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

2022 National Criminal Procedure Tournament
San Diego, California

TABLE OF CONTENTS

TABLE OF CONTENTS.....

TABLE OF AUTHORITIES.....

STATEMENT OF THE ISSUES.....

STATEMENT OF THE FACTS.....

SUMMARY OF THE ARGUMENT.....

STANDARD OF REVIEW.....

ARGUMENT.....

I. **The retrieval of Nadauld's information from the automatic license plate recognition database did not require a warrant under the Fourth Amendment.**

A. **Mr. Nadauld did not have an objectively reasonable expectation of privacy in his vehicle's movements.**

B. **There was no physical intrusion of Mr. Nadauld's vehicle by the ALPR system to constitute a search.**

C. The ALPR database did not reveal information that would be unknown absent physical intrusion by police.

II. **The use of a pole mount camera on a utility pole facing Nadauld's residence did not violate the Fourth Amendment.**

III. The California Fourth District Court of Appeal erred when it held that the warrantless entry and search of Nadauld's home violated his Fourth Amendment rights because the officers' conduct was justified by the existence of both probable cause and exigent circumstances.

IV. A. Officers Hawkins and Maldonado had probable cause to enter Nadauld's home because they reasonably believed that Nadauld had committed a crime based on the known facts.

V.

VI. 1. The probable cause standard is measured by the totality of the circumstances.

CONCLUSION.....

STATEMENT OF THE FACTS

A. Factual Background

On September 14, 2021, sometime between 12pm and 1pm, a masked shooter outfitted in combat gear opened fire from a rooftop into a crowd below. R. at 2 (Exhibits B, D, and I). Nine people were killed and six wounded. *Id*. The shooting took place in Balboa Park. *Id*. The police launched into an intensive investigation to bring the masked shooter to justice. R. at 3. Law enforcement employed several different methods to track down the perpetrator of the shooting effectively and efficiently. *Id*. The police began their investigation by looking at the available camera footage from the area surrounding Balboa Park. *Id*. The footage revealed that forty unidentified people had left the scene on foot. *Id*. The footage was too blurry for police to identify those forty individuals. *Id*. The footage also captured fifty cars leave the scene before police arrived. *Id*. The police did not waste time trying to identify the forty blurry individuals. *Id*. They began immediately pulling information about the owners of the fifty cars. *Id*. Police were able to identify all fifty registered owners. *Id*. One of the people on that list was Frank McKennery. *Id*. Once they had that information, police began cross-referencing data. *Id*. Police had access to certain databases, which made cross-referencing the fifty cars from the scene with other lists simple. *Id*. First, police checked to see if any of the owners of the fifty cars had criminal records. *Id*. None of the fifty came up as having criminal records. *Id*. Next, police checked to see if any of the fifty were involved in the Jora Guru religion, referenced in the shooter's manifesto. *Id*. That yielded no results. Finally, the police checked the list of registered assault rifle owners in the area. *Id*. Again, none of the fifty were found to be registered as assault rifle owners. *Id*. Under the assumption that the shooter must have gotten the weapon from

someone else, the police decided to pull the information of the registered assault rifle owners in the area. *Id*. Among those who were registered assault rifle owners was Nick Nadauld. *Id*.

The police used an Automatic License Plate Recognition (ALPR) database to continue their investigation. *Id*. The ALPR tracks the movements of cars by scanning passing cars for their license plate information and instantly compares that information with a police database. *Id*. The time and location data for each license plate scan is stored in the ALPR database. *Id*. Police accessed the ALPR database to investigate the movements of all fifty cars that were present at the shooting and had left before police arrived. *Id*. Police then examined the movements of people on the registered assault rifle owners list. *Id*. Finally, police cross-referenced the movements of both lists (the fifty cars and the assault rifle owners). *Id*. This revealed that ten people on the registered assault rifle list had some overlap with one of the fifty cars. *Id*. The police noticed that Nadauld, a registered assault rifle owner, had considerable overlap with McKennery, one of the fifty cars present at the shooting. R. at 4. Both of their cars were captured being at the same locations at similar times. *Id*.

The police determined that they should covertly monitor the homes of the ten individuals on the assault rifle list to see if they would have any more interaction with one of the fifty cars from the scene. *Id*. On September 24, 2021, police placed cameras on utility poles near the ten residences. *Id*. On September 25, police mailed letters to each of the ten residences, informing them that they would be verifying whether their assault rifles had been rendered inoperable as required by California Penal Code §30915. *Id*. Nadauld received his letter on September 27. *Id*.

On September 28, the police received an anonymous call from someone claiming to be the Balboa Park Shooter. *Id*. The voice said, "This is the Balboa Park shooter. This time, it's going to be a school." *Id*. The following day on September 29, the pole-mount camera near

Nadauld's home recorded McKennery pulling into the driveway and give Nadauld a large duffel bag before leaving. *Id*. FBI Officers Jack Hawkins and Jennifer Maldonado were immediately dispatched to Nadaduld's house to investigate. *Id.* The officers arrived to Nadauld's home thirty minutes after McKennery left. *Id*. The officers questioned Nadauld outside his front door about the assault rifle he inherited from his father five years prior. *Id*. Ex. A. They explained that they were making sure all assault weapons were accounted for and that they needed to come inside. Ex. A. Nadauld said he would prefer if they wait outside while he retrieves it. Ex. A. The officers moved to go into Nadauld's home and Nadauld stepped aside, letting them pass. Ex. A. Nadauld admitted that McKennery had borrowed his weapon but insisted that McKennery had been in the desert Tuesday, the day of the shooting, and even sent a picture. R. at 4. After the questioning ended, Nadauld was placed into custody. *Id*. When law enforcement went to McKennery's home to arrest him, they heard a gunshot inside the house and found McKennery lying dead on the floor. *Id*. Next to McKennery's body was a letter confessing to the crime of shooting the victims at Balboa Park. Ex. J.

B. Procedure Below

On October 1, 2021, Defendant Nick Nadauld was charged by indictment with nine counts of second-degree murder, nine counts of involuntary manslaughter under California Penal Code Section 192, one count of lending an assault weapon under California Penal Code 30600, and one count for failure to comply with the assault rifle requirements under California Penal Code Section 30915.

Defendant filed a motion to suppress evidence collected on the date of his initial arrest. The Superior Court of the State of California for the County of San Diego denied Defendant's Motion on November 21, 2021. On April 5, 2022, Defendant Nadauld appealed the denial of his

Motion to Suppress. On June 3, 2022, the Court of Appeal of the State of California Fourth Appellate District granted Nadauld's motion to suppress and remanded the case. The People of the State of California applied for writ of certiorari to the Supreme Court of the United States. This Court granted the People's writ on September 23, 2022.

SUMMARY OF THE ARGUMENT

The Government did not violate Nadauld's individual protections under the Fourth Amendment because the retrieval of Nadauld's information from the automatic license plate recognition ("ALPR") database was not a search and thus did not require a warrant. Precedent set by this Court supports a finding that the use of ALPR's do not constitute a search under the Fourth Amendment. As such, the Government is not required to obtain a warrant to retrieve an individual's information from the ALPR database.

The use of pole-mount cameras did not violate Nadauld's Fourth Amendment rights. An individual does not retain an expectation of privacy in the exterior of their home that is visible to the public. Accordingly, the Government mounting a camera and facing it at Nadauld's home does not require a warrant under this Court's precedent.

The Government did not violate Nadauld's Fourth Amendment rights when they entered and searched his apartment because their conduct was justified by the existence of both probable cause and exigent circumstances. The probable cause standard is measured by the totality of the circumstances. The government has probable cause when based on all of the facts, they

objectively and reasonably believe that the suspect has committed a crime. Officers' Hawkins and Maldonado's conduct satisfies the probable cause standard because they used information from police databases and the ALPR. In addition, they witnessed McKennery hand Nadauld a rifle sized duffel bag on a pole-mount camera. The officers went to speak with Nadauld outside of his home and his responses only confirmed their reasonable belief that he was somehow involved in the shooting crime. All of this taken together was enough to support probable cause.

The exigent circumstances of pursuit, destruction of evidence, and public safety existed and permitted Officers Hawkins and Maldonado to enter and search Nadauld's home at that time without first securing a warrant.

STANDARD OF REVIEW

This Court reviews this case under *de novo* review.

ARGUMENT

I. The retrieval of Nadauld's information from the automatic license plate recognition database did not require a warrant under the Fourth Amendment.

Individuals have a constitutional right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. At the heart of an individual's Fourth Amendment protection is the concept of reasonableness. *Katz v. U.S.*, 389 U.S. 347, 360 (1967). The protections of the Fourth Amendment extend to people, not places. *Katz*, 389 U.S. at 351. In *Katz*, Justice Harlan explained in concurrence the protection under the Fourth Amendment afforded to individuals is both a subjective and objective expectation. *Id*. at 361. An individual must have a subjective expectation of privacy in tandem with an objective expectation that society would deem reasonable. *Id*. "Thus, when an individual 'seeks to preserve something as private,' and his expectation of privacy is 'one that society is prepared to recognize as reasonable,' official intrusion into that sphere generally qualifies as a search and requires a warrant supported by probable cause." *Carpenter v. U.S.*, 138 S.Ct. 2206, 2209 (2018), citing *Smith v. Maryland*, 442 U.S. 735, 740, 99 S.Ct 2577, 61 L.Ed.2d 220 (internal quotation marks and alterations omitted).

While this Court has never given an extensive list of circumstances where an individual would have a reasonable expectation of privacy, the Court has required that expectations be sourced from societal recognitions or references to real or personal property law. *Byrd v. U.S.*, 138

S. Ct. 1518, 1527. (2018). An individual's knowing exposure to the public is not protected under the Fourth Amendment. *Katz*, 389 U.S. at 351. Activities in plain view of the public eye cannot reasonably be expected by an individual to be private because there cannot possibly be an intention to keep such private. *See Id*. at 361.

The retrieval of Nadauld's location data from the ALPR database was not a search under the Fourth Amendment and thus, it did not require a warrant. When Nadauld drove his vehicle on public roadways, he knowingly exposed to the public information about both his vehicle and his whereabouts that cannot reasonably be expected to be private. This Court should reverse the California Fourth District Court of Appeal and hold that law enforcement's retrieval of information from an automatic license plate recognition database does not constitute a search under the Fourth Amendment and thus does not require a warrant.

a. Mr. Nadauld did not have an objectively reasonable expectation of privacy in his vehicle's movements.

This Court has perpetually held that an individual has no reasonable expectation of privacy while traveling in a vehicle on public roads. *Cardwell v. Lewis*, 417 U.S. 583, 590, 94 S.Ct. 2464, 2469, 41 L.Ed.2d 325 (1974). It is no secret that driving a vehicle exposes an individual to the public. This Court's decision in *U.S. v. Knotts* provides analogous to law enforcement's retrieval of information from an ALPR database to being objectively reasonable and not requiring a warrant.

In *U.S. v. Knotts*, this Court held that defendant Knotts had no reasonable expectation of privacy when law enforcement used a beeper signal to track defendant's vehicle movements to his destination. 460 U.S. 276, 285 (1983). With the aid of a third party, the government in *Knotts* installed a beeper into a container that was then purchased by the defendant and placed into his car. *Id*. at 278. With the assistance of the beeper, police were able to monitor the defendant's

vehicle's movements to an end location that ultimately revealed a drug laboratory inside of a cabin following three days of visual surveillance. *Id*. at 278-79. In reaching its conclusion, the *Knotts* Court reasoned that the information the government obtained from the GPS beeper was essentially the same information police could have obtained by directly following the defendant's vehicle on the roads. *Id*. at 281. No new information about the defendant was revealed to law enforcement other than the defendant's destination—information that any individual could obtain by following a vehicle.

An appropriate balance must be struck between allowing law enforcement to use technology in lieu of visual surveillance while still preserving an individual's objectively reasonable expectation of privacy under the Fourth Amendment. Requiring law enforcement to obtain a warrant to access limited information for a specific purpose on an ALPR database would not strike this balance. In *Knotts*, this Court explained that "[t]he fact that the officers in this case relied not only on visual surveillance, but on the use of the beeper to signal the presence of Petschen's automobile to the police receiver, does not alter the situation. Nothing in the Fourth Amendment prohibited the police from augmenting the sensory faculties bestowed upon them at birth which such enhancement as science and technology afforded them in this case." *Knotts,* 460 U.S. at 282. The beeper in *Knotts* only revealed information that was already public—driving a vehicle on a roadway. *Id*. at 284. The fact that technological advancements have allowed law enforcement to not only supplement, but sometimes replace physical, visual surveillance does not mean an individual's Fourth Amendment protections diminish.

In a recent, relevant decision, the Massachusetts Supreme Judicial Court analyzed police's use of ALPR technology. In *Commonwealth v. McCarthy*, police used an automatic license plate reader to track the defendant's vehicle's movements across specific bridges for a span of three

months. 484 Mass. 493, 494, 142 N.E.3d 1090, 1095 (2020). The court found that "while the defendant has a constitutionally protected expectation of privacy in the whole of his public movements, an interest which potentially could be implicated by the widespread use of ALPRs, that interest is not invaded by the limited extent and use of ALPR data in this case." *Id*. at 494. Under *Katz*, the Massachusetts supreme court found that the use of four automatic license plate readers at two fixed locations did not give police an aggregate of the defendant's public movements; rather, it revealed a limited picture of his "progress on a single journey." *Id*. at 508-09.

By allowing law enforcement to access ALPR databases to retrieve information about a target vehicle, this Court will not obviate the fact that in certain instances, under certain, specific facts, law enforcement will obtain too much information that amounts to a search. There is a societal expectation that law enforcement can and will not monitor an individual's *every* movement for a very long period. *Carpenter v. U.S.*, 138 S.Ct. 2206, 2217 (2018) (emphasis added). For instance, in *Carpenter v. U.S*, this Court held that the government obtaining a defendant's cell-site records constituted a search under the Fourth Amendment. *Id*. at 2209. But cell phone records are unique. As this Court pointed out, "cell phone location information is detailed, encyclopedic, and effortlessly compiled." *Id*. at 2216. The information the government obtained in *Carpenter* provided an "all-encompassing" record of the defendant's locations for a period of 127 days. *Id*. But this Court recognized even more about cell phone data. "[W]hen the Government tracks the location of a cell phone it achieves near perfect surveillance, as if it had attached an ankle monitor to the phone's user." *Id*. at 2218.

Unlike retrieval of an individual's data from a cell-site, an ALPR does not reveal such an amass of information about an individual. ALPR databases obtain substantially less information

from a person driving on public roads. The scanner captures only the image of a vehicle, the corresponding license plate's alphanumeric characters, and the geospatial location where the vehicle's image was captured. (Ex. K). That's it. From this information, law enforcement is limited to two things: compare that license plate number with another database that stores "hot-list" vehicles, vehicles associated with active investigations, and canvas license plates around crime scenes to allow them to identify potential suspects, witnesses, and victims. (Ex. K). In fact, the ALPR does not even provide law enforcement with information about the vehicle's owner, let alone who the driver of the vehicle is. (Ex. K). Moreover, the ALPRs are only "deployed" in specific areas. (Ex. K).

The information law enforcement can learn from ALPR scans can be obtained through observation of the naked eye, whereas cell-site data reveals not only an individual's whereabouts, but personal information such as his "familial, political, professional, religious, and sexual associations." *Carpenter*, 138 S.Ct at 2217. As the Massachusetts supreme court noted in *Commonwealth v. McCarthy*, ALPR's at fixed locations do not give police an "aggregate" of an individual's public movements like data from a cell phone might. 484 Mass. 508-09. Absent additional, visual observation, police would not even know a vehicle's entire journey when such a scanner only capture's its location at a moment in time, whereas cell-site data could provide such information.

It is more appropriate to compare law enforcement's use of an ALPR database to a GPS beeper and find that there is no objectively reasonable expectation of privacy in one's license plate alphanumeric characters captured at a specific moment in time on a public roadway. This Court allowed police to observe more information about an individual on a public roadway in *Knotts* than an ALPR database would reveal. Not only did a GPS beeper placed in a container reveal an

individual's entire travel while the beeper was in the car, but it would also indicate to law enforcement any movements after the fact. An ALPR captures a vehicle's license plate's alphanumeric code—and only captures it when the vehicle is on a public roadway passing the fixed point in which the ALPR is mounted. (Ex. K).

For the foregoing reasons, Nadauld could not have an expectation of privacy in the information the government obtained through the use of an automatic license plate recognition scanner database that society would be prepared to recognize as reasonable as the scanner only obtains limited information about an individual's vehicle in a specific moment of time. As such, the government's retrieval of information on an ALPR database does not constitute a search under the Fourth Amendment.

b. There was no physical intrusion of Mr. Nadauld's vehicle by the ALPR system to constitute a search.

While *Knotts* established it was reasonable for the government to place a GPS beeper in a container prior to the container entering an individual's car, this conduct is different than the government *physically* placing a GPS device on an individual's vehicle. The lower court mistakenly extends this Court's decision in *United States v. Jones* to support its conclusion that law enforcement's retrieval of information from an ALPR database equates to a search. In *United States v. Jones,* the government attached a GPS monitoring device on the bottom of a vehicle to obtain the vehicle's activity. 565 U.S. 400, 404 (2012). While this Court in *Jones* held that physically installing a GPS device to a vehicle to obtain information about the vehicle's activity constitutes a search, it also recognized that what the government did in *Jones* was different than prior cases—the act of installation equated to a physical intrusion on an individual's private property. *Id.*

The retrieval of information from an ALPR database does not physically intrude on an individual's private property, nor does it equate to a trespass like the installation of a GPS device under a vehicle would. The *Jones* Court anticipated future cases where it would have a set of facts where "a classic trespassory search is not involved and resort must be had to Katz analysis." *Id.* at 412-13. The facts before this Court establish such. The officers in *Jones* installed a GPS tracking device underneath defendant Jones' vehicle and received over 2,000 pages of data transmitted during a 28-day period. *Id*. at 403. In the instant case, there was no physical intrusion on Defendant Nadauld's vehicle, nor did the police obtain anywhere near a similar aggregate of information from the ALPR database. The government did not install any type of device onto Defendant Nadauld's vehicle, nor were they able to track his movements for a period of 28 days. In fact, the data that *was* transmitted to law enforcement by the ALPR database only gave police limited information about Nadauld. Again, the ALPR obtains three pieces of information from a vehicle—an image of the vehicle itself, the location where the image was taken, and the license plate. (Ex. K). The police did not collect thousands of pages of data about Defendant Naduald's life from the ALPR and his daily movements to and from locations.

Not only is the information stored for a legitimate purpose, but the information gathered is only stored in the ALPR database for a limited period governed by statute within specific California jurisdictions. (Ex. K). As such, even if there was a legitimate concern to be raised about the storage of an individual's vehicle's license plate information, this concern is one that state legislatures are more appropriately equipped to address.

Since the government's retrieval of information from the ALPR database did not physically intrude on Defendant Nadauld's vehicle and obtain anywhere near the same aggregate of information that a GPS device attached to a vehicle would have, the government did not need a

warrant under the Fourth Amendment to retrieve information from the automatic license plate recognition database.

c. The ALPR database did not reveal information that would be unknown absent physical intrusion by police.

Technology that reveals private information that cannot ordinarily be obtained in public is different from information provided to law enforcement by an ALPR database. When the government seeks to learn information that would not be possible to obtain absent physical intrusion on an individual's home, an analysis under *Katz* is not applicable because there are already subjective and objective expectations of privacy within one's home. *Kyllo v. U.S.*, 533 U.S. 27, 28 (2001). In *Kyllo v. U.S.*, this Court held that "Where, as here, the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment 'search,' and is presumptively unreasonable without a warrant." 533 U.S. 27, 27 (2001). This Court in *Kyllo* grappled with the question of whether the government's use of a thermal-imaging device to scan the outside of the defendant's home to support the suspicion that the defendant was growing marijuana constituted a search and thus required a warrant. *Id*. at 27. While mere visual surveillance of an individual's home does not amount to a search, the use of "sense-enhancing technology" to reveal information within a home does.

The lower court incorrectly concludes that an ALPR database and the license plate scanning equates to technology that is not in general, public use. While they correctly point out that an ALPR is not available to the public, it is not comparable to a thermal-imaging device used to read an individual's private home's heat emissions. The police in *Kyllo* used a thermal-imaging device on the defendant's home. *Kyllo***,** 533 U.S. at 27. Here, the police obtained information from an ALPR that was mounted in public and used to capture exterior images of a vehicle and license

plate information. (Ex. K). Absent the thermal-imaging device in *Kyllo*, the government would not have been able to obtain heat emissions of the defendant's home without physically going into the home– a constitutionally protected place. Police can obtain an individual's license plate number and an image of a car through visual observation in a public space. As stated previously, an individual has no expectation of privacy when traveling on public roads. *Cardwell v. Lewis*, 417 U.S. at 590. A vehicle is not a home. The mere fact that the police were able to obtain the same information that could have been obtained through continual surveillance of Defendant Nadauld's vehicle by means of technology further suggests that these facts more align with *Knotts*, and should be analyzed under *Katz*.

It would be a dangerous precedent to hold that law enforcement must get a warrant to retrieve information from an ALPR database given the limited information that can be obtained from such a database. Not only would this undermine this Court's precedent that has allowed police to use technology for investigative purposes absent a warrant, it would create confusion among the states in the future to the next technological development available to police.

II. The use of a pole mount camera on a utility pole facing Nadauld's residence did not violate the Fourth Amendment.

As the Seventh Circuit Court of Appeals eloquently put it, "we are steadily approaching a future with a constellation of ubiquitous public and private cameras accessible to the government that catalog the movements and activities of all Americans." *United States v. Tuggle*, 4 F.4th 505, 509 (7th Cir. 2021). In *Tuggle*, the government installed three cameras facing the defendant's home and attached the cameras to public property. *Id*. at 510. Despite the cameras' eighteen month recording of the outside of the defendant's home, the Seventh Circuit held that defendant Tuggle "knowingly exposed" the front of his home to the public and did not have an objectively reasonable expectation of privacy in the area in front of his home. *Id*. at 514.

This Court has permitted law enforcement to do even more—such as use cameras to capture images of an individual's backyard from a private plane—an area outside of an individual's home that would otherwise be unobservable due to fencing. *California v. Ciraolo*, 476 U.S. at 209-10, 106 S.Ct. 1809 (1986). From the private plane, the government in *Ciraolo* captured photographs of marijuana plants. *Id.* at 209-10. The Court supported its holding by reasoning that any individual could similarly fly about the defendant's home in the public airspace and observe the same marijuana plants that the government observed. *Id*. at 213, 106 S. Ct. 1809.

I. The California Fourth District Court of Appeal erred when it held that the warrantless entry and search of Nadauld's home violated his Fourth Amendment rights because the officers' conduct was justified by the existence of both probable cause and exigent circumstances.

The California Fourth District Court of Appeal correctly describes what is involved in determining whether a police officer has probable cause. The court cites to the Supreme Court case, *Maryland v. Pringle*, which explains that the events leading up to an arrest should be examined. *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). And, next, there should be a determination of those facts through the perspective of an objectively reasonable officer. *Id*.

Though the court accurately explains probable cause and mentions the totality of the circumstances, it fails to analyze the facts the way a reasonably objective officer would, it fails to recognize that only a fair probability is needed, and it applies the facts incorrectly to the standard. The court ultimately reaches the wrong conclusion. Consequently, its decision should be reversed.

A. Officers Hawkins and Maldonado had probable cause to enter Nadauld's home because they reasonably believed that Nadauld had committed a crime based on the known facts.

1. The probable cause standard is measured by the totality of the circumstances.

The Supreme Court notably stated that, "the test for probable cause is not reducible to "precise definition or quantification." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). Meaning that there is no "rigid demand that specific "tests" be satisfied. . ." *Illinois v. Gates*, 462 U.S. 213, 231 (1983). Rather, the Court recognizes that probable cause is a "fluid concept" that is "not readily, or even usefully, reduced to a neat set of legal rules." *Id*. at 232. It does not involve "finely tuned standards such as proof beyond a reasonable doubt or by a preponderance of the evidence …" *Id*. at 235. It simply demands common sense. *Texas v. Brown*, 460 U.S. 730 (1983). The Court understands and accepts that "in dealing with probable cause, we deal with probabilities." *Id*. at 742. Probabilities are hardly concrete or certain. Because of this, the probable cause standard is a relatively low bar.

With respect to probable cause, the Court has never applied "one simple rule" to "cover every situation." *Gates*, 462 U.S. 213 at 231. Instead, when evaluating whether the government has met the standard for probable cause, this Court has traditionally relied on the totality of the circumstances. This approach calls for an examination of all the facts and applying them to the probable cause standard. As a result, proper probable cause analyses will vary depending on the facts of a particular case.

In 1983, the Court in *Texas v. Brown* plainly stated that an officer will have probable cause if "the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of a crime." Texas 742. There was no requirement that the officer's belief be true. *Id*. For decades the Court maintained that probable cause only requires "a probability or substantial chance of criminal

activity, not an actual showing of such activity." *District of Columbia v. Wesby*, 138 S.Ct. 577, 586 (2018).

Lower courts should follow this probable cause standard set forth by Supreme Court precedent. The standard requires those courts to thoroughly examine the facts, consider the totality of the circumstances, and decide whether there is a fair probability that an objectively reasonable person or officer would have the same response to the situation. Here, the California Fourth District Court of Appeal did not properly weigh the facts or view the facts through the perspective of an objectively reasonable person or officer. For this reason, it comes to the wrong conclusion. Its decision should be reversed.

2. Officers Hawkins and Maldonado's conduct satisfies the probable cause standard.

Here, Officers Hawkins and Maldonado did not have the facts to believe that Nadauld was the shooter because his vehicle was not identified as one of the fifty cars that had been at Balboa Park during the time of the shooting. However, the totality of the circumstances indicate that the officers did have sufficient evidence to believe that Nadauld was involved and had provided the shooter with his M16. First, Police obtained the car information for all the registered rifle owners in the area. Nadauld was on this list of registered assault rifle owners. Police had already obtained the information about the owners of the fifty cars that were present at the shooting but had not come forward. McKennery was on this list of fifty unidentified cars. Based on the ALPR data, police could see that on multiple occasions, Nadauld's car was shown to have been at the same locations, at similar times with McKennery's car. This alone likely alarmed the police, but there was not probable cause yet because the data showed that other cars in the list of fifty had had overlap with at least ten of the registered assault rifle owners.

The police decided to monitor the ten homes on the registered assault rifle owners list that had some kind of overlap with one of the fifty cars from the shooting scene. Police setup surveillance at these ten homes. To narrow down the registered assault rifle suspects who could have possibly loaned out their weapon to one of the fifty cars, police decided to conduct interviews and inspections. The police intended to look at each of the ten homes' assault rifle to see if it was rendered inoperable as required by state law. **Cal. Penal Code §30605**. It was plausible that if any of the ten homeowners had an assault rifle that was not rendered inoperable, that weapon could have been possessed by someone in the group of fifty cars. It was also plausible that anyone who had possessed a loaned assault rifle could be the Balboa shooter.

The police had their probable cause when they witnessed McKennery arrive at Nadauld's home. McKennery was seen getting out of his car, handing Nadauld a large duffel bag, and immediately leaving. Because of the significant overlap between the two and the suspicious sized duffel bag, it was reasonable for police to suspect that the duffel bag could contain an assault weapon. This reasonable belief that evidence from the crime was within the bag McKennery gave Nadauld was sufficient to establish probable cause to search Nadauld's home. Although police were not certain what was in the bag, they drew an inference based on all of the known facts. Police are not required to be certain. In addition, drawing from circumstantial evidence is permissible in establishing probable cause. The police had fair probability based on the facts and circumstances that the person to be searched had contraband or at least useful evidence from the crime.

If this showing did not amount to probable cause, the police still had probable cause to search based on the fact that there was reason to believe Nadauld possessed a fully functioning M16 assault rifle, in violation of **Cal. Penal Code §30605**. Police had individual probable cause

for Nadauld independent of his proximity to McKennery. Police met the standard after finding Nadauld on the registry of assault rifle owners and finding out that he was bequeathed the military grade weapon from his father who was in the military. After Nadauld gave evasive answers about the working condition of his M16, officers objectively and reasonably believed there was a fair probability that Nadauld possessed a fully operational M16 assault rifle. As a violation of California law, there was sufficient reason for officers Hawkins and Maldonado to enter Nadauld's home and search.

By agreeing with the California Fourth District Court of Appeal decision, this Court will be neglecting its decades long precedent on probable cause, creating confusion among the lower courts and specifically it would allow a lender of an assault rifle to avoid penalties.

B. Officers Hawkins and Maldonado's subsequent warrantless entry and search of Nadauld's home was permissible under the Fourth Amendment because there was an exigent circumstance.

Having concluded that there was probable cause to support officer entry and search, the next step is to determine whether an exigent circumstance existed to allow entry at that time, without first obtaining a warrant. Reasonableness is the "ultimate touchstone" of Fourth Amendment jurisprudence. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006). The warrant requirement is paramount, but it does not come without exceptions. Exceptions that are considered reasonable will overcome the general rule of obtaining a warrant. One such, well-documented, exception is exigent circumstances. An exigent circumstance exists when the immediacy and gravity of the situation "make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 586 U.S. 452, 460 (2011). "Reasonableness must embody allowance for the fact that police

officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id*. at 466.

The Court in *Welsh* decided to define the limits of the pursuit exigent circumstance exception in an effort to create a more cohesive framework the lower courts could follow. In *Welsh*, the defendant, who was reported as being intoxicated, abandoned his car and walked home. *Welsh v. Wisconsin*, 466 U.S. 740, 742 (1984). Upon discovering this, police went to Welsh's home without a warrant. The charged offense was operating a motor vehicle while under the influence of an intoxicant. *Id*. at 743. The *Welsh* Court definitively stated that "there should be a sense of proportionality" when evaluating whether a warrantless search is appropriate. *Id*. at 751. The evaluation involves measuring the gravity of the offense…" *Id*. The Welsh Court supplied some parameters when it revealed that "offenses involving no violence or threats of it" could not be treated as exigent. *Id*. The important takeaway from Welsh is that "an officer who postpones getting a warrant "must point to real immediate and serious consequences," to qualify as having had an exigent situation, where the warrant would not be required. *Id*.

In the present case, whether officers experienced an exigent circumstance when investigating a mass shooting is an issue of first impression for the Court. To settle this matter, the Court need only draw on its prior decisions on exigent circumstances. In looking at precedent, the Court will evaluate the totality of the circumstances, weigh the gravity of the offense, and determine whether there was real, immediate, or serious consequences. There are several exigencies that justify a warrantless entry into a home. Among the most frequently discussed are pursuit, preventing the destruction of evidence, and emergency aid. Here, all three exigencies are applicable.

1. Officers Hawkins' and Maldonado's warrantless entry into Nadauld's home was permissible because of the "pursuit" exigent circumstance exception.

Last year, the Supreme Court addressed whether the pursuit of a fleeing misdemeanor suspect categorically qualifies as an exigent circumstance in *Lange v. California*. The Court held that it does not. *Lange v. California*, 141 S.Ct. 2011, 2016 (2021). It instead said that whether a misdemeanor pursuit allows a warrantless entry depends entirely on the particular facts of the case. *Id*. Lange was charged with the misdemeanor of driving under the influence of alcohol in addition to a noise infraction. The State argued that pursuit of a suspected misdemeanant always qualifies as an exigent circumstance permitting warrantless home entry.

The Court noted that it typically applies exigent circumstances on a case-by-case basis. *Id*. at 2018. Whether a "now or never situation" is present "depends upon the facts on the ground." *Id*. The Court again states that looking to the totality of the circumstances the officer faces should be considered. *Id*. The Court determined there is "no evidence [to] suggest that every case of misdemeanor flight poses … dangers." *Id*. at 2020. Waiting for a warrant in cases where a person has committed a misdemeanor is not likely to hinder a compelling law enforcement need. *Id*. The Court concluded that precedent dictates using a case-by-case approach to exigencies arising from misdemeanants' flight. The Court confidently stated that when the totality of the circumstances points to an emergency that poses imminent harm to others, a threat to law enforcement, destruction of evidence, or escape from the home, the police will be able to act without waiting. *Id*. at 2021. The Court also looked to common law where a widely accepted exception to the warrant requirement to enter a home was the pursuit of a felon. *Id*. at 2022. Based on those considerations, the Lange Court ultimately held that the flight of a suspected misdemeanant does not always justify a warrantless entry into a home. *Id*. at 2024. Officers must

consider all of the circumstances in a pursuit case to determine whether there is a law enforcement emergency. *Id*.

Here, the pursuit exigent circumstance exception should apply. The Court should recognize that this case involves more than one felony offense. In *Lange*, the Court evaluated whether a misdemeanant could be pursued into the home by warrantless police. Though the Court declined to adopt a categorical rule for misdemeanor pursuit, it did not mention anything about felony pursuit. As the Court discovered, the common law permitted officers of the law to pursue any felony suspect into their homes without a warrant. The Court gives great deference to the common law from the time of the Framers. It should continue this practice by holding that pursuit of a felony can always be allowed. Here, Nadauld was suspected of committing two felonies, involuntary manslaughter and loaning an assault weapon. Because of the seriousness of being suspected of two felonies, the officers should have the ability to enter without a warrant. Because felonies are considered more of a threat than misdemeanors, they should carry more weight. A rule permitting warrantless entry of a home for felonies would be more appropriate given the severity of the offense. Police should not have to take time to secure a warrant when timing can be the difference between life or death.

However, in the event that the Court rejects another categorical rule and opts for a case-by-case approach, the outcome of this case will be the same. Based on the totality of the circumstances, there was the emergency of a school shooting that posed imminent threat to others.

2. The destruction of evidence exigent circumstance existed, permitting officer entry and search of Nadauld's home.

"In some circumstances law enforcement officers may conduct a search without a warrant to prevent the imminent destruction of evidence." *Missouri v. McNeely*, 569 U.S. 141, 149

(2013). Destruction of evidence is only exigent when "a reasonable person would believe entry is necessary to prevent … the destruction of relevant evidence." *U.S. v. Fowlkes*, 804 F.3d 954, 970 (9th Cir. 2015).

In the Ninth Circuit case *U.S. v. Tarazon*, officers entered Tarazon's home, searched the premises, and performed an arrest without a warrant. *U.S. v. Tarazon*, 989 F.2d 1045 (9th Cir. 1993). It was determined that the officers had probable cause and an exigent circumstance. The court acknowledged that even though there is probable cause, it does not automatically give officers the right to enter a home without a warrant. The officers mush show that there was an exigent circumstance to enter without first obtaining a warrant. Officials must have reasonable belief, not speculation. *Id. at 1049*. Once that is determined, the officers have a valid reason for why they had no time to get a warrant. *Id*. at 1049. The court found it completely reasonable for officers to believe that they did not have time to secure a warrant. *Id*. at 1050. In that time, the evidence of the crime could have been destroyed. From *Tarazon* we can glean that an exigent circumstance exists if officers have reasonable suspicion that there is a lack of time to get a warrant.

Here, although officers Hawkins and Maldonado reasonably believed if they did attempt to secure a warrant before going in to Nadauld's home, he would have quickly rendered it inoperable or destroyed it. According to the facts, it took 30 minutes for the officers to get from the station to Nadauld's home. This means it would likely take 30 minutes to arrive back at the station. Additional time would pass as the officers went through the procedures of obtaining a warrant. In that block of time, it is highly probable that Nadauld could have disassembled the M16, destroyed the M16, or somehow gotten rid of the M16. Because of the insufficient timetable, the officers legitimately believed the issue was exigent. Equipped with that entirely

reasonable belief, officers Hawkins and Maldonado it is clear that they were presented with an exigent circumstance. Therefore, they did not violate the Fourth Amendment by entering Nadauld's home and conducting a search. The search revealed an M16 in plain view. Officers reasonably believed that that M16 was the M16 given to McKennery and that McKennery used to carry out the shooting. Everything officers Hawkins and Maldonado did were justified by the law. They did not violate the Fourth Amendment and consequently, that evidence is not subject to the exclusionary rule. It can and must come in.

3. Alternatively, Officers Hawkins and Maldonado could enter because of the public safety exigent circumstance.

On several occasions, the Supreme Court, as well as the circuits, has recognized the "community caretaking function" of police. This protective aspect of police work is about public health and safety. Searches and seizures based on the community caretaking function are still subject to Fourth Amendment warrant requirements. *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1137 (2019). To search or seize based on the caretaking function, the police must show that to protect the public health or safety, a warrant exception applies. Here, the exigent circumstances exception applies.

When a suspected mass shooter is at large, the safety of the public is vital. The officers here needed to enter the house immediately to secure the M16. They could not risk the assault weapon being out of police possession because the threat of another shooting was so serious and imminent. There was a fair probability that if the M16 was not found, another mass shooting, this time at a school, would occur. If police did not find it and secure it, it could easily be borrowed again or stolen. Only after a search of the house and securing of the M16 did the officers

reasonably believe the public was safe. Entry was necessary to prevent harm to other persons and time was of the essence.