

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

EDWARD A. CANIGLIA,)
)
 Petitioner,)
)
 v.) No. 20-157
)
 ROBERT F. STROM, ET AL.,)
)
 Respondents.)

Pages: 1 through 108
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EDWARD A. CANIGLIA,)

Petitioner,)

v.) No. 20-157

ROBERT F. STROM, ET AL.,)

Respondents.)

- - - - -

Washington, D.C.

Wednesday, March 24, 2021

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:00 a.m.

1 APPEARANCES:
2
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8 Department of Justice, Washington, D.C.;
9 for the United States, as amicus curiae,
10 supporting the Respondents.
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1 P R O C E E D I N G S

2 (10:00 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument this morning in Case 20-157, Caniglia
5 versus Strom.

6 Mr. Dvoretzky.

7 ORAL ARGUMENT OF SHAY DVORETZKY

8 ON BEHALF OF THE PETITIONER

9 MR. DVORETZKY: Mr. Chief Justice, and
10 may it please the Court:

11 The Fourth Amendment recognizes the
12 sanctity of the home by drawing a firm line at
13 the door. The government cannot cross that line
14 without a warrant, unless there is consent or
15 exigent circumstances.

16 Here, there was neither. Respondents'
17 warrantless seizure of Petitioner from his home
18 and their subsequent seizures of his lawfully
19 possessed guns from his bedroom and garage
20 violated the Fourth Amendment.

21 The First Circuit tried to get around
22 the warrant requirement by creating a new
23 exception based on Cady. But Cady involved the
24 standardized search of a car in police custody.
25 It doesn't grant a license for intruding the

1 home. Quite the opposite, nearly every page of
2 the Court's decision relies on the
3 constitutional differences between cars and
4 houses.

5 Respondents and the United States take
6 a different tack. They claim that the warrant
7 requirement isn't even implicated when officers
8 act for non-investigatory reasons.

9 But, in case after case, the Court has
10 consistently applied the warrant requirement to
11 homes, regardless of the government's purpose,
12 including when public health or safety is at
13 stake.

14 Moreover, the line between
15 investigatory and non-investigatory actions is
16 hardly clear. Nearly every criminal violation
17 has public safety implications, so dispensing
18 with the warrant requirement whenever police can
19 point to a health or safety motive would
20 eviscerate the Fourth Amendment.

21 Finally, there's no good reason to
22 create the sweeping new rule that Respondents
23 ask for. Where there is a true emergency or
24 where people ask to be helped, existing law
25 already allows an exception to the warrant

1 requirement. Many states also provide a number
2 of ways for the government to address problems
3 while respecting the Fourth Amendment, including
4 red flag laws and involuntary commitment
5 procedures.

6 But absent consent or exigent
7 circumstances, the Fourth Amendment doesn't
8 allow officers to conduct searches or seizures
9 in the home pursuant only to their own
10 discretion.

11 I'd be happy to answer the Court's
12 questions.

13 CHIEF JUSTICE ROBERTS: Mr. Dvoretzky,
14 let's say the police get a call, it's 8:00 at
15 night, the person says their, you know, elderly
16 neighbor, they invited her to dinner at 6, it's
17 8:00, she's never late for anything, she's not
18 answering the phone, they haven't seen her leave
19 the house. They're worried. They ask the
20 police if they can come over and check it out.

21 The police do that. They go on to the
22 property. They can't see much through the
23 windows, but the back door is open. They go in.
24 She's not there, but she comes back and says,
25 what are you doing here? Sues -- sues them

1 under 1983 for violating her Fourth Amendment --
2 Fourth Amendment rights. Does she win?

3 MR. DVORETZKY: I -- I think, in that
4 situation, that -- that you'd have to analyze
5 whether the police had an objective basis for
6 believing that there was an emergency there.

7 CHIEF JUSTICE ROBERTS: Well, go ahead
8 --

9 MR. DVORETZKY: I think --

10 CHIEF JUSTICE ROBERTS: -- and analyze
11 it. I've given you all the facts. Do they have
12 an objective basis because the neighbors say she
13 hasn't -- they haven't seen her all day and she
14 didn't come over for dinner, she's never late?
15 Is that enough?

16 MR. DVORETZKY: No, I think that that
17 alone would not be enough. I think you would
18 need some additional facts to suggest that there
19 was a true emergency and that there was no other
20 alternative for the police but to go in.

21 There are other things they could --
22 that can be done in that situation. You can
23 call another family member, perhaps there would
24 be something --

25 CHIEF JUSTICE ROBERTS: Well, I mean,

1 come on. Assume they -- the -- the family
2 members aren't answering the phone either. You
3 know, the neighbors are saying she's an elderly
4 woman, it's -- she's never late. She's late.
5 They're not able to reach her by phone. They
6 don't know who else to call.

7 The -- the police are violating the
8 Constitution because they walk in the back door
9 to make sure, you know, she's not lying on --
10 lying on the floor?

11 MR. DVORETZKY: I think absent --
12 absent either consent or some objectively
13 reasonable indication of an emergency, which I
14 don't think those facts establish, the police
15 can't just go into somebody's house without a
16 warrant. That -- that is the basic command of
17 the Fourth Amendment.

18 CHIEF JUSTICE ROBERTS: Okay. It's 24
19 hours later. Can they go in then?

20 MR. DVORETZKY: I -- I -- I think that
21 there is a line-drawing question of -- of when
22 it -- how many facts you have to add to that
23 hypothetical until it becomes an emergency. I
24 think 24 hours would not be enough.

25 At a certain point, perhaps they could

1 get a warrant for a missing person and -- and go
2 in on that -- on that basis, but I think just
3 the fact that somebody for 24 hours might choose
4 not to show up to dinner or choose not to answer
5 the phone --

6 CHIEF JUSTICE ROBERTS: Well, that's
7 not --

8 MR. DVORETZKY: -- that doesn't --

9 CHIEF JUSTICE ROBERTS: -- the only --
10 that's not the only facts. There are more
11 facts, which is that she was supposed to come
12 over to dinner, that she's never late, that the
13 neighbors haven't been able to reach her.

14 But none of that matters. She just --
15 you know, maybe she dies, the difference between
16 8:00 at night and 8:00 the next day.

17 MR. DVORETZKY: I -- I think, if -- if
18 all you have is 24 hours, that wouldn't be
19 enough. I think, if you had -- maybe if you had
20 those facts, plus a couple more days, perhaps
21 that would be enough.

22 But -- but I think that, ultimately,
23 it comes down to whether the police have an
24 objective basis to think that there is an
25 emergency that requires them to go in. Absent

1 that --

2 CHIEF JUSTICE ROBERTS: Does it --

3 MR. DVORETZKY: -- they need --

4 CHIEF JUSTICE ROBERTS: All right.

5 Well, does she -- does it matter if we're
6 talking about a care-taking -- community
7 care-taking what the community is like? I mean,
8 is it -- could it be that, you know, somebody
9 like Andy Mayberry is all right because people
10 expect him to, you know, keep track of things,
11 but, you know, Kojak isn't?

12 MR. DVORETZKY: I -- I don't think
13 that police would have different license to
14 enter the home without a warrant based -- based
15 on those sorts of considerations, no, Your
16 Honor.

17 CHIEF JUSTICE ROBERTS: Justice
18 Thomas.

19 JUSTICE THOMAS: Thank you, Mr. Chief
20 Justice.

21 Counsel, I am going to return to the
22 Chief Justice's point. Where in the Fourth
23 Amendment is a wellness check precluded?

24 MR. DVORETZKY: Your Honor, I -- I
25 think that the basic command of the Fourth

1 Amendment is -- and this Court has recognized it
2 in -- in numerous cases -- is that warrantless
3 intrusions of the home are unreasonable absent
4 consent or exigent circumstances.

5 Now, if a wellness check were
6 justified based on exigent circumstances in
7 light of -- in light of all of the facts and
8 circumstances presented, then the Fourth
9 Amendment in that circumstance would allow it.

10 JUSTICE THOMAS: So what does the --

11 MR. DVORETZKY: But absent that --

12 JUSTICE THOMAS: -- what does the
13 Fourth Amendment say, what are the words in the
14 Fourth Amendment that preclude a wellness check,
15 not the -- not the exceptions, not the
16 jurisprudence, but the words?

17 MR. DVORETZKY: The -- the right of
18 the people to be secure in their -- in their
19 houses against unreasonable searches and
20 seizures shall not be violated. This Court --
21 this Court has interpreted the requirement of an
22 unreasonable search and seizure to mean that a
23 search of a home is unreasonable absent a
24 warrant --

25 JUSTICE THOMAS: Okay. But --

1 MR. DVORETZKY: -- unless one of the
2 --

3 JUSTICE THOMAS: -- but you're
4 skipping a step. The mere fact -- what if a
5 police officer simply comes on to your porch to
6 collect for a local charity. Where would that
7 -- how is that different from a wellness check?

8 MR. DVORETZKY: I think that the
9 police officers are allowed to come on to the
10 porch for a wellness check if all they're doing
11 is knocking on the door to check on you. I
12 think they can't go farther than that, though,
13 if they don't have consent to enter the home and
14 go inside of it.

15 But simply -- simply going on to the
16 porch and knocking on the door, whether it's
17 to -- to check on -- to check on wellness or
18 whether it is to collect for a charity, I don't
19 think that's prohibited by the Fourth Amendment.

20 JUSTICE THOMAS: I think that the
21 point of the Chief's question is if you're -- if
22 the elderly woman doesn't show up, she could be
23 sick, she could be -- actually, she could be
24 watching TV, she could be doing any number of
25 things, but the -- you know, maybe we agree that

1 you shouldn't -- the police officer shouldn't
2 peer through the windows in search of contraband
3 or something that looks like a search but to see
4 if she is okay.

5 How does that become a search? How
6 does looking for someone to determine whether
7 that person is okay -- how is that a search or a
8 seizure?

9 MR. DVORETZKY: I -- I think it's a
10 search or seizure when the police enter the home
11 without consent and -- and invade the privacy of
12 the home and violate, in that instance, the
13 right of the people to be secure in their home.

14 JUSTICE THOMAS: Well, let's assume
15 that --

16 MR. DVORETZKY: Now, again, they
17 cannot --

18 JUSTICE THOMAS: -- that he does go
19 in, and he finds her unconscious on the floor.
20 Can she sue him?

21 MR. DVORETZKY: If -- if -- if he goes
22 in and it turns out that there was an actual
23 emergency?

24 JUSTICE THOMAS: Yes. I mean, well, I
25 mean, he wouldn't know unless he enters the

1 premises. He doesn't have any knowledge of that
2 before. He goes in because, exactly as the
3 Chief said, the neighbors invited her to dinner.
4 She's never late. And he finds that she has
5 actually fallen and broken her hip.

6 MR. DVORETZKY: Justice Thomas, while
7 -- while it's not a hindsight inquiry, I think
8 if those were the facts, I -- I think if he goes
9 in without an objective basis and just happens
10 to have guessed correctly that she did need
11 help, that would not absolve the officer of
12 liability.

13 But -- but I do think that if the
14 officer has an objective basis beforehand for
15 going in, that would be emergency -- that would
16 be emergency aid, and in that situation, there
17 would be no Fourth Amendment violation.

18 JUSTICE THOMAS: Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Breyer.

21 JUSTICE BREYER: I have a factual
22 question and a legal question. My factual
23 question is this: The -- the police went to the
24 porch and they went inside and they took your
25 client and took him to the hospital, I think,

1 and then they went back and got the guns.

2 How long after they put him in the
3 ambulance or wherever they put him -- how long
4 afterwards did they get the gun --

5 MR. DVORETZKY: Justice Breyer --

6 JUSTICE BREYER: -- from the --

7 MR. DVORETZKY: -- Justice Breyer, I
8 -- I don't -- I can't tell you exactly how many
9 minutes or seconds it was, but it was all part
10 of the same visit.

11 JUSTICE BREYER: What? It was the
12 same visit?

13 MR. DVORETZKY: It was all part of the
14 same visit.

15 JUSTICE BREYER: All part of the same
16 visit. I mean, is 30 minutes too long? Is five
17 minutes too short? Do you have any idea?

18 MR. DVORETZKY: I -- I think it would
19 be less than five minutes. I think they --

20 JUSTICE BREYER: Less than five
21 minutes, okay. Thank you.

22 And a second question is a legal
23 question which I'm having a hard time with.
24 Sure, I think you could apply exigent
25 circumstances. Then I think, wait a minute,

1 there -- there's so many situations where it's
2 obvious the police should enter.

3 You know, a baby's been crying for
4 five hours, nobody seems to be around. A rat's
5 come out of the house at a time when rats carry
6 serious disease and have to be stopped.

7 A person goes into the house that the
8 police think, but they think the -- go inside
9 the house and don't know that this person has a
10 serious communicable disease, particularly for
11 older people who happen to live in the house.

12 I mean, we all can think of dozens of
13 instances, and if we call those exigent
14 circumstances, we weaken the exigent
15 circumstances. And if we move to a whole new
16 thing like caretaker, I don't know what we do.

17 So what's your answer to my dilemma
18 legally? Say exigent circumstances, but there's
19 special ones or what? How do we do it?

20 MR. DVORETZKY: Justice Breyer, I
21 think the way this Court has understood exigent
22 circumstances is as requiring a true emergency
23 demanding --

24 JUSTICE BREYER: Too narrow.

25 MR. DVORETZKY: -- an immediate act.

1 JUSTICE BREYER: Too narrow, because
2 there are lots of health emergencies. What
3 about, you know, the rats, the baby crying, the
4 old people who don't know they're going to be
5 exposed to deadly viruses, et cetera?

6 We can think of lots of circumstances
7 where it's very reasonable for a policeman to go
8 into the house.

9 MR. DVORETZKY: Well, Justice --

10 JUSTICE BREYER: And you can too. We
11 both can. So am I just supposed to move the
12 exigent circumstances rules which grew up in a
13 different context to this context or what?

14 MR. DVORETZKY: Just -- Justice
15 Breyer, just to take a couple of your examples,
16 a baby crying, I think, would be a true
17 emergency, but rats, that -- that was what was
18 at issue in the Frank case, which this Court
19 overruled in Camara.

20 JUSTICE BREYER: That was the wrong
21 rats. Try reading The Plague. Try reading
22 something where a rat coming out of a house
23 could give people bubonic plague. I mean, you
24 know, it's easy to invent hypotheticals.

25 Or do we just take this case on a

1 common law basis, make no rule and say this is
2 too much or too little? In Camara, it was a --
3 it was a -- it was a -- a -- a long term, it was
4 a different thing, okay.

5 I'm trying to put my dilemma, and I
6 want your answer.

7 MR. DVORETZKY: Just -- Justice
8 Breyer, I -- I think you apply the exigent
9 circumstances doctrine the way this Court has
10 always applied it, which is requiring a true
11 emergency. And if there isn't a true emergency,
12 there may be other alternatives that the police
13 can quickly take advantage of, like
14 administrative warrants. That's what the Court
15 contemplated in the Camara case involving
16 housing code issues.

17 And -- and if it's neither a true
18 emergency nor something that can be addressed in
19 that sort of manner, then I think the Fourth
20 Amendment requires that the police not go in in
21 that situation.

22 JUSTICE BREYER: Thank you.

23 CHIEF JUSTICE ROBERTS: Justice Alito.

24 JUSTICE ALITO: Mr. Dvoretzky, I -- I
25 think the way in which this case has been

1 presented to us by both sides is most unhelpful
2 because it conflates several separate issues.

3 One is whether a warrant is needed
4 under certain circumstances. I know that's what
5 you want to talk about. I want to put that
6 aside and talk about a -- a -- an issue that
7 comes before that, and that is, what are the
8 permissible reasons for a search or seizure and
9 the amount of evidence that a government officer
10 has to have to -- to conduct the search or
11 seizure?

12 And so what I'd like to do is to try
13 to give you some situations and ask you to tell
14 us as briefly as you possibly can whether a
15 search would be permitted under these
16 circumstances and the amount of information that
17 would be needed for a non-consensual search by
18 some governmental officer, also putting aside
19 the question of whether it's a police officer or
20 somebody else.

21 So the first one is a person in the
22 house may commit suicide where suicide is not a
23 crime. Is that a permissible reason for a
24 search?

25 MR. DVORETZKY: For -- for a search by

1 an officer without any other authorization, just
2 in the officer's discretion?

3 JUSTICE ALITO: Without consent.

4 MR. DVORETZKY: Without consent, no,
5 that's not a permissible reason for a search.

6 JUSTICE ALITO: Even if the officer
7 has probable cause to believe the person will
8 commit suicide?

9 MR. DVORETZKY: I think it may depend
10 on the immediacy of the situation in -- in that
11 hypothetical. If -- if --

12 JUSTICE ALITO: Putting aside the
13 warrant requirement, a person may commit
14 suicide -- probable cause the person will commit
15 suicide, a reason to enter.

16 MR. DVORETZKY: That -- that may be a
17 reason to enter.

18 JUSTICE ALITO: Does the officer need
19 probable cause, reasonable suspicion, or
20 something else?

21 MR. DVORETZKY: I -- I think the
22 officer needs to have an objective basis to
23 believe that the suicide is -- is going to be
24 immediate and that, therefore, the officer must
25 enter in order to prevent that happening.

1 JUSTICE ALITO: Well, immediacy goes
2 to the warrant requirement. Probable cause,
3 reasonable suspicion, or something else?

4 MR. DVORETZKY: I think they -- well,
5 I think they are related because I think, for
6 the warrant requirement, you're asking something
7 similar to a probable cause kind of inquiry,
8 which is, is there a reasonable basis to believe
9 that -- is there a reasonable basis to believe
10 that the officer needs to go in? These are --
11 these are all intertwined.

12 JUSTICE ALITO: All right. Let me go
13 on to a second example. A vulnerable -- a
14 vulnerable person in the house, for example, a
15 -- a person with a disability, an elderly person
16 with dementia, a child, may be abused or denied
17 necessary care. Permissible reason: probable
18 cause, reasonable suspicion, something else?

19 MR. DVORETZKY: I think you would need
20 probable cause in that situation, but that's a
21 criminal situation until you could get a
22 criminal warrant there.

23 JUSTICE ALITO: You need to be able to
24 get a criminal warrant?

25 MR. DVORETZKY: You -- you -- from the

1 hypothetical, as I understood it, that was a --
2 that would be criminal abuse of an elderly
3 individual in the house. If the police suspect
4 that, they need probable cause that that crime
5 is being committed, and a judge can in that
6 instance authorize a warrant.

7 JUSTICE ALITO: Well, a child calls
8 the police and says, I -- I live -- I live 500
9 miles away, my mother has mild dementia, last
10 time I spoke to her, she said something was
11 wrong, she's upset, but it was hard to make
12 sense of it, and now, when I call, the caretaker
13 always provides -- gives me excuses why she
14 can't -- my mother can't speak on the phone.

15 Can the police do anything?

16 MR. DVORETZKY: Absolutely. I think
17 that's a paradigmatic example of having a basis
18 to believe that a crime is being committed. The
19 police can investigate that, and they could seek
20 a criminal warrant.

21 JUSTICE ALITO: Do you think that's
22 probable cause?

23 MR. DVORETZKY: That sounds to me like
24 probable cause based on a -- a -- at least to --
25 at least to investigate and perhaps to get a

1 warrant based on a tip that a crime is being
2 committed.

3 JUSTICE ALITO: All right. Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Sotomayor.

6 JUSTICE SOTOMAYOR: Counsel, I'd be
7 hard pressed to think that any judge would not
8 consider the hypothetical pressed by the Chief
9 Justice as justifying a -- a knock and entry by
10 police officers.

11 You have a neighbor who expects an
12 elderly woman to come visit, a known tipster who
13 comes and tells the police she's never late, and
14 it's now -- she's really late and there's no
15 answer.

16 I don't see how, under any
17 circumstance, either the emergency aid or
18 emergency doctrine, exigent circumstance
19 doctrine wouldn't permit that search. I -- I --
20 I'm -- if that's the case, then maybe Justice
21 Breyer is right, but, if I disagree with him and
22 believe that both the emergency aid doctrine and
23 the exigent circumstance doctrine would permit
24 most entries that -- where there is reasonable
25 cause to believe that someone might be in need,

1 what does that do to your argument?

2 MR. DVORETZKY: Justice Sotomayor, I
3 don't mean to fight too hard on the hypothetical
4 that the Chief Justice presented. The emergency
5 aid doctrine, if -- if that could cover that
6 sort of situation, it -- it would also cover
7 lots of other situations that the other side is
8 positing today require a community caretaking
9 exception. The -- the emergency aid doctrine
10 can -- covers true emergencies if there is
11 reasonable cause to believe that someone is in
12 need.

13 That doesn't help the Respondents in
14 this case. They haven't argued exigent
15 circumstances. In fact, they've affirmatively
16 waived exigent circumstances.

17 JUSTICE SOTOMAYOR: I -- I don't
18 disagree with you, and I think that you could
19 always posit an argument in the middle, and then
20 officers would have qualified immunity.

21 But my point to you is, aren't you
22 trying to break -- you're right that the
23 community caretaking exception was created
24 because of some of these hypotheticals, but I
25 think, at -- at the core, and I thought that was

1 your argument, is that there has to be some
2 sense of imminency, some sense that there's a
3 real problem going on, correct?

4 MR. DVORETZKY: Absolutely. That's
5 absolutely right, Justice Sotomayor. The -- the
6 exigent circumstances doctrine requires a true
7 emergency. It has to require immediate action.
8 And if you had a reasonable cause to believe
9 that someone is in need, let's say the -- the
10 emergency -- the exigent circumstances doctrine
11 is satisfied, but that does not --

12 JUSTICE SOTOMAYOR: That -- by the
13 way, that's what I thought of most -- that's
14 what your brief pointed out, that many of the
15 circumstances that have been looked at
16 previously by other courts under the community
17 care -- community caretaking exception are
18 covered by either the emergency aid or exigent
19 circumstance doctrines, correct?

20 MR. DVORETZKY: Yes, Justice
21 Sotomayor. That's right.

22 JUSTICE SOTOMAYOR: All right. Thank
23 you, counsel.

24 CHIEF JUSTICE ROBERTS: Justice Kagan.

25 JUSTICE KAGAN: Mr. Dvoretzky, you

1 mentioned a bit ago the possibility of
2 administrative warrants, and I'd like to explore
3 that a bit.

4 Suppose a locality -- suppose you were
5 to win this case, and -- and the locality said,
6 you know, we want to set up a good scheme of --
7 of -- of giving permission for the kinds of
8 welfare checks that we've been doing.

9 What would that scheme look like and
10 how far away would it be from what we think of
11 as the kind of scheme that produces criminal
12 warrants?

13 MR. DVORETZKY: Justice Kagan, I think
14 it -- it would depend on what the -- the state
15 is trying to accomplish with the welfare check
16 scheme, but the two -- the two sorts of schemes
17 that have proliferate -- proliferated in states
18 are red flag laws and involuntary commitment
19 laws, and the red flag laws in many states allow
20 warrants where guns -- where taking guns from
21 people is necessary because they pose a risk of
22 harm to themselves or others. And those laws --

23 JUSTICE KAGAN: And under what
24 standard do those laws operate? Is it a
25 probable cause standard? Is it something lower?

1 Could it be something lower?

2 MR. DVORETZKY: It's usually a
3 probable cause standard, and they -- the laws
4 typically provide some specific criteria for a
5 court to consider about whether the person poses
6 a risk or not.

7 JUSTICE KAGAN: Suppose a locality
8 said probable cause is -- is too much, we should
9 -- we should use a reasonable suspicion
10 standard. Would that be appropriate? As long
11 as it went through a third party, you know, some
12 judge or other state official?

13 MR. DVORETZKY: I think the fact that
14 it goes through a third party is a key part of
15 that scheme. I think that is -- that's a
16 significant factor under the Fourth Amendment.

17 I think it would be more defensible
18 under the Fourth Amendment if it required
19 probable cause. I -- I -- I don't -- I don't
20 know, depending on the details of the scheme,
21 whether some slightly lesser standard would be
22 sufficient. But probable cause found by a judge
23 would, I think, be the gold standard of such a
24 scheme for Fourth Amendment purposes.

25 JUSTICE KAGAN: And I -- I guess I'm

1 less interested in the gold standard than in the
2 dividing line between constitutional and not,
3 but -- but you -- you also said that these red
4 flag laws were about procuring guns in the hands
5 of -- of -- of -- of people who would do harm to
6 themselves or others. Could you -- do you
7 think, constitutionally, you could broaden those
8 laws to encompass schemes like the Chief
9 Justice's hypothetical?

10 MR. DVORETZKY: I think you could. I
11 think states can provide for a warrant for a
12 welfare check as long as there is a -- an
13 objective basis for believing that there's a
14 person inside in need. And in that situation,
15 it might not have to be a true emergency because
16 it's not a police officer making that judgment
17 in his or her discretion on their own, but,
18 rather, you have a neutral decisionmaker.

19 I'm not aware of states having done
20 that, but -- but I think they probably could as
21 long as you had, again, the -- an objective
22 basis found by a judge, by a neutral
23 decisionmaker, not --

24 JUSTICE KAGAN: And -- and in -- in
25 the states that have done this, what neutral

1 decisionmakers are they using? Are they using
2 judges? Are they using other people? What
3 would be constitutionally permissible?

4 MR. DVORETZKY: They're -- they're
5 using judges.

6 JUSTICE KAGAN: All right. And --

7 MR. DVORETZKY: To my knowledge,
8 they're using --

9 JUSTICE KAGAN: -- do you think that
10 that's required?

11 MR. DVORETZKY: I -- I -- I think some
12 sort of a neutral decisionmaker is required.
13 Whether a state could have, say, an
14 administrative law judge or a different -- some
15 different kind of decisionmaker, I think that
16 might be -- that might well be fine.

17 JUSTICE KAGAN: Okay. One last
18 question on a -- on a different subject. You
19 said that the Respondents here had waived the
20 argument that this was a true emergency.
21 Putting the waiver question aside, why wasn't
22 this a true emergency?

23 MR. DVORETZKY: Justice Kagan, the --
24 the only basis that the officers had for
25 thinking that Mr. Caniglia was potentially

1 suicidal was a statement that he made the night
2 before. But 12 hours had passed since that
3 statement. He was in the home with the guns
4 during that time, nothing had happened, and the
5 officers said that when they spoke with Mr.
6 Caniglia, he seemed calm and normal and polite.

7 Those circumstances don't make out an
8 emergency that requires immediate action without
9 involving a mental health professional, a
10 neutral decisionmaker, and so forth, rather than
11 just the officer's discretion.

12 JUSTICE KAGAN: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice
14 Gorsuch.

15 JUSTICE GORSUCH: Good morning,
16 counsel.

17 MR. DVORETZKY: Good morning.

18 JUSTICE GORSUCH: I'll pick up where
19 Justice Kagan left off. Do we need to or should
20 we decide whether exigent circumstances or a
21 community caretaking exception applies to these
22 facts, or do you want us just to resolve the
23 legal question and remand to the First Circuit?

24 MR. DVORETZKY: Well, we're asking you
25 to -- we're not asking you to resolve and we

1 don't think it would be appropriate for you to
2 resolve whether exigent circumstances apply to
3 those facts because of the waiver.

4 As far as community caretaking is
5 concerned, we're asking you to hold as a legal
6 matter that the community caretaking doctrine
7 doesn't justify searches or seizures from the
8 home. And because that is the only basis that
9 the Respondents have given for the searches or
10 seizures here, there would be no remand
11 required. That -- that would be a judgment in
12 our favor at that point.

13 JUSTICE GORSUCH: Okay. And -- and
14 your -- your friends on the other side, the
15 solicitor general's office argues that the
16 Fourth Amendment permits warrantless seizure or
17 home entry that is reasonably necessary to
18 protect health or safety. That's their test.

19 What's wrong with that?

20 MR. DVORETZKY: For starters, Justice
21 Gorsuch, that's contravened by a number of this
22 Court's cases, including Camara and Clifford and
23 Barlow's and Patel, where even though there was
24 a public safety rationale offered for the
25 search, the Court nevertheless required an

1 administrative warrant before government
2 officials could search from the home.

3 So it's -- it's contrary to this
4 Court's case law. It's also a rule that would
5 swallow all sorts of other Fourth Amendment
6 doctrines because virtually any criminal
7 situation can also be described in health or
8 safety terms.

9 You wouldn't need the hot pursuit
10 exception because police could always say that
11 they're just acting to -- to protect the safety
12 of potential occupants in the home in light of
13 -- in light of having a criminal in their midst.
14 It wouldn't have to be in a hot pursuit
15 situation.

16 Likewise, you wouldn't need a -- a
17 warrant to enter the home in order to arrest
18 somebody because the police could in that
19 circumstance say, well, it would be dangerous
20 for the other occupants of the home to have --
21 to have a killer in the home with them.

22 For any situation involving drugs and
23 alcohol, police could just say they were going
24 into the home in order to make sure that the
25 suspect was okay. That would be contrary to

1 this Court's decision in Welsh.

2 And so the government's rule here is
3 contrary to lots of this Court's precedent and
4 would create an exception that swallows rules
5 that are essential to the Fourth Amendment.

6 JUSTICE GORSUCH: Okay. Accepting
7 that -- that that might be the case, counsel,
8 and that pretty much everything can be described
9 as health or safety, right? I mean, what --
10 what -- what does the government do that doesn't
11 involve health or safety? How does it help to
12 have an administrative warrant requirement?

13 I -- I mean, I understand the common
14 law requires -- treated the home as an asylum
15 and a castle of defense that was virtually
16 impenetrable, absent some sort of immediate
17 concern about physical injuries, as you describe
18 it in your brief.

19 But, if the government can just get an
20 administrative warrant to come in to test for
21 illness, to check the temperature of the house,
22 whether it's too hot, too cold, maybe to install
23 some energy-saving devices because that helps
24 health or safety, if that's what you're now
25 conceding, what's left of the Fourth Amendment?

1 MR. DVORETZKY: With an administrative
2 -- Justice Gorsuch, with an administrative
3 warrant requirement, you're involving a neutral
4 decisionmaker rather than leaving it --

5 JUSTICE GORSUCH: I understand that.
6 I understand that. But the neutral
7 decisionmaker is also employed by the
8 government, in a different branch maybe, maybe
9 not, and state governments can organize
10 themselves how they wish.

11 So it may be an executive officer
12 permitting another executive officer on a
13 showing of, what you said, reasonable suspicion
14 that -- that the house might be too warm, too
15 cold. Is that -- is that really a reasonable
16 search or seizure in light of the Fourth
17 Amendment's history and original meaning?

18 MR. DVORETZKY: If you -- you had one
19 executive officer providing authorization for
20 another, I think that would be problematic. If
21 you had a truly neutral decisionmaker, like a
22 judge, then having that decisionmaker involved
23 prevents arbitrary harassment by officers.

24 It gives the occupant of the home some
25 notice and some assurance that this is approved

1 and isn't simply the officer acting on his or
2 her own in a way that goes to the heart of the
3 Fourth Amendment's concerns. They --

4 JUSTICE GORSUCH: Pretty law of the
5 land there, counsel. Okay, but thank you.
6 My -- my time's expired.

7 MR. DVORETZKY: Thank you.

8 CHIEF JUSTICE ROBERTS: Justice
9 Kavanaugh.

10 JUSTICE KAVANAUGH: Thank you, Chief
11 Justice.

12 Good morning, Mr. Dvoretzky.

13 MR. DVORETZKY: Good morning.

14 JUSTICE KAVANAUGH: I think the
15 circumstances in which this issue are going to
16 matter or two -- two big circumstances where
17 it's going to matter are older people who fall
18 and suicide, so I want to focus on those two
19 things.

20 The Chief Justice's questions focused
21 on the older people who fall, and the statistics
22 on that are quite shocking, as I'm sure you --
23 they're huge, and many of us, of course, will,
24 when there's a neighbor who you haven't seen or
25 a parent who lives in a different place, will,

1 instead of barging into the house yourself or
2 calling if the parent lives in a different
3 place, calling a neighbor to barge into the
4 house, break into the house, you'll call the
5 local police officer who you might have a
6 relationship with, particularly in smaller towns
7 and communities, and ask them to check in.

8 When can you do that consistent with
9 the Fourth Amendment?

10 MR. DVORETZKY: I -- I think you can
11 always call the police, and --

12 JUSTICE KAVANAUGH: I know when you
13 can call. When can the police go in? I thought
14 your answer to the Chief Justice was somewhat
15 startling.

16 MR. DVORETZKY: Well, I -- I -- I
17 think the police can go in when they have
18 reasonable cause to believe that there's someone
19 in need and -- but --

20 JUSTICE KAVANAUGH: Okay. Let's --
21 let's break that down. You haven't seen the
22 person in a few hours, or you always talk to
23 your parent in Florida on Sunday night and --
24 and they weren't there, so, on Monday, you call
25 the police. What happens?

1 MR. DVORETZKY: I -- I -- I think
2 perhaps, in that situation, the police --
3 depending on how many facts you give them about,
4 you know, your parent generally being reliable,
5 not missing calls, not missing appointments,
6 the -- the more facts of that sort that you add
7 to the hypothetical, I think the -- the more
8 likely it is that the police could quite
9 plausibly invoke emergency aid as a basis for
10 going in to make sure that the person is okay.

11 But -- but you would need -- the
12 police would need to have that objective basis
13 to think that this is really somebody in need.
14 That's what lets them dispense with a warrant
15 request.

16 JUSTICE KAVANAUGH: Well, it's not
17 going to be perfect information. It's going to
18 be a neighbor who cares about another neighbor
19 and hasn't seen them, or a parent, and what I'm
20 worried about is, obviously, the longer you're
21 in the house and no one comes to get you, you're
22 more likely to die from the fall.

23 MR. DVORETZKY: It -- it -- it --

24 JUSTICE KAVANAUGH: And that's -- you
25 know, the statistics are huge on older people

1 dying from falls.

2 MR. DVORETZKY: Justice Kavanaugh,
3 it's never going to be perfect information, and
4 that's why it simply requires an objective
5 basis, not a certainty and just simply an
6 objective basis in the moment.

7 And I think, in the circumstance --

8 JUSTICE KAVANAUGH: Okay. Let's --

9 MR. DVORETZKY: -- of that
10 hypothetical you're --

11 JUSTICE KAVANAUGH: -- let's talk
12 about suicide. Do you know -- do you know how
13 many suicides by gunshot there are every day in
14 the United States?

15 MR. DVORETZKY: I -- I don't have the
16 statistics, but --

17 JUSTICE KAVANAUGH: There are -- there
18 are about --

19 MR. DVORETZKY: -- there are certainly
20 --

21 JUSTICE KAVANAUGH: -- every day on
22 average, every single day on average, there are
23 65 suicides by gunshot in the United States on
24 average every day, okay? And police officers
25 are critical in, when a neighbor, when a family

1 member, as in this instance, can help prevent
2 that.

3 And so why under the facts -- maybe
4 Justice Breyer's question, why under the facts
5 here isn't preventing suicide -- when a spouse
6 says that I am fearful that my spouse will
7 commit suicide, that's not good enough?

8 MR. DVORETZKY: Justice Kavanaugh,
9 what Mrs. Caniglia said in this case was that
10 she wanted the officers to check on Mr. Caniglia
11 and make sure that he was okay. They found him
12 okay. He -- he was calm, normal and polite in
13 speaking to them, and -- and -- and -- and 12
14 hours had passed since the statement that he had
15 made.

16 Now, whether or not somebody in that
17 situation might benefit from help, that --
18 that's not an -- an emergency.

19 JUSTICE KAVANAUGH: But police
20 officers in the moment -- in the moment don't
21 have time to do all this. They're faced with a
22 spouse, they're reacting to a situation. And
23 you know what, if they say, you know what,
24 that's not enough, and then the person commits
25 suicide, you know, that's not a good result.

1 And that's what --

2 MR. DVORETZKY: Justice Kavanaugh --

3 JUSTICE KAVANAUGH: -- and that's what
4 your position -- unfortunately, the starkest
5 form of your position will lead to officers
6 backing away from going into houses when old
7 people have fallen or there's concern about that
8 or when there's a risk of suicide.

9 MR. DVORETZKY: Justice Kavanaugh, in
10 a situation -- in a situation like this, the
11 officers could have involved a mental health
12 professional, and if they were unable to involve
13 one --

14 JUSTICE KAVANAUGH: But there's
15 time -- time is of the essence in -- in these
16 cases.

17 MR. DVORETZKY: If -- if -- if it's a
18 situation --

19 JUSTICE KAVANAUGH: Sixty-five a day.

20 MR. DVORETZKY: -- if it's a
21 situation, Justice Kavanaugh, where the officers
22 have an objective basis to think that time is of
23 the essence, then they can go in under exigent
24 circumstances.

25 JUSTICE KAVANAUGH: You don't know

1 ahead of time. That -- that's it. I'll let you
2 go to Justice Barrett.

3 CHIEF JUSTICE ROBERTS: Justice
4 Barrett.

5 JUSTICE BARRETT: Good morning,
6 Mr. Dvoretzky.

7 MR. DVORETZKY: Good morning.

8 JUSTICE BARRETT: I -- I have a
9 question. You know, you're talking about
10 finding a neutral decisionmaker, and you're --
11 and, you know, you cite the line in your brief
12 about police being engaged in the often
13 competitive enterprise of ferreting out crime.

14 What if, you know -- and -- and some
15 communities are doing that because sometimes
16 mental health checks don't go so well and people
17 end up getting hurt or the police, after someone
18 who's mentally ill pulled a gun on the police or
19 a knife, things go very poorly and sometimes the
20 person who is the subject of the welfare check
21 will end up being hurt or killed.

22 So some -- some communities are
23 creating a situation where social workers go in.
24 Would that be reasonable? Do you need to have
25 an administrative scheme or an administrative

1 warrant or something like that? What if it's
2 not the police who go in, but it's a community
3 that has a system where you call a social worker
4 if there's going to be a welfare check and the
5 social worker goes in in the kind of situation
6 that Justice Kavanaugh is describing?

7 MR. DVORETZKY: Justice Barrett, I
8 think the social worker, if a government
9 official, would still be subject to the Fourth
10 Amendment but that that --

11 JUSTICE BARRETT: Well, I know they'd
12 be subject to the Fourth Amendment, but my
13 question is, would that satisfy the Fourth
14 Amendment?

15 MR. DVORETZKY: I think the -- it
16 might because the social worker would be better
17 equipped than a police officer to determine if
18 there's a real emergency, and if the social
19 worker shows up on the scene and decides in his
20 or her professional judgment that I have to go
21 in, I think that would -- that would go a long
22 way towards showing that there were exigent
23 circumstances, such as the --

24 JUSTICE BARRETT: No, no, no. If
25 there are exigent circumstances, then the police

1 can decide if they're exigent circumstances, and
2 that's covered by our precedent. I guess I'm
3 asking you whether it affects the reasonableness
4 calculus if you have the kind of neutral person
5 that you're positing would be appropriately
6 involved in an administrative warrant scheme, if
7 that kind of person shows up and says, yes,
8 there's an old person who's been in there, and
9 rather than having the police go in, the social
10 worker's going to go in to check on the elderly
11 parent in Florida who hasn't been heard from.
12 Not exigent circumstances.

13 MR. DVORETZKY: So I think that likely
14 would satisfy the Fourth Amendment. The -- the
15 framework that I would use to think about that
16 is that the social worker is making a
17 determination of exigent circumstances.

18 JUSTICE BARRETT: Okay, but not
19 exigent circumstances. So you're -- so I think
20 the answer to my question -- you're -- you're
21 answering my question by saying no, the same
22 standard would apply to social workers. And
23 that's fine, that's consistent, but you're
24 saying exigent -- exigent circumstances or
25 nothing, no matter which government official is

1 making that judgment?

2 MR. DVORETZKY: I -- I -- I think
3 that's right. I think, if the social worker
4 were simply going in based on the judgment that
5 there's no exigent circumstance, but this person
6 could benefit from help, no, I don't think
7 that's a determination that the government can
8 make consistent with the Fourth Amendment.

9 JUSTICE BARRETT: Okay. Then I'll ask
10 you about the kinds of administrative schemes
11 that you're imagining. It -- it sounds odd to
12 my ears to talk about probable cause to think
13 that someone would benefit from help, right?
14 We've used the probable cause requirement to
15 talk about probable cause to believe that a
16 crime has been committed.

17 Are there circumstances where probable
18 cause or reasonable position -- reasonable
19 suspicion, those sorts of standards, have been
20 used outside of the investigative context when
21 we're talking about a crime?

22 MR. DVORETZKY: There are, and that is
23 what this Court called for in the Camara case.
24 And, again, red flag laws and involuntary
25 commitment laws, which I mentioned earlier, are

1 an example where the probable cause standard is
2 applied.

3 JUSTICE BARRETT: Well --

4 MR. DVORETZKY: It's also been applied
5 in other contexts, like housing code violations
6 and the like. So that -- that's the --

7 JUSTICE BARRETT: Well, housing code
8 violations sound different to me. You know, you
9 have probable cause to believe that there's been
10 some sort of violation, even if it's not
11 criminal. It sounds odd to me to apply that
12 probable cause standard to the kinds of
13 situations that the Chief Justice or Justice
14 Kavanaugh were positing, where you have an
15 elderly person who needs help. There's no
16 violation.

17 MR. DVORETZKY: There -- there's no
18 violation, but I think the way that -- that
19 court -- that states have adapted the probable
20 cause standard -- and I think it's consistent
21 with Camara -- is that probable cause means an
22 objective basis to believe that, fill in the
23 blank, that some -- somebody ought to have guns
24 removed from them, that they pose a risk of harm
25 to themselves, and so forth.

1 JUSTICE BARRETT: Okay. Thank you.

2 CHIEF JUSTICE ROBERTS: A minute to
3 wrap up, counsel.

4 MR. DVORETZKY: Thank you, Mr. Chief
5 Justice.

6 The Fourth Amendment protects the home
7 in a special way. When it comes to the home, a
8 reasonable search requires a warrant unless
9 there is consent or a true emergency.

10 A number of the Court's questions this
11 morning have focused on the practical
12 consequences of that, but -- but, as some of the
13 questions suggested, the exigent circumstances
14 doctrine and the -- and consent will cover the
15 vast majority of situations that one might be
16 concerned about.

17 Where police can point to an objective
18 basis to think that there is a need to go in,
19 they can do so. Where somebody asks for help,
20 they can do so.

21 And in some of the other scenarios,
22 states have come up with and can continue to
23 come up with administrative warrant-type regimes
24 that meet the needs that the Respondents and the
25 United States are positing in this case.

1 But the problem with the -- the rule
2 that the other side is positing is that it would
3 allow people to go into -- into the home, police
4 officers to go into the home without a warrant
5 in situations that would essentially blow up
6 numerous other Fourth Amendment doctrines that
7 this Court has held are very important to
8 protect the sanctity of the home.

9 CHIEF JUSTICE ROBERTS: Thank you,
10 counsel.

11 Mr. Desisto.

12 ORAL ARGUMENT OF MARC DESISTO
13 ON BEHALF OF THE RESPONDENTS

14 MR. DESISTO: Thank you, Mr. Chief
15 Justice, and may it please the Court:

16 The question presented is whether
17 caretaking by police officers and first
18 responders may under certain circumstances take
19 place in the home without a warrant. It should.

20 The Petitioner has an absolute
21 position: Under no circumstances should a
22 warrantless caretaking occur inside a home,
23 except upon consent or exigent circumstances.

24 This absolute all-or-nothing approach
25 is contrary to the reasonableness standard of

1 the Fourth Amendment, the very touchstone of the
2 Fourth Amendment. There may be circumstances
3 that allow for caretaking in the home absent a
4 warrant, when the advent of the potential harm
5 is not so clear but the need to respond could be
6 immediate. Time could be of the essence.

7 This Court, in the -- in the questions
8 you've asked, have outlined some examples of
9 people who are elderly. I used the example of
10 someone who hasn't gotten his or her mail for
11 three days and lives alone. The -- the -- the
12 potential harm is not so clear, and the need to
13 respond could be immediate.

14 The same facts -- the facts of this
15 case also illustrate this point. The Petitioner
16 here demonstrated the potential for suicide or
17 harm to his wife and others. The officers
18 reasonably acted, weighing the intrusions
19 against the risk and the timing of the harm.

20 In this case, the absolute position
21 taken by the Petitioner, not allowing the
22 caretaking actions, may have resulted in death
23 or injury, and that's why an absolute
24 prohibition against warrantless entry is wrong.

25 Community caretaking in the home

1 without a warrant should be allowed when it is
2 objectively reasonable to do so.

3 Thank you, Mr. Chief Justice. I
4 welcome the Court's questions.

5 CHIEF JUSTICE ROBERTS: Let's suppose,
6 Mr. Desisto, that police get a call from a --
7 from a neighbor who says, you know, the Johnsons
8 are away, I -- I know they're not here, and
9 they've got this fence around their backyard,
10 it's -- it's locked, but there's a cat up in the
11 tree. Can you -- can you come and help, you
12 know, get the cat down? Is that community
13 caretaking?

14 MR. DESISTO: Well, yes, I do. I
15 think that is community caretaking. And here's
16 why: You look at the intrusion, and the
17 intrusion is simply climbing a fence and getting
18 up in a tree, and you balance that against the
19 privacy right. And, to me, climbing a tree and
20 getting a cat doesn't interfere with the privacy
21 right. So I think that would be a -- an -- a
22 caretaking activity.

23 CHIEF JUSTICE ROBERTS: Well, at
24 common law and under our cases, the interests
25 protected by the Fourth Amendment, I think, are

1 a little more significant than that. And, you
2 know, the backyard surrounded by a locked fence
3 is -- is entitled to protection as well. You
4 know, a mere cat caught in a tree, I mean, you
5 leave it there for a while, it'll probably come
6 down on its own.

7 MR. DESISTO: That -- that -- that's
8 true. That's -- that is weighed in the balance
9 of whether or not it's a -- an intrusion. But,
10 you know, the common law reflects criminal
11 investigation, a criminal entry into -- an entry
12 into a home for criminal purposes.

13 So I'm not sure that that is an -- is
14 an apt way to look at it. I -- I think we've
15 got to remember caretaking functions are for
16 benign purposes, not for criminal
17 investigations.

18 CHIEF JUSTICE ROBERTS: Thank you,
19 counsel.

20 Justice Thomas.

21 JUSTICE THOMAS: Thank you, Mr. Chief
22 Justice.

23 Counsel, would you -- when I look back
24 at the cases that led to this and then that Cady
25 relied on, they were all cases involving

1 impounded or wrecked cars. How did we get from
2 that to -- to this case, where the -- no warrant
3 is required to enter a private home as opposed
4 to searching an impounded car?

5 MR. DESISTO: Well, you know, Cady
6 does speak of vehicles, but the text of Cady is
7 essential and applies to all situations
8 implicating a reasonable objective, a reasonable
9 test. Even Cady indicates that there may be
10 differences in the privacy rights when one looks
11 at a -- excuse me -- there may be differences in
12 the outcome when one looks at the privacy rights
13 in a home versus a car. But the test --

14 JUSTICE THOMAS: Well, that -- you
15 know, that's -- I -- I don't want to -- I'm
16 sorry for cutting you off, but just this point.
17 Here's my point, that in Cady, Chief Justice
18 Rehnquist first posits that there is a warrant
19 requirement, and we normally say that the Fourth
20 Amendment standard, when it comes to the home --
21 requirements of the Fourth Amendment are met
22 with a warrant when it comes to the home. But
23 he says this sentence, he writes this sentence:
24 "One class of cases which constitutes at least
25 -- at least a partial exception to this general

1 rule is automobile searches."

2 That sounds to me as though that's an
3 exception to the general requirement for a
4 warrant. And -- and I'm trying to figure out
5 how you got from this case to the general case,
6 to the case that he said -- to the general rule.
7 You got from the exception to the general rule,
8 and I don't understand how we did that.

9 MR. DESISTO: Well, I -- I would say
10 that the -- what -- what I think that that --
11 that phrase, that sentence in Cady is talking
12 about criminal investigations. So I -- I use
13 Cady to name the caretaking function, and then I
14 go back to cases such as Georgia versus
15 Randolph, where the Court says, you know, you
16 can't walk away from -- from things that
17 happened in a house, that you have to react to
18 it.

19 So I think we -- we go from the
20 vehicle, but the test remains the same. The --
21 the Fourth Amendment has only one test, and that
22 is that searches and seizures shall not be
23 unreasonable.

24 JUSTICE THOMAS: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Breyer.

2 JUSTICE BREYER: My question -- my
3 problem is that if you take a caretaker
4 exception and read that into the word
5 "reasonable," there's no stopping. We don't
6 know how far we'll go. But, if you are
7 absolute, you may cause a different problem.

8 So we're looking for subsidiary
9 standards. Camara says you need a warrant for
10 administrative searches, but it uses words like
11 "normally" and so forth, so there's some wiggle
12 room there.

13 What about -- would you -- what would
14 you think of the standard that Rhode Island
15 wrote into its law? That you'd write -- we'd
16 write a case that has to do with suicide
17 threats, period. The American Psychological
18 Association says you must take those threats
19 seriously. That's what we're writing about, the
20 common law approach, this case.

21 Rhode Island says any police
22 officer -- they wrote this statute after this
23 case began -- any police officer can take an
24 individual into protective custody and so forth
25 if the officer has reason to believe he is in

1 need of immediate care and treatment and there
2 would be a risk of serious harm by reason of
3 mental disability if he's allowed liberty.

4 What about that? If the officer has
5 reason to believe that there is a -- an imminent
6 likelihood of serious harm by reason of mental
7 disability. Suppose we said, well, for this
8 case, that is a reasonable standard.

9 MR. DESISTO: Isn't that the Fourth
10 Amendment standard? The Fourth Amendment --

11 JUSTICE BREYER: I don't know. That's
12 what I'm asking you, as in General Laws 1956,
13 40.1-5-7.1.

14 MR. DESISTO: Yes.

15 JUSTICE BREYER: Okay.

16 MR. DESISTO: Yes.

17 JUSTICE BREYER: Now what would you
18 think of simply saying Rhode Island here has
19 written a standard that is reasonable as applied
20 to this case, and then I -- you read -- I read
21 the sentence that I just read you?

22 MR. DESISTO: Yes.

23 JUSTICE BREYER: It doesn't say
24 probable cause. It says if the officer has
25 reason to believe, et cetera.

1 MR. DESISTO: Yes.

2 JUSTICE BREYER: What do you think of
3 it?

4 MR. DESISTO: I would go back to the
5 question presented, because the question
6 presented is whether the community caretaking
7 exception to the Fourth Amendment extends to the
8 home. So, for purposes of suicide in Rhode
9 Island, that may suffice, but that doesn't
10 answer the -- the question that is before the
11 Court and that you have to solve.

12 JUSTICE BREYER: Well, the question
13 before the Court is caretaker. We say no. That
14 exception is an automobile exception, that's
15 what we said, but that doesn't mean there's no
16 exception. There are emergencies, et cetera,
17 and as applied to a person who's a suicide
18 threat, Rhode Island's law does come up with a
19 reasonable standard that we think does not
20 violate the -- the Fourth Amendment.

21 MR. DESISTO: Okay.

22 JUSTICE BREYER: What would you think
23 of that?

24 MR. DESISTO: I -- I would think that
25 that helps for suicide -- suicidal issues in

1 Rhode Island.

2 CHIEF JUSTICE ROBERTS: Justice Alito

3 --

4 JUSTICE BREYER: I -- I'm sorry.

5 There's one standard for the country, and if
6 that kind of thing is okay in Rhode Island, it's
7 okay anywhere. I'm trying to get what you think
8 of it.

9 MR. DESISTO: Yes. Yes, I agree.

10 CHIEF JUSTICE ROBERTS: Justice Alito.

11 JUSTICE BREYER: You agree with that?

12 CHIEF JUSTICE ROBERTS: Justice Alito.

13 JUSTICE ALITO: Counsel, one of the
14 things that is troubling to a lot of people
15 about the caretaking exception is that it
16 doesn't seem to have any clear boundaries. And
17 when you tell us that it can include getting a
18 cat down from a tree, that fortifies that
19 concern. So can we narrow this down?

20 Let's talk about the reasons why a
21 search may be conducted or a seizure may be
22 conducted, and, again, putting aside the issue
23 of a warrant, can we narrow it down to
24 preventing life-threatening injury or serious
25 injury or some definable quantity of property

1 damage? Do you think it's possible to give it
2 some structure in any of those ways?

3 MR. DESISTO: I do. I think the most
4 important -- obviously, the most important goal
5 is preventing injury to life or death and -- or
6 destruction, major destruction of property.

7 I -- I don't think the test, though,
8 is any different because I think, when you weigh
9 the interests involved against the privacy
10 right, things like climbing up a tree to get a
11 cat don't count for a lot. But I think, if it's
12 someone might die, that does count for a lot.

13 And I -- I do think that -- that we
14 have prevented -- presented many standards for
15 the community caretaking --

16 JUSTICE ALITO: Well, let me just
17 interrupt because I have very little time. What
18 about the amount of information that the -- the
19 government officer has to have? Probable cause?
20 Reasonable suspicion? Something else?

21 MR. DESISTO: I -- I think -- I think
22 it has to be objectively reasonable and that's
23 it. You know, probable cause, as said in
24 Opperman, is peculiarly related to a criminal
25 activity, and I just don't see where it fits.

1 And --

2 JUSTICE ALITO: Well, it's a
3 calculation of probability, but it's a -- you
4 know, it's not a -- it's not an overwhelming
5 requirement, but it's a pretty substantial
6 requirement. "Reasonable suspicion" has a clear
7 meaning. It could be applied in a lot of
8 different contexts. Is that what you're
9 advocating?

10 MR. DESISTO: No, I'm advocating to --
11 to -- to -- to use the -- the -- the text of the
12 Fourth Amendment, which is the touchstone, and
13 that is reasonableness. So I think, if we stick
14 with is it objectively reasonable based upon all
15 the guardrails that we've put in, that is --
16 that's the proper way to address this.

17 JUSTICE ALITO: All right, thank you.

18 CHIEF JUSTICE ROBERTS: Justice
19 Sotomayor.

20 JUSTICE SOTOMAYOR: Counsel, I think
21 that Justice Alito hit the nail on the head,
22 because I've read the decisions of other
23 circuits. They seem all to have different
24 factors that make up community caretaking, and
25 I'm actually not sure what it means.

1 But I am concerned deeply about the
2 First Circuit's claim that there is no
3 requirement that officers must select the least
4 intrusive means of fulfilling care -- community
5 caretaking responsibilities.

6 I think what everyone has forgotten
7 here is that, at least in this situation, there
8 was no immediate danger to the person
9 threatening suicide and no immediate danger to
10 the wife because the suicide person was removed
11 to a hospital.

12 And so the issue is, can the police,
13 notwithstanding that and notwithstanding the
14 ability to ask the wife whether she would
15 consent to giving up the gun and ammunition,
16 that they decided on their own to go in and
17 seize the gun.

18 That appears to me to take away from
19 any of the limiting principles that Justice
20 Alito put forth, yes, some -- some -- whether
21 you call it reasonable suspicion, some -- some
22 suspicion, whatever adjective you put there,
23 there was no immediate danger, there were a
24 readily accessible alternative that was ignored,
25 and you're putting into the hands of law

1 enforcement the ability to use their judgment as
2 opposed to that of the psychiatrists who were
3 treating this man, they certainly could have
4 asked the psychiatrists whether they should
5 remove the guns or not. They didn't do
6 anything.

7 Tell me, what's the limiting
8 principles?

9 MR. DESISTO: Okay. I -- I --

10 JUSTICE SOTOMAYOR: Or how -- how
11 serious does the threat have to be? How much
12 judgment do the police officers have to be --
13 how do we limit them from substituting their
14 own? Could they have gone into the house and
15 taken not just the gun but any bat, knife,
16 anything else that in their judgment this man
17 could have used to commit suicide?

18 MR. DESISTO: I -- I think that's
19 where the objective reasonableness analysis
20 comes into play. First of all --

21 JUSTICE SOTOMAYOR: No, it doesn't,
22 because --

23 MR. DESISTO: -- there was no
24 immediate danger here.

25 JUSTICE SOTOMAYOR: No, no, it

1 doesn't, because the question is -- the
2 objective reasonableness has to do with going
3 into the place and seizing.

4 MR. DESISTO: Yes, it was --

5 JUSTICE SOTOMAYOR: So what was
6 objectively reasonable under these
7 circumstances? And what's the limiting
8 principle?

9 MR. DESISTO: Well, one of the things
10 to keep in mind is that there -- they were faced
11 with a situation where he was taken to the
12 hospital for evaluation, they didn't know when
13 he would be back. And, in fact --

14 JUSTICE SOTOMAYOR: Why couldn't they
15 find out?

16 MR. DESISTO: I -- I think --

17 JUSTICE SOTOMAYOR: Why couldn't they
18 ask the wife?

19 MR. DESISTO: They -- they could have.

20 JUSTICE SOTOMAYOR: Why couldn't they
21 have just taken the ammunition and not the gun?

22 MR. DESISTO: They -- they could have
23 done all of those things.

24 CHIEF JUSTICE ROBERTS: Justice Kagan.

25 MR. DESISTO: I can't quarrel with you

1 on that, but --

2 CHIEF JUSTICE ROBERTS: Justice Kagan.

3 JUSTICE KAGAN: Mr. Desisto, I -- I
4 would think that if the police have some good
5 reason to think that a person is going to use a
6 gun or other weapon to take his own life or to
7 take -- to take his own life or to take the life
8 of a spouse or other family member, that would
9 count as reason enough for the police to
10 proceed. In other words, it is exigent
11 circumstances or you can say it falls within the
12 exception that we've set up for emergency aid.

13 So why didn't you make that argument?

14 MR. DESISTO: We -- we looked at
15 Brigham and it was the timing of the potential
16 harm, could happen in a minute, could happen in
17 a day, and thought that that distinction made
18 exigent circumstances inapplicable.

19 Now, if this Court were to prefer to
20 --

21 JUSTICE KAGAN: I -- I'm sorry, could
22 you just explain that to me a little bit? You
23 just thought that it -- it wasn't -- it
24 didn't -- it was not an immediate threat and why
25 did you think that?

1 MR. DESISTO: We -- we thought that
2 the timing of the potential harm couldn't be
3 determined, was -- it's undeterminable, and so
4 exigent circumstances, when looking at this
5 Court's cases for emergency aid, and there are
6 only two of them, Michigan and Brigham, where
7 the action happened immediately right in front
8 of the officers, we thought that may not be the
9 best fit. And the best fit was the community
10 caretaking doctrine, where the -- the -- the --
11 the advent of the harm doesn't have to be
12 immediate. In fact, it's unknown and included
13 by --

14 JUSTICE KAGAN: Yeah. No, I mean, I
15 guess I understand why that would seem like
16 community caretaking. That sounds like a phrase
17 that covers a lot of stuff.

18 But, as Justice Thomas says, we really
19 have only used that phrase with respect to
20 automobile inventories, inventory searches, and
21 you said, well, the Fourth Amendment has only
22 one test, but I kind of think, if there's any
23 one principle of the Fourth Amendment law that
24 this Court has created, it's that the home is
25 special and that the automobile is distinctly

1 not.

2 MR. DESISTO: Yeah, I -- I agree, but
3 I think that that goes into the weighing of the
4 balance. The -- the -- the test is the same.
5 Where there's an automobile, the privacy right
6 is limited and the home is at the forefront.
7 That -- that makes the difference when -- if a
8 -- if an entry into the home is challenged. I
9 think courts take that into consideration and,
10 frankly, so do police officers.

11 JUSTICE KAGAN: Thank you, Mr.
12 Desisto.

13 CHIEF JUSTICE ROBERTS: Justice
14 Gorsuch.

15 JUSTICE GORSUCH: Mr. Desisto, at
16 common law at least, you know, when we look --
17 we often look to common law when we're
18 interpreting the Fourth Amendment, its
19 reasonableness requirement, what did it mean
20 then, people could, of course, trespass on
21 property in aid of a public or private
22 necessity, what we today call exigent
23 circumstances.

24 I'm unable to locate any common law
25 authority privileging a trespass absent

1 exigent -- something like exigent circumstances.
2 Have you been able to locate anything in the
3 common law that comes close to what you're
4 asking for here?

5 MR. DESISTO: No. I don't think the
6 common law helps either side in this. Neither
7 does, frankly, the history of the -- the making
8 of the Fourth Amendment.

9 I do think the Restatement of Torts
10 is -- as you indicated, is our best example.
11 And that is you're not a trespasser if you're
12 going in for purposes of helping someone or
13 helping the property.

14 JUSTICE GORSUCH: Okay. If the -- if
15 the original meaning and history doesn't help,
16 let -- let -- let me ask you why -- I'm kind of
17 following up on Justice Kagan real quickly here.

18 I would have thought that cases of --
19 of threatened violence against oneself or others
20 or the prospect that someone is lying, having
21 fallen in a home, would count as exigent
22 circumstances in the vast majority of cases, and
23 it's only when there's a long time delay that
24 that's going to become a problem.

25 So why -- why -- why doesn't the

1 exigent circumstances bucket take care of the
2 practical concerns that have been voiced here
3 today?

4 MR. DESISTO: I think, if this Court
5 determines and clarifies that apart from
6 Michigan and Fisher and Brigham, that exigent
7 circumstances account for situations where the
8 officer doesn't know when the harm is going to
9 occur and -- and doesn't know if there's an
10 immediate need, but -- but something must be
11 done, they can't walk away, well, then exigent
12 circumstances does apply.

13 JUSTICE GORSUCH: Thank you, counsel.

14 CHIEF JUSTICE ROBERTS: Justice
15 Kavanaugh.

16 JUSTICE KAVANAUGH: Thank you.

17 And good morning, Mr. Desisto.
18 Picking up right there on Justice Gorsuch's
19 question does make this seem, as I think the
20 amicus brief from the states, written by the
21 Utah solicitor general, says that this case is
22 before the Court, as the brief says, "partly
23 because of a confusion in nomenclature."

24 And then that amicus brief also says
25 "although mislabeled a community caretaking

1 warrant exception, the First Circuit effectively
2 applied Brigham City's emergency aid standard."

3 And I'm wondering if we're just here
4 because of a -- a confusion about labeling, as
5 that brief says. Can you respond to that?

6 MR. DESISTO: Yeah, I -- I can. I
7 think, if -- if this Court looks at Brigham and
8 looks at Michigan versus Fisher and then
9 determines that in situations apart from those
10 where the officers, as I said, can't tell when
11 the harm is going to happen and thinks that the
12 need is imminent, if that's termed exigent,
13 that -- that's fine.

14 I do think, though, that one has to
15 look at the response under caretaking and
16 exigent circumstances. One is reactive,
17 exigent, and one is proactive, caretaking.

18 And look at the facts of this case.
19 They sent them to -- to be evaluated. They
20 retained the guns. And -- and, frankly, you
21 know, the hospital record indicates that he was
22 discharged because they were confident the guns
23 had been taken. Those are proactive things that
24 fall within the community caretaking doctrine
25 that may not be applicable to exigent

1 circumstances.

2 JUSTICE KAVANAUGH: Thank you.

3 CHIEF JUSTICE ROBERTS: Justice
4 Barrett.

5 JUSTICE BARRETT: Good morning, Mr.
6 Desisto. You told Justice Gorsuch that your
7 best example at common law of something like
8 this was that for the tort of trespass, if you
9 entered property because of necessity, there was
10 no liability.

11 And is it really the case that, say,
12 I'm a neighbor and I go into Mr. Caniglia's home
13 because, you know, I understand the wife is
14 concerned about the presence of the guns still
15 in the house, and I take the guns and then take
16 them back to my house, that I'm not liable
17 either for trespass or conversion?

18 MR. DESISTO: Well, I didn't say
19 conversion. So that might be a little
20 different. And I -- and don't forget we're
21 talking about a tort action, but I -- I -- I go
22 by the words of the Restatement, and under the
23 Restatement, it --

24 JUSTICE BARRETT: But you're not
25 asking just for the entry; you have to justify

1 the seizure as well. And you -- you don't have
2 an example for that at common law; am I right?

3 MR. DESISTO: That's correct.

4 JUSTICE BARRETT: Okay. Let me ask
5 you this --

6 MR. DESISTO: Common law doesn't --

7 JUSTICE BARRETT: What if they -- the
8 police went into Mr. Caniglia's home and they
9 found a meth lab? I assume that they can take
10 all of that and then he can be prosecuted.

11 MR. DESISTO: He can. That's plain
12 view. Yes.

13 JUSTICE BARRETT: Okay. And then
14 let's talk about how far this exception might
15 go, because obviously there's a lot of concern
16 about being an umbrella for a lot of sorts --
17 lots of different things.

18 Let's say that in a town with a high
19 rate of COVID infections, police look through
20 the window and they can see a lot of people
21 gathered together that are not wearing masks.

22 Can they enter?

23 MR. DESISTO: Yes. But -- but see, I
24 think that gets -- there may be -- there may be
25 a criminal or, you know, a violation for so many

1 people entering that would allow --

2 JUSTICE BARRETT: No, that wasn't part
3 of my hypothetical. No criminal -- you know,
4 it's just that there's -- there's no crime
5 that -- say that there's a mask ordinance that
6 carries no penalty. People are told to wear
7 masks, but there's no penalty for it.

8 MR. DESISTO: Yes -- I --

9 JUSTICE BARRETT: This a concern about
10 spread.

11 MR. DESISTO: Yes, I -- I -- yes, I'd
12 look at the community caretaking test. It's a
13 transient hazard. There's a non-investigatory
14 reason for engaging in that activity going in.
15 They have articulable facts. They've seen it.
16 And there -- it depends on what they do. If
17 they go in and just disperse the crowd, I think
18 that fits within the community caretaking.

19 JUSTICE BARRETT: Okay. Thank you.
20 My time has expired.

21 CHIEF JUSTICE ROBERTS: A minute to
22 wrap up, Mr. Desisto.

23 MR. DESISTO: Thank you, Mr. Chief
24 Justice.

25 The text and the meaning and the

1 spirit of the Fourth Amendment is not offended
2 by caretaking activity to the most vulnerable at
3 the most vulnerable times, so long as the
4 intrusions are reasonable when weighed against
5 the privacy interest.

6 The -- the question presented is
7 something that should be answered in the
8 affirmative. An absolute prohibition is not
9 consistent with the Fourth Amendment. Our
10 nation doesn't abandon those in need. Police
11 officers cannot turn their backs and walk away.

12 The circuit decision should be
13 affirmed, and the question presented should be
14 answered in the affirmative. Thank you.

15 CHIEF JUSTICE ROBERTS: Thank you,
16 counsel.

17 Ms. Ratner.

18 ORAL ARGUMENT OF MORGAN L. RATNER
19 FOR THE UNITED STATES, AS AMICUS CURIAE,
20 SUPPORTING THE RESPONDENTS

21 MS. RATNER: Mr. Chief Justice, and
22 may it please the Court:

23 This case is fundamentally different
24 from most of the Court's Fourth Amendment cases
25 because the question is not act now or get a

1 warrant first. It's act now or not at all.
2 That's because there is no warrant process in a
3 lot of these non-investigatory situations, from
4 welfare checks on elderly residents to
5 intervention in current suicide threats.

6 Although there have been a lot of
7 questions this morning about whether this is
8 emergency aid or exigent circumstances or
9 community caretaking or something else, the
10 label you give it is not nearly as important as
11 the principle.

12 And the key principle is if someone is
13 at risk of serious harm and it's reasonable for
14 officials to intervene now, that is enough. The
15 officials don't need to show that the harm is
16 mere moments away or that there's no time to get
17 a warrant because, again, for many of these
18 situations there is no warrant process that
19 could be invoked at all.

20 CHIEF JUSTICE ROBERTS: Ms. Ratner,
21 how do you feel about the cat? Do you let the
22 policeman bring it down or die in the tree?

23 MS. RATNER: So we -- we don't, Your
24 Honor. The -- the lower courts have generally
25 applied three buckets of these types of

1 community caretaking interests: One is serious
2 harms to people. Two is serious harms to
3 property. And three is sort of an abatement of
4 nuisances. We're here defending the serious
5 harms to people, which we think is the paramount
6 government interest. And --

7 CHIEF JUSTICE ROBERTS: So no -- no
8 concern about property or -- or animals?

9 MS. RATNER: I think there would have
10 to be unusually compelling circumstances for
11 those other types of interests to be
12 sufficiently important to match the important
13 privacy interests --

14 CHIEF JUSTICE ROBERTS: Well, okay,
15 it's water dripping from above, you know, in --
16 in someone's home, and they happen to own a Van
17 Gogh and the water's going to ruin the painting.
18 Is that compelling?

19 MS. RATNER: I -- I think unlikely.
20 I'd hope they can move the painting in those
21 circumstances.

22 CHIEF JUSTICE ROBERTS: Well, you
23 know -- no, they're like the elderly woman.
24 They're off somewhere and nobody can reach them.

25 MS. RATNER: I -- again, you know,

1 there may be circumstances where the Court would
2 want to consider those questions and it may want
3 to leave that question open. But we think that
4 most important cases for the Court to cover here
5 are the protection of -- of risks to human
6 health.

7 And so there are cases where there's
8 water dripping from above over an electrical box
9 and firefighters are concerned about starting a
10 fire in -- in the home and they --

11 CHIEF JUSTICE ROBERTS: So why don't
12 we -- why aren't you arguing for an exception?
13 It's not community caretaking; it's, you know,
14 objectively reasonable grounds to believe life
15 is in danger?

16 MS. RATNER: But that -- that is -- is
17 more or less the test that we've put forward
18 here. We -- we think the community caretaking
19 label is a little misleading because, again,
20 Cady was so bound up in the particular
21 circumstances of vehicles, and that the better
22 rule here is there be specific facts that
23 objectively establish a non-investigatory
24 justification, in particular, the need for
25 assistance, and that the scope of the official's

1 actions be reasonably tailored to that interest.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 Justice Thomas.

5 JUSTICE THOMAS: Thank you, Mr. Chief
6 Justice.

7 Counsel, as well meaning as these
8 checks may be, there's always going to be
9 someone who does not want the government's help
10 or doesn't want the intrusion.

11 Normally, when we look at these things
12 under the Fourth Amendment, we do look for some
13 common law historical -- historic -- historical
14 analogue. And here it seems as though there is
15 none.

16 Could you give us something to look to
17 for the appropriate test? You've given us a
18 number of tests, what you suggest should be the
19 tests, but normally we look for some analogue.

20 What would be your best example?

21 MS. RATNER: Sure, Justice Thomas. I
22 think that the best analogue here is to the
23 duties of a constable. And the constable really
24 wore two hats at common law. One was a
25 peacekeeping role, and one was a law enforcement

1 role. And when he acted in that peacekeeping
2 role, if you look to Hale and Burn and Conductor
3 Generalis, you saw that he could enter a home
4 without a warrant to break up a fight, to stop
5 late-night noise, to deal with disorderly
6 drinking. And that was different from when he
7 was acting in his law enforcement capacity.

8 So that I -- I do think is the best
9 analogue that you have here. And I'd note that
10 Petitioner hasn't identified a single case or
11 treatise at common law in which a
12 non-investigatory entry was -- a warrant was
13 required.

14 JUSTICE THOMAS: But it seems as
15 though what you just gave me as an -- as
16 analogues would fit under some of our current
17 exceptions, exigent circumstances, emergencies,
18 things of that sort. And I don't know why we
19 would need another category to cover those
20 examples.

21 MS. RATNER: Justice Thomas, if you
22 think that exigent circumstances and emergency
23 aid are broad enough to cover circumstances in
24 which it is reasonable to act now, even if we
25 don't know that someone is going to be injured

1 in mere moments, then we are perfectly fine with
2 that test. And we think that test would cover
3 circumstances like welfare checks and the
4 current suicide threat.

5 The problem is when you have lower
6 courts -- and Petitioner here saying that those
7 are really cabined to circumstances in which the
8 emergency is going to come to head in the
9 moment. And that's just too restrictive to map
10 onto even that common law rule.

11 JUSTICE THOMAS: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice
13 Breyer.

14 JUSTICE BREYER: I -- I'd like to know
15 what you would think, if you accept, at least
16 hypothetically, that if you just say community
17 caretaking, we can't foresee how broad that
18 might be. And if you use the present words that
19 attach to emergency or exigent circumstances,
20 they might in this situation be too narrow.

21 But suppose we were -- what would you
22 think, what would the government think, of
23 simply taking this case as a common law case --
24 it does involve threats of suicide; they are
25 serious -- and saying the Rhode Island's

1 legislature has -- this is a Rhode Island case
2 -- has -- has enacted subsequently a statute
3 that we believe has a constitutional standard
4 that allows the officers to take this individual
5 into protective custody if the officer has
6 reason to believe that there is a risk of
7 imminent likelihood of serious harm by reason of
8 mental disability?

9 MS. RATNER: So, Justice Breyer, we
10 would be fine with that result if the Court
11 clarifies what it means by "imminent." And I
12 think is a problem --

13 JUSTICE BREYER: But we can't. That's
14 the very -- that's the very thing we can't do.

15 MS. RATNER: But --

16 JUSTICE BREYER: I mean, I don't know
17 how to do it because, obviously, a month is
18 ridiculous. A second is too short.

19 So you tell me, what is it that we
20 should say? How do you define the word
21 "imminent"? Often -- Judge, I know less about
22 this than psychologists and psychiatrists, who
23 say that any utterance of the words "threatening
24 suicide" should be taken very seriously. I'm
25 not an expert, and I would think laws should

1 take it seriously. What do you want to say?

2 MS. RATNER: I think, if you said, by
3 "imminent," we have meant to suggest a current,
4 ongoing crisis for which it is reasonable to act
5 now and you've bounded that description by
6 reasonableness rather than by a mere moment's
7 rule or by comparison to a warrant process that
8 doesn't even exist, then I think that that would
9 suffice and would give room to encompass these
10 different circumstances -- these various
11 situations.

12 JUSTICE BREYER: Thank you.

13 CHIEF JUSTICE ROBERTS: Justice Alito.

14 JUSTICE ALITO: How far can we go in
15 giving a little bit more substance to what's
16 been labeled community caretaking? Maybe what
17 you've said so far does give it some substance.

18 So if you -- I believe you -- you said
19 it at least encompasses a situation where the --
20 the objective is to prevent life-threat --
21 life-threatening or serious physical injury,
22 right? That would be a first step?

23 MS. RATNER: I think that's correct.
24 I would put emphasis on serious physical harm
25 because the Court said in Brigham City it wasn't

1 going to require someone to be, you know,
2 unconscious before it --

3 JUSTICE ALITO: Okay, serious --
4 serious physical harm. And then how much
5 information does a -- does an officer have to
6 have, and does it matter whether it's a police
7 officer or a -- a mental health professional or
8 someone else?

9 MS. RATNER: The -- the information we
10 think is specific facts sufficient to
11 objectively establish a non-investigatory
12 justification and to make it reasonable to act
13 now, and -- and that would apply both to law
14 enforcement officials and to others, which --
15 which I do think is an important part of this
16 case, that Petitioner is asking for a warrant
17 process to apply to things that firefighters do
18 and social workers do and mental health
19 professionals do.

20 JUSTICE ALITO: Well, in the case of
21 the -- the risk of suicide, do you think it's
22 sufficient if someone says, my friend said she
23 was so distraught she was going to jump out the
24 window, and then they questioned that person and
25 the person says, oh, it's just a joke?

1 MS. RATNER: I -- I think that would
2 likely not be sufficient there. I think, again,
3 you would need specific facts to objectively
4 establish the risk. And, here, you don't have
5 just a statement that might have been hyperbole.
6 You have that statement coupled with the
7 production of a live firearm, a statement that's
8 so scared, the individual who presumably knows
9 that person best, that she packed a bag, hid the
10 magazine for the gun, left for the night and
11 called the police the next morning.

12 And then you have confirmation by the
13 person who made the statement that he did say
14 it, but he was sick of his life and so on and so
15 on. And -- and so I -- I do think courts are
16 perfectly capable of drawing the line between
17 those two scenarios.

18 JUSTICE ALITO: All right. Thank you.

19 CHIEF JUSTICE ROBERTS: Justice
20 Sotomayor.

21 JUSTICE SOTOMAYOR: Counsel, one of
22 the reasons I think the Fourth Amendment was
23 there was to make persons -- and I'm quoting its
24 own language roughly -- to secure persons in
25 their home. That's the language of the Fourth

1 Amendment.

2 And it seems to me that I don't have a
3 problem with them having removed this gentleman
4 and taken him to the hospital. That's a
5 seizure, because they had reason to believe that
6 he was threatening suicide.

7 And even though 12 hours had passed,
8 the wife was still concerned, and he admitted to
9 the threat by calling it a joke. I don't think
10 police officers have to take his description at
11 face value given the circumstances described.

12 So seizing him and taking him to the
13 home would seem to me -- to psychiatric
14 examination is very much an exigent
15 circumstance.

16 Missing here, as I pointed out to your
17 colleague, is the next step, which is going into
18 the home without attempt to secure consent from
19 the wife and seizing the gun and then keeping it
20 indefinitely until a lawsuit is filed.

21 The wife tried to get it back. He
22 tried to get it back. Weeks and weeks went by.
23 When we permit police to search and seize
24 without some standard, we run the risk of
25 situations like this one repeating themselves.

1 So can you concentrate on the exigency
2 with respect to the second seizure at issue? My
3 colleagues seem concerned with the first one,
4 preventing the suicide, which has to do with
5 seizing the individual or even going in to care
6 for the individual. I'm talking about a second
7 seizure and --

8 MS. RATNER: So, Justice Sotomayor --

9 JUSTICE SOTOMAYOR: -- and one that
10 wasn't a seizure in plain view. They went in
11 and literally searched and took it.

12 MS. RATNER: So, Justice Sotomayor,
13 first, to get out of the way, the keeping
14 indefinitely of the gun was found to be a due
15 process violation, so you should take that part
16 out of the case.

17 And then the question was, you know,
18 should these officers have perhaps followed
19 Petitioner to the hospital and made sure that he
20 got a mental health evaluation or did they think
21 taking guns where they knew the location of
22 those guns was -- was a better or an -- or an
23 equal choice there?

24 You know, I think that's the closest
25 part of the case, but, at the end of the day,

1 without the benefit of hindsight, it was a
2 reasonable choice for them to think, let's
3 temporarily take ahold of these instead of
4 following this person to the hospital and -- and
5 seeing what happens there.

6 JUSTICE SOTOMAYOR: Well, it turned
7 out --

8 CHIEF JUSTICE ROBERTS: Justice Kagan.

9 JUSTICE KAGAN: Ms. Ratner, can I ask
10 you about a few of the community care cases in
11 the lower courts and ask what you think of them?

12 Rohrig, first, there's a lot of noise
13 coming from one house. The officer knocks.
14 Nobody comes to the door. The neighbors are
15 complaining, but there doesn't -- it's not -- it
16 doesn't rise to the level of a crime.

17 Can the officer go in?

18 MS. RATNER: So, as I mentioned
19 before, we aren't defending the abatement of
20 nuisances case like that one.

21 JUSTICE KAGAN: Right. I'm just
22 asking. I mean, what do you think?

23 MS. RATNER: I think the Court should
24 leave the question open, but, no, that's not the
25 course --

1 JUSTICE KAGAN: So what do you think?

2 Yes or no?

3 MS. RATNER: If we had to decide right
4 now, I would say probably not, that we're -- we
5 think that the risk of harm to a person is -- is
6 really the core that could match the --

7 JUSTICE KAGAN: Okay. How about
8 Quezada? The officer there goes to a home. I
9 think that the officer is trying to leave a
10 child protective order or something like that,
11 but what the officer finds is that the lights
12 are on inside and there's a TV on. Can the
13 officer go in?

14 MS. RATNER: I -- I think probably
15 not. I -- I think, in Quezada, there weren't
16 sufficient specific facts to establish -- to
17 make it reasonable to believe someone needed
18 assistance.

19 JUSTICE KAGAN: Okay. How about
20 McDonald? The -- the house owner goes to a
21 store, leaves his door partially ajar. The
22 neighbor sees the open door, calls the police.
23 Police officer arrives, doesn't receive a reply
24 because there is, in fact, nobody there.

25 Can he search the house?

1 MS. RATNER: If it's just an open
2 door, that's probably insufficient. Most of the
3 open door cases involve other facts, like
4 there's a car in the driveway starting to become
5 covered with leaves and mail outside and that
6 sort of thing. So that's --

7 JUSTICE KAGAN: Right. Does it give
8 you pause at all that the community care
9 exception has acquired these -- these dimensions
10 in the lower court -- in the lower courts to
11 encompass all of these cases?

12 MS. RATNER: So, no, Justice Kagan, I
13 -- I think because you've really highlighted a
14 couple of the more unusual ones, and the vast
15 majority, I point the Court to the LaFave
16 treatise, if you look through, these are things
17 like suicide threats and welfare checks and
18 unattended children and weapons that are left
19 accessible to children with no adult in the home
20 and risk of explosion, and they're just much
21 more obvious circumstances where there's no
22 warrant available and, of course, we want
23 someone to intervene there and, of course, we
24 want police involved.

25 JUSTICE KAGAN: Thank you, Ms. Ratner.

1 CHIEF JUSTICE ROBERTS: Justice
2 Gorsuch.

3 JUSTICE GORSUCH: Good morning, Ms.
4 Ratner. Let me see if I understand what -- what
5 you said this morning because it differs a
6 little bit from my reading of your brief.

7 You -- you agree we should look to the
8 common law to inform our understanding of the
9 Fourth Amendment's reasonableness test?

10 MS. RATNER: We've -- we've always
11 agreed that the Court looks to the common law
12 for -- for what it can get there if there's a
13 perfectly obvious answer.

14 JUSTICE GORSUCH: Okay, okay, okay.
15 And -- and you agree that there we'll find a
16 test that allows trespass for something that
17 looks like exigent circumstances, and -- and by
18 that, I mean an injury to a -- grave injury to a
19 person?

20 MS. RATNER: So there are -- there are
21 two differences there. You will see trespass
22 for private individuals allowed both for serious
23 harms to people and -- and actually to property
24 at the common law. And you will see government
25 officials were allowed to enter homes in the

1 service of their peace-keeping duties.

2 JUSTICE GORSUCH: Okay. But -- but
3 you're asking us to rely on, as I understand it,
4 maybe I'm mistaken, the common law's general
5 rule that a trespass is permissible in aid of
6 someone who's in danger of imminent physical
7 injury?

8 MS. RATNER: That's not quite how the
9 trespass rule is framed at common law. It's
10 generally, as now, explained in the Restatement,
11 it reasonably appears necessary to prevent a
12 harm.

13 So I -- I wouldn't want to put that to
14 sort of immediacy cast. And, again --

15 JUSTICE GORSUCH: Okay. But I
16 thought -- I thought -- I thought you said it
17 had to do with physical harm to persons.

18 MS. RATNER: The common law actually
19 extends both to serious harms to persons and to
20 property. There are a lot of --

21 JUSTICE GORSUCH: But your argument --
22 I'm am asking about your argument now. It
23 doesn't extend past persons; is that right?

24 MS. RATNER: Our argument we've --
25 we've defended today is that the serious

1 government interest, the government interest
2 that's been called paramount, an individual
3 safety is one that can match the significant
4 privacy interests in the home. We don't think
5 the Court should get into harms to property or
6 abatement of nuisances here.

7 JUSTICE GORSUCH: Okay. Okay. And if
8 -- if that's all true, why -- why doesn't that
9 more naturally fit under an exigent
10 circumstances test, rather than a community
11 caretaking exception that started in Cady, had
12 to do with cars, and now mostly has to do with
13 nuisances?

14 MS. RATNER: So, to be clear, we
15 haven't located this in Cady itself, but the --
16 the reason why exigent circumstances has, I
17 think, tripped up some lower courts is because
18 it's often thought of as the time available to
19 get a warrant. So courts have said, okay, what
20 if in this jurisdiction for a criminal case,
21 someone can act -- get a warrant within an hour?
22 Well, they need to know that suicide is going to
23 occur within an hour or that person they're
24 doing a welfare check on is going to break their
25 hip within the hour. And that --

1 JUSTICE GORSUCH: Okay. Thank you.

2 Thank you. Thank you, counsel.

3 CHIEF JUSTICE ROBERTS: Justice

4 Kavanaugh.

5 JUSTICE KAVANAUGH: Thank you, Chief

6 Justice. Good morning, Ms. Ratner.

7 If I'm hearing you correctly, you're
8 not concerned about the label, whether community
9 caretaking or exigent circumstances, as long as
10 we get the substance correct; is that accurate?

11 MS. RATNER: That's accurate. And --
12 and as I was just explaining to Justice Gorsuch,
13 I think the key part of the substance in many
14 circumstances is timing. If you limit this to
15 mere moments or if you limit this to the time
16 available to get a warrant when there is no
17 warrant available, then that's, I think, when
18 you end up excluding a lot of non-investigatory
19 activity.

20 JUSTICE KAVANAUGH: And I think you
21 used the phrase "current ongoing crisis by
22 which it's reasonable to act now." Is that an
23 accurate -- did I hear that correctly?

24 MS. RATNER: Yes, I think that's
25 correct.

1 JUSTICE KAVANAUGH: And then on the
2 common law, I think there's an interesting
3 question as to -- as to the original meaning of
4 the term "reasonable," "unreasonable," as
5 distinct from the terms "search" and "seizure."
6 But put that aside. We don't -- we certainly
7 don't ignore the common law even as to the term
8 "reasonable."

9 So if we're writing an opinion here
10 and it goes along the lines of the rule that
11 you're proposing, how would we write the
12 following sentence or paragraph? Our proposed
13 rule is consistent with common law because --
14 you can fill in the blank with the rest of your
15 time.

16 MS. RATNER: Because the common law
17 drew a line between government officials acting
18 in an investigatory and a non-investigatory
19 capacity, and when they were acting in a
20 non-investigatory capacity, they were allowed to
21 enter homes without warrants in order to address
22 a -- a need, a reasonable possibility of
23 disturbance or serious physical harm.

24 That also maps onto the common law of
25 trespass, which applied, of course, beyond

1 government officials and just to private
2 individuals.

3 I -- I would note that because that's
4 still the common law rule, under Petitioner's
5 theory here, government officials would be
6 allowed to enter the home in fewer circumstances
7 than private individuals are -- are permitted to
8 enter.

9 JUSTICE KAVANAUGH: Thank you,
10 Ms. Ratner.

11 CHIEF JUSTICE ROBERTS: Justice
12 Barrett. Justice Barrett.

13 JUSTICE BARRETT: Oh, sorry, I was on
14 mute. Ms. Ratner, can you say a little bit
15 about how the common law rule that justifies a
16 trespass in your view would justify seizing the
17 guns?

18 MS. RATNER: Sure. So that is the
19 circumstance where I -- I think obviously
20 there's no parallel between what government
21 officials are permitted to do and what the
22 private individuals are permitted to do. So --

23 JUSTICE BARRETT: And so to be clear
24 about your argument, you're saying that you
25 would be then okay if the rule that we

1 articulated, if we sided with you, didn't
2 include the ability to seize guns or other
3 things found in the home?

4 MS. RATNER: No, I wouldn't. I would
5 not be okay. My point is merely if you're
6 talking about the common law trespass rule that
7 applied to individuals, from that you can derive
8 the general point, which is an entry is
9 justified when there is a serious harm at risk.

10 On -- on the other hand, government
11 officials, obviously, are allowed to do things
12 all the time that private individuals can't do.
13 And so I certainly wouldn't limit government
14 officials to the common law rule that applied to
15 private individuals only.

16 JUSTICE BARRETT: So once you're in,
17 then -- you don't need a common law analogue.
18 Once you're in, you seize the guns if you see
19 drugs and that sort of thing?

20 MS. RATNER: Well, of course, plain
21 view applies. If someone is acting in a
22 reasonable way within the meaning of the Fourth
23 Amendment, then the other things that law
24 enforcement officers or other government
25 officials are entitled to do --

1 JUSTICE BARRETT: Even if the reason
2 they entered the house is to seize the guns?

3 MS. RATNER: Yes, I -- I -- I -- the
4 part of the test that we're talking about here
5 in terms of the scope is that we would expect
6 what they do in the house to be reasonably
7 tailored to the non-investigatory justification.

8 So if it's reasonable to temporarily
9 take ahold of some guns, then -- then yes, as
10 long as what they do inside the home is tailored
11 to that, that's permissible.

12 Again, I would -- I would focus -- I
13 would encourage the Court not to focus too much
14 on the guns of this case in part because
15 Petitioner doesn't even make an argument about
16 the case-specific reasonableness here, and in
17 large part because a lot of the cases that are
18 covered by these principles aren't going to
19 involve firearms.

20 JUSTICE BARRETT: Thank you, counsel.

21 CHIEF JUSTICE ROBERTS: A minute to
22 wrap up, Ms. Ratner.

23 MS. RATNER: Thank you, Mr. Chief
24 Justice. I just want to emphasize that the --
25 the distinction between investigatory and

1 non-investigatory activity is nothing new. As
2 Petitioner suggests, this would undermine or
3 depart from a lot of Fourth Amendment case law,
4 but the Court has drawn that distinction in
5 assessing programmatic searches like mandatory
6 drug testing and inventory searches.

7 And in those cases, the analysis
8 starts by asking whether there's an objective
9 purpose founded in general law enforcement. If
10 there is, then a warrant's required. If there's
11 not, then the courts apply general
12 reasonableness review.

13 It's also applied that review to
14 public safety interventions in the home,
15 including protective sweeps and entries to stop
16 domestic violence, to break up fights, or to
17 provide first aid.

18 So applying a warrant requirement here
19 would make little sense as a matter of text,
20 history, or logic. And what matters, no matter
21 the label, is that government officials can
22 constitutionally enter to address serious threat
23 to lives or health. Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Mr. Dvoretzky, we've afforded your
2 friends on the other side more time than
3 anticipated, so why don't you take up -- up to
4 ten additional minutes for further questions or
5 points you might like to make.

6 I -- I'd like -- and -- and during
7 that time, my colleagues, of course, are free to
8 ask additional questions.

9 And I'd like to start by asking you
10 whether you're concerned that this reliance on
11 -- a lot of your -- your answer in a lot of
12 these situations was that, well, that's an
13 exigent circumstance or that's an emergency aid.

14 Why -- why shouldn't we be concerned
15 that doing that will dilute the limits on those
16 exceptions, as opposed to having a more
17 carefully defined exception for situations that
18 aren't really that exigent or aren't that much
19 of an emergency?

20 REBUTTAL ARGUMENT OF SHAY DVORETZKY
21 ON BEHALF OF THE PETITIONER

22 MR. DVORETZKY: Well, Mr. Chief
23 Justice, I think if you have a situation that
24 isn't that exigent or that isn't an emergency,
25 then police shouldn't be going in.

1 The reason that the temporal limit on
2 the exigent circumstances doctrine is so
3 important is that it ensures that -- that
4 claiming exigent circumstances doesn't just
5 become a pretext for law enforcement.

6 And there are a couple of cases from
7 the lower courts here --

8 CHIEF JUSTICE ROBERTS: Well, my
9 concern is not so much it's a pretext for law
10 enforcement, but that it's a pretext for
11 community caretaking.

12 MR. DVORETZKY: Well, I think, either
13 way, the risk is that officers go in, they say
14 it's because they're looking out for somebody's
15 interests, but not in an emergency situation,
16 and they end up, even at -- at a minimum,
17 invading the privacy of the home when the person
18 might just want to be left alone, or, worse yet,
19 it might lead to a criminal prosecution pursuant
20 to, say, the plain view doctrine.

21 And there are a couple of cases from
22 the lower courts that illustrate this perfectly.
23 One is the Quezada case, which I think Justice
24 Kagan brought up. And -- and in that situation,
25 police officers heard the television on, they

1 saw that the door slightly ajar, they went
2 inside, they claimed that they were doing so
3 because they thought the person inside might
4 need help, they found the person sleeping on the
5 sofa with a sawed-off shotgun next to them, and
6 the person was criminally prosecuted. And the
7 Eighth Circuit in that case held that was a
8 permissible use of community caretaking.

9 And whether you call it community
10 caretaking or whether you call it a looser
11 version of exigent circumstances, either way,
12 not having the -- a carefully defined temporal
13 limit on what constitutes an exigent
14 circumstance is critical for protecting the
15 interests that underlie the Fourth Amendment.

16 JUSTICE KAGAN: Well, Mr. Dvoretzky --
17 this is just Elena Kagan -- if -- you know, if
18 you think about what the SG said today as
19 opposed to some of the statements in the SG
20 brief, as I understood Ms. Ratner, she said,
21 well, we don't care about the label and we can
22 call it exigent circumstance; the only thing we
23 care about -- and, she said, it has to be a
24 current ongoing crisis.

25 The only thing we care about is that

1 no court should think it has to be in the -- it
2 has to be really immediate or in the space of
3 time with which to get a warrant because, after
4 all, a lot of places, there's no place to get a
5 warrant in -- in circumstances like these.

6 So what would be wrong with that?

7 MR. DVORETZKY: Justice Kagan, let me
8 make two points in response to that. One, I
9 think it's critical that the officers think that
10 the need to act is imminent.

11 And if -- if you impose that imminence
12 requirement, that the injury is either happening
13 now or that it's about to happen, I -- I agree
14 it doesn't need to be happening now, and it
15 doesn't need to be happening in a matter of
16 seconds, but it has to be happening -- it has to
17 be quite imminent, I think it's important to
18 impose that temporal limit to avoid the sorts of
19 problems that I was describing.

20 The -- the other point I would like to
21 make in response to that is states have come up
22 with numerous warrant regimes that would apply
23 in these types of situations. There was one in
24 Rhode Island in this very case, where police, if
25 -- if Mr. Caniglia had refused to speak to a

1 mental health professional, rather than taking
2 it upon themselves to send him to the hospital,
3 police could have gotten an order from a court
4 that in their judgment there was an emergency
5 that required sending him to the hospital, and a
6 court could have authorized that.

7 And so there are these warrant
8 regimes. And in Camara, in fact, there were not
9 widespread administrative warrant regimes but
10 the court contemplated that such a regime was
11 necessary in order to protect the Fourth
12 Amendment. And states in the years since have
13 come up with it.

14 So I do think states have created
15 these kind of procedures, and that that is a
16 significant part of the answer to -- to the
17 question here is --

18 JUSTICE GORSUCH: Counsel --

19 MS. RATNER: -- to having -- having
20 those sorts of alternatives.

21 JUSTICE GORSUCH: Counsel, Counsel,
22 could you, just -- just to back up a moment,
23 because I think you blew past it pretty quickly,
24 explain what -- what the problems are with
25 diluting the imminence requirement.

1 MR. DVORETZKY: So I think the problem
2 with diluting the imminence requirement, and,
3 again, the cases, I think, illustrate this, if
4 -- if -- if you don't ensure that circumstances
5 are actually exigent, police will, in a -- in an
6 infinite array of situations, be able to say:
7 Well, we had some reason to believe that the
8 person inside might need help.

9 And -- and so if you take a case like
10 Welsh from this Court's case law, where the
11 police went to somebody's home, the person had
12 -- had committed drunk driving, but it was not a
13 hot pursuit, and the person was not a risk to
14 the public because he was already at home, but
15 the police nonetheless went into his house
16 without a warrant and arrested him.

17 This Court said that that violated the
18 Fourth Amendment. Under -- under the other
19 side's view of the law, presumably the police
20 could say: Well, we were very concerned that
21 this person was inebriated and at home and
22 needed help.

23 If -- if you allow that kind of a
24 situation to constitute exigent circumstance,
25 not only is that contrary to this Court's cases

1 like Welsh, but to your point, Justice Gorsuch,
2 I think it dilutes all of the interests that the
3 Fourth Amendment --

4 JUSTICE KAVANAUGH: Counsel --

5 MR. DVORETZKY: -- is meant to --

6 JUSTICE KAVANAUGH: Counsel, on the
7 question of suicide, how -- how is an officer
8 supposed to determine how immediate a person
9 might commit suicide, at risk is, assuming that
10 the officer's gotten some articulable suspicion
11 provided by someone else that a person's
12 suicidal? How are supposed to determine it is
13 going to happen now, might happen tonight? How
14 is the officer supposed to figure that out?

15 MR. DVORETZKY: So I think it depends
16 on what they see when they go to the home. And
17 to take this case --

18 JUSTICE KAVANAUGH: So they see
19 nothing when they go to the home. They -- they
20 have -- you know, this person is suicidal and
21 some facts that support that. And they can't
22 get in the home. Just let 'em -- let it go?

23 MR. DVORETZKY: So I -- I think the
24 first step would be to consult a mental health
25 professional. If they can't consult a mental

1 health professional --

2 JUSTICE KAVANAUGH: So that takes a
3 few hours and in the meantime the suicide has
4 occurred.

5 MR. DVORETZKY: So, first of all, I
6 think in many states, it wouldn't take a few
7 hours. It could be done much more quickly. But
8 if -- if they did find that they couldn't
9 consult a mental health professional because
10 they couldn't reach one for a few hours, and if
11 they had a credible reason to believe, based on
12 whatever information or tip they were given --

13 JUSTICE KAVANAUGH: I mean --

14 MR. DVORETZKY: -- and it couldn't
15 wait --

16 JUSTICE KAVANAUGH: -- these formulas
17 are great, but, you know, officers have to make
18 a split-second decision like -- they don't have
19 time to figure this out by consulting mental
20 health professionals.

21 They've been told, they have been told
22 under the hypothetical that the person is
23 suicidal. It's not the drunk driving example.
24 It's not -- it's suicidal. And -- and you want
25 them to hesitate. And I'm -- I really question

1 that.

2 MR. DVORETZKY: Justice Kavanaugh, if
3 -- if they've been told that the person is
4 suicidal, they cannot get in touch with the
5 person, they cannot get in touch with a mental
6 health professional, I think in that situation
7 they could go in. I think that would probably
8 constitute an exigency. That's --

9 JUSTICE KAVANAUGH: You would -- you
10 would impose the mental health professional
11 requirement in there?

12 MR. DVORETZKY: I think if they can do
13 that --

14 JUSTICE KAVANAUGH: The officer -- the
15 officer can't just take those facts and can't
16 make a judgment trying to save the life?

17 MR. DVORETZKY: I think that if they
18 can do that in a matter of moments, on the cell
19 phone while driving to the house to check on the
20 person, they also call the mental health
21 professional, I think they ought to do that.
22 Let's --

23 JUSTICE SOTOMAYOR: Counsel, this is
24 Justice Sotomayor. That seems to me going too
25 far. All right?

1 Let's be realistic. This is like
2 Justice -- the Chief Justice's question about
3 the lady who doesn't come out of her home. I do
4 understand the difference between this -- the
5 wellness check and what the common law permitted
6 you to do and the seizing of guns from the home,
7 where the person is no longer there or a suicide
8 threat. There's a big difference between the
9 two.

10 Why can't you see the difference? Why
11 can't your rule articulate that difference in a
12 more reasonable way?

13 MR. DVORETZKY: Justice Sotomayor, I
14 think on the facts of this case, the difference
15 is that they were able to speak to Mr. Caniglia.
16 He answered the door. He did not want to be
17 helped. And they had no basis to think that
18 there was an immediate harm that would have
19 prevented them --

20 JUSTICE SOTOMAYOR: That's a different
21 --

22 MR. DVORETZKY: -- in that situation
23 --

24 JUSTICE SOTOMAYOR: But that's a --

25 MR. DVORETZKY: -- from contacting a

1 mental --

2 JUSTICE SOTOMAYOR: But that's a
3 different issue.

4 MR. DVORETZKY: Right.

5 JUSTICE SOTOMAYOR: I want to deal
6 with the two seizures differently, and I want
7 you to articulate a rule that deals with the two
8 differently.

9 MR. DVORETZKY: Well, Justice
10 Sotomayor, I do think as your questions earlier
11 suggested that the seizure of the guns is wholly
12 indefensible because they took an extra step of
13 going into the home to seize the guns, when
14 there was no arguable imminent risk there while
15 Mr. Caniglia was at the hospital.

16 I still think that the seizure of Mr.
17 Caniglia was also a Fourth Amendment violation,
18 but -- but I think one -- one could distinguish
19 between them along those lines.

20 CHIEF JUSTICE ROBERTS: Mr. Dvoretzky,
21 why don't you take a minute to wrap up.

22 MR. DVORETZKY: Thank you, Mr. Chief
23 Justice.

24 The one pointed I wanted to add in
25 rebuttal was on the common law. Under the

1 common law, the only situations where officers
2 could go in is where they -- either it was a hot
3 pursuit situation or they were stopping ongoing
4 violence.

5 The restatement doesn't establish
6 otherwise. The restatement provision says that
7 officers can't commit a trespass or individuals
8 can't commit a trespass if the person doesn't
9 want the help.

10 And the reason that there isn't a
11 common law example requiring a warrant in these
12 sorts of situations is because these kinds of
13 community caretaking functions are not ones that
14 officers performed at all at common law.

15 The -- I -- I think the bottom line of
16 our position here is that we're not saying that
17 police officers can never enter. We're just
18 saying they need consent, a warrant, or an
19 emergency, an exigent circumstances situation,
20 but the exigent circumstances situation ought to
21 be defined with a tight temporal limit in order
22 to ensure the interests protected by the Fourth
23 Amendment.

24 The -- the First Circuit, of course,
25 relied only on the community caretaking

1 exception as the sole basis for upholding the
2 searches and seizures here. Because the
3 community caretaking exception doesn't extend to
4 the home, we ask that that judgment be reversed.

5 CHIEF JUSTICE ROBERTS: Thank you,
6 counsel. The case is submitted.

7 (Whereupon, at 11:42 a.m., the case
8 was submitted.)

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