
In the
Supreme Court of the United States

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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 THE NATIONAL ASSOCIATION OF COUNTIES,
THE NATIONAL LEAGUE OF CITIES, THE U.S.
CONFERENCE OF MAYORS, THE INTERNATIONAL
CITY/COUNTY MANAGEMENT ASSOCIATION, AND THE
INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS

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<i>May v. Franklin Cty. Bd. of Comm’rs</i> , 59 F. App’x 786 (6th Cir. 2003)	19
<i>Fish v Brown</i> , 838 F.3d 1153 (11th Cir. 2016).....	16
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<i>9-1-1 Statistics</i> , NENA: The 9-1-1 Association (2020), https://www.nena.org/ page/911statistics	6
Aaron Kassraie, <i>988 Approved as National Suicide Prevention Hotline Number</i> , Amer. Ass'n of Retired Persons (July 17, 2020), https:// www.aarp.org/health/conditions-treatments/ info-2019/988-suicide-prevention-hotline.html	13
Amy C. Watson & Jennifer D. Wood, <i>Everyday police work during mental health encounters: A study of call resolutions in Chicago and their implications for diversion</i> , 35(5-6) Behavioral Science Law 442, 444 (Sept. 2017)	11

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- David E. Bloom, David Canning & Günther Fink, *Implication of Population Aging for Economic Growth*, NBER Working Paper, National Bureau of Economic Research 1 (Jan. 2011)..... 7
- Deborah M. Stone, Thomas R. Simon, Katherine A. Fowler, et al., *Vital Signs: Trends in State Suicide Rates – United States – 1999-2016 and Circumstances Contributing to Suicide – 7 States, 2015*, 67(22) Morbidity and Mortality Weekly Report 617 (June 8, 2018)..... 11
- Eleven Murder-Suicides Occur Across America Each Week, Claiming More Than 1,300 Lives Annually*, Violence Policy Center (June 19, 2018) <https://vpc.org/press/eleven-murder-suicides-occur-across-america-each-week-claiming-more-than-1300-lives-annually> 22-23
- Henry J. Steadman, Marth W. Deane, Randy Borum, Bonita M. Veysey & Joseph P. Morrissey, *Comparing Outcomes of Major Models of Police Responses to Mental Health Emergencies*, 51 Psych. Servs. 645 (May 2000)..... 10
- Jane Perkins, *Ask a Firefighter: Why do firetrucks and police respond to 911 medical calls?*, The Westerly Sun (May 4, 2019), <https://www.thewesterlysun.com/opinion/guest-columns/ask-a-firefighter-why-do-firetrucks-and-police-respond-to-911-medical-calls>..... 5

- John Elflein, *Mental illness among U.S. Women 2008-2019*, Statistica (Sept. 22, 2020), <https://www.statista.com/statistics/666480/any-mental-illness-past-year-us-women/> 8
- John Elflein, *Any mental illness among U.S. men 2008-2019*, Statistica (Sept. 22, 2020), <https://www.statista.com/statistics/673184/any-mental-illness-past-year-us-men/> 8
- Jonathon Vespa, *The U.S. Joins Other Countries with Large Aging Populations*, U.S. Census Bureau (Oct. 8, 2019), <https://www.census.gov/library/stories/2018/03/graying-america.html> 7
- Maddy Reinert, Theresa Nguyen & Danielle Fritze, *The State of Mental Health in America 2021* 11 (2021) 10
- Matt Vasilogmabros, *Red Flag Laws Spur Debate Over Due Process*, PEW Charitable Trusts (Sept. 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/09/04/red-flag-laws-spur-debate-over-due-process> 16
- Mental health of older adults*, World Health Organization (Dec. 12, 2017), <https://www.who.int/en/news-room/fact-sheets/detail/mental-health-of-older-adults> 7
- Mkay Bonner & Mark S. Johnson, *Encounters Between the Elderly and Law Enforcement: An Overview of Mental Illness, Addictions, Victims, and Criminals* 3 (2018) 7, 8
- National Coalition Against Domestic Violence statistics, <https://ncadv.org/statistics> (last visited Feb. 16, 2021) 4

<i>New Study Reveals Lack of Access as Root Cause for Mental Health Crisis in America</i> , National Council for Behavioral Health (Oct. 10, 2018), https://www.thenationalcouncil.org/press-releases/new-study-reveals-lack-of-access-as-root-cause-for-mental-health-crisis-in-america/	10
Nora Freeman Engstrom, <i>When Cars Crash: The Automobile's Tort Law Legacy</i> , 53 Wake Forest L. Rev. 293, 294 (2018).....	4
P. S. Appelbaum & T. G. Gutheil, <i>Rotting with their rights on: constitutional theory and clinical reality in drug refusal by mental health patients</i> , 7(3) Bull. of the Amer. Acad. of Psychiatry and the Law 306, 308 (1979).....	9
<i>Public Health Impact: Suicide</i> , America's Health Rankings: United Health Found. (2020), https://www.americashealthrankings.org/explore/annual/measure/Suicide/state/ALL	11
<i>Raimondo Signs Gun Safety Legislation to Protect Rhode Islanders</i> , https://www.ri.gov/press/view/33355	17
Regina Varolli, <i>My Mom Wrote the Motto "To Protect and to Serve,"</i> (June 2, 2020), https://www.culinaryepicenter.com/my-mom-wrote-the-motto-to-protect-and-to-serve/	21
Rick Schmitt, <i>Elder Abuse: When Caregiving Goes Wrong</i> , AARP: Family Caregiving (Mar. 2, 2015), https://www.aarp.org/caregiving/basics/info-2017/elder-abuse-assisted-living.html	8

Sara R. Collins, Herman K. Bhupal & Michelle M. Doty, <i>Health Insurance Coverage Eight Years After the ACA</i> , The Commonwealth Fund (Jan. 7, 2019), https://www.commonwealthfund.org/publications/issue-briefs/2019/feb/health-insurance-coverage-eight-years-after-aca	10
<i>Second and Fourth Amendment Resolution against Red Flag and Enhanced Background Checks</i> , Republican Party of Texas (Sept. 16, 2019), https://www.texasgop.org/second-and-fourth-amendment-resolution-against-red-flag-and-enhanced-background-checks/	16-17
Stephen Johnson, <i>Why psychiatrists are calling on the APA to end its controversial ‘Goldwater Rule,’</i> Bigthink.com (June 29, 2018), https://bigthink.com/stephen-johnson/why-psychiatrists-are-calling-on-the-apa-to-end-its-goldwater-rule	22
<i>Suicide and First Responder’s Role</i> , Illinois Department of Public Health, https://www.dph.illinois.gov/sites/default/files/publications/first-responders-050216.pdf	12
<i>Suicide and Self-Inflicted Injury</i> , Centers for Disease Control and Prevention: National Center for Health Statistics (2018), https://www.cdc.gov/nchs/fastats/suicide.htm	12
<i>The Origin of the LAPD Motto</i> , https://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 (last visited Feb. 16, 2021)	21
Uma Suryadervara, Richard Holbert & Robert Averbuch, <i>Opioid Use in the Elderly</i> , 35 <i>Psychiatric Times</i> 1 (Jan. 20, 2018).....	7

Vera Institute of Justice, <i>Understanding Police Enforcement</i> , https://www.vera.org/projects/understanding-police-enforcement (last visited Feb. 16, 2021)	6
Veronica Stracqualursi, <i>FCC Approves 988 to be 3-digit number for national suicide hotline starting in 2022</i> , CNN (July 16, 2020), https://www.cnn.com/2020/07/16/politics/fcc-national-suicide-hotline/index.html	12-13
Victor E. Kappeler, <i>Critical Issues in Police Civil Liability</i> 6 (4th ed., 2006)	19, 20
W. Lawrence Fitch & Jeffery W. Swanson, <i>Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice</i> , Substance Abuse and Mental Services Administration 6 (2019)	9
<i>What are Police Welfare Checks?</i> National Police Support Fund (June 5, 2019), https://nationalpolicesupportfund.com/what-are-police-welfare-checks-2/	6
William Wan, <i>Teen Suicides are Increasing at an Alarming Pace, Outstripping All Other Age Groups, a New Report Says</i> , Wash. Post, Oct. 17, 2019	12

INTEREST OF AMICI CURIAE¹

The National Association of Counties (“NACo”) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation’s 3,069 counties through advocacy, education, and research.

The National League of Cities (“NLC”) is dedicated to helping city leaders build better communities. NLC is a resource and advocate for 19,000 cities, towns, and villages, representing more than 218 million Americans.

The U.S. Conference of Mayors (“USCM”), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes more than 1,200 cities at present. Each city is represented in USCM by its chief elected official, the mayor.

The International City/County Management Association (“ICMA”) is a nonprofit professional and educational organization of more than 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA’s mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.

The International Municipal Lawyers Association (“IMLA”) has been an advocate and resource for local government attorneys since 1935. Owned solely by its

¹ This brief was prepared by counsel for amici curiae and not by counsel for any party. No outside contributions were made to the preparation or submission of this brief. All parties have given written consent to the filing of this brief.

more than 2,500 members, IMLA serves as an international clearinghouse for legal information and cooperation on municipal legal matters.

Here, NACo, NLC, USCM, ICMA, and IMLA offer their perspective on why the rule sought by Petitioner would harm local governments, their employees, and their residents.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case is an unusual vehicle in which to demand a bright-line Fourth Amendment rule. The facts of this case would be inconceivable to our great-great-great-great-great-great-grandfathers who enacted the Fourth Amendment. A wife calls the police out of fear that her husband is suicidal, asks them to check on him and escort her back home, and after they respond the husband turns around and sues them, demanding punitive damages and attorney fees. Unrecognizable to the Founding Fathers. But they understood reasonableness. And enshrined it in the Constitution.

This case is as much about section 1983 litigation as it is about Fourth Amendment reasonableness. The premise of Petitioner's argument is that a 1973 decision by this Court limited what lower courts later called the "community caretaking exception" to automobiles. As a result, absent what Petitioner refers to as a "true emergency," no entry into a home by police or other first responders without a court order can ever be reasonable, subjecting them to liability.

Amici urge the Court to reject Petitioner's rule, for three main reasons. First, the rule ignores the

tremendous rise since 1973 of calls for help in the home. Wellness checks, the availability of 911 service, an aging population, the opioid crisis, the mental health crisis, and the increase in suicidal individuals have combined to make home visits an essential service provided by the police and other first responders. Expecting them always to obtain a warrant or other court order before entering a home, when they have been asked to protect someone there, is unreasonable.

Second, Petitioner's argument that police and other first responders have "ample tools" to protect people requesting help in their homes ignores reality. Police and others often have insufficient information, and certainly insufficient time, to obtain a warrant when responding to reports of overdoses, suicidal individuals, or other needs for care. Statutory schemes regarding domestic violence, red flag laws, and temporary involuntary commitments require instances of misconduct that are often not yet present and judicial actions not yet available. They are no help in a case like this.

Finally, Petitioner's rule would create perverse incentives. Police and other first responders who are shielded from liability for *failing* to respond when people call for help in their homes would be subject to liability when they *do* respond.

ARGUMENT

I. Petitioner's Absolute Rule Should Be Rejected.

Petitioner argues that a 1973 decision requires this Court to hold that Respondents' actions violated the Fourth Amendment. *See Cady v. Dombrowski*,

413 U.S. 433 (1973); Pet. Br. at 21 (stating *Cady* by its terms is limited to searches of cars).

But today is unlike 1973. Then gas was 40 cents a gallon. The average new home cost \$32,500. The Dow closed the year at 850. Archie Bunker was the most popular character on TV. And the Senate Watergate Committee began working in a truly bipartisan fashion.

Relevant here, in 1973 this Court could observe “that the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office.” *Cady*, 413 U.S. at 441.

That world is long gone. Today police-citizen contact involving the home dwarfs contact involving automobiles. In fact, domestic violence calls alone outnumber the number of motor vehicle accidents reported each year. *Compare* National Coalition Against Domestic Violence statistics, <https://ncadv.org/statistics> (last visited Feb. 16, 2021) (“On a typical day, there are more than 20,000 phone calls placed to domestic violence hotlines nationwide” [which works out to 7.3 million per year] *with* Nora Freeman Engstrom, *When Cars Crash: The Automobile's Tort Law Legacy*, 53 Wake Forest L. Rev. 293, 294 (2018) (“These days, there are roughly 6.3 million police-reported car crashes per year in the United States.”).

Most police-citizen contact these days is initiated by citizens themselves, often via a phone call to 911, a service that barely existed in 1973. And several overlapping trends arising since 1973—including an aging population, a mental health crisis, an opioid epidemic, and an increase in suicides (not to mention the pandemic)—show that people will continue to request police-citizen contact in their homes.

Moreover, other public servants are regularly called to provide services in homes, including firefighters, social workers, and emergency medical services providers. *See, e.g.*, Jane Perkins, *Ask a Firefighter: Why do firetrucks and police respond to 911 medical calls?*, *The Westerly Sun* (May 4, 2019), <https://www.thewesterlysun.com/opinion/guest-columns/ask-a-firefighter-why-do-firetrucks-and-police-respond-to-911-medical-calls> (noting that sixty-five percent of fire department responses are medical calls and that “fire departments have become all-hazards departments, with staff trained to respond to fires, emergency medical incidents, hazardous materials, and much more”). The Court’s rule in this case will affect them, too. *See, e.g.*, *People v. Slaughter*, 803 N.W.2d 171, 181 (Mich. 2011) (holding that “the community caretaking exception applies to firefighters”).

Amici contend that Petitioner’s absolute rule should be rejected. Petitioner’s argument ignores the demand for caretaking in the home that has ballooned since *Cady*. His asserted “ample tools” for protecting the public actually show that reasonableness is necessarily the test in cases like this one. And his rigid rule would perversely discourage police and others from responding to calls to protect people in their homes.

A. Requests for caretaking in the home have grown exponentially since *Cady*.

The 911 emergency number and various trends have increased the need for caretaking in the home. Since the 1970s, the 911 emergency number has become a universal feature of public health and safety. People have ready access to first responders

with the touch of a button. This access has transformed the modern police officer from investigative agent to community caretaker, a “Swiss Army knife” called to serve the public in a myriad of circumstances unrelated to traditional law enforcement duties.

The 911 emergency number was still in its infancy when *Cady* was decided back in 1973. By 1976 only 17% of Americans had access to 911 service. *9-1-1 Origin & History*, NENA: The 9-1-1 Association (2020), <https://www.nena.org/page/911overviewfacts>. Today 911 service is ubiquitous.

An estimated 240 *million* 911 calls are made each year, more than 650,000 per day. *9-1-1 Statistics*, NENA: The 9-1-1 Association (2020), <https://www.nena.org/page/911statistics>.

It is no wonder that “[p]olice officers dedicate most of their time to responding to 911 calls.” Vera Institute of Justice, *Understanding Police Enforcement*, <https://www.vera.org/projects/understanding-police-enforcement> (last visited Feb. 16, 2021). Plus, there are countless other calls like the one by Petitioner’s wife that are made to regular phone lines.

Police officers and others are often dispatched to perform “wellness checks” for at-risk individuals, including the elderly and those with mental health issues. Wellness checks are not criminal investigations, but contacts made at the request of concerned citizens who fear for the safety of another they believe to be in danger. *What are Police Welfare Checks?* National Police Support Fund (June 5, 2019), <https://nationalpolicesupportfund.com/what-are-police-welfare-checks-2/>.

Along with 911 access, there is a much greater need for caretaking services than there was back in 1973, due to such interrelated factors as (1) an aging population, (2) a mental health crisis, and (3) an increase in suicide.

First, the United States has a rapidly aging population. Jonathon Vespa, *The U.S. Joins Other Countries with Large Aging Populations*, U.S. Census Bureau (Oct. 8, 2019), <https://www.census.gov/library/stories/2018/03/graying-america.html>. Soon Americans 65 and older will outnumber children, those 18 and younger, for the first time in American history. *Id.*

An aging population is expected to exhaust health care providers and hospitals. David E. Bloom, David Canning & Günther Fink, *Implication of Population Aging for Economic Growth*, NBER Working Paper, National Bureau of Economic Research 1 (Jan. 2011). Experts predict an increase in police encounters with the elderly. McKay Bonner & Mark S. Johnson, *Encounters Between the Elderly and Law Enforcement: An Overview of Mental Illness, Addictions, Victims, and Criminals* 3 (2018).

Many contacts will be wellness checks in the home. Nearly 15% of elderly adults suffer from mental illness. *Mental health of older adults*, World Health Organization (Dec. 12, 2017), <https://www.who.int/en/news-room/fact-sheets/detail/mental-health-of-older-adults>. Data also reveals a drastic increase in opioid prescriptions, abuse, and overdoses in elderly Americans. Uma Suryadervara, Richard Holbert & Robert Averbuch, *Opioid Use in the Elderly*, 35 *Psychiatric Times* 1 (Jan. 20, 2018). The elderly are also attractive targets for

opportunistic criminals. Elderly persons often exhibit decreased knowledge, cognitive abilities, or lack of physical strength necessary to avoid becoming a victim of crime. Bonner, *Encounters Between the Elderly and Law Enforcement*, at 11. An estimated 10% of elderly persons will fall victim to elder abuse, often at the hands of hired caregivers in their homes. Rick Schmitt, *Elder Abuse: When Caregiving Goes Wrong*, AARP: Family Caregiving (Mar. 2, 2015), <https://www.aarp.org/caregiving/basics/info-2017/elder-abuse-assisted-living.html>.

Second, the American mental health crisis has been growing, even before the COVID-19 pandemic. John Elflein, *Mental illness among U.S. Women 2008-2019*, Statista (Sept. 22, 2020), <https://www.statista.com/statistics/666480/any-mental-illness-past-year-us-women/>; John Elflein, *Any mental illness among U.S. men 2008-2019*, Statista (Sept. 22, 2020), <https://www.statista.com/statistics/673184/any-mental-illness-past-year-us-men/>. From 2008 to 2019, incidence of mental illness in adult American men increased by 2.7%, from 13.6% to 16.3%, while incidences of mental illness in adult women increased by 3%, from 21.5% to 24.5%. *Id.*

After this Court's decision in *O'Connor v. Donaldson*, 422 U.S. 563 (1975), which post-dates *Cady*, treatment of the mentally ill changed drastically. Before *O'Connor*, the mentally ill were often involuntarily committed to psychiatric facilities pursuant to state law. Daniel Yohanna, *Deinstitutionalization of People with Mental Illness: Causes and Consequences*, 15 Amer. Med. Ass'n J. of Ethics 886, 887 (Oct. 2013). Involuntary civil commitment statutes pre-*O'Connor* largely lacked

exacting criteria for commitment, with most affording custodial discretion to hospital staff. *See Jackson v. Indiana*, 406 U.S. 715, 736-37 (1972) (noting that state statute permitted involuntary confinement of a person to “prevent injury to the public, to ensure his own survival or safety, or to alleviate or cure his illness”).

Involuntary civil commitment had been the preferred method of treating the mentally-ill since the 1830’s, when reformers such as Dorothea Dix advocated for the development of residential facilities for their care. P. S. Appelbaum & T. G. Gutheil, *Rotting with their rights on: constitutional theory and clinical reality in drug refusal by mental health patients*, 7(3) Bull. of the Amer. Acad. of Psychiatry and the Law 306, 308 (1979). Recognizing a need for reform, states undertook a “great surge of construction of state-run asylums . . . across the country.” *Id.*

In *O’Connor*, this Court held that “a State cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends.” 422 U.S. at 576. In accord with that holding, by the end of the 1970’s nearly every state had revised its commitment statutes. W. Lawrence Fitch & Jeffery W. Swanson, *Civil Commitment and the Mental Health Care Continuum: Historical Trends and Principles for Law and Practice*, Substance Abuse and Mental Services Administration 6 (2019). Empirical evidence suggests that it has been more difficult for mentally-ill persons to receive needed care since *O’Connor*. Yohanna, *supra*, at 886-87.

In addition to the elderly, there is a significant unmet need for mental health treatment for American youth and younger adults. Among youths designated as “major depressives” in 2017, for example, 71.8% reported receiving no treatment. Maddy Reinert, Theresa Nguyen & Danielle Fritze, *The State of Mental Health in America 2021* 11 (2021). And 23.6% of adults with any mental illness (AMI) reported an unmet need for treatment. *Id.* Nearly half of all American adults with AMI reported being inadequately insured, causing them to face cost-related barriers despite having health insurance. Sara R. Collins, Herman K. Bhupal & Michelle M. Doty, *Health Insurance Coverage Eight Years After the ACA*, The Commonwealth Fund (Jan. 7, 2019), <https://www.commonwealthfund.org/publications/issue-briefs/2019/feb/health-insurance-coverage-eight-years-after-aca>; see also *New Study Reveals Lack of Access as Root Cause for Mental Health Crisis in America*, National Council for Behavioral Health (Oct. 10, 2018), <https://www.thenationalcouncil.org/press-releases/new-study-reveals-lack-of-access-as-root-cause-for-mental-health-crisis-in-america/> (42% of Americans consider cost and poor insurance coverage as the top barriers to mental health access, with one in four having to choose between receiving mental health treatment and paying for daily necessities).

Consequently, the criminal justice system is one of the primary institutions left to respond to mental health crises. Henry J. Steadman, Marth W. Deane, Randy Borum, Bonita M. Veysey & Joseph P. Morrissey, *Comparing Outcomes of Major Models of Police Responses to Mental Health Emergencies*, 51 *Psych. Servs.* 645 (May 2000). Often, police officers

assume the role of “street corner psychiatrists” and social workers. *Id.* Up to 10% of all police contacts with the public involve people with serious mental illnesses. Amy C. Watson & Jennifer D. Wood, *Everyday police work during mental health encounters: A study of call resolutions in Chicago and their implications for diversion*, 35(5-6) Behavioral Science Law 442, 444 (Sept. 2017).

The modern police officer thus requires flexibility when attempting to respond to mental health episodes, including the ability to enter residences to provide aid when necessary. *See, e.g., Seibert v. State*, 923 So. 2d 460, 470-71 (Fla. 2006) (holding lawful a warrantless search of apartment in response to 911 call indicating that occupant was suicidal).

Third, suicide rates in the United States have risen nearly 30% since 1999, with worsening mental health being a critical factor contributing to this increase. Deborah M. Stone, Thomas R. Simon, Katherine A. Fowler, et al., *Vital Signs: Trends in State Suicide Rates – United States – 1999-2016 and Circumstances Contributing to Suicide – 7 States, 2015*, 67(22) Morbidity and Mortality Weekly Report 617 (June 8, 2018). Suicide rates increased among both sexes, all racial and ethnic groups, all urbanization levels, and across all age groups. *Id.* Suicide is the tenth leading cause of death in the United States and is one of only three leading causes of death that are *increasing*. *Public Health Impact: Suicide*, America’s Health Rankings: United Health Found. (2020), <https://www.americashealthrankings.org/explore/annual/measure/Suicide/state/ALL>.

Nowhere is the increase in suicide more apparent or more tragic than with young people. While suicides rates have grown across the board, “the increase among youths has outpaced all other age groups.” William Wan, *Teen Suicides are Increasing at an Alarming Pace, Outstripping All Other Age Groups, a New Report Says*, Wash. Post, Oct. 17, 2019, at A5. Over the course of a single decade, from 2007 to 2017, suicide among young Americans “suddenly increased 56 percent.” *Id.*

Suicide in the United States most often involves firearms. *Suicide and Self-Inflicted Injury*, Centers for Disease Control and Prevention: National Center for Health Statistics (2018), <https://www.cdc.gov/nchs/fastats/suicide.htm>. Most suicides are committed in private residences. *See Suicide and First Responder’s Role*, Illinois Department of Public Health, <https://www.dph.illinois.gov/sites/default/files/publications/first-responders-050216.pdf> (finding that 72% of state’s suicides occurred in the victim’s home).

The fact that most suicides occur in the home is particularly instructive in this case. Persons experiencing life-threatening mental crises are largely doing so in their homes, and first responders should be afforded some flexibility under the Fourth Amendment when their intent is to save suicidal individuals before it is too late.

The mental health crisis and related suicide rates are so serious that, in July 2022, about a year after the Court will decide this case, Americans will have access to a new suicidal crisis hotline, 988. *See* Veronica Stracqualursi, *FCC Approves 988 to be 3-digit number for national*

suicide hotline starting in 2022, CNN (July 16, 2020), <https://www.cnn.com/2020/07/16/politics/fcc-national-suicide-hotline/index.html>. The creation of 988 reflects the growing need for emergency services to suicidal and mentally ill persons, and it shows that 911 is overburdened by calls for mental health crisis intervention and assistance. Aaron Kassraie, *988 Approved as National Suicide Prevention Hotline Number*, Amer. Ass'n of Retired Persons (July 17, 2020), <https://www.aarp.org/health/conditions-treatments/info-2019/988-suicide-prevention-hotline.html>.

Lawmakers hope that switching to an easy-to-remember three-digit number will make it easier for Americans in crisis to access emergency services, while simultaneously decreasing the stigma surrounding suicide and mental health issues. *Id.* The forthcoming 988 number will increase the requests for caretaking in the home by social workers and other responders.

Petitioner alludes only once to the obvious reality of life down in the trenches, dismissively stating, “To be sure, the ‘wide range’ of everyday ‘catchall’ responsibilities that police officers perform may serve the public interest.” Pet. Br. at 33. Rather than acknowledging that the public interest supports reviewing Respondents’ actions for reasonableness, however, Petitioner argues that “a variety of existing tools already satisfy that interest.” *Id.* Amici disagree.

B. Petitioner’s “ample tools” argument does not support his absolute rule.

Petitioner’s “ample tools” argument proves the old adage that “the law is like Swiss cheese, it has holes.” See Pet. Br. at 33-39. Petitioner impliedly admits that

the other “tools” may not apply to cases similar to this one, in which police are summoned to a home out of concern about a possibly suicidal resident.

Start with exigent circumstances and warrants. Petitioner argues that many police visits within homes are supported by exigent circumstances and when no “true emergency” exists then “police *may* be able to obtain a warrant.” Pet. Br. at 10 (emphasis added); *see also* Pet. Br. at 33-36. Note the onus Petitioner would place on police and other first responders to determine if a request for help constitutes a “true emergency” and if not to obtain a warrant (if possible). Often limited information is provided in a 911 call and the urgency of the situation is not apparent until police or others knock on the door. Petitioner’s rule would invite tragedy, as preventable harms would occur while first responders had to seek warrants for anything that seemed to be less than a “true emergency.” Even if Petitioner is right that exigent circumstances or warrants may support many home entries made in response to requests for help, that is a good thing. It shows that what lower courts dub the “community caretaking exception” is infrequently needed, not a rule swallower.

Indeed, criminal defense lawyers and law professors have acknowledged in their amicus brief that the “community caretaking exception” could include at least two distinct areas besides motor vehicles: non-bodily harms such as nuisances,² and

² Nuisances that occasionally require warrantless entries into homes include triggered alarms, other noises that disturb the peace, gas leaks, water leaks, trapped wildlife such as bats and squirrels, and more.

non-imminent bodily harm. *See* Br. *Amicus Curiae* of NACDL and Criminal Procedure Professors at 15-20 (discussing “the scope of a possible community caretaking doctrine for warrantless home entries”); *see also State v. Smathers*, 753 S.E.2d 380, 386 (N.C. Ct. App. 2014) (recognizing exception and rejecting imminent harm requirement “[b]ecause such a requirement may prevent aid in situations where danger to life and limb may not be imminent, but could be prevented by swift action”).

While Petitioner supposes a clear line between “true” emergencies and what he derisively calls “exigency-lite,” *see* Pet. Br. at 32, the distinction blurs in the messiness of day-to-day calls for help. Here, for example, had Petitioner’s wife called 911 (as she considered doing) during the height of their argument, when Petitioner threw a gun on the table and said she should go ahead and shoot him, Petitioner would be hard-pressed to argue that was not a “true” emergency. The reasonableness of the response should not turn on the happenstance that Petitioner’s wife was able to hide the gun and hide out in a hotel before calling a regular line the next morning.

In short, the reasonableness of responses to calls like that of Petitioner’s wife is not readily defined by categorical, bright-line rules. *See, e.g., Georgia v. Randolph*, 547 U.S. 103, 125 (2006) (Breyer, J., concurring) (“the Fourth Amendment does not insist upon bright-line rules. Rather, it recognizes that no single set of legal rules can capture the ever-changing complexity of human life. It consequently uses the general terms ‘unreasonable searches and seizures.’”).

Petitioner’s remaining “ample tools,” four in all, similarly fail to support his rigid rule. *See* Pet. Br. at 37-39. First, domestic violence protection orders typically apply only when there have been acts of violence against another family member. *See, e.g.*, R.I. Gen. Laws § 12-29-2 (defining “domestic violence”). But many callers requesting help, like Petitioner’s wife, have not been victims of violence. Even in situations that do support issuance of a protective order, obtaining one from a court on short notice, such as on a Friday in August, can be difficult.³ Moreover, litigants such as Petitioner use the Fourth Amendment to challenge domestic violence protection orders, too. *See Fish v Brown*, 838 F.3d 1153, 1164 (11th Cir. 2016) (affirming summary judgment involving plaintiff’s section 1983 claim that seizure of guns pursuant to domestic violence protection order violated the Fourth Amendment); *Mann v. Helmig*, 289 F. App’x 845 (6th Cir. 2008) (same).

Second, “red flag” laws—state laws allowing judges to issue protective orders authorizing the temporary removal of firearms from people who may pose a danger to themselves or others—are new, largely untested, and subject to Fourth Amendment challenges of their own. Matt Vasilogmabros, *Red Flag Laws Spur Debate Over Due Process*, PEW Charitable Trusts (Sept. 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/09/04/red-flag-laws-spur-debate-over-due-process>; *Second and Fourth Amendment Resolution against Red Flag and Enhanced Background Checks*, Republican Party of Texas

³ Petitioner’s wife called the Cranston Police Department on Friday, August 21, 2015. *See* Pet. App. 53a-54a.

(Sept. 16, 2019), <https://www.texasgop.org/second-and-fourth-amendment-resolution-against-red-flag-and-enhanced-background-checks/>.

Note that both red flag laws and domestic violence protection acts have been enacted since *Cady* was decided in 1973, underscoring how requests for help in the home have skyrocketed since then. The first red flag law was passed in 1999. *See Red Flag Flaws Spur Debate, supra*. Rhode Island’s red flag law was only passed in June 2018, years after the phone call by Petitioner’s wife. *See Raimondo Signs Gun Safety Legislation to Protect Rhode Islanders*, <https://www.ri.gov/press/view/33355>. Domestic violence protection acts were passed beginning in the 1980s. *See Town of Castle Rock v. Gonzales*, 545 U.S. 748, 779 (2005) (Stevens, J., dissenting) (“States passed a wave of [domestic violence] statutes in the 1980’s and 1990’s”).⁴

Third, both the district court and the circuit court below explained why the applicable temporary involuntary commitment law cited by Petitioner, the Rhode Island Mental Health Law (RIMHL), does not cover the situation here. *See* Pet. App. 76a (“the scheme legislated in the RIMHL is not a fit here”); Pet. App. 48a (rejecting Petitioner’s theory that Respondents conspired to have him committed because “[e]ven when construed in the light most favorable to the plaintiff, . . . the record discloses no more than that the defendants sought to have him

⁴ The first case law uses of the terms “domestic violence protective order” and “domestic violence order” that counsel has located are from 1987 and 1985, respectively. *See In re McGraw*, 359 S.E.2d 853 (W.V. 1987) (“domestic violence protective order”); *In re Marriage of Shehade*, 484 N.E.2d 1253 (Ill. App. Ct. 1st Dist.1985) (“domestic violence order”).

transported to the hospital and evaluated by medical professionals”).

Fourth, citing case law from only three states, Petitioner argues that “police officers may be able to seek a warrant in jurisdictions that consider suicide a crime.” Pet. Br. at 39. Expecting police to take the time to go to court for a warrant makes no sense when they are trying to prevent a suicide. Also, Petitioner wrongly portrays prevention of suicide as adversarial in nature, dependent on criminal warrants, rather than collaborative. And what about first responders attempting to prevent suicide in the other forty-seven states?

Even if another “tool” might allow first responders to help people in need, assuming they had the time to obtain a court order in the meantime, that does not show that entering homes without a court order to provide caretaking is always unreasonable. *See Randolph*, 547 U.S. at 140 (Roberts, C.J., dissenting) (“the fact that alternative justifications for entry might arise does not show that entry pursuant to consent is unreasonable”). Given how rapidly a need for help can arise, such as with suicides or overdoses, Petitioner’s “ample tools” argument is entirely divorced from the reality of day-to-day work by first responders.

In sum, Petitioner’s “ample tools” argument does not support his absolute rule. Recognizing that caretaking by police and others in the home can be reasonable fills a hole in the Swiss cheese of claims involving the Fourth Amendment, including section 1983 litigation. Petitioner would instead subject first responders to tort liability in cases like his. Petitioner’s rule should be rejected.

C. Petitioner’s rule would create perverse incentives.

Under Petitioner’s formalistic rule, plaintiffs could use section 1983 to sue police officers and others who had responded to calls for help and entered their homes to perform caretaking functions, and the responders would have no defense where, as here, the specific “tools” discussed in part B above did not apply.

In contrast, police and others who *fail* to respond generally cannot be sued under section 1983. *See DeShaney v. Winnebago Cty. Dept. of Soc. Servs.*, 489 U.S. 189, 197 (1989) (holding that “a State’s failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause”); *Town of Castle Rock*, 545 U.S. at 768-69 (“the framers of the Fourteenth Amendment and the Civil Rights Act of 1871, 17 Stat. 13 (the original source of § 1983), did not create a system by which police departments are generally held financially accountable for crimes that better policing might have prevented”). Calls for help, such as 911 calls, do not meet the special relationship exception to *DeShaney*. *See, e.g., May v. Franklin Cty. Bd. of Comm’rs*, 59 F. App’x 786, 792-93 (6th Cir. 2003) (rejecting plaintiff’s arguments that 911 call created special relationship between county and victim or that operation of 911 service displaced other means of providing help).

Because they can be sued for acting, not for failing to act, police officers hesitate to perform what they believe are their legitimate duties out of fear of being sued, a fear that a majority of officers begin to develop while still cadets. *See, e.g., Victor E. Kappeler, Critical Issues in Police Civil Liability* 6 (4th ed.,

2006). This fear makes police less likely to intervene in order to stop a crime before it occurs. *Id.*

Under Petitioner’s rule, the perverse choice for police and other first responders performing caretaking functions would be “damned if you do [respond], absolved if you don’t.” For responding and entering a home they would face the prospect of lengthy litigation (the instant case dates back to 2015), time-consuming discovery, and potentially hefty verdicts. They (or taxpayers) would foot the bill. They would also in many cases be subject to administrative leave or desk work pending the outcome of the litigation. In contrast, for failing to respond they would face none of the above. See *DeShaney*, 489 U.S. at 203 (noting that had the state functionaries “moved too soon to take custody of the son away from the father, they would likely have been met with charges of improperly intruding into the parent-child relationship, charges based on the same Due Process Clause that forms the basis for the present charge of failure to provide adequate protection”).

Just imagine the conversation at the station house under Petitioner’s rule:

Clerk: Sergeant, a lady’s on the phone. She’s worried about her husband.

Sergeant: Why?

Clerk: Last night they had a big argument, and he took out a gun and said “Why don’t you just shoot me and get me out of my misery?”

Sergeant: Then what?

Clerk: She was so concerned she hid the gun and spent the night in a hotel. Now he won't answer the phone and she's worried he's suicidal.

Sergeant: What does she want us to do about it?

Clerk: She wants somebody to go check on him and escort her back into the house.

Sergeant [to self]: *Hmm, this sounds like caretaking, but caretaking stops at the front door.*

Sergeant [to clerk]: Tell her she's on her own.

Surely the public expects more, but Petitioner's rule would create the incentive for such inaction. The logical consequence of Petitioner's rule would be police and other first responders avoiding home entries. Petitioner's rule would in effect replace the long-time motto "to protect and to serve" with "to protect and *be sued*."⁵ Instead of reacting when called to protect, first responders would be incentivized by Petitioner's rule to be inactive. But if officers do not respond to these situations, who will? Neighbors? Bystanders? No one?

First responders entering a home to prevent a suicide should be appreciated, not second-guessed and sued. Yet second-guessing is what Petitioner has done. Petitioner repeatedly chides Sergeant Barth for

⁵ The now-widespread motto "To Protect and to Serve" dates back to an LAPD contest in 1955. See *The Origin of the LAPD Motto*, https://www.lapdonline.org/history_of_the_lapd/content_basic_view/1128 (last visited Feb. 16, 2021); Regina Varolli, *My Mom Wrote the Motto "To Protect and to Serve,"* (June 2, 2020), <https://www.culinaryepicenter.com/my-mom-wrote-the-motto-to-protect-and-to-serve/>.

“not consult[ing]” any medical professionals and “just going on [his] experience.” Pet. Br. at 5, 40. But Sergeant Barth hardly acted on his own. Officer Mastrati was similarly “concerned about [Petitioner’s] suicidal thoughts and that he was a danger to himself.” Pet. App. 55a. And Captain Henry, based on reports from “officers at the scene,” approved the seizure of Petitioner’s guns because the officers “felt it was reasonable to do so based on Mr. Caniglia’s state of mind.” Pet. App. 56a. Captain Henry “was concerned that if the guns remained in the home, Mr. Caniglia *and others* could be in danger.” *Id.* (emphasis added). Additionally, a fire department rescue lieutenant took Petitioner to the hospital. *Id.*

Expecting Sergeant Barth to have also consulted with a medical professional is unreasonable, because medical professionals generally do not diagnose from afar. *See, e.g.,* Stephen Johnson, *Why psychiatrists are calling on the APA to end its controversial ‘Goldwater Rule,’* Bigthink.com (June 29, 2018), <https://bigthink.com/stephen-johnson/why-psychiatrists-are-calling-on-the-apa-to-end-its-goldwater-rule> (reporting that “[s]ome psychiatrists want the American Psychiatric Association to end its controversial Goldwater Rule, which prohibits members from airing opinions on the mental health of public figures”).

By acting early, police and other first responders can try to defuse domestic ticking time bombs before they explode. On average in this country there are eleven murder-suicides each week, more than one per day. *See Eleven Murder-Suicides Occur Across America Each Week, Claiming More Than 1,300 Lives Annually,* Violence Policy Center (June 19, 2018)

<https://vpc.org/press/eleven-murder-suicides-occur-across-america-each-week-claiming-more-than-1300-lives-annually>. Nine out of ten involve a gun, sixty-five per cent involve an intimate partner, and ninety-six per cent of the murder victims are female. *Id.* Respondents had reason to be concerned.

It is an unfortunate reality that police and other first responders are called on to try and prevent such tragedies from occurring. With this actuality, “it would be silly to suggest that the police would commit a tort by entering . . . to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur.” *Randolph*, 547 U.S. at 118. Petitioner’s inflexible rule should be rejected.

CONCLUSION

The judgment below should be affirmed.

February 17, 2021 Respectfully Submitted,

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