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ARTICLES

THE MOVING PROPERTY PROBLEM IN FOURTH AMENDMENT LAW

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The Fourth Amendment's ban on unreasonable searches and seizures has been interpreted by the Supreme Court to require many location-specific rules. There are different rules for searching homes, cars, spaces near people, and at the border. The Fourth Amendment's place-based rules create a puzzle: What rules apply when property is moved from one place to another? Can the police expand their search powers by grabbing a person's property and moving it to a new place where protections are weaker? And can suspects impede investigations by moving their property to new places where protections are stronger?

This is the moving property problem of Fourth Amendment law. This Article identifies the moving property problem, shows that it is a recurring issue, and offers a framework for solving it. It links a range of cases that have not been linked before, and it shows how courts have often divided when faced with facts involving moving property. It then develops a two-part framework for how courts should solve moving property cases. First, courts should ask whether the movement is consistent with the rationales for the place-based rules of the starting and ending places. Second, courts should ask whether the movement itself was lawful, which should depend on whether the movement

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violated the Fourth Amendment or was the result of government coercion.

INTRODUCTION

Imagine you are carrying a bag that the police want to search. The Fourth Amendment rules for searching your bag depend on where it is. If the bag is inside your home, the government needs a warrant to enter the home and search it.[1] If the bag is in your car, however, probable cause is enough, and no warrant is needed.[2] If the police arrest you while you're carrying the bag, they can search the bag without any cause.[3] If the bag is more than a few feet from you at the time of your arrest, however, the

[1] See Silverman v. United States, 365 U.S. 505, 512 (1961) (holding that physical entry requires a warrant). The Supreme Court first expressly so held in *Agnello v. United States*, 269 U.S. 20, 31–33 (1925), although the point had "always been assumed." Id. at 32.

[2] See California v. Acevedo, 500 U.S. 565, 579–80 (1991) (holding that a search of property placed in a car requires probable cause but not a warrant).

[3] See United States v. Robinson, 414 U.S. 218, 236 (1973) (allowing the search of property on a person based on lawful arrest alone without requiring additional cause).

government needs a warrant again.[4] As these examples suggest, Fourth Amendment protection is fundamentally *place-based*. The government's search power depends on where items to be searched are located.

The place-based nature of Fourth Amendment rules raises a question: If property is moved to a new place, does moving the property change its constitutional protection? In other words, are search and seizure protections fixed using an item's prior location, or do those protections vary when the item is brought somewhere new? This question comes up often in Fourth Amendment cases. Consider a few examples drawn from recent decisions:

> An officer orders a passenger out of a car during a traffic stop. The passenger exits, taking her purse with her. Searching a purse outside a car requires a warrant, but searching a purse inside a car does not. Is a warrant needed to search the purse after the passenger has removed it from the car?[5]
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> The federal government has broad power to search at the border. Border agents seize a suspect's computer at the border, but they lack the expertise to search it. Agents bring the computer to a forensics expert, located hundreds of miles from the border, who searches it at his office. Does the forensic expert's search count as a border search?[6]
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> Officers want to arrest a suspect at his home, but they lack the warrant needed to enter the home to arrest him inside. From their position outside, officers point their guns at the suspect inside and order him to leave his house. He complies with the order, and officers arrest him outside. Was a warrant needed?[7]
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> Police arrest a man wearing a fanny pack. For their own safety, officers remove the fanny pack and place it twenty feet away. The Fourth Amendment permits a warrantless search of property on the person incident to his arrest, but it does not allow a search of

[4] See Chimel v. California, 395 U.S. 752, 763 (1969) (holding that a search incident to arrest only extends to the area of immediate control around the person arrested).

[5] See State v. Lang, 942 N.W.2d 388, 400 (Neb. 2020), discussed in Section I.B.

[6] See United States v. Cotterman, 709 F.3d 952, 961–62 (9th Cir. 2013) (en banc), discussed in Section I.D.

[7] See United States v. Maez, 872 F.2d 1444, 1450–51 (10th Cir. 1989), discussed in Section I.C.

> property more than a few feet away. Can the police still search the fanny pack without a warrant?[8]

> Investigators have a warrant to search a house, but they lack the cause needed to detain and interrogate a particular suspect who lives there. They know, however, that Fourth Amendment law allows the government to detain anyone present when a warrant is executed. Hoping to interrogate the suspect, investigators contact the suspect and pretend that his house has been robbed and that he should come home to assess the damage. When the man arrives, officers detain and interrogate him. Was this lawful?[9]

> The driver of a car consents to its search. An officer orders everyone out of the car, and a passenger takes her purse with her. The officer orders the passenger to put her purse back in the car so it can be searched. Case law allows the government to search anything in the car with the driver's consent but requires a warrant to search a purse outside the car. Can officers search the purse?[10]

In each of these cases, something or someone was moved from one place governed by one rule to a new place governed by a different rule. Sometimes the government moved the relevant thing or person. Sometimes a private party did. And sometimes the government caused the private party to move it. Each case raises the same question: Does moving the item to a new place change its constitutional protection?

[8] See, e.g., Jean v. State, 369 So. 3d 1235, 1237–38 (Fla. Dist. Ct. App. 2023). This scenario is discussed in Section I.B.

[9] See United States v. Ramirez, 976 F.3d 946, 949–50 (9th Cir. 2020), discussed in Section I.C.

[10] See State v. Boyd, 64 P.3d 419, 427 (Kan. 2003), discussed in Section I.C.

I call this the moving property problem.[11] Despite how often it surfaces, neither courts nor scholars have recognized it.[12] The moving property problem is particularly rich because the ex ante incentives are obvious. Government agents want to expand their search power, just as targets of searches want that authority narrowed.[13] If Fourth Amendment case law allows it, the police will move property or suspects to a place where officers have greater power to search—and then search under the relaxed rules of the new place. On the flip side, private parties who know the law may want to move their property to a place where their privacy rights are greatest—impeding investigations, if they can, by triggering the more restrictive rules of the new location. Ex post litigation incentives are clear, too. Each side has reason to argue that the other's moving of property works in reverse. When a suspect happens to move his property to a place where rights are weaker, the government will argue that rules of the new location apply. And defendants will make the mirror-image

[11] By the phrase "moving property," I mean anything that can be moved and that can later be searched, whether or not it counts as property in a technical legal sense. In most cases, the moving property will be containers such as bags, purses, briefcases, and fanny packs. In some cases, the item moved is a person, who is moved away from their containers or who is moved to a different location and then searched. I consider all of these examples of the moving property problem.

The label "moving property problem" might call to mind the automobile exception to the warrant requirement, under which searching a car does not require a warrant in part because cars are readily movable. See, e.g., California v. Carney, 471 U.S. 386, 390–91 (1985). My concern in this Article is not with whether property should receive different protection because it can move, however, but whether protections should change when items are moved from a place governed by one rule to a place governed by a different rule. Some moving property cases involve the automobile exception, as property is readily placed into or taken out of cars. But the moving property problem is about the clash of rules between two places—akin to a conflict of law problem—not the rules of any one place.

[12] My research has uncovered no prior articles on the moving property problem. The most relevant scholarship appears to be several articles on one specific application—whether and when officers can make warrantless doorway arrests by moving arrestees out of the home. There is a narrow literature on that question. See, e.g., Jack E. Call, The Constitutionality of Warrantless Doorway Arrests, 19 Miss. Coll. L. Rev. 333, 334–36 (1999) (discussing the cases); Steven B. Dow, "Step Outside, Please": Warrantless Doorway Arrests and the Problem of Constructive Entry, 45 New Eng. L. Rev. 7, 18–23 (2010) (same). See generally 3 Wayne R. LaFave, Search and Seizure § 6.1(e) (6th ed. 2020) ("Location of the arrestee: 'at,' 'on' and past the threshold."). For a discussion of the relevant cases, see infra Section I.C.

[13] The two sides are not equal in the likelihood that they intend to use the Fourth Amendment's rules to their advantage. The police are trained in the rules, and the cases show them intentionally seeking to manipulate the rules in their favor. In contrast, few individuals will have the knowledge and foresight to know and use the rules.

argument when police move property to a place where rights are stronger.[14]

This Article offers a comprehensive study of the moving property problem in Fourth Amendment law. It has two goals, one descriptive and one normative. The descriptive goal is to show that a large set of cases, not previously linked, all raise this common dynamic. Cataloging the many moving property cases reveals a taxonomy with variations on a theme.[15] It also shows that Supreme Court decisions rarely answer how to resolve moving property questions. In the absence of high court guidance, lower courts have struggled for answers. They have treated each case in isolation, and they have often disagreed on the correct approach. The lower court disagreement results from a failure to see and appreciate the moving property problem.

The second goal of this Article is to offer a normative framework for solving the moving property problem. It has two steps. The first step is to recognize why Fourth Amendment rules are spatially based in the first place. The Fourth Amendment's text, history, and case law seek to protect particular spaces in particular ways.[16] The rules recognize how different interests compete differently in different areas. This understanding prompts an initial answer to moving property problems. To decide whether movement changes the level of protection, courts should answer whether the movement aligns with the justifications for the Fourth Amendment's location-based rules. Courts must look doctrine-by-doctrine, focusing on the reasons for the space-based rules in play and the role of movement in supporting or defeating those reasons.[17]

The second step is realizing that some moving property cases raise two questions instead of one. When the government causes movement, either directly or by creating pressures on private parties to act, a second question must also be considered: Was the government-induced movement itself illegal, apart from the subsequent search? Government agents can be endlessly creative in devising new ways to get property to places where government search powers are greatest.[18] In many of these

[14] See infra Part I.
[15] See infra Part I.
[16] See infra Section II.A.
[17] See infra Section II.B.
[18] Cf. Johnson v. United States, 333 U.S. 10, 14 (1948) (Jackson, J.) (noting that the Fourth Amendment generally requires that "those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime").

cases, the legal limits in moving property cases should come not from the legal rule for searching at the old or new place but from recognizing the illegality of steps taken to trigger the movement itself.[19]

The Article proceeds in two parts. Part I offers a taxonomy of existing cases. It lays out the four basic kinds of moving property cases, explaining the scenarios and surveying how courts have so far resolved them. Part II proposes answers, developing a framework for solving the moving property problem and providing rules that courts can adopt to address them.

I. A TAXONOMY OF MOVING PROPERTY CASES

This Part offers a taxonomy of existing case law on the moving property problem. Presenting a taxonomy is difficult because there are many ways to group the cases. Nonetheless, it is helpful to organize the cases in some way to understand the range of disputes that the topic includes. This Part describes four basic categories of moving property cases. It focuses on the role of the government in inducing the movement. In the first set of cases, a private party moves property or themselves with no government role. In the second category, a private party moves property while aware of government interest. In the third category, the private party moves property under government coercion. And in the fourth category, a government agent moves the property. This Part introduces the major scenarios and explains how courts have so far resolved them.

A. Movement by Private Parties with No Government Role

The first type of moving property cases involves movement by private parties with no government role. These cases are the easy ones, relatively speaking. Fourth Amendment protection is set by the place where the property is found, after all. If a suspect brings his property to the border, and customs officials search it there, the border rules apply.[20] If a suspect brings a package into a house, and the government wants to search that

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[19] See infra Section II.E.

[20] See, e.g., United States v. Flores-Montano, 541 U.S. 149, 155–56 (2004) (allowing officers to take apart the gas tank of a car that arrived at a border checkpoint at a port of entry in Southern California under the border search exception).

package, the rules for houses apply.[21] For the most part, these cases raise few difficult issues: property must be searched under the rules governing the place where it is searched.

The most interesting cases in this category involve property placed within other property, raising the question of which property-based rule applies. For example, in *California v. Acevedo*,[22] officers saw a suspect carrying a brown paper bag that they had reason to believe contained illegal marijuana.[23] Officers watched as the suspect placed the bag in the trunk of a car and then drove off. The officers then pulled over the car and searched the trunk, finding the bag and opening it to find the marijuana.[24]

Acevedo involved a clash between two place-based rules. On one hand, searching a package ordinarily requires a warrant.[25] On the other hand, the automobile exception to the warrant requirement allows the search of a car with probable cause but no warrant.[26] *Acevedo* asked which rule applies if the police search a package that was placed inside a car: Is that a package search governed by the package rule, or is it a car search governed by the car rule? The Supreme Court held that the car rule applied: the search of a container placed in a car is still a search in a car.[27] It should make no difference, the Court reasoned, whether the ultimate goal of the search was to search a car that happened to store containers or to search containers that happened to be in a car.[28] When property had been placed in a car, the place of the search was the car and the place-based rules of cars applied.[29]

Almost three decades later, *Collins v. Virginia*[30] presented a mirror of the issue in *Acevedo*. An officer was looking for a stolen motorcycle that he had seen on public roads. The officer soon observed what he thought was the motorcycle, albeit covered by a tarp, on a part of a residential

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[21] See, e.g., Arizona v. Hicks, 480 U.S. 321, 325 (1987) (treating the movement of stolen stereo equipment in an apartment as having revealed a fact inside the apartment).
[22] 500 U.S. 565 (1991).
[23] See id. at 567.
[24] See id.
[25] See United States v. Chadwick, 433 U.S. 1, 13 (1977).
[26] See *Acevedo*, 500 U.S. at 569.
[27] See id. at 580.
[28] See id. ("Until today, this Court has drawn a curious line between the search of an automobile that coincidentally turns up a container and the search of a container that coincidentally turns up in an automobile. The protections of the Fourth Amendment must not turn on such coincidences.").
[29] See id.
[30] 584 U.S. 586 (2018).

driveway that was right next to a house.[31] Acting without a warrant, the officer walked up to the motorcycle, lifted the tarp, and confirmed that it was the stolen motorcycle he was seeking.[32]

Like *Acevedo*, *Collins* involved a clash between two place-based rules. On one hand, the automobile exception has been applied to motorcycles, so it would allow searching a motorcycle without a warrant—which, according to the Virginia Supreme Court below, included pulling off the tarp.[33] On the other hand, entering the space right around a home requires a warrant, as it is considered to be a special home-like area called "curtilage" that is treated as the inside of a home under Fourth Amendment case law.[34] *Collins* asked which place-based rule applies if an officer has to enter the curtilage to get to the vehicle: Is a warrant needed under curtilage doctrine, or is no warrant needed under the automobile exception?

Collins held that a warrant was required.[35] The curtilage rule prevailed because getting to the motorcycle first required entering the curtilage—and *that* required a warrant. In the Court's view, this was "an easy case,"[36] as the automobile exception did not apply to "space outside"[37] a vehicle. The motorcycle had been moved to the curtilage, and the officer's entering the curtilage to lift the tarp required satisfying the rules for entering the space that the officer entered.

So far, moving property cases look simple. When property is moved without government involvement, the applicable search rule is the rule at the new place. Notably, the Supreme Court has applied this framework even when the government had previously installed a secret monitoring device that the suspect unwittingly moved. In *United States v. Karo*,[38] the government placed a secret tracking device in a can of chemicals needed in the narcotics trade, tracking the device as the can entered a particular private home.[39] In holding that monitoring the tracking device after the

[31] See id. at 589.

[32] See id. at 589–90.

[33] See Collins v. Commonwealth, 790 S.E.2d 611, 620–21 (Va. 2016). It is not entirely obvious that lifting a tarp over a motorcycle was really a search of a vehicle sufficient to trigger the automobile exception, but so the state court held and it was assumed to be the case at the United States Supreme Court.

[34] See United States v. Dunn, 480 U.S. 294, 300 (1987).

[35] *Collins*, 584 U.S. at 601.

[36] Id. at 594.

[37] Id. at 595.

[38] 468 U.S. 705 (1984).

[39] See id. at 709.

suspects moved it inside the home was a search that required a warrant, the Court applied the same rule that would apply to agents physically entering the home.[40] The rule of the new place governed.[41]

B. Movement by Private Parties Who Are Aware of Police Interest

The next category introduces a government role. In these cases, private parties realize the police are interested in them and then move their property. We don't always know what the person is thinking. But the person is aware that they're being watched by government agents, and it's at least plausible, if not likely, that they moved property to impede government access to it. The question in these cases is whether the private party can increase their constitutional protection by moving the property away from them.

There is little Supreme Court case law that directly governs these situations. The closest case is *United States v. Santana*,[42] although it provides few answers. Officers came to arrest Santana when she was standing in the doorway of her house holding a bag that contained drugs.[43] The officers shouted "police," showed their badges, and approached her.[44] Santana responded by retreating back into her house. The officers followed her, grabbing her a few steps inside the house and seizing the drugs.[45]

Santana involved a clash of two location-based rules. On one hand, arresting a person in public does not require a warrant.[46] On the other hand, entering a house to make an arrest requires a warrant unless exigent circumstances allow a warrantless entry.[47] The question was, how did these principles apply to the arrest of Santana, who was standing at the doorway of her home, right on the line between inside and outside, and then stepped back inside? The Court first ruled that arresting Santana while she was standing in the doorway counted as being in public for

[40] The Court first ruled that a search occurred, see id. at 715–16, and it then ruled that a warrant was needed, see id. at 717–18.
[41] See id. at 718 ("In sum, we discern no reason for deviating from the general rule that a search of a house should be conducted pursuant to a warrant.").
[42] 427 U.S. 38 (1976).
[43] Id. at 40.
[44] Id.
[45] Id. at 40–41.
[46] United States v. Watson, 423 U.S. 411, 426–27 (1976) (Powell, J., concurring).
[47] Payton v. New York, 445 U.S. 573, 590 (1980).

purposes of the warrant rule.[48] That prompted the next question: Could the officers follow Santana into her home, where a warrant was ordinarily needed to enter, when she responded to police presence by moving inside?

The Supreme Court answered that the warrantless entry was permissible. Santana's "act of retreating into her house" could not "thwart" the "otherwise proper arrest."[49] The arrest had been "set in motion" in the public place of the doorway, the Court reasoned, and Santana's entering the home in response to the officers could "not defeat" the arrest.[50] This was so because of the hot-pursuit exception to the warrant requirement, which allows officers to enter a home to catch a suspected criminal. "Once Santana saw the police," the Court reasoned, "there was likewise a realistic expectation that any delay would result in destruction of evidence."[51] Officers could enter the home to prevent Santana from destroying evidence she was carrying.

Santana offers little guidance for answering moving property questions, unfortunately. On one hand, it arguably hints at an anti-thwarting principle. Perhaps suspects cannot move property (including themselves) to hinder government access, at least after the grounds for seizing the property were already set in motion. On the other hand, *Santana* is plausibly read narrowly as a small case about the hot pursuit and related exigent circumstances exceptions to the warrant requirement.[52] On that understanding, there is no general anti-thwarting principle afoot, but rather only a specific exception for emergency entries of homes to prevent destruction of evidence.

In the absence of clearer direction from the Supreme Court, lower court rulings involving defendants who moved property in response to police presence have pointed in somewhat different directions. Consider two cases about defendants who tried to get rid of fanny packs they were wearing when the police came to arrest them. In the first case, *United*

[48] *Santana*, 427 U.S. at 42.

[49] Id.

[50] Id. at 43.

[51] Id.

[52] Along those lines, it is worth noting that *Collins* minimized a plausible similar reading of *Scher v. United States*, 305 U.S. 251 (1938). In *Scher*, the officer was following a car when it pulled into a garage of a private home, later searching it without a warrant when a driver admitted it contained contraband. See id. at 253–54. *Collins* concluded that *Scher* was fact-bound and unable to support a broad reading: "*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." Collins v. Virginia, 584 U.S. 586, 599 (2018).

States v. Fernández Santos,[53] an officer entered Fernández Santos's home armed with an arrest warrant. Fernández Santos responded by opening a back door of his property and throwing his fanny pack about ten feet into the backyard.[54] Officers arrested Fernández Santos inside, and later they went to the backyard, retrieved the fanny pack, and found guns and ammunition inside.[55] Whether opening the fanny pack was permitted depended on which location-based rule applied: Was it the rule that a search warrant was needed to search the home and its surrounding curtilage, or that no search warrant was needed to search property on a person incident to their arrest?[56]

Fernández Santos held that the search could not be justified incident to arrest.[57] If Fernández Santos had been holding the fanny pack at the time of his arrest, the court reasoned, it could have been searched incident to the arrest.[58] But that exception did not allow a search of the fanny pack that was far away at the time of arrest, as the purposes animating the search incident to arrest exception—preventing the destruction of evidence and protecting officer safety—would not be furthered by searching the fanny pack that Fernández Santos had placed far away.[59] For Fernández Santos, throwing the fanny pack into the backyard paid off: it prevented the government from legally searching it incident to his arrest.

We see the flip side of *Fernández Santos* in *State v. Scullark*.[60] An officer came to a residential address to investigate a domestic violence call involving Scullark.[61] Inside the home, the officer decided to arrest Scullark and started to place handcuffs on him.[62] Scullark was wearing a fanny pack, and he removed the fanny pack from around his waist and

[53] No. 23-cr-00063, 2023 WL 8915838 (D.P.R. Dec. 27, 2023), *report and recommendation adopted in part and rejected in part sub nom.* United States v. Fernández, 716 F. Supp. 3d 8 (D.P.R. 2024).

[54] Id. at *1.

[55] Id. at *2.

[56] See Payton v. New York, 445 U.S. 573, 576 (1980); Chimel v. California, 395 U.S. 752, 762–63 (1969).

[57] *Fernández Santos*, 2023 WL 8915838, at *8.

[58] Id.

[59] Id. ("Here, the record shows that neither of these purposes would be furthered when Defendant was arrested outside of reaching distance of the black fanny pack and the search took place nearly 40 minutes later.").

[60] 23 N.W.3d 49 (Iowa 2025).

[61] Id. at 52.

[62] Id.

handed it off to a companion who was nearby.[63] After Scullark was arrested and placed in the squad car, officers retrieved the fanny pack, opened it, and found meth inside.[64]

The Supreme Court of Iowa ruled that searching the fanny pack was a valid search incident to arrest.[65] Part of *Scullark*'s reasoning is consistent with *Fernández Santos*. The court reasoned that search powers were determined by the location of the fanny pack at the time of arrest: "The time-of-arrest rule sets a bright-line rule that allows officers to search the arrestee's person and any items in the arrestee's actual and exclusive possession at the time of the arrest or immediately preceding it."[66] Because Scullark was wearing the fanny pack at the time the officer arrested him, the fanny pack could still be searched.[67]

Scullark then added an anti-thwarting rationale absent in *Fernández Santos*. Search powers "should not depend on games of 'hot potato,'" *Scullark* reasoned.[68] A person arrested could not "reduce the scope" of the government's search power "by handing the item to a companion before the officer can search him."[69] Or at the very least, an arrestee could not wait until his arrest occurred. After all, Fernández Santos had acted quickly by throwing his fanny pack out into the yard. But Scullark waited too long, until the arrest began—a time when it was, apparently, too late.[70]

Another recurring fact pattern in this category involves occupants of cars who remove bags from the cars before the cars are searched. For

[63] Id.

[64] Id.

[65] See id. at 53.

[66] Id. at 59.

[67] Id. at 61 ("We therefore conclude that because Scullark was wearing the fanny pack around his waist at the time of arrest, the fanny pack was immediately associated with his person for purposes of the [search incident to arrest] exception, and the categorical rule from *Robinson* and the related Iowa precedent applies.").

[68] Id. at 60.

[69] Id. at 60–61.

[70] For other cases in this vein, see State v. Roberts, 623 N.W.2d 298, 307 (Neb. 2001) (holding that where arrestee was permitted to take off his jacket and running pants after arrest had begun, but before he was taken away, those items could be searched incident to arrest; otherwise, an arrestee could "conceal evidence simply by discarding his or her clothing and leaving the area"); State v. Allman, 923 S.E.2d 412, 424–25 (W. Va. 2025), *cert. denied*, 146 S. Ct. 1670 (2026) (mem.) (holding that the search incident to arrest exception did not apply to the search of a bag when a man put his bag on the ground before walking to the officer to be arrested). *Allman* raises issues about the uncertain scope of the search incident to arrest exception that are discussed in Subsection I.D.1, infra.

example, in *State v. Lang*,[71] officers smelled marijuana emanating from a car during a routine speeding stop. Officers decided to search the car for marijuana using the automobile exception, which allows cars to be searched based on probable cause without a warrant.[72] As a preliminary step, the officers ordered both the driver and Lang to exit the car.[73] When Lang exited, she took her purse with her.[74] Officers then took Lang's purse from her and searched it without a warrant, finding meth, marijuana, and drug paraphernalia inside it.[75]

The legality of searching Lang's purse depended on a choice between two location-based rules. If the rule for searching property in a car applied, no warrant was needed under the automobile exception; if the rule for searching property outside of a car applied, a warrant was needed.[76] The Supreme Court of Nebraska ruled that the automobile exception allowed the warrantless search of the purse. In the court's view, the key question was whether probable cause existed to search the car when the purse was still inside it. If so, the Fourth Amendment rule was not changed by Lang moving the purse out of the car: "[T]he location of the purse at the time it was searched does not change its character as a container that was inside the vehicle when officers developed probable cause to search the vehicle."[77] In effect, the automobile exception froze the Fourth Amendment standard for all property in the car when probable cause emerged, even if the property was later moved away.[78]

The flip side of *Lang* is shown in *State v. Maloney*,[79] where probable cause came too late. Officers stopped Maloney and asked for consent to search her car.[80] She consented, and she then exited her car, taking her purse with her.[81] When a search of the car revealed a marijuana pipe, an officer announced that he would then search Maloney's purse—an authority he believed he had because the purse had previously been in the

[71] 942 N.W.2d 388, 394 (Neb. 2020).
[72] The automobile exception is further discussed in notes 233 to 239, infra.
[73] *Lang*, 942 N.W.2d at 394.
[74] Id.
[75] Id.
[76] See California v. Acevedo, 500 U.S. 565, 576 (1991); United States v. Chadwick, 433 U.S. 1, 12–13 (1977).
[77] *Lang*, 942 N.W.2d at 400–01.
[78] Id. at 400.
[79] 489 P.3d 847 (Idaho 2021).
[80] Id. at 850.
[81] Id.

car and the automobile exception (he believed) applied.[82] The Supreme Court of Idaho disagreed. The search of the purse violated the Fourth Amendment, *Maloney* held, because the pipe was found in the car and probable cause was established only *after* Maloney had removed it from the car.[83] The critical question, the court emphasized, is "the location of the container at the point at which probable cause arises."[84]

One last wrinkle to consider is the abandonment cases. In general, a person loses Fourth Amendment rights in property if, "in the eyes of a reasonable officer, the [person] manifested an intent to disavow ownership of the property."[85] As a practical matter, this ends up raising a preliminary question in some moving property cases. Courts first ask if moving property amounted to abandonment and therefore eliminated all rights. If the moving did not trigger abandonment, courts next turn to the moving property question of which location rule applies.

We can get a feel for the abandonment cases by comparing two rulings. First, in *United States v. Morgan*,[86] a robbery suspect fleeing the police threw a bag he was carrying onto the porch of a co-conspirator before running off.[87] The police later seized the bag and searched it without a warrant, revealing the robbery proceeds.[88] The Tenth Circuit held that Morgan had "voluntarily abandoned the bag, forfeiting his claim to object to its warrantless search," when he "discarded" the bag on the porch.[89] The abandonment eliminated all rights in the bag, so there was no need to rule on what location rule applied to its search.

On the flip side, in *State v. Allman*,[90] a suspect who was called by name by an officer wishing to arrest him placed his backpack on the ground before reaching the officer.[91] The officer arrested the man and then retrieved the backpack. A search revealed drugs. The Supreme Court of Appeals of West Virginia ruled that, at least on the record before it, the backpack was not abandoned.[92] A person could abandon property by

[82] See id. at 850 n.3.
[83] Id. at 854.
[84] Id.
[85] United States v. Porter, 66 F.4th 1223, 1226 (10th Cir. 2023) (citing cases).
[86] 936 F.2d 1561 (10th Cir. 1991).
[87] Id. at 1565.
[88] Id.
[89] Id. at 1571.
[90] 923 S.E.2d 412, 424–25 (W. Va. 2025).
[91] See id. at 417.
[92] See id. at 420–21.

throwing it away and running off, the court noted, as it suggested he would not return—as happened in *Morgan*. But simply putting property on the ground might indicate that he would come back to it after speaking with the officer.[93] After rejecting the government's abandonment claim, the *Allman* court proceeded to consider the moving property question.[94]

What should we make of these cases? Putting aside abandonment issues, courts seem to have competing instincts. When ruling for the government, as in *Santana* and *Scullark*, opinions emphasize anti-thwarting concerns: suspects should not be able to defeat government search authorities simply by moving property away. But opinions also emphasize timing rules, which tend to fix government powers at particular times such as when arrests begin or when probable cause emerges. Under those rules, moving property can add Fourth Amendment protection or leave it unchanged depending on whether the trigger of the timing rule had occurred.

C. Private Movement in Response to Government Coercion

The next category of cases involves private movement in response to government coercion or pressure. The cases fit into two groups. In the first group, officers make a direct order to move property. In the second group, officers create a ruse designed to trick the suspects into moving property or themselves to a new place where government search powers are greater. The cases in this category are a testament to the creativity of law enforcement, some of whom occasionally go to great lengths to try to take advantage of government-friendly location rules. Whether they can succeed in using the rules to their advantage has no simple answer. The lower court rulings are often mixed and conflicting, and the Supreme Court has never addressed the topic.

1. The Direct Order Cases

In the direct order cases, the officer tells the suspect to move property—or to keep it put, if it might otherwise be moved—to a place

[93] See id. at 421 ("There is no indication in the record below that Mr. Allman would not retrieve the backpack after speaking with the officer. Therefore, we decline the State's invitation to find that setting down a bag prior to addressing a law enforcement officer constitutes abandonment.").

[94] As noted earlier, supra note 70, *Allman* then held that the search of the bag could not be justified as a search incident to the defendant's arrest.

where Fourth Amendment protections are lighter. The suspect complies with the officer's order, and the property is later searched there. The question is, which location rule applies: The rule for the place where the property would have been without officer involvement, or the rule for the place where the officer ordered the property to be?

A useful starting point is *State v. Boyd*.[95] During a routine traffic stop, a driver consented to a search of his car. Officers then ordered everyone out of the car, as the law allows officers to do for officer safety reasons.[96] After being ordered to exit the car, Boyd, a passenger, reached for her purse to carry it with her.[97] An officer ordered Boyd to leave her purse behind in the car, presumably so he could search it with the driver's consent. Boyd complied, and the officer searched the purse in the car and found crack cocaine inside.[98]

The Supreme Court of Kansas ruled that the officer's search violated the Fourth Amendment.[99] Officers should not be able to unilaterally enhance their own search power by directing where the property was found, *Boyd* reasoned.[100] "If we hold an officer can lawfully order a passenger to leave her purse in the car and thereby make it subject to search," the court stated, "then what prevents the officer from ordering the passenger to remain in the car, thus subjecting her to be subsequently searched along with the car"?[101] This would not do, as Fourth Amendment protection "cannot be defined at the discretion of a law enforcement officer."[102] Officers could not add to what was searchable by directing property to be placed in the searchable place, and the warrantless search violated the Fourth Amendment.

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[95] 64 P.3d 419 (Kan. 2003); see also State v. Campbell, No. 16-0640, 2017 WL 3283284, at *5 (Iowa Ct. App. Aug. 2, 2017) ("We conclude the deputy's instruction for Campbell to place her purse back in the car was an illegal seizure of her property as it interfered with her possessory interest in her purse with no reasonable suspicion that the purse contained anything illegal or dangerous to the deputies.").

[96] See Pennsylvania v. Mimms, 434 U.S. 106, 111 (1977) (per curiam); Maryland v. Wilson, 519 U.S. 408, 414–15 (1997).

[97] *Boyd*, 64 P.3d at 421.

[98] Id.

[99] Id. at 427.

[100] Id.; see also *Campbell*, 2017 WL 3283284, at *5 (similar).

[101] *Boyd*, 64 P.3d at 427. This was a bigger deal during the *Belton* era. See generally New York v. Belton, 453 U.S. 454 (1981) (holding that law enforcement can search the passenger compartment of a vehicle when there has been a lawful custodial arrest of the vehicle's occupants).

[102] *Boyd*, 64 P.3d at 427.

Courts have divided on how the same fact pattern applies to searching a car incident to arrest. This was an important issue before *Arizona v. Gant*,[103] when the Supreme Court sharply cut back on how that exception applies to car searches. Pre-*Gant*, officers enjoyed a broad authority to arrest drivers of cars, place them in the back of the squad car, and then search the car incident to arrest.[104] This power raised a recurring question about searching the property of any passengers who happened to be in the car. Before searching, officers would order any passengers to exit. Could officers order the passengers to keep their property in the car and then search passengers' property under the arrest rule?

State supreme courts reached different answers in cases involving passengers carrying purses. In *State v. Newsom*, the Idaho Supreme Court ruled that a passenger could not be ordered to remove her purse.[105] *Newsom* construed the purse as passenger property that was beyond the scope of the search-incident-to-arrest power's ability to infringe the privacy of the person arrested.[106] Because the passenger was not arrested, the court ruled, she could control where her property was and whether it was subject to search.[107]

Faced with the same question, the Supreme Court of South Dakota reached the opposite result in *State v. Steele*.[108] In *Steele*'s view, allowing a passenger to remove containers before a car was searched would "nullif[y]"[109] the search incident to arrest power. The court instead adopted a freeze-in-time rule: because the purse was in the car when the power to search it vested, the purse could still be searched under the car-based rule. A passenger "may not, by attempting to remove her purse, change the facts present to law enforcement at the time justification for the search was triggered."[110]

Notably, *Newsom* and *Steele* express mirror-image anti-thwarting concerns. *Newsom* feared that officers would wrongly expand

[103] 556 U.S. 332 (2009).
[104] See, e.g., *Belton*, 453 U.S. at 462–63; Thornton v. United States, 541 U.S. 615, 623–24 (2004).
[105] 979 P.2d 100, 100 (Idaho 1998).
[106] See id. at 102.
[107] See id. Additional cases agreeing with *Newsom* include *Boyd*, 64 P.3d at 427, and *State v. Seitz*, 941 P.2d 5, 8 (Wash. Ct. App. 1997).
[108] 2000 SD 78, ¶ 1, 613 N.W.2d 825, 825–26.
[109] Id. ¶ 8, 613 N.W.2d at 827.
[110] Id. ¶ 10, 613 N.W.2d at 828. This conclusion implicates the changing view of the search incident to arrest exception, and the switch from *Belton* (in place at the time of *Steele*) to *Arizona v. Gant*, 556 U.S. 332 (2009), which is discussed in detail at Section II.C, infra.

government power by forcing property to be returned to the place where the search would occur. *Steele* feared that suspects would thwart legitimate searches by moving their property out of the search space.

Another recurring fact pattern in this category involves government efforts to bypass the rule that entry into a home to make an arrest requires a warrant.[111] Under *Payton v. New York*, the government does need a warrant to enter the home to make an arrest.[112] Under *United States v. Watson*, by contrast, the government does not need a warrant to make an arrest in a public place.[113] This sets up a moving property puzzle, or perhaps more specifically, a moving people puzzle: Is a warrant needed if the officers come to a home and order people inside to come outside so they can be arrested?

Some of these cases involve remarkable facts. Consider *United States v. Maez*, where a SWAT team came to the home of a bank robbery suspect with plans to arrest him without a warrant.[114] The SWAT team members surrounded the suspect's home and pointed their rifles at it.[115] An agent then announced over loudspeakers that those inside were "asked" to exit the home one-by-one.[116] The defendant Maez, his wife, and their son all exited the home, where Maez was then arrested without a warrant.[117] The defendant argued that the inside-the-home rule of *Payton* applied and that therefore a warrant was needed; the government argued that the outside-the-home rule of *Watson* applied and that no warrant was required.[118]

The Tenth Circuit agreed with the defendant. Although the officers had not entered the home, the court reasoned, Maez had been de facto arrested while he was in the home. It was his location, not the officers' location, that mattered. By extracting Maez from the home by coercion, "the privacy of the home [was] effectively invaded," the court concluded.[119] Some courts have referred to this as the "constructive entry" doctrine, on the thinking that extracting the person by force is the functional equivalent of entry.[120] In effect, this doctrine addresses the movement problem by

[111] See Payton v. New York, 445 U.S. 573, 576 (1980).
[112] See id. at 589–90.
[113] 423 U.S. 411, 418 (1976).
[114] 872 F.2d 1444, 1446 (10th Cir. 1989).
[115] Id. at 1447.
[116] Id.
[117] Id.
[118] Id. at 1449–50.
[119] Id. at 1451.
[120] See generally Dow, supra note 12 (describing the constructive entry doctrine).

viewing the property moved—in this case, the arrestee—as under arrest before the movement occurred. The person is inside the house at the moment they are arrested, triggering *Payton*. Under the constructive entry doctrine, the location can be assigned to the suspect, not the police.

But what if the facts are less extreme, and, in particular, they do not involve the threat of physical harm to the suspect and his family? A notable counterpoint to the constructive entry doctrine is provided by *Knight v. Jacobson*.[121] Officers came to Knight's home to arrest him for threatening to kill his ex-girlfriend. When Knight answered the door, an officer ordered Knight to step outside.[122] Knight complied, stepping out, and the officer then arrested Knight without a warrant.[123]

The Eleventh Circuit ruled that no warrant was needed, adopting the outside-the-home rule instead of the inside-the-home rule. According to the court, everything relevant had occurred outside:

> *Payton* keeps the officer's body outside the threshold, not his voice. It does not prevent a law enforcement officer from telling a suspect to step outside his home and then arresting him without a warrant. In that situation, the officer never crosses the firm line at the entrance to the house which is where *Payton* drew the line.[124]

The officers were permitted to extract the arrestee from inside without triggering *Payton*, at least in a case where the officers spoke their command and did not use an explicit threat of force to do so.[125]

2. *The Government Ruse Cases*

Perhaps the most astonishing set of officer-induced movement cases involves ruses. In these cases, the police execute a plan to reduce a person's Fourth Amendment rights by tricking them into moving property or themselves from a higher-protection place to a lower-protection place. For the most part, the government's intent is crystal clear; the point of the ruse is to lower Fourth Amendment protection. The question is whether officers can gain constitutional advantage from the ruse. No easy answers emerge from the lower court cases.

[121] 300 F.3d 1272 (11th Cir. 2002).
[122] Id. at 1274.
[123] Id.
[124] Id. at 1277 (internal quotation marks omitted).
[125] Id.

United States v. Ramirez[126] is an intriguing starting point. Officers learned that a particular home Internet account was used to distribute child sexual abuse material ("CSAM").[127] Agents suspected that a particular resident at the home, Ramirez, was the wrongdoer. They sought to interview Ramirez in a setting where he was legally detained and not free to leave—and therefore was more likely to confess. They also wanted to search Ramirez's personal laptop computer. But agents had a problem: they didn't have enough cause to detain or arrest Ramirez, and they didn't know where his computer was located.[128]

To get around these problems, agents devised a ruse based on two location-based rules. They knew that, under *Michigan v. Summers*,[129] agents can detain anyone who is present at a home when a search warrant is being executed there. They also knew that, if Ramirez happened to bring his laptop home, a warrant to search the home for evidence might cover the laptop that was brought there.[130] Officers devised a plan to lure Ramirez home while the warrant was being executed so he could then be detained and interrogated and his laptop searched.

The initial plan was to call Ramirez at work, claim to be an officer investigating a burglary at his home, and ask Ramirez to return to the home to confirm what was stolen.[131] When Ramirez did not answer, officers ended up setting up the ruse through his mother. Yes, believe it or not, Ramirez's mother went along with the ruse, telling her son that his house had been burglarized and that he needed to return home.[132] The trick worked. Ramirez came home with his laptop. Officers then detained him, searched his computer under the existing warrant, and successfully interrogated him.[133]

A divided Ninth Circuit held that the ruse violated the Fourth Amendment.[134] Writing for the majority, Judge Wardlaw concluded that the government could not invoke the rules of the place where Ramirez had been tricked into going. The ruse was constitutionally unreasonable because agents had no legitimate interest in pursuing it: "[T]he agents

126 976 F.3d 946 (9th Cir. 2020).
127 Id. at 949.
128 See id. at 949–50.
129 452 U.S. 692, 704–06 (1981).
130 See *Ramirez*, 976 F.3d at 957.
131 Id. at 950.
132 Id.
133 Id. at 951.
134 Id. at 959.

betrayed Ramirez's trust in law enforcement in order to conduct searches and seizures beyond what they were lawfully authorized to do."[135] More broadly, the government's "deceit . . . opens a loophole that the Fourth Amendment does not condone."[136] Allowing the ruse "would eviscerate the limitations implemented by the *Summers* rule, allowing law enforcement to seize people located away from the premises to be searched."[137]

Judge Collins dissented. In his view, the rules of the new place applied. The officers had simply followed the law. They had detained Ramirez on site, as permitted by *Summers*, and they had searched the computer that was at the residence, as permitted by the warrant that authorized the search of Ramirez's vehicle at his home.[138] The deception had merely "*facilitate[d]* the successful execution of a valid warrant to search or seize the very thing or person specified in the warrant."[139]

Although the Ninth Circuit invalidated the movement-inducing ruse in *Ramirez*, other courts have reached different results on different facts. The Supreme Court of Tennessee's ruling in *State v. Hendrix*[140] makes for a memorable contrast. In *Hendrix*, officers believed that a group of drug dealers led by a man named "Tommy" was operating out of a particular home.[141] Believing that they lacked probable cause to get a warrant to search the home, the officers came up with a scheme "to bypass the warrant requirement" by forcing the evidence from the home "into the open."[142] An officer went to a pay phone at a local convenience store, called the target home, and asked to speak with Tommy.[143] Without identifying himself, the officer warned Tommy that "the police were on their way to the house with a search warrant."[144] Agents watched from outside as those inside quickly emerged from the house, jumped into a car, and drove off, stopping a short distance away. When an officer

[135] Id.
[136] Id. at 956.
[137] Id.
[138] Id. at 962–63 (Collins, J., dissenting).
[139] Id. at 966.
[140] 782 S.W.2d 833 (Tenn. 1989).
[141] See id. at 834.
[142] Id. at 838 (Drowota, C.J., dissenting).
[143] Id. at 834 (majority opinion).
[144] Id.

approached the stopped car, he saw drug paraphernalia on both the back seat and front seat in plain view.[145]

The Tennessee Supreme Court ruled that this ruse was permitted and that the Fourth Amendment was not violated.[146] Although the officers would have needed a warrant to enter the home, the court reasoned, that rule did not apply because the officers did not actually enter. Making the phone call was legal, after all, and the undercover officer who made the phone call did not encourage anyone to commit a crime.[147] In the majority's view, the officers "did no more than precipitate departure of [the defendants] from the residence when they flushed the quarry with their telephone call."[148] The anonymous phone call that the police were coming had led the dealers to leave the high-protection house and bring their evidence where it could be observed in public without a warrant, but this was clever police work rather than an abuse of the Fourth Amendment.[149]

As these examples show, the cases on officer-induced movement are all over the map. Sometimes officers can trick a suspect into going to a new place governed by stronger search powers. Sometimes they cannot. Sometimes officers can pressure a person to leave a house to avoid needing a warrant to arrest them. Sometimes they cannot. Sometimes officers can order passengers to keep their bags in the car when the car is to be searched. Sometimes they cannot. No simple answers emerge from lower court cases.

D. Movement by the Government

The last category of cases involves movement by government actors. In these cases, officers take a suspect's property and move it to a new place. The cases mostly involve a recurring dynamic. An officer moves property for stated reasons of officer safety or law enforcement convenience; the movement brings the property to a place governed by a more protective rule; and the defendant argues that the movement increased Fourth Amendment protection.

Many of these cases involve the search-incident-to-arrest exception to the warrant requirement, and the cases are made more complicated by the

145 Id. at 834–35.
146 Id. at 836–37.
147 Id. at 836.
148 Id.
149 See id. at 836–37.

Supreme Court's mixed and confusing signals about how that exception should apply to moving property. This Section begins with a detailed look at the Supreme Court's treatment of the search-incident-to-arrest exception. It then turns to how lower courts have treated government movement in cases on that exception. It concludes by addressing how lower courts have treated government movement in other contexts.

1. Government Movement and Searches Incident to Arrest

The Supreme Court has long recognized a government power to search incident to a lawful arrest.[150] Under the Court's case law, that exception takes the form of three slightly different location-specific rules. First, when a person is lawfully arrested, the government has a broad power to search physical property found on the person.[151] Second, the lawful arrest also allows a search of the area around the person, the area of "immediate control . . . from within which he might gain possession of a weapon or destructible evidence."[152] And third, when a driver or recent occupant of a car is legally arrested, the Court has allowed a search of the passenger compartment of the car under some circumstances.[153]

At the outset, it's easy to see why these three location-specific rules provide fertile ground for moving property problems. Making an arrest generally means taking control. Officers determine where the arrested person goes and where their property goes, too. They might move the arrested person away from their property, or they might move the property away from the arrested person. They might move property that was on the person to an area near the person, or they might move property that was far from the person so it is near the person. The question is, can these movements alter Fourth Amendment rights? The Supreme Court's precedents point in different directions, creating an inconsistency that the Court has not yet resolved. A quick overview of the Supreme Court's rulings shows the problem.

[150] See, e.g., Agnello v. United States, 269 U.S. 20, 30–31 (1925) (discussing the exception).

[151] See United States v. Robinson, 414 U.S. 218, 235 (1973) ("It is the fact of the lawful arrest which establishes the authority to search, and we hold that in the case of a lawful custodial arrest a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment."). The Court has since carved out an exception for cell phones, see Riley v. California, 573 U.S. 373, 385–86 (2014).

[152] Chimel v. California, 395 U.S. 752, 763 (1969) (internal quotation marks omitted).

[153] These circumstances have varied over time, as discussed immediately below.

First, in *United States v. Chadwick*,[154] the Court suggested a narrow view of the power to search officer-moved property during an arrest. The officers in *Chadwick* arrested the defendants and brought them and their footlocker to a nearby federal building.[155] Ninety minutes later, officers searched the footlocker and found weed inside.[156] Among other holdings, *Chadwick* rejected the government's argument that agents could still search the footlocker incident to arrest. The search incident to arrest power did not apply to searches "remote in time or place from the arrest," the Court reasoned.[157] By the time agents were searching the footlocker over an hour later and at the federal building, the search incident to arrest power had dissipated: "Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control," *Chadwick* held, "and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest."[158]

Just a few years after *Chadwick*, the Court put a bookend on that limit in *New York v. Belton*.[159] In *Belton*, officers arrested all the occupants of a car and then searched the car incident to their arrest.[160] An officer found a jacket in the car, grabbed it, unzipped its pocket, and found drugs.[161] In proceedings below, the state court ruled that the car search was not permitted because the car in *Belton* was just like the footlocker in *Chadwick*. Once the car's occupants were arrested, the state court had reasoned, the car was under the government's exclusive control, and it could not be searched incident to arrest.[162] But the Supreme Court disagreed. "[U]nder this fallacious theory," the Supreme Court explained in a footnote, "no search or seizure incident to a lawful custodial arrest would ever be valid; by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control.' "[163]

[154] 433 U.S. 1 (1977).
[155] Id. at 4.
[156] Id. at 4–5.
[157] Id. at 15 (quoting Preston v. United States, 376 U.S. 364, 367 (1964)).
[158] Id.
[159] 453 U.S. 454 (1981).
[160] Id. at 456.
[161] Id.
[162] People v. Belton, 407 N.E.2d 420, 422–23 (N.Y. 1980).
[163] *Belton*, 453 U.S. at 462 n.5.

The combination of *Chadwick* and *Belton* suggested a particular answer to how moving property affected the search incident to arrest authority. The amount of movement mattered. Moving property just a little bit—like moving the passengers to a nearby squad car and taking the jacket out of the car to unzip it in *Belton*—did not alter the search incident to arrest power. On the other hand, moving property far from the place of arrest—like moving it to the federal building in *Chadwick*—eliminated that search power.

Whatever the merits of that line, it is hard to square with the next precedent, *Arizona v. Gant*.[164] Confusingly, *Gant* reformulated the search incident to arrest rule in the automobile setting while claiming to merely correct a common misunderstanding of *Belton*.[165] Much like in *Belton*, the officer in *Gant* made an arrest of a driver, placed the driver in the squad car, and then searched the car.[166] But in the course of its claimed correction of misunderstandings of *Belton*, *Gant* announced that searches of passenger compartments were justified incident to arrest "only when the arrestee is unsecured and within reaching distance of the passenger compartment [of the car] at the time of the search."[167] This was true, *Gant* explained, because searches were authorized incident to arrest only if there was a "possibility of access" when the search occurred.[168]

You can see the problem. When the police move a person's property away from them to prevent the person from accessing their property, there are two competing lines of thought. Under *Belton*, it would be "fallacious" to think that such a small movement eliminates the government's search power. But under *Gant*, which does not purport to overturn *Belton*, preventing access means that the possibility of access is removed and the search power eliminated. In effect, *Gant* implies a different interpretation of *Chadwick*'s conclusion about the scope of exclusive control—and therefore a different answer about the effect of movement on the search incident to arrest power—without formally overturning the contrasting interpretation from *Belton*.

[164] 556 U.S. 332 (2009).
[165] On this score, Justice Alito was exactly right. See id. at 356–58 (Alito, J., dissenting).
[166] Id. at 335 (majority opinion).
[167] Id. at 343.
[168] Id. at 344. *Gant* added a second basis for searching the passenger compartment of a car incident to arrest, allowing such searches "when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle," which need not concern us here. Id. at 335.

In the wake of conflicting signals from the Supreme Court, lower courts have often diverged in their treatment of officer-moved property during arrests. In the common fact pattern, officers plan to stop or arrest someone who is carrying some kind of bag. The officers take the bag away at the outset of the stop to prevent the suspect from accessing its contents. The question for courts is whether the government's act of moving the property away eliminates the authority to search the bag incident to arrest that would have existed if the bag had been near the suspect.

The lower court rulings on this subject are a mess. Generally speaking, in the period after *Belton* but before *Gant*, lower courts tended to allow officers to move property away without losing search powers.[169] After *Gant*, the precedents are mixed, tending to treat movement as rights-expanding, but with many precedents on the books that endorse the *Belton* approach. The result is a deep split in the circuits on the standard for searching moved-away property incident to arrest.

For a case echoing *Belton*, consider *State v. Byrd*.[170] Officers arrested Lisa Byrd while in the passenger seat of a car.[171] Byrd had her purse in her lap, and the officer grabbed the purse and set it aside before removing her from the vehicle.[172] The officer placed Byrd in the squad car and then returned to search the purse, finding meth inside.[173] The Supreme Court of Washington ruled that the purse search was lawful because the government's arrest power was fixed at the time of arrest.[174] Any "personal articles in the arrestee's actual and exclusive possession at or immediately preceding the time of arrest" could be searched without a warrant, even if the items were moved away from the person by the time

[169] See, e.g., United States v. Tavolacci, 895 F.2d 1423, 1429 (D.C. Cir. 1990) ("Thus we have upheld the search of a pouch even though it had been moved beyond the reach of the arrestee by the time of the search; it is enough, we said, if the search is confined to 'containers in hand or within reach when the arrest occurs.' " (quoting United States v. Brown, 671 F.2d 585, 587 (D.C. Cir. 1982) (per curiam))).
[170] 310 P.3d 793 (Wash. 2013).
[171] Id. at 795.
[172] Id.
[173] Id.
[174] Id. at 797–800.

of the search.[175] Several other state supreme courts and the First Circuit have taken the same basic approach.[176]

The Fourth Circuit's opinion in *United States v. Davis*[177] demonstrates the contrasting approach echoing *Gant*. Davis led the police on a high-speed chase that ended with a chase on foot into a swamp, with Davis carrying a backpack along with him.[178] An officer ordered Davis out of the swamp.[179] Davis complied, dropping his backpack and lying flat on his stomach.[180] The officer then handcuffed Davis and placed him under arrest, later unzipping the backpack and finding drugs.[181]

The Fourth Circuit held that unzipping the backpack violated the Fourth Amendment.[182] Adopting the view held by the Third Circuit, Ninth Circuit, and Tenth Circuit, the Fourth Circuit reasoned that the first prong of *Gant* applied equally to property that had been moved away from the arrestee.[183] The court adopted the rule that "police officers can conduct warrantless searches of non-vehicular containers incident to a lawful arrest 'only when the arrestee is unsecured and within reaching distance of the [container] at the time of the search.'"[184] Under this approach, moving a person's property (that is, their containers) away from them after an arrest eliminates the power to search that property incident to arrest.

There is one last moving-property wrinkle to consider with respect to the search incident to arrest exception: movement into areas of immediate control to trigger the search power after the arrest has begun. Under *Chimel v. California*, officers can search the area of "immediate control"

175 Id. at 799.

176 See United States v. Perez, 89 F.4th 247, 250, 254–55 (1st Cir. 2023); People v. Cregan, 2014 IL 113600, ¶ 50; State v. Mercier, 2016 ND 160, ¶¶ 33–37, 883 N.W.2d 478, 490–91; Price v. State, 662 S.W.3d 428, 438 (Tex. Crim. App. 2020).

177 997 F.3d 191 (4th Cir. 2021).

178 Id. at 194.

179 Id.

180 Id.

181 Id.

182 Id. at 200.

183 Id. at 197 (first citing United States v. Shakir, 616 F.3d 315, 318 (3d Cir. 2010) (holding that *Gant* should not be limited to automobile searches); then citing United States v. Cook, 808 F.3d 1195, 1199 n.1 (9th Cir. 2015) ("We do not read *Gant*'s holding as limited only to automobile searches because the Court tethered its rationale to the concerns articulated in *Chimel*, which involved a search of an arrestee's home."); and then citing United States v. Knapp, 917 F.3d 1161, 1168 (10th Cir. 2019) (reading *Gant* as focused on the dual rationales of the destruction of evidence and officer safety rather than vehicles specifically)).

184 Id. (alteration in original) (quoting Arizona v. Gant, 556 U.S. 332, 343 (2009)).

around a person who is arrested.[185] This raises a question: If officers want to search property, can they arrest a person, bring the person to the area where the property is—or move the property to the person—and then search the property on the ground that it is now within the area of immediate control?

Lower courts have generally rejected this tactic. For example, in *United States v. Rothman*, the defendant was arrested at the San Diego airport for assaulting a federal agent.[186] The defendant had already checked his luggage for his planned flight to Hawaii, and agents arranged for the luggage to be removed from the plane and brought to the room where he was being held.[187] After the luggage was brought next to the defendant, agents searched it, revealing thirty-nine kilograms of marijuana.[188] The Ninth Circuit ruled that the agents could not justify the search under the search incident to arrest exception: "The police can not circumvent the Fourth Amendment's warrant requirement by arresting a person and then bringing that person into contact with his possessions which are otherwise unrelated to the arrest."[189]

A similar case is *United States v. Griffith*.[190] Officers arrested the defendant in his underwear at his hotel room and then ordered him to get dressed before leaving.[191] The officers saw a brown paper sack lying on the bed, and they searched it and found drugs.[192] On appeal, the government tried to justify the search on the ground that it was within the area where the defendant had walked around in order to collect his clothes to get dressed.[193] The Seventh Circuit held that *Chimel* did not allow officers to manipulate their search power by bringing property within the area of immediate control. "Just as '*Chimel* does not permit the arresting officers to lead the accused from place to place and use his presence in each location to justify a "search incident to the arrest,"' " *Griffith* concluded, "it does not permit the officers to achieve the same result by ordering the accused to dress and then not bringing him his clothes, thus

[185] 395 U.S. 752, 763 (1969).
[186] 492 F.2d 1260, 1263 (9th Cir. 1973).
[187] Id.
[188] Id.
[189] Id. at 1266.
[190] 537 F.2d 900 (7th Cir. 1976).
[191] Id. at 902.
[192] Id. at 902–03.
[193] See id. at 904–05.

requiring him to move about the room in order to comply with their directions."[194]

2. Movement to Facilitate Searches Under Other Exceptions to the Warrant Requirement

All of the cases on government movement so far have dealt with the search-incident-to-arrest exception. Although many government movement cases involve arrests, there are also plentiful cases involving other exceptions. This Subsection runs through case law on other exceptions: the *Terry* frisk power, the consent exception, the border search exception, and the automobile exception.

Begin with the *Terry* frisk power. Under *Terry v. Ohio*, officers can conduct a limited search for weapons of a person who is reasonably believed to be armed and dangerous.[195] A recurring question is what happens when officers make a temporary stop of someone carrying a bag, and an officer takes the bag away to ensure that the suspect does not reach into the bag and pull out a weapon. Can officers then search the bag for weapons, or does moving the bag away from the suspect eliminate the frisk power?

Lower court decisions point in different directions that echo the debate over the *Belton*/*Gant* divide. For an example of the side that treats moving property as preserving government power to frisk, take *United States v. Walker*.[196] Officers conducted a stop of a robbery suspect who had a black duffel bag slung over his shoulder.[197] Concerned that the bag might contain a gun, the officer took the bag, put it on the ground, and escorted the suspect eight feet away.[198] During the stop, while talking with the suspect, an officer unzipped the duffel bag and found a skeleton mask, and later, pursuant to a search warrant, a gun and the proceeds from the robbery.[199] In an opinion by Judge Sutton, the court ruled that unzipping the bag was reasonable given the serious safety risks in play. "Where, as here, the only alternative is to give a suspect access to a potential weapon

[194] Id. at 904 (quoting in part United States v. Mason, 523 F.2d 1122, 1126 (D.C. Cir. 1975)).
[195] 392 U.S. 1, 30 (1968).
[196] 615 F.3d 728 (6th Cir. 2010).
[197] Id. at 730.
[198] Id.
[199] Id. at 730–31.

(in an un-searched bag), a *Terry* search for weapons is justified—and reasonable," Judge Sutton reasoned.[200]

Contrast *Walker* with the Fourth Circuit's decision in *United States v. Buster*.[201] Officers stopped Buster when he fled from the police after they tried to speak with him about his possible involvement in a weapons-related assault.[202] At the time of the stop, Buster was carrying a bag across his body. When agents tackled Buster, Buster grabbed for his bag, leading officers to handcuff him and take the bag away.[203] Officers then opened the bag, finding a gun inside.[204] Judge Heytens ruled that opening the bag violated the Fourth Amendment because it was searched when Buster was handcuffed and therefore had no access to what was inside.[205] Because opening the bag did not thwart "any credible threat to the officers' safety at the time they searched it," the act of moving the bag away from Buster and handcuffing him ended the power to search the bag for weapons.[206]

The cases on arrests and *Terry* frisks show a common dynamic. Officers have understandable public safety reasons to take away a suspect's bags, purses, or backpacks during an encounter. The hard question is whether moving the property away eliminates warrantless search powers premised on the suspect's ability to reach into the property during the stop. According to some courts, officers have to choose between searching the property or moving it. According to other courts, officers can do both.

Government movement has also arisen as an issue in applications of the consent exception. Some background may be useful. In general, the government can rely on a person's consent to search their home as long as that person has common authority over the home.[207] In *Georgia v. Randolph*, however, the Supreme Court carved out a location-based exception to that rule.[208] Under *Randolph*, the government cannot rely on the person's consent if an objecting co-occupant of the home is physically present—at least, not as to locations within the objecting co-occupant's

200 Id. at 734.
201 26 F.4th 627 (4th Cir. 2022).
202 Id. at 630.
203 Id.
204 Id.
205 Id. at 634.
206 Id.
207 See United States v. Matlock, 415 U.S. 164, 171 (1974).
208 547 U.S. 103 (2006).

authority.[209] *Randolph* prompts a moving property question: What rule applies if the objecting co-occupant is physically present, but the government then removes the co-occupant from the scene so that they are no longer present? Can the government move the objecting co-occupant and then rely on the other person's consent?

The Supreme Court answered that question in *Fernandez v. California*.[210] Police came to Fernandez's apartment seeking evidence of his involvement in a gang-related robbery.[211] His girlfriend Roxanne Rojas answered the door, but Fernandez soon came out and refused consent to search.[212] Officers then arrested Fernandez and took him away to the police station.[213] An hour later, officers returned to the apartment and asked Rojas for consent. Rojas consented, and the officers found evidence of the robbery and a sawed-off shotgun.[214]

The Court ruled 6-3 that officers could rely on Rojas's consent despite her boyfriend's earlier objection.[215] Fernandez had been present, but the officers moving him away meant that the usual rule applied. According to Justice Alito, writing for the majority, the officers were permitted to move Fernandez if they had the legal justification to do so, such as by having reasonable suspicion for a temporary detention or (as here) probable cause to make the arrest.[216]

The Court declined to look beyond that objective question into whether the officers had removed Fernandez for an improper reason, such as to defeat the application of *Randolph*.[217] In the majority's view, "an occupant who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason."[218] Under the majority's rule, moving the objector away from the place to be searched eliminated the bar on third-party consent. Officers were free to rely on the *Randolph* rule—and to rely on Rojas's consent when Fernandez was no longer present—as long as they moved Fernandez with the required cause.

[209] Id. at 120.
[210] 571 U.S. 292 (2014).
[211] Id. at 295.
[212] Id. at 296.
[213] Id.
[214] Id.
[215] See id. at 306–07.
[216] Id. at 307.
[217] Id. at 302.
[218] Id. at 303.

In dissent, Justice Ginsburg argued that the majority wrongly allowed the police to lessen Fourth Amendment protection by moving the objector.[219] The simple fact was that Fernandez "*was* present" at the time he objected.[220] In Justice Ginsburg's view, Fernandez's objection should have continued in effect regardless of whether he was later taken away. Allowing the police to work around *Randolph* so easily encouraged them to "dodge" the warrant requirement and gutted Fourth Amendment protection.[221]

Government movement has also been an issue in application of the border search exception. The key case on movement and the border search exception is the Ninth Circuit's en banc ruling in *United States v. Cotterman*,[222] which was previewed in the Introduction. The border search exception is yet another place-based rule: property searched crossing the international border or its functional equivalent is generally exempt from Fourth Amendment protection.[223] Among the issues in *Cotterman* was what rule applied if the property is seized at the border but then moved away from the border before it is searched.

Cotterman was stopped at the United States border as he entered from Mexico.[224] Based on suspicion that Cotterman was engaged in acts of child sex tourism abroad, agents seized two laptop computers and the digital cameras he was carrying and allowed him to enter the United States.[225] Border agents lacked the expertise to search the computers at the border, however, so one agent took the computers and one of the cameras and drove 170 miles from the border to Tucson, where a computer expert was located.[226] The computer expert searched the laptops in Tucson without a warrant, finding CSAM.[227] Cotterman cried foul,

219 Id. at 319 (Ginsburg, J., dissenting) ("I would honor the Fourth Amendment's warrant requirement and hold that Fernandez' objection to the search did not become null upon his arrest and removal from the scene.").

220 Id. at 312 (Ginsburg, J., dissenting).

221 Another case in the same ballpark as *Fernandez* is *United States v. Johns*, 469 U.S. 478 (1985), which involved moving packages taken from a car that was later searched under the automobile exception. The Court in *Johns* focused only on the time delay, however, rather than the moving of the property. Id. at 480.

222 709 F.3d 952 (9th Cir. 2013) (en banc).

223 See, e.g., United States v. Ramsey, 431 U.S. 606, 616–19 (1977); Almeida-Sanchez v. United States, 413 U.S. 266, 272–73 (1973).

224 *Cotterman*, 709 F.3d at 957.

225 Id. at 958.

226 Id.

227 Id.

arguing that moving his devices to Tucson meant that the border search exception did not apply in its usual way.[228]

The en banc Ninth Circuit disagreed. According to the majority, "[a] border search of a computer is not transformed . . . simply because the device is transported and examined beyond the border."[229] "Because Cotterman never regained possession of his laptop, the fact that the forensic examination occurred away from the border, in Tucson, did not heighten the interference with his privacy."[230] Although the distance away from the border mattered when the person was searched inside the United States, it did not matter when the property was seized at the border, and moving the property had not impacted his privacy or possessory interests.[231] Judge Milan Smith dissented, arguing that the regular border search doctrine should not apply because "this search did not occur at the border, but rather 170 miles away from the border."[232]

Finally, government movement has also arisen under case law on the automobile exception. Consider *Chambers v. Maroney*,[233] which involved moving a car to the police station after arresting the driver. In *Chambers*, armed robbery suspects were arrested while in a blue station wagon.[234] Officers had reason to believe the station wagon had been used as the getaway car, and they had probable cause to believe there was evidence of the robberies inside it.[235] The officers first drove the station

[228] Technically, Cotterman argued that moving the computer to Tucson triggered what Ninth Circuit law considers the "extended border search" doctrine. Id. at 961. Under that doctrine, the usual rule of searching switches from no cause at all to a reasonable suspicion requirement. See United States v. Guzman-Padilla, 573 F.3d 865, 878–79 (9th Cir. 2009). This particular quirk of Ninth Circuit law need not concern us. For our purposes, the key is that Cotterman argued that the ordinary border search rules no longer applied.

[229] *Cotterman*, 709 F.3d at 961.

[230] Id. at 962.

[231] See id.

[232] Id. at 989 (Milan Smith, J., dissenting) (emphasis omitted). A related issue is prompted by the rule adopted by lower courts that the warrant requirement does not apply to searches of property conducted outside the United States. See, e.g., In re Terrorist Bombings of U.S. Embassies in E. Afr., 552 F.3d 157, 169–71 (2d Cir. 2008). Imagine the government seizes a cell phone in Mexico and brings it to the United States to be searched. Does the government need a warrant to search the cell phone in the United States? That question was implicated by the facts of *United States v. Hernandez*, 167 F.4th 1113, 1119–22 (11th Cir. 2026), although the government obtained a warrant to search the phone so the moving property question was not litigated, see id. at 1123 (discussing the warrant).

[233] 399 U.S. 42 (1970).

[234] See id. at 44.

[235] See id. at 44, 52.

wagon to the police station and then searched the wagon without a warrant, finding the evidence of the robberies that they expected.[236]

Chambers held that moving the car to the station house before searching it did not change whether the automobile exception applied.[237] Although not a model of clarity, *Chambers* appears to reason that the automobile exception still applied because the rationales for the exception were not affected by the officer movement. Probable cause still existed—and the car was still mobile—after it was brought to the station house.[238] Although "arguably" the automobile exception should not apply once the car was secured at the police station, *Chambers* found this too much of a generalization to justify a constitutional rule.[239]

The government movement cases point in different directions. In the wake of conflicting guidance from *Belton* and *Gant*, lower courts are deeply divided on whether officers can search property that has been set aside during arrests and temporary stops. Outside that setting, courts have reached no consistent answers. In *Fernandez*, officers could remove the objector and lessen the Fourth Amendment barrier. In *Cotterman*, however, border agents moved the computer inland but the Fourth Amendment protection did not change. There are no easy answers in the cases, and the results seem hard—and in some cases, impossible—to reconcile.

* * *

What lessons can we draw from reviewing the moving property cases? Three main lessons emerge from the taxonomy above.

First, the issue is common. Whether movement changes Fourth Amendment protection—from the rule of the original location to the rules of the new location—comes up frequently. The legal rules of search and seizure law are often place-based, and property and people are often

[236] See id. at 44.

[237] See id. at 52.

[238] See id. ("On the facts before us, the blue station wagon could have been searched on the spot when it was stopped since there was probable cause to search and it was a fleeting target for a search. The probable-cause factor still obtained at the station house and so did the mobility of the car . . . .").

[239] See id. at 51–52. The Court's statement on this point was cryptic: "But which is the 'greater' and which the 'lesser' intrusion is itself a debatable question and the answer may depend on a variety of circumstances." Id. In a footnote, the Court added that it was reasonable to bring the car to the station house under the specific facts of the case. See id. at 52 n.10. The arrest had occurred in "a dark parking lot in the middle of the night," and "[a] careful search at that point was impractical and perhaps not safe for the officers." Id.

moved before they are searched. In a wide range of cases, involving a wide range of doctrines, courts have to figure out if the movement shifts the Fourth Amendment rules from the old to the new or keeps them as they were before.

Second, courts are often divided. There are easy cases, such as those involving private movement. But many recurring moving property questions have led to different results among different courts. Other fact patterns are less common but have nonetheless generated dissents.

Third, courts lack a framework to answer these problems. Judges tend to treat each moving property case as a one-off. They don't link the problems before them to other cases. Decisions in this area often proceed by instinct, asking whether one side or the other took unfair advantage of a rule. But courts have not yet looked carefully at the conceptual problem raised by moving property.

II. SOLUTIONS TO THE MOVING PROPERTY PROBLEM

Enough of the problem. It's now time for possible solutions. This Part offers a framework to help solve moving property cases. It proposes two steps to do so, and it suggests answers to several of the major cases and disputes that courts have faced.

The key idea is realizing that moving property presents a wrinkle on a fundamental dynamic in Fourth Amendment law. The text, history, and case law of the Fourth Amendment impose different rules in different places for an important reason. Different places play different roles in resolving the tensions among the interests that the Fourth Amendment considers, such as protecting personal privacy, limiting government power, and protecting officer safety. Moving property raises hard problems because it mixes our intuitions from different spaces.

That understanding in turn suggests a two-part framework for solving moving property cases. First, courts should ask how the movement fits the justifications for the Fourth Amendment rules at the start and end locations. In this step, courts must grapple with the reasons why particular location-based rules exist and determine which area rule aligns best with the movement that occurred. The focus should be internal and doctrine-by-doctrine, looking at the fit or lack of fit between the rationale for location-based rules and the particular movement in question. This step alone is powerful. It suggests answers to a majority of the moving property problems discussed in Part I.

The second step is needed in cases of government-caused movement. In these situations, government action triggers the movement—either by a government official moving the property directly, or by causing a private party to move it. The fact of government-induced movement suggests a second question should be considered: Was the movement itself legal? If the government illegally causes the movement, the government's action is illegal regardless of the legal regime that applies to the moved property. Other areas of Fourth Amendment law that deal with similar problems suggest a standard for the illegality of movement. Movement is unlawful when it violates the Fourth Amendment, threatens to violate the Fourth Amendment, or overcomes the will of the person who moves the property.

This Part develops the two-part test. It begins with the conceptual question of why Fourth Amendment rules are place-based. It then uses that answer to propose a first step for answering moving property questions, and it offers possible answers to several recurring questions. It then turns to the second step, exploring the problem of illegal movement and proposing a test to identify when the government's conduct to cause movement is unlawful.

This Part does not aim to answer every moving property question. Some cases remain difficult. Some cases rest on unresolved tensions in the Supreme Court's broader Fourth Amendment case law. As a result, reasonable minds can disagree on answers even if they agree with my framework. But my hope is that offering my own thoughts can at least begin a conversation on the best way to solve hard moving property cases.

A. Why Fourth Amendment Law Features Place-Based Rules

Turn to the big picture. Fourth Amendment law adopts many place-based rules. But why? The Supreme Court has crafted place-based rules because the constitutional text and the concepts that follow from it often relate to place. The Fourth Amendment is all about protecting particular places with special rules that recognize how interests play out in those places. Understanding why ends up being the crucial step to solving moving property cases.

Start with a big-picture view of Fourth Amendment law and the role of place within it. Textually, the Fourth Amendment protects the people from "unreasonable searches and seizures" in "their persons, houses, papers, and effects."[240] This text prompts courts to answer three questions: What is a search, what is a seizure, and when are searches and seizures reasonable? Each question is significantly tied to places.

Begin with searches. Many searches are physical searches, triggered by physical intrusion into persons, houses, papers, or effects. Physical searches occur when there is actual physical intrusion into those enumerated spaces. With a physical search, rooting protection in places is obvious. Place is central, as the Fourth Amendment protects some places but not others. The home itself has particular importance. As the Supreme Court has emphasized: "At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."[241] On the other hand, other places are not protected at all, such as areas far from the home.[242]

It is true that the Supreme Court famously said in *Katz v. United States* that "the Fourth Amendment protects people, not places."[243] But as Justice Harlan responded in his influential concurrence, this quip mischaracterized Fourth Amendment law: "The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a 'place.' "[244] Accordingly, even the reasonable expectation of privacy test that Justice Harlan articulated in that concurrence, which provides a second way to identify a search, is heavily place-based.[245] In large part, searches violate a reasonable expectation of privacy when they amount to a virtual intrusion of a protected space such as a home.[246]

The test for seizures of property is also place-focused. Under Supreme Court doctrine, the government seizes property when it meaningfully interferes with a person's possessory interest in it.[247] Possession just means knowing control,[248] which means that interfering with someone's

[240] U.S. Const. amend. IV.

[241] Silverman v. United States, 365 U.S. 505, 511 (1961).

[242] See, e.g., United States v. Dunn, 480 U.S. 294, 304 (1987) (referring to so-called "open fields").

[243] 389 U.S. 347, 351 (1967).

[244] Id. at 361 (Harlan, J., concurring).

[245] See id. This rule was of course later adopted by the full Court. See Smith v. Maryland, 442 U.S. 735, 739–41 (1979).

[246] See, e.g., Kyllo v. United States, 533 U.S. 27, 40 (2001); Orin S. Kerr, *Katz* as Originalism, 71 Duke L.J. 1047, 1050 (2022).

[247] United States v. Jacobsen, 466 U.S. 109, 113 (1984).

[248] See, e.g., Ninth Cir. Jury Instructions Comm., Manual of Model Criminal Jury Instructions § 6.15 (Possession—Defined) (2022) ("A person has possession of something if

possessory interest is interfering with their control. When it comes to property, the most obvious example of seizing is taking a person's property away. If a person is carrying a bag and the government grabs the bag, the government taking control of the bag by removing it to a new place amounts to a seizure. Here, place is a by-product of control. When the government takes control, it usually does so by taking property away.

Place is also central to reasonableness, and it is the role of place in reasonableness doctrine that has the most importance for the moving property problem. At the most general level, reasonableness doctrine looks to justification. Did the government have a good reason to search or seize? Given the scale of Fourth Amendment law—it governs hundreds of thousands of officers investigating tens of millions of cases a year—the Supreme Court tends to reduce this to rules that govern reasonableness in particular situations.[249] The classic statement is that a search or seizure is reasonable when the government has a valid warrant or else there is an established exception to the warrant requirement.[250] The list of exceptions to the warrant requirement includes searches incident to arrest, consent, the automobile exception, and the border exception.[251]

All of these reasonableness doctrines are linked to places. That's true for a simple reason: the justifications for searches often hinge on where they occur. For example, warrant searches are justified only when the searches they authorize are limited to a specific place. The text of the Fourth Amendment requires that warrants "particularly describ[e] the place to be searched,"[252] which ensures that only the specific place where evidence is expected to be found is invaded. The warrant requirement narrows warrant searches to specific places where the government has established probable cause to search.[253] Some areas can be searched, and other areas cannot be.

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the person knows of its presence and has physical control of it or knows of its presence and has the power and intention to control it.").

[249] New York v. Belton, 453 U.S. 454, 458 (1981) ("In short, '[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.'" (alteration in original) (quoting Dunaway v. New York, 442 U.S. 200, 213–14 (1979))).

[250] Nancy J. King, Orin S. Kerr & Eve Brensike Primus, Kamisar, LaFave, and Israel's Modern Criminal Procedure 296 (16th ed. 2023).

[251] Id. at 296, 352, 360, 436.

[252] U.S. Const. amend. IV.

[253] Maryland v. Garrison, 480 U.S. 79, 84 (1987).

Exceptions to the warrant requirement work in a similar way. Place matters. The search incident to arrest exception provides a particularly clear example. Although rooted in the common law,[254] the modern scope of the exception allows searches incident to arrest based on concerns that an unsearched arrestee would reach for a gun or destroy evidence of the crime.[255] Place defines where those concerns are strong and where they are weak. Under *Chimel v. California*, for example, the search power extends beyond the person to "the area into which an arrestee might reach in order to grab a weapon or evidentiary items."[256] *Chimel* terms this "the area within [the arrestee's] immediate control—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence."[257] There is "no comparable justification"[258] for searching areas outside that space. The doctrine is inherently spatial, as it focuses on where an arrested person might easily reach.

The border search exception also has an obvious connection to place. The exception allows border agents to control what enters and exits the country to protect national sovereignty, ensuring that tariffs are paid and contraband is not snuck in.[259] Allowing the inspection of property as it crosses the border is the natural way to do that. The border is the relevant "place" of that authority, as it of course distinguishes outside the United States from inside it. And when property is flown into or out of the country, and it last touches ground at an airport, treating that airport as the "functional equivalent of a border"[260] matches that goal, too. Again, the exception naturally focuses on places.

The law of consent, which allows individuals to agree to searches and seizures without a warrant or cause, is also rooted in spatial concepts. A person's right to consent extends only to places where they have common authority.[261] Common authority requires "mutual use of the property by persons generally having joint access or control for most purposes."[262] It

[254] Chimel v. California, 395 U.S. 752, 755 (1969) (noting "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime" (quoting Weeks v. United States, 232 U.S. 383, 392 (1914))).

[255] Id. at 763.

[256] Id.

[257] Id. (internal quotation marks omitted).

[258] Id.

[259] See United States v. Ramsey, 431 U.S. 606, 616 (1977).

[260] Almeida-Sanchez v. United States, 413 U.S. 266, 273 (1973).

[261] See United States v. Matlock, 415 U.S. 164, 171 (1974).

[262] Id. at 171 n.7.

exists over places where "it is reasonable to recognize that [the person] has the right to permit the inspection in his own right."[263] To have common authority that creates a right to consent to searches, the consenting person must have that relationship over the specific place to be searched. For example, a person might have common authority to authorize a search of a room but not a locked box found in that room.[264]

The place-based nature of exceptions to the warrant requirement extends to the automobile exception, although exactly how may be less obvious. The automobile exception allows a search of a car based on probable cause to believe contraband or evidence is inside.[265] The exception rests largely on the notion that obtaining a warrant is incompatible with the ready mobility of cars.[266] If an officer needed a warrant to stop and search a car, few searches would be possible. By the time an officer found a judge, obtained a warrant, and returned, after all, the car would have driven off, and the evidence in the car would be long gone.[267] Although that thinking has no explicit spatial limit, it has an implicit one. For property to be at risk of being driven away, it must be part of, inside, or attached to the car itself—something that will move away together with the car. The concern about lost evidence is limited to the car and property that is inside it.

What's the upshot? Fourth Amendment rules are often place-based because the law is fundamentally about protecting particular places and not others. Doctrines focus on who has rights in what places, and on how different realities of different spaces change the interests that the Fourth Amendment preserves. The Supreme Court has recognized different interests in different spaces based on assumptions about the role of those spaces and how they work. The result is a place-based rule structure, in which different rules apply to different spaces.

B. The First Step to Solve Moving Property Problems

Understanding the reasons for the place-based nature of Fourth Amendment rules points to a framework for solving the moving property problem. Let's call the beginning location of property the *start location*, and the place to which it is moved the *end location*. Moving property

[263] Id.
[264] See United States v. Block, 590 F.2d 535, 540–41 (4th Cir. 1978).
[265] Carroll v. United States, 267 U.S. 132, 149 (1925).
[266] California v. Carney, 471 U.S. 386, 390 (1985).
[267] Id. at 390–91.

problems trigger a rule clash that may feel like a conflict of law problem, except that the facts involve two places governed by different rules rather than two different jurisdictions.[268] Understanding the reasons why Fourth Amendment law adopts location-based rules suggests a key question to ask: Did moving the property align with the justifications for the start location rules or the end location rules?

This is the key question because the scope of Fourth Amendment rules should be defined by the rationales that motivate them.[269] The lines exist to fit the reasons for the lines. The reasons drive what rules apply. In some situations, movement will annul the justifications for the rules of the start location and will trigger the justifications for the rules of the end location. In other situations, the opposite will occur: movement will maintain the justifications for the rules of the start location but will not trigger the justifications for the rules of the end location. Courts should resolve moving property cases by ensuring that Fourth Amendment protection stays consistent with its justifications.

This suggests a powerful way to answer moving property questions. Courts should look internally at the justifications for each location-based rule. They should examine the justifications for both the rule of the start location and the rule of the end location. When the justifications for the location-based rule of the start location still apply after property is moved, the rule of the start location should still apply. By contrast, when movement from the start to the end location triggers the justifications of the end location rule, the end location rule should apply. The rule should be preserved, or should switch, depending on whether the rationales for the start location rule or end location rule apply.

This is all rather abstract, so a simple example helps show how this works. Recall the border search case of *United States v. Cotterman*, from Section I.D, in which border agents seized Cotterman's computers at the border and brought them 170 miles inland to be searched by forensic experts.[270] As you may remember, the Ninth Circuit ruled that moving the

[268] See Conflict of Laws, Black's Law Dictionary (11th ed. 2019) (defining "conflict of laws" as "[a] difference between the laws of different states or countries in a case in which a transaction or occurrence central to the case has a connection to two or more jurisdictions").

[269] See Arizona v. Gant, 556 U.S. 332, 342–43 (2009); Thornton v. United States, 541 U.S. 615, 629 (2004) (Scalia, J., concurring in the judgment).

[270] 709 F.3d 952, 958 (9th Cir. 2013).

property did not alter the border search exception.[271] The start location rule was preserved, even though the property was moved.

My guess is that you saw *Cotterman* as intuitively right. But unpack why. The reason, I suspect, is that the purpose of the border rule in the digital context is to prevent contraband from being introduced and used inside the United States. When border agents seize a computer at the start location of the border, and they bring it to the end location of where the forensic expert can analyze it, the location of the expert is irrelevant to that interest. The computer is just a collection of files. As long as the government has custody of the data, the location of that custody doesn't matter. Because the rationale of the start location's rule still applies, moving the property should preserve that rule. As *Cotterman* correctly held, the border search exception still applies.

State v. Boyd, in which the officer ordered a passenger to put her purse back in the car after a driver consented to a search of it, is another example rendered relatively straightforward by my approach.[272] The rationale for consent searches is that common authority over a space gives the consenting party the power to permit a government search.[273] The search exercises delegated power: it is reasonable because the government is acting in the place of, and with the authority of, the consenting party.[274] Using the power of the state to command items to be placed into a space after consent has been given to search it is inconsistent with that delegated role. Which items are properly inside the space over which consent has been given to search is a matter to be settled between the consenting party and the passenger, not by the government.

That is true even where, as in *Boyd*, the item was originally inside the car when the consent was given.[275] Recall that the officer ordered Boyd

[271] Id. at 961.

[272] 64 P.3d 419, 421 (Kan. 2003); see also State v. Campbell, No. 16-0640, 2017 WL 3283284, at *5 (Iowa Ct. App. Aug. 2, 2017) ("We conclude the deputy's instruction for Campbell to place her purse back in the car was an illegal seizure of her property as it interfered with her possessory interest in her purse with no reasonable suspicion that the purse contained anything illegal or dangerous to the deputies.").

[273] Fernandez v. California, 571 U.S. 292, 298 (2014).

[274] United States v. Matlock, 415 U.S. 164, 171 n.7 (1974) (noting that common authority to search rests "on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right").

[275] See *Boyd*, 64 P.3d at 421 ("When Officer Herman was told that Lassiter had consented to a search of the vehicle, Herman asked Boyd to get out. Boyd testified that when she left the

out of the car before searching it, and Boyd decided to take her purse with her.[276] That was properly her choice to make. According to the Supreme Court, the authority to order a person out of their car exists for officer safety reasons: a person sitting in a car could reach for a gun hidden there, and ordering the person out of the car separates the person from the gun.[277] But there is no obvious officer safety reason to direct a person who has been ordered out of a car to put their bag back inside it. If the officer has concerns about a weapon being in the bag, the officer can take the bag from the former occupant and put it elsewhere.

Following the internal rationales of the start and end location rules roots the choice of rule in the rationales for the rules themselves. In many cases, the framework will explain instincts that judges already have. When judges intuit that switching to the rules of the end location wrongly guts either a government power or a privacy protection, requiring the retention of the start location rule, that likely reflects an intuition that the rationale for the rule from the start location still prevails. Making the analysis explicit can test whether that intuition is right, ensuring that the scope of Fourth Amendment rules remains true to their justifications.

C. The Value of Freeze-in-Time Rules

This perspective reveals the value of freeze-in-time rules to answer moving property cases. As Part I showed, lower courts often answer moving property cases with a rule that looks for some triggering event to freeze government power. Moving property can change rights before the triggering event, but the triggering event freezes the level of rights even if property later moves. This approach is useful because it can fit the internal rationales of the start and end locations.

A useful example is the recurring fact pattern of the passenger who takes property out of the car before officers search it under the automobile exception, as seen in cases like *State v. Lang*[278] and *State v. Maloney*.[279] Courts generally hold that whether property brought out of the car can be searched under the automobile exception depends on whether probable

vehicle, she reached for her purse to take it with her but was told by Officer Herman to leave it inside the vehicle.”).

[276] See id.

[277] See, e.g., Pennsylvania v. Mimms, 434 U.S. 106, 109–10 (1977) (per curiam); Maryland v. Wilson, 519 U.S. 408, 412–15 (1997).

[278] 942 N.W.2d 388, 394 (Neb. 2020).

[279] 489 P.3d 847, 849–50 (Idaho 2021).

cause existed at some moment before the property was removed.[280] Before the trigger of probable cause exists, moving the property changes rights. If probable cause exists, however, it freezes the rights even if property later moves.

This answer strikes me as correct, as it seems to match the rationales of the automobile exception. As discussed above, the automobile exception rests on the incompatibility between warrants and the ready mobility of cars.[281] Without the automobile exception, officers would have no way to execute warrants for evidence in a car: by the time they returned with a warrant, the car would be long gone.[282] The automobile exception acts as a sort of automatic exigency requirement, preserving the traditional probable cause requirement to search but dispensing with the need for a warrant to prevent evidence from being lost through the car driving away.[283] In answering how to deal with occupants who remove property from cars before they are searched, the goal should be to maintain this role.

The probable cause rule of cases like *Lang* and *Maloney* achieves that. Consider both sides of the coin. First, allowing the search of property removed after probable cause was established prevents occupants from blocking searches based on probable cause. A person ordered out of a car is likely to end up back in it.[284] If an occupant can remove evidence from the car after probable cause existed, she can grab the evidence and wait out the search by the side of the road until the search is over. This means that the power to remove evidence after probable cause exists is the power to render the evidence inaccessible by driving away with it later—the precise problem the automobile exception is designed to thwart.

Indeed, removing property after probable cause has been established can thwart the finding of probable cause itself. If we assume a rule where the government can only search the property inside the car at the moment of the search, based on probable cause at that time, then an occupant can remove enough property to thwart the finding of probable cause. Again, this defeats the purpose of the automobile exception, which is to allow

280 See supra notes 71–84 and accompanying text.

281 See supra notes 265–67 and accompanying text.

282 Carroll v. United States, 267 U.S. 132, 153 (1925).

283 Maryland v. Dyson, 527 U.S. 465, 466–67 (1999) (per curiam).

284 A study of car searches during traffic stops found that only 32% of searches for white drivers, 29% for Black drivers, and 24% for Hispanic drivers led to the discovery of any evidence. See Emma Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, 4 Nature Hum. Behav. 736, 739 (2020).

warrantless searches of cars when probable cause exists, based on the exigency that the car may be driven off.

The flip side of the rule matches the automobile exception, too. Courts should not allow for the search of property removed *before* probable cause is found. Lots of property has been in a car at some point in the past. If the government could search items just because they had been in a car before, the resulting rule would expand the scope of the search beyond what there is probable cause to search. In effect, such a rule would expand the particularity requirement so that it no longer covers a car but instead covers cars plus what was in them before. This would water down the probable cause requirement in a way inconsistent with the automobile exception.

Next consider the case law on whether officers can search property that a person moves away from them at or near the time of their arrest. You'll recall this was an issue in *United States v. Fernández Santos*,[285] where the defendant threw his fanny pack into his backyard when agents entered his home to arrest him,[286] and also in *State v. Scullark*,[287] where the defendant, upon his arrest, handed his fanny pack to someone else. Although the two cases came out the opposite way, I think both may be right, as they reflect two sides of a plausible freeze-in-time rule. The defendant can change his rights by moving property before he is arrested, but the beginning of the arrest freezes the search incident to arrest authority.

This approach seems consistent with the rationale of the search incident to arrest rule. As *Chimel* explains, that rule exists to allow the government to prevent an arrestee from accessing the bag to destroy its contents or to grab a weapon.[288] The strength of those interests when an arrestee moves their property away from them may depend on whether the arrest has begun. Take Fernández Santos, who threw his fanny pack into the yard before he was arrested. Because Fernández Santos no longer retained access to the fanny pack when the arrest began, he was not in a position to destroy what was in it and could not retrieve a weapon in it before the

[285] No. 23-cr-00063, 2023 WL 8915838, at *1 (D.P.R. Dec. 27, 2023), *report and recommendation adopted in part and rejected in part sub nom.* United States v. Fernández, 716 F. Supp. 3d 8 (D.P.R. 2024).

[286] Id.

[287] 23 N.W.3d 49, 51–52 (Iowa 2025).

[288] Chimel v. California, 395 U.S. 752, 763 (1969).

officers reached him.[289] Scullark, who waited for the arrest to start before passing off his fanny pack, was in a different position. Once the arrest had started, the officer was now close by and occupied with making the arrest. The threat posed by any weapon present when the arrest has begun is at its highest, and moving the property away is more likely an effort to destroy the contents of the bag by impeding government access. Although this is not the only way to resolve these cases, a freeze-in-time rule when the arrest begins seems like a plausible resolution of the problem.

D. The Terry *Frisk Cases and Officer Movement Incident to Arrest*

As Part I shows, lower courts are deeply divided on a recurring fact pattern involving the search incident to arrest authority and the *Terry* frisk power.[290] Recall the problem. A person is arrested or stopped while carrying some sort of bag or purse.[291] During the arrest or stop, the officer moves the bag or purse aside so the suspect cannot reach it.[292] At some point during the arrest or stop, the officer wants to search the bag. The question becomes: Can officers search the bag without a warrant by relying on the same search power the officer has to search property on the person—the search incident to arrest power for an arrest, or the *Terry* frisk power for a temporary stop?[293] These are hard questions, and reasonable minds can disagree on the answers.

I'll do *Terry* frisks first. One plausible rule is that officers should be able to search the moved-away bag only at the end of the stop, and then only if the officers at that time have the required suspicion that the person is armed and presently dangerous. The main reason is that *Terry* stops must be brief. The officer gets a reasonable period under the circumstances to investigate possible ongoing crime or question a person who may have information about a past serious offense.[294] Unless the

[289] Because the area of the backyard was curtilage, a warrant was needed. Notably, had Fernández Santos thrown the bag into a public street, that act may very well have constituted abandonment that would have eliminated his Fourth Amendment rights entirely. *Fernández Santos*, 2023 WL 8915838, at *10.

[290] See supra Section I.D.

[291] Id.

[292] Id.

[293] Id.

[294] See United States v. Hensley, 469 U.S. 221, 228–29, 234–35 (1985).

officer develops probable cause and makes an arrest, a person who has been temporarily stopped must be let go.[295]

The short time window of *Terry* stops means that the officer safety issues they implicate do not end when the property is separated from the suspect. Like the occupant of the car who will likely return after the car is searched, the person stopped under *Terry* is likely to have his bag returned to him at the end of the stop. As Judge Sutton explained in *United States v. Walker*,[296] the prospect of return places the officer in an untenable bind. An officer who has reasonable suspicion to believe that a person stopped is armed and dangerous, specifically because they may have a gun in their bag, may have to return the bag to the person at the end of the stop if probable cause has not emerged that would justify an arrest.[297]

The ready analogy here is to *Michigan v. Long*, which allowed a protective sweep of a car if a person was dangerous and might gain control of a weapon in the car.[298] *Long* extended the concepts of *Terry* frisks to cars based on the assumption that a driver could access weapons in the car when he "reenter[ed] his automobile."[299] The same principle applies to moving property cases—an officer might return bags to their owners much like drivers might return to their cars. The key question should be whether, if the bag were to be returned unsearched, the officer would then have reasonable suspicion that the person is armed and dangerous. If so, the bag could be searched before it was returned. If not, the officer would have to return the bag unsearched at the end of the stop.[300]

[295] See Florida v. Royer, 460 U.S. 491, 498, 500 (1983) (plurality opinion) ("[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.").

[296] 615 F.3d 728 (6th Cir. 2010) (Sutton, J.).

[297] See id. at 734.

[298] 463 U.S. 1032, 1049 (1983) (allowing a protective sweep of the passenger compartment of a car "if the police officer possesses a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officer in believing that the suspect is dangerous and the suspect may gain immediate control of weapons" (quoting Terry v. Ohio, 392 U.S. 1, 21 (1968))).

[299] See id. at 1051.

[300] One difference between *Long* and my proposal for moving property is that I would tend to give the person stopped a chance to dispel the officer's suspicion that they are armed and dangerous. I would therefore have the search occur, and its legality evaluated, only at the end of the stop before the property is returned. The lower court case law on *Long* has rejected such a requirement on the ground that the person detained could at any time break away from the officers, go to the car, and get the gun—thus creating an interest in searching the car sooner rather than later. See United States v. Canada, 76 F.4th 1304, 1309–10 (10th Cir. 2023). If that

Now on to arrests.[301] This one is difficult, but I think it can be answered largely by a combination of my prior approaches. If an encounter begins with a *Terry* stop, and the property is removed as part of the *Terry* stop, then officers should not be allowed to search a removed bag if the *Terry* stop later ripens into an arrest. This is the flip side of the *Terry* rule above: because the property will not be returned to the person arrested, the search of the removed bag cannot be justified as a search incident to arrest. Under *Chimel*, the search incident to arrest power is justified by the need to prevent the destruction of evidence of the crime and protect officer safety during the arrest.[302] These interests are strongest in the zone of immediate control where an arrestee might reach, limiting the *Chimel* warrantless search power to that area within reach of the person arrested.[303] When officers have previously moved property away from that zone before the arrest began, they achieved the goal that the exception serves. Moving the property from inside the grabbable area to outside the grabbable area put it out of reach, ensuring that the purposes of the search incident to arrest exception are not advanced by a search of the previously removed bag.[304]

On the other hand, a different rule appears justified if the property is removed only when the arrest has begun, or the arrest "followed quickly on the heels" of the bag's removal.[305] This situation is indistinguishable from the scenario in which a suspect tries to move property after the search has begun, as in *Scullark*. The arrest freezes the scene. Property on or near the person when the arrest begins should be included in the search

is a valid public safety concern as applied to moved-away bags, it would justify a broader rule than I suggest that would broadly allow searching moved property on a *Michigan v. Long* rationale. With that said, it is worth noting that *Chimel* limits the concern of an arrestee reaching a weapon to the area of immediate control, not beyond it. See Chimel v. California, 395 U.S. 752, 763 (1969).

[301] The arrest rule may be less consequential than the rule for *Terry* stops. When officers arrest someone who was carrying a bag, the bag may be taken into custody and later searched under the inventory search exception regardless of how courts resolve the moving property problem. This will generate plausible arguments that the search was a valid inventory, or that the fruits of the search are admissible as an inevitable discovery. See, e.g., United States v. Fillyaw, 176 F.4th 951, 952 (7th Cir. 2026) (rejecting Fourth Amendment challenge to search of backpack removed on arrest under the inventory search exception).

[302] *Chimel*, 395 U.S. at 763.

[303] Id.

[304] See, e.g., United States v. Davis, 997 F.3d 191, 199–200 (4th Cir. 2021).

[305] Rawlings v. Kentucky, 448 U.S. 98, 111 (1980) (Blackmun, J., concurring) ("Where the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa.").

power. To rule otherwise reduces searches incident to arrest to a delicate dance, in which officers must think carefully about where they happen to open items taken from an arrestee during arrest to ensure that the movement does not inadvertently lessen search powers.[306]

E. The Second Step: Legality of the Movement Itself

I have not yet addressed some of the more remarkable cases from Part I involving ruses and other pressure campaigns. You'll recall some of the hard-to-believe scenarios. There was *United States v. Ramirez*, in which officers concocted a story that the defendant's home was robbed and that he needed to be home so that they could detain him under the search warrant power.[307] There was *United States v. Maez*, in which the SWAT team surrounded the home and told the people inside to come out so officers could arrest Maez without a warrant.[308] And don't forget *State v. Hendrix*, in which the undercover officer called the drug dealer and told him that the police were coming in order to "flush the evidence into the open."[309] How should courts approach those cases?

Courts should add a second step. In any government-induced movement case, there are really two separate steps to consider rather than one. The first step was covered earlier: asking whether the rationales for the rules are consistent with the movement at the start and end locations. But courts should also consider an analytically separate question in government movement cases: Was the movement itself legal? This step is particularly important in ruse cases and pressure cases, as it is often the ruse or the pressure that is illegal rather than a violation of the operative rule that applies in the place.

Step back a bit to see why. When the government causes property to be moved, there are two sequential issues to consider. First, there is the government action that causes property to be moved. Second, there is the property's arrival at the end location. Focusing only on which legal rule applies after the property is moved skips over the legality of the methods

[306] Cf. New York v. Belton, 453 U.S. 454, 462 n.5 (1981) (rejecting as "fallacious" the notion that "by seizing an article even on the arrestee's person, an officer may be said to have reduced that article to his 'exclusive control,'" eliminating the search incident to arrest power, as it would mean that "no search or seizure incident to a lawful custodial arrest would ever be valid").

[307] 976 F.3d 946, 950, 955 (9th Cir. 2020).

[308] 872 F.2d 1444, 1449–50 (10th Cir. 1989).

[309] 782 S.W.2d 833, 838 (Tenn. 1989) (Drowota, C.J., dissenting).

used to get there. But those methods matter too. Courts should analyze both.

A simple case to start with is *Maez*, in which the SWAT team surrounded the home and pointed rifles at those inside until they came out.[310] The Tenth Circuit found this unconstitutional because the government violated *Payton v. New York*'s requirement that a warrant must be obtained to enter the home to make an arrest.[311] In the court's view, the government had constructively entered the home when they pointed their guns: "the privacy of the home" was "effectively invaded,"[312] the court reasoned, as it should be "the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home."[313]

The Tenth Circuit reached the right result in *Maez*, but for the wrong reason. The government's conduct was outrageous. But it was not outrageous because the government violated *Payton*. Contrary to the Tenth Circuit's conclusion, there was no *Payton* violation at all. The government never entered the home or invaded the privacy of the home. The problem was not that the government lacked a warrant, but the government's blatantly unconstitutional use of force against Maez and his family.

Think about what happened. Maez was a robbery suspect, but the government had no reason to think he or anyone else in his family posed a threat to them. Nonetheless, the officers surrounded the home and pointed their rifles into the home, directing those inside over loudspeakers to come out.[314] The agents' pointing their rifles at Maez's family may have been an unconstitutional use of force,[315] and at the very least it was clearly a threat to use unconstitutional force. Agents cannot use deadly force unless they or someone else faces an imminent threat of bodily injury.[316] If Maez had refused to give up, the SWAT team would have had no legal right to shoot him. Yet the SWAT team threatened to do exactly

[310] *Maez*, 872 F.2d at 1449–50.
[311] See id. at 1450–51.
[312] See id. at 1451.
[313] Id. (quoting United States v. Al-Azzawy, 784 F.2d 890, 893 (9th Cir. 1985)).
[314] Id. at 1447.
[315] See, e.g., Robinson v. Solano County, 278 F.3d 1007, 1013–14 (9th Cir. 2002) (en banc) (holding that it can be an unconstitutional use of excessive force to point a gun at an unarmed misdemeanor suspect).
[316] See Tennessee v. Garner, 471 U.S. 1, 11 (1985).

that in order to coerce Maez to leave his residence.[317] The constitutional violation in *Maez*, in short, was not the lack of a warrant. Rather, it was the threat to kill Maez and his family that they used to induce them to leave their residence.

The point should be generalized. When the government moves property, either on its own or by pressuring private parties to move, the Fourth Amendment can be violated in two ways: first, by violating the applicable place-based rule, and, second, by illegally moving or causing the movement.

The last question is what test courts should use to determine whether movement is unlawful. *Maez* is an easy case. The government's action itself violated or threatened to violate the Fourth Amendment. But what about less egregious cases like *Ramirez* (the fake robbery case) or *Hendrix* (the undercover call that the police are coming)? Can the government use trickery that is not necessarily itself a constitutional violation, but that seems to go too far? And where is the line that counts as too far?

One useful standard beyond actual or threatened violations of the Fourth Amendment would be that the government cannot engage in deception akin to that which would vitiate consent to search. Some background may be helpful here. A large body of case law considers to what extent the government can trick a suspect into consenting to a search.[318] Some trickery is permitted, but too much deceit overcomes the will of the person and makes their consent invalid.[319] When the government creates a ruse such that no reasonable person would feel they had a choice except to consent, courts say there was no real choice and the consent was invalid.[320] One common holding is that the government cannot trick a person into consenting on the false premise that they are a potential victim of a crime rather than the suspect.

An example shows the dynamic. In *Pagán-González v. Moreno*,[321] federal agents had reason to suspect that a resident of a particular home

[317] *Maez*, 872 F.2d at 1450.

[318] See generally 4 Wayne R. LaFave, Search and Seizure § 8.2(n) (5th ed. 2012) (detailing the cases).

[319] See id. (distinguishing different results in two state court cases on the basis that a Fourth Amendment violation was only found where the police "deprived the defendant of a free choice in deciding whether to surrender his privacy").

[320] See, e.g., Bumper v. North Carolina, 391 U.S. 543, 550 (1968) (holding that a search was coerced despite purported consent where a police officer falsely claimed to have a warrant).

[321] 919 F.3d 582 (1st Cir. 2019).

in Puerto Rico was downloading CSAM from the residence.[322] The agents obtained consent to search the computer at the home by pretending there was a national security crisis: the home computer was sending viruses to Washington, D.C., the agents claimed, and they asked for entry to repair the computer.[323] After the resident consented to a computer search, the computer was searched, and CSAM was found. The First Circuit ruled that the trickery was so plainly excessive that the search was not only unconstitutional but beyond the protection of qualified immunity.[324] The resident faced "an unwitting, trusting beguilement," and "pressured by the urgency of the threat posed by the ruse and intimidated by the agents' en masse arrival," the resident "felt he had no choice but to allow the agents access to his home and computer."[325]

The standard from such consent cases should be applied to the moving property cases. A tight analogy exists between government deceit used in consent cases and government deceit used in moving property cases. The government tricks the suspect into action the government wants by making it seem the only reasonable course—whether to allow the police to search, in the consent cases, or to go where the government wants the person to go, in the moving property cases.

Applying this standard would produce agreement with the majority in *United States v. Ramirez*, the fake robbery case.[326] The police persuaded Ramirez's mother to pretend that his house had been robbed and that the police needed him at his home. Like Pagán-González, Ramirez was simply acting responsibly to help law enforcement. If anything, Ramirez's situation may be more extreme: Pagán-González at least knew he was consenting to a government search. Ramirez thought he was just coming home to see the damage of his home being robbed.[327] The government induced Ramirez's movement to come home, but that movement was not legally voluntary because of the government's improper inducement.

[322] Id. at 587.

[323] Id. at 586–87, 597.

[324] See id. at 600–01 ("[E]very reasonable officer would have understood that the ruse used here, carried out in a manner that signified an emergency, would leave an individual with effectively no choice but to allow law enforcement officers inside his home so they could attempt to alleviate the grave threat.").

[325] Id. at 598 (quoting in part United States v. Spivey, 861 F.3d 1207, 1216 (11th Cir. 2017)).

[326] See supra notes 126–37 and accompanying text.

[327] United States v. Ramirez, 976 F.3d 946, 950 (9th Cir. 2020).

This approach would also support the result in *State v. Hendrix*, the undercover call case.[328] The undercover agent in *Hendrix* did not deny agency to those in the house. Hearing from some unknown caller that the police were coming to search the house did not force those inside to leave. They exercised a choice based on their apparent wish to avoid law enforcement. That calculation, it turned out, was wrong.[329] But the choice was theirs to make, not something forced upon them by law enforcement.

CONCLUSION

Things move. Items in one place can be pushed, thrown, carried, sent, forced, or dropped somewhere else. When this happens, courts have to figure out which Fourth Amendment rules apply: The rules where the property was before, or the rules where the property is now?

Courts should take a two-step approach to answer this question. First, courts should ask how the movement fits the justifications for the Fourth Amendment rules at the start and end locations. In this first step, courts should grapple with the reasons why particular location-based rules exist and determine which area rule aligns with the movement. Second, when movement was caused by government actors, courts should ask whether the movement itself was lawful. That standard requires courts to consider whether the movement either was coerced or else violated or threatened to violate the Fourth Amendment.

This approach leads to results that are consistent with much of current case law. To date, courts have answered moving property problems intuitively. The method proposed here ends up largely justifying the bulk of that intuition. But courts have also divided over moving property problems, creating several circuit splits that call for Supreme Court attention. The approach developed in this Article suggests a way to resolve those splits. Doing so would reconcile this recurring problem with the fundamentally place-based nature of Fourth Amendment rules.

[328] 782 S.W.2d 833, 835–36 (Tenn. 1989).

[329] See id. at 834–35.