

IN THE SUPREME COURT OF THE UNITED STATES

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13 The above-entitled matter came on for
14 oral argument before the Supreme Court of the
15 United States at 12:39 p.m.
16
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19 on behalf of the Petitioner.
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25 Respondent.

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1 P R O C E E D I N G S

2 (12:39 p.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 24-624, Case versus
5 Montana.

6 Mr. Rowley.

7 ORAL ARGUMENT OF FRED A. ROWLEY, JR.

8 ON BEHALF OF THE PETITIONER

9 MR. ROWLEY: Thank you, Mr. Chief
10 Justice, and may it please the Court:

11 This Court has never allowed state
12 officials to force their way into someone's
13 home without a warrant or probable cause. It
14 should not start now. There is no liberty
15 interest more deeply rooted in the Fourth
16 Amendment than the sanctity of the home. The
17 Court has long recognized that physical entry
18 of the home is the chief evil against which the
19 wording of the Fourth Amendment is directed.

20 And the facts here well illustrate
21 what's at stake with such entries. The police
22 entered Trevor Case's home without permission,
23 a warrant, or even probable cause, and they
24 ended up shooting him in his own house.

25 Montana seeks to justify this

1 intrusion under the emergency aid exception,
2 which permits a home entry only when an officer
3 has an objectively reasonable basis for
4 believing that an occupant is seriously injured
5 or imminently threatened with such injury. As
6 Montana previously acknowledged, that standard
7 "requires in function, if not in form, that
8 officers have probable cause to believe
9 someone's in danger and requires immediate
10 assistance."

11 Now Montana insists probable cause is
12 not the right standard, but it also doesn't
13 defend the reasonable suspicion standard
14 applied by the Montana Supreme Court below.
15 Instead, Montana and the United States ask the
16 Court to adopt some other threshold that would
17 permit officials for the first time to breach
18 the sanctity of the home when they don't have
19 permission, don't have a warrant, and don't
20 even have facts leading to a fair probability
21 that an emergency is actually taking place
22 within the home.

23 Their proposed reasonableness standard
24 is so vague that not even the State and its
25 amici can agree on what it means. And its

1 open-ended balancing approach invites abuse and
2 confusion, leaving police and first responders
3 without the guidance they need and citizens
4 without the security promised by the Fourth
5 Amendment.

6 The Court should adhere to the textual
7 and traditional standard of probable cause.

8 I welcome the Court's questions.

9 JUSTICE THOMAS: Do we normally use
10 probable cause standard outside of the criminal
11 context?

12 MR. ROWLEY: Your Honor, the Court has
13 applied probable cause in Camara, for example,
14 with respect to administrative warrants and in
15 other contexts as well. I would point to, for
16 example, Whren, where the Court applied it to a
17 civil vehicle infraction. And so the Court has
18 applied it in non-criminal contexts.

19 JUSTICE THOMAS: Would you -- what is
20 the objective -- objectively reasonable basis
21 standard?

22 MR. ROWLEY: Your Honor, I think the
23 objectively reasonable basis standard, applied
24 in Brigham City, calls for and really
25 contemplates, sort of lends itself to some

1 standard of certainty. And our position is
2 that that standard of certainty is probable
3 cause, the traditional standard that the Court
4 has applied -- yes, Your Honor.

5 JUSTICE THOMAS: Well, I mean, I'm
6 just asking what it means. Is there any
7 difference between that and probable cause?

8 MR. ROWLEY: Your Honor, we think that
9 the -- that the standard sounds in probable
10 cause. The Court didn't use those words in
11 Brigham City, and it did not use those words in
12 Fisher, but we do think that the standard
13 echoes probable cause.

14 I'd point, for example, to the
15 language in -- in Pringle, where the Court said
16 that the substance of all probable cause
17 definitions is reasonable belief of guilt. And
18 so, while the Court didn't use the word
19 "probable cause," we do think that there is an
20 echo between the -- the standard applied in
21 Brigham City and the probable cause standard.

22 CHIEF JUSTICE ROBERTS: Well --

23 JUSTICE KAGAN: It is --

24 CHIEF JUSTICE ROBERTS: I was just
25 going to say, when we talk about probable

1 cause, we use it as a shorthand. It's probable
2 cause of what?

3 MR. ROWLEY: So, Mr. Chief Justice,
4 here, it would be probable cause that an
5 occupant is seriously injured or imminently
6 threatened with such injury. Ordinarily, it
7 would be probable cause to think a crime is
8 being committed, but, here --

9 CHIEF JUSTICE ROBERTS: Right.

10 MR. ROWLEY: -- as the government
11 explained in its brief in Brigham City, the
12 object might change, but the way that the
13 standard applies and the level of certainty
14 does not.

15 CHIEF JUSTICE ROBERTS: Well, why
16 isn't it something like probable concern or
17 reasonable concern? It seems to me that you're
18 taking a totally different context and applying
19 these things just because we're -- we're
20 familiar with them and -- and because
21 authorities are -- are in -- involved.

22 I mean, did they enter this home
23 because they were concerned that -- I forget
24 the name of the -- the individual -- would harm
25 himself, or was it because they wanted to

1 arrest him for a particular criminal activity?

2 MR. ROWLEY: So, Your Honor, the
3 dispatch call was for a wellness check. But
4 I -- but I think, to get to your original
5 question, the Court has applied that probable
6 cause standard even though the object of it
7 might change in -- in -- in different contexts.
8 For example, Whren, a civil vehicle infraction,
9 that's not a -- a crime, and the -- the -- the
10 standard still mapped onto it.

11 And we think that it maps onto the
12 emergency context quite well because officers
13 and first responders don't have complete
14 information. They're just trying to assess
15 whether there's an urgent emergency that is
16 happening behind the front door. And probable
17 cause would help them do that.

18 CHIEF JUSTICE ROBERTS: You -- you say
19 urgent emergency.

20 I mean, let's just say you -- what, I
21 guess, patrol or whatever, he looks in the
22 window and there's somebody who seems to be in
23 some distress.

24 Now is he supposed to say: You know,
25 I can't tell if, you know, his -- he -- he --

1 he has a -- whatever, a pain, or if he's having
2 a heart attack or whatever before, you know,
3 entering?

4 MR. ROWLEY: Mr. Chief Justice, the
5 way --

6 CHIEF JUSTICE ROBERTS: Or even just
7 lying on the ground. You know, why is that
8 person lying on the ground?

9 MR. ROWLEY: Well, the -- well, the --
10 the Court said in Fisher that you don't have to
11 have ironclad proof that somebody is dying
12 before you go in. But the standard is, under
13 the emergency aid exception, as defined in --
14 in Brigham City, seriously injured or
15 imminently at risk of such injury.

16 And so I do think the Court has fixed
17 the threshold, but it said you don't have to
18 have ironclad proof. And that's consistent
19 with probable cause because, of course,
20 probable cause also does not require ironclad
21 proof. What it requires is a fair probability
22 or a substantial chance.

23 And we think that that strikes the --
24 the right balance given the important and
25 really fundamental interest in the sanctity of

1 the home.

2 JUSTICE KAVANAUGH: I think it's
3 critical --

4 JUSTICE ALITO: If the --

5 JUSTICE KAVANAUGH: Go ahead.

6 JUSTICE ALITO: If there wasn't
7 probable cause, then there was nothing the
8 police could do. They couldn't get a warrant
9 either, right?

10 MR. ROWLEY: Your Honor, there is a
11 civil warrant available in the State of
12 Montana.

13 But -- but -- but, to answer your
14 question, in these circumstances, given the --
15 the risks, I think what Your Honor is asking is
16 whether they could do it immediately, and it
17 would not be easy to do that.

18 JUSTICE ALITO: No, it's not a
19 question of whether they could dispense with a
20 warrant requirement. If there's no probable
21 cause, then they can't get a warrant.

22 It seems to me that if the police
23 could not enter this house based on the facts
24 that they knew, then I don't know when the
25 police are ever going to be able to enter a

1 house to prevent somebody from committing
2 suicide.

3 Your client's ex-girlfriend calls them
4 and she says that he said he's indicated he was
5 going to kill himself. He was going to get a
6 note. She heard him racking the action on a
7 handgun. Then she heard a popping sound. Then
8 the line went dead. She was screaming on
9 the -- on the phone. He didn't answer.

10 They go to the house. They try
11 knocking on the door and yelling. They get no
12 response. They walk -- they see empty beer
13 cans. They spoke to a neighbor, who said his
14 vehicle was parked outside. They shone a
15 flashlight through the window. They saw his
16 keys on the table, alongside an empty holster
17 and an apparent suicide note.

18 I mean, what more did they need?

19 MR. ROWLEY: Justice Alito, I think
20 what's critical here is the officer's extensive
21 knowledge of Mr. Case. That knowledge goes
22 back decades as to a couple of the officers.
23 Chief Sather testified that -- that -- that he
24 had known Mr. Case his whole life. Captain
25 Heffernan also had known Mr. Case for a long

1 period of time.

2 But it's not just that. Officer
3 Linstead had been present at a couple of the
4 prior incidents that also involved threats of
5 suicide and what was perceived by Officer
6 Linstead as an effort to -- to provoke a
7 confrontation with police.

8 That is pretty unusual to have that
9 amount of -- of knowledge about a -- a specific
10 person. And we submit that that weighs against
11 the inference as -- as --

12 JUSTICE ALITO: Well, what would
13 they -- what more would they need here? Would
14 they need to be able to look through the window
15 and see him with a gun pointed to his head or
16 they need to see a dead body on the floor?
17 What more did they need?

18 MR. ROWLEY: Justice Alito, I think
19 the question is really what -- what you would
20 take away if they didn't know and hadn't had
21 such extensive experience with Mr. Case in --
22 and experience from which they drew the
23 inference that he was unlikely to kill himself,
24 that what he was likely to do instead was to
25 provoke -- yes, Your Honor.

1 JUSTICE ALITO: Well, I mean, you're
2 saying that because he had threatened to kill
3 himself before and he hadn't carried through,
4 then there was -- there were no circumstances
5 under which they could ever enter his house to
6 prevent him from committing suicide if he
7 threatened again? Is that your position?

8 MR. ROWLEY: Our position, Your Honor,
9 is, as assessed by the officers on the scene,
10 based upon their prior experience with them,
11 with Mr. Case, including, I would note,
12 percipient witness experience, they drew the
13 inference that he was unlikely to shoot himself
14 and that he --

15 JUSTICE JACKSON: But I find your
16 argument very odd, right? We're trying to
17 think about a standard here, and I would think
18 that the relevant criteria are the amount of
19 information that the officers had --

20 MR. ROWLEY: Yes.

21 JUSTICE JACKSON: -- and the threat to
22 the individual, the -- you know, the -- the
23 actual nature of the emergency.

24 And so, in this very situation, I'm
25 thinking the fact that they had a lot of

1 information about Mr. Case actually hurts your
2 cause, not helps you.

3 I mean, I understand you want them
4 to draw a different inference about it, but,
5 you know, this person had a long history of
6 threatening suicide, whether it be by cop or
7 whether it be on his own or whatever.

8 We have a long conversation, detailed,
9 specific, with the girlfriend about
10 circumstances that look like they're creating a
11 pretty significant emergency.

12 I would think this, kind of like what
13 Justice Alito is suggesting, on our axis of
14 information and threat or risk, this seems like
15 it's pretty high.

16 MR. ROWLEY: Justice Jackson, I think
17 that that information led to -- led the
18 officers on the scene, because there are
19 deliberations that are captured on body cam,
20 those deliberations by officers with quite a
21 lot of extensive experience with Mr. Case are
22 powerful evidence that Mr. Case was unlikely to
23 shoot himself because they're talking about him
24 provoking a confrontation with the police.

25 And -- and I would just -- just quote,

1 for example, Police Chief Sather -- Sather
2 says: He ain't got the guts, this is probably
3 the tenth time I've dealt with him doing this.

4 Or Sergeant Pasha, who says: He's
5 been suicidal forever and he hasn't done it.

6 JUSTICE JACKSON: Okay. Well, setting
7 aside this particular case, let me just try to
8 understand the standard that you want us to
9 apply.

10 MR. ROWLEY: Yes, Your Honor.

11 JUSTICE JACKSON: You say that it
12 should be probable cause. I thought we already
13 had the emergency aid exception requiring "an
14 objectively reasonable belief" that an
15 emergency is occurring, and I didn't hear that
16 in your recitation. You said you want it to be
17 a fair probability or a substantial chance.

18 So can you just describe for us or
19 explain why it would need to be a higher
20 standard than objectively reasonable belief?

21 MR. ROWLEY: So, Your Honor, we think
22 that the objectively reasonable belief standard
23 really lends itself to some standard of
24 certainty, and we think that the traditional
25 probable cause standard is the appropriate

1 formulation.

2 JUSTICE JACKSON: I see. So you're
3 saying you only have an objectively reasonable
4 belief, in your view, if you meet the threshold
5 of probable cause?

6 MR. ROWLEY: Yes, Justice Jackson.

7 JUSTICE GORSUCH: Why isn't that --

8 MR. ROWLEY: And I would say that the
9 fair -- just one --

10 JUSTICE GORSUCH: Sure. Please.

11 MR. ROWLEY: The fair probability
12 language and substantial chance, that's all
13 from Illinois v. Gates. Those are just
14 principles associated with probable cause. And
15 we think that they make a lot of sense in this
16 context, as they do in the context of -- of
17 investigatory searches and seizures.

18 JUSTICE GORSUCH: I wonder if this is
19 just a labeling exercise, Mr. Rowley, at the
20 end of the day because, when we're interpreting
21 the Fourth Amendment, we often look at, you
22 know, what the common law has been, was, what
23 positive law. We don't always, but we often
24 do. You know, Katz is another thing. But
25 Jardines tells us to look at the actual law.

1 And one thing I'm struck by here is,
2 you know, a private person would have a good
3 necessity defense to a trespass claim always,
4 historically, it appears, from what I can tell,
5 when it reasonably appears necessary to prevent
6 serious harm to the occupant. And that's
7 almost exactly what Brigham City says for
8 officers. And officers can't have any fewer
9 rights than a private citizen to enter a home
10 to render assistance.

11 Now that doesn't give them a license
12 to go rummage about the place for crimes, but
13 it does give them a license to enter to render
14 assistance, I would have thought.

15 What's wrong with just saying Brigham
16 City reflects traditional common law principles
17 and officers treated the same as private
18 citizens?

19 MR. ROWLEY: Justice Gorsuch, I have
20 a few responses to that.

21 JUSTICE GORSUCH: I bet you do.

22 MR. ROWLEY: I think the -- the -- the
23 first response is, when the Court looks to
24 common law examples, what it's asking about is
25 what the authority of constables was at common

1 law. And so I just point to -- to Wilson, for
2 example. The common law of search and seizure
3 recognized a law enforcement officer's
4 authority to break open the doors of a
5 dwelling. So it's what was the -- what was
6 the constable's authority at common law.

7 JUSTICE GORSUCH: See, but it
8 doesn't -- a constable doesn't have fewer
9 rights than a private citizen.

10 MR. ROWLEY: When the Court --

11 JUSTICE GORSUCH: We've often said
12 that.

13 MR. ROWLEY: Justice Gorsuch, when the
14 Court talks about that, about the -- the
15 ability of officers to do the same things that
16 an ordinary person is doing, ordinarily, it's
17 talking about whether there's a search, whether
18 the Fourth Amendment is even implicated.

19 JUSTICE GORSUCH: Right. We -- that's
20 another whole question whether there's even a
21 search here. But I'll -- I'll take as given
22 that there's a search for the person to render
23 assistance --

24 MR. ROWLEY: There is a --

25 JUSTICE GORSUCH: -- but not for other

1 purposes. It's not a license to go rummaging
2 about the place. It is a license perhaps to
3 enter and search for the per -- for the
4 occupant who's facing a serious risk.

5 MR. ROWLEY: But the -- but the
6 necessity defense was a -- a broad-based common
7 law tort defense. As my friend points out
8 in -- in -- in the Respondent's brief, it was
9 applicable to private parties as well as
10 constables. So it doesn't say anything
11 specific about constable authority. But, even
12 if it did --

13 JUSTICE GORSUCH: But it applied to
14 both. It applied to both, and it didn't
15 require any -- it didn't require the magic
16 words "probable cause," whatever they may or
17 may not add.

18 MR. ROWLEY: Justice Gorsuch, even
19 if it did, even if you were to consider the
20 necessity defense, as the controlling principle
21 here, as the -- the State has suggested, it
22 would hardly help the State because it was, if
23 anything, more stringent than the probable
24 cause requirement or the affray rule because
25 you had to be right. So they --

1 JUSTICE GORSUCH: No, you had -- read
2 the -- read --

3 MR. ROWLEY: Well, the United States
4 cites the Restatement.

5 JUSTICE GORSUCH: Yes. Okay.

6 MR. ROWLEY: But, at common law, you
7 had to be right that -- that the necessity
8 actually obtained.

9 JUSTICE GORSUCH: What's your best
10 authority for that?

11 MR. ROWLEY: Your -- I would point to
12 the -- the State's own cases. I would point to
13 Rex. I would point to the Wakem case. In
14 general, at common law, you had to be correct.

15 Now there is this reasonableness gloss
16 in the -- the Second Restatement. I would note
17 that the -- the State hasn't pressed this
18 argument. It hasn't suggested that there ought
19 to be some generalized necessity defense that
20 would be drawn from modern-day tort principles.

21 JUSTICE GORSUCH: Got you.

22 MR. ROWLEY: The way this has come up
23 in the briefs, as you suggested, is by way of
24 common law.

25 JUSTICE GORSUCH: Yeah.

1 MR. ROWLEY: And, again, I think that
2 the relevant question is what was the authority
3 of constables, and they had all these specific
4 rules that are set out in the treatises --

5 JUSTICE GORSUCH: Thank -- thank you.
6 Thank you.

7 JUSTICE KAVANAUGH: I thought the
8 hesitation of the officers that you pointed out
9 before showed care before rushing in and -- and
10 thoughtfulness by the officers, so why don't --
11 why don't you look at it that way?

12 MR. ROWLEY: Your Honor, I think that
13 the delay -- there -- there were deliberations
14 that were -- that were quite extensive and it
15 took them 40 minutes to go in, as the dissent
16 in the decision below noted. That amount of
17 time is inconsistent with the kind of urgency
18 you would expect if what you thought was
19 happening was somebody was either bleeding out
20 or was about --

21 JUSTICE KAVANAUGH: Well, if they,
22 after deliberations, walk away and he commits
23 suicide, I mean, what are you thinking then of
24 the officers?

25 MR. ROWLEY: That would be -- that

1 would be unfortunate and -- and tragic --

2 JUSTICE KAVANAUGH: Yeah.

3 MR. ROWLEY: -- but we are trying to
4 strike a balance between --

5 JUSTICE KAVANAUGH: Well, and the
6 officers need some clarity, I would think, in
7 circumstances like this about what they can do
8 and what they can't do. And it seems like they
9 thought about it carefully and -- and decided
10 that the risk was sufficiently high, to Justice
11 Jackson's point, and that harm that would occur
12 was sufficiently substantial that they should
13 go in. And, by the way, they're going in at
14 great risk to themselves.

15 MR. ROWLEY: Of course, Your Honor.

16 JUSTICE KAVANAUGH: And, you know,
17 this is not, as Justice Gorsuch has --
18 pretextually looking for a crime or going in
19 for some other pretextual reason or going in
20 to -- you know, for -- it's going in really
21 to -- to help someone.

22 MR. ROWLEY: A couple of responses.
23 One, there were certainly two risks that were
24 possible. There was the risk that he was going
25 to shoot himself, and there was the risk that

1 he would try to provoke a confrontation with
2 the officers.

3 J.H., the girl -- the ex-girlfriend,
4 actually identifies both risks. In the initial
5 call, she expresses concern that Mr. Case is
6 going to shoot himself. When she arrives on
7 the scene, because she comes to the scene, she
8 says that he also said that he was going to try
9 to shoot it out with the officers.

10 And that echoes what Officer Linstead
11 says when he arrives on the scene. What he
12 says shortly after arriving is: Last time we
13 were here, he, like, said he was going to shoot
14 it out with -- and he mentions another
15 officer -- and I. And then later on, he
16 recounts another incident where Mr. Case tried
17 to provoke a confrontation --

18 JUSTICE KAVANAUGH: What -- I'm sorry.
19 Keep --

20 MR. ROWLEY: -- on his perception.

21 JUSTICE KAVANAUGH: Sorry about that.
22 On the articulation of the standard you want,
23 do you have examples where, under the current
24 law, officers would go in, but you think, under
25 your test, they wouldn't and shouldn't and

1 couldn't go in?

2 MR. ROWLEY: Well, Your Honor, I think
3 the swatting example that we -- we cite in our
4 brief is a -- is a very real concern. It's a
5 pretty commonplace concern where somebody
6 calls, and under the United States' theory, I
7 think it's at page 22, where you would use the
8 severity of the -- the threat to ratchet down
9 the level of certainty that's required. If
10 somebody made a swatting call and said, well,
11 there's a bomb inside the house, it's a pretty
12 big bomb, I walked by the house, and I'm
13 worried that it's going to blow up the block,
14 you wouldn't even need corroboration. You
15 could just go in.

16 And so we think that just requiring a
17 fair probability or a substantial chance and
18 some corroborative -- corroborative work, and I
19 think in a lot of heartland scenarios, the
20 police would have that and would --

21 JUSTICE KAGAN: Mr. --

22 MR. ROWLEY: Yes, Justice Kagan.

23 JUSTICE KAGAN: Please. I'm sorry.

24 Did I cut you off?

25 MR. ROWLEY: Please.

1 JUSTICE KAGAN: I mean, one of the
2 things that strikes me here is the -- the term
3 "probable cause" is -- is not itself
4 self-defining, and most of the way we know what
5 probable cause is is because we have a body of
6 case law that talks about it, and it talks
7 about it in an investigatory criminal context.
8 And in this context, that way of figuring out
9 whether there's probable cause just disappears
10 because that's not the context we're in.

11 So I guess I'm wondering whether then
12 taking a term from -- from a context which has
13 a body of precedent that is pretty much
14 irrelevant to this one is -- is -- that -- that
15 seems like a bad idea, and maybe what we did
16 in -- in City of Brigham and in Fisher is
17 exactly what we should have done, is we just
18 use a different language and we -- and we -- we
19 don't try to grade that relative to probable
20 cause. It's just sort of a different inquiry,
21 but it does focus on what's important. Do you
22 have to have an objectively reasonable basis
23 for believing that somebody needs emergency
24 help?

25 And I guess what I'm saying is maybe

1 in those two cases we did, like, the best thing
2 possible, and we're not going to be able to do
3 anything better.

4 MR. ROWLEY: So, Justice Kagan, the --
5 the Court's always been reluctant to adopt a
6 third standard. I think, in Montoya, it
7 said --

8 JUSTICE KAGAN: Well, we did adopt a
9 third standard or, you know, a third
10 standard -- I mean, we used different words for
11 this different context, and why not just leave
12 it at that?

13 MR. ROWLEY: Because, Your Honor,
14 it -- it produced a lot of confusion in the
15 lower courts, as we explained in our -- our
16 cert petition. You had a significant number of
17 circuits in states that applied a lower
18 standard, akin to reasonable suspicion, like
19 the Montana Supreme Court did here. You had
20 other states that applied a probable cause
21 standard.

22 And we do think that given that this
23 situation is so recurring and that --

24 JUSTICE KAGAN: But why not just say:
25 This is a different context. Our probable

1 cause precedents are pretty much irrelevant and
2 can't help us. We think we got the standard
3 right. That doesn't mean reasonable suspicion.
4 Reasonable suspicion is an entirely different
5 thing. Go figure it out case by case in the
6 normal way that courts do.

7 MR. ROWLEY: Well, the -- even the
8 State doesn't defend reasonable suspicion at
9 this point.

10 JUSTICE KAGAN: I know. And we would
11 say it's not reasonable suspicion. You know,
12 it's just this. Do you have an objectively
13 reasonable basis for believing that emergency
14 help is required?

15 MR. ROWLEY: If -- if the Court were
16 to reject a reasonable suspicion standard, we
17 would be entitled to a remand even on that
18 ground, but we do think that it would be
19 better, that the better approach is to provide
20 a little more guidance to officers and first
21 responders. And while probable cause hasn't
22 been applied by all courts, it actually has
23 been applied by a significant number of the
24 lower courts.

25 In this specific context, the general

1 principles that apply there, when you're
2 assessing probabilities, comparing the relative
3 strengths of different sources and information,
4 those map on pretty cleanly. And even if the
5 Court just drew on concepts like fair
6 probability and substantial chance, that would
7 actually be helpful and it would be help --

8 JUSTICE KAGAN: Like, fair probability
9 and substantial chance, why are those any
10 better than objectively reasonable basis? I
11 feel as though we're just substituting, you
12 know, your terms for our terms. So these were
13 our terms. We used them twice. Let's use them
14 again.

15 MR. ROWLEY: Because "reasonable basis
16 to believe," we submit that it lends itself to
17 some standard of certainty, but it doesn't
18 spell it out. And for officers and first
19 responders who are trying to figure out -- it's
20 pretty dangerous to go into a house, as -- as
21 the common law sources recognize, as officers
22 express concern about all the time, and so
23 you'd need some level of certainty for officers
24 and first responders to -- to decide, look,
25 we -- we -- we know enough, there's a

1 substantial chance that somebody is seriously
2 hurt behind that door, and so it makes sense to
3 take the risk and go in.

4 JUSTICE BARRETT: Counsel --

5 JUSTICE SOTOMAYOR: Counsel --

6 MR. ROWLEY: And we think that that
7 standard is certainly preferable to the -- to a
8 reasonableness standard, where you're balancing
9 interests on the ground the way the State and
10 the United States have suggested.

11 If I might, I would just say that the
12 Court has always expressed concern about --
13 in -- in reactive situations, where officers
14 are trying to make quick decisions, about
15 engaging in -- in balancing. The Court
16 expressed concern --

17 CHIEF JUSTICE ROBERTS: Counsel, I
18 think --

19 MR. ROWLEY: -- about that in Dunaway.

20 CHIEF JUSTICE ROBERTS: -- I think
21 Justice Barrett has a question.

22 MR. ROWLEY: Yes, Your Honor.

23 JUSTICE BARRETT: Justice Sotomayor
24 did.

25 MR. ROWLEY: Oh.

1 JUSTICE SOTOMAYOR: Counsel, I think
2 we're fighting about labels, and you got to the
3 point, but you keep resisting it, okay?

4 The -- the court below did not use our
5 Brigham City standard. It used a reasonable
6 suspicion standard. I'm quoting from itself --
7 from the decision below: "Objective, specific,
8 and articulable facts from which an experienced
9 officer would suspect that a" -- "that a
10 citizen is in need." Reasonable suspicion, as
11 we've defined it, means a particularized and
12 objective basis for suspecting the particular
13 person stopped of criminal activity. So they
14 use a standard akin to reasonable suspicion.

15 MR. ROWLEY: Yes, Justice Sotomayor.

16 JUSTICE SOTOMAYOR: So what you're
17 saying is, whatever standard we announce, we
18 should vacate and remand to go back. And the
19 question becomes, how is Brigham City different
20 than probable cause other than in its
21 objective?

22 I got two quotes -- I mean one quote
23 from two of our cases that says probable cause
24 "is a reasonable ground for belief of guilt."
25 Our Brigham standard says -- we're not talking

1 about guilt here. Our Brigham standard says
2 objectively reasonable basis for believing --
3 that's a reasonable ground -- that an occupant
4 is seriously injured or imminently threatened
5 with injury.

6 I don't know, Justice Kagan was right,
7 this is, in my mind, simple. Apply the right
8 standard and tell us what the objective facts
9 were. Correct?

10 MR. ROWLEY: Yes, Your Honor. And,
11 certainly, on --

12 JUSTICE SOTOMAYOR: For believing --
13 for -- for believing that the occupant was
14 seriously injured or imminently threatened with
15 such injury.

16 MR. ROWLEY: Yes, Your Honor. I would
17 just say that that that formulation in Brigham
18 City did generate a bit of confusion in the
19 lower courts, even though we submit that it
20 is -- it -- it is consistent with and really
21 resonates with probable cause.

22 JUSTICE SOTOMAYOR: Well, it doesn't
23 resonate with reasonable suspicion.

24 MR. ROWLEY: It does not and we would
25 be entitled to a remand on that ground. But I

1 want to make sure I get to --

2 JUSTICE BARRETT: No, that's okay.

3 MR. ROWLEY: -- Justice Barrett's
4 question.

5 JUSTICE BARRETT: You're out of time.

6 CHIEF JUSTICE ROBERTS: Yeah, thank
7 you.

8 I think it's very difficult because we
9 talk about how much information the person has.
10 It could be more pertinent in a situation of
11 how little information they have. I mean,
12 think about an officer who walks down a regular
13 beat and there's a picture window, and there's
14 some person lying on the -- on the sofa that
15 looks like he's, you know, kind of in an
16 awkward position and keeps going down and two
17 hours later, comes back, it's the same thing.

18 MR. ROWLEY: Mm-hmm.

19 CHIEF JUSTICE ROBERTS: He knows
20 nothing about it except that the guy appears
21 perhaps to be, like, dead or passed out or --
22 or something.

23 So he knocks on the door and he knocks
24 on the window and gets no response and then
25 figures, you know, he's worried about it, he

1 breaks the door down or picks the lock and he
2 walks in and the person wakes up and there's,
3 you know, three kilos of whatever, and -- and,
4 I mean, is that -- I mean, is it -- is it wrong
5 that he did that out of legitimate concern and
6 he didn't know that, you know, that's just, you
7 know, Fred or whatever? I mean, I --

8 (Laughter.)

9 MR. ROWLEY: We -- we know that it's
10 subjective. I hope not.

11 CHIEF JUSTICE ROBERTS: I'm just
12 trying to think. I would want -- I would
13 want -- I would want a police officer in a
14 situation who walks by and sees somebody --

15 MR. ROWLEY: Sure.

16 CHIEF JUSTICE ROBERTS: -- in the
17 community that seems some -- something's wrong,
18 you know, he hasn't moved in four hours, it
19 doesn't look like he's taking a nap. But, you
20 know, and then what happens? I mean, then does
21 he have a sufficient basis to, you know,
22 justify the search that led to the -- the
23 illegal drugs? So he doesn't know anything.

24 I mean, maybe if he knew a little more
25 or maybe it's -- his regular habit is to go to

1 the -- the pub at night and -- that's why I
2 find it very difficult to articulate a
3 standard. I mean, you know, I don't think it
4 can be based on a -- a -- a probability of --
5 of something going awry or -- because you do
6 want police to be, you know, on the lookout for
7 things that might be dangerous, even if it's
8 not crime or criminal.

9 MR. ROWLEY: Certainly. But the Court
10 has always said subjective intent. So you
11 might well be concerned as an officer or a
12 first responder or even an ordinary citizen
13 that some -- something's going wrong inside
14 that house, but there could also be innocuous
15 explanations even in the scenario that -- that
16 you just sketched out, Mr. Chief Justice.

17 And in a lot of the scenarios that
18 Justice Kavanaugh similarly sketched out in his
19 concurrence in Caniglia, it could tack either
20 way, but oftentimes in those scenarios, the
21 report, especially if it's from a neighbor or
22 from a relative, is going to have a lot of
23 information about why it's uncharacteristic,
24 why this is weird, and that is powerful
25 information and can be linked up with

1 corroborating evidence to support going in.

2 CHIEF JUSTICE ROBERTS: Thank -- thank
3 you, counsel.

4 MR. ROWLEY: And at least it guards
5 against unnecessary and need -- needlessly
6 dangerous confrontations.

7 CHIEF JUSTICE ROBERTS: Justice
8 Thomas?

9 Justice Alito?

10 JUSTICE ALITO: What is the -- the
11 substantive difference between the words that
12 were used by the Montana Supreme Court and the
13 words that we used in Brigham City?

14 MR. ROWLEY: So, Justice Alito, what
15 they said was objective, specific, and
16 articulable facts from which an experienced
17 officer would suspect that a citizen is in need
18 of help.

19 JUSTICE ALITO: What's the difference
20 between that and what we said in Brigham City?

21 MR. ROWLEY: Reasonable basis to
22 believe that someone is seriously injured or
23 imminently threatened with such injury is
24 different because it doesn't use the word
25 "suspicion."

1 And I think the dissent is right to
2 say that the -- are -- the words used in the
3 majority opinion below sound in Terry. The --
4 not just the use of the word "suspicion" but
5 even the specific and articulable facts.
6 That's Terry-type language.

7 The -- in the footnote that
8 accompanies that standard, the majority
9 analogized and said it was comparable to the
10 Ninth Circuit's exigent circumstances test, but
11 the language is quite different and it is not
12 the Brigham City language that Justice
13 Sotomayor quoted.

14 JUSTICE ALITO: I know I -- I had a
15 couple more questions.

16 I'm puzzled by your explanation of
17 what -- why the police did what they did. Why
18 did they go in in your view?

19 MR. ROWLEY: Why -- why do I think
20 subjectively? I think that they treated it as
21 a -- to be honest, as a community caretaking
22 exercise.

23 JUSTICE ALITO: They didn't think he
24 was -- they -- you -- they didn't think he --
25 put aside the fact that Fourth Amendment looks

1 to object -- to whether -- looks to objective
2 facts, not to subjective, but your view is they
3 didn't really think he was going to commit
4 suicide, he -- what he really wanted to do was
5 to commit -- not -- he wasn't going to kill
6 himself directly. He wanted to commit suicide
7 by police. So they said, well, all right,
8 let's go in, so he -- he will pull a gun on us
9 and then we will shoot him, and if that's what
10 he wants, we're going to oblige him.

11 I'm totally puzzled by your
12 explanation of what you think really went on
13 here.

14 MR. ROWLEY: Justice Alito, I think
15 that that risk is the risk that was focused on
16 in the on-the-scene deliberations. I -- I'll
17 just quote again Sergeant Pasha: He's been
18 suicidal forever and he hasn't done it, but
19 there have been several times when he's tried
20 getting us to do it.

21 Later on, Sergeant Pasha says: I'm
22 scared that maybe he didn't actually shoot
23 himself because he can't and he's tried to
24 commit -- he's tried suicide by cop before and
25 he, like, left us all this, so we're going to

1 go in, into the house and -- and he's going to
2 pull a gun on us. So there's a refrain --

3 JUSTICE ALITO: So they -- they wanted
4 to oblige him in his desire to have -- to
5 commit suicide by police and thereby expose
6 themselves to serious risk of death or -- or
7 serious bodily injury? That's what was going
8 on?

9 MR. ROWLEY: Your Honor, at a certain
10 point in the -- when you watch the video, they
11 get sort of ahead of steam and they're starting
12 to just prep to go in, and they -- of course,
13 they have to do some prep, but they are focused
14 on taking the preparations that they'll need in
15 case he wants to -- to -- to shoot it out with
16 them, and -- and -- and that kind of momentum
17 leads after 40 minutes to the entry.

18 But, again, if you -- if you consider
19 the on-the-scene assessment by officers who
20 knew Mr. Case and -- and the -- the risk that
21 they thought was the serious one, it was the
22 risk that he was going to provoke a
23 confrontation, so -- so -- so --

24 JUSTICE ALITO: If we write a -- if we
25 write an opinion and we set out the facts of

1 this case and we say, well, it has to go back
2 to the Montana Supreme Court for them to apply
3 the Brigham City test, will it not be the case
4 that police -- those people who instruct police
5 officers are going to say: Wow, if the Supreme
6 Court thinks that this is even a close case,
7 has to be sent back to the Montana Supreme
8 Court, we don't know when you can ever go in
9 and try to prevent somebody from committing
10 suicide, unless you literally see through the
11 window the guy has got a gun to his head or
12 they see a dead body on -- on the floor. So,
13 look, let's do the safe thing. We're just not
14 going in unless we've got absolutely ironclad
15 proof.

16 MR. ROWLEY: Justice Alito, three
17 things. The Court's already said in Fisher you
18 don't need ironclad proof. The second thing is
19 the -- the -- of all the Supreme Court justices
20 on the Montana Supreme Court, there was not a
21 single justice who voted to uphold this search
22 under a probable cause standard, and three
23 justices said it did not meet probable cause.

24 And -- and the -- and the final thing,
25 I again would go to the officer's own

1 assessment. It is unusual -- an unusual case
2 because they had so much information about him,
3 and it's not just that they knew him. One of
4 the officers was -- a percipient witness was
5 there at two of the prior incidents.

6 JUSTICE ALITO: All right. Thank you.
7 I get it.

8 CHIEF JUSTICE ROBERTS: Justice
9 Sotomayor?

10 JUSTICE SOTOMAYOR: Counsel, the --
11 the state court is applying a lesser standard
12 than reasonable suspicion. It cited the
13 Lovegren, its own precedent, Lovegren.

14 MR. ROWLEY: Yes.

15 JUSTICE SOTOMAYOR: And in Lovegren,
16 it said it characterized community caretaking
17 stops as the least intrusive category of stop,
18 even less intrusive than a Terry stop, and
19 that's the standard they're using.

20 MR. ROWLEY: That's right, Your Honor.

21 JUSTICE SOTOMAYOR: And that's not the
22 standard we set in Brigham.

23 MR. ROWLEY: It is not. And --

24 JUSTICE SOTOMAYOR: All right. Now
25 stop trying to help yourself. I've gotten the

1 point out, right?

2 (Laughter.)

3 JUSTICE SOTOMAYOR: All right. Let me
4 get to the second point, which is Brigham also
5 said the manner of entry has to be reasonable,
6 okay? The one thing that nobody ever discussed
7 here, including Justice Alito, is he does this
8 when he's drunk, correct?

9 MR. ROWLEY: Your Honor, the call was
10 that he had been drinking.

11 JUSTICE SOTOMAYOR: And all of these
12 calls to the police had been -- nobody thought
13 of just letting him ride out his drunkenness, did
14 they?

15 MR. ROWLEY: No, Your Honor. There's
16 a -- there's a comment on the tape. I believe
17 it's Officer Linstead who poses the question do
18 we leave him, but it is ambiguous as to what
19 he's connoting. I --

20 JUSTICE SOTOMAYOR: All right. Now
21 they also didn't think of -- instead of death
22 by suicide, since he never pulled a gun on
23 anybody else, okay, getting medical personnel
24 to go in, which lots of divisions do on suicide
25 cases, don't they?

1 MR. ROWLEY: They do, Your Honor.

2 Here, I just would note that -- that Officer
3 Linstead did ask, should we stage medical? But
4 I don't think that they did that, and there was
5 no further discussion.

6 JUSTICE SOTOMAYOR: That's the point.

7 MR. ROWLEY: Yeah.

8 JUSTICE SOTOMAYOR: They didn't try to
9 call. They didn't do anything except not get a
10 warrant and break in, correct?

11 MR. ROWLEY: That's right, Your Honor.
12 They talked about calling other people, family
13 members, the father. They talked about calling
14 him. They ultimately, at least on the body cam
15 videos, there's no --

16 JUSTICE SOTOMAYOR: So there's a real
17 question even for the court below whether the
18 entry under the facts of this case -- not
19 generally when you're really afraid of a
20 suicide, because they're saying he doesn't have
21 the guts. It's not one officer; a bunch of
22 them were taking -- it sounded to me like they
23 were taking bets on it, and everybody was
24 saying he wants suicide by cops, he's not going
25 to shoot, he doesn't have the guts.

1 MR. ROWLEY: Right, Justice Sotomayor.
2 I would quote the dissent. What the dissent
3 says is all the officers on the scene stated
4 that it was unlikely Case required immediate
5 aid but, rather, was likely lying in wait for
6 them to commit suicide by cop.

7 JUSTICE SOTOMAYOR: So they can
8 decide, not us, on these facts whether it meets
9 the Bringham standard.

10 MR. ROWLEY: Yes, Your Honor.

11 JUSTICE SOTOMAYOR: What we do know is
12 that the Montana court used a different
13 standard, lower than reasonable suspicion.

14 MR. ROWLEY: That's right.

15 JUSTICE SOTOMAYOR: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice Kagan?
17 Justice Gorsuch?
18 Justice Kavanaugh?
19 Justice Barrett?

20 JUSTICE BARRETT: One question, and
21 maybe Montana can answer this, weigh in if you
22 don't know. Would it be normal or best
23 practices to send in just medical personnel
24 when someone has cocked a gun over the phone
25 and is known to be armed?

1 MR. ROWLEY: No, Your Honor. I
2 believe, in those circumstances, officers would
3 be called to the scene.

4 JUSTICE BARRETT: Thanks.

5 CHIEF JUSTICE ROBERTS: Justice
6 Jackson?

7 JUSTICE JACKSON: In those
8 circumstances, would you think there was
9 probable cause, setting aside the quirky
10 details of this case and all the stuff the
11 officers knew, under your probable cause
12 standard, if we just had the girlfriend call
13 and what they observed when they got to the
14 scene?

15 MR. ROWLEY: If -- if they actually --
16 I want to be careful because -- because, if
17 what they actually got was a call that said not
18 a pop, but there was a -- that there was a gun,
19 the action, as Justice Alito suggested, was
20 engaged and there -- and there was a --

21 JUSTICE JACKSON: Really? It has to
22 be that detailed?

23 MR. ROWLEY: Well, you know, a pop
24 could be anything over the phone. I think it's
25 different if -- if there's slide action or you

1 can hear the gun being engaged in some way.

2 JUSTICE JACKSON: Yes. I don't want
3 to belabor this. I guess I'm just trying to
4 isolate --

5 MR. ROWLEY: Sure.

6 JUSTICE JACKSON: -- the
7 suicide-by-cop knowledge and find out whether,
8 under your own test, all the stuff up to that
9 point would count, and you're just saying we
10 don't have probable cause because of the
11 suicide-by-cop scenario.

12 MR. ROWLEY: Yes, Your Honor. It's
13 all the information that is countervailing
14 about the risk.

15 JUSTICE JACKSON: Yeah. Thank you.

16 MR. ROWLEY: Yes, Your Honor.

17 CHIEF JUSTICE ROBERTS: Thank you.

18 Mr. Corrigan.

19 ORAL ARGUMENT OF CHRISTIAN B. CORRIGAN

20 ON BEHALF OF THE RESPONDENT

21 MR. CORRIGAN: Mr. Chief Justice, and
22 may it please the Court:

23 This Court should affirm the judgment
24 below for three reasons.

25 First, the Fourth Amendment protects

1 against unreasonable searches, not all
2 warrantless ones. The Framers enshrined that
3 tradition of reasonableness, not a rigid
4 warrant rule, in the Fourth Amendment. At
5 common law, officers and private citizens alike
6 could enter the home as -- as required by
7 necessity when life is at risk.

8 Petitioner's rule would turn that
9 structure upside down. He asks this Court to
10 graft the Warrant Clause's probable cause
11 requirement into the Reasonableness Clause
12 itself. That move has no basis in text, no
13 footing in history, and no support in this
14 Court's exigency precedents.

15 Second, this Court has already set the
16 standard for emergency entries at objective
17 reasonableness. To adopt Petitioner's view,
18 this Court would have to overrule the holding
19 in *Brigham City v. Stuart*, discard *Michigan v.*
20 *Fisher*, and recast probable cause, the classic
21 criminal law concept about belief of guilt,
22 into something entirely new and applicable to
23 non-criminal, non-investigatory emergencies.

24 Third, the objective reasonableness
25 standard provides sufficient guidance and

1 flexibility for emergency aid cases.
2 Conversely, a rule demanding probable cause of
3 peril would force officers to stand outside a
4 dying man's door calculating legal thresholds
5 instead of saving his life. That's not what
6 the Framers wrote, and that's not what this
7 Court has ever required.

8 The Montana Supreme Court applied the
9 rule required by the Constitution and this
10 Court's precedents. Officers may enter when
11 they have an objectively reasonable basis to
12 believe someone inside needs immediate aid.
13 That standard is faithful to text, history, and
14 common sense.

15 I welcome the Court's questions.

16 JUSTICE THOMAS: Did the Montana
17 Supreme Court cite Brigham City?

18 MR. CORRIGAN: It cited its own case
19 law, and it cited -- it relied on Caniglia,
20 which -- which relied on Brigham City. So --

21 JUSTICE THOMAS: But there seems to be
22 a disagreement between you and Petitioner as to
23 whether or not that standard was applied.

24 MR. CORRIGAN: It -- it applied the
25 Brigham City standard. It applied the totality

1 of the circumstances about whether officers had
2 an objectively reasonable basis that someone
3 needed -- inside needed immediate aid. And so
4 it -- it applied -- it applied the words -- it
5 applied the words of Brigham City.

6 JUSTICE THOMAS: Isn't it our normal
7 practice, though, if we're not certain about
8 the standard and we state a new standard, that
9 we send it back?

10 MR. CORRIGAN: Yes, Your Honor, in
11 some instances. But I think it's very clear
12 what standard the Montana Supreme Court applied
13 here, and the facts are particularly strong
14 that whatever standard this Court lays down,
15 the facts here satisfy it, that the -- that the
16 officers here had an objectively reasonable
17 basis for -- for believing Mr. Case needed
18 immediate aid.

19 JUSTICE GORSUCH: Would it be helpful,
20 do you think, to clarify -- I -- I mean,
21 there's some ambiguity about what the standard
22 was that was applied, say we don't care about
23 that, okay? It's what we said in Brigham City.
24 And then apply that standard to these facts, we
25 don't have to, we could send it back, but would

1 it help to provide guidance to confused lower
2 courts for us to use a concrete set of facts to
3 explain what that means?

4 MR. CORRIGAN: Absolutely, Justice
5 Gorsuch. This is a scenario that officers face
6 every day. Emergency aid scenarios are very
7 common, whether it's a suicide call like in
8 this case, a call of an elderly individual
9 who -- who's missing, or a hybrid scenario like
10 Brigham City or Fisher.

11 Having this Court apply whatever --
12 the Brigham City standard to the facts in this
13 case would be very helpful.

14 JUSTICE GORSUCH: And we have a full
15 enough record to do that, you think?

16 MR. CORRIGAN: Absolutely.

17 JUSTICE GORSUCH: All right. And --
18 and what do you say to your friend on the other
19 side about the necessity defense being more
20 liberal under the Restatement than it was at
21 common law?

22 MR. CORRIGAN: I think, at common law,
23 my -- my friend on the other side pointed to
24 the cases of *Rex v. Coate* and --

25 JUSTICE GORSUCH: Yeah.

1 MR. CORRIGAN: -- Scott v. Wakem.
2 When you read those cases, it's all based on a
3 reasonableness analysis. In -- in the Rex v.
4 Coate case, the restraining was justified if it
5 had been proved to have been with the best
6 motives or necessity was manifestly proven. To
7 me, that sounds like a reasonableness standard.

8 Now some of the issue in terms of
9 what -- the reasonableness standard at the time
10 is that we don't -- in tort law, we don't get
11 the full reasonableness standard until 1837 in
12 the Vaughan case in England, but Coke is
13 writing in the -- in the -- in the 16th century
14 about applying the law of reason to the
15 reasonableness of the common law, and so
16 implicit in jury and judicial verdicts at the
17 time, the concept of the ordinary person and
18 reasonableness is baked into the -- the common
19 law in England and the common law here and, of
20 course, textually in the Fourth Amendment.

21 JUSTICE GORSUCH: Does Montana follow
22 the Restatement?

23 MR. CORRIGAN: We follow the Second
24 Restatement, Your Honor.

25 JUSTICE GORSUCH: Thank you.

1 CHIEF JUSTICE ROBERTS: Counsel, we
2 talk about this as an emergency situation, but
3 there's a lot going on that doesn't look like
4 an emergency, right? I mean, they get there,
5 they're walking around for a while. Then
6 they -- what, they get the boss to come down?
7 I mean, call for somebody else? And they're
8 still there, and then they go get a body
9 shield. I mean, it -- it doesn't have the
10 atmosphere of, you know, we've got to get in
11 there right away.

12 And I wonder if that detracts from the
13 idea that they had sufficient justification,
14 and particularly since, at least as it said,
15 the emergency would come in if the officers
16 came in, and then you'd have the question of
17 suicide by police.

18 MR. CORRIGAN: Well, Mr. Chief
19 Justice, I would certainly agree that at some
20 point, if they did wait too long, that would --
21 that would cut against an emergency, but in
22 this case, I think the timeline is very
23 important. Officers arrive on the scene at
24 9:14 p.m. His ex-girlfriend arrives at 9:18.
25 They do a knock-and-announce. They knock

1 several times, and they spend the next 20
2 minutes trying to verify the facts that she
3 communicated to them in this case.

4 And it's at 9:34 p.m. that as -- as
5 they're doing this search of the outside of the
6 house, that they identify the suicide note when
7 they flash their flashlights through the
8 window. And so they spent about 20 minutes
9 trying to verify the facts that were
10 communicated to them.

11 And what I -- and I -- and I do think,
12 though, that the -- the possibility of suicide
13 by cop counseled additional caution on their
14 part that -- and you see this on the body cam.
15 Of course, they are worried about the
16 concept -- about the instance of suicide by
17 cop, but that's why they're doing the
18 additional investigation of walking around the
19 outside of the house, yelling into an open
20 window, giving Mr. Case every -- every
21 opportunity to let them know that he is alive
22 and inside, which he didn't do.

23 JUSTICE KAGAN: General --

24 JUSTICE BARRETT: Does Montana --

25 JUSTICE KAGAN: Oh.

1 JUSTICE BARRETT: Does Montana have --
2 I mean, it seems to me that there's some
3 confusion in the case law, and, I mean, I think
4 there was some sloppiness in the standard in
5 this case. Does Montana have some separate
6 community caretaker exception or something that
7 it calls a community caretaker exception that's
8 really equivalent to our emergency aid section
9 from Brigham City?

10 MR. CORRIGAN: Yes, Justice Barrett.
11 I -- I think that's -- when -- when the Montana
12 Supreme Court discusses the community
13 caretaking exception, I think they're folding
14 in Brigham City. There was some confusion, I
15 agree, in the standard. But it is a -- it's an
16 exigent circumstance exception to save human
17 life. And I think that's essentially what they
18 did.

19 JUSTICE BARRETT: Okay. I mean,
20 they're free to call it as a matter of state
21 law, I guess, whatever they want to call it.
22 But you would agree that there is no such
23 strand, that we've rejected that, we've
24 rejected it in Caniglia -- Caniglia -- it's
25 been a long day -- but that the emergency aid

1 exception and the standard from Brigham City is
2 all you're asking for, and you're not saying
3 that there's some yet another looser standard?

4 MR. CORRIGAN: That's correct. We are
5 entirely consistent with Brigham City and
6 Caniglia. We're not asking for anything beyond
7 that.

8 JUSTICE KAGAN: And -- and on that
9 point --

10 JUSTICE SOTOMAYOR: And their cite --
11 I'm sorry.

12 And their citation to Lovegren we just
13 ignore, where they said it was less than
14 reasonable suspicion?

15 MR. CORRIGAN: Well, the Court is
16 admittedly using imprecise language. What I
17 think is -- what's important is that the Court
18 is applying the totality of the circumstances
19 and it's making sure the scope and manner of
20 the search is reasonable.

21 And, of course, as was -- as my friend
22 was up here and the Court was asking questions,
23 pointed out that the Court does use some
24 language mirroring, at times, in the -- in sort
25 of the -- the more specific application of the

1 test that mirrors reasonable suspicion. But
2 this Court has done that in TLO and the special
3 needs cases. And so what the Court is -- what
4 the Court is looking to do is make sure that
5 the scope and manner of the search are
6 reasonable in balancing the privacy interests
7 at stake.

8 JUSTICE SOTOMAYOR: I -- I actually
9 don't see any -- them addressing the
10 reasonableness of the manner in which this
11 occurred.

12 And I pointed to things, Justice
13 Barrett was right, you're not going to send
14 medical personnel into a room with an armed
15 person, but you do call medical personnel
16 to make calls or to -- to talk to someone who's
17 suicidal on the phone. It happens quite often.

18 MR. CORRIGAN: They could do that.
19 Now, as -- as --

20 JUSTICE SOTOMAYOR: You could put a
21 megaphone out there and tell him: I'm a
22 doctor, please come out.

23 MR. CORRIGAN: I will -- I will point
24 out the time exigency here is that they -- they
25 did call medical personnel when Case -- after

1 the injury and he had been shot, but the
2 officers here --

3 JUSTICE SOTOMAYOR: Yes, after he had
4 been shot, when they had a great probability
5 of knowing that he was seeking to be --

6 MR. CORRIGAN: But there --

7 JUSTICE SOTOMAYOR: -- suicide by cop.

8 MR. CORRIGAN: There's no
9 indication that -- that EMTs would be able to
10 talk down Mr. Case. In fact, Chief Sather, who
11 had known Case for 30 years, testified that
12 based on prior incidents, he actually thought
13 that he could talk Case down and get him out of
14 the house.

15 It was only after they received the
16 reliable indicia that Case had actually
17 suffered a gunshot wound that the Chief arrives
18 and says: We have to go in.

19 JUSTICE KAGAN: Am I right, just to go
20 back to where you ended with Justice Barrett,
21 that you're not equating the City of Brigham
22 standard with our Terry stop standard?

23 MR. CORRIGAN: Correct.

24 JUSTICE KAGAN: You -- you think that
25 those are two different things?

1 MR. CORRIGAN: I think they're two
2 different things.

3 JUSTICE KAGAN: Okay. And, as to the
4 difference between the City of Brigham standard
5 and the probable cause standard, is your
6 position that the City of Brigham standard
7 is laxer, or is your position that it's just
8 different?

9 MR. CORRIGAN: I think it's more
10 flexible. And I think it answers a different
11 question.

12 So, as -- as the Court recognized when
13 my -- when my friend was up here earlier,
14 it's -- probable cause isn't just about
15 reaching a specific threshold. It's -- it's
16 fixed to criminality. But objective
17 reasonableness says, given the totality of the
18 circumstances, would an officer taking a
19 specific action be reasonable?

20 And I think one way to think of
21 it might be probable cause is a single
22 determination about whether a quantum of proof
23 has been satisfied. But objective
24 reasonableness, as in this case, can be a
25 progressive analysis.

1 And what I mean by that is, when
2 officers --

3 JUSTICE KAGAN: So it would help me,
4 I think, because that's a lot of words, and --
5 but, like, what's the -- what's -- what's the
6 case in the gap between the two? Like, what is
7 it where a police officer would not have
8 probable cause but can satisfy the Brigham City
9 standard? What are the kinds of things you're
10 talking about?

11 MR. CORRIGAN: So I think, if you take
12 this particular case and subtract perhaps
13 Mr. Case's history, which -- which we actually
14 think -- I actually think supports the
15 officer's reasonable determination, or if they
16 had not obtained the other reliable indicia,
17 so if -- if -- if Case's ex-girlfriend had
18 called him, she had heard the cocking of the
19 gun, heard what she thought to be a gunshot,
20 police arrive, they knock on the door, they
21 know -- they don't receive any response, but
22 they hadn't found the -- hadn't been able to
23 see the suicide note which might have been
24 upstairs with him, they hadn't seen the beer
25 cans or the empty paddle holster, I think

1 that's a much closer call, but we think that's
2 still objectively reasonable.

3 And I would point out that our friends
4 on the other side believe that even the very
5 strong facts in this case don't satisfy
6 probable cause.

7 And so I think, if the Court -- to
8 Justice Alito's questioning earlier, if the
9 Court were to determine that the facts in this
10 case do not satisfy probable cause, that is
11 going to have very detrimental effects down the
12 road for law enforcement.

13 JUSTICE KAGAN: Thank you.

14 JUSTICE JACKSON: They say they don't
15 satisfy probable cause because they're
16 reducing. That was my question to him at the
17 end, which is, without the suicide-by-cop
18 information, do you think we get there?

19 I thought he suggested we did, but
20 it was the fact that the cops also had this
21 additional information that made it less likely
22 or objectively less likely that Mr. Case would
23 actually commit suicide.

24 MR. CORRIGAN: Well, I -- I think it's
25 important to put the suicide by cop in context.

1 So some of what's happening at the scene, I
2 think, is cop talk of Sergeant Pasha's clearly
3 very concerned about suicide by cop.

4 The -- the context of suicide by cop
5 came -- first came up when Case was on the
6 phone with his ex-girlfriend and -- and he
7 says: I'm going to kill myself. And she
8 responds: Well, if you -- if you threaten
9 that, I'm going to have to call the police, and
10 she says: I'm going to -- or he says: I'll
11 shoot it out with them.

12 Chief Sather responds to Sergeant
13 Pasha's concern about that comment by saying:
14 He doesn't have the guts.

15 So I think the -- the dissent is
16 incorrect at the Montana Supreme Court to say
17 all the officers believed.

18 And our point is, is, certainly,
19 suicide by cop was a possibility, but that
20 was -- I think the officers ruled that out
21 based on his escalating history of violence
22 going back to 2015 and the incident that was
23 18 months earlier. And particularly once they
24 found the note, Chief Sather is convinced that
25 he actually has hurt himself this time.

1 In -- in terms of the test of
2 reasonableness, we -- we admit that a
3 reasonableness -- objective reasonableness is
4 an easy test, but it may not be an easy rubric
5 to always apply where -- where the Court is
6 taking the privacy interest versus the nature
7 of the exigency.

8 But I think the Court just did this in
9 Barnes. And the Court admitted that it's a
10 fact-bound morass that demands careful
11 attention to the facts and circumstances,
12 including the facts and circumstances leading
13 up to the climactic moment. And the Court has
14 to consider all relevant circumstances.

15 And I think that the excessive force
16 context makes a lot of sense here when we're
17 talking about, at its apex in this context, the
18 sanctity of human life versus the sanctity of
19 the home.

20 And the excessive force context also
21 involves two very -- two strong competing
22 interests of the safety of the officer versus
23 the use of deadly force. And the logic of
24 Barnes makes sense here. The application of it
25 makes sense.

1 And in terms of Brigham City, in terms
2 of hybrid scenarios that have been brought up,
3 I think that Brigham City and other cases that
4 involve underlying criminal activity recognize,
5 though, that first responders are first
6 responders first.

7 When they arrive on the scene of an
8 emergency, they're not necessarily concerned
9 about underlying crime. Their first instance
10 when they respond to someone yelling "help" is
11 to provide aid to someone in need. They can
12 worry about arresting someone for a crime or
13 worry -- or other criminal activity later on.
14 We treat hybrid cases the same as all other
15 exigencies.

16 And what's important to remember is,
17 as I -- I was articulating to Justice Kagan is,
18 the objective reasonableness standard allows a
19 progressive analysis. And so, when the
20 officers arrive and do a knock-and-announce,
21 they may not have -- it may not be objectively
22 reasonable right away for them to go through
23 the front door, but it allows them to go around
24 the curtilage, to yell through an open window,
25 to take progressive steps to alert the

1 individual and give them every opportunity to
2 respond and let them know that they are okay.

3 And I don't think that probable cause
4 allows that sufficient flexibility and doesn't
5 differentiate between going through a door and
6 breaking down a window, whereas the Barnes
7 standard and the -- and the reasonableness
8 standard differentiates between the facts that
9 make it reasonable to handcuff a suspect versus
10 to tackle a suspect or what -- or to use deadly
11 force.

12 And that's why we think that the
13 Montana Supreme Court appropriately applied
14 this Court's test in Brigham City. This Court
15 meant what it said in Brigham City, meant what
16 it said in Fisher, that officers may enter when
17 they have an objectively reasonable basis to
18 believe someone inside is in need of immediate
19 aid.

20 CHIEF JUSTICE ROBERTS: Thank you,
21 counsel.

22 Justice Thomas?

23 Justice Alito?

24 Justice Sotomayor?

25 JUSTICE SOTOMAYOR: Counsel, our entry

1 into the home cases, and it's been paramount
2 that a person's home, we don't enter without a
3 warrant except in recognized exceptions.

4 And I understand the instinct that
5 says that we don't want someone in real need
6 not to have the police enter quickly, but we're
7 always balancing interests, aren't we? And not
8 requiring enough proof also costs -- costs
9 lives.

10 Petitioner cites reports that people
11 with serious mental illness are 16 times more
12 likely to be killed by police during a police
13 encounter. An investigation found at least 178
14 cases in a two-year period where calls for
15 help, not a crime, like a 911 call or a
16 wellness check, resulted in the police shooting
17 and killing the people they were called on to
18 assist. It's a fine balance, but shouldn't we
19 make sure that the courts below are at least
20 following the right standard?

21 MR. CORRIGAN: So I --

22 JUSTICE SOTOMAYOR: And you keep
23 telling us that Montana -- that this state is,
24 despite using words that sound very similar to
25 reasonable suspicion, despite a case, Lovegren,

1 that says it's less than a Terry stop, I mean,
2 there's some value in clarifying what we have
3 said the standard is. If you're asking us to
4 describe what the quantum of proof, it sounds
5 like you want us to -- to accept what the --
6 the solicitor general is saying, some
7 possibility is enough. But that's never been
8 the standard. It's a reasonable suspicion --
9 reasonable belief, not a probable belief.

10 MR. CORRIGAN: So I agree that --
11 clarification from the Court, and I think the
12 Court can clarify that it meant what it said in
13 Brigham City, it meant what it said in Fisher,
14 and that an objectively reasonable basis is
15 what it is. And that --

16 JUSTICE SOTOMAYOR: And it's not
17 reasonable suspicion?

18 MR. CORRIGAN: It's -- it's not
19 necessarily reasonable suspicion, I think, in
20 some cases.

21 JUSTICE SOTOMAYOR: Ah, there's your
22 qualifier.

23 MR. CORRIGAN: In some -- it's -- in
24 some cases, the standard can look like
25 reasonable suspicion, and in some cases, the

1 flexibility makes it look more like probable
2 cause. But there's where we're getting to the
3 degree of certainty of the exigency. It takes
4 a -- the --

5 JUSTICE SOTOMAYOR: You want it to be
6 reasonable suspicion.

7 MR. CORRIGAN: Well, the --- the
8 objective reasonableness standard is the most
9 faithful to the text, history, and tradition of
10 the Constitution. If given a binary choice, we
11 would take reasonable suspicion over probable
12 cause.

13 But objective reasonableness is much
14 more flexible and -- and faithful to the text,
15 and it accounts for situations like this one or
16 others where there is -- there is some doubt as
17 to whether an individual is in need because --

18 JUSTICE SOTOMAYOR: So we might as
19 well just say what the court below said. It's
20 less than a Terry stop.

21 MR. CORRIGAN: Well, I think I'd look
22 to the language in Fisher where the Court says
23 officers, of course, are going to have less
24 than perfect information, but that doesn't mean
25 they should walk away from potentially

1 dangerous situations. And all we're asking is
2 that they use their common sense.

3 Officers, as well as reviewing courts,
4 are more than capable of figuring out when the
5 facts don't add up and when an objectively
6 reasonable belief doesn't exist. And I
7 think -- I go back to this Court could apply
8 whatever standard it articulates to the facts
9 in this case to provide ample guidance to lower
10 courts.

11 CHIEF JUSTICE ROBERTS: Justice Kagan?

12 JUSTICE KAGAN: I think I'm confused,
13 General, because I thought you told me that the
14 City of Brigham standard is not the same as the
15 Terry stop standard and that you were not
16 asking for the latter here.

17 MR. CORRIGAN: It -- it's not. It's
18 not in all cases. The Brigham City standard is
19 the Brigham City standard. In terms of the
20 degree of certainty, it may -- it can vacillate
21 between probable cause and reasonable
22 suspicion.

23 JUSTICE KAGAN: Okay.

24 MR. CORRIGAN: The text is just more
25 complex than that.

1 JUSTICE KAGAN: Thank you.

2 CHIEF JUSTICE ROBERTS: Justice
3 Gorsuch?

4 Justice Kavanaugh?

5 Justice Barrett?

6 JUSTICE BARRETT: You might be better
7 off just sticking with Brigham City. I think
8 what you -- maybe what you're saying is that in
9 some circumstances, applying reasonable
10 suspicion or objective reasonableness in the
11 Brigham City sense might yield the same result,
12 just like sometimes applying Brigham City and
13 probable cause, whatever it might mean in this
14 context, might yield the same result. But are
15 you really saying that we should do something
16 different than in Brigham City or -- or muddy
17 the waters by saying, oh, you know, objectively
18 reasonable basis but could be reasonable
19 suspicion?

20 MR. CORRIGAN: You're -- you're
21 correct on -- on the first part, on your -- on
22 the former. We are not saying that they
23 should -- that the Court -- that Brigham City
24 means reasonable suspicion. What -- what we're
25 saying is, in some instances, it could yield,

1 as you said, Justice Barrett, yield a result
2 like reasonable suspicion, just like it could
3 yield a result like probable cause.

4 JUSTICE BARRETT: Well, we don't need
5 to say that. I think that would be confusing.
6 I think we could just say Brigham City,
7 objectively reasonable basis to believe, and
8 put a period on that.

9 MR. CORRIGAN: I -- I agree, Justice
10 Barrett.

11 JUSTICE BARRETT: Okay. Thanks.

12 CHIEF JUSTICE ROBERTS: Justice
13 Jackson?

14 Thank you, counsel.

15 MR. CORRIGAN: Thank you.

16 CHIEF JUSTICE ROBERTS: Ms. Jacoby.

17 ORAL ARGUMENT OF ZOE A. JACOBY
18 FOR THE UNITED STATES, AS AMICUS CURIAE,
19 SUPPORTING THE RESPONDENT

20 MS. JACOBY: Mr. Chief Justice, and
21 may it please the Court:

22 This Court should adhere to the
23 objective reasonableness standard for emergency
24 aid entries set out in Brigham City rather than
25 require what Petitioner calls probable cause of

1 a danger. Petitioner's theory has no basis in
2 the Fourth Amendment's text, which links
3 probable cause to warrants, not to searches in
4 general. History doesn't support Petitioner's
5 theory either. The Framers adopted the Fourth
6 Amendment to guard against overzealous criminal
7 investigation, not to hamstring officers from
8 providing life-saving aid to people in need.

9 Yet Petitioner's rule would make it
10 harder for government officials to help people
11 in crisis, from victims of domestic violence to
12 older people who have fallen and can't get up.
13 This Court should instead reaffirm that
14 emergency aid entries are assessed for
15 reasonableness, a flexible determination that
16 accounts for both the severity of a danger and
17 its likelihood. States are always free to
18 craft their own rules above that constitutional
19 floor, but the Fourth Amendment does not
20 categorically require probable cause of a
21 danger for an emergency entry.

22 I welcome the Court's questions.

23 JUSTICE THOMAS: Should we apply this
24 rule here or send it back?

25 MS. JACOBY: We think you should apply

1 this rule here. I think there has been some
2 question about the Montana Supreme Court's use
3 of the word "suspect" in its test, but I would
4 urge this Court not to read a decision like a
5 statute, especially because elsewhere in the
6 decision, the Montana Supreme Court said that a
7 test -- its test largely mirrored the Ninth
8 Circuit's test, which uses the "objectively
9 reasonable basis for believing" language and
10 because it used other verbs elsewhere besides
11 "suspect." I think Pet. App. 14a, Footnote 5,
12 they say there was an objectively reasonable
13 basis for finding a danger.

14 So I -- I would avoid sending it back
15 just on the basis of that word "suspect" or a
16 citation to Lovegren.

17 JUSTICE SOTOMAYOR: I'm sorry, but
18 what the dissent -- when they -- when they
19 addressed the dissent's accusation that they
20 were using reasonable suspicion, nowhere did
21 they say we're not. It would have been the
22 easiest thing to do. We're not using
23 reasonable suspicion. Instead, they said we
24 don't have to because it's more -- it's a
25 different purpose than an arrest.

1 It seems to me that that's not a
2 disavowal.

3 MS. JACOBY: I do read them to sort of
4 disavow that they're applying a reasonable
5 suspicion standard, but I --

6 JUSTICE SOTOMAYOR: No. They said
7 we're not giving open license, but they didn't
8 disavow it.

9 MS. JACOBY: I -- I think, even if you
10 disagree with me about that, the reason not to
11 send it back is the one that Justice Alito
12 articulated earlier, which is, if you give sort
13 of officers and lower courts the impression
14 that there is any doubt about whether the facts
15 here satisfy the Brigham City test, I think
16 that's going to lead to a lot of confusion and
17 a lot of concern that officers can't make
18 entries based on the type of information --

19 JUSTICE SOTOMAYOR: If we --

20 MS. JACOBY: -- that they would think
21 they could.

22 JUSTICE SOTOMAYOR: -- if we apply it
23 here, are we ignoring the countervailing
24 factors of why they shouldn't have gone in? We
25 have a number of officers on tape saying he has

1 no guts, he won't kill himself. We have others
2 saying -- of officers saying he's waiting for
3 suicide by cops. There's no attention paid by
4 the officers to trying the father or to calling
5 a doctor to call out to him, not go into the
6 place. All they decide to do is go in.

7 Are we then inviting a carte blanche
8 to say don't think of more reasonable way or
9 manner to enter?

10 MS. JACOBY: I don't think so, Justice
11 Sotomayor. I'd point to a couple things. One,
12 I'd avoid relying too much on the cop talk
13 that's on the tape, especially because, in the
14 record, in the JA, at the suppression hearing,
15 several of the officers did testify, sworn
16 testimony, that -- that they were subjectively
17 afraid that he had -- had, in fact, injured
18 himself. So this was a situation --

19 JUSTICE SOTOMAYOR: Did they give a
20 basis for that? Did they give a basis for
21 that?

22 MS. JACOBY: I think the call and the
23 suicide note and the empty holster. So I think
24 this is a situation in which there were risks
25 of multiple outcomes, and the fact that they

1 articulated a concern about one of those
2 outcomes doesn't mean there wasn't also an
3 objectively reasonable basis for believing that
4 the other outcome might have happened as well.

5 JUSTICE JACKSON: So I take it that
6 you agree with Montana that the degree of
7 certainty can vacillate under the Brigham City
8 test and that that's really the work of your
9 sliding scale, is that right?

10 MS. JACOBY: I -- I think that's
11 right. What I would say is it's not so much,
12 like, in one case, you need probable cause, in
13 another case, you need reasonable suspicion.
14 Our point is just that there is not a fixed
15 prescribed quantum of certainty of danger that
16 needs to apply in all cases. The amount of
17 information, the reliability of information,
18 the corroboration of information that an
19 officer would need to make their entry reliable
20 in one instance may not be the same as in
21 another instance.

22 JUSTICE JACKSON: But those are the
23 key factors that -- would it be helpful for us
24 to kind of say that kind of thing? In other
25 words, you know, I understood your sliding

1 scale to have a matrix essentially that related
2 to the severity and the amount of information.

3 MS. JACOBY: I think so. To be clear,
4 I think the sliding scale, you know, it's just
5 a metaphor. We don't mean it sort of strictly
6 formulaic or a matrix or anything like that,
7 just that these are relevant considerations
8 that can make an entry reasonable and --

9 JUSTICE GORSUCH: Yeah, I don't
10 understand the sliding scale thing at all, I'll
11 be honest, so help me out. I understand lots
12 of different facts can lead to an objectively
13 reasonable basis, okay, and it's almost
14 impossible to catalogue them all.

15 But, on the other end, on the
16 severity, we said in Brigham Young what we
17 meant -- Brigham City, sorry. I am tired.
18 That it has to be a severe risk of harm to the
19 occupant. I'm -- I'm paraphrasing, but life or
20 limb was the classic formulation in Blackstone.
21 That's -- that's -- that's -- the severity is
22 the severity. It doesn't -- there's no sliding
23 scale. You don't get to go in with lots of
24 evidence to -- to deal with a hangnail.

25 MS. JACOBY: I absolutely agree with

1 that. There's sort of -- I mean, I think what
2 we would think of with the sliding scale
3 there's -- there's an outer bound on the
4 sliding scale formed by Brigham City's use of
5 that serious injury. But not all serious
6 injuries are alike, and our point is that based
7 on sort of the degree of the exigency, the
8 severity of the injury being complained about,
9 it may be reasonable in some instances for
10 officers to rely on less information or less
11 reliable information, and in other instances,
12 it may be reasonable -- it may not be
13 reasonable to rely on --

14 JUSTICE GORSUCH: I understand --

15 MS. JACOBY: -- some of that
16 information.

17 JUSTICE GORSUCH: -- that point.

18 MS. JACOBY: So that's -- that's our
19 only point.

20 JUSTICE GORSUCH: Do you have any
21 thoughts about the common law of necessity?

22 MS. JACOBY: Yeah, I think our -- our
23 point is that that's a -- a useful guidepost
24 here for the reasons that Your Honor
25 articulated, the fact that private individuals

1 were able to enter when life and limb were at
2 stake, we think provides some helpful guidance
3 about what the Framers would have thought was
4 reasonable here.

5 I don't think that we think of it as a
6 direct one-to-one analog, but I don't really
7 think it's our -- our burden to come up with a
8 direct one-to-one historical analog here given
9 that we have the -- the text of the amendment
10 on our side.

11 And it's really Petitioner who's
12 asking to graft on to the Fourth Amendment's
13 reasonableness standard this uniform probable
14 cause requirement that is not compelled by the
15 text of the amendment --

16 JUSTICE GORSUCH: Thank you.

17 MS. JACOBY: -- itself.

18 JUSTICE JACKSON: Would -- would you
19 object to the Court specifically saying that --
20 that the officers have to have more than
21 reasonable suspicion that an emergency is
22 occurring?

23 MS. JACOBY: I -- I think we would
24 object to it for a couple reasons. I mean,
25 one, I think because reasonable suspicion is a

1 standard from the criminal law, just as
2 probable cause is for the reasons that Justice
3 Kagan was -- was just articulating with my
4 friend, just pegging it to any one of these
5 criminal investigation standards I think does
6 more harm than good because --

7 JUSTICE JACKSON: But why isn't
8 that -- isn't that familiar? I mean, they're
9 used to those standards. And so I appreciate
10 that they do it in the criminal context when
11 they're looking for crimes, but they
12 understand, I would think, the difference
13 between probable cause and -- and -- and I'm
14 more focused on reasonable suspicion in that
15 context, and so why couldn't we just say you
16 have to have more than reasonable suspicion
17 that an emergency is occurring?

18 MS. JACOBY: Well, two points. First
19 of all, police officers may be familiar with
20 reasonable suspicion, but your standard here
21 will also apply to firefighters, paramedics,
22 all of whom may have no more familiarity with
23 reasonable suspicion than with probable cause.
24 And reasonableness is, I think, an easier
25 standard to understand.

1 Second of all, I do think just given
2 how varied emergencies are, it's best not to
3 sort of set either, like set a floor at -- at
4 reasonable suspicion just because this Court
5 can't really predict all manner of emergencies
6 that could arise. And rather than hamstringing
7 courts or officers with setting a floor on
8 this, better to just stick with the objectively
9 reasonable basis test from Brigham City.

10 JUSTICE JACKSON: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice Alito?

12 JUSTICE SOTOMAYOR: In Brigham City,
13 I'm quoting from the SG's brief, "One way to
14 conceptualize the emergency aid situation is
15 that the basic requirement that the police have
16 an objectively reasonable belief, i.e.,
17 probable cause - does not change, but the
18 object of the probable cause does change.

19 "Rather than requiring an objectively
20 reasonable basis for an officer to believe a
21 crime has been or is about to occur, the
22 officer needs an objectively reasonable basis
23 to believe that an emergency need for
24 assistance exists."

25 Have you changed your position?

1 MS. JACOBY: Yes. After the Court's
2 decision in Brigham City, which used the
3 objectively reasonable basis language but did
4 not draw that connection to probable cause that
5 we had sort of floated in a footnote, we did
6 rethink that. And in Caniglia or Caniglia,
7 our -- our brief five years ago, we -- we made
8 clear that our view is that probable cause is
9 not the correct standard.

10 JUSTICE SOTOMAYOR: May not be, but
11 Brigham is?

12 MS. JACOBY: Yes, Brigham City is the
13 correct standard, and -- and we -- we sort of
14 disavow that equivalence that we --

15 JUSTICE SOTOMAYOR: And reasonable
16 suspicion is not.

17 MS. JACOBY: Not -- not the correct
18 standard either. Objectively reasonable basis
19 just from Brigham City is -- is the correct
20 standard.

21 CHIEF JUSTICE ROBERTS: Justice Kagan?
22 Justice Gorsuch?
23 Justice Kavanaugh?
24 Justice Barrett?
25 Justice Jackson?

1 Thank you, counsel.

2 Rebuttal, Mr. Rowley?

3 REBUTTAL ARGUMENT OF FRED A. ROWLEY, JR.

4 ON BEHALF OF THE PETITIONER

5 MR. ROWLEY: Thank you, Mr. Chief

6 Justice.

7 I think it's critical to remember that
8 what we're dealing with here is an entry into
9 the home and there are these default
10 constitutional rules that are decades and
11 decades old.

12 As the Court has repeatedly said, at
13 the very core of the amendment stands the right
14 of a man to retreat -- to retreat into his home
15 and there be free from unreasonable government
16 intrusions. In Payton, the Court said that the
17 Fourth Amendment has drawn a firm line at the
18 entrance to the house.

19 And so these rules do not require if
20 you -- if you apply a probable cause standard
21 some kind of fundamental tweaking of -- of
22 Fourth Amendment jurisprudence. We think that
23 they are a natural extent -- application of --
24 of these basic Fourth Amendment principles.

25 I would also stress that in a lot of

1 these situations where the emergency aid
2 exception arises, you have not just potential
3 safety implications but also criminal
4 implications. Think of domestic violence
5 situations or the -- the situation that the
6 officers faced here.

7 And so having a parallel standard of
8 probable cause to think a crime is being
9 committed but also probable cause to think that
10 somebody is seriously injured or imminently
11 threatened with such injury makes good sense.

12 Conversely, if you adopted a standard
13 that was a sliding scale, as the government has
14 suggested, or a lower standard for the
15 emergency aid exception, there is the potential
16 for abuse. You could back-door your way into
17 a -- into a criminal investigation.

18 I'd just note that while the State now
19 has expressed concern about applying a probable
20 cause standard, in its brief in opposition, it
21 noted that the -- that a significant number of
22 lower courts apply a probable cause standard
23 even -- and they say it's functionally a
24 probable cause standard -- even if what they
25 say in terms of the standard, the words used,

1 is different.

2 And the Court didn't suggest that that
3 was a problem or that that stopped police
4 officers and other first responders from going
5 in and helping with an emergency.

6 And so we don't think that -- that
7 applying a probable cause standard, which is
8 the default standard, would prevent officers
9 from -- from stopping in a -- or -- or
10 intervening in an emergency.

11 On the common law, because Justice
12 Gorsuch asked about that, I'd just note that
13 the cases that my friend features in the
14 Respondent's brief, best cases presumably, do
15 say that the -- that the defendant or the
16 potential tortfeasor has to be right.

17 In Scott v. Wakem, the -- the Court
18 says, and I quote, "the question was not
19 whether the defendant sincerely believed he was
20 right but whether he was so."

21 So this reasonableness gloss is a
22 restatement gloss. I think the more
23 fundamental point, though, is that when you
24 were asking about constable authority, the
25 focus is what the rules that -- that governed

1 constable power and what they could do are the
2 cognate rules, and the closest one is the
3 affray rule. It actually applies to the same
4 set of circumstances that were at issue in
5 Fisher and in Brigham City.

6 Both of those involved what I think
7 the Court called a melee or a fracas, that is,
8 essentially, an affray. And we know what the
9 common law thought about that. What the common
10 law thought was that the constable had to see
11 or hear the affray if he wanted to break down
12 doors and part the affray.

13 That standard is fundamentally
14 inconsistent with a standard below probable
15 cause. The necessity defense and none of the
16 other specific rules that the State and the
17 United States outline supports a standard below
18 probable cause.

19 And so we think that the common law is
20 more supportive of our position than theirs and
21 that it echoes not just the language in Brigham
22 City, but it also underscores other exigent
23 circumstances cases, like Minnesota v. Olson,
24 where the Court has said that probable cause
25 for an exigency is essentially the correct or

1 the proper legal standard, and also in Santana,
2 which involved an exigent circumstance after
3 all, a hot pursuit, and the Court applied a
4 probable cause standard not just for the
5 underlying crime but to think that an
6 exigent -- exigency existed.

7 The -- the last thing I would say is
8 that the United States says that reasonableness
9 is an easier standard to -- to understand than
10 probable cause, but, as Justice Jackson
11 observed, probable cause is as settled a
12 formulation as you're going to find in the
13 Fourth Amendment.

14 It's a standard that -- that officers
15 have applied, that the courts have developed
16 over decades and decades. As the Court said in
17 Dunaway, the familiar threshold standard of
18 probable cause for Fourth Amendment seizures
19 provides the relative simplicity and clarity
20 necessary to the implementation of a workable
21 rule.

22 A balancing test, particularly a
23 sliding scale test, will not only be unfamiliar
24 to first responders but -- but particularly
25 unfamiliar to -- to -- to officers and --

1 and -- and other first responders.

2 CHIEF JUSTICE ROBERTS: Thank you,
3 counsel.

4 The case is submitted.

5 (Whereupon, at 1:54 p.m., the case was
6 submitted.)

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