The Perpetual Problem with Semantics: Reconciling Inconsistencies Amid *Payton*, *Steagald*, the Fourth Amendment, and Invasive Technologies

"[T]hat the police, acting alone and in the absence of exigent circumstances, may decide when there is sufficient justification for searching the home of a third party for the subject of an arrest warrant—would create a significant potential for abuse. Armed solely with an arrest warrant for a single person, the police could search all the homes of that individual's friends and acquaintances."[1]

I. INTRODUCTION

Embedded in the U.S. Constitution and its jurisprudence exists a deep belief that citizenry should be free from unwarranted government invasions of the home.[2] For over 200 years, courts have worked to develop law that balances the sanctity of privacy in the home with the government's interest in investigating, finding, and apprehending suspected felons.[3] Justifying law enforcement's violation of privacy when they enter a suspected felon's residence is uncomplicated; however, the issue becomes far murkier when a suspected felon is believed to be hiding in an innocent citizen's residence.[4]

1. Steagald v. United States, 451 U.S. 204, 215 (1981).

2. *See* U.S. CONST. amend. III (prohibiting forcibly quartering soldiers in citizens' homes); U.S. CONST. amend. IV (securing citizens' right to privacy and security from searches absent judicially approved probable cause); Payton v. New York, 445 U.S. 573, 601-02 (1980) (referring to Fourth Amendment's goal of eliminating chief misconduct of government intrusions of homes). Historically, the house is viewed as a commoner's equivalent to a castle, and within it, homeowners are protected from unwelcome intrusions and unjustified entries. *See* Semayne's Case (1604) 77 Eng. Rep. 194, 194 (K.B.) (explaining court's view of proper deference attributed to residences).

3. *See, e.g.*, *Steagald*, 451 U.S. at 224 (Rehnquist, J., dissenting) (quoting Camara v. Mun. Court, 387 U.S. 523, 537 (1967)) (reiterating resolving these issues depends on balancing need to search with level of invasion); *Payton*, 445 U.S. at 603 (Blackmun, J., concurring) (mentioning importance of balancing interests to reach proper decisions); Lynn Oliver Wenige, *Criminal Law and Procedure–Searches of Third Party Homes–Adequacy of Arrest Warrant to Protect Third Party's Privacy Rights*, Steagald v. United States, *451 U.S. 204 (1981)*, 49 TENN. L. REV. 652, 655 (1982) (asserting reasonableness standard based on competing societal interests of apprehending criminals and protecting privacy expectations). In English common law, which the United States later adopted into its own legal scheme, constables were men of "great authority" entrusted with carrying out the government's interest in apprehending criminals. *See Semayne's Case*, 77 Eng. Rep. at 198 (noting constables traditionally unlikely to abuse authority because of reverence for oath and office).

4. *See, e.g.*, *Steagald*, 451 U.S. at 214-15 (expressing concern over broad police discretion when applying *Payton*); United States v. Vasquez-Algarin, 821 F.3d 467, 472 (3d Cir. 2016) (turning to two governing decisions concerning arrest warrants used in lieu of search warrants); Wenige, *supra* note 3, at 658 (illuminating circuit court confusion regarding what standard to apply to third-party homes).

Motivated by a deep abhorrence for general warrants, the Framers created separate warrants for arrests and searches.[5] Each warrant protects differently situated interests: Arrest warrants ensure that probable cause that a suspect committed the crime exists before police make an arrest, while search warrants certify that there is probable cause that the legitimate object of a search will be located in a particular place.[6] Both protect against unjustified intrusions of one's property and person.[7] The foundational case, *Payton v. New York*,[8] held that an arrest warrant is sufficient to enter and search a suspected felon's residence if the officer has "reason to believe" the suspect resides at the dwelling and is present within at the time of entry.[9] *Payton* issues arise in both civil and criminal cases, in the form of civil rights violations and suppression of evidence motions, respectively.[10]

Steagald v. United States[11] refined *Payton* to protect the constitutional privacy rights of third-party homeowners who innocently host a suspected felon, by prohibiting officers from searching the residence solely with an arrest warrant for the guest within.[12] Consequently, police officers must obtain a separate warrant prior to commencing a search unless they reasonably believe that the suspected felon is in fact a resident of the home and is present within at the time of entry.[13] Nevertheless, this ambiguous reasonable belief standard has created a longstanding, diametric circuit split.[14]

5. *See Steagald*, 451 U.S. at 220 (summarizing constables' past use of general warrants and their lack of judicial oversight).

6. *See id.* at 213 (explaining different interests protected by arrest and search warrants).

7. *See* Steagald v. United States, 451 U.S. 204, 213 (1981) (describing protections provided by both types of warrants); *see also* U.S. CONST. amend. IV (codifying citizen protection from unwarranted government searches and seizures).

8. 445 U.S. 573 (1980).

9. *See id.* at 603. The Supreme Court held that an arrest warrant founded on probable cause implicitly carries with it a limited power to enter a suspect's dwelling when there is *reason to believe* that the suspect is both within the dwelling and resides there. *See id.* The Court's decision also implicitly suggests that, absent exigent circumstances, the Fourth Amendment prohibits officers from entering a suspected felon's residence without a warrant. *See* Matthew A. Edwards, *Posner's Pragmatism and* Payton *Home Arrests*, 77 WASH. L. REV. 299, 333 (2002).

10. *See* Edwards, *supra* note 9, at 337 (displaying various forms of *Payton* problems).

11. 451 U.S. 204 (1981).

12. *See id.* at 220-21. The Court ruled that absent consent or exigent circumstances, law enforcement agents must obtain a search warrant to search a third party's house for a suspected felon. *See id.* at 222 (deciding searches of third-party homes reasonably require search warrants). An arrest warrant is insufficient because it does not protect the privacy rights of the third party. *See id.* Thus, the constitutional issues at stake outweigh the inconvenience placed upon the government. *See id.* A search warrant will likely be granted upon the government proving it has reason to believe the suspect is within the third party's home. *See id.* at 221-22 (articulating warrant likely granted if sought based on adequate evidence). The issue lies within the fundamental question of whether "reason to believe" is a lower or equal standard to probable cause, an issue the *Steagald* decision sheds no light upon. *See id.* at 220-22 (discussing required reasonable belief standard, but never defining meaning comparatively to probable cause); Wenige, *supra* note 3, at 489.

13. *See Steagald*, 451 U.S. at 205-06, 222 (holding search warrant required to enter residence where suspected felon merely visiting). If the suspected felon is determined to be a resident of the dwelling and not a guest, then an arrest warrant is sufficient to search the dwelling. *See id.* at 221. Unfortunately, neither *Payton*

This Note addresses the varying arguments and interpretations of law surrounding the standard of proof required for law enforcement to deem a suspected felon a resident of a third party's home.[15] Specifically, it examines the circuit split regarding whether *Payton*'s reason-to-believe standard is less than or equal to traditional probable cause.[16] This Note also explains the recent transition in which the circuit split's historical minority became the new majority, alongside the rise of incredibly invasive surveillance technology.[17]

Section II.A of this Note provides a brief overview of the Fourth Amendment's genesis and the common-law rights of constables to execute arrest warrants.[18] Next, Sections II.B through II.E introduce and explain the *Steagald* and *Payton* holdings, the Supreme Court's relevant interpretations of law enforcement warrant authority under the common law, and the cases' applications and effects on the ability of law enforcement officials to rely on arrest warrants as limited, de facto search warrants.[19] Subsequently, each side of the circuit split is introduced, including the key arguments in defense of their "reason to believe" interpretation.[20] Then, Section II.G provides and explains the primary lens for this Note's analysis: *United States v. Vasquez-Algarin*.[21]

nor *Steagald* provide any guidance on how to determine the difference between a guest and a resident of a dwelling. *See* Edwards, *supra* note 9, at 334-35 (enumerating unresolved issues left open by *Steagald* and *Payton*).

14. *See* Circuit Review Staff, *Current Circuit Splits*, 3 SETON HALL CIR. REV. 191, 229-30 (2006) (explaining *Payton* circuit split and Sixth Circuit's interpretation of reasonable belief and probable cause).

15. *See infra* Sections II.F, III.B (analyzing relative merits and weaknesses of each faction of circuit split).

16. *See infra* Section II. *Compare* United States v. Werra, 638 F.3d 326, 337 (1st Cir. 2011) (implying reasonable belief represents less stringent standard than probable cause), *and* United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (holding reasonable belief lower standard because *Payton* Court deliberately did not use term probable cause), *on reh'g in part*, 179 F. App'x 60 (D.C. Cir. 2006) (per curiam), *and* Valdez v. McPheters, 172 F.3d 1220, 1224-25 (10th Cir. 1999) (deciding reasonable belief lower standard because equating to probable cause too burdensome on officers), *and* United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (following majority of circuits at time, ruling reasonable belief lesser than probable cause), *with* United States v. Vasquez-Algarin, 821 F.3d 467, 477 (3d Cir. 2016) (holding both standards equal because Court uses terms interchangeably), *and* United States v. Jackson, 576 F.3d 465, 469 (7th Cir. 2009) (explaining reasonable belief "grammatical analogue" of probable cause, but refraining from definitively deciding), *and* United States v. Barrera, 464 F.3d 496, 501 (5th Cir. 2006) (elaborating upon circuit precedent determining reasonable belief and probable cause embody same standard of reasonableness), *and* United States v. Gorman, 314 F.3d 1105, 1114-15 (9th Cir. 2002) (holding reasonable belief and probable cause embody same standard of reasonableness).

17. *See infra* Section II.H (explaining how new technology affects Fourth Amendment jurisprudence); *infra* Section III.D (analyzing how technology requires greater protection granted to homes).

18. *See infra* Section II.A (presenting history and holdings of Fourth Amendment jurisprudence).

19. *See infra* Sections II.B-E (outlining Supreme Court precedents and their subsequent interpretations); *see also* Steagald v. United States, 451 U.S. 204, 221-22 (1981) (creating standard for third-party home searches with arrest warrants alone); Payton v. New York, 445 U.S. 573, 603 (1980) (ruling arrest warrants inherently carry limited authority to search suspect's residence).

20. *See infra* Section II.F (introducing circuit split and opposing factions' rationales defending their interpretations).

21. *See infra* Section II.G; *see also* United States v. Vasquez-Algarin, 821 F.3d 467, 480 (3d Cir. 2016) (holding reasonable belief equivalent to probable cause, joining four other sister circuits).

Finally, Section II.H provides for the necessity of court-promulgated rules to ensure constitutional protection against invasive technologies.[22]

Section III.A begins with a synthesis of the historically supported common-law rights of constables to arrest according to *Payton* and *Steagald*.[23] This Note then compares the merits of each circuit's arguments and their consistency with Fourth Amendment jurisprudence.[24] Then, this Note assesses the level of constitutional accuracy and persuasion implemented in the *Vasquez-Algarin* decision.[25] This Note concludes with two assertions: First, the Third Circuit decided *Vasquez-Algarin* correctly and, second, Fourth Amendment jurisprudence is moving toward stricter residential protections due to invasive technology, which renders privacy more difficult to safeguard.[26]

II. HISTORY

A. The Fourth Amendment and the English Common-Law Right of Constables to Arrest

Like much of American law, the Fourth Amendment and law enforcement's authority to arrest spawn from the merits and mistakes of English common law.[27] *Semayne's Case*,[28] an antiquated yet quintessential common-law case, influenced the legal right of constables to arrest and shed light on many of the injustices the Fourth Amendment seeks to prevent.[29] Precedent building from

22. *See infra* Section II.H.

23. *See infra* Section III.A (explaining Court disagreements concerning constables' rights to arrest).

24. *See infra* Section III.B (comparing persuasiveness and constitutional consistency of each circuit split's position).

25. *See infra* Section III.C (reviewing *Vasquez-Algarin* decision for consistency with case law and level of persuasion).

26. *See infra* Part IV (summarizing Note's key arguments and ideas).

27. *See* Payton v. New York, 445 U.S. 573, 591-99 (1980) (highlighting majority's reliance on common law for arguments); *id.* at 607-15 (White, J., dissenting) (concluding common law and Fourth Amendment history unsupportive of majority's holding). The Fourth Amendment's creation was deeply influenced by the Framer's abhorrence for general warrants. *See* Steagald v. United States, 451 U.S. 204, 220 (1981); *Payton*, 441 U.S. at 583-84. General warrants merely state an offense and leave who to detain, where to search, and what to seize solely to the discretion of the constable. *See Steagald*, 451 U.S. at 220. As a result, the Fourth Amendment requires specificity as to the subject of the warrant. *See* U.S. CONST. amend. IV (requiring warrants "particularly describ[e] . . . place to be searched" or "persons or things to be seized"). Not all common law existing at the time of the Constitution's ratification was inherently adopted into the American legal system; on the contrary, the Framers omitted principles they deemed unjust or unfit for their new nation. *See Payton*, 445 U.S. at 591 n.33.

28. Semayne's Case (1604) 77 Eng. Rep. 194 (K.B.).

29. *See id.* (outlining constables' rights concerning authority to search and arrest). Under the common law, constables could forcibly enter a suspect's residence to execute the King's process, as long as the constable announced his authority and provided time for the suspect to comply. *See id.* Felony suspect arrests in the home required no warrant because the King's interest in apprehending felons rendered the warrant *non omittas propter aliquam libertatem*. *See id.* at 196 (meaning constables' arrest powers supersede opposing freedoms). Today, our law enforcement officers are imbued with similar authority to execute warrants on behalf of the government and are even allowed to perform warrantless searches and arrests under limited

Semayne's Case recognizes the need to loosen constitutional protections to provide officers with enough authority and flexibility to adequately perform their duties.[30] One prime example of this balance between constitutional protections and law enforcement authority is the limitation of protections when constables are pursuing suspects.[31] Nevertheless, these limitations are not without disagreement; for instance, there is a notable schism in circuit courts concerning a constable's right to forcibly enter a third-party residence to execute an arrest warrant.[32]

B. Payton v. New York

The Court's well-reasoned, yet vague, decision in *Payton* is the source of the circuit split regarding whether probable cause or reasonable belief is needed for law enforcement to enter a home in search of a felony suspect with only an arrest warrant.[33] In *Payton*, the Court joined two similar cases that challenged

circumstances. *See Steagald*, 451 U.S. at 214-16 (ruling warrantless searches impermissible absent consent or exigent circumstances); *id.* at 218 (reiterating "hot pursuit" of felons constitutes exigent circumstance); *see also* 18 U.S.C. § 3109 (2012) (codifying officers' right to forcibly enter residences under justifiable circumstances). *But see* John F. Decker, *Emergency Circumstances, Police Responses, and Fourth Amendment Restrictions*, 89 J. CRIM. L. & CRIMINOLOGY 433, 436 (1999) (noting warrantless searches presumptively unconstitutional). The "hot pursuit" exigency allows for officers to enter any residence in which the fleeing felon seeks refuge. *See* Wenige, *supra* note 3, at 656 n.26. The Framers exalted privacy of the home so greatly that they recognized constitutional privacy rights for buildings bordering, but related to the house, known as curtilage. *See* United States v. Mullin, 329 F.2d 295, 298-99 (4th Cir. 1964) (holding defendant's smokehouse within residence's curtilage, thus constitutionally protected); *see also* Robert C. Power, *Technology and the Fourth Amendment: A Proposed Formulation of Visual Searches*, 80 J. CRIM. L. & CRIMINOLOGY 1, 38 (1989) (noting what constitutes traditional curtilage).

30. *See Steagald*, 451 U.S. at 205-06 (recognizing warrants not required for searches under exigent circumstances or consent); *Semayne's Case*, 77 Eng. Rep. at 195 (holding officers merely must knock and announce before forcibly entering residences).

31. Wenige, *supra* note 3, at 656 n.26 (reiterating right of officers to break into residences while in hot pursuit).

32. *See Steagald*, 451 U.S. at 217-21 (displaying majority interpretation of common-law constables' power); *id.* at 227-31 (Rehnquist, J., dissenting) (providing dissent's view of common-law authority of constables). The dissent in *Steagald* emphasizes the common-law obligation of the populace to help law enforcement achieve its duty, while the majority focuses on constitutional privacy protections influenced by the common law. *See id*. at 218 (majority opinion); *id*. at 227 (Rehnquist, J., dissenting). The dissent in *Payton* disagrees with the majority that common-law commentators and the Framers would have prohibited the warrantless entry into a felon's house. *See Payton*, 445 U.S. at 603 (arguing arrest warrant implies limited right to enter suspect's home); *id.* at 607 (White, J., dissenting) (arguing felon's house reasonably subject to warrantless searches).

33. *See* Payton v. New York, 445 U.S. 573, 603 (1980) (implementing reason-to-believe standard but not explaining level of proof). The Court's decision to allow the legal community to discern the meaning of this standard caused a lack of uniformity in lower court decisions. *See* James J. Franklin, Note, Payton*'s Probable Cause: Why Probable Cause and "Reason to Believe" Represent and Should Represent the Same Reasonableness Standard*, 70 U. PITT. L. REV. 487, 487-88 (2009) (claiming circuit courts vague and inconsistent when applying *Payton*); *see also* C.M.A. McCauliff, *Burdens of Proof: Degrees of Belief, Quanta of Evidence, or Constitutional Guarantees?*, 35 VAND. L. REV. 1293, 1327 tbl. 3 (1982) (displaying percentages to demonstrate federal judges' disparate understanding of reason-to-believe standard). McCauliff's poll states that ninety-six out of 166 federal judges believe that reasonable belief requires 40% certainty or less by

a New York statute allowing officers to enter private residences without a warrant, by force if necessary, to make an arrest.[34] The Court found this statute violated petitioner's constitutional privacy rights, and required from officers an arrest warrant and the satisfaction of a novel two-prong test (*Payton* test).[35] When analyzing whether police officers could enter the third-party residence in question, the Court employed a reasonable belief standard, but never elaborated on its significance or relationship to probable cause.[36]

C. Steagald v. United States

Nevertheless, in *Steagald v. United States*, the Court grappled with applying the *Payton* test to searches of third-party homes in execution of felony arrest warrants.[37] In *Steagald*, officers forcibly entered a third party's residence, believing the subject of their arrest warrant was inside, but instead found large

officers, another 25% indicated 50% certainty was required, and a minority of about 19% felt that the standard required 60% or more certainty. *See* McCauliff, *supra*, at 1327 tbl. 3. In an unrelated Fourth Amendment issue known as *Terry* stops, reasonable belief is overtly recognized as a lesser standard than probable cause. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968); *see also* Alabama v. White, 496 U.S. 325, 330 (1990) (claiming reasonable suspicion lower standard than probable cause); Edwards, *supra* note 9, at 363-67 (explaining how reasonable belief standard applies to *Terry* stops).

34. *See Payton*, 445 U.S. at 574. Officers forcibly entered and arrested both Theodore Payton and Obie Riddick absent any type of warrant, as allowed under the state statute. *See id.* at 576-78.

35. *See id.* at 603 (holding statute contrary to Fourth Amendment privacy concerns). After realizing that the procurement of a search warrant is unreasonably burdensome, the Court ruled an arrest warrant inherently carries limited authority to search the subject's residence as long as the officers have a reasonable belief that the suspect is present at the time of entry. *See id.* at 602-03 (appreciating "interpos[ition] [of] . . . magistrate's determination of probable cause between the zealous officer and . . . citizen"). The Court held that it is constitutionally reasonable to require the subject of an arrest warrant to open their doors to officers of the law. *See id.* Despite the "reasonable belief" standard only being applied to determine if the suspect is located within by the *Payton* Court, subsequent courts applied the same standard to discern whether the suspect is a resident of the dwelling. *See* Valdez v. McPheters, 172 F.3d 1220, 1224-25 (10th Cir. 1999) (recognizing how courts impose reasonable belief on both prongs of *Payton* test). Thus, the Court created the precarious two-prong *Payton* test: An arrest warrant can be used as a limited search warrant so long as officers harbor a reasonable belief that the suspect resides at the dwelling, and officers reasonably believe that the suspect is present within the dwelling at the time of entry. *See Payton*, 445 U.S. at 602-03. Satisfying this test involves a commonsense approach of considering all the facts in their totality, with no one factor being dispositive. *See* United States v. Veal, 453 F.3d 164, 167-68 (3d Cir. 2006) (articulating review based on totality of the circumstances).

36. *See Payton*, 445 U.S. at 603 (holding need for reasonable belief but not defining standard); *see also* Ornelas v. United States, 517 U.S. 690, 696 (1996) (explaining both standards impossible to articulate due to fluidity and reliance on surrounding facts). Circuit courts have openly recognized the lack of clarity with this standard and have employed their own interpretations. *See, e.g.*, United States v. Hardin, 539 F.3d 404, 412 (6th Cir. 2008) (recognizing yet another contentious interpretation of *Payton*); United States v. Barrera, 464 F.3d 496, 501 (5th Cir. 2006) (noting *Payton* Court never defined reason-to-believe standard); United States v. Gorman, 314 F.3d 1105, 1112 (9th Cir. 2002) (stating *Payton* standard "far from clear").

37. *See* Steagald v. United States, 451 U.S. 204, 211-12 (1981) (narrowing issue to whether arrest warrant adequately protected homeowner's constitutional privacy rights). The Court concluded that *Payton*'s holding, which allows arrest warrants to carry limited authority to search dwellings, does not adequately protect a third-party homeowner's Fourth Amendment rights. *See id.* at 213.

amounts of cocaine belonging to the homeowner.[38] Concerned about the constitutional privacy rights of third-party homeowners, the Court found the search unconstitutional and required that police officers obtain a separate warrant before searching third-party residences for suspected felons.[39] Consequently, *Steagald* ensured the privacy rights of third parties, but shed no light on either the meaning of *Payton*'s reasonable belief standard or the determination of resident versus guest status.[40]

D. The Common Law of Home Searches

Courts grappling with controversies regarding privacy for third-party residences routinely seek illumination from the majority opinions (Majority Opinions) and dissenting opinions (Dissents) of *Steagald* and *Payton*.[41] The two sides' different understandings of the Framer's intent concerning warrants and the common-law authority of constables has only proliferated the current circuit split.[42]

38. *See id.* at 206-07 (explaining what officers found at appellant's residence). A criminal informant tipped off detectives regarding the whereabouts of a felony suspect, Ricky Lyons. *See id.* at 206. Armed solely with an arrest warrant, detectives arrived at Gary Steagald's house and searched it without consent or the existence of exigent circumstances. *See id.* at 206, 209. Lyons was not inside, but during a protective sweep, the officers found cocaine. *See id.* at 206. Upon procuring a search warrant, a further search revealed forty-three pounds of cocaine, which Steagald moved to suppress due to the allegedly unconstitutional entry and search. *See id.* at 206-07.

39. *See id.* at 222 (noting consistency of decision with constitutionally guaranteed rights). The Court ruled that an arrest warrant unrelated to the homeowner does not adequately protect their rights, and feared the potential for law enforcement abuse. *See id.* at 215. Thus, the Court concluded that in these third-party homeowner situations, officers must obtain a separate search warrant for the residence before searching for the suspected felon within. *See id.* at 205-06. Implicitly, only the *Payton* test, and not *Steagald*'s holding, applies if the officers have *reason to believe* the visiting, suspected felon actually resides at the residence and is within at the time of entry. *See id.* at 221; United States v. Gay, 240 F.3d 1222, 1226 (10th Cir. 2001) (explaining if police reasonably believed suspected felon resident of house then no search warrant required).

40. *See* Wenige, *supra* note 3, at 669 (observing existence of issues even after *Steagald* decision); *see also* Edwards, *supra* note 9, at 335 (lamenting over frustrations caused by *Payton* and *Steagald* decisions). Despite remarkably developing Fourth Amendment jurisprudence, both *Steagald* and *Payton* left the legal community to interpret and resolve the new issues they created. *See* Edwards, *supra* note 9, at 334-35. This ambiguity has led to varying treatment of the *Payton* standard throughout circuits. *See* United States v. Harper, 928 F.2d 894, 896-97 (9th Cir. 1991) (holding officers possessed probable cause to believe suspect within residence), *overruled by* United States v. King, 687 F.3d 1189 (9th Cir. 2012); United States v. Jones, 641 F.2d 425, 429 (6th Cir. 1981) (holding probable cause standard not satisfied to believe suspect present within residence). *But see* United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (requiring standard lower than probable cause for *Payton* test); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (articulating reason-to-believe standard constitutes lower burden than probable cause when applied to *Payton* test).

41. *See, e.g.*, *Thomas*, 429 F.3d at 286 (relying on guidance from language of *Payton*); United States v. Gorman, 314 F.3d 1105, 1114 (9th Cir. 2002) (gleaning insight on issue from Justice White's dissent); United States v. Magluta, 44 F.3d 1530, 1536 (11th Cir. 1995) (assessing standard to implement by reviewing *Payton*).

42. *See infra* Section II.F (explaining current circuit split and topic of this Note). *Compare Steagald*, 451 U.S. at 217-19 (relying on common law in deciding whether warrantless searches of third-party residences permitted), *and* Payton v. New York, 445 U.S. 573, 585, 616-17 (1980) (determining history of Fourth Amendment evidences intent to protect against more than just general warrants), *with Steagald*, 451 U.S. at 227 (Rehnquist, J., dissenting) (disagreeing whether warrantless entries permitted for third-party residence), *and*

One prime difference is that the Dissents rely more heavily on common law at the time of ratification than the Majority Opinions.[43] The Dissents argue that hundreds of years of common law evolution makes clear that officers may forcibly enter a residence without a warrant to effect an arrest upon meeting four requirements.[44] These criteria are: the arrest is pursuant to a felony; the arresting officers knock and announce their purpose during daylight hours; the officers have probable cause to believe the suspect who committed the felony is within the residence; and the officers are refused admittance.[45] Arguably, these safeguards adhere to the expectations of the Fourth Amendment and powerfully protect the privacy of the home.[46] Nevertheless, the Dissents believe that officers have "great original and inherent authority" to execute arrests and that warrants work to enhance their authority, not restrict it.[47] While the Dissents conclude that common law legitimately balances the needs of law enforcement with constitutional privacy interests, the Majority Opinions disagree.[48]

The Majority Opinions and the Dissents also vehemently disagree on a handful of common law and constitutional considerations integral in assessing

Payton, 445 U.S. at 616-17 (White, J., dissenting) (disagreeing whether Fourth Amendment prohibits or allows warrantless searches absent extraordinary circumstances).

43. *See* United States v. Steagald, 451 U.S. 204, 217-18 (1981) (stating what searches Framers would find reasonable instructive); *Payton*, 445 U.S. at 591 (stating Framers' intent dispositive on reasonableness of searches). *But see Steagald*, 451 U.S. at 227 (Rehnquist, J., dissenting) (stating what searches Framers would find reasonably important); *Payton*, 445 U.S. at 604 (White, J., dissenting) (articulating common law at time of ratification "highly relevant" to issue at hand). Strict adherents to common law at the time of ratification believe their opponents put too much stock in the old maxim a "man's home is his castle," especially in the context of criminal cases. *See Steagald*, 451 U.S. at 229-30 (Rehnquist, J., dissenting) (explaining this phrase does not answer all residence-related controversies).

44. *See Payton*, 445 U.S. at 616 (White, J., dissenting) (articulating procedure for warrantless entry arrests under common law).

45. *See id.* The Dissents believe that Congress did not expressly codify the procedure for arrests because the common law was so deeply engrained in the American legal framework. *See id.* at 615; *see also* 18 U.S.C. § 3109 (2012) (codifying, debatably, Justice White's interpretation of common-law warrantless, forcible-entry arrest). In fact, Justice White states that there were no challenges to these criteria for warrantless, forcible-entry arrests in the nineteenth century. *See Payton*, 445 U.S. at 611 (White, J., dissenting). The Dissents even declare these common-law safeguards adequate to protect the privacy of third-party residences. *See Steagald*, 451 U.S. at 227 (Rehnquist, J., dissenting).

46. *See Payton*, 445 U.S. at 616-17 (White, J., dissenting) (explaining how this procedure adequately safeguards privacy protections and prevents abuse). The felony requirement prevents abuse, since the warrantless procedure can only be justified in cases of serious crimes. *See id.* at 616-17. The knocking, announcing, and daytime requirements protect people against fear and embarrassment by providing notice to those within the residence. *See id.* at 617. Finally, requiring probable cause reduces the arbitrary implementation of this procedure. *See id.*

47. *See id.* at 605 (stating constables do not need warrants to exercise inherent powers). The Dissents argue that the Framers intended probable cause to be the main vehicle for officers to execute their official duties, not warrants. *See id.* at 621 (Rehnquist, J., dissenting). Further, officers' powers inherently exist and can be supplemented by warrants issued by justices of the peace. *See id.* at 605, 607 (White, J., dissenting).

48. *See* Payton v. New York, 445 U.S. 573, 620 (1980) (White, J., dissenting) (recognizing hundreds of years of common-law evolution accurately balances competing interests).

the *Payton*-promulgated reason-to-believe standard.[49] First, the two sides conflict both in the interpretation of and the amount of deference given to common law in the context of police power and constitutional privacy protections.[50] Second, the Majority Opinions argue that the Fourth Amendment's warrant requirement is meant to restrict officers' powers, whereas the Dissents believe warrants expand officers' powers beyond what they inherently possess.[51] Lastly, while the two sides agree that what the Framers would deem reasonable is dispositive, they diverge in *what* the Framers would deem reasonable.[52]

E. The Aftermath and Application of Payton *and* Steagald

After *Steagald*, the relationship of the suspected felon to the residence in question became the determining factor in deciding whether the *Payton* or *Steagald* rule should be applied.[53] Accordingly, if officers reasonably believe the suspected felon is a resident, then an arrest warrant is sufficient to enter the home; conversely, if the officers do not suspect the felon is a resident, then a search warrant is required to enter.[54] Regardless of what a court deems the

49. *See id.* at 588-89 (majority opinion) (stating invasion of home too substantial to not require warrant). *But see id.* at 616 (White, J., dissenting) (stating warrantless, forcible arrests clearly allowed under common law).

50. *See supra* note 43 (noting Majority Opinions find common law merely instructive while Dissents rely on it). The Dissents rely heavily on *Semayne's Case*, but the Majority Opinions note that the case is rife with ambiguous and unascertainable language. *See* Steagald v. United States, 451 U.S. 204, 217-19 (1981) (pointing out uncertain meaning of "upon pursuit," "flies," and "seeks refuge"). Even the greatest legal minds at the time of ratification disagreed about officers' power under *Semayne's Case*. *See Payton*, 445 U.S. at 594-96 (noting Blackstone, Coke, and Chitty disagreed over validity of warrantless searches). Because this area of the law was unsettled at the time of the Constitution's ratification, the Majority Opinions believe it is informative but not persuasive. *See id.* at 598 (concluding unsettled common law of little guidance in current controversy).

51. *See Payton*, 445 U.S. 588-89 (explaining substantial invasions need protective warrants); *id.* at 607-08 (White, J., dissenting) (stating warrant tool for law enforcement to expand powers). The Dissents explain that the officer has inherent powers, and that justices of the peace can increase his authority through warrants. *See id.* at 607-08. In the view of the Majority Opinions, the deliberate attention paid to warrants in the language of the Fourth Amendment demonstrates that officials abused their discretion prevalently, and warrants were created to interpose a neutral magistrate to reduce abuse. *See id.* at 602-03 (majority opinion).

52. *See id.* at 591 (recognizing importance of adhering to Framer's standard of reasonableness); *see also Steagald*, 451 U.S. at 227 (Rehnquist, J., dissenting) (claiming searches found reasonable by Framers dispositive on search's constitutionality). The Majority Opinions believe that the Framers abhorred warrantless searches of third-party homes, while the Dissents claim common law at the time of ratification would allow for such searches. *See Steagald*, 451 U.S. at 220 (holding Framers would not allow third-party, warrantless searches); *id.* at 227 (Rehnquist, J., dissenting) (indicating common law dictates such searches reasonable under Fourth Amendment).

53. *See* United States v. Gay, 240 F.3d 1222, 1226 (10th Cir. 2001) (noting determination of what case controls hinges on whether felon equates to resident or guest); *see also* Sarah L. Klevit, Recent Developments, *Entry to Arrest a Suspect in a Third Party's Home: Ninth Circuit Opens the Door*—United States v. Underwood, *717 F.2d 482 (1983), cert. denied, 104 S. Ct. 1309 (1984)*, 59 WASH. L. REV. 965, 972-73 (1984) (explaining when and how *Payton* and *Steagald* apply). The answer to the first prong of the *Payton* test determines which authority controls. *See Gay*, 240 F.2d at 1226.

54. *See Gay*, 240 F.2d at 1226 (explaining significance of first prong determination).

reason-to-believe standard to be, the satisfaction of the standard ultimately dictates the level of protection the residence is afforded.[55] The ambiguous and inconsistently applied reason-to-believe standard governs the most pivotal determination made in these kinds of cases: whether the suspected felon is a resident or a guest of the residence in question.[56] Analyzing the two prongs of the *Payton* test requires a common-sense analysis of the totality of the circumstances.[57] There is no established definition of residency, but courts treat people as residents of a home when they "'possess[] common authority over, or some other significant relationship to,' the residence entered by police."[58] Some determinative factors that courts examine include where the suspected felon receives mail and pays bills, the relationship between the suspected felon and the recognized homeowner, and whether officers received information from a reliable informant.[59] Nevertheless, courts recognize that a

55. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 473 (3d Cir. 2016) (determining suspect's relationship to residence dispositive of protection afforded). An officer's reasonable belief can, in fact, turn out to be incorrect, as long as the surrounding circumstances sufficiently support the officer's determination. *See Gay*, 240 F.3d at 1226; Valdez v. McPheters, 172 F.3d 1220, 1225 (10th Cir. 1999).

56. *See* Steagald v. United States, 451 U.S. 204, 230-31 (1981) (Rehnquist, J., dissenting) (foreseeing loophole in separate search warrant requirement if felon determined resident); *Vasquez-Algarin*, 821 F.3d at 473 (ruling level of protection afforded to residence related to residency status); Edwards, *supra* note 9, at 339-40 (recognizing *Payton*'s importance in state and federal court decisions and its vague standard). Not only is resident status determinative of the protection afforded, but it also establishes who can bring claims for *Steagald* or *Payton* violations. *See* United States v. Underwood, 717 F.2d 482, 483-84 (9th Cir. 1983). The *Underwood* court held:

> A person has no greater right of privacy in another's home than in his own. If an arrest warrant and reason to believe the person named in the warrant is present are sufficient to protect that person's Fourth Amendment privacy rights in his own home, they necessarily suffice to protect his privacy rights in the home of another.
>
> The right of a third party *not* named in the arrest warrant to the privacy of his home may not be invaded without a search warrant. But this right is personal to the home owner and cannot be asserted vicariously by the person named in the arrest warrant.

Id. at 484 (citations omitted). Thus, only a third-party homeowner can bring a claim or assert a defense based on *Steagald*, because a suspected felon has no privacy interest and he cannot vicariously assert the third party's violated rights. *See id.*; *see also* Minnesota v. Olson, 495 U.S. 91, 95-97 (1990) (illuminating standing issue inherent in *Steagald*). In sum, the suspected felon-visitor cannot bring a claim or suppression motion based on *Steagald*, but the innocent third-party homeowner, suffering a constitutional violation, can. *See Underwood*, 717 F.2d at 484.

57. *See* United States v. Veal, 453 F.3d 164, 167-68 (3d Cir. 2006); Edwards, *supra* note 9, at 341 (pointing out analysis of *Payton* test not philosophical but common-sense inquiry).

58. *Valdez*, 172 F.3d at 1225-26 (quoting United States v. Risse, 83 F.3d 212, 217 (8th Cir. 1996)) (describing residency fluid concept because of people's inherent mobility).

59. *See, e.g.*, *Veal*, 453 F.3d at 168 (holding suspect's wife's apartment constitutes his residence under test); *Valdez*, 172 F.3d at 1228 (holding suspect's mother's house also his residence under test); United States v. Risse, 83 F.3d 212, 216-17 (8th Cir. 1996) (ruling suspect's prolonged stay and relationship to boyfriend-homeowner enough to establish residency); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (concluding information from consistently reliable criminal informant enough to establish reasonable belief of suspect's residency).

person can have more than one legally cognizable residence, further confusing the concept of residency.[60]

The establishment of residency, or lack thereof, is only half the *Payton* test; the officers must also reasonably believe the suspect is inside the home at the time of entry.[61] Determinative factors for this analysis include the presence of the suspect's vehicle, the time of search, unexplainable noises from within the residence, and information from a reliable informant.[62] In limited circumstances and in the absence of any of these factors, a suspect's fugitive status is considered because pursuit by law enforcement motivates suspects to avidly conceal themselves.[63] Yet, none of these factors alone are dispositive and each case requires a thorough analysis of its particular circumstances.[64]

F. Current Circuit Split

Federal circuit courts disagree on what *Payton*'s reason-to-believe standard represents.[65] Roughly half of the circuit courts believe the standard equates to probable cause (equal-to faction), while the other half believes it represents a lesser standard (less-than faction).[66] In support of its belief, the less-than faction relies heavily on two considerations.[67] First, the *Payton* Court deliberately used "reason to believe" instead of "probable cause" because it

60. *See Steagald*, 451 U.S. at 230-31 (Rehnquist, J., dissenting) (recognizing possibility of concurrent residences); *Risse*, 83 F.3d at 217 (observing possibility of having more than one residence). Paying bills and receiving mail at one address does not preclude the potential of establishing residency at another address. *See Risse*, 83 F.3d at 217.

61. *See* Payton v. New York, 445 U.S. 573, 603 (1980) (acknowledging requirement to believe suspect present within to justify arrest-warrant searches); *see also* Valdez v. McPheters, 172 F.3d 1220, 1225 (10th Cir. 1999) (noting application of reason-to-believe standard to both *Payton* test prongs).

62. *See* Edwards, *supra* note 9, at 345-47 (listing factors and case examples of officers determining presence of suspected felon within residence); *see also* United States v. Werra, 638 F.3d 326, 337 (1st Cir. 2011) (holding reasonable to believe particular unemployed suspect likely home at 10 a.m.); United States v. Barrera, 464 F.3d 496, 499 (5th Cir. 2006) (ruling suspect's vehicle parked outside residence provided reason to believe suspect was home); *Veal*, 453 F.3d at 168 (holding unexplained noise within residence provided reasonable belief suspect present); *Lauter*, 57 F.3d at 215 (deciding reliable informant's information sufficient to create reasonable belief of presence). *But see Werra*, 638 F.3d at 337-38 (ruling informant's information unreliable because too vague).

63. *See* United States v. Magluta, 44 F.3d 1530, 1538 (11th Cir. 1995) (affirming defendant's fugitive status justified entry though officers lacked visual confirmation of defendant's presence). Though this factor is not dispositive of presence, the existence of fugitive status diminishes the destructive tendency a lack of suspect sighting has against officers' reasonable belief that the defendant is actually present. *See* Edwards, *supra* note 9, at 347-48 (noting fugitives' tendency to evade police).

64. *See* United States v. Veal, 453 F.3d 164, 168 (3d Cir. 2006) (reiterating each case requires consideration of circumstances and facts in their totality); *see also* Edwards, *supra* note 9, at 341-48 (listing potential factors used by courts).

65. *See* Circuit Review Staff, *supra* note 14, at 229-30 (noting circuit split related to *Payton* standard).

66. *See id.* (highlighting circuit split regarding *Payton*'s reason-to-believe standard). The First, Second, Tenth, and D.C. Circuits recognize reasonable belief as less than probable cause, while the Third, Fifth, Sixth, Seventh, and Ninth Circuits interpret the two standards as equivalent. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 474-76 (3d Cir. 2016) (listing respective circuit courts' split positions and arguments).

67. *See infra* notes 68-69 and accompanying text (outlining support for less-than faction's arguments).

intended the phrases to represent different standards.[68] Second, the *Payton* Court likely believed that the "inherent mobility of fugitives," the cost of surveillance, and the compelling need to apprehend fugitives and reduce crime rates outweighed any "countervailing privacy interests of the third party."[69] Nevertheless, the less-than faction may soon become a thing of the past: Treating the reasonable belief and probable cause standards as equal represents a newer trend in Fourth Amendment jurisprudence that not every circuit has had the opportunity to reconsider.[70]

A number of circuit courts mobilized the jurisprudential shift that reasonable belief and probable cause are equal standards through very convincing and matter-of-fact arguments.[71] First, the equal-to faction references the Supreme Court's interchangeable use of probable cause and reasonable belief in a variety of judicial decisions (grammatical analogue).[72] Second, these circuit courts note that the same standard of reasonableness and level of proof are required for both reasonable belief and probable cause, thus equating the two into a single, uniform standard.[73] Most prominently, these courts claim that treating

68. *See* United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (recognizing Court's deliberate use of reasonable belief in *Payton*); Franklin, *supra* note 33, at 491 (noting Court could have used probable cause if such standard intended).

69. *See* Wenige, *supra* note 3, at 666 (explaining *Steagald* dissent's reasoning). Due to the lack of explanation by the Court concerning the reason-to-believe standard, circuits have often looked to the dissents in *Steagald* and *Payton* for clues. *See* Steagald v. United States, 451 U.S. 204, 225-26 (1981) (Rehnquist, J., dissenting) (describing compelling government interests inherent in executing arrest warrants); Wenige, *supra* note 3, at 668-69 (listing circuit cases providing less protection than *Steagald* requires).

70. *See* Valdez v. McPheters, 172 F.3d 1220, 1224 (10th Cir. 1999) (noting only one circuit treats standards equally). The poorly explained reasoning of a single court did not convince others to dispense with the five-circuit, majority consensus treating the standards as different. *See id*. at 1224-25 (deciding Ninth Circuit's reasoning inadequate to justify following); *see also Thomas*, 429 F.3d at 286 (noting five circuits labeled standards different). Yet, as we entered the new millennium, many circuits began to join the Ninth Circuit in their interpretation of *Payton*'s reason-to-believe standard. *See e.g*., United States v. Jackson, 576 F.3d 465, 469 (7th Cir. 2009) (hinting court would join equal-to faction if case required such a decision); United States v. Barrera, 464 F.3d 496, 501-02 (5th Cir. 2006) (recognizing probable cause and reasonable belief embody same standard of reasonableness); United States v. Gorman, 314 F.3d 1105, 1112 (9th Cir. 2002) (improving Ninth Circuit's previous reasoning and creating more solid analytical foundation).

71. *See Vasquez-Algarin*, 821 F.3d at 474-76 (listing arguments in defense of treating standards equivalently).

72. *See* Gerstein v. Pugh, 420 U.S. 103, 114-16 (1975) (using probable cause determination to decide whether common-law concept of reasonable belief existed); *see also* Payton v. New York, 445 U.S. 573, 616 n.13 (1980) (White, J., dissenting) (explaining reason to believe requires quanta of probable cause); *Jackson*, 576 F.3d at 469 (noting reasonable belief's grammatical analogue to probable cause); *Barrera*, 464 F.3d at 501 n.5 (claiming probable cause legal term of art and reasonable belief for nontechnical laymen); Vasquez v. Snow, 616 F.2d 217, 220 (5th Cir. 1980) (drawing upon probable cause jurisprudence to determine reasonable belief). Using each standard interchangeably, the Court reasoned: "The purpose of the *probable-cause* requirement of the Fourth Amendment [is] to keep the state out of constitutionally protected areas until it has *reason to believe* that a specific crime has been or is being committed." Berger v. New York, 388 U.S. 41, 59 (1967) (emphasis added).

73. *See Gorman*, 314 F.3d at 1110-12 (following *Underwood* and ruling reasonable belief and probable cause embody same standard of reasonableness); *see also Barrera*, 464 F.3d at 501 (noting reasonable belief and probable cause use same method of assessment); Franklin, *supra* note 33, at 492 (observing Ninth Circuit

the two standards as equivalent is necessary to adequately safeguard constitutional privacy rights embodied within the Fourth Amendment, and to do otherwise would be incongruous with the Constitution.[74] Despite being less traditional, these arguments have recently turned the long-time minority interpretation of *Payton* into the majority.[75]

Although a few circuits have remained silent on this issue, they nonetheless add scope to the circuit split.[76] Some circuits never address the issues surrounding the *Payton* test because the evidence plainly either satisfies or fails both the reasonable belief and probable cause standards.[77] On the other hand, one Eighth Circuit case applied a probable cause analysis, but never mentioned the issue of interpretation between probable cause and reasonable belief.[78] Most notably, an Eleventh Circuit case applied a novel test, seemingly distinct from either standard, after addressing the problems surrounding the *Payton* test.[79]

held reason to believe another way to articulate probable cause). *Gorman*, the most influential decision in the equal-to faction, notes the large number of courts requiring substantial evidence to prove reasonable belief, making the standard equivalent to probable cause. *See* 314 F.3d at 1113. The difference between the two standards lies not in level of proof or reasonableness, but in the standard's allowance of "the officer, who has already been to the magistrate to secure an arrest warrant, to determine that the suspect is probably within certain premises without an additional trip to the magistrate and without exigent circumstances." United States v. Cravero, 545 F.2d 406, 421 (5th Cir. 1977).

74. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 478-79 (3d Cir. 2016) (relying heavily on protecting privacy when ruling two standards equal); Franklin, *supra* note 33, at 488 (concluding assurance of citizens' privacy rights requires equating probable cause standard to reasonable belief standards). Home intrusion by the government is the chief evil that the Fourth Amendment sought to extinguish; therefore, not requiring probable cause in the *Payton* test would be inconsistent with the Constitution. *See Payton*, 445 U.S. at 585-86 (citing United States v. United States Dist. Court, 407 U.S. 297, 313 (1972)); *see also* William C. Heffernan, *Fourth Amendment Privacy Interests*, 92 J. CRIM. L. & CRIMINOLOGY 1, 4 (2002) (calling police intrusion of home egregious).

75. *See Vasquez-Algarin*, 821 F.3d at 480 (adding Third Circuit to equal-to faction making it a five to four majority).

76. *See id*. at 476-77 (noting Eighth and Eleventh Circuits avoided issue, but developed own reasonableness tests).

77. *See* United States v. Risse, 83 F.3d 212, 217 (8th Cir. 1996) (avoiding any discussion grappling with requisite standards of reasonableness); *see also* United States v. Hardin, 539 F.3d 404, 426 (6th Cir. 2008) (deciding reasonable belief not satisfied and leaving *Payton* issue for more appropriate case); United States v. Veal, 453 F.3d 164, 168-69 (3d Cir. 2006) (skirting ruling on *Payton* issue because probable cause satisfied).

78. *See* United States v. Clifford, 664 F.2d 1090, 1093 (8th Cir. 1981) (examining officers' belief under probable cause but never mentioning *Payton* circuit split).

79. *See* United States v. Magluta, 44 F.3d 1530, 1534-36 (11th Cir. 1995) (utilizing *Payton*'s reason-to-believe standard but never defining proof required). The *Magluta* court applied a test combining probable cause principles with considerations of exigent circumstances. *See id.* at 1537. The entire analysis was done under the term "reason to believe" because that is the term used by the *Payton* Court; however, the *Magluta* court never defined the required level of proof. *See id.* at 1534-36. *Magluta* seemingly avoids the whole issue but uses the same reasoning and analysis as the Fifth Circuit in *Barrera*. *See Vasquez-Algarin*, 821 F.3d at 476-77.

G. United States v. Vasquez-Algarin*: The New Majority Interpretation*

During the summer of 2016, the equal-to faction became the majority interpretation when the Third Circuit Court of Appeals held *Payton*'s reason-to-believe standard equivalent to probable cause.[80] Originally, the federal district court denied Johnny Vasquez-Algarin's (Vasquez) motion to suppress evidence found during a search of his home.[81] The search came from a *Steagald*-like situation where the police forcibly entered Vasquez's home to execute an arrest warrant for a guest believed to be residing with Vasquez.[82] After receiving no answer at the door, officers forcibly entered the residence to find Vasquez, cocaine, baggies, ammunition, and keys to a stolen car.[83] Vasquez appealed the decision to the Third Circuit, where the court applied the *Payton* test, refined by *Steagald*, to determine whether the officers reasonably believed their fugitive resided at Vasquez's residence and that he was present within at the time of entry.[84]

In deciding the issue at hand, the Third Circuit explained the arguments held by each faction of the circuit split and was summarily convinced by the equal-to faction's interpretation.[85] Particularly important to the Third Circuit's decision was the Supreme Court's interchangeable use of reasonable belief and probable cause after *Payton*.[86] From this, the Third Circuit held that the standards were substitutive, with reasonable belief being the layman's term for probable cause.[87] Secondarily, the court felt compelled to treat the standards

80. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 483-84 (3d Cir. 2016) (holding nothing less than probable cause suffices when applying *Payton* test).

81. *Id.* at 470-71 (outlining nature and object of appeal).

82. *See id.* at 469 (explaining how search of appellant's residence began). Criminal informants notified police that their fugitive, Edguardo Rivera, resided or stayed at a location later identified as Vasquez's residence. *See id. Steagald*'s interpretation of *Payton* controls because Vasquez was a third-party homeowner asserting a constitutional violation of his privacy. *See id.* at 472-73.

83. *Id.* at 470 (introducing facts of case at bar). Officers heard a dog bark and a cell phone ring inside the residence before they were physically silenced which allegedly provided them with reason to believe their subject was in the home. *See id.*

84. *See Vasquez-Algarin*, 821 F.3d at 471, 477 (deciding to join equal-to faction and beginning analysis).

85. *See id.* at 474-77 (outlining each faction's notable arguments). The Third Circuit came close to tackling this issue a decade ago, but waited for a case more suitable for a reason-to-believe determination. *See* United States v. Veal, 453 F.3d 164, 167-69 (3d Cir. 2006) (avoiding *Payton* test issue because case's facts clearly satisfied probable cause); United States v. Agnew, 407 F.3d 193, 197 (3d Cir. 2005) (evading *Payton* issue but utilizing probable cause analysis). Dicta in *Agnew*, later followed in *Vasquez-Algarin*, treated the standards as equivalent, but the evidence satisfied both standards, thus dispensing with the need to evaluate the *Payton* test interpretation. *See Agnew*, 407 F.3d at 196; *see also Vasquez-Algarin*, 821 F.3d at 473. The *Agnew* court was aware of the circuit split, but patiently waited for the proper controversy. *See Vasquez-Algarin*, 821 F.3d at 473-74 (highlighting patient denial of *Agnew* court to take up *Payton*'s two-prong test issue).

86. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 477-78 (3d Cir. 2016) (recognizing consistent use of "reasonable belief" representing "probable cause" in post-*Payton* cases).

87. *See id.* at 475-76, 477-78 (elaborating on court's reason for ruling two standards equal). The close proximity and interchangeable use of the two terms, coupled with instances where reasonable belief is used to explain probable cause, suggests equality. *See id.* 477-78.

as equal considering the stringent privacy protections prescribed by the Constitution.[88]

After over thirty years of being the minority, the *Vasquez-Algarin* decision elevated the equal-to faction to the majority interpretation.[89] The case only solidified previously made arguments, but it did rely more heavily on consistency with the Fourth Amendment than on textual influences.[90] Ultimately, the *Vasquez-Algarin* court legitimized the characterization of reasonable belief as a layman's term, and its decision represents a shift in Fourth Amendment jurisprudence.[91]

H. Technology-Induced Jurisprudential Shift

State-of-the-art technological innovations have eroded protections of individual privacy in favor of law enforcement.[92] This new technology enables substantial invasion into zones historically deemed entirely private, and often, its use never even requires a suspicion of wrongdoing.[93] Modern technological advances further blur the already poorly-articulated definition of what constitutes an "unreasonable search" by continuously posing novel issues to the Court.[94]

88. *See id.* at 478-79 (holding Fourth Amendment requires both standards receive equal treatment). The sanctity of the home is at the core of issues relating to warrants, and the *Payton* test only properly defends that sanctity if probable cause is applied to each of the two prongs. *See id.* at 479; *see also* Steagald v. United States, 451 U.S. 204, 220, 222 (1981) (expounding on sanctity of home inherent in constitutional jurisprudence).

89. *See Vasquez-Algarin*, 821 F.3d at 480 (adding Third Circuit to now-majority, equal-to faction).

90. *See id.* at 478-80 (focusing heavily on constitutional issues at stake). Other circuits reference constitutional consistency but rely more on semantics-based arguments. *See, e.g.*, United States v. Jackson, 576 F.3d 465, 469 (7th Cir. 2009) (indicating support for idea reason-to-believe standard and probable cause synonymous); United States v. Hardin, 539 F.3d 404, 416 n.6 (6th Cir. 2008) (calling reason-to-believe standard explanatory of probable cause); United States v. Barrera, 464 F.3d 496, 501 (5th Cir. 2006) (claiming reason-to-believe standard and probable cause encompass same standard of reasonableness).

91. *See Vasquez-Algarin*, 821 F.3d at 478 (ruling reasonable belief likens to grammatical analogue of probable cause).

92. Eleanor Birrell, Technology and the Fourth Amendment: Balancing Law Enforcement with Individual Privacy (Mar. 5, 2015) (unpublished B.A. thesis), http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=971EDCCDA5F147B23563DCED371BCC54?doi=10.1.1.182.5283&rep=rep1&type=pdf [https://perma.cc/M568-ZE2G] (acknowledging loss of individual privacy in favor of law enforcement efficiency).

93. *See* Renée McDonald Hutchins, *Tied Up in* Knotts*: GPS Technology and the Fourth Amendment*, 55 UCLA L. REV. 409, 410-11 (2007) (condemning technology's role in eroding individual privacy protection). An Internet search can reveal copious amounts of personal information: Public surveillance cameras capture one's movements, and online vendors catalog recent purchases to cater advertisements to one's interests. *Id.* (introducing commonplace technology eroding our sense of privacy).

94. Birrell, *supra* note 92, at 1 (recognizing technological advances further confuse reasonableness concept); *see* Hutchins, *supra* note 93, at 414 (recognizing Fourth Amendment issues with GPS locators); Orin S. Kerr, *The Fourth Amendment and New Technologies: Constitutional Myths and the Case for Caution*, 102 MICH. L. REV. 801, 806, 834-35 (2004) (grappling with thermal and infrared sensors and privacy rights); Lisa J. Steele, Note, *The View from on High: Satellite Remote Sensing Technology and the Fourth Amendment*, 6 BERKELEY TECH. L.J. 317, 318 (1991) (approaching Fourth Amendment issues with satellite imagery). As cleverly articulated by one poetic scholar, "Fourth Amendment case law is a sinking ocean liner—rudderless

The Fourth Amendment serves as our first line of defense against the Orwellian[95] fears of modern technology.[96] For example, GPS locators compromise the privacy of where we travel.[97] Infrared and thermal sensors allow law enforcement to "see through" the walls of one's residence.[98] Satellite imagery forces citizens to expect decreased privacy in backyards and on patios.[99] As a whole, modern technology possesses the potential to so greatly invade the personal lives of U.S. citizens that it renders true and pure privacy impossible to achieve.[100] Courts are well-situated to promulgate Fourth Amendment protections against the unwarranted use of these technologies, beginning with heightened protection of privacy in the home.[101]

The implementation of new, invasive technology by law enforcement has forced courts to overly protect the residential privacy of U.S. citizens for three reasons.[102] First, while new technology emerges rapidly, regulations protecting privacy have historically developed more slowly.[103] Second, courts in the past have inaccurately analogized new technology to antiquated, less-invasive technology, thereby creating precedent that does not adequately protect individual privacy.[104] Lastly, law enforcement has no incentive to avoid using

and badly off course—yet most scholarship contents itself with rearranging the deck chairs." Akhil Reed Amar, *Fourth Amendment First Principles*, 107 HARV. L. REV. 757, 759 (1994) (articulating eroding clarity of Fourth Amendment jurisprudence and critiquing scholars' seeming blissful ignorance).

95. *See* GEORGE ORWELL, 1984, at 3 (1948) ("Big Brother is watching you.").

96. Hutchins, *supra* note 93, at 411 (claiming privacy invasions made possible by new technology prevented by Fourth Amendment).

97. *See id.* at 414 (outlining GPS development and law enforcement use).

98. *See* Kyllo v. United States, 533 U.S. 27, 29-30 (2001) (explaining how law enforcement used thermal imaging to, essentially, see through walls); *see also* Kerr, *supra* note 94, at 833-34 (describing thermal imagery used in *Kyllo*).

99. *See* Steele, *supra* note 94, at 333 (bringing decreased expectation of privacy in backyards to light). Beginning in the mid-1980s, the U.S., Soviet, and French governments gave power to commercial companies to capture and sell satellite images. *Id.* at 318.

100. *See supra* notes 96-99 and accompany text (introducing new and invasive policing technology).

101. *See Kyllo*, 533 U.S. at 40 (quoting Payton v. New York, 445 U.S. 573, 590 (1980)) (reiterating *Payton* holding: "Fourth Amendment draws . . . 'firm line at . . . entrance to . . . house'"); Hutchins, *supra* note 93, at 442 (maintaining Court consistently applies special protection to homes); Kerr, *supra* note 94, at 804-05 (recognizing advantageous position of courts to remedy privacy issues arising out of new technology). *But see* Kerr, *supra* note 94, at 806 (believing legislative action more appropriate to address and regulate new technology).

102. *See* Steele, *supra* note 94, at 320, 332 (recognizing absurdity of analogizing new technologies to old ones); Birrell, *supra* note 92, at 1, 13 (noting two main reasons why new policing technology demands judicial overprotection of homes); *see also infra* Section III.D.

103. *See* Birrell, *supra* note 92, at 1 (emphasizing "lengthy gap" between availability and implementation of new technology and passage of regulations). Given how long it takes to establish limitations, law enforcement is free to take advantage of new technology and profit from potentially invasive and unconstitutional searches for years. *See id.* at 4-5. Even judicial case law takes years to develop; law enforcement must take advantage of the technology, the case must go to trial and be litigated, the evidence must be introduced, and the defendant may then appeal to the highest possible court. *Id.* at 5; *see Kyllo*, 533 U.S. at 29 (noting police thermal scanning of defendant's home in 1992 reached Supreme Court in 2001).

104. *See* Dow Chemical Co. v. United States, 476 U.S. 227, 238-39 (1986) (analogizing aerial photography to looking into property from outside and DNA to abandoned trash); *see also* Steele, *supra* note 94, at 320, 332

potentially invasive technologies.[105] For these reasons, many courts feel compelled to overprotect the home to prohibit invasive technologies from prevailing over Fourth Amendment protections.[106]

III. ANALYSIS

A. Reconciling the Competing Interpretations of Constables' Rights Under Common Law in Steagald *and* Payton

The *Steagald* and *Payton* Majority Opinions' interpretation of common law provides a more thorough and convincing analysis of its role in this issue.[107] These cases grapple with determining what protection should be afforded to third-party homeowners; however, common law does not adequately consider the rights of these individuals.[108] Further, common law relating to warrantless arrests and forcible entries was inconsistent and unresolved at the time of the Constitution's ratification, which prevents legitimate reliance on it today.[109] Even if pre-ratification common law could be reliably applied to this issue, not all common law was inherently adopted at the time of ratification; rather, the Framer's selectively chose to adopt only the common-law principles that would best suit their new nation.[110] Lastly, the Dissents' reliance on English common law to justify third-party searches is fallible because dicta in *Semayne's Case* allows third-party searches only when the felon seeks refuge inside the third-

(comparing satellite imagery to aerial imagery, and thermal sensors to natural odors); Birrell, *supra* note 92, at 10 (criticizing courts' use of precedent when determining the constitutionality of searches with new technology). The Court expressed its concern with invasive technology, stating: "To withdraw protection of this minimum expectation [of privacy] would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment." Kyllo v. United States, 533 U.S. 27, 34 (2001).

105. *See* Birrell, *supra* note 92, at 13 (illuminating lack of discouragement to use invasive surveillance technology). Budget-conscious law enforcement agencies recognize the cost savings possible with new technology as it replaces manpower and increases efficiency. *See* Steele, *supra* note 94, at 333 (noting incentive for financially strained law enforcement departments to adopt new technology).

106. *See* Hutchins, *supra* note 93, at 442 (maintaining houses demand special Fourth Amendment protections); *see also Kyllo*, 533 U.S. at 40 (drawing firm line at home entrances).

107. *Compare* Steagald v. United States, 451 U.S. 204, 217-20 (1981) (deciding common law inadequately protective of third-party privacy concerns), *and* Payton v. New York, 445 U.S. 573, 591-98 (1980) (deciding common-law precedent not definitively clear regarding warrantless home arrests), *with Steagald*, 451 U.S. at 227-30 (Rehnquist, J., dissenting) (claiming common-law precedent allows invasions of third-party homes in search of felons), *and Payton*, 445 U.S. at 604-07 (White, J., dissenting) (asserting common law does not require any warrants to enter felon's house).

108. *See Steagald*, 451 U.S. at 219-20 (noting common law's lack of third-party considerations); *id.* at 229 (Rehnquist, J., dissenting) (attacking Court's conclusion concerning inapplicability of common-law authority to third-party rights).

109. *See Payton*, 445 U.S. at 597-98 (holding unsettled law at time of Constitution's ratification provides little guidance in case at bar). Both Lord Coke and Lord Blackstone profoundly influenced the Framers, but the two disagreed on the role of warrants in searches and seizures. *See id.* at 594-96.

110. *See id.* at 591 n.33 (opining not all common law inherently adopted into Constitution).

party residence during flight.[111] In sum, common law relating to third-party privacy rights lacks adequate analysis, is unsettled, and was not inherently adopted in the Constitution; therefore, the Majority Opinions' analyses provide greater guidance.[112]

B. Evaluating the Merits of Each Faction's Interpretation of Payton*'s Reason-to-Believe Standard*

Finding a consistent definition of reasonable belief continues to elude even the most brilliant legal minds.[113] Even the venerable Supreme Court stated that defining reasonable belief and probable cause is an impossible endeavor, due to their fluidity.[114] In Fourth Amendment jurisprudence unrelated to residential privacy interests, the Court has held reasonable belief to be an overtly lesser standard than probable cause.[115] Cases considering the holdings in *Payton* and *Steagald* best help us analyze whether reasonable belief is lesser or equal to probable cause, because they inherently must interpret and apply the *Payton* two-prong test.[116]

The circuit split revolves around three legal battlegrounds, and the "side" that a court falls on determines its treatment of *Payton*'s reason-to-believe standard: whether reasonable belief and probable cause are interchangeable standards of proof; balancing the right to privacy with the government authority to efficiently apprehend felons; and the consistency of the reasonableness standard, applied to the *Payton*-test, with the Fourth Amendment.[117]

111. *See Steagald*, 451 U.S. at 219 (noting warrantless third-party searches allowed only when in hot pursuit).

112. *See supra* text accompanying notes 108-110 (summarizing main arguments of Majority Opinions).

113. *See* McCauliff, *supra* note 33, at 1327 tbl. 3 (displaying federal judges' uncertain understanding of reason-to-believe standard).

114. *See* Ornelas v. United States, 517 U.S. 690, 695-96 (1996) (recognizing definitions of both standards impossible to codify due to fluidity and factual considerations). Probable cause and reasonable belief are commonsense, nontechnical concepts that balance factual and practical considerations upon which reasonable people would act. *See id.* (stating these standards likely never to possess neatly packaged rules).

115. *See* Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding lawful *Terry* stops require reasonable suspicion); *see also* Edwards, *supra* note 9, at 363-67 (analogizing *Terry* case's standard and *Payton* case's standard). Justice White explained reasonable suspicion as a less demanding standard that can be established with less reliable information than is needed for probable cause. *See* Alabama v. White, 496 U.S. 325, 330 (1990) (noting reasonable suspicion requires less reliable information than probable cause).

116. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 474-77 (3d Cir. 2016) (relying entirely on past case precedent instead of novel arguments).

117. *See id.* at 478-79 (acknowledging importance of decision's consistency with Fourth Amendment principles); United States v. Magluta, 44 F.3d 1530, 1534 (11th Cir. 1995) (claiming strongest support for lesser standard lies in *Payton* opinion text); Edwards, *supra* note 9, at 363 (asserting Court could use probable cause standard if it meant to, but did not); Wenige, *supra* note 3, at 666 (elaborating on vital government interests in apprehending felons on budget and practically).

1. The Textual Argument

Adherents of the equal-to faction argue that the two standards are used interchangeably because they represent an equal standard.[118] Their position is supported by the text of the *Payton* and *Steagald* decisions, which are riddled with references to probable cause while explaining the reason-to-believe standard of the *Payton* test.[119] Other post-*Payton* Supreme Court cases have also used reasonable belief in close proximity, and seemingly interchangeably, with probable cause.[120]

Lesser-than courts disagree with the equal-to faction's textual argument, relying on two frail arguments: The Court used "reason to believe" deliberately to represent a standard unique from probable cause, and other settled areas of Fourth Amendment law treat them as different standards.[121] The faction argues that the use of reasonable belief signals the Court's intention to create a lesser standard than probable cause.[122] Moreover, the Court would have used probable cause in the *Payton* standard, instead of reason to believe, if it intended that standard to govern the two-prong test.[123] Further, *Terry* stops, involving the seizure of a person and a warrantless protective search of their person, require only the Court-recognized, lower standard of reasonable suspicion.[124] Nevertheless, *Terry* stops are missing a vital consideration to a Fourth Amendment analysis: The involvement of a residence, which makes the constitutional protections deserved greater than those applied to *Terry*

118. *See*, *e.g.*, United States v. Jackson, 576 F.3d 465, 469 (7th Cir. 2009) (recognizing courts declaring reasonable belief grammatical analogue of probable cause); United States v. Gorman, 314 F.3d 1105, 1114 (9th Cir. 2002) (noting Justice White's interchangeable use of reasonable belief and probable cause); *Magluta*, 44 F.3d at 1534 (highlighting interchangeable use of probable cause and reasonable belief equal-to faction's strongest argument).

119. *See* Steagald v. United States, 451 U.S. 204, 212-13, 221-22 (1981) (employing term probable cause while explaining issue at hand); Payton v. New York, 445 U.S. 573, 583-601 (1980) (providing multiple references to probable cause in opinion); *see also* Edwards, *supra* note 9, at 363 (noting constant references to probable cause in *Payton* opinion). In one sentence, Justice White uses the term "reason to believe"; and in the next, he refers to "stringent probable cause." *See Payton*, 445 U.S. at 616 (White, J., dissenting).

120. *See supra* note 72 and accompanying text (highlighting seemingly interchangeable use of probable cause and reasonable belief in *Pugh* and *Berger*).

121. *See* Edwards, *supra* note 9, at 363-67 (noting *Terry* holding's relation to *Payton* issue); *id.* at 363 (elaborating on argument Court deliberately used "reason to believe" instead of probable cause); *see also* Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding reasonable suspicion standard required for stops lesser standard than probable cause).

122. *See* United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (expounding upon idea reason-to-believe standard less than probable cause); Edwards, *supra* note 9, at 363 (elaborating on argument Court intentionally used "reason to believe").

123. *See* Edwards, *supra* note 9, at 363 (asserting Court could have used probable cause but did not); *see also Payton*, 445 U.S. at 603 (holding two-prong test requires "reason to believe" suspect present within and resides at residence).

124. *See supra* note 115 and accompanying text (highlighting lawful stop and frisk searches only require reasonable suspicion).

searches.[125] Lastly, lesser-than advocates also argue that while the *Payton* Court *could* have used probable cause language to describe the standard, they instead chose to explain the probable cause requirement with the layman's term—reason to believe.[126]

In light of the post-*Payton* cases that use probable cause and "reason to believe" interchangeably, and the prevalence of probable cause references in both *Steagald* and *Payton*, treating the two standards as equal contains more merit.[127] Chiefly, the Fourth Amendment sought to prevent unwarranted invasions of the home; thus we must scrutinize the standards to protect the home more strictly than the standards for other searches.[128] Moreover, reasonable belief is a term often used by courts to more clearly explain the standard of reasonableness in probable cause.[129] Thus, because this issue concerns Fourth Amendment protections for the ever-revered home, and reasonable belief has been used interchangeably with probable cause a great number of times, it is valid to conclude that the *Payton* Court used the two standards in tandem for clarity—not to represent two different standards.[130]

2. The Balancing Interests Argument

The next analytical battleground concerns the impact that the reason-to-believe standard—whether a standard equal or unequal to probable cause—has on the authority of law enforcement and the government's interest in apprehending felons.[131] The dissent in *Payton* and courts in the lesser-than faction worry that instituting high standards will severely hamper officers' efficacy in apprehending fugitives.[132] If reasonableness standards are concepts

125. *See Terry*, 392 U.S. at 5-8 (addressing Fourth Amendment issue unrelated to privacy in house); *see also* Alabama v. White, 496 U.S. 325, 330 (1990) (applying lower reasonable belief standard to Fourth Amendment issue devoid of residential privacy issues).

126. *See supra* note 72 and accompanying text (noting reasonable belief grammatical analogue and layman's term for probable cause); *see also* United States v. Gorman, 314 F.3d 1105, 1110-11 (9th Cir. 2002) (stating probable cause and reasonable belief embody same standard of reasonableness). *But see* Edwards, *supra* note 9, at 363 (asserting if Court required probable cause, it would have said probable cause and not "reason to believe").

127. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 480 (3d Cir. 2016) (holding two standards equal); *see also supra* notes 118-120 and accompanying text (recounting arguments for equal-to faction). *But see Thomas*, 429 F.3d at 286 (ruling "reason to believe" lesser standard than probable cause).

128. *See supra* note 2 and accompanying text (explaining deeply engrained reverence for residential privacy in Fourth Amendment); *supra* note 125 and accompanying text (arguing reliance on *Terry* unpersuasive to support lesser-than faction because home privacy rights not implicated).

129. *See supra* note 73 and accompanying text (asserting reasonable belief another way to articulate probable cause standard).

130. *See* Steagald v. United States, 451 U.S. 204, 205-06 (1981) (noting *Payton* issues and case at bar necessarily include residence); *supra* note 73 and accompanying text (asserting two standards used together for clarity).

131. *See supra* note 117 (outlining main, contentious battlegrounds surrounding circuit split).

132. *See* Payton v. New York, 445 U.S. 573, 618 (1980) (White, J., dissenting) (declaring *Payton* holding severely hampers law enforcement's ability to effectuate responsibilities). First, mistakes made by officers with minimal legal knowledge leads to evidence suppression and possibly the loss of an entire conviction. *See*

that even judges struggle to understand, how can we expect police officers working in a stressful and fast-paced job to navigate the subtleties of this legal analysis?[133] Nevertheless, equal-to proponents claim that invasions into third-party residencies come up infrequently, ensuring that this extra burden on law enforcement does not outweigh the constitutional issues at stake.[134]

There is no doubt that equating reasonable belief to probable cause is inconvenient and burdensome on law enforcement.[135] Despite this, Fourth Amendment protections predominately inconvenience officers, especially in situations that arise infrequently.[136] Officers, like all humans, are fallible, mistake-prone individuals; therefore, we cannot naively expect that their good faith alone will protect innocent third parties from unintentional abuse.[137] Consequently, imposing a probable cause standard upon officers is the only way to adequately protect third parties' Fourth Amendment rights.[138]

3. The Constitutional Argument

Lastly, courts differ regarding how to interpret and apply "reasonable belief" consistently with third parties' Fourth Amendment rights.[139] Although suspected felons relinquish some of their protections, this Note is concerned with what standard adequately protects the constitutional rights of innocent third parties.[140] Currently, the lesser-than faction's application of the reason-to-

id. at 619 (recognizing mistakes by law enforcement lead to guilty felons walking free). Secondly, gathering enough evidence to comply with a high standard of certainty requires resources, time, and manpower that law enforcement agencies do not possess. *See id.* Justice Rehnquist equates the majority to observers in an ivory tower, detached from the realities of law enforcement. *See Steagald*, 451 U.S. at 226 (Rehnquist, J., dissenting).

133. *See Payton*, 445 U.S. at 618-19 (White, J., dissenting) (declaring imposing legal analysis of this kind on officers impractical, unfair, and detrimental to efficiency); McCauliff, *supra* note 33, at 1327 tbl. 3 (displaying judicial confusion relating to reasonable belief).

134. *See* Franklin, *supra* note 33, at 503-04 (asserting added obstacles for law enforcement not enough to outweigh third party's constitutional rights); *see also Steagald*, 451 U.S. at 221 (stressing situations requiring obtainment of separate search warrant will occur infrequently).

135. *See Payton*, 445 U.S. at 619 (White, J., dissenting) (recognizing burden on officers); Franklin, *supra* note 33, at 504 (recognizing obstacles placed on law enforcement).

136. *See supra* note 134 and accompanying text (suggesting situations occur infrequently and constitutional issues more important). The rights of innocent third parties are not adequately protected in these circumstances without the participation of an independent magistrate granting a warrant. *See* Franklin, *supra* note 33, at 503.

137. *See* Franklin, *supra* note 33, at 504-05 (contending expectation of officers exercising good faith naïve).

138. *See id.* at 504 (claiming probable cause required for adequate constitutional protection).

139. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 480 (3d Cir. 2016) (holding treating standards equally consistent with Fourth Amendment jurisprudence). *But see* United States v. Thomas, 429 F.3d 282, 286 (D.C. Cir. 2005) (reasoning reasonable belief less than probable cause consistent with demands of Constitution).

140. *See* Steagald v. United States, 451 U.S. 204, 212 (1981) (noting third party's privacy rights at issue); Payton v. New York, 445 U.S. 573, 602-03 (1980) (recognizing curbing of certain constitutional rights for fugitives).

believe standard decreases the level of constitutional protection afforded to third parties in their homes.[141] But, a uniform application of *Payton*'s standard—holding probable cause and "reason to believe" as equivalent—would decrease the potential for law enforcement abuse and improve judicial efficiency.[142] Further, mandating a uniform standard of probable cause—rather than a lesser standard—ensures law enforcement officers are cautious in their execution of authority, resulting in fewer squandered convictions.[143] This deliberateness and thoughtfulness on behalf of law enforcement is consistent with the purposes of the Fourth Amendment, especially when rights of innocent third parties are at stake.[144] Accordingly, the reason-to-believe standard should be treated equivalently to probable cause when used in the *Payton* two-prong test.[145]

C. Assessing the Persuasiveness, Accuracy, and Impact of the Vasquez-Algarin *Decision*

Consistent with the Fourth Amendment and the conclusions of the preceding section, the Third Circuit correctly ruled that *Payton*'s reason-to-believe standard is equivalent to probable cause in *Vasquez-Algarin*.[146] The Third Circuit's timely and well-reasoned decision rendered a thirty-year minority interpretation of *Payton*, the new majority.[147] Although the decision did not add arguments to the equal-to faction, *Vasquez-Algarin* clearly articulates each side's arguments and converts dicta in *United States v. Agnew*[148] to circuit precedent.[149]

The issue in *Vasquez-Algarin* concerned the level of certainty an officer must have that a suspect resides at and is present within a particular residence before forcibly entering.[150] The court agreed to a large extent with the "grammatical analogue" argument of the equal-to faction, but centered its decision on consistency with the Fourth Amendment—specifically the right to

141. *See* Edwards, *supra* note 9, at 361 (asserting inconsistent application of *Payton* standard diminishes protection and makes expectations dubious).

142. *See* Franklin, *supra* note 33, at 503 (toting judicial efficiency of uniform interpretation and application of standard); *id.* at 506 (noting potential for abuse inherent in uncertain application of reason-to-believe standard).

143. *See id.* at 507 (expressing concern over lack of prosecution or conviction of felony arrest suspects).

144. *See id.* (discussing balance between third party's Fourth Amendment rights and government interests).

145. *See id.* (noting profound need to treat two standards equally).

146. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 477 (3d Cir. 2016); *supra* notes 130, 138, 145 and accompanying text (concluding proper view on each contentious battleground).

147. *See supra* note 75 (pointing out long time minority view's transition to majority). Just a mere fifteen years ago the lesser-than faction outnumbered the equal-to faction four to one. *See* Valdez v. McPheters, 172 F.3d 1220, 1224 (10th Cir. 1999) (recognizing only Ninth Circuit treated standards equally).

148. 407 F.3d 193, 196 (3d Cir. 2005) (treating standards equally, albeit it in dicta).

149. *See Vasquez-Algarin*, 821 F.3d at 474-76 (articulating fundamental arguments in circuit split); *id.* at 483-84 (establishing *Agnew* holding and reasoning circuit precedent).

150. *See id.* at 469 (setting forth crucial question at bar).

be free from governmental intrusion within one's home.[151] Allowing a lower reasonable belief standard for residences would expose countless third parties to unwarranted entries based on the police's mistaken—albeit reasonable—belief that the fugitives resided within their dwellings.[152] The Third Circuit argues that in these situations, adherence to the Fourth Amendment requires probable cause, otherwise mere suspicion will defeat constitutional values.[153]

D. Representing a Trend in Fourth Amendment Jurisprudence

The now majority of circuit courts treating the two standards equally represent a heightening of judicial scrutiny concerning privacy in the home, which is integral in a climate where technology erodes traditionally expected privacies.[154] "The sky is not falling—yet. But if we continue to allow the Court's Fourth Amendment law to be interpreted in a limited fashion that reads the [A]mendment's protections into oblivion, George Orwell's *1984* will become a much more likely version of our future."[155] Preventing an oppressive regime of this kind requires strict application and preservation of Fourth Amendment protections.[156]

After *Payton*, courts nationwide applied reasonable belief as a lesser standard than probable cause, but today a majority of circuits now treat the standards as equivalent.[157] This development comes at a crucial time; with technology diminishing our expectations of privacy, the courts must work assiduously to protect the home in accordance with the Fourth Amendment.[158]

151. *See id.* at 478-80 (focusing on consistency of case's holding with Fourth Amendment values); *see also id.* at 480 (agreeing reasonable belief equates to probable cause in Supreme Court precedent). Anything less than stringent probable cause defeats the robust protections of the home prescribed by Fourth Amendment jurisprudence. *See id.* at 478-79 (noting "home takes pride of place in our constitutional jurisprudence").

152. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 479 (3d Cir. 2016) (highlighting lesser standard subjects residences to unacceptable risks of police error and warrantless searches). Applying a lower reasonable belief standard would incorrectly give residency status to guests and infringe on the privacy rights of those third-party homeowners where the suspected felon is a guest. *See id.*

153. *See id.* at 480 (opining laxer standard than probable cause not sufficient). Probable cause found by a neutral magistrate is inherent within an arrest warrant, but no probable cause exists in defense of the search of the third-party homeowner. *See id.* at 479-80 (holding probable-cause-based arrest warrants do not adequately protect third-party privacy rights). Without probable cause existing in a warrant, a third-party homeowner's privacy rights cannot be impinged with the unsettled standard of reasonable belief. *See id.*

154. *See id.* at 474 (noting change in *Payton* test interpretation).

155. Hutchins, *supra* note 93, at 465 (concluding need for robust Fourth Amendment protections from technology).

156. *See id.* at 464 (noting importance of Fourth Amendment in protecting privacy).

157. *See supra* note 75 and accompanying text (outlining Third Circuit holding); *see also supra* text accompanying note 147 (showing in 1999 only one circuit treated standard equally).

158. *See* Heffernan, *supra* note 74, at 3 (noting law enforcement use of technology invariably diminishes personal privacy); Power, *supra* note 29, at 2 (recognizing "loss of personal privacy" technology's greatest social cost). The Court views the rise of technology as a threat to individual privacy, stating: "If times have changed . . . the changes have made the values served by the Fourth Amendment more, not less, important." Hutchins, *supra* note 93, at 464 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 455 (1971)).

Apprehending felons is difficult work, but when it interferes with our last bastion of safety from government intrusion, concessions must be made in favor of protecting constitutional rights.[159] Our Constitution does not allow the promotion of the interests of law enforcement at the detriment of individuals' privacy rights.[160]

Circuit courts that have historically treated reasonable belief as a lesser standard than probable cause will likely reconsider when given an opportunity to take up the issue.[161] Shortly after *Payton*, at least one circuit ruled that reasonable belief is a lesser standard because, at the time, only the Ninth Circuit had ruled to the contrary, and their reasoning appeared weak.[162] Now, five other circuits have joined the Ninth Circuit, either overtly or by using their own reasonableness test resembling probable cause, and their justifications have become robust and articulate.[163] Additionally, the recent trend toward honoring the privacy of the home will likely affect courts' view of *Payton* when given a chance to reconsider.[164] For these reasons, future litigation will likely ensure that *Payton*'s reasonable belief is equivalent to probable cause nationwide.[165]

IV. CONCLUSION

Homeowner's rejoice! U.S. citizens may not be able to claim privacy in the credit cards they use, the phone numbers they dial, the pictures they post online, or prevent drones from entering the airspace over their homes, but the Supreme Court will ensure that citizens have stringent privacy within their

159. *See* Steagald v. United States, 451 U.S. 204, 227 (1981) (Rehnquist, J., dissenting) (recognizing difficulty of apprehending fugitives and need to assist law enforcement). *But see id.* at 222 (majority opinion) (describing "weighty" interest in home privacy).

160. *See* United States v. Vasquez-Algarin, 821 F.3d 467, 477 (3d Cir. 2016) (requiring officers possess probable cause to maintain consistency with constitutional protections).

161. *See, e.g.*, Valdez v. McPheters, 172 F.3d 1220, 1224-25 (10th Cir. 1999) (deciding issue over fifteen years ago); United States v. Risse, 83 F.3d 212, 216 (8th Cir. 1996) (deciding case over twenty years ago); United States v. Lauter, 57 F.3d 212, 215 (2d Cir. 1995) (deciding case over twenty years ago).

162. *See Valdez*, 172 F.3d at 1224-25 (dismissing Ninth Circuit's decision to treat standards equally because lacking rationale and defense).

163. *See supra* note 75 and accompanying text (recognizing five circuit courts now in equal-to faction); *see also Vasquez-Algarin*, 821 F.3d at 476-77 (noting Eighth and Eleventh Circuits' unique reasonableness test); *Risse*, 83 F.3d at 216-17 (declining to take up *Payton* test issue but applying reasonableness test); United States v. Magluta, 44 F.3d 1530, 1535-36 (11th Cir. 1995) (avoiding direct consideration of *Payton* standard but balancing factors in general reasonableness test).

164. *See supra* note 70 and accompanying text (noting cases interpreting *Payton* during this millennium shifted towards equivalent standards). Many of the lesser-than circuits took up this issue pre-2000 and have yet to reassess their rulings. *See, e.g.*, *Valdez*, 172 F.3d at 1220 (deciding case in 1999); *Magluta*, 44 F.3d 1530, 1530 (grappling with *Payton* standard interpretation in 1995); *Lauter*, 57 F.3d 212, 212 (ruling on *Payton* issue in 1995).

165. *See Vasquez-Algarin*, 821 F.3d at 480 (holding equal-to faction's arguments more persuasive and consistent with Fourth Amendment); *see also supra* note 162 and accompanying text (contending at least one circuit court joined lesser-than faction because lack of contrary precedent); *supra* note 164 (recognizing most circuits decided *Payton* issue well over decade ago).

homes. In a mere thirty years, federal courts have shifted from treating *Payton*'s standard as less than probable cause to now treating them as equal. Likely, this dramatic shift has been influenced by the exponential growth of technology, which has started to intrude into U.S. homes.

The U.S. Constitution demands minimizing government intrusions of the home and the interposition of a neutral magistrate between citizens and law enforcement. As more circuit courts recognize, nothing less than probable cause will adequately protect innocent homeowners from *Payton*-type searches. Meanwhile, proponents of strict residential privacy protections are optimistically waiting for the remaining lesser-than circuits to review and hopefully reinterpret *Payton*'s reason-to-believe standard.

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