The Skeleton Key:

Borrowed Urgency, Unpredicated Child Exploitation Suspicion, and the Cost No Plaintiff Can Recover

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Abstract

A federal officer who wants to search a traveler's phone at the border needs no warrant, no probable cause, and in the Eleventh Circuit no suspicion of any kind. Yet officers still give reasons, and the reason they give is not doctrinally idle. This article examines what happens when the reason given is child sexual exploitation and the record contains no predicate for it. The immediate cost falls on the traveler and is litigated in the ordinary way, through suppression. A second cost falls on a population that will never appear in the caption. Every unpredicated invocation of child exploitation as a search rationale spends down the credibility of the same assertion when it is made with a predicate, teaches the public to hear the phrase as an access request rather than an allegation, and supplies the strongest available argument to platforms resisting genuine child protection obligations. That cost is real, it is attributable, and no doctrine can reach it. Standing runs to the searched party, suppression compensates the searched party, and pretext analysis after *Whren* declines to examine subjective motive at all. The article traces the border search regime and its own internal suspicion floor, identifies why child exploitation is the optimal pretext under that regime, locates the structural blindness in standing and remedy rather than in judicial indifference, and proposes a contemporaneous articulation requirement calibrated to the one protection the agency already imposes on itself.

Keywords: border search exception; child sexual abuse material; pretextual suspicion; borrowed urgency; credibility depletion; electronic device search; Customs and Border Protection; unpredicated suspicion; third party harm; standing; suppression remedy; child protection enforcement.

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I. Introduction

On January 24, 2025, a United States citizen returning from vacation was directed into secondary inspection at Hartsfield-Jackson Atlanta International Airport.[1] Officers questioned him, searched his belongings, and demanded the passcodes to his phone and his e-reader. According to his motion to suppress, the officers told him they were looking for child sexual abuse material.[2] The government's own reports of the encounter record no basis for that suspicion. What the reports record instead is an interest in his association with a movement opposing construction of a police training facility in Atlanta, an association the operational paperwork characterized as membership in an anti-government violent extremist group, and for which he has never been charged with any offense.[3]

The Fourth Amendment questions that encounter raises are already being litigated and are already the subject of substantial commentary. This article is about a different question, and it starts from a premise that should be uncontroversial: the officers did not need a reason. Under settled doctrine, a routine border search of a traveler's effects requires no warrant, no probable cause, and no individualized suspicion.[4] In the circuit where this encounter occurred, even a forensic examination of an electronic device requires no suspicion of any kind.[5]

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1. Indictment at 1, United States v. Tunick, No. 1:25-cr-00499-ELR-CCB (N.D. Ga. filed Nov. 13, 2025) (ECF No. 1) (charging that the defendant, "before and during the search for and seizure of property by Customs and Border Patrol Tactical Terrorism Response Team Supervisory Officer L.C.," deleted the digital contents of a cellular telephone). The docket is available at `https://www.courtlistener.com/docket/72009158/united-states-v-tunick/` (last visited Aug. 2, 2026) [hereinafter Tunick Docket].

2. Motion to Suppress Evidence and Statements at 4, 7–8, United States v. Tunick, No. 1:25-cr-00499-ELR-CCB (N.D. Ga. filed Mar. 17, 2026) (ECF No. 21) [hereinafter Suppression Motion] (stating that officers introduced themselves as "looking for people who are pedophiles," that they justified the demand to search by asserting a need to confirm whether the defendant possessed child pornography, and that this was "a pretext for a fishing expedition" into his connections with the Defend the Atlanta Forest movement).

3. Suppression Motion, *supra* note 2, at 2–3 (stating that an FBI Atlanta Joint Terrorism Task Force officer and an FBI special agent coordinated with Customs and Border Protection to question and search the defendant on his return from the Dominican Republic, that the government was investigating him because of his association with the Defend the Atlanta Forest movement, and that although the government depicts that movement as an "Anti-Government, Anti-Authority Violent Extremist Group," it has not put forward evidence of his involvement in criminal activity connected to it).

4. United States v. Ramsey, 431 U.S. 606, 616 (1977) (describing border searches as reasonable simply by virtue of occurring at the border).

5. United States v. Touset, 890 F.3d 1227, 1234 (11th Cir. 2018).

So the reason was surplus. And that is the point. When an officer possesses unlimited authority and nevertheless articulates a rationale, the rationale is doing work that the authority does not require. It is managing the traveler, the bystanders, the eventual reader of the report, and the eventual reviewing court. The question this article asks is what that surplus rationale costs when it is chosen from the category of allegations that no one is willing to interrogate.

Child sexual exploitation is the strongest such category in American public life. An officer who invokes it converts a request into a moral emergency. The traveler who objects appears to be objecting to the protection of children. The bystander who films appears to be obstructing it. The reviewing court, examining a search that needed no justification, encounters a justification it will decline to scrutinize because *Whren* instructs that subjective motive is irrelevant where the search was objectively authorized.[6] The rationale is therefore both maximally persuasive and entirely unreviewable.

Something is spent when that happens, and it is not spent by the traveler. Assertions of this kind operate on a shared stock of credibility that belongs to everyone who will ever have to make the assertion truthfully. Each unpredicated invocation draws that stock down. The forensic examiner who has a predicate, the prosecutor building a case, the mandated reporter, the parent, the survivor testifying decades after the fact: all of them will be heard against a public that has learned, from repetition, that the phrase can mean an officer wants access to something. That is a harm to children, caused by an act of government, occurring in a case where children are nowhere near the facts.

No plaintiff can recover it. Part V explains why, and the answer is structural rather than a failure of judicial attention. Standing under *Lyons* runs to the person searched.[7] Suppression, when it is available at all, is calibrated to deterrence measured against the cost to the criminal

6. Whren v. United States, 517 U.S. 806, 813 (1996) (declining to entertain claims that an objectively justified stop was undertaken for improper reasons).

7. City of Los Angeles v. Lyons, 461 U.S. 95, 105–06 (1983) (requiring a plaintiff seeking injunctive relief to show a real and immediate threat of repeated injury to himself).

process, not to diffuse third party injury.[8] The population that bears the cost has no case, no caption, and no notice that it was injured.

Part II sets out the border search regime and the suspicion floor the agency has imposed on itself even where the Constitution imposes none. Part III examines the pretext in the record and explains why child exploitation is the optimal choice under this regime. Part IV specifies the uncounted cost and its three mechanisms. Part V locates the doctrinal blindness. Part VI proposes a contemporaneous articulation requirement modeled on a protection Customs and Border Protection already applies to itself, and explains why that proposal costs enforcement nothing it should want to keep.

II. The Border Search Regime and Its Internal Floor

A. The Constitutional Baseline

Searches at the international border occupy a category of their own. The government's authority to inspect persons and property entering the country is longstanding and statutory,[9] and the Supreme Court has held that routine searches conducted at the border are reasonable by virtue of where they occur.[10] The rule does not turn on the traveler's citizenship. A returning citizen is subject to it.[11]

The Court has distinguished routine searches from those that are sufficiently intrusive to require particularized suspicion. A prolonged detention of a traveler suspected of internal smuggling requires reasonable suspicion.[12] The disassembly of a vehicle's fuel tank does not.[13]

8. Herring v. United States, 555 U.S. 135, 141 (2009) (limiting exclusion to circumstances where the deterrent benefit outweighs the cost to the justice system).

9. *See* 19 U.S.C. §§1581, 1582 (authorizing search of persons, baggage, and merchandise arriving in the customs territory); 8 U.S.C. §1357 (immigration inspection authority); 19 C.F.R. §162.6 (2026) (subjecting all arriving persons, baggage, and merchandise to inspection and search).

10. *Ramsey*, 431 U.S. at 616.

11. *Id.* at 619–20 (grounding the exception in the sovereign's interest in what crosses the border rather than in the status of the person crossing).

12. United States v. Montoya de Hernandez, 473 U.S. 531, 541 (1985).

13. United States v. Flores-Montano, 541 U.S. 149, 155 (2004) (declining to extend a suspicion requirement to the removal and disassembly of a fuel tank).

The line the Court has drawn runs along the dignity interest of the person rather than the volume of information exposed, which is precisely the distinction that electronic devices make untenable.

Riley v. California recognized that a modern phone is categorically different from other effects a person carries, holding that the search incident to arrest exception does not extend to its contents.[14] *Riley* did not travel to the border, and the circuits that have addressed the question have divided over how much of its reasoning does.

B. The Split, and Where This Case Sits

The Ninth Circuit has held that a forensic border search of a device requires reasonable suspicion and must be limited to a search for digital contraband.[15] The Fourth Circuit has held that a warrantless border search of a device must bear a nexus to the sovereign interests that justify the exception, and may not be deployed to gather evidence of ordinary domestic crime.[16] The First Circuit went a different way than either. It held that basic searches are routine and require no suspicion, that advanced searches require neither a warrant nor probable cause, and that the exception is not confined to contraband itself but reaches evidence of contraband or of a border related offense.[17] That court did not impose a constitutional suspicion requirement on advanced searches. It observed that agency policy already supplies one.[18]

Empirical work cuts against the assumption that travelers understand this regime. In survey data, ordinary people rate a search of their electronic devices as approaching a strip or body cavity search in intrusiveness, and an overwhelming majority believe that no such search may occur without individualized suspicion, which means the doctrine as it stands operates

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14. Riley v. California, 573 U.S. 373, 393–95 (2014) (describing the quantitative and qualitative difference between a phone and physical items on the person).

15. United States v. Cano, 934 F.3d 1002, 1016–18 (9th Cir. 2019).

16. United States v. Aigbekaen, 943 F.3d 713, 721 (4th Cir. 2019).

17. Alasaad v. Wolf, 988 F.3d 8, 16–21 (1st Cir. 2021) (joining the Ninth and Eleventh Circuits on basic searches, joining the Eleventh on the absence of a warrant or probable cause requirement for advanced searches, and rejecting a contraband only limitation).

18. *Id.* at 19.

largely by surprise.[19] Commentators have accordingly argued that the doctrine cannot survive the Court's data privacy turn intact.[20]

The Eleventh Circuit stands alone at the far end. In *Touset*, it held that no suspicion whatsoever is required for a forensic search of an electronic device at the border, reasoning that property searches at the border have never required suspicion and that the Court's dignity based exceptions do not reach property.[21] Atlanta sits in the Eleventh Circuit. A traveler landing at Hartsfield-Jackson therefore arrives at the point in the United States where a device is most exposed and the Fourth Amendment is thinnest.

C. The Floor the Agency Imposed on Itself

Against that constitutional backdrop stands a striking fact about the agency's own rules. Customs and Border Protection Directive 3340-049A distinguishes a basic search, which an officer may conduct without suspicion, from an advanced search, in which external equipment is connected to a device to review, copy, or analyze its contents.[22] An advanced search requires reasonable suspicion of unlawful activity or a national security concern, together with supervisory approval at the GS-14 level or higher.[23] The same directive acknowledges that a traveler is not obliged to supply a passcode, while preserving the agency's authority to detain the device.[24]

The agency thus imposes on the copying step a suspicion requirement that the Eleventh Circuit holds the Constitution does not impose. That asymmetry is the most useful fact in this

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19. Kugler, *The Perceived Intrusiveness of Searching Electronic Devices at the Border: An Empirical Study* (2014), `https://doi.org/10.2139/ssrn.2402244` (last visited Aug. 2, 2026) (reporting that participants rated electronic searches as nearly as intrusive as strip and body cavity searches and that most believed individualized suspicion was required).

20. *See* Christopher Pryby, Note, *Forensic Border Searches After Carpenter Require Probable Cause and a Warrant*, 118 MICH. L. REV. 507 (2019), `https://doi.org/10.36644/mlr.118.3.forensic` (last visited Aug. 2, 2026); *see also* Adam M. Gershowitz, *The iPhone Meets the Fourth Amendment* (2008), `https://doi.org/10.2139/ssrn.1084503` (last visited Aug. 2, 2026).

21. *Touset*, 890 F.3d at 1233–34.

22. U.S. CUSTOMS & BORDER PROT., DIRECTIVE NO. 3340-049A, BORDER SEARCH OF ELECTRONIC DEVICES §§5.1.3–5.1.4 (Jan. 4, 2018), `https://www.cbp.gov/sites/default/files/assets/documents/2018-Jan/CBP-Directive-3340-049A-Border-Search-of-Electronic-Media-Compliant.pdf` (last visited Aug. 2, 2026) [hereinafter CBP DIRECTIVE 3340-049A].

23. *Id.* §5.1.4.

24. *Id.* §§5.3.1–5.3.3.

area of law, and Part VI builds on it. An agency that has already conceded, in its own operating rules, that the extraction of a traveler's data warrants a predicate and a supervisor's signature has conceded the premise of the reform proposed here.

III. The Pretext and Why It Is the One Chosen

A. What the Record Shows

The stated rationale in this encounter was a search for child sexual abuse material. The officers, by the account in the suppression filing, opened by telling the traveler they were looking for people who are pedophiles, and thereafter justified the demand for his passcode by the asserted need to confirm whether he possessed child pornography.[25]

Three features of the record bear on that rationale. First, the officers never supplied any basis for the suspicion.[26] Second, the government's own reports record no such suspicion at all, and record instead that the purpose of the detention and seizure was to investigate the traveler's ties to a political movement.[27] Third, the encounter was not a chance selection: a joint terrorism task force officer and an FBI special agent coordinated with Customs and Border Protection in advance of the arrival, and the charging instrument itself identifies the seizing officer as a supervisory officer of the Tactical Terrorism Response Team.[28]

Whether that record entitles the traveler to suppression is for the district court. The premise this article works from is narrower and does not depend on the outcome: a serious allegation about the sexual exploitation of children was asserted by federal officers in an official encounter, and the officers' own contemporaneous documentation supplies nothing to support it.

25. Suppression Motion, *supra* note 2, at 7 (citing the recorded interview at timestamp 19:49:00).

26. *Id.* ("The officers never provided any details as to why they purportedly suspected Mr. Tunick was harboring such contraband.").

27. *Id.* at 7–8.

28. *Id.* at 2–3; Indictment, *supra* note 1, at 1.

B. Why This Allegation

Consider the alternatives available to an officer who wants a device and needs a sentence. A customs rationale invites a customs answer. A narcotics rationale invites a question about what was seen. A national security rationale attracts oversight and requires supervisory buy-in under the agency's own directive.[29]

A child exploitation rationale has properties none of the others have. It requires no articulable observation, because the offense is by nature concealed and the officer can characterize the search as the very means of confirming or dispelling the concern. It is unrebuttable in the moment, because the traveler's denial is what a guilty traveler would also say. It reverses the social posture of the encounter, so that the traveler who asserts a right appears to be shielding something and the bystander who objects appears complicit. And it is treated as unreviewable, because *Whren* is read to foreclose inquiry into an officer's actual motivation once the action is objectively authorized,[30] a principle the Court later applied to reject an inquiry into the subjective purposes behind an otherwise valid seizure.[31] Part V.C explains why that reading is broader than the holding, and why the difference matters.

This is the profile of a skeleton key. It opens any lock, leaves no mark, and cannot be traced back to the hand that turned it.

IV. The Uncounted Cost

A. Credibility Is a Shared Stock

An allegation of child sexual exploitation carries authority because the public assumes it is not made lightly. That assumption is an asset, and it is held in common. It does not belong to the officer who invokes it, and it is not consumed only by the encounter in which it is used.

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29. CBP DIRECTIVE 3340-049A, *supra* note 22, §5.1.4.

30. *Whren*, 517 U.S. at 813 (holding that subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis).

31. Ashcroft v. al-Kidd, 563 U.S. 731, 736–37 (2011).

The mechanism is documented in an adjacent literature. Where a class of allegation acquires a reputation for tactical deployment, investigating institutions begin treating incoming reports in that class as presumptively suspect, and valid cases are discarded before they are assessed.[32] The same literature that identifies the pretextual use of child abuse allegations to expand information gathering authority identifies the population against which that expansion was historically directed.[33]

Every invocation without a predicate draws the stock down for everyone who will invoke it with one. This is not a claim about any individual's willingness to believe a particular allegation. It is a claim about the base rate a listener carries into the next hearing. Where a phrase has been observed functioning as an access request, the listener who next hears it will hold the possibility that it is functioning that way again, and the person making the truthful assertion will spend effort establishing what used to be presumed.

B. The Enforcement Argument Handed Over

The second mechanism operates in policy rather than in perception. Firms subject to child protection obligations have a standing interest in characterizing those obligations as surveillance authority in disguise. That characterization is ordinarily weak, because it requires the audience to believe that a protective rationale is being used for an unrelated purpose.

An officially documented instance in which a protective rationale was used for an unrelated purpose supplies exactly the evidence that argument has always lacked. The pretext therefore does not merely deplete credibility in the abstract; it manufactures a citation for the opposition to a category of regulation whose beneficiaries are children. The government produced that citation itself, in a case that has nothing to do with children.

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32. Saini, M., Laajasalo, T., & Platt, S., *Gatekeeping by Allegations: An Examination of Verified, Unfounded, and Fabricated Allegations of Child Maltreatment Within the Context of Resist and Refusal Dynamics*, 58 FAM. CT. REV. 417 (2020), `https://doi.org/10.1111/fcre.12480` (last visited Aug. 2, 2026) (describing the premature discarding of valid maltreatment allegations where the category is treated as presumptively tactical).

33. Mokrosinska, D., *Privacy and the Integrity of Liberal Politics: The Case of Governmental Internet Searches*, 45 J. SOC. PHIL. 369 (2014), `https://doi.org/10.1111/josp.12068` (last visited Aug. 2, 2026) (observing that allegations concerning child pornography and child abuse have been invoked to defend increased information gathering powers directed at particular communities).

C. The Arithmetic of Seriousness

The third mechanism is comparative and it is visible on the face of two dispositions.

The traveler in this case is charged under a statute carrying a maximum of five years.[34] The conduct alleged is that he supplied a passcode that caused his own device to erase its own contents.

In the same period, the founder of one of the largest churches in the United States pleaded guilty to five felony counts of lewd or indecent acts with a child, received a ten year sentence with all but six months suspended, served six months in a county jail, and was released.[35]

These two dispositions arise under different sovereigns, different statutes, and different procedural histories, and no direct doctrinal inference runs between them. The comparison does other work. It measures what the system treats as urgent when the urgency is borrowed against what it treats as urgent when the underlying conduct is proved. A rationale invoked to justify access carried a five year exposure for the person who resisted it. The conduct the rationale names carried six months for the person who committed it. Whatever else is true, the seriousness is not being allocated where the rationale claims it lives.

V. Why the Doctrine Cannot Reach It

A. Standing Runs to the Searched

The person injured by the mechanisms in Part IV is a future complainant, a future prosecutor, a future child. None of them was present. *Lyons* forecloses injunctive relief absent a showing that

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34. 18 U.S.C. §2232(a) (criminalizing destruction, damage, or disposal of property to prevent its seizure by a person authorized to make a search or seizure).

35. *See* Robert Morris, Gateway Church Founding Pastor, Pleads Guilty in Oklahoma Child Sexual Abuse Case, CBS NEWS (Oct. 2, 2025), https://www.cbsnews.com/texas/news/robert-morris-gateway-church-sexual-abuse-case-oklahoma/ (last visited Aug. 2, 2026); *Gateway Church Founder Released from Prison After Guilty Plea in Child Sex Abuse Case*, NBC DFW (Apr. 21, 2026), https://www.nbcdfw.com/news/local/gateway-church-founding-pastor-released-from-prison-after-pleading-guilty-to-child-sex-abuse/4003574/ (last visited Aug. 2, 2026).

this plaintiff faces a real and immediate threat of the same injury.[36] A diffuse and probabilistic injury distributed across a population defined only by future circumstance is the paradigm case of an injury no Article III plaintiff can carry.

B. Suppression Compensates the Wrong Party

Even a complete defense victory produces exclusion, which restores the searched traveler to the position he would have occupied. It transfers nothing to the population that bore the second cost, and the Court has made clear that the remedy is calibrated to marginal deterrence weighed against the cost of excluding probative evidence.[37] Deterrence of the pretext is a byproduct at best, and it is a byproduct only in circuits that scrutinize the predicate at all.

C. Pretext Doctrine Declines the Inquiry

The most direct barrier is treated as settled and is not. *Whren* is routinely cited for the proposition that an officer's motivation never matters. What *Whren* actually says is that subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis, and the Court in the same passage reserved the categories of search conducted in the absence of probable cause, naming inventory searches and administrative inspections.[38] A suspicionless border search of a device is not a probable-cause search. It sits on the reserved side of that line.

Two circuits have already conducted a version of the inquiry *Whren* is said to foreclose. The Fourth Circuit requires that a nonroutine forensic border search rest on suspicion of an offense bearing a nexus to the purposes of the exception, and holds that the Government may not

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36. *Lyons*, 461 U.S. at 105–06.

37. *Herring*, 555 U.S. at 141.

38. *Whren*, 517 U.S. at 811–13 (confining the rule to probable-cause analysis and distinguishing inventory searches and administrative inspections, which are exceptions to the general rule that Fourth Amendment searches require probable cause).

invoke the exception on behalf of a generalized interest in combatting crime.[39] That is an inquiry into what the search was for. The Ninth Circuit's contraband limitation does comparable work.[40]

So the barrier is not a holding. It is a practice. In the Eleventh Circuit the objective justification is automatic, the reason an officer gives is therefore surplus, and no court has occasion to examine it. The rationale operates as a nullity in law while doing substantial work in fact, and the harm identified in Part IV is invisible because nothing in the proceeding ever asks what was said or why.

VI. A Contemporaneous Articulation Requirement

A. The Proposal

Where a federal officer asserts child sexual exploitation as the basis for a border search of an electronic device, the officer should be required to record, contemporaneously and in writing, the articulable facts supporting that assertion, with supervisory review at the same grade the agency already requires for an advanced search.

Three features of the proposal are deliberate. It attaches to the assertion rather than to the search, so it does not disturb the border search exception or the Eleventh Circuit's holding. It requires articulation rather than sufficiency, so an officer with a thin but real basis is not deterred. And it is enforced administratively rather than through exclusion, so it does not turn on the vagaries of suppression practice or require any court to revisit *Whren*.

B. Why the Agency Has Already Conceded the Premise

Directive 3340-049A already requires reasonable suspicion and GS-14 approval before data may be copied off a device.[41] The agency therefore accepts that some steps in a border encounter

39. *Aigbekaen*, 943 F.3d at 721 (requiring individualized suspicion of an offense bearing a nexus to national security, duty collection, exclusion of unwanted persons, or contraband interdiction, and rejecting reliance on a generalized law enforcement interest).

40. *Cano*, 934 F.3d at 1016–18.

41. CBP DIRECTIVE 3340-049A, *supra* note 22, §5.1.4.

warrant a recorded predicate and a second signature even though the Constitution, as the Eleventh Circuit reads it, requires neither.

The point is not hypothetical. When the First Circuit declined to impose a constitutional suspicion requirement on advanced searches, it did so having noted that the agency's own policy already requires one.[42] An internal directive is therefore already doing work in federal appellate reasoning about what the Fourth Amendment needs to require. A requirement written into the same directive would enter the same channel.

The controlling case supplies the model. *Touset* was itself a child exploitation prosecution, and having held that no suspicion was required, the Eleventh Circuit went on to hold in the alternative that reasonable suspicion existed, resting on specific facts: money transfers to a country associated with child exploitation and a connection to an email account previously flagged for child pornography.[43] That is what an articulable predicate looks like when one exists, written by the very court that held none was necessary. The proposal here asks for no more than the record *Touset* itself contains. The proposal here asks for the same treatment of an assertion that is at least as consequential as the extraction it may be used to justify, and considerably more consequential to people who are not in the room.

C. What It Costs Enforcement

An officer with a genuine basis loses nothing but the time it takes to write a sentence. An officer without one loses the ability to deploy the most powerful accusation in American public life as a conversational instrument. Agencies that pursue child exploitation offenses in earnest gain the thing they most need and are currently losing, which is a public that still believes the phrase when it is used correctly.

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42. *Alasaad*, 988 F.3d at 19.

43. *Touset*, 890 F.3d at 1237–38 (holding in the alternative that the forensic searches were supported by reasonable suspicion based on three money transfers and an associated flagged email account).

VII. Conclusion

The traveler's case will be decided on grounds this article has set aside. He will win or lose on custody, on voluntariness, on whether the statute reaches a wipe executed by the officer's own keystroke, and on whether a circuit that requires no suspicion will find anything to suppress.

The finding here survives either outcome. A federal agency asserted the sexual exploitation of children as a reason to open a citizen's phone, its own records supply no basis for the assertion, and the record indicates the officers wanted something else entirely. The traveler has a remedy for what was done to him. The children in whose name it was done have none, were never notified, and will pay in a currency that does not appear on any docket: the diminishing willingness of the public to take the accusation seriously the next time it is true.

A doctrine that treats the officer's stated reason as legally irrelevant has, without intending to, made that reason free to spend. It is being spent.

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