The modern era of Fourth Amendment jurisprudence began in 1967 with *Katz v. United States*.[[1]](#footnote-0) That case, and especially Justice Harlan’s concurrence,[[2]](#footnote-1) heralded a new approach in which the Amendment’s protections turned on “reasonable expectation[s] of privacy.” In the decades since, the Supreme Court has used this approach to build a grand edifice of Fourth Amendment doctrine. But now, just over half a century later, the *Katz* era could be nearing its end. Recent cases have revealed interest among some originalist Justices in restoring a supposed pre-*Katz* regime under which Fourth Amendment protections turn on concepts of property and trespass rather than amorphous notions of privacy.[[3]](#footnote-2)

1. 389 U.S. 347 (1967); *see, e.g.*, Kiel Brennan-Marquez, *Outsourced Law Enforcement*, 18 U. Pa. J. Const. L. 797, 801 (2016) (noting that *Katz* “ushered in the modern era of Fourth Amendment law”). [↑](#footnote-ref-0)
2. *See Katz*, 389 U.S. at 360-62 (Harlan, J., concurring). [↑](#footnote-ref-1)
3. *See* United States v. Jones, 565 U.S. 400 (2012); Florida v. Jardines, 569 U.S. 1 (2013); Carpenter v. United States, 138 S. Ct. 2206, 2261 (2018) (Gorsuch, J., dissenting); *see also Carpenter*, 138 S. Ct. at 2224 (Kennedy, J., dissenting) (“[T]he Court unhinges Fourth Amendment doctrine from the property-based concepts that have long grounded the analytic framework that pertains in these cases.”). [↑](#footnote-ref-2)