No. ___

IN THE

Supreme Court of the United States

CHRISTOPHER CASTAGNA; GAVIN CASTAGNA,
Petitioners,

v.

HARRY JEAN; KEITH KAPLAN; DARAN EDWARDS,
Respondents,

JEAN MOISE ACLOQUE; GARY BARKER; MICHAEL BIZZOZERO; TERRY COTTON; RICHARD DEVOE; JON-MICHAEL HARBER; CLIFTON HAYNES; GAVIN MCHALE; KAMAU PRITCHARD; WILLIAM SAMARAS; STEPHEN SMIGLIANI; ANTHONY TROY; JAY TULLY; BRENDAN WALSH; DONALD WIGHTMAN; JAMES DOE, Individually; JOHN DOE 1; JOHN DOE 2; JOHN DOE 3; JOHN DOE 4; JOHN DOE 5; JOHN DOE 6; JOHN DOE 7; JOHN DOE 8; JOHN DOE 9; JOHN DOE 10; JOHN DOE 11; JOHN DOE 12,
Defendants.

On Petition for Writ of Certiorari
United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Date: 11/29/2021

On Petition:

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QUESTIONS PRESENTED (Rule 14.1(a))

1. Did this Court's opinion in *Cady v. Dombrowski*, 413 U.S. 433 (1973) clearly establish that the community caretaking exception applied only to warrantless entries into automobiles, and not to warrantless entries into homes?

PARTIES TO THE PROCEEDINGS BELOW

Petitioners are Christopher Castagna and Gavin Castagna, Plaintiffs in the District Court and Plaintiffs-Appellees in the Court of Appeals.

Respondents are Keith Kaplan, Harry Jean and Daran Edwards. They were Defendants in the District Court and Defendants-Appellants in the Court of Appeals.

The following Defendants were also on the case caption in the District Court and in the Court of Appeals: Jean Moise Acloque, Gary W. Barker, Michael Bizzozero, Terry Cotton, Richard Devoe, Jon-Michael Harber, Clifton Haynes, Gavin McHale, Kamau Pritchard, William Samaras, Stephen Smigliani, Anthony Troy, Jay Tully, Brendan Walsh, Donald Wightman, John Doe 1, John Doe 2, John Doe 3, John Doe 4, John Doe 5, John Doe 6, John Doe 7, John Doe 8, John Doe 9, John Doe 10, John Doe 11, and John Doe 12.

LIST OF ALL RELATED PROCEEDINGS (Rule 14.1(b)(iii))

Christopher Castagna and Gavin Castagna v. Daran Edwards, Anthony Troy, Jay Tully, Kamau Pritchard, Michael Bizzozero, Keith Kaplan and Harry Jean, No. 15-cv-14208-IT, U.S. District Court for the District of Massachusetts. Amended Judgment entered on June 28, 2019; Second Amended Judgment Entered May 1, 2020.

Christopher Castagna; Gavin Castagna v. Harry Jean; Keith Kaplan; Daran Edwards (Defendants/Appellants) and Jean Moise Acloque; Gary Barker; Michael Bizzozero; Terry Cotton; Richard Devoe; Jon-Michael Harber; Clifton Haynes; Gavin McHale; Kamau Pritchard; William Samaras;

Stephen Smigliani; Anthony Troy; Jay Tully; Brendan Walsh; Donald Wightman; James Doe, Individually; John Doe 1; John Doe 2; John Doe; John Doe 3; John Doe 4; John Doe 5; John Doe 6; John Doe 7; John Doe 8; John Doe 9; John Doe 10; John Doe 11; John Doe 12 (Defendants), No. 19-1677, United States Court of Appeals for the First Circuit. Judgment entered on April 10, 2020. Ruling denying Plaintiffs' Motion to Recall Mandate, to Stay Ruling on Within Motion Pending Ruling on Rule 60(b) Motion, and to Set Deadline to File Petition for Rehearing dated July 2, 2021.

Christopher Castagna; Gavin Castagna v. Harry Jean; Keith Kaplan; Daran Edwards (Defendants/Appellants) and Jean Moise Acloque; Gary Barker; Michael Bizzozero; Terry Cotton; Richard Devoe; Jon-Michael Harber; Clifton Haynes; Gavin McHale; Kamau Pritchard; William Samaras; Stephen Smigliani; Anthony Troy; Jay Tully; Brendan Walsh; Donald Wightman; James Doe, Individually; John Doe 1; John Doe 2; John Doe; John Doe 3; John Doe 4; John Doe 5; John Doe 6; John Doe 7; John Doe 8; John Doe 9; John Doe 10; John Doe 11; John Doe 12 (Defendants), No. 21-1494, United States Court of Appeals for the First Circuit. The matter, which remains pending, involves Plaintiffs' appeal of the denial by the District Court for the District of Massachusetts of Plaintiffs' Motion for Relief from Judgment as to §1983 Wrongful Entry Claim.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Christopher Castagna and Gavin Castagna respectfully petition for a writ of certiorari to review the final order of the United States Court of Appeals for the First Circuit (hereinafter, the "First Circuit").

OPINIONS BELOW

The opinion of the First Circuit denying Plaintiffs' Motion to Recall Mandate, to Stay Ruling on Within Motion Pending Ruling on Rule 60(b) Motion, and to Set Deadline to File Petition for Rehearing is reported at *Castagna v. Jean*, 2 F. 4th 9 (1st Cir. 2021). App.[1] 1a-4a.

The opinion of the United States Court for the District of Massachusetts denying Plaintiffs' Motion for Relief from Judgment as to § 1983 Wrongful Entry Claim, and issuing indicative rulings, is reported at *Castagna v. Edwards,* Civil Action No. 15-cv-14208-IT, 2021 U.S. Dist. LEXIS 113795 (D. Mass. June 17, 2021). App. 61a-102a.

The opinion of this Court denying the Castagnas' Petition for Writ of Certiorari is reported at *Castagna v. Jean*, 141 S. Ct. 896 (2020). App. 60a.

The opinion of the First Circuit reversing the grant of a new trial is reported at *Castagna v. Jean*, 955 F. 3d 211 (1st Cir. 2020). App. 30a-57a.

The opinion of the United States District Court for the District of Massachusetts granting a new trial is reported at *Castagna v. Edwards*, 361 F. Supp. 3d 171 (D. Mass. 2019). App. 5a-29a.

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[1] "App." refers to the Appendix to the petition for a writ of certiorari.

JURISDICTION

On July 2, 2021, the United States Court of Appeals for the First Circuit issued an order denying Plaintiffs' Motion to Recall Mandate, to Stay Ruling on Within Motion Pending Ruling on Rule 60(b) Motion (hereinafter, "Motion to Recall Mandate"). *Castagna v. Jean*, 2 F. 4th 9 (1st Cir. 2021); App. 1a-4a.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The time for filing the within petition was extended to 150 days from the date of the First Circuit's denial of the Motion to Recall Mandate via a COVID-19 order regarding filing deadlines issued by this Court on March 19, 2020. A Supreme Court Order dated July 19, 2021, in relevant part, set the deadline to file a petition for writ of certiorari at 150 days from the date of a judgment or order in matters in which the judgment or order at issue was issued before July 19, 2021.

STATUTORY/CONSTITUTIONAL PROVISIONS INVOLVED

USCA Const. Amend. 4 provides:

> 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.

42 U.S.C. §1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT

On March 17, 2013, at approximately 7:38 p.m., roughly 1.5 hours after a 911 call was placed regarding a loud party at the intersection where Christopher Castagna's apartment was located, seven police officers, including Daran Edwards, Harry Jean and Keith Kaplan (collectively, the "Officers") arrived at the apartment where Christopher Castagna was hosting guests. *Castagna*, 955 F. 3d 211, 214 (1st Cir. 2020) ("*Castagna I*"); App. 32a-33a.

Kaplan heard screaming, music and talking from the apartment. *Castagna I*, 955 F. 3d at 214; App. 33a. He also saw some people leave the party, one of whom may have returned to the apartment. *Id.* Kaplan could see people drinking in the apartment, some of whom he thought looked underage. *Id.* Edwards heard loud music, and, he and Jean (who arrived later) saw people, who appeared to be underage, drinking. *Id.* at 214-215; App. 34a. According to Jean, a male stumbled onto the sidewalk and vomited before returning to the apartment. *Castagna I*, 955 F. 3d at 215; App. 34a.

At the apartment door, Kaplan yelled "hello" several times and announced: "Boston Police." *Id.* Hearing no response, he walked into the apartment through the open door into the kitchen, where guests were dancing. *Id.* The Officers entered the apartment to locate the homeowner, have the volume of the music lowered and to make sure that any underage drinkers and the person who vomited were safe. *Id.* at 215; App. 35a. The guests eventually turned off the music and spoke with Kaplan. *Castagna I*, 955 F. 3d at 215; App. 35a.

On December 22, 2015, the Castagnas filed a complaint in the District Court, which was later amended, alleging, among other things, various violations of 42 U.S.C. §1983. [ECF[2] Nos. 1, 108, 189]; J.A.[3] 45-72, 80-106, 107-132. The District Court had jurisdiction pursuant to 28 U.S.C. §1331. After a jury

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[2] "ECF" refers to the Electronic Case Files for the District Court case, Civil Action No. 15-cv-14208-IT.

[3] Pursuant to Supreme Court Rule 12.7, Petitioners cite to the Joint Appendix, Vol. I of II, filed in the U.S. Court of Appeals for the First Circuit in No. 19-1677. "J.A." refers to said Joint Appendix.

verdict in favor of the Defendants, the District Court granted the Castagnas' motion for new trial as to the Castagnas' Fourth Amendment unlawful entry claim. [ECF No. 284]; J.A. 38; App. 5a-29a. On June 28, 2019, the District Court entered an amended judgment on the unlawful entry claim against the Officers and in favor of the Castagnas, awarding each Castagna a nominal damage of one dollar. [ECF. No. 325]; J.A. 44.

The Officers appealed that ruling to the First Circuit, which had jurisdiction over the matter pursuant to 28 U.S.C. §1291. In accordance with its determination made only weeks earlier that the community caretaking exception applies to warrantless entries into the home, *see Caniglia v. Strom*, 953 F. 3d 112 (1st Cir. 2020); App. 30a-57a, the First Circuit reversed the decision of the District Court, finding that qualified immunity protected the Officers on the §1983 unlawful entry claims.[4] *Castagna I*, 955 F. 3d at 221; App. 48a-49a. As to the first prong of the qualified immunity test, the First Circuit found that the officers were permitted to enter the home through the open door without violating the Castagnas' constitutional rights. *Id.* at 220; App. 45a. According to the First Circuit, the Officers were performing the community caretaking function of "hav[ing] the music turned down and mak[ing] sure any underage guests were safe." *Id.* at 221; App. 47a. As to the second prong, the First Circuit found that, at the time of the 2013 incident, persuasive authority limiting the community caretaking exception to searches of automobiles lacked consensus. *Id.* at 222-

[4] The First Circuit did not reach the question of whether the officers are entitled to qualified immunity under the emergency aid exception to the warrant requirement. *Castagna*, 955 F. 3d at 218, n. 8; App. 42a.

223; App. 51a-52a. The Officers, the First Circuit concluded, could not have known that "their actions would clearly violate the Castagnas' constitutional rights." *Castagna I*, 955 F. 3d at 224-225; App. 54a-55a.

On May 1, 2020, the First Circuit issued a mandate in *Castagna v. Jean*, Docket No. 19-1677. App. 58a-59a. While *Caniglia* remained pending before the Supreme Court, this Court denied Castagnas' Petition for Writ of Certiorari. *Castagna v. Jean*, 141 S. Ct. 896, 2020 U.S. LEXIS 5899 (2020); App. 60a.

On May 17, 2021, this Court decided *Caniglia v. Strom*, 141 S. Ct. 1596 (2021). Justice Thomas, writing for this Court, wrote that police officers may enter property where either exigent circumstances exist or police officers are taking actions that a private citizen may do without concern for liability – like knocking on a front door. *Id.* at 1599. He stated: "[t]he First Circuit's 'community caretaking' rule, however, goes beyond anything this Court has recognized." *Id.* at 1599. In *Cady*, the search was of an impounded vehicle – "a constitutional difference that the opinion repeatedly stressed." *Id.*; *Cady*, 413 U.S. at 439-442 (quotations omitted). *Cady* makes an "unmistakable distinction between vehicles and homes…." *Caniglia*, 151 S. Ct. at 1599. While, in *Cady*, this Court recognized that police officers perform various civic tasks, that mere recognition did not constitute "an open-ended license to perform them anywhere." *Id.* at 1600. In vacating the judgment, Justice Thomas confirmed that "this Court has repeatedly 'declined to expand the scope of … exceptions to the warrant requirement to permit warrantless entry into the home.'" *Id.*, quoting *Collins v. Virginia*, 584 U.S. ___, 138 S. Ct. 1663, 1672 (2018).

Two weeks later, based upon this Court's *Caniglia* decision, the Castagnas filed in the District Court Plaintiffs' Motion for Relief from Judgment as to §1983 Wrongful Entry Claim (the "Rule 60(b)(6) Motion"). [ECF No. 339].

On June 16, 2021, the Castagnas filed in the First Circuit a Motion to Recall Mandate (Docket No. 19-1677). App. 72a-102a. The next day, the District Court, despite finding that this Court's ruling in *Caniglia* constituted an extraordinary circumstance for which relief under Fed. R. Civ. P. 60(b)(6) could be considered, nonetheless denied the Castagnas' Rule 60(b)(6) Motion on the ground that the First Circuit had not recalled its mandate. *Castagna v. Edwards*, Civil Action No. 15-cv-14208-IT, 2021 U.S. Dist. LEXIS 113795 (D. Mass. June 17, 2021); App. 61a-71a. The District Court nevertheless issued indicative rulings that, on the merits, she would vacate the Second Amended Judgment, find as a matter of law no qualified immunity on the Officers' motions for judgment, leave the question of why the Officers entered the home for a jury determination, and limit the Castagnas to nominal damages. *Id.*; App. 66a-71a. As to the motions for judgment as a matter of law, the District Court wrote that she would deny Defendants' motions and find, quoting *Matalon v. Hynnes*, 806 F. 3d 627, 635 (1st Cir. 2015), that "an objectively reasonable officer should have known that a warrantless entry into the [Plaintiffs'] home [to have music turned down] could not be effected on the basis of the community caretaking exception." *Castagna v. Edwards*, 2021 U.S. Dist. LEXIS 113795, at *11; App. 69a-70a. With regard to Plaintiffs' Motion for Judgment as to Liability, the District Court wrote that she would submit to a jury the question as to "whether the Defendants entered the home to have

the music turned down or whether they entered the home to protect against underage drinking as their lawyers claim." *Id.* at *12; App. 70a.

The Castagnas appealed the denial by the District Court of the Rule 60(b)(6) Motion, the appeal of which remains pending in the First Circuit. (Docket No. 21-1494).

On July 2, 2021, a two-judge panel of the First Circuit denied the Motion to Recall Mandate, *Castagna v. Jean*, 2 F. 4th 9, 10 (1st Cir. July 2, 2021)("*Castagna II*"), and found, in violation of this Court's expressed adherence to *Cady's* definitive restrictive limitation of the community caretaking function to only automobiles, that *Caniglia* "held that police officers **may not always** enter a home without a warrant to engage in community caretaking functions, [*Caniglia*] at 141 S. Ct.1599-1600." App. 1a-4a (emphasis added). That language erroneously leaves open the door to circumstances in which a police officer may enter and search a home without a warrant under the community caretaking exception. The First Circuit found that, "[a]s controlling authority in this Circuit establishes, in 2013 there was no clearly established rule preventing the officers from entering the apartment. *See MacDonald [v. Town of Eastham*, 745 F. 3d 8, 14 (1st Cir. 2014)]," *Castagna II*, 2 F. 4th at 10; App. 3a.

REASONS FOR GRANTING THE WRIT

1. The Petitioners bring the within appeal under Supreme Court Rule 10(c), where the First Circuit has decided an important federal question to conflict with a relevant decision of this Court. The two-judge panel in *Castagna II* found that qualified immunity barred the Castagnas' claims because, in its view, according to the First Circuit and other

Circuit Courts, the law was not clearly established in 2013 that a police officer could not enter an apartment under the community caretaking exception. *Castagna II*, 2 F. 4th at 9-10; App. 2a-3a. That finding either appears to, or does, ignore this Court's ruling in *Cady*, recently reaffirmed in *Caniglia*, establishing almost fifty years ago that the community caretaking exception applied to only automobiles. *Cady*, 413 U.S. at 440-448; *Caniglia*, 141 S. Ct. at 1598-1600. As stated by Justice Thomas in *Caniglia*, "this Court has repeatedly 'declined to expand the scope of … exceptions to the warrant requirement to permit warrantless entry into the home.'" *Id.* at 1600, *quoting Collins*, 138 S. Ct. at 1667. As a result, qualified immunity does not bar the Castagnas' §1983 wrongful entry claims.

Almost one hundred years ago, this Court first recognized a distinction in constitutional principles applicable to searching homes and automobiles. In 1925, this Court acknowledged that, "practically since the beginning of the Government," the freedom from unreasonable searches and seizures recognizes a "necessary difference between a search of a … dwelling house … in respect of which a proper official warrant readily may be obtained, and a search of a[n] … automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought." *Carroll v. United States*, 267 U.S. 132, 153 (1925).

Almost forty years later, this Court reiterated this constitutional distinction in treatment between automobiles and homes, writing that:

> [c]ommon sense dictates, of course, that questions involving searches of

> motorcars or other things readily moved cannot be treated as identical to questions arising out of searches of fixed structures like houses. For this reason, what may be an unreasonable search of a house may be reasonable in the case of a motorcar.

Preston v. United States, 376 U.S. 364, 366-367 (1964); *citing Carroll* v. *United States*, 267 U.S. at 153.

In *Cady*, 413 U.S. at 435-436, which followed in 1973, this Court first announced its application of the community caretaking function in a case in which Dombrowski was arrested in Wisconsin for operating under the influence of alcohol after an automobile collision. Dombrowski had told officers that he was a Chicago police officer, and the police believed that Chicago police officers were required to have their service weapons in their possession. *Id.* at 436. A police officer then went to the location to which the vehicle was towed in order to look for the service weapon. *Id.* at 436-437. In the vehicle, the officer found items which ultimately led to a murder charge against Dombrowski. *Id.* at 434, 437.

In *Cady*, this Court wrote that police officers "frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441. The *Cady* Court again referred to the "constitutional difference" between searches of homes and vehicles arising out of the "ambulatory character" of vehicles and the notion that frequent

non-criminal contact between officers and vehicles will afford opportunities for officers to observe evidence of crimes. *Id.* at 442. Finding the search of Dombrowski's automobile not unreasonable under the Fourth and Fourteenth Amendments, this Court wrote that "[t]he Court's previous recognition of the distinction between motor vehicles and dwelling places leads us to conclude that the type of caretaking 'search' conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained." *Id.* at 447-448. Nothing in *Cady* permitted, or hinted as permissible, warrantless searches of homes under the community caretaking exception.

Since *Cady*, this Court has discussed the concept of the community caretaking exception (or function) in few decisions. In *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976), this Court mentioned the community caretaking function in the context of a case involving a warrantless search of an impounded vehicle. In that case, this Court reiterated its traditionally drawn distinction between automobiles and homes in the Fourth Amendment context. *Id.* at 367-368. The Court discussed the lesser expectation of privacy in a vehicle, arising out of the vehicle's mobility and continuing governmental regulation. *Id.* Citing *Cady*, this Court noted that automobiles are often taken into custody by police in order to preserve evidence, or to remove damaged or disabled automobiles from the street, as a part of public safety. *Id.* at 368. "The authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience is beyond challenge." *Opperman,* 428 U.S. at 368.

In *Colorado v. Bertine*, 479 U.S. 367, 381 (1987), a case involving the search of a backpack and containers in an impounded vehicle, Justice Marshall, joined by Justice Brennan, authored a dissent which referred to the community caretaking function.

This Court next spoke on the scope of the community caretaking function earlier this year, in *Caniglia v. Strom*, ___ U.S. ___, 141 S. Ct. 1596 (2021). Justice Thomas, writing for this Court, held that the community caretaking function announced in *Cady* did not justify "warrantless searches and seizures in the home." *Id.* at 1596. The Fourth Amendment guarantees the right of a person to "'retreat into his [or her] home and there be free from unreasonable governmental intrusion.'" *Id.* at 1599; *quoting Florida v. Jardines*, 569 U.S. 1, 6 (2013). Warrantless searches of a home are only permitted in limited circumstances – such as, when there is a valid warrant, when certain exigent circumstances are present or when officers are performing actions that a private citizen is permitted to take. *Caniglia*, 141 S. Ct. at 1599.

As Justice Thomas wrote, "the First Circuit's 'community caretaking rule, however, goes beyond anything this Court has recognized." *Id.* The *Cady* decision "repeatedly stressed" the difference, in a constitutional sense, between a home and a vehicle, pointing out that, in *Cady*, there was a difference between the review of a vehicle in police custody and a vehicle parked next to a person's home. *Id.* In other words, the additional protections of a home are ascribed to a vehicle when it is parked within the curtilage of a home.

This Court's *Caniglia* decision highlights and reaffirms "*Cady's* [long-standing,] unmistakable

distinction between vehicles and homes," and notes that the mere fact that officers have to perform various caretaking tasks in our society is "not an open-ended license to perform them anywhere." *Caniglia,* 141 S. Ct. at 1600. "[T]his Court has repeatedly 'declined to expand the scope of … exceptions to the warrant requirement to permit the warrantless entry into the home.'" *Id.* (*quoting Collins*, 138 S. Ct. at 1667).

Approximately two weeks after this Court's ruling in *Caniglia*, this Court reversed a guilty plea on the basis of *Caniglia* where the matter involved the Eighth Circuit's reliance on the community caretaking exception to support a warrantless entry into a home. *Sanders v. United States*, ___ U.S. ___, 141 S. Ct. 1646, 1646 (2021). In his concurring opinion, Justice Kavanaugh referred to the community caretaking doctrine, and noted that, on remand, the Eighth Circuit could consider whether to find the warrantless entry into the home permissible when officers reasonably believe that an occupant is threatened with serious injury." *Id.* In doing so, Justice Kavanaugh left open the door for another exception to the warrant requirement, like the emergency aid exception, to provide a constitutional basis for the warrantless entry into the home[5].

This Court, then, has consistently limited the scope of the community caretaking exception to only warrantless searches of an automobile, and, further, has never extended this exception to the home. In *Castagna I*, the First Circuit, relying on its own decision in *Caniglia*, applied the community

[5] As noted in footnote 4, *supra*, the emergency aid exception has not been addressed in this matter at the First Circuit.

caretaking exception to a warrantless entry into the Castagnas' apartment. *Castagna I*, 955 F. 3d at 220; 46a. In *Castagna II*, issued **after** this Court's decision in *Caniglia*, the First Circuit both failed to accept the restriction of this Court which has never extended the community caretaking exception beyond automobiles, and found that qualified immunity barred the Castagnas' claims arising out of a 2013 incident. *Castagna II*, 2 F. 4th at 10; App. 64a.

2. We turn, then, to the question of whether, in 2013, it was clearly established, for purposes of qualified immunity analysis, that the Officers could not make a warrantless entry into the apartment under the community caretaking exception. "The doctrine of qualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015)(*per curiam*)(*quoting Pearson v. Callahan*, 555 U.S. 223, 231 (2009)); *Stamps v. Town of Framingham*, 813 F. 3d 27, 33-34 (1st Cir. 2016). A constitutional right is clearly established when it is "sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Mullenix*, 577 U.S. at 11, *quoting Reichle v. Howards*, 566 U.S. 658, 664 (2012) (internal quotation marks and alteration omitted). The "existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011). Not only must the legal principle have a clear enough foundation in precedent that "every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply," *District of Columbia v. Wesby*, ___ U.S. ___, 138 S. Ct. 577, 589-90 (2018), but "[t]he 'clearly established' standard also requires

that the legal principle clearly prohibit the officer's conduct in the particular circumstances before him [or her]." *Id.* at 590.

This Court has yet to decide what precedents, other than its own, "qualif[ies] as controlling authority for purposes of qualified immunity. *See, e.g., Reichle,* 566 U.S. at 665-666 (reserving question of whether Court of Appeals' decisions can be "a dispositive source of clearly established law")." *Wesby*, 138 S. Ct. at 591 n. 8. This Court has left open the possibility that "a 'robust consensus of cases of persuasive authority' in the Courts of Appeals 'could itself clearly establish'" a federal right, and has assumed same, for the sake of argument, in some cases, although not in the area of the community caretaking function. *Taylor v. Barkes*, 575 U.S. 822, 826 (2015)(*per curiam*)(*quoting City and County of San Francisco v. Sheehan*, 575 U.S. 600, 617 (2015)); *Carroll v. Carman*, 574 U.S. 13, ___, 135 S. Ct. 348, 350 (2014)(*per curiam*); *Reichle*, 566 U.S. at 665-666. Possibly foreshadowing that this Court deems only its own rulings to be the proper source of precedent as to whether a right is clearly established, this Court recently pointed out in a qualified immunity case that the Ninth Circuit and the Respondent had not identified any Supreme Court case on whether a particular statement of law was clearly established. *Rivas-Villegas v. Cortesluna*, 211 L. Ed. 2d 164, 168 (October 18, 2021). In *Rivas-Villegas*, this Court wrote that the Ninth Circuit relied only on its own precedent, and found that, "[e]ven assuming that Circuit precedent can clearly establish law for purposes of §1983," the Ninth Circuit case was distinguishable. *Id.*

In *Castagna II*, 2 F. 4th at 9-10, App. 2a, the First Circuit relies upon cases from the First Circuit,

MacDonald, 745 F. 3d at 8, and other Circuits, *United States v. Quezada*, 448 F. 3d 1005, 1007 (8th Cir. 2006); *United States v. Rohrig*, 98 F. 3d 1506, 1520-23 (6th Cir. 1996); *United States v. York*, 895 F. 3d 8, 14 (1st Cir. 2014) in concluding that the law was not clearly established as of 2013. The First Circuit's reliance upon cases from its and various other Circuits fails to account for and explain away this Court's binding precedent of *Cady*. "If the Supreme Court has directly decided an issue, the lower courts must reach the same result 'unless and until [the] court reinterpret[s] the binding precedent.'" *United States v. Sampson*, 275 F. Supp. 2d 49, 73 (D. Mass. 2003)(*quoting Agostini v. Felton*, 521 U.S. 203, 238 (1997)). Courts of Appeals are constrained to follow Supreme Court precedent. *United States v. Jimenez-Banegas*, 790 F. 3d 253, 259 (1st Cir. 2015); *see Evans v. Thompson*, 518 F. 3d 1, 9 (1st Cir. 2008)("Many limitations on the ability of federal courts to grant relief originate not from Congress, but from binding Supreme Court precedent."); *see also Martin v. Hunter's Lessee*, 14 U.S. 304 (1816).

> '[I]t is this Court's prerogative alone to overrule one of its precedents.' *United States* v. *Hatter*, 532 U. S. 557, 567 (2001) (quoting *State Oil Co.* v. *Khan*, 522 U. S. 3, 20 (1997); internal quotation marks omitted); see *Rodriguez de Quijas* v. *Shearson/American Express, Inc.*, 490 U. S. 477, 484 (1989).... 'Our decisions remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality.' *Hohn v. United States,* 524 U. S. 236,

252-253, 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998).

Bosse v. Oklahoma, __ U.S. __, __, 137 S. Ct 1, 2-3 (2016).

As any officer, acting reasonably and objectively, is expected to know the law, and as the clearly established law here was determined in *Cady* well before 2013 and reaffirmed in *Caniglia*, a reasonable officer would or should know to follow that Supreme Court precedent, and should have known of the vital protections of the Fourth Amendment with regard to the sanctity of the home. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818-819 (1982); *see Melton v. City of Okla. City*, 879 F. 2d 706, 731 (10th Cir. 1989); *Hall v. Ochs*, 817 F. 2d 920, 924 (1st Cir. 1987). By 2013 and, indeed, as far back as 1973, this Court had established that the scope of the community caretaking exception was limited to automobiles, and did not apply to warrantless entries into a home. As a result, qualified immunity cannot and does not bar the Castagnas' claims.

This case presents the opportunity for this Court to clarify that only Supreme Court precedent, not Circuit Courts' precedents, may serve as a basis for determining whether a particular point of law is clearly established for purposes of qualified immunity. At the very least, the Circuit Court decisions which post-date and conflict with this Court's precedents cannot be a source of clearly established law, as only this Court, and not its subordinate Circuit Courts, may overrule this Court's precedents. *See Bosse*, 137 S. Ct. at 2-3. To the extent that subsequent lower court opinions (following the publication of an opinion by this Court) may somehow be utilized as a basis for whether a point of law is

clearly established, this Court should use the case at bar as an opportunity to clarify that, even so, an erroneous interpretation of law by a lower court may not serve as such a basis. Qualified immunity should not provide a cloak of protection to police officers who claim that the law on whether the community caretaking exception applied to warrantless searches of homes was not clearly established in 2013, when this Court acknowledged the constitutional difference between homes and automobiles almost 100 years ago, and, in 1973, clearly established that the scope of the community caretaking exception was limited to only automobiles. *See Cady*, 413 U.S. at 441-442; *Caniglia*, 141 S. Ct. at 1596.

3. The inapplicability of qualified immunity here, though, does not end the inquiry. In ruling on the Rule 60(b)(6) Motion, the District Court wrote that the First Circuit's decision in *Caniglia* was published nine months after the District Court entered an Amended Judgment in favor of the Castagnas and that the First Circuit then relied upon this Court's decision in *Caniglia* in finding that the Officers' entry into the home was protected under the community caretaking exception. *Castagna v. Edwards,* Civil Action No. 15-cv-14208-IT, 2021 U.S. Dist. LEXIS 113795 **6-7 (D. Mass. June 17, 2021). App. 65a-66a. "In these extraordinary circumstances," the District Court found, before denying the motion because of the mandate and issuing indicative rulings, "relief may be considered under Rule 60(b)(6)." *Id.* at *7; App. 66a. In *Castagna II*, 2 F. 4th at 9-10; App. 2a-3a, the First Circuit found a lack of extraordinary circumstances to justify recalling the mandate, and held that the Castagnas had "not come close to meeting their burden."

Circuit Courts have "inherent power to recall their mandates, subject to a review for an abuse of discretion." *Calderon v, Thomson*, 523 U.S. 538, 549-550 (1998). A Circuit Court may only exercise that power [to recall its mandate] upon a demonstration of "extraordinary circumstances." *See e.g. United States v. Fraser*, 407 F. 3d 9, 10 (1st Cir. 2005), *quoting Calderon*, 523 U.S. at 550. "**If a situation arose, such as a subsequent decision by the Supreme Court, which showed that our original judgment was demonstrably wrong, a motion to recall mandate might be entertained.**" *Legate v. Maloney*, 348 F. 2d 164, 166 (1st Cir. 1965)(emphasis added); *see Boston & Me. Corp. v. Town of Hampton*, 7 F. 3d 281, 283 (1st Cir. 1993).

The First Circuit here abused its discretion in denying the Motion to Recall Mandate. *Castagna I* was issued on the heels of, and in reliance upon, the First Circuit's *Caniglia* decision, which wrongly found that the community caretaking exception applied to the home. The Castagnas sought certiorari relief in this Court, albeit unsuccessfully. App. 60a. Shortly after this Court issued its decision in *Caniglia*, which demonstrated that the First Circuit had erroneously decided *Castagna I*, the Castagnas filed both the Rule 60(b)(6) Motion in the District Court and the Motion to Recall Mandate in the First Circuit. [ECF No. 339]; App. 72a-102a. The Castagnas have diligently and timely pursued relief in this matter, and the District Court has issued indicative rulings which, among other things, would vacate the judgment in favor of the Officers. App. 66a-71a. The reversal by this Court of the First Circuit's *Caniglia* opinion, which served the First Circuit as the basis for its erroneous application of the community caretaking exception to the Castagnas' case, demonstrates the sort of

"exceptional circumstance" – the rare case that justifies the recall of a mandate. *Fraser*, 407 F. 3d at 10, *quoting Calderon*, 523 U.S. at 550; *Legate*, 348 F. 2d at 166.

The Castagnas stand in a rare circumstance in which the First Circuit's decision in the Castagna matter was sandwiched in the brief period between the First Circuit Court's ruling in *Caniglia* (which the First Circuit relied upon in reversing the judgment in favor of the Castagnas) and this Court's reversal of that ruling. The First Circuit has ignored, or failed to follow, this Court's established precedent, causing a great injustice to the Castagnas. If left undisturbed, the *Castagna II* decision may mislead readers by permitting them to assume that the limitation of the community caretaking exception to automobiles was not clearly established as of 2013. The Castagnas, therefore, seek certiorari relief from this Court.

CONCLUSION

For the reasons above, this Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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