No. _____

In the
# Supreme Court of the United States

**JO-ANN CONNELLY,**

***Petitioner*,**

**v.**

**STATE OF CONNECTICUT EX REL. JEREMIAH DUNN, CHIEF STATE ANIMAL CONTROL OFFICER,**
***Respondent.***

**ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF CONNECTICUT**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Whether the exclusionary rule applies to warrantless searches of the home conducted for community caretaking?

2. Whether the exclusionary rule applies to warrantless searches of the home in forfeiture proceedings where the government claims it is motivated by welfare concerns rather than punishing the property owner?

## PARTIES TO THE PROCEEDING & RULE 29.6 STATEMENT

Petitioner is Jo-ann Connelly who was the owner of the listed animals subjected to the forfeiture proceeding below. Respondent is the State of Connecticut, by its Chief State Animal Control Officer, Jeremiah Dunn.

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## INTRODUCTION

This Court has long held that the privacy of the home is at the core of the Fourth Amendment's protections. In criminal cases, the Court has held for over a century that evidence obtained from government actors searching a home in violation of the Fourth Amendment's warrant requirement must be suppressed. The failure to obtain a warrant can be excused, and the search rendered reasonable, if the search is conducted pursuant to consent, or if exigent circumstances make obtaining a warrant impractical under the particular facts of the case. Exigent circumstances are determined objectively, based on what a reasonable government official would have done under the circumstances. In a criminal prosecution, the defendant moves to suppress the evidence from the search that she claims was obtained in violation of the warrant requirement, and a judge impartially determines if there are exigent circumstances that make the search reasonable in spite of a warrant's absence. If the circumstances upon which the government relies are not exigent, the government may not be rewarded for its illegal conduct, and the evidence from the unreasonable (and thus unlawful) search must be suppressed.

In *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965), this Court held that when the government seeks to impose penalties or forfeitures of non-contraband property on someone based on underlying conduct that is criminal in nature, the exclusionary rule applies, no matter what label the government gives to the proceeding.

This case presents two related questions on whether the exclusionary rule applies in civil forfeiture proceedings where the government seeks to use evidence obtained from the warrantless search of a home, and neither consent nor exigent circumstances were present.

First, this Court held in *Caniglia v. Strom*, 593 U.S. 194, 196 (2021) that the government's proclaimed motive of protecting public welfare under the community caretake label did not create an exception to the Fourth Amendment's warrant requirement for government searches of the home. *Caniglia* did not address, however, whether the exclusionary rule applies where the government unlawfully invades a home, conducts a warrantless search, and then uses the evidence from that search to forfeit the owner's property. Most courts to have addressed the issue have held that the government's motive to protect public welfare is not itself an exception to the warrant requirement, and that the exigent circumstances test must be applied on a case-by-case basis. In the case below, the Appellate Court adopted a different test, holding—like many other states—that where the government's claimed motive is to protect vulnerable populations like animals and children, the exclusionary rule can be dispensed with in proceedings that are not criminal prosecutions, like the civil forfeiture action here to seize Petitioner's animals.

Second, although *Plymouth Sedan* purported to broadly apply the exclusionary rule to both penalties and forfeitures where the underlying conduct is criminal in nature, the Appellate Court below held that when the government claims to bring a forfeiture action for a non-punitive purpose—like protecting

animal welfare—*Plymouth Sedan*'s mandate of exclusion is inapplicable, and the government's interest in protecting animals outweighs any Fourth Amendment privacy interest or deterrent effect that might be accomplished by the exclusionary rule. The Appellate Court's holding is at odds with the vast majority of jurisdictions that apply the exclusionary rule whenever the government seeks to forfeit non-contraband property.

The Court should grant certiorari, and hold that (1) the exclusionary rule applies to home searches conducted in violation of the Fourth Amendment even when the government asserts it was motivated by community caretaking/public welfare; and (2) the exclusionary rule applies to all forfeiture proceedings for non-contraband property based on underlying conduct that is criminal in nature, regardless of the government's claimed motive in bringing the forfeiture action.

## OPINIONS BELOW

The Appellate Court of Connecticut's opinion affirming the Superior Court's denial of Petitioner's Motion to Suppress is published at 228 Conn.App. 458 (2024), and is reproduced in the Appendix at Pet.App. 1a. The Connecticut Supreme Court's denial of Petitioner's certification to appeal is reproduced in the Appendix at Pet.App.63a.

## JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). The opinion of the Appellate Court of Connecticut was entered on October 8, 2023. The Connecticut Supreme Court denied the petition for certification on December 17,

2024. This petition is timely filed consistent with Justice Sotomayor's March 14, 2025 order extending the time to file this petition until May 16, 2025.

## CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are reproduced in the Appendix at Pet.App. 73a.

## STATEMENT[1]

1. Petitioner Jo-ann Connelly started an animal rescue in January 2019 and was fostering animals in her home on Porter Road in Hebron, Connecticut, eventually providing care to several dozen animals. Pet.App.3a-5a. The house was large, comprised of approximately 3200 square feet on approximately five-and-a-half acres. *Id.* 3a-4a. As of March 2022, Connelly was preparing to transfer the animals to a formal animal shelter she had outfitted and was awaiting state approval of the facility to move the animals.

Connelly and her then-husband filed for divorce in December of 2020. Apparently as a result of allegations emanating from that litigation, the State's Department of Children and Families ("DCF") initiated a neglect investigation concerning the Connelly's minor child. On February 22, 2022, DCF moved for an order requiring Connelly to give DCF

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[1] Pursuant to Rule 14(1)(i), Petitioner's Appendix contains only the pertinent orders issued below, as other evidence and pleadings in the case below, while relevant, is not "essential to understand the petition." Rule(14)(1)(i)(vi). Consistent with Rule 26(1), Petitioner will provide other record evidence necessary for a merits consideration if certiorari is granted.

access to her home and the minor child. The Superior Court granted the motion, authorizing a DCF official and the child's attorney to enter Connelly's home for observation, provided that the access occur before March 22, 2022.

At the time the DCF visit occurred on March 21, 2022, Connelly and her minor child were staying in an AirBnB because the Porter Road house was being cleaned out in advance of its planned sale.[2] Over DCF Investigator Rooke's objection, Connelly insisted on videotaping the visit.[3] The March 21, 2022 DCF visit was the only entry of Connelly's home authorized by court order, and no court order in the DCF case permitted entry into Connelly's home after March 22, 2022. The Appellate Court below's entire discussion of Connelly's interactions with DCF consisted of the statement, "An employee of [DCF] had contact with

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[2] While staying at the AirBnB, Connelly returned daily to the Porter Road house to care for the rescued animals.

[3] Because the Superior Court below held that this is a civil matter to which a suppression hearing is inapplicable (the subject of this Petition), no hearing was held. Consequently, evidence concerning the initial court-authorized DCF child welfare visit, and the warrantless first search at the Porter Road house, were not entered into the trial court record. The evidence is proffered here, as in the Appellate Court, to demonstrate what Petitioner would have presented to the trial court had a suppression hearing been permitted. Given the opportunity of a suppression hearing, she would submit the evidence that the March 23, 2022, search of her home was warrantless and unconsented, thereby rendering the subsequent warrant unlawful. *See, e.g., State v. Onofrio*, 179 Conn. 23, 35-36 (1979) (holding trial court's failure to enter proffered evidence into the record to permit appellate review was error, and remanding for new trial); *State v. Correa*, 340 Conn. 619, 682 n.35 (2021) (observing proper procedure when a trial court has failed to apply the correct Fourth Amendment standard is a remand to the trial court for a suppression hearing).

the defendant on March 21, 2022, concerning an unrelated matter." Pet.App.4a n.3.

2. Despite DCF having conducted the one entry authorized by the court, and despite the deadline for the entry having expired, on March 23, 2022, the State, including DCF, searched Connelly's Porter Road home without a warrant and without her permission. Officers arriving at the home claimed DCF had an order to search the house and property. Connelly asked for a copy of the asserted "order," but was instead immediately handcuffed, dragged down the stairs outside her home and kept detained. She demanded to be permitted to call her attorney but was refused. The group of officers included DCF Investigator Rooke from the court-authorized search two days earlier at the AirBnB, a local and a state animal control officer, and a State Police Officer.

Upon being detained, Connelly told DCF Investigator Rooke that the officials did not have permission to enter or search the house or property. The officials ignored her, and an animal control officer then opened the door and entered the house. Connelly repeatedly told the officials they were not allowed on her property and ordered them to leave.

After officers entered the home, Connelly again demanded to speak with her attorney and was eventually allowed to do so. He told the officers they had no order or warrant permitting them to be on the property. Nonetheless, the officers continued to search and take pictures inside her home and the property's external areas.

3. Based on the fruits of that warrantless search, an officer sought a criminal search and seizure warrant for Connelly's property on March 24, 2022,

asserting that evidence of the criminal offense of Cruelty to Animals in violation of Conn. Gen. Stat. § 53-247 would be found. Pet.App. 4a.[4] The Superior Court issued a search and seizure warrant that same day. *Id.* The State executed the warrant on March 25, 2022, seizing from Connelly's property 33 dogs, 28 cats, 5 ducks, 3 goats, 1 parakeet, and 1 pony. *Id.* at 4a-5a.

Following the seizure, the State charged Connelly with three misdemeanor counts of animal cruelty in violation of Conn. Gen. Stat. § 53-247(a). The State then instituted what it characterized as an *in rem* forfeiture action to ostensibly protect the seized animals from abuse and neglect pursuant to Conn. Gen. Stat. § 22-329a(b), (c), (f), and (g) based on claimed criminal violations under Conn. Gen. Stat. § 53-247(a). Pet.App. 5a-6a.

The Superior Court held a virtual hearing on May 26, 2022 to consider the State's application for temporary custody of the animals seized from Connelly. *Id.* at 6a. On June 15, 2022, the Court determined under a preponderance of the evidence standard the animals had been subject to abuse and neglect as defined under the criminal statute, Conn. Gen. Stat. § 53-247, and granted the State temporary custody of the animals. Pet.App.11a-12a.

4. On September 27, 2022, Connelly, *pro se*, moved to suppress all of the evidence collected by the State in the warrantless March 23, 2022 search, and

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[4] The warrant application did not aver that officers had Connelly's permission to enter her home, that there was any lawful warrant or order authorizing the search, or that any exigent circumstance existed that could excuse a warrantless entry.

all of the evidence from the subsequent March 25, 2022 search and seizure, which was obtained by the State relying on evidence from the initial warrantless search. *Id.* at 13a. The motion argued that the State's warrantless search, made without consent or exigent circumstances, violated the Fourth Amendment. The Superior Court denied the Motion finding, "The exclusionary rule does not apply to civil cases." *Id.* at 14a, 72a.

Responding to the court's order denying suppression, Connelly, then represented by counsel, filed a motion for reconsideration denoted as a "Motion to Reargue" on October 12, 2022, renewing her Fourth Amendment exclusion argument, and pointing out that that the exclusionary rule applies to civil forfeiture proceedings under *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965). *Id.* at 14a. The Superior Court ruled that "No Action [was] Necessary" because "the foregoing [Motion] having been considered by the Court." Pet.App. 71a.

On October 18, 2022 the Superior Court held a trial on the State's application for permanent custody of the animals and admitted all of the evidence entered in the earlier May 26, 2022 temporary custody hearing. *Id.* at 14a, 16a. The Court reached the same determination with respect to cruelty and neglect as it had in the earlier hearing, granted the State permanent custody of Connelly's animals, and imposed on her the costs the State purported to have incurred in caring for the animals since it seized them. *Id.* at 16a, 18a-19a, 64a-70a.

5. Connelly timely appealed the judgment, arguing the March 25, 2022 search of her home violated the Fourth Amendment and its evidentiary

fruits should have been excluded from the civil forfeiture proceeding. *Id.* at 2a-3a, 20a-21a. The Appellate Court affirmed the trial court's judgment that the exclusionary rule is inapplicable to forfeiture proceedings when the state claims the forfeiture is motivated by welfare concerns rather than to punish the property's owner. *Id.* at 21a, 33a-56a. For purposes of the appeal, the court assumed "the warrantless search of [Connelly's] property was conducted in violation of the Fourth Amendment." *Id.* at 21a n.21. The court's starting premise was that the exclusionary rule is a judicially-created prudential doctrine "formulated in the criminal context to deter law enforcement officers who fail to obtain a warrant as required under the Fourth Amendment," and that such deterrence is the doctrine's sole purpose. *Id.* at 21a n.21, 23a-27a. The court further opined that the United States Supreme Court has never applied the exclusionary rule in civil cases, except in civil forfeiture proceedings where the forfeiture was quasi-criminal in nature, as established in *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693 (1965). Pet.App. 23a-29a.

In determining whether the exclusionary rule should apply to particular kinds of civil proceedings, the Appellate Court held courts must "weigh the likely social benefits of excluding unlawfully seized evidence against the likely costs" on a case-by-case basis under the *Janis* balancing test. *Id.* at 28a-29a (citing, *e.g., United States v. Janis,* 428 U.S. 443, 446 (1976); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1041(1984)). The Appellate Court opined that the only civil cases in which the exclusionary rule may apply without resorting to the *Janis* balancing test is when the proceeding is quasi-criminal. Pet.App.29a-32a

The Appellate Court engaged in a three-step analysis to conclude that the exclusionary rule is inapplicable to animal forfeiture proceedings where the government's claimed motivation is protecting animal welfare. Under the first step, if the animal welfare proceeding is "a forfeiture proceeding intended to penalize the defendant for a criminal offense," the *Plymouth Sedan* exclusionary rule applies. Pet.App.32a. Construing the legislative language of Connecticut animal-seizure statutes, the Appellate Court held that (1) the statutory labeling of the procedures as "seizure and custody" of animals is distinct from their being labeled "forfeitures," and (2) that because the Legislature's purpose in authorizing *in rem* animal welfare seizure proceedings was to protect animals rather than to punish owners, such proceedings are not subject to the exclusionary rule under *Plymouth Sedan*. Pet.App.33a-43a.

Second, the exclusionary rule would also apply if the animal welfare proceeding is quasi-criminal. *Id.* at 32a. The Appellate Court held that because the animal seizure proceeding's primary purpose is remedial—to protect the health and safety of animals—and not to punish their owners, the exclusionary rule was inapplicable. *Id.* at 43a-47a.

Third, even if the proceeding at issue is neither a forfeiture nor quasi-criminal, the *Janis* balancing test must be applied to determine whether the exclusionary rule should be applied to such proceedings. *Id.* at 32a. Analogizing the state interest in protecting animal welfare to its interest in protecting child welfare, the Appellate Court observed that both are "part of a vulnerable class," and opined "there is little incentive to violate the Fourth Amendment because officers [charged with

protecting child welfare] do not usually act with the object of obtaining evidence for a criminal prosecution." *Id.* at 47a-54a (cleaned up). The Appellate Court asserted that any deterrent effect from an exclusionary rule would be minimal because government officials are already dissuaded from committing illegal searches by the rule's applicability to criminal proceedings. *Id.* at 53a-56a. It further observed that the animal seizure statute in question already required search warrants, making such illegal searches unlikely. *Id.* at 54a-56a and n.33. Moreover, the Appellate Court was concerned that applying the exclusionary rule to animal welfare cases would "prevent the state from being able to offer crucial evidence." *Id.* at 52a-53a. In view of the impediment imposed on the state's goal of protecting animal welfare and the perceived minimal deterrence value, the Appellate Court held that the circumstances did not justify excluding illegally-seized evidence from animal forfeiture proceedings. *Id.* at 56a.

6. At issue here is the question of whether evidence obtained by violating Petitioner's Fourth Amendment rights can used by the State when it is purportedly motivated by animal welfare and the State's "community caretaking" role.

## REASONS FOR GRANTING THE WRIT

### I. COURTS ACROSS THE COUNTRY ARE DEEPLY DIVIDED ON WHETHER THE EXCLUSIONARY RULE APPLIES TO UNLAWFUL SEARCHES OF THE HOME WHERE THE GOVERNMENT CLAIMS IT WAS MOTIVATED BY PUBLIC WELFARE CONCERNS RATHER THAN CRIMINAL PUNISHMENT.

Absent consent or exigent circumstances, the typical consequence for the government's warrantless search of a home in pursuit of protecting the public has been the exclusion of the evidence obtained from the search in a subsequent judicial proceeding. This is the usual rule in both the federal and state courts. Another line of cases, however, purports to create a categorical exception to the exclusionary rule when the government's warrantless search is claimed to be in furtherance of protecting children or animals. Since at least 1976, when *In re Robert P.*, 61 Cal.App.3d 310, 321 (Cal.Ct.App.-1st Dist. 1976) was decided, some states have asserted that their *motive* in protecting vulnerable populations allows the exclusionary rule to be dispensed with entirely, without regard to the *circumstances* under which government officials conducted their search. When the government conducts judicial proceedings not involving criminal prosecution for the ostensible protection of animal and child welfare, those states permit evidence obtained in violation of the Fourth Amendment to be admitted. That doctrinal conflict is entrenched, and will persist unless the Court intervenes.

### A. The Fourth Amendment Does Not Permit Warrantless Searches of the Home Based on the Government's Public Welfare Concerns.

In *Caniglia v. Strom*, 593 U.S. 194, 196 (2021), this Court held that the community caretaking function[5] does not justify warrantless searches and seizures in the home. The very core of the Fourth Amendment's guarantee of "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures" is "the right of a man to retreat into his home and there be free from unreasonable governmental intrusions." *Id.* at 197-98 (cleaned up). The Court "has repeatedly declined to expand the scope of exceptions to the warrant requirement to permit warrantless searches of the home." *Id.* at 199 (cleaned up).

The Fourth Amendment, however, "does not prohibit all unwelcome intrusions on private property—only unreasonable ones." *Id.* at 198 (cleaned up). When exigent circumstances are present, law enforcement officers may enter private property without a warrant. *Id.* at 198. The doctrine "allows an officer to enter a home without a warrant if the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Id.* at 205-06 (Kavanaugh, J., concurring) (citing *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)). Such exigencies include fighting

[5] "Community caretaking" commonly takes place in the context of what are referred to as "welfare checks." *See, e.g., Caniglia*, 593 U.S. at 196; *Graham v. Barnette*, 5 F.4th 872, 879-81 (8th Cir. 2021); *Luna-Diaz v. City of Hackensack Police Dept.*, 2022 WL 18024213 at *18 (D.N.J. Dec. 30, 2022).

fires and investigating their causes; preventing the imminent destruction of evidence; engaging in hot pursuit of a fleeing felon or to prevent a suspects escape; addressing a threat to the safety of law enforcement officers or the general public; rendering emergency assistance to an injured occupant; or protecting an occupant who is threatened with serious injury. *Id.* at 198 and 205 (Kavanaugh, J., concurring) (collecting cases). "[C]ircumstances are exigent only when there is not enough time to get a warrant[.]" *Id.* at 203 (Alito, J., concurring) (collecting cases).

The "recognition that police officers perform many civic tasks in modern society" is "not an open-ended license to perform them anywhere." *Id.* at 199. *Caniglia* left unaddressed, however, whether the exclusionary rule applies when government officials engage in warrantless community caretaking searches in the absence of exigent circumstances.

### B. Absent Exigent Circumstances, Federal & State Courts Typically Apply the Exclusionary Rule to Warrantless Searches of the Home Even When Government Officials Claim to be Acting to Protect Public Health & Safety.

The traditional rule applied by most courts, both federal and state, has been that compliance with the Fourth Amendment requires a warrant. A warrantless search can be rendered reasonable, however, when consent is provided, or when exigent circumstances make obtaining a warrant impractical under the fact-specific circumstances of a given case. As the examples *infra* demonstrate, this holds just as true when government officials are conducting a search pursuant to protecting the public's health and

welfare as it is when they are investigating crime. It is not the government's motive in conducting the warrantless search that renders it reasonable; it is the facts peculiar to the search at issue that determine if the failure to obtain a warrant should be excused. Courts routinely perform this function, and apply the exclusionary rule on a case-by-case basis, without granting categorical exceptions to the Fourth Amendment based on the government's claimed goal of protecting particular subjects.

1. In *United States v. Washington*, 573 F.3d 279, 288-89 (6th Cir. 2009), the Sixth Circuit held, "[T]he community caretaker exception does not provide the government with refuge from the warrant requirement except when delay is reasonably likely to result in injury or ongoing harm to the community at large." *Id.* at 289. *Washington* involved officers entering an apartment without a warrant on suspicion that the individual present was engaged in criminal trespass, a fourth-degree misdemeanor. *Id.* at 281-82, 289. The court held, "the critical issue is whether there is a "true immediacy" that absolves an officer from the need to apply for a warrant and receive approval from an impartial magistrate." Finding no such threat of imminent harm, the Sixth Circuit's remedy for the warrantless search of a home was to suppress the evidence obtained from that illegal search. *Id.* at 280, 289.

2. The Eleventh Circuit came to the same conclusion in *United States v. McGough*, 412 F.3d 1232 (11th Cir. 2005). The caretaking function in *McGough* involved officers entering an apartment without a warrant and without the owner's consent for the ostensible purpose of retrieving the shoes of a child who was outside the apartment after her father

had been arrested. *Id.* at 1233-35. In the absence of an imminent threat or other exigent circumstance justifying the warrantless search of the apartment to exercise that community caretaking function, the court held the evidence obtained from that warrantless entry had to be suppressed. *Id.* at 1239-40.

In a similar vein, in *United States v. Parr*, 716 F.2d 796, 811 (11th Cir. 1983), the Eleventh Circuit suppressed evidence obtained in a warrantless home search after a residential fire had been suppressed. Conducted by firemen and police, the search executed "a policy of seeking out and salvaging valuables without an administrative warrant." *Id.* at 811. Observing that "the 'basic purpose of the Fourth Amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials," the court held it was of no moment whether the officials were police officers engaged in crime detection. *Id.* at 811 (cleaned up). Regardless of whether the officials were health, fire, or building inspectors, or whether a search's "purpose may be to locate and abate suspected public nuisance, or simply to perform a routine periodic inspection," Fourth Amendment protections still apply. *Id.* at 811 (citing *Michigan v. Tyler*, 436 U.S. 499, 505 (1978); *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967)). Important though the government's interest might be in securing valuables and preventing vandalism and looters, government officials must obtain a "warrant to safeguard the substantial privacy interests implicated by any entry into a person's home." *Parr,* 716 F.2d at 812. The interest of fire officials in identifying valuable property after a fire is not an exigent circumstance outweighing a

homeowner's privacy interest. *Id.* at 813. Accordingly, the evidence obtained from the warrantless post-fire valuables search had to be suppressed. *Id.* at 810, 817.

In yet a third case, applying the same exigent circumstances rationale, the court held that officers responding to a domestic violence report involving gunshots were providing emergency aid, obviating the need for a warrant, and thus the court denied the motion to suppress the evidence of criminality discovered in the residence. *United States v. Jones,* 798 Fed.Appx. 434, 437-40 (11th Cir. 2020).

3. Applying the exigent circumstances test to find a warrantless home search reasonable, the Seventh Circuit held in *United States v. Collins*, 110 Fed.Appx. 701, 703-05 (7th Cir. 2004), that officers responding within a minute to reports of gunshots in the vicinity of the home could enter the home to ascertain if anyone inside had been shot. Because the facts reasonably supported the officers' warrantless entry into the home to ascertain if there were any victims in need of aid, the fruits of the search were admissible in a subsequent criminal prosecution.

4. Federal appellate courts have also held the exclusionary rule is properly applied to civil sanctions in administrative OSHA proceedings, where the government searches were warrantless, as an appropriate means of deterring such unlawful government conduct. *See Donovan v. Sarasota Concrete Co.*, 693 F.2d 1061, 1070-71 (11th Cir. 1982); *Savina Homes Indus., Inc. v. Sec. of Labor*, 594 F.2d 1358, 1362 (10th Cir. 1979) (holding that the exclusionary rule applies to administrative OSHA searches that violate the Fourth Amendment, and

collecting cases applying the exclusionary rule to administrative and civil cases). Hence, even where the welfare of humans (as opposed to animals) is concerned in non-criminal proceedings, the exclusionary rule is applied.

5. The California Supreme Court has emphatically rejected the argument that governmental interests distinct from traditional policing can justify warrantless searches. In *Dyas v. Superior Court*, 11 Cal.3d 628 (1974), the court held that what "matter[s] [under the Fourth Amendment] is whether [the person conducting the search] is employed by an agency of government, federal, state or local, whose *primary mission* is to enforce the law." *Id.* at 635. "Merely because the 'primary' mission of a governmental agency is not law enforcement does not provide its employees with authority to violate with impunity the privacy of citizens with whom they come in contact. *Id.* Hence, the court held the exclusionary rule applies regardless of a particular governmental official's duties or agency mission, including, for example, to social workers searching homes of welfare recipients seeking evidence of ineligibility, and agricultural inspectors looking for insect pests. *Id.* (collecting cases). The court concluded, "The controlling question, therefore, is not the 'mission' of the governmental agency. Whether the exclusionary rule should be invoked depends instead on whether to do so would deter the particular governmental employee, and others similarly situated, from engaging in illegal searches of private citizens." *Id.*

6. Applying an analysis similar to that later adopted in *Caniglia*, the New Jersey Supreme Court held in *State v. Vargas*, 213 N.J. 301 (2013), when faced with officers who conducted a warrantless

welfare check on a tenant's residence, that "the community-caretaking doctrine is not a justification for the warrantless entry and search of a home." *Id.* at 305. Such searches can be conducted only with consent or "some species of exigent circumstances." *Id.* at 321. The court observed that "merely because police activities [like community caretaking roles] are divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute does not mean that persons have a lesser expectation of privacy in their homes." *Id.* at 325 (cleaned up). In the absence of an exigency justifying the warrantless search of a home, the evidence from the search must be suppressed. *Id.* at 305, 329.

### C. Some States Have Created a "Vulnerable Populations" Exception to the Exclusionary Rule for Warrantless Search Evidence Used in Non-Criminal Judicial Proceedings.

The Appellate Court below held that the exclusionary should not apply to animal welfare seizure proceedings, because the rule "would yield a minimal deterrence benefit while at the same time it would frustrate and hinder the purpose of [Connecticut's] animal welfare statute and the protection of animals." Pet.App.56a. The court reached that conclusion by looking to "child protection proceedings for guidance, as they share important similarities with animal welfare proceedings in that both seek to protect a vulnerable class or group and both are civil, and not quasi-criminal, in nature." *Id.* at 47a.

The Appellate Court asserted that the exclusionary rule does not apply to civil child neglect proceedings. *Id.* at 48a-49a (citing *In re Nicholas R.*, 92 Conn.App. 316, 321(2005)). To bolster that conclusion, the Appellate Court relied in significant part (*see* Pet.App. 49a-51a) on the decision of the Appellate Division of the Supreme Court of New York in *Matter of Diane P.*, 110 A.D.2d 354, 356, 358 (N.Y. App. Div.-2d 1985) (citing *In re Robert P.*, 61 Cal.App.3d 310, 321 (Cal.Ct.App.-1st Dist. 1976)), which held, "State's overwhelming interest in protecting and promoting the best interests and safety of minors in a child protective proceeding far outweighs the rule's deterrent value," because "the State's interest in protecting abused children and the unthinkable consequences to the children if they are left in the hands of abusive parents far outweigh the potential consequences to the parents."

The court further explained, "Principles of law designed to protect the citizenry from improper police activities should not be applied without regard to the grim realities that permeate certain types of situations. A child abused by a parent is bereft of any refuge and is perhaps the most helpless and powerless of all victims, betrayed by the very person to whom he or she would most naturally turn for succor. We deal here not with theoretical quibbles over abstract social concepts, but with the urgent plight of those who most need the protective hand of the [s]tate. We also emphasize that the effects of applying the exclusionary rule in a child protective proceeding would potentially be immeasurably more devastating than is true of the typical criminal prosecution." *Id.* at 357.

Accordingly, the court concluded "because a child protective proceeding itself is not punitive in nature and the deterrent effect of the exclusionary rule will be adequately served by precluding use of the evidence in any related criminal proceeding, the [s]tate's interest in protecting its children mandates the admissibility of relevant evidence seized during an illegal search." *Id.* at 358.

The Appellate Court further relied (*see* Pet.App.51a-52a) on the same conclusion reached by the Utah Supreme Court in *State ex rel. A.R. v. C.R.*, 982 P.2d 73 (Utah 1999), holding "that the Fourth Amendment exclusionary rule is inapplicable to child protection proceedings." *Id.* at 78. The exclusionary rule's deterrent effect on government officials is inapplicable in the child welfare context, the court reasoned, because "State officials confronting the possibility of child abuse or neglect—emergencies that occasionally lead to child protection proceedings—do not ordinarily seek to uncover incriminating evidence during the warrantless searches incidental to these investigations. There is little incentive to violate the Fourth Amendment because these officers do not usually act with the object of obtaining evidence for criminal prosecution. There appears to be little likelihood that any substantial deterrent effect on unlawful police intrusion would be achieved by applying the exclusionary rule to child protection proceedings. Whatever deterrent effect there might be is far outweighed by the need to provide for the safety and health of children in peril." *Id.* at 79.

The California Court of Appeal likewise held in *In re Mary S.*, 186 Cal.App.3d 414 (Cal.Ct.App.-4th Dist. 1986), that because "Dependency proceedings are civil

in nature, designed not to prosecute a parent, but to protect the child," the exclusionary rule is inapplicable "since the potential harm to children in allowing them to remain in an unhealthy environment outweighs any deterrent effect which would result from suppressing evidence unlawfully seized." *Id.* at 418 (cleaned up).

Other state courts have come to the same conclusion that the government's motive in protecting child welfare obviates the need to apply the exclusionary rule to warrantless searches, without regard to whether exigent circumstances are present. *See, e.g., People ex rel. A.E.L*, 181 P.3d 1186, 1191-92 (Col.Ct.App.-Div. II 2008) ("a dependency and neglect case is not a quasi-criminal proceeding, and that the societal costs of applying the rule would exceed any deterrent effect that exclusion would have on the department or the police in investigating a child welfare issue); *In re Corey P.*, 269 Neb. 925, 933-35 (2005); (any possible benefits of the exclusionary rule do not justify the costly result in a juvenile proceeding of a possible erroneous conclusion that there has been no abuse or neglect, leaving innocent children in unhealthy or compromising circumstances); *State ex rel. Children, Youth & Families Dept. v. Michael T,* 143 N.M. 45, 77-78 (N.M.Ct.App. 2007) (because the nature of an abuse and neglect proceeding is to protect the interests and well-being of the children, the purposes of the exclusionary rule would not be advanced if the evidence is suppressed).

## II. CONNECTICUT HAS CREATED A CLEAR SPLIT OF AUTHORITY ON WHETHER THE EXCLUSIONARY RULE APPLIES IN FORFEITURE PROCEEDINGS BASED ON UNDERLYING CONDUCT THAT IS ALLEGEDLY CRIMINAL WHEN THE GOVERNMENT ASSERTS ITS OBJECTIVE IS NOT PUNITIVE.

In *One 1958 Plymouth Sedan v. Pennsylvania,* 380 U.S. 693 (1965), this Court held that even though Pennsylvania characterized its forfeiture action seizing the car at issue as "civil," the Fourth Amendment's exclusionary rule still applied in governmental proceedings to seize non-contraband property (i.e., property that is not inherently illegal)[6] for alleged *behavior* that is criminal in nature. *Id.* at 695, 698-702.[7]

*Plymouth Sedan* held that because "suits for *penalties and forfeitures* incurred by the commission of offenses against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings *for all the purposes of the fourth amendment* of the constitution." 380 U.S. at 697-98 (cleaned up) (emphasis added) (citing *Boyd v. United States*, 116 U.S. 616, 633-34 (1886)). By its plain

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[6] No issue of contraband is presented by this case. "[A]nimals under Connecticut law, as in all other states, have generally been regarded as personal property." *Nonhuman Rights Project, Inc. v. R.W. Commerford and Sons, Inc.*, 192 Conn.App. 36, 45 (2019) (citing *Griffin v. Fancher*, 127 Conn. 686, 688-89 (1941) (recognizing dogs as property)). *Accord*, *e.g., Northwestern Nat. Bank v. Freeman*, 171 U.S. 620, 621-630 (1898) (describing domesticated animals as chattel).

[7] *Plymouth Sedan* has never been overruled, and is still good law. *See, e.g., United States v. James Daniel*, 510 U.S. 43, 49 (1993) (citing *Plymouth Sedan*).

terms. *Plymouth Sedan* distinguished between penalties and forfeitures, holding that if either was to be imposed "within the reason" of a criminal proceeding, then the exclusionary rule applied: "[T]he essential question is whether evidence—in *Boyd* the books and records, here the results of the search of the car—the obtaining of which violates the Fourth Amendment may be relied upon to sustain a forfeiture. *Boyd* holds that it may not." 380 U.S. at 698.

The Appellate Court below dismissed the notion that Fourth Amendment constraints on forfeiture proceedings are applicable to animal welfare seizures, reasoning that "the animals subject to the custody order have not perpetrated some wrong, nor were they used for criminal purposes," and the seizure statute "lacked any language indicating that it is designed to punish property owners who abuse or neglect animals." Pet.App.40a. Because the statute's "overarching purpose" "is to protect the welfare of animals," it cannot be deemed punitive in nature, and is thus not considered a forfeiture for constitutional purposes. *Id.* at 40a-41a. *See also id.* at 46a ("it is clear from the legislative history that the primary purpose of § 22-329a (a) is not the protection of the owner, but rather the protection of animals from imminent harm.[8] In light of the clear purpose of animal welfare actions to protect the health and safety of animals, a vulnerable class, such actions are remedial and not punitive, and, thus, not quasi-criminal in nature. The

[8] The Appellate Court did not explain why the exigent circumstances doctrine would be insufficient to address "imminent harm," or why there was no evidence in the record of imminent harm known to the officers that would justify the warrantless search of Connelly's home.

exclusionary rule, therefore, does not apply to animal welfare actions on the basis of quasi-criminality.") (cleaned up).

The Maryland Court of Appeals has come to the opposite conclusion as the Appellate Court below, holding that *Plymouth Sedan* must be applied to all forfeitures based on underlying criminal conduct. *Plymouth Sedan* "speaks in general terms, labeling as 'quasi-criminal' any forfeiture action based upon inherently criminal activity, whether actually indictable or not, and no matter what the punishment." *One 1995 Corvette VIN No. 1G1YY22P585103433 v. Mayor and City Council of Baltimore*, 353 Md. 114, 133 (1999). The *Plymouth Sedan "*Court was referring . . . to all forfeiture actions requiring evidence of a criminal nature, *i.e.,* evidence of criminality." *Id.* at 134. Hence, the Maryland Court of Appeals held, "we decline to allow the government to avoid compliance with the requirements of the Fourth Amendment as traditionally applicable in criminal cases by proceeding under the auspices of a civil action that authorizes the taking of private property, but only if that property is used, or intended to be used, for criminally-related purposes. To do otherwise might facilitate a practice in which . . . property, and the financial benefits resulting from forfeiture, might become the primary purpose of the actions rather than the apprehension and conviction of the criminals and their removal from society." *Id.* at 137.

The Maryland Court of Appeals dealt head-on with the Appellate Court below's effort to assume away *Plymouth Sedan* when the government asserts a non-punitive motive for the forfeiture:

> The determination of whether the prophylactic, judicially-created exclusionary rule applies to a civil *in rem* forfeiture action is not based on whether the forfeiture statute was intended to be "punitive." Rather, because the federal exclusionary rule remedies certain violations of the Fourth Amendment, but is not coextensive with it, we must determine whether the Fourth Amendment was intended to apply to proceedings outside the scope of a criminal trial. Although the purpose of the exclusionary rule may be to curb improper police conduct, the purpose of the Fourth Amendment is to insure "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures...." It protects everybody, not just those of the criminal milieu, and, thus, is not limited to criminal proceedings.

353 Md. at 127-28. The court construed *Plymouth Sedan* as "speak[ing] in general terms, labeling as 'quasi-criminal' any forfeiture action based upon inherently criminal activity, whether actually indictable or not, and no matter what the punishment." *Id.* at 133.

Unlike the Appellate Court below's rationale in *Connelly* that no punitive forfeiture had occurred because the animals themselves were not perpetrators or the instrumentality of a crime, the Maryland Court of Appeals explained that *Plymouth Sedan* belies that reasoning: "Just as there was nothing even remotely criminal in possessing a 1958 Plymouth, it was not criminal for petitioner to own a 1995 Corvette" *Id.* at 134-35 (cleaned up). A "forfeiture action is . . . 'quasi-criminal' litigation

because criminality is at the basic foundation of the conduct from which a forfeiture suit may arise." *Id.* at 135 (cleaned up). That equally describes Connecticut's animal forfeiture regime at issue here, where criminal conduct—animal abuse and neglect—underpins the State's rationale for seizing an owner's property.

When it decided *1995 Corvette* in 1999, the Maryland Court of Appeals observed, "Eleven of the thirteen United States Courts of Appeals have interpreted *Plymouth Sedan* to stand for the proposition that the exclusionary rule applies to civil *in rem* forfeitures. Additionally, courts in thirty-four states have interpreted *Plymouth Sedan* to stand for the same proposition . . . the cases consistently accept the interpretation of *Plymouth Sedan* as applying the exclusionary rule to civil *in rem* forfeiture proceedings. Our examination of the cases has revealed no court that completely rejects that interpretation[.]" 353 Md. at 123-24 (collecting cases).

## III. THE DECISION BELOW IS WRONG.

This case exemplifies why the warrant requirement exists, and why evidence from illegal searches of the home should be suppressed. The entirety of the Appellate Court's recitation of the circumstances supporting the warrant for the second search of Connelly's home is as follows:

> On March 23, 2022, Tanya Wescovich, an animal control officer with the plaintiff, the state of Connecticut, visited the property with an employee of the Department of Children and Families, which had received a report that the defendant was abandoning the property and

> the animals being kept there. On the basis of Wescovich's observations during that visit, the next day, March 24, 2022, Wescovich, along with William A. Bell, the animal control officer for the town of Hebron, applied for a search and seizure warrant for the defendant's property in Hebron.

Pet.App.4a.

Had a suppression hearing been held, the trial court would have learned that the "report" Officer Wescovich claimed to have received consisted of her and four other Connecticut officers handcuffing Connelly and conducting an illegal home invasion.

The underlying premise of the Appellate Court's decision is the assumed lawful motives and good faith by the government employees at Connelly's home. But there is no evidence to support that assumption. When Connelly challenged the lawfulness of the government's conduct, the Connecticut courts held that because this was not a criminal prosecution, the Fourth Amendment provides her with no right to a hearing in which that conduct might be challenged.

Despite the Appellate Court's opinion below that the exclusionary rule should be inapplicable where the government acts to protect "vulnerable populations" like animals, courts are entirely capable of determining if exigent circumstances exist to justify warrantless searches and seizures in animal welfare cases. For instance, in *State v. Fessenden*, 355 Or. 759 (2014), an officer was dispatched to perform a welfare check on a horse reported as showing signs of starvation. *Id.* at 761-62. Given the officer's fact-based opinion that the horse's malnourishment constituted a medical emergency, the court held his

warrantless entry onto the property to seize the horse and take it to a veterinarian was an exigent circumstance excusing the warrantless entry onto the property, and that the evidence obtained thereby could be used in his criminal trial. *Id.* at 773-76.

By contrast, in the absence of exigent circumstances, an officer's warrantless entry onto residential property based on a complaint that dogs were not being cared for property presented no exigency, and the evidence from the search had to be suppressed. *State v. Berry*, 92 S.W.3d 823, 826-30 (Mo. Ct. App. 2003). Likewise, when officers responded to a report of bloodied dogs fighting in a yard in order to render any needed assistance to either the dogs or humans, there was no exigency justifying their warrantless entry onto the property, and the fruits of the search were properly suppressed. *Carpenter v. State*, 18 N.E.3d 998, 1000, 1003 (Ind. 2014) (decided under Indiana's state analogue to the Fourth Amendment). in the animal welfare context, the answer to that question—as with any other claimed exigency—is fact-dependent.

The Appellate Court's decision below provides no explanation for why enforcing the exclusionary rule in animal welfare cases would be any more burdensome than it is when government agents perform other public welfare functions, or why there would be any less of a need to deter home invasions by such officials. While there may be exigent circumstances permitting warrantless searches to protect animal welfare, the Court should provide clarity on whether the exclusionary rule applies where the Government cannot show such circumstances.

The Appellate Court's decision below identifies no other case in which *Pennsylvania Sedan*'s exclusionary rule has been held inapplicable to animal forfeiture or seizure hearings because the government's claimed motivation was protecting animal welfare instead of punishing the owner. The cases that have addressed this scenario have held, or otherwise suggested, that the contrary rule applies: Absent exigent circumstances, the exclusionary rule applies in animal forfeiture proceedings to warrantless searches conducted to protect animal welfare.

The Fourth Amendment's exclusionary rule applies to civil forfeiture proceedings brought to protect animal welfare, regardless of whether a crime is alleged. *Matter of Fourteen Exotic Parrot-like Birds,* 512 P.3d 392, 395-96, 398-99, 402 (Okla. Ct. Civ. App. 2022) (citing *Plymouth Sedan*, 380 U.S. at 398; *Camara*, 387 U.S. at 533). *Accord, Campbell v. City of Spencer*, 2013 WL 6835271 at *2, 4 (W.D. Okla. Dec. 26, 2013) (citing *Plymouth Sedan*, 380 U.S. at 700) (civil animal welfare forfeiture actions are covered by *Plymouth Sedan*'s holding), *aff'd*, 777 F.3d 1073, 1078-79 (10th Cir. 2014) (exclusionary rule applies to animal welfare civil forfeiture proceedings). While the Fourth Amendment's default warrant requirement applies to animal welfare searches and seizures, exigent circumstances can excuse the failure to obtain a warrant. *See e.g., Broden v. Marin Humane Soc'y*, 70 Cal.App.4th 1212, 1221-22 (Cal.Ct.App.-1st Dist. 1999); *King v. Montgomery Cnty., Tenn.*, 797 Fed.Appx. 955-56 (6th Cir. 2020). *See also, Pine v. State,* 921 S.W.2d 856, 870-71, 872 (Tex. Ct. App.-Houston (14th Dist.) 1996) (citing *Plymouth Sedan*, 380 U.S. 700-02) (assuming,

without deciding, that civil animal forfeiture proceedings to protect animals from neglect and abuse that are entirely separate from the criminal proceeding against the owner require government agents to obtain a warrant, and that evidence obtained in violation of the Fourth Amendment must be excluded).

Neither the relabeling, nor the State's claimed munificent motive, changes what Connecticut is doing: Seizing private, non-contraband property by conducting warrantless searches in violation of the Fourth Amendment.

Connecticut's animal welfare laws are simply a category of nuisance abatement. *Goodwin v. Toucy*, 71 Conn. 262 (1898). "[T]here does not appear to be any doubt but that the *Plymouth Sedan* approach is called for when the government instead brings an action to abate a nuisance and would prove the illegal activity constituting the nuisance by the means of evidence come by through an unconstitutional search." 1 LAFAVE, SEARCH & SEIZURE § 1.7(a), (6th ed. Oct. 2022 Update). Where the State seeks to prove conduct that would be criminal as the rationale for seeking someone's property, as it does by alleging abuse or neglect against animals (and regardless of whether the State brings any criminal prosecution), the State must adhere to Fourth Amendment standards. *See Plymouth Sedan*, 380 U.S. at 700-02; *Matter of Fourteen Exotic Parrot-like Birds,* 512 P.3d at 395-96, 398-99, 402.

The State obtained no warrant for its initial search of Connelly's home. Permitting government actors to engage in warrantless searches based on nothing more than the government's claim to be protecting

public welfare is an open invitation for government officials to run riot. It will, as it has here, eviscerate the Fourth Amendment's sanctified protection of the home. The Court should clarify the law, and hold that all of its fruits of Connecticut's warrantless search of Connelly's home were required to be excluded from its civil forfeiture proceedings to seize her animals.

## CONCLUSION

The petition for a writ of certiorari should be granted.

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