

the detention was not constitutionally sustainable under *Summers*.¹⁸⁹ According to the Court, application of the categorical exception to probable cause requirements for detention incident to a search is determined by spatial proximity, that is, whether the occupant is found “within the immediate vicinity of the premises to be searched,”¹⁹⁰ and not by temporal proximity, that is, whether the occupant is detained “as soon as reasonably practicable” consistent with safety and security.

The law enforcement interests that justify detention pending a search also may justify the use of “reasonable force,” including handcuffs, to effectuate a detention.¹⁹¹ Also, under some circumstances, officers may search premises on the mistaken but reasonable belief that the premises are described in an otherwise valid warrant.¹⁹²

Although, for purposes of execution, as for many other matters, there is little difference between search warrants and arrest warrants, one notable difference is that the possession of a valid arrest warrant cannot authorize authorities to enter the home of a third party looking for the person named in the warrant; in order to do that, they need a search warrant signifying that a magistrate has determined that there is probable cause to believe the person named is on the premises.¹⁹³

Valid Searches and Seizures Without Warrants

Although the Supreme Court stresses the importance of warrants and has repeatedly referred to searches without warrants as “exceptional,”¹⁹⁴ it appears that the greater number of searches, as well as the vast number of arrests, take place without warrants. The Reporters of the American Law Institute Project on a Model Code of Pre-Arrest Procedure have noted “their conviction that, as a practical matter, searches without warrant and incidental to

¹⁸⁹ As an alternative ground, the district court had found that stopping Bailey was lawful as an investigatory stop under *Terry v. Ohio*, 392 U.S. 1, 20 (1968), but the Supreme Court offered no opinion on whether, assuming the stop was valid under *Terry*, the resulting interaction between law enforcement and Bailey could independently have justified Bailey’s detention. 568 U.S. ___, No. 11–770, slip op. at 14 (2013).

¹⁹⁰ 568 U.S. ___, No. 11–770, slip op. at 13–14 (2013).

¹⁹¹ *Muehler v. Mena*, 544 U.S. 93, 98–99 (2005) (also upholding questioning the handcuffed detainee about her immigration status).

¹⁹² *Maryland v. Garrison*, 480 U.S. 79 (1987) (officers reasonably believed there was only one “third floor apartment” in city row house when in fact there were two).

¹⁹³ *Steagald v. United States*, 451 U.S. 204 (1981). An arrest warrant is a necessary and sufficient authority to enter a suspect’s home to arrest him. *Payton v. New York*, 445 U.S. 573 (1980).

¹⁹⁴ *E.g.*, *Johnson v. United States*, 333 U.S. 10, 14 (1948); *McDonald v. United States*, 335 U.S. 451, 453 (1948); *Camara v. Municipal Court*, 387 U.S. 523, 528–29 (1967); *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 352–53, 355 (1977).