



## Study Estimates Nearly 96% of Private Property Is Open to Warrantless Searches

C.J. Ciarmella

March 14, 2024

Police can traipse onto the vast majority of private property in the country without a warrant thanks to a century-old Supreme Court decision, according to a new study by the Institute for Justice, a libertarian-leaning public-interest law firm.

In a [study published in the spring 2024 issue of \*Regulation\*](#), a publication of the Cato Institute, Institute for Justice attorney Josh Windham and research analyst David Warren estimate that at least 96 percent of all private land in the country is excluded from Fourth Amendment's warrant requirement under the "open-fields doctrine," which allows police to forego warrants when they searched fields, woods, vacant lots, and other property not near a dwelling.

That adds up to nearly 1.2 billion acres open to government trespass, and the Institute for Justice says that's a conservative estimate. The organization also says the study is the first attempt to quantify how much private property is affected by the Supreme Court's 1924 ruling in [Hester v. U.S.](#), which created the doctrine.

"Now we have hard data showing that the Supreme Court's century-old error blew a massive hole in Americans' property and privacy rights," Windham said in a [press release](#). "Now we know what the open fields doctrine really means: Government officials can treat almost all private land in this country like public property."

Windham added that "courts and lawmakers across the country will have to face the consequences of keeping this doctrine on the books."

As *Reason's* Joe Lancaster has reported, the Institute for Justice is challenging warrantless searches of private property in several states. Last week, it [filed a lawsuit](#) on behalf of Tom Manuel, a Louisiana outdoorsman who hunts on a private parcel of undeveloped land that he owns. Despite fences and "No Trespassing" signs, Louisiana Department of Wildlife and Fisheries agents came onto his property twice last December without a warrant to check his hunting license.

In December 2021, two Pennsylvania hunting clubs represented by the Institute for Justice sued the Pennsylvania Game Commission for [setting up trail cameras](#) on their property without their knowledge or permission. The organization [filed a similar lawsuit](#) on behalf of Tennessee residents who had trail cameras installed on their property without a warrant.

In one of the more bizarre cases of the open-fields doctrine run amok, a Connecticut couple filed a lawsuit challenging warrantless surveillance after state wildlife officials put a camera on a bear that was known to frequent the private nature reserve they run, turning the animal into a roving police drone.

This is all possible because the Supreme Court ruled that the Fourth Amendment's warrant requirement only extends to the curtilage—the immediate surroundings of a house. "The special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers and effects,' is not extended to the open fields," Justice Oliver Wendell Holmes Jr. wrote in *Hester*. "The distinction between the latter and the house is as old as the common law."

In 1984 the Supreme Court reaffirmed that decision, ruling in *Ray E. Oliver v. U.S.* that even the presence of fences and "No Trespassing" signs did not establish a legitimate privacy interest in unoccupied land.

However, the Institute for Justice has argued that Holmes' appeal to the common law is based on a misreading—a misreading that implicates a massive amount of Americans' private property.