No. 24-624

# In the Supreme Court of the United States

WILLIAM TREVOR CASE, PETITIONER

*v.*

STATE OF MONTANA, RESPONDENT.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MONTANA

## BRIEF FOR PETITIONER


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## QUESTION PRESENTED

Whether law enforcement may enter a home without a search warrant based on less than probable cause that an emergency is occurring, or whether the emergency-aid exception requires probable cause.

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## INTRODUCTION

The home is the heartland of Fourth Amendment liberty. "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States* v. *U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972). Because the home garners "special protection," *Georgia* v. *Randolph*, 547 U.S. 103, 115 (2003) (citation omitted), the State must generally obtain a warrant supported by probable cause to enter it without consent, *e.g.*, *Lange* v. *California*, 594 U.S. 295, 298 (2021). While this Court has recognized exceptions for exigent circumstances, it has "jealously and carefully drawn" those exceptions. *Ibid.* (quoting *Randolph*, 547 U.S. at 109). The Court should take the same approach in defining the exigency exception for emergency aid, and hold that officials must have probable cause to believe an emergency exists before making a warrantless home entry.

In *Brigham City* v. *Stuart,* this Court held that police could enter a home without a warrant "when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 547 U.S. 398, 400 (2006). This exception furnishes the only basis for making a warrantless entry to render aid, for this Court rejected any "freestanding community-caretaking exception" in *Caniglia* v. *Strom*, 593 U.S. 194, 197-198 (2021). Here, however, the Montana Supreme Court upheld the officers' warrantless entry into the home of Petitioner William Trevor Case on the basis of a "community caretaking" test requiring only reasonable suspicion of an emergency. That decision not only contravenes *Caniglia* but, more fundamentally, adopts a "less stringent" standard of knowledge, *Delaware* v.

*Prouse*, 440 U.S. 648, 654 (1979), at precisely the place where the Fourth Amendment "draw[s] a *firm* line": "the entrance to the house," *Payton* v. *New York*, 445 U.S. 573, 590 (1980). As the dissent below recognized (Pet.App.29a-30a), *Brigham City*'s "objectively reasonable basis" language instead required the police to have probable cause to believe Case was "seriously injured or imminently threatened with such injury" before entering his home, 547 U.S. at 400.

Fourth Amendment principles, precedent, and the common law all point to a probable cause standard. The Fourth Amendment makes "probable cause" an express prerequisite to obtaining a warrant, and it is settled that officers need "probable cause plus exigent circumstances in order to make a lawful entry into a home" *without* a warrant. *Kirk* v. *Louisiana*, 536 U.S. 635, 638 (2002) (per curiam). Because exigency alone is the basis for entry under the emergency-aid exception, the home's "special protection" must surely require that the exigency be supported by probable cause. After all, "[d]ispensing with the need for a warrant is worlds apart from permitting a lesser standard of *cause*." *Arizona* v. *Hicks*, 480 U.S. 321, 327 (1987).

This Court has accordingly applied the probable cause standard to other exigent-circumstances exceptions, *e.g.*, *United States* v. *Santana*, 427 U.S. 38, 42 (1976) (hot pursuit), and *Brigham City*'s "reasonable basis" language tracks the probable cause requirement of "a reasonable ground for belief of guilt," *Maryland* v. *Pringle*, 540 U.S. 366, 371 (2003) (quoting *Brinegar* v. *United States*, 338 U.S. 160, 175 (1949)). The standard is further illuminated by the common law, which had a rule for warrantless entries in *precisely* the emergency scenario presented in *Brigham*

*City*: a home "affray." The common law rule permitted constables to "break[] open the doors" where "an affray is made in a house in the view or hearing of a constable" in "order to suppress the affray." 2 Hawkins, Pleas of the Crown 138-139 (1797) (Hawkins). This requirement of personal observation confirms that at the framing, officials could not have entered a home without a warrant on less than probable cause.

These principles foreclose the reasonable suspicion test applied below. Doctrinally, the Court has never applied that test to justify a warrantless home entry, but instead has limited it to "minimally intrusive" searches. *See Hicks*, 480 U.S. at 327. Constitutionally, applying a standard that this Court has characterized as "not high," *Richards* v. *Wisconsin*, 520 U.S. 385, 394 (1997), cannot be squared with the Fourth Amendment's special protections for the home or the common law's high bar for home affrays. Practically, applying that standard would "create a significant potential for abuse" in the many emergency situations involving potential criminal activity, *Steagald* v. *United States*, 451 U.S. 204, 215 (1981), and invite other abuse by crank-callers and "swatters." In non-criminal situations, it would invite dangerous home entries based on commonplace circumstances. By contrast, the traditional probable cause standard safeguards the liberty interest in the home, requires a level of certainty that avoids needless and dangerous confrontations, and enables police and first responders to provide aid when occupants urgently need it—including in "heartland emergency-aid situations." *Caniglia*, 593 U.S. at 206 (Kavanagh, J., concurring).

Here, the officers lacked probable cause to believe such an emergency existed when they entered Case's

home. The officers responded to a call from Case's ex-girlfriend, who told police that Case had threatened both to commit suicide and to "shoot it out" with police. JA71-73. The responding officers knew Case well. And they knew about prior instances where threats of self-harm had come to nothing except, at most, "attempt[ing] to elicit a defensive response" from them, "i.e., a suicide-by-cop." Pet.App.4a-5a. These facts, together with the officers' observations at the scene, made it objectively "unlikely [that] Case required immediate aid." Pet.App.29a (McKinnon, J., dissenting). Instead, the main risk, as one of the officers explained, was that Case had "tried this suicide by cop shit before," so if they made entry, "he's going to try and shoot it out with us." Pasha-Cam1 at 0:23:51.[1] And that is just what happened: after making entry, an officer "observed a 'dark object' near Case's waist, and instantaneously aimed at and shot Case." Pet.App.6a. Because that suicide-by-cop risk was one the officers controlled, and because the entry itself is what created the risk that Case would be "seriously injured," *Brigham City*, 547 U.S. at 400, it was unreasonable for the officers to enter Case's home without a warrant.

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[1] The bodycam recordings for Sergeant Pasha ("Pasha-Cam1" and "Pasha-Cam2"), Captain Heffernan ("Heffernan-Cam1" and "Heffernan-Cam2"), and Officer Linsted ("Linsted-Cam1" and "Linsted-Cam2") were admitted at the suppression hearing, respectively, as Exhibits 1, 2, and 3.

## OPINIONS BELOW

The opinion of the Supreme Court of Montana (Pet.App.1a-35a) is reported at 553 P.3d 985. The relevant trial court order is unreported, but available at Pet.App.33a-35a; JA234-239.

## JURISDICTION

The Montana Supreme Court entered judgment on August 6, 2024. Pet.App.2a. On October 11, Petitioner applied for an extension of time to file a petition for writ of certiorari. Justice Kagan granted the application, extending the time to file through December 4, 2024. Petitioner timely filed the petition (24A361), which was granted on June 2, 2025. The Court has jurisdiction under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISION

U.S. Const., amend. IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

On September 27, 2021, the Anaconda-Deer Lodge County Police Department searched Case's home without a warrant. During the search, the police made observations and seized evidence that Montana used to prosecute Case for felony assault on a police officer. After unsuccessfully moving to exclude the evidence, Case was tried and convicted. In a 4-3 decision, the

Montana Supreme Court upheld the search on the ground that the officers had "objective, specific, and articulable facts from which an experienced officer would suspect that a citizen was in need of help." Pet.App.16a (citation omitted).

## I. The call about Case's suicide threat, and the responding officers' knowledge of his history of suicide-by-cop threats.

Petitioner William Trevor Case is an Army veteran and longtime resident of Anaconda, a town of 10,000 near Butte, Montana.

1. On September 27, 2021, Case's ex-girlfriend, J.H., called police dispatch and reported that Case had threatened suicide during a telephone call that evening. Pet.App.3a. J.H. purportedly became concerned when Case said "he was going to get a note" and if she called the police, he would harm them. *Ibid.* J.H. claimed Case "was threatening suicide and the phone just went silent, and she didn't get a response." Pet.App.31a. According to J.H., Case "said he had a loaded gun, and all I hear[d] was clicking and, I don't know, I thought I heard a pop at the end, I don't know." *Ibid.*

2. Four officers went to Case's home and made entry: Captain Dave Heffernan, Sergeant Richard Pasha, Officer Blake Linsted, and Police Chief William "Bill" Sather. Pet.App.4a. All the officers knew or had met Case; all were familiar with Case's history of alcohol abuse and mental-health issues; and two had prior police encounters with Case. Pet.App.4a-5a.

At the suppression hearing, Captain Heffernan related, "I've known [Case] my whole life," and "we've had other prior dealings with him." JA82. Chief

Sather similarly had "known [Case] for probably 30 years, had beers with him, played softball with him," but also knew of his department's dealings with Case. JA211-212. Officer Linsted had personally dealt with Case (JA111-112), while Sergeant Pasha had recently met him (JA163-164); both were also aware of multiple prior police incidents involving suicide threats (JA111-113; JA82-84; JA212-213). In some of the incidents, officers (including Linsted) had "perceived Case's behavior as an attempt to elicit a defensive response, i.e., a 'suicide-by-cop.'" Pet.App.5a; *see also* Pasha-Cam2 at 0:04:40. Summing up the "[t]hree or four" incidents, Sather suggested that "when [Case] breaks up with a girl, he ... kind of drinks pretty heavy and goes off a little kilter and panics and wants to commit suicide," though he had never followed through. JA212.

3. In response to J.H.'s call, Sergeant Pasha and Officer Linsted, drove to Case's home, where they met Captain Heffernan. Pet.App.4a; JA106.

Pasha and Linsted looked through the home's windows. Pet.App.4a; JA77; JA106-107; JA165-166; JA171-173. They did not see Case, blood, or any other sign that Case was injured. *Ibid.* "We've gotten a pretty decent look into most of these rooms," Pasha remarked, and "I don't see shit." Pasha-Cam1, at 0:13:35. The officers noticed an empty handgun holster and a notepad with handwriting, which the officers took "potentially to be a suicide note." JA165-166. Linsted also saw empty beer cans. JA107.

The officers announced themselves, knocked on the door, and shined flashlights into the windows.

Pet.App.4a; JA76-77; JA116-117; JA171-173. Pasha also yelled through an open window. *Ibid.* Case did not respond. *Ibid.*

After about 15 minutes, Captain Heffernan called Chief Sather to "increase officer safety." JA86. While they were waiting, J.H. arrived and recounted her call with Case, including "something to th[e] effect" that Case had threatened to "shoot it out" with police. JA70-74.

Chief Sather arrived about 30 minutes after the other officers, and decided to make entry. Pet.App.4a-5a. The officers did not consider obtaining a warrant because "it wasn't a criminal thing"—they "were going in to assist [Case]." JA85. In preparation, Sergeant Pasha and Officer Linsted retrieved their rifles from their patrol car, and Captain Heffernan returned to the station to retrieve a ballistic shield. Pet.App.5A. In all, the officers waited roughly 40 minutes after arriving before entering Case's home. *Ibid.*

4. As the officers waited outside Case's house, they weighed the risks from making entry. Bodycam footage confirms that "[a]ll the officers on the scene stated that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." Pet.App.29a (McKinnon, J., dissenting).

Shortly after arriving, Officer Linsted noted that the "last time we were here, he like said he was going to shoot it out with [another officer] and I." Linsted-Cam1, at 0:02:06. Sergeant Pasha posed the question: "Do you make entry and then all of a sudden he comes from the house and he pulls a gun and then you shoot him, I mean if he's actually not dead." *Id.* at 0:19:30. Pasha then elaborated on the risk: "I'm scared that

maybe he didn't actually shoot himself, because he can't and he's tried suicide by cop before, and he like left us all this so we're gonna go in the house and ... he is going to pull a gun on us." *Id.* at 0:21:45; *accord* Pet.App.29a (McKinnon, J., dissenting). When Linsted recounted that Case was "trying to get us to sho[o]t him" the "last time we dealt with him" (Linsted-Cam1, at 0:22:27), Pasha underscored what he was "concerned about": "he's tried this suicide by cop shit before ... and he's going to try and shoot it out with us" because "he can't kill himself" (Pasha-Cam1, at 0:23:49). Linsted asked whether they should call ahead to "stage medical … I mean if he's got a gu—self-inflicted gunshot wound, like chances are pretty slim, but…." Linsted-Cam1, at 0:26:32.

After Chief Sather arrived, Pasha continued to raise his worry about "how many f**king times" Case had "tried to commit suicide by cop." Pasha-Cam2, at 0:06:10; *see* Pet.App.4a-5a. Pasha observed that Case had "been suicidal forever and he hasn't done it but there have been several times where he's tried getting us to do it." Pasha-Cam2, at 0:06:58.

Sather expressed the view that Case "ain't got the balls to shoot himself" and "wants us to" (*id.* at 0:06:16), remarking that Case "likes to [] drink and just go off somewhere and [] wait for everybody to cry for him" (*id.* at 0:07:32). Noting that "this is probably about the [] tenth time I've dealt with him doing this[]," Sather reiterated, "he ain't got the guts," though Case could nonetheless "put a [] bullet right through my noggin" if the officers entered. *Id.* at 0:08:25. Pasha remained steadfast in worrying that Case was "gonna want to shoot it out." *Id.* at 0:08:17.

The officers discussed calling Case's "ex-wife" or his father, as well as Case himself. Heffernan-Cam1, at 0:16:03; Linsted-Cam1, at 0:17:06, 0:18:45, 0:20:16. They ultimately made none of these calls before entering. *Ibid.*; *see also* JA141; JA194.

5. Roughly 40 minutes after their initial arrival, the four officers entered Case's residence through the unlocked front door, announcing themselves and "yelling the whole time," with firearms drawn. Pet.App.5a; JA87. Sergeant Pasha and Officer Linsted proceeded upstairs, while Chief Sather and Captain Heffernan went downstairs. Pet.App.5a.

As Pasha entered and began to sweep an upstairs bedroom, he saw a closet curtain "jerk open," revealing "Case's face" and "what appeared to be a black object coming out" from behind the curtain. JA194-195. Pasha swung his rifle around and fired one shot, striking Case in the arm and abdomen. Pet.App.6a. Linsted entered the room and began attempting to administer first aid. *Ibid.* After Heffernan and Sather entered the room, Heffernan noticed and seized a handgun lying in a laundry basket near Case. *Ibid.* Paramedics then took Case to the hospital. *Ibid.*

## II. Case is prosecuted and convicted of assault on a police officer.

The county attorney's office charged Case with felony assault on a peace officer. JA4. Case moved to suppress the evidence from the officers' warrantless entry. Pet.App.6a-7a.

The trial court held an evidentiary hearing on Case's suppression motion. Pet.App.7a. The four offic-

ers involved in the search and J.H. testified, and bodycam footage from Sergeant Pasha, Officer Linsted, and Captain Heffernan was admitted. At the conclusion of the hearing, the trial court denied the motion:

> You know we can slice the bologna as thin as we want about exigency versus emergency, you know, and different statutory definitions in different context, but police department got a call. They got a call about Trevor Case. No stranger to the Anaconda-Deer Lodge County Department of Law Enforcement. Uh, you know, prior things have gone on . . .
>
> But that micro analysis here says, yes for the purpose of whether or not there was an exigency when they went in because they still didn't know was he in there? Was he dead? Was he waiting for them? Was he gonna do it the suicide by cop thing? You know, what was going to happen? They had to be careful. But it was an exigent circumstance. They went into the house without a warrant. Uh, does not render what came as a result of that inadmissible. The Motion to Suppress is denied.

Pet.App.41a-43a.[2]

The matter proceeded to a jury trial, and Case was convicted. Pet.App.3a, 7a.

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[2] The motion to suppress was subsequently renewed and summarily denied. *See* JA2.

### III. A divided Montana Supreme Court upholds the entry into Case's home.

In a 4-3 decision, the Montana Supreme Court upheld the trial court's suppression ruling, reasoning that the officers properly entered Case's home under Montana's "community caretaker" exception, which it said draws on the "exigent circumstances" doctrine. Pet.App.11a-20a.

Case argued that the officers lacked exigent circumstances for entering his home, noting that the officers waited over 40 minutes to enter, and the known facts suggested Case sought to engage police officers rather than to commit suicide by his own hand. JA273-274. Nor, Case argued, could the search be justified under the community caretaking doctrine, which was abrogated by *Caniglia* v. *Strom*. JA279-281.

In a divided decision, however, the Montana Supreme Court upheld the entry. Pet.App.18a-20a. The majority observed that the "community caretaking" doctrine applies "when a peace officer acts on a duty to promptly investigate situations 'in which a citizen may be in peril or need some type of assistance.'" Pet.App.9a (citation omitted). While acknowledging that *Caniglia* "expounded on the propriety of the community caretaking doctrine," the majority concluded that *Caniglia* did not "rule[] that the doctrine is itself unreasonable per se," but "established that the Fourth Amendment requires reasonable exigency to enter a home." Pet.App.11a.

The majority then turned to Montana's "community caretaker" test, which drew on "the Ninth Circuit Court of Appeals' exigent circumstances standard for warrantless entry." Pet.App.13a. An "'officer has the

right to stop and investigate,'" the majority reasoned, "'as long as there are objective, specific and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril.'" Pet.App.12a-13a (citation omitted). The majority recognized that probable cause is a "sensible" benchmark for determining whether "a person is in imminent peril and in need of help." Pet.App.15a-16a. But it nonetheless deemed the "probable cause element" "superfluous" where an officer is "acting in a caretaker's capacity" and his "reasons for a warrantless entry" are "totally divorced" from the investigation of a crime. Pet.App.14a-15a.

The majority deemed it sufficient that the officers had "'objective, specific, and articulable facts'" supporting their suspicion that Case was "'in need of help'"—because he "was suicidal and potentially intoxicated" (Pet.App.16a (citation omitted)), "a noncriminal but imminently perilous situation in which immediate action is often necessary" (Pet.App.20a (citation omitted)).

Justice McKinnon dissented, joined by two other justices. She noted that the majority "misapprehend[ed] *Caniglia*, which held that the community caretaker doctrine was *not* a standalone exception to the warrant requirement and did not permit warrantless entries into personal residences." Pet.App.24a-25a. Because Montana precedent treated the community caretaker doctrine as "an exception to the warrant requirement," its "reasoning was inconsistent with what *Caniglia* subsequently held." Pet.App.27a-28a.

Justice McKinnon reasoned that "the probable cause requirement under the exigency exception is not

limited only to the commission of a criminal offense but applies to whether there is probable cause to believe a person is in imminent peril and in need of help." Pet.App.24a. Under that standard, the dissenters would have reversed, because "the record does not support the presence of exigent circumstances." Pet.App.28a. "All the officers on the scene stated that it was unlikely Case required immediate aid, but rather [was] likely lying in wait for them to commit suicide by cop." Pet.App.29a. The officers "were not responding to a call from Case himself requesting immediate assistance"; there were "no signs of an active emergency in progress"; and "[m]ore telling as to the lack of exigency, the officers waited nearly an hour before making entry." *Ibid.*

## SUMMARY OF ARGUMENT

This is the rare case where the recognized sources of Fourth Amendment meaning—constitutional text and first principles, precedent, the common law, and the relevant interests—all point to the same answer: to make a warrantless home entry on emergency-aid grounds, the State must have probable cause to believe someone is in urgent need of help. Because the Montana Supreme Court upheld the warrantless entry here under a reasonable suspicion standard that contravenes these principles, and because the officers lacked probable cause to believe there was an emergency in Case's home, this Court should reverse.

1. First principles and precedent require probable cause for emergency-aid entries.

a. The home occupies a unique position under the Fourth Amendment. "'Freedom' in one's own 'dwelling,'" this Court has explained, "is the archetype of the

privacy protection secured by the Fourth Amendment." *Lange*, 594 U.S. at 303 (citation omitted). For this reason, state officials must generally have a warrant supported by probable cause to enter a home, subject to only a few "jealously and carefully drawn" exceptions. *Ibid.* (citation omitted).

b. One exception is for exigent circumstances, which recognizes that certain situations present a need "so compelling that [a] warrantless search is objectively reasonable." *Riley* v. *California*, 573 U.S. 373, 402 (2014) (citation omitted). This Court's precedents recognize probable cause as "the proper legal standard" in assessing whether exigent circumstances justify a warrantless home entry. *Minnesota* v. *Olson*, 495 U.S. 91, 100 (1990).

The need to render urgent emergency aid is "[o]ne exigen[t]" circumstance, *Brigham City,* 547 U.S. at 403, and the test applied in this context likewise sounds in probable cause. In *Brigham City*, this Court held that officers may enter a home without a warrant if they have "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." *Id.* at 400. That standard was met there and in *Michigan* v. *Fisher* because the "tumultuous situation" the officers personally observed, 558 U.S. 45, 48 (2009), established a "fair probability" of an ongoing emergency, *cf. Illinois* v. *Gates*, 462 U.S. 213, 238 (1983). Indeed, Montana acknowledged in its Brief in Opposition that "*Brigham City*'s 'objectively reasonable basis' standard doesn't require courts to consider anything different from the probable cause standard." BIO 15.

c. "The common law in place at the Constitution's founding leads to the same conclusion." *Lange*, 594

U.S. at 309. At common law, "breaking down doors" (*i.e.*, entering without consent) was considered "extreme violence," and constables could take that measure only when compelled by "absolute necessity." 1 J. Chitty, Criminal Law 52 (1816) (Chitty). If there was an "affray made in a house"—like in *Brigham City* and *Fisher*—a constable could enter only if the affray was "within [his] view or hearing." *Ibid.* In grounding a constable's entry authority on direct observations, the affray rule clearly forbade warrantless entries on less than probable cause.

d. The common law affray rule, precedent, and first principles all require probable cause to make a warrantless entry to render emergency aid. But even if a "balancing of interests" were needed here, liberty interests, weighed against "the legitimate governmental interests" in rendering aid, support a probable cause standard. *Riley*, 573 U.S. at 385-386 (citation omitted). The liberty interest in the home is paramount, and "entitled to special protection," under the Fourth Amendment. *Randolph*, 547 U.S. at 115 (citation omitted). And probable cause "provides the relative simplicity and clarity" necessary to cover the wide range of emergencies that first responders may face. *Dunaway* v. *New York*, 442 U.S. 200, 213 (1979). At the same time, probable cause requires a level of certainty necessary to protect first responders and occupants alike when officials contemplate the "extreme violence" of a nonconsensual entry. Chitty, at 52.

2. The Montana Supreme Court rejected a probable cause standard in favor of a "reasonable suspicion" standard "based on *Terry*." Pet.App.32a (McKinnon, J., dissenting). But its reasoning and chosen standard

contravene settled precedent, first principles, and tradition.

a. The majority deemed probable cause inapplicable if the officers are "acting in a caretaker's capacity," for "reasons … totally divorced" from investigatory purposes. Pet.App.15a. But *Caniglia* rejected "community caretaking" as a "standalone doctrine" separate from exigent circumstances. 593 U.S. at 196. And *Brigham City* makes equally clear that the emergency-aid doctrine does not turn on an official's "subjective motives." 547 U.S. at 404-405. Plus, probable cause has long been applied to non-criminal contexts. *E.g.*, *Camara* v. *Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 538 (1967).

b. The decision below allows warrantless entries whenever officers have "objective, specific, and articulable facts from which an experienced officer would *suspect* that a citizen is in need of help." Pet.App.16a (emphasis added). But this Court has never applied that standard to home entries, and it should not start now.

This Court has limited the reasonable suspicion standard to "minimally intrusive" searches, typically involving brief stops in public places or vehicles. *Hicks*, 480 U.S. at 327. But entering a home is fundamentally more intrusive than stopping people while walking on the street or driving. Adopting a reasonable suspicion standard here would weaken Fourth Amendment protections at the very point where they should be strongest. The standard requires only "some minimal level of objective justification," *United States* v. *Sokolow*, 490 U.S. 1, 7 (1989), a level of cause inconsistent with

both the common law affray rule and the "heavy burden" this Court has imposed when officials invoke exigent circumstances, *Welsh* v. *Wisconsin*, 466 U.S. 740, 749-750 (1984).

A reasonable suspicion standard would also increase the risk of pretextual, mistaken, and tragic home entries. As *Brigham City* and *Fisher* illustrate, emergency-aid cases often involve both potential criminal activity *and* danger to occupants. Allowing officers to make warrantless entries on less than probable cause in those situations would create a palpable risk of abuse. Even in pure emergency situations, a reasonable suspicion standard could permit involuntary home entries based on ambiguous, commonplace signs, like children yelling. Nor are the risks limited to legitimate emergency calls, for a low bar could potentially lead more readily to crank and "swatting" call incidents.

3. The record shows the officers lacked probable cause to believe Case was seriously injured or about to be so. The officers responding to the suicide call made by Case's ex-girlfriend openly discussed his repeated pattern of threatening suicide without ever following through. When they arrived, they saw no signs of injury or violence. The officers waited 40 minutes before making entry, during which they "stated that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." Pet.App.29a (McKinnon, J., dissenting).

On these facts, the main risk the officers objectively faced was not that Case had shot himself—hence, the *40-minute* delay—but that their very entry would induce a shooting, *i.e.*, a "suicide-by-cop."

Pet.App.5a. That was not an emergency, but a risk the officers controlled: "[S]uicide by cop requires engagement with law enforcement," and "[t]he officers chose the time and place that [Case] encountered law enforcement." *United States* v. *Hastings*, 246 F. Supp. 3d 1163, 1167 (E.D. Tex. 2017). Because the officers lacked probable cause for the one possible emergency (suicide), and the main risk presented by the totality of the circumstances (suicide-by-cop) was not an emergency, the entry was objectively unreasonable.

4. A probable cause standard will still permit officers and other first responders to address the "heartland emergency-aid situations" raised in the *Caniglia* concurrences. In many such scenarios, officers will have probable cause to believe an emergency is unfolding. And even when they do not, officers and first responders concerned for an occupant's wellbeing have other potential means for providing assistance, including contacting family and friends—which the officers here considered, but never did.

## ARGUMENT

### I. The Fourth Amendment compels a probable cause standard for warrantless home entries to render emergency aid.

The Constitution provides special protection to the home, so "this Court has repeatedly 'declined to expand the scope of … exceptions to the warrant requirement to permit warrantless entry into the home.'" *Caniglia*, 593 U.S. at 199 (citation omitted). To be sure, such an exception exists where there are exigent circumstances, and the need to render emergency aid is "[o]ne exigency obviating the requirement of a warrant." *Brigham City*, 547 U.S. at 403. But what the

Fourth Amendment requires is what was lacking here: probable cause to believe an emergency actually exists.

### A. The Fourth Amendment accords special protection to the home, generally prohibiting the government from entering it without a warrant supported by probable cause.

The Fourth Amendment guarantees the "right of the people to be secure in their … houses … against unreasonable searches and seizures." U.S. Const. amend. IV. "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable government intrusion.'" *Collins* v. *Virginia*, 584 U.S. 586, 592 (2018) (citation omitted). Because the "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed," *U.S. Dist. Ct.*, 407 U.S. at 313, "the home is entitled to special protection as the center of the private lives of our people." *Randolph*, 547 U.S. at 115 (citation omitted).

1. This special protection "'generally requires the obtaining of a judicial warrant' before a law enforcement officer [or other official] can enter a home without permission." *Lange*, 594 U.S. at 301 (citation omitted). And the Constitution requires that "no Warrants shall issue, but upon probable cause." U.S. Const. amend. IV.

The twin protections of a warrant supported by probable cause ground the home's status as "first among equals" when "it comes to the Fourth Amendment." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013). The Warrant Clause "interpose[s] a magistrate between the citizen and the police … so that an objective mind

might weigh the need to invade [] privacy in order to enforce the law" or pursue other governmental objectives. *McDonald* v. *United States*, 335 U.S. 451, 455 (1948); *accord Johnson* v. *United States*, 333 U.S. 10, 14 (1948). And the mandate that warrants be supported by "probable cause," and "particularly describ[e] the place to be searched," ensures that searches based "on loose, vague or doubtful bases of fact" do not proceed. *Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 357 (1931).

The requirement of a warrant supported by probable cause is historically tied to the home as the locus of liberty. "[T]he Fourth Amendment was the founding generation's response to the reviled 'general warrants' and 'writs of assistance' of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley*, 573 U.S. at 403. The Warrant Clause—with its attendant probable cause requirement—was directly aimed at avoiding the "complete discretion" conferred by general warrants and writs of assistance. *Marcus* v. *Search Warrants of Prop. at 104 E. Tenth St.*, 367 U.S. 717, 729 n.22 (1961).

2. "[S]earches and seizures inside a home without a warrant are" thus "presumptively unreasonable." *Payton*, 445 U.S. at 586. Without a warrant, the government may only enter a home under "a few specifically established and well-delineated exceptions." *Mincey* v. *Arizona*, 437 U.S. 385, 390 (1978) (citation omitted).

### B. Precedent requires probable cause for home entries under the exigent circumstances doctrine, and the same standard applies to emergency-aid entries.

One "important exception" to the warrant requirement applies when "the exigencies of the situation" make the need for action "so compelling that [a] warrantless search is objectively reasonable." *Lange*, 594 U.S. at 301 (citation omitted). The specific exigencies that may justify such a warrantless entry include putting out a fire, *see Michigan* v. *Tyler*, 436 U.S. 499, 509 (1978); hot pursuit; preventing the imminent destruction of evidence; and the exigency at issue here: the need "to render emergency assistance to an injured occupant or to protect an occupant from imminent injury," *Brigham City*, 547 U.S. at 403. This Court's precedents treat probable cause as the general standard for exigent circumstances and that standard applies equally to the emergency-aid exception.

1. This Court has already explained that probable cause is the proper legal standard for assessing the constitutionality of warrantless home entries under the exigent-circumstances doctrine.

In *Minnesota* v. *Olson*, this Court affirmed the Minnesota Supreme Court's analysis of whether there was probable cause to believe that an exigent circumstance justified a warrantless entry, which this Court called "the proper legal standard." 495 U.S. at 100. After setting out the recognized exigent-circumstances exceptions, the Minnesota Supreme Court had reasoned "that in the absence of hot pursuit there must be at least probable cause to believe that one or more of the other factors justifying the entry were present."

*Ibid.* This Court held that this analysis "applied essentially the correct standard in determining whether exigent circumstances existed," and declined to "disturb the state court's judgment" that it was not met. *Id.* at 100-101.

*Olson*'s probable cause formulation is reinforced by this Court's previous exigent circumstances decisions. In applying the "hot pursuit" exception, for example, this Court has long focused on whether police "had probable cause to believe that [the fleeing suspect] had entered a house a few minutes before." *Santana*, 427 U.S. at 42. In *Santana*, the Court held that officers properly followed a suspect "through the open door" of her house, having watched her "retreat[] into the vestibule of her house." *Id.* at 40. Notably, the concurring opinions likewise stressed that there was probable cause to believe the suspect had just fled inside. As Justice White put it, "the officers had probable cause to arrest Santana *and* to believe that she was in the house." *Id.* at 43 (White, J., concurring) (emphasis added); *accord id.* at 44 (Stevens, J., concurring).

The Court's framework for analyzing exigent circumstances confirms that the standard for assessing the need for urgent action is probable cause. The ultimate question is whether "[t]he officer," on the available facts, "might reasonably have believed that he was confronted with an emergency," *Schmerber* v. *California*, 384 U.S. 757, 770 (1966) (applying destruction-of-evidence exception), and thus "reasonably believes [that] exigencies exist," *Lange*, 594 U.S. at 308 n.3. This tracks the traditional probable cause test, which focuses on whether the totality of the circumstances furnish "a reasonable ground for belief of guilt." *Brinegar*, 338 U.S. at 175 (citation omitted).

2. The probable cause standard applied in assessing other exigent circumstances properly governs the emergency-aid exception, too.

a. The emergency-aid exception applies where officials confront "the need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 403. While this Court has not used the words "probable cause" in applying the exception, its key emergency-aid precedents—*Brigham City* and *Fisher*—both support the same probable cause standard required for other exigent-circumstances entries.

b. In *Brigham City*, this Court held the emergency-aid exception applies if officers "have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 547 U.S. at 400. That standard is no different from whether officers have information that "would 'warrant a man of reasonable caution in the belief' that a [crime] has been committed.'" *Wong Sun* v. *United States*, 371 U.S. 471, 479 (1963) (citation omitted). After all, "[t]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt." *Pringle*, 540 U.S. at 371 (citation omitted).

It makes sense that *Brigham City*'s "objectively reasonable basis" requirement for emergency-aid entries sounds in probable cause. Probable cause is a "long-prevailing," *Pringle*, 540 U.S. at 370, and "familiar threshold standard," *Dunaway*, 442 U.S. at 213. Just as with other exigent circumstances or criminal activity, the test is whether "there is a fair probability," given the totality of the circumstances, *cf. Gates*, 462 U.S. at 238, that an occupant is injured or at imminent risk of injury. As the United States explained in

its *Brigham City* amicus brief, "[r]ather than requiring an objectively reasonable basis for an officer to believe a crime has been [committed] or is about to occur, the officer needs an objectively reasonable basis to believe that an emergency need for assistance exists." 2006 WL 448210, at *19 n.18 (Feb. 21, 2006).

Nor can there be any doubt that the officers' observations in *Brigham City* and *Fisher* satisfied a probable cause standard. In *Brigham City*, officers witnessed a family fight—a juvenile "struck one of the adults in the face," causing the adult to "spit[] blood." 547 U.S. at 401 (citation omitted). Because the officers saw an unfolding "melee" and "fracas" that had already caused physical harm, they "had an objectively reasonable basis for believing" their help was urgently needed. *Id.* at 400, 406. The officers in *Fisher* similarly "found a household in considerable chaos," with a freshly smashed pickup truck, damaged fence posts, and broken windows and glass strewn about. 558 U.S. at 45-46. They "found signs of a recent injury," *id.* at 48, including "blood on the hood of the pickup and on clothes inside of it, as well as on one of the doors to the house," *id.* at 46. And they "could see violent behavior inside," with "Fisher screaming and throwing things." *Id.* at 48. These personal and specific observations of "*ongoing* violence," *Brigham City*, 547 U.S. at 405, and "signs of a recent injury," *Fisher*, 558 U.S. at 48, justified a person "of reasonable caution" in the belief that someone in the home likely needed immediate help.

### C. Common law principles support a probable cause standard for warrantless emergency-aid entries into the home.

In construing the Fourth Amendment, this Court looks to historical practices in order to "assur[e]

preservation of that degree of privacy against government that existed when the[] Amendment was adopted." *United States* v. *Jones*, 565 U.S. 400, 406 (2012) (citation omitted). At the time of the framing, the common law allowed constables to enter homes without a warrant to address a specific and narrow emergency: an affray. But the common law required constables to directly observe the affray, which means they would necessarily have had probable cause to believe there was an emergency.

1. Emergency response services have evolved and expanded since the Fourth Amendment was framed. Today, police and other first responders provide a broad range of emergency services, from firefighting, to emergency medical services, to child-protective services. At the time the Constitution was adopted, however, a constable acted principally as "a conservator of the peace," and that was considered "the most essential part of his duty." T. Saunders, Chitty's Summary of the Office and Duties of Constables 105 (3d ed. 1844). That duty included breaking up "affrays," defined as "a Skirmish or Fighting between two or more," which may "terrify or bring fear." M. Dalton, The Country Justice 35 (1705) (Dalton); *accord Lange*, 594 U.S. at 312. And if there was an affray inside a home, the common law allowed a constable to enter the home to break it up, but only if he *saw or heard* it.

Sergeant William Hawkins noted that a constable "may break[] open the doors" "[w]here an affray is made in a house in the view or hearing of a constable, or where those who have made an affray in his presence fly into a house, and are immediately pursued by him, and he is not suffered to enter." Hawkins, at 138-139; *accord* R. Burn, The Justice of the Peace, and

Parrish Officer 17 (6th ed. 1758) (Burn). Chitty similarly explained that "in case of an actual affray… within the view or hearing of a constable, or where those who have made an affray in his presence, fly to a house and are pursued by him, he may break open the doors to arrest the affrayers, or suppress the tumult." Chitty, at 56 .

The commentators often stress that a constable's power to "break open doors" turned on his having "view[ed]" or "hear[d]" the affray. *Ibid.*; *see also* Burn, at 17; Hawkins, at 138-139; 1 Thomas Walter Williams, The Whole Law Relative to the Duty and Office of a Justice of the Peace 187 (3d ed. 1812) (Williams) (recognizing authority "[w]here an affray is made in an house in the view or hearing of the constable; or where those who made an affray in his presence fly into a house"). This rule sounds in probable cause, for it requires the constable to directly observe the affray, creating a "fair probability," *Gates*, 462 U.S. at 238, that entry is needed to render emergency aid.

Sir Matthew Hale's formulation of the rule likewise sounds in probable cause: "If there be an affray in the house, where the doors are shut, whereby there is likely to be manslaughter or bloodshed committed, the constable of the vill[age] having notice thereof, and demanding entrance, if they within refuse to do it, but continue the affray, the constable may break open the doors to keep the peace and prevent the danger." 2 Hale, *Historia Placitorum Coronæ* 95 (1736). Here, too, the affray must be "continu[ing]" in the constable's view or hearing for him to enter. Indeed, Hale and other commentators observed that if an affray

was "past, and not in view of [the] Constable, he cannot imprison without warrant of the Justice." Hale, Pleas of the Crown 136 (1678); Dalton, at 35 ("the Constable may not imprison the Parties, except the Affray were in the constables presence").

The common law thus allowed a constable to make a warrantless entry to "protect an occupant from imminent injury." *Cf. Brigham City,* 547 U.S. at 403. But breaking down doors was viewed as "so violent, obnoxious and dangerous a proceeding that it should be adopted only in extreme cases"—as when the constable personally observed an in-home affray. Chitty, at 52-54. That affray rule fits hand-in-glove with the Court's emergency-aid precedents. Both *Brigham City* and *Fisher* were affray cases, involving a "tumultuous situation" in which the officers personally saw and heard "violent behavior" inside the house. 558 U.S. at 48. The fact that constables, at the framing, needed to personally observe the affray in this situation confirms that the Fourth Amendment requires no less than probable cause to enter the home.

### D. A probable cause standard best accommodates the foundational liberty interest in the home, the public safety concerns grounding the emergency-aid exception, and officer and occupant safety.

The synergy between this Court's precedents and the "guidance from the founding era" supplied by the affray rule suffices to establish probable cause as the standard for emergency-aid entries. *Riley*, 573 U.S. at 385. But if those sources left any doubt on the matter, it is resolved by the "balancing of interests" bearing on emergency situations. *Id.* at 386. Only the "textual

and traditional standard of probable cause," *cf. Hicks*, 480 U.S. at 329, properly takes account of a warrantless home entry's "intru[sion] upon an individual's privacy" and liberty, as well as the "legitimate governmental interests" in public safety and officer safety, *Riley*, 573 U.S. at 385 (citation omitted).

1. Because the sanctity of the home is so foundational to the Fourth Amendment, it would be anomalous to uncouple it from the Amendment's textually committed standard of probable cause. "[W]hen it comes to the Fourth Amendment, the home is first among equals." *Jardines*, 569 U.S. at 6. If the "special protection" principle has any purchase, *Randolph*, 547 U.S. at 109, 115, officials seeking to enter the home without the presumptively required warrant surely ought to possess the same degree of objective justification that the Fourth Amendment prescribes for magistrates. As Justice Scalia stressed, "[d]ispensing with the need for a warrant is worlds apart from permitting a lesser standard of *cause*." *Hicks*, 480 U.S. at 327.

2. At the same time, the probable cause standard is sufficiently "fluid" and "practical," *cf. Gates*, 462 U.S. at 231-232, to promote the "governmental interest[]" in responding to emergencies, *Riley*, 573 U.S. at 385. Probable cause permits police and other first responders to assess the likelihood of a wide range of potential emergencies—just as with the myriad scenarios involving potential criminal activity.

This Court has applied the emergency-aid exception in a variety of situations beyond "tumultuous situation[s]" inside the home, *Fisher*, 558 U.S. at 48, from "entering a burning structure to put out the

blaze," *Tyler*, 436 U.S. at 509, to assisting an unmedicated mental health patient who had just threatened to kill staff, *City & County of San Francisco* v. *Sheehan*, 575 U.S. 600, 603, 612 (2015). Probable cause is well suited to all these situations. If police or firefighters must decide whether "to break down a door to enter a burning home to rescue occupants or extinguish a fire," they may corroborate a reported fire by observing "smoke coming out a window or under a door," *Wayne* v. *United States*, 318 F.2d 205, 212 (D.C. Cir. 1963), or "an odor of something burning," *United States* v. *Kump*, 536 F.3d 113, 118 (2d Cir. 2008). If officers respond to reports of a man "going crazy" at a residence, they may reasonably infer that "medical assistance was needed, or persons were in danger" from seeing "signs of a recent injury" and "violent behavior inside." *Fisher*, 558 U.S. at 45-49.

To be sure, first responders may not always be confronted with such clear evidence of "*ongoing* violence" or other threats "occurring *within* the home." *Brigham City*, 547 U.S. at 405. The nature and mix of evidence necessary to establish probable cause "may vary greatly" with the type of emergency, just as it does with different types of criminal activity. *Gates*, 462 U.S. at 232 (citation omitted). Some clues may point clearly and specifically to an immediate danger, while others may require more corroborating evidence. Across the broad range of emergency scenarios, probable cause "provides the relative simplicity and clarity necessary" to give police and other first responders, "a workable rule" for addressing public safety concerns. *Dunaway*, 442 U.S. at 213.

3. In addition to accounting for the individual liberty interest in the home and the public interest in

responding to emergencies, the probable cause standard protects first responders and occupants from needless confrontation.

The common law recognized that entering a home without a warrant or consent constituted "extreme violence." Chitty, at 52. This Court has similarly warned that such entries are "fraught with danger." *McDonald*, 335 U.S. at 461 (Jackson, J., concurring); *cf. Quarles* v. *United States*, 587 U.S. 645, 653 (2019). Even when warrantless entries do not result in injury, that is "due to luck more than to foresight." *McDonald*, 335 U.S. at 460 (Jackson, J., concurring). Because people view their homes as their castles, there is a "substantial risk" of violent confrontation "inherent at any time anyone enters another's home without permission." *United States* v. *Carter*, 601 F.3d 252, 254 (4th Cir. 2010). Today, as at common law, many residents "would resort to violence and force to prevent such entry." *Id.* at 255.

The risk of violent confrontation inherent in warrantless home entries is often heightened in the emergency-aid context. Part of what makes these entries so dangerous is that occupants will often not expect the intrusion, and so may not realize the invaders are police. When someone does not "know what the object of the person breaking open the door may be," he has "a right to consider it as an aggression on his private property, which he will be justified in resisting to the utmost." *Ker* v. *California*, 374 U.S. 23, 49 (1963) (Brennan, J., concurring and dissenting in part) (citation omitted). Even when a resident recognizes the intruder as police, the situation may escalate; "possession of a warrant by officers conducting an arrest or

search greatly reduces the perception of unlawful or intrusive police conduct." *Gates*, 462 U.S. at 236. Absent warrant authority, the resident is more likely to keep the door shut and demand—rightly or wrongly—that "the officers go to get a search warrant." *Cf. Fisher*, 558 U.S. at 46.

Given the palpable risk of harm to both first responders and occupants, it is critical that officials satisfy the "familiar threshold standard of probable cause" before making a warrantless emergency-aid entry. *Dunaway*, 442 U.S. at 213. Like the common law's "within view" rule for affrays, Chitty, at 56, that standard ensures the risks of entry are justified by the degree of cause necessary to convince a magistrate to issue a warrant: a "fair probability" that someone within the home needs urgent help. *Cf. Gates*, 462 U.S. at 238. The "familiar standard" of probable cause "is essential to guide police officers" and other first responders, "who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Dunaway*, 442 U.S. at 213-214.

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In emergency-aid situations, just as in other exigent circumstances, a probable cause standard "gives full recognition to the competing public and private interests here at stake," including the core Fourth Amendment interest in the home, the need to respond to emergencies, and the concern with minimizing violent confrontation. *Camara*, 387 U.S. at 539.

## II. In rejecting a probable cause standard in favor of a reasonable suspicion standard, the Montana Supreme Court contravened this Court's precedents and foundational Fourth Amendment principles.

The majority below declined to apply a probable cause standard—over the dissent's urging—on the theory that probable cause is applicable only to "determine whether the facts 'are sufficient to warrant a reasonable person to believe that the suspect has committed an offense.'" Pet.App.15a (emphasis omitted). Deeming the officers' warrantless entry "totally divorced from the detention, investigation, or acquisition of evidence relating to the violation of a criminal statute," the majority applied Montana's "community caretaking" test. Pet.App.15a. That test permits warrantless entries under a standard "based on *Terry* and particularized or reasonable suspicion." Pet.App.32a (McKinnon, J., dissenting). At every step of the analysis, the court distorted settled Fourth Amendment law.

### A. The probable cause standard is not limited to criminal investigations, and applies regardless of an entering official's subjective intent or uniform.

1. Although the Montana Supreme Court insisted that Montana's community caretaker doctrine "comports with *Caniglia*" (Pet.App.11a), its reasoning directly contravenes that decision.

The majority below reasoned that its community caretaking doctrine remains valid in "non-criminal situations" where an officer is "acting in a caretaker's

capacity," and "a warrantless entry is essential to ensure the wellbeing of a citizen." Pet.App.15a. But this Court made clear in *Caniglia* that community caretaking is not a "standalone doctrine" justifying home entry. 593 U.S. at 196. To justify a warrantless entry, officers must invoke a recognized warrant exception—like the emergency-aid branch of the exigent-circumstances doctrine. *Id.* at 198; *id.* at 200 (Roberts, C.J., concurring). In so holding, the *Caniglia* Court refused to bifurcate community caretaking from other exigent circumstance exceptions. *Id.* at 198.

2. The majority's approach also lowers the bar if "an officer's reasons for a warrantless entry" are to "act[] in a caretaker's capacity" and "totally divorced" from investigatory purposes. Pet.App.15a. This Court considered and rejected that theory in *Brigham City*, holding that it "does not matter" for Fourth Amendment purposes whether officers subjectively seek to "arrest [the suspects] and gather evidence against them or assist the injured and prevent further violence." 547 U.S. at 405. As with other exigencies, what matters is not the officer's "subjective motivation," but whether they have an *objective* basis to believe that "a 'now or never' situation actually exists" within the home. *Lange*, 594 U.S. at 302 (citation omitted).

3. The majority was equally wrong in assuming that probable cause is limited to criminal investigations. Pet.App.15a. Probable cause applies to home entries by officials in non-criminal contexts. *E.g.*, *Camara*, 378 U.S. at 538 (probable cause applies to administrative warrants for enforcing building, health, and fire codes). While "[t]he showing of probable cause necessary" to justify a search "may vary with the object and intrusiveness of the search," neither that

standard nor the Fourth Amendment's warrant requirement is limited to "the typical police search," *cf. Tyler*, 436 U.S. at 505-506, or "to assessing the likelihood a criminal offense has been or is being committed" (Pet.App.30a (McKinnon, J., dissenting)). Nor is there any merit to the majority's suggestion that probable cause would be "unwieldy." Pet.App.15a. As noted, the "simplicity and clarity" of that standard makes it suitable for assessing the likelihood of an emergency within the home. *Dunaway*, 442 U.S. at 213. Indeed, because emergency situations often raise the possibility of criminal activity as well as harm, it makes particular sense to have "[a] single, familiar standard" for entering a home. *Ibid.*

If acting "to ensure the wellbeing of a citizen," (Pet.App.15a)—whether assessed subjectively *or* objectively—triggered a relaxed test for warrantless entries, that could create a separate Fourth Amendment regime for first responders with "non-criminal" duties. Emergencies within the home often involve dangers that fall within the purview of firefighters, paramedics, and other non-police first responders. This Court has made clear, however, that whether "the official conducting the search wears the uniform of a firefighter rather than a policeman" is no more relevant to the Fourth Amendment than the official's subjective intent or "purpose." *Tyler*, 436 U.S. at 506. The amendment "extends beyond the paradigmatic entry into a private dwelling by a law enforcement officer in search of the fruits of or instrumentalities of crime," *id.* at 504, "apply[ing] to all invasions on the part of the government" into "the sanctity of a man's home," *Boyd* v. *United States*, 116 U.S. 616, 630 (1886).

### B. A reasonable suspicion standard is insufficiently protective of the home, and would create opportunities for abuse and safety risks.

The majority below held that officers may enter a home if they possess "objective, specific, and articulable facts from which an experienced officer would *suspect* that a citizen is in need of help." Pet.App.16a. This echoes the "reasonable suspicion" standard adopted in *Terry* v. *Ohio*, which allows police to stop and briefly detain someone if they have "specific and articulable facts" to suspect he is committing a crime. 392 U.S. 1, 21 (1968). But this Court has never permitted a warrantless home entry based on a mere "reasonable suspicion," and for good reason: that standard was devised for searches and seizures far less intrusive than nonconsensual home entries, and is too low to safeguard the foundational liberty interest there.

1. This Court developed the "reasonable suspicion" standard for searches and seizures that are "*minimally* intrusive." *Hicks*, 480 U.S. at 327 (emphasis added). None of those searches and seizures is remotely analogous to entering a home without a warrant.

To begin, the Court has generally applied a "reasonable suspicion" standard for searches and seizures *outside* the home. Beyond *Terry* stops, the standard applies to (among other similar situations), "brief investigative stops of persons at airports," *United States* v. *Place*, 462 U.S. 696, 704-705 (1983); school searches, *New Jersey* v. *T.L.O.*, 469 U.S. 325, 345-347 (1985); traffic stops to investigate whether the driver is unlicensed, *Kansas* v. *Glover*, 589 U.S. 376, 382 (2020);

and vehicle stops to investigate drug trafficking, *Alabama* v. *White*, 496 U.S. 325, 332 (1990).

Within the home, the reasonable suspicion standard has been applied only where police are *already* lawfully inside, to define the scope of additional search and seizure authority. For example, police executing a search warrant within a home may detain occupants to protect themselves and "prevent[] flight." *Michigan* v. *Summers*, 452 U.S. 692, 702 (1981). In upholding this intrusion, however, this Court stressed that "the fact that the police had obtained a warrant to search respondent's house" was "[o]f prime importance." *Id.* at 701. Similarly, police executing an arrest warrant inside a home may conduct a "protective sweep" of areas where they reasonably suspect people may be hiding. *See Maryland* v. *Buie*, 494 U.S. 325, 334-335 (1990). There, too, the Court emphasized that the "arrest warrant gave the police every right to enter the home," so "*[o]nce inside*, the potential for danger justified a standard of less than probable cause for conducting a limited protective sweep." *Id.* at 334 n.1 (emphasis added).

2. The grounds for applying the reasonable suspicion test in these situations are inapplicable to warrantless home entries. Breaking into a home without consent is the constitutional *antithesis* of a "minimally intrusive" search, for home entries are "the chief evil against which the wording of the Fourth Amendment is directed." *U.S. Dist. Ct.*, 407 U.S. at 313. Applying a standard "less stringent" than probable cause would distort Fourth Amendment precedent, *Prouse*, 440 U.S. at 654, and create anomalous, unfortunate effects in emergency-aid situations.

The showing required for reasonable suspicion "is not high," *Richards*, 520 U.S. at 394, and can be established with information that is not only "different in quantity or content than that required to establish probable cause" but also "*less reliable*"—like an "unverified tip from [a] known informant," *White*, 496 U.S. at 330 (emphasis added). Whereas probable cause requires facts raising a "fair probability" or a "substantial chance of criminal activity," *Gates,* 462 U.S. at 238, 243 n.13, reasonable suspicion requires only "some minimal level of objective justification" beyond a "hunch," *Sokolow*, 490 U.S. at 7 (citations omitted).

Allowing officials to enter a home under a standard that is "not high," *Richards*, 520 U.S. at 394, and tolerates "less reliable" evidence, *White*, 496 U.S. at 330, is inconsistent with the "heavy burden" this Court has imposed when officials claim an urgent need for a warrantless entry, *Welsh*, 466 U.S. at 749. More fundamentally, that standard cannot be squared with the home's "special [Fourth Amendment] protection." *Randolph*, 547 U.S. at 115. It would equate breaking down a home's door with "minimally intrusive" actions, *Hicks*, 480 U.S. at 327, reducing an occupant's privacy interest in his home to the weaker protection he enjoys when walking outside or driving in his car. That treats the home as just another personal "effect," not "first among equals," *Jardines*, 569 U.S. at 6, and as a semi-public space, not "our most private space" or castle, *Kentucky* v. *King*, 563 U.S. 452, 474 (2011).

3. A "reasonable suspicion" standard for emergency-aid entries would also amount to "an open-ended license to enter a home without a warrant" (Pet.App.31a (McKinnon, J., dissenting)), creating opportunities for abuse and significant safety risks.

a. Home emergencies are often bound up with potential criminal activity. When officers arrived at the home "melee" in *Brigham City*, for example, they "observed two juveniles drinking beer." 547 U.S. at 400-401. And in domestic violence situations, there may not only be an urgent need to prevent harm to an occupant, but also potential grounds for arresting the person responsible for the violence.

When the line between emergency aid and criminal investigation blurs in this way, allowing warrantless entries upon a mere reasonable *suspicion* that a home's occupant is in danger would "create a significant potential for abuse." *Steagald*, 451 U.S. at 215. It is easy to see how officers "engaged in the often competitive enterprise of ferreting out crime" might reasonably suspect that a home's occupant is in need of aid while also reasonably suspecting that a violent crime has or will soon take place inside. *Mincey*, 437 U.S. at 395 (quoting *Johnson*, 333 U.S. at 13-14). If mere reasonable suspicion of imminent danger sufficed to make warrantless entry in such circumstances, police could effectively backdoor their way into criminal investigations in the home on less than probable cause. That is especially so because an officer's "subjective motivations" for entering a home are constitutionally "irrelevant." *Brigham City*, 547 U.S. at 404.

b. Even where officers have no reason to suspect criminal activity, a reasonable suspicion standard would permit warrantless home entries in commonplace situations.

If any facts suggesting "more than a hunch" that someone within a home faces danger suffice under the emergency-aid exception, *Sokolow*, 490 U.S. at 7, the occasions for warrantless entries would be legion. For

example, a report of "two children screaming" *could* suggest danger, even though any parent knows that such a report is just as likely to suggest a tantrum or sibling spat. *Cf. People* v. *Garrett*, 256 A.D.2d 588 (N.Y. App. Div. 1998) (deeming uncorroborated tip inadequate). Other ambiguous cues, like a broken window or a loud bang, might well allow entry, too, especially if an occupant is a known gunowner.

Even assuming a warrantless home entry to render emergency aid may be "a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of crime," one "cannot agree that the Fourth Amendment interests at stake" in such cases "are merely 'peripheral.'" *Camara*, 387 U.S. at 530. Warrantless home entries are dangerous and invasive, however well-intentioned. So even "the most law-abiding citizen" has "a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority" to true emergencies where intervention is likely to help—not exacerbate—the situation. *Ibid.* If every circumstance leading police to reasonably *suspect* that an occupant might need help permitted warrantless entry, it would be easier for police to enter an ordinary citizen's home than the home of a suspected criminal.

c. A reasonable suspicion standard would also erode Fourth Amendment protections for people with mental health conditions.

Many emergency-aid cases involve wellness checks on occupants with mental health issues. *E.g.*, *Sutterfield* v. *City of Milwaukee*, 751 F.3d 542 (7th Cir. 2014); *Ziegler* v. *Aukerman*, 512 F.3d 777 (6th Cir. 2008). While these situations *may* involve an immediate and substantial risk that the distressed occupant will

harm himself or others, not all do. *Compare Sheehan*, 575 U.S. at 603, 612 (officers properly entered mental health patient's room where she had just threatened someone with a knife and was off her medication), *with United States* v. *Christy*, 810 F. Supp. 2d 1219, 1268 (D.N.M. 2011), *aff'd*, 739 F.3d 534 (10th Cir. 2014) (mere knowledge that occupant "was depressed and off her medication" and "had previously attempted suicide, [w]as not an objectively reasonable basis" for an emergency).

Law-abiding citizens should not lose Fourth Amendment protections just because they "struggle with suicide and depression." *Christy*, 810 F. Supp. 2d at 1269. As one court put it, "there is not a suicide exception to the warrant requirement," so "[t]he self[-]harm must still be exigent." *Ibid.* While a "sizable percentage" of the United States population experiences mental health issues, those people "do not give up all rights to Fourth Amendment protection." *Ibid.*

d. The risks flowing from a relaxed standard of reasonable suspicion are not limited to legitimate emergency calls. Decades ago, then-Chief Judge Burger observed that "[f]ires or dead bodies are reported to police by cranks where no fires or bodies are to be found." *Wayne*, 318 F.2d at 212. Today, such "cranks" terrorize victims through "so-called swatting calls, which entail contacting law enforcement" with a false emergency to create "a frantic armed police response to frighten, harass and endanger someone at their home." D. Barrett & M. Haberman, *Several Trump Administration Picks Face Bomb Threats and "Swatting*", N.Y. Times, Nov. 27, 2024, https://www.ny-

times.com/2024/11/27/us/politics/trump-administration-picks-bomb-threats.html. The results can be deadly. *See, e.g.*, *Finch* v. *Rapp*, 38 F.4th 1234, 1238 (10th Cir. 2022) (individual killed by police after fake emergency call). The motivation behind "swatting" calls can range from personal vendettas to political ones. No surprise, then, that federal executive branch nominees and judges alike have been the targets of "swatting" attacks. *See, e.g.*, Barrett & Haberman, *supra*; N. Raymond, *US judge in Trump's election case subject of apparent 'swatting' incident*, Reuters, Jan. 8, 2024, https://www.reuters.com/world/us/us-judge-trumps-election-case-subject-apparent-swatting-incident-2024-01-08/.

The probable cause standard plays a critical role in preventing such swatting calls—which could provide "reasonable suspicion" of a home emergency—from triggering potentially deadly home entries.

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The Fourth Amendment's text, principles, and purpose all point in the same direction: probable cause is required to make a warrantless emergency-aid entry. The same sources foreclose the reasonable suspicion standard applied by the Montana Supreme Court or any other "subtle verbal gradations" that water down probable cause and "obscure rather than elucidate" the important Fourth Amendment limitations at stake. *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 541 (1985).

## III. The officers here lacked probable cause of an emergency justifying warrantless entry into Case's home.

The police lacked probable cause to believe that Case was "seriously injured or imminently threatened with such injury." *Brigham City*, 547 U.S. at 400. Of course, the officers arrived at Case's home in response to a call from Case's ex-girlfriend reporting that he had threatened suicide. And "trying to prevent a potential suicide" can be a valid basis for a warrantless home entry. *Caniglia*, 593 U.S. at 204 (Kavanaugh, J., concurring). But the officers here all knew that Case had a history of suicide threats that came to naught, and that his dealings with police instead had repeatedly involved "attempt[s] to elicit a defensive response, i.e., a 'suicide-by-cop.'" Pet.App.5a. When the officers peered into Case's home, they saw no signs of injury (Pet.App.4a; JA77-78; JA106-107; JA165-166; JA171-173), with Pasha remarking "I don't see shit" (Pasha-Cam1, at 0:13:38). Instead, as confirmed by bodycam footage, "[a]ll the officers on the scene stated that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." Pet.App.29a (McKinnon, J., dissenting).

Consistent with that understanding, the officers waited roughly 40 minutes after their arrival to enter the home. Pet.App.5a. Throughout that time, they discussed their concern with "how many f**king times ... this guy tried to commit suicide by cop" (Pasha-Cam2, at 0:06:10), noting that Case has "been suicidal forever and he hasn't done it but there have been several times where he's tried getting *us* to do it" (*id.* at 0:06:58). One of the first things Officer Linsted said upon arrival was that Case "said he was going to shoot

it out with [us]" the "last time we were here." Linsted-Cam1, at 0:02:06. Sergeant Pasha repeatedly explained that in light of that history, he thought that Case was "going to try and shoot it out with us" because "he can't kill himself." Pasha-Cam1, at 0:23:53. When Case's ex-girlfriend arrived at the scene, she recounted her call with Case, confirming that Case had threatened to "shoot it out" with police. JA70-74.

Even assuming the totality of the circumstances supported a reasonable *suspicion* that Case had just attempted to take—or might imminently take—his own life, they fell short of establishing a "fair probability" or "substantial chance" that Case required immediate emergency aid. *Gates*, 462 U.S. at 238, 243 n.13. As the dissent noted, the initial call came "not from the person needing assistance, but from an ex-girlfriend." Pet.App.31a. And the officers knew that Case had a history of expressing his suicidal tendencies by attempting "to get [police] to shoot him," suggesting that imminent danger would *result from*, rather than be *prevented by*, a warrantless entry of Case's home. Pasha-Cam2, at 0:04:40. The officers were all familiar with Case, and most had either known him for decades or dealt with him before. The facts they knew about Case tended to *rebut* the risk that Case would attempt to kill himself. That is why Chief Sather remarked, "he ain't got the balls to shoot himself." *Id.* at 0:06:16.

Conversely, the main danger objectively suggested by the totality of the circumstances—suicide-by-cop—cannot justify the warrantless entry. The "exigent circumstances rule justifies a warrantless search when the conduct of the police *preceding* the exigency is reasonable," and "[t]he police did not create the exigency

by engaging … in conduct that violate[d] the Fourth Amendment." *King*, 563 U.S. at 462 (emphasis added). Here, any threat of a shootout with police was contingent on the officers first entering Case's home, and would not otherwise have arisen. The danger of suicide-by-cop was officer-created, and an objectively *un*reasonable basis for making a warrantless entry. A reasonable officer would instead have known that entering the house would likely "exacerbat[e]" things. *Cf. Chamberlain* v. *City of White Plains*, 960 F.3d 100, 108 (2d. Cir. 2020) (rejecting emergency-aid exception where officers were told the occupant "was not in need of urgent medical assistance," and knew he "had a history of mental illness," yet entered and killed occupant).

The facts known to the officers make this case fundamentally different from *Brigham City*, *Fisher*, and common law affrays. The officers here "arrived at a vacant and silent residence." Pet.App.29a (McKinnon, J., dissenting). They lacked probable cause for the only potential emergency (suicide), and the most likely danger they confronted (suicide-by-cop) was not an emergency, but a risk they controlled. While an "officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided," he cannot make a warrantless entry that predictably causes a "fracas," and then use it as an "emergency" justifying the entry. *Brigham City*, 547 U.S. at 406.

## IV. A probable cause standard allows police and other first responders to address emergencies inside homes.

The emergency scenarios raised by the concurring justices in *Caniglia* confirm that a probable cause

standard will not prevent police and other first responders from helping occupants in urgent need. Even in situations where officials suspect an emergency, but lack probable cause, they will nearly always have other means of providing assistance.

### A. First responders will generally have probable cause for warrantless entries in heartland emergency-aid situations.

The probable cause standard may require officers to exercise greater restraint where, as here, they suspect someone of seeking to goad the officers into shooting him rather than taking his own life. But the standard will not prevent police and other first responders from assisting residents in "heartland emergency-aid situations," including those involving the suicidal and the elderly. *Caniglia*, 593 U.S. at 206 (Kavanaugh, J., concurring).

1. Many—if not most—cases of suicide risk will not involve facts like these. "Suppose that a woman calls a healthcare hotline or 911 and says that she is contemplating suicide, that she has firearms in her home, and that she might as well die." *Id.* at 207 (Kavanaugh, J., concurring). "[O]fficers respond by driving to the woman's home" and "knock[ing] on the door but do not receive a response." *Ibid.* On those facts alone, the officers may well have probable cause to believe that the woman is "'seriously injured or threatened with such injury,'" justifying a warrantless entry. *Ibid.* (quoting *Brigham City*, 547 U.S. at 400, 403). Unlike here, the call came "from the person needing assistance." Pet.App.31a (McKinnon, J., dissenting). And unlike here, no countervailing facts weigh against a risk of imminent harm. Indeed, in jurisdic-

tions requiring probable cause for warrantless emergency-aid entries, that standard has not prevented police from entering homes to assist the suicidal. *See, e.g.*, *Roberts* v. *Spielman*, 643 F.3d 899, 905-906 (11th Cir. 2011) (per curiam) (police had probable cause for warrantless entry "in response to a 911 call for a possible suicide attempt").

2. Take another "heartland emergency-aid situation[]": assisting the elderly "who ha[v]e been out of contact and may have ... suffered a serious injury." *Caniglia*, 593 U.S. at 204, 206 (Kavanaugh, J., concurring). "Suppose that an elderly man is uncharacteristically absent from Sunday church services and repeatedly fails to answer his phone throughout the day and night." *Id.* at 207. After a "concerned relative calls the police," "officers drive to the man's home" and "knock but receive no response." *Id.* at 207-208. These facts—centering on a detailed tip from an identified and likely reliable source—may well support a "fair probability" or "substantial chance" that the elderly man is injured (perhaps from a fall), *Gates*, 462 U.S. at 238, 243 n.13, and "in urgent need of medical attention," *Caniglia*, 593 U.S. at 202 (Alito, J., concurring).

Once again, case law in jurisdictions requiring probable cause for emergency-aid entries illustrates that police remain able to assist the elderly. For example, in *Brown* v. *Hooks*, a court granted qualified immunity to officers with "at least arguable probable cause to enter the house" of an elderly woman as part of a welfare check. 2023 WL 3365163, at *5 (M.D. Ga. May 10, 2023). The woman's son and caregiver had been hospitalized and requested that someone check on her because she was "unable to care for herself[]

and had been alone in the house for at least seven days without her caregiver." *Id.* at *3.

3. Of course, even in heartland scenarios there will be difficult cases. But that is no different from the criminal context, and no reason to abandon probable cause's "flexible, easily applied standard," which has long enabled police to do their jobs without compromising Fourth Amendment protections. *Gates*, 462 U.S. at 239.

### B. Even when there is not probable cause of an emergency, there are many ways for officials to assist home occupants in need.

1. When officials are concerned that someone inside a house needs help, they need not walk away simply because the facts fall short of probable cause. To the contrary, when officers lack probable cause to believe that "a person within is in need of immediate aid," they necessarily have *more* options than when they reasonably believe there is no time to do anything *other than* enter the home at once to "preserve life or avoid serious injury." *Mincey*, 437 U.S. at 392 (citation omitted).

a. To start, "the voluntary consent of an individual possessing authority" will allow first responders to enter a home in many scenarios where occupants need assistance, even absent probable cause of an imminent emergency. *See Randolph*, 547 U.S. at 109. That will usually be true when a person calls 911 requesting help for himself or another person in his home. *See, e.g.*, *Earle* v. *City of Vail*, 146 F. App'x 990, 993 (10th Cir. 2005) (911 caller consented to warrantless entry of responding police). It may also be true when a third

party calls 911 to perform a wellness check at someone else's home. In such instances, someone inside the home may consent to (and perhaps even welcome) a warrantless entry. *See, e.g.*, *Hourihan* v. *Bitinas*, 811 F. App'x 11, 12-13 (1st Cir. 2020) (Souter, J.) (occupant consented to warrantless home entry after caller requested a wellness check on the occupant).

b. Even absent consent, police and other first responders may have options. Take the circumstances of this case.

"[W]hat [is it] we would have had" the officers "do in these circumstances"? *Hicks*, 480 U.S. at 329. They "should have followed up [any] suspicions" that Case needed help "by means other than a search," *ibid.*, including by doing what any concerned "private citizen might do,'" *Caniglia*, 593 U.S. at 198 (citation omitted). The officers could have done more to try to talk to Case—in fact, the record suggests they considered calling him on the phone, but ultimately did not. *See* Linsted-Cam1, at 0:20:16. The officers could have tried to bring other first responders or people to the scene—firefighters, paramedics, neighbors, friends, or family—all of whom likely would have appeared less threatening than police and been more likely to obtain consent to enter. *See, e.g.*, *Thacker* v. *City of Columbus*, 328 F.3d 244, 249, 255 n. 3 (6th Cir. 2003) (resident invited paramedics, but not police, to enter his apartment); *accord* Ashley Krider, *et al.*, Responding to Individuals in Behav. Health Crisis Via Co-responder Models, Pol'y Rsch., Inc. & Nat'l League of Cities (Jan. 2020), https://www.theiacp.org/sites/default/files/SJC Responding%20to%20Individuals.pdf (many jurisdictions have adopted "co-responder" programs where medical professionals work with police to respond to

mental health crises). The officers also could have reached out to Case's family or friends and had them call Case to check on him. Once again, bodycam footage confirms that the officers considered calling Case's "ex-wife" or his father, but ultimately did not. Heffernan-Cam1, at 0:16:03; Linsted-Cam1, at 0:17:06, 0:18:45.

Taking some or all of these actions would have allowed the officers to gather more information about the situation. In turn, that information would have helped the officers more accurately assess Case's needs, and whether breaking in would help or hurt the situation.

c. In situations involving potential criminal offenses, officers may have probable cause to obtain a warrant despite lacking sufficient evidence of an ongoing emergency. Officers may also be able to pursue civil processes for helping people who may be in crisis. For example, many states have laws providing for warrant-like procedures facilitating the evaluation or commitment of mentally ill individuals who pose a danger to themselves or others. The officers in this case, for example, could have requested that the county attorney file a petition for Case's civil commitment, to the extent they had "direct knowledge of the [relevant] facts" justifying it. *See* Mont. Code Ann. §53-21-121(1). Those facts would include whether Case's "mental disorder, as demonstrated by [his] recent acts or omissions, w[ould], if untreated, predictably result in" Case "becom[ing] a danger to self or others...." *Id.* §53-21-126(1)(d). The commitment process would move forward only if, among other things, a court found probable cause supported the petition. *Id.* §53-21-122(2)(a).

Whether any civil commitment scheme or similar law itself comports with the Fourth Amendment is a question beyond the scope of this case. *Accord Caniglia*, 593 U.S. at 201-202 (Alito, J., concurring). And states may explore "institut[ing] procedures for the issuance of warrants" to address other health and safety concerns, like "checking on a person's medical condition." *Id.* at 203. The essential point is that even absent probable cause of an emergency, the government's hands are not necessarily tied when it comes to helping home occupants.

2. There will of course remain circumstances where "no effective means short of a search exist" for preventing injury to those inside a home. *Hicks*, 480 U.S. at 329. But that tragic cost flows from the first-among-equals liberty interest in the home. Just as "the Constitution sometimes insulates the criminality of a few in order to protect the privacy of us all," *ibid.*, so too does it sometimes require restraint—even on matters of safety—to protect the safety and privacy of us all.

## CONCLUSION

The decision of the Montana Supreme Court should be reversed.

Respectfully submitted,

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