No. 20-253

IN THE

Supreme Court of the United States

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA

Petitioners,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,

Respondents.

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

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF QUESTION PRESENTED

1. Whether this case is appropriate for certiorari review where (a) the two-prong analysis for qualified immunity has been consistently and clearly defined by this Court; (b) there is no dispute that the law was not clearly established in 2013 as to whether officers could enter a home pursuant to the community caretaking exception to the Fourth Amendment's warrant requirement; and (c) the entry was constitutional pursuant to that same exception?

2. Whether this case is appropriate for certiorari review where the officers' entry was justified by the exigent circumstances exception to the Fourth Amendment's warrant requirement, as found by the jury?

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STATEMENT OF THE CASE

St. Patrick's Day in Boston is basically "a big party throughout the entire City." App. 4a.[1] South Boston, in particular, is prone to loud crowds, partying, and fighting following its annual St. Patrick's Day parade. App. 5a. To that end, many police officers who work in other parts of the city are reassigned to South Boston for parade day. App. 5a. Such was the case for Detective Jean, Officer Kaplan, and Officer Edwards on March 17, 2013. App. 4a-5a. They were assigned to supervise the parade in the morning and control loud partying in the evening. App. 5a.

Christopher Castagna and his brother, Gavin Castagna, hosted a St. Patrick's Day party for their friends that day at Christopher's apartment, located at the intersection of East 6th Street and O Street in South Boston. App. 4a. Christopher and Gavin moved furniture in advance of the party and purchased a keg of beer for their guests. App. 4a. By early evening many guests were intoxicated. App. 4a.

At 7:29PM Detective Jean, Officer Kaplan, and Officer Edwards, along with the rest of their unit, were dispatched to the intersection of East 6th Street and O Street in response to a 911 call regarding a loud party at the location. App. 4a-5a. Upon arrival Christopher's apartment was the only one near the intersection with any observable signs of a party. App. 5a. One of the officers estimated

[1] References to the Appendix filed by the Petitioners will be referred to as "App." followed by the page number.

that there were as many as thirty guests inside. App. 4a.

Officer Kaplan heard screaming and music coming from Christopher's apartment. App. 5a. He saw two or three guests leave the party who, in his opinion, looked underage. App. 5a. The door to the apartment was wide open and, through one of the windows, Officer Kaplan could see people drinking inside. App. 5a. Officer Kaplan's first objective upon arriving on scene was "to make contact with the owners." App. 5a.

When Officer Edwards approached the apartment he heard loud music and, through an open window, saw people drinking inside. App. 5a. Like Officer Kaplan, Officer Edwards thought some of these people looked underage. App. 5a.

Detective Jean, for his part, also noticed that some of the drinkers appeared to be underage. App. 6a. He observed that the front door was open. App. 6a. As he approached the apartment Detective Jean saw a young male stumble outside, vomit twice, and then stumble back into the apartment. App. 6a.

As a result of these observations, the officers had some safety concerns about the party. App. 7a. These included safety concerns about underage drinking. App. 7a. Nevertheless, the officers were not investigating any crimes, and they did not intend to arrest anyone. App. 6a. Rather, they wanted to check on the status of any underage drinkers, identify the owner of the apartment, and ask him to turn down the music and send his guests home.

App. 6a-7a. To this end, the officers approached the apartment. App. 6a.

The door was wide open. App. 6a. Officer Kaplan approached the open door and yelled "hello" several times, followed by "Boston Police." App. 6a. Receiving no response, Officer Kaplan entered the apartment, followed by Officer Edwards, Detective Jean, and the rest of their unit. App. 6a. Consistent with their purpose, the officers did not investigate any crime but sought to identify the owner of the apartment. App. 8a. Initially, none of the guests responded to the officers' questions about who owned the apartment. App. 7a. Eventually, though, someone identified "Chris" as the homeowner and said he was "in the back or the bathroom or something to that effect." App. 8a. Detective Jean and another officer went to look for Christopher while the other officers stayed in the kitchen with the guests. App. 8a. Detective Jean testified why it was so important for him to locate the owner of the property: "'[H]e's the person in control of the apartment . . . He's the one who would probably authorize all these people to be here . . . I don't know if it's an abandoned apartment and they're just throwing a party in it." App. 8a. This testimony was corroborated by other officers at trial. App. 8a.

Detective Jean initially waited outside the room where Christopher was supposed to be, but after hearing voices inside, he gave a knock. App. 9a. Christopher opened the door, at which point Detective Jean identified himself as a Boston police officer. App. 9a. At the time, Christopher appeared intoxicated and Detective Jean observed marijuana in the room. App. 9a. When Christopher saw what

Detective Jean was looking at, he pushed Detective Jean, slammed the door on Detective Jean's foot, and held it there. App. 9a. At this point, Officer Kaplan and Officer Edwards were still trying to figure out who the homeowners were so they could respond to the loud party complaint. App. 10a.

Christopher and Gavin were subsequently arrested on multiple charges, though the details that gave rise to those arrests are not relevant to this appeal. App. 10a.

REASONS FOR DENYING THE PETITION

Whether the community caretaking exception to the warrant requirement—the doctrine that is at issue in this case—applies to the home was not "clearly established" in 2013. Since the time the community caretaking exception was first recognized by this Court in Cady v. Dombrowski, 413 U.S. 433, 441 (1973), the circuit courts have been split as to whether it applies to the home. The Fifth, Sixth, Eighth, and Ninth Circuits have found that it does, while the Third and Seventh Circuits have found that it does not. Recently, in 2020, the First Circuit joined the former in finding that the community caretaking exception does apply to the home. See Caniglia v. Strom, 953 F.3d 112, 124 (1st Cir. 2020). Prior to that point, and certainly in 2013, the "scope and boundaries of the community caretaking exception [in the First Circuit were still] nebulous[.]" See MacDonald v. Town of Eastham, 745 F.3d 8, 14 (1st Cir. 2014).

Against this backdrop of uncertainty, this case is not appropriate for certiorari review because there

is no live issue to resolve. Even if this Court is now inclined to resolve the legal issue in the circuits regarding the community caretaking exception and its application to the home, it would be inappropriate to do so now, in this case, where the officers are nonetheless immune from suit pursuant to the doctrine of qualified immunity because the law was not clearly established in 2013 and because the entry was constitutional.

What is more, even if the officers were not entitled to qualified immunity, their entry was nonetheless justified by the exigent circumstances exception to the warrant requirement. The jury found as much and this Court should uphold the jury's verdict.[2]

For these reasons, which are developed more fully below, this Court should deny the petition for writ of certiorari.

A. Detective Jean, Officer Kaplan, And Officer Edwards Are Entitled To Qualified Immunity.

This Court has repeatedly and consistently stated that police officers are entitled to qualified immunity unless 1) they violated a federal statutory or constitutional right and 2) that right was so clearly established that a reasonable officer should have known how it applied to the situation at hand. See City & Cty. of San Francisco v. Sheehan, 135 S. Ct. 1765, 1774 (2015).

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[2] Having found that the officers were entitled to qualified immunity, the First Circuit did not address this argument. App. 15a at footnote 7.

1. The Contours Of The Community Caretaking Exception To The Warrant Requirement Were Not Clearly Established On March 17, 2013.

Turning first to the second prong of the qualified immunity test, this Court has held that the second prong is not met unless "existing precedent . . . placed the statutory or constitutional question beyond debate." Sheehan, 135 S. Ct. at 1774 (emphasis supplied) (quoting Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011)). In other words, existing precedent "must be clear enough that every reasonable official would interpret it to bar the conduct at issue." Hill v. Walsh, 884 F.3d 16, 21 (1st Cir. 2018) (emphasis in original) (quoting District of Columbia v. Wesby, 138 S. Ct. 577, 590 (2018)). "The rule must be 'settled law,'" that is, "dictated by controlling authority or a robust consensus of cases of persuasive authority." Wesby, 138 S. Ct. at 589-590 (internal quotations omitted). "It is not enough that the rule is suggested by then-existing precedent." Id. at 590. This is a "demanding standard" which "protects 'all but the plainly incompetent or those who knowingly violate the law.'" Wesby, 138 S. Ct. at 589; White v. Pauly, 137 S. Ct. 548, 551 (2017) (quoting Mullenix v. Luna, 136 S. Ct. 305, 308 (2015)). Moreover, this Court has "repeatedly" instructed lower courts "'not to define clearly established law at a high level of generality,' since doing so avoids the crucial question of whether the official acted reasonably in the particular circumstances that he or she faced." Plumhoff v. Rickard, 134 S. Ct. 2012, 2023 (2014) (quoting al-

Kidd, 563 U.S. at 742); see also Wesby, 138 S. Ct. at 589-90.

In the instant case, then, the question is whether on March 17, 2013, it was clearly established beyond debate that the community caretaking exception did not cover the officers' entry into Christopher's apartment. See id.

But the scope of the community caretaking exception was unclear on March 17, 2013. In its 2014 decision in MacDonald v. Eastham, the First Circuit acknowledged that the community caretaking exception was "poorly defined" outside the milieu of automobile searches. 745 F.3d at 13. The Court noted "a sea of confusing case law" and found it to be "apparent that the scope and boundaries of the community caretaking exception [we]re nebulous." Id. at 14. Indeed, as of 2014, the First Circuit "ha[d] not yet decided whether the community caretaking exception applie[d] to police activities involving a person's home." Id. at 13. The First Circuit specifically left that question open. Id. at 15. Most important for the instant purposes, the First Circuit found that "there [was] no directly controlling authority" to be applied to such a search, and further, that the case law was "a mixed bag" which did not "produce the requisite degree of clarity" to defeat qualified immunity. Id. at 14.

The First Circuit provided some additional clarity a year later in Matalon v. Hynnes where it held that the community caretaking exception was "nebulous in some respects (such as whether the exception applies at all to residential searches)" but that "the heartland of the exception is reasonably

well defined." 806 F.3d 627, 634 (1st Cir. 2015). "Actions within that heartland include actions taken to 'aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety.'" Castagna v. Jean, 955 F.3d 211, 220-21 (1st Cir. 2020) (citing United States v. Rodriguez-Morales, 929 F.2d 780, 784-85 (1st Cir. 1991).

Here, the officers' actions fell well within that heartland. When the officers responded to the loud party call, they came upon a party with approximately thirty guests, some of whom appeared to be underage. These guests were exiting the party freely through an open door. App. 20a. The party was loud enough to be heard from the street and Detective Jean saw at least one guest, who looked underage, stumble out of the apartment, vomit twice, and return inside. App. 20a. The officers underscored that their purpose was to locate the homeowner, ask that the music be turned down, and check on the well-being of any underage drinkers. App. 7a, 20a.

In 2013 there was no "robust consensus of persuasive authority" that the community caretaking exception did not apply to the home. For precisely that reason, the First Circuit in 2014 granted qualified immunity to officers who entered a home to check on the well-being of an occupant. MacDonald, 745 F.3d at 14.

What is more, as underscored by the First Circuit in this case, there was no "robust consensus of persuasive authority" that "the specific

circumstances surrounding the officers' entry into Christopher's apartment made their entry an unreasonable application of the community caretaking doctrine." App. 26a. Even looking to other circuits for guidance given the First Circuit's lack of clarity on the issue, the officers in this case would have been left with the impression that their entry into Christopher's home under these circumstances was reasonable under the community caretaking doctrine. In 1996 the Sixth Circuit held 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." United States v. Rohrig, 98 F.3d 1506, 1522 (6th Cir. 1996) (finding that officers could enter home under community caretaking exception to quell noise complaint). In 1990 the Fifth Circuit found that police officers could enter a home for "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." United States v. York, 895 F.2d 1026, 1030 (5th Cir. 1990). Likewise, in 2006 the Eighth Circuit found that the police may enter a home to check on the well-being of any occupants pursuant to the community caretaking exception. See United States v. Quezada, 448 F.3d 1005, 1007-08 (8th Cir. 2006).

Here, as in Rohrig, the officers were entering the apartment to quell a noise complaint. Like the officers in York, their motivations were "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," and, like in Quezada, they

intended to check on the well-being of any occupants inside. In light of the above, the constitutional question of whether the officers could enter Christopher's home under the community caretaking exception was not beyond debate in 2013. For that reason alone, the officers were entitled to qualified immunity. See e.g., Sheehan, 135 S. Ct. at 1774.

2. The Entry Was Constitutional Pursuant To The Community Caretaking Exception.

In addition to satisfying the second prong of the qualified immunity test, the officers' entry also satisfies the first prong because their entry did not violate a federal or constitutional right. As noted by the First Circuit here, "[p]olice are entitled to enter homes without a warrant if they are performing a community caretaking function and their actions are 'within the realm of reason.'" App. 19a; (citing Caniglia, 953 F.3d at 124).

Courts look to the function performed by the police officer in determining whether the community caretaking exception applies. See Matalon, 806 F.3d at 634. As noted above, to fall within the heartland of the community caretaking exception, the officer's actions must be divorced from criminal investigation and be taken to "aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." Rodriguez-Morales, 929 F.2d at 784-85. Here, Detective Jean, Officer Kaplan, and Officer Edwards offered two justifications for their entry into the home: first, to respond to the noise complaint by

finding the owner and asking him to lower the music; and second, to make sure that any underage drinkers were safe. App. 7a. Both of these explanations fall within the heartland of the community caretaking exception.

What is more, the officers acted reasonably. See Caniglia, 953 F.3d at 125 (noting that in determining whether actions are protected by the community caretaking exception, we must "balance … the need for the caretaking activity and the affected individual[s'] interest in freedom from government intrusions" to determine if the officers' actions were reasonable). As noted by the First Circuit here:

> The officers did not enter the home until announcing themselves and failing to get the guests' attention. They needed to get the attention of the homeowner because he is the person ultimately responsible for the impact of the party on the neighborhood. Because they were responding to a 911 call reporting a noise complaint, the officers knew that people in the neighborhood were disturbed by the party. In addition, underage drinkers pose a safety risk. This is especially true on a holiday known for drinking and one that requires extra police officers to be deployed throughout the city.

App. 21a-22a. Additionally, Christopher and Gavin diminished their own expectation of privacy by

leaving their front door wide open, failing to supervise who was coming or going from their party, and failing to respond to the officers' announcements. Balancing the need for the caretaking activities against Christopher and Gavin's freedoms, the scale tilts in favor of the officers on the facts of this case.

Tilting the scale in favor of the officers in this type of case does not "permit the trampling of Fourth Amendment protections" as bemoaned by the Petitioners. Pet. 16. As explained by the First Circuit, "activities carried out under the community caretaking banner must conform to certain limitations." Caniglia, 953 F.3d at 126. First, officers must have "solid, noninvestigatory reasons" for engaging in the community caretaking activity. Id. (citing Rodriguez-Morales, 929 F.2d at 787). Second, the community caretaking activity "must be based on specific articulable facts … sufficient to establish that an officer's decision to act in a caretaking function was justified on objective grounds." Caniglia, 953 F.3d at 126 (internal citations omitted). And third, the officers' actions must "draw their essence" either from "state law or from sound police procedure." Id. These "guardrails," as the First Circuit describes them, protect against giving police "carte blanche to undertake any action bearing some relation, no matter how tenuous, to preserving individual or public safety." Id. These "guardrails" have been adopted by other circuits as well to preserve the protections afforded by the Fourth Amendment. See e.g. United States v. King, 990 F.2d 1552, 1560 (10th Cir. 1993) (noting that need for community caretaking function must be based on specific,

articulable facts); Rohrig, 98 F.3d at 1523 (observing that sound police procedure includes abating nuisances that are disrupting the community); United States v. Harris, 747 F.3d 1013, 1018 (8th Cir. 2014) (recognizing different standards apply depending on whether officer is acting as caretaker or investigator). With these guardrails in place, the community caretaking exception does not disturb the protections afforded by the Fourth Amendment and is consistent with the cases in which this Court has approved warrantless government intrusions.

Here, all of the "guardrails" were satisfied: the officers were not investigating a crime; the officers articulated their reasons for entering the premises ("They were able to describe specific observations about the party, its effect on the neighborhood, and their reasons for being concerned about at least some of the guests' safety. They could articulate why it was necessary to enter the home to talk to the homeowner when they could not get anyone's attention from outside the house"); and quelling a noise complaint falls within sound police procedure. App. 23a-24a.

Because the officers' entry did not offend the constitution, their entry was constitutional and they were entitled to qualified immunity.

B. The Entry Was Justified By The Exigent Circumstances Exception To The Warrant Requirement.

This Court has "often said" that "[t]he ultimate touchstone of the Fourth Amendment … is 'reasonableness.'" Michigan v. Fisher, 558 U.S. 45,

47 (2009) (internal citations omitted) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006)). Following this premise, this Court recognizes an exception to the warrant requirement in certain exigent circumstances. Id. "[O]ne such exigency" is "the need to assist persons who are seriously injured or threatened with such injury." Id. (citing Brigham City, 547 U.S. at 403).

Importantly, "[t]his 'emergency aid exception' does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises." Id. (citing Brigham City, 547 U.S. at 404-05). And "[o]fficers do not need ironclad proof of a likely serious, life-threatening injury to invoke the emergency aid exception." Id. at 49. Rather, the "only" requirement is "an objectively reasonable basis for believing that a person within the house is in need of immediate aid." Id. at 47 (citations omitted) (quoting Brigham City, 547 U.S. at 404-05 and Mincey v. Arizona, 437 U.S. 385, 392 (1978)). This objectively reasonable basis "need not approximate probable cause." Hill, 884 F.3d at 23.

Here, the evidence at trial supported the application of the exigent circumstances exception. Detective Jean observed a young man, who looked to be underage, stumbling and vomiting twice outside of Christopher's apartment before going back inside. He was concerned about the safety of that guest and of the party itself. Similarly, Officers Kaplan and Edwards both testified that they were concerned about possible underage drinkers inside the home. To that end, the jury was instructed on exigent

circumstances[3] and it ultimately found that the officers' entry was constitutional.

The determination of objective reasonableness is particularly suited to determination by a jury. See e.g., Roy v. Inhabitants of City of Lewiston, 42 F.3d 691, 694 (1st Cir. 1994) ("Judgments about reasonableness are usually made by juries in arguable cases, even if there is no dispute about what happened."). But instead of permitting the jury to weigh this evidence and determine whether Detective Jean's concern was objectively reasonable, the District Court jumped into the fray in overturning the jury's verdict. App. 37a-39a. In doing so, however, the District Court applied an incorrect standard. It did not focus at all on whether the weight of the evidence showed Detective Jean's concern to be objectively reasonable. Id. Rather, it made an inappropriate determination based upon the subjective intentions of the officers. See id. In particular, the District Court focused on the fact that once inside, Detective Jean did not look for or inquire about the person who vomited. App. 38a.

Here is the question that the District Court should have asked: was it objectively reasonable for Detective Jean to be concerned for the safety of a vomiting teen in these circumstances? See Fisher, 558 U.S. at 49. It is important to note that emergency aid does not require a serious or life-threatening injury; a "bloody lip" from a fight is enough to reasonably invoke the exception. Id. The

[3] Petitioners actively elected to submit the question of exigent circumstances to the jury and the instruction used was part of their own requested instruction.

First Circuit has found that underage drinking is an objective safety concern. App. 23a. The Tenth Circuit agrees. See Galindo v. Town of Silver City, 127 Fed. Appx. 459, 466 (10th Cir. 2005) (noting that underage drinking amounts to an "immediate threat of death or severe physical harm") (citing Roska ex rel. Roska v. Peterson, 328 F.3d 1230, 1240 (10th Cir. 2003)). It follows that it was reasonable for Detective Jean to be concerned about alcohol poisoning in the circumstances that he encountered on St. Patrick's Day in 2013, and consequently, it was reasonable for the jury to apply the exigent circumstances exception.

The evidence showed that the events in question took place on St. Patrick's Day in South Boston, a time and place where the large-scale public festivities mean that drunkenness is a common problem. Detective Jean, Officer Kaplan, and Officer Edwards approached an apartment where there was obviously a party going on; they heard loud music and voices, and they saw people drinking who looked to be underage. It was under these circumstances that Detective Jean saw a young man, who looked underage, emerge from the apartment and vomit twice. Most concerning, however, is the evidence that this young man returned into the apartment. This evidence suggested that the guest was unaware of the danger to his health, that he did not intend to seek help, and that he may have intended to continue drinking.

Considered objectively and without regard to the subjective intentions of the officers, the evidence showed that there was ample reason to be concerned about underage drinking. And underage drinking is

an objective safety concern. In sum, the emergency aid exception applied, and more broadly, there was sufficient evidence for the jury to consider and determine the applicability of this exception. It follows that the jury's verdict in favor of the officers was consistent with the evidence and should have been upheld.

CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
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