

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL SCOTT HANUMAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has held that when law enforcement officers are lawfully present within a private home to make an arrest, the Fourth Amendment permits a protective sweep search of the home when there exists “reasonable suspicion” that “the area swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325, 334 (1990). Separately, this Court has held the Fourth Amendment permits law enforcement officers to make warrantless entry into a private home to render emergency aid, so long as there exists “an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger.” *Michigan v. Fisher*, 558 U.S. 45, 48 (2009).

The question presented by the petition is:

Does the Fourth Amendment permit law enforcement officers to conduct a protective sweep search of a private home under the *Buie* “reasonable suspicion” standard, when the officers are lawfully present within the home under authority of the emergency aid doctrine rather than to effect an arrest?

LIST OF PARTIES

All parties appear in the caption on the cover page of this Petition.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
PETITION FOR WRIT OF CERTIORARI	1
OPINION BELOW.....	1
JURISDICTION.....	1
RELEVANT CONSTITUTIONAL PROVISION	2
INTRODUCTION	3
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	7
A. The question has generated a divide among lower courts.....	7
B. The question is important to the administration of criminal justice	10
C. This case presents an apt vehicle by which to review the question.....	11
CONCLUSION.....	13

APPENDIX

App. A. Opinion below, (821 Fed. Appx. 662 (8th Cir. 2020))	App. 1-3
App. B. Order denying petition for rehearing, (unpublished, available at No. 19-2232 (8th Cir.))	App. 4
App. C. Opinion and order of district court (unpublished, available at 2018 WL 5995497).....	App. 5-8
App. D. Report and recommendation of magistrate judge (unpublished, available at 2018 WL 6520650).....	App. 9-12

TABLE OF AUTHORITIES

	Page
Cases	
<i>Brigham City v. Stuart</i> , 547 U.S. 390 (2006).....	4
<i>Groh v. Ramirez</i> , 540 U.S. 551 (2004).....	3
<i>Kirk v. Louisiana</i> , 536 U.S. 635 (2002).....	3
<i>Leaf v. Shelnutt</i> , 400 F.3d 1070 (7th Cir. 2005)	9
<i>Maryland v. Buie</i> , 494 U.S. 325 (1990)..... <i>passim</i>	
<i>Mendez v. County of Los Angeles</i> , 815 F.3d 1178 (9th Cir. 2016), vacated and remanded on other grounds, 137 S. Ct. 1539 (2017)	9
<i>Michigan v. Fisher</i> , 558 U.S. 45 (2009)..... <i>passim</i>	
<i>Terry v. Ohio</i> , 392 U.S. 1 (1968).....	3
<i>United States v. Caraballo</i> , 595 F.3d 1214 (11th Cir. 2010).....	9
<i>United States v. Fadul</i> , 16 F.Supp.3d 270 (S.D.N.Y. 2014)	10
<i>United States v. Gould</i> , 364 F.3d 578 (5th Cir. 2004)	9
<i>United States v. Hassock</i> , 631 F.3d 79 (2d Cir. 2011)	9, 10
<i>United States v. Martins</i> , 413 F.3d 139 (1st Cir. 2005).....	9
<i>United States v. Miller</i> , 430 F.3d 93 (2d Cir. 2005).....	9
<i>United States v. Patrick</i> , 959 F.2d 991 (D.C. Cir. 1992).....	9
<i>United States v. Taylor</i> , 248 F.3d 506 (6th Cir. 2001).....	9
<i>United States v. Torres-Castro</i> , 470 F.3d 992 (10th Cir. 2006).....	9

Statutes

28 U.S.C. § 1254.....	2
-----------------------	---

Rules

Rule 10	9
---------------	---

18 U.S.C. § 924.....	5
----------------------	---

21 U.S.C. § 841.....	5
----------------------	---

Other

O'Brien,

<i>Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine in Non-Arrest Situations,</i> 82 N.Y.U. L. Rev. 1139 (2007)	10
---	----

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PETITION FOR WRIT OF CERTIORARI

Petitioner Michael Hanuman respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINION BELOW

The opinion of the Eighth Circuit Court of Appeals is unpublished, but is available at *United States v. Hanuman*, 821 Fed. Appx. 662 (8th Cir. 2020), and is reprinted in the Appendix to this Petition. (App. 1-3).

JURISDICTION

The Eighth Circuit Court of Appeals issued its decision on August 18, 2020. (App. 1). Petitioner filed a timely motion for rehearing, which was denied by order dated September 22, 2020. (App. 4). By order dated March 19, 2020, this Court extended the deadline for filing of a petition for certiorari “to 150 days from the date of the lower court judgment, order denying discretionary review or order deny a

timely petition for rehearing.” Hence, this Petition is timely. This Court has jurisdiction to review the decision of the court of appeals under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL PROVISION

This petition involves the Fourth Amendment of the United States Constitution, which provides:

U.S. Const., Am. 4

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

INTRODUCTION

This Court has held that when law enforcement officers are lawfully present within a private home to make an arrest, the Fourth Amendment permits a (limited and cursory) protective sweep search of the home, so long as there exists “reasonable suspicion” that “the area swept harbors an individual posing a danger to those on the arrest scene.” *Maryland v. Buie*, 494 U.S. 325, 334 (1990). This Petition asks the Court to decide whether that same “reasonable suspicion” standard should apply to justify a protective sweep search when the officers are *not* lawfully present within the home to effect an arrest, but rather are lawfully present to render assistance under the emergency-aid exigency. *Michigan v. Fisher*, 558 U.S. 45, 48 (2009). Should the Court accept review of the question presented, the resulting decision would resolve inter-circuit conflicts, and also supply lower courts with much-needed guidance as to an important and recurring topic of federal criminal law. This is why Petitioner seeks this Court’s review.

STATEMENT OF THE CASE

1. Sanctity of the private home lies at the core of the Fourth Amendment's essential purpose. *Groh v. Ramirez*, 540 U.S. 551, 559 (2004). Hence, to lawfully effect a nonconsensual entry into a private home, law enforcement officers must either procure a valid warrant supported by probable cause, or demonstrate exigent circumstances deemed to justify such a breach. *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002).

2. When officers have entered a home pursuant to a valid warrant and to effect an arrest of an occupant, the circumstances may justify a "protective sweep" search of certain spaces therein, *i.e.*, a "quick and limited search of the premises, incident to an arrest and conducted to protect the safety of police officers and others."

Maryland v. Buie, 494 U.S. 325, 327 (1990). This Court has held:

The Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possesses a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Id. at 337. In this context, the "reasonable belief" standard equates with the "reasonable suspicion" standard as articulated in *Terry v. Ohio*, 392 U.S. 1 (1968) and its progeny. *Buie*, 494 U.S. at 331-34 & n.2; *accord id.* at 337 (Stevens, J., concurring) ("Today the Court holds that reasonable suspicion, rather than probable cause, is necessary to support a protective sweep while an arrest is in progress.").

3. By its express terms, the *Buie* decision applies to those protective sweep searches that are incident to an in-home arrest, and which are strictly limited to a "cursory inspection of those spaces where a person may be found." 494 U.S. at 335.

The permissible duration of any such search must “last[] no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises.” *Id.* 335-36.

4. Separate and apart from arrest-warrant protective sweeps, another exigency doctrine permits officers to make a warrantless entry into a private home and, if probable cause justifies the action, arrest an occupant. *Brigham City v. Stuart*, 547 U.S. 398, 400-01 & 406 (2006). The exigency in question is commonly known as the “emergency aid exception.” *Michigan v. Fisher*, 558 U.S. 45, 47 (2009). Under this doctrine, it is permissible for law enforcement officers to “enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Id.* (citations and punctuation omitted). To invoke this exception to the general warrant requirement, officers must have “an objectively reasonable basis for believing that medical assistance was needed, or persons were in danger.” *Id.* at 48 (citations and punctuation omitted).

5. In the case at hand, law enforcement officers approached Petitioner’s private home to conduct a “welfare” check, based upon an anonymous report that Petitioner was inebriated and in need of assistance. (App. 9-10). Upon knocking at the door, officers heard a voice coming from inside the residence and calling for help. (App. 9-10). Officers forcibly entered the home to render aid, and discovered an injured woman in need of medical assistance. (App. 10). The woman reported the Petitioner had “hit her and was in the home.” (App. 10). She indicated that just she and Petitioner were present in the home. (App. 2).

6. Officers began searching the home to locate Petitioner, who was promptly discovered in the garage and placed under arrest based upon probable cause that he had committed a suspected assault. (App. 10). Petitioner was then removed from the residence and placed in the rear of a patrol vehicle for post-arrest processing. (App. 10).

7. Rather than transporting Petitioner to a police station, responding law enforcement officers re-entered the residence to conduct what was dubbed a “protective sweep” in order “to see if anyone else was inside.” (App. 10). The purpose of the sweep-search, said the testifying officer, was to “protect the safety of [officers], the victim, and paramedics.” (App. 10).

8. During the course of the protective-sweep search, officers discovered no others secreted within the home. (App. 10). Instead, they saw in plain view a number of items associated with the possession and distribution of illicit controlled substances. (App. 10).

9. In part based upon the information gleaned from the protective-sweep search, officers applied for and obtained a search warrant for the residence. (App. 10-11). Upon execution, officers discovered illicit controlled substances and a firearm, both of which formed the basis for the federal criminal charges that were eventually filed against Petitioner, *i.e.*, unlawful possession of a controlled substance, 21 U.S.C. § 841, and possession of a firearm in furtherance thereof, 18 U.S.C. § 924(c). (App. 1, 9-11).

10. In district court proceedings, Petitioner filed a motion to suppress the direct and derivative fruits of the protective sweep search, on the ground that the

official search was undertaken in violation of the Fourth Amendment. (App. 5, 11). The magistrate judge concluded that the *Buie* protective sweep doctrine could apply, even though Petitioner had already been arrested and removed from the residence. (App. 11).

11. The district court judge adopted the foregoing conclusion, and held that post-arrest protective sweep search was justified by the need to provide emergency aid to the injured woman who remained in the residence following Petitioner's arrest. (App. 5, 7). That is to say, according to the district court, the protective sweep search was justified by the need "to protect the officers who were tending to the victim and the paramedics arriving on the scene." (App. 7).

12. The district court found the search "justified by articulable facts to support a reasonable belief that someone posing a danger . . . could be inside the house." (App. 7). Specifically, (i) Petitioner had time to hide following police entry; (ii) presence of surveillance cameras around the residence; (iii) Petitioner's prior conviction for unlawful firearm possession; (iv) inherent uncertainty of emergency-aid situation. (App. 7).

13. Petitioner entered a conditional plea to the charged offenses, authorizing an appeal of the above rulings to the Eighth Circuit Court of Appeals. (App. 1). The court of appeals affirmed, holding that a "protective sweep of the home was supported by a reasonable suspicion that other persons may have been hiding therein." (App. 2). The Eighth Circuit determined the above factual findings gave rise to a reasonable suspicion that "other individuals might be present who could pose a

threat to [law enforcement] or to the victim’s safety, as well as to the safety of those who were attending to her needs.” (App. 2).

14. In doing so, the Eighth Circuit extended this Court’s *Buie* “protective sweep” doctrine beyond the in-home arrest (“no longer than it takes to complete the arrest and depart the premises”), holding that a “protective sweep” search is permissible when the police are present within a home under the emergency-aid doctrine and there exists “reasonable suspicion” that other individuals might be present who might harm the injured person or responding medical personnel. (App. 2-3).

REASONS FOR GRANTING THE PETITION

The question presented asks whether the in-home arrest “protective sweep” doctrine—which permits a limited search of the residence when there exists reasonable suspicion that others are concealed therein—extends to officers who are lawfully present in a home under the emergency-aid exception. Petitioner respectfully requests the Court accept review of the question presented, because: (A) the question has generated conflicting authority among lower courts; (B) the question is important, with a weighty impact upon the administration of criminal justice; and (C) this case presents an apt vehicle by which to resolve the question.

A. The question has generated a divide among lower courts

Under this Court’s precedents a protective-sweep search of a home is permissible under relaxed “reasonable suspicion” standard, but only in the context of an in-home arrest authorized by a warrant. *Maryland v. Buie*, 494 U.S. 325, 330-34 (1990). The lower “reasonable suspicion” standard is permissible, said this Court, in

part because the scope of an in-home-arrest-related sweep is strictly limited with respect to space (“cursory inspection of those spaces where a person may be found”), and time (“sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger and in any event no longer than it takes to complete the arrest and depart the premises”). *Id.* at 335-36.

In the case at hand, the protective-sweep search occurred after Petitioner had been arrested and placed in a police vehicle for post-arrest processing. (App. 10). The stated justification for the protective sweep search had nothing to do with officer safety for purposes of “complet[ing] the arrest and depart[ing] the premises.” *Buie*, 494 U.S. at 335-36. But rather, to make the area safe for purposes of rendering aid to the injured person who remained inside the home. (App. 5-7). Hence, the protective sweep search at issue in this case lies outside the *Buie* scenario of police presence (*i.e.*, justified to make in-home arrest) and purpose (*i.e.*, to ensure law enforcement safety in making and completing the arrest). Instead, the protective sweep at issue here was conducted in the context of ongoing police presence justified by the emergency-aid exigency. (*See* App. 5-7).

This raises the question as to whether it is permissible for officers to conduct a reasonable-suspicion protective sweep search that is not justified by the needs of an in-home arrest, but rather by exigent circumstance used to justify the intrusion from the outset.

A number of circuit courts have held that an in-home protective sweep search is permissible under the relaxed “reasonable suspicion” standard so long as the police are lawfully on the premises for *any* reason—“whether an arrest warrant, a search

warrant, or the existence of exigent circumstances prompts their entry.” *United States v. Martins*, 413 F.3d 139, 149-50 (1st Cir. 2005); *accord United States v. Gould*, 364 F.3d 578, 581-87 (5th Cir. 2004); *United States v. Taylor*, 248 F.3d 506, 513-14 (6th Cir. 2001); *Leaf v. Shelnutt*, 400 F.3d 1070, 1087-88 (7th Cir. 2005); *United States v. Caraballo*, 595 F.3d 1214, 1224-25 (11th Cir. 2010); *United States v. Patrick*, 959 F.2d 991, 996-97 (D.C. Cir. 1992).

Other lower courts have declined to sanction reasonable-suspicion protective sweeps, outside the in-home arrest context presented in this Court’s *Buie* decision. *United States v. Torres-Castro*, 470 F.3d 992, 997 (10th Cir. 2006).

One federal circuit court is at odds with itself, generating a rare intra-circuit split of authority on the topic. *Mendez v. County of Los Angeles*, 815 F.3d 1178, 1191 (9th Cir. 2016) (citing conflicting circuit authority), *vacated and remanded on other grounds*, 137 S. Ct. 1539 (2017).

And yet another federal circuit permits reasonable-suspicion protective sweeps when officers enter the home “under lawful process,” *United States v. Miller*, 430 F.3d 93, 98-100 (2d Cir. 2005), but not when the police are lawfully present via consent of an occupant and make the protective sweep a primary objective rather than an incidental one, *United States v. Hassock*, 631 F.3d 79, 89 (2d Cir. 2011).

Hence, the question presented here has generated a doctrinal divide among the lower courts, of the sort that this Court has traditionally resolved via certiorari review. *See Rule 10(a)*.

B. The question is important to the administration of criminal justice

The question is weighty one. Its answer requires a balancing of safety considerations, vis-à-vis the traditional and strong Fourth Amendment protections afforded to the private home. It has prompted numerous and competing doctrinal proposals. Certainly from the legal academy. *See, e.g.*, O'Brien, *Finding a Reasonable Approach to the Extension of the Protective Sweep Doctrine in Non-Arrest Situations*, 82 N.Y.U. L. Rev. 1139 (2007) (proposing that, in deciding whether the *Buie* protective sweep doctrine should apply in a given situation, courts consider whether there exists a compelling need for entry into the home). And from jurists as well. *See, e.g.*, *United States v. Fadul*, 16 F.Supp.3d 270, 285-86 (S.D.N.Y. 2014) (positing a “modified protective-sweep doctrine” in the context of consent searches, whereby *Buie* protective sweep is not permissible when officers had reasonable suspicion of danger before entry into the home).

One aspect of the problem that has received relatively slight attention is that, outside the in-home arrest context of *Buie*, a protective-sweep search is “no different from any other search” and may be justified by warrant, exigency, or authorized consent. *Hassock*, 631 F.3d at 88. Hence, in the case at hand where the protective sweep was effected for the stated purpose of rendering emergency aid, the protective sweep would be justified by an officer’s proffer of necessity based upon an “objectively reasonable basis for believing that medical assistance was needed, or persons were in danger.” *Michigan v. Fisher*, 558 U.S. 45, 48 (2009). That is to say, an “objectively reasonable basis” that dangerous persons may be lurking in the home, rather than a mere “reasonable suspicion” that this might possibly be the case.

The *Buie-Terry* standard for a protective sweep is mere reasonable suspicion, a low bar in the context of in-home searches. The *Fisher* emergency-aid standard may well be higher, though this Court has not yet had cause to compare the standards. In any event, this case presents a prime opportunity to do so.

Or alternatively, to craft another rule for protective-sweep searches in the context of an emergency-aid entry. Or to simply graft the *Buie-Terry* standard upon such exigency entries, as a number of courts have urged. What is important is that some consistent nationwide rule is needed to resolve the question, to strike the proper balance between officer safety and the traditional sanctity of the private home as reflected in the Fourth Amendment. This case presents an apt vehicle by which to announce such a rule, as explained in the next and final subsection.

C. This case presents an apt vehicle by which to review the question

In this case, officers made a warrantless entry into Petitioner's private home, and it is undisputed that the entry was permissible under the emergency-aid exigency doctrine. (App. 9-10) It is further undisputed that the officers developed probable cause to arrest Petitioner, who was quickly located within. (App. 10).

The challenge was determining whether a protective sweep search was permissible, within the confines of the Fourth Amendment. The lower courts examined that question under the *Buie-Terry* "reasonable suspicion" framework. (App. 2, 6-7, 11). However, Petitioner had already been arrested and placed in a police vehicle outside the home, (App. 10), such that the explicit temporal limitation on a *Buie-Terry* protective sweep had been exceeded. *Buie*, 494 U.S. at 335-36 (permissible duration of any such search must "last[] no longer than is necessary to dispel the

reasonable suspicion of danger and in any event *no longer than it takes to complete the arrest and depart the premises*” (emphasis added)).

At the time of the protective sweep in question, officers lawfully remained in the home only to provide aid to the injured person—the very emergency-aid exigency that justified initial entry into the home. (App. 9-10) The reasons for the protective sweep—offered by officers and accepted by the lower courts—revolved around the claimed need to render aid to the injured person. (App. 6-8). Hence, the lower courts’ analysis of the question under the *Buie-Terry* “reasonable suspicion” standard is viable only if deemed applicable to an emergency-aid doctrine entrance and search.

The facts proffered to justify the protective sweep—*i.e.*, inherently uncertain situation and presence of security cameras—might arguably justify a protective sweep under the relatively low reasonable-suspicion standard of the *Buie-Terry* cases. (App. 6-8). Far less clear is whether those same bare facts would permit a protective sweep under the emergency-aid standard, which requires an “objectively reasonable basis for believing that medical assistance was needed, or persons were in danger.” *Fisher*, 558 U.S. at 48. Hence, this case presents an apt vehicle by which to decide the question presented.

CONCLUSION

For all these reasons, Petitioner respectfully asks the Court to grant this Petition for a Writ of Certiorari.

Dated: February 18, 2021

Respectfully submitted,

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