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

REPLY IN SUPPORT OF CERTIORARI

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INTRODUCTION

"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." Opp. 1. In so doing, it "acknowledged that courts differ as to whether the community caretaking doctrine extends to the warrantless entry of a home." *Id.* at 11. And its "deliberative, clear" opinion contains "the most comprehensive explanation and extension of the community caretaking doctrine to private property by a Circuit Court to date." *Id.* at 2, 6.

Those are Defendants' words, not ours. Defendants' Opposition concedes a split on the Question Presented, acknowledges the breadth of the holding below, and recognizes the importance of the issue. And Defendants don't even try to identify vehicle concerns. Quite the opposite: They concede the key facts and praise the First Circuit for isolating the Question Presented as the dispositive issue.

The Opposition thus confirms that the Court should grant certiorari. There is a deep, entrenched "split about whether the community caretaking function standard [this] Court first set forth in *Cady* in the vehicle context also applies to searches of a home." Pet.App.60a n.3. The First Circuit picked the wrong side. And the decision below is an exceptionally good vehicle for the Court to give a definitive answer, which has serious implications for the role of law enforcement and the sanctity of the home.

ARGUMENT

I. FEDERAL AND STATE COURTS ARE DEEPLY DIVIDED ON THE QUESTION PRESENTED.

A. Many federal circuits and state high courts have answered the Question Presented, and they have deeply split. The Third, Seventh, Ninth, and Tenth Circuits, as well as the high courts of Arizona, California, New Jersey, and North Dakota, have held that the "community caretaking" exception *cannot* justify warrantless intrusions into a home. *See* Pet. 12-14, 17-19. In contrast, the First, Fifth, and Eighth Circuits, as well as the high courts of South Dakota and Wisconsin, have held that it can. *See id.* at 15-16, 19-20.

Defendants count the split a little differently. They identify *even more* cases for their side of the split. *See* Opp. 15-25. As for Petitioner's side, Defendants dispute the Ninth Circuit's rule. *Id.* at 19-20, 27-28. But they concede the rule in the other three circuits, and don't say a word about any of the state high court cases. *See id.* at 25-29.

It makes no difference, however, whether the split is 8-to-5, 6-to-7, or something in between. Any way you slice it, there is a deep division of authority about "[w]hether the 'community caretaking' exception to the Fourth Amendment's warrant requirement extends to the home." Pet. i. Many courts—including the District Court and the First Circuit below—have acknowledged that split. *See, e.g.*, Pet.App.60a n.3; Pet.App.15a; *Ray v. Twp. of Warren*, 626 F.3d 170, 176-77 (3d Cir. 2010); *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 554 (7th Cir. 2014); *Corrigan v. Dist. of Columbia*, 841

F.3d 1022, 1034 (D.C. Cir. 2016). And despite their quibbles, Defendants acknowledge it too. They did so in their appellate briefing. Appellees' App. Ct. Br. at 34 ("[T]here is a split among the federal circuits concerning whether the community caretaking function applies outside of the automobile context."). And they do so again in their Opposition. *See, e.g.*, Opp. 1 (acknowledging a "few decisions that have declined the application of the community caretaking doctrine to private property"); *id.* at 11 ("The First Circuit acknowledged that courts differ as to whether the community caretaking doctrine extends to the warrantless entry of a home."); *id.* at 27 ("This case, arising in Wisconsin, highlights a split between state and federal courts in that jurisdiction.").

So even without parsing each case, the bottom line is clear: By any measure, there is a well-developed, certworthy split on the Question Presented.

B. Defendants are wrong on the individual cases anyway.

1. Unsurprisingly, Defendants agree that many courts have seen it the First Circuit's way—even going so far as to identify additional authority they think is consistent with their rule. *See* Opp. 15-25.[1]

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[1] For example, Defendants, citing *United States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996), suggest that "[t]he Sixth Circuit has embraced the concept of community caretaking searches in the home, referring to it by another name." Opp. 17. That court later clarified, however, that, "despite references to the doctrine in *Rohrig*, [it] doubt[s] that community caretaking will generally justify warrantless entries into private homes," *United States v. Williams*, 354 F.3d 497, 508 (6th Cir. 2003).

So that side of the split—which both Petitioner and Defendants agree is at least five federal circuits and state high courts deep, *see* Pet. 15-16, 19-20; Opp. 15-25—merits no further discussion.

2. Petitioner cited four federal circuits (the Third, Seventh, Ninth, and Tenth) and four state high courts (Arizona, California, New Jersey, and North Dakota) that have come out the other way. *See* Pet. 12-14, 17-19.

a. Defendants offer no response on the state courts. As the Petition explained, each decision involved a "warrantless entry and search of a home," and each squarely held that "the community-caretaking doctrine is not a justification" for such a search under the Fourth Amendment. *State v. Vargas*, 63 A.3d 175, 177 (N.J. 2013); *see also People v. Ovieda*, 446 P.3d 262, 266-67, 276 (Cal. 2019) (holding that the "community caretaking" exception did not justify a warrantless home entry to address a perceived suicide risk because that exception applies only "in the context of vehicle impound procedures"); *State v. Wilson*, 350 P.3d 800, 804 (Ariz. 2015) (refusing "to extend the community caretaking exception to police entry into homes"); *State v. Gill*, 755 N.W.2d 454, 461 (N.D. 2008) (holding that the community caretaking function "does not encompass

(continued…)

See Pet. 16-17 n.3. So Petitioner does not understand the Sixth Circuit to have definitively weighed in on this question. But it doesn't matter: Counting that court on either side of the split only deepens it.

dwelling places"). That part of the split is thus undisputed.

b. Defendants also acknowledge that the Third, Seventh, and Tenth Circuits have adopted a categorical *rule* that the "community caretaking" exception cannot apply to the home.

As to the Third Circuit, Defendants concede the only relevant point: that "*Ray v. Twp. of Warren* held that the community caretaking doctrine *cannot* be used to justify the warrantless search of a home." Opp. 25 (emphasis added). In that case, which involved a domestic dispute in a home, the Third Circuit agreed with "[t]he majority of circuits" that the "community caretaking" exception did not apply because *Cady* was "expressly based on the distinction between automobiles and homes for Fourth Amendment purposes." *Ray*, 626 F.3d at 171-73, 175-77. It is irrelevant that the Third Circuit reserved judgment on whether the exception could potentially apply to non-car, *non-home* spaces. Opp. 25. There is no dispute that, on the Question Presented—*i.e.*, "[w]hether the 'community caretaking' exception to the Fourth Amendment's warrant requirement extends to the *home*," Pet i. (emphasis added)—the Third Circuit has held "no."

Similarly, Defendants concede that "[t]he Seventh Circuit [has] interpreted *Cady* as confined to automobile cases." Opp. 26 (discussing *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982)); *see also id.* at 27 (acknowledging that *Sutterfield* "subscrib[ed] to a 'narrow view' confining the doctrine to automobile searches"). The *per curiam* opinion in *Dix v. Edelman Fin. Servs., LLC*, No. 18-2970, 2020 WL 6129585 (7th Cir. Oct. 19, 2020), is not to the

contrary. That case, unlike this one, involved a "fracas unfolding around [officers]" as a result of a trespasser's refusal to leave a homeowner's property. *Id.* at *7. Although the opinion uses the phrase "community caretaking," it does not purport to address the "community caretaking" exception at issue in this Petition. Indeed, neither the opinion nor the parties cited *Cady*, or binding circuit precedent "foreclos[ing] an expansive construction of [*Cady*] allowing warrantless searches of *private homes* or businesses" pursuant to the "community caretaking" exception. *Pichany*, 687 F.2d at 209 (emphasis added).

As for the Tenth Circuit, Defendants again acknowledge its categorical holding in *United States v. Bute*, 43 F.3d 531 (10th Cir. 1994), "that the community caretaking exception to the warrant requirement is applicable only in cases involving automobile searches." Opp. 28-29. That *Bute* (like *Pichany*) involved a warehouse, *id.* at 29, is of no moment. If the "community caretaking" exception does not even extend to a warehouse, then surely it does not apply to a *home*, the Fourth Amendment's core concern. Indeed, the Tenth Circuit block-quoted the Seventh Circuit's conclusion that the "community caretaking" exception does not apply to "private homes or businesses." *Bute*, 43 F.3d at 535 (quoting *Pichany*, 687 F.2d at 209).

c. The only circuit Defendants seriously dispute is the Ninth. But as the Petition explained, the Ninth Circuit held in *United States v. Erickson*, 991 F.2d 529, 531 (9th Cir. 1993)—and confirmed in *Mathis v. Cnty. of Lyon*, 757 F. App'x 542, 545 (9th Cir. 2018)—that "[t]he fact that [an] officer [was]

performing a community caretaking function … cannot itself justify a warrantless search of a private residence." *Erickson*, 991 F.2d at 531. The panel in *Rodriguez v. City of San Jose*, 930 F.3d 1123 (9th Cir. 2019), did not and could not overrule *Erickson*. Instead, it applied the "exigent circumstances" exception. Indeed, *Rodriguez* quoted *Erickson* in explaining that "the 'community caretaking function … cannot itself justify a warrantless search.'" *Rodriguez*, 930 F.3d at 1137.[2] Ultimately, however, nothing turns on whether there are eight courts on this side of the split or seven. Either way, the division of authority is stark, and warrants this Court's review.

II. THE DECISION BELOW IS WRONG.

A. Rather than challenge certworthiness, the Opposition primarily argues that the First Circuit "landed on the workable and constitutionally correct side of th[is] issue." Opp. 12. That is no reason to decline review. If, as Defendants say, the First Circuit got this right, that means many other courts have gotten it wrong. This Court takes cases to

[2] Defendants note that this Court recently considered a petition for certiorari in *Rodriguez*, 930 F.3d 1123, *cert denied*, No. 19-1057 (U.S. Oct. 13, 2020). *See* Opp. 19-20. The denial of certiorari in that case has no bearing on this one. The *Rodriguez* petition did not present the question whether the "community caretaking" exception extends to the home and, indeed, did not even mention *Cady*. Even if it had, *Rodriguez* would have been a poor vehicle for resolving that question because *Rodriguez* is better understood as an "exigent circumstances" case.

ensure uniformity in the law. And, whatever its view of the merits, that is what it should do here.

B. Regardless, Defendants (and the First Circuit) are wrong on the merits. There is no basis in precedent, Fourth Amendment first principles, or the practical realities of policing to extend the "community caretaking" exception to the home.

1. On precedent, Defendants do not dispute that this Court has only ever mentioned the "community caretaking" exception in the context of automobiles. *See Cady*, 413 U.S. at 447-48; *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976); *Colorado v. Bertine*, 479 U.S. 367, 372 (1987). They nevertheless argue that the First Circuit properly "extend[ed]" that exception to homes. *See, e.g.*, Opp. 29.

The *Cady* Court would surely have balked at the suggestion. *Cady* did not "*just happen*[ ] to involve the search of an automobile." *Id.* (emphasis added). And the opinion does not merely "*note*[ ] that home searches and automobile searches [are] constitutionally distinct." *Id.* (emphasis added). Instead, the constitutional distinction between cars and homes is the foundation for *Cady*'s "community caretaking" exception. *See* Pet. 20-23. The lesser constitutional status of automobiles for purposes of the Fourth Amendment was *the reason* the Court gave for its holding. *Cady*, 413 U.S. at 447-48 ("The Court's previous recognition of the distinction between motor vehicles and dwelling places *leads us to conclude* that the type of caretaking 'search' conducted here of a vehicle … was not unreasonable solely because a warrant had not been obtained." (emphasis added)). And the Court defined the concept of "community caretaking" exclusively in

terms of the work "[l]ocal police officers" do in "investigat[ing] vehicle accidents." *Id.* at 441.

B. On principles, Defendants do not even try to reconcile their understanding of the "community caretaking" exception with the text, original meaning, or purposes of the Fourth Amendment. Nor could they. As this Court has recognized repeatedly, "[a]t the [Fourth] Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)); *see also Payton v. New York*, 445 U.S. 573, 589-90 (1980). Accordingly, "the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home." *McDonald v. United States*, 335 U.S. 451, 456 (1948).

Vehicles, unlike houses, get no special mention in the Constitution. For that reason and others, the reasonable expectation of privacy in an "automobile is significantly less than that relating to one's home or office." *California v. Carney*, 471 U.S. 386, 391 (1985); *see also* Pet. 24-26. Indeed, under the "automobile exception," "officers may search an automobile without having obtained a warrant so long as they have probable cause to do so." *Collins v. Virginia*, 138 S. Ct. 1663, 1670 (2018) (citing *Carney*, 471 U.S. at 392-93)).

In *Collins*, this Court relied on the constitutional distinction between homes and cars in rejecting the kind of doctrinal "extension" Defendants seek here. Much of that opinion—which neither the First Circuit nor the Opposition cites—could be transposed

here. In both cases, expanding a vehicle-specific exception to the warrant requirement to the home "would unmoor the exception from its justifications, render hollow the core Fourth Amendment protection the Constitution extends to the house … , and transform what was meant to be an exception into a tool with far broader application." *Id.* at 1672-73.

C. Finally, on practicalities, Defendants suggest that the Court should expand the "community caretaking" exception to "give police elbow room to take appropriate action" to respond to "transient hazard[s]." Opp. 12 (quoting Pet.App.16a). Where there is a true emergency, however, longstanding exceptions to the warrant requirement—in particular, exigent circumstances and emergency aid—already allow officers to enter homes without warrants. *See, e.g.*, *Kentucky v. King*, 563 U.S. 452, 460 (2011). But where there is adequate time to obtain a warrant, the Fourth Amendment requires one before officers may enter a home.

And make no mistake: When Defendants characterize the "community caretaking" exception as applicable when "circumstances are dire" or "dangerous," Opp. 1-2, they are not talking about true emergency. If they were, the "community caretaking" exception would do no work at all. Instead, they are asking this Court to create a new category of cases in which no true exigency exists but a warrantless home entry is allowed. The First Circuit was frank about that. "[T]he terms 'imminent' and 'immediate,'" it explained, "are not imbued with any definite temporal dimensions." Pet.App.21a. "[T]hese terms," the court continued,

ought not be read "to suggest that the degree of immediacy typically required under the exigent circumstances and emergency aid exceptions is always required in the community caretaking context." *Id.*

There is no "exigency-lite" exception to the Fourth Amendment. Nor should there be. Exceptions to the warrant requirement are "jealously and carefully drawn," *Jones v. United States*, 357 U.S. 493, 499 (1958)—both to preserve the primacy of the warrant process, and so police officers have "'clear and unequivocal' guidelines," *California v. Acevedo*, 500 U.S. 565, 577 (1991). The First Circuit's "community caretaking" "catchall" undermines both goals. It short-circuits the warrant requirement for no good reason, since—absent a real exigency—officers have time to obtain the warrant the Constitution requires. And it offers officers no guidance on what the bounds of "community caretaking" might be. If, as the First Circuit has held, entering an apartment to break up a loud teenage party qualifies as "community caretaking," *Castagna v. Jean*, 955 F.3d 211, 220 (1st Cir. 2020), the exception—unmoored from its vehicular foundation—has no guardrails at all.

III. THIS CASE IS THE IDEAL VEHICLE TO ADDRESS THIS IMPORTANT QUESTION.

This case is an ideal vehicle. The Question Presented was briefed before, and decided by, the District Court and the First Circuit; the answer disposes of Petitioner's Fourth Amendment claim; and the qualified-immunity framework within which this issue often arises is not applicable. *See* Pet. 29-30. Moreover, the First Circuit "fram[ed] the issues"

and set the "stage[]" for this Court's review perfectly. Pet.App.9a-11a.

Defendants do not dispute any of that. Indeed, they concede the key facts—*i.e.*, that a home entry and seizures occurred, and that they were "warrantless and nonconsensual." *See* Opp. 4-5 nn.1-2. They also concede (as they did below) that the exigency and emergency-aid exceptions do not apply. *See id.* at 1 (acknowledging that "[n]either of [those] two exceptions precisely fit[s]" this case); *see also* Pet.App.11a-12a & n.5, 32a n.9 (noting that Defendants had waived reliance on those exceptions and opining that they would not apply anyway). After all, when the officers arrived it had been twelve hours since Petitioner's supposedly suicidal statement. *See* Pet.App.53a-55a. And he spoke to the officers in a "calm" and "normal" manner. Pet.App.55a. If the officers nevertheless believed they had cause for a seizure from Petitioner's home, one of them had plenty of time to get a warrant while the other three conversed with Petitioner. *Id. Compare, e.g.*, *Brigham City v. Stuart*, 547 U.S. 398, 406 (2006) (holding that the "emergency aid" exception applied where officers saw a "fracas … taking place inside the kitchen" in which "[a] juvenile, fists clenched, was being held back by several adults" and then "br[oke] free and [struck] one of the adults in the face, sending the adult to the sink spitting blood").

CONCLUSION

The petition for a writ of certiorari should be granted.

October 27, 2020

Respectfully submitted,

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