No. 20-518

In the Supreme Court of the United States

DARRIUS MARCEL MASTIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly applied the rule established in *Michigan* v. *Summers*, 452 U.S. 692 (1981), to allow officers to temporarily detain petitioner, an occupant of a hotel room, while attempting to execute an arrest warrant for another suspected occupant.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 972 F.3d 1230. The order of the district court (Pet. App. 17a) and the recommendation of the magistrate judge (Pet. App. 18a-64a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 26, 2020. The petition for a writ of certiorari was filed on October 16, 2020. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Middle District of Alabama, petitioner was convicted on one count of unlawfully possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. The court sentenced

petitioner to 51 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-16a.

1. On January 19, 2016, a state court judge in Montgomery, Alabama, issued arrest warrants for Trudyo Hines and Taboris Mock, in connection with their participation in an armed robbery. Pet. App. 18a-19a. The two men, both gang members, were also wanted for questioning about a related homicide. *Id.* at 19a. A joint state and federal task force, which was responsible for executing the warrants, learned that the two suspects often stayed in hotels in Montgomery and that Hines's girlfriend, Nakita Rogers, had rented a room at the Country Inn and Suites. *Id.* at 19a-20a. The officers set up surveillance at the hotel and, in the early morning hours of January 20, observed three vehicles pull into the parking lot together. *Id.* at 20a-21a. Three men and three women got out, and the three women—one of whom was identified as Rogers—went to the hotel's front desk, while the three men entered the hotel through a side entrance. *Id.* at 21a. The officers then observed two men and a woman leave the hotel and get into one of the vehicles, but they could not determine whether Mock or Hines (or both) were part of that group. *Id.* at 21a-22a.

The officers divided into two teams, and about five to eight officers went to the room that Rogers had rented. Pet. App. 22a. As the officers were getting "set up" outside the room, petitioner opened the door. *Ibid.* Petitioner had his hands in the pockets of his jacket, and the officers ordered him to take his hands of out his pockets, place them over his head, and get on the ground. *Ibid.* Rogers and her sister were also in the room, and the

officers told them to do the same thing, in order to determine that no one was holding a firearm and to limit the occupants' mobility. *Ibid.* The officers did not recognize petitioner, although they knew that he was not Mock or Hines. *Ibid.* Before entering the room to determine whether Mock or Hines was inside, the officers ordered petitioner, Rogers, and Rogers's sister to crawl into the hallway. *Id.* at 22a-23a. A black semiautomatic handgun fell out of petitioner's waistband as he did so. *Id.* at 23a. The officers detained petitioner and seized the gun. *Ibid.* Upon entering the room, the officers did a protective sweep. *Ibid.* Nobody else turned out to be inside, but the officers observed three firearms in open purses that they later learned were lawfully possessed by Rogers and her sister. The officers subsequently determined that petitioner was a convicted felon and on probation. *Id.* at 24a.

2. A federal grand jury in the Middle District of Alabama charged petitioner with unlawfully possessing a firearm and ammunition as a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1. Petitioner moved to suppress the handgun, contending that by directing him to remove his hands from his pockets and then crawl out of the hotel room, the officers had made an unconstitutional seizure, and that the handgun had been discovered only as a result of that seizure. Pet. App. 2a, 9a.

Following an evidentiary hearing, a magistrate judge recommended that petitioner's suppression motion be denied. Pet. App. 18a-64a. As relevant here, the magistrate judge determined that the officers had a reasonable belief that either or both of Hines or Mock was present when the officers attempted to execute the arrest warrants. *Id.* at 36a-37a. And the magistrate judge explained that, as a result, the officers had the

authority "to establish control of and secure the premises, both inside and immediately outside the room," and that that authority "was sufficient to permit officers to seize [petitioner] briefly by causing him to take his hands out of his pockets, place them over his head, and crawl out of the doorway of the room into the hall." *Id.* at 37a-38a (citing *Payton* v. *New York*, 445 U.S. 573 (1980), and *Michigan* v. *Summers*, 452 U.S. 692 (1981)). The magistrate judge also found that the officers were justified in seizing the gun because it posed an immediate threat to their safety while they attempted to execute the arrest warrants. *Id.* at 44a-48a.

The district court adopted the magistrate judge's report and recommendation and denied the motion to suppress. Pet. App. 17a. A jury found petitioner guilty, and the court sentenced petitioner to 51 months of imprisonment. Judgment 1-2.

3. The court of appeals affirmed. Pet. App. 1a-16a. As relevant here, the court determined that the rule established in *Summers*, *supra*, which permits police to detain an occupant of premises being searched pursuant to a warrant, applies to the arrest warrant context and that petitioner's detention was reasonable. Pet. App. 10a-13a. The court stated that "the primary rationale" for the *Summers* rule is "the potential risk [of harm to officers and bystanders] if bystanders could *not* be detained," and reasoned that police officers would "expose themselves to an unacceptable degree of risk" if not permitted to "briefly detain those on the premises while they seek to execute an arrest warrant." *Id.* at 10a-11a. The court recognized that "just because officers are entitled to detain bystanders while executing warrants does not mean that any manner of detention will always be reasonable," but found that under the facts of this case,

the officers engaged in "sound police practice" by requiring petitioner "to come out of areas that the police [did] not control (such as the hotel room) and into areas that police [did] control (such as the hallway)." *Id.* at 12a-13a.

ARGUMENT

Petitioner contends (Pet. 7-17) that the court of appeals erred in applying the rule of *Michigan* v. *Summers*, 452 U.S. 692 (1981), to his brief detention while officers were attempting to execute an arrest warrant, and that the decision implicates a circuit conflict. The court of appeals' decision is correct, and further review of this case is not warranted.

1. The court of appeals correctly determined that the *Summers* rule validated the reasonableness of petitioner's brief detention here.

a. This Court held in *Summers* that police officers executing a search warrant for contraband may detain the occupants of the premises while the search is conducted. 452 U.S. at 705. The Court noted that the detention of an occupant of a place about to be searched for contraband only marginally intrudes upon the occupant's privacy interests, while advancing substantial law enforcement interests, such as "preventing flight," "minimizing the risk of harm to the officers," and facilitating "orderly completion of the search." *Id.* at 702-703. In doing so, the Court observed that while preventing flight is the "[m]ost obvious" justification for the rule, "[l]ess obvious, but sometimes of greater importance, is the interest in minimizing the risk of harm to the officers." *Id.* at 702. And the Court explained that "[t]he risk of harm to both the police and the occupants is minimized if the officers *routinely* exercise unquestioned command of the situation." *Id.* at 702-703 (emphasis added).

Although *Summers* "was about search warrants," it logically "applies equally" in both the search and arrest warrant scenarios. Pet. App. 10a. Given the risk that officers face when executing an in-home arrest warrant, which may be even greater than in the search warrant context, the court of appeals correctly recognized that the safety interests at stake when executing either kind of warrant justify a brief detention like the one here.

The court of appeals' application of the *Summers* rule is also consistent with this Court's "general preference to provide clear guidance to law enforcement through categorical rules." *Riley* v. *California*, 573 U.S. 373, 398 (2014). Because the *Summers* rule is "categorical," *Muehler* v. *Mena*, 544 U.S. 93, 98 (2005), it provides a "workable rule[]" that police can apply in potentially dangerous, fast-moving situations without requiring "an ad hoc, case-by-case [analysis] by individual police officers,'" *Summers*, 452 U.S. at 705, n.19 (quoting *Dunaway* v. *New York*, 442 U.S. 200, 219–220 (1979) (White, J., concurring)). Requiring officers to make instantaneous assessments of the potential dangerousness of each occupant—subject to post hoc second-guessing in the context of a suppression hearing or civil suit—would be impractical and detrimental.

b. Petitioner argues that the court of appeals erred by considering "safety" as the "'primary rationale'" for the *Summers* rule. Pet. 14 (quoting Pet. App. 10a). But *Summers* itself recognized that the law enforcement interest in minimizing the risk of harm to officers was "sometimes of greater importance" than the more "obvious" interest in preventing the occupants' flight. *Summers*, 452 U.S. at 702.

This Court also has emphasized safety concerns in its post-*Summers* decisions. For example, in *Los Angeles County* v. *Rettele*, 550 U.S. 609 (2007) (per curiam), the Court considered the reasonableness of seizing two Caucasian individuals found inside a home when police officers executed a warrant to search the home for non-contraband items and three African-American suspects. *Id.* at 611. Although the officers knew the seized individuals were not the suspects for whom they were searching, the Court concluded that it was reasonable for the officers to detain them long enough to secure the premises and ensure the officers' safety. *Id.* at 613-615; see *id.* at 616 ("When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, * * * the Fourth Amendment is not violated."); see also *Muehler*, 544 U.S. at 100 (although individual detained in handcuffs while search was underway was not suspected of criminal activity being investigated, the "2- to 3-hour detention in handcuffs" during in-home execution of search warrant for weapons "does not outweigh the government's continuing safety interests").

Petitioner further contends that "any single justification for the *Summers* exception"—here, the interest in preventing harm to the officers—"would on its own be 'insufficient' to justify extending the exception to new contexts." Pet. 14 (quoting *Bailey* v. *United States*, 568 U.S. 186, 199 (2013)). As an initial matter, *Bailey* does not support that broad proposition. The Court's unwillingness to extend *Summers*' rule in that particular case reflected a determination that *none* of the interests identified in *Summers* justified "the detention of a former occupant, wherever he may be found away from the scene of the search." *Bailey*, 568 U.S. at 199.

And three members of the *Bailey* majority took the view that "[t]he *Summers* exception is appropriately predicated *only* on law enforcement's interest in carrying out the search unimpeded by violence or other disruptions." *Id.* at 205 (Scalia, J., concurring, joined by Ginsburg and Kagan, JJ.) (emphasis in original).

Petitioner's argument is also at odds with this Court's decisions in contexts other than the execution of a search warrant that have upheld limited intrusions on individuals' liberty as necessary to protect the safety of officers. See, *e.g.*, *Maryland* v. *Wilson*, 519 U.S. 408, 413-414 (1997) (holding that "weighty interest in officer safety" justifies detention of passenger of stopped car and relying on *Summers* as "offer[ing] guidance by analogy"); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 109-111 (1977) (per curiam) (finding it "too plain for argument that the * * * proffered justification—the safety of the officer—is both legitimate and weighty" and holding that it is "reasonable and thus permissible under the Fourth Amendment" during every traffic stop for police to order the motorist to get out of his vehicle); cf. *Maryland* v. *Buie*, 494 U.S. 325, 333-334 (1990) (stating that "[t]he risk of danger in the context of an arrest in the home is as great as, if not greater than, it is in an on-the-street or roadside investigatory encounter" and holding that, as an incident to arrest, officers may conduct protective sweep of spaces immediately adjoining the place of arrest without probable cause or reasonable suspicion).

Furthermore, although the decision below did not address the other law enforcement interests identified in *Summers*, those interests also apply to the arrest warrant context. Among other things, "[i]f occupants are permitted to wander around the premises, there is

the potential for interference with the execution of" the arrest warrant by, for example, "seek[ing] to distract the officers, or simply get[ting] in the way." *Bailey*, 568 U.S. at 197. The temporary detention of the residence's occupants also may facilitate the warrant-authorized arrest—and forestall potential flight—by "prevent[ing] advanced warning of an impending arrest that might cause fugitives to hide or flee the premises." *United States* v. *Werra*, 638 F.3d 326, 349 (1st Cir. 2011) (Howard, J., dissenting); see *id.* at 341 (majority opinion) (resolving case on different ground); cf. *Anderson* v. *United States*, 41 Fed. Appx. 506, 507 (2d Cir. 2002) (holding, in reliance in part on *Summers*, that police were justified in detaining occupants during in-home execution of an arrest warrant in light of "the relatively high likelihood that [they] would warn a possibly dangerous person of impending arrest, coupled with the relatively brief period of additional detention involved"). Occupants can also facilitate the officers' execution of an arrest warrant if the suspect's whereabouts within the premises are not evident and the officers need to search the premises to locate him. See *Buie*, 494 U.S. at 332-333 ("Possessing an arrest warrant and probable cause to believe [respondent] was in his home, the officers were entitled to enter and to search anywhere in the house in which [respondent] might be found."); see also *Werra*, 638 F.3d at 349 (Howard, J., dissenting) ("[S]uch detentions might even facilitate an arrest by inducing detainees to assist the officers in locating a fugitive 'to avoid the use of force that is not only damaging to property but may also delay the completion of the task at hand.'") (quoting *Summers*, 452 U.S. at 703).

Petitioner also errs in contending that applying *Summers* to the arrest warrant context would authorize

the police "to detain any bystander, no matter how innocent or harmless, simply because a suspect happens to be arrested nearby," including "in restaurants, movie theaters, and parking lots." Pet. 15. The court of appeals' holding is not nearly so expansive; instead, it permits the police to "briefly detain those *on the premises* while they seek to execute an arrest warrant." Pet. App. 11a (emphasis added). This Court's decision in *Bailey*, which limits the categorical rule in *Summers* to individuals "within the immediate vicinity" of the premises, 568 U.S. at 201, also would preclude the detention of those "[who] happen[] to be * * * nearby" (Pet. 15) but not at the scene of the arrest.

2. Petitioner argues (Pet. 8) that this Court's review is necessary because the decision below "solidifies a conflict among the courts of appeals" as to whether the categorical rule of *Summers* applies in the arrest warrant context. See Pet. 8-11. Petitioner overstates the extent of the conflict, and this Court's intervention is not warranted at this time.

In addition to the court below, the Sixth Circuit has applied the rule in *Summers* to the limited detention of a third party while officers execute an arrest warrant. See *United States* v. *Ocean*, 564 Fed. Appx. 765, 769-770 (2014) (stating that *Summers* and *Muehler* "counsel in favor of determining that" slight intrusion on a third-party occupant "for the purposes of officer safety, efficient processing of an arrest, and basic information gathering" is reasonable); *Cherrington* v. *Skeeter*, 344 F.3d 631, 638 (2003) (stating in dictum that "the police have the limited authority to briefly detain those on the scene, even wholly innocent bystanders, as they execute a search or arrest warrant" and citing *Summers*). Other

circuits also have suggested that *Summers* applies outside the search warrant context. See *Freeman* v. *Gore*, 483 F.3d 404, 412 (5th Cir. 2007) (stating that, although *Summers* and *Anderson* v. *United States*, 107 F. Supp. 2d 191 (E.D.N.Y. 2000), aff'd, 41 Fed. Appx. 506 (2d Cir. 2002) "would authorize the deputies to detain anyone found at [the address of a suspect named in an arrest warrant] during the execution of their arrest warrant," those cases did not support detention of suspect's mother outside of her own home while they questioned her about her son's whereabouts).

Petitioner correctly asserts that the Ninth Circuit took a contrary position in *Sharp* v. *County of Orange*, 871 F.3d 901 (2017). In that case, involving claims under 42 U.S.C. 1983, officers mistakenly arrested the plaintiff, believing that he was the subject of an arrest warrant. *Sharp*, 871 F.3d at 907. After they determined that the warrant was for the plaintiff's son, the officers continued to detain the plaintiff and kept him handcuffed and locked in their patrol car for about twenty minutes while the officers searched his home. *Id.* at 908. The court of appeals concluded that the detention was unconstitutional (albeit not so clearly proscribed by established law as to defeat the officers' qualified immunity defense). *Id.* at 912-913. The court rejected the officers' reliance on *Summers*, stating that "the categorical detention rule announced in *Summers* does not apply to arrest warrants," but emphasized that "[t]here will surely be circumstances when detention of persons on, or immediately near, the premises will be objectively reasonable." *Id.* at 913-915.[*]

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[*] Petitioner also contends (Pet. 11) that the decision below is "in considerable tension" with the Tenth Circuit's decision in *United*

Any narrow conflict with *Sharp* on the question presented does not warrant this Court's review. Neither the Ninth Circuit, nor any other circuit, has applied *Sharp*'s distinction of *Summers* to a subsequent case. Moreover, it is unclear whether and how *Sharp* would apply with precedential force, given the Ninth Circuit's prior recognition that, in determining the reasonableness of the seizure of a third party while officers attempt to execute an arrest warrant, "much of the analysis [in *Summers*] remains applicable." *United States* v. *Enslin*, 327 F.3d 788, 797 n.32, cert. denied, 540 U.S. 917 (2003); see also *Cherrington*, 344 F.3d at 638 (describing *Enslin* as "finding that *Summers* applies in the context of arrest as well as search warrants"); *Katzka* v. *Leong*, 11 Fed. Appx. 854, 855-856 (9th Cir. 2001) (stating that "[a]lthough *Summers* dealt with execution of a search warrant, rather than an arrest warrant, its analysis applies equally" to detention of arrestee's wife during "the brief period necessary to complete the arrest of" her husband); cf. *United States* v. *Vaughan*, 718 F.2d 332, 334-335 (9th Cir. 1983) (relying on *Summers* to find that detention of passenger in car was reasonable while officers were executing an arrest warrant for the driver). That intra-circuit tension and absence of

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States v. *Maddox*, 388 F.3d 1356 (2004), cert. denied, 544 U.S. 935 (2005). In *Maddox*, the court of appeals extended *Buie*, *supra*, to "protective detentions" of individuals and reasoned that the required level of suspicion depends on whether the person seized is within the "immediately adjoining" area of the arrest (no suspicion required) or outside that area ("reasonable suspicion" required). *Maddox*, 388 F.3d at 1362-1363. The government in that case did not press a *Summers* rationale, see Gov't C.A. Br. at 12-21, *Maddox*, *supra* (No. 04-8723), and the court did not address the application of *Summers* in a case like this. See *Maddox*, 388 F.3d at 1367 (referencing *Summers* only in a passing "Cf." citation on a minor point).

any court of appeals' decisions applying *Sharp*'s reasoning counsel against this Court's review of the asserted conflict at this time.

In addition, petitioner has not established that lower courts are experiencing any practical difficulties in deciding whether a detention, such as the one here, is reasonable under the *Summers* rationale. Although he claims that several lower-court decisions "reflect broad confusion about how *Summers* relates to the arrest-warrant context," Pet. 16, the cited cases all relied on *Summers*, in whole or in part, to determine that the detentions met the Fourth Amendment reasonableness requirement.

3. Finally, this case would be an unsuitable vehicle for addressing the application of the categorical rule of *Summers* to the arrest warrant context because petitioner's detention was objectively reasonable under the circumstances here, and the outcome would be the same even under his own approach. The officers were attempting to execute arrest warrants for two gang members wanted for armed robbery and for questioning in connection with a homicide; they suspected that several people, including at least one of the suspects, were in the hotel room; they could reasonably believe that the occupants were associates of the named suspects; and, when the officers were about to enter the hotel room to execute the arrest warrants, the door swung open and petitioner was standing just inside the doorway with his hands in his pockets and out of sight. See pp. 2-3, *supra*. Under any plausible standard of reasonableness, those circumstances justified petitioner's detention while the officers "stabilize[d] the situation while searching for the subject of [the] arrest warrant." *Sharp*, 871 F.3d at 915.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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