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## New Supreme Court Case Could Drastically Limit Homeowners' Fourth Amendment Rights

Nick Sibilla

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The Fourth Amendment, based in part on the principle that a man's house is his castle, famously treats the home as "first among equals" in forbidding "unreasonable searches and seizures." But on Wednesday, the U.S. Supreme Court will hear a case that could breach those safeguards by dramatically expanding the ways police can enter homes without a warrant.

Among the few "jealously and carefully drawn" exceptions to the warrant requirement the High Court has drawn are "exigent circumstances," like pursuing an armed robber or preventing the destruction of evidence (both felonies). As a corollary, the Supreme Court has rejected warrantless home entries to investigate non-jailable traffic violations. Yet it hasn't definitively ruled on whether a *fleeing misdemeanor* counts as an "exigent circumstance" that would justify a carve-out to the Fourth Amendment; *Lange v. California* offers the Supreme Court that opportunity.

Back in October 2016, California Highway Patrol Officer Aaron Weikert saw a car "playing music very loudly" and the driver (later identified as Arthur Lange) randomly honking his horn. Weikert began to follow Lange. Just as Lange turned into his driveway, Weikert activated his overhead lights, which Lange later said he didn't see. Right after Lange parked his car in his garage, Weikert stuck his foot under the garage door to prevent it from closing, and followed Lange inside. When Weikert spoke with Lange, he smelled alcohol on his breath, which led to a DUI charge against Lange.

Lange argued that the evidence for that charge should be suppressed since Weikert entered his home without a warrant. Instead, the California Court of Appeal held that Weikert's "hot pursuit of a suspect" qualified as an emergency situation that justified dispensing with the warrant requirement. Lange appealed his case to the Supreme Court, which granted cert last fall.

"A rule that allows police to forcibly enter a home without a warrant merely to question a suspect or issue a citation stretches the exigent-circumstances exception past its breaking point," attorneys for Lange argued in their brief. "A warrantless entry invades the privacy and security of *everyone* in the home, not just the fleeing suspect."

Nor is Lange's case an isolated incident. An amicus brief by the National Association of Criminal Defense Lawyers identified around 150 cases where law enforcement pursued someone suspected of committing a misdemeanor into a home without a warrant. The underlying crimes were trivial: public urination in Alabama, failing to pay a cab fare in Missouri, running a red light in Washington State. But these cases "often spiral unpredictably," damaging property and injuring residents and officers alike.

The risk of chaos inflicted by warrantless entry is one reason why the Framers insisted that the Fourth Amendment guarantee “the right of the people to be secure in their persons, houses, papers, and effects.” Yet as the Institute for Justice recounted in an [amicus brief](#), the Supreme Court has “overwhelmingly treated ‘reasonableness’ as ‘the ultimate touchstone’ for deciding whether a search or seizure violated the Amendment. Meanwhile, ‘the Fourth Amendment’s ‘to be secure’ phraseology has been largely ignored.’”

That’s a mistake. What counts as “reasonable” can be incredibly vague and is typically centered around the needs of law enforcement. But this “police-first approach flouts the Fourth Amendment’s text and purpose,” IJ’s brief asserted. “The Amendment was adopted not to make life easier for police, but to protect our security.”

Instead, the Supreme Court should view the Security Clause as its “North Star” to guide its Fourth Amendment decisions. For instance, if waiting to obtain a warrant would endanger the public or jeopardize officer safety, then an exigency exemption should apply. But if there were “no immediate danger requiring a warrantless entry, courts should presume no exigency existed,” IJ argued in its brief.

Upholding the lower court decision “would blow a massive hole in the warrant requirement, leaving us all far less secure as a result.” “If police can burst into our homes—our castles—to pursue nonviolent traffic offenders, what can’t they do?”

Moreover, a staggering amount of behavior is potentially criminal, which in turn grants law enforcement a wide berth to find probable cause to enter someone’s home. Today, misdemeanors account for more than three-quarters of all criminal charges, the ACLU, Cato Institute, R Street, and the American Conservative Union noted in a [joint amicus brief](#).

Thanks to overcriminalization, prosecutors could potentially file far more criminal charges over “a staggering array of everyday conduct,” including “doodling on a dollar bill, selling snacks without a license, spitting in public, eavesdropping, littering (including on your own property), jaywalking, and possession of a felt tip marker by a person under twenty-one.” As a result, “millions of Americans unwittingly commit a misdemeanor every day.”

“Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government,” Justice Robert H. Jackson [warned](#) more than seven decades ago. “Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart...the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.”

If the people are to remain secure in their homes—their castles—they must remain free from warrantless searches except in the direst of circumstances. Here’s hoping the Supreme Court stays true to that principle and rejects the lower court’s expansive reading of the “exigency” exception.