No. 24-624

# In The Supreme Court of the United States

**WILLIAM TREVOR CASE,**

*Petitioner,*

vs.

**MONTANA,**

*Respondent.*

**On Writ of Certiorari to the Supreme Court of the State of Montana**

## BRIEF OF AMICUS CURIAE THE RUTHERFORD INSTITUTE IN SUPPORT OF PETITIONER


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## INTEREST OF *AMICUS CURAE*

The Rutherford Institute (the "Institute") is a nonprofit civil liberties organization headquartered in Charlottesville, Virginia. Founded in 1982 by its President, John W. Whitehead, the Institute provides legal assistance at no charge to individuals whose constitutional rights have been threatened or violated and educates the public about constitutional and human rights issues affecting their freedoms. The Rutherford Institute works tirelessly to resist tyranny and threats to freedom by seeking to ensure that the government abides by the rule of law and is held accountable when it infringes on the rights guaranteed by the Constitution and laws of the United States.[1]

## SUMMARY OF ARGUMENT

This Court's Fourth Amendment precedents are clear that a warrantless search or seizure should be the exception rather than the rule. With or without a warrant, a search or seizure requires probable cause. A lesser standard—such as a community caretaking exception that finds no support in the text or history of the Fourth Amendment—simply invites warrantless searches. The likely result, as occurred in this case, is government invasion of the sanctity of the home under circumstances where a judicial officer

[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief.

would have been unlikely to find probable cause. The deprivation of the Petitioner's Fourth Amendment rights that occurred in this case demonstrates why the Court needs to not only correct this particular miscarriage of justice but do so in way that makes clear that this fundamental protection of the Bill of Rights does not vary depending upon the jurisdiction where the search or seizure occurred and whether a criminal defendant is being tried in state or federal court.

## ARGUMENT

### I. The Fourth Amendment Requires Police to Have Probable Cause to Enter a Home

### A. The Fourth Amendment's text and purpose support a universal probable cause standard for home entries.

The plain text of the Fourth Amendment and the circumstances under which it was carefully crafted by the framers support a universal probable cause standard. Under English rule, American colonists were commonly subjected to warrantless searches and seizures. These routine invasions of privacy were among the driving forces behind the Fourth Amendment. *See Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984). The Fourth Amendment guarantees—regardless of state or judicial circuit—"[t]he right of the people to be secure in their persons, ***houses***, papers, and effects, ***against unreasonable searches and seizures***" and declares that this right "shall not be violated, and no Warrants shall issue,

but upon ***probable cause***." U.S. Const. amend. IV (emphasis added).

The Fourth Amendment "protects two types of expectations, one involving 'searches,' the other 'seizures.'" *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." *Id.* The home is among the most important places where an expectation of privacy is most sacred, as the Court has long recognized. *Fla. v. Jardines*, 569 U.S. 1, 6 (2013) ("when it comes to the Fourth Amendment, the home is first among equals"); *see also Silverman v. United States*, 365 U.S. 505, 511 (1961) ("At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); *Payton v. New York*, 445 U.S. 573, 585 (1980) ("the principles reflected in the [Fourth] Amendment . . . 'apply to all invasions on the part of the government and its employés [sic] of the sanctity of a man's home and the privacies of life.'").

Warrantless home entries "are presumptively unreasonable," *Payton*, 445 U.S. at 586, and exceptions must be "few in number and carefully delineated," *United States v. U.S. Dist. Ct. for E. Dist. of Mich., S. Div.*, 407 U.S. 297, 318 (1972). In applying these carefully delineated exceptions, the Court has consistently acknowledged the requirement that a search or seizure of a home that may be justified without a warrant still requires probable cause. *See*

*United States v. Santana*, 427 U.S. 38, 42 (1976) (finding that the police had the right to pursue a fleeing suspect into a home when they had probable cause to believe that the suspect had committed a crime) (citing *Warden v. Hayden*, 387 U.S. 294 (1967) (same)); *see also Georgia v. Randolph*, 547 U.S. 103, 120 (2006) (remarking that a search for evidence suspected to be inside must include both probable cause and exigent circumstances (such as possible destruction of evidence) to justify warrantless entry in the case of potential victimized occupants of a home wherein a tenant has refused consent to search the premises). "[W]ith these long-recognized principles, the Court decided in *Payton v. New York* . . . that warrantless felony arrests in the home are prohibited by the Fourth Amendment, absent probable cause ***and*** exigent circumstances." *Welsh*, 466 U.S. at 749 (emphasis added). In violation of these principles and precedents, the search and seizure at issue in this case had neither.

The limited exigent circumstances that can justify a warrantless home entry are narrow and carefully delineated under the Court's precedents. These include the one at issue here, the "emergency aid" exception, which permits officers to enter a home without a warrant to render emergency assistance to an injured occupant or protect an occupant from

imminent injury. *See Kentucky v. King*, 563 U.S. 452, 460 (2011) (citations omitted).[2]

The question presented in this case is "[w]hether 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." *Case v. Montana*, Dkt. 24-624 (U.S. 2025) at Question Presented. This question has arisen as a result of lower courts' interpretations of two Supreme Court decisions: *Brigham City, Utah v. Stuart*, 547 U.S. 398, (2006) and *Michigan v. Fisher,* 558 U.S. 45 (2009). In *Brigham City*, the Court found that an officer's "objectively reasonable basis for believing" that an injured adult within a home might need help and that violence was escalating permitted warrantless entry under the emergency aid exception to the Fourth Amendment's warrant requirement. *Brigham City*, 547 U.S. at 406; *see also Fisher*, 558 U.S. at 47 (citing *Brigham* for the same concept). Some courts have misinterpreted the language of an "objectively reasonable basis for believing" as requiring something less than probable cause to justify warrantless entry under the emergency aid exception. In the process, these courts have disregarded the plain language of the emergency aid exception, which

[2] The other exceptions apply with respect to the "hot pursuit of a fleeing suspect" and to prevent "imminent destruction of evidence." *Id.*

recognizes rather than dispenses with the Fourth Amendment's requirement of probable cause.

### B. The founders understood that individuals' privacy interest is at its height in their own homes.

"[T]he home is first among equals" when it comes to the Fourth Amendment. *Jardines*, 569 U.S. at 6. Indeed, "[i]t is axiomatic that the 'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" *Welsh*, 466 U.S. at 748 (citation omitted).

The sanctity of the home applies equally to criminal and non-criminal governmental investigations. In *Silverman v. U.S.*, the Court found that the intrusion of a microphone spike by mere inches into a home to capture audial vibrations from a heating system while investigating illegal gambling constitutes an improper warrantless government intrusion. 365 U.S. 505, 511 (1961); *see also Jardines*, 569 U.S. at 5-6 (use of drug dogs within the curtilage of the home constituted an improper warrantless search). In *Georgia v. Randolph*, the Court found that even Scott Randolph's wife, a co-tenant of the home, could not consent to a warrantless criminal search over her husband's express objection. 547 U.S. at 122-23. The sanctity of the home under the Fourth Amendment is such that not even a co-tenant's permission strips an occupant's right to require the police to obtain a warrant supported by probable cause to search his home.

Even in non-criminal investigations, such as those dealing with the emergency aid exception to warrantless entry, the Court has reiterated the Fourth Amendment's protections within the home. In justifying a warrantless entry to provide emergency aid, the Court reminded that "[i]t is a 'basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable.'" *Brigham City*, 547 U.S. at 403 (citing *Groh v. Ramirez*, 540 U.S. 551, 559 (2004)). Such searches are permissible without a warrant only if "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Id.* (citing *Mincey v. Arizona*, 437 U.S. 385, 393–394 (1978)). *See also Fisher*, 558 U.S. at 47 (substantially the same).

In *Caniglia v. Strom*, this Court distinguished the expectation of privacy within a car from the expectation of privacy within a home. 593 U.S. 194, 198–199 (2021). In doing so, the Court expressly refused to extend the "community caretaking" exception recognized in *Cady v. Dombrowski*, 413 U.S. 433 (1973) to the home because doing so would violate the protections that the framers intended to cement in the Fourth Amendment. *See Caniglia*, 593 U.S. at 198–199. The same year that the Court in *Caniglia* refused to extend the community caretaking exception to the home, the Court unanimously held that the flight of a suspected misdemeanant did not justify a warrantless entry into a home. *Lange v. California*, 594 U.S. 295, 313 (2021).

The Court has always upheld the Fourth Amendment's specific and deliberate protection of the home, and it should continue to do so here by requiring probable cause of an exigent circumstance to justify warrantless entry. As Justice Scalia wrote in his concurrence in *Minnesota v. Dickerson*, "The purpose of [the Fourth Amendment] . . . is to preserve that degree of respect for the privacy of persons and the inviolability of their property that existed when the provision was adopted—even if a later, less virtuous age should become accustomed to considering all sorts of intrusion 'reasonable.'" 508 U.S. 366, 380 (1993) (Scalia, J., concurring).

### C. The warrant requirement is the rule, with exceptions granted sparingly and only upon a showing of probable cause.

The Court-created exceptions to the Fourth Amendment's warrant requirement must not be allowed to swallow the rule. "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no." *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (citations omitted). In the limited exigent circumstances under which warrantless entry of a home is permissible, the "contours of . . . any . . . warrant exception permitting home entry are 'jealously and carefully drawn,' in keeping with the 'centuries-old principle' that the 'home is entitled to special protection.'" *Lange v. California*, 594 U.S. at 303 (quoting *Georgia*, 547 U.S. at 109, 115.

### D. The probable cause standard for searching an individual's home applies to non-criminal investigations.

The probable cause standard for searching an individual's home must apply equally to non-criminal investigations to ensure that every individual, especially those not suspected of criminal wrongdoing, receives the protection of the Fourth Amendment. The premises of the exigent circumstance exceptions survive Fourth Amendment scrutiny only if "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.'" *Brigham City*, 547 U.S. at 403 (quoting *Mincey*, 437 U.S. at 393–94). The purpose of the exigent circumstances exceptions is to allow law enforcement to act when the circumstances are so pressing that police do not have time to get a warrant and thus the Fourth Amendment is not violated by warrantless action as long as there is still probable cause. These exceptions are not intended to lower that evidentiary burden required by the Fourth Amendment. The Court's decisions regarding the emergency aid exception demonstrate that warrantless entry was permissible because of exigent circumstances ***supported by probable cause***.

In *Brigham City*, police officers responded to a call regarding a party at a residence. 547 U.S. at 400–01. Upon arriving at the scene, police overheard shouting indicating a physical altercation. *Id.* at 401. Upon proceeding around to the backyard, the officers

witnessed a juvenile strike an adult in the face with a closed fist. *Id.* The Court found that subsequent warrantless entry into the home to quell the physical dispute was reasonable under the circumstances because the officers had "an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning." *Id.* at 406. Furthermore, the Court noted that "[n]othing in the Fourth Amendment required them to wait until another blow rendered someone 'unconscious.'" *Id.*

The officers in *Fisher* similarly arrived at a home in response to a reported disturbance. 558 U.S. at 48. Upon their arrival, the officers found evidence of a car accident outside and witnessed an individual screaming and throwing things. *Id.* Again, the Court found it "objectively reasonable to believe that Fisher's projectiles might have a human target (perhaps a spouse or a child), or that Fisher would hurt himself in the course of his rage." *Id.*

In both *Brigham City* and *Fisher*, the Court applied the emergency aid exception because there was "an objectively reasonable basis" (*i.e.*, probable cause) for believing that medical aid was needed or soon could be, based on the totality of the circumstances. Nowhere does either decision suggest that this "objectively reasonable belief" is anything less than the burden of probable cause required by the Fourth Amendment. Instead, the Court acknowledged that when there is probable cause to believe someone is injured—for example, as in those

cases, seeing an individual get struck in the face and spit blood in the sink, or evidence of a recent car crash and an individual raging inside the home—police need not wait for a warrant to administer aid. And since the emergency aid exception might not always involve criminal activity, the exception provides an alternative answer to the question: Probable cause *of what*?

Indeed, the language used in both *Brigham City* and *Fisher* is very similar to that traditionally used when describing probable cause. *Compare D.C. v. Wesby*, 583 U.S. 48, 56–57 (2018) ("To determine whether an officer had probable cause for an arrest, we examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an *objectively reasonable police officer*, amount to probable cause.") (quotation marks omitted and emphasis added) *with Brigham City*, 547 U.S. at 406 (using the language "objectively reasonable basis for believing").

## II. A Uniform Probable Cause Requirement for Entry Into the Home is the Only Way to Provide Clear Boundaries That Protect the Constitutional Rights of Individuals From Government Intrusion.

### A. Individuals must be secure in their constitutional rights regardless of the state in which their home is located.

The United States Circuit Courts of Appeals and State high courts have not interpreted the

"objectively reasonable belief" standard of *Brigham City* uniformly. Some—including the District of Columbia, Second, and Eleventh Circuits, and the Nebraska and Colorado Supreme Courts—have properly found that the language resembles the probable cause standard and in fact requires probable cause for warrantless entry under exigent circumstances. Other courts—including the First, Eighth, and Tenth Circuits, and the Kentucky, Maryland, and Kansas Supreme Courts, now joined by Montana—have held that some lesser burden than probable cause is sufficient. This has resulted in less constitutional protection for residents of certain regions or States.

"A principal purpose for which [this Court] use[s] [its] certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991). It is necessary to correct the divergence here to ensure that every person, regardless of residence, receives the full protection of the Constitution.

Many courts have properly found that exigent circumstances, such as the emergency aid exception to the warrant requirement, still require probable cause in accordance with the Court's decision in *Brigham City* and the text and purpose of the Fourth Amendment. *See, e.g., Est. of Chamberlain v. City of White Plains*, 960 F.3d 100, 105 (2d Cir. 2020) (requiring that officers have "probable cause to

believe that a person is 'seriously injured or threatened with such injury'" before entering a home without a warrant) (citing *Brigham City*, 547 U.S. at 403; *see also State v. Eberly*, 271 Neb. 893, 894 (2006) (finding that some reasonable basis, akin to probable cause, to associate the emergency with the area or place to be searched must be present to permit warrantless entry under the emergency aid doctrine).

Other courts, however, have misinterpreted the Court's "objectively reasonable belief" standard as suggesting that probable cause is not required to permit warrantless entry under the emergency aid doctrine. *See, e.g., Hill v. Walsh*, 884 F.3d 16, 23 (1st Cir. 2018) (holding that "objectively reasonable basis" in emergency aid situations "need not approximate probable cause" because probable cause is not mentioned in *Fisher*); *see also United States v. Quarterman*, 877 F.3d 794, 800 (8th Cir. 2017) (stating that probable cause is required for other exigent circumstances, but not in the circumstance of emergency aid). Consequently, these courts' decisions provide a lower level of constitutional protection within their jurisdiction. Further, by requiring probable cause for exigent circumstances other than emergency aid, these courts provide persons not suspected of criminal wrongdoing with less protection than those suspected of felony offenses. This disparate treatment improperly gives the government authority to invade the sanctity of the home in contravention of the guarantees of the Fourth Amendment.

And warrantless entries based upon "welfare checks" and emergency aid exceptions can have grave consequences for innocent residents. For example, an "investigation by The [Washington] Post reveal[ed] at least 178 cases from 2019 to 2021 in which calls for help resulted in law enforcement officers shooting and killing the very people they were called on to assist," as "[m]any of the calls alerted authorities to people in mental health crises, requested wellness checks or reported suicide threats." Jon Gerberg and Alice Li, *When a call to the police for help turns deadly*, THE WASHINGTON POST, June 22, 2022 (available at https://www.washingtonpost.com/investigations/interactive/2022/police-shootings-mental-health-calls/).
So, probable cause of imminent danger should be required under the emergency aid exception before making a warrantless entry which can lead to the police killing one of the residents, especially due to the potential for abuse by people making false reports and swatting calls to harm or harass the innocent residents.

To preserve civil liberties, the Court should apply a universal standard of probable cause as a requirement for home intrusion, starting with instances covered by the exception for warrantless entry under the emergency aid doctrine. Probable cause is widely understood by the legal community and public at large and carries decades of jurisprudence to evaluate infractions upon civil liberties. By using this established legal structure, the Court avoids any confusion. *See, e.g., Brigham City,* 547 U.S. at 404–05 (refusing to consider an

officer's subjective intent for entry to administer emergency aid as this Court has concluded for all other Fourth Amendment analysis).

### 1. States can provide additional rights to those in the Bill of Rights but cannot strip away constitutionally guaranteed rights.

States are free to provide heightened levels of protections within their jurisdictions, but they cannot strip away core constitutionally guaranteed rights. The Court has rejected "'the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights,' stating that it would be 'incongruous' to apply different standards 'depending on whether the claim was asserted in a state or federal court.'" *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 765 (2010) (citing *Malloy v. Hogan*, 378 U.S. 1, 10-11 (1964)).

And the Court has made clear that the protections of the Fourth Amendment apply to the States. "Under the Fourth Amendment, made applicable to the States by the Fourteenth Amendment, the people are 'to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures,. . . and no Warrants shall issue, but upon probable cause . . . .'" *Maryland v. Pringle*, 540 U.S. 366, 369 (2003) (citations omitted). Consequently, the base protections of the Fourth Amendment must be applied equally throughout the country.

### B. Absent a probable cause standard, the emergency aid exception swallows the warrant rule, allowing for individual liberties to be abridged.

#### 1. The Court's decisions have created an expansive emergency aid exception to the warrant requirement that can only be held together by probable cause.

The Court's decisions in *Kentucky v. King* and *Brigham City* recognizing an emergency aid exception to the warrant requirement have created an expansive exception that may be applied regardless of the officer's subjective belief that no emergency aid need be rendered and regardless of when the officer created the exigent circumstance. If the Court finds that probable cause is not required in such cases, the emergency aid exception will swallow the rule that a warrant is required, sharply curtailing civil liberties because an officer will often be able to claim some reason for thinking that a person inside might have needed emergency aid to justify the officer's warrantless entry.

As in this case, the Court in *Brigham City*, granted certiorari "in light of differences among state courts and Courts of Appeals concerning the appropriate Fourth Amendment standard governing warrantless entry by law enforcement in an emergency situation." *Brigham City*, 547 U.S. at 402. While holding that the standard requires an officer to have "an objectively reasonable basis for believing" that a person needs medical aid or is in other peril,

the Court strongly rejected the notion that it should consider the officer's subjective intent and sincerity to render emergency aid, rather than any ulterior motive, for entering the residence. *Id.* at 404–05, (2006). The Court made this determination in reliance on past Fourth Amendment decisions rejecting a subjective standard. *Id.* (citing *Scott v. United States*, 436 U.S. 128, 138 (1978); *Bond v. United States*, 529 U.S. 334, 338 (2000); *Whren v. United States*, 517 U.S. 806, 813 (1996); *Graham v. Connor*, 490 U.S. 386, 397 (1989)).

Five years later, however, in *Kentucky v. King*, the Court found that warrantless searches justified by exigent circumstances are lawful even where police created the exigent circumstances, so long as police did not create the exigency by violating the Fourth Amendment in the first place. *See* 563 U.S. at 462–63. The Court made this determination based on prior Fourth Amendment jurisprudence holding that seizure of evidence in plain view does not violate the Fourth Amendment "provided that [the police] have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made." *Id.* (citing *Horton v. California*, 496 U.S. 128, 136–40 (1990)).

Now, the Court is presented with the question whether probable cause is required for warrantless entry under the emergency aid doctrine. If the Court determines that some lower standard than probable cause is required, officers will be permitted to make a warrantless entry into a person's home even if they

created the emergency, even if they do not subjectively believe that emergency aid is required, and under an objective standard that falls short of the standard used in all other Fourth Amendment circumstances requiring a warrant—probable cause.

The only result consistent with the Fourth Amendment is a finding that probable cause is required for warrantless entry to provide emergency aid, just as the Court has found probable cause is required under the Fourth Amendment generally. In *Brigham City* and *Kentucky v. State*, the Court relied heavily on Fourth Amendment jurisprudence outside of exigent circumstances, and it should do so now. The exigent circumstance exceptions are exceptions to requiring a warrant—not to requiring probable cause. They were created to allow police to act when time is essential and procuring a warrant is not feasible. They were never intended to lower Fourth Amendment protections and make it easier for officers to search a residence. Probable cause is the rule applied across Fourth Amendment jurisprudence, and it should apply equally to warrantless entry to administer emergency aid.

And probable cause would be easy to apply to the emergency aid exception. The plain language of the Fourth Amendment states that "no Warrants shall issue, but upon probable cause supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. Therefore, to receive a search warrant in a criminal investigation, there

must be "cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 (1978). Here, for emergency aid, officers should be required to show probable cause that the exigent circumstance exists, and probable cause to believe that it exists in the home they seek to enter without a warrant. The Nebraska Supreme Court has summarized the elements of such an application as follows: (1) The police must have reasonable grounds to believe an emergency exists and an immediate need for their assistance for the protection of life or property . . . and (3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. *Eberly*, 271 Neb. at 894.

### 2. When police arrive to the home, they are always arriving as "police," not in any other capacity.

Requiring probable cause for warrantless home entry under the emergency aid exception is crucial because when police arrive to the home, they are always arriving as "police," not in any other capacity.

As demonstrated in *Horton v. California*, if an officer's entry into a premises does not violate the Fourth Amendment, seizure of items indicating a crime may be seized without violating the Fourth Amendment. 496 U.S. at 136–40. And police cannot "code switch" or arrive in a capacity that may ignore any perceived criminal wrongdoing. In *Foley v. Connelie*, the Court found that police are imbued with

the authority of the state and are always required to take appropriate action whenever criminal activity is observed. 435 U.S. 291, 293 (1978) ("All troopers are on call 24 hours a day and are required to take appropriate action whenever criminal activity is observed.").

Therefore, giving police the ability to make a warrantless home entry is no benign invasion of civil liberties. The Court has recognized a community caretaking role for officers in public places like public roadways. *See Cady* 413 U.S. at 441 (1973). But the Court has rightfully rejected efforts to allow this role to be expanded to justify invading the privacy of a home. *See Caniglia v. Strom*, 593 U.S. 194, 199 (2021). If it is necessary for police to enter a home to administer aid without a warrant, they must do so only when there is probable cause that such aid is needed. Otherwise, the reasonable expectation of privacy in the home is severely curtailed.

In the eyes of the public, a police officer arriving to render aid is the same as a police officer arriving to investigate a crime. As a result, probable cause should be required in both circumstances. Otherwise, police officers may have carte blanche to enter someone's home under perceived circumstances (regardless of whether they in fact exist) without the risk that the search (or its fruits) will be found to violate the Constitution.

In this case, the officers responding to an alleged threatened suicide attempt were familiar with Case's prior alleged attempt to elicit a defensive police

response, *i.e.*, "suicide-by-cop." Pet. App. 5a. Over a forty-five-minute time span, the officers discussed whether it was necessary to enter the home. *Id.* Bodycam footage revealed 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." *Id.* The officers then suited up in tactical gear and entered the home. *Id.* The lack of probable cause, which none of the officers allege existed, would have prevented this situation from escalating and preserved a person with a history of alcohol abuse and mental-health issues the right to retreat into his own home on a dark day in his life. Maybe Case needed help, but not in the form of being shot in the abdomen by police. And had the officers not entered his home, Case's emotional state might have improved or he might have sought mental health assistance without the officers unnecessarily creating a situation which put his and their own lives at risk. Regardless, this highlights the concern that if officers make entry without probable cause, there is a greater risk that there could be an innocent resident who is not suicidal or posing any threat, yet whom police still shoot "instantaneously" because they simply "observe[] a 'dark object' near [the resident's] waist." Pet. App. 6a. There was no exigency in this case that should have permitted warrantless entry under the totality of the circumstances.

If the Court determines that the officers in this case did not have an objectively reasonable basis to believe that Case required aid but does not find that the emergency aid exception requires probable cause,

then circuit and state high courts will continue to fall short of acknowledging the full protection of the Fourth Amendment. Indeed, the difference in courts' lower standards established by misinterpretations of the language in *Brigham City* demonstrate that that the well-established probable cause standard, and all of the jurisprudence surrounding it, is necessary to uniformly protect individual rights.

### C. A universal probable cause standard for entry into the home is the only way to protect the rights of individuals across the country.

The probable cause standard is based on the language of the Fourth Amendment. The standard has been tested and proven by the Court. Its application on a universal basis is the only way to ensure uniform protection of constitutional rights nationwide. It should apply in all circumstances, especially the emergency aid exception to the warrant requirement, under which police can invade innocent people's homes without having any evidence or suspicion of criminal activity.

The emergency aid exception is already broad despite the Court's insistence that such exceptions to the warrant requirement should be "carefully delineated." *United States v. United States Dist. Court for Eastern Dist. of Mich.*, 407 U.S. at 318. To be true to the Fourth Amendment, the Court must require probable cause under all circumstances so that the emergency aid exception does not render the warrant requirement meaningless.

The current piecemeal system does not allow for individuals to be secure in their rights regardless of geography. Because some States and U.S. Courts of Appeals require less than probable cause for warrantless entry, residents in some geographic areas do not receive the full protection of the Fourth Amendment.

The concurrences in *Caniglia*, in particular Justice Kavanaugh's, affirmed the emergency aid doctrine so that officers can assist those in need of aid via warrantless entry. Justice Kavanaugh brought up examples of suicidal persons and the elderly as important circumstances where police may need to make entry more quickly than would be possible if they had to await the issuance of a warrant. *See Caniglia*, 593 U.S. at 206–07 (Kavanaugh, J., concurring). Such circumstances certainly can accommodate probable cause without significantly compromising an officer's ability to respond quickly. Probable cause is not an overly burdensome standard, as "only the probability, and not a prima facie showing, of [the required circumstances] is the standard of probable cause." *Illinois v. Gates*, 462 U.S. 213, 235 (1983). Therefore, under a universal probable cause standard applied to the emergency aid doctrine, officers should often be able to find probable cause (i.e. a probability as determined by probable cause caselaw) that someone needs emergency aid, and that the person in need of aid is in the residence to be searched without a warrant when that situation actually exists.

## CONCLUSION

This case is an ideal opportunity for the Court to clarify, once and for all, that judicially created exceptions to the Fourth Amendment requirement of a warrant for a search of a home were not intended to relieve the government of having probable cause to enter the home, with or without a warrant. The protections afforded by the Fourth Amendment should not vary by State, or within States depending upon whether a case is pending in federal or state court. A universal probable cause standard is the only way of ensuring that the Fourth Amendment's protection against unreasonable searches and seizures are the same nationwide.

Respectfully submitted,


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