

# ***Payton v. New York: Is “Reason to Believe” Probable Cause or a Lesser Standard?***

*Michael A. Rabasca<sup>†</sup>*

I. Introduction .....	438
II. Background: The Current State of the Law .....	441
A. Payton v. New York: The Appearance of “Reason to Believe” .....	441
B. United States v. Gorman: “Reason to Believe” is Probable Cause .....	443
C. United States v. Pruitt: “Reason to Believe” is a Lesser Standard than Probable Cause .....	445
D. Distinguishing Between Probable Cause and Pruitt’s Lesser Standard .....	447
E. Steagald v. United States: Protecting Third Parties’ Home .....	449
III. Protecting a Suspect’s Home: Extension of Steagald .....	450
A. Payton’s “Reason to Believe” is Probable Cause .....	450
1. Probable Cause Protects a Suspect’s Home from Unreasonable Intrusion .....	451
2. Probable Cause Provides a Uniform Standard for Situations Where Police Seek to Enter a Private Residence .....	452
3. Probable Cause Provides a Clear and Workable Standard for Police Officers .....	453
B. Procedural Problem: Police Officers are Not Suited to Conduct the Probable Cause Analysis in an Objective Manner .....	454

---

<sup>†</sup> J.D. Candidate, 2010, Seton Hall University School of Law; B.S., The College of New Jersey, magna cum laude, 2006. I would like to thank my advisor, Professor Alice Ristroph, for her insight and guidance throughout the comment writing process. I would also like to thank the editors of *Seton Hall Circuit Review*, especially Stefanie Duda, for their hard work. Finally, I owe special thanks to my family and my girlfriend, Meghan, for their love and support.

C. An Arrest in One's Home Implicates Both the Protection from Unreasonable Arrest and the Protection of One's Home from Unreasonable Intrusion .....	456
D. A Warrant Requirement Would Provide a Uniform Application of Probable Cause .....	457
E. A Warrant Requirement Would Not Unduly Hinder Law Enforcement Efforts.....	458
IV. Conclusion .....	459

## I. INTRODUCTION

Prior to 1766, the British Crown permitted the issuance of general warrants for both the arrest of its subjects and the search of its subjects' homes.<sup>1</sup> These general warrants gave soldiers and government officials "blanket authority"<sup>2</sup> to either arrest "unspecified persons suspected of committing a named offense"<sup>3</sup> or search any home for "whatever evidence could be found of interest to the Crown."<sup>4</sup> Parliament abolished the use of general warrants after John Wilkes successfully recovered monetary damages on a claim for libel against a government official who executed a search of his home and seized his personal papers pursuant to a general warrant.<sup>5</sup> Despite this "landmark[] of . . . liberty," the abuses of the British Crown were "fresh in the memories" of American citizens after they won their independence.<sup>6</sup> Consequently, American citizens sought to assure that their new federal government would not follow the British Crown and disregard what they viewed as their inalienable right

---

<sup>1</sup> See generally *Boyd v. United States*, 116 U.S. 616, 625–26 (1886); Paul Savoy, *When Criminal Rights Go Wrong; Forget Liberal. Forget Conservative. Think Common Sense*, WASHINGTON MONTHLY, Dec. 1, 1989, available at <http://encyclopedia.farlex.com/general+warrants> (follow "When criminal rights go wrong; forget liberal. Forget conservative. ..." hyperlink).

<sup>2</sup> *Payton v. New York*, 445 U.S. 573, 584 n.21 (1980) (citing *Stanford v. Texas*, 379 U.S. 476, 481–82 (1965)).

<sup>3</sup> *General Warrants*, THE UNABRIDGED HUTCHINSON ENCYCLOPEDIA (2009), <http://encyclopedia.farlex.com/general+warrants> (last visited Mar. 24, 2009).

<sup>4</sup> Michael J. Bulzomi, *Protecting Personal Privacy: Drawing the Line Between People and Containers*, THE FBI LAW ENFORCEMENT BULLETIN, Feb. 1, 2006, available at <http://encyclopedia.farlex.com/general+warrants> (follow "Protecting personal privacy: drawing the line between people and ..." hyperlink).

<sup>5</sup> See *Boyd*, 116 U.S. 625–29 (discussing both the events leading up to the search of Wilkes's home and Lord Camden's 1765 court decision).

<sup>6</sup> *Id.* at 625–26.

to be secure in both their persons and in their homes.<sup>7</sup> The Fourth Amendment to the United States Constitution addressed this concern.<sup>8</sup>

The text of the Fourth Amendment contains two clauses: the first protects a citizen's right to be free from unreasonable arrests and searches, while the second requires that warrants be particular and supported by probable cause.<sup>9</sup> Specifically, the first clause provides: (1) protection of one's *person* from unreasonable arrest or "governmental termination of freedom of movement through means intentionally applied;"<sup>10</sup> and (2) protection of one's *place* from "the unjustified intrusion of the police."<sup>11</sup> The second clause recognizes the need for balance between citizens' rights under the first clause and the investigative needs of law enforcement officials. Since the adoption of the Fourth Amendment, courts have struggled to maintain this delicate balance.

The Fourth Amendment's protections of one's person and one's place intersect in *Payton v. New York*.<sup>12</sup> In *Payton*, the United States Supreme Court briefly addressed what the appropriate level of protection is for a suspect's home where police have the authority to arrest the suspect.<sup>13</sup> The Court held that "an arrest warrant founded on probable cause carries with it the limited authority to enter a dwelling in which the suspect lives when there is *reason to believe* the suspect is within."<sup>14</sup> Despite the Supreme Court's apparent resolution of this issue, a split has developed in the federal circuit courts concerning the Supreme Court's meaning of "reason to believe" in *Payton*.<sup>15</sup> The Federal Court of Appeals for the Ninth Circuit held in *United States v. Gorman*<sup>16</sup> that *Payton*'s "reason to believe" standard "embodies the same standard of reasonableness inherent in probable cause."<sup>17</sup> However, all other circuits that have considered the issue, including the Sixth Circuit in *United States v. Pruitt*,<sup>18</sup> have held that a lesser standard applies.<sup>19</sup> The Supreme

---

<sup>7</sup> *Id.* See also *Payton*, 445 U.S. at 584 n.21 (citing *Stanford*, 379 U.S. at 481–82).

<sup>8</sup> *Payton*, 445 U.S. at 583.

<sup>9</sup> *Id.* at 584; U.S. Const. amend. IV.

<sup>10</sup> *Jensen v. City of Oxnard*, 145 F.3d 1078, 1083 (9th Cir. 1998); See also *Torres v. City of Madera*, 524 F.3d 1053, 1055 (9th Cir. 2008).

<sup>11</sup> *Steagald v. United States*, 451 U.S. 204, 213 (1981).

<sup>12</sup> *Payton v. New York*, 445 U.S. 573 (1980).

<sup>13</sup> See *id.* at 603.

<sup>14</sup> *Id.* (emphasis added).

<sup>15</sup> See *United States v. Pruitt*, 458 F.3d 477, 483–84 (6th Cir. 2006).

<sup>16</sup> *United States v. Gorman*, 314 F.3d 1105 (9th Cir. 2002).

<sup>17</sup> *Id.* at 1111.

<sup>18</sup> *United States v. Pruitt*, 458 F.3d 477 (6th Cir. 2006).

<sup>19</sup> *Id.* at 482–83. See also *United States v. Veal*, 453 F.3d 164, 167 n.3 (3d Cir. 2006); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005); *United States v. Route*, 104 F.3d 59, 62–63 (5th Cir. 1997); *United States v. Risse*, 83 F.3d 212, 216–17

Court has offered no further guidance as to whether *Payton's* "reason to believe" language requires an arresting officer to establish probable cause or merely *Pruitt's* lesser standard. Furthermore, it is unclear whether police officers or magistrates are best equipped to conduct the fact sensitive analysis in these situations.

Although the federal circuits have adopted different standards, probable cause and *Pruitt's* lesser standard may produce a different outcome in only a small number of close cases.<sup>20</sup> Nevertheless, the difference between standards is extremely important in the cases in which the standard applied will be outcome determinative. The Ninth Circuit's adherence to a probable cause requirement is superior to the lesser requirement of the other circuits because: (1) probable cause is required to protect a suspect's constitutional "interest in the privacy of his home and possessions against unjustified intrusions by the police;"<sup>21</sup> (2) it provides a uniform standard for situations where police seek to enter a private residence;<sup>22</sup> and (3) it provides a clear and workable standard for law enforcement officers.<sup>23</sup> Accordingly, the Supreme Court should clarify that *Payton's* "reason to believe" language requires a showing of probable cause. However, law enforcement officers are ill equipped to conduct the fact sensitive probable cause analysis because they are often too involved in the criminal investigation to determine objectively the propriety of entering a suspect's home to execute an arrest warrant.<sup>24</sup> In order to maintain an appropriate balance between citizens' rights and the investigative needs of law enforcement officials, the Supreme Court should extend the holding of *Steagald v. United States*<sup>25</sup>—which required the issuance of a search warrant to enter the home of a third-party not named in the arrest warrant in order to arrest a suspect—to encompass situations where law enforcement officers seek to

---

(8th Cir. 1996); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995). For purposes of clarity, I will refer to these standards throughout this comment as the probable cause standard and *Pruitt's* lesser standard, respectively.

<sup>20</sup> See *United States v. Hardin*, 539 F.3d 404, 415 (6th Cir. 2008) (suggesting that the officers in *Pruitt* gathered evidence that would satisfy both standards).

<sup>21</sup> *Steagald v. United States*, 451 U.S. 204, 213 (1981).

<sup>22</sup> See generally *id.*; *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that police officers on patrol may stop and frisk suspicious persons based on "reasonable suspicion," a lower standard than probable cause); *United States v. Mondragon*, 181 F. App'x. 904, 906 (11th Cir. 2006); 2-22 JOHN W. HALL, SEARCH AND SEIZURE § 22.18 (2007).

<sup>23</sup> See *Illinois v. Gates*, 462 U.S. 213, 235 (1983); *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979); *Pruitt*, 458 F.3d at 484.

<sup>24</sup> See generally *Johnson v. United States*, 333 U.S. 10, 14 (1948); 1-3 HALL, *supra* note 22, § 3.4, 3.9; 2-22 HALL, *supra* note 22, § 22.31; Matthew A. Edwards, *Posner's Pragmatism and Payton Home Arrests*, 77 WASH. L. REV. 299, 301 (2002).

<sup>25</sup> *Steagald v. United States*, 451 U.S. 204 (1981).

enter a suspect's home to execute an arrest warrant.<sup>26</sup> The Court should require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect's home to execute an arrest warrant and thus permit the magistrate to conduct the probable cause analysis. Even though it would represent a radical change in the law, the Supreme Court should institute this additional warrant requirement because an arrest in one's home implicates both the protection from unreasonable arrest and the protection of one's home from unreasonable intrusion.<sup>27</sup> Furthermore, requiring police officers to obtain an additional warrant would provide a uniform application of the probable cause analysis<sup>28</sup> without hindering law enforcement efforts.<sup>29</sup>

## II. BACKGROUND: THE CURRENT STATE OF THE LAW

### *A. Payton v. New York: The Appearance of "Reason to Believe"*

On January 12, 1970, New York City detectives began to investigate the murder of a gas station manager.<sup>30</sup> Within two days, detectives gathered enough evidence to establish probable cause that Theodore Payton had committed the murder.<sup>31</sup> On the morning of January 15, 1970, six officers went to Payton's apartment to arrest him without first obtaining an arrest warrant.<sup>32</sup> The officers discovered that both "light and music emanated from the apartment."<sup>33</sup> However, no one responded to their knocks on the door.<sup>34</sup> After forcing entry into the apartment and determining that no one was home, the officers seized a bullet shell casing found in plain view.<sup>35</sup> Payton eventually surrendered to police.<sup>36</sup> At trial, the court allowed the prosecution to submit the shell

---

<sup>26</sup> See *id.* at 213–16.

<sup>27</sup> See *Payton v. New York*, 445 U.S. 573, 588–89 (1980) (citing *United States v. Reed*, 572 F.2d 412, 423 (1978), *cert. denied sub nom. Goldsmith v. United States*, 439 U.S. 913 (1978)) ("To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home.").

<sup>28</sup> See *Smith v. United States*, 358 F.2d 833, 837 (D.C. Cir. 1966) (citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949)); Edwards, *supra* note 24, at 301.

<sup>29</sup> See *United States v. Mondragon*, 181 F. App'x 904, 906 (11th Cir. 2006); 2-22 HALL, *supra* note 22, § 22.31; 1-3 HALL, *supra* note 22, § 3.5.

<sup>30</sup> *Payton*, 445 U.S. at 576.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Payton*, 445 U.S. at 576–77.

<sup>36</sup> *Id.* at 577.

casing into evidence.<sup>37</sup> The jury subsequently convicted Payton of murder.<sup>38</sup>

In a separate incident three years later, the victims of two armed robberies identified Obie Riddick as their attacker.<sup>39</sup> Police went to Riddick's house on March 14 1974, to arrest him without obtaining an arrest warrant.<sup>40</sup> Riddick's son opened the door and the officers found the suspect in bed.<sup>41</sup> After placing Riddick under arrest, the officers searched a chest of drawers next to his bed for weapons and discovered drugs.<sup>42</sup> A New York trial court found Riddick guilty of narcotics related offenses.<sup>43</sup>

The Supreme Court heard Payton's and Riddick's appeals in a consolidated action in order to determine "the constitutionality of New York statutes that authorize police officers to enter a private residence without a warrant and with force, if necessary, to make a routine felony arrest."<sup>44</sup> Justice Stevens, writing for the majority, held that warrantless entry into one's home to make a felony arrest is unconstitutional even "when probable cause is clearly present."<sup>45</sup> The Court noted that entry into one's home "is the chief evil against which the wording of the Fourth Amendment is directed."<sup>46</sup> The Court found the New York Court of Appeals' reasoning that a "substantial difference [exists between] the relative intrusiveness of an entry to search for property and an entry to search for a person" unpersuasive.<sup>47</sup> Indeed, Justice Stevens stated that entries to search and entries to arrest "implicate the same interest in preserving the privacy and the sanctity of the home"<sup>48</sup> and that the differences in intrusiveness between the two types of entries are "ones of degree rather than kind."<sup>49</sup> The Court held that the language of the Fourth Amendment gives citizens the right to "be free from unreasonable governmental intrusion," which, absent exigent circumstances, includes warrantless entry into one's home to seize persons or property.<sup>50</sup>

---

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 579.

<sup>39</sup> *Id.* at 578.

<sup>40</sup> *Payton*, 445 U.S. at 578.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 579.

<sup>44</sup> *Id.* at 574.

<sup>45</sup> *Payton*, 445 U.S. at 589 (quoting *United States v. Reed*, 572 F.2d 412, 423 (1978), *cert. denied sub nom. Goldsmith v. United States*, 439 U.S. 913 (1978)).

<sup>46</sup> *Id.* at 585 (citing *United States v. United States Dist. Court*, 407 U.S. 297, 313 (1972)).

<sup>47</sup> *Id.* at 589.

<sup>48</sup> *Id.* at 588.

<sup>49</sup> *Id.* at 589.

<sup>50</sup> *Payton*, 445 U.S. at 589-90 (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

The Court in *Payton* held that police need an arrest warrant to enter a suspect's home to make an arrest.<sup>51</sup> However, the Court's holding was less clear as to what law enforcement officials must establish in order to enter a suspect's home after obtaining an arrest warrant. Justice Stevens stated that "for Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is *reason to believe* the suspect is within."<sup>52</sup> In light of the inherent ambiguity of this phrase, it is understandable that a split developed in the federal circuit courts as to the meaning of "reason to believe" in this context.<sup>53</sup>

*B. United States v. Gorman: "Reason to Believe" is Probable Cause*

In *United States v. Gorman*, the Ninth Circuit interpreted *Payton*'s "reason to believe" language as being equivalent to probable cause.<sup>54</sup> In September or October of 2000, San Diego Police learned that a man named "Kenny" was using mail box keys to steal mail from residents of a housing complex.<sup>55</sup> After further investigation, officers discovered that "Kenny" was Clarence Kenneth Gorman, an ex-convict who was in violation of his supervised release from prison and had an active felony warrant.<sup>56</sup> The police also discovered that Gorman was living at his girlfriend Helen's home on Ranchero Hills Drive.<sup>57</sup>

Several officers went to the home on Ranchero Hills Drive on November 6, 2000 to arrest Gorman.<sup>58</sup> The officers watched the residence for an hour after spotting Gorman's car outside but they did not see him enter or leave.<sup>59</sup> The officers knocked on the front door and thought they heard someone inside.<sup>60</sup> After no one answered, the officers knocked on the back door.<sup>61</sup> There is a factual dispute regarding the

---

<sup>51</sup> See *id.* at 588–89.

<sup>52</sup> *Id.* at 603 (emphasis added).

<sup>53</sup> Compare *United States v. Pruitt*, 458 F.3d 477, 483–84 (6th Cir. 2006) ("[A]n arrest warrant is sufficient to enter a residence if the officers, by looking at common sense factors and evaluating the totality of the circumstances, establish a reasonable belief that the subject of the arrest warrant is within the residence at that time") with *United States v. Gorman*, 314 F.3d 1105, 1111 (9th Cir. 2002) ("[T]he 'reason to believe,' or reasonable belief, standard of *Payton* . . . embodies the same standard of reasonableness inherent in probable cause.").

<sup>54</sup> *Gorman*, 314 F.3d at 1111.

<sup>55</sup> *Id.* at 1107.

<sup>56</sup> *Id.*

<sup>57</sup> See *id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Gorman*, 314 F.3d at 1108.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

circumstances under which they entered the house.<sup>62</sup> One of the officers subsequently claimed that police entered the house only after Gorman's girlfriend answered the door and, after persistent questioning, told them that Gorman was inside.<sup>63</sup> However, another officer asserted that Helen told the police that no one was inside except for her mother and child and that the officers instructed her to wait outside while they entered the house.<sup>64</sup> The officers found Gorman in bed and, during the arrest, discovered three mailbox keys and checks written to other people in his wallet.<sup>65</sup> Gorman pleaded guilty to possession of a counterfeit postal key but preserved the right to appeal the district court's denial of his motion to suppress the evidence gathered by the arresting officers "allegedly in violation of his Fourth Amendment rights."<sup>66</sup>

Writing for a majority of the Ninth Circuit, Judge Pregerson held that the district court applied the wrong standard to Gorman's motion to suppress the evidence seized by the police.<sup>67</sup> The court pointed out that, under *Payton*, an arresting officer must have an arrest warrant and "reason to believe" the suspect is present in order to enter a home to execute the warrant.<sup>68</sup> However, the court stated that the district court erroneously interpreted "reason to believe" to mean "reasonable suspicion" rather than probable cause.<sup>69</sup> Probable cause is a "common sense" determination as to whether there is a "fair probability" that the evidence [or person] sought is "located in a particular place" based on the "totality of the circumstances."<sup>70</sup>

In the opinion, Judge Pregerson highlighted the importance of the "located in a particular place" element of the probable cause analysis where police wish to enter a suspect's home.<sup>71</sup> The court held that a "particular place" for purposes of probable cause is "a particular building."<sup>72</sup> Furthermore, the Ninth Circuit stated that the arresting officers must believe "that the subject of the arrest warrant is present [in

---

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Gorman*, 314 F.3d at 1108.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 1110.

<sup>67</sup> *Id.* at 1116.

<sup>68</sup> *Id.* at 1111 (citing *Payton v. New York*, 445 U.S. 573, 603 (1980); *United States v. Albreksten*, 151 F.3d 951, 953 (9th Cir. 1998)).

<sup>69</sup> *Gorman*, 314 F.3d at 1110, 1116.

<sup>70</sup> *Illinois v. Gates*, 462 U.S. 213, 238 (1983).

<sup>71</sup> *See Gorman*, 314 F.3d at 1113-14.

<sup>72</sup> *See id.* at 1113 (citing *United States v. Phillips*, 497 F.2d 1131, 1136 (9th Cir. 1974)).



the particular building] *at the time of the warrant's execution.*"<sup>73</sup> The court noted that "[e]ntry into a person's home is so intrusive that such searches always require probable cause regardless of whether some exception would excuse the warrant requirement."<sup>74</sup> Synthesizing the *Gates* and *Gorman* decisions produces the probable cause standard for situations where police officers seek to enter a suspect's home to execute an arrest warrant. Indeed, in order to establish probable cause, police officers must make a common sense determination, based on the totality of the circumstances, that there is a fair probability that the suspect is presently within his home.<sup>75</sup> The court remanded the case to the district court in order to determine whether the arresting officers established probable cause that Gorman was inside his girlfriend's home when they entered.<sup>76</sup>

*C. United States v. Pruitt: "Reason to Believe" is a Lesser Standard than Probable Cause*

In contrast to the Ninth Circuit's holding in *Gorman*, every other federal circuit that has considered the issue has interpreted *Payton's* "reason to believe" language as requiring a lesser showing than probable cause.<sup>77</sup> *United States v. Pruitt*, a recent Sixth Circuit decision, illustrates the position of the circuits that have adopted this lesser standard.<sup>78</sup> In July 2004, Demetrius Pruitt "became a fugitive of justice" after being released from prison on parole and "failing to report to his parole officer."<sup>79</sup> A magistrate issued an arrest warrant for Pruitt after officers did not find him at his recorded address.<sup>80</sup> In August 2004, police received an anonymous tip that Pruitt had relocated to another address.<sup>81</sup> The tipster informed police that Pruitt had been at the address within the past several hours and that he had drugs and a firearm in his possession.<sup>82</sup> After conducting surveillance for a short period of time, police stopped a

---

<sup>73</sup> *Id.* at 1114 n.9 (citing *United States v. Litteral*, 910 F.2d 547 (9th Cir. 1990)) (emphasis added).

<sup>74</sup> *Id.* at 1113 (quoting *United States v. Howard*, 828 F.2d 552, 555 (9th Cir. 1987).

<sup>75</sup> *See id.*; *Gates*, 462 U.S. at 238.

<sup>76</sup> *See Gorman*, 314 F.3d at 1112, 1116.

<sup>77</sup> *United States v. Pruitt*, 458 F.3d 477, 483 (6th Cir. 2006); *See United States v. Veal*, 453 F.3d 164, 167 n.3 (3d Cir. 2006); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005); *United States v. Route*, 104 F.3d 59, 62–63 (5th Cir. 1997); *United States v. Risse*, 83 F.3d 212, 216–17 (8th Cir. 1996); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995).

<sup>78</sup> *Pruitt*, 458 F.3d at 483.

<sup>79</sup> *Id.* at 478.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 478–79.

<sup>82</sup> *Id.*

man they saw enter and quickly leave Pruitt's supposed new residence.<sup>83</sup> The man told the officers that Pruitt was inside the house.<sup>84</sup> Using the information gathered from the anonymous tipster and the man stopped outside the residence, a detective obtained a search warrant.<sup>85</sup> Police entered the house and found Pruitt hiding in a closet along with drugs and a loaded gun in plain view.<sup>86</sup> At trial, Pruitt moved to suppress the evidence gathered by the officers because the search warrant "lacked indicia of probable cause."<sup>87</sup> The district court initially granted Pruitt's motion but subsequently denied it upon reconsideration.<sup>88</sup>

Writing for a majority of the Sixth Circuit, Judge McKeague held that the district court properly denied Pruitt's motion to suppress the evidence gathered during his arrest.<sup>89</sup> The court acknowledged that the search warrant was invalid because the detective failed to list any facts in his form affidavit and the issuing court did not transcribe his sworn statement.<sup>90</sup> Nevertheless, the court held that, under *Payton*, a search warrant was not necessary to enter a residence where the officers had an arrest warrant and "reason to believe [the suspect] was inside."<sup>91</sup> Judge McKeague pointed out that the vast majority of courts have interpreted "reason to believe" to mean a lesser standard than probable cause.<sup>92</sup> Indeed, the court noted that the Supreme Court did not use the terms "probable cause" and "reason to believe" interchangeably and thus implied that "reason to believe" is a lesser standard.<sup>93</sup> The court articulated this lesser standard as requiring an arresting officer to "look[] at common sense factors and evaluat[e] the totality of the circumstances"<sup>94</sup> in order to "establish a reasonable belief that the subject of the arrest warrant is within the residence at that time."<sup>95</sup> Applying this lesser standard, Judge McKeague held that the arresting officers had reason to believe that Pruitt was within the house at the time of his arrest

---

<sup>83</sup> *Pruitt*, 458 F.3d at 479.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 480.

<sup>88</sup> *Pruitt*, 458 F.3d at 480.

<sup>89</sup> *Id.* at 485.

<sup>90</sup> *Id.* at 480–81.

<sup>91</sup> *Id.* at 482.

<sup>92</sup> *Id.* at 483; *See* *United States v. Veal*, 453 F.3d 164, 167 n.3 (3d Cir. 2006); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005); *United States v. Route*, 104 F.3d 59, 62–63 (5th Cir. 1997); *United States v. Risse*, 83 F.3d 212, 216–17 (8th Cir. 1996); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995).

<sup>93</sup> *Pruitt*, 458 F.3d at 484.

<sup>94</sup> *Id.* at 482.

<sup>95</sup> *Id.* at 483.

based on the information gathered from the tipster and the man stopped after leaving the residence.<sup>96</sup>

*D. Distinguishing Between Probable Cause and Pruitt's Lesser Standard*

Although the federal circuit courts have interpreted *Payton's* "reasonable to believe" language differently, probable cause and *Pruitt's* lesser standard lead to the same outcome in most instances.<sup>97</sup> For example, the Fifth Circuit decided *United States v. Route*,<sup>98</sup> using *Pruitt's* "reasonable belief" language.<sup>99</sup> However, the decision would have been the same had the court applied the probable cause standard.<sup>100</sup>

In *Route*, a police officer executed an arrest warrant for Route and Crossley at Route's residence.<sup>101</sup> The officer arrested Route outside the residence and subsequently entered the house to arrest Crossley.<sup>102</sup> While searching for Crossley, the officer discovered evidence that the prosecution used against the defendant at trial.<sup>103</sup> The Fifth Circuit held that the officer had a "reasonable belief" that Crossley lived in Route's home and was present at the time of the arrest. The court noted that the officer knew Crossley's credit card applications, water and electric bills, car registration, and mail listed Route's residence as his current address and that the officer heard the television on inside the house after he arrested Route.<sup>104</sup> Applying the lesser standard articulated in *Pruitt*, it is clear that the arresting officer, after considering "common sense factors and the totality of the circumstances" established that there was a "reasonable belief" that Crossley lived at Route's residence and was present at the time of the arrest.<sup>105</sup> Additionally, the information gathered by the arresting officer would have satisfied the probable cause test. Indeed, considering that the officer knew that Crossley's credit card applications, water and electric bills, car registration and mail listed Route's address as his current address and the officer heard the television

---

<sup>96</sup> *Id.* at 485.

<sup>97</sup> *Id.* at 483. *See also* *United States v. Veal*, 453 F.3d 164, 167 n.3 (3d Cir. 2006); *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005); *United States v. Route*, 104 F.3d 59, 62–63 (5th Cir. 1997); *United States v. Risse*, 83 F.3d 212, 216–17 (8th Cir. 1996); *United States v. Lauter*, 57 F.3d 212, 215 (2d Cir. 1995).

<sup>98</sup> *United States v. Route*, 104 F.3d 59 (5th Cir. 1997).

<sup>99</sup> *Id.* at 61–62.

<sup>100</sup> *See Illinois v. Gates*, 462 U.S. 213, 238 (1983); *United States v. Gorman*, 314 F.3d 1105, 1113–14 (9th Cir. 2002).

<sup>101</sup> *See Route*, 104 F.3d at 61.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 62 n.1.

<sup>105</sup> *See United States v. Pruitt*, 458 F.3d 477, 483 (6th Cir. 2006).

on inside the house immediately after he arrested Route,<sup>106</sup> the officer undoubtedly could make a common sense determination, based on the totality of the circumstances, that there is a fair probability that Crossley was within his home.<sup>107</sup> It is clear that the arresting officer in *Route* could establish probable cause and satisfy *Pruitt*'s lesser standard.

Even though probable cause and *Pruitt*'s lesser standard are similar tests, the difference between the two standards is extremely important in the few closer cases in which the standard used will affect the outcome. For example, the Sixth Circuit applied *Pruitt*'s lesser standard in *United States v. McKinney*.<sup>108</sup> The court held that arresting officers had a "reasonable belief" that a suspect was on the premises where the police received an anonymous tip as to the suspect's whereabouts and collected information a month before the arrest concerning the suspect's "presence around the premises."<sup>109</sup> Under these circumstances, the court reasoned that the arresting officers, after considering "common sense factors and the totality of the circumstances," established that there was a "reasonable belief" that the suspect was on the premises at that time.<sup>110</sup> Even though probable cause is not an onerous standard,<sup>111</sup> the facts known to the officer in *McKinney* are not sufficient to establish probable cause. In order to have probable cause to enter a suspect's home to execute an arrest warrant, police officers must make a common sense determination, based on the totality of the circumstances that there is a fair probability that the suspect is presently within his home.<sup>112</sup> An anonymous tip as to the suspect's whereabouts and month-old information concerning the suspect's "presence around the premises,"<sup>113</sup> do not establish a fair probability that the suspect lives in the residence nor do they establish that the suspect will be present at the time of the search. Evidently, the standard used to evaluate the appropriateness of entering a suspect's home to execute an arrest warrant will effect the outcome of the analysis in some closer cases.

---

<sup>106</sup> *Route*, 104 F.3d at 62 n.1.

<sup>107</sup> See *Illinois v. Gates*, 462 U.S. 213, 238 (1983); *United States v. Gorman*, 314 F.3d 1105, 1113–14 (9th Cir. 2002).

<sup>108</sup> *United States v. McKinney*, 379 F.2d 259 (6th Cir. 1967).

<sup>109</sup> *Pruitt*, 458 F.3d at 482 (citing *United States v. McKinney*, 379 F.2d 259, 263–64 (6th Cir. 1967)).

<sup>110</sup> See *id.* (citing *McKinney*, 379 F.2d at 263–64).

<sup>111</sup> See *Gates*, 462 U.S. at 235.

<sup>112</sup> See *id.* at 238; *Gorman*, 314 F.3d at 1113–14.

<sup>113</sup> *Pruitt*, 458 F.3d at 482 (citing *United States v. McKinney*, 379 F.2d 259, 263–64 (6th Cir. 1967)).

*E. Steagald v. United States: Protecting Third Parties' Homes*

In *Steagald v. United States*, the Supreme Court emphasized the distinction between the protection of one's *person* and one's *place* under the Fourth Amendment when it held that police needed a search warrant to enter the home of a third-party not named in the arrest warrant in order to arrest a suspect.<sup>114</sup> Although the *Steagald* holding only applies to situations where police seek to arrest a suspect in a third-party's home,<sup>115</sup> its clearly drawn distinction between the protection of one's person and one's place is also relevant where law enforcement officers wish to enter a suspect's own home.

In January 1978, a DEA agent in Detroit received an anonymous tip that Ricky Lyons, a federal fugitive with an outstanding arrest warrant for drug charges, was in Atlanta, Georgia.<sup>116</sup> The informant provided a phone number at which officers could contact Lyons.<sup>117</sup> The agent relayed this information to an agent working in the Atlanta area, who obtained the address that corresponded to the phone number.<sup>118</sup> On January 16, 1978, twelve officers descended upon the address and found Hoyt Gaultney and Gary Steagald outside.<sup>119</sup> After determining that neither of the men was Lyons, several agents proceeded to the house where Gaultney's wife let them in.<sup>120</sup> The agents did not find Lyons in the house but they did discover cocaine.<sup>121</sup> Armed with the cocaine as probable cause, one agent went to obtain a search warrant while the other agents conducted a second search, which uncovered additional incriminating evidence.<sup>122</sup> After obtaining the search warrant, the agents conducted a third search in which they discovered an additional forty-three pounds of cocaine.<sup>123</sup> At trial, Steagald moved to suppress the evidence because "agents had failed to secure a search warrant before entering the house."<sup>124</sup> Both the district court and the Fifth Circuit Court of Appeals denied Steagald's motion and both Steagald and Gaultney were found guilty.<sup>125</sup>

---

<sup>114</sup> See *Steagald v. United States*, 451 U.S. 204, 213 (1981).

<sup>115</sup> See *id.* at 216.

<sup>116</sup> *Id.* at 206.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Steagald*, 451 U.S. at 206.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Steagald*, 451 U.S. at 207.

<sup>125</sup> *Id.*

The United States Supreme Court heard Steagald's appeal.<sup>126</sup> Writing for the majority, Justice Marshall held that the initial search of Steagald's home violated his Fourth Amendment rights.<sup>127</sup> Although both arrest warrants and search warrants "serve to subject the probable-cause determination of the police to judicial review," the court reasoned that the warrants protect two distinct interests.<sup>128</sup> The Court stated that arrest warrants "serve[] to protect an individual from an unreasonable seizure," while search warrants "safeguard[] an individual's interest in the privacy of his home and possessions against the unjustified intrusion of the police."<sup>129</sup> In this case, Justice Marshall determined that, although the arrest warrant addressed Lyons' interest in being free from an unreasonable seizure, it did not address Steagald and Gaultney's interest in protecting their home from an unreasonable intrusion by police.<sup>130</sup> Indeed, the Court noted that the agents never submitted evidence that they could find Lyons inside the residence to a magistrate.<sup>131</sup> Thus, the Court held that, "since warrantless searches of a home are impermissible absent consent or exigent circumstances," the search of Gaultney and Steagald's home violated their Fourth Amendment rights.<sup>132</sup>

### III. PROTECTING A SUSPECT'S HOME: EXTENSION OF *STEAGALD*

#### *A. Payton's "Reason to Believe" is Probable Cause*

Even though probable cause and *Pruitt's* lesser standard may produce a different outcome in only a small number of cases, the federal circuit courts must adopt a uniform test to account for the cases in which the standard applied will affect the outcome.<sup>133</sup> The Ninth Circuit correctly held that *Payton's* "reason to believe" language is equivalent to probable cause. Indeed, probable cause is the appropriate standard where police seek to enter a suspect's home to execute an arrest warrant because probable cause sufficiently protects a suspect's home from unreasonable intrusion,<sup>134</sup> it provides a uniform standard for situations

---

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 216.

<sup>128</sup> *Id.* at 212–13.

<sup>129</sup> *Steagald*, 451 U.S. at 213.

<sup>130</sup> *Id.* at 216.

<sup>131</sup> *Id.* at 213–14.

<sup>132</sup> *Id.* at 216.

<sup>133</sup> *See United States v. Hardin*, 539 F.3d 404, 415 (6th Cir. 2008) (suggesting that the officers in *Pruitt* gathered evidence that would satisfy both standards).

<sup>134</sup> *Steagald*, 451 U.S. at 213.

where police seek to enter a private residence,<sup>135</sup> and it provides an appropriate balance between citizens' rights and the investigational requirements of law enforcement.<sup>136</sup> Accordingly, the Supreme Court should clarify that *Payton's* "reason to believe" language requires a showing of probable cause.

### 1. Probable Cause Protects a Suspect's Home from Unreasonable Intrusion

Probable cause is the appropriate standard where a law enforcement officer seeks to enter a suspect's home to enforce an arrest warrant because probable cause sufficiently protects a suspect's constitutional "interest in the privacy of his home and possessions against the unjustified intrusion by the police."<sup>137</sup> Entry into one's home to execute an arrest warrant implicates both the Fourth Amendment protection of one's person and the Fourth Amendment protection of one's home.<sup>138</sup> However, an arrest warrant protects a person only from an unreasonable arrest by requiring a showing of probable cause that the "subject of the warrant has committed an offense."<sup>139</sup> It does not protect one's home from an unreasonable intrusion by police.<sup>140</sup>

In order to adequately protect a suspect's home, officers should have to establish probable cause, and not a lesser "reasonable belief" that the suspect is presently within his home. One's home is the center of one's private life and is entitled to special protection under the law.<sup>141</sup> The Fourth Amendment protects an individual's home "from prying government eyes."<sup>142</sup> Indeed, the Fourth Amendment, at its core, gives citizens the right "to retreat into [their] own home" where they will be free from "even a fraction of an inch" of physical governmental

---

<sup>135</sup> See generally *id.*; *Terry v. Ohio*, 392 U.S. 1 (1968) (holding that police officers on patrol may stop and frisk suspicious persons based on "reasonable suspicion," a lower standard than probable cause); *United States v. Mondragon*, 181 F. App'x 904, 906 (11th Cir. 2006); 2-22 HALL, *supra* note 22.

<sup>136</sup> See *Illinois v. Gates*, 462 U.S. 213, 235 (1983); *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979); *United States v. Pruitt*, 458 F.3d 477, 483 (6th Cir. 2006).

<sup>137</sup> *Steagald*, 451 U.S. at 213.

<sup>138</sup> See *Payton v. New York*, 445 U.S. 573, 588–89 (1980) (citing *United States v. Reed*, 572 F.2d 412, 423 (1978), *cert. denied sub nom. Goldsmith v. United States*, 439 U.S. 913 (1978)) ("To be arrested in the home involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home.").

<sup>139</sup> See *Steagald*, 451 U.S. at 213.

<sup>140</sup> *Id.*

<sup>141</sup> *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (citing *Minnesota v. Carter*, 525 U.S. 83, 99 (1998) (Kennedy, J., concurring)).

<sup>142</sup> *Kyllo v. United States*, 533 U.S. 27, 37 (2001) (citing *Silverman v. United States*, 365 U.S. 505, 511 (1961)).

intrusion.<sup>143</sup> To comply with the “reasonableness” requirement of the Fourth Amendment, magistrates require police to establish *probable cause* before they will issue a search warrant permitting the arresting officers to invade the sanctity of one’s home.<sup>144</sup> In *Payton*, the Court held that “an entry to arrest and an entry to search and to seize property implicate the same interest in preserving the privacy and the sanctity of the home, and justify the same level of constitutional protection.”<sup>145</sup> Therefore, adopting a standard below probable cause where law enforcement officers seek to enter a suspect’s home to enforce an arrest warrant would infringe on the suspect’s rights under the Fourth Amendment. Indeed, adopting *Pruitt*’s lesser standard would reduce the protection of one’s home to a level below the standard contemplated in *Payton*.<sup>146</sup> Accordingly, probable cause is the more appropriate standard because it sufficiently protects a suspect’s home from unreasonable intrusion.

## 2. Probable Cause Provides a Uniform Standard for Situations Where Police Seek to Enter a Private Residence

Additionally, probable cause is the more appropriate standard because it provides a uniform standard for situations where police seek to enter a private residence.<sup>147</sup> A uniform standard “is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.”<sup>148</sup> Police must show probable cause in a variety of situations in which they wish to enter a private residence. For example, to obtain a search warrant, police must establish “probable cause to believe that the legitimate object of a search is located in a particular place . . . .”<sup>149</sup> Additionally, in the circumstances where an officer may enter a home without an arrest warrant or search warrant to make an arrest, probable cause is an integral part of the analysis.<sup>150</sup> In order to make such a warrantless entry into a home to make an arrest, an

---

<sup>143</sup> *Silverman*, 365 U.S. at 511–12.

<sup>144</sup> *See Steagald*, 451 U.S. at 213.

<sup>145</sup> *Payton v. New York*, 445 U.S. 573, 588 (1980).

<sup>146</sup> *See id.* at 616 n.13 (White, J., dissenting).

<sup>147</sup> There are situations not involving entry into one’s home where law enforcement officers may act without probable cause. *See Terry v. Ohio*, 392 U.S. 1 (1968) (holding that police officers on patrol may stop and frisk suspicious persons based on “reasonable suspicion,” a lower standard than probable cause).

<sup>148</sup> *Dunaway v. New York*, 442 U.S. 200, 213–14 (1979).

<sup>149</sup> *Steagald*, 451 U.S. at 213.

<sup>150</sup> *See 2-22 Hall*, *supra* note 22, § 22.31; *United States v. Mondragon*, 181 F. App’x 904, 906 (11th Cir. 2006).



officer must have “sufficient justification for a warrantless entry, a probable cause question”<sup>151</sup> and “exigent circumstances [must] make it impossible or impracticable to obtain a warrant . . . .”<sup>152</sup> Since police must establish probable cause in other situations where they wish to enter a home, requiring officers to establish probable cause where they seek to enter a suspect’s home to enforce an arrest warrant would provide a more uniform standard. Accordingly, probable cause is the more appropriate standard under these circumstances.

### 3. Probable Cause Provides a Clear and Workable Standard for Police Officers

Finally, probable cause is the more appropriate test because it provides a clear and workable standard for police officers. In instances where police seek to enter a suspect’s home to execute an arrest warrant, the officers often have “only limited time and expertise to reflect on and balance the social and individual interests involved” in this fact sensitive inquiry.<sup>153</sup> Consequently, police officers require a standard that is both clear and workable.<sup>154</sup>

The probable cause standard is clearer than *Pruitt*’s lesser standard. Law enforcement officers must establish probable cause in other situations where they wish to enter a private residence.<sup>155</sup> The only thing that is clear about *Pruitt*’s lesser standard is that the courts define it as being “satisfied by something less than would be required for a finding of ‘probable cause.’”<sup>156</sup> Consequently, implementing this lesser standard where law enforcement officials seek to enter a suspect’s home to enforce an arrest warrant would still require officers to think in terms of probable cause. Arresting officers would still be required to know the requirements of probable cause to determine if their suspicion meets a vague standard explicitly defined as requiring a lesser showing than probable cause.<sup>157</sup>

Moreover, probable cause is a sufficiently workable standard. Using this standard, an arresting officer need only make a common sense determination, based on the totality of the circumstances that there is a

---

<sup>151</sup> 2-22 HALL, *supra* note 22, § 22.18.

<sup>152</sup> *Mondragon*, 181 F. App’x at 906.

<sup>153</sup> *See Dunaway v. New York*, 442 U.S. 200, 213–14 (1979).

<sup>154</sup> *See id.*

<sup>155</sup> *See supra* at III.A.2

<sup>156</sup> *United States v. Thomas*, 429 F.3d 282, 286 (D.C. Cir. 2005). *See also United States v. Pruitt*, 458 F.3d 477, 484 (6th Cir. 2006). The courts do not reference “reasonable suspicion” in their explanation of the lesser standard.

<sup>157</sup> *See Pruitt*, 458 F.3d at 484.

fair probability that the suspect is presently within his home.<sup>158</sup> Probable cause is not an onerous standard.<sup>159</sup> Indeed, it is an extremely deferential standard that requires far less evidence than “proof beyond a reasonable doubt or by a preponderance of the evidence.”<sup>160</sup> Adopting *Pruitt*’s lesser standard would loosen a standard that is already sufficiently deferential to law enforcement. Accordingly, probable cause is the more appropriate standard where law enforcement officials seek to enter a suspect’s home to execute an arrest warrant because probable cause provides an appropriate balance between citizens’ rights and the investigational requirements of law enforcement.

*B. Procedural Problem: Police Officers are Not Suited to Conduct the Probable Cause Analysis in an Objective Manner*

Even if the Supreme Court was to hold that “reason to believe” under *Payton* is equivalent to probable cause, the question remains: who is best equipped to conduct fact sensitive probable cause analysis? The Court previously held that an arresting officer may conduct the analysis.<sup>161</sup> Indeed, because probable cause is a “common sense determination” that “deal[s] with ‘the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act,’” it is reasonable to think that police officers would be more than capable of conducting the analysis.<sup>162</sup> Nevertheless, law enforcement officers are ill equipped to conduct the probable cause analysis to determine the propriety of entering a suspect’s home to execute an arrest warrant because they are too involved in the criminal investigation to be objective.<sup>163</sup>

Police officers are “engaged in the often competitive enterprise of ferreting out crime.”<sup>164</sup> Consequently, the interests and investigative needs of law enforcement officers are often in direct conflict with the Fourth Amendment rights of citizens to be free from unreasonable arrests and free from unreasonable searches of their homes.<sup>165</sup> The framers of

---

<sup>158</sup> See *supra* at II.B.

<sup>159</sup> See *Illinois v. Gates*, 462 U.S. 213, 235 (1983).

<sup>160</sup> *Id.*

<sup>161</sup> See *Payton v. New York*, 445 U.S. 573, 603 (1980); *Steagald v. United States*, 451 U.S. 204, 213 (1981).

<sup>162</sup> *Gates*, 462 U.S. at 231 (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)). See also *United States v. Sokolow*, 490 U.S. 1, 7–8 (1989).

<sup>163</sup> See *Johnson v. United States*, 333 U.S. 10, 14 (1948); 1-3 HALL, *supra* note 22, § 3.4, 3.9; 2-22 HALL, *supra* note 22, § 22.31; Edwards, *supra* note 24, at 301.

<sup>164</sup> *Johnson*, 333 U.S. at 14.

<sup>165</sup> See *id.*; *United States v. Lefkowitz*, 285 U.S. 452, 464 (1932).

the Fourth Amendment recognized this inherent conflict of interests.<sup>166</sup> Accordingly, the second clause of the Fourth Amendment requires that a “‘neutral and detached’ magistrate review the facts and circumstances articulated by the officer to determine probable cause” before police may conduct a search, absent exigent circumstances.<sup>167</sup> Allowing a police officer to make a subjective probable cause determination without objective oversight “significantly dilutes”<sup>168</sup> citizens’ Fourth Amendment rights and allows room for potential abuse.<sup>169</sup> For example, police may be able to use an arrest to enter a suspect’s home “even when they may believe the suspect is elsewhere, as a pretext to conduct a plain view search or protective sweep of the premises that could not otherwise be done because probable cause to search was lacking.”<sup>170</sup> In order to ensure an objective determination of probable cause where law enforcement officers seek to enter a suspect’s home to execute an arrest warrant, the Supreme Court should require a level of judicial oversight.

To effectively protect a suspect’s home from unreasonable intrusion where officers wish to execute an arrest warrant, the Supreme Court should extend the holding of *Steagald* to encompass situations where law enforcement officers seek to enter a suspect’s home to execute an arrest warrant.<sup>171</sup> Indeed, courts should require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect’s home to execute an arrest warrant and thus, enable the magistrate to conduct the probable cause analysis. The text of the Fourth Amendment separately protects one’s person and one’s place, therefore contemplating the need for separate safeguards of these rights.<sup>172</sup> Requiring a search warrant in these circumstances would appropriately protect a suspect’s home and safeguard the rights of any other residents. Admittedly, this additional warrant requirement would represent a radical change in the law; however, it would ensure a level of objective oversight in the probable cause analysis. The Supreme Court should institute this additional warrant requirement because an arrest in one’s home implicates both the protection from unreasonable arrest and the protection of one’s home from unreasonable intrusion, it would provide a uniform application of the standard, and it would not unduly hinder law enforcement efforts.

---

<sup>166</sup> See U.S. Const. amend. IV.

<sup>167</sup> See 1-3 HALL, *supra* note 22, § 3.4.

<sup>168</sup> *Id.*

<sup>169</sup> See Edwards, *supra* note 24, at 301; 2-22 HALL, *supra* note 22, § 22.31.

<sup>170</sup> 2-22 HALL, *supra* note 22, § 22.31.

<sup>171</sup> See *Steagald v. United States*, 451 U.S. 204, 213–16 (1981).

<sup>172</sup> See U.S. Const. amend. IV.

*C. An Arrest in One's Home Implicates Both the Protection from Unreasonable Arrest and the Protection of One's Home from Unreasonable Intrusion*

The Supreme Court should require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect's home to execute an arrest warrant because the situation involves two distinct protections. Indeed, entering a suspect's home to arrest him "involves not only the invasion attendant to all arrests, but also an invasion of the sanctity of the home."<sup>173</sup> Magistrates issue arrest warrants upon a showing of probable cause that the "subject of the warrant has committed an offense."<sup>174</sup> However, an arrest warrant "makes no determination as to probable cause to believe the suspect is anywhere in particular."<sup>175</sup> Although an arrest warrant protects a suspect from unreasonable arrest, it does not protect a suspect's home from an unreasonable intrusion by police.<sup>176</sup>

The Ninth Circuit correctly held that, in order to protect a suspect's Fourth Amendment right to keep his home free from unreasonable intrusion by police, arresting officers need to establish probable cause before entering a suspect's home to execute an arrest warrant.<sup>177</sup> Public policy dictates the desirability of having an objective magistrate "pass on the question of probable cause . . . so [that] any search undertaken will be properly limited" in scope.<sup>178</sup> Indeed, the judiciary is best equipped to ensure that any search is "strictly tied to and justified by the circumstances which rendered its initiation permissible."<sup>179</sup> To adequately safeguard this right and eliminate the possibility of abuse by law enforcement officers, courts should require officers to obtain a search warrant in these situations before they enter a suspect's home to arrest him.

Search warrants are specifically designed to protect "an individual's interest in the privacy of his home and possessions against the unjustified intrusion of the police."<sup>180</sup> Under the Fourth Amendment, magistrates issue search warrants "upon a showing of probable cause to believe that

---

<sup>173</sup> See *Payton v. New York*, 445 U.S. 573, 588 (1980) (citing *United States v. Reed*, 572 F.2d 412, 423 (1978), *cert. denied sub nom. Goldsmith v. United States*, 439 U.S. 913 (1978)).

<sup>174</sup> *Steagald*, 451 U.S. at 213; See 2-22 HALL, *supra* note 22, § 22.31.

<sup>175</sup> *Steagald*, 451 U.S. at 213.

<sup>176</sup> *Id.*

<sup>177</sup> See *United States v. Gorman*, 314 F.3d 1105, 1111 (9th Cir. 2002); *supra* at III.A.

<sup>178</sup> 1-3 HALL, *supra* note 22, § 3.5.

<sup>179</sup> *Chamel v. California*, 395 U.S. 752, 762 (1969) (citing *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

<sup>180</sup> *Steagald*, 451 U.S. at 213.

the legitimate object of a search is located in a particular place.”<sup>181</sup> Indeed, the Fourth Amendment requires search warrants to “‘particularly describ[e] the place to be searched, and the persons or things to be seized.’”<sup>182</sup> Since arresting officers must already adhere to the judicial process to obtain an arrest warrant in these situations, it would not be unreasonable to require an additional submission to the magistrate demonstrating probable cause “that the subject of the arrest warrant is present [in his home] *at the time of the warrant’s execution*.”<sup>183</sup> This additional warrant requirement would potentially reduce the ability of law enforcement officers to use an arrest warrant as a pretext to conduct “a plain view search or protective sweep”<sup>184</sup> of a suspect’s home because it would effectively bar officers from entering the suspect’s home until they are able to present sufficient evidence that there is a fair probability that the suspect is present.<sup>185</sup> Accordingly, the Supreme Court should require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect’s home to execute an arrest warrant.

*D. A Warrant Requirement Would Provide a Uniform Application of Probable Cause*

The Supreme Court should also require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect’s home to execute an arrest warrant because it would provide a uniform application of the probable cause standard. Probable cause is not an overly “technical” standard.<sup>186</sup> In theory, a police officer, based on his experience should be able to conduct a probable cause analysis where he seeks to enter a suspect’s home to make an arrest.<sup>187</sup> Nevertheless, law enforcement officers are too involved in the criminal investigation to objectively conduct the analysis.<sup>188</sup> Instituting a warrant requirement would ensure objective judicial review of the factual assumptions made by police.

---

<sup>181</sup> *Id.*

<sup>182</sup> U.S. Const. amend. IV.

<sup>183</sup> *Gorman*, 314 F.3d at 1114 n.9 (citing *United States v. Litteral*, 910 F.2d 547 (9th Cir. 1990) (emphasis added)).

<sup>184</sup> 2-22 HALL, *supra* note 22, § 22.31.

<sup>185</sup> See *Gorman*, 314 F.3d at 1113; *Illinois v. Gates*, 462 U.S. 213, 238 (1983). But see *Edwards*, *supra* note 24, at 301 (“[C]ourts reviewing police home entries under *Payton* routinely engage in potentially unwarranted conjecture regarding criminal suspects’ behavior as part of systemic deference to law enforcement agents who seek to arrest suspects at home.”).

<sup>186</sup> *Smith v. United States*, 358 F.2d 833, 837 (D.C. Cir. 1966) (citing *Brinegar v. United States*, 338 U.S. 160, 175 (1949)).

<sup>187</sup> See *United States v. Sokolow*, 490 U.S. 1, 7–8 (1989); *Gates*, 462 U.S. at 231.

<sup>188</sup> See *supra* at III.B.

Magistrates are learned jurists that are more apt than police to objectively make a common sense determination, based on the totality of the circumstances that there is a fair probability that the suspect is presently within his home. Magistrates would be better able to uniformly apply this standard, thus ensuring the maintenance of an appropriate balance between the investigative needs of law enforcement and the Fourth Amendment rights of citizens. Accordingly, The Supreme Court should require arresting officers to obtain a search warrant from an objective magistrate before entering a suspect's home to execute an arrest warrant because magistrates would uniformly conduct the probable cause analysis in an objective manner.

*E. A Warrant Requirement Would Not Unduly Hinder Law Enforcement Efforts*

Finally, requiring arresting officers to obtain a search warrant from an objective magistrate before entering a suspect's home to execute an arrest warrant would not unduly hinder law enforcement efforts. Although this requirement would safeguard criminal suspects' Fourth Amendment rights, it would undoubtedly place a higher burden on law enforcement officers.<sup>189</sup> Nevertheless, the allowance for warrantless searches where exigent circumstances exist would effectively maintain an appropriate balance between citizens' rights and the investigative needs of law enforcement.<sup>190</sup> The United States Supreme Court in both *Payton* and *Steagald* noted that police are not required to obtain search warrant where "exigent circumstances make it impossible or impracticable to obtain a warrant."<sup>191</sup> Exigent circumstances are those situations where there is "an articulable basis of a factual belief"<sup>192</sup> that "there is a compelling need for official action."<sup>193</sup> Examples of "a compelling need for official action"<sup>194</sup> include situations where police are in hot pursuit of a suspect, "lives are threatened, . . . or evidence is about to be destroyed."<sup>195</sup> Since the courts would excuse the search warrant requirement where exigent circumstances exist, the warrant requirement would not unduly hinder police where they seek to enter a suspect's home to execute an arrest warrant.

---

<sup>189</sup> See *Steagald v. United States*, 451 U.S. 204, 213–16 (1981).

<sup>190</sup> See *United States v. Mondragon*, 181 F. App'x 904, 906 (11th Cir. 2006); 2-22 HALL, *supra* note 22, § 22.31; 1-3 HALL, *supra* note 22, § 3.5.

<sup>191</sup> *Mondragon*, 181 F. App'x, at 906; 2-22 HALL, *supra* note 22, § 22.31.

<sup>192</sup> 2-22 HALL, *supra* note 22, § 22.31.

<sup>193</sup> *Michigan v. Tyler*, 436 U.S. 499, 509 (1978).

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*; *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 298–99 (1967).

## IV. CONCLUSION

The protection of one's person and one's place under the Fourth Amendment are fundamental. Nevertheless, the government has a countervailing need to effectively enforce its laws. Courts have the important task of maintaining the delicate balance between citizens' rights and the investigational requirements of law enforcement. Different courts may reach different conclusions as to what the proper balance is, as the Sixth and Ninth circuits did in *Pruitt* and *Gorman* respectively.<sup>196</sup> After analyzing the substance and application of probable cause and *Pruitt's* lesser standard, the difference between the standards is important in close cases where the standard applied may affect the outcome.

The Supreme Court should clarify that *Payton's* "reason to believe" language requires a showing of probable cause. Probable cause is superior to a lesser standard where law enforcement officers wish to enter a suspect's home to execute an arrest warrant because probable cause protects a suspect's home from unreasonable intrusion by police, provides a uniform standard, and provides an appropriate balance between a suspect's rights and the investigational needs of law enforcement by presenting a clear and workable standard for law enforcement. Nevertheless, police are often too involved in the criminal investigation to objectively determine the propriety of entering a suspect's home to execute an arrest warrant. In order to sufficiently protect a suspect's home, the Supreme Court should require officers to obtain a search warrant where they seek to arrest a suspect at home. The Supreme Court should institute this additional warrant requirement because an arrest in one's home implicates both the protection from unreasonable arrest and the protection of one's home from unreasonable intrusion, it would provide a uniform application of the standard, and it would not unduly hinder law enforcement efforts. Although it would be a dramatic change in the law, this additional warrant requirement would provide objective oversight of the probable cause analysis and may reduce the potential for abuse by law enforcement officers.

---

<sup>196</sup> United States v. *Pruitt*, 458 F.3d 477, 483 (6th Cir. 2006); United States v. *Gorman*, 314 F.3d 1105, 1111 (9th Cir. 2002).