No. _____

In The
Supreme Court of the United States

BRYCE WATKINS,

Petitioner,

v.

BRIAN WUNDERLICH, KEVIN NICHOLS, TAMMY BLACK,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Georgia v. Randolph*, 547 U.S. 103, 120 (2006), this Court clearly established that "a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." A circuit split exists regarding *Randolph*'s application when the police enter a dwelling to arrest someone for domestic violence. The weight of authority has clearly established that a home entry based on reported domestic violence is only justified if the alleged victim's safety may be in immediate danger. Here, the police knew the alleged victim of domestic violence was standing outside the home safely in a park blocks away from Petitioner's home when they entered his home based on a co-occupant's consent, despite being aware of Petitioner's unequivocal non-consent and his physical presence in his home. Accordingly, the questions presented are:

1. Whether the Fourth Amendment permits the police to enter a shared dwelling solely based on consent, when a physically present resident recently has expressly refused to consent to the entry, in order to arrest a suspect for domestic violence.

2. Whether *Georgia v. Randolph* clearly established that Respondents were prohibited under the Fourth Amendment from entering Petitioner's home, when Respondents entered Petitioner's home to arrest

QUESTIONS PRESENTED – Continued

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him based on his co-occupant's consent to the home entry, even though Respondents knew Petitioner was physically present and recently expressly refused to consent and that his co-occupant was physically safe and blocks away from the home.

PARTIES TO THE PROCEEDING

Petitioner, Bryce Watkins, was the plaintiff-appellant in the court of appeals. Respondents, Tammy Bozarth, Kevin Nichols, and Brian Wunderlich, in their individual capacities, were the defendants-appellees in the court of appeals.

STATEMENT OF RELATED CASES

- *Watkins v. Wunderlich, et al.*, No. 1:20-cv-01172-RM-MEH, U.S. District Court for the District of Colorado. Judgment entered September 22, 2022.
- *Watkins v. Wunderlich, et al.*, No. 22-1358, U.S. Court of Appeals for the Tenth Circuit. Judgment entered July 25, 2023.

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PETITION FOR WRIT OF CERTIORARI

Bryce Watkins petitions for a writ of certiorari to review the Tenth Circuit's judgment in this case.

OPINIONS BELOW

The opinion of the Tenth Circuit is unpublished and is reproduced in the appendix hereto ("App.") at App. 1-30. The Tenth Circuit's Order denying Mr. Watkin's petition for rehearing is reproduced at App. 43.

The opinion of the United States District Court for the District of Colorado granting the defendants' motions for summary judgment is unreported and is reproduced at App. 31-42.

JURISDICTION

The district court had jurisdiction over Petitioner's federal civil rights claims pursuant to 28 U.S.C. § 1331. Jurisdiction in the Tenth Circuit Court of Appeals was proper pursuant to 28 U.S.C. § 1291, as Petitioner appealed from a final decision of the district court. The district court entered an order granting Respondents' motion for summary judgment on September 22, 2022. The district court's order dismissed all of the Petitioner's claims against all the Respondents. Final judgment was entered on September 22, 2022. The Tenth Circuit entered its opinion on June 23, 2023. The Tenth

Circuit denied rehearing and rehearing en banc on July 17, 2023. This petition is timely filed, and the Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment 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.

U.S. Const. amend. IV.

STATEMENT OF THE CASE

I. Introduction

Respondents, sheriffs employed by the Douglas County, Colorado sheriff's office, had just one potential legal basis for entering Petitioner's private home on April 28, 2018: the consent of one co-occupant who, while apparently safe and blocks from her home had alleged that while in the home, she was the victim of domestic violence. It is undisputed that they lacked a warrant and that no exigency existed at the time. However, Respondents knew at the time that the one

physically present resident in the home, Petitioner, had expressly refused to permit the police to enter his home just a few minutes before they entered it and then forcibly arrested him inside. As explained below, Respondents'[1] home entry violated the constitutional law this Court clearly established in *Georgia v. Randolph*, 547 U.S. 103, 120 (2006). The Tenth Circuit's erroneous holding to the contrary exacerbated a circuit split that exists interpreting *Randolph*. The public at large, and law enforcement and legal practitioners in particular, need clear guidance from this Court regarding the important and recurring Fourth Amendment issues presented by *Randolph*.

II. Petitioner expressly communicated to the Respondents that they could not enter his home.

On the evening of April 28, 2018, Petitioner Bryce Watkins' wife at the time filed a police report with the Douglas County, Colorado sheriff's office alleging that she and Mr. Watkins had been involved in a domestic violence incident on the morning of April 28, 2018. The

[1] At the summary judgment stage, Petitioner asserted an unlawful entry claim against Douglas County Sheriff Kevin Nichols for his entry into the garage and the living area of his home, and against Douglas County Sheriff Tammy Bozarth for her entry into his garage only. For brevity's sake, however, Petitioner generally collectively refers to the Appellees herein. Petitioner originally brought unlawful entry claims against all three Respondents, but the district court dismissed some of those claims when it granted in part Respondents' motion to dismiss under Fed. R. Civ. P. 12(b)(6).

police were unable to contact Mr. Watkins on April 28th.

About 24 hours after the reported altercation between Mr. and Ms. Watkins, Ms. Watkins called 911 and stated that Mr. Watkins had recently arrived home. Soon afterwards, Deputy Kevin Nichols, Deputy Tammy Black, and Sergeant Brian Wunderlich (Respondents) of the Douglas County Sheriff's Office were dispatched to the Watkins' residence in Parker, Colorado to follow up on the April 28th domestic violence report. They arrived in separate patrol vehicles at about 9:30am on April 29th. As the police knew, Ms. Watkins was safely standing outside in a park blocks away from Mr. Watkins' home when Nichols arrived on scene, and no one besides Mr. Watkins was in his home at the time.

Deputy Nichols and Ms. Watkins spoke while they were in the park together. Ms. Watkins identified Mr. Watkins' home and told Nichols that she and Mr. Watkins live there together. Ms. Watkins also told Nichols that there were not any firearms in the home. The police had no reason to believe any safety threat existed at the time inside Mr. Watkins' home.

During Nichols' conversation with Ms. Watkins in the park, Petitioner called his wife's phone, and Deputy Nichols answered it. Nichols asked Mr. Watkins to come out of the house to speak with deputies. Mr. Watkins refused. Mr. Watkins instead clearly asserted to Nichols that law enforcement could not enter his home.

Nichols reported on his police radio (which at least Respondents Black and Wunderlich could hear at the time) that he had just talked with Mr. Watkins, that Mr. Watkins was refusing to come to the door, that Mr. Watkins stated he was going to take a shower, and that Mr. Watkins hung up on him (Nichols). Thus, all the Respondents knew that Mr. Watkins unequivocally did not consent to law enforcement entering his home.[2]

Before leaving the park, Nichols also asked Ms. Watkins if there was a garage code, and she stated that there was and gave him the code. Ms. Watkins told Nichols that this same code would open the front door. However, Nichols did not ask Ms. Watkins if the police had permission to enter Mr. Watkins' home, nor did Ms. Watkins state that the police had permission to enter Mr. Watkins' home.

Once Nichols ended his conversation with Ms. Watkins, he reentered his patrol vehicle and drove the short distance to Mr. Watkins' house. He reported on the radio to his co-Respondents that he was heading to Mr. Watkins' home, and that Ms. Watkins was going to remain in the park. Respondents Black and Wunderlich were standing just outside Mr. Watkins' house when Nichols arrived.

Nichols relayed the garage code Ms. Watkins provided to Black and Wunderlich. Wunderlich tried to

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[2] Respondents conceded for purposes of summary judgment that they knew that Petitioner had unequivocally refused to allow the police to enter his home shortly before they first entered it.

open the garage door using the code Ms. Watkins provided but was unable to do so. Nichols then entered the code Ms. Watkins had given him into the garage door keypad. It worked – and the garage door opened. The garage manifestly was part of Mr. Watkins' home; it was fully encompassed and enclosed by the walls and roof of Mr. Watkins' house, and there were two cars and numerous other personal effects inside. The garage was not semi-detached or detached from the house.

III. Respondents Nichols and Black First Entered Petitioner's Home Through the Garage.

Respondents Nichols and Black entered Mr. Watkins' garage that was part of the interior of his home. As Respondents Nichols and Black prepared (with weapons drawn) to open the door into the next room in Mr. Watkins' house, Wunderlich asked if Ms. Watkins had given them permission to go inside. Nichols told Wunderlich that she had not explicitly given law enforcement permission to enter the home.

Nichols then went back outside by passing underneath the open garage door, in order to speak with Ms. Watkins again. Meanwhile, Black remained inside the garage.

Nichols walked back to the park to ask Ms. Watkins if she would consent to the deputies' entry to the home. For the first time, she directly said that she consented. However, Respondents still knew that Mr.

Watkins had explicitly refused to consent to the police entering his home just a few minutes earlier.

IV. Respondents Then Entered the Living Area of Respondent's Home Despite Knowing He Had Unequivocally Refused to Consent to the Entry, and Despite Lacking a Warrant or an Exigency.

Nichols again entered Mr. Watkins' home via the garage and joined Black, who was already there. Nichols entered the living area of Mr. Watkins' home by opening the closed door separating the garage and laundry room and went into the laundry room. Black followed close behind him.

Black and Nichols then went through Mr. Watkins' kitchen area to a staircase that led to the second floor. Once they were inside Mr. Watkins' home, Respondents Nichols and Black started loudly announcing that the sheriff's office was there and demanding that Watkins immediately come out and talk with them. Wunderlich entered Mr. Watkins' home through the front door around the time that Nichols and Black arrived at the base of the staircase. The police observed nothing concerning or out of the ordinary in Mr. Watkins' home. In fact, Respondents conceded that there was no exigent circumstance when they entered Mr. Watkins' home.

Mr. Watkins was upstairs applying lotion to his face at the time, having recently exited the shower. Upon hearing the loud commands of unexpected home intruders, Mr. Watkins came partway down the stairs.

Mr. Watkins was bewildered – and repeatedly asked what was going on. No one answered this reasonable query. Mr. Watkins also clearly was unarmed and nonthreatening – wearing only a towel around his waist at the time.

V. Respondents Subjected Petitioner to Significant Physical Force Without Justification Inside His Home.

Nichols and Black then pointed their weapons straight at Mr. Watkins. In the ensuing moments, Mr. Watkins again plainly communicated that the police did not have permission to be in his home by loudly and clearly stating, *inter alia*:

- "Excuse me, you're in my house!"
- "You're in my house!"
- "This is 50% my house! My name is on the title!"

Additionally, when Nichols said that "your wife gave us permission" to be in the home, Mr. Watkins immediately exclaimed "No!"

Though Mr. Watkins again unequivocally communicated to the police that they did not have permission to be inside his home, none of this deterred the Respondents from continuing to occupy Mr. Watkins' home. Soon after Mr. Watkins first saw the Respondents, he complied with their commands for him to come down the stairs and descended to the base of his staircase. He kept asking the Respondents for an

explanation about what was going on. They again failed to provide one and thereby escalated the situation.

After Mr. Watkins stopped on the bottom step, Deputy Nichols tried to grab one of Mr. Watkins' arms, and he reflexively pulled his arms away and began to back up the stairs. However, Mr. Watkins did nothing that was threatening at the time. Mr. Watkins also did nothing indicating that he was attempting to flee his home.

Almost instantaneously after Mr. Watkins took just a few steps backwards, Deputy Nichols grabbed and tackled him, throwing Mr. Watkins down hard to the ground with his back pointed towards the stairs. At about the same time, Nichols clenched Mr. Watkins' neck with one of his hands and began to intentionally choke him. At no point during Mr. Watkins' interaction with Respondents did he kick, punch, or spit on anyone, nor did Mr. Watkins threaten to harm law enforcement in any way.

Mr. Watkins was by this point petrified. Law enforcement had entered the sanctity of his home (repeatedly) despite his unequivocal objections, failed to ever state that he was under arrest, pointed deadly weapons at him, and subjected him to physical force, including a large male deputy tackling and choking him. Consequently, Mr. Watkins instinctively tried to retreat further up the stairs. Respondents' unreasonable conduct recklessly escalated the situation.

Nichols, Wunderlich, and Black, acting in concert, immediately chased Mr. Watkins up the stairs and Wunderlich deliberately slammed him down very hard to the ground, face first, while he was still on the stairs. This caused serious additional pain to Mr. Watkins. Mr. Watkins further suffered the indignity of his towel falling off his body during this time. He was now naked.

Respondents Nichols, Wunderlich, and Black, acting in concert, continued to subject Mr. Watkins to substantial physical force once he was on the ground (and naked). For example, After Wunderlich slammed Mr. Watkins to the ground on his stairs, Wunderlich admitted to crushing Mr. Watkins under his approximately 255 pounds of body weight, even though Mr. Watkins was not resisting at the time. Nichols placed a taser in his back and threatened to deploy it if he did not stop resisting (though Mr. Watkins was clearly not resisting at the time). Even Wunderlich admitted that Nichols was unjustified in threatening to taser Mr. Watkins after Mr. Watkins was handcuffed and fully restrained.

Nichols then intentionally excessively tightly handcuffed Mr. Watkins' hands behind his back, while he was still lying naked on the staircase. This caused significant additional pain to Mr. Watkins' wrists. At no relevant time did any Appellee try to intervene to stop their co-Respondents from subjecting Mr. Watkins to excessive force, despite having the opportunity to do so.

Eventually, Wunderlich retrieved clothes for Mr. Watkins and Nichols put pants on him. The Respondents then escorted Mr. Watkins, still shirtless and

shoeless, to an awaiting patrol car in front of his onlooking neighbors and his prospective work clients.

Mr. Watkins was then transported to the DCSO jail. As mentioned, the Respondents intentionally placed Mr. Watkins in excessively tight handcuffs. They then kept him excessively tightly cuffed for an extended period. Of particular note, while Mr. Watkins was waiting to be booked as Black typed the police report, he asked her repeatedly if someone could loosen his handcuffs because, as he explained, he was starting to lose feeling in his hands. Black intentionally took no action to ameliorate his reported pain and loss of circulation for over an hour. Mr. Watkins suffered visibly bruised wrists and other injuries from this excessive force.

VI. Procedural History

Based on the facts above, Petitioner filed a lawsuit in the United States District Court for the District of Colorado. Petitioner brought Fourth Amendment claims against Respondents pursuant to 42 U.S.C. § 1983 for unlawfully entering his home and for excessive force. The district court had jurisdiction over Petitioner's federal civil rights claims pursuant to 28 U.S.C. § 1331. The district court entered an order granting Respondents' motion for summary judgment on September 22, 2022. The district court's order dismissed all of Petitioner's claims against all the Respondents. Final judgment was entered on September 22, 2022. Petitioner timely filed his notice of appeal in the Tenth Circuit on October 20, 2022.

The United States Court of Appeals for the Tenth Circuit fully affirmed the district court's summary judgment order on June 23, 2023. Regarding Petitioner's unlawful entry claim, the Tenth Circuit granted qualified immunity to the Respondents. The Tenth Circuit held that the relevant law was not clearly established, but failed to define the law applicable to the circumstances underlying Petitioner's case. Respondent timely filed a petition for rehearing en banc, which was denied on July 7, 2023.

ARGUMENT

I. Summary of Reasons for Granting Petition

This Court clearly established in *Georgia v. Randolph*, 547 U.S. 103, 120 (2006) that "a warrantless search of a shared dwelling for evidence over the express refusal of consent by a physically present resident cannot be justified as reasonable as to him on the basis of consent given to the police by another resident." However, a circuit split exists regarding *Randolph*'s application when officers enter a dwelling to arrest someone for domestic violence. As the Tenth Circuit explicitly noted in its opinion below, the Sixth and Ninth Circuits have adopted a broad interpretation of *Randolph*. *Bonivert v. City of Clarkston*, 883 F.3d 865 (9th Cir. 2018); *United States v. Tatman*, 397 F. App'x 152, 161-62 (6th Cir. 2010). Conversely, the Eighth and Fourth Circuits have adopted narrower interpretations of *Randolph*. *United States v. Coleman*, 909 F.3d

925 (8th Cir. 2018); *Trull v. Smolka*, 411 F. App'x 651 (4th Cir. 2011). This circuit split regarding an important and reoccurring constitutional question, which involves the core of the Fourth Amendment's protections (the sanctity of the home), needs to be resolved by this Court.

This Court should confirm that, under *Randolph*, a domestic violence exception to the Fourth Amendment's warrant requirement only allows police entry into a private home if a domestic violence victim may be inside the home, despite a present owner's objection. Here, however, the entry-consenting alleged domestic violence victim was safely in a park blocks away. And Petitioner, a physically present resident, expressly told Respondents that the police could not enter his home right before they entered it, just like the objecting co-occupant in *Randolph*. This Court should hold that a reasonable law enforcement officer would have understood that Petitioner's explicit non-consent was sufficient to override any consent the co-occupant of his home may have provided, given that the legal justification for entering his home was solely based on consent. The law under the Fourth Amendment to the United States Constitution was clear on this point in 2018, when the events underlying the case occurred. The Tenth Circuit therefore wrongly granted qualified immunity to Respondents on Petitioner's unlawful entry claim.

Specifically, full review by this Court is necessary because the Tenth Circuit legally erred in at least three ways. First, the Tenth Circuit incorrectly limited

the breadth of *Randolph* by contending its holding only clearly extended to at-the-door colloquies when the police are seeking to search a home, in contravention of the holding of *Randolph* itself, along with the weight of authority from other Circuits interpreting it. *See*, *e.g.*, *Bonivert*, 883 F.3d 865 at 874; *Tatman*, 397 F. App'x at 161-62; *see also United States v. Hudspeth*, 518 F.3d 954, 960 (8th Cir. 2008). Second, the Tenth Circuit drew an incorrect legal distinction between the Fourth Amendment standards that apply to police entering a home to effectuate an arrest versus conducting a search, in contravention of this Court's holding in *Payton v. New York*, 445 U.S. 573, 586 n.25 (1980) (emphasis added) and recent authority interpreting it within the context of *Randolph*. *See Bonivert*, 883 F.3d at 874 ("The two intrusions share this fundamental characteristic: the breach of the entrance to an individual's home."). Third, the Tenth Circuit incorrectly endorsed a broad domestic violence exception to the parameters that dictate when law enforcement can enter a private home under the Fourth Amendment without warrant or consent, in contravention of the overwhelming weight of authority from all Circuits, which holds that such an entry cannot be justified absent exigent circumstances.

II. A Circuit Split Exists Regarding the Application of *Georgia v. Randolph* in Cases Involving Reported Domestic Violence.

As the Tenth Circuit stated in its opinion below, "the circuits are split on *Randolph*'s application when

officers enter a dwelling to arrest someone for domestic violence." App. 18. This Court should resolve that important constitutional question. The Tenth Circuit described the circuit split as follows:

> The Tenth Circuit has not applied *Randolph* in a case where one occupant consented to police entry into a dwelling, another occupant objected to entry, and the police entered to arrest the latter for domestic violence. We thus have no precedent interpreting *Randolph*'s scope in cases like this one. Other courts of appeals are divided.
>
> In *Bonivert v. City of Clarkston*, 883 F.3d 865 (9th Cir. 2018), the Ninth Circuit read *Randolph* broadly. In that case police officers, dispatched to a home where a "physical domestic" dispute had been reported, found the defendant's girlfriend outside the home. *Id.* at 869. She said the defendant had thrown her to the ground and that he was inside the home. *Id.* The officers knocked on the door, but the defendant refused them entry. *Id.* at 870. The officers then requested and received the girlfriend's permission to enter the home, did so, and tased the defendant. *Id.* at 870-71. The court held the consent exception did not justify the warrantless search because "[e]ven though the officers secured [the girlfriend's] consent, [the defendant] was physically present inside and expressly refused to permit the officers to enter." *Id.* at 875.
>
> In *United States v. Tatman*, 397 F. App'x 152 (6th Cir. 2010) (unpublished), the Sixth Circuit

adopted a similarly broad construction. There, the defendant and his wife had a violent altercation, and the defendant kicked his wife out of their shared home. *Id.* at 155-56. The wife returned with police officers and opened the door to invite them into the house. *Id.* at 156. The defendant then appeared at the door and told the police they could not enter. *Id.* After further discussion, the defendant agreed to leave the house, but first went upstairs to collect some personal items. *Id.* The wife informed the police that the defendant had automatic weapons. *Id.* They followed the defendant upstairs, found the weapons, and arrested the defendant. *Id.* The court held that the defendant's explicit denial of permission to enter the house while he was standing at the doorway invalidated his wife's consent. *Id.* at 161. It rejected the government's argument that the actual entry occurred only after the defendant had left the threshold, stating that "the [*Randolph*] Court . . . did not intend the 'at the door' language to be talismanic." *Id.*

By contrast, the Eighth and Fourth Circuits have adopted narrower interpretations of *Randolph*. In *United States v. Coleman*, 909 F.3d 925 (8th Cir. 2018), the defendant's partner called 911 to report that he had hit her. *Id.* at 929. When a police officer arrived at the residence, he found her crying and visibly injured. *Id.* She opened the door, and one of the officers entered the residence. *Id.* The defendant objected shortly after the officer entered the residence, *id.* at 930, but the officer ignored the objection and arrested him. *Id.* at

929. The Eighth Circuit held that the partner's consent justified the officer's entry into the residence. *Id.* at 930. It rejected the defendant's *Randolph* argument because *Randolph* "made clear that a co-tenant's consent to entry will suffice if a potential objector is nearby but not part of the threshold colloquy." *Id.* The court pointed to the *Randolph* Court's statement that "this case has no bearing on the capacity of the police to protect domestic victims." *Id.* (quoting *Randolph*, 547 U.S. at 118). Because the defendant "did not object until after [the officer] entered the residence with [the partner's] consent to investigate her report of domestic violence," the Eighth Circuit held that *Randolph* did not apply. *Id.*

In *Trull v. Smolka*, 411 F. App'x 651 (4th Cir. 2011) (unpublished), a § 1983 action, the Fourth Circuit also declined to extend *Randolph*. There, officers responded to a 911 call reporting a domestic dispute between a husband and his wife. *Id.* at 653. When the wife invited the officers into the home, the husband had locked himself in a bathroom. *Id.* The officers ordered him to leave the bathroom. *Id.* He refused. *Id.* The officers then burst into the bathroom and removed the husband. *Id.* He sued under § 1983, arguing the officers' entry into the bathroom violated *Randolph* because his objection to their entry trumped his wife's consent. *Id.* at 655. The Fourth Circuit disagreed, finding the case distinguishable from *Randolph* "because here the officers were investigating a domestic

> situation rather than conducting a search for evidence of a crime." *Id.* at 655.

App. 13-15. The important and reoccurring constitutional questions presented by *Randolph* that have generated a circuit split need to be resolved by this Court.

III. The Tenth Circuit's Decision Conflicts with the Weight of Authority, which Demonstrates that Respondents Violated Clearly Established Fourth Amendment Law.

Georgia v. Randolph, 547 U.S. 103 clearly established in 2006 that the police cannot enter a home based on consent when the police lack a warrant or an exigency if a physically present resident expressly refuses to consent to the entry shortly before the entry. That is exactly what happened when Mr. Watkins unambiguously communicated to the police that they could not enter his home a few minutes before Respondents entered it based on a co-occupant's consent. Mr. Watkins' explicit non-consent should have vitiated the co-occupant's consent under the circumstances. And *Randolph* itself should have been sufficient to defeat Respondents' request for qualified immunity on Petitioner's unlawful entry claim.

The weight of authority interpreting *Randolph* confirms that Respondents violated Mr. Watkins' clearly established Fourth Amendment rights by entering his home. For instance, the Sixth Circuit, in *Tatman*, 397 F. App'x at 161-62, rejected the same, extremely narrow reading of *Randolph* that the Tenth

Circuit endorsed here by holding that *Randolph* is limited to an at-the-door colloquy. The court held that this Court "did not intend the 'at the door' language to be talismanic."

In *Bonivert*, 883 F.3d 865, the Ninth Circuit rejected police officers' request for qualified immunity under the plaintiff's Fourth Amendment claim pursuant to *Randolph*, where a physically present resident twice objected to officers entering his home, first by audibly locking the door as an officer was approaching it and second by attempting to close the door on officers around the time an officer attempted to enter this home. Like Mr. Watkins' case, *Bonivert* arose from a domestic violence report to the police. Also similar, the reported victim of domestic abuse was outside the home when the police arrived and she consented to the police entering the plaintiff's home. Like Mr. Watkins, the only person inside the home when the police sought to enter it was the plaintiff, who expressly communicated to the police that they could not enter it shortly before they entered, but who did not verbally assert to the police that they could not enter his home while standing at the door. Correctly observing that the case "closely parallels *Georgia v. Randolph*", the Ninth Circuit held that the officers who entered the plaintiff's home despite lacking a warrant or an exigency violated clearly established Fourth Amendment law. *Id*. at 869. The result should have been no different here.

The Eighth Circuit, sitting en banc in *United States v. Hudspeth*, 518 F.3d 954, 960 (8th Cir. 2009), similarly held that the relevant inquiry under *Randolph*

is whether the objecting co-occupant is physically present in the home, not whether the objecting co-occupant is literally standing right at the door:

> [U]nlike Randolph, the officers in the present case were not confronted with a "social custom" dilemma, where two physically present co-tenants have contemporaneous competing interests and one consents to a search, while the other objects. Instead, when Cpl. Nash asked for Mrs. Hudspeth's consent, Hudspeth was not present because he had been lawfully arrested and jailed based on evidence obtained wholly apart from the evidence sought on the home computer. Thus, this rationale for the narrow holding of Randolph, which repeatedly referenced the defendant's physical presence *and* immediate objection, is inapplicable here.

Id. at 960; *see also id*. ("The Randolph opinion repeatedly referred to an 'express refusal of consent by a *physically present* resident.'") (emphasis in original) (citing *Randolph*, 547 U.S. at 120 at 108, 109, 114, 121-23). Thus, this Court should confirm that physical presence in the home is the critical factor for evaluating whether a co-occupant's non-consent vitiates another occupant's consent under *Randolph*.

IV. The Decision Below Conflicts with this Court's Holdings in *Randolph* and *Fernandez*.

The decision below misconstrued this Court's holding in *Fernandez v. California*, 571 U.S. 292 (2014) by contending that *Fernandez* narrowed the applicability of *Randolph* to an at-the-door colloquy. App. 17. However, *Fernandez* addressed a question that materially differs from the salient issue here. *See id*. at 294 ("In this case, we consider whether *Randolph* applies if the objecting occupant is absent when another occupant consents."). This Court should take the opportunity presented here to reiterate that *Fernandez* did not address the type of situation presented by Petitioner's case. Unlike the objecting occupant in *Fernandez*, Mr. Watkins was not absent from his home when the other occupant consented to the police entering his home.[3]

Additionally, *Fernandez* made clear that *Randolph* was *not* limited to circumstances when the physically present objector is standing near the door. *Id*. at 304, 306. Rather, "***Randolph* requires presence on the premises to be searched**." *Fernandez*, 571 U.S. at 306 (emphasis added). Though *Fernandez* does, at times, discuss situations when the physically present

[3] Ms. Watkins, meanwhile, *was* absent from the home. *Fernandez* held that Fourth Amendment considerations related to consent should focus on the physically present co-occupant in such circumstances. Thus, *Fernandez* is best described as *reinforcing* the point that Mr. Watkins' non-consent should have carried the day under the Fourth Amendment.

resident is located at the threshold of the door, the most logical reading of the case as a whole is that *Fernandez* describes this circumstance merely because that was what happened in *Randolph*. This Court did not appear to limit *Randolph* only to scenarios when the resident is standing at the front door. The passage below is illustrative:

> It seems obvious that the calculus of this hypothetical caller would likely be quite different if the objecting tenant was not standing at the door. When the objecting occupant is standing at the threshold saying "stay out," a friend or visitor invited to enter by another occupant can expect at best an uncomfortable scene and at worst violence if he or she tries to brush past the objector. **But when the objector is not on the scene (and especially when it is known that the objector will not return during the course of the visit), the friend or visitor is much more likely to accept the invitation to enter.** Thus, petitioner's argument is inconsistent with *Randolph*'s reasoning.

Fernandez, 571 U.S. at 303-04 (emphasis added) (internal footnote omitted). Here and elsewhere, when *Fernandez* refers to a tenant who is not at the door, it is referring to a tenant who is not on scene. *See id.* at 319 (Collecting quotes from *Randolph* demonstrating that physical presence in the home is the controlling requirement, though a few quotes instead focus on "at the door" and objects).

As the Sixth Circuit held in *Tatman*, the at-the-door language is not "talismanic." 397 F. App'x at 161-62. Moreover, describing *Randolph*, the *Fernandez* Court itself held that "[t]he Court's opinion went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is present." *Fernandez*, 571 U.S. at 301. This Court in *Fernandez* could have, but did not, hold that *Randolph* is limited to situations in which the objecting occupant is standing at the door. Instead, *Fernandez* described physical presence – *not* standing at the door – as ***the*** "controlling factor." 571 U.S. at 301. This Court should grant certiorari here to reaffirm that physical presence is the salient factor surrounding the objecting co-occupant's location under *Randolph*.

V. The Tenth Circuit Drew an Incorrect Legal Distinction between the Police Entering a Private Home to Make an Arrest Versus Conducting a Search, in Conflict with this Court's Holding in *Payton*.

The decision below also incorrectly asserted that "[t]he Court limited its holding in *Randolph* to 'merely evidentiary searches.'" App. 17 (citing *Randolph*, 547 U.S. at 118-19). However, this short quote from *Randolph*, taken in isolation and out of context, does not appear to accurately portray the point this Court was making as part of this statement. What this Court appears to have been discussing, in this portion of its opinion, was "[t]he undoubted right of the police to enter in order to protect a victim." There, this Court was

seeking to allay concerns that its holding would "compromise the capacity [of the police] to protect a fearful occupant." *Randolph*, 547 U.S. at 118-19. But that scenario is not the scenario present in Mr. Watkins' case, given the lack of any exigency or other immediate safety concerns at the time Respondents entered his home.

Moreover, this Court held more than forty years ago in *Payton*, 445 U.S. at 586 n.25 that a "basic principle of Fourth Amendment law [is] that searches **and *seizures*** inside a man's house without warrant are *per se* unreasonable in the absence of some one of a number of well defined 'exigent circumstances.' " (emphasis added). *See also Bonivert*, 883 F.3d at 874 (confirming that Fourth Amendment does not draw "talismanic" distinction between entry and search and holding that, "[a]s a matter of clearly established law, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant.") (internal citation and quotation marks omitted). Accordingly, there was no principled reason for drawing a distinction under *Randolph* between an entry to effectuate an arrest and to conduct a search, as the Tenth Circuit did here. Conversely, *Payton* shows that the same general Fourth Amendment principles apply to both scenarios. The Tenth Circuit's decision conflicts with *Payton* and well-reasoned authority applying it within the context of *Randolph*.

VI. There Is No Broad Domestic Violence Exception to the Fourth Amendment Standards that Dictate when the Police Can Enter a Private Home. The Tenth Circuit's Decision Conflicts with *Randolph* and the Overwhelming Weight of Authority from the Circuits.

The Tenth Circuit attached great significance to the fact that "this case involved police investigating domestic violence." App. 16. However, under *Randolph* and other clearly established law, domestic violence is only relevant when evaluating the legality of a police home entry if the reported victim (or another person inside the home) faces a legitimate threat to their safety in the home, at the time. This Court, in *Randolph*, supplied examples of domestic violence-related situations when it could be reasonable under the Fourth Amendment for the police to enter a home, despite conflicting consent between two physically present co-occupants:

> [T]his case has no bearing on the **capacity of the police to protect domestic victims**. The dissent's argument rests on the failure to distinguish two different issues: when the police may enter without committing a trespass, and when the police may enter to search for evidence. No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; **so long as they have good reason to believe such a threat exists**, it would be silly to suggest that the police

> would commit a tort by entering, say, to give a complaining tenant the opportunity to collect belongings and get out safely, or to determine whether violence (or threat of violence) has just occurred or is about to (or soon will) occur, however much a spouse or other co-tenant objected. (And since the police would then be lawfully in the premises, there is no question that they could seize any evidence in plain view or take further action supported by any consequent probable cause.) Thus, the question whether the police might lawfully enter over objection in order to **provide any protection that might be reasonable** is easily answered yes. See 4 LaFave § 8.3(d), at 161 (" . . . **[W]here the defendant has victimized the third-party . . . the emergency nature of the situation is such that the third-party consent should validate a warrantless search despite defendant's objections**" (internal quotation marks omitted; third omission in original)). The undoubted right of the police **to enter in order to protect a victim**, however, has nothing to do with the question in this case, whether a search with the consent of one co-tenant is good against another, standing at the door and expressly refusing consent.

547 U.S. at 118-19 (emphasis added) (selected citations omitted).

However, this case materially differs from the scenarios described above in *Randolph*. A reasonable officer in 2018 would have understood that the ability

of the police to enter a home to protect a victim of domestic violence did not extend to the circumstances underlying Mr. Watkins' case, where the alleged victim clearly was safe when the entry occurred. Even Respondents admitted that the police entered Mr. Watkins' home for a reason that had nothing to do with protecting a victim – but, instead, solely to arrest him.

Further, courts "**have held, almost uniformly, that once a victim of domestic violence is removed from the situation, the exigency required to justify a warrantless entry is also removed**[,]" as was the case here with Ms. Watkins. *See United States v. Lopez*, No. 2:08-CR-94, 2009 U.S. Dist. LEXIS 30941, at *12-13 (E.D. Tenn. Apr. 13, 2009) (emphasis added) (collecting cases).

Here, like the alleged domestic violence victim in *Randolph*, the suspected victim was clearly visible to law enforcement before the entry and not in immediate danger; the police knew Ms. Watkins was safely standing outside in a park at the time. Moreover, the only physically present resident (Mr. Watkins) told the police that they could not enter his home. As such, reported domestic violence should not have materially impacted the Tenth Circuit's analysis of Petitioner's Fourth Amendment entry claim under the facts present. The correct application of all relevant, binding case law would have been to hold that domestic violence only becomes germane under *Randolph* if bona fide safety concerns exist around the time when the police entry occurs. The Tenth Circuit's decision conflicts with *Randolph* and the overwhelming weight of

authority addressing police home entries in domestic violence situations.

VII. The Tenth Circuit Improperly Disregarded the Unreasonableness of Respondents' Home Entry when Evaluating Petitioner's Excessive Force Claim against Them.

Finally, the Tenth Circuit's incorrect dismissal of Petitioner's Fourth Amendment illegal entry claim irrevocably tainted its analysis of Petitioner's excessive force claim against Respondents.[4] A key argument Petitioner advanced in support of his excessive force claim was that the Respondents, in entering Petitioner's home illegally, engaged in unreasonable and reckless conduct that arguably created the need to use force inside his home. By disregarding the unreasonableness of Respondents' home entry when evaluating Plaintiff's excessive force claim, the Tenth Circuit's decision incorrectly failed to account for the totality of the circumstances. *See Graham v. Connor*, 490 U.S. 386 (1989); *see also Young v. City of Providence ex rel. Napolitano*, 404 F.3d 4 (1st Cir. 2005); *Billington v. Smith*, 292 F.3d 1177, 1189 (9th Cir. 2002); *Abraham v. Raso*, 183 F.3d 279 (3d Cir. 1999); *Allen v. Muskogee, Okl.*, 119 F.3d 837, 840 (10th Cir. 1997).

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[4] Petitioner asserted an excessive force claim against all three Respondents

VIII. The Tenth Circuit's Decision Involves Matters of Exceptional Public Importance: Police Encounters with Citizens at their Homes.

This proceeding involves matters of great public importance. The core issue here – officers' unconstitutional disregard of a homeowner's valid refusal to allow them to enter his home – is contrary to the core protections of the Fourth Amendment. Individuals – and law enforcement in particular – need to understand clearly when officers can and cannot enter homes. This is essential to maintaining the core protections that exist under the Fourth Amendment. It is well-settled that searches conducted without a warrant issued upon probable cause are per se unreasonable, subject only to a few specifically established and well-delineated exceptions. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). It is equally well-settled that consent frequently is the touchstone for determining if police can lawfully enter a private home. *Id.*; *Randolph*, 547 U.S. at 122; *United States v. Matlock*, 415 U.S. 164, 171-72 (1974).

Unfortunately, the decision below gave no guidance whatsoever about when consent-based home entries can occur, and instead merely stated that the law was unclear. This leaves a legal void that needs to be filled. It is particularly important to settle the circuit split regarding consent-based searches in the context of domestic violence because reported domestic violence is a very common reason the police interact with

civilians at their homes. According to the National Institute of Justice, domestic-violence-related police calls constitute the single largest category of calls received by police, accounting for fifteen to more than fifty percent of all calls.[5] Additionally, scholars have estimated that consent searches comprise more than 90% of all warrantless searches by police.[6]

Further underscoring the importance of this case, protection of the home is a defining value of the Fourth Amendment. In William Blackstone's commentaries on the laws of England, he notes that "the law . . . has so particular and tender a regard to the immunity of a man's house, that it stiles it his castle, and will never suffer it to the immunity of a man's house. . . . For this reason, no doors can in general be broken open to execute any civil process." 4 Commentaries 223 (1765-1769). The Fourth Amendment embodies this centuries-old English principle, and the Framers intended it to protect the understanding that "the house of everyone is to him as his castle and fortress, as well for his defence against injury and violence, as for his repose," *Wilson v. Layne*, 526 U.S. 603, 609 (1999) (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b (1604)); *see also Randolph*, 547 U.S. at 115.

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[5] Nat'l Inst. of Justice, NCJ 225722, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges* 1 (2009).

[6] Alafair S. Burke, *Consent Searches and Fourth Amendment Reasonableness*, 67 Fla. L. Rev. 509, 511 (2015).

This Court has consistently held that physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed, and that the home is therefore entitled to heightened constitutional protections. U.S. Const. amend. IV; *Randolph*, 547 U.S. at 115; *Payton*, 445 U.S. at 584; *see also Florida v. Jardines*, 569 U.S. 1, 6 (2013) (holding that even the curtilage of one's house is included in Fourth Amendment protections because "the right to retreat would be significantly diminished if the police could enter a man's property to observe his repose from just outside the front window[]"); *Kyllo v. United States*, 533 U.S. 27, 37, 40 (2001) (holding that the use of thermal imaging technology outside a home and across the street constitutes a Fourth Amendment search because "in the sanctity of the home, all details are intimate details because the entire area is held safe from prying government eyes[]"). The Tenth Circuit's flawed decision below severely undermines the Fourth Amendment's core commitment to protecting the sanctity of the home.

CONCLUSION

The Tenth Circuit's decision directly conflicts with this Court's authority, the weight of authority from other Circuits, and fundamental Fourth Amendment principles. Accordingly, Petitioner respectfully requests that the decision of the Tenth Circuit granting qualified immunity to Respondents be summarily reversed,

or alternatively, that a writ of certiorari be issued so full review can be had by this Court.

Respectfully submitted,

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