

AN ANALYSIS AND CATEGORIZATION OF U.S. SUPREME COURT
CASES UNDER THE EXIGENT CIRCUMSTANCES EXCEPTION
TO THE WARRANT REQUIREMENT

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INTRODUCTION

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.¹

The Fourth Amendment protects individual privacy by requiring probable cause and a warrant before police may conduct searches and seizures.² This protection has been refined by the U.S. Supreme Court over the years to allow exceptions.³ These exceptions are few and well-delineated⁴ and include exigent circumstances, plain view seizure, searches with consent, special needs, and searches incident to

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¹ U.S. CONST. amend. IV.

² *Id.*

³ *See, e.g.*, *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006) (approaching a premises with an objectively reasonable belief that “an occupant is seriously injured or imminently threatened with such injury”); *Griffin v. Wisconsin*, 483 U.S. 868, 880 (1987) (searching probationers); *Chimel v. California*, 395 U.S. 752, 763 (1969) (making an arrest and searching the arrestee for weapons); *Harris v. United States*, 390 U.S. 234, 236 (1968) (protecting a vehicle in police custody); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 299 (1967) (pursuing fleeing armed suspect inside house within minutes of his arrival); *Schmerber v. California*, 384 U.S. 757, 770-71 (1966) (taking a driver’s blood sample who was accused of driving while intoxicated); *but see* *Vale v. Louisiana*, 399 U.S. 30, 35 (1970) (arresting an individual outside his home does not constitute exigent circumstances for a warrantless search of the home).

⁴ *See* *Missouri v. McNeely*, 133 S. Ct. 1552, 1558 (2013); *Katz v. United States*, 389 U.S. 347, 357 (1967).

lawful arrest.⁵ This Article looks at exigent circumstances, which have been defined as emergency situations “that make obtaining a warrant impractical, useless, dangerous, or unnecessary, and that justify warrantless arrests or entries into homes or premises.”⁶

In the course of day-to-day law enforcement, police officers often have to determine whether an exigency is present so they can enter private premises without a warrant.⁷ This judgment is sometimes difficult to make and occurs in situations that may require quick thinking.⁸ Legislatures and courts have not provided police officers with consistent guidelines for identifying exigent circumstances.⁹ Rather than providing a readily applicable definition, the U.S. Supreme Court has held that exigent circumstances should be examined on a case-by-case basis.¹⁰

Academics and commentators have discussed the diverse and sometimes inconsistent interpretations of the exigent circumstances exception to the warrant requirement.¹¹ The Court has stated that the exigent circumstances exception is determined on a case-by-case basis,¹² however, courts and scholars have failed to interpret exigent circumstances in a way which provides guidance for law enforcement.¹³ Scholars have either discussed why the Court affirmed the exigent circumstances exception in a specific case,¹⁴ focused on the

⁵ ROLANDO V. DEL CARMEN, *CRIMINAL PROCEDURE: LAW AND PRACTICE* 198 (9th ed. 2014); Adam D. Searl, *Warrantless Searches of Cellular Phones: The Exigent Circumstances Exception in the Right Fit*, 39 OHIO N. U. L. REV. 387, 388 (2012).

⁶ DEL CARMEN, *supra* note 5, at 171.

⁷ See 68 AM. JUR. 2D *Searches and Seizures* § 135 (2016).

⁸ See, e.g., *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1770-71 (2015) (“With the door closed, all that Reynolds and Holder knew for sure was that Sheehan was unstable, she had just threatened to kill three people, and she had a weapon. Reynolds and Holder had to make a decision.”).

⁹ See *McNeely*, 133 S. Ct. at 1564.

¹⁰ *Id.*

¹¹ Claire Frances Stamm, *Defining the Destruction of Evidence Exigency Exception: Why Courts Should Adopt a Strict Probable Cause Standard in the Wake of Kentucky v. King*, 82 MISS. L. J. 1417, 1419-20 (2013); see also John R. Turner, Craig Hemmens, & Adam K. Matz, *Is It Reasonable? A Legal Review of Warrantless Searches of Probationers and Parolees*, CRIM. JUST. POL’Y REV. 1, 4 (2014).

¹² *McNeely*, 133 S. Ct. at 1564.

¹³ *Id.* at 1574 (Roberts, J., dissenting). See *infra* notes 14-18 (showing that scholars often analyze discrete exceptions in Fourth Amendment jurisprudence without directing their message to law enforcement).

¹⁴ See, e.g., Jennifer Moore et al., *The Cost of Privacy: Riley v. California’s Impact on Cell Phone Searches*, 9 J. DIGITAL FORENSICS SEC. L. 7 (2014) (discussing police searches of cell phones); Lee A. Schaffer, *United States v. Markham: The Attack on the Drug War Becomes an*

search and seizure exception doctrine in one type of crime emergency situation (for example, technology or hot pursuit),¹⁵ or examined warrantless search and seizure based on the individual place or situation, such as the warrantless search of a home¹⁶ or cell phone.¹⁷ The literature on the exigent circumstances exception to the Fourth Amendment can be confusing and complex.¹⁸ This confusion has real implications on the daily operations of law enforcement personnel.¹⁹

This Article uses qualitative and quantitative methods to analyze and categorize U.S. Supreme Court decisions on exigent circumstances and develops suggestions for police guidance. It consists of three parts. Part I reviews previous literature and leading U.S. Supreme Court cases on exigent circumstances. Three key concepts in understanding exigent circumstances are identified. Part II presents the results of the analysis and categorizes the different exigent circumstances. Lastly, Part III suggests legal guidelines for conducting searches involving exigent circumstances.

Attack on the Fourth Amendment, 22 AKRON L. REV. 445 (1989) (discussing the expansion of the automobile exception).

¹⁵ See, e.g., Elizabeth S. Myers, *Containing Cell Phones: Restoring the Balance between Privacy and Government Interests in Fourth Amendment Cell Phone Searches and Seizures*, 48 SUF-FOLK U. L. REV. 203 (2015); H. Morley Swingle, *Smartphone Searches Incident to Arrest*, 68 J. MO. BAR 36 (2012); Nathan Vaughn, *Overgeneralization of the Hot Pursuit Doctrine Provides Another Blow to the Fourth Amendment in Middletown v. Flinchum*, 37 AKRON L. REV. 509 (2004).

¹⁶ See, e.g., Megan Connor Bertron, *Home Is Where Your Modem Is: An Appropriate Application of Search and Seizure Law to Electronic Mail*, 34 AM. CRIM. L. REV. 163 (1996).

¹⁷ See, e.g., Searl, *supra* note 5.

¹⁸ See, e.g., Christopher LoGalbo, *Resolving the Threat of Ambiguity by Defining a Threat to the Fourth Amendment Under Kentucky v. King*, 78 BROOK. L. REV. 1487, 1488 (2013).

¹⁹ If law enforcement officers incorrectly determine that exigent circumstances were present, then they could be held civilly liable for violating the Fourth Amendment. See, e.g., 42 U.S.C. § 1983 (2012); *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 397 (1971). If officers fail to identify an emergency, then their inaction could result in harm to themselves or other civilians. See, e.g., *Minnesota v. Olson*, 495 U.S. 91, 101 (1990) (inferring exigent circumstances may exist when the police have not yet recovered a murder weapon, when unwitting residents are nearby the suspect, and when a defendant attempts to flee a dwelling); *Michigan v. Long*, 463 U.S. 1032, 1034-35 (1983) (citing the safety of two officers as a concern where the officers reasonably believed a driver to be armed and dangerous); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967). See also *Segura v. United States*, 468 U.S. 796, 812 (1984) (stating that evidence seized during illegal entry may be suppressed).

I. BACKGROUND

Two leading U.S. Supreme Court cases discuss the conceptual origins of the exigent circumstances doctrine. These cases set the foundation for assessing exigent circumstances.

A. *The Leading Cases on Exigent Circumstances: Mincey v. Arizona and Riley v. California*

In *Mincey v. Arizona*, the U.S. Supreme Court clarified the requirements of the exigent circumstances exception to the Fourth Amendment.²⁰ In 1974 a shooting at Mincey's apartment resulted in the death of an undercover officer and injuries to several other people.²¹ Ten minutes after the shooting, police officers conducted a warrantless and extensive search of the apartment that lasted four days.²² Items that were seized were admitted into evidence during trial.²³ Mincey was convicted of murder, assault, and narcotics offenses.²⁴ On appeal, the Arizona Supreme Court upheld the warrantless search under the "murder scene exception," in which the seriousness of the offense was deemed sufficient to create an exigent circumstance that justified the intrusion.²⁵ The U.S. Supreme Court later reversed this decision, stating:

There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant. . . And there is no suggestion that a warrant could not easily and conveniently have been obtained. We decline to hold that the seriousness of the offense under investigation itself creates exigent circumstances of the kind that under the Fourth Amendment justify a warrantless search.²⁶

The Court identified two elements needed to establish exigent circumstances. The first is time pressure; the second is risk of evi-

²⁰ *Mincey v. Arizona*, 437 U.S. 385, 387-88 (1978).

²¹ *Id.* at 387.

²² *Id.* at 388-89.

²³ *Id.* at 389.

²⁴ *Id.* at 387-88.

²⁵ *Id.* at 394-95; ROLANDO V. DEL CARMEN & JEFFERY T. WALKER, BRIEFS OF LEADING CASES IN LAW ENFORCEMENT 75 (8th ed. 2012) [hereinafter BRIEFS OF LEADING CASES IN LAW ENFORCEMENT].

²⁶ *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).

dence destruction.²⁷ Without both, the exigent circumstances exception would not apply and the evidence obtained would not be admissible during trial.²⁸

The Court again addressed the meaning of exigent circumstances in a more recent case.²⁹ On August 22, 2009, Riley was stopped for a traffic violation, which led to an arrest after weapons were found.³⁰ The police searched his vehicle and his cell phone without a warrant.³¹ Based on the information collected from his cell phone, Riley was charged with crimes related to a drive-by shooting.³² In a unanimous opinion, the Court held that police cannot search information on an arrestee's cell phone without a warrant, unless exigent circumstances exist at the time of arrest.³³ Chief Justice Roberts stressed that in today's world, the cell phone serves as an immense storage repository of private information, far beyond other items that may be carried on an arrestee's person.³⁴ Before the emergence of cell phones, a police search was limited to physical items and possessions and generally constituted only a narrow intrusion on privacy.³⁵ Nevertheless, a search into a cell phone leads to several interrelated privacy issues.³⁶ Cell phone users tend to keep and use their devices over a long period of time, thus cell phones store more information than merely isolated physical records.³⁷ Therefore, a warrantless search of a cell phone results in a more serious violation of the arrestee's privacy rights that is not generally recognized.³⁸

B. *Three Key Concepts to Understanding Exigent Circumstances*

Exigent circumstances permit police to make warrantless entry into private places when “exigencies of the situation made that course imperative.”³⁹ The exigency must “make the needs of law enforce-

²⁷ See *id.* at 392, 394.

²⁸ See *id.* at 394.

²⁹ See *Riley v. California*, 134 S. Ct. 2473 (2014).

³⁰ *Id.* at 2480.

³¹ *Id.*

³² *Id.* at 2481.

³³ *Id.* at 2493-95.

³⁴ *Id.* at 2489.

³⁵ *Riley v. California*, 134 S. Ct. 2473, 2489 (2014).

³⁶ *Id.*

³⁷ *Id.*

³⁸ See *id.* at 2490.

³⁹ *McDonald v. United States*, 335 U.S. 451, 456 (1948).

ment so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.”⁴⁰ Exigent circumstances are situational and environmentally influenced in a number of ways,⁴¹ but three concepts are key to understanding when exigent circumstances may legally be invoked. These are: “reasonableness,” “present needs,” and “existing facts.”⁴²

The U.S. Supreme Court has held that warrantless searches may be justified under the exigent circumstances exception when there was an objectively reasonable basis that led the police to believe that someone was “seriously injured or imminently threatened with such injury.”⁴³ The Court said, “An action is ‘reasonable’ under the Fourth Amendment, regardless of the individual police officer’s state of mind, ‘as long as the circumstances, viewed *objectively*, justify [the] action.’”⁴⁴ The ambiguity and imprecision of this objectively reasonable basis test was addressed by the Court in the 2011 case of *Kentucky v. King*.⁴⁵ Before the Court’s ruling on this issue, some lower courts had established a “police-created exigency” doctrine, which invalidated exigent circumstances claims made by law enforcement when the exigency was created or manufactured by conduct of the officers.⁴⁶ These lower courts imposed additional standards for reviewing the reasonableness of law enforcement officers’ behavior to consider whether the officer deliberately intended to avoid the warrant requirement in bad faith,⁴⁷ whether it was reasonably foreseeable that the conduct would create an exigency,⁴⁸ or whether the conduct was contrary to standard law enforcement practices.⁴⁹ The Court rejected these subjective approaches, instead holding that “the exigent circum-

⁴⁰ *Mincey v. Arizona*, 437 U.S. 385, 394 (1978).

⁴¹ The U.S. Supreme Court has determined that the validity of warrantless searches and seizures in exigent circumstances varies depending on the location and situation of the emergency. *See infra* Appendix for further distinction.

⁴² *See, e.g.*, *DEL CARMEN*, *supra* note 5, at 205-07.

⁴³ *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006).

⁴⁴ *Id.* at 404 (alteration in original) (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)).

⁴⁵ *See Kentucky v. King*, 563 U.S. 452, 460-61 (2011).

⁴⁶ *Id.* at 461.

⁴⁷ *See, e.g.*, *United States v. Chambers*, 395 F.3d 563, 566 (6th Cir. 2005), *abrogated by Kentucky v. King*, 563 U.S. 452, 464 (2011).

⁴⁸ *See, e.g.*, *United States v. Mowatt*, 513 F.3d 395, 403-04 (4th Cir. 2008), *abrogated by Kentucky v. King*, 563 U.S. 452, 464-65 (2011).

⁴⁹ *See, e.g.*, *United States v. Gould*, 364 F.3d 578, 591 (5th Cir. 2004), *abrogated by Kentucky v. King*, 563 U.S. 452, 467 (2011).

stances rule applies when the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment.”⁵⁰ The exigent circumstances rule would not apply, for example, in a case where law enforcement officers threaten to enter without a warrant or lack a legally sound basis for entry after the occupant refuses to voluntarily let them in.⁵¹

Scenarios that may be deemed exigencies include “the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury. . . .”⁵² Such situations may be emergencies that qualify for warrant-exemption, but this determination is made by a judge and takes into account the totality of circumstances in the particular case without regard for the subjective motives or intentions of the officer.⁵³ The reasonableness of warrantless searches and seizures “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”⁵⁴ Reasonableness determinations must allow “for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.”⁵⁵ The Court has held that “evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.”⁵⁶ Objectiveness is a critical component of exigent circumstances. Such must be based on present need, existing facts, and exclude the public agent’s subjective creation of an emergency.⁵⁷

The compelling needs of law enforcement officers in exigent situations must be weighed against the privacy legally afforded to the location. American law affirms that “a search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property.”⁵⁸ The Fourth Amendment was “intended to protect against invasions of ‘the sanctity of a man’s home and the privacies of life’ from searches under indiscriminate,

⁵⁰ *King*, 563 U.S. at 469.

⁵¹ *See, e.g., id.* at 462.

⁵² *Riley v. California*, 134 S. Ct. 2473, 2494 (2014).

⁵³ *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006).

⁵⁴ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁵⁵ *Id.* at 397.

⁵⁶ *See Horton v. California*, 496 U.S. 128, 138 (1990).

⁵⁷ *Id.* at 138-40.

⁵⁸ *Id.* at 135.

general authority.”⁵⁹ The Court has stated that the “Fourth Amendment protects expectations of privacy, the individual’s legitimate expectations that in certain places and at certain times he has the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.”⁶⁰ Privacy rights that were originally reserved for a person and residence have expanded to include telephone booths,⁶¹ vehicles,⁶² and digital data on cellphones.⁶³ Public areas, where no reasonable expectation of privacy exists, are not protected under the Fourth Amendment.⁶⁴ Two observations can be inferred from the Fourth Amendment. First, the privacy that a search would invade and the Fourth Amendment would protect includes the person and physical location.⁶⁵ Second, “if exigent circumstances do exist, law enforcement officers may cross this threshold and enter a residence without a warrant.”⁶⁶ Thus, exigent circumstances can justify warrantless searches and seizures in areas that are reasonably understood as private.

Exigent circumstances are generally recognized as emergencies related to law enforcement.⁶⁷ The U.S. Court of Appeals for the Fourth Circuit has held that the existence of an exigency may be determined by:

- (1) the degree of urgency involved and the amount of time necessary to obtain a warrant;
- (2) the officers’ reasonable belief that the contraband is about to be removed or destroyed;
- (3) the possibility of danger to police guarding the site;
- (4) information indicating the possessors of

⁵⁹ *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 301 (1967) (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

⁶⁰ *Winston v. Lee*, 470 U.S. 753, 758 (1985) (citations omitted) (internal quotation marks omitted).

⁶¹ See *Katz v. United States*, 389 U.S. 347, 353 (1967).

⁶² See, e.g., *Maryland v. Dyson*, 527 U.S. 465, 467 (1999); see also *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); *California v. Carney*, 471 U.S. 386, 390 (1985).

⁶³ *Riley v. California*, 134 S. Ct. 2473, 2485 (2014).

⁶⁴ See *United States v. Watson*, 423 U.S. 411, 445 (1976); see also *Katz*, 389 U.S. at 351.

⁶⁵ See *Michigan v. Fisher*, 558 U.S. 45, 47 (2009); *Groh v. Ramirez*, 540 U.S. 551, 561-63 (2004); *Payton v. New York*, 445 U.S. 573, 589-90 (1980); *Mincey v. Arizona*, 437 U.S. 385, 391-92 (1978).

⁶⁶ *Elizabeth Sargeant, Kentucky v. King: The One Where the Supreme Court Dishonors the Warrant Requirement in Drug Cases*, 47 WAKE FOREST L. REV. 1269, 1275 (2012).

⁶⁷ 68 AM. JUR. 2D *Searches and Seizures* § 133 (2016).

the contraband are aware that the police are on their trail; and (5) the ready destructibility of the contraband.⁶⁸

To be eligible for a warrant exception, the exigency must include fatal danger or imminent damage and a time limitation requiring police to act swiftly.⁶⁹

The U.S. Supreme Court, however, has not clearly set the timeframe within which to determine whether exigent circumstances are present.⁷⁰ Lower courts and legal studies have recognized this time limitation from a qualitative approach, providing a literal description of time limits under exigency.⁷¹ The U.S. Supreme Court has stated, “Where there are exigent circumstances in which police action literally must be ‘now or never’ to preserve the evidence of the crime, it is reasonable to permit action without prior judicial evaluation.”⁷² Here, the time limitation under the exigency was described as “now or never.”⁷³ Due to the urgent nature of this requirement, the police have to identify exigent circumstances by relying on their own understanding and experience. This time limitation likely results in inconsistency.⁷⁴ The timeframe for exigent circumstances is always dependent on the nature of the exigency, such as danger or damage.⁷⁵ Because this is a particularity, this research excludes the time dimension in categorizing exigent circumstances.

⁶⁸ *United States v. Turner*, 650 F.2d 526, 528 (4th Cir. 1981).

⁶⁹ *See, e.g., Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *see also Roaden v. Kentucky*, 413 U.S. 496, 505 (1973).

⁷⁰ *See, e.g., Richard A. Williamson, The Supreme Court, Warrantless Searches, and Exigent Circumstances*, 31 OKLA. L. REV. 110 (1978).

⁷¹ *See Theresa Ludwig Kruk, Annotation, Admissibility, in Criminal Case, of Evidence Discovered by Warrantless Search in Connection with Fire Investigation—Post-Tyler Cases*, 31 A.L.R. 4TH 194 (1984); V. G. Lewter, *Annotation, Modern Status of Rule as to Validity of Non-consensual Search and Seizure Made Without Warrant After Lawful Arrest as Affected by Lapse of Time Between, or Difference in Places of, Arrest and Search*, 19 A.L.R. 3D 727 (1968); H. H. Henry, *Annotation, Lawfulness of Nonconsensual Search and Seizure Without Warrant, Prior to Arrest*, 89 A.L.R. 2D 715 (1963).

⁷² *Roaden*, 413 U.S. at 505 (internal citations omitted).

⁷³ *Id.*

⁷⁴ *See, e.g., Ben Lowry, Subjective Intent and the Police-Created Exigency Doctrine: The Lawlessness of the Lawfulness Test*, 51 U. LOUISVILLE L. REV. 591, 606 (2013) (discussing the potential for law enforcement officers to abuse their discretion or arbitrarily conduct warrantless searches and seizures).

⁷⁵ *See Lewter, supra* note 71.

Traditionally, exigent circumstances were recognized and grouped by emergent dangers and damage.⁷⁶ This first concept involves danger to the public and police. The Court ruled that certain situations support warrantless searches, such as “hot pursuit of a fleeing felon, the imminent destruction of evidence, the need to prevent a suspect’s escape, or the risk of danger to the police or others; . . . and, in assessing the risk of danger, the gravity of the crime and likelihood that the suspect is armed should be considered.”⁷⁷ The Court added that the “Fourth Amendment does not require police officers to delay in their course of investigation if to do so would gravely endanger their lives or lives of others.”⁷⁸

Damage to evidence or other property constituted the second main exigency grouping.⁷⁹ South Dakota courts have established that the main reason for the exigent circumstances exception to the warrant requirement is law enforcement’s interest in preventing the loss of important evidence.⁸⁰ The exigent circumstances exception is affirmed in situations where the police must act quickly to protect evidence from imminent destruction or substantial harm.⁸¹ There may be a substantial risk that evidence would be lost if police are not able to get a warrant in time.⁸²

Some scholars have categorized exigent circumstances based on the type of law enforcement interaction. For example, Claire Frances Stamm categorizes exigent circumstances into two groups: public safety and evidence gathering.⁸³ Examples of public-safety exigencies include hot pursuit, preventing escape, and providing emergency aid to another person.⁸⁴ Rolando V. Del Carmen identifies four groups of exigent circumstances: (1) physical harm to the officer or destruction of evidence, (2) hot pursuit of dangerous suspects, (3) danger to a

⁷⁶ See Crishauna Lloyd, *Exigent Circumstances: How Useful Are the Lower Courts Tests If They Require So Many*, (2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2021403.

⁷⁷ *Minnesota v. Olson*, 495 U.S. 91, 100 (1990).

⁷⁸ *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967).

⁷⁹ See, e.g., *Missouri v. McNeely*, 133 S. Ct. 1552, 1559 (2013); *Kentucky v. King*, 563 U.S. 452, 462, 472 (2011); *United States v. Ramirez*, 523 U.S. 65, 67-68 (1998).

⁸⁰ See Emily J. Sovell, *State v. Hanson: Has the Exigent Circumstances Exception to the Warrant Requirement Swallowed the Rule*, 45 SAN. DIEGO. L. REV. 163, 173 (2000).

⁸¹ Searl, *supra* note 5, at 390.

⁸² See, e.g., *United States v. Farra*, 725 F.2d 197, 199 (2d Cir. 1984).

⁸³ Stamm, *supra* note 11, at 1431.

⁸⁴ *Id.* at 1431-32.

third person, and (4) driving while intoxicated.⁸⁵ As Justice Powell has noted, “The range of variables in the fact situations of search and seizure is almost infinite. Rather than seek facile solutions, it is best to apply principles broadly faithful to Fourth Amendment purposes.”⁸⁶

II. EXIGENT CIRCUMSTANCES CATEGORIZED

An investigation into this doctrine raises two questions based on the key points of exigent circumstances: (1) where does the exigent circumstances exception always occur?; and (2) what facts of exigency are always involved? A search of U.S. Supreme Court cases identified 44 cases which discussed the exigent circumstances exception.⁸⁷ These cases revealed a model of exigent circumstances which could be categorized into three main groups: (1) private premises, (2) vehicle, and (3) technology and digital data. However, this conceptualization does not adequately provide guidance for law enforcement practice. Further narrowed to 31 cases with relevant holdings, as listed in the

⁸⁵ DEL CARMEN, *supra* note 5, at 205.

⁸⁶ *Rakas v. Illinois*, 439 U.S. 128, 156 (1978) (Powell, J., concurring).

⁸⁷ *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1774-75, 1778 (2015); *Riley v. California*, 134 S. Ct. 2473, 2494-95 (2014); *Florida v. Jardines*, 133 S. Ct. 1409, 1417-18 (2013); *Missouri v. McNeely*, 133 S. Ct. 1552, 1568 (2013); *Stanton v. Sims*, 134 S. Ct. 3, 7 (2013); *Kentucky v. King*, 563 U.S. 452, 455, 472 (2011); *City of Ontario v. Quon*, 560 U.S. 746, 760-63, 765 (2010); *Arizona v. Gant*, 556 U.S. 332, 346, 351 (2009); *Michigan v. Fisher*, 558 U.S. 45, 49-50 (2009); *Brigham City v. Stuart*, 547 U.S. 398, 407 (2006); *Kirk v. Louisiana*, 536 U.S. 635, 637 (2002); *Maryland v. Dyson*, 527 U.S. 465, 467 (1999); *United States v. Ramirez*, 523 U.S. 65, 73-74 (1998); *Pennsylvania v. Labron*, 518 U.S. 938, 940-41 (1996); *Michigan v. Clifford*, 464 U.S. 287, 297-99 (1994); *California v. Acevedo*, 500 U.S. 565, 580-81 (1991); *Maryland v. Buie*, 494 U.S. 325, 337 (1990); *Minnesota v. Olson*, 495 U.S. 91, 101 (1990); *Anderson v. Creighton*, 483 U.S. 635, 641, 646 (1987); *California v. Carney*, 471 U.S. 386, 394-95 (1985); *Thompson v. Louisiana*, 469 U.S. 17, 21, 23 (1985); *Segura v. United States*, 468 U.S. 796, 816 (1984); *United States v. Karo*, 468 U.S. 705, 717-18, 721 (1984); *Welsh v. Wisconsin*, 466 U.S. 740, 754-55 (1983); *Michigan v. Thomas*, 458 U.S. 259, 262 (1982); *United States v. Ross*, 456 U.S. 798, 825 (1982); *Steagald v. United States*, 451 U.S. 204, 212, 222-23 (1981); *Vale v. Louisiana*, 399 U.S. 30, 35-36 (1981); *Walter v. United States*, 447 U.S. 649, 654, 659-60 (1980); *Arkansas v. Sanders*, 442 U.S. 753, 766 (1979); *Michigan v. Tyler*, 436 U.S. 499, 510, 512 (1978); *Mincey v. Arizona*, 437 U.S. 385, 395, 402 (1978); *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 358-99, 360-61 (1977); *United States v. Chadwick*, 433 U.S. 1, 15-16 (1977); *United States v. Santana*, 427 U.S. 38, 42-43 (1976); *Cardwell v. Lewis*, 417 U.S. 583, 595-96 (1974); *Moran v. Neff*, 415 U.S. 940, 940 (1974); *Cady v. Dombrowski*, 413 U.S. 433, 446, 450 (1973); *Cupp v. Murphy*, 412 U.S. 291, 295 (1973); *Chambers v. Maroney*, 399 U.S. 42, 51-52, 54 (1970); *Chimel v. California*, 395 U.S. 752, 768 (1969); *Katz v. United States*, 389 U.S. 347, 356-57, 359 (1967); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 310 (1967); *Ker v. California*, 374 U.S. 23, 38-39, 44 (1963); *United States v. Jeffers*, 342 U.S. 48, 51-52, 54 (1951).

Appendix,⁸⁸ the three groups were split into subgroups of exigent circumstances to guide law enforcement officers and policymakers as they consider the impact of new legislation on exigent circumstances exceptions. For example, under the group of “private premises,” the exigencies were subcategorized by four main kinds of exigencies summarized from the case factors.⁸⁹ Finally, an analysis of the key points of each group and its subgroups based on the Court holdings provides practical guidelines for law enforcement.

A. *Involving Private Premises*

The Fourth Amendment in essence affirms that each “man’s home is his castle,” secure from unreasonable searches and seizures of property by the government.⁹⁰ The first right of privacy established by the Court was privacy in the house and the surrounding attached space.⁹¹ Unsurprisingly, house entries are the most litigated area in warrantless search cases.⁹² The requirements for constitutional warrantless searches of the house are stricter than other private locations. The Court has held that “In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.”⁹³ This household privacy threshold incorporates the house itself as well as the curtilage⁹⁴ and outer doors.⁹⁵

A total of 16 U.S. Supreme Court cases interpreted exigent circumstances involving private premises.⁹⁶ Four subgroups of exigen-

⁸⁸ See *infra* Appendix.

⁸⁹ See *infra* Appendix.

⁹⁰ Jonathan L. Hafetz, “*A Man’s Home Is His Castle?*”: *Reflections on the Home, the Family, and Privacy During the Late Nineteenth and Early Twentieth Centuries*, 8 WM. & MARY J. WOMEN & L. 175, 175 (2002).

⁹¹ *Id.*

⁹² See *Kyllo v. United States*, 533 U.S. 27, 28 (2001).

⁹³ *Payton v. New York*, 445 U.S. 573, 590 (1980).

⁹⁴ See, e.g., *Florida v. Jardines*, 133 S. Ct. 1409, 1417-18 (2013).

⁹⁵ See *Steagald v. United States*, 451 U.S. 204, 217-18 (1981).

⁹⁶ *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1769-70 (2015) (group home for people living with mental illness); *Kentucky v. King*, 563 U.S. 452, 455, 472 (2011) (apartment); *Michigan v. Fisher*, 558 U.S. 45, 45 (2009); *Brigham City v. Stuart*, 547 U.S. 398, 400-01 (2006); *Kirk v. Louisiana*, 536 U.S. 635, 635 (2002); *United States v. Ramirez*, 523 U.S. 65, 68-69 (1998); *Minnesota v. Olson*, 495 U.S. 91, 94 (1990); *Michigan v. Clifford*, 464 U.S. 287, 289 (1984); *Segura v. United States*, 468 U.S. 796, 797 (1984); *Steagald*, 451 U.S. at 206; *Michigan v. Tyler*, 436 U.S. 499 (1978); *Mincey v. Arizona*, 437 U.S. 385, 396 (1978); *G. M. Leasing Corp. v.*

cies justify a warrantless search in commercial and residential buildings. These are: (1) danger to the public,⁹⁷ (2) danger to police,⁹⁸ (3) danger to property,⁹⁹ and (4) damage to evidence.¹⁰⁰

1. Danger to the Public

In seven cases, the Court has applied the exigent circumstances exception when there is danger to people in the house.¹⁰¹ The following cases exemplify the criteria needed to justify warrantless entry into private residences when occupants are in danger.

In *Brigham City, Utah v. Stuart*, police officers responding to noise complaints entered a home without a warrant after witnessing an altercation between four adults and a juvenile.¹⁰² Specifically, the youth was seen punching an adult in the face.¹⁰³ The trial court, Utah Court of Appeals, and Utah Supreme Court all ruled that the evidence obtained from the warrantless entry should be suppressed because a punch that resulted in minor injury did not create an exigent circumstance.¹⁰⁴ On appeal, the U.S. Supreme Court held that “police may enter a home without a warrant if they have an objectively reasonable basis for believing that an occupant is or is about to be seriously injured.”¹⁰⁵ The Court noted that “the officers had an objectively reasonable basis for believing that the injured adult might need help and that the violence in the kitchen was just beginning.”¹⁰⁶ *Stuart* established the “emergency aid exception,” which allows police to “enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent

United States, 429 U.S. 338, 344-45 (1977); *United States v. Santana*, 427 U.S. 38, 42-43 (1976); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 310 (1967); *Ker v. California*, 374 U.S. 23, 38-39, 44 (1963). See *infra* Appendix for case summaries.

⁹⁷ See *infra* Appendix, Part A, Section 1 and Part B, Section 1.

⁹⁸ See *infra* Appendix, Part A, Section 2 and Part B, Section 1.

⁹⁹ See *infra* Appendix, Part A, Section 3.

¹⁰⁰ See *infra* Appendix, Part A, Section 4 and Part B, Section 3.

¹⁰¹ *Sheehan*, 135 S. Ct. at 1774-75; *Fisher*, 558 U.S. at 49; *Stuart*, 547 U.S. at 404; *Olson*, 495 U.S. at 100; *Tyler*, 436 U.S. at 509, 511; *Mincey*, 437 U.S. at 392-93; *Hayden*, 387 U.S. at 298-99.

¹⁰² *Stuart*, 547 U.S. at 400-01.

¹⁰³ *Id.* at 401.

¹⁰⁴ See *id.* at 398.

¹⁰⁵ *Id.* at 400.

¹⁰⁶ *Id.* at 406.

injury.”¹⁰⁷ There must be an actual or predicted injury to the person in the house to justify the exception.¹⁰⁸

City and County of San Francisco, California v. Sheehan exemplifies the exigent circumstances exception to the warrant requirement when protection of a third person is involved.¹⁰⁹ In *Sheehan*, police officers entered the private room of a group home resident without a warrant after knocking and announcing their intentions to help her.¹¹⁰ The Court held that the police officers’ actions were constitutional because the resident threatened to injure people in the house and a delayed response could have increased the risk of danger.¹¹¹

The cases reviewed in this section indicate that police may enter a home without a warrant when the exigent circumstances involve danger to the public that requires the police to provide emergency assistance.¹¹² Warrantless entry was justified because the risk of danger could have been increased during the time it would take law enforcement officers to secure a warrant.¹¹³

2. Danger to the Police

Two U.S. Supreme Court cases focus on danger to police as an exigent circumstance involving the warrantless entry of a home.¹¹⁴ In *Warden, Maryland Penitentiary v. Hayden*, a suspected armed felon ran into a house within minutes of the police’s arrival.¹¹⁵ Police entered the house without a warrant to search for the robber and weapons that could be used against them.¹¹⁶ The Court found that a warrantless search was reasonably necessary to prevent dangers associated with the suspect’s escape or resistance to apprehension.¹¹⁷ Specifically, the Court held, “The Fourth Amendment does not require police officers to delay in the course of an investigation if to do so

¹⁰⁷ *Id.* at 402-03.

¹⁰⁸ *See* *Brigham City v. Stuart*, 547 U.S. 398, 398 (2006).

¹⁰⁹ *See* *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1774-75 (2015).

¹¹⁰ *Id.* at 1770.

¹¹¹ *See id.* at 1774-75.

¹¹² *See supra* note 101.

¹¹³ *See Sheehan*, 135 S. Ct. at 1775.

¹¹⁴ *See* *Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967).

¹¹⁵ *Hayden*, 387 U.S. at 297.

¹¹⁶ *Id.* at 298-99.

¹¹⁷ *Id.* at 299.

would gravely endanger their lives or the lives of others.”¹¹⁸ The Court noted that “Speed here was essential, and only a thorough search of the house for persons and weapons could have insured that Hayden was the only man present and that the police had control of all weapons”¹¹⁹

In *Minnesota v. Olson*, police entered a home without a warrant to arrest a person suspected of accomplice murder and robbery committed the day before.¹²⁰ The Court ruled the warrantless arrest invalid because exigent circumstances were not present.¹²¹ Although a serious felony was involved, there was no evidence that the suspect was violent or had a weapon.¹²² In addition, there was time after the crime to obtain a warrant, police and occupants were not in danger, and there was no risk of escape because police surrounded the house.¹²³

The contrasting circumstances in these two cases highlight the scope of the danger to police exigency, particularly when operating in residential locations. The circumstances in *Olson* were not exigent because the police exerted control over the elements and had time to obtain an arrest warrant.¹²⁴ Conversely, in *Hayden*, police did not have control of the situation—the armed and dangerous felon was attempting to escape apprehension—and the police did not have time to secure a warrant before entering the house because they were in hot pursuit of the suspect.¹²⁵ These cases suggest that exigency is increased when police lack control over the scene. The Court noted, “The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.”¹²⁶

3. Danger to Property

The danger to property exigency pertains to the danger to real property as distinguished from damage to evidence in general. The

¹¹⁸ *Id.* at 298-99.

¹¹⁹ *Id.* at 299.

¹²⁰ *Minnesota v. Olson*, 495 U.S. 91, 93-94 (1990).

¹²¹ *Id.* at 100.

¹²² *Id.* at 101.

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *See Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 299 (1967).

¹²⁶ *Michigan v. Summers*, 452 U.S. 692, 702-03 (1981).

Court addressed danger to property in four exigent circumstances cases.¹²⁷ In *Michigan v. Tyler*, the Court found that warrantless entry into a burning building was reasonable under the exigent circumstances exception.¹²⁸ The Court held, “Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze.”¹²⁹ Although not explicitly written, the Court alludes to the risk of harm to people and damage to property that would result during the time it would take firefighters to obtain a warrant before extinguishing a fire.¹³⁰ After the fire is extinguished, firefighters have compelling interests in immediately investigating the cause of the fire to detect and control dangers that could rekindle the fire and to preserve evidence of arson or accidental ignition.¹³¹ Thus, evidence obtained from a search within a reasonable time after the exigency is admissible.¹³² A few years after *Tyler* the Court further clarified the requirements for searching fire-damaged homes, holding that the scope of a firefighter’s search for hazards or causes of fire “may be no broader than reasonably necessary to achieve its end.”¹³³ Once the cause of the fire is established and the investigators determine that there are no further fire hazards, any additional searching is for the purpose of finding evidence of arson and requires a warrant unless exigent circumstances are present or consent is given.¹³⁴

The Court has also considered a case involving damage to a home caused by police executing a search warrant.¹³⁵ In *United States v. Ramirez*, the Court found that it was reasonable for police to break a single garage window for the purpose of discouraging house occupants from accessing weapons that an informant said were located there.¹³⁶ The damage caused by the police in this case was relatively minor, but the Court recognized that “Excessive or unnecessary destruction of

¹²⁷ See *Michigan v. Fisher*, 558 U.S. 45, 48 (2009); *United States v. Ramirez*, 523 U.S. 65, 71-72 (1998); *Michigan v. Clifford*, 464 U.S. 287, 291-93 (1984); *Michigan v. Tyler*, 436 U.S. 499, 509 (1978).

¹²⁸ *Tyler*, 436 U.S. at 509.

¹²⁹ *Id.* at 509.

¹³⁰ See *id.* at 509-10.

¹³¹ *Id.* at 510.

¹³² *Id.* at 500.

¹³³ *Michigan v. Clifford*, 464 U.S. 287, 294-95 (1984).

¹³⁴ *Id.* at 297-98.

¹³⁵ See *United States v. Ramirez*, 523 U.S. 65, 71-72 (1998).

¹³⁶ *Id.*

property in the course of a search may violate the Fourth Amendment”¹³⁷ If exigent circumstances, such as situations involving threats of physical violence or imminent destruction of evidence are not present, then law enforcement officers are generally required to knock and announce their presence and purpose before forcefully entering private residences.¹³⁸ This knock-and-announce requirement provides individuals an opportunity to comply with the law and avoid the destruction of property resulting from a forcible entry.¹³⁹

The cases reviewed in this subcategory present two contrastive lines of reasoning. First, firefighters entering a burning building without a warrant are justified, at least implicitly, by the need to protect the property that is at risk of damage.¹⁴⁰ Requiring firefighters to obtain a warrant before extinguishing a fire would be unrealistic and inevitably result in increased injury to people and damage to property.¹⁴¹ Second, it may be reasonable for law enforcement officers to cause damage to property during a forcible entry into a residence if other exigent circumstances are present.¹⁴² This approach supports damage to residential property in limited circumstances, whereas the former encourages protection of property from fire damage.

4. Damage to Evidence

In nine cases, the Court applied the exigent circumstances exception when there is risk of damage to evidence in residential locations.¹⁴³ In *Ker v. California*, police officers conducted a warrantless search for evidence because they had reason to believe people in an apartment had bought marijuana, which was a felony offense at the time, and that this drug evidence could be lost in the time it would take to secure a warrant.¹⁴⁴ The Court held that police can enter a

¹³⁷ *Id.* at 71.

¹³⁸ *Wilson v. Arkansas*, 514 U.S. 927, 929-30 (1995).

¹³⁹ *See id.* at 935-36.

¹⁴⁰ *See, e.g., Michigan v. Clifford*, 464 U.S. 287, 293 (1984); *Michigan v. Tyler*, 436 U.S. 499, 509-10 (1978).

¹⁴¹ *See, e.g., Tyler*, 436 U.S. at 509-10.

¹⁴² *See, e.g., United States v. Ramirez*, 523 U.S. 65, 71-72 (1998).

¹⁴³ *See Kentucky v. King*, 563 U.S. 452, 462, 472 (2011); *Michigan v. Fisher*, 558 U.S. 45, 48 (2009); *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002); *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1990); *Segura v. United States*, 468 U.S. 796, 810 (1984); *Tyler*, 436 U.S. at 510; *G. M. Leasing Corp. v. United States*, 429 U.S. 338, 358-59 (1977); *United States v. Santana*, 427 U.S. 38, 43 (1976); *Ker v. California*, 374 U.S. 23, 40-41 (1963).

¹⁴⁴ *Ker*, 374 U.S. at 26-29.

residence without a warrant when the person inside evaded police 30 minutes earlier and could attempt to destroy evidence in the time it would take to get a warrant.¹⁴⁵ In a similar case, narcotics investigators approached a suspected drug dealer standing in the front door of a house, which prompted the suspect to flee into the house.¹⁴⁶ Police followed and arrested the suspect for drug-related crimes.¹⁴⁷ The Court ruled that the arrest and search were constitutional because the police were in hot pursuit of a suspect to prevent the destruction of drug evidence.¹⁴⁸ The Court defined “hot pursuit” as a chase that “need not be an extended hue and cry in and about the public streets.”¹⁴⁹ In *Segura v. United States*, the Court ruled that “securing a dwelling, on the basis of probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents.”¹⁵⁰

As these cases demonstrate, there are situations where law enforcement personnel may be justified in entering a home without a warrant or consent to prevent the imminent destruction of evidence. Knowing that the evidence is in the residence is not enough to justify a warrantless entry, there must be probable cause to believe that a serious crime has been committed and the suspect is in the dwelling, and a reasonable belief that evidence will likely be destroyed if officers do not move quickly.¹⁵¹ Reasonable belief is based on a totality of circumstances, but may be established when officers have information that suggests the suspect may be aware of police surveillance or pursuit and is likely to attempt to destroy the evidence.¹⁵² The exigent circumstances exception to the warrant requirement may be more successful in drug cases.¹⁵³ The Court has noted, “Destruction of evidence issues probably occur most frequently in drug cases because drugs may be easily destroyed by flushing them down a toilet or rinsing them down a drain.”¹⁵⁴ Warrantless searches of private premises

¹⁴⁵ *Id.* at 40-41.

¹⁴⁶ *Santana*, 427 U.S. at 40.

¹⁴⁷ *Id.* at 40-41.

¹⁴⁸ *Id.* at 42-43.

¹⁴⁹ *Id.* at 43 (internal quotation marks omitted).

¹⁵⁰ *Segura v. United States*, 468 U.S. 796, 810 (1984).

¹⁵¹ *Groh v. Ramirez*, 540 U.S. 551, 559 (2004); *Payton v. New York*, 445 U.S. 573, 588 (1980); *see supra* note 143.

¹⁵² *See, e.g., Ker v. California*, 374 U.S. 23, 40-41 (1963).

¹⁵³ *See, e.g., Kentucky v. King*, 563 U.S. 452, 461, 472 (2011).

¹⁵⁴ *Id.* at 461.

may be appropriate so long as the exigency of evidence destruction is an immediate risk and the officers meet the probable cause and reasonable belief requirements.

B. *Involving Vehicles*

Compared with private residences, vehicles have a reduced level of privacy.¹⁵⁵ The limited privacy afforded to automobiles derives from the compelling governmental interest in regulation.¹⁵⁶ Law enforcement needs related to vehicle safety, for example inspection and licensing or traffic rules, engender interactions with police that would not transpire in home settings.¹⁵⁷ Differences in the degree of privacy between homes and vehicles generate some important distinctions for law enforcement practices, particularly in response to exigencies.

Carroll v. United States was the first case to grant a motor vehicle exception based on exigent circumstances.¹⁵⁸ The *Carroll* doctrine supports a warrantless search of a vehicle when there is probable cause to believe there is evidence of crime in the vehicle and the vehicle could be moved before a warrant could be secured.¹⁵⁹ Similarly, in *United States v. Ross*,¹⁶⁰ the Court held that police may conduct a warrantless search of a vehicle if they have probable cause to believe contraband is hidden somewhere within it.¹⁶¹ The scope of the automobile search, however, “is defined by the object of the search and the places in which there is probable cause to believe that it may be found.”¹⁶² The exigency that validates warrantless searches of automobiles stems from the mobility of vehicles, which could result in the loss of evidence.

The Court has addressed exigent circumstances involving vehicles in 13 cases.¹⁶³ Three main subcategories of exigent circumstances sat-

¹⁵⁵ *Cady v. Dombrowski*, 413 U.S. 433, 439-441 (1973); *Carroll v. United States*, 267 U.S. 132, 151 (1925).

¹⁵⁶ *California v. Carney*, 471 U.S. 386, 392 (1985).

¹⁵⁷ *Id.*

¹⁵⁸ *See Carroll*, 267 U.S. at 162.

¹⁵⁹ *Id.* at 153-56.

¹⁶⁰ *United States v. Ross*, 456 U.S. 798, 823 (1982).

¹⁶¹ *Id.*

¹⁶² *Id.* at 824. *See also* *Pennsylvania v. Labron*, 518 U.S. 938, 940-41 (1996).

¹⁶³ *See, e.g., Missouri v. McNeely*, 133 S. Ct. 1552, 1568 (2013); *Maryland v. Dyson*, 527 U.S. 465 (1999); *Labron*, 518 U.S. at 940-41; *California v. Acevedo*, 500 U.S. 565, 580-81 (1991); *California v. Carney*, 471 U.S. 386, 394-95 (1985); *Michigan v. Long*, 463 U.S. 1032, 1050 (1983);

isfy the warrantless search of a vehicle: (1) dangers to people and police, (2) driving while intoxicated, and (3) damage to evidence.

1. Dangers to People and Police

Three U.S. Supreme Court cases address dangers to people and police in vehicles.¹⁶⁴ The Court has considered dangers to police and the public when law enforcement officials believe there are weapons in the vehicle. In *Michigan v. Long*, police conducted a warrantless protective sweep for weapons during an investigatory stop of a car.¹⁶⁵ In finding that the nature of roadside encounters between police and suspects are uniquely hazardous and that danger may result from suspects' access to weapons, the Court held that searches of passenger compartments that are limited in scope by where weapons may be located are valid if the officer has "a reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons."¹⁶⁶ The Court found that the facts of the case supported the conclusion that the officers had reason to believe that they were in danger.¹⁶⁷ Specifically, it was late at night in a rural area, the suspect had been pulled over for driving erratically and upon questioning appeared to be under the influence, and the officers observed a large knife inside the car.¹⁶⁸ Given these facts, the officers were justified in frisking the suspect for weapons and conducting a protective search of the car that was limited to areas that would be in the suspect's immediate control and could conceal a weapon.¹⁶⁹

Warrantless searches of seized vehicles that occur beyond the location of the scene where the vehicle was initially stopped may also be reasonable. For example, in *Cady v. Dombrowski*,¹⁷⁰ the Court

Welsh v. Wisconsin, 466 U.S. 740, 754-55 (1983); *Michigan v. Thomas*, 458 U.S. 259, 262 (1982); *Ross*, 456 U.S. at 823; *Cardwell v. Lewis*, 417 U.S. 583, 595-96 (1974); *Cady v. Dombrowski*, 413 U.S. 433, 448 (1973); *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971); *Schmerber v. California*, 384 U.S. 757, 771-72 (1966).

¹⁶⁴ *Acevedo*, 500 U.S. at 565; *Long*, 463 U.S. at 1032; *Cady*, 413 U.S. at 433.

¹⁶⁵ *Long*, 463 U.S. at 1050.

¹⁶⁶ *Id.* at 1049 (citations omitted).

¹⁶⁷ *Id.* at 1050.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Cady v. Dombrowski*, 413 U.S. 433, 448 (1973).

ruled the warrantless search of a vehicle towed by police was constitutional because the officer reasonably believed there was a gun in the trunk and that the car was vulnerable to vandalism at the impound lot.¹⁷¹ The Court found that the general public could be endangered if an intruder was able to steal the gun that was in the trunk of the car.¹⁷² Here, the purpose of protecting the general public's safety was the main reason for the Court's decision.

Early Court decisions held that containers within vehicles were protected from warrantless searches unless exigent circumstances were present. For example, in *Arkansas v. Sanders*, law enforcement officers got a tip from a reliable informant that an arriving airline passenger had marijuana in a suitcase.¹⁷³ Police observed the suspected individual pick up the luggage and get into a taxi.¹⁷⁴ The officers stopped the taxi and searched the luggage without a warrant.¹⁷⁵ The Court held that seizure of the luggage was justified, but the search was not because the police had control of the suitcase, which negated the risk of danger to police or removal of evidence from the luggage before a warrant could be obtained.¹⁷⁶ The Court recognized that there may be situations that would support a warrantless search of luggage.¹⁷⁷ For example, if law enforcement officers have reason to believe that the luggage contains dangerous explosives, then they would be justified in opening the container and disarming the weapon.¹⁷⁸ The Court later overruled this reasoning in *California v. Acevedo*, which held that police may conduct a warrantless search of a container located in a vehicle if they have probable cause to believe it holds contraband or evidence.¹⁷⁹ After *Acevedo*, law enforcement officers do not need to establish the existence of danger to search containers without a warrant.¹⁸⁰

¹⁷¹ *Id.*

¹⁷² *Id.* at 447.

¹⁷³ *Arkansas v. Sanders*, 442 U.S. 753, 755 (1979), *abrogated by California v. Acevedo*, 500 U.S. 565 (1991).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 759, 762.

¹⁷⁷ *Id.*

¹⁷⁸ *United States v. Chadwick*, 433 U.S. 1, 6, 24 (1977), *abrogated by California v. Acevedo*, 500 U.S. 565 (1991).

¹⁷⁹ *California v. Acevedo*, 500 U.S. 565, 580 (1991).

¹⁸⁰ *Id.*; *see, e.g., Cynthia Lee, Package Bombs, Footlockers, and Laptops: What the Disappearing Container Doctrine Can Tell Us About the Fourth Amendment*, 100 J. CRIM. L. & CRIMINOLOGY 1403, 1440-41 (2010).

The cases reviewed here indicate that law enforcement officers may search a container in a vehicle without a warrant if they have probable cause to believe it holds contraband or evidence.¹⁸¹ The presence of weapons in automobiles combined with other indicators of threats may establish an exigency of danger to police or others, which would permit warrantless searches of the driver and the area within the immediate control of the driver where weapons may reasonably be located and concealed.¹⁸² Although officers do not need to establish the presence of danger to search containers, they do need to confirm this exigency before conducting more intrusive searches of the driver and areas within the driver's control.¹⁸³

2. Driving While Intoxicated (DWI)

Three Court cases discuss exigent circumstances involving DWI offenses.¹⁸⁴ When stopping and arresting a drunk driver, police officers may be able to take a blood sample without a warrant.¹⁸⁵ Courts will sometimes recognize an exigent circumstance here because "alcohol in the suspect's bloodstream might disappear in the time required to obtain a warrant."¹⁸⁶ In *Missouri v. McNeely*, the Court ruled that the constitutionality of acquiring nonconsensual blood samples from suspected DWI offenders must be determined on a case-by-case basis.¹⁸⁷ Delays in obtaining a warrant within a timeframe that preserves the evidence may establish an exigency that would support this practice.¹⁸⁸ However, advances in technological communications that facilitate officers in procuring warrants may reduce the power of this premise.¹⁸⁹

An exigent circumstance that obviates the need for a warrant to obtain a blood sample cannot extend to searching other locations. In *Welsh v. Wisconsin*, police found an abandoned car suspected to be

¹⁸¹ See *Missouri v. McNeely*, 133 S. Ct. 1552, 1568 (2013); *Acevedo*, 500 U.S. at 580-81; *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1983); *Cady v. Dombrowski*, 413 U.S. 433, 448 (1973); *Schmerber v. California*, 384 U.S. 757, 771-72 (1966).

¹⁸² See, e.g., *Michigan v. Long*, 463 U.S. 1032 (1983); *Cady*, 413 U.S. at 433.

¹⁸³ *Id.*

¹⁸⁴ See *McNeely*, 133 S. Ct. at 1568; *Welsh*, 466 U.S. at 753; *Schmerber*, 384 U.S. at 758-59, 772.

¹⁸⁵ See, e.g., *Schmerber*, 384 U.S. at 758-59.

¹⁸⁶ DEL CARMEN, *supra* note 5, at 219.

¹⁸⁷ See *McNeely*, 133 S. Ct. at 1568.

¹⁸⁸ See *id.* at 1563.

¹⁸⁹ See *id.* at 1561, 1568.

left by a drunk driver, identified the owner's address, and proceeded to enter the suspect's home without a warrant to effectuate an arrest.¹⁹⁰ The Court held it was unconstitutional for the police to enter a home without a warrant to arrest an individual for driving under the influence, as this was a minor, noncriminal traffic offense.¹⁹¹ The nonseriousness of the offense was relevant here, as the Court found 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, such as the kind at issue in this case, has been committed."¹⁹² The holding in this case also indicates that the exigency must be present at the location where the officers seek to take advantage of the exigent circumstances exception.¹⁹³ Warrantless entry into the home was not justified by hot pursuit "because there was no immediate or continuous pursuit . . . from the scene of a crime" and there was no threat to public safety.¹⁹⁴ Nor was the home arrest upheld by the concern for dissipation of blood-alcohol content evidence.¹⁹⁵

These cases suggest that law enforcement officers should tread carefully in DWI situations.¹⁹⁶ Warrantless, nonconsensual blood draws of DWI suspects may be permitted only in rare and exceptional circumstances. It is clear that the human body is accorded substantial privacy protections and any forced intrusion by the government must clearly serve legitimate interests.¹⁹⁷

3. Damage to Evidence

In eight cases, the Court has affirmed the presence of exigent circumstances in evidence loss based on a vehicle's mobility.¹⁹⁸ In *Coolidge v. New Hampshire*, the Court claimed that exigent circumstances

¹⁹⁰ *Welsh v. Wisconsin*, 466 U.S. 740, 741 (1984).

¹⁹¹ *Id.*

¹⁹² *Id.* at 753.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 754.

¹⁹⁶ *See Missouri v. McNeely*, 133 S. Ct. 1552, 1568 (2013); *Welsh v. Wisconsin*, 466 U.S. 740, 753-55 (1983); *Schmerber v. California*, 384 U.S. 757, 770-72 (1966).

¹⁹⁷ *See, e.g., Washington v. Harper*, 494 U.S. 210, 229 (1990); *Winston v. Lee*, 470 U.S. 753, 760 (1985).

¹⁹⁸ *Maryland v. Dyson*, 527 U.S. 465, 467 (1999); *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996); *California v. Acevedo*, 500 U.S. 565, 580-81 (1991); *California v. Carney*, 471 U.S. 386, 393 (1985); *Michigan v. Thomas*, 458 U.S. 259, 262 (1982); *United States v. Ross*, 456 U.S. 798,

justify warrantless searches of vehicles stopped on the highway when there is probable cause, the car can be moved, the occupants have been alerted, and the contents may be lost in the time it would take to get a warrant.¹⁹⁹ In *California v. Carney*, the Court said that a warrantless search of a stationary automobile located in a non-residential area was justified because the vehicle was capable of movement and vehicles have reduced levels of privacy compared to homes.²⁰⁰ Moreover, *Maryland v. Dyson* held that “the ‘automobile exception’ [to the warrant requirement] has no separate exigency requirement.”²⁰¹ Police can conduct searches without warrants within all areas of the automobile if there is probable cause to believe contraband is located in the vehicle.²⁰² In this case, the Court claimed that the automobile exception to the warrant requirement was satisfied because there was “abundant probable cause that the car contained contraband.”²⁰³ In *Pennsylvania v. Labron*, the Court found that probable cause supporting warrantless searches is established when police observe a suspect physically putting drugs in a car or when a suspect’s behavior suggests that drugs are in the car.²⁰⁴ The Court concluded, “If a car is readily mobile and probable cause exists to believe it contains contraband, the Fourth Amendment thus permits police to search the vehicle without more.”²⁰⁵

The cases reviewed in this subcategory highlight an important distinction for privacy expectations in vehicles: the exigency of evidence loss can justify warrantless searches of vehicles simply because automobiles and other vessels have the mobility to leave the scene and travel to a different jurisdiction in the time that it could take officers to obtain a warrant.²⁰⁶ The difficulty in this category is not the recognition of the exigent circumstance, but how law enforcement officers

825 (1982); *Cardwell v. Lewis*, 417 U.S. 583, 595-96 (1974); *Coolidge v. New Hampshire*, 403 U.S. 443, 460 (1971).

¹⁹⁹ *Coolidge*, 403 U.S. at 460 (“As we said in *Chambers*, ‘exigent circumstances’ justify the warrantless search of ‘an automobile stopped on the highway,’ where there is probable cause, because the car is ‘movable, the occupants are alerted, and the car’s contents may never be found again if a warrant must be obtained.’”) (citation omitted).

²⁰⁰ *Carney*, 471 U.S. at 393.

²⁰¹ *Dyson*, 527 U.S. at 466.

²⁰² *Id.* at 467.

²⁰³ *Id.*

²⁰⁴ *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996).

²⁰⁵ *Id.*

²⁰⁶ See *infra* Appendix, Section B, Subsection 3.

should conduct valid warrantless searches. Importantly, officials need only probable cause showing that contraband is located in the vehicle to search without a warrant.²⁰⁷

C. *Involving Technology and Digital Data*

The privacy protected by the Fourth Amendment expands with changes in social, economic, and technological development.²⁰⁸ The Court has recognized that the protection of the Fourth Amendment's warrant requirement is not limited to private locations or communications.²⁰⁹ Two U.S. Supreme Court cases exemplify exigent circumstances involving technology and digital data.²¹⁰

In the more recent case of *Riley v. California*, David Riley appealed to the Court, alleging that the warrantless evidence collected from his cell phone should be suppressed because of an unlawful warrantless search.²¹¹ Chief Justice Roberts noted that “Modern cellphones . . . [w]ith all they contain and all they may reveal, . . . hold for many Americans ‘the privacies of life.’”²¹² The Court upheld Riley's petition and ruled that the purposes of the search incident to arrest exception to the warrant requirement—protecting officer safety and preserving evidence—did not apply with equal force to warrantless searches of digital data.²¹³ The Court believed that there were no exigent circumstances that would support the warrantless search of the cell phone in this case because digital data on a cell phone cannot be used to harm a police officer or aid in escape and there are several technologies that can help prevent loss of digital evidence in cell phones during the time it would take police to obtain a warrant.²¹⁴ In *Riley*, the Court affirmed the private nature of cell phones, but the Court also said that warrantless searches of cell phones may be

²⁰⁷ See, e.g., *Maryland v. Dyson*, 527 U.S. 465, 467 (1999).

²⁰⁸ *Riley v. California*, 134 S. Ct. 2473, 2495 (2014); *Kyllo v. United States*, 533 U.S. 27, 33-34 (2001).

²⁰⁹ *United States v. Chadwick*, 433 U.S. 1, 7 (1977), *abrogated by California v. Acevedo*, 500 U.S. 565 (1991).

²¹⁰ See *Riley*, 134 S. Ct. at 2494-95; *Walter v. United States*, 447 U.S. 649, 657 (1980).

²¹¹ *Riley*, 134 S. Ct. at 2480-81.

²¹² *Id.* at 2494-95 (citing *Boyd v. United States*, 116 U.S. 616, 630 (1886)).

²¹³ *Id.* at 2481, 2494-95.

²¹⁴ *Id.* at 2485-86.

acceptable in objectively reasonable emergency situations where police have compelling interests.²¹⁵

It is not clear whether the logic in *Riley* extends to other electronic devices (for example, laptops, tablets, USB drives, digital cameras), the National Security Agency's bulk record collection program, access to cloud-based data, and the third-party doctrine.²¹⁶ The third-party doctrine maintains that "What a person knowingly exposes to the public . . . is not a subject of Fourth Amendment protection."²¹⁷ This doctrine has been invoked to conclude that individuals have no legitimate expectation of privacy with financial information maintained by banks²¹⁸ and call logs held by phone companies.²¹⁹

The intersection of technology and criminal procedure demonstrated in *Riley* will impact law enforcement officials. The decision will likely have the biggest impact on first responders and criminal investigators who may have previously conducted searches immediately or shortly after seizing cell phones from arrestees.²²⁰ These law enforcement officers will no longer be able to utilize investigatory techniques like a cursory scroll analysis without securing a warrant first.²²¹ Police officers will also need to be trained in the methods for preserving digital data for later forensic examination.²²²

III. ANALYSIS AND POLICY IMPLICATIONS

A law enforcement officer's discretion in emergency situations varies depending on the context of the location (i.e., private premises, vehicles, or technology and digital data). From the location of the emergency, four conditions must be met for the warrantless search to be legal under the exigent circumstances exception: (1) there must be

²¹⁵ *Id.* at 2494.

²¹⁶ Adam Liptak, *Major Ruling Shields Privacy of Cellphones: Supreme Court Says Phones Can't Be Searched Without a Warrant*, N.Y. TIMES (Jun. 25, 2014), <http://www.nytimes.com/2014/06/26/us/supreme-court-cellphones-search-privacy.html>; Marc Rotenberg & Alan Butler, *Symposium: In Riley v. California, a Unanimous Supreme Court Sets Out Fourth Amendment for Digital Age*, SCOTUS BLOG (Jun. 26, 2014, 6:07 PM), <http://www.scotusblog.com/2014/06/symposium-in-riley-v-california-a-unanimous-supreme-court-sets-out-fourth-amendment-for-digital-age/>.

²¹⁷ *Katz v. United States*, 389 U.S. 347, 351 (1967).

²¹⁸ *See United States v. Miller*, 425 U.S. 435, 442 (1976).

²¹⁹ *See Smith v. Maryland*, 442 U.S. 735, 745 (1979).

²²⁰ Jennifer L. Moore et al., *supra* note 14, at 13.

²²¹ *Id.*

²²² *See, e.g., Riley v. California*, 134 S. Ct. 2473, 2487 (2014).

a reasonable expectation of privacy;²²³ (2) probable cause must be present;²²⁴ (3) there is no time to obtain a warrant;²²⁵ and (4) the exigency must be objective.²²⁶ In crafting legislation and administrative guidelines for law enforcement officers, policymakers must give careful attention to these considerations as derived from Court decided cases.

A. *There Must Be a Reasonable Expectation of Privacy*

The constitutionality of warrantless searches in exigent circumstances depends foremost on the extent of privacy rights in the location. Public areas where no reasonable expectation of privacy exists are not protected under the Fourth Amendment.²²⁷ The Court has recognized that residential and commercial buildings, vehicles, and digital data are protected realms of privacy.²²⁸ Of these three areas, homes are afforded the highest level of privacy.²²⁹ The Court has recognized that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.”²³⁰ Vehicles have less privacy than houses or offices because of the compelling government need for regulation and the exigency of mobility that could result in evidence loss.²³¹ The jurisprudence of privacy interests in technology and digital data is a burgeoning topic.²³² As the law stands, private communications and data are protected by the Fourth Amendment.²³³ The safeguards afforded to cell phones and telephone booths may extend to other electronic devices and data in the

²²³ See, e.g., *Michigan v. Fisher*, 558 U.S. 45, 49-50 (2009); *Groh v. Ramirez*, 540 U.S. 551, 573-74 (2004); *Mincey v. Arizona*, 437 U.S. 385, 395, 402 (1978); *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

²²⁴ See, e.g., *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002); *California v. Acevedo*, 500 U.S. 565, 574 (1991); *United States v. Gonzales-Barrera*, 288 F. Supp. 2d 1041, 1051 (D. Ariz. 2003).

²²⁵ See, e.g., *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973).

²²⁶ See, e.g., *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006).

²²⁷ *United States v. Watson*, 423 U.S. 411, 423 (1976); *Katz*, 389 U.S. at 351.

²²⁸ *Riley v. California*, 134 S. Ct. 2473, 2494 (2014); *Maryland v. Dyson*, 527 U.S. 465, 467 (1999); *Pennsylvania v. Labron*, 518 U.S. 938, 941 (1996); *California v. Carney*, 471 U.S. 386, 394-95 (1985); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 309-310 (1967).

²²⁹ See, e.g., *Segura v. United States*, 468 U.S. 796, 820 (1984) (Stevens, J., dissenting) (“Nowhere are expectations of privacy greater than in the home.”).

²³⁰ *United States v. U.S. District Court (Keith)*, 407 U.S. 297, 313 (1972).

²³¹ *Carney*, 471 U.S. at 392.

²³² See, e.g., Mark A. Rothstein, *Privacy and Technology in the Twenty-First Century*, 52 U. LOUISVILLE L. REV. 333 (2014).

²³³ See, e.g., *Riley*, 134 S. Ct. at 2494; *Katz v. United States*, 389 U.S. 347, 359 (1967).

future.²³⁴ As privacy concerns evolve with advances in technology, the exigent circumstances exception will also be refined accordingly.

B. *Probable Cause Must Be Present*

Without probable cause, the claim of exigent circumstances fails.²³⁵ Probable cause is a higher standard than reasonable suspicion and exists when a reasonable person acting on facts and reliable information would believe that “an offense has been or is being committed.”²³⁶ Reliable sources of information may include trusted confidential informants or a report from an informant coupled with police observations.²³⁷ Before officers may enter a home without a warrant in exigent situations, they must determine that there is valid probable cause that a serious crime was or will likely be committed and that the suspect and evidence are located in the private premises.²³⁸ Courts may not uphold challenges to warrantless entries involving hot pursuit of individuals suspected of committing minor crimes.²³⁹ In non-exigent circumstances, officers would have time to apply for a warrant and their probable cause determination would be reviewed by a neutral third-party magistrate.²⁴⁰ Absent a warrant, law enforcement personnel need to ascertain the probability that a crime has occurred and the evidence and suspect may be found in the private building during the brief period of time that elapses before a search is initiated.²⁴¹

Before initiating a warrantless search of a vehicle, officers need only probable cause to believe contraband is located in the vehicle.²⁴² Probable cause may be established, for example, by the smell of drugs

²³⁴ See *supra* note 216.

²³⁵ See, e.g., *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002); *California v. Acevedo*, 500 U.S. 565, 569 (1991); *United States v. Gonzales-Barrera*, 288 F. Supp. 2d 1041, 1051 (D. Ariz. 2003).

²³⁶ *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949).

²³⁷ 68 AM. JUR. 2D *Searches and Seizures* § 130 (2016).

²³⁸ See *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006); *Groh v. Ramirez*, 540 U.S. 551, 559 (2004); *Minnesota v. Olson*, 495 U.S. 91, 100-01 (1990); *Payton v. New York*, 445 U.S. 573, 587-88 (1980) (citing *Dorman v. United States*, 435 F.2d 385, 389 (D.C. Cir. 1970)); *United States v. Santana*, 427 U.S. 38, 43 (1976).

²³⁹ See, e.g., *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1983).

²⁴⁰ See, e.g., *Michigan v. Tyler*, 436 U.S. 499, 507 (1978); *Schmerber v. California*, 384 U.S. 757, 770-71 (1966); *Johnson v. United States*, 333 U.S. 10, 14-15 (1948).

²⁴¹ See *Santana*, 427 U.S. at 43; *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967).

²⁴² *Maryland v. Dyson*, 527 U.S. 465, 467 (1999) (per curiam).

emanating from the automobile.²⁴³ The scope of the search would then be limited to areas where it is reasonable to expect drugs will be located.²⁴⁴ Searching for drug evidence on people within the vehicle may not be valid if there is no additional danger to the officers or others.²⁴⁵ If officers have probable cause to believe that persons within the automobile may be armed and dangerous, then they may conduct protective sweeps of the car and frisk the people for weapons.²⁴⁶

The legal doctrine on searching electronic devices, however, is meager. Officers may be able to seize technology without a warrant if, for example, they have probable cause to believe that evidence of a crime may be located in the device.²⁴⁷ After the seizure, officers would have time to obtain a warrant. If officers establish probable cause that a serious crime is imminent and that related evidence may be found in the device, then there may be emergency situations that would justify a warrantless search of technology or digital data.²⁴⁸ The Court has not constructed categorical rules in these situations because the reasonableness of the officer's actions will depend on the specific circumstances of the situation.²⁴⁹

C. *There is No Time to Obtain a Warrant*

The Court has not set clear guidelines for law enforcement officials to determine whether obtaining a warrant would be impractical, useless, dangerous, or unnecessary.²⁵⁰ Court cases from earlier decades found that it may have been difficult to obtain a warrant, especially late at night when the magistrate was out of the office.²⁵¹ Advances in communications technology in recent years, however, have made it easier to get a warrant.²⁵² The Court has held that

²⁴³ 68 AM. JUR. 2D *Searches and Seizures* § 129 (2016).

²⁴⁴ *United States v. Ross*, 456 U.S. 798, 820-21 (1982).

²⁴⁵ *See Michigan v. Long*, 463 U.S. 1032, 1049 (1983); *Cady v. Dombrowski*, 413 U.S. 433, 447-48 (1973).

²⁴⁶ *Long*, 463 U.S. at 1049-50.

²⁴⁷ *See, e.g., Riley v. California*, 134 S. Ct. 2473, 2486-87 (2014); *Illinois v. McArthur*, 531 U.S. 326, 331-32 (2001); *Segura v. United States*, 468 U.S. 796, 809-10 (1984).

²⁴⁸ *See Riley*, 134 S. Ct. at 2494.

²⁴⁹ *See, e.g., Missouri v. McNeely*, 133 S. Ct. 1552, 1561 (2013).

²⁵⁰ *Williamson*, *supra* note 70, at 110.

²⁵¹ *See Johnson v. United States*, 333 U.S. 10, 14-15 (1948); *McDonald v. United States*, 335 U.S. 451, 455 (1948).

²⁵² *Riley*, 134 S. Ct. at 2493.

“inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate” are not adequate reasons for bypassing the warrant requirement.²⁵³ Rather, warrantless searches and seizures are only permissible when exigent circumstances create a “now or never” situation for police action to preserve evidence or protect people.²⁵⁴ This “now or never” standard applies to all protected areas. Officers are granted some leeway in these high-pressure decisions, as the Court has recognized that “The Constitution is not blind to the fact that police officers are often forced to make split-second judgments.”²⁵⁵

When officials are conducting fire investigations, the Court has noted, “the sooner the officials complete their duties, the less will be their subsequent interference with the privacy and the recovery efforts of the [fire] victims.”²⁵⁶ These officials are granted a reasonable amount of time to investigate the cause of the fire and any future fire risks.²⁵⁷ The reasonableness of the timeframe depends on the exigencies of the situation as well as the homeowners’ reasonable expectations of privacy.²⁵⁸ Because residential and commercial buildings, vehicles, and digital data are all afforded some level of privacy, the timeframe within which a warrantless search may be authorized by exigent circumstances is always dependent on whether the officer reasonably believed immediate action was necessary to preserve evidence or protect people.²⁵⁹

D. *The Exigency Must Be Objective*

During emergency situations, warrantless searches are justified by the compelling needs of law enforcement.²⁶⁰ These valid needs include providing emergency aid to injured people or individuals threatened with injury, ensuring officer and public safety, preventing a

²⁵³ *Johnson*, 333 U.S. at 15.

²⁵⁴ *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973).

²⁵⁵ *City and Cty. of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1775 (2015) (internal quotation marks omitted) (citing *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2020 (2014)).

²⁵⁶ *Michigan v. Tyler*, 436 U.S. 499, 510 (1978).

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 510 n.6.

²⁵⁹ *Roaden*, 413 U.S. at 505.

²⁶⁰ *See, e.g., Riley v. California*, 134 S. Ct. 2473, 2494 (2014); *California v. Carney*, 471 U.S. 386, 392 (1985).

fleeing felon's escape, and avoiding the destruction of evidence.²⁶¹ The standard of review in exigent circumstances cases is the "objectively reasonable basis" test.²⁶² This determination is based on present need and existing facts, excluding the public agent's subjective creation of an emergency.²⁶³

Before entering a private residence, law enforcement officers must establish that there is sufficient evidence to believe an exigency is present.²⁶⁴ In assessing the risk of danger to officers and others, the seriousness of the suspected crime and probability that the suspect is armed should be considered.²⁶⁵ If the objective is to prevent the imminent destruction of evidence, agents must have a reasonable belief that the evidence will be destroyed if they do not move quickly.²⁶⁶ Reasonable belief is based on a totality of circumstances, but may be confirmed, for example, when officers have information that suggests the suspect may be aware of police surveillance or pursuit and is likely to attempt to destroy the evidence.²⁶⁷ Once inside a dwelling, the search and seizure should be confined to what is reasonably necessary to control the scene and prevent harm to people or destruction of evidence.²⁶⁸

In the case of vehicles, if officers have probable cause to believe there is contraband in a vehicle, then they can search without a warrant because the mobility of a vehicle creates an objective exigency of risk of evidence loss.²⁶⁹ Although officers do not need to establish the presence of danger to search for contraband, they do need to confirm this exigency before conducting more intrusive searches of the driver and areas within the driver's control.²⁷⁰ Warrantless searches of seized vehicles that occur beyond the location of the scene where the vehicle

²⁶¹ See, e.g., *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006); *Roaden*, 413 U.S. at 505-06.

²⁶² See *Stuart*, 547 U.S. at 404.

²⁶³ See, e.g., *Kentucky v. King*, 563 U.S. 452, 460, 471-72 (2011); *Horton v. California*, 496 U.S. 128, 138-40 (1990).

²⁶⁴ See *Michigan v. Fisher*, 558 U.S. 45, 47-48 (2009); *Stuart*, 547 U.S. at 406.

²⁶⁵ See, e.g., *Minnesota v. Olson*, 495 U.S. 91, 100 (1990); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967).

²⁶⁶ See *Groh v. Ramirez*, 540 U.S. 551, 559 (2004); *Payton v. New York*, 445 U.S. 573, 588 (1980).

²⁶⁷ See, e.g., *Ker v. California*, 374 U.S. 23, 40-41 (1963).

²⁶⁸ See, e.g., *Hayden*, 387 U.S. at 298-99.

²⁶⁹ See, e.g., *Maryland v. Dyson*, 527 U.S. 465, 466-67 (1999); *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996).

²⁷⁰ See, e.g., *Michigan v. Long*, 463 U.S. 1032, 1034-35 (1983); *Cady v. Dombrowski*, 413 U.S. 433, 447 (1973).

was initially stopped may also be reasonable when there is a legitimate concern for safety.²⁷¹ Cases involving warrantless, nonconsensual blood draws of drivers suspected of DWI offenses may be permitted only in rare and exceptional circumstances.²⁷² The concern for dissipation of blood-alcohol content evidence is not sufficient to authorize a warrantless intrusion of the suspected DWI offender's home to collect such evidence.²⁷³

In situations involving technology and digital data, it may be difficult for government agents to prove that a warrantless search at the scene was valid based on the exigency of evidence destruction because there are tools and procedures available to prevent the loss of digital data, such as disconnecting from the network.²⁷⁴ In situations where officers or others are in danger and there is probable cause to believe that a crime will be committed, warrantless search of an electronic device may be valid.²⁷⁵ The Court suggested the following hypotheticals that could potentially justify warrantless searches: "a suspect texting an accomplice who, it is feared, is preparing to detonate a bomb, or a child abductor who may have information about the child's location on his cell phone."²⁷⁶ The reasonableness of an officer's actions in these situations, however, depends on the totality of circumstances.²⁷⁷ The Court has held, "While the desire for a bright-line rule is understandable, the Fourth Amendment will not tolerate adoption of an overly broad categorical approach that would dilute the warrant requirement in a context where significant privacy interests are at stake."²⁷⁸

E. *Recommendations for Policymakers*

Before conducting a warrantless search, officers must first establish whether their search would encroach on an area that is reasonably understood as private. If the location is private, then the officer must determine that there is probable cause to believe that a serious crime

²⁷¹ See *Cady*, 413 U.S. at 447.

²⁷² See, e.g., *Missouri v. McNeely*, 133 S. Ct. 1552, 1560-61 (2013); *Schmerber v. California*, 384 U.S. 757, 767-68 (1966).

²⁷³ See, e.g., *Welsh v. Wisconsin*, 466 U.S. 740, 754 (1983).

²⁷⁴ See, e.g., *Riley v. California*, 134 S. Ct. 2473, 2487 (2014).

²⁷⁵ See, e.g., *id.* at 2494.

²⁷⁶ *Id.*

²⁷⁷ See, e.g., *id.*; *McNeely*, 133 S. Ct. at 1554.

²⁷⁸ *McNeely*, 133 S. Ct. at 1564.

has been or will be committed and that the evidence or suspect may be located in the area. If there is probable cause, then the agent must decide whether there is time to obtain a warrant without risking harm to people or destruction of evidence. If there is no time, then the official must have an objectively reasonable belief based on a totality of circumstances that there is an emergency requiring a quick response. After the exigency, law enforcement officers may seize evidence in plain view,²⁷⁹ but in general, “any further intrusions that take place after the exigent circumstances have passed require a warrant.”²⁸⁰

These principles broadly cover myriad aspects of law enforcement operations. Police officers must understand the definition and meaning of privacy afforded to various locations, probable cause, temporal limitations in obtaining warrants, and exigent circumstances. When the actions of law enforcement officers are challenged in court, the burden is on the officers to show that the warrantless search was justified under the exigent circumstances exception.²⁸¹ Absent adequate justification for intrusion, government agents may be held civilly liable²⁸² or evidence gathered could be suppressed.²⁸³

Policymakers must consider the principles set out by the U.S. Supreme Court in drafting new legislation. Without careful consideration, legislatures could easily encroach upon law enforcement functions, creating more difficulties for these officials. To avoid increases in civil lawsuits and evidence suppression, lawmakers must review U.S. Supreme Court precedent and understand the impact that policies can have on law enforcement officers.

CONCLUSION

In routine law enforcement functions, officers generally do not have the luxury of time before responding to emergency situations. This Article focuses on this concern through a review of U.S. Supreme Court decided cases and suggests principles to guide law enforcement practices and procedures in emergency situations that require acting

²⁷⁹ *Arizona v. Hicks*, 480 U.S. 321, 325 (1987).

²⁸⁰ *Illinois v. Andreas*, 463 U.S. 765, 777 (1983) (citing *Michigan v. Tyler*, 436 U.S. 499, 509 (1978)).

²⁸¹ *See Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971).

²⁸² *See Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 395-97 (1971).

²⁸³ *See, e.g., Segura v. United States*, 468 U.S. 796, 812 (1984).

without a warrant. As the meaning of privacy evolves beyond private residences to technology and digital data and the temporal delays in obtaining a warrant are reduced, the future of the exigent circumstances doctrine will need to adapt as well. The Court will hear more Fourth Amendment cases in the future in an attempt to reconcile law enforcement procedure with advances in technology while maintaining the delicate balance between individual privacy rights and legitimate government interests.

APPENDIX: *U.S. Supreme Court Cases on the Exigent Circumstances Exception to the Fourth Amendment Warrant Requirement*

A. Involving Private Premises

1. Danger to the Public

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
City and Cty. of San Francisco v. Sheehan, 135 S. Ct. 1765 (2015)	Can police enter a private residential home without a warrant to apprehend a dangerous resident?	Yes	Warrantless entry into private room at group home was reasonable because the resident threatened to injure police and other people in the house with a weapon and a delayed response could have increased the risk of danger.
Michigan v. Fisher, 558 U.S. 45 (2009) ^{2,3}	Can police enter a house without a warrant when there is evidence of injury to persons inside?	Yes	Officer's warrantless entry into a home was reasonable based on broken house windows, signs of recent injury, and observed violent behavior that could lead to harm of the occupant or other people inside.
Brigham City v. Stuart, 547 U.S. 398 (2006)	Can injury to occupants be used as an objectively reasonable basis to enter a home without a warrant?	Yes	Regardless of their subjective motives, police officers were justified in entering a home without a warrant under exigent circumstances; actual or threatened injury established an objectively reasonable basis.
Steagald v. United States, 451 U.S. 204 (1981)	Can law enforcement officers conduct a warrantless search of the subject of an arrest warrant who is in the home of a third party?	No	Absent exigent circumstances or consent, law enforcement officers cannot conduct a warrantless search of a house. An arrest warrant was not sufficient to search for the suspect in the home of persons not named in the arrest warrant.
Michigan v. Tyler, 436 U.S. 499 (1978) ^{2,3}	Can a burning furniture store be a sufficient condition to justify a warrantless search by firefighters?	Yes	A burning building is an exigency that makes warrantless entry reasonable for the purposes of extinguishing fire, and once inside, officials may remain there for a <i>reasonable amount of time</i> to investigate the cause of the fire. Later investigative entries must follow warrant procedures for administrative searches, in which evidence found is

			admissible. Further entries to obtain evidence of arson require probable cause and a warrant.
Mincey v. Arizona, 437 U.S. 385 (1978)	Can police conduct a four-day warrantless search of a house based on the seriousness of the offense?	No	The fact that a serious crime (homicide) occurred did not, in itself, give rise to such exigent circumstances as to justify a four-day warrantless search.

2. Danger to Police

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
Minnesota v. Olson, 495 U.S. 91 (1990) ^{1,3}	Can police enter a house without a warrant to arrest a suspected felon?	No	Exigent circumstances that would justify a warrantless arrest—hot pursuit, risk of evidence destruction, suspect escape, danger to police or other people—were not present in this case.
Warden, Md. Penitentiary v. Hayden, 387 U.S. 294 (1967) ¹	Can police enter a house without a warrant to search for a fleeing felon and weapons used in the offense?	Yes	Warrantless entry and search after police were notified that a suspected armed robber had entered a house within minutes of their arrival on the scene is valid because delay would risk danger to police and others.

3. Danger to Property

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
United States v. Ramirez, 523 U.S. 65 (1998)	Can police damage property when executing a search warrant at a house if there are exigent circumstances to do so?	Yes	When executing a search warrant, it was reasonable for police to break a single garage window for the purpose of discouraging house occupants from accessing weapons that an informant said were there.
Michigan v. Clifford, 464 U.S. 287 (1984)	Can firefighters continue to search a fire-damaged home without a warrant after they have determined the cause of the fire?	No	Warrantless search of a fire-damaged house was unreasonable after fire investigators had determined the cause of the fire. Any additional searching is for the purpose of finding evidence of arson, which requires a warrant, unless exigent circumstances are present or consent is given.

4. Damage to Evidence

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
Kentucky v. King, 563 U.S. 452 (2011)	Can police enter an apartment without warrant if they believe there is a risk that evidence may be destroyed?	Yes	Warrantless entry into an apartment to prevent the destruction of evidence is constitutional where police do not create the exigency through actual or threatened Fourth Amendment violation (e.g., police threaten to enter without a warrant or exigent circumstances after the occupant does not voluntarily let them in).
Kirk v. Louisiana, 536 U.S. 635 (2002)	Can courts review warrantless police entry into an apartment without regard for exigent circumstances (e.g., damage to evidence)?	No	Lawful entry into a residence requires either a warrant or probable cause plus exigent circumstances. Trial court found no exigent circumstances in this case.
Segura v. United States, 468 U.S. 796 (1984)	Can police secure a dwelling while awaiting a search warrant?	Yes	Securing a dwelling, on the basis of probable cause, to prevent the destruction or removal of evidence while a search warrant is being sought is not itself an unreasonable seizure of either the dwelling or its contents.
G. M. Leasing Corp. v. United States, 429 U.S. 338 (1977)	Can IRS agents lawfully search and seize evidence from an office one day after observing evidence being removed?	No	IRS agents' warrantless search of an office and seizure of books and records was unconstitutional. Exigent circumstances were not present because the agent's actions were delayed—they did not conduct the search until one day after they observed materials (evidence) being removed from the office.
United States v. Santana, 427 U.S. 38 (1976)	Can police enter a house without a warrant to pursue a suspect and prevent the destruction of evidence?	Yes	Since there was a need for the police to act quickly to prevent the destruction of narcotics evidence, there was a true "hot pursuit," and therefore the warrantless entry by the police into the house to make the arrest was justified, as was the ensuing search.
Ker v. California,	Can police enter an apartment and arrest a	Yes	Warrantless entry into apartment and arrest of person suspected of

374 U.S. 23 (1963)	suspected felon without a warrant if there is a risk that the evidence could be lost in the time it would take to get a warrant?	possessing marijuana (felony offense) was reasonable because the person had evaded the police 30 minutes earlier and the evidence could be destroyed or distributed in the time that it would take to get a warrant.
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B. Involving Vehicles

1. Dangers to People and Police

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
California v. Acevedo, 500 U.S. 565 (1991) ³	Can police conduct a warrantless search of a container located in a vehicle?	Yes	Police may conduct a warrantless search of a container located in a vehicle if they have probable cause to believe it holds contraband or evidence; the scope of the search is limited by the object and areas where there is probable cause to believe it can be found.
Michigan v. Long, 463 U.S. 1032 (1983)	Can police conduct a protective search for weapons on the driver's person and in the passenger compartment of the automobile?	Yes	Warrantless protective sweep of the car and frisk of the driver were valid because the officers had a reasonable basis to believe that the driver was dangerous and could gain immediate control of weapons.
Cady v. Dombrowski, 413 U.S. 433 (1973)	Can police conduct a warrantless search of the trunk of a car in their unattended impound lot?	Yes	Warrantless search of a vehicle towed by police was reasonable because the officer reasonably believed there was a gun in the car and that the car was vulnerable to vandalism at the impound lot.

2. Driving While Intoxicated

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
Missouri v. McNeely, 133 S. Ct. 1552 (2013)	Can police conduct a warrantless blood test of a suspected DWI offender?	No	Natural dissipation of alcohol in the bloodstream does not present a <i>per se</i> exigency that justifies nonconsensual blood testing in all drunk-driving cases. Exigencies in this context must be determined on a case-by-case basis.
Welsh v. Wisconsin, 466 U.S. 740 (1983)	Can police enter a home without a warrant to arrest a suspected DWI offender?	No	Warrantless, nighttime entry into home to arrest an individual for DWI was not constitutional absent exigent circumstances.

Schmerber v. California, 384 U.S. 757 (1966)	Can police conduct a nonconsensual blood test of a suspected DWI offender without a warrant?	Yes	Warrantless blood test was permissible because it was reasonable for the officer to believe an exigency existed from destruction of evidence that would occur during the time it would take to get a warrant. Also, the blood test was effective, involved virtually no pain, and was conducted by a physician according to accepted medical practices.
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3. Damage to Evidence

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
Maryland v. Dyson, 527 U.S. 465 (1999)	Can police search a vehicle without a warrant if they have probable cause to believe it contains drugs?	Yes	The “automobile exception” has no separate exigency requirement. Police only need probable cause to believe contraband is located in the vehicle to search without a warrant.
Pennsylvania v. Labron, 518 U.S. 938 (1996)	Can police search a vehicle without a warrant if it is readily mobile and there is probable cause to believe it contains contraband?	Yes	Ready mobility of a car is a sufficient exigency to permit a warrantless search once probable cause exists to believe the car contains contraband.
California v. Carney, 471 U.S. 386 (1985)	Can police conduct a warrantless search of a mobile home when there is probable cause to believe there was illicit activity?	Yes	Although the mobile home possessed some attributes of a home, it was readily mobile, thus the vehicle exception applies. Thus, the warrantless search was not unreasonable because there was probable cause.
Michigan v. Thomas, 458 U.S. 259 (1982)	Can police conduct a warrantless search of an impounded vehicle after contraband is found during the inventory search?	Yes	Warrantless search of a stopped vehicle, even after it is impounded, is reasonable when police have probable cause to believe there is contraband inside. The validity of the search does not depend on immobility or the likelihood that the car would have been driven away or that its contents would have been tampered with during the time required for the police to obtain a warrant.

United States v. Ross, 456 U.S. 798 (1982)	Can police conduct a warrantless search of a vehicle if there is probable cause to believe that contraband is concealed?	Yes	Warrantless search of a vehicle is constitutional if there is probable cause to believe that contraband is concealed somewhere within it. The scope of the search is not defined by the nature of the container in which the contraband is hidden, but rather, the object of the search and the places where there is probable cause to believe it can be found.
Cardwell v. Lewis, 417 U.S. 583 (1974)	Can police conduct a warrantless search of a vehicle's exterior?	Yes	Warrantless search of the vehicle's exterior was reasonable because there was probable cause and the car was parked in a public place.
Coolidge v. New Hampshire, 403 U.S. 443 (1971)	Can police search a vehicle without a warrant after arresting a person in their home?	No	Warrantless search of a vehicle after arresting a suspect in the suspect's home was unconstitutional because there was no reason why police could not obtain a warrant. The automobile exception does not apply (evidence in the car was not stolen, contraband, or dangerous), there was no risk of the suspect fleeing, and the suspect had ample time to dispose of evidence in the car during the course of the investigation.

C. Involving Technology and Digital Data

<i>Case</i>	<i>Issue</i>	<i>Ruling</i>	<i>Reason for the Decision</i>
Riley v. California, 134 S. Ct. 2473 (2014)	Can police conduct a warrantless search of digital data on a cell phone seized from an arrestee?	No	Absent exigent circumstances, police may not search for digital data on an arrestee's cell phone without a warrant. In this case, there was no risk to officer safety or of evidence destruction.
Walter v. United States, 447 U.S. 649 (1980)	Can law enforcement officers conduct a warrantless examination of films?	No	Absent consent, a warrant, or exigent circumstances, FBI agents who viewed films committed an unreasonable invasion of a film owner's constitutionally protected interest in privacy.

¹ Also discusses danger to people.

² Also discusses danger to property.

³ Also discusses damage to evidence.