Team #25

NO. 1788-850191

In The Supreme Court of the United States

PEOPLE OF THE STATE OF CALIFORNIA
Petitioner,

V.

NICK NADAULD
Respondent,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH DISTRICT

BRIEF FOR PETITIONER

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CONTENTS ……i

TABLE OF AUTHORITIES....…….…….iii

ISSUES PRESENTED FOR REVIEW…….…….vi

STATEMENT OF THE FACTS ……....1

SUMMARY OF THE ARGUMENT …….4

ARGUMENT ……..5

I. STANDARD OF REVIEW ……..……..5

II. THE COURT OF APPEAL ERRED IN HOLDING THAT THE RETRIEVAL OF THE DEFENDANT'S INFORMATION FROM THE AUTOMATIC LICENSE PLATE RECOGNITION ("ALPR") DATABASE, AND THE SUBSEQUENT POLE-MOUNTED CAMERA SURVEILLANCE OF THE DEFENDANT'S HOUSE, REQUIRED A WARRANT UNDER THE FOURTH AMMENDMENT. ……...……5

A. The Mere Collection and Storage of Vehicle Identification and Location Data by the ALPR System Meets a Societal Need for Pervasive Government Regulation of Vehicles Traveling on Public Roads. ……...…….6

B. The Warrantless Access to Nadauld's Historical Location Data Does Not Amount to a Search Under the Fourth Amendment as the Information Stored by the ALPR Database is Voluntarily Availed to the Public and Includes Only a Sparse Collection of Movements. ……...…...8

C. Nadauld's Fourth Amendment Rights Were Not Violated by the Utility Pole-Mounted Camera Surveillance as it Captured Only Plainly Visible Actions and Did Not Exhaustively Track His Movements. ……..…12

III. THE WARRANTLESS SEARCH OF NADAULD'S HOME WS JUSTIFIED BY THE PROBABLE CAUSE, EXIGENT CIRCUMSTANCES, AND THEREFORE, HIS CONFESSION WAS PROPERLY ADMITTED INTO EVIDENCE. ……14

A. All the Facts Available to Officers Hawkins and Maldonado at the Time of the Search Would Have Led a Reasonable Officer to Suspect Nadauld's Involvement with McKennery. ……..…...15

B. The Threat to Public Safety and the Possibility of the Destruction of Evidence Created the A "Now or Never Moment" That Justifies the Warrantless Entry of Nadauld's Home. ……18

C. Nadauld's Confession About Lending His Gun to McKennery Was Properly Admitted at Trial Regardless of if The Court Finds a Constitutional Violation…..…20

1. Nadauld's Confession Should Not Be Suppressed Because He Was Not Coerced into Making It……...….21

2. If This Court Finds That This Encounter Was a Custodial Interrogation, Then Public Safety Outweighs the Need For *Miranda* Safeguards……..…….23

CONCLUSION…….……23

TABLE OF AUTHORITIES

CASES PAGES

Beck v. Ohio, 379 U.S. 89 (1964) …… 15

Beckwith v. United States, 425 U.S. 341 (1976)…….. 20

Boyd v. United States, 116 U.S. 616 (1886) …….. 9

Brinegar v. United States, 338 U.S. 160 (1949) …….. 15

California v. Carney, 471 U.S. 386 (1985) …… 6

*Carpenter v. United States,*138 S. Ct. 2206 (2018) …….. 9,10

Carrol v. United States, 267 U.S. 132 (1925) ……. 6,8

Chambers v. Maroney, 399 U.S. 42 (1970) ……...……..14,15

Commonwealth v. McCarthy, 484 Mass. 493 (2020) ……...….. 11,12

Davis v. State of N.C., 384 U.S. 737 (1966) ……...….21

Howes v. Fields, 565 U.S. 499 (2012) ……. 21

Illinois v. Gates, 462 U.S. 213 (1983) ……. 15

Katz v. United States, 389 U.S. 347 (1967) …… 5,12,13,14

Kentucky v. King, 563 U.S. 452 (2011) …….. 14,18

Kyllo v. United States, 533 U.S. 27 (2001) ……... 8,13

Lange v. California, 141 S. Ct. 2011 (2021) …….. 14,18

Miranda v. Arizona, 384 U.S. 436 (1966) ……... 15,20,21,22,23

Missouri v. McNeely, 569 U.S. 141(2013) ……... 18

New York v. Class, 475 U.S. 106 (1986) ……... 7,8,10

New York v. Quarles, 467 U.S. 649 (1984) ……..…….. 15,20,21

Nix v. Williams, 467 U.S. 431 (1984) …….. 22

Olabisiomotosho v. City of Houston, 185 F. 3d 521 (5th Cir. 1999) …….. 7

Ornelas v. United States, 517 U.S. 690, (1996) ……. 5

Payton v. New York, 445 U.S. 573 (1980) ……... 14

Preston v. United States, 376 U.S. 364 (1964) ……..……... 18

Riley v. California, 573 U.S. 373 (2014) ……. 18

Rogers v. Richmond, 365 U.S. 534 (1961) ……. 20,21

Smith v. Maryland, 442 U.S. 735 (1979) ……. 10

South Dakota v. Opperman, 428 U.S. 364 (1976) ……. 6

Thompson v. Keohane, 516 U.S. 99 (1995) ……. 21

United States v. Diaz-Castaneda, 494 F. 3d 1146 (9th Cir. 2007) ……..……..7,8

United States v. Di Re, 332 U.S. 581 (1948) ……. 9

United States v. Ellison, 462 F. 3d 557 (6th Cir. 2006) …….. 7

United States v. Houston, 813 F.3d 282 (6th Cir. 2016) ……. 13,14

United States v. Jones, 565 U.S. 400 (2012) …… 10

United States v. Miller, 425 U.S. 435 (1976) ……... 10

United States v. Knotts, 460 U.S. 276 (1983) ……. 10,11

United States v. Miranda-Sotolongo, 827 F. 3d 663 (7th Cir. 2016) ……..……..7

United States v. Sparks, 37 F. App'x 826 (8th Cir. 2002) ……...……7

United States v. Tuggle, 4 F.4th 505 (7th Cir. 2021) ……...12,13

United States v. Walraven, 892 F. 2d 972 (10th Cir. 1989) …….7

United States v. Washington, 431 U.S. 181 (1977) …….15,20

United States v. Yang, 958 F.3d 851 (9th Cir. 2020) ……11

United States v. Caiello, 420 F.2d 471 (CA2 1969) …….20

Weeks v. United States, 232 U.S. 383 (1914) ……...14

Wolf v. Colorado, 338 U.S. 25 (1949) ……..14

Wong Sun v. United States, 371 U.S. 471 (1963) …….22

OTHER AUTHORITY

PAGES

U.S. Cont. Amend. IV ……5,14

U.S. Cont. Amend. V ……14

Infographic: Mass Shootings in the US over the past 10 years, Al Jazeera, 25 May 2022, https://www.aljazeera.com/news/2022/5/25/infographic-mass-shootings-in-the-us-over-the-past-10-years 16

ISSUES PRESENTED FOR REVIEW

The State of California respectfully submits the following questions for this Court to review:

First Question Presented:

Did the California Fourth District Court of Appeal err in holding that the retrieval of defendant's information from the automatic license plate recognition database required a warrant under the Fourth Amendment?

Second Question Presented:

Did the California Fourth District Court of Appeal err in holding that the warrantless entry and search of the defendant's home violated defendant's Fourth Amendment rights under Supreme Court precedents?

STATEMENT OF THE FACTS

I. Factual History

On September 14, 2021, a mass shooting occurred at Balboa Park in San Diego, California. R. at 2. A masked man appeared on a rooftop, and, using a fully automatic M16 rifle, fired on the crowd below before disappearing. R. at 2. Nine people were killed and six were wounded. R. at 2. The shooter was not apprehended at the scene; however, a "manifesto" was left on the rooftop which threatened further shootings. R. at 2, 36. The event caused extreme distress in the community with members of the public even advocating for vigilante justice against the shooter. R. at 29.

In the following weeks, the extremely violent nature of the crime and the threat of future harm compelled law enforcement to work nonstop, using all methods available to them, to find the shooter. R. at 3. The most effective of which proved to be an analysis of the Automatic License Plate Recognition ("ALPR") database. R. at 3. The ALPR database is compiled through cameras placed on police vehicles and at public road intersections. R. at 39. The cameras instantly scan passing license plate numbers and cross-check the numbers with the police database. R. at 38. For a fixed retention period, the license plate number, the date, the time, and the location of the search are stored in the database. R. at 38.

In this case, thorough law enforcement agents gained access to all ALPR checks made by the fifty or so license plate numbers that were recorded leaving Balboa Park on September 14 before police arrived. R. at 3. One of these vehicles belonged to Frank McKennery ("McKennery"). R. at 3. Law enforcement also gained access to all ALPR checks of vehicles belonging to owners of the fifty automatic weapons in the area, one of whom was defendant Nick Nadauld ("Nadauld"). R. at 3. After cross-checking the locations of each group, a

significant overlap was discovered between McKennery's and Nadauld's data was discovered. R. at 4. It was later discovered the two were coworkers. R. at 2. On September 24, 2021, a camera was placed on a utility pole outside Nadaulds's home by law enforcement viewing the front door and driveway of his home. R. at 4.

On September 28, 2021, police received an anonymous phone call with the caller saying, "This is the Balboa Park Shooter. This time, it's going to be a school." R. at 4. The following day, the pole-mounted camera aimed at Nadauld's home viewed McKennery dropping off a large duffel bag to Nadauld. R. at 4. Believing that another attack was imminent, FBI agents Jack Hawkins ("Hawkins") and Jennifer Maldonado ("Maldonado") arrived at Naduald's home soon after and questioned him outside his front door about the automatic rifle in his possession. R. at 4. With Nadauld refusing to provide satisfying answers to their questions, and with the threat of a looming school shooting, the agents believed they had to confiscate the weapon as soon as possible. R. at 4. The agents entered Nadauld's home without his permission and swiftly found the weapon, which was still operable contrary to California state law. R. at 4. Following further questioning, Nadauld admitted to allowing McKennery to borrow the weapon on the day of the shooting on the pretense that McKennery was going target shooting. R. at 4. Nadauld was brought into custody following this incident. R. at 4. Officers arrived at McKennery's residence to find he had committed suicide, leaving a letter confessing to the Balboa Park shooting. R. at 4, 37.

II. Procedural History

On October 1, 2021, Nadauld was indicted on nine counts of second-degree murder under California Penal Code Section 187, nine counts of involuntary manslaughter under California

Penal Code Section 192, one count of lending an assault weapon under California Penal Code Section 30600, and one count for failure to comply with the assault rifle requirements under California Penal Code Section 30915. R. at 1. On November 21, 2021, Judge Marietta Meagle of the Superior Court of California, County of San Diego, denied Nadauld's motion to suppress evidence. R. at 1. Nadauld was found not guilty of the nine counts of second-degree murder but was convicted of all other charges. R. at 41, 42. On April 5, 2022, the Court of Appeal of the State of California, Fourth District, reversed the evidentiary finding of the Superior Court and remanded the case for further proceedings. R. at 13. On September 23, 2022, the Supreme Court of the United States granted certiorari. R. at 1.

SUMMARY OF THE ARGUMENT

As to the first issue, the use of the ALPR database did not violate Nadauld's Fourth Amendment rights as there is an omnipresent societal need for the regulation of vehicles on public roads, the tracking of Nadauld's historical vehicle travels through the ALPR cataloged information voluntarily availed to the public, and the ALPR included only a sparse collection of movements. Additionally, the pole-mounted surveillance of the exterior of Nadauld's home also did not violate his Fourth Amendment rights as it captured only plainly visible actions and did not exhaustively track his movements.

As it relates to the second issue, the actions taken by Officers Hawkins and Maldonado did not violate Nadauld's Constitutional rights. Given the totality of the circumstances, all the facts available to Officers Hawkins and Maldonado would have led any reasonable police officer to believe that Nadauld and McKennery were associated, and that the assault rifle would be located within the house. Further, the risk of public safety and possibility of the destruction of evidence created a "now or never" moment that any reasonable officer would act upon. Lastly, Nadauld's confession was admissible at trial because it was not coerced out of him, and any possible constitutional violation is cured by the necessity of public safety.

For these reasons, the Supreme Court of the United States should reverse the ruling of the Court of Appeal for the State and California and affirm the ruling of the Superior Court of California.

ARGUMENT

I. STANDARD OF REVIEW

This Court reviews the Court of Appeal for the State of California's reversal of the Superior Court of California's dismissal of Respondent's Motion to Suppress evidence. In reviewing a denial of a motion to suppress, this Court reviews factual findings for clear error and legal conclusions *de novo*. *Ornelas v. United States*, 517 U.S. 690, 699 (1996). In the Case before this Court, the facts are not in dispute, therefore, *de novo* review is proper in reviewing the legal conclusions regarding the Fourth Amendment issues.

II. THE COURT OF APPEAL OF THE STATE OF CALIFORNIA ERRED IN HOLDING THAT THE RETIEVAL OF THE DEFENDENTS INFORMTATION FROM THE AUTOMATIC LICENSE PLATE RECOGNITION ("ALPR") DATABASE, AND THE SUBSEQUENT POLE-MOUNTED CAMERA SURVEILLANCE OF THE DEFENDENTS HOUSE, REQUIRED A WARRANT UNDER THE FOURTH AMMENDMENT.

The Fourth Amendment of the United States prevents government actors from conducting unreasonable searches and seizures. *U.S. Const. Amend. IV*. To be an unlawful search or seizure, an individual must have a reasonable expectation of privacy in what is searched. *Katz v. United States*, 389 U.S. 347 (1967). There are two prongs when assessing whether a reasonable expectation of privacy exists: (1) whether an individual expressed a subjective expectation of privacy, and (2) whether that expectation of privacy is one that is recognized by society as reasonable. *Id.* at 361. In response to the ruling from the Court of Appeal for the State of California, the focal point of this analysis goes to the second prong: whether the warrantless usage of the ALPR database violates a societal expectation of privacy.

The use of the ALPR database did not violate Nadauld's Fourth Amendment rights for the following reasons: (A) there is an omnipresent societal need for the regulation of vehicles on

public roads, and (B) the tracking of Nadauld's historical vehicle travels through the ALPR only cataloged information voluntarily availed to the public and included only a sparse collection of movements. The distinction is drawn between both the recording of vehicle's identification information by the ALPR, and the use of that information in the conglomerate to track one's location. Finally, (C) the pole-mounted surveillance of the exterior of Nadauld's home also did not violate his Fourth Amendment rights as it captured only plainly visible actions and did not exhaustively track his movements.

A. The Mere Collection and Storage of Vehicle Identification and Location Data by the ALPR System Meets a Societal Need for Pervasive Government Regulation of Vehicles Traveling on Public Roads.

The existence of a lessened expectation of privacy regarding vehicles has long been established in jurisprudence. *Carroll v. United States*, 267 U.S. 132, 153 (1925). The rationale is that vehicles are mobile, and thus can be quickly moved from any jurisdiction in which a warrant may be sought. *Id*. As vehicle use became more accepted, so did the awareness among the public of the need for pervasive government regulation of vehicles traveling on public highways. *California v. Carney*, 471 U.S. 386, 386 (1985). The Supreme Court has stated:

> "Automobiles, unlike homes, are subjected to pervasive and continuing governmental regulation and controls, including periodic inspection and licensing requirements. As an everyday occurrence, police stop and examine vehicles when license plates or inspection stickers have expired, or if other violations, such as exhaust fumes or excessive noise, are noted, or if headlights or other safety equipment are not in proper working order." *South Dakota v. Opperman*, 428 U.S. 364, 368 (1976).

It is worth noting that these previously cited cases concern searches of a vehicle's interior, a more permeating intrusion than is present in this situation. The ALPR cameras merely

look at license plate information, which is publicly displayed, to compare it with the police database. R. at 38. There is no privacy interest in the exterior of a vehicle that has been "thrust into the public eye." *New York v. Class*, 475 U.S. 106 (1986). In *Class*, it was ruled that there is no reasonable expectation of privacy in a vehicle's VIN (Vehicle Identification Number), which should be in public view to aid in government regulation. *Id*. at 113.

The Ninth Circuit, along with several other Circuits[1], applied the ruling in *Class* to license plate numbers in *United States v. Diaz-Castaneda*. 494 F.3d 1146 (9th Cir. 2007). In *Diaz-Castaneda*, a police officer ran a background check on a license plate number, finding that the owner had a revoked license. *Id*. at 1148. The defendant was identified after the police pulled the vehicle over. *Id.* at 1149. He was detained after it was discovered he had outstanding immigration issues. *Id*. In answering whether the stop itself was legal, the court considered that license plates are specifically intended to convey information about a vehicle to law enforcement authorities. *Id*. at 1151. Therefore, there was no subjective expectation of privacy in their license plates, and even if there was, this expectation would not be one that society is prepared to recognize as reasonable. *Id*.

To reiterate, the ALPR database operates through cameras mounted on police vehicles or poles at intersections of public roads. R. at 38. The cameras scan passing license plate numbers and then instantly compare the information with the police database, typically to check the vehicle's registration status. R. at 38. This is a duty specifically granted to law enforcement in many districts, technological advancements simply allow it to be done faster and more

[1] *See United States v. Ellison*, 462 F.3d 557 (6th Cir. 2006); *United States v. Sparks*, 37 F. App'x 826 (8th Cir. 2002); *United States v. Walraven*, 892 F.2d 972 (10th Cir. 1989); *Olabisiomotosho v. City of Houston*, 185 F.3d 521 (5th Cir. 1999); *United States v. Miranda-Sotolongo*, 827 F.3d 663 (7th Cir. 2016).

efficiently. *Diaz-Castaneda*, 494 F.3d at 1151. The imaging does not reach into the interior of the vehicle. R. at 40. The time and location of the check are then stored in the database only accessible by law enforcement personnel. R. at 38, 39. The records are not stored indefinitely unless for a legitimate law enforcement purpose. R. at 38. As the ALPR only records information on the visible exterior of the vehicle, and it pervasively regulates vehicle travel over public highways, its function as a law enforcement tool is constitutionally protected.

The Court of Appeal for the State of California contends that the ALPR database and scanning are not in public use, thus heightening a reasonable expectation of privacy. *Kyllo v. United States*, 533 U.S. 27, 34 (2001). There is a wide array of technology not in public use, however, how the government intends to use that technology is the pertinent question for a Fourth Amendment analysis. In *Kyllo*, it was ruled that thermal imaging of the inside of a home required a warrant as it was used to "explore details of the home that would previously have been unknowable without physical intrusion." *Id*. at 40. This is not analogous to the ALPR system, which scans information on the exterior of vehicles that are already exposed to the public eye. *Class*, 475 U.S. at 114. It has been well established that the expectation of privacy over vehicles on public roads is lesser than the interior of a home. *Carroll*, 267 U.S. at 153.

B. The Warrantless Access to Nadauld's Historical Location Data does not Amount to a Search Under the Fourth Amendment as the Information Stored by the ALPR Database is Voluntarily Availed to the Public and Includes Only a Sparse Collection of Movements.

It has been demonstrated that Fourth Amendment jurisprudence supports the ALPR database as a valid law enforcement mechanism, the question should then become whether the use of the database amounted to a level of "tracking" that required a warrant. At its heart, the

Fourth Amendment intends to secure "the privacies of life" against the "arbitrary power" of the government. *Carpenter v. United States*, 138 S. Ct. 2206, 2214 (2018) (*quoting Boyd v. United States*, 116 U.S. 616, 630 (1886)). Law enforcement's access to the historical locations of Nadauld's vehicle did neither betray any privacies that he was entitled to nor was it arbitrary.

The location data recovered by the ALPR is at the heart of this issue. Under certain factual situations, an individual maintains a legitimate expectation of privacy in the record of his physical movements. *Id*. at 2217. In *Carpenter*, it was found that the government must obtain a valid warrant to gain access to one's cell phone data, stored by a third-party wireless carrier, to track an individual's movements. *Id.* The Court reasoned that a central aim of the Framers when crafting the Fourth Amendment was "to place obstacles in the way of a too permeating police surveillance." *Id.* at 2214 (*quoting United States v. Di Re*, 332 U.S. 581, 595 (1948)). The immense storage capacity of cell phones, containing intimate location details of both public and private movements, merits the necessity of a warrant. *Id.*

The ruling in *Carpenter* is distinguished from this case as cell phone location access paints with a far larger brush than the ALPR database. In *Carpenter*, the Government obtained 12,898 location points cataloging Carpenter's movements—an average of 101 data points per day. *Id*. at 2212. In contrast, the ALPR database was used to access Nadauld's location points corresponding with McKennery's movements, limited mostly to movements on public roads. R. at 3,4. This is not a comparable level of "permeating police surveillance." *Carpenter*, 138 S. Ct. at 2214. Further, the Court of Appeal for the State of California noted how the Court in *Carpenter* found a reasonable expectation of privacy in the cell phone data surrendered to the third-party wireless carriers and likened this to the information collected by the ALPR database. R. at 17.. This comparison is unfounded; all the information gathered is being voluntarily availed

to the public eye. *Class*, 475 U.S. at 114. More, all the cases cited by the Court of Appeal regard third parties that are private entities. *See Carpenter*, 138 S. Ct. at 2206; *United States v. Miller*, 425 U.S. 435 (1976); *Smith v. Maryland*, 442 U.S. 735 (1979). The use and storage of information in the ALPR database are limited to only government actors. R. at 39.

It has also been found that the Government's installation of a GPS device on a target's vehicle, and its use of that device to monitor the vehicle's movements, constitutes a search. *United States v.* Jones, 565 U.S. 400, 404 (2012). In *Jones*, the government placed a GPS monitoring device in the undercarriage of the vehicle of a suspected drug trafficker. *Id*. at 403. The Court reasoned that because the Government physically occupied private property to obtain information when placing the device, a search had occurred. *Id*. at 404. Again, *Jones* differs from this case in substantial ways. In *Jones*, it was found that a physical intrusion into one's effects constituted the search. *Id*. In this case, the government did not physically intrude in any way on Naduald's vehicle. Also, the GPS monitoring system tracks continuously while the ALPR system does not monitor all, or even many, movements. (R. 38).

The most analogous case to this situation remains *United States v. Knotts*. 460 U.S. 276 (1983). In *Knotts*, a location beeper was placed in a container of chloroform with the consent of the manufacturer. *Id*. at 278. The container was purchased by a suspected illicit drug manufacturer, placed in their vehicle, and subsequently tracked by officers who maintained contact by using both visual surveillance and a monitor which received the signals sent from the beeper. *Id*. The Court reasoned that the visual surveillance from public places alone would have sufficed to reveal all the incriminating facts to the police, therefore there was no Fourth Amendment violation. *Id*. at 282. A person traveling in an automobile on public roads has no reasonable expectation of privacy in his movements from one place to another; traveling over

public streets voluntarily conveys to anyone who wanted to look at the direction and destination of an individual. *Id*. at 281-282. The ruling in *Knotts* should be applied to this case, Nadauld's movement could have been seen by any casual observer. *Id*.

Knotts also acknowledges that different constitutional principles may apply to "dragnet" style of surveillance. *Id*. at 283-284. It describes "dragnet" style surveillance as, "twenty-four hour surveillance of any citizen . . . without judicial knowledge or supervision." *Id*. The Court of Appeal for the State of California applies its own definition to "dragnet," calling it "any system of coordinated measures for apprehending criminals or suspects." R. at 16. The Court of Appeal's broad definition of "dragnet" is unsupported by the language used by the Supreme Court. *Knotts*, 460 U.S. at 283-284. Applying the Supreme Court definition to this case, the ALPR scanners did not provide twenty-four hour surveillance of Nadaulds' vehicle without judicial oversight, thus was not "dragnet" style surveillance. *Id*.

Lastly, as the ALPR database utilizes new technology, there is almost no specific caselaw regarding its legality. The recent Ninth Circuit decision in *United States v. Yang* failed to definitively address the constitutionality of the ALPR system when faced with the question. 958 F.3d 851 (9th Cir. 2020). The most complete legal opinion on the matter comes from the Massachusetts Supreme Court in *Commonwealth v. McCarthy*. 484 Mass. 493 (2020). The Massachusetts Supreme Court reasons that with enough cameras in enough locations, the historic location data from an ALPR system would invade a reasonable expectation of privacy. *Id*. at 506. The constitutional question is not merely an exercise in counting cameras; the analysis should focus, ultimately, on the extent to which a substantial picture of an individual's public movements is revealed by the surveillance. *Id*. The placement of ALPRs near constitutionally

sensitive locations, such as a home or place of worship, reveals more of an individual's life and associations than does an ALPR trained on an interstate highway. *Id.*

While only persuasive, applying the principles set out in *McCarthy* confirms the same conclusions drawn by our previous analysis of Supreme Court precedent. The ALPR database here operates through cameras located on public roadways and only collects information from vehicles that are in public view. R. at 39. It did not capture images of any constitutionally protected areas, such as the interior of the car or home. R. at 40. In sum, it only recorded a limited picture of Nadauld's overall movements, and those that were recorded were not secret or sensitive in any legal sense.

C. Nadauld's Fourth Amendment Rights Were Not Violated by the Utility Pole-Mounted Camera Surveillance as it Captured Only Plainly Visible Actions and did not Exhaustively Track his Movements.

The Court of Appeal for the State of California found the pole-mounted surveillance of Nadauld's home to the be poisonous fruit of the ALPR "search" and therefore did not address the constitutionality of the issue. R. at 18. As there was no Fourth Amendment violation in law enforcement's use of the ALPR system, it must be addressed that there was no subsequent Fourth Amendment violation in the pole-mounted camera placement.

Significant jurisprudence exists on this specific issue that addresses both prongs of the *Katz* test. *Katz*, 389 U.S. at 361. In a recent case, the Seventh Circuit found that when an individual did not erect any fences or otherwise tried to shield the driveway from public view, which might have signaled he feared the wandering eye or camera lens on the street, then no subjective interest of privacy was exhibited. *United States v. Tuggle*, 4 F.4th 505, 513 (7th Cir. 2021) (*quoting Katz*, 389 U.S. at 361). *Tuggle* similarly regarded police cameras that were set up

on public poles to monitor the coming and going of individuals at the home of a suspected drug dealer for eighteen months. *Id*. at 511-512. It was ruled that the government's use of technology in public use, while in a place it was lawfully entitled to be, to observe plainly visible happenings, did not run afoul of the Fourth Amendment. *Id*.

Additional case law suggests that videotaping the exterior of a home from a public place does not violate any expectation of privacy that society is willing to accept as reasonable. *Katz*, 389 U.S. at 361. In *United States v. Houston*, an individual's property was recorded for ten weeks atop a utility pole. 813 F.3d 282, 285 (6th Cir. 2016). The Sixth Circuit found that the surveillance only had access to the same view a bystander would on public roads. *Id*. at 287. The camera did not generate a comprehensive record of the individuals' movements that demonstrated significant detail about their personal associations. *Id*. at 290. So long as the cameras do not intrude into territory hidden from the public gaze, such as the interior of the home, there is no reasonable societal expectation of privacy that the pole-mounted cameras violate. *See Kyllo*, 533 U.S. at 40.

In this case, nothing indicates that Nadauld wished to prevent the public from viewing his driveway, thus he did not exhibit a subjective expectation of privacy. *Tuggl*e, 4 F.4th at 513. The camera outside his home was located on a utility pole facing only the front of his residence; it could only view what a passerby on the road would see. R. at 4. The only significant activity captured by the camera was McKennery dropping off a duffel bag at Nadauld's residence on September 29, 2021. R. at 4. The camera operated for a total of five days, far less than in he previously referenced cases. R. at 4. No comprehensive details about Nadauld's personal life were revealed and no expectation of privacy that society would accept as reasonable was

violated. *Houston*, 813 F.3d Therefore, the *Katz* test fails and there is no Fourth Amendment violation in the utility pole-mounted camera placement.

III. THE WARRANTLESS SEARCH OF NADAULD'S HOME WAS JUSTIFIED BY THE PROBABLE CAUSE, EXIGENT CIRCUMSTANCES, AND THERFORE, HIS CONFESSION WAS PROPERLY ADMITTED INTO EVIDENCE.

The Court of Appeal of the State of California incorrectly reversed the Superior Court's decision to admit Nadauld's confession because it was the product of an exempted warrantless entry, and he was not coerced into making it. The Fourth Amendment states "The right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause." *U.S. Const. Amend. IV.* Equally as important, the Fifth Amendment states, "No person . . . shall be compelled in any criminal case to be a witness against himself." *U.S. Const. Amend. V.* When evidence is obtained in violation of a suspect's constitutional rights, the exclusionary rule prohibits that evidence from being used against them in a criminal trial. *Weeks v. United States,* 232 U.S. 383, 391 (1914); *See also Wolf v. Colorado,* 338 U.S. 25, 33 (1949). However, the warrant requirement is subject to "certain exceptions". *Bringham City v. Stuart,* 547 U.S. 398, 403 (2006).

In the face of probable cause and exigent circumstances, the warrantless entrance into a suspect's home does not violate their constitutional rights. *Payton v. New York,* 445 U.S. 573, 586 (1980). The exigent circumstances exception to the warrant requirement applies when "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable. *Lange v. California,* 141 S. Ct. 2011, 2017 (*quoting Kentucky v. King,* 563 U.S. 452, 460 (2011)). In these exigent circumstances, the judgment of the police as to probable cause "serve[s] as a sufficient authorization for a search." *Chambers v. Maroney,* 399

U.S. 42, 51 (1970). When dealing with confessions, "absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions. *United States v. Washington,* 431 U.S. 181, 187 (1977). Further, when public safety is of paramount importance, *Miranda* warnings are not required. *New York v. Quarles,* 467 U.S. 649, 654 (1984).

A. All the Facts Available to Hawkins and Maldonado at the Time of the Search Would Have Led a Reasonable Officer to Suspect Nadauld's Involvement With McKennery.

Probable cause can best be explained as the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act based on the totality of the circumstances. *Illinois v. Gates,* 462 U.S. 213, 231 (1983). The probable cause standard deals with the factual and practical considerations of everyday life on which reasonable, prudent men act. *Brinegar v. United States,* 338 U.S. 160, 173 (1949). It does not require proof beyond a reasonable doubt, but simply "reasonably trustworthy information." *Beck v. Ohio,* 379 U.S. 89, 91 (1964).

Based on all the facts available to Officers Hawkins and Maldonado at the time of the warrantless search, there was ample, reasonably trustworthy information to suspect Nadauld was involved in the Balbo Park shooting. This is what Hawkins and Maldonado knew at the time they entered Nadauld's house. They knew Nadauld was one of 50 registered assault rifle owners in the San Diego area. R. at 3. They knew ammo commonly used in assault rifles was found on the roof of the art museum. R. at 2. They knew one of the 50 cars identified leaving Balboa Park just after the shooting was McKennery's. R. at 3. Based on information from the ALPR, Hawkins and Maldonado knew there was considerable overlap between McKennery's and Nadauld's

movements. *Id.* Investigators were then able to narrow down a list of ten residences that corresponded the most with the movements of the 50 cars previously identified, and Nadauld's house was one of the ten. R. at 4.

Without the benefit of hindsight, Hawkins and Maldonado had a very good reason to believe that the shooter was not working alone and that they were planning another attack soon. The manifesto stated "My friends and I are going to show this world that there's nothing. … We're going to do this again. Get ready. Soon." R. at 36. The day after Nadauld received the letter about authorities coming to inspect his assault rifle, officers received a call from someone claiming to be the shooter and told them a school was next. *Id.* In the two weeks since the shooting, there were no reports of any other anonymous callers claiming to be the shooter or making threats of other shootings. Therefore, officers could reasonably believe that this was the Balboa Park shooter. The day after that, McKennery was seen on camera at Nadauld's house giving him a duffle bag large enough to contain an assault rifle. *Id.* All this considered, it is beyond reasonable for Hawkins and Maldonado to assume Nadauld and McKennery were working together in some capacity, and that one of them could be the Balboa Park shooter.

The Court of Appeal, using the benefit of hindsight, arguably went out of its way to expand the list of possible suspects. First, they faulted law enforcement for not adding themselves and off-duty military to the list of assault rifle owners. R. at 19. In the past ten years, there have been roughly twenty-five mass shootings in America. Of those twenty-five, only three were carried out by former military personnel[2]. So, it isn't unheard of for a tragedy like this to be

[2] *Infographic: Mass Shootings in the US over the past 10 years*, Al Jazeera, 25 May 2022, https://www.aljazeera.com/news/2022/5/25/infographic-mass-shootings-in-the-us-over-the-past-10-years

carried out by former military, but the way the Court of Appeal did here is the equivalent of faulting law enforcement for initially investigating and focusing on the more likely demographic.

Additionally, they faulted investigators for not investigating the forty unidentified individuals that fled Balboa Park on foot, and those who illegally converted their assault rifles to automatic rifles. R. at 19. This is a ludicrous, unreasonable thing to fault investigators for because it's faulting them for not considering the unknown. For one, there is nothing in the record that indicates that the forty unidentified individuals that fled on foot knew they were on any sort of list, and therefore didn't know they could have cleared themselves as potential suspects. Moreover, hypothetically speaking, if McKennery was one of those forty, would the Court of Appeal have expected him to come forward and surrender if there was no indication, he was a possible suspect? A similar hypothetical can be extended to the notion of considering those who illegally converted semi-automatic rifles to automatic ones. Expecting law enforcement to know exactly how many people converted their semi-automatic rifles to automatic ones, would be expecting those who broke the law to notify law enforcement of their illegal behavior.

At the time of the search of Nadauld's house, the totality of circumstances would have led any reasonable law enforcement officer to suspect fruits of illegality would be located at Nadauld's home. He and McKennery were on a small list of possible suspects, gave authorities reason to believe they were in communication, and exchanged what could have been believed to be a gun just after the shooter made a threat of a future attack. Therefore, Hawkins and Maldonado had the requisite probable cause to justify the search of Nadauld's home.

B. The Threat to Public Safety and the Possibility of the Destruction of Evidence Created the Exigency That Justifies the Warrantless Entry and Search of Nadauld's Home.

The Fourth Amendment ordinarily requires that a law enforcement officer obtain a judicial warrant before entering a home without permission. *Riley v. California,* 573 U.S. 373, 382 (2014). However, an officer may make a warrantless entry "the exigencies of the situation," taken on a case-by-case basis, create "a compelling need for official action and no time to secure a warrant. *Kentucky v. King,* 563 U.S. 452, 460 (2011); *Missouri v. McNeely,* 569 U.S. 141, 149 (2013). When the totality of the circumstances shows an emergency like "imminent harm to others" the police may act without waiting for a warrant. *Lange v. California,* 141 S. Ct. 2011, 2021 (2021). "Contemporaneous searches [are] justified . . . by the need to seize weapons . . . which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime." *Preston v. U.S.,* 376 U.S. 364, 367 (1964).

Here, there was an objectively reasonable fear that there was imminent harm to others. The day before the search of Nadauld's home, law enforcement received a call from someone claiming to be the shooter, who then told law enforcement that their next target was a school. R. at 4. Officers could have reasonably inferred that this genuinely was the shooter because, in the two weeks since the shooting, there were no reports of any similar claims made. Therefore, this could be viewed as a credible threat. The day after receiving this threat, law enforcement saw two of their suspects exchanging a bag large enough to carry an assault rifle. *Id.* Any reasonable police officer presented with a situation where they've received a credible threat, and then see two suspects exchange what's suspected of being a gun capable of carrying out that threat, would believe they were in a now or never moment.

Additionally, the possible threat posed by McKennery and Nadauld was not the only emergency facing law enforcement. As stated in the first San Diego Times article that came out after the shooting, some citizens felt compelled to "hunt down" the shooter themselves. R. at 31. So not only did law enforcement have to worry about another attack from the Balboa Park shooter, but they also had to worry about possible vigilantes attacking innocent people. Any reasonable police officer facing multiple threats would believe that the actions taken by Hawkins and Maldonado were reasonable to stop imminent harm to others.

Another reasonable assumption Hawkins and Maldonado could have made at this time was that Nadauld could imminently destroy any evidence that could be obtained from seizing his assault rifle. Albeit not as readily destructible as drugs, it is not unreasonable to assume that Nadauld could have destroyed or altered the gun in some way. Especially, when you consider that he and McKennery were both construction workers, R at 2, so one could reasonably believe Nadauld would have tools at his home capable of destroying evidence from the gun. He could saw off the barrel of the gun, making it less likely the gun could accurately hit a target from far away. Nadauld also could have possibly, and finally, rendered his rifle incapable of automatic firing which would have made any conviction nearly impossible. These rational concerns are supported by the fact that two days before the search, Nadauld received notice of the upcoming gun inspection. R. at 4. Therefore, with the knowledge that law enforcement was on his trail, Nadauld could have reasonably believed Nadauld was planning on destroying any possible evidence. Thus, Officers Hawkins and Maldonado's actions were justified.

C. Nadauld's Confession About Lending His Gun to McKennery was Properly Admitted at Trial Regardless of If the Court Finds a Constitutional Violation.

The Fifth Amendment guarantees that "[n]o person … shall be compelled in any criminal case to be a witness against himself." *U.S. Cont. Amend. V. Miranda v. Arizona,* 384 U.S. 436 (1966), was the first time a citizen's Fifth Amendment privileges were extended to compulsory self-incriminating statements made to police during custodial interrogations. *See New York v. Quarles,* 467 U.S. 649, 654 (1984); (*quoting Miranda,* 384 U.S. at 460-461). This is because of the "compulsive aspect of [a] custodial interrogation, and not the strength or content of the government's suspicions at the time of the questioning." *Beckwith v. U.S.,* 425 U.S. 341, 346, (1976) (*citing U.S. v. Caiello, 420 F.2d 471, 473 (CA2 1969)).* A custodial interrogation occurs when questioning is "initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of their freedom of action in any significant way." *Miranda,* 384 U.S. at 444. When noncustodial interrogations are in question, the Court determines whether or not "the behavior of . . . law enforcement officials was such as to overbear petitioner's will to resist and bring about confessions not freely self-determined." *Rogers v. Richmond,* 365 U.S. 534, 544, (1961). "Absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions." *United States v. Washington,* 431 U.S. 181, 187 (1977). The "public safety exception . . . to *Miranda* warnings" applies when "spontaneity . . . is necessarily the order of the day," and the exception does not depend on "post hoc findings" that concern the subjective motive of the arresting officer. *Quarles,* 467 U.S. at 656.

1. Nadauld's Confession Should Not Be Suppressed Because He Was Not Coerced into Making It.

To determine if someone is in custody for the purposes of *Miranda*, the Court must determine "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. *Thompson v. Keohane,* 516 U.S. 99, 109 (1995). The core focus of this inquiry is the "nature and setting" of the custodial interrogation. When noncustodial interrogations are in question, the focus is on "the facts established in the record . . . to determine the coercive influences. *Davis v. State of N.C.,* 384 U.S. 737, 752 (1966). Circumstances to consider when determining if someone is in coercion are: the location of the questioning, its duration, statements made during the interview, and the presence of physical restraints during the questioning. *Howes v. Fields,* 565 U.S. 499, 509 (2012).

The circumstances surrounding Officers Hawkins and Maldonado's questioning show that Nadauld was not coerced into confessing he lent McKennery his assault rifle. Coercive behavior by law enforcement can best be described as so overbearing that a suspect's "will to resist and bring about confessions [was] not freely self-determined. *Rogers 365* U.S. at 544. Nadauld was not dragged to the police station for questioning but was in his own home. Additionally, Hawkins's line of questioning lasted mere minutes for one afternoon, not multiple times over multiple days. *See Davis,* 384 U.S. at 737 (stating "The fact that each individual interrogation session was relatively short duration does not mitigate the substantial coercive effect created by repeated interrogation . . . over 16 days.) Lastly, Nadauld was never subjected to violence or threat of violence. *See Rogers* 365 U.S. at 535. Nadauld was never placed in

handcuffs. Hawkins and Maldonado never once took their guns out of their holster. Neither of them stood by one of the exits that would prevent Nadauld from leaving.

2. If This Court Finds That This Encounter Was a Custodial Interrogation, Then Public Safety Outweighs the Need for *Miranda* Safeguards.

Evidence that has been illegally obtained need not always be suppressed. *Nix v. Williams*, 467 U.S. 431, 441 (1984); (*citing Wong Sun v. United States*, 371 U.S. 471 (1963)). The doctrinal underpinnings of *Miranda* need not be applied in all its rigor to a situation in which police officers ask questions reasonably prompted by a concern for public safety. *Quarles*, 467 U.S. at 656. When police are confronted with an immediate necessity to ascertain the whereabouts of a gun that poses a danger to public safety, then *Miranda* warnings are not required. *See Id* at 657**.** This exception to *Miranda*, "should not be made to depend on post hoc findings. *Id.*

Here, law enforcement was undoubtedly prompted by a concern for public safety. Both federal and local law enforcement were actively searching for a gunman who indicated that they were not working alone and would attack again soon. Officers knew that the shooter utilized an automatic assault rifle, and one of their 10 suspects owned an assault rifle. R. at 4. They recently received a call from the shooter stating a school was their next target. *Id.* Further, 30 minutes before Hawkins and Maldonado arrived at Nadauld's house, they saw footage of him receiving a large duffle bag from someone whose car was seen leaving Balboa Park before police arrived to secure the area. *Id.* All the facts known to Hawkins and Maldonado at this time would have led any reasonable police officer to believe that McKennery had just given Nadauld a weapon to carry out the next mass shooting. Based on this, the objective concern for public safety

outweighed the need for *Miranda* warnings. Therefore, Nadauld's confession should not be confessed.

Since Nadauld was not coerced into making his confession, it was properly admitted into evidence at his trial. However, should the Court find that Nadauld's confession was the product of coercion, then the concern for public safety justified the lack of *Miranda* warnings.

CONCLUSION

For the aforementioned reasons, the Supreme Court of the United States should reverse the ruling of the Court of Appeal for the State and California and affirm the ruling of the Superior Court of California.