

08-1332 CITY OF ONTARIO V. QUON

DECISION BELOW: 529 F.3d 892

LOWER COURT CASE NUMBER: 07-55282

QUESTION PRESENTED:

While individuals do not lose Fourth Amendment rights merely because they work for the government, some expectations of privacy held by government employees may be unreasonable due to the "operational realities of the workplace." *O'Connor v. Ortega*, 480 U.S. 709, 717 (1987) (plurality). Even if there exists a reasonable expectation of privacy, a warrantless search by a government employer - for non-investigatory work-related purposes or for investigations of work-related misconduct - is permissible if reasonable under the circumstances. *Id.* at 725-26 (plurality). The questions presented are:

1. Whether a SWAT team member has a reasonable expectation of privacy in text messages transmitted on his SWAT pager, where the police department has an official no-privacy policy but a non-policymaking lieutenant announced an informal policy of allowing some personal use of the pagers.
2. Whether the Ninth Circuit contravened this Court's Fourth Amendment precedents and created a circuit conflict by analyzing whether the police department could have used "less intrusive methods" of reviewing text messages transmitted by a SWAT team member on his SWAT pager.
3. Whether individuals who send text messages to a SWAT team member's SWAT pager have a reasonable expectation that their messages will be free from review by the recipient's government employer.

CERT. GRANTED 12/14/2009