No. 24-624

In the Supreme Court of the United States

WILLIAM TREVOR CASE, PETITIONER

v.

STATE OF MONTANA, RESPONDENT.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MONTANA

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

In its BIO, Montana rightly conceded 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. Now, remarkably, Montana contends that requiring probable cause would "necessitate overruling *Brigham City*" and "reimagine the Fourth Amendment." Resp.Br.1-2.

Montana was right the first time. "The requirement of probable cause has roots that are deep in our history." *Dunaway* v. *New York*, 442 U.S. 200, 213 (1979). The liberty interest at stake in emergency-aid situations is equally venerable, for we have "lived our whole national history" with the understanding "that a man's house is his castle." *Georgia* v. *Randolph*, 547 U.S. 103, 115 (2006). And because probable cause is "a fluid concept," *Illinois* v. *Gates*, 462 U.S. 213, 232 (1983), it has long been applied to "noncriminal" inquiries (Resp.Br.13-14). Indeed, as Montana has noted, courts around the country *already* "routinely apply the probable cause standard" to emergency-aid entries. BIO2-3. Confirming probable cause as the emergency-aid standard requires no imagination; merely respect for well-founded constitutional law.

Montana and the U.S. insist probable cause cannot be detached from "criminality" (Resp.Br.27), making it "poorly suited, at best, for the context of emergency aid" (U.S.Br.14). But it is *this* position, not Case's, that "reimagine[s]" Fourth Amendment protections. Resp.Br.1. On the State and Government's theory, the citizen in his home is not a man in his castle, but equivalent to a schoolchild in the classroom or a probationer, once the state invokes a "noninvestigatory"

purpose. Resp.Br.46-48; U.S.Br.20. On their theory, the established baseline rule requiring a warrant and probable cause should be cast aside in favor of an academic theory that, on its own terms, departs from this Court's precedent. And on their theory, the apt historical principle is not the common law affray rule, which applied in the very situation presented in *Brigham City* v. *Stuart*, 547 U.S. 398 (2006), but a "necessity" tort defense (Resp.Br.24-25) that no search-or-seizure treatise mentions and that required *greater* certainty than probable cause.

Based on these reimagined tenets, Montana and the U.S. urge the Court to replace the "familiar threshold standard" of probable cause, *Dunaway*, 442 U.S. at 213, with a "reasonableness" standard that is hopelessly indeterminate. The State and Government cannot even settle on a single standard within *their own* briefs, disclaiming reasonable suspicion while simultaneously invoking precedent applying that standard. They offer no guidance on how certain a first responder must be that someone inside a home urgently needs help. The upshot is that first responders would need to ponder incommensurate "social and individual interests" amidst the chaos and danger of emergency situations. *Cf. id.* at 214.

This Court has refused to adopt "a third Fourth Amendment threshold" between probable cause and reasonable suspicion, *United States* v. *Montoya de Hernandez*, 473 U.S. 531, 540 (1985), and a vague "reasonableness" test is an especially poor candidate. The officers, "firefighters, social workers, and paramedics" who assess emergencies (U.S.Br.29) need "the relative simplicity and clarity" provided by probable

cause, *Dunaway*, 442 U.S. at 213—not a rule that confuses even its own proponents. This Court should "adhere to the textual and traditional standard of probable cause." *Arizona* v. *Hicks*, 480 U.S. 321, 329 (1987).

ARGUMENT

I. The Fourth Amendment requires probable cause for emergency-aid home entries.

A. Nonconsensual warrantless home entries implicate core Fourth Amendment interests, not the lesser interests the State invokes.

Montana concedes that "searches and seizures inside a home without a warrant are presumptively unreasonable." Resp.Br.26 (quoting *Brigham City*, 547 U.S. at 403). Because the Fourth Amendment makes a warrant supported by probable cause the constitutional baseline for "entering a home without permission," the Court has "jealously" guarded the few exceptions for "warrantless intrusions." *Lange* v. *California*, 594 U.S. 295, 298, 303 (2021). Under those exceptions, it has never held that the state can breach "the sanctity of a person's living space," *ibid.*, on *less* than probable cause. As Justice Scalia explained, "[d]ispensing with the need for a warrant is worlds apart from permitting a lesser standard of *cause*." *Hicks*, 480 U.S. at 327. So a "dwelling-place search"—warrant or no—"requires probable cause." *Id.* at 328.

1. Despite allowing that "the sanctity of the home is an important Fourth Amendment value" (Resp.Br.46), Montana contends there is no "mechanical requirement of warrants or probable cause" for home entries (*id.* at 25). Yet neither Montana nor the U.S. can cite a single decision of this Court holding

that a "quantum of knowledge" (Resp.Br.23) less than probable cause suffices to enter an ordinary citizen's home. Instead, they ground their theory that "probable cause is not invariably required" (Resp.Br.17; U.S.Br.13 (quoting *Vernonia Sch. Dist. 47J* v. *Acton*, 515 U.S. 646, 653 (1995))), in cases involving liberty interests far removed from the "core" interest in the home, *Lange*, 594 U.S. at 303. *See* Resp.Br.17, 41, 47-48; U.S.Br.13-14, 18.

A warrant or probable cause may not be an "irreducible requirement of a valid search" when officials search students at school, *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340 (1985); *Acton*, 515 U.S. at 653, government employees in the workplace, *Nat'l Treasury Emps. Union* v. *Von Raab*, 489 U.S. 656, 665 (1989), or impounded vehicles, *South Dakota* v. *Opperman*, 428 U.S. 364, 372 (1976); *Colorado* v. *Bertine*, 479 U.S. 367, 374 (1987). But these intrusions do not implicate a citizen's liberty interest in his home, "the archetype of [Fourth Amendment] privacy protection." *Lange*, 594 U.S. at 303; *cf. City of Los Angeles* v. *Patel*, 576 U.S. 409, 420 (2015) ("administrative search[es]" of hotel's records). And entering the homes of "probationers in the legal custody of the State," *Griffin* v. *Wisconsin*, 483 U.S. 868, 870 (1987), or benefit recipients who have consented to such searches, *Wyman* v. *James*, 400 U.S. 309, 317-318 (1971), bears no constitutional comparison to entering a non-consenting person's home with "long barrel guns" drawn (Pet.App.5a).

This approach would topple the home's constitutional status as "first among equals." *Florida* v. *Jardines*, 569 U.S. 1, 6 (2013). In place of the baseline warrant and probable cause requirements for home

searches, Montana would substitute the weaker protections afforded places the state controls or has custodial power. If anything "reimagine[s]" the Fourth Amendment (Resp.Br.1), it is equating the citizen in his home with a schoolchild; a public employee; a probationer; a dependent.

2. To justify this doctrinal inversion, Montana proposes displacing precedent with academic theory. Relying on articles by Professor Akhil Amar, Montana argues that the Framers "bifurcat[ed]" the Fourth Amendment into the Warrant Clause and the Reasonableness Clause, creating "two different commands." Resp.Br.16. Per this notion, neither the warrant requirement nor probable cause establishes a constitutional baseline for Fourth Amendment "reasonableness"; rather, reasonableness is wholly "separate" and "distinct." Resp.Br.16-17, 25.

The precise relationship between the Warrant Clause and Reasonableness Clause is a matter of "disagreement" running back "over a hundred years," *Coolidge* v. *New Hampshire*, 403 U.S. 443, 474 (1971), which this Court has never definitively resolved. But as Amar recognizes, his view that the protections of warrants and probable cause do not inform the Reasonableness Clause is contravened by "modern Supreme Court" precedent. *The Bill of Rights as a Constitution*, 100 Yale L.J. 1131, 1178-1179 (1991). That precedent "routinely sa[ys] that even warrantless searches and seizures ordinarily must be backed by 'probable cause.'" Amar, *Fourth Amendment First Principles*, 107 Harv. L. Rev. 757, 782 (1994). So whatever the merits of the "bifurcation" theory, endorsing

it would require upending decades of binding precedent, *see supra* § I.A.1, and raise questions far beyond this case's scope.[1]

B. This Court's exigency precedents support a probable cause standard.

This Court's exigent-circumstances precedents reflect the general requirement that officials have probable cause before making warrantless entries. Pet.Br.22-25. And while the Court did not use "'probable cause' language" in *Brigham City* or *Michigan* v. *Fisher*, 558 U.S. 45 (2009) (Resp.Br.43), the standard it *did* apply is consistent with probable cause.

1. The language and reasoning of the Court's exigent-circumstances precedents refute Montana's contention that the Court "has never required officers to have probable cause *of the exigency*." Resp.Br.29.

a. Montana insists *Minnesota* v. *Olson*, 495 U.S. 91 (1990), "did not say that the state court actually applied the correct standard" (Resp.Br.45). That ignores the Court's holding that the lower court applied "the

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[1] Further, Professor Amar's strict "bifurcation" theory (Resp.Br.16) is hardly the prevailing historical view. *See, e.g.*, Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 618 (1999) ("[N]one [of the early constitutional commentaries] identified a reasonableness standard distinct from the standards for a valid warrant."). Rather, the requirement of probable cause has long been tied to the reasonableness of a search or seizure. The concept evolved independently of, and predates, warrants (*see* CAC.Br.20-23), and the common law required "probable cause of suspicion" for warrantless felony arrests, 1 Hale, *Historia Placitorum Coronæ* 588 (1736); *accord United States* v. *Watson*, 423 U.S. 411, 420-421 (1976).

proper legal standard" in requiring "probable cause to believe that one or more [exigent-circumstance] factors justifying the entry were present." *Id.* at 100. The probable cause standard was "essentially the correct standard," *ibid.*, even though the lower court decided that the facts did not justify warrantless entry (U.S.Br.28).

b. Montana is equally wrong in reading *United States* v. *Santana*, 427 U.S. 38 (1976), as not "requir[ing] both probable cause of the underlying crime *and* separate probable cause to believe that the suspect fled inside her house" (Resp.Br.45). *Santana* held that the case was "clearly governed" by precedent "recogniz[ing] the right of police, who had probable cause to believe that an armed robber had entered a house a few minutes before, to make a warrantless entry." 427 U.S. at 42 (citing *Warden* v. *Hayden*, 387 U.S. 294 (1967)). Given that *Santana* involved the hot-pursuit exception, its language means "the officers had probable cause to arrest Santana and to believe that she was in the house." *Id.* at 43 (White, J., concurring). Even the U.S. does not contest *Santana*'s holding, arguing only that it "does not imply that officers must *always* have 'probable cause' to believe that an exigency exists." U.S.Br.27. But this Court has never adopted varying standards depending on "what type of exigency it is" (*ibid.*), and the U.S. offers no reasoned argument on that score.

2. In its BIO, Montana agreed that *Brigham City* contemplated a probable cause standard "in function if not in form." BIO2. Now, however, Montana contends an "objectively reasonable belief" is formally and functionally "different" from probable cause

(Resp.Br.44), such that applying probable cause would require "overruling *Brigham City*" (*id.* at 2).

Montana's new position is wrong. That the Court "never used th[e] term" probable cause explains why review is necessary here, but it hardly compels a "different meaning[]." Resp.Br.43-44. In both *Brigham City* and *Fisher*, this Court stressed that the officers personally observed "violent behavior" and "signs of a recent injury." *Fisher*, 558 U.S. at 48 (applying *Brigham City*). These observations supported a "fair probability" or "substantial chance" that an emergency existed, just as they might support an inference that criminal activity was afoot. *Gates*, 462 U.S. at 238, 243 n.13. The resonance with probable cause is underscored, not undermined, by the "case-by-case and holistic[]" approach taken in these cases (*cf.* U.S.Br.21), for probable cause "consider[s] the facts as a whole," *District of Columbia* v. *Wesby*, 583 U.S. 48, 60-61 (2018).

C. The affray rule is the most analogous common law rule.

Montana's rejoinders confirm that the affray rule is the most relevant common law analogue for emergency-aid entries. None of Montana's search-and-seizure examples involve an emergency arising within the home or support a warrantless entry on less than probable cause. Nor does the "doctrine of necessity" offer proof that warrantless home entries "were governed by reasonableness" (Resp.Br.19-20; U.S.Br.25). As the treatises confirm, established search-and-seizure rules, not a general necessity defense, defined "a *law enforcement officer's authority* to break open the doors of a dwelling" at common law." *Wilson* v. *Arkansas*, 514 U.S. 927, 929 (1995) (emphasis added). And

regardless, that defense's requirements were more stringent than the affray rule's.

1. Montana pushes at an open door in arguing that the affray rule was not the only "circumstance[] that permitted officers of the law to 'break [open] the party's house.'" Resp.Br.21. Our position is not that the affray rule was the exclusive warrantless entry exception at common law, but that the common law "had a rule for warrantless entries in *precisely* the emergency scenario presented in *Brigham City*." Pet.Br.2-3. That affray rule shows "officials could not have entered a home without a warrant on *less* than probable cause" (*ibid.*), not that it required "absolute certainty" (Resp.Br.20).

Montana does not seriously dispute (Resp.20-21) that constables could enter a home to part an affray only if it was "made in a house in the view or hearing of a constable," 2 Hawkins, Pleas of the Crown 138-139 (1797). The constable's power to suppress "disorderly drinking or noise in a house at an unreasonable time of night" was a corollary of the affray rule (2 Hale, at 95), and nothing suggests it permitted a lesser showing (Resp.Br.22). Nor does the constable's duty to part a reported affray even if "out of [his] presence" (*id.* at 44), change the requirements for an *in-home* affray.

2. None of the other "special crimes or circumstances" identified by Montana (Resp.Br.21-22) involve the constable's power to address an emergency arising within a home or support a relaxed certainty standard. While a constable could "break open the door, tho he have no warrant" in hot pursuit of a felon, 2 Hale, at 91-92; *accord Lange*, 594 U.S. at 312, the constable had to observe the felon's flight into the

home, *see, e.g.*, M. Dalton, The Country Justice 307 (1705) (permitting entry only "upon fresh Suit" of someone who "dangerously wounded another, and then fl[ew] into a[] house"). Similarly, while a constable could raise a hue-and-cry "in any case, where he may arrest, tho it be only a suspicion of felony," the pursuers could not "break open doors" unless the suspect actually "be there," 2 Hale, at 102-103; *accord* CAC.Br.13-14 (escapees).

The U.S. tries to minimize the affray rule, casting it as "primarily tied to arrest, rather than the emergency entry" (U.S.Br.24), but the commentators stressed the need to "keep the peace," 2 Hale, at 95. And it is hardly surprising that the common law rule on a constable's power to address an in-home emergency was tied to crime. Constables did not have general first-responder duties; their main power, as a "conservator of the peace," was to arrest. 1 J. Chitty, Criminal Law 20 (1816).

3. To find historical support, Montana reaches beyond the "common law of search and seizure" and an "officer's authority," *Wilson*, 514 U.S. at 929, to the law of torts. Invoking the "doctrine of necessity," Montana argues that the common law allowed warrantless entries "for a public good such as saving li[ves], and required no quantum of belief" beyond "that they [were] reasonably necessary." Resp.Br.24.

a. As both Montana and the U.S. recognize, the doctrine of necessity was a general tort defense, applicable to "both officers and private citizens" (Resp.Br.20; U.S.Br.16), across a wide array of circumstances, including many far afield of an emergency entry to save someone inside a home (*e.g.*,

U.S.Br.16-17 (discussing cases involving wartime requisitioning and casting personal property out of a barge)).

Because the necessity doctrine was not specific to constables, it says little about the "the common-law understanding of an *officer's* authority," *Payton* v. *New York*, 445 U.S. 573, 591 (1980) (emphasis added), or "traditional protections against unreasonable searches," *Wilson*, 514 U.S. at 931. If, as Montana suggests, the necessity doctrine were a controlling common law "guidepost" for constables (Resp.Br.24-25), the leading search-and-seizure treatises would emphasize it. Yet neither government points to a single such treatise even *discussing* the "doctrine of necessity." Resp.Br.24. That is unsurprising; if the power of constables to make warrantless entries were governed by a general "necessity doctrine," there would have been no need for an affray *or* hot-pursuit rule. Whenever "safety was at stake," the constable could have made a warrantless entry, and the homeowners' rights would "give way." U.S.Br.16. The "doctrine of necessity" is absent from these treatises because the common law already had specific rules governing constables, who could interpose them to "justify [his search or seizure] in an action of false imprisonment" or trespass. 1 Hale, at 588. That also explains why none of the governments' necessity cases involve a constable carrying out his duties.

At most, the affray rule could be viewed as a specific application of the general concept that the sanctity of the home "is only to be violated when absolute necessity compels" it. Chitty, at 52. Even then, however, the general principle would hardly supplant the specific rule for affrays.

b. Even if the "doctrine of necessity" bore on constabulary powers at common law, the authorities advanced by Montana and the U.S. would not support their proposed standard. Rather, those cases confirm that it was not enough for a tortfeasor to show his actions were "reasonably necessary." Resp.Br.24; U.S.Br.24. The tortfeasor had to "manifestly prove[]," under "the strictest test," *Rex* v. *Coate*, 98 Eng.Rep. 539, 540 (1772), that "he was right," *in fact*, about the necessity of his actions, *Scott* v. *Wakem*, 176 Eng.Rep. 147, 150 (1862). Accordingly, in the few cited cases upholding a trespass into someone's home (Resp.Br.24-25), the facts showed that the danger was publicly apparent, and thus easily cleared the probable cause standard. *See, e.g.*, *Maleverer* v. *Spinke*, 73 Eng.Rep. 79, 81 (1537) ("a[] house on fire"); *Handcock* v. *Baker*, 126 Eng.Rep. 1270, 1270 (1800) (wife "cried murder and called for assistance" from within a home).

D. A probable cause standard best balances liberty interests in the home and public safety concerns.

A probable cause standard best balances "the degree to which [a warrantless entry] intrudes upon an individual's privacy" against the "legitimate governmental interests" in the safety of occupants and first responders. *Riley* v. *California*, 573 U.S. 373, 385 (2014). To flip the constitutional baseline from a warrant supported by probable cause to a relaxed rule allowing warrantless "welfare check" entries (Resp.Br.14), Montana and the U.S. skew the relevant factors.

1. Montana and the U.S. blur the "firm line" drawn by the Fourth Amendment "at the entrance to the

house," *Lange*, 594 U.S. at 303, by equating the paramount liberty interest of a citizen in the home with subordinate circumstances like a child at school or a criminal on probation. *See supra* §I.A.1.

They contend that a citizen's liberty interest in his home is contingent on an official's "purpose" in entering, and may be "diminished" if the intrusion's purpose is "to render emergency aid." Resp.Br.13; *see also* U.S.Br.10. That reasoning is in tension with *Caniglia* v. *Strom*, which rejected community caretaking as a "standalone doctrine" "justif[ying] warrantless [home] searches." 593 U.S. 194, 196 (2021). And whether an official claims to provide "aid" (Resp.Br.47) rather than seek "violations of the law" (U.S.Br.15), the "intrusions share [a] fundamental characteristic: the breach of the entrance to an individual's home," *Payton*, 445 U.S. at 589. The "essence of the offense" from a home intrusion is "the invasion of [the occupant's] indefeasible right of personal security, personal liberty and private property." *Boyd* v. *United States*, 116 U.S. 616, 630 (1886); *cf.* Resp.Br.46-47. That does not change depending on whether the official's purpose is the collection of "evidence," *Boyd*, 116 U.S. at 630, or what "uniform" the official wears, *Michigan* v. *Tyler*, 436 U.S. 499, 506 (1978).

In focusing on the search's "primary purpose," Montana invokes authority involving programmatic searches rather than searches requiring individualized justification, like emergency-aid entries. Resp.Br.47 (quoting *Patel*, 576 U.S. at 420). As this Court explained in *Brigham City*, "'an inquiry into *programmatic* purpose' is sometimes appropriate" in assessing the reasonableness of a regime of "program-

matic searches conducted without individualized suspicion," to ensure that "the purpose behind the *program*" is distinct from "crime control." 547 U.S. at 405. Emergency-aid entries, however, "are not programmatic but are responsive to individual events." *Cf. Tyler*, 436 U.S. at 507.

Lowering the standard for home entries for non-"adversarial" (U.S.Br.19) or "noncriminal purposes" (Resp.Br.2) would invite courts to uphold searches based on their post-hoc assessment of whether the searches furthered "what the government perceives to be [the occupant's] own good," *cf. 44 Liquormart, Inc.* v. *Rhode Island*, 517 U.S. 484, 503 (1996). That is hardly the Framers' vision of the Fourth Amendment, and calls to mind Ronald Reagan's adage that "the nine most terrifying words in the English language are: I'm from the Government, and I'm here to help."[2]

2. Nobody disputes the "strong governmental interest in … preserv[ing] life and safety." U.S.Br.3. But neither Montana nor the U.S. offers a coherent explanation for why this interest justifies a departure from the traditional probable cause standard.

a. Montana's main response is an exercise in question-begging. It insists that probable cause is "inextricably tied to criminal investigations" (Resp.Br.13), so that "by definition, officers cannot develop probable cause" in emergency-aid circumstances (*id.* at 49).

Montana's premise is wrong. This Court *has* applied probable cause in "noncriminal context[s]."

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[2] *The President's News Conference*, Aug. 12, 1986, https://www.reaganlibrary.gov/archives/speech/presidents-news-conference-23.

Resp.Br.43. As Montana admits, in *Camara* v. *Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523 (1967), this Court "held that administrative warrants for health and safety inspections [of homes] must be supported by probable cause." Resp.Br.42. That makes sense; it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara*, 387 U.S. at 530. Nor is *Camara* an outlier. Rather, because probable cause "can take into account the nature of the search," *id.* at 538, the Court has long applied probable cause in a variety of non-criminal contexts, from civil forfeiture, *Locke* v. *United States*, 11 U.S. (7 Cranch) 339, 348 (1813), to "civil traffic violation[s]," *Whren* v. *United States*, 517 U.S. 806, 808 (1996), to workplace health-and-safety inspections, *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307, 320 (1978). And lower courts have held that officers seizing an individual "for a mental-health evaluation" must have "probable cause that [the] person poses an emergent danger." *See Graham* v. *Barnette*, 5 F.4th 872, 886 (8th Cir. 2021) (joining "unanimous" circuit courts).

Montana tries to cabin *Camara* by saying it involved potential "violations of codes for which criminal penalties applied" (Resp.Br.42-43) and thus was "criminal-adjacent" (U.S.Br.10). But the possibility of criminal penalties does not distinguish *Camara* from many emergency-aid situations, which often involve potential criminal activity. Pet.Br.39.

b. In any case, Montana's reductive claim that probable cause cannot, "by definition," apply beyond criminal investigations (Resp.Br.49) merely dodges the essential question here: whether probable cause

supplies a "workable rule" in emergency-aid contexts, *Dunaway*, 442 U.S. at 213.

On *that* question, Montana and the U.S. have no substantive response. They insist that "requiring probable cause *for the exigency* would make no sense" (Resp.Br.28), because the standard is "poorly suited, at best, for the context of emergency aid" (U.S.Br.14). But basic probable cause principles, like the concepts of a "fair probability" and "substantial chance," *Gates*, 462 U.S. at 238, 243 n.13, apply equally to the risk "that an occupant is seriously injured or imminently threatened with such injury," *Brigham City*, 547 U.S. at 400. Nor is it "difficult to see" (U.S.Br.14) how the standard's familiar principles of corroboration would apply to assessing the risk and gravity of an emergency, *cf. Gates*, 462 U.S. at 242-246. These general principles help officers with incomplete information assess risk and probability "on the spur (and in the heat) of the moment." *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 347 (2001). As the U.S. explained in its *Brigham City* amicus brief, "the basic requirement that the police have an objectively reasonable belief—*i.e.*, probable cause—does not change, but the object of the probable cause does change." 2006 WL 448210, at *18 n.18.

c. Montana and the U.S. also warn that adopting a probable cause standard for emergency-aid situations "would almost always prevent law enforcement from helping" home occupants (Resp.Br.49), and "impede first responders from saving lives" (U.S.Br.3). But neither actually explains why a probable cause standard, in practice, would foreclose first responders from addressing "heartland" emergency-aid scenarios, including those set out by the *Caniglia* concurrences.

Pet.Br.45-48; *cf.* U.S.Br.30. In fact, as Montana previously recognized, lower courts already "routinely apply the probable cause standard" to emergency-aid entries (BIO2-3), without compromising their ability to deliver urgently needed care (*see* Pet.Br.45-48).

3. Finally, Montana ignores the dangers of nonconsensual warrantless entries. Because "enter[ing] another's home without permission" itself creates a "substantial risk" of violent confrontation, *United States* v. *Carter*, 601 F.3d 252, 255 (4th Cir. 2010), the "governmental interest[] in saving li[ves]" applies to first responders and occupants alike (Resp.Br.14). This case illustrates the point: despite being called "for 'a welfare check'" on Case (Resp.Br.4), the officers ultimately *shot* him (*accord* NACDL.Br.17 ("[w]elfare checks … are among the most dangerous encounters between individuals and law enforcement")).

II. Montana's intermediate reasonableness standard contravenes precedent and would sow confusion.

Montana does not try to defend the reasonable suspicion standard applied below, arguing, instead, for a vague "reasonableness" standard that "stops short of probable cause." Resp.Br.41. But this standard between reasonable suspicion and probable cause is at odds with precedent and hopelessly indeterminate.

1. Unlike its amici (States.Br.3; Mannheimer.Br.16), Montana does not urge a reasonable suspicion standard (Resp.Br.39-40), and the U.S. disclaims any "equivalen[ce]" between *Brigham City*'s standard and reasonable suspicion (U.S.Br.10, 21). Both governments, however, invoke cases applying a

reasonable suspicion standard in their effort to minimize the intrusiveness of warrantless home entries. *E.g.*, *T.L.O.*, 469 U.S. at 345-347. Indeed, in formulating its proposed reasonableness standard, the U.S. urges applying a "lesser degree of certainty—such as a 'moderate chance'" to emergency-aid situations. U.S.Br.20. But the very case it cites applied the "standard of reasonable suspicion" to school searches. *Safford Unified Sch. Dist. No. 1* v. *Redding*, 557 U.S. 364, 370 (2009).

Regardless of whether these arguments are a backdoor endorsement of reasonable suspicion, a standard "short of probable cause" (Resp.Br.41) would increase the risk of mistaken and dangerous home entries (Pet.Br.39-42), invite abuse in the many emergency-aid scenarios involving potential criminal activity (*id.* at 39; NACDL.Br.9-14), and erode Fourth Amendment protections for the mentally ill (Pet.Br.40-41; APA.Br.10-11).

2. Taken at their word, Montana and the U.S. argue that the emergency-aid exception should be governed by a vague "objective-reasonableness" (Resp.Br.15) or "[g]eneral [r]easonableness" standard (U.S.Br.12) that exceeds reasonable suspicion and "stops short of probable cause" (Resp.Br.41). But the Court has previously rejected attempts to "enunciate[e] still a third Fourth Amendment threshold between 'reasonable suspicion' and 'probable cause,'" *Montoya de Hernandez*, 473 U.S. at 540, and it should do so again. Neither Montana nor the U.S. explains how the standard would provide a "workable rule" for emergency-aid situations, *Dunaway*, 442 U.S. at 213, and their efforts to even enunciate an "appropriate

reasonableness standard" (U.S.Br.10) yield no standard at all.

a. Montana and the U.S. observe that a general-reasonableness standard is "flexible" (Resp.Br.36) and "account[s] for all of the circumstances" (U.S.Br.17; *see also* Resp.Br.34-35). But these formulations do not distinguish that standard from probable cause or even reasonable suspicion, both of which are also characterized by a "flexible," *Gates*, 462 U.S. at 238-239, totality-of-the-circumstances assessment, *ibid.*, *Redding*, 557 U.S. at 385. And apart from noting that the standard was satisfied in this Court's emergency-aid cases (Resp.Br.34-35; U.S.Br.21), the State and Government offer no concrete explanation for how their standard would guide first responders in deciding, amidst the flux and stress of an emergency, whether to make entry. A general reasonableness test may make sense for assessing a regime of "programmatic searches," *Brigham City*, 547 U.S. at 405, or determining the proper standard "governing any specific class of searches," *T.L.O.*, 469 U.S. at 337, but it offers little guidance for individual home entries under exigent circumstances.

b. The distinguishing feature of the proposed reasonableness standard only adds to the confusion: the lack of any clear requirement of certainty. Montana articulates no certainty requirement at all, and the U.S. is inconsistent on the point, suggesting a "moderate chance" requirement drawn from the reasonable suspicion standard it disavows. U.S.Br.20. It is unsurprising that the State and Government struggle to give content to their reasonableness standard. That standard not only "risks melding the two [established] standards," 2 Wayne R. LaFave, *Search and Seizure:*

A Treatise on the Fourth Amendment §3.1(a) (6th ed. 2020), but is "so devoid of content that it produces rather than eliminates uncertainty," creating "difficulties … for courts, police, and citizens," *O'Connor* v. *Ortega*, 480 U.S. 709, 730 (1987) (Scalia, J., concurring).

That indeterminacy is underscored by Montana's shifting positions on what the standard means—first arguing that "[t]he daylight between probable cause and an 'objectively reasonable basis' is difficult, if not impossible, to see" (BIO15), but now claiming that the standard compels something "short of probable cause" (Resp.Br.41). Even Montana's amici are at odds, with some understanding an "objectively reasonable basis" to require mere reasonable suspicion (Mannheimer.Br.16; States.Br.3), and others saying it imposes a standard distinct from either reasonable suspicion *or* probable cause (U.S.Br.10; Local.Gov.Br.3).

c. Far from solving this indeterminacy problem, the U.S.'s proposed "sliding scale" approach, requiring "less certain[ty]" the "more severe a danger" (U.S.Br.22), would exacerbate it.

This Court has already built the "potential severity" of a danger (*ibid.*) into the emergency-aid exception's threshold, for it applies only when there is a risk "that an occupant is *seriously* injured or imminently threatened with such injury." *Brigham City*, 547 U.S. at 400 (emphasis added). The seriousness of circumstances may bear on whether they constitute the *type* of exigency justifying a warrantless entry. *Ibid.* This Court has held, for example, that the hot-pursuit exception does not categorically allow officers to follow a suspect into a house if he is suspected of a misdemeanor, *Lange*, 594 U.S. at 313, or was merely the driver in a victimless crash, *Welsh* v. *Wisconsin*, 466

U.S. 740, 753 (1984). But the circumstances' seriousness does not change the degree of *certainty* required to invoke the exception, just as the seriousness of a crime does not change the requirement of probable cause. *Cf. Atwater*, 532 U.S. at 354.

The U.S.'s theory would allow warrantless entries even if only "a relatively slim chance existed" of a catastrophic threat in a home. U.S.Br.22. Under such a test, officers might not even need *reasonable suspicion* to enter a home if someone reported a "highly destructive bomb" (*ibid.*) or similar threat. Indeed, the U.S.'s academic authority suggests that "[s]ometimes 0.1% is more than enough" to permit warrantless home entry. Amar, *First Principles*, at 801. But the U.S. cites no case blessing such an extreme approach. And the notion that the government could enter a home on an anonymous tip with *zero* corroboration, provided the tip involved a particularly destructive threat, would invite even greater abuse (in cases with criminal implications) and mischief (in "swatting" cases) than a *Terry* standard. It would also set at naught the government's "heavy burden" in "demonstrat[ing] an urgent need that might justify warrantless searches." *Welsh*, 466 U.S. at 749-750.

By requiring officials to determine the severity of a health or safety risk and then calibrate the required level of certainty accordingly, the Government's sliding-scale approach demands just the sort of on-the-spot balancing this Court has cautioned against: "reflect[ing] on and balanc[ing] the social and individual interests involved in the specific circumstances [officers] confront." *Dunaway*, 442 U.S. at 214. Such balancing provides inadequate guidance to first responders and would inevitably lead to "more slide than

scale." *United States* v. *Winsor*, 846 F.2d 1569, 1578 n.9 (9th Cir. 1988).

In contrast, "the requisite 'balancing' … is [already] embodied in" the "single, familiar standard" of probable cause. *Dunaway*, 442 U.S. at 213-214. That standard permits officials to consider the specific risk at issue in making a "balanced assessment" of corroborating information and its "relative weights." *Gates*, 462 U.S. at 234. Commonplace risks, like an injured child, may require first responders to corroborate ambiguous clues like children yelling. But a more unusual emergency, like a "highly destructive bomb" in a house (U.S.Br.22), may be corroborated by even a few telling clues—like an "abundance of wire" outside the house, *cf. United States* v. *Melvin*, 596 F.2d 492, 498 (1st Cir. 1979). Police have long applied probable cause to investigate serious crimes and forestall "severe" danger (U.S.Br.22), and that experience translates directly to assessing emergencies.

3. The "object in implementing [the Fourth Amendment's] command of reasonableness is to draw standards sufficiently clear and simple" that officials can make judgments in "the heat[] of the moment." *Atwater*, 532 U.S. at 347. While the U.S. worries that "firefighters, social workers and paramedics … may not apply probable-cause standards as commonly as police officers do" (U.S.Br.29), the "relative simplicity and clarity" of probable cause, *Dunaway*, 442 U.S. at 213, make it far more manageable, and far less "unpredictable" (*cf.* U.S.Br.29), than the proposed balancing of incommensurable social interests.

III. The officers here lacked probable cause—or reasonable grounds—of an emergency justifying warrantless entry into Case's home.

Montana does not dispute that if the officers' only objective justification for entering Case's home was the threat that he would "attempt to elicit a defensive response, i.e., a 'suicide-by-cop" (Pet.App.5a), their entry was unconstitutional (Resp.Br.36-37). The State argues, instead, that the officers had probable cause (Resp.Br.51-52), or reasonable grounds to believe "J.H.'s initial report that Case was 'in danger' and might attempt suicide" (Resp.Br.37).

As the officers' own conduct shows, the "key facts" they knew—especially their "prior personal knowledge" and "prior interactions" with Case (Resp.Br.36-37)—did not support a fair probability that Case had shot or would imminently shoot himself. A reasonable officer who believed Case had "already shot himself" or "might do so imminently" (U.S.Br.32) would have entered as quickly as possible. Yet the officers waited 40 minutes before doing so.

Even allowing time to "make appropriate cautionary plans" (Resp.Br.39), it was not objectively consistent with probable cause of an exigent self-shooting to enter after so much delay. But it *was* consistent with the officers' own on-the-scene assessment "that it was unlikely Case required immediate aid, but rather was likely lying in wait for them to commit suicide by cop." Pet.App.29a (McKinnon, J., dissenting). The pivotal information, as the officers recognized, was Case's track record, paired with J.H.'s warning that Case wanted to "shoot it out" with the police. JA104. Police Chief Sather remarked that Case "ain't got the guts" to shoot himself (Pasha-Cam2 at 0:08:25),

reflecting the officers' experience, summarized by Sergeant Pasha, that Case had "been suicidal forever and he hasn't done it but there have been several times where he's tried getting us to do it" (Pasha-Cam2 at 0:06:58). In fact, the "last time" police were called to Case's house, he *also* "said he was going to shoot it out with [the officers]." Linsted-Cam1, at 0:02:06.

The point is not, as Montana suggests, that "the responding officers' supposed subjective views" control the probable cause inquiry (Resp.Br.38); rather, their on-the-ground assessment underscores how a reasonable officer would objectively view the situation. After all, "a police officer may draw inferences based on his own experience in deciding whether probable cause exists." *Ornelas* v. *United States*, 517 U.S. 690, 700 (1996). Even if the "trail of corroborating breadcrumbs" (Resp.Br.37) was consistent with *both* a risk of suicide *and* a risk of suicide-by-cop, an inference that Case was at risk of suicide was undermined here by the officers' experience. That experience, along with their on-the-scene observations, made suicide-by-cop a "countervailing probabilit[y]," *United States* v. *Jackson*, 415 F.3d 88, 94 (D.C. Cir. 2005), and rendered their delayed entry unreasonable even under Montana's standard. Indeed, far from providing "life-saving aid" (U.S.Br.31), the officers here shot Case.

CONCLUSION

This Court should reverse the Montana Supreme Court.

Respectfully submitted,

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