

No. 25-1235

United States Court of Appeals
FOR THE FOURTH CIRCUIT

FAREED N. HAYAT,
Plaintiff-Appellant,

v.

CASEY DIAZ, ET AL.,
Defendants-Appellees.

**Appeal from the United States District Court for the
District of Maryland**

**BRIEF OF THE CATO INSTITUTE AS *AMICUS*
CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE

The Cato Institute is a nonpartisan public-policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law-enforcement officers.

This case concerns Cato because it involves core questions of individual liberty protected by the Constitution and presents an opportunity to improve the administration of the Fourth Amendment and maintain that provision's protections in the modern era.

ARGUMENT

This Court should grant the petition for rehearing. Permitting an officer to extend a *Terry* stop into the home violates the original meaning of the Fourth Amendment, undermining the protections intended by its

Framers. That is likely why no other circuit has allowed a putative *Terry* stop to extend into the home, nor has the U.S. Supreme Court ever blessed such an overreading of *Terry*. Worse, allowing officers to enter private homes when they have only reasonable suspicion endangers officers and homeowners alike and hinders police work. This Court should therefore grant a rehearing and reconsider the panel’s dramatic expansion of *Terry* into the household.

I. The panel opinion extends *Terry* in a manner that undermines the Fourth Amendment’s original meaning.

The panel opinion contradicts the Fourth Amendment’s original meaning by permitting officers to extend a *Terry* stop into the home. By aggrandizing officers’ discretionary authority, dispensing with the probable-cause requirement, and undermining the home’s special status, the panel opinion contradicts the Framers’ intent. The common law at the time of the framing defines the scope of the Fourth Amendment’s protections. *United States v. Jones*, 565 U.S. 400, 411 (2012) (“What we apply is an 18th century guarantee against unreasonable searches, which we believe must provide *at a minimum* the degree of protection it afforded when it was adopted.”).

The panel opinion aggrandizes officers’ discretionary authority, which is precisely what the Framers aimed to prevent. The Framers opposed general warrants, which were unparticularized and commonly lacked “a complaint under oath or an adequate showing of cause.”¹ General warrants perpetuated oppressive practices and enabled control by those conducting a search to take the place of judicial control. *Henry v. United States*, 361 U.S. 98, 100 (1959). The Framers were especially concerned about general warrants in the context of “revenue searches” of houses to collect excise taxes.² The Framers loathed general warrants because, during the prerevolutionary era, general warrants delegated discretionary authority to ordinary officers.³ While the Framers viewed any form of discretionary authority with “unease,” the “delegation of

¹ Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 558 (1999).

² Davies, *supra* note 1, at 610 (“[T]he complaints expressed during the prerevolutionary controversies and during the ratification debates reveal that the Framers . . . were concerned specifically with the threat posed by general warrants, especially in the context of revenue searches of houses.”); *id.* at 609 n.164.

³ *See id.* at 578 (“Common-law authorities repeatedly gave a consistent reason for condemning general warrants: if such warrants had been permitted, they would have conferred on ordinary officers *discretionary authority* to arrest or even to search houses.”).

discretionary authority to ordinary . . . officers” was particularly “anathema.”⁴ Thus, at common law, warrantless officers did not have discretionary authority under a loose “reasonableness” standard.⁵

The panel opinion also conflicts with the Framers’ intent in the way it extends the permissions conferred by reasonable suspicion instead of requiring probable cause. The probable-cause requirement “has roots that are deep in our history.” *Henry*, 361 U.S. at 100. It was enshrined in the Constitution to safeguard the right to privacy and the presumption of innocence. *Brinegar v. United States*, 338 U.S. 160, 176 (1949); *see also Terry v. Ohio*, 392 U.S. 1, 37–38 (1968) (Douglas, J., dissenting) (explaining that allowing a seizure based on reasonable suspicion departs from the founding-era practice of requiring probable cause).

On top of that, the panel opinion diminishes the sanctity of the home, which has enjoyed a special status since even before the founding. The venerable notion that “[a] man’s house is his castle” can be traced

⁴ *See id.*

⁵ *Id.* at 736 (“The Framers never meant to create a relativistic notion of ‘reasonableness’. . . Rather, they banned general warrants in order to prevent the officer from exercising discretionary authority.”).

back to the Magna Carta.⁶ This principle was famously articulated by Sir Edward Coke in 1604 in *Semayne’s Case*.⁷ A heightened concern for the home “has been embedded in our traditions since the origins of the Republic.” *Payton v. New York*, 445 U.S. 573, 601 (1980). While it is doubtful that the Fourth Amendment contains a “reasonableness” standard at all,⁸ probable cause is the standard that faithfully preserves historical protections for the home as the Framers intended. See *United States v. Vasquez-Algarin*, 821 F.3d 467, 480 (3d Cir. 2016) (holding that a “laxer standard” than probable cause “would effect an end-run around” the Constitution, making “all private homes—the most sacred of Fourth

⁶ Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181, 1251 (2016).

⁷ *Id.* at 1208 (citing *Semayne’s Case*, 77 Eng. Rep. 194, 195 (K.B. 1604) (“[T]he house of every one is to him as his . . . castle and fortress.”)).

⁸ During the seventeenth century, “unreasonable” translated to “against the reason of common law.” Donohue, *supra* note 6, at 1192. Thus, constitutional unreasonableness is the absence of a warrant, not the absence of reason. *Id.*; see also Davies, *supra* note 1, at 554–55 (“John Adams personally introduced the phrase ‘unreasonable searches and seizures’ when he wrote the 1780 Massachusetts provision—the state provision that most closely anticipated the Fourth Amendment. Adams’s authorship reveals that ‘unreasonable’ was derived from Sir Edward Coke’s earlier use of ‘against reason’ as a synonym for inherent illegality or unconstitutionality.”).

Amendment spaces—susceptible to search by dint of mere suspicion or uncorroborated information and without the benefit of any judicial determination.”).

In sum, the panel opinion is contrary to founding-era protections and undermines the Framers’ intent in at least three ways: by delegating broad discretionary authority to officers, by displacing the probable-cause requirement, and by allowing a warrantless, probable-cause-less intrusion into the home.

Here, the panel effectively concluded that even an unreliable tip satisfied the loose standard of reasonable suspicion, and that this conferred officers with full authority to enter a home—merely because a suspect exercised his rights to refuse to answer questions and to retreat into his home. The Framers would have never anticipated that officers would possess this level of broad discretionary authority to forcefully enter homes.⁹ This Court should therefore grant rehearing to rein in the panel opinion’s dramatic departure from the Fourth Amendment protections the Framers intended.

⁹ See Davies, *supra* note 1, at 556.

II. The panel opinion’s unprecedented expansion of *Terry* makes this Court an outlier among all other circuits and conflicts with Supreme Court precedent.

In stark contrast to the panel opinion, the Supreme Court has repeatedly emphasized that the intrusiveness of *Terry* stops must be minimal. Investigative methods must be “the least intrusive means reasonably available to verify or dispel the officer’s suspicion.” *Florida v. Royer*, 460 U.S. 491, 500 (1983). Since *Terry* stops occur “without a warrant and on the basis of reasonable suspicion less than probable cause,” the permissible intrusiveness is narrow. *Minnesota v. Dickerson*, 508 U.S. 366, 373 (1993); *see also, e.g., United States v. Brignoni-Ponce*, 422 U.S. 873, 881–82 (1975) (requiring that an officer conducting a *Terry* stop obtain consent or probable cause for any intrusion beyond asking questions). Anything more than minimal intrusion renders the search unlawful. *See Dickerson*, 508 U.S. at 373.

Not only does the panel opinion contradict Supreme Court precedent, but it also conflicts with other circuits. Consistent with the Supreme Court, other circuits have uniformly held that officers must use the least intrusive means possible. *E.g. Gilles v. Repicky*, 511 F.3d 239, 245 (2d Cir. 2007) (“the investigative methods employed should be the

least intrusive means reasonably available”); *United States v. See*, 574 F.3d 309, 313 (6th Cir. 2009) (holding that the investigative means used must be the “least intrusive means reasonably available” for a *Terry* stop to be valid); *United States v. Ienco*, 182 F.3d 517, 523 (7th Cir. 1999) (“To qualify as a lawful *Terry* stop, a detention must be . . . executed through the least restrictive means.”); *United States v. Sanford*, 813 F.3d 708, 713 (8th Cir. 2016) (“[O]fficers must use ‘the least intrusive means of detention and investigation . . . that are reasonably necessary to achieve the purpose of the *Terry* stop.’”); *Martinez v. Nygaard*, 831 F.2d 822, 827 (9th Cir. 1987) (“the investigative methods used should be the least intrusive means reasonably available”). The panel opinion squarely conflicts with this rule that is uniformly recognized in multiple other circuits.

Far from permitting home entry based on reasonable suspicion alone, courts have been clear that a *Terry* stop must be less intrusive than an arrest—which requires a warrant or probable cause. There is a “constitutionally sacrosanct demarcation between” the “intermediate level of intrusion” permitted during a *Terry* stop and a “detention that is sufficiently intrusive to rise to the level of an arrest” because an officer

conducting a *Terry* stop has “no probable cause.” *George v. Rehiel*, 738 F.3d 562, 583 (3d Cir. 2013); *see also United States v. Acosta*, 363 F.3d 1141, 1145–46 (11th Cir. 2004) (explaining that there is a clear difference between limited *Terry* stops and arrests based on probable cause). The panel opinion thus departs even further from its sister circuits and the common-sense limitations on *Terry* stops that they recognize.

The panel opinion allows *Terry* stops to continue into homes under mere reasonable suspicion. No other circuit has gone so far. The Supreme Court has never blessed nor hinted at such an expansion of *Terry*. This Court should therefore grant rehearing to bring the Court back into uniformity with federal courts across the country.

III. Allowing a *Terry* stop to continue into the home would hinder investigations and imperil human life.

A. Allowing police to enter a home with only reasonable suspicion would disincentivize civilian cooperation with the police and hinder law-enforcement investigations.

On top of its legal infirmity, the panel opinion also puts officers and the public in danger. The job of a police officer is uniquely difficult and risky. Police must work with civilians in order to investigate crime and

address community needs.¹⁰ This cooperation can take many forms, such as citizens calling 911 to report crime, voluntarily speaking with law enforcement about their observations, and ensuring their own compliance with the law.¹¹ But the panel opinion hinders this cooperation by jeopardizing the legitimacy of police practices in the eyes of the citizenry.

Empirical research shows that people are more likely to cooperate with police when they “see the police as legitimate authorities who are entitled to be obeyed.”¹² “Such legitimacy judgments . . . are shaped by public views about procedural justice—the fairness of the processes the police use when dealing with members of the public.”¹³ The fairer the public sees law enforcement practices, the more cooperation police officers can expect from the public.

The panel opinion’s expansion of *Terry* threatens the legitimacy and resulting cooperation from the public that police need. Without a warrant

¹⁰ Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why Do People Help the Police Fight Crime in Their Communities?*, 6 OHIO ST. J. CRIM. L. 231, 233 (2008).

¹¹ *See id.* at 233, 236.

¹² *Id.* at 267.

¹³ *Id.*

and without probable cause, the panel opinion allows officers to force their way into a home if they observe behavior they deem suspicious and the suspect retreats into their home once a stop has begun. If that is all it takes for officers to enter a home, the public will be less likely to aid police when they seek citizen cooperation.¹⁴

Because there is reason to doubt that *Terry* stops are effective at addressing crime to begin with,¹⁵ it is clear that expanded police authority is a poor trade-off for citizen cooperation.

B. The expansion of *Terry* threatens the lives of police and the public alike.

The United States has high gun-ownership rates, in part due to the liberties afforded by the Second Amendment. About a third of adult

¹⁴ See Tracey L. Meares, *Policing in the 21st Century: The Importance of Public Security*, 2016 U. CHI. LEGAL F. 1, 8 (2016) (“Police action taken for the purpose of making communities safer, especially aggressive police action, can have the counter-productive result of destroying the very reservoir of trust on which communities and policing agencies depend for a proper functioning system.”).

¹⁵ See Jeffrey Fagan, *Terry’s Original Sin*, 2016 U. CHI. LEGAL F. 43, 46 (2016) (explaining empirical data suggesting that stops based on probable cause result in “significant reductions in crime,” while stops that do not rise to that level (i.e., those based on reasonable suspicion) have “no effect on local crime rates”).

citizens report owning a firearm.¹⁶ Forty percent of American adults report living in a household with a firearm: That’s about 136,700,000 Americans who reside in households with firearms.¹⁷ When police enter a home, there is a substantial chance that they are entering an environment with an armed resident.

Investigations-turned-shootouts are a severe risk police officers face when entering a home. The Supreme Court has recognized that warrantless police entries into homes can turn violent quickly. *See, e.g., Ker v. California*, 374 U.S. 23, 58 (1963) (recognizing “the hazards of the officers’ dangerous calling” and how “police themselves . . . might be mistaken for prowlers and be shot down by a fearful householder” (cleaned up)); *accord McDonald v. United States*, 335 U.S. 451, 460–61 (1948) (Jackson, J., concurring). What is clear to the Supreme Court should be clear to this Court: Creating more opportunities for police to

¹⁶ Katherine Schaeffer, *Key Facts About Americans and Guns*, PEW RESEARCH CENTER (Jul. 24, 2024), <https://www.pewresearch.org/short-reads/2024/07/24/key-facts-about-americans-and-guns/>.

¹⁷ *Id.*; *see* U.S. Census Bureau, *QuickFacts: United States*, U.S. CENSUS BUREAU (Jul. 1, 2025), <https://www.census.gov/quickfacts/>.

enter a home without a warrant creates more high-risk situations where someone might get shot.

The scuffle police had with Mr. Hayat in the doorway of his home, eventually resulting in Mr. Hayat being forced to the ground with a taser jammed into his back, is indicative of the kinds of violent interactions allowing a *Terry* stop to continue into the home would engender. *See* J.A. 226. Going through the proper procedure of obtaining a warrant, knocking and announcing themselves at the door, and conducting a planned entry into a home creates a much more predictable environment for police to enter. The same goes for homeowners, who have an opportunity to review the warrant before police conduct a search or seizure. Under the rule created by the panel, police would be allowed to escalate an impromptu encounter into a search of a private domicile where many citizens seek to protect their privacy interests, potentially through force. Insisting on abiding by the warrant and probable-cause requirements brings predictability, stability, and safety to police interactions with suspects of crime.

CONCLUSION

This Court should grant the petition for rehearing.

Date: October 13, 2026

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limits because it contains 2,586 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). It complies with typeface and type-style requirements because it was typed in size-14 Century Schoolbook font in Microsoft Word for Microsoft 365.

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CERTIFICATE OF SERVICE

I certify that on October 13, 2026, I electronically filed the foregoing Brief of the Cato Institute as Amicus Curiae via this Court's CM/ECF system, which will send notice of such filing to counsel of record in the above-captioned case.

/s/ Steven J. Alagna