No. 20-157

In The
Supreme Court of the United States

EDWARD A. CANIGLIA,

Petitioner,

v.

ROBERT F. STROM, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Police officers responded to a call from Petitioner's distraught wife, who was concerned for his well-being. The officers sent Petitioner to a nearby hospital for a psychiatric evaluation and then seized two firearms and ammunition from his home in order to protect Petitioner, his wife, and others. No criminal charges were brought. Does the "special measure of constitutional protection" afforded law enforcement officers by the community caretaking doctrine articulated in *Cady v. Dombrowski* extend to a home under these circumstances?

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INTRODUCTION

1. The First Circuit extended the community caretaking doctrine first articulated in *Cady v. Dombrowski*, 413 U.S. 433 (1973) to officers performing community caretaking functions on private premises, recognizing that some courts have declined to do so. Rather than creating a "deep circuit split" as Petitioner suggests, the unique facts of each case show that courts routinely allow officers to enter a residence without a warrant if the circumstances are dire and the officers' actions are both limited and based on sound police procedure. Even the few decisions that have declined the application of the community caretaking doctrine to private property recognize that police officers can—and should—respond to urgent situations in the home involving the potential for violence or injury without being required to obtain a warrant. This is especially true in situations that have no criminal consequences. Numerous courts have allowed warrantless entry to keep the peace, some under the name of "community caretaking" and several employing the "exigent circumstances" or "emergency aid" exceptions. Neither of the latter two exceptions precisely fit the unique circumstances of this case, but it is the legal theory, and not the nomenclature, that must carry the day.

2. There is no good reason to limit the application of the community caretaking doctrine to automobile inventory searches. *Cady* first articulated the community caretaking doctrine in the context of a motor vehicle impoundment and inventory search. The legal foundation of *Cady* is not necessarily that a firearm was in an automobile, but that the

firearm was in an accessible location where it could pose an imminent danger. While recognizing the difference between an automobile and a home, this Court did not limit *Cady* to automobile searches. Rather, it simply applied the community caretaking concept to the facts before it. The Fourth Amendment does not prohibit law enforcement officers from diffusing a volatile situation in a home to protect the residents or others.

3. The First Circuit applied the community caretaking doctrine consistent with the teachings of the Fourth Amendment and the better reasoned decisions in federal and state courts of last resort, including the Rhode Island Supreme Court. Confining its decision to the particular facts of this case, the court struck a constitutionally sound balance between individual liberties and community safety.

4. The First Circuit's decision is the most comprehensive explanation and extension of the community caretaking doctrine to private property by a Circuit Court to date. The First Circuit did not give law enforcement *carte blanche* to search a home for contraband or weapons. Rather, the First Circuit established clear, constitutionally sound guidelines for law enforcement given the unique facts of this case, where no criminal charges were brought and where a focused search and seizure ensured that a dangerous situation had been averted.

STATEMENT OF THE CASE

1. Petitioner Edward Caniglia and his wife Kim Caniglia live in Cranston, Rhode Island. The Respondents include Cranston's police chief and several Cranston police officers. On August 20, 2015, the Caniglias had an argument so intense that Petitioner went into the bedroom, grabbed a handgun and "recklessly" threw it on the kitchen table, Pet.App. 25a, saying something to the effect of "shoot me now and get it over with." *Id.* at 3a, 23a. Petitioner then left the home to go for a ride. *Id.* at 3a. His wife, "unnerved," *id*. at 25a, returned the gun to its normal place, but hid the magazine and quickly packed a bag in case she needed to get out of the home. *Id.* at 3a. When Petitioner returned from his ride, another argument erupted. *Id.* at 4a. Mrs. Caniglia left the home and spent the night in a hotel. *Id.* at 4a. The two spoke that evening by telephone, Mrs. Caniglia describing her husband as upset and "[a] little angry." *Id.*

After a night away from her home, Mrs. Caniglia called Petitioner but was unable to reach him, and she became "concerned that he might have committed suicide or otherwise harmed himself." *Id*. She was so concerned that she called the Cranston Police Department and asked that an officer accompany her to her home. During that call she said that "her husband was depressed and that she was 'worried for him.' She also said that she was concerned 'about what [she] would find' when she returned home." *Id*. She met one of the officers at a restaurant and told him about the arguments with her husband the previous day, his

disturbing behavior and statements, and her hiding the magazine for the gun. *Id.* During this conversation, Mrs. Caniglia first mentioned that the handgun that her husband had thrown on the table had not been loaded. *Id*.

At that point, the officer called the Caniglia home and spoke with the Petitioner, who agreed to speak with the police in person. Four officers went to the home and spoke to the Petitioner, but they told Mrs. Caniglia to wait in her car, which she did. *Id.* at 5a. Petitioner "corroborated Kim's account" and told the officers that "he brought out the firearm and asked his wife to shoot him because he was 'sick of the arguments' and 'couldn't take it anymore.'" *Id.* The officers' observations of Petitioner ranged from "normal" to "'[a]gitated' and 'angry.'" *Id.* Mrs. Caniglia said that Petitioner was "very upset" with her for calling the police. *Id*.

Based upon the events that unfolded overnight and the next morning, the ranking officer at the scene concluded that Petitioner was "imminently dangerous to himself and others," *id.* at 5a, and, after some discussion, Petitioner went to a nearby hospital by ambulance for a psychiatric evaluation. *Id*.[1] After Petitioner

[1] Respondents do not dispute that this was a "seizure" within the meaning of the Fourth Amendment. Pet.App. 11a. In having Petitioner transported to the hospital, officers were acting pursuant to the Cranston Police Department's General Order 320.70, which authorized officers to send an individual who is "imminently dangerous" to himself or others to a hospital by means of

was handed over to medical personnel in a "calm, professional manner . . . without any physical coercion or restraints," *id.* at 25a, Mrs. Caniglia informed the officers that there were two handguns in the home, and after consulting with a superior officer by telephone, officers on the scene made a decision to seize the weapons. *Id*. at 6a. Guided by Mrs. Caniglia, the officers seized two firearms, magazines for both, and ammunition. *Id*.[2] There was no other search of the home, nor was any other property of the Caniglias seized. Petitioner was not admitted to the hospital, nor was he charged with any crime. *Id*.

2. Petitioner filed an action in the District of Rhode Island containing seven counts claiming that Respondents violated: the Rhode Island Firearms Act; the Second Amendment's right to keep arms; the search and seizure provisions of the Fourth Amendment and Rhode Island Constitution; the due process and equal protection clauses of the United States Constitution; and Rhode Island's Mental Health Law. The complaint also stated state law claims for common law trover and conversion. The parties filed cross-motions for summary judgment supported by a wealth of undisputed facts. The District Court granted Petitioner's motion on his due process claim, but only as to the eventual return of his handguns. The District Court

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emergency transportation for an involuntary psychiatric evaluation. *Id*. at 23a.

[2] Respondents also agree that this was a warrantless and nonconsensual "seizure" within the meaning of the Fourth Amendment. Pet.App. 11a.

granted summary judgment to all Respondents on all other counts. That decision began by addressing the "constitutionality of police conduct when officers are not acting in their law enforcement or investigatory capacity, but aiding individuals out in the community." *Id*. at 52a.

After reviewing the particular facts of this case, the District Court found that the "undisputed record supports its conclusion that the City and its officers were authorized by the community caretaking function to send Petitioner to Kent Hospital for a mental health evaluation and to seize his guns." *Id.* at 64a. The District Court then rejected the remainder of Petitioner's claims.

Petitioner filed an appeal of the District Court's findings against him. The First Circuit unanimously affirmed the District Court on all grounds, including the extension of the "special measure of constitutional protection" afforded to officers performing community caretaking functions on private premises. *Id*. at 2a. The First Circuit's decision does not call for review, as it is grounded in the underlying rationale of *Cady v. Dombrowski* and pragmatically balances the realities of law enforcement, domestic violence, and gun ownership.

The First Circuit's decision is deliberative, clear, and instructive. Petitioner's truncated treatment of it bears little resemblance to the fifty-three-page decision itself. The decision began with some ground rules: the court assumed that the entry into the Caniglias'

home was warrantless and nonconsensual, and that both Petitioner and his guns were "seized" as that term is used in the constitutional sense. *Id.* at 10a-11a. The court recognized throughout its decision that police officers play a special role in "preserving and protecting communities," *id.* at 2a, and that, at its core, the community caretaking doctrine is designed to "give police elbow room to take appropriate action when unforeseen circumstances present some transient hazard that requires immediate attention." *Id.* at 16a. *See also* 35a ("The police play a vital role as guardians of the public weal"), 49a ("Police officers play an important role as community caretakers . . . [and are] sometimes confronted with peculiar circumstances . . . that present them with difficult choices."). An understanding of the reasons supporting the community caretaking doctrine "leads inexorably," the court stated, to an extension of the doctrine outside of the motor vehicle context. *Id.* at 16a.

The issues addressed by the First Circuit were three-fold: 1) the involuntary seizure of an individual whom officers have an objectively reasonable basis to believe is suicidal or otherwise poses an imminent risk of harm to himself or others; 2) the temporary seizure of firearms and associated paraphernalia that police officers have an objectively reasonable basis to believe such an individual may use in the immediate future to harm himself or others; and 3) the appropriateness of a warrantless entry into an individual's home when that entry is tailored to the seizure of firearms in furtherance of police officers' community caretaking

response. *Id.* at 17a. The court ultimately deemed all three of these activities "a natural fit for the community caretaking exception," finding them to be "squarely within what we have called the heartland" of the doctrine. *Id.* (internal quotation marks and citation omitted).

The First Circuit first acknowledged two competing interests: "the need for the caretaking activity and the affected individual's interest in freedom from government intrusions." *Id.* at 18a. It found that "[t]he community's strong interest in ensuring a swift response to individuals who are mentally ill and imminently dangerous will often weigh heavily in the balance." *Id.* This interest weighs so heavily, the court opined, that an individual's "robust interests in preserving his bodily autonomy, the sanctity of his home, and his right to keep firearms within the home for self-protection" sometimes must "yield to the public's powerful interest in ensuring that dangerous mentally ill persons [do] not harm themselves or others." *Id.* (internal quotation marks and citation omitted) (alteration in original). To allow otherwise would leave police officers "twisting in the wind" in "damned-if-you-do, damned-if-you-don't" situations, exposed either to "claims of overreach and unwarranted intrusion" or to "interminable second-guessing." *Id.* at 18a-19a.

In recognizing the sanctity of the home, the court required that police officers have "solid, non-investigatory reasons" for engaging in community caretaking activities and that they may not use the doctrine as a subterfuge for criminal investigations. *Id.* at 20a. The

court wrote that, in the residential context, "[l]eave to undertake community caretaking activities must be based on specific articulable facts sufficient to establish that an officer's decision to act in a caretaking capacity was justified on objective grounds," with their "essence" drawn "either from state law or from sound police procedure." *Id.* It rejected Petitioner's argument that the officers had to choose the "least intrusive means" of accomplishing the difficult job that domestic disturbance or gun cases present. It is enough, the court wrote, that the choice made is "within the realm of reason." *Id.* at 21a.

Recognizing a certain amount of confusion and overlap between the community caretaking doctrine and the concepts of "exigent circumstances" and "emergency aid," the First Circuit clarified that the former has a more expansive "temporal reach" than the latter, limiting its holding to the facts of imminent danger presented by Petitioner and his circumstances. *Id.*

Addressing the community caretaking doctrine as applied to Petitioner's dispatch to the emergency room, the court wrote that "no rational factfinder could deem unreasonable the officers' conclusion that [Petitioner] presented an imminent risk of harming himself or others." *Id.* at 23a. Although Petitioner's revisionist history of the events is not surprising and downplays the potential danger he posed to himself and others that night, Mrs. Caniglia's contemporaneous actions support the officers' reasonableness, as does the "sound police procedure" found in the Cranston Police Department's General Order 320.70. *Id.* That General Order

authorizes officers to send an individual who is "imminently dangerous" for an involuntary psychiatric evaluation and supported the officers' actions in the instant matter. *Id.* The temporary seizure of Respondent in order to determine his mental state was one of a universe of reasonable choices and did not violate the Fourth Amendment. *Id.* at 24a.

Turning to the seizure of the guns from the Caniglias' home, the First Circuit recognized that seizures of personal property generally require a warrant, or some exception, and that the same applies "with particular force" for entries into the home. *Id.* at 30a. The court used an "objective reasonableness" test to gauge the officers' conduct in entering the home while Respondent was in the hospital. *Id.* at 31a. It found that the officers' purpose was to ensure that no harm came to anyone upon his return, and that they had no inkling when that would be or what his mental state would be. *Id.* at 32a. The record in this case supported the court's finding that "an objectively reasonable officer remaining at the residence after Petitioner's departure could have perceived a real possibility that Petitioner might refuse an evaluation and shortly return home in the same troubled mental state." *Id.* at 33a. "Such uncertainty . . . could have led a reasonable officer to continue to regard the danger of leaving firearms in the Caniglia's home as immediate and, accordingly, to err on the side of caution." *Id.*

Finally, the court rejected Petitioner's persistent urging that the officers should have chosen a less drastic solution to the circumstances that he presented to

them. *Id.* at 20a, 34a. The decision was loyal to the framers' instruction that, in cases without a warrant, reasonableness is the constitutional guide. In this case, no matter what the location, a warrantless seizure of the person, seizure of personal property, or entry into a home should be judged against a reasonableness standard, and in any given situation there will likely be more than one reasonable response. In applying the community caretaking doctrine to bar Petitioner's claims, the First Circuit found that the officers had chosen from among the available alternatives and thus fell under the "protective carapace" of the community caretaking exception to the warrant requirement. *Id.* at 35a, 37a.

The remainder of the First Circuit's decision granting summary judgment to Respondents is not germane to the instant Petition.

REASONS FOR DENYING THE WRIT

I. The Decision of the First Circuit is Consistent With Decisions of This Court, Other Circuit Courts of Appeals, and State Courts of Last Resort.

The First Circuit acknowledged that courts differ as to whether the community caretaking doctrine extends to the warrantless entry of a home. Pet.App. 15a. However, the decisions of this Court, and the better reasoned decisions in the Circuits and state courts of

last resort show that the First Circuit landed on the workable and constitutionally correct side of the issue.

A. The Decision of the First Circuit is Faithful to This Court's Fourth Amendment Decisions.

The community caretaking doctrine has as its foundation this Court's recognition that "[l]ocal police officers . . . frequently investigate [matters] in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, at 441. The First Circuit recognized that: "At its core, the community caretaking doctrine is designed to give police elbow room to take appropriate action when unforeseen circumstances present some transient hazard that requires immediate attention. Understanding the core purpose of the doctrine leads inexorably to the conclusion that it should not be limited to the motor vehicle context." Pet.App. 16a (internal citation omitted).

Camara v. Municipal Court of San Francisco, 387 U.S. 523 (1967) interpreted the Fourth Amendment as requiring warrants for administrative searches, while recognizing that the general "reasonableness" standard would sometimes allow warrantless searches. "[N]othing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has

traditionally upheld in emergency situations. See *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (1908) (seizure of unwholesome food); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (compulsory smallpox vaccination); *Compagnie Francaise v. Board of Health*, 186 U.S. 380 (1902) (health quarantine); *Kroplin v. Truax*, 165 N.E. 498 (Ohio 1929) (summary destruction of tubucular cattle)." *Id.* at 539.

Brigham City v. Stewart, 547 U.S. 398 (2006) addressed the reasonableness of officers' entry into a home to break up a fight. This court granted *certiorari* in light of differences among courts concerning the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation. 547 U.S. at 402. There, officers were called by neighbors to a house party and observed a fight beginning in the kitchen. The lower court suppressed evidence discovered after the officers entered to break up the fight. The issue as framed by this Court was whether police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury. 547 U.S. at 400. This Court easily concluded that they may. *Id.* The following applies with equal force to cases that do not result in criminal charges: "Nothing in the Fourth Amendment required [the officers] to wait until

another blow rendered someone 'unconscious' or 'semi-conscious' or worse before entering." 547 U.S. at 406.[3]

That same year, *Georgia v. Randolph*, 547 U.S. 103 (2006) recognized the increasing demand on law enforcement officers in responding to domestic violence cases. "No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists, it would be silly to suggest that the police would commit a tort by entering, say . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur. . . ." 547 U.S. at 118. This Court characterized the right of the police to enter a residence to protect a victim (or potential victim) "undoubted." *Id.* Although that observation was made in the context of whether a co-tenant could consent to police entry, any holding that officers could not enter a home to prevent harm without risking civil liability in these circumstances would be no less "silly."

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[3] Police officers are most effective when they can diffuse and de-escalate a tense situation so that there is no need for an arrest. It would make no sense to suggest that the Fourth Amendment would allow officers to enter a home in circumstances like *Brigham City*, where criminal charges resulted, but not allow officers entry in a case such as this, which is a pure community caretaking case that resulted in no charges, to ensure the safety of residents and others. Such a holding may force police to make arrests where they may not have to, simply to obtain a warrant to enter private property and protect citizens.

B. There is no Split—Circuit Courts and State Courts of Last Resort Routinely Allow Officers to Enter Private Property in Order to Protect Citizens From Harm.

The First Circuit specifically referred to decisions from the Fifth, Sixth, Eighth and Ninth Circuits in finding that "the [community caretaking] doctrine allows warrantless entries onto private premises (including homes) in particular circumstances." Pet.App. 15a. Even more allow for seizures of "individuals or property other than motor vehicles in the course of fulfilling community caretaking responsibilities." *Id.* The facts of these cases are more like the present one—domestic disputes, wellness checks, disturbed individuals and the like. These cases are by far the more reasonable, workable and constitutionally sound.

The First Circuit noted that the reach of the community caretaking doctrine outside of the motor vehicle context is ill defined and recognized that there are "differences among the federal courts of appeals." *Id*. at 14a-15a. Although the present case represents the first time the First Circuit expressly extended the community caretaking doctrine to a home in a non-criminal context, the handwriting has been on the wall for some time. *See MacDonald v. Town of Eastham*, 745 F.3d 8, 14 (1st Cir. 2014) (recognizing that courts of appeals are divided on the question of whether the community caretaking exception applies to police activities involving a person's home, resulting in disarray and a profusion of cases pointing in different directions*); United States v. Rodriguez-Morales*, 929 F.2d 780, 787 (1st Cir.

1991) (noting that the need for police to function as community caretakers arises fortuitously, when unexpected circumstances present some transient hazard which must be dealt with on the spot). *See also Castagna v. Jean*, 955 F.3d 211 (1st Cir. 2020) (post-*Caniglia* decision affording officers qualified immunity in a case challenging their entry into a home after receiving a 911 call).[4]

In *United States v. York*, 895 F.2d 1026 (5th Cir. 1990), *reh'ng. den.* (en banc) (1990), the Fifth Circuit extended the community caretaking doctrine to search and seizure in a home. There, a houseguest requested that officers accompany his family to gather their belongings from the house of their drunk and belligerent host. While protecting the family, the officers observed weapons in plain sight, and criminal charges were brought against the homeowner. The Fifth Circuit ultimately held that no Fourth Amendment "search" took place and thus no constitutional violation occurred. *Id*. at 1030.

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[4] Courts have not been reluctant to offer qualified immunity to officers performing community caretaking functions outside of the automobile context. *See*, *e.g. Ray v. Twp. of Warren*, 626 F.3d 170 (3d Cir. 2010); *MacDonald v. Town of Eastham, supra*; *Vargas v. City of Phila.*, 783 F.3d 962 (3d Cir. 2015); *Hunsberger v. Wood*, 570 F.3d 546 (4th Cir. 2009); *Graham v. Barnette*, 970 F.3d 1075 (8th Cir. 2020); *Foshey v. Ekholm*, No. 19-cv-434-slc, 2020 U.S. Dist. LEXIS 163294 (W.D. Wisc. Sept. 8, 2020). Indeed, in the instant matter, the District Court ruled in the alternative that the officers were entitled to qualified immunity. Pet.App. at 8a n.3, 66a. The First Circuit did not address this issue, electing instead to decide Petitioner's Fourth Amendment claim on the merits. *Id.* at 8a-9a n.3.

The First Circuit counted the Sixth Circuit among those that had extended *Cady* to searches of the home. Pet.App. 15a. Petitioner disputes that designation. Petition at 16-17, n.3. The Sixth Circuit has embraced the concept of community caretaking searches in the home, referring to it by another name. In *United States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996), the warrantless entry into a home after neighbors registered a noise complaint was examined. That entry resulted in criminal charges against the resident of the home. In applying an "exigency" exception, that court concluded that "the governmental interest in immediately abating an ongoing nuisance by quelling loud and disruptive noise in a residential neighborhood is sufficiently compelling to justify warrantless intrusions under some circumstances." *Id.* at 1522. After finding that an important community caretaking interest motivated the officers' entry, the Sixth Circuit concluded that their failure to obtain a warrant did not render that entry unlawful, but rather, satisfied the Fourth Amendment's "reasonableness" requirement. Like other criminal decisions, *Rohrig* conflates the concept of community caretaking with exigent circumstances, but correctly found that "warrantless entry into Defendant's home was justified by exigent circumstances." *Id*. at 1521. *Rohrig* noted that "nothing in the Fourth Amendment requires us to set aside our common sense," *id*., building on an earlier recognition that the court did not "think that the police must stand outside an apartment, despite legitimate concerns about the welfare of the occupant, unless they can hear screams." 98 F.2d at 1522 (citation omitted). Petitioner

argues that in *United States v. Williams*, 354 F.3d 497, 508 (6th Cir. 2003) the Sixth Circuit muddied the waters somewhat when it "doubt[ed] that community caretaking will generally justify warrantless entries into private homes." That case is not helpful, as officers there suspected drug activity before they entered the home. The Sixth Circuit refused to accept the officers' arguments that their initial entry was justified by the community caretaking doctrine, saying "the community caretaking function . . . cannot apply where, as here, there is a significant suspicion of criminal activity." *Id.* Respondents agree with the outcome in *Williams* and believe that it emphasizes the need to examine each case on its unique facts.

The Eighth Circuit has extended the community caretaking doctrine to officers' entries into homes. *United States v. Quezada*, 448 F.3d 1005 (8th Cir. 2006) expressly acknowledges the constitutionality of warrantless entries into a home pursuant to the community caretaking doctrine. There, an officer attempting to serve papers discovered an unconscious man lying on a firearm. Being a felon, the man was charged with a crime and filed a motion to suppress, alleging a Fourth Amendment violation. The Eighth Circuit held that a police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention. Based on the reasonableness of the initial entry, the Eighth Circuit affirmed denial of the motion to suppress. *See also United States v. Smith*, 820 F.3d 356 (8th Cir. 2016) (police officers

may enter a residence to perform a wellness check without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention).

Also recognized by the First Circuit (and presently pending on certiorari before this court) is the Ninth Circuit's decision in *Rodriguez v. City of San Jose*, 930 F.3d 1123 (9th Cir. 2019), *petition for cert. filed*, No. 19-1057 (U.S. Feb. 25, 2020). The Ninth Circuit extended the community caretaking doctrine outside of the vehicular context in a case with similar facts to the case *sub judice*. *Rodriguez* correctly determined that the same factors that support application of the doctrine in vehicular cases—public safety, urgency of the public interest, and individual interests—must be balanced based on all of the facts available to an objectively reasonable officer when reviewing warrantless entry into a home. Like here, a distraught wife in San Jose, California made a 911 call, asking police to do a wellness check on her husband. After sending Mr. Rodriguez to a hospital for evaluation, officers seized several firearms. This action was challenged by Mrs. Rodriguez on the grounds that she had the right to the firearms. The Ninth Circuit disagreed with Mrs. Rodriguez, finding that an objectively reasonable officer would have been deeply concerned by the prospect that the husband/homeowner might have had access to a firearm. The Ninth Circuit held that the warrantless seizure of the guns did not violate the Fourth Amendment. *See also United States v. Bradley*, 321 F.3d 1212, 1214 (9th Cir. 2003) (using the "emergency doctrine," which the

Ninth Circuit described as being "derived from police officers' community caretaking function" to allow evidence found during a search for a nine-year-old boy in a drug house).

In *Corrigan v. District of Columbia*, 841 F.3d 1022, 1025, 1034 (D.C. Cir. 2016), *reh'ng den.* (en banc), 2017 U.S. App. LEXIS 4332 (D.C. Cir. 2017), the Circuit Court for the District of Columbia assumed, without deciding, that the community caretaking doctrine applies to a home. The facts of that case did not support a warrantless and destructive search of the premises hours after the initial exigency had abated. That Court ultimately found that a home search was unreasonable as no imminent threat presented, and the intrusion of the search was substantial.

The First Circuit also noted non-automobile inventory cases that nonetheless allowed warrantless searches, and it is submitted that these should be considered a logical extension of *Cady*. Pet.App. 15a. The Third Circuit, in *Vargas v. Philadelphia, supra*, acknowledged that police may sometimes seize individuals or property other than motor vehicles in the course of fulfilling their community caretaking responsibilities. In doing so, that Court invoked the admonition in *Ray v. Twp. of Warren, supra*, that it had "expressly noted [in *Ray*] that we were not deciding whether that doctrine can *ever* apply outside the context of an automobile search." *Vargas*, 783 F.3d at 971 (emphasis added). *Vargas* involved the police holding an automobile that was taking a young girl to a hospital upon hearing the sounds of an ambulance rushing

to the scene. This case extended the community caretaking doctrine to seizures of persons outside of the home for non-investigatory purposes and to protect the individual or the community at large.

Also applying the community caretaking doctrine outside of an automobile inventory search was *United States v. Gilmore*, 776 F.3d 765 (10th Cir. 2015). There, police received a call of a disoriented person in a parking lot. A pat down search revealed a firearm, and Gilmore was charged with a felony. The Tenth Circuit reasoned that one exception to the warrant requirement involves community caretaking functions. As defined, under this exception "a police officer may have occasion to seize a person, as the Supreme Court has defined the term for Fourth Amendment purposes, in order to ensure the safety of the public and/or the individual, regardless of any suspected criminal activity." *Id*. at 769 (citation omitted). The Tenth Circuit concluded that the police were acting within the scope of their community caretaking function to ensure that Gilmore was safe from harm, therefore, no constitutional wrong occurred.

In 2007, the First Circuit applied *Cady* to a non-inventory automobile stop. Although *Lockhart-Bembry v. Sauro*, 498 F.3d 69 (1st Cir. 2007) involved an automobile, it did not involve a search. Rather, the driver was injured following an officer's instruction to move the car away from travel lanes. Because police are entitled to remove disabled vehicles from the streets in order to protect public safety and to ensure the smooth flow of traffic, and because the officer's conduct in this

case was reasonable, the community caretaking doctrine was held to insulate the officer from liability.

Not surprisingly, the Eighth Circuit applies *Cady* to police actions taken in the curtilage of a home, as well as the home's interior. In *Samuelson v. City of New Ulm*, 455 F.3d 871 (8th Cir. 2006), a homeowner who had called to report intruders was mistaken for a burglar. Because of his behavior, he was transported to a hospital against his will and subsequently sued the officers. The Court balanced the interests involved and determined that no jury could find the officers' actions "objectively unreasonable." 455 F.3d at 877. The Eighth Circuit has also recognized that the community caretaking function can take officers to locations where people and danger intersect, not just to automobiles. In *United States v. Harris*, 747 F.3d 1013 (8th Cir. 2014), *cert. den.*, 574 U.S. 910 (2014), officers were called because a man asleep at a bus station had a gun falling out of his pocket. In explaining why that search and seizure was constitutionally permissible, that Court explained the reason for the community caretaking doctrine, acknowledging an earlier holding that "[f]irearms are dangerous, and extraordinary dangers sometimes justify unusual precautions." 747 F.3d at 1018 (citations omitted). The reasonableness of the officers' actions weighed in favor of finding no Fourth Amendment violation.

The First Circuit also referenced *United States v. Rideau*, 949 F.2d 718, 720 (5th Cir. 1991), *vacated on other grounds*, 969 F.2d 1572 (5th Cir. 1992) (en banc) as it applied the community caretaking doctrine to a

non-vehicular case. There, police found a man dressed in dark clothes in the middle of the road, apparently intoxicated. A pat down search found a firearm. Although the Fifth Circuit did not find fault with the initial community caretaking stop, they held that the subsequent frisk violated the Fourth Amendment. Importantly, the Fifth Circuit recognized that "the officers would have been derelict in their duties had they not stopped the Defendant to check on his condition." *Id*. at 720.[5]

State courts of last resort also allow warrantless searches and seizures outside of the automobile inventory context to protect their citizens, although they might give the "exception" or the "doctrine" different

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[5] Police officers performing community caretaking functions often find themselves between the Scylla of protecting the community and the Charybdis of civil liability. Or, as the First Circuit put it, "encounters with individuals whom police reasonably believe to be experiencing acute mental health crises frequently confront police with precisely the sort of damned-if-you-do, damned-if-you-don't conundrum that the community caretaking doctrine can help to alleviate." Pet.App. 18a. *MacDonald* foresaw a "parade of horribles that could be imagined had the officers simply turned tail." 745 F.3d 12; *Rohrig* realized that if the police had "left the scene to obtain a warrant, the citizens would have viewed the officers' actions as poor police work," 98 F.3d at 1524; *State v. Dunn*, 964 N.E. 2d 1037 (Ohio 2012), noting the irony where a formerly suicidal plaintiff claimed that the police should not have stopped him. The Supreme Court of Ohio recognized that if the police had not stopped him, he may have harmed himself. And if they had not acted and had harmed or killed himself, Dunn or his estate could have filed a civil lawsuit against the police for failure to respond to an emergency. "Such is the balancing act of Fourth Amendment law." *Id*. at 1040.

names and impose different elements of proof. *See*, *e.g.*, *State v. Cook*, 440 A.2d 137 (R.I. 1982) (noting that any officer may be asked to act as a "domestic-relations counselor in an attempt to reconcile two belligerent spouses who at some prior time had solemnly promised to love and honor each other," among other examples of allowable community caretaking functions); *Duquette v. Godbout*, 471 A.2d 1359 (R.I. 1984) (applying "exigent circumstances" defense to insulate officers who entered apartment looking for a minor); *People v. Ray*, 981 P.2d 928 (Cal. 1999), *cert. den.*, 528 U.S. 1187 (2000) (holding that the warrantless entry into a home is constitutionally permissible where the officers' conduct is prompted by the motive of preserving life, using the "emergency aid" exception); *Williams v. State*, 962 A.2d 210 (De. 2008) (affirming the denial of a motion to suppress and adopting a three part test in holding that officer was acting in his community caretaking capacity when he stopped a man walking on the side of the road and later discovered that the man had outstanding warrants); *People v. Slaughter*, 803 N.W. 2d 171 (Mich. 2011) (applying community caretaking doctrine to firefighters entering an apartment after receiving a 911 call); *State v. Deneui*, 775 N.W. 2d 221 (S.D. 2009) (applying community caretaking exception to officers who entered a residence after smelling ammonia fumes); *State v. Pinkard*, 785 N.W. 2d 592 (Wis. 2010) (reading *Cady* not as prohibiting home entries under the CC doctrine, but instead as counseling a cautious approach); *Seibert v. State*, 923 So.2d 460, 470-471 (Fla. 2006) (warrantless entry and search of an apartment in response to a call indicating that a person in the

apartment had threatened to kill himself was lawful because of exigent circumstances indicating the need for help). Cases relied upon by Petitioner do not support his request for an extreme departure from Fourth Amendment precedent. *Ray v. Twp. of Warren* held that the community caretaking doctrine cannot be used to justify the warrantless search of a home. 626 F.3d at 177. The Third Circuit held that in order to search a home without a warrant, another exception, such as the exigent circumstances exception, must exist. However, *Ray*, after finding existing caselaw "unclear", ultimately afforded the officers qualified immunity from suit. *Id.* Significant is the Third Circuit's admonition that they were "not deciding whether [the community caretaking doctrine] can *ever* apply outside the context of an automobile search." *Id.* (emphasis added). Indeed, in 2015 the Third Circuit did just that in *Vargas v. Philadelphia*, discussed *infra*, pp. 16, 20.

Petitioner makes too much of the opinion in *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982). The facts before the Seventh Circuit were so different that it is understandable why that Court declined to use that case as a vehicle to extend the community caretaking doctrine outside of the automobile context. *Pichany* framed the issue as "whether the community caretaking exception to the Fourth Amendment's warrant requirement first established in *Cady* . . . and previously applied only to automobiles extends to the search of an unlocked warehouse during a burglary investigation." 687 F.2d at 205. There, officers were investigating a reported burglary in a warehouse and,

in doing so, entered the wrong building and discovered stolen equipment. There was no urgency, and the officers did not claim to have entered the warehouse to protect themselves or the public from potential danger. The officers did not argue that exigent circumstances were present, only that they had acted in good faith.

The Seventh Circuit interpreted *Cady* as confined to automobile cases and not as a vehicle itself to expand application to create a "warehouse exception." 687 F.2d at 209. This holding is understandable and correct—as the burglary had already been committed and there was no danger of any imminent harm to persons *or* property.

Petitioner also rests his argument of a "deep circuit split" in part on *Sutterfield v. City of Milwaukee*, 751 F.3d 542 (7th Cir. 2014), *cert. den.*, 574 U.S. 993 (2014). To begin, the officers in *Sutterfield* did not rely upon the community caretaking doctrine, instead they relied upon the exigent circumstances exception to the warrant requirement as that Circuit had applied it. Perhaps that is why this opinion is overly complicated, unlike the First Circuit's decision which is clear and logical. *Sutterfield* concluded that a warrantless entry into a woman's home was justified, as the defendant officers had a reasonable basis to believe that Sutterfield posed an imminent danger of harm to herself. 751 F.3d at 545. Much like this case, officers were sent to Sutterfield's home after a call for a wellness check from her doctor, concerned that she might be suicidal. During that check, officers discovered and seized firearms

from a locked container in her home. *Sutterfield* noted that in that jurisdiction, there are three possible justifications for entry into the home—one being the community caretaking doctrine. The Seventh Circuit applied another of the three, the "emergency aid" doctrine, which they characterize as a subset of the exigent circumstances doctrine. *Id.* That Court recognized a divide in state and federal courts regarding the scope of the community caretaking doctrine, while subscribing to a "narrow view" confining the doctrine to automobile searches, citing *Pichany.* 751 F.3d at 553. This case, arising in Wisconsin, highlights a split between state and federal courts in that jurisdiction.[6]

The Seventh Circuit, agreeing that it was "natural, logical and prudent" for the officers to believe that Sutterfield's firearm should be seized for safekeeping until she was evaluated and no longer posed a danger to herself, found no constitutional violation, instead recognizing that the situation called for expeditious action, applying the "emergency aid" doctrine to insulate the officers from liability. 751 F.2d at 570.

Petitioner also relies on *United States v. Erickson*, 991 F.2d 529 (9th Cir. 1993), to bolster his claims of a

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[6] The state courts in Wisconsin, when interpreting the Fourth Amendment, have "accorded a much broader sweep to the community caretaking doctrine" than its federal Circuit court, *Sutterfield*, 751 F.2d 554, extending the doctrine to allow warrantless searches of the home. *See State v. Horngren*, 617 N.W. 2d 508 (Wis. Ct. App. 2000); *State v. Pinkard*, *supra* (both applying the community caretaking doctrine after officers entered a home out of concern for the occupants and then found evidence of a crime).

circuit split in need of repair. However, the Ninth Circuit has recently applied the community caretaking doctrine to allow officers to enter a home without a warrant in circumstances more like the instant case. *See Rodriguez v. City of San Jose, supra*. In *Erickson*, officers were called by neighbors to investigate a possible burglary at a home. An officer pulled back a window covering and saw marijuana growing in the basement of the home. Criminal charges against the homeowner resulted, and a motion to suppress was granted and affirmed by the Ninth Circuit.

In holding that *Cady* created only an "automobile exception," the Ninth Circuit stated the fact that a police officer is performing a community caretaking function cannot itself justify a warrantless search of a private residence. *Erickson*, 991 F.2d at 531. The Ninth Circuit left the door open in cases involving more urgent circumstances: "[O]f course, to say that a police officer may not conduct a warrantless search of a residence merely because he is performing a community caretaking function does not mean that such a search may never be made." 991 F.2d at 533. *Erickson* should therefore be limited in its application to burglary investigations, as the Ninth Circuit's later decision in *Rodriguez* makes clear.

United States v. Bute, 43 F.3d 531 (10th Cir. 1994) held, also in the context of a burglary investigation, that the community caretaking exception to the warrant requirement is applicable only in cases involving automobile searches. Much like *Pichany*, this is somewhat

understandable given the lack of urgency in the burglary investigation at a warehouse.

In sum, Petitioner's "deep split" rests on burglary investigations and on other decisions involving the potential for serious injury to citizens where the community caretaking doctrine was not extended to warrantless entry of the home, but where the officers' actions were insulated from liability.

II. The First Circuit's Proper Extension of *Cady* to the Caniglias' Tense, Emotional Circumstances Requires no Further Review.

The First Circuit's holding is a logical and constitutionally correct extension of this Court's continuing explanation of the Fourth Amendment, and nothing in *Cady* precludes extending the community caretaking doctrine to urgent circumstances that happen to unfold in a home containing firearms. The need for purely protective police functions as described in *Cady* can arise anywhere. *Cady* just happened to involve the search of an automobile. *Cady* noted that home searches and automobile searches were constitutionally distinct, but it did not foreclose the application of the community caretaking doctrine to a home setting. Indeed, *Cady* applies perfectly in the situation where police are called to tamp down highly charged situations such as the one at the Caniglias' home. The reason *Cady* allowed the warrantless automobile search was the potential danger posed by a transient firearm. *Cady* made it clear that it was not going to refine or engage

in unnecessary musing about the reach of the Fourth Amendment, 413 U.S. at 448, so it is not surprising that it did not go further than necessary. Here, both Petitioner and his firearms were transient. That, coupled with the objectively reasonable belief that Petitioner posed an imminent danger to himself and to others, places this case squarely in "the heartland of the community caretaking exception." *Castanga v. Jean*, 955 F.3d at 220-21 (citation omitted).

This Court has consistently noted that "whether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case." *Cady*, 413 U.S. at 440 (citing *Cooper v. California*, 386 U.S. 58, 59 (1967)). This case is undeniably unique. Officers from liability were presented with a situation where (1) Petitioner and Mrs. Caniglia had a fight and Petitioner put a gun on the table and implored her to shoot him; (2) Mrs. Caniglia informed the officers that her husband was depressed and that she was concerned that he would harm himself; (3) Petitioner had ready access to at least one gun and ammunition; (4) Petitioner admitted to taking the gun out and imploring his wife to shoot him; (5) Petitioner informed the officers that he was "sick of the arguments" and "couldn't take it anymore"; and (6) Petitioner was "very upset" and "agitated." The officers could not have known when Petitioner would return to the residence, or whether he would use the guns to harm himself, his wife, or anybody else. They accordingly "conclud[ed] that the flashing red lights signaled imminent danger." Pet.App. 26a. After all,

"[s]tandard police equipment does not include crystal balls." *Id*. at 25a. These facts, coupled with "sound police procedure," support every action taken by the Respondents. The First Circuit's repeated findings of "objective reasonableness" are constitutionally solid.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Petition for Certiorari be denied.

Respectfully submitted,

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