Constitutionality of Third-Party Consent Searches: *Fernandez v. California* and Its Crippling Effect on Fourth Amendment Protections

I. INTRODUCTION: A MAN'S HOME IS HIS CASTLE (UNLESS IT'S HIS CO-OWNER'S CASTLE)[1]

"[W]hen it comes to the Fourth Amendment, the home is first among equals."[2] At least that is likely what the Framers had envisioned in their discussions, which focused "almost exclusively" about the need to ban house searches under the "despised" general warrants.[3] The Fourth Amendment states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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.[4]

But over the years, the Supreme Court has carved out an increasing number of exceptions to the Fourth Amendment. One of these "jealously and carefully drawn" exceptions validates a warrantless search of a home with the consent of "an individual possessing authority."[5] But the question begs asking: what if one resident objects to the search and another resident consents? With the multitude of possibilities and fact patterns underlying this question, the Supreme Court has struggled to maintain a coherent third-party consent doctrine.

The doctrine of unreasonable searches and seizures originated as early as seventh century England, with English codes penalizing the invasion of a neighbor's land.[6] In the 15th century, as the violence and frequency of government house searches increased, the English began to form a doctrine of unreasonable searches and seizures.[7] In a 1763 opinion, Chief Justice Pratt showed hostility toward "nameless warrants," writing that government house searches are "worse than the Spanish Inquisition; a law with which no Englishman would wish to live an hour."[8] The

American Revolutionary leaders were similarly concerned, prompting them to "enshrine protections against such abuses in a Bill of Rights."[9]

Despite these protections, the Supreme Court has given law enforcement an increasing amount of latitude to conduct certain types of consent searches. "Whether the 'fiercely proud men' who wrote the Constitution would have allowed their roommates to admit British soldiers, even when the soldiers were well aware of the Framer's non-consent, is certainly an open question."[10] But in 1973, the Court held that the State does not need to establish that an individual had knowledge of his right to refuse to consent to a warrantless search.[11] The following year, delving into third-party consent, the Court held that one occupant's consent to search a house is valid where that occupant has common authority over the premises.[12] The Court granted law enforcement even more leeway in 1990, finding a search valid where the police reasonably believed that a consenting third party had authority over the premises.[13] In 2006, however, the Court finally refused to "plac[e] a higher value on delving into private premises to search for evidence … than on requiring clear justification before the government searches private living quarters over a resident's objection."[14] Though faulty in its reasoning, *Georgia v. Randolph* protected a physically present co-occupant's refusal over another occupant's consent.[15] The Court has since regressed from this ground-breaking decision with its 2014 holding in *Fernandez v. California*.[16] *Fernandez* shrunk *Randolph*'s holding "to petite size,"[17] holding that the co-occupant's stated refusal is no longer valid once he has been removed from the premises.[18]

This Note will address the Supreme Court's erroneous ruling in *Fernandez v. California*.[19] Part II will discuss the Court's third-party consent doctrine prior to *Fernandez*, as well as several decisions illustrating the lower courts' difficulty interpreting that doctrine. Part

III will examine *Fernandez* in light of the Court's prior third-party consent cases. Part IV will analyze the majority's flawed reasoning in *Fernandez* and identify the problems with its holding. Part V will offer concluding thoughts on the future impact of *Fernandez*.

II. CONFLICTING DECISIONS AND A CIRCUIT SPLIT PAVE THE WAY FOR *FERNANDEZ*

A. Common Authority Includes Apparent Authority

In 1974, the Supreme Court began to shape its third-party consent doctrine by holding in *United States v. Matlock* that a co-occupant's consent validates warrantless searches.[20] Police arrested Matlock in the front yard of the home he shared with his girlfriend and several others.[21] The police officers did not ask Matlock if they could search his house.[22] Instead, three officers went to the door of the house and told Matlock's girlfriend they were looking for money and a gun.[23] She consented to the search, and the police found $4,995 in a diaper bag in a bedroom the girlfriend had told the police she shared with Matlock.[24] The Court attempted to qualify its holding by noting that the third party must have common authority over the premises such that the co-occupants have assumed the risk that one of them might consent to a search.[25] In his dissent, Justice Douglas argued that the "crucial finding" in this case was not whether Matlock's girlfriend had common authority, but that there were no exigent circumstances that excused the police from obtaining a warrant.[26] Douglas argued that the police officers' "fatal" error in not procuring a warrant reduces the Fourth Amendment to "empty phrases."[27]

In 1990, the Court expanded the meaning of common authority to include apparent authority.[28] In *Illinois v. Rodriguez*, Gail Fischer told police she had been assaulted by Edward Rodriguez, and that Rodriguez was asleep in the apartment in which the assault took place.[29] She agreed to travel with the police to the apartment to unlock the door with her key so the officers could enter and arrest Rodriguez.[30] Fischer referred to the apartment as "our" apartment,

and she told police that she had clothes and furniture there.[31] When they arrived at the apartment, Fischer unlocked the door with her key and gave the officers permission to enter.[32] The officers did not have an arrest warrant or a search warrant.[33] As the officers walked through the apartment to arrest Rodriguez, they observed drug paraphernalia and containers filled with white powder.[34] They found Rodriguez asleep in the bedroom and arrested him, later charging him with possession of a controlled substance with intent to deliver.[35] Using *Matlock* as a guidepost, the Court held that the State had not established that Fischer had common authority.[36] Nevertheless, the Court determined that the officers' reasonable belief that Fischer had authority was enough to justify the warrantless search.[37] Justice Marshall disagreed with the majority's deference to the officers' reasonable belief, noting in his dissent that "[e]ven if the officers reasonably believed that Fischer had authority to consent, she did not, and Rodriguez's expectation of privacy was therefore undiminished."[38]

B. *Georgia v. Randolph* and "Widely Shared Social Expectations"

The Court shifted gears in 2006, narrowly expanding the interpretation of the Fourth Amendment to protect an individual's refusal to grant consent when he is present and objecting. In *Georgia v. Randolph*, police officers arrived at the scene of a domestic dispute.[39] Janet Randolph complained that her husband, Scott Randolph, was a cocaine user and that there were "items of drug evidence" in the house.[40] She consented to a search, but Scott Randolph "unequivocally refused."[41] Police searched the house and found a drinking straw with a powdery white residue.[42] They later obtained a warrant and returned to the house, where they found further evidence.[43] Randolph moved to suppress the evidence as products of an unauthorized search.[44]

In a 5-3 decision[45], the Court held that a physically present co-occupant's objection to a search prevails over another co-occupant's consent.[46] The majority opinion, authored by Justice Souter, based its reasoning on the concept of "widely shared social expectations," observing that "there is no common understanding that one co-tenant generally has a right or authority to prevail over the express wishes of another."[47] The Court noted, however, that its decision drew "a fine line" considering its prior holdings, but distinguished *Matlock* and *Rodriguez* based on the facts.[48] While Matlock was locked in a squad car and Rodriguez was asleep, Randolph was present and objecting to the search.[49]

Chief Justice Roberts, joined by Justice Scalia, dissented, arguing that the majority's application of social norms to determine Fourth Amendment rights "provides protection on a random and happenstance basis."[50] The correct approach, according to Roberts, is to analyze third-party consent cases in light of the assumption of risk doctrine.[51] "If an individual shares information, papers, *or places* with another, he assumes the risk that the other person will in turn share access to that information or those papers *or places* with the government."[52] Justice Scalia also authored his own dissent, primarily aimed at debunking Justice Stevens' concurrence that praised the opinion as a modern interpretation of the Constitution.[53] Justice Thomas also offered his own dissenting views, arguing that no search had even occurred because Janet Randolph had voluntarily led police to potential evidence of her husband's wrongdoing.[54]

C. Circuit Split

The "fine line" observed by Justice Souter's majority opinion ultimately had the effect of generating varied interpretations of *Randolph*'s holding.[55] The Ninth Circuit broadened *Randolph*, holding that a co-occupant's consent does not trump another co-occupant's refusal, even where the non-consenting party has been arrested and taken to jail.[56] The Eighth Circuit

had a more narrow interpretation, holding that *Randolph* did not apply where the co-occupant that refused the search was not physically present and immediately objecting.[57] The Seventh Circuit also interpreted *Randolph* narrowly, holding that a husband's objection to a search "'lost its force' when the police arrested him," thereby validating his wife's consent to the warrantless search.[58]

III. *FERNANDEZ V. CALIFORNIA*: A SOLUTION OR A SETBACK?

A. Background

Fernandez v. California was a unique opportunity for the Court to resolve the circuit split and clarify the perplexities surrounding third-party consent doctrine. Instead of adopting a clear rule, however, the *Fernandez* Court limited *Randolph* to its specific facts, allowing law enforcement "a back-door way into people's homes."[59] In *Fernandez*, two police officers responded to a radio dispatch regarding a possible gang-related assault.[60] The officers drove to an alley where they knew gang members gathered.[61] While the officers were standing in the alley, a man walked by and said, "[T]he guy is in the apartment."[62] The officers then saw someone run through the alley and into the building where the witness had pointed.[63]

After hearing sounds of screaming and fighting coming from the building, the officers knocked on the door of the apartment unit from which they had heard the sounds.[64] Roxanne Rojas answered the door holding a baby.[65] She appeared to be crying, and she had a large bump on her nose and blood on her shirt.[66] Rojas told the officers she had been in a fight, and they asked to enter the apartment to conduct a protective sweep.[67] Walter Fernandez then appeared at the door and told the officers, "You don't have any right to come in here. I know my rights."[68] The officers subsequently arrested Fernandez and removed him from the residence.[69]

Approximately one hour after Fernandez's arrest, one of the police officers returned to the apartment and asked Rojas' for her consent to search the premises.[70] Rojas agreed.[71] In his search, the officer found gang paraphernalia, a knife, clothing worn by the robbery suspect, ammunition, and a sawed-off shotgun.[72]

Fernandez was charged on five different counts.[73] He pleaded *nolo contendere* to the firearms and ammunition charges, but went to trial for robbery and infliction of corporal injury.[74] The jury found him guilty and he was sentenced to 14 years of imprisonment.[75] The California Court of Appeal affirmed, finding that Fernandez's physical presence was necessary to invalidate the warrantless search.[76] The California Supreme Court denied the petition for review, and the Supreme Court granted certiorari.[77]

B. Majority Opinion: "Widely Shared Social Expectations" Rears Its Ugly Head

In an opinion written by Justice Alito, the Court held that a co-occupant's objection to a search does not remain effective after he is no longer on the premises, even if his absent is due to an arrest.[78] Careful not to overrule *Randolph*, the Court characterized that decision as a "narrow exception" to the rule that one resident's consent is "generally sufficient to justify a warrantless search."[79] Honing in on *Randolph*'s specific language, the opinion emphasized that a co-occupant's objection only prevails when he is physically present.[80] Using *Randolph*'s "widely shared social expectations" analysis, the Court reasoned that "when the objector is not on the scene … the friend or visitor is much more likely to accept the invitation to enter."[81]

In addition to justifying its decision under the social norms analysis, the Court addressed the "plethora of practical problems" that would result from a rule allowing a primary objection to a search to remain effective even after the objector is absent.[82] The Court questions how long an objection could be in effect and expresses concern over administrative issues, such as "the

procedure needed to register a continuing objection" and "the question of the particular law enforcement officers who would be bound by an objection."[83] These concerns, along with the opinion's reference to warrants as a "burden" clearly illustrate the Court's reluctance to hamper law enforcement.[84]

Justices Scalia and Thomas joined in the opinion of the Court, but wrote separately to address specific concerns of their own.[85] In his concurrence, Justice Scalia discussed an argument raised in an amicus brief submitted by the National Association of Criminal Defense Lawyers.[86] Scalia concluded that there is "no basis" to determine the police infringed on Fernandez's rights under property law.[87] Justice Thomas, in his concurrence, reiterated his disagreement with *Randolph*, and argued that *Fernandez* calls for the application of the assumption of risk theory advocated by Chief Justice Roberts in his *Randolph* dissent.[88]

C. Ginsburg's Dissent

Justice Ginsburg wrote a dissenting opinion that was joined by Justices Sotomayor and Kagan.[89] Noting that Walter Fernandez, like Scott Randolph, was present when he voiced his objection to the search, Ginsburg argues that *Fernandez* "calls for a straightforward application of *Randolph*.[90] Though the dissent does not disagree with *Randolph*'s outcome, it questions the appropriateness of using social customs to determine the constitutionality of warrantless home searches.[91] The dissent also rejects the majority's negative characterization of the warrant requirement, noting the "ease and speed with which search warrants nowadays can be obtained."[92] In her final remarks, Ginsburg notes the prevalence of domestic violence, but argues that "the specter of domestic abuse hardly necessitates the diminution of the Fourth Amendment rights at stake here."[93]

IV. POST-*FERNANDEZ* THIRD-PARTY CONSENT: STILL A GAME OF BLINDMAN'S BUFF[94]

A. "Widely Shared Social Expectations" and Assumption of Risk: Two Unworkable Standards

The most prominent flaw in the Court's reasoning in *Fernandez* is its continued use of the "widely shared social expectations" framework to determine the constitutionality of warrantless searches. This reasoning, as Chief Justice Roberts points out in his dissent in *Randolph*, "provides protection on a random and happenstance basis."[95] Roberts' argument turned out to be correct when the social expectations analysis in *Fernandez* yielded the opposite result as *Randolph*. The facts in *Fernandez* differed slightly from those in *Randolph* in that Fernandez had been arrested and removed from the premises prior to the search, while Randolph was present the entire time.[96] But "Fernandez *was* present when he stated his objection to the would-be searches in no uncertain terms."[97] Discounting an objector's stated refusal on the sole basis of his absence sets an arbitrary standard for constitutional protections that defies the Fourth Amendment's intended purpose.[98]

Furthermore, social norms "shed little light" on the constitutionality of consent searches, "given the marked distinctions between private interactions and police investigations."[99] It is difficult to imagine that a homeowner's reaction would be the same if a police officer knocked on his door than it would be if his neighbor asked to come inside. That is, in part, because police "have power no private person enjoys."[100] But it is also unlikely that a neighbor or acquaintance would be seeking entry to conduct a search or look for incriminating evidence, making it even more unreasonable to compare interactions with police officers with general social interactions. "Why an expectation that your roommate may have friends over in your absence, should extend to the police, is unclear."[101]

The social expectations test is also problematic because of a "wide variety of differing social situations."[102] It is difficult to predict what a "reasonable person" might do if he is invited into a home by one occupant but refused entry by another occupant.[103] One person might respect the objecting occupant's wishes, and never enter the house. Someone else might return later when the objecting occupant is no longer at home. Another person might forcibly enter the house in spite of the occupant's refusal to grant entry. Basing on opinion on a "hunch about how people would typically act in an atypical situation" is neither logical nor just.[104]

Roberts' dissent in *Randolph* championed the assumption of risk doctrine as the appropriate framework for determining the constitutionality of third-party consent searches.[105] Despite his fervent opposition in *Randolph* to the social norms analysis, Roberts joined the *Fernandez* majority without authoring a concurrence to explain his sudden agreement with the majority's interpretation. Though Roberts' position is now difficult to decipher, the majority was correct in declining to apply the assumption of risk doctrine to *Fernandez*. It is unrealistic to liken the sharing of information and documents to the sharing of a home. Many people do not choose their living situations in the same way they might choose to disclose information to a friend. "For individuals in U.S. criminal justice systems, third-party consent searches have lasting consequences not likely contemplated when individuals agree to share property with their roommate, friend, or spouse."[106] Moreover, a person's specific living arrangements might be affected by his or her age, income, health condition, or family situation. These circumstances should not have any affect on an individual's constitutional rights.

B. Domestic Violence: An Exception or a Red Herring?

From a sociological standpoint, the three dissenters in *Fernandez* create an interesting twist to the decision. The only three women on the Supreme Court argued to uphold the

protections of the Constitution despite a domestic dispute that left a victim injured.[107] Where female victims of domestic violence outnumbered male victims by roughly three to one in the United States between 2003 and 2012,[108] it is important to take into account the bearing these statistics might have on the validity of the majority's decision, which touts its holding as a triumph for victims of domestic abuse.[109]

It is highly unlikely that Justices Ginsburg, Kagan, and Sotomayor are indifferent to the plight of victims of domestic abuse.[110] The dissent also agrees that "[d]omestic abuse is indeed 'a serious problem in the United States.'"[111] But this case has no bearing on a police officer's ability to protect a victim of domestic abuse.[112] If an individual's safety is threatened by a domestic abuser, exigent circumstances justify a warrantless entry to remove the abuser from the premises."[113] With the domestic abuser in custody, it is unlikely that any evidence that implicates him or her in the crime will be destroyed or lost, and the police will be able to acquire a warrant to search the home.

C. The Warrant Requirement: Nearing Extinction?

More often than not, consent searches encourage distrust of the judicial system.[114] In spite of this, they continue to be recognized as permissible warrantless searches.[115] Though law enforcement may regard these searches as a convenient alternative to seeking a warrant, [116] this is no justification for undermining the Framers' express instructions that the neutral magistrate be an "essential part of the criminal process."[117] In arguing the constitutionality of the warrantless consent search, the *Fernandez* majority claims that "the warrant procedure imposes burdens on the officers who wish to search."[118] But this "burden" is what protects individuals from unreasonable searches, and it "reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of simplicity

in enforcement of the criminal law."[119] Moreover, the Court undervalues the technological advances, and the "ease and speed with which search warrants nowadays can be obtained."[120] But even in the absence of these advances, an interest in expedient law enforcement does not justify a warrantless search.[121]

V. CONCLUSION

The Fourth Amendment was enacted to protect the rights of individuals to be free from police intrusion into their home, not to protect the rights of individuals to invite police into their home.[122] Unfortunately, *Fernandez* has left yet another gaping hole in our Fourth Amendment's protections. "Co-occupants' Fourth Amendment rights to be free from warrantless searches may now depend … on whether the police are able to remove the objector to obtain consent from obliging co-occupants."[123] If this is any indication of our country's future, it paints a frightening picture. The Court's failure to create a clear rule in *Fernandez* likely means that we have not seen the end of this debate. Until the Court defines our Fourth Amendment protections in a more applicable way, our only safeguard from the repugnant third-party consent search is to live alone.

[1] Georgia v. Randolph, 547 U.S. 103, 142 (2006) (Roberts, C.J., dissenting).

[2] Florida v. Jardines, No. 11-564, slip op. at 4 (U.S. Mar. 26, 2013).

[3] David E. Steinberg, *Restoring the Fourth Amendment: The Original Understanding Revisited*, 33:1 HASTINGS CONST. L.Q. 47, 62 (2005); Daniel E. Pulliam, Note, *Post-Georgia v. Randolph: An Opportunity to Rethink the Reasonableness of Third Party Consent Searches Under the Fourth Amendment*, 43 IND. L. REV. 237, 241 (2009) ("despised general warrants … prompted the adoption of the Fourth Amendment.").

[4] US CONST. amend. IV.

[5] Randolph, 547 U.S. at 109 (citations omitted).

[6] Steinberg, *supra* note 3, at 62.

[7] *Id*.

[8] Steinberg, *supra* 6, at 64 (internal quotations omitted).

[9] Daniel E. Pulliam, Note, *Post-Georgia v. Randolph: An Opportunity to Rethink the Reasonableness of Third Party Consent Searches Under the Fourth Amendment*, 43 IND. L. REV. 237, 240 (2009).

[10] Rory Little, *Supreme Court Analysis From Professor Little: Why Fernandez v. California Isn't So Easy*, UNIV. OF CAL. HASTINGS COLL. OF THE LAW, (Nov. 7, 2013), http://www.uchastings.edu/news/articles/2013/11/little-on-scotusblog-fernandez.php.

[11] Schneckloth Conservation Ctr. Superintendent v. Bustamonte, 412 U.S. 218 (1972).

[12] United States v. Matlock, 415 U.S. 164, 172 (1974).

[13] Illinois v. Rodriguez, 497 U.S. 177, 188 (1990).

[14] Georgia v. Randolph, 547 U.S. 103, 120 (2006).

[15] *Id.* at 106

[16] No. 12-7822 (U.S. Feb. 25, 2014).

[17] *Id.* at 2 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[18] *Id.* at 1.

[19] No. 12-7822 (U.S. Feb. 25, 2014).

[20] 415 U.S. 164, 166 (1974).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 166-67.

[25] *Id*. at 171, n.7.

[26] *Id. at* 178 (Douglas, J., dissenting).

[27] *Id.* at 178, 187 (1974) (Douglas, J., dissenting).

[28] Illinois v. Rodriguez, 497 U.S. 177 (1990).

[29] *Id.* at 179.

[30] *Id.*

[31] *Id.*

[32] *Id.* at 180

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 182.

[37] *Id*. at 188-89.

[38] *Id*. at 194 (Marshall, J., dissenting).

[39] Georgia v. Randolph, 547 U.S. 103, 107 (2006).

[40] *Id.* (internal quotations omitted).

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] Justice Alito took no part in the decision.

[46] Randolph, 547 U.S. at 106.

[47] *Id.* at 111, 114.

[48] *Id*. at 121.

[49] *Id.*

[50] *Id.* at 127 (Roberts, C.J., dissenting).

[51] *Id.* at 128 (Roberts, C.J., dissenting).

[52] *Id.* (emphasis in original).

[53] *Id.* at 142-45 (Scalia, J., dissenting).

[54] *Id.* at 145 (Thomas, J., dissenting) (citing *Coolidge v. New Hampshire*, 403 U.S. 443 (1971)).

[55] *See* Pullium, *supra* note 9, at 250.

[56] *Id.* at 252-53 (citing United States v. Murphy, 516 F.3d 1117 (9th Cir. 2008)).

[57] *Id.* at 254 (citing United States v. Hudspeth, 459 F.3d 922 (8th Cir. 2006)).

[58] *Id.* at 255 (citing United States v. Henderson, 536 F.3d 776 (7th Cir. 2008)).

[59] Ben Bullard, *Supreme Court Strikes Blow To 4th Amendment With Homeowner Consent Ruling*, PERSONAL LIBERTY DIGEST, (Feb. 25, 2014), http://personalliberty.com/supreme-court-strikes-blow-to-4th-amendment-with-homeowner-consent-ruling/.

[60] People v. Fernandez, 208 Cal. App. 4th 100, 105 (Cal. Ct. App. 2012).

[61] *Id.* at 105-106.

[62] Fernandez v. California, No. 12-7822, slip op. at 2 (U.S. Feb. 25, 2014).

[63] Fernandez, 208 Cal. App. 4th at 106.

[64] *Id.*

[65] Fernandez, No. 12-7822 at 2.

[66] *Id.*

[67] *Id.*

[68] Fernandez, 208 Cal. App. 4th at 106.

[69] *Id.*

[70] Fernandez, No. 12-7822 at 3.

[71] *Id.*

[72] *Id.*

[73] *Id.* at 4

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.* at 5.

[78] *Id.* at 10.

[79] *Id.* at 7.

[80] *Id.* at 8.

[81] *Id.* at 11.

[82] *Id.* at 12.

[83] *Id*. at 12-13.

[84] *Id.* at 14.

[86] Fernandez v. California, No. 12-7822, slip op. at 1 (U.S. Feb. 25, 2014) (Scalia, J., concurring).

[87] *Id.* at 1-2.

[88] Fernandez v. California, No. 12-7822, slip op. at 1 (U.S. Feb. 25, 2014) (Thomas, J., concurring). *See also* Georgia v. Randolph, 547 U.S. 103, 128 (2006) (Roberts, C.J., dissenting).

[89] *Id*. at 1 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[90] *Id.* at 2.

[91] *Id.* at 4.

[92] *Id.* at 8.

[93] *Id.* at 9-10.

[94] Schneckloth Conservation Ctr. Superintendent v. Bustamonte, 412 U.S. 218, 289 (1972) (Marshall, J., dissenting).

[95] Georgia v. Randolph, 547 U.S. 103, 127 (2006) (Roberts, C.J., dissenting).

[97] Fernandez v. California, No. 12-7822, slip op. at 3 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[98] *See* Georgia v. Randolph, 547 U.S. 103 (2006) (Roberts, C.J., dissenting).

[99] Fernandez v. California, No. 12-7822, slip op. at 4 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[100] *Id.*

[101] Rory Little, *Supreme Court Analysis From Professor Little: Why Fernandez v. California Isn't So Easy*, UNIV. OF CAL. HASTINGS COLL. OF THE LAW, (Nov. 7, 2013), http://www.uchastings.edu/news/articles/2013/11/little-on-scotusblog-fernandez.php (noting Justice Sotomayor's suggestion "that the entire 'third-party disclosure' privacy doctrinal line should be reconsidered").

[102] Georgia v. Randolph, 547 U.S. 103, 129-30 (2006) (Roberts, C.J., dissenting).

[103] *See* Little, *supra* note 101.

[104] Randolph, 547 U.S. at 129-30 (2006) (Roberts, C.J., dissenting).

[105] *Id.* at 128-29 (2006).

[106] Pulliam, *supra* note 9, at 244.

[107] *See generally* Fernandez v. California, No. 12-7822 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[108] Press Release, Bureau of Justice Statistics, Domestic Violence Accounted for About a Fifth of All Violent Victimizations Between 2003 and 2013 (Apr. 17, 2014), http://www.bjs.gov/content/pub/press/ndv0312pr.cfm#.

[109] Fernandez v. California, No. 12-7822, slip op. at 15 (U.S. Feb. 25, 2014) ("Denying someone in Rojas' position the right to allow the police to enter *her* home would also show disrespect for her independence.").

[110] *See* Fernandez v. California, No. 12-7822, slip op. at 9-10 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[111] *Id.* at 10.

[112] Georgia v. Randolph, 547 U.S. 103, 118 (2006) (noting that "[t]he undoubted right of the police to enter in order to protect a victim … has nothing to do with … whether a search with the consent of one co-tenant is good against another … .")

[113] Fernandez v. California, No. 12-7822, slip op. at 10 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[114] *See* Pulliam, *supra* note 9, at 243.

[115] Fernandez v. California, No. 12-7822, slip op. at 5 (U.S. Feb. 25, 2014).

[116] *See* Illinois v. Rodriguez, 497 U.S. 177, 188 (1990) (Marshall, J., dissenting) ("[T]he sole law enforcement purpose underlying third-party consent searches is avoiding the inconvenience of securing a warrant … .").

[117] Fernandez v. California, No. 12-7822, slip op. at 8 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[118] Fernandez v. California, No. 12-7822, slip op. at 14 (U.S. Feb. 25, 2014).

[119] Fernandez v. California, No. 12-7822, slip op. at 8 (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting).

[120] Fernandez v. California, No. 12-7822, slip op. at (U.S. Feb. 25, 2014) (Ginsburg, J., dissenting) (quoting *Mincey v. Arizona*, 437 U.S. 385, 393 (1978)) (internal quotations omitted).

[121] Georgia v. Randolph, 547 U.S. 103, 115, n.5 (2006).

[122] Pulliam, *supra* note 9, at 248.

[123] *Id.* at 255.

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