

Opinion of KENNEDY, J.

SUPREME COURT OF THE UNITED STATES

No. 97-1121

CITY OF CHICAGO, PETITIONER v.
JESUS MORALES ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
ILLINOIS

[June 10, 1999]

JUSTICE KENNEDY, concurring in part and concurring in the judgment.

I join Parts I, II, and V of JUSTICE STEVENS' opinion.

I also share many of the concerns he expresses in Part IV with respect to the sufficiency of notice under the ordinance. As interpreted by the Illinois Supreme Court, the Chicago ordinance would reach a broad range of innocent conduct. For this reason it is not necessarily saved by the requirement that the citizen must disobey a police order to disperse before there is a violation.

We have not often examined these types of orders. Cf. *Shuttlesworth v. Birmingham*, 382 U. S. 87 (1965). It can be assumed, however, that some police commands will subject a citizen to prosecution for disobeying whether or not the citizen knows why the order is given. Illustrative examples include when the police tell a pedestrian not to enter a building and the reason is to avoid impeding a rescue team, or to protect a crime scene, or to secure an area for the protection of a public official. It does not follow, however, that any unexplained police order must be obeyed without notice of the lawfulness of the order. The predicate of an order to disperse is not, in my view, sufficient to eliminate doubts regarding the adequacy of notice under this ordinance. A citizen, while engaging in a wide array of innocent conduct, is not likely to know when

Opinion of KENNEDY, J.

he may be subject to a dispersal order based on the officer's own knowledge of the identity or affiliations of other persons with whom the citizen is congregating; nor may the citizen be able to assess what an officer might conceive to be the citizen's lack of an apparent purpose.