US Supreme Court backs police on warrantless searches

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In a 6-3 decision issued Tuesday, the US Supreme Court further narrowed the application of the Fourth Amendment of the Constitution, which prohibits police searches without a judicial warrant.

The decision in *Fernandez v. California* significantly curtailed the effect of an earlier ruling, in the 2007 case of *Georgia v. Randolph,* where the court barred the use of evidence recovered by police who searched an apartment after one of the two residents objected, while the other gave permission.

In the California case, Walter Fernandez vociferously objected to the police entering the apartment he shared with Roxanne Rojas, standing in the doorway and declaring, "You don't have any right to come in here. I know my rights."

The police then arrested him on suspicion of domestic violence against Rojas, took him away, and came back an hour later. After 20 minutes of bullying, including a suggestion that her children could be taken away if she continued to resist, Rojas agreed orally and in writing to a search. This produced evidence that was used to convict Fernandez of several gang-related crimes and send him to prison for 14 years.

The majority decision upholding the police search is a mass of contradictions papered over with cynical doubletalk, of the kind that gives rise to the phrase "lawyers' arguments."

The two most reactionary justices, Antonin Scalia and Clarence Thomas, dissented in *Georgia v. Randolph* and wanted to overturn it outright, giving the police the right to enter a home without a warrant in the face of a resident's objection, so long as at least one other resident consented.

They nonetheless signed off on the *Fernandez* decision, which upholds *Randolph,* since it further narrows the constitutional restriction on police powers to search without a warrant, the goal they sought to accomplish.

The other four justices in the *Fernandez* majority included conservatives Samuel Alito, who wrote the opinion, Chief Justice John Roberts and Anthony Kennedy, as well as Stephen Breyer, one of the four moderate liberals.

Alito's opinion acknowledged a "dictum" in the *Randolph* case, which noted that while a resident must be physically present to assert his objection to a police search, a search might still be barred if "there is evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection."

While this clearly applied to the California case—police arrested Fernandez after he objected to the search, took him to the station, then immediately returned to his apartment and browbeat his partner into permitting the search—the majority opinion held that as long as the arrest itself was legal, the police motivation was irrelevant.

"We first consider the argument that the presence of the objecting occupant is not necessary when the police are responsible for his absence," the majority opinion declares, concluding, "We do not believe the statement should be read to suggest that improper motive may invalidate objectively justified removal."

The dissenting opinion, written by Justice Ruth Bader Ginsburg, argued that such reasoning gives a license to police to manipulate those targeted for an illegal search. "Instead of adhering to the warrant requirement," she wrote, "today's decision tells the police they may dodge it, never mind ample time to secure the approval of a neutral magistrate."

Having arrested Fernandez, there was no urgency to dispense with the usual procedure of obtaining a

judicial warrant, she noted, since “with the objector in custody, there was scant danger to persons on the premises, or risk that evidence might be destroyed or concealed, pending request for, and receipt of, a warrant.”

The dissent pointed to the far-reaching constitutional implications of the ruling, and the threat to democratic rights, citing the famous statement of Justice Robert Jackson—who also served as chief prosecutor at the Nuremberg trial of Nazi war criminals—that the Fourth Amendment’s requirement of a judicial warrant for a police search is one of the “fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.”

Remarkably, the court majority never acknowledges the constitutional presumption that a warrantless police search should be an exception, permitted only under special circumstances. Instead, the majority opinion treats the requirement of a warrant as an undesirable imposition that “may interfere with law enforcement strategies.”

“The warrant procedure imposes burdens on the officers who wish to search, the magistrate who must review the warrant application, and the party willing to give consent,” their opinion claims.