CONSTITUTIONAL LAW—JOYCE V. TOWN OF TEWKSBURY: THE FOURTH AMENDMENT’S PROTECTION OF LIBERTY AND PRIVACY VERSUS QUALIFIED IMMUNITY

Heather Carey

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NOTES

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INTRODUCTION

The Fourth Amendment to the United States Constitution secures the people's right to be free from unreasonable searches and seizures. The United States Supreme Court has stated that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." Generally, any search or seizure conducted without a valid warrant is unconstitutional, although there are certain well-recognized exceptions.

1. The Fourth Amendment reads:
   The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.
   U.S. Const. amend. IV.
4. A search or seizure may be reasonable under the Fourth Amendment, even where law enforcement officers do not possess a warrant, provided that it is supported by probable cause. See, e.g., California v. Acevedo, 500 U.S. 565, 579 (1991) (holding that a warrant is not necessary to search an automobile when there is probable cause to believe that the vehicle contains contraband); Horton v. California, 496 U.S. 128, 136-37 (1990) (adopting the rule that officers may seize items in "plain view" without a search warrant); United States v. Santana, 427 U.S. 38, 43 (1976) (holding that when sufficient exigent circumstances are present to justify entry into a home, a warrant is not a requisite); United States v. Watson, 423 U.S. 411, 427 (1976) (holding that no arrest warrant is required to arrest a suspect when the suspect is in public); Schneckloth v. Bustamonte, 412 U.S. 218, 226-27 (1973) (holding that where consent is voluntarily given—a court determines voluntariness by weighing the totality of the circumstances—a search without a warrant is constitutional); Chimel v. California, 395 U.S. 752, 763 (1969) (holding that no search warrant is necessary for a "search incident to arrest"); United States v. McConney, 728 F.2d 1195, 1206 (9th Cir. 1984) (following Chimel and holding that a search incident to arrest is an exception to the warrant requirement);
Perhaps the most notable of these exceptions is what the Supreme Court has termed "exigent circumstances." Absent a showing of exigency or consent, the police officer must obtain a warrant from a neutral magistrate who determines whether there is sufficient probable cause.

Where, however, police conduct a search or arrest of an individual without a warrant in circumstances that do not fall under one of the recognized exceptions, an individual may claim that the police have violated his Fourth Amendment rights. To remedy the harm of such a Fourth Amendment violation, the individual may

United States v. Blalock, 578 F.2d 245, 247 (9th Cir. 1978) (holding that no warrant is necessary to arrest a suspect in the suspect's business establishment during business hours).

5. Generally, exigent circumstances exist where there is an emergency situation justifying police action without a warrant. See generally Minnesota v. Olson, 495 U.S. 91, 100 (1990) (discussing several examples of exigent circumstances). Exigent circumstances include the following: (1) "hot pursuit of a fleeing felon," (2) "imminent destruction of evidence," (3) "the need to prevent a suspect's escape," and (4) "the risk of danger to the police or to other persons inside or outside the dwelling." Id. (citations omitted); see also Arizona v. Hicks, 480 U.S. 321, 325 (1987) (holding that an exigency may have existed to investigate a bullet fired through an apartment floor); Michigan v. Tyler, 436 U.S. 499, 509 (1978) (holding that a burning building creates an exigency); Warden v. Hayden, 387 U.S. 294, 298-99 (1967) (holding that police officers may enter a dwelling to search for a suspected felon and his weapons within minutes of a robbery because "[t]he 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. Speed here was essential . . .").

Courts determine whether sufficient exigent circumstances exist on a case-by-case basis. See Olson, 495 U.S. at 100 (stating that the court may employ a "fact-specific application of the proper legal standard" to determine whether exigent circumstances exist); see also Welsh v. Wisconsin, 466 U.S. 740, 761 (1984) (White, J., dissenting) (recognizing that the majority's holding that courts should consider the gravity of the offense when determining if exigent circumstances exist will necessitate a case-by-case analysis). However, the prosecution bears the burden of proving that sufficient exigent circumstances exist to warrant the intrusion. See Welsh, 466 U.S. at 750 (stating that "the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries"); H. Patrick Furman, The Exigent Circumstances Exception to the Warrant Requirement, 20 COLO. L. REV. 1167, 1167 (1991) (stating that "[t]he prosecution bears the burden of establishing probable cause . . . [and] exigent circumstances").

6. See, e.g., Schneckloth, 412 U.S. at 226-27 (holding that where consent is voluntarily given—a court determines voluntariness by weighing the totality of the circumstances—a search without a warrant is constitutional).

7. See Payton, 445 U.S. at 576. For a discussion of the warrant process, see infra Part I.A.2. For a discussion of probable cause, see infra note 54 and accompanying text. There are other instances in which an arrest is lawful notwithstanding the absence of an exigency or consent. See supra note 4 for a description of several of these exceptions.

8. See supra notes 4-5 for descriptions and examples of certain exceptions, including exigent circumstances, to the warrant requirement.
bring a civil action under 42 U.S.C. § 1983.9 Section 1983 provides a federal cause of action against state officials for deprivations of constitutional or federal statutory rights.10 The purposes are two-fold. First, § 1983 discourages state officials from using the “badge of their authority” to deprive individuals of federal constitutional and statutory rights.11 Second, the statute provides individuals with a remedy where § 1983 does not succeed in discouraging such deprivations of federal statutory or constitutional rights.12 State officials can, however, avoid § 1983 liability with a number of defenses.13

The most common method for public officials to avoid liability under § 1983 is to claim a defense of qualified immunity.14 Qualified immunity is an affirmative defense, which shelters public offi-


Every person who, under color of any statute . . . of any State or Territory . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. Id. See infra Part I.C.1 for further a discussion of § 1983.


12. See id.


cials from civil liability for violations of constitutional or statutory rights. In order for an official to prevail on his defense of qualified immunity, the official must show that the law that he allegedly violated was not "clearly established" at the time of the alleged misconduct. The primary purpose of qualified immunity is to enable public officials to perform their duties without the interruption of potentially "harassing litigation."

The United States Court of Appeals for the First Circuit addressed the defense of qualified immunity in the context of the Fourth Amendment and § 1983 in Joyce v. Town of Tewksbury. In Joyce, police officers entered the Joyces' home, without a search warrant, to execute an outstanding arrest warrant for the Joyces' son, Lance Joyce, who did not reside in that house. Joanne and James Joyce brought suit against the two officers under 42 U.S.C.

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16. See Harlow, 457 U.S. at 818; see also Anderson, 483 U.S. at 640 (defining "clearly established" as those rights where "[t]he contours of the right [are so] sufficiently clear that a reasonable official would understand" that his conduct violates that established right); Pinder v. Comm'rs of Cambridge, 821 F. Supp. 376, 398 (D. Md. 1993) (holding that the inquiry into whether an officer is entitled to qualified immunity "requires a review of (1) the identification of the specific right allegedly violated; (2) determining whether or not at the time of the alleged violation, the right was "clearly established"; and (3) whether a reasonable person in the officer's position would have known that [his conduct] would violate that right"), rev'd on other grounds, 54 F.3d 1169 (4th Cir. 1995). See infra Part I.C.2 for further discussion of qualified immunity.

17. See Mark R. Brown, Correlating Municipal Liability and Official Immunity Under Section 1983, 1989 U. Ill. L. Rev. 625, 670 (1989) ("The rationale for qualified immunity is that . . . an official must be allowed to act undeterred by potential harassing litigation."); see also Elder, 510 U.S. at 514; Wyatt v. Cole, 504 U.S. 158, 167 (1992) ("Qualified immunity strikes a balance between compensating those who have been injured by official conduct and protecting government's ability to perform its traditional functions."); Anderson, 483 U.S. at 638 ("[P]ermitting damages suits against government officials can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties."); Butz v. Economou, 438 U.S. 478, 506 (1978) (stating that immunity was justified, in part, to preserve the "public interest in encouraging the vigorous exercise of official authority"); Pierson v. Ray, 386 U.S. 547, 554 (1967) (recognizing that qualified immunity permits officials to perform their duties in a "principled and fearless" manner).

18. 112 F.3d 19 (1st Cir. 1997).
19. See id. at 20.
20. The Joyces originally brought suit against the Town of Tewksbury, the chief of
§ 1983, alleging that the officers violated their Fourth Amendment rights by entering their home without a search warrant. The court addressed the following issue: whether police officers' entry into a third party's home without a search warrant to arrest a suspect for whom they have an arrest warrant violates "clearly established" Fourth Amendment rights of which a reasonable officer would have known at the time of the entry. Rather than deciding the issue on Fourth Amendment grounds, however, the First Circuit held that the officers were protected under the doctrine of qualified immunity. The dissent argued that the majority's use of qualified immunity was incorrect because the police officers' conduct presented a clear violation of the Fourth Amendment.

This Note addresses the issue of whether the First Circuit erred...
in granting the police officers in *Joyce* qualified immunity under the particular facts of that case. Part I of this Note provides a brief overview of the Fourth Amendment, discussing its origins and subsequent ratification. This Part also discusses the warrant requirement contained in the Warrant Clause of the Fourth Amendment, the process utilized in obtaining a warrant, and the distinctions between arrest warrants and search warrants. Part I further examines United States Supreme Court decisions concerning how arrest warrants, search warrants and exigent circumstances impact arrests occurring in homes. Finally, Part I discusses § 1983 actions and the doctrine of qualified immunity. Part II presents the United States Court of Appeals for the First Circuit’s decision in *Joyce v. Town of Tewksbury*, outlining the relevant facts as well as the majority, concurring, and dissenting opinions. Part III explores relevant substantive Fourth Amendment law and suggests that the First Circuit erred in applying qualified immunity. Specifically, this Part argues that at the time of the alleged misconduct in *Joyce*, Supreme Court case law “clearly established” that police officers may not enter a third party’s home to execute an arrest warrant without first obtaining a search warrant for the premises. Finally, Part III suggests that when courts—like the *Joyce* court—grant qualified immunity without first wrestling with difficult Fourth Amendment issues, the line between constitutional and unconstitutional searches and seizures remains unclear. Further, this Part hypothesizes that through decisions such as *Joyce v. Town of Tewksbury*, courts promote confusion among law enforcement officers as to the constitutionality of their actions. This Note concludes that the First Circuit’s avoidance of the Fourth Amendment issue, by holding that the doctrine of qualified immunity protected the officers in *Joyce*, could result in further infringement upon constitutionally protected rights in the future.

26. See *infra* Part I.A.1 for a discussion of the use of general warrants and the abuses connected with those warrants that the Framers sought to eradicate by enacting the Fourth Amendment.

27. See *infra* Part I.A.2 for a discussion of the warrant process and the distinctions between arrest warrants and search warrants.

28. See *infra* Part I.B.1-3 for a discussion of the Supreme Court precedent relevant to the present issue.

29. See *infra* Part I.C.2 for a discussion of the doctrine of qualified immunity.

30. 112 F.3d 19 (1st Cir. 1997).
I. The Fourth Amendment, the Warrant Clause, and Qualified Immunity

To better understand the issue addressed in Joyce v. Town of Tewksbury, it is necessary to first examine the history and development of the Fourth Amendment as well as the warrant requirement set forth in the amendment. It is also necessary to examine the relevant Supreme Court decisions interpreting the Fourth Amendment’s warrant requirement as it pertains to arrests in homes. Finally, to discern why the First Circuit in Joyce employed the doctrine of qualified immunity, one must examine the purpose and significance of qualified immunity.

A. Development of the Fourth Amendment and Its Application

1. Writs of Assistance and the Adoption of the Fourth Amendment

The adoption of the Fourth Amendment was largely a reaction to the abuse of discretion and power exercised pursuant to the writs of assistance used in the colonies. Also known as general warrants, writs of assistance were most commonly used by customs officials in the detection of smuggled goods. Issued by the Superior Court of the colony, general warrants allowed authorized persons to “search any house, shop, warehouse . . . break open doors, chests, packages . . . and remove any prohibited or uncustomed goods or merchandise.” They required no degree of suspicion, were not particularized to person or place, and did not need to be supported by information that illegal activity was taking place or that illegal goods were being stored. Although such writs were

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31. 112 F.3d 19 (1st Cir. 1997).
32. See Chimel v. California, 395 U.S. 752, 761 (1969) (stating that the Fourth Amendment “was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists”); Nelson B. Lasson, The History and Development of the Fourth Amendment to the United States Constitution 51-60 (1937).
33. See Stanford v. Texas, 379 U.S. 476, 481 (1965) (stating that “[t]he hated writs of assistance had given customs officials blanket authority to search where they pleased for goods imported in violation of the British tax laws”); see also Lasson, supra note 32, at 56.
34. Lasson, supra note 32, at 53. The writs of assistance used in the colonies were similar to the writs used in England, with the same authority given to the official who held one, except that the English Court of Exchequer issued the writs used in England. See id. at 53-54.
35. See Thomas K. Clancy, The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures, 25 U. Mem. L. Rev. 483, 500 (1995). In addition to the arbitrary issuance of writs where no credible information was needed to
issued by the Superior Court, they did not expire until the death of the monarch.\textsuperscript{36} Therefore, "[t]he discretion delegated to the official was . . . practically absolute and unlimited."\textsuperscript{37}

Consequently, many colonial courts began to deny the issuance of the general warrants, although required to do so by law,\textsuperscript{38} because of criticisms regarding their legality.\textsuperscript{39} In response to these concerns, the individual states adopted provisions in their constitutions to protect the people from the unfettered discretion of officials associated with the general warrants.\textsuperscript{40}

During the ratification debates of the United States Constitution, one of the principal arguments against ratification was the omission of a bill of rights.\textsuperscript{41} Although the states eventually ratified the Constitution without a bill of rights, advocates of a bill of rights continued to fight for its inclusion.\textsuperscript{42} Thus, at the Constitutional search for and seize goods, the official who seized the goods would receive an allotment of the goods seized as recompense for his duties, thus furthering the injustices of the procedure. See M.H. Smith, The Writs of Assistance Case 13 (1978). But see Lasson, supra note 32, at 54 (stating that general warrants issued for a case of libel were limited in reach because they extended only to particular types of objects, namely, libelous literature).

36. See Richard E. Hillary, II, Note, Arizona v. Evans and the Good Faith Exception to the Exclusionary Rule: The Exception is Swallowing the Rule, 27 U. Tol. L. Rev. 473, 476 (1996); see also Lasson, supra note 32, at 57 (stating the writs expired "six months after the death of the sovereign").

37. Lasson, supra note 32, at 54. James Otis, a Massachusetts attorney representing a group of Boston merchants opposing the writs, argued that the writs of assistance were "the worst instruments of arbitrary power, the most destructive of English liberty . . . ." Id. at 59; accord Boyd v. United States, 116 U.S. 616, 625 (1886). Otis further argued that the writs of assistance should be limited so that they were issued only when supported by information given under oath that is particularized to a specific seizure or search. See Smith, supra note 35, at 282-83; see also Clancy, supra note 35, at 505.

38. See George Anastaplo, The Amendments to the Constitution 71 (1995). The Townshend Act of 1767, enacted by the British Crown, specified the superior or supreme courts of each colony as the bodies charged with issuing writs of assistance. See Hillary, supra note 36, at 476.

39. See Lasson, supra note 32, at 73.

40. Virginia, Vermont, North Carolina, New Hampshire, Pennsylvania, Maryland, and Massachusetts all adopted provisions similar to those contained in the Fourth Amendment, and served as models for the current Fourth Amendment. See Lasson, supra note 32, at 82 n.17; see also Anastaplo, supra note 38, at 71.

41. See generally Lasson, supra note 32, at 83-100.

42. See id. at 98-99. James Madison stated the following:

The General Government has a right to pass all laws which shall be necessary to collect its revenue; the means for enforcing the collection are within the discretion of the Legislature; may not general warrants be considered necessary for this purpose, as well as for some purposes which it was supposed at the framing of their constitutions the State Governments had in view? If there
Convention of 1787, it became clear that it was time to protect the citizens of the United States from the federal government's powers.\textsuperscript{43} The Founding Fathers had three concerns leading to the enactment of the Fourth Amendment: (1) to "ensure that searches and seizures would be justified by probable cause, [(2)] to restrict their scope with the requirement of particularity, and [(3)] to enforce these limits with various mechanisms, including independent judicial review."\textsuperscript{44}

The Framers of the Bill of Rights viewed the adoption of the Fourth Amendment as necessary to safeguard the citizens' rights. The Supreme Court has stated that the warrant requirement of the Fourth Amendment facilitates the protection of liberty and privacy interests.\textsuperscript{45} The Framers secured this protection through the use of two types of warrants: the arrest warrant and the search warrant.

2. The Warrant Requirement

The Fourth Amendment is comprised of two clauses: the Reasonableness Clause\textsuperscript{46} and the Warrant Clause.\textsuperscript{47} The Warrant Clause, which embodies the warrant requirement, is particularly

\textsuperscript{43} See id. at 83.

\textsuperscript{44} Morgan Cloud, Searching Through History; Searching for History, 63 U. CHI. L. REV. 1707, 1731 (1996); cf. TELFORD TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 41 (1969) (arguing that the Framers "were not concerned about warrantless searches, but about overreaching warrants").

\textsuperscript{45} Although the Framers consciously intended the Fourth Amendment to protect property and liberty rights, the Supreme Court has since interpreted the Fourth Amendment as protecting individual privacy interests. See infra note 80.

\textsuperscript{46} See U.S. CONST. amend. IV. The Reasonableness Clause protects individuals from unreasonable searches and seizures: "[t]he right of the people to be secure ... against unreasonable searches and seizures, shall not be violated ..." Id.

\textsuperscript{47} See U.S. CONST. amend. IV. The Warrant Clause provides that judges may only issue warrants where probable cause exists, and the warrant must state with particularity the object or person to be searched or seized: "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Id.

In Marshall v. Barlow's, Inc., 436 U.S. 307, 327 (1978), the Supreme Court used the term "Reasonableness Clause" to describe the first clause of the Fourth Amendment and "Warrant Clause" to define the second clause. The Supreme Court had previously labeled the two clauses in this manner. See, e.g., Lopez v. United States, 373 U.S. 427, 454 (1963) (Brennan, J., dissenting) (referring to the second clause of the Fourth Amendment as the "Warrant Clause" for the first time); Michigan v. Clifford, 464 U.S. 287, 303 n.5 (1984) (Stevens, J., concurring) (using the term "Reasonableness Clause" to mean the first clause of the Fourth Amendment). However, Marshall was the first case to use both terms. See Marshall, 436 U.S. at 327.
significant where police officers seek to either seize a person or object or search certain premises. Generally, the Warrant Clause requires police officers to obtain a warrant to either arrest a suspect or search an individual’s home.48 However, although warrantless searches and seizures are permissible in some instances,49 the Warrant Clause imposes strict guidelines on the issuance of warrants.50

The Warrant Clause provides that a judge or magistrate may only issue a warrant where probable cause exists, and the warrant must state with particularity the object or person to be searched or seized: “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”51 In obtaining a warrant, police first submit an affidavit to a judge or magistrate for a determination of sufficient probable cause.52 The affidavit must specify the facts and circumstances that support a conclusion of probable cause, and not merely the officer’s subjective belief that probable cause exists.53

Generally, “[p]robable cause exists where ‘the facts and circumstances within [the officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense

48. See Payton v. New York, 445 U.S. 573, 586 (1980) (stating that warrantless searches are “presumptively unreasonable” unless they fall under designated exceptions); see also California v. Acevedo, 500 U.S. 565, 580 (1991) (acknowledging that automobile searches conducted without a warrant are per se unreasonable); United States v. Place, 462 U.S. 696, 701 (1983) (recognizing that seizures are per se unreasonable unless supported by a warrant based upon probable cause); Katz v. United States, 389 U.S. 347, 357 (1967) (stating that a search or seizure is reasonable if authorized by a valid warrant); Carroll v. United States, 267 U.S. 132, 155-56 (1925) (declaring that the reasonableness of a seizure is determined by whether the officer had the requisite “reasonable or probable cause” as required by the warrant requirement).

49. See supra note 4 for a description of the exceptions to the warrant requirement.

50. See supra note 47 and infra note 51 and accompanying text for the text of the Warrant Clause and its restrictions on the issuance of warrants.

51. U.S. CONST. amend. IV.

52. See generally Spinelli v. United States, 393 U.S. 410 (1969) (discussing the process of presenting an affidavit in order to obtain a warrant); United States v. Nelson, 511 F. Supp. 77, 80 (W.D. Tex. 1980) (stating that “[b]efore issuing the arrest warrant, the magistrate is to determine from a complaint or affidavits filed with the complaint that there is probable cause to believe that an offense has been committed and that the defendant has committed it”); RICHARD VAN DUIZEND ET AL., THE SEARCH WARRANT PROCESS: PRECONCEPTIONS, PERCEPTIONS, PRACTICES 15-36 (1985) (discussing the warrant application process). Vital to this process is that the issuing magistrate be “neutral and detached.” See Johnson v. United States, 333 U.S. 10, 14 (1948).

53. See LASSON, supra note 32, at 130.
has been or is being committed.”54 Once the magistrate determines that there is probable cause and issues the warrant, the Fourth Amendment requires that the warrant “particularly descript[e] the place to be searched, and the persons or things to be seized.”55 If the officers executing the warrant “can with reasonable effort ascertain and identify the place intended”56 and “nothing is left to the discretion of the officer executing the warrant,”57 the requirement of particularity has been met.58

The Fourth Amendment, by implication, authorizes two types of warrants: arrest warrants and search warrants. A magistrate may issue an arrest warrant upon a showing that there is probable cause to believe an individual has committed a crime.59 A magistrate may issue a search warrant upon a showing that the object (or person) of the search is located in a particular place.60 Since it is the Fourth Amendment’s protection of liberty and privacy interests that the Supreme Court seeks to uphold, understanding the distinct protections afforded by the two types of warrants61 is important in discerning the Court’s application of those protections to various situations involving arrests.


55. U.S. Const. amend. IV.


58. The Supreme Court has interpreted the requirement of particularity to mean that the officer may do only what the warrant authorizes him or her to do, and no more. See Davis v. United States, 328 U.S. 582, 595 (1946) (Frankfurter, J., dissenting) (stating that “[w]here a search is made under the authority of a warrant issued from a judicial source, the scope of the search must be confined to the specific authorization of the warrant”).


60. See id.; see also Lasson, supra note 32, at 129 (emphasizing the differences between the probable cause required for an arrest warrant and the probable cause required for a search warrant). See generally Steagald v. United States, 451 U.S. 204 (1981); cf. Wayne R. LaFave, A Treatise on the Fourth Amendment § 6.1(b), at 238-39 (3d ed. 1996) (stating that Steagald left uncertain whether an arrest warrant and a search warrant are necessary for an arrest of a suspect in another’s home; thus, the safest approach is to obtain both).

61. See Steagald, 451 U.S. at 213 (stating that “the interests protected by the two warrants differ”).
An arrest warrant authorizes police officers to deprive an individual of his or her liberty interests by seizing the individual. The arrest warrant, therefore, protects the liberty interests of those not named in the warrant. A search warrant, on the other hand, protects individual privacy interests. By requiring an impartial judicial officer to determine that there is probable cause to search a place for a particular object or person, a search warrant ensures that an unauthorized search does not encroach upon an individual's privacy.

Preserving the liberty and privacy interests secured by the warrant requirement has been the ultimate premise behind the Supreme Court decisions regarding the legality of intrusions necessary for police officers to effect arrests. The following section introduces decisions that demonstrate the Court's continuing concern with individual liberty and privacy.

B. United States Supreme Court Decisions: Arrest Warrants, Search Warrants, and Exigent Circumstances in Relation to Home Arrests

Ever since the Framers enacted the Fourth Amendment, changing fact patterns have challenged courts of every circuit to define the reach of Fourth Amendment protections. Three impor-
tant United States Supreme Court cases have shaped the interpretation of the amendment as it pertains to the arrest of a person inside the home: *United States v. Santana,*66 *Payton v. New York,*67 and *Steagald v. United States.*68 *Santana* held that a warrantless entry may be justified by exigent circumstances,69 regardless of the existence of a valid arrest warrant or search warrant.70 Under *Payton,* an arrest warrant, which protects individual liberty interests, is sufficient to protect the privacy interests of the subject of an arrest warrant when the suspect is in his home.71 *Steagald,* however, charges law enforcement officers with the duty to obtain a search warrant before arresting a suspect in a third party’s home.72 These three decisions shape the case law pertinent to the issue that the United States Court of Appeals for the First Circuit addressed in *Joyce v. Town of Tewksbury.*73

1. A Suspect Cannot Defeat a Lawful Arrest by Retreating into the Home: *United States v. Santana*

*United States v. Santana*74 involved the issue of whether a suspect can escape a lawful warrantless arrest, which began in a public place,75 by withdrawing into her home.76 In *Santana,* police officers proceeded to Santana’s home to arrest her without an arrest war-
rant for alleged drug trafficking. When the officers pulled up, Santana was standing in the doorway of her house; as the officers approached, Santana retreated into the vestibule of her house and the officers followed her inside and arrested her. The Court held that such a retreat from a public place to a private one could not defeat the arrest and that a "hot pursuit" exigency justified the warrantless entry into the subject's home.

The Court first noted that Santana had no expectation of privacy while she stood outside her home in a public place. Even

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77. See id. at 40. An undercover officer of the Philadelphia Narcotics Squad arranged a buy with a known drug dealer who received her drugs from Santana. See id. at 39.

78. See id. at 40. Santana was indicted for possession of heroin with intent to distribute. See id. at 41.

79. See id. at 43. No precise definition for "hot pursuit" has been articulated. The phrase first surfaced in Johnson v. United States, 333 U.S. 10, 16 n.7 (1948), "where it was recognized that some element of a chase will usually be involved in a 'hot pursuit' case." Santana, 427 U.S. at 43 n.3. The Court later elaborated on the phrase in Vale v. Louisiana, 399 U.S. 30, 35 (1970), characterizing the exigency as "hot pursuit of a fleeing felon." Id.; accord Minnesota v. Olson, 495 U.S. 91, 100-01 (1990) (holding that there was no exigency of "hot pursuit of a fleeing felon" where "[t]he suspect was going nowhere . . . and [i]f he came out of the house he would have been promptly apprehended"); Welsh v. Wisconsin, 466 U.S. 740, 750 (1984) (recognizing that arrests for felonies, and not minor offenses, are the only situations in which the exigent circumstances exception should be allowed).

80. The recognition of an individual's expectation of privacy began in Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294 (1967), where the Supreme Court began to shift Fourth Amendment protection from property interests to privacy interests. In Warden, the Court stated that "the principal object of the Fourth Amendment is the protection of privacy rather than property." Id. at 304. Later the same year, in Katz v. United States, 389 U.S. 347, 353 (1967), the Court elaborated on the notion that the Fourth Amendment protects individual privacy, holding that the amendment safeguards legitimate expectations of privacy. (emphasis added). Therefore, the Fourth Amendment protects an individual's subjective expectation of privacy, so long as it is "one that society is prepared to recognize as reasonable." Minnesota v. Olson, 495 U.S. 91, 96 (1990) (citation omitted). See Gerald G. Ashdown, The Fourth Amendment and the 'Legitimate Expectation of Privacy,' 34 Vand. L. Rev. 1289 (1981), for an insightful and extensive discussion of the Fourth Amendment's protection of privacy interests. For further discussion, see Thomas K. Clancy, What Does the Fourth Amendment Protect: Property, Privacy, or Security?, 33 Wake Forest L. Rev. 307, 327-44 (1998) (discussing the development of the expectation of privacy theory); Stephen P. Jones, Reasonable Expectations of Privacy: Searches, Seizures, and the Concept of Fourth Amendment Standing, 27 U. Mem. L. Rev. 907, 912-26 (1997) (discussing expectations of privacy and what the concept means); Daniel B. Yeager, Search, Seizure and the Positive Law: Expectations of Privacy Outside the Fourth Amendment, 84 J. Crim. L. & Criminology 249, 249-86 (1993) (discussing the Supreme Court's historical approach to privacy interests).

81. See Santana, 427 U.S. at 42. The Court articulated that Santana's presence in public justified her warrantless arrest under Watson. See id. See supra note 75 for an explanation of the constitutionality of warrantless arrests under Watson.
though the officers apprehended Santana almost immediately after her entry into her house, the Court concluded that “hot pursuit” justified the officers’ entry. According to the Court, the exigency of “hot pursuit” occurs whenever there is some sort of a chase.

The Court in Santana did not address the “question of whether and under what circumstances a police officer may enter the home of a suspect [absent an exigency showing] in order to make a warrantless arrest.” Four years later, however, the Supreme Court addressed that specific issue in Payton.

2. An Arrest Warrant is Sufficient to Justify Entry into a Suspect’s Home: Payton v. New York

In Payton v. New York, the Court addressed the specific issue of whether the police may enter an arrestee’s home to arrest a suspect without an arrest warrant, and if so, under what circumstances. In Payton, police officers had probable cause to believe that Payton had committed murder. The officers went to Payton’s residence without an arrest warrant to effect Payton’s arrest. When no one answered their knock, the officers forcibly entered Payton’s home and seized evidence. The Court held that absent exigent circumstances, the Fourth Amendment “prohibits the po-

82. See Santana, 427 U.S. at 42. While “hot pursuit” was the primary exigency at issue in Santana, the Court’s holding was also based upon the presence of another exigency—destruction of evidence. See id. at 43. The Court stated that “[o]nce Santana saw the police, there was . . . a realistic expectation that any delay would result in destruction of evidence.” Id. (emphasis added).

83. See id. The Court rejected the United States District Court for the Eastern District of Pennsylvania’s interpretation of “hot pursuit” as “a chase . . . ’in and about [the] public streets.’” Id. at 43.

84. Id. at 45 (Marshall, J., dissenting). The Court also declined to address this issue in United States v. Watson, 423 U.S. 411 (1976). In Watson, the Court expressly declined to address such an issue because the case did not raise “the still unsettled question . . . whether and under what circumstances an officer may enter a suspect’s home to make a warrantless arrest.” Id. at 418 n.6. (citation omitted).


86. See id. at 575. In the companion case of Riddick v. New York, police officers likewise acted without an arrest warrant, and went to the home of Obie Riddick to execute his arrest. See id. at 578. Riddick’s son opened the door and the police could see Riddick in bed from the open doorway. They then entered the house and placed Riddick under arrest. See id. Both Payton and Riddick were convicted and the New York Court of Appeals affirmed both convictions. See id. at 577-79.

87. See id. at 576.

88. See id.

89. See id. Although the police did not apprehend Payton at that time, Payton later surrendered to police. See id. at 577.

90. See id. at 583. Whether or not the exigent circumstances exception to the
lice from making a warrantless and nonconsensual entry into a suspect’s home in order to make a routine felony arrest."91

In support of its holding, the Court in Payton noted that the Framers of the Fourth Amendment intended the amendment to prevent the abuse of discretion associated with general warrants.92 It added that “[u]nreasonable searches and seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment.”93 The Court concluded that it is lawful for police to enter a suspect’s home to arrest him so long as they have a valid arrest warrant and reason to believe the suspect is within the home.94 The Court explained why an arrest warrant, as opposed to a search warrant, is sufficient to protect the privacy in-warrant requirement applies turns, in part, upon the gravity of the offense the suspect has committed. The notion that the seriousness of the offense is fundamental to the determination of whether the exigent circumstance exception applies has been recognized throughout Fourth Amendment jurisprudence. See Welsh v. Wisconsin, 466 U.S. 740, 753 (1984) (stating that the “application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed”). In his dissent in Payton, Justice White recognized the importance of the felony limitation on arrests involving exigent circumstances. See Payton, 445 U.S. at 616-17 (White, J., dissenting); see also McDonald v. United States, 335 U.S. 451, 459 (1948) (stating that “the gravity of the offense" is to be considered in deciding whether officers are entitled to the exigency exception). 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 (1990), for an insightful examination of Welsh's gravity of the offense requirement and other exigent circumstances issues. See supra note 5 for a general discussion of exigent circumstances.


92. See id. at 585; see also Sarah L. Klevit, Entry to Arrest a Suspect in a Third Party's Home: Ninth Circuit Opens the Door—United States v. Underwood, 717 F.2d 482 (1983), 59 WASH. L. REV. 965, 966 (1984) (stating that the Fourth Amendment was drafted to "prevent the indiscriminate and widespread searches made under the guise of general warrants"). See supra Part I.A.1 for a discussion of the purpose behind the adoption of the Fourth Amendment.

93. Payton, 445 U.S. at 585. The Court further stated that “the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'” Id. (quoting United States v. United States Dist. Court, 407 U.S. 297, 313 (1972)). In giving great deference to the plain language of the Fourth Amendment and its protections, the Court reasoned that “[we cannot] disregard the overriding respect for the sanctity of the home that has been embedded in our traditions.” Id. at 601; see generally Bryan Murray, After United States v. Vaneaton, Does Payton v. New York Prevent Police from Making Warrantless Routine Arrests Inside the Home?, 26 GOLDEN GATE U. L. REV. 135, 141-42 (1996). See supra note 1 for the complete text of the Fourth Amendment and supra note 47 for the text and a discussion of the Warrant Clause.

94. See Payton, 445 U.S. at 603.
interests of the suspect:95

It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law.96

The Court in Payton did not address the authority of the police to enter another person's home, a home in which they believed the object of their arrest warrant was located. The Court explicitly stated that it would not decide such an issue because neither Payton, nor Riddick,97 the companion case consolidated with Payton by the New York Court of Appeals, raised such a question.98 The issue presented itself one year later in Steagald.

3. A Search Warrant is Necessary to Enter a Third Party's Home to Effect an Arrest: Steagald v. United States

In Steagald v. United States,99 the Court addressed the issue of whether an officer may enter the home of a third party, without a search warrant, to search for and arrest the subject of an arrest warrant.100 The Court held that absent exigent circumstances or con-

95. See id. But see Klevit, supra note 92, at 967 (stating that "the Court failed to explain why an arrest warrant was constitutionally sufficient").

96. Payton, 445 U.S. at 602-03. The state's argument prompted the Court's explanation of why an arrest warrant is sufficient in these circumstances. The state had argued that only a search warrant based on probable cause to believe the suspect is at home will sufficiently protect the privacy interests of the suspect; thus, since such a requirement would be unrealistic, there should be no warrant required at all. See id. at 602.

97. See supra note 86 for a discussion of the Riddick facts.

98. See Payton, 445 U.S. at 583.


100. See id. at 205. In Steagald, Drug Enforcement Administration ("DEA") agents were notified by an informant that Ricky Lyons, the subject of an arrest warrant, was staying at the home of Gary Steagald. See id. at 206. DEA agents drove to the house looking for Lyons. See id. After frisking Steagald and another man on the front lawn, the agents went inside the house to locate Lyons. See id. Lyons was not present, but the officers found narcotics during the initial search of Steagald's home. See id. The officers subsequently obtained a search warrant to re-search the house, at which time they found more drugs. See id. at 206-07. Because the government successfully argued that Steagald's connection with the house was enough to establish constructive possession of the narcotics, he was brought up on drug charges. See id. at 207-09.
sent, police must procure a search warrant to enter a third party's home to search for the target of an arrest warrant. 101

In Steagald, the Court reaffirmed various maxims of Fourth Amendment law. First, the Court stated that lacking exigent circumstances or consent, the "threshold [of the house] may not reasonably be crossed without a warrant." 102 Second, the Court summarized the protections afforded by arrest warrants, stating that a magistrate issues an arrest warrant upon a showing of probable cause that an individual has committed a crime, and protects that "individual from an unreasonable seizure." 103 Third, the Court distinguished search warrants from arrest warrants, stating that a magistrate may issue a search warrant when an officer demonstrates that there is "probable cause to believe that the legitimate object of a search is located in a particular place . . . ." 104 Thus, a search warrant protects privacy interests in the home and its possessions from an unreasonable invasion by police officers. 105 In essence, the Court stated that an arrest warrant protects liberty interests and a search warrant protects privacy interests. 106

By employing these maxims, the Court concluded that an arrest warrant provides inadequate protection to a third party's privacy interests when police enter his home to search for and arrest the subject of their arrest warrant. 107 In relying on the differences

101. See id. at 205-06. Because Steagald was not a civil case brought pursuant to 42 U.S.C. § 1983, the Court had no occasion to consider whether the officers' actions were reasonable under the doctrine of qualified immunity.


104. Id. at 213.

105. Id. While both an arrest warrant and a search warrant are subjected to the scrutiny of a detached judicial officer, they serve to protect different interests. See id. See supra Part I.A.2 for a discussion of the distinctions between arrest warrants and search warrants.


107. See id.

108. See id. at 213. The Court did address the government's argument that requiring a search warrant would greatly impede the efforts of law enforcement officers. See id. at 220-22. It concluded that such a requirement presents a minimal burden since there are options available to lessen the burden of obtaining a search warrant. See id.; see also Payton v. New York, 445 U.S. 573, 603 (1980) (arresting a suspect in his own home requires only an arrest warrant); United States v. Watson, 423 U.S. 411, 423-24 (1976) (holding that arrests in public places do not require an arrest warrant); FED. R. CRIM. P. 41(c)(2) (allowing police to obtain telephonic search warrants when necessary).
between search warrants and arrest warrants, the Court assessed the plain language of the Fourth Amendment and determined that:

[T]he Fourth Amendment admits of no exemption from the warrant requirement when the search of a home is for a person rather than a thing. . . . [The] language plainly suggests that the same sort of judicial determination must be made when the search of a person's home is for another person as is necessary when the search is for an object. Specifically, . . . the magistrate, rather than the police officer, must make the decision that probable cause exists to believe that the person . . . to be seized is within a particular place.109

Any other result, noted the Court, would produce considerable potential for abuse because officers could search the homes of all the acquaintances and friends of a suspect or use the arrest warrant as a pretext to search homes for illegal activity.110

United States v. Santana,111 Payton v. New York112 and Steagald v. United States113 all play an important role in interpreting the Fourth Amendment in the context of arrests. Santana provides that exigent circumstances will justify entry despite the absence of a warrant authorizing the entry.114 Payton and Steagald, taken together, establish the critical distinctions between arrest warrants and search warrants and the interplay between the two; while an arrest warrant is sufficient to secure the privacy interests of a sus-

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109. Steagald, 451 U.S. at 214 n.7. The Court added the following: [The police may not] use an arrest warrant as legal authority to enter the home of a third party to conduct a search. . . . Because it does not authorize the police to deprive the third person of his liberty, it cannot embody any derivative authority to deprive this person of his interest in the privacy of his home. Id.

110. See id. at 215; see also The Supreme Court, 1980 Term, supra note 102, at 264-65 (discussing the Steagald Court's fear that pretextual searches will be used to bypass the warrant requirement). A "pretextual search" is one in which law enforcement officers search a home pursuant to a warrant for evidence of one crime, when they are in fact only interested in seizing evidence relating to another crime—a crime for which no search warrant has been obtained. See Horton v. California, 496 U.S. 128, 147 (1990) (Brennan, J., dissenting). Referring to pretextual searches, the Court in Steagald simply meant that law enforcement officers would have no reasonable, lawful basis for searching the homes of a suspect's friends and acquaintances, nor would they have a lawful basis for using an arrest warrant to search homes for illegal activity, and therefore such searches would be pretextual. See Steagald, 451 U.S. at 215.

114. See Santana, 427 U.S. at 43.
pect in his home, a search warrant is necessary when the suspect is in a third party's home. Moreover, these three cases form the precedent relevant to the issue addressed by the United States Court of Appeals for the First Circuit in *Joyce v. Town of Tewksbury*. Ultimately, this precedent is also relevant to suits under 42 U.S.C. § 1983 and the "clearly established law" standard for qualified immunity employed by the First Circuit in *Joyce*. However, before one can understand the First Circuit's holding in *Joyce*, it is necessary to examine the relationship between § 1983 suits and the defense of qualified immunity.

C. *Section 1983 and the Doctrine of Qualified Immunity*

1. *Section 1983*

   This section provides a federal cause of action against individuals acting under color of state law for violations of constitutional or federal statutory rights. The purposes of § 1983 are twofold: (1) to deter state officials from abusing their authority and (2) to provide a remedy, where deterrence fails, for individuals who are victims of deprivations of federal constitutional or statutory rights.

115. See *Payton*, 445 U.S. at 576.
116. See *Steagald*, 451 U.S. at 205-06.
117. 112 F.3d 19 (1st Cir. 1997).
120. Section 1983 protects "rights, privileges or immunities secured by the Constitution and laws." 42 U.S.C. § 1983 (1994); see also *Wyatt v. Cole*, 504 U.S. 158, 161 (1992); *Thomas v. Roach*, 165 F.3d 137, 142 (2d Cir. 1999); *Shapiro*, *supra* note 13, at 249 (stating that § 1983 "provides individuals with a federal cause of action for violations of their constitutional and other federal statutory rights by persons acting under color of state law").
121. See *Wyatt*, 504 U.S. at 161 (stating that the purpose of § 1983 "is to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails"); see also *Pierson v. Ray*, 386 U.S. 547, 563 (1967) (Douglas, J., dissenting) (stating that § 1983's purpose "was to provide redress for the deprivation of civil rights").

   Congress introduced § 1983 in 1871 as part of the Ku Klux Klan Act. See *Ku Klux Klan Act*, ch. 22, § 1, 17 Stat. 13 (1871); see also *Pierson*, 386 U.S. at 559 (Douglas, J., dissenting) (stating that the statute "came on the books as § 1 of the Ku Klux Klan Act of April 20, 1871"); *Burris*, *supra* note 14, at 132 ("The common title of the Act—the Ku Klux Klan Act—indicates its purpose: to redress wrongs by those who wore black robes during the day and white robes at night."); *Hawkins*, *supra* note 14, at 356 ("Orig-
Section 1983 requires a plaintiff to make two allegations in order to state a cause of action: "First, the plaintiff must allege that some person has deprived him of a federal right. Second, he must allege that the person who has deprived him of that right acted under color of state or territorial law."\(^{122}\) Although the deprivation must have been "committed by a person acting under color of state law,"\(^{123}\) there are three possible defendants in a § 1983 suit: state or local officials, private individuals, and municipalities.\(^{124}\) Finally, the United States Congress enacted § 1983 as part of the Ku Klux Klan Act of 1871 'to give force and effect to the guarantees of the Thirteenth and Fourteenth Amendments.'\(^{125}\) (citing C. RICHEY, MANUAL ON EMPLOYMENT DISCRIMINATION AND CIVIL RIGHTS ACTIONS IN THE FEDERAL COURTS D2-1 (1987 revised ed.)). Over many objections to the statute, including the breadth of the statute and an unwillingness to usurp state authority and hold state officials liable, Congress passed § 1983. See generally Burris, supra note 14, at 132-34 (providing a brief discussion of the objections to the statute). Although the statute initially sought to redress the wrongs committed by the Klan, "the remedy created was not a remedy against [only the Klan] or its members but against those who representing a State in some capacity were unable or unwilling to enforce a state law." Monroe v. Pape, 365 U.S. 167, 175-76 (1961), overruled by Monell v. Department of Soc. Servs., 436 U.S. 658, 663 (1978) ("[W]e now overrule Monroe v. Pape . . . insofar as it holds that local governments are wholly immune from suit under § 1983.").

122. Gomez v. Toledo, 446 U.S. 362, 365 (1980); see also Dunn v. Tennessee, 697 F.2d 121, 125 (6th Cir. 1982) (explaining that the plaintiff must plead two requirements in a § 1983 action: first, "a deprivation of . . . 'rights, privileges, or immunities secured by the Constitution and laws,'" and second, that the defendants deprived the plaintiff of those rights " 'under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory'" ) (citations omitted).

123. Rodrigues v. Furtado, 950 F.2d 805, 813 (1st Cir. 1991); see also Thomas, 165 F.2d at 142 (stating that "[t]o prevail on a § 1983 claim a plaintiff must establish that a person acting under color of state law deprived him of a federal right").

124. See Hawkins, supra note 14, at 360; see also Shapiro, supra note 13, at 250-51. According to Shapiro, there are two types of § 1983 suits:
The first type [of suit] arises when government policy or a government official following government policy directly causes injury. In such a case, the injured party may sue the government directly. In the second scenario, a government employee who is not acting pursuant to official policy causes the harm. In this situation, the injured party may bring suit against the employee in his personal capacity.

Id. at 250-51 (footnotes omitted); see also Blum, infra note 125, at 14-16 (providing a brief discussion of the difference between suing a government official in his personal capacity and suing a government official in his official capacity).

125. A plaintiff in a § 1983 suit may not sue a state government directly because the Eleventh Amendment forbids suits against states. The Eleventh Amendment provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. See generally Karen M. Blum, Local Government Liability Under Section 1983, 420 PRAC. LAW INST./LITIG. 9, 19 (1991) ("In the absence of consent to suit or waiver of immunity, a state is shielded from suit in federal court by virtue of the Eleventh Amendment.").
While § 1983, on its face, does not provide for any immunities,\textsuperscript{126} the Supreme Court has “accorded certain government officials . . . qualified immunity from suit if the ‘tradition of immunity was so firmly rooted in the common law and was supported by such strong policy reasons that ‘Congress would have specifically so provided had it wished to abolish the doctrine.’”\textsuperscript{127}

2. Qualified Immunity

Qualified immunity is an affirmative defense,\textsuperscript{128} which shields public officials\textsuperscript{129} from liability in civil actions for alleged violations of constitutionally or statutorily protected rights.\textsuperscript{130} The primary

\begin{quote}
For government officials, the test, enunciated in \textit{Monroe v. Pape}, 365 U.S. 167 (1961), is whether the official carries “a badge of authority of a State and represent[s] it in some capacity.” \textit{Id.} at 172; see also Hawkins, \textit{supra} note 14, at 360-61. The test for whether a private individual has acted under “color of state law” is whether there is a “sufficient nexus” between the government and the conduct of the private individual. See \textit{Adickes v. S.H. Kress & Co.}, 398 U.S. 144, 144 (1970). In determining whether this nexus exists, courts should consider the following factors: (1) source of funding, (2) extent of government regulation, (3) exclusivity of the government function, and (4) existence of a symbiotic relationship. See Hawkins, \textit{supra} note 14, at 361-62 (citing \textit{Blum v. Yartsky}, 457 U.S. 991, 991 (1982)). The test for whether a municipality will be liable under § 1983 is whether the constitutional or statutory deprivation resulted from an official policy or custom of the governmental body. See \textit{Monell v. Department of Soc. Servs.}, 436 U.S. 658 (1978); see also Hawkins, \textit{supra} note 14, at 362; Shapiro, \textit{supra} note 13, at 250.

\textsuperscript{126} Indeed, the text of the statute provides that “every person” who violates constitutionally or statutorily protected rights “shall be liable.” See 42 U.S.C. § 1983 (1994).

\textsuperscript{127} \textit{Wyatt v. Cole}, 504 U.S. 158, 163-64 (1992) (quoting \textit{Owens v. City of Independence}, 445 U.S. 622, 637 (1980)); see also Burris, \textit{supra} note 14, at 125 (“Although the statute's language, legislative history, and logic all indicate that Congress intended to abolish common-law immunities, the Supreme Court has overlain the Section 1983 cause of action with immunities based in the common-law.”). In addition to qualified immunity, the judiciary accords certain individuals—although not police officers—absolute immunity. See \textit{generally Hawkins}, \textit{supra} note 14, at 364.

\textsuperscript{128} See \textit{Harlow v. Fitzgerald}, 457 U.S. 800, 815 (1982). An affirmative defense is a “matter asserted by [the] defendant which, assuming the complaint to be true, constitutes a defense to it.” \textsc{Black's Law Dictionary} 60 (6th ed. 1990). Pursuant to Fed. R. Crm. P. 8(c), and most local rules of evidence, “all affirmative defenses must be raised in the responsive pleading (answer) . . . .” \textit{Id.}


\textsuperscript{130} See \textit{Anderson v. Creighton}, 483 U.S. 635, 638 (1987) (stating that qualified immunity “shield[s] public officials] from civil damages . . . as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated”); see also David Rudovsky, \textit{The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights}, 138 U. Pa. L. Rev. 23, 26-27 (1989) (noting that qualified immunity serves to “protect[ ] government of-
purpose of qualified immunity "is to protect [public officials] 'from undue interference with their duties and from potentially disabling threats of liability.'" Therefore, qualified immunity serves three purposes: (1) it protects public officials' "ability to serve the public good," (2) it guarantees that the threat of liability does not dissuade skillful candidates from entering public service, and (3) it permits officials to perform discretionary tasks that they would otherwise fear to undertake.

American common law provided the roots for the doctrine of qualified immunity as it is known today. At common law, the courts applied both objective and subjective elements to the defense of qualified immunity. The objective element of qualified immunity "... directly limits individual liability for constitutional violations..."

131. Elder, 510 U.S. at 514 (citing Harlow, 457 U.S. at 806); see also Wyatt, 504 U.S. at 167 (stating that the doctrine of "[q]ualified immunity strikes a balance between compensating those who have been injured by official conduct and protecting government's ability to perform its traditional functions" (citing Harlow, 457 U.S. at 819)); Anderson, 483 U.S. at 638 ("[P]ermitting damages suits against government officials can entail substantial social costs, including the risk that fear of personal monetary liability and harassing litigation will unduly inhibit officials in the discharge of their duties." (citing Harlow, 457 U.S. at 814)); Butz v. Economou, 438 U.S. 478, 506 (1978) (stating that immunity was justified, in part, to preserve the "public interest in encouraging the vigorous exercise of official authority"); Pierson v. Ray, 386 U.S. 547, 554 (1967) (recognizing that qualified immunity permits officials to perform their duties in a "principled and fearless" manner); Brown, supra note 17, at 670 (stating that the purpose of qualified immunity is to permit officials to perform their duties "undeterred by potential harassing litigation").

132. Wyatt, 504 U.S. at 167.

133. See id.; see also Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (stating that one of the consequences of limiting qualified immunity is to "deter[ ]... able people from public service") (quoting Harlow, 457 U.S. at 816).

134. See Mitchell, 472 U.S. at 526 (stating that qualified immunity prevents the "inhibition of discretionary action").

135. See generally Pierson, 386 U.S. at 557 (1967) (stating that the defense of good faith and probable cause, which [was] available [at] common-law... is also available... in... in [a § 1983 action]...); Rudovsky, supra note 130, at 35-42 (discussing the historical development of qualified immunity). The common law form of qualified immunity was most commonly termed the "good faith" immunity. See Harlow, 457 U.S. at 815. Moreover, the common law defense of good faith and probable cause is the foreground for the current doctrine of qualified immunity as it applies to the Fourth Amendment. See Rudovsky, supra note 130, at 39 (citing Anderson, 483 U.S. at 639-41). In Malley v. Briggs, 475 U.S. 335 (1986), the Court stated that "while we look to the common law for guidance [in determining whether § 1983 affords the same immunity] we do not assume that Congress intended to incorporate every common law immunity into § 1983 in unaltered form." Id. at 340.

136. See Harlow, 457 U.S. at 815. In Harlow, the Court stated the following: Referring both to the objective and subjective elements... qualified immunity would be defeated if an official 'knew or reasonably should have known that
immunity was a respect for fundamental constitutional rights, and the courts presumed that the public official knew what those basic, fundamental rights were. The subjective element, on the other hand, involved "permissible intentions" or good faith.

In 1982, in the case of Harlow v. Fitzgerald, the Supreme Court disposed of the subjective element of the qualified immunity inquiry. The Court reasoned that an inquiry into the official's good faith involved "substantial costs," and the subjective element was based on whether the official took the action with the malicious intention to deprive the plaintiff of constitutional rights. The action he took within his sphere of official responsibility would violate the constitutional rights of the plaintiff, or if he took the action with the malicious intention.

Harlow v. Fitzgerald, 457 U.S. 800 (1982). In Harlow, the plaintiff, A. Ernest Fitzgerald, brought an action against two senior Nixon White House aides, pursuant to 42 U.S.C. § 1983, for conspiracy to unlawfully discharge Fitzgerald in retaliation for Fitzgerald's plan to "blow the whistle" on some "shoddy purchasing practices" by exposing them to public view. Id. at 804.

The societal costs emphasized by the Harlow Court included subjecting public officials to the hazards of trial. See id. at 816. More specifically, the Court noted the general costs of "distraction of officials from their duties, inhibition of discretionary action, and deterrence of able people from public service" as well as the "special" cost of "broad-ranging discovery" where there often is no clear end to the relevant evidence. Id. at 816-17. Therefore, the Court concluded
ment of qualified immunity disrupted both the judicial system and the actions of officials. Thus, the Court stated that “[t]he defense [should] turn . . . on objective factors.” In reaching this conclusion, the Court reasoned that “[r]eliance on the objective reasonableness of an official’s conduct, as measured by reference to clearly established law, should avoid excessive disruption of government and permit the resolution of many insubstantial claims on summary judgment.” Today, “government officials performing discretionary functions . . . are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”

In United States v. Leon, the Court, while addressing the issue of whether to suppress evidence obtained as a result of a defective search warrant, defined the objective reasonableness involved in a Fourth Amendment inquiry. The Court stated that objective reasonableness meant whether a reasonable police officer, similarly situated, would have known that his conduct violated a clearly established right. In Malley v. Briggs, the Court employed the objective reasonableness standard of Leon in the qualified immunity context, holding “that the same standard of objective reasonableness that removing the subjective element of the inquiry would reduce those costs. See id. at 817-18.

142. See id. at 816. The subjective element of qualified immunity disrupted the judicial system in that it caused “insubstantial claims” to proceed to trial. Id. The Court stated that since the application of qualified immunity depended upon the subjective good faith of the official, and because extensive discovery was usually required to establish good faith, summary judgment was inapplicable, and made dispensing with an “insubstantial claim[]” before trial impossible. See id. at 816-17. Thus, the Court abolished the subjective element to prevent these “insubstantial claims” from proceeding to trial. Id. at 816.

143. See id. at 818.
144. Id. at 819.
145. Id. at 818.
146. Id.
148. See id. at 900.
149. See id. at 922 n.23 (stating that “the objectively ascertainable question [is] whether a reasonably well-trained officer would have known that the search was illegal”) (emphasis added). The Court held that if the police officer reasonably believed that the search warrant was valid, the evidence obtained through the defective warrant need not be suppressed in the criminal trial of the suspect charged with the crime. See id. at 922, 926. The standard applied in Leon to determine whether to suppress the evidence is the same standard used to resolve whether a police officer is entitled to a qualified immunity defense. See id. at 922 n.23.

150. 475 U.S. 335 (1986).
bleness . . . applied in . . . Leon . . . defines the qualified immunity accorded an officer whose request for a warrant allegedly caused an unconstitutional arrest.”151

Although the test for qualified immunity is objective reasonableness, the Court has “recognized that it is inevitable that law enforcement officials will in some cases reasonably but mistakenly conclude that” their actions were lawful.152 Accordingly, the real inquiry, and what a plaintiff must prove to overcome a defense of qualified immunity in a § 1983 case, is whether the applicable law was “clearly established” at the time of the alleged violation.153 If the plaintiff succeeds in demonstrating that “the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct.”154

In Anderson v. Creighton,155 the Court attempted to define what the “clearly established law” test enunciated in Harlow entails.156 It stated that the term “clearly established” means that “[t]he contours of the right [are] sufficiently clear [so] that a reasonable official would understand” that his conduct violates that established right.157 Specifically, more than a mere general recognition

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151. Id. at 344; see also Anderson v. Creighton, 483 U.S. 635, 641 (1987) (concluding that the objective test is “whether a reasonable officer could have believed [the] warrantless search to be lawful”) (emphasis added); Thomas v. Roach, 165 F.3d 137, 142 (2d Cir. 1999) (“The doctrine of qualified immunity shields police officers acting in their official capacity from suits for damages under 42 U.S.C. § 1983, unless their actions violate clearly-established rights of which an objectively reasonable official would have known.”).

152. Anderson, 483 U.S. at 641. The Court limited qualified immunity by providing that the defense does not protect those officials who are “plainly incompetent or those who knowingly violate the law.” Malley, 475 U.S. at 341.

153. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The Court further instructed that discovery should not be permitted until the immunity issue is resolved. See id.; see also Mitchell v. Forsyth, 472 U.S. 511, 526 (1985) (stating that “[u]nless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery”).


156. See id. at 639; see also Mayer, supra note 140, at 270-72, 279-80 (reviewing Anderson and asserting that Anderson gives guidance to the lower courts in determining whether the right alleged to have been violated is sufficiently specific so as to be “clearly established”). But see Rudovsky, supra note 130, at 44-45 (stating that Davis v. Scherer, 468 U.S. 183, 192-93 (1984) and Mitchell, 472 U.S. at 517 “made clear that something more than the existence of general legal principals (the due process right to a pretermination hearing or fourth amendment prohibition against warrantless searches) [is] necessary to show that the controlling legal doctrine was ‘clearly established’”).

of a broad right is necessary for a law to be "clearly established." 158 Rather, the plaintiff must establish that courts recognize a particular application of the broader right and the contours of that general application are sufficiently analogous to the circumstances of the case in question. 159 The Court clarified that its definition of "clearly established" does not mean that qualified immunity applies only to the courts that have not previously held the specific conduct in question unlawful, but rather, "that in the light of pre-existing law the unlawfulness [of this conduct] must be apparent." 160 Whether the right was "clearly established" at the time of the alleged misconduct is a question of law, not one of fact. 161

In *Elder v. Holloway*, 162 the Court considered the applicability of qualified immunity in a § 1983 suit against the arresting officers, alleging that they violated Elder's Fourth Amendment rights. 163 In *Elder*, police officers sought to arrest Elder at work, a public place, in order to avoid the necessity of an arrest warrant. 164 Elder, however, had already returned home from work, so the officers surrounded his home and demanded that he come outside. 165 The Court held that in order to effectively determine whether government officials are entitled to qualified immunity, it is necessary to

158. See id. Justice Scalia, writing for the majority, stated the following:

The operation of this standard, however, depends substantially upon the level of generality at which the relevant "legal rule" is to be identified. For example, the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause . . . violates a clearly established right. . . . But if the test of "clearly established law" were to be applied at this level of generality, it would bear no relationship to the "objective legal reasonableness" that is the touchstone of *Harlow*.

Id. at 639.

159. See id. at 640.

160. Id.

161. See Elder v. Holloway, 510 U.S. 510, 516 (1994); see also Swain v. Spinney, 117 F.3d 1, 10 (1st Cir. 1997) (stating that the ultimate question of whether a reasonable law enforcement agent could have believed his conduct did not violate the constitutional right asserted is a question of law). Where, however, the issue is on appeal, the question of law to be determined by the reviewing court is "whether the law clearly prescribed the actions the defendant claims he took." *Mitchell*, 472 U.S. at 528.


163. See id. at 512.

164. See id. *United States v. Watson*, 423 U.S. 411 (1976), permits police officers to arrest a suspect when they have probable cause without an arrest warrant when the suspect is in a public place. See id. at 418-20.

165. See *Elder*, 510 U.S. at 512. Elder suffered an epileptic seizure when he emerged from the house, fell on the sidewalk, and suffered brain trauma and partial paralysis. See id. at 512. Elder sued the arresting officers under 42 U.S.C. § 1983, claiming that his warrantless arrest violated the Fourth Amendment. See id. at 516.
consider all available precedent concerning the relevant issue.\textsuperscript{166} Specifically, the Court noted that the lower court in \textit{Elder} should have considered a previous decision,\textsuperscript{167} a decision that "might have alerted a reasonable officer to the constitutional implications [of their actions]," to determine whether the officers acted reasonably under a qualified immunity analysis.\textsuperscript{168}

The United States Court of Appeals for the First Circuit has determined that the \textit{Harlow} and \textit{Anderson} rulings, taken together, fashion the following two-prong test for qualified immunity defenses:\textsuperscript{169} (1) whether the right was "clearly established" and (2)

\begin{enumerate}
\item \textsuperscript{166} See id.
\item \textsuperscript{167} See id. at 513-14 (citing \textit{United States v. Al-Azzawy}, 784 F.2d 890 (9th Cir. 1985), as the applicable previous decision). The Supreme Court noted that the court in \textit{Al-Azzawy} held that the location of the arrestee, not the arresting officers, determines whether a particular arrest takes place inside or outside the home. See id. (citing \textit{Al-Azzawy}, 754 F.2d at 893). \textit{Al-Azzawy} was decided one year before the circumstances in \textit{Elder}, and the Ninth Circuit considered the precedent to have "been unearthed too late." See id. at 514. The Supreme Court, however, held that this precedent made \textit{Elder's} rights "clearly established" for purposes of qualified immunity. See id. at 515-16.
\item \textsuperscript{168} See id. at 513 (quoting Elder v. Holloway, 975 F.2d 1388, 1391-92 (9th Cir. 1991)). The Court noted that the determination of whether the right asserted was firmly established at the time of the conduct in question is a question of law for the appellate judge to decide de novo. See id. at 516. Thus, "[a] court engaging in review of a qualified immunity judgement should . . . use its 'full knowledge of its own [and other relevant] precedents.'" Id. The Court reversed the judgement of the Court of Appeals and remanded the case so that the lower court could consider the \textit{Al-Azzawy} decision. See id. In \textit{Mitchell v. Forsyth}, 472 U.S. 511 (1985), the Supreme Court noted that the proper inquiry as to whether qualified immunity applies is "whether it was clearly established" at the time of the alleged violation that such conduct was unconstitutional. See id. at 530. See Rudovsky, supra note 130, at 44-45, for a discussion of \textit{Mitchell}.
\item \textsuperscript{169} See \textit{Swain v. Spinney}, 117 F.3d 1, 9 (1st Cir. 1997) (stating that "[t]here are two prongs to the qualified immunity analysis"); St. Hilaire v. City of Laconia, 71 F.3d 20, 24 (1st Cir. 1995) (employing a two-prong test for qualified immunity). Other circuits take very similar approaches. See, e.g., \textit{Thomas v. Roach}, 165 F.3d 137, 142-43 (2d Cir. 1999) (stating that the two prongs of qualified immunity are as follows: "[f]irst, a plaintiff must allege the violation of a clearly-established constitutional or statutory right. Second, qualified immunity will be denied only if a reasonable official should have known that the challenged conduct violated that established right"); \textit{Gould v. Davis}, 165 F.3d 265, 269 (4th Cir. 1998) (stating that the court "must identify the right allegedly violated . . . decide whether the right was clearly established at the time of the alleged violation; and . . . determine whether a reasonable person in the officer's position would have known that his or her actions violated that right"); \textit{Heitschmidt v. City of Houston}, 161 F.3d 834, 836-37 (5th Cir. 1998) (stating that the two prongs are whether the "pleadings, if accepted as true, (1) conceivably state violations of clearly established Fourth Amendment rights, and (2) allege conduct that is objectively unreasonable"); \textit{Kornegay v. Cottingham}, 120 F.3d 392, 395 (3d Cir. 1997) (stating that the court must determine that the police officer's "conduct did not violate clearly established law of which a reasonable person would have known"); \textit{Dickerson v. McClellan}, 101 F.3d 1151, 1157-58 (6th Cir. 1996) (identifying the three prongs as (1) whether "a
whether a reasonable official should have known that his or her conduct violated that right.\textsuperscript{170} In addition to this two-prong test, the First Circuit has taken a somewhat fact-specific approach to the issue of qualified immunity.\textsuperscript{171} This approach does not explicitly require the specific conduct to have been previously deemed unlawful per se.\textsuperscript{172} Rather, the test is whether a reasonable officer could have believed that the challenged conduct was lawful when viewed in light of all preceding case law, taken as a whole.\textsuperscript{173} Thus, to overcome the defense of qualified immunity the plaintiff must prove that there is sufficient precedent “to clearly establish that, if a court were presented with such a situation, the court would find that the plaintiff’s rights were violated.”\textsuperscript{174}

The doctrine of qualified immunity, taken together with Supreme Court precedent, laid the groundwork for the First Circuit’s decision in Joyce v. Town of Tewksbury.\textsuperscript{175}

\textbf{II. Joyce v. Town of Tewksbury}

\textbf{A. Facts}

On August 6, 1989, with knowledge of an outstanding arrest constitutional violation occurred,” (2) whether the constitutional violation “involved ‘clearly established constitutional rights,’” and (3) whether the officer’s conduct “was objectively unreasonable’”); Greiner v. City of Champlin, 27 F.3d 1346, 1351 (8th Cir. 1994) (stating that the rule of qualified immunity states that a police officer will be immune from liability “unless a reasonable person in his position would have known that his actions violated clearly established law”).

170. \textit{See Swain,} 117 F.3d at 9 (maintaining that the first prong is whether “the constitutional right in question [was] clearly established at the time of the alleged violation” and the second prong is whether “a reasonable, similarly situated official [would] understand that the challenged conduct violated that established right”); Burns v. Loranger, 907 F.2d 233, 235-36 (1st Cir. 1990) (stating that the first prong is whether the right alleged to have been violated was “clearly established” at the time in question, and the second prong is whether “a reasonable official situated in the same circumstances should have understood that the challenged conduct violated that established right”).

171. \textit{See Swain,} 117 F.3d at 9 (stating that the second prong of the test is “highly fact specific” and cannot be resolved on summary judgment if material facts are in dispute).

172. \textit{See Germany v. Vance,} 868 F.2d 9, 16 (1st Cir. 1989) (holding that the plaintiff is not required to produce individual cases that hold the particular alleged misconduct unlawful, and may simply demonstrate that cases exist in which the right is so clearly defined that no reasonable official could believe his actions were lawful).

173. \textit{See id.; see also Mozingo, supra} note 140, at 817-18.


175. 112 F.3d 19 (1st Cir. 1997).
warrant for Lance Joyce,\textsuperscript{176} police officers Donovan and Budryk approached the home of Joanne and James Joyce to arrest Lance.\textsuperscript{177} Although Lance did not live with his parents,\textsuperscript{178} the police received a tip earlier in the evening that Lance was visiting his parents that night.\textsuperscript{179} At approximately 11:30 p.m.,\textsuperscript{180} Lance opened the interior door of the Joyce home at the officer's knock, while keeping the outer screen door closed.\textsuperscript{181} When the officers announced their purpose and asked Lance to step outside, he retreated to the interior of the house.\textsuperscript{182} As Lance retreated, the officers followed him inside.\textsuperscript{183} James and Joanne Joyce entered the room and asked the officers if they had a warrant.\textsuperscript{184} Because the officers did not have the actual warrant with them, Mr. Joyce left the room to call the police station to verify the status of the warrant.\textsuperscript{185} While Lance's father was on the phone, an altercation occurred between Mrs. Joyce and the officers as she protested Lance's arrest.\textsuperscript{186} While one officer secured Joanne's arms, the other officer arrested Lance.\textsuperscript{187} The Joyces brought suit against the two officers, the chief of police, and the town under 42 U.S.C. § 1983,\textsuperscript{188} claiming that the officers violated their Fourth Amendment rights by entering the Joyce home without a search warrant.\textsuperscript{189} By margin order,\textsuperscript{190} the district court granted the defendant's motion for summary judgment on the

\textsuperscript{176} Lance's arrest warrant was for violation of a restraining order. See Joyce, 112 F.3d at 20.

\textsuperscript{177} See id.

\textsuperscript{178} Lance resided in Lowell, Massachusetts, which is several towns away from Tewksbury, Massachusetts. See Appellants' Brief at 4, Joyce v. Town of Tewksbury, 112 F.3d 19 (1st Cir. 1997) (No. 95-1814). At the time of his arrest, Lance was twenty-five years old. See id.

\textsuperscript{179} See Joyce, 112 F.3d at 20.

\textsuperscript{180} See Appellants' Brief at 4, Joyce (No. 95-1814).

\textsuperscript{181} See Joyce, 112 F.3d at 20.

\textsuperscript{182} See id.

\textsuperscript{183} See id.

\textsuperscript{184} See id. Although there was an outstanding arrest warrant for Lance, the officers did not have the warrant with them. See id.

\textsuperscript{185} See id. Indeed, an arrest warrant, charging Lance with violation of a protective order, did exist. See id. at 20, 22.

\textsuperscript{186} See id. at 21.

\textsuperscript{187} See id.

\textsuperscript{188} See supra note 10 for the text of the statute.

\textsuperscript{189} See Joyce, 112 F.3d at 21.

\textsuperscript{190} A margin order is either a typed or hand-written notation in the margin of a motion presented to the court, which explains the judge's ruling on the motion. See BLACK'S LAW DICTIONARY 1096 (6th ed. 1990) (stating that an "order" is a "[d]irection of a court or judge made or entered in writing, and not included in a judgment, which determines some point"). Thus, in Joyce, there is no lower court record.
issue of illegal entry, stating that "[t]here is no evidence in the record to support [that] the entry was in violation of the Fourth Amendment." Joanne Joyce (hereinafter "Joyce") appealed, and a panel of the First Circuit affirmed the district court's order for summary judgment. Joyce then petitioned the First Circuit for a rehearing en banc.

B. Decision of the United States Court of Appeals for the First Circuit

The court held that the defense of qualified immunity protected the officers from liability since the Fourth Amendment precedent pertinent to the issue was not "clearly established" so as to make their actions unreasonable. The dissent, however, asserted that the law was "clearly established" by virtue of Steagald v. United States, and therefore qualified immunity was inappropriate.

1. Majority Opinion

The majority in Joyce began its discussion with a brief examination of case law relevant to the Fourth Amendment issue at hand. The court noted that "even when armed with an arrest warrant, police must generally have a search warrant to lawfully enter a third person's home." The court acknowledged, however, that police may enter a third person's house when there is an exigency, and that under Santana "hot pursuit" qualifies as an exigent circumstance. Joyce argued that the facts of the case did not support a finding

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191. Joyce, 112 F.3d at 21.
192. See id. While both of the Joyces brought the original suit, James Joyce died during the litigation and Joanne Joyce brought the appeals on her own behalf and as executrix of the estate of James Joyce. See id.
193. See id.
194. See id. at 23.
196. See Joyce, 112 F.3d at 25-26 (Selya, J., dissenting). The dissent further asserted that the case that the majority relied upon, United States v. Santana, 427 U.S. 38 (1976), was distinguishable. See id. at 25-26 (Selya, J., dissenting).
198. Joyce, 112 F.3d at 21-22 (citing Steagald, 451 U.S. at 212-13).
199. See id. at 22 (citing Steagald, 451 U.S. at 213-14).
200. See id. (citing Santana, 427 U.S. at 42-43).
of "hot pursuit," because in Santana, the suspect's first contact with the police was outside the home, with the suspect subsequently retreating into her house.\(^{201}\) Thus, she argued, to uphold the entry into the Joyce home under Santana "creates a slippery slope, allowing the police to enter without a search warrant if the police merely suspect that the person sought is inside the house."\(^{202}\) Second, Joyce argued that Welsh v. Wisconsin\(^{203}\) held that a finding of exigent circumstances requires a felony, and that the offense listed on Lance's arrest warrant, a violation of a restraining order, was not a felony under Massachusetts law.\(^{204}\)

The court rejected Joyce's arguments. The court stated that Santana's "hot pursuit" exigency is not limited to cases in which the suspect was first in a public place.\(^{205}\) In addition, the court stated that while the law of Massachusetts does not categorize Lance's offense as a felony, "violations of protective orders are among the more grave offenses affecting our society."\(^{206}\) Furthermore, the

\(^{201}\) See id. See supra Part I.B.1 for a discussion of Santana.

\(^{202}\) Joyce, 112 F.3d at 22.

\(^{203}\) 466 U.S. 740 (1984). In Welsh, the Court stated that "minor offense[s]" are not the proper situation in which to apply the exigent circumstances exception to the warrant requirement. See id. at 750. Thus, "[w]hen the government's interest is only to arrest for a minor offense, [the] presumption of unreasonableness is difficult to rebut, and the government usually should be allowed to make such arrests only with a warrant issued upon probable cause by a neutral and detached magistrate." Id. The Court elaborated, stating that its decision in Payton v. New York, 445 U.S. 573, 583-90 (1980), which allowed warrantless home arrests where there is sufficient probable cause or exigent circumstances, was limited to felony arrests. See Welsh, 466 U.S. at 749 n.11. See supra Part I.B.1 for a discussion of Santana's "hot pursuit" exception to the warrant requirement and supra note 5 for a list and discussion of exigent circumstances generally.

\(^{204}\) See Joyce, 112 F.3d at 21. While Joyce based her argument upon the Welsh decision, three other considerations also came into play: (1) the Supreme Court has phrased the "hot pursuit" exigency as "hot pursuit of a fleeing felon," Vale v. Louisiana, 399 U.S. 30, 35 (1970) (emphasis added); (2) although expressing the exigency in terms of the need to prevent harm to police officers and the public and the danger of escape, the Supreme Court in Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 298-99 (1967), found it significant that the suspect in that case was a suspected felon; and (3) the dissenters in Payton recognized the importance of a felony limitation on the exigent circumstances exception to the warrant requirement. See Payton, 445 U.S. at 616-17 (White, J., dissenting).

\(^{205}\) See Joyce, 112 F.3d at 22.

\(^{206}\) Id. The reason that the court characterized Lance's offense as a non-minor offense, even though it was clearly not a felony, is unclear. However, it is relevant that the Supreme Court has said that the exigent circumstances exception to the warrant requirement should be applicable only in cases that involve felonies and non-minor offenses. See Welsh, 466 U.S. at 753 ("Application of the exigent-circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense . . . has been committed."); Payton, 445 U.S.
court noted that had it decided the case under the exigent circumstances exception to the warrant requirement, certain circumstances, for example "inadequacy in the opportunity afforded for a peaceable surrender" and nighttime entry, could undermine the exigency showing.  

Ultimately, the court held that the doctrine of qualified immunity protected the officers because they acted reasonably. The court reasoned that the law in this area is unsettled. The majority defined "unsettled" as not "reasonably well-established." In elaborating upon its interpretation of the phrase unsettled, the court noted that "[t]he Supreme Court cases, with Steagald at one pole and Santana at the other, do not definitively resolve our own case." The officers had no notice that their entry without a search was unlawful. It was, therefore, entirely appropriate to leave the Fourth Amendment issue to be resolved in a case in which the facts were clearer and the issue more decisive—essentially, where qualified immunity would not apply.

2. Concurring Opinions

Chief Judge Torruella, while joining in the majority's ultimate decision at 616-17 (White, J., dissenting) (recognizing the importance of the felony limitation on arrests involving exigent circumstances); McDonald v. United States, 335 U.S. 451, 459 (1948) (stating that "the gravity of the offense" is to be considered in determining whether the exigent circumstances should apply). Although the court described Lance's offense as a "grave offense[,]" it recognized that if the offense had been trivial or the arrest had not already been in progress, the outcome of the case could be different. See Joyce, 112 F.3d at 22.

207. See Joyce, 112 F.3d at 22.

208. See id. at 23. In determining whether the officers were protected, the court noted that the officers were "entitled to qualified immunity [so long as] their decision was reasonable, even if mistaken." Id. (quoting Hunter v. Bryant, 502 U.S. 224, 229 (1991)). The court held that the officers' actions were reasonable because the law was not so clear as to put them on notice that without a search warrant their entry was unlawful. See id. See also supra Part I.C.2 for a discussion of qualified immunity.

209. See Joyce, 112 F.3d at 23.

210. See id. at 22-23.

211. Id. at 22. Furthermore, the court stated that "there is no settled answer as to the constitutionality of doorway arrests." Id. See infra note 258 for a brief discussion of the constitutionality of doorway arrests.

212. See Joyce, 112 F.3d at 23.

213. See id. Although the court did not decide this case under a Fourth Amendment analysis, several members of the court appeared to be of the opinion that the officers' entry would probably not pass constitutional muster. See id. In other words, notwithstanding the fact that the law was unclear, if the Supreme Court were to review the case it could find that the officers had violated the Joyces' Fourth Amendment rights by failing to obtain a search warrant before approaching and entering the Joyce home, as Steagald requires. See id.
conclusion, wrote separately to emphasize the reasonableness standard of the Fourth Amendment.214 In determining the validity of the entry at issue, Judge Torruella found it reasonable for officers who are directly opposite an arrestee, albeit separated by a screen door, who refuses to cooperate, to follow the suspect into the home.215 Judge Torruella found it significant that the officers did not enter an unrelated third party's home.216 Because the judge viewed the police conduct as reasonable,217 he classified the situation as one of "hot pursuit" as described in United States v. Santana.218

Judge Lynch, while concurring with the majority, did so merely because of the irresolute state of Fourth Amendment law.219 He sympathized with Joyce and stated that she presented "very strong arguments that the police violated the Fourth Amendment."220 Judge Lynch determined, however, that given the uncertain state of Fourth Amendment law on the legality of entry into a third party's home, the officers were not unreasonable in their interpretation of the law.221 Specifically, Judge Lynch stated "[t]hat the judges of this court so strongly disagree about whether there was a Fourth Amendment violation means that the law in this area is not so clearly established as to make the officers' action objectively unreasonable."222 Thus, Judge Lynch concluded that the officers' actions

214. See id. at 24 (Torruella, C.J., concurring). This reasonableness standard has been emphasized on other occasions as well. See, e.g., Payton v. New York, 445 U.S. 573, 620 (1980) (White, J., dissenting) (stating that “[o]ur cases establish that the ultimate test under the Fourth Amendment is one of ‘reasonableness’”) (citing Marshall v. Barlow’s, Inc., 436 U.S. 307, 315-16 (1978); Camara v. Municipal Court, 387 U.S. 523, 539 (1967) (stating that the touchstone of the Fourth Amendment is reasonableness). See supra note 48 for additional cases supporting the proposition that warrantless searches and seizures are presumptively unreasonable.

215. See Joyce, 112 F.3d at 24 (Torruella, C.J., concurring).

216. See id. (Torruella, C.J., concurring). Had the officers entered an unrelated third party's home, Judge Torruella noted that the officers' conduct would clearly violate Steagald and make the search unreasonable. See id. (Torruella, C.J., concurring). Although Steagald did not limit its holding to unrelated third parties' homes, but rather held that an arrest warrant was insufficient to secure the privacy interests in the home of a third party, Judge Torruella considered that Lance's familial relationship with the third party made the case distinguishable from Steagald. See id. (Torruella, C.J., concurring); see also Steagald v. United States, 451 U.S. 204, 214 n.7 (1981).

217. See Joyce, 112 F.3d at 24 (Torruella, C.J., concurring).


219. See Joyce, 112 F.3d at 24 (Lynch, J., concurring).

220. Id. (Lynch, J., concurring).

221. See id. (Lynch, J., concurring).

222. Id. (Lynch, J., concurring).
were not unreasonable and qualified immunity protected the of­
ficers from liability.223

3. Dissenting Opinion

In dissent, Judge Selya, joined by Judge Stahl, asserted that it
was entirely inappropriate to decide this case under the defense of qualified immunity.224 Judge Selya stated that “qualified immunity
does not shield violations of clearly established constitutional prin­
ciples merely because the specific factual situation in which a viola­
tion arises has novel features.”225 Indeed, Judge Selya noted that
the “court not only denies the plaintiff her day in court but also
invites the proliferation of such incidents . . . . [Moreover,] we will
be seen as sanctioning that which we are unwilling to condemn.”226
Judge Selya did not believe that the Fourth Amendment law appli­
cable to the present issue was “unsettled” at the time of the officers’
entry.227 Rather, Judge Selya stated that Steagald and Santana
“clearly established” the law relevant to the present Fourth
Amendment determination.228 Thus, Judge Selya asserted that this
case must be decided on the already established rules of Fourth
Amendment protection, rather than under the protective cover of
qualified immunity.229

Judge Selya concluded that the police in this case unquestiona­
bly betrayed the rule established in Steagald by entering a third
party’s home without consent, a search warrant, or exigent circum­
stances.230 No exigency existed, in Judge Selya’s opinion, because

223. See id. (Lynch, J., concurring). Judge Lynch’s conclusion that the officers’
conduct was reasonable rested on the standard of qualified immunity which provides
that officers will not be liable if the law governing their conduct was not “clearly estab­
lished” at the time of the alleged misconduct. See Harlow v. Fitzgerald, 457 U.S. 800,
224. See Joyce, 112 F.3d at 25 (Selya, J., dissenting).
225. Id. (Selya, J., dissenting). Judge Selya believed that the officers in this case
plainly violated established Fourth Amendment rights. See id. at 26 (Selya, J.,
dissenting).
226. Id. (Selya, J., dissenting).
227. See id. at 25 (Selya, J., dissenting).
228. See id. at 25-26 (Selya, J., dissenting).
229. See id. (Selya, J., dissenting). Judge Selya noted that “‘a general constitu­
tional rule already identified in the decisional law may apply with obvious clarity to the
specific [facts] in question, even though the very action in question has not previously
been held unlawful.’” Id. (Selya, J., dissenting) (quoting United States v. Lanier, 520
U.S. 259, 271 (1997)).
230. See id. (Selya, J., dissenting). Judge Selya stated that “the police trans­
gressed the clearly established rule laid down by the Steagald Court. The plaintiff, Jo­
anne Joyce, was not herself a suspect. Yet the defendant officers entered her home
the mere act of moving from one part of the house to another does not constitute "hot pursuit" as described in Santana. Judge Selya noted that Santana's holding only represented "that when the police confront a suspect whom they have probable cause to arrest in a public place, and the suspect subsequently flees into her home, they may pursue and arrest her." Judge Selya distinguished Santana by observing that Lance was not in public when the police first sought to arrest him; rather, he was inside the house with a screen door separating himself from the officers. The distinction between a suspect who is first seen outside the home and the suspect who is within "makes every bit of difference." According to Judge Selya, "the Fourth Amendment has drawn a firm line at the entrance to the house." Judge Selya believed that the majority's holding drew no line at all.

III. The Law Governing Police Officers' Rights to Enter the Home of a Third Party Without a Search Warrant Is Sufficiently "Clearly Established" to Remove the Shield of Qualified Immunity

In Joyce v. Town of Tewksbury, determining whether the law was "clearly established" at the time of the officers' entry involved an examination of whether it is lawful, under the Fourth Amendment, for police officers to enter the home of a third party when the suspect refuses to step outside to be arrested. Although Supreme Court precedent does not definitively resolve the particular facts presented in Joyce, the Court has laid down some fundamental rules to guide the lower courts in resolving cases arising under the Fourth Amendment.

In Joyce, the United States Court of Appeals for the First Cir-
cuit determined that although there were strong arguments that the police officers encroached upon the Joyces' privacy interests and violated their Fourth Amendment rights, the officers were entitled to qualified immunity. The majority stated that the police officers, even if mistaken in their understanding of Fourth Amendment law, nevertheless acted reasonably, and thus were entitled to qualified immunity protection. The court reasoned that Fourth Amendment law has not drawn any bright lines so as to make it clear to the officers that their actions were unreasonable. The majority concluded that uncertainty in the law and disagreement among the members of the court warranted the decision to defer the constitutional question until another day.

The dissent stated that "seeking cover under the doctrine of qualified immunity... effectively condones an unconstitutional encroachment on the sanctity of the home." Accordingly, the dissent argued that the court should have decided the Fourth Amendment question based on available precedent even though the Supreme Court had not yet addressed the specific facts of Joyce.

This analysis explores the issue of whether the United States Court of Appeals for the First Circuit erred in granting qualified immunity to the officers, specifically, whether the law was "clearly

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239. "[T]he principal object of the Fourth Amendment is the protection of privacy...." Warden, Maryland Penitentiary v. Hayden, 387 U.S. 294, 304 (1967); see also Katz v. United States, 389 U.S. 347, 354 (1967) (holding that the Fourth Amendment protects individual privacy rights so long as they are legitimate expectations of privacy); Ashdown, supra note 80 (providing an extensive discussion of privacy interests and their relation to the Fourth Amendment).

240. See Joyce, 112 F.3d at 23.

241. See id. The Court in Steagald warned of such defenses. In discussing the argument offered by the Government (that there were existing remedies such as motions to suppress and civil suits for damages so as to make a search warrant requirement unnecessary), the Supreme Court noted that "a person seeking to recover civil damages for the unjustified search of his home may possibly be thwarted if a good-faith [and reasonable] defense to such unlawful conduct is recognized." Steagald v. United States, 451 U.S. 204, 216 n.9 (1981). Indeed, the holding in Joyce presents such a case—the petitioners were left without a remedy because of what the court deemed the "reasonable" efforts of the police.

242. See Joyce, 112 F.3d at 23.

243. See id. While the majority deemed the available precedent "unsettled," the Supreme Court has, in fact, been rather clear in this area of law. In Payton v. New York, 445 U.S. 573, 590 (1980), the Court stated that "the Fourth Amendment has drawn a firm line at the entrance to the house... [and] that threshold may not reasonably be crossed without a warrant." The Supreme Court has, time and again, interpreted this phrase to mean that the doorway represents a clear line; a line recognized by only the dissent in Joyce. See Joyce, 112 F.3d at 26 (Selya, J., dissenting); see also Steagald, 451 U.S. at 212.

244. Joyce, 112 F.3d at 24-25 (Selya, J., dissenting).
established” at the time of the alleged misconduct in Joyce. This analysis argues that Fourth Amendment law, with respect to police entry into a third party’s home to effectuate an arrest of their suspect, was “clearly established.” Therefore, this analysis concludes that the police were not entitled to the protective shield of qualified immunity. Finally, this analysis asserts that there is a danger in avoiding the merits of a Fourth Amendment claim: by not resolving the merits, the First Circuit leaves the door open for future police misconduct.

A. Substantive Fourth Amendment Law Was “Clearly Established”

Because the first step in a § 1983 case involving a qualified immunity defense is to determine whether the law was “clearly established” at the time of the alleged misconduct, it is necessary to first examine the relevant precedent on the Fourth Amendment issues presented in the case. This section will demonstrate that the Supreme Court has drawn some bright lines in the area of Fourth Amendment law truly relevant to the issue in Joyce. This analysis is comprised of two key issues: (1) the warrant requirement and the protections it affords and (2) the lawfulness of arrests when exigent circumstances are present.

1. The Warrant Requirement and Privacy Interests

The Supreme Court has interpreted the language of the Fourth Amendment’s second clause, the Warrant Clause, which does not require a warrant in all instances, to mean that law enforcement officers must obtain a warrant unless the circumstances of the case fall into one of the categorically defined exceptions. Two types of warrants exist to protect individual liberty and privacy interests. The arrest warrant protects the liberty interests of the per-
son named in the warrant. The search warrant protects the privacy interests of the owners of the premises or property named in the warrant. The Supreme Court has made it clear that an arrest warrant, while adequately safeguarding a suspect's liberty interests protected under the Fourth Amendment, does nothing to protect the privacy interests of other persons not named in the warrant. In *Steagald v. United States,* the Supreme Court positively ensured the privacy interests of third parties by holding that a search warrant is necessary to adequately safeguard those privacy interests:

[While] an arrest warrant authorizes the police to deprive a person of his liberty . . . [and] also authorizes a limited invasion of that person's privacy interest . . . in his home[, such a conclusion] is plainly inapplicable when the police seek to use an arrest warrant as legal authority to enter the home of a third party to [execute an arrest]. . . . Because [an arrest warrant] does not authorize the police to deprive the third person of his liberty, it cannot embody any derivative authority to deprive this person of his interest in the privacy of his home.

As *Steagald* elucidates, at the time of the alleged violation in *Joyce,* the law "clearly established" that a search warrant is necessary to protect third parties' privacy interests.

As was the case in *Steagald,* the officers in *Joyce* entered the Joyces' home to effect the arrest of the Joyces' son Lance, who did not reside in the home. When the officers knocked on the

249. See *supra* note 62 and accompanying text for the proposition that an arrest warrant protects individual liberty interests.
250. See *supra* notes 63-64 and accompanying text for the proposition that search warrants protect privacy interests.
251. See *Steagald v. United States,* 451 U.S. 204, 211-16 (1981). Indeed, the *Steagald* Court, in discussing the officers' belief that Ricky Lyons was inside Steagald's home, noted that:

 Regardless of how reasonable [the] belief [that the subject of their arrest was in Steagald's home] might have been, it was never subjected to the detached scrutiny of a judicial officer. Thus, while the [arrest] warrant in this case may have protected Lyons from an unreasonable seizure, it did absolutely nothing to protect petitioner's privacy interest in being free from an unreasonable invasion . . . .

*Id.* at 213. See *supra* Part I.B.3 for a discussion of *Steagald.*

253. See *id.* at 213-14. See *supra* Part I.B.3 for a discussion of *Steagald.*
254. *Steagald,* 451 U.S. at 214 n.7.
255. See *Joyce v. Town of Tewksbury,* 112 F.3d 19, 20 (1st Cir. 1997). Although Lance did not reside in the home, he was an overnight guest at his parents' house on the night of August 6, 1989. See Appellants' Brief at 4, *Joyce* (No. 95-1814). Lance's over-
door and Lance answered it, a screen door separated Lance from

night stay was not planned, but rather due to the fact that the family had assisted Lance's brother, Dean Joyce, in the installation of kitchen cabinets at Dean's home. See id. After a long day of hard work, the family returned to the Joyce home and Lance agreed to spend the night so that Lance's father would not need to drive him home at the late hour. See id.

One could argue that Lance's status as an overnight guest makes a difference in the legality of the police officers' entry into the Joyce home. For example, Minnesota v. Olson, 495 U.S. 91 (1990), established that a suspect's lengthy stay in another's home may give the suspect an expectation of privacy in the home, and therefore, the court may consider the host's home as the suspect's "home" for purposes of the Fourth Amendment's warrant requirement. See id. at 96-100. Specifically, Olson held that a suspect may challenge police entry into a third party's home, under the principles of Payton v. New York, 445 U.S. 573 (1980), if the police did not have an arrest warrant for the suspect. See Olson, 495 U.S. at 100; see also United States v. Romanelli, No. 98-50046, 1998 WL 822730, at *1 (9th Cir. Nov. 17, 1998) (holding that an overnight guest has a legitimate expectation of privacy in a locked box in which defendant places some personal papers, and thus has standing to challenge an allegedly unlawful search); United States v. Elliot, No. 3:93 CR 98, 1993 WL 366454, at *4-6 (D. Conn. Sept. 9, 1993) (holding that an overnight guest has a legitimate expectation of privacy in his host's home and can therefore challenge his arrest and a search of the premises), aff'd, 50 F.3d 180 (2d Cir. 1995); United States v. Sissler, No. 91-2113, 1992 WL 126974, at *3 (6th Cir. June 10, 1992) (holding that an overnight guest has a legitimate expectation of privacy in the entire premises, and thus has standing to challenge the constitutionality of the search); United States v. Osorio, 949 F.2d 38, 41-42 (2d Cir. 1991) (reviewing Olson and concluding that overnight guests have an expectation of privacy in their host's home and therefore are entitled to Fourth Amendment protection); Matthew Frank, A Guest's Legitimate Expectation of Privacy: A Case Analysis of Minnesota v. Olson, 110 S. Ct. 1687 (1990), 14 Hamline L. Rev. 231, 231-48, 251-55 (1990) (discussing Olson and providing a thoughtful analysis of how Olson impacts a host's Fourth Amendment rights).

However, the overnight guest question is inapplicable to the issue of whether qualified immunity was appropriate in Joyce, because the facts of Joyce occurred in 1989, prior to the Supreme Court's 1990 Olson decision. Thus, Lance's status as an overnight guest is beyond the scope of this Note. For further reading on the overnight guest issue, see Jones, supra note 80, at 957-65 (discussing an overnight guest's legitimate expectation of privacy as essentially a standing issue).

256. Generally, police officers approaching a house to either arrest an occupant or search the premises must knock on the door and announce their presence. See generally Wilson v. Arkansas, 514 U.S. 927 (1995). In Wilson, the Supreme Court adopted the common law "knock and announce rule," which requires police officers to knock at a dwelling and announce their purpose before forcibly entering the premises. See id. at 934. The Court in Wilson also stated that an unannounced entry may be permissible in some circumstances where "law enforcement interests . . . establish the reasonableness of an unannounced entry." Id. at 936. Federal law enforcement officers are subject to a similar "knock and announce rule," which is codified in 18 U.S.C. § 3109 (1994). See United States v. Hudson, 100 F.3d 1409, 1417 (9th Cir. 1996) (interpreting the federal law).

In Richards v. Wisconsin, 520 U.S. 385 (1997), the Supreme Court held that although the states may not adopt a blanket exception to the "knock and announce rule," an unannounced entry may be permissible where police can demonstrate "a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." Richards,
the officers, and he was completely inside the house. Lance did not submit to his arrest before the police officers entered the Joyce home, and therefore, did not waive his privacy interests. More

520 U.S. at 394; see also United States v. Murphy, 69 F.3d 237, 243-44 (8th Cir. 1995) (holding that exigency and fear for the safety of officers and others in neighborhood justified unannounced entry); United States v. Kennedy, 32 F.3d 876, 882 (4th Cir. 1994) (holding that exigency of prevention of destruction of evidence justified unannounced entry); United States v. Stiver, 9 F.3d 298, 301-02 (3d Cir. 1993) (holding that exigent circumstances justified unannounced entry).

257. See Joyce, 112 F.3d at 20. The fact that Lance was completely within the home, separated from the officers by a screen door, may raise the interesting issue of the constitutionality of doorway arrests. A doorway arrest occurs when police officers approach a house, knock on the door, and seek to arrest the suspect without a warrant by convincing the suspect to submit to the officers’ authority. See, e.g., United States v. Berkowitz, 927 F.2d 1376, 1379-80 (7th Cir. 1991). Although the Supreme Court has not definitively resolved the issue of the constitutionality of doorway arrests, the United States Courts of Appeals that have dealt with the issue generally agree that the issue centers on whether the suspect voluntarily surrenders his Fourth Amendment privacy interests. See id. at 1388 (stating that “if police go to a person’s home to arrest him, and have reason to believe they may have to enter the home to make the arrest, they should obtain a warrant”); United States v. McCraw, 920 F.2d 224, 228 (4th Cir. 1990) (extending Payton v. New York to guestrooms in commercial establishments and holding that a suspect does not consent to police officers’ entry by partially opening his door to determine who is knocking, nor does the suspect relinquish his expectation of privacy in doing so); Duncan v. Storie, 869 F.2d 1100, 1102 (8th Cir. 1989) (stating that the doorway may be a public place if the suspect has voluntarily come to stand in the doorway, but that a suspect “who is compelled to stand in a doorway cannot be lawfully arrested without the existence of probable cause and exigent circumstances”); United States v. George, 883 F.2d 1407, 1414 n.4 (9th Cir. 1989) (stating that doorway arrests in which the officers do not, in good faith, observe the warrant requirement are invalid); United States v. Herrold, 772 F. Supp. 1483, 1489-90 (M.D. Pa. 1991) (discussing Payton v. New York, 445 U.S. 573 (1980) and United States v. Santiana, 427 U.S. 38 (1976), and concluding that “[l]aw enforcement officers may not circumvent [Payton’s] arrest warrant requirement by simply summoning a suspect to the doorway of the suspect’s home in order to effect an arrest in a ‘public place’”). While the majority in Joyce stated that “there is no settled answer as to the constitutionality of doorway arrests,” Joyce, 112 F.3d at 22, the cases addressing doorway arrests primarily involve situations in which arresting officers have approached a suspect’s home to arrest the suspect without an arrest warrant. Thus, while an interesting question for courts to consider, courts have not applied these principles when police seek to arrest a suspect, for whom they have an arrest warrant, in a third party’s home, for which they do not have a search warrant. Given that the courts have not applied the issue of the constitutionality of doorway arrests to arrests in third party homes, the issue is beyond the scope of this Note. For further reading, see Murray, supra note 93, at 142-44 (providing a brief discussion of how Payton applies to the constitutionality of doorway arrests, as well as several cases relating to doorway arrests and the expectation of privacy rationale). See also David Orlin et al., Warrantless Searches and Seizures, 85 GEO. L.J. 847, 861 n.148 (1997) (discussing cases in which courts have addressed the constitutionality of doorway arrests). See infra note 260 for further discussion of the implications of the doorway arrest in Joyce.

258. The officers claimed that Lance’s refusal to exit the home once they announced the existence of the arrest warrant for him prompted their entrance, and there-
importantly, however, Lance could not have waived his parents' privacy interests in their home. *Steagald* made it perfectly clear that a search warrant is the only method of ensuring the Joyces' privacy interests. Certainly *Steagald* should have alerted the officers that the law in this area was "clearly established," thereby alerting them that their actions were unconstitutional and making the defense of qualified immunity unavailable. However, the officers, in attempting to arrest Lance within a home he did not reside in, violated the clear holding of *Steagald*, which unequivo-

\[\text{fore entry was proper under Santana's "hot pursuit" exception. See Joyce, 112 F.3d at 22. See infra Part III.A.2 for the proposition that "hot pursuit" is inapplicable to the facts of Joyce.}

259. *See Joyce, 112 F.3d at 21.* The fact that Lance did not surrender to his arrest when he opened the door to the officers' knock, and therefore arguably did not surrender his privacy interests, is generally the primary issue involved in a doorway arrest situation. As in the more typical doorway arrest situation, one could argue that Lance, summoned to the door by the officers' knock, did not "come to stand in the doorway voluntarily." *Duncan, 869 F.2d at 1102; see also McCraw, 920 F.2d at 228, 229* (holding that an individual does not "voluntarily expose himself to the public" by partially opening the door to determine the identity of the person knocking); *Berkowitz, 927 F.2d at 1388* (stating that "there is a significant difference between a person who for no reason voluntarily decides to stand in his open doorway, and a person who merely answers a knock on his door. The person who answers the knock and stays within the house is not voluntarily exposing himself 'to public view . . . as if [he is] standing completely outside [his] house'"") (citation omitted). Thus, should courts eventually apply doorway arrest principles to arrests in third party homes, one could argue that Lance was not exposed "to public view, speech, hearing, and touch as if [he was] standing completely outside [his] home." United States v. Santana, 427 U.S. 38, 42 (1976).

260. *See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).* See supra notes 139-46 and accompanying text for a discussion of *Harlow.* In *Harlow,* the Supreme Court stated that "whether [the] law was clearly established at the time an action occurred" determines whether qualified immunity applies. *Harlow,* 451 U.S. at 818; see also United States v. Leon, 468 U.S. 897, 922 n.23 (1984) (defining the "clearly established" standard of *Harlow* as "whether a reasonably well trained officer would have known that the search was illegal").

261. The officers' conduct was unconstitutional under the Fourth Amendment in that they did not have the requisite search warrant. *See Steagald v. United States,* 451 U.S. 204, 222 (1981).

262. *But see Anderson v. Creighton,* 483 U.S. 635 (1987). The Court in *Anderson* stated the following:

It . . . does not follow immediately from the conclusion that it was firmly established that warrantless searches not supported by probable cause and exigent circumstances violate the Fourth Amendment that [the officer's] search was objectively legally unreasonable. We have recognized that . . . law enforcement officials will in some cases reasonably but mistakenly conclude that [their actions were legal].

*Id.* at 641. The Court went on to state that "we have been unwilling to complicate qualified immunity analysis by making the scope or extent of immunity turn on the precise nature of various officials' duties or the precise character of the particular rights alleged to have been violated." *Id.* at 643.
cally requires that police obtain a search warrant before approaching a third party’s home to arrest a suspect for whom they have an arrest warrant. Notwithstanding Steagald’s clear and unambiguous search warrant requirement, the Joyce court determined that the law was not “clearly established” and that the officers’ actions were reasonable under the doctrine of qualified immunity.

While the Joyce court did not formally discuss the different interests protected by arrest warrants and search warrants, the court apparently did not consider Steagald’s search warrant requirement as “clearly established” law. This reasoning contradicts the Supreme Court’s explicit language that the police may not enter a third party’s home without a search warrant. The majority’s holding essentially places a determination reserved for the magistrate—whether an object is located in a particular place—in the hands of police officers in situations where they have an arrest warrant and must enter a third party’s home to complete the arrest. The Steagald Court warned that leaving this sort of determination to law enforcement officers “create[s] a significant potential for abuse,” because the police could then use an arrest warrant to search the homes of all the suspect’s friends and acquaintances. In sanctioning the officers’ entry under the shield of qualified immunity, the Joyce court failed to heed the Supreme Court’s warning that an arrest warrant for Lance was insufficient to secure the Joyces’ privacy interests.

2. Exigent Circumstances: “Hot Pursuit”?

While the Joyce court did not ultimately decide this case under the Fourth Amendment, it discussed the plausibility of resolving it under the exigent circumstances exception to the warrant requirement. In so doing, the court contemplated that the police pursu-
ance of Lance Joyce could be considered “hot pursuit” as described in Santana. Although Santana involved a suspect fleeing from the outside of her house to the inside to prevent arrest, the Joyce court stated that “Santana’s exception likely does not turn on whether the individual is standing immediately outside or immediately inside the house when the police first confront him and attempt an arrest.” The court declared that Lance’s position—inside or outside the house—was not the decisive factor in determining the applicability of Santana’s “hot pursuit” exception. Rather, the court considered Santana’s “hot pursuit” exigency to apply in any situation in which the suspect knows of the police officers’ intention to arrest him and then attempts to thwart arrest. The First Circuit’s interpretation of Santana does not coincide with the fact that the Santana Court evidently based its decision on United States v. Watson, which held that no warrant is necessary to arrest a suspect who is in a public place, so long as there is probable cause. In addition, the Joyce court’s view is inconsistent with the prevailing interpretation of the “hot pursuit” exigency established in Santana. Such an interpretation of Santana is overly

prompted their entrance into the Joyce home. See id. The officers argued that their entry was proper under Santana’s “hot pursuit” exception. See id. See supra note 5 for a description of exigent circumstances.

269. See Joyce, 112 F.3d at 22. Santana established that the retreat of a suspect into her home, after seeing the police approaching, could not defeat a proper arrest; such circumstances were deemed “hot pursuit,” falling under the exigent circumstances exception. See United States v. Santana, 427 U.S. 38, 43 (1976). See supra Part I.B.1 for a discussion of Santana.

270. Joyce, 112 F.3d at 22.

271. See id.

272. Remarkably, the Court in Santana stated that “[o]nce Santana saw the police, there was . . . a realistic expectation that any delay would result in destruction of evidence.” Santana, 427 U.S. at 43 (emphasis added). Therefore, although Santana classified the case as one of “hot pursuit,” the hot pursuit exigency also considers the fact that Santana might destroy evidence if police did not arrest her immediately. See id. See supra note 5 for the proposition that destruction of evidence is an exigent circumstance. The need to prevent the destruction of evidence is one of the principal rationales of the “hot pursuit” exigency. See generally Santana, 427 U.S. at 43. Thus, if the First Circuit was relying on Lance’s recognition that the police were there to arrest him in order to construct their theory that the location of the arrestee is irrelevant to Santana’s “hot pursuit” exception, their reliance is ironic, since there is no evidence associated with the violation of a restraining order, and therefore no evidence for Lance to destroy. See Joyce, 112 F.3d at 22.


274. See id. at 424-28.

275. See United States v. Vaneaton, 49 F.3d 1423, 1426 (9th Cir. 1995) (stating that “the question presented in this case is not decided only on the basis of whether Vaneaton was standing inside or outside the threshold of his room, but whether he
broad and not one likely contemplated by the *Santana* Court.\textsuperscript{276}

Although the majority in *Joyce* ultimately decided the case on qualified immunity grounds, it considered the "hot pursuit" exception plausible. The facts of this case, however, simply do not present a situation involving the "hot pursuit of a fleeing felon."\textsuperscript{277} As the dissent in *Joyce* observed, "the mere fact that Lance Joyce, prompted by police action, moved from one part of his mother's home to another did not create any cognizable exigency."\textsuperscript{278} The Supreme Court has stated that in order for there to be a finding of "hot pursuit," there must be some sort of chase.\textsuperscript{279} In *Joyce*, there

\textsuperscript{276} See supra Part I.B.1 for a discussion of *Santana*. The Supreme Court's holding in *Santana* reads: "[w]e thus conclude that a suspect may not defeat an arrest which has been set in motion in a public place, and is therefore proper under *Watson*, by the expedient of escaping to a private place." *Santana*, 427 U.S. at 43.

\textsuperscript{277} See *Vale v. Louisiana*, 399 U.S. 30, 35 (1970); see also *Welsh v. Wisconsin* 466 U.S. 740, 742 (1984). In *Welsh*, the suspect swerved off the road and landed in an open field, whereupon he got out of the car and walked away from the scene. See *id.* at 742. A short while later, police arrived at the scene, checked the registration of the vehicle, and proceeded to the suspect's home. See *id.* Without obtaining a warrant of any kind, the police entered the suspect's home and arrested him for driving while intoxicated. See *id.* at 743. The Supreme Court of Wisconsin held that exigent circumstances, specifically "hot pursuit," the need to prevent physical harm to the public, and the destruction of evidence (suspect's blood alcohol level) justified the entry. See *id.* at 747-48. The Supreme Court of the United States reversed, holding that no exigent circumstances including "hot pursuit" were present, because the nature of the underlying offense was "minor," and the gravity of the offense is to be considered in determining if an exigency exists. See *id.* at 750, 753. In addition, the Court stated that "the claim of hot pursuit is unconvincing because there was no immediate or continuous pursuit ... from the scene of a crime." *Id.* at 753. See supra Part II.A for a discussion of the facts of *Joyce*. See supra Part II.B.2 for a discussion of Judge Torruella's concurrence, in which he stated that he believed the case fell under the "hot pursuit" exigency exception.

\textsuperscript{278} *Joyce*, 112 F.3d at 25 (Lynch, J., dissenting).

\textsuperscript{279} See *Johnson v. United States*, 333 U.S. 10 (1948). In *Johnson*, the Court stated "we find no element of 'hot pursuit' in the arrest of one who was not in flight." *Id.* at 16 n.7. Moreover, the *Santana* Court reiterated this point: "[I]n *Johnson v. United States* ... it was recognized that some element of a chase will usually be involved in a 'hot pursuit' case." *Santana*, 427 U.S. at 43 n.3 (citation omitted); see also *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967) (holding that searching for a suspected felon within minutes of a robbery constituted an exigency finding).
was no chase. Lance simply "withdrew from the doorway." One could argue that if an exigency situation existed, Officers Donovan and Budryk actually created the exigency. Since Lance was not in his own home, the officers knew they could not cross the threshold of the house to effect their arrest without a search warrant under Steagald v. United States. Since suspects frequently refuse to submit to arrest, the police officers' need to enter the Joyce home was entirely predictable. Given this predictable outcome, by failing to obtain a search warrant in advance of arresting Lance, the officers created the exigency—the need to follow him into the house once he refused to come outside. Moreover, regardless of whether the officers knew that Lance intended to stay at the Joyce home overnight, the officers received their tip about Lance's whereabouts "earlier in the evening" and did not endeavor to arrest Lance until "[l]ate [in] the evening," at approximately 11:30 p.m. The officers therefore had ample time to obtain a search warrant before approaching the premises. Viewed in this light, it appears that the officers relied on a self-created exigency in order to enter the house to arrest Lance. This sort of self-created exigency demonstrates the officers' apparent inattention to the warrant requirement of the Fourth Amendment.

Instead of relying on a self-created exigency, police officers

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280. See supra note 79 for a description of "hot pursuit" and the relevance of "chase."

281. Joyce, 112 F.3d at 20.

282. Police officers may not, in effecting an arrest, create their own exigency. See United States v. Blount, 123 F.3d 831, 838 (5th Cir. 1997) ("[T]he prosecution may not rely upon an exigency that the police themselves created . . . ."), cert. denied by Johnson v. United States, 118 S. Ct. 895 and by Blount v. United States, 118 S. Ct. 1101 (1998); United States v. Johnson, 12 F.3d 760, 764-65 (8th Cir. 1993) (stating that the exigent circumstances must arise from something outside of the officers' control, and thus, "[t]he police themselves . . . cannot create the exigency"); United States v. McCraw, 920 F.2d 224, 230 (4th Cir. 1990) (stating that the exigency "was precipitated by the agents' themselves when they knocked on the door"); see also United States v. Duchi, 906 F.2d 1278, 1284-85 (8th Cir. 1990) (holding that evidence obtained through an exigency created by the police must be suppressed).


284. See Joyce, 112 F.3d at 20.

285. See id.

286. See Appellants' Brief at 4, Joyce (No. 95-1814).

287. Courts have admonished police officers whose self-created exigency demonstrated a lack of good faith in observing the warrant requirement for arrests in residences. See McCraw, 920 F.2d at 230; United States v. George, 883 F.2d 1407, 1414-15 (9th Cir. 1989). But cf. United States v. Kunkler, 679 F.2d 187, 192 (9th Cir. 1982) (holding that exigent circumstances justified the warrantless seizure of defendant's residence while a search warrant was being procured).
could have arrested Lance in his own home under the principles of *Payton v. New York*.

Alternatively, the officers could have waited patiently outside the Joyce residence and arrested Lance when he left. Indeed, the *Steagald* Court recognized this possibility, and stated that "in most situations the police may avoid altogether the need to obtain a search warrant simply by waiting for a suspect to leave the third person's home before attempting to arrest that suspect." Rather than employing either of these two options, the police went to the Joyce home to arrest Lance, thereby producing what the court in *Joyce* considered could constitute an exigent circumstance.

If the court in *Joyce* had characterized the case as one of "hot pursuit," not only would it have inaccurately expanded the scope of that exigency, it would have demonstrated to law enforcement officers that a mere shuffle of the feet can create such an exigency. Lance's withdrawal from the screen door can hardly constitute a chase rising to the level of "hot pursuit." It is questionable whether a finding to the contrary would leave the Fourth Amendment's exigency exception intact.

**B. A Danger in Avoiding the Substantive Fourth Amendment Issue?**

When courts use qualified immunity to shield law enforcement officers from liability when those officers have violated the law, there is a danger that courts are simply avoiding difficult substantive Fourth Amendment issues. Although a court may deem the

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288. 445 U.S. 573 (1980). See supra Part I.B.2 for a discussion of *Payton*. *Payton* held that police officers may enter the home of the subject of an arrest warrant to arrest the suspect. See id. at 602-03. Since the police in *Joyce* had an arrest warrant for Lance, they could have waited until Lance returned home to arrest him. Indeed, the *Steagald* Court recognized that "the situation in which a search warrant will be necessary are few [because] *Payton* [held that] an arrest warrant alone will suffice to enter a suspect's own residence to effect his arrest." *Steagald*, 451 U.S. at 221.

289. Had the officers waited outside to arrest Lance, their arrest would clearly have been valid under *United States v. Watson*, 423 U.S. 411 (1976), which held that warrantless arrests are valid if done in a public place. The fact that the arrest warrant was outstanding indicates that the police had ample opportunity to choose either of these two options for apprehending Lance. See id. at 415.

290. *See Steagald*, 451 U.S. at 221. The Court stated that "the subject of an arrest warrant can be readily seized before entering or after leaving the home a third party." *Id.* at 221 n.14.

291. *Id.* at 221 n.14.

292. *See Joyce v. Town of Tewksbury*, 112 F.3d 19, 22 (1st Cir. 1997).

293. *See id.*

294. The majority in *Joyce* recognized this possible danger. *See id.* at 23.
available precedent "unsettled," such a determination not only leaves the law unclear, but also disrupts the evolution of constitutional law. If courts deciding § 1983 suits on the basis of qualified immunity were to tackle the difficult substantive law, then the law would become "clearly established" so that officers presented with similar factual scenarios in the future would not be able to trample the rights of others.

By avoiding the merits of the Joyces' claim, the First Circuit has in essence signaled to the law enforcement community that law officials are effectively shielded from § 1983 damages suits. In addition, although the Supreme Court has clearly held that police officers must have a search warrant or exigent circumstances before entering the home of a third party to execute an arrest warrant, the Joyce holding, based on qualified immunity, excuses and even condones police misconduct. Such an endorsement makes it more likely that officers in the future will feel free to infringe upon others' constitutionally protected rights.

The Fourth Amendment protects individual liberty and privacy interests, and the Supreme Court has held that the Fourth Amendment's warrant requirement is necessary to preserve our

295. See John M.M. Greabe, Mirabile Dictum!: The Case for "Unnecessary" Constitutional Rulings in Civil Rights Damages Actions, 74 NOTRE DAME L. REV. 403, 410 (1999). Greabe argues that courts should, notwithstanding that the defendants in a § 1983 action are entitled to qualified immunity, resolve the underlying issues in dicta. In support of this argument, Greabe states the following:

The requirement that the allegedly violated right be clearly established at the time of the action in question tends, if not to "freeze" constitutional law, then at least to retard its growth through civil rights damages actions. The corpus of constitutional law grows only when courts address novel constitutional questions, yet a novel claim, by definition, seeks to establish a right that is not already "clearly established."

Id. Although Greabe recognizes that dicta does not carry as much precedential weight as holdings, see id. at 421, he argues that courts would increase the corpus of constitutional law if they were to address the merits of constitutional claims, so as to notify state officials whether untested conduct is constitutional, as well as deter future unconstitutional conduct. See id. at 433.

296. See id. at 410.

297. See id. at 407 (arguing that "officials whose unconstitutional conduct already has been challenged in court should not be permitted, indeed encouraged, to repeat their unlawful conduct without accountability").

298. See supra note 62 and accompanying text for the proposition that arrest warrants protect individual liberty interests.

299. See supra note 80 for the proposition that the Fourth Amendment protects legitimate expectations of privacy; supra notes 70-71 and accompanying text for the proposition that search warrants protect privacy interests.
Fourth Amendment protections. The Fourth Amendment protects every American citizen from "unreasonable searches and seizures," and the search warrant requirement serves to protect individuals from governmental encroachment upon their privacy interests. Such a protection is implicit in the concept of ordered liberty, is essential to the American notion of freedom, and has become a touchstone in American jurisprudence.

In deciding the case under the protection of qualified immunity, and thus avoiding the Fourth Amendment issue, the majority in Joyce effectively dismisses the importance of the Fourth Amendment's history and its protections. The Framers enacted the Fourth Amendment to protect the people of this country from the widespread abuses resulting from the use of general warrants. This motivating factor has shaped the Supreme Court's interpretation of the amendment. However, assuming the officers' entry in Joyce

300. See generally Payton v. New York, 445 U.S. 573, 589-90 (1980) ("[T]he zone of privacy [is most] clearly defined ... when bounded by the unambiguous physical dimensions of an individual's home .... Absent exigent circumstances, [the] threshold [of the house] may not reasonably be crossed without a warrant."); Chambers v. Maroney, 399 U.S. 42, 61 (1970) (Harlan, J., concurring in part and dissenting in part) ("The general requirement that a search warrant be obtained is basic to the Amendment's protection of privacy . . . .") (citation omitted); see also Dorman v. United States, 435 F.2d 385, 389 (D.C. Cir. 1970) ("Freedom from intrusion into the home or dwelling is the archetype of the privacy protection secured by the Fourth Amendment. . . . [A] home may not be searched without a warrant notwithstanding probable cause.") (footnotes omitted).

301. U.S. CONST. amend IV. See supra note 1 for the complete text of the Fourth Amendment.

302. See supra notes 62-64 for the proposition that arrest warrants protect liberty interests and search warrants protect privacy interests.

303. See Wolf v. Colorado, 338 U.S. 25, 27 (1949) (explaining that the Fourth Amendment was made applicable to the states through the Due Process Clause, and stating that the freedoms guaranteed by the amendment are "basic to our free society"), overwritten on other grounds by Mapp v. Ohio, 367 U.S. 643 (1961); see also Johnson v. United States, 333 U.S. 10, 17 n.8 (1948) (quoting Gouled v. United States, 255 U.S. 298, 303 (1921), as stating that the rights secured by the Constitution are "to be regarded as of the very essence of constitutional liberty").

304. See Anastaplo, supra note 38, at 69; Lasson supra note 32, at 51-53; cf. Payton, 445 U.S. at 585 ("[T]he evil the Amendment was designed to prevent was broader than the abuse of a general warrant. Unreasonable searches or seizures conducted without any warrant at all are condemned by the plain language of the first clause of the Amendment."). See supra Part I.A.1 for a discussion of the use of general warrants, which led to the adoption of the Fourth Amendment.

305. See, e.g., Payton, 445 U.S. at 591-98 (tracing the history of the common law relevant to the interpretation of the Fourth Amendment); Davis v. United States, 328 U.S. 582, 603-06 (1946) (reciting the experience of the Framers which led to the adoption of the Fourth Amendment); Boyd v. United States, 116 U.S. 616, 624-33 (1886) (discussing the importance of the history of the Fourth Amendment to a determination
was unlawful (a point the court did not decide), it appears that the doctrine of qualified immunity tolerates the abuses\textsuperscript{306} the Fourth Amendment was designed to eradicate.\textsuperscript{307}

To effectively safeguard our constitutional rights, the Fourth Amendment requires law enforcement officers to obtain either an arrest warrant or a search warrant unless there is consent\textsuperscript{308} or exigent circumstances.\textsuperscript{309} In order to preserve the integrity of the Fourth Amendment, courts should continue to assess new factual situations so that the body of law concerning the Fourth Amendment’s warrant requirement develops, thus limiting the number of situations in which the law is unclear. The holding in \textit{Joyce} certainly does not signal to the officers that they violated the Fourth Amendment—nor does it set a precedent for officers in the future. Notwithstanding all of the available precedent, the First Circuit concluded that the law was too uncertain for them to judge the Fourth Amendment issue.\textsuperscript{310} In failing to decide the Fourth Amendment issue, the First Circuit has implicitly given the police of its meaning). The \textit{Boyd} Court noted that “[i]n order to ascertain the nature of the proceedings intended by the fourth amendment to the constitution under the ‘unreasonable searches and seizures,’ it is only necessary to recall the contemporary or then recent history of the controversies on the subject, both in this country and England.” \textit{Id.} at 624-25.

306. While general warrants no longer exist, abuse of the warrant process still continues. See, e.g., Horton \textit{v. California}, 496 U.S. 128, 134-36 (1990) (quoting \textit{Coolidge v. New Hampshire}, 403 U.S. 443, 465-66 (1971), and stating that the “plain view” doctrine does not apply where police are not lawfully present at the location of the search and seizure); Welsh \textit{v. Wisconsin}, 466 U.S. 740, 753 (1984) (rejecting the claim of “hot pursuit . . . because there was no immediate or continuous pursuit of the petitioner from the scene of a crime” and therefore officers could not use exigent circumstances to justify entry, without an arrest warrant, to arrest defendant for drunk driving).

307. See supra notes 32-37 and accompanying text for a description of the abuses that the Fourth Amendment was designed to prevent.

308. When police officers seek to arrest a suspect in his home or search a suspect’s home, the suspect must consent to the police entry into his home in order for a warrantless arrest or search to be lawful. See Schneckloth \textit{v. Bustamonte}, 412 U.S. 218, 248-49 (1973) (holding that where consent is voluntary, a search without a warrant is constitutional). However, in cases in which police officers attempt to arrest a suspect in a third party’s home, the third party must consent to the officers’ entry. See \textit{Steagald v. United States}, 451 U.S. 204, 205-06 (1981) (“[A] search warrant must be obtained absent exigent circumstances or consent . . . .”). In \textit{Joyce}, the Joyces did not consent to the officers entry into their home. See \textit{Joyce v. Town of Tewksbury}, 112 F.3d 19, 20 (1st Cir. 1997).

309. See supra Part I.A.2 for a discussion of the warrant process; see also \textit{California v. Acevedo}, 500 U.S. 565, 601 (1991) (Stevens, J., dissenting) (stating that “[e]ven if the warrant requirement does inconvenience the police to some extent, that fact does not distinguish this constitutional requirement from any other procedural protection secured by the Bill of Rights”).

310. See \textit{Joyce}, 112 F.3d at 22-23.
force authority to conduct themselves in the same unlawful fashion in the future without the threat of § 1983 damages liability. This authority is greater than the Supreme Court has afforded in Santana, Payton, and particularly Steagald. The United States Court of Appeals for the First Circuit’s decision in Joyce thus not only muddies the waters of Fourth Amendment law, but increases the probability of future Fourth Amendment violations.

**Conclusion**

When courts permit law enforcement officers to pierce the protective shield of the Fourth Amendment through the use of qualified immunity, the Fourth Amendment becomes an arbitrary and useless principle. The Court of Appeals for the First Circuit’s decision in Joyce v. Town of Tewksbury allowed such a piercing of the Fourth Amendment. The Joyce court’s decision based on qualified immunity was incorrect given that Steagald v. United States unequivocally requires police to obtain a search warrant before entering a third party’s home to arrest their suspect. The decision in Joyce permits law enforcement officers to disregard the clear rule

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311. See United States v. Santana, 427 U.S. 38 (1976). In Santana, while ultimately holding that the arrest in that case was proper, the Court emphasized that Santana had no expectation of privacy while standing in her doorway, since a doorway is considered a public place for purposes of the Fourth Amendment. See id. at 42.

312. See Payton v. New York, 445 U.S. 573 (1980). While holding that an arrest warrant is necessary to arrest a suspect in his home, and recognizing that a search warrant would afford greater protection, the Court stressed that an arrest warrant “will suffice to interpose the magistrate’s determination of probable cause between the zealous officer and the citizen.” Id. at 602.

313. See Steagald v. United States, 451 U.S. 204 (1981). In holding that a search warrant is necessary to enter the home of a third party to effectuate an arrest, the Steagald Court distinguished between the protections afforded by an arrest warrant and the protections afforded by a search warrant. The Court stated:

> [T]he [arrest] warrant [obtained by the police] embodied a judicial finding that there was probable cause to believe that Ricky Lyons had committed a felony, and the warrant therefore authorized the officers to seize Lyons. However, the agents sought to do more than use the warrant to arrest Lyons in a public place or in his home; instead, they relied on the warrant as legal authority to enter the home of a third person based on their belief that Ricky Lyons might be a guest there. Regardless of how reasonable this belief might have been, it was never subjected to the detached scrutiny of a judicial officer. Thus, while the [arrest] warrant . . . may have protected Lyons from an unreasonable seizure, it did absolutely nothing to protect petitioner’s privacy interest in being free from an unreasonable invasion and search of his home.

*Id.* at 213 (emphasis added).

314. See, e.g., Mapp v. Ohio, 367 U.S. 643, 659 (1961) ("Nothing can destroy a government more quickly than its failure to observe its own law, or worse, its disregard of the charter of its own existence.").
established by the Supreme Court in Steagald while remaining immune from suit. Even assuming that the law was unsettled when the First Circuit decided Joyce, the First Circuit's avoidance of the substantive Fourth Amendment law furthers the law's undefined scope.

Heather Carey