents of communications."

U.S. v. Jones (2012): The Supreme Court ruled that the installation of a GPS tracking device on someone's vehicle, without a warrant, is an unlawful search under the Fourth Amendment. The Court said that the GPS tracking in this case was unconstitutional because the government had trespassed onto Jones's personal property to install the device. Although the majority opinion did not say so, five justices agreed, through concurring opinions, that such long-term GPS monitoring (the police had monitored Jones's location for more than a month) also violates someone's reasonable expectation of privacy.

Riley v. California (2014): The Supreme Court decided that a warrantless search of data on an arrestee's cell phone is generally unconstitutional. The justices said that police officers should get a warrant if they want to search through someone's cell phone when they are arrested (unless it is an emergency). The Court said that people have strong privacy interests in their phones, which can store more personal information than a person in the past would have ever been able to carry on them.

Stored Communications Act

The 1986 Act added new statutory provisions, 18 U.S.C. §§ 2701 to 2710, to protect the privacy of stored electronic communications, either before such a communication is transmitted to the recipient, or, if a copy of the message is kept, after it is delivered. These provisions focus on technologies such as electronic mail and computer transmissions, where copies of the messages are kept. Electronic storage is defined in 18 U.S.C. § 2510(17) as both any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof and the storage of such communication by an electronic communication service for purposes of backup protection of such communication.

Section 2701 of Title 18 makes it an offense to either (a) intentionally access, without authorization, a facility through which an electronic communication service is provided; or (b) intentionally exceed the authorization of such facility; and as a result of this conduct, obtain, alter or prevent authorized access to a wire or electronic communication while it is in electronic storage in such a system. 18 U.S.C. § 2701(a). This section covers "electronic mail" service, which permits a sender to transmit a digital message to the service's facility, where it is held in storage until the addressee requests it, U.S.C. § 2701, as well as "voice mail" service.

This provision is intended to address "computer hackers" and corporate spies. The provision is not intended to criminalize access to "electronic bulletin boards," which are generally open to the public. A communication will be found to be readily accessible to the general public if the telephone number of the system and other means of access are widely known, and if a person does not, in the course of gaining access, encounter any warnings, encryptions, password requests, or other indicia of intended privacy. To access a communication on such a system is not a violation of the law. 18 U.S.C. § 2701(a).

Smith v. Maryland

MR. JUSTICE, BLACKMUN delivered the opinion of the Court.

This case presents the question whether the installation and use of a pen register 1 constitutes a "search" within the meaning of the Fourth Amendment,² made applicable to the States through the Fourteenth Amendment. *Mapp v. Ohio*, 367 U. S. 643 (1961).

I

On March 5, 1976, in Baltimore, Md., Patricia McDonough was robbed. She gave the police a description of the robber and of a 1975 Monte Carlo automobile she had observed near the scene of the crime. Tr. 66-68. After the robbery, McDonough began receiving threatening and obscene phone calls from a man identifying himself as the robber. On one occasion, the caller asked that she step out on her front porch; she did so, and saw the 1975 Monte Carlo she had earlier described to police

moving slowly past her home. *Id.*, at 70. On March 16, police spotted a man who met McDonough's description driving a 1975 Monte Carlo in her neighborhood. *Id.*, at 71-72. By tracing the license plate number, police learned that the car was registered in the name of petitioner, Michael Lee Smith. *Id.*, at 72.

The next day, the telephone company, at police request, installed a pen register at its central offices to record the numbers dialed from the telephone at petitioner's home. *Id.*, at 73, 75. The police did not get a warrant or court order before having the pen register installed. The register revealed that on March 17 a call was placed from petitioner's home to McDonough's phone. *Id.*, at 74. On the basis of this and other evidence, the police obtained a warrant to search petitioner's residence. *Id.*, at 75. The search revealed that a page in petitioner's phone book was turned down to the name and number of Patricia McDonough; the phone book was seized. *Ibid.* Petitioner was arrested, and a six-man lineup was held on March 19. McDonough identified petitioner as the man who had robbed her. *Id.*, at 70-71.

Petitioner was indicted in the Criminal Court of Baltimore for robbery. By pretrial motion, he sought to suppress "all fruits derived from the pen register" on the ground that the police had failed to secure a warrant prior to its installation. Record 14; Tr. 54-56. The trial court denied the suppression motion, holding that the warrantless installation of the pen register did not violate the Fourth Amendment. *Id.*, at 63. Petitioner then waived a jury, and the case was submitted to the court on an agreed statement of facts. *Id.*, at 65-66. The pen register tape (evidencing the fact that a phone call had been made from petitioner's phone to McDonough's phone) and the phone book seized in the search of petitioner's residence were admitted into evidence against him. *Id.*, at 74-76. Petitioner was convicted, *id.*, at 78, and was sentenced to six years. He appealed to the Maryland Court of Special Appeals, but the Court of Appeals of Maryland issued a writ of certiorari to the intermediate court in advance of its decision in order to consider whether the pen register evidence had been properly admitted at petitioner's trial. 283 Md. 156, 160, 389 A. 2d 858, 860 (1978).

The Court of Appeals affirmed the judgment of conviction, holding that "there is no constitutionally protected reasonable expectation of privacy in the numbers dialed into a telephone system and hence no search within the fourth amendment is implicated by the use of a pen register installed at the central offices of the telephone company." *Id.*, at 173, 389 A. 2d, at 867. Because there was no "search," the court concluded, no warrant was needed. Three judges dissented, expressing the view that individuals do have a legitimate expectation of privacy regarding the phone numbers they dial from their homes; that the installation of a pen register thus constitutes a "search"; and that, in the absence of exigent circumstances, the failure of police to secure a warrant mandated that the pen register evidence here be excluded. *Id.*, at 174, 178, 389 A. 2d, at 868, 870. Certiorari was granted in order to resolve indications of conflict in the decided cases as to the restrictions imposed by the Fourth Amendment on the use of pen registers.³ 439 U. S. 1001 (1978).

II

A

The Fourth Amendment guarantees "t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." In determining whether a particular form of government-initiated electronic surveillance is a "search" within the meaning of the Fourth Amendment, our lodestar is *Katz v. United States*, 389 U. S. 347 (1967). In *Katz*, Government agents had intercepted the contents of a telephone conversation by attaching an electronic listening device to the outside of a public phone booth. The Court rejected the argument that a "search" can occur only when there has been a "physical intrusion" into a "constitutionally protected area," noting that the

Fourth Amendment "protects people, not places." *Id.*, at 351-353. Because the Government's monitoring of *Katz*' conversation "violated the privacy upon* which he justifiably relied while using the telephone booth," the Court held that it "constituted a 'search and seizure' within the meaning of the Fourth Amendment." *Id.*, at 353.

Consistently with *Katz*, this Court uniformly has held that the application of the Fourth Amendment depends on whether the person invoking its protection can claim a "justifiable," a "reasonable," or a "legitimate expectation of privacy" that has been invaded by government action. E. g., *Rakas v. Illinois*, 439 U. S. 128, 143, and n. 12 (1978); *id.*, at 150, 151 (concurring opinion); *id.*, at 164 (dissenting opinion); *United States v. Chadwick*, 433 U. S. 1, 7 (1977); *United States v. Miller*, 425 U. S. 435, 442 (1976); *United States v. Dionisio*, 410 U. S. 1, 14 (1973); *Couch v. United States*, 409 U. S. 322, 335-336 (1973); *United States v. White*, 401 U. S. 745, 752 (1971) (plurality opinion); *Mancusi v. DeForte*, 392 U. S. 364, 368 (1968); *Terry v. Ohio*, 392 U. S. 1, 9 (1968). This inquiry, as Mr. Justice Harlan aptly noted in his *Katz* concurrence, normally embraces two discrete questions. The first is whether the individual, by his conduct, has "exhibited an actual (subjective) expectation of privacy," 389 U. S., at 361-whether, in the words of the *Katz* majority, the individual has shown that "he seeks to preserve [something] as private." *Id.*, at 351. The second question is whether the individual's subjective expectation of privacy is "one that society is prepared to recognize as 'reasonable,'" *id.*, at 361- whether, in the words of the *Katz* majority, the individual's expectation, viewed objectively, is "justifiable" under the circumstances. *Id.*, at 353.5 See *Rakas v. Illinois*, 439 U. S., at 143-144, n. 12; *id.*, at 151 (concurring opinion); *United States v. White*, 401 U. S., at 752 (plurality opinion).

B

In applying the *Katz* analysis to this case, it is important to begin by specifying precisely the nature of the state activity that is challenged. The activity here took the form of installing and using a pen register. Since the pen register was installed on telephone company property at the telephone company's central offices, petitioner obviously cannot claim that his "property" was invaded or that police intruded into a "constitutionally protected area." Petitioner's claim, rather, is that, notwithstanding the absence of a trespass, the State, as did the Government in *Katz*, infringed a

"legitimate expectation of privacy" that petitioner held. Yet a pen register differs significantly from the listening device employed in *Katz*, for pen registers do not acquire the contents of communications.

This Court recently noted:

"Indeed, a law enforcement official could not even determine from the use of a pen register whether a communication existed. These devices do not hear sound. They disclose only the telephone numbers that have been dialed—a means of establishing communication. Neither the purport of any communication between the caller and the recipient of the call, their identities, nor whether the call was even completed is disclosed by pen registers." *United States v. New York Tel. Co.*, 434 U. S. 159, 167 (1977).

Given a pen register's limited capabilities, therefore, petitioner's argument that its installation and use constituted a "search" necessarily rests upon a claim that he had a "legitimate expectation of privacy" regarding the numbers he dialed on his phone.

This claim must be rejected. First, we doubt that people in general entertain any actual expectation of privacy in the numbers they dial. All telephone users realize that they must "convey" phone numbers to the telephone company, since it is through telephone company switching equipment that their calls are completed. All subscribers realize, moreover, that the phone company has facilities for making permanent records of the numbers they dial, for they see a list of their longdistance (toll) calls on their monthly bills. In fact, pen registers and similar devices are routinely used by telephone companies "for the purposes of checking billing operations, detecting fraud, and preventing violations of law." *United States v. New York Tel. Co.*, 434 U. S., at 174-175. Electronic equipment is used not only to keep billing records of toll calls, but also "to keep a record of all calls dialed from a telephone which is subject to a special rate structure." *Hodge v. Mountain States Tel. & Tel. Co.*, 555 F. 2d 254, 266 (CA9 1977) (concurring opinion). Pen registers are regularly employed "to determine whether a home phone is being used to conduct a business, to check for a defective dial, or to check for overbilling."

Note, *The Legal Constraints upon the Use of the Pen Register as a Law Enforcement Tool*, 60 Cornell L. Rev. 1028, 1029 (1975) (footnotes omitted). Although most people may be oblivious to a pen register's esoteric functions, they presumably have some awareness of one common use: to aid in

the identification of persons making annoying or obscene calls. See, e. g., *Von Lusch v. C & P Telephone Co.*, 457 F. Supp. 814, 816 (Md. 1978); Note, 60 Cornell L. Rev., at 1029-1030, n. 11; Claerhout, *The Pen Register*, 20 Drake L. Rev. 108, 110-111 (1970). Most phone books tell subscribers, on a page entitled "Consumer Information," that the company "can frequently help in identifying to the authorities the origin of unwelcome and troublesome calls." E. g., *Baltimore Telephone Directory* 21 (1978); *District of Columbia Telephone Directory* 13 (1978). Telephone users, in sum, typically know that they must convey numerical information to the phone company; that the phone company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes. Although subjective

expectations cannot be scientifically gauged, it is too much to believe that telephone subscribers, under these circumstances, harbor any general expectation that the numbers they dial will remain secret.

Petitioner argues, however, that, whatever the expectations of telephone users in general, he demonstrated an expectation of privacy by his own conduct here, since he "ug[ed] the telephone in his house to the exclusion of all others." Brief for Petitioner 6 (emphasis added). But the site of the call is immaterial for purposes of analysis in this case. Although petitioner's conduct may have been calculated to keep the contents of his conversation private, his conduct was not and could not have been calculated to preserve the privacy of the number he dialed. Regardless of his location, petitioner had to convey that number to the telephone company in precisely the same way if he wished to complete his call. The fact that he dialed the number on his home phone rather than on some other phone could make no conceivable difference, nor could any subscriber rationally think that it would. Second, even if petitioner did harbor some subjective expectation that the phone numbers he dialed would remain private, this expectation is not "one that society is prepared to recognize as 'reasonable.'"

Katz v. United States, 389 U. S., at 361. This Court consistently has held that a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties. E. g., United States v. Miller, 425 U. S., at 442-444; Couch v. United States, 409 U. S., at 335-336; United States v. White, 401 U. S., at 752 (plurality opinion); Hoffa v. United States, 385 U. S. 293, 302 (1966); Lopez v. United States, 373 U. S. 427 (1963). In Miller, for example, the Court held that a bank depositor has no "legitimate 'expectation of privacy'" in financial information "voluntarily conveyed to ... banks and exposed to their employees in the ordinary course of business." 425 U. S., at 442. The Court explained: "The depositor takes the risk, in revealing his affairs to another, that the information will be conveyed by that person to the Government. . . . This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed." Id., at 443. Because the depositor "assumed the risk" of disclosure, the Court held that it would be unreasonable for him to expect his financial records to remain private.

This analysis dictates that petitioner can claim no legitimate expectation of privacy here. When he used his phone, petitioner voluntarily conveyed numerical information to the telephone company and "exposed" that information to its equipment in the ordinary course of business. In so doing, petitioner assumed the risk that the company would reveal to police the numbers he dialed. The switching equipment that processed those numbers is merely the modern counterpart of the operator who, in an earlier day, personally completed calls for the subscriber. Petitioner concedes that if he had placed his calls through an operator, he could claim no legitimate expectation of privacy. Tr. of Oral Arg. 3-5, 11-12, 32. We are not inclined to hold that a different constitutional result is required because the telephone company has decided to automate.

Petitioner argues, however, that automatic switching equipment differs from a live operator in one pertinent respect. An operator, in theory at least, is capable of remembering every number that is conveyed to him by callers. Electronic equipment, by contrast, can "remember" only those numbers it is programmed to record, and telephone companies, in view of their present billing practices, usually do not record local calls. Since petitioner, in calling McDonough, was making a local call, his expectation of privacy as to her number, on this theory, would be "legitimate."

This argument does not withstand scrutiny. The fortuity of whether or not the phone company in fact elects to make a quasi-permanent record of a particular number dialed does not, in our view, make any constitutional difference. Regardless of the phone company's election, petitioner voluntarily conveyed to it information that it had facilities for recording and that it was free to record. In these circumstances, petitioner assumed the risk that the information would be divulged to police. Under petitioner's theory, Fourth Amendment protection would exist, or not, depending on how the telephone company chose to define local-dialing zones, and depending on how it chose to bill its customers for local calls. Calls placed across town, or dialed directly, would be protected; calls placed across the river, or dialed with operator assistance, might not be. We are not inclined to make a crazy quilt of the Fourth Amendment, especially in circumstances where (as here) the pattern of protection would be dictated by billing practices of a private corporation.

We therefore conclude that petitioner in all probability entertained no actual expectation of privacy in the phone numbers he dialed, and that, even if he did, his expectation was not "legitimate." The installation and use of a pen register, consequently, was not a "search," and no warrant was required.

The judgment of the Maryland Court of Appeals is affirmed.

It is so ordered.

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN joins, dissenting.

I am not persuaded that the numbers dialed from a private telephone fall outside the constitutional protection of the Fourth and Fourteenth Amendments.

In *Katz v. United States*, 389 U. S. 347, 352, the Court acknowledged the "vital role that the public telephone has come to play in private communication [s]." The role played by a private telephone is even more vital, and since *Katz* it has been abundantly clear that telephone conversations carried on by people in their homes or offices are fully protected by the Fourth and Fourteenth Amendments. As the Court said in *United States v. United States District Court*, 407 U. S. 297, 313, "the broad and unsuspected governmental incursions into conversational privacy which electronic surveillance entails necessitate the application of Fourth Amendment safeguards." (Footnote omitted.)

Nevertheless, the Court today says that those safeguards do not extend to the numbers dialed from a private telephone, apparently because when a caller dials a number the digits may be recorded by the telephone company for billing purposes. But that observation no more than describes the basic nature

of telephone calls. A telephone call simply cannot be made without the use of telephone company property and without payment to the company for the service. The telephone conversation itself must be electronically transmitted by telephone company equipment, and may be recorded or overheard by the use of other company equipment. Yet we have squarely held that the user of even a public telephone is entitled "to assume that the words he utters into the mouthpiece will not be broadcast to the world." *Katz v. United States*, supra, at 352.

The central question in this case is whether a person who makes telephone calls from his home is entitled to make a similar assumption about the numbers he dials. What the telephone company does or might do with those numbers is no more relevant to this inquiry than it would be in a case involving the conversation itself. It is simply not enough to say, after *Katz*, that there is no legitimate expectation of privacy in the numbers dialed because the caller assumes the risk that the telephone company will disclose them to the police.

I think that the numbers dialed from a private telephone-like the conversations that occur during a call-are within the constitutional protection recognized in *Katz*. 'It seems clear to me that information obtained by pen register surveillance of a private telephone is information in which the telephone subscriber has a legitimate expectation of privacy.' The information captured by such surveillance emanates from private conduct within a person's home or office-locations that without question are entitled to Fourth and Fourteenth Amendment protection. Further, that information is an integral part of the telephonic communication that under *Katz* is entitled to constitutional protection, whether or not it is captured by a trespass into such an area.

The numbers dialed from a private telephone-although certainly more prosaic than the conversation itself-are not without "content." Most private telephone subscribers may have their own numbers listed in a publicly distributed directory, but I doubt there are any who would be happy to have broadcast to the world a list of the local or long distance numbers they have called. This is not because such a list might in some sense be incriminating, but because it easily could reveal the identities of the persons and the places called, and thus reveal the most intimate details of a person's life.

I respectfully dissent.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting. The Court concludes that because individuals have no actual or legitimate expectation of privacy in information they voluntarily relinquish to telephone companies, the use of pen registers by government agents is immune from Fourth Amendment scrutiny. Since I remain convinced that constitutional protections are not abrogated whenever a person apprises another of facts valuable in criminal investigations, see, e. g., *United States v. White*, 401 U. S. 745, 786-790 (1971) (Harlan, J., dissenting); *id.*, at 795-796 (MARSHALL, J., dissenting); *California Bankers Assn. v. Shultz*, 416 U. S. 21, 95-96 (1974) (MARSHALL, J., dissenting); *United States v. Miller*, 425 U. S. 435, 455-456 (1976) (MARSHALL, J., dissenting), I respectfully dissent.

Applying the standards set forth in *Katz v. United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring), the Court first determines that telephone subscribers have no subjective expectations of privacy concerning the numbers they dial. To reach this conclusion, the Court posits that individuals somehow infer from the long-distance listings on their phone bills, and from the cryptic assurances of "help" in tracing obscene calls included in "most" phone books, that pen registers are regularly used for recording local calls. See ante, at 742-743. But even assuming, as I do not, that individuals "typically know" that a phone company monitors calls for internal reasons, ante, at 743,¹ it does not follow that they expect this information to be made available to the public in general or the government in particular. Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes. See *California Bankers Assn. v.*

Shultz, supra, at 95-96 (MARSHALL, J., dissenting).

The crux of the Court's holding, however, is that whatever expectation of privacy petitioner may in fact have entertained regarding his calls, it is not one "society is prepared to recognize as 'reasonable.'" Ante, at 743. In so ruling, the Court determines that individuals who convey information to third parties have "assumed the risk" of disclosure to the government. Ante, at 744, 745. This analysis is misconceived in two critical respects.

Implicit in the concept of assumption of risk is some notion of choice. At least in the third-party consensual surveillance cases, which first incorporated risk analysis into Fourth Amendment doctrine, the defendant presumably had exercised some discretion in deciding who should enjoy his confidential communications. See, e. g., *Lopez v. United States*, 373 U. S. 427, 439 (1963); *Hoffa v. United States*, 385 U. S. 293, 302- 303 (1966); *United States v. White*, supra, at 751-752 (plurality opinion). By contrast here, unless a person is prepared to forgo use of what for many has become a personal or professional necessity, he cannot help but accept the risk of surveillance. Cf. *Lopez v. United States*, supra, at 465-466 (BRENNAN, J., dissenting). It is idle to speak of "assuming" risks in contexts where, as a practical matter, individuals have no realistic alternative.

More fundamentally, to make risk analysis dispositive in assessing the reasonableness of privacy expectations would allow the government to define the scope of Fourth Amendment protections. For example, law enforcement officials, simply by announcing their intent to monitor the content of random samples of first-class mail or private phone conversations, could put the public on notice of the risks they would thereafter assume in such 'communications. See Amsterdam, *Perspectives on the Fourth Amendment*, 58 Minn. L. Rev. 349, 384, 407 (1974). Yet, although acknowledging this implication of its analysis, the Court is willing to concede only that, in some circumstances, a further "normative inquiry would be proper." Ante, at 740-741, n. 5. No meaningful effort is made to explain what those circumstances might be, or why this case is not among them.

In my view, whether privacy expectations are legitimate within the meaning of Katz depends not on the risks an individual can be presumed to accept when imparting information to third parties, but on the risks he should be forced to assume in a free and open society. By its terms, the constitutional prohibition of unreasonable searches and seizures assigns to the judiciary some prescriptive responsibility. As Mr. Justice Harlan, who formulated the standard the Court applies today, himself recognized: "[s]ince it is the task of the law to form and project, as well as mirror and reflect, we should not ... merely recite ... risks without examining the desirability of saddling them upon society." *United States v. White*, supra, at 786 (dissenting opinion). In making this dissenting assessment, courts must evaluate the "intrinsic character" of investigative practices with reference to the basic values underlying the Fourth Amendment. *California Bankers Assn. v. Shultz*, 416 U. S., at 95 (MAIsEAL1, J., dissenting). And for those "extensive intrusions that significantly jeopardize [individuals'] sense of security . . . , more than self-restraint by law enforcement officials is required." *United States v. White*, 401 U. S., at 786 (Harlan, J., dissenting).

The use of pen registers, I believe, constitutes such an extensive intrusion. To hold otherwise ignores the vital role telephonic communication plays in our personal and professional relationships, see *Katz v. United States*, 389 U. S., at 352, as well as the First and Fourth Amendment interests implicated by unfettered official surveillance. Privacy in placing calls is of value not only to those engaged in criminal activity. The prospect of unregulated governmental monitoring will undoubtedly prove disturbing even to those with nothing illicit to hide. Many individuals, including members of unpopular political organizations or journalists with confidential sources, may legitimately wish to avoid disclosure of their personal contacts. See *NAACP v. Alabama*, 357 U. S. 449, 463 (1958); *Branzburg v. Hayes*, 408 U. S. 665, 695 (1972); *id.*, at 728-734 (STEWART, J., dissenting). Permitting governmental access to telephone records on less than probable cause may thus impede certain forms of political affiliation and journalistic endeavor that are the hallmark of a truly free society. Particularly given the Government's previous reliance on warrantless telephonic surveillance to trace reporters' sources and monitor protected political activity,² I am unwilling to insulate use of pen registers from independent judicial review.

Just as one who enters a public telephone booth is "entitled to assume that the words he utters into the mouthpiece will not be broadcast to the world," *Katz v. United States*, supra, at 352, so too, he should be entitled to assume that the numbers he dials in the privacy of his home will be recorded, if at all, solely for the phone company's business purposes. Accordingly, I would require law enforcement officials to obtain a warrant before they enlist telephone companies to secure information otherwise beyond the government's reach.

United States v. Jones

JUSTICE SCALIA delivered the opinion of the Court.

We decide whether the attachment of a GlobalPositioning-System (GPS) tracking device to an individual's vehicle, and subsequent use of that device to monitor the vehicle's movements on public streets, constitutes a search or seizure within the meaning of the Fourth Amendment.

I

In 2004 respondent Antoine Jones, owner and operator of a nightclub in the District of Columbia, came under suspicion of trafficking in narcotics and was made the target of an investigation by a joint FBI and Metropolitan Police Department task force. Officers employed various investigative techniques, including visual surveillance of the nightclub, installation of a camera focused on the front door of the club, and a pen register and wiretap covering Jones's cellular phone.

Based in part on information gathered from these sources, in 2005 the Government applied to the United States District Court for the District of Columbia for a warrant authorizing the use of an electronic tracking device on the Jeep Grand Cherokee registered to Jones's wife. A warrant issued, authorizing installation of the device in the District of Columbia and within 10 days.

On the 11th day, and not in the District of Columbia but in Maryland,¹ agents installed a GPS tracking device on the undercarriage of the Jeep while it was parked in a public parking lot. Over the next 28 days, the Government used the device to track the vehicle's movements, and once had to replace the device's battery when the vehicle was parked in a different public lot in Maryland. By means of signals from multiple satellites, the device established the vehicle's location within 50 to 100 feet, and communicated that location by cellular phone to a Government computer. It relayed more than 2,000 pages of data over the 4-week period.

The Government ultimately obtained a multiple-count indictment charging Jones and several alleged coconspirators with, as relevant here, conspiracy to distribute and possess with intent to distribute five kilograms or more of cocaine and 50 grams or more of cocaine base, in violation of 21 U. S. C. §§841 and 846. Before trial, Jones filed a motion to suppress evidence obtained through the GPS device. The District Court granted the motion only in part, suppressing the data obtained while the vehicle was parked in the garage adjoining Jones's residence. 451 F. Supp. 2d 71, 88 (2006). It held the remaining data admissible, because "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." Ibid. (quoting *United States v. Knotts*, 460 U. S. 276, 281 (1983)). Jones's trial in October 2006 produced a hung jury on the conspiracy count.

In March 2007, a grand jury returned another indictment, charging Jones and others with the same conspiracy. The Government introduced at trial the same GPS-derived locational data admitted in the first trial, which connected Jones to the alleged conspirators' stash house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. The jury returned a guilty verdict, and the District Court sentenced Jones to life imprisonment.

The United States Court of Appeals for the District of Columbia Circuit reversed the conviction because of admission of the evidence obtained by warrantless use of the GPS device which, it said, violated the Fourth Amendment. *United States v. Maynard*, 615 F. 3d 544 (2010). The D. C. Circuit denied the Government's petition for rehearing en banc, with four judges dissenting. 625 F. 3d 766 (2010). We granted certiorari, 564 U. S. ____ (2011).

II

A

The Fourth Amendment provides in relevant part that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” It is beyond dispute that a vehicle is an “effect” as that term is used in the Amendment. *United States v. Chadwick*, 433 U. S. 1, 12 (1977). We hold that the Government's installation of a GPS device on a target's vehicle,² and its use of that device to monitor the vehicle's movements, constitutes a “search.”

It is important to be clear about what occurred in this case: The Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a “search” within the meaning of the Fourth Amendment when it was adopted. *Entick v. Carrington*, 95 Eng. Rep. 807 (C. P. 1765), is a “case we have described as a ‘monument of English freedom’ ‘undoubtedly familiar’ to ‘every American statesman’ at the time the Constitution was adopted, and considered to be ‘the true and ultimate expression of constitutional law’” with regard to search and seizure. *Brower v. County of Inyo*, 489 U. S. 593, 596 (1989) (quoting *Boyd v. United States*, 116 U. S. 616, 626 (1886)). In that case, Lord Camden expressed in plain terms the significance of property rights in search-and-seizure analysis:

“[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all; if he will tread upon his neighbour's ground, he must justify it by law.” *Entick*, *supra*, at 817.

The text of the Fourth Amendment reflects its close connection to property, since otherwise it would have referred simply to “the right of the people to be secure against unreasonable searches and seizures”; the phrase “in their persons, houses, papers, and effects” would have been superfluous. Consistent with this understanding, our Fourth Amendment jurisprudence was tied to common-law trespass, at least until the latter half of the 20th century. *Kyllo v. United States*, 533 U. S. 27, 31 (2001); Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 Mich. L. Rev. 801, 816 (2004). Thus, in *Olmstead v. United States*, 277 U. S. 373, 384 (1928), we held that wiretaps attached to telephone wires on the public streets did not constitute a Fourth Amendment search because “[t]here was no entry of the houses or offices of the defendants,” *id.*, at 464.

Our later cases, of course, have deviated from that exclusively property-based approach. In *Katz v. United States*, 389 U. S. 347, 351 (1967), we said that “the Fourth Amendment protects people, not

places,” and found a violation in attachment of an eavesdropping device to a public telephone booth. Our later cases have applied the analysis of Justice Harlan’s concurrence in that case, which said that a violation occurs when government officers violate a person’s “reasonable expectation of privacy,” *id.*, at 360. See, e.g., *Bond v. United States*, 529 U. S. 334 (2000); *California v. Ciraolo*, 476 U. S. 207 (1986); *Smith v. Maryland*, 442 U. S. 735 (1979).

The Government contends that the Harlan standard shows that no search occurred here, since Jones had no “reasonable expectation of privacy” in the area of the Jeep accessed by Government agents (its underbody) and in the locations of the Jeep on the public roads, which were visible to all. But we need not address the Government’s contentions, because Jones’s Fourth Amendment rights do not rise or fall with the Katz formulation. At bottom, we must “assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.” *Kyllo*, *supra*, at 34. As explained, for most of our history the Fourth Amendment was understood to embody a particular concern for government trespass upon the areas (“persons, houses, papers, and effects”) it enumerates. Katz did not repudiate that understanding. Less than two years later the Court upheld defendants’ contention that the Government could not introduce against them conversations between other people obtained by warrantless placement of electronic surveillance devices in their homes. The opinion rejected the dissent’s contention that there was no Fourth Amendment violation “unless the conversational privacy of the homeowner himself is invaded.”⁴ *Alderman v. United States*, 394 U. S. 165, 176 (1969). “[W]e [do not] believe that Katz, by holding that the Fourth Amendment protects persons and their private conversations, was intended to withdraw any of the protection which the Amendment extends to the home . . .” *Id.*, at 180.

More recently, in *Soldal v. Cook County*, 506 U. S. 56 (1992), the Court unanimously rejected the argument that although a “seizure” had occurred “in a ‘technical’ sense” when a trailer home was forcibly removed, *id.*, at 62, no Fourth Amendment violation occurred because law enforcement had not “invade[d] the [individuals’] privacy,” *id.*, at 60. Katz, the Court explained, established that “property rights are not the sole measure of Fourth Amendment violations,” but did not “snuff[f] out the previously recognized protection for property.” 506 U. S., at 64. As Justice Brennan explained in his concurrence in *Knotts*, Katz did not erode the principle “that, when the Government does engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.” 460 U. S., at 286 (opinion concurring in judgment). We have embodied that preservation of past rights in our very definition of “reasonable expectation of privacy” which we have said to be an expectation “that has a source outside of the Fourth Amendment, either by reference to concepts of real or personal property law or to understandings that are recognized and permitted by society.” *Minnesota v. Carter*, 525 U. S. 83, 88 (1998) (internal quotation marks omitted). Katz did not narrow the Fourth Amendment’s scope.

The Government contends that several of our post-Katz cases foreclose the conclusion that what occurred here constituted a search. It relies principally on two cases in which we rejected Fourth Amendment challenges to “beepers,” electronic tracking devices that represent another form of electronic monitoring. The first case, *Knotts*, upheld against Fourth Amendment challenge the use of a “beeper” that had been placed in a container of chloroform, allowing law enforcement to monitor the location of the container. 460 U. S., at 278. We said that there had been no infringement of *Knotts*’ reasonable expectation of privacy since the information obtained—the location of the automobile carrying the container on public roads, and the location of the off-loaded container in open fields near *Knotts*’ cabin—had been voluntarily conveyed to the public.⁶ *Id.*, at 281–282. But as we have discussed, the Katz reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassory test. The holding in *Knotts* addressed only the former, since the latter was not at issue. The beeper had been placed in the container before it came into *Knotts*’ possession, with the consent of the then-owner. 460 U. S., at 278. *Knotts* did not challenge that installation, and we specifically declined to consider its effect on the Fourth Amendment analysis. *Id.*, at 279, n. *Knotts* would be relevant, perhaps, if the Government were making the argument that what would otherwise

be an unconstitutional search is not such where it produces only public information. The

Government does not make that argument, and we know of no case that would support it.

The second “beeper” case, *United States v. Karo*, 468 U. S. 705 (1984), does not suggest a different conclusion. There we addressed the question left open by *Knotts*, whether the installation of a beeper in a container amounted to a search or seizure. 468 U. S., at 713. As in *Knotts*, at the time the beeper was installed the container belonged to a third party, and it did not come into possession of the defendant until later. 468 U. S., at 708. Thus, the specific question we considered was whether the installation “with the consent of the original owner constitute[d] a search or seizure . . . when the container is delivered to a buyer having no knowledge of the presence of the beeper.” *Id.*, at 707 (emphasis added). We held not. The Government, we said, came into physical contact with the container only before it belonged to the defendant *Karo*; and the transfer of the container with the unmonitored beeper inside did not convey any information and thus did not invade *Karo*’s privacy. See *id.*, at 712. That conclusion is perfectly consistent with the one we reach here. *Karo* accepted the container as it came to him, beeper and all, and was therefore not entitled to object to the beeper’s presence, even though it was used to monitor the container’s location. Cf. *On Lee v. United States*, 343 U. S. 747, 751–752 (1952) (no search or seizure where an informant, who was wearing a concealed microphone, was invited into the defendant’s business). Jones, who possessed the Jeep at the time the Government trespassorily inserted the information-gathering device, is on much different footing. The Government also points to our exposition in *New York v. Class*, 475 U. S. 106 (1986), that “[t]he exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a ‘search.’” *Id.*, at 114. That statement is of marginal relevance here since, as the Government acknowledges, “the

officers in this case did more than conduct a visual inspection of respondent's vehicle," Brief for United States 41 (emphasis added). By attaching the device to the Jeep, officers encroached on a protected area. In *Class* itself we suggested that this would make a difference, for we concluded that an officer's momentary reaching into the interior of a vehicle did constitute a search.⁷ 475 U. S., at 114–115.

Finally, the Government's position gains little support from our conclusion in *Oliver v. United States*, 466 U. S. 170 (1984), that officers' information-gathering intrusion on an "open field" did not constitute a Fourth Amendment search even though it was a trespass at common law, *id.*, at 183. Quite simply, an open field, unlike the curtilage of a home, see *United States v. Dunn*, 480 U. S. 294, 300 (1987), is not one of those protected areas enumerated in the Fourth Amendment. *Oliver*, *supra*, at 176–177. See also *Hester v. United States*, 265 U. S. 57, 59 (1924). The Government's physical intrusion on such an area—unlike its intrusion on the "effect" at issue here—is of no Fourth Amendment significance.

B

The concurrence begins by accusing us of applying "18th-century tort law." *Post*, at 1. That is a distortion. What we apply is an 18th-century guarantee against unreasonable searches, which we believe must provide at a minimum the degree of protection it afforded when it was adopted. The concurrence does not share that belief. It would apply exclusively *Katz*'s reasonable-expectation-of-privacy test, even when that eliminates rights that previously existed.

The concurrence faults our approach for "present[ing] particularly vexing problems" in cases that do not involve physical contact, such as those that involve the transmission of electronic signals. *Post*, at 9. We entirely fail to understand that point. For unlike the concurrence, which would make *Katz* the exclusive test, we do not make trespass the exclusive test. Situations involving merely the transmission of electronic signals without trespass would remain subject to *Katz* analysis.

In fact, it is the concurrence's insistence on the exclusivity of the *Katz* test that needlessly leads us into "particularly vexing problems" in the present case. This Court has to date not deviated from the understanding that mere visual observation does not constitute a search. See *Kyllo*, 533 U. S., at 31–32. We accordingly held in *Knotts* that "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." 460 U. S., at 281. Thus, even assuming that the concurrence is correct to say that "[t]raditional surveillance" of Jones for a 4-week period "would have required a large team of agents, multiple vehicles, and perhaps aerial assistance," *post*, at 12, our cases suggest that such visual observation is constitutionally permissible. It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy, but the present case does not require us to answer that question.

And answering it affirmatively leads us needlessly into additional thorny problems. The concurrence posits that “relatively short-term monitoring of a person’s movements on public streets” is okay, but that “the use of longer term GPS monitoring in investigations of most offenses” is no good. Post, at 13 (emphasis added). That introduces yet another novelty into our jurisprudence. There is no precedent for the proposition that whether a search has occurred depends on the nature of the crime being investigated. And even accepting that novelty, it remains unexplained why a 4-week investigation is “surely” too long and why a drug-trafficking conspiracy involving substantial amounts of cash and narcotics is not an “extraordinary offens[e]” which may permit longer observation. See post, at 13–14.

What of a 2-day monitoring of a suspected purveyor of stolen electronics? Or of a 6-month monitoring of a suspected terrorist? We may have to grapple with these “vexing problems” in some future case where a classic trespassory search is not involved and resort must be had to Katz analysis; but there is no reason for rushing forward to resolve them here.

III

The Government argues in the alternative that even if the attachment and use of the device was a search, it was reasonable—and thus lawful—under the Fourth Amendment because “officers had reasonable suspicion, and indeed probable cause, to believe that [Jones] was a leader in a large-scale cocaine distribution conspiracy.” Brief for United States 50–51. We have no occasion to consider this argument. The Government did not raise it below, and the D. C. Circuit therefore did not address it. See 625 F. 3d, at 767 (Ginsburg, Tatel, and Griffith, JJ., concurring in denial of rehearing en banc). We consider the argument forfeited. See *Sprietsma v. Mercury Marine*, 537 U. S. 51, 56, n. 4 (2002).

* * *

The judgment of the Court of Appeals for the D. C. Circuit is affirmed. It is so ordered.

JUSTICE SOTOMAYOR, concurring.

I join the Court’s opinion because I agree that a search within the meaning of the Fourth Amendment occurs, at a minimum, “[w]here, as here, the Government obtains information by physically intruding on a constitutionally protected area.” Ante, at 6, n. 3. In this case, the Government installed a Global Positioning System (GPS) tracking device on respondent Antoine Jones’ Jeep without a valid warrant and without Jones’ consent, then used that device to monitor the Jeep’s movements over the course of four weeks. The Government usurped Jones’ property for the purpose of conducting surveillance on him, thereby invading privacy interests long afforded, and undoubtedly entitled to, Fourth Amendment protection. See, e.g., *Silverman v. United States*, 365 U. S. 505, 511– 512 (1961). Of course, the Fourth Amendment is not concerned only with trespassory intrusions on property. See, e.g., *Kyllo v. United States*, 533 U. S. 27, 31–33 (2001). Rather, even in the absence of a trespass, “a Fourth Amendment search occurs when the government violates a subjective expectation of privacy

that society recognizes as reasonable.” *Id.*, at 33; see also *Smith v. Maryland*, 442 U. S. 735, 740–741 (1979); *Katz v. United States*, 389 U. S. 347, 361 (1967) (Harlan, J., concurring). In *Katz*, this Court enlarged its then-prevailing focus on property rights by announcing that the reach of the Fourth Amendment does not “turn upon the presence or absence of a physical intrusion.” *Id.*, at 353. As the majority’s opinion makes clear, however, *Katz*’s reasonable-expectation-of-privacy test augmented, but did not displace or diminish, the common-law trespassory test that preceded it. *Ante*, at 8. Thus, “when the Government does engage in physical intrusion of a constitutionally protected area in order to obtain information, that intrusion may constitute a violation of the Fourth Amendment.” *United States v. Knotts*, 460 U. S. 276, 286 (1983) (Brennan, J., concurring in judgment); see also, e.g., *Rakas v. Illinois*, 439 U. S. 128, 144, n. 12 (1978). JUSTICE ALITO’s approach, which discounts altogether the constitutional relevance of the Government’s physical intrusion on Jones’ Jeep, erodes that longstanding protection for privacy expectations inherent in items of property that people possess or control. See *post*, at 5–7 (opinion concurring in judgment). By contrast, the trespassory test applied in the majority’s opinion reflects an irreducible constitutional minimum: When the Government physically invades personal property to gather information, a search occurs. The reaffirmation of that principle suffices to decide this case.

Nonetheless, as JUSTICE ALITO notes, physical intrusion is now unnecessary to many forms of surveillance. *Post*, at 9–12. With increasing regularity, the Government will be capable of duplicating the monitoring undertaken in this case by enlisting factory- or owner-installed vehicle tracking devices or GPS-enabled smartphones. See *United States v. Pineda-Moreno*, 617 F. 3d 1120, 1125 (CA9 2010) (Kozinski, C. J., dissenting from denial of rehearing en banc). In cases of electronic or other novel modes of surveillance that do not depend upon a physical invasion on property, the majority opinion’s trespassory test may provide little guidance. But “[s]ituations involving merely the transmission of electronic signals without trespass would remain subject to *Katz* analysis.” *Ante*, at 11. As JUSTICE ALITO incisively observes, the same technological advances that have made possible nontrespassory surveillance techniques will also affect the *Katz* test by shaping the evolution of societal privacy expectations. *Post*, at 10–11. Under that rubric, I agree with JUSTICE ALITO that, at the very least, “longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.”

Post, at 13.

In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. See, e.g., *People v. Weaver*, 12 N. Y. 3d 433, 441–442, 909 N. E. 2d 1195, 1199 (2009) (“Disclosed in [GPS] data . . . will be trips the indisputably private nature of which takes little imagination to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the

by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on”).

The Government can store such records and efficiently mine them for information years into the future. *Pineda-Moreno*, 617 F. 3d, at 1124 (opinion of Kozinski, C. J.). And because GPS monitoring

is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices:

“limited police resources and community hostility.” *Illinois v. Lidster*, 540 U. S. 419, 426 (2004).

Awareness that the Government may be watching chills associational and expressive freedoms. And

the Government’s unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring—by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in

its unfettered discretion, chooses to track—may “alter the relationship between citizen and government in a way that is inimical to democratic society.” *United States v. Cuevas-Perez*, 640 F. 3d 272, 285 (CA7 2011) (Flaum, J., concurring).

I would take these attributes of GPS monitoring into account when considering the existence of a reasonable societal expectation of privacy in the sum of one’s public movements. I would ask whether people reasonably expect that their movements will be recorded and aggregated in a manner that enables the Government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on. I do not regard as dispositive the fact that the Government might obtain the fruits of GPS monitoring through lawful conventional surveillance techniques. See *Kyllo*, 533 U. S., at 35, n. 2;

ante, at 11 (leaving open the possibility that duplicating traditional surveillance “through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy”). I would also consider the appropriateness of entrusting to the Executive, in the absence of any oversight from a coordinate branch, a tool so amenable to misuse, especially in light of the Fourth Amendment’s goal to curb arbitrary exercises of police power to and prevent “a too permeating police surveillance,” *United States v. Di Re*, 332 U. S. 581, 595 (1948).

More fundamentally, it may be necessary to reconsider the premise that an individual has no reasonable expectation of privacy in information voluntarily disclosed to third parties. E.g., *Smith*, 442 U. S., at 742; *United States v. Miller*, 425 U. S. 435, 443 (1976). This approach is ill suited to the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks. People disclose the phone numbers that they dial or text to their cellular providers; the URLs that they visit and the e-mail addresses with which they correspond to their Internet service providers; and the books, groceries, and medications they purchase to online retailers. Perhaps, as JUSTICE ALITO notes, some people may find the “tradeoff” of privacy for convenience “worthwhile,” or come to accept this “diminution of privacy” as “inevitable,” post, at 10, and perhaps not. I for one doubt that people would accept without complaint the warrantless disclosure to the Government of a list of every Web site they had visited in the last week, or month, or

year. But whatever the societal expectations, they can attain constitutionally protected status only if our Fourth Amendment jurisprudence ceases to treat secrecy as a prerequisite for privacy. I would not assume that all information voluntarily disclosed to some member of the public for a limited purpose is, for that reason alone, disentitled to Fourth Amendment protection. See *Smith*, 442 U. S., at 749 (Marshall, J., dissenting) (“Privacy is not a discrete commodity, possessed absolutely or not at all. Those who disclose certain facts to a bank or phone company for a limited business purpose need not assume that this information will be released to other persons for other purposes”); see also *Katz*, 389 U. S., at 351–352 (“[W]hat [a person] seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected”). Resolution of these difficult questions in this case is unnecessary, however, because the Government’s physical intrusion on Jones’ Jeep supplies a narrower basis for decision. I therefore join the majority’s opinion.

Riley v. California

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

I A

In the first case, petitioner David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley’s license had been suspended. The officer impounded Riley’s car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car’s hood. See Cal. Penal Code Ann. §§12025(a)(1), 12031(a)(1) (West 2009).

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

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he “went through” Riley’s phone “looking for evidence, because . . . gang members will often video themselves with guns or take pictures of themselves with the guns.” App. in No. 13–132, p. 20. Although there was “a lot of stuff”

on the phone, particular files that “caught [the detective’s] eye” included videos of young men sparring while someone yelled encouragement using the moniker “Blood.” *Id.*, at 11–13. The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Riley was ultimately charged, in connection with that earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. The State alleged that Riley had committed those crimes for the benefit of a criminal street gang, an aggravating factor that carries an enhanced sentence. Compare Cal. Cite as: 573 U. S. ____ (2014) Penal Code Ann. §246 (2008) with §186.22(b)(4)(B) (2014). Prior to trial, Riley moved to suppress all evidence that the police had obtained from his cell phone. He contended that the searches of his phone violated the Fourth Amendment, because they had been performed without a warrant and were not otherwise justified by exigent circumstances. The trial court rejected that argument. App. in No. 13–132, at 24, 26. At Riley’s trial, police officers testified about the photographs and videos found on the phone, and some of the photographs were admitted into evidence. Riley was convicted on all three counts and received an enhanced sentence of 15 years to life in prison.

The California Court of Appeal affirmed. No. D059840 (Cal. App., Feb. 8, 2013), App. to Pet. for Cert. in No. 13–132, pp. 1a–23a. The court relied on the California Supreme Court’s decision in *People v. Diaz*, 51 Cal. 4th 84, 244 P. 3d 501 (2011), which held that the Fourth Amendment permits a warrantless search of cell phone data incident to an arrest, so long as the cell phone was immediately associated with the arrestee’s person. See *id.*, at 93, 244 P. 3d, at 505–506.

The California Supreme Court denied Riley’s petition for review, App. to Pet. for Cert. in No. 13–132, at 24a, and we granted certiorari, 571 U. S. ____ (2014).

B

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

They next used an online phone directory to trace that phone number to an apartment building. When the officers went to the building, they saw Wurie’s name on a mailbox and observed through a window a woman who resembled the woman in the photograph on Wurie’s phone. They secured the

apartment while obtaining a search warrant and, upon later executing the warrant, found and seized 215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash. Wurie was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition. See 18 U. S. C. §922(g); 21 U. S. C. §841(a). He moved to suppress the evidence obtained from the search of the apartment, arguing that it was the fruit of an unconstitutional search of his cell phone. The District Court denied the motion. 612 F. Supp. 2d 104 (Mass. 2009). Wurie was convicted on all three counts and sentenced to 262 months in prison.

A divided panel of the First Circuit reversed the denial of Wurie's motion to suppress and vacated Wurie's convictions for possession with intent to distribute and possession of a firearm as a felon. 728 F. 3d 1 (2013). The court held that cell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant, because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interests. See *id.*, at 8–11.

We granted certiorari. 571 U. S. ____ (2014). Cite as: 573 U. S. ____ (2014)

II

The Fourth Amendment provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

As the text makes clear, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Brigham City v. Stuart*, 547 U. S. 398, 403 (2006). Our cases have determined that “[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, . . . reasonableness generally requires the obtaining of a judicial warrant.” *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646, 653 (1995). Such a warrant ensures that the inferences to support a search are “drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.” *Johnson v. United States*, 333 U. S. 10, 14 (1948).

In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement. See *Kentucky v. King*, 563 U. S. ____, ____ (2011) (slip op., at 5–6). The two cases before us concern the reasonableness of a warrantless search incident to a lawful arrest. In 1914, this Court first acknowledged in dictum “the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime.” *Weeks v. United States*, 232 U. S. 383, 392. Since that time, it has been well accepted that such a search constitutes an exception to the warrant requirement. Indeed, the label “exception” is something of a misnomer in this context, as warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant. See 3 W. LaFare, *Search and Seizure* §5.2(b), p. 132, and n. 15 (5th ed. 2012).

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

The first, *Chimel v. California*, 395 U. S. 752 (1969), laid the groundwork for most of the existing search incident to arrest doctrine. Police officers in that case arrested Chimel inside his home and proceeded to search his entire three-bedroom house, including the attic and garage. In particular rooms, they also looked through the contents of drawers. *Id.*, at 753–754.

The Court crafted the following rule for assessing the reasonableness of a search incident to arrest: “When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer’s safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee’s person in order to prevent its concealment or destruction. . . . There is ample justification, therefore, for a search of the arrestee’s person and the area ‘within his immediate control’—construing that phrase to mean the area from within which he might gain possession of a Cite as: 573 U. S. ____ (2014) weapon or destructible evidence.” *Id.*, at 762–763.

The extensive warrantless search of Chimel’s home did not fit within this exception, because it was not needed to protect officer safety or to preserve evidence. *Id.*, at 763, 768. Four years later, in *United States v. Robinson*, 414 U. S. 218 (1973), the Court applied the Chimel analysis in the context of a search of the arrestee’s person. A police officer had arrested Robinson for driving with a revoked license. The officer conducted a patdown search and felt an object that he could not identify in Robinson’s coat pocket. He removed the object, which turned out to be a crumpled cigarette package, and opened it. Inside were 14 capsules of heroin. *Id.*, at 220, 223.

The Court of Appeals concluded that the search was unreasonable because Robinson was unlikely to have evidence of the crime of arrest on his person, and because it believed that extracting the cigarette package and opening it could not be justified as part of a protective search for weapons. This Court reversed, rejecting the notion that “case-by-case adjudication” was required to determine “whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest.” *Id.*, at 235. As the Court explained, “[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect.” *Ibid.* Instead, a “custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.” *Ibid.*

The Court thus concluded that the search of Robinson was reasonable even though there was no concern about the loss of evidence, and the arresting officer had no specific concern that Robinson might be armed. *Id.*, at 236. In doing so, the Court did not draw a line between a search of Robinson's person and a further examination of the cigarette pack found during that search. It merely noted that, "[h]aving in the course of a lawful search come upon the crumpled package of cigarettes, [the officer] was entitled to inspect it." *Ibid.* A few years later, the Court clarified that this exception was limited to "personal property . . . immediately associated with the person of the arrestee." *United States v. Chadwick*, 433 U. S. 1, 15 (1977) (200-pound, locked footlocker could not be searched incident to arrest), abrogated on other grounds by *California v. Acevedo*, 500 U. S. 565 (1991).

The search incident to arrest trilogy concludes with *Gant*, which analyzed searches of an arrestee's vehicle. *Gant*, like *Robinson*, recognized that the *Chimel* concerns for officer safety and evidence preservation underlie the search incident to arrest exception. See 556 U. S., at 338. As a result, the Court concluded that *Chimel* could authorize police to search a vehicle "only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search." 556 U. S., at 343. *Gant* added, however, an independent exception for a warrantless search of a vehicle's passenger compartment "when it is 'reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle.'" *Ibid.* (quoting *Thornton v. United States*, 541 U. S. 615, 632 (2004) (SCALIA, J., concurring in judgment)). That exception stems not from *Chimel*, the Court explained, but from "circumstances unique to the vehicle context." 556 U. S., at 343.

III

These cases require us to decide how the search incident Cite as: 573 U. S. ____ (2014) to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy. A smart phone of the sort taken from *Riley* was unheard of ten years ago; a significant majority of American adults now own such phones. See A. Smith, Pew Research Center, *Smartphone Ownership—2013 Update* (June 5, 2013). Even less sophisticated phones like *Wurie's*, which have already faded in popularity since *Wurie* was arrested in 2007, have been around for less than 15 years. Both phones are based on technology nearly inconceivable just a few decades ago, when *Chimel* and *Robinson* were decided.

Absent more precise guidance from the founding era, we generally determine whether to exempt a given type of search from the warrant requirement "by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming v. Houghton*, 526 U. S. 295, 300 (1999). Such a balancing of interests supported the search incident to arrest exception in *Robinson*, and a mechanical application of *Robinson* might well support the warrantless searches at issue here.

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

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

A

We first consider each *Chimel* concern in turn. In doing so, we do not overlook Robinson’s admonition that searches of a person incident to arrest, “while based upon the need to disarm and to discover evidence,” are reasonable regardless of “the probability in a particular arrest situation that weapons or evidence would in fact be found.” 414 U. S., at 235. Rather than requiring the “case-by-case adjudication” that Robinson rejected, *ibid.*, we ask instead whether application of the search incident to arrest doctrine to this particular category of effects would “untether the rule from the justifications underlying the *Chimel* exception,” *Gant*, *supra*, at 343. See also *Knowles v. Iowa*, 525 U. S. 113, 119 (1998) (declining to extend *Robinson* to the issuance of citations, “a situation where the concern for officer safety is not present to the same extent and the concern for destruction or loss of evidence is not present at all”).

1

Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee’s escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one. Perhaps the same might have been said of the cigarette pack seized from Robinson’s pocket. Once an officer gained control of the pack, it was unlikely that Robinson could have accessed the pack’s contents. But unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest. The officer in *Robinson* testified that he could not identify the objects in the cigarette pack but knew they were not cigarettes. See 414 U. S., at 223, 236, n. 7. Given that, a further search was a reasonable protective measure. No such unknowns exist with respect to digital data. As the First Circuit explained, the officers who searched Wurie’s cell phone “knew exactly what they would find therein: data. They also knew that the data could not harm them.” 728 F. 3d, at 10.

The United States and California both suggest that a search of cell phone data might help ensure officer safety in more indirect ways, for example by alerting officers that confederates of the arrestee are headed to the scene. There is undoubtedly a strong government interest in warning officers about such possibilities, but neither the United States nor California offers evidence to suggest that their concerns are based on actual experience. The proposed consideration would also represent a broadening of *Chimel*'s concern that an arrestee himself might grab a weapon and use it against an officer "to resist arrest or effect his escape." 395 U. S., at 763. And any such threats from outside the arrest scene do not "lurk[] in all custodial arrests." *Chadwick*, 433 U. S., at 14–15. Accordingly, the interest in protecting officer safety does not justify dispensing with the warrant requirement across the board. To the extent dangers to arresting officers may be implicated in a particular way in a particular case, they are better addressed through consideration of case-specific exceptions to the warrant requirement, such as the one for exigent circumstances. See, e.g., *Warden, Md. Penitentiary v. Hayden*, 387 U. S. 294, 298–299 (1967) ("The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others.").

2

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

Both *Riley* and *Wurie* concede that officers could have seized and secured their cell phones to prevent destruction of evidence while seeking a warrant. See Brief for Petitioner in No. 13–132, p. 20; Brief for Respondent in No. 13–212, p. 41. That is a sensible concession. See *Illinois v. McArthur*, 531 U. S. 326, 331–333 (2001); *Chadwick*, *supra*, at 13, and n. 8. And once law enforcement officers have secured a cell phone, there is no longer any risk that the arrestee himself will be able to delete incriminating data from the phone.

The United States and California argue that information on a cell phone may nevertheless be vulnerable to two types of evidence destruction unique to digital data— remote wiping and data encryption. Remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is preprogrammed to delete data upon entering or leaving certain geographic areas (so-called "geofencing"). See Dept. of Commerce, National Institute of Standards and Technology, R. Ayers, S. Brothers, & W. Jansen, *Guidelines on Mobile Device Forensics* (Draft) 29, 31 (SP 800– 101 Rev. 1, Sept. 2013) (hereinafter *Ayers*). Encryption is a security feature that some modern cell phones use in addition to password protection. When such phones lock, data becomes protected by sophisticated encryption that renders a phone all but "unbreakable" unless police know the password. Brief for United States as Amicus Curiae in No. 13–132, p. 11.

As an initial matter, these broader concerns about the loss of evidence are distinct from *Chimel*'s focus on a defendant who responds to arrest by trying to conceal or destroy evidence within his reach. See

395 U. S., at 763– 764. With respect to remote wiping, the Government’s primary concern turns on the actions of third parties who are not present at the scene of arrest. And data encryption is even further afield. There, the Government focuses on the ordinary operation of a phone’s security features, apart from any active attempt by a defendant or his associates to conceal or destroy evidence upon arrest.

We have also been given little reason to believe that either problem is prevalent. The briefing reveals only a couple of anecdotal examples of remote wiping triggered by an arrest. See Brief for Association of State Criminal Investigative Agencies et al. as Amici Curiae in No. 13– 132, pp. 9–10; see also Tr. of Oral Arg. in No. 13–132, p. 48. Similarly, the opportunities for officers to search a password-protected phone before data becomes encrypted are quite limited. Law enforcement officers are very unlikely to come upon such a phone in an unlocked state because most phones lock at the touch of a button or, as a default, after some very short period of inactivity. See, e.g., iPhone User Guide for iOS 7.1 Software 10 (2014) (default lock after about one minute). This may explain why the encryption argument was not made until the merits stage in this Court, and has never been considered by the Courts of Appeals.

Moreover, in situations in which an arrest might trigger a remote-wipe attempt or an officer discovers an unlocked phone, it is not clear that the ability to conduct a warrantless search would make much of a difference. The need to effect the arrest, secure the scene, and tend to other pressing matters means that law enforcement officers may well not be able to turn their attention to a cell phone right away. See Tr. of Oral Arg. in No. 13–132, at 50; see also Brief for United States as Amicus Curiae in No. 13–132, at 19. Cell phone data would be vulnerable to remote wiping from the time an individual anticipates arrest to the time any eventual search of the phone is completed, which might be at the station house hours later. Likewise, an officer who seizes a phone in an unlocked state might not be able to begin his search in the short time remaining before the phone locks and data becomes encrypted.

In any event, as to remote wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. See Ayers 30–31. Such devices are commonly called “Faraday bags,” after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, lightweight, and easy to use. See Brief for Criminal Law Professors as Amici Curiae 9. They may not be a complete answer to the problem, see Ayers 32, but at least for now they provide a reasonable response. In fact, a number of law enforcement agencies around the country already encourage the use of Faraday bags. See, e.g.,

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

To the extent that law enforcement still has specific concerns about the potential loss of evidence in a particular case, there remain more targeted ways to address those concerns. If “the police are truly confronted with a ‘now or never’ situation,”—for example, circumstances suggesting that a defendant’s phone will be the target of an imminent remote-wipe attempt—they may be able to rely on exigent circumstances to search the phone immediately. *Missouri v. McNeely*, 569 U. S. ___, ___ (2013) (slip op., at 10) (quoting *Roaden v. Kentucky*, 413 U. S. 496, 505 (1973); some internal quotation marks omitted). Or, if officers happen to seize a phone in an unlocked state, they may be able to disable a phone’s automatic-lock feature in order to prevent the phone from locking and encrypting data. See App. to Reply Brief in No. 13–132, p. 3a (diagramming the few necessary steps).

Such a preventive measure could be analyzed under the principles set forth in our decision in *McArthur*, 531 U. S. 326, which approved officers’ reasonable steps to secure a scene to preserve evidence while they awaited a warrant. See *id.*, at 331–333.

B

The search incident to arrest exception rests not only on the heightened government interests at stake in a volatile arrest situation, but also on an arrestee’s reduced privacy interests upon being taken into police custody. *Robinson* focused primarily on the first of those rationales. But it also quoted with approval then-Judge Cardozo’s account of the historical basis for the search incident to arrest exception: “Search of the person becomes lawful when grounds for arrest and accusation have been discovered, and the law is in the act of subjecting the body of the accused to its physical dominion.” 414 U. S., at 232 (quoting *People v. Chiagles*, 237 N. Y. 193, 197, 142 N. E. 583, 584 (1923)); see also 414 U. S., at 237 (Powell, J., concurring) (“an individual lawfully subjected to a custodial arrest retains no significant Fourth Amendment interest in the privacy of his person”). Put simply, a patdown of Robinson’s clothing and an inspection of the cigarette pack found in his pocket constituted only minor additional intrusions compared to the substantial government authority exercised in taking Robinson into custody. See *Chadwick*, 433 U. S., at 16, n. 10 (searches of a person are justified in part by “reduced expectations of privacy caused by the arrest”).

The fact that an arrestee has diminished privacy interests does not mean that the Fourth Amendment falls out of the picture entirely. Not every search “is acceptable solely because a person is in custody.” *Maryland v. King*, 569 U. S. ___, ___ (2013) (slip op., at 26). To the contrary, when “privacy-related concerns are weighty enough” a “search may require a warrant, notwithstanding the diminished expectations of privacy of the arrestee.” *Ibid.* One such example, of course, is *Chimel*. *Chimel* refused to “characteriz[e] the invasion of privacy that results from a top-to-bottom search of a man’s house as ‘minor.’” 395 U. S., at 766–767, n. 12. Because a search of the arrestee’s entire house was a substantial invasion beyond the arrest itself, the Court concluded that a warrant was required.

Robinson is the only decision from this Court applying *Chimel* to a search of the contents of an item found on an arrestee's person. In an earlier case, this Court had approved a search of a zipper bag carried by an arrestee, but the Court analyzed only the validity of the arrest itself. See *Draper v. United States*, 358 U. S. 307, 310–311 (1959). Lower courts applying *Robinson* and *Chimel*, however, have approved searches of a variety of personal items carried by an arrestee. See, e.g., *United States v. Carrion*, 809 F. 2d 1120, 1123, 1128 (CA5 1987) (billfold and address book); *United States v. Watson*, 669 F. 2d 1374, 1383–1384 (CA11 1982) (wallet); *United States v. Lee*, 501 F. 2d 890, 892 (CA10 1974) (purse).

The United States asserts that a search of all data stored on a cell phone is “materially indistinguishable” from searches of these sorts of physical items. Brief for United States in No. 13–212, p. 26. That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together.

Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse. A conclusion that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items, but any extension of that reasoning to digital data has to rest on its own bottom.

1

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

One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. See Kerr, Foreword: Accounting for Technological Change, 36 Harv. J. L. & Pub. Pol'y 403, 404–405 (2013). Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in *Chadwick*, *supra*, rather than a container the size of the cigarette package in *Robinson*. But the possible intrusion on privacy is not physically limited in the same way when it comes to cell phones. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos. See Kerr, *supra*, at 404; Brief for Center for Democracy & Technology et al. as Amici Curiae 7–8. Cell phones couple that capacity with the ability to store many different types of

information: Even the most basic phones that sell for less than \$20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand entry phone book, and so on. See *id.*, at 30; *United States v. Flores-Lopez*, 670 F. 3d 803, 806 (CA7 2012). We expect that the gulf between physical practicability and digital capacity will only continue to widen in the future. The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone’s capacity allows even just one type of information to convey far more than previously possible. The sum of an individual’s private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower. See Harris Interactive, 2013 Mobile Consumer Habits Study (June 2013).

A decade ago police officers searching an arrestee might have occasionally stumbled across a highly personal item such as a diary. See, e.g., *United States v. Frankenberry*, 387 F. 2d 337 (CA2 1967) (*per curiam*). But those discoveries were likely to be few and far between. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate. See *Ontario v. Quon*, 560 U. S. 746, 760 (2010). Allowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case.

Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different. An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual’s private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD. Data on a cell phone can also reveal where a person has been. Historic location information is a standard feature on many smart phones and can reconstruct someone’s specific movements down to the minute, not only around town but also within a particular building. See *United States v. Jones*, 565 U. S. ___, ___ (2012) (SOTOMAYOR, J., concurring) (slip op., at 3) (“GPS monitoring

generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.”).

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

In 1926, Learned Hand observed (in an opinion later quoted in *Chimel*) that it is “a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him.” *United States v. Kirschenblatt*, 16 F. 2d 202, 203 (CA2). If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form— unless the phone is.

2

To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter. See *New York v. Belton*, 453 U. S. 454, 460, n. 4 (1981) (describing a “container” as “any object capable of holding another object”). But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are designed to do by taking advantage of “cloud computing.” Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself. Cell phone users often may not know whether particular information is stored on the device or in the cloud, and it generally makes little difference. See Brief for Electronic Privacy Information Center in No. 13–132, at 12–14, 20. Moreover, the same type of data may be stored locally on the device for one user and in the cloud for another.

The United States concedes that the search incident to arrest exception may not be stretched to cover a search of files accessed remotely—that is, a search of files stored in the cloud. See Brief for United States in No. 13–212, at 43–44. Such a search would be like finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house. But officers searching a phone's

data would not typically know whether the information they are viewing was stored locally at the time of the arrest or has been pulled from the cloud.

Although the Government recognizes the problem, its proposed solutions are unclear. It suggests that officers could disconnect a phone from the network before searching the device—the very solution whose feasibility it contested with respect to the threat of remote wiping. Compare Tr. of Oral Arg. in No. 13–132, at 50–51, with Tr. of Oral Arg. in No. 13–212, pp. 13–14. Alternatively, the Government proposes that law enforcement agencies “develop protocols to address” concerns raised by cloud computing. Reply Brief in No. 13–212, pp. 14–15. Probably a good idea, but the Founders did not fight a revolution to gain the right to government agency protocols. The possibility that a search might extend well beyond papers and effects in the physical proximity of an arrestee is yet another reason that the privacy interests here dwarf those in Robinson.

C

Apart from their arguments for a direct extension of Robinson, the United States and California offer various fallback options for permitting warrantless cell phone searches under certain circumstances. Each of the proposals is flawed and contravenes our general preference to provide clear guidance to law enforcement through categorical rules. “[I]f police are to have workable rules, the balancing of the competing interests . . . ‘must in large part be done on a categorical basis—not in an ad hoc, caseby-case fashion by individual police officers.’” *Michigan v. Summers*, 452 U. S. 692, 705, n. 19 (1981) (quoting *Dunaway v. New York*, 442 U. S. 200, 219–220 (1979) (White, J., concurring)).

The United States first proposes that the *Gant* standard be imported from the vehicle context, allowing a warrantless search of an arrestee’s cell phone whenever it is reasonable to believe that the phone contains evidence of the crime of arrest. But *Gant* relied on “circumstances unique to the vehicle context” to endorse a search solely for the purpose of gathering evidence. 556 U. S., at 343.

JUSTICE SCALIA’s Thornton opinion, on which *Gant* was based, explained that those unique circumstances are “a reduced expectation of privacy” and “heightened law enforcement needs” when it comes to motor vehicles. 541 U. S., at 631; see also *Wyoming v. Houghton*, 526 U. S., at 303–304. For reasons that we have explained, cell phone searches bear neither of those characteristics.

At any rate, a *Gant* standard would prove no practical limit at all when it comes to cell phone searches.

In the vehicle context, *Gant* generally protects against searches for evidence of past crimes. See 3 W.

LaFave, *Search and Seizure* §7.1(d), at 709, and n. 191. In the cell phone context, however, it is reasonable to expect that incriminating information will be found on a phone regardless of when the crime occurred. Similarly, in the vehicle context *Gant* restricts broad searches resulting from minor crimes such as traffic violations. See *id.*, §7.1(d), at 713, and n. 204. That would not necessarily be true for cell phones. It would be a particularly inexperienced or unimaginative law enforcement officer who could not come up with several reasons to suppose evidence of just about any crime could be found on a cell phone. Even an individual pulled over for something as basic as speeding might well

have locational data dispositive of guilt on his phone. An individual pulled over for reckless driving might have evidence on the phone that shows whether he was texting while driving. The sources of potential pertinent information are virtually unlimited, so applying the *Gant* standard to cell phones would in effect give “police officers unbridled discretion to rummage at will among a person’s private effects.” 556 U. S., at 345.

The United States also proposes a rule that would restrict the scope of a cell phone search to those areas of the phone where an officer reasonably believes that information relevant to the crime, the arrestee’s identity, or officer safety will be discovered. See Brief for United States in No. 13–212, at 51–53. This approach would again impose few meaningful constraints on officers. The proposed categories would sweep in a great deal of information, and officers would not always be able to discern in advance what information would be found where.

We also reject the United States’ final suggestion that officers should always be able to search a phone’s call log, as they did in *Wurie*’s case. The Government relies on *Smith v. Maryland*, 442 U. S. 735 (1979), which held that no warrant was required to use a pen register at telephone company premises to identify numbers dialed by a particular caller. The Court in that case, however, concluded that the use of a pen register was not a “search” at all under the Fourth Amendment. See *id.*, at 745–746. There is no dispute here that the officers engaged in a search of *Wurie*’s cell phone. Moreover, call logs typically contain more than just phone numbers; they include any identifying information that an individual might add, such as the label “my house” in *Wurie*’s case.

Finally, at oral argument California suggested a different limiting principle, under which officers could search cell phone data if they could have obtained the same information from a pre-digital counterpart. See Tr. of Oral Arg. in No. 13–132, at 38–43; see also *Flores-Lopez*, 670 F. 3d, at 807 (“If police are entitled to open a pocket diary to copy the owner’s address, they should be entitled to turn on a cell phone to learn its number.”). But the fact that a search in the pre-digital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form. In *Riley*’s case, for example, it is implausible that he would have strolled around with video tapes, photo albums, and an address book all crammed into his pockets. But because each of those items has a pre-digital analogue, police under California’s proposal would be able to search a phone for all of those items—a significant diminution of privacy.

In addition, an analogue test would launch courts on a difficult line-drawing expedition to determine which digital files are comparable to physical records. Is an e-mail equivalent to a letter? Is a voicemail equivalent to a phone message slip? It is not clear how officers could make these kinds of decisions

before conducting a search, or how courts would apply the proposed rule after the fact. An analogue test would “keep defendants and judges guessing for years to come.” *Sykes v. United States*, 564 U. S. 1, ____ (2011) (SCALIA, J., dissenting) (slip op., at 7) (discussing the Court’s analogue test under the Armed Career Criminal Act).

IV

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. Privacy comes at a cost.

Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest. Our cases have historically recognized that the warrant requirement is “an important working part of our machinery of government,” not merely “an inconvenience to be somehow ‘weighed’ against the claims of police efficiency.” *Coolidge v. New Hampshire*, 403 U. S. 443, 481 (1971).

Recent technological advances similar to those discussed here have, in addition, made the process of obtaining a warrant itself more efficient. See *McNeely*, 569 U. S., at ____ (slip op., at 11–12); *id.*, at ____ (ROBERTS, C. J., concurring in part and dissenting in part) (slip op., at 8) (describing jurisdiction where “police officers can e-mail warrant requests to judges’ iPads [and] judges have signed such warrants and e-mailed them back to officers in less than 15 minutes”).

Moreover, even though the search incident to arrest exception does not apply to cell phones, other case-specific exceptions may still justify a warrantless search of a particular phone. “One well-recognized exception applies when “the exigencies of the situation” make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.” *Kentucky v. King*, 563 U. S., at ____ (slip op., at 6) (quoting *Mincey v. Arizona*, 437 U. S. 385, 394 (1978)). Such exigencies could include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury. 563 U. S., at _____. In *Chadwick*, for example, the Court held that the exception for searches incident to arrest did not justify a search of the trunk at issue, but noted that “if officers have reason to believe that luggage contains some immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the station house without opening the luggage.” 433 U. S., at 15, n. 9.

In light of the availability of the exigent circumstances exception, there is no reason to believe that law enforcement officers will not be able to address some of the more extreme hypotheticals that have been suggested: a suspect Cite as: 573 U. S. ____ (2014) texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may have information about the child’s location on his cell phone. The defendants here recognize—indeed, they stress—that such fact-specific threats may

justify a warrantless search of cell phone data. See Reply Brief in No. 13–132, at 8–9; Brief for Respondent in No. 13–212, at 30, 41. The critical point is that, unlike the search incident to arrest exception, the exigent circumstances exception requires a court to examine whether an emergency justified a warrantless search in each particular case. See *McNeely*, *supra*, at ____ (slip op., at 6).²

* * *

Our cases have recognized that the Fourth Amendment was the founding generation’s response to the reviled “general warrants” and “writs of assistance” of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity. Opposition to such searches was in fact one of the driving forces behind the Revolution itself. In 1761, the patriot James Otis delivered a speech in Boston denouncing the use of writs of assistance. A young John Adams was there, and he would later write that “[e]very man of a crowded audience appeared to me to go away, as I did, ready to take arms against writs of assistance.” 10 Works of John Adams 247–248 (C. Adams ed. 1856). According to Adams, Otis’s speech was “the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.” *Id.*, at 248 (quoted in *Boyd v. United States*, 116 U. S. 616, 625 (1886)).

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans “the privacies of life,” *Boyd*, *supra*, at 630. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple— get a warrant.

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