No. 24-624

IN THE

Supreme Court of the United States

WILLIAM TREVOR CASE,

Petitioner,

v.

STATE OF MONTANA,

Respondent.

On Writ of Certiorari to the Supreme Court of Montana

Brief of National Association of Criminal Defense Lawyers, American Civil Liberties Union, and American Civil Liberties Union of Montana as *Amici Curiae* in Support of Petitioner

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TABLE OF CONTENTS

Page

INTEREST OF *AMICI CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 2

ARGUMENT 4

I. Protection of Individuals' Privacy Interests in Their Homes Is the Paramount Concern of the Fourth Amendment. 4

II. Allowing Officers to Enter Homes to Render Emergency Aid On Less Than Probable Cause Would Create Opportunities for Abuse and Significant Safety Risks for Officers and Occupants. 9

A. Opportunities For Abuse 9

B. Significant Safety Risks 14

III. Requiring Probable Cause of Imminent Injury Will Not Hinder Law Enforcement From Rendering Necessary Aid in Emergency Situations. 19

A. Probable Cause Is an Objective, Administrable Standard Familiar to Officers in the Field. 19

B. A Probable Cause Standard Will Not Prevent Officers or Other First Responders From Entering the Home to Address Emergencies. 21

CONCLUSION 25

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Arizona v. Gant,
556 U.S. 332 (2009) 2

Brigham City v. Stuart,
547 U.S. 398 (2006) 3, 6, 7

Brinegar v. United States,
338 U.S. 160 (1949) 7, 9

Buchanan v. Maine,
469 F.3d 158 (1st Cir. 2006) 18

Buckley v. Fitzsimmons,
509 U.S. 259 (1993) 18

Byrd v. United States,
584 U.S. 395 (2018) 1, 2

Camara v. Mun. Ct. of the City and Cnty. of San Francisco,
387 U.S. 523 (1967) 5, 20

Caniglia v. Strom,
593 U.S. 194 (2021) 23, 24

Cantrell v. City of Murphy,
666 F.3d 911 (5th Cir. 2012) 21

Carpenter v. United States,
585 U.S. 296 (2018) 1

Collins v. Virginia,
584 U.S. 586 (2018) 4

Coolidge v. New Hampshire,
403 U.S. 443 (1971) 4, 10

Dist. of Columbia v. Heller,
554 U.S. 570 (2008) 15

Est. of Chamberlain v. City of White Plains,
960 F.3d 100 (2d Cir. 2020) 16

Ferguson v. City of Charleston,
532 U.S. 67 (2001) 8

Florence v. Bd. of Chosen Freeholders,
566 U.S. 318 (2012) 9

Florida v. Harris,
568 U.S. 237 (2013) 19

Florida v. Jardines,
569 U.S. 1 (2013) 2, 4

Gaetjens v. City of Loves Park,
4 F.4th 487 (7th Cir. 2021), cert. denied, 142 S. Ct. 1765 (2022) 23, 24

Georgia v. Randolph,
547 U.S. 103 (2006) 22

Hudson v. Michigan,
547 U.S. 586 (2006) 15

Illinois v. Gates,
462 U.S. 213 (1983) 3, 19, 20

Illinois v. Wardlow,
528 U.S. 119 (2000) 2

Kentucky v. King,
563 U.S. 452 (2011) 5, 6

Ker v. California,
374 U.S. 23 (1963) 6

Kerman v. City of New York,
261 F.3d 229 (2d Cir. 2001)..... 20

Kyllo v. United States,
533 U.S. 27 (2001) 2

Lange v. California,
594 U.S. 295 (2021) 4

Luethje v. Kyle,
131 F.4th 1179 (10th Cir. 2025)..... 17

Maryland v. Buie,
494 U.S. 325 (1990) 10

Maryland v. King,
569 U.S. 435 (2013) 15

Maryland v. Pringle,
540 U.S. 366 (2003) 19

McInerney v. King,
791 F.3d 1224 (10th Cir. 2015) 13

Michigan Dep't of State Police v. Sitz,
496 U.S. 444 (1990) 8

Michigan v. Clifford,
464 U.S. 287 (1984) 21

Michigan v. Fisher,
558 U.S. 45 (2009) 6, 7, 10

Michigan v. Tyler,
436 U.S. 499 (1978) 5, 10

Miller v. United States,
357 U.S. 301 (1958) 15

Minnesota v. Olson,
495 U.S. 91 (1990) 5

Missouri v. McNeely,
569 U.S. 141 (2013) 2

Mitchell v. Wisconsin,
588 U.S. 840 (2019) 6

Monday v. Oullette,
118 F.3d 1099 (6th Cir. 1997) 21

New Jersey v. TLO,
469 U.S. 325 (1985) 9

New York v. Burger,
482 U.S. 691 (1987) 9

Payton v. New York,
445 U.S. 573 (1980) 15

Pennington v. City of Rochester,
No. 13-CV-6304-FPG, 2020 WL
1151461 (W.D.N.Y. Mar. 9, 2020) 23

Riley v. California,
573 U.S. 373 (2014) 1

Sabbath v. United States,
391 U.S. 585 (1968) 15

Terry v. Ohio,
392 U.S. 1 (1968) 2, 8

Texas v. Brown,
460 U.S. 730 (1983) 10

United States v. Cooks,
920 F.3d 735 (11th Cir. 2019) 20

United States v. Hastings,
246 F. Supp. 3d 1163 (E.D. Tex.
2017)..... 11, 12

United States v. Hill,
649 F.3d 258 (4th Cir. 2011) 12

United States v. Holloway,
290 F.3d 1331 (11th Cir. 2002) 20

United States v. Jones,
565 U.S. 400 (2012) 2

United States v. Martinez-Fuerte,
428 U.S. 543 (1976) 8

United States v. Robinson,
414 U.S. 218 (1973) 10

United States v. Santana,
427 U.S. 38 (1976) 5

United States v. Timmann,
741 F.3d 1170 (11th Cir. 2013) 13, 14

United States v. U.S. Dist. Ct. for the E. Dist. Mich.,
407 U.S. 297 (1972) 4

Warden v. Hayden,
387 U.S. 294 (1967) 5

Welsh v. Wisconsin,
466 U.S. 740 (1984) 12

Whren v. United States,
517 U.S. 806 (1996) 2, 10, 19

Williams v. Maurer,
9 F.4th 416 (6th Cir. 2021)..... 17

STATE CASES

Pennsylvania v. Edgin,
273 A.3d 573 (Pa. Super. Ct. 2022)..... 12

State v. Boggess,
340 N.W.2d 516 (Wis. 1983)..... 20

State v. Heard,
350 P.3d 1044 (Idaho 2015)..... 22

CONSTITUTIONAL PROVISIONS

U.S. Const. Amendment IV.....1-2, 4-5, 8-10, 15, 21

OTHER AUTHORITIES

Case of Richard Curtis, Fost. 135, 168
Eng. Rep. 67 (Crown 1757) 14

Chief Joel F. Schults, *The Peril and Promise of Well-Being Checks*, Nat'l Police Ass'n, available at https://tinyurl.com/ymcrmpeb 18

Dan A. Black et al., *Criminal Charges, Risk Assessment, and Violent Recidivism in Cases of Domestic Abuse* (Nat'l Bureau of Econ. Rsch., Working Paper No. 30884, 2023); https://tinyurl.com/2h9va9z6 22

Julie A. Ward et al., *National Burden of Injury and Deaths from Shootings by Police in the United States, 2015-2020*, 4 Am. J. Pub. Health 387 (March 13, 2024), https://doi.org/10.2105/AJPH.2023.307560 17

Lee v. Gansel, 1 Cowp. 1, 98 Eng. Rep. 935 (Crown 1774) 15

Richard R. Johnson, *Correlates of Re-arrest Among Felony Domestic Violence Probationers*, 72 Fed. Probation 3, https://tinyurl.com/2yudkc9m 22

What Percentage of Americans Own Guns?, Gallup (Nov. 13, 2020), https://tinyurl.com/mr7bujj4 16

INTEREST OF *AMICI CURIAE*

The National Association of Criminal Defense Lawyers ("NACDL") is the preeminent national organization in the United States representing attorneys practicing in the field of criminal defense—including private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges committed to ensuring fairness within America's criminal justice system.[1] The NACDL is a nonprofit, voluntary professional bar association that frequently appears as *amicus curiae* before this Court in cases raising issues of importance to criminal defendants and the defense bar.

NACDL and its many thousands of members have an important interest in ensuring that the emergency aid exception to the Fourth Amendment's warrant requirement is applied in a manner that is consistent with this Court's precedents and that minimizes the potential for abuse and the risk of dangerous confrontations between police officers and home occupants.

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization with more than 1.3 million members, founded in 1920 and dedicated to the principles of liberty and equality enshrined in the Constitution. In support of those principles, the ACLU has appeared before this Court as counsel or *amicus curiae* in numerous Fourth Amendment cases including *Carpenter v. United States*, 585 U.S. 296 (2018) (counsel); *Riley v. California*, 573 U.S. 373 (2014) (amicus); *Byrd v. United*

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[1] No party authored this brief in whole or in part, and no person or entity, other than the undersigned *amici curiae*, their members, or their counsel, has made a monetary contribution to the preparation or submission of this brief.

States, 584 U.S. 395 (2018) (amicus); *Missouri v. McNeely*, 569 U.S. 141 (2013) (counsel); *United States v. Jones*, 565 U.S. 400 (2012) (amicus); *Arizona v. Gant*, 556 U.S. 332 (2009) (amicus); *Kyllo v. United States*, 533 U.S. 27 (2001) (amicus); *Illinois v. Wardlow*, 528 U.S. 119 (2000) (amicus); *Whren v. United States*, 517 U.S. 806 (1996) (amicus); and *Terry v. Ohio*, 392 U.S. 1 (1968) (amicus).

The ACLU of Montana is a non-profit, non-partisan membership organization devoted to protecting civil rights and liberties for all Montanans. It is the state affiliate of the ACLU. For decades, the ACLU of Montana has litigated questions involving civil rights and liberties in the state and federal courts, including cases involving the Fourth Amendment.

INTRODUCTION AND SUMMARY OF ARGUMENT

At the "very core" of the Fourth Amendment is "the right of a man to retreat into his own home and there be free." *Florida v. Jardines*, 569 U.S. 1, 6 (2013) (citation omitted). This Court has thus never allowed law enforcement officers to enter a private home—for criminal investigations or non-criminal functions—without probable cause to support entry.

The Court should reject Montana's request to do so for the first time here. The text of the Fourth Amendment makes the home the "first among equals," *id.*, and it expressly sets "probable cause" as the default standard for investigatory actions, U.S. Const. amend. IV. Accordingly, this Court's longstanding jurisprudence generally requires officers to have a warrant supported by probable cause to enter a home. This Court has also permitted warrantless entry into a home in certain exigent circumstances—for instance, when in "hot pursuit" of a fleeing felon, when faced

with the imminent destruction of evidence, or when emergency aid is required to protect an occupant's safety. *See Brigham City v. Stuart*, 547 U.S. 398, 403 (2006) (citation omitted). But even in those circumstances, this Court has never upheld a warrantless entry on less than probable cause.

Allowing home entries on a standard lower than probable cause would create serious risks. First, the existence of two different standards based on the officers' underlying rationale would invite abuse. Officers could use a thin "emergency aid" rationale to enter the home and pursue otherwise inappropriate investigatory aims once inside, or as a post hoc justification for an entry that lacked probable cause. Second, the increased number of home entries likely to flow from a relaxed emergency-aid standard would exacerbate the significant safety risks to officers and occupants when officers enter a home.

On the other hand, requiring officers to have probable cause of an ongoing emergency or imminent safety risk before entering a home will not hinder law enforcement from responding effectively to legitimate emergencies. The probable cause standard, familiar to every officer in the country, is a "flexible, easily applied standard" that has proven administrable in the field. *Illinois v. Gates*, 462 U.S. 213, 239 (1983). That is true even where officers are performing functions unrelated to criminal investigations. In most types of emergencies, including fires, domestic abuse, medical emergencies, and drug overdoses, this standard is easily satisfied.

In sum, this Court should hold that where police officers or other state actors enter a home without a warrant to render emergency aid or prevent imminent injury to an occupant, they must have probable cause

to believe that a genuine emergency exists or that the occupant's safety is in imminent peril for the entry to be reasonable under the Fourth Amendment.

ARGUMENT

I. Protection of Individuals' Privacy Interests in Their Homes Is the Paramount Concern of the Fourth Amendment.

1. The Fourth Amendment guarantees the right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It further provides that "no Warrants shall issue, but upon probable cause." *Id.*

In light of this language, this Court has recognized that "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Ct. for the E. Dist. Mich.*, 407 U.S. 297, 313 (1972). And because the home is the "first among equals," *Jardines*, 569 U.S. at 6, home entry by police officers typically requires a warrant supported by probable cause, *see Lange v. California*, 594 U.S. 295, 298 (2021). Indeed, a warrantless home entry is *per se* unreasonable, and therefore violates the Fourth Amendment, "unless the police can show that it falls within one of a carefully defined set of [exigent circumstance] exceptions" to the warrant requirement. *Coolidge v. New Hampshire*, 403 U.S. 443, 474-475 (1971). Absent a warrant or a showing of exigent circumstances, police officers may not intrude upon the home "even when they have probable cause," as such intrusions are "invasion[s] of the sanctity of the home." *Collins v. Virginia*, 584 U.S. 586, 596 (2018) (citation omitted).

These Fourth Amendment requirements apply equally to state actors who are not engaged in criminal law enforcement functions, such as health and safety inspectors and firefighters. *See Camara v. Mun. Ct. of the City and Cnty. of San Francisco*, 387 U.S. 523, 534 (1967) (health and safety inspectors); *Michigan v. Tyler*, 436 U.S. 499, 504 (1978) (firefighters).

2. In several circumstances, this Court has allowed warrantless entry into a home based on "a genuine exigency." *Kentucky v. King*, 563 U.S. 452, 470 (2011). But the Court has never upheld a warrantless home entry without probable cause to believe that the exigency existed. *Cf. Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (affirming the Minnesota Supreme Court's application of the proper legal standard where it held that "there must be at least probable cause to believe that one or more of the [exigent circumstance] factors justifying the entry were present"). Nor has the Court ever allowed state actors to enter a home for any other reason based on less than probable cause.

a. *Hot Pursuit*. In *United States v. Santana*, 427 U.S. 38 (1976), the Court upheld a warrantless home entry because officers were in "hot pursuit" of a suspect whom they believed was dealing drugs. *Id.* at 42. *Santana* built upon the Court's prior decision in *Warden v. Hayden*, 387 U.S. 294 (1967), which upheld entry into a private home to arrest a suspected armed robber.

In both of these cases, the police had probable cause to support their actions. In *Santana*, the police had probable cause that the suspect was dealing drugs. 427 U.S. at 42. The *Santana* Court noted that officers in *Hayden* "had probable cause to believe" that the suspect they were chasing had entered the home. *Id.* And the Court has never suggested in any other

case that officers may pursue a fleeing suspect into a home based on a mere reason, without probable cause, to believe he may have committed a felony.

b. *Destruction of Evidence*. In *Ker v. California*, 374 U.S. 23 (1963), the Court upheld a warrantless home entry based on the imminent destruction of evidence. The officers had probable cause to believe that the suspect was in possession of narcotics "which could be quickly and easily destroyed," and the suspect's furtive conduct alerted the officers to intervene. *Id.* at 40-41; *see also Mitchell v. Wisconsin*, 588 U.S. 840, 850 (2019) (reasoning underlying imminent destruction of evidence cases is that there is "no time to secure a warrant" (citation omitted)). Similarly, in *Kentucky v. King*, 563 U.S. 452 (2011) the Court held that it was reasonable "to dispense with the warrant requirement" where circumstances "led the officers to believe that drug-related evidence was about to be destroyed." *Id.* at 457, 462. The Court allowed the entry because there was no time to secure a warrant, but the Court did not excuse the officers from meeting the probable cause standard.

In each of these cases, officers observed or could infer with a fair degree of probability that evidence was imminently going to be destroyed, and thus had probable cause to support their entry.

c. *Emergency Aid*. In *Brigham City v. Stuart*, 547 U.S. 398 (2006), this Court recognized that "[o]ne exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." *Id.* at 403. In *Michigan v. Fisher*, 558 U.S. 45 (2009), the Court reaffirmed the emergency aid exception. *Id.* at 47.

The Court did not use the term "probable cause" in *Brigham City* and *Fisher* or expressly characterize the

level of suspicion necessary to justify entry. But the facts of those cases make clear that officers had probable cause to believe an emergency was imminent or ongoing. In *Brigham City*, officers responded to a noise complaint about a loud house party. 547 U.S. at 401. They saw "through a screen door and windows—an altercation taking place in the kitchen of the home," during which one partygoer struck another in the face. *Id.* One officer testified that the person who was struck spit blood into a nearby sink. *Id.* The officers' personal observations of an ongoing fight were more than sufficient "'to warrant a man of reasonable caution in the belief that' an [emergency] has been or is" occurring. *Brinegar v. United States*, 338 U.S. 160, 175-176 (1949) (citation omitted).

In *Fisher*, officers responded to a call about a disturbance in a residential neighborhood. 558 U.S. at 45. When they arrived, officers saw a smashed pickup truck, damaged fenceposts, three broken house windows, and blood on a truck, on the clothes inside, and on the doors of the house. *Id.* at 45-46. Officers also saw a man inside the house screaming and throwing things and observed a cut on the man's hand. *Id*. at 46. Because officers "encountered a tumultuous situation in the house," found "signs of a recent injury," and "could see violent behavior inside," *id.* at 48, they undoubtedly had probable cause to enter the house to prevent injury to the screaming individual or someone else in the home.

3. This Court has permitted searches and seizures based on less than probable cause only where individuals have reduced expectations of privacy or where the intrusion is limited in scope.

For example, vehicles at a permanent, fixed checkpoint near the border may be briefly inspected without

suspicion because "one's expectation of privacy in an automobile . . . [is] significantly different from the traditional expectation of privacy and freedom in one's residence," *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976), and the government's interest in immigration enforcement is high, *id.* at 557. In contrast to government intrusions into "the sanctity of private dwellings," the level of "intrusion on Fourth Amendment interests" involved in brief visual inspections of vehicles at permanent checkpoints near the border is "quite limited." *Id.* at 557-558. The same is true of sobriety checkpoints. *See Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 451-452 (1990); *see also Ferguson v. City of Charleston*, 532 U.S. 67, 83 n.21 (2001) (distinguishing *Martinez-Fuerte* and *Sitz* on the basis that those cases did not involve an "intrusive search of . . . the home" (citation omitted)).

Officers may also briefly stop and frisk an individual on a public street based upon a reasonable suspicion of that person being "armed and presently dangerous to the officer or to others." *Terry v. Ohio*, 392 U.S. 1, 24 (1968). During a stop-and-frisk, the Fourth Amendment's demand of reasonableness is satisfied even where officers do not yet have probable cause that a crime has occurred because the "limited search for weapons" is only a "brief, though far from inconsiderable, intrusion upon the sanctity of the person" that amounts to "less than a full search." *Id.* at 26.

Likewise, the Court has allowed searches based on "special needs" only where individuals have diminished expectations of privacy. For example, the expectation of privacy in "commercial premises" is "different from, and indeed less than, a similar expectation of privacy in an individual's home" and is "particularly attenuated in commercial property employed in

'closely regulated' industries." *New York v. Burger*, 482 U.S. 691, 700 (1987); *see also New Jersey v. TLO*, 469 U.S. 325 (1985) (searches in schools allowed based on reasonable suspicion); *Florence v. Bd. of Chosen Freeholders*, 566 U.S. 318 (2012) (strip searches at jails during booking procedures allowed without suspicion).

II. Allowing Officers to Enter Homes to Render Emergency Aid On Less Than Probable Cause Would Create Opportunities for Abuse and Significant Safety Risks for Officers and Occupants.

In situations where officers suspect that an individual inside a home requires aid or is at imminent risk of injury, officers must balance the importance of swift action against the privacy and security interests embedded in the Fourth Amendment. The probable cause standard is the "best compromise . . . for accommodating" such "opposing interests." *Brinegar*, 338 U.S. at 176. A lower standard of proof would create incentives for officers to use the emergency aid exception to gain entry into homes for other law enforcement purposes or to rationalize unlawful entries after the fact. It would also unnecessarily expose officers and home occupants to the significant safety risks inherent in residential encounters.

A. Opportunities For Abuse

1. Because entry into the home requires probable cause in all other circumstances, allowing warrantless home entries on less than probable cause to render emergency aid would create an incentive for officers to seek reasons to enter based on the emergency aid exception in order to engage in other law enforcement activity. A series of other established doctrines combines to exacerbate this risk.

To start, officers' subjective motives do not matter when assessing whether a Fourth Amendment search or seizure is reasonable. *See Whren v. United States*, 517 U.S. 806, 813 (1996). In *Fisher*, the Court confirmed that in the emergency aid context the Fourth Amendment reasonableness analysis "does not depend on the officers' subjective intent," but asks only whether they had "an objectively reasonable basis for believing . . . that a person within [the house] is in need of immediate aid." 558 U.S. at 47 (citation and internal quotation marks omitted). Because officers' intent is constitutionally irrelevant, their entry into the home is lawful even where the reason justifying the entry is pretextual.

Once lawfully inside the home—even with less than probable cause to justify the entry—other Fourth Amendment rules would permit officers to engage in a much wider investigation. An officer may seize evidence of criminal wrongdoing in plain view. *See Coolidge*, 403 U.S. at 465-466; *Texas v. Brown*, 460 U.S. 730, 737-739 (1983) (plurality opinion); *see also Michigan v. Tyler*, 436 U.S. at 509 ("[O]nce in a building [to put out blazes], firefighters may seize evidence of arson that is in plain view."). If officers develop probable cause for an arrest while inside the home, they may also search the person and the immediate area as part of a search incident to arrest, *see United States v. Robinson*, 414 U.S. 218 (1973), or other rooms in the home as part of a protective sweep, *see Maryland v. Buie*, 494 U.S. 325 (1990).[2]

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[2] Although *Buie* allows officers to perform protective sweeps based on reasonable suspicion of threats to their safety, their initial entry into the home must have been supported by probable cause. *See Buie*, 494 U.S. at 330 (police could enter and search

(footnote continued)

2. The combination of these doctrines would open the door to officers who lack probable cause to look for some lesser suspicion of an emergency to justify entry. If officers need only some objective reason, but not probable cause, to believe there may be an emergency inside a home, they could enter the home based on ambiguous cues—the sound of a loud bang or pop, the smell of smoke (maybe from a backyard barbecue or fire pit, or maybe not), or raised voices; the sight of a broken window or an occupant carrying a gun; or a call reporting a disturbance next door. In that world, officers could use ambiguous indicia of an emergency to enter the home of an occupant they wish to investigate for other reasons, criminal or not.

Cases around the country already show how home entries under the emergency aid exception can expand into broader investigations.

a. In *United States v. Hastings*, 246 F. Supp. 3d 1163 (E.D. Tex. 2017), the Secret Service had issued a "nationwide BOLO" for the defendant and "wanted the officers to locate that individual and take him into custody." *Id.* at 1171. Officers then breached the defendant's hotel room without an arrest or search warrant on the ground that the defendant was "possibly suicidal" and presented a risk of "suicide by cop." *Id.* at 1176. But at the time of the officers' entry, the defendant "was not displaying any increasing mental instability" and officers did not "communicat[e] with him or gaug[e] his mental state." *Id.* at 1167. After justifying entry on the ground that the defendant was suicidal,

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for suspect in a home "based on the authority of the arrest warrant").

officers collected evidence in the hotel room and ultimately charged the defendant using the evidence they discovered. *Id*. at 1174.

b. In *Pennsylvania v. Edgin*, 273 A.3d 573 (Pa. Super. Ct. 2022), officers relied on the emergency exception to enter a home through an "unlocked, sliding door in the back of the house" purportedly to assist an intoxicated individual within. *Id.* at 583, 585. Once inside, the officers proceeded to "detain, mirandize, and interrogate" the occupant on suspicion of drunk driving, *id.* at 586, even though this Court has disallowed "warrantless home arrest[s]" for that offense, *Welsh v. Wisconsin*, 466 U.S. 740, 754 (1984). By relying on the emergency exception, the police quite literally used a backdoor for their investigation.

c. In *United States v. Hill*, 649 F.3d 258 (4th Cir. 2011), officers searching for a suspect for whom they had an arrest warrant entered the suspect's girlfriend's home, thinking that the girlfriend's sister might be "facing some safety issues." *Id.* at 261, 265. The officers "expressed concern" after seeing an old doorframe was slightly damaged and knocking and getting no response, even though they heard the television on in the living room. *Id.* at 265, 266. Once inside to purportedly provide emergency aid, officers found the target of their arrest warrant, conducted a protective sweep, and uncovered evidence of criminal wrongdoing in plain view. *Id.* at 261-262. The sister was not in the house.

These examples show that officers have and will use the emergency exception as a pretext to enter homes for other investigative purposes. Permitting emergency entries on suspicion less than probable cause will only increase the number of such pretextual entries.

3. Similarly, a standard lower than probable cause provides a potential post hoc rationale to justify otherwise unlawful entries.

a. For example, in *McInerney v. King*, 791 F.3d 1224 (10th Cir. 2015), an officer investigating a complaint that a woman shoved her ex-husband's girlfriend went to the woman's house to serve her with a summons for harassment. *Id.* at 1227. There he observed "two open front windows," a front door "open about six inches," and an open garage door, but he never told the senior officer who arrived shortly after him that he thought there was an ongoing emergency. *Id.* at 1228. Both officers proceeded to enter the home under the guise of a welfare check, guns drawn. *Id.* at 1228. Inside, they found a woman "partially dressed," soundly asleep in her bed, and started "screaming and yelling at her while shining a flashlight in her eyes." *Id.* at 1228-1229. Only on summary judgment in the woman's section 1983 claim did the officer introduce, for the first time, facts related to the woman's history of drug abuse to attempt to show that a reasonable officer could have believed there was a need to assure the safety of those in the home. *Id.* at 1232-1233.

b. In *United States v. Timmann*, 741 F.3d 1170 (11th Cir. 2013), an officer responded to a "service call" from a woman who found a bullet hole in the wall between her bedroom and the apartment unit next door. *Id.* at 1173. Officers knocked several times on the unit next door, received no response, and confirmed that no calls reporting gunshots or disturbances at the apartment had been made in the preceding days. *Id.* at 1174. Officers returned the next day to "further investigate" and entered the unit that they suspected was the origin of the bullet. *Id.* at 1174-1175. They found "no one present and no signs of injury," but found guns

in plain view and charged the resident as a felon in possession. *Id.* at 1175-1176. Though there were no signs of an ongoing emergency when officers entered the apartment, the district court found the entry lawful under the emergency aid exception because of the presence of the bullet hole. *Id.* at 1177, 1180-1181. The Eleventh Circuit reversed on appeal.

In sum, a lower standard of proof for the emergency aid exception is ripe for abuse, either as pretext for other investigatory purposes or as a retrospective excuse to justify unlawful entry.

B. Significant Safety Risks

Law enforcement entries into people's homes are inherently volatile and dangerous, regardless of the type of exigency involved. Requiring probable cause appropriately balances these real risks for officers and home occupants with a legitimate need to render emergency aid.

1. Since before the Founding, courts have recognized the dangers associated with warrantless or unexpected home entries. Famously, a common law English court once reviewed the murder conviction of a man who killed a Crown officer and argued that the killing was justified because the officer had failed to announce himself. *See Case of Richard Curtis*, Fost. 135, 168 Eng. Rep. 67 (Crown 1757). The Court remarked that officers effectuating a home entry must provide notice "that the officer cometh not as a mere trespasser, but claiming to act under a proper authority." *Id.* at 68. Likewise, Lord Mansfield once remarked that allowing bailiffs to make unannounced home entries "would leave the family within, naked and exposed to thieves and robbers. It is much better therefore, says the law, that you should wait for another opportunity, than do an act of violence, which

may probably be attended with such dangerous consequence." *Lee v. Gansel*, 1 Cowp. 1, 7, 98 Eng. Rep. 935, 938 (Crown 1774).

Following this common-law tradition, this Court's Fourth Amendment jurisprudence recognizes that a "crucial factor" in determining the reasonableness of a government intrusion is whether the intrusion may "threaten the safety or health of [an] individual" or otherwise present a "physical danger." *Maryland v. King*, 569 U.S. 435, 464 (2013) (citation omitted). On numerous occasions, this Court has considered the dangers inherent in law enforcement home encounters and crafted rules designed to mitigate them.

For example, this Court struck down the "longstanding, widespread practice" of warrantless entries into homes to conduct routine arrests, in part because some common-law sources highlighted "substantial risks in proceeding without [a warrant]." *Payton v. New York*, 445 U.S. 573, 596, 600 (1980). The Court has also recognized that requiring officers to knock and announce prior to entry protects "human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident." *Hudson v. Michigan*, 547 U.S. 586, 594 (2006); *see also Sabbath v. United States*, 391 U.S. 585, 589 (1968) ("[P]rior notice of authority and purpose" also "safeguard[s] officers").

Those risks are particularly amplified because many people keep firearms in their homes for self-defense. *See Dist. of Columbia v. Heller*, 554 U.S. 570, 629 (2008) (observing that "handguns are the most popular weapon chosen by Americans for self-defense in the home"); *Miller v. United States*, 357 U.S. 301, 313 n.12 (1958) (requiring notice as a "safeguard for the police themselves who might be mistaken for

prowlers and be shot down by a fearful householder"); *What Percentage of Americans Own Guns?*, Gallup (Nov. 13, 2020), https://tinyurl.com/mr7bujj4 (last accessed August 4, 2025) (44% of Americans reported living in a gun-owning household).

2. Officers entering a home under exigent circumstances—especially where officers believe that someone's life or well-being is on the line—may be required to make fast-moving decisions based on incomplete information, or information that may prove unreliable or outright false. *See* Pet'r Br. 41-42 (discussing the risks of "swatting," in which someone reports a false emergency at another's home to create an armed police response as a way to harass and threaten the home occupant). If police are mistaken about the existence of an emergency requiring aid, or if they are right but their actions escalate the situation, a sudden entry exacerbates risks that an occupant may mistake officers for home invaders, that officers may encounter a violent response, or that officers may cause damage to property.

Cases from around the country highlight the serious, and potentially deadly, consequences attendant with these risks.

a. In *Est. of Chamberlain v. City of White Plains*, 960 F.3d 100 (2d Cir. 2020), a man accidentally activated his Life Aid medical button, prompting an operator to summon emergency services personnel. *Id.* at 101. When officers knocked on the door, the man repeatedly told them that he did not need their help. *Id.* at 102. Officers nevertheless tried to forcibly enter the man's home. *Id.* The man grew agitated and pulled out a knife. *Id.* at 103. After an hour-long standoff, officers entered the home, tased, shot, and killed the man. *Id.*

b. In *Williams v. Maurer*, 9 F.4th 416 (6th Cir. 2021), officers received an anonymous 911 call about a break-in. Officers arrived at the apartment number the tipster provided but heard nothing inside. *Id*. at 423. The tipster called back and stated she was unsure of the right apartment. *Id.* After eight minutes and a brief exchange once an occupant opened the door, the officers rushed inside because "we got exigent circumstances." *Id.* at 423-425. The officers tackled both occupants, arrested one for obstruction of police, "left a permanent scar" on the other. *Id.* at 425.

c. In *Luethje v. Kyle*, 131 F.4th 1179 (10th Cir. 2025), officers received a 911 call about a break-in where the suspect had fled the scene. Deputies "observed nothing further" inside or outside the home other than a broken window with the screen still in place. *Id.* at 1191. The officers immediately removed the screen and sent in a canine to "bite whomever it found inside the residence." *Id.* at 1185. The canine repeatedly bit a sleeping resident, who had broken the window to get inside. *Id.* at 1186. After the resident was transported to the hospital, officers "conducted a thorough search," finding "no other person" inside and "no evidence of a crime." *Id.*

d. Welfare checks in particular are among the most dangerous encounters between individuals and law enforcement. One study showed that "[w]ell-being checks were 74% more likely to be associated with fatal injury" than other incidents of officer-involved shootings, "despite not explicitly or necessarily involving pre-encounter threats of harm." Julie A. Ward et al., *National Burden of Injury and Deaths from Shootings by Police in the United States, 2015-2020*, 4 Am. J. Pub. Health 387, 393 (March 13, 2024),

https://doi.org/10.2105/AJPH.2023.307560 (last accessed August 4, 2025). To reduce these risks, many local governments recognize that health professionals may best handle some emergencies without police involvement, while others have adopted a model of co-responder programs where a social worker accompanies officers during welfare checks on individuals with mental illness. *See* Chief Joel F. Schults, *The Peril and Promise of Well-Being Checks*, Nat'l Police Ass'n, available at https://tinyurl.com/ymcrmpeb (last accessed August 4, 2025). But smaller and less resourced police forces may not have such programs, increasing the risk of violent altercations. *Id.*

For example, in *Buchanan v. Maine*, 469 F.3d 158 (1st Cir. 2006), two officers in rural Maine responded to a call for a welfare check from the neighbor of a man with a long history of mental illness. *Id.* at 164. The man screamed at the officers, threw liquid appearing to be liquor at one of them through an open window, and punched open another window, bloodying his hand. *Id.* at 165. Observing the man's erratic and dangerous behavior, one of the officers entered the home "to put [the man] into protective custody and have him evaluated." *Id.* Once inside, the man grabbed a knife and stabbed the officer. *Id.* at 166. The officer's partner rushed inside and fatally shot the mentally unstable man. *Id.*

Given the risks of home entries, and particularly welfare check entries, the probable cause standard appropriately balances risks and benefits. Because the probable cause standard demands that officers "search[] for the clues and corroboration" that a genuine exigency exists, *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993), it encourages officers to seek addi-

tional assurances that aid is *probably* required to justify the risks to both officers and occupants, rather than entering a home based on mere reason to think that aid *might* be needed.

III. Requiring Probable Cause of Imminent Injury Will Not Hinder Law Enforcement From Rendering Necessary Aid in Emergency Situations.

Requiring officers to have probable cause to enter a home will not prevent first responders from responding appropriately to emergencies. The probable cause standard is an objective standard familiar to officers, and, in most common types of emergencies, officers or other first responders have more than enough evidence of an ongoing emergency or need for aid to meet the probable cause bar.

A. Probable Cause Is an Objective, Administrable Standard Familiar to Officers in the Field.

Probable cause is a "flexible, easily applied standard" that has proven administrable in the field. *Gates*, 462 U.S. at 239. It is based on an objective view of the circumstances surrounding an officer's actions. *Id.*; *see Whren*, 517 U.S. at 813. And it is a "practical, nontechnical conception that deals with the factual and practical considerations of everyday life." *Maryland v. Pringle*, 540 U.S. 366, 370 (2003) (citation omitted). The Court has clarified that all that probable cause requires "is the kind of 'fair probability' on which 'reasonable and prudent [people,] not legal technicians, act.'" *Florida v. Harris*, 568 U.S. 237, 244 (2013) (quoting *Gates*, 462 U.S. at 238, 231).

While the probable cause standard is most familiar to officers in the criminal investigations context, the

Court has also applied the concept of probable cause in non-criminal contexts. For health and safety inspections, for instance, the reasonableness of a particular inspection depends on "whether there is probable cause to issue a warrant for that inspection." *Camara*, 387 U.S. at 535. In such contexts, "the facts that would justify an inference of 'probable cause' to make an inspection are clearly different from those that would justify such an inference where a criminal investigation has been undertaken." *Id.* at 538. But the probable cause analysis still depends on contextual cues related to the underlying goal of the search. *Id.* at 538-539 (listing "the passage of time, the nature of the building . . ., [and] the condition of the neighborhood" as exemplary factors in the health and safety context). In short, "[t]he test of 'probable cause' . . . can take into account the nature of the search that is being sought." *Id.* at 538.

In the emergency aid context, probable cause has been the rule in many federal and state courts for as long as four decades. *See State v. Boggess*, 340 N.W.2d 516, 523 (Wis. 1983) (applying the *Gates* "totality of the circumstances" probable cause analysis to an emergency aid entry and assessing "the presence of detail in the information [provided to police], and corroboration of details of an informant's tip by independent police work"); *Kerman v. City of New York*, 261 F.3d 229, 236 (2d Cir. 2001) (officers lacked probable cause for warrantless entry because they "had no corroborating evidence of the alleged danger [from an anonymous call] to establish reliability"); *United States v. Holloway*, 290 F.3d 1331, 1338 (11th Cir. 2002) (probable cause for entry existed "based on the information conveyed by the 911 caller and the personal observations of the officers"); *United States v. Cooks*, 920 F.3d 735, 745 (11th Cir. 2019) (Newsom, J.) ("[R]easonable

inferences based on both knowns and known unknowns—rather than concrete evidence of harm alone—can establish probable cause to believe that an innocent is in danger and in need of immediate aid." (citation omitted)).

Lower courts have also applied the probable cause standard to mental health seizures. *See, e.g.*, *Monday v. Oullette*, 118 F.3d 1099, 1102 (6th Cir. 1997) (remarking that if "a dangerous mental condition is analogized to the role of criminal activity in traditional Fourth Amendment analysis, a showing of probable cause . . . requires only a 'probability or substantial chance' of dangerous behavior"); *Cantrell v. City of Murphy*, 666 F.3d 911, 923 (5th Cir. 2012).

If this Court adopts the probable cause standard for situations where emergency aid may be warranted, officers can rely on a developed body of case law to guide their decision-making.

B. A Probable Cause Standard Will Not Prevent Officers or Other First Responders From Entering the Home to Address Emergencies.

Requiring state actors to have probable cause before entering a home to render emergency aid will not hinder law enforcement and other first responders from effective emergency response. In the most common types of home emergencies—fires, domestic abuse, overdoses, or medical emergencies, especially among the elderly—the probable cause bar is not difficult for first responders to meet.

1. In the context of fires, this Court recognized decades ago that a "burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze." *Michigan v. Clifford*, 464 U.S.

287, 293 (1984). When firefighters are dispatched to a potential fire, the presence of smoke or flames provides obvious probable cause to justify their entry under the emergency aid exception.

As for officers responding to domestic violence calls, this Court observed in *Georgia v. Randolph*, 547 U.S. 103 (2006), that "[n]o question . . . reasonably could be [raised] about the authority of the police to enter a dwelling to protect a resident from domestic violence; so long as they have good reason to believe such a threat exists." *Id.* at 118; *see State v. Heard*, 350 P.3d 1044 (Idaho 2015) (upholding warrantless entry into hotel room where hotel clerk reported loud arguing and fighting between a man and a woman and officers saw the woman motionless and barely responsive in the room upon arrival).

Many domestic violence calls come from the victim or other individuals within the home, or from neighbors, family, or friends with specific and reliable information. Officers can corroborate this information with their own observations or by looking in their database, as many domestic abusers are repeat offenders known to law enforcement. *See, e.g.*, Dan A. Black et al., *Criminal Charges, Risk Assessment, and Violent Recidivism in Cases of Domestic Abuse* 4-5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30884, 2023); https://tinyurl.com/2h9va9z6 (last accessed August 4, 2025); Richard R. Johnson, *Correlates of Re-arrest Among Felony Domestic Violence Probationers*, 72 Fed. Probation 3, https://tinyurl.com/2yudkc9m (last accessed August 4, 2025).

In drug overdose cases, a call from a reliable source reporting that the occupant is likely overdosing on drugs would be enough to meet the probable cause bar; or where the source is anonymous or its reliability is

uncertain, police can gather information to meet the probable cause bar to justify their entry.

For example, in *Pennington v. City of Rochester*, No. 13-CV-6304-FPG, 2020 WL 1151461 (W.D.N.Y. Mar. 9, 2020), two officers went to a woman's home to perform a welfare check. *Id.* at *2. When officers arrived, they noticed an open inner door and saw the woman through the window, lying motionless on the couch with two cans of beer next to her. *Id.* When the woman did not respond to officers' knocks and shouts, they entered, concerned that she was suffering from alcohol poisoning or had overdosed. *Id.* The court upheld the entry under the Second Circuit's probable cause standard. *Id.* at *3.

Home welfare checks can also meet the probable cause standard. For example, in *Gaetjens v. City of Loves Park*, 4 F.4th 487 (7th Cir. 2021), *cert. denied,* 142 S. Ct. 1765 (2022), a woman's doctor and neighbor were unable to reach her after her doctor recommended she go to the hospital for high blood pressure. The neighbor—listed by the woman as her emergency contact—called the police for a welfare check. *Id.* at 493. Even though the officers did not "see anyone inside," they observed "packages on the porch, untended garbage, and a full mailbox." *Id.* at 490. The officers interviewed the neighbor again before asking for a spare key. *Id.* at 490. The Seventh Circuit found that this welfare check "f[ell] into the heartland of emergency-aid situations." *Id.* at 493.

This answers the question raised during oral argument in *Caniglia v. Strom*, 593 U.S. 194 (2021), where the Chief Justice asked whether police could enter the home of an elderly woman about whom neighbors had called because the woman had uncharacteristically

not shown up to dinner. *See* Transcript of Oral Argument at 6:13-7:2, *Caniglia v. Strom* 593 U.S. 194 (2021) (No. 20-157). In the Chief Justice's hypothetical, the neighbors did not see the woman leave and could not reach her or her family members by phone. While there will always be cases on the edge of the probable cause analysis, most courts would likely find those facts sufficient to show a "fair probability" that the elderly woman needed emergency aid. In any close cases, the probable cause standard would encourage officers to corroborate their beliefs, as they did in *Gaetjens*, before entering the home. Furthermore, under the current law on qualified immunity, an officer would be protected from liability unless it is clearly established that his actions are unlawful.

2. The facts of this case are consistent with—and indeed illuminate—these principles. Here, there was no probable cause to justify the officers' warrantless entry—not because of a lack of information, but because the police had more than the typical amount of information. The officers' knowledge about the petitioner's past interactions with law enforcement, along with what they observed outside the home, undermined the report they had received about a possible suicide attempt. In fact, the responding officers stated it was unlikely that petitioner required immediate aid and more likely that petitioner was waiting inside for officers to enter in hopes of inviting a violent response. *See* Pet. App. 28a-30a (dissenting opinion of Justice McKinnon). Based on these facts, officers should have known that not only was there no cause for entry, but that their entry *itself* would *create* the risk for injury. In other circumstances, a credible report of a suspected suicide within a home, by itself, might well amount to probable cause to justify entry. But here,

the totality of the circumstances showed that petitioner did *not* require emergency aid.

All told, drawing a bright-line probable cause rule will not prevent officers or state actors from rendering necessary aid in emergency situations. Officers and first responders will satisfy probable cause for most common emergency aid situations. The Court should not dilute the long-established probable cause standard to justify entry where officers or other state actors either lack information to reach probable cause or, as here, have important information that undermines the reliability of information that might, absent that broader context, amount to probable cause.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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