No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

ARTHUR GREAVES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the public safety exception to the *Miranda* doctrine as set forth in *New York v. Quarles,* apply to private property, simply based on allegations that a firearm is located in that private property?

PARTIES TO THE PROCEEDING

Arthur Greaves, petitioner on review, was the defendant-appellant below. The United States of America, respondent on review, was the plaintiff-appellee below.

RELATED PROCEEDINGS

Decision below in the U.S. Court of Appeals for the Third Circuit:

United States v. *Greaves*, No. 19-3577 (3rd Cir.) (December 17, 2020) (unpublished)(panel decision holding that *Miranda* doctrine does not apply based on public safety exception where firearm was reportedly brought into private, abandoned building near a resource center)(Pet.App. 1a-4a).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

TABLE OF AUTHORITIES—Continued

Page(s)

CONSTITUTIONAL PROVISIONS

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PETITION FOR A WRIT OF CERTIORARI

Arthur Greaves respectfully petitions for a writ of certiorari to review the judgment of the Third Circuit in this case.

INTRODUCTION

In *New York v. Quarles,* 467 U.S. 649 (1984), this Court for the first time recognized a "public safety" exception to the *Miranda* rule. The *Quarles* Court believed that the "public safety" exception would be easy for police officers to apply and lower courts to review, "because in each case it will be circumscribed by the exigency which justifies it." *Id.*

Time has shown that the public safety exception has been anything but easy for the lower courts to review. Rather than constituting a narrow exception to the *Miranda* rule, the courts have expanded the public safety exception far beyond strictly guarded contours this Court intended in *Quarles*. Rather than constituting a narrow tool to address an exigent danger to public safety, lower courts are frequently allowing—under the guise of the public safety exception—law enforcement to question suspects without first providing *Miranda* warnings so long as law enforcement asks about weapons or other dangerous items. Such questioning allows the public safety exception to swallow the *Miranda* rule, particularly here where the location of the alleged firearm was a private, abandoned building which could have been closed off to the public by law enforcement.

The time has come for this Court to provide guidance about the proper application of the narrow public safety exception, and return that exception to the limits intended by the Court when it announced *New York v. Quarles,* 467 U.S. 649 (1984).

OPINIONS BELOW

The Third Circuit's opinion is unpublished. Pet. App. 1a-4a.

JURISDICTION

The Third Circuit judgment became final upon the entry of judgment by the Court of Appeals on December 17, 2020. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT

Procedural Background

Arthur Greaves was charged in a one count information with possession of a firearm with an obliterated serial number in violation of 18 U.S.C. § 922(k). Mr. Greaves filed a motion to suppress statements attributed to him, and filed a psychosocial evaluation in support of that motion. Mr. Greaves asserted that he did not waive his rights under *Miranda,* that any statements he made were

not voluntary, that his arrest was illegal and that any physical evidence seized by law enforcement officers was fruit of the poisonous tree and inadmissible.

The District Court held an evidentiary hearing at which the following facts were adduced: Dispatch received a call regarding an armed robbery involving an AK-47 assault rifle. Witnesses at the scene told officers that a person ran into an abandoned building next door to a family resource center. Police conducted a search of the abandoned building and did not find the suspect. Mr. Greaves was later found in the porch area of the resource center. Det. Velasquez advised Mr. Greaves of his *Miranda* rights, which Mr. Greaves said he understood. Det. Velazquez interrogated Mr. Greaves regarding the location of the gun. Mr. Greaves made statements and then led officers to where the gun was located in the abandoned building. Approximately five minutes elapsed between the time Mr. Greaves was given *Miranda* warnings and when he took Det. Velazquez to where the gun was located.

Detective Velasquez testified that he advised Mr. Greaves of his rights because he wanted to know where the gun was. Velasquez appealed to Mr. Greaves' emotions and fears when he said that if something happened as a result of someone finding and using the gun, then Mr. Greaves would be responsible. Det. Velasquez stated that he wanted to appeal to Mr. Greaves "moral side." Mr. Greaves did not sign a *Miranda* waiver.

The District Court subsequently denied Mr. Greaves' motion to suppress on the basis that it was not involuntary, and that law enforcement had read *Miranda* warnings. The District Court was largely silent as to whether Mr. Greaves had waived his *Miranda* rights. Mr. Greaves pled guilty pursuant to a conditional plea agreement that allowed him to appeal the denial of his suppression motion. The court sentenced Mr. Greaves to 120 months imprisonment, a supervised release term of five years, and a special assessment of $100.00.

A timely appeal followed. The United States Court of Appeals for the Third Circuit denied the appeal after finding that the *Miranda* doctrine did not apply due to "pressing public safety concerns." (App. 1a-4a).

REASONS FOR GRANTING THE PETITION

I. WITHOUT CAREFULLY DELINEATED LIMITS, THE PUBLIC SAFTETY EXCEPTION COULD SWALLOW THE *MIRANDA* RULE

The Third Circuit's holding represents an unwarranted expansion of the *Quarles* public safety exception to *Miranda*'s requirements. The decision below is inconsistent with *Quarles* because, in circumstances like those in this case, there is no immediate threat to public safety that would have required the arresting officers to undertake the sort of "on-the-scene balancing" that the *Quarles* Court sought to avoid. And the holding below dramatically undermines *Miranda* because virtually *every* search

conducted by police officers involves the possibility of discovering a dangerous item and thus, according to the Third Circuit's holding, the "public safety" exception could apply to virtually every interrogation preceding a search. This significant expansion of the public safety exception to *Miranda* finds no support in the rationale for that rule.

A. The Public Safety exception was intended to be narrow

In *New York v. Quarles,* 467 U.S. 649 (1984), a defendant suspected of armed rape fled into a grocery store. Before he was arrested, Quarles stashed a firearm, which would later be found behind some empty cartons on a grocery store shelf. The arresting officer subdued Quarles and noticed that Quarles was wearing an empty holster. Prior to issuing *Miranda* warnings, the officer asked Quarles where the firearm was located. Quarles responded and ultimately directed the officer to the location of the firearm. *Id.* at 652-53. This Court ultimately concluded that the evidence was admissible, and for the first time recognized a "public safety" exception to the *Miranda* rule. The *Quarles* Court believed that the "public safety" exception would be easy for police officers to apply and lower courts to review, "because in each case it will be circumscribed by the exigency which justifies it." *Id.*

In establishing the public safety exception, the Court was clear that it was not meant to be a broadly applied tool for law enforcement to conduct fishing expeditions anytime public or officer safety is implicated. *Id.* at 658. Rather, it applies only when public exigency is present. *See e.g.*, 467

U.S. at 657-58 (public safety exception was needed because police officers are called upon to make decisions, "often in a matter of seconds," whether to forego *Miranda* warning in order to obtain evidence or statements required for public or officer safety); *id.* at 658 ("[W]e recognize here the importance of a workable rule to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront.").

That exigency is required before the public safety exception may be applied was also clear from the Court when distinguishing *Quarles* from *Orozco v. Texas,* 394 U.S. 324 (1969). In *Orozco,* four officers entered Orozco's house, arrested him, and interrogated him without *Miranda* warnings, regarding a murder committed hours earlier. The police asked if he had been present at the scene of the shooting, whether he owned a gun and where the gun was located. The defendant admitted that he was present at the scene, that he owned a pistol and that the pistol was located in the washing machine in a backroom of the house.

Comparing the cases, the *Quarles* Court stated:

> In *Orozco* however, the questions about the gun were clearly investigatory; they did not in any way relate to an objectively reasonable need to protect the police or the public from any *immediate danger* associated with the weapon. In short there was no *exigency requiring immediate action* by the officers beyond the normal need expeditiously to solve a serious crime.

Quarles, 467 U.S. at 659 n.8. The Court thus distinguished situations where public or officer safety required exigency and situations where it did not. In doing so, the Court undoubtedly recognized that if the public safety exception was truly to apply as an *exception*, it must necessarily be tied to public exigency.

There was thus an important distinction between *Quarles* and *Orozco*—while a firearm abandoned in a public area may create exigency justifying interrogation without *Miranda* warnings, the possible existence of a firearm on private property to which the public lacks access does not. In other words, the mere allegation that a firearm might be present did not automatically constitute exigency so as to render *Miranda* inapplicable.

The *Quarles* Court recognized that its "public safety" exception to *Miranda* would govern a very narrow range of circumstances involving threats to the public or law enforcement officers. In *Quarles*, police officers, "in the very act of apprehending a suspect, were confronted with the immediate necessity of ascertaining the whereabouts of a gun" that the defendant had just discarded in a busy supermarket. 467 U.S. at 657. It was undisputed that the weapon "obviously posed more than one danger to the public safety: an accomplice might make use of it, [or] a customer or employee might later come upon it." *Id.* The Court concluded that in such an emergency situation, it would be "untenable" to require officers to decide "in a matter of seconds" whether to forego the *Miranda* warning at the cost of admissibility of any incriminating statement, or to issue a warning that would preserve

admissibility but undermine the officers' ability to "neutralize the volatile situation confronting them." *Id.* at 657-58. The *Quarles* Court therefore acknowledged the "public safety" exception expressly to avoid such untenable "on-the-scene balancing" dilemmas. *Id.* at 658.

B. The exception has been expanded by a number lower courts

The lower courts have interpreted the public safety exception to apply in a number of circumstances which bear little resemblance to that presented in *Quarles*. Many of those cases involve searches of private property, such as vehicles, in which law enforcement speculates that a weapon could be located. The end result is that many courts no longer require an imminent threat to public safety, and instead apply the exception upon speculation that a threat could materialize. *See, e.g., United States v. Luker,* 395 F.3d 830, 833-34 (8th Cir. 2005)(sufficient to justify pre-*Miranda* warning questioning that "officers were aware of Luker's history of methamphetamine use and were concerned about needles or substances associated with such use in the car").

The First Circuit has allowed officers to question suspects who have not received *Miranda* warnings about weapons in a secured vehicle. *United States v. Fox,* 393 F.3d 52 (1st Cir. 2004), *vacated on other grounds,* 545 U.S. 1125 (2005). The defendant in *Fox* had been arrested and placed in the officer's car. Nonetheless, the court held that the potential that a weapon could be hidden in the

defendant's car was "ample reason [for the officer] to fear for his own safety and that of the public." 393 F.3d at 60. Moreover, once the officer found a gun, the First Circuit permitted him to question the suspect about its operation, finding that the danger of transporting a potentially loaded weapon also was sufficient to trigger the *Quarles* exception. *Ibid.*

The Tenth Circuit has taken a similar approach. In *United States v. Phillips,* 94 Fed. Appx. 796 (10th Cir. 2004), which involved a house search, the Tenth Circuit specifically held that the danger of coming across a weapon was sufficient to trigger *Quarles*. "[T]he fact that the other residents of the house were secured did not completely eliminate the risk that a weapon hidden somewhere could pose a danger to one of them or to the police." *Id.* at 801 n.2.

By holding that the questioning of a suspect prior to the issuance of *Miranda* warnings is permissible even when there is no imminent danger, these decisions, as well as the Third Circuit decision in the instant case, essentially create a reasonableness or "convenience" exception to *Miranda*. But *Quarles* specifically rejected the idea of such a reasonableness exception. See *Quarles,* 467 U.S. at 653 n.3 ("[T]he Fifth Amendment's strictures, unlike the Fourth's, are not removed by a showing of reasonableness.") (quoting *Fisher v. United States,* 425 U.S. 391, 400 (1976)). Such a rule cannot be applied consistently by police officers and courts. See *Dickerson v. United States,* 530 U.S. 428, 444 (2000) ("But experience suggests that the totality-of-the-circumstances test *** is more difficult

than *Miranda* for law enforcement officers to conform to, and for courts to apply in a consistent manner.").

C. Other courts have not expanded the public safety exception to searches of private property merely based on allegations of the existence of a dangerous weapon

In *United States v. Mobley,* 40 F.3d 688 (4th Cir. 1994), the Fourth Circuit considered a situation in which officers were about to search the defendant's apartment. The apartment had already been secured and there were no third parties in the vicinity. An officer asked the defendant whether "there was anything in the apartment that could be of danger to the agents who would be staying to conduct the search warrant, such as a weapon." *Id.* at 691. The defendant confirmed that there was a weapon in the apartment and was later convicted on the basis of his statement. On appeal, the Fourth Circuit reversed the conviction, declining to apply the public safety exception "[a]bsent an objectively reasonable concern for immediate danger to police or public." *Id.* at 693. Noting that nothing "separate[d] the[] facts [of that case] from those of an ordinary and routine arrest scenario" (*ibid.*), the court rejected the government's argument that the risk of encountering a firearm during the course of the search constituted a threat to the public safety. *Ibid. See also, e.g., United States v. Melvin,* 2007 WL 2046735, at *11 (4th Cir. July 13, 2007)(holding that the government must "demonstrate an immediate need that would validate protection under the *Quarles* exception.").

One of the defendants in *Melvin, supra,* was arrested outside his apartment, shortly after police seized and began towing his truck, which was parked outside. After the defendant was arrested, but before he was given *Miranda* warnings, officers asked "if there was 'anything the agents needed to know about in the truck.' " *Id.* at *8. Although the officers in *Melvin* faced the danger of coming across hidden weapons during a search of the car, the Fourth Circuit held the *Quarles* exception inapplicable. Indeed, the *Melvin* court suggested that the danger of coming upon a weapon during a search can never be sufficient on its own to trigger the public safety exception. *Id.* at *11 ("[T]he government did not admit evidence that the public had access to the impound lot so as to create a public danger. In the absence of such evidence, we are constrained to conclude that [the defendant's] *** statements were improperly admitted."). Here, there was no evidence that the public were permitted access to the uninhabited building, or that law enforcement could not prevent public access to the building while it was searched. The building itself was not a public, crowded location such as the supermarket in *Quarles*.

The Third Circuit's decision here also conflicts with the Sixth Circuit's holding in *United States v. Williams,* 483 F.3d 425 (6th Cir. 2007). As in *Mobley*, officers in *Williams* entered the suspect's apartment and questioned him after he was no longer free to leave. They asked "if anybody else was in the room and if he had any weapon." *Id.* at 427. The court held the defendant's response, identifying the location of a gun, inadmissible, reasoning that "[t]he public safety exception applies if and only if" an

officer has "a reasonable belief that he is in danger" because, "at minimum," (1) "the defendant might have (or recently have had) a weapon, and (2) *** someone other than police might gain access to that weapon and inflict harm with it." *Id.* at 428. The court remanded the matter for the trial court to determine whether "someone other than police could access the weapon and inflict harm with it." *Id.* at 429. The Sixth Circuit's holding that the public safety exception applies if and only if a third party might "gain access to [a] weapon and inflict harm with it" cannot be reconciled with the decision below. There is an absence of evidence here that the public could reasonably gain access to a weapon in the uninhabited building, which presumably could have been closed off by law enforcement.

The panel's holding here also conflicts with the Fifth Circuit's decision in *United States v. Raborn,* 872 F.2d 589 (5th Cir. 1989). There, police officers had safely arrested the defendant during a traffic stop and there were no third parties on the scene. The officers believed the defendant had a weapon in his truck and, without issuing a *Miranda* warning, questioned him about the location of the gun. In response, the defendant admitted to having an illegal firearm in his truck. He was later convicted as a felon in possession and sought to suppress both the statement and the weapon, which the government argued were admissible under *Quarles.* The court concluded:

> Unlike the situation in *Quarles*, however, when the gun was hidden in a place to which the public had access, Raborn's truck, where the police officers believed the gun to be, had already been seized and only the police officers had access to the truck. It is difficult therefore, to find that the public-safety exception applies.

Id. at 595.2 This reasoning cannot be reconciled with the decision in this case. See also *United States v. Brathwaite,* 458 F.3d 376, 382 n.8 (5th Cir. 2006) (finding that where "agents had performed two sweeps of the house and had both occupants of the house in handcuffs," officers could not ask about the presence of weapons in the house).

II. THE QUESTION PRESENTED IS OF SUBSTANTIAL IMPORTANCE.

By holding that the questioning of a suspect prior to the issuance of *Miranda* warnings is permissible even when there is no imminent danger, the decision below essentially creates a reasonableness or "convenience" exception to *Miranda.* But *Quarles* specifically rejected the idea of such a reasonableness exception. See *Quarles,* 467 U.S. at 653 n.3 ("[T]he Fifth Amendment's strictures, unlike the Fourth's, are not removed by a showing of reasonableness.") (quoting *Fisher v. United States,* 425 U.S. 391, 400 (1976)).

Intervention by this Court is necessary. Such a rule of convenience or reasonableness cannot be applied consistently by police officers and courts. *See Dickerson v. United States,* 530 U.S. 428, 444 (2000) ("But experience suggests that the totality-of-the-circumstances test *** is more difficult than *Miranda* for law enforcement officers to conform to, and for courts to apply in a consistent manner."). Given the great practical importance of holdings like the one below adopting such a rule -

searches like the one in this case occur with great frequency[1] and law enforcement officers often will have reason to suspect the presence of guns or other dangerous materials[2]- further review in this case is warranted.

As set forth herein, the Third Circuit has joined the First, Eighth and Tenth Circuits in creating such a rule of convenience or reasonableness. The Fourth, Fifth and Sixth Circuits have narrowly interpreted the public safety exception and generally followed this Court's limitations as explicated in *Quarles*. There is thus a well-entrenched split among the circuits which leads to disparate results based not on a reasoned application of law to facts, but instead on the random factor of geographic location.

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1 For example, the Bureau of Justice Statistics estimates that there were 854,990 car searches in 2005. See Bureau of Justice Statistics Special Report, Contacts Between Police and the Public 2005 at 6, http:// www.ojp.gov/bjs/pub/pdf/cpp05.pdf.

2 Not only is finding guns or drug paraphernalia a very real possibility in many, if not most, criminal searches, but the high rate of gun ownership in the United States could be enough, under the Eighth Circuit's rule, to justify police officers in *always* asking about the presence of weapons before searching virtually any location. Compare Tom W. Smith, Public Attitudes Towards the Regulation of Firearms at Fig. 2 (March 2007), http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf (finding that 34.5% of households contain a gun) *with* National Rifle Association of America, Institute for Legislative Action, More Guns, Less Crime (Sept. 28, 2007) *available at* http:// www.nraila.org/Issues/FactSheets/Read.aspx?id=206 (noting that numerous studies have found "almost half of all households have at least one gun owner").

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the document contains 3,570 words.

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/S/*Mathew Campbell*
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AFFIDAVIT OF SERVICE

I HEREBY CERTIFY pursuant to Supreme Court Rule 29.5(b) that on May 11, 2021, one copy of the PETITION FOR A WRIT OF CERTIORARI in the above-captioned case were served, as required by U.S. Supreme Court Rule 29.5(c), on the following:

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APPENDIX – THIRD CIRCUIT
OPINION – December 17, 2020

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