

SOUTER, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 00–1260

UNITED STATES, PETITIONER *v.* MARK
JAMES KNIGHTS

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

[December 10, 2001]

JUSTICE SOUTER, concurring.

As this case was originally presented to us, the dispute centered on whether Knights’s agreement to the search condition included in his terms of probation covered only those searches with a probation-related purpose, or rather extended to searches with an investigatory or law-enforcement purpose. At that time, the Government argued that *Whren v. United States*, 517 U. S. 806 (1996), precluded any enquiry into the motives of the individual officers conducting the search. We now hold that law-enforcement searches of probationers who have been informed of a search condition are permissible upon individualized suspicion of criminal behavior committed during the probationary period, thus removing any issue of the subjective intention of the investigating officers from the case. I would therefore reserve the question whether *Whren*’s holding, that “[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis,” *id.*, at 813, should extend to searches based only upon reasonable suspicion.