No. 20-157

In The Supreme Court of the United States

EDWARD A. CANIGLIA

PETITIONER,

v.

ROBERT F. STROM ET AL.

RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND, THE CATO INSTITUTE, AND THE AMERICAN CONSERVATIVE UNION FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution. In furtherance of those principles, the ACLU has appeared in numerous cases before this Court involving the meaning and scope of the Fourth Amendment, both as direct counsel and as an amicus. Because this case directly implicates those issues, its proper resolution is a matter of concern to the ACLU and its members. The ACLU of Rhode Island is an affiliate of the ACLU and shares this mission and these concerns.

The Cato Institute was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Cato's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the

[1] Petitioner and respondent have consented to the filing of this brief. Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part and that no person other than amici or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief.

criminal justice system, and accountability for law enforcement officers. The present case centrally concerns Cato because it represents an opportunity to improve Fourth Amendment doctrine and maintain that provision's protections in the modern era.

The American Conservative Union Foundation ("ACUF") Nolan Center for Justice ("NCJ") is a tax-exempt charity whose mission is to educate Americans about conservative public policies. Specifically, ACUF-NCJ focuses on policies that strengthen safety, advance human dignity, and improve government accountability. Further, ACUF seeks to preserve and protect the values of life, liberty, and property for every American. ACUF's five policy centers represent a range of issues, including property rights, criminal justice reform, statesmanship and diplomacy, arts and culture, and human rights and dignity. In this context, ACUF-NCJ is dedicated to expanding the protections offered by aiding in the development of Fourth Amendment doctrine consistent with sound Constitutional principles and the rule of law.

Amici respectfully submit this brief to assist the Court in resolving whether petitioner's Fourth Amendment rights were violated when, without probable cause or a warrant, police officers entered petitioner's home based only on an asserted community caretaking interest. In light of amici's strong interest in the protections contained in the Constitution—including the Fourth Amendment's guarantee of freedom from unwarranted intrusion into the home—the proper resolution of this case is a matter of substantial interest to amici, their affiliates, and their members. For the reasons given by petitioner, and those set forth below, the First Circuit erred in extending the community caretaking doctrine to warrantless home entries.

SUMMARY OF THE ARGUMENT

"We have . . . lived our whole national history with an understanding of 'the ancient adage that a man's house is his castle.'" *Georgia v. Randolph*, 547 U.S. 103, 115 (2006) (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958)). But if the decision below is correct, that castle is made of sand. As interpreted by the First Circuit, the extent of the Fourth Amendment's protection for the home depends on the subjective intent of a governmental "master of all emergencies." Pet.App.16a. In this system, the court of appeals posited, state agents "need only act within the realm of reason" in order to justify entry into the home without either probable cause or a warrant. Pet.App.14a (internal quotation marks omitted). That cannot be the law.

The nebulous and expansive version of the "community caretaking" exception adopted by the court of appeals is neither "jealously" nor "carefully" drawn. *Jones v. United States*, 357 U.S. 493, 499 (1958). No precedent supports such a dramatic curtailment of the Fourth Amendment. To the contrary, this Court has always carefully limited the scope of the narrow exception established in *Cady v. Dombrowski*, 413 U.S. 433 (1973), to inventory searches of vehicles under police custody or control. Yet in the decades since, lower courts have seized on the opinion's use of the ambiguous term "community caretaking" to author an untethered doctrine of their own—one that not only directly contradicts *Cady*, but eviscerates the Fourth Amendment's protections.

Extending the "community caretaking" exception to warrantless searches of the home would allow police officers to bypass the Fourth Amendment's restrictions in a startling array of circumstances. These are not theoretical concerns. In both state and federal courts,

everything from loud music to leaky pipes have been used to justify warrantless invasion of the home. Allowing ill-defined notions of "community caretaking" to override the Fourth Amendment is unwise, unmanageable, and unnecessary, and it opens the door to abusive police conduct, including against those who most need society's protections.

Amici urge the Court to keep the "community caretaking" exception confined to its historic, vehicle-related origins and reject a broader standard that would give police free rein to enter the home without probable cause or a warrant, whenever they think it is "reasonable" to do so.

ARGUMENT

I. THE FOURTH AMENDMENT STRONGLY PROTECTS THE SANCTITY OF THE HOME

A. The Fourth Amendment's Text and History Make Clear that the Home is Sacrosanct

1. The text of the Fourth Amendment expressly guards the home from "unreasonable searches and seizures." U.S. Const. amend. IV. In fact, the home is the *only* place the Fourth Amendment singles out for protection.

This Court has long recognized protection of the home as the cornerstone of the Fourth Amendment. "At the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo v. United States*, 533 U.S. 27, 31 (2001) (internal quotation marks omitted). "[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Court*, 407 U.S. 297, 313 (1972); *see also Jones*, 357 U.S. at 498 ("[I]t is difficult

to imagine a more severe invasion of privacy than the nighttime intrusion into a private home."). Unsurprisingly, then, an individual's expectation of privacy is "most heightened" in his home. *California v. Ciraolo*, 476 U.S. 207, 213 (1986).

2. The Fourth Amendment's defense of the home arose in direct response to English writs of assistance, which gave British officials "blanket authority" to enter private property. *Stanford v. Texas*, 379 U.S. 476, 481 (1965). British abuses of these writs "were fresh in the memories of those who achieved our independence and established our form of government." *Boyd v. United States*, 116 U.S. 616, 625 (1886). "[T]he searches and seizures which deeply concerned the colonists, and which were foremost in the minds of the Framers, were those involving invasions of the home." *United States v. Chadwick*, 433 U.S. 1, 8 (1977); *see also Carpenter v. United States*, 138 S. Ct. 2206, 2239 (2018) (Thomas, J., dissenting) ("Widespread hostility" to the Crown's intrusions into the home was the "driving force behind the adoption of [the Fourth] Amendment." (internal quotation marks omitted)).

In a famous case concerning the writs, colonial attorney James Otis argued that "[a] man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle. [The] writ, if it should be declared legal, would totally annihilate this privilege." 2 Legal Papers of John Adams 142-44 (Wroth & Zobel eds. 1965). John Adams, who was in the audience that day, later observed that Otis's ferocious defense of the home struck a chord with budding Revolutionaries, proclaiming that "American Independence was then and there born." *Frank v. Maryland*, 359 U.S. 360, 364 (1959). After Independence, Adams penned a provision of the

Massachusetts Constitution that specifically protected the home and "served as a model for the Fourth Amendment." *Carpenter*, 138 S. Ct. at 2240 (Thomas, J., dissenting).

3. The special protection for private dwellings provided by the Fourth Amendment does not vanish simply because the government claims to be motivated by something other than law enforcement purposes. To the contrary, as originally understood, the Fourth Amendment prevents "*all invasions* on the part of the government and its employes of the sanctity of a man's home and the privacies of life." *Boyd*, 116 U.S. at 630 (emphasis added); *see also* Gerard V. Bradley, *The Constitutional Theory of the Fourth Amendment*, 38 DePaul L. Rev. 817, 836 (1989). It was irrelevant whether the original justification for the search was to detect criminal conduct. Laura K. Donohue, *The Original Fourth Amendment*, 83 U. Chi. L. Rev. 1181, 1198-99, 1203-04, 1311, 1317-19 (2016).

The Fourth Amendment protects all of us. "[E]ven the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority." *Camara v. Mun. Ct.*, 387 U.S. 523, 530-31 (1967).

B. The Probable Cause and Warrant Requirements Protect the Sanctity of the Home

"It is a 'basic principle of Fourth Amendment law' that searches and seizures inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 477 (1971)). This rule recognizes that "the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home,"

and that the protection of the home is "too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals." *McDonald v. United States*, 335 U.S. 451, 455-56 (1948).

The warrant and probable cause requirement is subject to only a few "jealously and carefully drawn" exceptions. *Jones*, 357 U.S. at 499; *see also Katz v. United States*, 389 U.S. 347, 357 (1967) (noting that the requirement is "subject only to a few specifically established and well-delineated exceptions."). This insistence on precision serves officer and citizen alike: It provides clear rules for government officials while guarding against the subtle erosion of individual rights.

This Court has held that warrantless home entry is constitutional in just two narrow settings: consent of an occupant or exigent circumstances. *Steagald v. United States*, 451 U.S. 204, 211 (1981).[2] No other justification is sufficient. *See, e.g., Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018) (explaining that the "plain view" doctrine alone is never enough to justify entry into a home).

II. THE DEVELOPMENT OF A "COMMUNITY CARETAKING" DOCTRINE AMONG LOWER COURTS IS CONTRARY TO PRECEDENT

A. This Court Has Limited the "Community Caretaking" Exception to the Search of Automobiles Under Police Custody or Control

1. The term "community caretaking" first appeared as an offhand remark in this Court's discussion of

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[2] In the decision below, the First Circuit incorrectly treated "emergency aid" as a separate exception. Pet.App.11a-12a. This Court has clarified that emergency aid falls under the exigent circumstances exception. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

automobile search procedures in *Cady v. Dombrowski*. 413 U.S. 433, 441 (1973). Dombrowski, an off-duty police officer, was in a car accident while driving under the influence, disabling his vehicle and substantially injuring himself. *Id.* at 436-37. Officers had the vehicle towed from the site of the accident and, following Dombrowski's arrest and hospitalization, returned to the vehicle to search for Dombrowski's service weapon, pursuant to the department's "standard procedure." *Id.* While searching for the weapon, officers inadvertently discovered evidence implicating Dombrowski's involvement in a murder. *Id.* at 437. This evidence was introduced at Dombrowski's trial, and he was ultimately convicted. *Id.* at 438. Dombrowski challenged his conviction, contending that the warrantless and suspicionless search of his vehicle violated the Fourth Amendment. *Id.* at 434.

This Court upheld the search of the vehicle as lawful on two factual bases: "First, the police had exercised a form of custody or control over the 1967 Thunderbird." *Id.* at 442-43. And "[s]econd, . . . the search of the trunk to retrieve the revolver was standard procedure in (that police) department." *Id.* at 443 (internal quotation marks omitted). That procedure required officers "to secure in a place of safety property of persons in custody of [the] department." Pet. Br. 22, *Cady v. Dombrowski*, 413 U.S. 433 (1973), 1973 WL 171687, (No. 72-586), at *22-23.

Tellingly, the Court drew exclusively on its prior automobile inventory jurisprudence to uphold the legality of the search, stipulating that "the instant case is controlled by principles that may be extrapolated from *Harris v. United States* and *Cooper v. California*." *Cady*, 413 U.S. at 444-45 (citations omitted). *Harris* upheld the search of an "impounded vehicle" as "a measure taken to protect the car while it was in police custody." *Id.* at 445

(quoting *Harris v. United States*, 390 U.S. 234, 236 (1968) (per curiam)). And in *Cooper*, the Court upheld the search of an "impound[ed]" vehicle on the basis that "[i]t would be unreasonable to hold that the police, having to retain the car in their custody for such a length of time, had no right, even for their own protection, to search it." *Id.* at 446 (quoting *Cooper v. California*, 386 U.S. 58, 61-62 (1967)). Relying on this precedent, the Court in *Cady* found that the police had a caretaking responsibility to inventory certain contents of Dombrowski's vehicle, derived from officer control over both Dombrowski and his vehicle:

> [T]he type of caretaking "search" conducted here of a vehicle that was neither in the custody nor on the premises of its owner, and that had been placed where it was by virtue of lawful police action, was not unreasonable solely because a warrant had not been obtained.

Id. at 447-48.

In justifying the search in *Cady*, the Court explicitly and repeatedly distinguished automobiles as *inherently different* from homes—discussing the differences in the protections afforded to cars and homes on almost every page. *See, e.g., id.* at 439 ("Although vehicles are 'effects' within the meaning of the Fourth Amendment, 'for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars.'") (quoting *Chambers v. Maroney*, 399 U.S. 42, 52 (1970)); *id.* at 440 ("[S]earches of cars that are constantly movable may make the search of a car without a warrant a reasonable one although the result might be the opposite in a search of a home.") (quoting *Cooper v. California*, 386

U.S. 58, 59 (1967)); *id.* at 442 (recognizing "[t]he constitutional difference between searches of . . . houses and similar structures and . . . vehicles"); *id.* at 447 (noting "[t]he Court's previous recognition of the distinction between motor vehicles and dwelling places").

In sum, *Cady* established a narrow exception to the Fourth Amendment, applicable *only* when a vehicle is taken under police custody or control. The exception is based on 1) the reduced expectation of privacy in automobiles; 2) the propriety of non-criminal inventory of automobiles under police custody or control; and 3) the adherence to standardized police procedures as a check on police discretion.

2. This Court has revisited the "community caretaking" exception of *Cady* only twice—in both cases, like *Cady* itself, in the context of standardized vehicle searches.

a. In *South Dakota v. Opperman*, 428 U.S. 364, 365 (1976), the Court upheld the search of an impounded car. Contrary to the expansive exception lower courts fashioned from *Cady*, *see infra* Section II(B), *Opperman* reiterated that *Cady*'s narrow holding did not recognize a "caretaking" exception separate from inventory searches. Instead, the Court made explicit that the "caretaking" exception of *Cady* hinges on the fact that officers exerting control over property have caretaking responsibilities for that property. *Id.* at 369 ("These procedures developed in response to three distinct needs: the protection of the owner's property while it remains in police custody; the protection of the police against claims or disputes over lost or stolen property; and the protection of the police from potential danger." (citations omitted)). And, as in *Cady*, the Court relied entirely on its automobile

jurisprudence, citing *Cooper* and *Harris* in addition to *Cady*. *Id.* at 373-75. Based on the rationales of these cases, the Court replicated the holding of *Cady*: "caretaking" inventories of vehicles taken under police custody or control, pursuant to standard police practices, are reasonable. *Id.* at 375.

b. The final case of the "caretaking" doctrine's trio, *Colorado v. Bertine*, 479 U.S. 367 (1987), cements what is already obvious—the Court has never permitted the expansion of *Cady* beyond the original exception it drew. As in the previous cases, police conducted a search of Bertine's vehicle after lawfully taking control of it, pursuant to standard practices. *Id.* at 372. And again, the justification for the "caretaking" search was to inventory the contents of a vehicle under police custody or control, pursuant to what the Court referred to interchangeably as "standardized caretaking," "police caretaking," and "administrative caretaking." *Id.* at 367, 371, 372. Citing *Cady*, the Court explained that its "cases accord[] deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody." *Id.* at 372.

As the line of "caretaking" cases makes clear, there is no doctrinal support for extending the "community caretaking" doctrine beyond inventory searches of automobiles. *Cady* and its progeny begin and end with standardized searches of vehicles under police control.

B. Despite This Court's Careful Confinement of the "Community Caretaking" Exception, Lower Courts Have Impermissibly Extended *Cady* Beyond Recognition

While *Bertine* was the last time this Court addressed the warrant exception articulated in *Cady*, lower courts

have used the ambiguity of the term "community caretaking" to fashion new doctrine, divorced from the original holding of *Cady*.

1. Among federal courts, the Fifth Circuit was the first to use *Cady* to justify a warrantless home entry. *United States v. York*, 895 F.2d 1026, 1030 (5th Cir. 1990). In that case, police officers accompanied a former occupant to retrieve his possessions from the defendant's home, entering despite defendant's protest or any urgency to do so. *Id.* at 1027-30. While inside, officers observed weapons they believed to be illegal to possess, and obtained a warrant to return to seize them. *Id.* at 1028. The Fifth Circuit relied on the ambiguity of the term "community caretaking" in justifying its holding that no search had occurred at all. *Id.* at 1030. While citing the caretaking exception from *Cady*, the Fifth Circuit in no way adhered to its actual reasoning—instead using *Cady* as window dressing while crafting an open-ended test hinging on whether it was "reasonably foreseeable" that police would enter the home. *Id.* at 1029.

The Eighth Circuit created its own version of the community caretaking doctrine in *United States v. Quezada*, 448 F.3d 1005, 1006 (8th Cir. 2006). In that case, an officer went to the homeowner's residence to serve a protective order. Upon knocking, the door became ajar. *Id.* The officer called out and no one responded, but because lights and the television were on, the officer entered the home. *Id.* The defendant was found sleeping with a shotgun, and was arrested for being a felon in possession of a firearm. *Id.* at 1006-07. The Eighth Circuit found that the search of the home was reasonable. *Id.* at 1007. Referring to officers as "jacks of all trades," the Eighth Circuit relied on *Cady* to develop an exigency lite doctrine—permitting entry to the home based on

"reasonable belief" that "community caretaking" was necessary. *Id.*[3] The Eighth Circuit's holding essentially finds it reasonable for officers to enter a residence any time a door is not properly closed and the lights are on, but no one is (or rather, appears to be) home.

Finally, in this case, the First Circuit completed what it referred to as an "odyssey"—taking the "caretaking" doctrine of *Cady* far beyond its narrow origins in automobile inventory searches to expansive rationales for suspicionless and warrantless home entry. Pet.App.16a. Ignoring not only the text of the Fourth Amendment, but *Cady* itself, the First Circuit based its decision on its view of the caretaking doctrine's "core purpose." Pet.App.16a. But, as explained above, *supra* Section II(A), this Court has never expanded *Cady* beyond its initial, narrow holding. The only "inexorabl[e]," Pet.App.16a, conclusion of *Cady* is that the "community caretaking" exception is strictly limited to inventory searches of vehicles under police custody or control, pursuant to standardized police practices. *See Cady*, 413 U.S. at 447-48.

2. It is not only federal courts that have developed an expansive and unmoored "community caretaking" doctrine that conflicts with this Court's precedent. A number of state courts have also crafted "community caretaking" exceptions that permit warrantless entry into the home, flouting *Cady*'s explicit distinction between

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[3] *Quezada* illustrates a common mistake made by lower courts—the conflation of "community caretaking" with "exigent circumstances." While *Quezada* discusses community caretaking, it derived its test from cherry-picked portions of the exigent circumstances exception. 448 F.3d at 1007 (citing *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978)); s*ee also infra* Section III(B). This permitted the Eighth Circuit to uphold the warrantless entry in the absence of exigency.

homes and vehicles.[4] Like the federal courts of appeals, the state courts that have expanded the "community caretaking" exception to the home pay lip service to *Cady*, but detach the doctrine from its original foundations; they require neither an automobile, nor an inventory purpose, nor standardized procedures—even though *Cady* demands all three. And, as in the federal courts, the state courts' varying definitions of "community caretaking" are much more expansive than the circumscribed inventory purposes that this Court has recognized—at times, actually encompassing criminal investigatory purposes. *See, e.g.*, *State v. Pinkard*, 785 N.W.2d 592, 603 (Wis. 2010) ("[O]fficers were engaged in a bona fide community caretaker function . . . police received a reliable anonymous tip that the occupants of Pinkard's home appeared to be sleeping near drugs, money and drug

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[4] *See People v. Kolesnikov*, No. 2-18-0787, 2020 WL 4933496, ¶ 3 (Ill. App. Ct. Aug. 24, 2020) (finding it reasonable to search entire home after suicidal man had been secured in ambulance); *People v. Hill*, 829 N.W.2d 908, 910 (Mich. Ct. App. 2013) (permitting entry into home for "welfare check" on resident despite fact that "there were no visible signs of a home invasion, no unusual odors emanating from the home, no signs of violence, and no sounds of someone in distress"); *State v. Deneui*, 775 N.W.2d 221, 239 (S.D. 2009) (permitting entry and sweep of entire home in response to concern about possible gas theft); *State v. Pinkard*, 785 N.W.2d 592, 594-95 (Wis. 2010) (upholding entry to home, pursuant to community caretaking function, because the home in question was a known drug house); *State v. Alexander*, 721 A.2d 275, 279 (Md. Ct. Spec. App. 1998) (finding officer's warrantless entry through home's basement window and sweep of the entire home reasonable); *Commonwealth v. Baumgardner*, 1997 WL 727726, at *4 (Va. Ct. App. Nov. 21, 1997) (permitting warrantless entry by officers to accompany fired live-in nanny to gather her belongings, despite nanny's informing officers that there were illegal drugs in the house); *State v. Dube*, 655 A.2d 338, 339 (Me. 1995) (upholding officer entry into the home to accompany landlord in dealing with a plumbing issue).

paraphernalia."). The result is an almost boundless exception to both the warrant and probable cause requirements.

C. Lower Courts' Interpretation of the "Community Caretaking" Exception is Inconsistent with Other Fourth Amendment Precedent

In addition to being inconsistent with *Cady*, the expansive version of the "community caretaking" exception crafted by lower courts is irreconcilable with this Court's cases recognizing the Fourth Amendment's special protections for the home. The courts have taken a doctrine developed for the reduced expectation of privacy associated with impounded vehicles, and applied it to the home, the apex of privacy, without justification.

"[W]hen it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Comparatively, citizens enjoy a much weaker expectation of privacy when they operate automobiles on public roadways. *Chambers v. Maroney*, 399 U.S. 42, 48-49 (1970). So "for the purposes of the Fourth Amendment there is a constitutional difference between houses and cars." *Id.* at 52. This distinction was paramount to *Cady*'s reasoning. 413 U.S. at 439-42. Yet lower courts extending the community caretaking exception to the home almost completely ignore it.

Instead, these courts looked simply to general concepts of "reasonableness." Pet.App.18a, 21a; *United States v. York*, 895 F.2d 1026, 1028-30 (5th Cir. 1990). It is of course true that "[t]he ultimate standard set forth in the Fourth Amendment is reasonableness." *Cady*, 413 U.S. at 439. But that does not mean lower courts have free rein to determine "reasonableness" on an ad hoc basis, using whatever considerations they see fit. Instead, lower

courts must use the guideposts this Court has laid out, including the presumptions about what constitutes a reasonable search of a home. They have not done so.

Most egregiously, these courts ignored a core principle this Court has reaffirmed time and time again: warrantless entry into a home is presumptively unreasonable. *Payton v. New York*, 445 U.S. 573, 586 (1980); *see Kentucky v. King*, 563 U.S. 452, 459 (2011); *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). To be sure, the decision below paid lip service to the Fourth Amendment's special protection of the home. *See* Pet.App.36a (recognizing "the constitutional significance of warrantless entries into a person's residence"). But that court disregarded the Fourth Amendment's special protection for the home once it found the need to give the job of on-the-spot policing "reasonable leeway." Pet.App.36a.

The Fourth Amendment does not permit such a free-wheeling balancing inquiry when it comes to searches of homes. Indeed, quite the opposite is true. "Absent exigent circumstances, th[e] threshold [of the home] may not reasonably be crossed without a warrant." *Payton*, 445 U.S. at 590. Yet by permitting warrantless entry whenever police act within "the universe of reasonable choices available to them," Pet.App.24a, lower courts have inverted the presumption. In their view, warrantless home entry for a "community caretaking" purpose is presumptively *reasonable*, unless the subject of the search can show otherwise. Such a standard does violence to the Fourth Amendment.

D. The Special Needs Doctrine Does Not Justify the Search and Seizure Here

1. The special needs doctrine—sometimes referred to as the administrative search doctrine—provides a narrow carve-out from the warrant requirement. It applies "[o]nly in those exceptional circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring).

This doctrine is necessarily "fact-specific," *Board of Education v. Earls*, 536 U.S. 822, 830 (2002), but it is susceptible to broad categorization. The Court has decided over two dozen cases implicating this exception, most of which concern "programmatic searches of either the public at large or a particular class of regulated but otherwise law-abiding citizens." *Maryland v. King*, 569 U.S. 435, 462 (2013). They generally involve reduced expectations of privacy and standardized procedures, or some other substitute for the warrant requirement.

This case does not share any of these features. A typical programmatic search of the public, *see, e.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (random vehicle checkpoint), targets the entire population of a particular area. Individuals or structures therein are subject to search or seizure in accordance with standardized protocols (as in the automobile inventory searches discussed above). Such procedures are required to limit the discretion of frontline officials. *See, e.g.*, *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 454 (1990); *Donovan v. Dewey*, 452 U.S. 594, 604 (1981); *Delaware v. Prouse*, 440 U.S. 648, 661 (1979); *Almeida-Sanchez v. United States*, 413 U.S. 266, 270 (1973); *Camara*, 387 U.S. at 532. But in this case—as in all "community caretaking"

home entries—individual police officers targeted petitioner and his property for search and seizure in response to a set of individualized facts. This is exactly what the process for obtaining a warrant is designed to permit. That is, a law enforcement officer who can articulate probable cause is authorized by the judiciary to breach a home to conduct a search. *McDonald*, 335 U.S. at 453.

2. Subpopulation searches, on the other hand, are generally permitted because the individual or entity subject to search has a "particularly attenuated" expectation of privacy. *New York v. Burger*, 482 U.S. 691, 700 (1987); *see also Skinner v. Ry. Labor Execs.' Ass'n*, 489 U.S. 602, 627 (1989) (holding that railroad workers' "expectations of privacy . . . are diminished by reason of their participation in an industry that is regulated pervasively"); *T.L.O.*, 469 U.S. at 348 ("In any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally.") (Powell, J., concurring).

Here, however, the police entered petitioner's home, where Fourth Amendment protections are highest. Indeed, the Court has repeatedly distinguished special needs searches from warrantless home entries. In *Burger*, for example, it observed that the relevant expectation of privacy was "different from, and indeed less than, a similar expectation in an individual's home." 482 U.S. at 700. The Court was similarly explicit in *Martinez-Fuerte*: "[W]e deal neither with searches nor the sanctity of private dwellings, ordinarily afforded the *most stringent* Fourth Amendment protection." 428 U.S. at 561 (emphasis added); *see also Dewey*, 452 U.S. at 598 ("[U]nlike searches of private homes, which generally must be conducted pursuant to a warrant in order to be

reasonable under the Fourth Amendment, legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate the Fourth Amendment.").

This Court has only twice suggested that a nonconsensual special needs search could extend into the home. And in both cases, it required the government to first obtain an administrative warrant. *Michigan v. Clifford*, 464 U.S. 287, 292-94 (1984); *Camara*, 387 U.S. at 534. The First Circuit's community caretaking exception, by contrast, leaves the privacy of the home to the open-ended discretion of an officer's assessment of what is needed to care for the community.

III. AN EXCEPTION ALLOWING WARRANTLESS SEARCHES OF THE HOME BASED ON "COMMUNITY CARETAKING" IS OVERBROAD

1. Given the capacious array of activities that could be called "community caretaking," it is hardly surprising that courts have relied on it to uphold warrantless entries based on a wide variety of police actions. In *Castagna v. Jean*, for example, police officers entered a private dwelling after hearing "loud music" and suspecting underage drinking. 955 F.3d 211, 214-15 (1st Cir. 2020). Courts have also sanctioned warrantless entries to accompany a fired live-in nanny to gather her belongings, *Commonwealth v. Baumgardner*, 1997 WL 727726, at *4 (Va. Ct. App. Nov. 21, 1997), investigate ammonia fumes, *State v. Deneui*, 775 N.W.2d 221, 226-27 (S.D. 2009), and address a plumbing issue, *State v. Dube*, 655 A.2d 338, 339 (Me. 1995). In one case, officers entered an individual's bedroom after tracing a vehicle accident back to his house. *State v. Gracia*, 826 N.W.2d 87, 94-95 (Wis. 2013); *cf. State v. Gill*, 755 N.W.2d 454, 456-57 (N.D. 2008) (similar facts

to *Gracia*, but declining to extend the doctrine to the home).

Even in courts that have *not* extended the doctrine beyond the automobile context, states and the federal government have pressed similarly expansive justifications for police intrusions into the home. In one particularly striking illustration, during a burglary investigation, a police officer searched the home of a neighbor's *separate residence*, which the officer sought to justify as a caretaking search performed in the interests of the neighbor. *United States v. Erickson*, 991 F.2d 529, 530 (9th Cir. 1993); *cf. United States v. Pichany*, 687 F.2d 204, 205-06 (7th Cir. 1982) (per curiam) (search of a warehouse during an investigation into a burglary at an adjacent property). Other examples include performing "welfare checks," *Ray v. Twp. of Warren*, 626 F.3d 170, 172 (3d Cir. 2010); *State v. Vargas*, 63 A.3d 175, 177 (N.J. 2013), entering a building on a hunch of possible burglary or vandalism, *United States v. Bute*, 43 F.3d 531, 533 (10th Cir. 1994), and searching a home to evaluate potential mercury contamination. *State v. Wilson*, 350 P.3d 800, 801-02 (Ariz. 2015).

This wide array of tasks shows there is no limit in the Constitution, or the community caretaking doctrine itself, to what the state can cite as "community caretaking." The First Circuit's expansive view offers no basis for limiting the scope of activities that might qualify. And neither the warrant nor probable cause requirements provide any boundaries. In a jurisdiction that has adopted the exception, for example, going on vacation for two weeks without notice could lead to a warrantless search of your home. *See People v. Hill*, 829 N.W.2d 908, 910 (Mich. Ct. App. 2013). Such broad exceptions are inconsistent with both the Fourth Amendment's text and history, as well as

this Court's precedents. *Chadwick*, 433 U.S. at 8; *Payton*, 445 U.S. at 576, 585.

The opinion below makes clear just how broad its "community caretaking" exception is. The First Circuit says police can use the community caretaking exception whenever they act "within the realm of reason." Pet.App.14a. This highly deferential, *Chevron*-esque review is hardly the scrutiny the Fourth Amendment requires for warrantless home entries. *See Jones*, 357 U.S. at 499.

Finally, the First Circuit focused on giving "police elbow room to take appropriate action." Pet.App.16a. But there is no basis in the Fourth Amendment or its original understanding for granting law enforcement such "elbow room" when they are intruding on the privacy of the home. This Court has time and time again recognized that the Fourth Amendment does not yield simply because it makes the job of law enforcement more difficult. *See Scott v. Harris*, 550 U.S. 372, 383 (2007). The founding generation had no concept of the modern system of policing—so they certainly would not have understood the Fourth Amendment to grant a state-sanctioned "master of all emergencies" carte blanche to enter private homes, so long as it is in the name of "protect[ing] public safety" and within the "realm of reason." Pet.App.16a, 21a, 35a. The "community caretaking" doctrine is a blunt instrument untethered to text or tradition. And extending it to cover warrantless home searches flouts this Court's instruction that exceptions to the general warrant requirement be narrow and carefully drawn. *See Jones*, 357 U.S. at 499.

2. The First Circuit purported to limit its version of the "community caretaking" exception by requiring a

"solid, non-investigatory reason." Pet.App.20a. But this requirement provides little solace for those concerned about potential abuse and pretextual searches. Indeed, because of the breadth of the exception and the discretion it affords officers, deceit can play an unfortunately large role in these cases.

Police cannot falsely claim authority to secure consent for a home entry. *Bumper v. North Carolina*, 391 U.S. 543, 548-50 (1968). But the "community caretaking" doctrine allows law enforcement to get awfully close to that line. As the First Circuit recognized, "deception is a well-established and acceptable tool of law enforcement." Pet.App.10a n.4 (quoting *Pagan-Gonzalez v. Moreno*, 919 F.3d 582, 591 (1st Cir. 2019)). Expanding the "community caretaking" doctrine to cover warrantless home entries risks encouraging police to resort to deceit.

Indeed, when police are not required to secure a warrant or show exigent circumstances—but need only show a "good police practice" that justifies their entry—they may be incentivized to say whatever necessary to gain access to the home. This is true even when, as here, police do not appear to have any ill motives. In this case, police lied to Mr. Caniglia about whether they would confiscate his firearms if he voluntarily left for a psychiatric evaluation. Pet.App.9a. And another lie about Mr. Caniglia's consent convinced Mrs. Caniglia to lead police to the firearms. Pet.App.10a-11a.

These concerns are especially grave because many "community caretaking" cases involve the policing of some of society's most stigmatized individuals. *See, e.g.*, *Graham v. Barnette*, 970 F.3d 1075, 1082-83 (8th Cir. 2020) (entry of a home to involuntarily commit a woman for psychiatric evaluation for repeatedly calling 911 to

make complaints about the police). When every interaction with police or request for help can become an invitation for police to invade the home, the willingness of individuals to seek assistance when it is most needed will suffer. That result not only offends the sanctity of the home; it undermines community caretaking in the first place. The public will not voluntarily call emergency services—even when necessary—unless they have faith that doing so will not authorize law enforcement to breach their home.

3. Lower courts that extend the community caretaking exception to warrantless searches of the home claim the extension is necessary to mitigate "[t]hreats to individual and community safety." Pet.App.16a; *see also United States v. Smith*, 820 F.3d 356, 361-62 (8th Cir. 2016). But this Court has already considered that careful balance when it comes to protecting public safety. In such cases, only *imminent* danger is a sufficient justification. *See Brigham City*, 547 U.S. at 403; *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978); *see also Erickson*, 991 F.2d at 533 ("[T]he exigent circumstances exception to the warrant requirement adequately accommodates" the competing interests in community caretaking and sanctity of the home.). "Police action literally must be now or never." *Roaden v. Kentucky*, 413 U.S. 496, 505 (1973) (internal quotation marks omitted); *see Ray v. Twp. of Warren*, 626 F.3d 170, 177 (3d Cir. 2010) ("Circumstances involving the protection of a child's welfare, even absent suspicions of criminal activity, may present an exigency permitting warrantless entry, but only if the officer reasonably believes that 'someone is in *imminent* danger.'") (quoting *Parkhurst v. Trapp*, 77 F.3d 707, 711 (3d Cir. 1996)). When there is no such urgency, police must obtain a warrant.

The community caretaking exception eliminates any imminence requirement. In fact, the First Circuit went to great lengths to explain that "the degree of immediacy typically required under the exigent circumstances and emergency aid exceptions" is *not* required in the community caretaking context. Pet.App.21a. And despite that court's frequent use of the terms "imminent" and "immediate," it treated those terms as lacking "any definite temporal dimensions." Pet.App.21a. In other words, despite the fact that police may have plenty of time to get a warrant, they don't need to so long as their warrantless search is in the interest of "community safety."

Making matters worse, the First Circuit required petitioner to prove a *lack* of immediacy. In discussing the facts of this case, it observed that "[t]here is no evidence that the officers had any inkling when the plaintiff would return." Pet.App.32a. That is a vice, not a virtue. "[T]he burden is on the government" to "overcome the presumption of unreasonableness that attaches to *all* warrantless home entries." *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984) (emphasis added). But in the First Circuit's opinion, ambiguity favors the state. This gets things backwards, subjecting every American to nonconsensual "caretaking" by government agents unless the citizen can conclusively demonstrate a lack of urgency.

Not only does this overbroad exception defy this Court's instruction that only the need for immediate action can justify exceptions to the warrant requirement, it renders the exigency exception wholly unnecessary. When officers enter a home to provide emergency aid they conduct a community caretaking function—they are not investigating a crime. So if the community caretaking exception applied to the home, there would have been no

need for this Court to announce a separate, and far narrower, emergency aid exception. Yet in discussing the emergency aid exception, this Court did not cite *Cady* or even mention community caretaking. *See generally Brigham City*, 547 U.S. 398. The upshot is clear: the community caretaking doctrine has no applicability to the home.

When public safety is at issue, this Court has already established the rule for violating the sanctity of the home: there must be a serious risk of harm and that risk must be imminent. *See id.* 403. There is no reason to depart from that well-established rule here.

CONCLUSION

The judgment of the First Circuit should be reversed.

Respectfully submitted,

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JANUARY 15, 2021

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