No. 20-157

# In The
# Supreme Court of the United States

EDWARD A. CANIGLIA,

*Petitioner,*

v.

ROBERT F. STROM, *et al.*,

*Respondents.*

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

## BRIEF OF INSTITUTE FOR JUSTICE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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## QUESTION PRESENTED

Whether the "community caretaking" exception to the Fourth Amendment's warrant requirement extends to the home.

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## INTEREST OF AMICUS CURIAE

The Institute for Justice (IJ)[1] is a nonprofit, public-interest law center committed to securing the foundations of a free society by defending constitutional rights. A central pillar of IJ's mission is the protection of private property rights, both because the ability to control one's property is an essential component of personal liberty and because property rights are inextricably linked to all other civil rights. See *United States* v. *James Daniel Good Real Prop.*, 510 U.S. 43, 61 (1993) ("Individual freedom finds tangible expression in property rights.").

IJ's property-rights work includes challenges to programs that allow officials to trespass on private property without first securing a warrant based on individualized probable cause. See, *e.g.*, *LMP Servs., Inc.* v. *City of Chicago*, 2014 IL 123123, 2019 WL 2218923 (Ill. May 23, 2019), cert. denied, 140 S. Ct. 468 (Nov. 4, 2019); *McCaughtry* v. *City of Red Wing*, 831 N.W.2d 518 (Minn. 2013); *Black* v. *Village of Park Forest*, 20 F. Supp. 2d 1218 (N.D. Ill. 1998). IJ also regularly files amicus briefs in Fourth Amendment cases before this Court. See, *e.g.*, *Lange* v. *California*, No. 20-18, ___ S. Ct. ___ (2021), *Bovat* v. *Vermont*, 141 S. Ct. 22 (Oct. 19, 2020); *Collins* v. *Virginia*, 138 S. Ct. 1663 (2018); *Carpenter* v. *United States*, 138 S. Ct. 2206 (2018); *City*

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[1] Amicus affirms that both parties have consented to the filing of this brief, no attorney for either party authored this brief in whole or in part, and no person or entity made a monetary contribution specifically for the preparation or submission of this brief.

*of Los Angeles* v. *Patel*, 576 U.S. 409 (2015); *Riley* v. *California*, 573 U.S. 373 (2014).

## SUMMARY OF ARGUMENT

The Fourth Amendment to the U.S. Constitution protects "[t]he right of the people to be secure in their . . . houses . . . against unreasonable searches and seizures." Interpreting that language, this Court has held that "reasonableness" is the "ultimate touchstone" for determining whether a search or seizure is constitutional. *Kansas* v. *Glover*, 140 S. Ct. 1183, 1191 (2020) (quotes and citation omitted). But the Amendment's opening phrase, "[t]he right of the people to be secure," has been "largely ignored." Luke M. Milligan, *The Forgotten Right to Be Secure*, 65 Hastings L.J. 713, 734 (2014). Amicus respectfully encourages this Court to consider the meaning of the right to be secure.

This Court's current approach is to ask a deceptively simple question: Is this search or seizure "reasonable"? The answer, of course, "depends on the context." *Maryland* v. *King*, 569 U.S. 435, 462 (2013) (quoting *New Jersey* v. *T.L.O.*, 469 U.S. 325, 337 (1985)). As a result, courts engage in "relativistic balancing" based on the totality of the circumstances. Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 559 (1999). This malleable approach has left Fourth Amendment law "incoherent, unpredictable, and in fundamental need of repair." See, *e.g.*, Nicholas A. Kahn-Fogel, *An Examination of the*

*Coherence of Fourth Amendment Jurisprudence*, 26 Cornell J. L. & Pub. Pol'y 275, 289 (2016). Courts need an objective, coherent principle to guide them in identifying "unreasonable" searches and seizures.

The Fourth Amendment's opening words provide that guidance. Textually, the "right of the people to be secure" appears first in the Amendment and announces its purpose. Historically, the Founding generation understood "secure" to mean free from threats to their persons and property. The Framers adopted that meaning in response to decades of abuse under British officers' unchecked power to search and seize. And in pre-ratification discourse, the right to be "secure" in one's home was connected to the immunity and fortification associated with castles.

This case provides the Court with an opportunity to show how the "right of the people to be secure" helps to identify unreasonable searches. Properly understood, that phrase provides an answer to the question presented: whether the "community caretaking" exception to the Fourth Amendment's warrant requirement extends to the home. The answer is no.

Below, Amicus explains that the "right of the people to be secure" establishes the right to be free from threats to our persons and property. Section I, *infra*. The warrant requirement is an expression of that right, as are its few and narrowly drawn exceptions. Section II, *infra*. But many courts, including the court below, have allowed warrantless intrusions into peoples' *homes* under this Court's decision in *Cady* v.

*Dombrowksi*, 413 U.S. 433 (1973), which upheld the warrantless "community caretaking" search of a *vehicle*. Because lower courts have interpreted *Cady* to allow warrantless entries into peoples' homes on a whim, and because that interpretation threatens "the right of the people to be secure," this Court should clarify *Cady* and reverse the decision below. Section III, *infra*.

## ARGUMENT

### I. The right to be secure requires freedom from threats to our persons and property.

The Fourth Amendment's opening words—"[t]he right of the people to be secure"—have been "largely ignored." Milligan*, supra*, at 734. However, this Court has noted that constitutional interpretation "start[s] with the text," *Gamble* v. *United States*, 139 S. Ct. 1960, 1965 (2019), which means "every word must have its due force, and appropriate meaning" and "[n]o word . . . can be rejected as superfluous." *Richfield Oil Corp.* v. *State Bd. of Equalization*, 329 U.S. 69, 77–78 (1946) (quoting *Holmes* v. *Jennison*, 39 U.S. (14 Pet.) 540, 570–71 (1840)).

To the Founding generation, "secure" did not simply mean the right to be "spared" an unreasonable search or seizure. Milligan, *supra*, at 738–50. Rather, influential scholars and pre-ratification discourse show that the "right to be secure" phraseology was also concerned with "harms attributable to the *potential* for unreasonable searches and seizures." *Id.* at 750

(emphasis added). Influential scholars from the colonial era defined "secure" to imply freedom from the fear of potential threats. See, *e.g.*, SAMUEL JOHNSON, 2 A DICTIONARY OF THE ENGLISH LANGUAGE 1777, at 177 (W. Strahan ed., 1755) (defining "secure" to mean "free from fear" and "sure, not doubting"); 1 W. Blackstone, *Commentaries on the Laws of England* 125, 130 (1765) (describing "personal security" as a "person's legal and uninterrupted enjoyment of his life, his limbs, [and] his body" as well as freedom from "menaces" to his safety).

Pre-ratification discourse emphasized the right to be secure in response to the "immediate evils that motivated the framing and adoption of the Fourth Amendment." *Payton* v. *New York*, 445 U.S. 573, 583 (1980). Those immediate evils, the "reviled 'general warrants' and 'writs of assistance' . . . allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley* v. *California*, 573 U.S. 373, 403 (2014). Following his famous condemnation of the writs of assistance in *Paxton's Case*, James Otis wrote that the writs were "most destructive of English liberty" because they "place[d] the liberty of every man in the hands of every petty officer." CHARLES FRANCIS ADAMS, ed., 2 THE WORKS OF JOHN ADAMS 523–25 (1850). Otis concluded that the looming threat of arbitrary intrusion—and the fear it created—necessarily made "every householder in this province . . . less *secure* than he was before." Milligan, *supra*, at 740.

The Founding generation also emphasized security through its "frequent repetition of the adage that

'a man's house is his castle[.]'" *Payton*, 445 U.S. at 596. Common use of the castle metaphor shows that "[t]he Framers valued security and intimately associated it with the ability to exclude the government." Thomas K. Clancy, *What Does the Fourth Amendment Protect: Property, Privacy, or Security?*, 33 Wake Forest L. Rev. 307, 353–54 (1998); see also *Carpenter* v. *United States*, 138 S. Ct. 2206, 2239–40 (2018) (Thomas, J., dissenting) (collecting prominent uses of the castle metaphor to show that the Framers "were quite familiar with the notion of security in property"). But castles do more than exclude: they provide confidence against potential future intrusions. Milligan, *supra*, at 748. Consequently, John Adams—"the original author of the 'to be secure' phraseology"—observed that a home provides "as compleat a security, safety and *Peace and Tranquility*" as a castle. *Id.* at 741, 748 (citation omitted) (emphasis added).

In sum, the Founders inherited and preserved a definition of "secure" that meant "free from fear," which implies protection against looming, arbitrary threats. Key figures in pre-ratification discourse, including Otis and Adams, understood the term as such. The Framers' decision to emphasize the right to be secure thus affirmed the sanctity of our homes (and other property) and ensured protection against arbitrary searches and seizures. See Milligan, *supra* 732–50.

## II. The right to be secure requires a robust warrant requirement with narrow exceptions.

This Court has held that a robust warrant requirement is essential to ensuring the Fourth Amendment's protections. *Johnson* v. *United States*, 333 U.S. 10, 14 (1948) (lack of a warrant requirement "would reduce the Amendment to a nullity and leave the people's homes secure only in the discretion of police officers").

A robust warrant requirement furthers peoples' security in at least two ways. First, it reduces the risk that interactions between police and citizens will result in injuries or loss of life. See *Terry* v. *Ohio*, 392 U.S. 1, 13 (1968). This Court has recognized that forcibly entering someone's home can "provoke violence in supposed self-defense by the surprised resident." *Hudson* v. *Michigan*, 547 U.S. 586, 594 (2006). One function of the warrant requirement, then, is to "minimize[] the danger of needless intrusions" into the home. *Payton*, 445 U.S. at 586 (citation omitted). Second, the warrant requirement protects citizens from the threat of arbitrary searches and seizures. As Justice Jackson recognized: "Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart" as when "homes, persons and possessions are subject at any hour to unheralded search and seizure by the police." *Brinegar* v. *United States*, 338 U.S. 160, 180–81 (1949) (Jackson, J., dissenting).

Of course, there are rare circumstances when "the exigencies of the situation" justify a warrantless search or seizure. *McDonald* v. *United States*, 335 U.S. 451, 456 (1948). But that "narrow and well-delineated" exception, *Flippo* v. *West Virginia*, 528 U.S. 11, 13 (1999) (per curiam), is "jealously and carefully drawn." *Jones* v. *United States*, 357 U.S. 493, 499 (1958). Because the warrant requirement is a bulwark against the threat of arbitrary searches and seizures, the right to be secure means little if that requirement is not jealously guarded. Accordingly, this Court has refused to expand exceptions to the warrant requirement that would effectively "swallow the rule." *City of Los Angeles* v. *Patel*, 576 U.S. 409, 424–25 (2015).

In *Cady* v. *Dombrowksi*, 413 U.S. 433 (1973), this Court upheld the warrantless search of a vehicle towed to a private garage under a new "community caretaking" exception to the warrant requirement. The defendant, a Chicago policeman, crashed his vehicle in a rural area after drinking. *Id.* at 435–36. At his request, local police brought the defendant to his vehicle and called for a tow truck. *Id.* at 436. One officer, who believed that the defendant was required to carry a service revolver, quickly inspected the vehicle but failed to locate the missing gun. *Id.* The tow truck arrived and transported the damaged vehicle to a privately-owned garage. *Id.* Several hours later, one of the officers drove to the garage, unlocked the vehicle, and conducted another search to locate the revolver. *Id.* at 436–37. The search produced incriminating evidence linking the defendant to a murder. *Id.* at 437–38.

This Court upheld the search after recognizing an exception to the warrant requirement applicable to the case's "narrow circumstances": a "caretaking 'search' conducted . . . of a vehicle that was neither in the custody nor on the premises of its owner . . . was not unreasonable solely because a warrant had not been obtained." *Id*. at 445–48.

The narrow decision in *Cady* was based on two alleged public-safety concerns unique to vehicles.

*First*, the officers in *Cady* "exercis[ed] control" over the vehicle after concluding that it "represented a nuisance" on a public highway. *Id.* at 446–47. The Court distinguished such nuisances from vehicles parked adjacent to the owner's home or those only "momentarily unoccupied on a street." *Id.* at 447 (citing *Coolidge* v. *New Hampshire*, 403 U.S. 443 (1971)). Applying that rationale, the Court has since observed that police may remove and impound vehicles that "jeopardize both the public safety and the efficient movement of vehicular traffic." *South Dakota* v. *Opperman*, 428 U.S. 364, 368–69 (1976).

*Second*, the Court upheld the subsequent search based on officers' right to remove threats from vehicles in police custody. The Court observed that the officers had exercised "control" over the vehicle, which was "neither in the custody nor on the premises of its owner." *Cady*, 413 U.S. at 447–48. After police towed the defendant's vehicle to a garage, an officer searched it to find a revolver they assumed to be missing. *Id.* at 436–37; see also *Opperman*, 428 U.S. at 374 (observing

that this was the "sole justification" for upholding the search in *Cady*). Furthermore, the officers conducted that search pursuant to a "standard procedure" aimed, in part, at ensuring that weapons left in vehicles did not fall into "untrained or perhaps malicious hands." *Id.* at 443. The Court concluded that searching vehicles in police custody without a warrant, if done pursuant to standard procedures aimed at removing potential safety threats, does not violate the Fourth Amendment. *Id.* at 447–48.

The *Cady* Court's focus on circumstances unique to *vehicles* explains both holdings. For instance, when vehicles are disabled in the public right-of-way, they can create "public safety" risks that require removal by police. *Opperman*, 428 U.S. at 368–69. After all, such vehicles can cause traffic accidents, increase roadway congestion, or entice thieves and other criminals. See *Cady*, 413 U.S. at 447 (describing the defendant's wrecked vehicle as a "nuisance"). And once those vehicles are removed and in police custody, routine "inventory" or "protective" searches permit officers to discover and remove potential dangers while protecting owners' property and themselves from false claims of loss or theft. *Opperman*, 428 U.S. at 369. The community caretaking exception remains narrow—thereby honoring the right to be secure—if it does no more than allow police to take lawful custody of dangerous vehicles and conduct subsequent inventory searches according to standard procedures.

So cabined, the community caretaking exception does not create a looming threat that "places the

liberty of every man in the hands of every petty officer." CHARLES FRANCIS ADAMS, ed., 2 THE WORKS OF JOHN ADAMS 524 (1850). The warrant requirement remains intact in all other contexts—and so, therefore, does the people's right to be secure.

## III. Extending the community caretaking exception to the home violates the right to be secure.

In August 2015, Petitioner Caniglia and his wife got into an argument in their home. Pet.App.53a. When the argument became heated, Mr. Caniglia retrieved an unloaded gun from the bedroom, placed it in front of his wife, and said, "why don't you just shoot me and get me out of my misery?" *Id.* After spending the night at a motel, Mrs. Caniglia asked police to make a "well call" and escort her home. *Id.* at 54a. Outside the house, Mr. Caniglia explained to the officers what had happened; officers said that he "seemed normal" and "calm for the most part." *Id.* at 55a. Even so, Mr. Caniglia agreed to accompany an officer to a hospital on the condition that the officers not seize his two handguns. *Id.* at 56a. After he left, however, the officers misled Mrs. Caniglia into believing that her husband consented to the seizure and entered the home to retrieve them. *Id.* at 56a–57a. It was not until Mr. Caniglia filed suit that the officers returned his handguns. *Id.* at 57a.

The First Circuit rejected Mr. Caniglia's Fourth Amendment claim under the community caretaking exception, which it called a "catchall" exception to the

warrant requirement for whenever police perform duties unrelated to law enforcement. *Id.* at 13a–14a (quoting *United States* v. *Rodriguez-Morales*, 929 F.2d 780, 785 (1st Cir. 1991)). Under the court's theory, police may dispense with the warrant requirement whenever they confront a "transient hazard that requires immediate attention." *Id.* at 16a. It is unclear what constitutes a "hazard," but it need not be an emergency. *Id.* at 11a–12a. Worse, the exception applies to all private property, houses included.

In other words: No matter the time, no matter the place, and no matter the nature of the alleged "transient hazard," police may search and seize your property without a warrant as long as the search is unrelated to the enforcement of a criminal statute.

That regime invokes the arbitrary, looming threat of general writs that so incited the Framers. The lower court not only expanded the exception beyond its relevant historical context—vehicles in police custody presenting a safety threat—but did so without any limiting principles. Such a broad exception to the warrant requirement renders our "homes, persons and possessions . . . subject at any hour to unheralded search and seizure by the police." *Brinegar*, 338 U.S. at 180–81 (Jackson, J., dissenting). More distressing still is that it was applied to the home: If such a broad exception applies to property the Court deems "first among equals" under the Fourth Amendment, *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013), there is no constitutional interest too great to escape it.

This Court must reject an expansion of the community caretaking exception to the home if it is to preserve the warrant requirement's underlying purpose.

*First*, the lower court's broad expansion of the community caretaking exception flatly contradicts this Court's narrow description of the exception. In the nearly 50 years since *Cady*, this Court has only discussed community caretaking in the context of vehicle searches and seizures. See, *e.g.*, *Opperman*, 428 U.S. at 368. That makes sense, as *Cady* itself turned on the distinction between vehicles and homes. *Cady*, 413 U.S. at 439 (noting the "constitutional difference between houses and cars"); *id.* at 447–48 (same). Indeed, the entire justification for authorizing officers to take custody of vehicles that pose threats to public safety, and conducting subsequent inventory searches, is that vehicles in the public right-of-way present unique problems for law enforcement. It makes no sense to expand the exception to encompass homes, where that justification is entirely absent.

*Second*, expanding the community caretaking exception beyond its vehicle-specific origins would unreasonably infringe the right of the people to be secure. Again, the animating purpose for the exception is to allow officers to remove damaged or abandoned vehicles that pose a risk to public safety. *Opperman*, 428 U.S. at 368–69. That function does not create an arbitrary power to seize vehicles on a whim, nor the fear that such power would engender. Rather, it means that the owner of a damaged or abandoned vehicle cannot demand that officers obtain a warrant before

remedying a nuisance that threatens public safety. And once police take custody of that damaged or abandoned vehicle, they have an interest in securing the vehicle's contents to protect the owner, themselves, and the public. *Opperman*, 428 U.S. at 369.

Compare that narrow, vehicle-specific, exception to the dangerous "catchall" version adopted by the lower court. Pet.App.13a–14a (quoting *United States* v. *Rodriguez-Morales*, 929 F.2d 780, 785 (1st Cir. 1991)). Unmoored from its logical and historical origins, the lower court's exception would permit law enforcement to enter peoples' homes without a warrant for the purpose of addressing any "transient hazards" they may suspect. *Id.* at 13a–14a. The only limiting factor, according to the lower court, would be that those searches must be unrelated to law enforcement. *Id.* But this Court grounded that limitation in the reality that there are various non-enforcement reasons why police come into contact with *vehicles*—not *homes*. *Cady*, 413 U.S. at 440; *Opperman*, 428 U.S. at 367–68. Under the lower court's rule, law enforcement would not need a warrant to enter peoples' homes—even without facing a genuine emergency—as long as they could dream up some non-enforcement reason for being there. That approach cannot be reconciled with the people's right to be secure in their persons and property.

Clarifying that *Cady* applies only to vehicles, by contrast, resolves this case in a way that honors the right to be secure. The community caretaking exception would continue to allow police to address the

unique threat that disabled vehicles can pose. But in all other contexts—including Mr. Caniglia's home in this case—the warrant requirement would remain intact.

* * *

The Fourth Amendment protects our right to be secure in our houses. To extend the community caretaking exception to the home, as the lower court did, would threaten the sort of looming arbitrary intrusions that motivated the Amendment's Framers. The Court should therefore reject that extension as inconsistent with the right to be secure. Doing so will provide much-needed guidance for lower courts on how a security-based approach to the Fourth Amendment looks in practice.

## CONCLUSION

The Court should reject an expansion of the community caretaking exception to the home and reverse the decision below.

Respectfully submitted,

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