NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2021

Kenneth Lamont Sanders- Petitioner,

vs.

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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QUESTIONS PRESENTED FOR REVIEW

1. Whether the "principle of party presentation" articulated in *Greenlaw v. United States*, is violated where: (1) the prosecution defends a warrantless home entry throughout a suppression motion and appeal, as justified solely by *Cady v. Dombrowski*'s "community caretaking" exception; (2) the Supreme Court issues a GVR order directing reconsideration in light of *Caniglia v. Strom*; and (3) on remand, with no supplemental briefing, the Court of Appeals re-affirms the warrantless home entry as justified by the "emergency aid" exception, which the government never claimed, the parties never litigated, and the district court never considered.

2. Whether the "serious aid" exception to the Fourth Amendment authorized police entry into a home without a warrant less than fifty seconds after officers knocked to perform a welfare check, where: (1) officers made no inquiry, but suspected a man inside had caused minor injuries to a woman's face and neck in a domestic disturbance; and (2) they observed one child "acting excited" in an upstairs window, and heard another child crying inside the home as the woman reentered, with officers' express assent, to ask the man to come outside.

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

(1) *United States v. Sanders*, 2:18-cr-01025-LRR-MAR (N.D. Iowa) (criminal proceedings), judgment entered February 27, 2019.

(2) *United States v. Sanders*, 19-1497 (8th Cir.) (direct criminal appeal), judgment entered April 14, 2020, *available at* 956 F.3d 534 (8th Cir. 2020).

(3) *Sanders v. United States,* 20-6400 (S.C.) (on certiorari), GVR entered June 1, 2021, *available at* 141 S. Ct. 1646 (2021).

(4) *United States v. Sanders*, 19-1497 (8th Cir.) (continued direct criminal appeal following remand), judgment entered July 16, 2021, *published at* 4 F.4th 672 (8th Cir. 2021).

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The petitioner, Kenneth Lamont Sanders, through counsel, respectfully prays that a writ of certiorari issue to review the July 16, 2021, judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 19-1497.

OPINION BELOW

On June 1, 2021, the Supreme Court issued a "grant, vacate, remand" (GVR) order directing the Eighth Circuit to reconsider, in light of *Caniglia v. Strom*, 141 S. Ct. 1596 (2021), its April 2020 decision affirming the warrantless home entry in this case under the "community caretaking" exception to the Fourth Amendment's warrant requirement, articulated in *Cady v. Dombrowski,* 413 U.S. 433 (1973). On July 16, 2021, a panel of the Eighth Circuit Court of Appeals entered a substituted opinion re-affirming the judgment of the United States District Court for the

Northern District of Iowa, this time pursuant to the more restrictive "emergency aid" exception. The decision is published and available at 4 F.4th 672 (8th Cir. 2021). Mr. Sanders filed a petition for panel and *en banc* rehearing from the Eighth Circuit's judgment, which was denied on September 20, 2021.

JURISDICTION

The Court of Appeals entered its judgment on July 16, 2021, and denied Mr. Sanders's request for rehearing on September 20, 2021. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> 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.

STATEMENT OF THE CASE

On February 16, 2018, Mr. Sanders had an argument with his girlfriend, Ms. LaFrancois. PSR ¶ 5.[1] Ms. LaFrancois's daughter, aged 11, overheard the argument from her upstairs bedroom and contacted her grandmother. *Id.* Grandmother called the police department and requested a "well-check," reporting the child said Ms. LaFrancois and her boyfriend, "Kenny," were "fighting real bad." Hr'g Ex. A. Grandmother stated children ages 11, 7, and 1, were in the home, but provided no additional information. *Id.*

Knowing only what Grandmother relayed to dispatch, Officer Cross responded, and as he approached the two-story home, observed someone "acting excited" in an upper window. Hr'g Tr., p. 12. He knocked, and Ms. LaFrancois answered the door and stepped outside. *Id.* pp. 12–13. She appeared to have been recently crying and had a few minor red marks or scratches on her face and neck, none of which were bleeding or that looked serious enough to require medical attention. *Id.*; Hr'g Exs. 6–8. Officer Cross wore a body camera. The video is lengthy, but barely more than the first minute is relevant, because officers breached the threshold of the home less than 50 seconds after knocking. Hr'g Exs. 1, 2. The

[1] In this brief, "R. Doc." refers to the district court docket, criminal Case No. 2:18-cr-01025-LRR-MAR in the United States District Court for the Northern District of Iowa. "Hr'g Tr." refers to the official transcript of the suppression hearing held February 26, 2019, available at R. Doc. 20. "Hr'g Ex." refers to exhibits received by the district court during the suppression hearing. *See* R. Doc. 40. "PSR" refers to the presentence report prepared for sentencing in the case. R. Doc. 31.

entirety of the relevant interaction between officers and Ms. LaFrancois, who was at all times calm and polite, is transcribed[2] as follows:

Cross: Hello, is everything okay? I mean obviously there is some yelling, I think your daughter upstairs heard the noise and called.
LaFrancois: Do not tell him that she called you guys.
Cross: I'm not telling him anything. I want to make sure that you're safe.
LaFrancois: Yea.
Cross: I mean people can argue and have a bad day, I just want to make sure, you know, [unintelligible] that no one is hurt back there.
LaFrancois: Yea, we are okay.

[Officer Pregler arrives]

Cross: I think he is still in there yet.
Pregler: Mind if I go in and talk to him?
LaFrancois: No, I don't want you to go in there.
Pregler: Well, we have to talk to him, so either he comes out . . . .
LaFrancois: I will tell him to come out.
Pregler: Okay, that's fine

[LaFrancois opens exterior and interior doors, enters, pushes interior door closed; child can be heard crying]

Cross: Her daughter is in there crying, I think at that point we need to go in.
Pregler: Good enough for me.

[Pregler opens screen door, then interior door, crosses threshold as LaFrancois speaks]

LaFrancois: Please don't come in here.
Pregler: We have to come in here.
LaFrancois: No, please don't come in here.
Pregler: Your daughter's in here crying.

[2] The transcription was prepared by the Federal Defender's Office, and is believed to be an accurate representation of the exchange. Once officers enter, there are overlapping voices, making it difficult to discern all words or the order in which they are spoken.

LaFrancois: My daughter is fine, please don't come in here, I asked you please don't come in here.

[all talking at once]

Cross: It's a welfare check at this point.
LaFrancois: I asked you not to come in here.
Pregler: Please step outside.
Cross: It's a welfare check at this point.
LaFrancois: I asked you not to come in here. Please don't come in.
Sanders: This is our house, though.
Pregler: Is this your house?
Sanders: This is her house.
LaFrancois: I asked you not to come in here.
Pregler: We are conducting an investigation we have a right to be here.

Hr'g Ex. 1 (0:00–1:10). Once inside, officers learn a gun is in the home, which they eventually locate. Mr. Sanders was arrested, and later indicted, for being a prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g).

Mr. Sanders filed a Motion to Suppress, arguing that no exception excused law enforcement's warrantless entry into his home, such that all evidence discovered thereafter must be suppressed. R. Doc. 7-1. The government resisted the motion, specifically citing *only* the "community care-taking" exception to the Fourth Amendment's warrant requirement as justification for the initial entry, and claiming additional exigent circumstances developed *after* entry that resulted in the search for and seizure of the gun.[3] *See* R. Doc. 9 ("There were exceptions to the warrant requirement applicable in this case, specifically the community care-taking

[3] The instant petition for certiorari concerns only whether law enforcement was justified in entering the home without a warrant in the first place. If not, of course, all information and evidence obtained thereafter is fruit of the poisonous tree. *See Wong Sun v. United States*, 371 U.S. 471, 484–85 (1963).

exception and the exigent circumstance exception."); R. Doc. 9-1, p. 6 ("Officers' presence in the home was justified by the community caretaking exception to the warrant requirement" because they had "a reasonable belief that a domestic dispute [] was occurring and that the female and possibility [sic] the children in the residence were in danger"); Sent. Tr. p. 41 ("Our primary argument is this community caretaking, which then leads to exigent circumstances[.]"). The government maintained its singular focus on the broad, automobile-based community caretaking exception as justification for the initial warrantless entry at the suppression hearing. Hr'g Tr. pp. 44–45 ("Instead of erring on the side of, *Well . . . we didn't know exactly what was going on, therefore, we didn't go in*. . . . The community caretaking is specifically set up and the case law indicates [police] should err on the side of entering and community caretaking . . . We're making sure that these three kids are safe, that Ms. LaFrancois is safe, that these circumstances are okay."). The government also offered Officer Pregler's testimony at the suppression hearing, who clearly stated that he and Officer Cross did not make entry because they believed someone inside the home was seriously injured or at risk of imminent serious injury; rather, they entered the home because they did not know what was going on inside and felt they had better go in and check things out—just to be on the safe side:

> [W]e had an unstable situation. There was obviously emotional people there. We had somebody upstairs, who we don't know who this person is. We don't know if there are any injuries. We don't know what's going on upstairs. We don't know what's going on in the house. Again, with the emotions that are going on, we've got to make sure everybody is ok.

Hr'g Tr. p. 15.

In a report and recommendation, a United States magistrate judge determined that the warrantless entry was "justified based on [officers'] community caretaker responsibilities." R. Doc. 16, pp. 8–9 ("[O]fficers did not have sufficient information to justify entry into the house under the exigent circumstances exception to the warrant requirement," but "could lawfully enter the residence [as a community caretaker] to determine whether [anyone was] actually in danger, and if so, to protect the individuals"). The district court overruled Mr. Sanders's objections to the magistrate's recommended findings, and denied his Motion to Suppress, also agreeing specifically that the warrantless entry "was justified by [officers'] community caretaking responsibilities" because the child in the window "may have been at risk" and the "crying indicated someone was in distress." R. Doc. 25, p. 7. Mr. Sanders thereafter entered a conditional plea of guilty and was sentenced to 120 months incarceration for violating 18 U.S.C. § 922(g). R. Doc. 17–18, 24–25, 41.

Mr. Sanders appealed. In resisting his appeal, the government continued to rely exclusively on the very broad "community caretaking" exception, emphasizing that officers here "did what was expected of them" by making a warrantless entry because "there was an unstable situation inside the residence and there was an injured female and multiple children inside." *See* 8th Cir. No. 19-1497, ID: 4828962, pp. 16–21. On April 14, 2020, following briefing and oral argument, a panel of the Eighth Circuit Court of Appeals affirmed the district court's conclusion

that the warrantless entry into Mr. Sanders's home was compliant with the Fourth Amendment, pursuant to the community caretaker exception. *United States v. Sanders*, 956 F.3d 534 (8th Cir. 2020). More specifically, it stated that the "justification for the officers' warrantless entry arises from their obligation to help a child or children that could be injured inside or to ensure the safety of the children." *Sanders*, 956 F.3d at 539. The Eighth Circuit denied Mr. Sanders's request for en banc or panel rehearing. Eighth Circuit Case No. 19-1497, Entry ID: 4925794.

Mr. Sanders petitioned for certiorari, and the Supreme Court requested a response from the government on December 17, 2020. *See* S.C. No. 20-6400. The Solicitor General requested that the matter be held pending resolution of *Caniglia v. Strom*, which was then pending oral argument and would address whether *Cady*'s community caretaking exception even applies to homes to begin with. *Caniglia* was argued on March 24, 2021, and on May 17, 2021, the Court unanimously agreed that the community caretaking exception applies *only* to automobiles. *Caniglia v. Strom*, 141 S. Ct. 1596 (2021). Shortly thereafter, on June 1, 2021, the Court granted Mr. Sanders's petition for certiorari, vacated the judgment of the Eighth Circuit, and remanded the case for further consideration in light of *Caniglia*. *See Sanders v. United States*, 141 S. Ct. 1646 (June 1, 2021).

Jurisdiction was formally returned to the Eighth Circuit on July 6, 2021, when the Supreme Court's mandate issued. *See* 8th Cir. Case No. 19-1497, ID: 5051744, 5151750. Ten days later, without any supplemental briefing or input from the parties, the presiding Eighth Circuit panel issued a substituted decision finding

the warrantless entry into Mr. Sanders' home "reasonable" under the "emergency aid" exception to the Fourth Amendment. *Sanders*, 4 F.4th at 677–78. The panel concluded that the information officers learned on the front porch "indicat[ed] a serious concern for the safety of [Ms. LaFrancois] and the children who were inside the house," such that officers "reasonably believed that entry was necessary to either provide emergency assistance to the child who was heard crying or to prevent an imminent assault on the daughter who had reported the incident." *Sanders*, 4 F.4th at 678. The panel further found that the "scope of the encounter was carefully tailored to satisfy the officers' purpose for entry," because once inside, they separated Mr. Sanders and Ms. LaFrancois and located the "gesturing" daughter, who when questioned, revealed information leading to discovery of a firearm, and Mr. Sanders's instant prosecution. *Id*.

REASONS FOR GRANTING THE WRIT

Summary of the Argument

The facts of this case are so obviously deficient as justification for an "emergency aid" warrantless home entry that, respectfully, the Supreme Court should consider issuing another GVR order directing the Eighth Circuit to reverse its affirmance of the district court's denial of Mr. Sanders's suppression motion. Petitioner submits that two separate reasons justify summary action by this Court.

First, the Supreme Court should grant certiorari because the Eighth Circuit's judgment clearly conflicts with this Court's authority on the "principle of party presentation," which recognizes that an adversarial system of justice "rel[ies] on the parties to frame the issues for decision and assigns to courts the role of neutral arbiter of matters the parties present." *Greenlaw v. United States*, 554 U.S. 237, 243–44 (2008). In the nearly four years since Mr. Sanders's arrest in February 2018, the government has at all times asserted that the singular justification for the initial warrantless entry in this case was *Cady*'s broad and generalized "community caretaking exception," which covers "emergency" situations well beyond those involving actual or imminent "serious injuries." *Cady*, 413 U.S. 433 (1973). Mr. Sanders is *severely* prejudiced by having his motion to suppress evidence affirmed by the Court of Appeals pursuant to a Fourth Amendment exception that the government never asserted, the parties never litigated, and the district court never considered. *See* Supreme Ct. Rules 10(a), (c).

A writ of certiorari in this case is also imperative because it involves an issue of exceptional importance: the permissible scope of the "emergency aid" exception to the Fourth Amendment's warrant requirement. The published Eighth Circuit panel decision, which is now precedential authority throughout *seven* states, effectively creates a *de facto* domestic violence exception to the warrant requirement, which drastically and improperly expands the scope of the "emergency aid" exception, in direct conflict with virtually all well-established Supreme Court authority on the issue. Indeed, the Fourth Amendment offers little meaningful protection from governmental overreach if police can breach the sanctity of one's home without a warrant based on the mere sound of a child crying inside a residence thought to contain the perpetrator of an apparently completed domestic assault that caused only minor, non-life threatening injuries. *See* Supreme Ct. Rules 10(a), (c); *see, e.g.*, *Brigham City, Utah, v. Stuart*, 547 U.S. 398 (2006) (cause for a warrantless entry exists when there is a need "to render *emergency* assistance to an injured occupant or to protect an occupant from *imminent* injury." (emphasis added)); *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) ("No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a residence from domestic violence, so long as they have *good reason to believe such a threat exists*." (emphasis added)).

Argument

1. *The Court of Appeals violated the "principle of party presentation" by deciding the case on a basis never asserted by the government, litigated by the parties, or considered by the district court.*

The Eighth Circuit committed a serious violation of the principle of party presentation when it held that law enforcement reasonably entered Mr. Sanders's home without a warrant pursuant to the "emergency aid" exception. This exception to the Fourth Amendment has never been asserted by the government, litigated by the parties at any point in this case, or considered by the district court. Recently, in *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1578 (2020), the defendant appealed her immigration conviction, but never raised a First Amendment overbreadth challenge. The Ninth Circuit raised the issue *sua sponte*, named *amici* to brief it, and ultimately adopted *amici*'s argument, dismissing the charge as constitutionally defective. *Id*. at 1578. The Supreme Court remanded for "an adjudication of the appeal attuned to the case shaped by the parties rather than the case designed by the appeals panel":

> In our adversarial system of adjudication, we follow the principle of party presentation. As this Court stated in *Greenlaw* . . . "in both civil and criminal cases, in the first instance and on appeal . . ., we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." In criminal cases, departures from the party presentation principle have usually occurred "to protect a pro se litigant's rights." [*S*]*ee, e.g.*, *Castro v. United States*, 540 U.S. 375, 381–383 (2003) (affirming courts' authority to recast pro se litigants' motions to "avoid an unnecessary dismissal" or "inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a pro se motion's claim and its underlying legal basis" (citation omitted)). But

> as a general rule, our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief."
>
> In short: "[C]ourts are essentially passive instruments of government." *United States v. Samuels*, 808 F.2d 1298, 1301 (CA8 1987) (Arnold, J., concurring in denial of reh'g en banc). They "do not, or should not, sally forth each day looking for wrongs to right. [They] wait for cases to come to [them], and when [cases arise, courts] normally decide only questions presented by the parties." *Ibid.*

Id. at 1579 (alterations in original, most citations omitted).

Like *Singeneng-Smith*, "this case scarcely fits the bill" of presenting a situation where "an initiating role for the court is appropriate." *Id.* To the contrary, Mr. Sanders is severely and irreparably prejudiced by having his appeal decided on a basis that has never been raised in the case or litigated in any way. Had the government framed its suppression resistance in 2018 as involving a claim that occupants of the house were "seriously injured" or "imminently threatened with such injury" pursuant to the emergency aid exception, both Mr. Sanders's line of inquiry at the suppression hearing and his legal arguments throughout the litigation would have been very different. *See Brigham City, Utah, v. Stuart*, 547 U.S. 398, 404 (2006). Indeed, just as in *Caniglia*, where the government *also* did not raise the emergency aid exception as a justification for its warrantless entry before the district court, the government has "forfeited the point." *See Caniglia*, 141 S. Ct. at 1599; *see also id.* at 1604 (Kavanaugh, J., concurring) ("This case does not

require us to explore all the contours of . . . emergency-aid situations because the officers here disclaimed reliance on that doctrine.").[4]

2. The "emergency aid" exception to the Fourth Amendment does not excuse law enforcement's warrantless entry into Mr. Sanders's home.

Because police did not obtain a warrant before entering Mr. Sanders's home, the burden was on the government to establish an exception to the Fourth Amendment's warrant requirement. *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984). Here, as in *Caniglia*, the government actually disclaimed reliance on any justification for the warrantless entry save for *Cady*'s "community caretaking" exception to the Fourth Amendment's warrant requirement. After the Supreme Court found in *Caniglia* that "community caretaking" is an automobile-only exception and GVR'ed Mr. Sanders's case, however, the Eighth Circuit simply swapped out a few paragraphs of its earlier decision to effectively *sua sponte* affirm based on the never-before raised or litigated "emergency aid" exception. In an

[4] Consistent with his concurring opinion in *Caniglia*, Justice Kavanaugh also wrote a concurrence to the GVR order granting Mr. Sanders's first petition for certiorari, observing that "the fact that the Eighth Circuit used a now-erroneous label does not mean that [it] reached the wrong result," and that the panel could consider on remand whether exigencies other than the community caretaker exception apply. *Sanders*, 141 S. Ct. at 1647–48; *compare Caniglia*, 141 S. Ct. at 1603 (Kavanaugh, J, concurring) (acknowledging community caretaking is inapplicable to homes, but noting "this Fourth Amendment issue is more labeling than substance. . . . As relevant here, one such recognized [exception is the *Brigham*] emergency aid exception."). Justice Kavanaugh notably did <u>not</u> express any opinion as to whether the exception actually should, or legally could, apply on the facts herein.

extremely cursory analysis, issued without any input or supplemental briefing from the parties, the Court of Appeals' stated:

> [W]e are satisfied that the officers had an objectively reasonable basis to enter LaFrancois' house without a warrant. Although the presence of a domestic violence suspect in a home with children cannot alone justify a warrantless entry, here the officers were confronted with "facts indicating that the suspect was a threat to the child[ren] or others." *Smith v. Kansas City Police Dep't*, 586 F.3d 576, 580 (8th Cir. 2009); *see also United States v. Quarterman*, 877 F.3d 794, 798–99 (8th Cir. 2017) (finding a reasonable basis to believe a threat existed from a domestic violence suspect). Once at the scene of the domestic disturbance, the officers learned further details indicating a serious concern for the safety of LaFrancois and the children who were inside the house. LaFrancois had visible injuries consistent with a physical altercation. LaFrancois expressed concern for her daughter and directed the officers not to tell Sanders that her daughter was the one that reported the disturbance. A child was seen in an upstairs window acting excitedly and gesturing at the first responding officer.
>
> The record establishes that the officers had reason to believe that a domestic violence suspect was inside the home with children. When LaFrancois opened the door, the suspect was still in the residence and officers heard crying coming from inside. Considering the totality of the facts known to the officers prior to their entry of the home, the officers reasonably believed that entry was necessary to either provide emergency assistance to the child who was heard crying or to prevent an imminent assault on the daughter who had reported the incident.

Sanders, 4 F.4th at 956 F.3d at 677–78. The Court of Appeals further concluded that the "scope of the encounter was carefully tailored to satisfy the officers' purpose for the entry" because, after entering, officers separated Ms. LaFrancois and Mr. Sanders, and found and talked to the excited child from the upstairs window, who provided an independent basis for their continued presence in the home. *Id.* p. 678.

"[T]he Fourth Amendment has drawn a firm line at the entrance to the house." *Payton v. New York*, 445 U.S. 573, 590 (1980) ("It is a basic principle of

Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable."); *see Lange v. California*, 141 S. Ct. 2011, 2018–19 (2021) ("[T]he contours of . . . any . . . warrant exception permitting home entry are 'jealously and carefully drawn,' in keeping with the "centuries-old principle" that the "home is entitled to special protection") (quoting *Georgia v. Randolph*, 547 U.S. 103, 109, 115 (2006)). "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Exigent circumstances, including the need to render "emergency aid," are narrowly drawn Fourth Amendment exceptions. *See Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) ("[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.") (citation omitted). They authorize immediate police action without necessity of a warrant only when "the needs of law enforcement [are] so compelling that the warrantless search is objectively reasonable under the Fourth Amendment," such as when "lives are threatened, a suspect's escape is imminent, or to prevent the imminent destruction of evidence." *Brigham City, Utah, v. Stuart*, 547 U.S. 398, 404 (2006) (emphasis added, citing *Mincey v. Arizona*, 437 U.S. 385, 393–94)); *Kentucky v. King*, 563 U.S. 452, 461 (2011).

The "emergency aid" exception justifies law enforcement in entering a home without a warrant only when the totality of the circumstances show officers had "an

objectively reasonable basis for believing that an occupant [of the home] [wa]s seriously injured or imminently threated with such injury." *Brigham*, 547 U.S. at 400, 403 (emphasis added); *Missouri v. McNeely*, 569 U.S. 141, 145 (2013) ("[C]onsistent with general Fourth Amendment principles, [a non-per se] exigency must be determined case by case based on the totality of the circumstances."). The specific and articulable facts must further demonstrate that "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless entry is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at 393–94 (some alterations and quotation marks omitted).

The facts of this case fall woefully short of satisfying the emergency aid standard because no reading of the record supports an objectively reasonable inference that either Ms. LaFrancois or her children: (1) had been *seriously* injured; (2) were at *imminent* risk of *serious* injury; or (3) were even in need of *any* aid at all, let alone emergency aid. The *only* injuries reported or observed before the warrantless entry were minor, non-life-threatening scratches on Mr. LaFrancois's face, and officers *never even asked her about their origin*; they simply assumed the scratches had been inflicted by a man inside the home.[5] Even if it was reasonable

[5] The Eighth Circuit acknowledges that in *Smith v. Kansas City Police Dep't*, it squarely reversed application of the emergency aid exception because there were no "facts indicating that the suspect was a threat" to a child inside the home with him, despite the suspected domestic abuse victim having *personally* reported being physically assaulted by the suspect, with her report confirmed by her appearance, including "scrapes, bumps, and bruises on her body." 586 F.3d 576, 580 (8th Cir. 2009); *see Sanders*, 4 F.4th at 678. Despite the panels' attempts to distinguish its

for officers to suspect, after less than a minute of inquiry, that Ms. LaFrancois had been the victim of a domestic assault, she clearly and calmly disclaimed a need for any sort of aid—emergency or otherwise—for either herself or her children.[6] *See* Hr'g Ex. 1. There was no arguing, yelling, or fighting ongoing while officers were present, no blood, no visible broken or disturbed objects, no cries for help, and no cries that were characterized as agonized, pained, concerning, or even unusual. Unlike in other cases where the emergency aid exception has applied, there was merely a suspicion of a minor incident of domestic violence, a child "acting excited" in an upstairs window, and the sound of another child crying. *Compare, e.g.*,

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own authority in *Smith*, this case is virtually identical, albeit presenting *far more* innocuous factual circumstances.

[6] In characterizing the record, the Eighth Circuit inaccurately recounts that while Ms. LaFrancois "said everything was okay, the officers observed . . . [that] she was acting emotionally and unstable." *Sanders*, 4 F.4th at 677 (emphasis added). Officer Pregler, however, testified to an "unstable situation" that involved "obviously emotional people," not that Ms. LaFrancois was acting emotionally and unstable. See Hr'g Tr. p. 15. The body cam footage shows clearly that while Ms. LaFrancois had obviously been crying, she was calm and cooperative during her interactions with police. Hr'g Ex. 1.

Petitioner also takes serious issue with the Eighth Circuit's statement in its recitation of facts that Ms. "LaFrancois was so adamant about keeping the officers outside and away from any other witnesses or evidence that might be inside the house that she volunteered to get Sanders to bring him outside." *Sanders*, 4 F.4th at 677. As the bodycam footage and transcript shows, officers asked Ms. LaFrancois if they could come inside and she politely and respectfully exercised her absolute right under the Fourth Amendment to say no. Hr'g Tr. p. 14; Hr'g Ex. 1. It is improper to assume, or even to suggest on this record, that she did so for any nefarious purpose. *See also* Hr'g Tr. p. 43 (AUSA arguing at suppression hearing that "[t]he fact that [Ms. LaFrancois] won't let them into the residence . . . adds to the concern. Had nothing been going on . . . she would have—been more like . . . 'yeah, look around.'").

Brigham City, 547 U.S. at 399 ("Here, officers were confronted with *ongoing* violence occurring *within* the home. . . . Given the tumult at the house when [officers] arrived [and] in light of the fracass they observed in the kitchen, the officers had an objectively reasonable basis for believing both that the injured adult might need help and that the violence was just beginning."); *Michigan v. Fisher*, 558 U.S. 45, 46 (2009) (before entering, officers actually observed a juvenile break free from restraint and punch another in the face, who then spat blood); *Hunsberger v. Wood*, 570 F.3d 546 (4th Cir. 2009) (entry permissible where there "was evidence that a minor girl was in the home, given that her car was parked in front of the house" in the middle of the night, her stepfather said she was not supposed to be there, and "the girl was not answering her cell phone," all of which suggested the possibility that she was "hurt or otherwise in need of assistance");*United States v. Gambino-Zavala*, 539 F.3d 1221 (10th Cir. 2008) (with reports of multiple shots fired from within a specific apartment and knowledge that the man who lived there carried guns, entry justified to see if "an injured victim could be inside"); *United States v. Uscanga-Ramirez*, 475 F.3d 1024, 1028-29 (8th Cir. 2007) (because "officers had reliable information that Usacanga-Ramirez had locked himself in a bedroom with a gun and . . . was very upset over the disintegration of his marriage," they could enter to ensure "he would not seriously injury or kill himself"); *United States v. Chipps*, 410 F.3d 438 (8th Cir. 2005) (dispatcher told officer assault had occurred, and when officer arrived, he followed a trail of blood into the curtilage of the home, which reasonably "indicated that someone's life was in immediate danger"); *United*

States v. Gill, 354 F.3d 963 (8th Cir. 2004) (officers appropriately used ladder to look inside apartment to "ensure that no one inside was in need of assistance," after finding a man muddied on the ground below who may have jumped or fallen from the window, and who had blood on his shirt, but no apparent wounds); *United States v. Salava*, 978 F.2d 320 (7th Cir. 1992) (officers could explore the "possibility of a wounded victim" in defendant's trailer, where they had reliable information defendant had killed someone, he was seen covered with blood and in possession of a sawed-off shotgun, and was last seen at the trailer).

The Eighth Circuit provides zero explanation for extrapolating from Ms. LaFrancois's obviously *minor* facial scratches a conclusion that either she or her children were in imminent danger of serious injury. *See Brigham*, 547 U.S. at 403. Such an inference, in any event, is directly contrary to Officer Pregler's testimony that he and Officer Cross entered without a warrant precisely because they had no clue what was going inside the house or if someone might be injured, and they wanted to find out. Hr. Tr. p. 15 ("We don't know if there are any injuries. We don't know what's going on upstairs. We don't know what's going on in the house. Again, with the emotions that are going on, we've got to make sure everybody is ok." (emphasis added)). The inference is also contrary to Officer Cross's repeated contemporaneous assertions upon entry that officers were entitled to come inside for a "welfare check," as well as Officer Pregler's announcement that, "We are conducting an investigation. We have a right to be here." *See* Hr'g Ex. 1.

The Eighth Circuit's published judgment cannot be left to stand, as it effectively creates a de facto exception to the warrant requirement based entirely on law enforcement's reasonable suspicion of domestic violence. Application of the emergency aid exception, however, is case specific. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 21 (1968) ("[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant that intrusion . . . in light of the particular circumstances."). It does not excuse law enforcement's failure to get a warrant simply because domestic violence situations, in general, *can* become more volatile than other types of police calls. And it most certainly does not allow officers to go on a general investigative mission just to perform a "welfare check" just to determine in the first instance whether any children inside "might [be] injured," *Sanders*, 4 F.4th at 677 (emphasis added), particularly where officers have already been told that none of the home's occupants are in need of aid. *See e.g.*, *Hannon v. State*, 207 P.3d 344 (Nev. 2009) (officer not entitled to enter "to check everybody's welfare" upon responding to neighbor's 911 call of yelling, screaming and thumping on walls, where the woman who answered the door reported a "verbal argument" had occurred earlier and no one was injured or needed attention).

This lends no support to the Eighth Circuit's conclusion that officers could enter without a warrant to "either": (1) "provide emergency assistance to the child who was heard crying"; or (2) "prevent an imminent assault on the daughter who had reported the incident." Slip Op. p. 7. Surely a crying child inside a home

known to contain three small children cannot be the decisive factor, lest the "emergency aid" exception swallow the Fourth Amendment's warrant requirement entirely. Humans cry, especially children, and especially in emotionally charged situations like domestic disputes. But they also cry for a plethora of other reasons. A mere suspicion that Mr. Sanders assaulted Ms. LaFrancois, causing minor scratches, combined with a child crying, is no more indicative of one of the children inside being "seriously injured," than it is that the child was upset by the argument, hungry, sleepy, dirty, or just cranky. In any event, even if a crying child *is* enough to tip the balance, the right of officers to be present without a warrant lasts only so long as the exigency exists. Here, any purported exigency was extinguished immediately upon entry, when officers observed the crying one-year old unhurt on Mr. Sanders's hip, and could see that he was likely just yearning for the full bottle Mr. Sanders was holding in his hand. *See* Hr'g Ex. 1.

With the mystery of the crying child resolved, there was nothing about the scene justifying officers *staying* in the home, let alone going upstairs to locate the "excited" child in the window. Indeed, well before officers went upstairs to speak with the excited child, they were standing mere feet away from Ms. LaFrancois and Mr. Sanders, who was holding a small child. There was no chaos, no yelling, no fighting, and no weapons apparent—just the home's residents politely insisting to officers they were not entitled to come inside without a warrant. Under these circumstances, it is not even *plausible* that Mr. Sanders could have posed an imminent danger of serious injury to a child on an upper floor of the home. Ms.

LaFrancois's request to officers on the porch that they not tell "him" that the excited child called adds nothing to the analysis. Any possible danger of retaliation to the child was expressly conditioned on officers *telling Mr. Sanders* the child called them. Officers, of course, knew that had not occurred, and in fact, Officer Cross verbally assured LaFrancois before entering the home that he would not tell Mr. Sanders, obviating any reasonable belief that his knowledge might invoke a violent response against the child. Hr'g Ex. 1.

Respectfully, the Eighth Circuit analysis demonstrates a complete failure to carefully parse and consider the "totality of the circumstances," which necessarily includes both what officers knew at the time of entry *and* what they did not know. Highly relevant facts in the record, however, are completely ignored, even though they strongly undercut any possible conclusion that an objectively reasonable exigency justified the warrantless entry. Officers entered barely 50 seconds after knocking, knowing only a "disturbance" had been reported, Ms. LaFrancois had scratches on her face, a child was acting excited in an upstairs window, and another child was crying. They asked no questions at all about what had occurred prior to their arrival. They were assured by Ms. LaFrancois that both she and the children were okay. When Ms. LaFrancois politely declined admission to her home, officers were so unconcerned about the situation inside the house that they expressly assented to her reentering to ask Sanders to come outside. Officer Pregler even affirmatively testified that *at the time of entry*, they had no information whatsoever regarding any injury to anyone in the house, apart from minor scratches on Ms.

LaFrancois's face. Combined with Officer Pregler's announcement that "[w]e are conducting an investigation," and Officer Cross's insistence that the entry was to perform a "welfare check," the record supports only one conclusion: the warrantless entry in this case was for unlawful, investigative purposes, and not based on any specific, articulable facts supporting an objectively reasonable belief that anyone in the home had been, or was imminently going to be, seriously injured. The emergency aid exception is plainly inapplicable.

CONCLUSION

The government's exclusive reliance on *Cady*'s now-inapplicable "community caretaker" exception precluded the Eighth Circuit from affirming the warrantless entry in this case under the "emergency aid" exception, which was never litigated by the parties or considered by the district court. Even on its merits, however, the "emergency aid" is plainly inapplicable, because the facts of this case are so fundamentally lacking that no reasonable person could find the warrantless entry to be "reasonable" under the Fourth Amendment. Mr. Sanders respectfully requests that the Court grant certiorari, vacate the Eighth Circuit's decision, and remand the matter to the Court of Appeals with instruction that no exception to the warrant requirement justified law enforcement's warrantless entry into Mr. Sanders's home.

RESPECTFULLY SUBMITTED,

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