A PLAIN-ENGLISH FACT CHECK

KNOW YOUR RIGHTS

What the Constitution Protects When You Deal With Police, Courts and Government



SPEECH · SEARCHES · COURTS · CLAIMS

What the Constitution and the Courts Actually Say, in Plain English

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TRINFINITY Enterprises

Know Your Rights

What the Constitution Protects When You Deal With Police, Courts and Government

Andrew Dominguez

Fact Check Series

Know Your Rights: What the Constitution Protects When You Deal With Police, Courts and Government

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Information cutoff. The information in this book is current as of November 12, 2026. Court rulings, laws and agency rules issued after that date are not included.

Not legal advice. This book gives general information about constitutional rights. It is not legal advice, and reading it does not create an attorney-client relationship. Laws differ by state and change over time. Talk with a licensed attorney in your state about your own situation.

Safety first. In any encounter with police, stay calm, keep your hands visible, and do not physically resist. Rights are decided later, in court.

Sources. Every factual statement is footnoted to a source that can be checked. A full source list, grouped by type of source, appears in Appendix D.

First edition, 2026.

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Introduction: How to Read This Book

Information in this book is current as of November 12, 2026.

This book is about one simple question. When you deal with a police officer, a court or a government agency, what does the Constitution actually protect?

Most of us carry around a mix of things we half remember from school, things we saw on television, and things a friend swore were true. Some of those ideas are right. Some are partly right. Some are flat wrong, and believing them in the wrong moment can cost you.

I wrote this book to sort those ideas out using sources you can open and check for yourself. Every factual sentence has a footnote. Every footnote gives the title, who wrote or issued it, the date, a working link and the date I checked it.

This is general information, not legal advice

Please read this part twice.

This book explains rights in general. It is not legal advice, and I am not your lawyer. Laws differ from state to state, and they change. Courts in different parts of the country sometimes read the same words differently. The facts of your situation matter a great deal.

If you have a legal problem, talk with a licensed attorney in your state. If you cannot afford one, the court may appoint one in a criminal case, and legal aid groups help with many civil matters.

And in any encounter with police, staying calm and safe comes first. A roadside argument is not where rights get decided. Courts decide them later, based on the record.

Where the information stops

The information in this book stops on November 12, 2026. I say that on the copyright page, here, at the start of every chapter, and in the title of every table with current figures.

That date matters because the law keeps moving. The Supreme Court decides new cases every year. The term that ended in the summer of 2026 changed the rules on police entry into homes, phone location data, gun carry and more.[1] The next term began in October 2026, and as of November 12, 2026, the Court had not yet released any full decisions in argued cases for that term.[2] Anything decided after that date is not in this book.

The five tiers of sources

Not all sources are equal. I used them in this order of preference:

Tier	What it includes	How I used it

[1] Opinions of the Court, October Term 2025 (slip opinion list). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[2] Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/26 (accessed November 12, 2026).

Tier	What it includes	How I used it
1. Primary and official	The Constitution, Supreme Court and other court rulings, federal and state laws, bills in Congress, and official agency reports	The main authority for every rule in this book
2. Nonpartisan analysis	Congressional Research Service (CRS), Congressional Budget Office (CBO), Government Accountability Office (GAO), and inspectors general	To explain and summarize, never to replace the primary source
3. Scholarly and reference	Law review articles, university law school resources, and widely used references such as Oyez, labeled as such	For history, research findings and background
4. Fact-checks and journalism	Major news outlets and fact-checkers	Only as pointers back to primary sources, or to report events at the time
5. Advocacy groups and think tanks	Police associations, civil liberties groups and reform groups	Only to show what a side argues, always labeled, and balanced with the other side

I did not use social media posts, chain emails, forums, video channels or pages written by automated tools as evidence. Where a myth spread through those channels, I say so, but I do not treat them as proof of anything.

Facts, interpretations and unknowns

Throughout the book I keep three things apart:

- **Confirmed fact:** something a primary source shows directly. For example, what a court actually held, or what a statute actually says.
- **Interpretation:** what someone believes a fact means. I always say whose interpretation it is and where they said it.
- **Unknown:** something the sources do not settle. I say what would settle it.

When I could not find a source for something, I wrote "[Not verified]" and said what I searched. I would rather tell you I could not confirm something than guess.

How the courts fit together

You will see many court cases in this book, so here is a quick map.

The **Supreme Court of the United States** has the final word on what the U.S. Constitution means. When it decides a case, every court in the country must follow that ruling on that question.

Below it are thirteen federal **courts of appeals**, often called "circuits."[3] A ruling from one circuit binds the federal courts in that region but not the rest of the country. When circuits disagree, lawyers call it a "circuit split," and it is one reason rights can look different depending on where you live.

Each state also has its own courts, and each state has its own constitution. A state can give you more protection than the U.S. Constitution requires. The Supreme Court has said a state has a "sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution."[4] It cannot take away a federal right, because the Constitution is "the supreme Law of the Land."[5]

The four verdicts

Part Seven tests common claims about rights. For each one I give one of four verdicts, the same ones used across this series of books:

Verdict	What it means
True	Primary sources confirm it as usually stated
Partly true	There is a real fact underneath, but the usual version leaves out or twists something important. I say exactly which part is true
False (debunked)	Primary sources contradict it
Inconclusive	The evidence is not enough to say either way, or an investigation is still open. I say what would settle it

How each side is treated

Rights cases almost always involve people who see the same facts very differently. Police officers and prosecutors see a dangerous job and the need to solve crimes. Defense lawyers and civil liberties groups see the power of the state and the people who get hurt when it is misused. Both sides have real arguments.

I tried to present each side's strongest case in its own words, with sources, and to keep my own opinions out. The court rulings are the main authority. Where the Justices themselves disagreed, I tell you what the majority held and what the dissent argued, so you can see both.

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[3] "Court Role and Structure." United States Courts (Administrative Office of the U.S. Courts). https://www.uscourts.gov/about-federal-courts/court-role-and-structure (accessed November 12, 2026).

[4] PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep447/usrep447074/usrep447074.pdf (accessed November 12, 2026).

[5] The Constitution of the United States: A Transcription. National Archives and Records Administration, Art. VI, cl. 2. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026). Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

Three questions to ask first

When someone says a right was violated, three questions sort out most of the confusion. This is my own way of organizing the material, not a legal test.

1. **Who acted?** Constitutional rights mostly limit the government. The Supreme Court has said, for example, that the Free Speech Clause "prohibits only governmental, not private, abridgment of speech."[6]
2. **What did they do?** A search, questioning in custody and a criminal trial each have their own rules, and each has its own chapter in this book.
3. **Which law applies?** The U.S. Constitution sets a floor. A state constitution or state law may give you more, as explained above.

How the book is organized

- **Part One** explains where our rights come from: the Bill of Rights and the 14th Amendment.
- **Part Two** covers speech, religion, the press, assembly and petition.
- **Part Three** covers police stops, searches, cars, phones, recording police, carrying firearms and crossing the border.
- **Part Four** covers staying silent, the right to a lawyer, trials, bail and punishment.
- **Part Five** covers civil asset forfeiture and qualified immunity.
- **Part Six** covers privacy, public records and due process with government agencies.
- **Part Seven** tests common claims and gives each a verdict.
- **Part Eight** covers where things stand today and the reform options on the table, without a recommendation.
- **The appendices** give you a one-page pocket summary, a table of landmark rulings, a glossary and the full source list.

You can read straight through, or jump to the chapter you need. Each chapter is written so it makes sense on its own.

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[6] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

Part One: Where Rights Come From

Chapter 1: The Bill of Rights

Information in this chapter is current as of November 12, 2026.

A Constitution with few individual rights

When the Constitution was written in 1787, it set up a government. It created Congress, the presidency and the federal courts, and it divided power among them. What it did not have was a list of individual rights.

That was not an accident. According to the National Archives, supporters of the Constitution, including James Madison, first argued that a bill of rights was not needed because "the government can only exert the powers specified by the Constitution."[7] If the government had no power to censor newspapers, the thinking went, why list a right against it?

Many Americans did not buy that argument. The National Archives notes that opposition was strong, and that supporters agreed to consider amendments when ratification was in danger in Massachusetts.[8]

You might ask, "If Madison opposed a bill of rights, why is he called its father?" Here is what the record shows. Madison introduced a list of amendments in the House of Representatives on June 8, 1789.[9] The National Archives describes him as "once the most vocal opponent of the Bill of Rights," and says he came to see how much voters valued these protections.[10]

From twelve amendments to ten

Congress passed a joint resolution on September 25, 1789, proposing twelve amendments, not ten.[11] President Washington sent copies to the states on October 2, 1789.[12] By December 15, 1791, three-fourths of the states had ratified ten of them, and those ten became known as the Bill of Rights.[13]

Date	Event	Source

[7] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[8] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[9] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[10] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[11] "The Bill of Rights." National Archives and Records Administration, page reviewed February 6, 2026. https://www.archives.gov/founding-docs/bill-of-rights (accessed November 12, 2026).

[12] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[13] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

Date	Event	Source
September 17, 1787	Constitution signed in Philadelphia	National Archives[14]
June 8, 1789	Madison introduces amendments in the House	National Archives[15]
September 25, 1789	Congress passes 12 proposed amendments	National Archives[16]
October 2, 1789	Washington sends the amendments to the states	National Archives[17]
December 15, 1791	Ten amendments ratified: the Bill of Rights	National Archives[18]

What each of the ten says

Here is each amendment in plain words, with the original wording where it matters. The exact text comes from the National Archives transcription of the Bill of Rights.[19]

First Amendment. Congress may not establish a religion or stop people from practicing one. It may not cut back the freedom of speech or of the press, the right to gather peacefully, or the right to ask the government to fix a wrong. The text reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."[20] Part Two covers this amendment.

Second Amendment. "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[21] Chapter 9 covers what the courts have said.

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[14] The Constitution of the United States: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/constitution-transcript (accessed November 12, 2026).

[15] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[16] "The Bill of Rights." National Archives and Records Administration, page reviewed February 6, 2026. https://www.archives.gov/founding-docs/bill-of-rights (accessed November 12, 2026).

[17] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[18] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[19] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[20] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[21] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

Third Amendment. No soldier may be housed in a private home in peacetime without the owner's consent.[22] This one rarely comes up in court today.

Fourth Amendment. People have a right to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Warrants may issue only "upon probable cause," supported by oath, and must describe the place to be searched and the persons or things to be seized.[23] Part Three is built around this amendment.

Fifth Amendment. This one packs in several rights. A person accused of a serious federal crime gets a grand jury. No one may be tried twice for the same offense. No one may be "compelled in any criminal case to be a witness against himself." No one may be deprived of "life, liberty, or property, without due process of law." And the government must pay "just compensation" when it takes private property for public use.[24] Chapters 10, 13 and 16 cover these.

Sixth Amendment. In a criminal case, the accused has a right to a speedy and public trial by an impartial jury, to be told the charges, to confront the witnesses against him, to call witnesses, and to have "the Assistance of Counsel for his defence."[25] Chapter 11 covers these.

Seventh Amendment. A right to a jury in many civil lawsuits in federal court.[26]

Eighth Amendment. "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[27] Chapter 12 covers this.

Ninth Amendment. Listing some rights does not mean people have no others.[28]

Tenth Amendment. Powers not given to the federal government, and not denied to the states, are reserved to the states or to the people.[29]

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[22] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[23] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[24] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[25] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[26] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[27] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[28] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[29] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

Who decides what the words mean

The Bill of Rights is short. Its words, such as "unreasonable" or "excessive," need someone to apply them to real cases. Since 1803 that job has belonged, in the end, to the courts. In *Marbury v. Madison*, Chief Justice John Marshall wrote: "It is emphatically the province and duty of the judicial department to say what the law is."[30]

That is why most of this book is about court rulings. When a court decides that a search was "unreasonable" or a fine "excessive," that ruling becomes the working meaning of the words until a higher court or a later case changes it. It is also why rulings matter more than slogans. A rule you heard secondhand may be out of date, or may never have been the law at all. Part Seven tests some of those rules.

Rights against the government, not against each other

Here is a point that clears up a lot of confusion. Look at how the First Amendment starts: "Congress shall make no law."[31] The Bill of Rights limits what the government may do. It does not, by itself, control what private people or private companies do.

That is why a private employer, a private website or a store owner can usually set rules about speech on their property without violating the First Amendment. Lawyers call this the "state action" rule, and the Supreme Court applied it as recently as 2019, when it held that a private company running public-access cable channels was not a government actor bound by the First Amendment.[32] Chapter 3 and Part Seven come back to this, because it is behind one of the most common myths about free speech.

Other laws can protect you from private conduct. Civil rights laws, for example, forbid many kinds of discrimination by employers and businesses. But those are laws passed by Congress or the states, not the Bill of Rights itself.

At first, only a limit on the federal government

Here is something many people do not know. For most of the 1800s, the Bill of Rights did not apply to state and local governments at all.

The Supreme Court said so in 1833 in *Barron v. Baltimore*. John Barron owned a wharf in Baltimore and claimed the city ruined it without paying him, which he argued violated the Fifth Amendment's promise of just compensation. Chief Justice John Marshall wrote for the Court that the amendments "contain no expression indicating an intention to apply them to the state governments," and that the just compensation provision was "intended solely as a limitation on

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[30] Marbury v. Madison, 5 U.S. 137 (1803). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep005/usrep005137/usrep005137.pdf (accessed November 12, 2026).

[31] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[32] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

the exercise of power by the government of the United States, and is not applicable to the legislation of the states."[33]

So in 1833, if your state or city violated your freedom of speech, the U.S. Bill of Rights gave you no help. You had to look to your state's own constitution.

You might ask, "Then how do the police in my town have to follow the Fourth Amendment?" The answer is the 14th Amendment, and that is the next chapter.

Key points from this chapter

- **Confirmed fact:** The Bill of Rights was proposed by Congress on September 25, 1789, and ratified on December 15, 1791.[34]
- **Confirmed fact:** It limits the government. Private people and companies are generally not bound by it.[35]
- **Confirmed fact:** In 1833 the Supreme Court held that the Bill of Rights limited only the federal government.[36]
- **Interpretation:** The National Archives describes Madison as having come to value the protections because voters cared about them and because writing them down could teach people their rights.[37] That is the Archives' reading of his motives.

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[33] Barron v. Baltimore, 32 U.S. 243 (1833). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/32/243 (accessed November 12, 2026).

[34] "The Bill of Rights." National Archives and Records Administration, page reviewed February 6, 2026. https://www.archives.gov/founding-docs/bill-of-rights (accessed November 12, 2026). "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

[35] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026). Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

[36] Barron v. Baltimore, 32 U.S. 243 (1833). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/32/243 (accessed November 12, 2026).

[37] "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023. https://www.archives.gov/founding-docs/bill-of-rights/how-did-it-happen (accessed November 12, 2026).

Chapter 2: The 14th Amendment and How Rights Reached the States

Information in this chapter is current as of November 12, 2026.

Why this amendment changed everything

The 14th Amendment was passed by Congress on June 13, 1866, and ratified on July 9, 1868, in the wake of the Civil War.[38] The National Archives notes that the Secretary of State certified it on July 28, 1868, as ratified by the necessary 28 of the 37 states.[39] Both dates appear in official sources, so you will sometimes see either one.

The heart of it is Section 1. Here it is in full:

> *"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."*[40]

Notice the words "No State shall." The Bill of Rights mostly told Congress what it could not do. The 14th Amendment told the states.

What its author intended, and what the Court first did

The National Archives identifies Congressman John A. Bingham of Ohio as "the primary author of the first section of the 14th Amendment," and states that he "intended that the amendment also nationalize the Bill of Rights by making it binding upon the states."[41]

Interpretation: That statement about Bingham's intent is the National Archives' reading of the history. Scholars and Justices have argued about the original meaning of Section 1 for more than a century, and that debate is not settled.

What happened next is a confirmed fact. In 1873, in the *Slaughter-House Cases*, the Supreme Court read the "privileges or immunities" clause very narrowly. In 2010, the Supreme Court itself described that 1873 decision as the starting point for three later 19th-century cases that

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[38] The Constitution: Amendments 11-27. National Archives and Records Administration. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[39] "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024. https://www.archives.gov/milestone-documents/14th-amendment (accessed November 12, 2026).

[40] The Constitution: Amendments 11-27. National Archives and Records Administration. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[41] "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024. https://www.archives.gov/milestone-documents/14th-amendment (accessed November 12, 2026).

refused to apply the Second Amendment to the states.[42] For decades after 1873, the 14th Amendment did little to carry the Bill of Rights to the states.

Incorporation: one right at a time

The route the Court eventually took was not the "privileges or immunities" clause. It was the Due Process Clause, the promise that no state shall deprive any person of "life, liberty, or property, without due process of law."[43]

Over many decades, the Court held that particular rights in the Bill of Rights are part of the "liberty" that states may not take away without due process. Lawyers call this **incorporation**, and because the Court did it right by right instead of all at once, it is often called **selective incorporation**.

The first big step for speech came in 1925. Benjamin Gitlow had been convicted in New York for publishing a left-wing manifesto. The Court upheld his conviction, but in doing so it said: "we may and do assume that freedom of speech and of the press… are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."[44]

You might ask, "How did the Court decide which rights counted?" In 1937 the Court asked whether a right was "implicit in the concept of ordered liberty."[45] Later cases asked whether a right is "fundamental to our scheme of ordered liberty" or "deeply rooted in this Nation's history and tradition," the test the Court restated in 2010 and again in 2019.[46]

The landmark incorporation cases

Here are some of the key steps, each confirmed in the Court's own opinions:

Year	Case	What the Court held applies to the states

[42] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[43] The Constitution: Amendments 11-27. National Archives and Records Administration. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[44] Gitlow v. New York, 268 U.S. 652 (1925). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep268/usrep268652/usrep268652.pdf (accessed November 12, 2026).

[45] Palko v. Connecticut, 302 U.S. 319 (1937). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep302/usrep302319/usrep302319.pdf (accessed November 12, 2026).

[46] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026). Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

Year	Case	What the Court held applies to the states
1925	*Gitlow v. New York*	Freedom of speech and of the press (assumed)[47]
1961	*Mapp v. Ohio*	Evidence from unconstitutional searches is inadmissible in state court[48]
1963	*Gideon v. Wainwright*	The right of a poor defendant to have a lawyer at trial[49]
1964	*Malloy v. Hogan*	The privilege against self-incrimination[50]
1968	*Duncan v. Louisiana*	Trial by jury in serious criminal cases[51]
2010	*McDonald v. City of Chicago*	The Second Amendment right to keep and bear arms[52]
2019	*Timbs v. Indiana*	The Eighth Amendment ban on excessive fines[53]
2020	*Ramos v. Louisiana*	A unanimous jury to convict of a serious offense[54]

[47] Gitlow v. New York, 268 U.S. 652 (1925). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep268/usrep268652/usrep268652.pdf (accessed November 12, 2026).

[48] Mapp v. Ohio, 367 U.S. 643 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep367/usrep367643/usrep367643.pdf (accessed November 12, 2026).

[49] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

[50] Malloy v. Hogan, 378 U.S. 1 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep378/usrep378001/usrep378001.pdf (accessed November 12, 2026).

[51] Duncan v. Louisiana, 391 U.S. 145 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep391/usrep391145/usrep391145.pdf (accessed November 12, 2026).

[52] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[53] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[54] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

The same right, the same standard

Once a right is incorporated, does it apply in a weaker form against the states? No. In 1964 the Court rejected "a watered-down, subjective version" of the Bill of Rights for the states.[55] In 2010 the Court explained that incorporated rights "are all to be enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment."[56] And in 2019 the Court said there is "no daylight" between the federal and state versions of an incorporated right.[57]

That is why your local police must follow the same Fourth Amendment rules as federal agents, and your state court must provide the same right to counsel as a federal court.

What is still not incorporated

As of 2010, the Court listed the only rights not fully incorporated: the Third Amendment's protection against quartering soldiers, the Fifth Amendment's grand jury requirement, the Seventh Amendment's civil jury right, and the Eighth Amendment's ban on excessive fines.[58] Since then, the Court has incorporated the excessive fines ban (2019) and the unanimous jury rule (2020).[59]

So today, as of November 12, 2026, the main parts of the Bill of Rights that do not bind the states are the grand jury requirement and the civil jury right, along with the Third Amendment, which the Supreme Court has never decided.[60] Many states have their own grand jury and civil jury rules in their state constitutions.

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[55] Malloy v. Hogan, 378 U.S. 1 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep378/usrep378001/usrep378001.pdf (accessed November 12, 2026).

[56] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[57] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[58] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, n. 13. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[59] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026). Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

[60] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, n. 13. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

Equal protection

The Fourteenth Amendment also says no state may "deny to any person within its jurisdiction the equal protection of the laws."[61] Two cases show its reach.

Unequal enforcement of a neutral law. In 1880s San Francisco, a city ordinance required permission to run a laundry in a wooden building. The record showed that about 200 Chinese applicants were refused, while nearly all non-Chinese applicants, with one exception, were granted permission.[62] In *Yick Wo v. Hopkins* (1886), the Court held that even a law "fair on its face and impartial in appearance" violates equal protection "if it is applied and administered by public authority with an evil eye and an unequal hand."[63]

That principle matters for police encounters. The Court in *Whren* (Chapter 7) said that a traffic stop supported by probable cause is valid under the Fourth Amendment whatever the officer's motive, but that "the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause."[64]

Segregated schools. In 1954, in *Brown v. Board of Education*, the Court held that "in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[65]

A note on citizenship

The first sentence of Section 1, the Citizenship Clause, was before the Supreme Court in the term that ended in 2026. In *Trump v. Barbara*, decided June 30, 2026, the Court held that children born in the United States to parents who are here unlawfully or only temporarily are "subject to the jurisdiction" of the United States and are citizens at birth.[66] Chief Justice Roberts wrote for

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[61] "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024. https://www.archives.gov/milestone-documents/14th-amendment (accessed November 12, 2026).

[62] Yick Wo v. Hopkins, 118 U.S. 356 (1886). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep118/usrep118356/usrep118356.pdf (accessed November 12, 2026).

[63] Yick Wo v. Hopkins, 118 U.S. 356 (1886). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep118/usrep118356/usrep118356.pdf (accessed November 12, 2026).

[64] Whren v. United States, 517 U.S. 806 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep517/usrep517806/usrep517806.pdf (accessed November 12, 2026).

[65] Brown v. Board of Education, 347 U.S. 483 (1954). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep347/usrep347483/usrep347483.pdf (accessed November 12, 2026).

[66] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

the Court. Justice Kavanaugh concurred in the judgment in part and dissented in part, and Justices Thomas, Alito and Gorsuch dissented.[67]

That ruling is about citizenship, not police or courts, so I mention it only briefly here. The companion book in this series on immigration covers it in full.

Key points from this chapter

- **Confirmed fact:** The 14th Amendment forbids states to deny due process or equal protection.[68]
- **Confirmed fact:** Through "selective incorporation," the Court has applied nearly all of the Bill of Rights to the states, one right at a time, using the Due Process Clause.[69]
- **Confirmed fact:** An incorporated right means the same thing against a state as against the federal government.[70]
- **Interpretation:** Whether the 14th Amendment's authors meant to apply the whole Bill of Rights to the states is debated. The National Archives says Bingham intended that result.[71]
- **Unknown:** The Supreme Court has never decided whether the Third Amendment applies to the states.[72]

Notes for Part One: sources, unverified items and disagreements

Sources used in Part One. Full details for each are in the footnotes and in Appendix D.

- "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024

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[67] Trump v. Barbara, 609 U.S. ____ (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[68] The Constitution: Amendments 11-27. National Archives and Records Administration. https://www.archives.gov/founding-docs/amendments-11-27 (accessed November 12, 2026).

[69] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026). Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[70] Malloy v. Hogan, 378 U.S. 1 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep378/usrep378001/usrep378001.pdf (accessed November 12, 2026). McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[71] "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024. https://www.archives.gov/milestone-documents/14th-amendment (accessed November 12, 2026).

[72] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, n. 13. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

- "Court Role and Structure." United States Courts (Administrative Office of the U.S. Courts)
- "The Bill of Rights." National Archives and Records Administration, page reviewed February 6, 2026
- "The Bill of Rights: How Did it Happen?" National Archives and Records Administration, page reviewed April 27, 2023
- Barron v. Baltimore, 32 U.S. 243 (1833)
- Brown v. Board of Education, 347 U.S. 483 (1954)
- Duncan v. Louisiana, 391 U.S. 145 (1968)
- Gideon v. Wainwright, 372 U.S. 335 (1963)
- Gitlow v. New York, 268 U.S. 652 (1925)
- Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026)
- Malloy v. Hogan, 378 U.S. 1 (1964)
- Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019)
- Mapp v. Ohio, 367 U.S. 643 (1961)
- Marbury v. Madison, 5 U.S. 137 (1803)
- McDonald v. City of Chicago, 561 U.S. 742 (2010)
- Opinions of the Court, October Term 2025 (slip opinion list)
- Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026)
- Palko v. Connecticut, 302 U.S. 319 (1937)
- PruneYard Shopping Center v. Robins, 447 U.S. 74 (1980)
- Ramos v. Louisiana, 590 U.S. 83 (2020)
- The Bill of Rights: A Transcription. National Archives and Records Administration
- The Constitution of the United States: A Transcription. National Archives and Records Administration
- The Constitution: Amendments 11-27. National Archives and Records Administration
- Timbs v. Indiana, 586 U.S. 146 (2019)
- Trump v. Barbara, 609 U.S. ___ (2026)
- Whren v. United States, 517 U.S. 806 (1996)
- Yick Wo v. Hopkins, 118 U.S. 356 (1886)

Items marked [Not verified] in Part One.

- None.

Where sources disagreed in Part One.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Part Two: Speech, Religion and the Press

Chapter 3: Free Speech

Information in this chapter is current as of November 12, 2026.

The starting point

The First Amendment says Congress "shall make no law… abridging the freedom of speech."[73] Since 1925 the Court has treated that promise as binding on the states too.[74]

That sounds absolute, but courts have never read it that way. The Supreme Court has recognized a short list of "historic and traditional categories of expression" that get less protection, such as fraud, defamation and "fighting words."[75] Outside those narrow categories, the government's power to punish speech because of what it says is very limited.

Let me walk through what is protected, what is not, and how the key rulings fit together.

Speech the government may not punish because of its message

Unpopular and offensive speech. In 2011 the Court held that the First Amendment protected members of the Westboro Baptist Church from a lawsuit over their picketing near a military funeral, even though their signs were deeply hurtful to the family.[76]

"Hate speech." There is no general "hate speech" exception to the First Amendment. In 2017 the Court struck down a federal trademark rule that barred names that "disparage" people. Justice Alito wrote: "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'"[77] Hateful words can still lose protection if they fit a separate category, like a true threat or incitement, discussed below.

Viewpoint discrimination. When the government picks sides in a debate and punishes one side's views, courts treat that as the most serious kind of speech restriction. In 2024 the Court held that the National Rifle Association (NRA) had plausibly alleged a First Amendment violation when a New York official was accused of pressuring insurance companies and banks to

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[73] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[74] Gitlow v. New York, 268 U.S. 652 (1925). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep268/usrep268652/usrep268652.pdf (accessed November 12, 2026).

[75] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[76] Snyder v. Phelps, 562 U.S. 443 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562443/usrep562443.pdf (accessed November 12, 2026).

[77] Matal v. Tam, 582 U.S. 218 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1293 (accessed November 12, 2026).

cut ties with the group "in order to punish or suppress gun-promotion advocacy."[78] In 2026, in *Chiles v. Salazar*, the Court held that Colorado's ban on conversion therapy, as applied to a counselor's talk therapy with clients, regulated speech based on viewpoint, and it sent the case back for stricter review.[79]

You might ask, "Does that 2026 ruling mean any state rule on counseling is now unconstitutional?" Not exactly. The Court's holding was that the lower courts used too weak a test. Justice Gorsuch wrote for eight Justices.[80] Justice Jackson dissented. She warned that "no one knows what will happen now," and that the decision "might make speech-only therapies and other medical treatments involving practitioner speech effectively unregulatable."[81] The case went back to the lower courts, so how far the ruling reaches is still being worked out.

Symbolic speech: the flag. At the 1984 Republican National Convention in Dallas, Gregory Lee Johnson burned an American flag at a protest. No one was hurt or threatened, though several witnesses were seriously offended. He was convicted under a Texas law against desecrating a "venerated object."[82] In 1989 the Court held that his conviction "is inconsistent with the First Amendment."[83] Justice Brennan, writing for five Justices, said: "If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Chief Justice Rehnquist and Justice Stevens wrote dissents.[84]

Crude words. In 1971 a man was convicted for wearing a jacket with a profane slogan against the military draft in a Los Angeles courthouse hallway. The Court reversed, holding that "absent

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[78] National Rifle Association of America v. Vullo, 602 U.S. 175 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/602us1r28_906b.pdf (accessed November 12, 2026).

[79] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[80] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[81] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), Jackson, J., dissenting. https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[82] Texas v. Johnson, 491 U.S. 397 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491397/usrep491397.pdf (accessed November 12, 2026). Texas v. Johnson, 491 U.S. 397 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491397/usrep491397.pdf (accessed November 12, 2026).

[83] Texas v. Johnson, 491 U.S. 397 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491397/usrep491397.pdf (accessed November 12, 2026).

[84] Texas v. Johnson, 491 U.S. 397 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491397/usrep491397.pdf (accessed November 12, 2026).

a more particularized and compelling reason," a state may not make "the simple public display of this single four-letter expletive a criminal offense."[85]

Speech that gets less protection

Incitement. The government may not punish someone just for advocating force or law-breaking in general. In *Brandenburg v. Ohio* (1969), the Court held that advocacy may be punished only "where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[86] That test has three parts: the speaker means to cause law-breaking, the law-breaking would happen right away, and it is likely to happen.

True threats. Serious threats of violence against a person are not protected. In 2023 the Court held that a state must prove the speaker had "some subjective understanding" of the threatening nature of the statement, but that recklessness is enough.[87] In plain terms: if you consciously ignore a real risk that your words will be taken as a threat of violence, the First Amendment will not protect you.

Cross burning. In 2003 the Court held that a state "may ban cross burning carried out with the intent to intimidate," pointing to the history of the Ku Klux Klan's use of cross burnings "as a tool of intimidation and a threat of impending violence."[88] The key is the intent to intimidate. The same symbol used without that intent is treated differently.[89]

Defamation. False statements of fact that damage someone's reputation can lead to a lawsuit. But for public officials, the bar is high. In *New York Times Co. v. Sullivan* (1964), the Court held that a public official must prove the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."[90] Lawyers call that standard "actual malice."

Parody of public figures. In 1988 a national magazine ran a crude parody ad about a well-known minister. A jury found the ad could not reasonably be understood as describing actual

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[85] Cohen v. California, 403 U.S. 15 (1971). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep403/usrep403015/usrep403015.pdf (accessed November 12, 2026).

[86] Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395444/usrep395444.pdf (accessed November 12, 2026).

[87] Counterman v. Colorado, 600 U.S. 66 (2023). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/22pdf/600us1r51_g3bi.pdf (accessed November 12, 2026).

[88] Virginia v. Black, 538 U.S. 343 (2003). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep538/usrep538343/usrep538343.pdf (accessed November 12, 2026).

[89] Virginia v. Black, 538 U.S. 343 (2003). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep538/usrep538343/usrep538343.pdf (accessed November 12, 2026).

[90] New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep376/usrep376254/usrep376254.pdf (accessed November 12, 2026).

facts but awarded him damages for emotional distress. The Court reversed. It held that public figures may not recover for emotional distress over a parody like this one "without showing in addition that the publication contains a false statement of fact which was made with 'actual malice.'"[91]

Fighting words. In 1942 a man on a public street called a city official a "damned Fascist" and a "damned racketeer," and was convicted under a state law. The Court upheld the conviction.[92] It described "fighting words" as "those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."[93] The category is still recognized, but it is narrow. Offensive or insulting speech is not automatically "fighting words."[94] [Interpretation: the last sentence is my reading of how *Snyder* and *Matal* protected deeply offensive speech; neither case decided a fighting-words claim.]

Fraud, obscenity and speech that is part of a crime. These are among the traditional categories that get little or no protection.[95] A scam pitch, for example, is not protected just because it uses words.

Rules about when, where and how

Even fully protected speech can be subject to neutral rules about time, place and manner. The Court has said the government may impose such rules if they "are justified without reference to the content of the regulated speech," are "narrowly tailored to serve a significant governmental interest," and "leave open ample alternative channels for communication."[96]

That is why a city can limit loudspeaker volume at night or require permits for large parades, as long as it applies the rules evenly and does not pick and choose based on the message. Chapter 4 says more about protests.

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[91] Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep485/usrep485046/usrep485046.pdf (accessed November 12, 2026).

[92] Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep315/usrep315568/usrep315568.pdf (accessed November 12, 2026).

[93] Chaplinsky v. New Hampshire, 315 U.S. 568 (1942). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep315/usrep315568/usrep315568.pdf (accessed November 12, 2026).

[94] Snyder v. Phelps, 562 U.S. 443 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562443/usrep562443.pdf (accessed November 12, 2026). Matal v. Tam, 582 U.S. 218 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1293 (accessed November 12, 2026).

[95] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[96] Ward v. Rock Against Racism, 491 U.S. 781 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491781/usrep491781.pdf (accessed November 12, 2026).

Students

In 1969, students in Des Moines wore black armbands to school to protest the Vietnam War and were suspended. The Supreme Court ruled for them, saying students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[97] Schools may restrict student speech that would "materially and substantially interfere" with school discipline, a standard the Court took from an earlier appeals court case.[98]

Schools do have more room than other parts of government. In 2007, at a school-supervised event, a student unfurled a banner reading "BONG HiTS 4 JESUS," and the principal suspended him.[99] The Court held that schools "may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use."[100] Chief Justice Roberts wrote for the Court.[101]

In 2021 the Court held that a school went too far when it suspended a cheerleader from the squad for a vulgar social media post she made off campus on a weekend. The Court said schools may have some interest in regulating off-campus speech, but that interest was not enough in that case.[102]

Speech online, and the government versus private companies

Here is where many people get mixed up.

The First Amendment limits the government, not private companies. In 2019 the Court said the Free Speech Clause "prohibits only governmental, not private, abridgment of speech."[103] So when a private social media company removes a post or bans an account, the First Amendment generally does not apply to that decision.

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[97] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep393/usrep393503/usrep393503.pdf (accessed November 12, 2026).

[98] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep393/usrep393503/usrep393503.pdf (accessed November 12, 2026).

[99] Morse v. Frederick, 551 U.S. 393 (2007). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep551/usrep551393/usrep551393.pdf (accessed November 12, 2026).

[100] Morse v. Frederick, 551 U.S. 393 (2007). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep551/usrep551393/usrep551393.pdf (accessed November 12, 2026).

[101] Morse v. Frederick, 551 U.S. 393 (2007). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep551/usrep551393/usrep551393.pdf (accessed November 12, 2026).

[102] Mahanoy Area School District v. B. L., 594 U.S. 180 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/594us1r54_k5gm.pdf (accessed November 12, 2026).

[103] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

Platforms have speech rights of their own. In 2024, in *Moody v. NetChoice*, the Court reviewed Florida and Texas laws that limited how large platforms could moderate content. It sent both cases back because the lower courts had not done the right analysis, but it explained why platforms like Facebook and YouTube are "engaged in expression" when they make content moderation choices.[104]

The government cannot block you from the internet as a whole. In 2017 the Court struck down a North Carolina law that barred registered sex offenders from using many social media sites. It called social media one of "the most important places" to exchange views today.[105]

Officials who block people online. When a public official blocks someone from commenting on the official's own social media page, is that government action? In 2024 the Court said it is state action only if the official "possessed actual authority to speak on the State's behalf" on the matter, and "purported to exercise that authority" in the posts in question.[106]

Government pressure on platforms. In 2024, in *Murthy v. Missouri*, two states and five social media users sued federal officials, claiming they pressured platforms to remove posts. The Court did not decide whether the officials' conduct was lawful. It held that none of the plaintiffs had standing, meaning the legal right to bring the case, to seek an injunction.[107]

What this leaves open: Because the Court ruled only on standing, it did not decide where lawful government persuasion of a platform ends and unlawful coercion begins. *Vullo* (2024) does confirm that coercing private companies in order to punish a viewpoint can violate the First Amendment.[108]

Speech and arrest: retaliation claims

What if an officer arrests you because of what you said? In 2019 the Court held that a person arrested with probable cause generally cannot win a First Amendment retaliatory arrest claim.[109]

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[104] Moody v. NetChoice, LLC, 603 U.S. 707 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r58_8mj9.pdf (accessed November 12, 2026).

[105] Packingham v. North Carolina, 582 U.S. 98 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1194 (accessed November 12, 2026).

[106] Lindke v. Freed, 601 U.S. 187 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us1r08_a8cf.pdf (accessed November 12, 2026).

[107] Murthy v. Missouri, 603 U.S. 43 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r49_n6io.pdf (accessed November 12, 2026).

[108] Murthy v. Missouri, 603 U.S. 43 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r49_n6io.pdf (accessed November 12, 2026). National Rifle Association of America v. Vullo, 602 U.S. 175 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r28_9o6b.pdf (accessed November 12, 2026).

[109] Nieves v. Bartlett, 587 U.S. 391 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=413 (accessed November 12, 2026).

The Court recognized an exception for "circumstances where officers have probable cause to make arrests, but typically exercise their discretion not to do so."[110] In 2024 it held that a lower court read that exception too narrowly when it demanded very specific comparison evidence.[111]

Key points from this chapter

- **Confirmed fact:** Most speech is protected, including offensive and hateful speech, unless it fits a narrow category such as incitement, true threats, defamation or fraud.[112]
- **Confirmed fact:** The First Amendment limits government, not private companies.[113]
- **Confirmed fact:** The government may set neutral time, place and manner rules.[114]
- **Interpretation:** How far *Chiles v. Salazar* (2026) reaches into rules for licensed professionals is disputed. The majority saw viewpoint discrimination; the dissent saw a threat to medical regulation.[115]
- **Unknown:** The line between permitted government persuasion of platforms and forbidden coercion has not been fully drawn by the Supreme Court.[116]

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[110] Gonzalez v. Trevino, 602 U.S. 653 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r42_l5gm.pdf (accessed November 12, 2026).

[111] Gonzalez v. Trevino, 602 U.S. 653 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r42_l5gm.pdf (accessed November 12, 2026).

[112] Snyder v. Phelps, 562 U.S. 443 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562443/usrep562443.pdf (accessed November 12, 2026). Matal v. Tam, 582 U.S. 218 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1293 (accessed November 12, 2026). Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395444/usrep395444.pdf (accessed November 12, 2026). Counterman v. Colorado, 600 U.S. 66 (2023). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/22pdf/600us1r51_g3bi.pdf (accessed November 12, 2026). New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep376/usrep376254/usrep376254.pdf (accessed November 12, 2026).

[113] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

[114] Ward v. Rock Against Racism, 491 U.S. 781 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491781/usrep491781.pdf (accessed November 12, 2026).

[115] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[116] Murthy v. Missouri, 603 U.S. 43 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r49_n6io.pdf (accessed November 12, 2026). National Rifle Association of America v. Vullo, 602 U.S. 175 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r28_906b.pdf (accessed November 12, 2026).

Chapter 4: Religion, the Press, Assembly and Petition

Information in this chapter is current as of November 12, 2026.

Two religion clauses

The First Amendment has two promises about religion. Congress may make no law "respecting an establishment of religion," and no law "prohibiting the free exercise thereof."[117] Lawyers call these the Establishment Clause and the Free Exercise Clause.

The first keeps the government from setting up or favoring a religion. The second protects your right to practice your faith. Most of the time they point the same way. Sometimes they pull against each other, and those are the cases that end up in the Supreme Court.

Free exercise: practicing your faith

The baseline rule. Two older cases frame the debate. In 1972 Amish parents were convicted for not sending their children to school after eighth grade, as Wisconsin law required. The Court ruled for them, finding the parents had shown that the law "would gravely endanger if not destroy the free exercise of their religious beliefs."[118] But in 1990, in *Employment Division v. Smith*, two men were fired for using peyote at a Native American Church ceremony and were denied unemployment benefits. The Court held that the Free Exercise Clause "does not relieve an individual of the obligation to comply with a law that incidentally forbids (or requires) the performance of an act that his religious belief requires (or forbids) if the law is not specifically directed to religious practice."[119] Justice Scalia wrote for the Court.[120]

In plain terms, under *Smith* a neutral law that applies to everyone usually stands even if it burdens someone's religion. A law that targets religion, or that is not applied generally, gets much tougher review. The 2021 *Fulton* case below turned on that second point.[121]

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[117] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[118] Wisconsin v. Yoder, 406 U.S. 205 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep406/usrep406205/usrep406205.pdf (accessed November 12, 2026).

[119] Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep494/usrep494872/usrep494872.pdf (accessed November 12, 2026).

[120] Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep494/usrep494872/usrep494872.pdf (accessed November 12, 2026).

[121] Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep494/usrep494872/usrep494872.pdf (accessed November 12, 2026). Fulton v. City of Philadelphia, 593 U.S. 522 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/593us2r47_8m59.pdf (accessed November 12, 2026).

In a case decided in 2021, the City of Philadelphia had stopped referring foster children to Catholic Social Services because the agency would not certify same-sex couples as foster parents, citing its religious beliefs. Chief Justice Roberts wrote for the Court that the city's refusal to contract with the agency on those terms "violates the Free Exercise Clause of the First Amendment."[122]

In 2022 the Court ruled for Joseph Kennedy, a public high school football coach who was placed on administrative leave after praying at the 50-yard line after games.[123] The Court held that the Free Exercise and Free Speech Clauses "protect an individual engaging in a personal religious observance from government reprisal."[124] Justice Gorsuch wrote for six Justices.[125]

Justice Sotomayor dissented, joined by Justices Breyer and Kagan. She framed the case differently: "This case is about whether a public school must permit a school official to kneel, bow his head, and say a prayer at the center of a school event. The Constitution does not authorize, let alone require, public schools to embrace this conduct."[126]

You can see both sides in their own words. The majority saw a coach's personal prayer. The dissent saw a school official leading prayer at a school event, with students watching.

The Establishment Clause after 2022

School prayer. In 1962 the Court held that state officials "may not compose an official state prayer and require that it be recited in the public schools," even if the prayer is "denominationally neutral" and students may stay silent or leave the room.[127] Justice Black wrote for the Court.[128]

For about fifty years, courts often used a test from a 1971 case, *Lemon v. Kurtzman*, to judge Establishment Clause claims. In *Kennedy* the Court said it had "abandoned" that approach, and

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[122] Fulton v. City of Philadelphia, 593 U.S. 522 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/593us2r47_8m59.pdf (accessed November 12, 2026).

[123] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[124] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[125] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[126] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[127] Engel v. Vitale, 370 U.S. 421 (1962). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep370/usrep370421/usrep370421.pdf (accessed November 12, 2026).

[128] Engel v. Vitale, 370 U.S. 421 (1962). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep370/usrep370421/usrep370421.pdf (accessed November 12, 2026).

that the Establishment Clause must instead be interpreted by "reference to historical practices and understandings."[129]

Interpretation: What counts as a historical practice that permits a given government action is now argued case by case. That is a direct result of the shift in *Kennedy*, and it means the law in this area is still settling.

Religion in prison

Congress passed a law called the Religious Land Use and Institutionalized Persons Act (RLUIPA) to protect the religious practice of people in prisons and jails that receive federal money. In June 2026, in *Landor v. Louisiana Department of Corrections and Public Safety*, Damon Landor, a Rastafarian whose faith requires him to leave his hair uncut, sued after prison officers forcibly shaved his head.[130] The Court held that individual officials cannot be held personally liable for money damages under RLUIPA unless they "voluntarily and knowingly consented" to that liability, so his damages case could not proceed against them.[131] Justice Gorsuch wrote for six Justices. Justice Jackson dissented, joined by Justices Sotomayor and Kagan.[132]

That ruling is about the money damages remedy. It does not change the law's protection itself, and other ways of enforcing it, such as court orders to stop a practice, were not at issue in the holding as described in the syllabus.[133]

Freedom of the press

The press clause protects the right to publish. The strongest protection is against what lawyers call **prior restraint**, meaning the government stopping something from being published in the first place.

In 1971 the federal government tried to stop *The New York Times* and *The Washington Post* from publishing a secret study of the Vietnam War, often called the Pentagon Papers. The Court

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[129] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[130] Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

[131] Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

[132] Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

[133] Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

ruled for the newspapers. It said the government carries a "heavy burden of showing justification for the enforcement of such a [prior] restraint," and had not met it.[134]

The press can still be sued after publication for defamation, but as Chapter 3 explained, a public official must prove "actual malice."[135]

Reporters and grand juries. In 1972 the Court held that the First Amendment does not relieve a reporter "of the obligation that all citizens have to respond to a grand jury subpoena and answer questions relevant to a criminal investigation." It found no constitutional privilege for a reporter to refuse to name a source to a grand jury.[136] Justice White wrote for five Justices; Justices Douglas and Stewart wrote dissents.[137] [Not verified: many states have "shield laws" that protect reporters' sources to some degree; I did not confirm a current list from an official source before the cutoff.]

You might ask, "Does the press clause give professional reporters special rights that I do not have?" **Interpretation:** This is my reading of the two rulings above, not a holding on that question. Neither the Pentagon Papers rule against prior restraint nor the actual malice rule is written as a rule only for professional journalists.[138] Whether the press clause gives journalists any extra protection, beyond what every speaker has, is a question this book does not try to settle.

Assembly and protest

The First Amendment protects "the right of the people peaceably to assemble."[139] The key word is "peaceably." Violence, property destruction and blocking others' rights are not protected.

Peaceful protest is protected even when its message offends, as the Westboro case showed.[140] But cities may require permits and set neutral time, place and manner rules, so long as those rules do not target the message and leave other ways to get the message out.[141]

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[134] New York Times Co. v. United States, 403 U.S. 713 (1971). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep403/usrep403713/usrep403713.pdf (accessed November 12, 2026).

[135] New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep376/usrep376254/usrep376254.pdf (accessed November 12, 2026).

[136] Branzburg v. Hayes, 408 U.S. 665 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep408/usrep408665/usrep408665.pdf (accessed November 12, 2026).

[137] Branzburg v. Hayes, 408 U.S. 665 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep408/usrep408665/usrep408665.pdf (accessed November 12, 2026).

[138] New York Times Co. v. United States, 403 U.S. 713 (1971). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep403/usrep403713/usrep403713.pdf (accessed November 12, 2026). New York Times Co. v. Sullivan, 376 U.S. 254 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep376/usrep376254/usrep376254.pdf (accessed November 12, 2026).

[139] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

Freedom of association. Assembly includes the right to join with others. In the 1950s, Alabama demanded that the National Association for the Advancement of Colored People (NAACP) turn over its membership lists, and held the group in contempt and fined it $100,000 when it refused.[142] In 1958 the Court ruled for the NAACP. It held that "freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment," and that forced disclosure of the members' names was "likely to constitute an effective restraint" on that freedom.[143] The 2026 *First Choice* case, covered below, built on that line of cases.[144]

In practice, permit rules differ by city and state. A protest on a public sidewalk is treated differently from a march that closes a street, which usually needs a permit. Check with your city before planning a large event.

If an officer gives a lawful order to disperse during a protest that has turned unlawful, refusing can lead to arrest. Whether a particular order was lawful is a question a court decides afterward, based on the facts. That is another reason to stay calm in the moment and raise your objections later through a lawyer.

The right to petition

The right "to petition the Government for a redress of grievances" is the right to ask the government to fix a problem.[145] It covers letters to your representatives, public comments, lawsuits against the government, and organized lobbying.

In 2024 the Court sided with Sylvia Gonzalez, who had run for city council in Castle Hills, Texas. She claimed she was arrested in retaliation for gathering signatures on a petition seeking the removal of the city manager. The Court held that the lower court had demanded too much proof under the retaliatory arrest rule, and sent the case back.[146]

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[140] Snyder v. Phelps, 562 U.S. 443 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562443/usrep562443.pdf (accessed November 12, 2026).

[141] Ward v. Rock Against Racism, 491 U.S. 781 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491781/usrep491781.pdf (accessed November 12, 2026).

[142] NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep357/usrep357449/usrep357449.pdf (accessed November 12, 2026).

[143] NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep357/usrep357449/usrep357449.pdf (accessed November 12, 2026).

[144] First Choice Women's Resource Centers, Inc. v. Davenport, 608 U.S. 174 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us1r30_3f14.pdf (accessed November 12, 2026).

[145] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[146] Gonzalez v. Trevino, 602 U.S. 653 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r42_l5gm.pdf (accessed November 12, 2026).

In April 2026, in *First Choice Women's Resource Centers, Inc. v. Davenport*, the Court held that a New Jersey pregnancy center, which does not provide or refer for abortions, could bring a federal lawsuit challenging a state attorney general's subpoena for its donor information, because the demand caused a present injury to its First Amendment right of association.[147]

Key points from this chapter

- **Confirmed fact:** The government may not punish a person's personal religious observance, and Philadelphia violated the Free Exercise Clause when it refused to contract with a Catholic foster agency on the city's terms.[148]
- **Confirmed fact:** In 2022 the Court replaced the *Lemon* test with an approach based on "historical practices and understandings."[149]
- **Confirmed fact:** Prior restraints on publication face a "heavy burden."[150]
- **Confirmed fact:** Peaceful assembly is protected, subject to neutral time, place and manner rules.[151]
- **Unknown:** How the history-based Establishment Clause test will apply to many specific practices, such as school prayer policies and religious displays, is still being decided in the lower courts.

Notes for Part Two: sources, unverified items and disagreements

Sources used in Part Two. Full details for each are in the footnotes and in Appendix D.

- Brandenburg v. Ohio, 395 U.S. 444 (1969)
- Branzburg v. Hayes, 408 U.S. 665 (1972)
- Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)
- Chiles v. Salazar, 607 U.S. 627 (2026)

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[147] First Choice Women's Resource Centers, Inc. v. Davenport, 608 U.S. 174 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us1r30_3f14.pdf (accessed November 12, 2026).

[148] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026). Fulton v. City of Philadelphia, 593 U.S. 522 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/593us2r47_8m59.pdf (accessed November 12, 2026).

[149] Kennedy v. Bremerton School District, 597 U.S. 507 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us2r62_d92h.pdf (accessed November 12, 2026).

[150] New York Times Co. v. United States, 403 U.S. 713 (1971). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep403/usrep403713/usrep403713.pdf (accessed November 12, 2026).

[151] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026). Ward v. Rock Against Racism, 491 U.S. 781 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep491/usrep491781/usrep491781.pdf (accessed November 12, 2026).

- Cohen v. California, 403 U.S. 15 (1971)
- Counterman v. Colorado, 600 U.S. 66 (2023)
- Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)
- Engel v. Vitale, 370 U.S. 421 (1962)
- First Choice Women's Resource Centers, Inc. v. Davenport, 608 U.S. 174 (2026)
- Fulton v. City of Philadelphia, 593 U.S. 522 (2021)
- Gitlow v. New York, 268 U.S. 652 (1925)
- Gonzalez v. Trevino, 602 U.S. 653 (2024)
- Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)
- Kennedy v. Bremerton School District, 597 U.S. 507 (2022)
- Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026)
- Lindke v. Freed, 601 U.S. 187 (2024)
- Mahanoy Area School District v. B. L., 594 U.S. 180 (2021)
- Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019)
- Matal v. Tam, 582 U.S. 218 (2017)
- Moody v. NetChoice, LLC, 603 U.S. 707 (2024)
- Morse v. Frederick, 551 U.S. 393 (2007)
- Murthy v. Missouri, 603 U.S. 43 (2024)
- NAACP v. Alabama ex rel. Patterson, 357 U.S. 449 (1958)
- National Rifle Association of America v. Vullo, 602 U.S. 175 (2024)
- New York Times Co. v. Sullivan, 376 U.S. 254 (1964)
- New York Times Co. v. United States, 403 U.S. 713 (1971)
- Nieves v. Bartlett, 587 U.S. 391 (2019)
- Packingham v. North Carolina, 582 U.S. 98 (2017)
- Snyder v. Phelps, 562 U.S. 443 (2011)
- Texas v. Johnson, 491 U.S. 397 (1989)
- The Bill of Rights: A Transcription. National Archives and Records Administration
- Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)
- Virginia v. Black, 538 U.S. 343 (2003)
- Ward v. Rock Against Racism, 491 U.S. 781 (1989)
- Wisconsin v. Yoder, 406 U.S. 205 (1972)

Items marked [Not verified] in Part Two.

- Many states have "shield laws" that protect reporters' sources to some degree; I did not confirm a current list from an official source before the cutoff.

Where sources disagreed in Part Two.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Part Three: Police Stops, Searches and Your Phone

Chapter 5: Searches and Warrants

Information in this chapter is current as of November 12, 2026.

The words of the Fourth Amendment

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." It adds that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[152]

Three ideas in that sentence run through the rest of Part Three:

- A **search** is when the government intrudes on something private.
- A **seizure** is when the government takes your property or stops your freedom to leave.
- **Probable cause** is a fair basis, grounded in facts, to believe a crime happened or that evidence will be found. It is more than a hunch but less than proof.[153] In 1983 the Court said a judge deciding whether to issue a warrant makes "a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place." It replaced a rigid test for informants' tips with a "totality of the circumstances" approach.[154]

The amendment does not ban all searches. It bans **unreasonable** ones. Much of the law is about what "reasonable" means.

What counts as a search?

In 1967 the Federal Bureau of Investigation (FBI) recorded Charles Katz's side of phone calls by attaching a device to the outside of a public phone booth. The Court held that this was a search, because the Fourth Amendment "protects people, not places," and Katz justifiably relied on the privacy of the booth.[155] Justice Harlan's concurring opinion offered a two-part test that later courts adopted: first, that a person "have exhibited an actual (subjective) expectation of privacy

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[152] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[153] Illinois v. Gates, 462 U.S. 213 (1983). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep462/usrep462213/usrep462213.pdf (accessed November 12, 2026).

[154] Illinois v. Gates, 462 U.S. 213 (1983). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep462/usrep462213/usrep462213.pdf (accessed November 12, 2026).

[155] Katz v. United States, 389 U.S. 347 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep389/usrep389347/usrep389347.pdf (accessed November 12, 2026).

and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"[156] That is where the phrase "reasonable expectation of privacy" comes from.

The Court has also said a search happens when the government physically intrudes on your person, house, papers or effects to get information. In 2012 it held that attaching a Global Positioning System (GPS) tracker to a car and following it for weeks was a search.[157] In 2013 it held that bringing a drug-sniffing dog onto a home's front porch to investigate was a search.[158]

The home gets the most protection

Courts treat the home as the core of the Fourth Amendment. In 1980 the Court held that police may not make "a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest."[159] The protection reaches the **curtilage**, the area right around the house, such as a porch or a driveway next to the home. In 2018 the Court held that the automobile exception "does not permit the warrantless entry of a home or its curtilage in order to search a vehicle therein."[160]

The warrant rule and its exceptions

The general rule is that police need a warrant from a neutral judge, based on probable cause, before they search. But the Court has recognized exceptions. Here are the main ones.

Exception	What it allows	Key ruling
Consent	A search you voluntarily agree to. Police do not have to tell you that you may refuse, but whether you knew is one factor in judging if consent was voluntary	*Schneckloth v. Bustamonte* (1973)[161]

[156] Katz v. United States, 389 U.S. 347 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, Harlan, J., concurring. https://tile.loc.gov/storage-services/service/ll/usrep/usrep389/usrep389347/usrep389347.pdf (accessed November 12, 2026).

[157] United States v. Jones, 565 U.S. 400 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep565/usrep565400/usrep565400.pdf (accessed November 12, 2026).

[158] Florida v. Jardines, 569 U.S. 1 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep569/usrep569001/usrep569001.pdf (accessed November 12, 2026).

[159] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026).

[160] Collins v. Virginia, 584 U.S. 586 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/16-1027 (accessed November 12, 2026).

[161] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

Exception	What it allows	Key ruling
Plain view	Seizing evidence an officer sees in plain view from a place the officer is lawfully allowed to be	*Horton v. California* (1990)[162]
Search incident to arrest	Searching the person arrested and the area within their "immediate control," but not the whole house	*Chimel v. California* (1969)[163]
Emergency aid	Entering a home when officers have "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury"	*Brigham City v. Stuart* (2006); *Case v. Montana* (2026)[164]
Hot pursuit	Following a fleeing suspect inside, judged case by case. Flight by someone suspected only of a misdemeanor does not always justify entering a home	*Lange v. California* (2021)[165]
Automobile	Searching a car with probable cause, explained in Chapter 7	*Carroll v. United States* (1925)[166]

One thing the Court has said is **not** an exception: the idea of "community caretaking" in the home. In 2021 the Court held that the reasoning of an earlier car case did not justify warrantless searches and seizures in the home.[167]

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[162] Horton v. California, 496 U.S. 128 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep496/usrep496128/usrep496128.pdf (accessed November 12, 2026).

[163] Chimel v. California, 395 U.S. 752 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395752/usrep395752.pdf (accessed November 12, 2026).

[164] Brigham City v. Stuart, 547 U.S. 398 (2006). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep547/usrep547398/usrep547398.pdf (accessed November 12, 2026). Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[165] Lange v. California, 594 U.S. 295 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/594us1r56_7k47.pdf (accessed November 12, 2026).

[166] Carroll v. United States, 267 U.S. 132 (1925). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep267/usrep267132/usrep267132.pdf (accessed November 12, 2026).

[167] Caniglia v. Strom, 593 U.S. 194 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/20pdf/593us1r33_4i29.pdf (accessed November 12, 2026).

The newest ruling: Case v. Montana (2026)

In January 2026, the Court decided *Case v. Montana*. Montana officers went to William Case's home after his former girlfriend called 9-1-1 to report that he was threatening suicide and may have shot himself. No one answered, and through a window officers could see an empty handgun holster and what looked like a suicide note, so they went in without a warrant.[168] The Court, in a unanimous opinion by Justice Kagan, held that the emergency aid standard from *Brigham City* "applies without further gloss" and was satisfied in that case.[169]

The defendant had argued that officers should need something close to probable cause before entering. The Court declined "to put a new probable-cause spin onto the emergency-aid standard."[170] But it also rejected the Montana court's lower standard, which the Court said resembled the "reasonable suspicion" test used for brief street stops.[171] The test is the *Brigham City* test, no more and no less: an objectively reasonable basis to believe someone inside is seriously hurt or about to be.[172]

Justices Sotomayor and Gorsuch each wrote separate concurring opinions.[173]

What happens when police break the rules?

The main tool is the **exclusionary rule**: evidence found through an unconstitutional search generally cannot be used against you at trial. In 1961 the Court applied that rule to the states: "all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."[174]

The Court has since carved out limits:

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[168] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[169] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[170] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[171] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[172] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[173] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[174] Mapp v. Ohio, 367 U.S. 643 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep367/usrep367643/usrep367643.pdf (accessed November 12, 2026).

- **Good faith.** If officers reasonably rely on a warrant that a judge issued but that later turns out to be invalid, the evidence is usually still allowed.[175]
- **Attenuation.** In 2016 the Court allowed evidence found after an unlawful stop because the officer discovered a valid, pre-existing arrest warrant, and the Court found no flagrant misconduct.[176]
- **Knock and announce.** Police generally must knock and announce themselves before entering a home to execute a warrant; the Court held in 1995 that this old common-law rule "forms a part of the Fourth Amendment reasonableness inquiry."[177] But in 2006 it held that a violation of that rule "does not require suppression of evidence found in a search."[178]

Interpretation: Supporters of these limits, including the majority in *Leon*, argue that excluding evidence is meant to deter police misconduct, so it makes little sense when officers acted reasonably.[179] Critics, including dissenting Justices in *Strieff*, argued that such limits weaken the rule's protection. I have not quoted the *Strieff* dissents here because I relied on the Court's syllabus for that case; readers can find them in the full opinion at the link in the footnote.[180]

A practical note

You might ask, "If an officer asks to search my car or my bag, do I have to say yes?" The law says a consent search is valid only if consent is voluntary, and that officers do not have to tell you that you may refuse.[181] But if officers have probable cause or another exception applies, they may search without consent, as the table above shows. Whether a search was lawful is decided afterward, in court. The American Civil Liberties Union (ACLU), a civil liberties advocacy group,

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[175] United States v. Leon, 468 U.S. 897 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep468/usrep468897/usrep468897.pdf (accessed November 12, 2026).

[176] Utah v. Strieff, 579 U.S. 232 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/14-1373 (accessed November 12, 2026).

[177] Wilson v. Arkansas, 514 U.S. 927 (1995). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep514/usrep514927/usrep514927.pdf (accessed November 12, 2026).

[178] Hudson v. Michigan, 547 U.S. 586 (2006). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep547/usrep547586/usrep547586.pdf (accessed November 12, 2026).

[179] United States v. Leon, 468 U.S. 897 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep468/usrep468897/usrep468897.pdf (accessed November 12, 2026).

[180] Utah v. Strieff, 579 U.S. 232 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/14-1373 (accessed November 12, 2026).

[181] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

says: "You may be able to reduce risk to yourself by staying calm and not exhibiting hostility toward the officers."[182] [Not verified: I did not obtain a law enforcement organization's published advice on consent searches before the cutoff, so I cannot present that side in its own words here.]

Key points from this chapter

- **Confirmed fact:** A warrant based on probable cause is the general rule, with recognized exceptions such as consent, plain view, emergencies and arrests.[183]
- **Confirmed fact:** The home and the area right around it get the strongest protection.[184]
- **Confirmed fact:** In 2026 the Court reaffirmed the emergency aid test for entering homes without a warrant.[185]
- **Confirmed fact:** Illegally obtained evidence is generally excluded, with exceptions for good faith and attenuation.[186]

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[182] American Civil Liberties Union (civil liberties advocacy group), "Know Your Rights: Stopped by Police," last updated June 8, 2026. https://www.aclu.org/know-your-rights/stopped-by-police (accessed November 12, 2026).

[183] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026). Horton v. California, 496 U.S. 128 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep496/usrep496128/usrep496128.pdf (accessed November 12, 2026). Chimel v. California, 395 U.S. 752 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395752/usrep395752.pdf (accessed November 12, 2026). Brigham City v. Stuart, 547 U.S. 398 (2006). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep547/usrep547398/usrep547398.pdf (accessed November 12, 2026).

[184] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026). Collins v. Virginia, 584 U.S. 586 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-1027 (accessed November 12, 2026).

[185] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[186] Mapp v. Ohio, 367 U.S. 643 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep367/usrep367643/usrep367643.pdf (accessed November 12, 2026). United States v. Leon, 468 U.S. 897 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep468/usrep468897/usrep468897.pdf (accessed November 12, 2026). Utah v. Strieff, 579 U.S. 232 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/14-1373 (accessed November 12, 2026).

Chapter 6: Street Stops, Frisks and Showing ID

Information in this chapter is current as of November 12, 2026.

How often do people deal with police?

The most recent national survey from the Bureau of Justice Statistics (BJS), the research arm of the U.S. Department of Justice, covers 2022. It found that about 19 percent of U.S. residents age 16 or older, an estimated 49.2 million people, had contact with police that year.[187] About 8 percent had a contact the police started, such as a traffic stop or a street stop.[188]

Table 6-1. Police-initiated contacts, 2022 (most recent BJS survey; information current as of November 12, 2026)

Type of police-initiated contact	Share of residents age 16+	Estimated people
Any police-initiated contact	7.6%	20,297,300
Traffic stop, as the driver	5.2%	12,446,800
Street stop	1.0%	not listed here
Other approach by police	1.1%	not listed here

Source: BJS, *Contacts Between Police and the Public, 2022*, Table 2.[189]

The same report found that a small share of people experienced the threat or use of nonfatal force. Its summary heading says "about 2%," and its detailed text gives 1.5 percent, or about 748,800 people, for any police contact in 2022, down from 1.9 percent in 2020.[190] Both figures appear in the report, so I give both.

Three kinds of encounters

Courts sort police encounters into three rough types. Knowing which one you are in tells you what rules apply.

Type	What it is	What police need

[187] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

[188] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

[189] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

[190] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

Type	What it is	What police need
Consensual encounter	An officer approaches and talks to you, and a reasonable person would feel free to decline and go about their business	Nothing. It is not a "seizure"
Investigative stop (a "Terry stop")	A brief detention to check out possible crime	Reasonable suspicion
Arrest	Taking you into custody	Probable cause

Consensual encounters. In 1991 the Court held that police questioning passengers on a bus was not automatically a seizure. The test is "whether, taking into account all of the circumstances surrounding the encounter, a reasonable passenger would feel free to decline the officers' requests or otherwise terminate the encounter."[191]

You might ask, "How do I know if I am free to go?" Courts ask what a reasonable person would think, based on all the facts. Many people simply ask, politely, "Officer, am I free to go?" The answer tells you which kind of encounter you are in. That question is not a legal requirement, just a practical way to find out.

Terry stops and frisks

In 1968 a Cleveland detective, Martin McFadden, watched two men repeatedly walk past and look into the same store window, then confer. Suspecting they were planning a robbery, he stopped them and patted down their outer clothing, finding a gun on John Terry.[192]

The Court upheld the stop and the pat-down. It held that when an officer reasonably concludes that criminal activity may be afoot and that the person may be armed and dangerous, the officer "may make a reasonable search for weapons of the person believed by him to be armed and dangerous regardless of whether he has probable cause to arrest."[193] That is the "stop and frisk."

Two limits matter:

- The stop needs **reasonable suspicion**, which means specific facts, not a hunch.[194]
- The frisk is only a **pat-down for weapons**, and only when the officer reasonably believes the person is armed and dangerous.[195]

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[191] Florida v. Bostick, 501 U.S. 429 (1991). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep501/usrep501429/usrep501429.pdf (accessed November 12, 2026).

[192] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

[193] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

[194] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

What counts as reasonable suspicion? Courts look at the "totality of the circumstances."[196] In 2000 the Court held that a person's "unprovoked flight" upon seeing police in a high-crime area can support reasonable suspicion, calling headlong flight "the consummate act of evasion."[197]

Anonymous tips. A tip alone is often not enough. In 2000 the Court held that "an anonymous tip that a person is carrying a gun is not, without more, sufficient to justify a police officer's stop and frisk of that person." In that case the officers' suspicion came "solely from a call made from an unknown location by an unknown caller," and the tip "provided no predictive information."[198] Justice Ginsburg wrote for a unanimous Court.[199]

Not every anonymous tip fails, though. In 2014 a 911 caller reported that a pickup truck had run her off the road and described it. An officer found and stopped the truck and, smelling marijuana, found 30 pounds of it. The Court held the stop was lawful because, "under the totality of the circumstances, the officer had reasonable suspicion that the truck's driver was intoxicated." It noted that an anonymous tip "alone seldom" is reliable enough, but can be in the right circumstances, such as an eyewitness report made soon after the event through the 911 system.[200] [Interpretation: the contrast between *J. L.* and *Navarette* is how courts weigh a tip's reliability; the specific factors the Court relied on are in the *Navarette* opinion.]

The 2026 ruling. In April 2026, in *District of Columbia v. R. W.*, an officer responding around 2:00 a.m. to a call about a suspicious vehicle saw two people flee from a car and leave a door open, and the driver begin to back out. The officer blocked the car and ordered the driver to put his hands up.[201] The District's highest court had found no reasonable suspicion. The Supreme Court reversed in an unsigned opinion, saying the lower court wrongly looked at facts

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[195] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

[196] District of Columbia v. R. W., 608 U.S. 22 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/608us1r26_ppl4.pdf (accessed November 12, 2026).

[197] Illinois v. Wardlow, 528 U.S. 119 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep528/usrep528119/usrep528119.pdf (accessed November 12, 2026).

[198] Florida v. J. L., 529 U.S. 266 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep529/usrep529266/usrep529266.pdf (accessed November 12, 2026).

[199] Florida v. J. L., 529 U.S. 266 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep529/usrep529266/usrep529266.pdf (accessed November 12, 2026).

[200] Navarette v. California, 572 U.S. 393 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep572/usrep572393/usrep572393.pdf (accessed November 12, 2026).

[201] District of Columbia v. R. W., 608 U.S. 22 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/608us1r26_ppl4.pdf (accessed November 12, 2026).

in isolation instead of together.[202] Justice Jackson dissented, and Justice Sotomayor would not have taken the case.[203]

Stop and frisk in practice: the New York case

The most studied stop-and-frisk program was in New York City. On August 12, 2013, in *Floyd v. City of New York*, U.S. District Judge Shira A. Scheindlin ruled on a class action challenging the program. Her opinion found that the New York Police Department "made 4.4 million stops between January 2004 and June 2012," and, based on her analysis of the department's own stop records, that "at least 200,000 stops were made without reasonable suspicion."[204]

She examined the individual stops of the named plaintiffs and wrote: "I find that nine of the stops and frisks were unconstitutional." Her central holding was: "I find that the City is liable for violating plaintiffs' Fourth and Fourteenth Amendment rights." Remedies were addressed in a separate opinion.[205]

This was a trial court ruling. It binds the parties in that case, not police departments elsewhere, and it did not change the *Terry* rule itself. What it shows is how the *Terry* standard can be tested against a program's records.[206]

The policy debate over stop and frisk is still active. [Not verified: I did not obtain each side's argument in its own words from a named official or group before the cutoff, so I do not summarize the debate or give a verdict on it.]

Do I have to show ID?

This is one of the most misunderstood questions, and Part Seven tests the common claims. Here is what the law says.

No general national ID requirement. No federal law requires you to carry identification while walking down the street. [Not verified: I did not find a single official source that states this as a rule; it reflects the absence of such a law in the U.S. Code as I searched it.]

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[202] District of Columbia v. R. W., 608 U.S. 22 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/608us1r26_ppl4.pdf (accessed November 12, 2026).

[203] District of Columbia v. R. W., 608 U.S. 22 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us1r26_ppl4.pdf (accessed November 12, 2026).

[204] Floyd v. City of New York, No. 08 Civ. 1034 (SAS), Opinion and Order on liability (S.D.N.Y. Aug. 12, 2013) (Judge Shira A. Scheindlin). Copy posted by the NAACP Legal Defense Fund. https://www.naacpldf.org/document/floyd-liability-opinion (accessed November 12, 2026).

[205] Floyd v. City of New York, No. 08 Civ. 1034 (SAS), Opinion and Order on liability (S.D.N.Y. Aug. 12, 2013) (Judge Shira A. Scheindlin). Copy posted by the NAACP Legal Defense Fund. https://www.naacpldf.org/document/floyd-liability-opinion (accessed November 12, 2026).

[206] Floyd v. City of New York, No. 08 Civ. 1034 (SAS), Opinion and Order on liability (S.D.N.Y. Aug. 12, 2013) (Judge Shira A. Scheindlin). Copy posted by the NAACP Legal Defense Fund. https://www.naacpldf.org/document/floyd-liability-opinion (accessed November 12, 2026). Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

State "stop and identify" laws. Some states require a person who is lawfully detained in a Terry stop to identify themselves. Nevada is a good example. Its law says a person detained on reasonable suspicion "shall identify himself or herself, but may not be compelled to answer any other inquiry of any peace officer." The detention may last no longer than 60 minutes.[207]

In 2004 that Nevada law reached the Supreme Court. Larry Hiibel was stopped while officers investigated a report of an assault involving a truck, and he refused to give his name. The Court held that "a state law requiring a suspect to disclose his name in the course of a valid Terry stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures."[208] It also rejected his Fifth Amendment claim on the facts, because he had not shown that saying his name would incriminate him, though it left open a case where it might.[209]

So the honest answer depends on three things:

1. **Where you are.** Some states have stop-and-identify laws; others do not.
2. **What kind of encounter it is.** These laws apply to lawful detentions, not to casual conversations.
3. **Whether you are driving.** Drivers must show a license when lawfully stopped, under state traffic laws. Chapter 7 covers traffic stops.

Even under these laws, what is required is your identity, not answers to other questions. Nevada's law says so expressly.[210]

Use of force

What if a stop turns physical? The Constitution limits how much force officers may use.

- In 1985 the Court held that deadly force may not be used to stop an apparently unarmed, nondangerous fleeing suspect. It may be used only if necessary to prevent escape and the officer has probable cause to believe the suspect "poses a significant threat of death or serious physical injury to the officer or others."[211]

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[207] Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[208] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026).

[209] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026).

[210] Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[211] Tennessee v. Garner, 471 U.S. 1 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep471/usrep471001/usrep471001.pdf (accessed November 12, 2026).

- In 1989 the Court held that all excessive force claims during an arrest or stop are judged under the Fourth Amendment's "objective reasonableness" standard, from the view of a reasonable officer on the scene.[212]
- In 2025, in *Barnes v. Felix*, the Court unanimously rejected a lower court rule that looked only at the moment of the threat. It held that the "totality of the circumstances" inquiry "has no time limit," so earlier events can matter too.[213]

Key points from this chapter

- **Confirmed fact:** In 2022 about 8 percent of residents age 16 and older had a police-initiated contact, most often a traffic stop.[214]
- **Confirmed fact:** Police may briefly detain you on reasonable suspicion and frisk you for weapons if they reasonably believe you are armed and dangerous.[215]
- **Confirmed fact:** States may require a lawfully detained person to give their name. Nevada does.[216]
- **Confirmed fact:** Force must be objectively reasonable under all the circumstances.[217]
- **Unknown (for this book):** The detailed findings of the New York stop-and-frisk case, which I could not confirm from the opinion itself before the cutoff.

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[212] Graham v. Connor, 490 U.S. 386 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep490/usrep490386/usrep490386.pdf (accessed November 12, 2026).

[213] Barnes v. Felix, 605 U.S. 73 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/24pdf/605us1r30_h315.pdf (accessed November 12, 2026).

[214] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

[215] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

[216] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[217] Graham v. Connor, 490 U.S. 386 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep490/usrep490386/usrep490386.pdf (accessed November 12, 2026). Barnes v. Felix, 605 U.S. 73 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/24pdf/605us1r30_h315.pdf (accessed November 12, 2026).

Chapter 7: Traffic Stops and Cars

Information in this chapter is current as of November 12, 2026.

The most common police encounter

If you deal with police at all, it will most likely be at a traffic stop. In the most recent national survey, being stopped as a driver was the single largest category of police-initiated contact, about 5.2 percent of residents age 16 and older in 2022.[218]

A traffic stop is a seizure under the Fourth Amendment. The Court has held that a routine traffic stop "is more like a brief stop under *Terry v. Ohio*... than an arrest."[219] That means the stop must be justified at the start, and it must stay within limits.

Why police can pull you over

A traffic violation is enough. Police may stop a car when they have probable cause to believe a traffic law was broken. In 1996 the Court held that such a stop is reasonable "even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective."[220] In plain words, if the officer saw you roll through a stop sign, the stop is valid even if the officer was really curious about something else. These are often called "pretext stops."

Reasonable suspicion is also enough for a brief investigative stop. In 2020 the Court held that an officer who runs a plate, learns the registered owner's license is revoked, and has no information suggesting someone else is driving, may stop the car.[221]

Honest mistakes of law. In 2014 the Court held that a stop based on an officer's reasonable mistake about what the law required (in that case, how many working brake lights a car needed) can still be supported by reasonable suspicion.[222]

Not for no reason at all. Police may not stop a single car at random just to check the license and registration, without "at least articulable and reasonable suspicion" of a violation.[223]

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[218] Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024. https://bjs.ojp.gov/library/publications/contacts-between-police-and-public-2022 (accessed November 12, 2026).

[219] Rodriguez v. United States, 575 U.S. 348 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep575/usrep575348/usrep575348.pdf (accessed November 12, 2026).

[220] Whren v. United States, 517 U.S. 806 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep517/usrep517806/usrep517806.pdf (accessed November 12, 2026).

[221] Kansas v. Glover, 589 U.S. 376 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/preliminaryprint/589US2PP_final.pdf#page=268 (accessed November 12, 2026).

[222] Heien v. North Carolina, 574 U.S. 54 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep574/usrep574054/usrep574054.pdf (accessed November 12, 2026).

Checkpoints are different. In 1990 the Court upheld a highway sobriety checkpoint program in Michigan, where every car was briefly stopped under set rules.[224]

What police can tell you to do

Question	What the Court held	Ruling
Can the officer order the driver out of the car?	Yes, after a lawful stop, for officer safety	*Pennsylvania v. Mimms* (1977)[225]
Can the officer order passengers out?	Yes, "pending completion of the stop"	*Maryland v. Wilson* (1997)[226]
Are passengers seized too?	Yes, so a passenger may challenge whether the stop was lawful	*Brendlin v. California* (2007)[227]
How long can the stop last?	Only as long as needed for its "mission," which is to deal with the traffic violation and related safety concerns	*Rodriguez v. United States* (2015)[228]

Frisking a passenger. Ordering people out of the car is one thing; patting them down is another. In 2009 the Court held that during a lawful traffic stop, officers do not need to suspect a passenger of a crime to keep the passenger there, but "to justify a patdown of the driver or a passenger during a traffic stop… the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous."[229]

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[223] Delaware v. Prouse, 440 U.S. 648 (1979). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep440/usrep440648/usrep440648.pdf (accessed November 12, 2026).

[224] Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep496/usrep496444/usrep496444.pdf (accessed November 12, 2026).

[225] Pennsylvania v. Mimms, 434 U.S. 106 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep434/usrep434106/usrep434106.pdf (accessed November 12, 2026).

[226] Maryland v. Wilson, 519 U.S. 408 (1997). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep519/usrep519408/usrep519408.pdf (accessed November 12, 2026).

[227] Brendlin v. California, 551 U.S. 249 (2007). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep551/usrep551249/usrep551249.pdf (accessed November 12, 2026).

[228] Rodriguez v. United States, 575 U.S. 348 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep575/usrep575348/usrep575348.pdf (accessed November 12, 2026).

[229] Arizona v. Johnson, 555 U.S. 323 (2009). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep555/usrep555323/usrep555323.pdf (accessed November 12, 2026).

Drug dogs

In 2005 the Court held that a dog sniff during a lawful traffic stop, which reveals only whether contraband is present, does not violate the Fourth Amendment.[230]

But timing matters. In 2015 the Court held that "absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution."[231] So an officer may not hold you at the roadside, after the ticket is done, just to wait for a dog, unless there is reasonable suspicion of something more.

Searching the car

The automobile exception. Cars can be searched without a warrant when police have probable cause to believe they contain evidence or contraband. The rule goes back to a 1925 Prohibition case about bootleg liquor, where the Court allowed a search based on "a belief, reasonably arising out of circumstances known to the officer, that the vehicle contains such contraband liquor."[232]

After an arrest. In 2009 the Court narrowed when police may search a car after arresting someone who was in it. Police may search the passenger compartment "only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest."[233]

Consent. As Chapter 5 explained, if you agree to a search, that consent must be voluntary, and police do not have to tell you that you may refuse.[234]

How far consent goes. If you agree to a search of your car, how far can officers go? In 1991 the Court held that when a driver gives permission to search the car for narcotics without limiting the search, police may open "a closed container found within the car that might reasonably hold the object of the search." The test is what "it is objectively reasonable for the

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[230] Illinois v. Caballes, 543 U.S. 405 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep543/usrep543405/usrep543405.pdf (accessed November 12, 2026).

[231] Rodriguez v. United States, 575 U.S. 348 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep575/usrep575348/usrep575348.pdf (accessed November 12, 2026).

[232] Carroll v. United States, 267 U.S. 132 (1925). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep267/usrep267132/usrep267132.pdf (accessed November 12, 2026).

[233] Arizona v. Gant, 556 U.S. 332 (2009). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep556/usrep556332/usrep556332.pdf (accessed November 12, 2026).

[234] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

police to believe" the consent covered.[235] The Court noted that a suspect "may of course delimit as he chooses the scope of the search to which he consents."[236]

Passengers' belongings. In 1999 the Court held that "police officers with probable cause to search a car… may inspect passengers' belongings found in the car that are capable of concealing the object of the search."[237]

At home. A car parked in the area right around a house gets the home's protection. The automobile exception does not let officers walk up a driveway next to a house to search a car there.[238]

Drunk driving tests

What about breath and blood tests? In 2016 the Court held that the Fourth Amendment "permits warrantless breath tests incident to arrests for drunk driving but not warrantless blood tests."[239] It added that motorists "may not be criminally punished for refusing to submit to a blood test based on legally implied consent."[240]

Before *Birchfield*, the Court had already ruled on blood draws. In 2013 a Missouri driver refused a breath test, and an officer had his blood drawn at a hospital without trying to get a warrant. The Court held that "the natural dissipation of alcohol in the bloodstream does not constitute an exigency in every case sufficient to justify conducting a blood test without a warrant." Whether there is an emergency "must be determined case by case based on the totality of the circumstances."[241]

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[235] Florida v. Jimeno, 500 U.S. 248 (1991). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep500/usrep500248/usrep500248.pdf (accessed November 12, 2026).

[236] Florida v. Jimeno, 500 U.S. 248 (1991). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep500/usrep500248/usrep500248.pdf (accessed November 12, 2026).

[237] Wyoming v. Houghton, 526 U.S. 295 (1999). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep526/usrep526295/usrep526295.pdf (accessed November 12, 2026).

[238] Collins v. Virginia, 584 U.S. 586 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/16-1027 (accessed November 12, 2026).

[239] Birchfield v. North Dakota, 579 U.S. 438 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/14-1468 (accessed November 12, 2026).

[240] Birchfield v. North Dakota, 579 U.S. 438 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/14-1468 (accessed November 12, 2026).

[241] Missouri v. McNeely, 569 U.S. 141 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep569/usrep569141/usrep569141.pdf (accessed November 12, 2026). Missouri v. McNeely, 569 U.S. 141 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep569/usrep569141/usrep569141.pdf (accessed November 12, 2026).

The Court noted that "all 50 States have adopted implied consent laws," under which drivers agree to testing as a condition of driving.[242] The Court noted that such laws may impose "civil penalties and evidentiary consequences," such as losing your license or having your refusal used as evidence.[243] So refusing a test is not free of consequences. The details depend on your state.

A word about safety

The rulings above show that officers have broad authority at a traffic stop: to stop you for any traffic violation, to order you and your passengers out, and to use a dog if it does not extend the stop. They also show limits: a stop may not drag on without reason, and a car search needs probable cause, consent or another exception.

The ACLU's advice page says: "You may be able to reduce risk to yourself by staying calm and not exhibiting hostility toward the officers." It adds its own view that "the burden of de-escalation does not fall on private citizens, it falls on police officers."[244] [Not verified: I tried to open a federal traffic safety agency's published tips for drivers stopped by police, and it would not load before the cutoff. I did not find a law enforcement organization's published advice in its own words, so this paragraph presents only one side's guidance, labeled as advocacy.]

What the rulings themselves show is that disputes over a stop are settled later, from the record, in court.[245]

Key points from this chapter

- **Confirmed fact:** Any traffic violation can justify a stop, whatever the officer's other motives.[246]
- **Confirmed fact:** Officers may order the driver and passengers out of the car during a lawful stop.[247]

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[242] Birchfield v. North Dakota, 579 U.S. 438 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/14-1468 (accessed November 12, 2026).

[243] Birchfield v. North Dakota, 579 U.S. 438 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/14-1468 (accessed November 12, 2026).

[244] American Civil Liberties Union (civil liberties advocacy group), "Know Your Rights: Stopped by Police," last updated June 8, 2026. https://www.aclu.org/know-your-rights/stopped-by-police (accessed November 12, 2026).

[245] Rodriguez v. United States, 575 U.S. 348 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep575/usrep575348/usrep575348.pdf (accessed November 12, 2026). Whren v. United States, 517 U.S. 806 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep517/usrep517806/usrep517806.pdf (accessed November 12, 2026).

[246] Whren v. United States, 517 U.S. 806 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep517/usrep517806/usrep517806.pdf (accessed November 12, 2026).

[247] Pennsylvania v. Mimms, 434 U.S. 106 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep434/usrep434106/usrep434106.pdf (accessed November 12, 2026). Maryland v. Wilson, 519 U.S. 408 (1997). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports.

- **Confirmed fact:** A stop may not be extended for a dog sniff without reasonable suspicion.[248]
- **Confirmed fact:** Breath tests may be required after a drunk driving arrest without a warrant; blood tests need a warrant or another exception, and criminal penalties for refusing a blood test are not allowed.[249]
- **Varies by state:** Penalties for refusing a test, and many traffic rules, depend on state law.

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https://tile.loc.gov/storage-services/service/ll/usrep/usrep519/usrep519408/usrep519408.pdf (accessed November 12, 2026).

[248] Rodriguez v. United States, 575 U.S. 348 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep575/usrep575348/usrep575348.pdf (accessed November 12, 2026).

[249] Birchfield v. North Dakota, 579 U.S. 438 (2016). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/14-1468 (accessed November 12, 2026).

Chapter 8: Phones, Data and Location

Information in this chapter is current as of November 12, 2026.

Why phones are different

The Fourth Amendment was written for "persons, houses, papers, and effects."[250] The people who wrote it never imagined a device in your pocket holding years of messages, photos, bank records and a map of everywhere you have been. Over the past twelve years, the Supreme Court has decided three major cases about how the old words apply to that new reality.

Riley v. California (2014): searching the phone itself

David Riley was stopped for expired registration, and police found evidence that led them to search his smartphone after his arrest. In a companion case, police seized a cell phone from a man named Wurie after arresting him for an apparent drug sale, and used information on it to find his apartment.[251]

At the time, police could search items found on a person they arrested. The question was whether that rule covered phones. The Court said no. It held that police "generally may not, without a warrant, search digital information on a cell phone seized from an individual who has been arrested."[252] Chief Justice Roberts ended the opinion this way: "Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple - get a warrant."[253]

Two limits are worth knowing:

- Police may still physically examine a phone to make sure it cannot be used as a weapon.[254]
- The ruling leaves room for case-specific exceptions, such as **exigent circumstances**, meaning a real emergency like a threat to someone's safety or the imminent destruction of evidence.[255]

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[250] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[251] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[252] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[253] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[254] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

And of course, if you consent to a search of your phone, a warrant is not needed, as long as your consent is voluntary.[256]

Background: the "third-party" rule

To understand the phone cases, it helps to know an older rule. In the 1970s the Court held that people generally have no Fourth Amendment privacy in information they hand over to a business.

- **Bank records (1976).** The Court held that a man "possessed no Fourth Amendment interest in the bank records" the government got by subpoena, because they were "business records of the banks, not respondent's private papers."[257]
- **Dialed phone numbers (1979).** Police asked the phone company to install a "pen register" to record the numbers dialed from a suspect's home phone. The Court held that this "was not a 'search' within the meaning of the Fourth Amendment, and hence no warrant was required."[258]

That rule is why *Carpenter* and *Chatrie* were important. In both, the government argued that location data held by a company fell under the third-party rule. The Court disagreed in each case, as the next sections explain.[259]

Carpenter v. United States (2018): records held by the phone company

Your phone constantly connects to cell towers, and wireless carriers keep records of those connections, called cell-site location information (CSLI). In the investigation of a string of robberies, the government obtained Timothy Carpenter's CSLI from his wireless carriers using court orders under the Stored Communications Act, which required only "reasonable grounds"

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[255] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[256] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

[257] United States v. Miller, 425 U.S. 435 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep425/usrep425435/usrep425435.pdf (accessed November 12, 2026).

[258] Smith v. Maryland, 442 U.S. 735 (1979). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep442/usrep442735/usrep442735.pdf (accessed November 12, 2026).

[259] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026). Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

for believing the records were "relevant and material to an ongoing investigation," a lower bar than probable cause.[260]

The Court held that "the Government's acquisition of Carpenter's cell-site records was a Fourth Amendment search."[261] Because it did not get a warrant, the search was not valid on that basis.[262]

Why did this matter so much? Before *Carpenter*, the general rule, called the **third-party doctrine**, said you have no reasonable expectation of privacy in records you share with a business, like bank records or numbers you dial. *Carpenter* did not overrule that doctrine. The Court called its decision "a narrow one," and said it was not deciding questions such as real-time tracking or "tower dumps," and was not calling into question "conventional surveillance techniques and tools, such as security cameras."[263]

Chatrie v. United States (2026): Google location history

In June 2026 the Court took the next step. Police investigating a credit union robbery in Virginia got a "geofence warrant" directed to Google. It asked for data about phones located within a 150-meter radius of the credit union around the time of the crime, using Google's Location History service, which recorded a user's phone location "every two minutes or so."[264] That process led them to Okello Chatrie.

The Court, in an opinion by Justice Kagan, held that "police officers conducted a Fourth Amendment search when they acquired Chatrie's location data from Google because an individual has a reasonable expectation of privacy in his cell-phone location information."[265] It reasoned that Location History gives an even more detailed picture than the tower records in

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[260] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026).

[261] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, syllabus. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026).

[262] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026).

[263] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026).

[264] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[265] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

Carpenter, and that users treat it "as a personal journal."[266] It also rejected the government's argument that collecting only a short window of data does not count as a search.[267]

But the Court did not decide whether this particular warrant was valid. The warrant was "an uncommon, multi-step one," and the Court sent the case back to the court of appeals to decide whether "at each step of the search process, the warrant satisfied the Fourth Amendment's requirements of particularity and probable cause."[268]

How the Justices split. Five Justices joined Justice Kagan's opinion in full. Justice Gorsuch agreed with the result for different reasons. Justice Alito dissented, joined in part by Justices Thomas and Barrett, and Justice Barrett also wrote her own dissent.[269]

Justice Barrett's dissent raised a question many readers will share: "where does the boundary between *Carpenter* and the third-party doctrine lie after today?" She asked whether police now need a warrant for "a person's Amazon purchase history" or "Google search history or Venmo transaction log."[270]

What is confirmed: Getting a person's cell-phone location history from a company like Google is a Fourth Amendment search.[271]

What is not yet known: Whether a geofence warrant like the one used here can satisfy the Fourth Amendment, and how far the reasoning reaches to other kinds of data held by companies. Those questions are open as of November 12, 2026.[272]

Passcodes and fingerprints

You might ask, "Can police make me unlock my phone?" This is an unsettled area. The Fifth Amendment protects against being "compelled in any criminal case to be a witness against

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[266] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[267] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[268] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[269] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[270] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), Barrett, J., dissenting. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[271] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[272] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

himself."[273] Courts have disagreed about whether being forced to enter a passcode, or to press a finger or show a face to unlock a device, counts as compelled testimony.

[Not verified: I did not confirm a current list of the federal and state court rulings on compelled unlocking from a primary or nonpartisan source before the cutoff. The Supreme Court had not decided the question as of November 12, 2026, based on my review of its opinions in the cases cited in this book.] If this comes up for you, it is a question for a lawyer in your state.

Technology aimed at the home: Kyllo (2001)

Phones are not the only technology the Court has addressed. Federal agents suspected Danny Kyllo of growing marijuana in his home, so they scanned it from outside with a thermal-imaging device. The scan showed parts of the house were much warmer than the rest and than the neighboring units, and that helped them get a warrant.[274]

The Court held that "where... the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment 'search,' and is presumptively unreasonable without a warrant."[275] Justice Scalia wrote for the Court.[276]

Note the words "not in general public use." As technology becomes common, how that phrase applies can change. [Interpretation: this is my reading of the holding's wording; the Court did not decide future technologies.]

Other phone and data issues

- **GPS trackers.** Attaching a GPS device to a car and using it to monitor the car's movements is a search.[277]
- **Your phone at the border.** Searches at the border follow different rules. Chapter 9 covers them.
- **Your phone and police recording.** Chapter 9 also covers recording police with your phone.

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[273] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[274] Kyllo v. United States, 533 U.S. 27 (2001). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep533/usrep533027/usrep533027.pdf (accessed November 12, 2026). Kyllo v. United States, 533 U.S. 27 (2001). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep533/usrep533027/usrep533027.pdf (accessed November 12, 2026).

[275] Kyllo v. United States, 533 U.S. 27 (2001). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep533/usrep533027/usrep533027.pdf (accessed November 12, 2026).

[276] Kyllo v. United States, 533 U.S. 27 (2001). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep533/usrep533027/usrep533027.pdf (accessed November 12, 2026).

[277] United States v. Jones, 565 U.S. 400 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep565/usrep565400/usrep565400.pdf (accessed November 12, 2026).

Key points from this chapter

- **Confirmed fact:** Police generally need a warrant to search the data on your phone, even after arresting you.[278]
- **Confirmed fact:** Getting your cell-site records or your phone location history from a company is a Fourth Amendment search.[279]
- **Interpretation:** Justice Barrett, dissenting, argued that *Chatrie* leaves the line between protected and unprotected business records unclear. The majority disagreed with her approach.[280]
- **Unknown:** Whether geofence warrants can be valid, and whether police can force you to unlock a phone, are open questions as of November 12, 2026.

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[278] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[279] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026). Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[280] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

Chapter 9: Recording Police, Carrying Firearms and Crossing Borders

Information in this chapter is current as of November 12, 2026.

This chapter covers three subjects the courts have handled in very different ways. On recording police, the Supreme Court has not ruled, but federal appeals courts have. On guns, the Supreme Court has ruled often and recently. On the border, the Supreme Court set the basic rule long ago, and appeals courts are split on phones and laptops.

Recording police

What the courts have said

The Supreme Court has not decided whether the First Amendment protects recording police in public. Federal appeals courts have.

In 2017, in *Fields v. City of Philadelphia*, the U.S. Court of Appeals for the Third Circuit heard two cases. Amanda Geraci, a legal observer, said an officer pinned her against a pillar for one to three minutes at a protest at the Philadelphia Convention Center. Richard Fields, a Temple University sophomore, photographed officers breaking up a house party, and was arrested and had his phone searched.[281] Writing for the court, Judge Ambro held that "the First Amendment protects the act of photographing, filming, or otherwise recording police officers" carrying out their duties in public. The court noted that "every Circuit Court of Appeals to address this issue (First, Fifth, Seventh, Ninth, and Eleventh)" had reached the same conclusion.[282]

But notice the second half of the case. The majority also asked whether the officers were entitled to qualified immunity, and answered: "We conclude they are." Judge Nygaard dissented on that point.[283] Chapter 14 explains why that happens. A right can exist and still not lead to money damages.

Confirmed fact: Every federal appeals court that had ruled on the question as of the *Fields* decision recognized a First Amendment right to record police in public.[284] [Not verified: I did not confirm a complete, current list of every circuit's ruling as of November 12, 2026, from a primary or nonpartisan source.]

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[281] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[282] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[283] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[284] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

Limits: distance, interference and state law

A right to record does not mean a right to interfere. Officers may still give lawful orders, such as to step back from an arrest. How close is too close has been tested.

Arizona's 8-foot law. In 2022 Arizona passed a law making it a crime to "knowingly film police officers 8 feet or closer if the officer tells the person to stop," as NBC News described it. Gov. Doug Ducey signed it on July 6.[285] Before it took effect, U.S. District Judge John J. Tuchi blocked it with a preliminary injunction after the state attorney general, the county prosecutor and the sheriff said they would not defend it.[286] The Davis Vanguard reported in July 2023 that the law had been blocked "since September 2022," never took effect, and that Judge Tuchi approved a settlement under which the state would reimburse the challengers $69,000 in fees.[287]

Audio recording laws. Some states require the consent of everyone in a private conversation before it is recorded. How those laws apply to recording police in public varies. [Not verified: I did not confirm a current list of all-party consent states or how each applies them to police from an official source before the cutoff.]

Advice from an advocacy group

The ACLU, a civil liberties advocacy group, tells people: "The First Amendment protects your right to take photos and videos of law enforcement officers." It also says that, if you are not under arrest, "a law enforcement officer needs a warrant to confiscate your device," and that "the government may never delete your photographs or videos under any circumstances." It warns that "some officers retaliate by making threats, spraying chemical irritants, and arresting people recording them."[288] These are the group's statements of its position. [Not verified: I did not obtain a police organization's published guidance on being recorded before the cutoff, so the other side is not presented here in its own words.]

You might ask, "So can I be arrested for recording?" The *Fields* case shows that it happens. Whether an arrest was lawful depends on the facts, such as whether you interfered or disobeyed a lawful order, and it is decided later, in court.[289]

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[285] "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read). https://www.nbcnews.com/news/us-news/federal-judge-blocks-arizona-law-limiting-filming-police-rcna47148 (accessed November 12, 2026).

[286] "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read). https://www.nbcnews.com/news/us-news/federal-judge-blocks-arizona-law-limiting-filming-police-rcna47148 (accessed November 12, 2026).

[287] Citlalli Florez, "Arizona Law Banning Recording of Police Declared Unconstitutional." Davis Vanguard, July 2023. https://www.davisvanguard.org/2023/07/arizona-law-banning-recording-of-police-declared-unconstitutional (accessed November 12, 2026).

[288] American Civil Liberties Union (civil liberties advocacy group), "Recording and Documenting Police and Federal Agents," Know Your Rights, last updated June 8, 2026. https://www.aclu.org/know-your-rights/recording-and-documenting-police-and-federal-agents (accessed November 12, 2026).

[289] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

Carrying firearms

What the Second Amendment protects

The Second Amendment reads: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."[290]

For much of the 20th century, people argued about whether that language protects an individual right or only a right tied to militia service. In 2008 the Court settled that question. In *District of Columbia v. Heller*, it held that the Second Amendment "protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home."[291]

The Court also said the right "is not unlimited." It said its opinion "should not be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."[292] In 2010 the Court applied the right to the states.[293]

Carrying in public: Bruen (2022)

New York required a person to show "proper cause," a special need, to get a license to carry a handgun in public. In 2022, in *New York State Rifle and Pistol Association, Inc. v. Bruen*, the Court held that the requirement violated the Constitution "by preventing law-abiding citizens with ordinary self-defense needs from exercising their Second Amendment right to keep and bear arms in public for self-defense."[294] Justice Thomas wrote for six Justices. Justice Breyer dissented, joined by Justices Sotomayor and Kagan.[295]

Bruen also set a new test. When the Second Amendment's text covers what a person wants to do, the government must show its law is "consistent with the Nation's historical tradition of firearm regulation."[296]

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[290] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[291] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554570/usrep554570.pdf (accessed November 12, 2026).

[292] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554570/usrep554570.pdf (accessed November 12, 2026).

[293] McDonald v. City of Chicago, 561 U.S. 742 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep561/usrep561742/usrep561742.pdf (accessed November 12, 2026).

[294] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026).

[295] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026).

[296] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion).

Refining the test: Rahimi (2024)

Two years later the Court made clear the history test does not demand an exact match. In *United States v. Rahimi*, it upheld a federal law that disarms people under certain domestic violence restraining orders. It held that "when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment."[297] Chief Justice Roberts wrote for eight Justices; Justice Thomas dissented.[298] The Court said the government need not find a "historical twin," and may reason by analogy to laws with similar purposes and methods.[299]

The 2026 rulings: Hemani and Wolford

United States v. Hemani (June 18, 2026). Federal law makes it a crime for an unlawful user of a controlled substance to possess a gun.[300] Mr. Hemani, a Texas-born man who lives in the Dallas area, surrendered a gun during a 2022 search of his family's home and told agents he used marijuana about every other day. The government prosecuted him based solely on that admitted marijuana use.[301] The Court held that "the government's prosecution of Mr. Hemani under Section 922(g)(3)'s unlawful user provision is inconsistent with the Second Amendment."[302] Justice Gorsuch wrote for seven Justices, and the other two agreed with the result.[303]

You might ask, "Does that mean drug users can now own guns?" Not in general. The ruling was about this prosecution, which the Court found rested on a reading of the law that would ban

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https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026). United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[297] United States v. Rahimi, 602 U.S. 680 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/602us1r43_p860.pdf (accessed November 12, 2026).

[298] United States v. Rahimi, 602 U.S. 680 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r43_p860.pdf (accessed November 12, 2026).

[299] United States v. Rahimi, 602 U.S. 680 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r43_p860.pdf (accessed November 12, 2026). United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[300] 18 U.S.C. 922, Unlawful acts (firearms). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/922 (accessed November 12, 2026).

[301] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[302] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[303] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

guns for any unlawful drug user regardless of whether the person's drug use made them dangerous.[304] The law is still on the books, and how it applies in other cases depends on the facts.

Wolford v. Lopez (June 25, 2026). After *Bruen*, Hawaii passed a law making it a crime for a person with a carry permit to bring a handgun onto private property open to the public, such as a store, unless the owner gave express permission. The Court held that this default rule "violates the Second and Fourteenth Amendments."[305] It reasoned that the law reversed the traditional rule, under which the public may enter property open to the public unless the owner says otherwise, and so imposed "a new and significant burden" on permit holders.[306] Justice Alito wrote for six Justices. Justice Kagan dissented, and Justice Jackson dissented, joined by Justice Sotomayor.[307]

Property owners can still ban guns on their own property under either rule. What changed is the default.[308]

Where states differ

Gun laws vary more from state to state than almost any other area in this book: permits, training, where you may carry, which weapons are allowed, and what to do if stopped while carrying. Some states require you to tell an officer you are carrying when stopped; others do not. [Not verified: I did not confirm a current 50-state summary of carry and duty-to-inform laws from an official or nonpartisan source before the cutoff.] Check your own state's laws, and the laws of any state you travel to, before carrying.

Crossing the border

The border search exception

At the border, the usual Fourth Amendment rules relax a great deal. In 1977 the Court held that "border searches without probable cause and without a warrant are nonetheless 'reasonable'

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[304] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[305] Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

[306] Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

[307] Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

[308] Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

within the meaning of the Fourth Amendment." It said the exception rests on "the recognized right of the sovereign to control… who and what may enter the country."[309]

In 1985 the Court put it this way: "Routine searches of the persons and effects of entrants are not subject to any requirement of reasonable suspicion, probable cause, or warrant."[310] But a detention that goes "beyond the scope of a routine customs search and inspection" needs more. In that case, holding a traveler suspected of smuggling drugs in her body was justified only because agents "reasonably suspect[ed]" it.[311]

In 2004 the Court held that the government's "authority to conduct suspicionless inspections at the border includes the authority to remove, disassemble, and reassemble a vehicle's fuel tank."[312]

Phones and laptops at the border

The Supreme Court has not decided how the border search exception applies to phones and laptops. *Riley* (Chapter 8) required a warrant to search a phone after an arrest, but it did not involve the border.[313]

The lower courts are divided. The Congressional Research Service, Congress's nonpartisan research office, wrote in 2021: "The courts, however, are split over whether more intrusive, forensic searches require at least reasonable suspicion," and that "the Supreme Court has not yet addressed this issue."[314] [Not verified: I did not confirm which circuits fall on each side of that split, or whether it has changed since 2021, before the cutoff. I also could not open U.S. Customs and Border Protection's current device search page.]

Confirmed fact: As of November 12, 2026, the Supreme Court had not decided how much suspicion, if any, is needed for a forensic search of a phone or laptop at the border.[315]

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[309] United States v. Ramsey, 431 U.S. 606 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep431/usrep431606/usrep431606.pdf (accessed November 12, 2026).

[310] United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[311] United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[312] United States v. Flores-Montano, 541 U.S. 149 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep541/usrep541149/usrep541149.pdf (accessed November 12, 2026).

[313] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[314] Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026).

[315] Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026). Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026).

Key points from this chapter

- **Confirmed fact:** Federal appeals courts that have ruled on it recognize a First Amendment right to record police in public, though officers may still give lawful orders and may have qualified immunity.[316]
- **Confirmed fact:** The Second Amendment protects an individual right to keep and bear arms, including carrying a handgun in public, subject to laws consistent with the nation's historical tradition.[317]
- **Confirmed fact:** In 2026 the Court ruled against a marijuana-user gun prosecution and against Hawaii's default ban on carrying on private property open to the public.[318]
- **Confirmed fact:** Routine border searches need no warrant or suspicion.[319]
- **Unknown (for this book):** The rule for forensic searches of phones at the border, where lower courts are split.[320]

Notes for Part Three: sources, unverified items and disagreements

Sources used in Part Three. Full details for each are in the footnotes and in Appendix D.

- "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read)

Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/26 (accessed November 12, 2026).

[316] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[317] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554570/usrep554570.pdf (accessed November 12, 2026). New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026). United States v. Rahimi, 602 U.S. 680 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/602us1r43_p860.pdf (accessed November 12, 2026).

[318] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026). Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

[319] United States v. Ramsey, 431 U.S. 606 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep431/usrep431606/usrep431606.pdf (accessed November 12, 2026). United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[320] Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026).

- 18 U.S.C. 922, Unlawful acts (firearms)
- American Civil Liberties Union (civil liberties advocacy group), "Know Your Rights: Stopped by Police," last updated June 8, 2026
- American Civil Liberties Union (civil liberties advocacy group), "Recording and Documenting Police and Federal Agents," Know Your Rights, last updated June 8, 2026
- Arizona v. Gant, 556 U.S. 332 (2009)
- Arizona v. Johnson, 555 U.S. 323 (2009)
- Barnes v. Felix, 605 U.S. 73 (2025)
- Birchfield v. North Dakota, 579 U.S. 438 (2016)
- Brendlin v. California, 551 U.S. 249 (2007)
- Brigham City v. Stuart, 547 U.S. 398 (2006)
- Caniglia v. Strom, 593 U.S. 194 (2021)
- Carpenter v. United States, 585 U.S. 296 (2018)
- Carroll v. United States, 267 U.S. 132 (1925)
- Case v. Montana, 607 U.S. 107 (2026)
- Chatrie v. United States, 609 U.S. 605 (2026)
- Chimel v. California, 395 U.S. 752 (1969)
- Citlalli Florez, "Arizona Law Banning Recording of Police Declared Unconstitutional." Davis Vanguard, July 2023
- Collins v. Virginia, 584 U.S. 586 (2018)
- Delaware v. Prouse, 440 U.S. 648 (1979)
- District of Columbia v. Heller, 554 U.S. 570 (2008)
- District of Columbia v. R. W., 608 U.S. 22 (2026)
- Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia)
- Florida v. Bostick, 501 U.S. 429 (1991)
- Florida v. J. L., 529 U.S. 266 (2000)
- Florida v. Jardines, 569 U.S. 1 (2013)
- Florida v. Jimeno, 500 U.S. 248 (1991)
- Floyd v. City of New York, No. 08 Civ. 1034 (SAS), Opinion and Order on liability (S.D.N.Y. Aug. 12, 2013) (Judge Shira A. Scheindlin). Copy posted by the NAACP Legal Defense Fund
- Graham v. Connor, 490 U.S. 386 (1989)
- Heien v. North Carolina, 574 U.S. 54 (2014)
- Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004)
- Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com)
- Horton v. California, 496 U.S. 128 (1990)
- Hudson v. Michigan, 547 U.S. 586 (2006)
- Illinois v. Caballes, 543 U.S. 405 (2005)
- Illinois v. Gates, 462 U.S. 213 (1983)
- Illinois v. Wardlow, 528 U.S. 119 (2000)
- Kansas v. Glover, 589 U.S. 376 (2020)

- Katz v. United States, 389 U.S. 347 (1967)
- Kyllo v. United States, 533 U.S. 27 (2001)
- Lange v. California, 594 U.S. 295 (2021)
- Mapp v. Ohio, 367 U.S. 643 (1961)
- Maryland v. Wilson, 519 U.S. 408 (1997)
- McDonald v. City of Chicago, 561 U.S. 742 (2010)
- Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990)
- Missouri v. McNeely, 569 U.S. 141 (2013)
- Navarette v. California, 572 U.S. 393 (2014)
- Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026
- New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022)
- Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026)
- Payton v. New York, 445 U.S. 573 (1980)
- Pennsylvania v. Mimms, 434 U.S. 106 (1977)
- Riley v. California, 573 U.S. 373 (2014)
- Rodriguez v. United States, 575 U.S. 348 (2015)
- Schneckloth v. Bustamonte, 412 U.S. 218 (1973)
- Smith v. Maryland, 442 U.S. 735 (1979)
- Susannah N. Tapp and Elizabeth J. Davis, "Contacts Between Police and the Public, 2022," NCJ 308847. Bureau of Justice Statistics, U.S. Department of Justice, October 2024
- Tennessee v. Garner, 471 U.S. 1 (1985)
- Terry v. Ohio, 392 U.S. 1 (1968)
- The Bill of Rights: A Transcription. National Archives and Records Administration
- United States v. Flores-Montano, 541 U.S. 149 (2004)
- United States v. Hemani, 608 U.S. 772 (2026)
- United States v. Jones, 565 U.S. 400 (2012)
- United States v. Leon, 468 U.S. 897 (1984)
- United States v. Miller, 425 U.S. 435 (1976)
- United States v. Montoya de Hernandez, 473 U.S. 531 (1985)
- United States v. Rahimi, 602 U.S. 680 (2024)
- United States v. Ramsey, 431 U.S. 606 (1977)
- Utah v. Strieff, 579 U.S. 232 (2016)
- Whren v. United States, 517 U.S. 806 (1996)
- Wilson v. Arkansas, 514 U.S. 927 (1995)
- Wolford v. Lopez, 609 U.S. 185 (2026)
- Wyoming v. Houghton, 526 U.S. 295 (1999)

Items marked [Not verified] in Part Three.

- I did not obtain a law enforcement organization's published advice on consent searches before the cutoff, so I cannot present that side in its own words here.

- I did not obtain each side's argument in its own words from a named official or group before the cutoff, so I do not summarize the debate or give a verdict on it.
- I did not find a single official source that states this as a rule; it reflects the absence of such a law in the U.S. Code as I searched it.
- I tried to open a federal traffic safety agency's published tips for drivers stopped by police, and it would not load before the cutoff. I did not find a law enforcement organization's published advice in its own words, so this paragraph presents only one side's guidance, labeled as advocacy.
- I did not confirm a current list of the federal and state court rulings on compelled unlocking from a primary or nonpartisan source before the cutoff. The Supreme Court had not decided the question as of November 12, 2026, based on my review of its opinions in the cases cited in this book.
- I did not confirm a complete, current list of every circuit's ruling as of November 12, 2026, from a primary or nonpartisan source.
- I did not confirm a current list of all-party consent states or how each applies them to police from an official source before the cutoff.
- I did not obtain a police organization's published guidance on being recorded before the cutoff, so the other side is not presented here in its own words.
- I did not confirm a current 50-state summary of carry and duty-to-inform laws from an official or nonpartisan source before the cutoff.
- I did not confirm which circuits fall on each side of that split, or whether it has changed since 2021, before the cutoff. I also could not open U.S. Customs and Border Protection's current device search page.

Where sources disagreed in Part Three.

- The Bureau of Justice Statistics report on 2022 police contacts gives "about 2%" in a summary heading and 1.5 percent in its detailed text for the share of people who experienced the threat or use of nonfatal force. Chapter 6 reports both and explains the difference.

Part Four: Silence, Lawyers and Trials

Chapter 10: The Right to Stay Silent

Information in this chapter is current as of November 12, 2026.

Where the right comes from

The Fifth Amendment says no person "shall be compelled in any criminal case to be a witness against himself."[321] Lawyers call this the privilege against self-incrimination. Since 1964 it has applied to the states too.[322]

In plain terms, the government cannot force you to help convict yourself with your own words. It has to prove its case some other way.

Miranda v. Arizona (1966)

In 1963 Ernesto Miranda was arrested in Phoenix and questioned by police without being told of his rights. He confessed, and the confession was used to convict him. In 1966 the Supreme Court reversed his conviction in a 5-4 decision written by Chief Justice Earl Warren.[323]

The Court held that prosecutors "may not use statements... stemming from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards."[324] It described those safeguards this way:

> *"Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."*[325]

Those are the familiar "Miranda warnings." In 2000 the Court refused to let Congress override *Miranda* by statute, noting that "Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture."[326]

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[321] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[322] Malloy v. Hogan, 378 U.S. 1 (1964). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep378/usrep378001/usrep378001.pdf (accessed November 12, 2026).

[323] "Miranda v. Arizona." Oyez (widely used reference). https://www.oyez.org/cases/1965/759 (accessed November 12, 2026). Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[324] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[325] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

When the warnings are required, and when they are not

Here is where television gets it wrong. *Miranda* warnings are required before **custodial interrogation**, which means both:

1. **Custody:** you are under arrest or your freedom is restrained in a significant way, and
2. **Interrogation:** police are questioning you.[327]

So:

- If police arrest you but do not question you, no warnings are needed.
- If police ask you questions in a casual, non-custodial setting, such as on your front porch where you are free to end the conversation, no warnings are needed.
- If you volunteer statements without being questioned, those statements can be used.

Age matters for custody. A 13-year-old seventh grader, identified in court papers as J. D. B., was taken from his classroom by a uniformed officer to a closed-door conference room and questioned by police and school officials for at least 30 minutes, without *Miranda* warnings and without being told he could leave. He confessed.[328] In 2011 the Court held that "a child's age properly informs *Miranda*'s custody analysis."[329] In other words, whether a reasonable person would feel free to leave can depend on whether that person is a child. Justice Sotomayor wrote for the Court.[330]

You might ask, "If they did not read me my rights, does my case get thrown out?" No. The usual remedy is that statements obtained in violation of *Miranda* may not be used as evidence in the prosecution's main case.[331] The arrest, physical evidence and other proof can still be used. Part Seven tests this claim directly.

What counts as "interrogation"?

Questioning does not have to be a direct question. In 1980 a robbery suspect in Providence, Rhode Island, asked for a lawyer and was placed in a police car. On the way, two officers talked

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[326] Dickerson v. United States, 530 U.S. 428 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep530/usrep530428/usrep530428.pdf (accessed November 12, 2026).

[327] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[328] J. D. B. v. North Carolina, 564 U.S. 261 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep564/usrep564261/usrep564261.pdf (accessed November 12, 2026).

[329] J. D. B. v. North Carolina, 564 U.S. 261 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep564/usrep564261/usrep564261.pdf (accessed November 12, 2026).

[330] J. D. B. v. North Carolina, 564 U.S. 261 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep564/usrep564261/usrep564261.pdf (accessed November 12, 2026).

[331] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

between themselves about the missing shotgun, saying there was a school for children with disabilities nearby and "God forbid one of them might find a weapon." The suspect interrupted and offered to show them where the gun was.[332]

The Court held that *Miranda* applies to "express questioning or its functional equivalent," meaning "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response."[333] On those facts, though, the Court found the officers' brief conversation was not interrogation.[334] Justice Stewart wrote for the Court.[335]

The public safety exception

In 1984 a woman told officers she had just been raped and that her attacker had gone into a nearby supermarket carrying a gun. An officer found the man, frisked him, found an empty shoulder holster, handcuffed him, and asked where the gun was. The man nodded toward some empty cartons and said, "the gun is over there."[336]

The Court held that there is a "public safety" exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted, and that the exception "does not depend upon the motivation of the individual officers involved."[337] The gun and the answer could be used. Justice Rehnquist wrote for the Court.[338]

Silence must be spoken out loud

This sounds odd, but it is the law. In two cases the Court held that you generally must **say** that you are invoking your rights.

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[332] Rhode Island v. Innis, 446 U.S. 291 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep446/usrep446291/usrep446291.pdf (accessed November 12, 2026).

[333] Rhode Island v. Innis, 446 U.S. 291 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep446/usrep446291/usrep446291.pdf (accessed November 12, 2026).

[334] Rhode Island v. Innis, 446 U.S. 291 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep446/usrep446291/usrep446291.pdf (accessed November 12, 2026).

[335] Rhode Island v. Innis, 446 U.S. 291 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep446/usrep446291/usrep446291.pdf (accessed November 12, 2026).

[336] New York v. Quarles, 467 U.S. 649 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep467/usrep467649/usrep467649.pdf (accessed November 12, 2026).

[337] New York v. Quarles, 467 U.S. 649 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep467/usrep467649/usrep467649.pdf (accessed November 12, 2026).

[338] New York v. Quarles, 467 U.S. 649 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep467/usrep467649/usrep467649.pdf (accessed November 12, 2026).

Berghuis v. Thompkins (2010). Van Chester Thompkins sat through about 2 hours and 45 minutes of questioning, saying very little, before answering a question that helped convict him. The Court held that his near-silence "did not invoke his right to remain silent," because, like the right to counsel, the right to silence must be invoked "unambiguously."[339]

Salinas v. Texas (2013). Genovevo Salinas, who was not in custody and had not been given warnings, voluntarily answered a police officer's questions about a murder, but fell silent when asked whether his shotgun would match shell casings found at the scene. Prosecutors used that silence against him at trial.[340] Three Justices concluded his claim failed "because he did not expressly invoke the privilege," and two others agreed with the result on other grounds.[341]

The practical lesson the courts' rulings point to: if you intend to stay silent, say so clearly, for example, "I am going to remain silent," and if you want a lawyer, say clearly, "I want a lawyer."

Asking for a lawyer

Once you clearly ask for a lawyer during custodial questioning, police must stop. In 1981 the Court held that a person who asks for counsel "is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication."[342]

But the request must be clear. In 1994 the Court held that "Maybe I should talk to a lawyer" was not clear enough, and officers could continue questioning.[343]

Can police lie during questioning?

Yes, within limits. In 1969 the Court reviewed a case where an officer "falsely told" a suspect that his cousin had confessed. The Court held that the lie was "relevant" but "insufficient... to make this otherwise voluntary confession inadmissible," looking at the "totality of the circumstances."[344]

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[339] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026).

[340] Salinas v. Texas, 570 U.S. 178 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep570/usrep570178/usrep570178.pdf (accessed November 12, 2026).

[341] Salinas v. Texas, 570 U.S. 178 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep570/usrep570178/usrep570178.pdf (accessed November 12, 2026).

[342] Edwards v. Arizona, 451 U.S. 477 (1981). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep451/usrep451477/usrep451477.pdf (accessed November 12, 2026).

[343] Davis v. United States, 512 U.S. 452 (1994). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep512/usrep512452/usrep512452.pdf (accessed November 12, 2026).

[344] Frazier v. Cupp, 394 U.S. 731 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep394/usrep394731/usrep394731.pdf (accessed November 12, 2026).

Varies by state: Some states have passed laws limiting deception when questioning young people. [Not verified: I did not confirm a current list of those states from a primary or nonpartisan source before the cutoff.]

Late warnings and two-step questioning

What if police get an unwarned confession, then give warnings and get it again?

- In 1985 the Court held that a later warned confession does not have to be thrown out "solely because the police had obtained an earlier voluntary but unwarned admission."[345]
- In 2004 the Court ruled the other way on a deliberate two-step strategy, where police questioned first, gave warnings midstream, and had the suspect repeat the confession.[346]

No lawsuit for a Miranda violation alone

In 2022, in *Vega v. Tekoh*, the Court held that "a violation of the *Miranda* rules does not provide a basis for a Section 1983 claim," meaning you cannot sue the officer for money damages just because warnings were not given.[347] The remedy is keeping the statements out of the trial. Justice Alito wrote for six Justices. Justice Kagan dissented, joined by Justices Breyer and Sotomayor.[348]

What the law says about what to say and not say

The prompt for this book asked me to explain what to say and not say, according to the law. I have kept to what the rulings show, without writing scripts of my own:

Situation	What the rulings show
Police ask you questions	You may decline to answer. To be safe, say clearly that you are choosing to remain silent[349]

[345] Oregon v. Elstad, 470 U.S. 298 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep470/usrep470298/usrep470298.pdf (accessed November 12, 2026).

[346] Missouri v. Seibert, 542 U.S. 600 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542600/usrep542600.pdf (accessed November 12, 2026).

[347] Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[348] Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[349] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026). Salinas v. Texas, 570 U.S. 178 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep570/usrep570178/usrep570178.pdf (accessed November 12, 2026).

Situation	What the rulings show
You want a lawyer	Say so clearly and without "maybe." Questioning must then stop[350]
You are asked your name during a lawful stop	Some states, such as Nevada, require you to identify yourself, but not to answer other questions[351]
Police tell you something that may not be true	Deception alone does not make a confession invalid[352]
You were not read your rights	That affects whether your answers to custodial questioning can be used, not whether the case continues[353]

And always: stay calm, keep your hands visible, and do not physically resist, even if you believe the stop or arrest is wrong. Your lawyer can raise the problem in court.

Key points from this chapter

- **Confirmed fact:** Miranda warnings are required before custodial interrogation, not at every arrest.[354]
- **Confirmed fact:** The remedy for a Miranda violation is keeping the statements out of evidence, not dismissing the case, and not a damages lawsuit.[355]

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[350] Edwards v. Arizona, 451 U.S. 477 (1981). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep451/usrep451477/usrep451477.pdf (accessed November 12, 2026). Davis v. United States, 512 U.S. 452 (1994). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep512/usrep512452/usrep512452.pdf (accessed November 12, 2026).

[351] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[352] Frazier v. Cupp, 394 U.S. 731 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep394/usrep394731/usrep394731.pdf (accessed November 12, 2026).

[353] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026). Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[354] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[355] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026). Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

- **Confirmed fact:** You must clearly say you are invoking your right to silence or to a lawyer.[356]
- **Confirmed fact:** Police deception during questioning does not by itself make a confession inadmissible.[357]

[356] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026). Davis v. United States, 512 U.S. 452 (1994). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep512/usrep512452/usrep512452.pdf (accessed November 12, 2026).

[357] Frazier v. Cupp, 394 U.S. 731 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep394/usrep394731/usrep394731.pdf (accessed November 12, 2026).

Chapter 11: The Right to a Lawyer and a Fair Trial

Information in this chapter is current as of November 12, 2026.

What the Sixth Amendment promises

In a criminal case, the Sixth Amendment gives the accused the right to "a speedy and public trial, by an impartial jury," to be told the charges, "to be confronted with the witnesses against him," to call witnesses, and "to have the Assistance of Counsel for his defence."[358] Each of those has its own line of court cases. This chapter walks through the main ones.

Gideon v. Wainwright (1963)

Clarence Earl Gideon was charged in Florida with breaking and entering, a felony. He could not afford a lawyer and asked the court to appoint one. Florida law at the time allowed appointed lawyers only in capital cases, so he defended himself, was convicted and was sentenced to five years.[359]

From prison, he petitioned the Supreme Court. The Court ruled for him unanimously, in an opinion by Justice Hugo Black.[360] It held that the right of a poor defendant to have a lawyer "is a fundamental right essential to a fair trial," and it overruled an earlier case that had said otherwise.[361] Justice Black wrote that "lawyers in criminal courts are necessities, not luxuries."[362]

Before Gideon: the Scottsboro case. *Gideon* had roots in a 1932 case, *Powell v. Alabama*. Black defendants accused of assaulting two white girls on a freight train were taken to Scottsboro, Alabama, where they were met by a large crowd and guarded by soldiers at every stage.[363] The Court held that, at least in a capital case, the right "to have the aid of counsel for his defense, which includes the right to have sufficient time to advise with counsel and to prepare a

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[358] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[359] "Gideon v. Wainwright." Oyez (a free law project of Cornell LII, Justia and Chicago-Kent College of Law; widely used reference). https://www.oyez.org/cases/1962/155 (accessed November 12, 2026).

[360] "Gideon v. Wainwright." Oyez (a free law project of Cornell LII, Justia and Chicago-Kent College of Law; widely used reference). https://www.oyez.org/cases/1962/155 (accessed November 12, 2026).

[361] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

[362] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

[363] Powell v. Alabama, 287 U.S. 45 (1932). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep287/usrep287045/usrep287045.pdf (accessed November 12, 2026).

defense, is one of the fundamental rights guaranteed by the due process clause of the Fourteenth Amendment."[364]

How far the right to appointed counsel reaches

In 1972 the Court extended *Gideon* to less serious cases that lead to jail: "absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial."[365]

You might ask, "Does that mean I get a free lawyer for a traffic ticket?" Usually not. The rule in *Argersinger* is tied to imprisonment. If jail time is not imposed, the federal constitutional right to appointed counsel generally does not apply, though many states give broader rights by their own laws.[366]

Children in juvenile court. In 1967 a 15-year-old Arizona boy, Gerald Gault, was committed to a state industrial school after juvenile court hearings over a complaint that he had made lewd telephone calls.[367] The Court held that in juvenile proceedings that may lead to commitment to an institution, "the child and his parents must be advised of their right to be represented by counsel and, if they are unable to afford counsel, that counsel will be appointed to represent the child."[368] Justice Fortas wrote for the Court.[369]

A lawyer who actually helps

Having a lawyer means having an effective one. In 1984 the Court held that "the Sixth Amendment right to counsel is the right to the effective assistance of counsel." The test is whether the lawyer's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result."[370] In practice, courts require

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[364] Powell v. Alabama, 287 U.S. 45 (1932). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep287/usrep287045/usrep287045.pdf (accessed November 12, 2026).

[365] Argersinger v. Hamlin, 407 U.S. 25 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407025/usrep407025.pdf (accessed November 12, 2026).

[366] Argersinger v. Hamlin, 407 U.S. 25 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407025/usrep407025.pdf (accessed November 12, 2026).

[367] In re Gault, 387 U.S. 1 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf (accessed November 12, 2026).

[368] In re Gault, 387 U.S. 1 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf (accessed November 12, 2026).

[369] In re Gault, 387 U.S. 1 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep387/usrep387001/usrep387001.pdf (accessed November 12, 2026).

[370] Strickland v. Washington, 466 U.S. 668 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep466/usrep466668/usrep466668.pdf (accessed November 12, 2026).

both poor performance and a reasonable probability that it changed the outcome, which is a hard standard to meet.[371]

A 2026 ruling on talking to your lawyer during trial. In February 2026, in *Villarreal v. Texas*, a judge ordered a defendant's lawyer not to discuss the defendant's ongoing testimony during an overnight break in the middle of that testimony, while allowing other topics. The Court held that such a limited order "does not violate the Constitution," because it balances the right to counsel against the need for testimony that has not been coached.[372] Justice Jackson wrote for the Court.[373]

Defending yourself

You also have the right **not** to have a lawyer. In 1975 the Court held that the Sixth Amendment guarantees "an independent constitutional right of self-representation," so a defendant "may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so."[374] In that case, California courts had forced Faretta to accept a public defender against his will.[375]

You might ask, "Is that a good idea?" The Court in *Gideon* called lawyers "necessities, not luxuries."[376] The right to represent yourself exists, but the decision must be knowing and voluntary, and judges commonly warn defendants of the risks. [Not verified: I did not confirm a specific required warning from a primary source before the cutoff.]

Plea bargains and advice about consequences

Most criminal cases end in a guilty plea, not a trial. The Court has held that the right to effective counsel applies there too.

- **Plea offers must be passed on.** Galin Frye was charged with driving with a revoked license, a felony in his case because of prior convictions. The prosecutor offered to reduce the charge to a misdemeanor with a 90-day sentence recommendation, but his

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[371] Strickland v. Washington, 466 U.S. 668 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep466/usrep466668/usrep466668.pdf (accessed November 12, 2026).

[372] Villarreal v. Texas, 607 U.S. 465 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us2r16_869c.pdf (accessed November 12, 2026).

[373] Villarreal v. Texas, 607 U.S. 465 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r16_869c.pdf (accessed November 12, 2026).

[374] Faretta v. California, 422 U.S. 806 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep422/usrep422806/usrep422806.pdf (accessed November 12, 2026).

[375] Faretta v. California, 422 U.S. 806 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep422/usrep422806/usrep422806.pdf (accessed November 12, 2026).

[376] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

lawyer never told him, and the offers expired. He later pleaded guilty with no deal and got three years.[377] In 2012 the Court held that the right to effective counsel "extends to the consideration of plea offers that lapse or are rejected."[378] Justice Kennedy wrote for the Court.[379]

- **Immigration consequences.** Mr. Padilla, a lawful permanent resident for more than 40 years, pleaded guilty to drug charges in Kentucky. He said his lawyer told him not to worry about deportation because he had lived in the country so long.[380] In 2010 the Court held that "counsel must inform a client whether his plea carries a risk of deportation."[381] Justice Stevens wrote for the Court.[382]

Evidence that helps the defense

In 1963, in *Brady v. Maryland*, the Court held that "suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution."[383] Lawyers call this "*Brady* material."

Facts that raise a sentence go to the jury

In 2000 the Court held that "any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a

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[377] Missouri v. Frye, 566 U.S. 134 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep566/usrep566134/usrep566134.pdf (accessed November 12, 2026). Missouri v. Frye, 566 U.S. 134 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep566/usrep566134/usrep566134.pdf (accessed November 12, 2026).

[378] Missouri v. Frye, 566 U.S. 134 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep566/usrep566134/usrep566134.pdf (accessed November 12, 2026).

[379] Missouri v. Frye, 566 U.S. 134 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep566/usrep566134/usrep566134.pdf (accessed November 12, 2026).

[380] Padilla v. Kentucky, 559 U.S. 356 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep559/usrep559356/usrep559356.pdf (accessed November 12, 2026).

[381] Padilla v. Kentucky, 559 U.S. 356 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep559/usrep559356/usrep559356.pdf (accessed November 12, 2026).

[382] Padilla v. Kentucky, 559 U.S. 356 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep559/usrep559356/usrep559356.pdf (accessed November 12, 2026).

[383] Brady v. Maryland, 373 U.S. 83 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep373/usrep373083/usrep373083.pdf (accessed November 12, 2026).

jury and proved beyond a reasonable doubt."[384] Justice Stevens wrote for the Court.[385] In plain terms, a judge alone cannot find the facts that push a sentence above the legal maximum.

A jury of your peers

Jury trial. Since 1968, the right to a jury in serious criminal cases has applied to the states.[386]

Unanimous verdicts. In 2020 the Court held that the Sixth Amendment requires a unanimous jury to convict of a serious offense, in state as well as federal court.[387] The Court noted that 48 states and the federal courts already required unanimity, while "two States, Louisiana and Oregon, have long punished people based on 10-to-2 verdicts."[388]

Race and jury selection. In 1986 the Court held that prosecutors may not use their peremptory strikes, the strikes that need no stated reason, to exclude jurors because of race.[389] In May 2026, in *Pitchford v. Cain*, the Court held that the Mississippi Supreme Court "unreasonably applied" those rules in a death penalty case where the prosecutor struck four Black prospective jurors.[390]

Confronting your accusers

The Confrontation Clause lets you cross-examine the witnesses against you. In 2004 the Court held that when "testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is confrontation."[391] In other words, a statement made to police

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[384] Apprendi v. New Jersey, 530 U.S. 466 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep530/usrep530466/usrep530466.pdf (accessed November 12, 2026).

[385] Apprendi v. New Jersey, 530 U.S. 466 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep530/usrep530466/usrep530466.pdf (accessed November 12, 2026).

[386] Duncan v. Louisiana, 391 U.S. 145 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep391/usrep391145/usrep391145.pdf (accessed November 12, 2026).

[387] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

[388] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

[389] Batson v. Kentucky, 476 U.S. 79 (1986). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep476/usrep476079/usrep476079.pdf (accessed November 12, 2026).

[390] Pitchford v. Cain, 608 U.S. 391 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r38_l53m.pdf (accessed November 12, 2026).

[391] Crawford v. Washington, 541 U.S. 36 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep541/usrep541036/usrep541036.pdf (accessed November 12, 2026).

generally cannot be used against you unless the person who made it is available for cross-examination, or was earlier.

The 2025 ruling on screens. In November 2025, in *Pitts v. Mississippi*, the trial court let a child witness testify behind a screen so she would not have to see the defendant, relying on a state law that gave child witnesses that right. The Court held that the Sixth Amendment allows screening only if the court hears evidence and makes a "case-specific" finding that it is necessary. Pointing to the statute was not enough.[392] The Court sent the case back to decide whether the error was harmless.[393]

A speedy trial

How fast is "speedy"? There is no fixed number. In 1972 the Court said the right "cannot be established by any inflexible rule" and instead weighs factors such as "the length of and reason for the delay" and whether the defendant asserted the right.[394] Many states and the federal government also have speedy trial statutes with specific deadlines.

Key points from this chapter

- **Confirmed fact:** If you face jail and cannot afford a lawyer, you have a right to an appointed one.[395]
- **Confirmed fact:** The right is to effective help, judged by a demanding two-part standard.[396]
- **Confirmed fact:** Serious criminal convictions require a unanimous jury in every state.[397]
- **Confirmed fact:** Prosecutors may not strike jurors because of race.[398]

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[392] Pitts v. Mississippi, 607 U.S. 1 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/607us1r01_kjfm.pdf (accessed November 12, 2026).

[393] Pitts v. Mississippi, 607 U.S. 1 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r01_kjfm.pdf (accessed November 12, 2026).

[394] Barker v. Wingo, 407 U.S. 514 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407514/usrep407514.pdf (accessed November 12, 2026).

[395] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026). Argersinger v. Hamlin, 407 U.S. 25 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407025/usrep407025.pdf (accessed November 12, 2026).

[396] Strickland v. Washington, 466 U.S. 668 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep466/usrep466668/usrep466668.pdf (accessed November 12, 2026).

[397] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

- **Confirmed fact:** You generally have a right to cross-examine the people whose statements are used against you, and screens need case-specific findings.[399]

[398] Batson v. Kentucky, 476 U.S. 79 (1986). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep476/usrep476079/usrep476079.pdf (accessed November 12, 2026). Pitchford v. Cain, 608 U.S. 391 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r38_l53m.pdf (accessed November 12, 2026).

[399] Crawford v. Washington, 541 U.S. 36 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep541/usrep541036/usrep541036.pdf (accessed November 12, 2026). Pitts v. Mississippi, 607 U.S. 1 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r01_kjfm.pdf (accessed November 12, 2026).

Chapter 12: Bail, Fines and Punishment

Information in this chapter is current as of November 12, 2026.

The Eighth Amendment in one sentence

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[400]

That one sentence covers three different points in a criminal case: before trial (bail), at sentencing (fines), and the punishment itself.

Bail

Bail is money or conditions that let a person go free while waiting for trial, with a promise to come back to court. In 1951 the Court held that bail "set before trial at a figure higher than an amount reasonably calculated to fulfill the purpose of assuring the presence of the defendant is 'excessive' under the Eighth Amendment."[401] It also said bail must be based on standards relevant to that purpose and set for each individual defendant.[402]

Detention without bail. In 1987 the Court upheld a federal law that allows judges to hold some defendants before trial if no conditions can reasonably protect the community. It wrote: "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[403] The Court found that the law's purpose was regulatory, not punishment, and that it had enough procedural protections.[404]

Unknown (for this book): Bail reform is actively debated in many states. [Not verified: I did not confirm a current list of state bail laws, each side's position in its own words, or any study of the effects of recent reforms from a primary or nonpartisan source before the cutoff. I searched official and court sources available to me, so I make no claim here about what the reforms have done or which side the evidence favors.]

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[400] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[401] Stack v. Boyle, 342 U.S. 1 (1951). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep342/usrep342001/usrep342001.pdf (accessed November 12, 2026).

[402] Stack v. Boyle, 342 U.S. 1 (1951). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep342/usrep342001/usrep342001.pdf (accessed November 12, 2026).

[403] United States v. Salerno, 481 U.S. 739 (1987). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep481/usrep481739/usrep481739.pdf (accessed November 12, 2026).

[404] United States v. Salerno, 481 U.S. 739 (1987). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep481/usrep481739/usrep481739.pdf (accessed November 12, 2026).

Excessive fines

The Excessive Fines Clause limits what the government may take as punishment, whether in cash or in property.

- In 1993 the Court held that civil forfeiture under a federal drug law is "a monetary punishment and, as such, is subject to the limitations of the Excessive Fines Clause."[405]
- In 1998 the Court held that taking all $357,144 a traveler failed to report when leaving the country would violate the clause, because the forfeiture was "grossly disproportional" to the reporting offense.[406]
- In 2019, in *Timbs v. Indiana*, the Court held that the clause applies to the states.[407]

The *Timbs* facts show why this matters. Tyson Timbs pleaded guilty to drug and theft charges. Police seized his Land Rover, which he had bought for $42,000 with money he received from an insurance policy when his father died. The trial court noted that was "more than four times the maximum $10,000 monetary fine" for his drug conviction and refused the forfeiture as grossly disproportional.[408] After the Supreme Court's ruling, the case went back to the Indiana courts. Chapter 13 covers forfeiture in more depth.

Jail for being unable to pay. A fine can also turn into jail. In a 1983 Georgia case, a man on probation paid the first $200 of a $750 fine and restitution, then lost his job and could not find work. The court revoked his probation and sent him to prison.[409] The Supreme Court held that a court "cannot properly revoke a defendant's probation for failure to pay a fine and make restitution, absent evidence and findings that he was somehow responsible for the failure or that alternative forms of punishment were inadequate." If a person has made "all reasonable bona fide efforts" to pay and cannot through no fault of his own, the Court said "it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishment" are available.[410] Justice O'Connor wrote for the Court.[411]

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[405] Austin v. United States, 509 U.S. 602 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep509/usrep509602/usrep509602.pdf (accessed November 12, 2026).

[406] United States v. Bajakajian, 524 U.S. 321 (1998). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep524/usrep524321/usrep524321.pdf (accessed November 12, 2026).

[407] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[408] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[409] Bearden v. Georgia, 461 U.S. 660 (1983). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep461/usrep461660/usrep461660.pdf (accessed November 12, 2026).

[410] Bearden v. Georgia, 461 U.S. 660 (1983). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep461/usrep461660/usrep461660.pdf (accessed November 12, 2026).

[411] Bearden v. Georgia, 461 U.S. 660 (1983). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep461/usrep461660/usrep461660.pdf (accessed November 12, 2026).

A 2026 related ruling. In June 2026, in *Pung v. Isabella County*, a county sold a home at a tax auction to collect a tax debt. The owner argued he was owed the home's fair market value. The Court held that the proper measure of "just compensation" after a fairly conducted tax sale is "the auction sale price, not the property's hypothetical fair market value," and it rejected the claim that the sale was an excessive fine.[412] Justice Alito wrote for the Court.[413]

Cruel and unusual punishment

Courts read this clause by looking at text, history, tradition and earlier cases.[414] One well-known example: in 2005 the Court held that the Constitution forbids the death penalty "on offenders who were under the age of 18 when their crimes were committed."[415]

Prison conditions can also violate this clause. In 2020 the Court held that officers were not entitled to qualified immunity when they held an inmate for days in a cell covered, "nearly floor to ceiling," in feces, and then in a cold cell where raw sewage spilled across the floor, because "any reasonable correctional officer should have realized" that the conditions were unconstitutional.[416] Chapter 14 explains qualified immunity.

Which crimes can bring a death sentence

In 2008 the Court held that "the Eighth Amendment bars Louisiana from imposing the death penalty for the rape of a child where the crime did not result, and was not intended to result, in the victim's death."[417] The case involved a man convicted of raping his 8-year-old stepdaughter. Justice Kennedy wrote for five Justices. Justice Alito dissented, joined by Chief Justice Roberts and Justices Scalia and Thomas.[418]

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[412] Pung v. Isabella County, 609 U.S. 30 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r54_d18e.pdf (accessed November 12, 2026).

[413] Pung v. Isabella County, 609 U.S. 30 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r54_d18e.pdf (accessed November 12, 2026).

[414] Roper v. Simmons, 543 U.S. 551 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep543/usrep543551/usrep543551.pdf (accessed November 12, 2026).

[415] Roper v. Simmons, 543 U.S. 551 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep543/usrep543551/usrep543551.pdf (accessed November 12, 2026).

[416] Taylor v. Riojas, 592 U.S. 7 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/592US1PP_web.pdf#page=47 (accessed November 12, 2026).

[417] Kennedy v. Louisiana, 554 U.S. 407 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554407/usrep554407.pdf (accessed November 12, 2026).

[418] Kennedy v. Louisiana, 554 U.S. 407 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554407/usrep554407.pdf (accessed November 12, 2026).

Long prison terms: the "three strikes" case

For prison sentences, the Court has applied only a "narrow proportionality principle." Under California's three strikes law, a man named Ewing, who had prior serious or violent felony convictions, received 25 years to life for stealing three golf clubs worth $399 apiece. In 2003 the Court upheld the sentence, with the lead opinion concluding it was "not grossly disproportionate."[419]

Young offenders

The Court has drawn several lines for people who commit crimes as juveniles, building on *Roper*:

- **Life without parole for crimes other than homicide.** Terrance Graham was 16 when he committed an armed burglary. After he violated his probation, a Florida court sentenced him to life in prison, and because Florida had abolished parole, he had no chance of release except clemency.[420] In 2010 the Court held that the Eighth Amendment "does not permit a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime."[421] Justice Kennedy wrote for the Court.[422]
- **Mandatory life without parole.** In two cases decided together in 2012, 14-year-olds had been convicted of murder and received mandatory sentences of life without parole.[423] The Court held that the Eighth Amendment "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders."[424] Justice Kagan wrote for the Court.[425]

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[419] Ewing v. California, 538 U.S. 11 (2003). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep538/usrep538011/usrep538011.pdf (accessed November 12, 2026).

[420] Graham v. Florida, 560 U.S. 48 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560048/usrep560048.pdf (accessed November 12, 2026).

[421] Graham v. Florida, 560 U.S. 48 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560048/usrep560048.pdf (accessed November 12, 2026).

[422] Graham v. Florida, 560 U.S. 48 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560048/usrep560048.pdf (accessed November 12, 2026).

[423] Miller v. Alabama, 567 U.S. 460 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep567/usrep567460/usrep567460.pdf (accessed November 12, 2026).

[424] Miller v. Alabama, 567 U.S. 460 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep567/usrep567460/usrep567460.pdf (accessed November 12, 2026).

[425] Miller v. Alabama, 567 U.S. 460 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep567/usrep567460/usrep567460.pdf (accessed November 12, 2026).

You might ask, "Does *Miller* mean no juvenile can ever get life without parole?" No. Its holding is about **mandatory** sentences, ones the judge has no choice about. It requires the sentencer to be able to consider the offender's youth.[426]

Intellectual disability and the death penalty

In 2002 the Court held that executing people with intellectual disability (the opinion used the older term "mentally retarded") is a "cruel and unusual" punishment prohibited by the Eighth Amendment.[427] It explained that a punishment is "excessive" if it is "not graduated and proportioned to the offense," judged by "currently prevailing standards of decency," with state laws as the clearest evidence of those standards.[428]

Homelessness and camping laws: Grants Pass (2024)

Grants Pass, Oregon, a city of about 38,000 people with roughly 600 homeless on a given day, banned camping on public property. Repeat violations could lead to jail. A federal appeals court had earlier held that cities could not enforce such laws against homeless people when there were more homeless people than available shelter beds.[429]

The Supreme Court reversed. It held: "The enforcement of generally applicable laws regulating camping on public property does not constitute 'cruel and unusual punishment' prohibited by the Eighth Amendment." It reasoned that the clause is aimed at "the method or kind of punishment," not at what conduct a government may make a crime.[430] Justice Gorsuch wrote for six Justices.[431]

Justice Sotomayor dissented, joined by Justices Kagan and Jackson. She wrote: "Sleep is a biological necessity, not a crime." In her view, for people with no access to shelter, the city's laws punish them "for being homeless," which she called "unconscionable and unconstitutional."[432]

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[426] Miller v. Alabama, 567 U.S. 460 (2012). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep567/usrep567460/usrep567460.pdf (accessed November 12, 2026).

[427] Atkins v. Virginia, 536 U.S. 304 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536304/usrep536304.pdf (accessed November 12, 2026).

[428] Atkins v. Virginia, 536 U.S. 304 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536304/usrep536304.pdf (accessed November 12, 2026).

[429] City of Grants Pass v. Johnson, 603 U.S. 520 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r56_1bo2.pdf (accessed November 12, 2026).

[430] City of Grants Pass v. Johnson, 603 U.S. 520 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r56_1bo2.pdf (accessed November 12, 2026).

[431] City of Grants Pass v. Johnson, 603 U.S. 520 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r56_1bo2.pdf (accessed November 12, 2026).

[432] City of Grants Pass v. Johnson, 603 U.S. 520 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/603us1r56_1bo2.pdf (accessed November 12, 2026).

What the ruling does and does not do: It does not require cities to pass camping bans. It holds that the Eighth Amendment does not stop them. Cities and states remain free to choose their own policies.[433]

Key points from this chapter

- **Confirmed fact:** Bail may not be set higher than needed to make sure a defendant returns to court, but some defendants may be held without bail under laws with proper safeguards.[434]
- **Confirmed fact:** Fines and forfeitures that are grossly disproportional to the offense violate the Eighth Amendment, in federal and state cases.[435]
- **Confirmed fact:** The death penalty may not be imposed for crimes committed under age 18.[436]
- **Unknown (for this book):** The effects of recent state bail reforms, which I did not verify before the cutoff.

Notes for Part Four: sources, unverified items and disagreements

Sources used in Part Four. Full details for each are in the footnotes and in Appendix D.

- "Gideon v. Wainwright." Oyez (a free law project of Cornell LII, Justia and Chicago-Kent College of Law; widely used reference)
- "Miranda v. Arizona." Oyez (widely used reference)
- Apprendi v. New Jersey, 530 U.S. 466 (2000)
- Argersinger v. Hamlin, 407 U.S. 25 (1972)
- Atkins v. Virginia, 536 U.S. 304 (2002)
- Austin v. United States, 509 U.S. 602 (1993)
- Barker v. Wingo, 407 U.S. 514 (1972)
- Batson v. Kentucky, 476 U.S. 79 (1986)

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[433] City of Grants Pass v. Johnson, 603 U.S. 520 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r56_1bo2.pdf (accessed November 12, 2026).

[434] Stack v. Boyle, 342 U.S. 1 (1951). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep342/usrep342001/usrep342001.pdf (accessed November 12, 2026). United States v. Salerno, 481 U.S. 739 (1987). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep481/usrep481739/usrep481739.pdf (accessed November 12, 2026).

[435] United States v. Bajakajian, 524 U.S. 321 (1998). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep524/usrep524321/usrep524321.pdf (accessed November 12, 2026). Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[436] Roper v. Simmons, 543 U.S. 551 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep543/usrep543551/usrep543551.pdf (accessed November 12, 2026).

- Bearden v. Georgia, 461 U.S. 660 (1983)
- Berghuis v. Thompkins, 560 U.S. 370 (2010)
- Brady v. Maryland, 373 U.S. 83 (1963)
- City of Grants Pass v. Johnson, 603 U.S. 520 (2024)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Davis v. United States, 512 U.S. 452 (1994)
- Dickerson v. United States, 530 U.S. 428 (2000)
- Duncan v. Louisiana, 391 U.S. 145 (1968)
- Edwards v. Arizona, 451 U.S. 477 (1981)
- Ewing v. California, 538 U.S. 11 (2003)
- Faretta v. California, 422 U.S. 806 (1975)
- Frazier v. Cupp, 394 U.S. 731 (1969)
- Gideon v. Wainwright, 372 U.S. 335 (1963)
- Graham v. Florida, 560 U.S. 48 (2010)
- Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004)
- In re Gault, 387 U.S. 1 (1967)
- J. D. B. v. North Carolina, 564 U.S. 261 (2011)
- Kennedy v. Louisiana, 554 U.S. 407 (2008)
- Malloy v. Hogan, 378 U.S. 1 (1964)
- Miller v. Alabama, 567 U.S. 460 (2012)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- Missouri v. Frye, 566 U.S. 134 (2012)
- Missouri v. Seibert, 542 U.S. 600 (2004)
- Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026
- New York v. Quarles, 467 U.S. 649 (1984)
- Oregon v. Elstad, 470 U.S. 298 (1985)
- Padilla v. Kentucky, 559 U.S. 356 (2010)
- Pitchford v. Cain, 608 U.S. 391 (2026)
- Pitts v. Mississippi, 607 U.S. 1 (2025)
- Powell v. Alabama, 287 U.S. 45 (1932)
- Pung v. Isabella County, 609 U.S. 30 (2026)
- Ramos v. Louisiana, 590 U.S. 83 (2020)
- Rhode Island v. Innis, 446 U.S. 291 (1980)
- Roper v. Simmons, 543 U.S. 551 (2005)
- Salinas v. Texas, 570 U.S. 178 (2013)
- Stack v. Boyle, 342 U.S. 1 (1951)
- Strickland v. Washington, 466 U.S. 668 (1984)
- Taylor v. Riojas, 592 U.S. 7 (2020)
- The Bill of Rights: A Transcription. National Archives and Records Administration
- Timbs v. Indiana, 586 U.S. 146 (2019)
- United States v. Bajakajian, 524 U.S. 321 (1998)

- United States v. Salerno, 481 U.S. 739 (1987)
- Vega v. Tekoh, 597 U.S. 134 (2022)
- Villarreal v. Texas, 607 U.S. 465 (2026)

Items marked [Not verified] in Part Four.

- I did not confirm a current list of those states from a primary or nonpartisan source before the cutoff.
- I did not confirm a specific required warning from a primary source before the cutoff.
- I did not confirm a current list of state bail laws, each side's position in its own words, or any study of the effects of recent reforms from a primary or nonpartisan source before the cutoff. I searched official and court sources available to me, so I make no claim here about what the reforms have done or which side the evidence favors.

Where sources disagreed in Part Four.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Part Five: Forfeiture and Qualified Immunity

Chapter 13: Civil Asset Forfeiture

Information in this chapter is current as of November 12, 2026.

What forfeiture is

Forfeiture is the government taking property because of its link to a crime. There are two kinds, and the difference matters more than almost anything else in this chapter.

- **Criminal forfeiture** is part of a criminal case. The person is charged, and the property is taken as part of the punishment after a conviction.
- **Civil forfeiture** is a case against the property itself. The owner does not have to be charged with a crime, let alone convicted. That is why civil forfeiture cases have names like *United States v. $8,850*, the name of a case the Supreme Court cited in 2024.[437]

Federal law allows civil forfeiture of property tied to many federal crimes, including money and property traceable to drug trafficking.[438] Every state also has its own forfeiture laws, and they differ a great deal.[439]

You might ask, "How can the government keep my property if I was never charged?" The short answer is history. The Supreme Court has traced forfeiture of property used in wrongdoing back to early English and American law, and it has relied on that history to uphold forfeitures even against owners who did nothing wrong, as the next section shows.[440]

The federal rules

Congress set the basic federal rules for civil forfeiture in 18 U.S.C. 983. In plain terms:

Rule	What the statute says
Notice	In most cases where the government handles a forfeiture without going to court, it must send written notice "in no case more than 60 days after the date of the seizure," with some exceptions[441]

[437] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[438] 18 U.S.C. 981, Civil forfeiture. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/981 (accessed November 12, 2026). 21 U.S.C. 881, Forfeitures. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/21/881 (accessed November 12, 2026).

[439] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[440] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026).

[441] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

Rule	What the statute says
Who must prove what	"The burden of proof is on the Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture"[442]
Connection to the crime	When the government says property was used to commit a crime, it must show "a substantial connection between the property and the offense"[443]
Innocent owners	"An innocent owner's interest in property shall not be forfeited," but the owner carries the burden of proving that he or she is an innocent owner[444]
A lawyer	There is no general right to a free lawyer. A court may let an appointed criminal defense lawyer also handle the property claim, and must arrange a lawyer when the property is the person's primary residence and the person cannot afford one[445]
Hardship	An owner may ask for property back while the case goes on if keeping it would cause "substantial hardship," such as "preventing an individual from working, or leaving an individual homeless," among other conditions[446]

"Preponderance of the evidence" means more likely than not. That is a lower bar than "beyond a reasonable doubt," the standard for a criminal conviction.

[442] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[443] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[444] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[445] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[446] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

What the Supreme Court has said

Bennis v. Michigan (1996): an innocent co-owner loses her share

Tina Bennis co-owned a car with her husband. He used it for sex with a prostitute, and Michigan declared the car forfeit as a public nuisance. She did not know what he was doing, and the trial court gave her nothing back for her share.[447]

The Supreme Court held that the forfeiture "did not offend the Due Process Clause of the Fourteenth Amendment or the Takings Clause of the Fifth Amendment." It pointed to "a long and unbroken line of cases" holding that "an owner's interest in property may be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use."[448]

Confirmed fact: The Constitution, as the Court read it in *Bennis*, does not by itself require an innocent owner defense. Federal law now provides one by statute, as the table above shows.[449]

The Excessive Fines Clause applies

Chapter 12 covered three cases that limit forfeiture through the Eighth Amendment:

- *Austin* (1993) held that civil forfeiture under a federal drug law is punishment subject to the Excessive Fines Clause.[450]
- *Bajakajian* (1998) held that taking all $357,144 a traveler failed to report was "grossly disproportional" to the offense.[451]
- *Timbs* (2019) held that the clause applies to the states, in a case about a $42,000 Land Rover.[452]

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[447] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026).

[448] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026).

[449] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026). 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[450] Austin v. United States, 509 U.S. 602 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep509/usrep509602/usrep509602.pdf (accessed November 12, 2026).

[451] United States v. Bajakajian, 524 U.S. 321 (1998). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep524/usrep524321/usrep524321.pdf (accessed November 12, 2026).

[452] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

Culley v. Marshall (2024): how fast you get a hearing

Halima Culley lent her car to her son, who was stopped by Alabama police and arrested for having marijuana. Lena Sutton lent her car to a friend, who was stopped and arrested for trafficking methamphetamine. Alabama seized both cars and filed forfeiture cases 10 and 13 days later.[453]

Both women eventually won their cars back by showing they were innocent owners. Culley's car was seized in February 2019 and a state court ordered it returned on October 30, 2020. Sutton got hers back after a state court ruled for her on May 28, 2020.[454] The Court's majority noted that each woman had moved slowly in her own state case: Culley "waited six months" to answer the complaint and another year before raising the innocent owner defense.[455]

They then sued in federal court, arguing that due process required a quick "preliminary hearing" to decide whether the state could keep their cars while the main case went on. The Court disagreed. It held: "In civil forfeiture cases involving personal property, the Due Process Clause requires a timely forfeiture hearing but does not require a separate preliminary hearing."[456] Justice Kavanaugh wrote for six Justices.[457]

The other opinions show how divided the Justices are about forfeiture as a whole:

- **Justice Gorsuch**, joined by Justice Thomas, agreed with the result but wrote that the case left larger questions open. He noted that states take many approaches: some set fixed deadlines for hearings, others "require a jury trial," "still others condition civil forfeiture on a successful criminal prosecution," and "a few now require preliminary hearings."[458]
- **Justice Sotomayor**, joined by Justices Kagan and Jackson, dissented. She wrote that a "lack of standardized procedural safeguards makes civil forfeiture vulnerable to abuse," and, relying on a brief from the Institute for Justice, that "in 32 States and the federal

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[453] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[454] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[455] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[456] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[457] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[458] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

system, when law enforcement agencies forfeit property, the proceeds go to their own budgets."[459]

Interpretation (Justice Sotomayor's, in dissent): that budget link gives police "a financial incentive to seize as many cars as possible and try to retain them."[460] The majority did not adopt that view.[461]

Good (1993): notice before taking a home

Four and a half years after police found drugs in a Hawaii man's home, the federal government filed a civil forfeiture case against his house and land and seized the property without notice or a hearing.[462] The Court held that "absent exigent circumstances, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture."[463] Justice Kennedy wrote the opinion.[464] Note the contrast with *Culley*: a home cannot easily be hidden or moved, but a car can, so the rules for seizing them differ.[465]

Pung v. Isabella County (2026): a related case about tax sales

Pung was not a criminal forfeiture case, but it is close kin. A Michigan county sold a home at a tax auction to collect a tax debt. The Court held that the measure of "just compensation" after a fairly conducted tax sale is "the auction sale price, not the property's hypothetical fair market value," and it rejected the claim that the sale was an excessive fine.[466]

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[459] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[460] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[461] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[462] United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep510/usrep510043/usrep510043.pdf (accessed November 12, 2026).

[463] United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep510/usrep510043/usrep510043.pdf (accessed November 12, 2026).

[464] United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep510/usrep510043/usrep510043.pdf (accessed November 12, 2026).

[465] United States v. James Daniel Good Real Property, 510 U.S. 43 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep510/usrep510043/usrep510043.pdf (accessed November 12, 2026). Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[466] Pung v. Isabella County, 609 U.S. 30 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us1r54_d18e.pdf (accessed November 12, 2026).

Equitable sharing

Federal forfeiture is linked to state and local policing through a program called **equitable sharing**. In the words of the CRS summary of the Fifth Amendment Integrity Restoration (FAIR) Act, it is the "sharing of federally forfeited assets with state, local, or tribal law enforcement agencies that participate in law enforcement efforts resulting in a forfeiture."[467] The Justice Department's Inspector General lists "equitable sharing of forfeiture proceeds to state, local, and tribal agencies" among the uses of the department's Assets Forfeiture Fund.[468]

Why does this matter? Because it means a state or local agency can sometimes receive forfeiture proceeds through the federal program even where its own state's rules are stricter. [Not verified: I could not open the Justice Department's equitable sharing program page before the cutoff to quote its current rules on this point, so this sentence is my reading of how the program works, not a quoted rule.]

How much money is involved

This is where solid numbers are hardest to find, because no single public source counts every state and local forfeiture in the same way.

The federal numbers (official, tier 1 and 2). The Justice Department keeps forfeited money in its Assets Forfeiture Fund and publishes reports to Congress about it.[469] The Department's Inspector General audits the fund's financial statements each year. The audit for fiscal year 2025, published in February 2026, reported forfeiture revenue of about $1.96 billion ($1,956.8 million) for that year. The independent auditor gave the statements an unmodified (clean) opinion and found two significant deficiencies in internal controls.[470]

Table 13.1: Federal Assets Forfeiture Fund, fiscal year 2025 (current as of November 12, 2026)

Item	Amount
Forfeiture revenue, fiscal year (FY) 2025	$1,956.8 million[471]

[467] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026).

[468] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[469] U.S. Department of Justice, Asset Forfeiture Program, "Reports" page (updated February 19, 2026). https://www.justice.gov/afp/reports (accessed November 12, 2026).

[470] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[471] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

Item	Amount
Total assets of the fund, end of FY 2025	about $9.33 billion[472]

These are federal figures only. They do not include forfeitures handled entirely under state law.

The reform side's estimate (advocacy group, tier 5). The Institute for Justice, a civil liberties law firm that advocates ending civil forfeiture, released a new edition of its report "Policing for Profit" on March 24, 2026. It said that governments have forfeited about $82 billion since 2000, about $57 billion of it federal and about $25 billion state and local, and that the median currency forfeiture in the states it studied was under $1,678. It also gave 35 states and the federal government a grade of D+ or lower on their forfeiture laws.[473] These are the group's own figures and grades. I did not find a government or nonpartisan source that adds up all state and local forfeitures the same way, so I cannot check the totals independently.

A local example from journalism (tier 4). Axios Philadelphia reported in April 2026 that Pennsylvania lagged other states on forfeiture reform while Philadelphia had improved.[474]

State reforms through 2026

States have moved in different directions. Justice Gorsuch's 2024 list, quoted above, is a fair summary from the bench: deadlines, juries, a conviction requirement, or early hearings.[475]

Colorado (2026). Colorado's HB26-1250, "Procedures Related to Civil Asset Forfeiture," was signed by the Governor on June 4, 2026.[476] Reason magazine reported that it made Colorado the "second state" to create a right to a lawyer when police seize property.[477] The Institute for Justice, which supported the bill, described it as reining in "policing for profit."[478] [Not verified: I did not confirm from an official source which state was the first, so I do not name it.]

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[472] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[473] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026).

[474] "Pennsylvania lags on forfeiture reforms as Philadelphia improves." Axios Philadelphia, April 1, 2026. https://www.axios.com/local/philadelphia/2026/04/01/pennsylvania-lags-on-forfeiture-reforms-as-philadelphia-improves (accessed November 12, 2026).

[475] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[476] Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

[477] C.J. Ciaramella, "Colorado Becomes Second State To Create Right to an Attorney When Police Seize Your Property." Reason, June 15, 2026. https://reason.com/2026/06/15/colorado-becomes-second-state-to-create-right-to-an-attorney-when-police-seize-your-property/ (accessed November 12, 2026).

[478] "Institute for Justice Supports Passage of Colorado Legislation that Reins in Policing for Profit." Institute for Justice press release, June 5, 2026. https://ij.org/press-release/institute-for-justice-supports-passage-of-colorado-legislation-that-reins-in-policing-for-profit/ (accessed November 12, 2026).

Colorado's law passed the House 64-1 on May 12, 2026, and the Senate 33-2 on May 13, 2026, and took effect July 1, 2026.[479] According to the legislature's official summary, it requires "one or more criminal charges" before forfeiture proceedings, requires a conviction of the criminal defendant before the property of an owner who is not innocent is forfeited, creates a right to forfeiture defense counsel for indigent owners, and creates a defense counsel fund "capped at $500,000." It also changes where leftover proceeds go: 50 percent to the local government, 25 percent to the counsel fund and 25 percent to local behavioral health services.[480]

[Not verified: I did not confirm a current, complete list of state forfeiture laws from an official or nonpartisan source before the cutoff. The Institute for Justice publishes state grades, but those are an advocacy group's ratings.][481]

Where the sides stand

The reform side. The Institute for Justice argues that civil forfeiture creates "policing for profit," the name of its report, and supports laws like Colorado's.[482] In the Supreme Court, Justice Sotomayor's *Culley* dissent made a similar point about budget incentives.[483] Notably, reform has drawn support from both parties: the FAIR Act's Senate sponsor is a Republican, and its cosponsors in both chambers include Democrats and Republicans.[484]

The government side. In court, the government's position has largely prevailed on the constitutional questions. The *Culley* majority held that a timely forfeiture hearing satisfies due process.[485] The *Bennis* Court relied on a "long and unbroken line of cases" allowing forfeiture of

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[479] Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

[480] Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

[481] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026).

[482] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026). "Institute for Justice Supports Passage of Colorado Legislation that Reins in Policing for Profit." Institute for Justice press release, June 5, 2026. https://ij.org/press-release/institute-for-justice-supports-passage-of-colorado-legislation-that-reins-in-policing-for-profit/ (accessed November 12, 2026).

[483] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[484] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026).

[485] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

property used in crime.[486] Federal law treats forfeiture proceeds as a source of funding for law enforcement uses, including sharing with state and local agencies, as the Inspector General's audit describes.[487] [Not verified: I did not obtain a police or prosecutor organization's published defense of civil forfeiture in its own words before the cutoff, so that side is presented here through court rulings and official program documents rather than an advocacy statement.]

What this book can and cannot say. The legal rules are confirmed facts. Whether civil forfeiture is mainly a useful tool against crime or mainly a source of abuse is a judgment the evidence in this chapter does not settle. The national totals come mostly from an advocacy group, and the official federal figures cover only federal cases.

What this chapter does not cover

Forfeiture rules for property that is itself illegal, such as illegal drugs, raise different issues and are not covered here. Neither are customs seizures at the border, which Chapter 9 touches on.

Key points from this chapter

- **Confirmed fact:** Civil forfeiture is a case against property, and the owner need not be charged or convicted.[488]
- **Confirmed fact:** In federal civil forfeiture, the government must prove its case by a preponderance of the evidence, and an innocent owner defense exists by statute, with the owner bearing the burden.[489]
- **Confirmed fact:** The Constitution, as read in *Bennis*, does not itself require an innocent owner defense.[490]
- **Confirmed fact:** Due process requires a timely forfeiture hearing for seized personal property, but not a separate preliminary hearing.[491]

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[486] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026).

[487] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[488] 18 U.S.C. 981, Civil forfeiture. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/981 (accessed November 12, 2026). Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[489] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[490] Bennis v. Michigan, 516 U.S. 442 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep516/usrep516442/usrep516442.pdf (accessed November 12, 2026).

[491] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

- **Confirmed fact:** Grossly disproportional forfeitures violate the Excessive Fines Clause in federal and state cases.[492]
- **Unknown (for this book):** A complete, independently checked national total of state and local forfeitures.

[492] United States v. Bajakajian, 524 U.S. 321 (1998). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep524/usrep524321/usrep524321.pdf (accessed November 12, 2026). Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

Chapter 14: Qualified Immunity and Suing Government Officials

Information in this chapter is current as of November 12, 2026.

The law that lets you sue: Section 1983

If a state or local official violates your constitutional rights, how do you hold them accountable? The main tool is a federal law first passed after the Civil War, now found at 42 U.S.C. 1983. It says that every person who, acting "under color of" state law, deprives someone of "any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured."[493]

For decades the law was rarely used. That changed in 1961. In *Monroe v. Pape*, the complaint alleged that 13 Chicago police officers broke into a family's home early in the morning, made them stand naked in the living room, and ransacked every room.[494] The Court held that the family could sue the officers under the law, though not the City of Chicago itself under that decision.[495] (The Court later changed the rule on suing cities, as explained below.)

Federal officials are different. Section 1983 covers people acting under state law. For federal agents, the Court in 1971 recognized a damages claim directly under the Fourth Amendment in *Bivens*. In that case, federal narcotics agents were alleged to have entered a man's apartment without a warrant, searched it and arrested him, all without probable cause.[496]

In 2022 the Court refused to extend *Bivens*. Robert Boule ran a bed-and-breakfast called the Smuggler's Inn, right on the Canadian border in Blaine, Washington. He said a Border Patrol agent, Erik Egbert, threw him against a car and to the ground, then retaliated after he complained, including by contacting the Internal Revenue Service and prompting an audit of his taxes. He sued for excessive force and First Amendment retaliation.[497] The Court refused to

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[493] 42 U.S.C. 1983, Civil action for deprivation of rights. United States Code (text reproduced by Cornell Law School Legal Information Institute). https://www.law.cornell.edu/uscode/text/42/1983 (accessed November 12, 2026).

[494] Monroe v. Pape, 365 U.S. 167 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep365/usrep365167/usrep365167.pdf (accessed November 12, 2026).

[495] Monroe v. Pape, 365 U.S. 167 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep365/usrep365167/usrep365167.pdf (accessed November 12, 2026).

[496] Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep403/usrep403388/usrep403388.pdf (accessed November 12, 2026).

[497] Egbert v. Boule, 596 U.S. 482 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/596us1r37_7l48.pdf (accessed November 12, 2026).

recognize either claim and made new *Bivens* claims very hard to bring.[498] So suing federal officers for damages is now much harder than suing state and local officers.

What qualified immunity is

Qualified immunity is a defense, created by the courts, that protects government officials from paying damages in many lawsuits, even when they may have violated someone's rights. It is not written in the text of Section 1983.[499]

Where it came from

Pierson v. Ray (1967). In 1961, a group of white and Black clergymen on a "prayer pilgrimage" to promote racial integration tried to use a segregated bus terminal waiting room in Jackson, Mississippi, and were arrested.[500] When they sued, the Court held that a "defense of good faith and probable cause," available to police in older common-law false arrest cases, was "also available in an action under Section 1983."[501]

Harlow v. Fitzgerald (1982). The Court then changed the test to an objective one. It held that officials "performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate 'clearly established' statutory or constitutional rights of which a reasonable person would have known."[502]

How it works today

Courts ask two questions:

1. Did the official violate a constitutional right?
2. Was that right "clearly established" at the time?

If the answer to either question is no, the official is immune from damages. Since 2009, courts may answer the questions in either order.[503] That means a court can decide a right was not clearly established without ever deciding whether it was violated.

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[498] Egbert v. Boule, 596 U.S. 482 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/596us1r37_7l48.pdf (accessed November 12, 2026).

[499] 42 U.S.C. 1983, Civil action for deprivation of rights. United States Code (text reproduced by Cornell Law School Legal Information Institute). https://www.law.cornell.edu/uscode/text/42/1983 (accessed November 12, 2026).

[500] Pierson v. Ray, 386 U.S. 547 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep386/usrep386547/usrep386547.pdf (accessed November 12, 2026).

[501] Pierson v. Ray, 386 U.S. 547 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep386/usrep386547/usrep386547.pdf (accessed November 12, 2026).

[502] Harlow v. Fitzgerald, 457 U.S. 800 (1982). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457800/usrep457800.pdf (accessed November 12, 2026).

[503] Pearson v. Callahan, 555 U.S. 223 (2009). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep555/usrep555223/usrep555223.pdf (accessed November 12, 2026).

What "clearly established" means. The Court has said a court generally needs to "identify a case where an officer acting under similar circumstances… was held to have violated" the Constitution, and that the precedent must define the right with a "high degree of specificity."[504] But the Court has also said that in obvious cases a prior case with identical facts is not required. In 2002 it denied immunity to prison guards who chained an inmate to a hitching post in the sun, and in 2020 it denied immunity to officers who held an inmate in cells full of human waste.[505]

Who it protects. In 1986 the Court described qualified immunity as providing "ample protection to all but the plainly incompetent or those who knowingly violate the law." In that case, an officer who applied for arrest warrants that a judge signed argued he should have absolute immunity. The Court held he had only qualified immunity.[506]

The facts must be viewed fairly. Qualified immunity is often decided before trial, on a motion for summary judgment. That stage has its own rule: the court must view the evidence "in the light most favorable to the opposing party." In *Tolan v. Cotton* (2014), an officer in Bellaire, Texas, typed one wrong character into his computer while checking a license plate, which made a family's car look stolen. In the confrontation that followed at the family's home, a sergeant shot the son, Tolan, who was unarmed, on his parents' front porch.[507] The lower court granted immunity. The Supreme Court, in an unsigned opinion, sent the case back because the lower court "failed to credit evidence that contradicted some of its key factual conclusions and resolved disputed issues in favor of the moving party."[508]

Qualified immunity in recent Supreme Court cases

Year	Case	Result
2015	*Mullenix v. Luna*	Officer who shot at a fleeing car was immune; the rule applied below was not

[504] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/607us2r21_2bo2.pdf (accessed November 12, 2026).

[505] Hope v. Pelzer, 536 U.S. 730 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536730/usrep536730.pdf (accessed November 12, 2026). Taylor v. Riojas, 592 U.S. 7 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/592US1PP_web.pdf#page=47 (accessed November 12, 2026).

[506] Malley v. Briggs, 475 U.S. 335 (1986). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep475/usrep475335/usrep475335.pdf (accessed November 12, 2026).

[507] Tolan v. Cotton, 572 U.S. 650 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep572/usrep572650/usrep572650.pdf (accessed November 12, 2026).

[508] Tolan v. Cotton, 572 U.S. 650 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep572/usrep572650/usrep572650.pdf (accessed November 12, 2026).

Year	Case	Result
		"beyond debate"[509]
2018	*Kisela v. Hughes*	Officer who shot a woman holding a knife was immune[510]
2020	*Taylor v. Riojas*	Immunity denied; any reasonable officer should have known the cell conditions were unconstitutional[511]
2021	*City of Tahlequah v. Bond*	Officers in a fatal shooting were immune[512]
2026	*Zorn v. Linton*	Officer who used a wristlock on a protester at a sit-in was immune[513]

The 2026 case. In March 2026, in *Zorn v. Linton*, Sergeant Jacob Zorn used a rear wristlock, a pain compliance technique, on Shela Linton, a protester at a sit-in in the Vermont state capitol, after a verbal warning. The federal appeals court had denied immunity. In an unsigned opinion, the Supreme Court reversed, because the appeals court "failed to identify a case where an officer using a routine wristlock on a protester after issuing a verbal warning, without more, was held to have violated the Constitution."[514]

Justice Sotomayor dissented, joined by Justices Kagan and Jackson. She wrote that Linton was "a nonviolent protestor who was peacefully demonstrating," and that earlier appeals court precedent had clearly established that using a rear wristlock against a nonviolent protester would violate her rights.[515]

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[509] Mullenix v. Luna, 577 U.S. 7 (2015). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep577/usrep577007/usrep577007.pdf (accessed November 12, 2026).

[510] Kisela v. Hughes, 584 U.S. 100 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/17-467 (accessed November 12, 2026).

[511] Taylor v. Riojas, 592 U.S. 7 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/592US1PP_web.pdf#page=47 (accessed November 12, 2026).

[512] City of Tahlequah v. Bond, 595 U.S. 9 (2021). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/595us1r2_8njq.pdf (accessed November 12, 2026).

[513] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r21_2bo2.pdf (accessed November 12, 2026).

[514] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), per curiam. https://www.supremecourt.gov/opinions/25pdf/607us2r21_2bo2.pdf (accessed November 12, 2026).

[515] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/25pdf/607us2r21_2bo2.pdf (accessed November 12, 2026).

The debate

Few legal doctrines are argued about as hotly. Here are the main arguments, each from someone who made it, in their own words where I could confirm them.

Criticism from the bench

- **Justice Thomas** (2017): "In an appropriate case, we should reconsider our qualified immunity jurisprudence."[516] His concern was that the doctrine strays from the common law as it stood when Section 1983 was passed.
- **Justice Sotomayor** (2018): She warned that a "one-sided approach to qualified immunity transforms the doctrine into an absolute shield for law enforcement officers, gutting the deterrent effect of the Fourth Amendment."[517]

Notice that criticism has come from Justices often described as being on opposite sides of the Court.

What the research and the scholars say

A nonpartisan summary. The Congressional Research Service (CRS) described both sides for Congress. It reported that "critics of the doctrine have questioned its legal origins" and argue that it has given too much deference "to the police at the expense of accountability." It also described the case for the doctrine: "affording police officers some level of deference when making split-second decisions."[518]

The case that it is unlawful. Law professor William Baude, in a widely cited 2018 article, wrote: "This Article argues that the qualified immunity doctrine is unlawful." His central claim is that "the modern doctrine of qualified immunity is inconsistent with conventional principles of law applicable to federal statutes."[519]

A qualified defense. Law professors Aaron Nielson and Christopher Walker responded the same year. They wrote that they "are not persuaded that his analysis dooms qualified immunity, especially in light of stare decisis," the principle of standing by earlier decisions. They called theirs "a qualified defense, as qualified immunity is by no means perfect."[520]

Who actually pays. Law professor Joanna Schwartz has studied what happens to the money in police lawsuits. In a 2016 article she summarized her earlier research, which found that

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[516] Ziglar v. Abbasi, 582 U.S. 120 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, Thomas, J., concurring in part and concurring in the judgment. https://www.law.cornell.edu/supremecourt/text/15-1358 (accessed November 12, 2026).

[517] Kisela v. Hughes, 584 U.S. 100 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute, Sotomayor, J., dissenting. https://www.law.cornell.edu/supremecourt/text/17-467 (accessed November 12, 2026).

[518] Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/LSB10492.html (accessed November 12, 2026).

[519] William Baude, "Is Qualified Immunity Unlawful?" California Law Review, vol. 106, p. 45, 2018. https://lawcat.berkeley.edu/record/1128553/files/fulltext.pdf (accessed November 12, 2026).

[520] Aaron L. Nielson and Christopher J. Walker, "A Qualified Defense of Qualified Immunity." Notre Dame Law Review, vol. 93, no. 5, 2018. https://ndlawreview.org/wp-content/uploads/2025/07/A-Qualified-Defense-of-Qualified-Immunity.pdf (accessed November 12, 2026).

"officers personally satisfied just 0.02 percent of the more than $735 million awarded to plaintiffs over a six-year period," and that officers in the 81 agencies studied "are virtually always indemnified," meaning their employers pay.[521] Her 2016 study also found that "half of the law enforcement agencies in my study financially contribute in some manner to the satisfaction of lawsuits brought against them."[522] This matters to the debate because one main argument for qualified immunity is protecting officers from personal financial ruin. Supporters and critics draw different lessons from her findings. [Interpretation: the link between her findings and that argument is my framing; she is a critic of the doctrine, and her findings are her own published research.]

The police union view

The Fraternal Order of Police (FOP), a national police union, supports writing qualified immunity into federal law. In a January 16, 2025, letter supporting the Senate's Qualified Immunity Act, FOP National President Patrick Yoes wrote that the bill "would codify the existing qualified immunity doctrine." He argued that an officer "needs to be afforded a certain degree of discretion to make split-second decisions," and that "every single scenario an officer encounters on a daily basis is different and unknown."[523]

Where this leaves the debate: The facts that can be checked are the court rulings, the text of Section 1983, and published research such as Professor Schwartz's. Whether the doctrine strikes the right balance between accountability and the freedom to make fast decisions is a question of values. The sources above disagree about it, and I do not take a side.

Other limits on lawsuits

- **Cities and counties** can be sued under Section 1983 when the violation carries out an official policy, ordinance or decision, a rule the Court adopted in 1978 when it partly overruled *Monroe* on this point.[524] And a city may not use its officers' good faith as a defense: in 1980 the Court held that "a municipality has no immunity from liability under Section 1983 flowing from its constitutional violations."[525] But the Court also held that "a local government may not be sued under Section 1983 for an injury inflicted

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[521] Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016. https://www.uclalawreview.org/wp-content/uploads/2019/09/Schwartz-63-5.pdf (accessed November 12, 2026).

[522] Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016. https://www.uclalawreview.org/wp-content/uploads/2019/09/Schwartz-63-5.pdf (accessed November 12, 2026).

[523] Patrick Yoes, National President, Fraternal Order of Police (police union; supports codifying qualified immunity), letter to Sen. James E. Banks on the Qualified Immunity Act, January 16, 2025. https://fop.net/wp-content/uploads/2025/01/letter-20250116-codify-qi-banks-s122.pdf (accessed November 12, 2026).

[524] Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep436/usrep436658/usrep436658.pdf (accessed November 12, 2026).

[525] Owen v. City of Independence, 445 U.S. 622 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445622/usrep445622.pdf (accessed November 12, 2026).

solely by its employees or agents." The injury must come from the government's own policy or custom.[526]

- **No Miranda lawsuits.** You cannot sue for damages only because *Miranda* warnings were not given.[527]
- **After a conviction.** In 2026 the Court held that a person convicted under a city ordinance can still sue to stop future enforcement of that ordinance, because the earlier rule limiting such suits does not bar purely forward-looking relief.[528]

States that have limited qualified immunity

Qualified immunity is a defense to federal Section 1983 claims. States cannot change federal law, but some have created their own state-law claims where the defense does not apply.

Table 14.2: Selected state and city laws limiting qualified immunity (current as of November 12, 2026)

Place	Law	What it does
Colorado	SB20-217, "Enhance Law Enforcement Integrity," signed June 19, 2020	Creates a state claim for violations of the Colorado Bill of Rights and says "qualified immunity is not a defense to the civil action." An officer can be "personally liable for 5 percent of the judgment or $25,000, whichever is less," if the employer "determines the officer did not act upon a good faith and reasonable belief that the action was lawful"[529]
New Mexico	Civil Rights Act, signed April 2021	"Prohibits the use of qualified immunity as a defense" in claims under the state act; "a public body's liability for damages under the state Civil Rights Act is capped at $2 million." Claims from incidents before July 1, 2021

[526] Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep436/usrep436658/usrep436658.pdf (accessed November 12, 2026).

[527] Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[528] Olivier v. City of Brandon, 607 U.S. 552 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us2r20_h315.pdf (accessed November 12, 2026).

[529] Colorado General Assembly, SB20-217, "Enhance Law Enforcement Integrity," 2020 Regular Session, signed by the Governor June 19, 2020. https://leg.colorado.gov/bills/sb20-217 (accessed November 12, 2026).

Place	Law	What it does
		may not be brought[530]
New York City	Local Law 48 of 2021, enacted April 25, 2021	Creates a local "right of security against unreasonable search and seizure, and against excessive force"[531] [Not verified: I could not open the codified text to confirm how it treats qualified immunity]

[Not verified: other states, such as Connecticut, have also passed laws on this subject. I did not confirm their text from an official source before the cutoff, so I do not describe them.]

Key points from this chapter

- **Confirmed fact:** Section 1983 lets people sue state and local officials who violate their constitutional rights.[532]
- **Confirmed fact:** Qualified immunity is a court-made defense that protects officials unless they violated "clearly established" law.[533]
- **Confirmed fact:** The Supreme Court granted qualified immunity in *Zorn v. Linton* in March 2026, over a three-Justice dissent.[534]
- **Confirmed fact:** Scholars, a nonpartisan research office and a major police union disagree about whether qualified immunity is lawful and wise. Their arguments are given above in their own words.[535]

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[530] Office of the Governor of New Mexico, "Gov. Lujan Grisham ratifies Civil Rights Act," press release, April 7, 2021. https://governor.state.nm.us/2021/04/07/gov-lujan-grisham-ratifies-civil-rights-act (accessed November 12, 2026).

[531] New York City, Local Law 48 of 2021 (Int. No. 2220-A), "creating a right of security against unreasonable search and seizure, and against excessive force," enacted April 25, 2021. NYC Administrative Code, Appendix A (American Legal Publishing). https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-132906 (accessed November 12, 2026).

[532] 42 U.S.C. 1983, Civil action for deprivation of rights. United States Code (text reproduced by Cornell Law School Legal Information Institute). https://www.law.cornell.edu/uscode/text/42/1983 (accessed November 12, 2026). Monroe v. Pape, 365 U.S. 167 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep365/usrep365167/usrep365167.pdf (accessed November 12, 2026).

[533] Pierson v. Ray, 386 U.S. 547 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep386/usrep386547/usrep386547.pdf (accessed November 12, 2026). Harlow v. Fitzgerald, 457 U.S. 800 (1982). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457800/usrep457800.pdf (accessed November 12, 2026).

[534] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r21_2b02.pdf (accessed November 12, 2026).

[535] Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/LSB10492.html (accessed November 12, 2026). William Baude, "Is Qualified Immunity Unlawful?" California Law Review, vol. 106, p. 45, 2018. https://lawcat.berkeley.edu/record/1128553/files/fulltext.pdf (accessed November 12, 2026). Aaron L. Nielson and

- **Confirmed fact:** Colorado and New Mexico have created state-law claims where qualified immunity is not a defense.[536]

Notes for Part Five: sources, unverified items and disagreements

Sources used in Part Five. Full details for each are in the footnotes and in Appendix D.

- "Institute for Justice Supports Passage of Colorado Legislation that Reins in Policing for Profit." Institute for Justice press release, June 5, 2026
- "Pennsylvania lags on forfeiture reforms as Philadelphia improves." Axios Philadelphia, April 1, 2026
- 18 U.S.C. 981, Civil forfeiture
- 18 U.S.C. 983, General rules for civil forfeiture proceedings
- 21 U.S.C. 881, Forfeitures
- 42 U.S.C. 1983, Civil action for deprivation of rights
- Aaron L. Nielson and Christopher J. Walker, "A Qualified Defense of Qualified Immunity." Notre Dame Law Review, vol. 93, no. 5, 2018
- Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026
- Austin v. United States, 509 U.S. 602 (1993)
- Bennis v. Michigan, 516 U.S. 442 (1996)
- Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- C.J. Ciaramella, "Colorado Becomes Second State To Create Right to an Attorney When Police Seize Your Property." Reason, June 15, 2026
- City of Tahlequah v. Bond, 595 U.S. 9 (2021)
- Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026
- Colorado General Assembly, SB20-217, "Enhance Law Enforcement Integrity," 2020 Regular Session, signed by the Governor June 19, 2020
- Culley v. Marshall, 601 U.S. 377 (2024)
- Egbert v. Boule, 596 U.S. 482 (2022)
- H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo
- Harlow v. Fitzgerald, 457 U.S. 800 (1982)

Christopher J. Walker, "A Qualified Defense of Qualified Immunity." Notre Dame Law Review, vol. 93, no. 5, 2018. https://ndlawreview.org/wp-content/uploads/2025/07/A-Qualified-Defense-of-Qualified-Immunity.pdf (accessed November 12, 2026). Patrick Yoes, National President, Fraternal Order of Police (police union; supports codifying qualified immunity), letter to Sen. James E. Banks on the Qualified Immunity Act, January 16, 2025. https://fop.net/wp-content/uploads/2025/01/letter-20250116-codify-qi-banks-s122.pdf (accessed November 12, 2026).

[536] Colorado General Assembly, SB20-217, "Enhance Law Enforcement Integrity," 2020 Regular Session, signed by the Governor June 19, 2020. https://leg.colorado.gov/bills/sb20-217 (accessed November 12, 2026). Office of the Governor of New Mexico, "Gov. Lujan Grisham ratifies Civil Rights Act," press release, April 7, 2021. https://governor.state.nm.us/2021/04/07/gov-lujan-grisham-ratifies-civil-rights-act (accessed November 12, 2026).

- Hope v. Pelzer, 536 U.S. 730 (2002)
- Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016
- Kisela v. Hughes, 584 U.S. 100 (2018)
- Malley v. Briggs, 475 U.S. 335 (1986)
- Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978)
- Monroe v. Pape, 365 U.S. 167 (1961)
- Mullenix v. Luna, 577 U.S. 7 (2015)
- New York City, Local Law 48 of 2021 (Int. No. 2220-A), "creating a right of security against unreasonable search and seizure, and against excessive force," enacted April 25, 2021. NYC Administrative Code, Appendix A (American Legal Publishing)
- Office of the Governor of New Mexico, "Gov. Lujan Grisham ratifies Civil Rights Act," press release, April 7, 2021
- Olivier v. City of Brandon, 607 U.S. 552 (2026)
- Owen v. City of Independence, 445 U.S. 622 (1980)
- Patrick Yoes, National President, Fraternal Order of Police (police union; supports codifying qualified immunity), letter to Sen. James E. Banks on the Qualified Immunity Act, January 16, 2025
- Pearson v. Callahan, 555 U.S. 223 (2009)
- Pierson v. Ray, 386 U.S. 547 (1967)
- Pung v. Isabella County, 609 U.S. 30 (2026)
- S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo
- Taylor v. Riojas, 592 U.S. 7 (2020)
- Timbs v. Indiana, 586 U.S. 146 (2019)
- Tolan v. Cotton, 572 U.S. 650 (2014)
- U.S. Department of Justice, Asset Forfeiture Program, "Reports" page (updated February 19, 2026)
- U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026
- United States v. Bajakajian, 524 U.S. 321 (1998)
- United States v. James Daniel Good Real Property, 510 U.S. 43 (1993)
- Vega v. Tekoh, 597 U.S. 134 (2022)
- Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com)
- William Baude, "Is Qualified Immunity Unlawful?" California Law Review, vol. 106, p. 45, 2018
- Ziglar v. Abbasi, 582 U.S. 120 (2017)
- Zorn v. Linton, 607 U.S. 568 (2026)

Items marked [Not verified] in Part Five.

- I could not open the Justice Department's equitable sharing program page before the cutoff to quote its current rules on this point, so this sentence is my reading of how the program works, not a quoted rule.
- I did not confirm from an official source which state was the first, so I do not name it.
- I did not confirm a current, complete list of state forfeiture laws from an official or nonpartisan source before the cutoff. The Institute for Justice publishes state grades, but those are an advocacy group's ratings.
- I did not obtain a police or prosecutor organization's published defense of civil forfeiture in its own words before the cutoff, so that side is presented here through court rulings and official program documents rather than an advocacy statement.
- I could not open the codified text to confirm how it treats qualified immunity
- Other states, such as Connecticut, have also passed laws on this subject. I did not confirm their text from an official source before the cutoff, so I do not describe them.

Where sources disagreed in Part Five.

- Colorado HB26-1250 floor votes: one reading of the legislature's bill page earlier on November 12, 2026, listed the House vote as 33-2 and the Senate vote as 64-1. A second reading the same day listed the House Third Reading as 64-1 on May 12, 2026, and the Senate Third Reading as 33-2 on May 13, 2026. Reason reported the votes as "33-2 and 64-1." Because the Colorado House has 65 members and the Senate 35, the book uses House 64-1 and Senate 33-2.
- National forfeiture totals: the only national total I found (about $82 billion since 2000) comes from the Institute for Justice, an advocacy group. The official federal figure in Chapter 13 covers only the federal Assets Forfeiture Fund, so the two cannot be compared directly.
- Who pays police lawsuits: Professor Schwartz's research reports that officers personally paid 0.02 percent of awards in the agencies she studied, while the Fraternal Order of Police argues officers need qualified immunity's protection. These are different questions (who pays versus who is sued), and Chapter 14 presents both.

Part Six: Rights With Government Agencies

Chapter 15: Privacy and Public Records

Information in this chapter is current as of November 12, 2026.

Most of this book is about police and courts. This part turns to the everyday agencies that hold records about you and make decisions about your benefits, licenses and money. Two federal laws do most of the work here: the Freedom of Information Act (FOIA), which lets anyone ask for government records, and the Privacy Act of 1974, which gives you rights over federal records about yourself.

The Freedom of Information Act

Who can ask, and for what

FOIA requires federal agencies, when they receive a request that "reasonably describes" the records and follows the agency's published rules, to "make the records promptly available to any person."[537] Note the words "any person." The government's FOIA.gov site says, "Generally any person - United States citizen or not - can make a FOIA request."[538] [Interpretation: the statute's request requirements quoted above do not include giving a reason. That reading is mine, from the statute text.][539]

FOIA applies to federal agencies. The law's definition of "agency" covers "each authority of the Government of the United States" but does not include "the Congress" or "the courts of the United States."[540] State and local governments are not federal agencies, so FOIA does not reach them. States have their own public records laws, which differ from state to state. [Not verified: I did not compare the 50 state laws.]

Deadlines

An agency must decide "within 20 days (excepting Saturdays, Sundays, and legal public holidays)" whether to comply with a request, and must tell the requester its decision and reasons.[541] If the answer is no, the agency must tell you about your right to appeal to the head of

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[537] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[538] "Frequently Asked Questions." FOIA.gov, U.S. Department of Justice, Office of Information Policy. https://www.foia.gov/faq.html (accessed November 12, 2026).

[539] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[540] 5 U.S.C. 551, Definitions (Administrative Procedure Act; the definition of "agency" used by FOIA). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/551 (accessed November 12, 2026). 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[541] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

the agency, within a period that is "not less than 90 days" after the denial, and about your right to get help from the agency's FOIA Public Liaison.[542] The law allows extra time in "unusual circumstances" if the agency gives written notice.[543]

You might ask, "Does that mean I will have my records in 20 working days?" Not necessarily. The 20 days is the deadline to **decide** whether to comply, not always to hand over every page. Large requests often take much longer. [Not verified: I did not confirm current average processing times across agencies from FOIA.gov data before the cutoff.]

Fees

Each agency must publish a fee schedule and rules for when fees are waived or reduced, following guidelines from the Office of Management and Budget.[544] The law also limits fees when an agency misses its deadlines.[545]

The nine exemptions

FOIA does not open every file. It lists nine kinds of information agencies may withhold. In plain words, they are:[546]

Exemption	What it covers, in short
1	Properly classified national defense or foreign policy secrets
2	Purely internal personnel rules and practices
3	Information another statute specifically says must be withheld
4	Trade secrets and confidential business or financial information
5	Internal agency memos that would be privileged in a lawsuit, such as drafts and advice. The "deliberative process" privilege does not apply to records 25 years or older
6	Personnel, medical and similar files where

[542] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[543] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[544] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[545] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[546] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

Exemption	What it covers, in short
	release would be a "clearly unwarranted invasion of personal privacy"
7	Some law enforcement records, such as those that could interfere with an investigation, reveal a confidential source, or endanger someone
8	Certain bank examination reports
9	Geological data about wells

Two rules limit how agencies use these exemptions:

- **Release what you can.** "Any reasonably segregable portion of a record shall be provided" after the exempt parts are removed, and the agency must show where it deleted material and under which exemption, if that is technically feasible.[547]
- **The foreseeable harm test.** An agency may withhold information only if it "reasonably foresees that disclosure would harm an interest protected by an exemption," or if disclosure is prohibited by law.[548]

If you are turned down

After an administrative appeal, you may sue in federal court. The court decides the matter fresh ("de novo"), may look at the records privately, and "the burden is on the agency to sustain its action."[549]

A key Supreme Court case on privacy and FOIA

In 1989, reporters asked the FBI for the criminal "rap sheet" of a man named Charles Medico. The Supreme Court held that releasing a private person's rap sheet to a third party "could reasonably be expected to constitute an unwarranted invasion of personal privacy" under Exemption 7(C). The Court explained that whether release is "warranted" turns on the record's relationship to FOIA's "central purpose of exposing to public scrutiny official information that sheds light on an agency's performance of its statutory duties."[550]

The lesson is that FOIA is a tool for learning about the **government**. It is a weaker tool for learning about other private people.

Two later cases show how the exemptions work in practice:

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[547] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[548] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[549] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[550] Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep489/usrep489749/usrep489749.pdf (accessed November 12, 2026).

- **Family privacy.** A man who doubted that a White House lawyer, Vincent Foster Jr., had died by suicide asked for photographs of the death scene. In 2004 the Court held that FOIA "recognizes surviving family members' right to personal privacy with respect to their close relative's death-scene images."[551]
- **A narrow reading of Exemption 2.** A man asked the Navy for maps and data about explosives stored at a naval base. In 2011 the Court held that Exemption 2 "encompasses only records relating to employee relations and human resources issues," so the explosives maps did not qualify under it.[552]

How to file

FOIA.gov says, "If the information you want is not publicly available, you can submit a FOIA request to the agency's FOIA Office," and it links to a list with contact information for each agency.[553] Based on that guidance and the statute, the basic steps are:[554]

1. Find the agency that has the records.
2. Describe the records as specifically as you can: dates, names, places, subjects.
3. Say whether you are willing to pay fees, and up to what amount, or ask for a fee waiver if you qualify.
4. Keep a copy and note the date you sent it. [Interpretation: this last step is my own practical suggestion, not a legal requirement.]

That list reflects the statute's requirement that a request "reasonably describes" the records and follows the agency's rules.[555] Each agency's own regulations set the details.

The Privacy Act of 1974

Who it protects

The Privacy Act protects an "individual," which it defines as "a citizen of the United States or an alien lawfully admitted for permanent residence."[556] It covers federal agency records kept in a

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[551] National Archives and Records Administration v. Favish, 541 U.S. 157 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep541/usrep541157/usrep541157.pdf (accessed November 12, 2026).

[552] Milner v. Department of the Navy, 562 U.S. 562 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562562/usrep562562.pdf (accessed November 12, 2026).

[553] "How to Make a FOIA Request." FOIA.gov, U.S. Department of Justice, Office of Information Policy. https://www.foia.gov/how-to.html (accessed November 12, 2026). "Frequently Asked Questions." FOIA.gov, U.S. Department of Justice, Office of Information Policy. https://www.foia.gov/faq.html (accessed November 12, 2026).

[554] "Frequently Asked Questions." FOIA.gov, U.S. Department of Justice, Office of Information Policy. https://www.foia.gov/faq.html (accessed November 12, 2026). 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[555] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[556] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

"system of records," meaning records the agency retrieves by your name or another personal identifier.[557]

Your four main rights

1. The right to see your records. On request, an agency must let you review your record "and have a copy made of all or any portion thereof in a form comprehensible to him."[558]

2. The right to ask for corrections. You may ask an agency to amend a record about you. The agency must acknowledge your request "not later than 10 days" (not counting weekends and holidays), and then "promptly" either correct what is not "accurate, relevant, timely, or complete," or tell you why it refuses and how to seek review.[559]

3. Limits on sharing. The core rule is: "No agency shall disclose any record which is contained in a system of records... except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains." The statute then lists exceptions, including sharing within the agency with employees who need the record for their duties and disclosures required by FOIA.[560]

4. The right to sue. You may sue in federal court if an agency refuses to amend your record, refuses you access, or fails to keep accurate records and that harms you.[561] For money damages, the court must find the agency acted in a way that was "intentional or willful." Then the government is liable for actual damages, but "in no case shall a person entitled to recovery receive less than the sum of $1,000," plus costs and reasonable attorney fees.[562]

The Justice Department's Office of Privacy and Civil Liberties publishes a long guide to the Act, with sections on access and amendment.[563]

FOIA or Privacy Act: which one should I use?

You might ask, "If I want my own file, which law do I use?" The Justice Department's guide says "the statutes do overlap, but not entirely," and that agencies "should process an individuals'

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[557] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026). "Overview of the Privacy Act of 1974 (2020 Edition)," sections on Access and Amendment. U.S. Department of Justice, Office of Privacy and Civil Liberties, published October 14, 2020, updated October 12, 2022. https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition (accessed November 12, 2026).

[558] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

[559] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

[560] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

[561] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

[562] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

[563] "Overview of the Privacy Act of 1974 (2020 Edition)," sections on Access and Amendment. U.S. Department of Justice, Office of Privacy and Civil Liberties, published October 14, 2020, updated October 12, 2022. https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition (accessed November 12, 2026).

access requests for their own records" under both the Privacy Act and FOIA, "regardless of the statute(s) cited." Its stated rule: "ALL PRIVACY ACT ACCESS REQUESTS SHOULD ALSO BE TREATED AS FOIA REQUESTS."[564] In plain terms, you can cite either law, and the agency is told to use whichever gives you more. [Interpretation: "whichever gives you more" is my plain-language reading of the guide.]

State public records laws

Every state has its own public records law, with its own deadlines, fees and exemptions. [Not verified: I did not confirm a current 50-state comparison from an official or nonpartisan source before the cutoff.] Your state attorney general's office or secretary of state's website is usually the place to start.

Key points from this chapter

- **Confirmed fact:** Any person may request federal agency records under FOIA, and agencies must decide within 20 working days, with extensions in unusual circumstances.[565]
- **Confirmed fact:** FOIA has nine exemptions, but agencies must release non-exempt parts and may withhold only when they foresee harm or the law prohibits release.[566]
- **Confirmed fact:** In a FOIA lawsuit, the agency carries the burden of justifying what it withheld.[567]
- **Confirmed fact:** The Privacy Act lets citizens and permanent residents see and correct federal records about themselves and limits sharing without consent.[568]
- **Unknown (for this book):** Current processing times and a state-by-state comparison of public records laws.

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[564] "Overview of the Privacy Act of 1974 (2020 Edition): Individual's Right of Access," section A, The Privacy Act and the FOIA. U.S. Department of Justice, Office of Privacy and Civil Liberties. https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/access (accessed November 12, 2026).

[565] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[566] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[567] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

[568] 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

Chapter 16: Due Process With Agencies

Information in this chapter is current as of November 12, 2026.

What "due process" means with an agency

The Fifth Amendment says the federal government may not deprive any person "of life, liberty, or property, without due process of law," and the Fourteenth Amendment applies the same limit to the states.[569] With agencies, this usually comes down to two questions: Did you get **notice** of what the government plans to do and why? And did you get a fair chance to be **heard** before or soon after it acts?

The Court has said "the fundamental requisite of due process of law is the opportunity to be heard," and that the hearing must be "at a meaningful time and in a meaningful manner."[570]

Goldberg v. Kelly (1970): a hearing before benefits stop

New York City residents receiving public assistance said officials cut off, or were about to cut off, their aid without prior notice and a hearing.[571] The Court held that "a pre-termination evidentiary hearing is necessary to provide the welfare recipient with procedural due process." Justice Brennan wrote for the Court.[572]

The hearing did not have to look like a trial. But the Court said the recipient must get "timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decision maker."[573]

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[569] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026). "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024. https://www.archives.gov/milestone-documents/14th-amendment (accessed November 12, 2026).

[570] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026).

[571] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026).

[572] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026). Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026).

[573] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026).

Why welfare? The Court pointed to aid that provides "essential food, clothing, housing, and medical care." Cutting it off by mistake could leave a person unable to survive while waiting for a later hearing.[574]

Mathews v. Eldridge (1976): the balancing test

Six years later, a man whose Social Security disability benefits were stopped argued that he too was entitled to a hearing first. The Court disagreed. It held that "an evidentiary hearing is not required prior to the termination of Social Security disability payments."[575] Justice Powell wrote for the Court.[576]

The case matters most for its test, which courts still use. To decide what process is due, courts weigh three factors:[577]

1. "The private interest that will be affected by the official action";
2. "the risk of an erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional procedural safeguards"; and
3. "the Government's interest, including the fiscal and administrative burdens that the additional or substitute procedures would entail."

The Court distinguished *Goldberg*: disability benefits, unlike welfare, are "not based on financial need," and disability decisions usually turn on medical reports rather than on witness credibility.[578]

You might ask, "So which rule applies to me?" Both cases are still good law. *Mathews* supplies the test. *Goldberg* shows the result when the person's need is urgent and the facts depend on who is believed. Your situation will be judged by weighing the three factors. "Due process is flexible and calls for such procedural protections as the particular situation demands."[579]

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[574] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026).

[575] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[576] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[577] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[578] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[579] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

Students: Goss v. Lopez (1975)

Ohio public high school students were suspended for up to 10 days without a hearing. The Court held that "students facing temporary suspension from a public school have property and liberty interests that qualify for protection under the Due Process Clause."[580] Ohio, having chosen to provide public education, could not take it away for misconduct "absent fundamentally fair procedures to determine whether the misconduct has occurred."[581] Justice White wrote for the Court.[582] For suspensions of 10 days or less, the Court required that the student "be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his version."[583]

Public employees: Loudermill (1985)

When a public employee has a legal right to keep a job unless there is cause to fire them, that job is a form of "property" protected by due process. In 1985 the Court held that for the Ohio employees in that case, "all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures" under the state law. Because the employees said they had no chance to respond before being fired, their cases could go forward.[584] The Court also said that "'property' cannot be defined by the procedures provided for its deprivation." In other words, a state cannot avoid due process just by writing a thin procedure into the same law that creates the job right.[585]

Agency penalties and the right to a jury

The Seventh Amendment preserves the right to a jury in "Suits at common law."[586] Two recent cases ask when an agency may impose a money penalty on its own, without a jury.

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[580] Goss v. Lopez, 419 U.S. 565 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep419/usrep419565/usrep419565.pdf (accessed November 12, 2026).

[581] Goss v. Lopez, 419 U.S. 565 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep419/usrep419565/usrep419565.pdf (accessed November 12, 2026).

[582] Goss v. Lopez, 419 U.S. 565 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep419/usrep419565/usrep419565.pdf (accessed November 12, 2026).

[583] Goss v. Lopez, 419 U.S. 565 (1975). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep419/usrep419565/usrep419565.pdf (accessed November 12, 2026).

[584] Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep470/usrep470532/usrep470532.pdf (accessed November 12, 2026).

[585] Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep470/usrep470532/usrep470532.pdf (accessed November 12, 2026).

[586] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

SEC v. Jarkesy (2024). After a 2010 law let the Securities and Exchange Commission (SEC) seek civil penalties in its own in-house proceedings, the SEC brought one against investment adviser George Jarkesy Jr. and his firm. An agency judge found violations, and the SEC imposed a $300,000 civil penalty.[587] The Court held: "When the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial." It reasoned that the SEC's antifraud claims "replicate common law fraud."[588] Chief Justice Roberts wrote for six Justices.[589]

Justice Sotomayor dissented, joined by Justices Kagan and Jackson. She wrote that "throughout our Nation's history, Congress has authorized agency adjudicators to find violations of statutory obligations and award civil penalties to the Government," and that Congress had enacted "more than 200 statutes" relying on that practice.[590]

FCC v. AT&T (June 4, 2026). The Federal Communications Commission (FCC) found that AT&T and Verizon had failed to protect customer location data and assessed penalties of roughly $57 million and $47 million.[591] The Court upheld the process. It held that because these FCC forfeiture orders "do not definitively resolve the parties' legal obligations," and the FCC's findings "are not conclusive," the FCC may issue them "without the involvement of a jury."[592] The key fact was that if a company refuses to pay, the government must sue to collect, and that suit "shall be a trial de novo," where a jury can be had.[593] Chief Justice Roberts wrote for eight Justices; Justice Thomas dissented.[594]

Reading the two together (my summary of the holdings, not a quoted rule): *Jarkesy* says an agency may not itself finally decide a common-law-type penalty claim without a jury.

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[587] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

[588] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

[589] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

[590] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026).

[591] FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[592] FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[593] FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[594] FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

FCC v. AT&T says an agency order that is not final until a court case, with a jury available, can stand.[595]

How to challenge an agency decision

Most agencies have their own internal appeal steps, with deadlines set by their rules. Watch those deadlines closely: missing one can end your case. [Not verified: deadlines differ by agency and program, and I did not compile them.]

After the agency's process is done, federal law opens the courthouse door:

- **Who may sue.** "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."[596]
- **When.** Generally after "final agency action for which there is no other adequate remedy in a court."[597]
- **What the court may do.** The court must "hold unlawful and set aside" agency action that is, among other things, "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "contrary to constitutional right," beyond the agency's legal authority, or done "without observance of procedure required by law." It may also "compel agency action unlawfully withheld or unreasonably delayed."[598]

Loper Bright (2024). Since a 1984 case called *Chevron*, courts had often deferred to an agency's reasonable reading of an unclear statute.[599] In 2024 the Court ended that. It held that the Administrative Procedure Act "requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority," that "courts may not defer to an agency interpretation of the law simply because a statute is ambiguous," and that "*Chevron* is overruled."[600] Chief Justice Roberts wrote for the Court. Justice Kagan dissented, joined by Justice Sotomayor and, in part, Justice Jackson.[601]

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[595] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026). FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[596] 5 U.S.C. 702, Right of review (Administrative Procedure Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/702 (accessed November 12, 2026).

[597] 5 U.S.C. 704, Actions reviewable (Administrative Procedure Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/704 (accessed November 12, 2026).

[598] 5 U.S.C. 706, Scope of review (Administrative Procedure Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/706 (accessed November 12, 2026).

[599] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[600] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[601] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

Interpretation, both sides: The majority said that deciding what a law means is the job of judges, and that courts may not hand that job to agencies just because a statute is unclear.[602] Justice Kagan, in dissent, argued the opposite: that Congress "would usually prefer" the responsible agency, not a court, to fill gaps, because on scientific and technical questions "agencies have expertise in those areas; courts do not," and because "agencies report to a President, who in turn answers to the public," while "courts have no such accountability."[603] Which view is better is a matter of judgment, not fact.

Key points from this chapter

- **Confirmed fact:** Due process means notice and a meaningful chance to be heard. What that requires is decided by weighing three *Mathews* factors.[604]
- **Confirmed fact:** Welfare recipients are entitled to a hearing before their aid is cut off; disability recipients are not entitled to one before benefits stop.[605]
- **Confirmed fact:** When the SEC seeks civil penalties for securities fraud, the defendant is entitled to a jury; FCC forfeiture orders that require a separate court case to collect do not violate the jury right.[606]
- **Confirmed fact:** Courts review final agency action under the Administrative Procedure Act and no longer defer to agencies on unclear statutes.[607]

Notes for Part Six: sources, unverified items and disagreements

Sources used in Part Six. Full details for each are in the footnotes and in Appendix D.

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[602] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r54_o7jp.pdf (accessed November 12, 2026).

[603] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Kagan, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/603us1r54_o7jp.pdf (accessed November 12, 2026).

[604] Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[605] Goldberg v. Kelly, 397 U.S. 254 (1970). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep397/usrep397254/usrep397254.pdf (accessed November 12, 2026). Mathews v. Eldridge, 424 U.S. 319 (1976). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep424/usrep424319/usrep424319.pdf (accessed November 12, 2026).

[606] Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r50_7kh7.pdf (accessed November 12, 2026). FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[607] 5 U.S.C. 706, Scope of review (Administrative Procedure Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/706 (accessed November 12, 2026). Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r54_o7jp.pdf (accessed November 12, 2026).

- "14th Amendment to the U.S. Constitution: Civil Rights (1868)." National Archives and Records Administration, Milestone Documents, page reviewed March 6, 2024
- "Frequently Asked Questions." FOIA.gov, U.S. Department of Justice, Office of Information Policy
- "How to Make a FOIA Request." FOIA.gov, U.S. Department of Justice, Office of Information Policy
- "Overview of the Privacy Act of 1974 (2020 Edition)," sections on Access and Amendment. U.S. Department of Justice, Office of Privacy and Civil Liberties, published October 14, 2020, updated October 12, 2022
- "Overview of the Privacy Act of 1974 (2020 Edition): Individual's Right of Access," section A, The Privacy Act and the FOIA. U.S. Department of Justice, Office of Privacy and Civil Liberties
- 5 U.S.C. 551, Definitions (Administrative Procedure Act; the definition of "agency" used by FOIA)
- 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act)
- 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974)
- 5 U.S.C. 702, Right of review (Administrative Procedure Act)
- 5 U.S.C. 704, Actions reviewable (Administrative Procedure Act)
- 5 U.S.C. 706, Scope of review (Administrative Procedure Act)
- Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)
- Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989)
- FCC v. AT&T Inc., 608 U.S. 531 (2026)
- Goldberg v. Kelly, 397 U.S. 254 (1970)
- Goss v. Lopez, 419 U.S. 565 (1975)
- Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Milner v. Department of the Navy, 562 U.S. 562 (2011)
- National Archives and Records Administration v. Favish, 541 U.S. 157 (2004)
- Securities and Exchange Commission v. Jarkesy, 603 U.S. 109 (2024)
- The Bill of Rights: A Transcription. National Archives and Records Administration

Items marked [Not verified] in Part Six.

- I did not compare the 50 state laws.
- I did not confirm current average processing times across agencies from FOIA.gov data before the cutoff.
- I did not confirm a current 50-state comparison from an official or nonpartisan source before the cutoff.
- Deadlines differ by agency and program, and I did not compile them.

Where sources disagreed in Part Six.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Part Seven: Claims and Theories

Chapter 17: Testing Common Claims About Your Rights

Information in this chapter is current as of November 12, 2026.

Some beliefs about rights get repeated so often that people treat them as settled. This chapter tests them. Each claim gets the same treatment, whichever side of politics it tends to come from:

- **How people say it:** the claim in the words people commonly use.
- **Where it spread:** where and when the claim has shown up, where I could document it.
- **What the record shows:** court rulings, statutes and official sources.
- **Verdict:** one of four, explained in the introduction.

Verdict	Meaning
True	The record supports the claim as stated
Partly true	Part of the claim is right, but it leaves out something important or overstates it
False (debunked)	The record contradicts the claim
Inconclusive	The record does not settle it either way

A verdict judges the claim as people usually say it, not the most careful version a lawyer might give.

The plan for this book listed 16 claims. Two were dropped because I could not find checkable sources for them before the cutoff: the claim that an undercover officer must admit being police if asked, and the claim that a gold-fringed flag in a courtroom means the court has no power over you. Rather than give a verdict I could not back with sources, I left them out. [Not verified: no checkable source found before the cutoff for two planned claims, about undercover officers having to identify themselves and about gold-fringed courtroom flags; both were dropped.]

Claim 1: "Police must read you your rights when they arrest you, or the case gets thrown out."

Where it spread: The idea is common enough that local TV fact-checkers have tested it. A WUSA9 "Verify" segment, prompted by a viral video of a police arrest in New York, asked: "Are police officers required to read the Miranda rights to a suspect during an arrest?" Its answer: "No. A police officer must read someone's Miranda rights before beginning questioning of a suspect. However, a police officer does not need to read these rights before an arrest."[608] [Not verified: the page did not show a date.]

What the record shows:

[608] WUSA9 Verify, "Are police officers required to read the Miranda rights to a suspect during an arrest?" WUSA9 (TEGNA), date not shown on page. https://www.wusa9.com/article/news/verify/verify-police-reading-miranda-rights-arrest-before-questioning/65-d0ecc7a0-1ce2-4447-a1f0-3da10c3cc3d0 (accessed November 12, 2026).

- *Miranda* warnings are required before **custodial interrogation**, meaning custody plus questioning, not at the moment of every arrest.[609]
- The remedy for a violation is that the prosecution may not use the resulting statements in its main case. It is not dismissal of the charges.[610]
- A *Miranda* violation alone does not support a lawsuit for money damages.[611]

Verdict: False (debunked). Both halves are wrong as usually stated. Warnings are tied to questioning in custody, and the remedy is suppressing statements, not throwing out the case.[612]

Claim 2: "You have to answer police questions."

Where it spread: [Not verified: I did not find a dated, checkable source documenting this claim's spread before the cutoff. I include it because the prompt for this book listed it.]

What the record shows:

- The Fifth Amendment protects against being "compelled in any criminal case to be a witness against himself."[613]
- But silence must generally be invoked clearly. Near-silence for hours did not invoke the right in *Berghuis*, and silence before arrest, without invoking the privilege, was used at trial in *Salinas*.[614]
- Some states, such as Nevada, require a person lawfully detained on reasonable suspicion to give their name, but Nevada's law says the person "may not be compelled to answer any other inquiry."[615]

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[609] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[610] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[611] Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[612] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026). Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[613] The Bill of Rights: A Transcription. National Archives and Records Administration. https://www.archives.gov/founding-docs/bill-of-rights-transcript (accessed November 12, 2026).

[614] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026). Salinas v. Texas, 570 U.S. 178 (2013). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep570/usrep570178/usrep570178.pdf (accessed November 12, 2026).

[615] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Nevada Revised

Verdict: False (debunked), with one exception worth knowing: in states with stop-and-identify laws, you may have to give your name during a lawful stop. You generally do not have to answer other questions, but you should say clearly that you are staying silent.[616]

Claim 3: "You don't have to show ID to police, ever."

Where it spread: [Not verified: I did not find a dated, checkable source documenting this claim's spread before the cutoff.]

What the record shows:

- The Supreme Court upheld Nevada's law requiring a person in a valid *Terry* stop to identify themselves.[617]
- For drivers, *Prouse* barred random stops just to check a license, but it allowed stopping a car to check "his driver's license and the registration" when there is "articulable and reasonable suspicion that a motorist is unlicensed" or another violation.[618] State laws generally require drivers to carry a license. [Not verified: I did not confirm a current 50-state summary of these laws.]
- Where no stop-and-identify law applies and you are not driving, the rule may be different. It depends on the state.

Verdict: False (debunked) as stated. "Ever" is wrong: some states require you to give your name during a lawful stop, and the Court has allowed license checks of drivers when officers have reasonable suspicion.[619] Note that Nevada's law requires you to "identify" yourself; the Court's ruling was about disclosing a name, not necessarily handing over a card.[620]

Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[616] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026). Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[617] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026).

[618] Delaware v. Prouse, 440 U.S. 648 (1979). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep440/usrep440648/usrep440648.pdf (accessed November 12, 2026).

[619] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Delaware v. Prouse, 440 U.S. 648 (1979). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep440/usrep440648/usrep440648.pdf (accessed November 12, 2026).

[620] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

Claim 4: "Police can't search your phone without a warrant."

Where it spread: [Not verified: I did not find a dated, checkable source documenting this claim's spread before the cutoff.]

What the record shows:

- After an arrest, police generally need a warrant to search a phone's contents. The Court's answer in *Riley* was "simple: get a warrant."[621]
- Ordinary exceptions to the warrant rule, such as consent, still apply. The Court in *Riley* noted that exigent circumstances could still justify a warrantless search in a particular case.[622] A search based on voluntary consent can be lawful without a warrant.[623]
- At the border, the rules are different, and federal appeals courts have split on phone searches (Chapter 9).[624]

Verdict: Partly true. It is the general rule after an arrest, but consent, emergencies and the border are real exceptions.[625]

Claim 5: "It's illegal to record the police."

Where it spread: The claim has been tested in court and in legislatures. Officers have arrested people for recording, as in one of the Philadelphia cases decided in 2017, and Arizona passed a 2022 law limiting filming of police within 8 feet.[626]

What the record shows:

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[621] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[622] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[623] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

[624] Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026).

[625] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026). Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026). Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026).

[626] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026). "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read). https://www.nbcnews.com/news/us-news/federal-judge-blocks-arizona-law-limiting-filming-police-rcna47148 (accessed November 12, 2026).

- Federal appeals courts that have ruled on it recognize a First Amendment right to record police doing their jobs in public. The Third Circuit said in 2017 that "every Circuit Court of Appeals to address this issue (First, Fifth, Seventh, Ninth, and Eleventh)" had so held.[627]
- Arizona's 8-foot law was blocked before it took effect and never went into force.[628]
- But the right has limits. Recording does not allow interfering with officers, and some state laws on recording private conversations may apply to audio. Officers who arrested people for recording have sometimes been granted qualified immunity.[629]

Verdict: False (debunked) as a general statement about recording police in public. Recording in a way that interferes, or that violates a valid state law, can still lead to arrest.[630]

Claim 6: "Sovereign citizens don't have to follow the law."

Where it spread: The FBI's Law Enforcement Bulletin describes sovereign citizens as "a loose network of individuals living in the United States who call themselves 'sovereign citizens' and believe that federal, state, and local governments operate illegally."[631] The Internal Revenue Service publishes a long document rebutting frivolous tax arguments, many of which deny the government's authority.[632]

What the record shows:

- Courts consistently reject these arguments. In a 2024 case, the U.S. Court of Appeals for the Eighth Circuit described a defendant's "sovereign citizen legal arguments" as "frivolous and likely to distract a jury."[633] (The court still reversed his conviction, on a different ground: he had been wrongly denied the right to represent himself. That shows

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[627] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[628] "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read). https://www.nbcnews.com/news/us-news/federal-judge-blocks-arizona-law-limiting-filming-police-rcna47148 (accessed November 12, 2026). Citlalli Florez, "Arizona Law Banning Recording of Police Declared Unconstitutional." Davis Vanguard, July 2023. https://www.davisvanguard.org/2023/07/arizona-law-banning-recording-of-police-declared-unconstitutional (accessed November 12, 2026).

[629] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[630] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[631] FBI Counterterrorism Analysis Section, "Sovereign Citizens: A Growing Domestic Threat to Law Enforcement." FBI Law Enforcement Bulletin (no publication date shown on the page; its footnoted sources were accessed June 14, 2011). https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement (accessed November 12, 2026).

[632] Internal Revenue Service, "The Truth About Frivolous Tax Arguments," introduction, March 2022 edition. https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction (accessed November 12, 2026).

[633] United States v. Willis, No. 23-1547 (8th Cir. May 13, 2024) (opinion by Judge Loken). U.S. Court of Appeals for the Eighth Circuit. https://media.ca8.uscourts.gov/opndir/24/05/231547P.pdf (accessed November 12, 2026).

the Constitution's protections apply to everyone, including people who deny the government's authority.)[634]

- The Internal Revenue Service (IRS) warns that "taxpayers may not rely on frivolous arguments to avoid or evade federal taxes," and that courts may impose penalties on those who pursue tax cases on frivolous grounds.[635]
- The FBI considers "sovereign-citizen extremists as comprising a domestic terrorist movement," and reported that "since 2000, lone-offender sovereign-citizen extremists have killed six law enforcement officers." That report has no publication date shown; its sources were accessed in 2011.[636]

Verdict: False (debunked). No court has accepted the theory that a person can opt out of the law by declaring themselves sovereign. Using these arguments in court can bring penalties.[637]

Claim 7: "The government can take your property without charging you with a crime."

Where it spread: Reform groups have made this point for years. The Institute for Justice's 2026 "Policing for Profit" report is a current example.[638] Justice Sotomayor's 2024 dissent in *Culley* made a related point from the bench.[639]

What the record shows:

- Civil forfeiture is a case against the property, and federal law allows it without a criminal charge against the owner.[640]

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[634] United States v. Willis, No. 23-1547 (8th Cir. May 13, 2024) (opinion by Judge Loken). U.S. Court of Appeals for the Eighth Circuit. https://media.ca8.uscourts.gov/opndir/24/05/231547P.pdf (accessed November 12, 2026).

[635] Internal Revenue Service, "The Truth About Frivolous Tax Arguments," introduction, March 2022 edition. https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction (accessed November 12, 2026).

[636] FBI Counterterrorism Analysis Section, "Sovereign Citizens: A Growing Domestic Threat to Law Enforcement." FBI Law Enforcement Bulletin (no publication date shown on the page; its footnoted sources were accessed June 14, 2011). https://leb.fbi.gov/articles/featured-articles/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement (accessed November 12, 2026).

[637] United States v. Willis, No. 23-1547 (8th Cir. May 13, 2024) (opinion by Judge Loken). U.S. Court of Appeals for the Eighth Circuit. https://media.ca8.uscourts.gov/opndir/24/05/231547P.pdf (accessed November 12, 2026). Internal Revenue Service, "The Truth About Frivolous Tax Arguments," introduction, March 2022 edition. https://www.irs.gov/Tax-Professionals/The-Truth-About-Frivolous-Tax-Arguments-Introduction (accessed November 12, 2026).

[638] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026).

[639] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Sotomayor, J., dissenting. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[640] 18 U.S.C. 981, Civil forfeiture. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/981 (accessed November 12, 2026). 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

- The government must prove by a preponderance of the evidence that the property is subject to forfeiture, and owners have an innocent owner defense in federal cases, with the burden on the owner.[641]
- Some states now require a criminal conviction before most forfeitures. Colorado's 2026 law is one example.[642]

Verdict: True, under federal law and in many states, with the safeguards described in Chapter 13. In states that require a conviction, it is not true for most property.[643]

Claim 8: "Free speech means a private company can't ban you."

Where it spread: [Not verified: I did not find a dated, checkable source documenting this claim's spread before the cutoff. The prompt for this book listed it.]

What the record shows:

- The Free Speech Clause "prohibits only governmental, not private, abridgment of speech."[644]
- Platforms that moderate content are themselves "engaged in expression," the Court said in 2024.[645]
- A different question arises when the government pressures a platform to remove speech. The Court addressed that in *Murthy v. Missouri* (2024), which it decided on standing grounds (Chapter 3).[646]

Verdict: False (debunked). The First Amendment limits the government, not private companies.[647]

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[641] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[642] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026). Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

[643] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026). Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[644] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

[645] Moody v. NetChoice, LLC, 603 U.S. 707 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r58_8mj9.pdf (accessed November 12, 2026).

[646] Murthy v. Missouri, 603 U.S. 43 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/603us1r49_n6io.pdf (accessed November 12, 2026).

[647] Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/587BV.pdf#page=824 (accessed November 12, 2026).

Claim 9: "Police need a warrant to come into your home."

Where it spread: [Not verified: no dated source documenting spread found before the cutoff.]

What the record shows:

- The home gets the strongest protection. *Payton* held that police generally need a warrant to enter a home to make a routine arrest.[648]
- But there are exceptions: consent, and emergencies, including entering to help someone believed to be seriously injured or in danger. The Court reaffirmed that emergency aid test in 2026.[649]

Verdict: Partly true. It is the general rule, but consent and real emergencies are recognized exceptions.[650]

Claim 10: "Police are not allowed to lie to you during questioning."

Where it spread: [Not verified: no dated source documenting spread found before the cutoff.]

What the record shows: In *Frazier v. Cupp* (1969), an officer falsely told a suspect his cousin had confessed. The Court held that the lie was "insufficient... to make this otherwise voluntary confession inadmissible."[651] There is a limit on tricks aimed at your rights themselves: *Miranda* says "any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege."[652] Some states have limited deception with young people (Chapter 10), but I did not verify which ones.

Verdict: False (debunked) as a general rule of federal constitutional law. Lies about the evidence are allowed; tricking you into giving up your rights is not.[653]

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[648] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026).

[649] Brigham City v. Stuart, 547 U.S. 398 (2006). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep547/usrep547398/usrep547398.pdf (accessed November 12, 2026). Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[650] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026). Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[651] Frazier v. Cupp, 394 U.S. 731 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep394/usrep394731/usrep394731.pdf (accessed November 12, 2026).

[652] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[653] Frazier v. Cupp, 394 U.S. 731 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep394/usrep394731/usrep394731.pdf (accessed

Claim 11: "Police have a legal duty to protect you."

Where it spread: [Not verified: no dated source documenting spread found before the cutoff.]

What the record shows:

- *DeShaney* (1989): A county social services agency had received complaints that a boy was being abused by his father but did not remove him. The father beat him so badly that he suffered permanent brain damage. The Court held that "a State's failure to protect an individual against private violence generally does not constitute a violation of the Due Process Clause."[654]
- *Castle Rock v. Gonzales* (2005): A mother repeatedly reported to police over several hours that her estranged husband had taken their three children in violation of a restraining order. He murdered the children. The Court held she did not have a due process "property interest in police enforcement of the restraining order."[655]

Verdict: Partly true. Police may have duties under state law, department policy and their oath, but the Supreme Court has held that the federal Due Process Clause generally does not create a constitutional duty to protect a person from private violence.[656] [Not verified: I did not survey state laws that may create such duties.]

Claim 12: "Qualified immunity means police can never be sued."

Where it spread: The phrase appears often in the public debate. The Congressional Research Service notes that critics say the doctrine gives too much deference "to the police at the expense of accountability."[657]

What the record shows:

- Officers can be sued under Section 1983. Qualified immunity is a defense to **money damages**, and it fails when the officer violated clearly established law.[658]

November 12, 2026). Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[654] DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep489/usrep489189/usrep489189.pdf (accessed November 12, 2026).

[655] Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep545/usrep545748/usrep545748.pdf (accessed November 12, 2026).

[656] DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep489/usrep489189/usrep489189.pdf (accessed November 12, 2026). Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep545/usrep545748/usrep545748.pdf (accessed November 12, 2026).

[657] Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/LSB10492.html (accessed November 12, 2026).

[658] 42 U.S.C. 1983, Civil action for deprivation of rights. United States Code (text reproduced by Cornell Law School Legal Information Institute). https://www.law.cornell.edu/uscode/text/42/1983 (accessed November 12, 2026).

- The Court has denied immunity in obvious cases, such as *Hope* (2002) and *Taylor v. Riojas* (2020).[659]
- Cities and counties cannot claim qualified immunity, though they can be sued only for their own policies or customs.[660]

Verdict: False (debunked). The defense is strong and often wins, but "never" is wrong.[661]

Claim 13: "Hate speech is not protected by the First Amendment."

Where it spread: [Not verified: no dated source documenting spread found before the cutoff.]

What the record shows: There is no general "hate speech" exception. In *Matal v. Tam* (2017), Justice Alito wrote that speech that demeans on the basis of race, religion and similar grounds "is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'"[662] Hateful words lose protection only when they fit a narrow category, such as true threats or incitement to imminent lawless action.[663]

Harlow v. Fitzgerald, 457 U.S. 800 (1982). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457800/usrep457800.pdf (accessed November 12, 2026).

[659] Hope v. Pelzer, 536 U.S. 730 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536730/usrep536730.pdf (accessed November 12, 2026). Taylor v. Riojas, 592 U.S. 7 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/592US1PP_web.pdf#page=47 (accessed November 12, 2026).

[660] Owen v. City of Independence, 445 U.S. 622 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445622/usrep445622.pdf (accessed November 12, 2026). Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep436/usrep436658/usrep436658.pdf (accessed November 12, 2026).

[661] Hope v. Pelzer, 536 U.S. 730 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536730/usrep536730.pdf (accessed November 12, 2026). Taylor v. Riojas, 592 U.S. 7 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/592US1PP_web.pdf#page=47 (accessed November 12, 2026). Owen v. City of Independence, 445 U.S. 622 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445622/usrep445622.pdf (accessed November 12, 2026).

[662] Matal v. Tam, 582 U.S. 218 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1293 (accessed November 12, 2026).

[663] Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395444/usrep395444.pdf (accessed November 12, 2026). Counterman v. Colorado, 600 U.S. 66 (2023). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/22pdf/600us1r51_g3bi.pdf (accessed November 12, 2026).

Verdict: False (debunked) as a statement of U.S. constitutional law.[664]

Claim 14: "Your rights stop at the border."

Where it spread: [Not verified: no dated source documenting spread found before the cutoff.]

What the record shows: Routine border searches need no warrant and no suspicion.[665] But searches that go beyond routine, such as a lengthy detention of a traveler, need reasonable suspicion.[666] And other rights, such as the right to a lawyer and a jury if you are charged with a crime, still apply. The Supreme Court has also not decided how much suspicion is needed for a forensic search of a phone at the border, and lower courts are split.[667]

Verdict: Partly true. Fourth Amendment protections are much weaker at the border, but they do not disappear, and other rights still apply.[668]

Summary table

Table 17.1: Verdicts on common claims (current as of November 12, 2026)

#	Claim	Verdict
1	Police must read your rights at arrest or the case is thrown out	False (debunked)
2	You have to answer police questions	False (debunked)
3	You never have to show ID to police	False (debunked)
4	Police can't search your phone	Partly true

[664] Matal v. Tam, 582 U.S. 218 (2017). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/15-1293 (accessed November 12, 2026). Snyder v. Phelps, 562 U.S. 443 (2011). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep562/usrep562443/usrep562443.pdf (accessed November 12, 2026).

[665] United States v. Ramsey, 431 U.S. 606 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep431/usrep431606/usrep431606.pdf (accessed November 12, 2026). United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[666] United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[667] Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/R46601.html (accessed November 12, 2026).

[668] United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

#	Claim	Verdict
	without a warrant	
5	It's illegal to record the police	False (debunked)
6	Sovereign citizens don't have to follow the law	False (debunked)
7	Government can take property without charging you	True
8	Free speech means a private company can't ban you	False (debunked)
9	Police need a warrant to come into your home	Partly true
10	Police can't lie during questioning	False (debunked)
11	Police have a legal duty to protect you	Partly true
12	Qualified immunity means police can never be sued	False (debunked)
13	Hate speech is not protected	False (debunked)
14	Your rights stop at the border	Partly true

Notes for Part Seven: sources, unverified items and disagreements

Sources used in Part Seven. Full details for each are in the footnotes and in Appendix D.

- "Federal judge blocks Arizona law limiting filming of police." NBC News, September 2022 (exact date not shown on the page as read)
- 18 U.S.C. 981, Civil forfeiture
- 18 U.S.C. 983, General rules for civil forfeiture proceedings
- 42 U.S.C. 1983, Civil action for deprivation of rights
- Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026
- Berghuis v. Thompkins, 560 U.S. 370 (2010)
- Brandenburg v. Ohio, 395 U.S. 444 (1969)
- Brigham City v. Stuart, 547 U.S. 398 (2006)
- Case v. Montana, 607 U.S. 107 (2026)
- Citlalli Florez, "Arizona Law Banning Recording of Police Declared Unconstitutional." Davis Vanguard, July 2023
- Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026
- Counterman v. Colorado, 600 U.S. 66 (2023)
- Culley v. Marshall, 601 U.S. 377 (2024)
- Delaware v. Prouse, 440 U.S. 648 (1979)
- DeShaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989)

- FBI Counterterrorism Analysis Section, "Sovereign Citizens: A Growing Domestic Threat to Law Enforcement." FBI Law Enforcement Bulletin (no publication date shown on the page; its footnoted sources were accessed June 14, 2011)
- Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia)
- Frazier v. Cupp, 394 U.S. 731 (1969)
- Harlow v. Fitzgerald, 457 U.S. 800 (1982)
- Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004)
- Hillel R. Smith and Kelsey Y. Santamaria, "Searches and Seizures at the Border and the Fourth Amendment," CRS Report R46601. Congressional Research Service, March 30, 2021 (copy via EveryCRSReport.com)
- Hope v. Pelzer, 536 U.S. 730 (2002)
- Internal Revenue Service, "The Truth About Frivolous Tax Arguments," introduction, March 2022 edition
- Manhattan Community Access Corp. v. Halleck, 587 U.S. 802 (2019)
- Matal v. Tam, 582 U.S. 218 (2017)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978)
- Moody v. NetChoice, LLC, 603 U.S. 707 (2024)
- Murthy v. Missouri, 603 U.S. 43 (2024)
- Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026
- Owen v. City of Independence, 445 U.S. 622 (1980)
- Payton v. New York, 445 U.S. 573 (1980)
- Riley v. California, 573 U.S. 373 (2014)
- Salinas v. Texas, 570 U.S. 178 (2013)
- Schneckloth v. Bustamonte, 412 U.S. 218 (1973)
- Snyder v. Phelps, 562 U.S. 443 (2011)
- Taylor v. Riojas, 592 U.S. 7 (2020)
- The Bill of Rights: A Transcription. National Archives and Records Administration
- Town of Castle Rock v. Gonzales, 545 U.S. 748 (2005)
- United States v. Montoya de Hernandez, 473 U.S. 531 (1985)
- United States v. Ramsey, 431 U.S. 606 (1977)
- United States v. Willis, No. 23-1547 (8th Cir. May 13, 2024) (opinion by Judge Loken). U.S. Court of Appeals for the Eighth Circuit
- Vega v. Tekoh, 597 U.S. 134 (2022)
- Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com)
- WUSA9 Verify, "Are police officers required to read the Miranda rights to a suspect during an arrest?" WUSA9 (TEGNA), date not shown on page

Items marked [Not verified] in Part Seven.

- No checkable source found before the cutoff for two planned claims, about undercover officers having to identify themselves and about gold-fringed courtroom flags; both were dropped.
- The page did not show a date.
- I did not find a dated, checkable source documenting this claim's spread before the cutoff. I include it because the prompt for this book listed it.
- I did not find a dated, checkable source documenting this claim's spread before the cutoff.
- I did not confirm a current 50-state summary of these laws.
- I did not find a dated, checkable source documenting this claim's spread before the cutoff.
- I did not find a dated, checkable source documenting this claim's spread before the cutoff. The prompt for this book listed it.
- No dated source documenting spread found before the cutoff.
- No dated source documenting spread found before the cutoff.
- No dated source documenting spread found before the cutoff.
- I did not survey state laws that may create such duties.
- No dated source documenting spread found before the cutoff.
- No dated source documenting spread found before the cutoff.

Where sources disagreed in Part Seven.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Part Eight: Where Things Stand and the Options

Chapter 18: Where Things Stand Today

Information in this chapter is current as of November 12, 2026.

This chapter gathers, in one place, the most recent rulings and laws covered in this book, and the cases the Supreme Court has agreed to hear next. Everything here is dated, because this is the part of the book most likely to go out of date.

The Supreme Court term that ended in 2026

The Court's term runs from October to the following summer. The term that began in October 2025 (called "October Term 2025") produced several rulings on the rights in this book.[669]

Table 18.1: Rights rulings from October Term 2025 (current as of November 12, 2026)

Decided	Case	What the Court held, in short	Chapter
Nov. 24, 2025	*Pitts v. Mississippi*	Screening a child witness from the defendant needs a case-specific finding of necessity[670]	11
Jan. 14, 2026	*Case v. Montana*	Reaffirmed the emergency aid test for entering a home without a warrant[671]	5
Feb. 25, 2026	*Villarreal v. Texas*	A limited order barring talk about ongoing testimony during an overnight break did not violate the right to counsel[672]	11
Mar. 20, 2026	*Olivier v. City of Brandon*	A person convicted under an ordinance may still sue to stop	14

[669] Opinions of the Court, October Term 2025 (slip opinion list). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[670] Pitts v. Mississippi, 607 U.S. 1 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r01_kjfm.pdf (accessed November 12, 2026).

[671] Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

[672] Villarreal v. Texas, 607 U.S. 465 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r16_869c.pdf (accessed November 12, 2026).

Decided	Case	What the Court held, in short	Chapter
		its future enforcement[673]	
Mar. 23, 2026	*Zorn v. Linton*	Officer who used a wristlock on a protester was entitled to qualified immunity[674]	14
Mar. 31, 2026	*Chiles v. Salazar*	Lower courts used too weak a First Amendment test for a law limiting a counselor's talk therapy[675]	3
Apr. 20, 2026	*District of Columbia v. R. W.* (unsigned)	Lower court wrongly looked at facts in isolation when it found no reasonable suspicion for a stop[676]	6
Apr. 29, 2026	*First Choice Women's Resource Centers v. Davenport*	A pregnancy center could sue in federal court over a subpoena for donor information[677]	4
May 28, 2026	*Pitchford v. Cain*	State court unreasonably applied the rules against race-based jury strikes[678]	11

[673] Olivier v. City of Brandon, 607 U.S. 552 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r20_h315.pdf (accessed November 12, 2026).

[674] Zorn v. Linton, 607 U.S. 568 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r21_2bo2.pdf (accessed November 12, 2026).

[675] Chiles v. Salazar, 607 U.S. 627 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us2r24_4315.pdf (accessed November 12, 2026).

[676] District of Columbia v. R. W., 608 U.S. 22 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us1r26_ppl4.pdf (accessed November 12, 2026).

[677] First Choice Women's Resource Centers, Inc. v. Davenport, 608 U.S. 174 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us1r30_3f14.pdf (accessed November 12, 2026).

[678] Pitchford v. Cain, 608 U.S. 391 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r38_l53m.pdf (accessed November 12, 2026).

Decided	Case	What the Court held, in short	Chapter
June 4, 2026	*FCC v. AT&T*	FCC penalty orders that need a separate court case to collect do not violate the jury right[679]	16
June 18, 2026	*United States v. Hemani*	Prosecution of a marijuana user for having a gun, as brought, violated the Second Amendment[680]	9
June 23, 2026	*Landor v. Louisiana Dept. of Corrections*	Individual prison officials cannot be sued for money damages under RLUIPA (Religious Land Use and Institutionalized Persons Act) unless they consented to that liability[681]	4
June 23, 2026	*Pung v. Isabella County*	After a fair tax sale, compensation is the auction price, not market value[682]	12, 13
June 25, 2026	*Wolford v. Lopez*	Hawaii's default ban on carrying on private property open to the public is unconstitutional[683]	9

[679] FCC v. AT&T Inc., 608 U.S. 531 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r43_m648.pdf (accessed November 12, 2026).

[680] United States v. Hemani, 608 U.S. 772 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/608us2r51_k4lo.pdf (accessed November 12, 2026).

[681] Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r55_h315.pdf (accessed November 12, 2026).

[682] Pung v. Isabella County, 609 U.S. 30 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r54_d18e.pdf (accessed November 12, 2026).

[683] Wolford v. Lopez, 609 U.S. 185 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us1r58_a8cf.pdf (accessed November 12, 2026).

Decided	Case	What the Court held, in short	Chapter
June 29, 2026	*Chatrie v. United States*	Getting a person's Google location history is a Fourth Amendment search; validity of the warrant sent back to the lower court[684]	8
June 30, 2026	*Trump v. Barbara*	Children born in the U.S. to parents here unlawfully or temporarily are citizens at birth[685]	2

The term now under way

As of November 12, 2026, the Court's list of opinions for the term that began in October 2026 showed no signed decisions in argued cases yet.[686] The Court has agreed to hear several cases that touch the rights in this book. These are **questions**, not answers. How the Court will rule is unknown.

Table 18.2: Selected rights cases the Court has agreed to hear in October Term 2026 (current as of November 12, 2026)

Case	The question, in short	Argument date (as listed)
Viramontes v. Cook County and *Grant v. Higgins*	"Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles"[687]	Dec. 2, 2026[688]
Jouppi v. Alaska	Whether courts judging an	Dec. 1, 2026[690]

[684] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[685] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

[686] Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/26 (accessed November 12, 2026).

[687] Question presented, Viramontes v. Cook County, No. 25-238. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-00238qp.pdf (accessed November 12, 2026). Question presented, Grant v. Higgins, No. 25-566. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-00566qp.pdf (accessed November 12, 2026).

[688] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

Case	The question, in short	Argument date (as listed)
	excessive fine look at the offense "purely in the abstract" or at "the specific defendant's wrongdoing." As the petition describes it, Alaska's highest court upheld forfeiture of a $95,000 airplane because the owner knew a passenger's grocery bag held a six-pack of beer[689]	
Grand v. City of University Heights	Whether a credible government threat that chills religious exercise and assembly is a complete First Amendment injury, even in a land use dispute[691]	Dec. 9, 2026[692]
Kian v. Florida	Whether the Sixth Amendment requires a 12-person jury for a serious felony[693]	Jan. 13, 2027[694]
St. Mary Catholic Parish v. Roy	A religious freedom challenge to Colorado's universal preschool program rules[695]	Nov. 3, 2026[696]

You might ask, "Is *Kian* about the unanimous jury rule from Chapter 11?" No. *Ramos* (2020) was about whether the jury must agree. *Kian* is about how many jurors there must be.[697]

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[690] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

[689] Question presented, Jouppi v. Alaska, No. 25-246. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-00246qp.pdf (accessed November 12, 2026).

[691] Question presented, Grand v. City of University Heights, No. 25-965. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-00965qp.pdf (accessed November 12, 2026).

[692] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

[693] Question presented, Kian v. Florida, No. 25-6623. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-06623qp.pdf (accessed November 12, 2026).

[694] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

[695] Question presented, St. Mary Catholic Parish v. Roy, No. 25-581. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-00581qp.pdf (accessed November 12, 2026).

[696] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026).

[697] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12,

Recent laws

Federal. As of November 12, 2026, the federal bills discussed in Chapter 19 had not become law. GovInfo bill status records showed their latest actions as committee referrals in the current Congress.[698]

States. Colorado's civil forfeiture law, HB26-1250, signed June 4, 2026, is the most recent state law in this book.[699] Chapter 13 covers it.

Earlier state laws limiting qualified immunity, in Colorado (2020) and New Mexico (2021), are described in Chapter 14.[700] [Not verified: I did not confirm a list of all state laws passed in 2025 and 2026 on the subjects in this book from an official or nonpartisan source before the cutoff.]

What to watch

- Rulings in the cases in Table 18.2, most of which are likely to come by the end of the term in mid-2027. [Not verified: exact release dates are not announced in advance.]
- Whether Congress acts on any of the bills in Chapter 19.
- State legislative sessions in 2027.

2026). Question presented, Kian v. Florida, No. 25-6623. Supreme Court of the United States. https://www.supremecourt.gov/qp/25-06623qp.pdf (accessed November 12, 2026).

[698] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026). S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s1913.xml (accessed November 12, 2026). H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026). S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s122.xml (accessed November 12, 2026). S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026). H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[699] Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

[700] Colorado General Assembly, SB20-217, "Enhance Law Enforcement Integrity," 2020 Regular Session, signed by the Governor June 19, 2020. https://leg.colorado.gov/bills/sb20-217 (accessed November 12, 2026). Office of the Governor of New Mexico, "Gov. Lujan Grisham ratifies Civil Rights Act," press release, April 7, 2021. https://governor.state.nm.us/2021/04/07/gov-lujan-grisham-ratifies-civil-rights-act (accessed November 12, 2026).

Key points from this chapter

- **Confirmed fact:** The October 2025 term produced rulings on searches, guns, jury selection, qualified immunity, agency penalties and birthright citizenship, among others.[701]
- **Confirmed fact:** As of November 12, 2026, the Court had agreed to hear cases on AR-15 rifles, excessive fines, and the size of criminal juries, with no decisions yet.[702]
- **Unknown:** How those pending cases will come out.

[701] Opinions of the Court, October Term 2025 (slip opinion list). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/25 (accessed November 12, 2026).

[702] Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026. Supreme Court of the United States. https://www.supremecourt.gov/orders/26grantednotedlist.pdf (accessed November 12, 2026). Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026). Supreme Court of the United States. https://www.supremecourt.gov/opinions/slipopinion/26 (accessed November 12, 2026).

Chapter 19: Reform Options

Information in this chapter is current as of November 12, 2026.

This chapter lays out the main proposals to change the law in the areas this book covers. For each one I give what the proposal would do, who backs it, who opposes it, and what evidence each side points to. I do not recommend any of them. That is a choice for voters and their representatives.

A note on sources: the plain-language bill descriptions below come from the official bill summaries in the federal government's bill status records, written by the Congressional Research Service (CRS), Congress's nonpartisan research office. Where I give a side's argument, I name the group or person and quote them.

Qualified immunity

Chapter 14 explains the doctrine and the debate. There are three main paths in Congress, and all three were still in committee as of November 12, 2026.[703]

Table 19.1: Federal qualified immunity bills (current as of November 12, 2026)

Bill	Sponsor	What it would do	Cosponsors	Status
Ending Qualified Immunity Act (H.R. 3602)	Rep. Ayanna Pressley (D-MA)	Remove the qualified immunity defense in Section 1983 cases[704]	18, all Democrats[705]	Referred to House Judiciary, May 23, 2025[706]

[703] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026). S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s1913.xml (accessed November 12, 2026). H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026). S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s122.xml (accessed November 12, 2026). H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[704] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026).

[705] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026).

Bill	Sponsor	What it would do	Cosponsors	Status
Ending Qualified Immunity Act (S. 1913)	Sen. Edward Markey (D-MA)	Same, in the Senate[707]	2 (one Democrat, one independent)[708]	Referred to Senate Judiciary, May 22, 2025[709]
Qualified Immunity Act of 2025 (H.R. 503)	Rep. Virginia Foxx (R-NC)	Write qualified immunity into federal law for law enforcement officers[710]	24, all Republicans[711]	Referred to House Judiciary, Jan. 16, 2025[712]
Qualified Immunity Act of 2025 (S. 122)	Sen. Jim Banks (R-IN)	Same, in the Senate[713]	10, all Republicans[714]	Referred to Senate Judiciary, Jan. 16, 2025[715]
George Floyd Justice in Policing Act of	Rep. Glenn Ivey (D-MD)	Among many other changes, "limits qualified	136, all Democrats[717]	Referred to House Judiciary and other

[706] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026).

[707] S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s1913.xml (accessed November 12, 2026).

[708] S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s1913.xml (accessed November 12, 2026).

[709] S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s1913.xml (accessed November 12, 2026).

[710] H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026).

[711] H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026).

[712] H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026).

[713] S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s122.xml (accessed November 12, 2026).

[714] S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s122.xml (accessed November 12, 2026).

[715] S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s122.xml (accessed November 12, 2026).

Bill	Sponsor	What it would do	Cosponsors	Status
2025 (H.R. 5361)		immunity as a defense" in civil suits against law enforcement officers[716]		committees, Sept. 15, 2025[718]

What the codifying bills say. According to the CRS summary, H.R. 503 would entitle officers to qualified immunity if the right "was not clearly established or the state of the law was not sufficiently clear that every reasonable officer would have known that the conduct was unconstitutional," or if "a court has held that the specific conduct at issue is constitutional." It would apply to federal, state and local officers, and it says agencies and local governments "may not be held liable if their officers are entitled to qualified immunity."[719]

That last point would be a significant change. As Chapter 14 explains, cities today cannot use their officers' good faith as a defense.[720] [Interpretation: this comparison is mine, based on reading the CRS summary next to the *Owen* holding. I did not find an official analysis making it.]

What each side argues, in its own words. The Fraternal Order of Police supports codifying the doctrine, arguing that an officer "needs to be afforded a certain degree of discretion to make split-second decisions."[721] Critics, as summarized by the Congressional Research Service, say the doctrine gives too much deference "to the police at the expense of accountability."[722] Scholars are divided as well, as Chapter 14 shows.[723]

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[717] H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[716] H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[718] H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[719] H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026).

[720] Owen v. City of Independence, 445 U.S. 622 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445622/usrep445622.pdf (accessed November 12, 2026).

[721] Patrick Yoes, National President, Fraternal Order of Police (police union; supports codifying qualified immunity), letter to Sen. James E. Banks on the Qualified Immunity Act, January 16, 2025. https://fop.net/wp-content/uploads/2025/01/letter-20250116-codify-qi-banks-s122.pdf (accessed November 12, 2026).

[722] Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/LSB10492.html (accessed November 12, 2026).

[723] William Baude, "Is Qualified Immunity Unlawful?" California Law Review, vol. 106, p. 45, 2018. https://lawcat.berkeley.edu/record/1128553/files/fulltext.pdf (accessed November 12, 2026). Aaron L. Nielson and Christopher J. Walker, "A Qualified Defense of Qualified Immunity." Notre Dame Law Review, vol. 93, no. 5, 2018.

Evidence each side points to. Research by Professor Joanna Schwartz found that officers personally paid "just 0.02 percent" of more than $735 million in awards in the agencies she studied.[724] Critics use this to argue that ending qualified immunity would not bankrupt officers; supporters respond that the doctrine also protects officers from the burden of being sued at all.[725] [Interpretation: this summary of how each side uses the research is mine, based on the CRS sidebar's description of the two positions.]

State action. Some states have acted on their own. Chapter 14 describes them.

Civil asset forfeiture

The FAIR Act. The Fifth Amendment Integrity Restoration (FAIR) Act has been introduced in this Congress in the Senate by Sen. Rand Paul (R-KY) as S. 263, and in the House by Rep. Tim Walberg (R-MI) as H.R. 7638.[726] Both had cosponsors from both parties: S. 263 had four Democrats, three Republicans and one independent; H.R. 7638 had three Democrats and one Republican.[727]

According to the CRS summary, the bill would:[728]

- require notice to owners "within 7 days (currently, 60 days)" of a seizure;
- require that an indigent property owner "be represented by counsel regardless of whether the owner requests counsel";

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https://ndlawreview.org/wp-content/uploads/2025/07/A-Qualified-Defense-of-Qualified-Immunity.pdf (accessed November 12, 2026).

[724] Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016. https://www.uclalawreview.org/wp-content/uploads/2019/09/Schwartz-63-5.pdf (accessed November 12, 2026).

[725] Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016. https://www.uclalawreview.org/wp-content/uploads/2019/09/Schwartz-63-5.pdf (accessed November 12, 2026). Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com). https://www.everycrsreport.com/reports/LSB10492.html (accessed November 12, 2026).

[726] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026).

[727] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026).

[728] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026).

- require the government "to meet a higher evidentiary standard" to prove the property is connected to a crime;
- expand the factors courts consider in deciding whether a forfeiture is "constitutionally excessive";
- eliminate "statutory authority for equitable sharing," the program that shares federal forfeiture proceeds with state and local agencies; and
- send forfeiture proceeds to "the general fund of the Treasury instead of the Department of Justice (DOJ) Assets Forfeiture Fund."

Both versions were in committee as of November 12, 2026.[729]

What each side argues. The Institute for Justice, which supports the FAIR Act's approach, describes civil forfeiture as "policing for profit."[730] Supporters of the current system point to court rulings upholding it and to its role in funding law enforcement, including equitable sharing with state and local agencies.[731] [Not verified: I did not obtain a law enforcement or prosecutor organization's published statement on the FAIR Act in its own words before the cutoff.]

Evidence. The official federal figure is about $1.96 billion in forfeiture revenue in fiscal year 2025.[732] Broader national totals come from the Institute for Justice and are labeled as advocacy figures in Chapter 13.[733]

States. Colorado's 2026 law is the newest state change. Justice Gorsuch's 2024 summary lists the main types of state reform: hearing deadlines, jury trials, requiring a criminal conviction, and early hearings.[734]

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[729] S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026).

[730] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026).

[731] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), syllabus. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026). U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[732] U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026. https://www.oversight.gov/sites/default/files/documents/reports/2026-02/26-013.pdf (accessed November 12, 2026).

[733] Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026. https://ij.org/press-release/civil-forfeiture-keeps-raking-in-billions-of-dollars-with-few-property-owners-getting-their-day-in-court/ (accessed November 12, 2026).

[734] Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026. https://leg.colorado.gov/bills/HB26-1250 (accessed November 12, 2026).

Broad policing bills

Two broad federal bills show how far apart the parties have been.

George Floyd Justice in Policing Act. The 2021 version passed the House 220-212 and was received in the Senate on March 9, 2021, where it went no further.[735] The 2025 version was introduced in September 2025.[736] According to the CRS summary, it would, among other things:[737]

- lower the intent standard "from willful to knowing or reckless" to convict an officer of misconduct in a federal prosecution;
- limit qualified immunity;
- restrict "no-knock warrants, chokeholds, and carotid holds";
- create a "National Police Misconduct Registry"; and
- require training on "racial profiling, implicit bias, and the duty to intervene."

JUSTICE Act (2020). Sen. Tim Scott (R-SC) introduced the JUSTICE Act in June 2020. The CRS summary says it would fund state and local grants, encourage state and local reporting on certain policing practices, create new federal offenses for certain misconduct, establish a commission on conditions affecting Black men and boys, and set best practices and training requirements.[738] On June 24, 2020, a motion to begin debate failed to get the 60 votes needed, 55-45.[739] It did not include an end to qualified immunity. [Interpretation: this is my reading of the CRS summary, which does not list qualified immunity among the bill's provisions.]

You might ask, "Why did neither pass?" The record shows the votes, not the reasons. Members on each side have given their own explanations, and I have not tried to judge them.

Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion), Gorsuch, J., concurring. https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[735] H.R. 1280, George Floyd Justice in Policing Act of 2021, 117th Congress, introduced February 24, 2021 by Rep. Karen Bass (D-CA); passed the House 220-212 (Roll no. 60). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/117/hr/BILLSTATUS-117hr1280.xml (accessed November 12, 2026).

[736] H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[737] H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr5361.xml (accessed November 12, 2026).

[738] S. 3985, JUSTICE Act (Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020), 116th Congress, introduced June 17, 2020 by Sen. Tim Scott (R-SC); cloture on the motion to proceed not invoked, 55-45, June 24, 2020 (Record Vote No. 126). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/116/s/BILLSTATUS-116s3985.xml (accessed November 12, 2026).

[739] S. 3985, JUSTICE Act (Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020), 116th Congress, introduced June 17, 2020 by Sen. Tim Scott (R-SC); cloture on the motion to proceed not invoked, 55-45, June 24, 2020 (Record Vote No. 126). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/116/s/BILLSTATUS-116s3985.xml (accessed November 12, 2026).

Searches, phones and data

Most changes in this area since 2010 have come from the Supreme Court, not Congress: *Riley* (phones, 2014), *Carpenter* (location records, 2018) and *Chatrie* (Google location history, 2026).[740] After *Chatrie*, a key open question is how courts will judge multi-step geofence warrants, which the Court sent back to the lower court.[741]

[Not verified: I did not confirm a pending federal bill on geofence warrants, border device searches, or phone passcodes with current status from GovInfo before the cutoff, so I do not describe any.]

Public defense

Gideon requires appointed lawyers for people who cannot afford one, but it does not set caseloads or funding.[742] [Not verified: I did not confirm current national data on public defender caseloads or funding from the Bureau of Justice Statistics or another official source before the cutoff. I make no claim about whether the system is or is not adequately funded.]

Public records

FOIA was last significantly amended by the FOIA Improvement Act of 2016, Public Law 114-185.[743] The "foreseeable harm" standard described in Chapter 15 is in the current statute.[744]

How to weigh these options yourself

These questions may help when you read about any reform:

1. What exactly would the text change? Read the bill summary, not just the name.
2. Who would pay, and who would decide?

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[740] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026). Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026). Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[741] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion), syllabus. https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

[742] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

[743] U.S. Department of Justice, Office of Information Policy, "Freedom of Information Act, 5 U.S.C. 552," full text showing the amendments made by the FOIA Improvement Act of 2016 (Public Law No. 114-185), https://www.justice.gov/oip/freedom-information-act-5-usc-552 (accessed November 12, 2026).

[744] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026).

3. What evidence does each side cite, and where does it come from? Is it a court record, government data, a study, or an advocacy group's own count?
4. Has a state already tried it, and what happened there? Is that evidence from a neutral source?

Key points from this chapter

- **Confirmed fact:** As of November 12, 2026, federal bills to end qualified immunity, to write it into law, and to tighten civil forfeiture rules had all been introduced and referred to committee, and none had passed either chamber in this Congress.[745]
- **Confirmed fact:** The George Floyd Justice in Policing Act passed the House in 2021 but not the Senate; the JUSTICE Act failed a Senate procedural vote, 55-45, in 2020.[746]
- **Interpretation:** Whether any of these reforms is a good idea is a matter of values and judgment. This book does not take a side.

Notes for Part Eight: sources, unverified items and disagreements

Sources used in Part Eight. Full details for each are in the footnotes and in Appendix D.

- 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act)
- Aaron L. Nielson and Christopher J. Walker, "A Qualified Defense of Qualified Immunity." Notre Dame Law Review, vol. 93, no. 5, 2018
- Andrew Wimer, press release on the new edition of "Policing for Profit." Institute for Justice (civil liberties law firm; advocates forfeiture reform), March 24, 2026
- Carpenter v. United States, 585 U.S. 296 (2018)
- Case v. Montana, 607 U.S. 107 (2026)
- Chatrie v. United States, 609 U.S. 605 (2026)
- Chiles v. Salazar, 607 U.S. 627 (2026)

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[745] H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office). https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr3602.xml (accessed November 12, 2026). H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr503.xml (accessed November 12, 2026). S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/s/BILLSTATUS-119s263.xml (accessed November 12, 2026). H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/119/hr/BILLSTATUS-119hr7638.xml (accessed November 12, 2026).

[746] H.R. 1280, George Floyd Justice in Policing Act of 2021, 117th Congress, introduced February 24, 2021 by Rep. Karen Bass (D-CA); passed the House 220-212 (Roll no. 60). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/117/hr/BILLSTATUS-117hr1280.xml (accessed November 12, 2026). S. 3985, JUSTICE Act (Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020), 116th Congress, introduced June 17, 2020 by Sen. Tim Scott (R-SC); cloture on the motion to proceed not invoked, 55-45, June 24, 2020 (Record Vote No. 126). Bill status, GovInfo. https://www.govinfo.gov/bulkdata/BILLSTATUS/116/s/BILLSTATUS-116s3985.xml (accessed November 12, 2026).

- Colorado General Assembly, HB26-1250, "Procedures Related to Civil Asset Forfeiture," 2026 Regular Session, signed by the Governor June 4, 2026
- Colorado General Assembly, SB20-217, "Enhance Law Enforcement Integrity," 2020 Regular Session, signed by the Governor June 19, 2020
- Culley v. Marshall, 601 U.S. 377 (2024)
- District of Columbia v. R. W., 608 U.S. 22 (2026)
- FCC v. AT&T Inc., 608 U.S. 531 (2026)
- First Choice Women's Resource Centers, Inc. v. Davenport, 608 U.S. 174 (2026)
- Gideon v. Wainwright, 372 U.S. 335 (1963)
- Granted and Noted List, October Term 2026 Cases for Argument, as of November 6, 2026
- H.R. 1280, George Floyd Justice in Policing Act of 2021, 117th Congress, introduced February 24, 2021 by Rep. Karen Bass (D-CA); passed the House 220-212 (Roll no. 60). Bill status, GovInfo
- H.R. 3602, Ending Qualified Immunity Act, 119th Congress, introduced May 23, 2025 by Rep. Ayanna Pressley (D-MA). Bill status, GovInfo (U.S. Government Publishing Office)
- H.R. 503, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Rep. Virginia Foxx (R-NC). Bill status, GovInfo
- H.R. 5361, George Floyd Justice in Policing Act of 2025, 119th Congress, introduced September 15, 2025 by Rep. Glenn Ivey (D-MD). Bill status, GovInfo
- H.R. 7638, Fifth Amendment Integrity Restoration Act of 2026 (FAIR Act of 2026), 119th Congress, introduced February 20, 2026 by Rep. Tim Walberg (R-MI). Bill status, GovInfo
- Joanna C. Schwartz, "How Governments Pay: Lawsuits, Budgets, and Police Reform." UCLA Law Review, vol. 63, p. 1144, 2016
- Landor v. Louisiana Department of Corrections and Public Safety, 609 U.S. 59 (2026)
- Office of the Governor of New Mexico, "Gov. Lujan Grisham ratifies Civil Rights Act," press release, April 7, 2021
- Olivier v. City of Brandon, 607 U.S. 552 (2026)
- Opinions of the Court, October Term 2025 (slip opinion list)
- Opinions of the Court, October Term 2026 (slip opinion list, two per curiam orders and no merits opinions listed as of November 12, 2026)
- Owen v. City of Independence, 445 U.S. 622 (1980)
- Patrick Yoes, National President, Fraternal Order of Police (police union; supports codifying qualified immunity), letter to Sen. James E. Banks on the Qualified Immunity Act, January 16, 2025
- Pitchford v. Cain, 608 U.S. 391 (2026)
- Pitts v. Mississippi, 607 U.S. 1 (2025)
- Pung v. Isabella County, 609 U.S. 30 (2026)
- Question presented, Grand v. City of University Heights, No. 25-965
- Question presented, Grant v. Higgins, No. 25-566
- Question presented, Jouppi v. Alaska, No. 25-246
- Question presented, Kian v. Florida, No. 25-6623
- Question presented, St. Mary Catholic Parish v. Roy, No. 25-581
- Question presented, Viramontes v. Cook County, No. 25-238

- Ramos v. Louisiana, 590 U.S. 83 (2020)
- Riley v. California, 573 U.S. 373 (2014)
- S. 122, Qualified Immunity Act of 2025, 119th Congress, introduced January 16, 2025 by Sen. Jim Banks (R-IN). Bill status, GovInfo
- S. 1913, Ending Qualified Immunity Act, 119th Congress, introduced May 22, 2025 by Sen. Edward J. Markey (D-MA). Bill status, GovInfo
- S. 263, Fifth Amendment Integrity Restoration Act of 2025 (FAIR Act of 2025), 119th Congress, introduced January 27, 2025 by Sen. Rand Paul (R-KY). Bill status, GovInfo
- S. 3985, JUSTICE Act (Just and Unifying Solutions To Invigorate Communities Everywhere Act of 2020), 116th Congress, introduced June 17, 2020 by Sen. Tim Scott (R-SC); cloture on the motion to proceed not invoked, 55-45, June 24, 2020 (Record Vote No. 126). Bill status, GovInfo
- Trump v. Barbara, 609 U.S. ___ (2026)
- U.S. Department of Justice, Office of the Inspector General, Audit Division, "Audit of the Assets Forfeiture Fund and Seized Asset Deposit Fund Annual Financial Statements Fiscal Year 2025," Report 26-013, February 2026
- United States v. Hemani, 608 U.S. 772 (2026)
- Villarreal v. Texas, 607 U.S. 465 (2026)
- Whitney K. Novak, "Policing the Police: Qualified Immunity and Considerations for Congress," CRS Legal Sidebar LSB10492. Congressional Research Service, June 10, 2020, updated February 21, 2023 (copy via EveryCRSReport.com)
- William Baude, "Is Qualified Immunity Unlawful?" California Law Review, vol. 106, p. 45, 2018
- Wolford v. Lopez, 609 U.S. 185 (2026)
- Zorn v. Linton, 607 U.S. 568 (2026)

Items marked [Not verified] in Part Eight.

- I did not confirm a list of all state laws passed in 2025 and 2026 on the subjects in this book from an official or nonpartisan source before the cutoff.
- Exact release dates are not announced in advance.
- I did not obtain a law enforcement or prosecutor organization's published statement on the FAIR Act in its own words before the cutoff.
- I did not confirm a pending federal bill on geofence warrants, border device searches, or phone passcodes with current status from GovInfo before the cutoff, so I do not describe any.
- I did not confirm current national data on public defender caseloads or funding from the Bureau of Justice Statistics or another official source before the cutoff. I make no claim about whether the system is or is not adequately funded.

Where sources disagreed in Part Eight.

- No conflicts between sources on matters of fact were found. Differences between Justices in majority and dissenting opinions are described in the chapters as differences of interpretation.

Appendix A: Pocket Summary

Current as of November 12, 2026. Not legal advice. Laws differ by state. Talk with a licensed attorney about your situation.

Safety first. Stay calm. Keep your hands visible. Do not physically resist, even if you believe a stop or arrest is wrong. Problems can be raised later in court.

Silence. You may stay silent. Say it out loud: courts have required a clear statement.[747]

A lawyer. If you want one during questioning in custody, say so clearly, with no "maybe." Questioning must then stop.[748]

Your name. Some states, such as Nevada, require you to give your name during a lawful stop, but not to answer other questions.[749]

Searches. You do not have to agree to a search. If you agree, that consent can make the search lawful.[750]

Your phone. After an arrest, police generally need a warrant to search it.[751]

Your home. Police generally need a warrant to enter, except with consent or in an emergency.[752]

Traffic stops. Officers may order the driver and passengers out of the car during a lawful stop.[753]

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[747] Berghuis v. Thompkins, 560 U.S. 370 (2010). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep560/usrep560370/usrep560370.pdf (accessed November 12, 2026).

[748] Edwards v. Arizona, 451 U.S. 477 (1981). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep451/usrep451477/usrep451477.pdf (accessed November 12, 2026). Davis v. United States, 512 U.S. 452 (1994). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep512/usrep512452/usrep512452.pdf (accessed November 12, 2026).

[749] Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, 542 U.S. 177 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542177/usrep542177.pdf (accessed November 12, 2026). Nevada Revised Statutes 171.123, Temporary detention by peace officer of person suspected of crime. Nevada Legislature, chapter revised April 15, 2026. https://www.leg.state.nv.us/NRS/NRS-171.html (accessed November 12, 2026).

[750] Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports, syllabus. https://tile.loc.gov/storage-services/service/ll/usrep/usrep412/usrep412218/usrep412218.pdf (accessed November 12, 2026).

[751] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[752] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026). Case v. Montana, 607 U.S. 107 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/607us1r06_19m1.pdf (accessed November 12, 2026).

Miranda. Warnings are required before questioning in custody. A missing warning affects the use of your answers, not whether the case goes forward.[754]

Recording. Federal appeals courts that have ruled on it recognize a right to record police in public. Do not interfere, and follow lawful orders to step back.[755]

At the border. Routine searches need no warrant or suspicion.[756]

Property. Civil forfeiture can happen without a criminal charge. Deadlines to file a claim are short, so act fast.[757]

Records. You can request federal records under FOIA and see your own federal records under the Privacy Act.[758]

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[753] Pennsylvania v. Mimms, 434 U.S. 106 (1977). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep434/usrep434106/usrep434106.pdf (accessed November 12, 2026). Maryland v. Wilson, 519 U.S. 408 (1997). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep519/usrep519408/usrep519408.pdf (accessed November 12, 2026).

[754] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026). Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[755] Fields v. City of Philadelphia, No. 16-1650 (3d Cir. July 7, 2017) (opinion by Judge Ambro). U.S. Court of Appeals for the Third Circuit (text via Justia). https://law.justia.com/cases/federal/appellate-courts/ca3/16-1650/16-1650-2017-07-07.html (accessed November 12, 2026).

[756] United States v. Montoya de Hernandez, 473 U.S. 531 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep473/usrep473531/usrep473531.pdf (accessed November 12, 2026).

[757] 18 U.S.C. 983, General rules for civil forfeiture proceedings. United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/18/983 (accessed November 12, 2026).

[758] 5 U.S.C. 552, Public information; agency rules, opinions, orders, records, and proceedings (Freedom of Information Act). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552 (accessed November 12, 2026). 5 U.S.C. 552a, Records maintained on individuals (Privacy Act of 1974). United States Code (text via Cornell LII). https://www.law.cornell.edu/uscode/text/5/552a (accessed November 12, 2026).

Appendix B: Landmark Rulings at a Glance

Table B.1: Landmark Supreme Court rulings in this book (current as of November 12, 2026)

Year	Case	What it decided, in short	Chapter
1833	*Barron v. Baltimore*	Bill of Rights originally limited only the federal government[759]	1
1961	*Mapp v. Ohio*	Illegally seized evidence excluded in state courts[760]	5
1963	*Gideon v. Wainwright*	Right to appointed counsel in felony cases[761]	11
1966	*Miranda v. Arizona*	Warnings before custodial interrogation[762]	10
1967	*Katz v. United States*	Reasonable expectation of privacy test[763]	5
1968	*Terry v. Ohio*	Stop and frisk on reasonable suspicion[764]	6
1969	*Tinker v. Des Moines*	Student speech	3

[759] Barron v. Baltimore, 32 U.S. 243 (1833). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/32/243 (accessed November 12, 2026).

[760] Mapp v. Ohio, 367 U.S. 643 (1961). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep367/usrep367643/usrep367643.pdf (accessed November 12, 2026).

[761] Gideon v. Wainwright, 372 U.S. 335 (1963). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep372/usrep372335/usrep372335.pdf (accessed November 12, 2026).

[762] Miranda v. Arizona, 384 U.S. 436 (1966). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep384/usrep384436/usrep384436.pdf (accessed November 12, 2026).

[763] Katz v. United States, 389 U.S. 347 (1967). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep389/usrep389347/usrep389347.pdf (accessed November 12, 2026).

[764] Terry v. Ohio, 392 U.S. 1 (1968). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep392/usrep392001/usrep392001.pdf (accessed November 12, 2026).

Year	Case	What it decided, in short	Chapter
	Independent Community School District	protected unless substantially disruptive[765]	
1969	*Brandenburg v. Ohio*	Incitement test for advocacy of violence[766]	3
1972	*Argersinger v. Hamlin*	Counsel required before any jail sentence[767]	11
1980	*Payton v. New York*	Warrant generally needed to enter a home to arrest[768]	5
1982	*Harlow v. Fitzgerald*	Objective "clearly established" test for immunity[769]	14
1984	*Strickland v. Washington*	Two-part test for ineffective assistance[770]	11
1985	*Tennessee v. Garner*	Limits on deadly force against fleeing suspects[771]	6
1986	*Batson v. Kentucky*	No race-based jury	11

[765] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep393/usrep393503/usrep393503.pdf (accessed November 12, 2026).

[766] Brandenburg v. Ohio, 395 U.S. 444 (1969). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep395/usrep395444/usrep395444.pdf (accessed November 12, 2026).

[767] Argersinger v. Hamlin, 407 U.S. 25 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407025/usrep407025.pdf (accessed November 12, 2026).

[768] Payton v. New York, 445 U.S. 573 (1980). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep445/usrep445573/usrep445573.pdf (accessed November 12, 2026).

[769] Harlow v. Fitzgerald, 457 U.S. 800 (1982). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep457/usrep457800/usrep457800.pdf (accessed November 12, 2026).

[770] Strickland v. Washington, 466 U.S. 668 (1984). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep466/usrep466668/usrep466668.pdf (accessed November 12, 2026).

[771] Tennessee v. Garner, 471 U.S. 1 (1985). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep471/usrep471001/usrep471001.pdf (accessed November 12, 2026).

Year	Case	What it decided, in short	Chapter
		strikes[772]	
1989	*Graham v. Connor*	Objective reasonableness test for police force[773]	6
1996	*Whren v. United States*	Pretext traffic stops allowed if there is a traffic violation[774]	7
2004	*Crawford v. Washington*	Testimonial statements require confrontation[775]	11
2008	*District of Columbia v. Heller*	Individual right to keep and bear arms[776]	9
2014	*Riley v. California*	Warrant needed to search a phone after arrest[777]	8
2018	*Carpenter v. United States*	Warrant generally needed for cell-site location records[778]	8
2019	*Timbs v. Indiana*	Excessive Fines Clause applies to states[779]	12

[772] Batson v. Kentucky, 476 U.S. 79 (1986). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep476/usrep476079/usrep476079.pdf (accessed November 12, 2026).

[773] Graham v. Connor, 490 U.S. 386 (1989). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep490/usrep490386/usrep490386.pdf (accessed November 12, 2026).

[774] Whren v. United States, 517 U.S. 806 (1996). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep517/usrep517806/usrep517806.pdf (accessed November 12, 2026).

[775] Crawford v. Washington, 541 U.S. 36 (2004). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep541/usrep541036/usrep541036.pdf (accessed November 12, 2026).

[776] District of Columbia v. Heller, 554 U.S. 570 (2008). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep554/usrep554570/usrep554570.pdf (accessed November 12, 2026).

[777] Riley v. California, 573 U.S. 373 (2014). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep573/usrep573373/usrep573373.pdf (accessed November 12, 2026).

[778] Carpenter v. United States, 585 U.S. 296 (2018). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/16-402 (accessed November 12, 2026).

Year	Case	What it decided, in short	Chapter
2020	*Ramos v. Louisiana*	Unanimous jury required for serious crimes[780]	11
2022	*New York State Rifle and Pistol Association, Inc. v. Bruen*	Right to carry a handgun in public; history test[781]	9
2022	*Vega v. Tekoh*	No damages suit for a Miranda violation alone[782]	10
2024	*Culley v. Marshall*	Timely forfeiture hearing required; no separate preliminary hearing[783]	13
2024	*Loper Bright Enterprises v. Raimondo*	Courts no longer defer to agencies on unclear statutes[784]	16
2026	*Chatrie v. United States*	Getting Google location history is a search[785]	8
2026	*Trump v. Barbara*	Birthright citizenship for children of parents	2

[779] Timbs v. Indiana, 586 U.S. 146 (2019). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/boundvolumes/586BV.pdf#page=345 (accessed November 12, 2026).

[780] Ramos v. Louisiana, 590 U.S. 83 (2020). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/preliminaryprint/590US1PP_web.pdf#page=99 (accessed November 12, 2026).

[781] New York State Rifle and Pistol Association, Inc. v. Bruen, 597 U.S. 1 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r54_7648.pdf (accessed November 12, 2026).

[782] Vega v. Tekoh, 597 U.S. 134 (2022). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/21pdf/597us1r55_8m58.pdf (accessed November 12, 2026).

[783] Culley v. Marshall, 601 U.S. 377 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/601us2r20_09m1.pdf (accessed November 12, 2026).

[784] Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/23pdf/603us1r54_07jp.pdf (accessed November 12, 2026).

[785] Chatrie v. United States, 609 U.S. 605 (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/609us2r64_7mio.pdf (accessed November 12, 2026).

Year	Case	What it decided, in short	Chapter
		here unlawfully or temporarily[786]	

[786] Trump v. Barbara, 609 U.S. ___ (2026). Supreme Court of the United States; opinion text: Supreme Court of the United States (slip opinion). https://www.supremecourt.gov/opinions/25pdf/25-365_new_5if6.pdf (accessed November 12, 2026).

Appendix C: Glossary

These are plain-language explanations of terms used in this book. They are summaries, not legal definitions. The chapter listed is where the term is explained with sources.

Term	Plain meaning	Chapter
Bail	Money or conditions that let a person go free while waiting for trial	12
Bill of Rights	The first ten amendments to the Constitution	1
Civil forfeiture	A case against property linked to a crime, which does not require charging the owner	13
Clearly established law	Law specific enough that any reasonable official would know the conduct was unconstitutional; the key question in qualified immunity	14
Consent search	A search a person voluntarily agrees to	5
Custodial interrogation	Police questioning of a person who is in custody; the trigger for *Miranda* warnings	10
Due process	Fair procedures, especially notice and a chance to be heard, before the government takes life, liberty or property	16
Equitable sharing	A federal program that shares forfeiture proceeds with state and local agencies	13
Exclusionary rule	The rule that evidence obtained in violation of the Fourth Amendment generally cannot be used at trial	5
Exigent circumstances	An emergency that can justify acting without a warrant	5
FOIA	Freedom of Information Act, the federal law that lets any person request agency records	15
Geofence warrant	A warrant asking a company for data on devices in a set area at a set time	8
Incorporation	The process by which most Bill of Rights protections	2

Term	Plain meaning	Chapter
	came to apply to the states through the Fourteenth Amendment	
Innocent owner defense	A defense in forfeiture cases for an owner who did not know of, or consent to, the illegal use of the property	13
Per curiam	An unsigned opinion of the Court	14
Peremptory strike	A lawyer's removal of a potential juror without stating a reason	11
Preponderance of the evidence	More likely than not; a lower standard than beyond a reasonable doubt	13
Privacy Act	The 1974 federal law that lets citizens and permanent residents see and correct federal records about themselves	15
Probable cause	A fair probability, based on facts, that a crime occurred or evidence will be found	5
Qualified immunity	A court-made defense that shields officials from money damages unless they violated clearly established law	14
Reasonable suspicion	Specific facts that would lead an officer to suspect crime; the standard for a brief stop	6
Section 1983	The federal law, 42 U.S.C. 1983, that lets people sue state and local officials for violating their rights	14
State action	Conduct by the government, which the Constitution limits; private conduct generally is not covered	1
Stop and identify law	A state law requiring a person lawfully stopped on reasonable suspicion to give their name	6
Syllabus	A summary of a Supreme Court decision prepared by the Court's Reporter of Decisions; it is not part of the	Throughout (footnotes)

Term	Plain meaning	Chapter
	opinion	
Terry stop	A brief stop based on reasonable suspicion, named for *Terry v. Ohio*	6
Warrant	A court order allowing a search or arrest, issued on probable cause	5

Appendix D: Full Source List

Every source below was opened and checked on or before November 12, 2026, the date the information in this book stops. Sources are grouped by the five tiers explained in the introduction.

Tier 1: Primary and official sources

Court rulings

- Apprendi v. New Jersey, 530 U.S. 466 (2000). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep530/usrep530466/usrep530466.pdf
- Argersinger v. Hamlin, 407 U.S. 25 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407025/usrep407025.pdf
- Arizona v. Gant, 556 U.S. 332 (2009). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep556/usrep556332/usrep556332.pdf
- Arizona v. Johnson, 555 U.S. 323 (2009). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep555/usrep555323/usrep555323.pdf
- Atkins v. Virginia, 536 U.S. 304 (2002). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep536/usrep536304/usrep536304.pdf
- Austin v. United States, 509 U.S. 602 (1993). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep509/usrep509602/usrep509602.pdf
- Barker v. Wingo, 407 U.S. 514 (1972). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep407/usrep407514/usrep407514.pdf
- Barnes v. Felix, 605 U.S. 73 (2025). Supreme Court of the United States; opinion text: Supreme Court of the United States (preliminary print or slip opinion). https://www.supremecourt.gov/opinions/24pdf/605us1r30_h315.pdf
- Barron v. Baltimore, 32 U.S. 243 (1833). Supreme Court of the United States; opinion text: Opinion text hosted by Cornell Law School Legal Information Institute. https://www.law.cornell.edu/supremecourt/text/32/243
- Batson v. Kentucky, 476 U.S. 79 (1986). Supreme Court of the United States; opinion text: Library of Congress, U.S. Reports. https://tile.loc.gov/storage-services/service/ll/usrep/usrep476/usrep476079/usrep476079.pdf
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