NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

NOVEMBER TERM, 2020

Kenneth Lamont Sanders- Petitioner,

vs.

United States of America - Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Nova D. Janssen
Assistant Federal Public Defender
400 Locust Street, Suite 340
Des Moines, IA 50309
TELEPHONE: 515-309-9610
FAX: 515-309-9625

ATTORNEY FOR PETITIONER

QUESTIONS PRESENTED FOR REVIEW

Whether the community caretaker exception to the Fourth Amendment allowed law enforcement to make warrantless entry into the home of Mr. Sanders, his girlfriend, and three children – less than fifty seconds after their initial knock for a welfare check – where: (1) police suspected he had fought with and caused minor scratches to the face of his girlfriend, who assured officers that she and her 11, 7 and 1 year-old children were all fine; and (2) police heard a child crying inside the home after expressly assenting to the girlfriend reentering the house to ask Mr. Sanders to come out?

PARTIES TO THE PROCEEDINGS

The caption contains the names of all parties to the proceedings.

DIRECTLY RELATED PROCEEDINGS

(1) *United States v. Sanders*, 2:18-cr-01025-LRR-MAR (N.D. Iowa) (criminal proceedings), judgment entered February 27, 2019.

(2) *United States v. Sanders*, 19-1497 (8th Cir.) (direct criminal appeal), judgment entered April 14, 2020.

TABLE OF CONTENTS

QUESTIONS PRESENTED ii

TABLE OF AUTHORITIES iv

OPINION BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 15

INDEX TO APPENDICES

APPENDIX A: Opinion of the Eighth Circuit Court of Appeals 04-14-2020 17

APPENDIX B: Judgment of the Eighth Circuit Court of Appeals 04-14-2020 .. 26

APPENDIX C: Eighth Circuit Court of Appeals Order Denying Petition for Rehearing En Banc 06-22-2020 27

TABLE OF AUTHORITIES

Cases:

Brigham City, Utah v. Stuart, 547 U.S. 398 (2006) 7, 10, 11

Cady v. Dombrowski, 413 U.S. 433 (1973) 7, 11

Florida v. Jardines, 133 S. Ct. 1409 (2013) 10

Georgia v. Randolph, 547 U.S. 103 (2006) 11

Kentucky v. King, 563 U.S. 452 (2011) 10

Mincey v. Arizona, 437 U.S. 385 (1978) 7, 11-12

Missouri v. McNeely, 569 U.S. 141 (2013) 13

Payton v. New York, 445 U.S. 573 (1980) 10

Smith v. Kansas City Police Department, 586 F.3d 576 (8th Cir. 2009) 9

Terry v. Ohio, 392 U.S. 1, 21 (1968) 9, 12

United States v. Harris, 747 F.3d 1013 (8th Cir. 2014) 15

United States v. Martinez, 643 F.3d 1292 (10th Cir. 2011) 15

United States v. Sanders, 956 F.3d 534 (8th Cir. Apr. 14, 2020) 7, 8, 9, 14

Welsh v. Wisconsin, 466 U.S. 740 (1984) 7, 8, 10

Rules:

Supreme Ct. Rule 10(a) 6

Supreme Ct. Rule 10(c) 6

IN THE SUPREME COURT OF THE UNITED STATES

NOVEMBER TERM, 2020

Kenneth Lamont Sanders - Petitioner,

vs.

United States of America - Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

The petitioner, Kenneth Lamont Sanders, through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in Case No. 19-1497, entered on April 14, 2020.

OPINION BELOW

On June 22, 2020, a panel of the Eighth Circuit Court of Appeals entered its opinion affirming the judgment of the United States District Court for the Northern District of Iowa. The decision is published and available at 956 F.3d 534 (8th Cir. Apr. 14, 2020). Mr. Sanders filed a petition for panel and *en banc* rehearing, which was denied on June 22, 2020.

JURISDICTION

The Court of Appeals entered its judgment on April 14, 2020, and denied Mr. Sanders's request for rehearing on June 22, 2020. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> 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.

STATEMENT OF THE CASE

On February 16, 2018, Mr. Sanders was involved in an argument with his girlfriend, Ms. LaFrancois. PSR ¶ 5.[1] Ms. LaFrancois's eleven year-old daughter, N.R., overheard the argument from her upstairs bedroom and contacted her grandmother. *Id.* N.R.'s grandmother called dispatch and requested a "well-check," reporting that, according to N.R., Ms. LaFrancois and her boyfriend, "Kenny," were "fighting real bad." Hr'g Ex. A. The grandmother stated there were three children in the house, ages 11, 7, and 1, but that she had no idea if the fight was physical, verbal, or involved weapons. *Id.*

With absolutely no additional information beyond that disclosed in the 911 call, Dubuque Police Officers Cross and Pregler responded to the call for a welfare check. Officer Cross observed someone "acting excited" and "gesturing" in an upper window of the two-story home as he proceeded up the home's walkway. Hr'g Tr. p. 12. Thereafter, Ms. LaFrancois answered officers' knock on the front door and stepped outside to speak with them. *Id.* pp. 12–13. She looked as though she had recently been crying and had a few red marks on her face and neck. *Id.*; Hr'g Exs. 6–8.

[1] In this brief, "DCD" refers to the district court docket, criminal Case No. 2:18-cr-01025-LRR-MAR in the United States District Court for the Northern District of Iowa. "Hr'g Tr." refers to the official transcript of the suppression hearing held February 26, 2019, available at DCD 20. "Hr'g Ex." refers to exhibits received by the district court during the suppression hearing. *See* DCD 40. "PSR" refers to the presentence report prepared for sentencing in the case. DCD 31.

Officers stated that N.R. called them, to which Ms. LaFrancois responded, "do not tell him that she called you guys." Hr'g Ex. 1. Officer Cross told Ms. LaFrancois they were there to ensure she is "safe" and "make sure no one is hurt back there." *Id.* She responded, "Yea, we're ok." *Id.* Officers state that "he" is still inside and ask if they can enter the house, but Ms. LaFrancois declines, stating she does not want the officers inside her home. *Id.* Officer Pregler states they need to "talk to him" and "either he comes here or I go there," to which Ms. LaFrancois responds, "I'll tell him to come out." Officer Pregler responds. "okay, that's fine."

With the officers' consent, Ms. LaFrancois opens the exterior and interior doors and crosses the threshold of the home. Hr'g Ex. 1. As she begins to close the interior door against the winter cold behind her, Officer Cross observes aloud to Officer Pregler that the "daughter is crying" inside the home. Hr'g Tr. pp. 14–15; Hr'g Ex. 1. Officer Cross continues, "at that point, we need to go in." Hr'g Ex. 1. Officer Pregler replies, "that's good enough for me." *Id.* They immediately cross the few steps of the porch and make entry into the home – all within four seconds of the time the interior door is fully closed, and within 50 seconds of their initial knock on the home's door. Hr'g Exs. 1, 2. Once inside, they eventually locate a gun, and Mr. Sanders is arrested, and later indicted, for being a prohibited person in possession of a firearm, in violation of 18 U.S.C. § 922(g).

Mr. Sanders filed a Motion to Suppress, arguing that no exception to the warrant requirement excused law enforcement's initial warrantless entry into his home, such that all evidence discovered thereafter must be suppressed. DCD 7-1. At

the suppression hearing, Officer Pregler testified that the aforementioned facts justified a warrantless entry under the community caretaker exception, because:

> [W]e had an unstable situation. There was obviously emotional people there. We had somebody upstairs, who we don't know who this person is. We don't know if there are any injuries. We don't know what's going on upstairs, We don't know what's going on in the house. Again, with the emotions that are going on, we've got to make sure everybody is ok.

Hr'g Tr. p. 15.

The district court denied Mr. Sanders's Motion to Suppress, finding the community caretaker exception justified law enforcement's initial warrantless entry. *See* DCD 16, 25. Mr. Sanders thereafter entered a conditional plea of guilty and was sentenced to 120 months incarceration for violating 18 U.S.C. § 922(g). DCD 17–18, 24–25, 41. On April 14, 2020, following briefing and oral argument, a panel of the Eighth Circuit Court of Appeals affirmed the district court's conclusion that the warrantless entry into Mr. Sanders's home was compliant with the Fourth Amendment, pursuant to the community caretaker exception. More specifically, it stated that the "justification for the officers' warrantless entry arises from their obligation to help a child or children that could be injured inside or to ensure the safety of the children." *Sanders*, 956 F.3d at 539. Mr. Sanders requested en banc and panel rehearing, but the Eighth Circuit denied his request on June 22, 2020. Eighth Circuit Case No. 19-1497, Entry ID: 4925794.

REASONS FOR GRANTING THE WRIT

Summary of the Argument

Less than fifty seconds after knocking on the door of Mr. Sanders's home to perform a welfare check, law enforcement forced their way inside without a warrant. Their justification? They suspected that Mr. Sanders's girlfriend, who appeared to have been crying and had a few red marks on her face, had been the victim of a domestic assault just prior to their arrival. Although Ms. LaFrancois assured the officers that she and her children were fine, she declined their request to go inside the house to speak to its occupants. With officers' express permission, however, she went back inside the house herself, in order to send Mr. Sanders out to speak to officers on the porch. As she did so, officers heard the sound of a child crying inside, and decided a warrantless entry was necessary to "make sure everybody is okay."

The Supreme Court should grant Mr. Sanders's petition for writ of certiorari because the published Eighth Circuit panel decision in this case drastically expands the scope of the community caretaker exception to the Fourth Amendment's warrant requirement, in direct conflict with relevant Supreme Court decisions. *See* Supreme Ct. Rules 10(a), (c).

The Eighth Circuit determined that law enforcement acted out of an appropriate community caretaking "obligation to help a child or children that *could be* injured inside or to *ensure* the safety of the children" because police: (1) "had reason to believe that a domestic violence suspect was inside the home with

children"; and (2) heard the sound of a child crying in a home known to contain children ages 11, 7, and 1. *Sanders*, 956 F.3d at 538 (emphasis added). Warrantless entries, however, are presumptively unreasonable, and exigent circumstances constitute only a *narrowly* drawn exception. A warrantless entry based on a "community caretaking" exigency requires specific and articulable facts supporting a reasonable belief by law enforcement that immediate action is necessary to address an existing emergency, which itself is sufficiently compelling to outweigh the Constitution's strong interest in protecting the sanctity of the home from governmental intrusion. *See Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984); *Brigham City, Utah v. Stuart*, 547 U.S. 398 (2006); *Mincey v. Arizona*, 437 U.S. 385 (1978); *Cady v. Dombrowski*, 413 U.S. 433 (1973). The facts and circumstances of this case fall woefully short of qualifying as an exigency that should be excused from the Fourth Amendment's warrant requirement. The now-binding Eighth Circuit decision must be vacated, and the case remanded with instruction that law enforcement's initial warrantless entry into Mr. Sanders's home was unlawful.

Argument

Because police did not obtain a warrant before entering Mr. Sanders's home, the burden was on the government to establish an exception to the Fourth Amendment's warrant requirement. *Welsh*, 466 U.S. at 749. Here, the government asserted, the district court found, and the Eighth Circuit agreed, that the "community caretaking" exception to the warrant requirement justified law enforcement's warrantless entry into Mr. Sanders's home. In particular, the Court of Appeals observed:

> The officers initially assented to allowing LaFrancois to go inside and get Sanders. However, when LaFrancois opened the door to the residence, the officers heard crying inside. After hearing the crying, the officers decided to enter the house to make sure that everyone was safe. They opened the door and saw Sanders and LaFrancois standing just inside the door and a crying infant located in a nearby playpen. . . .
>
> The record establishes that the officers had reason to believe that a domestic violence suspect was inside the home with children. When LaFrancois opened the door to get that suspect, the officers heard crying coming from inside. The justification for the officers' warrantless entry arises from their obligation to help a child or children that could be injured inside or to ensure the safety of the children. We conclude that the officers reasonably believed an emergency situation existed that required their immediate attention in the form of entering LaFrancois' home to ensure that no one inside was injured or in danger. The officers' warrantless entry was permissible under the community caretaker exception.

Sanders, 956 F.3d at 539–40 (emphasis added). The Court of Appeals additionally found that the "scope of the encounter was carefully tailored to satisfy the officers' purpose for the entry" because, after entering, officers separated Ms. LaFrancois

and Mr. Sanders, and found and talked to N.R., who provided an independent basis for their continued presence in the home. *Id*. p. 540.

The emphasized portions of the quoted passage demonstrates that the Court of Appeals, like Officer Pregler, erroneously concluded that the Fourth Amendment required no warrant because officers did not know who was waving in the window, did not know what was happening in the house, and did not know if anyone was injured inside. Hr'g Tr. p. 15. The community caretaking exception, however, does not authorize warrantless entry based merely on an officer's belief that a domestic violence suspect is inside a house with a child. *See, e.g.*, *Smith v. Kansas City Police Department*, 586 F.3d 576, 580 (8th Cir. 2009) (rejecting the argument that a domestic violence suspect being inside a home with a child was an exigent circumstance where there was no indication that the suspect posed any danger to the child, even though the victim reported an actual physical altercation). It does not allow police to enter a man's home simply because domestic violence situations, in general, can be more volatile than many other types of police calls. *See, e.g.*, *Terry v. Ohio*, 392 U.S. 1, 21 (1968) ("[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant that intrusion . . . in light of the particular circumstances."). Most importantly, the exception does not allow officers to go on a general investigative mission – no matter how noble – to "make sure that everyone [is] safe" or "ensure that no one inside [is] injured or in danger." *Sanders*, 956 F.3d at 539–40.

"It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980). "[T]he Fourth Amendment has drawn a firm line at the entrance to the house." *Id.* at 590. "At the Amendment's 'very core' stands 'the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013) (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). "[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *Welsh*, 466 U.S. at 748 (citation omitted).

Exigent circumstances constitute a *narrowly* drawn exception to the warrant requirement. *See Welsh*, 466 U.S. at 752. Before it will be excused from complying with the Fourth Amendment's warrant requirement, the government must satisfy a heavy burden of establishing that an exigency existed sufficient to overcome the presumptive unreasonableness that attaches to a warrantless entry of the home. *Id.* at 750; *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006) ("Warrants are generally required . . . unless 'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.") (citing *Mincey*, 437 U.S. at 393–94). The exigent circumstances exception authorizes immediate police action without necessity of a warrant *only* when lives are threatened, a suspect's escape is imminent, or to prevent the imminent destruction of evidence. *Kentucky v. King*, 563 U.S. 452, 461 (2011).

Where an officer reasonably believes that his entry is necessary to assist persons who are seriously injured or threatened with such injury, exigent circumstances exist under what is known as the emergency aid, or community caretaking functions exception. *See Brigham City*, *Utah,* 547 U.S. at 403. Community caretaking functions are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). Under the exception, a warrantless entry is permitted when an officer has an objectively reasonable belief that an emergency[2] exists requiring his or her attention. *See Mincey*, 437 U.S. at 392 ("The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." (quotation marks and citation omitted)); *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) ("No question has been raised, or reasonably could be, about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have *good reason to believe such a threat exists*.") (emphasis added). The belief must be based on specific and articulable facts establishing that "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless entry is objectively reasonable under the Fourth Amendment." *Mincey*, 437 U.S. at

[2] An "emergency" is defined as "an unforeseen combination of circumstances or the resulting state that calls for immediate action" or as "an urgent need for assistance or relief." Emergency, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/emergency?src=search-dict-hed (last visited November 1, 2020).

393–94 (some alterations and quotation marks omitted); *Terry*, 392 U.S. at 21 (1968).

At the time of their warrantless entry into Mr. Sanders's home, Officers Cross and Pregler knew *only* that a person who had reportedly been "fighting" with Ms. LaFrancois was inside the home with three children, ages 11, 7 and 1. The red marks on Ms. LaFrancois's face – which were obviously not life threatening – were the only indicator that the reported fight might have been physical. Assuming for the sake of argument that it was reasonable for officers to presume, without making any inquiry on the topic, that the red marks on Ms. LaFrancois's face were inflicted by way of physical violence, this still would not imply that *the children* had been victims of any violence, were in danger, or were in need of immediate assistance, which is the test for exigency. To the contrary, Ms. LaFrancois affirmatively told officers that both she and the children were fine, and officers were then comfortable enough with the *non-emergency* nature of the situation that they assented to her reentering the house, unaccompanied, to ask Mr. Sanders to come outside.

It surely cannot be enough to tip the balance that a child could be heard crying inside a home that officers knew contained three children, ages 11, 7, and 1. Were that the test, the Fourth Amendment warrant requirement would become meaningless, as the community caretaker exception would completely swallow the rule. Babies, children, and adults all cry, especially in the types of emotionally charged situations that generate domestic disturbance calls. Indeed, police no doubt encounter crying children on a regular, if not frequent, basis. The mere

sound of a child crying, however, is scant evidence of an "emergency" justifying police entry into a home without a warrant, even when coupled with a suspicion that a physical altercation between the child's parents may recently have occurred. It is certainly not evidence of an immediate and significant emergency that is so compelling Mr. Sanders's Fourth Amendment rights should be discarded.

Because the standard is objective, it is important to remember that the ultimate reasonableness of any warrantless entry turns on the *totality* of the circumstances, meaning that what officers did *not* know at the time of entry is equally as significant to the reasonableness of their warrantless entry as what they did know. *See Missouri v. McNeely*, 569 U.S. 141, 145 (2013) ("[C]onsistent with general Fourth Amendment principles, [a non-*per se*] exigency must be determined case by case based on the totality of the circumstances."). Here, however, the lower courts paid no attention at all to the innumerable facts in the record that significantly undercut any "reasonable officer belief" that an emergency existed inside the residence that *required* an immediate, warrantless entry. Officers did not observe any blood, disarray, or screaming before entering the home. They made entry less than 50 seconds after initially knocking on the door, knowing only that a "disturbance" had been reported, a woman had scratches on her face, a child was gesturing in a window, and another child was crying. They asked Ms. LaFrancois no questions about the cause of her perceived "injuries," who was inside the home, what happened prior to their arrival, or whether any occupant of the home possessed firearms, had violent tendencies, or had been involved in prior domestic

disturbances. When officers told Ms. LaFrancois they wanted to be sure she was safe, she assured them that both she and the children were okay. When Ms. LaFrancois politely declined officers' request to go inside the house, they were so unconcerned about the dangers of the situation that they expressly assented to her reentering the house to ask Mr. Sanders to come out.[3] When she opened the door and officers heard a child crying within, they didn't call out or make further inquiry about the source of the crying. They also didn't claim the crying was of some particularly agonizing-sounding variety or otherwise out of the ordinary in any way. Instead, it is clear on this record that both the subjective and objective motivation behind the warrantless entry was officers' desire to *investigate in the first instance* whether anyone inside the home was injured or needed their help. The Fourth Amendment, however, prohibits precisely such actions.

The facts of this case categorically do not present a situation where "police [needed to] make a split-second decision in the face of an emergency to either stand idly by, permitting a dangerous situation to continue uninterrupted, or act,

[3] It is troubling that the panel states in its recitation of facts that "LaFrancois was so adamant about keeping the officers outside and away from any other witnesses or evidence that might be inside the house that she volunteered to get Sanders to bring him outside." *Sanders*, 956 F.3d at 539. This statement is full of judgments and insinuations that are simply not supported by the record. Officers asked Ms. LaFrancois for permission to enter , and she politely told them she did not want law enforcement in her house. Hr'g Tr. p. 14; Hr'g Ex. 1. She had absolutely no obligation to allow, let alone invite, police into her home, and it is completely improper to assume, or even suggest, that she did so for any nefarious purpose.

addressing the potential danger to protect the public." *United States v. Harris*, 747 F.3d 1013, 1017–18 (8th Cir. 2014). There was no emergency or imminent danger, real or otherwise, and officers had no reasonable basis to think there was. While their intentions to protect the occupants of the home may have been honorable, that is not the test. Exceptions to the Fourth Amendment cannot be based on hunches and generic information about the risks of domestic violence situations, to the exclusion of the *actual* facts and circumstances of the situation at hand. On *this* record, there were simply no specific and articulable facts available to the officers at the time of their warrantless entry supporting a reasonable belief that an emergency existed inside the home that was so compelling, it required them to make an immediate, warrantless entry. Indeed, even if the minimal information officers knew at the time of entry justified them in having a heightened level of suspicion or concern, the proper course of action was for officers to make further inquiry to confirm or dispel their suspicions, not to barge into Mr. Sanders's home without a warrant. *See United States v. Martinez*, 643 F.3d 1292, 1299 (10th Cir. 2011) (emphasizing that the community caretaker exception to the warrant requirement does not authorize a warrantless intrusion into the "sanctity of the home" when there is a "mere possibility that someone inside is in need of aid" because "such a 'possibility' is ever-present." (emphasis added, citation omitted)).

CONCLUSION

Under the circumstances of this case, the mere possibility that an incidence of domestic incident *might* have occurred before police arrived, that *might* have

posed some unspecified danger to some unidentified person inside the house, was not sufficiently compelling to outweigh Mr. Sanders's fundamental constitutional interest in being free from governmental intrusion in his home. The community caretaker exception is inapplicable. Mr. Sanders respectfully requests that the Court grant certiorari, vacate the Eighth Circuit's decision, and remand the matter to the Court of Appeals for further proceedings.

RESPECTFULLY SUBMITTED,

/s/ Nova D. Janssen

Nova D. Janssen
Assistant Federal Public Defender
400 Locust Street, Suite 340
Des Moines, IA 50309
TELEPHONE: 515-309-9610
FAX: 515-309-9625

ATTORNEY FOR PETITIONER