

*Fourth American
law review 2*

DANKE!

THANK YOU!

MERCI!

GRAZIE!

GRACIAS!

DANK JE WEL!



Unsplash

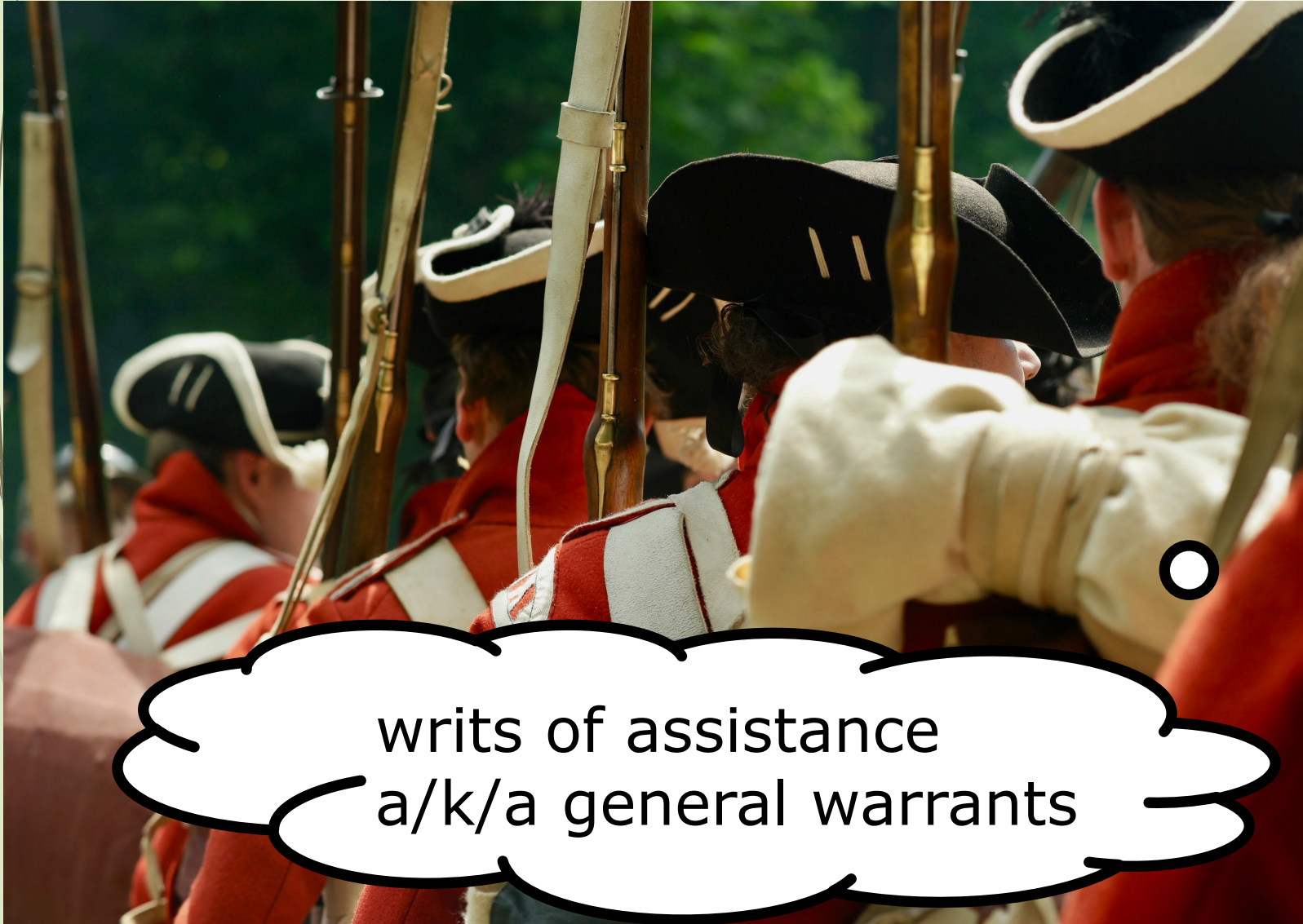
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Article and case list

2

- “*Access denied? Think twice before sharing your device’s passcode,*” Texas Bar Journal, April 2022, p. 250. *United States v. Black*, 2021 WL 4953849 (A. Ct. Crim. App. Oct. 22, 2021).
- “*A body-worn camera does not dispense the need for a warrant,*” Circuits, Feb. 2022, p. 32. *Commonwealth v. Yusuf*, 173 N.E.3d 378 (Mass. 2021).
- “*Ubiquitous cameras make it ever harder to hide,*” Circuits, May 2022, p. 33. *United States v. Tuggle*, 4 F.4th 505 (7th Cir. 2021).
- “*Electronic signatures are binding,*” Texas Bar Journal, July/Aug. 2022, p. 498, see also Circuits, May 2022, p. 41. *Aerotek, Inc. v. Boyd*, 624 S.W.3d 199 (Tex. 2021).²²
- “*Cyberstalker learns a hard lesson,*” Circuits, Sept. 2022, p. 8. *United States v. Yung*, 37 F.4th 70 (3rd Cir. 2022).
- “*Foreign Internet platform provider subject to specific personal jurisdiction in Texas,*” Circuits, Sept. 2022, p. 14. *Facebook, Inc. v. Doe*, 2022 WL 1087826, --- S.W.3d --- (Tex. App.—Houston [14th Dist.] Apr. 12, 2022, no pet. h.).
- “*FAA drone regulation survives constitutional challenge,*” Circuits, Dec. 2022, Brennan v. Dickson, 45 F.4th 48 (D.C. Cir. 2022).
- “*Capitol rioter’s motion to suppress Facebook evidence denied,*” Dec. 2022, *United States v. Bledsoe*, Circuits, 2022 WL 3594628 (D.D.C. Aug. 22, 2022).

Fourth Amendment



writs of assistance
a/k/a general warrants



Governor Bernard, Mass.

Fourth Amendment

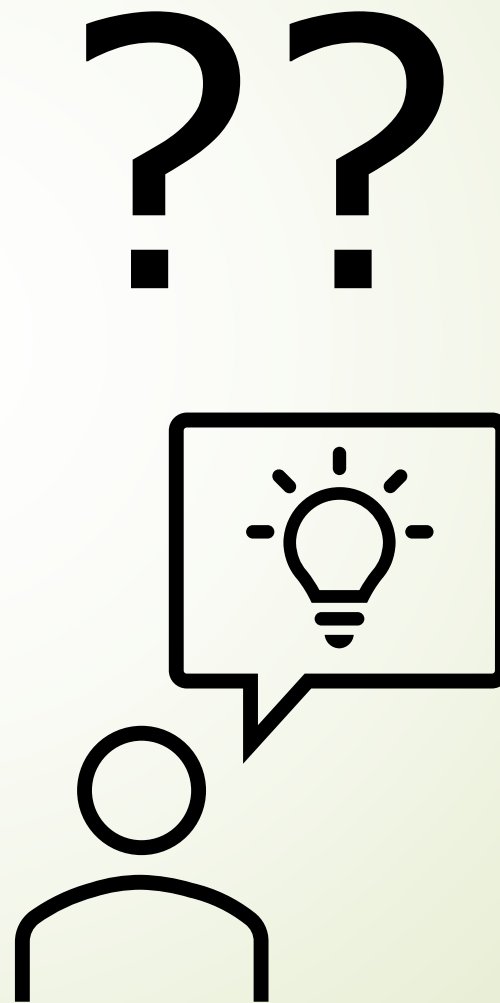


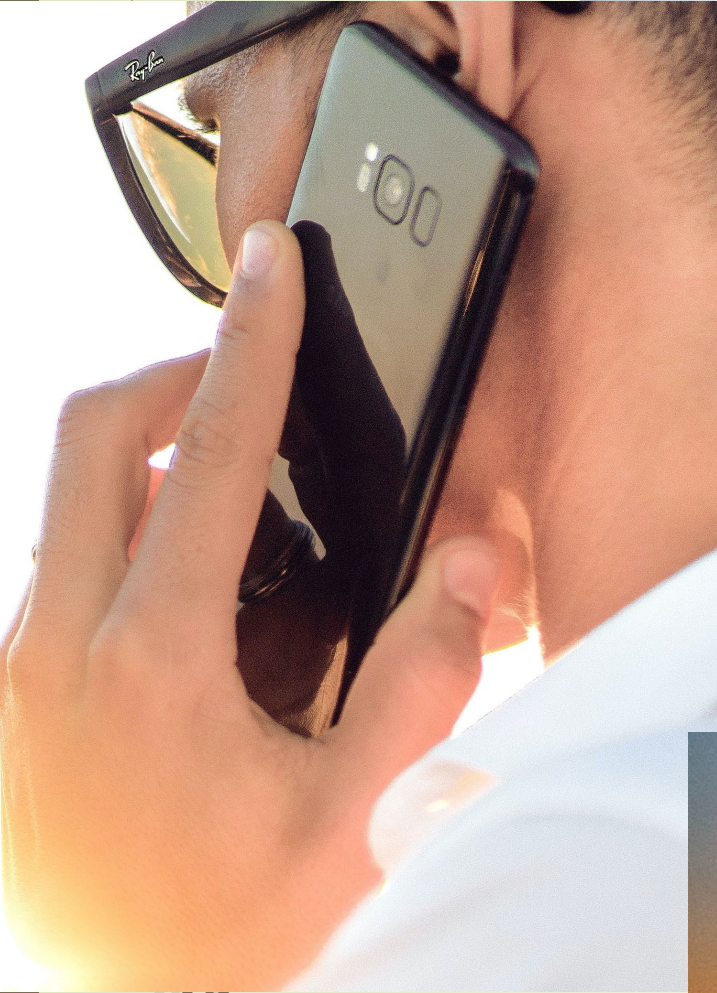
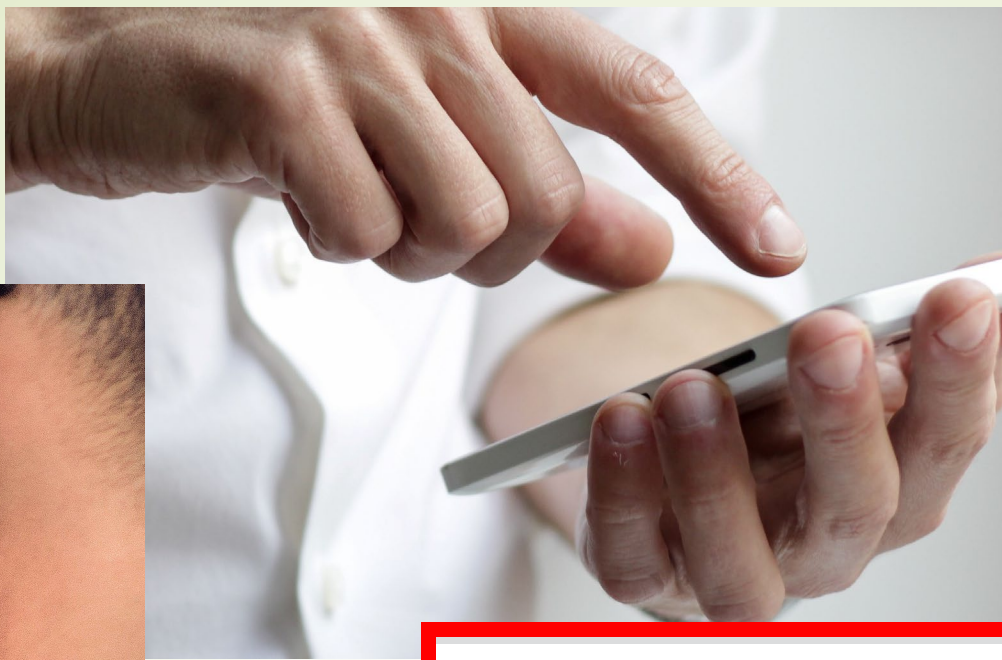
"Reasonable subjective expectation of privacy"
Katz v. U.S.

The facts of each case, not generalizations



United States v. Black, 2021 WL 4953849
(A. Ct. Crim. App. Oct. 22, 2021).







Child pornography!!

Motion to suppress?

8

- ▶ Trial court: Granted; no consent
- ▶ Court of appeals: Denied

Initial search
unauthorized

- ▶ Granted unrestricted access with password
- ▶ Express restrictions are what counts
- ▶ Same with the sergeant

People v. Davis, 438 P.3d 266 (Colo. 2019).

9

- No manifest expectation of privacy
- Not reasonable



Commonwealth v. Yusuf, 173 N.E.3d 378
(Mass. 2021).

10



Motion to suppress?

11



- Trial court: Denied
- Sup. Court: Granted



United States v. Tuggle, 4 F.4th 505
(7th Cir. 2021).

Meth dealing
conviction



18 months





Aerotek, Inc. v. Boyd, 624 S.W.3d 199
(Tex. 2021).

Application:

- Unique username
- Password
- Security questions

Uniform Electronic
Transactions Act, Tex.
Bus. & Comm. Code
§§ 322.001 *et seq.*

F
H I R E D

UETA, Tex. Bus. & Comm. Code §§ 322.001 et seq.

- “An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.”
- A security procedure is:
 - “a procedure employed for the purpose of verifying that an electronic signature, record . . . is that of a specific person . . . [and] includes a procedure that requires the use of . . . identifying words or numbers, . . . or other acknowledgment procedures.”

Mutual arbitration agreement

16

We did not
sign it!

- No evidence to support Plaintiffs' claims
- Program manager testimony sufficiently "clear, direct, and positive"
- Overcame interested witness status

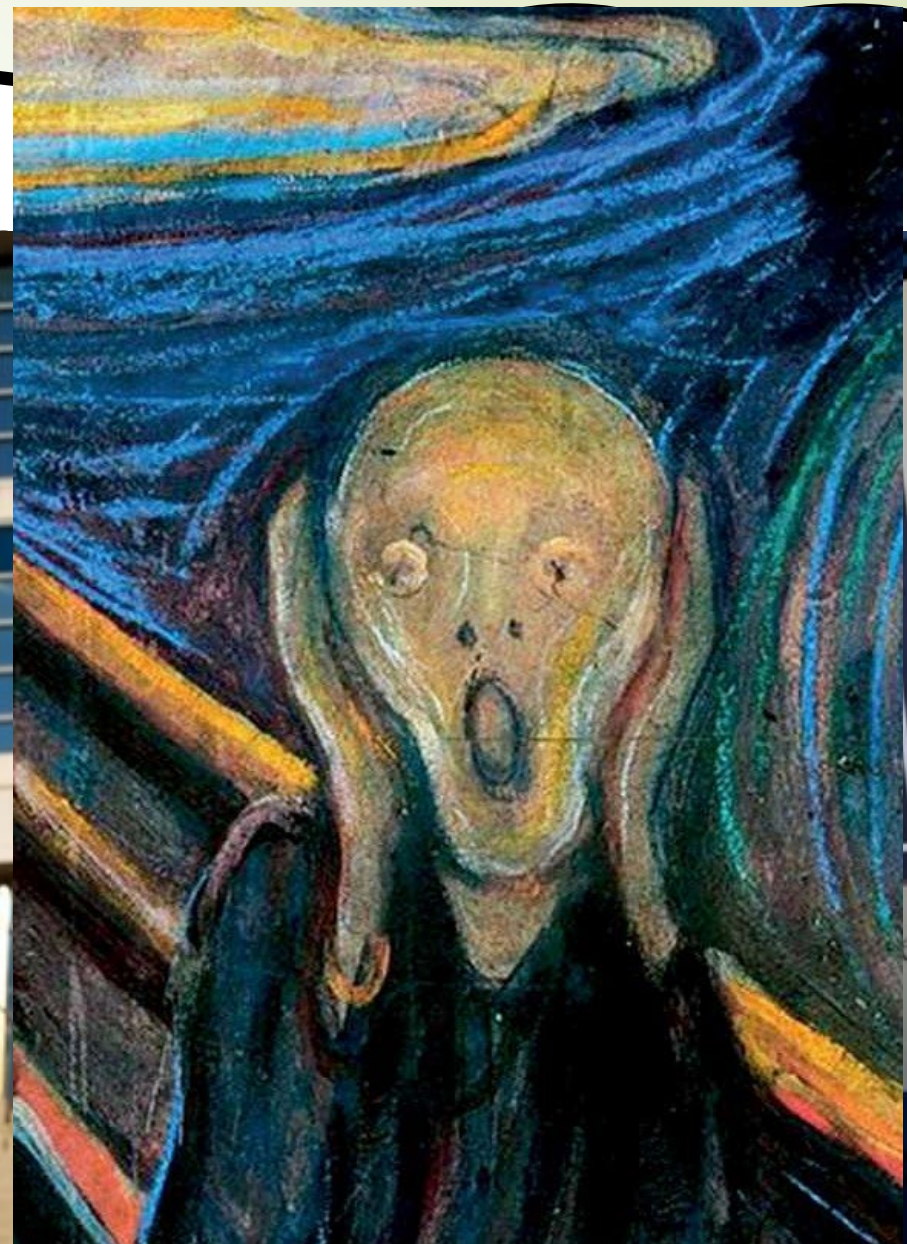
United States v. Yung, 37 F.4th 70
(3rd Cir. 2022).

One year later:

- Fake social media profiles
- Complaints
- Accusations
- On-line sex adds

Fed

§



18 U.S.C. § 2261A(2) (2013).

18

Facial
challenge

Statute requires:

- An act
- An intent
- A result

~~As-applied
challenge~~

- The defendant must use a computer service
 - “with the intent to kill, injure, harass, intimidate” to place the victim “in reasonable fear of ... death ... or serious bodily injury,” or “cause[], attempt[] to cause, or ... be reasonably expected to cause substantial emotional distress.”

18 U.S.C. § 2261A(2) (2013).

Canons of constitutional interpretation



Canons of constitutional interpretation

20

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U.S. v. Fleury, 20 F.4th
1353 (11th Cir. 2021)

U.S. v. Ackell, 907 F.3d
67 (1st Cir. 2018)

ent usage canon
canon

words canon

al avoidance canon

Facebook, Inc. v. Doe, 2022 WL 1087826, --- S.W.3d --- (Tex. App.—Houston [14th Dist.] Apr. 12, 2022, no pet. h.).



***Procedural;
not merits***


Tex. Civ. Prac. & Rem. Code § 98.002

22

- ▶ Creates a civil cause of action against defendants who:
 - ▶ “intentionally or knowingly benefit[] from participating in a [sex-trafficking] venture.”



Définitions proposées par : [Oxford Languages](#) · [En savoir plus](#)

 **nex·us**
/ˈnɛksəs/
noun

a connection or series of connections linking two or more things
"the nexus between industry and political power"

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Personal jurisdiction

23

- (1) purposefully avails itself of the privilege of conducting activities in the forum state, and
- (2) the lawsuit arises or relates to the defendant's contacts with the forum

Nexus test: merely relatedness, not causation

- Does not offend traditional notions of fair play and substantial justice
- Strong state interest

Brennan v. Dickson, 45 F.4th 48
(D.C. Cir. 2022).



Drone
registration
(Privacy Act
5 U.S.C. § 552a)

FAA Remote ID Rule:

- Serial number
- Location and velocity
- Control station location
- Time stamp
- Emergency status



Katz v. United States

25



~~Reasonable
subjective
expectation
of privacy!~~



United States v. Bledsoe, 2022 WL 3594628 (D.D.C. Aug. 22, 2022).

26



SCA 18 U.S.C. § 2702(c)(4)

27

Step 1: Account ID



**SEARCH
WARRANT**

➤ Authorizes providers to provide non-cont

➤ "to a governmental

believes that an emergency involving danger or death or serious physical injury to any person requires disclosure without delay of information relating to the emergency."

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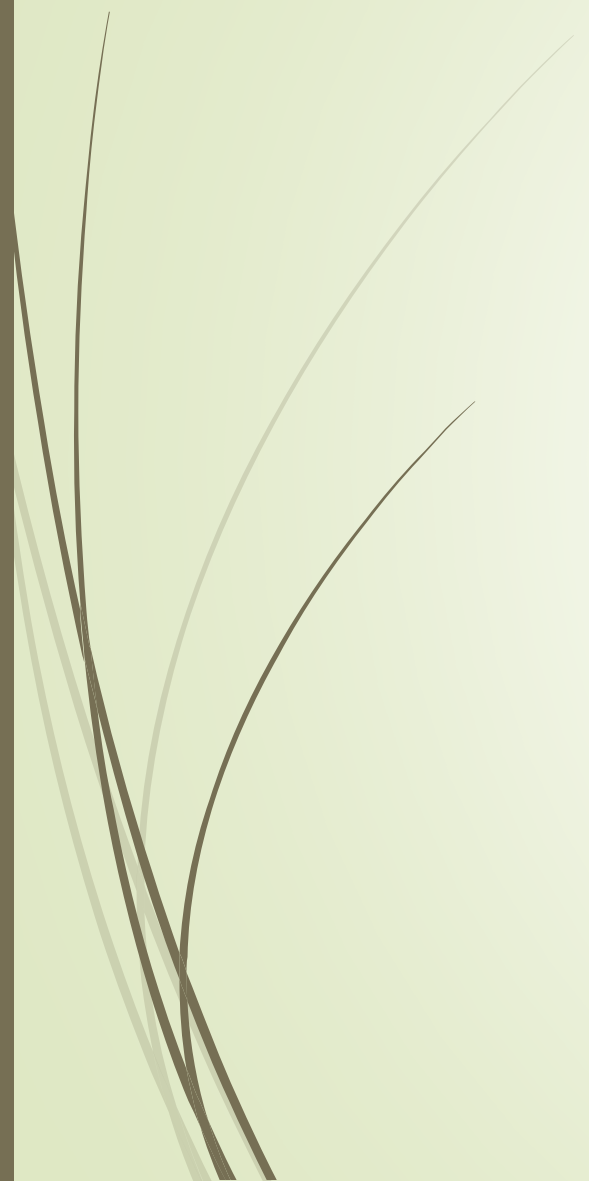
s services

faith,

Failed to meet burden

28





Tex. Bar J. and Circuits Articles by Pierre

- ▶ "Access denied? Think twice before sharing your device's passcode," Texas Bar Journal, April 2022, p. 250. *United States v. Black*, 2021 WL 4953849 (A. Ct. Crim. App. Oct. 22, 2021).
- ▶ "A body-worn camera does not dispense the need for a warrant," Circuits, Feb. 2022, p. 32. *Commonwealth v. Yusuf*, 173 N.E.3d 378 (Mass. 2021).
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Join the SBoT Computer & Technology Section today!

➔ Thank you!

➔ Merci !

