Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BAILEY *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 11–770. Argued November 1, 2012—Decided February 19, 2013

While police were preparing to execute a warrant to search a basement apartment for a handgun, detectives conducting surveillance in an unmarked car outside the apartment saw two men—later identified as petitioner Chunon Bailey and Bryant Middleton—leave the gated area above the apartment, get in a car, and drive away. The detectives waited for the men to leave and then followed the car approximately a mile before stopping it. They found keys during a patdown search of Bailey, who initially said that he resided in the apartment but later denied it when informed of the search. Both men were handcuffed and driven in a patrol car to the apartment, where the search team had already found a gun and illicit drugs. After arresting the men, police discovered that one of Bailey's keys unlocked the apartment's door.

At trial, the District Court denied Bailey's motion to suppress the apartment key and the statements he made to the detectives when stopped, holding that Bailey's detention was justified under *Michigan* v. *Summers*, 452 U. S. 692, as a detention incident to the execution of a search warrant, and, in the alternative, that the detention was supported by reasonable suspicion under *Terry* v. *Ohio*, 392 U. S. 1. Bailey was convicted. The Second Circuit affirmed denial of the suppression motion. Finding that *Summers* authorized Bailey's detention, it did not address the alternative *Terry* holding.

Held: The rule in *Summers* is limited to the immediate vicinity of the premises to be searched and does not apply here, where Bailey was detained at a point beyond any reasonable understanding of the immediate vicinity of the premises in question. Pp. 4–15.

(a) The *Summers* rule permits officers executing a search warrant "to detain the occupants of the premises while a proper search is con-

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ducted," 452 U. S., at 705, even when there is no particular suspicion that an individual is involved in criminal activity or poses a specific danger to the officers, *Muehler* v. *Mena*, 544 U. S. 93. Detention is permitted "because the character of the additional intrusion caused by detention is slight and because the justifications for detention are substantial." *Id.,* at 98. In *Summers* and later cases the detained occupants were found within or immediately outside the residence being searched. Here, however, petitioner left the apartment before the search began and was detained nearly a mile away. Pp. 4–6.

(b) In *Summers,* the Court recognized three important law enforcement interests that, taken together, justify detaining an occupant who is on the premises during the search warrant's execution, 452 U. S., at 702–703. The first, officer safety, requires officers to secure the premises, which may include detaining current occupants so the officers can search without fear that the occupants will become disruptive, dangerous, or otherwise frustrate the search. If an occupant returns home during the search, officers can mitigate the risk by taking routine precautions. Here, however, Bailey posed little risk to the officers at the scene after he left the premises, apparently without knowledge of the search. Had he returned, he could have been apprehended and detained under *Summers*. Were police to have the authority to detain persons away from the premises, the authority to detain incident to the execution of a search warrant would reach beyond the rationale of ensuring the integrity of the search by detaining those who are on the scene. As for the Second Circuit's additional concerns, if officers believe that it would be dangerous to detain a departing individual in front of a residence, they are not required to stop him; and if officers have reasonable suspicion of criminal activity, they can instead rely on *Terry*. The risk that a departing occupant might alert those still inside the residence is also an insufficient safety rationale for expanding the detention authority beyond the immediate vicinity of the premises to be searched.

The second law enforcement interest is the facilitation of the completion of the search. Unrestrained occupants can hide or destroy evidence, seek to distract the officers, or simply get in the way. But a general interest in avoiding obstruction of a search cannot justify detention beyond the vicinity of the premises. Occupants who are kept from leaving may assist the officers by opening locked doors or containers in order to avoid the use of force that can damage property or delay completion of the search. But this justification must be confined to persons on site as the search warrant is executed and so in a position to observe the progression of the search.

The third interest is the interest in preventing flight, which also serves to preserve the integrity of the search. If officers are con-

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cerned about flight in the event incriminating evidence is found, they might rush the search, causing unnecessary damage or compromising its careful execution. The need to prevent flight, however, if unbounded, might be used to argue for detention of any regular occupant regardless of his or her location at the time of the search, *e.g.*, detaining a suspect 10 miles away, ready to board a plane. Even if the detention of a former occupant away from the premises could facilitate a later arrest if incriminating evidence is discovered, "the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment." *Mincey* v. *Arizona*, 437 U. S. 385, 393.

In sum, none of the three law enforcement interests identified in *Summers* applies with the same or similar force to the detention of recent occupants beyond the immediate vicinity of the premises to be searched. And each is also insufficient, on its own, to justify an expansion of the rule in *Summers* to permit the detention of a former occupant, wherever he may be found away from the scene of the search. Pp. 6–12.

(c) As recognized in *Summers,* the detention of a current occupant "represents only an incremental intrusion on personal liberty when the search of a home has been authorized by a valid warrant," 452 U. S., at 703, but an arrest of an individual away from his home involves an additional level of intrusiveness. A public detention, even if merely incident to a search, will resemble a full-fledged arrest and can involve the indignity of a compelled transfer back to the premises. P. 12.

(d) Limiting the rule in *Summers* to the area within which an occupant poses a real threat to the safe and efficient execution of a search warrant ensures that the scope of the detention incident to a search is confined to its underlying justification. Because petitioner was detained at a point beyond any reasonable understanding of immediate vicinity, there is no need to further define that term here. Since detention is justified by the interests in executing a safe and efficient search, the decision to detain must be acted upon at the scene of the search and not at a later time in a more remote place. Pp. 13–15.

(e) The question whether stopping petitioner was lawful under *Terry* remains open on remand. P. 15.

652 F. 3d 197, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. SCALIA, J., filed a concurring opinion, in which GINSBURG and KAGAN, JJ., joined. BREYER, J., filed a dissenting opinion, in which THOMAS and ALITO, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 11–770

CHUNON L. BAILEY, AKA POLO, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[February 19, 2013]

JUSTICE KENNEDY delivered the opinion of the Court.

The Fourth Amendment guarantees the right to be free from unreasonable searches and seizures. A search may be of a person, a thing, or a place. So too a seizure may be of a person, a thing, or even a place. A search or a seizure may occur singly or in combination, and in differing sequence. In some cases the validity of one determines the validity of the other. The instant case involves the search of a place (an apartment dwelling) and the seizure of a person. But here, though it is acknowledged that the search was lawful, it does not follow that the seizure was lawful as well. The seizure of the person is quite in question. The issue to be resolved is whether the seizure of the person was reasonable when he was stopped and detained at some distance away from the premises to be searched when the only justification for the detention was to ensure the safety and efficacy of the search.

I

A

At 8:45 p.m. on July 28, 2005, local police obtained a warrant to search a residence for a .380-caliber handgun.

The residence was a basement apartment at 103 Lake Drive, in Wyandanch, New York. A confidential informant had told police he observed the gun when he was at the apartment to purchase drugs from "a heavy set black male with short hair" known as "Polo." App. 16–26. As the search unit began preparations for executing the warrant, two officers, Detectives Richard Sneider and Richard Gorbecki, were conducting surveillance in an unmarked car outside the residence. About 9:56 p.m., Sneider and Gorbecki observed two men—later identified as petitioner Chunon Bailey and Bryant Middleton—leave the gated area above the basement apartment and enter a car parked in the driveway. Both matched the general physical description of "Polo" provided by the informant. There was no indication that the men were aware of the officers' presence or had any knowledge of the impending search. The detectives watched the car leave the driveway. They waited for it to go a few hundred yards down the street and followed. The detectives informed the search team of their intent to follow and detain the departing occupants. The search team then executed the search warrant at the apartment.

Detectives Sneider and Gorbecki tailed Bailey's car for about a mile—and for about five minutes—before pulling the vehicle over in a parking lot by a fire station. They ordered Bailey and Middleton out of the car and did a patdown search of both men. The officers found no weapons but discovered a ring of keys in Bailey's pocket. Bailey identified himself and said he was coming from his home at 103 Lake Drive. His driver's license, however, showed his address as Bayshore, New York, the town where the confidential informant told the police the suspect, "Polo," used to live. *Id.*, at 89. Bailey's passenger, Middleton, said Bailey was giving him a ride home and confirmed they were coming from Bailey's residence at 103 Lake Drive. The officers put both men in handcuffs. When

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