Administrative-turned-Criminal Searches: The Fragmented Privacy Rights of Occupants in Condemned Housing

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INTRODUCTION

Crystal Bridges is a Black woman in her late 40s. She lives in Detroit, Michigan, in a small 2-bedroom house. Ms. Bridges lives with her 11-year-old daughter, and is seasonally employed as a hairdresser.

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One day in March of 2019, she woke up and slowly made her way over to her neighbor's house to use the restroom. The water has been shut off in her home for several weeks. Ms. Bridges could not pay her water bills for the past couple of months as her daughter had fallen ill and she had used what little savings she had on medical bills. The outstanding balance on her water bill quickly surpassed $1,000. Ms. Bridges and her family have been living in this house for over 11 years. This was the first time their water had been shut off.

That same day, around noon, she heard people banging on her door. She exited her bedroom into the hallway, peeked out, and heard "Detroit Police!" Startled, she got dressed and made her way to the living room, where she was confronted by three police officers pointing their guns at her. They had entered her home before she could even get to the door. Ms. Bridges was ordered to put her hands in the air and come toward the officers. She complied. They ordered her to kneel. She complied. Finally, they handcuffed her and placed her under arrest.

The police officers explained to her that the house had been condemned by the city for failure to pay water bills, and that she was not permitted to be there. They told her they had a warrant out for her arrest, and that they were allowed to search the house due to the condemnation. They asked her if anyone else was inside the house, and she told them her daughter was in a bedroom. They also asked her if she had "anything illegal" in the house; they explained that because the house looked extremely cluttered, they wanted to make sure there were no needles or sharp objects that could injure them. Ms. Bridges responded, "I don't have anything like that." An officer then asked, "what about drugs or dope?" Ms. Bridges hesitated before responding "yes" without elaborating further. Another officer asked her "what kind? You got meth or coke?" She told them she had a small bag of meth.

The officers re-entered the home to find the daughter and claim custody over all remaining individuals in the home. They found her daughter and completed the protective sweep of the house. At this point, both Ms. Bridges and her daughter were in the living room. Her daughter had not been placed under arrest, but Ms. Bridges was still handcuffed and restrained. The officers made multiple entries back into the bedrooms, after the protective sweep and after everyone was already in custody, to eventually find the bag of meth. Thirty minutes later, an officer located the bag on her bed. She was charged for unlawful possession of a controlled substance.[1]

[1] This scenario is based on a case that I worked on, involving an unlawful search and

Problematic searches such as the one illustrated above, where law enforcement justify searches for evidence of a crime on property condemnation, show how law enforcement and the criminal legal system can subtly and disturbingly blur the lines between *administrative* and *criminal* searches.[2] Administrative searches, conducted for non-criminal purposes under an administrative or statutory scheme, do not require authorities to show probable cause or obtain a search warrant.[3] Instead, courts evaluating the validity of administrative searches need only balance the government's need for the administrative search scheme—i.e. the importance of the general administrative objective to the public interest—against the scope and degree of intrusion upon the affected individual.[4] These relaxed standards are justified on the premise that administrative inspections are "[n]either personal in nature nor aimed at the discovery evidence of crime, [and thus] they involve a relatively limited invasion of the urban citizen's privacy."[5] But because of these relaxed standards, *administrative-turned-criminal* searches carry vast potential for abuse.

"One of the fundamental principles of [the] administrative searches doctrine is that the government may not use an administrative inspection scheme as a pretext to search for evidence of criminal violations."[6] In reality, administrative searches often turn into searches for evidence of a crime, providing the government with a de facto license to conduct *criminal-like* searches without the protections of the Fourth Amendment.[7] Under this doctrine, for example, administrative searches

seizure in a temporarily condemned home. To preserve client confidentiality, all individual names, locations, and other identifying information have been changed.

[2] While the determination of whether a search is criminal or administrative can be crucial to the outcome of a criminal prosecution, "[t]he line between administrative and criminal searches . . . is not always clear." Donna Mussio, *Drawing the Line Between Administrative and Criminal Searches: Defining the "Object of the Search" in Environmental Inspections*, 18 B.C. ENV'T AFFS. L. REV. 185, 196 (1990).

[3] Examples of commonplace administrative searches include sobriety checkpoints, metal detector scans at airports or government buildings, screening at international borders, and drug testing of security and safety workers. Eve B. Primus, *Bringing Clarity to Administrative Search Doctrine: Distinguishing Dragnets from Special Subpopulation Searches*, 39 SEARCH & SEIZURE L. REP. 61, 61 (2012).

[4] *Id.*

[5] Camara v. S.F. Mun. Court, 387 U.S. 523, 537 (1967).

[6] People v. Madison, 520 N.E.2d 374, 381 (Ill. 1988).

[7] Primus, *supra* note 3, at 61; *see, e.g.*, City of Indianapolis v. Edmond, 531 U.S. 32 (2001) (discussing traffic search designed to uncover illegal drugs); Illinois v. Lidster, 540 U.S. 419 (2004) (holding that a highway checkpoint, set up to obtain information

of temporarily-condemned homes, which are deemed unfit or unsafe for human occupancy under municipal or local ordinances, are permissible.[8] This illustrates the intertwined issues of criminal law and privacy that typically arise in the context of condemned homes. Municipalities can condemn homes or structures for a multitude of reasons, including, *inter alia*: flood or fire damage, neglect, or if the building is "[l]acking . . . [in] basic facilities such as water, electricity, and heat."[9] These *administrative-turned-criminal* searches will become more common as the housing crisis worsens and the home vacancy rate in the United States rises, leading to the disproportionate over-policing of communities of color. In Ms. Bridge's case, her privacy rights turned on her inability to pay the water bill—that is to say, on her financial situation. Stagnant wages, in conjunction with the housing affordability crisis which will become even more dire due to the COVID-19 pandemic, means more financially vulnerable individuals will be at risk of losing their property and privacy rights via housing condemnations, as well as their liberties. Due to the long list of exceptions to the warrant requirement, when administrative searches of condemned homes result in the seizure of incriminating evidence,[10] the only available legal remedy will be

from motorists about a crime committed at a certain location, was not a violation of the Fourth Amendment); Maryland v. King, 569 U.S. 435 (2013) (holding that a routine DNA swab of defendant, which later implicated him in an unsolved rape, was a constitutional administrative search as the *minimal scope of intrusion was outweighed by the government's interest in ascertaining the identity of the arrestee*) (emphasis added).

[8] *See Condemnation FAQ*, CITY OF DEKALB, https://www.cityofdekalb.com/1223/Condemnation-FAQ (last visited Feb. 28, 2020); *Condemnations, Unfit for Human Habitation*, ST. PAUL, https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/condemnation-unfit (last visited Feb. 28, 2020); *Meeting the Housing Code in Boston*, BOSTON, https://www.boston.gov/departments/inspectional-services/meeting-housing-code-boston (last visited Feb. 28, 2020).

[9] *See Condemnation FAQ*, CITY OF DEKALB, https://www.cityofdekalb.com/1223/Condemnation-FAQ (last visited Feb. 28, 2020); *Condemnations, Unfit for Human Habitation*, ST. PAUL, https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/condemnation-unfit (last visited Feb. 28, 2020); *Meeting the Housing Code in Boston*, BOSTON, https://www.boston.gov/departments/inspectional-services/meeting-housing-code-boston (last visited Feb. 28, 2020).

[10] *See, e.g.*, Brigham City, Utah v. Stuart, 547 U.S. 398 (2006) (finding an exigency exception to the warrant requirement); Chimel v. California, 395 U.S. 752 (1969) (discussing a search-incident-to-arrest exception); Arizona v. Gant, 556 U.S. 332 (2009)

challenging the validity of the search in court.

There is little robust scholarly debate, and no clear answers from the courts, on whether one's expectations of privacy should change within a home that a city has temporarily condemned. Both property law and the concept of privacy have been used as vehicles to imagine, define, and later redefine the perpetually changing values that shape American society. For example, in the landmark eminent domain case *Kelo v. City of New London*, the Supreme Court expanded the scope of the government's eminent domain power to transfer private property from one owner to another.[11] The city of New London, Connecticut had condemned privately owned property pursuant to an economic development plan after Pfizer Inc., a large pharmaceutical company, announced plans to build a large research facility in the area.[12] The Court affirmed the City's authority to take petitioners' private properties, and held that the takings challenged here satisfied the public use requirement under the Fifth Amendment's Takings Clause.[13] Professor David A. Dana wrote about the expressive power of the law in the context of post-*Kelo* backlash: "Laws do not simply, or only, dictate what people and institutions are permitted or prohibited from doing. Laws are also a part of the culture that helps *form* prevailing values and understandings."[14] As Dana illustrated in his essay, negative space—i.e., the lack of discourse following certain doctrinal developments—is *itself* an expression of values. Property discourse is as much about those who have property as those who do not. It shapes the way that we talk about our communities, including the under-propertied.[15]

(discussing an automobile exception); Maryland v. Buie, 494 U.S. 325 (1990) (protective sweep exception); Arizona v. Hicks, 480 U.S. 321 (1987) (detailing plain view doctrine); *Camara*, 387 U.S. 523 (discussing administrative searches).

[11] Kelo v. City of New London, 545 U.S. 469 (2005).

[12] *Id.* at 473.

[13] *Id.* at 489–90.

[14] David A. Dana, *The Law and Expressive Meaning of Condemning the Poor after* Kelo, 101 NW. U. L. REV. 365, 378 (2007) (arguing that the post-*Kelo* backlash—especially when contrasted with the lack of backlash after *Berman*, in which the Supreme Court approved blight condemnations in low-income areas—and its subsequent reforms privilege middle-class households over low-income households, expressing the view that the needs of poor households are relatively unimportant) (emphasis added).

[15] Professor Roark discusses how property doctrines are integral to identity-making for property owners, but it fails to play the same roles for under-propertied persons: "Besides the role these doctrines play in supporting the basic functions of identity-making and community-making for property owners, they also illustrate how similar values elude under-propertied persons." Marc L. Roark, *Under-Propertied Persons*, 28 CORNELL J. L.

This Note seeks to bring attention to an area that is currently going unnoticed in both property law and criminal law scholarship: the reasonable expectation of privacy within condemned homes. In the aftermath of *Kelo*, robust debates have animated contemporary discussion of property law and criminal law, centered around privacy and Fourth Amendment rights in the context of *temporary* housing and individuals experiencing homelessness,[16] as well as eminent domain.[17] However, while these ongoing debates inevitably touch on the intersection of socioeconomic class and property or privacy rights, both property law and criminal law scholarship have glossed over privacy rights within condemned homes. To date, there are no published articles that focus exclusively on the topic of condemned properties. As society continues to reimagine and redefine what a "home" is, this Note invites the courts to be more reflective in light of such normative changes. As such, there is no better time than now to start a robust discussion on condemned housing.

A condemnation taints the sanctity of the home, and allows for the State, through its agents, to enter an individual's home via an administrative search. If homes are at the center of Fourth Amendment protections and those without traditional "homes" reside at the outer ring—often retaining the weakest Fourth Amendment protections—what

& PUB. POL'Y 1, 12 (2017).

[16] *See, e.g.*, Maria Foscarinis, *Downward Spiral: Homelessness and Its Criminalization*, 14 YALE L. & POL'Y REV. 1 (1996) (advocating for the rights of unhoused individuals in their homes under the Fourth Amendment and state constitutional analogues); Lindsay J. Gus, Comment, *The Forgotten Residents: Defining the Fourth Amendment "House" to the Detriment of the Homeless*, 2016 U. CHI. LEGAL F. 769 (2016) (focusing on the police misconduct and officers' mistreatment of homeless individuals); Carrie Leonetti, *The Wild, Wild West: The Right of the Unhoused to Privacy in Their Encampments*, 56 AM. CRIM. L. REV. 399 (2019) (arguing that the courts should recognize the dwellings of the unhoused as homes entitled to the same constitutional protection as brick-and-mortar houses); David Reichbach, Comment, *The Home Not the Homeless: What the Fourth Amendment has Historically Protected and Where the Law is Going After* Jones, 47 U.S.F.L. REV. 377 (2012) (discussing the potential for *Jones* to extend greater Fourth Amendment protections to homeless individuals).

[17] *See, e.g.*, Dana, *supra* note 14, at 365 (discussing the "firestorm" of reform in the states after the *Kelo* decision); Julia D. Mahoney, *Kelo's Legacy: Eminent Domain and the Future of Property Rights*, SUP. CT. REV. 103 (2005); Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CAL. L. REV. 107, 163 (2013) ("*Kelo* inspired a popular and political backlash that received considerable media coverage."); Ilya Somin, *Is Post-*Kelo *Eminent Domain Reform Bad for the Poor?*, 101 NW. U. L. REV. 195 (2007) (disagreeing with Dana's proposition that post-*Kelo* reforms have systematically disfavored low-income areas).

about the occupant whose home is temporarily condemned by a city? What Fourth Amendment protections are afforded to the home that the municipality condemns? For example, are there different levels of Fourth Amendment protections afforded to occupants who remain in fire-ravaged condemned homes versus occupants who remain in a condemned dwelling for poverty- or blight-related reasons?

These questions are not merely normative or imaginative. Descriptively, this Note argues that the law should not calibrate one's privacy rights based on income or class. There is division among lower courts about whether individuals living in condemned homes receive fewer constitutional protections than individuals in stable housing. As the housing affordability and vacancy crises continue to grow, and as more families are living in non-traditional or less stable housing arrangements, there is no better time than now for the Supreme Court to resolve this tension by holding that occupants in condemned homes should receive the same level of constitutional protection as occupants in more stable housing arrangements. Holding otherwise would result in long-lasting racist and classist implications, indicating that the privacy rights of the financially vulnerable or unstably housed are *less than*. As Professor Roark wrote in *Under-Propertied Persons*, "[o]ur morality dictates that we find ways to articulate for under-propertied persons the same values we ask property to protect."[18] He noted that because "property is a natural vehicle for wealth accumulation, being under-propertied often carries higher costs associated with ordinary activities . . . [and] [b]eing propertied affords one the space and resources to be private."[19]

This Note, by analyzing the small but growing number of condemned housing cases, uncovers a previously unseen and disturbing pattern of courts calibrating privacy rights based on their classist categorization of harm. This Note argues that courts seem to distinguish the level of Fourth Amendment protections warranted to individuals based on their equally-classist formulation of harm. For example, even former occupants of homes deemed uninhabitable due to fire damage receive more protections than individuals in homes condemned for failure to maintain utilities. At the same time, the reasonable-expectation-of-privacy test articulated in *Katz v. United States* allows the courts to make discretionary decisions that have classist and racist implications.[20]

[18] Roark, *supra* note 15, at 8.

[19] *Id.* at 10.

[20] Katz v. United States, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

Specifically, this Note argues that *Katz's* reasonableness test is not race- or class-neutral, and its normative determination of the societal value of various living situations has a disparate impact on particular low-income communities of color.[21]

Part I discusses the gap in current scholarship and examines the open question of whether privacy rights within the home are calibrated based on one's income. Part II begins with an analysis of the Supreme Court's condemned housing cases, and then discusses how the problematic reasoning underlying *Katz's* reasonable-expectation-of-privacy test led to courts' implicit calibration of privacy rights in racist or classist ways. Finally, Part III focuses on the role of courts in defining privacy rights by arguing that the Supreme Court should offer a clear and definite solution that reimagines and broadens the definition of what a "home" is in light of how people are adapting to, and surviving amidst, broader socioeconomic changes.

This Note argues that people living in condemned homes should retain a reasonable expectation of privacy, both with regard to the home itself and their belongings within the home. The current confusion and lack of clarity among the courts on this issue stems from implicit biases against financially vulnerable individuals and how "moral construction of poverty in the United States presupposes that the poor are morally and behaviorally inferior."[22] The COVID-19 pandemic will only further exacerbate the existing wealth inequality and housing instability in the U.S. There is no better time than now to fill the gap within the law and ensure that the Fourth Amendment offers robust protections for under-propertied individuals.

I. THE GAP IN THE CURRENT DEBATE

Scholars who have been interested in questions about the intersection of property, privacy rights, and criminal law have tended to focus on Fourth Amendment protections for transient populations or the doctrine of eminent domain. As discussed in the following sections, there is a significant amount of literature concerning the Fourth Amendment and the reasonable expectation of privacy for individuals without traditional homes,[23] and a plethora of articles discussing both eminent domain reform after *Kelo* and expressive meaning within the *Kelo*

[21] *Id.*

[22] Leonetti, *supra* note 16, at 422 (citing KHIARA M. BRIDGES, THE POVERTY OF PRIVACY RIGHTS 5 (2018)).

[23] *See supra* note 16 and accompanying text.

context.[24] And while both spheres focus on historically marginalized groups and offer proposals to help those without property, current scholarship must shift to include marginalized groups at risk of having their home condemned by the municipality and losing their liberty through *administrative-turned-criminal* searches.

A. The Housing Crises: Affordability and Vacancy

The United States is currently facing two housing crises: the affordability crisis and the vacancy crisis. As the vacancy rate contributes to poverty and more people struggle to afford traditional living arrangements, more people will be at risk of facing condemnation proceedings.

The first underlying problem fueling the housing affordability crisis is wage stagnation. People are simply not earning enough to keep up with the rising costs of living.[25] The latest research from Home1, a housing policy advocacy group, found that 11 million Americans spend more than half of their monthly paychecks on rent.[26] Researchers at Harvard found that nearly half of U.S. renters were "cost-burdened," meaning they spend thirty percent or more of their income on rent.[27] These rising housing cost burdens are emblematic of a larger problem with being low-income in the United States: rents have dramatically outpaced wage growth, and a growing number of families are unable to pay for housing comfortably as "wage growth stagnates and housing costs continue to climb."[28] And while metropolitan areas like Los Angeles and New York have higher productivity rates and wages, they also have the highest costs of living.[29] Even if prospects of higher wages are appealing,

[24] Ilya Somin posits that *Kelo v. City of New London* is one of the Court's most influential decisions to date, in that its backlash "resulted in more new state legislation than any other Supreme Court decision in history." Ilya Somin, *The Limits of Backlash: Assessing the Political Response to* Kelo, 93 MINN. L. REV. 2100, 2102 (2009); *see also* Dana, *supra* note 14; Mahoney, *supra* note 17; Rosser, *supra* note 17; Somin, *Is Post*-Kelo *Eminent Domain Reform Bad* supra note 17.

[25] Patrick Sisson et al., *The Affordable Housing Crisis, Explained*, CURBED (May 15, 2019, 12:26 PM), https://www.curbed.com/2019/5/15/18617763/affordable-housing-policy-rent-real-estate-apartment.

[26] Patrick Sisson, *High Housing Costs and Long Commutes Drive More Workers to Sleep in Cars*, CURBED (Mar. 6, 2018, 12:26 PM), https://archive.curbed.com/2018/3/6/17082570/affordable-housing-commute-rent-apartment.

[27] Sisson et al., *supra* note 25.

[28] Sisson et al., *supra* note 25.

[29] Matthew Yglesias, *America's Dual Housing Crisis and What Democrats Plan To Do*

higher housing prices make it difficult for families to move to those areas.

The housing shortage is the second underlying problem fueling the housing affordability crisis. There is a growing consensus among housing policy analysts that housing underproduction is a big part of the problem.[30] Between 2000 and 2015, the country produced 7.3 million fewer homes than it needed to keep up with housing demand.[31] The tight supply has led to increased housing prices, even as wages have stagnated. Indeed, home prices have risen at twice the rate of wage growth.[32] The housing shortage is also aggravated by a nationwide "not in my backyard" ("NIMBY") problem, as restrictive zoning codes are used to fight against new construction and protect increasing property values.[33] These codes, like those limiting building heights or mandating that large apartment buildings have a minimum number of parking spots, are commonly used in cities like Los Angeles and San Francisco, contribute to California's severe housing shortage.[34] While current property owners have benefited from these regulations through increased property values, these methods have hurt the wider economy. A study published by researchers at the University of Chicago's Booth School of Business estimates that these housing constraints in metropolitan areas "lowered aggregate U.S. growth by 36 percent from 1964 to 2009."[35]

Paradoxically, the vacant housing crisis is on the rise as well. Housing vacancies surged in the wake of the 2008 economic crisis. Between 2005 and 2010 the "number of unoccupied homes jumped 26

About It, Explained, VOX (Jul. 30, 2019; 8:50 AM), https://www.vox.com/2019/7/30/20681101/housing-crisis-democrats-2020-warren-harris-booker-castro.

[30] Benjamin Schneider, *The American Housing Crisis Might Be Our Next Big Political Issue*, BLOOMBERG CITYLAB (May 16, 2018), https://www.bloomberg.com/news/articles/2018-05-16/how-to-make-americans-understand-the-new-housing-crisis ("[T]here is widespread consensus that the country as a whole—not just high-cost metros—is not building enough homes.").

[31] *Id.*

[32] Sisson et al., *supra* note 25.

[33] Sisson et al., *supra* note 25.

[34] *Id.* ("Restrictive zoning codes are often an effective tool in the fight against new construction and, frequently, densification, helping to suppress housing supply even as demand rises . . . California cities like Los Angeles and San Francisco are known for impeding new construction through these methods, which has helped lead to the state's severe housing shortage.").

[35] Chang-Tai Hsieh & Enrico Moretti, *Housing Constraints and Spatial Misallocation*, 11 AM. ECON. J.: MACROECONOMICS 1 (2019).

percent–from 9.5 to 12 million."[36] And while the percentage of vacant units has declined during the post-recession economic recovery, there are still more vacant units today than there were before 2005.[37] In some cities like Cleveland and Detroit, vacancy levels have never dropped from the height of the recession.[38] Furthermore, "hypervacancy" (the condition in which pervasiveness of vacant properties define the character of the neighborhood) has been trending upwards since the 1990s.[39] Vacancy is "first and foremost a symptom of other problems—concentrated poverty, economic decline, and market failure."[40] Urban areas with vacant structures also tend to have the highest concentrations of poverty.[41] While not all vacant properties are problematic, they may have devastating effects on nearby areas by "undermining their neighbors' quality of life, diminishing the value of neighboring properties, and imposing fiscal burdens on the city."[42] And although most people think of vacancy as a problem limited to distressed cities, this is far from the truth: vacancies plague small towns and rural communities, which often have "vacancy rates that are roughly double that of metro areas."[43]

Unsurprisingly, the housing and vacancy crises disproportionately affect low-income people and people of color. Rent increases and the affordability crisis impact elderly people, Black people, and low-income wage earners the hardest.[44] The geographic concentration of poverty also differs sharply by race and ethnicity: 70% of low-income Blacks and 63% of low-income Hispanics live in high-poverty neighborhoods, compared with just 35% of low-income Whites and 40% of low-income Asians.[45] The concentration of various racial or ethnic groups in high-poverty areas is not simply determined by

[36] Richard Florida, *Vacancy: America's Other Housing Crisis*, BLOOMBERG CITYLAB (July 27, 2018, 11:30 AM), https://www.bloomberg.com/news/articles/2018-07-27/the-disturbing-rise-of-housing-vacancy-in-u-s-cities.

[37] ALAN MALLACH, THE EMPTY HOUSE NEXT DOOR: UNDERSTANDING AND REDUCING VACANCY AND HYPERVACANCY IN THE UNITED STATES 7 (2018).

[38] *Id.*

[39] *Id.* at 4–5.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 18.

[43] Florida, *supra* note 36.

[44] Glenn Thrush, *As Affordable Housing Crisis Grows, HUD Sits on the Sidelines*, N.Y. TIMES (Jul. 27, 2018), https://www.nytimes.com/2018/07/27/us/politics/hud-affordable-housing-crisis.html.

[45] JOINT CENTER FOR HOUSING STUDIES OF HARVARD UNIVERSITY, THE STATE OF THE NATION'S HOUSING 16 (2019).

socioeconomic status. Approximately 48% of all Blacks and 41% of all Hispanics live in high-poverty neighborhoods, regardless of their own socioeconomic class, compared with just 16% of all whites and 21% of all Asians.[46] Another study conducted by Patrick Sharkey, a Professor of Sociology at New York University, showed that Black families making $100,000 annually typically live in the kind of neighborhoods inhabited by White families making $30,000.[47] These disturbing statistics are undoubtedly linked to the country's history of racist and anti-Black housing policies. A 2018 Brookings Institute report analyzed the extent to which racism depleted—and continues to deplete—wealth from Black homeowners: "For much of the 20th century, the devaluing of [B]lack lives led to segregation and racist federal housing policy through redlining that shut out chances for [B]lack people to purchase homes and build wealth, making it difficult to start and invest in businesses and afford college tuition."[48] Homes occupied by Black homeowners are persistently undervalued by an average of $48,000, amounting to $156 billion in cumulative losses.[49] Furthermore, the devaluation of Black neighborhoods has a devastating effect that is passed onto future generations. The report found that there was a "positive and statistically significant correlation between the devaluation of homes in Black neighborhoods and upward mobility of Black children in metropolitan areas with majority neighborhoods."[50] Thus, Black children who grow up in neighborhoods with greater devaluation of Black assets have lower income as adults compared to Black children who grow up in areas where properties in Black and White neighborhoods are priced equally.

These two crises demonstrate that a growing number of people are struggling to maintain housing stability, with communities of color suffering the most instability in terms of housing devaluation and poverty. And both the affordability crisis and the vacancy crisis, along with wage stagnation, are linked inextricably to property condemnations. For example, the housing code in Boston states that the city can condemn any

[46] *Id.*

[47] Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/.

[48] Andre M. Perry et al., *Brookings Institute, The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property* (Nov. 27, 2018), https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/.

[49] *Id.*

[50] *Id.*

residential unit for failure-to-pay utility bills as well as for vacancy.[51] Local data regarding housing condemnations in Saint Paul, Minnesota also demonstrate the link between poverty and housing condemnations, and "show [that] most condemnations due to water shut-offs happen in some of the city's lowest-income neighborhoods."[52] As more communities struggle with deeply-entrenched issues stemming from poverty, and this in turn fuels the vacancy crisis, condemnations of residential property will inevitably rise.

B. The Fourth Amendment and the Criminalization of Homelessness

The thin Fourth Amendment protections afforded to homes that are not *traditional* homes fall short of human decency.[53] Even as Fourth Amendment doctrine has evolved to "protect[] people, not places," people in non-traditional homes are offered significantly less protection than occupants in traditional homes.[54] For example, in *California v. Carney*, the Supreme Court held that a warrantless search of a motorhome did not violate the Fourth Amendment because it fell under the automobile exception to the warrant requirement, despite the dissent's chiding and persuasive argument that "the highest and most legitimate expectations of privacy associated with these temporary abodes should command the respect of [the] Court."[55] There is also a circuit split on whether tenants have a reasonable expectation of privacy in the common areas of apartment buildings.[56]

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[51] Boston, *Meeting the Housing Code in Boston* (July 14, 2016), https://www.boston.gov/departments/inspectional-services/meeting-housing-code-boston.

[52] Emma Nelson, *Failing to Pay Water Bills Can Get Your House Condemned in St. Paul*, STAR TRIBUNE (Apr. 27, 2019), http://www.startribune.com/failing-to-pay-water-bills-can-get-your-house-condemned/509165902/.

[53] Here, traditional homes refer to permanent structures such as single-family housing structures or multi-unit apartment buildings. Non-traditional homes refer to structures typically used as temporary or permanent residences, such as mobile homes, trailers, and tents.

[54] Katz v. United States, 389 U.S. 347, 351 (1967); *see also* California v. Carney, 471 U.S. 386 (1985) (holding that a warrantless search of a motorhome falls under the automobile exception to the warrant requirement, and that motorhomes are not traditional homes).

[55] *Carney*, 471 U.S. at 407–08 (Stevens, J., dissenting).

[56] Sean M. Lewis, *The Fourth Amendment in the Hallway: Do Tenants Have a Constitutionally Protected Privacy Interest in the Locked Common Areas of Their Apartment Buildings?* 101 MICH. L. REV. 273, 275 (2002).

As for temporary housing, courts have yet to recognize the modern problem of the "long-term unhoused" and the legal status of their permanent encampments.[57] Basic and necessary human functions such as sleeping become impossible to do lawfully for those without sufficient income to afford traditional housing. Terry Skolnik discussed cases of "chronic impossibility where both the lack of alternatives and breach of legal rules are persistent," suggesting situations like an anti-public sleeping law and lack of shelter.[58] These laws categorically ban behaviors which individuals experiencing homelessness will "inevitably engage [in] as part of their existence."[59] As such, Skolnik suggested contesting the constitutionality of such laws and granting injunctions against the enforcement of laws that disproportionately affect the homeless, both of which can then stimulate policy change at a higher level.[60] As recently as December 2019, the Supreme Court refused to hear an appeal from *Martin v. City of Boise* regarding this very issue.[61] In *Martin*, residents of Boise sued the city for ticketing them repeatedly for violating city ordinances that criminalized sleeping outside on public property.[62] The Ninth Circuit held that the Eighth Amendment prohibited the imposition of criminal penalties "for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter" because there are not enough shelter beds within the area.[63] It found that any "conduct at issue here is *involuntary* and *inseparable from status*" and held that the state may not criminalize such conduct.[64]

The *Martin* decision only affects cities within the jurisdiction of the Ninth Circuit. This is not to be taken lightly, as more than half of the country's unsheltered homeless population resides in California alone.[65] Furthermore, most other cities in the United States have retained laws prohibiting sitting or sleeping in public areas, camping, panhandling,

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[57] Leonetti, *supra* note 16, at 403.

[58] Terry Skolnik, *Homelessness and the Impossibility to Obey the Law*, 43 FORDHAM URB. L.J. 741, 750 (2016).

[59] *Id.*

[60] *Id.* at 744.

[61] Martin v. City of Boise, 920 F. 3d 584 (9th Cir. 2019).

[62] *Id.* at 603.

[63] *Id.* at 616.

[64] *Id.* at 617 (quoting Jones v. City of L.A., 444 F.3d at 1136 (9th Cir. 2006)) (emphasis added).

[65] Joy Kim, Note, *The Case Against Criminalizing Homelessness: Functional to Shelters and Homeless Individuals' Lack of Choice*, 95 N.Y.U. L. REV. 1150, 1156 (2020).

public intoxication, and public urination.[66] Local governments increasingly turn to criminal law to respond to the issue of homelessness in public places, and courts generally defer to legislatures' policy decisions.[67] Laws criminalizing homelessness often make matters worse, as they fail to address underlying issues such as poverty, lack of affordable housing, or inadequate access to mental healthcare services, yet simultaneously make it impossible for the unhoused to conduct normal daily functions. Like the vague vagrancy and anti-loitering laws enacted by former Confederate states after the Civil War, which criminalized *Blackness* as opposed to any particular conduct, anti-sleeping laws effectively function as 21st century vagrancy laws criminalizing the *status* of homelessness.[68]

The trend of criminalizing homelessness is relatively new. During the 1980s, scholars and activists sought to establish a constitutional "right to shelter."[69] However, efforts to criminalize homelessness have since replaced these efforts. Cities around the country have put forth a variety of rationales for these criminalization efforts, but a common goal is the removal of the unhoused from downtown business or tourist areas.[70] Because cities that enforce prohibitions on sleeping in public often do not have enough shelters or beds, individuals experiencing homelessness face the unenviable choice of either violating the law or leaving the city.[71] Just like the vagrancy laws of the Jim Crow era, these new-age vagrancy laws have a disturbing and disparate impact on people of color. While Black individuals represent 13% of the U.S. population, they represent 40% of individuals experiencing homelessness in the U.S.[72] Native populations are also overrepresented amongst individuals experiencing homelessness, representing 1% of the U.S. population and 3% of the homeless population.[73] In contrast, White people are

[66] Skolnik, *supra* note 58, at 784.

[67] Foscarinis, *supra* note 16, at 16.

[68] *Id.* For a more robust discussion on vagrancy laws and how such statutes and ordinances were used to police and control Black communities, see Gary Stewart, *Black Codes and Broken Windows: The Legacy of Racial Hegemony in Anti-Gang Civil Injunctions*, 107 YALE L. J. 2249 (1998).

[69] Foscarinis, *supra* note 16, at 3.

[70] *Id.* at 19.

[71] *Id.* at 25.

[72] *State of Homelessness: 2020 Ed.*, NAT'L ALLIANCE TO END HOMELESSNESS, https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/ (last visited Dec. 15, 2019).

[73] *Id.*

underrepresented among individuals experiencing homelessness, constituting 79% of the U.S. population and 50% of the homeless population.[74] The discriminatory effect caused by over-criminalizing homelessness will likely exacerbate the parallel racial disparities that are currently plaguing the carceral state.

Unsurprisingly, the overcriminalization of homelessness is intertwined with the lack of positive rights that stem from the concept of privacy. Individuals without traditional homes do not enjoy Fourth Amendment protections from government surveillance despite homes traditionally being afforded such Constitutional protections.[75] Without these protections, the intimacies of an individual's life are inevitably thrust into the public.[76] No privacy rights exist for the unhoused, and local ordinances target them for criminal prosecution simply for engaging in basic, quality of life activities.[77]

Despite the rich discourse among legal scholars, the Supreme Court has not taken on the question of which Fourth Amendment protections extend to temporary or transient homes. Academics should expand this debate beyond the context of temporary or transient housing and look more broadly at the normative values underlying the concept of what constitutes a *home*. While persons moving through homelessness do not have homes in the brick-and-mortar sense, the Court should expand its notion of what a *home* is. Until we come up with a way to cure the underlying forces that require people to live on the street, the Court should afford individuals experiencing homelessness the same Fourth Amendment protections as traditionally-sheltered individuals. Likewise, the Court should afford occupants living in homes that the municipality has temporarily condemned the same protections as occupants in more stable housing. Society's response of criminalizing transient populations and less-wealthy homeowners are an insult to human dignity. The lack of Fourth Amendment protections also engenders harmful expressive ideas about the Court's nefarious views on poverty. Rather than penalizing people experiencing homelessness or housing instability, municipalities and courts should afford them more protections as they actively work to address the root causes of homelessness and cyclical poverty.

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[74] *Id.*

[75] Reichbach, *supra* note 16, at 377.

[76] *Id.*

[77] Skolnik, *supra* note 58.

C. Post-*Kelo* Eminent Domain

Many scholars rushed to contribute to legal discourse around takings and eminent domain after *Kelo*.[78] In 2000, the City of New London, Connecticut, created a development plan that sought to transfer ten residences and five other properties to private developers in order to promote economic development in the area.[79] None of the properties were blighted or in poor condition, nor was the area itself.[80] In a 5-4 decision, the Supreme Court held that a taking of private property for the purposes of "economic development" was constitutional under the Public Use Clause of the Fifth Amendment.[81] The Court was extremely deferential to the decision of the city legislature and rejected property owners' argument that a property transfer to *private* developers rather than a public entity required a heightened degree of judicial scrutiny.[82] This decision sparked public outrage, likely causing a more extensive legislative reaction about eminent domain than any other Supreme Court decision. After the decision, more than forty-three states have enacted reform legislation to curb eminent domain doctrine and limit the effects of *Kelo*.[83] South Dakota, for example, continues to permit blight condemnations but does not allow any takings which transfer property to any private persons or entities.[84] The U.S. Congress also responded immediately by passing a resolution denouncing the *Kelo* decision.[85] In addition to public outcry and swift legislative reform, the *Kelo* decision has also galvanized debate from academics across the political spectrum.[86] For example, Dana argues from a progressive perspective that post-*Kelo* reforms have serious flaws and reflect a classist society that privileges the stability of middle-class households relative to the stability of low-income households.[87]

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[78] Kelo v. City of New London, 545 U.S. 469 (2009).

[79] *Id.* at 473–77.

[80] *Id.* at 475.

[81] *Id.* at 478–83.

[82] Somin, *supra* note 24, at 2108.

[83] *Id.* at 2102.

[84] *Id.* at 2139.

[85] *Id.* at 2109.

[86] Conservative scholars like Somin argue that the backlash is mostly symbolic and disagree with Dana's proposition that post-*Kelo* reforms have "systematically treated land where the poor tend to live worse off than of middle- and upper-class homeowners." Somin, *supra* note 17, at 195; Ilya Somin, *Controlling the Grasping Hand: Economic Development Takings After Kelo*, 15 SUP. CT. ECON. REV. 183 (2007) (arguing that *Kelo* was wrongly decided and that courts should forbid condemnations for economic development); *see also* Mahoney, *supra* note 17.

[87] Dana, *supra* note 14, at 365.

Meanwhile Somin disagrees with Dana's proposition that post-*Kelo* reforms have systematically disfavored land where low-income populations tend to live.[88]

Despite the wide-ranging and extensive backlash to *Kelo*, the lack of public outcry or legislative revolt after *Berman v. Parker* in 1954 highlights the legislative and judicial devaluing of low-income households and their property rights.[89] In the 1950s, the U.S. Congress undertook an enormous urban renewal project which involved condemning a large portion of a low-income area in D.C. and rebuilding it in the hopes of eliminating blight.[90] The plaintiffs in this case owned a department store scheduled to be taken by eminent domain in order to clear the larger blighted area. They argued that Congress could not constitutionally take the property for this project because the commercial property itself was neither blighted nor "slum housing."[91] Despite this, the Court allowed the redevelopment plan to move forward, finding that it was sufficient for the property to be located in a blighted area designated for redevelopment.[92] The Court unanimously upheld the constitutionality of blight condemnations under the Federal Public Use Clause.[93] Unlike with *Kelo*, no robust discussion on eminent domain followed the *Berman* decision.[94] The rich discourse on eminent domain only followed *Kelo* because that case affected middle-class homeowners. Thus, as more states enacted laws—whether symbolic or effective—in order to protect the property interests of middle-class homeowners and communities, they have simultaneously diminished the property rights of owners in blighted areas. Only three states—Florida, New Mexico, and Utah—have abolished both condemnations for economic development and blight.[95] In fact, after *Berman*, many states had actually expanded the definition of blight "to encompass almost any area where economic development could potentially be increased."[96] The juxtaposition of the reactions to these two cases, distinguishable mostly by discrete class contexts (one affecting

[88] Somin, *supra* note 17, at 195.
[89] Berman v. Parker, 348 U.S. 26 (1954).
[90] Janice Nadler & Shari S. Diamond, *Eminent Domain and the Psychology of Property Rights: Proposed Use, Subjective Attachment, and Taker Identity*, 5 J. OF EMPIRICAL LEGAL STUDIES 713 (2008).
[91] *Berman*, 348 U.S. at 31.
[92] *Id.* at 34–36.
[93] *Id.*
[94] Dana, *supra* note 14, at 365–66.
[95] Somin, *supra* note 24, at 2138.
[96] *Id.* at 2121.

lower-income and one affecting the middle-class), advances the harmful idea that political, judicial, and even academic institutions do not care about the interests and needs of less wealthy households.

II. THE UNREASONABLE "REASONABLE-EXPECTATION-OF-PRIVACY" TEST IN THE CONTEXT OF CONDEMNED HOMES

A. Different Homes Have Different Privacy Guarantees — Condemned Housing

Current jurisprudence on whether the Fourth Amendment applies to condemned housing varies by circuit. The few cases that deal with the Fourth Amendment's application to condemned housing are contradictory. The lack of clarity regarding administrative searches in condemned homes stems from the legal system's expressive devaluing of low-income households. For example, the different outcomes and protections offered in cases of fire-damaged homes compared with cases of blighted homes show the contrasting values underlying these two types of condemned housing and demonstrate that current Fourth Amendment jurisprudence is vulnerable to classist applications. By granting stronger property and privacy rights for occupants of fire-damaged condemned homes, but not for occupants of homes condemned for poverty-related contexts, courts make an expressive statement that the property and privacy rights of financially vulnerable occupants are not as important as those of their wealthier counterparts.

There are cases in adjacent contexts in which the Court has devalued low-income classes' conceptions of the home. *California v. Carney* did not involve a condemned house, but a motorhome.[97] Drug Enforcement Administration (DEA) agents suspected that Carney's motorhome was being used to exchange marijuana for sex and they observed a youth entering the motorhome.[98] They later questioned the youth, who told the DEA agents that he had received marijuana in exchange for sexual contacts.[99] The agents entered the motorhome without a warrant or consent and saw marijuana and drug paraphernalia

[97] California v. Carney, 471 U.S. 386, 391 (1985).
[98] *Id.* at 388.
[99] *Id.*

on a table.[100] The Court rejected Carney's argument that his motorhome should not be subject to the Fourth Amendment's automobile exception because his motorhome was "*capable of functioning as a home.*"[101] The Court held that the warrantless search of Carney's motorhome did not violate the Fourth Amendment because (1) the motorhome is a vehicle that is readily mobile, and (2) "there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle" subject to pervasive regulations.[102]

In *Carney*, the Court prematurely and hastily muddied this already-confusing area of law. Rather than attempting to define the contours of what a reasonable search looks like in different contexts, the Court makes the search's context, which is often intertwined with socioeconomic status, dispositive. The fact that Carney's home was a motorhome, capable of serving two functions, should not have automatically relaxed Carney's Fourth Amendment protections.[103] As Justice Stevens noted in his dissent, "searches of places that regularly accommodate a wide range of private human activity are different from searches of automobiles which primarily serve a public transportation function."[104] Courts must accept that as society evolves, we will continue to depart from traditional living or housing arrangements, thus requiring judges to interpret and apply Fourth Amendment protections to a broader array of settings.

Courts' case-by-case approach to reasonableness and the reasonable expectation of privacy in the context of non-traditional versus traditional housing has resulted in various expressive statements that devalue low-income households in specific circumstances. In cases involving blighted homes or condemnations related to poverty, courts are more likely to deem warrantless entry justified due to a diminished expectation of privacy. However, there is also a small, insubstantial body of cases dealing with the Fourth Amendment's application to condemned housing; while the Supreme Court has ruled on cases regarding privacy in

[100] *Id.*

[101] *Id.* at 393.

[102] *Id.*

[103] *Id.* at 399 (Stevens, J., dissenting) ("Premature resolution of the novel question presented has stunted the natural growth and refinement of alternate principles. Despite the age of the automobile exception and the countless cases in which it has been applied, we have no prior cases *defining the contours of a reasonable search in the context of hybrids* such as motorhomes, house trailers, houseboats, or yachts.") (emphasis added).

[104] *Id.* at 407.

fire-damaged condemned homes, only a few lower courts have dealt with the issue of Fourth Amendment protections applying to homes that are condemned due to poverty. In *People v. Antwine*, the Michigan Court of Appeals held that the defendant had no reasonable expectation of privacy in a condemned house.[105] The house had been condemned as "unfit for human occupancy or use" because it lacked water service and a sanitary facility.[106] Thus, police were not precluded from conducting a search during which they discovered drugs in plain view.

The ease with which municipalities can condemn homes and use law enforcement agents to conduct administrative searches can make Fourth Amendment protections utterly meaningless. The cases above show that reasonable expectations of privacy are reduced in homes that do not fit into preconceived, middle-class notions of what a *home* is. Because of this, motorhomes and houses condemned for poverty-related reasons are simply not included within the sphere of Fourth Amendment protections.

As the following cases illustrate, the Supreme Court has granted complete Fourth Amendment protections to individuals in fire-damaged homes. Yet there are no Supreme Court cases governing instances of *administrative-turned-criminal* searches in the context of homes that have been condemned for poverty-related reasons. In finding that individuals in homes condemned or deemed uninhabitable due to fire damage still retain reasonable expectations of privacy, the Court makes a classist distinction. The Court makes its expressly classist values clear by using language to suggest the innocence of individuals whose homes are condemned due to fire damage, and refusing to clarify whether the same expectations of privacy exist in homes condemned due for underlying poverty issues. In *Michigan v. Tyler*, a case which involved a warrantless entry into a fire-damaged property, the court repeatedly mentioned that "innocent fire victims" should not have any diminution in their expectations of privacy nor in the protection of the Fourth Amendment.[107] A state police arson investigator had made multiple warrantless entries

[105] People v. Antwine, 809 N.W.2d 439, 443 (Mich. Ct. App. 2011).

[106] *Id.* at 441.

[107] Michigan v. Tyler, 436 U.S. 499, 505–06 (1978) ("For even if the petitioner's contention that arson establishes abandonment be accepted, its second proposition—that *innocent fire victims* inevitably have no protectible expectations of privacy in whatever remains of their property—is contrary to common experience . . . Once it is recognized that *innocent fire victims* retain the protection of the Fourth Amendment, the rest of the petitioner's argument unravels.") (emphasis added).

into the burned store to seize evidence of arson.[108] The Court rejected the state's argument that "*innocent fire victims* inevitably have no protectable expectations of privacy in whatever remains of their property," holding that the argument was "contrary to common experience" because "[p]eople may go on living in their homes or working in their offices after a fire."[109] Here, the Court explicitly acknowledges that individuals retain reasonable expectations of privacy in condemned buildings, as they may continue living or working at the premises.[110] The words "victim" and "innocent" are mentioned in the opinion eight and three times, respectively.[111] "Fire-damaged premise" is mentioned four times.[112] The distinction between innocent victims and blameworthy individuals stems from the Court's biases against financially vulnerable individuals and how the "moral construction of poverty in the United States presupposes that the poor are morally and behaviorally inferior."[113] The emphasis on innocence implies a class-based calibration of property rights, where fire damage calls for innocence while poverty is blameworthy. Whether these prejudices, embedded within the current body of case law, are conscious or unconscious, they have a profound expressive effect on the treatment of low-income individuals and the unstably housed.

Only six years after *Michigan v. Tyler*, in *Michigan v. Clifford*, the Supreme Court held in a plurality decision that reasonable expectations of privacy remained in fire-damaged premises, and that local authorities needed both an administrative warrant to determine the cause and origin of the fire and a criminal warrant to find evidence of arson.[114] Both cases concerned fire-damaged properties and whether there are legitimate privacy interests in fire-damaged properties that the Fourth Amendment protects. When read together, they elucidate the idea that occupants of uninhabitable homes "retain the protection of the Fourth Amendment," especially in light of the "strong expectations of privacy associated with a home."[115] In addition to the heightened privacy

[108] *Id.* at 502.
[109] *Id.* at 505.
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] Leonetti, *supra* note 16.
[114] Michigan v. Clifford, 464 U.S. 287, 298 (1984) (plurality) (holding that once an administrative search turns into a search for criminal activity, a search warrant is required).
[115] *Tyler*, 436 U.S. at 505 (holding that occupants still have protectible expectations of privacy in whatever remains of their property); *Clifford*, 464 U.S. at 295.

expectations within a home, the *Clifford* court noted that because "personal belongings remained" and because the Cliffords arranged "to have the house secured against intrusion in their absence," they "retained reasonable privacy interests in their *fire-damaged* residence."[116] The word "fire-damaged" is mentioned eighteen times in the *Clifford* opinion and the word "victim" is mentioned twice.

The Supreme Court must clarify this area of law and hold that these protections apply equally to homes condemned due to poverty. Just as an occupant of a fire-damaged house may retain privacy interests in their residence and in their personal belongings following a fire, even if the house may be deemed uninhabitable by local authorities or the municipality, an occupant of a house condemned for *any* reason should be able to retain privacy interests in their home and in their belongings. By limiting its holding to cases concerning fire-damaged homes, the Court leaves out the subset of occupants who are temporarily living in condemned homes due to an inability to pay for basic necessities like water or utility bills. As the housing crisis worsens, more homeowners or occupants in low-income communities are likely to be subject to searches that evade the constraints of the Fourth Amendment. The following sections will discuss the problematic reasoning underlying *Katz* and suggest how the Court should put an end to the body of case law that implicitly calibrates privacy rights in racist or classist ways.

B. The Problematic Reasoning Underlying the Fourth Amendment and Searches of the Home Generally

The Fourth Amendment's modern classist application makes sense in light of its history. By limiting the Crown's investigatory powers during the late eighteenth century, "the English courts may have been attempting to protect the property interests of the landed classes, rather than basing their decisions on any notion of individual privacy."[117] Despite these origins, Fourth Amendment cases are commonly understood to support the principle that the state cannot arbitrarily enter and search an individual's property.[118]

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[116] *Clifford*, 464 U.S. at 295 (noting that because personal belongings remained, the house was secured against intrusion by the Cliffords, and because of the strong expectations of privacy within a home, the Cliffords retained reasonable privacy interests in their fire-damaged residence).

[117] Carlos B. Castillo, *Discord Among Federal Courts of Appeals: The Constitutionality of Warrantless Searches of Employers' OSHA Records*, 45 U. MIAMI L. REV. 201, 207 (1990).

[118] *Id.*

The Supreme Court has consistently held that searches of private property require either a valid search warrant or consent of the occupant on premises.[119] These protections, rooted in the Fourth Amendment, are strongest in one's home.[120] In *Kyllo v. United States*, a case regarding whether an infrared thermal imaging device aimed at the defendant's home violated his reasonable expectation of privacy under the Fourth Amendment, the Court stated that "[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from governmental intrusion."[121] The Court also ruled that under the Fourth Amendment, searches of the home conducted outside the judicial process are *per se* unreasonable, subject only to a narrow and specific set of well-established exceptions.[122]

The Supreme Court has traditionally applied the Fourth Amendment through either a reasonableness inquiry or a warrant requirement. The pro-warrant school of thought reads the Fourth Amendment as proscribing *all* unreasonable searches and seizures, and holds that the warrant process is mandatory except in a few well-established exceptions.[123] The constitutional protection prior to the search lies in the interposition of a neutral judge between the police and the citizen.

As with all rules, there are many exceptions. The person in

[119] The Supreme Court has long held that the State must demonstrate by clear and convincing evidence that the consent was in fact "voluntarily given, and not the result of duress or coercion, express or implied." *See* Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973). Courts have found that individuals did not voluntarily consent to searches based on factors such as, *inter alia*, the lack of any advice to the accused of their constitutional rights, length of detention, repeated and prolonged nature of the questioning, relative number of police officers at the scene, and display of automatic and semi-automatic weaponry. *Id.*; Camara v. S.F. Mun. Court, 387 U.S. 523, 528–29 (1967).

[120] *See* Payton v. New York, 445 U.S. 573, 573 (1980) (recognizing that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.").

[121] Kyllo v. United States, 533 U.S. 27, 31 (2001) (quoting Silverman v. United States, 365 U.S. 505, 511 (1961)); *see also Payton*, 445 U.S. at 596 (finding that this sensitivity to privacy within the home dates back to common law and the "zealous and frequent repetition of the adage that a man's 'house is his castle.'").

[122] Katz v. United States, 389 U.S. 347, 357 (1967).

[123] *See, e.g.*, Mincey v. Arizona, 437 U.S. 385, 390 (1978) (holding that the exigency exception does not justify an extensive four-day warrantless search of a homicide scene); *see also* Chimel v. California, 395 U.S. 752, 766 n.12 (1969) (noting that the Fourth Amendment is "designed to prevent, not simply redress," unlawful police action by way of the warrant process).

question could, for example, consent to a search;[124] the police could spot an obviously incriminating object in plain view if they come upon the object while otherwise engaged in a lawful entry or search;[125] there could be exigent circumstances justifying the warrantless search, such as a hot pursuit;[126] or there could be an imminent risk of destruction of evidence or danger to others.[127] Even though there are myriad ways the government can bypass Fourth Amendment applicability, as these exceptions demonstrate, Fourth Amendment protections are typically strongest within an individual's home.[128]

The reasonableness inquiry, the standard at issue in the context of a warrantless entry into condemned homes, has become the dominant standard. The reasonableness inquiry asks whether the search was reasonable given what the officers knew at the time of the search.[129] Courts typically determine the reasonableness of a search by examining the degree to which it intrudes upon an individual's privacy and the degree to which it is necessary for the promotion of legitimate governmental interests.[130] The outcome of the reasonableness analysis depends more on the contextual circumstances justifying the search and how the search was conducted, rather than whether the authorities in question obtained a warrant. A defendant's main protection in the reasonableness inquiry lies in after-the-fact review of police conduct to determine whether the warrantless search was actually reasonable, an "imprecise and inflexible" judgment.[131]

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[124] *See Schneckloth*, 412 U.S. at 248–49 (holding that if the State wants to justify a search on the basis of consent, it must demonstrate that the consent was voluntarily given).

[125] *See* Arizona v. Hicks, 480 U.S. 321, 326 (1987) (discussing the confines of the plain view doctrine).

[126] *See* Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 298 (1967) (holding that the exigent circumstances of the hot pursuit justified the warrantless entry into the house to search for the robber).

[127] *See* Minnesota v. Olson, 495 U.S. 91, 100 (1990) ("[A] warrantless intrusion may be justified by hot pursuit of a fleeing felon, or imminent destruction of evidence, or the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling.").

[128] *See, e.g.*, Kyllo v. United States, 533 U.S. 27, 33 (2001) (quoting Dow Chemical Co. v. United States, 476 U.S. 227, 237, n.4 (1986)) (finding that privacy expectations are "most heightened" within a home).

[129] United States v. Knights, 534 U.S. 112, 118–19 (2001) ("[t]he touchstone of the Fourth Amendment is reasonableness.") (upholding a search of a defendant's apartment despite the failure to obtain a warrant and the absence of probable cause).

[130] *Id.*

[131] Steven R. Morrison, *The Fourth Amendment's Applicability to Residents of Homeless Shelters*, 32 HAMLINE L. REV. 319, 328 (2009).

In the context of administrative searches in fire-damaged or blighted homes, the contrasting values underlying these two types of condemned housing show that current Fourth Amendment jurisprudence is vulnerable to classist and racist applications. Courts, by defending property and privacy rights in fire-damaged condemned homes, but not in other poverty-related contexts, are making an expressive statement that the property and privacy rights of financially vulnerable occupants are not as important as those of wealthier occupants. As the country's housing crisis becomes more severe and these issues become more pervasive, courts will need to offer a consistent and definite solution to the problems that searches of condemned homes raise.

C. Katz and the "Reasonable-Expectation-of-Privacy Test"

The Fourth Amendment protects people from warrantless seizures of persons or searches of places in which they have a reasonable expectation of privacy.[132] The touchstone of modern Fourth Amendment jurisprudence, as discussed in the condemned housing context, is the reasonable-expectation-of-privacy test, which first appeared in Justice Harlan's concurrence in *Katz v. United States*.[133] *Katz* involved an FBI investigation into an illegal betting scheme wherein agents used a microphone to monitor phone conversations inside a public telephone booth. They attached the monitoring device without obtaining a warrant, which Katz argued was a Fourth Amendment violation. Justice Stewart wrote for the majority:

> [w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection . . . . But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.[134]

By making clear that private information can still be protected in publicly-accessible spaces, the Court departed from the trespass doctrine upon which Fourth Amendment questions had traditionally turned.

In the concurrence, Justice Harlan articulated a two-part test for determining whether a questionable search violates an individual's Fourth Amendment rights based on their reasonable expectations of privacy.[135] First, the test considers whether "a person [has] exhibited an actual

[132] Katz v. United States, 389 U.S. 347, 360–61 (1967).
[133] *Id.* at 361.
[134] *Id.* at 347–48, 351.
[135] *Id.* at 351, 361.

(subjective) expectation of privacy, and, second, that the expectation be one that society is prepared to recognize as 'reasonable.'"[136] The Court has since applied this test in a multitude of contexts.[137] However, Supreme Court decisions following *Katz* make it difficult to determine what counts as a "reasonable expectation of privacy."[138] The glaring issue is that Justice Harlan's test is largely circular, in that a person only has a reasonable expectation of privacy once the courts decide to protect that particular privacy interest in that particular place.[139] The *Katz* test is unclear, but what is clear is that despite the language in *Katz*, "society's view of what is reasonable has little or no role in a court's analysis."[140] Thus, current Fourth Amendment jurisprudence protects privacy via a normative analysis of whether an expectation of privacy should be deemed constitutionally reasonable.

Courts use the reasonable-expectation-of-privacy analysis to make classist decisions about the types of occupants who deserve certain property rights. Both in *Tyler* and *Clifford*, the Court used this analysis to hold that "innocent fire victims" have a reasonable expectation of privacy in their fire-damaged premises. In *Michigan v. Tyler*, the Court found that "innocent fire victims retain the protection of the Fourth Amendment" and that "there is no diminution in a person's reasonable expectation of privacy" in this context.[141] In *Michigan v. Clifford*, the Court stated that "in light of the strong expectations of privacy associated with a home . . . the Cliffords retained reasonable privacy interests in their fire-damaged residence."[142] In contrast, the motorhome case *California v. Carney*, also turned on the reasonable expectation-of-privacy analysis in which the Court found that "the expectation of privacy with respect to

[136] *Id.* at 361.

[137] *Id.* at 361. *See* Minnesota v. Carter, 525 U.S. 83 (1998) (finding that defendants, who were in another person's apartment for a short time to package cocaine, had no legitimate expectation of privacy in the apartment); *see also* Byrd v. United States, 138 S. Ct. 1518 (2018) (finding that even though the defendant violated the rental car agreement by driving while not listed as an authorized driver, the violation did not defeat any reasonable expectation of privacy he had in the vehicle).

[138] Kyllo v. United States, 533 U.S. 27, 34 (2001) ("The *Katz* test . . . has often been criticized as circular, and hence subjective and unpredictable."); Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 MICH. L. REV. 801, 808 (2004).

[139] Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 MICH. L. REV. 801, 808 (2004).

[140] Morrison, *supra* note 131, at 328.

[141] Michigan v. Tyler, 436 U.S. 499, 505–06 (1978).

[142] Michigan v. Clifford, 464 U.S. 287, 295 (1984).

one's automobile is significantly less than that relating to one's home or office."[143] It is widely acknowledged that privacy expectations typically fall along a continuum, depending on the individual's relation to the searched area and the nature of the searched area itself.[144] But these cases also show that the status and class of the individual and whether their dwelling fits into the Court's preconceived notion of a home affect the privacy expectation analysis too.

D. Administrative Searches

Administrative searches are broad, non-individualized searches conducted for non-criminal purposes pursuant to an administrative or statutory scheme.[145] As such, they do not require probable cause or a search warrant.[146] Since September 11, 2001, administrative searches have become more pervasive, with government agencies using the administrative search exception to justify a range of actions, including additional screening at airports, passenger searches on subways, and extensive wiretaps.[147] Administrative searches have also allowed for warrantless inspections of: arson investigations of fire scenes,[148] fixed checkpoints near the border to search for undocumented persons,[149] sobriety checkpoints,[150] and inventory searches of impounded cars.[151] This list will continue to grow because the administrative search exception functions as an extremely broad license for the government to conduct warrantless searches. Because characterizing a search as

[143] California v. Carney, 471 U.S. 386, 391 (1985).

[144] *See* United States v. Maestas, 639 F.3d 1032, 1038 (10th Cir. 2011) (finding that tenants in a multi-unit apartment building have a lesser expectation of privacy than a homeowner in a private home); *see also* Minnesota v. Carter, 525 U.S. 83, 90 (1998) (holding that an overnight guest in a home may claim the protection of the Fourth Amendment, but a guest who is simply present with the consent of the homeowner may not).

[145] *See* Primus, *supra* note 3, at 61-62.

[146] *Id.* at 61.

[147] Eve B. Primus, *Disentangling Administrative Searches*, 111 COLUM. L. REV. 254, 259 (2011).

[148] Michigan v. Clifford, 464 U.S. 287 (1984); Michigan v. Tyler, 436 U.S. 499 (1978).

[149] United States v. Martinez-Fuerte, 428 U.S. 543, 566–67 (1976) (allowing for fixed checkpoints near the border to stop vehicles and briefly question the occupants to detect undocumented persons).

[150] Michigan Dep't of State Police v. Sitz, 496 U.S. 444, 445 (1990) (holding that sobriety checkpoints are consistent with the Fourth Amendment).

[151] Colorado v. Bertine, 479 U.S. 367, 375-76 (1987) (allowing for inventory of contents of van impounded after owner was arrested for drunk driving).

administrative places it outside the Fourth Amendment warrant and probable cause requirements for individualized suspicion, such searches are prone to abuse and can be used to further dilute justification requirements.

Administrative searches will become more relevant as vacant or condemned homes increase in number, since searches of vacant or "uninhabitable" homes are typically conducted via administrative searches. While the scope of permissible administrative searches varies by municipality, many municipal or local ordinances permit administrative searches of temporarily-condemned homes that are deemed unfit or unsafe for human occupancy.[152] Municipalities can condemn homes or structures for various reasons, including flood or fire damage, neglect, or if the structure lacks basic facilities such as water, electricity, and heat.[153]

In *Camara v. Municipal Court of San Francisco*, the Court first announced the lesser "probable cause" standard for such searches, effectively redefining the standard of probable cause in the administrative context.[154] The defendant was charged with criminal violation of a San Francisco housing code for refusing to permit a warrantless inspection of their residence.[155] The majority agreed with the defendant, finding that the warrantless inspection scheme was unconstitutional and that administrative inspections *do* implicate the Fourth Amendment's fundamental purpose of protecting individual privacy interests against

[152] *Condemnation FAQ*, CITY OF DEKALB, https://www.cityofdekalb.com/1223/Condemnation-FAQ (last visited Feb. 28, 2020); *Condemnations, Unfit for Human Habitation*, ST. PAUL, https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/condemnation-unfit (last visited Feb. 28, 2020); *Meeting the Housing Code in Boston*, BOSTON, https://www.boston.gov/departments/inspectional-services/meeting-housing-code-boston (last visited Feb. 28, 2020).

[153] *Condemnation FAQ*, CITY OF DEKALB, https://www.cityofdekalb.com/1223/Condemnation-FAQ (last visited Feb. 28, 2020); *Condemnations, Unfit for Human Habitation*, ST. PAUL, https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/condemnation-unfit (last visited Feb. 28, 2020); *Meeting the Housing Code in Boston*, BOSTON, https://www.boston.gov/departments/inspectional-services/meeting-housing-code-boston (last visited Feb. 28, 2020).

[154] Camara v. Mun. Court of S.F., 387 U.S. 523, 539 (1967).

[155] *Id.* at 525.

state agents' unwarranted intrusions.[156] However, it held that while such administrative searches are subject to Fourth Amendment constraints, the standard of justification is lower than probable cause.[157] The Court opined that administrative searches require a lower, more lenient standard than the standard for probable cause because, allegedly, these inspections are necessary for the protection of public health, safety, and welfares.[158]

Because of the varying and often unclear probable cause standards, determination of whether an inspection is administrative or criminal can be dispositive of a criminal prosecution's or suppression hearing's outcome. And due to the lower standards of administrative searches, they carry vast potential for abuse. Unfortunately, the line between criminal and administrative searches is murky. For example, in *City of Indianapolis v. Edmond*, the Court attempted to bring clarity to this area of law by holding that a traffic checkpoint program designed to seize illegal drugs violated the Fourth Amendment because its primary purpose was to detect evidence of criminal wrongdoing and was thus motivated by a "general interest in crime control."[159] Despite this attempt, administrative search jurisprudence still begs for more clarity, as it can be difficult for courts to assess whether a search was pretextual or a valid administrative search.[160]

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[156] *Id.* at 530–31.

[157] *Id.* at 538 ("Where considerations of health and safety are involved, the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken.").

[158] *Id.* at 538–39; *see also* Wayne R. LaFave, *Administrative Searches and the Fourth Amendment: The* Camara *and* See *Cases*, 1967 SUP. CT. REV. 1, 18–19 (1967) ("A more appropriate interpretation of the Court's language, considering the context in which it is used, is that a lesser quantum of evidence is constitutionally required for these inspections because the search involved is less of an intrusion on personal privacy and dignity than that which generally occurs in the course of a criminal investigation.").

[159] City of Indianapolis v. Edmond, 531 U.S. 32, 32 (2001).

[160] *See* Illinois v. Lidster, 540 U.S. 419, 427 (2004) (holding that a suspicionless highway checkpoint to get information from motorists about a past crime was constitutional, because the enforcement purpose was not to determine whether drivers themselves where implicated in the crime, but to seek their help); *see also* Stephen A. Saltzburg & Daniel J. Capra, American Criminal Procedure: Investigative 382–85 (8th ed. 2007) (noting difficulty of distinguishing between a search conducted for administrative purposes and one conducted to obtain evidence for a criminal violation); *see also* Primus, *supra* note 147, at 257 ("Formulating the boundaries and requirements of administrative search doctrine is therefore a matter of great importance, and yet the rules governing administrative searches are notoriously unclear. In fact, scholars and courts find it difficult to even define what an administrative search is, let alone to explain what test

Because the rules currently governing administrative searches are far from clear, and because administrative searches will become more common as more people begin living in non-traditional or condemned homes, the Supreme Court must reformulate the boundaries of the administrative search doctrine. Even though administrative search schemes can only be valid "if the search serves a narrow but compelling administrative objective" and the search is no more intrusive than necessary to satisfy the administrative need, courts must play a more active role to make sure that administrative searches are not subverted into pretextual searches that violate the Fourth Amendment.[161] The Ninth Circuit noted that "[b]ecause these searches require no warrant or particularized suspicion, an administrative search scheme invests the Government with the power to intrude into the privacy of ordinary citizens."[162] The Supreme Court also noted the dangers of administrative searches and how they constitute significant intrusions upon interests protected by the Fourth Amendment: "We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of a criminal penalty."[163]

Financially vulnerable occupants of homes and the unstably housed are victims of these inadequate legal standards. They will continue to suffer from weaker protections of their constitutional rights than their wealthier counterparts. The Court's implicit determination that there is no reasonable expectation of privacy in non-traditional and low-income homes means that the state will continue to justify warrantless entries into condemned homes via the administrative search doctrine and the classist notion that certain subgroups of people should enjoy weaker individual rights. The Court has used reasonableness balancing embedded within the administrative search doctrine to erode individual rights, and it will continue to do so unless and until the courts finally remedy this issue.[164] As academics and courts continue to reimagine what

governs the validity of such a search.").

[161] United States v. Bulacan, 156 F.3d 963, 968 (9th Cir. 1998) (holding that warrantless seizure under plain view was only valid if the underlying administrative search was valid, and a broad administrative search scheme which encompasses both a permissible and an impermissible purpose violates the Fourth Amendment).

[162] *Id.* at 967.

[163] Camara v. Mun. Court of S.F., 387 U.S. 523, 533 (1967).

[164] *See* Primus, *supra* note 147, at 255 ("As long as the government is reasonably pursuing a legitimate government interest, the warrant and probable cause requirements fade

the "home" is, they need to refocus their attention toward administrative searches and begin to untangle the muddled doctrine that has become too influential to leave alone.

III. THE ROLE OF COURTS

The Supreme Court should offer a clear and definite solution that recognizes the rights of occupants in homes condemned due to conditions of poverty. Specifically, it should clarify this area of law by deciding that occupants in condemned homes still retain reasonable expectations of privacy, both with regard to their home itself and their belongings within the home. If the Court continues making case-by-case decisions where homes condemned for fire damage retain greater privacy rights than homes condemned for a failure to pay utility bills, it will implicitly calibrate privacy rights based on class and socioeconomic status. Such expressive statements are harmful to low-income families by explicitly devaluing their property rights in relation to the property rights of others. As Professor Dana noted, "[a]t its crudest, the message of the differential treatment of poor households and middle-class households is that staying in your home only really matters if you are a middle-class person in a middle-class home."[165]

In addition, the Fourth Amendment should be interpreted broadly in response to technological and social changes. As Justice Brandeis noted in his dissent in *Olmstead v. United States*, as technology advances and society evolves, "every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."[166] Only through this recognition will everyone's civil liberties be adequately protected. As the law currently stands under *Katz*, it is up to the courts to determine when an expectation of privacy is "reasonable." Consequently, courts must continually update and refine the boundaries of the Fourth Amendment. As our ways of living and co-existing evolve, courts must break down the classist conceptions that govern Fourth Amendment protections.

Professor Orin Kerr argues for judicial caution, suggesting that legislatures should provide the primary rules governing law enforcement investigations involving new technologies.[167] He states that because "[p]rivacy is one of our most cherished values . . . rules that effectively

away.").

[165] Dana, *supra* note 14, at 380.

[166] Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

[167] Kerr, *supra* note 138, at 806.

regulate criminal investigations to prevent governmental abuse are essential to our traditions."[168] However, his argument should be limited to the technological and data privacy context because legislatures may very well be better-equipped to generate protective rules there. However, in the privacy-within-homes context, the anti-homeless ordinances as well as the ordinances permitting searches of condemned structures suggest that the legislatures are not generating protective rules for financially vulnerable or under-propertied individuals. Ideally, criminalization measures should not exist in the first place; however, as such ordinances are becoming a common municipal response to the issue of homelessness, courts should step in and protect the rights of under-propertied individuals.[169] Although the Court itself is far from perfect, it has more institutional competence, especially where constitutional rights are concerned.[170] Courts should take the lead by crafting rules to protect privacy because historically they have played an active role in regulating privacy rights in various contexts.

If the Supreme Court hears a case about a house condemned for reasons of poverty and determines that there are diminished expectations of privacy, it may justify the diminution in one of two ways. First, the Court may say that there are diminished expectations of privacy because even though the inhabitant has a *subjective* expectation of privacy in a condemned home or an encampment, it is not one that society recognizes as reasonable.[171] However, the Court should reflect on its own analysis in *Michigan v. Clifford* and *Michigan v. Tyler* and ask why fire damage, as opposed to delinquent payment of utility bills, warrants more protection of one's home. Furthermore, there is something utterly troubling about how the state—rather than remedying the underlying causes of poverty and one's inability to pay for utilities—chooses to condemn private property and use its law enforcement capacity to arrets or escort individuals out of their home. This policy arguably expends more resources than necessary to remedy the initial non-payment issue. As Professor Margaret Jane Radin theorized, homes are objects that

[168] *Id.*

[169] *See* Kim, *supra* note 65, at 1184.

[170] *Id.* at 1185 ("But when a constitutional right is implicated as it was in *Martin*, courts have greater institutional competence to strike down criminalization ordinances. And while it is in the purview of legislatures and city councils to address homelessness by providing more affordable housing and services, the reality is that governments have turned more to criminalization measures than to providing housing and services.").

[171] Katz v. United States, 389 U.S. 347, 361 (1967).

people "feel are almost part of themselves" and are "closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world."[172] As such, despite the temporary status or even the makeshift nature of a home, occupants in non-traditional housing deserve the same protection as occupants in traditional housing. Second, the Court may defer to the legislature on the familiar premise that municipalities and legislatures have broad police powers and a democratically elected body to use that power. However, while states can exercise their police power to regulate the welfare and safety of the public, courts should serve as a check to make sure that states exercise that power in a fair and equitable manner. Where court decisions have classist overtones or where there are inequality concerns, courts should apply more rigorous review, even when states argue their actions are legitimate in light of their police power.

The judiciary has a meaningful role to play in policing privacy and poverty rights, especially for marginalized groups. Thus far, the political process has failed financially vulnerable individuals and the unstably housed in the housing context.[173] Courts, too, have been far from perfect in attempting to adjudicate this issue. As Professor Carrie Leonetti stated, "[t]he subjective, normative nature of the *Katz* reasonable-expectation-of-privacy test has sometimes allowed individual judges' contempt for the unhoused to shine through where they have opined on the reasonableness of their expectations of privacy."[174] Despite these faults, courts are still better positioned than legislatures to draw the boundaries of privacy rights and protect the vulnerable, as judges' lifetime appointments protect them against counter-majoritarian forces and NIMBYism. In order to remedy this, the judiciary must begin reimagining what the home looks like for individuals in varying socioeconomic classes—the current *Katz* framework, and its case-by-case analysis, often allows for classist decisions rooted in implicit biases that are justified by variances in fact patterns. The judiciary should not abdicate its role.

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[172] Margaret J. Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 957 (1982).

[173] *See* Leonetti, *supra* note 16, at 404 (discussing the proliferation of anti-camping and trespassing ordinances that punish for socioeconomic status rather than voluntary behavior).

[174] *Id.* at 421 ("Cases attempting to determine the constitutional limitations that may surround searches of the homes of the unhoused often feature sarcastic quotation marks around the words 'home' and 'residence,' particularly in courts not inclined to recognized unhoused encampments as worthy of Fourth Amendment protection.").

CONCLUSION

Occupants of non-traditional homes or unstable living situations are discriminated against under this country's current property and criminal law. The Court, by differentiating the reasonable expectations of privacy between fire-damaged condemned homes and homes condemned for underlying poverty reasons, has made an expressive and classist statement that the property rights of financially vulnerable occupants are less valuable or important than the property rights of "innocent fire victim[s]." As the housing crisis worsens and wage stagnation continues, there will be a more pressing and immediate need for the Court to define which property rights are afforded to occupants in non-traditional or temporarily-condemned homes. Privacy rights should not be calibrated based on income or class nor should they hinge on the circumstances of engaging with the state (i.e. fire damage vs. condemnation due to failure to pay utility bills). The Supreme Court should clarify the unequal laws regarding the expectations of privacy within condemned homes and hold that occupants in condemned homes should receive the same level of Constitutional protection as occupants in stable housing arrangements. Holding otherwise would result in a decision with long-lasting racist and classist implications, entrenching into the law that the privacy rights of the financially vulnerable or under-propertied are *less than*.