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

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

"[T]he right of privacy [is] … too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." *McDonald v. United States*, 335 U.S. 451, 455–56 (1948). For that reason, "the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home." *Id.* at 456. Warrantless intrusions of the home are unreasonable absent consent or exigent circumstances. *See Steagald v. United States*, 451 U.S. 204, 211 (1981).

Respondents and the United States agree that neither situation is present here. Instead, they claim that the warrant requirement is not implicated in the first place when officers act for non-investigatory purposes. And even if the warrant requirement is implicated in some non-investigatory contexts, they ask the Court to create a new exception to the warrant requirement for community caretaking. Both arguments amount to a claim that official action in the name of "community caretaking" is permissible as long as it is reasonable.

Both arguments fail. The warrant requirement applies to *all* intrusions of the home, whatever their purpose. And allowing warrantless invasions of the home based on undefined "community caretaking" needs is not merely a "step" away from this Court's precedents, Resp. Br. 15; it is a giant leap that would eviscerate the Fourth Amendment. Respondents' efforts to justify their radical rule are unavailing. This Court should reverse the decision below.

ARGUMENT

I. THE FOURTH AMENDMENT SHIELDS THE HOME FROM WARRANTLESS SEARCHES AND SEIZURES

"[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Ct.*, 407 U.S. 297, 313 (1972). The Fourth Amendment's warrant requirement provides "a principal protection against unnecessary intrusions" into the home by "agents of the government." *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984). For that reason, *all* warrantless intrusions of the home are unreasonable—no matter their purpose—in the absence of consent or exigent circumstances.

A. Warrantless Invasions Of The Home Are Presumptively Unreasonable Regardless Of Their Purpose

The presumption that warrantless intrusions into the home are unreasonable applies without regard to the government's motive for acting. It applies when officers act with an investigatory purpose, like seeking evidence of crime, *e.g.*, *Groh v. Ramirez*, 540 U.S. 551, 559 (2004), or apprehending a suspect, *e.g.*, *Payton v. New York*, 445 U.S. 573, 586 (1980). It also applies when officers act for non-investigatory reasons, like public health or safety.

Applying the "consistently … followed" "governing principle" that warrantless intrusions of the home are unreasonable, *Camara v. Municipal Court* required a warrant for inspections that were based on "the health and safety of entire urban populations." 387 U.S. 523, 528–29, 533 (1967); *see also Mincey v. Arizona*, 437 U.S. 385, 391–92 (1978) (public safety needs did not "justify creating a new exception to the warrant

requirement"). *Michigan v. Clifford* similarly declined to exempt from the warrant requirement searches to determine "the cause and origin of a recent fire." 464 U.S. 287, 294 (1984) (plurality op.). And *Brigham City v. Stuart* made clear that the exigency of emergency aid is an "exception[]" to "the warrant requirement." 547 U.S. 398, 403 (2006). Other cases confirm that the warrant requirement applies even to searches based on public safety needs. *See Los Angeles v. Patel*, 576 U.S. 409, 419–23 (2015) (enforcing warrant requirement for non-investigatory motel records search); *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320–21 (1978) (enforcing warrant requirement for OSHA inspections of businesses).

It makes sense that the warrant requirement applies to investigatory and non-investigatory searches alike. "[E]ven the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority," and it "surely" would be "anomalous" if the Fourth Amendment protected homes "only when the [occupants] are suspected of criminal behavior." *Camara*, 387 U.S. at 530–31; *see also, e.g.*, *Michigan v. Tyler*, 436 U.S. 499, 506, (1978) ("[T]here is no diminution in a person's reasonable expectation of privacy … simply because the official conducting the search wears the uniform of a firefighter rather than a policeman, or because his purpose is to ascertain the cause of a fire rather than to look for evidence of a crime.").

To be sure, the concept of "probable cause" looks different when the objective purpose of a search or seizure involves "considerations of health and safety" rather than the investigation of crime. *Camara*, 387

U.S. at 538 (citation omitted). But that does not mean that residents' privacy should be left "to the discretion of the official in the field." *Id.* at 532. For example, *Camara* held that "administrative searches" for possible housing code violations violate the Fourth Amendment "when authorized and conducted without a warrant procedure." *Id.* at 534. In that context, "'probable cause' to issue a warrant to inspect" may be based on a showing that "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling." *Id.* at 538; *see also Barlow's*, 436 U.S. at 320–21 ("probable cause" standard for OSHA violations).

Similarly, when "the primary object [of the search] is to determine the cause and origin of a recent fire"—as opposed to "gather[ing] evidence" of arson—"an administrative warrant will suffice." *Clifford*, 464 U.S. at 294 (plurality op.); *see also Tyler*, 436 U.S. at 511. The Fourth Amendment's probable cause requirement is satisfied in this context when officers show "that a fire of undetermined origin has occurred on the premises, that the scope of the proposed search is reasonable and will not intrude unnecessarily on the fire victim's privacy, and that the search will be executed at a reasonable and convenient time." *Clifford*, 464 U.S. at 294 (plurality op.).

B. Absent Consent, Only Exigent Circumstances Requiring *Immediate* Action Can Overcome The Presumption Of Unreasonableness

The "presumption of unreasonableness that attaches to all warrantless home entries" is "difficult to rebut." *Welsh*, 466 U.S. at 750. Only two exceptions

can overcome it: consent and exigent circumstances. *See Steagald*, 451 U.S. at 211–12; Pet. Br. 23–30.

These two exceptions are "jealously and carefully drawn." *Georgia v. Randolph*, 547 U.S. 103, 109 (2006) (citation omitted); *see* Pet. Br. 27–30. And when it comes to the home, the Court is particularly "hesit[ant]" to "find[] exigent circumstances." *Welsh*, 466 U.S. at 750. Exigencies that may qualify "include the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury." *Riley v. California*, 573 U.S. 373, 402 (2014).

These exigencies share a common thread: the need for *immediate* police action. The destruction of evidence must be "imminent," *Kentucky v. King*, 563 U.S. 452, 460 (2011) (citation omitted); a "hot pursuit" requires an "immediate or continuous pursuit … from the scene of a crime," *Welsh*, 466 U.S. at 753; and emergency aid requires an objectively reasonable belief that someone inside is "seriously injured or imminently threatened with such injury," *Brigham City*, 547 U.S. at 400. This makes sense because, absent the need for immediate action, there is no legitimate reason to bypass the warrant requirement. Pet. Br. 35–36.

Allowing warrantless home entries only in moments that require immediate action prevents "arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *United States v. Martinez-Fuerte*, 428 U.S. 543, 554 (1976). Otherwise, the exigent circumstances could become a pretext for "rummag[ing] through homes in an unrestrained

search for evidence of criminal activity." *Riley*, 573 U.S. at 403; *see also Welsh*, 466 U.S. at 750–51 (exigent circumstances justifying warrantless home entry "should be severely restricted" to guard against the "shocking proposition that private homes … may be indiscriminately invaded at the discretion of any suspicious police officer" (quoting *McDonald*, 335 U.S. at 459 (Jackson, J., concurring))).

Welsh illustrates that the Fourth Amendment's exigent circumstances exception applies only when police must act immediately. In that case, an erratic driver swerved off the road into an open field and then walked away from the scene. 466 U.S. at 742. Police arrived a "few minutes later." *Id.* Although there was no damage, a witness told them that "the driver was either very inebriated or very sick." *Id.* After checking the car's registration information, police went to the driver's house. *Id.* at 742–43. Without "securing any type of warrant" or consent, they entered the home, found the driver upstairs "lying naked in bed," and arrested him for drunk driving. *Id.* at 743 & n.1.

That police conduct, *Welsh* held, was "clearly prohibited by the special protection afforded the individual in his home by the Fourth Amendment." *Id.* at 754. The Court rejected the state's "attempts to justify the arrest by relying on the hot-pursuit doctrine, on the threat to public safety, and on the need to preserve evidence of the [defendant's] blood-alcohol level." *Id.* at 753. First, there was no exigency because there was no need for immediate police action: There was no "immediate or continuous pursuit" from the scene of a crime, and "there was little remaining threat to the public safety" because the defendant was

at home. *Id.* Second, even if the need to prevent "the imminent destruction of evidence" by measuring the defendant's blood-alcohol level before it dissipated would constitute an exigency, allowing police to enter a home on that basis would be "unreasonable." *Id.* at 754.

C. The Presumption Against Warrantless Searches And Seizures In The Home Comports With The Text And Original Meaning Of The Fourth Amendment

The Fourth Amendment provides:

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

U.S. Const. amend. IV. This text and its original meaning support the longstanding presumption that warrantless entries into the home are unreasonable.

"Originally, the word 'unreasonable' in the Fourth Amendment likely meant 'against reason'—as in 'against the reason of the common law.'" *Carpenter v. United States*, 138 S. Ct. 2206, 2243 (2018) (Thomas, J., dissenting) (citations omitted). And the common law prohibited nonconsensual entries into homes to conduct a search or seizure unless an officer was actively pursuing a known felon or had a specific warrant. *See* Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1228–30, 1188 (2016); Pet. Br. 21–22. The Fourth Amendment's two clauses accordingly work together to "cement[]" the

widely held understanding "[a]t the time of the Founding" that "the government could not enter [a home] at will," and that "[t]he only way that officers could legally demand access to the home was with a particularized showing under oath." Donahue, *supra*, at 1188.

In addition, the Fourth Amendment by its terms extends its protections to *all* searches and seizures within the home, regardless of their purpose. "When the Fourth Amendment was adopted, as now, to 'search' meant '[t]o look over or through for the purpose of finding something; to explore; to examine by inspection; as, to *search* the house for a book; to *search* the wood for a thief.'" *Kyllo v. United States*, 533 U.S. 27, 33 n.1 (2001) (citation omitted). The original meaning of "seizure"—"taking possession"—is similarly untethered to a particular purpose. *California v. Hodari D.*, 499 U.S. 621, 624 (1991) (citations omitted).

When some common-law authorities excused warrantless entries into homes based on exigent circumstances, they did so only because it was immediately necessary to stop life-threatening criminal violence. Respondents' and the United States' own authorities prove the point. *E.g.*, *Handcock v. Baker*, 126 Eng. Rep. 1270, 1270 (C.P. 1800) (permitting warrantless entry where "wife's life could not have been otherwise preserved than by immediately breaking open the door"); 1 Matthew Hale, *The History of the Pleas of the Crown* 588 (1847) (officials could enter homes to "prevent blood shed"); George C. Thomas III, *Stumbling Toward History: The Framers' Search and Seizure World*, 43 Tex. Tech. L. Rev. 199, 201, 226 (2010) (citing common-law

authorities describing breaches of the peace in terms of violent acts imminently threatening others). The same authorities warned that, if the fighting was over, entry could not "be done without a warrant, unless a man be dangerously wounded or killed in the affray." Hale, *supra*, at 588.

II. THE FOURTH AMENDMENT DEMANDS THAT THE HOME BE INSULATED FROM *CADY*'S COMMUNITY CARETAKING EXCEPTION

Respondents and the United States recognize that the community caretaking searches and seizures in Petitioner's home do not fall under any recognized exception to the Fourth Amendment's warrant requirement. They nevertheless ask the Court to allow warrantless entries into the home whenever officers perform "a true community caretaking function." Resp. Br. 15; *see* U.S. Br. 10. Granting their request would be anathema to the Fourth Amendment.

A. Extending The Community Caretaking Exception To The Home Would Eliminate Safeguards That *Cady* Deemed Critical

Cady tailored the community caretaking exception to the unique context of motor vehicle searches. *See* Pet. Br. 13–16. Nearly every page of *Cady* relies on the "constitutional difference between houses and cars." *Cady v. Dombrowski*, 413 U.S. 433, 439 (1973) (citation omitted); *see id.* at 440–42, 447–48. While cars are at the bottom of the Fourth Amendment hierarchy, homes are at the very top. *See* Pet. Br. 18–20, 23–30. Treating houses like cars is incompatible with the Fourth Amendment, but that is not the biggest problem with Respondents' rule.

Extending *Cady* to the home would flip the Fourth Amendment's priorities on its head: By eliminating safeguards that *Cady* and its progeny deemed critical for searches of cars, Respondents' rule would grant homes *less* protection than automobiles.

First, even a vehicle enjoys heightened constitutional protection when it is "in the custody" or "on the premises of its owner." *Cady*, 413 U.S. at 447–48; *see Collins v. Virginia*, 138 S. Ct. 1663, 1675 (2018). The vehicles searched in *Cady* and its progeny were in lawful police custody—a fact essential to the validity of each search. *See Colorado v. Bertine*, 479 U.S. 367, 368 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 365 (1976); *Cady*, 413 U.S. at 447–48. It is hard to imagine how police could ever take lawful custody of a home, which is inherently "in the custody" and "on the premises of its owner." *Cady*, 413 U.S. at 447–48. Perhaps the closest analogy is when police secure a crime scene, and even then the Fourth Amendment requires a warrant. *See Mincey*, 437 U.S. at 389–90.

Second, Respondents' rule eliminates any requirement that officers adhere to standardized procedures. *See* Resp. Br. 43 (officers may make "reasonable choices among available options"); *see* Pet. App. 13a, 20a. But adherence to standardized criteria was a critical safeguard in *Cady* and its progeny. *See Bertine*, 479 U.S. at 372, 374 n.6; *Opperman*, 428 U.S. at 372, 376; *Cady*, 413 U.S. at 437. By constraining an individual officer's discretion, standardized criteria reduce the danger that inventory searches may be used as "a ruse for a general rummaging in order to discover incriminating evidence." *Florida v. Wells*, 495 U.S. 1, 4 (1990); *see Bertine*, 479 U.S. at 376 (Blackmun, J., concurring) ("This absence of

discretion ensures that inventory searches will not be used as a purposeful and general means of discovering evidence of crime."). Stripped of that limitation, caretaking searches threaten to become the very sort of "unrestrained search for evidence of criminal activity" that the Fourth Amendment was designed to prevent. *Riley*, 573 U.S. at 403.

Third, while *Cady* defined "community caretaking" in terms of the work "[l]ocal police officers" do in "investigat[ing] vehicle accidents," 413 U.S. at 441, Respondents would expand the phrase to encompass everything government officials do while "protecting and serving their community," Resp. Br. 32; *see id.* at 35–36 (collecting cases illustrating "bona fide community caretaking"); U.S. Br. 26–27 n.* (same). Unlike the "few specifically established and well delineated exceptions" justifying warrantless entry into the home, *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971) (citation omitted), the community caretaking exception is inherently incapable of being "jealously and carefully drawn" once it extends beyond cars, *Randolph*, 547 U.S. at 109 (citation omitted).

Finally, the lack of any temporal limitation—critical to the exigent circumstances exception, *see supra* at 4–7— exacerbates all of these problems. *See Opperman*, 428 U.S. at 373 (recognizing validity of vehicle search that took place one week after impoundment); Resp. Br. 8–9 & n.5, 42. An indefinite timeframe is one thing in the context of vehicles that are in police custody and are being searched in part to protect "the police against claims or disputes over lost or stolen property." *Opperman*, 428 U.S. at 369. But it is irreconcilable with the Fourth Amendment's special protection of the home.

B. Extending *Cady*'s Exception To The Home Would Eviscerate The Fourth Amendment

Allowing government officials to enter the home based on "community caretaking" needs would create an exception that swallows the Fourth Amendment. Because "law enforcement involvement always serves some broader social purpose or objective," virtually any search or seizure could "be justified by reference to the broad social benefits that … laws might bring about (or, put another way, the social harms that they might prevent)." *Ferguson v. City of Charleston*, 532 U.S. 67, 84 & n.22 (2001). An officer's "subjective motivation is irrelevant," *Brigham City*, 547 U.S. at 404, and it would not be difficult for an officer to articulate *some* objective health or safety reason for his actions.

For example, absent consent or exigent circumstances, police cannot enter a home without a warrant to make an arrest. *Steagald*, 451 U.S. at 216; *Payton*, 445 U.S. at 587–90. But under Respondents' and the United States' rule, warrantless entries would be perfectly fine based on the need to protect other occupants from a suspected criminal. *Cf. Luer v. Clinton*, 987 F.3d 1160, 1167 (8th Cir. 2021) (per curiam) (warrantless sweep of curtilage for cab-fare skipper justified by caretaking need "to preserve and protect community safety"). The same public safety interest would eliminate the need for officers to rely on hot pursuit.

Even when the police know that a suspect is alone in a home, they could justify their entries in many instances, including virtually any involving drugs or alcohol, by the need to make sure the suspect himself

is okay. *Compare Welsh*, 446 U.S. at 742, 754 (prohibiting warrantless entry into home of driver who was "very inebriated or very sick"), *with Wisconsin v. Gracia*, 826 N.W.2d 87, 98 (Wis. 2013) (warrantless entry to check on welfare of drunk driver was "reasonable exercise of the community caretaker function"); *compare Johnson v. United States*, 333 U.S. 10, 12–15 (1948) (prohibiting warrantless entry based on odor of drugs), *with Wisconsin v. Pinkard*, 785 N.W.2d 592, 603–05 (Wis. 2010) (warrantless entry to check on welfare of drug users was exercise of "bona fide community caretaker function"). And while the Court has carefully circumscribed the scope of searches incident to arrest within the home, *see Maryland v. Buie*, 494 U.S. 325, 337 (1990); *Chimel v. California*, 395 U.S. 752, 768 (1969), officers could search far more broadly in the name of "community caretaking"—for instance, examining every drawer and medicine cabinet for pills in situations involving potential suicide by overdose.

Respondents' and the United States' rule would have ramifications beyond the home, too. The Court has meticulously defined the circumstances in which a closely regulated business may be searched without a warrant, *see New York v. Burger*, 482 U.S. 691, 702–03 (1987), and has restricted warrantless searches of other businesses, *see, e.g.*, *Barlow's*, 436 U.S. at 320–21 (enforcing warrant requirement for OSHA inspections). Allowing the government to justify a search simply by pointing to a public health or safety concern would nullify the Court's analysis in those cases.

C. Officials Already Have Ample Tools For Addressing Public Health And Safety Concerns

There is no reason to adopt a rule with such sweeping consequences. Existing Fourth Amendment doctrines already enable government officials to address the vast majority of scenarios that Respondents and their amici posit.

Consent will cover many, if not most, situations. That is certainly true whenever an individual calls 911 requesting help for herself or a child in her home, assuming the officers do not exceed the scope of the request. *See Randolph*, 547 U.S. at 109, 114; *see also, e.g.*, *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 516 (7th Cir. 2020) (resident requested help evicting ex-boyfriend who "had no right or privilege to be in [her] home"); NAC Br. 4 ("Most police-citizen contact these days is initiated by citizens themselves, often via a phone call to 911.").

When an occupant does not request help for himself but there is a true emergency requiring immediate intervention, officers may enter the home under the exigent circumstances exception. *See Brigham City*, 547 U.S. at 403. Many of the cases that Respondents and their amici cite uphold warrantless entries under this exception, without mentioning community caretaking at all. *See, e.g.*, *Bloom v. Palos Heights Police Dep't*, 840 F. Supp. 2d 1059, 1068 (N.D. Ill. 2012) (report that teen "was contemplating suicide and had a knife to her throat"); *Nebraska v. Plant*, 461 N.W.2d 253, 262–63 (Neb. 1990) (abusive parent offered inaccurate accounts of toddlers' whereabouts). Others involve facts that likely would qualify as exigent circumstances. *See, e.g.*, *United States v.*

Sanders, 956 F.3d 534, 539 (8th Cir. 2020) (child reported domestic violence in home involving gun, and police saw signs of injury upon arrival); *United States v. Smith*, 820 F.3d 356, 358 (8th Cir. 2016) (report that woman was being held involuntarily by her ex-boyfriend, with whom she had "no-contact order," and who had weapons in his home).

The remaining fact patterns highlight the potential for abuse. Many involve situations where the police entered a home because nobody answered the door despite signs that someone was home. *See United States v. Quezada*, 448 F.3d 1005, 1006 (8th Cir. 2006) (lights and television were on); *MacDonald v. Town of Eastham*, 745 F.3d 8, 10 (1st Cir. 2014) (resident left door open for cat); *People v. Hill*, 829 N.W.2d 908, 912 (Mich. Ct. App. 2013) (lights were on and car was in driveway). But people seldom advertise that they are away, and there is nothing unusual about leaving lights on in an empty house.

When a bystander expresses concern about somebody's welfare, police officers (like anyone else) are free to knock on the door to check on the person's well-being. *King*, 563 U.S. at 469. But the occupant "has no obligation to open the door or to speak," *id.* at 469–70, and if nobody answers, officers need more than a nosy neighbor's curiosity to invade the home, *cf. Hill*, 829 N.W.2d at 916 (Markey, J., dissenting) (entry based on concern of neighbor who "admittedly had little to no interaction with" occupant). They cannot simply rely on "the paternalistic premise that 'We're from the government and we're here to help you.'" *People v. Ovieda*, 446 P.3d 262, 271 (Cal. 2019) (citation omitted). The Fourth Amendment requires a true emergency or a warrant.

III. RESPONDENTS' EFFORTS TO JUSTIFY THEIR RULE ARE UNAVAILING

Respondents and the United States do not grapple with the "constitutional difference between houses and cars." *Cady*, 413 U.S. at 439 (citation omitted). Instead, they claim that the Fourth Amendment's warrant requirement does not apply at all when officers act for non-investigatory purposes. And even if the warrant requirement does apply to some non-investigatory actions, they say that the Court should create a new exception for community caretaking. Whether framed as an end-run around the warrant requirement entirely or as grounds for creating a new exception, Respondents' argument is that the Fourth Amendment lets government officials invade homes in the name of "community caretaking." They offer no sound basis for the radical rule they seek.

A. Community Caretaking Searches Are Not Exempt From The Fourth Amendment's Warrant Requirement

Respondents and the United States try to evade the warrant requirement altogether, claiming that official action to protect health or safety is permissible as long as it is reasonable. *See* Resp. Br. 39; U.S. Br. 11. That is incorrect.

1. Warrantless intrusions of the home are presumptively unreasonable regardless of the government's reason for acting. Respondents' and the United States' own authorities repudiate the notion that health or safety concerns take official action outside the scope of the warrant requirement. *See supra* at 2–4.

The argument that non-investigatory government actions need only be "reasonable" is also incompatible

with the Court's careful framing of the exigent circumstances exception. *Brigham City* would not have needed to consider whether "emergency aid" falls within the exigent circumstances exception to the warrant requirement. *See* 547 U.S. at 403–04. And *Welsh* could have skipped straight to considering whether the warrantless entry motivated by a "threat to public safety" was reasonable. 466 U.S. at 753. Yet in both cases, the Court considered the "reasonableness" of the entry only *after* determining that the government had established the applicability of a recognized exception. *See Brigham City*, 547 U.S. at 403–04, 406–07; *Welsh*, 466 U.S. at 750, 754. Unless consent or exigent circumstances are shown first, there is no "reasonableness" test for gaining entry into a home. *See Groh*, 540 U.S. at 558–59 (refusing to evaluate reasonableness of a search "whose only defect is a lack of particularity in the warrant").

2. Respondents and the United States insist that "the lack of crime" in caretaking cases "makes obtaining a warrant impossible." Rep. Br. 42; *see* U.S. Br. 12–13. But the Court frequently enforces the warrant requirement in non-investigatory contexts, including situations implicating public health and safety. *See supra* at 2–4. Contrary to the United States' representation, these cases are not limited to "inspections for other unlawfulness." U.S. Br. 12; *see Clifford*, 464 U.S. at 294 (plurality op.) (requiring administrative warrant for non-investigatory search "to determine cause and origin of a recent fire"); *Camara*, 387 U.S. at 535 (requiring administrative warrant for search whose "primary governmental interest … [was] prevent[ing] even the unintentional

development of conditions which are hazardous to public health and safety").

In the community caretaking context, the Fourth Amendment likewise demands that the decision to enter the home be made by a neutral third party. What that looks like depends on which "caretaking" functions officials are performing. For safety hazards, such as leaky plumbing in a neighboring townhouse, *cf. People v. Slaughter*, 803 N.W.2d 171 (Mich. 2011), an administrative warrant should suffice, *cf. Clifford*, 464 U.S. at 294 (plurality op.). In the context of mental health problems, many states allow judges to authorize involuntary treatment. *See* Pet. Br. 38–39 n.4. States also may provide for warrants based on certification from a medical or mental health professional that an individual presents a danger to himself or others, or an affidavit from officers that they have followed specific, reasonable state procedures. *See id.*; *cf. Camara*, 387 U.S. at 538 (probable cause for warrant exists if "reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling"). And of course, if the occupant of a home *asks* for help for herself, or there is a true emergency demanding *immediate* action, no warrant is required. *See Brigham City*, 547 U.S. at 403; *Randolph*, 547 U.S. at 109.

B. There Is No Basis For Creating A New Exception To The Warrant Requirement

Even if the warrant requirement does apply to some non-investigatory actions, Respondents urge the Court to create a new exception to the warrant requirement for community caretaking. That is

irreconcilable with the Fourth Amendment, *see supra* at 9–13, and Respondents' contrary arguments fail.

1. Respondents and the United States emphasize that their new exception is limited to "pure caretaking" functions with "no criminal implications." Resp. Br. 12; *see* U.S. Br. 8. But the line between "caretaking" and "criminal" law enforcement functions is hardly clear because many crimes have public-safety implications. Several of the situations that Respondents and the United States characterize as examples of "caretaking" are inextricably tied to criminal investigations: entering a home to suppress violent fighting and "blood shed," U.S. Br. 15–16; conducting a "prompt warrantless search" of a homicide scene "to see if there are other victims or if a killer is still on the premises," *Mincey*, 437 U.S. at 392; entering a home to rouse someone who had possibly overdosed on drugs, and arresting him immediately, *Pinkard*, 785 N.W.2d at 595, 603–04; and entering the bedroom of a driver involved in a single-car accident "to make sure he was okay" (despite his command to "go away"), and then arresting him for driving under the influence, *Gracia*, 826 N.W.2d at 92.

In addition, a "benign rather than punitive" motive "cannot justify a departure from Fourth Amendment protections." *Ferguson*, 532 U.S. at 85. And even in situations that are divorced from criminal conduct, officials cannot gain entry into the home without a warrant. *See Clifford*, 464 U.S. at 294 (plurality op.); *supra* at 2–4.

2. Respondents and their amici claim that warrantless entries into the home are necessary because community caretaking serves a vital public interest. *See* Resp. Br. 30–36; U.S. Br. 20–21; NAC

Br. 5–13. But as Respondents' State amici explain, a "governmental *interest* alone does not create an *exception* for the warrant." States Br. 18. And the question in this case is not whether police may *ever* enter homes to serve "community caretaking" needs, but whether they may do so without a warrant. *See Camara*, 387 U.S. at 533.

Moreover, existing Fourth Amendment doctrines already provide ways of meeting caretaking interests. *See* Pet. Br. 33–40; *supra* at 14–16. Respondents implicitly concede as much when they emphasize that officers need not choose the "least restrictive" action (a proposition that none of their authorities applies to the home). Resp. Br. 49. And while Respondents' amici protest that it is difficult for officers to determine what constitutes a true emergency, NAC Br. 15, that is a function of having an exigent circumstances exception in the first place, not a reason to expand it.

Respondents' State amici agree that there is no need to create a new exception to the warrant requirement for community caretaking, but seek to eliminate the immediacy element that the Court has imposed on exigent circumstances. *See* States Br. 6–7; *see supra* at 4–7. That proposal is functionally identical to Respondents' and suffers from the same flaws. *See supra* at 9–13.

3. Finally, Respondents and the United States are wrong to suggest that prior cases recognize a community caretaking exception in the home. The Court's statement that "a dangerous high-speed car chase that threaten[ed] the lives of innocent bystanders" implicates a "paramount governmental interest in ensuring public safety" hardly creates a

license to invade the home in the name of routine caretaking responsibilities. *Scott v. Harris*, 550 U.S. 372, 383, 386 (2007). Respondents' reliance on cases upholding warrantless vehicle checkpoints conducted according to standardized criteria is similarly misplaced. *See Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 447, 454 (1990).

Brigham City is likewise unhelpful to Respondents. Police entered a home upon witnessing "*ongoing* violence," including bloodshed, occurring inside. 547 U.S. at 405. While police did not need to wait for the violence to climax, that does not mean they could have barged in *before* any fighting was "imminent[]." *See id.* at 400, 406.

The same is true of *Randolph*'s recognition that police may "enter a dwelling to protect a resident from domestic violence." 547 U.S. at 118. The passing parenthetical's reference, in dicta, to violence that "soon will" occur, *id.*, did not jettison the "severe[] restrict[ions]" the Court has imposed on exigent circumstances in case after case, *e.g.*, *Welsh*, 466 U.S. at 750. And in the domestic-violence context, an abuser arguably has forfeited his otherwise "equal" authority to object to entry in the face of his victim's request for help. *See Randolph*, 547 U.S. at 113, 118 (under commonly shared norms, "[f]ear for the safety of the occupant issuing the invitation" constitutes "very good reason" for "a caller standing at the door of shared premises … to enter when a fellow tenant [stands] there saying, 'stay out'").

III. RESPONDENTS' WARRANTLESS SEARCHES AND SEIZURES IN PETITIONER'S HOME VIOLATED THE FOURTH AMENDMENT

Respondents violated Petitioner's Fourth Amendment rights when they seized him from his home, and then seized his guns from his bedroom and garage, all without a warrant.

Respondents' actions were unreasonable *per se*, *see Welsh*, 466 U.S. at 750, and they have not even tried to show exigent circumstances or consent. Respondents waived exigent circumstances and implicitly recognize that there was no emergency given that they were interacting with Petitioner *the day after* his statement to his wife. *See* Pet. App. 11a–12a, 54a–55a. And at this stage of the proceedings it is undisputed that Petitioner never consented to the search of his home or the seizures. *Id.* at 9a–11a. Mrs. Caniglia's request that an officer accompany her home because she was concerned about Petitioner's welfare (*not* her own safety), *id.* at 4a; J.A. 49, could not constitute valid consent to seize *Petitioner's* person and property or search the home over his objection. *See Randolph*, 547 U.S. at 120.

Instead, Respondents rely on the community caretaking exception—and that exception alone—to justify their actions. Resp. Br. 43; *see also* Pet. App. 11a, 30a, 37a. But that narrow exception to the warrant requirement applies only to automobiles, and certainly does not extend to the home.

In claiming that their actions were reasonable, Respondents disregard the rule that warrantless invasions of the home are unreasonable. Respondents insist that they had no other options. Resp. Br. 53. But they did not even follow their own standardized

procedures for potential suicide risks. *See* J.A. 59–60. Moreover, the officers who spoke with Petitioner acknowledged that he "sounded fine," "seemed normal," and "was calm for the most part," Pet. App. 55a, and cite no facts to support their belief that he posed a danger to anyone other than himself, *see id.* at 4a (Petitioner's wife "made clear that she was not concerned for her own safety" and feared only for her husband); J.A. 49 (same). If the law does not provide a mechanism for officials to provide unwanted help in the absence of an emergency, perhaps it is because that is not their role.

Finally, the Court should reject Respondents' passing assertion in a footnote that they are entitled to qualified immunity. Resp. Br. 8 n.4. Although the First Circuit declined to address qualified immunity, it correctly observed that the doctrine "offers no refuge either to the City or to the officers in their official capacities." Pet. App. 8a n.3. Moreover, few rights are more clearly established than the right to remain free from warrantless searches and seizures at home absent consent or exigent circumstances. *See* Pet. Br. 21–29. At a minimum, however, the question of qualified immunity should be left for the First Circuit to resolve in the first instance. *See Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012).

CONCLUSION

The judgment below should be reversed.

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