No. 20-18

In the Supreme Court of the United States

ARTHUR GREGORY LANGE, PETITIONER

v.

STATE OF CALIFORNIA

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING AFFIRMANCE

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
DAVID P. BURNS
Acting Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
ANDREW C. NOLL
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a state law-enforcement officer's pursuit of petitioner, whom the officer had probable cause to arrest for a misdemeanor offense and who was on notice that the officer was trying to stop him, into a home garage was reasonable under the Fourth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and rules:

Statutes and rules—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 20-18

ARTHUR GREGORY LANGE, PETITIONER

v.

STATE OF CALIFORNIA

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING AFFIRMANCE

INTEREST OF THE UNITED STATES

This case presents the question of an officer's ability under the Fourth Amendment to the federal Constitution to pursue a suspect into a residence, when the officer has probable cause to arrest the suspect for a misdemeanor offense and the suspect is on notice that the officer is trying to stop him. The question presented may arise in the context of federal law enforcement in national parks or on other federal land, or in federal prosecutions based on arrests by state or local police. The United States therefore has a substantial interest in the Court's resolution of the question presented.

STATEMENT

Following a no-contest plea in state court, petitioner was convicted on one count of driving under the influence of alcohol, in violation of California Vehicle Code

§ 23152(d) (West Supp. 2014). Pet. App. 6a; Resp. Br. 8. The Superior Court denied petitioner's motion to suppress evidence. Pet. App. 4a. On interlocutory appeal and again after petitioner's conviction, the Appellate Division of the Superior Court affirmed. *Id.* at 23a-25a, 26a-27a. The California Court of Appeal granted petitioner's motion for the discretionary transfer of his appeal and affirmed the denial of his suppression motion. *Id.* at 1a-22a.

1. At around 10:20 p.m. on October 7, 2016, California Highway Patrol Officer Aaron Weikert was parked along a state highway in Sonoma County, California. Pet. App. 2a. Officer Weikert observed a car "playing music very loudly" and saw the driver, later identified as petitioner, "honk[] the car's horn four or five times," even though no vehicles were in front of the driver. *Ibid.* Officer Weikert followed petitioner's car, "intending to conduct a traffic stop," *ibid.*, for violating two provisions of the California Vehicle Code, *id.* at 16a; see Pet. Br. 2-3; Resp. Br. 6.

After petitioner made a right turn, no vehicles were between Officer Weikert and petitioner. Pet. App. 2a. Officer Weikert continued to follow petitioner, who later made a left turn and then "stopped for a few seconds." *Ibid.* When petitioner began to move forward, Officer Weikert activated his overhead lights. *Id.* at 2a-3a, 16a. No other cars were on the street, and the officer's lights illuminated the area around petitioner's car. *Id.* at 16a.

Instead of stopping, petitioner drove a distance of about one hundred feet, taking approximately four more seconds, and turned into a driveway. Pet. App. 3a, 17a. Petitioner's car entered a garage, and the garage door began to close. *Id.* at 3a. Officer Weikert "exited

his vehicle, approached the garage door, stuck his foot 'in front of the sensor[,] and the garage door started to go back up.'" *Ibid.* Officer Weikert then entered the garage and asked petitioner if he had noticed the officer following him. *Ibid.* Petitioner denied that he had. *Ibid.* Smelling alcohol on petitioner's breath, Officer Weikert ordered petitioner out of the garage for field sobriety tests. Pet. Br. 4; see Resp. Br. 7.

2. Petitioner was charged with the misdemeanor of driving under the influence of alcohol "and with the infraction of operating a vehicle's sound system at excessive levels." Pet. App. 2a. The prosecution later added an allegation that petitioner had a prior conviction for driving under the influence. *Ibid.*

Petitioner moved to suppress evidence, arguing that the entry into the garage violated the Fourth Amendment because it was not pursuant to a warrant. Pet. App. 2a. The District Attorney opposed the motion, on the ground that probable cause to arrest petitioner for the misdemeanor offense of failing to stop for the flashing police lights, and exigent circumstances, rendered Officer Weikert's actions constitutionally permissible. *Id.* at 3a-4a; see Resp. Br. 7-8. The Superior Court denied suppression, Pet. App. 4a, and the Appellate Division affirmed in an interlocutory appeal, *id.* at 26a-27a.

Petitioner pleaded no contest to the charge of driving under the influence and appealed. Pet. App. 6a. The Appellate Division again affirmed. *Id.* at 23a-25a.

3. The California Court of Appeal granted petitioner's motion for the transfer of his appeal and affirmed. Pet. App. 1a-21a.

The California Court of Appeal found that petitioner's actions in "'playing music very loudly'" and "honking

the horn unnecessarily" justified Officer Weikert's "attempt to stop [petitioner's] vehicle" for violations of the Vehicle Code. Pet. App. 16a. And after reviewing the evidence, including the video recording from Officer Weikert's dashboard camera, the court additionally found that "a reasonable person in [petitioner's] position would have known the officer intended for him to pull over." *Id.* at 17a.

Because California law makes it "a misdemeanor to willfully resist, delay or obstruct a peace officer in the discharge of his duties," as well as to "'willfully fail or refuse to comply with a lawful order, signal, or direction of a peace officer,'" the California Court of Appeal determined that petitioner's conduct gave Officer Weikert probable cause for an arrest. Pet. App. 17a (quoting Cal. Veh. Code § 2800(a) (West 2015); citing Cal. Penal Code § 148(a)(1) (West 2014) and Cal. Veh. Code § 40000.7(a)(2) (West 2014)); see *id.* at 18a. The court then found that Officer Weikert's pursuit of petitioner into the garage to "prevent [petitioner] from frustrating the arrest which had been set in motion in a public place constitute[d] a proper exception to the warrant requirement." *Id.* at 18a (quoting *People* v. *Lloyd*, 265 Cal. Rptr. 422, 425 (Cal. Ct. App. 1989)).

4. The Supreme Court of California denied petitioner's petition for review. Pet. App. 28a.

SUMMARY OF ARGUMENT

This Court has long recognized that the Fourth Amendment permits officers in hot pursuit of a suspect based on probable cause to continue that pursuit if the suspect leads them into a residence. Although the Court has thus far addressed the rule only in the felony context, the rule's logic creates at least a general presumption that a suspect should similarly be unable to

thwart an otherwise-lawful public encounter by fleeing into a residence when officers have probable cause to believe the suspect has committed a misdemeanor. Contrary to petitioner's contentions, the rule's application in the misdemeanor context is neither foreclosed by the common law, which was divided on the subject, nor by policy concerns, which are not unique to the misdemeanor context and are appropriately addressed by other Fourth Amendment doctrines.

I. The touchstone of the Fourth Amendment is reasonableness, and a search or seizure based on probable cause may be reasonable under the circumstances even without a warrant. One circumstance in which this Court has found it reasonable for the police to proceed without a warrant is when they are in hot pursuit of a suspect who chooses to bring an otherwise-public encounter into a residence.

Significant justifications support this Court's classification of pursuit as an exigency that can permit warrantless entry into a home. The hot-pursuit rule allows officers to effectuate arrests that a suspect's flight has precluded them from making in public, to protect the public from the dangers that a fleeing suspect creates, and to ensure that a suspect does not entirely evade identification and detention. Because the act of flight itself will frequently preclude officers from learning enough about a suspect to identify him or the nature of the residence that he has entered, it will be difficult for officers to obtain warrants, let alone to obtain them with the necessary rapidity, when a suspect leads them into a residence. And any privacy interest that a suspect may have in foreclosing a limited entry into the residence is diminished, if not forfeited, by his choice to move the encounter there.

The Court has described the hot-pursuit rule in categorical terms, and the rule's justifications are not limited to the felony context in which the Court has previously had occasion to apply it. Its logic is not primarily based on the seriousness of a suspect's offense, and the line between felonies and misdemeanors is often blurry, technical, and difficult for officers to apply in quickly evolving situations. Even if the rule is not categorical in misdemeanor cases, and instead requires circumstance-specific consideration of the potentially nonviolent or extremely minor nature of a particular suspected offense, the totality of the circumstances will typically favor the rule's application. Thus, the hot-pursuit rule should at least presumptively apply in the misdemeanor context.

Petitioner's efforts to limit the rule are unsound. At the outset, petitioner errs in asserting that hot pursuit, even in the felony context, is not a true exigent circumstance that can itself justify warrantless entry into a home. Contrary to his suggestion, this Court has treated the hot-pursuit rule as a standalone rule that allows warrantless entry even in the absence of a separate recognized exigency, such as the risk of destruction of evidence. Likewise contrary to petitioner's suggestion, the common law did not clearly prohibit in-home arrests in hot pursuit of a fleeing misdemeanor suspect. And while petitioner observes that pursuits may raise safety and related concerns, several doctrines—such as the requirement that the manner of entry be reasonable—appropriately address those concerns.

II. On the facts of this case, Officer Weikert's warrantless entry into petitioner's garage was reasonable. The officer observed petitioner violate multiple provisions of the California Vehicle Code; the lower courts

determined that a reasonable person in petitioner's position would have understood that the officer was attempting to stop him on the public streets; and petitioner nonetheless failed to comply and led the officer to the garage. The officer's manner of entry was reasonable and the intrusion on petitioner's privacy interests was limited. In these circumstances, petitioner's act of leaving the public road when an officer validly tried to pull him over should not be permitted to thwart an otherwise-lawful law-enforcement encounter.

ARGUMENT

The state courts correctly denied petitioner's suppression motion in this case. Petitioner does not dispute that the case involves hot pursuit by a law-enforcement officer who had probable cause to arrest him for a misdemeanor offense. Even if those two circumstances would not in themselves categorically justify continuing pursuit into a residence in every case, such continued pursuit will generally be reasonable under the Fourth Amendment. So long as an officer does not effectuate the pursuit in an unreasonable manner, the hot-pursuit rule—well established in the felony context—would typically preclude a suspect from frustrating a lawful public encounter, based on probable cause to believe the suspect has committed a misdemeanor, by fleeing into a residence. And Officer Weikert's actions in this case were reasonable.

I. AN OFFICER IN HOT PURSUIT BASED ON PROBABLE CAUSE TO ARREST FOR A MISDEMEANOR MAY REASONABLY CONTINUE PURSUIT WHEN THE SUSPECT LEADS HIM INTO A RESIDENCE

A. This Court Has Recognized Hot Pursuit Of A Fleeing Suspect As An Exigent Circumstance That Can Justify Warrantless Entry Into A Home

1. The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" and that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This Court has explained that "the 'ultimate touchstone of the Fourth Amendment is 'reasonableness'" and has recognized many circumstances in which warrantless entry into a home is reasonable. *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006) (citation omitted). Those circumstances include where the "'exigencies of the situation' make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable." *Kentucky* v. *King*, 563 U.S. 452, 460 (2011) (citation omitted; brackets in original).

This Court has listed "'hot pursuit' of a fleeing suspect" as one distinct type of "exigent circumstance" that will justify a warrantless entry. *Brigham City*, 547 U.S. at 403 (quoting *United States* v. *Santana*, 427 U.S. 38, 42-43 (1976)). Others include "assist[ing] persons who are seriously injured or threatened with such injury"; "prevent[ing] the imminent destruction of evidence"; and "ent[ering] onto private property to fight a fire and investigate its cause." *Ibid.*; see *King*, 563 U.S. at 460; *Michigan* v. *Tyler*, 436 U.S. 499, 509 (1978). And the Court's precedents make clear that, while the different

types of exigent circumstances sometimes overlap, hot pursuit can in itself justify a warrantless entry.

Although the Court did not use the specific term "hot pursuit," it appears to have first upheld a home arrest under that doctrine in *Scher* v. *United States*, 305 U.S. 251 (1938); see *Collins* v. *Virginia*, 138 S. Ct. 1663, 1674 (2018) (characterizing *Scher*'s reasoning as "sounding * * * perhaps most appropriately [in] hot pursuit"). There, federal officers observed a bootlegging offense in public. *Scher*, 305 U.S. at 253. They then pursued the suspect and ultimately arrested him after he drove his vehicle into an open garage behind his residence. *Id.* at 253-255. Although the officers did not have a warrant, the Court observed that "just before [the suspect] entered the garage[,] the following officers properly could have stopped [his] car, made search and put him under arrest." *Id.* at 255. And the Court held that "[p]assage of the car into the open garage closely followed by the observing officers did not destroy this right," as "[t]he officers did nothing either unreasonable or oppressive." *Ibid.*

The Court again upheld a home arrest under the hot-pursuit rule in *United States* v. *Santana*, *supra*. There, an undercover officer arranged to accompany a street-level drug dealer to purchase heroin from Santana's home. 427 U.S. at 39. After the purchase, officers drove back to the house and saw Santana standing in the doorway. *Id.* at 40. They then pulled up to within 15 feet of Santana, got out of the police van, "shout[ed] 'police,' and display[ed] their identification." *Ibid.* Santana, however, "retreated into the vestibule of her house." *Ibid.* The officers followed through the open door, arrested Santana, and seized evidence in her control. *Id.* at 40-41. Echoing *Scher*, this Court noted that officers

had initially sought to arrest Santana in a "'public' place"; explained that "the warrantless arrest of an individual in a public place upon probable cause [does] not violate the Fourth Amendment"; and rejected the proposition that Santana's "act of retreating into her house could thwart an otherwise proper arrest." *Id.* at 42.

The Court in *Santana* observed that in *Warden* v. *Hayden*, 387 U.S. 294 (1967), it had "recognized the right of police, who had probable cause to believe that an armed robber had entered a house a few minutes before, to make a warrantless entry to arrest the robber and to search for weapons." *Santana*, 427 U.S. at 42. It noted that *Hayden*, which involved eyewitness reports rather than firsthand police observation of the suspect's crime and flight, had not even "involve[d] a 'hot pursuit' in the sense that that term would normally be understood." *Id.* at 43 n.3; see *Hayden*, 387 U.S. at 297-298. It accordingly reasoned that the case before it, "involving a true 'hot pursuit,' [was] clearly governed by" *Hayden*, because "the need to act quickly" was "even greater * * * while the intrusion [was] much less." *Santana*, 427 U.S. at 42-43 (footnote omitted). And it "conclude[d]," in general terms, "that a suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper * * * , by the expedient of escaping to a private place." *Id.* at 43.

2. Significant justifications support this Court's classification of hot pursuit as a distinct type of exigent circumstance that can permit warrantless entry into a home. To determine whether a warrantless search or seizure is reasonable, this Court "balance[s] the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion."

Scott v. *Harris*, 550 U.S. 372, 383 (2007) (citation omitted). The hot-pursuit rule serves important government interests that are independent from other recognized exigencies. Where law-enforcement officers have probable cause to believe a suspect has committed an offense, the suspect's flight from a public encounter with the police may suggest that he has in fact committed a crime, possibly a more serious one than the one the officer suspects; that he may pose a danger to occupants of the home to which he flees; or that, once inside, he may take further, perhaps dangerous, action to elude the police. See *Illinois* v. *Wardlow*, 528 U.S. 119, 124 (2000) ("Headlong flight—wherever it occurs—is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such.").

Most fundamentally, the hot-pursuit rule furthers vital interests in the rule of law and compliance with governmental authority. Where officers have probable cause to believe a crime has been committed, the Fourth Amendment permits the warrantless arrest of an individual in a public place, for both felony and misdemeanor offenses, without any showing of exigent circumstances. *United States* v. *Watson*, 423 U.S. 411, 416-417, 423-424 (1976) (felonies); *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 323, 354 (2001) (misdemeanors committed in the officer's presence). By disabling a suspect from preventing a lawful police action "by the expedient of escaping to a private place," *Santana*, 427 U.S. at 43, the hot-pursuit rule effectuates the "[s]ociet[al] * * * interest in not rewarding the evasion of lawful police authority" or turning law enforcement into a game of tag, where all the suspect need do is make it to a residence. *State* v. *Legg*, 633 N.W.2d 763, 772

(Iowa 2001); see also, *e.g.*, *Commonwealth* v. *Jewett*, 31 N.E.3d 1079, 1089 (Mass. 2015); *State* v. *Ricci*, 739 A.2d 404, 408 (N.H. 1999).

The hot-pursuit rule also secures the "paramount governmental interest in ensuring public safety" by encouraging suspects to stop rather than flee to a residence. *Scott*, 550 U.S. at 383; see *California* v. *Hodari D.*, 499 U.S. 621, 627 (1991) ("Street pursuits always place the public at some risk, and compliance with police orders to stop should therefore be encouraged."). A suspect who believes that police cannot pursue him into a residence will have a significant incentive to flee to a residence—whether his own or another's—potentially endangering himself, law enforcement, and innocent bystanders. A suspect's "determination to elude capture," particularly in a vehicle, demonstrates a "lack of concern for the safety of property and persons" of others. *Sykes* v. *United States*, 564 U.S. 1, 8 (2011), overruled by *Johnson* v. *United States*, 576 U.S. 591 (2015); see *Scott*, 550 U.S. at 384; see also Court-Appointed Amicus Curiae Br. (Amicus Br.) 15 (noting potential for "more—and more reckless—flight"). Cases of vehicular flight result in a significant number of fatalities each year. See, *e.g.*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, *Police Vehicle Pursuits*, *2012-2013*, at 1 (May 2017), https://www.bjs.gov/content/pub/pdf/pvp1213.pdf (*Police Vehicle Pursuits*) (reporting an average of 355 deaths per year from vehicular pursuits from 1996 to 2015). Although officers may choose to decline to pursue fleeing suspects in light of these dangers, where pursuit is in progress, officers should not have to break off the chase to await the clear development of a threat of serious injury

to innocents or imminent destruction of evidence, see *Brigham City*, 547 U.S. at 403, before resuming pursuit.

That is particularly so because breaking off pursuit may allow a potentially unidentifiable suspect to get away entirely. See *Hiibel* v. *Sixth Judicial Dist. Court*, 542 U.S. 177, 186 (2004) (recognizing identification as an "important government interest[]"). Whether the flight that leads to a residence is on foot or in a car, an officer may only have gotten a glimpse of the suspect's basic physical attributes or current articles of clothing. And the officer may well be unsure of whether a suspect driver is the registered owner of the vehicle, or whether a suspect lives in the residence to which he has fled. If the officer could not pursue the suspect into the residence, the suspect could change clothing, remove identifying items, or simply run out the back door—effectively destroying evidence of his identity—while the officer tries to obtain a warrant. Cf. *Maryland* v. *King*, 569 U.S. 435, 450 (2013) ("It is a well recognized aspect of criminal conduct that the perpetrator will take unusual steps to conceal not only his conduct, but also his identity.") (citation omitted). Such a warrant would have been unnecessary absent the suspect's flight and may be impossible to execute in the absence of the identification that the flight prevented the officer from obtaining.

Because it would not take long for the suspect to hide himself among other occupants or leave the residence through an uncovered exit, that problem would exist even if, as petitioner assumes (Br. 14-15, 36), an officer will generally be able to obtain an arrest warrant within minutes, while remaining on the scene. But in many cases, obtaining such a warrant will be impossible. As a threshold matter, if the suspect has fled into someone

else's residence—a fact the officer often will not know—an arrest warrant alone may be insufficient. See *Steagald* v. *United States*, 451 U.S. 204, 205-206, 221-222 (1981) (generally requiring search warrant to enter third-party residence for an arrest, with exception for hot pursuit). Furthermore, although "John Doe" arrest warrants are "not inherently in conflict with the Fourth Amendment," 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 5.1(h), at 93 (5th ed. 2012), courts may hold that warrant applications with little identifying information are insufficient, see, *e.g.*, *State* v. *Hamilton*, 840 P.2d 1061, 1062-1063 (Ariz. Ct. App. 1992) (search warrant); *People* v. *Simmons*, 569 N.E.2d 591, 595-596 (Ill. App. Ct. 1991) (same); see generally Fed. R. Crim. P. 4(b)(1)(A) (requiring "defendant's name or, if it is unknown, a name or description by which the defendant can be identified with reasonable certainty"). And "even in our age of rapid communication," warrants "'inevitably take some time for police officers or prosecutors to complete and for magistrate judges to review,'" and there is no "'guarantee that a magistrate judge will be available when an officer needs a warrant'" late at night. *Mitchell* v. *Wisconsin*, 139 S. Ct. 2525, 2539 (2019) (plurality opinion) (citation omitted).[*]

---

[*] Although many States and the Federal Rules of Criminal Procedure permit application for a warrant over a telephone or through electronic means, see 2 LaFave § 4.3(c), at 648-649 & n.29 (collecting state laws); Fed. R. Crim. P. 4.1 (outlining procedures), those procedures may still take significant time. Cf. Resp. Br. 33 (stating that "warrants can *sometimes* be obtained in under an hour") (emphasis added). And other States still require the application to be in writing, *e.g.*, Colo. Rev. Stat. § 16-3-303 (2020); require the applicant to appear in person before a judge, *e.g.*, Mass. Gen. Laws ch. 276, § 2B

3. The hot-pursuit rule not only protects important public and governmental interests, but involves the significantly diminished privacy interests of a suspect who voluntarily moves the location of a police encounter from a public place to a residence. This Court has recognized that arrestees have "reduced privacy interests," *Riley* v. *California*, 573 U.S. 373, 391 (2014); see *King*, 569 U.S. at 462, and a suspect who eludes a lawful public arrest should be treated similarly. The suspect's reduced privacy interests include both his interest in his person and any interest he may have in the residence into which he has taken what would otherwise be a public encounter. Cf. *Katz* v. *United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.").

Permitting a fleeing suspect to invoke the usual sanctuary of the home would inappropriately allow him to bootstrap the "expedient" of his own flight into greater Fourth Amendment protection. *Santana*, 427 U.S. at 43. If it is not his own home, he generally will have no Fourth Amendment interest in it at all. See *Minnesota* v. *Carter*, 525 U.S. 83, 90 (1998). If it is, but he lives with others (see Pet. Br. 37; Resp. Br. 22), the other residents' interests are necessarily diminished, because living with someone else always presents the risk that he or she might—through words or deeds—invite the police into the home. See *Fernandez* v. *California*, 571 U.S. 292, 300 (2014). And that is exactly what a suspect does when he chooses to avoid an otherwise-public encounter by fleeing into a residence.

(2015); or limit oral warrant applications to certain types of cases, *e.g.*, Iowa Code § 321J.10.3 (2020).

To the extent that anyone with a sufficient interest in the residence objects to police entry, the Fourth Amendment requirement of a reasonable entry accommodates that concern. See pp. 28-29, *infra*; cf. *Georgia* v. *Randolph*, 547 U.S. 103, 106 (2006). Any intrusion on privacy interests is also limited, because an officer's hot-pursuit entry into a home provides the officer only with circumscribed authority. In a hot-pursuit case, an officer enters a home to continue a public encounter—not to conduct a thorough search of the home. The officer must possess probable cause to arrest and, absent other circumstances, generally will be limited to making an arrest, conducting a search incident to the arrest (*i.e.*, searching the suspect's person and area within his immediate control), and seizing evidence discovered in plain view. See *Coolidge* v. *New Hampshire*, 403 U.S. 443, 466 (1971); *Chimel* v. *California*, 395 U.S. 752, 762-763 (1969); see also *Maryland* v. *Buie*, 494 U.S. 325, 336 (1990) (permitting a limited, protective sweep when "justified by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene").

B. The Considerations That Support The Hot-Pursuit Rule Apply In The Misdemeanor Context

This Court's foundational hot-pursuit cases have involved probable cause to believe that a suspect has committed a felony offense. As the Court has recognized, however, "though *Santana* involved a felony suspect, [the Court] did not expressly limit [its] holding based on that fact." *Stanton* v. *Sims*, 571 U.S. 3, 9 (2013) (per curiam). And while the Court held in *Welsh* v. *Wisconsin*, 466 U.S. 740 (1984), that a warrant is usually required for an in-home arrest based on probable cause that a suspect committed a non-jailable misdemeanor,

Welsh did not involve a hot pursuit, and "nothing in the opinion establishes that the seriousness of the crime is equally important in cases of hot pursuit." *Stanton*, 571 U.S. at 9 (emphasis omitted). That is for good reason. The justifications for warrantless entry into a home in felony hot-pursuit cases will typically, if not invariably, extend to misdemeanor cases as well.

1. The considerations underlying the hot-pursuit rule do not generally depend on whether the officer's probable cause to arrest is for a felony or a misdemeanor. The public interests in prohibiting suspects from thwarting lawful public encounters, deterring potentially dangerous flight, and enabling the identification of suspects are not limited to the felony context. Allowing flight into a residence to provide sanctuary from an otherwise-lawful public misdemeanor arrest would inappropriately suggest that "flight from police officers is justified and reasonable as long as no felony offense has been committed." *City of Middletown* v. *Flinchum*, 765 N.E.2d 330, 332 (Ohio 2002). Similarly, a suspect's flight from police can present risks to himself, pursuing officers, and the public irrespective of the particular offense that precipitated it. And a suspect's ability to alter his appearance, hide himself among other individuals in the home, or effectuate escape through a residence does not depend on the nature of the officer's probable cause to arrest him.

The State suggests (Br. 26) that "the risk" of escape "is less pronounced in misdemeanor-pursuit cases." It posits, in particular, that misdemeanor suspects are unlikely to flee once they arrive in the home because doing so could expose the suspect to further criminal penalties and physical danger, while "a successful escape might provide only a temporary reprieve from apprehension." *Ibid.* But in

any hot-pursuit case—felony or misdemeanor—the suspect *already* has chosen to flee once, suggesting his willingness to take on the risks of flight again. Moreover, as noted above, his flight may suggest that he has committed a more serious crime than the one of which the pursuing officer is currently aware. In any event, an officer simply has no way to know what the suspect intends. And any privacy interest that the suspect may have in the residence is diminished by his decision to move a public encounter there, regardless of whether his crime is classified as a felony or a misdemeanor.

Indeed, the line between felonies and misdemeanors is not as clear as petitioner and the State suggest. As this Court has observed, "numerous misdemeanors involve conduct more dangerous than many felonies." *Tennessee* v. *Garner*, 471 U.S. 1, 14 (1985); see *id.* at 14 n.12; see also, *e.g.*, *Voisine* v. *United States*, 136 S. Ct. 2272, 2276 (2016) (considering misdemeanor domestic violence offenses). As a result, any across-the-board "assumption that a 'felon' is more dangerous than a misdemeanant" is "untenable." *Garner*, 471 U.S. at 14. The distinction between felonies and misdemeanors also is "highly technical" and "difficult to apply in the field." *Id.* at 20. As this Court has recognized, it is unrealistic to "expect every police officer to know the details of frequently complex penalty schemes." *Atwater*, 532 U.S. at 348. That is especially so when officers must act "on the spur (and in the heat) of the moment." *Id.* at 347. For example, an officer who observes an offense is often in "no position to know" facts that will determine whether a crime is a misdemeanor or a felony, such as the type of drugs transferred, "the precise value of property stolen, or whether the crime was a first or second offense." *Garner*, 471 U.S. at 20; see, *e.g.*, *Atwater*,

532 U.S. at 348-349; *Berkemer* v. *McCarty*, 468 U.S. 420, 430-431 (1984); *Magruder* v. *United States*, 62 A.3d 720, 724 (D.C. 2013); see also Amicus Br. 39-40 (noting that in some States, the felony-misdemeanor line may not exist at all).

2. Although the Court's exigent-circumstances cases often eschew categorical rules, see Pet. Br. 10-11, the Court has described its felony hot-pursuit precedents in categorical terms. See, *e.g.*, *Steagald*, 451 U.S. at 221 (citing *Santana* and *Hayden* for the proposition that "warrantless entry of a home would be justified if the police were in 'hot pursuit' of a fugitive"); Resp. Br. 5, 14. A categorical hot-pursuit rule, at least in the felony context, is consistent with the Court's more general practice of giving "great weight to the 'essential interest in readily administrable rules'" when "determining what is reasonable under the Fourth Amendment." *Virginia* v. *Moore*, 553 U.S. 164, 175 (2008) (quoting *Atwater*, 532 U.S. at 347); see, *e.g.*, *United States* v. *Robinson*, 414 U.S. 218, 234-235 (1973).

Nonetheless, in determining the reasonableness of warrantless entry into a home during hot pursuit based on probable cause to arrest for a misdemeanor, it may be appropriate to consider the nonviolent or extremely minor nature of the suspected offense. While the hot-pursuit rule is not primarily concerned with, and serves interests independent of, the gravity of the underlying offense, law enforcement may have a diminished interest in identifying and prosecuting suspects who have committed particularly minor, nonviolent crimes. In addition, other circumstances—such as an officer's prior familiarity with (and thus ability to identify) the suspect, or a lack of clarity about whether a reasonable person in the suspect's position would have known that

police were trying to stop him—may also diminish the government's interest in pursuit into a residence in a particular misdemeanor case.

But even if the relatively minor nature of the suspected crime means that exigent circumstances may not be present in particular cases, that does not preclude the Court from setting forth at least a "general rule" that will presumptively apply. *Mitchell*, 139 S. Ct. at 2531 (plurality opinion); see *id.* at 2539 (exigent-circumstances rule that "almost always" applies); see also *id.* at 2541 (Thomas, J., concurring) ("That the exigent-circumstances exception might ordinarily require an evaluation of the particular facts of each case does not foreclose us from recognizing that a certain, dispositive fact is always present in some categories of cases.") (citation and internal quotation marks omitted). Even if no categorical rule applies, such a general presumptive rule is appropriate for hot-pursuit cases involving probable cause to arrest for a misdemeanor. Regardless of the seriousness of the offense, the government's interests will typically outweigh the fleeing suspect's diminished privacy interests, making a limited, warrantless home entry reasonable under the Fourth Amendment.

While a hot pursuit "need not be an extended hue and cry 'in and about [the] public streets,'" *Santana*, 427 U.S. at 43 (brackets in original), the Court has suggested that it requires "immediate or continuous pursuit" of a suspect, *Welsh*, 466 U.S. at 753, as well as the suspect's "flight" or "attempt to escape," *Johnson* v. *United States*, 333 U.S. 10, 16 n.7 (1948). Contrary to petitioner's suggestion (Pet. Br. 32-34), those facts bear far more than "a loose relationship to the pertinent law-enforcement interests." *Id.* at 34. A suspect's decision to flee, and an officer's hot pursuit of him, are the very

circumstances that make the officer's entry into the home—where the suspect has elected to move the encounter—reasonable. Such entry may be further justified when officers have an objectively reasonable basis for concluding that they cannot otherwise identify the suspect, that they would be unable to secure a warrant (which would not have been necessary absent the suspect's flight), or that they lack sufficient time to do so. *Missouri* v. *McNeely*, 569 U.S. 141, 149 (2013); see *id.* at 173 (Roberts, C.J., concurring in part and dissenting in part). A suspect's flight may also provide further support for a warrantless entry when the manner of flight itself has been dangerous to officers or the public. Such conduct may suggest, for example, that the suspect is more likely to have entered someone else's home (rather than his own), heedless of the additional dangers that he invites by doing so.

Those circumstances are not exhaustive, and a general rule presumptively allowing for warrantless entry will help to avoid the temptation for reviewing courts to deem an officer's conduct unreasonable simply because, "judged with the benefit of hindsight," the officer appears to have misjudged the situation in the heat of the moment. *City & Cnty. of San Francisco* v. *Sheehan*, 575 U.S. 600, 612 (2015). "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.'" *Heien* v. *North Carolina*, 574 U.S. 54, 60-61 (2014). And the Fourth Amendment is likewise "not blind to the fact that police officers are often forced to make split-second judgments," *Sheehan*, 575 U.S. at 612 (citation and internal quotation marks omitted), often on incomplete or imperfect information.

C. Petitioner's Objections To Applying The Hot-Pursuit Rule To Misdemeanors Are Unsound

In opposing application of the hot-pursuit rule to misdemeanors, petitioner contends (Br. 15, 26-31, 37-44) that hot pursuit is not a standalone exigent circumstance; that the common law does not support applying the doctrine in the context of misdemeanor offenses; and that home entries threaten disproportionate Fourth Amendment harms. See Resp. Br. 18-23. None of those objections support his approach, which would effectively eviscerate the rule in the misdemeanor (and perhaps even the felony) context.

1. As an overarching matter, petitioner's position rests on the unsound premise that hot pursuit, even in the felony context, is not a true exigent circumstance. In his view, hot pursuit should justify a warrantless home entry *only* when an additional exigency is present—for example, when "taking the time to seek a warrant would risk the destruction of evidence; would allow the suspect to escape; or would endanger occupants of the home, members of the public, or the officers themselves." Pet. Br. 15; see Resp. Br. 24.

As discussed above, however, this Court's precedents recognize that although additional exigencies—such as the likely destruction of evidence or the need to provide aid to occupants of the house—may often be present in hot-pursuit cases, the hot-pursuit rule serves important independent interests and is *itself* sufficient to justify warrantless home entry. The Court did not discuss any additional exigencies in *Scher*. 305 U.S. at 253-255. And in *Santana*, the Court first held that the hot pursuit was "sufficient to justify the warrantless entry into Santana's house," and only then observed, without further elaboration, that "[o]nce Santana saw the

police, there was likewise a realistic expectation that any delay" to secure a warrant "would result in destruction of evidence." 427 U.S. at 43.

This Court, moreover, has repeatedly described *Santana* as "identif[ying]" the "hot pursuit of a fleeing suspect" as among the "*several* exigencies that may justify a warrantless" entry of a home. *King*, 563 U.S. at 460 (emphasis added); see, *e.g.*, *Birchfield* v. *North Dakota*, 136 S. Ct. 2160, 2173 (2016); *McNeely*, 569 U.S. at 149; *Brigham City*, 547 U.S. at 403; *Welsh*, 466 U.S. at 750; *Mincey* v. *Arizona*, 437 U.S. 385, 394 (1978); see also *Stanton*, 571 U.S. at 9; *Vale* v. *Louisiana*, 399 U.S. 30, 35 (1970) (describing "hot pursuit of a fleeing felon" as a distinct exception from the need to "respond[] to an emergency"); *Johnson*, 333 U.S. at 15 (similar). Those decisions make clear that while "hot pursuit" may coexist with other exigencies like "the 'emergency' aid exception" or "the need 'to prevent the imminent destruction of evidence,'" *King*, 563 U.S. at 460 (citations omitted), the hot-pursuit exception is separate from—and may justify a warrantless entry into a home independent of—those other exigencies.

2. Petitioner errs in suggesting (Br. 29) that whatever the applicability of the rule in the felony context, it should not apply to misdemeanors, on the theory that "mere pursuit of a suspected misdemeanant was not among the limited circumstances justifying a warrantless home entry" at common law. While "[t]he common law may, within limits, be instructive in determining what sorts of searches [and seizures] the Framers of the Fourth Amendment regarded as reasonable," the Court's decisions "have not 'simply frozen into constitutional law those enforcement practices that existed at the time of the Fourth Amendment's passage.'" *Steagald*,

451 U.S. at 217 & n.10 (quoting *Payton* v. *New York*, 445 U.S. 573, 591 n.33 (1980)) (footnote omitted). That is especially so where common law fails to provide "a conclusive answer" to the question presented. *Moore*, 553 U.S. at 171. And that is the case here.

For one thing, the (blurry) line between felonies and misdemeanors is quite different today than it was when the Fourth Amendment was adopted. While at common law "'the gulf between the felonies and the minor offences was broad and deep,'" today the distinction "is minor and often arbitrary." *Garner*, 471 U.S. at 14 (quoting 2 Frederick Pollock & Frederic William Maitland, *The History of English Law* 467 n.3 (2d ed. 1909)); see pp. 18-19, *supra*. Those changes make reliance on any common-law dividing line between felony and misdemeanors inappropriate here.

Even putting that aside, the common law would not support petitioner. This Court has on multiple occasions recognized the lack of uniformity among common-law authorities about warrantless arrests. See *Payton*, 445 U.S. at 592 (warrantless home arrests); *Atwater*, 532 U.S. at 329 (same for misdemeanor public arrests). That is also true here. Multiple Founding-era sources support the legality of warrantless entry into a home based on hot pursuit of a misdemeanant. For example, William Hawkins recognized authority to arrest in the home persons who committed an affray in the presence of an official and were immediately pursued, and persons who were lawfully arrested and then escaped. 2 William Hawkins & Thomas Leach, *A Treatise of the Pleas of the Crown* 138-139 (6th ed. 1787). Richard Burn likewise recognized authority to enter the home in cases of escape. 1 Richard Burn, *The Justice of the Peace, and Parish Officer* 102-103 (14th ed. 1780); see

Pet. Br. 29-30. Both fighting in public and escape were misdemeanors at common law, 9 Earl of Halsbury et al., *The Laws of England* §§ 919, 1101, at 468, 508 (1909), and they are misdemeanors in California today, Cal. Penal Code § 415(1) (West 2020) and Cal. Penal Code § 836.6 (West 2008).

At the same time, several commentators broadly recognized an officer's authority to conduct a warrantless, in-home arrest if a suspect committed a "breach of the peace" in the officer's presence and then fled to a home. See, *e.g.*, American Law Institute, Code of Criminal Procedure § 28, at 254 (1930); Horace L. Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 798, 802-803 (1924). As the Court has observed, the term "'breach of the peace'" meant "very different things in different common-law contexts." *Atwater*, 532 U.S. at 327 & n.2. "Even when used to describe common-law arrest authority," it did not necessarily entail "violence or a threat thereof." *Id.* at 327 n.2; see *United States* v. *Brewster*, 408 U.S. 501, 521 (1972); *Williamson* v. *United States*, 207 U.S. 425, 444 (1908). The common-law authority to enter a home without a warrant in hot pursuit of someone who breached the peace thus was not limited to felonies.

Other authorities cited by petitioner (Br. 27-30) shed little light on the extent to which misdemeanor hot pursuits were permitted. Sir Matthew Hale expressly limited his analysis to felonies and imminent felonies. 2 Matthew Hale, *The History of the Pleas of the Crown* 85, 90 (1736). Lord Edward Coke accepted that an officer could "break a house to apprehend the delinquent" "upon Hue and Cry of one that is slain or wounded, so as he is in danger of death, or robbed." 4 Edward Coke, *Institutes of the Laws of England* 177 (6th ed. 1681).

But some authorities suggest that hue and cry applied more broadly, see Amicus Br. 22, and in any event the common law "'hue and cry'" could be invoked "simply to apprehend a person suspected of a felony," without requiring the exigent circumstance of a hot pursuit. *Steagald*, 451 U.S. at 229 n.2 (Rehnquist, J., dissenting). It therefore does not demonstrate what rule applied where a misdemeanor suspect fled to a residence.

Nor is petitioner correct (Br. 28) that some commentators' limitations on the breaking of doors applied to *any* "entering [of] a home without permission." An officer's entry through an open door of a home did not qualify as the breaking of doors. See 4 Coke 177-178; *Semayne's Case*, (1604) 77 Eng. Rep. 194, 197 (K.B.); see also *Steagald*, 451 U.S. at 218 & n.11. And, as petitioner acknowledges, some commentators described breaking doors as "violent," suggesting that some nontrivial physical force was required. Pet. Br. 28 (citation omitted). Thus, even where common-law commentators would have limited the authority to "break doors" in pursuit of some fleeing misdemeanants, they would not necessarily have prohibited other types of entries (like the one at issue here, see p. 32, *infra*).

For all of those reasons, this "simply is not a case in which" the party challenging a law-enforcement practice "can point to 'a clear answer [that] existed in 1791 and has been generally adhered to by the traditions of our society ever since.'" *Atwater*, 532 U.S. at 345 (quoting *County of Riverside* v. *McLaughlin*, 500 U.S. 44, 60 (1991) (Scalia, J., dissenting)) (brackets in original). The Court therefore should analyze the permissibility of the practice "under traditional standards of reasonableness," *Wyoming* v. *Houghton*, 526 U.S. 295, 299-300 (1999)—which here demonstrate that warrantless home

entries in hot pursuit of a suspect with probable cause of a misdemeanor will typically comport with the Fourth Amendment. See pp. 8-21, *supra*.

3. Finally, petitioner's policy concerns about potentially "abusive or unnecessary" law-enforcement practices do not support limiting the hot-pursuit rule in the misdemeanor context to cases in which a separate exigency is also present. Pet. Br. 39; see Resp. Br. 22-23 & n.17. Petitioner's concerns about the hot-pursuit rule are not unique to the misdemeanor context, see Resp. Br. 23, and several doctrines appropriately cabin officers' authority when making a warrantless entry.

Petitioner suggests (Br. 38) that applying the hot-pursuit rule in the misdemeanor context would allow "even a mere *Terry* stop" to "escalate into a warrantless entry," because many States make willful flight from police a misdemeanor. His concerns about applying the rule in that particular scenario do not justify his effort to effectively dispense with it entirely. Suspects can readily avoid that result by complying with law-enforcement officers' lawful displays of authority. Law-enforcement agencies may also avoid it, at public urging or on their own initiative, by adopting hot-pursuit policies that do not authorize officers to pursue suspects to the full extent permitted by the Fourth Amendment. And as discussed below, other Fourth Amendment doctrines will limit the scope of any such pursuit.

Petitioner similarly errs in suggesting that declining to adopt his constriction of the hot-pursuit rule would "allow officers to enter a home without a warrant * * * even if it turns out the citizen did not realize the officer was trying to make a stop." Pet. Br. 38-39; see *id.* at 18. When "a reasonable person in [a suspect's] position would have known the officer intended to detain [him],"

as the lower courts found here, Pet. App. 5a, a suspect's assertion that—unbeknownst to the officer—he was subjectively unaware of the attempted stop cannot render the officer's continuation of that attempt unreasonable. Furthermore, while petitioner is correct that California makes "flight from or failure to cooperate with police * * * a misdemeanor," Pet. Br. 38, it does so only if the suspect acts "willfully," Cal. Penal Code § 148(a)(1) (West. 2014). It therefore excludes the unknowing-suspect scenario that petitioner envisions. See Resp. Br. 28 & n.22 (citing additional state laws criminalizing fleeing from the police or resisting arrest, each of which requires that the defendant act "knowingly" or "intentionally").

Nor does the hot-pursuit rule permit officers to "lure a known suspect out of his house" in the hope that he decides to end a consensual encounter and retreat back into his home. Pet. Br. 39, 41-42; cf. Resp. Br. 23-24. Courts have held that the termination of a consensual encounter generally will not justify a warrantless entry under the hot-pursuit rule, because simply ending such an encounter does not constitute flight. See *Smith* v. *Stoneburner*, 716 F.3d 926, 931 (6th Cir. 2013) ("In consensual encounters, we think of individuals as 'free to leave,' not 'free to flee.'").

Petitioner also suggests (Br. 42) that warrantless home entries "risk property damage, trauma, and violent confrontations." But recognizing that an officer is permitted to enter a home in hot pursuit of a suspect does not eliminate the separate constitutional restriction on the *manner* of entry, which must itself be "reasonable." *Brigham City*, 547 U.S. at 406-407; see, *e.g.*, *Trent* v. *Wade*, 776 F.3d 368, 382 (5th Cir. 2015) ("Hot pursuit itself may give the officer the authority to

be inside a home without a warrant, but it does not have any bearing on the constitutionality of the manner in which he enters the home."). While the facts that justify hot pursuit of a fleeing suspect may demonstrate that it would be futile for officers to "knock and announce" their presence, see, *e.g.*, *Trent*, 776 F.3d at 382 n.11, officers still must enter reasonably and act reasonably while inside. As with any entry, with or without a warrant, the "[e]xcessive or unnecessary destruction of property in the course of" entry under the hot-pursuit rule "may violate the Fourth Amendment." *United States* v. *Ramirez*, 523 U.S. 65, 71 (1998).

Similarly, safety concerns about warrantless entries, see Pet. Br. 37, 42-43, are mitigated by the Fourth Amendment's prohibition against the unreasonable use of excessive or deadly force. *Graham* v. *Connor*, 490 U.S. 386, 395-397 (1989); *Garner*, 471 U.S. at 9-11. And to the extent that pursuit of a fleeing suspect into a home presents safety concerns in certain cases, the Fourth Amendment analysis should take into account that the suspect himself decided to move the encounter there. Cf. *Scott*, 550 U.S. at 384 (recognizing that in balancing Fourth Amendment interests, it is "appropriate * * * to take into account" the suspect's actions in "intentionally plac[ing] himself and the public in danger" by "ignor[ing]" officers' warning to stop and engaging in a high-speed chase). So long as the officer's actions, viewed in light of the totality of the circumstances, are reasonable, a suspect should not be able to create safety concerns through his own conduct and then claim that they give rise to a Fourth Amendment violation by the pursuing officers.

Moreover, in light of dangers that may arise from police chases, many jurisdictions have established policies

regarding when pursuit is appropriate and the manner in which it may be conducted. See, *e.g.*, *Police Vehicle Pursuits* 1 ("As of January 2013, all state police and highway patrol agencies and nearly all local police departments (97%) and sheriffs' offices (96%) had a written vehicle pursuit policy."); see also Illinois et al. Amici Br. 12-14 (describing pursuit policies). Such policies serve valuable interests, including protecting officers and the public, fostering positive community-police relations, and in some cases, remedying unreasonable use of force or other constitutional violations. See, *e.g.*, Civil Rights Div., U.S. Dep't of Justice, *Investigation of the Baltimore City Police Department* 76 (Aug. 10, 2016), https://www.justice.gov/crt/file/883296/download; Civil Rights Div. & U.S. Att'y's Office of N. Dist. of Ill., U.S. Dep't of Justice, *Investigation of the Chicago Police Department* 26-27, 30-31 (Jan. 13, 2017), https://www.justice.gov/opa/file/925846/download. No need exists to "authorize[] courts to make judgments on matters that are the province of those who are responsible for federal and state law enforcement agencies," *King*, 563 U.S. at 467-468, through limitations on the hot-pursuit rule.

II. THE WARRANTLESS GARAGE ENTRY IN THIS CASE WAS REASONABLE UNDER THE CIRCUMSTANCES AND CONSTITUTIONALLY PERMISSIBLE

Even if the hot-pursuit rule is not categorical in the misdemeanor context, the decision of the California Court of Appeal should be affirmed. Considering the circumstances of this case, Officer Weikert's warrantless entry into the garage was reasonable, and thus constitutional.

It is undisputed that Officer Weikert observed petitioner violate multiple provisions of California's Vehicle

Code, "which justified the officer's attempt to stop [petitioner's] vehicle." Pet. App. 16a; see Pet. Br. 2-3. The state courts further determined that "a reasonable person in [petitioner's] position would have known the officer intended for him to pull over." Pet. App. 17a. No other cars were on the street; Officer Weikert "pulled up directly behind" petitioner's vehicle and activated his emergency lights; and those lights "provided considerable illumination, lighting up the area behind, around, and in front of [petitioner's] car." *Id.* at 16a.

Petitioner has claimed that he did not realize that Officer Weikert was ordering him to stop. See Pet. Br. 3; Pet. App. 18a. But even if that is true, it reflects an unreasonable lack of awareness and, in any event, is not something that Officer Weikert could possibly have known at the time. Instead, Officer Weikert saw petitioner failing to comply with his lawful show of authority. Rather than stopping as he had been lawfully ordered to do, petitioner continued to drive and then pulled into a garage. Pet. App. 17a. Petitioner's "fail[ure] to immediately pull over * * * gave the officer probable cause to arrest him" for two separate willful-resistance misdemeanors. *Ibid.* (citing Cal. Veh. Code § 2800(a) (West 2015) and Cal. Penal Code § 148(a)(1) (West 2014)). And petitioner continued to attempt to evade Officer Weikert when he reached the garage, closing the garage door despite the officer's display of authority. See *id.* at 3a.

In short, from Officer Weikert's perspective, petitioner had chosen to move the location of a lawful stop from the street to the garage—and then attempted to shut the garage door behind him. Nothing in the record suggests that Officer Weikert knew who the driver of the car was; what he (or she) even looked like; whether

the driver was the registered owner of the car; precisely whose garage it was; or whether the presence of other people in the residence would complicate any effort to identify and arrest the driver. In addition, Officer Weikert's manner of entry—passing his foot beneath the garage door to stop it from closing—was reasonable and minimally intrusive. In such circumstances, petitioner's "act of retreating into" the garage should not be permitted to "thwart an otherwise proper arrest." *Santana*, 427 U.S. at 42.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
DAVID P. BURNS
Acting Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
ANDREW C. NOLL
Attorney

JANUARY 2021