

No. 25-1030

IN THE
Supreme Court of the United States

CHRISTOPHER R. CUMMINS,

Petitioner,

v.

ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, SECOND DISTRICT

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR THE PETITIONER**I. SINCE THE JUDGMENT OF THE ILLINOIS APPELLATE COURT IS *FINAL* BY OPERATION OF THE ILLINOIS “LAW OF THE CASE” DOCTRINE, THIS COURT HAS PROPER APPELLATE JURISDICTION UNDER 28 U.S.C. § 1257(a).**

The State of Illinois urges this Court to deny *certiorari*, claiming that this Court lacks jurisdiction because the decision of the Appellate Court is not final. (Opp. br, pp. 7-10) The State’s position is incorrect – the decision of the Appellate Court of Illinois on this *constitutional question is final* by application of the common law rule in Illinois of the doctrine of *The Law of The Case*. “The preclusion doctrines of *res judicata*, collateral estoppel, and *the law of the case* prevent a defendant from ‘taking two bites out of the same appellate apple’. Specifically, the law of the case doctrine *bars relitigation* of an issue *already decided in the same case*. “[A] determination of an issue on its merits by an appellate court is *final and conclusive* upon the parties in a second appeal in the same case, and the issues considered and decided *cannot be reconsidered* by the same court except on a petition for rehearing.” *People v. Tenner*, 206 Ill. 2d 381, 395 (2002) (internal citations omitted, emphasis added). The Illinois Supreme Court’s *denial* of Petitioner Cummins’ Petition for Leave to Appeal on November 26, 2025 (Order on Pet. for Leave to Appeal, Pet. For Cert., Appendix 1a.) *finalized* the decision of the Appellate Court under the Illinois Law of the Case doctrine.

The omission of the State’s argument to mention how application of the Illinois common law doctrine of the law of the case renders the Appellate Court’s decision *final* (*Tenner, Id.*, at 395) amounts to a disingenuous attempt to insulate the lower court’s decision in this case from the direct review of this Court on a critical 4th and 14th amendment question. Thus, no further reply is necessary to the State’s unnecessary analysis of *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). Therefore, as there is now *no question* that this Court has proper jurisdiction of this matter under 28 U.S.C. § 1257(a) – it should be vigorously exercised by allowing *certiorari*.

II. WHEN THE STATE COURT’S DECISION IGNORED THE TESTIMONY OF THE OFFICER WHO MADE THE WARRANTLESS ENTRY INTO PETITIONER’S HOME – THAT HE “HAD NOT RECEIVED ANY INFORMATION THAT ‘ANYBODY WAS HURT IN THERE OR THERE WAS AN EMERGENCY’.” IN ITS ANALYSIS, THE STATE COURT FAILED TO “FAITHFULLY APPLY” THE *BRIGHAM CITY* STANDARD HERE.

The positions presented by the Opposition brief as reasons to deny *certiorari* lack merit and should be rejected for the reasons which follow. Petitioner replies to the State’s arguments in section II a., b., and c. of the Opp. br. in the order of section II b., a., and c.

Reply To Opp. Br. Section II (b)

The State urges that the state appellate court “faithfully applied” the standard set out in *Brigham City*,

as reaffirmed in *Case v. Montana*, 607 U.S. 107, at 113, 116, and 119 to this case. The State’s position is incorrect.

The state court failed to apply the standard of *Brigham City* in *People v. Cummins*, 2025 IL App (2d) 230516 because it failed to utilize the proper constitutional perspective as to *who* needs to have the “objectively reasonable basis for believing that someone inside needs emergency assistance” before a warrantless entry is made into a person’s home. (*Brigham City, Id.*, at 400.) This Court’s decision in *Lange v. California*, 594 U.S. 295, 301, 02 (2021) instructs that “Whether a ‘now or never situation’ actually exists – whether an officer has ‘no time to secure a warrant’ – *depends on the facts on the ground*. So the issue, we have thought, is most naturally considered by look[ing] to the totality of circumstances *confronting the officer as he* decides to make a warrantless entry. *Lange, Id.* (internal citations omitted, emphasis added). Instead of reviewing the facts *confronting Officer Kuttner as he decided to make the warrantless entry to Petitioner’s home* (*Lange, Id.*), the state appellate court quoted his testimony describing the lack of any constitutional basis to apply the “emergency exception” to the warrant requirement – then proceeded to *ignore that testimony* in the balance of its analysis.

Plainly, that officer’s testimony cannot be reconciled with a proper application of the “emergency exception” to the warrant requirement *or* the concept of having an “objectively reasonable basis for believing” that someone inside needs emergency assistance.” *Brigham City, Id.*, at 400, reaffirmed in *Case v. Montana*, 607 U.S. 107 (2026). Here, as he noted in his Petition, the appellate court’s application of the constitutional standard in *Brigham City*

where law enforcement testimony *excludes* application of that standard, provides *no* constitutional protection whatsoever. (Pet., p. 5) Indeed, no *party* to this case ever believed that *Brigham City* applied here. In the state appellate court, *neither* party cited *Brigham City*. The choice to cite *Brigham City* was a *sua sponte* decision by the state court. *Certiorari* should be allowed.

III. THE FINAL DECISION ON THE 4TH AND 14TH AMENDMENT QUESTION PRESENTED HERE IS COMPLETELY AND OBJECTIVELY UNREASONABLE. THIS CASE MEETS PROPER STANDARDS FOR *CERTIORARI* REVIEW.

Reply To Opp. Br. Section II (a)

The State says that this case does not meet this Court's standards for *certiorari* review, marginalizing this Petition as merely seeking an "error correction." (Opp. br., p. 10) Again, the State's position is wrong. As previously noted, the state appellate court failed to apply the correct constitutional perspective (*Lange, Id.*) to Officer Kuttner's testimony, *supra*, – and then ignored the impact of that testimony in misapplying the rule in *Brigham City* to this case. The result of this final and precedential decision of the state appellate court will cause incalculable damage to the constitutional cloak of protection afforded to persons' homes nationwide (*Payton v. New York*, 445 U.S. 537, 585-86 (1980)) and ravage all notions that "The contours [of the exigent circumstances exception] or any other warrant exception are 'jealously and carefully drawn,' in keeping with the 'centuries old principle' that the home is entitled to special protection." *Lange, Id.*, at 303 (emphasis added). Much more than mere

“error correction” is at stake in this case. When the state court failed to tether its application of the constitutional principle of *Brigham City* to the Officer’s testimony (*Cummins, Id.*, at ¶16) the state court’s application of the constitutional principle here became completely and objectively unreasonable. *Bell v. Cone*, 535 U.S. 685, 693, 94 (2002), cited by *Lee v. Mlodzik*, ___ F.4th ___, 2026 WL 806653, pp. 5, 6 (7th Cir., dec. March 24, 2026).

The record here is neither lengthy nor complex. The misapplication of the constitutional perspective and rule in *Brigham City* by the state court is evident and objectively unreasonable. *Cone, Id.* This Court should allow review and consider whether allowing *certiorari* and the entry of a *per curiam* reversal is warranted.

IV. THE STATE’S FINAL ARGUMENT CONCERNING THE “GRANT, VACATE, AND REMAND” CONSTRUCT SHOULD BE REJECTED, AS IT IS SPECIOUS AND BASED ON THE FALSE PREMISE THAT THIS COURT LACKS JURISDICTION.

Reply To Opp. Br. Section II (c)

The State’s argument, while continuing to ignore the Officer’s testimony that “led the way” into Petitioner’s home without a warrant that he “*had not received any information that ‘anybody was hurt in there or there was an emergency’.*” *Cummins, Id.*, ¶16 (emphasis added) – as did the state court – is based on the specious premise that a “grant, vacate, and remand” might be considered. The argument is meritless and should be rejected. The State again fails to mention that application of the Illinois “Law

of the Case” doctrine operates as a *complete bar* to the parties and the appellate court from ever considering the constitutional issue it decided in this case a second time. (*Tenner, Id.*, at 395) Finally, to underscore the damaging effect of the unreviewed appellate court decision in this case, unless and until another case arises in another district of the state appellate court which disagrees with the decision in this case, “Under the Illinois rule of *stare decisis*, a circuit court must follow the precedent of the appellate court of its district, if such precedent exists; if no such precedent exists, the circuit court must follow the precedent of other districts. *Schramer v. Tiger Athletic Assoc.*, 351 Ill. App. 3d 1016, 1020 (2d Dist., 2004) Without further review by *this* Court, every trial court in the State of Illinois *must* follow the lower court’s decision in this case. Given the intra and interstate potential precedential damage of this constitutional decision, *certiorari* should be allowed.

CONCLUSION

Pursuant to the matters presented by this case, this Petition for a Writ of *Certiorari* should be allowed.

Respectfully submitted,

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