

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD A. CANIGLIA,)
)
 Petitioner,)
)
 v.) No. 20-157
)
 ROBERT F. STROM, ET AL.,)
)
 Respondents.)

Pages: 1 through 108
Place: Washington, D.C.
Date: March 24, 2021

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EDWARD A. CANIGLIA,)

Petitioner,)

v.) No. 20-157

ROBERT F. STROM, ET AL.,)

Respondents.)

- - - - -

Washington, D.C.

Wednesday, March 24, 2021

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

1 APPEARANCES:
2
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4 on behalf of the Petitioner.
5 MARC DESISTO, ESQUIRE, Providence, Rhode Island;
6 on behalf of the Respondent.
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8 Department of Justice, Washington, D.C.;
9 for the United States, as amicus curiae,
10 supporting the Respondents.
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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument this morning in Case 20-157, Caniglia
5 versus Strom.

6 Mr. Dvoretzky.

7 ORAL ARGUMENT OF SHAY DVORETZKY

8 ON BEHALF OF THE PETITIONER

9 MR. DVORETZKY: Mr. Chief Justice, and
10 may it please the Court:

11 The Fourth Amendment recognizes the
12 sanctity of the home by drawing a firm line at
13 the door. The government cannot cross that line
14 without a warrant, unless there is consent or
15 exigent circumstances.

16 Here, there was neither. Respondents'
17 warrantless seizure of Petitioner from his home
18 and their subsequent seizures of his lawfully
19 possessed guns from his bedroom and garage
20 violated the Fourth Amendment.

21 The First Circuit tried to get around
22 the warrant requirement by creating a new
23 exception based on Cady. But Cady involved the
24 standardized search of a car in police custody.
25 It doesn't grant a license for intruding the

1 home. Quite the opposite, nearly every page of
2 the Court's decision relies on the
3 constitutional differences between cars and
4 houses.

5 Respondents and the United States take
6 a different tack. They claim that the warrant
7 requirement isn't even implicated when officers
8 act for non-investigatory reasons.

9 But, in case after case, the Court has
10 consistently applied the warrant requirement to
11 homes, regardless of the government's purpose,
12 including when public health or safety is at
13 stake.

14 Moreover, the line between
15 investigatory and non-investigatory actions is
16 hardly clear. Nearly every criminal violation
17 has public safety implications, so dispensing
18 with the warrant requirement whenever police can
19 point to a health or safety motive would
20 eviscerate the Fourth Amendment.

21 Finally, there's no good reason to
22 create the sweeping new rule that Respondents
23 ask for. Where there is a true emergency or
24 where people ask to be helped, existing law
25 already allows an exception to the warrant

1 requirement. Many states also provide a number
2 of ways for the government to address problems
3 while respecting the Fourth Amendment, including
4 red flag laws and involuntary commitment
5 procedures.

6 But absent consent or exigent
7 circumstances, the Fourth Amendment doesn't
8 allow officers to conduct searches or seizures
9 in the home pursuant only to their own
10 discretion.

11 I'd be happy to answer the Court's
12 questions.

13 CHIEF JUSTICE ROBERTS: Mr. Dvoretzky,
14 let's say the police get a call, it's 8:00 at
15 night, the person says their, you know, elderly
16 neighbor, they invited her to dinner at 6, it's
17 8:00, she's never late for anything, she's not
18 answering the phone, they haven't seen her leave
19 the house. They're worried. They ask the
20 police if they can come over and check it out.

21 The police do that. They go on to the
22 property. They can't see much through the
23 windows, but the back door is open. They go in.
24 She's not there. But she comes back and says,
25 what are you doing here? Sues them -- sues them

1 under 1983 for violating her Fourth Amendment --
2 Fourth Amendment rights. Does she win?

3 MR. DVORETZKY: I -- I think, in that
4 situation, that -- that you'd have to analyze
5 whether the police had an objective basis for
6 believing that there was an emergency there.

7 CHIEF JUSTICE ROBERTS: Well, go ahead
8 --

9 MR. DVORETZKY: I think that --

10 CHIEF JUSTICE ROBERTS: -- and analyze
11 it. I've given you all the facts. Do they have
12 an objective basis because the neighbors say she
13 hasn't -- they haven't seen her all day, and she
14 didn't come over for dinner, she's never late?
15 Is that enough?

16 MR. DVORETZKY: No, I think that that
17 alone would not be enough. I think you would
18 need some additional facts to suggest that there
19 was a true emergency and that there was no other
20 alternative for the police but to go in.

21 There are other things they could --
22 that can be done in that situation. You can
23 call another family member. Perhaps there would
24 be something --

25 CHIEF JUSTICE ROBERTS: Well, I mean,

1 come on. Assume they -- the -- the family
2 members aren't answering the phone either. You
3 know, the neighbors are saying she's an elderly
4 woman, it's -- she's never late. She's late.
5 They're not able to reach her by phone. They
6 don't know who else to call.

7 The -- the police are violating the
8 Constitution because they walk in the back door
9 to make sure, you know, she's not lying on --
10 lying on the floor.

11 MR. DVORETZKY: I think, absent --
12 absent either consent or some objectively
13 reasonable indication of an emergency, which I
14 don't think those facts establish, the police
15 can't just go into somebody's house without a
16 warrant. That -- that is the basic command of
17 the Fourth Amendment.

18 CHIEF JUSTICE ROBERTS: Okay. It's 24
19 hours later. Can they go in then?

20 MR. DVORETZKY: I -- I -- I think that
21 there is a line-drawing question of -- of when
22 it -- how many facts you have to add to that
23 hypothetical until it becomes an emergency. I
24 think 24 hours would not be enough.

25 At a certain point, perhaps they could

1 get a warrant for a missing person and -- and go
2 in on that -- on that basis, but I think just
3 the fact that somebody for 24 hours might choose
4 not to show up to dinner or choose not to answer
5 the phone --

6 CHIEF JUSTICE ROBERTS: Well, that's
7 not --

8 MR. DVORETZKY: -- that doesn't --

9 CHIEF JUSTICE ROBERTS: -- the only --
10 that's not the only facts. There are more
11 facts, which is that she was supposed to come
12 over to dinner, that she's never late, that the
13 neighbors haven't been able to reach her.

14 But none of that matters. She just --
15 you know, maybe she dies, the difference between
16 8:00 at night and 8:00 the next day.

17 MR. DVORETZKY: I -- I think, if -- if
18 all you have is 24 hours, that wouldn't be
19 enough. I think, if you had -- maybe if you had
20 those facts plus a couple more days, perhaps
21 that would be enough.

22 But -- but I think that, ultimately,
23 it comes down to whether the police have an
24 objective basis to think that there is an
25 emergency that requires them to go in. Absent

1 that --

2 CHIEF JUSTICE ROBERTS: Does it --

3 MR. DVORETZKY: -- they need --

4 CHIEF JUSTICE ROBERTS: All right.

5 Well, does she -- does it matter if we're
6 talking about a caretaking -- community
7 caretaking what the community is like? I mean,
8 is it -- could it be that, you know, somebody
9 like Andy Mayberry is all right because people
10 expect him to, you know, keep track of things,
11 but, you know, Kojak isn't?

12 MR. DVORETZKY: I -- I don't think
13 that police would have different license to
14 enter the home without a warrant based -- based
15 on those sorts of considerations, no, Your
16 Honor.

17 CHIEF JUSTICE ROBERTS: Justice
18 Thomas.

19 JUSTICE THOMAS: Thank you, Mr. Chief
20 Justice.

21 Counsel, I am going to return to the
22 Chief Justice's point. Where in the Fourth
23 Amendment is a wellness check precluded?

24 MR. DVORETZKY: Your Honor, I -- I
25 think that the basic command of the Fourth

1 Amendment is -- and this Court has recognized it
2 in -- in numerous cases -- is that warrantless
3 intrusions of the home are unreasonable absent
4 consent or exigent circumstances.

5 Now, if a wellness check were
6 justified based on exigent circumstances in
7 light of -- in light of all of the facts and
8 circumstances presented, then the Fourth
9 Amendment in that circumstance would allow it.

10 But absent that --

11 JUSTICE THOMAS: So what does the --
12 what does the Fourth Amendment say -- what are
13 the words in the Fourth Amendment that preclude
14 a wellness check, not the -- not the exceptions,
15 not the jurisprudence, but the words?

16 MR. DVORETZKY: The -- the right of
17 the people to be secure in their -- in their
18 houses against unreasonable searches and
19 seizures shall not be violated.

20 This Court -- this Court has
21 interpreted the requirement of an unreasonable
22 search and seizure to mean that a search of a
23 home is unreasonable absent a warrant --

24 JUSTICE THOMAS: Okay. But --

25 MR. DVORETZKY: -- unless one of the

1 --

2 JUSTICE THOMAS: -- but you're
3 skipping a step. The mere fact -- what if a
4 police officer simply comes on to your porch to
5 collect for a local charity? Where would that
6 -- how is that different from a wellness check?

7 MR. DVORETZKY: I think that the
8 police officers are allowed to come on to the
9 porch for a wellness check if all they're doing
10 is knocking on the door to check on you. I
11 think they can't go farther than that, though,
12 if they don't have consent to enter the home and
13 go inside of it.

14 But simply -- simply going on to the
15 porch and knocking on the door, whether it's
16 to -- to check on -- to check on wellness or
17 whether it is to collect for a charity, I don't
18 think that's prohibited by the Fourth Amendment.

19 JUSTICE THOMAS: I think that the
20 point of the Chief's question is, if you're --
21 if the elderly woman doesn't show up, she could
22 be sick, she could be -- actually, she could be
23 watching TV, she could be doing any number of
24 things, but the -- you know, maybe we agree that
25 you shouldn't -- the police officer shouldn't

1 peer through the windows in search of contraband
2 or something that looks like a search but see if
3 she is okay.

4 How does that become a search? How
5 does looking for someone to determine whether
6 that person is okay -- how is that a search or a
7 seizure?

8 MR. DVORETZKY: I -- I think it's a
9 search or seizure when the police enter the home
10 without consent and -- and invade the privacy of
11 the home and violate, in that instance, the
12 right of the people to be secure in their homes.

13 JUSTICE THOMAS: Well, let's assume
14 that --

15 MR. DVORETZKY: Now, again, they
16 cannot --

17 JUSTICE THOMAS: -- that he does go in
18 and he finds her unconscious on the floor.

19 Can she sue him?

20 MR. DVORETZKY: If -- if -- if he goes
21 in and it turns out that there was an actual
22 emergency?

23 JUSTICE THOMAS: Yes. I mean, well, I
24 mean, he wouldn't know unless he enters the
25 premises. He doesn't have any knowledge of that

1 before. He goes in because, exactly as the
2 Chief said, the neighbors invited her to dinner.
3 She's never late. And he finds that she has
4 actually fallen and broken her hip.

5 MR. DVORETZKY: Justice Thomas, while
6 -- while it's not a hindsight inquiry, I think,
7 if those were the facts, I -- I think, if he
8 goes in without an objective basis and just
9 happens to have guessed correctly that she did
10 need help, that would not absolve the officer of
11 liability.

12 But -- but I do think that if the
13 officer has an objective basis beforehand for
14 going in, that would be emergency -- that would
15 be emergency aid, and in that situation, there
16 would be no Fourth Amendment violation.

17 JUSTICE THOMAS: Thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Breyer.

20 JUSTICE BREYER: I have a factual
21 question and a legal question. My factual
22 question is this: The -- the police went to the
23 porch and they went inside and they took your
24 client and took him to the hospital, I think,
25 and then they went back and got the guns.

1 How long after they put him in the
2 ambulance or wherever they put him -- how long
3 afterwards did they get the gun --

4 MR. DVORETZKY: Justice Breyer --

5 JUSTICE BREYER: -- from the --

6 MR. DVORETZKY: -- Justice Breyer, I
7 -- I don't -- I can't tell you exactly how many
8 minutes or seconds it was, but it was all part
9 of the same visit.

10 JUSTICE BREYER: What? It was the
11 same visit?

12 MR. DVORETZKY: It was all part of the
13 same visit.

14 JUSTICE BREYER: All part of the same
15 visit. I mean, is 30 minutes too long? Is five
16 minutes too short? Do you have any idea?

17 MR. DVORETZKY: I -- I think it would
18 be less than five minutes. I think they --

19 JUSTICE BREYER: Less than five
20 minutes, okay. Thank you.

21 And a -- a second question is a legal
22 question which I'm having a hard time with.
23 Sure, I think you could apply exigent
24 circumstances. Then I think, wait a minute,
25 there -- there's so many situations where it's

1 obvious the police should enter.

2 You know, a baby's been crying for
3 five hours, nobody seems to be around. A rat's
4 come out of the house at a time when rats carry
5 serious disease and have to be stopped.

6 A person goes into the house that the
7 police think, but they think the -- go inside
8 the house and don't know that this person has a
9 serious communicable disease, particularly for
10 older people who happen to live in the house.

11 I mean, we all can think of dozens of
12 instances, and if we call those exigent
13 circumstances, we weaken the exigent
14 circumstances. And if we move to a whole new
15 thing like caretaker, I don't know what we do.

16 So what's your answer to my dilemma
17 legally? Say exigent circumstances, but there's
18 special ones or what? How do we do it?

19 MR. DVORETZKY: Justice Breyer, I
20 think the way this Court has understood exigent
21 circumstances is as requiring a true emergency
22 demanding --

23 JUSTICE BREYER: Too narrow.

24 MR. DVORETZKY: -- an immediate act.

25 JUSTICE BREYER: Too narrow, because

1 there are lots of health emergencies. What
2 about, you know, the rats, the baby crying, the
3 old people who don't know they're going to be
4 exposed to deadly viruses, et cetera?

5 We can think of lots of circumstances
6 where it's very reasonable for a policeman to go
7 into the house.

8 MR. DVORETZKY: Well, Justice --

9 JUSTICE BREYER: And you can too. We
10 both can. So am I just supposed to move the
11 exigent circumstances rules which grew up in a
12 different context to this context or what?

13 MR. DVORETZKY: Just -- Justice
14 Breyer, just to take a couple of your examples,
15 a baby crying, I think, would be a true
16 emergency. But rats, that -- that was what was
17 at issue in the Frank case, which this Court
18 overruled in Camara and said --

19 JUSTICE BREYER: That was the wrong
20 rats. Try reading The Plague. Try reading
21 something where a rat coming out of a house
22 could give people bubonic plague. I mean, you
23 know, it's easy to invent hypotheticals.

24 Or do we just take this case on a
25 common law basis, make no rule and say this is

1 too much or too little? In Camara, it was a --
2 it was a -- it was a -- a -- a long term, it was
3 a different thing.

4 Okay. I'm trying to put my dilemma,
5 and I want your answer.

6 MR. DVORETZKY: Just -- Justice
7 Breyer, I -- I think you apply the exigent
8 circumstances doctrine the way this Court has
9 always applied it, which is requiring a true
10 emergency. And if there isn't a true emergency,
11 there may be other alternatives that the police
12 can quickly take advantage of, like
13 administrative warrants. That's what the Court
14 contemplated in the Camara case involving
15 housing code issues.

16 And -- and if it's neither a true
17 emergency nor something that can be addressed in
18 that sort of manner, then I think the Fourth
19 Amendment requires that the police not go in in
20 that situation.

21 JUSTICE BREYER: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice Alito.

23 JUSTICE ALITO: Mr. Dvoretzky, I -- I
24 think the way in which this case has been
25 presented to us by both sides is most unhelpful

1 because it conflates several separate issues.

2 One is whether a warrant is needed
3 under certain circumstances. I know that's what
4 you want to talk about. I want to put that
5 aside and talk about a -- a -- an issue that
6 comes before that, and that is, what are the
7 permissible reasons for a search or seizure and
8 the amount of evidence that a government officer
9 has to have to -- to conduct the search or
10 seizure?

11 And so what I'd like to do is to try
12 to give you some situations and ask you to tell
13 us as briefly as you possibly can whether a
14 search would be permitted under these
15 circumstances and the amount of information that
16 would be needed for a non-consensual search by
17 some government officer, also putting aside the
18 question of whether it's a police officer or
19 somebody else.

20 So the first one is a person in the
21 house may commit suicide where suicide is not a
22 crime. Is that a permissible reason for a
23 search?

24 MR. DVORETZKY: For -- for a search by
25 an officer without any other authorization, just

1 in the officer's discretion?

2 JUSTICE ALITO: Without consent.

3 MR. DVORETZKY: Without consent, no,
4 that's not a permissible reason for a search.

5 JUSTICE ALITO: Even if the officer
6 has probable cause to believe the person will
7 commit suicide?

8 MR. DVORETZKY: I think it may depend
9 on the immediacy of the situation in -- in -- in
10 that hypothetical. If -- if --

11 JUSTICE ALITO: Putting aside the
12 warrant requirement, a person may commit
13 suicide -- probable cause the person will commit
14 suicide. A reason to enter?

15 MR. DVORETZKY: That -- that may be a
16 reason to enter.

17 JUSTICE ALITO: Does the officer need
18 probable cause, reasonable suspicion, or
19 something else?

20 MR. DVORETZKY: I -- I think the
21 officer needs to have an objective basis to
22 believe that the suicide is -- is going to be
23 immediate and that, therefore, the officer must
24 enter in order to --

25 JUSTICE ALITO: Well --

1 MR. DVORETZKY: -- prevent that
2 happening.

3 JUSTICE ALITO: -- immediacy goes to
4 the warrant requirement. Probable cause,
5 reasonable suspicion, or something else?

6 MR. DVORETZKY: I think they -- well,
7 I think they are related because I think, for
8 the warrant requirement, you're asking something
9 similar to a probable cause kind of inquiry,
10 which is, is there a reasonable basis to believe
11 that -- is there a reasonable basis to believe
12 that the officer needs to go in? These are --
13 these are all intertwined.

14 JUSTICE ALITO: All right. Let me go
15 on to a second example. A vulnerable -- a
16 vulnerable person in the house, for example, a
17 -- a person with a disability, an elderly person
18 with dementia, a child, may be abused or denied
19 necessary care. Permissible reason: probable
20 cause, reasonable suspicion, something else?

21 MR. DVORETZKY: I think you would need
22 probable cause in that situation, but that's a
23 criminal situation until you could get a
24 criminal warrant there.

25 JUSTICE ALITO: You need to be able to

1 get a criminal warrant?

2 MR. DVORETZKY: You -- you -- from the
3 hypothetical, as I understood it, that was a --
4 that would be criminal abuse of an elderly
5 individual in the house. If the police suspect
6 that, they need probable cause that that crime
7 is being committed, and a judge can, in that
8 instance, authorize a warrant.

9 JUSTICE ALITO: Well, a child calls
10 the police and says, I -- I live -- I live 500
11 miles away, my mother has mild dementia, last
12 time I spoke to her she said something was
13 wrong, she's upset, but it was hard to make
14 sense of it, and now, when I call, the caretaker
15 always provides -- gives me excuses why she
16 can't -- my mother can't speak on the phone.

17 Can the police do anything?

18 MR. DVORETZKY: Absolutely. I think
19 that's a paradigmatic example of having a basis
20 to believe that a crime is being committed. The
21 police can investigate that, and they could seek
22 a criminal warrant.

23 JUSTICE ALITO: Do you think that's
24 probable cause?

25 MR. DVORETZKY: That sounds to me like

1 probable cause based on a -- a -- at least to --
2 at least to investigate and perhaps to get a
3 warrant based on a tip that a crime is being
4 committed.

5 JUSTICE ALITO: All right. Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor.

8 JUSTICE SOTOMAYOR: Counsel, I'd be
9 hard pressed to think that any judge would not
10 consider the hypothetical pressed by the Chief
11 Justice as justifying a -- a knock and entry by
12 police officers.

13 You have a neighbor who expects an
14 elderly woman to come visit, a known tipster who
15 comes and tells the police she's never late, and
16 it's now -- she's really late and there's no
17 answer.

18 I don't see how, under any
19 circumstance, either the emergency aid or
20 emergency doctrine, exigent circumstance
21 doctrine wouldn't permit that search. I -- I --
22 I'm -- if that's the case, then maybe Justice
23 Breyer is right, but, if I disagree with him and
24 believe that both the emergency aid doctrine and
25 the exigent circumstance doctrine would permit

1 most entries that -- where there is reasonable
2 cause to believe that someone might be in need,
3 what does that do to your argument?

4 MR. DVORETZKY: Justice Sotomayor, I
5 don't mean to fight too hard on the hypothetical
6 that the Chief Justice presented. The emergency
7 aid doctrine, if -- if that could cover that
8 sort of situation, it -- it would also cover
9 lots of other situations that the other side is
10 positing today require a community caretaking
11 exception. The -- the emergency aid doctrine
12 can -- covers true emergencies if there is
13 reasonable cause to believe that someone is in
14 need.

15 That doesn't help the Respondents in
16 this case. They haven't argued exigent
17 circumstances. In fact, they've affirmatively
18 waived exigent circumstances.

19 JUSTICE SOTOMAYOR: I -- I don't
20 disagree with you, and I think that you could
21 always posit an argument in the middle, and then
22 officers would have qualified immunity.

23 But my point to you is, aren't you
24 trying to break -- you're right that the
25 community caretaking exception was created

1 because of some of these hypotheticals, but I
2 think, at -- at the core -- and I thought that
3 was your argument -- is that there has to be
4 some sense of imminency, some sense that there's
5 a real problem going on, correct?

6 MR. DVORETZKY: Absolutely. That's
7 absolutely right, Justice Sotomayor. The -- the
8 exigent circumstances doctrine requires a true
9 emergency. It has to require immediate action.
10 And if you had a reasonable cause to believe
11 that someone is in need, let's say the -- the
12 emergency circum -- the exigent circumstances
13 doctrine is satisfied, but that does not --

14 JUSTICE SOTOMAYOR: That -- by the
15 way, that's what I thought of most -- that's
16 what your brief pointed out, that many of the
17 circumstances that have been looked at
18 previously by other courts under the community
19 care -- community caretaking exception are
20 covered by either the emergency aid or exigent
21 circumstance doctrines, correct?

22 MR. DVORETZKY: Yes, Justice
23 Sotomayor, that's right.

24 JUSTICE SOTOMAYOR: All right. Thank
25 you, counsel.

1 CHIEF JUSTICE ROBERTS: Justice Kagan.

2 JUSTICE KAGAN: Mr. Dvoretzky, you
3 mentioned a bit ago the possibility of
4 administrative warrants, and I'd like to explore
5 that a bit.

6 Suppose a locality -- suppose you were
7 to win this case, and -- and the locality said,
8 you know, we want to set up a good scheme of --
9 of -- of giving permission for the kinds of
10 welfare checks that we've been doing.

11 What would that scheme look like and
12 how far away would it be from what we think of
13 as the kind of scheme that produces criminal
14 warrants?

15 MR. DVORETZKY: Justice Kagan, I think
16 it -- it would depend on what the -- the state
17 is trying to accomplish with the welfare check
18 scheme, but the two -- the two sorts of schemes
19 that have proliferate -- proliferated in states
20 are red flag laws and involuntary commitment
21 laws, and the red flag laws in many states allow
22 warrants where guns -- where taking guns from
23 people is necessary because they pose a risk of
24 harm to themselves or others. And those laws
25 would --

1 JUSTICE KAGAN: And under what
2 standard do those laws operate? Is it a
3 probable cause standard? Is it something lower?
4 Could it be something lower?

5 MR. DVORETZKY: It's usually a
6 probable cause standard, and they -- the laws
7 typically provide some specific criteria for a
8 court to consider about whether the person poses
9 a risk or not.

10 JUSTICE KAGAN: Suppose a locality
11 said probable cause is -- is too much, we should
12 -- we should use a reasonable suspicion
13 standard. Would that be appropriate? As long
14 as it went through a third party, you know, some
15 judge or other state official?

16 MR. DVORETZKY: I think the fact that
17 it goes through a third party is a key part of
18 that scheme. I think that is -- that's a
19 significant factor under the Fourth Amendment.

20 I think it would be more defensible
21 under the Fourth Amendment if it required
22 probable cause. I -- I -- I don't -- I don't
23 know, depending on the details of the scheme,
24 whether some slightly lesser standard would be
25 sufficient. But probable cause found by a judge

1 would, I think, be the gold standard of such a
2 scheme for Fourth Amendment purposes.

3 JUSTICE KAGAN: And I -- I guess I'm
4 less interested in the gold standard than in the
5 dividing line between constitutional and not,
6 but -- but you -- you also said that these red
7 flag laws were about procuring guns in the hands
8 of -- of -- of -- of people who would do harm to
9 themselves or others. Could you -- do you
10 think, constitutionally, you could broaden those
11 laws to encompass schemes like the Chief
12 Justice's hypothetical?

13 MR. DVORETZKY: I think you could. I
14 think states can provide for a warrant for a
15 welfare check as long as there is a -- an
16 objective basis for believing that there's a
17 person inside in need. And in that situation,
18 it might not have to be a true emergency because
19 it's not a police officer making that judgment
20 in his or her discretion on their own, but,
21 rather, you have a neutral decisionmaker.

22 I'm not aware of states having done
23 that, but -- but I think they probably could as
24 long as you had, again, the -- an objective
25 basis found by a judge, by a neutral

1 decisionmaker, not --

2 JUSTICE KAGAN: And -- and in -- in
3 the states that have done this, what neutral
4 decisionmakers are they using? Are they using
5 judges? Are they using other people? What
6 would be constitutionally permissible?

7 MR. DVORETZKY: They're -- they're
8 using judges.

9 JUSTICE KAGAN: All right. And --

10 MR. DVORETZKY: To my knowledge,
11 they're using --

12 JUSTICE KAGAN: -- do you think that
13 that's required?

14 MR. DVORETZKY: I -- I -- I think some
15 sort of a neutral decisionmaker is required.
16 Whether a state could have, say, an
17 administrative law judge or a different -- some
18 different kind of decisionmaker, I think that
19 might be -- that might well be fine.

20 JUSTICE KAGAN: Okay. One last
21 question on a -- on a different subject. You
22 said that the Respondents here had waived the
23 argument that this was a true emergency.
24 Putting the waiver question aside, why wasn't
25 this a true emergency?

1 MR. DVORETZKY: Justice Kagan, the --
2 the only basis that the officers had for
3 thinking that Mr. Caniglia was potentially
4 suicidal was a statement that he made the night
5 before. But 12 hours had passed since that
6 statement. He was in the home with the guns
7 during that time, nothing had happened, and the
8 officers said that when they spoke with Mr.
9 Caniglia, he seemed calm and normal and polite.

10 Those circumstances don't make out an
11 emergency that requires immediate action without
12 involving a mental health professional, a
13 neutral decisionmaker, and so forth, rather than
14 just the officer's discretion.

15 JUSTICE KAGAN: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Gorsuch.

18 JUSTICE GORSUCH: Good morning,
19 counsel.

20 MR. DVORETZKY: Good morning.

21 JUSTICE GORSUCH: I'll pick up where
22 Justice Kagan left off. Do we need to or should
23 we decide whether exigent circumstances or a
24 community caretaking exception applies to these
25 facts, or do you want us just to resolve the

1 legal question and remand to the First Circuit?

2 MR. DVORETZKY: Well, we're asking you
3 to -- we're not asking you to resolve and we
4 don't think it would be appropriate for you to
5 resolve whether exigent circumstances apply to
6 those facts because of the waiver.

7 As far as community caretaking is
8 concerned, we're asking you to hold as a legal
9 matter that the community caretaking doctrine
10 doesn't justify searches or seizures from the
11 home. And because that is the only basis that
12 the Respondents have given for the searches or
13 seizures here, it -- there would be no remand
14 required. That -- that would be a judgment in
15 our favor at that point.

16 JUSTICE GORSUCH: Okay. And -- and
17 your -- your friends on the other side, the
18 solicitor general's office argues that the
19 Fourth Amendment permits warrantless seizure or
20 home entry that is reasonably necessary to
21 protect health or safety. That's their test.

22 What's wrong with that?

23 MR. DVORETZKY: For starters, Justice
24 Gorsuch, that's contravened by a number of this
25 Court's cases, including Camara and Clifford and

1 Barlow's and Patel, where even though there was
2 a public safety rationale offered for the
3 search, the Court nevertheless required an
4 administrative warrant before government
5 officials could search from the home.

6 So it's -- it's contrary to this
7 Court's case law. It's also a rule that would
8 swallow all sorts of other Fourth Amendment
9 doctrines because virtually any criminal
10 situation can also be described in health or
11 safety terms.

12 You wouldn't need the hot pursuit
13 exception because police could always say that
14 they're just acting to -- to protect the safety
15 of potential occupants in the home in light of
16 -- in light of having a criminal in their midst.
17 It wouldn't have to be in a hot pursuit
18 situation.

19 Likewise, you wouldn't need an -- a
20 warrant to enter the home in order to arrest
21 somebody because the police could in that
22 circumstance say, well, it would be dangerous
23 for the other occupants of the home to have --
24 to have a killer in the home with them.

25 For any situation involving drugs and

1 alcohol, police could just say they were going
2 into the home in order to make sure that the
3 suspect was okay. That would be contrary to
4 this Court's decision in Welsh.

5 And so the government's rule here is
6 contrary to lots of this Court's precedent and
7 would create an exception that swallows rules
8 that are essential to the Fourth Amendment.

9 JUSTICE GORSUCH: Okay. Accepting
10 that -- that that might be the case, counsel,
11 and that pretty much everything can be described
12 as health or safety, right? I mean, what --
13 what -- what does the government do that doesn't
14 involve health or safety? How does it help to
15 have an administrative warrant requirement?

16 I -- I mean, I understand the common
17 law requires -- treated the home as an asylum
18 and a castle of defense that was virtually
19 impenetrable, absent some sort of immediate
20 concern about physical injuries, as you describe
21 it in your brief.

22 But, if the government can just get an
23 administrative warrant to come in to test for
24 illness, to check the temperature of the house,
25 whether it's too hot, too cold, maybe to install

1 some energy-saving devices because that helps
2 health or safety, if that's what you're now
3 conceding, what's left of the Fourth Amendment?

4 MR. DVORETZKY: With an admin --
5 Justice Gorsuch, with an administrative warrant
6 requirement, you're involving a neutral
7 decisionmaker rather than leaving it --

8 JUSTICE GORSUCH: I understand that.
9 I understand that. But the neutral
10 decisionmaker is also employed by the
11 government, in a different branch maybe, maybe
12 not, and state governments can organize
13 themselves how they wish.

14 So it may be an executive officer
15 permitting another executive officer on a
16 showing of, what you said, reasonable suspicion
17 that -- that the house might be too warm, too
18 cold. Is that -- is that really a reasonable
19 search or seizure in light of the Fourth
20 Amendment's history and original meaning?

21 MR. DVORETZKY: If -- if you had one
22 executive officer providing authorization for
23 another, I think that would be problematic. If
24 you had a truly neutral decisionmaker, like a
25 judge, then having that decisionmaker involved

1 prevents arbitrary harassment by officers. It
2 gives the occupant of the home some notice and
3 some assurance that this is approved and isn't
4 simply the officer acting on his or her own in a
5 way that goes to the heart of the Fourth
6 Amendment's concerns. They --

7 JUSTICE GORSUCH: Pretty law of the
8 land there, counsel. Okay, but thank you.
9 My -- my time's expired.

10 MR. DVORETZKY: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Kavanaugh.

13 JUSTICE KAVANAUGH: Thank you, Chief
14 Justice.

15 Good morning, Mr. Dvoretzky.

16 MR. DVORETZKY: Good morning.

17 JUSTICE KAVANAUGH: I think the
18 circumstances in which this issue are going to
19 matter or two -- two big circumstances where
20 it's going to matter are older people who fall
21 and suicide, so I want to focus on those two
22 things.

23 The Chief Justice's questions focused
24 on older people who fall, and the statistics on
25 that are quite shocking, as I'm sure you --

1 they're huge, and many of us, of course, will,
2 when there's a neighbor who you haven't seen or
3 a parent who lives in a different place, will,
4 instead of barging into the house yourself or
5 calling if the parent lives in a different
6 place, calling a neighbor to barge into the
7 house, break into the house, you'll call the
8 local police officer who you might have a
9 relationship with, particularly in smaller towns
10 and communities, and ask them to check in.

11 When can you do that consistent with
12 the Fourth Amendment?

13 MR. DVORETZKY: I -- I think you can
14 always call the police, and --

15 JUSTICE KAVANAUGH: I know when you
16 can call. When can the police go in? I thought
17 your answer to the Chief Justice was somewhat
18 startling.

19 MR. DVORETZKY: Well, I -- I -- I
20 think the police can go in when they have
21 reasonable cause to believe that there's someone
22 in need and -- but --

23 JUSTICE KAVANAUGH: Okay. Let's --
24 let's break that down. You haven't seen the
25 person in a few hours, or you always talk to

1 your parent in Florida on Sunday night and --
2 and they weren't there, so, on Monday, you call
3 the police. What happens?

4 MR. DVORETZKY: I -- I -- I think
5 perhaps, in that situation, the police --
6 depending on how many facts you give them about,
7 you know, your parent generally being reliable,
8 not missing calls, not missing appointments --
9 the -- the more facts of that sort that you add
10 to the hypothetical, I think the -- the more
11 likely it is that the police could quite
12 plausibly invoke emergency aid as a basis for
13 going in to make sure that the person is okay.

14 But -- but you would need -- the
15 police would need to have that objective basis
16 to think that this is really somebody in need.
17 That's what lets them dispense with --

18 JUSTICE KAVANAUGH: Well, it's not --

19 MR. DVORETZKY: -- a warrant request.

20 JUSTICE KAVANAUGH: -- going to be
21 perfect information. It's going to be a
22 neighbor who cares about another neighbor and
23 hasn't seen them, or a parent, and what I'm
24 worried about is, obviously, the longer you're
25 in the house and no one comes to get you, you're

1 more likely to die from a fall.

2 MR. DVORETZKY: It -- it -- it --

3 JUSTICE KAVANAUGH: And that's -- you
4 know, the statistics are huge on older people
5 dying from falls.

6 MR. DVORETZKY: Justice Kavanaugh,
7 it's never going to be perfect information, and
8 that's why it simply requires an objective
9 basis, not a certainty and just simply an
10 objective basis in the moment.

11 And I think, in the circumstance --

12 JUSTICE KAVANAUGH: Okay. Let's --

13 MR. DVORETZKY: -- of that
14 hypothetical you're --

15 JUSTICE KAVANAUGH: -- let's talk
16 about suicide. Do you know -- do you know how
17 many suicides by gunshot there are every day in
18 the United States?

19 MR. DVORETZKY: I -- I don't have the
20 statistics, but --

21 JUSTICE KAVANAUGH: There are -- there
22 are about --

23 MR. DVORETZKY: -- there are certainly
24 --

25 JUSTICE KAVANAUGH: -- every -- every

1 day on average, every single day on average,
2 there are 65 suicides by gunshot in the United
3 States on average every day, okay? And police
4 officers are critical in, when a neighbor, when
5 a family member, as in this instance, can help
6 prevent that.

7 And so why under the facts -- maybe
8 Justice Breyer's question, why under the facts
9 here isn't preventing suicide -- when a spouse
10 says that I am fearful that my spouse will
11 commit suicide, that's not good enough?

12 MR. DVORETZKY: Justice Kavanaugh,
13 what Mrs. Caniglia said in this case was that
14 she wanted the officers to check on Mr. Caniglia
15 and make sure that he was okay. They found him
16 okay. He -- he was calm, normal, and polite in
17 speaking to them, and -- and -- and -- and 12
18 hours had passed since the statement that he had
19 made.

20 Now, whether or not somebody in that
21 situation might benefit from help, that --
22 that's not an -- an emergency.

23 JUSTICE KAVANAUGH: But police
24 officers in the moment -- in the moment don't
25 have time to do all this. They're faced with a

1 spouse, they're reacting to a situation, and you
2 know what, if they say, you know what, that's
3 not enough, and then the person commits suicide,
4 you know, that's not a good result. And that's
5 what --

6 MR. DVORETZKY: Justice Kavanaugh --

7 JUSTICE KAVANAUGH: -- and that's what
8 your position -- unfortunately, the starkest
9 form of your position will lead to officers
10 backing away from going into houses when old
11 people have fallen or there's concern about that
12 or when there's a risk of suicide.

13 MR. DVORETZKY: Justice Kavanaugh, in
14 a sit -- in a situation like this, the officers
15 could have involved a mental health
16 professional, and if they were unable to involve
17 one --

18 JUSTICE KAVANAUGH: But there's
19 time -- time is of the essence in -- in these
20 cases.

21 MR. DVORETZKY: If -- if -- if it's a
22 situation --

23 JUSTICE KAVANAUGH: Sixty-five a day.

24 MR. DVORETZKY: -- if it's a
25 situation, Justice Kavanaugh, where the officers

1 have an objective basis to think that time is of
2 the essence, then they can go in under exigent
3 circumstances.

4 JUSTICE KAVANAUGH: You don't know
5 ahead of time. That -- that's it. I'll let you
6 go to Justice Barrett.

7 CHIEF JUSTICE ROBERTS: Justice
8 Barrett.

9 JUSTICE BARRETT: Good morning,
10 Mr. Dvoretzky.

11 MR. DVORETZKY: Good morning.

12 JUSTICE BARRETT: I -- I have a
13 question. You know, you're talking about
14 finding a neutral decisionmaker, and you're --
15 and, you know, you cite the line in your brief
16 about police being engaged in the often
17 competitive enterprise of ferreting out crime.

18 What if, you know -- and -- and some
19 communities are doing that because sometimes
20 mental health checks don't go so well and people
21 end up getting hurt or the police, after someone
22 who's mentally ill pulled a gun on the police or
23 a knife, things go very poorly and sometimes the
24 person who is the subject of the welfare check
25 wind up being hurt or killed.

1 So some -- some communities are
2 creating a situation where social workers go in.
3 Would that be reasonable? Do you need to have
4 an administrative scheme or an administrative
5 warrant or something like that? What if it's
6 not the police who go in, but it's a community
7 that has a system where you call a social worker
8 if there's going to be a welfare check and the
9 social worker goes in in the kind of situation
10 that Justice Kavanaugh is describing?

11 MR. DVORETZKY: Justice Barrett, I
12 think the social worker, if a government
13 official, would still be subject to the Fourth
14 Amendment but that that --

15 JUSTICE BARRETT: Well, I know they'd
16 be subject to the Fourth Amendment, but my
17 question is, would that satisfy the Fourth
18 Amendment?

19 MR. DVORETZKY: I think the -- it
20 might because the social worker would be better
21 equipped than a police officer to determine if
22 there's a real emergency, and if the social
23 worker shows up on the scene and decides in his
24 or her professional judgment that I have to go
25 in, I think that would -- that would go a long

1 way towards showing that there were exigent
2 circumstances, such as the --

3 JUSTICE BARRETT: No, no, no. If
4 there are exigent circumstances, then the police
5 can decide if there are exigent circumstances,
6 and that's covered by our precedent.

7 I guess I'm asking you whether it
8 affects the reasonableness calculus if you have
9 the kind of neutral person that you're positing
10 would be appropriately involved in an
11 administrative warrant scheme, if that kind of
12 person shows up and says, yes, there's an old
13 person who's been in there, and rather than
14 having the police go in, the social worker's
15 going to go in to check on the elderly parent in
16 Florida who hasn't been heard from. Not exigent
17 circumstances.

18 MR. DVORETZKY: So -- so I think that
19 likely would satisfy the Fourth Amendment. The
20 -- the framework that I would use to think about
21 that is that the social worker is making a
22 determination of exigent circumstances.

23 JUSTICE BARRETT: Okay, but not
24 exigent circumstances. So you're -- so I think
25 the answer to my question -- you're -- you're

1 answering my question by saying no, the same
2 standard would apply to social workers. And
3 that's fine, that's consistent. But you're
4 saying exigent -- exigent circumstances are
5 enough, no matter which government official is
6 making that judgment?

7 MR. DVORETZKY: I -- I -- I think
8 that's right. I think, if the social worker
9 were simply going in based on the judgment that
10 there's no exigent circumstance, but this person
11 could benefit from help, no, I don't think
12 that's a determination that the government can
13 make consistent with the Fourth Amendment.

14 JUSTICE BARRETT: Okay. Then I'll ask
15 you about the kinds of administrative scheme
16 that you're imagining. It -- it sounds odd to
17 my ears to talk about probable cause to think
18 that someone would benefit from help, right?
19 We've used the probable cause requirement to
20 talk about probable cause to believe that a
21 crime has been committed.

22 Are there circumstances where probable
23 cause or reasonable position -- reasonable
24 suspicion, those sorts of standards, have been
25 used outside of the investigative context when

1 we're talking about a crime?

2 MR. DVORETZKY: There are, and that is
3 what this Court called for in the Camara case.
4 And, again, red flag laws and involuntary
5 commitment laws, which I mentioned earlier, are
6 an example where the probable cause standard is
7 applied.

8 JUSTICE BARRETT: Well --

9 MR. DVORETZKY: It's also been applied
10 in other contexts, like housing code violations
11 and the like. So that -- that's the context of
12 Camara.

13 JUSTICE BARRETT: Well, housing code
14 violations sound different to me. You know, you
15 have probable cause to believe that there's been
16 some sort of violation, even if it's not
17 criminal. It sounds odd to me to apply that
18 probable cause standard to the kinds of
19 situations that the Chief Justice or Justice
20 Kavanaugh were positing, where you have an
21 elderly person who needs help. There's no
22 violation.

23 MR. DVORETZKY: There -- there's no
24 violation, but I think the way that the court --
25 that states have adapted the probable cause

1 standard -- and I think it's consistent with
2 Camara -- is that probable cause means an
3 objective basis to believe that, fill in the
4 blank, that some -- somebody ought to have guns
5 removed from them, that they pose a risk of harm
6 to themselves, and so forth.

7 JUSTICE BARRETT: Okay. Thank you.

8 CHIEF JUSTICE ROBERTS: A minute to
9 wrap up, counsel.

10 MR. DVORETZKY: Thank you, Mr. Chief
11 Justice.

12 The Fourth Amendment protects the home
13 in a special way. When it comes to the home, a
14 reasonable search requires a warrant unless
15 there is consent or a true emergency.

16 A number of the Court's questions this
17 morning have focused on the practical
18 consequences of that. But -- but, as some of
19 the questions suggested, the exigent
20 circumstances doctrine and the -- and consent
21 will cover the vast majority of situations that
22 one might be concerned about.

23 Where police can point to an objective
24 basis to think that there is a need to go in,
25 they can do so. Where somebody asks for help,

1 they can do so.

2 And in some of the other scenarios,
3 states have come up with and can continue to
4 come up with administrative warrant-type regimes
5 that meet the needs that the Respondents and the
6 United States are positing in this case.

7 But the problem with the -- the rule
8 that the other side is positing is that it would
9 allow people to go into -- into the home, police
10 officers to go into the home without a warrant
11 in situations that would essentially blow up
12 numerous other Fourth Amendment doctrines that
13 this Court has held are very important to
14 protect the sanctity of the home.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Mr. Desisto.

18 ORAL ARGUMENT OF MARC DESISTO
19 ON BEHALF OF THE RESPONDENTS

20 MR. DESISTO: Thank you, Mr. Chief
21 Justice, and may it please the Court:

22 The question presented is whether
23 caretaking by police officers and first
24 responders may under certain circumstances take
25 place in the home without a warrant. It should.

1 The Petitioner has an absolute
2 position: Under no circumstances should a
3 warrantless caretaking occur inside a home,
4 except upon consent or exigent circumstances.

5 This absolute all-or-nothing approach
6 is contrary to the reasonableness standard of
7 the Fourth Amendment, the very touchstone of the
8 Fourth Amendment. There may be circumstances
9 that allow for caretaking in the home absent a
10 warrant, when the advent of the potential harm
11 is not so clear but the need to respond could be
12 immediate. Time could be of the essence.

13 This Court, in the -- in the questions
14 you've asked, have outlined some examples of
15 people who are elderly. I used the example of
16 someone who hasn't gotten his or her mail for
17 three days and lives alone. The -- the -- the
18 potential harm is not so clear, and the need to
19 respond could be immediate.

20 The same facts -- the facts of this
21 case also illustrate this point. The Petitioner
22 here demonstrated the potential for suicide or
23 harm to his wife and others. The officers
24 reasonably acted, weighing the intrusions
25 against the risk and the timing of the harm.

1 In this case, the absolute position
2 taken by the Petitioner, not allowing the
3 caretaking actions, may have resulted in death
4 or injury, and that's why an absolute
5 prohibition against warrantless entry is wrong.

6 Community caretaking in the home
7 without a warrant should be allowed when it is
8 objectively reasonable to do so.

9 Thank you, Mr. Chief Justice. I
10 welcome the Court's questions.

11 CHIEF JUSTICE ROBERTS: Let's suppose,
12 Mr. Desisto, that police get a call from a --
13 from a neighbor who says, you know, the Johnsons
14 are away, I -- I know they're not here, and
15 they've got this fence around their backyard,
16 it's -- it's locked, but there's a cat up in the
17 tree. Can you -- can you come and help, you
18 know, get the cat down? Is that community
19 caretaking?

20 MR. DESISTO: Well, yes, I do. I
21 think that is community caretaking, and here's
22 why. You look at the intrusion, and the
23 intrusion is simply climbing a fence and getting
24 up in a tree, and you balance that against the
25 privacy right. And, to me, climbing a tree and

1 getting a cat doesn't interfere with the privacy
2 right. So I think that would be a -- an -- a
3 caretaking activity.

4 CHIEF JUSTICE ROBERTS: Well, at
5 common law and under our cases, the interests
6 protected by the Fourth Amendment, I think, are
7 a little more significant than that. And, you
8 know, the backyard surrounded by a locked fence
9 is -- is entitled to protection as well. You
10 know, a mere cat caught in a tree, I mean, you
11 leave it there for a while, it'll probably come
12 down on its own.

13 MR. DESISTO: That -- that -- that's
14 true. That's -- that is weighed in the balance
15 of whether or not it's a -- an intrusion. But,
16 you know, the common law reflects criminal
17 investigation, a criminal entry into -- an entry
18 into a home for criminal purposes. So I'm not
19 sure that that is an -- is an apt way to look at
20 it. I -- I think we've got to remember
21 caretaking functions are for benign purposes,
22 not for criminal investigations.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Justice Thomas.

1 JUSTICE THOMAS: Thank you, Mr. Chief
2 Justice.

3 Counsel, would you -- when I look back
4 at the cases that led to this and then that Cady
5 relied on, they were all cases involving
6 impounded or wrecked cars. How did we get from
7 that to -- to this case, where the -- no warrant
8 is required to enter a private home as opposed
9 to searching an impounded car?

10 MR. DESISTO: Well, you know, Cady
11 does speak of vehicles, but the text of Cady is
12 essential and applies to all situations
13 implicating a reasonable objective, a reasonable
14 test. Even Cady, Justice Thomas, indicates that
15 there may be differences in the privacy rights
16 when one looks at a -- excuse me -- there may be
17 differences in the outcome when one looks at the
18 privacy rights in a home versus a car. But the
19 test --

20 JUSTICE THOMAS: Well, that -- you
21 know, that's -- I -- I don't want to -- I'm
22 sorry for cutting you off, but just this point.
23 Here's my point, that in Cady, Chief Justice
24 Rehnquist first posits that there is a warrant
25 requirement, and we normally say that the Fourth

1 Amendment standard, when it comes to the home --
2 requirements of the Fourth Amendment are met
3 with a warrant when it comes to the home. But
4 he says this sentence, he writes this sentence:
5 "One class of cases which constitutes at least
6 -- at least a partial exception to this general
7 rule is automobile searches."

8 That sounds to me as though that's an
9 exception to the general requirement for a
10 warrant. And -- and I'm trying to figure out
11 how you got from this case to the general case,
12 to the case that he said -- to the general rule.
13 You got from the exception to the general rule,
14 and I don't understand how we did that.

15 MR. DESISTO: Well, I -- I would say
16 that the -- what -- what I think that that --
17 that phrase, that sentence in Cady is talking
18 about criminal investigations. So I -- I use
19 Cady to name the caretaking function, and then I
20 go back to cases such as Georgia versus
21 Randolph, where the Court says, you know, you
22 can't walk away from -- from things that happen
23 in a house, that you have to react to it.

24 So I think we -- we go from the
25 vehicle, but the test remains the same. The --

1 the Fourth Amendment has only one test, and that
2 is that searches and seizures shall not be
3 unreasonable.

4 JUSTICE THOMAS: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Breyer.

7 JUSTICE BREYER: My question -- my
8 problem is that if you take a caretaker
9 exception and read that into the word
10 "reasonable," there's no stopping. We don't
11 know how far we'll go. But, if you are
12 absolute, you may cause a different problem.

13 So we're looking for subsidiary
14 standards. Camara says you need a warrant for
15 administrative searches, but it uses words like
16 "normally" and so forth, so there's some wiggle
17 room there.

18 What about -- would you -- what would
19 you think of the standard that Rhode Island
20 wrote into its law? That you'd write -- we'd
21 write a case that has to do with suicide
22 threats, period. The American Psychological
23 Association says you must take those threats
24 seriously. That's what we're writing about, the
25 common law approach, this case.

1 Rhode Island says any police
2 officer -- they wrote this statute after this
3 case began -- any police officer can take an
4 individual into protective custody and so forth
5 if the officer has reason to believe he is in
6 need of immediate care and treatment and there
7 would be a risk of serious harm by reason of
8 mental disability if he's allowed liberty.

9 What about that? If the officer has
10 reason to believe that there is a -- an imminent
11 likelihood of serious harm by reason of mental
12 disability. Suppose we said, well, for this
13 case, that is a reasonable standard.

14 MR. DESISTO: Isn't that the Fourth
15 Amendment standard? The Fourth Amendment --

16 JUSTICE BREYER: I don't know. That's
17 what I'm asking you, as in General Laws 1956,
18 40.1-5-7.1.

19 MR. DESISTO: Yes.

20 JUSTICE BREYER: Okay.

21 MR. DESISTO: Yes.

22 JUSTICE BREYER: Now what would you
23 think of simply saying Rhode Island here has
24 written a standard that is reasonable as applied
25 to this case, and then I -- you read -- I read

1 the sentence that I just read you?

2 MR. DESISTO: Yes.

3 JUSTICE BREYER: It doesn't say
4 probable cause. It says if the officer has
5 reason to believe, et cetera.

6 MR. DESISTO: Yes.

7 JUSTICE BREYER: What do you think of
8 it?

9 MR. DESISTO: I would go back to the
10 question presented, because the question
11 presented is whether the community caretaking
12 exception to the Fourth Amendment extends to the
13 home. So, for purposes of suicide in Rhode
14 Island, that may suffice, but that doesn't
15 answer the -- the question that is before the
16 Court and that you have to resolve.

17 JUSTICE BREYER: Well, the question
18 before the Court is caretaker. We say no. That
19 exception is an automobile exception, that's
20 what we said, but that doesn't mean there's no
21 exception. There are emergencies, et cetera,
22 and as applied to a person who's a suicide
23 threat, Rhode Island's law does come up with a
24 reasonable standard that we think does not
25 violate the -- the Fourth Amendment.

1 MR. DESISTO: Okay.

2 JUSTICE BREYER: What would you think
3 of that?

4 MR. DESISTO: I -- I would think that
5 that helps for suicide -- suicidal issues in
6 Rhode Island.

7 CHIEF JUSTICE ROBERTS: Justice --

8 JUSTICE BREYER: I -- I'm sorry.
9 There's one standard for the country, and if
10 that kind of thing is okay in Rhode Island, it's
11 okay anywhere. I'm trying to get what you think
12 of it.

13 MR. DESISTO: Yes. Yes, I agree.

14 CHIEF JUSTICE ROBERTS: Justice Alito.

15 JUSTICE BREYER: You agree with that?

16 CHIEF JUSTICE ROBERTS: Justice Alito.

17 JUSTICE BREYER: If you would just --

18 JUSTICE ALITO: Counsel, one of the
19 things that is troubling to a lot of people
20 about the caretaking exception is that it
21 doesn't seem to have any clear boundaries. And
22 when you tell us that it can include getting a
23 cat down from a tree, that fortifies that
24 concern. So can we narrow this down?

25 Let's talk about the reasons why a

1 search may be conducted or a seizure may be
2 conducted, and, again, putting aside the issue
3 of a warrant, can we narrow it down to
4 preventing life-threatening injury or serious
5 injury or some definable quantity of property
6 damage? Do you think it's possible to give it
7 some structure in any of those ways?

8 MR. DESISTO: I do. I think the most
9 important -- obviously, the most important goal
10 is preventing injury to life or death and -- or
11 destruction -- major destruction of property.

12 I -- I don't think the test, though,
13 is any different because I think, when you weigh
14 the interests involved against the privacy
15 right, things like climbing up a tree to get a
16 cat don't count for a lot. But I think, if it's
17 someone might die, that does count for a lot.

18 And I -- I do think that -- that we
19 have prevented -- presented many standards for
20 the community caretaking --

21 JUSTICE ALITO: Well, let me just
22 interrupt because I have very little time. What
23 about the amount of information that the -- the
24 government officer has to have? Probable cause?
25 Reasonable suspicion? Something else?

1 MR. DESISTO: I -- I think -- I think
2 it has to be objectively reasonable and that's
3 it. You know, probable cause, as said in
4 Opperman, is peculiarly related to a criminal
5 activity, and I just don't see where it fits.
6 And --

7 JUSTICE ALITO: Well, it's a
8 calculation of probability, but it's a -- you
9 know, it's not a -- it's not an overwhelming
10 requirement, but it's a pretty substantial
11 requirement. "Reasonable suspicion" has a clear
12 meaning. It could be applied in a lot of
13 different contexts. Is that what you're
14 advocating?

15 MR. DESISTO: No, I'm advocating to --
16 to -- to -- to use the -- the -- the text of the
17 Fourth Amendment, which is the touchstone, and
18 that is reasonableness. So I think, if we stick
19 with is it objectively reasonable based upon all
20 the guardrails that we've put in, that is --
21 that's the proper way to address this.

22 JUSTICE ALITO: All right, thank you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Sotomayor.

25 JUSTICE SOTOMAYOR: Counsel, I think

1 that Justice Alito hit the nail on the head,
2 because I've read the decisions of other
3 circuits. They seem all to have different
4 factors that make up community caretaking, and
5 I'm actually not sure what it means.

6 But I am concerned deeply about the
7 First Circuit's claim that there is no
8 requirement that officers must select the least
9 intrusive means of fulfilling care -- community
10 caretaking responsibilities.

11 I think what everyone has forgotten
12 here is that, at least in this situation, there
13 was no immediate danger to the person
14 threatening suicide and no immediate danger to
15 the wife because the suicide person was removed
16 to a hospital.

17 And so the issue is, can the police,
18 notwithstanding that and notwithstanding the
19 ability to ask the wife whether she would
20 consent to giving up the gun and ammunition,
21 that they decided on their own to go in and
22 seize the gun.

23 That appears to me to take away from
24 any of the limiting principles that Justice
25 Alito put forth, yes, some -- some -- whether

1 you call it reasonable suspicion, some -- some
2 suspicion, whatever adjective you put there,
3 there was no immediate danger, there were a
4 readily accessible alternative that was ignored,
5 and you're putting into the hands of law
6 enforcement the ability to use their judgment as
7 opposed to that of the psychiatrists who were
8 treating this man, they certainly could have
9 asked the psychiatrists whether they should
10 remove the guns or not. They didn't do
11 anything.

12 Tell me, what's the limiting
13 principles?

14 MR. DESISTO: Okay. I -- I --

15 JUSTICE SOTOMAYOR: Or how -- how
16 serious does the threat have to be? How much
17 judgment do the police officers have to be --
18 how do we limit them from substituting their
19 own? Could they have gone into the house and
20 taken not just the gun but any bat, knife,
21 anything else that in their judgment this man
22 could have used to commit suicide?

23 MR. DESISTO: I -- I think that's
24 where the objective reasonableness analysis
25 comes into play. First of all --

1 JUSTICE SOTOMAYOR: No, it doesn't,
2 because --

3 MR. DESISTO: -- there was no
4 immediate danger here.

5 JUSTICE SOTOMAYOR: No, no, it
6 doesn't, because the question is -- the
7 objective reasonableness has to do with going
8 into the place and seizing.

9 MR. DESISTO: Yes, it was --

10 JUSTICE SOTOMAYOR: So what was
11 objectively reasonable under these
12 circumstances? And what's the limiting
13 principle?

14 MR. DESISTO: Well, one of the things
15 to keep in mind is that there -- they were faced
16 with a situation where he was taken to the
17 hospital for evaluation, they didn't know when
18 he would be back. And, in fact --

19 JUSTICE SOTOMAYOR: Why couldn't they
20 find out?

21 MR. DESISTO: I -- I think --

22 JUSTICE SOTOMAYOR: Why couldn't they
23 ask the wife?

24 MR. DESISTO: They -- they could have.

25 JUSTICE SOTOMAYOR: Why couldn't they

1 have just taken the ammunition and not the gun?

2 MR. DESISTO: They -- they could have
3 done all of those things.

4 CHIEF JUSTICE ROBERTS: Justice Kagan.

5 MR. DESISTO: I -- I can't quarrel
6 with you on that, but --

7 CHIEF JUSTICE ROBERTS: Justice Kagan.

8 JUSTICE KAGAN: Mr. Desisto, I -- I
9 would think that if the police have some good
10 reason to think that a person is going to use a
11 gun or other weapon to take his own life or to
12 take -- to take his own life or to take the life
13 of a spouse or other family member, that would
14 count as reason enough for the police to
15 proceed. In other words, it is exigent
16 circumstances or you can say it falls within the
17 exception that we've set up for emergency aid.

18 So why didn't you make that argument?

19 MR. DESISTO: We -- we looked at
20 Brigham, and it was the timing of the potential
21 harm, could happen in a minute, could happen in
22 a day, and thought that that distinction made
23 exigent circumstances inapplicable.

24 Now, if this Court were to prefer to
25 --

1 JUSTICE KAGAN: I -- I'm sorry, could
2 you just explain that to me a little bit? You
3 just thought that it -- it wasn't -- it
4 didn't -- it was not an immediate threat, and
5 why did you think that?

6 MR. DESISTO: We -- we thought that
7 the timing of the potential harm couldn't be
8 determined, was -- it's undeterminable, and so
9 exigent circumstances, when looking at this
10 Court's cases for emergency aid, and there are
11 only two of them, Michigan and Brigham, where
12 the action happened immediately right in front
13 of the officers, we thought that may not be the
14 best fit. And the best fit was the community
15 caretaking doctrine, where the -- the -- the --
16 the advent of the harm doesn't have to be
17 immediate. In fact, it's unknown and including
18 by police.

19 JUSTICE KAGAN: Yeah. No, I mean, I
20 guess I understand why that would seem like
21 community caretaking. That sounds like a phrase
22 that covers a lot of stuff.

23 But, as Justice Thomas says, we really
24 have only used that phrase with respect to
25 automobile inventories, inventory searches, and

1 you said, well, the Fourth Amendment has only
2 one test, but I kind of think, if there's any
3 one principle of the Fourth Amendment law that
4 this Court has created, it's that the home is
5 special and that the automobile is distinctly
6 not.

7 MR. DESISTO: Yeah, I -- I agree, but
8 I think that that goes into the weighing of the
9 balance. The -- the -- the test is the same.
10 Where there's an automobile, the privacy right
11 is limited, and the home is at the forefront.
12 That -- that makes a difference when -- if a --
13 if an entry into the home is challenged. I
14 think courts take that into consideration and,
15 frankly --

16 JUSTICE KAGAN: Thank you, Mr.
17 Desisto.

18 MR. DESISTO: -- so do police
19 officers.

20 CHIEF JUSTICE ROBERTS: Justice
21 Gorsuch.

22 JUSTICE GORSUCH: Mr. Desisto, at
23 common law at least, you know, when we look --
24 we often look to common law when we're
25 interpreting the Fourth Amendment, its

1 reasonableness requirement, what did it mean
2 then, people could, of course, trespass on
3 property in aid of a public or private
4 necessity, what we today call exigent
5 circumstances.

6 I'm unable to locate any common law
7 authority privileging a trespass absent
8 exigent -- something like exigent circumstances.
9 Have you been able to locate anything in the
10 common law that comes close to what you're
11 asking for here?

12 MR. DESISTO: No. I don't think the
13 common law helps either side in this. Neither
14 does, frankly, the history of the -- the making
15 of the Fourth Amendment.

16 I do think the Restatement of Torts
17 is -- as you indicated, is our best example, and
18 that is you're not a trespasser if you're going
19 in for purposes of helping someone or helping
20 the property.

21 JUSTICE GORSUCH: Okay. If the -- if
22 the original meaning and history doesn't help,
23 let -- let -- let me ask you why -- I'm kind of
24 following up on Justice Kagan real quickly here.

25 I would have thought that cases of --

1 of threatened violence against oneself or others
2 or the prospect that someone is lying, having
3 fallen in a home, would count as exigent
4 circumstances in the vast majority of cases, and
5 it's only when there's a long time delay that
6 that's going to become a problem.

7 So why -- why -- why doesn't the
8 exigent circumstances bucket take care of the
9 practical concerns that have been voiced here
10 today?

11 MR. DESISTO: I think, if this Court
12 determines and clarifies that apart from
13 Michigan and Fisher and Brigham, that exigent
14 circumstances account for situations where the
15 officer doesn't know when the harm is going to
16 occur and -- and doesn't know if there's an
17 immediate need, but -- but something must be
18 done, they can't walk away, well, then exigent
19 circumstances does apply. But --

20 JUSTICE GORSUCH: Thank you, counsel.

21 CHIEF JUSTICE ROBERTS: Justice
22 Kavanaugh.

23 JUSTICE KAVANAUGH: Thank you.

24 And good morning, Mr. Desisto.

25 Picking up right there on Justice Gorsuch's

1 question does make this seem, as I think the
2 amicus brief from the states, written by the
3 Utah solicitor general, says that this case is
4 before the Court, as the brief says, "partly
5 because of a confusion in nomenclature."

6 And then that amicus brief also says
7 "although mislabeled a community caretaking
8 warrant exception, the First Circuit effectively
9 applied Brigham City's emergency aid standard."

10 And I'm wondering if we're just here
11 because of a -- a confusion about labeling, as
12 that brief says. Can you respond to that?

13 MR. DESISTO: Yeah, I -- I can. I
14 think, if -- if this Court looks at Brigham and
15 looks at Michigan versus Fisher and then
16 determines that in situations apart from those
17 where the officers, as I said, can't tell when
18 the harm is going to happen and think that the
19 need is imminent, if that's termed exigent,
20 that -- that -- that's fine.

21 I do think, though, that one has to
22 look at the response under caretaking and
23 exigent circumstances. One is reactive,
24 exigent, and one is proactive, caretaking.

25 And look at the facts of this case.

1 They sent him to -- to be evaluated. They
2 retained the guns. And -- and, frankly, you
3 know, the hospital record indicates that he was
4 discharged because they were confident the guns
5 had been taken. Those are proactive things that
6 fall within the community caretaking doctrine
7 that may not be applicable to exigent
8 circumstances.

9 JUSTICE KAVANAUGH: Thank you.

10 CHIEF JUSTICE ROBERTS: Justice
11 Barrett.

12 JUSTICE BARRETT: Good morning, Mr.
13 Desisto. You told Justice Gorsuch that your
14 best example at common law of something like
15 this was that for the tort of trespass, if you
16 entered property because of necessity, there was
17 no liability.

18 And is it really the case that, say,
19 I'm a neighbor and I go into Mr. Caniglia's home
20 because, you know, I understand the wife is
21 concerned about the presence of the guns still
22 in the house, and I take the guns and then take
23 them back to my house, that I'm not liable
24 either for trespass or conversion?

25 MR. DESISTO: Well, I didn't say

1 conversion, so that might be a little different.
2 And I -- and don't forget we're talking about a
3 tort action. But I -- I -- I go by the words of
4 the Restatement, and under the Restatement, it
5 --

6 JUSTICE BARRETT: But you're not
7 asking just for the entry; you have to justify
8 the seizure as well. And you -- you don't have
9 an example for that at common law, am I right?

10 MR. DESISTO: That's correct --

11 JUSTICE BARRETT: Okay. Let me ask
12 you this.

13 MR. DESISTO: -- that common law
14 doesn't --

15 JUSTICE BARRETT: What if they -- the
16 police went into Mr. Caniglia's home and they
17 found a meth lab? I assume that they can take
18 all of that and then he can be prosecuted.

19 MR. DESISTO: He can. That's plain
20 view. Yes.

21 JUSTICE BARRETT: Okay. And then
22 let's talk about how far this exception might go
23 because, obviously, there's a lot of concern
24 about it being an umbrella for a lot of sorts --
25 lots of different things.

1 Let's say that in a town with a high
2 rate of COVID infections, police look through
3 the window and they can see a lot of people
4 gathered together that are not wearing masks.

5 Can they enter?

6 MR. DESISTO: Yes. But -- but, see, I
7 think that gets -- there may be -- there may be
8 a criminal or, you know, a violation for so many
9 people entering that would allow them --

10 JUSTICE BARRETT: No, that wasn't part
11 of my hypothetical. No criminal -- you know,
12 it's just that there's -- there's no crime, you
13 know, that -- say that there's a mask ordinance
14 that carries no penalty. People are told to
15 wear masks, but there's no penalty for it.

16 MR. DESISTO: Yes, I -- I --

17 JUSTICE BARRETT: This a concern about
18 spread.

19 MR. DESISTO: Yes, I -- I -- yes, I'd
20 look at the community caretaking test. It's a
21 transient hazard. There's a non-investigatory
22 reason for engaging in that activity going in.
23 They have articulable facts. They've seen it.
24 And there -- it depends on what they do. If
25 they go in and just disperse the crowd, I think

1 that fits within community caretaking.

2 JUSTICE BARRETT: Okay. Thank you.
3 My time's expired.

4 CHIEF JUSTICE ROBERTS: A minute to
5 wrap up, Mr. Desisto.

6 MR. DESISTO: Thank you, Mr. Chief
7 Justice.

8 The text and the meaning and the
9 spirit of the Fourth Amendment is not offended
10 by caretaking activity to the most vulnerable at
11 the most vulnerable times so long as the
12 intrusions are reasonable when weighed against
13 the privacy interest.

14 The -- the question presented is
15 something that should be answered in the
16 affirmative. An absolute prohibition is not
17 consistent with the Fourth Amendment. Our
18 nation doesn't abandon those in need. Police
19 officers cannot turn their backs and walk away.

20 The circuit decision should be
21 affirmed, and the question presented should be
22 answered in the affirmative. Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Ms. Ratner.

1 ORAL ARGUMENT OF MORGAN L. RATNER
2 FOR THE UNITED STATES, AS AMICUS CURIAE,
3 SUPPORTING THE RESPONDENTS

4 MS. RATNER: Mr. Chief Justice, and
5 may it please the Court:

6 This case is fundamentally different
7 from most of the Court's Fourth Amendment cases
8 because the question is not act now or get a
9 warrant first. It's act now or not at all.
10 That's because there is no warrant process in a
11 lot of these non-investigatory situations, from
12 welfare checks on elderly residents to
13 intervention in current suicide threats.

14 Although there have been a lot of
15 questions this morning about whether this is
16 emergency aid or exigent circumstances or
17 community caretaking or something else, the
18 label you give it is not nearly as important as
19 the principle.

20 And the key principle is, if someone
21 is at risk of serious harm and it's reasonable
22 for officials to intervene now, that is enough.
23 The officials don't need to show that the harm
24 is mere moments away or that there's no time to
25 get a warrant because, again, for many of these

1 situations, there is no warrant process that
2 could be invoked at all.

3 CHIEF JUSTICE ROBERTS: Ms. Ratner,
4 how do you feel about the cat? Do you let the
5 policeman bring it down or it die in the tree?

6 MS. RATNER: So we -- we don't, Your
7 Honor. The -- the lower courts have generally
8 applied three buckets of these types of
9 community caretaking interests: one is serious
10 harms to people; two is serious harms to
11 property; and three is sort of an abatement of
12 nuisances. We're here defending the serious
13 harms to people, which we think is the paramount
14 government interest. And we don't --

15 CHIEF JUSTICE ROBERTS: So no -- no
16 concern about property or -- or animals?

17 MS. RATNER: I think there would have
18 to be unusually compelling circumstances for
19 those other types of interests to be
20 sufficiently important to match the important
21 privacy interests in the home.

22 CHIEF JUSTICE ROBERTS: Well, okay,
23 it's water dripping from above, you know, in --
24 in someone's home, and they happen to own a Van
25 Gogh and the water's going to ruin the painting.

1 Is that compelling?

2 MS. RATNER: I -- I think unlikely.
3 I'd hope they can move the painting in those
4 circumstances.

5 CHIEF JUSTICE ROBERTS: Well, you
6 know, they're -- no, they're like the elderly
7 woman. They're off somewhere and nobody can
8 reach them.

9 MS. RATNER: I -- again, you know,
10 there may be circumstances where the Court would
11 want to consider those questions and it may want
12 to leave that question open. But we think the
13 most important cases for the Court to cover here
14 are the protection of -- of risks to human
15 health. And so there are cases where there's
16 water dripping from above over an electrical box
17 and firefighters are concerned about starting a
18 fire in -- in the home and they --

19 CHIEF JUSTICE ROBERTS: So why don't
20 we -- why aren't you arguing for an exception?
21 It's not community caretaking; it's, you know,
22 objectively reasonable grounds to believe life
23 is in danger?

24 MS. RATNER: So that -- that is -- is
25 more or less the test that we've put forward

1 here. We -- we think the community caretaking
2 label is a little misleading because, again,
3 Cady was so bound up in the particular
4 circumstances of vehicles and that the better
5 rule here is that there be specific facts that
6 objectively establish a non-investigatory
7 justification, in particular, the need for
8 assistance, and that the scope of the official's
9 actions be reasonably tailored to that interest.

10 CHIEF JUSTICE ROBERTS: Thank you,
11 counsel.

12 Justice Thomas.

13 JUSTICE THOMAS: Thank you, Mr. Chief
14 Justice.

15 Counsel, as well meaning as these
16 checks may be, there's always going to be
17 someone who does not want the government's help
18 or doesn't want the intrusion.

19 Normally, when we look at these things
20 under the Fourth Amendment, we do look for some
21 common law historical -- historic -- historical
22 analogue, and, here, it seems as though there is
23 none.

24 Could you give us something to look to
25 for the appropriate test? You've given us a

1 number of tests, what you suggest should be the
2 tests, but, normally, we look for some analogue.

3 What would be your best example?

4 MS. RATNER: Sure, Justice Thomas. I
5 think that the best analogue here is to the
6 duties of a constable. And the constable really
7 wore two hats at common law. One was a
8 peacekeeping role, and one was a law enforcement
9 role. And when he acted in that peacekeeping
10 role, if you look to Hale and Burns and
11 Conductor Generalis, you saw that he could enter
12 a home without a warrant to break up a fight, to
13 stop late-night noise, to deal with disorderly
14 drinking, and that was different from when he
15 was acting in his law enforcement capacity.

16 So that I -- I do think is the best
17 analogue that you have here. And I'd note that
18 Petitioner hasn't identified a single case or
19 treatise at common law in which a
20 non-investigatory entry was -- a warrant was
21 required.

22 JUSTICE THOMAS: But it seems as
23 though what you just gave me as an -- as -- as
24 -- as analogues would fit under some of our
25 current exceptions, exigent circumstances,

1 emergencies, things of that sort, and I don't
2 know why we would need another category to cover
3 those examples.

4 MS. RATNER: So, Justice Thomas, if
5 you think that exigent circumstances and
6 emergency aid are broad enough to cover
7 circumstances in which it is reasonable to act
8 now, even if we don't know that someone is going
9 to be injured in mere moments, then we are
10 perfectly fine with that test, and we think that
11 test would cover circumstances like welfare
12 checks and the current suicide threat.

13 The problem is when you have lower
14 courts -- and Petitioner here saying that those
15 are really cabined to circumstances in which the
16 emergency is going to come to head in moments,
17 and that's just too restrictive to map onto even
18 that common law rule.

19 JUSTICE THOMAS: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Breyer.

22 JUSTICE BREYER: I -- I'd like to know
23 what you would think, if you accept at least
24 hypothetically that if you just say community
25 caretaking, we can't foresee how broad that

1 might be. And if you use the present words that
2 attach to emergency or exigent circumstances,
3 they might in this situation be too narrow.

4 But suppose we were -- what would you
5 think, what would the government think, of
6 simply taking this case as a common law case --
7 it does involve threats of suicide; they are
8 serious -- and saying the Rhode Island's
9 legislature has -- this is a Rhode Island case
10 -- has -- has enacted subsequently a statute
11 that we believe has a constitutional standard
12 that allows the officers to take this individual
13 into protective custody if the officer has
14 reason to believe that there's a risk of
15 imminent likelihood of serious harm by reason of
16 mental disability?

17 MS. RATNER: So, Justice Breyer, we
18 would be fine with that result if the Court
19 clarifies what it means by "imminent." And I
20 think there is a problem --

21 JUSTICE BREYER: But we can't. That's
22 the very -- that's the very thing we can't do.

23 MS. RATNER: But --

24 JUSTICE BREYER: I mean, I don't know
25 how to do it because, obviously, a month is

1 ridiculous. A second is too short.

2 So you tell me, what is it that we
3 should say? How do you define the word
4 "imminent"? Often -- Judge, I know less about
5 this than psychologists and psychiatrists, who
6 say that any utterance of the words "threatening
7 suicide" should be taken very seriously. I'm
8 not an expert, and I would think laws should
9 take it seriously. What do you want to say?

10 MS. RATNER: I think, if you said, by
11 "imminent," we have meant to suggest a current,
12 ongoing crisis for which it is reasonable to act
13 now and you bounded that description by
14 reasonableness rather than by a mere moment's
15 rule or by comparison to a warrant process that
16 doesn't even exist, then I think that that would
17 suffice and would give room to encompass these
18 different circum -- these various situations.

19 JUSTICE BREYER: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice Alito.

21 JUSTICE ALITO: How far can we go in
22 giving a little bit more substance to what's
23 been labeled community caretaking? Maybe what
24 you've said so far does give it some substance.

25 So if you -- I believe you -- you said

1 it at least encompasses a situation where the --
2 the objective is to prevent life-threat --
3 life-threatening or serious physical injury,
4 right? That would be a first step?

5 MS. RATNER: I think that's correct.
6 I would put emphasis on serious physical harm
7 because the Court said in Brigham City it wasn't
8 going to require someone to be, you know,
9 unconscious before it --

10 JUSTICE ALITO: Okay, serious --
11 serious physical harm. And then how much
12 information does a -- does an officer have to
13 have, and does it matter whether it's a police
14 officer or a -- a mental health professional or
15 someone else?

16 MS. RATNER: So the information we
17 think is specific facts sufficient to
18 objectively establish a non-investigatory
19 justification and to make it reasonable to act
20 now, and -- and that would apply both to law
21 enforcement officials and to others, which --
22 which I do think is an important part of this
23 case, that Petitioner is asking for a warrant
24 process to apply to things that firefighters do
25 and social workers do and mental health

1 professionals do.

2 JUSTICE ALITO: Well, in the case of
3 the -- the risk of suicide, do you think it's
4 sufficient if someone says, my friend said she
5 was so distraught she was going to jump out the
6 window, and then they questioned that person and
7 the person says, oh, it's just a joke?

8 MS. RATNER: I -- I think that would
9 likely not be sufficient there. I think, again,
10 you would need specific facts to objectively
11 establish the risk. And, here, you don't have
12 just a statement that might have been hyperbole.
13 You have that statement coupled with the
14 production of a live firearm, a statement that's
15 so scared, the individual who presumably knows
16 that person best, that she packed a bag, hid the
17 magazine for the gun, left for the night and
18 called the police the next morning.

19 And then you have confirmation by the
20 person who made the statement that he did say
21 it, but he was sick of the fights and so on and
22 so on. And -- and so I -- I do think courts are
23 perfectly capable of drawing the line between
24 those two scenarios.

25 JUSTICE ALITO: All right. Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Sotomayor.

3 JUSTICE SOTOMAYOR: Counsel, one of
4 the reasons I think the Fourth Amendment was
5 there was to make persons -- and I'm quoting its
6 own language roughly -- to secure persons in
7 their home. That's the language of the Fourth
8 Amendment.

9 And it seems to me that I don't have a
10 problem with them having removed this gentleman
11 and taken him to the hospital. That's a
12 seizure, because they had reason to believe that
13 he was threatening suicide.

14 And even though 12 hours had passed,
15 the wife was still concerned, and he admitted to
16 the threat by calling it a joke. I don't think
17 police officers have to take his description at
18 face value given the circumstances described.

19 So seizing him and taking him to the
20 home would seem to me -- to psychiatric
21 examination as very much an exigent
22 circumstance.

23 Missing here, as I pointed out to your
24 colleague, is the next step, which is going into
25 the home without attempt to secure consent from

1 the wife and seizing the gun and then keeping it
2 indefinitely until a lawsuit is filed.

3 The wife tried to get it back. He
4 tried to get it back. Weeks and weeks went by.
5 When we permit police to search and seize
6 without some standard, we run the risk of
7 situations like this one repeating themselves.

8 So can you concentrate on the exigency
9 with respect to the second seizure at issue? My
10 colleagues seem concerned with the first one,
11 preventing the suicide, which has to do with
12 seizing the individual or even going in to care
13 for the individual. I'm talking about a second
14 seizure and --

15 MS. RATNER: So, Justice Sotomayor --

16 JUSTICE SOTOMAYOR: -- and one that
17 wasn't a seizure in plain view. They went in
18 and literally searched and took it.

19 MS. RATNER: So, Justice Sotomayor,
20 first, to get out of the way, the keeping
21 indefinitely of the gun was found to be a due
22 process violation, so you should take that part
23 out of the case.

24 And then the question was, you know,
25 should these officers have perhaps followed

1 Petitioner to the hospital and made sure that he
2 got a mental health evaluation or did they think
3 taking guns where they knew the location of
4 those guns was -- was a better or an -- or an
5 equal choice there?

6 You know, I think that's the closest
7 part of the case, but, at the end of the day,
8 without the benefit of hindsight, it was a
9 reasonable choice for them to think, let's
10 temporarily take ahold of these instead of
11 following this person to the hospital and -- and
12 seeing what happens there.

13 JUSTICE SOTOMAYOR: Well, it turned
14 out --

15 CHIEF JUSTICE ROBERTS: Justice Kagan.

16 JUSTICE KAGAN: Ms. Ratner, can I ask
17 you about a few of the community care cases in
18 the lower courts and ask what you think of them?

19 Rohrig, first, there's a lot of noise
20 coming from one house. The officer knocks.
21 Nobody comes to the door. The neighbors are
22 complaining, but there doesn't -- it's not -- it
23 doesn't rise to the level of a crime. Can the
24 officer go in?

25 MS. RATNER: So, as I mentioned

1 before, we aren't defending the abatement of
2 nuisances case like that one.

3 JUSTICE KAGAN: Right. I'm just
4 asking. I mean, what do you think?

5 MS. RATNER: I think the Court should
6 leave the question open, but, no, that's not the
7 core --

8 JUSTICE KAGAN: So what do you think?
9 Yes or no?

10 MS. RATNER: If we had to decide right
11 now, I would say probably not, that we're -- we
12 think that the risk of harm to a person is -- is
13 really the core that could match the --

14 JUSTICE KAGAN: Okay. How about
15 Quezada? The officer there goes to a home. I
16 think that the officer is trying to leave a
17 child protective order or something like that,
18 but what the officer finds is that the lights
19 are on inside and there's a TV on. Can the
20 officer go in?

21 MS. RATNER: I -- I think probably
22 not. I -- I think, in Quezada, there weren't
23 sufficient specific facts to establish -- to
24 make it reasonable to believe someone needed
25 assistance.

1 JUSTICE KAGAN: Okay. How about
2 McDonald? The -- the house owner goes to a
3 store, leaves his door partially ajar. The
4 neighbor sees the open door, calls the police.
5 Police officer arrives, doesn't receive a reply
6 because there is, in fact, nobody there. Can he
7 search the house?

8 MS. RATNER: If it's just an open
9 door, that's probably insufficient. Most of the
10 open-door cases involve other facts, like
11 there's a car in the driveway starting to become
12 covered with leaves and mail outside and that
13 sort of thing. So that's --

14 JUSTICE KAGAN: Right. Does it give
15 you pause at all that the community care
16 exception has acquired these -- these dimensions
17 in the lower court -- in the lower courts to
18 encompass all of these cases?

19 MS. RATNER: So, no, Justice Kagan, I
20 -- I think because you've really highlighted a
21 couple of the more unusual ones, and the vast
22 majority, I point the Court to the LaFave
23 treatise, if you look through, these are things
24 like suicide threats and welfare checks and
25 unattended children and weapons that are left

1 accessible to children with no adult in the home
2 and risk of explosion, and they're just much
3 more obvious circumstances where there's no
4 warrant available, and, of course, we want
5 someone to intervene there and, of course, we
6 want police involved.

7 JUSTICE KAGAN: Thank you, Ms. Ratner.

8 CHIEF JUSTICE ROBERTS: Justice
9 Gorsuch.

10 JUSTICE GORSUCH: Good morning, Ms.
11 Ratner. Let me see if I understand what -- what
12 you said this morning because it differs a
13 little bit from my reading of your brief.

14 You -- you agree we should look to the
15 common law to inform our understanding of the
16 Fourth Amendment's reasonableness test?

17 MS. RATNER: We -- we've always agreed
18 that the Court looks to the common law for --
19 for what it can get there if there's a perfectly
20 obvious answer.

21 JUSTICE GORSUCH: Okay, okay, okay.
22 And -- and you agree that there we'll find a
23 test that allows trespass for something that
24 looks like exigent circumstances, and -- and by
25 that, I mean an injury to a -- grave injury to a

1 person?

2 MS. RATNER: So there are -- there are
3 two differences there. You will see trespass
4 for private individuals allowed both for serious
5 harms to people and -- and actually to property
6 at the common law. And you will see government
7 officials were allowed to enter homes in the
8 service of their peace-keeping duties.

9 JUSTICE GORSUCH: Okay. But -- but
10 you're asking us to rely on, as I understand it,
11 maybe I'm mistaken, the common law's general
12 rule that a trespass is permissible in aid of
13 someone who's in danger of imminent physical
14 injury?

15 MS. RATNER: That's not quite how the
16 trespass rule is framed at common law. It's
17 generally, as now, explained in the Restatement,
18 it reasonably appears necessary to prevent a
19 harm. So I -- I wouldn't want to put that to
20 sort of immediacy cast. And, again --

21 JUSTICE GORSUCH: Okay. But I
22 thought -- I thought -- I thought you said it
23 had to do with physical harm to persons.

24 MS. RATNER: So the common law
25 actually extends both to serious harms to

1 persons and to property. There are a lot of --

2 JUSTICE GORSUCH: But -- but -- but
3 your argument -- I'm asking about your argument
4 now. It doesn't extend past persons, is that
5 right?

6 MS. RATNER: Our argument we've --
7 we've defended today is that the serious
8 government interest, the government interest
9 that's been called paramount, an individual's
10 safety, is one that can match the significant
11 privacy interests in the home. We don't think
12 the Court should get into harms to property or
13 abatement of nuisances here.

14 JUSTICE GORSUCH: Okay. Okay. And if
15 -- if that's all true, why -- why -- why doesn't
16 that more naturally fit under an exigent
17 circumstances test rather than a community
18 caretaking exception that started in Cady, had
19 to do with cars, and now mostly has to do with
20 nuisances?

21 MS. RATNER: So, to be clear, we
22 haven't located this in Cady itself, but the --
23 the reason why exigent circumstances has, I
24 think, tripped up some lower courts is because
25 it's often thought of as the time available to

1 get a warrant. So courts have said, okay, what
2 if, in this jurisdiction for a criminal case,
3 someone can act -- get a warrant within an hour?
4 Well, they need to know that suicide is going to
5 occur within an hour or that person they're
6 doing a welfare check on is going to break their
7 hip within the hour. And that --

8 JUSTICE GORSUCH: Thank -- thank you.
9 Thank you, counsel.

10 CHIEF JUSTICE ROBERTS: Justice
11 Kavanaugh.

12 JUSTICE KAVANAUGH: Thank you, Chief
13 Justice.

14 Good morning, Ms. Ratner. If I'm
15 hearing you correctly, you're not concerned
16 about the label, whether community caretaking or
17 exigent circumstances, as long as we get the
18 substance correct. Is that accurate?

19 MS. RATNER: That's accurate. And --
20 and as I was just explaining to Justice Gorsuch,
21 I think the key part of the substance in many
22 circumstances is timing. If you limit this to
23 mere moments or if you limit this to the time
24 available to get a warrant when there is no
25 warrant available, then that's, I think, when

1 you end up excluding a lot of non-investigatory
2 activity.

3 JUSTICE KAVANAUGH: And I think you
4 used the phrase "current ongoing crisis by which
5 it's reasonable to act now." Is that an
6 accurate -- did I hear that correctly?

7 MS. RATNER: Yes, I -- I -- I think
8 that's correct.

9 JUSTICE KAVANAUGH: And then, on the
10 common law, I think there's an interesting
11 question as to the -- as to the original meaning
12 of the term "reasonable," "unreasonable," as
13 distinct from the terms "search" and "seizure."
14 But put that aside. We don't -- we certainly
15 don't ignore the common law even as to the term
16 "reasonable."

17 So, if we're writing an opinion here
18 and it goes along the lines of the rule that
19 you're proposing, how would we write the
20 following sentence or paragraph? Our proposed
21 rule is consistent with common law because --
22 you can fill in the blank with the rest of your
23 time.

24 MS. RATNER: Because the common law
25 drew a line between government officials acting

1 in an investigatory and a non-investigatory
2 capacity, and when they were acting in a
3 non-investigatory capacity, they were allowed to
4 enter homes without warrants in order to address
5 a -- a need, a reasonable possibility of
6 disturbance or serious physical harm.

7 That also maps onto the common law of
8 trespass, which applied, of course, beyond
9 government officials and just to private
10 individuals.

11 I -- I would note that because that's
12 still the common law rule, under Petitioner's
13 theory here, government officials would be
14 allowed to enter the home in fewer circumstances
15 than private individuals are -- are permitted to
16 enter.

17 JUSTICE KAVANAUGH: Thank you,
18 Ms. Ratner.

19 CHIEF JUSTICE ROBERTS: Justice
20 Barrett. Justice Barrett.

21 JUSTICE BARRETT: Oh, sorry, I was on
22 mute.

23 Ms. Ratner, can you say a little bit
24 about how the common law rule that justifies a
25 trespass in your view would justify seizing the

1 guns?

2 MS. RATNER: Sure. That is a
3 circumstance where I -- I think, obviously,
4 there's no parallel between what government
5 officials are permitted to do and what private
6 individuals are permitted to do. So --

7 JUSTICE BARRETT: And so, to be clear
8 about your argument, you're saying that you
9 would be then okay if the rule that we
10 articulated, if we sided with you, didn't
11 include the ability to seize guns or other
12 things found in the home?

13 MS. RATNER: No, I wouldn't. I would
14 not be okay. My point is merely, if you're
15 talking about the common law trespass rule that
16 applied to individuals, from that, you can
17 derive the general point, which is an entry is
18 justified when there is a serious harm at risk.

19 On -- on the other hand, government
20 officials, obviously, are allowed to do things
21 all the time that private individuals can't do.
22 And so I certainly wouldn't limit government
23 officials to the common law rule that applied to
24 private individuals only.

25 JUSTICE BARRETT: So, once you're in,

1 then -- you don't need a common law analogue.
2 Once you're in, you seize the guns if you see
3 drugs and that sort of thing?

4 MS. RATNER: Well, of course, plain
5 view applies. If someone is acting in a
6 reasonable way within the meaning of the Fourth
7 Amendment, then the other things that law
8 enforcement officers or other government
9 officials are entitled to do --

10 JUSTICE BARRETT: Even if the reason
11 they entered the house is to seize the guns?

12 MS. RATNER: Yes, I -- I -- I -- the
13 part of the test that we're talking about here
14 in terms of the scope is that we would expect
15 what they do in the house to be reasonably
16 tailored to the non-investigatory justification.

17 So, if it's reasonable to temporarily
18 take ahold of some guns, then -- then, yes, as
19 long as what they do inside the home is tailored
20 to that, that's permissible.

21 Again, I would -- I would focus -- I
22 would encourage the Court not to focus too much
23 on the guns of this case, in part because
24 Petitioner doesn't even make an argument about
25 the case-specific reasonableness here and in

1 large part because a lot of the cases that are
2 covered by these principles aren't going to
3 involve firearms.

4 JUSTICE BARRETT: Thank you, counsel.

5 CHIEF JUSTICE ROBERTS: A minute to
6 wrap up, Ms. Ratner.

7 MS. RATNER: Thank you, Mr. Chief
8 Justice.

9 I just want to emphasize that the
10 distinction between investigatory and
11 non-investigatory activity is nothing new. As
12 Petitioner suggests, this would undermine or
13 depart from a lot of Fourth Amendment case law,
14 but the Court has drawn that distinction in
15 assessing programmatic searches like mandatory
16 drug testing and inventory searches.

17 And in those cases, the analysis
18 starts by asking whether there's an objective
19 purpose grounded in general law enforcement. If
20 there is, then a warrant's required. If there's
21 not, then the courts apply general
22 reasonableness review.

23 It's also applied that review to
24 public safety interventions in the home,
25 including protective sweeps and entries to stop

1 domestic violence, to break up fights, or to
2 provide first aid.

3 So applying a warrant requirement here
4 would make little sense as a matter of text,
5 history, or logic. And what matters, no matter
6 the label, is that government officials can
7 constitutionally enter to address a serious
8 threat to lives or health. Thank you.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Mr. Dvoretzky, we afforded your
12 friends on the other side more time than
13 anticipated, so why don't you take up -- up to
14 10 additional minutes for further questions or
15 points you might like to make.

16 I -- I'd like -- and -- and during
17 that time, my colleagues, of course, are free to
18 ask additional questions.

19 And I'd like to start by asking you
20 whether you're concerned that this reliance on
21 -- a lot of your -- your answer in a lot of
22 these situations was that, well, that's an
23 exigent circumstance or that's an emergency aid.

24 Why -- why shouldn't we be concerned
25 that doing that will dilute the limits on those

1 exceptions, as opposed to having a more
2 carefully defined exception for situations that
3 aren't really that exigent or aren't really that
4 much of an emergency?

5 REBUTTAL ARGUMENT OF SHAY DVORETZKY

6 ON BEHALF OF THE PETITIONER

7 MR. DVORETZKY: Well, Mr. Chief
8 Justice, I think, if you have a situation that
9 isn't that exigent or that isn't an emergency,
10 then police shouldn't be going in.

11 The reason that the temporal limit on
12 the exigent circumstances doctrine is so
13 important is that it ensures that -- that
14 claiming exigent circumstances doesn't just
15 become a pretext for law enforcement.

16 And there are a couple of cases from
17 the lower courts here --

18 CHIEF JUSTICE ROBERTS: Well, my
19 concern is not so much it's a pretext for law
20 enforcement but that it's a pretext for
21 community caretaking.

22 MR. DVORETZKY: Well, I think, either
23 way, the risk is that officers go in, they say
24 it's because they're looking out for somebody's
25 interests, but not in an emergency situation,

1 and they end up, even at -- at a minimum,
2 invading the privacy of the home when the person
3 might just want to be left alone, or, worse yet,
4 it might lead to a criminal prosecution pursuant
5 to, say, the plain view doctrine.

6 And there are a couple of cases from
7 the lower courts that illustrate this perfectly.
8 One is the Quezada case, which I think Justice
9 Kagan brought up. And -- and in that situation,
10 police officers heard the television on, they
11 saw that the door was slightly ajar, they went
12 inside, they claimed that they were doing so
13 because they thought the person inside might
14 need help, they found the person sleeping on the
15 sofa with a sawed-off shotgun next to them, and
16 the person was criminally prosecuted. And the
17 Eighth Circuit in that case held that was a
18 permissible use of community caretaking.

19 And whether you call it community
20 caretaking or whether you call it a looser
21 version of exigent circumstances, either way,
22 not having the -- the carefully defined temporal
23 limit on what constitutes an exigent
24 circumstance is critical for protecting the
25 interests that underlie the Fourth Amendment.

1 JUSTICE KAGAN: Well, Mr. Dvoretzky --
2 this is just Elena Kagan -- if -- you know, if
3 you think about what the SG said today as
4 opposed to some of the statements in the SG
5 brief, as I understood Ms. Ratner, she said,
6 well, we don't care about the label and we can
7 call it exigent circumstance; the only thing we
8 care about -- and she said it has to be a
9 current ongoing crisis.

10 The only thing we care about is that
11 no court should think it has to be in the -- it
12 has to be really immediate or in the space of
13 time with which to get a warrant because, after
14 all, a lot of places, there's no place to get a
15 warrant in -- in -- in circumstances like these.

16 So what would be wrong with that?

17 MR. DVORETZKY: Justice Kagan, let me
18 make two points in response to that.

19 One, I -- I think it's critical that
20 the officers think that the need to act is
21 imminent. And if -- if you impose that
22 imminence requirement, that the injury is either
23 happening now or that it's about to happen, I --
24 I agree it doesn't need to be happening now, and
25 it doesn't need to be happening in a matter of

1 seconds, but it has to be happening -- it -- it
2 has to be quite imminent, I think it's important
3 to impose that temporal limit to avoid the sorts
4 of problems that I was describing.

5 The -- the other point I'd like to
6 make in response to that is states have come up
7 with numerous warrant regimes that would apply
8 in these types of situations. There was one in
9 Rhode Island in this very case where police --
10 if -- if Mr. Caniglia had refused to speak to a
11 mental health professional, rather than taking
12 it upon themselves to send him to the hospital,
13 police could have gotten an order from a court
14 that in their judgment there was an emergency
15 that required sending him to the hospital, and a
16 court could have authorized that.

17 And so there are these warrant
18 regimes. And in Camara, in fact, there were not
19 widespread administrative warrant regimes, but
20 the Court contemplated that such a regime was
21 necessary in order to protect the Fourth
22 Amendment. And states in the years since have
23 come up with it.

24 So I do think states have created
25 these kinds of procedures and that that is a

1 significant part of the answer to -- to the
2 question here, is --

3 JUSTICE GORSUCH: Counsel --

4 MS. RATNER: -- having those -- having
5 those sorts of alternatives.

6 JUSTICE GORSUCH: Counsel -- counsel,
7 could you, just -- just to back up a moment
8 because I think you blew past it pretty quickly,
9 explain what -- what the problems are with
10 diluting the imminence requirement?

11 MR. DVORETZKY: So I think the problem
12 with diluting the imminence requirement -- and,
13 again, the cases, I think, illustrate this -- if
14 -- if -- if you don't ensure that circumstances
15 are actually exigent, police will, in a -- in an
16 infinite array of situations, be able to say:
17 Well, we had some reason to believe that the
18 person inside might need help.

19 And -- and so, if you take a case like
20 Welsh from this Court's case law, where the
21 police went to somebody's home, the person had
22 -- had committed drunk driving, but it was not a
23 hot pursuit, and the person was not a risk to
24 the public because he was already at home, but
25 the police nonetheless went into his house

1 without a warrant and arrested him, this Court
2 said that that violated the Fourth Amendment.

3 Under -- under the other side's view
4 of the law, presumably, the police could say:
5 Well, we were very concerned that this person
6 was inebriated and at home and needed help.

7 If -- if you allow that kind of a
8 situation to constitute exigent circumstance,
9 not only is that contrary to this Court's cases
10 like Welsh, but, to your point, Justice Gorsuch,
11 I think it dilutes all of the interests that the
12 Fourth Amendment --

13 JUSTICE KAVANAUGH: Counsel --

14 MR. DVORETZKY: -- is meant to
15 protect.

16 JUSTICE KAVANAUGH: -- counsel, on the
17 -- on the question of suicide, how -- how is an
18 officer supposed to determine how immediate the
19 person might commit suicide, at risk is,
20 assuming that the officer has gotten some
21 articulable suspicion provided by someone else
22 that a person's suicidal? How are they supposed
23 to determine it's going to happen now, might
24 happen tonight? How is the officer supposed to
25 figure that out?

1 MR. DVORETZKY: So I think it depends
2 on what they see when they go to the home. And
3 to take this case --

4 JUSTICE KAVANAUGH: So they see
5 nothing when they go to the home. They -- they
6 have -- you know, this person is suicidal and
7 some facts that support that, and they can't get
8 in the home. Just let them -- let it go?

9 MR. DVORETZKY: So I -- I think the
10 first step would be to consult a mental health
11 professional. If they can't consult a mental
12 health professional --

13 JUSTICE KAVANAUGH: So -- so that
14 takes a few hours and, in the meantime, the
15 suicide's occurred.

16 MR. DVORETZKY: So, first of all, I
17 think, in many states, it wouldn't take a few
18 hours. It could be done much more quickly.
19 But, if -- if they did find that they couldn't
20 consult a mental health professional because
21 they couldn't reach one for a few hours, and if
22 they had a credible reason to believe based on
23 whatever information or tip they were given --

24 JUSTICE KAVANAUGH: I mean, the --
25 these --

1 MR. DVORETZKY: -- that it couldn't
2 wait --

3 JUSTICE KAVANAUGH: -- these formulas
4 are great, but, you know, officers have to make
5 a split-second decision like -- they don't have
6 time to figure this out by consulting mental
7 health professionals. They've been told --
8 they've been told under the hypothetical that
9 the person is suicidal. It's not the drunk
10 driving example. It's not -- it's suicidal.
11 And -- and you want them to hesitate, and I'm --
12 I really question that.

13 MR. DVORETZKY: Justice Kavanaugh, if
14 -- if they have been told that the person is
15 suicidal, they cannot get in touch with the
16 person, they cannot get in touch with a mental
17 health professional, I think, in that situation,
18 they could go in. I think that would probably
19 constitute an exigency. That's --

20 JUSTICE KAVANAUGH: You -- you -- you
21 would -- you would impose the mental health
22 professional requirement in there?

23 MR. DVORETZKY: I think, if they can
24 do that --

25 JUSTICE KAVANAUGH: The officer can't

1 -- the officer can't just take those facts and
2 -- and can't make a judgment trying to save the
3 life?

4 MR. DVORETZKY: I think that if they
5 can do that in a matter of moments, on the cell
6 phone while driving to the house to check on the
7 person, they also call the mental health
8 professional, I think they ought to do that. It
9 was --

10 JUSTICE SOTOMAYOR: Counsel, this is
11 Justice Sotomayor. That seems to me going too
12 far, all right? Let's be realistic. This is
13 like Justice -- the Chief Justice's question
14 about the lady who doesn't come out of her home.

15 I do understand the -- the difference
16 between this -- the wellness check and what the
17 common law permitted you to do and the seizing
18 of guns from the home, where the person's no
19 longer there or a suicide threat. There's a big
20 difference between the two.

21 Why can't you see the difference? Why
22 can't your rule articulate that difference in a
23 more reasonable way?

24 MR. DVORETZKY: Justice Sotomayor, I
25 think, on the facts of this case, the difference

1 is that they were able to speak to Mr. Caniglia.
2 He answered the door. He did not want to be
3 helped. And they had no basis to think that
4 there was an immediate harm that would have
5 prevented them --

6 JUSTICE SOTOMAYOR: That's a different
7 --

8 MR. DVORETZKY: -- in that situation
9 --

10 JUSTICE SOTOMAYOR: That's a --

11 MR. DVORETZKY: -- from contacting a
12 mental --

13 JUSTICE SOTOMAYOR: That's a different
14 issue.

15 MR. DVORETZKY: Right.

16 JUSTICE SOTOMAYOR: I want to deal
17 with the two seizures differently, and I want
18 you to articulate a rule that deals with the two
19 differently.

20 MR. DVORETZKY: Well, Justice
21 Sotomayor, I do think, as your questions earlier
22 suggested, that the -- the seizure of the guns
23 is wholly indefensible because they -- they took
24 an extra step of going into the home to seize
25 the guns when there was no arguable imminent

1 risk there while Mr. Caniglia was at the
2 hospital.

3 I still think that the seizure of Mr.
4 Caniglia was also a Fourth Amendment violation,
5 but -- but I think one -- one could distinguish
6 between them along those lines.

7 CHIEF JUSTICE ROBERTS: Mr. Dvoretzky,
8 why don't you take a minute to wrap up.

9 MR. DVORETZKY: Thank you, Mr. Chief
10 Justice.

11 The one point that I wanted to add in
12 -- in rebuttal was on the common law. Under the
13 common law, the only situations where officers
14 could go in is where they -- either it was a hot
15 pursuit situation or they were stopping ongoing
16 violence.

17 The Restatement doesn't establish
18 otherwise. The Restatement provision says that
19 officers can't commit a trespass or individuals
20 can't commit a trespass if the person doesn't
21 want the help.

22 And -- and the reason that there isn't
23 a common law example requiring a warrant in
24 these sorts of situations is because these kinds
25 of community caretaking functions are not ones

1 that officers performed at all at common law.

2 The -- I -- I think the bottom line of
3 our position here is that we're not saying that
4 police officers can never enter. We're just
5 saying they need consent, a warrant, or an
6 emergency, an exigent circumstances situation,
7 but the exigent circumstances situation ought to
8 be defined with a tight temporal limit in order
9 to ensure the interests protected by the Fourth
10 Amendment.

11 The -- the First Circuit, of course,
12 relied only on the community caretaking
13 exception as the sole basis for upholding the
14 searches and seizures here. Because the
15 community caretaking exception doesn't extend to
16 the home, we ask that that judgment be reversed.

17 CHIEF JUSTICE ROBERTS: Thank you,
18 counsel. The case is submitted.

19 (Whereupon, at 11:42 a.m., the case
20 was submitted.)

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