No. 20-157

In the Supreme Court of the United States

EDWARD A. CANIGLIA, PETITIONER

v.

ROBERT F. STROM, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record
NICHOLAS L. MCQUAID
Acting Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
MORGAN L. RATNER
Assistant to the Solicitor General
ROSS B. GOLDMAN
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the Fourth Amendment precludes government officials, who reasonably believe that a potentially mentally unstable person presents an impending threat of harming himself or others with a firearm, from a warrantless seizure of his person to facilitate a medical evaluation and of firearms from his residence to forestall potential harm to him or others.

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INTEREST OF THE UNITED STATES

This case concerns a government official's ability under the Fourth Amendment to address an impending safety threat through a warrantless seizure of a potentially mentally unstable person and an entry into his residence for the limited purpose of removing firearms. Federal officials make warrantless entries into residences in a variety of circumstances where health or safety are threatened. The federal government also prosecutes cases in which state or local officials undertaking such actions have encountered evidence of a crime. The United States therefore has a substantial interest in the Court's resolution of this case.

STATEMENT

1. During a heated argument with his wife, petitioner retrieved a handgun, threw the gun onto the dining

room table, and "said something like 'shoot me now and get it over with.'" Pet. App. 3a. Petitioner's wife, who did not know that the gun was unloaded, took petitioner's actions, which he later characterized as a "dramatic gesture," seriously. *Ibid.* After petitioner left to take a drive, she returned the gun to its usual place, but hid the magazine. *Ibid.* She also packed a bag so she could stay at a hotel that night if petitioner had not calmed down by the time he returned. *Ibid.* When she and petitioner resumed arguing upon his return, she left. *Id.* at 4a. She later spoke with petitioner by phone from her hotel and thought "he sounded upset and 'a little' angry." *Ibid.* (brackets omitted).

The next morning, petitioner's wife called petitioner, but he did not answer. Pet. App. 4a. Worried that he may have hurt or killed himself, she called the Cranston (Rhode Island) Police Department and asked for an officer to accompany her home, explaining that petitioner was "depressed" and that she was "'worried for him'" and "'about what she would find' when she returned home." *Ibid.* (brackets omitted). Shortly thereafter, she met with one of respondents, Officer John Mastrati. *Ibid.* She told him about her arguments with petitioner the day before, and she reiterated her concern that petitioner may have committed suicide and her fear "of what she would find when she got home." *Ibid.* (brackets omitted). Officer Mastrati called petitioner, who agreed to speak with officers in person. *Ibid.*

Officer Mastrati and three other officers (all of whom are respondents here) drove to petitioner's home and spoke to petitioner on the porch while petitioner's wife waited in her car. Pet. App. 4a-5a. Petitioner confirmed her account of the previous day, acknowledging that he

had brought out the gun and asked her to shoot him because he was "sick of the arguments" and "couldn't take it anymore." *Id.* at 5a. When the officers asked about his mental health, petitioner replied that it was "none of their business" and denied that he was suicidal. *Ibid.* The officers had different reactions to the conversation, with two characterizing petitioner as calm but a third describing him as "somewhat 'agitated' and 'angry.'" *Ibid.* (brackets omitted). Petitioner's wife, for her part, thought that petitioner was "very upset" with her for involving the police. *Ibid.* And at some point, either she or petitioner informed the officers about a second handgun in the residence. *Id.* at 5a-6a.

The ranking officer at the scene determined that petitioner "was imminently dangerous to himself and others," and petitioner, after initially hesitating, agreed to go to a nearby hospital for a psychiatric evaluation. Pet. App. 5a; see *id.* at 5a-6a. Although he has asserted in this litigation that he agreed only because the officers told him they would not seize his guns if he went, "the record contains no evidence from any of the four officers who were present at the residence suggesting that such a promise was made." *Id.* at 5a. Petitioner departed in an ambulance, unaccompanied by any of the officers. *Id.* at 6a.

The ranking officer at the scene then "decided to seize the[] two firearms," and a superior officer approved that decision by phone. Pet. App. 6a. One or more of the officers entered the house and garage with petitioner's wife, who directed the officers to the firearms, magazines, and ammunition, each of which the officers secured. *Ibid.* Although the parties dispute whether petitioner's wife wanted the guns seized and

whether the officers obtained her cooperation by representing that petitioner had consented to the seizure, the officers knew that the guns were petitioner's and that he objected to their seizure. *Ibid.*

Meanwhile, petitioner was evaluated at the hospital and discharged without admission. Pet. App. 6a. Over the next few months, petitioner tried unsuccessfully to retrieve his firearms from the Cranston Police Department. *Ibid.*

2. Petitioner ultimately sued respondents, who include the individual officers involved and the City of Cranston. Pet. App. 2a-3a & n.1, 6a. Petitioner brought a variety of state and federal claims, including a Fourth Amendment individual-capacity damages claim against the officers under 42 U.S.C. 1983, alleging the unlawful seizure of his person and firearms. Pet. App. 6a-7a. The district court granted summary judgment for respondents on that claim. See *id.* at 58a-66a.

The district court first reasoned that petitioner's trip to the hospital for a psychiatric evaluation did not amount to a seizure because petitioner "voluntarily left in" the ambulance. Pet. App. 62a. Alternatively, the court determined—citing, *inter alia*, *Cady* v. *Dombrowski*, 413 U.S. 433 (1973)—that any seizure of petitioner's person did not violate the Fourth Amendment under the "community caretaking" doctrine, because "sending [petitioner] to talk to a mental health professional is a quintessential community caretaking function and was reasonable under these circumstances." Pet. App. 63a; see *id.* at 60a. The court also determined that the seizure of petitioner's guns was reasonable because, under the circumstances, the officers reasonably believed that petitioner and his wife "were in crisis" and that if petitioner remained "at his home with the guns,

he, his wife, and their neighbors could potentially be in danger." *Id.* at 63a-64a. Finally, the court determined that, even if respondents had violated petitioner's Fourth Amendment rights, the qualified-immunity doctrine precluded individual-capacity damages liability. *Id.* at 64a-66a.

3. The court of appeals affirmed. Pet. App. 1a-49a. In relevant part, it agreed with the district court that petitioner's Fourth Amendment claim lacked merit. See *id.* at 8a-37a. As a result, the court of appeals found it unnecessary to address qualified immunity. See *id.* at 8a n.3.

The court of appeals noted that while respondents' Fourth Amendment argument relied on "the community caretaking exception to the warrant requirement," rather than "either the exigent circumstances or emergency aid exceptions," there is "substantial overlap" in those doctrines, and it had "no occasion to craft crisp distinctions" among them. Pet. App. 11a-12a & n.5. The court explained that the "community caretaking exception" recognizes that "police officers frequently engage in * * * 'community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" *Id.* at 12a-13a (quoting *Cady*, 413 U.S. at 441). It further explained that "the Fourth Amendment's imperatives are satisfied when the police perform non-investigatory duties, including community caretaker tasks, so long as the procedure employed (and its implementation) is reasonable." *Id.* at 13a-14a (citation and internal quotation marks omitted).

In applying that reasonableness framework to this case, the court of appeals adopted the parties' assumption that two seizures—"one of [petitioner's] person and

the other of his firearms"—had occurred. Pet. App. 9a. The court also assumed that the officers' entry into petitioner's residence was nonconsensual. *Id.* at 11a. It then determined that the challenged police activities here were "a natural fit for the community caretaking exception," as "the interests animating these activities"—the need to "respond to individuals who present an imminent threat to themselves or others"—was "distinct from the normal work of criminal investigation." *Id.* at 17a (citation and internal quotation marks omitted).

The court of appeals found the assumed seizure of petitioner reasonable because the officers could reasonably have concluded that petitioner "presented an imminent risk of harming himself or others" and the officers had "acted in conformity with sound police procedure by seizing [petitioner] and sending him to the hospital for a psychiatric evaluation." Pet. App. 23a; see *id.* at 23a-30a. And the court found the entry into the residence and the seizure of firearms reasonable because "the officers could reasonably have believed, based on the facts known to them at the time, that leaving the guns in [petitioner's] home, accessible to him, posed a serious threat of immediate harm." *Id.* at 31a; see *id.* at 30a-37a. The court observed that "[f]rom the perspective of an objectively reasonable officer, [petitioner's] departure had not necessarily dispelled the threat of harm." *Id.* at 31a-32a; see *id.* at 32a-34a. And it explained that "the officers' decision to confiscate the firearms was a reasonable choice from among the available alternatives." *Id.* at 35a.

SUMMARY OF ARGUMENT

The touchstone of the Fourth Amendment is reasonableness. For criminal investigations, this Court has generally incorporated the Warrant Clause into the

Fourth Amendment's overarching reasonableness requirement, but it has not generally done so for searches or seizures objectively premised on justifications other than the investigation of wrongdoing. The ultimate question in this case is therefore not whether the respondent officers' actions fit within some narrow warrant exception, but instead whether those actions were reasonable. And under all of the circumstances here, they were.

I. The Fourth Amendment's Warrant Clause, as distinct from its overall reasonableness requirement, is "linked" to investigations of wrongdoing—the context in which the "probable cause" standard developed, in which that standard operates naturally, and in which warrants were employed at common law. *South Dakota* v. *Opperman*, 428 U.S. 364, 370 n.5 (1976). The Court has accordingly begun its analysis of the reasonableness of government officials' investigatory actions with a baseline warrant requirement that "ensures that the inferences to support a search are 'drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Riley* v. *California*, 573 U.S. 373, 382 (2014) (quoting *Johnson* v. *United States*, 333 U.S. 10, 14 (1948)).

By contrast, atextually and ahistorically applying a baseline warrant requirement in non-investigatory contexts makes little sense. When government officials enter private spaces to ensure public safety or health, rather than to investigate wrongdoing, the question is not whether "probable cause" exists—whatever that might mean in the context of a health or safety crisis—but instead whether their actions are objectively reasonable. Whenever this Court has assessed the constitutionality

of a non-investigatory search or seizure, it has therefore applied reasonableness review rather than requiring a warrant. *Cady* v. *Dombrowski*, 413 U.S. 433 (1973), a decision that petitioner devotes most of his brief to distinguishing on the ground that it involved vehicles, is simply one example. The Court's cases considering non-investigatory actions also include decisions arising in a variety of other circumstances, such as the entry into the home to address a serious public-safety risk in *Brigham City* v. *Stuart*, 547 U.S. 398 (2006).

The core lesson from those decisions is that, for non-investigatory searches and seizures like those at issue here, the Fourth Amendment's reasonableness standard requires not a warrant, but instead a circumstance-specific balancing of the degree of privacy intrusion against the need for government intervention to address important public interests other than the enforcement of the criminal laws. Because the home enjoys the highest protections under the Fourth Amendment, the government must have a sufficiently important interest to support the reasonableness of a warrantless entry. But "ensuring public safety" is "the paramount governmental interest," *Scott* v. *Harris*, 550 U.S. 372, 383 (2007), and can therefore qualify.

Government officials may thus constitutionally enter a home when a serious threat to lives or health justifies immediate intervention, so long as those officials act in a reasonable manner tailored to addressing the particular threat that justified their entry. Petitioner's contrary rule, which restricts warrantless home entries solely to emergencies that will necessarily reach their climax within moments, would preclude official action in a wide variety of serious situations in which society expects swift government intervention.

II. Under the appropriate reasonableness standard, the warrantless home entry and seizures in this case were reasonable and did not violate the Fourth Amendment. The respondent officers confronted a specific, credible, and reasonably impending threat of suicide or domestic violence, and they reasonably determined that petitioner presented a serious risk of violence to himself or others. They facilitated petitioner's transfer to medical personnel for a mental-health evaluation, performed a targeted home entry and search, and seized the particular weapons that had been identified to them. As the court of appeals explained, faced with an "unenviable choice" about how or whether to intervene, the officers reasonably decided not to leave petitioner "agitated, ostensibly suicidal, and with two handguns at his fingertips." Pet. App. 24a.

In the alternative, if this Court has doubts about the reasonableness of the respondent officers' actions—an issue that petitioner does not specifically address—the Court could affirm the court of appeals' judgment by concluding that the officers are entitled to qualified immunity.

ARGUMENT

Petitioner errs in contending (Br. 12-43) that the officers' actions here, which were objectively premised on protecting safety rather than investigating crime, necessarily required a warrant in order to satisfy the Fourth Amendment "touchstone" of "reasonableness." *Maryland* v. *Wilson*, 519 U.S. 408, 411 (1997) (citations omitted). Although this Court has generally interwoven the Fourth Amendment's textually separate reasonableness and warrant requirements in the context of criminal-investigatory actions, the Court has focused on the overarching reasonableness requirement when

evaluating non-investigatory actions like those at issue here. Petitioner's efforts to frame this case as a binary choice between applying *Cady* v. *Dombrowski*, 413 U.S. 433 (1973), and requiring a warrant are accordingly misplaced. *Cady* illustrates—but does not in itself define the boundaries of—the broader principle that the constitutionality of a search or seizure objectively justified by non-investigatory interests should be judged under the general rubric of reasonableness, which will not invariably require a warrant. Applying that principle here, warrantless entries into a home may be reasonable in limited circumstances where they address serious threats to health or safety.

I. THE FOURTH AMENDMENT PERMITS A WARRANTLESS SEIZURE OR HOME ENTRY THAT IS REASONABLY NECESSARY TO PROTECT HEALTH OR SAFETY

A. The Constitutionality Of A Non-Investigatory Search Or Seizure Turns On Its Overall Reasonableness, Not A Presumption That A Warrant Is Required

1. The Fourth Amendment conjunctively provides two protections. First, it states that the right "against unreasonable searches and seizures, shall not be violated." U.S. Const. Amend. IV. Second, it states that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." *Ibid.* But "[t]he text of the Fourth Amendment does not specify when a search warrant must be obtained." *Birchfield* v. *North Dakota*, 136 S. Ct. 2160, 2173 (2016) (quoting *Kentucky* v. *King*, 563 U.S. 452, 459 (2011)).

In accord with the text, this Court has recognized the reasonableness and warrant requirements as separate

but related. The Court has repeatedly reiterated that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Riley* v. *California*, 573 U.S. 373, 381-382 (2014) (quoting *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006)); see, *e.g.*, *Illinois* v. *McArthur*, 531 U.S. 326, 330 (2001); *Cady*, 413 U.S. at 439. And the Court has reasoned that "where a search is undertaken by law enforcement officials *to discover evidence of criminal wrongdoing*, reasonableness generally requires the obtaining of a judicial warrant," *Riley*, 573 U.S. at 382 (quoting *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 653 (1995)) (emphasis added; brackets and ellipsis omitted); see *Birchfield*, 136 S. Ct. at 2173.

A warrant should not, however, be presumptively required when a government official's action is objectively grounded in a non-investigatory public interest, such as health or safety. In the context of criminal investigations or arrests, the warrant requirement "ensures that the inferences to support a search are 'drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Riley*, 573 U.S. at 382 (quoting *Johnson* v. *United States*, 333 U.S. 10, 14 (1948)); see, *e.g.*, *McArthur*, 531 U.S. at 330; *Payton* v. *New York*, 445 U.S. 573, 585 (1980). Outside of that context, however, translating the Fourth Amendment's overarching reasonableness standard into a specific warrant requirement is less textually and theoretically sound.

"[L]inked as the warrant requirement textually is to the probable-cause concept," it does not naturally apply in non-investigatory scenarios. *South Dakota* v. *Opperman*, 428 U.S. 364, 370 n.5 (1976). The probable-cause standard functions awkwardly, at best, in the absence of any suspicion of wrongdoing. Both at the time of the

Framing and thereafter, "probable cause" traditionally has required "a fair probability that *contraband or evidence of a crime* will be found in a particular place." *Illinois* v. *Gates*, 462 U.S. 213, 238 (1983) (emphasis added); see, *e.g.*, *Locke* v. *United States*, 11 U.S. (7 Cranch.) 339, 348 (1813) (noting that "the term 'probable cause,' * * * in all cases of seizure, has a fixed and well known meaning" of "a seizure made under circumstances which warrant suspicion"); 4 William Blackstone, *Commentaries on the Laws of England* 287 (1772) (Blackstone) (explaining that the party seeking a warrant must demonstrate "that there is a felony or other crime actually committed" and "prove the cause and probability of suspecting the party, against whom the warrant is prayed") (emphases omitted).

Absent an expansive new conception of "probable cause," it is difficult to see how a warrant requirement could sensibly apply in many non-investigatory contexts. This Court recognized as much in *South Dakota* v. *Opperman*, *supra*, explaining that "[t]he standard of probable cause is peculiarly related to criminal investigations" and is "unhelpful when analysis centers upon the reasonableness of routine administrative caretaking functions." 428 U.S. at 370 n.5. The Court has accordingly expanded the notion of probable cause beyond its traditional criminal-law moorings only in the analogous circumstance of inspections for other unlawfulness. See *Camara* v. *Municipal Court*, 387 U.S. 523, 534-539 (1967) (prescribing warrant procedure for code-enforcement inspections). And although additional close analogues might exist, see, *e.g.*, *Alfano* v. *Lynch*, 847 F.3d 71, 77 (1st Cir. 2017) (collecting cases applying "probable cause" requirement to involuntary seizures under civil protection statutes), the probable-cause

framework is generally ill-suited to circumstances that do not involve specific legal prohibitions—for example, a "welfare check" on an elderly resident who has not answered a family member's phone calls, or a safety sweep of a home that smells of a noxious gas.

In such circumstances, "the relevant question is not whether police"—or other government officials, such as social workers or firefighters—"have an adequate basis to believe they will find particular persons or things in a particular place," but instead "whether they have sufficient reason to act." Debra Livingston, *Police, Community Caretaking, and the Fourth Amendment*, 1998 U. Chi. Legal F. 261, 275 (1998) (Livingston). As a result, not only is the probable-cause standard inapt, but the presumed benefits of a warrant requirement have less salience. Because officers are not "engaged in the often competitive enterprise of ferreting out crime," the need to interpose "a neutral and detached magistrate" is less pressing. *Johnson*, 333 U.S. at 13-14; see *Opperman*, 428 U.S. at 370 n.5 ("With respect to noninvestigative police inventories of automobiles lawfully within governmental custody, * * * the policies underlying the warrant requirement * * * are inapplicable."); see also Livingston 274 (observing that police officers acting outside the criminal context are "not imbued with the adversarial spirit that so prompted elaboration of the warrant preference theory"). To the contrary, requiring a warrant could risk transforming collaborative activities geared toward ensuring public safety into an overly formal, or even adversarial, process in which government officials' ability to work directly with the community is diminished.

2. The Framers would not have anticipated, let alone intended, that government officials would presumptively need to submit their otherwise reasonable non-investigatory actions for judicial preapproval. Although this Court has treated warrants as a presumptive prerequisite for reasonableness in certain investigatory contexts, see, *e.g.*, *Birchfield*, 136 S. Ct. at 2173, scholars have debated whether the Warrant Clause was in fact designed simply to cabin the circumstances in which reasonableness could be conclusively presumed based on prior judicial approval. Compare, *e.g.*, Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181 (2016), with Akhil Reed Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757 (1994); see *California* v. *Acevedo*, 500 U.S. 565, 581-582 (1991) (Scalia, J., concurring in the judgment). The debate even on that threshold issue reinforces the absence of support for a presumptive warrant requirement in the non-investigatory context.

As this Court has explained, the "Founding generation crafted the Fourth Amendment as a 'response to the reviled "general warrants" and "writs of assistance" of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.'" *Carpenter* v. *United States*, 138 S. Ct. 2206, 2213 (2018) (quoting *Riley*, 573 U.S. at 403); see *Payton*, 445 U.S. at 583 n.21. Typically, such "writs of assistance empower[ed] revenue officers to search suspected places for smuggled goods," while "general search warrants permitt[ed] the search of private houses, often to uncover papers that might be used to convict persons of libel." *United States* v. *Verdugo-Urquidez*, 494 U.S. 259, 266 (1990). Whether their target was untaxed goods or criminal evidence, the abusive

practices that were "[t]he driving force behind the adoption of the Amendment," *ibid.*, were designed to uncover wrongdoing—not to protect health and safety.

Founding-era common law recognized a distinction between government intervention to investigate or punish wrongdoing, on the one hand, and to preserve public order, on the other. See 1 William Hawkins, *A Treatise of the Pleas of the Crown* 137 (1716) (Hawkins) (explaining that "it is the proper Business of a Constable to preserve the Peace, not to punish the Breach of it"). Common-law sources referred to warrants not as an invariant requirement for all government activity affecting the person or the home, but instead as documents that could be sought in the context of a criminal investigation. See, *e.g.*, Blackstone 286-287 (describing warrants issued for an "offence," as part of "the regular and ordinary method of proceeding in the courts of criminal jurisdiction"); *A New Conductor Generalis: Being a Summary of the Law Relative to the Duty and Office of Justices of the Peace, Sheriffs, Coroners, Constables, Jurymen, Overseers of the Poor, &c. &c.* 404-405 (1803) (recording debate between Edward Coke and Matthew Hale about propriety of warrants to search home for felons or stolen goods).

Where those common-law sources discussed law-enforcement activity for non-investigatory purposes—typically the need to quell "affrays" and keep the public order—they did not similarly describe a warrant requirement. See, *e.g.*, Blackstone 145 (noting that "the constable, or other similar officer, however denominated, is bound to keep the peace; and to that purpose may break open doors to suppress an affray"); 1 Matthew Hale, *The History of the Pleas of the Crown* 588 (1847) ("Where there is an affray made in a house, * * *

during such affray the constable or any other may break open the doors to preserve the peace, and prevent blood shed."); Hawkins 137 ("And if an Affray be in a House, the Constable may break open the Door to preserve the Peace."). That common-law backdrop would not have given rise to an understanding, let alone an intent, that the Fourth Amendment's warrant requirement would generally apply to government officials' safety, health, and other non-investigatory functions, as opposed to their investigatory ones.

3. This Court has accordingly applied a general reasonableness standard, without translating that standard into a warrant requirement, across a variety of non-investigatory contexts. As the Court has observed, searches "may be reasonable where special needs make the warrant and probable-cause requirement impracticable, and where the primary purpose of the searches is distinguishable from the general interest in crime control." *City of Los Angeles* v. *Patel*, 576 U.S. 409, 420 (2015) (brackets, citations, ellipsis, and internal quotation marks omitted). In *Cady*, for example, the Court upheld as reasonable a warrantless search of a car, where the car's owner had been hospitalized and the police had reason to believe that the disabled car contained a (lawfully owned) firearm that might pose a danger to the public. See 413 U.S. at 442-443. The Court explained that law-enforcement officers often need to act where "there is no claim of criminal liability" and to "engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Id.* at 441.

After *Cady*, this Court has held that law-enforcement officers may conduct various "programmatic searches * * * without individualized suspicion," so as long as "the purpose behind the program is not 'ultimately indistinguishable from the general interest in crime control.'" *Brigham City*, 547 U.S. at 405 (quoting *City of Indianapolis* v. *Edmond*, 531 U.S. 32, 44 (2000)) (emphasis omitted). The Court has, for example, described as "beyond challenge" the "authority of police to seize and remove from the streets vehicles impeding traffic or threatening public safety and convenience," and has authorized a "routine practice of securing and inventorying the [seized] automobiles' contents." *Opperman*, 428 U.S. at 369; see *Colorado* v. *Bertine*, 479 U.S. 367, 372-374 (1987) (approving practice of opening containers during vehicle inventory search); *Illinois* v. *Lafayette*, 462 U.S. 640, 646-648 (1983) (approving inventory search of arrestees at police station). The Court has emphasized that, in those circumstances, the animating governmental interest "is distinctly non-criminal in nature" and "the process is aimed at" securing property, protecting the police, or ensuring public safety—not at investigating crime. *Opperman*, 428 U.S. at 368, 373; see *Bertine*, 479 U.S. at 373; *Lafayette*, 462 U.S. at 646-647.

This Court has also recognized that government officials may enter homes or businesses without a warrant if intervention is reasonably necessary to respond to an emergency. In *Brigham City* v. *Stuart*, *supra*, for example, the Court determined that officers did not violate the Fourth Amendment by entering a home without a warrant where their observation of violence inside provided "an objectively reasonable basis for believing that an occupant [was] seriously injured or imminently

threatened with such injury." 547 U.S. at 400. Although the Court framed such emergency aid as an "exception[]" to a warrant requirement, *id.* at 403, it explained the reasonableness of the officers' actions by focusing on the objective *non*-investigatory basis for entering the home after witnessing the apparent crime, see *id.* at 404-405, and never suggested that the warrant process could itself accommodate such distinct non-investigatory concerns. Cf. 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment* § 6.6(a), at 596 n.7 (5th ed. 2012) (LaFave) (describing the "'emergency aid exception'" as a subset of the "'community caretaking functions' of the police").

The Court in *Brigham City* found the officers' entry "'reasonable' under the Fourth Amendment" because "'the circumstances, viewed objectively, justif[ied] the action.'" 547 U.S. at 404 (brackets, citation, and emphasis omitted). The Court cited, among other precedents, *Mincey* v. *Arizona*, 437 U.S. 385 (1978), which had recognized that police may perform "legitimate emergency activities" to protect "life or limb," *id.* at 393. See *Brigham City*, 547 U.S. at 403. The Court also relied on *Michigan* v. *Tyler*, 436 U.S. 499 (1978), which had recognized that the Fourth Amendment does not require a warrant for firefighters to enter a home to extinguish a blaze—or even to remain in the home to determine the fire's cause, to limit the threat of further harm, *id.* at 510-511. See *Brigham City*, 547 U.S. at 403. In situations of that sort, an objectively reasonable government official has a justification for acting that is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady*, 413 U.S. at 441.

Notwithstanding this Court's decisions illustrating that a warrant requirement is "unhelpful" in non-investigatory circumstances, *Opperman*, 428 U.S. at 370 n.5, petitioner fails to address the fundamental mismatch between such a requirement and the typical governmental justifications for non-investigatory searches and seizures. Instead, he repeatedly assumes (*e.g.*, Br. 31, 32, 36) that a warrant could, and presumptively should, be obtained in any of the infinitely varied non-investigatory circumstances that a government official might face in the course of his or her duties. But absent a reimagination of "probable cause" to cover justifiable concerns about public safety and health, it may be "more accurate to say that," under the approach that petitioner suggests, "a warrant [would be] unavailable, period." *Sutterfield* v. *City of Milwaukee*, 751 F.3d 542, 563, 565 (7th Cir.), cert. denied, 574 U.S. 993 (2014). At a minimum, courts would need to create "a particular type of warrant that does not currently exist." *Id.* at 565. Neither the Fourth Amendment's text and history nor this Court's precedents require superimposing such a regime atop the general reasonableness approach that the Court has traditionally applied in this context.

B. A Warrantless Seizure Or Home Entry Objectively Justified By Health Or Safety Concerns And Conducted In A Reasonable Manner Is Constitutionally Permissible

Under that traditional approach, courts determining whether a warrantless search or seizure is reasonable under the Fourth Amendment must "assess[], on the one hand, the degree to which [the search or seizure] intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Virginia* v. *Moore*, 553 U.S. 164, 171 (2008) (citation omitted); see *Scott* v.

Harris, 550 U.S. 372, 383 (2007). The reasonableness inquiry therefore "depends upon the facts and circumstances of each case," *Cooper* v. *California*, 386 U.S. 58, 59 (1967), as viewed by an objectively reasonable officer, see *Brigham City*, 547 U.S. at 404-405. As petitioner emphasizes (Br. 23, 25), "the home is first among equals" when it comes to the Fourth Amendment's protections, *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013), and searches and seizures that would be reasonable outside the home may not be reasonable inside it, see, *e.g.*, *Opperman*, 428 U.S. at 367. In particular cases, however, health, safety, or other non-investigatory concerns will provide an objective justification for immediate official action that can outweigh the substantial privacy interests in the home.

1. This Court has described "ensuring public safety" as "the paramount governmental interest." *Scott*, 550 U.S. at 383. The Court's decisions accordingly reflect the common-sense proposition that "concern for the safety of the general public" is an "immediate and constitutionally reasonable" basis for government action that would otherwise violate the Fourth Amendment. *Cady*, 413 U.S. at 447; see *Georgia* v. *Randolph*, 547 U.S. 103, 118 (2006) (observing that no question "reasonably could be" raised "about the authority of the police to enter a dwelling to protect a resident from domestic violence"). Indeed, police officers are not simply *permitted* to combat serious impending threats to public safety and health; society *expects* them to do so. See National Research Council, *Fairness and Effectiveness in Policing: The Evidence* 58-59 (2004) (explaining that "[t]he bulk of patrol officer contacts with the public involve responding to calls for service" rather than police-initiated investigations of crime).

As this Court has recognized, the "role of a peace officer includes preventing violence and restoring order." *Brigham City*, 547 U.S. at 406. The court of appeals likewise observed that "a police officer—over and above his weighty responsibilities for enforcing the criminal law— * * * is expected to aid those in distress, combat actual hazards, prevent potential hazards from materializing, and provide an infinite variety of services to preserve and protect community safety." Pet. App. 16a (citation and internal quotation marks omitted). Petitioner asserts (Br. 33) that "medical and mental health professionals are often better suited" than police officers for assessing and responding to certain crises. But to the extent that it might be desirable to shift certain functions, now carried out primarily by police officers, to other government officials, those officials would likewise be subject to the same Fourth Amendment constraints. See *New Jersey* v. *T. L. O.*, 469 U.S. 325, 335 (1985). Petitioner does not suggest—nor could he—that the Fourth Amendment would apply differently if the individual respondents were social workers rather than police officers.

2. An entry into the home by a government official will typically be less intrusive when it is not for the purpose of investigating crime or apprehending a suspect. Indeed, the Court has recognized that even some investigatory searches (administrative searches of residences for building-code violations) involve "a relatively limited invasion of the urban citizen's privacy" because they are "neither personal in nature nor aimed at the discovery of evidence of crime." *Camara*, 387 U.S. at 537; see *id.* at 530 (noting that an administrative inspection is "a less hostile intrusion than the typical policeman's search for the fruits and instrumentalities of

crime"). It necessarily follows that non-investigatory searches infringe even less on legitimate privacy interests. If, for example, government officials perform a search with a public-safety justification—say, checking for unconscious victims of a noxious gas, see, *e.g.*, *State* v. *Deneui*, 775 N.W.2d 221 (S.D. 2009), cert. denied, 559 U.S. 1041 (2010)—the search "does not damage reputation or manifest official suspicion." Livingston 273 (internal quotation marks omitted).

Moreover, the non-investigatory nature of the search in itself places constitutional limits on its scope. Under the Fourth Amendment, any search or seizure within the home must be reasonable in relation to the public interest that objectively justifies it. See *Brigham City*, 547 U.S. at 406-407. Generally, that means that a search must be "no broader than reasonably necessary to achieve its end." *Michigan* v. *Clifford*, 464 U.S. 287, 294-295 (1984); see *Mincey*, 437 U.S. at 393 (explaining that "a warrantless search must be 'strictly circumscribed by the exigencies which justify its initiation'") (quoting *Terry* v. *Ohio*, 392 U.S. 1, 26 (1968)). Adherence to standard procedures is one "factor tending to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function." *Opperman*, 428 U.S. at 375.

The overarching reasonableness framework allows government officials "to graduate their response to the demands of any particular situation," *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 542 (1985) (citation omitted), and an official's actions may be reasonable even if a judge later identifies a less intrusive alternative. See *Lafayette*, 462 U.S. at 647 ("The reasonableness of any particular governmental activity does not

necessarily or invariably turn on the existence of alternative 'less intrusive' means."); *Cady*, 413 U.S. at 447 ("The fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, by itself, render the search unreasonable."). But the Fourth Amendment provides safeguards against, *inter alia*, the "[e]xcessive or unnecessary destruction of property in the course of a search," *United States* v. *Ramirez*, 523 U.S. 65, 71 (1998), and the excessive use of force, see, *e.g.*, *Graham* v. *Connor*, 490 U.S. 386, 395-397 (1989).

3. Contrary to petitioner's assertion (Br. 13), applying the well-established reasonableness framework to non-investigatory official actions like those at issue here does not grant the police "sweeping authority" to invade individual rights. It simply recognizes that petitioner's own approach—which involves a rigid and ultimately unworkable taxonomy of potentially permissible warrantless searches, see Br. 27-30—cannot possibly accommodate the wide variety of circumstances that government officials encounter in their day-to-day interactions with the community. As particularly relevant here, petitioner would deprive officials of any authority to reasonably "protect or preserve life or avoid serious injury" through a warrantless home entry, *Mincey*, 437 U.S. at 392 (citation omitted), unless they "need to act in a matter of moments," Pet. Br. 29. That restriction is doctrinally unsound and practically harmful.

On a doctrinal level, petitioner's inflexible approach overlooks that this Court's individual decisions like *Cady* and *Brigham City*, particularly when taken together, reflect a broader textual and historical principle that emphasizes general reasonableness, rather than a warrant requirement, in non-investigatory circumstances.

See pp. 10-19, *supra*. On a practical level, petitioner's unyielding warrant requirement hinges on an unrealistic view of field operations. Petitioner would require a government official confronting a public safety or health crisis that will not obviously come to a head in "moments" to call a local court from the field, describe the unique factual circumstances, and request that a judicial officer quickly force-fit a "probable cause" standard to those circumstances and determine whether it is satisfied. The Fourth Amendment does not require that result.

This Court's application of the Fourth Amendment's overarching reasonableness standard, rather than a warrant requirement, in non-investigatory contexts appropriately recognizes that the protection of health and safety does not lend itself to hermetically sealed categories or strict temporal limitations. The Court has declined to attempt to "usefully refine the language of the [Fourth] Amendment itself in order to evolve some detailed formula for judging cases." *Cady*, 413 U.S. at 448. And it has recognized that "there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails." *Camara*, 387 U.S. at 536-537; see *United States* v. *Banks*, 540 U.S. 31, 36, 41 (2003) (rejecting effort to transform the Fourth Amendment's reasonableness standard "into a set of sub-rules" or "categories and protocols"). Instead, the established circumstance-specific inquiry best accounts for the many unforeseeable permutations of serious threats to lives and health that might justify immediate intervention. See, *e.g.*, Sylvester Amara Lamin & Consoler Teboh, *Police Social Work and Community Policing*, 2 Cogent Soc. Sci. 1, 3 (2016) (describing the "considerable time" police

spend "settling family fights, * * * handling mental health issues, * * * and maintaining order"); Barry Friedman, *Disaggregating the Police Function*, N.Y.U. Pub. Law & Legal Theory Research Paper Series, Working Paper No. 20-03, at 24 (Apr. 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564469 (describing domestic arguments, alarms, and medical assistance as among the most common reasons for calls to police).

The critical question in assessing government intervention in such circumstances is not whether government officials *must* act within "moments," but instead whether it is reasonable for them to do so. In light of the strong Fourth Amendment protection of the home, immediate entry may often be unreasonable, but will not invariably be so. Some entries may address harms already in progress or that appear mere moments away. See, *e.g.*, *Brigham City*, 547 U.S. at 406 (visible physical altercation). But at other times, serious threats may be impending yet lack a readily determinable timeline that would allow a government official to pinpoint the precise moment at which to intervene. See, *e.g.*, *Randolph*, 547 U.S. at 118 (approving police intervention where domestic violence "has just occurred or is about to (or soon will) occur"). For example, government officials may be called upon to respond to suicide threats or domestic-violence complaints, to perform "welfare checks" on vulnerable residents, to locate children who may be missing or in danger, to investigate potentially fatal gas leaks, and so on—and warrantless home entries may in some cases be justified in the effectuation of those duties.

Case law considering such circumstances, some of which is cataloged in the footnote below, illustrates the

wide variety of contexts in which officers may reasonably perceive an immediate need to enter a home without a warrant.[*] See generally LaFave § 6.6(a), at 608-620 &

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[*] See, *e.g.*, *United States* v. *Sanders*, 956 F.3d 534 (8th Cir. 2020), petition for cert. pending, No. 20-6400 (filed Nov. 17, 2020) (entry to ensure safety of children during apparent domestic dispute); *Rodriguez* v. *City of San Jose*, 930 F.3d 1123, 1140 (9th Cir. 2019) (detention for mental-health evaluation and entry to seize firearms after wife called 911 for welfare check on husband, who was ranting about being watched and mentioned "[s]hooting up schools") (brackets in original), cert. denied, 141 S. Ct. 610 (2020); *United States* v. *Smith*, 820 F.3d 356 (8th Cir. 2016) (entry to locate missing halfway-house resident, who was not found in other likely locations and had last been placed at ex-boyfriend's residence); *Sutterfield*, *supra* (detention for mental-health evaluation and entry to seize handgun after psychiatrist reported suicide threat); *People* v. *Slaughter*, 803 N.W.2d 171 (Mich. 2011) (entry to shut off water running into neighboring residence and over electrical box); *Ray* v. *Township of Warren*, 626 F.3d 170 (3d Cir. 2010) (entry to check on child's well-being after father did not respond to mother's attempts to pick up child for visitation or inquiries from police); *Deneui*, *supra* (entry to ensure that, given the powerful smell of ammonia, nobody was unconscious inside); *Mora* v. *City of Gaithersburg*, 519 F.3d 216 (4th Cir. 2008) (detention for mental-health evaluation and entry to seize firearms after man told hotline operator that he was suicidal, had weapons in his apartment, and could understand shooting people at work); *State* v. *Crabb*, 835 N.E.2d 1068 (Ind. Ct. App. 2005) (entry to rescue small child from risk of explosion or toxic chemical exposure from suspected methamphetamine lab); *United States* v. *Bradley*, 321 F.3d 1212 (9th Cir. 2003) (entry to locate nine-year-old after his mother had been arrested and child could not be located in alternate location); *United States* v. *Rhiger*, 315 F.3d 1283 (10th Cir.) (entry to shut down suspected methamphetamine lab that posed explosion risk), cert. denied, 540 U.S. 836 (2003); *United States* v. *York*, 895 F.2d 1026 (5th Cir. 1990) (entry to accompany former guest and children while they removed their belongings amidst threats from intoxicated owner); *State* v. *Plant*, 461 N.W.2d 253

nn. 44-60; *id.* at 608 ("Doubtless there are an infinite variety of situations in which entry for the purpose of rendering aid is reasonable," including "to thwart an apparent suicide attempt.") (footnote omitted). Although petitioner suggests otherwise (Br. 34-35), his cramped allowance for emergencies occurring "in a matter of moments" (Br. 29) would exclude intervention in many of those cases and would imperil large swaths of government action designed to ward off harm, rather than simply redress it after the fact. Indeed, petitioner's theory would seem to exclude most emergency mental-health commitments without advance judicial approval—a practice that almost every State allows and that petitioner himself cites with approval. See Pet. Br. 38-39 & n.4; see also *Sutterfield*, 751 F.3d at 552. And even if petitioner could identify a warrant "exception" to cover every past case, nobody can foresee all of the future ones. The sounder approach thus remains the practical one suggested by the Fourth Amendment's text and this Court's precedent—namely, a fact-specific inquiry that flexibly accommodates the limited circumstances in which a warrantless seizure or home entry for non-investigatory purposes is in fact reasonable.

II. THE WARRANTLESS SEARCH AND SEIZURES IN THIS CASE WERE REASONABLE AND DID NOT VIOLATE THE FOURTH AMENDMENT

Under the principles discussed above, the respondent officers' warrantless entry into petitioner's resi-

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(Neb. 1990) (entry to search for young children who had been left unattended for hours, after abusive father gave misinformation about whereabouts); *United States* v. *Antwine*, 873 F.2d 1144 (8th Cir. 1989) (entry to retrieve brandished gun from residence so that it was not left alone with children).

dence and targeted seizure of petitioner and his firearms, in response to a credible and current threat of suicide or violence, did not violate the Fourth Amendment. At the very least, those actions did not violate any clearly established law so as to render the officers individually liable in a damages action.

A. The Challenged Actions In This Case Were Reasonable Under The Circumstances

In the circumstances of this case, the respondent officers' targeted home entry and seizures were justified by the public interest in responding to a potentially suicidal individual reasonably believed to present an ongoing risk of violence to himself or others. See Pet. App. 16a-17a. This case does not involve some abstract risk of future violence; rather, petitioner's threat of suicide was specific, credible, and reasonably impending.

1. In the midst of a heated argument the previous evening, petitioner threw a handgun on a table and said that his wife should "shoot me now and get it over with." Pet. App. 3a. Petitioner's wife took his threat so seriously that, after petitioner left to go for a drive, she hid the handgun's magazine and packed a bag; spent the night at a hotel; and called police when she could not contact petitioner in the morning because she was "afraid of what she would find when she got home." *Id.* at 3a-4a, 25a, 31a (brackets omitted). When officers arrived at petitioner's residence, petitioner confirmed his wife's account and, although denying that he was suicidal or violent, seemed "upset that she had involved the police." *Id.* at 5a, 31a.

As the court of appeals recognized, a reasonable officer in those circumstances could have "discern[ed] a serious risk of imminent self harm" to petitioner and a "near-term risk" to petitioner's wife. Pet. App. 25a, 31a.

The officers had a compelling interest in protecting both of them. As this Court has made clear, government officials may act to prevent a dangerous person not only from harming others, but also from harming himself. See *City & Cnty. of San Francisco* v. *Sheehan*, 575 U.S. 600, 612 (2015) (approving an attempt to enter a room to "help" a mentally disabled person who locked herself inside with a knife); *Michigan* v. *Fisher*, 558 U.S. 45, 48 (2009) (per curiam) (approving an entry partly justified by concern "that Fisher would *hurt himself* in the course of his rage") (emphasis added). And so, "[f]aced with the unenviable choice between sending [petitioner] to the hospital and leaving him (agitated, ostensibly suicidal, and with two handguns at his fingertips), the officers" in this case "reasonably chose to be proactive and to take preventive action." Pet. App. 24a.

The officers' preventive actions—arranging an emergency medical transport for a mental-health evaluation and entering the residence to secure specifically identified weapons—were reasonable in both their design and their implementation. As the court of appeals explained, the officers followed "sound police procedure" in arranging the medical transport for an individual perceived to be "'imminently dangerous' to himself or others." Pet. App. 23a (quoting Cranston Police Department General Order 320.70); see J.A. 133-134; see also Pet. Br. 38-39 & n.4 (describing similar state laws). And the "undisputed facts reveal that the officers facilitated [petitioner's] transport to the hospital by ambulance in a calm, professional manner and without any physical coercion or restraints." Pet. App. 25a. The officers also limited their role once petitioner had been transferred to medical professionals. See *id.* at 23a, 34a.

The seizure of the firearms—"one of which [petitioner] had admitted to throwing the previous day and the other of which had been specifically called to the officers' attention"—was likewise reasonable. Pet. App. 36a. That action accounted for the fact that petitioner had used a firearm to threaten self-harm, saying "shoot me now and get it over with" while throwing the gun on the table during an argument with his wife—causing her such concern that she later tried to disable the gun. See *id.* at 3a, 31a. The officers also carefully tailored their entry into petitioner's residence to eliminate the specific threat that justified the entry, without any additional intrusion into the privacy of the home. Petitioner's wife accompanied officers into the residence and directed them to the firearms, magazines, and ammunition. *Id.* at 6a, 36a; see J.A. 171. And the officers neither rummaged through other areas of petitioner's home nor extended their search any longer than necessary to seize the firearms at issue. See Pet. App. 6a, 36a.

2. Petitioner contended below that the seizure of the firearms was unreasonable because "he already had been removed from the scene at the time of the seizure." Pet. App. 31a. But as the court of appeals explained, the officers who remained at the scene did not know "when [petitioner] would return or what his mental state might be upon his return"; whether petitioner would ultimately agree to a mental-health evaluation at the hospital; or what steps the personnel involved in his emergency transport would take if petitioner declined to cooperate. *Id.* at 32a. Given all that uncertainty, it was objectively reasonable for the officers, who had already intervened in the situation, to conclude that petitioner's "departure had not necessarily dispelled the threat of

harm" because he might "shortly return home in the same troubled mental state." *Id.* at 31a-33a; see *Scott*, 550 U.S. at 385 (reasoning that "police need not have taken th[e] chance" that the danger to the public was over "and hoped for the best"). Even if the officers might alternatively have waited at the hospital or otherwise attempted to gain information about petitioner's mental-health evaluation before seizing the firearms, their actions were not unreasonable merely because "the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means." *Cady*, 413 U.S. at 447. Rather, the reasonableness standard gives officers "fair leeway for enforcing the law in the community's protection," *Heien* v. *North Carolina*, 574 U.S. 54, 61 (2014) (citation omitted), as the officers sought to do here.

In addition to the court below, other courts of appeals addressing similar temporary detentions of potentially suicidal individuals have likewise recognized that a contemporaneous seizure of weapons may serve important public-safety interests. See *Rodriguez* v. *City of San Jose*, 930 F.3d 1123, 1140 (9th Cir. 2019) (explaining that, after officers sent individual for mental-health evaluation, "they expected the individual would have access to firearms and present a serious public safety threat if he returned to the home, and they did not know how quickly the individual might return"), cert. denied, 141 S. Ct. 610 (2020); *Sutterfield*, 751 F.3d at 570 (observing, in qualified-immunity analysis, that although officers knew that the individual taken into custody "would be evaluated by mental health professionals," it was "natural, logical, and prudent for them to believe that her firearm should be seized for safekeeping until such time as she was evaluated and it was clear that she

no longer posed a danger to herself"); *Mora* v. *City of Gaithersburg*, 519 F.3d 216, 228 (4th Cir. 2008) (rejecting argument that "the emergency that brought on the seizure disappeared" once the individual was "en route to the hospital").

Those decisions appropriately reflect this Court's repeated admonition that reasonableness "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham*, 490 U.S. at 396. Even if a reviewing court believes that it can identify the precise moment at which the emergency dissipated, officers on the scene will have less information, may lack resources to continually monitor the situation for an indefinite period, and must account for the potentially dire consequences if they fail to act to address an ongoing risk. As the Fourth Circuit has accordingly explained, "to say [an] emergency vanished when [the individual] was heading to the hospital is to slice the situation too finely and employ hindsight too readily to actions aimed—as we cannot overemphasize—at heading off a human tragedy that, once visited, could not be redeemed or taken back." *Mora*, 519 F.3d at 228.

B. In The Alternative, The Respondent Officers Are Entitled To Qualified Immunity

If any doubt exists about the reasonableness of the respondent officers' actions—a question that petitioner does not specifically address, apart from his contention that a warrant was required—this Court should affirm on the alternative ground that the officers are entitled to qualified immunity. See *Thigpen* v. *Roberts*, 468 U.S. 27, 30 (1984) (explaining that this Court can "affirm on any ground that the law and the record permit and that will not expand the relief granted below"); see also

Sheehan, 575 U.S. at 613 (resolving reasonableness on qualified-immunity grounds where the question whether the Fourth Amendment was violated "ha[d] not been adequately briefed").

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson* v. *Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818 (1982)). No such clearly established law forbade the respondent officers from entering petitioner's residence to address a suicide threat that, under all the circumstances, was specific, credible, and reasonably impending. Indeed, as noted, every court of appeals to have evaluated the constitutionality of similar police action has determined that the action does not violate the Fourth Amendment. See Pet. App. 36a-37a; *Rodriguez*, 930 F.3d at 1140-1141; *Mora*, 519 F.3d at 228; see also *Sutterfield*, 751 F.3d at 578-579 (holding that officers were entitled to qualified immunity).

Petitioner's Fourth Amendment claim appears to extend only to the individual respondents, to whom qualified immunity would apply. Although the court of appeals seemed to presume otherwise, see Pet. App. 8a n.3, 40a-41a, petitioner did not specifically state a Fourth Amendment claim against the municipal respondent—as he did with respect to every other constitutional claim. Compare D. Ct. Doc. 51, at ¶¶ 75-78 (Jan. 19, 2019) (Fourth Amendment count), with *id.* ¶ 74 (Second Amendment count); *id.* ¶ 80 (due process count); *id.* ¶ 82 (equal protection count). The district court accordingly understood qualified immunity as an alternative ground

for resolving the entire Fourth Amendment claim, without perceiving a need to address municipal liability. See Pet. App. 64a-66a; cf. *id.* at 67a-73a (discussing alleged policies with respect to other constitutional claims). This Court could do the same.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General
NICHOLAS L. MCQUAID
Acting Assistant Attorney General
ERIC J. FEIGIN
Deputy Solicitor General
MORGAN L. RATNER
Assistant to the Solicitor General
ROSS B. GOLDMAN
Attorney

FEBRUARY 2021