

Hot Pursuit Doctrine and Fleeing Misdemeanor Suspects: Case-by-Case Analysis Required

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On June 23, 2021, the Supreme Court issued an opinion in [Lange v. California](#) holding that under the Fourth Amendment, the pursuit of a fleeing misdemeanor suspect does not categorically qualify as an exigent circumstance justifying a law enforcement officer's warrantless entry of a home. In a 9-0 decision, authored by Justice Kagan, the Court determined that the need for a warrant in these types of scenarios will depend on the totality of the circumstances and a case-by-case analysis of the exigencies present.

Fourth Amendment

The Fourth Amendment to the U.S. Constitution [protects](#) the “right of the people” to be free from “unreasonable searches and seizures,” and that “no Warrants shall issue, but upon probable cause.” This right hinges on an individuals’ [reasonable expectation of privacy](#) in the place to be searched or the thing to be seized. Applying this principle, the Supreme Court has held that homeowners possess a privacy interest that extends inside their home and the [immediately surrounding curtilage](#). The Court also has held that warrantless searches and seizures inside a home are presumptively unreasonable, but because [reasonableness](#) is the cornerstone of the Fourth Amendment, the presumption may be overcome in some circumstances and, as such, the warrant requirement is subject to exceptions.

One exception to the Fourth Amendment’s warrant requirement is the “exigent circumstances” [exception](#), which applies when “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is [objectively reasonable](#) under the Fourth Amendment.” The Court has identified several exigent circumstances that may justify a warrantless entry of a home which include: “[preventing violence and restoring order](#),” “rendering [emergency assistance](#) to an injured occupant or to protect an occupant from imminent injury,” preventing the [destruction of evidence](#) or some other consequence improperly frustrating [legitimate law enforcement efforts](#), or hot pursuit of a fleeing felony suspect.

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The “hot pursuit” doctrine provides that police may pursue a fleeing felony suspect into a home, without a warrant, when they have probable cause to make an arrest and when they set that arrest in motion in a public place. Lower courts were divided on whether the “hot pursuit” doctrine extended to the pursuit of misdemeanor suspects. Some courts adopted a categorical rule that the Fourth Amendment permits an officer’s warrantless search of a home during the hot pursuit of a fleeing misdemeanor suspect. Other courts rejected a categorical rule and instead employed a case-by-case analysis of the exigencies arising from a fleeing misdemeanant. Prior to *Lange*, the Court had not addressed the issue of the hot pursuit doctrine as applied to the pursuit of a fleeing misdemeanant.

Background

Lange involves a California State Highway Patrolman’s attempt to effectuate a traffic stop. Prior to the attempt, the officer heard loud music and “unnecessary” honking coming from Arthur Lange’s vehicle in violation of California law. The officer followed Lange’s car and subsequently activated the patrol car’s overhead lights, signaling Lange to pull over. Lange, who failed to stop, drove to his driveway and entered into his garage. Without obtaining a warrant, the officer entered the garage and proceeded to question Lange. After witnessing signs of intoxication, the officer asked Lange to perform several field sobriety tests, and a later blood test showed that Lange’s blood alcohol content exceeded the legal limit.

The State of California charged Lange with driving under the influence, a misdemeanor offense. Lange moved to suppress the evidence obtained after the officer entered his garage, arguing that the officer’s warrantless entry into his garage violated the Fourth Amendment. California courts denied Lange’s motion, finding that the officer had probable cause to arrest Lange due to his failure to comply with a police signal, a misdemeanor. The courts further found that the officer’s warrantless entry into Lange’s garage was lawful because the officer was in hot pursuit of a misdemeanor suspect, and the pursuit of a fleeing misdemeanor suspect always qualifies as an exigent circumstance authorizing a warrantless home entry. The Supreme Court granted certiorari to resolve the conflict between courts over whether the Fourth Amendment permits a warrantless entry under these circumstances.

U.S. Supreme Court Decision

Balancing the sanctity of the home versus the interests of law enforcement, the Court rejected employing a categorical rule for fleeing misdemeanants. In reaching its decision, the Court relied on its precedent and the Fourth Amendment’s common law roots to determine that a case-by-case assessment of exigency is necessary when deciding whether a suspected misdemeanant’s flight justifies a warrantless home entry. According to the Court, “[w]hen the totality of circumstances shows an emergency—such as imminent harm to others, a threat to the officer himself, destruction of evidence, or escape from the home—the police may act without waiting.” However, “when the nature of the crime, the nature of the flight, and surrounding facts present no such exigency,” “officers must respect the sanctity of the home—which means they must get a warrant.”

Central to its decision, the Court considered the gamut and breadth of misdemeanor offenses and offenders. The Court explained that while some misdemeanor offenses involve violence, they also cover minor offenses such as public intoxication, traffic offenses, and disorderly conduct. The Court also noted that it previously held “that when a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless entry.” The Court recognized that misdemeanants may attempt to “flee” for various reasons such as fear or diminished capacity as opposed to wanting to destroy evidence or harm others. According to the Court, in these instances, waiting for a warrant would not hinder law enforcement efforts. As a result, the Court was reluctant to establish a bright-line rule expanding the “hot pursuit” doctrine to include misdemeanants unless some other exigency exists.

The Court explained that this view followed the Fourth Amendment’s common law roots, when officers had more latitude to enter a home when pursuing a felon. At that time, the definition of a felony offense was limited to those offenses “punishable by death,” and there did not appear to be an “all misdemeanor-flight rule.” Thus, the Court held that “the common law . . . does not support a categorical rule allowing warrantless home entry when a misdemeanant flees.”

While the Justices unanimously agreed on vacating and remanding the case, several Justices wrote concurrences. Justice Thomas (joined in part by Justice Kavanaugh) [wrote separately](#) to emphasize that the majority opinion announcing a general case-by-case rule was subject to “[historical, categorical exceptions](#).” Justice Thomas also wrote that the [exclusionary rule](#) is inapplicable to evidence discovered during a hot pursuit and does not require the suppression of evidence.

The [Chief Justice’s concurrence](#) (joined by Justice Alito) argued that it is the “hot pursuit” that creates the exigency in the “hot pursuit doctrine” and not the underlying offense. The Chief Justice stated that the case-by-case analysis was [confusing, impractical, and potentially dangerous](#) to officers and the public at large. According to the Chief Justice, while an officer was assessing a particular situation to determine whether the underlying offense was a felony or misdemeanor, the suspect could be long gone or could cause harm to the occupants of the home. The Chief Justice ultimately concurred in the judgment to vacate and remand to allow Lange the opportunity to argue that his case is the “unusual case” in which the general “hot pursuit” rule should not apply, and that his actions did not constitute a flight.

Justice Kavanaugh wrote a [separate concurrence](#), reasoning that there is little practical difference between the Court’s reasoning and the Chief Justice’s concurrence. According to Justice Kavanaugh, in most instances of a hot pursuit of a fleeing misdemeanant, there will also be a [recognizable exigent circumstance](#) such as the destruction of evidence, risk of harm to others, or risk of escape, that will justify warrantless entry into a home.

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