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 FOR AMICUS CURIAE AMERICAN ASSOCIATION OF SUICIDOLOGY SUBMITTED IN SUPPORT OF PETITIONER

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I

INTEREST OF AMERICAN ASSOCIATION OF SUICIDOLOGY[1]

The American Association of Suicidology[2] ("AAS"), a non-profit organization, promotes "the understanding and prevention of suicide and supports those who have been affected by it." Founded in 1968, the AAS supports research, public awareness programs, public education and training for professionals and volunteers. It also serves as a national clearinghouse for information on suicide. Its membership includes mental and public health professionals, researchers, suicide prevention and crisis intervention centers, school districts, crisis center volunteers, survivors of suicide loss, attempt survivors, and a variety of persons interested in suicide prevention. American Ass'n of Suicidology website, *About AAS*, *at* https://suicidology.org/about-aas/ (last visited Jan. 5, 2021). Specifically, the AAS seeks to:

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[1] No counsel for any party authored this brief in whole or in part, nor did such counsel or any party contribute money to fund this brief. The American Association of Suicidology funded its preparation and submission. Petitioner and Respondents consented to the filing of this amici curiae brief.

[2] Suicidology is "the study of suicide with a goal to help save lives through the scientific understanding of those suicidal and the translation of that understanding to interventions/treatments and prevention programs." Expert Rpt. of Alan. L. Berman, Ph.D. 1 (Aug. 27, 2018) (included in the District Court record as Exhibit BB of Plaintiff's Statement of Undisputed Facts, ECF #44, and in the First Circuit appendix beginning at page 789).

- Advance Suicidology as a science; encouraging, developing and disseminating scholarly work in suicidology.
- Encourage the development and application of strategies that reduce the incidence and prevalence of suicidal behaviors.
- Compile, develop, evaluate and disseminate accurate information about suicidal behaviors to the public.
- Foster the highest possible quality of suicide prevention, intervention and postvention to the public.
- Publicize official AAS positions on issues of public policy relating to suicide.
- Promote research and training in suicidology.

Interactions between police officers and potentially suicidal individuals often require quick action to prevent imminent tragic results that may infringe upon personal liberties protected by law. The American public is largely willing to countenance those actions if the circumstances demand. State and federal law reflect that willingness. So do many of this Court's opinions.

The AAS contends that this case lies at the other end of the spectrum – coercive measures ostensibly intended to prevent suicide weren't necessary, but members of the Cranston, Rhode Island, Police Department ("CPD") took them anyway, resulting in an unnecessary clash between suicide prevention and civil liberties.

The AAS takes great interest in this matter for that reason as it wishes to help minimize and prevent further clashes. It well understands that protecting individuals from harming themselves while observing, and protecting, their legal and constitutional rights may entail a delicate balancing act in often trying circumstances. First responders who (thankfully) undertake this balancing act need training and protocols to help determine whether individuals are potentially suicidal and what to do – and not to do – under those circumstances. And just as the facts and circumstances of each case determine the "reasonableness" of a search or seizure[3], many of those same facts determine whether someone is, or isn't, suicidal.

The AAS aids a variety of entities, including police departments, to develop and implement training, policies, and procedures to help identify people at imminent risk of suicide. Alan. L. Berman, Ph.D ("Dr. Berman"), past President and Executive Director of the AAS, reviewed the summary judgment record of this case as an expert witness for Petitioner Edward A. Caniglia ("Edward"). His review and expertise should help this Court determine whether the circumstances constitute "exigent circumstances" justifying seizures of persons and property without a warrant, and the materiality of facts in the record. The AAS stands firmly behind training all potential interventionists in assessing and managing potential suicidal crises, both to better ascertain where imminent/acute risk may exist and

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[3] *Cady v. Dombrowski*, 413 U.S. 433, 440 (1973) (citation omitted).

to assess where risk can be reasonably evaluated to be low.

The AAS thanks this Court for the opportunity to weigh in on this important matter.

II

SUMMARY OF ARGUMENT

Material facts in the record and inferences derived therefrom demonstrate that Edward was at minimal risk of suicide, imminent or otherwise, at any pertinent time. CPD officers at the scene had the training to recognize warning signs and ask follow-up questions. They didn't utilize that training, nor did they abide by applicable CPD protocols. As a result, they needlessly required Edward to submit to a psychiatric evaluation and confiscated his firearms.

These seizures violated Edward's Fourth Amendment rights. The United States District Court for the District of Rhode Island granted summary judgment for the CPD defendants on the Fourth Amendment claims. The First Circuit Court of Appeals affirmed. Both applied the "community caretaker function" to sanction the seizure of Edward's person and property, even though this Court has never applied it outside the motor vehicle context. Both found the officers' actions "reasonable" without acknowledging that circumstances that determine "reasonableness" include the officers' training and CPD protocols which, if observed, would have prompted them to

take no action. That the CPD needed a warrant never into their calculus.

The First Circuit's reasoning and conclusions reflect fundamental errors. It discounted competent evidence in the summary judgment record that Edward wasn't a suicide risk, something CPD officers should have realized had they consulted their training. It impermissibly weighed evidence, and viewed the facts and drew inferences most favorable to the moving party.

On substantive issues, the First Circuit should have rejected Respondents' invitation to apply the "community caretaker" exception to the warrant requirement. Fourth Amendment jurisprudence includes the "exigent circumstances" exception and a subcategory, the "emergency aid" exception, which other circuit courts have applied many times when dealing with similar scenarios. Applying the community caretaker exception here required the lower courts to massively broaden a narrow principle to ensure that it fit a set of facts already governed by an established carveout to the warrant requirement.

Absent exigent circumstances – which didn't exist here – the Fourth Amendment requires state actors to obtain a warrant when requiring potentially suicidal persons to submit to psychiatric evaluations based on "probable cause", namely facts and circumstances showing that they're dangerous to themselves or others.

III

ARGUMENT

A

MATERIAL FACTS [4]

Rule 56(a) of the Rules of Civil Procedure provides in part that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A factual dispute is "genuine" if a factfinder could reasonably resolve it in favor of either party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). A fact is "material" if it "might affect the outcome of the suit under the governing law[.]" *Id.* at 248.

Substantive law identifies material facts, *id.*, and the law doesn't get any more substantive than the Constitution. The Fourth Amendment provides that

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

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[4] Facts with no citation to the record can be found at *Caniglia v. Strom*, 953 F.3d 112, 119-20 (1st Cir. 2020).

U.S. CONST. amend. IV. Its basic purpose " 'is to safeguard the privacy and security of individuals against arbitrary invasions by government officials'"[5] and its protection "extends beyond the sphere of criminal investigation[.]"[6]

The explicit protection against "unreasonable searches and seizures" makes "reasonableness" the touchstone of any Fourth Amendment inquiry. This Court assesses reasonableness "by carefully weighing 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.' " *County of Los Angeles v. Mendez*, 137 S. Ct. 1539, 1546 (2017) (citations omitted). "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively,* justify [the] action.' " *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006) (emphasis in original) (citation omitted).

1. Sequence of events

Edward is sixty-eight years old. [Jt. Appx. 39 ¶ 1] He has no criminal history or record of violence, including domestic violence. No restraining order ever entered against him. He has no history of threating violence against anyone, including himself. [Jt. Appx. 47 ¶ 46]

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[5] *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) (citation omitted).

[6] *Grady v. North Carolina*, 575 U.S. 306, 309 (2015) (citation omitted). All agree that that this case doesn't involve a criminal matter.

Edward and his wife, Kim, were happily married for nearly twenty-two years as of August 20, 2015, when they got into an argument over, of all things, use of a coffee mug. "I've never used this since your brother used it", joking that he "might catch a case of dishonesty[.]" [Expert Rpt. of Alan. L. Berman, Ph.D. 3 (Aug. 27, 2018) ("Berman Rpt.")] That acerbic quip sparked an argument that lasted for the next hour or so.

At some point Edward just wanted the dispute to end, prompting him to do something that sounds superficially ominous. He retrieved one of his two handguns from the bedroom, brought it downstairs, and slid it across the table or countertop to Kim. He then said something to the effect of "shoot me now and get it over with."

She couldn't have if she wanted to – the gun was unloaded and didn't have the magazine in it. [Berman Rpt. 3] Clearly, Edward didn't want to Kim to *actually* shoot him.

He left to "go for a ride" after Kim threatened to call the police. She returned the gun to its usual location. She found the magazine and hid it. [Berman Rpt. 3-4] By then, she knew that the gun Edward gave her couldn't have harmed anyone. At no time did Edward threaten Kim, nor did she feel threatened.

Edward, likely realizing the error(s) of his ways, picked up a plant for Kim as a token of apology. It didn't have the desired effect as the argument reignited after he returned.

Kim decided to spend the night at a hotel. She and Edward talked over the phone. He sounded upset and "a little angry" but asked Kim to come

home. [Berman Rpt. 4] She didn't, but called him the next morning while at breakfast at a local restaurant. He didn't answer because he was in the bathroom. [Jt. Appx. 49 ¶ 62]

There are many reasons why someone doesn't answer a phone call, but Kim feared the worst given what happened the day before. She contacted the CPD and asked for an escort to the house. She told the CPD that Edward was depressed, she was worried about him, and was afraid "about what [she] would find." But she also told Officer Mastrati of the CPD that the gun Edward produced wasn't loaded, "that she was not scared for her own life, but more scared walking in and not knowing if Edward had committed suicide." [Jt. Appx. 40 ¶ 65]

Happily Kim's fears weren't realized. Edward answered a call made by Officer Mastrati, telling him he'd meet him at the house. Officer Mastrati told Kim that he sounded fine. [Jt. Appx. 50 ¶ 66] Kim figured that the incident would quickly wind down: "I thought that I would have an officer go with me to the house, he would knock on the door, Ed would answer the door, I would know he was okay, that we would talk, and if things were fine, the officer would leave." [Jt. Appx. 61 ¶ 142]

But things took a turn that neither she nor Edward expected.

Three other officers, Sergeant Barth and Officers Smith and Russell, arrived in separate squad cars and spoke with Edward. [Jt. Appx. 50 ¶ 68] He corroborated Kim's account, telling the officers that he asked her to shoot him because he was sick of the arguments and "couldn't take it anymore." He also made clear that he wasn't

suicidal. By that time, the officers knew that he didn't give Kim a loaded gun.

Nevertheless, they remained skeptical despite all appearances. Edward "appeared normal" to Officer Mastrati. He wasn't abrasive or aggressive. [Jt. Appx. 50 ¶ 70] Officer Russell described him as "nice", "very polite" and "welcoming", and didn't remember him saying anything indicating an intent to harm himself. Edward didn't seem suicidal to him. [Jt. Appx. 51 ¶ 81]

But Sergeant Barth, the officer in charge at the scene[7], viewed him as somewhat agitated and angry about them being there, albeit "not hysterical[.]" [Berman Rpt. 4] Edward told them that his mental health was none of their business beyond denying suicidal intent. In fact, he told Officer Mastrati that a friend of his committed suicide and he'd never do that to his family. [Jt. Appx. 50 ¶ 72]

Officer Mastrati didn't believe him. [Jt. Appx. 50 ¶ 73] Sergeant Barth wanted him transported to a nearby hospital for an "involuntary emergency psychiatric evaluation." [Jt. Appx. 226 ¶ 161]

Sergeant Barth also wanted to confiscate Edward's guns for "safekeeping." Captain Henry of the CPD endorsed his decision based on information relayed from officers at the scene. [Jt. Appx. 52 ¶ 87]

Edward objected to both demands, telling the officers "[y]ou're not confiscating anything." [Jt. Appx. 51 ¶ 84] That didn't change the officers'

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[7] Jt. Appx. 50 ¶ 68.

minds, but it did change their approach. They told Edward that they wouldn't confiscate his guns if he submitted to the evaluation. He relented, but only for that reason. [Jt. Appx. 52 ¶ 85]

Little did he know that CPD officers didn't intend to honor their ostensible "bargain."[8] After rescue personnel took him away, the officers told Kim that he gave them permission take the guns. She never told them that she wanted them gone. [Jt. Appx. 56 ¶ 113] Nevertheless, she pointed out where the guns were kept in the house and garage. The officers took them, the magazines, and ammunition.[9]

2. CPD training and protocols regarding potentially suicidal individuals

CPD officers receive training to deal with mentally ill persons, including those who appear suicidal. Department protocols provide further guidance.

(a) Protocol

CPD General Order ("GO") 370.20 addresses most common interactions with mentally ill persons. [Jt. Appx. 127] It notes that "[o]fficers are not in a position to diagnose mental illness but must be alert to common symptoms", which may include "a person making a statement that they want to kill

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[8] Given its involuntary nature it was more like "an offer he can't refuse." *See* THE GODFATHER (Paramount Pictures 1972).

[9] The First Circuit stated immediately after reciting these facts "[t]here is no dispute, though, that the officers understood that the firearms belonged to [Edward] and that he objected to their seizure." *Caniglia*, 953 F.3d at 120 (bracketed substitution added).

themselves[.]" [Jt. Appx. 128; *see also* Jt. App. 43 ¶ 28] Significantly, "[w]hile a single symptom or isolated event does not necessarily indicate mental illness, professional help should be sought if symptoms persist or worsen." [Jt. Appx. 128] "Once sufficient information

> has been collected about the nature of the situation, and the situation has been stabilized, there is a range of options officers should consider when selecting an appropriate disposition. These options include the following . . . . Transport for involuntary emergency psychiatric evaluation if the person's behavior meets the criteria for this action.

(Ellipse added). [Jt. Appx. 131] In that event,

> Police officers, who have personally observed the actions of the individual and have reason to believe that the person is in clear and imminent danger of causing personal harm to him/herself or others, will ensure the individual is evaluated. The normal procedure will be to have rescue transport the individual.

[Jt. Appx. 133-34]

Capt. Henry contends that CPD officers may require a person to go to a hospital where a mental examination can be performed but can't force him or her to submit to one. [Jt. Appx. 53-54 ¶ 95] Officer Mastrati also acknowledged lacking that authority. [Jt. Appx. 47 ¶ 53]

(b) Training

Officer Mastrati learned to assess people for risk of suicide, but none of the factors set forth in his training applied to Edward when he spoke to him. [Jt. Appx. 51 ¶ 79] "I can't determine if someone is not suicidal", he said. "To me, I felt like [Edward] was a risk to himself" because he placed the gun on the counter and "ask[ed] his wife to end his life." He had no other reason to believe Edward was suicidal. [Jt. Appx. 50-51 ¶¶ 74-76]

Sergeant Barth has required people to go for mental evaluations "[m]ore times than [he] can count." [Jt. Appx. 225 ¶ 157] Whether he dealt with those situations any more appropriately than he dealt with this one remains undetermined. Here, though, he didn't consult any specific psychological or psychiatric criteria or with any medical professionals when making the decision regarding Edward. [Jt. Appx. 225 ¶¶ 158, 159] He didn't recall whether the CPD had any written policy or procedure for determining when to seek a mental evaluation. [Jt. Appx. 225 ¶ 155] He also didn't recall any of his training regarding dealing with persons with mental health issues when this incident occurred. [Jt. Appx. 226 ¶ 163] He believes he "was probably more going on [his] experience." (Bracketed substitution added). [Jt. Appx. 225 ¶ 156] And the only factor he considered on August 20, 2015, was that Edward had a gun and supposedly said "he wanted harm done to himself." [Jt. Appx. 226 ¶ 164]

On a broader level, CPD officers have no formal training to determine whether someone is imminently dangerous beyond obvious indicia. They make the determination subjectively based on

experience. As a result, two officers could come to different conclusions when dealing with the same circumstances. [Jt. Appx. 54 ¶¶ 98, 99]

Colonel Winquist, Chief of the CPD, contends that the police have authority to seize a person's firearms without a court order "if that person was in imminent danger of harming himself or someone else." [*See* Jt. Appx. 39-40 ¶¶ 3-4] Captain Henry reiterates this view." [Jt. Appx. 53 ¶ 90] However, he wasn't aware that Rhode Island's Mental Health Law existed at all pertinent times and that it laid out procedures for police or family members to compel psychiatric evaluations. *See* R.I. GEN. LAWS § 40.1-5-7, -8.

* * * * *

A social worker evaluated Edward at the Kent County Hospital. He was immediately discharged. [Jt. Appx. 57 ¶ 121]

3. Edward wasn't at risk for suicide at any pertinent time

Dr. Berman reviewed the following information:

- Kent Hospital Medical Chart re Edward A. Caniglia
- Cranston Fire Department Report 08/21/2015
- Cranston Police Department Incident Report 08/21/2015
- Dr. Berman's interview with Plaintiff Edward Caniglia (July 24, 2018)

- Deposition of Edward Caniglia (with Exhibits A-E)
- Deposition of Kim Caniglia (with Exhibits A and B)
- Deposition of Officer John Mastrati (with Exhibits 1-10, 19)
- Deposition of Sergeant Brandon Barth (with Exhibits 31-34)
- Deposition of Captain Russell C. Henry, Jr. (with Exhibits 4-27)
- Deposition of Officer Michael Winquist (with Exhibits 28 and 29)
- Deposition of Rescue Officer Richard Greene (with Exhibits 39-43)

[Berman Rpt. 3]

This information led him to conclude that Edward wasn't at acute or chronic risk of suicide on August 20th or 21st of 2015. "Acute" risk depends on several variables associated by research with risk, typically within weeks or months. "Imminent" risk means acute risk in the near term, within forty-eight hours. "Chronic" risk of suicide also depends on research-based variables associated with elevated risk across a person's lifetime. [Berman Rpt. 6]

These criteria revealed that Edward had a very slight chronic risk of suicide based on family history (an uncle who committed suicide), chronic sleep problems, and age and gender (male over sixty-five years old). [Berman Rpt. 6] He had no significant acute risk as his circumstances fit very few associated variables. His August 20th argument with Kim resulted from mutual situational frustrations. The Kent County Hospital's diagnosis

of "Unspecified Depressive Disorder" was no cause for concern as it isn't based on symptomatic criteria or duration. "This diagnosis typically is a wastebasket diagnosis used when specificity is lacking and for purposes of securing insurance coverage, as both a DSM-V and an ICD (International Classification of Diseases) code accompanied the diagnosis." [Berman Rpt. 7]

For these reasons, Dr. Berman determined that Edward wasn't at acute or imminent risk of suicide. [Berman Rpt. 7]

He also doesn't believe that Edward's behavior on August 20th reflected suicidal ideation or intent. He and Kim had a good marriage over the prior twenty-two years with no history of domestic violence or significant acrimony. He never threatened Kim at any time. Circumstances made clear that Edward knew that she wouldn't follow through on his empty directive to "shoot me":

> [T]here is no evidence that he handed a loaded weapon to her, such that were she in a mistaken belief he was serious and in her own rage at him would ever have pulled a firearm's trigger to act on his statement. As Ed Caniglia described his behavior this night, he was annoyed that his initial comments led to an argument and that Kim kept following him around when he would have preferred to drop the subject [Interview with Ed Caniglia]. It was in this context and in the throes of his frustration that he brought the weapon out.

[Berman Rpt. 9] As a result, Edward's "actions and words on August 20, 2015 did not constitute a suicidal communication, nor communicated any

degree of suicidal intent. His behavior might be reasonably construed as foolish, perhaps; reckless, perhaps; but not as a suicidal behavior." [Berman Rpt. 9]

4. What CPD officers could *reasonably* conclude on August 21, 2015

That said, CRP officers aren't mental health professionals and shouldn't be held to the same standards. The Constitution doesn't demand otherwise. "The Fourth Amendment standard is reasonableness, and it is reasonable for police to move quickly if delay 'would gravely endanger their lives or the lives of others.' " *City of San Francisco v. Sheehan*, 135 S. Ct. 1765, 1775 (2015) (citation omitted). "This is true even when, judged with the benefit of hindsight, the officers may have made 'some mistakes' " as "[t]he Constitution is not blind to 'the fact that police officers are often forced to make split-second judgments.' " *Id.* (citation omitted).

But there were no "split second judgments" to make here, and CPD officers should have known given the circumstances, their training, and CPD guidelines that they had no grounds to exercise authority reserved for exigent circumstances. Dr. Berman notes "[t]heir responsibility in so meeting with [Edward] was to evaluate his danger to himself as currently observed." (Bracketed substitution added). [Berman Rpt. 9] CPD officers make that evaluation at the scene. However, no officer asked Edward any questions regarding factors relating to risk of suicide, risk of violence, or prior misuse of firearms. They relied solely upon what happened the day before when demanding a psychiatric evaluation

and confiscating Edward's guns. [Berman Rpt. 10] Based thereon, Dr. Berman concluded:

> on the morning of August 21, 2015 no independent evaluation of Ed Caniglia's risk for suicide was made based on both his current mental status and associated suicide risk factors as the Cranston Police Department Officers were trained to observe . . . and that, as noted above, a sole reliance on Ed Caniglia's statement and actions of the night before to document any level of concern for imminent risk of harm was inappropriate and a breach in the standards to which these officers were trained.

(Ellipse added). [Berman Rpt. 10]

B

THE FIRST CIRCUIT'S OPINION

The above factual backdrop required CPD officers to obtain a warrant to have Edward submit to a psychiatric evaluation given that no "exigent circumstances" existed. That warrant would issue upon a showing of probable cause that he posed a danger to himself or others. Rhode Island law sets out detailed procedures consistent with Fourth Amendment requirements. *See* R.I. GEN. LAWS §§ 40.1-5-7 (emergency certification for admission), 40.1-5-8 (civil court certification).

The CPD didn't invoke the Mental Health Law, and its actions violated this Court's established Fourth Amendment jurisprudence. The District Court and First Circuit sanctioned its actions by

enlisting an exception to the warrant requirement that doesn't require probable cause for searches and seizures – it just requires "reasonableness." This exception arises out of the "community caretaking function" applicable only to limited circumstances involving motor vehicles. Now, according to the First Circuit, it applies to nearly everything.

Edward and other amici will (very ably) argue why this Court should reject the First Circuit's holding and reasoning. The AAS agrees but will leave the heavy lifting to them. Instead, it will show that existing Fourth Amendment jurisprudence applies quite well to situations where state actors "seize" individuals to compel psychiatric evaluations – they must obtain a warrant based on probable cause or prove that "exigent circumstances" negate the need to obtain one.

No exigent circumstances existed here, rendering the CPD's decision to forego a warrant unreasonable and a violation of the Fourth Amendment.

1. The Fourth Amendment and mental health emergencies

" 'No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.' " *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (citation omitted). The Fourth Amendment embodies that sacred right. And when it comes to Fourth Amendment protections " 'the home is first among equals.' " *Collins v. Virginia*, 138 S. Ct. 1663,

1670 (2018) (citation omitted). Hence, "searches and seizures inside a home without a warrant are presumptively unreasonable." *Kentucky v. King*, 563 U.S. 452, 459 (2011) (citation omitted).

The warrant requirement has exceptions, one of which " 'applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.' " *Missouri v. McNeely*, 569 U.S. 141, 148-49 (2013) (citation omitted). Those exigencies include the "emergency aid" exception, where " 'officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.' " *King*, 563 U.S. at 460 (citation omitted).

Circuit courts have often dealt with the "emergency aid" exception where police officers seize allegedly suicidal individuals. In that event, " '[t]he Fourth Amendment requires an official seizing and detaining a person for a psychiatric evaluation to have probable cause to believe that the person is dangerous to himself or others.' " *E.g.*, *Machan v. Olney*, 958 F.3d 1212, 1214 (6th Cir. 2020) (citation omitted); *Graham v. Barnette*, 970 F.3d 1075, 1093 (8th Cir. 2020), *cert. pet'n docketed* (U.S. Jan. 7, 2021) (a mental health seizure must be justified by probable cause that the person subject to the arrest presents an emergent threat of harm to herself or others); *Livingston v. Kehagias*, 803 F. App'x 673, 690 (4th Cir. 2020) (citation omitted).

Circuit courts tailored the probable cause requirement to this non-criminal context. "If a dangerous mental condition is analogized to the role

of criminal activity in traditional Fourth Amendment analysis, a showing of probable cause in the mental health seizure context requires only a 'probability or substantial chance' of dangerous behavior, not an actual showing of such behavior." *Monday v. Oullette*, 118 F.3d 1099, 1102 (6th Cir. 1997); *see Roberts v. Spielman*, 643 F.3d 899, 905 (11th Cir. 2011) (probable cause element satisfied where officers reasonably believe a person is dangerous to himself or others).

Still, any warrantless search or seizure in the mental health context "must be strictly circumscribed by the exigencies which justify its initiation." *Roberts*, 643 F.3d at 905 (citation omitted). Otherwise, state actors must obtain a warrant to seize the individual unless the nature of the emergency provides objective "reason to believe the individual subject to the seizure presents a threat to herself or others such that an order of a court or other authority cannot be obtained in time to prevent the anticipated harm or injury." *Graham*, 970 F.3d at 1093.

This jurisprudence[10] negates any need to add the "community caretaking" exception to the mix of grounds for warrantless seizures when dealing with these kinds of scenarios. The First Circuit resorted to this exception chiefly for the convenience of the police, "to give [them] elbow room to take appropriate action when unforeseen circumstances present some transient hazard that requires immediate attention." *Caniglia v. Strom*, 953 F.3d 112, 124 (1st Cir. 2020) (bracketed substitution). But Fourth Amendment

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[10] Not to mention Rhode Island's Mental Health Law.

protections don't exist for the convenience of state actors, and the exigent circumstances and emergency aid exceptions already provide sufficient "elbow room" without allowing them to ignore the warrant requirement.

Suffice it to say that the First Circuit broadened the reach of this exception to fit circumstances already well covered by the emergency aid exception.

2. CPD officers had no "probable cause" to seize Edward or his guns

"Any warrantless entry based on exigent circumstances must, of course, be supported by a genuine exigency", *Kentucky*, 563 U.S. at 470, and "[t]he government bears the burden of demonstrating that the exception applies." *United States v. Timmann*, 741 F.3d 1170, 1178-79 (11th Cir. 2013). Facts in the record and inferences drawn therefrom demonstrate that no "genuine exigency" existed regarding Edward, which may explain why the CPD only raised the community caretaking exception – it doesn't require either a warrant or an emergency.

But, as shown above, the warrant and probable cause requirements most definitely apply when dealing with mentally ill or suicidal persons. For instance, the Sixth Circuit found probable cause for a mental evaluation where a high school student openly contemplated suicide for the past month and wanted to hurt herself after seeing guns and knives at home. *See Machan*, 958 F.3d at 1213-14, 1215.

Opposite conclusions obtained in cases where police had no objective evidence of suicidal intent

after receiving emergency calls to that effect. In *Fisher v. Harden*, 398 F.3d 837 (6th Cir. 2005), police arrested an elderly man with a hunting rifle after someone claimed that he tied himself to railroad tracks. Turns out he was merely hunting while sitting in a folding chair. Nevertheless, police officers arrested him without attempting to determine whether he was depressed or actually suicidal. *See id.* at 843. The Sixth Circuit noted that law enforcement officials "may not physically restrain an individual merely to assess his mental health." *Id.* at 842.

Bruce v. Guernsey, 777 F.3d 872 (7th Cir. 2015), and *Bailey v. Kennedy*, 349 F.3d 731 (4th Cir. 2003), involved high school students thought to be suicidal, again based upon claims made by others. Each student appeared normal to the police and denied suicidal intent. In *Bruce*, police took a girl away for a mental health examination based on her ex-boyfriend's claim that she tried to kill herself. 777 F.3d at 873. Officers failed to account for contradictory information, including the girl's calm demeanor and her father's protestations. *Id.*

Bailey involved an allegedly suicidal young man who fell off his bike while intoxicated. A neighbor called 911 claiming he was depressed and intended to commit suicide when he arrived home. 349 F.3d at 734. Officers found him at sitting at the dining room table eating lunch. He answered questions, apparently to their satisfaction, but ran into problems when mentioning that his father kept guns in the house. *Id.* He labeled the neighbor's suicide report as "crazy" and told the officers that they needed to leave. They didn't. They wrestled

him to the floor and beat him when he resisted. *Id.* at 735.

Ultimately, being at home and intoxicated wasn't enough to establish probable cause despite the 911 call – "[t]he law does not permit 'random or baseless detention of citizens for psychological evaluations.' " *Id.* at 740 (citation omitted).

Many more cases like this exist in the Federal Reporter – some find probable cause and exigent circumstances, some don't. Regardless, nearly all (barring the few that adopted the community caretaker exception) faithfully apply the probable cause requirement. The First Circuit should have followed suit. Had it done so, it would have ruled, first and foremost, that the CPD violated the warrant requirement and lacked probable cause to seize Edward or his guns.

3. The First Circuit reached its conclusion by misapplying summary judgment standards

In cases like this and criminal matters generally, the existence of probable cause always depends on the totality of the circumstances, requiring courts to consider the facts of each case as a whole. *District of Columbia v. Wesby*, 138 S. Ct. 577, 586, 588 (2018) (citation omitted). The First Circuit never determined whether probable cause existed – the community caretaking exception doesn't require it. It merely determined that the officers' decisions and conduct were "reasonable."

They weren't. As a result, no probable cause supported the CPD's actions even when the facts are

evaluated "from the standpoint of an objectively reasonable police officer[.]" 138 S. Ct. at 586.

The First Circuit concluded otherwise in part by misapplying summary judgment standards, first and foremost the requirement to view the facts in a light most favorable to the nonmoving party and draw all justifiable inferences in that party's favor. *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 779 (2020) (citations omitted). It had no business making credibility determinations or weighing evidence in the summary judgment record, *see Anderson*, 477 U.S. at 255, but it did that, too.

First things first. The CPD seized Edward's person when requiring him to undergo an "involuntary emergency psychiatric evaluation." It seized his property when confiscating his guns. "A 'seizure' of property occurs when 'there is some meaningful interference with an individual's possessory interests in that property.' " *Soldal v. Cook County*, 506 U.S. 56, 61 (1992) (citation omitted). A seizure of an individual occurs when " 'there is a governmental termination of freedom of movement through means intentionally applied.' " *Scott v. Harris*, 550 U.S. 372, 381 (2007) (citation omitted).

The First Circuit also thought "it prudent to assume that the officers' entry into the [Caniglias'] home was not only warrantless but also nonconsensual." 953 F.3d at 122 (bracketed material added). It ruled that "[t]he undisputed facts establish that a seizure of the plaintiff's firearms occurred." *Id.* As to the seizure of Edward himself, it "assume[d] — favorably to the plaintiff — that the

involuntary seizure of his person lasted through his eventual psychiatric evaluation." *Id.* at 121.

But the First Circuit shot down Edward's appeal in part because "no rational factfinder could deem unreasonable the officers' conclusion that the plaintiff presented an imminent risk of harming himself or others." *Id.* at 127. A quick review of the facts previously discussed and inferences therefrom viewed in a light most favorable to Edward easily undercuts this conclusion.

A man, with no police record, no record of domestic violence, and no history of suicidal thoughts or threats, gives his wife of twenty-two years an unloaded gun during a long argument and says something to the effect of "just shoot me and get it over with." A reasonable person could infer that he didn't intend his wife to take him literally – after all, he gave her an unloaded gun with no magazine.

And nothing else that Edward did or said in his entire life up to that point remotely suggests that he wanted to harm himself. Nothing he said or did thereafter supports that suggestion, either. He went for a ride in the car and left his guns at home. The argument started up again when he returned – certainly not a pleasant situation, but at no time did he threaten to harm himself or his wife.

Kim decides to spend the night at a motel. A reasonable person could infer that she had enough of her husband and needed her own time away to cool down. They talked over the phone that night. Edward sounded upset and a little angry, but a reasonable person wouldn't find that unusual given the argument they had a few hours earlier. Nothing

he said indicated intent to commit suicide or harm anyone else.

Kim went to eat breakfast the next morning at a restaurant in Cranston. A reasonable person could infer that she wasn't worried at that point that Edward committed suicide during the night. If she was, she would likely have done something that reflected that concern.

She calls Edward while at breakfast but he doesn't answer. People miss phone calls for reasons too numerous to mention. Hence, a reasonable person could only speculate as to the reason why.

Edward didn't answer Kim's call for a simple reason – he was in the bathroom. But she didn't know that and worried that he may have committed suicide. That prompted her to call the CPD for an escort to the house, afraid of what she might find. She also told the CPD that she didn't fear for her own life, only her husband's. A reasonable person could conclude that Kim's worry at this point was speculative, given that it arose from Edward's failure to answer the phone.

Officer Mastrati called Edward. He answered, sounded fine, and agreed to meet at the house. At this point, Kim's worry that Edward committed suicide was unfounded.

At least two of the officers who met Edward at the house found him "normal", "nice", "very polite", and "welcoming." He explained that he presented an unloaded gun to his wife the day before because he was sick and tired of arguing, but also told them that he didn't intend her to kill him. He specifically disclaimed being suicidal and that he'd never do that to his family.

At this point, all observations made by police officers, other than what they were told, provided no objective basis to conclude that Edward was suicidal.

Sergeant Barth found him somewhat agitated and angry, but not hysterical, about Kim's decision to call the police. A reasonable person would not find that unusual – a person with no suicidal intent or tendencies might be somewhat perturbed at the suggestion that he was. Nor would a reasonable person find unusual that Edward wouldn't respond to inquiries about his mental health given that he already denied being suicidal.

Edward's demeanor and attitude at the scene was entirely consistent with not being suicidal or mentally ill. Consequently, a reasonable person would not find unusual his resistance to the officers' intent to confiscate his firearms and demand for a psychiatric examination – he, subjectively, saw no need whatsoever.

A reasonable person would find Kim's explicit lack of fear for her own safety well-founded – Edward never threatened her with harm at any point during this unfortunate episode and had never done so in the past.

Overall, the officers' observations and discussions with Kim and Edward provided no objective basis to conclude that Edward was suicidal. At best, a reasonable person would find his statement "just shoot me and get it over with" circumstantially ambiguous – all know the literal meaning of this ostensible directive, but all also know that the person who uttered it intentionally withheld the means to carry it out. A reasonable person would consider Edward's statement in light of

that. Hence, that same reasonable person would view his statement as mere "hyperbolic flourish" as the First Circuit described it[11] – emotional exaggeration to make a point, but not to be taken literally.

And a reasonable person would know that people do that all the time.

These facts and inferences – all supported in the record – shatter any pretense that an "objectively reasonable officer" would view Edward as "dangerous to himself or others." *See Wesby*, 138 S. Ct. at 586; *see also Machan*, 958 F.3d at 1214.

The First Circuit's contrary conclusion and reasoning sanctions the CPD's "worst fears" decision-making. As to Edward's guns, officers couldn't assure themselves that he would submit to a mental evaluation at the hospital, or if he did, that he would be truthful and forthcoming. But this only means that CPD officers couldn't, or wouldn't, trust the outcome of the psychiatric examination they demanded any more than they trusted Edward's denial of suicidal intent – nothing he could say or do could dissuade them from taking his guns or returning them after receiving a clean bill of mental health.

The CPD indulged in this "worst fears" decision-making mostly for its own benefit. The First Circuit approved: " 'One need only imagine the public outcry ... had the police left the gun[s]' in place and the plaintiff 'returned home and then used the gun[s]' to inflict harm." 953 F.3d at 132-33 (citation omitted). Protecting police departments from "public

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[11] *See* 953 F.3d at 128.

outcry" is hardly grounds to set aside Fourth Amendment protections.

The First Circuit's skewed view of the facts continued when it refused to afford credence or weight to Dr. Berman's analysis. "[T]he plaintiff arguably exhibited *a significant number of warning signs* and, beyond denying that he was suicidal, steadfastly refused to discuss his mental health." *Id.* at 128 n.7 (emphasis added). The court further discounted Dr. Berman's opinion, arguing that he relied on Edward's "assessment of his own behavior," and may not have "viewed the evidence from the perspective of an objectively reasonable officer rather than, as his report seemed to indicate, from the vantage point of a trained psychologist with "more than 47 years [of experience] as a Suicidologist." *Id.* at 129 n.8.

The court mischaracterized Dr. Berman's analysis and conclusions – he relied on far more than his conversation with Edward. *Compare id.*, *with* Berman Rpt. 10-13. It also substituted its view of the facts for Dr. Berman's, who wrote "Ed Caniglia had a very slight chronic risk for suicide in that he had only a few risk factors associated with elevated lifetime vulnerability to be suicidal." [Berman Rpt. 6] "In addition and more importantly, he had no significant acute risk for suicide", referring to Table 1, "Factors Associated with Acute Risk for Suicide of Relevance to Ed Caniglia[.]" [Berman Rpt. 6-9] The court's contention that Edward "arguably exhibited a significant number of warning signs" finds no support in the record.

The First Circuit's suggestion that "officers followed sound police procedure" is troubling under

the circumstances. "[S]ound police procedure" should reflect the officers' training to recognize suicide risk factors. It should also reflect "application of fixed criteria", especially those in a General Order intended "[t]o address the most common types of interactions with mentally ill persons, and provide guidance to department personnel in dealing with such individuals." [Jt. Appx. 127] CPD General Orders aren't mere suggestions.

All agree that reasonableness of a Fourth Amendment seizure depends on the facts and circumstances of each case which include a police officer's training and experience. *United States v. Turner*, 839 F.3d 429, 433 (5th Cir. 2016) ("When reviewing probable cause determinations, we 'consider the totality of the circumstances—including the officers' training and experience as well as their knowledge of the situation at hand.' ") (citation omitted). Training and experience have often sanctioned the seizure of contraband or weapons searches under a given set of circumstances. *See, e.g.*, *Terry*, 392 U.S. at 27 (1968); *United States v. Sanchez*, 519 F.3d 1208, 1216 (10th Cir. 2008) (pat-down searches) (citation omitted); *United States v. Williams*, 627 F.3d 247, 251 (7th Cir. 2010) (contraband search).

Dr. Berman reviewed CPD training which "define[d] the appropriate criteria for the police officers to use to determine whether an individual is at imminent risk for self-harm, hence to determine the need for a psychological evaluation at the hospital." [Berman Rpt. 10] General Order 320.70 specified that officers "must be alert to

common symptoms" of suicide "and that 'professional help should be sought if symptoms *persist or worsen*[.]' " (Emphasis in original). [Berman Rpt. 11] They breached this duty by

> failing to apply or follow this General Order 320.70 in assessing any symptoms of psychiatric disturbance or mental illness exhibited by Ed Caniglia, no less any symptoms that had *persisted or worsened* since Ed Caniglia's actions and statement of the evening before that occurred in the context of a marital argument. In point of fact, as outlined above, on the morning of August 21, 2015, Ed Caniglia was observed to be 'normal' and 'calm,' no less denied current suicidal thoughts.

(Emphasis in original). [Berman Rpt. 11]

Suicide risk factors the officers should have been acquainted with from their training demonstrate that Edward wasn't at risk – at best he fit only two of them, and those would fit half the population should it live long enough – gender and age. Their training also directed them to ask certain questions to assess imminent suicide risk. The only one they asked related to current suicidal thoughts, which he denied having – and then they didn't believe him. [Berman Rpt. 11]

Dr. Berman, the only expert to analyze this matter, determined that Edward wasn't at imminent risk of suicide on August 20 or 21 of 2015. Consequently, no "exigent circumstances" existed to seize his guns or whisk him away for a psychiatric evaluation.

That said, "[t]he lawfulness of the defendants' actions must be measured by the facts in the officers' possession at the time of the seizure, not by whether the conclusions that they drew from those facts were later substantiated." 953 F.3d at 129. But the facts cited above show that CPD officers had the ability to process "facts in [their] possession at the time of the seizure[s]" to reach a more informed conclusion whether Edward was an imminent suicide risk. It would seem "reasonable" for them to apply that ability before taking action with constitutional implications. Had they done so, they should have reached the same conclusion as Dr. Berman.

These facts and inferences easily "affect the outcome of the suit under the governing law[.]" *See Anderson*, 477 U.S. at 248. The First Circuit misapplied summary judgment standards when concluding otherwise as well as misapplying the governing law.

IV

CONCLUSION

Existing Fourth Amendment jurisprudence, which includes the "exigent" and "emergency aid" exceptions to the warrant requirement, easily apply in cases dealing with mental health issues. Circuit courts appropriately tailored the probable cause requirement to fit the context.

The CPD didn't apply any of this. Its officers ignored their training – or just plum forgot it – and didn't apply existing protocols. They certainly didn't observe Fourth Amendment principles. Instead, they

justified seizing Edward's person and firearms based on their own worst fears, and did so by employing an exception to the warrant requirement tailor-made and explicitly limited to motor vehicles. But doing so expands a narrow exception so much so that nearly swallows the rule.

This Court should reverse the judgment below.

Respectfully submitted,

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