No. 20-18

In the Supreme Court of the United States

ARTHUR GREGORY LANGE,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
FIRST APPELLATE DISTRICT

BRIEF FOR RESPONDENT SUPPORTING VACATUR

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QUESTION PRESENTED

Whether pursuit of a person who a police officer has probable cause to believe has committed a misdemeanor offense categorically qualifies as an exigent circumstance sufficient to allow the officer to enter a home without a warrant.

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INTRODUCTION

Under the Fourth Amendment, it is generally unreasonable for the police to enter a home without a warrant. This Court has adopted a limited exception to the warrant requirement for cases in which officers pursue a felony suspect who flees into a home. This case raises the question whether that categorical "hot-pursuit" exception should be extended to cases involving suspected misdemeanants. The Court has never before applied a categorical hot-pursuit exception in the misdemeanor context, and it should not do so now.

In deciding whether to extend a Fourth Amendment rule into a new or different context, the Court typically considers relevant guidance from the founding era, as well as the law enforcement and privacy interests at stake. Here, the historical evidence supports a felony hot-pursuit exception but provides no basis for expanding that exception to all misdemeanor pursuits. The law enforcement interests that would be advanced by such an expansion are less weighty than the comparable interests served by the existing exception. And there are substantial and legitimate privacy interests that would be jeopardized by a rule authorizing a warrantless entry in every case in which a suspected misdemeanant flees into a home. No doubt, there are cases in which it is important—even imperative—for police to pursue a fleeing misdemeanor suspect into a home. In most of those cases, however, officers will be able to identify a case-specific exigency justifying a warrantless entry. And if the circumstances do not present any such exigency, officers may remain outside the home and enter as soon as they obtain a valid warrant.

OPINIONS BELOW

The opinions below in this case are unreported. The California Court of Appeal's opinion appears at pages 1a-22a of the petition appendix (and on Westlaw at 2019 WL 5654385). The two opinions of the appellate division of the Sonoma County Superior Court appear at pages 23a-25a and 26a-27a of the petition appendix. The transcript of the trial court's oral ruling denying Lange's motion to suppress appears at pages 278-279 of the clerk's transcript below.

JURISDICTION

The California Supreme Court denied a timely petition for review on February 11, 2020. Pet. App. 28a. A petition for a writ of certiorari was filed on July 10, 2020, and granted on October 19, 2020. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT

A. Legal Framework

1. The "'central requirement'" of the Fourth Amendment "is one of reasonableness." *Illinois v. McArthur*, 531 U.S. 326, 330 (2001). When police undertake a search or seizure to investigate criminal wrongdoing, "reasonableness generally requires the obtaining of a judicial warrant." *Riley v. California*,

573 U.S. 373, 382 (2014). That requirement exists because "inferences . . . from evidence" supporting a search or seizure should, as a general matter, be "drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948); *cf. Steagald v. United States*, 451 U.S. 204, 215 (1981) (warrant requirement is "'designed to prevent, not simply to redress, unlawful police action'").

The Court has "nonetheless . . . made it clear that there are exceptions to the warrant requirement." *McArthur*, 531 U.S. at 330. "When faced with special law enforcement needs, diminished expectations of privacy, minimal intrusions, or the like, the Court has found that certain general, or individual, circumstances may render a warrantless search or seizure reasonable." *Id.* Such exceptions include, for example, searches of automobiles based on probable cause, *California v. Carney*, 471 U.S. 386, 394 (1985), arrests made in public places based on probable cause, *United States v. Watson*, 423 U.S. 411, 423 (1976) (felonies); *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001) (misdemeanors), and searches incident to lawful arrests, *United States v. Robinson*, 414 U.S. 218, 235 (1973).

When it comes to the home, however, the Court has emphasized that exceptions to the warrant requirement should be "'jealously and carefully drawn.'" *Georgia v. Randolph,* 547 U.S. 103, 109 (2006). "'Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment.'" *Payton v. New York*, 445 U.S. 573, 587 (1980). For that reason, police must gener-

ally obtain a warrant before entering a home—including for the purpose of arresting someone. *See id.* at 603 (arrest warrant required for suspect in own home); *Steagald*, 451 U.S. at 213-214 (search warrant required for suspect in someone else's home).

The few recognized exceptions to that general rule reflect the Court's careful approach to allowing warrantless entries of a home. For example, the "voluntary consent of an individual possessing authority," such as a "fellow occupant," provides the police with authority to enter a home without a warrant. *Randolph,* 547 U.S. at 109. So does an exigent circumstance "so compelling that a warrantless search is objectively reasonable." *Kentucky v. King*, 563 U.S. 452, 460 (2011) (internal quotation marks and alteration omitted). Exigencies justifying a warrantless search of a home include, for example, "assist[ing] persons who are seriously injured or threatened with such injury," *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006), putting out a fire in a residence, *Michigan v. Tyler*, 436 U.S. 499, 509 (1978), and preventing the "'imminent destruction of evidence,'" *King*, 563 U.S. at 460.

2. Certain exceptions to the warrant requirement "apply categorically and thus do not require an assessment of whether the policy justifications underlying the exception . . . are implicated in a particular case." *Missouri v. McNeely*, 569 U.S. 141, 150 n.3 (2013); *see, e.g.*, *Riley*, 573 U.S. at 382, 386 (search incident to arrest).[1] Other exceptions "call[] for a case-specific inquiry." *McNeely*, 569 U.S. at 150 n.3.

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[1] *See also Robinson*, 414 U.S. at 235 ("[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on

The exigent circumstances exception ordinarily falls within the latter category, requiring a court to "evaluate each . . . alleged exigency based 'on its own facts and circumstances.'" *McNeely*, 569 U.S. at 150; *see also id.* at 156 ("based on the totality of the circumstances"). But this Court has long recognized that a categorical approach to the exigent circumstances exception is appropriate in the particular context of warrantless entries into a home while officers are in "hot pursuit of a fleeing felon." *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984) (citing *United States v. Santana*, 427 U.S. 38, 42-43 (1976)).

This hot-pursuit exception allows police to complete a felony arrest "set in motion in a public place," where the suspect flees and "some sort of a chase" ensues, leading the suspect to "retreat[] into [a] house." *Santana*, 427 U.S. at 42, 43. In those circumstances, the pursuing officers may enter the home without a warrant for the limited purpose of completing the lawful arrest. *See id.*; *Steagald*, 451 U.S. at 221; *Payton*, 445 U.S. at 598. The Court has repeatedly listed "hot pursuit" of a felony suspect as its own category of exigency, separate from case-specific exigencies such as a risk of evidence destruction or a danger of physical harm to persons. *See, e.g.*, *Stanton v. Sims*, 571 U.S. 3, 8 (2013) (per curiam); *McNeely*, 569 U.S. at 149; *King*, 563 U.S. at 460; *Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *Welsh*, 466 U.S. at 750. The Court has not, however, applied the hot-pursuit exception in the misdemeanor context. *Cf. Stanton*, 571 U.S. at 6 (recognizing that "federal and state courts nationwide are sharply divided on the question").

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what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found").

B. Factual Background

Petitioner Arthur Lange drove past a California highway patrol officer in Sonoma late on the evening of October 7, 2016. Pet. App. 2a. Lange was playing music "very loudly" and unnecessarily honking his car's horn, leading the officer to "follow[] Lange intending to conduct a traffic stop." *Id.* Under California law, excessive sound amplification and honking without justification are both infractions, punishable with fines but not jail time. *See* Cal. Veh. Code §§ 27001, 27007.[2]

After briefly following Lange, the officer flashed his vehicle's overhead emergency lights to signal that Lange should pull over and stop. Pet. App. 3a. "It was very dark outside" and the lights—which "consisted of 'four red lights'" and an additional "'bright light that switche[d] between red and blue'"—provided "considerable illumination." *Id.* at 16a. By that point, however, Lange had nearly arrived at the driveway to his home. *Id.* at 3a, 17a. Rather than stopping as directed, Lange turned into the driveway and continued into his garage. *Id.* at 3a. As the garage door began to close, the officer "exited his vehicle, approached the garage door, stuck his foot 'in front of the sensor and the garage door started to go back up.'" *Id.*[3]

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[2] Like many States, California uses the term "infraction" for non-jailable offenses, "misdemeanor" for offenses that authorize jail time up to one year, and "felony" for offenses that authorize a longer period of incarceration. *See* Cal. Penal Code §§ 17, 19.2, 19.6; *see generally* 1 LaFave et al., *Criminal Procedure* § 1.8(c) (4th ed. 2015).

[3] A camera on the officer's dashboard recorded a video of these events. That video is in the record below. *See* Pet. App. 3a.

Upon entering the garage and questioning Lange, the officer observed signs that Lange was intoxicated, such as bloodshot eyes and slurred speech. C.T. 26, 136.[4] A blood test later revealed that Lange's blood-alcohol content was more than three times the legal limit. *Id.* at 20, 207.

C. Proceedings Below

The Sonoma County District Attorney charged Lange with the misdemeanor offense of driving under the influence of alcohol, *see* Cal. Veh. Code § 23152, and with an infraction for operating his car's sound system at an excessive level, *see id.* § 27007; Pet. App. 2a.

Lange moved to suppress the evidence obtained after the officer entered his garage, arguing that the officer had no justification to enter without a warrant. Pet. App. 2a-3a. The prosecutor responded that the entry was lawful because the officer was in hot pursuit of Lange based on probable cause to believe that Lange had violated California Vehicle Code Section 2800, which makes it a misdemeanor to "willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer." *See* C.T. 23-24, 562-564. Because the officer lawfully sought to stop Lange in order to investigate Vehicle Code infractions, Section 2800 required Lange to comply with the officer's instruction to pull over. Pet. App. 3a-4a, 6a, 17a.[5] The

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[4] Citations to "C.T." are to the clerk's transcript from the court of appeal.

[5] For the same reason, the officer had probable cause to believe that Lange had violated California Penal Code Section 148, which makes it a misdemeanor to "willfully resist, delay or

superior court denied the motion to suppress on that basis. *Id.* at 4a.

After the appellate division of the superior court affirmed that ruling, Pet. App. 5a, Lange pleaded no contest to one DUI count, *id.* at 6a. In light of his high blood-alcohol content and a prior DUI conviction, the superior court sentenced Lange to thirty days in jail and three years' probation. C.T. 208. Lange appealed the conviction to the appellate division of the superior court, which again affirmed the trial court's denial of the suppression motion. Pet. App. 6a; *see also id.* at 23a-24a (concluding that Lange could bring a "second appeal" of the denial of his suppression motion following entry of his conviction).

The court of appeal then granted Lange's petition to review the case, Pet. App 1a, and affirmed Lange's conviction, *id.* at 14a-21a.[6] The court explained that, under existing California precedent, the "hot pursuit" exception applies "'[w]here the pursuit into the home was based on an arrest set in motion in a public place.'" *Id.* at 20a (quoting *People v. Lloyd*, 216 Cal. App. 3d 1425, 1430 (1989)); *see also Stanton*, 571 U.S. at 9 (noting that *Lloyd* "refused to limit the hot pursuit exception to felony suspects").

In the court of appeal's view, that exception applied here. The court observed that probable cause of "non-jailable" offenses—such as the noise and honking

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obstruct a peace officer in the discharge of his duties." *See* Pet. App. 17a.

[6] In misdemeanor cases in California, a defendant may appeal suppression issues as of right only to the superior court's appellate division. *See* Cal. Penal Code § 1538.5(j). Additional appellate review may be had in the court of appeal only if it exercises its discretion to order "transfer" of the case. Cal. R. of Ct. 8.1002.

infractions that initially prompted the officer to follow Lange—might not have been sufficient to authorize the warrantless entry. Pet. App. 21a (citing, *e.g.*, *People v. Thompson*, 38 Cal. 4th 811, 821 (2006)). But California precedent established that probable cause of any "jailable" misdemeanor categorically allows an officer to pursue a fleeing suspect into a home. Pet. App. 20a-21a (citing, *e.g.*, *Lloyd*, 216 Cal. App. 3d at 1430). Under the circumstances here, the court concluded that the officer's warrantless entry was valid because he had probable cause to arrest Lange for the jailable offense of "failing to immediately pull over" when the officer activated his lights. Pet. App. 17a; *see id.* at 19a-21a.

Lange petitioned the California Supreme Court to review the case. That Court denied review without requesting an answer. Pet. App. 28a.[7] This Court then granted Lange's petition for a writ of certiorari.[8]

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[7] In a separate civil proceeding that preceded the appeals in his criminal case, Lange challenged the decision of the Department of Motor Vehicles to suspend his driver's license for one year. Pet. App. 4a-5a. In that case, the superior court agreed with Lange that the warrantless entry into his garage violated the Fourth Amendment, and overturned his license suspension on that basis. *Id.* That decision became final when the Department of Motor Vehicles did not appeal.

[8] The State opposed Lange's petition in light of the particular circumstances of the case, but noted that "[i]f the Court does grant plenary review in this case . . . California would argue that the Court should reject the categorical rule in the misdemeanor context." Br. in Opp. 9.

SUMMARY OF ARGUMENT

The exigent circumstances exception to the warrant requirement ordinarily applies on a case-by-case basis. But this Court has long recognized a categorical hot-pursuit exception, which establishes a conclusive presumption that exigent circumstances exist when police pursue a fleeing felony suspect into a home. In evaluating whether to extend that exception to pursuits of suspected misdemeanants, the Court should consider the factors that it normally examines in deciding whether to apply an existing Fourth Amendment exception in a new or distinct context: founding-era history, any intrusion on legitimate privacy interests that would result from extending the exception, and the law enforcement interests that would be advanced by that extension. Here, each of those factors counsels against applying the categorical hot-pursuit exception in the misdemeanor context.

The Founders prized the sanctity of the home, and so did the common law authorities they consulted when drafting the Fourth Amendment. While common law commentators recognized something akin to today's hot-pursuit exception in cases involving fleeing felony suspects, their writings do not support extending that exception to every case in which an officer pursues a person who is suspected of committing a misdemeanor.

Privacy interests also weigh against such an extension. A sudden police entry into a home imposes an obvious burden on the privacy and dignity interests of those within the home—especially the interests of those occupants who had nothing to do with the offense giving rise to the entry. And given the greater number and frequency of misdemeanor offenses and arrests, such entries could become substantially more

common if this Court extended the hot-pursuit exception to all misdemeanor cases on a nationwide basis.

At the same time, the law enforcement interests that are advanced by the felony hot-pursuit exception are far less weighty in the misdemeanor context. Misdemeanor pursuits are less likely to involve risks of violence, evidence destruction, or escape from the home—the three exigencies that can be expected to arise with sufficient frequency in the felony context to justify departing from a case-by-case approach in favor of a bright line categorical rule.

In light of these considerations, the categorical hot-pursuit exception should be limited to cases in which police have probable cause to believe that the fleeing suspect committed a felony. To be sure, in certain cases it will be important for the police to enter a dwelling in pursuit of a misdemeanor suspect. In those cases, officers may enter the home immediately if the facts establish a case-specific exigency, or they may wait outside and enter after obtaining a warrant. Because the record here does not establish a case-specific exigency and the officer did not have a warrant to enter Lange's garage, the Court should hold that the entry was inconsistent with the Fourth Amendment. But in view of state appellate precedent that authorized the entry at the time it took place, the Court should remand for the lower court to resolve whether the good-faith exception to the exclusionary rule applies.

ARGUMENT

I. THE CATEGORICAL HOT-PURSUIT EXCEPTION SHOULD NOT BE EXTENDED TO PURSUITS OF SUSPECTED MISDEMEANANTS

The "'central requirement'" of the Fourth Amendment "is one of reasonableness." *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *see supra* pp. 2-3. This Court long ago held that it is reasonable for the police to pursue a fleeing suspect into a home, without first obtaining a warrant, if there is probable cause to believe the suspect committed a felony. *See United States v. Santana*, 427 U.S. 38, 42-43 (1976). But the Court has never extended that categorical rule to cases involving individuals suspected of committing only a misdemeanor. It should not do so now.

A. The Court Has Only Applied a Categorical Hot-Pursuit Exception in the Felony Context

Before *Santana*, this Court had considered, but not adopted, a hot-pursuit exception. In *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 297-298 (1967), the government invoked the exception after police entered a home without a warrant to apprehend an armed robbery suspect. Witnesses who observed the robbery followed the suspect to his home and called the police, who arrived "[w]ithin minutes." *Id.* at 297. While two Justices indicated that the "'hot pursuit' exception" justified the warrantless entry, *id.* at 312 (Fortas, J., concurring), the Court resolved the Fourth Amendment question on case-specific grounds, *id.* at 298 (opinion of the Court). The Court explained that delay in seeking a warrant would have "gravely endanger[ed]" the lives of law enforcement officials "or the lives of others," and only an immediate "search of the house for persons and weapons could have insured

that [the suspect] was the only man present" in the home "and that the police had control of all weapons which could be used against them or to effect an escape." *Id.* at 298-299.[9]

In *Santana*, the Court made clear that *Hayden* was not a "true 'hot pursuit'" case because it did not involve a "chase." *Santana*, 427 U.S. at 42-43 & n.3. Instead, *Hayden* "was based upon the 'exigencies of the situation.'" *Id.* at 42 n.3. By contrast, *Santana* did involve a "chase": Several narcotics agents made a controlled drug buy, purchasing heroin with marked bills before following the street-level dealer to the home of Dominga Santana, a higher-level dealer. *Id.* at 39-40. After Santana took the money and gave the heroin to the street-level dealer, the agents approached the home, "shouting 'police,' and displaying their identification." *Id.* This led Santana, who initially stood "directly in the doorway," *id.* at 40 n.1, to "retreat[] into the vestibule of her house," *id.* at 40. Although the agents did not have a warrant, they followed her inside and arrested her. *Id.* at 40-41.

This Court upheld the entry and arrest, reasoning that the "hot pursuit" was "sufficient to justify the warrantless entry." *Santana*, 427 U.S. at 42-43. While the Court acknowledged that the "pursuit . . . ended almost as soon as it began," *id.* at 43, it held

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[9] The Court also considered the hot-pursuit exception in *Johnson v. United States*, 333 U.S. 10, 16 n.7 (1948), where federal narcotics agents entered an apartment without a warrant based on probable cause of opium consumption. The government argued "that '[i]n a sense,' the arrest was made in 'hot pursuit.'" *Id.* But the Court perceived "no element of 'hot pursuit' in the arrest of one who was not in flight, was completely surrounded by agents before she knew of their presence, . . . and who made no attempt to escape." *Id.*

that the hot-pursuit exception requires only "some sort of a chase," not "an extended hue and cry in and about the public streets," *id.* (internal quotation marks and alteration omitted). As the Court recognized, once Santana "saw the police," there was "a realistic expectation that any delay would result in destruction of evidence." *Id.*

Since *Santana*, this Court has used categorical terms to describe the exception that it adopted in that case. *See, e.g.*, *Steagald v. United States*, 451 U.S. 204, 221 (1981); *supra* p. 5. The Court routinely lists "hot pursuit" of a felony suspect as its own category of exigency—separate from case-specific exigencies, such as risk of physical harm or evidence destruction, which require an evaluation of the totality of the circumstances in a particular case. *See, e.g.*, *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (recognizing that, "in the absence of hot pursuit," there must be "at least probable cause to believe that one or more" case-specific exigencies "were present"); *Missouri v. McNeely*, 569 U.S. 141, 149 (2013) (similar); *Kentucky v. King*, 563 U.S. 452, 460 (2011) (similar); *Stanton v. Sims*, 571 U.S. 3, 8 (2013) (per curiam) (describing "our precedent holding that hot pursuit of a fleeing felon justifies an officer's warrantless entry").[10]

Over the decades, the categorical rule adopted in *Santana* has proved to be a workable and sensible one. In "many cases," as in *Santana*, "there will be a danger that evidence will be destroyed if there is delay, and there will sometimes be a danger of flight or a threat

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[10] Lower courts, too, have understood the exception as a categorical one. *See, e.g.*, *State v. Thomas*, 280 Kan. 526, 536 (2005) ("hot pursuit alone justifies a warrantless intrusion into a home"); *United States v. Schmidt*, 403 F.3d 1009, 1015 (8th Cir. 2005) (similar).

of harm to the officers as well." *Bodine v. Warwick*, 72 F.3d 393, 399 (3d Cir. 1995) (Alito, J.). Indeed, "[n]ot infrequently, a prompt entry to arrest is called for in order to minimize the risk that someone will be injured or killed." 3 LaFave, *Search & Seizure: A Treatise on the Fourth Amendment* § 6.1(f) (6th ed. 2020) (LaFave); *see also id.* § 6.1(d). Because these exigencies will frequently arise when police pursue fleeing felony suspects, it is appropriate to replace case-specific application of the exigent circumstances exception with a bright line rule, categorically allowing officers to pursue a suspect into a home for the limited purpose of effecting a felony arrest. *See, e.g.*, *State v. Weber*, 372 Wis. 2d 202, 222 (2016) (discussing the "intuitive reasonableness" of the established "hot pursuit doctrine").

But this Court has never applied the hot-pursuit exception to a case involving a suspected misdemeanant. The offense giving rise to the pursuit in *Santana* was a felony drug crime. *See* 427 U.S. at 41. And the Court has explicitly described its precedent as "holding that hot pursuit of a fleeing *felon* justifies an officer's warrantless entry," *Stanton*, 571 U.S. at 8 (emphasis added), while reserving the question "whether an officer with probable cause to arrest a suspect for a misdemeanor may enter a home without a warrant while in hot pursuit of that suspect," *id.* at 6.

B. The Court Should Not Extend the Categorical Hot-Pursuit Exception to the Misdemeanor Context

The factors this Court normally considers when deciding whether to extend a categorical Fourth Amendment exception to a different context do not support extending the felony hot-pursuit exception to the context of misdemeanor pursuits.

1. The Fourth Amendment generally "prohibit[s] the warrantless entry of a person's house as unreasonable *per se*," and this Court has recognized only "'carefully drawn'" exceptions to that rule. *Georgia v. Randolph,* 547 U.S. 103, 109 (2006); *see supra* pp. 3-4. That level of caution is particularly appropriate when considering whether to extend a categorical exigency-based exception because "'the fact-specific nature'" of the reasonableness inquiry normally "demands that [courts] evaluate each case of alleged exigency based 'on its own facts and circumstances.'" *McNeely*, 569 U.S. at 150.

Of course, this Court has also recognized that certain circumstances justify an "exception[] to the warrant requirement that appl[ies] categorically," *McNeely*, 569 U.S. at 150 n.3, and one of those circumstances is "law enforcement's need to" enter a home while "engage[d] in 'hot pursuit'" of a suspected felon, *id.* at 149 (quoting *Santana*, 427 U.S. at 42-43). The chief virtue of categorical rules as a general matter is that they establish bright lines that are more administrable for police and the courts: they avoid the need for case-by-case assessments in contexts where some common fact or circumstance means that a search or seizure will "in general [be] reasonable." *Thornton v. United States*, 541 U.S. 615, 627 (2004) (Scalia, J., concurring in the judgment).[11]

In the context of the exception for searches incident to arrest, for example, the Court recognized that a case-by-case approach would unduly interfere with a "police officer's determination as to how and where to search the person of a suspect whom he has arrested."

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[11] *See also* LaFave, *"Case-by-Case Adjudication" Versus "Standardized Procedures,"* 1974 Sup. Ct. Rev. 127, 141-143.

United States v. Robinson, 414 U.S. 218, 235 (1973). The "need to disarm and to discover evidence" is commonly present when police effect an arrest. *Id.* The Court thus concluded that the legality of an officer's "ad hoc judgment" about whether to conduct such a search should "not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." *Id.*[12]

But categorical Fourth Amendment rules can also have drawbacks. They are blunt instruments, by design. They may at times be applied in cases in which, absent the categorical rule, a case-specific inquiry into all the facts and circumstances would cast doubt on the reasonableness of a search. *Cf. Richards v. Wisconsin*, 520 U.S. 385, 393 (1997) (rejecting proposed categorical rule that "contain[ed] a considerable overgeneralization"). And once this Court has adopted a categorical Fourth Amendment rule, it should be expected that police will internalize it and apply it—even if they would have concluded that a particular search or seizure might be unreasonable if evaluated on all the particular facts of a case in the absence of a categorical rule. *See, e.g.*, *Thornton*, 541 U.S. at 627-628 (Scalia, J., concurring in the judgment).

In view of those drawbacks, the Court does not reflexively extend existing categorical exceptions to a

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[12] Other examples of categorical Fourth Amendment exceptions include the "automobile exception," *McNeely*, 569 U.S. at 150 n.3 (citing *California v. Acevedo*, 500 U.S. 565, 569-570 (1991)), and the rule allowing police to make warrantless public arrests of felony suspects based on probable cause, *see United States v. Watson*, 423 U.S. 411, 423 (1976) (adopting categorical rule, "rather than . . . encumber[ing] criminal prosecutions with endless litigation [over] the existence of exigent circumstances").

new or distinct context. Instead, it generally conducts a fresh inquiry, examining any relevant "guidance from the founding era," the privacy concerns that would be implicated by extending the exception, and the "'legitimate governmental interests'" at stake. *Riley v. California*, 573 U.S. 373, 385 (2014). In *Atwater v. City of Lago Vista*, for example, the Court carefully examined those considerations before extending to misdemeanor suspects the existing categorical rule allowing warrantless arrests of suspected felons in public. *See* 532 U.S. 318, 327-354 (2001).[13] In *Riley*, those factors persuaded the Court to reject extension of the search-incident-to-arrest exception to searches of digital information on a cell phone seized from an arrestee. 573 U.S. at 385-386. Here, the same considerations weigh against extending the categorical hot-pursuit exception to the misdemeanor context.

2. The founding-era history supports a categorical hot-pursuit exception for suspected felons, but offers scant support for extending that exception to suspected misdemeanants. The "common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers," providing an "unequivocal endorsement of the tenet that 'a man's house is his castle.'" *Payton v. New York*, 445 U.S. 573, 596, 598 (1980); *see, e.g.*, *Semayne's Case*, 77 Eng. Rep. 194, 195 (KB 1604). Although some commentators "disagreed" about "whether a constable had the authority to make warrantless arrests in the home on mere suspicion of a felony," *Payton*, 445 U.S. at 592, 593, "the weight of authority as it appeared to the Framers was

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[13] *Atwater* reserved the question whether the Fourth Amendment allows warrantless public arrests of misdemeanor suspects where the offense was not committed "'in the presence'" of an officer. 532 U.S. at 340-341 & n.11.

to the effect that a warrant was required" and "the prevailing practice was not to make such arrests"—"except in hot pursuit or when authorized by a warrant," *id.* at 596, 598.

As the Court explained in *Payton*, a leading common law commentator viewed the hot-pursuit exception as generally limited to felony cases. Sir Matthew Hale opined "that in the case where the constable suspects a person of a felony, 'if the supposed offender fly and take house, and the door will not be opened upon demand of the constable and notification of his business, the constable may break the door, tho he have no warrant.'" 445 U.S. at 595 n.41; *see* 2 Matthew Hale, *The History of the Pleas of the Crown* 92, 94 (1st Am. ed. 1847). None of the other common law sources discussed by the Court in *Payton* indicated that this warrantless entry exception extended to pursuits of *all* fleeing suspects on a categorical basis. *See* 445 U.S. at 594-598 & n.41; *see also Steagald*, 451 U.S. at 218.

Historical scholarship published since *Payton* is consistent with the understanding that the exception was generally limited to felony suspects. One recent historical survey describes two common law doctrines allowing warrantless entries into a home for the purpose of effecting an arrest. The first, the "fleeing felon exception," allowed the police to enter homes "in pursuit of" a felony suspect. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1196 n.56, 1228-1229 (2016). The second, the "ancient tradition" of "hue and cry," bore a "close relationship" to the fleeing felon exception; it "extended the authority to apprehend" felony suspects "beyond officers of the Crown" to private citizens in certain circumstances.

Id. at 1231.[14] These common law exceptions were somewhat broader than the modern hot-pursuit exception in that they apparently extended to individuals who were suspected for recently committed offenses but who were not actively fleeing an arrest attempt. *See* Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 622 & n.198 (1999); *Steagald*, 451 U.S. at 229, n.2 (Rehnquist, J., dissenting).

More relevant for present purposes, however, both common law exceptions appear to have been limited to felony offenses, with the possible exception of certain non-felony offenses that involved violence or a risk of harm to others. For example, Joseph Chitty recognized that officers "may be justified in breaking open doors" to apprehend a person on "suspicion of a felony" or where "a dangerous wound [is] given, and the offender being pursued, takes refuge in his own house." 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 35 (1819); *see also id.* at 38 ("or where those who have made an affray [*i.e.*, a public fight] fly to a house, and are pursued").[15] Similarly, Coke described "Hue and Cry by the Common Law, or for the King" as applying "when any felony is committed, or any person grievously and dangerously wounded, or

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[14] The practice of "hue and cry" required "all persons between the ages of fifteen and sixty" to assist law enforcement officers in searching for a suspect wanted for a recently committed felony—including, if necessary, by entering a suspect's home without a warrant. Donohue, *supra*, p. 1231.

[15] *See also* Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602-1791* pp. 750-751 (2009 ed.); Davies, *supra*, p. 644; Schroeder, *Warrantless Misdemeanor Arrests and the Fourth Amendment*, 58 Mo. L. Rev. 771, 812 n.147 (1993).

any person assaulted and offered to be robbed either in the day or night." 3 Edward Coke, *Institutes of the Laws of England* 116 (6th ed. 1680).[16] That history provides considerable support for the categorical hot-pursuit exception with respect to individuals suspected of committing felony offenses; it provides no support for extending that exception to every case of flight by a suspected misdemeanant.

3. Privacy interests also weigh heavily against extending the categorical hot-pursuit exception to the misdemeanor context. "'[W]hen it comes to the Fourth Amendment, the home is first among equals.'" *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018); *see also Kyllo v. United States*, 533 U.S. 27, 40 (2001) (the "Fourth Amendment draws 'a firm line at the entrance to the house'"). At the Amendment's "'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Thus, when the Court is setting a rule regarding the authority of government officials to "'cross the threshold'" of a person's home without a warrant, *Payton*, 445 U.S. at 601 n.54, the privacy interests protected by the Fourth Amendment are at their apex.

Expanding the categorical hot-pursuit exception to encompass misdemeanor pursuits would threaten those interests in a number of ways. While an officer entering the home for the limited purpose of effecting an arrest lacks authority to conduct a "full-blown" or "'top-to-bottom' search" of the premises, *Maryland v.*

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[16] *See also* 2 Richard Burn, *The Justice of the Peace and Parish Officer* 716-718 (20th ed. 1805) (similar); 2 Hale, *supra* pp. 98, 101-102 (similar).

Buie, 494 U.S. 325, 336 (1990), the disturbance of privacy interests can still be significant. An officer may conduct a "sweep" of multiple rooms, for example, and may "look in closets" for anyone else present in the home who could pose a danger. *Id.* at 333, 334. That sudden scrutiny of a private home surely implicates the "privacy and dignity" interests of those inside the home, *Hudson v. Michigan*, 547 U.S. 586, 594 (2006)—especially any "innocent" occupants who may have nothing to do with the misdemeanor offense giving rise to the pursuit, *Michigan v. Tyler*, 436 U.S. 499, 505 (1978); *see, e.g.*, *Stanton*, 571 U.S. at 4-5; *Mascorro v. Billings,* 656 F.3d 1198, 1202 (10th Cir. 2011). A "surprised resident" may have no time "'to pull on clothes or get out of bed'" before the officer's entry. *Hudson*, 547 U.S. at 594. Or he may react with "violence in supposed self-defense," endangering officers as well as other occupants. *Id.*; *see, e.g.*, *State v. Markus*, 211 So. 3d 894, 910 (Fla. 2017) (noting the "potential danger that accompanies an officer's entry into the private dwelling," including "the potential for officer injuries or fatalities").

A ruling from this Court extending the hot-pursuit exception to all misdemeanor offenses on a nationwide basis could materially increase the number and frequency of hot-pursuit entries implicating these significant privacy interests. Misdemeanor offenses span a wide range of conduct, from "jaywalking and littering," *Markus*, 211 So. 3d at 911, to "public intoxication," "unlawful assembly," "obstructing a sidewalk," and "public nuisance," Pet. 25. And it is not uncommon for the police to interact with suspected misdemeanants near their homes, in circumstances (akin to those in *Santana*) where a few steps by a suspect from her front yard, porch, stoop, or doorway into her home could qualify as a "hot pursuit." *Supra* pp. 13-14; *see,*

e.g., *Markus* 211 So. 3d at 897; *Butler v. State*, 309 Ark. 211, 215-217 (1992); *see also* Pet. 14, n.6 (collecting similar examples).[17]

Of course, the felony hot-pursuit exception that this Court adopted in *Santana* also implicates legitimate privacy interests. But the constitutional balance is materially different in the misdemeanor and felony contexts. The greater number and frequency of misdemeanor offenses and arrests suggests that, in the aggregate, the intrusions on privacy resulting from the existing exception are lesser than those that would result from an expanded exception. And, as discussed below, the interests of law enforcement in pursuing a fleeing felony suspect into a home are typically of a different and weightier nature than those associated with pursuing a suspected misdemeanant.

4. a. The law enforcement interests that justify the felony hot-pursuit exception do not arise with the same frequency in the misdemeanor context. The

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[17] The "potential for abuse" is also a relevant factor in assessing privacy interests under the Fourth Amendment. *Steagald*, 451 U.S. at 215. The State is not aware of any indication that law enforcement officers in California, or other jurisdictions that currently apply a categorical hot-pursuit exception in the misdemeanor context, have abused their authority in invoking or applying that rule. But enshrining a nationwide misdemeanor hot-pursuit exception in this Court's Fourth Amendment doctrine would surely present a greater *potential* for abuse than a rule requiring officers to identify case-specific circumstances justifying a warrantless entry. *See generally Nieves v. Bartlett*, 139 S. Ct. 1715, 1727 (2019) (noting "'a risk that some police officers may exploit the arrest power'"); *Payton*, 445 U.S. at 616-617 (White, J., dissenting) (stressing the importance of a "felony requirement" for warrantless home entries to "guard[] against abusive or arbitrary enforcement" and "ensure[] that invasions of the home occur only in case of the most serious crimes").

principal justification for the exception in the felony context is that the flight of a suspected felon into a home is likely to implicate at least one of several recognized exigent circumstances justifying a warrantless entry: a serious risk of physical harm to others, *see Brigham City v. Stuart*, 547 U.S. 398, 406 (2006); the destruction of evidence, *see King*, 563 U.S. at 460; or the escape of the suspect, *see Hayden*, 387 U.S. at 298-299; *see also Bodine*, 72 F.3d at 399; *State v. Thomas*, 280 Kan. 526, 537 (2005); *supra* pp. 14-15. Each of those circumstances is less likely to arise in the context of misdemeanor pursuits.

As to the risk of harm to others, while misdemeanors sometimes involve dangerous conduct, *see Tennessee v. Garner*, 471 U.S. 1, 14 (1985), the "conduct at issue in misdemeanors is typically not particularly dangerous," Natapoff, *The High Stakes of Low-Level Criminal Justice*, 128 Yale L.J. 1648, 1695 (2019). The underlying offense in a misdemeanor-pursuit case is thus far less likely to suggest a risk of imminent violence than in a felony case. *Compare Hayden*, 387 U.S. at 298-299 (felony armed robbery offense gave police reason to believe suspect would threaten the "lives [of police] or the lives of others").

Recent scholarship supports that conclusion. An empirical analysis of thousands of misdemeanor charges filed in eight separate U.S. jurisdictions indicates that four offenses make up more than half of all misdemeanor cases: "possession of marijuana, petty theft, DUI, and simple assault/battery." Mayson & Stevenson, *Misdemeanors by the Numbers*, 61 B.C. L. Rev. 971, 999 (2020).[18] Marijuana possession and

[18] The study excluded non-DUI traffic offenses from this calculation.

petty theft are plainly nonviolent. Driving under the influence involves "little remaining threat to the public safety" once the suspect arrives at home and is off the road. *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984). And while simple assault or battery offenses can sometimes suggest a continuing risk of harm to others, other times they will not. *Cf. Johnson v. United States*, 559 U.S. 133, 141 (2010) (simple battery often requires only "the merest touching").[19]

The risk of evidence destruction also arises less frequently in the misdemeanor context. In many cases there will be no physical evidence associated with the underlying misdemeanor offense. *See* Mayson & Stevenson, *supra*, p. 1044 (listing numerous misdemeanor offenses unlikely to involve physical evidence). Here, for example, the only conduct relevant to Lange's misdemeanor flight offense was recorded by the officer's dashboard video camera. *Supra* p. 6 & n.3. Similarly, in a hot-pursuit case involving the misdemeanor of driving without working taillights, there was "no evidence which could have potentially been destroyed." *Mascorro,* 656 F.3d at 1207; *see also People v. Hammerlund*, 504 Mich. 442, 461 (2019) (defendant was suspected of misdemeanor-level failure to

[19] Other commonly prosecuted misdemeanors include public intoxication, trespass, possession of drug paraphernalia, resisting arrest, underage drinking, vandalism, failing to give information to police, and general regulatory offenses (such as violating regulations governing commercial or recreational activities). *See* Mayson & Stevenson, *supra*, pp. 993 & n.86, 1000, 1044. Each is unlikely to suggest an ongoing risk of physical harm to others. *See generally id.* at 974; Baughman, *Dividing Bail Reform*, 105 Iowa L. Rev. 947, 990-992 (2020) (explaining that misdemeanors are less likely to qualify as dangerous offenses for purposes of determining eligibility for release under state bail regimes).

report traffic accident "and there was no evidence of that crime that she could destroy").

To be sure, other misdemeanor-pursuit cases may involve physical evidence. But the fleeing suspect will have less incentive to destroy it, when compared with a suspected felon, because the potential penalties for conviction would be less serious. In *Smith v. Stoneburner*, 716 F.3d 926, 931-933 (6th Cir. 2013), for example, Judge Sutton doubted that an individual suspected of stealing a "$14.99 phone charger" would attempt to destroy evidence during the time it would take the police to secure an arrest warrant. He explained that "[a]ny destruction of evidence . . . would have elevated a minor misdemeanor . . . into the felony of evidence tampering." *Id.* at 932.

For similar reasons, the risk that a suspect will attempt to escape while the police obtain a warrant is less pronounced in misdemeanor-pursuit cases. A number of factors discourage suspects from fleeing a home while officers stand outside awaiting a warrant: a flight from the home could expose the suspect to additional criminal penalties beyond those he is already facing, *see infra* p. 28, n.22; it may endanger the suspect's physical safety, *cf. Garner*, 471 U.S. at 3-4; and, unless the suspect intends to remain on the lam, a successful escape might provide only a temporary reprieve from apprehension. While the serious penalties for felonies may sometimes motivate a suspect to assume those risks, the penalties associated with a misdemeanor are comparatively less likely to do so. Indeed, this Court recognized in *Welsh* that "an important factor to be considered" when determining whether an escape- or evidence destruction-based exigency exists "is the gravity of the underlying offense for which the arrest is being made." 466 U.S. at 753.

Although Justice White dissented in *Welsh*, he agreed that the gravity of the underlying offense "bears on the likelihood" that a suspect will have an incentive to "flee and escape apprehension" while police wait for a warrant. *Id.* at 759 (White, J., dissenting).[20]

b. There are undoubtedly valid government interests that would be served by extending the categorical hot-pursuit exception to misdemeanors, but they are not sufficient to overcome the threatened intrusion on legitimate privacy interests. Without a categorical rule in misdemeanor-pursuit cases, some misdemeanor arrests or prosecutions may be thwarted by a suspect's escape or destruction of evidence in circumstances where the pursuing officers cannot identify another legitimate basis for an immediate warrantless entry. *But see infra* pp. 30-32. As this Court has recognized, however, "[p]rivacy comes at a cost." *Riley*, 573 U.S. at 401. On balance, the marginal risk of interfering with certain misdemeanor arrests and prosecutions is insufficient to justify a categorical exception to the warrant requirement for all misdemeanor pursuits. *Cf.* 4 William Blackstone, *Commentaries on the Laws of England* 5 (1769) (misdemeanors are "smaller faults, and omissions of less consequence" than felonies).

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[20] *Welsh* held that police violated the Fourth Amendment by conducting a warrantless home entry to arrest a suspect for a recently committed drunk-driving offense (classified as a civil, nonjailable offense at the time in Wisconsin). *See* 466 U.S. at 742, 753-754. The crux of the disagreement between the majority and dissent was whether "the need to preserve evidence of the petitioner's blood-alcohol level" qualified as an exigent circumstance. *Id.* at 753; *see infra* p. 32.

Another argument in favor of a categorical misdemeanor-pursuit rule is that, in its absence, suspects would have "an incentive to flee law enforcement." *City of Bismarck v. Brekhus*, 908 N.W.2d 715, 723 (N.D. 2018).[21] But fleeing into a home hardly earns a suspect a get-out-of-jail-free card: the police may "remain[] in the area of the house as they wait[] to obtain a warrant," and then enter to effect an arrest as soon as they have the warrant. *Markus*, 211 So. 3d at 912; *cf. Steagald*, 451 U.S. at 221 n.14 (officers "may avoid altogether the need to obtain a . . . warrant simply by waiting for a suspect to leave"). Moreover, fleeing from the police or otherwise resisting arrest is itself a criminal offense in every State, often accompanied by substantial penalties.[22] In light of those penalties, it is not at all clear that a categorical exception to the warrant requirement is necessary to deter a misdemeanor suspect from fleeing when the police attempt to arrest the suspect in public.

A final argument in favor of a categorical misdemeanor-pursuit exception is that police would otherwise be required to make determinations in the field

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[21] *See also State v. Legg*, 633 N.W.2d 763, 772 (Iowa 2001) ("Society has an interest in not rewarding the evasion of lawful police authority by allowing suspects who make it to their homes steps ahead of law enforcement officers to claim sanctuary.").

[22] *See, e.g.*, *supra* pp. 7-8 & n.5 (discussing misdemeanor flight offenses under California law); Cal. Veh. Code §§ 2800.2-2800.3 (imposing felony-grade offenses for exhibiting "willful or wanton disregard" for public safety in the course of fleeing or evading officers); Ala. Code § 13A-10-52 (fleeing or attempting to elude a law enforcement officer); Mont. Code Ann. § 61-8-316 (similar); N.Y. Penal Law §§ 270.25-270.35 (similar); Neb. Rev. Stat. § 28-904 (resisting arrest); Ky. Rev. Stat. Ann. § 520.090 (similar).

about whether a fleeing suspect has committed a felony or misdemeanor. *See, e.g.*, *State v. Paul*, 548 N.W.2d 260, 268 (Minn. 1996). As this Court recognized in *Atwater*, "officer[s] on the street" are not always "able to tell" the difference between various classes of offenses. 532 U.S. at 348. But the reality is that a number of constitutional and statutory requirements already require police to differentiate between classes of offenses. In most States, for example, officers must know whether an offense is a felony or misdemeanor because their authority to conduct a warrantless arrest may turn on that distinction.[23] In jurisdictions that have refused to extend the hot-pursuit exception to misdemeanors, police already must differentiate between felony and misdemeanor offenses before invoking the exception to enter a home without a warrant. *See, e.g.*, *Markus*, 211 So. 3d at 911; *Mascorro*, 656 F.3d at 1207; *Butler*, 309 Ark. at 217. And even in many jurisdictions that have recognized a categorical hot-pursuit exception in the misdemeanor context, police must distinguish between "jailable" and "nonjailable" offenses. *See, e.g.*, *Commonwealth v. Jewett*, 471 Mass. 624, 634 (2015) (adopting "hot pursuit exception" that is limited "to felonies and *jailable* misdemeanors") (emphasis

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[23] An officer may generally arrest a suspect in public for a misdemeanor only if it was committed "in the officer's presence," but no such limitation applies to warrantless felony arrests. *E.g.*, Cal. Penal Code § 836(a); *see Atwater*, 532 U.S. at 354-360 (collecting similar statutes in numerous other States); *see also, e.g.*, 3 LaFave, *supra*, § 5.1(b) (discussing the "Uniform Act on Fresh Pursuit," adopted in most States, allowing an officer pursuing a *felony* suspect, but not a *misdemeanor* suspect, to follow the suspect across state lines to effect an arrest in another State); Council of State Governments, *The Handbook on Interstate Crime Control* 1-2 (1949 ed.) (setting out the Act's text).

added); *City of Bismarck*, 908 N.W.2d at 723 (similar); *In re Lavoyne M.*, 221 Cal. App. 3d 154, 159 (1990) (similar).

Of course, there will be some occasions in which a pursuing officer is unsure in the moment whether the suspected crime giving rise to a pursuit is a felony or a misdemeanor. In those circumstances, if no case-specific exigency justifies a warrantless entry, the appropriate course will be for the officer either to await confirmation that the offense is a felony or to obtain a warrant. The costs associated with that delay are not trivial, but they are consonant with the "sanctity of the home," *Payton*, 445 U.S. at 601, as well as the principle that "'[f]reedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment,'" *id.* at 587.

C. Existing Doctrine Enables Police to Enter a Home in Pursuit of a Misdemeanor Suspect in Appropriate Cases

As just noted, in many cases existing doctrine will allow police to pursue a misdemeanor suspect who flees into a home, either by identifying a case-specific exigency or by obtaining a warrant.

1. In appropriate misdemeanor cases, courts uphold warrantless home entries based on case-specific exigencies. In *Brigham City*, for example, this Court held that officers lawfully entered a home without a warrant based on "an objectively reasonable basis for believing" that an "injured adult might need help" inside the home and that additional "violence" was about to break out. 547 U.S. at 406. It made no

difference that the police had witnessed only misdemeanor-level conduct before entering. *See id.* at 405.[24]

Although *Brigham City* was not a hot-pursuit case, lower courts have repeatedly recognized case-specific exigencies in the context of misdemeanor hot pursuits. In *United States v. Johnson*, 106 F. App'x 363, 364, 368 (6th Cir. 2004), for example, police "responded to a report that a man was firing a shotgun from a porch of a home"—a misdemeanor offense in the relevant jurisdiction—and then "observed [the] man recklessly fire two shots into the air, reload the shotgun, and then flee into the house." The Sixth Circuit held that the officers plainly faced "a dangerous situation" justifying an immediate, warrantless entry. *Id.* at 368; *see also United States v. Lenoir*, 318 F.3d 725, 727 (7th Cir. 2003) (similar). Other examples of safety-based exigencies that may arise in the misdemeanor-pursuit context include criminal-trespass episodes, where a fleeing suspect enters or breaks into the home of strangers, *see, e.g.*, *White v. Hefel*, 875 F.3d 350, 357 (7th Cir. 2017); *United States v. Collins*, 650 F. App'x 398, 399 (9th Cir. 2016), and misdemeanor domestic-violence offenses, where police need to enter the home immediately to protect a victim from physical harm, *cf. United States v. Martinez*, 406 F.3d 1160, 1164 (9th Cir. 2005); *Fletcher v. Town of Clinton*, 196 F.3d 41, 51 (1st Cir. 1999).

Case-specific concerns about evidence destruction or escape could also support a warrantless entry in

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[24] *Cf. Mitchell v. Wisconsin*, 139 S. Ct. 2525, 2537 (2019) (upholding warrantless blood test in misdemeanor DUI case to prevent destruction of evidence); *McArthur*, 531 U.S. at 331 (upholding warrantless two-hour detention to prevent suspect from entering home while police sought a warrant to search the home for evidence of misdemeanor drug possession).

certain misdemeanor-pursuit cases. For example, the conduct of a person suspected of possessing or using drugs might, in appropriate circumstances, lead officers to believe that the suspect will destroy the drugs upon entering a house. And where police pursue a DUI suspect, exigent circumstances could conceivably justify a warrantless entry if specific facts indicate that the suspect will either "attempt[] to flee" or "ingest more alcohol" inside his home—thereby interfering with the officers' ability to determine his blood-alcohol content at the time of the offense. *People v. Thompson*, 38 Cal. 4th 811, 826-827 (2006) (officers witnessed a DUI suspect attempt to flee out of the back door of his home "to evade police investigation"); *see also State v. Legg*, 633 N.W.2d 763, 772 (Iowa 2001) (suspect's willingness to flee from authorities suggested a "real possibility" that suspect would "drink [more] alcohol in her home" to thwart a DUI investigation).

This Court's decision in *Welsh* does not foreclose police from relying on case-specific exigencies in the misdemeanor context. As noted above, the Court recognized that "an important factor to be considered" when determining whether an escape- or evidence-based exigency exists "is the gravity of the underlying offense for which the arrest is being made." 466 U.S. at 753. But while the seriousness of an offense is a relevant factor in evaluating whether a suspect is likely to destroy evidence or attempt to escape, *see supra* pp. 26-27, once officers have made an objectively reasonable determination that such an exigency exists based on the particular circumstances before them, a warrantless entry may be justified, *cf. McArthur*, 531 U.S. at 336.

2. In other cases involving misdemeanor pursuits, police may be able to obtain a warrant to enter the suspect's home. While the officer in this case did not do so—quite reasonably, in light of longstanding state appellate precedent, *see, e.g.*, *People v. Lloyd*, 216 Cal. App. 3d 1425, 1430 (1989)—the circumstances would have allowed him to pursue an arrest warrant. The traffic infractions alone would have provided a basis for such a warrant. *See* Cal. Penal Code §§ 817, 840.[25] The officer also had probable cause for a warrant based on Lange's failure "to immediately pull over" when the officer activated his lights. Pet. App. 17a; *see supra* pp. 7-8 & n.5.

And the officer could have applied for the warrant while remaining outside of Lange's home. In California, like many States, officers may apply for warrants from the field by telephone or other electronic means. *See* Cal. Penal Code §§ 817(b)-(d), 1526(b)-(c); *McNeely*, 569 U.S. at 154 & n.4. Processing times can vary depending on a number of factors, including the availability of a magistrate, but telephonic and electronic warrants can sometimes be obtained in under an hour. *See, e.g.*, *Riley*, 573 U.S. at 401. While the Fourth Amendment requires an arrest-warrant application to identify the suspect with particularity, the application need not specify the suspect's name so long as it sufficiently describes him. *See generally* 3 LaFave, *supra*, § 5.1(h); *People v. Robinson*, 47 Cal. 4th 1104, 1131 (2010). In this case, for example, it would have sufficed for the officer to describe Lange's specific conduct,

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[25] In practice, however, it is unusual for officers to seek an arrest warrant for nonjailable infractions.

the automobile he was driving, and the address of the residence he entered.[26]

D. The Court Should Remand for Application of the Good-Faith Exception

If the Court declines to extend the categorical hot-pursuit exception to the misdemeanor context, the record here would provide no basis for the warrantless entry of Lange's garage. Pet. 17. Before entering the garage, the officer had probable cause to believe that Lange had committed only a misdemeanor offense—failure to comply with the officer's lawful command to stop. *See supra* pp. 7-8 & n.5. The record does not establish any case-specific exigency that would have otherwise made the entry objectively reasonable: Petitioner posed no apparent risk of harm to himself or others, and there were no particular facts establishing a risk of flight from the home or destruction of evidence. To the contrary, the evidence of the misdemeanor offense giving rise to the entry had already been recorded by the camera attached to the dashboard of the officer's cruiser. *See supra* p. 6 & n.3.

That is not to say that Lange's underlying DUI conviction is infirm. Even if this Court were to reject the categorical hot-pursuit exception, there is no basis for suppressing the evidence of Lange's intoxication because the officer's entry was made in good-faith reliance on "binding appellate precedent." *Davis v.*

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[26] One legal obstacle the officer in this case might have faced was the late hour: under California law, an officer may not execute an arrest warrant for a non-felony offense between the hours of 10 p.m. and 6 a.m. unless a magistrate concludes there is "good cause" to do so and issues a warrant expressly authorizing such a nighttime arrest. Cal. Penal Code § 840(4); *see also, e.g.*, Okla. Stat. tit. 22, § 189 (similar); Nev. Rev. Stat. § 171.136(2) (similar); Minn. R. Crim. P. 3.03(3) (similar).

United States, 564 U.S. 229, 232 (2011); *see, e.g.*, *Lloyd*, 216 Cal. App. 3d at 1430. Indeed, long before that entry, this Court had recognized that "the California Court of Appeal refused to limit the hot pursuit exception to felony suspects." *Stanton*, 571 U.S. at 7. Under the "'good-faith' exception" to the exclusionary rule, the fruits of that entry need not be suppressed. *Davis*, 564 U.S. at 238. Because this issue falls outside the question presented, however, and because this Court is "'a court of review, not of first view,'" *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 922 (2017), the Court should remand for the court below to address the issue in the first instance.

CONCLUSION

The Court should vacate the judgment below and remand for further proceedings.

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