No. 24-624

IN THE
Supreme Court of the United States

WILLIAM TREVOR CASE,
Petitioner,
v.
MONTANA,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of Montana

BRIEF OF PROFESSOR MICHAEL J.Z. MANNHEIMER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party other than *amicus* or his counsel made a monetary contribution intended to fund the preparation or submission of this brief.

[2] The views expressed herein are those of the individual amicus, not of any institutions or groups with which he is affiliated.

SUMMARY OF ARGUMENT

1. The Fourth Amendment prohibits "unreasonable searches and seizures," U.S. Const. amend. IV, and "searches and seizures inside a home without a warrant are presumptively unreasonable." *Kentucky v. King*, 563 U.S. 452, 459 (2011) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2004)). The Court has confirmed, however, that the ultimate touchstone under the Fourth Amendment is *reasonableness*, and accordingly there are circumstances in which the search of a home, even in the absence of a warrant, is entirely reasonable. *Id.*

Petitioner nonetheless argues that "constitutional text and first principles, precedent, the common law, and the relevant interests . . . all point to the same answer: to make a warrantless home entry on emergency-aid grounds, the State must have probable cause to believe someone is in urgent need of help." Pet. Br. 14. That assertion is wrong. This Court has rightly recognized that police officers have a community-caretaking role distinct from their role as crime fighters and that searches justified by community-caretaking concerns should be treated differently under the Fourth Amendment. Contrary to Petitioner's argument, this Court has not rejected a community-caretaking exception to the warrant requirement but has instead recognized that the community-caretaking role may, in appropriate circumstances, justify a warrantless search of a home under a lower standard than probable cause.

2. It is undisputed that exigencies specific to the crime-fighting context require a showing of probable cause before police may conduct a warrantless search.

In such crime-fighting circumstances, this Court has held that the Fourth Amendment requires probable cause to believe both that a crime has been committed or evidence thereof is on the premises *and* that an exigency exists such that proceeding immediately, without a warrant, is justified.

At the same time, the Court has recognized that there are some exigent circumstances unrelated to fighting crime that require immediate action to protect the community. Responding to those dangers without first obtaining a warrant is part of the community caretaking required of law enforcement, including tasks such as rendering "emergency aid" to injured people or protecting them from imminent injury even if they are within their own homes.

In the context of community-caretaking exigencies, the Court has regularly described the standard that must be met to justify a warrantless search as something less than probable cause. The Court has often described that standard in terms such as an "objectively reasonable basis [to] believe[]" the exigency exists. *See, e.g.*, *Brigham City*, 547 U.S. at 406 ("objectively reasonable basis [to] believe[]"); *Georgia v. Randolph*, 547 U.S. 103, 118 (2006) (explaining that "so long as [officers] have good reason to believe" that there is a threat of domestic violence, the officers may lawfully enter the home without a warrant); *Michigan v. Fisher*, 558 U.S. 45, 47 (2009) ("[The emergency aid exception] requires only 'an objectively reasonable basis for believing' that 'a person within [the house] is in need of immediate aid'" (second alteration in original) (citations omitted) (first quoting *Brigham City*, 547 U.S. at 406, then quoting

Mincey v. Arizona, 437 U.S. 385, 392 (1978))); *Mincey*, 437 U.S. at 392 (collecting cases approving warrantless searches where officers "reasonably believe that a person . . . is in need of immediate aid"). This objectively reasonable basis to believe standard should be applied to actions such as those of the officers in this case.

3. The concept of probable cause is well recognized and widely used. Although the concept is "incapable of precise definition," the Court has summarized it as "a reasonable ground for belief of guilt, . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citation omitted). If the Court intended the probable cause standard to apply to searches in furtherance of community-caretaking functions, it would have used that established term.

But it has not done so. Instead, the Court has held that a reasonable basis to believe that an emergency requiring police assistance exists is sufficient to support a warrantless search when pursuing community care. The Court's use of language similar to "reasonable basis to believe" in other contexts confirms that it must mean something different from and lesser than probable cause.

Thus, for example, in *Arizona v. Gant*, 556 U.S. 332 (2009), the Court held that a search of a vehicle incident to a lawful arrest is permissible, even if the arrestee is secured and not within reaching distance of the vehicle, if it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Id.* at 343 (quoting *Thornton v. United*

States, 541 U.S. 615, 632 (2004) (Scalia, J., concurring in the judgment)). If *Gant* required probable cause to justify the warrantless search, the decision would have been unnecessary and meaningless because the Court's prior decision in *Carroll v. United States*, 267 U.S. 132 (1925), and its progeny already permit such a search.

4. The objectively reasonable basis to believe standard is functionally equivalent to the reasonable suspicion standard set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). In that case, the Court approved warrantless stop-and-frisk searches and seizures where an officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* at 21. In other words, reasonable suspicion is enough if one is assessing only the presence of danger, not seeking evidence to support a criminal charge.

The reasonable suspicion standard as articulated in *Terry* is unquestionably a lower standard than probable cause. In explaining the rationale for adopting that lower standard, the Court emphasized the community-caretaking function of law enforcement "to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." *Id.* at 24.

5. Treating exigencies related to community caretaking, such as those in this case and in *Brigham City*, differently from exigencies related to crime fighting dovetails perfectly with this Court's special needs cases. Those cases cover a broad spectrum of situations in which government actors conduct searches or seizures for reasons unrelated to crime

fighting. In each of those situations, the Court has held that government agents need, at most, reasonable suspicion to search or seize.

Programmatic searches and seizures not focused on any particular individual and motivated by safety concerns typically require no suspicion at all. In these types of cases, the programmatic purpose of the search or seizure demonstrates that suspicion is irrelevant, and the routinized and standardized nature of the search or seizure replaces individualized suspicion to cabin police discretion.

Even where safety-related searches or seizures are focused on an individual, government officials still need less than probable cause to conduct them. For example, a school official may conduct a reasonable search of a student whenever there is reasonable suspicion that the student possesses contraband on school grounds. *See New Jersey v. T.L.O.*, 469 U.S. 325, 340–42 (1985); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 371 (2009). And even a lengthy detention at an international border is justified so long as there is reasonable suspicion that the traveler is carrying dangerous contraband. *See United States v. Montoya de Hernandez*, 473 U.S. 531, 541 (1985). That the contraband in either case might be unlawful to possess does not alter the fact that these searches and seizures are performed with the objective purpose of protecting the public, not fighting crime.

6. The officers who entered the Petitioner's home on September 27, 2021, did so as community caretakers, based on a reasonable suspicion that Petitioner either had or was about to inflict grave

injury upon himself or others. They entered his home in an attempt to prevent violence and save a life, not to arrest Petitioner or investigate any crime. Upon entering Petitioner's home, the officers did not inspect its contents for evidence of any crime. To the contrary, they sought to locate the Petitioner to check on his well-being. Those reasonable actions were consistent with officers' role as community caretakers rather than as crime fighters. Consistent with that role, their entry into Petitioner's home need only satisfy a standard of reasonable suspicion, which it did.

ARGUMENT

The central question in this case is whether police officers may enter a home to facilitate community-caretaking activities without a warrant based on something less than probable cause that an emergency is occurring. Under this Court's precedents and sound application of Fourth Amendment principles, the answer to that question is yes. Petitioner's argument to the contrary fails to honor this Court's precedents recognizing that the ultimate touchstone under the Fourth Amendment is *reasonableness.*

I. The Court has embraced, not rejected, a community-caretaking exception to the warrant requirement based on less than probable cause.

It is well established that searches conducted in response to certain exigent circumstances are excepted from the Fourth Amendment's warrant requirement. *See, e.g.*, *Brigham City*, 547 U.S. at 403 ("[W]arrants are generally required to search a

person's home or his person 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." (quoting *Mincey*, 437 U.S. at 393–94)). Whether warrantless entries into a home must be supported by probable cause or, instead, reasonable suspicion, depends upon what role the officer fulfills in making the entry. The role of a "peace officer" is myriad, including preventing violence, restoring order, and rendering first aid to casualties. *Caniglia v. Strom*, 593 U.S. 194, 199 (2021) (Roberts, C.J., concurring). Thus, "[a] variety of circumstances may give rise to an exigency sufficient to justify a warrantless search," including the need to provide emergency assistance to an individual, put out a fire in a burning building and investigate its cause, or prevent the destruction of evidence. *Missouri v. McNeely*, 569 U.S. 141, 149 (2013).

Recognizing the many distinct roles police officers play, and society's varying tolerance for intrusions based on those differing roles, this Court's precedents distinguish between exigent circumstances that are related to crime fighting (requiring probable cause) and those related to community caretaking (*not* circumscribed by probable cause). *See, e.g.*, *id.* (noting that community-caretaking exigencies and crime-fighting exigencies "do not necessarily involve equivalent dangers"). The Court correctly values police officers' role in society as caretakers, and gives police more leeway in circumstances where they are acting to protect people from imminent dangers.

Petitioner argues that the "Court rejected any 'freestanding community-caretaking exception' in *Caniglia v. Strom*, 593 U.S. 194, 197–98 (2021)," and from there extrapolates that the Court must have rejected a lower standard for community caretaking writ large. Pet. Br. 1, 33–34. Not so. In *Caniglia*, the police entered a home without a warrant, after the emergency had passed, to collect weapons, contrary to the express wishes of the owner, who was by then safely in police custody. 593 U.S. at 196–97. The *Caniglia* Court thus rejected "an open-ended license" for police to enter "anywhere" under the guise of "community caretaking," and, therefore, *Caniglia* stands for the commonsense proposition that police may not use the guise of caretaking to enter the sanctity of a private home under non-exigent circumstances. *Id.* at 199.

That holding is a far cry from requiring police to meet the high standard of "probable cause" whenever they enter a dwelling as community caretakers. A search based on reasonable suspicion instead of probable cause, limited to what is necessary under exigent circumstances to protect the community, is consistent with *Caniglia* and the Fourth Amendment. *See, e.g.*, *Terry*, 392 U.S. at 29 ("The sole justification of the search in the present situation is the protection of the police officer and others nearby, and it must therefore be confined in scope.").

In the same way that this Court's rejection of a "generalized" license to frisk in *Ybarra v. Illinois*, 444 U.S. 85, 92–94 (1979), left the central holding of *Terry* intact, *Caniglia* leaves room for searches based on reasonable suspicion in other, narrower, community-

caretaking scenarios than the one purportedly presented there. As Justice Alito observed in his concurrence, "[w]hile there is no overarching 'community caretaking' doctrine, it does not follow that all searches and seizures conducted for non-law-enforcement purposes must be analyzed under precisely the same Fourth Amendment rules developed in criminal cases. Those rules may *or may not* be appropriate for use in various non-criminal-law-enforcement contexts." *Caniglia*, 593 U.S. at 200–01 (Alito, J., concurring) (emphasis added). Petitioner entirely ignores that reasoning, drawing instead the erroneous conclusion that a reasonable suspicion standard for community caretaking in exigent circumstances "contravenes *Caniglia*." Pet. Br. 1. No such conclusion follows if one reads the actual text of this Court's opinion and accompanying concurrences.

II. Exigencies related to crime fighting require a higher showing to justify an exception to the Fourth Amendment's warrant requirement than do those related to community caretaking.

A. It is undisputed that exigencies specific to the crime-fighting context require a showing of probable cause before police may conduct a warrantless search consistent with the Fourth Amendment. These exigencies include preventing the imminent destruction of evidence or escape of a suspect or facilitating the hot pursuit of a fleeing felon. All these circumstances focus primarily on enabling police officers to curb and later prosecute criminal activity,

even if they arguably implicate community-caretaking concerns incidentally.

In such crime-fighting circumstances, this Court has held that the Fourth Amendment requires probable cause to believe both that a crime has been committed or evidence thereof is on the premises *and* that an exigency exists such that proceeding immediately, without a warrant, is justified.

For example, in *Minnesota v. Olson*, 495 U.S. 91 (1990), the Court held that a warrantless search to apprehend a suspect in a bank robbery and murder case violated the Fourth Amendment. While there was probable cause to believe the crime had been committed and the perpetrator was within the house, the police did *not* have probable cause to believe there were any exigent circumstances sufficient to negate the usual warrant requirement. *Id.* at 96–101. In reaching that conclusion, the Court emphasized that the suspect was merely the non-violent getaway driver, the murder weapon had already been recovered, the police did not have any reason to suspect other individuals in the house were in danger and the police had the house surrounded such that the "suspect was going nowhere." *Id.* at 101. Thus, viewed objectively, the police officers' primary motivation in making their warrantless entry was crime fighting—namely, apprehending a suspect who was in no danger of escaping. Probable cause was therefore necessary to justify an exception to the warrant requirement.

By the same token, the Court has permitted warrantless searches when the police had probable cause to believe a search was necessary due to a crime-

fighting exigency. For example, in *Cupp v. Murphy*, 412 U.S. 291 (1973), the Court held that sampling a suspect's fingernails, over his objection and without a warrant, did not violate the Fourth Amendment based on exigent circumstances. The Court explained that the police had probable cause to believe that the suspect had murdered his wife and that "highly evanescent" evidence of the crime might be destroyed because the suspect, "obviously aware of the detectives' suspicions," began rubbing his fingers together and fidgeting with his keys or other objects in his pockets, suggesting that he was attempting to destroy evidence. *Id.* at 294–96. As in *Olson*, any objective observer would conclude that the police in *Cupp* were motivated primarily by crime fighting because the murder had already been committed and there was no reason to believe the suspect was a danger to others. But unlike in *Olson*, probable cause existed to believe evidence was in imminent danger of being destroyed, thus justifying the warrantless search and seizure.

B. The Court has also recognized that there are some exigent circumstances unrelated to crime fighting that require immediate action to protect the community. Responding to those dangers without first obtaining a warrant is part of the community caretaking required of law enforcement, including tasks such as rendering "emergency aid" to injured people or protecting them from imminent injury even if they are within their own homes. *See, e.g.*, *Brigham City*, 547 U.S. at 402–03; *Fisher*, 558 U.S. at 47. For example, the Court has held that a warrantless entry onto a premises to contain or extinguish a fire and conduct an initial investigation of its cause is justified

because it serves a "vital social objective." *Michigan v. Tyler*, 436 U.S. 499, 507–11 (1978).

Community-caretaking exigencies are focused primarily on the health and safety of the public, even if they sometimes result in the discovery of evidence or other tasks adjacent to crime fighting. *Brigham City*, 547 U.S. at 405 (approving a warrantless entry into a home where officers had an objectively reasonable basis to believe someone was injured, even though the officers subsequently made arrests and collected evidence from the scene). In such situations, it is the "need to protect or preserve life or avoid serious injury," not any crime-fighting objective, that gives rise to the exigency justifying an exception to the Fourth Amendment's warrant requirement. *Mincey*, 437 U.S. at 392 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (opinion of Burger, J.)).

In the context of community-caretaking exigencies, the Court has regularly described the standard that must be met to justify a warrantless search as something less than probable cause. The Court has often described that standard as an "objectively reasonable basis [to] believe[]" the exigency exists or a similar formulation. *See, e.g.*, *Brigham City*, 547 U.S. at 406 ("objectively reasonable basis [to] believe[]"); *Randolph*, 547 U.S. at 118 (explaining that "so long as [officers] have good reason to believe" that there is a threat of domestic violence, the officers may lawfully enter the home without a warrant); *Fisher*, 558 U.S. at 47 ("[The emergency aid exception] requires only 'an objectively reasonable basis for believing' that 'a person within [the house] is in need of immediate aid'" (second alteration in

original) (citations omitted) (first quoting *Brigham City*, 547 U.S. at 406, then quoting *Mincey*, 437 U.S. at 392)); *Mincey*, 437 U.S. at 392 (collecting cases approving warrantless searches where officers "reasonably believe that a person . . . is in need of immediate aid"). This objectively reasonable basis to believe standard should be applied to actions such as those of the officers in this case.

III. The objectively reasonable basis to believe standard is different from and lower than the probable cause standard.

A. The concept of probable cause is well recognized and widely used. Although the concept is "incapable of precise definition," the Court has summarized it as "a reasonable ground for belief of guilt, . . . and that the belief of guilt must be particularized with respect to the person to be searched or seized." *Pringle*, 540 U.S. at 371 (citation omitted). If the Court intended the probable cause standard to apply to searches in furtherance of community-caretaking functions, it would have used that established term.

But the Court has not invoked probable cause in the context of community caretaking. Rather, the Court has held that a reasonable basis to believe that an emergency requiring police assistance exists is sufficient to support a warrantless search when pursuing community care. The Court's use of language similar to "reasonable basis to believe" in other contexts confirms that it must mean something different from and lesser than probable cause.

For example, this Court long ago established the automobile exception to the Fourth Amendment's

warrant requirement, pursuant to which officers may search a car without a warrant if they have probable cause to believe that it contains evidence of a crime or contraband. *Carroll*, 267 U.S. at 155–56. Later, in *Gant*, 556 U.S. 332, the Court held that a search of a vehicle incident to a lawful arrest is permissible, even if the arrestee is secured and not within reaching distance of the vehicle, if it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Id.* at 343 (quoting *Thornton*, 541 U.S. at 632 (Scalia, J., concurring in the judgment)). If *Gant* required probable cause to justify the warrantless search, the decision would have been unnecessary and meaningless because *Carroll* and its progeny already permit such a search. Accordingly, for the *Gant* holding to be meaningful, the Court's use of a "reasonable to believe" standard must mean something different than probable cause. And it is hard to imagine that the Court meant for "reasonable to believe" and "reasonable basis to believe" to mean two different things.

Likewise, in *Payton v. New York*, 445 U.S. 573 (1980), this Court held that officers are not allowed to enter a suspect's home without a warrant to make an arrest, even if they have probable cause to believe the suspect committed a crime and is in the home. The Court further clarified that, if officers obtain an arrest warrant supported by probable cause, they may then enter the suspect's home, even without a separate search warrant, if "there is *reason to believe* the suspect is within." *Id.* at 603 (emphasis added). Thus, in the same breath, the *Payton* Court explicitly distinguished the requisite standard necessary to secure an arrest warrant—probable cause—from the

requisite standard necessary to enter the suspect's home pursuant to the arrest warrant but without a separate search warrant—requiring only a reason to believe the suspect was within. Again, if those two standards meant the same thing, the Court's rationale in *Payton* would make no sense.

B. The "objectively reasonable basis to believe" standard is functionally equivalent to the reasonable suspicion standard set forth in *Terry*. In that case, the Court approved warrantless stop-and-frisk searches and seizures where an officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. In other words, reasonable suspicion is enough if all one is assessing is the presence of danger, not seeking evidence to support a criminal charge. The Court held that a police officer's observation of men acting in a manner that was consistent with "contemplating a daylight robbery" was "enough to make it quite reasonable to fear that they were armed" and justified a search for "the protection of the police officer and others nearby," even though the officer did not have probable cause to arrest the men. *Id.* at 28–29.

The reasonable suspicion standard as articulated in *Terry* is unquestionably a lower standard than probable cause. In explaining the rationale for adopting that lower standard, the Court emphasized the community-caretaking function of law enforcement "to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest." *Id.* at 24.

As with *Terry*, the exigency in *Brigham City* was the "need to protect or preserve life or avoid serious injury," which was sufficient to allow the officer to "enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Brigham City*, 547 U.S. at 403. In that case, the officers were responding to noise complaints, could hear an altercation occurring as they arrived on the scene, observed a "fracas . . . taking place inside the kitchen," and witnessed a juvenile in the kitchen punch an adult in the face, drawing blood. *Id.* at 406. The Court held that, under the circumstances, the officers had "an objectively reasonable basis for believing both that the injured adult might need help and that the violence in the kitchen was just beginning," and, thus, the Fourth Amendment did not require the officers to wait until things got worse before taking action to protect people.

Brigham City itself demonstrates that the objectively reasonable basis to believe standard is effectively the same as the reasonable suspicion standard described in *Terry*. In both cases, the Court looked to specific facts that, when considered as a whole, supported a rational inference that immediate police intervention was needed such that the warrantless intrusion was reasonable.

IV. Distinguishing community caretaking from investigative search and seizure follows from this Court's precedents in the special needs context.

Treating exigencies relating to community caretaking, such as those in this case and in *Brigham*

City, differently from exigencies relating to crime fighting, such as those in *Olson* and *Cupp*, dovetails perfectly with this Court's special needs cases. Those cases cover a broad spectrum of situations in which government actors conduct searches or seizures for reasons unrelated to crime fighting. In each of those situations, the Court has held that government agents need, at most, reasonable suspicion to search or seize.

Programmatic searches and seizures not focused on any particular individual and motivated by safety concerns typically require no suspicion at all. For example, to foster highway safety, police may set up checkpoints and briefly seize drivers on the road with no suspicion at all. *See generally Mich. Dep't of State Police v. Sitz*, 496 U.S. 444 (1990); *see also Delaware v. Prouse*, 440 U.S. 648, 656–57 (1979) (opining in *dicta* that a fixed checkpoint to enforce a licensing scheme would be constitutional). Likewise, police need no individualized suspicion to search the person of an arrestee or to make an inventory of items in an impounded vehicle. *See Illinois v. Lafayette*, 462 U.S. 640, 648 (1983); *South Dakota v. Opperman*, 428 U.S. 364, 369–71, 375–76 (1976). Nor is suspicion required to drug-test schoolchildren involved in extracurricular activities. *Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822, 827–28 (2002). In these types of cases, the programmatic purpose of the search or seizure demonstrates that suspicion is irrelevant, and the routine and standardized nature of the search or seizure replaces individualized suspicion to cabin police discretion.

Even where safety-related searches or seizures are focused on an individual, government officials still

need less than probable cause to conduct them. For example, a school official may conduct a reasonable search of a student whenever there is reasonable suspicion that the student possesses contraband on school grounds. *See T.L.O.*, 469 U.S. at 340–42; *Redding*, 557 U.S. at 371. And even a lengthy detention at an international border is justified so long as there is reasonable suspicion that the traveler is carrying dangerous contraband. *See Montoya de Hernandez*, 473 U.S. at 541. That the contraband in either case might be unlawful to possess does not alter the fact that these searches and seizures are performed with the objective purpose of protecting the public, not fighting crime.

Petitioner's effort to distinguish his situation from searches of lockers or cars based on the "sanctity" of the home falls flat. The Court has never treated the home as fundamentally different when it comes to ensuring community safety. In *Griffin v. Wisconsin*, 483 U.S. 868 (1987), for example, this Court upheld a regulation permitting probation officers to conduct searches of probationers' homes upon reasonable suspicion of possession of contraband or other items barred by the terms of probation. Likewise, the Court expressly approved the warrantless search of a premises based on reasonable suspicion—or sometimes none at all—that an individual posing a danger to the officers was present (the so-called "protective sweep" exception). *Maryland v. Buie*, 494 U.S. 325 (1990). By contrast, even when officers are lawfully in a home, they need probable cause, not just reasonable suspicion, to conduct subsidiary searches for evidence of a crime. *Arizona v. Hicks*, 480 U.S. 321 (1987).

To be sure, the Court has held that an administrative warrant based on probable cause is required for government officials to enter homes to conduct programmatic health and safety inspections. *Camara v. Mun. Ct. of San Francisco*, 387 U.S. 523, 538–39 (1967). But in such cases, there is no exigency requiring quick action. More to the point, the probable cause required in such cases is a far cry from the probable cause required to conduct a search or seizure when police are investigating crime. Rather, probable cause in that context refers to "reasonable legislative or administrative standards for conducting an area inspection." *Id.* These standards can be based on such facts as "the passage of time" or "the nature of the building" to be inspected. *Id.* That is to say, so long as all rental units in an area are inspected every two years, the fact that a home is a rental unit due for the biennial inspection itself constitutes probable cause under *Camara*. This specialized use of the term "probable cause" has no relevance to a search performed to head off an imminent danger.

When a person presents an imminent danger to the community (*i.e.*, other *people*), reasonable suspicion justifies a warrantless search for the limited purpose of ameliorating the danger. The need to protect the community and the justification for taking action do not take on lesser importance based on the location of the danger. Reasonable suspicion that a home contains a ticking timebomb justifies entry no less than if the bomb were in a briefcase, locker, or car.

V. A reasonable suspicion of danger standard is sufficient to protect the sanctity of the home and justified the search in this case.

The circumstances police encountered on September 27, 2021, created *at the very least* a reasonable suspicion that a member of the community needed assistance. Petitioner's repeated references to the fact that he "had a history of suicide threats that came to naught," *see, e.g.*, Pet. Br. 43, reflects a misguided and dangerous understanding of suicidal behavior and gun violence. In 2022, there were more than 48,000 firearm-related deaths in the United States, with more than half of those deaths caused by suicide. *See* Centers for Disease Control and Prevention, *Wide-ranging Online Data for Epidemiologic Research: Provisional Mortality Data*, https://wonder.cdc.gov/mcd.html (last visited Aug. 5, 2025).

A prior history of suicide attempts (such as Petitioner's) is considered one of the most robust predictors of eventually completed suicide. Rebecca W. Brendel et al., *The Suicidal Patient*, *in* Massachusetts General Hospital Comprehensive Clinical Psychiatry 733–45 (1st ed., Mosby Elsevier 2008). Petitioner's previous and current threats of suicide coincided with the termination of romantic relationships—a factor known by the officers to prompt Petitioner to "drink[] pretty heavy," to go "off a little kilter and panic[] and want[] to commit suicide." Pet. Br. 7. The fact that Petitioner "had never followed through" before, *id.*, is as irrelevant as it is obvious. By the time a person in crisis follows through on a threat of suicide, it is, by definition, too late to

render assistance; police ought not be required to wait for a dead body to act to protect people. Yet, applying a standard of probable cause to intervention in a suicide is likely to produce just such a result.

The reasonable suspicion standard was met and exceeded in this case, where police had information from a reliable source that Petitioner had not only threatened suicide, but also was armed with the means to effectuate that threat and had ended a call with his ex-girlfriend with a "pop" sound followed by silence. When they arrived at the house, the officers could see an empty handgun holster, multiple empty beer cans, and a handwritten note. Taken together, these facts support an objectively reasonable basis for believing that Petitioner may have needed immediate assistance. *See Caniglia*, 593 U.S. at 204 (Kavanaugh, J., concurring) ("[T]rying to prevent a potential suicide" can be a valid basis for warrantless home entry.).

CONCLUSION

The decision of the Montana Supreme Court should be affirmed.

Respectfully Submitted,

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