

O'CONNOR, J., concurring in part

SUPREME COURT OF THE UNITED STATES

No. 03–5165

MARCUS THORNTON, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[May 24, 2004]

JUSTICE O'CONNOR, concurring in part.

I join all but footnote 4 of the Court's opinion. Although the opinion is a logical extension of the holding of *New York v. Belton*, 453 U. S. 454 (1981), I write separately to express my dissatisfaction with the state of the law in this area. As JUSTICE SCALIA forcefully argues, *post*, p. 2-5 (opinion concurring in judgment), lower court decisions seem now to treat the ability to search a vehicle incident to the arrest of a recent occupant as a police entitlement rather than as an exception justified by the twin rationales of *Chimel v. California*, 395 U. S. 752 (1969). That erosion is a direct consequence of *Belton*'s shaky foundation. While the approach JUSTICE SCALIA proposes appears to be built on firmer ground, I am reluctant to adopt it in the context of a case in which neither the Government nor the petitioner has had a chance to speak to its merit.