

**GO TINY OR GO HOME:  
HOW LIVING TINY MAY INADVERTENTLY REDUCE PRIVACY RIGHTS IN  
THE HOME**

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## I. INTRODUCTION

We have all seen shows on channels like HGTV and the DIY Network devoted to “tiny homes,” including *Tiny House Nation*,<sup>1</sup> *Tiny House Hunters*,<sup>2</sup> and *Tiny Luxury*.<sup>3</sup> Inspired by desires to simplify finances, live a minimalist lifestyle, and focus on relationships and experiences, tiny homes are designed to be truly *tiny*, averaging about 186 square feet of living space, roughly the size of a garage.<sup>4</sup>

Builders of tiny homes face many legal challenges, but perhaps the greatest hurdles are constructing the home in compliance with local building codes and finding a place where tiny houses are allowed.<sup>5</sup> Building codes in most municipalities set a minimum size for foundation-built homes, effectively forcing tiny homes to be constructed on trailers,<sup>6</sup> which often places them into the recreational vehicle (RV) category.<sup>7</sup> Zoning laws add to the regulatory complexity, often restricting where a tiny home on wheels may be placed.<sup>8</sup>

Although building a tiny home on wheels is a creative way to circumvent building codes, doing so may have unintended consequences under the Fourth Amendment, which protects against “unreasonable searches and seizures”<sup>9</sup> and generally requires police to obtain a warrant to

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1. *Tiny House Nation* (Loud Television television broadcast 2014), <http://www.fyi.tv/shows/tiny-house-nation>.

2. *Tiny House Hunters* (Pie Town Productions television broadcast 2014), <http://www.hgtv.com/shows/tiny-house-hunters/episodes>.

3. *Tiny Luxury* (Bodega Pictures television broadcast 2015), <http://www.hgtv.com/shows/tiny-luxury/episodes>.

4. See Ryan Mitchell, *What Is the Tiny House Movement* (2017), <http://thetinylife.com/what-is-the-tiny-house-movement> [hereinafter Mitchell].

5. See Teresa Mears, *Could You Survive in 150 Square Feet? The Lowdown on Tiny Homes*, U.S. NEWS (June 18, 2015, 9:56 AM), <http://money.usnews.com/money/personal-finance/articles/2015/06/18/8-factors-to-consider-before-joining-the-tiny-house-movement>; see also Associated Press, *Northeast Arkansas Town Restricts Tiny House Construction*, WASH. TIMES (June 21, 2015), <http://www.washingtontimes.com/news/2015/jun/21/northeast-arkansas-town-restricts-tiny-house-const/> (reporting that city officials in Jonesboro, Arkansas, recently voted to restrict construction of homes less than 600 square feet because such small houses are a fire hazard and can reduce adjacent property values).

6. See JAY SHAFER, *THE SMALL HOUSE BOOK* 9 (2nd ed. 2010).

7. See Mears, *supra* note 5; see also Katherine M. Vail, *Saving the American Dream: The Legalization of the Tiny House Movement*, 54 U. LOUISVILLE L. REV. 357, 370 (2016).

8. See Vail, *supra* note 7, at 370.

9. U.S. CONST. amend. IV.

search for evidence of criminal wrongdoing.<sup>10</sup> Americans have traditionally enjoyed the greatest Fourth Amendment protection in their homes, a threshold which generally may not be crossed without a warrant.<sup>11</sup> Searches of automobiles and other motor vehicles, however, often do not require prior judicial approval and may be based on a police officer's own determination of probable cause.<sup>12</sup> Because tiny houses on wheels are readily mobile, full-time residences, this begs the question—yet unexplored by any court or scholar—of whether police may search a tiny home on wheels without a warrant under the automobile exception. This Article explores that issue.

Part II of this Article summarizes the so-called tiny house movement. Part III considers zoning laws and building codes and examines their impact on the construction and placement of tiny homes. Part IV summarizes the automobile exception to the Fourth Amendment's warrant requirement, examining cases involving motor homes, RVs, and trailers. Part V considers the automobile exception's likely application to tiny houses and sets forth a proposal for treating nearly all tiny houses alike under the Fourth Amendment. Part VI concludes.

## II. THE TINY HOUSE MOVEMENT

The “tiny house movement” is a “social movement where people are choosing to downsize the space they live in.”<sup>13</sup> The average size of a new home built in 2014 was over 2,400 square feet.<sup>14</sup> By contrast, the typical tiny

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10. See *Katz v. United States*, 389 U.S. 347, 357 (1967) (stating the familiar principle that “searches 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”) (emphasis added); see also *Riley v. California*, 134 S. Ct. 2473, 2482 (2014).

11. The United States Supreme Court has repeatedly emphasized the heightened Fourth Amendment protections in the home. *E.g.*, *Payton v. New York*, 445 U.S. 573, 585 (1980) (recognizing that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed”) (quoting *United States v. United States District Court*, 407 U.S. 297, 313 (1972)); *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.” With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.” (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961))).

12. See *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (listing the requirements of the automobile exception to the warrant requirement as probable cause and ready mobility).

13. Mitchell, *supra* note 4.

14. Mears, *supra* note 5.

house built on trailers, the focus of this Article, is about 200 square feet.<sup>15</sup> Any home between 500 and 1,000 square feet is considered “small,” not “tiny.”<sup>16</sup>

The concept of “living little” became more popular during the minimalist craze of the early 2000s and gained traction during the recession as a way to combat high mortgages, weekends spent on home repair and maintenance, and the bitter reality that home values can fall quickly during economic downturns.<sup>17</sup>

The typical tiny house costs between \$45,000 and \$80,000,<sup>18</sup> and the trend is to make them “bigger and fancier.”<sup>19</sup> Thus, tiny houses that are just under 400 square feet and cost \$70,000 or more are increasingly common.<sup>20</sup> In general, however, a 180-square foot tiny home on wheels will cost around \$45,000 to construct, with about half of that cost spent on materials and about half on labor.<sup>21</sup>

Tiny homes are different from motor homes and RVs because they are designed to look like a home built on a foundation, only smaller.<sup>22</sup> In addition, tiny homes, unlike motor homes and RVs, usually serve as someone’s permanent residence.<sup>23</sup> Moreover, although building standards

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15. There are different types of “tiny houses.” This Article focuses on those that are around 200 square feet, situated on wheels, and able to move from place to place. There are also “tiny house ‘eco-villages,’ which are essentially communities of small houses clustered together.” Mears, *supra* note 5. Additionally, homes that are less than 1,000 square feet, built in a traditional way, and intended to stay put are also considered part of the “tiny house movement.” *Id.*

16. Lukas I. Alpert, *West Texas Town Finds ‘Tiny House’ Crowd a Bit Too Earthy*, WALL ST. J. (June 13, 2016, 9:22 PM), <https://www.wsj.com/articles/west-texas-town-finds-tiny-house-crowd-a-bit-too-earthly-1465867332>.

17. Richard Reep, *Florida’s Tiny House Movement Embraces Some Big Ideas*, ORLANDO WEEKLY (Dec. 28, 2016), <http://www.orlandoweekly.com/orlando/floridas-tiny-house-movement-embraces-some-big-ideas/Content?oid=2550158&showFullText=true>.

18. See *FAQs*, TINY HOUSE COMMUNITY, <http://www.tinyhousecommunity.com/faqs/#what> (last visited Oct. 19, 2017).

19. *Id.*

20. *Id.*

21. *Id.* (citing rangerfan213, *What It Really Costs to Build a Tiny Home* (Nov. 1, 2014), <https://rangerfan213.wordpress.com/2014/11/01/what-it-really-costs-to-build-a-tiny-home/>).

22. Claudia Boyd-Barrett, *Can Tiny Houses Help Solve Ventura County’s Woes?*, VENTURA CTY. STAR (Oct. 3, 2016, 3:00 PM), <http://www.vcstar.com/story/news/local/communities/2016/10/03/can-tiny-houses-help-solve-ventura-countys-woes/91495296/>; see SHAFER, *supra* note 6, at 18 (containing a photograph of a truck towing a typical tiny home).

23. See, e.g., FLA. STAT. § 320.01(1)(b) (2017) (defining “motor vehicle” to include “[a] recreational vehicle-type unit primarily designed as temporary living quarters for

exist for RVs, residential homes on foundations, and manufactured homes,<sup>24</sup> none of these standards are fully applicable to the tiny home on wheels<sup>25</sup> (although a state or municipality can deem them so, as in Minnesota, discussed below).

Although there is no official, legal definition of a “tiny house on wheels,” according to a popular set of “Guidelines for Tiny Houses on Wheels,”<sup>26</sup> a “tiny house on wheels” is a structure which is intended as a full-time residence or year-round rental property and meets the following five conditions:

- (1) is built on a trailer registered with the builder’s local DMV;
- (2) is towable by a “bumper hitch, frame-towing hitch, or fifth-wheel connection,” such that it is incapable of moving and is not designed to be moved under its own power;
- (3) is typically “no more than 8'6" wide, 30' long, and 13'6" high” (larger structures may require a commercial driver’s license when being towed);
- (4) has between 70 and 400 square feet of interior living space (excluding lofts); and
- (5) accommodates normal daily activities, such as cooking and sleeping.<sup>27</sup>

In short, a tiny home is designed to serve as a full-time residence; yet, it may also be moved from place to place by a vehicle capable of towing it.<sup>28</sup>

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recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle,” an example of which is the “motor home,” which is defined as “a vehicular unit which . . . is a self-propelled motor vehicle . . . primarily designed to provide temporary living quarters for recreational, camping, or travel use”).

24. Elaine Walker, *Guidelines for Tiny Houses on Wheels (THOWs)*, TINY HOUSE COMMUNITY, <http://www.tinyhousecommunity.com/guidelines-for-thow/> (last visited Oct. 10, 2017); *see generally* TINY HOUSES CODE FACT SHEET, MINN. DEP’T OF LAB. AND INDUS., [https://www.dli.mn.gov/cld/PDF/tiny\\_houses.pdf](https://www.dli.mn.gov/cld/PDF/tiny_houses.pdf) [hereinafter CODE FACT SHEET].

25. *See* CODE FACT SHEET, *supra* note 24 (describing the requirements for tiny houses on wheels separately from those without); *see also* Walker, *supra* note 24.

26. According to the author of the Guidelines for Tiny Houses on Wheels, these guidelines “are not recognized by any government authority” and are designed to help establish standards that might later be adopted by agencies when creating new zoning or code regulations for tiny houses. Walker, *supra* note 24.

27. *Id.*

28. *See* SHAFER, *supra* note 6, at 18 (containing a photograph of a truck towing a typical tiny home).

Thus, if a tiny home dweller wants to spend his summer visiting Alaska,<sup>29</sup> California,<sup>30</sup> Texas,<sup>31</sup> Florida,<sup>32</sup> Colorado,<sup>33</sup> and Indiana,<sup>34</sup> he may do so if he has a vehicle capable of transporting his home and finds locations in those states where tiny homes are allowed.

Because zoning laws and building codes effectively dictate where most tiny home dwellers will choose to locate their home and how they will construct it,<sup>35</sup> the next Part examines trends in housing regulations as they pertain to the tiny house movement.

### III. ZONING LAWS, BUILDING CODES, AND HOUSING REGULATIONS

Although growing in popularity, tiny home living is complicated by the legal hurdles that must be overcome to construct a tiny house. Building a tiny home on a foundation is often risky due to building codes and zoning laws, which generally prohibit residences below a certain minimum square footage.<sup>36</sup> For this reason, most tiny home builders initially used “legal loopholes” to make tiny home living a reality, including building homes on trailers to evade minimum square footage requirements for foundation-built

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29. See Elise Giordano, *Tiny House Trailers Considered Recreational Vehicles*, SKAGWAY NEWS (Feb. 18, 2016), <http://skagwaynews.com/2016/02/18/tiny-house-trailers-considered-recreational-vehicles/> (reporting that Skagway Borough, Alaska “assembly members passed the first reading of an ordinance that permits tiny house trailers as recreational vehicles where RVs are currently allowed”).

30. See Ramona Giwargis, *San Jose: New Law Would Make City First to Allow “Tiny Homes” for Homeless*, MERCURY NEWS (Oct. 7, 2016) (reporting changes to laws in San Jose, California, that allow tiny homes for the homeless).

31. See Alpert, *supra* note 16 (stating that the “relaxed building codes” in certain areas of Texas make tiny homes appealing).

32. See Reep, *supra* note 17.

33. See Lloyd Alter, *Finally! Tiny Home Subdivisions and Developments are Becoming a Reality*, TREEHUGGER (Dec. 21, 2015), <https://www.treehugger.com/tiny-houses/finally-tiny-home-subdivisions-and-developments-are-becoming-reality.html> (reporting a change in zoning code restrictions on houses less than 600 square feet to permit tiny homes in the town of Walsenburg, Colorado).

34. See Jeff Parrott, *Will Tiny House Movement Make a Big Impact in South Bend?*, SOUTH BEND TRIBUNE (Dec. 11, 2016), [http://www.southbendtribune.com/news/local/will-tiny-house-movement-make-a-big-impact-in-south/article\\_55ef082c-5f71-5bdc-9080-203ee89b7856.html](http://www.southbendtribune.com/news/local/will-tiny-house-movement-make-a-big-impact-in-south/article_55ef082c-5f71-5bdc-9080-203ee89b7856.html) (contemplating a tiny house subdivision in South Bend, Indiana).

35. See Vail, *supra* note 7, at 372–73 (discussing how tiny home dwellers must find loopholes to circumvent various building codes and zoning laws).

36. *Id.* at 365 (stating that zoning laws regulating the minimum amount of floor space in housing effectively exclude tiny homes from most residential neighborhoods).

homes.<sup>37</sup> However, in recent years, advocates of the tiny house movement have been working to “change the law[] rather than evade it.”<sup>38</sup> After summarizing traditional housing regulations, including zoning laws and building codes, this Section examines those efforts, and subsequent sections show how housing regulations may inadvertently impact a tiny home owner’s Fourth Amendment rights.

#### A. Zoning Laws

Housing regulations in America include both zoning laws and building codes.<sup>39</sup> Zoning laws date back to the early 1900s and are used today to manage the development and use of land by creating different zones and regulating the use and construction of property allowed in each zone.<sup>40</sup>

In 1926, the United States Supreme Court held that the passage of zoning laws is a constitutional exercise of a government’s police powers to promote health, safety, morals, and the general welfare.<sup>41</sup> In that case, the Court recognized that one of the basic elements of zoning is the classification of land by permissible use.<sup>42</sup> Common permissible uses today include residential, containing buildings for human habitation; commercial, where businesses are located; agricultural, encompassing lands used for farming; industrial, including manufacturing, shipping, and transportation; and conservation, such as areas dedicated to soil and water preservation.<sup>43</sup> A city’s districts may be further divided into sub-districts. A residential district, for example, may be divided into sub-districts separating low-density (single-family homes with large lots), high-density (single- and

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37. See, e.g., SHAFER, *supra* note 6, at 9–10 (describing the author’s experience evading housing regulations).

38. Vail, *supra* note 7, at 358.

39. See Georgette Chapman Phillips, *An Urban Slice of Apple Pie: Rethinking Homeownership in U.S. Cities*, 24 NOTRE DAME J.L. ETHICS & PUB. POL’Y 187, 191–92 (2010); see also Sara C. Galvan, *Rehabilitating Rehab Through State Building Codes*, 115 YALE L.J. 1744, 1746 (2006) (discussing building codes).

40. *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 386–87 (1926).

41. *Id.* at 386–97.

42. *Id.* at 388.

43. See Eric Damian Kelly, *Fair Housing, Good Housing or Expensive Housing? Are Building Codes Part of the Problem or Part of the Solution?*, 29 J. MARSHALL L. REV. 349, 352 (1996) (stating that common land use classifications include residential, commercial, industrial, and agricultural uses); S.C. CODE ANN. § 6-29-710(A)(5) (2004) (stating that a zoning ordinance must be made for certain purposes, including, but not limited to, conservation).

multiple-family homes with small lots), and planned-unit structures (condominiums or apartments).

Since 1928, the Supreme Court has rarely held that a zoning measure exceeds the police power.<sup>44</sup> As a result, the primary responsibility for regulating zoning laws resides with the states, which have generally delegated the zoning power to municipalities.<sup>45</sup> Municipalities' zoning rules govern more than permissible uses of land.<sup>46</sup> In residential districts, for example, an ordinance may regulate matters such as lot size and height.<sup>47</sup> Importantly for the tiny house movement, zoning ordinances usually set minimum square footage requirements, often in the range of 500 to 1,500 square feet.<sup>48</sup> These zoning ordinances serve various purposes, including preserving land values, preventing overcrowding, fostering the general health of the community's occupants, and preserving a community's character.<sup>49</sup> Jurisdictions may also require minimum lot sizes, which can pose a problem for those wishing to live in a tiny home.<sup>50</sup> Although there are exceptions, square footage and lot size requirements effectively make tiny homes constructed on a foundation illegal in most jurisdictions.<sup>51</sup>

To circumvent traditional building requirements, builders of tiny homes often construct their homes on trailers.<sup>52</sup> However, doing so does not necessarily make a tiny home lawful. For example, in 2015, in St. Cloud,

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44. *The Legitimate Objectives of Zoning*, 91 HARV. L. REV. 1443, 1443 (1978) [hereinafter *Legitimate Objectives*].

45. *Id.* at 1443–44; Galvan, *supra* note 39, at 1746.

46. *See Legitimate Objectives, supra* note 44, at 1444 (recognizing that municipalities have more than one objective that they may pursue through zoning).

47. Vail, *supra* note 7, at 362; *see also Legitimate Objectives, supra* note 44, at 1445–46.

48. *See Builders Serv. Corp., Inc. v. Planning & Zoning Comm'n of Town of E. Hampton*, 545 A.2d 530, 540 n.13 (Conn. 1988) (setting forth minimum square footage requirements in over 150 Connecticut municipalities); *see also* CODE FACT SHEET, *supra* note 24 (stating that “minimum building size varies from areas of 500 to 2,000 square feet”); *cf.* *Lionshead Lake, Inc. v. Wayne Twp.*, 89 A.2d 693, 698 (N.J. 1952) (upholding minimum floor space requirements of 768 square feet for a one-story dwelling; 1,000 square feet for a two-story dwelling with an attached garage; and 1,200 square feet for a two-story dwelling without an attached garage).

49. *See Lionshead Lake*, 89 A.2d at 697.

50. *See id.* at 697–98; *see also* Rebecca Thiele, *Kalamazoo's First Tiny House May Change Housing Laws*, WMUK (Sept. 16, 2016), <http://wmuk.org/post/kalamazoo-s-first-tiny-house-may-change-housing-laws> (reporting that foundation-built homes in Kalamazoo, Michigan, may be as small as 120 square feet, but the municipality's minimum lot sizes could pose a problem for residents wishing to reside in a tiny home within the city).

51. *See Vail, supra* note 7, at 365.

52. *See, e.g.,* SHAFER, *supra* note 6, at 9.

Minnesota, the St. Cloud Zoning Board of Appeals denied a church's request to allow a tiny house to be used to house homeless persons on church grounds.<sup>53</sup> In rejecting the church's permit, the St. Cloud Zoning Board of Appeals found that the tiny home, which had been built on a trailer, most closely resembled an RV and therefore could not be used as a full-time residence under the city's zoning laws.<sup>54</sup> Deeming the matter a legislative concern, St. Cloud Zoning Board of Appeals Chairman Drew Hultgren declared that "[u]nless the [city's zoning ordinance] changes, . . . we couldn't approve it."<sup>55</sup>

As the St. Cloud example illustrates, even when tiny homes are built on wheels to circumvent minimum square footage requirements, the homes may still be illegal if they fail to comply with requirements applicable to other analogous structures. Thus, a tiny home builder does not necessarily satisfy zoning requirements by building a home on a trailer.

### B. Building Codes

Along with zoning laws, building codes usually impact the construction of tiny houses.<sup>56</sup> As with zoning laws, the power to draft building codes resides with the states, which have generally delegated that power to local governments.<sup>57</sup> Building codes in the United States have evolved from a short set of rules constituting a few sentences to complex sets of documents filling hundreds of pages.<sup>58</sup> Today, approximately 10,000 jurisdictions in the United States have a traditional building code.<sup>59</sup>

Building codes control the construction of buildings and are designed to ensure that buildings are safe, sanitary, convenient, and efficient.<sup>60</sup> As such, building codes typically set forth technical requirements that are drafted by industry experts to ensure a minimum standard of quality and safety.<sup>61</sup>

"Narrowly defined, 'building codes' address the structure of buildings," while "[s]upplemental codes address such issues as plumbing and electrical

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53. Frank Rajkowski, *Tiny House Sits Empty as Search for Solution Continues*, ST. CLOUD TIMES (Sept. 18, 2015), <http://www.sctimes.com/story/news/local/2015/09/18/tiny-house-sits-empty-search-solution-continues/72419484/>.

54. *Id.*

55. *Id.*

56. See Kelly, *supra* note 43, at 350.

57. Galvan, *supra* note 39, at 1747.

58. Kelly, *supra* note 43, at 349.

59. Galvan, *supra* note 39, at 1747.

60. Kelly, *supra* note 43, at 349.

61. Galvan, *supra* note 39, at 1747.

systems.”<sup>62</sup> Numerous model building codes exist,<sup>63</sup> such as the International Building Code (IBC), which have greatly influenced local building laws.<sup>64</sup> In jurisdictions with a building code, a “building code administrator,” or someone with a similar title, implements the code.<sup>65</sup>

Manufactured homes, or mobile homes, add to the complexity of zoning laws and building codes.<sup>66</sup> Municipalities often discourage manufactured homes because they can be perceived as eye sores that attract undesirable inhabitants.<sup>67</sup> Some older manufactured homes also came with extreme safety risks, such as highly flammable materials.<sup>68</sup> For the past few decades, however, most new manufactured homes have been subject to standards established by the U.S. Department of Housing and Urban Development (HUD),<sup>69</sup> such that many of these homes are built with the types of technologies often used to build more traditional homes.<sup>70</sup> Finally, although most mobile homes today contain 1,400 or more square feet,<sup>71</sup> they are usually easily identifiable as manufactured homes and are subject to their own unique set of HUD standards.<sup>72</sup>

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62. See Kelly, *supra* note 43, at 354.

63. *Id.* at 350–51 (listing regional model building codes, including, among others, “the Uniform Building Code, developed by the International Congress of Building Officials (ICBO); the Basic Building Code ([BOCA]), developed by the Building Officials Conference of America; the Southern Standard Building Code, prepared by the Southern Building Code Congress; and the National Building Code, offered by the American Insurance Association”); see also *Veeck v. S. Bldg. Code Cong. Int’l Inc.*, 241 F.3d 398, 401 (5th Cir. 2001) (noting that several towns in North Texas have adopted building codes published by Southern Building Code Congress International).

64. See 5 PHILIP L. BRUNER & PATRICK J. O’CONNOR JR., BRUNER & O’CONNOR ON CONSTRUCTION LAW § 16:2, 5 n.11 (2017) (describing the various model building codes and their adoption by state and local governments).

65. Kelly, *supra* note 43, at 352.

66. *Id.* at 354.

67. *Id.*

68. *Id.*

69. 2 U.S.C. § 5403(d) (2012); Kelly, *supra* note 43, at 354–55; *Office Manufactured Housing Programs*, U.S. DEP’T HOUS. & URBAN DEV., [https://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/rmra/mhs/mhshome](https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/mhs/mhshome) (last visited Nov. 7, 2017).

70. Kelly, *supra* note 43, at 354–55.

71. *Id.* at 355.

72. *Id.* at 354–55.

### C. *Tiny House Regulations*

Tiny houses, like all other houses, must comply with applicable zoning laws and building codes.<sup>73</sup> Because the tiny house movement is relatively new, only a handful of municipalities have expressly amended their zoning laws to specifically account for the tiny home.<sup>74</sup> Accordingly, in most jurisdictions, housing officials and prospective homeowners face great uncertainty when attempting to categorize the tiny house, which is necessary to determine applicable building standards and zoning laws.<sup>75</sup>

Because the typical tiny home has characteristics of traditional homes built on foundations (as to its aesthetics and amenities), RVs (as to its mobility), and manufactured homes (as to its prefabricated manner of construction), in jurisdictions where building codes have not been amended to specifically account for the tiny home, tiny homes might be deemed to fall into any of those categories, so it is difficult to know in advance what rules apply.<sup>76</sup> The Minnesota Department of Labor and Industry (Minnesota Labor Department) recently issued a “Code Fact Sheet” to provide guidance on this very issue in Minnesota.<sup>77</sup>

According to the Code Fact Sheet, a tiny home may fall into one of several distinct categories of structures depending on a host of variables, including whether the particular tiny home is built on a chassis with wheels,

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73. CODE FACT SHEET, *supra* note 24.

74. *See, e.g.*, BRILEY TOWNSHIP, MICH., ZONING ORDINANCE §§ 201, 500 (2015) (containing the zoning ordinance of Briley Township, Michigan, which now permits an “economy efficient dwelling,” which is a dwelling of between 240 and 500 square feet that is placed on a permanent foundation).

75. *See* Brynn Grimley, *Steilacoom Family’s Tiny Housing Choice Raises Big Question About Size*, NEWS TRIBUNE (Aug. 15, 2016, 7:00 PM), <http://www.thenewstribune.com/news/local/article95866897.html> (describing the uncertainty surrounding the regulation of tiny homes in Washington); *see generally* CODE FACT SHEET, *supra* note 24 (attempting to help tiny home owners navigate the zoning and building code uncertainties of owning a tiny home).

76. *See* Grimley, *supra* note 75 (describing the uncertainty surrounding the regulation of tiny homes in Washington and reporting on one Washington county that classifies a tiny home on wheels as an RV); Brian Perry, *Ideas to Increase Maui County’s Affordable Housing Inventory Offered*, MAUI NEWS (Oct. 8, 2016), <http://www.mauinews.com/uncategorized/2016/10/ideas-to-increase-maui-countys-affordable-housing-inventory-offered/> (noting the report of a Maui County Council investigative group stating that “[i]t is unclear how tiny homes with wheels are treated for purposes of the building and zoning codes” and recommending comprehensive rezoning by the Maui County Council to make tiny homes lawful).

77. CODE FACT SHEET, *supra* note 24.

whether it is intended to provide permanent or temporary living quarters, whether it is site-built or prefabricated, and its square footage.<sup>78</sup>

The Minnesota State Building Code governs the construction and use of buildings in the State of Minnesota.<sup>79</sup> As part of the Building Code, Minnesota also has a statewide “Residential Code,” called the “2015 Minnesota Residential Code,”<sup>80</sup> which itself contains detailed provisions governing the construction of single-family dwellings.<sup>81</sup>

As a starting point, the Minnesota Labor Department posits that a tiny house meets the definition of “dwelling” under the 2015 Minnesota Residential Code,<sup>82</sup> making its provisions applicable, including its minimum square footage requirements.<sup>83</sup> The Minnesota Residential Code, in turn, requires every dwelling unit to “have at least one habitable room [of] not less than 120 square feet,” adding that “[o]ther habitable rooms shall have a floor area of not less than 70 square feet.”<sup>84</sup> Unlike some housing codes, these particular square footage minimums likely do not pose a problem for many tiny homes.<sup>85</sup> However, because tiny homes in Minnesota might also be subject to other sets of standards—for example, those pertaining to prefabricated buildings—they could potentially still be illegal, as is true in other jurisdictions.<sup>86</sup>

According to the Minnesota Labor Department, a tiny home constructed on site is subject only to the requirements of the 2015 Minnesota Residential Code.<sup>87</sup> By contrast, “tiny houses built on a chassis with wheels” could be

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78. *Id.*

79. MINN. STAT. ANN. §§ 326B.101–16 (West 2013).

80. MINN. R. 1309.0010–.0905 (2017); Builders Ass’n of Twin Cities v. Minn. Dep’t of Labor & Indus., 872 N.W.2d 263, 266 (Minn. Ct. App. 2015) (stating that the Minnesota Residential Code is part of the Building Code); see CODE FACT SHEET, *supra* note 24 (providing an overview of the 2015 Minnesota Building Code).

81. The Minnesota State Building Code adopts by reference portions of the 2012 International Residential Code. MINN. R. 1309.0010 (2017); see CODE FACT SHEET, *supra* note 24 (discussing the 2015 Minnesota Building Code).

82. The Minnesota Residential Code defines “dwelling,” in pertinent part, to include “[a]ny building that contains one dwelling unit . . . designed to be . . . occupied for living purposes.” MINN. R. 1309.0202 (2017).

83. CODE FACT SHEET, *supra* note 24.

84. Vail, *supra* note 7, at 372 (quoting INT’L RESIDENTIAL CODE § R304.1 (INT’L CODE COUNCIL 2015) (incorporated by reference in MINN. R. 1309.0010 (2017))).

85. See Vail, *supra* note 7, at 372 (stating that local codes are likely a greater obstacle than the International Residential Code).

86. See, e.g., Vail, *supra* note 7, at 372–73 (recognizing that most tiny homes are factory built and would be illegal in Louisville, Kentucky, due to applicable square footage and permanent foundation requirements).

87. CODE FACT SHEET, *supra* note 24.

classified as a “recreational park trailer,” which is governed by a distinct set of building standards.<sup>88</sup> However, if a tiny home on wheels is intended as a permanent living dwelling unit, as most tiny homes are, the 2015 Minnesota Residential Code would govern.<sup>89</sup>

The 2015 Minnesota Residential Code likewise pertains to dwellings constructed as prefabricated buildings, which again includes most tiny homes;<sup>90</sup> however, such prefabricated buildings must *also* satisfy the requirements for prefabricated homes set forth in either Chapter 1360 or 1361 of the Minnesota Rules,<sup>91</sup> depending on the number of prefabricated homes a particular manufacturer constructs in a given calendar year.<sup>92</sup> Finally, a tiny home, depending on its size and manner of construction, could qualify as a HUD “manufactured home,” thereby triggering the usual HUD requirements for such homes.<sup>93</sup>

Although tiny home builders in Minnesota no doubt appreciate the Minnesota Labor Department’s guidance regarding how tiny homes will be regulated, this dizzying array of classifications and standards illustrates the difficulty some persons, including law enforcement, encounter when attempting to place a given tiny home into a traditional structural category. And of course, zoning laws may also impact the lawfulness of tiny homes, which is particularly true in Minnesota, where municipalities such as St. Cloud have deemed tiny homes on wheels essentially unlawful under local zoning laws (even if the tiny home otherwise complies with applicable building standards).<sup>94</sup>

When zoning laws do pose a problem for the tiny home dweller, individual homeowners may seek a variance, which is essentially an

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88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* See MINN. R. 1360.0100 (2017) (stating that the chapter of the rules is intended to govern the construction of prefabricated buildings for manufacturers who produce three or less prefabricated buildings in a calendar year).

93. See 42 U.S.C. § 5402 (2012) (defining a manufactured home); *id.* § 5404 (providing standards for manufactured home installation).

94. See ST. CLOUD, MINN., LAND DEV. CODE art. 14.3.H.1 (2014); see, e.g., SHAFER, *supra* note 6, at 15 (explaining how the author sidestepped building codes in Iowa City by building his tiny home on wheels only to discover additional zoning laws impacting where he could locate the home); Katie Moore, *Some Tiny Houses Not Allowed as Residences in Topeka*, TOPEKA CAPITAL-JOURNAL (Nov. 15, 2016), <http://cjonline.com/news/2016-11-15/some-tiny-houses-not-allowed-residences-topeka> (reporting that tiny homes in Topeka, Kansas, must be built on a permanent foundation to be lawful).

exception to zoning rules made on a case-by-case basis.<sup>95</sup> Some municipalities, sympathetic to the tiny house movement, have made changes to their zoning laws specifically allowing variances to the municipality's minimum floor area requirements. The City of Walsenburg, Colorado, for example, has adopted ordinances designed to make tiny homes lawful by explicitly authorizing the city's planning commission to consider variances to the minimum floor area required for homes located in certain residential districts within the city. However, to obtain such a variance, the dwelling must be permanently placed on a footer or foundation and separately connected to the city's water and sewer system.<sup>96</sup>

Although the City of Walsenburg likely did not consider the Fourth Amendment implications of its rules at the time, due to the foundation and utilities requirements described above, tiny homes in Walsenburg almost certainly enjoy the same Fourth Amendment protections pertaining to all homes—namely the full protection of warrants. However, this is not always the case, especially as to tiny homes built on wheels that could be considered “vehicles” rather than “homes” under the Fourth Amendment.<sup>97</sup>

Along with variances, some municipalities have taken a more proactive approach by amending their zoning laws and building codes to make tiny homes categorically lawful. For example, Coconino County, Arizona, has plans to amend its building code to allow tiny homes within the municipality.<sup>98</sup> Although not this Article's focus, the county's proposed revisions provide an excellent example of a building code specifically designed for tiny homes.<sup>99</sup> Of particular importance to this Article, however, is the fact that tiny homes in Coconino County can be built either on trailers or foundations,<sup>100</sup> thereby squarely presenting the issue of whether, as part of a criminal investigation, police may search a particular tiny home in

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95. See Nathan T. Boone, *Varying the Variance: How New York City Can Solve Its Housing Crisis and Optimize Land Use to Serve the Public Interest*, 81 BROOK. L. REV. 837, 839 (2016) (noting that variances create exceptions to zoning restrictions when economic necessity demands it).

96. E.g., Walsenburg, Colo., Ordinance No. 1045 (Sept. 2, 2014), [http://docs.wixstatic.com/ugd/1615ec\\_3abcd0d5b964a4da0dd22eb33976bf7.pdf](http://docs.wixstatic.com/ugd/1615ec_3abcd0d5b964a4da0dd22eb33976bf7.pdf).

97. See *California v. Carney*, 471 U.S. 386, 393 (1985) (characterizing a motor home as a “vehicle” and holding that the Fourth Amendment warrant requirement does not apply).

98. COCONINO CTY. ARIZ. CMTY. DEV., PERMITTING REGULATIONS FOR TINY HOUSES IN COCONINO COUNTY (Aug. 19, 2016), <http://coconino.az.gov/DocumentCenter/View/17693> [hereinafter COCONINO].

99. See *id.*

100. *Id.*

Coconino County without a warrant pursuant to the automobile exception, a topic addressed below.

#### IV. THE FOURTH AMENDMENT'S AUTOMOBILE EXCEPTION

The Fourth Amendment guarantees the “right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures” and generally requires police to obtain a warrant to search for evidence of criminal wrongdoing.<sup>101</sup> Partly due to the explicit protection of “houses” in the Fourth Amendment’s text, Americans have traditionally enjoyed the greatest Fourth Amendment protection in their homes, a threshold that generally may not be crossed without a warrant.<sup>102</sup> Although searches of the home may occur without a warrant in limited instances,<sup>103</sup> outside the home, the Fourth Amendment’s so-called warrant requirement is subject to numerous exceptions, including, but not limited to, consent,<sup>104</sup> searches incident to arrest,<sup>105</sup> stop and frisk searches,<sup>106</sup> and searches performed for administrative reasons.<sup>107</sup>

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101. U.S. CONST. amend. IV; *see* *Katz v. United States*, 389 U.S. 347, 357 (1967) (stating the familiar principle that “searches 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”) (emphasis added); *Riley v. California*, 134 S. Ct. 2473, 2482 (2014).

102. The United States Supreme Court has repeatedly emphasized the heightened Fourth Amendment protections in the home. *See, e.g.,* *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”) (internal citations and marks omitted); *Payton v. New York*, 445 U.S. 573, 585 (1980) (recognizing that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed”).

103. *See* *Kentucky v. King*, 563 U.S. 452, 460 (2011) (discussing the most common exigencies that may justify a warrantless search of a home).

104. *See* *Schneckloth v. Bustamonte*, 412 U.S. 218, 248–49 (1973).

105. *See* *United States v. Robinson*, 414 U.S. 218, 235 (1973).

106. *See* *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (authorizing the temporary seizure of a person suspected of committing a crime on the basis of reasonable suspicion, rather than probable cause, and further authorizing a limited search for weapons where police have reason to believe the person may be armed).

107. *See* *United States v. Ramsey*, 431 U.S. 606, 619 (1977) (recognizing that persons and property may be searched without a warrant or probable cause upon entry into the United States).

A. *The Automobile Exception Applied to Cars*

Under the automobile exception to the warrant requirement, police may search a vehicle<sup>108</sup> without a warrant if they have probable cause to believe the vehicle contains evidence of a crime and the vehicle is “readily mobile.”<sup>109</sup> Importantly for the tiny house movement, the “readily mobile” requirement is not stringent, merely requiring that a vehicle be capable of functioning as such—a standard that is easily met.

1. *The “Readily Mobile” Requirement*

Since 1925, the United States Supreme Court has decided numerous automobile exception cases.<sup>110</sup> In its early cases, the Court vacillated between a true “mobility” concern that requires an actual risk of losing valuable evidence if police are required to obtain a warrant to search a vehicle that may be quickly driven away<sup>111</sup> and a far more relaxed “mobility” standard that considers merely whether a vehicle is capable of operation, regardless of whether there is any meaningful chance the vehicle could be moved during the warrant application process.<sup>112</sup> Today, the latter view has prevailed.<sup>113</sup> Thus, as long as a vehicle is capable of operation and

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108. Notably, the automobile exception extends to more than automobiles capable of functioning on the highway. *See* *Carroll v. United States*, 267 U.S. 132, 153 (1925) (distinguishing a search of a “store, dwelling house, or other structure,” which generally requires a warrant, from a search of a “ship, motor boat, wagon, or automobile,” each of which “can be quickly moved out of the locality or jurisdiction in which the warrant must be sought”); *see also* *United States v. Hill*, 855 F.2d 664, 668 (10th Cir. 1988) (applying the automobile exception to a houseboat).

109. *See* *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (“If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.”).

110. *See* *California v. Carney*, 471 U.S. 386, 390–91 (1985) (tracing the history of the exception).

111. *See* *Coolidge v. New Hampshire*, 403 U.S. 443, 459–62 (1971); *Carroll*, 267 U.S. at 153; *see also* *Chambers v. Maroney*, 399 U.S. 42, 61–65 (1970) (Harlan, J., dissenting) (rejecting the argument that a vehicle may be searched without a warrant where there is no real danger that the vehicle will be moved out of the jurisdiction in the short time necessary to obtain a warrant).

112. *See* *Carney*, 471 U.S. at 393 (describing the “mobility” requirement as “readily mobile by the turn of an ignition key, if not actually moving”).

113. *See* *Maryland v. Dyson*, 527 U.S. 465, 466–67 (1999) (“[U]nder our established precedent, the ‘automobile exception’ has no separate exigency requirement.”); *Labron*, 518 U.S. at 940 (rejecting the requirement of an exigency to search a car without a warrant); *Cady*

probable cause exists to search it, police may search the vehicle without a warrant.<sup>114</sup>

In the Court's first automobile exception case, *Carroll v. United States*, police had probable cause to search a car stopped on the highway but could not arrest the vehicle's occupants until the officers actually observed the bootleg liquor they believed was hidden in the vehicle.<sup>115</sup> Under these circumstances, had a warrant been required, the car could have been "quickly moved out of the locality or jurisdiction in which the warrant must be sought."<sup>116</sup> Thus, the Court determined that police could immediately search the vehicle on the highway solely on the basis of probable cause.<sup>117</sup> Significantly, however, the Court stated that where it is "reasonably practicable" to secure a warrant prior to searching a car, one should be obtained.<sup>118</sup>

Although the *Carroll* ruling was grounded in the vehicle's capability of being quickly removed from the jurisdiction where a warrant might be obtained, arguably establishing a true exigency requirement,<sup>119</sup> the Court's more recent cases make clear that no such exigency is required.<sup>120</sup> In *Chambers v. Maroney*, for example, the Court held that a vehicle was properly searched without a warrant, pursuant to the automobile exception, while it was secured at a police station with its occupants safely behind bars.<sup>121</sup> Unlike in *Carroll*, where police could not make an arrest until after the car was searched, in *Chambers*, officers had probable cause to immediately arrest the vehicle's occupants.<sup>122</sup> Further, police searched the

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v. Dombrowski, 413 U.S. 433, 441–42 (1973) (commenting on the lack of any exigency in several of the Court's automobile exception cases).

114. See *Carney*, 471 U.S. at 392–93.

115. See *Carroll*, 267 U.S. at 159–62.

116. *Id.* at 153.

117. See *id.* at 155–57.

118. *Id.* at 156 ("In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer against a suit for damages. In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.") (citing *U.S. v. Kaplan*, 286 F. 963, 972 (S.D. Ga. 1923)); see also *Carney*, 471 U.S. at 401 (Stevens, J., dissenting) (endorsing this view).

119. See *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971) (endorsing this view of *Carroll*).

120. See *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (rejecting the exigency requirement for searches conducted under the automobile exception); *United States v. Johns*, 469 U.S. 478, 484 (1985) (citing *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (rejecting the exigency requirement for searches conducted under the automobile exception)).

121. *Chambers v. Maroney*, 399 U.S. 42, 47–52 (1970).

122. *Chambers*, 399 U.S. at 46.

*Chambers* vehicle only after towing it from the highway, securing the vehicle, and arresting its occupants.<sup>123</sup> As such, the officers arguably should have been required to obtain a warrant prior to conducting the search because there was no real danger that the *Chambers* automobile or any evidence inside would disappear while a warrant was sought.<sup>124</sup> Nevertheless, the Court upheld the search.<sup>125</sup> Emphasizing the “reasonableness” of the warrantless search, the *Chambers* majority stated that the vehicle “could have been searched on the [highway] when it was stopped since there was probable cause to search and it was a fleeting target for a search.”<sup>126</sup> According to Justice White, who authored the *Chambers* opinion, probable cause was still present at the station house and “so [was] the mobility of the car,” making the automobile exception applicable.<sup>127</sup>

Through its holding, the *Chambers* Court effectively treated functioning automobiles as *inherently* mobile—even while impounded at the police station—making the vehicle searchable upon probable cause alone. The Court reversed course, but only briefly, in another automobile exception case decided just one year later—*Coolidge v. New Hampshire*.<sup>128</sup>

In *Coolidge*, police arrested a man at his home and, without a valid search warrant, seized the car parked in his driveway, towed it to the police station, and searched it two days later, again a year later, and again a few months after that.<sup>129</sup> Evidence obtained from the car was then admitted against Coolidge, leading to his conviction.<sup>130</sup> On appeal to the Supreme Court, the State invoked the automobile exception and argued, pursuant to *Chambers*, that whenever police may search a vehicle on the highway under *Carroll*, they may also seize the vehicle and search it later at the police station.<sup>131</sup> The Court rejected the State’s argument because, in the majority’s view, “application of the *Carroll* case to these facts would extend it far

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123. *Id.* at 44.

124. *See id.* at 51.

125. *Id.* at 52.

126. *Id.*

127. *Id.* Although the majority’s reasoning on this point is somewhat unclear, the Supreme Court in *Coolidge* later described the holding of *Chambers* as follows: “*Chambers* . . . held only that, where the police may stop and search an automobile under *Carroll*, they may also seize it and search it later at the police station.” *Coolidge v. New Hampshire*, 403 U.S. 443, 463 (1971).

128. *Coolidge*, 403 U.S. at 453 (finding invalid a warrant authorizing the vehicle search because the warrant had been issued not to a neutral and detached magistrate, as the Fourth Amendment requires, but by the Attorney General, who was to be chief prosecutor at the trial).

129. *Id.* at 447–49.

130. *Id.* at 448.

131. *Id.* at 458.

beyond its original rationale.”<sup>132</sup> According to the Court, unlike *Carroll*, and to some extent *Chambers*, where the opportunity to search was “fleeting,” it was not in *Coolidge*.<sup>133</sup> Specifically, Coolidge was arrested inside his house and could not have gained access to the automobile.<sup>134</sup> Also, police had removed Coolidge’s wife from the home and told her she could not use the subject vehicle, after which they guarded the Coolidge property throughout the night.<sup>135</sup> For these reasons, the Court emphasized that the case involved “no alerted criminal bent on flight, no fleeting opportunity [to search] on an open highway after a hazardous chase, no contraband or stolen goods or weapons, no confederates waiting to move the evidence, not even the inconvenience of a special police detail to guard the immobilized [vehicle].”<sup>136</sup> Accordingly, the automobile exception was deemed “irrelevant.”<sup>137</sup>

Reflecting his desire to treat all functioning automobiles alike for Fourth Amendment purposes, Justice White, who authored *Chambers*, wrote a dissent in which he declared that “the difference between a moving and movable vehicle is tenuous at best.”<sup>138</sup> He therefore urged the Court, “in the interest of coherence and credibility,” to either “treat automobiles precisely as we do houses or apply th[e] [automobile exception] to readily movable as well as moving vehicles . . . .”<sup>139</sup> In Justice White’s view, as long as a vehicle is capable of operation, nothing more than probable cause should be required to search it.<sup>140</sup>

Despite these early disagreements regarding the meaning of mobility, Justice White’s relaxed view of mobility has since been routinely endorsed.<sup>141</sup> The Second Circuit Court of Appeals, for example, recently

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132. *Id.*

133. *Id.* at 460.

134. *Id.*

135. *Id.* at 460–61.

136. *Id.* at 462.

137. *Id.*

138. *Id.* at 537 (White, J., concurring and dissenting).

139. *Id.*

140. *See id.*

141. *See California v. Carney*, 471 U.S. 386, 392 (1985) (merely requiring vehicle to be “readily capable” of use on the highway); *United States v. Howard*, 489 F.3d 484, 493 (2d Cir. 2007) (rejecting the defendants’ argument that their vehicles were not “readily mobile” because they were in police custody and stating, “[w]hether a vehicle is ‘readily mobile’ within the meaning of the automobile exception has more to do with the inherent mobility of the vehicle than with the potential for the vehicle to be moved from the jurisdiction . . . .”); *Collins v. Commonwealth*, 790 S.E.2d 611, 618 (Va. 2016) (recognizing that “[a] vehicle’s inherent mobility—not the probability that it might actually be set in motion—is the

stated that the automobile exception's "readily mobile" requirement "has more to do with the *inherent mobility* of the vehicle than with the potential for the vehicle to be moved from the jurisdiction,"<sup>142</sup> adding that "[e]ven where there is little practical likelihood that [a] vehicle will be driven away"—as in a case where the vehicle's occupants are detained by police—the exception still applies.<sup>143</sup> Thus, under today's law, all functioning automobiles satisfy the automobile exception's mobility requirement, leaving only an officer's own determination of probable cause as a barrier to such a search, a notion of mobility that has potentially profound implications for the tiny home on wheels.<sup>144</sup>

## 2. *The Lesser Expectation of Privacy Rationale*

Given the differing conceptions of mobility, particularly as between *Chambers* (decided in 1970) and *Coolidge* (decided in 1971), the Court later determined that the automobile exception should be grounded in a different rationale, namely that vehicles enjoy relatively reduced expectations of privacy as compared to homes, thereby justifying their warrantless search.<sup>145</sup> This additional rationale effectively makes the lack of any mobility-based exigency essentially irrelevant in any given automobile exception case.<sup>146</sup>

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foundation of the automobile exception's mobility rationale") (quoting *United States v. Smith*, 456 F. App'x 200, 209 (4th Cir. 2011)); *cf.* *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) ("[W]here there [i]s probable cause to search a vehicle 'a search is not unreasonable if based on facts that would justify the issuance of a warrant, *even though a warrant has not been actually obtained*' . . . . In this case, the [lower court] found that there was 'abundant probable cause' that the car contained contraband. This finding alone satisfies the automobile exception to the Fourth Amendment's warrant requirement . . . .") (quoting *United States v. Ross*, 456 U.S. 798, 809 (1982)) (emphasis in the original).

142. *Howard*, 489 F.3d at 493 (emphasis added).

143. *Id.*

144. *See* *United States v. Navas*, 597 F.3d 492, 497–98 (2d Cir. 2010) (stating that the automobile exception "permits law enforcement to conduct a warrantless search of a readily mobile vehicle where there is probable cause to believe that the vehicle contains contraband" and stating that, "a vehicle's inherent mobility—not the probability that it might actually be set in motion—is the foundation of the mobility rationale") (first citing *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); then citing *Howard*, 489 F.3d at 493); *United States v. McKreith*, 708 F. Supp. 2d 216, 225 (D. Conn. 2010) (deeming the "practical likelihood" that a vehicle will be moved irrelevant under the automobile exception and applying the exception even though it was "unlikely" for the actual owner of a vehicle to have attempted to remove it from police custody (citing *Howard*, 489 F.3d at 493–94, regarding "practical likelihood").

145. *See Labron*, 518 U.S. at 940.

146. *See* *United States v. Graham*, 275 F.3d 490, 509 (6th Cir. 2001) ("Since *California v. Carney* . . . articulated an additional justification for warrantless car searches, namely that a

The Supreme Court has identified several factors that collectively reduce the expectation of privacy in automobiles, emphasizing the “pervasive and continuing governmental regulation” of vehicles as the primary factor.<sup>147</sup> In addition, the Court has noted that a vehicle’s “function is transportation and it seldom serves as one’s residence or as the repository of personal effects.”<sup>148</sup> Moreover, a vehicle “travels public thoroughfares where both its occupants and its contents are in plain view”<sup>149</sup> such that “[t]he expectation of privacy as to automobiles is . . . diminished by the obviously public nature of automobile travel.”<sup>150</sup> For these reasons, the primary rationale for the automobile exception today is that expectations of privacy in automobiles are diminished relative to the home, an important step for making certain “vehicles”—including motor homes and perhaps even tiny houses on trailers, particularly those that are classified as RVs—subject to the automobile exception.

*B. The Automobile Exception Applied to Motor Homes, Trailers, and RVs*

Given the distinction between homes (which enjoy the full protection of a warrant) and vehicles (which may be searched without a warrant due to a reduced expectation of privacy), it was only a matter of time before the Court had to determine whether a motor home should be treated similarly to homes or vehicles for Fourth Amendment purposes. The Court decided that issue in *California v. Carney*.<sup>151</sup>

In *Carney*, San Diego police received information that Defendant Charles Carney was using his Dodge Mini Motor Home to exchange marijuana for sexual favors.<sup>152</sup> At the time of their investigation, Carney’s motor home was parked near a downtown courthouse where a warrant could

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car’s occupants have a lesser expectation of privacy in their car than in their home due to our society’s pervasive regulation of automobiles, the necessity of a special exigency has waned.”).

147. *California v. Carney*, 471 U.S. 386, 392 (1985) (citing *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976)).

148. *United States v. Chadwick*, 433 U.S. 1, 12 (1977) (quoting *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion)), *abrogated by California v. Acevedo*, 500 U.S. 565 (1991).

149. *Id.*

150. *Opperman*, 428 U.S. at 368.

151. *Carney*, 471 U.S. 386.

152. *Id.* at 387–88.

have been obtained.<sup>153</sup> Police put the motor home under surveillance and within minutes observed a youth enter the vehicle, leaving shortly thereafter with marijuana.<sup>154</sup> The youth then informed the officers that he received the drugs in exchange for sexual contacts.<sup>155</sup> At that time, the officers had no indication the motor home was about to depart.<sup>156</sup> Nevertheless, without a warrant, police entered Carney's motor home, searched it, and seized drugs inside.<sup>157</sup>

After Carney was charged with possession of marijuana for sale, he moved to suppress the evidence discovered in the motor home.<sup>158</sup> Carney's motion was denied, leading to his conviction.<sup>159</sup> However, the California Supreme Court reversed, reasoning that the expectations of privacy in a motor home are akin to those in a dwelling because the primary function of a motor home is not transportation but rather to "provide the occupant with living quarters."<sup>160</sup> The United States Supreme Court granted certiorari to review that decision.<sup>161</sup>

Despite recognizing that Carney's vehicle "possessed some, if not many of the attributes of a home," the Court declared that "[w]hen a vehicle is being used on the highways, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes[,] . . . the two justifications for the vehicle exception come into play"—i.e., ready mobility and reduced expectations of privacy—making the exception applicable.<sup>162</sup> "At least in these circumstances," the Court declared, "the overriding societal interests in effective law enforcement justify an immediate search before the vehicle and its occupants become unavailable."<sup>163</sup>

The most important aspect of *Carney* for the tiny house movement is the fact that the Carney motor home, although not on the highway, was "so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle."<sup>164</sup> In footnote three of its opinion, the Court

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153. *Id.* at 404 (Stevens, J., dissenting).

154. *Id.* at 388.

155. *Id.*

156. *Id.* at 404 (Stevens, J., dissenting).

157. *Id.* at 388.

158. *Id.*

159. *Id.* at 388–89.

160. *People v. Carney*, 668 P.2d 807, 812 (Cal. 1983).

161. *Carney*, 471 U.S. at 389.

162. *Id.* at 392, 393.

163. *Id.* at 393.

164. *Id.*

suggested that the outcome might change in a scenario involving a “motor home that is situated in a way or place that objectively indicates that it is being used as a residence,” and listed “factors that might be relevant” to the analysis to include the vehicle’s “location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road.”<sup>165</sup> In a similar passage, the dissent suggested additional factors separating mobile homes from permanent structures, including “whether the home is moving or at rest, whether it rests on land or water, the form of the vehicle’s attachment to its location, its potential speed of departure, its size and capacity to serve as a domicile, and its method of locomotion.”<sup>166</sup>

*Carney* was decided in 1985, leaving more than thirty years for lower courts to distinguish vehicles objectively serving as residences and those that serve more of a vehicular function.<sup>167</sup> Although many vehicles “possess[] . . . attributes of a home,”<sup>168</sup> the primary factor courts consider in these cases is whether an objective observer would view the structure at issue as being used as a residence or as a vehicle.<sup>169</sup> Given the capacity for some vehicles to serve both functions (like the motor home in *Carney*), the lines are not always clear, but as a structure becomes more “readily mobile,” the automobile exception will more likely apply. With these principles in mind, the remainder of this Section considers cases applying *Carney* to searches of motor homes, RVs, and trailers.

### 1. Motor Home and RV Searches

As a class of vehicle, motor homes and RVs are essentially the same, given that each are designed to provide temporary living quarters for recreational, camping, or travel use.<sup>170</sup> For Fourth Amendment purposes, cases involving motor homes and RVs are fact-specific and have led to different outcomes under the automobile exception.

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165. *Id.* at 394 n.3.

166. *Id.* at 399 (Stevens, J., dissenting).

167. *Id.* at 386.

168. *Id.* at 393.

169. *See* *United States v. Ludwig*, 10 F.3d 1523, 1529 (10th Cir. 1993) (deeming the critical question under *Carney* as whether the vehicle at issue is “so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle”).

170. *See* FLA. STAT. § 320.01(1)(b) (Supp. 2017) (delineating eight types of “recreational vehicle-type unit[s],” including the “motor home,” that are designed to provide temporary living quarters).

In *United States v. Hamilton*,<sup>171</sup> an exemplary case,<sup>172</sup> the Ninth Circuit Court of Appeals considered whether the automobile exception applied to a motor home located in a private residential driveway and connected to a residence by an extension cord.<sup>173</sup> Applying the factors from *Carney*'s footnote three, the court found that the motor home was subject to the automobile exception because it was readily mobile, as evidenced by the fact that it had been moved the night before the search; was licensed for travel; and was located in a residential driveway with easy access to a public road.<sup>174</sup> Also, although the motor home was attached to "utilities," this factor carried little weight because an extension cord "is hardly the kind of 'pipe and drain' connection that would render the motor home more permanent and less mobile as was contemplated by the Court in *Carney*."<sup>175</sup> For these reasons, the court found that the automobile exception applied.<sup>176</sup>

In *United States v. Matteucci*, the United States District Court for the District of Oregon reached the opposite outcome on a motor home search.<sup>177</sup> In that case, police stopped the defendants on the highway due to a traffic violation.<sup>178</sup> After a consent search of their vehicle turned up weapons, methamphetamine-related books, and psilocybin mushrooms, the vehicle's

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171. 792 F.2d 837 (9th Cir. 1986).

172. Numerous cases exist. *See, e.g.*, *United States v. Aguilar*, 338 F. App'x 736 (9th Cir. 2009) (applying the automobile exception to two motor homes parked at a public campground due to "objective indications that [the defendants] were using the motor homes as vehicles," including that the motor homes were readily mobile, as evidenced by the fact that they had been driven to and from the campground, were not elevated on blocks, were not attached to utilities, and were licensed, as well as the fact that the campsite where they were parked was adjacent to a public road); *United States v. Markham*, 844 F.2d 366 (6th Cir. 1988) (applying the automobile exception to a motor home bearing Tennessee license plates parked in a driveway in Ohio); *United States v. Bertram*, No. CR-07-10-JHP, 2007 WL 1375576, at \*3 (E.D. Okla. May 3, 2007) (rejecting the defendant's argument that police violated the Fourth Amendment by searching his RV without a warrant because the vehicle was readily mobile and probable cause existed to search); *cf.* *United States v. Barajas-Avalos*, 377 F.3d 1040, 1057 (9th Cir. 2004) (finding that a travel trailer parked on a farm was not a "home" for purposes of the Fourth Amendment's open fields doctrine because the defendant used the travel trailer infrequently as a place to sleep while performing farm chores); *Ciampi v. City of Palo Alto*, 790 F. Supp. 2d 1077, 1096-97 (N.D. Cal. 2011) (stating that although the plaintiff had been using his van as a home for several years, the van "would most likely be treated as a vehicle, subject to lesser protections," because the plaintiff's van was parked on a street, readily mobile, and registered for use on public roads and highways).

173. *Hamilton*, 792 F.2d at 843.

174. *Id.*

175. *Id.*

176. *Id.*

177. *See* 842 F. Supp. 442, 449 (D. Or. 1994).

178. *Id.* at 444.

occupants, including Defendant Rodney Griffee, informed the officers that the defendants were living at a nearby campsite with Defendant Roberta Matteucci.<sup>179</sup> Suspecting the group was involved in methamphetamine production, the officers then drove to the campsite where they observed a motor home and various vehicles.<sup>180</sup> Deputy Tom Bergin then knocked on the motor home's door and engaged Matteucci in conversation, attempting to obtain Matteucci's consent to search the motor home.<sup>181</sup> Matteucci initially declined consent but relented when Deputy Bergin informed her that her baby might be removed until Matteucci was cleared of suspicion.<sup>182</sup> Deputy Bergin then searched the motor home, finding incriminating items inside.<sup>183</sup>

The defendants later challenged the motor home search, which the Government argued was justified either by Matteucci's consent or the automobile exception.<sup>184</sup> Regarding the automobile exception, the court examined both the mobility of the motor home and evidence that it was being used as a residence, the two primary considerations under *Carney*.<sup>185</sup> The court first found that the motor home was not "mobile that evening" because it was "snowed in" in a state park and, to get to a public road, a driver would have to go down a steep hill and travel several miles in the park.<sup>186</sup> Next, the court found evidence to suggest the motor home was being used as a residence of Griffee, Matteucci, and their baby.<sup>187</sup> Specifically, prior to the search, Griffee had informed Deputy Bergin that he was staying at the campsite, and Matteucci likewise told the officer that the motor home was being used as their home because they had been kicked out of their apartment.<sup>188</sup> Accordingly, the court deemed the automobile exception inapplicable.<sup>189</sup>

Although the *Matteucci* court arguably focused too narrowly on the motor home's likelihood of mobility on the *particular evening* in question,<sup>190</sup> rather than the vehicle's inherent mobility, the court's analysis

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179. *Id.* at 445.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 445–46.

184. *Id.* at 446.

185. *Id.* at 449.

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *But see* *Collins v. Commonwealth*, 790 S.E.2d 611, 618 (Va. 2016) (refusing to decide whether a motorcycle was immediately mobile at the precise moment of the search

of the motor home's primary function (residential) was sufficient to resolve the case.<sup>191</sup> Significantly for the tiny house movement, some courts go even further than *Matteucci* by finding that, even where a motor home is mobile, the automobile exception does not apply if an objective observer would conclude the motor home is being used as a residence.<sup>192</sup> A case decided by the United States District Court for the Middle District of Florida, *United States v. Adams*, is illustrative.<sup>193</sup>

In *Adams*, Defendant Kenneth Adams was arrested outside of his motor home located in a wooded area of a rural section of Suwanee County, Florida.<sup>194</sup> After arresting Adams, officers searched his motor home and uncovered evidence that allowed them to obtain warrants to search his storage facilities, where incriminating evidence was found.<sup>195</sup> Adams later challenged the search of his motor home, which the Government defended on the basis of the automobile exception.<sup>196</sup>

Along with the requirement of probable cause, the *Adams* court read *Carney* as requiring the Government to prove *both* that the vehicle at issue was readily mobile and that it was objectively being used for transportation.<sup>197</sup> Despite finding the probable cause and mobility requirements met, the court found evidence that the vehicle was not being used for transportation but as a residence.<sup>198</sup> For example, the court noted that the motor home was located in a rural area on a private wooded lot, that an electric generator was operating at the time, and that other vehicles used for transportation were located on the property.<sup>199</sup> In addition, personal items, including clothing and food, were located in the motor home.<sup>200</sup> Also, "the motor home contained a kitchenette, sink, bed, sofa, and a dining room table."<sup>201</sup> Finally, there was no convenient access to a public road.<sup>202</sup>

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because the automobile exception's "bright-line test" for inherent mobility does not require a court to hypothesize whether it would have been technically possible to flee from the police at the time of the search; rather, "[t]he mere fact that the stolen motorcycle was 'clearly operational and therefore readily movable'" is dispositive).

191. See *California v. Carney*, 471 U.S. 386, 394 n.3 (1985) (providing factors for the vehicle exception).

192. See *id.* at 393–94, 394 n.3.

193. 845 F. Supp. 1531 (M.D. Fla. 1994).

194. *Id.* at 1534.

195. *Id.*

196. *Id.* (citing *Carney*, 471 U.S. 386).

197. *Id.* at 1536.

198. *Id.* at 1537.

199. *Id.* at 1536–37.

200. *Id.* at 1537.

201. *Id.*

Accordingly, even though the motor home was readily mobile due to its “inherent ability to function,”<sup>203</sup> the court found the automobile exception inapplicable.

Cases involving the warrantless search of RVs, which are structurally similar to motor homes,<sup>204</sup> have also led to different outcomes depending on the vehicle’s perceived primary use. The simplest cases in this line include those where RVs were pulled over while traveling down the highway, given that such vehicles are clearly mobile and are undoubtedly being used for transportation, making them subject to immediate search under the automobile exception (assuming probable cause exists).<sup>205</sup> Contrary RV cases include *United States v. Briscoe*,<sup>206</sup> a federal court opinion that, in dicta, deems the automobile exception inapplicable to an RV parked behind a residence because the RV was not parked on a public street or in a public area; officers were able to determine from outside the vehicle that the defendants were living in the RV; and the RV was not registered or licensed for travel.<sup>207</sup>

## 2. Trailer Searches

Along with motor homes and RVs, courts have applied the automobile exception to various trailer searches. An important case on this issue is *United States v. Navas*, which involved the search of an unhitched tractor trailer that, like the tiny house on wheels, is not capable of transportation on its own.<sup>208</sup>

In *Navas*, while investigating narcotics trafficking, police searched a tractor trailer that had been unhooked from its cab and left in a

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202. *Id.*

203. *Id.*

204. See FLA. STAT. § 320.01(1)(b) (Supp. 2017) (defining “motor vehicle” to include “[a] recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle,” and identifying eight “basic entities” that qualify as “recreational vehicle-type” units, including the “motor home” which is defined as “a vehicular unit which . . . is a self-propelled motor vehicle . . . primarily designed to provide temporary living quarters for recreational, camping, or travel use”).

205. See, e.g., *United States v. Zucco*, 860 F. Supp. 363, 369–70 (E.D. Tex. 1994) (applying the automobile exception to a search of an RV that had been pulled over on the highway).

206. No. 16-10155-EFM, 2017 WL 1908594 (D. Kan. May 10, 2017).

207. *Id.* at \*3 n.43.

208. *United States v. Navas*, 597 F.3d 492, 497–500 (2d Cir. 2010); see Walker, *supra* note 24.

warehouse.<sup>209</sup> The United States District Court for the Southern District of New York limited the automobile exception to “some type of vehicle that is capable of moving on its own” and concluded that “[a] stationary trailer, detached from a tractor cab with its legs dropped[] and stored inside a warehouse[] is not a vehicle that is readily mobile” for purposes of the automobile exception, particularly since the cab’s drivers were under arrest and the warehouse was surrounded by agents at the time.<sup>210</sup> Accordingly, the district court found the automobile exception inapplicable,<sup>211</sup> a decision the Second Circuit Court of Appeals reversed.<sup>212</sup>

In a lengthy analysis, the Second Circuit found two fundamental errors in the district court’s analysis. Most importantly, the district court erred in limiting the automobile exception to vehicles capable of moving on their own.<sup>213</sup> Citing the Supreme Court’s reference to “wagon[s]” in *Carroll*, which are likewise incapable of self-propulsion, the court found it insignificant that the trailer was disconnected from its cab.<sup>214</sup> In the Second Circuit’s view, “the trailer remained inherently mobile as a result of its own wheels and the fact that it could have been connected to *any* cab and driven away.”<sup>215</sup>

Referencing *Carney*’s footnote three, the court further distinguished a trailer “with its legs dropped” from a motor home with its wheels “elevated on blocks.”<sup>216</sup> According to the court:

Trailers are routinely parked, legs dropped, with the expectation of promptly returning them to the road as soon as they have been loaded or a cab becomes available to haul them. The dropping of the legs in no way suggests that the trailer will not promptly return to service on the highways. In contrast, the raising of a motor home onto blocks is a more elaborate process, less easily undone, which might “objectively indicate[] that [the motor home] is being used as

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209. *United States v. Navas*, 640 F. Supp. 2d 256, 260–62 (S.D.N.Y. 2009), *rev’d*, 597 F.3d 492 (2d Cir. 2010) (describing the events leading to the search).

210. *Id.* at 267, 268.

211. *Id.*

212. *United States v. Navas*, 597 F.3d 492, 501 (2d Cir. 2010).

213. *Id.* at 499.

214. *Id.* (citing *Carroll v. United States*, 267 U.S. 132, 153 (1925)).

215. *Id.* (emphasis in original).

216. *Id.* (citing *California v. Carney*, 471 U.S. 386, 394 n.3 (1985)).

a residence” rather than a vehicle. The position of a trailer’s legs conveys no such impression.<sup>217</sup>

Accordingly, the court found “no question that the trailer in this case was being used as a vehicle and not a residence.”<sup>218</sup> In addition, the court determined that the trailer’s “inherent mobility” did not change simply because the arrestees were detained and the warehouse was secured.<sup>219</sup> Accordingly, the Fourth Amendment permitted an immediate, warrantless search.<sup>220</sup>

Reaching a similar result as the Second Circuit in *Navas*, the Supreme Court of North Dakota, in *State v. Otto*, applied the automobile exception to a camper that was not hooked to any vehicle, had its landing gear down, and was connected to power cords at the time of the search.<sup>221</sup> Relying on *Navas*, the court determined that although the “camper was not mobile while the officers were present, it was capable of being mobilized within a very short time,” making it subject to the automobile exception.<sup>222</sup>

Cases similar to *Navas* and *Otto* include *United States v. Ervin*,<sup>223</sup> where the Fifth Circuit Court of Appeals applied the automobile exception to a travel trailer attached to a truck and parked in a motel parking lot, whose owners were staying inside the motel rather than in the trailer;<sup>224</sup> and *United States v. Smith*,<sup>225</sup> an unpublished opinion of the Fourth Circuit Court of Appeals applying the automobile exception to an unhitched tractor trailer involved in distributing illegal liquor.<sup>226</sup>

In contrast to the aforementioned cases and reminiscent of the *Navas* court’s distinction between a trailer on blocks and one that is merely parked

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217. *Id.* (citing *Carney*, 471 U.S. at 394 n.3).

218. *Id.*

219. *Id.* at 500.

220. *See id.* (reasoning that the Fourth Amendment gave the agents probable cause to conduct the search).

221. *See* 840 N.W.2d 589, 594–95 (N.D. 2013).

222. *Id.*

223. 907 F.2d 1534 (5th Cir. 1990).

224. *See id.* at 1538–39 (reasoning that the travel trailer met the automobile exception because it was parked in a parking lot and the owners were not utilizing it as a residence).

225. 456 F. App’x 200 (4th Cir. 2011).

226. *Id.* at 203, 209 (reasoning that the automobile exception applied because the tractor trailer was inherently mobile and the recent unloading activity may have suggested it would be moved after all of the liquor was unloaded); *see also* *United States v. Allen*, 771 F. Supp. 2d 752, 760 (W.D. Ky. 2011) (applying the automobile exception to a trailer that was hooked to a tractor and was being moved along the interstate).

“with its legs dropped,”<sup>227</sup> the United States District Court for the District of New Hampshire has ruled, in dicta, that the automobile exception did not apply to a house trailer situated in a trailer park in a manner objectively indicating that it was being used as a residence.<sup>228</sup> The court emphasized that the trailer was not readily mobile, even though the truck which towed it was nearby, because one end of the trailer was elevated on blocks, the trailer was connected to campground utilities, and it would have taken nearly an hour to connect the trailer to the truck.<sup>229</sup>

In sum, motor homes, RVs, and trailers may or may not be subject to the automobile exception depending on the precise facts. Because an inherently mobile vehicle triggers the automobile exception’s twin rationales, mobility is critical.<sup>230</sup> However, where such a structure is objectively being used as a residence rather than for transportation, the automobile exception generally does not apply, regardless of inherent mobility.<sup>231</sup> Thus, as *Adams* illustrates,<sup>232</sup> a structure’s primary function—residential or vehicular—is the most critical inquiry under *Carney*.<sup>233</sup>

#### V. COURTS’ LIKELY APPLICATION OF THE AUTOMOBILE EXCEPTION TO TINY HOMES

Although downsizing to 200 square feet of living space is surely difficult, perhaps the biggest challenge a tiny home owner will face is finding a suitable place to live. This is largely determined by zoning laws,

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227. See *United States v. Navas*, 597 F.3d 492, 499 (2d Cir. 2010) (distinguishing a trailer “with its legs dropped” from a motor home with its “wheels elevated on blocks” (citing *California v. Carney*, 471 U.S. 386, 394 n.3 (1985))).

228. *United States v. Levesque*, 625 F. Supp. 428, 450–51 (D.N.H. 1985).

229. *Id.* at 451.

230. See *Carney*, 471 U.S. at 392–93.

231. See *Carney*, 471 U.S. at 394 (stating that the automobile exception “has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation”); *cf. id.* at 394 n.3 (refusing to decide whether the automobile exception would apply to a motor home situated in a way or place that objectively indicates it is being used as a residence).

232. See *United States v. Adams*, 845 F. Supp. 1531, 1535 (M.D. Fla. 1994) (citing *Carney*, 471 U.S. at 392–93).

233. See *Carney*, 471 U.S. at 394 (stating that the automobile exception “has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation”); see also *United States v. Ludwig*, 10 F.3d 1523, 1529 (10th Cir. 1993) (citing *Carney*, 471 U.S. at 393) (deeming the critical question under *Carney* as whether the vehicle at issue was “so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle”).

such as those in Walsenburg, Colorado, or Topeka, Kansas, which require tiny homes to be placed permanently on a footer or foundation and be connected to city utilities.<sup>234</sup> Other municipalities, such as Coconino County, Arizona, permit tiny homes to be built either on foundations or trailers.<sup>235</sup>

A police officer who confronts a *foundation-built* tiny home will almost certainly view the structure as a “home” for purposes of the Fourth Amendment, at least under the standards articulated in *Carney*, because a tiny home on a foundation is not “readily mobile” and is clearly being used for residential purposes.<sup>236</sup> An officer whose investigation leads him to a tiny home on wheels, however, would face a much more difficult analysis.

If a case arises where a tiny house built on a trailer is searched pursuant to the automobile exception and is subsequently challenged under the Fourth Amendment, courts might choose to resolve each case according to its unique set of facts or may instead adopt a categorical rule that treats all tiny homes alike. Either approach is reasonable. However, the case-specific approach will have great appeal for courts. First, it is the method adopted by the United States Supreme Court in *Carney*, the most analogous case.<sup>237</sup> Second, the case-specific approach will allow a court to resolve only the case before it, which courts strongly prefer.<sup>238</sup> This approach would, in turn, allow courts to avoid classifying *all* tiny homes into a single category,

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234. *See, e.g.*, Walsenburg, Colo., Ordinance No. 1045 (Sept. 2, 2014), [http://docs.wixstatic.com/ugd/1615ec\\_3abcdd0d5b964a4da0dd22eb33976bf7.pdf](http://docs.wixstatic.com/ugd/1615ec_3abcdd0d5b964a4da0dd22eb33976bf7.pdf) (requiring that a single-family detached dwelling be placed permanently on a footer or foundation and tapped into the city’s water and sewer system separately from any other structure or use on the premises); Moore, *supra* note 94 (noting the requirement of a permanent foundation and connections to sewer, water, and electric utilities in Topeka County).

235. COCONINO, *supra* note 98.

236. *See Carney*, 471 U.S. at 394 n.3 (considering factors that might be relevant in determining when a house will be deemed a residence).

237. *See id.* (recognizing that “a motor home that is situated in a way or place that objectively indicates that it is being used as a residence” presents a different issue than the case at hand).

238. *See, e.g.*, Va. Elec. & Power Co. v. NLRB, 319 U.S. 533, 545 (1943) (“We need not now examine the various situations that were before the Circuit Courts of Appeals in the cases [involving different circumstances] or consider hypothetical possibilities. We decide only the case before us and sustain the power of the Board to order reimbursement in full under the circumstances here disclosed.”); Jefferson County v. Acker, 210 F.3d 1317, 1318 n.1 (11th Cir. 2000) (“Of course, we decide only the case before us, and nothing we say in this opinion is meant to imply any view on any other issues relating to the Jefferson County occupational tax.”); Lionshead Lake, Inc. v. Wayne Twp., 89 A.2d 693, 697 (N.J. 1952) (stating that the question of whether a zoning ordinance is arbitrary and unreasonable “must be answered in the light of the facts of this particular case”).

residence or vehicle, which they will hesitate to do. Accordingly, the case-specific approach will likely become the norm.

A. *Case-Specific Approach*

If history is a guide, courts will decide each case involving the warrantless search of a tiny home on wheels according to its own unique facts, specifically by applying the factors in *Carney*'s footnote three (or some similar set of factors). Those factors include the tiny home's location, whether it is readily mobile, whether it is licensed, whether it is connected to utilities, and whether it has access to a public road.<sup>239</sup>

In my estimation, merely applying the *Carney* factors to the typical tiny home on wheels *without* a more critical analysis of the underlying concerns in that case will almost always trigger the automobile exception. First, the tiny home on wheels is, by definition, mobile.<sup>240</sup> In addition, as the RV and motor home cases show, merely connecting a tiny home to utilities would not alter the home's inherent mobility.<sup>241</sup> Also, in some municipalities, tiny homes on wheels must be licensed for transportation,<sup>242</sup> a further indicator of mobility per *Carney*.<sup>243</sup> In addition, because a person who opts to live in a tiny home often does so, at least in part, because of its mobility, the owner of a tiny home on wheels is unlikely to permanently secure the home to a foundation or elevate it on blocks but will instead leave the underlying trailer bed in place and functional.<sup>244</sup> For these reasons, the typical tiny home on wheels would likely be subject to the automobile exception under the factors articulated in *Carney*.

With that said, the *Carney* factors discussed above are merely a guide for resolving the underlying issues identified in that case—whether the structure at issue is readily mobile *and* whether it serves a residential or

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239. *Id.*

240. See Walker, *supra* note 24 (stating that a tiny house on wheels (THOW) is intended as a full-time residence or year-round rental property and must be built on a trailer and have the ability to tow).

241. See *supra* notes 175–180 and accompanying text; see also Grimley, *supra* note 75 (reporting that a tiny home on wheels has utility connections similar to those of an RV).

242. See Grimley, *supra* note 75 (reporting that tiny homes on wheels are classified as RVs in Washington and must be certified by the state Department of Transportation).

243. See *Carney*, 471 U.S. at 394 n.3 (proposing factors that may be relevant in determining whether a warrant would be required to search including whether the vehicle is licensed).

244. See *United States v. Navas*, 597 F.3d 492, 499 (2d Cir. 2010) (highlighting this distinction).

vehicular function.<sup>245</sup> These are arguably distinct inquiries that tend to point in different directions for the tiny home on wheels. If, for example, a court views the critical *Carney* issue as whether the tiny house on wheels is inherently mobile, this would likely trigger the automobile exception. After all, one of the tiny home's core attributes is its mobility.<sup>246</sup> Under this reading of *Carney*, the automobile exception is particularly likely to apply in the event a tiny home may be moved quickly, such as when it is found attached to a vehicle readily capable of towing it.<sup>247</sup> The exception might even apply when the tiny home on wheels is found stationary, unconnected to a vehicle capable of towing it. As the Second Circuit Court of Appeals has noted, “[e]ven where there is little practical likelihood that the vehicle will be driven away, the exception applies at least when that possibility exists.”<sup>248</sup> Moreover, although a core feature of the tiny home on wheels is that it cannot move under its own power,<sup>249</sup> this does not necessarily render the automobile exception inapplicable, as illustrated by *Navas* which applied the automobile exception to a tractor trailer disconnected from its cab.<sup>250</sup> Thus, if a court were to follow the reasoning of *Navas*, the typical tiny home on wheels would almost certainly satisfy the automobile exception's mobility requirement, leaving only an officer's determination of probable cause as a barrier to a warrantless search.

Yet, this is not the end of the analysis under *Carney*. As the Court in that case instructs, if an objective observer would believe a tiny home—even one on a trailer—is being used as a residence, the automobile exception should

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245. See *Carney*, 471 U.S. at 394 (describing the “two requirements for application of the exception” as “ready mobility” and “the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation”).

246. See *Walker*, *supra* note 24 (stating that a tiny house on wheels (THOW) is intended as a full-time residence or year-round rental property and must be built on a trailer and have the ability to tow).

247. Cf. *United States v. Levesque*, 625 F. Supp. 428, 451 (D.N.H. 1985) (finding, in dicta, that the automobile exception would not apply to a trailer situated in a trailer park and on a lot, objectively indicating that it was being used as a residence, and noting that “although the truck which tows the trailer was only a few feet from the trailer, the trailer was not readily mobile in light of the fact that one end of the trailer was elevated on blocks and that the trailer was connected to utilities at the campground, and also because of the three quarters of an hour lead time to connect the trailer to the truck”).

248. *United States v. Howard*, 489 F.3d 484, 493 (2d Cir. 2007).

249. *Walker*, *supra* note 24.

250. See *United States v. Navas*, 597 F.3d 492, 499 (2d Cir. 2010) (reasoning that though the trailer remained disconnected from the cab, it remained inherently mobile due to its own wheels).

not apply.<sup>251</sup> This would almost certainly be true of tiny homes built on foundations and could likewise apply to most tiny homes on wheels, which, by definition, are intended as full-time residences.<sup>252</sup> By contrast, motor homes, which are often subject to the automobile exception per *Carney*, are utilized in ways different than the tiny home. For example, a motor home might be used for business purposes; it may serve as one's primary mode of transportation; or it could be used for taking vacations to remote destinations.<sup>253</sup> Unlike tiny homes, motor homes are usually not permanent residences.<sup>254</sup> Because of their more obvious residential function, tiny homes are more likely to invoke the residential use highlighted in *Carney*, making their inherent mobility much less significant than the Dodge Mini Motor Home in that case.<sup>255</sup> Accordingly, if a court were to apply the *Carney* framework, the result would largely depend on whether the court views mobility or primary function as dispositive.

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251. See *California v. Carney*, 471 U.S. 386, 394 (1985) (describing the “two requirements for application of the exception” as “ready mobility” and “the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation”).

252. Walker, *supra* note 24.

253. *United States v. Kinney*, No. 4:05CR00280ERW, 2005 WL 3213909, at \*2 n.4 (E.D. Mo. Nov. 30, 2005).

254. See *Nationwide Mut. Fire Ins. Co. v. Gen. Motors Corp.*, 415 F. Supp. 2d 769, 773 (N.D. Ohio 2006) (finding no requirement under Florida law that a motor home be used as a permanent residence); see also FLA. STAT. § 320.01(1)(b) (Supp. 2017) (defining “motor vehicle” to include “[a] recreational vehicle-type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle” and identifying eight “basic entities” that qualify as “recreational vehicle-type” units, including the “motor home” which is defined as “a vehicular unit which . . . is a self-propelled motor vehicle . . . primarily designed to provide temporary living quarters for recreational, camping, or travel use”).

255. The majority opinion in *Carney* distinguishes between residential and vehicular use on at least four occasions. See *Carney*, 471 U.S. at 393 (noting that although *Carney*'s motor home “possessed some, if not many of the attributes of a home, it is equally clear that the vehicle falls clearly within the scope of the [automobile] exception” because, in part, it “was so situated that an objective observer would conclude that it was being used not as a residence, but as a vehicle”); *id.* at 394 (declining to distinguish between “‘worthy’ and ‘unworthy’ vehicles which are either on the public roads and highways, or situated such that it is reasonable to conclude that the vehicle is not being used as a residence”); *id.* (stating that the automobile exception “has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation”); *id.* at 394 n.3 (refusing to decide whether the automobile exception would apply to a motor home situated in a way or place that objectively indicates it is being used as a residence).

*B. Categorical Approach*

A wholesale alternative to the *Carney* framework is a bright-line rule that treats all tiny homes, whether on foundations or on wheels, as Fourth Amendment “houses” rather than vehicles. The rationale of this approach is simple. *Carney* effectively adopted a presumption that a motor home, due to its ability to be quickly moved at the turn of an ignition key, should be treated as a vehicle under the Fourth Amendment.<sup>256</sup> This makes sense. A motor home, after all, is built for transportation, having all the capabilities of any other vehicle while supporting only temporary residency. The opposite is true for a tiny house, which is incapable of transportation on its own and is built to serve as a permanent residence. Accordingly, *Carney*’s underlying presumption should not apply to the typical tiny home on wheels. For these reasons, I propose that essentially all tiny homes, including those on trailers, be entitled to the protections afforded to the home. This result can be reached either under the *Carney* framework (by prioritizing residential function over inherent mobility) or under a bright-line rule that treats the tiny home on wheels for what it truly is—a home.

*Carney* was decided over thirty years ago. While *Carney* is still the law, it may be time to rethink that decision, particularly as it pertains to the tiny home on wheels. Stepping out of *Carney*’s restrictive framework, the most striking feature of the tiny home on wheels is *not* that it is capable of being moved, but rather that it is a *home*. Over and over, the Supreme Court has emphasized the core of the Fourth Amendment as the right of an individual to retreat into his home and there be free of unreasonable government intrusion.<sup>257</sup> As the Court has noted, “[a] sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man’s castle.”<sup>258</sup> These principles apply as equally to the home resting on wheels as to the home resting on a cement foundation. In addition, many tiny home owners choose to place their homes on wheels, rather than on foundations, not

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256. *See Carney*, 471 U.S. at 393.

257. *See, e.g., Kyllo v. United States*, 533 U.S. 27, 31 (2001) (“At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”) (internal citations and marks omitted); *Payton v. New York*, 445 U.S. 573, 585 (1980) (“[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.”).

258. *Silverman v. United States*, 365 U.S. 505, 511 n.4 (1961) (citing *United States v. On Lee*, 193 F.2d 306, 315–16 (2d Cir. 1951)), *aff’d*, 343 U.S. 747 (1952).

because they particularly desire mobility, but rather to make their homes lawful under local building codes and zoning laws. Moreover, no one would ever seriously argue that a person's Fourth Amendment rights should depend on the square footage of his home,<sup>259</sup> but that would be the practical result of a rule that categorizes most tiny homes as vehicles. Thus, a strong argument can be made to treat all tiny homes alike for purposes of the Fourth Amendment.

Even under this proposed bright-line rule, however, there will surely be cases where the automobile exception should apply to a tiny home. Imagine, for example, a case where police suspect a person is using a tiny home on wheels to manufacture methamphetamine, transporting the home from place to place to evade detection. Police then pull over the suspect as he is towing his tiny home down the highway, just miles from the state border, and have probable cause to believe the tiny home contains evidence of the illegal methamphetamine operation. On these facts, it would be illogical to conclude that police must obtain a warrant to search the tiny home.<sup>260</sup> Here, not only is the tiny home obviously mobile and hence a fleeting target for a search,<sup>261</sup> it is also entitled to a lesser expectation of privacy than the traditional foundation-built home, particularly if the home is registered as an RV under the jurisdiction's motor vehicle laws.<sup>262</sup> Further, if police have reason to believe the tiny home is being used to manufacture illegal drugs, it would be reasonable to conclude the home is not being used as a residence, thereby paving the way to treat the structure as a vehicle.<sup>263</sup> Accordingly, a

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259. See *Carney*, 471 U.S. at 407–08 (Stevens, J., dissenting) (“These places [mobile homes] may be as spartan as a humble cottage when compared to the most majestic mansion . . . but the highest and most legitimate expectations of privacy associated with these temporary abodes should command the respect of this Court.”).

260. See *id.* at 393–94 (“[T]o fail to apply the [automobile] exception to vehicles such as a motor home ignores the fact that a motor home lends itself easily to use as an instrument of illicit drug traffic and other illegal activity.”).

261. See *id.* at 399 (Stevens, J., dissenting) (suggesting factors used to separate mobile homes from permanent structures, including “whether the home is moving or at rest”).

262. See CODE FACT SHEET, *supra* note 24 (recognizing that some tiny houses are designed as trailers and in Minnesota can be classified as park models or recreational park trailers that are on a chassis with wheels, which must be constructed to ANSI standard (A119.5) and must display a vehicle identification number (VIN)); *cf.* *United States v. Graham*, 275 F.3d 490, 510 (6th Cir. 2001) (“[T]he Supreme Court’s reference to the truck’s ‘ready mobility’ [in *Labron*] was not . . . to demonstrate an ‘exigent circumstance,’ but rather to show that when the place to be searched, such as a truck, is associated with a lesser expectation of privacy than a home, the justification for a warrantless search articulated in *Carney* is satisfied provided the police have probable cause.”).

263. See *Carney*, 471 U.S. at 392–94.

bright-line rule deeming the automobile exception inapplicable for *every* tiny home on wheels is probably not the best solution. Nevertheless, by making residential function the core consideration in these cases, a court would go far towards ensuring that most tiny homes on wheels are protected by the warrant requirement.

#### VI. CONCLUSION

The tiny home on wheels is a unique structure. Although undoubtedly mobile, the tiny home's primary function is residential, and owners of tiny homes often place their homes on trailers not to make them mobile, but instead to make them lawful under local building codes and zoning laws. Accordingly, although the tiny home on wheels serves residential and transportation functions, it should enjoy the full protections of a warrant.