



In wake of Floyd, Taylor killings, should police have power to enter your home without a warrant?

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March 22, 2021

The footprint of American policing is vast.

A nod from the Supreme Court in case that would give police right to search for 'community caretaking' would be a violation of the Fourth Amendment.

And police officers respond to a host of problems that have nothing to do with catching people suspected of crimes. Fundamental questions about just how far police power should extend are at the core of a critically important case, *Caniglia v. Strom*, that the Supreme Court is slated to hear Wednesday.

This case has gone unnoticed so far among a Supreme Court docket loaded with important cases concerning everything from health care, voting rights and religious exemptions to anti-discrimination laws. But the issue in *Caniglia* — whether police officers may invade a person's home without a warrant or without suspicion of criminal activity, simply because they are pursuing a "community caretaking" function — could not be more important.

The question the justices must answer is far reaching: Is our home still our castle?

"When it comes to the Fourth Amendment, the home is first among equals," as Justice Antonin Scalia put it in a 2013 ruling. If police can enter a person's home without any suspicion of criminal wrongdoing simply because they claim to be taking care of the community, the Fourth Amendment would be close to a dead letter. Our right to be secure would exist only at the whim of the police.

The police officers who broke into the home of Edward Caniglia are urging the court, with the rather surprising support of the Biden administration, to bless a massive expansion in the power of police to enter the home. They claim that police officers may invade the home to protect the purported safety of the community if the police acted "reasonably." As a fallback, they argue that the police officers are protected by qualified immunity, a doctrine that prevents holding police officers and others legally accountable.

Embracing such an open-ended formula would grant police officers the unbridled discretion the Fourth Amendment was designed to prevent. The Fourth Amendment promised to end indiscriminate searches and seizures of the home. *Caniglia* tests whether the justices are willing to enforce the central idea at the heart of the Fourth Amendment: the need for strict limits on excessive police discretion.

In theory, “community caretaking” sounds like a reasonable justification. But the difficulty is that it lacks any coherent limiting principle and would allow the police to invade the privacy and sanctity of the home in a startling array of circumstances. Expanding the power of the police to break into a person’s home — particularly for petty matters such as investigating noise complaints — opens the door to horrific police abuse and violence. These fears are hardly theoretical. In recent years, police have killed a number of innocent Black people in their homes. Expanding opportunities for warrantless police entry into the home has the potential to end in even more loss of life.

In the wake of the killing of George Floyd, who died after an officer put a knee on the unarmed Black man's neck, Americans have been reckoning with the scourge of police violence that has resulted in the taking of so many innocent lives in communities of color. One of the most important lessons we have learned in the past year is that the police are engaged in many tasks that have little to do with crime fighting and do not require the use of force. We need to find ways to limit the circumstances in which we rely on the police, who are given immense powers by the state to use force and inflict harm.

Sanctioning a massive expansion in the power of the police to invade the home based on a nebulous interest in "community caretaking" would move the law in the exact opposite direction. It would place the Supreme Court’s imprimatur on the broadest possible conception of the power of the police to violate our security and privacy in the home. To be sure, such unbridled police authority would fall hardest on the poorest and most marginalized communities, but the threat cuts across ideological lines in unexpected ways. Amicus briefs filed in support of Caniglia range from Gun Owners of America, the Second Amendment Law Center, Institute for Justice and the Cato Institute to the American Civil Liberties Union, the National Association of Criminal Defense Lawyers and my organization, the Constitutional Accountability Center.

The Founding generation considered the home to be a “place of perfect security.” The question now is whether the Supreme Court will respect the text and history of the Fourth Amendment, or invent a new exception that would open the floodgates to police entry of the home.

The justices should make clear that police need a warrant and probable cause of criminal wrongdoing or emergency circumstances before they enter a person’s home.

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