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 Montana

BRIEF OF THE CATO INSTITUTE AND AMERICANS FOR PROSPERITY FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF 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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INTEREST OF *AMICI CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

Amicus curiae Americans for Prosperity (AFPF) is a 501(c)(3) nonprofit organization committed to educating and training Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. Those key ideas include the freedoms and rights protected by the Fourth Amendment to the United States Constitution, including in particular the freedom from unreasonable searches and seizures as understood by the original framers of the amendment. AFPF believes all Americans should be shielded from the arbitrary exercise of the police power and that the probable cause standard is key to that protection.[2] As part of its mission, AFPF appears as *amicus curiae* before federal and state courts.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

[2] Amicus AFPF takes no position in this brief on the constitutionality of the exclusionary rule as the proper remedy for violations of the Fourth Amendment.

This case interests Cato and AFPF because it concerns the ability of police officers to unconstitutionally enter a home without a warrant, unnecessarily endangering both police and civilians.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Fourth Amendment's warrant requirement was once relatively simple to understand and apply. If an officer wanted to conduct a search, seize papers, or enter a home, he had to get a warrant. *See* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181, 1192 (2016).[3] There were few exceptions, and even these were construed narrowly, for the protection of officers, civilians, suspects, and the public.

Now, however, there is a "labyrinth of exceptions" to the warrant requirement, each with their own nuances, caveats, and conditions. *See* Michael Gentithes, *Exigencies, Not Exceptions: How to Return Warrant Exceptions to Their Roots*, 25 U. PA. J. CONST. L. 59, 60 (2023).[4] No underlying legal theory ties these exceptions together—except, perhaps, a desire to ease the difficult job of policing. *See id*. at 63 (noting that many exceptions arose from "narrow concerns over officers' ability to respond to emergencies").

The "emergency aid" exception is one such carveout: police officers may enter a home without a warrant if a person inside is experiencing, or is imminently threatened by, an emergency which requires the officer to provide immediate assistance.

In this case, Montana police entered the home of William Trevor Case without a warrant. The state argues that the resulting criminal evidence is admissible because the officers were providing emergency aid. The incident began in September 2021, when Case's ex-girlfriend called police and reported that Case had

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[3] Available at https://tinyurl.com/mvpmm629.

[4] Available at https://tinyurl.com/6a7bc39u.

threatened suicide during a phone argument that evening. Cert. Pet. at 6. Four officers went to Case's home, announced their presence, and observed through a window an empty handgun holster and a notepad—but no sign of life. *Id.* at 6–8. The officers hesitated to enter, knowing that Case had a history of mental health issues and that he had previously attempted "suicide by cop." *Id.* at 2–3.

After about 40 minutes of discussion and preparation, the officers entered through the unlocked front door. They conducted a sweep and found Case, alive and hiding in a closet, which he revealed by opening a curtain while an officer was sweeping the room. *Id.* at 7, 10. One officer, seeing a "dark object" near Case's waist, fired a shot that struck him in the arm and abdomen. *Id.* at 4, 10. The officers recovered a handgun from a nearby laundry basket, and Case was taken to a hospital. *Id.* at 10.

Case was later charged with felony assault of a police officer. *Id.* He moved to suppress the evidence obtained from the warrantless entry. *Id.* The trial court denied the motion. *Id.* at 11. In a divided opinion, the Montana Supreme Court upheld that decision under the state's "community caretaker" exception, which is informed by the Ninth Circuit's exigent circumstances test. *Id.* at 12. Case now appeals and argues the evidence should be excluded because the officers lacked probable cause to enter. *Id.* at 14.

Warrantless home entries based on mere reasonable suspicion of exigent circumstances violate the Fourth Amendment and needlessly threaten the safety of citizens and law enforcement. If Montana police did

not have probable cause to enter Case's home, their search should be declared unconstitutional.

If the Court declines to affirm a categorical warrant requirement, it should at a minimum clarify that the emergency aid exception requires probable cause. This higher standard follows from the text of the Fourth Amendment, preserves the sanctity of the home, and reduces the risks warrantless entries pose to both residents and law enforcement.

ARGUMENT

I. THE FRAMERS DID NOT RECOGNIZE AN EMERGENCY AID EXCEPTION TO THE FOURTH AMENDMENT'S PROBABLE CAUSE REQUIREMENT.

Modern courts have outlined many exceptions to the Fourth Amendment's warrant and probable cause requirements. In many jurisdictions, including Montana, the emergency aid exception allows officers to enter private dwellings without a warrant, based only on reasonable suspicion that an emergency is occurring inside. *See id.* at 12. Though this ahistorical, vague, relaxed standard derives from *Terry v. Ohio*, 392 U.S. 1, 21–27 (1968), this Court has never applied *Terry*'s reasonable suspicion standard to warrantless home entries. *See* Cert. Pet. at 13–14.

Probable cause is the only standard that faithfully preserves the protection the Framers intended against unreasonable home entries. The Fourth Amendment enshrines "[t]he right of the people to be secure in their . . . houses . . . against unreasonable searches." U.S. CONST. amend. IV. Further, "no Warrants shall issue, but upon probable cause." *Id.* The Framers ratified the Amendment to prevent the government from issuing

general warrants and adopting other intrusive practices characteristic of the British government. *See* Donohue, *supra*, at 1323–24. The Fourth Amendment provides essential protections against government intrusion into the lives of ordinary citizens, "secur[ing] 'the privacies of life' against 'arbitrary power' . . . '[and placing] obstacles in the way of a too permeating police surveillance.'" *Carpenter v. United States*, 585 U.S. 296, 305 (2018) (first quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886); then quoting *United States v. Di Re*, 332 U.S. 581, 595 (1948)).

Notably, at the Founding, the Fourth Amendment's ban on warrantless searches was understood as nearly absolute. Police could not enter a "home, warehouse, or place of business against the owner's wishes to search for or to seize persons, papers, and effects, absent a specific warrant." Donohue, *supra*, at 1185. The *only* common law exception to this requirement was when a constable pursued a known felon into a home. *Id.* at 1228–29 (citing MATTHEW HALE, PLEAS OF THE CROWN: OR, A METHODICAL SUMMARY OF THE PRINCIPAL MATTERS RELATING TO THAT SUBJECT 91 (1682)).[5]

Departing from early Fourth Amendment jurisprudence, modern courts and scholars too often treat "reasonableness" as an independent standard, untethered from the warrant and probable cause requirements, and tethered instead to a vague sense of situational

[5] And even on this point, there was not a consensus in the seventeenth and eighteenth centuries. Donohue, *supra*, at 1228 ("For Coke, only a King's indictment could justify breaking down doors to effect arrest based on suspicion. A warrant issued by a justice of the peace was insufficient.") (citing EDWARD COKE, THE FOURTH PART OF THE INSTITUTES OF THE LAWS OF ENGLAND: CONCERNING THE JURISDICTION OF COURTS 177 (1644)).

"reasonableness." *See* Donohue, *supra*, at 1191–93. This flawed, newer understanding does not reflect the intent of the Framers and has allowed courts to weaken Americans' Fourth Amendment protections. *See id.* at 1240–1305. Far from supporting a "reasonable suspicion" standard for warrantless entry, the original reasonableness standard requires that "outside of apprehending a known felon, a warrant [is] required." *Id.* at 1192. Constitutional unreasonableness, therefore, is not the absence of reason, but the absence of a warrant. *Id.* ("What 'unreasonable' meant in the seventeenth century was 'against reason,' which translated into 'against the reason of the common law.'").

Reasonable suspicion is an atextual standard that has been used to justify myriad "muscular investigatory practice[s]." Devon W. Carbado, *Stop-and-Strip Violence: The Doctrinal Migrations of Reasonable Suspicion*, 55 HARV. C.R.-C.L. L Rev. 467, 490 (2020);[6] *see also Terry*, 392 U.S. at 1 (stop-and-frisk searches); *Arizona v. Johnson*, 555 U.S. 323 (2009) (frisks of vehicle passengers); *United States v. Vega-Barvo*, 729 F.2d 1341 (11th Cir. 1984) (stop-and-strip and X-ray searches at the border); *Ibrahim v. DHS*, 62 F. Supp. 3d 909 (N.D. Cal. 2014) (the no-fly list). This Court should confirm that the Fourth Amendment requires probable cause—not mere reasonable suspicion—for entry into a home.

II. A PROBABLE CAUSE REQUIREMENT FOR HOME ENTRIES PRESERVES THE SANCTITY OF THE HOME.

The venerable notion that "[a] man's house is his castle" can be traced back to Magna Carta. Donohue,

[6] Available at https://tinyurl.com/yz4euwr8.

supra, at 1251. The constitutional guarantee of security in one's house was inspired by overbroad "general warrants" issued by British colonial authorities. U.S. CONST. amend. IV; *Payton v. New York*, 445 U.S. 573, 583 (1980). Nothing is nearer to the Fourth Amendment's essence than preventing "the danger of needless intrusions" into homes. *Payton*, 445 U.S. at 586.

Because government officials can invade a home without a warrant only in very rare circumstances, a standard of mere reasonable suspicion undermines the Fourth Amendment. "[R]easonable suspicion is a decidedly easy standard for the government to meet" and could easily be used to justify routine, warrantless home entries. *See, e.g.*, Carbado, *supra*, at 472. Accepting this would wrongly "disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." *Payton*, 445 U.S. at 601; *see also Boyd*, 116 U.S. at 630 ("It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of [a Fourth Amendment violation]; but it is the invasion of his indefeasible right of personal security, personal liberty and private property . . . ."); *United States v. Reed*, 572 F.2d 412, 423 (2d Cir. 1978) (op. of Meskill, J.) ("To be arrested in the home involves . . . an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when . . . probable cause is clearly present."). As the Third Circuit has held, a "laxer standard" than probable cause "would effect an end-run around" the Constitution, making "all private homes—the most sacred of Fourth Amendment spaces—susceptible to search by dint of mere suspicion or uncorroborated information and without the benefit of any judicial determination."

United States v. Vasquez-Algarin, 821 F.3d 467, 480 (3d Cir. 2016).

Probable cause at least limits warrant exceptions and preserves some Fourth Amendment protections. It can help ensure that "exigent circumstances" does not become a shorthand for unconstitutional invasions of citizens' castles. This would protect civilians, suspects, and officers alike.

III. A PROBABLE CAUSE REQUIREMENT PROTECTS BOTH HOMEOWNERS AND POLICE.

Fourth Amendment requirements protect not just property—they safeguard human life. As early as 1603, the Court of King's Bench warned that the "destruction or breaking of any house" to effect an entry could cause "great damage and inconvenience." *Wilson v. Arkansas*, 514 U.S. 927, 935–36 (1995) (quoting *Semayne's Case*, 77 Eng. Rep. 194, 196 (K.B. 1603)). This Court, too, has repeatedly noted the importance of protecting homeowners' lives and limbs from the perils of unnecessary home entries. In *McDonald v. United States*, 335 U.S. 451, 452–53 (1948), a police officer jimmied open a woman's bedroom window and crawled inside to investigate an illegal lottery scheme operated from her boarding house. The officer lacked an arrest or search warrant, and this Court held that the subsequent search was illegal. *Id.* at 452–56. Concurring, Justice Robert Jackson expressed concern about the safety of the search at issue, predicting "grave troubles" if police continued to carry out entries cavalierly. *Id.* at 459 (Jackson, J., concurring). He considered the lack of injury to anyone a matter of "luck more than [of] foresight." *Id.* at 460.

Like Case, many homeowners keep guns or other weapons at home for self-defense. When officers perform warrantless searches, they are initiating an encounter that is inherently dangerous for officers and occupants alike. In recent years, news reports and social media have featured countless stories of violent encounters between law enforcement and homeowners—sometimes due to entries at incorrect addresses, overzealous policing, and mistaken identity.[7] For example, if a woman "sees a strange man, in plain clothes, prying up her bedroom window and climbing in, her natural impulse would be to shoot." *McDonald*, 335 U.S. at 460–61. For his part, "an officer seeing a gun being drawn on him might shoot first"—but under the circumstances, Justice Jackson wrote that he himself "should not want the task of convincing a jury that it was not murder" by the officer. *Id.* at 461. The warrant requirement discourages "a method of law enforcement so reckless and so fraught with danger and discredit." *Id.*

Home entries cannot constitutionally rest on tenuous assessments. There is no textual support for the reasonable suspicion standard, and as four justices wrote in *Ker v. California*, "practical hazards of law

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[7] *See, e.g.*, Peggy Lowe, *Former KCPD Detective Violated Cameron Lamb's Rights, Federal Court Rules in Wrongful Death Suit*, KCUR (Sept. 18, 2024) (describing a case in which an officer "kicked over a barricade to enter [a] backyard" without a warrant and fatally shot the occupant), available at https://tinyurl.com/ywkvnh49; Emma Colton, *Bodycam Footage Shows Police Fatally Shoot Armed Homeowner After Responding to Wrong House*, FOX 32 CHICAGO (Apr. 17, 2023), available at https://tinyurl.com/36h6mxad; Anthony Galaviz, *Armed Homeowner Was Victim Shot by Reedley Police Officer During Burglary Suspect Hunt*, FRESNO BEE (Sept. 15, 2021), available at https://tinyurl.com/9m55szaf.

enforcement militate strongly against any relaxation" of requirements for home entries. 374 U.S. 23, 57 (1963) (op. of Brennan, J.).

Besides, what does reasonable suspicion of an emergency even look like? The officers here claim to have reasonably believed that Case required immediate emergency aid—yet they waited 40 minutes before entering his house. Cert. Pet. at 9. The reasonable suspicion standard led the court below to unreasonably find an exigency, despite the officers' decision to delay.

CONCLUSION

The Fourth Amendment requires a warrant backed by probable cause for nearly all home entries—a rule that exists to safeguard life, limb, and property. This Court should reverse the decision below.

Respectfully submitted,

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