



JUNE 2025

# Warrantless Entries

## UNDERSTANDING EXIGENT CIRCUMSTANCES

### Part 1

### Hot Pursuit Explained

**The Basics:** The Fourth Amendment protects “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

At the core of this protection is “the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion. *Florida v. Jardines*, (2013). Normally, a warrant is required before entering someone’s home. However, courts recognize several exceptions – one of the most important being **exigent circumstances**.

**What Are Exigent Circumstances?** The U.S. Supreme Court defines “exigent circumstances” as “an emergency situation requiring swift action.” *Birchfield*

*v. North Dakota* (2013). When time is critical and writing a warrant isn't practical, officers may lawfully enter a home without one — but only if it is **reasonable** based on the situation.

As the Second Circuit put it, “the core question is whether the facts, as **they appeared at the moment of entry**, would lead a reasonable experienced officer to believe that there was an urgent need to render aid or take action.” *U.S. v. Klump* (2d Cir. 2008).

The primary examples of exigent circumstances include entering a home: (1) to prevent imminent danger of death or serious injury; (2) to prevent the destruction of evidence; and (3) when in hot pursuit of a fleeing suspect.<sup>1</sup>

#### Hot Pursuits:

The Supreme Court in *U.S. v. Santana*, (1976) explained that a pursuit is “hot” if: (1) There is **probable cause** to arrest the suspect; (2) the arrest was **attempted in a public place**; and (3) the suspect fled into their home or other private place.

Recently, the Ninth Circuit revisited this in *Newman v. Underhill, et al.*, (9th Cir. 2025).

**Case Study** - In *Newman*, San Bernardino County Sheriff’s Deputy Todd Underhill tried to pull over a fleeing suspect in a Chevy Silverado. The suspect turned down a dead-end road and fled on foot towards a nearby house. As Underhill chased, he

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<sup>1</sup> *Imminent Danger of Death or Serious Injury, and Destruction of Evidence will be covered in future Training Bulletins – Stay Tuned!*



notified dispatch that the suspect was last seen running toward a residence and requested backup.

Underhill ran toward the backyard but because he lost sight of the suspect, he paused and waited for Deputy Barner who arrived approximately two minutes later. As the two Deputies cleared the backyard, Underhill noticed the back door was slightly ajar. Underhill made announcements into the residence and heard Plaintiff's voice from inside. Approximately nine minutes elapsed between the time Underhill initiated pursuit to when the two Deputies entered the residence.

Once inside, Underhill encountered Newman who turned out to be the suspect's roommate. After some push-back, Newman consented to Underhill searching the residence and the suspect was located and arrested.

Newman then sued both Deputies and the Sheriff's Department alleging that Underhill violated his Fourth Amendment rights. The District Court entered judgment in favor of Underhill and Newman appealed.

On appeal, the Ninth Circuit held that, based on the totality of the circumstances, "a reasonable person in Underhill's shoes would have believed that there was at least a fair probability that [the suspect] was inside Newman's home."

However, Newman argued that the pursuit was no longer "hot" and therefore there was no exigency for Underhill to enter the home. The Court disagreed and held that, in the Ninth Circuit, a pursuit remains hot "if the officers were in **immediate and continuous**

pursuit of a suspect from the scene of the crime at the moment they made entry."

It was undisputed that Underhill gave chase "immediately" after seeing the suspect fail to yield to the traffic stop (a felony). However, Newman argued that because Underhill lost sight of the suspect for nine minutes before entering, the pursuit was not "continuous".

The Court again disagreed and explained that if an officer always knows where the suspect is then the pursuit is obviously continuous; but, if officers "no longer have any idea where the suspect is" at they time they enter home, then the search is no longer continuous, and the entry is not exigent.

Underhill's pursuit was somewhere in the middle. Although there was a nine-minute "pause" in the pursuit, "during those nine minutes, Underhill had a reasonably good idea of where [the suspect] was hiding [and] Underhill spent most, if not all, of the nine minutes in question actively working to find and apprehend" the suspect.

Therefore, the Ninth Circuit concluded that Underhill's pursuit remained continuous and thus still "hot" for the purposes of making an exigent entry into Newman's home.

### "Hot Pursuit" and Misdemeanors

Importantly, hot pursuit does not require a felony. Probable cause that a suspect committed a crime is required; but keep in mind that courts review the circumstances of warrantless entries on a case-by-



case basis and have generally held that “minor offenses” will not justify warrantless entries.

In *Lange v. California*, (2021), the U.S. Supreme Court ruled that chasing someone suspected of a misdemeanor DUI into a home didn’t automatically justify warrantless entry. CHP attempted a traffic stop for suspected DUI approximately 400 feet from Lange’s house. Instead of pulling over, Lange parked in his driveway and entered his attached garage. The officer followed Lange, began questioning him, and eventually conducted field sobriety tests which Lange miserably failed. Lange was charged with misdemeanor DUI but moved to suppress all evidence obtained after the officer entered his garage. The CHP officer argued that he was justified based on “hot pursuit” and the California courts agreed. Lange appealed to the U.S. Supreme Court.

Although all three requirements for “hot pursuit” were met, the Supreme Court did not agree the entry into the garage was justified and reversed, holding that the government’s interest in arresting Lange did not outweigh the protections of the Fourth Amendment.

The Supreme Court recognized that California classifies various forms of assault as misdemeanors (e.g. domestic violence) while at the same time it is a misdemeanor to litter on a public beach; thus, there cannot be a flat rule that “exigency exists in every misdemeanor pursuit”.

Therefore, the Court rejected a blanket rule for misdemeanors, emphasizing that courts must consider each case individually.

### **Take Aways:**

“Hot pursuit” allows warrantless entry – but only with probable cause, a public arrest attempt and a suspect fleeing into a private space.

Pursuit must be “immediate and continuous” and while there is no specific rule that the crime must have been a felony (i.e.: a “fleeing felon”), courts will rarely find that exigency exists for “minor offenses.”

**Remember:** When the nature of the crime, the nature of the pursuit, and the surrounding facts do not present a “now or never” urgency, respect “the sanctity of the home” – and get a warrant.

### ***Stay Safe and Informed!***

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