No. 21-1190

IN THE
SUPREME COURT OF THE UNITED STATES

RAMON RIOS, III

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari
to the Texas Fourteenth Court of Appeals

REPLY BRIEF FOR PETITIONER

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Officers arrested petitioner on his front porch, handcuffed him, and placed him inside a patrol car across the street. Ten to fifteen minutes later, the officers performed several "protective" sweeps inside his home despite candidly conceding they "didn't have any evidence or any information" indicating someone else was inside. App. B at 35a. Their warrantless searches of the home in this case comport with their regular practice of conducting full protective sweeps of "every residence" after every arrest "no matter how much intel" they have. App. B at 48a.

In *Maryland v. Buie*, this Court held that:

> 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.

494 U.S. 325, 337 (1990). A "protective sweep" was defined as "a quick and limited search" that lasts "no longer than it takes to complete the arrest and depart the premises." *Id.* at 335.

The State embraces the policy of its officers performing protective sweeps of every home every time an arrest is made in or near a home. It does so by claiming officers have the power to perform protective sweeps unless they are "100-percent" certain there is no potential threat of danger. BIO.15.

This is a shocking and systemic disregard of the standards announced in *Buie*. The arrest occurred outside the home. The so-called protective sweeps were performed after the officers had completed the arrest and left the area with petitioner. The sweeps were neither quick nor limited. And they were not based on specific and articulable facts that someone else in the home posed a danger to officers on the scene.

In holding the protective sweeps constitutional, the majority has answered an important federal question in a way that conflicts directly with this Court's precedent. *See* Sup. Ct. R. 10(b). The decision frustrates core Fourth Amendment principles by allowing the narrow protective sweep exception to swallow the rule that warrantless searches of a home are presumptively unreasonable. Review is required.

I. The majority's decision conflicts directly with this Court's decision in *Buie*.

Buie does not permit a warrantless search simply because someone was arrested inside their home. Instead, *Buie* requires specific and articulable facts that support a reasonable belief that the area to be swept harbors an individual who poses a danger to the officers on the scene. 494 U.S. at 327.

Here, the officers readily admitted they had no reason to believe that anyone—dangerous or otherwise—was anywhere on the premises before conducting multiple warrantless searches of the entire home. App. B at 35a. There was no voice from behind a

door,[1] movement in an upstairs window,[2] or extra car in the driveway.[3] Without any affirmative indication that someone may have been lying in wait, the officers had nothing more than the "unparticularized suspicion" or "hunch" rejected in *Buie*, 494 U.S. at 332, (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)).

Nor does *Buie* permit officers to protract their exposure to "ambush" by deciding not to depart the premises after completing the arrest. The State says the "officers could not immediately depart the premises upon effecting the defendant's arrest because they had reason to believe firearms and other contraband were located inside the breached residence." BIO.7. This slip betrays the rule the State claims to meet.

To be sure, a belief that firearms were present may have given reasonable officers cause to worry that petitioner himself posed a threat to their safety. But a belief that firearms were present did nothing to suggest that anyone else was in the house. And officers need no protection from firearms inside a house when no one is there to wield them. *See United States v. Colbert*, 76 F.3d 773, 777 (6th Cir. 1996) ("The facts upon which officers may justify a *Buie* protective sweep are those facts giving rise to a suspicion of danger from attack by a third party. . . .").

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1 *United States v. Martins*, 413 F.3d 139, 151 (1st Cir. 2005).

2 *United States v. Burrows*, 48 F.3d 1011, 1017 (7th Cir. 1995).

3 *United States v. Hauk*, 412 F.3d 1179, 1192 (10th Cir. 2005).

A belief that firearms are present—with no reason to believe a person capable of using them is there too—cannot justify a sweep under *Buie*. Ever. Otherwise, millions of gunowners will have sacrificed their Fourth Amendment rights to privacy inside their homes simply because they decided to keep guns inside their homes in accordance with the Second Amendment. App. B at 64a. That is not the law in our country. But even if it were, it shouldn't be.

The real reason the officers stayed on the premises after completing the arrest is obvious: they were going to search the home no matter what information they had. That is what they do every time they make an arrest at a residence, "no matter how much intel" they have. App. B at 36a. By blessing these automatic sweeps as constitutional, the majority decision breathes life into Justice Brennan's concern that protective sweeps "might encourage police officers to execute arrest warrants in suspects' homes so as to take advantage of the opportunity to peruse the premises for incriminating evidence left in 'plain view.'" *Buie*, 494 U.S. at 342 n.5 (Brennan, J., dissenting). Indeed, that is exactly what the officers tried to do here. And the majority condoned it.

The majority's decision runs afoul of *Buie* and departs from basic principles of constitutional law concerning the sanctity of private homes and the right to bear arms. This case is worthy of review. *See* Sup. Ct. R. 10(b).

II. This case presents recurring constitutional questions of national importance.

When it comes to the Fourth Amendment, this Court has observed that "a single, familiar standard is essential to guide police officers, who only have limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway v. New York*, 442 U.S. 200, 213 (1979). During the 32 years since *Buie*, courts have provided guidance to officers by refining the outermost parameters of a permissible protective sweep.

But the majority disrupted the development of the law when it held that what officers *did not know* about the presence of others inside the home qualifies as a specific and articulable fact justifying a protective sweep. Specifically, the court found the protective sweeps constitutional based on testimony that the officers "could not be certain that there were no other people in the residence." App. A at 13a–14a. This conclusion validates the routine practices described by the officer. *See* App. B at 36a ("[N]o matter how much intel I'm given, until I physically go inside that residence and look, that I know that 100 percent there's no one inside."); *id.* (observing that his team performs "a protective sweep on every residence that we go to.").

By focusing on information the officers lacked (rather than information they had) about the presence of others in the home, the majority's approach collides with the case law holding that "'[n]o information' cannot be an articulable basis for a sweep that

requires information to justify it in the first place."[4] *Colbert*, 76 F.3d at 778. Allowing officers to conduct protective sweeps whenever they do not know whether anyone else is inside a home incentivizes them "to stay ignorant as to whether or not anyone else is inside a house in order to conduct a protective sweep." *Id.*

The State does not contest the substantial importance of the questions presented, other than to claim that the case "lacks precedential value" due to its "fact intensive" nature. BIO.5. Of course, this Court would never grant certiorari in a Fourth Amendment case if that had any truth to it. *See Terry*, 392 U.S. at 29 (recognizing the limitations imposed by the Fourth Amendment "will have to be developed in the concrete factual circumstances of individual cases").

Law enforcement officers need bright lines to do their job right. Yet the majority's decision blurs the lines and, in turn, prevents law enforcement authorities from understanding and adopting a clear set of rules regarding permissible protective sweeps. This Court should grant certiorari to clarify the confusion created by the majority's decision.[5]

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[4] *United States v. Gandia*, 424 F.3d 255, 264 (2d Cir. 2005) (holding protective sweep was unjustified where officer testified that "he 'didn't have any information at all' when asked whether he had information that anyone was inside the . . . apartment prior to his decision to conduct the protective sweep"); *Sharrar v. Felsing*, 128 F.3d 810, 824 (3d Cir. 1997); *Carter*, 360 F.3d at 1242–43; *United States v. Chaves*, 169 F.3d 687, 692 (11th Cir. 1999).

[5] The State argues that petitioner waived his argument that the majority misapplied the plain-view doctrine because he did not

CONCLUSION

This Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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challenge that holding "in his motion for rehearing or his motion for en banc reconsideration." BIO.20. But petitioner did raise the issue in his petition for discretionary review, and that is all Texas law requires to preserve error. Tex. R. App. P. 49.10 ("A motion for rehearing or for en banc reconsideration is not a prerequisite to filing . . . a petition for discretionary review in the Court of Criminal Appeals nor is it required to preserve error.").