

THE FOURTH AMENDMENT IN THE AGE OF AUTONOMOUS VEHICLES

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Autonomous vehicles exist at the intersection of two extremely turbulent areas of Fourth Amendment jurisprudence—traffic stops and emerging technologies—and have implications for virtually every major search and seizure doctrine developed over the last century. Complicating matters even further is the fact that car manufacturers are developing these vehicles at varying rates, meaning that vehicles with differing levels of automation are being introduced onto the consumer market at different (and often unpredictable) times. Each level of vehicle automation, in turn, poses unique issues for law enforcement. Semi-autonomous (Levels 2 and 3) vehicles make it extremely difficult for police to distinguish between dangerous distracted driving and safe use of a vehicle’s autonomous capabilities. Fully autonomous (Level 4 and 5) vehicles solve this problem but create another one: the ability of criminals to use these vehicles to break the law with an extremely low risk of detection. How and whether we solve these legal and law enforcement issues depends on our willingness to adapt or abandon a number of significant Fourth Amendment doctrines. Six possible solutions (in order from least to most extreme) reveal why. These solutions include (1) restrictions on visibility obstructions, (2) restrictions on the use and purchase of fully autonomous vehicles, (3) requirements that users of these cars provide implied consent for suspicion-less traffic stops and searches, (4) creation of government checkpoints or pull-offs requiring autonomous vehicles to submit to brief stops and dog sniffs, and (5) exploitation of the third-party doctrine to surveil the data generated by these vehicles. They also include abandonment of the century-old “automobile exception” in favor of rebalancing Fourth Amendment jurisprudence for the benefit of motorists who, for far too long, have seen a gradual but persistent erosion of some of their most significant constitutional rights.