CRIMINAL PROCEDURE—THIRD PARTY CONSENT—UPHOLDING CONSENT TO SEARCH BY COTENANT OVER OBJECTION OF TENANT REMOVED FROM PREMISES.

Fernandez v. California, 134 S. Ct. 1126 (2014).

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In *Fernandez v. California*,[1] the United States Supreme Court affirmed the California Court of Appeal's decision, which held that *Georgia v. Randolph*[2] is not applicable when the tenant objecting to a consent search is not physically present.[3] In *Fernandez*, police officers knocked on Walter Fernandez's apartment door shortly after a violent robbery.[4] Roxanne Rojas, a resident of the apartment, answered the door, and the officers asked to perform a protective sweep of the apartment.[5] Fernandez approached the door and objected.[6] The officers apprehended Fernandez,[7] who the robbery victim identified as the initial assailant.[8] Later, a police officer returned to the apartment, received oral and written consent from Rojas to search the apartment, and found assorted items linking Fernandez to the robbery.[9]

Prior to trial,[10] Fernandez made a motion to suppress the evidence from the consent search.[11] The trial court denied the mo-

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[1] 134 S. Ct. 1126 (2014).

[2] 547 U.S. 103 (2006) (stating that an objection to a search by a physically present cotenant was dispositive as to that cotenant, despite the consent of another physically present cotenant).

[3] *Fernandez*, 134 S. Ct. at 1130, 1137.

[4] *Id.* at 1130. Petitioner cut the victim on the wrist with a knife, and four men beat the victim and stole his wallet and cell phone. *Id.* Police officers saw Fernandez run through an alley and into an apartment building near where the robbery took place. *See id.*

[5] *Id.*

[6] *Id.*

[7] Roxanne Rojas appeared to be crying when she answered the door. *Fernandez*, 134 S. Ct. at 1130. Police believed that she was the victim of domestic abuse. *Id.* Police officers apprehended Fernandez because they believed him to be the proponent of such abuse. *Id.*

[8] *Id.*

[9] *Id.* at 1130–31. Police found gang paraphernalia, a butterfly knife, and ammunition, all belonging to Fernandez. *Id.*

[10] Fernandez was charged with robbery, infliction of corporal injury on a cohabitant, possession of a firearm by a felon, possession of a short-barreled shotgun, and

tion, and the California Court of Appeal affirmed,[12] holding that *Georgia v. Randolph* required Fernandez to be physically present to object to the search.[13] The Supreme Court of California denied Fernandez's petition for review, and the Supreme Court of the United States granted certiorari on the issue of whether *Randolph* controls where an objecting occupant is absent when another cotenant consents to a search.[14] The Court joined the majority of federal courts[15] by holding that *Randolph* does not apply when one resident consents[16] after the removal of the objecting resident.[17]

The Court initiated its analysis by noting that consent searches do not violate the Fourth Amendment,[18] and that requiring police officers to procure a search warrant when consent is available would be "unreasonable" and "absurd."[19] The Court addressed the importance of a cotenant's independence by acknowledging that the Fourth Amendment does not grant one cotenant the power to dictate the other cotenant's ability to admit people into their shared residence.[20] In support of its holding, the Court observed the inconveniences placed upon magistrates, police officers, and consenting tenants if police officers were required to obtain a search warrant despite a cohabitant's consent.[21]

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felony possession of ammunition. *Fernandez*, 134 S. Ct. at 1131 (citing CAL. PENAL CODE § 211, § 273.5(a), § 12021(a)(1), § 12020(a)(1), and § 12316(b)(1) (West 2009)).

[11] *Id.*

[12] *Id.* at 1131.

[13] *Fernandez*, 134 S. Ct. at 1131.

[14] *Id.* at 1130–31.

[15] *Id.* at 1131, 1137. The Court notes that the California Court of Appeal decision confirmed the rationale amongst the majority of federal courts that held the objecting tenant's physical presence is "indispensable to the decision in *Randolph*." *Id.* at 1131 (citations omitted).

[16] The Court notes that the petitioner and the dissent argue that police coerced Roxanne Rojas' consent. *Id.* at 1130 n.2. However, the Court did not disturb the correctness of the trial court's finding on this issue. *Id.*

[17] *Fernandez*, 134 S. Ct. at 1128, 1137. The Court notes that Rojas' consent was given "well after" Fernandez was taken into police custody. *Id.* at 1128.

[18] *Id.* at 1132 (citing Kentucky v. King, 131 S. Ct. 1849, 1852 (2011) (holding that the exigent circumstances rule does not apply when police create the exigency); Michigan v. Fisher, 558 U.S. 45, 49 (2009) (ruling a warrantless entry into the defendant's residence was objectively reasonable under the circumstances); and Brigham City v. Stuart, 547 U.S. 398, 398 (2006) (holding that the subjective intent of police officers is irrelevant under the exigent circumstances exception to the warrant requirement)).

[19] *Id.*

[20] *See id.* at 1137.

[21] *Id.*

The Court dismissed the argument that physical presence is unnecessary when a tenant's absence is the result of police intervention, as long as the removal of the tenant is objectively reasonable.[22] In its discussion, the Court opined that Fernandez "stands in the same shoes as an occupant who is absent for any other reason."[23] The Court also rejected Fernandez's argument that an initial objection remains controlling until revoked.[24] The Court drew upon the "widely shared social expectations" that a "hypothetical caller" would have adhered to when a physically present tenant objected to his entry as opposed to a situation where an absent tenant previously objected to the caller's entry.[25] The Court observed that such standing objections would create practical complications in determining the duration of the objection, law enforcement officers to which the objection applies, and the correct procedure for registering the objection.[26]

Forty years prior to the Supreme Court's decision in *Fernandez*, the Supreme Court addressed consent to a search by a cohabitant in *United States v. Matlock*.[27] Police arrested respondent Matlock for bank robbery[28] in the front yard of the house Matlock shared with Mrs. Graff and a number of her family members.[29] The officers did not ask Matlock for his consent to a search of the property.[30] After Matlock's arrest, Mrs. Graff gave her consent for police to search the bedroom she shared with Matlock.[31] Mrs. Graff informed police that she and Matlock slept in the room together and shared a

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[22] *Id.* at 1134. The Court previously delineated the insufficiency of consent by a co-tenant where "there is [] evidence that the police have removed the potentially objecting tenant from the entrance for the sake of avoiding a possible objection" to the search. Georgia v. Randolph, 547 U.S. 103, 121 (2006). However, the Court stressed that its earlier statement does not mean an improper motive will nullify an "objectively justified removal." *Fernandez*, 134 S. Ct. at 1134.

[23] *Fernandez*, 134 S. Ct. at 1134.

[24] *Id.* at 1135. Petitioner argued "that his objection, made at the threshold of the premises that the police wanted to search, remained effective until he changed his mind and withdrew his objection." *Id.*

[25] *See id.*

[26] *Id.* at 1135–36.

[27] United States v. Matlock (*Matlock II*), 415 U.S. 164, 166 (1974).

[28] *Id.* Petitioner was indicted for the robbery of a federally insured bank in Wisconsin, in violation of 18 U.S.C. § 2113 (2012). *Id.*

[29] Matlock resided with Mrs. Graff, Mrs. Graff's mother, Mrs. Graff's siblings, and Mrs. Graff's children. *Id.*

[30] *Id.*

[31] *Matlock II*, 415 U.S. at 166.

dresser.[32] During the search, police officers found $4,995 in cash inside the closet of the room shared by Mrs. Graff and Matlock.[33]

The District Court for the Western District of Wisconsin required the United States to show that the officers had a reasonable belief "that facts exist which will render the consenter's consent binding on the putative defendant," and "facts do exist which render the consenter's consent binding on the putative defendant."[34] Because the court also held that Mrs. Graff's statements regarding the shared bedroom were not admissible for the truth of the matter asserted,[35] the government's evidence was insufficient to show that Mrs. Graff's consent to the search was binding upon Matlock.[36]

The Seventh Circuit Court of Appeal[37] affirmed the judgment of the district court.[38] The Supreme Court of the United States granted certiorari[39] and considered whether the United States submitted sufficient evidence of a third party's voluntary consent to search the dwelling to overcome a motion to suppress the evidence found during said search.[40] The Court ultimately stated that the consent of a third party with "common authority"[41] over the property is adequate against an occupant who does not consent and is not physically present at the time of consent.[42] The Court also found that the United States presented ample evidence to show that Mrs. Graff voluntarily consented to the search.[43]

To reach this conclusion, the *Matlock* Court reviewed lower court decisions that determined whether consent by a person with "common authority"[44] over the premises or personal property[45] is

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[32] *Id.* at 168.
[33] *Id.* at 166–67.
[34] *Matlock II*, 415 U.S. at 167 (internal quotation marks omitted).
[35] *Id.* at 168. The district court, however, allowed admission of the statements to prove the good faith belief of the officers that Mrs. Graff had the authority to consent to the search. *See id.*
[36] *See id.* at 167–68.
[37] *See* Matlock (*Matlock I*), 476 F.2d 1083, 1083 (7th Cir. 1973).
[38] *Matlock II*, 415 U.S. at 169.
[39] *Id.*
[40] *Id.* at 166.
[41] *Id.* at 170.
[42] *Id.* at 170–71.
[43] *See id.* at 177.
[44] *Matlock II*, 415 U.S. at 170. In his dissent, Justice Brennan noted that they would require sufficient proof of consent *and* a showing that Mrs. Graff knew that she did not have to consent to the search. *Id.* at 188 (Brennan, J., dissenting).
[45] *See generally* Frazier v. Cupp, 394 U.S. 731, 740 (1969) (affirming that joint users of a duffel bag had authority to consent to its search during the course of an otherwise lawful search).

sufficient against an absent party who does not consent.[46] The Court previously left the issue of third-party consent open,[47] but the *Matlock* Court relied upon the fact that "recent authority here clearly indicates that the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared."[48] Prior to the *Matlock* decision, the Court approvingly addressed the constitutionality of third-party consent searches and distinguished such searches from the waiver of a constitutionally granted trial right.[49] The *Matlock* Court made it clear that voluntary consent from a third-party with common authority over the premises is sufficient to justify a warrantless search.[50]

Next, the Court turned to the issue of whether the United States met their burden of proof as to the sufficiency of the evidence, and the Court found the prior courts in error for excluding out-of-court statements by Matlock and Mrs. Graff pertaining to their cohabitation and marital status.[51] The Court found error with this ruling because the evidentiary rules governing criminal trials are not necessarily the same as those regarding what the judge may hear at an indictment hearing.[52] In fact, the Court observed that magistrates frequently administer search warrants based on out-of-court hearsay statements, regardless of their admissibility at trial.[53] Apart from the traditional rules of attorney-client privilege, the Court stated that exclusionary rules are not appropriate in proceedings where the judge himself is considering the admissibility of

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[46] *Matlock II*, 415 U.S. at 170–72.

[47] *See* Amos v. United States, 255 U.S. 313, 317 (1921) (The Court felt it unnecessary to "consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights").

[48] *Matlock II*, 415 U.S. at 170.

[49] *Id.* at 171.

[50] *Id.*

[51] *Id.* at 171–72.

> Whether or not Mrs. Graff's statements were hearsay, the respondent's own out-of-court admissions would surmount all objections based on the hearsay rule both at the suppression hearings and at the trial itself, and would be admissible for whatever inferences the trial judge could reasonably draw concerning joint occupancy of the east bedroom.

Id. at 172.

[52] *See id.* at 172–73.

[53] *See Matlock II*, 415 U.S. at 174. "Thus hearsay may be the basis for issuance of the warrant 'so long as there . . . [is] a substantial basis for crediting the hearsay.'" United States v. Ventresca, 380 U.S. 102, 108 (1965) (alteration in original) (quoting Jones v. United States, 362 U.S. 257, 271 (1960)).

evidence.[54] Because such out-of-court statements were admissible, and because there were no "serious doubts about the truthfulness" of Mrs. Graff's statements, the Court decided that the United States met their burden of showing that Mrs. Graff consented to the warrantless search.[55]

The *Matlock* decision led to the inevitable question of whether a person who the police reasonably believed to have common authority over the premises could consent to a warrantless search. The Supreme Court faced this issue in *Illinois v. Rodriguez*.[56] In *Rodriguez*, the Court held that a search is valid when police reasonably believed the purported tenant to have authority over the premises.[57]

In *Rodriguez*, Gail Fischer granted police officers access to the apartment of Edward Rodriguez.[58] Fischer referred to the apartment as "our" apartment, opened the door with her key, and noted that she had various items of personal property in the apartment.[59] During the arrest and search, police found cocaine paraphernalia, and the State subsequently attempted to introduce the seized items into evidence at Rodriguez's trial.[60] Rodriguez made a motion to suppress the evidence obtained during the search by claiming Fischer did not have the authority to consent to a search of his apartment.[61] The Cook County Circuit Court granted Rodriguez's motion, and the Appellate Court of Illinois affirmed such grant.[62] The Illinois Supreme Court denied the State's petition for appeal, and the Supreme Court of the United States granted certiorari.[63]

The Court agreed that the State failed to meet their burden of showing that Fischer had common authority over the premises because Fischer did not pay rent, she did not bring guests, and Rodriguez restricted her access to the property.[64] The State asserted that the issue of whether Fischer could consent to the search of Rodri-

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[54] *Matlock II*, 415 U.S. at 175.
[55] *Id.* at 175, 177–78.
[56] 497 U.S. 177, 179 (1990).
[57] *Id.* at 188–89.
[58] *Id.* at 179. "Fischer . . . showed signs of a severe beating. She told the officers that she had been assaulted by respondent Edward Rodriguez earlier that day . . . ." *Id.*
[59] *Id.*
[60] *See id.* at 180. "Rodriguez was charged with possession of a controlled substance with intent to deliver." *Rodriguez*, 497 U.S. at 180.
[61] *Id.*
[62] *Id.* "The [Cook County Circuit] Court concluded that Fischer was not a 'usual resident' but rather an 'infrequent visitor' at the apartment . . . ." *Id.*
[63] *Id.* at 180–81.
[64] *Id.* at 181–82.

guez's apartment was a question for state law because the Illinois Constitution affords its citizens additional protection than the United States Constitution.[65] The Court found this argument to be invalid due to there being no mention of the Illinois Constitution in the prior *Rodriguez* decisions.[66] Thus, the issue primarily rested on federal law and was properly within the Supreme Court's jurisdiction.[67]

Rodriguez contended that allowing Fischer to consent to a search of his apartment based upon the reasonable belief that she had common authority to do so would "vicariously" waive respondent's rights under the Fourth Amendment.[68] However, the Court maintained that the issue in *Rodriguez* was whether the search was unreasonable, not whether there was an effective waiver of the respondent's rights.[69] The Court felt that respondent's contention would impose a requirement upon police officers to be not only reasonable in their judgment, but also for them to be correct.[70] The Court detailed other aspects of criminal investigation where the law held law enforcement officers to a "reasonableness" standard, such as: the reasonable belief that a search is "authorized by a valid warrant," the likely results of an authorized search, and the location of the purported felon's residence.[71] Ultimately, the Court found no reason to abandon the general rule that the Fourth Amendment requires reasonableness,[72] and such reasonableness is determined by an objective standard.[73] Thus, a reasonable belief by police officers that a purported resident, who consents to a warrantless search and seizure, has the common authority to grant such permission is sufficient for such search and seizure to take place.[74]

After *Rodriguez*, a question remained as to what effect the physical presence of an objecting tenant has upon another tenant's

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[65] *Rodriguez*, 497 U.S. at 182.
[66] *Id.*
[67] *See id.* "But when 'a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law,' we require that it contain a 'plain statement that [it] rests upon adequate and independent state grounds . . . .'" *Id.* (alteration in original) (quoting Michigan v. Long, 463 U.S. 1032, 1040, 1042 (1983)) (internal quotation marks omitted).
[68] *Id.* at 183.
[69] *Id.* at 187.
[70] *See Rodriguez*, 497 U.S. at 184.
[71] *Id.*
[72] *Id.* at 186.
[73] *Id.* at 188.
[74] *See id.* at 188–89.

consent to search the residence. In *Georgia v. Randolph*,[75] the Supreme Court analyzed the issue of whether evidence is admissible when the objecting occupant was physically present at the time of the search.[76] The Court stated that "a physically present inhabitant's express refusal of consent to a police search was dispositive as to him, regardless of the consent of a fellow occupant."[77]

In *Randolph*, police officers responded to the residence of Scott and Janet Randolph; Janet relayed information of a domestic disagreement and accused her husband of cocaine usage.[78] The officers asked respondent Randolph for consent to search the premises, but he refused.[79] Janet freely gave her consent to a warrantless search of the property, and officers found evidence of cocaine usage in what Janet identified as the respondent's bedroom.[80]

At his trial for possession of cocaine, Randolph made a motion to suppress the evidence of cocaine usage acquired by law enforcement officers during the search.[81] The trial court denied the motion, but the Court of Appeals of Georgia reversed the trial court's judgment by holding that consent by one resident does not override the objection of another physically present resident.[82] The Supreme Court of Georgia agreed with the court of appeals and noted the importance of the physical presence of both occupants at all relevant times.[83] The Supreme Court of the United States granted certiorari to resolve the issue.[84]

The Court began with a brief history of Fourth Amendment case law related to warrantless search and seizures as background for its analysis in *Randolph*.[85] In so doing, the Court reiterated that customary social expectations, rather than property law, were controlling for the purposes of determining the reasonableness of war-

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[75] 547 U.S. 103 (2006).
[76] *Id.* at 106.
[77] *Id.* at 122–23.
[78] *Id.* at 106–07.
[79] *Id.* at 107.
[80] *Id.*
[81] *Randolph*, 547 U.S. at 107.
[82] *Id.* at 107–08.
[83] *Id.* at 108.
[84] *Id.*
[85] *Id.* at 109; *see also* Payton v. New York, 445 U.S. 573, 576 (1980) (holding that the Fourth Amendment prohibits nonconsensual, warrantless entry by police attempting to make an arrest); Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973) (holding that consent to a warrantless search must be voluntary); Coolidge v. New Hampshire, 403 U.S. 443, 449 (1971) (stating that a warrant issued by a magistrate who was not neutral and detached did not satisfy the Fourth Amendment); Jones v. United States, 357 U.S. 493, 500 (1958) (reversing prior decision which relied upon evidence seized during a warrantless search).

rantless consent searches.[86] In the earlier decision of *Minnesota v. Olson*,[87] the Court held that overnight guests had privacy expectations despite their stay being temporary.[88] The Court extended this analysis by reasoning that if overnight houseguests had such privacy expectations, then cohabitants had even higher expectations of deference to their privacy rights.[89] In support of this position, the Court offered the example of a joint tenant's right to a partition action regardless of the reasons that the cotenant sought partition.[90] The Court also noted that one particular occupant did not have the power to trump the decision of another occupant on issues immense or diminutive.[91]

The *Randolph* Court stressed the importance of several public policy issues during the course of its analysis.[92] The Court referenced the importance of home privacy and cited to case law where the significance of home privacy was evident.[93] As in *Fernandez*,[94] the Court again utilized the example of the hypothetical houseguest and determined that the unwanted entry of a police officer, like the unwanted entry of a visitor to a houseguest, is as unreasonable as searching the home without consent at all.[95] The Court also took into account the cotenant's interest in protecting themselves from unwanted criminal activity in their own home; but it provided alternative remedies for such cotenants in the face of an objecting inhabitant, such as taking evidence to the police in order for the police to procure a search warrant.[96] Domestic abuse was a further concern to the Court, but the majority noted that "this case has no bearing on the capacity of the police to protect domestic victims."[97]

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[86] *Randolph*, 547 U.S. at 111.
[87] Minnesota v. Olson, 495 U.S. 91 (1990).
[88] *Id.* at 113; *Olson*, 495 U.S. at 99.
[89] *See Randolph*, 547 U.S. at 113.
[90] *Id.* at 114.
[91] *See id.*
[92] *Id.* at 115–18.
[93] *Id.* at 115 (citing Wilson v. Layne, 526 U.S. 603 (1999) (refusing to allow police officers to bring members of the media into a home to record the execution of an arrest warrant); Minnesota v. Carter, 525 U.S. 83 (1998) (extending Fourth Amendment protection to overnight houseguests, though not other temporary guests there simply by consent of the homeowner); Miller v. United States, 357 U.S. 301 (1958) (rejecting as unlawful an arrest where the petitioner did not receive notice of the authority and purpose of the police)).
[94] *See* Fernandez v. California, 134 S. Ct. 1126, 1135 (2014). The *Fernandez* Court refers to such analysis as "the calculus of this hypothetical caller." *Id.*
[95] *See Randolph*, 547 U.S. at 113–14.
[96] *Id.* at 115–16.
[97] *Id.* at 117–18. In his dissent, Chief Justice Roberts counters that,

The Court maintained that the issue in *Randolph* was one of disputed consent, rather than whether police power enabled officers to shield victims of domestic violence from abuse.[98] Thus, home privacy, social norms, and domestic violence were all of importance to the Court.

In *Randolph*, the Court also addressed "two loose ends" left in the wake of its prior decisions.[99] In its prior decision of *Matlock*, the power of one tenant to consent to police entry derived from traditional social norms, rather than background principles of property law.[100] The Court emphasized that the issue was not whether the objecting tenant divested the consenting tenant of a real property interest,[101] but rather, whether "customary social usage" granted the consenting cohabitant the power to triumph over the other tenant's refusal to consent.[102]

The Court was also inclined to address the significance of *Rodriguez* and *Matlock* in the face of the *Randolph* decision.[103] The

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> Perhaps the most serious consequence of the majority's rule is its operation in domestic abuse situations, a context in which the present question often arises. . . . The majority's rule apparently forbids police from entering to assist with a domestic dispute if the abuser whose behavior prompted the request for police assistance objects.

Id. at 139 (Roberts, C.J., dissenting) (citing Illinois v. Rodriguez, 497 U.S. 177, 179 (1990) (search and seizure issue arose where respondent's purported cotenant showed signs of severe abuse and claimed respondent was responsible for said abuse); United States v. Donlin, 982 F.2d 31 (1st Cir. 1992) (search and seizure issue arose where appellant's wife asked police officers to remove appellant after a violent argument between the two)); *cf. Fernandez*, 134 S. Ct. at 1130 (search and seizure issue arose in the case where petitioner's consenting cotenant Rojas was believed to be the victim of domestic violence at the hands of the petitioner).

[98] *Randolph*, 547 U.S. at 118–19.

[99] *Id.* at 120–21.

[100] *Id.* "Common authority is, of course, not to be implied from the mere property interest a third party has in the property. The authority which justifies the third-party consent does not rest upon the law of property, with its attendant historical and legal refinements . . . ." United States v. Matlock, 415 U.S. 164, 171 n.7 (1974) (citing Chapman v. United States, 365 U.S. 610 (1961)) (invalidating consent to the search of a rented house by the landlord on behalf of the tenant); Stoner v. California, 376 U.S. 483 (1964) (invalidating consent to the search of a hotel room by a hotel employee on behalf of the occupant of the room)).

[101] *Randolph*, 547 U.S. at 120–21. "[T]he 'right' to admit the police to which *Matlock* refers is not an enduring and enforceable ownership right as understood by the private law of property, but is instead the authority recognized by customary social usage as having a substantial bearing on Fourth Amendment reasonableness in specific circumstances." *Id.*

[102] *Id.* at 121.

[103] *Id.*

Court stressed that the *Randolph* holding was a very narrow one that only applied when one tenant objected and the other tenant consented when both were physically present on the property.[104] The Court believed that requiring a search warrant in the face of an objection allowed police officers to rely on a valid search warrant, rather than ambiguous consent.[105]

The Framers of the Constitution codified the American citizens' right to be free of unreasonable searches or seizures in 1791 with the enactment of the Fourth Amendment.[106] Almost 200 years later, the Supreme Court of the United States determined that the Fourth Amendment does not protect a residence from searches when a cotenant with common authority consents to the search in its *Matlock* decision.[107] With scant analysis, the Court relied upon its previous decisions to determine the constitutional validity of warrantless consent searches in *Matlock*.[108] As a result, the third-party consent doctrine was born.

Charged with the common authority requirement,[109] the Court next determined that warrantless consent searches were valid as long as law enforcement officers had an objectively reasonable belief that the person giving consent had the requisite common authority over the premises in *Rodriguez*.[110] In keeping with customary expectations of courtesy, the Court in *Randolph* limited a cotenant's ability to consent by holding that a physically present tenant's objection to the search is dispositive as to him.[111] Most recently, the Supreme Court declined to extend *Randolph* to situations where the objecting cotenant was not physically present upon the premises at the time of consent by another inhabitant with its holding in *Fer-*

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[104] *Id.*
[105] *See id.* at 116–18.
[106] *See* U.S. CONST. amend. IV. The Supreme Court has historically stated that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." United States v. U.S. Dist. Court, 407 U.S. 297, 313 (1972).
[107] *See Matlock II*, 415 U.S. at 171.
[108] *See id.*
[109] The United States Court of Appeals for the District of Columbia Circuit recently distinguished *Fernandez* in *United States v. Peyton*. In this case, a great-grandmother and her great-grandson shared a small apartment. United States v. Peyton, 745 F.3d 546, 549 (D.C. Cir. 2014). The great-grandmother had the common authority to consent to searches of shared spaces, but did not have the common authority to consent to the search of her great-grandson's personal property found in a shoebox under his bed. *Id.* at 549–52.
[110] *Rodriguez*, 497 U.S. at 188–89.
[111] *See Randolph*, 547 U.S. at 122–23.

nandez.[112] The *Fernandez* holding applies even when the objecting tenant is absent because of an arrest.[113]

In the *Fernandez* opinion, the Court detailed the hardships on magistrates and law enforcement officers, but did not consider the rights of the individual absent or arrested.[114] As a result of the *Fernandez* holding, law enforcement officers are not required to show that the arrest of the absent cotenant was valid.[115] Rather, officers only have to act in an objectively reasonable manner.[116] Such a requirement may incentivize officers to attempt to act in an objectively reasonable manner in arresting the tenant, when their subjective intent is to obtain the consent of a cohabitant in the absence of the arrestee. A cohabitant may give "unwilling consent" in the light of the recent events that took place on their property, in an attempt to avoid the same treatment their cotenant received. The *Fernandez* opinion allows law enforcement officers to avoid finding probable cause worthy of a search warrant, in an effort to avoid inconveniencing magistrates, law enforcement officials, and consenting citizens. This decision turns the right of citizens to be free from unreasonable searches and seizures[117] into a right applicable solely if the citizen is not working, running errands, enjoying vacation, or sitting in the county jail.

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[112] *Fernandez*, 134 S. Ct. at 1135–36.
[113] *Id.* at 1134.
[114] *See id* at 1132, 1134.
[115] *See id* at 1134.
[116] *See id.*
[117] U.S. CONST. amend. IV.