SUPREME COURT OF THE UNITED STATES

October Term 2013

Docket No. 2013-12

Daniel Vasquez,

Petitioner,

v.

United States of America,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

The University of San Diego School of Law
25th Annual National Criminal Procedure Tournament
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF ARCADIA

UNITED STATES OF AMERICA, Plaintiff, v. DANIEL VASQUEZ, Defendant.	Case No. 3:11-cr-2009-T (CVW) **ORDER:** **GRANTING DEFENDANT DANIEL VASQUEZ'S MOTION TO SUPPRESS EVIDENCE**

On March, 27, 2012, Defendant Daniel Vasquez was indicted for twenty-two violations of federal law. These criminal charges arise out of Mr. Vasquez's alleged human sex trafficking and transportation of minors for the facilitation of prostitution in the city of Tarabon, Arcadia. Now pending before the Court is Mr. Vasquez's motion to suppress. Mr. Vasquez moves to suppress (1) evidence seized pursuant to a search of his residence, (2) evidence gathered incident to his arrest, and (3) evidence obtained from the surveillance of his vehicle using a networked system of automated license plate scanners. The motion is fully briefed.

For the following reasons, the Court **GRANTS** Mr. Vasquez's motion to suppress evidence obtained in violation of the Fourth Amendment.

I. BACKGROUND

Defendant Daniel Vasquez is a resident of the city of Tarabon, Arcadia. Tarabon is home to approximately 65,000 residents and is situated on the coast in Northern San Santiago County, approximately forty-five miles north of the Mexico-United States border.

Before describing the events that unfolded involving Mr. Vasquez, two broader developments in Tarabon bear on the issues in this motion. First, as a result of San Santiago County being classified as a hub for human trafficking in 2009, the FBI and local police departments formed a joint state-federal task force to investigate and prosecute human labor and sex trafficking in the county. This task force comprised local and federal officers who received supplemental training pursuant to the federal Trafficking Victims Protection Reauthorization Act of 2008, federal logistical support staff, and several FBI Victim Specialists.

Second, in an effort to improve safety and reduce crime, Tarabon in 2010–2011 installed several hundred license plate scanner devices that use automatic license plate recognition technology ("ALPR"). These ALPR scanners were largely funded by grants from the State of Arcadia and the Federal Government. Similar to the devices used by many cities' police departments and several federal agencies, Tarabon's ALPR scanners are high-speed cameras that near-instantaneously identify any license plate at which the camera is aimed. These scanners then convert each license plate number into machine-readable text to be processed by computer software.

Once the license plate number is processed, the scanner's computer software checks this number against a "hot list" of predetermined license plate numbers. If a scanned number matches one on the hot list, then the system provides an instant alert to law enforcement agents in the area near the vehicle. In addition to the hot-list feature, a database for the ALPR network stores the photograph of the vehicle; its license plate number; and the date, time, and location of where the vehicle was recorded. Software can then be used to filter the database for all of the entries associated with a particular vehicle, providing a history of where the vehicle has been located.

In Tarabon, it is impractical for a vehicle to enter or leave the city's limits by road without an ALPR scanner identifying and logging its passage. All major intersections along Tarabon's Main Street and congested commercial areas are similarly equipped with scanners. Further, over fifty percent of the intersections in the outlying urban and residential sectors of Tarabon are outfitted with ALPR technology. A tri-directional scanner is also installed on each of Tarabon's police cruisers for its thirty-two sworn officers, adopting a practice from the Los Angeles Police Department. Although the majority of these scanners are placed in plain view, it would be challenging to view some of the scanners mounted below freeway overpasses and in other locations. As described below, this technology is at issue in this case because it led to the discovery of additional incriminating evidence after the search of Mr. Vasquez's home and his subsequent arrest.

A. The Search of Mr. Vasquez's Residence

On February 8, 2012, the Tarabon Police Department received a call from a concerned resident on its nonemergency line shortly before dusk. The resident stated that she had observed a relatively small but steady stream of water flowing from underneath her neighbor's garage door for several hours. Despite the lack of evidence of severe property damage, the resident stated that she was concerned because she believed that her neighbor may be out of town and that the issue would grow worse.

Approximately forty minutes later, Officer Alyssa Eisenberg responded to the resident's complaint. At the suppression hearing, she testified that she had previously responded to hundreds of similar incidents, especially in this part of town, and that the subject matter of these complaints varied from firework-wielding teenagers to abandoned street-parked vehicles. As Officer Eisenberg approached the address provided to the department, she noted a steady stream of water leaking from the left side of a three-door garage connected to the house and that a black pick-up truck was parked in front of the house. She stated that the garage door appeared tightly sealed, and it was difficult to gauge whether or not the garage was flooded or just leaking water. The house appeared old, poorly maintained, and each of its windows was shut with the blinds

drawn. She walked to the front door, knocked on the door, and announced her presence, which was the standard operating procedure for such incidents. No one responded, but she noticed that an internal light was on, and she could hear either a television or radio playing from some part of the house.

Officer Eisenberg then moved towards the garage and rapped her flashlight on the garage door, again announcing her presence. She received no response, but she testified that she heard water spraying, presumably from the house's water heater or a ruptured pipe. She moved along the outside edge of the garage in search of an external shutoff valve, but she could not locate one.

Officer Eisenberg advanced to the rear of the property, by making her way through an open side gate, where she came upon a backdoor to the house. She opened the screen door, and as she knocked on the door, the door slid inwards. Although the door was locked, it had not been securely shut. She immediately noticed that the room she entered appeared to be a kitchen but was desolate with several boards across each of the windows. She radioed for backup, explaining that she was investigating a potential burst water heater while a resident was out of town but that the house appeared abnormal.

As Officer Eisenberg moved towards the garage, she passed by two rooms that contained three to four mattresses strewn out on different areas of the floor but lacked any furniture. She also noted that the doors she passed by were soundproofed and equipped with deadbolts. Outside of these rooms, she observed a laundry container filled with various ropes and what appeared to be physical restraints. As she entered the garage, she observed roughly six inches of water covering the floor and a worn waterline that had burst and was continuously spraying water. The water line proceeded through one of the garage walls and was connected to a washing machine on the other side of the wall. The valve adjacent to the hose was rusted through, so she began searching the garage for a wrench or tool to help her shut off the valve.

Meanwhile, Officers Travers and Williams, who had only been a short three blocks away, responded to Officer Eisenberg and approached the scene. As they made their way around to the back of the residence, Officer Williams spotted a white van pulling up the alleyway behind the

house and parking approximately twenty feet from its back gate. The officers informed Officer Eisenberg that they were going to briefly investigate the van.

B. Arrest of Mr. Vasquez and Aftermath

An adult male came through the back gate and was startled at the sight of Officers Travers and Williams standing in the backyard with their flashlights and weapons drawn. Officer Travers immediately asked the man to identify himself. He stated that his name was Daniel Vasquez, he was the owner of the property, and he was returning home from work.

Recalling that Officer Eisenberg had stated that the house was suspicious, Officer Williams looped around behind Mr. Vasquez and made his way towards the van to check the perimeter. As he walked by the front of the van, he testified that he spotted five young females inside of it and heard frightened reactions when he shone his flashlight into the vehicle. He stepped back to radio Officer Travers and inform her that he found something in the vehicle.

Officer Travers testified that Mr. Vasquez was acting suspiciously and demanded that the officer inside his home produce a warrant or leave immediately. Officer Travers explained that they were responding to a concerned neighbor's complaint of a possible serious water leak, but she testified that Mr. Vasquez continued to act suspiciously and shift his stance nervously. When Mr. Vasquez again demanded to enter his house, Officer Travers handcuffed him and placed him under arrest. She also searched Mr. Vasquez and found two separate bundles of cash on him, totaling $4,336.00 and $5,672.00 respectively.

Suspecting that Mr. Vasquez was involved in something more nefarious than smuggling persons, Officer Travers contacted FBI Special Agent Mark Ahn to request technical support and to notify the rest of the joint-task force that they suspected Mr. Vasquez was potentially involved in human trafficking. She provided Agent Ahn with the license plate number from Mr. Vasquez's van. This license plate number was registered to Mr. Vasquez and his residence's address. It was not standard practice for law enforcement agents to actively monitor the database for suspicious travel patterns, but they could utilize that capability. Agent Ahn accessed the ALPR database, searched for entries matching the given plate number, and retrieved 3217 data

points for the vehicle over the previous five months, the period in which Mr. Vasquez appeared to have driven the vehicle in Tarabon. There also appeared to be nine instances where Mr. Vasquez exited Tarabon for a period of at least twenty-four hours.

Agent Ahn further filtered the entries down to the last several weeks and was able to determine that Mr. Vasquez regularly travelled from his house across town to a location near the cross section of Duke and Pleades street, which was the last intersection where his plate would be logged each time. Agent Ahn recognized this intersection as being adjacent to the "Star Motel," a suspected hub of human trafficking where middlemen would funnel victims into the hands of the Indigos, a street gang known for operating a large prostitution ring in Tarabon. Over the next several weeks, the joint-task force used the location history of Mr. Vasquez to pinpoint locations for subsequent trafficking investigations. In total, the joint-task force obtained warrants and raided two motels, a massage parlor, and two private residences, discovering several dozen trafficking victims being held against their will.

On March 27, 2012, a superseding indictment was filed against Mr. Vasquez. In the indictment, the grand jury charges that Mr. Vasquez operated a human trafficking scheme where he would entice young immigrants to accompany him by promising them passage, work, and a place to stay in Arcadia once they paid a fee for his services. Yet, once into Tarabon, Mr. Vasquez allegedly held the victims against their will in his residence until he arranged for a buyer, often the Indigos street gang, that would force the victims into prostitution using a combination of emotional abuse, intimidation, physical force, and narcotics. He would then complete his middleman role by transporting the victims to their various destinations. For these acts, the indictment charges Mr. Vasquez with committing multiple crimes in violation of 18 U.S.C. § 1590, which makes it unlawful to recruit, harbor, transport, or broker persons for involuntary labor or services, and § 1591, which criminalizes using force, fraud, or coercion to cause a minor to engage in a commercial sex act. He is also charged with conspiring to violate §§ 1952(a), 2421, 2422, and 2423, which are various provisions relating to his alleged connection to the Indigos' prostitution ring.

Mr. Vasquez now moves to suppress evidence obtained by the Government on three grounds. First, he contends that the search of his residence violated the Fourth Amendment. Second, Mr. Vasquez argues that the arresting agent, Officer Travers, lacked probable cause to place him into custody outside his residence. Last, Mr. Vasquez asserts that the regular scanning of his license plate prior to the police searching his residence was an unconstitutional search.

II. LEGAL STANDARD

Under Rule 41(h) of the Federal Rules of Criminal Procedure, "[a] defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides." Fed. R. Crim. P. 41(f). Rule 12 in turn provides that a motion to suppress must be made before the commencement of trial. Fed. R. Crim. P. 12(b)(3)(c).

One ground for such a motion is that the Government obtained evidence in violation of the Fourth Amendment; if that is the case, the evidence obtained "cannot be used in a criminal proceeding against the victim of the illegal search and seizure." *United States v. Calandra*, 414 U.S. 338, 347 (1973) (citing *Mapp v. Ohio*, 367 U.S. 643, 655 (1961)). This prohibition on illegally obtained evidence also applies to the "fruits of the illegally seized evidence." *Id.* (citing *Wong Sun v. United States*, 371 U.S. 471, 484 (1963)).

Ordinarily, a defendant who files a motion to suppress carries the burden of proof. *E.g.*, *Rakas v. Illinois*, 439 U.S. 128, 130 n.1 (1978). However, where a search is conducted without a warrant, as is the case here, the burden shifts to the Government to demonstrate by a preponderance of the evidence that the warrantless search was conducted pursuant to one of the exceptions to the warrant requirement. *United States v. Herrold*, 962 F.2d 1131, 1137 (3d Cir. 1992).

III. DISCUSSION

The Fourth Amendment provides in relevant part that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." U.S. Const. amend. IV. As the Supreme Court has explained, a "search" for Fourth Amendment purposes exists when the Government obtains information by physically

intruding on persons, houses, papers, or effects. *Florida v. Jardines*, 133 S.Ct. 1409, 1414 (2013). In circumstances where a physical trespass is not present, a "search" occurs where (1) a person has a subjective expectation of privacy in the information obtained, and (2) society is willing to recognize the person's expectation of privacy as objectively reasonable. *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring); *see also Kyllo v. United States*, 533 U.S. 27, 33 (2001). Further, searches conducted without a warrant are "per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions." *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz*, 389 U.S. at 357) (internal quotation marks omitted).

As for the arrest of a person, "[i]t is a well-settled principle of constitutional jurisprudence that an arrest without probable cause constitutes an unreasonable seizure in violation of the Fourth Amendment." *Ingram v. City of Columbus*, 185 F.3d 579, 592–93 (6th Cir. 1999) (internal citation omitted). However, a warrantless arrest by a law enforcement officer is reasonable under the Fourth Amendment where the arrest is in public and there is probable cause to believe that a criminal offense has been or is being committed. *United States v. Watson*, 423 U.S. 411, 417–24 (1976).

In this case, Mr. Vasquez challenges the search of his residence, his arrest, and the tracking of his vehicle. This Court will first examine whether the warrantless search of Mr. Vasquez's residence may be justified under an exception to the warrant requirement, next consider whether there was probable cause for his arrest, and then finally analyze whether the Government's use of ALPR scanners constituted a search under the Fourth Amendment.

A. Warrantless Search of Mr. Vasquez's Residence

"At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511 (1961). As mentioned, when the Government obtains information by physically intruding upon a home, "a search within the original meaning of the Fourth Amendment has undoubtedly occurred." *Florida*, 133 S.Ct. at 1414 (quoting *United States v.*

Jones, 132 S. Ct. 945, 950–51, n.3 (2012)) (internal quotation marks omitted). If such an intrusion into a home is carried out without a warrant, then, "[w]ith few exceptions," the question whether this search is "reasonable and hence constitutional must be answered no." *Kyllo*, 533 U.S. at 31.

Because no warrant was issued here, the Government asserts that Officer Eisenberg's entry into Mr. Vasquez's residence was justified under the "community caretaking" exception to the warrant requirement. This exception was first recognized by the Supreme Court in *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973). In *Cady*, the defendant police officer in the underlying action, Dombrowski, was visiting Wisconsin from Chicago when he was involved in an automobile accident and contacted the local police. *Id.* at 435–36. The police responded to the scene of the accident and noticed that Dombrowski was visibly intoxicated. *Id.* While interacting with the officers, Dombrwoski informed them that he was a Chicago policeman. *Id.* at 436. The officers then searched him and the front seat and glove compartment of his wrecked car for his sidearm because they believed that members of the Chicago police force were required to carry a service revolver at all times. *Id.* The police did so with the intention "to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands." *Id.* at 443.

Thereafter, the police arranged for Dombrowski's wrecked vehicle to be towed to a private garage where it was parked outside. *Cady*, 413 U.S. at 443. After taking Dombrowski to a local hospital for medical treatment, one of the officers returned to Dombrowski's car to again try to recover the service revolver to prevent it from falling into improper hands. *Id.* at 436–37. Upon opening the trunk, the officer discovered various blood-soaked items that linked Dombrowski to a murder. *Id.* at 437–38.

After Dombrowski's conviction, the Supreme Court considered his habeas appeal and held that the search of his vehicle was permissible because it was the result of a police officer's "community caretaking" function, which is "totally divorced from the detection, investigation, or

acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441. Yet, this holding was largely based on a constitutional distinction between automobiles and dwellings:

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office . . . . The Court's previous recognition of the distinction between motor vehicles and dwelling places leads us to conclude that the type of caretaking "search" conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained.

Id. at 439, 447–48.

Consequently, the Court expressly distinguished caretaking automobile searches from searches of a home. *See id*. This distinction recognizes that "[t]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. District Court*, 407 U.S. 297, 313 (1972).

As to whether this exception may be extended to homes, there is significant confusion among the courts of appeals. The majority of the circuits addressing this issue have reasoned that *Cady*'s community caretaking doctrine is limited to automobile searches. For example, the Ninth Circuit, in *United States v. Erickson*, held that *Cady* was based on the distinction made between vehicles and residences and that an officer acting as a community caretaker may only enter a building based on an already acknowledged exception to the warrant requirement, such as exigent circumstances. 991 F.2d 529, 531–32 (9th Cir. 1993). The Seventh Circuit took a similar approach in *United States v. Pichany*, which concerned a warrantless search of a privately owned warehouse. 687 F.2d 204 (7th Cir. 1982). The court held that *Cady* was limited to automobile searches and refused to create a "warehouse exception," even if the officers were acting as community caretakers. *Id.* at 207–09. Likewise, the Tenth Circuit held that the search of an old manufacturing plant under the auspices of the community caretaking doctrine was improper because it did not concern an automobile. *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994). The Third Circuit reached an analogous conclusion in the context of a civil

Section 1983 action as well. *Ray v. Township of Warren*, 626 F.3d 170, 177 (3d Cir. 2010). The State of New Jersey has also rejected applying this exception to the search of a residence. *State v. Vargas*, 63 A.3d 175, 187 (N.J. 2013).

In contrast, a few circuits have reached the opposite result by holding that a warrantless entry into a home may be justified under the community caretaking exception. The Eighth Circuit held that an officer acting in a community caretaking role may enter a residence when the officer has a reasonable belief that an emergency exists that requires attention. *United States v. Quezada*, 448 F.3d 1005, 1007–08 (8th Cir. 2006). Similarly, the Sixth Circuit held that two officers' warrantless entry into a home was permissible because they were acting as community caretakers to abate a significant noise nuisance. *United States v. Rohrig*, 98 F.3d 1506, 1509 (6th Cir. 1996). Additionally, several states' highest courts have reached the same conclusion. *E.g.*, *State v. Pinkard*, 785 N.W.2d 592, 601 (Wis. 2010).

Here, the Court finds that Officer Eisenberg's warrantless entry into Mr. Vasquez's home was not reasonable. Although this Court's circuit has not yet considered this issue, the Court adopts the reasoning of the majority of the circuits that have concluded that there is no community caretaking exception to the warrant requirement. This reasoning is persuasive because the "warrantless search of a private residence strikes at the heart of the Fourth Amendment's protections. 'The right of officers to thrust themselves into a home is . . . a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance.' " *Erickson*, 991 F.2d at 532 (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1993)). Consequently, Officer Eisenberg's search may only survive constitutional scrutiny if it is based on an alternative, acceptable exception to the warrant requirement, such as an exigency or consent. *Id*. at 532.

On this latter point, the Court additionally finds that none of the potential exceptions to the warrant requirement apply here. Officer Eisenberg did not receive consent to enter the residence, nor did the circumstances reveal an exigency justifying her intrusion. There was no reasonable indication that the leaking washing machine would cause severe property damage or

create an emergency warranting an immediate entrance. That Officer Eisenberg possibly became increasingly suspicious as she observed the condition of the house and its unsecured door does not change this analysis. Rather, the circumstances in this case present "precisely [the] kind of judgmental assessment of the reasonableness and scope of a proposed search that the Fourth Amendment requires be made by a neutral and objective magistrate, not a police officer." *See Mincey v. Arizona*, 437 U.S. 385, 395 (1978).

Ultimately, because Officer Eisenberg did not obtain a search warrant, and because the Government cannot rely on an established exception to the warrant requirement, her search of Mr. Vasquez's residence fails to survive constitutional scrutiny. *See, e.g.*, *Kyllo*, 533 U.S. at 31. Moreover, given this Court's ruling regarding the community caretaking exception, this Court does not reach the question of whether her actions in this case would be permissible under a community caretaking doctrine for residences. Accordingly, the Court grants Mr. Vasquez's motion to suppress all of the evidence obtained from the search of his residence. *See Calandra*, 414 U.S. at 347.

B. Warrantless Arrest

As described, an arrest without probable cause constitutes an unreasonable seizure in violation of the Fourth Amendment. *E.g.*, *Ingram*, 185 F.3d at 592–93. "To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable . . . officer, amount to' probable cause." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (quoting *Ornelas v. United States*, 517 U.S. 690, 696 (1996)).

Here, Mr. Vasquez contends that even if the evidence gathered from the search of his residence is not suppressed, Officer Travers lacked probable cause to arrest him behind his residence. The Government concedes that Officer Travers alone lacked probable cause. Yet, it argues that probable cause existed to arrest Mr. Vasquez by virtue of aggregating the officers' knowledge at the scene through the application of the "collective-knowledge principle."

However, this Court already concluded that the evidence obtained from the illegal search of Mr. Vasquez's residence must be suppressed. Therefore, the Government cannot rely on Officer Eisenberg's observations within Mr. Vasquez's residence to establish the existence of probable cause. The Court consequently finds that the Government lacked probable cause to conduct the arrest, even if the Government is permitted to aggregate the remaining two officers' knowledge. Accordingly, the Court grants Mr. Vasquez's motion to suppress the evidence obtained from his arrest.

C. Warrantless Use of Automatic License Plate Recognition Technology

Last, this Court addresses the Government's use of APLR scanners. The Court addresses this issue despite its previous findings because Mr. Vasquez's travel history was obtained independently before the events regarding his residence unfolded.

As these scanners are a recent advent in public surveillance technology, this Court turns to the existing jurisprudence regarding electronic tracking devices for guidance. Using such a device to monitor a vehicle's location was originally held not to be a search under the Fourth Amendment, but physically installing a tracking device is now considered unconstitutional absent a warrant. *Jones*, 132 S. Ct. at 954. This conclusion was reached using a trespass-oriented conception of the Fourth Amendment, but the reasonable expectation-of-privacy test is still implicated in a tracking context not involving a physical trespass to determine whether a search has occurred. *Id.* at 949, 954–55, 958; *see also Katz*, 389 U.S. at 353 (holding that the Fourth Amendment "cannot turn upon the presence or absence of a physical intrusion into any given enclosure").

To expand, the Supreme Court has held that the warrantless installation of an electronic beeper that transmitted radio signals into a vehicle did not violate the Fourth Amendment. *United States v. Knotts*, 460 U.S. 276, 285 (1983). In *Knotts*, law enforcement agents planted a battery operated radio transmitter into a five gallon chemical drum purchased by one of the defendant's coconspirators. *Id.* at 277. The agents were able to then trace the chloroform drum

from its place of purchase to the defendant's secluded cabin, ultimately leading to the discovery of his clandestine drug laboratory and to his subsequent conviction. *Id*. at 279.

In upholding the constitutionality of the surveillance of defendant's vehicle, the court reasoned that "a person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another," and that "[n]othing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them in this case." *Knotts*, 560 U.S. at 281–82. Yet, *Knotts* also reserved the issue of more sophisticated systems of mass surveillance for another day. *Id.* at 283. In responding to the defendant's argument that the beeper's placement in his vehicle would bring about "twenty-four hour surveillance of any citizen of this country," the Supreme Court stated that "if such dragnet type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable." *Id.*

Thereafter, the Supreme Court held that the warrantless tracking of a vehicle using a more sophisticated GPS-tracking device was unconstitutional. *Jones*, 132 S.Ct at 954. In *Jones*, the defendant came under suspicion of trafficking narcotics and was the target of a joint federal and state task force. *Id.* at 948. The agents obtained a proper warrant to track the defendant, but the agents attached a GPS device to the undercarriage of the defendant's Jeep one day outside of the warrant's allotted time period and in a separate jurisdiction. *Id.* The GPS device was still used and established the Jeep's location within 50 to 100 feet over the course of 28 days, relaying more than 2,000 pages of data to law enforcement. *Id.* This information was used to indict the defendant for drug-related charges. *Id.* After the defendant moved to suppress the evidence obtained from the tracking device, the district court granted his motion in part, and the court of appeals reversed by holding that all of the GPS-related evidence should be suppressed. *Id.*

The Supreme Court affirmed, resolving a split among the court of appeals by holding that an unconstitutional search had occurred. *Jones*, 132 S.Ct at 954. Writing for the Court, Justice

Scalia emphasized that the "Government had physically occupied private property for the purpose of obtaining information" by planting the GPS device. *Id.* at 949. There was therefore "no doubt" that such a physical intrusion constituted a search under the Fourth Amendment. *Id.* The Government had argued that the defendant did not have a reasonable expectation of privacy under the *Katz* test because he was traveling on public roadways; however, the Court did not reach this contention because it held that a violation involving the trespass-based conception of a search was an independent ground under the Fourth Amendment to hold the warrantless search unconstitutional. *Id.* at 951–52. In Justice Alito's concurrence, joined by three justices, he instead advocated deciding the case by determining whether the defendant had a reasonable expectation of privacy in his movements on public roads, concluding that the use of "longer term GPS monitoring in investigations impinges on expectations of privacy." *Id.* at 946.

In this case, the Court is not confronted with the tracking of a single vehicle, but rather widespread visual surveillance that effectively recorded most of Mr. Vasquez's movements over a course of five months. Because the government has decided to institute a program of "mass surveillance of vehicular movements, it [is] time enough to decide whether the Fourth Amendment should be interpreted to treat such surveillance as a search." *See United States v. Garcia*, 474 F.3d 994, 998 (7th Cir. 2007) (Posner, J.).

Under the foregoing precedent, this Court begins its analysis by recognizing it is not confronted with electronic surveillance that requires a physical device to transmit data to law enforcement. Rather, Tarabon's ALPR scanners solely relied on the physical appearance of Mr. Vasquez's vehicle, similar to traditional visual surveillance. A Fourth Amendment analysis predicated on trespass is therefore inapposite, and the majority's opinion in *Jones* does not determine this case. *See Jones*, 132 S.Ct. at 949. The Court will instead consider whether Mr. Vasquez had a reasonable expectation of privacy in his movements throughout Tarabon. *See id.* at 949, 954–55, 958.

In applying the *Katz* expectation-of-privacy test, the Court acknowledges that "[w]hat a person knowingly exposes to the public . . . is not a subject of Fourth Amendment Protection."

Katz, 389 U.S. at 351. However, this Court agrees that "the whole of a person's movements" over the course of several months "is not actually exposed to the public because the likelihood that a stranger would observe all those movements is not just remote, it is essentially nil." *United States v. Maynard*, 615 F.3d 544, 560 (D.C. Cir. 2010). Further,

> [i]t is one thing for a passerby to observe or even to follow someone during a single journey as he goes to the market or returns home from work. It is another thing entirely for that stranger to pick up the scent again the next day and the day after that, week in and week out, dogging his prey until he has identified all the places, peoples, amusements, and chores that make up that person's hitherto private routine.

Id. Therefore, the Court finds that society would view as reasonable Mr. Vasquez's expectation of privacy in a large portion of his movements over the course of five months because he did not "expose" his pattern of movements to the public. *See id.*; *Katz*, 389 U.S. at 361.

Additionally, due to the elaborate network of scanners at use in this case, Mr. Vasquez's movements were recorded as part of what is essentially a law enforcement "dragnet." *Knotts*, 560 U.S. at 281–82. The dragnet descriptor is warranted here because the surveillance of Mr. Vasquez's location was both "random" and "arbitrary," invoking the serious privacy concerns associated with "wholesale surveillance." *See United States v. Marquez*, 605 F.3d 604, 610 (8th Cir. 2010).

Moreover, this Court shares the concern that law enforcement along with "[c]ompanies are amassing huge, ready-made databases of where we've all been. If . . . we have no privacy interest in where we go, then the government can mine these databases without a warrant, indeed without any suspicion whatsoever." *United States v. Pineda-Moreno*, 617 F.3d 1120, 1125 (9th Cir. 2010) (Kozinski, J.) If, as done in this case, the Government is capable of tracking and recording the movements of tens of thousands of individuals, then "the Government can use computers to detect patterns and develop suspicions. It can also learn a great deal about us just because where we go says much about who we are." *See id.* For example, as with GPS data, the data collected here may disclose trips "the indisputably private nature of which takes little information to conjure: trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club . . . and on and on." *People v. Weaver*, 12 N.Y.3d 433, 441–42

(2009). The FBI's ability in this case to track Mr. Vasquez's location to specific motels and establishments shows the potential that this system has to invade citizens' privacy.

In conclusion, the Court finds that Mr. Vasquez possessed a reasonable expectation of privacy in the movements of his vehicle over the course of the five months that his location information was recorded. This Court also finds that the wholesale surveillance at use in this case should be considered a search because of its propensity to collect and reveal private matters on a mass scale. Because the agents in this case did not obtain a warrant to extensively track Mr. Vasquez's movements, the search was unconstitutional and the Court accordingly grants Mr. Vasquez's motion to suppress the evidence obtained from the search. *See Gant*, 129 S.Ct. at 1716 (2009).

IV. CONCLUSION & ORDER

In light of the foregoing, the Court **GRANTS** Mr. Vasquez's motion to suppress evidence obtained from his residence, arrest, and vehicle's movements.

IT IS SO ORDERED

DATED: August 7, 2012

James M. Torrenz
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellant,* v. DANIEL VASQUEZ, *Defendant-Appellee*.	No. 13-2009 D.C. No. 3:11-cr-2009-T (CVW) OPINION

Appeal from the United States District Court
for the Southern District of Arcadia
James M. Torrenz, District Judge, Presiding

Argued and Submitted
January 15, 2013—Casadena, Arcadia

Filed April 7, 2013

Before: William P. Draber, Susan K. Stiles, and John R. Florence, Circuit Judges

Opinion by Judge Florence

OPINION

FLORENCE, Circuit Judge:

The United States appeals the District Court for the Southern District of Arcadia's decision to grant Defendant Daniel Vasquez's motion to suppress evidence. This appeal involves the questions of whether the Government may obtain evidence through the warrantless search of a house based on the "community caretaking" exception to the warrant requirement, whether the collective-knowledge principle allows investigating officers' knowledge to be aggregated, and whether law enforcement may collect vehicle-location information using a network of automated license plate scanners. We reverse the District Court's decision and remand the case with instructions to proceed to trial.

I. Background[1]

In February 2012, Officer Eisenberg of the Tarabon Police Department entered Mr. Vasquez's residence through a backdoor to investigate a reported water leak. While searching for the source of the leak, she discovered two side rooms that were equipped with deadbolts and lined with multiple mattresses. She also observed an assortment of what she described as physical restraints nearby these two rooms. She ultimately discovered that the leak was originating from a

[1] We substantially adopt the district court's recitation of the facts and offer only a brief summary.

burst water hose in the garage, but she was unable to immediately solve the problem.

Meanwhile, two other law enforcement agents, Officers Travers and Williams, responded to Officer Eisenberg's request for assistance and encountered a white van approaching the back of the residence. The officers soon encountered Mr. Vasquez walking from the direction of the van. As Officer Travers started questioning Mr. Vasquez, Officer Williams moved around the back towards the van to examine the perimeter. He then discovered the van was filled with several frightened women. Officer Travers proceeded to arrest Mr. Vasquez, and a search of his person uncovered approximately $10,000.

Thereafter, law enforcement agents used Mr. Vasquez's license plate number to gather his location history from Tarabon's automatic license plate recognition ("ALPR") scanner database. This information was used to raid several establishments in which officers discovered human trafficking victims.

Consequently, Mr. Vasquez was indicted for various violations of federal human trafficking laws. He moved to suppress the evidence obtained from his residence, arrest, and vehicle's location history. The district court granted his motion, and the Government now appeals.

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II. Analysis

In reviewing the district court's decision to grant Mr. Vasquez's motion to suppress, we will not disturb that court's factual findings unless they are clearly erroneous. *E.g.*, *United States v. Johnson*, 9 F.3d 506, 508 (6th Cir. 1993). In this case, neither party challenges the district court's factual determinations. However, we review *de novo* any conclusions of law the district court reached in granting Mr. Vasquez's motion to suppress. *E.g.*, *id*. We will first address the Government's arguments related to the community caretaking doctrine and will then analyze its contentions regarding the collective-knowledge principle and its use of a network of automated license plate scanners.

A. Warrantless Search of Mr. Vasquez's Residence

1. Availability of the Community Caretaking Exception

We first consider the Government's contention that the district court incorrectly found that the "community caretaking" exception to the warrant requirement does not apply to residences. The Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause[.]" U.S. Const. amend. IV. As a "basic principle of Fourth Amendment law . . . searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980)

(footnote omitted). Yet, this rule is not without its exceptions, the largest of which is an exigency based on various circumstances such as "(1) hot pursuit of a fleeing felon, (2) imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) a risk of danger to the police or others." *E.g.*, *Johnson*, 9 F.3d 3d at 1515.

Initially, we acknowledge that the facts of this case do not fit neatly into one of the aforementioned existing categories of "exigent circumstances." This determination does not end our inquiry, however, for each presently recognized exigency does not claim any special constitutional status. "[R]ather, each was a product of a distinct and independent analysis of the facts of a particular case in light of underlying Fourth Amendment Principles." *Johnson*, 9 F.3d at 1519; *see also United States v. Acevedo*, 627 F.2d 68, 70 (7th Cir.) ("[T]he limitless array of factual settings that may arise caution against a checklist-type analysis."), *cert. denied*, 449 U.S. 1021 (1980). Therefore, if the situation dictates, courts are not precluded from fashioning or adopting a new exception that justifies the warrantless entry into the defendant's home. *Id.*

The Government offers one such crafted exception, based on the "community caretaker doctrine," for this case's circumstances. As the district court noted, there is disagreement among state and circuit courts as to whether this exception applies to homes. Several courts have concluded that this exception

does apply to residences. *United States v. Quezada*, 448 F.3d 1005, 1007–08 (8th Cir. 2006); *Rohrig*, 98 F.3d 1506, 1509 (6th Cir. 1996); *State v. Pinkard*, 785 N.W.2d 592, 601 (Wis. 2012).

In contrast, other courts have reached the opposite conclusion. *Ray v. Township of Warren*, 626 F.3d 170, 177 (3d Cir. 2010); *United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994); *United States v. Erickson*, 991 F.2d 529, 533 (9th Cir. 1993); *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982); *State v. Vargas*, 63 A.3d 175, 187 (N.J. 2013).

In turning our focus to the cases that have found this exception applicable, these courts have relied upon the fact that "[p]olice officers, unlike other public employees, tend to be 'jacks of all trades.' " *E.g.*, *Quezada*, 448 F.3d at 1007 (quoting *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973)). Police officers therefore often act in ways "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, 413 U.S. at 441. Additionally, "there is no language in *Cady*," or the Supreme Court's other community caretaking decisions, "that limits an officer's community caretaker functions to incidents involving automobiles." *Pinkard*, 785 N.W.2d at 598; *accord e.g.*, *Rohrig*, 98 F.3d at 1523, 1522. Accordingly, a police officer may enter a residence without a warrant as a community caretaker "where the officer has a reasonable belief that an emergency exists requiring his or her attention."

Quezada, 448 F.3d at 1007 (citing *Mincey v. Arizona*, 437 U.S. 385, 392–93; *United States v. Nord*, 586 F.2d 1288, 1291 n.5 (8th Cir. 1978)).

Here, in contrast to the district court, we hold that the community caretaking exception applies to an officer's entry into a residence. We do so by adopting the above-mentioned reasoning that officers are "jacks of all trades," who perform many functions that are wholly divorced from ferreting out criminal wrongdoing. *See Cady*, 413 U.S. at 441. We do not desire to deter officers from entering a home when they reasonably believe that their immediate assistance is needed to better the community.

Because we hold that the community caretaking exception applies to a warrantless entry into a home, we will next consider whether this exception applies to the circumstances at hand.

2. Application of the Community Caretaker Exception

"Although a multitude of activities fall within the community caretaker *function*, not every intrusion that results from the exercise of a community caretaker function will fall within the community caretaker *exception* to permit warrantless entry into a home." *State v. Pinkard*, 785 N.W.2d 592, 598–99 (Wis. 2010). In order to determine whether a specific exercise of this function to enter a home will pass constitutional muster, we must analyze whether the community caretaker function was reasonably exercised under the "totality of the

circumstances and the inherent necessities of the situation at the time." *Rohrig*, 98 F.3d at 1511 (quoting *Johnson*, 9 F.3d at 508) (internal quotation marks omitted).

Under this framework, a police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention. *Quezada*, 448 F.3d at 1007. In *Quezada*, a police officer was serving a child protection order and proceeded to knock on the apartment's front door. *Id.* at 1006. The door yielded to his knock and the officer could see that the apartment's lights were on through the gap in the door. *Id*. He announced his arrival several times but received no response. *Id*. The officer proceeded to enter the residence and noticed a pair of legs on the ground sticking out from the hallway bedroom. *Id*. The officer noticed a shotgun protruding from underneath the man, who was eventually indicted for being a felon in possession of a firearm. *Id*. at 1006–07.

After the district court denied the defendant's motion to suppress, the Sixth Circuit affirmed the search based on the community caretaker exception. *Quezada*, 418 F.3d at 1008. In doing so, the court noted that "there is a difference between the standards that apply when an officer makes a warrantless entry when acting as a so-called community caretaker and when he or she makes a warrantless entry to investigate a crime." *Id.* at 1007. The court held that the officer had a reasonable belief because he could conclude that someone was inside the apartment, based on

the lights being on and the door yielding to his knock, but unable to respond for some reason. *Id*.

Similarly, police officers' warrantless entry into a home to investigate a serious noise complaint may be upheld pursuant to the community caretaking exception. *Rohrig*, 98 F.3d at 1506. In *Rohrig*, two police officers received a complaint of loud noise emanating from the defendant's residence, and they arrived at the premises at 1:39 a.m. to observe between four and eight pajama-clad neighbors emerge from their homes to voice their frustration. *Id.* at 1509. The officers proceeded to bang repeatedly on the door of the defendant's home, to no avail. *Id*. They began rapping the windows until they reached the back of the house, where the officers entered the residence after discovering an open back door only protected by an unlocked screen door. *Id*. As they moved through the house, the officers continued to announce their presence, and they followed a light emerging from the basement to discover "wall-to-wall" marijuana plants. *Id*. The officers then travelled upstairs and ultimately located the sleeping defendant to request that he turn down the offending stereo. *Id*. After convincing the defendant to sign a consent form, the officers also searched his closets and discovered two firearms, including an illegal sawed-off shotgun found in the closet of the bedroom. *Id*. at 1510.

Subsequently, the defendant was prosecuted for drug and firearm-related offenses, but he successfully moved to suppress the evidence obtained from his home. *Rohrig*, 98 F.3d at 1510. The Sixth Circuit upheld the search on appeal, based on determining that a form of exigent circumstances existed predicated on the warrant requirement being "implicated to a lesser degree when police officers act in their roles as 'community caretakers.' " *Id*. at 1523. The court emphasized that the officers attempted to abate the noise nuisance through various measures short of entering the home, such as banging the door and the windows. *Id*. at 1524. Further, the court noted that the back door was open, the officers announced their presence, and that "nothing in the Fourth Amendment requires that police (and the neighbors) to idly observe and tolerate a late-night, ongoing nuisance to the community while a warrant is sought and obtained." *Id*. Accordingly, the appeals court held that the search was not unlawful, but rather reasonable under the totality of the circumstances. *Id*. at 1525.

Here, we conclude that Officer Eisenberg's actions were reasonable under the totality of the circumstances in light of the community caretaking exception to the warrant requirement. To begin, investigating a neighbor's complaint about a believed out-of-town resident's water leak, which could grow worse and damage property, is the type of "community caretaking" task that police perform as "jacks of all trades." *See United States v. Boyd*, 407 F. Supp. 693, 695 (S.D.N.Y. 1976)

(finding police officer's warrantless entry to stop water leak was permissible because it was a "legitimate reason" unrelated to any search for contraband, albeit in an apartment setting where the water was more dangerous). The water leak was also similar to a nuisance. *See Rohrig*, 98 F.3d at 1524.

Additionally, Officer Eisenberg took reasonable steps to abate the issue before entering the residence. She knocked on the front door, rapped her flashlight multiple times on the garage door, and knocked at the backdoor. She also searched for a shut-off valve outside of the garage to solve the problem. Officer Eisenberg therefore reasonably believed that there was a pressing problem and took reasonable steps to abate the issue without intruding on the residence. *See Rohrig*, 98 F.3d at 1524. Accordingly, we hold that her entrance into the backdoor of the house was permitted under the community caretaker exception to the warrant requirement. The evidence discovered thereafter in the home is admissible because it was in plain view. *See Quezada*, 448 F.3d at 1008.

In conclusion, we hold that Officer Eisenberg's entry into Mr. Vasquez's residence was reasonable under the community caretaker exception to the warrant requirement. The district court consequently erred in suppressing the evidence viewed in Mr. Vasquez's home.

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B. Warrantless Arrest

We next consider Mr. Vasquez's contention that Officer Travers lacked probable cause to arrest him behind his residence. The Government in turn responds that the aggregate knowledge of the officers involved in the events that unfolded was more than sufficient to form a basis to arrest Mr. Vasquez.

This disagreement invokes the "collective-knowledge doctrine." This doctrine pertains to situations "where law enforcement agents are working together in an investigation but have not explicitly communicated the facts each has independently learned." *United States v. Ramirez*, 473 F.3d 1026, 1032 (9th Cir. 2007). Because no single law enforcement officer in this type of situation knows all of the facts necessary to establish reasonable suspicion or probable cause, an aggregation of facts may be required to survive constitutional scrutiny. *Id*. A court applies this doctrine by examining the collective knowledge of all of the officers involved in the criminal investigation to determine whether the investigatory stop, search, or arrest complied with the Fourth Amendment. *United States v. Sutton*, 794 F.2d 1415, 1426 (9th Cir. 1986).

Moreover, this doctrine can be applied "regardless of whether [any] information [giving rise to probable cause] was actually communicated to" the officer conducting the stop, search, or arrest. *United States v. Bertrand*, 926 F.2d 838, 844 (9th Cir. 1991). A limitation on this doctrine is that there must "be a

communication among the officers but not necessarily the conveyance of any actual information[.]" *Ramirez*, 473 F.3d at 1032–33.

Here, we note at the threshold that there was radio communication between Officers Eisenberg, Travers, and Williams as they investigated Mr. Vasquez's residence. They did not convey each relevant fact as it was uncovered, but that level of specificity is not required under this analysis. *See Ramirez*, 473 F.3d at 1032. We proceed by examining whether the collective knowledge of each of these three officers would form probable cause to arrest Mr. Vasquez. Officer Travers testified that she believed Mr. Vasquez was acting suspiciously, even more so after being told that an officer was searching his home for a water shutoff. At the same time, Officer Eisenberg had observed a series of mattresses and what appeared to be handcuffs and restraints inside Mr. Vasquez's home. Last, Officer Williams observed five frightened women inside Mr. Vasquez's van while circling around the back. We conclude that in the aggregate these facts were enough to establish probable cause to arrest Mr. Vasquez.

Accordingly, we hold that the evidence obtained after arresting Mr. Vasquez should not be suppressed.

C. Use of Automatic License Plate Reader Scanners

We now turn to the Government's argument that its surveillance of Mr. Vasquez's vehicle using a system of automatic license plate reader ("ALPR")

scanners did not constitute a search under the Fourth Amendment. Although we join the district court in drawing guidance from the Supreme Court's decisions interpreting the use of GPS trackers and radio beepers, we believe that this case is more analogous to established precedent concerning law enforcement agents' visual surveillance of defendants' activities and vehicles. We begin by analyzing whether Mr. Vasquez had a reasonable expectation of privacy in movements about Tarabon, and we then discuss why the technology at issue here is unlike the GPS surveillance that has spurred more serious privacy concerns from the courts.

i. Mr. Vasquez Did Not Have a Reasonable Expectation of Privacy in His Movements Throughout Tarabon.

"As Justice Harlan's oft-quoted concurrence described it, a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33 (2001) (citing *Katz v. United States*, 389 U.S. 347, 361 (1967)). This principle has been held to mean that a "Fourth Amendment search does *not* occur—unless 'the individual manifested a subjective expectation of privacy in the object of the challenged search,' and 'society [is] willing to recognize that expectation as reasonable.' " *Id.* (quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)).

To illustrate this test, we note that the Supreme Court has held that "a person travelling in an automobile on public thoroughfares has no reasonable expectation

of privacy in his movements from one place to another." *United States v. Knotts*, 460 U.S. 276, 281 (1983). In *Knotts*, the police tracked a five gallon chemical drum using visual surveillance and the signal emitted from a radio beeper planted in the chemical container. *Id.* at 277. The Court noted that, in the defendant's case, "[a] police car following [the defendant] at a distance throughout his journey could have observed him leaving the public highway and arriving at the cabin . . . . [T]here is no indication that the beeper was used in any way to reveal information . . . that would not have been visible to the naked eye." *Id.* at 285; *see also California v. Greenwood*, 486 U.S. 35, 41 (1988) ("[T]he police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public.").

The Supreme Court confronted a similar situation in *United States v. Jones*, which involved the secret placement of a GPS tracking device on the defendant's car. 132 S.Ct. 945 (2012). In holding this placement to be an unconstitutional search, the Court's opinion explicitly relied on the trespassory nature of the agents' actions. *Id.* at 949. The majority in *Jones* based its decision on the fact that the agents had to "physically occup[y] private property for the purpose of obtaining information." *Id.* The Court therefore did not overrule *Knotts*'s holding regarding the lack of a reasonable expectation of privacy for vehicles on public roads.

Rather, the *Jones* opinion explicitly distinguished *Knotts* on the grounds that trespass was not an issue in that case. *Id.* at 951–52.

Here, we hold that the agents' use of ALPR scanners did not constitute a search under the Fourth Amendment. As a threshold matter, the Supreme Court's holding in *Jones* is inapplicable because the ALPR technology did not require the installation of any type of device on Mr. Vasquez's vehicle or property. *See Jones*, 132 S.Ct at 955 (arguing that "the majority opinion's trespassory test" provides little guidance on "cases of electronic or other novel modes of surveillance that do not depend upon a physical invasion on property") (Sotomayor, J., concurring). Therefore, *Jones* does not govern here.

Instead, we conclude that the *Katz* reasonable-expectation-of-privacy test applies. In applying the *Katz* test, we conclude that Mr. Vasquez did not have a reasonable subjective expectation of privacy in his movements on Tarabon's public streets. When Mr. Vasquez was driving his vehicle on these roads, he was in a public space where "access [was] not meaningfully restricted," *Cardwell v. Lewis*, 417 U.S. 583, 593 (1974), and his appearance was "visible to the public." *United States v. Santana*, 427 U.S. 38, 42 (1976). Meaning, by moving freely about the thoroughfares of Tarabon, Mr. Vasquez did not exhibit behavior that suggested a desire for privacy, for he knowingly exposed his actions to all other drivers, pedestrians, police officers, traffic cameras, and the ALPR scanners at issue in this

case. Additionally, we reach this conclusion because Tarabon's scanners are analogous to traditional visual surveillance, and these scanners are also distinguishable from the GPS devices that have invoked serious privacy concerns from other courts.

Similar to visual surveillance, the ALPR scanners in Tarabon at their most basic level are recording the appearance of Mr. Vasquez's license plate number, which was in plain view throughout the city's public streets. Mr. Vasquez did not have a reasonable expectation of privacy in his license plate number because of the "important role played by the" plate number in the "pervasive governmental regulation of the automobile." *See New York v. Class*, 475 U.S. 106, 114 (1986). Because the exterior of his car was "thrust into the public eye," examining the license plate did "not constitute a 'search.' " *See id.* These scanners also did not involve the transmission of signals to satellites nor broadcasted radio transmissions. Consequently, the technology present in this case is more analogous to the placement of surveillance cameras to capture incidents on public property. *See United States v. McIver*, 186 F.3d 1119, 1125 (9th Cir. 1999) (holding that the "use of photographic equipment to gather evidence that could be lawfully observed by a law enforcement officer does not violate the Fourth Amendment"), *abrogated on other grounds by Jones*, 132 S.Ct at 954.

Moreover, the ALPR scanners did not grant law enforcement officers any extrasensory ability, but rather improved their innate ability to visually observe the license plates of nearby automobiles in public. These scanners could not visually intrude on the sanctity of the home. The ALPR technology is consequently unlike the unconstitutionally intrusive technology condemned in *Kyllo*. 533 U.S. at 27. We recognize that the efficiency of these scanners vastly improved officers' visual abilities, but this fact does not change our analysis. *See Dow Chem. Co. v. United States*, 476 U.S. 227, 289 (1989).

ii. ALPR Technology Does Not Implicate the Same Privacy Concerns as GPS Technology.

Additionally, to the extent that the use of these scanners exceeded the abilities of traditional surveillance cameras when used in conjunction with a computer database, the facts here do not show that the "whole of [Mr. Vasquez's] movements" were recorded over the course of the surveillance period. *See Maynard*, 615 F.3d at 560. The facts instead show that, in at least nine instances, Mr. Vasquez ventured out of Tarabon and could not be tracked. Unlike GPS devices, these scanners are limited and are unable to supplant visual surveillance by tracking a target to remote areas where agents would have difficulty pursuing a vehicle. *See Knotts*, 460 U.S. at 278.

Furthermore, these scanners could not reveal where Mr. Vasquez's vehicle was located with the precision associated with GPS or more sophisticated

surveillance. For example, the ALPR database could reveal that Mr. Vasquez turned down a dead-end residential street and returned through the intersection several hours later, but unlike GPS data, the series of images here would not reveal if and how long he stopped at any particular private residence along that street. In situations where the database collected more precise location information from roving police vehicles, the scanners in these situations were only "augmenting the sensory faculties bestowed upon [the officers] at birth with such enhancement as science and technology afforded them in this case." *See Knotts*, 460 U.S. at 282; *accord United States v. Lee*, 274 U.S. 559, 563 (1927); *but see Kyllo*, 533 U.S. at 34–35 (holding that the use of technology not in general public use to obtain information constitutes a search in the context of a home).

The scanners here were also not equivalent to a concealed device on Mr. Vasquez's vehicle. Although a portion of the devices were difficult to observe or were in movement while affixed to law enforcement vehicles, the vast majority of the scanners were stationary and placed in public view. These scanners did not proceed "surreptitiously," and they did not "evade[] the ordinary checks that constrain abusive law enforcement practices[.]" *See Jones*, 132 S.Ct at 956.

Moreover, the network of devices at issue here does not amount to a "dragnet," as labeled by the district court below based on the Supreme Court's reservation in *Knotts*. The record here does not show that law enforcement was

actively searching through its database to locate vehicles with suspicious travelling patterns. Agent Ahn only did so here after discovering that Mr. Vasquez was suspected of illegal activity. In standard practice, the ALPR scanners only notified officers of a "hit" when the vehicle was already on the "hot list" because authorities needed to locate it because it was possibly stolen, being used in a kidnapping, or connected to other criminal activity.

In sum, because the authorities here tracked Mr. Vasquez's known license plate number while he voluntarily "travelled on public thoroughfares," Mr. Vasquez did not have a reasonable expectation of privacy in the license plate scanner data and the location of his vehicle. *See Knotts*, 460 U.S. at 281; *see also United States v. Skinner*, 690 F.3d 772, 772 (6th Cir. 2012) (holding that the defendant had no expectation of privacy in a case involving GPS data from a prepaid cell phone, "just as the driver of a getaway car has no expectation of privacy in the particular combination of colors of the car's paint"). Therefore, suppression is not warranted and the district court incorrectly granted Mr. Vasquez's motion to suppress.

III. Conclusion

For the foregoing reasons, we hold that the district court erred in granting Mr. Vasquez's motion to suppress. The district court's judgment is therefore **REVERSED** and the case is **REMANDED**.

STILES, Circuit Judge, concurring in part and dissenting in part:

Although I agree with my colleagues' determinations as to the search of Mr. Vasquez's residence and the surveillance of his vehicle, I cannot agree with their expansion of the collective-knowledge doctrine.

This doctrine, "as enunciated by the Supreme Court, holds that when an officer acts on an instruction from another officer, the act is justified if the instructing officer had sufficient information to justify taking such action herself[.]" *United States v. Massenburg*, 654 F.3d 480, 492 (4th Cir. 2011). The Supreme Court applied this doctrine in *United States v. Hensley*, holding that where officers stopped the defendant in "objective reliance" on an arrest flyer disseminated from another department, the stop was justified only if the officers who issued the request had reasonable, particularized suspicion sufficient to justify their own stop. 469 U.S. 221, 223, 232 (1985). In other terms, this rule allows a "vertical" collective knowledge relationship, in which "the first officer's conclusion was conveyed" to the officer making the stop or arrest, but not a "horizontal collective knowledge relationship in which the knowledge of several officers must be aggregated to create probable cause." *See United States v. Rodirguez-Rordiguez*, 550 F.3d 1223, 1228 n.5 (10th Cir. 2008) (citing *United States v. Chavez*, 534 F.3d 1338, 1345 (10th Cir. 2008)).

Here, the Government admits that that the arresting officer did not have probable cause to arrest Mr. Vasquez upon encountering him behind his residence. As mentioned, the Government seeks to overcome this pitfall by contending that because Officers Eisenberg, Travers, and Williams were working in concert, the other law enforcement agents' knowledge may be imputed to Officer Travers. Yet, again, "the collective-knowledge doctrine simply directs us to substitute the knowledge of the *instructing officer or officers* for the knowledge of the *acting officer*; it does not permit us to aggregate bits and pieces of information from among myriad officers, nor does it apply outside the context of communicated alerts or instructions." *Massenberg*, 654 F.3d at 493. I also share our sister court's concern that the Government's "proposed aggregation rule would do nothing but redeem searches or seizures that the acting officers should have *believed at the time* to be unlawful," defeating the purpose of the exclusionary rule. *Id*. at 490.

Accordingly, I would hold that Officer Travers lacked probable cause to arrest Mr. Vasquez, and would consequently affirm the district court's order suppressing the evidence obtained incident to his arrest.

SUPREME COURT OF THE UNITED STATES

October Term 2013

Docket No. 2013-12

Daniel Vasquez,

Petitioner,

v.

United States of America,

Respondent.

Petition for certiorari is granted. The Court grants cert limited to the following questions:

A. Under the Fourth Amendment:

1. **Whether the "community caretaker" exception to the warrant requirement may justify a police officer entering and searching a residence.**

2. **Assuming the community caretaker exception is applicable, whether this exception justifies the officer's entry and search of the home in this action.**

B. Similarly under the Fourth Amendment:

1. **Whether the "collective knowledge" principle permits the aggregation of multiple communicating officers' knowledge to form probable cause to justify an arrest.**

2. **Whether a search occurs when law enforcement agents track a vehicle using a network of automated license plate scanners.**

Exhibit A

Excerpt of Officer Eisenberg's Suppression Hearing Testimony

DIRECT EXAMINATION BY MS. NGUYEN

Q: Let's pick back up where we left off. What happened when you arrived at the residence located at 1322 Emerald Street?

A: I got there when it was almost dark. I exited my vehicle and walked towards the garage to check out the neighbor's water leak report. I walked past a black pick-up truck in the driveway, where I could see from a distance a stream of water coming out of the left side of the residence's two-car garage door. I couldn't tell if the garage was flooded because it looked like it was tightly closed.

Q: What did you do next?

A: I went around the front of the house on a path to get to its entrance.

Q: Did you observe anything regarding the residence?

A: Yeah. The house's windows were shut with their blinds drawn. And the condition of the structure was very poor. The paint was chipping, the landscape was overgrown, and the porch near the front door was in shambles.

Q: What happened next?

A: I followed our standard routine by knocking on the front door of the house and announcing the presence of a police officer. No one answered, but I did hear something -- either a television or a radio or something playing from somewhere in the house. It was tough to tell what it was, but I didn't hear it when I was out front. I also saw a single light on inside.

Q: Where did you go after receiving no response at the front door?

A: I went back to the garage, this time walking all the way up to it. I tapped my flashlight several times on the first door, and I called out for anyone inside. I could hear water spraying somewhere from inside. Based on where the water was coming from and the bad condition of the place, I believed that the water heater had burst or a pipe was broken.

Q: How did you react?

A: I tried to look for a valve outside the residence to turn the water off. I couldn't find one outside of the garage so I decided to go around the back of the residence to uh -- try to fix the

problem somehow. I walked through an open gate and entered the backyard. I found back there a different door to the house.

Q: Did you approach the entrance?

A: Yes. I opened its screen door and tried knocking -- but as I knocked, the door pushed in and opened. I proceeded to step inside, figuring out that the door's bottom lock was locked. A few seconds later I got on my radio and called for backup.

Q: Why did you call for backup?

A: My gut instincts told me that something was wrong as soon as I walked into the house. I was in what looked like a kitchen, but its windows were boarded shut behind their blinds, and its fixtures were dilapidated. It did not look like it had been used in years. I explained to dispatch that I was investigating a likely burst water heater in an out-of-town resident's home but that the house appeared very abnormal.

Q: What happened next?

A: I moved through the kitchen towards the direction of the garage. I was able to turn on several lights and entered a hallway. Across from the kitchen I saw an empty room. I turned and walked down the hallway where I found two side rooms. There were three to four mattresses on the floor with no bedding on them inside each room. The rooms didn't have typical bedroom furniture and their windows were also securely boarded.

Q: Did you notice anything else about these rooms?

A: Yes. Their doors had serious deadbolts that could be locked from the hallway. The doorframes were also lined with a thick material that looked like some kind of soundproofing material.

Q: What did you do after that?

A: I turned the other way and made my way to what seemed to be the entrance to the garage. I stepped over a laundry container that was overflowing with what looked like restraints. There were ropes and zip ties in it. I opened the door to the garage and viewed maybe six inches of water covering the entire garage. An old water hose that was connected to the washing machine

inside the hallway had ruptured and was still leaking water.

Q: Did you shut off the water?

A: No -- not right away. I found the shut-off valve but it was rusted, and I couldn't turn it. I started looking for a tool to use in the garage, which is when Officer Williams radioed to me that he had arrived with Officer Travers but they were now investigating a car that had pulled up around the back of the house.

--End of Excerpt--

Exhibit B

Floor Plan of Mr. Vasquez's Home with Notations

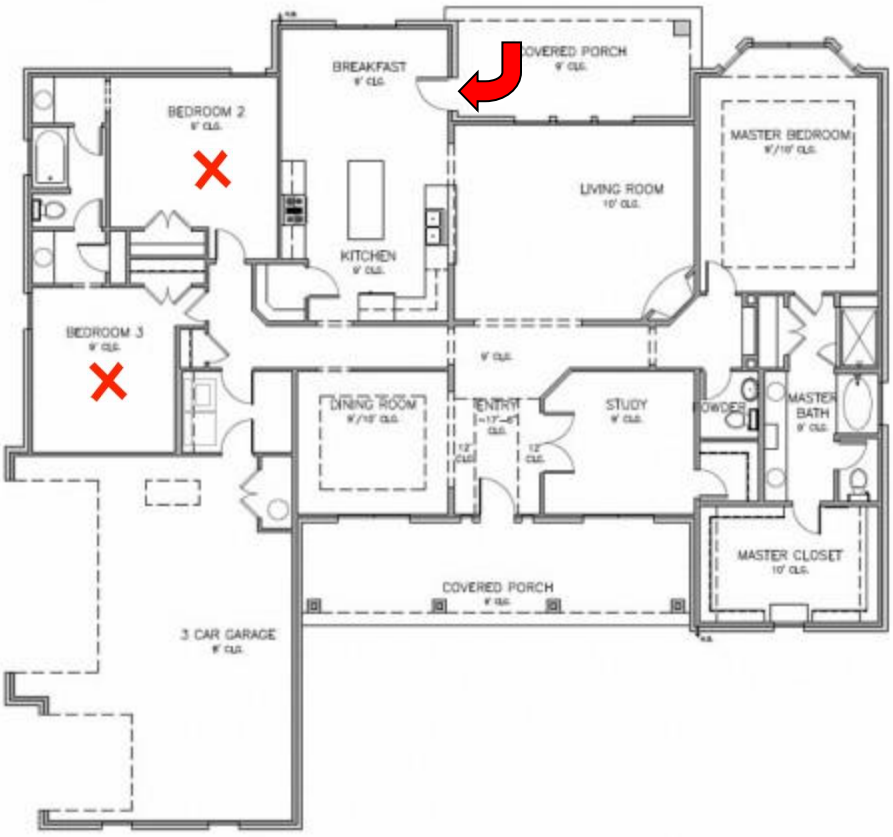
BREAKFAST
COVERED PORCH
BEDROOM 2
MASTER BEDROOM
LIVING ROOM
KITCHEN
BEDROOM 3
DINING ROOM
ENTRY
STUDY
POWDER
MASTER BATH
MASTER CLOSET
COVERED PORCH
3 CAR GARAGE

Exhibit C

Vehicle-Mounted ALPR System


Police
KCMO
943

Exhibit D

Stationary ALPR System

Exhibit E

ALPR Systems Located in Tarabon's Southwest Quadrant