No. 20-157

In The
Supreme Court of the United States

EDWARD A. CANIGLIA,
Petitioner,

v.

ROBERT F. STROM, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Supreme Court Rule 37, Pacific Legal Foundation submits this brief amicus curiae in support of Petitioner Edward Caniglia.[1]

PLF is a nonprofit, public interest legal foundation established more than 40 years ago to advance the principles of individual rights and limited government at all levels of state and federal courts. PLF attorneys have been lead counsel in numerous property rights cases before this Court and have expertise litigating Fourth Amendment issues in the lower courts. *See, e.g., Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Suitum v. Tahoe Regional Plan. Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Cedar Point Nursery v. Shiroma*, 923 F.3d 524 (9th Cir. 2019), *certiorari granted sub nom. Cedar Point Nursery v. Hassid*, No. 20-107, 2020 WL 6686019 (Nov. 13, 2020); *Stavrianoudakis, et al. v. United States Fish & Wildlife Service*, *et al.*, No. 1:18–cv–01505 (E.D. Cal. filed Oct. 30, 2018). Amicus believes that its perspective on property and privacy rights will

[1] All parties have consented to the filing of this brief. Counsel of record for all parties received notice at least 10 days prior to the due date of Amicus Curiae's intention to file this brief. No counsel for any party authored this brief in whole or in part and no person or entity made a monetary contribution specifically for the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

aid this Court in the consideration of the issues presented by this case.

SUMMARY OF ARGUMENT

The home is the place where Americans have historically enjoyed the strongest protection against governmental intrusion. The Fourth Amendment safeguards this sphere of freedom by requiring that agents of the state obtain the permission of a neutral and detached judge who provides them with a limited authorization to search or seize property after being convinced by sufficient evidence that the search or seizure is justified. *See* U.S. Const amend. IV. In this manner, the Fourth Amendment codifies separation of powers and due process principles by insisting that a judicial officer determine the reasonableness of law enforcement officers' search and seizure functions and in requiring that those law enforcement officers submit sufficient evidence under oath to justify the searches and seizures they seek permission to execute. *See id.*

Over the years, however, this Court has recognized numerous exceptions to the requirement that government agents acquire judicial permission before executing searches and seizures. One such exception is the so-called Community Caretaking Exception ("CCE"), which permits law enforcement officers to execute searches and seizures aimed at guarding the community from perceived risks in circumstances where the privacy interests of the person's property that is the object of the search are low and the risk to the community from police inaction is high. Originally created for vehicles, this Court in *Cady v. Dombrowski* crafted this exception to uphold the seizure of a gun from an arrestee's car "to protect

the public from the possibility that [the] revolver would fall into untrained or perhaps malicious hands." 413 U.S. 433, 434–39, 446–47 (1973).

The lower court in the case at bar issued an opinion below expanding the CCE to homes. However, this Court foreclosed extending the CCE to the home in the case which initially created it, distinguishing the vehicle at issue from a home. Aside from violating precedent, the lower court's decision also ignores the original meaning of the Fourth Amendment, which secures a resident's home against warrantless searches except in cases of emergency or exigency.

Extending the CCE to homes is not only unsupported by the original meaning of the Constitution, which treats warrantless trespasses against homes as unreasonable *per se*, but fails even a more deferential legal analysis that weighs the government's interest against the resident's liberty interest. The privacy interests in the home are paramount, while the amorphous state interest to engage in nonemergency community caretaking is not inherently damaged by requiring a warrant since a warrant only delays government action, rather than foreclosing it. Finally, the CCE does not include sufficient restraints on officer discretion to guard against arbitrary intrusions into the home. Limiting officer discretion to prevent arbitrary intrusions against persons, houses, papers, and effects is one of the principal concerns of the Fourth Amendment, but the CCE as defined by the lower court fails in this crucial task.

The lower court could have resolved this on constitutionally sound ground had it fully examined whether a resident had consented to the search. The

Court should reverse and remand with direction to determine whether the officers received consent for the search, as that is the only constitutional basis on which to uphold a search under the facts presented.

ARGUMENT

I.

INTRODUCTION & BACKGROUND

It is a basic principle of Fourth Amendment law that warrantless searches are presumptively unconstitutional, subject to rehabilitation only by the government proving that the search fits within one of the few, carefully limited exceptions to the warrant requirement. *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015). Exceptions to the warrant requirement are "few[,] specifically established and well-delineated[.]" *Katz v. United States*, 389 U.S. 347, 357 (1967); *See also*, *Camara v. Municipal Court*, 387 U.S. 523, 528–29 (1967). The lower court thwarted this principle by unjustifiably expanding the Community Caretaker Exception ("CCE") discussed by this Court in *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973) ("*Cady*"), to include searches of homes.

Mr. Caniglia and his wife, Kim, had an argument in which Mr. Caniglia put his gun on the table and dramatically told his wife that she ought to "shoot me now and get it over with" to end the argument. *Caniglia v. Strom*, 953 F.3d 112, 119 (1st Cir. 2020). Angry, she spent the night at a hotel but became concerned after he did not call her the following morning. Kim called the police and met them at the house to perform a welfare check. *Id.* Mr. Caniglia spoke to the police outside his home and assented to

the officers' demands that he go to the hospital[2] only after telling them he did not consent to the seizure of his firearm. Nonetheless, the police entered the house after Mr. Caniglia left and seized the gun anyway. *Id.* at 119–20. Mr. Caniglia has challenged the warrantless entry to his house and seizure of his gun under the Fourth Amendment.

The court below found that seizing the gun and the related home search were constitutionally permissible because of the CCE. *Id.* at 132–33. As defined by the lower court, the CCE allows warrantless searches where the officer is performing "noninvestigatory duties, including community caretaker tasks, so long as the procedure employed (and its implementation) is reasonable." *Id.* at 123. The court distinguished the CCE from other exceptions to the warrant requirement that permit officers to enter a house to provide emergency aid, prevent the destruction of evidence, or catch a fleeing suspect. *Id.* at 126 & n.5. It expressly declined to apply these doctrines of exigency or emergency. *Id.* at 126 n.5 ("Because the defendants seek shelter only behind the community caretaking exception, we have no occasion to craft crisp distinctions between those three exceptions. We doubt, however, that either the exigent circumstances exception or the emergency aid exception would be a perfect fit for the full tableau of this case."). Nor did the court contemplate consent in reaching its conclusion: "Given the factual disputes

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[2] It is important to note that whether Mr. Caniglia was seized when sent to the hospital is only tangentially relevant to this case and a topic on which Amicus does not take a position. It is the invasion of his property and privacy rights from the entrance to the house and seizure of personal chattel property (the gun) that are at issue in this case.

surrounding the representations made to the plaintiff's wife, we think it prudent to assume that the officers' entry into the home was not only warrantless but also nonconsensual." *Id.* at 122.

Applying this broad CCE exception to the home contradicts this Court's precedents and would degrade the security interests of the home below the protections afforded by the Fourth Amendment at the time it was ratified. Application of the CCE to the home would likewise overextend officer discretion beyond constitutional limits, exposing private houses to the threat of arbitrary intrusion.

II.

THE COMMUNITY CARETAKING EXCEPTION DOES NOT EXTEND TO HOMES

The CCE has no place in the home. Extending the exception to homes would violate this Court's precedents limiting the CCE to vehicles as well as the Fourth Amendment's property rights baseline that regards warrantless trespasses against the home as presumptively unconstitutional, subject to rehabilitation only through a warrant exception that constituted a legal police practice under the common law of the 18th Century. Even under the balancing test this Court has favored since the 1960s, the home's paramount Fourth Amendment importance outweighs any government interest in a nonimminent, nonemergency function.

A. This Court's Precedents Exclude Homes from the Community Caretaking Exception.

The First Circuit's analysis strays from this Court's past holdings differentiating home searches

from the vehicle search at issue in the seminal community caretaker precedent of *Cady*, 413 U.S. at 439. In that case, police seized a weapon from a vehicle that was unattended after its owner was arrested, to prevent it from being accessed by passersby in a public place. This Court has never applied the CCE to the home, as the lower court did in this case. This silence is not accidental or due to lack of opportunity. *Cady* expressly differentiated the vehicle search from a home search, *id.* at 439–44, and this Court has subsequently distinguished *Cady* from cases involving home searches. *See South Dakota v. Opperman*, 428 U.S. 364, 367 (1976) (noting that vehicle search at issue would not have been upheld had it been a home search). The First Circuit's decision should be overturned for contradicting this Court's precedent differentiating the CCE from home searches.

B. The Exception Should Continue To Exclude Homes.

"In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." *Payton v. New York*, 445 U.S. 573, 590 (1980). This is the most basic application of the Amendment, securing private homes from warrantless government trespass. This Court's recent cases on trespassory searches make clear that this original meaning of the amendment still applies when the government invades private property, as it did when seizing Mr. Caniglia's gun. Even looking to the policy-based balancing analysis this Court has at times employed to craft or expand warrant exceptions,

the historic importance of the liberty, property, and privacy interests Americans hold in their own houses outweighs the government's interest in trespassing on the home without a warrant to carry out a nonemergency community caretaker function.

1. Trespass on a home without a warrant is unreasonable *per se*.

This Court has made clear that a trespass without a warrant is presumed to violate the Fourth Amendment's prohibition on unreasonable searches. From 1967 until 2012, the Supreme Court developed a jurisprudence that predominantly defined Fourth Amendment interests in terms of an individual's reasonable expectation of privacy. *Katz*, 389 U.S. at 361; *see also, e.g.*, *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 448–49 (1990) (emphasizing the minimal level of intrusion on privacy effected by a sobriety checkpoint); *New York v. Burger*, 482 U.S. 691, 699 (1987) (emphasizing diminished privacy interest in justifying warrantless searches of closely regulated industries). But in *United States v. Jones*, 565 U.S. 400 (2012), this Court emphasized that "the *Katz* reasonable-expectation-of-privacy test has been added to, not substituted for, the common-law trespassers test." *Id.* at 409. The Fourth Amendment is at issue whenever the government trespasses on property, no matter the privacy interests involved. *Id.* at 404; *see also Florida v. Jardines*, 569 U.S. 1, 11 (2013) (recognizing Fourth Amendment property protection extends to curtilage). The Fourth Amendment's language, in extending its protection to persons, houses, papers, and effects, "reflect[s] its close connection to property." *Carpenter v. United States*, 138 S. Ct. 2206, 2239 (2018) (Thomas, J.,

dissenting) (quoting *Jones*, 565 U.S. at 405). Though the Justices sitting on this Court have disagreed about the role of expectations of privacy in Fourth Amendment cases, there is broad consensus that a trespassory search, as in this case, must be accompanied by a warrant. *See, e.g.*, *Carpenter*, 138 S. Ct. at 2268 (Gorsuch, J., concurring); *Jones*, 565 U.S. at 406 (opinion by Scalia, J., in which Roberts, C.J., Thomas, and Kennedy, JJ., joined); *id.* at 430 (Alito, J., concurring in judgment); *id.* at 413–14 (Sotomayor, J., concurring).

The property "owner's right to exclude others" is "perhaps the most fundamental of all property interests." *Lingle v. Chevron*, 544 U.S. 528, 539 (2003). The Founders were particularly concerned with property rights. For this reason, the Fourth Amendment secures a list of property interests, including "houses," from arbitrary government intrusions. U.S. Const. amend. IV. This Court has reaffirmed the importance of the property interests the Fourth Amendment protects through a string of recent decisions. In *Collins v. Virginia*, 138 S. Ct. 1663 (2018), it held that warrantless physical intrusions into the curtilage were *per se* unreasonable, even for the purpose of searching a vehicle for which there was probable cause of criminal involvement. *Id.* at 1671–72. In *Jones*, it applied common-law property principles in ruling that *the attachment alone* of a tracking device to a vehicle was *per se* unreasonable as a trespass to an "effect." 565 U.S. at 404. And in *Jardines*, this Court quoted *Entick v. Carrington* to emphasize the importance of the property interests involved in a search that trespasses against the house and its curtilage, recognizing that the "law holds the property of every man so sacred, that no man can set

his foot upon his neighbor's close without his leave[,]" 569 U.S. at 7–8 (quoting *Entick v. Carrington*, 2 Wils. K.B. 275, 95 Eng. Rep. 807, 817 (K.B. 1765)), including agents of the state.

The contours of this trespassory search doctrine have been a part of the Fourth Amendment since its inception. This Court has repeatedly emphasized the Amendment's focus on home trespass, holding that "[p]hysical intrusion into the home is the chief evil against which the wording of the Fourth Amendment is directed." *See Illinois v. McArthur*, 531 U.S. 326, 331 (2001); *Payton*, 445 U.S. at 585 (1980) (quoting *United States v. United States Dist. Court for Eastern Dist. of Mich.*, 407 U.S. 297, 313 (1972)). This language has spanned decades of cases because it is grounded in the founding-era's irreducible minimum protections. *See United States v. Jones*, 565 U.S. 400, 406 (2012) (quoting *Kyllo v. United States*, 533 U.S. 27, 34 (2001), to hold that, "At bottom, we must "assur[e] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted"). The minimum founding-era protections do not allow the CCE to apply to homes because "absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional[.]" *Payton*, 445 U.S. at 587–88. In accordance with this "long–settled premise[,]" the Court has excused warrantless invasions of the home *only* when it is proved to be strictly necessary to apprehend a fleeing suspect, prevent the destruction of evidence, or render emergency aid. *See Kentucky v. King*, 563 U.S. 452, 460 (2011).

As for the ruling in *Cady*, there are reasons to treat trespasses upon vehicles with lesser scrutiny than trespasses to homes that are compatible with this founding-era understanding of the right against unreasonable searches and seizures. In *Carroll v. United States*, more than forty years before the *Katz* privacy test came about, this Court held that vehicles were subject to search under a warrantless probable cause standard, pointing to the legislation and practices of this country in the late 18th century. 267 U.S. 132, 149–54 (1925). Indeed, one of John Adams' principal objections to the seizure of John Hancock's ship, the *Liberty*—which would become a flashpoint in the growing sentiment for American independence—was founded in great part on the absence of specific cause. Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 Ind. L.J. 979, 1019–20 (2011). This disparate treatment shows that the security of the home was treated differently than searches of vehicles of transport, even during the Founding era. Thus, this Court has always read the Fourth Amendment to apply to the home more forcefully, repeatedly holding that "[p]hysical intrusion into the home is the chief evil against which the wording of the Fourth Amendment is directed." *See McArthur*, 531 U.S. at 331; *Payton*, 445 U.S. at 585 (quotation omitted).

At the time of the founding, the only exceptions to the warrant requirement which applied to the home were exceptions based in exigency. *Georgia v. Randolph*, 547 U.S. 103, 123 (2006) (Stevens, J., concurring) ("At least since 1604 it has been settled that in the absence of exigent circumstances, a government agent has no right to enter a 'house' or 'castle' unless authorized to do so by a valid warrant.")

(citing *Semayne's Case*, 77 Eng. Rep. at 195).[3] Likewise, this Court has often held that exigency is a prerequisite to a warrantless intrusion into a home. *See Payton*, 445 U.S. at 590 ("Absent exigent circumstances, [the home's] threshold may not reasonably be crossed without a warrant."); *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984) ("Before agents of the government may invade the sanctity of the home, the burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries."). But the First Circuit placed these doctrines to the side. *See Caniglia*, 953 F.3d at 122, 126 & n.5.

The lower court could have addressed the trespass-based property interests involved in this case by asking whether Mr. Caniglia's wife consented to the search of the house and whether she had the capacity or apparent authority to consent to the seizure of the gun, *see United States v. Matlock*, 415 U.S. 164, 169–70 (1974) (outlining the effect of

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[3] *See also, e.g.*, Thomas K. Clancy, *The Fourth Amendment: Its History and Interpretation* 24–25, § 2.2 (2009) (discussing hot pursuit); Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1222–23 (2016) (discussing the common law "hue and cry"); *United States v. Robinson*, 414 U.S. 218, 224–29 (1973) (examining the historical and traditional justifications for the search incident to arrest doctrine); *Carroll*, 267 U.S. at 153–54 (citing historical evidence from the Founding era that rendered the automobile exception consistent with the Fourth Amendment); *United States v. Watson*, 423 U.S. 411, 418 (1976) ("The cases construing the Fourth Amendment thus reflect the ancient common-law rule that a peace officer was permitted to arrest without a warrant for a misdemeanor or felony committed in his presence as well as for a felony not committed in his presence if there was reasonable ground for making the arrest.").

authority and consent to the search of shared property). Instead, it assumed that the police did not obtain consent. *Caniglia*, 953 F.3d at 122. After discarding the emergency aid exception and consent, *id.* at 126 & n.5, the First Circuit's deliberations on the "reasonableness" of this search should have been at an end: Because there was no warrant and no consent, the search of the home was definitionally unreasonable.

2. A noninvestigatory search of the home does not relegate it to a lesser degree of scrutiny.

Good intentions are not a substitute for a neutral arbiter's judgment and do not overcome the founding-era requirement of exigency for warrantless home entries. This Court has already decided that that all invasions of a home by a government agent are searches under the Fourth Amendment, *Payton*, 445 U.S. at 585 (quoting *Boyd v. United States*, 116 U.S. 616, 630 (1886)). Likewise, any government intrusion of the home subjects its intimacies to inspection, regardless of the purpose of the search. *See Kyllo*, 533 U.S. at 37. These holdings make no exception for entry for the purpose of community caretaking or some other noninvestigatory purpose. *See Camara*, 387 U.S. at 534–35.

As far as the lower court's factual analysis shows, the exigency elements were deficient in this case. *See Caniglia*, 953 F.3d at 126 ("[T]he terms 'imminent' and 'immediate,' as used throughout this opinion, are not imbued with any definite temporal dimensions."). The circuit court based its decision on the CCE, exclusively, noting that the government did not attempt to justify its warrantless search and seizure

based on either emergency aid or exigent circumstances. *Id.* at 126 n.5. If there was evidence that the presence of a firearm in the house posed an imminent threat of bodily harm to someone in the house, then the police would have been permitted to enter without a warrant under *Brigham City v. Stuart*, 547 U.S. 398 (2006).

Finally, concluding that the officers' intentions determine the scope of Fourth Amendment protection would be anomalous. The practical impact of such a holding would provide officers with more leniency to invade the privacy of average citizens than the officers enjoy when investigating those suspected of crimes. Fourth Amendment protections should not apply with more force when the person searched is suspected of a crime than when the person is not. *Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 530 (1967).

C. Privacy Interests Are at Their Zenith in the Home.

Even if the Court were to look past the trespassory test for reasonableness that requires exigent circumstances or an emergency to justify a warrantless search, the balance of interests would weigh against extending the CCE to private homes. "[W]hen it comes to the Fourth Amendment, the home is first among equals. 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.'" *Jardines*, 569 U.S. at 6 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). Thus, it is difficult to overstate the privacy and property interests that attach to it. From the property right of exclusive possession to the privacy interest of

enjoying the intimate details of home life, the liberty interests tied up in dwellings easily outmatch the government's asserted interest in entering homes to perform an ill-defined and nonemergency caretaking function.

Indeed, Americans' assertion of their right to the security of their homes represented "the commencement of the controversy between Great Britain and the Colonies." Nelson B. Lasson, *The History and Development of the Fourth Amendment to the United States Constitution* 61 (1970) (quoting Mabel Hill, *Liberty Documents* 188–89 (New York 1901)). The arbitrary invasions of Americans' homes by British officers was a principal trigger for the American Revolution, and James Otis' spirited arguments against them in *Paxton's Case* represent the foundation for the right against unreasonable searches and seizures. That case inspired the language drafted by John Adams for the Massachusetts Constitution, which ultimately served as a model for the federal Fourth Amendment. *See* Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 Ind. L.J. 979, 1027–29, 1050–51 (2011). It prohibited *all* unreasonable searches and seizures of homes and other properties rather than serving as merely a prohibition of general warrants.

In *Paxton's Case*, Otis represented a group of merchants challenging searches of their homes (and businesses) by customs officials, where he "assert[ed] that 'the freedom of one's house' was among 'the most essential branches of English liberty.'" William J. Cuddihy, *The Fourth Amendment: Origins and Original Meaning 602–1791* 378 (2009) (quoting Brief

of Otis, *Paxton's Case* (Mass. Sup. Ct. 1761), and *Massachusetts Spy*, April 29, 1773 (vol. 3, no. 117), p. 3, col. 1). This language is echoed in *Payton*, where this Court struck down the practice of warrantless arrests in the home: "The zealous and frequent adage that 'a man's house is his castle,' made it abundantly clear both in England and the Colonies that 'the freedom of one's house' was one of the most vital elements of English liberty." 445 U.S. at 596–97. Indeed, "[w]e have . . . lived our whole national history with an understanding of [this] ancient adage . . . [that t]he poorest man may in his cottage bid defiance to all the forces of the Crown." *Randolph*, 547 U.S. at 115 (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958)) (alteration in original).

Decisions of this Court recognizing this ancient heritage are numerous and have routinely treated the home with greater deference than other items secured by the Fourth Amendment. *See, e.g.*, *United States v. Karo*, 468 U.S. 705, 716 (1984) (upholding warrantless electronic beeper surveillance with the exception of when the beeper is located in a suspect's home); *Carroll*, 267 U.S. at 153 (subjecting vehicles to lesser protection than the home); *compare United States v. Watson*, 423 U.S. 411, 420 (1976) (upholding warrantless arrests of suspects on probable cause), *and Payton*, 445 U.S. at 590–98 (prohibiting warrantless arrests of suspects in the home, even with probable cause).

The home is the place where persons and families carry out the intimate details of life. From registration numbers on home appliances to the precise time of a shower, things that happen in the home are private. *Kyllo*, 533 U.S. at 38. And much like the location data

at issue in *United States v. Jones*, there is always a risk that the disclosed information may lead to a more classically private discovery, such as a medical diagnosis, a person's sexuality, or membership in an anonymous group. 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring). Where those intimate privacy interests are weighed against a government's interest in carrying out a nonemergency community caretaking function, that government interest must yield to the sphere of liberty ascribed to this sacred place of family privacy by the Constitution.

The lower court erred, in part, by failing to properly value the gravity of police intrusion into the home and its effect on privacy interests. Instead of recognizing that "[i]n the home . . . *all* details are intimate details, because the entire area is held safe from prying government eyes[,]" *Kyllo v. United States*, 533 U.S. 27, 37 (2001), it categorized the police function as a minimal intrusion by distinguishing a "ransack[ing]" of Mr. Caniglia's home from the "tailored . . . movements" of the police officers in retrieving his property from the house. *Caniglia*, 952 F.3d at 133. But a person's house need not be ransacked for an intrusion to be unreasonable. *Every* intrusion against the privacies of the home by the state is a grave one.

In *Kyllo*, merely measuring the heat levels radiating from a house was an unreasonable intrusion, despite the limited information it conveyed, 533 U.S. at 40. In *Collins*, the mere entrance of law enforcement upon the curtilage of a home constituted an unreasonable search, even though the officers tailored their search to a vehicle they believed contained evidence of crime, 138 S. Ct. at 1671–73.

And in *United States v. Karo*, this Court held that even the electronic signature of a beeper device could not be activated from inside a suspect's house without unreasonably intruding upon privacy. 468 U.S. 705, 717 (1984). "The Fourth Amendment reflects the views of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978). For that reason, "warrants are generally required to search a person's home or his person unless 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.* (emphasis added; citations and quotation marks omitted).

As the foregoing discussion demonstrates, only compelling emergencies allow warrantless intrusions by the state,[4] and the lower court made no finding of such a condition here. *Caniglia*, 953 F.3d at 122, 126 & n.5, 131. This conflicts with this Court's limitation of warrantless home searches to cases of hot pursuit of a fleeing suspect, the imminent risk of flight or destruction of evidence, or the immediate need to render emergency aid. *See King*, 563 U.S. at 460. Since the First Circuit's analysis untethers the search from temporal constraints, any alleged interest in

[4] "We do not question the right of the police to respond to emergency situations . . . 'The need to preserve life or avoid serious injury is sufficient justification for what would be otherwise illegal absent an exigency or emergency.'" *Mincey v. Arizona*, 437 U.S. 385, 392–93 (1978) (citations omitted).

community caretaking is outweighed by Mr. Caniglia's property and privacy interests.

III.

THE COMMUNITY CARETAKER EXCEPTION IS UNWORKABLE IN THE CONTEXT OF THE HOME BECAUSE IT PLACES NO FIXED LIMITS ON THE DISCRETION OF OFFICERS IN THE FIELD

Even if this Court is inclined to find that the balance of interests favors a warrantless community caretaking function for police in private homes, the exception is unworkable because the First Circuit's articulated standard for the CCE places no real fixed and enforceable limits on officer discretion that would prevent the arbitrary exercise of this power. The First Circuit simply required that the "procedure employed (and its implementation) is reasonable." *Caniglia*, 953 F.3d at 123. Limits on officer discretion is one of the hallmarks of Fourth Amendment protection, and a community caretaker exception that extends to the house based on ad-hoc reasonableness rather than the existence of an objectively measurable emergency, exigency, or the impracticability of obtaining a warrant is an exception that would swallow the warrant requirement whole.

A. Obtaining a Warrant Must Be Impracticable for a Warrantless Home Search To Be Reasonable.

Warrants are generally only excused in cases where either the necessity of immediate action or the functions of the Warrant Clause would render the search futile. *See Stuart*, 547 U.S. at 406 (upholding warrantless dwelling search by officers who had

"objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning"); *Burger*, 482 U.S. at 710 (dispensing with warrant requirement where it would render regulatory inspection schemes ineffective). This Court has never excused a warrantless home search where the police could have obtained a warrant without adverse consequences to an individual or their investigation.

The lower court's decision relied upon no such impracticability for justifying the warrantless intrusion into Mr. Caniglia's home. *See Caniglia*, 953 F.3d at 122 n.5 (recognizing that the exigent circumstances exception, unlike the community caretaker exception, "is defined by a time-urgent need to act that makes resort to the warrant process impractical"); *id.* at 126 (eschewing the need for immediate necessity to uphold a community caretaking search of a dwelling, opting for a loose definition of "immediate" and "imminent" to describe the threat of harm). Instead, it opted to stretch the meaning of the terms "immediate" and "imminent" with respect to the perceived threat from Mr. Caniglia to excuse the police's entry to the home. *Id.* But when the definition of these temporal constraints is weakened, so is the contention that obtaining a warrant is impracticable.

In the absence of immediate necessity, there were other (constitutional) options open to the officers besides a warrantless intrusion. In *Segura v. United States*, this Court upheld the police practice of securing a location while a warrant was obtained through proper channels. 468 U.S. 796, 798 (1984). Since warrants are traditionally *ex parte* procedures,

one of the officers at Mr. Caniglia's house could have taken a statement from his wife and gone to secure a warrant while another officer remained at the house, securing it until the requested writ was obtained.

Simply put, warrantless intrusions into the home, the place of apex property, privacy, and liberty interests, should be an act of last resort. Indeed, this is the standard adopted by the United States Court of Appeals for the Ninth Circuit in a decision cited by the opinion below. *See Rodriguez v. City of San Jose*, 930 F.3d 1123, 1137 (9th Cir. 2019) (requiring that "a warrant could not have been obtained in time" as part of the government's burden for establishing a reasonable, warrantless community caretaking search of the home). The lower court erred by not applying the principle that the police must, when practicable, follow the judicial process by obtaining permission from a judge before entering a dwelling as community caretakers. The Fourth Amendment strikes an important balance between the security of the home and expedient police powers and part of that balance is designating a *judicial* officer as the arbiter of whether a proposed search is reasonable, where possible. Since the officers who searched Mr. Caniglia's home could have secured it while they sought a judge's permission to enter and seize his gun, sound options remained available to them in complying with the Constitution. However, they did not avail themselves of this process. Therefore, the search of Mr. Caniglia's home was unreasonable.

B. The Community Caretaker Exception Does Not Place Sufficient Limits on Officer Discretion To Guard Against Arbitrary Intrusions on the Privacy of the Home.

The CCE does not place sufficient limitations on officer discretion in the context of the home because it asks whether the officer reasonably engaged in an undefined act of "community caretaking," which is too vague to impose real bars on arbitrary intrusions. As discussed above, *see supra* Parts II.B.1 & II.C, the home is the place where property and privacy interests are at their zenith, where *all* details are intimate details, and therefore the CCE would subject it to a greater threat of arbitrary invasion than it does to vehicles because every trespass on the home is a grave one. Likewise, as discussed above, *see supra* Parts II.A & II.C, this Court has a long history of tolerating warrant exceptions related to "persons," "papers," or "effects" that it would not tolerate for "houses."

Eliminating arbitrary discretion from officers in the field is one of the primary concerns of the Fourth Amendment. *See Brown v. Texas*, 443 U.S. 47, 50 (1979) ("A central concern . . . has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field.") (citing *Delaware v. Prouse*, 440 U.S. 648, 654–55 (1979)); *Camara*, 387 U.S. at 527 ("The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials."). After judicial warrants, the best safeguard against arbitrary search powers is the requirement of a specific cause. Indeed, "[t]he core

complaint of the colonists . . . was the general, suspicionless nature of the searches and seizures . . . . As they sought to regulate searches and seizures, the framers held certain principles to be fundamental, of which particularized suspicion was in the first rank." Thomas K. Clancy, *The Role of Individualized Suspicion in Assessing the Reasonableness of Searches and Seizures*, 25 U. Mem. L. Rev. 483, 528 (1994–1995) (footnotes and citations omitted). The most familiar example is *Terry v. Ohio*, which permits officers to frisk a suspect for weapons, but only if the officer has a reasonable, specific, and articulable suspicion that a person suspected of criminal involvement is armed. 392 U.S. 1, 27 (1968). Likewise, in *New Jersey v. T.L.O.*, this Court held that in the interest of efficient administration of discipline, public school officials could warrantlessly search their students based on that same level of specific evidentiary cause for a violation of school policies. 469 U.S. 325, 341-42 (1985). Requiring that an officer possess specific cause before engaging in a warrantless search is one way to enforce an objective standard that fosters adherence to the Fourth Amendment.

However, in a community caretaker exception such as the First Circuit outlined, a specific cause requirement applies no effective limitation on officer discretion because the standard against which officers are required to establish evidence is itself discretionary. The lower court requires only that the facts known to the officers are "sufficient to establish that an officer's decision to act in a caretaking capacity was 'justified on objective grounds.'" *Caniglia*, 953 F.3d at 126 (quoting *United States v. Rodriguez–Morales*, 929 F.2d 780, 787 (1st Cir. 1991)).

Presumably, those "objective grounds" won't always be the nonimminent threat that a person will self-harm with a firearm that is inside that person's home. What constitutes "probable cause" or "reasonable suspicion" to establish the need for community caretaking is unknown and perhaps unknowable.

This conclusion is borne out by examining the cause requirements this Court has previously adopted for reasonable warrantless searches of the home. First, the exigent circumstances test asks whether officers have probable cause to believe that evidence is being destroyed or a suspect is fleeing. *See King*, 563 U.S. at 460. Thus, there is a specific type of conduct or event against which to measure an officer's evaluation of the facts. Likewise, the emergency aid exception requires that there be probable cause of an imminent threat of injury or the need to intercede in order to render emergency aid. *See Stuart*, 547 U.S. at 406. It is objectively measurable whether evidence is likely to be destroyed, a person is about to flee, or someone is in need of emergency aid. But defining "community caretaking," let alone determining when it is justified, is nebulous by comparison, making the officer in the field the lone arbiter of reasonableness. Such a standard leaves rights uncertain and delegates the judge's role in defining the scope and permissibility of searches and seizures to officers in the field with no objective metrics that place officers or anyone else on notice of what it means.

In other cases, this Court has upheld warrantless searches without specific cause for "special needs" purposes only where certain established policies or procedures—enforceable either administratively or by statute—place real limits on the discretion of the

officers who carry them out. Inventory searches, inspections of closely regulated industries, sobriety checkpoints, and suspicionless drug testing fall into this category. *See Patel*, 576 U.S. at 432 (recognizing the requirement that regulatory schemes sufficiently limit the scope and manner of industrial inspections); *Florida v. Wells*, 495 U.S. 1 (1990) (striking down inventory search for absence of policy limiting officer discretion regarding containers in vehicles); *Sitz*, 496 U.S. at 452–53 (identifying the limitations placed on officer discretion by guidelines governing the operation of a DUI checkpoint); *Skinner v. Railway Labor Executives' Ass'n*, 489 U.S. 602, 622 (1989) (marking "the minimal discretion vested in those charged with administering the [suspicionless drug testing] program"). But this Court has never included private homes within its ambit. In fact, it considered in *Camara v. Municipal Court* whether to permit warrantless searches of private homes for the "special need" of building and safety code enforcement and declined to do so, adopting a default requirement that inspectors obtain at the bare minimum an administrative warrant. *Camara*, 387 U.S. at 528—529. To permit procedure-based limits alone to perform the Warrant Clause's function of limiting officer discretion regarding the search of private homes would therefore be a departure from this Court's case law. *See Caniglia*, 953 F.3d at 126.

Nonetheless, where no policies, procedures, or statutory safeguards exist, or where they exist but are not followed or are insufficient, this Court considers a "special needs" search or seizure "unreasonable." *See Wells*, 496 U.S. at 452–53.[5] Here, the lower court stated that "sound police procedures" could guide the constitutional application of community caretaking searches of the home. *Caniglia*, 953 F.3d at 126. But this language does not provide sufficiently measurable and enforceable criteria for limiting the discretion of officers in the field. This standard is anemic by the First Circuit's own holding, which goes on to say that fixed protocol or criteria are unnecessary. *Id.* It pointed only to the "reasonableness" and "soundness" of the officers' conduct, eschewing any further limits on their discretion. *Id.* This is merely a rule of ad-hoc

[5] The closely regulated industry doctrine, though resting on uncertain foundations, has produced quite a jurisprudence in lower courts of determining when procedural safeguards sufficiently limit officer discretion to serve as an adequate substitute for a judicial warrant. *See Hansen v. Illinois Racing Bd.*, 534 N.E.2d 658 (Ill. App. Ct. 1989) (holding horse racing closely regulated but inspection standard of statute did not sufficiently limit officer discretion); *State v. Marsh*, 823 P.2d 823 (Kan. Ct. App. 1991) (animal dealers closely regulated but owner of puppy mill not licensed and therefore was not on notice of warrantless inspection regimes; discretion of officers not sufficiently limited); *State v. VFW Post 3562*, 525 N.E.2d 773 (Ohio 1998) (invalidating warrantless inspection by liquor enforcement because law did not sufficiently restrain time, scope, manner of search); *State v. McClure*, 74 S.W.3d 362 (Tenn. Crim. App. 2001) (recognizing motor carrier industry as closely regulated but invalidating search because statute allowed officers too much discretion); *Santikos v. State*, 836 S.W.2d 631 (Tex. Crim. App. 1992) (en banc) ("at any time" inspection provision in liquor licensing scheme did not sufficiently limit officer discretion).

reasonableness, reviewable by the courts under a case-by-case basis but providing insufficient criteria to limit the discretion of officers in the field. Thus, even if this Court were inclined to adopt a search exception for community caretaking in the home, "sound police procedures" would not pass constitutional muster. Indeed, there is no set of enforceable criteria that can sufficiently limit officer discretion to carry out a function so vacuously defined as "community caretaking" in a place as intimately bound up in the property and privacy interests of Americans as their private homes.

CONCLUSION

This Court should reject wholesale the attempt to expand the ill-defined community caretaker exception to houses. The home is the place where property and privacy interests are at their zenith. Its security against arbitrary intrusion motivated in substantial part the war for this nation's independence and the constitutional amendment that defends this right should be strictly enforced. Searches of the home without an emergency basis were illegal at the time of the founding and remain so today. Amicus, therefore, opposes extension of the community caretaker exception to houses, as it violates the original meaning of the right against unreasonable searches

and seizures and would expose private homes to the threat of arbitrary intrusions by the state.

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Respectfully submitted,

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