In Hot Pursuit of a Fleeing Misdemeanant? An Officer Must Now Undertake a Full Legal Analysis Before Acting Under *Lange v. California*

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Abstract. Police officers are expected to do one thing in our society—protect the public without breaking the law. To do so, police officers must understand what the law allows them to do. Common sense tells us that clear rules make it easier for an officer to understand these boundaries. But the realities of police work are all but clear, especially in exigent circumstances. In those circumstances, particularly the hot pursuit of fleeing suspects, an officer will be forced to make a split-second decision on the job that could have deadly consequences for the officer or the public. Prior to Lange v. California*, the rules of hot pursuit were clear. No longer is that true.*

This Note will focus on Lange v. California *and some of its potential consequences to police work. It will also highlight the constant struggle between efficient police work and the privacy rights of individuals within their own home. Finally, this Note will propose a measured solution that draws clear lines for police officers while accounting for privacy concerns of the public.*

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Introduction

What can a state police officer do when they witness a drug deal? They can arrest them.[1] What if they witness that drug deal, and then the suspect runs? Clearly, the officer can chase the suspect.[2] But what if the suspect runs into his home? Can the officer chase after him into his home without a warrant? Well, that depends on what state the officer is in and whether that state defines possession of that drug, say marijuana, as a misdemeanor or a felony. For if the officer believes a felony occurred, he may follow the suspect into the home without a warrant.[3] But suppose the officer only has probable cause to believe a misdemeanor occurred. In that case, the officer must complete a complicated balancing test of competing facts that will determine whether he is able to follow the suspect into his home.[4] This is clearly a problem for high-stakes situations that typically coincide with hot pursuit.[5] If an officer cannot clearly tell what to do in such situations, uncertainty arises, leaving an officer to make a complicated decision in the heat of the moment.[6] This leaves room for error, which can harm a private citizen's well-being and a police officer's goal of eradicating crime.[7]

This misdemeanor and felony distinction becomes even more problematic when considering that a certain criminal act may be a felony in one state but a misdemeanor in another.[8] Each State has its own legal regime of standards for warrantless entries.[9] Before the Supreme Court's recent decision in *Lange v. California*,[10] an officer could categorically enter the home without a warrant only when in hot pursuit of fleeing felons.[11]

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[1] MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE § 120.1(1) (AM. L. INST. 1975).

[2] *See* United States v. Santana, 427 U.S. 38, 42–43 (1976) (identifying hot pursuit as "some sort of a chase" that police may use when chasing after a suspect).

[3] *See* Lange v. California, 141 S. Ct. 2011, 2025 (2021) (Kavanaugh, J., concurring); *see Santana*, 427 U.S. at 42–43.

[4] *See Lange*, 141 S. Ct. at 2021–22.

[5] *See id.* at 2031 (Roberts, C.J., concurring).

[6] *See id.* at 2036.

[7] *Cf. id.* (discussing how a totality of the circumstances approach is "hopelessly indeterminate" for law enforcement).

[8] *See id.* at 2035–36.

[9] *Lange*, 141 S. Ct. at 2035–36 (discussing the differing standards states have with regard to warrantless entry regimes).

[10] 141 S. Ct. 2011 (2021).

[11] *See id.* at 2019–20; *see also* Stanton v. Sims, 571 U.S. 3, 6 (2013) (per curiam) ("[F]ederal and state courts nationwide are sharply divided on the question whether an officer with probable cause to arrest a suspect of a misdemeanor may enter the home without a warrant while in hot pursuit of that suspect.").

The Court had not answered whether that categorical exception existed for the hot pursuit of fleeing misdemeanants.[12] Instead of extending the categorical exception, the Court in *Lange* held that the hot pursuit of a fleeing misdemeanant may not always provide the exigency needed to warrantlessly enter the home.[13] A totality of the circumstances analysis must justify an exigency for the officer to warrantlessly enter the home.[14] Under this new test for hot pursuit of fleeing misdemeanants, officers do not have clear rules to guide them in practice.[15] Despite applying different tests to fleeing misdemeanants and felons, the Court in *Lange* laid the groundwork for clear rules in the future because it relied heavily on the seriousness of the suspected offense in its analysis.[16]

This Note analyzes how the *Lange* decision laid the groundwork for bright-line rules for certain classes of misdemeanor offenses when considering the privacy and governmental interests at stake for hot pursuit of fleeing misdemeanants. It then argues that an officer in hot pursuit of a fleeing misdemeanant can never enter the home without a warrant for certain classes of minor offenses, say non-jailable offenses. But officers can always enter the home in hot pursuit of a fleeing misdemeanant if it does not fall into those certain classes of minor offenses and otherwise satisfies a totality of the circumstances analysis.[17] This approach will create clear rules for officers while simultaneously protecting the privacy interests the majority in *Lange* was concerned about.[18]

Part I of this Note details the warrant requirement's background under the Fourth Amendment and its exceptions. Part I also discusses the privacy interests in the home and the origin and evolution of the hot pursuit doctrine up to the decision in *Lange v. California*. Part II discusses in detail the Court's decision in *Lange v. California* by focusing upon the

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12 *Lange*, 141 S. Ct. at 2019–20 (discussing how the law on hot pursuit of a fleeing misdemeanant was not clearly established and remained in that unsettled state until the opinion in *Lange*).

13 *Id.* at 2021–22.

14 *See id.*

15 *Lange*, 141 S. Ct. at 2021; *id.* at 2033, 2035 (Roberts, C.J., concurring).

16 *See id.* at 2019–20 (leaving open the question of whether *Santana*'s modern-day interpretation that hot pursuit of a fleeing felon is a categorical rule is actually correct).

17 Of course, other exigent circumstances may be invoked to still allow for a warrantless entry into the home. This Note will only focus on the hot pursuit doctrine as an exigent circumstance. Whether officers may use other exigencies in conjunction with hot pursuit to warrantlessly enter the home is outside the scope of this Note. Thus, for the purposes of this Note, I assume that only the hot pursuit doctrine is invoked, and no other exigencies are at stake unless specifically stated.

18 *Compare Lange*, 141 S. Ct. at 2018–19 (discussing the large privacy interests an individual has in their home) *with Lange*, 141 S. Ct. at 2033, 2035 (2021) (Roberts, C.J., concurring) (observing that police have an interest in clear rules so that they know how to operate in real life).

facts, the holding and rationale, two concurring opinions, and the key takeaways and implications of *Lange* for the hot pursuit doctrine. Part II also focuses on how the Court can analyze when it is appropriate to impose a bright-line rule for certain classes of misdemeanors. Part III argues that the Court has laid the groundwork for some bright-line rules for certain classes of minor offenses when applying the hot pursuit doctrine to fleeing misdemeanants. It also discusses how a bright-line rule would operate, the pros and cons of a bright-line rule in the context of the hot pursuit doctrine, and why the Court must adopt this bright-line rule to properly balance the privacy interests at stake in the home with an officer's interest in fighting crime.

I. Balancing the Privacy Interest of the Home with the Government's Interest in Fighting Crime

As a foundational matter, the Fourth Amendment protects the "right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures" and guarantees "no Warrants shall issue, but upon probable cause."[19] The Supreme Court has read the Fourth Amendment to mean that "searches and seizures inside a home without a warrant are presumptively unreasonable."[20] But, of course, there are always exceptions to the general rule.[21] One well-recognized exception to the warrant requirement, and most pertinent to this Note, is the exigent circumstances doctrine.[22] This exception is generally justified because, on balance, the warrant requirement does more harm than good where the "threat to society outweighs [an individual's] right to privacy" in

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19 U.S. CONST. amend. IV.

20 *E.g.*, Payton v. New York, 445 U.S. 573, 586 (1980).

21 Kentucky v. King, 563 U.S. 452, 459 (2011) ("[T]he warrant requirement is subject to certain reasonable exceptions.").

22 *See id.* at 460.

emergency situations.[23] Thus, the warrantless search or seizure is "objectively reasonable" and complies with the Fourth Amendment.[24]

The Supreme Court has applied the doctrine to various situations where the Court has found that "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment."[25] This doctrine applies not only to warrantless searches but to warrantless seizures as well.[26] The case law identifies three general exigencies that justify warrantless searches and seizures under the exigent circumstance doctrine: an imminent or threatened harm to others or the officer himself, the imminent destruction of evidence, or the pursuit of a fleeing suspect ("hot pursuit").[27] The Court has held that each of these exigencies

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23 Nathan Vaughan, Note, *Overgeneralization of the Hot Pursuit Doctrine Provides Another Blow to the Fourth Amendment in Middletown v. Flinchum*, 37 AKRON L. REV. 509, 514–16 (2004) (discussing that the Supreme Court has implemented a balancing test between the government's interest in preventing crime and an individual's right to privacy when balancing the reasonableness of warrantless searches and seizures). Warrantless searches must still comport with the traditional standards of reasonableness, where reasonableness is a balancing of an individual's interest in privacy and the government's legitimate interest in crime prevention. *Cf.* Wyoming v. Houghton, 526 U.S. 295, 299–300, 307 (1999) (pointing out that warrantless searches or seizures must still satisfy the "traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests").

24 Mincey v. Arizona, 437 U.S. 385, 394 (1978).

25 *See, e.g.*, *id.* at 394 (internal quotation marks omitted). *Mincey v. Arizona* is a leading case on the modern-day exigent-circumstances exception to the warrant requirement. *See* Jia Di, Kallee Spooner & Ronaldo V. Del Carmen, *An Analysis and Categorization of U.S. Supreme Court Cases Under the Exigent Circumstances Exception to the Warrant Requirement*, 27 GEO. MASON U. CIV. RTS. L.J. 37, 40 (2016) (categorizing *Mincey* as a leading Supreme Court case on exigency). *Mincey* will be discussed further in Section B, Sub-section 3, *infra*.

26 Kentucky v. King, 563 U.S. 452, 459–60 (2011).

27 *See* Lange v. California, 141 S. Ct. 2011, 2021 (2021); Christopher Slobogin, *The World Without A Fourth Amendment*, 39 UCLA L. REV. 1, 19 n.58 (1991). Professor Christopher Slobogin states that even though the case law does not explicitly categorize these concerns in this way, the Court seems to recognize that these are the three general concerns that underlie the exigent circumstances doctrine and could independently justify a warrantless search. Since Slobogin's observation, the Court has consistently laid out the same concerns in its cases on exigent circumstances, and other scholars have made similar observations. *See* Jia Di et al., *supra* note 25, at 43; *see also King*, 563 U.S. at 460 (listing the same three exigencies); Riley v. California, 573 U.S. 373, 402 (2014) (listing the same three exigencies).

The Supreme Court has recognized more specific applications of these various concerns, *see* Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (collecting cases recognizing that an officer may make a warrantless entry into the home to "fight a fire or investigate its cause, . . . [or] to assist persons who are seriously injured or threatened with such injury"), but those applications may be properly nestled under the broader concern of imminent harm to others or to the officer himself.

can independently justify a warrantless search or seizure.[28] This Note focuses on when the hot pursuit doctrine allows an officer warrantless entry into the home.[29] Part A details the tradition of privacy rights in the home and the presumption against warrantless entries, and Part B traces the history of hot pursuit.

A. *The Privacy Interest in the Home and Warrantless Entries Into the Home*

Before discussing the history of the hot pursuit exception to the warrant requirement, one must consider the privacy interests at stake in the home. It is important to remember the oft-cited quote: "a man's home is his castle," and that he should be "secure from unreasonable searches and seizures of property by the government."[30] And in the Fourth Amendment context, "the home is first among equals."[31]

The Fourth Amendment exists, in part, as a response to the colonists' experience under British rule, where they were subjected to countless searches based on little or even no suspicion.[32] Even in spite of the colonial experience, the English common law recognized an overarching privacy right in the home.[33] The Framers, then, crafted the Fourth Amendment to express that certain enclaves should be free (or nearly free) from arbitrary governmental interference.[34] Of the utmost importance was the home in

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28 *See Brigham City*, 547 U.S. at 406 (holding that an officer who heard a fight at three o'clock in the morning at a house, saw a juvenile break free from adults in that house, and subsequently saw that juvenile punch an adult in the face drawing blood, was justified in entering the home without a warrant because of the perceived imminent harm to the juvenile); Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 298–99 (1967) (holding that an officer in hot pursuit of a robbery suspect acted reasonably when the officer entered the robbery suspect's house without a warrant to search for weapons); Schmerber v. California, 384 U.S. 757, 770–71 (1966) (holding that a warrantless blood test of a suspected drunk driver was justified because of the risk of the destruction of blood alcohol levels needed to prove intoxication increased as time passed).

29 *See Lange*, 141 S. Ct. 2011, 2014.

30 Ji Dia et al., *supra* note 25, at 48.

31 Florida v. Jardines, 569 U.S. 1, 6 (2013).

32 *See generally* Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. MEM. L. REV. 483, 530 (1995) ("[The] chief goal of the framers was to prevent the historical abuses associated with suspicionless searches and seizures predating the [Fourth] Amendment.").

33 *See* Entick v. Carrington, 2 Wils. K.B. 275, 291 (K.B. 1795) ("[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbor's close without his leave.").

34 *See* Oliver v. United States, 466 U.S. 170, 178 (1984) (discussing the Framers' recognition that "certain enclaves should be free from arbitrary government interference.").

that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed."[35]

In modern-day jurisprudence, all warrantless searches are per se unreasonable.[36] And in expounding on this principle regarding an individual's privacy interest in the home, the Supreme Court has clearly recognized that the home deserves special protections from government interference,[37] for "the Fourth Amendment has drawn a firm line at the entrance of the house."[38] Moreover, every man has the right "to retreat into his own home and there be free from unreasonable governmental intrusion."[39] This principle—that the home is "first among equals" and every man has a right to retreat into his home—is deeply rooted in American and English jurisprudence and has been recognized in leading Supreme Court cases regarding the Fourth Amendment.[40]

In protecting the historical privacy right in the home, the Court held in *Payton v. New York*[41] that a New York statute allowing the police to make warrantless home entries for felony arrests violated the Fourth Amendment.[42] Because a person has a greater expectation of privacy in the home versus in public,[43] the Court reasoned that, absent exigent circumstances, an officer must have an arrest warrant to enter a suspect's home and arrest them.[44] Therefore, a "search [or] seizure inside a home

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[35] United States v. United States District Court for the Eastern District of Michigan, Southern Division, 407 U.S. 297, 313 (1972).

[36] Katz v. United States, 389 U.S. 347, 357 (1967) (holding that all searches conducted outside the judicial process—which includes a warrantless search of the home—are per se unreasonable under the Fourth Amendment).

[37] Payton v. New York, 445 U.S. 573, 587 (1980) (implying that because the home was distinguishable from a public place it was deserving of more careful protection from arbitrary government intrusion); Alan W. Blackman, *Warrantless Home Searches: The Road to Calabretta*, 22 J. JUV. L. 64, 69–70 (2002).

[38] *Payton*, 445 U.S. at 590.

[39] Silverman v. United States, 365 U.S. 505, 511 (1961).

[40] *See* Florida v. Jardines, 569 U.S. 1, 6 (2013). Justice Antonin Scalia writes for the majority in this case regarding what constitutes a "search" under the Fourth Amendment. Here, Scalia recognizes that a search occurs when the government invades the home or its curtilage. *Id.* at 6–7. And to get to this holding, Scalia rationalizes that this is actually an ancient principle rooted in both English and American tradition. *Id.* The sanctity of the home traverses through the Court's Fourth Amendment jurisprudence, and this principle holds true to the hot pursuit doctrine. *See also Silverman*, 365 U.S. at 511 (demonstrating that the English common law recognized the right to retreat into the home to be free from governmental intrusion).

[41] 445 U.S. 573 (1980).

[42] *Payton*, 445 U.S. at 602–03.

[43] *See id.* at 587 (noting the distinction between an arrest in public, which does not involve a privacy concern, versus an arrest in the home which invokes privacy concerns).

[44] *Id.* at 602–03.

without a warrant [is] presumptively unreasonable."[45] The warrant was necessary to prevent needless intrusions on the sanctity of one's home; the warrantless entry into a home, then, was the exception.[46]

B. *The History of the Hot Pursuit Doctrine*

Hot pursuit is generally defined as an officer in some immediate and continuous chase of a suspect from the location of a crime.[47] Three leading Supreme Court cases discuss the conceptual origin of the hot pursuit doctrine and set the foundation for the Court's analysis of the hot pursuit issue faced in *Lange v. California*.

1. Hot Pursuit is Born—*Warden v. Hayden*

The Supreme Court first recognized hot pursuit as an exigency doctrine in the seminal case of *Warden, Maryland Penitentiary v. Hayden*.[48] In 1967, the Court dealt with whether an officer could enter and subsequently search the home where the suspect fled without a warrant.[49]

The suspect was an armed robber who took $363 from a taxicab business.[50] Two taxi drivers followed the suspect to his home, watched him enter the home, and then called the police.[51] The police, who were already en route to the scene of the robbery, arrived within minutes at the home, asked to search the home (and were granted permission), and entered—all

45 *Id.* at 586.

46 *See id.* at 585–86 (noting that the warrant requirement "minimizes the danger of needless intrusions" on the sanctity of one's home).

47 *See* Vaughan, *supra* note 23, at 519; *see also* United States v. Santana, 427 U.S. 38, 43 (1976) (approving the lower court's definition that hot pursuit meant some sort of chase, even if that chase was not in or about a public place); Welsh v. Wisconsin, 466 U.S. 740, 753 (1984) (implying that some sort of immediate or continuous pursuit of a suspect from the scene of a crime is necessary to invoke the hot pursuit doctrine).

48 387 U.S. 294 (1967); *see also* WAYNE R. LAFAVE, *The "hot pursuit" exception*, *in* 3 SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.1(d) (6th ed. 2020) (recognizing that *Warden* was the first case to recognize that "hot pursuit" could justify a warrantless entry into the home) (internal quotation marks omitted). It is important to note that while *Warden* is generally understood as the first case recognizing "hot pursuit" in the context of exigent circumstances, *see id.*, the phrase "hot pursuit" first appears in a Supreme Court case in 1948. *See generally Santana*, 427 U.S. at 43 n.3 (citing *Johnson v. United States*, 333 U.S. 10, 16 n.7 (1948)) (pointing out that hot pursuit was first mentioned in *Johnson*, where the Court recognized the meaning of hot pursuit as involving some element of chase).

49 Warden, Md. Penitentiary v. Hayden, 387 U.S. 294, 297–98 (1967).

50 *Id.* at 297.

51 *Id.*

without a warrant.[52] While there, the officers searched for evidence of the robbery or the suspected robber himself.[53] The officers eventually arrested Hayden, who was "feigning sleep" in his bedroom, and found other evidence around the house.[54]

The robber challenged the search as unconstitutional, but the Court held that the officers acted reasonably in entering the home without a warrant because "the exigencies of the situation made that course imperative."[55] In the Court's view, the "Fourth Amendment does not require police officers to delay in the course of an investigation if to do so would gravely endanger their lives or the lives of others."[56] Because the officers had probable cause to believe that there was an armed robber in the home, the warrantless entry to arrest the robber and the following search were justified.[57] And even though the Court's majority opinion does not explicitly mention "hot pursuit" by that label, Justice Abe Fortas recognizes in concurrence that what the majority opined was a "hot pursuit" exception to the general warrant requirement justified by exigency.[58]

2. Hot Pursuit and the Fleeing Felon—*United States v. Santana* and Its Progeny

Nine years after *Warden*, the Court narrowed in on hot pursuit in *United States v. Santana*.[59] Here, an undercover officer arranged to buy drugs from McCafferty, whose supplier was Santana.[60] The officer and McCafferty went to Santana's house, and the officer waited outside while McCafferty obtained the drugs.[61] Once McCafferty returned, the officer revealed his identity, arrested McCafferty, and asked where the money was located.[62] After McCafferty told the officer that Santana had the money, officers returned to Santana's house and found Santana standing in the doorway with a brown paper bag in hand.[63] As the officers approached,

52 *Id.*

53 *Id.* at 298.

54 *Id.*

55 *Hayden*, 387 U.S. at 298 (internal quotation marks omitted).

56 *Id.* at 298–99.

57 *Id.* at 298.

58 *Id.* at 310 (Fortas, J., concurring); *see also* LAFAVE, *supra* note 48, at 425.

59 427 U.S. 38 (1976).

60 *Id.* at 39.

61 *Id.* at 39–40.

62 *Id.* at 40.

63 *Id.*

Santana ran back into her home.[64] The officers followed her through the door and arrested her for a felony.[65]

The issue here was whether the act of retreating into the home could prevent an arrest without a warrant.[66] Emphatically, the Court declared that it could not.[67] It expanded its hot pursuit jurisprudence and held that hot pursuit means some sort of chase, but it does not necessarily need to be an extended chase in or on public streets.[68] Once the officers saw Santana retreat into the home, it was reasonable for them to believe that any delay would result in the destruction of the evidence pinning Santana to the drug crime.[69] Just because the hot pursuit "ended almost as soon as it began" did not mean that it was any less of a hot pursuit legally.[70]

In its later jurisprudence, the Court cites *Santana* for the proposition that the hot pursuit of a fleeing felon justifies warrantless entry into the home.[71] While it is unclear whether this rule represents a categorical exception to the warrant requirement,[72] the Court clearly had not decided whether the rationale of *Santana* also applied to fleeing misdemeanants until *Lange v. California* was decided.[73]

64 *Id.*

65 *Santana*, 427 U.S. at 40–41.

66 *Id.* at 42.

67 *Id.*

68 *Id.* at 42–43.

69 *Id.* at 43.

70 *Id.*

71 *See* Stanton v. Sims, 571 U.S. 3, 8 (2013) (per curiam) (citing Welsh v. Wisconsin, 466 U.S. 740, 750 (1984)) ("Our opinion first noted our precedent holding that hot pursuit *of a fleeing felon* justifies an officer's warrantless entry." (emphasis added)).

While the focus of this Note is on hot pursuit and the future of the doctrine, it should be noted that probable cause is still fundamentally a part of the analysis. Generally, an officer must have probable cause that an exigency exists. *See* Amy B. Beller, Comment, United States v. MacDonald: *The Exigent Circumstances Exception and the Erosion of the Fourth Amendment*, 20 HOFSTRA L. REV. 407, 410 (1991) ("The [exigent circumstance test justifying warrantless entry] had required probable cause to believe one of the following circumstances existed: imminent destruction of evidence, the need to prevent a suspect's escape, or the risk of danger to the police or to other persons inside or outside the dwelling."). The Supreme Court has recognized that "warrantless felony arrests in the home are prohibited by the Fourth Amendment, absent probable cause and exigent circumstances." *Welsh*, 466 U.S. at 749; *see generally* Dale Joseph Gilsinger, Annotation, *When is Warrantless Entry of House or Other Building Justified Under "Hot Pursuit" Doctrine*, 17 A.L.R. 6th 327 (2006) (collecting cases) (discussing that lower courts have generally held that an officer must have probable cause that an exigency has occurred). Thus, one must not forget that an officer must still have probable cause that the suspect committed a crime and probable cause that an exigency, like hot pursuit, has occurred.

72 *See* Lange v. California, 141 S. Ct. 2011, 2019 (2021) (stating that the Court need not consider whether fleeing-felon cases under *Santana* were treated categorically).

73 *See Sims*, 571 U.S. at 6, 10 (2013) (per curiam) ("[T]he law regarding warrantless entry in hot pursuit of a fleeing misdemeanant is not clearly established."); *Lange*, 141 S. Ct. at 2019 ("[The Court]

3. Hot Pursuit and the Seriousness of the Suspected Offense

After *Santana*, the hot pursuit doctrine as an exception to the warrant requirement widened.[74] But then the Supreme Court decided *Welsh v. Wisconsin*,[75] which limited the application of the hot pursuit doctrine and added another layer of analysis to hot pursuit: the seriousness of the suspected offense.[76] *Welsh* presented a unique question—whether the severity of the underlying offense played into the calculus of determining whether an exigency sufficiently justified a warrantless entry into the home.[77]

A witness saw Welsh driving erratically, eventually swerving off the road and into an open field.[78] The witness and another passerby pulled over to check on the driver.[79] The passerby called the police, but before they arrived, Welsh walked away from the scene to his home, leaving the car in the field.[80] When an officer arrived a few minutes later, the witnesses informed him that they believed Welsh was inebriated.[81] After running the plates on the car and obtaining Welsh's address, the officer, without a warrant, went to Welsh's home.[82] The officer entered the home,[83] assumedly with no consent,[84] found Welsh in his bedroom lying naked, and arrested him for driving or operating a motor vehicle while intoxicated.[85] This crime, as a first offense, was a noncriminal, civil forfeiture offense where no imprisonment was possible.[86]

found that neither *Santana* nor any other decision had resolved [whether warrantless entry was permitted in hot pursuit of a fleeing misdemeanant].").

74 *See, e.g.*, Archibald v. Mosel, 677 F.2d 5, 6–7 (1st Cir. 1982) (citing State v. Gallo, 582 P.2d 558 (Wash Ct. App. 1978); People v. Escudaro, 23 Cal. 3d 800 (1979)) (discussing courts' expansion of the hot pursuit doctrine to include cases in which police relied on witness sightings and cases in which suspects were not consistently in physical view).

75 466 U.S. 740 (1984).

76 *See Welsh*, 466 U.S. at 753 (discussing the correlation between the seriousness of the offense and the justifications for allowing an officer to warrantlessly arrest someone in the home).

77 *See id.* at 742, 751–52.

78 *Id.* at 742.

79 *Id.*

80 *Id.*

81 *Id.*

82 *Welsh*, 466 U.S. at 742–43.

83 *Id.* at 743.

84 *Id.* at 743 n.1.

85 *Id.* at 743.

86 *Id.* at 754.

The State argued that hot pursuit justified the arrest for this noncriminal traffic offense.[87] But the Supreme Court held that there was no hot pursuit since no immediate or continuous pursuit of Welsh from the scene of the crime was at stake.[88] Welsh had already arrived at home and left the scene of the crime when officers began their search. Thus, there was no pursuit.[89]

Although this was a narrow holding regarding the hot pursuit issue, the Court discussed several important factors in the overall analysis of exigency in the context of the home.[90] First, the Court clarified that "an important factor to be considered when determining whether any exigency exists is the gravity of the underlying offense for which the arrest is being made."[91] And in the context of the home, it noted that exigent circumstances, like hot pursuit, justifying a warrantless entry should be the exception, not the rule, when there is probable cause to believe that *only* a minor offense was committed.[92]

This broad decree concerning the seriousness of the underlying offense, however, must be read in line with the Court's decision in *Mincey v. Arizona*.[93] In *Mincey*, the Court dealt with whether there was a homicide exigency exception that would allow officers to warrantlessly search an area at the scene of a possible homicide.[94] The Court held that the mere fact that a homicide was possible was not enough to justify a warrantless search, even though homicide is a serious crime.[95] Thus, *Mincey* stands for the proposition that the gravity of the offense matters, but that fact alone cannot justify the exercise of a warrantless search under the auspices of exigency.[96] And when *Mincey* and *Welsh* are read together, one can see that "the [seriousness] of the offense may prohibit a warrantless search, but [seriousness alone] cannot justify [a warrantless search]."[97]

87 *Id.* at 753.

88 *Welsh*, 466 U.S. at 753.

89 *Id.*

90 *Id.*

91 *Id.*

92 *Id.*

93 437 U.S. 385 (1978); *see* Slobogin, *supra* note 27, at 19 n.58 (discussing that *Mincey* and *Welsh* should be read together when determining how impactful the gravity of the underlying offense is to the overall analysis on exigency and warrantless searches and seizures).

94 *Mincey*, 437 U.S. at 392.

95 *Id.* at 395.

96 *See id.* at 394; *see also* Slobogin, *supra* note 27, at 31 n.109 ("[T]he fact that an offense is grave does not by itself create an emergency.").

97 Slobogin, *supra* note 27, at 19 n.58.

Given this background, one thing is clear: the fleeing felon exception to the warrant requirement is not up for debate.[98] Rather, hot pursuit jurisprudence is unsettled on whether an officer can categorically make a warrantless entry into the home in the hot pursuit of a fleeing misdemeanant. No Supreme Court opinion prior to *Lange v. California* has explicitly addressed this issue. Moreover, suppose there is a difference in how the hot pursuit exception operates when applied to fleeing misdemeanants. In that case, the Court must answer whether the seriousness of the underlying misdemeanor factors into the overall hot pursuit analysis. As it turns out, the answers to these issues are complicated and have serious practical implications for law enforcement and legal implications for the courts.

II. *Lange v. California*—Hot Pursuit Doctrine, Today

The Supreme Court, in *Lange v. California*, finally answered an important question for the hot pursuit doctrine: whether an officer can categorically enter the home of a fleeing misdemeanant while in hot pursuit.[99] The Court held that it could not.[100] But in doing so, the Court created several practical and legal issues that must now be addressed. To do so, this Note discusses the facts and procedural history of the case, its holding and rationale, and the concurring opinions. Then, it addresses the implications of the Court's opinion for law enforcement and the Court's hot pursuit jurisprudence under the Fourth Amendment.

A. *The Facts and Procedural History*

One night, Lange drove past a California officer on the way home while playing loud music with the windows rolled down and repeatedly honking the horn.[101] After catching the officer's attention as Lange drove past, the officer tailed Lange and eventually turned on his overhead lights, signaling for Lange to pull over.[102] Instead of immediately pulling over, Lange continued driving "about a hundred feet (some four-seconds drive)" onto his driveway and into his garage, which was attached to Lange's

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[98] Lange v. California, 141 S. Ct. 2011, 2019 (2021). Justice Elena Kagan in her majority opinion clearly states that the Court sees no reasons to "consider . . . [whether] *Santana* did not establish *any* categorical rule." *Id.* The Court assumes that fleeing felon cases under the hot pursuit doctrine are treated categorically, which leads to the analysis of misdemeanors. *Id.*

[99] *Lange*, 141 S. Ct. at 2016.

[100] *Id.*

[101] *Id*.

[102] *Id.*

home.[103] The officer followed Lange into the garage.[104] After failing field sobriety tests, Lange was arrested for a misdemeanor of driving under the influence and a low-level noise infraction.[105]

At trial, Lange moved to suppress the evidence obtained from the officer after the officer followed Lange into his garage.[106] California contested and argued that because Lange failed to comply with a police signal, a misdemeanor under California law, the officer had probable cause to arrest Lange on those grounds.[107] Given Lange's failure to comply, California argued that the officer was in hot pursuit of Lange, and the hot pursuit of a fleeing misdemeanant justified a warrantless entry into Lange's home.[108]

The trial court denied suppression, and the California Court of Appeal affirmed.[109] The California Court of Appeal broadly held that, categorically, the hot pursuit of a fleeing misdemeanant always justified a warrantless entry into the home under the exigency doctrine.[110] And on that ground, the Supreme Court granted review.[111]

B. *Holding and Rationale*

Before discussing the holding, it is important to note the Supreme Court vote count in the opinion. The Court was unanimous in the overall judgment to vacate and remand.[112] Justice Elena Kagan, joined by five other Justices, wrote the majority opinion.[113] But Chief Justice John Roberts, joined by Justice Samuel Alito, wrote separately in concurrence joining no parts of the majority's rationale.[114] Justice Brett Kavanaugh also concurred while joining all of the majority's opinion,[115] and Justice Clarence Thomas

103 *Id.*

104 *Id.*

105 *Lange*, 141 S. Ct. at 2016.

106 *Id.*

107 *Id.*

108 *Id.* At this point, because the garage was attached to the home, the Court assumes that the garage is a part of the home for the purposes of this opinion. *See id.*

109 *Id.*

110 *Id.*

111 *Lange*, 141 S. Ct. at 2017.

112 *Id.* at 2011.

113 *Id.* at 2015.

114 *Id.* at 2028.

115 *Id.* at 2025 (Kavanaugh, J., concurring).

joined most of the majority's opinion while writing separately on a couple of distinct issues.[116]

The Supreme Court rejected the California Court of Appeal's categorical rule for hot pursuit and instead opted for a totality of the circumstances approach for fleeing misdemeanants.[117] In determining this approach, the Court returned to a familiar concept: analyzing the seriousness of the underlying offense.[118]

Relying on *Welsh*, the majority opined that there are a variety of misdemeanors, some of which are "minor" because they are not harmful or violent.[119] In California, misdemeanors range from various types of domestic violence to mere acts of littering on a public beach or artificially coloring any live chicks or rabbits.[120] To the majority, the latter two offenses are obviously "minor."[121]

The Court had previously held that "whe[re] a minor offense alone is involved, police officers do not usually face the kind of emergency that can justify a warrantless entry."[122] Given that, the majority held that flight alone in a misdemeanor case could not categorically justify a warrantless entry into the home.[123] Rather, the totality of the circumstances, with flight included as a part of the analysis, determines whether a sufficient emergency exists that can justify a warrantless entry into the home.[124] That is because not "every case of misdemeanor flight [rises to the level of exigency]" that justifies warrantless entries into the home.[125] If this categorical rule did apply, it would "treat a dangerous offender and the scared teenager the same" even though they may have committed significantly different crimes under the broad label of a misdemeanor.[126]

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[116] *Id.* at 2025–26 (Thomas, J., concurring) (discussing the historical categorical exceptions to the warrant requirement under the common law and the issue of the federal exclusionary rule). To the extent that the historical categorical exceptions are relevant, I will discuss them in Part II, Section C, *infra*. The federal exclusionary rule issue is not the focus of this Note and therefore will not be discussed.

[117] *Lange*, 141 S. Ct. at 2021, 2024–25.

[118] *See id.* at 2020; *cf.* Welsh v. Wisconsin, 466 U.S. 740, 750 (1984).

[119] *Lange*, 141 S. Ct. at 2020.

[120] *Id.*

[121] *Id.*

[122] *Id.*

[123] *Id.* at 2021 ("Add a suspect's flight and the calculus changes—but not enough to justify [a] categorical rule.").

[124] *Id.* at 2021–22.

[125] *Lange*, 141 S. Ct. at 2021.

[126] *Id.* ("[Non-emergency situations] reveal the overbreadth—fatal in this context—of [a categorical rule for fleeing misdemeanants], which would treat a dangerous offender and the scared teenager the same.").

In requiring a totality of the circumstances analysis for fleeing misdemeanants, the majority weighed public safety and governmental interests less favorably than an individual's interest in privacy and the "sanctity of the home" by requiring officers to obtain a warrant.[127]

Notwithstanding modern Supreme Court precedent, the majority also justified its rejection of a categorical rule for fleeing misdemeanants under the common law in place at the time of the Constitution's adoption.[128] Simply put, the historical common law made distinctions between felonies and misdemeanors.[129] For felonies, which were generally labeled as crimes punishable by death, there existed an exception to the warrant requirement for warrantless entry into the home.[130] But for misdemeanors, where the misdemeanant threatened no harm, fleeing or otherwise, an officer had to get a warrant.[131] To the majority, this clearly meant that no categorical exception to the warrant requirement existed at common law and that the seriousness of the offense mattered.[132]

C. *The Concurring Opinions*[133]

1. Chief Justice Roberts

Chief Justice Roberts, in the principal concurrence that reads more like a dissent, argued that the majority erred in concluding that the severity of the underlying offenses, as opposed to the conduct of hot pursuit, is what creates the exigency.[134] In his view, wherever hot pursuit exists, that itself is the exigency upon which officers are justified to make warrantless entries into the home.[135]

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127 *See id.* at 2021–22.

128 *Id.* at 2022.

129 *Id.* at 2023.

130 *Id.*

131 *See Lange*, 141 S. Ct. at 2023–24.

132 *Id*.

133 I will only discuss two concurring opinions: that of the Chief Justice and of Justice Kavanaugh. Justice Clarence Thomas's concurrence, while important regarding the historical categorical common law exceptions and application of the federal exclusionary rule, is not necessary for discussion in this Note. I do not touch these issues, and they are not nearly as important to the discussion of hot pursuit as the other two concurrences are.

134 *Lange*, 141 S. Ct. at 2028 (Roberts, C.J., concurring); *see also* ALISON M. SMITH, CONG. RSCH. SERV., LSB10630, HOT PURSUIT DOCTRINE AND FLEEING MISDEMEANOR SUSPECTS: CASE-BY-CASE ANALYSIS REQUIRED 3 (2021), https://perma.cc/H9XU-BBRN.

135 *Lange*, 141 S. Ct. at 2028 (Roberts, C.J., concurring) ("[Hot pursuit] is itself an exigent circumstance.").

Chief Justice Roberts goes to great lengths to cite various cases that framed the analysis as hot pursuit being the exigency instead of "merely the background against which *other* exigencies justifying warrantless entry might arise."[136] He argued that the majority's totality of the circumstances approach affords no guidance to law enforcement, which could ultimately hamper effective law enforcement activities.[137]

The Chief Justice next turned to the practicalities of the new rule imposed by the majority.[138] In effect, he argued that even though the majority claims some misdemeanors are not worth enforcing when a suspect flees,[139] this proposition cannot be true considering every government is interested in "ensuring compliance with law enforcement."[140] If a suspect is allowed to evade an arrest, this frustrates society's interest in having its laws obeyed.[141] Therefore, the Chief argued that the majority has created an untenable situation between the government's legitimate interests in law enforcement and the practicalities of officers enforcing the laws.[142]

Furthermore, the State has a "paramount . . . interest in public safety."[143] And this interest cannot be protected if suspects are allowed to evade an arrest.[144] An officer's safety is also relevant in the calculus.[145] For an officer is vulnerable to those inside the home while an officer waits for a warrant.[146] This is especially at issue where a suspect has already demonstrated that they are undeterred by police orders.[147]

Moreover, according to the Chief Justice, this totality of the circumstances test creates a rule that is impractical and not administrable.[148] Where the totality of the circumstances is the test, officers will be faced with an unenviable task. They must make a split-second decision while balancing many details and rules in their heads to

136 *Id.* at 2030 (collecting cases).

137 *See id.* at 2030–33.

138 *Id.* at 2034.

139 *Id.* at 2035.

140 *Id.* at 2030 (citing California v. Hodari D., 499 U.S. 621, 627 (1991)).

141 *Lange*, 141 S. Ct. at 2031 (Roberts, C.J., concurring) ("Affording suspects the opportunity to evade arrest by winning the race rewards flight and encourages dangerous behavior.").

142 *See id.* at 2035.

143 *Id.* at 2031 (citing Scott v. Harris, 550 U.S. 372, 383 (2007)) (internal quotation marks omitted).

144 *See id.*

145 *Id.* at 2032.

146 *Id.*

147 *Lange*, 141 S. Ct. at 2032 (Roberts, C.J., concurring).

148 *See id.* at 2033, 2036 (implying that the majority's new test will require an officer to distinguish between permissible and impermissible warrantless entries at a moment's notice based on complex legal rules—something that officers should not be burdened to do).

determine whether they can chase a suspect into their home in the face of flight.[149] Considering all these interests, the Chief Justice concludes that the totality of the circumstances test does not favor the practicalities of law enforcement.[150]

2. Justice Kavanaugh

Justice Kavanaugh wrote separately to emphasize two issues. First, he believes that the debate between the Chief Justice and the majority is only academic in nature and will not produce any practical differences in operation.[151] Second, he emphasized that the categorical rule for fleeing felons is settled law and should not be disturbed.[152] The second issue is of importance to this Note and the analysis below. If the majority has indeed not disturbed the categorical rule that hot pursuit of fleeing felons will always justify a warrantless entry, this focuses the analysis for my proposed solution below in Part III on the implications of bright-line rules when applied to fleeing misdemeanants.[153]

D. *The Implications of Lange on the Future of the Hot Pursuit Doctrine*

Ultimately, the *Lange* decision comes down to balancing an individual's privacy interest in the home with the government's equally valid interest in enforcing its laws and protecting the public safety.[154] For the majority, they skewed toward protecting the privacy interest in the home when finding that a minor offense could not justify such a significant intrusion into the privacy of the home.[155] But the Chief Justice balanced interests differently, arguing that clear, administrable rules benefit police officers in carrying out their law enforcement duties.[156] In any case, the majority's decision poses certain issues for the future of the hot pursuit doctrine.

First, as the Chief Justice noted, the government has compelling interests for a clear, categorical rule for hot pursuit, regardless of the

149 *Id.* at 2031, 2036.

150 *Id.* at 2036.

151 *Id.* at 2025 (Kavanaugh, J., concurring).

152 *Id.*

153 *See infra* Part III.

154 *See Lange*, 141 S. Ct. at 2018 (starting the analysis with the privacy interest every American has in their home); *id.* at 2030–33 (Roberts, C.J., concurring) (identifying the governmental interests ignored by the majority balanced against the privacy interests an individual has in the home).

155 *See id.* at 2017–18; *id.* at 2025 (Thomas, J., concurring).

156 *See id.* at 2033 (Roberts, C.J., concurring).

felony versus misdemeanor distinction.[157] The majority does not persuasively address any of these government interests as clearly as the Chief does. Second, the Chief does address the privacy interest in the home by arguing that "those who evade arrest by leading the police on car chases into their garages" should have a reduced expectation of privacy.[158] But the Chief failed to consider that a full-blown categorical rule for *all* types of misdemeanors should nevertheless still consider the important privacy interests implicated while an individual is in their own home.

Thus, the future of the hot pursuit doctrine, insofar as it is applied to fleeing misdemeanants, truly depends on the Court's view of whether a bright-line rule is appropriate for hot pursuit. It should be noted that reasonableness (i.e., a balancing test) is generally the touchstone for most Fourth Amendment questions.[159] The Court in *Lange* seems to agree with this, as they do not want bright-line rules for crimes classified as misdemeanors.[160]

But to see whether rejecting bright-line rules in the Fourth Amendment context is warranted, Professor Wayne LaFave has suggested a four-part analysis.[161] This analysis is useful in determining whether the majority was correct in rejecting a bright-line rule for the hot pursuit of fleeing misdemeanants.[162] The test is formulated as such:

> (1) Does [the bright-line rule] have clear and certain boundaries, so that it in fact makes case-by-case evaluation and adjudication unnecessary? (2) Does it produce results approximating those which would be obtained *if* accurate case-by-case application of the underlying principle were practicable? (3) Is it responsive to a genuine need to forgo case-by-case application of a principle because that approach has proved unworkable? (4) Is it not readily subject to manipulation and abuse?[163]

LaFave suggests that in the realm of exigent circumstances, a bright-line formula may be necessary when considering that a warrantless entry into the home is a substantial intrusion upon an individual's privacy interest.[164] A multifactor balancing test of varying facts and circumstances, as the Court applies in *Lange*, is an exercise that typically "boggles the

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157 *See id.*

158 *See id.*

159 *See* Kristofer A. Kristofferson, Note, Lange v. California *141 S. Ct. 2011 (2021)*, 48 OHIO N.U. L. REV. 191, 199–200 (2021).

160 *Lange*, 141 S. Ct. at 2024–25.

161 *See* Wayne R. LaFave, *Being Frank About the Fourth: On Allen's "Process of 'Factualization' in the Search and Seizure Cases"*, 85 MICH. L. REV. 427, 452 (1986).

162 *See id.*

163 *Id.* Of course, this test has not been adopted by any court. Instead, it merely serves as a good doctrinal foundation that some scholars have used for considering whether a bright line is appropriate when a court fashions a new Fourth Amendment rule. *See infra* note 167.

164 LaFave, *supra* note 161, at 467–68.

minds of police and judges."[165] Thus, a bright-line rule for the hot pursuit of fleeing misdemeanants should consider certain line-drawing issues such as the seriousness of varying misdemeanors, the privacy interest at stake if warrantless entry of a home is permitted, and the practicality of conducting a totality of the circumstances test while in hot pursuit.

III. Determining When a Categorical Rule Should Be Used in Hot Pursuit

Given *Lange*'s holding and implications, this Note proposes that the Court should adopt an analysis that balances an individual's privacy interest in the home with the practical interests of officers who find themselves in an actual hot pursuit. This balance can be achieved if the Court adopts a bright-line rule for certain classes of misdemeanor offenses in which hot pursuit could never justify a warrantless entry.[166] If the Court adopts this approach, it can properly balance the Chief Justice's concerns for clear rules to police and the majority's concerns about the substantial intrusion of a warrantless entry into the home.

A. *The Operation of a Bright-Line Formula for Determining Certain Classes of Misdemeanor Offenses*

When determining what classes of minor offenses should be included under a bright-line formula, the Court should look to the analysis LaFave discusses regarding the adoption of bright-line rules. This analysis should also consider the seriousness of the underlying misdemeanor in relation to the recognized substantial intrusion on an individual's interest in the home. Thus, the Court should impose a bright-line prohibition against a

[165] *Id.* at 468.

[166] It should be noted that other exigent circumstances, like destruction of evidence or the protection from harm, may be invoked. I am simply proposing that if only the hot pursuit exception is argued, some classes of minor offenses should never justify a warrantless entry. The Court in *Lange* has specifically stated that if other exigencies do exist, then that could justify a warrantless entry into the home in the face of some minor offense. Thus, my proposal is cabined to circumstances only in which the hot pursuit exigency is invoked. Any discussion on the interaction between other exigent circumstances and my proposal are outside the scope of this Note.

In another student note, Kristofferson takes a different position from this article in some respects. Kristofferson, *supra* note 159, at 199–201. He states that *Lange*'s holding was correct not to impose a categorical exception to the Fourth Amendment for the hot pursuit of fleeing misdemeanants. *Id.* at 199. But his note did not consider a narrower subset of underlying crimes that should be considered when determining whether to impose a bright-line rule. However, like this Note, Kristofferson has recognized that the underlying crime plays a key role in the analysis for the correct underlying test for hot pursuit of fleeing misdemeanants. *Id.* at 200.

warrantless entry into the home for an officer in hot pursuit of a fleeing misdemeanant if: (1) the bright-line prohibition has clear and certain boundaries, (2) the prohibition produces results approximating those if accurate case-by-case adjudication were conducted, and (3) the prohibition cannot be readily subject to manipulation and abuse.[167] In practice, balancing the seriousness of the underlying misdemeanor and the substantiality of the intrusion into the home against the government's interest in crime fighting and public safety will happen in step two. Step three will involve an analysis of pretext and other means by which officers could abuse a bright-line formula.[168]

Under recent Supreme Court precedent, one particular class of misdemeanor offenses seems ripe for the Court to declare that officers cannot, in hot pursuit, categorically enter the home without a warrant. Non-jailable offenses, as found in *Welsh v. Wisconsin*, are the prime example of a class of minor offenses that should not, categorically, give rise to a warrantless entry into the home if the officer is in hot pursuit.[169]

Non-jailable offenses meet all three steps of analysis for the adoption of prohibitions against a warrantless entry.[170] First, the mere label as a non-jailable offense presents a clear and certain boundary that makes case-by-case evaluation unnecessary. Non-jailable offenses are not as serious when compared to offenses that a legislature has assigned prison time as a possible punishment. Plus, any court or police officer can easily look to the statute to determine whether an offense is non-jailable.

Second, when non-jailable offenses are the predicate for hot pursuit, a bright-line rule would produce approximately the same results as individual case-by-case determinations because the seriousness of these offenses is low compared to a warrantless intrusion of the home.[171] Thus, an officer is likely to almost always find that, barring any other exigent circumstances, when he is in hot pursuit of an individual who he has probable cause to believe has committed a non-jailable offense, the individual's flight alone could not justify an entry into the home. Third,

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[167] *See* William A. Schroeder, *Factoring the Seriousness of the Offense Into Fourth Amendment Equations—Warrantless Entries Into Premises: The Legacy of* Welsh v. Wisconsin, 38 U. KAN. L. REV. 439, 499 (1990). Professor William Schroeder adapts Professor Wayne LaFave's four-part test but frames it in an ex ante perspective rather than LaFave's ex post perspective. In LaFave's article, he adds a fourth prong when discussing bright-line rules. But that fourth prong looks to see whether a previous principle has proved to be unworkable. Many times, this prong will be inapplicable. *See* LaFave, *supra* note 161, at 452 (discussing general considerations courts should examine before imposing bright-line rules).

[168] *See* Schroeder, *supra* note 167, at 490.

[169] *Id.* at 472.

[170] *Id.* at 504–05.

[171] *Id.* at 470–72, 489–91.

this bright-line rule prevents the abuse of an individual's privacy interest since officers cannot use a non-jailable offense as pretext to enter the home without a warrant.

The ex post factor LaFave discusses weighs in the opposite direction for non-jailable offenses because the Court's institutional practice has always favored a totality of the circumstances approach for exigencies.[172] But that alone should not be enough to weigh against the imposition of a bright-line prohibition here. Even LaFave seems to acknowledge that some bright-line formula is necessary in the realm of exigencies because of how complicated a totality of the circumstances analysis can appear to officers in practice.[173] Using LaFave's four-part analysis, Professor William Schroeder has similarly concluded that bright-line rules are necessary.[174]

B. *The Benefits Outweigh the Detriments of a Bright-Line Rule for Certain Classes of Minor Offenses*

The doctrine proposed here may suffer from being too over-inclusive.[175] Bright-line rules cannot account for small factual differences particular to an individual's case. But even if the proposed rule is over-inclusive, the benefits of the bright-line formula proposed in the context of hot pursuit of fleeing misdemeanants can still be evaluated relative to its detriments.

Bright-line rules produce benefits when implemented and constrained properly.[176] At first blush, bright-line rules in the context of hot pursuit are extremely useful in clarifying what an officer can and cannot do.[177] It leaves little to chance and gives an officer clear instruction on how to act.[178] Particularly in the hot pursuit context, an officer must make decisions at a moment's notice.[179] And a bright-line rule helps an officer make that quick—and most importantly, correct—decision as to whether an officer can follow a fleeing misdemeanant without a warrant.

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172 *See* LaFave, *supra* note 161, at 466–67; Birchfield v. North Dakota, 579 U.S. 438, 457 (2016) ("We refuse[] to 'depart from careful case-by-case assessment of exigen[cies] . . . .'" (quoting Missouri v. McNeely, 569 U.S. 141, 152 (2013))).

173 *Id.* at 467–68.

174 *See* Schroeder, *supra* note 167, at 499.

175 *See* LaFave, *supra* note 161, at 450.

176 *See* Schroeder, *supra* note 167, at 472.

177 *See* Lange v. California, 141 S. Ct. 2011, 2029–30 (2021) (Roberts, C.J., concurring).

178 *See id.*

179 *Id.* at 2031; *see also* Schroeder, *supra* note 167, at 472 ("[A] pursuing officer [is put] in the impossible situation of weighing, often while literally on the run, multiple and possibly competing factors.").

Moreover, the costs of implementing the proposed bright-line formula are low. By focusing on the seriousness of the underlying misdemeanor, the Court benefits from an efficient use of judicial resources because most minor offenses are of the nature that "no evidence of their commission exists to be found or destroyed."[180]

Finally, bright lines for minor misdemeanors protect an individual's interest in the home. Many times, when a court is required to apply a totality of the circumstances test, a close case for a clearly guilty person will lean in favor of the officer.[181] But this also means that an individual's rights may be infringed upon more in close cases. Imposing bright-line rules will reduce an officer's discretion when determining whether an exception to the warrant requirement, such as hot pursuit, exists. Bright lines, then, serve to protect an individual's interest in the sanctity of their home without regard to how guilty the individual may appear.[182]

Of course, there are detriments to this bright-line formula. Its application may be extremely difficult for a court first to impose because determining whether something is minor versus more serious can be confusing. Opponents of bright-line rules suggest that it is exactly that gray area that makes bright-line formulas both over- and under-inclusive.[183] And while that may be true, that has not stopped the Supreme Court from imposing at least some bright-line rules in almost every aspect of the law.[184] There are many instances in Fourth Amendment jurisprudence where bright-line rules are employed. Famous cases like *Miranda v. Arizona*[185] and *United States v. Watson*[186] both draw bright lines for law enforcement purposes.[187] Thus, the mere existence of a gray area only means that the Court should be more wary when imposing a bright line. This should not countenance against the imposition of bright-line rules entirely.

Accordingly, when one balances this detriment against the benefits the proposed bright-line formula provides for police officers and an individual's privacy interest in their home, imposing some bright-line rules for the hot pursuit of fleeing misdemeanants must win the day.[188]

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180 Schroeder, *supra* note 167, at 472.

181 *Id.* at 490; *see also* Brinegar v. United States, 338 U.S. 160, 182 (1949) (Jackson, J., dissenting).

182 *See* Schroeder, *supra* note 167, at 490.

183 *See generally* Kristofferson, *supra* note 159, at 201–03. Kristofferson argues that *Lange*'s holding was necessary to stave off an erosion of the reasonableness requirement articulated in the text of the Fourth Amendment. *Id.* This article takes no position on that proposition.

184 *See* LaFave, *supra* note 161, at 450–51.

185 384 U.S. 436 (1966).

186 423 U.S. 411 (1976).

187 *See* LaFave, *supra* note 161, at 450, 466–68.

188 *See* Kristofferson, *supra* note 159, at 205–06.

Another student note has also suggested that *Lange*'s holding tips the balance in favor of private citizens.[189] But this Note serves to fine-tune that conclusion and argues that the bright-line rule should be carefully articulated to protect private citizens without interrupting important police capabilities. Bright lines for fleeing misdemeanants can benefit law enforcement without diminishing the individual's right to privacy.

Conclusion

Lange v. California is surely a seminal case for the hot pursuit doctrine, but it is yet to be seen how deep its implications are to the exigent-circumstance exception to the warrant requirement. This Note has analyzed *Lange*'s deeper implications on Fourth Amendment jurisprudence and law enforcement practices.

The Supreme Court in *Lange* finally answered whether hot pursuit categorically applied to fleeing misdemeanants. In doing so, the Court balanced privacy interests and the government's interest in safety and enforcing its laws. But it did not get that balance correct. The Court has tipped the scales toward privacy but to the detriment of the good-faith work of law enforcement.

To correct this imbalance, this Note proposes that the Court should expand on *Lange* to adequately account for the government's valid interest in efficient crime-fighting abilities. The Court can adopt a rule that imposes a bright line, without running afoul of *Lange*, for certain classes of minor misdemeanor offenses—like non-jailable offenses—for which officers cannot, in hot pursuit, enter a home without a warrant. When deciding to impose a bright-line rule for a class of minor misdemeanor offenses, the Court should consider (1) whether the bright-line prohibition has clear and certain boundaries, (2) if the prohibition produces results approximating those if accurate case-by-case adjudication were conducted, and (3) if the prohibition cannot be readily subject to manipulation and abuse. If the Court determines a certain class of misdemeanor offenses meets these criteria, then it should impose a bright-line rule that bars any officers from entering a home without a warrant while in hot pursuit of a person suspected of committing that misdemeanor.

This formula for determining when to impose a bright-line rule will allow the Court to weigh the relative benefits and detriments of a bright-line rule. Where the Court finds the imposition of a bright-line rule justified, the Court will have provided clear guidance on what is and is not expected of the officer in the real-life practice of law enforcement.

[189] *Id.*

Compared to the totality of the circumstances approach taken in *Lange* for all fleeing misdemeanants, bright-line rules imposed for certain classes of misdemeanors will reduce the ambiguity officers will face in the field and ultimately lead to more efficient law enforcement practices.

And most importantly, imposing bright-line rules for certain classes of minor misdemeanors will better protect the privacy interests of everyday Americans. Close cases in a totality of the circumstances regime tend to favor law enforcement's intrusions of privacy. However, because bright-line rules will reduce an officer's discretion, an individual need not worry that their homes will be invaded due to the clear guidelines an officer must now observe. Under this Note's proposal for the hot pursuit of fleeing misdemeanants, everyday Americans need not fear that their interest in the privacy of their own homes will be ceded to the government, and officers can still efficiently fight crime.