SLATE

Get Off My Lawn!

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Justice Sonia Sotomayor gave gun rights advocates and libertarians a reason to rejoice on Tuesday morning when the most liberal member of the Supreme Court handed down her opinion in *Collins v. Virginia*, a modest but important case that sits at the intersection of property rights and personal privacy. *Collins* wasn't close; the court ruled 8–1 that cops generally need a warrant to search a vehicle in your driveway, a lopsided victory for champions of the Fourth Amendment. But that near-unanimity conceals a sharp divide within the court that scrambles the usual ideological lines: Justices Clarence Thomas and Samuel Alito seized upon *Collins* to promote their own police-friendly views—proposing dueling visions of the Fourth Amendment that would dramatically undermine individual liberty.

Ryan Collins, the defendant in Tuesday's case, was not a very competent criminal. Collins illegally purchased a stolen motorcycle and parked it at the house of his girlfriend and child, where he often spent the night. He then uploaded pictures of the house to Facebook with the motorcycle in view. Officer David Rhodes saw the pictures, visited the house, and observed a motorcycle-like object at the top of a driveway, covered by a tarp. Without a warrant, he walked up the driveway, lifted the tarp, and checked the vehicle identification number, confirming that the bike was stolen. When Collins arrived home, Rhodes confronted him about the motorcycle, and Collins acknowledged it was his. Rhodes promptly arrested him for receiving property he knew to be stolen.

Collins is clearly guilty of that crime. But at trial, he filed a motion to suppress the evidence Rhodes had gathered, arguing that the officer had searched his home in violation of the Fourth Amendment. The trial court rejected his argument and convicted Collins, sentencing him to two months' imprisonment. An appeals court affirmed the trial court's rejection of Collins' constitutional claim, as did the Virginia Supreme Court. Rhodes' search of Collins' motorcycle, the court held, falls under the "automobile exception" to the Fourth Amendment, which allows officers to search vehicles without a warrant so long as they have probable cause.

But wait: The automobile exception kicks in when police search vehicles in public, typically on the street. Collins' bike was parked in the driveway of a home he shared with his girlfriend and child—just feet from the house itself, as Virginia Supreme Court Justice Bill Mims, a staunch

Republican, noted in a barbed dissent to his court's ruling. Does the automobile exception really apply when a cop has to cross onto an individual's private property and futz with his personal effects to find the evidence he's looking for?

Absolutely not, Sotomayor held. The Supreme Court has held that areas like Collins' driveway are part of a house's "curtilage," the area connected to and "intimately linked to the home, both physically and psychologically." Because "privacy expectations are most heightened" in the home, the police usually need a warrant, based on probable cause, to search the area. Even a relatively minor search, like the one Rhodes conducted, triggers this warrant requirement so long as the officer "physically intrudes on the curtilage to gather evidence." That's precisely what Rhodes did here, so his search cannot possibly fall under the automobile exception. *Collins* thus gives us a new bright-line rule of constitutional law: Outside of an emergency situation, the cops need a warrant to search your driveway.

Seven justices signed onto Sotomayor's opinion, including Thomas. But the conservative justice wrote separately to declare that he has decided the Supreme Court has no authority to impose the exclusionary rule on the states. This rule compels the suppression of evidence obtained in violation of the Fourth Amendment, and the court has applied it to the states since 1961's *Mapp v. Ohio*. And while it's not explicitly stated in the text of the Constitution, the Supreme Court has long recognized that the Fourth Amendment "is of no value, and … might as well be stricken from the Constitution" without it. (Some scholars have also arguedpersuasively that the Fourth Amendment's framers did, indeed, support the rule.) Nonetheless, Thomas has decided that the court should overturn *Mapp* and allow prosecutors to convict suspects using evidence obtained illegally, essentially ripping the heart out of the Constitution's protections against unreasonable searches and seizures.

Sotomayor didn't bother responding to Thomas' concurrence, likely because the justice joined her opinion anyway. In *Collins*, the court was only asked to resolve whether Rhodes had conducted a search for Fourth Amendment purposes; it had no need to decide whether the evidence he found had to be suppressed. (Sotomayor left that analysis, which is quite messy and riddled with exceptions, to the lower courts.) Thomas agreed that a search had occurred, while laying the groundwork for a future challenge to the exclusionary rule. He wants police and prosecutors to know that once the right case hits the docket, he's eager to overrule 57 years of precedent and wipe *Mapp* off the books.

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Justice Samuel Alito didn't go as far as Thomas, but he dissented from Sotomayor's ruling on rather limp originalist grounds. Alito pointed to a statute passed in 1789 by the First Congress—the same Congress that sent the Fourth Amendment to the states for approval. The law allowed officers "to search vessels without a warrant," granting them an "implicit" ability to "cross private property such as wharves in order to reach and board those vessels." In light of Congress' approval of that statute, Alito asserted, "Officer Rhodes's conduct in this case is consistent with the original understanding of the Fourth Amendment." Really? Sotomayor dismissed this

argument in a footnote by noting that *the very same law* that Alito cited "expressly required warrants to search houses." Rhodes conducted a search on Collins' curtilage, a part of his home, not his vessel or his wharves. Alito's wharf madness is wildly off point.

Sotomayor's opinion, and her emphatic rejection of Alito's arguments, will bring a sigh of relief to advocacy groups that support the rights to private property and gun ownership. The Cato Institute and the Institute for Justice both filed amicus briefs on Collins' behalf, as did the NRA's Freedom Action Foundation, the group's legal arm. Gun Owners of America, the Gun Owners Foundation, and the Heller Foundation all signed onto an amicus brief as well. As the NRA's Freedom Action Foundation explained in its brief, the organization urged the court to respect "the fundamental role the sanctity of the home plays in safeguarding many of our constitutional rights." That includes "not only the right against unreasonable searches and seizures, but also the right to keep and bear arms in defense of oneself, one's family, and one's home."

Gun rights groups worry that, if the court sanctioned Rhodes' conduct here, it would erode the "sanctity" of the home, undermining not just individual privacy but also the right to self-defense. Gun owners, after all, want to protect their homes and families, using lethal force against intruders if necessary. If the police can trespass on their property with impunity, the concept of unlawful intrusion gets blurry: A cop, acting on a hunch, can do what a private citizen cannot, and a homeowner may not easily distinguish between the two as he assesses a potential threat. Equally worrisome is the possibility that police might trawl a homeowner's carport for any indication of gun ownership, then use the evidence to justify a warrantless search for illegal firearms. Cops already use lawful firearm possession to infringe on Fourth Amendment rights; gun rights groups fretted that a bad decision in *Collins* could further undermine gun owners' rights to be protected from unreasonable searches.

Alito and Thomas present themselves as vigorous defenders of rights to self-defense and private property. But the theories they present in Collins would subvert both, expanding the state's power to intrude into our homes with no judicial oversight. Sotomayor, by contrast, understands that a little case about a stolen motorcycle has major ramifications for Americans' broader right to live free from obtrusive meddling by the police. David Rhodes did not have carte blanche to break the law just because he suspected Ryan Collins of doing the same. That's the basic premise of the Fourth Amendment, and it appears to be more or less safe in Sotomayor's hands.