

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND CIRCUIT

3  
4 August Term, 2009

5 (Argued: January 27, 2010 Decided: March 8, 2010)

6 Docket No. 09-1144-cr  
7

8 UNITED STATES OF AMERICA,

9 *Appellant,*

10 - v. -

11 JOSE NAVAS, JOSE ALVAREZ, and ARTURO MOREL,

12 *Defendants-Appellees,*

13 FAUSTO VELEZ, FERNANDO DELGADO, PEDRO VENTURA, ANTONIO MOREL, and EURIS  
14 VELEZ,

15 *Defendants.\**  
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\* The Clerk of the Court is respectfully directed to amend the official caption of this action to conform to the caption listed above.

1 Before:

2 LEVAL and WESLEY, *Circuit Judges*, and GLEESON, *District Judge*.\*\*

3 Interlocutory appeal from a March 19, 2009 order of the  
4 United States District Court for the Southern District of  
5 New York (Pauley, J.), which granted in part and denied in  
6 part motions to suppress evidence and post-arrest statements  
7 collected during the course of a narcotics investigation.  
8 The government seeks review of the portion of the district  
9 court's order that suppressed narcotics seized by law  
10 enforcement officers during a warrantless search of a  
11 trailer. We hold that the search was lawful under the  
12 "automobile exception" to the Fourth Amendment's warrant  
13 requirement.

14  
15 REVERSED and REMANDED.

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19 United States Attorney, *on the brief*), for  
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21 Southern District of New York, New York, New  
22 York, for Appellant.

23  
24 PATRICK J. JOYCE, New York, New York, for Appellee  
25 Jose Navas.

26  
27 LAWRENCE D. GERZOG, New York, New York, for Appellee  
Jose Alvarez.

28  
29 SUSAN G. KELLMAN, Brooklyn, New York, for Appellee  
30 Arturo Morel.

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\*\* The Honorable John Gleeson, United States District Court for the Eastern District of New York, sitting by designation.

1 WESLEY, *Circuit Judge*:

2 This appeal concerns a trailer, unhitched from its cab  
3 and parked in a warehouse. The district court held that a  
4 warrantless search of the trailer ran afoul of the Fourth  
5 Amendment. On appeal, defendants liken the trailer to a  
6 fixed structure, and argue that the district court properly  
7 suppressed the fruits of the search. The government argues  
8 that, whether or not attached to a cab, the trailer is  
9 subject to a warrantless search pursuant to the "automobile  
10 exception" to the Fourth Amendment's warrant requirement.  
11 As the trailer was readily mobile and commanded only a  
12 diminished expectation of privacy, we hold that the  
13 automobile exception applies. Therefore, we reverse.

14 **I. BACKGROUND**

15 **A. Facts**

16 The information leading to defendants' arrests was  
17 provided to the Drug Enforcement Administration ("DEA") by a  
18 cooperating witness who himself had been arrested for a  
19 narcotics-related offense. The witness informed the DEA  
20 that he was a member of a narcotics distribution enterprise  
21 that shuttled large quantities of narcotics and illicit  
22 proceeds between California and New York City. The *modus*

1    *operandi* of the group, according to the cooperating witness,  
2    was to transport the contraband in hidden "traps" located  
3    within trailers that contained more mundane freight.<sup>1</sup> In  
4    addition to providing information about the nature of the  
5    narcotics trafficking scheme, the cooperating witness also  
6    implicated defendant-appellee Jose Navas and provided the  
7    number of a cellular telephone that was subsequently linked  
8    to Navas following further investigation.

9            On October 27 2008, the government obtained an order  
10    from a magistrate judge in the Southern District of New York

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<sup>1</sup> At the suppression hearing conducted by the district court, one of the agents who participated in the challenged search testified that he was "not really a truck guy." Perhaps as a result, there is a dearth of evidence in the record regarding the nature of the vehicle at issue and some confusion in the district court's terminology. The district court used the word "cab" to describe what we understand to be "[t]he noncargo carrying power unit that operates in combination with a semitrailer or trailer." 23 C.F.R. § 658.5 (Department of Transportation regulation defining the terms "tractor" and "truck tractor"). In some parts of its decision, the court used the term "tractor trailer" to describe what we understand to be a "nonautomotive highway . . . vehicle designed to be hauled" by a "cab." *Webster's Third New International Dictionary of the English Language* 2424 (2002). At other times, the court referred to the object of the search simply as a "trailer." The testimony from the hearing suggests that it was in fact only the trailer portion of a tractor trailer. Thus, for purposes of clarity, we adopt the district court's use of the term "cab" and refer to the vehicle searched as a "trailer." We only use the phrase "tractor trailer" to denote times at which the cab and the trailer were connected.

1 that authorized law enforcement officers to track the  
2 location of the phone.<sup>2</sup> On November 4, 2008, agents  
3 assigned to the Drug Enforcement Task Force observed that  
4 the phone was approaching the Bronx. Based on that  
5 observation, agents were dispatched to the Hunts Point  
6 Terminal Market to conduct surveillance.<sup>3</sup> During the  
7 afternoon, one of the agents identified Navas at the Market.  
8 He was seen unloading a tractor trailer with out-of-state  
9 license plates, aided by an individual later identified as  
10 defendant-appellee Jose Alvarez. Later that night, Navas

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<sup>2</sup> The order was issued pursuant to 18 U.S.C. §§ 3121-26, 2703(d), which were enacted in Titles II and III of the Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848 (1986). See *United States v. Navas*, 640 F. Supp. 2d 256, 262 (S.D.N.Y. 2009). The surveillance authorized by the order allowed the agents to approximate the phone's geographic position by monitoring the "cell site" information transmitted between the phone and the antenna towers in its vicinity. See *In re Application of the U.S. for an Order for Prospective Cell Site Location Info. on a Certain Cellular Telephone*, 460 F. Supp. 2d 448, 450-52 (S.D.N.Y. 2006) (describing the mechanics and investigative uses of cell site information). The district court denied defendants' motions to suppress evidence collected pursuant to this order, and those holdings are not at issue in this appeal. See *Navas*, 640 F. Supp. 2d. at 262-63.

<sup>3</sup> The Hunts Point Terminal Market is located on Halleck and Spofford Streets in the Bronx. It is one of the largest wholesale produce and meat processing centers in the world. See *United States v. Alfisi*, 308 F.3d 144, 147 (2d Cir. 2002). Products are shipped there via air, rail, and road.

1 and Alvarez drove the tractor trailer to a private warehouse  
2 on Drake Street in the Bronx, approximately one half mile  
3 from the Hunts Point Market. At the warehouse, the agents  
4 watched Navas open the garage door, park the tractor trailer  
5 in the warehouse, unhitch the cab, and lower the legs in the  
6 front of the trailer to stabilize it. Navas and Alvarez  
7 then drove the cab out of the warehouse, closed its garage  
8 door, and drove away. Some of the surveilling agents  
9 pursued Navas and Alvarez, and others remained at the  
10 warehouse.

11 Navas and Alvarez proceeded to a nearby McDonald's  
12 restaurant, where they parked the cab on the street. A male  
13 later identified as defendant Fernando Delgado approached  
14 the cab and engaged in a discussion with Navas and Alvarez.  
15 After the conversation, Delgado entered a black Lincoln Town  
16 Car with Ohio license plates, which then parked in the  
17 McDonald's parking lot. Delgado exited that vehicle, spoke  
18 again with Navas and Alvarez, and then entered a silver  
19 Honda Odyssey parked adjacent to the Lincoln. Thereafter,  
20 approximately five individuals exited the Honda with black  
21 duffel bags.

22 The agents at the scene then arrested Navas, Alvarez,  
23 Delgado, and the remaining occupants of the Lincoln and the

1 Honda. Searches incident to those arrests revealed that the  
2 duffel bags removed from the Honda were empty, but that  
3 additional bags within that vehicle contained gloves,  
4 drills, and drill bits. The agents patted down the  
5 arrestees and transported them back to the warehouse, where  
6 they were issued *Miranda* warnings in Spanish and patted down  
7 a second time. After receiving *Miranda* warnings, Navas  
8 "admitted that he was a driver for drug traffickers, that  
9 the trailer was being delivered to a member of the  
10 trafficking organization, and that narcotics were stowed in  
11 a secret rooftop compartment of the trailer." *Navas*, 640 F.  
12 Supp. 2d at 261.

13 During the pat-down of an arrestee later identified as  
14 defendant-appellee Arturo Morel, an agent noticed a "large  
15 box-like object" in Morel's right front pants pocket. The  
16 agent testified at the suppression hearing that Morel stated  
17 that the object was "the garage door opener to [his] house,"  
18 but the garage door of the warehouse opened when the agent  
19 "inadvertently" "touch[ed]" it.<sup>4</sup> *Id.* at 261. After further  
20 discussion, Morel verbally consented to a search "inside

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<sup>4</sup> The district court specifically credited this aspect of the agent's testimony, and its credibility determination is unchallenged. See *Navas*, 640 F. Supp. 2d at 261 & n.2.

1 [the warehouse at] 528 Drake Street and anything that was in  
2 there." *Id.* Morel also executed a written Consent Form,  
3 but neither the agents nor Morel completed the portion of  
4 the form calling for a description of the area to be  
5 searched.

6 Following Morel's consent, the agents entered the  
7 warehouse and conducted the search at issue in this appeal.  
8 Acting on information from Navas's post-arrest statement and  
9 the cooperating witness, they examined the top of the  
10 trailer and observed physical indicia of a secret  
11 compartment. The agents then "ripped off the sheet metal  
12 roof" of the trailer, discovered 230 kilograms of cocaine,  
13 and promptly seized the contraband. *Id.* at 262.

#### 14 **B. Procedural History**

15 Following the November 4, 2008 arrests, eight  
16 defendants were indicted on November 19, 2008. The  
17 indictment charges a single count of conspiracy to possess  
18 and distribute more than five kilograms of cocaine, in  
19 violation of 21 U.S.C. § 846. In early 2009, defendants-  
20 appellees Navas, Alvarez, and Morel filed separate motions to  
21 suppress. The central issues raised by their motions  
22 related to the government's cell site surveillance, the



1 searches incident to the arrests, and the search of the  
2 trailer. The district court conducted a suppression hearing  
3 on February 24, 2009, at which the government offered  
4 testimony from three of the agents who participated in the  
5 investigation. Navas and Alvarez also submitted evidence in  
6 affidavit form.

7 On March 19, 2009, the district court issued a decision  
8 granting in part and denying in part the motions. The  
9 district court rejected the challenges to the cell site  
10 surveillance. See *Navas*, 640 F. Supp. 2d at 263-64. It  
11 also held that defendants' arrests were supported by  
12 probable cause, and that the searches of their persons, the  
13 Honda, the Lincoln, and the cab were all lawful searches  
14 incident to those arrests. See *id.* at 265-66.

15 Finally, the district court held that the search of the  
16 trailer in the warehouse violated the Fourth Amendment. It  
17 began by rejecting the government's argument that Morel's  
18 consent was sufficient to permit the search. The district  
19 court found it "undisputed that Morel verbally consented to  
20 a general search of the warehouse," but concluded that his  
21 consent did not extend to a physically invasive search of

1 the trailer. *Id.* at 267.<sup>5</sup> Therefore, the court held, the  
2 warrantless search of the trailer was not justified by the  
3 consent doctrine. *Id.*

4 Turning to the application of the automobile exception,  
5 the district court took the view that the doctrine  
6 "generally relates to some type of vehicle that is capable  
7 of moving on its own." *Id.* at 267. Framed as such, the  
8 court held that the exception was inapplicable because "[a]  
9 stationary trailer, detached from a tractor cab with its  
10 legs dropped, and stored inside a warehouse, is not a  
11 vehicle that is readily mobile or in use for  
12 transportation." *Id.* Based on its holdings that Morel's  
13 consent did not extend to a search of the trailer and that  
14 the automobile exception was inapplicable, the district  
15 court ordered that the narcotics evidence be suppressed.  
16 *Id.* at 268.

## 17 II. DISCUSSION

18 We review *de novo* the district court's legal conclusion

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<sup>5</sup> In addition to defendants-appellees' arguments relating to the automobile exception, Alvarez separately argues that we may affirm the district court based on the alternative ground that "the search of the warehouse was performed . . . without consent." Because this assertion ignores the district court's ruling that Morel consented to a general search of the warehouse, we reject it.

1 regarding the constitutionality of the search. *E.g.*, *United*  
2 *States v. Plugh*, 576 F.3d 135, 140 n.5 (2d Cir. 2009). The  
3 district court's findings of fact, as well as its probable  
4 cause determination, are undisputed. Furthermore, in light  
5 of the district court's finding that "Morel verbally  
6 consented to a general search of the warehouse," the agents  
7 were lawfully within that structure. *Navas*, 640 F. Supp. 2d  
8 at 267. To justify the search of the trailer, the  
9 government relies exclusively on the automobile exception.  
10 Consequently, we are left with a straightforward legal  
11 question: Is the warrantless search of a trailer that is  
12 unhitched from its cab permissible under the automobile  
13 exception to the Fourth Amendment's warrant requirement? We  
14 hold that the exception applies.

15 **A. The Automobile Exception**

16 We begin our inquiry on well-tread ground. "[S]earches  
17 conducted outside the judicial process, without prior  
18 approval by judge or magistrate, are *per se* unreasonable  
19 under the Fourth Amendment – subject only to a few  
20 specifically established and well-delineated exceptions."  
21 *Katz v. United States*, 389 U.S. 347, 357 (1967) (footnote  
22 omitted). One such exception is the "automobile exception."

1 It permits law enforcement to conduct a warrantless search  
2 of a readily mobile vehicle where there is probable cause to  
3 believe that the vehicle contains contraband. *E.g.*,  
4 *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996) (per  
5 curiam). Where the probable cause upon which the search is  
6 based "extends to the entire vehicle," the permissible scope  
7 of a search pursuant to this exception includes "every part  
8 of the vehicle and its contents [including all containers  
9 and packages] that may conceal the object of the search.'" *United States v. Harwood*, 998 F.2d 91, 96 (2d Cir. 1993)  
10 (alteration in original) (quoting *United States v. Ross*, 456  
11 U.S. 798, 825 (1982)); see also *California v. Acevedo*, 500  
12 U.S. 565, 580 (1991).

14 The Supreme Court has relied on two rationales to  
15 explain the reasonableness of a warrantless search pursuant  
16 to the automobile exception: vehicles' inherent mobility  
17 and citizens' reduced expectations of privacy in their  
18 contents. See, e.g., *California v. Carney*, 471 U.S. 386,  
19 391 (1985); see also *United States v. Howard*, 489 F.3d 484,  
20 492 (2d Cir. 2007). One of the seminal cases defining the  
21 exception, *Carroll v. United States*, emphasized vehicles'  
22 mobility:

1 [T]he guaranty of freedom from unreasonable  
2 searches and seizures by the Fourth Amendment has  
3 been construed, practically since the beginning of  
4 the government, as recognizing a necessary  
5 difference between a search of a store, dwelling  
6 house, or other structure in respect of which a  
7 proper official warrant readily may be obtained  
8 and a search of a ship, motor boat, wagon, or  
9 automobile for contraband goods, where it is not  
10 practicable to secure a warrant, because the  
11 vehicle can be quickly moved out of the locality  
12 or jurisdiction in which the warrant must be  
13 sought.

14 267 U.S. 132, 153 (1925); see also *Carney*, 471 U.S. at 390  
15 (characterizing *Carroll* as being based on "a long-recognized  
16 distinction between stationary structures and vehicles").  
17 Based on this reasoning, courts have held that vehicular  
18 mobility is a sufficient exigency to permit law enforcement  
19 to invoke the doctrine. *E.g.*, *Maryland v. Dyson*, 527 U.S.  
20 465, 466-67 (1999).

21 In addition to the mobility rationale, other authority  
22 emphasizes that warrantless searches pursuant to the  
23 automobile exception are also reasonable because citizens  
24 possess a reduced expectation of privacy in their vehicles.  
25 See *Carney*, 471 U.S. at 393.

26 "Automobiles, unlike homes, are subjected to  
27 pervasive and continuing governmental regulation  
28 and controls, including periodic inspection and  
29 licensing requirements. As an everyday  
30 occurrence, police stop and examine vehicles when  
31 license plates or inspection stickers have

1 expired, or if other violations, such as exhaust  
2 fumes or excessive noise, are noted, or if  
3 headlights or other safety equipment are not in  
4 proper working order.”

5 *Id.* at 392 (quoting *South Dakota v. Opperman*, 428 U.S. 364,  
6 368 (1976)). Thus, citizens’ reasonable expectations of  
7 privacy in their vehicles are reduced by the far-reaching  
8 web of state and federal regulations that covers not only  
9 vehicles but also our nation’s roadways. As a result,  
10 warrantless searches of readily mobile vehicles, when based  
11 on probable cause, are reasonable under the Fourth  
12 Amendment.

13 Although we have characterized the mobility and  
14 reduced-privacy rationales as “distinct,” they are related.  
15 *Howard*, 489 F.3d at 492. A vehicle’s mobility has given  
16 rise to “a range of . . . regulation[s] inapplicable to a  
17 fixed dwelling,” which has in turn reduced citizens’  
18 reasonable expectations of privacy in their vehicles.  
19 *Carney*, 471 U.S. at 393. Consequently, when a vehicle is  
20 both inherently mobile and subject to a reduced expectation  
21 of privacy – as we conclude is true of the trailer in this  
22 case – a warrantless search supported by probable cause is  
23 permissible under the automobile exception.

24 **B. Mobility**

1           The phrase “readily mobile” is frequently used as a  
2 term of art to describe the mobility rationale. See, e.g.,  
3 *Dyson*, 527 U.S. at 467; *Howard*, 489 F.3d at 492-93; *United*  
4 *States v. Gaskin*, 364 F.3d 438, 456 (2d Cir. 2004). As we  
5 recently made clear, a vehicle’s inherent mobility – not the  
6 probability that it might actually be set in motion – is the  
7 foundation of the mobility rationale. See *Howard*, 489 F.3d  
8 at 493. In our view, this rationale supports the  
9 application of the automobile exception to the warrantless  
10 search of the trailer.

11           As we have already indicated, the mobility rationale  
12 originates from the Prohibition Era case of *Carroll v.*  
13 *United States*, 267 U.S. 132 (1925). There, the Supreme  
14 Court upheld a warrantless search of a car stopped on a  
15 highway where the officers had probable cause to believe  
16 that the vehicle’s occupants, two bootleggers, were  
17 transporting “intoxicating spirituous liquor” in violation  
18 of the National Prohibition Act. *Id.* at 134. The *Carroll*  
19 Court conducted a historical inquiry and found a distinction  
20 between the Fourth Amendment’s application to a search of a  
21 “store, dwelling house, or other structure,” for which a  
22 warrant was required, and a search of a “movable vessel”

1 such as a "ship, motor boat, wagon, or automobile," "where  
2 it is not practicable to secure a warrant." *Id.* at 151,  
3 153. To explain the distinction, the Court reasoned that a  
4 vessel of the latter type could be "quickly moved" and  
5 "readily . . . put out of reach of a search warrant." *Id.*  
6 at 151, 153.

7 Under our case law, the mobility rationale articulated  
8 in *Carroll* does not turn on case-by-case determinations by  
9 agents in the field regarding either the probability that a  
10 vehicle could be mobilized or the speed with which movement  
11 could be achieved. Rather, "[w]hether a vehicle is 'readily  
12 mobile' within the meaning of the automobile exception has  
13 more to do with *the inherent mobility of the vehicle* than  
14 with the potential for the vehicle to be moved from the  
15 jurisdiction, thereby precluding a search." *Howard*, 489  
16 F.3d at 493 (emphasis added).

17 In *Howard*, we sustained two roadside vehicular searches  
18 that were conducted while the vehicles' occupants were being  
19 questioned at New York State Troopers' barracks. *Id.* at  
20 492-96. In doing so, we attributed error to the district  
21 court's decision "to regard the actual ability of a driver  
22 or passenger to flee immediately in the car, or the



1 likelihood of him or her doing so, as a requirement for the  
2 application of the automobile exception." *Id.* at 493. We  
3 also pointed out that "the district court's inquiry into . .  
4 . the proximity of the drivers and passenger to the vehicles  
5 . . . [was] misplaced." *Id.* at 494. Instead, "[t]he mere  
6 inherent mobility of [a] vehicle is sufficient to constitute  
7 the 'ready mobility' the automobile exception cognizes."  
8 *Id.*

9 In light of *Howard's* emphasis on inherent mobility and  
10 the practical concerns that animate the mobility rationale,  
11 the district court erred in its assessment of the trailer  
12 sans cab. It started by wrongly characterizing the  
13 automobile exception as "generally relat[ing] to some type  
14 of vehicle that is capable of moving on its own." *Navas*,  
15 640 F. Supp. 2d at 267. However, when the Supreme Court  
16 introduced the mobility rationale in *Carroll*, it referenced  
17 "wagon[s]," which, like trailers, require an additional  
18 source of propulsion before they can be set in motion.  
19 *Carroll*, 267 U.S. at 153; see also *Ross*, 456 U.S. at 820  
20 n.26 (referring to "contraband . . . transported in a horse-  
21 drawn carriage"). A wagon is not "capable of moving on its  
22 own," but the *Carroll* Court considered it to present

1 mobility concerns similar to those presented by the car  
2 searched in that case. And, at least for purposes of the  
3 Fourth Amendment, a trailer unhitched from a cab is no less  
4 inherently mobile than a wagon without a horse.

5 The district court's adoption of a false premise –  
6 *i.e.*, that the automobile exception centers on a vehicle's  
7 ability to "mov[e] on its own" – led it to place undue  
8 emphasis on the fact that the trailer was disconnected from  
9 a cab at the time of the search. However, the trailer  
10 remained inherently mobile as a result of its own wheels and  
11 the fact that it could have been connected to *any* cab and  
12 driven away. For similar reasons, we are unpersuaded by the  
13 district court's reference to the position of the trailer's  
14 "legs." These legs served only as a temporary stabilization  
15 mechanism. They could be retracted and a cab could be  
16 attached to the trailer. As such, the fact that the trailer  
17 was "detached from a . . . cab with its legs dropped,"  
18 *Navas*, 640 F. Supp. 2d at 267, did not eliminate its  
19 inherent mobility.

20 Moreover, contrary to defendant Morel's assertion, a  
21 trailer "with its legs dropped," *id.*, is quite unlike a  
22 motor home with its wheels "elevated on blocks," *Carney*, 471

1 U.S. at 394 n.3. Trailers are routinely parked, legs  
2 dropped, with the expectation of promptly returning them to  
3 the road as soon as they have been loaded or a cab becomes  
4 available to haul them. The dropping of the legs in no way  
5 suggests that the trailer will not promptly return to  
6 service on the highways. In contrast, the raising of a  
7 motor home onto blocks is a more elaborate process, less  
8 easily undone, which might "objectively indicate[] that [the  
9 motor home] is being used as a residence" rather than a  
10 vehicle. *Id.* The position of a trailer's legs conveys no  
11 such impression. There is no question that the trailer in  
12 this case was being used as a vehicle and not a residence.

13 Finally, the district court also erred by relying on  
14 the location of the defendants and the agents at the time of  
15 the search. "Even where there is little practical  
16 likelihood that the vehicle will be driven away, the  
17 [automobile] exception applies . . . when that possibility  
18 exists" because of the vehicle's inherent mobility. *Howard*,  
19 489 F.3d at 493. The district court concluded that this  
20 standard was not satisfied, reasoning that it was "hard to  
21 imagine a scenario where the [trailer] could have been  
22 hooked up to a cab" because "[d]efendants were under arrest,

1 and more than a dozen government agents surrounded the  
2 warehouse." *Navas*, 640 F. Supp. 2d at 268. As in *Howard*,  
3 the district court appears to have erroneously regarded "the  
4 actual ability of a driver or passenger to flee immediately  
5 in the [vehicle], or the likelihood of him . . . doing so,  
6 as a requirement for the application of the automobile  
7 exception." 489 F.3d at 493. Although the arrestees were  
8 detained and the warehouse was secured by the agents, these  
9 facts had no bearing on the inherent mobility of the trailer  
10 itself.

11 In reasoning otherwise, the district court suggested  
12 that, instead of performing the search, the agents were  
13 required to halt an ongoing investigation in order to wait  
14 at the scene and ensure that the trailer remained secure  
15 while a search warrant was obtained. The Fourth Amendment  
16 does not necessitate such a course of action. The agents  
17 had probable cause to conduct the search, and "an automobile  
18 'search is not unreasonable if based upon facts that would  
19 justify the issuance of a warrant, *even though a warrant has*  
20 *not been actually obtained.'*" *Howard*, 489 F.3d at 495  
21 (emphasis in original) (quoting *Dyson*, 527 U.S. at 467).  
22 The "justification to conduct such a warrantless search does

1 not vanish once the car has been immobilized." *Michigan v.*  
2 *Thomas*, 458 U.S. 259, 261 (1982).

3 If the agents had left the area around the warehouse,  
4 the inherent mobility of the trailer would provide ample  
5 cause for concern that it could be removed from the  
6 jurisdiction. For example, as we observed in *Howard*,  
7 "confederates in another car, of whom the police were  
8 unaware, might have observed the police intervention and  
9 might drive the [trailer] away." 489 F.3d at 493-94. The  
10 district court referenced this hypothetical, but apparently  
11 found it inapposite because the warehouse was "surrounded"  
12 by "more than a dozen government agents." *Navas*, 640 F.  
13 Supp. 2d at 268. However, the very function of the  
14 automobile exception is to ensure that law enforcement  
15 officials need not expend resources to secure a readily  
16 mobile automobile during the period of time required to  
17 obtain a search warrant.

18 In sum, the trailer in this case was: (1) affixed with  
19 at least one axle and a set of wheels; and (2) capable of  
20 being attached to a cab and driven away. Therefore, we  
21 conclude that the trailer was inherently mobile at the time  
22 of the search, notwithstanding the fact that it was

1 unhitched from the cab that initially transported it to the  
2 warehouse. Accordingly, we hold that the mobility rationale  
3 militates in favor of the conclusion that the search of the  
4 trailer was lawful under the automobile exception.

5 **C. Reduced Expectation of Privacy**

6 The district court also failed to properly consider the  
7 reduced-privacy rationale underlying the automobile  
8 exception. Although it acknowledged the “diminished  
9 expectation of privacy enjoyed by the drivers and  
10 passengers,” the court discarded this proposition and  
11 repeated its mobility-based holding that “the unhitched  
12 trailer in the warehouse [did] not constitute a vehicle in  
13 use for transportation.” *Navas*, 640 F. Supp. 2d at 268  
14 (quoting *Howard*, 489 F.3d at 494). This failure to account  
15 for defendants’ reduced expectation of privacy in the  
16 trailer was also error.

17 Indeed, the reduced-privacy rationale applies  
18 forcefully here. Agents had observed the trailer being used  
19 for transportation. Unlike the motor home in *Carney*, the  
20 trailer bore no objective indicia of residential use that  
21 might give rise to elevated privacy expectations in its  
22 contents. Moreover, any expectation of privacy that

1 defendants may have harbored in the trailer was  
2 significantly diminished by the “pervasive schemes” of state  
3 and federal regulation to which it was subject. *Carney*, 471  
4 U.S. at 392; *cf. New York v. Burger*, 482 U.S. 691, 700  
5 (1987) (reasoning that expectations of privacy are  
6 “particularly attenuated in commercial property employed in  
7 ‘closely regulated’ industries”). Several of our sister  
8 circuits have held that the interstate commercial trucking  
9 industry is pervasively regulated to an extent that  
10 justifies a warrantless administrative search of a tractor  
11 trailer. *See, e.g., United States v. Delgado*, 545 F.3d  
12 1195, 1201-02 & n.3 (9th Cir. 2008). Although the  
13 foundation for the administrative search exception to the  
14 warrant requirement is entirely distinct from the rationales  
15 underlying the automobile exception, the discussion of the  
16 applicable regulatory structures in this authority is  
17 instructive. Based on the nature and scope of the  
18 regulations relating to the commercial trucking industry, we  
19 are persuaded that defendants’ reasonable expectations of  
20 privacy in the trailer were minimal. Therefore, the  
21 reduced-privacy rationale provides further support for our  
22 conclusion that the warrantless search of this inherently

1 mobile trailer was reasonable under the Fourth Amendment.

2 **III. CONCLUSION**

3 For the foregoing reasons, we hold that the automobile  
4 exception applies because the trailer was inherently mobile,  
5 and defendants possessed a significantly reduced expectation  
6 of privacy in the trailer. Accordingly, the district  
7 court's order is **REVERSED** insofar as it granted the motion  
8 to suppress, and the matter is **REMANDED** for further  
9 proceedings consistent with this opinion.

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