

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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UNITED STATES *v.* GRUBBSCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 04–1414. Argued January 18, 2006—Decided March 21, 2006

A Magistrate Judge issued an “anticipatory” search warrant for respondent Grubbs’ house based on a federal officer’s affidavit. The affidavit explained that the warrant would not be executed until a parcel containing a videotape of child pornography—which Grubbs had ordered from an undercover postal inspector—was received at, and physically taken into, the residence. The affidavit also referred to two attachments describing the residence and the items to be seized. After the package was delivered and the search commenced, Grubbs was given a copy of the warrant, which included the attachments but not the supporting affidavit. When he admitted ordering the videotape, he was arrested, and the videotape and other items were seized. Following his indictment for receiving child pornography, see 18 U. S. C. §2252(a)(2), Grubbs moved to suppress the seized evidence, arguing, *inter alia*, that the warrant was invalid because it failed to list the triggering condition. The District Court denied the motion, and Grubbs pleaded guilty. The Ninth Circuit reversed, concluding that the warrant ran afoul of the Fourth Amendment’s particularity requirement, which, under Circuit precedent, applied to the conditions precedent to an anticipatory warrant.

Held:

1. Anticipatory warrants are not categorically unconstitutional under the Fourth Amendment’s provision that “no Warrants shall issue, but upon probable cause.” Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Illinois v. Gates*, 462 U. S. 213, 238. When an anticipatory warrant is issued, the fact that the contraband is not presently at the place described is immaterial, so long as there is probable cause to believe it will be there when the warrant is executed.

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Anticipatory warrants are, therefore, no different in principle from ordinary warrants: They require the magistrate to determine (1) that it is *now probable* that (2) contraband, evidence of a crime, or a fugitive *will be* on the described premises (3) when the warrant is executed. Where the anticipatory warrant places a condition (other than the mere passage of time) upon its execution, the first of these determinations goes not merely to what will probably be found *if* the condition is met, but also to the likelihood that the condition *will* be met, and thus that a proper object of seizure will be on the described premises. Here, the occurrence of the triggering condition—successful delivery of the videotape—would plainly establish probable cause for the search, and the affidavit established probable cause to believe the triggering condition would be satisfied. Pp. 3–7.

2. The warrant at issue did not violate the Fourth Amendment’s particularity requirement. The Amendment specifies only two matters that the warrant must “particularly describ[e]”: “the place to be searched” and “the persons or things to be seized.” That language is decisive here; the particularity requirement does not include the conditions precedent to execution of the warrant. Cf. *Dalia v. United States*, 441 U. S. 238, 255, 257. Respondent’s two policy rationales—that setting forth the triggering condition in the warrant itself is necessary (1) to delineate the limits of the executing officer’s power and (2) to allow the individual whose property is searched or seized to police the officer’s conduct—find no basis in either the Fourth Amendment or Federal Rule of Criminal Procedure 41. Pp. 7–9.

377 F. 3d 1072 and 389 F. 3d 1306, reversed and remanded.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, and BREYER, JJ., joined, and in which STEVENS, SOUTER, and GINSBURG, J., joined as to Parts I and II. SOUTER, J., filed an opinion concurring in part and concurring in the judgment, in which STEVENS and GINSBURG, JJ., joined. ALITO, J., took no part in the consideration or decision of the case.