

The Burger Court Opinion Writing Database

California v. Ciraolo

476 U.S. 207 (1986)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

Circulated: FEB 20 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
 CALIFORNIA, FIRST APPELLATE DISTRICT

[February —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether the Fourth Amendment is violated by aerial observation without a warrant from an altitude of 1000 feet of a fenced-in backyard within the curtilage of a home.

I

On September 2, 1982, Santa Clara Police received an anonymous telephone tip that marijuana was growing in respondent's backyard. Police were unable to observe the contents of respondent's yard from ground level because of a 6-foot outer fence and a 10-foot inner fence completely enclosing the yard. Later that day, Officer Schutz, who was assigned to investigate, secured a private plane and flew over respondent's house at an altitude of 1000 feet, within navigable airspace; he was accompanied by Officer Rodriguez. Both officers were trained in marijuana identification. From the overflight, the officers readily identified marijuana plants 8 feet to 10 feet in height growing in a 15 by 25 foot plot in respondent's yard; they photographed the area with a standard 35mm camera.

On September 8, 1982, Officer Schutz obtained a search warrant on the basis of an affidavit describing the anonymous tip and their observations; a photograph depicting respondent's house, the backyard and neighboring homes was at-

Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

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 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
 CALIFORNIA, FIRST APPELLATE DISTRICT

[March —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether the Fourth Amendment is violated by aerial observation without a warrant from an altitude of 1000 feet of a fenced-in backyard within the curtilage of a home.

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On September 2, 1982, Santa Clara Police received an anonymous telephone tip that marijuana was growing in respondent's backyard. Police were unable to observe the contents of respondent's yard from ground level because of a 6-foot outer fence and a 10-foot inner fence completely enclosing the yard. Later that day, Officer Schutz, who was assigned to investigate, secured a private plane and flew over respondent's house at an altitude of 1000 feet, within navigable airspace; he was accompanied by Officer Rodriguez. Both officers were trained in marijuana identification. From the overflight, the officers readily identified marijuana plants 8 feet to 10 feet in height growing in a 15 by 25 foot plot in respondent's yard; they photographed the area with a standard 35mm camera.

On September 8, 1982, Officer Schutz obtained a search warrant on the basis of an affidavit describing the anonymous tip and their observations; a photograph depicting respondent's house, the backyard and neighboring homes was at-

To: Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

STYLISTIC CHANGES THROUGHOUT;

see also pp. 6-7

From: **The Chief Justice**

Circulated: _____

Recirculated: May 1, 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
 CALIFORNIA, FIRST APPELLATE DISTRICT

[May —, 1986]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to determine whether the Fourth Amendment is violated by aerial observation without a warrant from an altitude of 1,000 feet of a fenced-in backyard within the curtilage of a home.

I

On September 2, 1982, Santa Clara Police received an anonymous telephone tip that marijuana was growing in respondent's backyard. Police were unable to observe the contents of respondent's yard from ground level because of a 6-foot outer fence and a 10-foot inner fence completely enclosing the yard. Later that day, Officer Schutz, who was assigned to investigate, secured a private plane and flew over respondent's house at an altitude of 1,000 feet, within navigable airspace; he was accompanied by Officer Rodriguez. Both officers were trained in marijuana identification. From the overflight, the officers readily identified marijuana plants 8 feet to 10 feet in height growing in a 15-by-25 foot plot in respondent's yard; they photographed the area with a standard 35mm camera.

On September 8, 1982, Officer Schutz obtained a search warrant on the basis of an affidavit describing the anonymous tip and their observations; a photograph depicting respondent's house, the backyard, and neighboring homes was

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 28, 1986

No. 84-1513

California v. Ciraolo

Dear Lewis,

Please join me in your dissent in
the above.

Sincerely,

Bill

Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

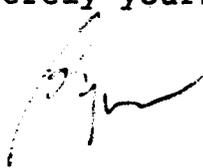
March 3, 1986

84-1513 - California v. Ciraolo

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 17, 1986

Re: No. 84-1513-California v. Ciraolo

Dear Chief:

I will await further writing in this case.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 28, 1986

Re: No. 84-1513-California v. Ciraolo

Dear Lewis:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 28, 1986

Re: No. 84-1513, California v. Ciraolo

Dear Lewis:

Please join me in your dissent.

Sincerely,



Justice Powell

cc: The Conference

APR 29 1986

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**
APR 5 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
CALIFORNIA, FIRST APPELLATE DISTRICT

[April —, 1986]

JUSTICE POWELL, dissenting.

Concurring in *Katz v. United States*, 389 U. S. 347 (1967), Justice Harlan warned that any decision to construe the Fourth Amendment as proscribing only physical intrusions by police onto private property "is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion." *Id.*, at 362. Because the Court today ignores that warning in an opinion that departs significantly from the standard developed in *Katz* for deciding when a Fourth Amendment violation has occurred, I dissent.

I

As the Court's opinion reflects, the facts of this case are not complicated. Officer Shutz investigated an anonymous report that marijuana was growing in the backyard of respondent's home. A tall fence prevented Shutz from looking into the yard from the street. The yard was directly behind the home so that the home itself furnished one border of the fence. Shutz proceeded, without obtaining a warrant, to charter a plane and fly over the home at an altitude of 1,000 feet. Observing marijuana plants growing in the fenced-in yard, Shutz photographed respondent's home and yard, as well as homes and yards of neighbors. The photograph clearly shows that the enclosed yard contained a small swimming pool and patio. Shutz then filed an affidavit, to which

Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

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P- 1, 3, 5, 7, 8, 9, 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

[April —, 1986]

JUSTICE POWELL, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

Concurring in *Katz v. United States*, 389 U. S. 347 (1967), Justice Harlan warned that any decision to construe the Fourth Amendment as proscribing only physical intrusions by police onto private property "is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion." *Id.*, at 362. Because the Court today ignores that warning in an opinion that departs significantly from the standard developed in *Katz* for deciding when a Fourth Amendment violation has occurred, I dissent.

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05/13

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

Stylistic Changes Throughout

& new note 4

From: Justice Powell

Circulated: _____

Recirculated: MAY 13 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
 CALIFORNIA, FIRST APPELLATE DISTRICT

[May —, 1986]

JUSTICE POWELL, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: Justice Powell

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p. 6, 8

SUPREME COURT OF THE UNITED STATES

No. 84-1513

CALIFORNIA, PETITIONER *v.* CIRAOLLO

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF
 CALIFORNIA, FIRST APPELLATE DISTRICT

[May 19, 1986]

JUSTICE POWELL, with whom JUSTICE BRENNAN, JUSTICE MARSHALL, and JUSTICE BLACKMUN join, dissenting.

Concurring in *Katz v. United States*, 389 U. S. 347 (1967), Justice Harlan warned that any decision to construe the Fourth Amendment as proscribing only physical intrusions by police onto private property "is, in the present day, bad physics as well as bad law, for reasonable expectations of privacy may be defeated by electronic as well as physical invasion." *Id.*, at 362. Because the Court today ignores that warning in an opinion that departs significantly from the standard developed in *Katz* for deciding when a Fourth Amendment violation has occurred, I dissent.

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Supreme Court of the United States
Washington, D. C. 20543

February 26, 1986

Re: No. 84-1513 California v. Ciraolo

Dear Chief,

Please join me.

Sincerely,

The Chief Justice

cc: The Conference

SR FEB 26 1986



CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

Supreme Court of the United States
Washington, D. C. 20543

March 6, 1986

Re: 84-1513 - California v. Ciraolo

Dear Chief:

Please join me.

Respectfully,

The Chief Justice
Copies to the Conference

82 NYB-2 61:51

20011 11/10/86

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 24, 1986

Re: 84-1513 California v. Ciraolo

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

82 FEB 24 1986