



## Supreme Court Weighs Expansion to Warrantless Entry

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The California case raises questions about when a police officer can enter a home

In this Feb. 4, 2021, file photo, the U.S. Supreme Court is seen from the Capitol Hill in Washington, D.C.

When can law enforcement enter and search your home? That's the issue that was argued before the U.S. Supreme Court this week. What's the case that led to the hearing and what did the justices say?

On Wednesday, the Supreme Court debated whether police officers can legally follow a person into their home without a warrant, solely because they suspect that the person committed a misdemeanor.

During the two-hour oral argument, the justices tried to balance the need to protect Fourth Amendment rights and police officers' interests and were torn about several points of contention — including the distinction between misdemeanor and felony cases, the necessity of exigent circumstances, and the importance of a "hot pursuit" in allowing warrantless entries.

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Their final decision could have broad implications for Americans who value sacrosanct rights guaranteed by the Fourth Amendment to feel safe and secure in their homes.

### What Normally Allows a Police Officer to Enter and Search Your Home

The Fourth Amendment requires that police officers have a warrant to enter and search a home. The goal of this provision is to protect privacy and offer freedom from unreasonable intrusions by the government.

Generally, there are a few exceptions. Warrantless searches are permitted when a person gives consent to a home search. It can happen if a police officer already has the right to be on the person's property and sees evidence of a crime. Police also have the authority to search and seize evidence if they are conducting a valid arrest in a person's home. Another exception is the "emergency aid" case, when an officer sees a resident collapsing for apparent medical reasons from the window and can run into the house to administer aid.

Additionally, the Supreme Court has carved out a further exception to this general rule for “exigent circumstances.” Typically, this situation applies only in emergencies, when there isn’t enough time for the police to get a search warrant. One type of instance, a “hot pursuit,” allows police to enter a home when they are pursuing a suspect who is about to escape.

This is when things get murky. Warrantless entries might be more acceptable when the police are chasing an armed robber or preventing the destruction of evidence when the suspect is committing a felony, or responding to threats to national security. But the law hasn’t given specific instructions on whether a person fleeing for a misdemeanor would count as an “exigent circumstance.”

Now, the Supreme Court is debating that exact issue in the *Lange v. California* case.

### **What Is the *Lange v. California* Case**

In October 2016, Arthur Lange was driving home in Sonoma, California. While on the road, he had his windows down, played loud music and honked his horn a few times. His actions caught the attention of Aaron Weikert, a California highway patrol officer, who followed Lange from a distance. When Lange approached his driveway, Weikert activated his lights. Lange then pulled into his garage and closed the door.

What Weikert did next became the focus of the 4-year-long litigation — he propped his foot under the garage door to prevent it from closing, triggering a sensor that sent it back up. Weikert smelled alcohol on Lange’s breath and charged him with driving under the influence after a test showed that Lange’s blood-alcohol level exceeded the legal limit.

Lange argued that his Fourth Amendment rights were violated when Weikert entered his garage without a warrant. The California Court of Appeal upheld his conviction, saying that “California precedent established that probable cause of any ‘jailable’ misdemeanor categorically allows an officer to pursue a fleeing suspect into a home.”

However, Lange and his lawyer argue that, “A categorical misdemeanor-pursuit exception [to the Fourth Amendment’s warrant requirement] would give police officers discretion to enter private dwellings based on a vast array of minor offenses.” This would add to the burden on those communities that are already “disproportionately subject to discretionary enforcement of misdemeanor laws.”

“Study after study has confirmed the unfortunate reality that, in many communities, racial minorities are disproportionately subject to the sort of police-citizen encounters that give rise to misdemeanor pursuits,” the brief reads.

### **What Did the Justices Debate About?**

The Supreme Court on Wednesday seemed inclined to expand police power to make warrantless entries into people’s homes.

Lawyer Jeffrey Fisher, arguing on behalf of Lange, opposed adopting a categorical rule allowing warrantless entry for “hot pursuit” of misdemeanor suspects. He said that even if the vast majority of the cases would allow a warrantless conduct, there still are cases that qualify as “exigent circumstances,” and the police need “substantial discretion” on a case-by-case basis. He said that even in many emergency cases, police can knock on the door for entry.

Chief Justice John Roberts said that Fisher’s suggestion to knock on the door can be dangerous, as it gives time for suspects to retrieve weapons and destroy evidence.

Several justices discussed the option of drawing a line between felony and misdemeanor cases, and agreed that it can be messy and confusing.

“States have very different rules as to what counts as a felony or a misdemeanor,” Justice Stephen Breyer observed. He said assault and battery is classified as a misdemeanor in Massachusetts, but a felony in California. “How do you draw a line?”

Justice Sonia Sotomayor and Elena Kagan also weighed in, both saying that at the present time, a felony includes white collar crimes and environmental crimes, which do not necessarily make the suspect dangerous, whereas most domestic violence offenses are misdemeanors.

Another discussion landed on the concept of “hot pursuit.” Justice Samuel A. Alito Jr. suggested that the court could resolve such cases by ruling if there has been a chase, which qualifies it as “hot” or not, regardless of whether the suspect committed a felony or a misdemeanor.

“Hot pursuit has to be hot and it has to be a pursuit. It has to involve a chase,” said Alito, who said that there was no chase in Lange’s case after reviewing the video taken by Officer Weikert’s dashboard camera.

On behalf of the federal government, Erica Ross argued against Lange. She contended that “the court should adopt at least a general presumptive rule that warrantless entry in misdemeanor hot pursuit cases is reasonable.”

A decision in the case is expected by June.

### **What Would It Mean for You If the Court Expands Warrantless Entries**

Nowadays, misdemeanors represent more than three-quarters of all criminal cases filed annually in the U.S. A joint amicus brief by the American Civil Liberties Union, Cato Institute, R Street, and the American Conservative Union noted that misdemeanor offenses cover a wide range 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.”

Therefore, if the judges ruled that it is lawful for an officer — in hot pursuit of a suspect whom he had probable cause to arrest for violation of a misdemeanor — to enter the suspect’s home without a warrant, law enforcement would basically have the power to enter anyone’s home for the smallest offenses.

This could largely violate the American people’s Fourth Amendment rights, rendering their home vulnerable from law enforcement.

In fact, Lange’s case is not a singular incident. The National Association of Criminal Defense Lawyers listed, in a brief, around 150 cases where law enforcement pursued and entered a home of someone for a suspected misdemeanor without a warrant. The brief went into details of cases in which a warrantless entry led to property damage, risk, trauma, or pain to the police officer or the home’s occupant when the situation spiraled out of control.