449 F.2d 143 (1971)

UNITED STATES of America, Appellee,
v.
Bernard GAINES, Appellant.

No. 414, Docket 35361.

United States Court of Appeals, Second Circuit.

October 7, 1971.

144 *144 Whitney North Seymour, Jr., U. S. Atty., S. D. N. Y., Robert P. Walton and Daniel J. Sullivan, Asst. U. S. Attys., for appellee.

Michael Meltsner, Jack Greenberg and Ann Wagner, New York City, for appellant.

Before LUMBARD, MOORE and SMITH, Circuit Judges.

PER CURIAM:

Bernard Gaines was convicted of a federal narcotics violation on May 16, 1968. He was released on bail pending sentencing. On June 1, 1968, he was arrested by New York State authorities on charges of robbery and murder and held without bail. On June 20, 1968, he was brought before the federal court pursuant to a writ of habeas corpus ad prosequendum and sentenced to two years on the narcotics charge. He was then returned to the custody of the New York authorities who proceeded with the preliminaries to prosecution on the murder and robbery charges. On December 5, 1969, bail was set for the first time in the amount of $7,500. Gaines' counsel had made no previous application for bail because he had believed that Gaines' indigency would preclude his posting bail in any amount which might conceivably be set in light of the seriousness of the pending charges. (Appendix to Gaines' brief in this court at 25a.) Gaines was unable to post bail in this amount and he remained confined by the New York authorities. On April 1, 1970, Gaines was paroled from state custody and transferred to begin service of his federal sentence.[1] The state indictment against him was dismissed on the basis of newly discovered evidence which led other persons to be charged for the crimes for which Gaines had been held.

Gaines then made a 28 U.S.C. § 2255 motion to correct his sentence and credit him with the time spent in state custody after bail had been set. The district court denied the motion and we affirmed, 436 F.2d 1069 (1971), reasoning that the wording of the statute, 18 U.S.C. § 3568, did not allow such credit. The Supreme Court vacated our judgment by order of June 1, 1971, 402 U.S. 1006, 91 S.Ct. 2195, 29 L.Ed.2d 428, and remanded the case for "reconsideration in light of position asserted by the Solicitor General."

After such reconsideration, we are now of the view that Gaines should be credited with the time spent in custody after the state court had set bail. Gaines was unable to enter into federal custody after bail was set in December 1969 solely because he lacked sufficient funds to post bond in the state court which held him in custody. The Supreme Court's decisions in Tate v. Short, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971), and Williams v. Illinois, 399 U. S. 235, 90 S.Ct. 2018, 26 L.Ed.2d 586 (1970) indicate that a man should not be kept imprisoned solely because of his lack of wealth. If Gaines had had the money to post the state bond in December 1969 and had then entered federal custody, he would now be eligible for his conditional release. Gaines' lack of wealth has resulted in his having to serve a sentence that a richer man would not have had to serve, an impermissible discrimination according to *Tate* and *Williams.* Accordingly, Gaines ought to be credited with the time spent in state custody after bail was set.

Remanded to the district court for further proceedings in conformity with this opinion.

[1] Gaines is presently free on bail, pursuant to an order of Mr. Justice Harlan, pending resolution of this case.

Syllabus

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

SUPREME COURT OF THE UNITED STATES

Syllabus

COLLINS *v.* VIRGINIA

CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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

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

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

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

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

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

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

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

Syllabus

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

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

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

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

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

I

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

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

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

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

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

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

---

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

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

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

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

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

II

The Fourth Amendment provides in relevant part that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." This case arises at the intersection of two components of the Court's Fourth Amendment jurisprudence: the automobile exception to the warrant requirement and the protection extended to the curtilage of a home.

A

1

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

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

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

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

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

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

2

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

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

sonable absent a warrant.

B

1

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

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

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

2

In physically intruding on the curtilage of Collins' home

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

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

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

---

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

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

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

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

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

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

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

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

---

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

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

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

III

A

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

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

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

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

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

B

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

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

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

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

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

IV

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

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE THOMAS, concurring.

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

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

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

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

---

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

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

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

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

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

---

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

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

Stan. L. Rev. 1027, 1030–1031 (1974).

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

---

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

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

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

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

---

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

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

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

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

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

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

* * *

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

---

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

SUPREME COURT OF THE UNITED STATES

No. 16–1027

RYAN AUSTIN COLLINS, PETITIONER *v.* VIRGINIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

[May 29, 2018]

JUSTICE ALITO, dissenting.

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

---

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

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

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

---

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

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

I would affirm the decision below and therefore respectfully dissent.

136 S.Ct. 2056 (2016)

UTAH, Petitioner

v.

Edward Joseph STRIEFF, Jr.

No. 14-1373.

Supreme Court of United States.

Argued February 22, 2016.
Decided June 20, 2016.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UTAH.

Tyler R. Green, Solicitor General, for petitioner. John F. Bash for the United States as amicus curiae, by special leave of the Court, supporting the petitioner. Joan C. Watt, Salt Lake City, UT, for respondent.

Sean D. Reyes, Utah Attorney General, Tyler R. Green, Utah Solicitor General, Laura B. Dupaix, Deputy Solicitor General, Thomas B. Brunker, Criminal Appeals Director, Jeffrey S. Gray, Search & Seizure Section Director, Salt Lake City, UT, for petitioner.

Stuart Banner, UCLA School of Law, Supreme Court Clinic, Los Angeles, CA, Patrick L. Anderson, Joan C. Watt, Salt Lake Legal Defender, Association, Salt Lake City, UT, for respondent.

2057 *2057 ***Syllabus***[*]

Narcotics detective Douglas Fackrell conducted surveillance on a South Salt Lake City residence based on an anonymous tip about drug activity. The number of people he observed making brief visits to the house over the course of a week made him suspicious that the occupants were dealing drugs. After observing respondent Edward Strieff leave the residence, Officer Fackrell detained Strieff at a nearby parking lot, identifying himself and asking Strieff what he was doing at the house. He then requested Strieff's identification and relayed the information to a police dispatcher, who informed him that Strieff had an outstanding arrest warrant for a traffic violation. Officer Fackrell arrested Strieff, searched him, and found
2058 methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that it was derived from *2058 an unlawful investigatory stop. The trial court denied the motion, and the Utah Court of Appeals affirmed. The Utah Supreme Court reversed, however, and ordered the evidence suppressed.

Held: The evidence Officer Fackrell seized incident to Strieff's arrest is admissible based on an application of the attenuation factors from *Brown v. Illinois,* 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416. In this case, there was no flagrant police misconduct. Therefore, Officer Fackrell's discovery of a valid, pre-existing, and untainted arrest warrant attenuated the connection between the unconstitutional investigatory stop and the evidence seized incident to a lawful arrest. Pp. 2060-2064.

(a) As the primary judicial remedy for deterring Fourth Amendment violations, the exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality." *Segura v. United States*, 468 U.S. 796, 804, 104 S.Ct. 3380, 82 L.Ed.2d 599. But to ensure that those deterrence benefits are not outweighed by the rule's substantial social costs, there are several exceptions to the rule. One exception is the attenuation doctrine, which provides for admissibility when the connection between unconstitutional police conduct and the evidence is sufficiently remote or has been interrupted by some intervening circumstance. See *Hudson v. Michigan,* 547 U.S. 586, 593, 126 S.Ct. 2159, 165 L.Ed.2d 56. Pp. 2060-2062.

(b) As a threshold matter, the attenuation doctrine is not limited to the defendant's independent acts. The doctrine therefore applies here, where the intervening circumstance is the discovery of a valid, pre-existing, and untainted arrest warrant. Assuming, without deciding, that Officer Fackrell lacked reasonable suspicion to stop Strieff initially, the discovery of that

arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to his arrest. Pp. 2061-2064.

(1) Three factors articulated in *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416, lead to this conclusion. The first, "temporal proximity" between the initially unlawful stop and the search, *id.,* at 603, 95 S.Ct. 2254 favors suppressing the evidence. Officer Fackrell discovered drug contraband on Strieff only minutes after the illegal stop. In contrast, the second factor, "the presence of intervening circumstances," *id.,* at 603-604, 95 S.Ct. 2254 strongly favors the State. The existence of a valid warrant, predating the investigation and entirely unconnected with the stop, favors finding sufficient attenuation between the unlawful conduct and the discovery of evidence. That warrant authorized Officer Fackrell to arrest Strieff, and once the arrest was authorized, his search of Strieff incident to that arrest was undisputedly lawful. The third factor, "the purpose and flagrancy of the official misconduct," *id.,* at 604, 95 S.Ct. 2254 also strongly favors the State. Officer Fackrell was at most negligent, but his errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights. After the unlawful stop, his conduct was lawful, and there is no indication that the stop was part of any systemic or recurrent police misconduct. Pp. 2062-2064.

(2) Strieff's counterarguments are unpersuasive. First, neither Officer Fackrell's purpose nor the flagrancy of the violation rises to a level of misconduct warranting suppression. Officer Fackrell's purpose was not to conduct a suspicionless fishing
2059 expedition but was to gather information about activity inside a *2059 house whose occupants were legitimately suspected of dealing drugs. Strieff conflates the standard for an illegal stop with the standard for flagrancy, which requires more than the mere absence of proper cause. Second, it is unlikely that the prevalence of outstanding warrants will lead to dragnet searches by police. Such misconduct would expose police to civil liability and, in any event, is already accounted for by *Brown*'s "purpose and flagrancy" factor. Pp. 2063-2064.

2015 UT ¶ 2, 357 P.3d 532, reversed.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C.J., and KENNEDY, BREYER, and ALITO, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion, in which GINSBURG, J., joined as to Parts I, II, and III. KAGAN, J., filed a dissenting opinion, in which GINSBURG, J., joined.

Justice THOMAS delivered the opinion of the Court.

To enforce the Fourth Amendment's prohibition against "unreasonable searches and seizures," this Court has at times required courts to exclude evidence obtained by unconstitutional police conduct. But the Court has also held that, even when there is a Fourth Amendment violation, this exclusionary rule does not apply when the costs of exclusion outweigh its deterrent benefits. In some cases, for example, the link between the unconstitutional conduct and the discovery of the evidence is too attenuated to justify suppression. The question in this case is whether this attenuation doctrine applies when an officer makes an unconstitutional investigatory stop; learns during that stop that the suspect is subject to a valid arrest warrant; and proceeds to arrest the suspect and seize incriminating evidence during a search incident to that arrest. We hold that the evidence the officer seized as part of the search incident to arrest is admissible because the officer's discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest.

I

This case began with an anonymous tip. In December 2006, someone called the South Salt Lake City police's drug-tip line to report "narcotics activity" at a particular residence. App. 15. Narcotics detective Douglas Fackrell investigated the tip. Over the course of about a week, Officer Fackrell conducted intermittent surveillance of the home. He observed visitors who left a few minutes after arriving at the house. These visits were sufficiently frequent to raise his suspicion that the occupants were dealing drugs.

2060 *2060 One of those visitors was respondent Edward Strieff. Officer Fackrell observed Strieff exit the house and walk toward a nearby convenience store. In the store's parking lot, Officer Fackrell detained Strieff, identified himself, and asked Strieff what he was doing at the residence.

As part of the stop, Officer Fackrell requested Strieff's identification, and Strieff produced his Utah identification card. Officer Fackrell relayed Strieff's information to a police dispatcher, who reported that Strieff had an outstanding arrest warrant for a

traffic violation. Officer Fackrell then arrested Strieff pursuant to that warrant. When Officer Fackrell searched Strieff incident to the arrest, he discovered a baggie of methamphetamine and drug paraphernalia.

The State charged Strieff with unlawful possession of methamphetamine and drug paraphernalia. Strieff moved to suppress the evidence, arguing that the evidence was inadmissible because it was derived from an unlawful investigatory stop. At the suppression hearing, the prosecutor conceded that Officer Fackrell lacked reasonable suspicion for the stop but argued that the evidence should not be suppressed because the existence of a valid arrest warrant attenuated the connection between the unlawful stop and the discovery of the contraband.

The trial court agreed with the State and admitted the evidence. The court found that the short time between the illegal stop and the search weighed in favor of suppressing the evidence, but that two countervailing considerations made it admissible. First, the court considered the presence of a valid arrest warrant to be an "`extraordinary intervening circumstance.'" App. to Pet. for Cert. 102 (quoting *United States v. Simpson,* 439 F.3d 490, 496 (C.A.8 2006)). Second, the court stressed the absence of flagrant misconduct by Officer Fackrell, who was conducting a legitimate investigation of a suspected drug house.

Strieff conditionally pleaded guilty to reduced charges of attempted possession of a controlled substance and possession of drug paraphernalia, but reserved his right to appeal the trial court's denial of the suppression motion. The Utah Court of Appeals affirmed. 2012 UT App ¶ 245, 286 P.3d 317.

The Utah Supreme Court reversed. 2015 UT ¶ 2, 357 P.3d 532. It held that the evidence was inadmissible because only "a voluntary act of a defendant's free will (as in a confession or consent to search)" sufficiently breaks the connection between an illegal search and the discovery of evidence. *Id.,* at 536. Because Officer Fackrell's discovery of a valid arrest warrant did not fit this description, the court ordered the evidence suppressed. *Ibid.*

We granted certiorari to resolve disagreement about how the attenuation doctrine applies where an unconstitutional detention leads to the discovery of a valid arrest warrant. 576 U.S. ___, 136 S.Ct. 27, 192 L.Ed.2d 997 (2015). Compare, *e.g., United States v. Green,* 111 F.3d 515, 522-523 (C.A.7 1997) (holding that discovery of the warrant is a dispositive intervening circumstance where police misconduct was not flagrant), with, *e.g., State v. Moralez,* 297 Kan. 397, 415, 300 P.3d 1090, 1102 (2013) (assigning little significance to the discovery of the warrant). We now reverse.

II

A

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against
2061 unreasonable searches and seizures." Because officers who violated the *2061 Fourth Amendment were traditionally considered trespassers, individuals subject to unconstitutional searches or seizures historically enforced their rights through tort suits or self-help. Davies, Recovering the Original Fourth Amendment, 98 Mich. L. Rev. 547, 625 (1999). In the 20th century, however, the exclusionary rule — the rule that often requires trial courts to exclude unlawfully seized evidence in a criminal trial — became the principal judicial remedy to deter Fourth Amendment violations. See, *e.g., Mapp v. Ohio,* 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

Under the Court's precedents, the exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality," the so-called "`fruit of the poisonous tree.'" *Segura v. United States,* 468 U.S. 796, 804, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984). But the significant costs of this rule have led us to deem it "applicable only... where its deterrence benefits outweigh its substantial social costs." *Hudson v. Michigan,* 547 U.S. 586, 591, 126 S.Ct. 2159, 165 L.Ed.2d 56 (2006) (internal quotation marks omitted). "Suppression of evidence ... has always been our last resort, not our first impulse." *Ibid.*

We have accordingly recognized several exceptions to the rule. Three of these exceptions involve the causal relationship between the unconstitutional act and the discovery of evidence. First, the independent source doctrine allows trial courts to admit evidence obtained in an unlawful search if officers independently acquired it from a separate, independent source. See *Murray v. United States,* 487 U.S. 533, 537, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988). Second, the inevitable discovery doctrine allows for the admission of evidence that would have been discovered even without the unconstitutional source.

See *Nix v. Williams*, 467 U.S. 431, 443-444, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). Third, and at issue here, is the attenuation doctrine: Evidence is admissible when the connection between unconstitutional police conduct and the evidence is remote or has been interrupted by some intervening circumstance, so that "the interest protected by the constitutional guarantee that has been violated would not be served by suppression of the evidence obtained." *Hudson, supra,* at 593, 126 S.Ct. 2159.

B

Turning to the application of the attenuation doctrine to this case, we first address a threshold question: whether this doctrine applies at all to a case like this, where the intervening circumstance that the State relies on is the discovery of a valid, pre-existing, and untainted arrest warrant. The Utah Supreme Court declined to apply the attenuation doctrine because it read our precedents as applying the doctrine only "to circumstances involving an independent act of a defendant's `free will' in confessing to a crime or consenting to a search." 357 P.3d, at 544. In this Court, Strieff has not defended this argument, and we disagree with it, as well. The attenuation doctrine evaluates the causal link between the government's unlawful act and the discovery of evidence, which often has nothing to do with a defendant's actions. And the logic of our prior attenuation cases is not limited to independent acts by the defendant.

It remains for us to address whether the discovery of a valid arrest warrant was a sufficient intervening event to break the causal chain between the unlawful stop and the discovery of drug-related evidence on Strieff's person. The three factors
2062 articulated in *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 *2062 L.Ed.2d 416 (1975), guide our analysis. First, we look to the "temporal proximity" between the unconstitutional conduct and the discovery of evidence to determine how closely the discovery of evidence followed the unconstitutional search. *Id.,* at 603, 95 S.Ct. 2254. Second, we consider "the presence of intervening circumstances." *Id.,* at 603-604, 95 S.Ct. 2254. Third, and "particularly" significant, we examine "the purpose and flagrancy of the official misconduct." *Id.,* at 604, 95 S.Ct. 2254. In evaluating these factors, we assume without deciding (because the State conceded the point) that Officer Fackrell lacked reasonable suspicion to initially stop Strieff. And, because we ultimately conclude that the warrant breaks the causal chain, we also have no need to decide whether the warrant's existence alone would make the initial stop constitutional even if Officer Fackrell was unaware of its existence.

1

The first factor, temporal proximity between the initially unlawful stop and the search, favors suppressing the evidence. Our precedents have declined to find that this factor favors attenuation unless "substantial time" elapses between an unlawful act and when the evidence is obtained. *Kaupp v. Texas,* 538 U.S. 626, 633, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) (*per curiam*). Here, however, Officer Fackrell discovered drug contraband on Strieff's person only minutes after the illegal stop. See App. 18-19. As the Court explained in *Brown,* such a short time interval counsels in favor of suppression; there, we found that the confession should be suppressed, relying in part on the "less than two hours" that separated the unconstitutional arrest and the confession. 422 U.S., at 604, 95 S.Ct. 2254.

In contrast, the second factor, the presence of intervening circumstances, strongly favors the State. In *Segura,* 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599, the Court addressed similar facts to those here and found sufficient intervening circumstances to allow the admission of evidence. There, agents had probable cause to believe that apartment occupants were dealing cocaine. *Id.,* at 799-800, 104 S.Ct. 3380. They sought a warrant. In the meantime, they entered the apartment, arrested an occupant, and discovered evidence of drug activity during a limited search for security reasons. *Id.,* at 800-801, 104 S.Ct. 3380. The next evening, the Magistrate Judge issued the search warrant. *Ibid.* This Court deemed the evidence admissible notwithstanding the illegal search because the information supporting the warrant was "wholly unconnected with the [arguably illegal] entry and was known to the agents well before the initial entry." *Id.,* at 814, 104 S.Ct. 3380.

Segura, of course, applied the independent source doctrine because the unlawful entry "did not contribute in any way to discovery of the evidence seized under the warrant." *Id.,* at 815, 104 S.Ct. 3380. But the *Segura* Court suggested that the existence of a valid warrant favors finding that the connection between unlawful conduct and the discovery of evidence is "sufficiently attenuated to dissipate the taint." *Ibid.* That principle applies here.

In this case, the warrant was valid, it predated Officer Fackrell's investigation, and it was entirely unconnected with the stop. And once Officer Fackrell discovered the warrant, he had an obligation to arrest Strieff. "A warrant is a judicial mandate to

an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions." *United States v. Leon,* 468 U.S. 897, 920, n. 21, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (internal quotation marks omitted). Officer *2063 Fackrell's arrest of Strieff thus was a ministerial act that was independently compelled by the pre-existing warrant. And once Officer Fackrell was authorized to arrest Strieff, it was undisputedly lawful to search Strieff as an incident of his arrest to protect Officer Fackrell's safety. See *Arizona v. Gant,* 556 U.S. 332, 339, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009) (explaining the permissible scope of searches incident to arrest).

Finally, the third factor, "the purpose and flagrancy of the official misconduct," *Brown, supra,* at 604, 95 S.Ct. 2254, also strongly favors the State. The exclusionary rule exists to deter police misconduct. *Davis v. United States,* 564 U.S. 229, 236-237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). The third factor of the attenuation doctrine reflects that rationale by favoring exclusion only when the police misconduct is most in need of deterrence — that is, when it is purposeful or flagrant.

Officer Fackrell was at most negligent. In stopping Strieff, Officer Fackrell made two good-faith mistakes. First, he had not observed what time Strieff entered the suspected drug house, so he did not know how long Strieff had been there. Officer Fackrell thus lacked a sufficient basis to conclude that Strieff was a short-term visitor who may have been consummating a drug transaction. Second, because he lacked confirmation that Strieff was a short-term visitor, Officer Fackrell should have asked Strieff whether he would speak with him, instead of demanding that Strieff do so. Officer Fackrell's stated purpose was to "find out what was going on [in] the house." App. 17. Nothing prevented him from approaching Strieff simply to ask. See *Florida v. Bostick,* 501 U.S. 429, 434, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991) ("[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions"). But these errors in judgment hardly rise to a purposeful or flagrant violation of Strieff's Fourth Amendment rights.

While Officer Fackrell's decision to initiate the stop was mistaken, his conduct thereafter was lawful. The officer's decision to run the warrant check was a "negligibly burdensome precautio[n]" for officer safety. *Rodriguez v. United States,* 575 U.S. ___, ___, 135 S.Ct. 1609, 1616, 191 L.Ed.2d 492 (2015). And Officer Fackrell's actual search of Strieff was a lawful search incident to arrest. See *Gant, supra,* at 339, 129 S.Ct. 1710.

Moreover, there is no indication that this unlawful stop was part of any systemic or recurrent police misconduct. To the contrary, all the evidence suggests that the stop was an isolated instance of negligence that occurred in connection with a bona fide investigation of a suspected drug house. Officer Fackrell saw Strieff leave a suspected drug house. And his suspicion about the house was based on an anonymous tip and his personal observations.

Applying these factors, we hold that the evidence discovered on Strieff's person was admissible because the unlawful stop was sufficiently attenuated by the pre-existing arrest warrant. Although the illegal stop was close in time to Strieff's arrest, that consideration is outweighed by two factors supporting the State. The outstanding arrest warrant for Strieff's arrest is a critical intervening circumstance that is wholly independent of the illegal stop. The discovery of that warrant broke the causal chain between the unconstitutional stop and the discovery of evidence by compelling Officer Fackrell to arrest Strieff. And, it is especially significant that there is no evidence that Officer Fackrell's illegal stop reflected flagrantly unlawful police misconduct.

2064 *2064 **2**

We find Strieff's counterarguments unpersuasive.

First, he argues that the attenuation doctrine should not apply because the officer's stop was purposeful and flagrant. He asserts that Officer Fackrell stopped him solely to fish for evidence of suspected wrongdoing. But Officer Fackrell sought information from Strieff to find out what was happening inside a house whose occupants were legitimately suspected of dealing drugs. This was not a suspicionless fishing expedition "in the hope that something would turn up." *Taylor v. Alabama,* 457 U.S. 687, 691, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982).

Strieff argues, moreover, that Officer Fackrell's conduct was flagrant because he detained Strieff without the necessary level of cause (here, reasonable suspicion). But that conflates the standard for an illegal stop with the standard for flagrancy. For the violation to be flagrant, more severe police misconduct is required than the mere absence of proper cause for the seizure. See, *e.g., Kaupp,* 538 U.S., at 628, 633, 123 S.Ct. 1843 (finding flagrant violation where a warrantless arrest was made in the arrestee's home after police were denied a warrant and at least some officers knew they lacked probable

cause). Neither the officer's alleged purpose nor the flagrancy of the violation rise to a level of misconduct to warrant suppression.

Second, Strieff argues that, because of the prevalence of outstanding arrest warrants in many jurisdictions, police will engage in dragnet searches if the exclusionary rule is not applied. We think that this outcome is unlikely. Such wanton conduct would expose police to civil liability. See 42 U.S.C. § 1983; *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); see also *Segura*, 468 U.S., at 812, 104 S.Ct. 3380. And in any event, the *Brown* factors take account of the purpose and flagrancy of police misconduct. Were evidence of a dragnet search presented here, the application of the *Brown* factors could be different. But there is no evidence that the concerns that Strieff raises with the criminal justice system are present in South Salt Lake City, Utah.

*** * ***

We hold that the evidence Officer Fackrell seized as part of his search incident to arrest is admissible because his discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized from Strieff incident to arrest. The judgment of the Utah Supreme Court, accordingly, is reversed.

It is so ordered.

Justice SOTOMAYOR, with whom Justice GINSBURG joins as to Parts I, II, and III, dissenting.

The Court today holds that the discovery of a warrant for an unpaid parking ticket will forgive a police officer's violation of your Fourth Amendment rights. Do not be soothed by the opinion's technical language: This case allows the police to stop you on the street, demand your identification, and check it for outstanding traffic warrants — even if you are doing nothing wrong. If the officer discovers a warrant for a fine you forgot to pay, courts will now excuse his illegal stop and will admit into evidence anything he happens to find by searching you after arresting you on the warrant. Because the Fourth Amendment should prohibit, not permit, such misconduct, I dissent.

I

Minutes after Edward Strieff walked out of a South Salt Lake City home, an officer stopped him, questioned him, and took
2065 his *2065 identification to run it through a police database. The officer did not suspect that Strieff had done anything wrong. Strieff just happened to be the first person to leave a house that the officer thought might contain "drug activity." App. 16-19.

As the State of Utah concedes, this stop was illegal. App. 24. The Fourth Amendment protects people from "unreasonable searches and seizures." An officer breaches that protection when he detains a pedestrian to check his license without any evidence that the person is engaged in a crime. *Delaware v. Prouse*, 440 U.S. 648, 663, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The officer deepens the breach when he prolongs the detention just to fish further for evidence of wrongdoing. *Rodriguez v. United States*, 575 U.S. ___, ___-___, 135 S.Ct. 1609, 1615-1616, 191 L.Ed.2d 492 (2015). In his search for lawbreaking, the officer in this case himself broke the law.

The officer learned that Strieff had a "small traffic warrant." App. 19. Pursuant to that warrant, he arrested Strieff and, conducting a search incident to the arrest, discovered methamphetamine in Strieff's pockets.

Utah charged Strieff with illegal drug possession. Before trial, Strieff argued that admitting the drugs into evidence would condone the officer's misbehavior. The methamphetamine, he reasoned, was the product of the officer's illegal stop. Admitting it would tell officers that unlawfully discovering even a "small traffic warrant" would give them license to search for evidence of unrelated offenses. The Utah Supreme Court unanimously agreed with Strieff. A majority of this Court now reverses.

II

It is tempting in a case like this, where illegal conduct by an officer uncovers illegal conduct by a civilian, to forgive the officer. After all, his instincts, although unconstitutional, were correct. But a basic principle lies at the heart of the Fourth

Amendment: Two wrongs don't make a right. See *Weeks v. United States*, 232 U.S. 383, 392, 34 S.Ct. 341, 58 L.Ed. 652 (1914). When "lawless police conduct" uncovers evidence of lawless civilian conduct, this Court has long required later criminal trials to exclude the illegally obtained evidence. *Terry*, 392 U.S., at 12, 88 S.Ct. 1868; *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961). For example, if an officer breaks into a home and finds a forged check lying around, that check may not be used to prosecute the homeowner for bank fraud. We would describe the check as "`fruit of the poisonous tree.'" *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Fruit that must be cast aside includes not only evidence directly found by an illegal search but also evidence "come at by exploitation of that illegality." *Ibid.*

This "exclusionary rule" removes an incentive for officers to search us without proper justification. *Terry*, 392 U.S., at 12, 88 S.Ct. 1868. It also keeps courts from being "made party to lawless invasions of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasions." *Id.*, at 13, 88 S.Ct. 1868. When courts admit only lawfully obtained evidence, they encourage "those who formulate law enforcement polices, and the officers who implement them, to incorporate Fourth Amendment ideals into their value system." *Stone v. Powell*, 428 U.S. 465, 492, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976). But when courts admit illegally obtained evidence as well, they reward "manifest neglect if not an
2066 open defiance of the prohibitions of the *2066 Constitution." *Weeks*, 232 U.S., at 394, 34 S.Ct. 341.

Applying the exclusionary rule, the Utah Supreme Court correctly decided that Strieff's drugs must be excluded because the officer exploited his illegal stop to discover them. The officer found the drugs only after learning of Strieff's traffic violation; and he learned of Strieff's traffic violation only because he unlawfully stopped Strieff to check his driver's license.

The court also correctly rejected the State's argument that the officer's discovery of a traffic warrant unspoiled the poisonous fruit. The State analogizes finding the warrant to one of our earlier decisions, *Wong Sun v. United States*. There, an officer illegally arrested a person who, days later, voluntarily returned to the station to confess to committing a crime. 371 U.S., at 491, 83 S.Ct. 407. Even though the person would not have confessed "but for the illegal actions of the police," *id.*, at 488, 83 S.Ct. 407 we noted that the police did not exploit their illegal arrest to obtain the confession, *id.*, at 491, 83 S.Ct. 407. Because the confession was obtained by "means sufficiently distinguishable" from the constitutional violation, we held that it could be admitted into evidence. *Id.*, at 488, 491, 83 S.Ct. 407. The State contends that the search incident to the warrant-arrest here is similarly distinguishable from the illegal stop.

But *Wong Sun* explains why Strieff's drugs must be excluded. We reasoned that a Fourth Amendment violation may not color every investigation that follows but it certainly stains the actions of officers who exploit the infraction. We distinguished evidence obtained by innocuous means from evidence obtained by exploiting misconduct after considering a variety of factors: whether a long time passed, whether there were "intervening circumstances," and whether the purpose or flagrancy of the misconduct was "calculated" to procure the evidence. *Brown v. Illinois*, 422 U.S. 590, 603-604, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975).

These factors confirm that the officer in this case discovered Strieff's drugs by exploiting his own illegal conduct. The officer did not ask Strieff to volunteer his name only to find out, days later, that Strieff had a warrant against him. The officer illegally stopped Strieff and immediately ran a warrant check. The officer's discovery of a warrant was not some intervening surprise that he could not have anticipated. Utah lists over 180,000 misdemeanor warrants in its database, and at the time of the arrest, Salt Lake County had a "backlog of outstanding warrants" so large that it faced the "potential for civil liability." See Dept. of Justice, Bureau of Justice Statistics, Survey of State Criminal History Information Systems, 2014 (2015) (Systems Survey) (Table 5a), online at https://www.ncjrs.gov/pdffiles1/ bjs/grants/249799.pdf (all Internet materials as last visited June 16, 2016); Inst. for Law and Policy Planning, Salt Lake County Criminal Justice System Assessment 6.7 (2004), online at http://www.slco.org/ cjac/resources/SaltLakeCJSAfinal.pdf. The officer's violation was also calculated to procure evidence. His sole reason for stopping Strieff, he acknowledged, was investigative — he wanted to discover whether drug activity was going on in the house Strieff had just exited. App. 17.

The warrant check, in other words, was not an "intervening circumstance" separating the stop from the search for drugs. It was part and parcel of the officer's illegal "expedition for evidence in the hope that something might turn up." *Brown*, 422 U.S., at 605, 95 S.Ct. 2254. Under our precedents, because the officer found Strieff's drugs by exploiting his own
2067 constitutional *2067 violation, the drugs should be excluded.

III

A

The Court sees things differently. To the Court, the fact that a warrant gives an officer cause to arrest a person severs the connection between illegal policing and the resulting discovery of evidence. *Ante,* at 2062-2063. This is a remarkable proposition: The mere existence of a warrant not only gives an officer legal cause to arrest and search a person, it also forgives an officer who, with no knowledge of the warrant at all, unlawfully stops that person on a whim or hunch.

To explain its reasoning, the Court relies on *Segura v. United States,* 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984). There, federal agents applied for a warrant to search an apartment but illegally entered the apartment to secure it before the judge issued the warrant. *Id.,* at 800-801, 104 S.Ct. 3380. After receiving the warrant, the agents then searched the apartment for drugs. *Id.,* at 801, 104 S.Ct. 3380. The question before us was what to do with the evidence the agents then discovered. We declined to suppress it because "[t]he illegal entry into petitioners' apartment did not contribute in any way to discovery of the evidence seized under the warrant." *Id.,* at 815, 104 S.Ct. 3380.

According to the majority, *Segura* involves facts "similar" to this case and "suggest[s]" that a valid warrant will clean up whatever illegal conduct uncovered it. *Ante,* at 2062-2063. It is difficult to understand this interpretation. In *Segura,* the agents' illegal conduct in entering the apartment had nothing to do with their procurement of a search warrant. Here, the officer's illegal conduct in stopping Strieff was essential to his discovery of an arrest warrant. *Segura* would be similar only if the agents used information they illegally obtained from the apartment to procure a search warrant or discover an arrest warrant. Precisely because that was not the case, the Court admitted the untainted evidence. 468 U.S., at 814, 104 S.Ct. 3380.

The majority likewise misses the point when it calls the warrant check here a "`negligibly burdensome precautio[n]'" taken for the officer's "safety." *Ante,* at 2063 (quoting *Rodriguez,* 575 U.S., at ___, 135 S.Ct., at 1615). Remember, the officer stopped Strieff without suspecting him of committing any crime. By his own account, the officer did not fear Strieff. Moreover, the safety rationale we discussed in *Rodriguez,* an opinion about highway patrols, is conspicuously absent here. A warrant check on a highway "ensur[es] that vehicles on the road are operated safely and responsibly." *Id.,* at ___, 135 S.Ct., at 1615. We allow such checks during legal traffic stops because the legitimacy of a person's driver's license has a "close connection to roadway safety." *Id.,* at ___, 135 S.Ct., at 1615. A warrant check of a pedestrian on a sidewalk, "by contrast, is a measure aimed at `detect[ing] evidence of ordinary criminal wrongdoing.'" *Ibid.* (quoting *Indianapolis v. Edmond,* 531 U.S. 32, 40-41, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000)). Surely we would not allow officers to warrant-check random joggers, dog walkers, and lemonade vendors just to ensure they pose no threat to anyone else.

The majority also posits that the officer could not have exploited his illegal conduct because he did not violate the Fourth Amendment on purpose. Rather, he made "good-faith mistakes." *Ante,* at 2063. Never mind that the officer's sole purpose
2068 was to fish for evidence. The majority casts his unconstitutional actions as "negligent" *2068 and therefore incapable of being deterred by the exclusionary rule. *Ibid.*

But the Fourth Amendment does not tolerate an officer's unreasonable searches and seizures just because he did not know any better. Even officers prone to negligence can learn from courts that exclude illegally obtained evidence. *Stone,* 428 U.S., at 492, 96 S.Ct. 3037. Indeed, they are perhaps the most in need of the education, whether by the judge's opinion, the prosecutor's future guidance, or an updated manual on criminal procedure. If the officers are in doubt about what the law requires, exclusion gives them an "incentive to err on the side of constitutional behavior." *United States v. Johnson,* 457 U.S. 537, 561, 102 S.Ct. 2579, 73 L.Ed.2d 202 (1982).

B

Most striking about the Court's opinion is its insistence that the event here was "isolated," with "no indication that this unlawful stop was part of any systemic or recurrent police misconduct." *Ante,* at 2063. Respectfully, nothing about this case is isolated.

Outstanding warrants are surprisingly common. When a person with a traffic ticket misses a fine payment or court appearance, a court will issue a warrant. See, *e.g.,* Brennan Center for Justice, Criminal Justice Debt 23 (2010), online at https://www.brennancenter.org/sites/ default/files/legacy/Fees%20and% 20Fines%20FINAL.pdf. When a person on probation drinks alcohol or breaks curfew, a court will issue a warrant. See, *e.g.,* Human Rights Watch, Profiting from

Probation 1, 51 (2014), online at https://www. hrw.org/report/2014/02/05/profiting-probation/americas-offender-funded-probation-industry. The States and Federal Government maintain databases with over 7.8 million outstanding warrants, the vast majority of which appear to be for minor offenses. See Systems Survey (Table 5a). Even these sources may not track the "staggering" numbers of warrants, "`drawers and drawers'" full, that many cities issue for traffic violations and ordinance infractions. Dept. of Justice, Civil Rights Div., Investigation of the Ferguson Police Department 47, 55 (2015) (Ferguson Report), online at https://www.justice.gov/ sites/default/files/opa/press-releases/ attachments/2015/03/04/ferguson_police_ department_report.pdf. The county in this case has had a "backlog" of such warrants. See *supra,* at 2066. The Department of Justice recently reported that in the town of Ferguson, Missouri, with a population of 21,000, 16,000 people had outstanding warrants against them. Ferguson Report, at 6, 55.

Justice Department investigations across the country have illustrated how these astounding numbers of warrants can be used by police to stop people without cause. In a single year in New Orleans, officers "made nearly 60,000 arrests, of which about 20,000 were of people with outstanding traffic or misdemeanor warrants from neighboring parishes for such infractions as unpaid tickets." Dept. of Justice, Civil Rights Div., Investigation of the New Orleans Police Department 29 (2011), online at https://www.justice.gov/ sites/default/files/crt/legacy/2011/03/17/ nopd_report.pdf. In the St. Louis metropolitan area, officers "routinely" stop people — on the street, at bus stops, or even in court — for no reason other than "an officer's desire to check whether the subject had a municipal arrest warrant pending." Ferguson Report, at 49, 57. In Newark, New Jersey, officers stopped 52,235 pedestrians within a 4-year period and ran warrant checks on 39,308 of them.
2069 Dept. of Justice, Civil Rights Div., Investigation of the Newark Police Department 8, 19, n. 15 *2069 (2014), online at https://www.justice.gov/ sites/default/files/crt/legacy/2014/07/22/ newark_findings_7-22-14.pdf. The Justice Department analyzed these warrant-checked stops and reported that "approximately 93% of the stops would have been considered unsupported by articulated reasonable suspicion." *Id.,* at 9, n. 7.

I do not doubt that most officers act in "good faith" and do not set out to break the law. That does not mean these stops are "isolated instance[s] of negligence," however. *Ante,* at 2063. Many are the product of institutionalized training procedures. The New York City Police Department long trained officers to, in the words of a District Judge, "stop and question first, develop reasonable suspicion later." *Ligon v. New York,* 925 F.Supp.2d 478, 537-538 (S.D.N.Y.), stay granted on other grounds, 736 F.3d 118 (C.A.2 2013). The Utah Supreme Court described as "`routine procedure' or `common practice'" the decision of Salt Lake City police officers to run warrant checks on pedestrians they detained without reasonable suspicion. *State v. Topanotes,* 2003 UT 30, ¶ 2, 76 P.3d 1159, 1160. In the related context of traffic stops, one widely followed police manual instructs officers looking for drugs to "run at least a warrants check on all drivers you stop. Statistically, narcotics offenders are ... more likely to fail to appear on simple citations, such as traffic or trespass violations, leading to the issuance of bench warrants. Discovery of an outstanding warrant gives you cause for an immediate custodial arrest and search of the suspect." C. Remsberg, Tactics for Criminal Patrol 205-206 (1995); C. Epp et al., Pulled Over 23, 33-36 (2014).

The majority does not suggest what makes this case "isolated" from these and countless other examples. Nor does it offer guidance for how a defendant can prove that his arrest was the result of "widespread" misconduct. Surely it should not take a federal investigation of Salt Lake County before the Court would protect someone in Strieff's position.

IV

Writing only for myself, and drawing on my professional experiences, I would add that unlawful "stops" have severe consequences much greater than the inconvenience suggested by the name. This Court has given officers an array of instruments to probe and examine you. When we condone officers' use of these devices without adequate cause, we give them reason to target pedestrians in an arbitrary manner. We also risk treating members of our communities as second-class citizens.

Although many Americans have been stopped for speeding or jaywalking, few may realize how degrading a stop can be when the officer is looking for more. This Court has allowed an officer to stop you for whatever reason he wants — so long as he can point to a pretextual justification after the fact. *Whren v. United States,* 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996). That justification must provide specific reasons why the officer suspected you were breaking the law, *Terry,* 392 U.S., at 21, 88 S.Ct. 1868 but it may factor in your ethnicity, *United States v. Brignoni-Ponce,* 422 U.S. 873, 886-887, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975), where you live, *Adams v. Williams,* 407 U.S. 143, 147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), what you were wearing, *United States v. Sokolow,* 490 U.S. 1, 4-5, 109 S.Ct. 1581, 104 L.Ed.2d 1

(1989), and how you behaved, *Illinois v. Wardlow,* 528 U.S. 119, 124-125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000). The officer does not even need to know which law you might have broken so long as he can later point to any possible infraction
2070 — even one that is minor, unrelated, or ambiguous. *Devenpeck v. Alford,* *2070 543 U.S. 146, 154-155, 125 S.Ct. 588, 160 L.Ed.2d 537 (2004); *Heien v. North Carolina,* 574 U.S. ___, 135 S.Ct. 530, 190 L.Ed.2d 475 (2014).

The indignity of the stop is not limited to an officer telling you that you look like a criminal. See Epp, Pulled Over, at 5. The officer may next ask for your "consent" to inspect your bag or purse without telling you that you can decline. See *Florida v. Bostick,* 501 U.S. 429, 438, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). Regardless of your answer, he may order you to stand "helpless, perhaps facing a wall with [your] hands raised." *Terry,* 392 U.S., at 17, 88 S.Ct. 1868. If the officer thinks you might be dangerous, he may then "frisk" you for weapons. This involves more than just a pat down. As onlookers pass by, the officer may "`feel with sensitive fingers every portion of [your] body. A thorough search [may] be made of [your] arms and armpits, waistline and back, the groin and area about the testicles, and entire surface of the legs down to the feet.'" *Id.,* at 17, n. 13, 88 S.Ct. 1868.

The officer's control over you does not end with the stop. If the officer chooses, he may handcuff you and take you to jail for doing nothing more than speeding, jaywalking, or "driving [your] pickup truck... with [your] 3-year-old son and 5-year-old daughter ... without [your] seatbelt fastened." *Atwater v. Lago Vista,* 532 U.S. 318, 323-324, 121 S.Ct. 1536, 149 L.Ed.2d 549 (2001). At the jail, he can fingerprint you, swab DNA from the inside of your mouth, and force you to "shower with a delousing agent" while you "lift [your] tongue, hold out [your] arms, turn around, and lift [your] genitals." *Florence v. Board of Chosen Freeholders of County of Burlington,* 566 U.S. ___, ___-___, 132 S.Ct. 1510, 1514, 182 L.Ed.2d 566 (2012); *Maryland v. King,* 569 U.S. ___, ___, 133 S.Ct. 1958, 1980, 186 L.Ed.2d 1 (2013). Even if you are innocent, you will now join the 65 million Americans with an arrest record and experience the "civil death" of discrimination by employers, landlords, and whoever else conducts a background check. Chin, The New Civil Death, 160 U. Pa. L. Rev. 1789, 1805 (2012); see J. Jacobs, The Eternal Criminal Record 33-51 (2015); Young & Petersilia, Keeping Track, 129 Harv. L. Rev. 1318, 1341-1357 (2016). And, of course, if you fail to pay bail or appear for court, a judge will issue a warrant to render you "arrestable on sight" in the future. A. Goffman, On the Run 196 (2014).

This case involves a *suspicionless* stop, one in which the officer initiated this chain of events without justification. As the Justice Department notes, *supra,* at 2068-2069, many innocent people are subjected to the humiliations of these unconstitutional searches. The white defendant in this case shows that anyone's dignity can be violated in this manner. See M. Gottschalk, Caught 119-138 (2015). But it is no secret that people of color are disproportionate victims of this type of scrutiny. See M. Alexander, The New Jim Crow 95-136 (2010). For generations, black and brown parents have given their children "the talk" — instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger — all out of fear of how an officer with a gun will react to them. See, *e.g.,* W.E.B. Du Bois, The Souls of Black Folk (1903); J. Baldwin, The Fire Next Time (1963); T. Coates, Between the World and Me (2015).

By legitimizing the conduct that produces this double consciousness, this case tells everyone, white and black, guilty and innocent, that an officer can verify your legal status at any time. It says that your body is subject to invasion while courts
2071 excuse the violation of your rights. It *2071 implies that you are not a citizen of a democracy but the subject of a carceral state, just waiting to be cataloged.

We must not pretend that the countless people who are routinely targeted by police are "isolated." They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere. See L. Guinier & G. Torres, The Miner's Canary 274-283 (2002). They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.

*** * ***

I dissent.

Justice KAGAN, with whom Justice GINSBURG joins, dissenting.

If a police officer stops a person on the street without reasonable suspicion, that seizure violates the Fourth Amendment. And if the officer pats down the unlawfully detained individual and finds drugs in his pocket, the State may not use the contraband as evidence in a criminal prosecution. That much is beyond dispute. The question here is whether the prohibition on admitting evidence dissolves if the officer discovers, after making the stop but before finding the drugs, that

the person has an outstanding arrest warrant. Because that added wrinkle makes no difference under the Constitution, I respectfully dissent.

This Court has established a simple framework for determining whether to exclude evidence obtained through a Fourth Amendment violation: Suppression is necessary when, but only when, its societal benefits outweigh its costs. See *ante,* at 2060-2061; *Davis v. United States,* 564 U.S. 229, 237, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). The exclusionary rule serves a crucial function — to deter unconstitutional police conduct. By barring the use of illegally obtained evidence, courts reduce the temptation for police officers to skirt the Fourth Amendment's requirements. See *James v. Illinois,* 493 U.S. 307, 319, 110 S.Ct. 648, 107 L.Ed.2d 676 (1990). But suppression of evidence also "exacts a heavy toll": Its consequence in many cases is to release a criminal without just punishment. *Davis,* 564 U.S., at 237, 131 S.Ct. 2419. Our decisions have thus endeavored to strike a sound balance between those two competing considerations — rejecting the "reflexive" impulse to exclude evidence every time an officer runs afoul of the Fourth Amendment, *id.,* at 238, 131 S.Ct. 2419 but insisting on suppression when it will lead to "appreciable deterrence" of police misconduct, *Herring v. United States,* 555 U.S. 135, 141, 129 S.Ct. 695, 172 L.Ed.2d 496 (2009).

This case thus requires the Court to determine whether excluding the fruits of Officer Douglas Fackrell's unjustified stop of Edward Strieff would significantly deter Police from committing similar constitutional violations in the future. And as the Court states, that inquiry turns on application of the "attenuation doctrine," *ante,* at 2061-2062 — our effort to "mark the point" at which the discovery of evidence "become[s] so attenuated" from the police misconduct that the deterrent benefit of exclusion drops below its cost. *United States v. Leon,* 468 U.S. 897, 911, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984). Since *Brown v. Illinois,* 422 U.S. 590, 604-605, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), three factors have guided that analysis. First, the closer the "temporal proximity" between the unlawful act and the discovery of evidence, the greater the deterrent value of suppression. *Id.,* at 603, 95 S.Ct. 2254. Second, the more "purpose[ful]" or "flagran[t]" the police illegality, the
2072 clearer the necessity, and better the chance, of preventing similar misbehavior. *Id.,* at 604, 95 S.Ct. 2254. *2072 And third, the presence (or absence) of "intervening circumstances" makes a difference: The stronger the causal chain between the misconduct and the evidence, the more exclusion will curb future constitutional violations. *Id.,* at 603-604, 95 S.Ct. 2254. Here, as shown below, each of those considerations points toward suppression: Nothing in Fackrell's discovery of an outstanding warrant so attenuated the connection between his wrongful behavior and his detection of drugs as to diminish the exclusionary rule's deterrent benefits.

Start where the majority does: The temporal proximity factor, it forthrightly admits, "favors suppressing the evidence." *Ante,* at 2062. After all, Fackrell's discovery of drugs came just minutes after the unconstitutional stop. And in prior decisions, this Court has made clear that only the lapse of "substantial time" between the two could favor admission. *Kaupp v. Texas,* 538 U.S. 626, 633, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) (*per curiam*); see, *e.g., Brown,* 422 U.S., at 604, 95 S.Ct. 2254 (suppressing a confession when "less than two hours" separated it from an unlawful arrest). So the State, by all accounts, takes strike one.

Move on to the purposefulness of Fackrell's conduct, where the majority is less willing to see a problem for what it is. The majority chalks up Fackrell's Fourth Amendment violation to a couple of innocent "mistakes." *Ante,* at 2063. But far from a Barney Fife-type mishap, Fackrell's seizure of Strieff was a calculated decision, taken with so little justification that the State has never tried to defend its legality. At the suppression hearing, Fackrell acknowledged that the stop was designed for investigatory purposes — *i.e.,* to "find out what was going on [in] the house" he had been watching, and to figure out "what [Strieff] was doing there." App. 17-18. And Fackrell frankly admitted that he had no basis for his action except that Strieff "was coming out of the house." *Id.,* at 17. Plug in Fackrell's and Strieff's names, substitute "stop" for "arrest" and "reasonable suspicion" for "probable cause," and this Court's decision in *Brown* perfectly describes this case:

> "[I]t is not disputed that [Fackrell stopped Strieff] without [reasonable suspicion]. [He] later testified that [he] made the [stop] for the purpose of questioning [Strieff] as part of [his] investigation.... The illegality here ... had a quality of purposefulness. The impropriety of the [stop] was obvious. [A]wareness of that fact was virtually conceded by [Fackrell] when [he] repeatedly acknowledged, in [his] testimony, that the purpose of [his] action was `for investigation': [Fackrell] embarked upon this expedition for evidence in the hope that something might turn up." 422 U.S., at 592, 605, 95 S.Ct. 2254 (some internal punctuation altered; footnote, citation, and paragraph break omitted).

In *Brown,* the Court held those facts to support suppression — and they do here as well. Swing and a miss for strike two.

Finally, consider whether any intervening circumstance "br[oke] the causal chain" between the stop and the evidence. *Ante,* at 2062. The notion of such a disrupting event comes from the tort law doctrine of proximate causation. See *Bridge v. Phoenix Bond & Indemnity Co.,* 553 U.S. 639, 658-659, 128 S.Ct. 2131, 170 L.Ed.2d 1012 (2008) (explaining that a party cannot "establish[ ] proximate cause" when "an intervening cause break[s] the chain of causation between" the act and the injury); Kerr, Good Faith, New Law, and the Scope of the Exclusionary Rule, 99 Geo. L. J. 1077, 1099 (2011) (Fourth
2073 Amendment attenuation analysis "looks to *2073 whether the constitutional violation was the proximate cause of the discovery of the evidence"). And as in the tort context, a circumstance counts as intervening only when it is unforeseeable — not when it can be seen coming from miles away. See W. Keeton, D. Dobbs, B. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 312 (5th ed. 1984). For rather than breaking the causal chain, predictable effects (*e.g.,* X leads naturally to Y leads naturally to Z) are its very links.

And Fackrell's discovery of an arrest warrant — the only event the majority thinks intervened — was an eminently foreseeable consequence of stopping Strieff. As Fackrell testified, checking for outstanding warrants during a stop is the "normal" practice of South Salt Lake City police. App. 18; see also *State v. Topanotes,* 2003 UT 30, ¶ 2, 76 P.3d 1159, 1160 (describing a warrant check as "routine procedure" and "common practice" in Salt Lake City). In other words, the department's standard detention procedures — stop, ask for identification, run a check — are partly designed to find outstanding warrants. And find them they will, given the staggering number of such warrants on the books. See generally *ante,* at 2067-2068 (SOTOMAYOR, J., dissenting). To take just a few examples: The State of California has 2.5 million outstanding arrest warrants (a number corresponding to about 9% of its adult population); Pennsylvania (with a population of about 12.8 million) contributes 1.4 million more; and New York City (population 8.4 million) adds another 1.2 million. See Reply Brief 8; Associated Press, Pa. Database, NBC News (Apr. 8, 2007), online at http://goo.gl/ 3Yq3Nd (as last visited June 17, 2016); N.Y. Times, Oct. 8, 2015, p. A24.[1] So outstanding warrants do not appear as bolts from the blue. They are the run-of-the-mill results of police stops — what officers look for when they run a routine check of a person's identification and what they know will turn up with fair regularity. In short, they are nothing like what intervening circumstances are supposed to be.[2] Strike three.

The majority's misapplication of *Brown*'s three-part inquiry creates unfortunate incentives for the police — indeed, practically invites them to do what Fackrell did here. Consider an officer who, like Fackrell, wishes to stop someone for investigative reasons, but does not have what a court would view as reasonable suspicion. If the officer believes that any evidence he
2074 discovers will be inadmissible, he is likely to think the unlawful stop not worth making — precisely the deterrence *2074 the exclusionary rule is meant to achieve. But when he is told of today's decision? Now the officer knows that the stop may well yield admissible evidence: So long as the target is one of the many millions of people in this country with an outstanding arrest warrant, anything the officer finds in a search is fair game for use in a criminal prosecution. The officer's incentive to violate the Constitution thus increases: From here on, he sees potential advantage in stopping individuals without reasonable suspicion — exactly the temptation the exclusionary rule is supposed to remove. Because the majority thus places Fourth Amendment protections at risk, I respectfully dissent.

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.,* 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 490.

[1] What is more, outstanding arrest warrants are not distributed evenly across the population. To the contrary, they are concentrated in cities, towns, and neighborhoods where stops are most likely to occur — and so the odds of any given stop revealing a warrant are even higher than the above numbers indicate. One study found, for example, that Cincinnati, Ohio had over 100,000 outstanding warrants with only 300,000 residents. See Helland & Tabarrok, The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping, 47 J. Law & Econ. 93, 98 (2004). And as Justice SOTOMAYOR notes, 16,000 of the 21,000 people residing in the town of Ferguson, Missouri have outstanding warrants. See *ante,* at 2063.

[2] The majority relies on *Segura v. United States,* 468 U.S. 796, 104 S.Ct. 3380, 82 L.Ed.2d 599 (1984), to reach the opposite conclusion, see *ante,* at 2062-2063, but that decision lacks any relevance to this case. The Court there held that the Fourth Amendment violation at issue "did not contribute in any way" to the police's subsequent procurement of a warrant and discovery of contraband. 468 U.S., at 815, 104 S.Ct. 3380. So the Court had no occasion to consider the question here: What happens when an unconstitutional act in fact leads to a warrant which then leads to evidence?