

Good Faith, Bad Law: The “Good Faith” Exception Against the Fourth Amendment

By Prem Kamat

In the United States, the Fourth Amendment is the easiest to violate. The Fourth Amendment states the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” thus implying that improper search and seizure is unconstitutional.¹⁷ As stated in *Davis v. United States (2011)*, this doctrine decrees that “evidence obtained in good faith reliance on a legal authority will not be excluded, even if the authority turns out to be unconstitutional or otherwise defective.”¹⁸ Essentially, when police act on the belief that a faulty precedent, statute, or warrant authorizes their search, the evidence acquired is generally deemed admissible. Though designed to provide a safeguard against reasonable error, the “good faith” exception undermines the Fourth Amendment’s constitutional design, twists the exclusionary rule, and incentivizes government overreach. Originating in *United States v. Leon (1984)* and growing in scope through cases like *Illinois v. Krull (1987)* and *Heien v. North Carolina (2014)*, the “good faith” exception has become a fundamental loophole to the Constitution. Through its excuse of unreasonable searches under the veil of “police mistakes,” it modulates the Fourth Amendment from a protection against tyranny to a moldable justification for state abuse.

The Fourth Amendment was developed in response to the British military’s practice of unjustly entering homes to search for evidence of libel against the King.¹⁹ The exclusionary rule established under the Fourth Amendment intended to protect citizens from such abuses, and dictates that evidence obtained in violation of a defendant's constitutional rights is inadmissible and must be excluded. This rule has been expanded since *Monroe v. Pape (1961)* and *Mapp v. Ohio (1961)*, where the Supreme Court ruled that citizens could seek remedies if they were victims of constitutional violations.²⁰ The exclusionary rule was established to preserve

¹⁷ U.S. Constitution. amend. IV.

¹⁸ Tokson, Matthew, and Michael Gentithes. 2025. “Reality of the Good Faith Exception.” *The Georgetown Law Journal* 113, no. 3 (February): 556. <https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-113/volume-113-issue-3-february-2025/the-reality-of-the-good-faith-exception/>.

¹⁹ Tokson, Matthew, and Michael Gentithes. 2025. “Reality of the Good Faith Exception.” *The Georgetown Law Journal* 113, no. 3 (February): 587.

²⁰ Henning, Karen M. 2016. ““Reasonable” Police Mistakes: Fourth Amendment Claims and the “Good Faith” Exception After Heien.” *St. John’s Law Review* 90:281. <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6753&context=lawreview>.

individual rights in the face of constitutional pressures; however, recent developments in judicial philosophy with the “good faith” exception demonstrate a shift towards prioritizing deterrence and efficiency. Oftentimes, this prioritization infringes on the rights of defendants in spite of constitutional safeguards. This development raises an important question: What are the effects of courts allowing unconstitutional searches on the basis that an officer “meant well?”

The origins of the “good faith” exception can be traced to the 1980s. Alberto Leon was under police surveillance for his suspected role in a California drug dealing operation based on an anonymous tip. The police were granted a warrant and found large quantities of illegal drugs in his possession. Later it was judicially concluded that the warrant was derived from insufficient probable cause and thus in violation of the Fourth Amendment.²¹ *United States v. Leon* (1980) establishes the “good faith” exception to the exclusionary rule under the principle that “the marginal or nonexistent benefits produced by suppressing evidence obtained in objectively reasonable reliance on a subsequently invalidated search warrant cannot justify the substantial costs of exclusion.” In other words, the ruling in *Leon* permits that officers’ actions are protected based simply on their ability to be “reasonable” and protects evidence acquired unconstitutionally—a violation of the Fourth Amendment seemingly rooted in the weighing of “benefits” and “substantial costs.” Justice Brennan, backed by Justice Marshall, wrote a harsh dissent corroborating this violation, asserting that his “colleagues have positioned themselves to reopen the door [to evidence secured by official lawlessness] still further and abandon altogether the exclusionary rule in search and seizure cases.” Brennan also directly asserts that the foundation of the “good faith” mistake in “costs” and “benefits” should not constitute the “Court’s ‘victory’ over the Fourth Amendment.”²²

Illinois v. Krull (1987) nearly immediately expanded the scope of the ruling in *Leon*. Four men, including Albert Krull, owned a wrecking yard, which, under Illinois law, could be investigated at any time without a warrant as part of their licensing agreement. The police audited the business and discovered four stolen vehicles, but the law that their actions were based on had recently been struck down. The evidence from the *illegal* investigation was validated in accordance with the ideals of the “good faith” exception, proving the Supreme Court’s staunch

²¹ “United States v. Leon.” 1984. Oyez. <https://www.oyez.org/cases/1983/82-1771>.

²² *United States v. Leon*, 468 U.S. 897 (1984)

acceptance of the rule and expanding it to apply to unconstitutional statutes.²³ The dissent by Justice O'Connor expresses her concern with the confusing nature of the *Krull* decision, stating, "Leon's rationale does not support this extension of its rule, and the Court is unable to give any independent reason in defense of this departure from established precedent."²⁴ O'Connor's remarks demonstrate that these violations of the Fourth Amendment are unfounded and reflect a trend of blurring the boundary between policing error and executive overreach.

More recently, *Heien v. North Carolina (2014)* expanded the "good faith" exception. A North Carolina sheriff pulled over a vehicle for a faulty brake light based on a misunderstood traffic statute. The sheriff noticed a man lying unresponsive in the backseat. Since the driver and the individual in the backseat had inconsistent stories, the officer asked to search the vehicle. The officer found more than 50 grams of cocaine in the car.²⁵ The search was in violation of the Fourth Amendment, but the Supreme Court upheld the search as legal due to it being a "reasonable" stop. The unconstitutionality of the search stems from the officer's initial stop of the vehicle, which hinged on improper legal knowledge. Justice Sonia Sotomayor pushed back in her dissent that the Court "does not define the categories of inputs that courts are to consider when assessing the reasonableness of a search or seizure, each of which must be independently justified" thus rendering the search in the case unconstitutional.²⁶ She expands the critique that the "good faith" exception is flawed due to its vagueness. The three aforementioned cases—*Leon*, *Krull*, and *Heien*—in addition to a litany of others show how the "good faith" exception, previously just an "exception," has become the rule unto itself. How can an unconstitutional act not only be consistently repeated but also become the evolving standard by which cases are determined? The "good faith" exception is not only qualitatively inconsistent with the Fourth Amendment, but empirically reduces the impact of the intent of the Constitution. In a 2025 study, researchers Tokson and Gentithes investigated the prevalence of the exception by analyzing all federal and state court published and unpublished judgments in the months of July 2015, July 2018, and July 2021 regarding the Fourth Amendment and suppression of evidence. Through their research, they found that one in every six suppression cases discussed the

²³ "Illinois v. Krull." 1987. Oyez. Accessed October 16, 2025. www.oyez.org/cases/1986/85-608.

²⁴ Illinois v. Krull, 480 U.S. 340 (1987)

²⁵ "Heien v. North Carolina." 2014. Oyez. <https://www.oyez.org/cases/2014/13-604>.

²⁶ Heien v. North Carolina, 574 U.S. 54 (2014)

exception, and in 12.7%, the “good faith” exception applied.²⁷ This produces an oxymoron—an “exception” to a rule is repeated in practically 1 out of every 8 cases. Furthermore, they find that 29.9% of all rulings including the “good faith” mistake avoid any substantial ruling regarding whether or not the search and seizure violated the Fourth Amendment implying that “over several years, hundreds or thousands of cases will be resolved solely based on the good faith exception, with the courts avoiding the underlying substantive issue [of the Fourth Amendment] entirely.”²⁸ This notion is complemented by Laura Moraff in *The Champion*, who identifies that, “the good-faith doctrine...leads courts to avoid difficult Fourth Amendment questions that need answering, and thereby keeps the law frozen in time even as technology rapidly advances.”²⁹ The “good faith” exception has developed into a judicial “cop out” utilized to reduce the requisite number of substantial rulings. In addition, Tokson and Gentithes note that the “law actively encourages investigators to use novel, potentially unlawful surveillance technologies as much as possible.”³⁰ Moraff buttresses this: “it is particularly invidious in the context of novel types of searches, where the exception not only ratifies Fourth Amendment violations, but also allows police to experiment with constitutionally dubious surveillance tools with impunity”³¹ Together, their findings reflect a dangerous trend. The exception lends itself as a tool for unconstitutional governmental overreach under the guise of “policing error” due to new technology. Both the empirical data and the exception’s relationship to novel devices present the same conclusion: the “good faith” mistake rewards error and reduces restraint—precisely the opposite intent of the Fourth Amendment.

The vague nature of the “reasonableness” aspect of the *Leon* ruling has caused a standard that Professor Karen McDonald Henning calls “double reasonableness.” Here, there must be two tests, one for the violation of the Fourth Amendment and another one for the remedy. This double layered approach allows for a violation of the amendment to be deemed unreasonable, but

²⁷ Tokson, Matthew, and Michael Gentithes. 2025. “Reality of the Good Faith Exception.” *The Georgetown Law Journal* 113, no. 3 (February): 565. <https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-113/volume-113-issue-3-february-2025/the-reality-of-the-good-faith-exception/>.

²⁸ Tokson, Matthew, and Michael Gentithes. 2025. “Reality of the Good Faith Exception.” *The Georgetown Law Journal* 113, no. 3 (February): 569. <https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-113/volume-113-issue-3-february-2025/the-reality-of-the-good-faith-exception/>.

²⁹ Moraff, Laura. 2023. “Resisting the Good-Faith Exception in Cases Involving Novel Types of Surveillance.” *The Champion* 47 (May): 65. <https://www.nacdl.org/getattachment/1c9b940d-8fd8-463c-87f4-8ddcb550af96/resisting-the-good-faith-exception.pdf>.

³⁰ Tokson, Matthew, and Michael Gentithes. 2025. “Reality of the Good Faith Exception.” *The Georgetown Law Journal* 113, no. 3 (February): 553. <https://www.law.georgetown.edu/georgetown-law-journal/in-print/volume-113/volume-113-issue-3-february-2025/the-reality-of-the-good-faith-exception/>.

³¹ Moraff, Laura. 2023. “Resisting the Good-Faith Exception in Cases Involving Novel Types of Surveillance.” *The Champion* 47 (May): 58. <https://www.nacdl.org/getattachment/1c9b940d-8fd8-463c-87f4-8ddcb550af96/resisting-the-good-faith-exception.pdf>.

if the officer made their mistake in “reasonable good faith” then the remedy is withheld. Reasonableness is simultaneously the problem and the solution to the “good faith” exception, but the cyclical reasoning renders the Fourth Amendment practically void. Furthermore, the broad spectrum of applications for the “good faith” mistake has “sow[n] confusion” and limited the effectiveness of the exclusionary rule—a rule designed to protect citizens’ rights.³²

The *Leon* ruling has also shifted the intent of the exclusionary rule. David Kaye notes that “though the exclusionary rule can deter negligent and unconstitutional conduct, the cost of doing so is too high to pay,” which implies that courts are no longer concentrated on upholding constitutionality, instead aimed at improving governmental efficiency.³³ Since disregarding illegally obtained evidence muddles police and judicial procedures, courts are more likely to utilize the “good faith” exception as a legal scapegoat. The exclusionary rule founded in *Monroe* and *Mapp* has been diluted in exchange for efficiency, taking away the rights of citizens. Going back to Sotomayor’s dissent in *Heien*, the misguided and confused judgment of the Courts run in parallel to the Framers as “an officer’s mistaken understanding of the Fourth Amendment itself can support a seizure if that understanding was reasonable” — citizen’s rights can now be violated based on a mistaken understanding of the law.³⁴ The Supreme Court has dissolved the black-and-white of the Fourth Amendment into a hazy gray that seemingly has no clear rules. Sotomayor’s warning serves to reframe the “good faith” exception as illegitimate, because a constitutional right that can be violated in blind “good faith” no right at all.

Though largely unconstitutional, it is beneficial to understand the intent of the rulings in *Leon*, *Krull*, and *Heien*. On the exclusionary rule, the ruling in *Leon* was, “it cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity.”³⁵ Obviously, the decision is meant to prevent the exploitation of the exclusionary rule, but it ends up permitting the loophole of the “good faith” exception through its vague language. It is simply impossible to determine what constitutes an “objectively reasonable” action, as “reasonableness” is a subjective marker. The commentary for the *Krull* ruling falls short, as it once again attempts

³² Henning, Karen M. 2016. ““Reasonable” Police Mistakes: Fourth Amendment Claims and the “Good Faith” Exception After Heien.” *St. John’s Law Review* 90:272-275. <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=6753&context=lawreview>.

³³ Kaye, David H. 2011. “Unraveling the Exclusionary Rule: From Leon to Herring to Robinson—And Back?” *UCLA Law Review In Disc.* (May). <https://www.uclalawreview.org/unraveling-the-exclusionary-rule-from-leon-to-herring-to-robinson-and-back/>.

³⁴ *Heien v. North Carolina*, 574 U.S. 54 (2014)

³⁵ *United States v. Leon*, 468 U.S. 897 (1984)

to rationalize a truly subjective marker: “there is no evidence to suggest that legislatures are inclined to ignore or subvert the Fourth Amendment.” It is possible to expect the best in legislators; however, regardless of intent or not, they have repeatedly left the door open for possible Fourth Amendment violations.³⁶ Lastly, the *Heien* ruling expands the two mistakes regarding the written law, seeking to protect law enforcement officers whose knowledge may be limited: “because the officer’s mistake about the brake-light law was reasonable, the stop in this case was lawful under the Fourth Amendment.”³⁷ The three rulings all demonstrate a defense of higher powers—executive civil servants and legislators—not the people. The Fourth Amendment was designed to protect citizens from government overreach; these rulings stand in opposition to that purpose.

The “good faith” exception was conceived as a weak protection for honest error, yet it has evolved into a constitutional scapegoat. By propagating rights violations acted in “reasonable” ignorance, the Court has weakened the Fourth Amendment from a clear guarantee to one of judicial discretion. Though it began as judicial pragmatism, it now invites executive overreach and constitutional complacency. In order for the Fourth Amendment to remain a living protection, rather than simply a procedural courtesy, the era of the “good faith” exception must come to a close.

³⁶ *Illinois v. Krull*, 480 U.S. 340 (1987)

³⁷ *Heien v. North Carolina*, 574 U.S. 54 (2014)