The Single-Purpose Container Exception: A Logical Extension of the Plain View Doctrine Made Unworkable by Inconsistent Application

I. INTRODUCTION

For people like John Meada, III, the protections provided by the Fourth Amendment¹ can be surprisingly narrow. However, for those who study Fourth Amendment law, the fact that an individual can have no privacy interest in a closed container in their possession is no surprise at all. Mr. Meada pled guilty to weapons possession charges after a warrantless search of his home turned up firearms located in a closed container.³ The search³ of Mr. Meada’s home was possible because the language of the Fourth Amendment only prohibits “unreasonable searches and seizures.”⁴ The definition of what is reasonable is what allows police officers to legally enter a home, without a warrant, and search the contents of closed contain-

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1. U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”).

2. United States v. Meada, 408 F.3d 14, 17 (1st Cir. 2004).

3. The police officer’s entry into Mr. Meada’s residence was made pursuant to Mr. Meada’s roommate’s request to obtain clothing located therein. Id. Prior to the entry, the roommate obtained a restraining order against Mr. Meada. Id.

ers located inside. At the heart of the definition of what is reasonable is the requirement that police officers obtain a warrant before searching or seizing an individual's property. In *Maryland v. Buie*, the United States Supreme Court stated that "in determining reasonableness, we have balanced the intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Under this test, a search of [a home] or office is generally not reasonable without a warrant issued on probable cause.

Like any good rule of law, however, the Fourth Amendment's warrant requirement is subject to a bounty of exceptions. Two exceptions in particular made the warrantless search of Mr. Meada's home reasonable. First, the police had Mr. Meada's roommate's consent to enter and search the home. Second, because the firearms that led to Mr. Meada's conviction were in a container that clearly revealed its contents, the firearms were in plain view and therefore subject to a valid warrantless search. The plain view doctrine allows police officers to seize contraband when its incriminating character is immediately apparent and when they come across it while in a location where they have the right to be. The search conducted in *Meada* was not justified by the plain view doctrine alone; to justify this search, the court had to call upon an extension to the plain view doctrine—the single-purpose container exception. This exception holds that some containers so clearly reveal their contents that the contents can be considered to be in plain view.

An individual's right to be free from unreasonable searches and seizures is eroded by layer after layer of exceptions, but each of these exceptions is grounded in one principle: the reasonable expectation of privacy.

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8. Meada, 408 F.3d at 20 ("[P]olice need not seek a warrant where 'voluntary consent has been obtained, either from the individual whose property is searched, or from a third party who possesses common authority over the premises.'" (quoting Illinois v. Rodriguez, 497 U.S. 177, 181 (1990))).
9. Id. at 22.
11. Meada, 408 F.3d at 23.
13. See Katz v. United States, 389 U.S. 347 (1967); Stephen P. Jones, Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing, 27 U. MEM. L. REV. 907, 908 (1997) ("If a defendant does not have a reasonable expec-
This reasonable expectation of privacy concept can act as the North Star when navigating the often troublesome waters that are Fourth Amendment jurisprudence. The bottom line is that individuals lack Fourth Amendment protection when they lack a reasonable expectation of privacy.\textsuperscript{14} The exceptions to the Fourth Amendment warrant requirement work by identifying situations where individuals do not have a reasonable expectation of privacy in their property or actions.\textsuperscript{15} The reasonable expectation of privacy is a key to understanding the single-purpose container exception which will be the focus of this Comment.

In \textit{United States v. Tejada}, Judge Posner identified a split in the way the federal circuits apply the single-purpose container exception.\textsuperscript{16} The exception was recognized by the Supreme Court,\textsuperscript{17} so there is no question as to the validity of the exception (although this will not prevent a discussion as to the exception's proper place in Fourth Amendment jurisprudence). Rather, the circuits are divided on the issue as to the use of extrinsic evidence in determining which containers are or are not single-purpose containers.\textsuperscript{18} The following materials will examine this split and its impact on the application of the Fourth Amendment. To do this properly however, there must be a thorough discussion of the reasonable expectation of privacy, the plain view doctrine, and the single-purpose container exception. Specifically, Part II (A) will cover the reasonable expectation of privacy, while parts II (B) and (C) will discuss the plain view doctrine and the single-purpose container exception, respectively. Next, in Part III, this Comment will begin to analyze the single-purpose container exception and reach the conclusion that the exception should be eliminated, or at least limited significantly, because its inconsistent use by the federal circuits leads to an arbitrary application of Fourth Amendment protections to closed containers. Part III (A) identifies the circuit split that developed based on the inconsistency of privacy in an area searched or an item seized, he does not suffer a Fourth Amendment violation.

\textsuperscript{14} \textit{Katz}, 389 U.S. at 361 (1967) (Harlan, J., concurring) (describing a two-part test to determine when an individual has a reasonable expectation of privacy and, thus, deserves freedom from an unreasonable search or seizure).

\textsuperscript{15} See \textit{Sanders}, 442 U.S. at 764-65 n.13 (explaining how some containers can be searched without a warrant because they do not support a reasonable expectation of privacy).

\textsuperscript{16} 524 F.3d 809, 813 (7th Cir. 2008).

\textsuperscript{17} \textit{Sanders}, 442 U.S. at 764-65 n.13.

\textsuperscript{18} Compare \textit{United States v. Gust}, 405 F.3d 797, 801 (9th Cir. 2005) ("[C]ourts should make judgments about the applicability of the 'single-purpose container' exception by evaluating the nature of containers from the objective viewpoint of a layperson, rather than from the subjective viewpoint of a trained law enforcement officer, and without sole reliance on the specific circumstances in which the containers were discovered.")), with \textit{United States v. Williams}, 41 F.3d 192, 197-98 (4th Cir. 1994) (finding a cellophane-wrapped package to be a single-purpose container because of the circumstances in which it was discovered and the police officer's experience).
tent use of extrinsic evidence to determine which containers qualify as single-purpose containers. Finally, Parts III (B) and (C) work together to show how allowing extrinsic evidence in the process of classifying containers as single-purpose containers erodes the Fourth Amendment and leads to its inconsistent application to closed containers.

II. BACKGROUND

A. THE REASONABLE EXPECTATION OF PRIVACY

In deciding whether or not an individual’s Fourth Amendment protections are violated when their conversations in a public telephone booth are monitored by law enforcement agents, the Supreme Court created what has come to be known as the reasonable expectation of privacy test.\(^\text{19}\) Interestingly, the reasonable expectation of privacy test, which is now synonymous with *Katz v. United States*, is not a product of Justice Stewart’s majority opinion,\(^\text{20}\) nor has it persisted without criticism.\(^\text{21}\) The criticism seems to be grounded in Justice Harlan’s concurrence in *Katz* where, while trying to make sense of the majority opinion, he formulated a two-prong test to determine when an individual deserves constitutional protection via the Fourth Amendment.\(^\text{22}\) It is really Justice Harlan’s test that the Supreme Court and Fourth Amendment scholars now call the reasonable expectation of privacy test.\(^\text{23}\)

In *Katz v. United States*, the Supreme Court changed the way it previously viewed the protections provided by the Fourth Amendment.\(^\text{24}\) The

\(^{19}\) See Terry v. Ohio, 392 U.S. 1, 9 (1968) (discussing the reasonable expectation of privacy test developed in *Katz*); see also Jones, supra note 13, at 915.

\(^{20}\) See *Katz*, 389 U.S. at 347-59; 1 LAFAVE, supra note 7, § 2.1(c), at 436 (“In his oft-quoted concurring opinion in *Katz*, Justice Harlan stated the rule in terms of a ‘two fold requirement.’”).

\(^{21}\) See 1 LAFAVE, supra note 7, § 2.1(c), at 436-39 (discussing how the first prong of Justice Harlan’s test has little significance in determining when an individual has an interest worthy of Fourth Amendment protection); Anthony G. Amsterdam, *Perspectives on the Fourth Amendment*, 58 MINN. L. REV. 349, 382-85 (1974); Note, *From Private Places to Personal Privacy: A Post-Katz Study of Fourth Amendment Protection*, 43 N.Y.U L. REV. 968, 976 (1968) (stating that the test announced in *Katz* does little to guide future interpretation of the Fourth Amendment’s scope).

\(^{22}\) *Katz*, 389 U.S. at 361 (Harlan, J., concurring).

\(^{23}\) See, e.g., Smith v. Maryland, 442 U.S. 735, 740 (1979) (attributing the two-prong test to Justice Harlan’s concurrence in *Katz*).

\(^{24}\) Compare *Olmstead v. United States*, 277 U.S. 438, 464-66 (1928) (limiting the Fourth Amendment to only protect individuals from physical intrusions into their persons, homes, papers, or effects), *with Katz*, 389 U.S. at 352-53 (departing from *Olmstead*’s narrow interpretation of the Fourth Amendment by holding that protections granted by the Amendment extend beyond the search or seizure of tangible items).
Court moved from a very strict interpretation of the Fourth Amendment to a more expansive view. Before the *Katz* opinion, the Supreme Court applied the reasonableness standard only to searches and seizures of persons, houses, papers, and effects, just as the Amendment says to do. This traditional way of applying the protections granted by the Fourth Amendment was illustrated in *Olmstead v. United States.* In a very similar situation as the one presented in *Katz,* the Court in *Olmstead* answered the question “whether the use of evidence of private telephone conversations between the defendants and others, intercepted by means of wire tapping, amounted to a violation of the Fourth . . . Amendment” when done without a warrant, in the negative. The Court came to this result because, at the time, it was unwilling to expand the Fourth Amendment’s protection beyond searches and seizures of tangible property. In support of this position, the court cited several earlier opinions that limited the Fourth Amendment’s protection to such property. Because the information used to convict the defendants in *Olmstead* was obtained by wiretapping and not by a physical intrusion into their persons, houses, papers, or effects, it did not violate their Fourth Amendment privacy rights. Had the same information been obtained by opening a sealed letter, the opposite result would have occurred. Simply put, the process of tapping the defendants’ telephones did not result in any intrusion into their homes or offices, nor did law enforcement agents seize any of their belongings, so their Fourth Amendment rights could not have been violated. In two separate cases,

Justice Bradley . . . and Justice Clarke . . . said that . . . the Fourth Amendment [is] to be liberally construed to effect the purpose of the framers of the Constitution in the interest

25. *See Jones,* supra note 13, at 914 (“The Court . . . recognized that the proscriptions of the Fourth Amendment were no longer limited to tangible ‘things’ as believed in *Olmstead.* Therefore, the police were no longer restricted only when they physically intruded into one’s property interest.”).

26. U.S. CONST. amend. IV.

27. *Id.; Olmstead,* 277 U.S. at 455, 466; *Jones,* supra note 13, at 912.

28. 277 U.S. at 464.

29. *Id.* at 455, 466.

30. *Id.* at 464 (“The amendment itself shows that the search is to be of material things—the person, the house, his papers, or his effects.”).


32. *Olmstead,* 277 U.S. at 469 (affirming the lower court, which upheld the defendant’s convictions).

33. *Id.* at 464.

34. *Id.* (“The amendment does not forbid what was done here. There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry of the houses or offices of the defendants.”).
of liberty. But that cannot justify enlargement of the language employed beyond the possible practical meaning of houses, persons, papers, and effects, or so to apply the words search and seizure as to forbid hearing or sight.35

In *Katz v. United States*, the court did apply the words search and seizure as to forbid hearing or sight (at least in some situations).36 At the lower court level, Mr. Katz’s conviction for violating a federal statute prohibiting the use of wire communication for the purpose of placing bets was upheld because the evidence used to convict him was not obtained in violation of the Fourth Amendment.37 In their investigation, agents of the Federal Bureau of Investigation placed a listening and recording device on a public telephone booth that Mr. Katz was known to use.38 Using the narrow interpretation of the Fourth Amendment discussed in *Olmstead*, this was the correct result.39 However, Mr. Katz claimed such surveillance, without a warrant, violated his Fourth Amendment rights.40 In support of this contention, Katz raised two issues:

A. Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening recording device to the top of such a booth is obtained in violation of the right to privacy of the user of the booth.

B. Whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment to the United States Constitution.41

In an act completely inconsistent with past precedent42 the Supreme Court rejected this formulation of the issues because, as Justice Stewart wrote,

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35. *Id.* at 465.
36. *Katz v. United States*, 389 U.S. 347, 353 (1967) ("Indeed, we have expressly held that the Fourth Amendment governs not only the seizure of tangible items, but extends as well to the recording of oral statements overheard without ‘any technical trespass under local property law.’").
37. *Id.* at 348.
38. *Id.* at 348, 354.
39. *Id.* at 348-49 ("In affirming his conviction, the Court of Appeals rejected the contention that the recordings had been obtained in violation of the Fourth Amendment, because ‘there was no physical entrance into the area occupied by [Katz] . . . ’").
40. *Id.*
“the Fourth Amendment protects people, not places.”

The amendment protects individuals from government intrusions, but the protections do not stop there. Because of the Court’s new interpretation of the Fourth Amendment, the parties’ fixation in characterizing the telephone booth as a constitutionally protected area was misplaced. So too was the government’s argument that the surveillance technique used was constitutional simply because the phone booth was not penetrated. These arguments were made obsolete by the Court’s new interpretation of the Fourth Amendment and the protection it provides individuals. In his majority opinion, Justice Stewart said the Fourth Amendment goes beyond the tangible to include what the individual seeks to preserve as private. “The Court made it clear in Katz that the ‘person’ provided for in the text of the Fourth Amendment extended beyond the physical body. The Fourth Amendment ‘person’ included peoples’ expectations that their activity will remain private.” In the end, the Court held that the FBI violated the privacy Mr. Katz “justifiably relied [upon] while using the telephone booth,” and because of this reliance, a search and seizure within the meaning of the Fourth Amendment took place when Mr. Katz’s conversation was monitored by the FBI.

Using this language about justifiable reliance, Justice Harlan refined the majority’s new interpretation of the Fourth Amendment and created a two-prong test to determine when an individual has an expectation of privacy that is worthy of Fourth Amendment protection. Justice Harlan stated, “My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation

43. Katz, 389 U.S. at 351.
44. Id. at 350.
45. Id. at 351 (“[T]he parties have attached great significance to the characterization of the telephone booth from which the petitioner placed his calls. The petitioner has strenuously argued that the booth was a ‘constitutionally protected area.’ The Government has maintained with equal vigor that it was not. But this effort to decide whether or not a given ‘area,’ viewed in the abstract, is ‘constitutionally protected’ deflects attention from the problem presented by this case.” (footnote omitted)).
46. Id. at 352.
47. Id. at 353 (“[O]nce it is recognized that the Fourth Amendment protects people—and not simply ‘areas’—against unreasonable searches and seizures it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.”).
49. Jones, supra note 13, at 914.
51. Id. at 361 (Harlan, J., concurring); see also Brian J. Serr, Great Expectations of Privacy: A New Model for Fourth Amendment Protection, 73 MINN. L. REV. 583, 592 (1989).
be one that society is prepared to recognize as 'reasonable.'\(^{52}\) While this two part test, as a whole, is the current standard guiding Fourth Amendment protection, the first prong is given little weight; in fact, "the courts frequently do not distinguish between the two parts of the \textit{Katz} test."\(^{53}\) This is likely because there are many situations in which a subjective expectation can be overcome. For example, "the government [can] diminish each person's subjective expectation of privacy merely by announcing half-hourly on television that . . . we [are] all forthwith being placed under comprehensive electronic surveillance."\(^{54}\) As a result, the subjective element of the test is generally disfavored.\(^{55}\) Justice Harlan even noticed the problems with the subjective element and wrote in \textit{United States v. White} that analysis under \textit{Katz} "must transcend the search for subjective expectations."\(^{56}\)

With or without the subjective element of Justice Harlan's test, an individual claiming a Fourth Amendment violation must still establish that their expectation is "one that society is prepared to recognize as reasonable."\(^{57}\) This is the element that really matters; it is the one courts most often look to in determining whether an individual suffered a Fourth Amendment violation.\(^{58}\) With respect to the subject matter of this Comment, the constitutional use of the single-purpose container exception, hinges on what society does or does not consider reasonable.\(^{59}\) "The rationale for this doctrine rests on the notion that the Fourth Amendment does not protect expectations of privacy that society does not consider reasonable."\(^{60}\) Therefore, the warrantless search of the defendant's packages in \textit{United States v. Williams}, which were "wrapped heavily in cellophane and a layer of brown material," was constitutional because they were so likely to contain cocaine

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52. \textit{Katz}, 389 U.S. at 361 (Harlan, J., concurring).
53. 1 LAFAVE, supra note 7, § 2.1(c), at 438 (quoting Eric Bender, \textit{The Fourth Amendment in the Age of Aerial Surveillance: Curtains for the Curtilage?}, 60 N.Y.U. L. REV. 725, 744-45 (1985)).
54. Amsterdam, supra note 21, at 384; see also Smith v. Maryland, 442 U.S. 735, 741 n.5 (1979).
55. Amsterdam, supra note 21, at 384 ("An actual, subjective expectation of privacy obviously has no place in a statement of what \textit{Katz} held or in a theory of what the [F]ourth [A]mendment protects. It can neither add to, nor can its absence detract from, an individual's claim to [F]ourth [A]mendment protection.").
57. \textit{Katz}, 389 U.S. at 361 (Harlan, J., concurring).
58. Jones, supra note 13, at 923.
59. Arkansas v. Sanders, 442 U.S. 753, 764-65 n.13 (1979) ("Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers . . . by their very nature cannot support any reasonable expectation of privacy because their contents can be inferred from their outward appearance.").
60. \textit{United States v. Williams}, 41 F.3d 192, 196 (4th Cir. 1994).
that they could not support a reasonable expectation of privacy.\textsuperscript{61} In contrast, because society recognized as reasonable a defendant's expectation of privacy in his unmarked, hard-plastic case, the warrantless search by federal agents was deemed to be unconstitutional in \textit{United States v. Bonitz}.\textsuperscript{62}

For better or worse, that is the reasonable expectation of privacy test. Stated generally, "the formula is that 'wherever an individual may harbor a reasonable expectation of privacy,' . . . he is entitled to be free from unreasonable governmental intrusion."\textsuperscript{63} The problem with this formula is that it "offers neither a comprehensive test of [F]ourth [A]mendment coverage nor any positive principles by which questions of coverage can be resolved."\textsuperscript{64} Stated otherwise, while the \textit{Katz} test invalidates the Supreme Court's prior treatment of the Fourth Amendment's protections of privacy, the \textit{Katz} test does little to guide future interpretation of the scope of the amendment.\textsuperscript{65} The reasons for this are twofold. First, because the \textit{Katz} test is based on a reasonableness standard, it is inherently vague, and second, since Justice Stewart failed to define the notion of "justifiable reliance," the opinion cannot effectively aid in determining what other circumstances, besides conversations in telephone booths, harbor a privacy interest that an individual can justly rely upon.\textsuperscript{66} Despite this, courts have been willing to work with the standard created in \textit{Katz}; it is, after all, the foundation upon which the single-purpose container exception is built.\textsuperscript{67}

Finally, it is important to note that the Fourth Amendment only protects individuals from the unreasonable actions of government actors.\textsuperscript{68} Therefore, if an employee for a shipping company inadvertently damages a container so as to reveal its illegal contents, the owner of the container does not have a reasonable expectation of privacy as to the action of that employee.\textsuperscript{69} Additionally, the product of a private search can be turned over to law enforcement officials and used as evidence to incriminate its owner.\textsuperscript{70}

Only two types of conduct by government actors can violate Fourth Amendment protection: searches and seizures.\textsuperscript{71} In the context of persons

\begin{itemize}
  \item \textsuperscript{61} Id. at 194, 197-98.
  \item \textsuperscript{62} 826 F.2d 954, 956 (10th Cir. 1987).
  \item \textsuperscript{63} Amsterdam, \textit{supra} note 21, at 383.
  \item \textsuperscript{64} Id. at 385.
  \item \textsuperscript{65} Note, \textit{supra} note 21, at 976.
  \item \textsuperscript{66} Id.
  \item \textsuperscript{67} Arkansas v. Sanders, 442 U.S. 753, 764-65 n.13 (1979).
  \item \textsuperscript{68} Jones, \textit{supra} note 13, at 917. The "Fourth Amendment does not prohibit search or seizure conducted by private person[s] not acting as government agent[s] or in concert with [a] government official." \textit{United States v. Donnes}, 947 F.2d 1430, 1434 (10th Cir. 1991) (citing \textit{United States v. Smith}, 810 F.2d 996, 997 (10th Cir. 1987)).
  \item \textsuperscript{69} United States v. Jacobsen, 466 U.S. 109, 115 (1984).
  \item \textsuperscript{70} Id. at 115-16.
  \item \textsuperscript{71} Jones, \textit{supra} note 13, at 925.
\end{itemize}
and property, a search occurs when a reasonable expectation of privacy is infringed. Thus, federal agents conducted a search when they listened to Mr. Katz's conversations in the telephone booth because Mr. Katz had an expectation that his conversations in that booth would remain private. Property is seized when "there is some meaningful interference with [the owner's] possessory interests in that property." Similarly, a seizure of a person occurs when a government actor holds a person so that he or she is not free to leave or carry about his or her business.

B. THE PLAIN VIEW DOCTRINE

Since the single-purpose container exception is essentially an extension of the plain view doctrine, a brief explanation of the plain view doctrine is warranted. The plain view exception to the warrant requirement rests on the notion that "once police are lawfully in a position to observe an item first-hand, its owner's privacy interest in that item is lost." Once that interest is lost, a warrantless seizure of the property is permissible under the Fourth Amendment. For the plain view doctrine to be effective, however, two requirements must be satisfied. First, the officer must view the item in question from a vantage point where he or she has the right to be. For example, "police may perceive an object while executing a search warrant, or they may come across an item while acting pursuant to some exception to the warrant clause." In either of these situations, the police would have a lawful justification for being in the location that allowed them to view the incriminating evidence. Second, the incriminating nature of the evidence sought to be seized must be immediately apparent to the police officer. For instance, because the incriminating character of the defendant's stereo equipment in Arizona v. Hicks was not apparent without an inspection of the serial numbers located thereon, the seizure of the equipment could not be justified by the plain view doctrine. Before the Supreme Court's opin-

74. Jacobsen, 466 U.S. at 113.
75. Jones, supra note 13, at 926.
78. Id.
81. Id. at 739 n.4; see Coolidge v. New Hampshire, 403 U.S. 443, 468 (1971) ("[P]lain view alone is never enough to justify the warrantless seizure of evidence.").
82. Brown, 460 U.S. at 736-37.
ion in *Horton v. California*, the plain view doctrine had a third requirement; that the evidence was discovered inadvertently. This was to prevent the plain view exception from becoming a pretext for otherwise unlawful searches. The need for an inadvertent discovery of incriminating evidence was rejected in *Horton*. In *Horton*, the Court explained the fact that "an officer is interested in an item of evidence and fully expects to find it in the course of a search should not invalidate its seizure if the search is confined in area and duration by the terms of a warrant or a valid exception to the warrant requirement."

By expanding upon the second element of the plain view doctrine, the single-purpose container exception brings the plain view doctrine into the realm of searches. While the plain view doctrine will "support the warrantless seizure of a container believed to contain contraband, any subsequent search of its concealed contents must either be accompanied by a search warrant or justified by one of the exceptions to the warrant requirement" such as the single-purpose container exception. As discussed earlier in Mr. Meada’s case, the warrantless search of his gun case was justified by the single-purpose container exception. Because the gun case’s outward appearance so clearly revealed the incriminating character of its contents, they were immediately apparent to the searching officer and therefore in plain view. In such a case, the police are not really searching the container because they already "know" what it contains. That is, it was so obvious that Mr. Meada’s case contained a gun it was as if the gun was lying exposed on the bedroom floor of his home.

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84. 496 U.S. at 137 (finding the inadvertent discovery element of the plain view doctrine to be unnecessary, as was previously required under *Coolidge*).
86. *Brown*, 460 U.S. at 737.
88. *Id.* at 138.
91. *United States v. Meada*, 408 F.3d 14, 23 (1st Cir. 2005).
92. *Id.*
C. THE SINGLE-PURPOSE CONTAINER EXCEPTION

Footnote thirteen of *Arkansas v. Sanders* created what is now the single-purpose container exception. The footnote was written to clarify the majority's holding that a warrant is required to search luggage found in a legally stopped automobile. The footnote's purpose was to add flexibility to the rule and allow for some warrantless searches. It states:

Not all containers and packages found by police during the course of a search will deserve the full protection of the Fourth Amendment. Thus, some containers (for example a kit of burglar tools or a gun case) by their very nature cannot support a reasonable expectation of privacy because their contents can be inferred from their outward appearance. Similarly, in some cases the contents of a package will be open to "plain view," thereby obviating the need for a warrant.

The Supreme Court expanded upon the single-purpose container exception in *Robbins v. California*. In this opinion, the Court recognized that the exception is "little more than another variation of the 'plain view' exception." The *Robbins* Court went on to say that a container is protected by the Fourth Amendment so long as its configuration does not reveal its contents, thereby not effectively placing them in the plain view of police officers. In defining when a container so reveals its contents, a plurality of the Supreme Court concluded that considering the circumstances in which a container is found or the searching officer's "generalized factual assertions" as to what a container likely contains would expand the exception beyond what was intended by the Court. General social norms define which ex-

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93. 442 U.S. at 764-65 n.13; see also United States v. Gust, 405 F.3d 797, 799 (9th Cir. 2005) (applying the single-purpose container exception). Some circuits, however, call the exception by different names. See, e.g., Williams, 41 F.3d at 198 (applying the plain view container doctrine); Donnes, 947 F.2d at 1437 (naming the exception the plain view container exception).
94. *Gust*, 405 F.3d at 800.
98. *Robbins*, 453 U.S. at 427. This reasoning is consistent with the principle that, absent some exception (e.g., the single-purpose container exception), "all containers will receive the full protection of the fourth amendment during a police search" so long as their owner has a reasonable expectation of privacy in their contents. United States v. Donnes, 947 F.2d 1430, 1435 (10th Cir. 1991).
The single-purpose container exception can be justified on similar grounds as the exceptions that came before it, but any benefits to law enforcement created by the exception are far outweighed by its shortcomings.

V. ANALYSIS

The single-purpose container exception can be justified on similar grounds as the exceptions that came before it, but any benefits to law enforcement created by the exception are far outweighed by its shortcomings.
ings. By allowing the warrantless search of a container whose contents are known with certainty by the police, the single-purpose container exception eases some of the burdens created by the warrant requirement.\textsuperscript{107} In allowing this exception, however, the Supreme Court unleashed upon an already cluttered and confusing area of law,\textsuperscript{108} another rule that must be interpreted and applied by courts throughout the country. This is where the single-purpose container exception fails. Not only has the exception been applied inconsistently by the circuits,\textsuperscript{109} it tends to apply to a very narrow set of facts\textsuperscript{110} and further erodes the protections guaranteed by the Fourth Amendment.\textsuperscript{111} The solution is to eliminate, or at least limit, the exception and require law enforcement officers to get a search warrant.

A. \textsc{The Circuit Split}

Writing for the Seventh Circuit Court of Appeals in United States v. Tejada, Judge Posner identified a split in the way federal circuits apply the single-purpose container exception.\textsuperscript{112} This case involved the warrantless search of a bag, later found to contain cocaine, located in the defendant’s entertainment center.\textsuperscript{113} Although this particular warrantless search was validated by the inevitable discovery doctrine,\textsuperscript{114} Judge Posner recognized that had this not been the case, the single-purpose container exception

\begin{thebibliography}{1}
\item[107] See United States v. Ross, 456 U.S. 798, 816 n.21 (1982) (noting the lengthy time required to get a warrant and the strain it places on the public's resources).
\item[108] See \textsc{Allen} et al., \textit{supra} note 7, at 462-550.
\item[109] Compare United States v. Banks, 514 F.3d 769, 775 (8th Cir. 2008) (considering common practices in the handgun industry when finding a particular gun case to be a single-purpose container), and United States v. Williams, 41 F.3d 192, 198 (4th Cir. 1994) (finding that a cellophane-wrapped package to be a single-purpose container because of the circumstances in which it was discovered and the police officer's experience), with \textsc{Gust}, 405 F.3d at 801 (disallowing extrinsic evidence and officer expertise in the determination as to which containers qualify as single-purpose containers).
\item[110] This case law suggests that the single-purpose container exception is used most often to search packages of drugs and gun cases. See \textsc{Gust}, 405 F.3d at 798; \textsc{Meada}, 408 F.3d at 22; \textsc{Williams}, 41 F.3d at 194; United States v. Corral, 970 F.2d 719, 722 (10th Cir. 1992).
\item[111] See, \textit{e.g.}, Arkansas v. Sanders, 442 U.S. 753, 764-65 n.13 (1979) (explaining that a warrant is not required to search certain containers when their appearance 'reveals' their contents); \textsc{Katz} v. United States, 389 U.S. 347, 357 (1967) (stating that, generally, searches conducted without a warrant are unreasonable under the Fourth Amendment).
\item[112] \textit{Id.} at 811.
\item[113] See generally 6 \textsc{LaFave}, \textit{supra} note 7, § 11.4(a), at 258-85 (noting that the inevitable discovery doctrine allows for evidence found as a result of a Fourth Amendment violation to be admissible in court, because its lawful discovery was inevitable despite the Fourth Amendment violation); Robert M. Bloom, \textit{Inevitable Discovery: An Exception Beyond the Fruits}, 20 \textsc{Am. J. Crim. L.} 79 (1992).
\end{thebibliography}
would have been addressed by the court. Whether or not it would have been applied to justify the warrantless search is another matter not relevant here. However, when the single-purpose container exception is relevant, the circuits are divided as to when a container so clearly reveals its contents as to justify a warrantless search. The circuits do not disagree as to the constitutionality of the exception, but rather in determining when to classify a given container as a single-purpose container. For example, the Fourth Circuit allows extrinsic evidence and the special expertise of police officers to be considered in determining when a container is a single-purpose container, while the First, Fifth, Ninth, and Tenth Circuits ignore this evidence in making the same determination. If the single-purpose container exception is never invalidated by the Supreme Court, the approach to the exception taken by these latter circuits is the lesser of two evils and therefore should be adopted by the remaining circuits. To be discussed in depth later, the approach taken by the First, Fifth, Ninth, and Tenth Circuits is preferable because it limits the scope of the exception by allowing fewer containers to qualify and also limits the amount of deference afforded to police officers. The Seventh Circuit has dealt with the issue, but has not officially taken a stance as to what type of evidence should be allowed in determining whether or not a container is a single-purpose container. Like the Seventh Circuit, the Eighth Circuit addressed the single-purpose container exception without determining what type of evidence is appropriate in defining a single-

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115. Tejada, 524 F.3d at 813.
116. See id.
117. Compare United States v. Williams, 41 F.3d 192, 198 (4th Cir. 1994) (finding a cellophane-wrapped package to be a single-purpose container because of the circumstances in which it was discovered and the police officer’s experience), with United States v. Gust, 405 F.3d 797, 801 (9th Cir. 2005) (disallowing extrinsic evidence and officer expertise in the determination as to which containers qualify as single-purpose containers).
118. Williams, 41 F.3d at 198.
119. See, e.g., Gust, 405 F.3d 797; United States v. Meada, 408 F.3d 14 (1st Cir. 2005); United States v. Villarreal, 963 F.2d 770 (5th Cir. 1992); United States v. Bonitz, 826 F.2d 954 (10th Cir. 1987).
120. Meada, 408 F.3d at 18-19 (declining to apply the exception to a container simply because a police officer recognized it to be an ammunition can); Gust, 405 F.3d at 801 (“[T]he extent to which a container’s exterior reveals its contents should not be solely determined either by the circumstances of its discovery, or by the experience and expertise of law enforcement officers.” (quoting United States v. Miller 769 F.2d 554, 560 (9th Cir. 1985))).
121. See, e.g., United States v. Cardona-Rivera, 904 F.2d 1149 (7th Cir. 1990); United States v. Eschweiler, 745 F.2d 435 (7th Cir. 1984).
purpose container. 122 Unlike the Seventh Circuit, however, the Eighth Circuit clearly did not take a stance. 123

In United States v. Williams, the court determined that two packages "wrapped heavily in cellophane and a layer of brown material" 124 were single-purpose containers that did not support a reasonable expectation of privacy. 125 The searching officer's testimony that "in his experience, similarly wrapped packages always contained narcotics" 126 weighed heavily on the court. 127 So too did the circumstances in which the packages were found. 128 In the Fourth Circuit, when "determining whether the contents of a container are a foregone conclusion, the circumstances under which an officer finds the container may add to the apparent nature of its contents." 129 Here, the packages were found in a suitcase along with dirty blankets, towels, and a burned shirt. 130 Because these are not normal items to take on a cross-country trip, the court found these circumstances relevant in establishing the incriminating nature of each container's contents. 131

The majority of the circuits lie on the other side of the issue. 132 As demonstrated in Gust, the Ninth Circuit "made clear that courts should assess the nature of a container primarily 'with reference to general social norms' rather than 'solely . . . by the experience and expertise of law enforcement officers.'" 133 The First Circuit used the same reasoning in United

122. See United States v. Banks, 514 F.3d 769, 773-75 (8th Cir. 2008).
123. See id. at 775 (explaining that the court does not need to determine whether it may "consider testimony based on the special expert testimony of a police officer" in finding a container to be a single-purpose container).
124. 41 F.3d 192, 194 (4th Cir. 1994).
125. Id. at 197, 198.
126. Id. at 194.
127. Id. at 198. ("Given the fact that Detective Finkel is a ten-year veteran of narcotics enforcement, [his opinion] is a compelling factor pointing toward the conclusion that the contents of the packages were a foregone conclusion.").
128. Id.
129. Williams, 41 F.3d at 197; see also United States v. Blair, 665 F.2d 500, 507 (4th Cir. 1981) (allowing the warrantless search of containers simply because they were found near similar containers that exposed their illegal contents).
130. Williams, 41 F.3d at 194.
131. Id. at 198.
132. See, e.g., United States v. Gust, 405 F.3d 797 (9th Cir. 2005); United States v. Meade, 408 F.3d 14 (1st Cir. 2005); United States v. Villareal, 963 F.2d 770 (5th Cir. 1992); United States v. Bonitz, 826 F.2d 954 (10th Cir. 1987).
133. Gust, 405 F.3d at 803 (quoting United States v. Miller 769 F.2d 554, 560 (9th Cir. 1985)); see also Bonitz, 826 F.2d at 956 (stating that a "hard plastic case did not reveal its contents to the trial court even though it could perhaps have been identified as a gun case by a firearms expert"). But see United States v. Huffhines, 967 F.2d 314, 319 (9th Cir. 1992) (noting that the defendant had no reasonable expectation in a bag because the officer could tell it contained a gun simply by looking at it).
States v. Meada, when it validated the warrantless search of a gun case and invalidated the search of a metal container thought to contain ammunition. The court upheld the warrantless search of the gun case because its label clearly revealed its contents such that expertise in firearms was not needed to know the case contained a gun. The opposite is true for the ammunition can. Although the police officer recognized the container as one commonly used to contain ammunition, the court concluded nonetheless “that Meada did have a privacy expectation in the ammunition can because its outward appearance did not reveal [its contents]” to the average person.

In further contrast to Williams and the Fourth Circuit, the Ninth Circuit in Miller expressly stated that extrinsic evidence should not be considered in deciding whether or not a container is a single-purpose container. Miller dealt with the warrantless search of a plastic bag that contained an “innocuous” white powder that had, mixed within it, another fiberglass container that contained cocaine. The court found the bag did not, by its outward appearance, announce its illegal contents to the casual observer. In reaching this conclusion, the court stated, “The bag did not have a distinctive shape or odor that identified its contents, other than the white powder that proved to be innocuous.” Likewise, in denying to apply the sin-
gle-purpose container exception to a camera lens case containing methamphetamine, the Tenth Circuit disregarded the fact that it was found inside a glove with a syringe.\footnote{142} In \textit{Donnes}, the court refused to consider extrinsic evidence because had they not, the single-purpose container exception would have been expanded to a point where a “warrantless search of any container found in the vicinity of a suspicious item” would be valid.\footnote{143} In concluding that the defendant’s gun case in \textit{Gust} was not a single-purpose container, the court disregarded the circumstances surrounding the search as well.\footnote{144} One of those circumstances was the defendant telling the police that “the cases he and his companions were carrying contained guns.”\footnote{145} This demonstrates the great length this court went to avoid considering extrinsic evidence in identifying a container as a single-purpose container.

The Seventh Circuit may have abstained from taking a side on the issue at hand,\footnote{146} but when Judge Posner’s opinion in \textit{United States v. Cardona-Rivera} is scrutinized, it hints at the circuit’s willingness to consider extrinsic evidence when applying the single-purpose container exception.\footnote{147} The first example of this occurs when Judge Posner states several Supreme Court Justices “believe . . . that if the shape or other characteristics of [a] container, taken with the circumstances in which it is seized\footnote{148} . . . proclaim its contents unambiguously, there is no need to obtain a warrant.”\footnote{149} By choosing these words in his opinion, instead of the opposing language used in \textit{Miller}, Judge Posner makes it appear that the Seventh Circuit would al-

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Although the \textit{Donnes} court recognized the officer’s experience and training, the court further explained that the inferences made by the officer were not without limitation:

\textit{We recognize that the officer’s experience and training could have led him to infer that the camera lens case contained narcotics in light of the fact that it was found inside the glove with a syringe. However, this inference does not alter the “cardinal principle that ‘searches conducted outside the judicial process, without prior approval by a judge or magistrate, are per se unreasonable . . .”’}\footnote{142}
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\textit{Id.} at 1438 (quoting Mincey v. Arizona, 437 U.S. 385, 390 (1978)); \textit{see also} United States v. Bonitz, 826 F.2d 954, 956 (10th Cir. 1987) (“This hard plastic case did not reveal its contents to the trial court even though it could perhaps have been identified as a gun case by a firearms expert.”).

142. \textit{Donnes}, 947 F.2d at 1438.
143. \textit{Id.}
144. \textit{United States v. Gust}, 405 F.3d 797, 804 (9th Cir. 2005).
145. \textit{Id.} at 798.
146. Whether the contents of a container “could be thought in ‘plain view’ because [they were] known with certainty, is an issue that has divided the circuits”; however, this issue is one in “which our court has not taken a position.” \textit{United States v. Tejada}, 524 F.3d 809, 813 (7th Cir. 2008).
147. \textit{See} 904 F.2d 1149 (7th Cir. 1990).
148. For example, taking the container from a suspected drug dealer as opposed to a “harmless old lady.” \textit{Id.} at 1155.
149. \textit{Id.}
low extrinsic evidence when determining which containers qualify as single-purpose containers. Even more revealing, is Judge Posner’s willingness to consider extrinsic evidence in Cardona-Rivera. There, the defendant lost any expectation of privacy he had in his container when he told police that it contained “coke.” The opposite happened when the defendant in Gust told the police that his containers contained guns. Finally, Judge Posner’s note that the defendant was found with a cellular telephone was unnecessary unless the circuit does in fact consider extrinsic evidence when applying the single-purpose container exception.

When the Eighth Circuit addressed the single-purpose container exception it did so with restraint. Here, the goal was to limit the exception to prevent it from completely eroding the expectation of privacy individuals have in everyday containers such as guitar cases or jewelry boxes. In applying the rule to the facts in Banks, the court clearly did not determine whether or not a court may consider the “special expertise of a police officer” in classifying a container as a single-purpose container. This is because the “Phoenix Arms” label on the defendant’s container made clear, even to the average person, that it contained a gun. This was enough to strip the defendant of his expectation of privacy in the case and validate the officer’s warrantless search of its contents.

The Supreme Court made statements that favor the First, Fifth, Ninth, and Tenth Circuits’ treatment of the single-purpose container exception in its plurality opinion in Robbins v. California. In this case, “the Court

150. Id. at 1155-56.
151. Compare Cardona-Rivera, 904 F.2d at 1156 (stating that once the defendant “admitted that his package contained a contraband substance, no lawful interest of his could be invaded by the officers’ opening the packages”), with United States v. Gust, 405 F.3d 797, 801-03 (9th Cir. 2005) (finding that a defendant retained a reasonable expectation of privacy in his container, despite admitting its contents to police officers).
152. Gust, 405 F.3d at 798.
153. Cardona-Rivera, 904 F.2d at 1155. (“[The defendant] does not question the existence of probable cause to arrest him and seize his briefcase with the packages of cocaine (and-the mark of an up-to-date drug dealer or stockbroker-the cellular telephone that was also in the brief case).”).
154. United States v. Banks, 514 F.3d 769, 774 (8th Cir. 2008) (“[T]he single-purpose nature of a container reduces the degree of privacy that a reasonable person may expect, but does not eliminate it.”). Given this restraint, it would not be incorrect to assume this circuit may favor the First, Ninth, Fifth, and Tenth Circuits’ treatment of the single-purpose container exception.
155. Id. (“[W]e do not wish our statement of the single-purpose container rule to be read such that we authorize police to open any seemingly innocuous single-purpose container.”).
156. Id. at 775.
157. Id.
158. Id.
rejected the argument that packages wrapped in green opaque plastic . . . were plain view containers because an experienced observer could have inferred that the packages contained marijuana.\textsuperscript{160} Because the police officer's testimony did not establish that marijuana was "ordinarily 'packaged this way,'" the defendant continued to have a reasonable expectation of privacy in his packages wrapped in green plastic as the average person would not have recognized them to contain contraband.\textsuperscript{161} Further, while interpreting Robbins, the Miller Court found that a single-purpose container should not be defined solely by the circumstances of its discovery.\textsuperscript{162} As a general matter, the circuit split turns on the interpretation of Robbins. Circuits that choose to follow the plurality's opinion "evaluate the nature of a container without regard for the context in which it is found or the fact that the searching officer had special reasons to believe the container held contraband,"\textsuperscript{163} and those who do not, allow extrinsic evidence and specialized knowledge to be considered in classifying containers.

B. THE SIGNIFICANCE OF ALLOWING EXTRINSIC EVIDENCE AND POLICE EXPERTISE

By considering extrinsic evidence and the special expertise of police officers in classifying a container as a single-purpose container, courts exacerbate two problems. First, by considering these types of evidence, more containers will qualify as single-purpose containers,\textsuperscript{164} thus creating more situations where warrants will not be required.\textsuperscript{165} Second, when courts defer to police judgment as to which containers are single-purpose containers, there is a greater opportunity for mistake or misconduct, which the warrant process is designed to prevent.\textsuperscript{166}

\textsuperscript{160} United States v. Donnes, 947 F.2d 1430, 1438 (10th Cir. 1991); see Robbins, 453 U.S. at 427-28.
\textsuperscript{161} Robbins, 453 U.S. at 428.
\textsuperscript{162} United States v. Miller, 769 F.2d 554, 560 (9th Cir. 1985).
\textsuperscript{163} United States v. Gust, 405 F.3d 797, 802 (9th Cir. 2005).
\textsuperscript{164} See Illinois v. Jones, 830 N.E.2d 541, 552 (Ill. App. Ct. 2005) ("We agree with the State that perhaps a reasonable civilian could fail to recognize a 'one-hitter' box as drug paraphernalia."). This tends to show that, had the court relied solely on the "general social norms" standard discussed in Miller, the container in question would not have been classified as a single-purpose container. \textit{Id.;} see also United States v. Williams, 41 F.3d 192 (4th Cir. 1994) (relying heavily on the circumstances in which a container was found in making the determination to classify it as a single-purpose container).
\textsuperscript{165} Katz v. United States, 389 U.S. 347, 357 (1967) ("[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions.").
\textsuperscript{166} Coolidge v. New Hampshire, 403 U.S. 443, 450 (1971) ("[P]rosecutors and policemen . . . cannot be asked to maintain the requisite neutrality with regard to their own
lice knowledge, the Miller Court recognized that to permit such an extension of the single-purpose container exception "would increase significantly the risk of erroneous police decisions on whether there is sufficient certainty to permit a warrantless search."\(^{167}\)

1. The Warrant Requirement

Central to the Fourth Amendment is the idea that a search or seizure will be unconstitutional if not accompanied by a warrant.\(^{168}\) The warrant requirement holds a prominent place in United States Supreme Court decisions and for good reason.\(^{169}\) Language suggesting it should only be bypassed in a few situations needs to be respected.\(^{170}\) As more exceptions to the warrant requirement are accepted by the Supreme Court, the chances that unconstitutional deprivations of privacy will take place greatly increase.\(^{171}\) The continued existence of the single-purpose container exception, especially in its broadest form,\(^{172}\) and other erosions of the Fourth Amendment like it, cannot be overlooked as insignificant.\(^{173}\) The Supreme Court recognized in Boyd v. United States\(^{174}\) and again in Coolidge that "illegitimate and unconstitutional practices get their first footing in . . . silent approaches and slight deviations from legal modes of procedure."\(^{175}\) Arguably, the single-purpose container exception is the kind of silent approach or slight deviation the Court contemplated in Boyd. It was certainly investigations—the 'competitive enterprise' that must rightly engage their single-minded attention.\(^{176}\); see also Johnson v. United States, 333 U.S. 10, 13-14 (1947).

167. Miller, 769 F.2d at 560 (quoting 2 WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 7.2(e), at 245 (Supp. 1985)).

168. See Coolidge, 403 U.S. at 467 (noting that intrusions, by way of search or seizure, are evils that should not be justified without a careful determination as to their necessity); Katz, 389 U.S. at 357.

169. The warrant requirement stands for the "basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches and levels of government." Arkansas v. Sanders, 442 U.S. 753, 759 (1979) (quoting United States v. U.S. Dist. Court (Keith), 407 U.S. 297, 317 (1972)).


172. See United States v. Williams, 41 F.3d 192 (4th Cir. 1994) (considering extrinsic evidence and special police knowledge in applying the single-purpose container exception).

173. Sanders, 442 U.S. at 759-60 ("[E]ach exception to the warrant requirement invariably impinges to some extent on the protective purpose of the Fourth Amendment . . . ").


a concern of the Fifth, Eighth, and Ninth Circuits. The Court went on to suggest that adherence to the warrant requirement is the remedy to such an undesirable consequence, the continuance of an unconstitutional practice.

The argument against strict adherence to the warrant requirement has merit because an after-the-fact review of police decisions can be more efficient, as it generates less litigation and uses fewer resources. There is also evidence to suggest that magistrates do not always demonstrate the neutrality envisioned by the Supreme Court. However, when police officers go their entire career without knowing what a search warrant is, the movement has gone too far. In Donnes for instance, the warrantless entry of the defendant’s home was made by a police officer who, after being an officer for eighteen years, “had never once obtained a search warrant, and . . . ‘didn’t even know what a search warrant was’.” Warrants are also necessary to prevent unlawful intrusions and aid in successful searches and seizures as part of police investigations.

2. Police Deference

When federal circuits defer to police officer judgment in deciding whether or not to classify a container as a single-purpose container, they create executive power that is counter to the Fourth Amendment and susceptible to misuse. The Fourth Amendment “interposed a magistrate between the citizen and the police” as a means to have an “objective mind weigh the need to invade [an expectation of privacy].” Supreme Court precedent suggests that this is because:

176. See United States v. Banks, 514 F.3d 769, 774 (8th Cir. 2008); United States v. Gust, 405 F.3d 797, 802 (9th Cir. 2005); United States v. Villarreal, 963 F.2d 770, 776 (5th Cir. 1992).
177. Coolidge, 403 U.S. at 454.
178. See Robbins v. California, 453 U.S. 420, 433 (1981) (discussing the effect the warrant requirement has on the public’s limited resources); 2 LAFAVE, supra note 7, § 4.1(a), at 442-45.
179. 2 LAFAVE, supra note 7, § 4.1(a), at 442-45.
181. 2 LAFAVE, supra note 7, § 4.1(a), at 442-45. When police obtain a warrant before making a seizure or conducting a search, they know for a fact that their actions are lawful and the evidence they seize will be admissible in court. Id. at 444. With after-the-fact review, a search can be deemed unconstitutional, where had the police been aware of a deficiency, for example, through the warrant process, they could have investigated further to correct it and then effect a valid search. Id.
183. McDonald v. United States, 335 U.S. 451, 455 (1948); see also Coolidge, 403 U.S. at 449 ("When the right of privacy must reasonably yield to the right of search is, as a
The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.  

A neutral and detached magistrate is an important element in a system where the mistakes of well-intentioned, but overzealous, police officers can create serious constitutional violations when their interests in solving a crime cause them to put the constitutional interests of their suspect into the background. For example, had the police officer in *Gust* obtained a search warrant before opening the defendant's gun case, the defendant's Fourth Amendment rights would have been protected and his conviction on weapons charges would likely have been sustained. In *McDonald v. United States*, the Supreme Court suggested that the right of privacy is "too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." However, to say that police officers cannot be trusted is to go too far. Therefore, police discretion in the context of the single-purpose container exception should be limited, not eliminated. The purpose of limiting police discretion in this context is to retain the reasonable expectation of privacy rightfully attached to most containers and to prevent unconstitutional intrusions into peoples' privacy. As stated in *Gust*, when courts consider the special knowledge of police officers when classifying containers, the result is an overly intrusive single-purpose container exception that "essentially permits law enforcement to conduct warrantless searches of indistinct and innocuous containers... in contravention of the well established principle that 'no amount of probable cause can justify a warrantless search or seizure absent exigent circumstances.' To this end, the Supreme Court has made an effort to ensure

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186. *United States v. Gust*, 405 F.3d 797, 803-04 (9th Cir. 2005).
187. 335 U.S. at 455-56.
188. *Id.*
189. *Gust*, 405 F.3d at 802 (quoting Horton v. California, 496 U.S. 128, 137 (1990)); *see also* United States v. Banks, 514 F.3d 769, 774 (8th Cir. 2008) ("If we allow police to open any single-purpose container they lawfully come across we would be authorizing exploratory searches of containers where a reasonable person would rightfully expect privacy:...".)
that expectations of privacy are not invaded by unfettered police discretion.\footnote{190}{See Delaware v. Prouse, 440 U.S. 648 (1979); Brown v. Texas, 443 U.S. 47 (1979).}

Although the single-purpose container exception has not been extended to violin cases or cereal boxes as posited in \textit{Banks}, fears of the expansive effect of considering special police knowledge in the context of the single-purpose container exception are justified.\footnote{191}{\textit{Banks}, 514 F.3d at 774.} As noted in Appendix B of \textit{Gust}, the defendant's gun case was very similar to the average guitar case and the government attempted, nonetheless, to justify the warrantless search of that container using the single-purpose container exception.\footnote{192}{\textit{Gust}, 405 F.3d at 807-14.} Also, the hard plastic case under review in \textit{Bonitz}, was so nondescript that the trial court would have suspected it to contain a violin.\footnote{193}{United States v. Bonitz, 826 F.2d 954, 956 (10th Cir. 1987).}

Police discretion is essential, and is often considered in the context of police officers' decisions to arrest or not to arrest, due to the reality that not every criminal ordinance or statute can or should be enforced at all times.\footnote{194}{See \textit{Kenneth Culp Davis, Police Discretion} 62-63 (1975) ("No matter what the legislative body has made a crime and no matter what the literal words of the full enforcement legislation say, patrolmen do not arrest for all offences committed in their presence.").} However, with discretion comes the potential for abuse and misuse which can negatively impact the police function and individual citizens.\footnote{195}{See \textit{Gregory Howard Williams, The Law and Politics of Police Discretion} 90 (1984).} The issues and concerns presented by police discretion in the context of arrest are transferrable to the present issue of warrantless searches of containers and are therefore worth discussing here.\footnote{196}{United States v. Miller, 769 F.2d 554, 560 (9th Cir. 1985) (stating that too much police deference can lead to erroneous decisions); see also United States v. Villarreal, 963 F.2d 770, 775 (5th Cir. 1992) (applying a narrow construction of the single-purpose container exception to avoid the problems associated with classifying containers).} Despite its place in law enforcement, there is reason to eliminate unnecessary discretion and to control that discretion which is necessary.\footnote{197}{See \textit{Davis}, supra note 194, at 141-43.} The primary reason is to place a check on police power, because out of all the trustworthy police officers, there is a handful that will abuse their power and potentially deprive citizens of their rights.\footnote{198}{\textit{Id.} at 143.} For example, as mentioned in \textit{Banks} and \textit{Gust}, an officer could use the discretion granted to him as a tool for validating the warrantless

for example, police could open violin cases and guitar bags, look inside cereal boxes and bread baskets, or empty out clothes hampers and jewelry boxes without even a suspicion that these containers hold evidence of a crime."\footnote{199}{\textit{Id.} at 143.}
searches of countless containers that ordinarily would support a reasonable expectation of privacy.

When circuits consider evidence derived from the searching officer’s expert knowledge, they introduce a subjective element into the determination of what privacy interest is reasonable that is not present in the Robbins interpretation of the single-purpose container exception. This subjective element further exacerbates the problem of the circuit split by creating a situation where the reasonableness of an individual’s expectation of privacy will turn on the knowledge of the particular officer searching his or her belongings. Because all police officers do not possess the same knowledge, the very same container could exclaim its contents to officer A, but not officer B. Thus, in the context of the single-purpose container exception, the protections provided by the Fourth Amendment are determined not by the United States Constitution or its courts, but by the mere chance a police officer may recognize a container as containing something criminal.

To avoid these problems, the single-purpose container exception, if it is going to be used at all, should be limited in its scope. That is, it should be applied without considering special police knowledge or the circumstances in which the container was found as suggested in Robbins. In most cases, however, the Fourth Amendment’s warrant requirement should be adhered to because after all, “[i]t is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”

C. INCONSISTENCY CREATED BY THE SINGLE-PURPOSE CONTAINER EXCEPTION

The problem with this circuit split is that it produces inconsistent results that add confusion to the law, making it more difficult for police offi-

199. E.g., United States v. Meada, 408 F.3d 14, 24 (1st Cir. 2005) (noting that a tin can was not a single-purpose container because the officer present at the time did not know what it contained); United States v. Williams, 41 F.3d 192, 198 (4th Cir. 1994) (relying on the searching officer’s experience, not general police knowledge, in identifying a single-purpose container).

200. Robbins v. California, 453 U.S. 420, 428 (1981) (”Expectations of privacy are established by general social norms . . . .”); see also United States v. Gust, 405 F.3d 797, 801 (9th Cir. 2005) (“[C]ourts should make judgments about the applicability of the ‘single-purpose container’ exception by evaluating the nature of containers from the objective viewpoint of a layperson rather than from the subjective viewpoint of a trained law enforcement officer.”).

201. See Robbins, 453 U.S. at 427-28; see also Gust, 405 F.3d 797; Meada, 408 F.3d 14; United States v. Villarreal, 963 F.2d 770 (5th Cir. 1992); United States v. Bonitz, 826 F.2d 954 (10th Cir. 1987).

cers, attorneys, and judges to do their jobs. The Supreme Court has recognized the problems caused by inconsistencies in the law and has, in the past, worked to resolve them. The same should be done with the single-purpose container exception. Not only is the rule applied inconsistently as to what evidence is allowed, there is inconsistency even among the circuits that allow the same amount of evidence. The negative result of the inconsistent application of the single-purpose container exception is that similar containers are given different levels of Fourth Amendment protection.

Take for example, packages of drugs. In United States v. Williams, which was decided in a circuit that allows extrinsic evidence, the court found that the defendant had no reasonable expectation of privacy in his bricks of cocaine. On the other hand, in Robbins v. California, similarly wrapped bricks of marijuana sustained a reasonable expectation of privacy. In its reasoning, the Robbins Court did not rely on the searching officer's testimony that he knew the packages contained illegal drugs due to his years of experience. Miller provides another troubling example of the inconsistent application of the single-purpose container exception. As discussed above, Miller involved the illegal search of a fiberglass container that was found in a plastic baggy filled with an innocuous white powder. There is little to differentiate this container from the one taken from the defendant's suitcase in Williams; they both consist of white powder sur-

204. See California v. Acevedo, 500 U.S. 565, 579 (1991) (“Although we have recognized firmly that the doctrine of stare decisis serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results. . . . [T]he existence of the dual regimes for automobile searches that uncover containers has proved as confusing as the Chadwick and Sanders dissenters predicted. We conclude that it is better to adopt one clear-cut rule to govern automobile searches . . . .”).
205. Compare United States v. Villarreal, 963 F.2d 770, 776 (5th Cir. 1992) (stating that simply because a container’s label “purports to reveal some information about its contents does not necessarily mean that its owner has no reasonable expectation that those contents will remain free from inspection by others”), with United States v. Meada, 408 F.3d 14, 22 (1st Cir. 2005) (“[The defendant] did not have a reasonable expectation of privacy in the contents of [his] gun case because the case’s GUN GUARD label ‘clearly revealed its contents. It was specifically made to carry guns and was stamped accordingly.’”). While both of these circuits apply a narrow version of the single-purpose container exception—one that disregards extrinsic evidence and subjective viewpoints of police officers—they still lack consistency when applying the exception, because they give different consideration to labels on containers and, therefore, different constitutional protection.
206. 41 F.3d 192, 198 (4th Cir. 1994).
208. Id. at 427-28.
209. See United States v. Miller, 769 F.2d 554 (9th Cir. 1985).
210. Id. at 560.
rounded by transparent plastic.\textsuperscript{211} For two containers so similar in appearance and purpose, to be given inconsistent constitutional treatment should not be tolerated. With such unpredictability, how is a police officer to know when he may or may not assume a cellophane or plastic wrapped 'brick' contains illegal drugs? As alluded to in the previous section, he may not know, and therefore he may encroach upon a citizen's or suspect's Fourth Amendment rights.

The First, Fifth, Ninth, and Tenth Circuits' unwillingness to consider specialized police knowledge when applying the single-purpose container exception is favorable, because it narrows the number of situations where the exception will be applicable.\textsuperscript{212} However, relying on general social norms to determine whether a container is a single-purpose container is not without flaws and can still produce inconsistent results. To validate the warrantless search of the defendant's gun case in \textit{Meada}, the court relied on its label for support that its contents were unambiguous.\textsuperscript{213} Because the case said "GUN GUARD" on it, a layperson could reasonably expect it to contain a gun.\textsuperscript{214} Using the same standard, general social norms may suggest that the white powder in a plastic baggy is really cocaine, but as we have already seen, the \textit{Miller} court was unwilling to reach this conclusion.\textsuperscript{215} The chances of the white powder in a plastic baggy being cocaine and a gun being found in a case labeled "GUN GUARD" are too similar for these containers to be given unequal constitutional protection.

The different treatment of labeled containers is yet another problem with the single-purpose container exception.\textsuperscript{216} Despite a Supreme Court opinion\textsuperscript{217} where the Court found that "descriptive labels on boxes of obscene films did not eliminate the reasonable expectation of privacy in the content of the films,"\textsuperscript{218} some federal circuits have found that labels on con-

\begin{footnotesize}
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\item \textsuperscript{211} See \textit{Williams}, 41 F.3d at 194; \textit{Miller}, 769 F.2d at 555.
\item \textsuperscript{212} United States v. Gust, 405 F.3d 797, 801 (9th Cir. 2005) ("In \textit{Miller}, we interpreted the Robbins plurality opinion to mean that courts should make judgments about the applicability of the 'single-purpose container' exception by evaluating the nature of containers from the objective viewpoint of a layperson . . . .")
\item \textsuperscript{213} United States v. Meada, 408 F.3d 14, 23 (1st Cir. 2005).
\item \textsuperscript{214} See id.
\item \textsuperscript{215} \textit{Miller}, 769 F.2d at 560.
\item \textsuperscript{216} Compare United States v. Banks, 514 F.3d 769, 775 (8th Cir. 2008) (finding that the single-purpose container exception applied to a container labeled "Phoenix Arms" because a casual observer could conclude that it contained a gun), with United States v. Villarreal, 963 F.2d 770, 776 (5th Cir. 1992) (stating that simply because a container's label "purports to reveal some information about its contents does not necessarily mean that its owner has no reasonable expectation that those contents will remain free from inspection by others").
\item \textsuperscript{217} \textit{Walter} v. United States, 447 U.S. 649 (1980).
\item \textsuperscript{218} United States v. Donnes, 947 F.2d 1430, 1438 (10th Cir. 1991) (citing \textit{Walter}, 447 U.S. at 658-58) (Marshall, J., concurring)).
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tainers that exclaim their contents remove any expectation of privacy in those contents.\textsuperscript{219} In the Fifth Circuit, "\textbf{[i]t}he fact that the exterior of a container purports to reveal some information about its contents does not necessarily mean that its owner has no reasonable expectation that those contents will remain free from inspection by others.\textsuperscript{220} However, in applying the very same single-purpose container exception, the Eighth Circuit came to the opposite conclusion and determined that a container's label makes its contents known to the layperson.\textsuperscript{221} So too did the First Circuit.\textsuperscript{222} Here, the court considered the "GUN GUARD" label on the defendant's container as evidence to suggest a layperson could expect the case to contain a firearm.\textsuperscript{223} As a result, two identical containers—gun cases with some label describing their contents—will receive different treatment in terms of the warrant requirement, despite being protected by the same Fourth Amendment. The single-purpose container exception in its current divided form is creating situations where identical containers are not being given identical constitutional protection. To resolve this problem, federal circuits need to consistently disallow extrinsic evidence and apply the general social norms standard explained in Robbins\textsuperscript{224} and followed by the First, Fifth, Ninth, and Tenth Circuits when applying the single-purpose container exception.\textsuperscript{225} The better solution; however, may be to discontinue using the exception altogether.

The inconsistent application of the single-purpose container exception by the federal circuits is further complicated by the state courts' reliance on their opinions. Illinois courts have been struggling with the issue for decades.\textsuperscript{226} In \textit{Illinois v. Jones}, the Illinois Supreme Court finally made a decision that the expert knowledge of police officers should be considered in determining whether a container is for a single-purpose, and therefore does not support an expectation of privacy.\textsuperscript{227} In doing so, the Court upheld the

\textsuperscript{219} E.g., \textit{Donnes}, 947 F.2d at 1438.
\textsuperscript{220} \textit{Villarreal}, 963 F.2d at 776 ("If the government seeks to learn more than the label reveals by opening the container, it generally must obtain a search warrant.").
\textsuperscript{221} \textit{Banks}, 514 F.3d at 775.
\textsuperscript{222} See \textit{United States v. Meada}, 408 F.3d 14, 19 (1st Cir. 2005).
\textsuperscript{223} Id.
\textsuperscript{224} \textit{Robbins} v. California, 453 U.S. 420, 428 (1981) ("Expectations of privacy are established by general social norms . . . .").
\textsuperscript{225} E.g., \textit{Meada}, 408 F.3d at 24; \textit{Villarreal}, 963 F.2d at 776; \textit{Donnes}, 947 F.2d at 1438; \textit{United States v. Miller}, 769 F.2d 554, 560 (9th Cir. 1985).
\textsuperscript{227} 830 N.E.2d 541, 555 (Ill. 2005).
warrantless search of a one-hitter box\textsuperscript{228} that a police officer viewed in the defendant's shirt pocket during a traffic stop.\textsuperscript{229} Although the officer's testimony showed he was uncertain as to the container's actual contents, the Court deferred to his judgment nonetheless.\textsuperscript{230} In support of this conclusion, the Court cited the Fourth, Tenth, and Seventh Circuit cases of \textit{Williams}, \textit{Corral}, and \textit{Eschweiler}.\textsuperscript{231} The effect of \textit{Jones} was to disregard prior Illinois precedent\textsuperscript{232} and erode Fourth Amendment protections by allowing more containers to qualify as single-purpose containers.\textsuperscript{233} The consequences of this decision are great considering the facts of \textit{Illinois v. Penny}.\textsuperscript{234} In that case, the Court invalidated the warrantless search of "a package, approximately 7 inches in diameter and 4 inches thick, wrapped in a brown opaque plastic material . . . ."\textsuperscript{235} "Here, the only reasons given for the search [were] based on the officer's experience[,] the officer thought that the package ‘looked like a kilo of cocaine’ . . . ."\textsuperscript{236} Should this situation present itself in Illinois today, the Illinois Supreme Court would likely uphold the validity of the search by relying on police officer testimony despite the fact that "a thousand other items . . . are legitimately used and packaged in similar wrappings."\textsuperscript{237} This creates an undesirable situation in which fewer containers are granted the Fourth Amendment protection they deserve.

\textsuperscript{228} This wooden box was "approximately two inches wide, four inches tall, and less than an inch thick." \textit{Id.} at 546. Containers of this type are "commonly used to carry cannabis." \textit{Id.}

\textsuperscript{229} \textit{Id.}

\textsuperscript{230} \textit{Id.} at 556 ("Viewed from [the officer's] standpoint, taking into account his training and experience, we conclude that defendant's 'one-hitter' box proclaimed its contents. To a civilian, it is possible that [the officer's] belief could seem to be a mere 'suspicion.' To [him] however, the contents of the box were a virtual certainty.").

\textsuperscript{231} \textit{Id.} at 554.


\textsuperscript{233} In the \textit{Jones} opinion, the court stated, "[w]e agree with the State that perhaps a reasonable civilian could fail to recognize a 'one-hitter' box as drug paraphernalia." \textit{Jones}, 830 N.E.2d at 552. Had the Illinois Supreme Court relied on the First, Fifth, Ninth, or Tenth Circuits and applied a "general social norms standard," the defendant would have retained a reasonable expectation of privacy in his box, and the Fourth Amendment would have avoided another attack on its integrity.


\textsuperscript{235} \textit{Id.} at 1016. ("When [the officer] poked a hole in the top of the package with a knife, he saw that it contained white powder which later proved to be cocaine.").

\textsuperscript{236} \textit{Id.} at 1017 (emphasis added).

\textsuperscript{237} \textit{Id.} at 1016.
This problem extends beyond Illinois. Unlike the federal courts in the Ninth Circuit, the state courts of Washington expand upon the single-purpose container exception by considering police officer experience.238 In Washington v. Courcy the court considered the warrantless search of a folded paper bindle.239 Here, the court determined the warrantless search was valid because the officer was able to make the “necessary factual assertions” that cocaine is ordinarily packaged this way and because he had the “necessary identification experience.”240 In Colorado v. Mascarenas, the court also determined that a paper bindle was a single-purpose container and therefore validated a warrantless search of such a container.241 The treatment of paper bindles appears to be reasonable. In Michigan, however, a very similar container received very different treatment, which again brings into question the reasonableness of the single-purpose container exception.242 In Michigan v. Bickel, the court invalidated the warrantless search of small foil packets found in a plastic bag in the defendant’s possession.243 Incredibly, in making its determination, the court ignored the observations of a layperson who believed the packets to contain contraband.244 So, this state court refused to apply even the more conservative version of the single-purpose container exception that is used in the First, Fifth, Ninth, and Tenth Circuits.245 The result is an inconsistency in the treatment of very similar containers used for the same purpose. The only real difference between a paper bindle and a folded piece of foil is the material in which they are made. Fourth Amendment protections should not be determined by such a distinction. Because of the inconsistent application of the single-purpose container exception, people cannot be sure if the containers they use to hold their belongings support the reasonable expectation of privacy they deserve. The solution is to discontinue, or at least significantly limit, the use of the single-purpose container exception; a rule that appears logical on its face, but is unworkable as applied.

239. Id. at 99. A bindle is essentially a makeshift envelope made from folded paper.
240. Id. at 102.
241. 972 P.2d 717, 722 (Colo. Ct. App. 1998) (“[B]indles . . . are the sort of unique, single-purpose containers that may be opened without a search warrant under the 'single-purpose container rule.'”).
243. Bickel, 1998 WL 1990380, at *1. Laboratory tests confirmed that the foil packets contained heroin. Id.
244. Id.
245. E.g., United States v. Gust, 405 F.3d 797 (9th Cir. 2005); United States v. Meada, 408 F.3d 14 (1st Cir. 2005); United States v. Villarreal, 963 F.2d 770 (5th Cir. 1992); United States v. Bonitz, 826 F.2d 954 (10th Cir. 1987).
VI. CONCLUSION

The logic behind the single-purpose container exception is sound. It allows police officers to efficiently locate contraband and seize it. As the cited cases have shown, the exception is an effective tool to help police get drugs off the streets and guns away from dangerous people. In these cited cases, there was not a single time where the officers' experience led them astray. Each time, their intuitions were correct and the container in question did contain contraband. Consider Crawford v. Florida as an example of how perceptive police officers can be. In Crawford, the searching officer felt in the defendant's pocket a small cylindrical tube, which the officer believed to be an M&Ms candy container filled with crack cocaine. Once the container was removed from the defendant's pocket, the officer's suspicions were verified.

The single-purpose container exception is not undesirable because it proves to be an effective tool for law enforcement officers in locating contraband and making arrests. The deference the single-purpose container exception provides to police officers is arguably beneficial to society because it aids police in their mission to fight crime. It is important to remember, however, that the "evil of an unreasonable search or seizure is that it invades privacy, not that it uncovers crime, which is no evil at all." The problem is that the single-purpose container exception is not evenly applied. Because the federal circuits do not agree as to the kinds of evidence allowed in classifying single-purpose containers, and because labeled containers are not given consistent treatment, the Fourth Amendment is being applied inconsistently to very similar containers. To apply the Fourth Amendment in such a way is to do so arbitrarily, which undermines the purpose of the amendment altogether. The significance of the Fourth Amendment is drastically defeated if people cannot count on it to protect them from unwanted governmental intrusions into their personal property. Simply because a plain black case is labeled "GUN GUARD" or "Phoenix Arms" instead of "BUSHMASTER" should not remove the owner's expectation that its contents will remain private. Nor should a plastic wrapped item be safe from government intrusion in one jurisdiction, while remaining

246. See United States v. Banks, 514 F.3d 769 (8th Cir. 2008); Meada, 408 F.3d 14; United States v. Williams, 41 F.3d 192 (4th Cir. 1994); United States v. Corral, 970 F.2d 719 (10th Cir. 1992); United States v. Cardona-Rivera, 904 F.2d 1149 (7th Cir. 1990); United States v. Blair, 665 F.2d 500 (4th Cir. 1981).
248. Id. at 522.
249. Id.
open to intrusion in another. Additionally, a drug user or dealer should not be more protected from warrantless searches simply because he or she chooses to store their drugs in small foil packets instead of folded paper.

Just as the Supreme Court adopted one clear-cut rule to govern automobile searches, it needs to adopt an equally clear-cut rule to govern the single-purpose container exception so that its application is uniform across the circuits. The Court was almost there in Robbins, but fell short. A majority of the Court, rather than a plurality, needs to decide that courts cannot consider the context in which a container is found when applying the single-purpose container exception. To be complete, the Court would also have to restrict courts from considering the particularized knowledge of the searching officer. If the Supreme Court were to prohibit this evidence, fewer containers would be subject to the exception, thus respecting the Warrant Clause and promoting consistency in the constitutional treatment of containers by limiting police discretion and requiring lower courts to apply the exception identically. In this limited form, the single-purpose container exception could persist without seriously eroding the Fourth Amendment and still be a helpful tool for law enforcement officials looking to conduct searches efficiently and lawfully, but the better option still, would be to invalidate the exception altogether.

DANIEL KEGL*

252. See United States v. Miller, 769 F.2d 554, 559 (9th Cir. 1985) (discussing the Supreme Court's interpretation of the single-purpose container exception in Robbins).

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