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 OF IOWA, LOUISIANA, MINNESOTA, MONTANA, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, AND UTAH AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the "community caretaking" exception to the Fourth Amendment's warrant requirement extends to the home.

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INTEREST OF AMICI CURIAE

Amici states have a substantial interest in ensuring that their peace officers have clear and consistent guidance on what the Fourth Amendment requires of them when fulfilling their duties to further legitimate government interests. What is clear is that this case implicates a state's legitimate community caretaking interest to protect the public from serious harm. And there is no dispute that under the Fourth Amendment that interest may—and in this case did—justify a search and seizure. What is left is whether the circumstances here justified a warrantless search.

And in the lower courts, that is where the clarity ends—they have split on whether what they call a community caretaking exception can justify warrantless searches and seizures in the home. But the *Amici* states believe that the emergency aid exception—as laid out in *Brigham City v. Stuart*—already covers that situation. 547 U.S. 398 (2006).

There, this Court held that "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." *Id.* at 400. That rule, properly applied, provides the straightforward guidance police officers need to determine when the Fourth Amendment permits warrantless searches of a home and related seizures to further the government's community caretaking interest in protecting the public's safety. Applying that rule here, the officers' seizure of

Petitioner for psychiatric evaluation and their subsequent entry into his home and seizure of his guns was reasonable under the emergency aid exception.[1]

SUMMARY OF ARGUMENT

"Police officers wear many hats: criminal investigator, first aid provider, social worker, crisis intervener, family counselor, youth mentor and peacemaker, to name a few." *State v. McCormick*, 494 S.W.3d 673, 683 (Tenn. 2016) (cleaned up). In other words, officers function in all kinds of roles serving various public interests. For example, officers conduct searches and seizures justified by the government's interest in preventing and detecting crime. They also conduct searches and seizures justified by the government's various community caretaking interests, including protecting the public from serious harm. All those searches and seizures are subject to the Fourth Amendment.

This Court has formulated standards by which a particular search or seizure is judged "by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). There is no question that the officers here were acting to further a legitimate and weighty government interest—protecting citizens from serious

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[1] Because the question presented is limited to the Fourth Amendment, this case presents no occasion to consider whether seizing the guns implicated Petitioner's Second Amendment rights.

harm—that justified a search. But the governmental interest alone will not justify a warrantless search. The question here is whether, under the Fourth Amendment, the totality of the circumstances permitted a warrantless search.

Officers took Petitioner from his home, transported him to a hospital for a psychiatric evaluation, then, not knowing when he might return to the home or what his mental state might be, temporarily removed his guns from the home. The officers were responding to Petitioner's wife's request for a wellness check. The night before, Petitioner had retrieved one of his guns, threw it on the table, and asked his wife to shoot him. She was so concerned about her husband's behavior that she left the home and stayed at a motel that night, hiding the magazine to one of his guns. When she was unable to reach Petitioner the following morning, she called police and requested that they accompany her to check on Petitioner. When police made contact with Petitioner that morning and asked about his mental health, he appeared calm to the officers, but he told them to mind their own business. His wife told police that he still appeared angry. These circumstances raised concerns that Petitioner may have posed an imminent threat to himself or others.

This Court has been asked to address whether what lower courts—including the First Circuit here—have called a "community caretaking" warrant exception should extend to home searches such as this one. But there is no rule that needs to be extended to

address the warrantless search in this case. The emergency aid exception already addresses whether the circumstances here justified a warrantless search and seizure. *See Brigham City v. Stuart*, 547 U.S. 398 (2006).

That exception permits warrantless searches when the facts and circumstances provide "an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." *Id.* at 400. Although mislabeled a "community caretaking" warrant exception, the First Circuit effectively applied *Brigham City*'s emergency aid standard. *Compare* Pet. App. 17a ("objectively reasonable basis for believing [an occupant] is suicidal or otherwise poses an imminent risk of harm to himself"), *with Brigham City*, 547 U.S. at 400. And there is no question about the validity of the emergency aid exception.

This case is before the Court partly because of a confusion in nomenclature. The lower courts have referred to a "community caretaking" warrant exception. But "community caretaking" merely describes a variety of governmental *interests*, apart from its interest in the prevention and detection of crime, that may justify searches and seizures. It does not describe circumstances that would explain why a warrant isn't required—i.e., an *exception*.

The confusion stems from an overreading of the "community caretaking" language in *Cady v. Dombrowski*, 413 U.S. 433 (1973). There, this Court

recognized that police officers "frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what … may be described as community caretaking functions." *Id.* at 441. In other words, the Court recognized that police perform functions that serve governmental interests in community caretaking, apart from its interest in preventing and detecting crime. And *Cady* recognized that such searches and seizures, like those that are justified by the government's crime-prevention-and-detection interest, are subject to the Fourth Amendment. *Id.* at 447-48.

It wasn't the public policy interest in community caretaking alone that made the warrantless search in *Cady* constitutional. That community caretaking interest justified a search and seizure. But, it was the totality of all the circumstances in the case that led the Court to find that a warrant was not needed to satisfy the Fourth Amendment's "ultimate standard" of reasonableness. *Id.* at 439, 442-43.

And because *Cady* involved the search of an automobile, some courts have interpreted the community caretaking "exception" as limited to warrantless searches and seizures of automobiles. In concluding that the warrantless search in *Cady* was reasonable, the Court looked in part to the attributes of an automobile—its mobility, lowered expectation of privacy, etc. *Id.* at 441-42. But those attributes did not define the limits of when the Fourth Amendment permits warrantless searches and seizures in furtherance of legitimate government caretaking interests. Instead,

those attributes, and the fact patterns in *Cady* and similar predecessor cases, set the groundwork for a categorical warrant exception that is limited to the inventory search of automobiles lawfully impounded by police.

So when police lawfully take an automobile into custody, they may conduct a warrantless inventory search of the car consistent with standard police procedure. While this Court calls it the inventory exception, some lower courts call it the community caretaking exception. That is the exception to which Petitioner wrongly refers. The *Amici* states agree that the inventory exception cannot apply to a home.

While police may conduct inventory searches and seizures as part of their community caretaking functions, the inventory search does not define the universe of searches and seizures justified by the government's community caretaking interests, nor the universe of circumstances when a warrant is not required. Accordingly, some lower courts have recognized a broader, "community caretaking" exception that justifies warrantless searches and seizures in contexts that extend beyond lawfully impounded vehicles. Warrantless searches under this exception are justified by the government's community caretaking interest in the public's safety together with the need for prompt action.

But again, this Court has already set the standard for warrantless home searches in furtherance of the government's community caretaking interests in

public safety—when police have "an objectively reasonable basis for believing" that prompt entry is necessary to provide aid to someone who is "seriously injured or imminently threatened with such injury." *Brigham City*, 547 U.S. at 400. While disentangling the government's community caretaking interests recognized in *Cady* from this Court's inventory exception would clarify some of the confusion in the lower courts, there is no confusion about the exception that applies to this and like cases—the emergency aid exception, and it extends to the home.

All that is left to decide here is whether the warrantless entry into Petitioner's home and the warrantless seizure of him and his guns met the "ultimate standard" of reasonableness. The answer turns on whether the elements of the emergency aid exception applied. They did. Officers had an objectively reasonable basis to believe there was an imminent risk that Petitioner might harm himself or others, justifying both his seizure for transport to the hospital for a psychiatric evaluation and the officer's entry into his home to retrieve the weapons he might use to do so.

ARGUMENT

This Court has already decided that a warrantless entry into a home may be justified by the government's community caretaking interest in protecting individuals from the imminent risk of serious harm and the need to act promptly—the emergency aid exception.

This Court has been asked to determine whether a community caretaking exception should be extended to warrantless home searches. There is no need to extend any exception because one already applies—the emergency aid exception. The emergency aid exception permits a warrantless search of and related seizure in the home when there is an imminent threat of serious harm. That search and seizure is conducted in furtherance of the government's community caretaking interests to protect public health and safety. Lower courts have misapplied this Court's precedent to create a variety of warrant exceptions labeled "community caretaking" exceptions. But while the government's community caretaking *interest* may justify a search, that interest alone does not justify an *exception* to the warrant requirement.

A. The emergency aid exception permits police officers' warrantless entry into a home and related seizures when there is an imminent threat of serious harm to an occupant.

This Court is being asked to consider whether a so-called "community caretaking" exception to the warrant requirement should be extended to warrantless searches of a home and related seizures. As explained in Section B below, that question is rooted in confusing this Court's recognition of a governmental community caretaking interest with a separate warrant exception.

But this Court has already recognized that the government's interest in protecting the public from imminent threats of serious harm—a quintessential community caretaking interest—extends to the home. And it has established when warrantless searches in furtherance of that interest are constitutional. So the search and related seizures at issue here—the seizure of a person believed to pose a suicide risk and the seizure of his guns (the instrument he had threatened to use)—are already covered by this Court's well-recognized precedent. There is no rule that needs to be extended.

In *Brigham City v. Stuart*, this Court held that "police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury." 547 U.S. 398, 400 (2006). The Court reaffirmed *Brigham City* three

years later in *Michigan v. Fisher*, holding that an officer's warrantless entry is permitted under the Fourth Amendment so long as "there [is] 'an objectively reasonable basis for believing' that medical assistance [is] needed, or persons [are] in danger." 558 U.S. 45, 49 (2009) (quoting *Brigham City*, 558 U.S at 406).

Brigham City explained that whether a warrantless home search is reasonable is an objective inquiry: "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.'" 547 U.S. at 404 (quoting *Scott v. United States*, 436 U.S. 128, 138 (1978)) (emphasis added in *Brigham City*).

And as in all Fourth Amendment cases, an emergency aid search must not only be "lawful at its inception," but must also be "executed in a reasonable manner." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005); *accord Brigham City*, 547 U.S. at 406 (holding that the "manner of the officers' entry was also reasonable"). Accordingly, "[t]he scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible.'" *Terry v. Ohio*, 392 U.S. 1, 19 (1968) (quoting *Warden v. Hayden*, 387 U.S. 294, 310 (1967) (Fortas, J., concurring)).

This Court has identified "emergency aid" as one exigency that falls under the "well-recognized" exigent circumstances exception to the warrant

requirement—"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.'" *Kentucky v. King*, 563 U.S. 452, 460 (2011) (quoting *Mincey v. Arizona*, 437 U.S. 385, 394 (1978)) (cleaned up).

Under this Court's emergency aid standard, police may, in the interest of public safety and under appropriate circumstances, enter homes to quell and protect against threatened domestic violence, address suicide risks, and conduct wellness checks—community caretaking functions. Although *Brigham City* addressed only a search (entry into a home), its objective reasonable-basis-to-believe standard may also provide the basis for the seizure of persons or things—when there is an objectively reasonable basis for believing someone poses a serious danger to himself or others or when there is an objectively reasonable basis for believing that the removal of, for example, weapons, drugs, or poisons, is necessary for the protection of others.

And in substance, emergency aid is the exception the First Circuit applied here even though it denominated the exception "community caretaking." Under this Court's emergency aid exception, the question is whether officers "have *an objectively reasonable basis for believing* that an occupant is seriously injured or *imminently threatened* with such injury." *Brigham City*, 547 U.S. at 400 (emphasis added). Likewise, the question under the First Circuit's community caretaking "exception" is whether the officers had "*an*

objectively reasonable basis for believing" that an occupant "pose[d] an *imminent risk* of harm to himself or others." Pet. App. 17a (emphasis added). There is no daylight between the two. *See also Fisher*, 558 U.S. at 48 (concluding that it was "objectively reasonable to believe" that Fisher would either harm someone or "hurt himself in the course of his rage").

In a footnote, the First Circuit below drew a distinction between its community caretaking exception and this Court's emergency aid exception. It surmised that this Court's emergency aid exception applies when the injury has already occurred or is "moments" away and that its community caretaking exception applies to imminent threats that may materialize sometime later, as for example, when someone has made a credible threat of suicide. Pet. App. 12a n.5, 21a. But *Brigham City* does not so limit the exception. It requires an imminent threat, not an immediate threat. So long as police have an objectively reasonable basis for believing that the risk of imminent harm remains unabated, the exception applies.[2]

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[2] Other lower courts have recognized the absence of any real difference between their community caretaking exceptions and this Court's emergency aid exception—"whether denoted as an exception to the warrant requirement for 'community caretaking' or 'emergency aid,'" police "'may enter a residence without a warrant ... where the officer has a reasonable belief that an emergency exists requiring his or her attention.'" *Ellison v. Lesher*, 796 F.3d 910, 915 (8th Cir. 2015) (citation omitted). And although the Seventh Circuit Court of Appeals has retained a distinction between its community caretaking exception and the

In sum, this case does not really pose a question about whether a rule needs to be extended to cover the warrantless search and seizures at issue here. It is already covered by a well-established rule—the emergency aid exception, which may be invoked when police officers are serving the government's community caretaking interest. And that is the only clarification that needs to be made.

B. The confusion that gave rise to the question presented results from the lower courts misreading the community caretaking *interest* as a warrant *exception*.

Petitioner asks this Court to resolve whether a so-called community caretaking exception should be extended from automobile searches to home searches. Petitioner says it shouldn't.

But as explained, this Court has already resolved that the community caretaking *interest* in protecting the public from serious harm extends to the home and delineated the exigent circumstances that make a warrantless entry reasonable under the Fourth Amendment—the emergency aid exception.

The community caretaking language the lower courts have relied on to name a warrant exception

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emergency aid exception, it applied the emergency aid exception in upholding the response of police to a potentially suicidal individual under facts similar to this case. *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 560-66 (7th Cir. 2014).

comes from *Cady v. Dombroski*. But *Cady* did not create a "community caretaking" or any other exception.

First, *Cady* taught that traditional Fourth Amendment standards of reasonableness govern police functions tied to the government's "community caretaking" interests—just as they govern police functions tied to the government's interest in preventing and detecting crime. 413 U.S. at 440-42. Then, applying those standards to the search in that particular case, involving a car, the Court examined whether the warrantless search satisfied the Fourth Amendment's "ultimate standard" of reasonableness. *Id.* at 439-48. *Cady*'s recognition of a legitimate caretaking *interest* did not create a freestanding caretaking *exception*.

Second, *Cady* was part of a collection of cases that eventually evolved into this Court's recognition of a categorical inventory exception for impounded vehicles. But *Cady* itself did not purport to create a narrow inventory exception or any other freestanding caretaking exception—it was a straightforward application of Fourth Amendment principles to the particular facts of the case. And although the Court partly relied on the lesser expectation of privacy enjoyed in automobiles in its totality-of-the-circumstances analysis, it did not suggest that other circumstances could not justify a warrantless home search undertaken in furtherance of a community caretaking interest. Petitioner's focus on inventory search analysis is thus misplaced.

Third, and for the same reasons, lower courts have misapplied the "community caretaking" language of *Cady* to create a variety of community caretaking "exceptions." Mislabeling the government's community caretaking interest as an *exception* both incorrectly limits the scope of the government's community caretaking interests and the universe of searches available to advance those interests.

1. *Cady* did not create a caretaking "exception" but merely recognized the government's community caretaking interests and applied traditional Fourth Amendment standards to the unique facts of the case in deciding that the warrantless car search was reasonable.

In *Cady*, police directed that a car involved in a single-car accident be towed to a privately-owned garage, and the wrecker then left the car unsecured outside that garage. *Id.* at 435-36. Officers later suspected that a gun may be in the car's trunk: the driver, who was arrested for drunk driving, was a Chicago policeman; officers believed regulations required him to carry his service revolver at all times; and officers found no gun on his person or in the car's passenger compartment before it was towed. *Id.* at 436. As a matter of "standard procedure," an officer drove to the garage and searched the car's trunk for a gun but found evidence of a murder instead. *Id.* at 436-37.

This Court identified two community caretaking functions at stake in *Cady*: (1) attending to the aftermath of "vehicle accidents," *id.* at 441, and (2) protecting "the safety of the general public," *id.* at 447. Recognizing that the Fourth Amendment applies to all police functions involving a search or seizure—including those that advance "community caretaking" interests—the Court engaged in a traditional totality-of-the-circumstances analysis to decide whether the car search "was unreasonable solely because" police did not obtain a warrant, and if not, whether the warrantless search otherwise satisfied the Fourth Amendment's "ultimate standard" of reasonableness. *Id.* at 439-48.

In finding the warrantless search reasonable, the Court relied on a combination of three facts: (1) the search was of a car, where the expectations of privacy are not as great as in the home, *id.* at 439-40; (2) "police had exercised a form of custody or control over" the car, *id.* at 442-43; and (3) "the search of the trunk to retrieve the revolver was standard procedure … to protect the public from the possibility that a revolver would fall into untrained or perhaps malicious hands." *Id.* at 439-43, 447-48 (cleaned up).

In sum, *Cady* was a straightforward application of Fourth Amendment principles to the unique facts of the case. And although the Court relied in large part on the lesser expectation of privacy enjoyed in automobiles in its totality-of-the-circumstances analysis, it did not suggest that other circumstances could not justify a warrantless home search undertaken in

furtherance of a community caretaking interest. That question was not before the Court. To this point the Court quoted a passage from a prior case:

> [W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment *depends upon the facts and circumstances of each case* and … searches of cars that are constantly movable *may* make the search of a car without a warrant a reasonable one although the result *might* be the opposite in a search of a home, a store, or other fixed piece of property.

Id. at 440 (quoting *Cooper v. California*, 386 U.S. 58, 59 (1967). In other words, while a warrantless home search might be unreasonable, it also might be reasonable depending on the circumstances.

And while the search at issue in *Cady* involved an automobile, this Court had already recognized that governmental caretaking interests are not limited to situations involving vehicles. This is evident from a case *Cady* relied on. In *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523 (1967), the Court explained the inquiry this way:

> In assessing whether the public interest [in the public's health and safety] demands creation of a general exception to the Fourth Amendment's warrant requirement, the question *is not whether the public interest justifies the type of search [or seizure] in question, but whether the authority to search should be*

> *evidenced by a warrant*, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.

Id. at 533 (emphasis added).

As in *Camara*, the public interest implicated here is the government's community caretaking interest in the health and safety of the public. And the Court in *Camara* recognized that protecting the public from harm is a substantial government interest that can justify a search or seizure. 387 U.S. at 533 (recognizing that public health and safety justifies building inspections).

Although the *Camara* Court observed that a warrant was still required for routine building inspections, even those conducted to prevent the development of conditions which could lead to devastating fires and epidemics, *id.* at 534-35, it also emphasized that its holding *did not* "foreclose prompt inspection[] [searches]*, even without a warrant, that the law has traditionally upheld in emergency situations*." *Id.* at 539 (emphasis added).

Cady and *Camara* confirm that the government's community caretaking interest in protecting public safety extends beyond automobiles and may justify a search or seizure. Circumstances may sometimes dispel of the warrant requirement for that search or seizure, but the governmental *interest* alone does not create the *exception* for the warrant.

2. *Cady* was a forerunner to this Court's adoption of the inventory exception to the warrant requirement for searching a lawfully-impounded automobile, but that exception does not limit the broader application of the Fourth Amendment standards applied in *Cady*.

In concluding that the car search was reasonable under the circumstances, *Cady* relied on two cases upholding searches of impounded vehicles—*Cooper v. California*, 386 U.S. 58 (1967), and *Harris v. United States*, 390 U.S. 234 (1968). The Court held that although "police did not have actual, physical custody" of the car as in *Cooper* and *Harris*, it had been lawfully towed to the garage "at the officers' directions" because "it represented a nuisance." *Cady*, 413 U.S. at 446-47. The Court then noted that the "justification" for the car search in *Cooper* was "to guarantee the safety of the custodians," and in *Harris*, "to safeguard the owner's property." *Id.* at 447. The Court held that the justification in *Cady* was just "as immediate and constitutionally reasonable"—"the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle." *Id.*

Three years later, this Court addressed another car search—this time of an abandoned vehicle that police had lawfully impounded. *South Dakota v. Opperman*, 428 U.S. 364 (1976). Relying on its decisions in *Cooper*, *Harris*, and *Cady*, the Court concluded that the search of the impounded vehicle, performed

according to standard police procedures, "was not 'unreasonable' under the Fourth Amendment." *Id.* at 372-76. In doing so, the Court recognized three community caretaking interests justifying inventory searches involving lawfully impounded vehicles: (1) "the protection of the owner's property while [the automobile] remains in police custody," (2) "the protection of the police against claims or disputes over lost or stolen property," and (3) "the protection of the police from potential danger." *Id.* at 369.

This Court later solidified this line of reasoning and recognized that an inventory search of an automobile in police custody is a "well-defined exception to the warrant requirement." *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983). It has become what may be characterized as a "categorical" exception to the warrant requirement. The "commonalities" among this class of cases—community caretaking searches of impounded vehicles under standard police procedures—"justify dispensing with the warrant requirement for all of those cases, regardless of their individual circumstances." *See Birchfield v. North Dakota*, 136 S. Ct. 2160, 2188 (2016) (Sotomayor, J., concurring in part and dissenting in part). The inventory exception applies categorically to all lawfully impounded vehicles "because the need for the warrantless search arises from the very 'fact of the lawful [impoundment],' not from the reason for [impoundment] or the circumstances surrounding it." *Id.* at 2189 (citation omitted).

But what is now understood by this Court as the inventory exception was not immediately apparent in *Cady*. And this has led some lower courts to call this exception by the name "community caretaking." *See, e.g.*, *United States v. Cervantes*, 703 F.3d 1135, 1141 (9th Cir. 2012) (explaining that "community caretaking exception" permits police to impound vehicles posing risk to public safety or impeding traffic flow and then conduct inventory search consistent with police department's standard procedures).

Petitioner appears to speak to that exception. Pet.Br. 13-20. And the *Amici* states agree that an inventory exception cannot apply to the home.

But the "community caretaking" label is a poor fit for the restrictive and categorical inventory-search exception. The government's legitimate interest in "community caretaking" by its very nature goes beyond impounded vehicles. *See, e.g.*, *Camara*, 387 U.S. at 535. And as explained in Section A above, this Court's emergency aid exception applies to the community caretaking interests at issue here.

Cady may have contributed to the evolution of the inventory-search exception, but the inventory exception neither limits governmental community caretaking interests to impounded vehicles, nor does the inventory exception affect *Cady's* broader rule—that warrantless searches in furtherance of a community caretaking interest are constitutional when they meet the ultimate standard of reasonableness under the totality of the circumstances.

3. Lower courts have created a variety of community caretaking "exceptions" that incorrectly limit the scope of the government's public safety interests and the searches that advance those interests.

The problem that has led to the confusion in the lower courts largely arises from the specific search in *Cady*—an automobile search. But while the "totality of circumstances" in *Cady* included the attributes of an automobile, that did not define the scope of the government's community caretaking interest.

As explained above, some courts have called the inventory-search exception by the name "community caretaking." Relying on the broader principles identified in *Cady*, other lower courts have gone beyond the inventory search. Some have held that a broader exception called "community caretaking" permits intrusions into vehicles not in police custody—and therefore outside the categorical inventory-search exception—when specific facts demonstrate a "public-safety need." *United States v. Chavez*, No. 19-2123, 2021 WL 191660, at *7-8, ___ F.3d ___ (10th Cir. Jan. 20, 2021). Still, pointing to *Cady's* emphasis that there is a "constitutional difference between houses and cars," 413 U.S. at 439 (citation omitted), these courts limit the exception to automobiles. *See United States v. Bute*, 43 F.3d 531, 535 (10th Cir. 1994); *Sutterfield v. City of Milwaukee*, 751 F.3d 542, 554-56 (7th Cir. 2014).

No doubt drawing from the lessons in both *Camara* and *Cady*, the First Circuit adopted an even broader exception called "community caretaking" that extends to the home. Recognizing that "[t]hreats to individual and community safety are not confined to the highways," it interpreted the broader exception as extending to warrantless searches and seizures inside the home. Pet. App. 16a. It thus held that a warrantless search or seizure, even in the home, is permitted under what it dubbed the community caretaking exception when there is "an objectively reasonable basis for believing" that a person is in "imminent risk of harm." Pet. App. 17a.[3]

The "community caretaking" label for these broader-encompassing, warrantless searches is somewhat of a misnomer and can be misleading. "Community caretaking" is shorthand for a broad range of public interests a search or seizure may serve. That is what *Camara* recognized. 387 U.S. at 535. But *Camara* also recognized that it is not the *reason* for dispensing with the warrant requirement. *Id.* at 533.

As explained in Section A above, when a warrantless search and seizure takes place in a home, the search is not constitutional simply because police

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[3] Some courts have also extended their community caretaking exception to warrantless searches and seizures conducted in furtherance of other community caretaking interests, such as protecting private property or even quelling noise disturbances. This case addresses the community caretaking exception only as it applies to the need to promptly act in furtherance of public safety.

officers were conducting a search that served a community caretaking interest in protecting an occupant. That is merely why a search may be justified, but it is not the reason for dispensing with a warrant. It's the need to act promptly that may justify that.

This Court has already recognized that the community caretaking interest in protecting the public from serious harm may justify a search of a home and related seizures. And it has already answered when that search may be done without a warrant. No extension is necessary. The Court need only reaffirm that the emergency aid exception is the rule that applies to warrantless home searches in furtherance of the community caretaking interest in the public's safety.

C. The warrantless seizure of Petitioner for a psychiatric evaluation and the temporary seizure of his guns in his home fell within the emergency aid exception.

The officers' seizure of Petitioner for a psychiatric evaluation and their subsequent entry into his home and removal of his handguns was constitutional under the emergency aid exception.

First, as the First Circuit explained below, "the facts available to the officers at the time" supported an objectively reasonable basis for believing that there was an imminent risk Petitioner might seriously harm himself or others, justifying his seizure for a psychiatric evaluation. Pet. App. 23a. Officers knew he had retrieved a gun during a dispute with his

wife the night before and implored her to shoot him; they knew that his wife was so distraught by his behavior that she spent the night in a hotel; and they knew that his wife was unable to reach her husband by phone the following morning and was so concerned that he may have committed suicide that she asked police to conduct a wellness check. *Id.* at 4a, 23a.

It is true that some 12 hours had elapsed since Petitioner's fight with his wife. *Id.* at 26a. And it is true that when police finally spoke with Petitioner at his home, his demeanor seemed calm, and he denied that he was suicidal. *Id.* at 26a-27a.

But when police asked him about his mental health, he told officers to mind their own business and his wife told police that he still seemed angry. *Id.* at 5a. As the First Circuit observed, "suicidal individuals are not apt to be the best judges of their own mental health. Common sense teaches that such individuals may deliberately conceal or downplay their self-destructive impulses, particularly when speaking with the police." *Id.* at 27a.

Undoubtedly, the officers' seizure of Petitioner was a significant intrusion, but the totality of these circumstances provided an objectively reasonable basis for believing that Petitioner "might do harm to himself or others, particularly when [his] wife continued to express urgent concerns about [his] well-being the morning after his disturbing interaction with her." *Id.* at 26a.

Second, although Petitioner had been taken to the hospital for an involuntary psychiatric evaluation, the facts and circumstances supported an objectively reasonable basis for believing that leaving the guns in Petitioner's home, accessible to him, posed a "serious threat" of imminent harm. *Id.* at 31a.[4] Petitioner had admitted to police that he retrieved a gun during the fight with his wife and told her to shoot him. *Id.* at 5a. Again, officers knew that his wife was so distraught by his behavior that she hid the gun's magazine, stayed at a motel, and called police the following morning concerned that he may have committed suicide. *Id.* at 23a, 25a. And "[t]o cap the matter, the officers knew that [Petitioner] might soon return to a contentious domestic environment, that he was 'sick of the arguments' with his wife, and that he was upset that she had involved the police." *Id.* at 31a.

As the First Circuit observed, the officers "had [no] inkling when [Petitioner] would return or what his mental state might be upon his return." *Id.* at 32a. Indeed, officers did not know what information would be relayed to healthcare providers; they did not know whether "emergency services personnel would monitor [him] to ensure that he was evaluated, let alone whether" he would be involuntarily admitted under State emergency certification procedures. *Id.* And finally, Petitioner's reticence to submit to an evaluation

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[4] The First Circuit used "immediate," but as explained, this Court's emergency aid exception requires that the threat be imminent not immediate.

and his refusal to answer some of the officers' questions "could have given an objectively reasonable officer pause about whether he would in fact submit to an evaluation." *Id.* Although State law authorized the officers to transport Petitioner to the hospital for an evaluation, it did not authorize them to force him into submitting. *Id.* at 33a.

These facts are similar to those found to create the imminence necessary for the warrantless entry in *Brigham City*. There, police entered a home after witnessing a teenager punch an adult in the mouth as he and three other adults tried to restrain the teenager. 547 U.S. at 406. Respondents argued that the threat of serious harm was lacking because the adult was only spitting a little blood into the sink. *Id.* at 405-06.

But this Court explained that "[n]othing in the Fourth Amendment required [police] to wait until another blow rendered someone 'unconscious' or 'semiconscious' or worse before entering." *Id.* at 406. After all, the Court reasoned, "[t]he role of a peace officer *includes preventing violence and restoring order*, not simply rendering first aid to casualties …." *Id.* (emphasis added).

Similarly, it was objectively reasonable for police in this case to believe that they had to act promptly to prevent Petitioner from injuring himself or others—they had no way to know when Petitioner would act on his suicidal threat, when he might return from the hospital, or whether his state of mind would have improved.

In sum, under the totality of the facts and circumstances, there was an objectively reasonable basis for believing that "a real possibility" existed that Petitioner "might refuse an evaluation and shortly return home in the same troubled state," or worse, leading "a reasonable officer to continue to regard the danger of leaving firearms in [Petitioner's] home as immediate and, accordingly, to err on the side of caution." Pet. App. 33a.

CONCLUSION

This Court should reaffirm this Court's emergency aid exception to the warrant requirement and hold that the officers' warrantless actions in this case fell within that exception.

Respectfully submitted.

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