BEYOND EXIGENCY: DISPUTED CONSENT AND WARRANTLESS ENTRY IN INTIMATE PARTNER VIOLENCE CONTEXTS

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Intimate partner violence (IPV) cases frequently require law enforcement to make rapid decisions at the intersection of survivor safety and Fourth Amendment privacy protections in the home. The Supreme Court's decision in Georgia v. Randolph*, which bars warrantless entry into the home based on disputed consent between co-occupants, has generated significant uncertainty when a survivor is outside the home, referred to herein as "non-exigent" IPV contexts. Federal and state courts have diverged in interpreting* Randolph*'s disputed consent rule and the relevance of an officer's motivation for warrantless entry in such IPV contexts.*

This Note identifies and analyzes the circuit split concerning the applicability of Randolph*'s disputed consent rule and warrantless entry in these "non-exigent" IPV situations when the survivor is outside the home. This Note proposes to resolve the circuit split by adopting the Ninth Circuit's approach of extending* Randolph*'s disputed consent rule to warrantless entry into the home, regardless of the motivation for entry, and statutorily requiring officers to remain with survivors outside the home until a warrant is obtained or alternative community-based interventions are initiated. This solution reinforces core Fourth Amendment protections of privacy in the home, improves administrability of the consent doctrine, and promotes survivor safety and agency.*

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INTRODUCTION

On April 28, 2018, Denise Zamora called 911 and reported that her then-husband, Bryce Watkins, had physically attacked her in their shared home in Parker, Colorado.[1] When the officers arrived, Watkins had already left the home, and Zamora expressed that "she was afraid . . . Watkins would kill her."[2] The next morning, Watkins returned home.[3] Zamora called 911, left to a nearby park, and met with Deputy Kevin Nichols from the Douglas County Sheriff's Office.[4] Zamora reiterated that "she felt unsafe around . . . Watkins."[5]

During their conversation, Watkins called Zamora, and Zamora handed the phone to Deputy Nichols.[6] Deputy Nichols asked Watkins to "come to the front door of the home to speak," but Watkins explicitly refused, stating: "[Y]ou cannot come inside my house. I do not want to talk to you."[7] Zamora then provided Deputy Nichols with the code to their shared home's garage door and explained how to enter.[8] After receiving Zamora's explicit consent, Deputy Nichols and two other officers entered the shared home without a warrant, announced their presence, and told Watkins to come downstairs.[9] Appearing in only a towel and "continu[ing] [to] protest[] that the officers were in his home," Watkins complied and descended the stairs.[10] After a brief physical altercation, Watkins was arrested for "second degree assault, domestic violence."[11]

The violence and fear that triggered the involvement of law enforcement in Zamora's situation is far from exceptional in the United States. Every minute, thirty-two people in the United States experience intimate partner violence (IPV).[12] Nearly one in two women and more

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1. Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904, at *1 (10th Cir. June 23, 2023); Defendants'-Appellees' Corrected Response Brief at 3, *Watkins*, No. 22-1358, 2023 WL 1815959.

2. *Watkins*, 2023 WL 4145904, at *1.

3. Id.

4. Id.

5. Id.

6. Id.

7. Id. (alteration in original) (internal quotation marks omitted) (quoting App., Vol. II at 253).

8. Id. The Tenth Circuit found that this constituted consent to enter the garage and house because "[Zamora] providing Deputy Nichols with the means to enter her home—the garage access code—was a 'gesture[] or . . . indication[] of acquiescence' to home entry that would be 'comprehensible to a reasonable officer.'" Id. at *4 (second and fourth alterations in original) (quoting United States v. Guerrero, 472 F.3d 784, 789–90 (10th Cir. 2007)).

9. Id. at *1.

10. Id. at *2 (citing defendant Sergeant Wunderlich's bodycam at 16:07:46–16:08:03).

11. Id. (internal quotation marks omitted) (quoting defendant Wunderlich's bodycam at 16:09:16).

12. Milena J. Wisniewska, Domestic Violence Statistics 2024, Break the Cycle (Oct. 7, 2024), https://www.breakthecycle.org/domestic-violence-statistics/ [https://perma.cc/

than two in five men have reported experiencing IPV at some point in their life.[13]

Courts have responded to such violence by authorizing state intervention into the home through Fourth Amendment warrant exceptions, particularly the exigent circumstances and consent doctrines.[14] In *Georgia v. Randolph*, however, the Supreme Court created the disputed consent rule and held that disputed consent between co-occupants of a shared home cannot justify warrantless entry for evidentiary searches.[15] Consequently, courts have generously applied the exigent circumstances doctrine to justify warrantless entry in IPV situations and protect survivors from imminent harm.[16] But the exigent circumstances doctrine only applies in

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6HVD-R3YY] (last updated Jan. 20, 2026). IPV is defined by a pattern of abusive behaviors used by one partner "to maintain power and control over the other" in an intimate relationship. See Learn More About Abuse, Nat'l Domestic Violence Hotline, https://www.thehotline.org/resources/learn-more-about-abuse/ [https://perma.cc/VAK9-7PYE] (last visited Aug. 12, 2026). Such violence "can be physical, sexual, emotional, economic, psychological, or technological actions or threats of actions or other patterns of coercive behavior that influence another person within an intimate partner relationship." See Domestic Violence, Off. on Violence Against Women (OVW), https://www.justice.gov/ovw/domestic-violence [https://perma.cc/XLC2-NX7J] (last updated Jan. 22, 2025). IPV is associated with psychological trauma and can result in physical injury or even death. See Ruth W. Leemis, Norah Friar, Srijana Khatiwada, May S. Chen, Marcie-jo Kresnow, Sharon G. Smith, Sharon Caslin & Kathleen C. Basile, CDC, The National Intimate Partner and Sexual Violence Survey: 2016/2017 Report on Intimate Partner Violence 1 (2022), https://www.cdc.gov/nisvs/documentation/NISVSReportonIPV_2022.pdf (on file with the *Columbia Law Review*) [hereinafter NISVS Survey].

This Note uses "IPV" and "domestic violence" interchangeably when referring to the abusive behaviors present in an intimate relationship. See The Language We Use, Women Against Abuse, https://www.womenagainstabuse.org/education-resources/the-language-we-use [https://perma.cc/P73T-4VE3] (last visited Aug. 12, 2026) (explaining that IPV is a more recent term used to specify "violence perpetrated by a partner in a romantic or dating relationship" as opposed to domestic violence, which more broadly describes "violence among people in a domestic situation . . . [including] siblings, parents, aunts, uncles, cousins, etc.").

13. NISVS Survey, supra note 12, at 5, 7 (defining IPV in this study as "experiencing contact sexual violence, physical violence, and/or stalking victimization by an intimate partner"). In addition, victimization surveys indicate that only seventy percent of aggravated domestic violence incidents are even reported to law enforcement, since the complex dynamics and varying definitions of IPV cause IPV crimes to be underreported. Alex R. Piquero & Andrew Wheeler, Toward a Better Estimate of Domestic Violence in America, Council on Crim. Just. (2024), https://councilonj.org/toward-a-better-estimate-of-domestic-violence-in-america/ [https://perma.cc/4UXH-BKDD] (finding that aggravated domestic violence incidents in a sample of the top twenty U.S. cities with the highest number of reported domestic violence incidents are estimated to be twenty-nine percent to fifty-three percent higher than those reflected in law enforcement data).

14. See infra section I.A.

15. See Georgia v. Randolph, 547 U.S. 103, 106 (2006) ("[A] physically present co-occupant's stated refusal to permit entry prevails, rendering the warrantless search unreasonable and invalid as to him.").

16. See Amanda Jane Proctor, Breaking Into the Marital Home to Break Up Domestic Violence: Fourth Amendment Analysis of "Disputed Permission", 17 Am. U. J. Gender Soc.

immediate emergencies, "in which police ha[ve] to act immediately" and do not have the time to obtain a warrant.[17] Even though survivors remain vulnerable to future acts of violence,[18] courts rarely consider situations in which a survivor has physically left the home, whether by choice or circumstance, to be exigent for Fourth Amendment purposes.[19] As such, this Note refers to IPV situations in which a survivor has left the home as "non-exigent" IPV situations.[20]

Zamora's situation illustrates a recurring dilemma in law enforcement responses to "non-exigent" IPV situations. When an alleged abuser is inside the home and the survivor is outside seeking assistance, officers must decide whether immediate concerns justify warrantless entry. "Non-exigent" IPV situations thus place two fundamental values in direct tension: protecting individuals from private violence and preserving the constitutional sanctity of the home.

Recognizing that the cycle of abuse does not end just because an IPV survivor is temporarily outside of their home, some courts have limited the application of *Randolph*'s disputed consent rule to evidentiary searches.[21] Although not clearly defined by case law, evidentiary searches generally refer to searches for evidence of crime, as opposed to protective searches, arrests, or investigations.[22] Limiting the scope of *Randolph*'s disputed consent rule therefore allows the police to enter the home and speak with the

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Pol'y & L. 139, 153 (2009) ("[L]ower courts are usually generous in applying exigent circumstances to permit police entry to protect and aid domestic violence victims.").

17. 180 Am. Jur. 3d Proof of Facts § 10, Westlaw (database updated Aug. 2026); see also infra section I.B.

18. See Martha R. Mahoney, Legal Images of Battered Women: Redefining the Issue of Separation, 90 Mich. L. Rev. 1, 65 (1991) ("Separation assault is the attack on the [survivor]'s body and volition in which [their] partner seeks to prevent [them] from leaving, retaliate for the separation, or force [them] to return." (emphasis omitted)); Deborah Tuerkheimer, Exigency, 49 Ariz. L. Rev. 801, 803, 817 (2007) (highlighting that IPV is an "ongoing exercise of power and control" that extends beyond discrete acts of abuse and can "become particularly intense when victims act to involve law enforcement"). To ignore the "time period between discrete episodes of serious violence—a time period during which the [survivor] may never know when the next incident will occur, and may continue to live with ongoing psychological abuse—is to" ignore a "continuing 'state of siege.'" Mary Ann Dutton, Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome, 21 Hofstra L. Rev. 1191, 1208 (1993) (citing Telephone Interview with Sue Osthoff, Dir., Nat'l Clearinghouse for the Def. of Battered Women (Jan. 2, 1991)).

19. See infra note 52 and accompanying text.

20. This Note's usage of the term "non-exigent" IPV is not intended to minimize the severity or dangerousness of such IPV situations but rather to reflect the doctrinal reality that the exigent circumstances doctrine is often not available to justify warrantless entry when survivors are physically separated from the suspected abuser. See infra note 52 and accompanying text.

21. See, e.g., infra sections II.A.1–.2 (analyzing the Fourth and Tenth Circuits' decisions in Trull v. Smolka, 411 F. App'x 651 (4th Cir. 2011) (per curiam), and Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904 (10th Cir. June 23, 2023), respectively).

22. See infra notes 72–76 and accompanying text.

suspected abuser. Other courts, however, have determined that *Randolph*'s disputed consent rule applies to warrantless entry, regardless of the motivation for entry.[23] This difference has created a circuit split as to whether *Randolph*'s disputed consent rule is strictly limited to the context of evidentiary searches in "non-exigent" IPV cases.

This Note argues that *Randolph*'s disputed consent rule should apply beyond evidentiary searches to all warrantless entry into the home in "non-exigent" IPV contexts, regardless of the motivation for entry. Part I describes the development of the exigent circumstances and consent doctrines as exceptions to the Fourth Amendment warrant requirement and provides background on *Randolph*'s disputed consent rule. Part II analyzes the circuit split between the Fourth, Sixth, Ninth, and Tenth Circuits regarding the application of *Randolph*'s disputed consent rule in "non-exigent" IPV situations. It also examines how *Randolph*'s disputed consent rule has been applied by state courts. Part III proposes to resolve the circuit split by adopting the Ninth Circuit's approach of extending *Randolph*'s disputed consent rule beyond evidentiary searches and prohibiting disputed consent from justifying warrantless entry into the home when a survivor is outside. It also recommends statutorily requiring officers to remain with the survivor outside the home until a warrant is obtained or community-based alternatives are initiated.

I. BACKGROUND TO THE FOURTH AMENDMENT AND *RANDOLPH*'S DISPUTED CONSENT RULE

This Part will first track the development of Fourth Amendment warrant exceptions, including the exigent circumstances, emergency aid, and consent doctrines, and situate them in the context of IPV situations. Then, it will analyze how *Georgia v. Randolph*[24] and *Fernandez v. California*[25] addressed disputed consent and describe the potential implications of *Randolph*'s disputed consent rule in IPV situations.

A. *Exceptions to the Fourth Amendment Warrant Requirement*

The home has long served as a central refuge and private sanctuary from government intrusion.[26] The home is where some of the most funda-

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23. See, e.g., infra sections II.A.3–.4 (analyzing the Sixth and Ninth Circuits' decisions in United States v. Tatman, 397 F. App'x 152 (6th Cir. 2010), and Bonivert v. City of Clarkston, 883 F.3d 865 (9th Cir. 2018), respectively).

24. 547 U.S. 103 (2006).

25. 571 U.S. 292 (2014).

26. See Florida v. Jardines, 569 U.S. 1, 6 (2013) ("At the Fourth Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" (quoting Silverman v. United States, 365 U.S. 505, 511 (1961))); William L. Prosser, Privacy, 48 Calif. L. Rev. 383, 389–92 (1960) (explaining that privacy protects "the seclusion of [one's] home"); Samuel D. Warren & Louis D.

mental understandings of constitutional rights, such as the right against unreasonable search and seizure, have been defined and contested.[27]

The Fourth Amendment guarantees "[the] right of the people to be secure in their persons [and] houses . . . against unreasonable searches and seizures" and that "no Warrants shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized."[28] The Supreme Court has repeatedly emphasized that warrantless searches and seizures inside one's home are "presumptively unreasonable" under the Fourth Amendment[29] and "subject only to a few specifically established and well-delineated exceptions."[30] In *Payton v. New York*, the Supreme Court clarified that this protection "applies equally to seizures of persons *and* to seizures of property," because "the Fourth Amendment has drawn a firm line at the entrance to the house."[31] In fact, the Supreme Court explicitly held that absent exigent circumstances, the Fourth Amendment "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest."[32]

In an attempt to balance "an individual's privacy" against "legitimate governmental interests,"[33] the Supreme Court has recognized several exceptions to the Fourth Amendment's warrant requirement involving the home, including but not limited to (1) exigent circumstances;[34] (2) emer-

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Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 220 (1890) ("The common law has always recognized a man's house as his castle, impregnable, often, even to its own officers . . . .").

27. See Stephanie M. Stern, The Inviolate Home: Housing Exceptionalism in the Fourth Amendment, 95 Cornell L. Rev. 905, 906–07 (2010) (observing that "notions of the inviolate home and the paramount importance of constraining government search of the home are cherished tenets of [Fourth Amendment] constitutional law . . . and dominate[] criminal procedure commentary"); Jeannie Suk, At Home in the Law: How the Domestic Violence Revolution Is Transforming Privacy 3 (2009) ("[T]he home is where the most basic questions about the relation between individuals and state power arise.").

28. U.S. Const. amend. IV. While the word "arrest" does not actually appear in the Constitution, courts have interpreted the Fourth Amendment's "right . . . to be 'secure in their persons'" to include "prevent[ing] unreasonable arrests or detentions." 44 Am. Jur. 2d Proof of Facts § 1 (1986) (quoting Dunaway v. New York, 442 U.S. 200, 207 (1979)) (citing Whiteley v. Warden, 401 U.S. 560, 568 (1971)). As a result, "[a]n arrest is a seizure of the individual for purposes of constitutional analysis." Id. (citing Payton v. New York, 445 U.S. 573, 585 (1980); People v. Ramey, 545 P.2d 1333, 1337 (Cal. 1976)).

29. See, e.g., *Payton*, 445 U.S. at 586; Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (quoting Groh v. Ramirez, 540 U.S. 551, 559 (2004)).

30. Katz v. United States, 389 U.S. 347, 357 (1967).

31. 445 U.S. at 585, 590 (emphasis added); see also id. ("[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." (internal quotation marks omitted) (quoting United States v. U.S. Dist. Ct., 407 U.S. 297, 313 (1972))).

32. Id. at 576.

33. Wyoming v. Houghton, 526 U.S. 295, 300 (1999).

34. See *Payton*, 445 U.S. at 590 ("Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.").

gency aid;[35] and (3) consent.[36] There is, however, no general IPV or domestic violence exception to the Fourth Amendment's warrant requirement.[37] Instead, the government must rely on existing exceptions to justify warrantless entry into a home in IPV situations.

B. *The Exigent Circumstances (and Emergency Aid) Exceptions*

1. *Development of the Exigent Circumstances (and Emergency Aid) Exceptions.* — The exigent circumstances doctrine has long been recognized as an exception to the Fourth Amendment warrant requirement.[38] In *Mincey v. Arizona*, the Supreme Court found specific exigencies "ma[d]e the needs of law enforcement so compelling that [a] warrantless search [was] objectively reasonable under the Fourth Amendment."[39] Commonly recognized exigencies that justify warrantless entry into the home include imminent destruction of evidence,[40] hot pursuit of a fleeing criminal suspect,[41] and protection of the public, officers, or a person inside the home from immediate danger.[42] Exigent circumstances, however, "do not excuse a failure to get a warrant when there [is] time" to get one.[43]

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35. See Brigham City v. Stuart, 547 U.S. 398, 403 (2006) ("One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury.").

36. See Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973) ("[O]ne of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent." (citing Davis v. United States, 328 U.S. 582, 593–94 (1946); Zap v. United States, 328 U.S. 624, 630 (1946))).

37. See, e.g., Smith v. Kan. City Police Dep't, 586 F.3d 576, 580 (8th Cir. 2009) ("The presence of a domestic violence suspect . . . does not alone justify . . . warrantless entry."); United States v. Black, 482 F.3d 1035, 1040 (9th Cir. 2007) ("[W]e have stopped short of holding that 'domestic abuse cases create a per se exigent need for warrantless entry . . . .'" (quoting United States v. Brooks, 367 F.3d 1128, 1136 (9th Cir. 2004))); United States v. Davis, 290 F.3d 1239, 1244 (10th Cir. 2002) ("[G]ranting unfettered permission to officers to enter homes, based only upon a general assumption domestic calls are *always* dangerous, would violate the Fourth Amendment.").

38. See Vale v. Louisiana, 399 U.S. 30, 35 (1970) (determining that warrant exceptions based on consent, emergency response, hot pursuit, and destruction of evidence did not apply and that there was no indication that "it was impracticable for [the officers] to obtain a search warrant"); Johnson v. United States, 333 U.S. 10, 14–15 (1948) (recognizing that there may exist "exceptional circumstances in which, on balancing the need for effective law enforcement against the right of privacy, it may be contended that a magistrate's warrant for search may be dispensed with").

39. 437 U.S. 385, 394 (1978) (citing McDonald v. United States, 335 U.S. 451, 456 (1948); *Johnson*, 333 U.S. at 14–15).

40. See Schmerber v. California, 384 U.S. 757, 770–71 (1966).

41. See Warden v. Hayden, 387 U.S. 294, 298–300 (1967).

42. See, e.g., Brigham City v. Stuart, 547 U.S. 398, 403 (2006); Wayne v. United States, 318 F.2d 205, 212 (D.C. Cir. 1963) ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.").

43. See Proof of Facts, supra note 17, § 10.

The Supreme Court has not formally differentiated between the exigent circumstances and emergency aid exceptions.[44] In *Brigham City v. Stuart*, the Supreme Court held that "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury."[45] This standard essentially collapsed law enforcement and community caretaking functions[46] in emergency situations under "the general rubric of 'exigent circumstances.'"[47] Almost twenty years later in *Case v. Montana*, the Supreme Court clarified that *Brigham*'s objectively reasonable basis standard in emergency aid cases does not mean "that officers

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44. See Kit Kinports, The Quantum of Suspicion Needed for an Exigent Circumstances Search, 52 U. Mich. J.L. Reform 615, 616–17 (2019) [hereinafter Kinports, Quantum of Suspicion] (explaining that "the Supreme Court has treated them all as subcategories of a single exigent circumstances exception to the warrant requirement" and that various opinions used probable cause, reasonable suspicion, and amorphous phrases such as "reasonable to believe" to describe the "standard of exigency" required to support warrantless entry (internal quotation marks omitted)). Some scholars and state supreme courts, however, have argued that there is a fundamental distinction between the two. See Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 6.6(a), n.10 (6th ed. 2020) [hereinafter LaFave, Search and Seizure] (explaining that exigency "is defined by a time-urgent need to act that makes . . . the warrant process impractical" but that a warrant may be unavailable under certain emergency aid situations, regardless of time constraints (internal quotation marks omitted) (quoting Sutterfield v. City of Milwaukee, 751 F.3d 542, 559 (7th Cir. 2014))); Gregory T. Helding, Stop Hammering Fourth Amendment Rights: Reshaping the Community Caretaking Exception With the Physical Intrusion Standard, 97 Marq. L. Rev. 123, 136 (2013) (noting the exceptions are "often confused" with each other, but that emergency aid focuses on "the protection of people," while exigent circumstances focuses on "the protection of evidence"); People v. Hebert, 46 P.3d 473, 479 (Colo. 2002) ("[D]efining the emergency aid exception as an 'exigent circumstance' is erroneous because a true emergency situation does not require probable cause that contraband or other evidence of criminal activity is located at a particular place."); State v. Fessenden, 333 P.3d 278, 282 (Or. 2014) (explaining that "[t]he exigent circumstances exception 'requires both probable cause and an exigency'" while emergency aid does not (quoting State v. Snow, 94 P.3d 872, 874 (Or. 2004))). There are two different concepts of probable cause that are relevant to exigent circumstances: probable cause (1) to enter the premises and (2) to believe an exigency exists. See Kinports, Quantum of Suspicion, supra, at 629–30; see also Proof of Facts, supra note 17, § 10 ("Exigent circumstances are thus a substitute for a warrant but do not constitute a substitute for probable cause.").

45. 547 U.S. at 400. This was an explicit rejection of the pre-*Brigham* emergency aid standard that prevented law enforcement from warrantlessly entering a home "with an accompanying intent to either arrest or search." Edward G. Mascolo, The Emergency Doctrine Exception to the Warrant Requirement Under the Fourth Amendment, 22 Buff. L. Rev. 419, 426 (1973).

46. The community caretaking exception was recognized in Cady v. Dombrowski, 413 U.S. 433, 441 (1973) (defining community caretaking as a function "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute"). In *Caniglia v. Strom*, however, the Supreme Court clarified that there is no freestanding community caretaking exception to the warrant requirement that justifies warrantless searches and seizures in the home. 141 S. Ct. 1596, 1598 (2021).

47. Kit Kinports, Diminishing Probable Cause and Minimalist Searches, 6 Ohio St. J. Crim. L. 649, 652–53 (2009); see also Tuerkheimer, supra note 18, at 813 ("[L]aw enforcement and 'community caretaking' functions have been officially married.").

must have 'probable cause' for the [home] intrusion, as they typically would when investigating a crime," because the probable cause requirement "is rooted in, and derives its meaning from, the criminal context."[48] The Court did not, however, explicitly clarify whether or not the emergency aid doctrine is now considered to be separate from the exigent circumstances exception.[49]

2. *Application of Exigent Circumstances Exception in IPV Cases.* — In IPV cases, distinctions between the exigent circumstances and emergency aid doctrines often collapse because "the same facts [of abuse] that give rise to the exigency also provide probable cause of a suspected crime"—which in these cases is IPV.[50] As a result, "outcomes generally have been the same" under the application of either warrant exception.[51] Thus, this Note will refer to both exceptions as "exigent circumstances" for the sake of simplicity.

Nevertheless, courts have reached conflicting conclusions regarding what qualifies as exigent circumstances in IPV contexts. While courts often find that exigent circumstances do not apply if an IPV survivor is outside their home,[52] some courts disagree.[53] Courts also differ as to whether a 911

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48. 146 S. Ct. 500, 503 (2026).

49. Interestingly, the Court did not refer to the exigent circumstances and emergency aid doctrines interchangeably in this decision, as it had in previous decisions. See id. at 503–09 (referring to "emergency aid" and "emergency-aid" nine times in the opinion, while not mentioning "exigent" or "exigency" a single time).

50. See Proctor, supra note 16, at 142 (citing Tuerkheimer, supra note 18, at 811 n.53); see also Kinports, Quantum of Suspicion, supra note 44, at 629–30 (noting that probable cause to enter and probable cause to believe an exigency exists "may flow more easily from one another" in emergency aid cases because the same set of facts can establish both).

51. Proctor, supra note 16, at 142.

52. See, e.g., United States v. Goins, No. 22-1201, 2022 WL 17078875, at *4 (6th Cir. Nov. 18, 2022) (noting that the court has previously found the exigent circumstances exception to be inapplicable in situations when "the alleged victim had been removed from the potentially dangerous situation already"); Penree ex rel. Penree v. City of Utica, 694 F. App'x 30, 33 (2d Cir. 2017) (finding the emergency aid exception did not apply because the victim and her children were outside the house); United States v. Davis, 290 F.3d 1239, 1241 (10th Cir. 2002) (noting exigent circumstances did not apply because the possibility of immediate harm was extinguished after the husband "order[ed]" his wife out of the home while he remained inside).

53. See, e.g., Pardue v. Raymond, No. 2:23-cv-00332, 2025 WL 1883628, at *8–9 (D. Me. July 8, 2025) (noting that the undercurrent of domestic violence created an exigent circumstance for the victims standing outside at the edge of the yard); People v. Wilkins, 17 Cal. Rptr. 2d 743, 749 (Ct. App. 1993) (holding that the risk of imminent violence posed to the victim found outside her home constituted an exigent circumstance that justified a warrantless arrest inside the home); State v. Morris, No. 18CA3638, 2019 WL 337008, at *4 (Ohio Ct. App. Jan. 15, 2019) (finding "any threat of harm had yet to completely terminate" when the victim and her children were outside the home because they were "still present at the scene"); Botello v. State, No. 01-18-00929-CR, 2020 WL 3969628, at *4 (Tex. Ct. App. July 14, 2020) (determining that exigent circumstances existed when the victim was outside because "appellant might become angry at his wife for calling the police and physically attack his wife again after police left").

report of a domestic incident alone is sufficient to trigger the exigent circumstances exception.[54] In light of inconsistent interpretations of the exigent circumstances doctrine and the serious safety risks facing survivors, prosecutors have unsurprisingly sought a simpler and often more predictable justification for warrantless entry in IPV situations: the consent exception.[55]

C. *The Consent Exception Before* Georgia v. Randolph

Prior to 2006, the consent exception justified warrantless entry and search of shared spaces, including homes. In the 1974 case of *United States v. Matlock*, officers warrantlessly searched Matlock's jointly occupied room on the basis of the co-occupant's consent.[56] The Supreme Court held that consent by a person with common authority over the premises is "valid as against [an] absent, nonconsenting person," because each co-occupant assumes the risk that the other may allow a search of common areas.[57] So long as the consent is voluntary under a totality of the circumstances analysis,[58] a warrantless search is constitutionally permissible. Before *Georgia v. Randolph* was decided in 2006, officers often relied on the consent exception to justify warrantless police entry in IPV contexts, regardless of whether the alleged abuser agreed.[59] Thus, disputed consent was not considered a potential obstacle to survivor safety.

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54. Contrast Reed v. Campbell County, 80 F.4th 734, 744 (6th Cir. 2023) (holding that a "911 call alone is insufficient to justify the officers' warrantless entry" and that "[t]he officers needed more than just that phone call"), with State v. Greene, 784 P.2d 257, 259 (Ariz. 1989) (en banc) (holding that the IPV "call itself creates a sufficient indication that an exigency exists allowing the officer to enter a dwelling if no circumstance indicates that entry is unnecessary").

55. See Tuerkheimer, supra note 18, at 806 & n.28 (noting that warrantless entry in IPV situations was often justified by survivor consent because consent is the "largest and most easily satisfied exception to the warrant requirement"); Richard Van Duizend, L. Paul Sutton & Charlotte A. Carter, The Search Warrant Process: Preconceptions, Perceptions, Practices 69 (1985) ("[C]onsent is the easiest thing in the world to obtain.").

56. 415 U.S. 164, 166–67 (1974).

57. Id. at 170–71.

58. See Schneckloth v. Bustamonte, 412 U.S. 218, 227 (1973).

59. See 547 U.S. 103, 108 n.1 (2006) ("All four Courts of Appeals to have considered this question have concluded that consent remains effective in the face of an express objection. Of the state courts that have addressed the question, the majority have reached that conclusion as well." (citations omitted)). See, e.g., United States v. Hendrix, 595 F.2d 883, 885 (D.C. Cir. 1979) (holding that the wife's consent to a search justified the police's warrantless entry and search despite the husband's refusal), abrogated by *Randolph*, 547 U.S. at 106, 114; People v. Wilkins, 17 Cal. Rptr. 2d 743, 751 (Ct. App. 1993) ("[T]his authority was not vitiated . . . by defendant's refusal to give consent."); People v. Sanders, 904 P.2d 1311, 1313 (Colo. 1995) ("The fact that the defendant was present at the time . . . does not vitiate the co-occupant's consent."), abrogated by People v. Strimple, 267 P.3d 1219, 1224 (Colo. 2012); City of Laramie v. Hysong, 808 P.2d 199, 204 (Wyo. 1991) (deciding that there is not "a constitutional significance to the refusal to consent of a co-owner or occupant who is present"), abrogated by *Randolph*, 547 U.S. at 106, 114.

D. Randolph *and* Fernandez*: Limiting the Consent Exception*

This changed in the case of *Georgia v. Randolph*. In the summer of 2001, Janet Randolph called the police after her estranged husband, Scott Randolph, took their son away during a domestic dispute.[60] After they arrived, Janet told them that there were "items of drug evidence"[61] inside the "marital residence."[62] Although Scott "unequivocally refused" to grant consent to the police to search the premises, officers warrantlessly entered the residence based on Janet's consent.[63] A fragmented Supreme Court rooted its Fourth Amendment analysis in "widely shared social expectations" and held that one occupant's consent to a "warrantless search of a shared dwelling for evidence" is invalid in the face of "express refusal of consent by a physically present" occupant, creating what this Note refers to as *Randolph*'s disputed consent rule.[64] Chief Justice John Roberts's dissent characterized *Randolph*'s disputed consent rule as one that "forbids police from entering to assist with a domestic dispute if the abuser whose behavior prompted the request for police assistance objects" and expressed doubt that reliance on the exigent circumstances exception would "suffice[] to protect the safety of occupants in domestic disputes."[65]

In response to these safety concerns, the majority expressly stated that "[the] case has no bearing on the capacity of the police to protect . . . a resident from domestic violence" because officers would still be able to enter without a warrant "so long as they have good reason to believe such a threat exists."[66] The majority further explained that "it would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur."[67] This language indicates two distinct justifications for warrantless entry: Reference to "whether violence (or threat of violence) has just occurred" is backward-looking and investigative in nature, while reference to "is about to (or soon will) occur" is forward-looking and preventive against future harm.[68] The majority, however, did not clarify whether this is intended to (1) allow disputed consent to justify warrantless entry in all IPV situations or (2) reaffirm the exigent circumstances doc-

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60. *Randolph*, 547 U.S. at 106–07.

61. Id. at 107 (internal quotation marks omitted) (quoting Brief for Petitioner at 3, *Randolph*, 547 U.S. 103 (2006) (No. 04-1067), 2005 WL 1429275).

62. Id. at 106.

63. Id. (noting that the officers discovered a drinking straw with cocaine residue, obtained a search warrant for the home, and seized more evidence of drug use). Scott moved to suppress the evidence. Id.

64. Id. at 111, 120.

65. Id. at 139–40 (Roberts, C.J., dissenting).

66. Id. at 118 (majority opinion) (noting that police would be able to warrantlessly enter to "give a complaining tenant the opportunity to collect belongings and get out safely").

67. Id.

68. See id.

trine as an alternative basis to warrantless entry in IPV situations. Nor did the majority explain if this is rooted in (1) the exigent circumstances doctrine, (2) the emergency aid doctrine, or (3) neither.[69] In addition, the Court did not address whether an IPV survivor's location—inside or outside the home—affects how *Randolph*'s disputed consent rule applies.[70] The dissent, however, criticized the language of "good reason" in this section as "creat[ing] a new exception to the warrant requirement to justify warrantless entry short of exigency in potential domestic abuse situations."[71]

The majority emphasized that *Randolph*'s disputed consent rule was limited to "evidentiary searches."[72] Although evidentiary searches generally seem to refer to searches for evidence of a crime,[73] the *Randolph* majority did not specify whether the type of crime[74] or alternative purposes for warrantless entry[75] changed the applicability of its disputed consent rule. The dissent criticized the majority's attempt to limit *Randolph*'s dis-

69. See id. (emphasizing the emergency nature of the situation but recognizing that whether an exigency justifies warrantless entry is a context-based inquiry). Justice Breyer's concurrence, however, arguably indicates that consent could provide the evidence of domestic violence necessary to justify warrantless entry because it "would provide a special reason for immediate, rather than later, police entry." Id. at 127 (Breyer, J., concurring); see also Andrew Fiske, Comment, Disputed-Consent Searches: An Uncharacteristic Step Toward Reinforcing Defendants' Privacy Rights, 84 Denv. U. L. Rev. 721, 731 (2006) (noting that Justice Breyer's concurrence implies that "any sign of domestic violence or other dangerous conditions would alter the totality of the circumstances, and potentially make entrance reasonable under the exigent circumstances exception").

70. See *Randolph*, 547 U.S. at 106–23.

71. Id. at 141 (Roberts, C.J., dissenting).

72. See id. at 106, 119 (majority opinion) (noting that the question presented focuses on whether "an evidentiary seizure is likewise lawful" and engaging with the dissent's argument regarding "limits on merely evidentiary searches").

73. See id. at 118–20 (appearing to refer to evidentiary searches and searches for evidence interchangeably when responding to the dissent's argument on "the capacity of the police to protect domestic victims"); see also Arizona v. Gant, 556 U.S. 332, 346–47 (2009) (referring to "safety and evidentiary interests" disjunctively and implying that there is a difference between searching when an officer has reasonable suspicion that an individual is "dangerous" and searching for "evidence of criminal activity" (internal quotation marks omitted) (quoting Michigan v. Long, 463 U.S. 1032, 1049 (1983))); Wayne R. LaFave, "Case-by-Case Adjudication" Versus "Standardized Procedures": The *Robinson* Dilemma, 1974 Sup. Ct. Rev. 127, 150 (proposing that evidentiary searches for minor traffic violations could be justified "on even a remote chance that the arrestee might possess evidence of the crime").

74. See *Randolph*, 547 U.S. at 106–23. In IPV contexts, the potentially relevant crime could refer to IPV-related crimes, drug crimes, and/or firearm- and weapons-related crimes, depending on what the suspected abuser is charged with. See, e.g., United States v. Tatman, 397 F. App'x 152, 155–56 (6th Cir. 2010) (noting that the initial police interaction arose from a domestic violence call, but that Tatman was ultimately charged with unlawful possession of weapons).

75. In potential IPV contexts, alternative purposes for warrantless entry could include investigating whether violence occurred or arresting a suspected abuser. See *Randolph*, 547 U.S. at 138 (Roberts, C.J., dissenting) (referring to the majority's "differentiation between entry focused on discovering whether domestic violence has occurred . . . and entry focused on searching for evidence of other crime").

puted consent rule to evidentiary searches, asserting that the rule restricts a co-occupant's authority to "open the door" and gives veto power to the co-occupant who wants to "exclude the police from entry" entirely.[76]

Eight years later in *Fernandez v. California*, the Supreme Court clarified this disputed consent rule.[77] The majority held that an occupant's consent to a warrantless search after a physically present and objecting co-tenant is lawfully removed by police is valid against the objecting co-tenant because an occupant "who is absent due to a lawful detention or arrest stands in the same shoes as an occupant who is absent for any other reason."[78] The dissent found this limitation on *Randolph*'s disputed consent rule to be unnecessary and believed that the exigent circumstances exception was sufficient to protect IPV survivors when officers determine that there is insufficient time to secure a warrant.[79] Other critics have elaborated that *Fernandez*'s narrowing of *Randolph*'s disputed consent rule has dangerous implications for safeguarding the Fourth Amendment's fundamental protections and deterring police misconduct.[80]

Randolph seemingly foreclosed the possibility of justifying warrantless entry into the home based on disputed consent, even in IPV situations. Justices and scholars alike assumed that warrantless entry in IPV contexts would be analyzed under exigent circumstances.[81] Fourth Amendment

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76. See id. at 139–40 n.2 (emphasis omitted) (internal quotation marks omitted) (noting that the majority's rule would "put[] to one side the fact that [the shared home] is her castle, too").

77. 571 U.S. 292, 294 (2014).

78. Id. at 294, 303 (noting that "consent was provided by an abused woman well after her male partner had been removed from the apartment they shared").

79. See id. at 318 (Ginsburg, J., dissenting) ("If a person's health and safety are threatened by a domestic abuser, exigent circumstances would justify immediate removal of the abuser from the premises, as happened here."). In fact, officers relied on exigent circumstances to warrantlessly arrest Fernandez in the first place because they suspected Fernandez of assaulting his cohabitant, Roxanne Rojas, when she answered the door with "a large bump on her nose" and "blood . . . from what appeared to be a fresh injury." Id. at 295–96 (majority opinion). As a result, "the specter of domestic abuse hardly necessitates the diminution of the Fourth Amendment rights at stake." Id. at 319 (Ginsburg, J., dissenting).

80. See, e.g., George M. Dery III, Creating the Right to Deny Yourself Privacy: The Supreme Court Broadens Police Search Powers in Consent Cases in *Fernandez v. California*, 2014 Mich. St. L. Rev. 1129, 1130–32 (arguing that *Fernandez* has functionally reframed the Fourth Amendment right to keep the government out of the home into a new "right-to-invite rule" that undermines traditional expectations of privacy and essentially provides a guide to police officers on how to commit a warrantless search); Alexis A. Yackley, Note, The Cohabitation Aggravation: Third-Party Consent and the Fourth Amendment Following *Fernandez v. California*, 60 S.D. L. Rev. 93, 114 (2015) (contending that the *Fernandez* decision "appears to literally 'open the door' to unreasonable searches of the home" by protecting the practice of "[s]imply . . . removing the objecting tenant . . . and obtaining consent from the remaining co-tenant" (quoting *Fernandez*, 571 U.S. at 316 n.4 (Ginsburg, J., dissenting))).

81. See *Fernandez*, 571 U.S. at 318 (Ginsburg, J., dissenting) (relying specifically on the exigent circumstances exception to justify warrantlessly removing an abuser); *Randolph*,

analysis in the home, however, remains a highly fact-specific and nuanced puzzle.[82] It should come as no surprise that federal and state courts have splintered in the application of *Randolph*'s disputed consent rule and the exigent circumstances doctrine in volatile IPV situations that implicate both safety and privacy interests.

II. THE DISPUTED CONSENT RULE CIRCUIT SPLIT IN "NON-EXIGENT" IPV CONTEXTS

This Part will analyze the existing federal circuit split regarding the application of *Randolph*'s disputed consent rule in "non-exigent" IPV contexts when a survivor is physically outside their home. The Fourth and Tenth Circuit Courts of Appeals limit the scope of *Randolph*'s disputed consent rule to evidentiary searches, while the Sixth and Ninth Circuit Courts of Appeals apply it to warrantless entry into the home, regardless of the purpose of entry. This Part will also examine how state courts have applied *Randolph*'s disputed consent rule in similar IPV situations when the survivor is outside the home.

A. *Federal Circuit Split Regarding* Randolph*'s Disputed Consent Rule*

The Fourth and Tenth Circuits determined that *Randolph*'s disputed consent rule is limited to warrantless evidentiary searches in "non-exigent" IPV situations.[83] As a result, *Randolph*'s holding does not prohibit warrantless entry to investigate a domestic situation or arrest a suspected abuser based on consent from an IPV survivor who has left the premises, even if

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547 U.S. at 140–41 (Roberts, C.J., dissenting) (asserting that the *Randolph* majority "sp[un] out an entirely new framework for analyzing exigent circumstances"); see also Tuerkheimer, supra note 18, at 809 (characterizing the *Randolph* majority's attempt to preserve the "authority of the police to enter a dwelling to protect a resident from domestic violence" as "the exigency exception" (internal quotation marks omitted) (quoting *Randolph*, 547 U.S. at 118 (majority opinion))); Cheryl Hanna, Behind the Castle Walls: Balancing Privacy and Security in Domestic Abuse Cases, Keynote Address at the Thomas Jefferson School of Law's Ninth Annual Women and the Law Conference (Feb. 27, 2009), *in* 32 T. Jefferson L. Rev. 65, 79 (2009) (defining the police's continued ability to enter a home "if they have reason to believe that there is violence or the threat of violence occurring inside the home," regardless of consent, as "the doctrine of exigent circumstances").

82. See Gerald S. Dickinson, The Fourth Amendment's Constitutional Home, 31 Wm. & Mary Bill Rts. J. 1063, 1099 (2023) (asserting the Supreme Court has "craft[ed] a patchwork of exceptions that, taken together, limit special protections to the home"); Orin S. Kerr, An Equilibrium-Adjustment Theory of the Fourth Amendment, 125 Harv. L. Rev. 476, 479 (2011) (noting that Fourth Amendment "[s]cholars complain that the law is 'a mess,' 'an embarrassment,' and 'a mass of contradictions'" (footnotes omitted) (first quoting Ronald J. Allen & Ross M. Rosenberg, The Fourth Amendment and the Limits of Theory: Local Versus General Theoretical Knowledge, 72 St. John's L. Rev. 1149, 1149 (1998); then quoting Akhil Reed Amar, The Constitution and Criminal Procedure: First Principles 1 (1997); and then quoting Craig M. Bradley, Two Models of the Fourth Amendment, 83 Mich. L. Rev. 1468, 1468 (1985))).

83. See Trull v. Smolka, 411 F. App'x 651, 655 (4th Cir. 2011) (per curiam); Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904, at *6 (10th Cir. June 23, 2023).

the suspected abuser objects, so long as the purpose is not to obtain evidence. In *Trull v. Smolka*, the Fourth Circuit distinguished between an evidentiary search and an investigation of a domestic situation, holding that *Randolph*'s disputed consent rule does not prevent warrantless entry into the home when officers are conducting an investigation of domestic situations.[84] In *Watkins v. Wunderlich*, the Tenth Circuit distinguished between a search for evidence and the arrest of a suspected abuser, concluding that *Randolph*'s disputed consent rule did not clearly establish that warrantless entry into the home is prohibited when officers intend to execute an arrest.[85]

On the other side of the circuit split, the Sixth and Ninth Circuits found that *Randolph*'s disputed consent rule applies beyond the context of warrantless evidentiary searches. As a result, disputed consent cannot justify warrantless entry in "non-exigent" IPV situations when the survivor is outside the home. In *United States v. Tatman*, the Sixth Circuit found that *Randolph*'s disputed consent rule barred warrantless entry without discussing the officers' motivations for entry, implying that such motivations are irrelevant and *Randolph*'s disputed consent rule is not limited to evidentiary searches.[86] In *Bonivert v. City of Clarkston*, the Ninth Circuit determined that *Randolph*'s disputed consent rule applies beyond evidentiary searches and prevents warrantless entry into the home on the basis of disputed consent because there is no functional difference between a warrantless entry and a warrantless search.[87]

1. Trull v. Smolka*: Fourth Circuit Distinguishes Evidentiary Searches From Investigations.* — Less than five years after the decision in *Randolph*, Mary Picchi placed a 911 call from her shared home with her husband, Lawrence Trull, alleging he "had threatened to have her removed from the home."[88] When the two officers arrived, Trull was locked inside a closed bathroom, and Picchi was still inside the home but outside the bathroom.[89] The officers warrantlessly entered the home and conducted a brief search of the bedroom for a potential firearm based on Picchi's consent.[90] After the officers ordered Trull to come out and Trull expressed "a general unwillingness to exit the bathroom," the officers used force to warrantlessly enter the bathroom with Picchi's consent.[91] Trull filed § 1983 claims, alleging violation of his Fourth Amendment rights to be free of unreasonable seizure and excessive force.[92]

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84. See 411 F. App'x at 655 (citing *Randolph*, 547 U.S. at 118).

85. See *Watkins*, 2023 WL 4145904, at *6.

86. See 397 F. App'x 152, 159–60 (6th Cir. 2010).

87. See 883 F.3d 865, 874–75 (9th Cir. 2018).

88. *Trull*, 411 F. App'x at 653.

89. Id.

90. Id.

91. See id. at 653, 655 (referring to "Picchi's consent to the entry into the house and bathroom").

92. Trull v. Smolka, No. 3:08CV460, 2008 WL 4279599, at *2 (E.D. Va. Sep. 18, 2008).

The Fourth Circuit rejected the application of *Randolph*'s disputed consent rule, finding it applies only to warrantless entry into the home for evidentiary searches, not warrantless entry into the home for investigations of domestic situations.[93] Although Picchi was still inside the home, the Fourth Circuit's reasoning remains relevant to the circuit split because (1) the court still interpreted *Randolph*'s disputed consent rule, merely narrowing the constitutional analysis from the home to the bathroom, and (2) Picchi was still physically separated from Trull, similar to the "non-exigent" IPV situations described earlier in this Note.[94] After determining that disputed consent between Picchi and Trull did not prohibit the officers from warrantlessly entering the bathroom, the Fourth Circuit held that the officers' warrantless entry was justified by exigent circumstances.[95]

Trull asserted that applying *Randolph*'s disputed consent rule in a consent analysis would result in a finding that "the officers violated [his] Fourth Amendment rights by entering the bathroom when he objected."[96] The Fourth Circuit disagreed and specifically distinguished this case from *Randolph*, noting that "the officers were investigating a domestic situation rather than conducting a search for evidence of a crime."[97] The court found that "a search for evidence based on consent to search a dwelling [is] different than law enforcement's need to enter a home for purposes of investigating a domestic situation"[98] but did not clarify the basis for this distinction or explain its implications for either safety or privacy interests. After conceding that there was "no outward evidence" of violence, the Fourth Circuit stated that "a definite determination could not be made without talking to both parties," implying that the need to speak to all relevant parties could be the distinction between investigating a domestic situation and searching for evidence.[99] The Fourth Circuit determined

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93. *Trull*, 411 F. App'x at 655.

94. Id.

95. Id. (finding the "officers were justified in concluding that a person involved in a marital spat, who was refusing to speak with officers, could be a threat to them while they were in the home discussing the dispute with his wife" without any evidence of violence at the scene). Interestingly, however, the Fourth Circuit's exigent circumstances analysis was rooted in a concern for the safety of the officers and the alleged instigator of the domestic situation, not the woman who sought police assistance in the first place.

96. Id.

97. Id.

98. Id. (citing Georgia v. Randolph, 547 U.S. 103, 118 (2006)).

99. Id. at 656. The court based its reasoning on the following excerpt of the *Randolph* opinion:

> [T]his case has no bearing on the capacity of the police to protect domestic victims. . . . [S]o long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) *has just occurred or is about to (or soon will) occur*, however much a spouse or other co-tenant objected.

Id. at 655 (emphasis added) (internal quotation marks omitted) (quoting *Randolph*, 547 U.S. at 118).

that *Randolph*'s disputed consent rule did not apply and that Trull's objection did not prohibit warrantless police entry into the bathroom.[100] If the scope of the consent analysis were expanded from the bathroom to the home, a natural implication of the Fourth Circuit's reasoning would find that disputed consent prohibits warrantless entry into the home to search for evidence of a crime but does not prohibit entry into the home to investigate a domestic situation.

Interestingly, however, the Fourth Circuit appeared to analyze whether the application of *Randolph*'s disputed consent rule could preclude warrantless entry that is otherwise justified by exigent circumstances, rather than treating consent and exigent circumstances as separate and independently sufficient exceptions to the warrant requirement.[101] In fact, after determining that *Randolph*'s disputed consent rule did not apply, the Fourth Circuit upheld the officers' warrantless entry under the exigent circumstances exception—not the consent exception.[102]

2. Watkins v. Wunderlich*: Tenth Circuit Distinguishes Evidentiary Searches From Arrests.* — Recall Zamora's situation, discussed in the Introduction[103]: The officers warrantlessly entered the shared home of Zamora and Watkins with Zamora's consent and over Watkins's objections and arrested Watkins for "second degree assault, domestic violence."[104] Watkins filed a § 1983 suit alleging Fourth Amendment violations based on unlawful entry into his garage and home.[105]

The Tenth Circuit rejected the application of *Randolph*'s disputed consent rule, finding it applies only to warrantless entry into the home for evidentiary searches, not warrantless entry into the home for investigations of domestic violence or arrests of suspected abusers.[106] Thus, Watkins's

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100. Id.

101. Id. at 656 (determining that *Randolph*'s disputed consent rule does not apply because "*Randolph* is distinguishable" and holding that "the officers' entry into the bathroom was justified by the exigent circumstances"). Another federal district court criticized a similar argument in a Fourth Amendment case arising from a domestic disturbance. See Castillo v. Bush, No. 6:22-cv-00684, 2024 WL 3825206, at *4 (D. Or. Aug. 15, 2024) (explaining that "the ability of a co-occupant to refuse consent for purposes of [the] exception to the warrant requirement does not negate the ability of an officer to enter the home when faced with exigent circumstances" because it is "a different exception to the warrant requirement").

102. *Trull*, 411 F. App'x at 655.

103. See supra Introduction (describing the facts of Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904 (10th Cir. June 23, 2023)).

104. *Watkins*, 2023 WL 4145904, at *1–2 (internal quotation marks omitted) (quoting defendant Wunderlich's bodycam at 16:09:16).

105. Id. The Tenth Circuit specifically focused on Watkins's argument that he negated Zamora's consent to enter the garage and house because the court found that Zamora provided the officers with both implicit and explicit consent to enter the garage and the house. Id. at *3–4.

106. Id. at *6.

explicit objection to entry did not prohibit the officers' warrantless entry into the home.

The Tenth Circuit began its consent analysis by emphasizing that it "ha[d] not applied *Randolph* in a case where one occupant consented to police entry into a dwelling, another occupant objected to entry, and the police entered *to arrest the latter for domestic violence*."[107] The Tenth Circuit first asserted that *Randolph*'s disputed consent rule does not apply because "this case involved police investigating domestic violence," and "police may enter a home to 'determine whether violence (or threat of violence) has just occurred,' regardless of whether the alleged domestic abuser protested the officers' entry."[108] *Randolph*'s disputed consent rule, however, is "expressly limited"[109] to "merely evidentiary searches,"[110] or searches for evidence of a crime. The Tenth Circuit even reiterated the Fourth Circuit's reasoning in *Trull v. Smolka* that there is a difference between searches for evidence and investigations of domestic situations.[111] This court, however, similarly did not explain how a search for evidence of a crime and investigation of domestic violence differ when the potential crime in question is domestic violence. Instead, the Tenth Circuit distinguished this case from *Randolph* by drawing a bright line between warrantless entry for evidentiary searches and warrantless entry to arrest a suspected domestic violence abuser, noting that the officers "entered Mr. Watkins's home to arrest him [for felony domestic assault], not to search for evidence" of felony domestic assault.[112]

Due to this difference in motivation for entry, the Tenth Circuit determined that the officers were not subject to *Randolph*'s disputed consent rule. As a result, Watkins's explicit denial of consent did not override Zamora's grant of consent and did not prohibit the officers from warrantlessly entering their shared home. The court, however, did not continue with the consent analysis and hold that Zamora's consent from outside the shared home affirmatively justified the officers' warrantless entry. Instead, the Tenth Circuit resolved the unlawful entry claim on the basis of qualified immunity[113]—rendering a precise resolution of the consent analysis unnecessary.

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107. Id. at *5 (emphasis added).

108. Id. at *6 (quoting Georgia v. Randolph, 547 U.S. 103, 118 (2006)).

109. Id. at *4.

110. Id. at *4, *6 (internal quotation marks omitted) (quoting *Randolph*, 547 U.S. at 118–19).

111. Id. at *6 (citing Trull v. Smolka, 411 F. App'x 651, 655 (4th Cir. 2011) (per curiam)).

112. Id. at *2, *6.

113. Id. at *7. The court determined that a lack of "on-point Supreme Court or Tenth Circuit authority" and a circuit split from out-of-circuit cases on "*Randolph*'s application when officers enter a dwelling to arrest someone for domestic violence" did not satisfy the "clearly established prong of qualified immunity." Id. (internal quotation marks omitted) (quoting Mocek v. City of Albuquerque, 813 F.3d 912, 929 n.9 (10th Cir. 2015)). As a result,

3. United States v. Tatman*: Sixth Circuit Implies Motivations for Entry Are Irrelevant.* — On the other side of the circuit split, the Sixth Circuit seemed to imply that motivations for warrantless entry are irrelevant when applying *Randolph*'s disputed consent rule in IPV contexts. In February 2006, Taresa Tatman got into a physical altercation with her estranged husband, Daniel Tatman, and was physically removed from their formerly shared home.[114] After leaving to a local general store, Taresa called the police and reported an occurrence of domestic violence.[115] The police met her in the store's parking lot and "decided to go to the house to arrest [Daniel] Tatman."[116] When no one initially answered the door, the police returned to the parking lot and obtained Taresa's consent to enter.[117] When the officer and Taresa first arrived, Daniel objected to the officer entering the home.[118] After a verbal exchange with the officer, Daniel agreed to leave the house.[119] When Daniel went upstairs to collect his personal belongings, the officer warrantlessly entered the home, followed Daniel upstairs, saw his guns, and "arrested [Daniel] for domestic violence."[120] Daniel was later indicted for unlawful possession of firearms,[121] and he filed a motion to suppress all evidence obtained during the search of his home in violation of his Fourth Amendment rights.[122]

The Sixth Circuit applied *Randolph*'s disputed consent rule, but it did not discuss any differences between warrantless entry into the home to (1)

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the constitutional question regarding warrantless entry was not put "beyond debate" and the officers were entitled to qualified immunity. Id. (internal quotation marks omitted) (quoting White v. Pauly, 580 U.S. 73, 79 (2017) (per curiam)).

114. United States v. Tatman, 397 F. App'x 152, 155 (6th Cir. 2010). By the time these events occurred, Taresa had left her shared home with Daniel and had moved almost all of her belongings out of the house. Id. When Taresa returned on the day of the altercation, she "threatened [Daniel] Tatman that she would tell the authorities about his illegal weapons if he did not give her possession of the house." Id. Before the physical altercation, Daniel had "agreed to leave the following day." Id.

115. Id.

116. Id. at 155–56.

117. Id. at 156, 159–60 (referring to "Taresa agree[ing] to let [the police] into the house" as "consent").

118. Id. at 156. Although it is disputed as to whether Daniel objected to the officer entering the home, the district court "credited [Daniel]'s testimony" when factual issues were in dispute. Id. at 157. In addition, Daniel testified that the officer originally told him that he was able to get into the home because "the door was open" but later admitted that Taresa let him in. Id. at 158.

119. Id. When Daniel went upstairs, seemingly unaccompanied, id. at 158–59, Taresa told the officer that Daniel possessed fully automatic weapons in the house. Id. at 156.

120. Id. at 156, 164. Although it is disputed as to whether Daniel led the officer upstairs or the officer followed Daniel upstairs without telling him, the district court "credited [Daniel]'s testimony" where factual issues were in dispute. Id. at 157.

121. Indictment at 1–3, United States v. Tatman, 615 F. Supp. 2d 664 (S.D. Ohio 2008) (No. 2:06 cr 268), 2006 WL 6352706.

122. *Tatman*, 397 F. App'x at 155. There were additional searches conducted over the course of approximately a year, but this Note's analysis focuses on the initial entry and arrest, which triggered the Sixth Circuit's relevant consent and exigent circumstances analysis.

search for evidence, (2) investigate a domestic violence incident, or (3) arrest a suspected abuser. Instead, the court found that disputed consent between Taresa and Daniel did not justify the officer's warrantless presence in the home.[123] The court ultimately held that the officer's initial warrantless entry was unconstitutional because it was not justified by the consent or exigent circumstances exceptions.[124]

The Sixth Circuit found that *Randolph*'s disputed consent rule applied because "[Daniel] Tatman qualifie[d] as a 'physically present fellow tenant [who] object[ed]' to [the officer]'s entry."[125] Unlike the Fourth and Tenth Circuits, however, the Sixth Circuit did not analyze the possibility of *Randolph*'s disputed consent rule being limited to evidentiary searches. While the majority noted in the background section of the opinion that "the police decided to go to the house to arrest [Daniel],"[126] according to Daniel's testimony, the officer "did not tell him that he was under arrest, or place him under arrest, prior to [Daniel's] going upstairs."[127] On the other hand, the officer testified that "he told [Daniel] that he was there [to] investigat[e] the domestic-violence incident."[128] The Sixth Circuit noted that the district court resolved "factual disputes based on [Daniel]'s and [the officer]'s conflicting testimony in [Daniel]'s favor" regarding the officer's entry and Daniel's objection to his entry and adopted those findings for its own analysis.[129] Neither court, however, conclusively determined what the officer's intention was before warrantlessly entering Daniel's home—whether he intended to investigate a domestic situation, conduct a search for evidence of a crime (presumably domestic violence), or arrest

123. Id. at 162–63.

124. Id. at 163–64 (explaining that the officer "did not become aware of the possibility that [Daniel] possessed illegal weapons until *after* he illegally entered the house" and that Daniel was both unarmed and cooperative (emphasis added)). In fact, the officer himself testified that "[his] lieutenant actually had cleared the scene because [Daniel] wasn't violent . . . [and] wasn't causing a problem." Id. (internal quotation marks omitted) (quoting District Court Record Entry 39, vol. 1, at 41).

The concurrence disagreed, asserting that "the recent violence by [Daniel] plus his access to an illegal and peculiarly dangerous weapon[] created exigent circumstances [that] justif[ied] the officer's entry further into the household." Id. at 178 (Kennedy, J., concurring in part and dissenting in part). Interestingly, however, the concurrence neither specified whose safety was at risk nor addressed the fact that Taresa, the woman who requested assistance, was outside the home. Id. at 177–79.

125. Id. at 160 (majority opinion) (third and fourth alterations in original) (quoting Georgia v. Randolph, 547 U.S. 103, 121 (2006)). The Sixth Circuit found that Daniel "clearly and unequivocally objected to the police officer's presence before the search began," id. at 161, and, in the alternative, that his objections "at the very least operated as a withdrawal of Taresa's consent" because "[a] person who consents to a warrantless search has the right to restrict the scope of the search." Id. at 162–63.

126. Id. at 156.

127. Id. at 159.

128. Id.

129. Id.

Daniel for domestic violence.[130] The Sixth Circuit neither confirmed the officer's motivation for warrantless entry nor addressed whether differing motivations would affect the applicability of *Randolph*'s disputed consent rule, implying that such a distinction was not a relevant consideration in the consent analysis.

Regardless of the officer's motivation for entry, the Sixth Circuit held that the officer's warrantless entry into Daniel Tatman's home was "unconstitutional under *Randolph*" and that the officer's arrest of Daniel "was not legal."[131] The court further elaborated that even if the officer had probable cause to arrest Daniel for domestic violence, he "was not permitted to enter [Daniel]'s home to arrest him without a warrant or exigent circumstances."[132]

4. Bonivert v. City of Clarkston*: Ninth Circuit Determines Motivations for Entry Are Irrelevant.* — In January 2012, two police officers responded to a "physical domestic" dispatch to the co-occupied home of Ryan Bonivert and his girlfriend Jessie Ausman.[133] At the time of this incident, Bonivert and Ausman had a nine-month-old baby.[134] By the time the police arrived, Ausman, their baby, and all guests had safely departed from the home.[135] The officers decided to speak to Bonivert, who was still inside of the shared home.[136] When the police officers first approached the side door, Bonivert "locked the deadbolt from inside," causing one of the police officers to "believe[] that Bonivert did not want to speak or have any contact with him."[137] Nevertheless, an officer "decided he needed to assess Bonivert's

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130. The Sixth Circuit concurrence, however, did specifically characterize the officer's motivation for entry as intending to arrest Daniel. Id. at 178 (Kennedy, J., concurring in part and dissenting in part) (noting that "the officer had both the *intention* and the probable cause to *arrest* [Daniel]" (emphasis added)). In addition, the district court noted that after the officers did not receive an answer from Daniel during their first visit to the home, they "told [Taresa] that they planned to obtain a warrant for his arrest for domestic violence." United States v. Tatman, 615 F. Supp. 2d 664, 669 (S.D. Ohio 2008) (citing Mar. 8, 2007 Hearing Transcript at 28–29). Nevertheless, the officer's alleged intention to arrest Daniel did not make a difference in the Sixth Circuit's constitutional analysis of the officer's initial entry. *Tatman*, 397 F. App'x at 178–79 (Kennedy, J., concurring in part and dissenting in part) (agreeing that the officer's initial warrantless entry of Tatman's home was not justified by the consent exception).

131. *Tatman*, 397 F. App'x at 163 (majority opinion).

132. Id.

133. Bonivert v. City of Clarkston, 883 F.3d 865, 869 (9th Cir. 2018) (noting that Bonivert and Ausman "had been living together in Bonivert's home for the past two years").

134. Id.

135. Id. at 868. According to Ausman, Ausman's sister, and Ausman's mother, who were all standing outside Bonivert's house when the officers arrived, "Bonivert [had] grabbed Ausman and thr[own] her to the ground" after "Ausman announced that she was leaving with the baby." Id. at 869. Ausman also informed one of the officers "that there were no weapons in the home" and "that she did not believe Bonivert was a danger to himself." Id. at 870.

136. Id. at 869–70.

137. Id. at 870.

condition . . . , 'find out what was going on,' . . . and 'see what his state of mind [was].'"[138] The officers warrantlessly entered the home with Ausman's consent by shattering a windowpane on the back door and unlocking the door.[139] After engaging in an intense physical altercation with Bonivert,[140] the officers arrested Bonivert for assaulting an officer, resisting arrest, and domestic violence assault in the fourth degree.[141] Bonivert eventually brought § 1983 claims, alleging warrantless entry and excessive force in violation of his Fourth Amendment rights.[142]

The Ninth Circuit held that neither the consent exception[143] nor any other warrant exception[144] justified the officers' warrantless entry into Bonivert's home and declined to grant qualified immunity to the officers.[145] After conceding that "*Randolph* was decided in the context of an evidentiary search," the Ninth Circuit found that *Randolph*'s disputed consent rule nevertheless applied because "there is no talismanic distinction, for Fourth Amendment purposes, between a warrantless 'entry' and a warrantless 'search.'"[146] In fact, the court explicitly noted that both are

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138. Id. (quoting Danny Combs, Sergeant, Clarkston Police Dep't).

139. Id. at 870–71 (observing that the assisting officers were aware they did not have a warrant to enter the home or arrest Bonivert and that they did not obtain information about "what basis the . . . officers had for entering the home"). Two officers "deployed their tasers at Bonivert in dart mode" without warning before one of the officers "shoved the door open with enough force to throw Bonivert to the other side of the room," allowing both officers to enter the home. Id. at 871.

140. Bonivert was tackled and stunned multiple times. Id. at 871 ("[Sergeant] Combs's . . . taser was activated in drive-stun mode four times within approximately one minute.").

141. Id.

142. Id.

143. Id. at 874–76.

144. The Ninth Circuit addressed both the emergency aid and exigent circumstances exceptions. Id. at 876–79. It found that the emergency aid exception did not justify warrantless entry because there was "no objectively reasonable basis" to determine that Bonivert posed a harm to any third party or himself, since both Ausman and their child were safely outside and Ausman confirmed that there were no weapons in the house. Id. at 877 (emphasizing the officers sent a "Code 4" message, which specifically means that "there is no immediate danger of death or significant harm" (internal quotation marks omitted) (quoting Paul Purcell, Officer, Clarkston Police Dep't)). It also determined that warrantless entry was not justified under the exigent circumstances exception because "the alleged victim of the domestic assault, Ausman, was safely outside the home before the officers even arrived." Id. at 878–79 (noting the officers "indisputably had no 'probable cause to believe that [there was] contraband or evidence of a crime [in Bonivert's house]'" (alterations in original) (quoting United States v. Martinez, 406 F.3d 1160, 1164 (9th Cir. 2005))).

145. Id. at 879. In fact, the Ninth Circuit noted the unlawfulness of the warrantless entry was "clearly established" and described this case as one that demanded "knowledge of . . . basic, unquestioned constitutional rights." Id. at 873–74 (alteration in original) (internal quotation marks omitted) (quoting Wood v. Strickland, 420 U.S. 308, 322 (1975)). "To the extent the officers were mistaken 'as to what the law require[d]' to justify a warrantless entry that evening . . . their mistake was not 'reasonable.'" Id. (alteration in original) (quoting Saucier v. Katz, 533 U.S. 194, 205 (2001)).

146. Id. at 874.

"intrusions [that] share [a] fundamental characteristic: the breach of the entrance to an individual's home."[147] The Ninth Circuit reiterated that "the Fourth Amendment has drawn a firm line at the entrance to the house . . . [that] [a]bsent exigent circumstances . . . may not reasonably be crossed without a warrant."[148] The court did not resolve whether the officers "needed to assess Bonivert's condition,"[149] "find out what was going on," "see . . . his state of mind,"[150] investigate a domestic dispute, or arrest a suspected abuser, seemingly because the officers' motivation for warrantless entry was not relevant to the application of *Randolph*'s disputed consent rule.

The Ninth Circuit found that Bonivert's objections triggered the application of *Randolph*'s disputed consent rule[151] and that the consent exception did not justify the officers' warrantless entry into Bonivert's home.[152] Absent exigent circumstances, the officers were neither justified in crossing the threshold of the home without a warrant nor entitled to qualified immunity because "a reasonable officer would have understood that no means no."[153]

B. *State Jurisprudence Regarding* Randolph*'s Disputed Consent Rule*

While the foregoing focused on the doctrinal conflict in the federal courts, IPV protections are primarily defined and enforced at the state level.[154] This section examines how state court applications of *Randolph*'s disputed consent rule have shaped practical understandings of Fourth Amendment warrant exceptions in "non-exigent" IPV situations when a survivor is outside the home. First, this section will discuss state cases that align with the Fourth and Tenth Circuits' approach that *Randolph*'s disputed consent rule is strictly limited to evidentiary searches and should not prevent warrantless police entry in IPV situations, even when the sur-

147. Id. (internal quotation marks omitted) (quoting Payton v. New York, 445 U.S. 573, 589 (1980)).

148. Id. (internal quotation marks omitted) (quoting *Payton*, 445 U.S. at 590).

149. Id. at 870.

150. Id. (internal quotation marks omitted) (quoting Danny Combs, Sergeant, Clarkston Police Dep't).

151. See id. at 875 (confirming that Bonivert expressly objected to the officers' entry twice when he (1) locked the side door of his house and (2) "attempted to close the back door on the officers after [Officer] Combs broke in"). The Ninth Circuit specifically noted that express refusal of consent does not necessarily require verbal refusal because specific actions, such as attempting to close a door, can communicate a refusal of consent to any further intrusion by the officers. Id.

152. Id.

153. Id. at 874, 876.

154. See Domestic Violence/Domestic Abuse Definitions and Relationships, Nat'l Conf. of State Legislatures (NCSL), https://www.ncsl.org/human-services/domestic-violence-domestic-abuse-definitions-and-relationships (on file with the *Columbia Law Review*) (last updated June 13, 2019) ("State legislatures are at the forefront of defining and penalizing domestic violence and abuse.").

vivor is physically outside the home. Then, this section analyzes cases that support the Sixth and Ninth Circuits' approach that *Randolph*'s disputed consent rule extends beyond evidentiary searches to prevent warrantless entry in "non-exigent" IPV situations, regardless of the officers' motivation to enter.

1. *In Support of the Fourth and Tenth Circuits' Approach.* — In the following cases, state courts applied similar reasoning to the Fourth and Tenth Circuits when the survivor was physically outside the home and determined that *Randolph*'s disputed consent rule is limited to evidentiary searches. According to these state courts, disputed consent would not prohibit officers from warrantlessly entering the home if they were investigating potential domestic situations instead of searching for evidence of a crime.[155]

In *City of Westland v. Kodlowski*, Marilyn Kodlowski called the police after a verbal disagreement with her husband, Jeffrey Kodlowski, "to seek assistance in retrieving the personal belongings . . . withheld from her."[156] Marilyn was outside the home when the police arrived and consented to their warrantless entry.[157] Although Jeffrey eventually asked the officers to leave his home, the Michigan Court of Appeals held that Jeffrey's revocation of consent was "irrelevant to the Fourth Amendment analysis"[158] and did not "render the officers' [warrantless] presence [in his home] unlawful."[159] This is because *Randolph*'s disputed consent rule only applied to officers "search[ing] for evidence," not officers "investigat[ing] potential domestic violence."[160] Similar to the Fourth and Tenth Circuits, this court did not explain the difference between searching for evidence and investigating a potential domestic violence situation.

In *People v. Cole*, officers were called to George Cole and the survivor's co-occupied home because of a domestic dispute.[161] The survivor was out-

155. None of these cases, however, address whether *Randolph*'s disputed consent rule prohibits warrantless entry into the home when officers are intending to arrest someone as opposed to investigating a potential domestic situation. In *Evans v. State*, the Indiana Supreme Court denied Evans's petition to transfer jurisdiction after she was convicted of forcibly resisting law enforcement when her ex-boyfriend consented to the officers' warrantless entry into her home. See 207 N.E.3d 428, 428 (Ind. 2023). The dissent explained that the question as to "when, if ever, an occupant can validly consent to law enforcement's warrantless entry of a residence when another occupant unequivocally objects" has yet to be settled. Id. at 428–29 (Rush, C.J., dissenting from the denial of transfer) (noting that "an officer express[ing] intent to arrest [the occupant]" is a question of law "of recurring significance—particularly when officers respond to domestic disputes").

156. 828 N.W.2d 67, 70, 72 (Mich. Ct. App. 2012), rev'd in part and vacated in part on other grounds, 837 N.W.2d 285 (Mich. 2013).

157. Id. at 70. Jeffrey was arrested and charged with assault, battery, and resisting arrest after a physical altercation occurred between him and the officers. Id. at 71–72.

158. Id. at 78.

159. Id.

160. Id.

161. No. A150572, 2017 WL 6507050, at *1 (Cal. Ct. App. Dec. 20, 2017).

side the home, had physical injuries inflicted by Cole, and provided consent for officers to enter.[162] Cole initially agreed to the officers' entry, and then immediately revoked consent.[163] Nevertheless, the trial court found that *Randolph*'s disputed consent rule did not apply to overrule the survivor's consent to enter because "the officers were responding to an incident of domestic violence . . . not entering to search for evidence."[164] The California Court of Appeal for the First District agreed and held that the case "concerns a domestic violence situation to which the bright-line consent rule enunciated in *Georgia* [*v. Randolph*] does not apply."[165] Similar to the Fourth Circuit, however, this court ultimately upheld the officers' warrantless entry under the exigent circumstances exception instead of the consent exception.[166]

In *State v. Dowling*, officers responded to a neighbor's 911 call reporting a potential domestic disturbance at the shared home of Thomas Dowling and his wife.[167] Although the wife was still inside the home, this resembles a "non-exigent" situation because the officers and court did not refer to any signs of physical injury or violence or conduct an exigency analysis.[168] The wife consented to the officers' warrantless entry, and Dowling eventually refused to consent.[169] The Wisconsin Court of Appeals found that *Randolph*'s disputed consent rule did not apply because "there [was] no indication in the record that any of the officers searched the apartment for [Dowling] or any other evidence"[170] and the "'intrusion' . . . was less significant than in *Randolph*."[171] The court held the officers' continued warrantless presence was justified by the consent exception

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162. Id. The victim stated that Cole had "kept hitting [her] upside the head," and that she had numerous bruises inflicted by Cole over the past two days. Id. (internal quotation marks omitted) (quoting victim). She also said that Cole had threatened to "burn down the house," "kill [her] dad," and "have the CIA kill [her] dad," and confirmed that there were knives in the residence. Id. (internal quotation marks omitted) (quoting victim).

163. Id.

164. Id. at *2 (noting that the victim was not out of danger just because she was standing outside the home because this relationship involved ongoing abuse and threats of future violence).

165. Id. at *4.

166. Id. at *5 ("[W]e do not need to address [Cole]'s contentions that his statements to the officers were sufficient to invoke the bright-line consent rule articulated in [*Randolph*].").

167. No. 2016AP838-CR, 2016 WL 6269342, at *1 (Wis. Ct. App. Oct. 26, 2016) (unpublished table decision).

168. Id. at *1–2 (noting that the wife opened the door, told the officers that Dowling was in the back bedroom, and was observed by one of the officers as being "calm" (internal quotation marks omitted) (quoting Patrick Brock, Officer, Grafton Police Dep't)).

169. Id. at *1.

170. Id. at *6. Instead, the court specifically noted that "the officers entered the apartment just barely beyond its threshold" instead of "enter[ing] and *search*[*ing*] the residence." Id.

171. Id. (citing Georgia v. Randolph, 547 U.S. 103, 112, 118 (2006)) (noting that the officers in *Randolph* entered and actually searched the residence).

because the officers were "investigating what's called a family trouble or domestic violence incident . . . [and] had to confirm and make sure there was no domestic violence situation taking place."[172] Similar to the Fourth and Tenth Circuits, this court distinguished between evidentiary searches and investigations of potential domestic violence incidents. Unlike the Fourth and Tenth Circuits, however, this court implied that the distinction is at least influenced in part by the degree of police intrusion associated with the warrantless entry into the home.

2. *In Support of the Sixth and Ninth Circuits' Approach.* — Other state courts have reached opposite conclusions, aligning instead with the Sixth and Ninth Circuits' interpretations of *Randolph*'s disputed consent rule in "non-exigent" IPV situations when the survivor is outside the home. In the following cases, courts found that *Randolph*'s disputed consent rule applied, regardless of the officers' motivation for entry, because the Fourth Amendment's protection of privacy draws a line at the threshold of the home. Thus, warrantless entry on the basis of disputed consent was prohibited, irrespective of whether the officers intended to search for evidence of a crime, investigate a potential IPV situation, or arrest a suspected abuser.

In *Hendricks v. State*, officers responded to Eteria Jackson's 911 call reporting that her partner, Dereck Hendricks, had attempted to choke her while she was sleeping.[173] "Intending to arrest Hendricks," the officers warrantlessly entered the shared home on the basis of Jackson's consent from outside the home, despite Hendricks's refusal.[174] The Indiana Court of Appeals held that *Randolph*'s disputed consent rule applied and prohibited the officers' warrantless entry, because "the officers did not enter a home to assist [the survivor] or to investigate an ongoing threat but entered the home intending to arrest Hendricks without an arrest warrant."[175] Similar to the Sixth and Ninth Circuits, this court essentially reasoned that an officer's motivation for warrantless entry is only relevant to the degree that it affects an exigency analysis, not a consent analysis. Thus, the court implied that *Randolph*'s disputed consent rule should apply to both warrantless entry for evidentiary searches and arrests in the home.

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172. Id. at *3 (quoting Dustin Cline, Officer, Grafton Police Dep't).

173. No. 49A04-1510-CR-1558, 2016 WL 3977006, at *1 (Ind. Ct. App. July 25, 2016) (unpublished table decision).

174. Id. After a physical altercation, Hendricks was arrested and charged with two counts of Class A misdemeanor resisting law enforcement. Id. at *2.

175. Id. at *4. The court also held that the officers' warrantless entry was not justified by exigent circumstances. Id. (noting that "[the survivor] was not inside the home when the officers arrived, . . . the officers did not need to enter the home to protect her . . . [and] [t]he officers simply had no reason to enter the home without a warrant"). In fact, the court specifically explained that the officers "could have, at a minimum, requested an arrest warrant either by telephone or radio and waited outside Hendricks's residence until the warrant was issued." Id.

In *State v. Morris*, an officer responded to a domestic dispute dispatch and met Yalanda Iser outside of the home that she shared with her boyfriend Mark Morris.[176] The officers warrantlessly entered the home, after receiving consent from Iser and express objections from Morris, and attempted to detain Morris.[177] The Ohio Court of Appeals specifically cited the Sixth Circuit in *Tatman* and found that *Randolph*'s disputed consent rule applied to the situation, preventing Iser's consent from overriding Morris's objection and justifying the officers' warrantless entry.[178] It is unclear, however, whether the officers warrantlessly entered the home with the intention of investigating a potential domestic dispute or immediately arresting Morris, or whether the distinction is even relevant.[179] Similar to the Sixth Circuit, this court did not describe why *Randolph*'s disputed consent rule applied in this context or if the officers' motivation informed the applicability of the rule—implying that motivation is irrelevant to the consent analysis. Although the court determined that the officers' warrantless entry could not be justified under the consent exception, it did find that the entry was justified under exigent circumstances.[180]

III. RESOLVING THE SPLIT: EXTENDING *RANDOLPH*'S DISPUTED CONSENT RULE

This Note proposes to resolve the circuit split by adopting the Ninth Circuit's approach and extending *Randolph*'s disputed consent rule beyond evidentiary searches in "non-exigent" IPV situations when a survivor is outside the home, regardless of the officers' motivation for entry. Under this approach, entry into the home in such "non-exigent" IPV situations would either require a warrant or an exception to the warrant requirement independent of consent. In addition, this Note recommends enacting a statutory requirement that law enforcement remain with the survivor outside the home until a warrant has been obtained or appropriate alternative community-based measures have been initiated.

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176. No. 18CA3638, 2019 WL 337008, at *1 (Ohio Ct. App. Jan. 15, 2019). The girlfriend reported that Morris "had threatened to kill her if she did not get her 'shit and leave.'" Id. (quoting Yalanda Iser).

177. Id. at *1–2. Morris was eventually arrested and charged with assaulting a police officer. Id. at *2.

178. See id. at *3.

179. An officer "testified that they did not leave the residence after Morris refused entry because they were still investigating the complaint that Morris had made a threat of serious physical harm." Id. at *2. The court also noted that "[o]nce inside the home, the officers attempted to detain Morris." Id. The court, however, did not conclusively determine the officers' initial motivation for entry. Id. at *1–5.

180. Id. at *3–4 (noting that (1) the 911 call included a report of serious threat of violence to Iser; (2) Iser and her children were "visibly distraught"; (3) Morris was acting "belligerent[ly] and aggressive[ly]"; and (4) Iser warned the officers that "Morris had weapons in the house").

Although the existing circuit split indicates that *Randolph*'s disputed consent rule has proved difficult for lower courts to apply uniformly, particularly in IPV contexts, the Court's intention of protecting both privacy and safety interests is clear.[181] This Note's proposed solution of extending *Randolph*'s disputed consent rule beyond evidentiary searches is most consistent with long-standing Fourth Amendment principles and best aligns with the Supreme Court's framework from *Randolph*, because it seeks to protect the safety of survivors *and* maximize privacy rights in the home. This Part will first argue that this Note's proposed solution is the most doctrinally consistent interpretation of *Randolph*'s disputed consent rule because it reinforces constitutionally protected privacy interests in the home and the reliance on objective factors instead of subjective motivations in Fourth Amendment analysis. Then, it will explore how public policy considerations also justify this Note's proposed solution because it supports a more administrable disputed consent rule, reduces the risk of police misconduct, minimizes conflict escalation in IPV situations, and balances survivor safety and agency concerns.

A. *Doctrinal Justifications for Extending* Randolph*'s Disputed Consent Rule*

First, this section explains how this Note's solution of extending *Randolph*'s disputed consent rule is doctrinally consistent with long-standing Fourth Amendment principles that protect privacy rights in the home. Then, this section analyzes how extending *Randolph*'s disputed consent rule beyond evidentiary searches, regardless of officer motivations, aligns with the Supreme Court's established practice of treating officers' subjective motivations as irrelevant and providing clear guidance to law enforcement.

1. *Reinforcing Privacy Rights in the Home.* — This Note's proposed solution of extending *Randolph*'s disputed consent rule beyond evidentiary searches reinforces privacy rights in the home by limiting the circumstances in which warrantless government intrusion is allowed. Distinct from the physical structure of a house, the home holds uniquely "formative cultural, emotional, and psychic significance."[182] The home generates personal "feelings of safety and belonging,"[183] and the law recognizes that the "intimate features of household privacy are necessary conditions for

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181. The *Randolph* majority stated that disputed permission is no match for the "centuries-old principle of respect for the privacy of the home." Georgia v. Randolph, 547 U.S. 103, 115 (2006) (internal quotation marks omitted) (quoting Wilson v. Layne, 526 U.S. 603, 610 (1999)). It also explicitly "recognize[d] that domestic abuse is a serious problem in the United States" and asserted that its disputed consent rule would have "no bearing on the capacity of the police to protect domestic victims." Id. at 117–18. Regardless of its workability, the explicit acknowledgment and discussion of privacy and safety interests by the majority and dissent indicate that both were important considerations of *Randolph*'s disputed consent rule.

182. See Suk, supra note 27, at 1.

183. See id. at 1–2.

the fulfilment of . . . [the] 'dimensions of freedom' in public life."[184] Thus, the home occupies "a special place in Fourth Amendment jurisprudence."[185] This Note's proposed solution adheres to the long-standing tradition of protecting privacy in the home by "draw[ing] a firm line at the entrance to the house . . . that . . . may not reasonably be crossed without a warrant"[186] in "non-exigent" IPV situations regardless of law enforcement's motivation for entry.

Although entry to search and entry to arrest are functionally different, the Supreme Court determined almost fifty years ago in *Payton v. New York* that "any differences in the intrusiveness of entries to search and entries to arrest are merely ones of degree rather than kind."[187] Even when statutory authority has been provided and probable cause is clearly present, different motivations for warrantless entry into the home implicate the same core interest: "preserving the privacy and the sanctity of the home."[188]

This Note's proposed solution of extending *Randolph*'s disputed consent rule beyond evidentiary searches in "non-exigent" IPV contexts best aligns with the home's core privacy interests. As the Ninth Circuit observed in *Bonivert*, "there is no talismanic distinction, for Fourth Amendment purposes," between warrantlessly entering a home to search for evidence of a crime, to investigate a domestic dispute, or to arrest a suspected abuser.[189] The type of intrusion into the home remains constant, even if the degree of intrusion differs. Absent exigent circumstances, warrantless entry to the home under this Note's proposed solution will be entitled to "the same level of constitutional protection,"[190] regardless of an officer's motivation for entry.

By contrast, the Fourth and Tenth Circuits limit *Randolph*'s disputed consent rule to evidentiary searches.[191] Unlike existing Fourth Amendment cases that seek to "preserv[e] the privacy and the sanctity of

184. Thomas P. Crocker, The Fourth Amendment at Home, 96 Ind. L.J. 167, 169 (2020) (quoting Obergefell v. Hodges, 576 U.S. 644, 660 (2015)).

185. Id. at 168; see also United States v. U.S. Dist. Ct., 407 U.S. 297, 313 (1972) ("[P]hysical entry of the home is the chief evil against which the . . . Fourth Amendment is directed . . . ."); Silverman v. United States, 365 U.S. 505, 511 (1961) ("At the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." (citing Entick v. Carrington (1765) 95 Eng. Rep. 807, 812, 19 How. St. Tr. 1029, 1066; Boyd v. United States, 116 U.S. 616, 626–30 (1886))); Stern, supra note 27, at 908 ("[M]any cases have afforded expansive, formalistic protection to the physical home . . . .").

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

187. Id. at 589.

188. Id. at 588.

189. Bonivert v. City of Clarkston, 883 F.3d 865, 874 (9th Cir. 2018).

190. *Payton*, 445 U.S. at 588–89 (finding Judge Leventhal's reasoning for the United States Court of Appeals for the District of Columbia Circuit "to be persuasive and in accord with [the Supreme] Court's Fourth Amendment decisions").

191. See supra notes 97–99, 108–112 and accompanying text.

the home,"[192] a limitation of *Randolph*'s holding expands the scope of circumstances in which officers can justify warrantless entry into the home. The Fourth and Tenth Circuits rightly pointed out that *Randolph*'s disputed consent rule was framed by *Randolph*'s majority as only applying to "evidentiary searches"[193] and "search[es] for evidence"[194]—implying that it was not intended to cover investigations of domestic violence or arrests of suspected abusers.[195] Neither circuit, however, explained what the distinction is between evidentiary searches and investigations of domestic situations or why it should make a difference. In addition, both courts described evidentiary searches as a "search for evidence"[196] or "search for evidence of a crime,"[197] without specifying if the relevant crime referred to IPV, drugs, or weapons-related offenses. As a result, an inexplicable categorical difference between an evidentiary search and an investigation into a domestic situation becomes unworkably ambiguous, particularly with IPV-related crimes. The Fourth and Tenth Circuits seemingly view warrantless entry to search for evidence of crime, to investigate domestic situations, and to arrest suspected abusers as a difference in kind, instead of degree, of intrusion into the home. Reliance on this type of reasoning to justify differential Fourth Amendment protections, however, seems contrary to *Payton*'s determination that different degrees of intrusion into the home, such as that between a search and an arrest, are still entitled to the same level of constitutional protection.[198]

Under this Note's proposed solution, entry into the home in "non-exigent" IPV situations will be constitutional only if officers obtain a warrant or determine that exigent circumstances do apply—regardless of whether officers are searching for evidence, investigating a domestic dispute, or arresting a suspected abuser. By removing an officer's motivation for entry from the consent analysis and extending *Randolph*'s disputed consent rule beyond evidentiary searches, this Note's proposed solution remains consistent with existing Fourth Amendment precedent and reinforces the centrality of constitutionally protected home privacy.

2. *Treating Subjective Motivations as Irrelevant.* — This Note's proposed solution of extending *Randolph*'s disputed consent rule without consideration of officer motivation better aligns with long-standing Fourth Amendment practices of treating subjective motivations as irrelevant. The Supreme Court has repeatedly held that an officer's subjective motivation is irrelevant to determining whether an officer's actions violate the Fourth

192. *Payton*, 445 U.S. at 588.

193. Georgia v. Randolph, 547 U.S. 103, 119 (2006).

194. Id. at 118, 120.

195. See supra sections II.A.1–.2.

196. Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904, at *6 (10th Cir. June 23, 2023).

197. Trull v. Smolka, 411 F. App'x 651, 655 (4th Cir. 2011) (per curiam).

198. See supra notes 187–190 and accompanying text.

Amendment.[199] This is because "evenhanded law enforcement is best achieved by the application of objective standards of conduct,"[200] and "the protections of the Fourth Amendment would [otherwise] evaporate . . . [at] the discretion of the police."[201] While some scholars have challenged the premise that Fourth Amendment jurisprudence is completely objective,[202] the Court's efforts to maximize usage of objective standards are significant. In fact, the *Randolph* dissent even characterized "[t]he majority's differentiation between entry focused on discovering whether domestic violence has occurred . . . and entry focused on searching for evidence of other crime" as "puzzling," given how the "Court has rejected subjective motivations of police officers in assessing Fourth Amendment questions."[203]

Although *Randolph*'s disputed consent rule was framed as applying only to evidentiary searches,[204] the *Randolph* majority did not analyze or even address any differences between searches for evidence of a crime, investigations into a domestic incident, and arrests of a suspected abuser. The factual circumstances of *Randolph* did not require it, so the *Randolph* majority did not determine whether its disputed consent rule should turn on the subjective or objective motivations for entry, especially in "non-exigent" IPV situations.[205]

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199. See, e.g., Brigham City v. Stuart, 547 U.S. 398, 404–05 (2006) ("The officers' subjective motivation is irrelevant . . . [i]t therefore does not matter here . . . whether the officers entered the kitchen to arrest respondents and gather evidence against them or to assist the injured and prevent further violence." (citations omitted)); Bond v. United States, 529 U.S. 334, 338 n.2 (2000) ("The parties properly agree that the subjective intent of the law enforcement officer is irrelevant in determining whether that officer's actions violate the Fourth Amendment."); Scott v. United States, 436 U.S. 128, 137 (1978) ("[A]lmost without exception in evaluating alleged violations of the Fourth Amendment the Court has first undertaken an objective assessment of an officer's actions in light of the facts and circumstances then known to him."). There are two exceptions, however, "where 'actual motivations' do matter": the special needs and administrative search doctrines. See Ashcroft v. al-Kidd, 563 U.S. 731, 736 (2011) (quoting United States v. Knights, 534 U.S. 112, 122 (2001)).

200. Kentucky v. King, 563 U.S. 452, 464 (2011) (internal quotation marks omitted) (quoting Horton v. California, 496 U.S. 128, 138 (1990)).

201. Beck v. Ohio, 379 U.S. 89, 97 (1964).

202. See Orin S. Kerr, The Questionable Objectivity of Fourth Amendment Law, 99 Tex. L. Rev. 447, 449, 451 (2021) (arguing that "Fourth Amendment law increasingly offers a mix of objective and subjective tests" to determine (1) what is a search or seizure, (2) if a search or seizure was unreasonable and unconstitutional, and (3) the scope of remedies for Fourth Amendment violations); Kit Kinports, Questions for *The Questionable Objectivity of Fourth Amendment Law*, 99 Tex. L. Rev. Online 142, 154 (2021), https://texaslawreview.org/wp-content/uploads/2021/04/Kinports.TLR_.V99.Final2_.pdf [https://perma.cc/KBF7-RPQQ] (agreeing generally that "the Court cannot be taken at its word when it repeatedly asserts that its Fourth Amendment jurisprudence is driven by objective standards").

203. Georgia v. Randolph, 547 U.S. 103, 138 (2006) (Roberts, C.J., dissenting).

204. See id. at 118, 122 (majority opinion).

205. The circuit split that has emerged in the last twenty years regarding the applicability of *Randolph*'s disputed consent rule, however, now requires the Supreme Court to address whether differences in officers' subjective motivations for warrantless entry in

The Fourth and Tenth Circuits' approach is contrary to long-standing practice because it requires the court to ascertain the officers' subjective motivation for entry into the home, whether it be to search for evidence of a crime, investigate a domestic incident, or arrest a suspected abuser. In contrast, extending *Randolph*'s disputed consent rule beyond evidentiary searches, regardless of officers' motivations, reaffirms established Fourth Amendment precedent that subjective intent is irrelevant and reliance on objective factors is preferred.[206] This Note's proposed solution is also more consistent with the Supreme Court's "general preference to provide clear guidance to law enforcement through categorical rules"[207] because it clearly communicates that officers may only enter a home in IPV situations with a warrant or under exigent circumstances.

B. *Policy Justifications for Extending* Randolph*'s Disputed Consent Rule*

Section III.B.1 first explains how extending *Randolph*'s disputed consent rule beyond evidentiary searches clarifies and improves its administrability. Section III.B.2 then discusses how a clarified version of *Randolph*'s disputed consent rule can, in practice, reduce the risk of police misconduct. Section III.B.3 identifies how extending *Randolph*'s disputed consent rule could reduce the likelihood of physical altercations in IPV situations and limit the number of non-IPV charges that are brought against a defendant. Finally, section III.B.4 analyzes how this Note's proposed solution better balances the safety and agency interests of potential IPV survivors.

1. *Improving the Administrability of* Randolph*'s Disputed Consent Rule.* — This Note's approach provides analytical clarity to the Fourth Amendment warrant requirement in "non-exigent" IPV contexts by simplifying *Randolph*'s disputed consent rule and improving its administrability. Under this approach, warrantless entry is an unconstitutional intrusion when a survivor is outside the home and exigent circumstances do not apply.

This Note's proposed solution is both simple to understand and straightforward to apply. Unlike the subjective approach proposed by the Fourth and Tenth Circuits, extending *Randolph*'s disputed consent rule to

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"non-exigent" IPV situations trigger different constitutional protections. See supra Part II (highlighting that the Fourth and Tenth Circuits' application of *Randolph*'s disputed consent rule depended on the subjective motivations of the officers, while the Sixth and Ninth Circuits' application did not).

206. See supra notes 199–201 and accompanying text.

207. Riley v. California, 573 U.S. 373, 398 (2014); see also Atwater v. City of Lago Vista, 532 U.S. 318, 347 (2001) ("[T]he object in implementing [the Fourth Amendment's] command of reasonableness is to draw standards sufficiently clear and simple to be applied . . . ."); California v. Acevedo, 500 U.S. 565, 577 (1991) ("We have noted the virtue of providing '"clear and unequivocal" guidelines to the law enforcement profession.'" (internal quotation marks omitted) (quoting Minnick v. Mississippi, 498 U.S. 146, 151 (1990))); United States v. Ross, 456 U.S. 798, 825 (1982) (Blackmun, J., concurring) ("It is important . . . not only for the Court . . . but also for law enforcement officials . . . that the applicable legal rules be clearly established.").

"a firm line at the entrance to the house"[208] minimizes the difficult, fact-intensive inquiry that is often required to review officer discretion[209] and confirm whether officers intended to search for evidence of a crime (whether it be IPV, drugs, or weapons-related), investigate a domestic dispute, or arrest a suspected abuser.[210] Making such a determination is particularly difficult when the differences between a search for evidence of a crime (often alleged to be IPV) and an investigation of a domestic situation are practically indistinguishable.

The Fourth Circuit in *Trull* implied that investigations of domestic situations differ from evidentiary searches because they involve "talking to [the relevant] parties" to make a "definite determination" as to whether any violence occurred.[211] While seemingly straightforward, this approach overlooks the reality that questioning the parties about IPV may itself reveal evidence of IPV,[212] collapsing the distinction between investigating a domestic dispute and searching for evidence of IPV-related crimes.[213] In addition, warrantless entry for the limited purpose of speaking with relevant parties of a domestic situation can easily expand into broader evidentiary searches under the plain view[214] and protective sweep doctrines.[215]

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

209. See Wayne R. LaFave, Controlling Discretion by Administrative Regulations: The Use, Misuse, and Nonuse of Police Rules and Policies in Fourth Amendment Adjudication, 89 Mich. L. Rev. 442, 445 (1990) (asserting that "some limitations on [investigative] power are essential" because of "the complex and discretionary character of police search and seizure decisions").

210. For example, in *United States v. Tatman*, the Sixth Circuit's majority stated in the background section of the opinion that "the police decided to go to the house to arrest [Daniel] Tatman." 397 F. App'x 152, 156 (6th Cir. 2010). The majority, however, also noted the officer testified that "he was there investigating the domestic-violence incident," while Daniel testified that the officer "did not tell him that he was under arrest, or place him under arrest" immediately after talking about the domestic violence allegation. Id. at 159. Similarly, in *State v. Morris*, the court did not make a specific determination as to the officers' initial motivation for entry. See supra note 179 and accompanying text.

211. Trull v. Smolka, 411 F. App'x 651, 656 (4th Cir. 2011) (per curiam).

212. See, e.g., Georgia v. Randolph, 547 U.S. 103, 127 (2006) (Breyer, J., concurring) (noting that a victim's invitation or consent to enter itself could "indicate the availability of evidence, in the form of an immediate willingness to speak, that might not otherwise exist"); Davis v. Washington, 547 U.S. 813, 822 (2006) (holding that a statement is considered to be testimonial if "the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution").

213. See Nat'l Dist. Att'ys Ass'n, Women Prosecutors Section, National Domestic Violence Prosecution Best Practices Guide 14 (2020), https://evawintl.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-June-23-2020-1.pdf [https://perma.cc/YSN9-53V8] ("A complete [domestic violence] investigation should include formal recorded statements from the victim, the defendant, and all witnesses . . . .").

214. See Arizona v. Hicks, 480 U.S. 321, 323, 326 (1987) (holding that "a warrantless seizure by police of an item that comes within plain view during their lawful search of a private area may be reasonable under the Fourth Amendment").

215. See Maryland v. Buie, 494 U.S. 325, 327, 334 (1990) (noting that "[a] 'protective sweep' is a quick and limited search of premises," in which officers, "as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces

Because these doctrines expand the scope of permissible searches once officers are lawfully inside of a home, the line-drawing required by the Fourth and Tenth Circuits' approach becomes quite challenging.[216]

The alternative state court approach in *Dowling* suggests that the distinction between evidentiary searches and investigations into domestic situations depends instead on the degree of intrusion into the home.[217] After all, an officer standing just inside the home and asking questions is admittedly less intrusive than an officer actively conducting a search of the home. This approach, however, was rejected decades earlier by the Supreme Court in *Payton v. New York*.[218] In addition, this approach would require a similarly difficult line-drawing exercise to determine exactly how much intrusion into the home would transform a constitutional investigation into an unconstitutional evidentiary search. It would also suffer from the same practical issue identified in the Fourth and Tenth Circuits' approach above: Once officers are lawfully inside the home, they can seize a broader scope of evidence either in plain view or through a protective sweep.[219]

This Note's approach minimizes this complexity by uniformly extending the application of *Randolph*'s disputed consent rule to all warrantless home entries in "non-exigent" IPV situations, regardless of the officers' motivation and by reducing the extent of fact-dependent judicial analysis required. With consent foreclosed as a warrant exception in situations of disputed consent, officers would have to rely on exigent circumstances[220]

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immediately adjoining the place of arrest from which an attack could be immediately launched").

216. For more discussion on how the plain view and protective sweep doctrines expand the scope of permissible searches within the home, see *Randolph*, 547 U.S. at 118 (noting that "there is no question that [police] could seize any evidence in plain view" once they are lawfully in the premises); Dickinson, supra note 82, at 1106 (asserting that the plain view doctrine "allows law enforcement to search and seize items in the home . . . incident to intentional or inadvertent observations of the home"); LaFave, Search and Seizure, supra note 44, § 6.4(c) (highlighting that the "'potentiality for danger surrounding the arrest' may be so high that entry of premises to make a 'protective sweep' will be permissible even though the arrest itself was not yet made or was achieved without entry" (quoting McGeehan v. Wainwright, 526 F.2d 397, 399 (5th Cir. 1976))); Mark J. Sifferlen, Fourth Amendment—Protective Sweep Doctrine: When Does the Fourth Amendment Allow Police Officers to Search the Home Incident to a Lawful Arrest?, 81 J. Crim. L. & Criminology 862, 878 (1991) (cautioning that a broad application of the protective sweep doctrine could "justify[] unnecessary officer actions" without a warrant in the home).

217. See State v. Dowling, No. 2016AP838-CR, 2016 WL 6269342, at *6 (Wis. Ct. App. Oct. 26, 2016) (unpublished table decision) (emphasizing that the officers entered "just barely beyond [the] threshold" instead of "enter[ing] and *search*[*ing*] the residence").

218. See supra notes 187–188 and accompanying text.

219. See supra notes 214–216 and accompanying text.

220. See supra notes 45–49 and accompanying text (noting that the exigent circumstances exception requires officers to have an "objectively reasonable basis" to warrantlessly enter a home).

or obtain a warrant before entering the home. Under either approach, the Fourth Amendment analysis is simplified for officers and courts.

2. *Reducing the Risk of Police Misconduct.* — This Note proposes a straightforward solution that makes it easier for officers to act constitutionally in IPV contexts and reduces the likelihood of unconstitutional home intrusions. Constitutional protection of privacy in the home functions as a "structural check on federal and state power."[221] Although the safety of IPV survivors may justify privacy intrusions in circumstances of imminent harm, IPV should not become a pretext for "aggrandiz[ing] police power at the expense of individual privacy rights."[222] This Note's solution clarifies the boundary between constitutional and unconstitutional conduct in IPV contexts. It also restores a meaningful remedy for Fourth Amendment violations by establishing a path to overcoming officers' presumptive qualified immunity in § 1983 suits.

Under § 1983's "clearly established" standard,[223] "a circuit split all but guarantees qualified immunity."[224] The circuit split over whether disputed consent can justify warrantless home entry signals the absence of a clearly established Fourth Amendment right in § 1983 actions that are often initiated in these "non-exigent" IPV contexts.[225] As a result, officers may invoke qualified immunity and avoid liability—even when constitutional violations may have occurred.[226]

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221. See Crocker, supra note 184, at 169–70 (explaining that the home is "explicitly protected against government occupation" and has a "structural role within the Constitution's system of separated powers").

222. See Lesley McCall, Case Note, *Georgia v. Randolph*: Whose Castle Is It, Anyway?, 41 U. Rich. L. Rev. 589, 607 (2007) (criticizing the *Randolph* dissent's invocation of domestic violence to expand police power).

223. Qualified immunity shields officers from § 1983 liability "when a reasonable official would not have known that [their] actions would violate a constitutional right that was 'clearly established' at the time of the incident." Michael Avery, David Rudovsky, Karen M. Blum & Jennifer Laurin, Police Misconduct: Law and Litigation § 3:6 (2025); see also Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011) (holding that the Supreme Court does "not require a case directly on point" to satisfy the clearly established right standard but emphasizing that "existing precedent must have placed the statutory or constitutional question beyond debate"). It is unclear, however, which types of authority are required in the analysis of a "clearly established" right and how conflicting authorities should be reconciled in the absence of an on-point Supreme Court decision. See Avery et al., supra, § 3:9.

224. Tyler Finn, Note, Qualified Immunity Formalism: "Clearly Established Law" and the Right to Record Police Activity, 119 Colum. L. Rev. 445, 450 (2019).

225. See, e.g., Watkins v. Wunderlich, No. 22-1358, 2023 WL 4145904, at *1 (10th Cir. June 23, 2023) (arrestee brought § 1983 actions); Bonivert v. City of Clarkston, 883 F.3d 865, 871 (9th Cir. 2018) (same); Trull v. Smolka, 411 F. App'x 651, 657–59 (4th Cir. 2011) (per curiam) (same).

226. See, e.g., Crespo v. City of New York, 781 F. Supp. 3d 125, 134 (E.D.N.Y. 2025) (holding that, although the emergency aid exception did not justify the police officers' warrantless entry into the plaintiff's home after a reported incident of domestic abuse, "the underlying law is far from clearly established" based on "the lengthy path the Court travelled" in its analysis).

This Note's proposed resolution of the circuit split—extending *Randolph*'s disputed consent rule beyond evidentiary searches—strengthens the argument that a clearly established right exists against warrantless home entry in "non-exigent" IPV circumstances and increases the likelihood of overcoming an officer's presumptive qualified immunity.[227] Although resolving the circuit split in any direction would help clarify the law, the version of *Randolph*'s disputed consent rule that is most likely to firmly establish the right is the version that is clearest and most readily understood by reasonable officers responding to IPV situations. By extending *Randolph*'s disputed consent rule beyond evidentiary searches, this Note's proposed solution creates a clear and uniform rule: Disputed consent cannot justify warrantless home entry in "non-exigent" IPV situations, regardless of the officers' motivations.[228] Officers who intend to enter the home must first obtain a warrant.[229] Thus, this Note's proposed solution preserves access to meaningful civil remedies for constitutional violations under § 1983 and reduces the risk of potential police misconduct.

3. *Minimizing the Escalation of Violence in IPV Situations.* — This Note's proposed solution may also prevent the escalation of tension and potential violence between suspected abusers and law enforcement in volatile IPV situations. In "non-exigent" circumstances, individuals understandably maintain an expectation of privacy against state intrusion within their home.[230] An unexpected confrontation with law enforcement inside the home without consent or a warrant can provoke aggressive or combative responses that might not otherwise occur.[231] Such conduct can also result in additional, non-IPV charges against the suspected abuser, such as resisting arrest or assaulting an officer.[232]

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227. See supra note 113 and accompanying text.

228. See supra section III.B.1 (explaining how this Note's proposed solution improves the administrability of *Randolph*'s disputed consent rule).

229. At the same time, if the officers have good reason to believe that the survivor's safety is at immediate risk and that warrantless entry is required to provide protection, the exigent circumstances doctrine will still provide officers the discretion and authority to act swiftly without a warrant.

230. See supra notes 182–186 and accompanying text.

231. See LaFave, Search and Seizure, supra note 44, § 11.4(j) (noting that "[o]n occasion, when the police conduct an illegal arrest or an illegal search, [it] will prompt the person arrested or subjected to the search to react by committing some criminal offense" such as attacking or threatening the officer). In such instances, courts have held that "evidence of this new crime" of attacking or threatening to attack the officer is admissible, even if the officers entered unlawfully. Id.

232. See, e.g., Bonivert v. City of Clarkston, 883 F.3d 865, 871 (9th Cir. 2018) (noting that Bonivert was arrested for assaulting an officer and resisting arrest, in addition to domestic violence assault in the fourth degree); People v. Wilkins, 17 Cal. Rptr. 2d 743, 745–46 (Ct. App. 1993) (noting that Wilkins was convicted of an IPV-related charge (willful infliction of corporal injury on a spouse) and two non-IPV related charges (taking a peace officer's weapon while obstructing him in the performance of his duties and forcibly resisting a peace officer in the performance of his duties)).

In the already dangerous and volatile environment created by IPV situations,[233] adoption of the Fourth and Tenth Circuits' interpretation would expand warrantless entries of the home, increase the likelihood of additional charges against potential defendants, and escalate the risk of deadly altercations. On the other hand, extending *Randolph*'s disputed consent rule beyond evidentiary searches and requiring officers to secure a warrant before entering a home in "non-exigent" IPV situations reinforces the Fourth Amendment's protection of home privacy and reduces the risk of physical altercations between suspected abusers and police.

4. *Balancing the Safety and Agency of Survivors.* — This Note recognizes the inherent tension in balancing safety, privacy, and agency in IPV situations. Although the potential for retaliation or reassertion of control following law enforcement involvement creates particularly dangerous risks to the survivor,[234] immediate arrest and prosecution may not always be the optimal course of action in all IPV scenarios. By extending *Randolph*'s disputed consent rule beyond evidentiary searches and statutorily requiring officers to remain with the survivor outside the home, this Note's proposed solution creates a brief window of opportunity that can secure the survivor's immediate safety, support their longer-term safety, and recover their sense of agency.

a. *Preserving Survivor Safety.* — The *Randolph* dissent warned that the disputed consent rule would inevitably transform a co-occupant's right to deny the police entry for an evidentiary search into a co-occupant's right to deny the police entry into the home entirely,[235] potentially trapping IPV survivors in the home at their abuser's discretion. As a result, the Fourth and Tenth Circuits' limitation of *Randolph*'s disputed consent rule can best be understood as judicial attempts to prevent disputed consent from unintentionally jeopardizing the safety of IPV survivors.

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233. In addition to the danger faced by potential victims, IPV situations also present an elevated risk of violence and death for responding officers and suspected abusers. See Nick Breul & Desiree Luongo, Making It Safer: A Study of Law Enforcement Fatalities Between 2010–2016, at 22–23 (2017), https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0858-pub.pdf [https://perma.cc/KU5N-RHR3] (finding that domestic dispute calls accounted for the largest share of line-of-duty fatalities from 2010 to 2016, comprising twenty-nine percent of 133 officer deaths); Sarah DeGue, Katherine A. Fowler & Cynthia Calkins, Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009–2012, 51 Am. J. Prev. Med. S173, S180 (2016) (finding that nearly fourteen percent of the 812 fatal shootings by police between 2009 and 2012 across seventeen states were related to intimate partner violence); Cassandra Kercher, David I. Swedler, Keshia M. Pollack & Daniel W. Webster, Homicides of Law Enforcement Officers Responding to Domestic Disturbance Calls, 19 Inj. Prevention 331, 332 (2013) (finding that thirty percent of the 116 officer fatalities resulting from domestic disturbance calls between 1996 and 2010 occurred after a struggle between the responding officer and the suspect).

234. See supra note 18 and accompanying text.

235. See Georgia v. Randolph, 547 U.S. 103, 139 n.2 (2006) (Roberts, C.J., dissenting).

The scope of this Note's analysis and proposed solution, however, is limited to "non-exigent" IPV situations in which the exigent circumstances exception is less likely to apply because a survivor is already outside the home and physically separated from the abuser. In such cases, *Randolph*'s disputed consent rule would not trap survivors inside the home with their suspected abusers or endanger their safety. While investigating past violence and preventing imminent harm remain essential to disrupting cycles of abuse and ensuring long-term safety, the exigency itself is generally mitigated once the survivor is no longer inside the home,[236] and the justification for immediate warrantless entry into the home becomes materially weaker.[237] At this point, warrantless entry to investigate domestic violence would no longer serve the immediate protective purpose intended by *Randolph*.[238] While the abusive relationship has not yet ended, this physical separation often provides officers with sufficient time to secure a warrant before entering the home, whether it be to investigate the dispute or arrest a suspected abuser. This Note's proposed solution ensures survivor safety without unnecessarily overriding privacy rights in the home.

In particularly volatile IPV situations, the timeliness of law enforcement intervention is crucial to the protection of survivors. Some courts have cautioned that a delay associated with obtaining a warrant could jeopardize a survivor's safety even when the survivor is physically outside the home because IPV situations can escalate rapidly into violence.[239] Advances in electronic warrant technology, however, have significantly

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236. See supra note 52 and accompanying text.

237. See, e.g., Vangel v. Szopko, 672 F. App'x 543, 546 (6th Cir. 2016) ("An exigency justifying warrantless entry is less apparent where, as here, the officers have information that the suspect is alone in the house."). But when officers have determined that they must act immediately to prevent further harm and do not have the time to secure a warrant before entering the home, the exigent circumstances doctrine is still available. See, e.g., State v. Morris, No. 18CA3638, 2019 WL 337008, at *1, *3–4 (Ohio Ct. App. Jan. 15, 2019) (holding that the officers' warrantless entry was justified under exigent circumstances, but not by consent, even though the survivor was outside the home when the officers arrived).

238. Since the *Randolph* majority uses the words "protect" or "protection" no fewer than five times in its two-paragraph discussion of domestic violence, the Supreme Court's overriding purpose seems to indicate that the safety of IPV survivors would not be sacrificed for the privacy interests of suspected abusers. See *Randolph*, 547 U.S. at 118–19 ("[T]his case has no bearing on the capacity of the police to protect domestic victims.").

239. See Fernandez v. California, 571 U.S. 292, 306–07 (2014) ("Even with modern technological advances, the warrant procedure imposes burdens on the officers who wish to search, the magistrate who must review the warrant application, and the party willing to give consent."); State v. Greene, 784 P.2d 257, 259 (Ariz. 1989) (en banc) ("To require an officer to obtain a search warrant before entering a dwelling in response to a domestic violence call would be a meaningless delay that could lead to the occurrence of otherwise preventable violence."); People v. Cole, No. A150572, 2017 WL 6507050, at *2 (Cal. Ct. App. Dec. 20, 2017) (noting that leaving the scene to obtain a warrant after midnight could pose "a significant risk" of "additional harm" to the victim and that leaving some officers on the scene with the victim while waiting for the warrant could also pose a safety risk to the victim and the officers).

reduced potential delays.[240] In fact, an empirical analysis of Utah's electronic warrant system from 2017 to 2020 found that the median time for review was just over three minutes, with one out of ten warrants being approved in sixty seconds or less.[241]

Warrant procedures, however, differ across jurisdictions. In addition, the time required to secure a warrant "has not [completely] disappeared"[242] because "[w]arrants inevitably take some time for police officers or prosecutors to complete and for magistrate judges to review" and "improvements in communications technology do not guarantee that a magistrate judge will be available when an officer needs a warrant after making a late-night arrest."[243] Importantly, this Note's proposed solution does not affect the availability of the exigent circumstances doctrine in IPV situations. Although the Fourth Circuit in *Trull* and the state court in *Cole* both seemed to analyze whether the application of *Randolph*'s consent rule would prevent the officers' warrantless entry from being justified by exigent circumstances,[244] consent and exigent circumstances remain separate exceptions to the Fourth Amendment's warrant requirement. Even if disputed consent cannot justify warrantless entry into the home, officers may still rely on exigent circumstances when a survivor faces imminent harm and there is insufficient time to secure a warrant.[245] Some state courts have even recognized that exigent circumstances may apply if survivors actively seek to reenter their home immediately following a physical altercation.[246]

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240. See Miguel F.P. de Figueiredo, Brett Hashimoto & Dane Thorley, Unwarranted Warrants?: An Empirical Analysis of Judicial Review in Search and Seizure, 138 Harv. L. Rev. 1959, 1964–66 (2025) (noting that most of the "only four empirical studies on the warrant application and review process conducted in the last forty-five years" "raised concerns about the speed at which warrants were reviewed and the high rates at which they were approved"). Advances in warrant technology have also been acknowledged by courts. See, e.g., Missouri v. McNeely, 569 U.S. 141, 173 (2013) (Roberts, C.J., concurring in part and dissenting in part) (describing an instance of "police officers . . . e-mail[ing] warrant requests to judges' iPads" and judges emailing signed warrants "back to officers in less than 15 minutes"). For a critique of how electronic warrants exacerbate the power imbalance between police and citizens, see generally Tracy Hresko Pearl, On Warrants & Waiting: Electronic Warrants & the Fourth Amendment, 99 Ind. L.J. 1 (2023).

241. See de Figueiredo et al., supra note 240, at 1967.

242. Mitchell v. Wisconsin, 139 S. Ct. 2525, 2539 (2019).

243. *McNeely*, 569 U.S. at 155.

244. See supra notes 94–95, 166 and accompanying text.

245. See supra section I.B; see also State v. Morris, No. 18CA3638, 2019 WL 337008, at *3–4 (Ohio Ct. App. Jan. 15, 2019) (holding that the officers' warrantless entry was not justified under the consent exception but was justified under the exigent circumstances exception).

246. See, e.g., People v. Wilkins, 17 Cal. Rptr. 2d 743, 749 (Ct. App. 1993) (finding the officer's belief that the survivor's "re-entry into the home or even her continuing presence on the premises outside the home would spark further violence by [Wilkins]" constituted exigent circumstances); People v. Mikrut, 864 N.E.2d 958, 962–63 (Ill. App. Ct. 2007) (finding officers were constitutionally entitled to assist IPV survivors in retrieving their belongings from the home but that "the intrusion had to be strictly circumscribed by the exigencies justifying its initiation" (citing People v. Lewis, 845 N.E.2d 39, 49 (Ill. App. Ct.

Thus, this Note's proposed expansion of *Randolph*'s disputed consent rule should not increase the risk of harm because exigent circumstances remain an independently valid justification for warrantless entry. In addition, this Note suggests statutorily requiring an officer to remain with the survivor outside the home until a warrant has been secured or alternative community-based measures have been initiated as a measure of precaution to ensure survivor safety.

b. *Maximizing Survivor Agency.* — This Note recognizes that a delicate balance exists between protecting a survivor's safety and agency in IPV situations. Ensuring a survivor's safety remains paramount, but ignoring personal conceptions of autonomy and privacy may unintentionally result in "disempower[ing] or endanger[ing] [IPV] survivors [who] lack[] resources to navigate the criminal justice system."[247] This Note's proposed solution of extending *Randolph*'s disputed consent rule and requiring a warrant for entry in "non-exigent" IPV situations seeks to balance survivor safety and agency by creating a brief window for discussion between survivors and officers.

Immediate investigation and arrest of the suspected abuser have been suggested as "the best, if not the only, way of preventing further injury" to IPV survivors.[248] In fact, twenty-two states and Washington, D.C., have mandatory arrest laws regarding domestic violence-related charges, seven states have preferred arrest laws, and twenty-one states have discretionary arrest laws.[249] This Note's proposed solution does not prevent officers from enforcing existing IPV laws. In states with mandatory arrest laws, a suspected abuser will still be arrested after the police demonstrate probable cause and obtain a warrant.

2006))). The effort of "securing . . . a warrant would necessarily have occasioned some delay" given the time of night, and that delay would render the survivor "vulnerable to further risk of physical harm" by Wilkins. *Wilkins*, 17 Cal. Rptr. 2d at 749. This reasoning echoes the majority in *Fernandez*, which noted that the Fourth Amendment does not grant an abuser the right to bar a survivor from controlling access to their own home. See Fernandez v. California, 571 U.S. 292, 307 (2014).

247. Karina Devi Etminani, Note, Hashtags, Handcuffs, and Hush Money: Inequitable Application of the Fourth Amendment in Electronic Surveillance, 22 UC L.J. Race & Econ. Just. 281, 294–95 (2025); see also Virginia Stulz, Lyn Francis, Anshu Naidu & Rebecca O'Reilly, Women Escaping Domestic Violence to Achieve Safe Housing: An Integrative Review, BMC Women's Health, May 31, 2024, at 1, 18–19 (analyzing nine articles on women's experiences escaping IPV to achieve safe housing and finding that "empowerment after leaving [IPV]" was essential to their recovery (internal quotation marks omitted)).

248. Tuerkheimer, supra note 18, at 817; see also Lisa G. Lerman, Expansion of Arrest Power: A Key to Effective Intervention, 7 Vt. L. Rev. 59, 60 (1982) (explaining that a policy of arrest may prevent further injury and communicate to abusers that the criminal justice system will act to stop the abuse).

249. 50 State Survey: Mandatory Arrests for Domestic Violence Cases, DC Just. Lab (Apr. 19, 2022), https://dcjusticelab.org/wp-content/uploads/2024/07/Mandatory-Arrests-50-State-Survey-April-19-2022.pdf [https://perma.cc/S293-TJJK].

At the same time, some studies have found that arrests and prosecutions may not be the only, or even best, means of protecting IPV survivors.[250] A legal paradigm that relies on the government unilaterally ending an intimate relationship—regardless of a survivor's own wishes[251]—risks reducing survivors to one-dimensional victims who are denied the ability to seek protection from violence *and* set boundaries around their homes and relationships.[252] Such a system ignores the complex reality that arrests and prosecutions can unintentionally harm some IPV survivors[253] and overlooks the existence of potential alternatives to the criminal justice system.[254] In fact, reliance on such carceral strategies has discouraged some survivors from reporting such violence in the first place.[255] In states with discretionary or preferred arrest laws, this Note's proposed solution of extending *Randolph*'s disputed consent rule beyond evidentiary searches

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250. See, e.g., Jeffrey Fagan, Nat'l Inst. Just., The Criminalization of Domestic Violence: Promises and Limits 25 (1996) ("There is little conclusive evidence of either deterrent or protective effects of legal sanctions or treatment interventions for domestic violence."); Radha Iyengar, Corrigendum to "Does the Certainty of Arrest Reduce Domestic Violence? Evidence From Mandatory and Recommended Arrest Laws", J. Pub. Econ., Nov. 2019, at 1, 2 ("[A]rrest policies related to intimate partner violence may not have the strong deterrent effect anticipated . . . .").

251. See Suk, supra note 27, at 12, 45, 52 (highlighting "the tension between protecting women from intimate violence and promoting their autonomy" that results in "a distinctive synergy between state control backed by the public interest and the derogation of individual autonomy").

252. See Dana Raigrodski, Consent Engendered: A Feminist Critique of Consensual Fourth Amendment Searches, 16 Hastings Women's L.J. 37, 59 (2004) ("One lesson from feminist jurisprudence lies in the rejection of simple dichotomies and the abandonment of the either/or that characterize our current jurisprudence."); Suk, supra note 27, at 122–23, 130–31 (highlighting that a feminist perspective embraces the woman as multidimensional, with legitimate interests in protection by police *and* expectations of privacy in her home).

253. See Kris Henning, Brian Renauer & Robert Holdford, Victim or Offender?: Heterogeneity Among Women Arrested for Intimate Partner Violence, 21 J. Fam. Violence 351, 352 (2006) (highlighting that dual arrest and mandatory arrest policies can intersect to create negative repercussions for IPV victims who are arrested, including "the loss of services designated for victims, (e.g., housing, restraining orders, victim's assistance, legal aid), employment problems, financial instability, and difficulties maintaining custody of their children").

254. See Leigh Goodmark, Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women, 23 St. Louis U. Pub. L. Rev. 7, 41–44 (2004) (explaining that "there are a number of promising [community-oriented] initiatives . . . that bypass the legal system altogether" and focus instead on prevention, education, screening, training, counseling, advocacy, and capacity building).

255. See Sarah Anderson & Lisel Petis, R Street, From Victim to Defendant: How Justice Falls Short for Women 15 (2025) ("Victims may fear the on-scene arrest of their abusers . . . [because] many victims are dependent on their abuser for financial support, childcare, and shelter . . . [and] may also fear retaliation . . . ."). In addition, the nuances of criminalizing IPV can affect women of color uniquely. See Tashayla Sierra-Kadaya Borden, Note, Criminalizing Abuse: Shortcomings of the DVSJA on Black Woman Survivorship, 124 Colum. L. Rev. 2065, 2081 (2024) (explaining how Black women in particular may hesitate to involve law enforcement in IPV situations because they fear discrimination, isolation, and even potential threats to themselves and their abusive partners).

and requiring a warrant to enter in "non-exigent" IPV situations creates a brief window of opportunity[256] for officers and survivors to discuss the survivor's preferences. Even in jurisdictions where warrants are approved quickly, the warrant requirement would still provide a short, structured pause in the officers' decisionmaking process that would otherwise likely be absent under a warrantless-entry approach. Although brief, this window of opportunity has the potential to shape IPV intervention strategies in ways that protect survivor safety and respect survivor agency.

CONCLUSION

Intimate partner violence poses a persistent challenge for Fourth Amendment doctrine, implicating both the need to protect survivors from further harm and the need to respect constitutional limits against unwarranted state intrusion of the home. When courts treat IPV as a categorical exigency instead of an ongoing relationship of abuse, they risk overlooking the nuanced, long-term needs of survivors and diluting constitutionally protected privacy in the home. Doctrinal ambiguity in "non-exigent" IPV situations leaves all parties without guidance in critically volatile moments when legal clarity and decisive action matter most.

This Note demonstrates that protecting privacy rights in the home does not necessarily undermine survivor safety. Instead, it recognizes that privacy considerations can coexist with, and even reinforce, effective intervention in abusive relationships. By clarifying the limits of warrantless entry and acknowledging the seriousness of "non-exigent" IPV situations, courts can better safeguard survivor safety and agency while preserving the legitimacy of Fourth Amendment protections.

256. A European study has documented a "window of opportunity after a violent incident" in which a professional collaboration among social workers, healthcare practitioners, and police officers can determine whether the suspected abuser should be arrested and how to best offer support and help to the survivor. See Mari Brännvall & Veronica Ekström, Immediate and Coordinated Responses to Domestic Violence: Exploring the Window of Opportunity Concept, 7 J. Gender-Based Violence 288, 289, 295 (2022) ("[A]gency is attributed to [the survivor] during the window of opportunity.").