No. 19-6343

IN THE SUPREME COURT OF THE UNITED STATES

ANTOINE RICHMOND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in determining that, based on the totality of the circumstances, a limited protective search of the area within petitioner's immediate control, where officers reasonably believed that he had hidden a gun, by officers lawfully within the curtilage of the duplex where petitioner was staying, was reasonable under the Fourth Amendment.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (E.D. Wis.):

United States v. Richmond, No. 16-cr-197 (Feb. 26, 2018)

United States Court of Appeals (7th Cir.):

United States v. Richmond, No. 18-1559 (May 13, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-36a) is reported at 924 F.3d 404. The order of the district court (Pet. App. 37a-45a) is not published in the Federal Supplement but is available at 2017 WL 3701216.

JURISDICTION

The judgment of the court of appeals was entered on May 13, 2019. A petition for rehearing was denied on July 17, 2019 (Pet. App. 56a). The petition for a writ of certiorari was filed on October 15, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Eastern District of Wisconsin, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The district court sentenced petitioner to 24 months and ten days of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-36a.

1. At about 11:40 p.m. on October 11, 2016, two police officers saw petitioner walking alone in an area of Milwaukee, Wisconsin, that is "known for drug trafficking, armed robberies, and gun violence." Pet. App. 2a; see id. at 38a. The officers observed that petitioner was walking with his left hand at his side and his right hand holding a "medium-sized to larger object" that was concealed in the front pocket of his shirt. Id. at 2a. Based on their training and experience, both officers suspected that petitioner was holding a gun. Ibid.

When petitioner saw the officers, he started walking faster, changed direction, cut across a lawn, and climbed up the stairs onto the front porch of a nearby duplex house. Pet. App. 2a-3a. Although the officers were not aware of it at the time, petitioner's girlfriend lived in the house, and petitioner had been staying there for about a month. Id. at 2a & n.1.

After seeing petitioner's "unusual change of course," the officers got out of their car and began walking toward the house.

Pet. App. 2a-3a. As they did so, the officers saw petitioner open the outer screen door of the house, bend down, and "place a dark, medium-sized object on the doorframe between the screen door and front door, which was closed." Id. at 3a. Petitioner then closed the screen door and turned around to face the officers. Ibid. Both officers suspected that petitioner had "hid[den] a gun" behind the screen door. Ibid. The officers also inferred from petitioner's actions that he likely did not have a license to carry a concealed firearm, as "hiding a gun on the floor behind an unlocked screen door in response to approaching police was not typical of a concealed-carry license holder." Ibid.

The officers approached the house and identified themselves. Pet. App. 3a, 39a. With petitioner's consent, the officers climbed the stairs to the porch. Id. at 3a-4a, 10a n.2. One of the officers asked petitioner about his connection to the house and whether he was carrying a gun. Id. at 3a. When they did so, the officers were concerned that petitioner was in a position to quickly recover the gun from behind the screen door. Id. at 5a. Among other things, the officers observed that petitioner "stood unrestrained within a stride or two" of the door and that petitioner was "very well-built [and] muscular," making it difficult for the officers to stop him if he decided to "bolt toward the door to arm himself." Id. at 5a-6a; see id. at 54a n.3 (noting that both officers indicated that petitioner was standing

"directly in front" of the door during the encounter).[1] The officers were also concerned that another occupant of the house might open the front door from the inside and grab the gun, "posing a danger to anyone outside or inside the house." Id. at 5a.

Petitioner denied carrying a gun and stated that the house was his girlfriend's. Pet. App 3a. Meanwhile, fearing a safety threat, the other officer opened the screen door "as little as possible, so as not to alert [petitioner] for fear [petitioner] would lunge or fight." Id. at 40a-41a; see id. at 3a. The officer observed a loaded .40 caliber semiautomatic handgun resting on the doorframe. Id. at 3a-4a, 41a; see Factual Stipulations 4. After confirming that petitioner had a prior felony conviction, the officers arrested him. Pet. App. 4a.

2. A federal grand jury in the Eastern District of Wisconsin charged petitioner with possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner moved to suppress the gun on the theory that the officers violated the Fourth Amendment by detaining him and by opening the screen door without a warrant. Pet. App. 4a; see D. Ct. Doc. 20, at 5-6 (Feb. 17, 2017).

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[1] One of the officers testified that petitioner was standing "within the screen door's swing radius," making it impossible to open the door fully "without hitting [petitioner's] back." Pet. App. 4a. The other officer testified that petitioner was standing a few feet away on the steps leading up to the porch. Id. at 5a. Regardless of petitioner's specific location, both officers stated that petitioner was standing close to the screen door and was in a position to quickly grab the gun. Ibid.

a. Following an evidentiary hearing, a magistrate judge recommended that petitioner's motion be denied. Pet. App. 46a-55a. The magistrate judge determined that, based on all of the facts known to the officers at the time, the officers had reasonable suspicion to stop petitioner and question him about whether he had an illegal firearm. Id. at 54a. The magistrate judge therefore found that the stop was permissible under Terry v. Ohio, 392 U.S. 1 (1968), which established that police officers may stop and briefly detain a suspect for investigation if they have reasonable suspicion of criminal activity. Id. at 30.

The magistrate judge further determined that the Fourth Amendment "permitted the officers to search behind [the screen door] to ensure their safety." Pet. App. 54a; see id. at 54a-55a (determining that, under the circumstances, the officers' conduct satisfied the Fourth Amendment's "central requirement" of reasonableness) (citation omitted). The magistrate judge explained that, having initiated a valid Terry stop, "the officers were allowed to take reasonable steps to ensure their safety, which included searching the area within [petitioner]'s control." Id. at 54a (citing Terry, 392 U.S. at 24). And the magistrate judge credited the officers' testimony that the area immediately behind the screen door was within petitioner's control and that they reasonably believed that petitioner had hidden a gun there. Ibid.

b. Following a second evidentiary hearing, the district court adopted the magistrate judge's recommendation and denied

petitioner's motion to suppress. Pet. App. 37a-45a. The court determined that the officers were justified in conducting an investigatory stop. Id. at 41a-42a, 43a. The court explained that "the totality of the circumstances" known to the officers -- including petitioner's presence in a high-crime area late at night; his clutching of a large, concealed object in his pocket; his evasive movements after seeing the officers; and his hiding the object behind the screen door before acknowledging the officers -- "provided the officers with reasonable suspicion that [petitioner] was doing something unlawful." Id. at 42a-43a.

After considering the totality of the circumstances, the district court concluded that "specific and articulable facts" supported the officers' decision to conduct a "limited" search of the area behind the screen door, which they reasonably believed "contained a weapon posing a danger to those on the scene." Pet. App. 45a. The court observed that the Fourth Amendment generally allows an officer to "conduct a limited, protective search without a warrant during a Terry stop" for the purpose of "'discover[ing] * * * weapons which might be used to harm the officer or others nearby.'" Id. at 43a (quoting Minnesota v. Dickerson, 508 U.S. 366, 373 (1993)). And the court found that the officers' actions in this case comported with that principle, explaining that the encounter with petitioner was a "dynamic, fluid situation" that unfolded quickly and that the facts known to the officers at the time gave rise to a reasonable belief that petitioner had hidden

a gun within his reach and was capable of retrieving it before the officers could stop him. Id. at 44a-45a. The court observed that petitioner's "own exhibits" confirmed that, no matter where he was standing on the porch or the stairs, he "could have armed himself quickly had he chosen to turn back for the gun." Ibid. And the court credited the officers' testimony that they also perceived potential danger from someone inside the house, who could have opened the front door and grabbed the gun. Id. at 45a.

c. Petitioner pleaded guilty to possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. Petitioner's plea was conditional, preserving his right to appeal the denial of his motion to suppress. See Pet. App. 1a. The district court sentenced him to 24 months and ten days of imprisonment. Judgment 2.

3. The court of appeals affirmed. Pet. App. 1a-36a. The court observed that "the resolution of a motion to suppress is a fact-specific inquiry" that requires a district court to make "commonsense judgments and inferences about human behavior" based on "the totality of the circumstances of each case." Id. at 6a-7a, 20a (citations omitted). Based on its "independent review of the facts and inferences" in petitioner's case, and "giving due weight to the district court's credibility determinations," the court of appeals determined that the officers' limited search behind the screen door "was an objectively reasonable police

response to a reasonable suspicion of danger" and did not violate the Fourth Amendment. Id. at 21a.

First, the court of appeals determined that the officers had reasonable suspicion to stop petitioner for questioning. Pet. App. 7a-11a. The court identified several "categories of facts" that combined to support a finding of reasonable suspicion, including that petitioner (1) was "walking down the street near midnight in a neighborhood plagued by drug trafficking and gun violence"; (2) was holding a large object concealed in his front pocket, which the officers' training and experience taught them was likely a gun; (3) "quickened his pace, changed his direction, [and] cut across a property" as soon as he saw the officers; and (4) hid the suspected gun "between the screen door and the front door" of a duplex house (which, in the moment, the police had no way of knowing was his residence) before turning around to acknowledge the officers. Id. at 7a-8a, 9a. The court acknowledged that each of those facts, by itself, might be "susceptible to an innocent explanation," id. at 9a (citation omitted), but determined that "the aggregate facts support[ed] a particularized and objective basis for the officers to suspect [petitioner] was engaged in criminal activity," id. at 11a; see id. at 8a-11a.

Second, the court of appeals determined that the limited search behind the screen door was a permissible "protective search for weapons" under Terry. Pet. App. 13a; see id. at 16a-21a. The

court noted that petitioner did not dispute "that he consented to the officers' presence on the porch," id. at 10a n.2, and that the officers were therefore "permitted to enter onto the porch area to ask him questions to dispel their suspicions," id. at 11a. The court determined that, having lawfully entered the curtilage of a home to conduct a valid Terry stop, the officers were permitted to conduct a "minimally intrusive search" behind the screen door based on their reasonable suspicion that petitioner had hidden a gun there. Id. at 20a.

The court of appeals identified a number of "commonsense * * * inferences" that, taken together, supported the district court's determination that the search was appropriate under the Fourth Amendment. Pet. App. 20a (citation omitted). The court of appeals explained that the officers' interaction with petitioner was fraught with "obvious risks" to their safety: they had observed petitioner put an object they believed to be a gun between the screen door and the closed front door of a house; they did not know whether petitioner had a connection to the house or who was inside; petitioner and the officers were in close proximity on a "narrow" porch, with petitioner standing "within the immediate vicinity" of the screen door; and petitioner appeared capable of "physically overwhelm[ing]" the officers in a fight. Id. at 18a. The court determined that, under those circumstances, the officers could reasonably fear that petitioner "might lunge toward what they suspected was a gun" and gain control of it before they could

stop him, or that other occupants of the house "might access the gun by opening the front door and picking it up off the threshold." Ibid. And the court recognized that those circumstances justified a limited search of the area where the officers had seen petitioner place the suspected gun in order "to verify the reasonable suspicion of danger" and neutralize the threat. Id. at 20a.

The court of appeals rejected petitioner's argument that the officers' actions violated the Fourth Amendment because he was being "calm and cooperative." Pet. App. 17a. The court explained that a reasonable officer would still have been "'warranted in the belief that his safety or that of others was in danger,'" id. at 18a (quoting Terry, 392 U.S. at 27), because petitioner's demeanor could have "quickly change[d]" and, in any event, petitioner's cooperation did not eliminate the possibility that "someone from inside the house could obtain the weapon" and use it against the officers or others. Ibid. The court also declined to second-guess the officers' "on-the-spot" decision not to order petitioner to move away from the house, noting that such a course might have exposed the officers to other "unnecessary risks" and would not have resolved the potential threat posed by people inside the house. Id. at 19a. And the court rejected petitioner's assertion that the officers lacked a sufficient basis for believing that he was not legally authorized to carry a gun. Id. at 21a. The court noted that reasonable suspicion does not "demand * * * certainty," id. at 20a, and it credited the officers' "commonsense

inference" that a person licensed to carry a concealed firearm would not have engaged in the "suspicious (and dangerous) behavior" that petitioner exhibited. Id. at 20a-21a.

Finally, the court of appeals rejected petitioner's contention that, because the search occurred within the curtilage of a home, this Court's precedents required the officers to obtain a warrant based on probable cause. Pet. App. 12a-16a; see id. at 22a-23a. The court of appeals recognized that this Court's decisions in Collins v. Virginia, 138 S. Ct. 1663 (2018), and Florida v. Jardines, 569 U.S. 1 (2013), required law enforcement to obtain a warrant to conduct routine searches of the curtilage of a home for evidence of crime. Pet. App. 13a-15a. The court observed, however, that they did not involve officers' entry into the curtilage with a suspect's consent for the purpose of conducting a Terry stop, followed by a limited protective search for weapons in an area within the suspect's control where the officers reasonably believed the suspect had hidden a weapon. Ibid.; see id. at 16a (noting that none of petitioner's cited cases "concern[ed] protective searches to neutralize the threat of a weapon in a suspect's immediate area of control" during a Terry stop). And after "balanc[ing] the interests of officer safety, effective law enforcement, and individual rights" at issue in this case, id. at 22a, it found the officers' actions here to be reasonable. The court emphasized that its decision was tied to the facts of this case, and specifically noted that its

reasonableness determination would likely have been "differ[ent]" if the "gun was located behind the closed front door" or if the search had otherwise involved a greater intrusion on petitioner's expectations of privacy. Id. at 22a-23a.

4. Chief Judge Wood dissented. Pet. App. 24a-36a. In her view, a warrant requirement for searches within the curtilage of a home -- even protective searches performed in the course of a Terry stop -- was consistent with this Court's precedent. Id. at 26a-30a. Chief Judge Wood also disagreed with the court of appeals' factual determination that the officers had reasonable suspicion to conduct a Terry stop and a protective search for weapons in this case, based largely on her view that each fact supporting a reasonable-suspicion finding was susceptible to a possible innocent explanation. Id. at 32a-36a.

ARGUMENT

Petitioner contends (Pet. 11-18) that the search behind the screen door violated the Fourth Amendment. The court of appeals' factbound decision is correct, and petitioner identifies no decision of this Court or of another court of appeals that has reached a contrary result on analogous facts. The petition for a writ of certiorari should be denied.

1. a. "[T]he central inquiry under the Fourth Amendment [is] the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Terry v. Ohio, 392 U.S. 1, 19 (1968); see Birchfield v. North Dakota, 136

S. Ct. 2160, 2186 (2016) ("[R]easonableness is always the touchstone of Fourth Amendment analysis."). In Terry, this Court held that a police officer may make an investigatory stop of a suspect based upon a reasonable and articulable suspicion that he has or is engaged in criminal activity. 392 U.S. at 21, 30-31. The Court further held that, during such a stop, an officer may perform a limited search of the suspect for weapons if the officer "has reason to believe that he is dealing with an armed and dangerous individual." Id. at 27; see id. at 30-31.

In upholding the protective search for weapons in Terry, the Court balanced the suspect's interest in being free from intrusion against the police officer's "immediate interest * * * in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him." 392 U.S. at 23. Noting that a large number of law enforcement personnel have been killed in the line of duty, the Court concluded that "we cannot blind ourselves to the need for law enforcement officers to protect themselves * * * in situations where they may lack probable cause for an arrest." Id. at 24. "Certainly," the Court emphasized, "it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." Id. at 23.

In subsequent cases, this Court has further held that a protective search for weapons under Terry may extend to "the area surrounding a suspect" where the totality of the circumstances

would "'reasonably warrant' the officer in believing that the suspect is dangerous and * * * may gain immediate control of weapons" and the search is "limited to those areas in which a weapon may be placed or hidden." Michigan v. Long, 463 U.S. 1032, 1049-1050 (1983) (quoting Terry, 392 U.S. at 21). In Michigan v. Long, supra, the Court concluded that police officers who had a reasonable belief that a detained motorist was potentially dangerous could search the passenger compartment of his car for weapons. 463 U.S. at 1049. The Court "recognized that suspects may injure police officers and others by virtue of their access to weapons, even though they may not themselves be armed," and determined that the possibility that the suspect could "retrieve a weapon from his automobile" if he was "permitted to reenter the vehicle" or "br[oke] away from police control" during the course of the stop permitted the police to search the car to ensure that no weapons were present. Id. at 1048, 1051-1052.

In Maryland v. Buie, 494 U.S. 325 (1990), this Court held that, consistent with the principles announced in Terry and Long, police officers could conduct a limited protective sweep of a residence to ensure officer safety when the officers were lawfully present in the residence to make an arrest and had "reasonable suspicion of danger." Id. at 332-333, 335-336. The Court acknowledged that such a search would infringe upon important privacy expectations, just as the searches in Terry and Long did. Id. at 333. But it reasoned that, as in those cases, the public's

interest in "protecting the arresting officers" from harm was "sufficient to outweigh" the arrestee's privacy interests. Id. at 334-335; see id. at 336-337 (observing that "requiring a protective sweep to be justified by probable cause" in those circumstances would be "unnecessarily strict"); cf. Chimel v. California, 395 U.S. 752, 763 (1969) (citing Terry for the proposition that, even in the absence of probable cause, an arresting officer may search "the area into which an arrestee might reach in order to grab a weapon," including within a home).

In approving warrantless protective searches founded on reasonable suspicion, rather than on probable cause, this Court has emphasized that "[t]he purpose of [such] limited search[es] is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence." Adams v. Williams, 407 U.S. 143, 146 (1972). Terry stops and arrests require "'close range'" contact with criminal suspects that renders police officers "particularly vulnerable," requiring officers to make "'quick decision[s] as to how to protect [themselves] and others from possible danger.'" Long, 463 U.S. at 1052 (quoting Terry, 392 U.S. at 24, 28). Under those circumstances, police officers' "immediate interest" in ensuring "that the persons with whom they [are] dealing [are] not armed with, or able to gain immediate control of, a weapon that could unexpectedly and fatally be used against them" will often outweigh

a suspect's privacy interests in his person and his immediate surroundings. Buie, 494 U.S. at 333.

b. Applying those principles, the court of appeals correctly determined that, "[g]iven the totality of the circumstances" in this case, Pet. App. 23a, the officers permissibly conducted a limited search behind petitioner's screen door to verify and neutralize the threat posed by the gun that they reasonably believed petitioner had hidden there. The court explained that the officers had reasonable grounds to believe that petitioner was engaged in criminal conduct and that, in investigating that conduct, their safety could be jeopardized by a gun within his reach. The officers had observed petitioner walking late at night in a high-crime area, clutching what they suspected was a concealed firearm in his pocket, altering his behavior after seeing the police, and ultimately climbing onto the porch of a then-unknown house and transferring the object from his pocket to the space between the screen door and the closed front door. Id. at 7a-9a. Petitioner acknowledged that he consented to the officers' entry onto the porch itself, id. at 10a-11a & nn.2-3, and the lower courts both found that petitioner's location and physical condition gave the officers ample reason to fear that he would be capable of retrieving the gun before they could stop him, id. at 18a. Cf. Chimel, 395 U.S. at 763 ("A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the

person arrested."). The court also credited the officers' testimony and the district court's finding that the officers also had reasonable grounds to fear that someone inside the house might open the front door and retrieve the gun. Pet. App. 18a; cf. Buie, 494 U.S. at 333 (noting that a confrontation with police at a suspect's home "puts the officer at the disadvantage of being on his adversary's 'turf'" and exposes the officer to the danger of "[a]n ambush").[2]

Having determined that the officers lawfully entered the curtilage of the house, with petitioner's consent, for the purpose of conducting an investigation, and that the officers had reason to believe that petitioner was "able to gain immediate control of[] a weapon that could unexpectedly and fatally be used against them," Buie, 494 U.S. at 333, the court of appeals appropriately recognized that the officers were allowed to search the location where they reasonably (and correctly) believed a gun to be hidden. The confrontation between the officers and petitioner was a "'tense, uncertain, and rapidly evolving'" situation that took place at close quarters and required the officers to make "quick decisions" to ensure their safety and the safety of others, Pet. App. 18a-19a (citation omitted) -- precisely the circumstances in

[2] The court of appeals correctly determined that the officers were under no obligation to leave or to incur "unnecessary risks" by attempting to move petitioner further away from the house. Pet. App. 19a (citing Terry, 392 U.S. at 23); see Long, 463 U.S. at 1052 ("[W]e have not required that officers adopt alternative means to ensure their safety in order to avoid the intrusion involved in a Terry encounter.").

which a limited protective search based on reasonable suspicion is justified. See Long, 463 U.S. at 1052 (citing Terry, 392 U.S. at 24, 28). The search itself was "strictly circumscribed by the exigencies which justified its initiation," id. at 1051 (quoting Terry, 392 U.S. at 26) (brackets omitted), involving only the partial opening of a screen door to observe a specific area within petitioner's control where the gun was suspected to be. Pet. App. 3a-4a, 41a. And the officers did not conduct "a full search of the premises," Buie, 494 U.S. at 335, or otherwise engage in conduct consistent with the sort of routine search for "evidence of crime" that would ordinarily require a warrant, Adams, 407 U.S. at 146; see Pet. App. 22a-23a (noting that court of appeals' decision was fact-dependent and would likely have been "differ[ent]" if the officers had looked "behind the closed front door").

2. Petitioner errs in contending that the Fourth Amendment required the officers to accept the danger that petitioner had a gun within the area of his control as the cost of investigating their reasonable suspicion of his criminal activity.

a. Petitioner's suggestion (Pet. 11-13) that this Court's decisions in Florida v. Jardines, 569 U.S. 1 (2013), and Collins v. Virginia, 138 S. Ct. 1663 (2018), establish a per se rule that no portion of a home or its curtilage may be searched unless police have "a warrant, consent, or probable cause and exigency" is misplaced. Pet. 13. As the court of appeals recognized (Pet. App. 13a-16a), neither of those decisions establishes such a rule.

In Jardines, police officers brought a drug-detection dog onto the defendant's porch, without the defendant's knowledge or consent, so that it could sniff his house in an effort to determine whether drugs were being stored inside. 569 U.S. at 3-4. This Court acknowledged that police officers generally have an "implicit license" to enter the curtilage of a home without a warrant in order to approach the front door and knock, just as any other visitor would. Id. at 8. But the Court determined that "introducing a trained police dog to explore the area around the home in hopes of discovering incriminating evidence" exceeded the scope of that license and thus violated the Fourth Amendment. Id. at 9; see id. at 11 (explaining that case involved a "physical[] intru[sion] on Jardines' property to gather evidence").

In Collins, a police officer walked up the driveway of a home, lifted a tarp covering a motorcycle that was parked at the top of the driveway, and inspected the motorcycle to determine whether it was stolen. 138 S. Ct. at 1668. The Court reiterated that the Fourth Amendment generally forbids police officers to "physically intrude[] on the curtilage to gather evidence" without a warrant. Id. at 1670 (citing Jardines, 569 U.S. at 11). And the Court determined that the automobile exception to the Fourth Amendment -- which permits officers to search a vehicle without a warrant based on probable cause to believe it contains evidence of a crime, see, e.g., South Dakota v. Opperman, 428 U.S. 364, 368 (1976) --

does not authorize police to enter a home or its curtilage to search vehicles parked therein. Collins, 138 S. Ct. at 1671-1673.

Neither of those decisions establishes that a warrant was required in this case. Unlike in Collins and Jardines, petitioner consented to the officers' entry onto the porch in order to question him. Pet. App. 10a-11a & nn. 2-3. The officers' presence within the curtilage for the purpose of conducting an investigation was therefore authorized independent of any "implicit license" to approach the house. Jardines, 569 U.S. at 8. And the officers' subsequent search behind the screen door was a protective search, limited to the specific area where they suspected that a gun was hidden and conducted for the purpose of neutralizing a threat to the officers' safety that arose in the course of a "tense, uncertain, and rapidly evolving" confrontation with petitioner, who was present throughout the encounter. Pet. App. 18a-19a (citation omitted). Such a search bears little resemblance to those in Collins and Jardines, which were "performed while the suspect was absent," with no articulated "threat of danger," for the purpose of "'trawl[ing] for evidence.'" Id. at 15a (quoting Jardines, 569 U.S. at 6) (brackets in original); see Adams, 407 U.S. at 146 (explaining that a Terry search for weapons need only be supported by reasonable suspicion because, inter alia, it is not a general search for "evidence of crime").

b. Petitioner's proposed per se rule is also inconsistent with this Court's repeated admonition that "[t]he touchstone of

our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'" Pennsylvania v. Mimms, 434 U.S. 106, 108-109 (1977) (per curiam) (quoting Terry, 392 U.S. at 19) (emphasis added); see Birchfield, 136 S. Ct. at 2186; Brigham City v. Stuart, 547 U.S. 398, 403 (2006). The reasonableness of a search "is measured in objective terms by examining the totality of the circumstances," Ohio v. Robinette, 519 U.S. 33, 39 (1996), which requires a court to "carefully weigh[] 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion,'" County of Los Angeles v. Mendez, 137 S. Ct. 1539, 1546 (2017) (quoting Tennessee v. Garner, 471 U.S. 1, 8 (1985)); see United States v. Knights, 534 U.S. 112, 119 (2001). In conducting that inquiry, this Court has "consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry." Robinette, 519 U.S. at 39.

Petitioner acknowledges (Pet. 12) that the Fourth Amendment typically requires "courts to determine the reasonableness of [a] search on a case-by-case basis," but contends that "this balancing approach" does not apply to homes. That contention is incorrect. While this Court has explained that, because of the strong privacy interests that attach to an individual's residence, "a warrant must generally be secured" to search a home, it has "also

recognized that this presumption may be overcome in some circumstances" and that the balance of interests may require "reasonable exceptions" to the warrant requirement in particular cases. Kentucky v. King, 563 U.S. 452, 459 (2011). And the Court has repeatedly applied that principle in approving warrantless searches of homes or their curtilage. See, e.g., Fernandez v. California, 571 U.S. 292, 298 (2014) (consent); Stuart, 547 U.S. at 403 (exigent circumstances); Samson v. California, 547 U.S. 843, 848 (2006) (parolee searches); Knights, 534 U.S. at 118-119 (probationer searches); Buie, 494 U.S. at 334 (protective sweeps). As the decisions in those cases make clear, the identification of a reasonable exception in a particular case depends heavily on the circumstances. See, e.g., Fernandez, 571 U.S. at 299-301 (describing various factual scenarios in which consent has been deemed sufficient or insufficient to dispense with a warrant). Petitioner's assertion (Pet. 12) that no warrantless search of a home's curtilage may be approved unless it fits squarely within a pre-existing exception cannot be squared with that circumstance-specific approach. See Knights, 534 U.S. at 117 (rejecting the "dubious logic" that "an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it").

In any event, the search in this case fits comfortably within the warrant exceptions that this Court has previously identified. The possibility that a criminal suspect confronted by police may

have a deadly weapon on his person or within his control has long been recognized as an "'exigenc[y]'" that allows officers to conduct a limited protective search for weapons based on reasonable suspicion. Long, 463 U.S. at 1051 (quoting Terry, 392 U.S. at 26); see Terry, 392 U.S. at 20 (noting that protective searches implicate an "entire rubric of police conduct -- necessarily swift action predicated upon the on-the-spot observations of the officer on the beat -- which historically has not been, and as a practical matter could not be, subjected to the warrant procedure"). And the Court has balanced safety concerns against privacy interests in upholding warrantless searches of homes. In Buie, for example, the police had a warrant to arrest the suspect and thus were authorized to enter his home in order to effectuate the arrest. 494 U.S. at 330. But they had neither a warrant nor probable cause to search the suspect's home beyond what was necessary to find him. Ibid. This Court nonetheless applied the Fourth Amendment's "general reasonableness balancing" framework to determine that, having lawfully entered the home, the police were permitted to conduct a protective sweep to allay their reasonable suspicion that other dangerous individuals might be lurking inside. Id. at 330, 334-336; see id. at 332 ("The ingredients to apply the balance struck in Terry and Long are present in this case."); cf. Chimel, 395 U.S. at 763 (same for limited protective search of areas of home "into which an arrestee might reach in order to grab a weapon").

The facts of this case -- where petitioner consented to the officers' presence on the front porch and the officers reasonably believed that petitioner was in a position to quickly retrieve a gun he had hidden behind a screen door -- are analogous to those in Terry, Long, and Buie. The court of appeals appropriately determined that, as in those cases, the balance of interests favored safety considerations over the limited privacy interest in keeping the screen door closed, and thus the search was reasonable under the Fourth Amendment. No reason exists to review that factbound determination.

3. Petitioner errs in contending (Pet. 14) that the court of appeals' decision conflicts with decisions of other circuits. As the court of appeals correctly explained, none of the cases on which petitioner relies is inconsistent with the decision below. Pet. App. 9a-10a n.2. Each involved a circumstance where police seized a suspect at his home after entering the residence or its curtilage without a warrant or consent. See Moore v. Pederson, 806 F.3d 1036, 1045-1046 (11th Cir. 2015), cert. denied, 136 S. Ct. 2014 (2016); United States v. Struckman, 603 F.3d 731, 738-743 (9th Cir. 2010); United States v. Reeves, 524 F.3d 1161, 1167-1169 (10th Cir. 2008); United States v. Winsor, 846 F.2d 1569, 1572, 1574-1578 (9th Cir. 1988) (en banc). None considered whether officers who entered the curtilage of a home with the suspect's consent in order to carry out an investigatory stop would be foreclosed, in the course of that encounter, from conducting a

limited protective search based on reasonable suspicion that the suspect had hidden a gun within his area of control, placing the officers and others in serious danger. See, e.g., Reeves, 524 F.3d at 1166 n.4 ("express[ing] no opinion" on circumstance where suspect voluntarily agrees to talk to officers in his home or curtilage, and citing cases).

The Massachusetts Supreme Judicial Court's decision in Commonwealth v. Leslie, 76 N.E.3d 978 (2017) (cited at Pet. 15), is likewise inapposite. In that case, police officers entered the curtilage of a home without consent to conduct a Terry stop of individuals standing on the front porch and then "ventur[ed] into the side yard of the home" in order to search for a suspected firearm. Id. at 986. The court viewed that conduct as akin to a warrantless evidentiary search of the sort at issue in Jardines; it did not address whether a similar search would have been permissible had it occurred within the suspects' area of control, nor did it consider a situation in which officers entered the curtilage with consent. Id. at 986-987. That decision therefore does not indicate that the court would have reached a different outcome from the decision below on the distinct facts of this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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