No. 24-624

In the Supreme Court of the United States

WILLIAM TREVOR CASE., PETITIONER

v.

STATE OF MONTANA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

INTRODUCTION

The State disputes almost none of the reasons that this Court should grant review. The State agrees that the "standard[] for evaluating warrantless entries in emergency-aid situations" (BIO26) is "an issue of vital importance to citizens and law enforcement" (BIO32). The State also agrees there is a "split of authority" on the issue (BIO3)—that "[s]ome courts say probable cause isn't required," "but some say it is" (BIO1). The State even agrees with Case on how that split should be resolved on the merits, explaining that "*Brigham City*'s 'objectively reasonable basis' standard requires, in function if not in form, that officers have probable cause to believe someone is in danger and requires immediate assistance." BIO15. And the State concedes that this case "could provide a suitable vehicle" to resolve the split. BIO14.

The State's main argument that the split "does not require this Court's intervention" (BIO2) rests on the dubious premise that, "in practice courts apply probable cause," even when they say they are applying a lower standard (BIO26). But the courts adopting a "more lenient" standard did not idly opt against probable cause's "more stringent" requirements. *E.g.*, *United States* v. *Gambino-Zavala*, 539 F.3d 1221, 1225 (10th Cir. 2008). Rather, those courts have empowered police to enter a home on a mere "reasonable belief" of an ongoing emergency, *e.g.*, *State* v. *Curet*, 289 A.3d 176, 190 (Conn. 2023), precisely *because* of the "daylight" between that standard and probable cause (*cf.* BIO14-15). Nor can the State minimize the "differing standards" among the lower courts by suggesting they do not affect Fourth Amendment outcomes or lead to "the wrong result." BIO3. In this

case itself, the majority and dissent *agreed* that the controlling standard determined the constitutionality of the search, and courts on both sides of the split similarly held that the controlling standard was outcome-determinative.

The State's position ultimately rests on the premise that probable cause is no different than any other reasonableness inquiry. That premise cannot be squared with this Court's Fourth Amendment precedents, which carefully calibrate the level of suspicion required to conduct a particular search. Even if, as the State suggests, the lower courts are in denial over whether "there is daylight between *Brigham City*'s 'objectively reasonable basis' standard and probable cause" (BIO31), review would be warranted to provide needed clarity. Because home entries are inherently dangerous, police need a clear standard to balance the risks of harm to occupants and first responders. This Court should grant review.

I. The entrenched split over the quantum of proof required for warrantless home entry in emergency-aid scenarios is real and outcome-determinative.

1. There is no dispute that a deep split of authority exists on the question presented. The State concedes that "Case is right that many federal and state courts articulate ostensibly distinct standards for evaluating warrantless entries in emergency-aid situations." BIO26. The State agrees that "[t]he First, Eighth, and Tenth Circuits all say that *Brigham City*'s 'objectively reasonable basis' standard requires something less than probable cause." BIO16. And the State does not contest that Kansas, Connecticut, and Maryland all

apply a standard that is "more lenient than the probable cause standard." BIO21 & n.2 (quoting *State* v. *Hillard*, 511 P.3d 883, 902 (Kan. 2022)). On the other side of the scale, the State also agrees that "[t]he Second, Eleventh, and D.C. Circuits have all held that warrantless entries under the emergency-aid exception must be supported by probable cause." BIO23.

2. Despite this admitted "ostensible split of authority" (BIO3), the State insists that this Court should deny review. The State concedes that "*Brigham City*'s 'objectively reasonable basis' standard" is no "different from the probable cause standard." BIO15. And it also concedes that multiple courts have expressly held that the "objectively reasonable basis" standard "requires something less than probable cause." BIO16. Yet, even though "courts have articulated different standards" of proof (BIO14), the State asserts that the split is "largely illusory" because "in practice courts apply probable cause or something close to it" (BIO26).

On a matter as "serious" as "the sanctity of the home," *Hudson* v. *Michigan*, 547 U.S. 586, 603 (2006), it would be alarming if courts publicly announced a lower standard for entry, while privately applying the probable cause standard. Even if the State were correct—and it is not—review is warranted because courts should not be articulating the wrong legal standard on a matter that the State admits is of "vital importance." BIO32.

3. In any event, the State is wrong: courts explicitly applying a "more lenient standard," *Gambino-Zavala*, 539 F.3d at 1225, have meant what they said, accepting less than probable cause as sufficient to permit entry into a home, *see* Pet. 14-17.

a. The State reasons that because the Courts applying a lower standard nevertheless undertake an objective totality-of-the-circumstances inquiry, they are *really* requiring probable cause, "in function if not in form." BIO2; *ibid.* at 8-19, 21. For example, the State claims that Kansas and Connecticut apply a standard that "closely approximates probable cause" because they consider "whether the totality of circumstances created a reasonable belief" that someone inside "may need immediate aid." BIO21 (quoting *Hillard*, 511 P.3d at 902). And it asserts that Maryland also effectively requires probable cause, because it "requires courts to consider whether an officer had 'reasonable grounds to believe'—based on 'specific and articulable facts'—that an emergency existed." BIO21 (quoting *State* v. *Alexander*, 721 A.2d 275, 285 (Md. Ct. Spec. App. 1998)).

But undertaking an objective, totality-of-the-circumstances inquiry hardly means these courts are requiring that totality to add up to probable cause. After all, "the ultimate touchstone of the Fourth Amendment is 'reasonableness,'" regardless of the applicable quantum of proof in any given case. *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006). As with probable cause, "totality of the circumstances" is the "principle which governs the existence *vel non* of 'reasonable suspicion.'" *United States* v. *Arvizu*, 534 U.S. 266, 275 (2002). Yet this Court has been clear that "'reasonable suspicion' is a less demanding standard than probable cause." *Illinois* v. *Wardlow*, 528 U.S. 119, 123 (2000). The State's position conflates those standards and negates this Court's body of Fourth Amendment law establishing different quanta of proof for different circumstances.

Kansas's and Connecticut's consideration of the totality of the circumstances does not mean they required probable cause. And Maryland's reference in *Alexander* to "specific and articulable facts" is an unmistakable reference to this Court's *Terry* standard for establishing reasonable suspicion, not probable cause. *See Kansas* v. *Glover*, 589 U.S. 376, 384-85 (2020); *Navarette* v. *California*, 572 U.S. 393, 397 (2014).

b. According to the State, the First and Eighth Circuits exemplify how courts purporting to apply a less stringent standard are really approximating probable cause. BIO16-17 (discussing *Hill* v. *Walsh*, 884 F.3d 16 (1st Cir. 2018), and *United States* v. *Quarterman*, 877 F.3d 794 (8th Cir. 2017)). But neither *Hill* nor *Quarterman* considered whether the totality of the circumstances supported a "fair probability" or "substantial chance" that an ongoing emergency existed, as is required under a probable cause standard. *See Illinois* v. *Gates*, 462 U.S. 213, 238, 245 n.3 (1983). If anything, these precedents illustrate why a lower standard may lead courts to "the wrong result." BIO3.

In *Hill*, the officers entered a home to execute a civil commitment warrant for the homeowners' son, who had previously overdosed and threatened suicide at his own apartment building. 884 F.3d at 19-20. In deeming the warrantless entry objectively reasonable, *Hill* took pains to emphasize that "the government need not show probable cause" to invoke the emergency-aid exception. *Ibid.* at 23. And the "daylight" between those standards might well have mattered in that case. Although the civil warrant listed the parents' home address and the officers "thought they saw" movement inside, the warrant specifically indicated

the son was "CURRENTLY AT MORTON HOSPITAL"—not at his parents' home. *Ibid.* at 19.

A recent decision from the Eighth Circuit—issued after the Petition—further illustrates how its more lenient standard allows emergency-aid entries that would be invalid under a probable cause standard. In *Dimock* v. *City of Brooklyn Center*, a 911 caller alleged that his grandson had threatened him with a knife and hammer, but then told the operator to "forget it." 124 F.4th 544, 549 (8th Cir. 2024). Officers knew the grandson had stabbed himself before, but when they responded to the home, the grandfather greeted them and said that his grandson was "going to be ok." *Ibid.* The officers nevertheless entered. *Ibid.*

The Eighth Circuit deemed the entry reasonable, even though "the presence of a weapon inside [a] home does not necessarily create exigent circumstances" and the officers did not observe the grandson making "any quick movements before they entered." *Ibid.* at 551. Crucial to that result was the court's reliance on the principle that "officers may enter a home without a warrant or even probable cause" to provide emergency aid. *Ibid.* at 550-51 (quoting *Quarterman*, 877 F.3d at 800). The outcome would have been different had the court required a "fair probability" of an *ongoing* emergency, given the grandson's repose at the scene and his grandfather's assurance that he would "be ok."

c. The State's efforts to harmonize the less demanding standard applied by other state and federal courts with probable cause are equally meritless. BIO22-23. It overlooks the Ninth Circuit's use of the word "suspect" in "'objectively reasonable basis' to *suspect*," *Hopkins* v. *Bonvicino*, 573 F.3d 752, 765 (9th Cir.

2009) (emphasis modified)—which is the crux of Case's argument that the Ninth Circuit applies a reasonable suspicion standard rather than probable cause. As for the Fourth Circuit, the State insists "it's not clear" whether that court applies a reasonable suspicion standard, even though the Fourth Circuit admittedly "evaluates exigency in the context of seizures traditionally covered by *Terry*." BIO22. By invoking *Terry* and focusing its inquiry on "specific" and "articulable facts," the Fourth Circuit evidently equated *Brigham City*'s standard for emergency-aid entries with the less demanding *Terry* test. *United States* v. *Curry*, 965 F.3d 313, 326 (4th Cir. 2020).

As for the other jurisdictions that have adopted a less demanding test in emergency-aid cases, the State admits that cases from California, Oregon, South Dakota, Tennessee, Michigan, and Ohio "use language common to *Terry*'s 'reasonable suspicion' test." BIO23 n.3. The State downplays this relaxed standard because those courts recite *Brigham City*'s "objectively reasonable belief" language. *Ibid.* That is not only inconsistent with the State's frontline position that "*Brigham City*'s 'objectively reasonable basis' standard doesn't require courts to consider anything different from the probable cause standard" (BIO15), but also inconsistent with this Court's precedents defining the *Terry* standard as distinct from probable cause.

3. The State ultimately claims that the courts should not be taken at their word. In the State's telling, "courts across the country" have "essentially applied the same standard" even though they have "articulated seemingly distinct standards." BIO3. The cases confirm, however, that this is not a situation

where courts are using different phrasings, without established legal meaning, to grasp the same concept.

As the State admits, there is "[n]o doubt" that, unless this Court intervenes, "the use of different formulations" in emergency-aid cases risks "sowing deeper confusion among federal and state courts." BIO32. Indeed, that confusion includes open conflict between at least two states and their coordinate federal Circuits. Pet. 21-22.

II. This case offers a clean opportunity to clarify a recurring issue of vital importance.

The State agrees that the question presented is "an issue of vital importance to citizens and law enforcement" (BIO32), as flagged by three Justices in *Caniglia* v. *Strom*, 593 U.S. 194 (2021). It also "agrees that this case could provide a suitable vehicle" to address the question and "clarify the 'contours of the exigent circumstances doctrine as applied to emergency-aid situations.'" BIO14 (quoting *Caniglia*, 593 U.S. at 206 (Kavanaugh, J., concurring)); *accord* BIO32 (conceding that if there is "a deep and intractable split" on how "courts should evaluate warrantless entries under the emergency-aid exception," then "Case's petition provides a suitable vehicle to address that split").

The State's concessions are well taken. The Montana Supreme Court's 4-3 decision tracks the broader split discussed above and illustrates how that split can be outcome-determinative. The State's half-hearted claim that this case is nonetheless "not an *ideal* vehicle" (BIO31) (emphasis added) rests on its suggestion that the majority and dissent "diverged" on

their "read of the record" (BIO12), and that their disagreement carries no functional significance (BIO31). Both arguments fail.

1. The State insists that the "disconnect" between the majority and dissent below "boils down to different views" of "the factual record," making review unnecessary "[b]ecause this Court does not grant certiorari to resolve factual disputes." BIO3; *accord* BIO29. The State has it backwards—in its own words, the dispute below involved "doctrinal disagreements" (BIO29) about what quantum of proof to measure the facts against, not a disagreement about the facts themselves. The facts surrounding the entry, which were recorded in bodycam footage (Pet.App.19a, 39a), were undisputed. The majority and dissent simply "emphasized" (BIO13) different undisputed facts to reach opposite outcomes under their "competing emergency-aid standards" (BIO31).

2. The State does not dispute that the Montana Supreme Court's split decision showcases the disagreement over whether police making a warrantless entry to render emergency-aid must have probable cause to believe an ongoing emergency exists, or whether a lower degree of suspicion is sufficient. The majority held that police may make a warrantless entry if there are "objective, specific and articulable facts from which an experienced officer would *suspect* that a citizen is in need of help or is in peril." Pet.App.12a-13a (emphasis added). According to the majority, the more rigorous probable cause requirement is limited to "criminal investigation[s]." Pet.App.15a. By contrast, the dissent reasoned that "the probable cause requirement under the exigency exception is not limited to only the commission of a criminal offense but

applies to whether there is probable cause to believe a person is in imminent peril and in need of help." Pet.App.24a.

a. Just as with the broader split, however, the State contends that "[e]ven though the majority and the dissent articulated seemingly distinct standards, they (like other courts across the country) essentially applied the same standard." BIO3. But the mere fact that both assessed the officers' entry based upon "the facts in the record" does not mean that they applied the same quantum of proof. *Ibid.* Indeed, the majority *explicitly* rejected the requirement of "probable cause to believe a person is in imminent peril and in need of help," contending that such a requirement would be an "unprecedented formulation of law." Pet.App.15a.

The State is thus wrong that "the majority opinion applied the appropriate standard." BIO32. To the contrary, the majority expressly applied what both sides now agree was the *wrong* standard. After all, the State repeatedly *agrees* with Case on the merits of the question presented—*i.e.*, that "*Brigham City*'s 'objectively reasonable basis' standard requires, in function if not in form, that officers have probable cause to believe someone is in danger and requires immediate assistance." BIO2; *see also ibid.* (treating the *Brigham City* standard as "probable cause by any other name"); BIO15 ("*Brigham City*'s 'objectively reasonable basis' standard doesn't require courts to consider anything different from the probable cause standard"); *ibid.* (contending that the "daylight between probable cause" and *Brigham City*'s "'objectively reasonable basis' [standard] is difficult, if not impossible, to see"). Again, the State asks this Court

to assume that the Montana Supreme Court either misunderstood what it was actually doing or rebuked the dissent for demanding probable cause while at once applying the probable cause standard itself. This makes no sense, and if true, would simply be a further reason to grant review.

b. The decision below also illustrates the real-world consequences of the split. The majority applied a standard lower than probable cause and upheld the warrantless entry, which led to the police *shooting* Case. *See* Pet.App.16a-17a. But the dissent applied a probable cause standard to determine that the police's warrantless entry *violated* the Fourth Amendment. *See* Pet.App.25a. In other words, the choice of standard determined the constitutionality of the warrantless entry culminating in a violent confrontation. And the State does not dispute that this issue controls not only the trial court's suppression ruling, but also the State's prosecution against Case.

The State insists that the majority's and dissent's "competing emergency-aid standards yield only chimeric differences in practice." BIO31. But reaching *opposite* outcomes—one upholding and the other invalidating a search—is hardly a "chimeric difference[]." *Ibid.* Indeed, the fact that the majority and dissent applied "competing emergency-aid standards" only highlights why this case is an "ideal," and not just "suitable," vehicle. *Cf. ibid.* Unlike many of the other cases entangled in the split, the decision below here involved competing opinions advocating for each side of the split.

The State similarly contends that "[r]esolving the proper standard of proof wouldn't yield a different outcome" (BIO3), so the majority opinion "reached the

correct result" (BIO32). The State is wrong. Applying the "proper standard of proof" *would* "yield a different outcome" (BIO3) because the record does not establish probable cause for an ongoing emergency. As the dissent explained, the officers "arrived at a vacant and silent residence with no signs of an active emergency in progress" and "waited nearly an hour before making entry," Pet.App.29a (McKinnon, J., dissenting). Though they were responding to a call from Case's ex-girlfriend expressing concern that Case was suicidal, the officers all knew that Case had "tried suicide by cop before" and commented "that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." *Ibid.* Given all the undisputed facts, there was "no probable cause to believe Case was in imminent peril and in need of immediate assistance." Pet.App.30a (McKinnon, J., dissenting). To the contrary, the facts suggested that entering Case's home would itself create a risk of fatal confrontation.

CONCLUSION

Certiorari should be granted.

Respectfully submitted,

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