Team 3

Docket 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 COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOR THE FOURTH APPELLATE DISTRICT

BRIEF FOR THE PETITIONER

Attorneys for Petitioner

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ISSUES PRESENTED

1. Whether the police use of the Automatic License Plate Recognition database constituted a search under the Fourth Amendment?
2. Whether the officers' entry and search of the Respondent's home was justified under the exigent circumstances exception of the Fourth Amendment?

STATEMENT OF FACTS

In the early days of September 2021, Nick Nadauld ("Respondent") lent his M16 assault rifle ("M16") to Frank McKennery ("McKennery"). R. at 2. Respondent inherited the M16 upon the death of his father; however, he never obtained a permit for it nor disabled it as required by California Penal Code § 30915. R. at 2, 4, 5.[1]

On September 14, 2021, McKennery drove to Balboa Park, located in San Diego, California. R. at 2. He positioned himself on a rooftop and opened fire with the borrowed M16 on the unexpecting crowd below. R. at 2, 29. By the time law enforcement got to the rooftop to stop the attack, McKennery had fled the scene. *Id*. At his shooting spot, McKennery left a Manifesto which stated, "[w]e're going to do this again." R. at 36. Police used the rifle rounds found at the scene to determine that the weapon used was a type of assault rifle. R. at 2. Law enforcement began their investigation by going through a series of steps to narrow down a list of suspects.

First, law enforcement obtained surveillance footage covering in and around Balboa Park in an attempt to identify the individuals who were present at the time of the shooting. R. at 3. The footage revealed that forty people fled the scene on foot and fifty vehicles drove away. *Id*. One of the vehicle drivers was McKennery. *Id*. Police were unable to identify any of the individuals who left on foot; however, they were able to use their resources to locate the individuals who drove out of the park. *Id*. Police found no criminal records for the fifty vehicle drivers, including McKennery. *Id*. Police also obtained the list of fifty assault rifle owners which included the Respondent. *Id*.

In the next part of their investigation, police used the Automatic License Plate Recognition ("ALPR") database to verify the movements of the cars at Balboa Park at the time of the shooting

[1] R references to the record on appeal.

and the movements of the vehicles owned by the owners of the assault rifles. *Id*. As the name suggests, ALPR systems automatically take pictures of a vehicle and its license plate. *Id*. Optical character recognition technology transforms the license plate photo into an alphanumeric character. R. at 3, 38. This data, the geographical location, and a photo timestamp are added to the police database. R. at 3. There, the plate can be used to identify stolen vehicles, find missing persons, and aid in open criminal investigations. R. at 38. ALPR cameras are located at a fixed location or on police cars, both of which collect data from vehicles that are in public view. R. at 3, 39. After cross-referencing the movements of both the fifty vehicle drivers and fifty assault rifle owners, police noticed that McKennery and Respondent's vehicles were at the same location at the same time, on several occasions. R. at 4.

On September 24, 2021, police placed cameras on utility poles facing the front of the Respondent's home. R. at 4, 7. On September 27, 2021, Respondent received a letter from police informing him that police would be coming to his home in one month to ensure that his assault rifle had been rendered inoperable as required per California Penal Code 30915. R. at 4. The following morning, police received a call from someone who claimed to be the Balboa Park shooter and threatened that "this time," he would attack a school. *Id*. The next day, through the pole-mounted camera installed in front of Respondent's home, police saw McKennery arrive at Respondent's home with a large duffle bag, hand it to the Respondent, and leave. *Id*. Officers Hawkins and Maldonado were immediately dispatched to Respondent's home. *Id*.

Upon their arrival, the officers spoke with Respondent outside of the home and asked him if he still had the M16 that he had inherited from his father. R. at 4, 23. Respondent admitted that he did. R. at 23. Respondent blankly stared at them when asked if he had "anything to worry about." *Id*. He refused to show the officers the rifle because the letter he had received a few days

earlier stated police would be checking the status of the rifle in a month. *Id*. Even when he was told that this was part of the investigation into the Balboa Park shooting, Respondent stated he had nothing to do with the attack and again did not provide police access to the assault rifle. *Id*. Officer Hawkins remained firm in his request to see the weapon, and finally, Respondent offered to retrieve it from within the home. *Id*.

With this information, Officers Hawkins and Maldonado decided to step into the home. R. at 4, 24. While conducting a search, Officer Maldonado saw the assault rifle sitting on Respondent's bedroom. R. at 24. Following the discovery of the assault rifle, Officer Hawkins asked Respondent if he had given the rifle to McKennery, to which he admitted. *Id*.

Police left to McKennery's home to arrest him; however, upon their arrival, McKennery committed suicide. R. at 33. In McKennery's suicide note, he confessed to being the Balboa Park shooter and stated that he obtained the assault rifle from "another guy." R. at 37. After forensic ballistics experts concluded their examination of Respondent's assault rifle and the bullet casings left at the crime scene, it was confirmed that Respondent's gun was the murder weapon used in the Balboa Park shooting. R. at 33. Respondent was arrested and subsequently charged with nine counts of second-degree murder, nine counts of involuntary manslaughter, one count of lending an assault weapon, and one count of failing to comply with California Penal Code Section 30915. R. at 4, 5. Respondent filed a motion to suppress the evidence found on the day of his arrest. R. at 5. The Superior Court of the State of California denied Respondent's Motion to Suppress. R. at 12. The Court of Appeal of the State of California for the Fourth Appellate District granted Respondent's Motion to Suppress and remanded to the lower court. R. at 21.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Court of Appeal because: (1) the information obtained from the ALPR did not constitute a search under the Fourth Amendment and; (2) the entry and search of Respondent's home was justified by exigent circumstances. In this case, there is no search because Respondent does not have a reasonable expectation of privacy in his movements on public roadways. Law enforcement used ALPR for its intended, nonintrusive purpose: to find the individuals responsible for the Balboa Park shooting by identifying their vehicles and location data in sparce, public locations. In addition, the information gathered by the pole-mount cameras was readily visible to any member of the public and is therefore constitutional because it only captured what was exposed from the street level.

Furthermore, Officer Hawkins and Maldonado lawfully entered and searched Respondent's home because they had probable cause to believe that an exigency existed. Respondent was the record owner of an assault rifle that matched the one used at the Balboa Park shooting. The Officers went to Respondent's home to ensure that his assault rifle was rendered inoperable as required by California Law. Respondent had a personal connection to McKennery, an individual who fled the scene of the crime. Consequently, Officers were justified in entering his home to search for the assault rifle. Lastly, the fruit of the poisonous tree doctrine does not apply because all searches in this case were justified.

STANDARD OF REVIEW

This Court reviews determinations of reasonable suspicion and probable cause to conduct a warrantless search, the standard of review is *de novo*. *Ornelas v. United States,* 517 U.S. 690, 596 (1996).

ARGUMENT

I. LAW ENFORCEMENT'S RETRIEVAL OF ALPR DATA TO DETERMINE RESPONDENT'S MOVEMENTS DID NOT REQUIRE A WARRANT BECAUSE THERE IS NO REASONABLE EXPECTATION OF PRIVACY ON PUBLIC ROADWAYS.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. It is established law that the touchstone of Fourth Amendment analysis is whether an individual has a "constitutionally protected expectation of privacy." *California v. Ciraolo,* 476 U.S. 207, 211 (1986)(quoting *Katz v. United States*, 389 U.S. 347, 361 (1967)(Harlan, J., concurring)). A constitutionally protected expectation of privacy exists when a person exhibits a subjective expectation of privacy and society is prepared to recognize that expectation as reasonable. *Id.* What a person *knowingly* reveals to the public is not subject to Fourth Amendment protection. *Id* at 35. (emphasis added).

A. THE USE OF ALPR IS NOT A SEARCH BECAUSE THERE IS NO REASONABLE EXPECTATION OF PRIVACY IN A LICENSE PLATE.

When compared to a home, this Court has noted that there is a lower expectation of privacy in a person's car because it travels through public roads, enabling its contents to be in plain view. *Cardwell v. Lewis,* 417 U.S. 583, 590 (1974)(plurality). Considering this diminished expectation of privacy, it must be determined whether Respondent had a subjective expectation of privacy in his license plate.

1. Respondent Did Not Exhibit A Subjective Expectation Of Privacy In His License Plate Because The License Plate Is Visible To The Public.

It is not reasonable to have an expectation of privacy in something that is required, by law, to be placed on the outside of the car. *New York v. Class*, 475 U.S. 106, 114 (1986). Under California law, license plates must be located where they are "clearly visible." Cal. Veh. Code Art.

9 § 5201. License plates are "specifically intended to convey information about a vehicle to law enforcement" so that the status of the individual, and the car itself, can be verified. *United States v. Diaz-Castaneda,* 494 F. 3d 1146, 1151 (9th Cir. 2007). This information includes the vehicle's make, model, and color, and its registration status.

Based on the fact that Respondent's vehicle was registered by the Automatic License Plate Recognition ("ALPR") database, it logically follows that he did not make any attempt to conceal his license plate. Therefore, Respondent could not have had a subjective expectation of privacy in his license plate when it was availed to the general public where any individual who was driving on the same road, at the same time, could see Respondent's license plate.

2. Society Is Not Prepared To Recognize An Expectation of Privacy In The Contents Of A License Plate Because Cars Are Highly Regulated.

The California Vehicle Code provides extensive information on the requirements of automobiles. For example, the Code states that vehicles must be registered with the state, how to register those vehicles, renew vehicle registrations, how to obtain and display a license plate, and what type of license plate is needed for particular vehicles. For this reason, license plates must fail the second prong of *Katz.*

It is true that a person does not surrender all Fourth Amendment protections by entering their vehicle. *See Delaware v. Prouse,* 440 U.S. 648 (1979). But state and federal courts consistently find that license plate checks are not considered searches for Fourth Amendment purposes because they are not located in an area where there is a reasonable expectation of privacy. *See Diaz-Castaneda,* 494 F. 3d 1146 (9th Cir. 2007); *Olabisiomotosho v. City of Houston,* 185 F. 3d 521, 529 (5th Cir. 1999); *United States v. Walvaren,* 892 F. 2d 972, 974 (10th Cir. 1989); *Traft v. Commonwealth,* 539 S.W. 3d 647 (Ky. 2018); *People v. Bushey,* 29 N.Y. 3d 158 (N.Y. 2017); *State v. Setinich,* 822 N.W. 2d 9 (Minn. Ct. App. 2012). By virtue of driving a car, drivers should

expect that the state will intrude on their expectations of privacy because police officers regularly stop and examine a car when, among other things, license plates or inspection stickers have expired. *South Dakota v. Opperman,* 428 U.S. 364, 368 (1976).

Furthermore, the information that a police officer gets when they perform a license plate check is voluntarily given by the individual to a government agency in order to receive their license, license plate, and registration. *See Bushey,* 29 N.Y. 3d at 163. The trade-off for this privilege is that a person has a diminished expectation of privacy when they are driving because at any time, a police officer may conduct a traffic stop and check the status of a car through its license plate. Since cars are highly regulated and are "thrust into the public eye," society would not be prepared to recognize that there is a reasonable expectation of privacy in a license plate. *Class*, 475 U.S at 114.

B. THE RETRIEVAL OF RESPONDENT'S ALPR DATA DID NOT REQUIRE A WARRANT BECAUSE POLICE DID NOT VIOLATE A LEGITIMATE EXPECTATION OF PRIVACY.

Whether a Fourth Amendment search has occurred incorporates common law trespass principles and the two-prong *Katz* test. *See United States v. Jones,* 565 U.S. 400, 406 (2012) (discussing how *Katz* did not repudiate concerns for government trespass). Because there was no physical occupation of private property in this case, a common law trespass analysis would be improper. *Id.* at 404. Thus, the proper analysis is to determine whether Respondent had a subjective expectation of privacy in his historical location data and whether that is an expectation that society is prepared to recognize as reasonable. *Katz,* 389 U.S. at 361.

1. Respondent Did Not Have A Reasonable Expectation Of Privacy In His Public Movements.

This Court has consistently held that there is a diminished expectation of privacy in an automobile. *See generally Carroll v. United States,* 267 U.S. 132 (1925); *Cardwell v. Lewis,* 417 U.S. 583 (1974). In fact,

> A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another. When [Respondent] travelled over the public streets he voluntarily conveyed to anyone who wanted to look the fact that he was travelling over particular roads in a particular direction, the fact of whatever stops he made, and the fact of his final destination when he exited from public roads onto private property.

Knotts, 460 U.S. at 276. Here, Respondent voluntarily exposed his public movements to anyone who was watching. Whenever Respondent drove on public roads, he availed himself to being the subject of a traffic stop, pay-by-plate toll cameras, private security systems, and other people driving in the same direction or to the same location as he was. Therefore, Respondent did not have a reasonable expectation of privacy in his movements on a public road.

2. A Warrant Was Not Required To Retrieve Respondent's ALPR Because There Was No Search Within The Meaning Of The Fourth Amendment.

Generally, California police officers with access to ALPR are encouraged to canvas license plates in the immediate wake of any "major crime" such as a homicide or shooting. *See* Cypress Police Department, Cypress Police Department Policy Manual 426 (2022), https://www.cypressca.org/home/showdocument?id=9444; Alameda Police Department, Alameda Police Department Police Manual 446 (2020), lexipol-manual-6.8.20-update.pdf (alamedaca.gov); San Diego Police Department, License Plate Recognition 2 (2020), https://www.sandiego.gov/sites/default/files/sb34compliance.pdf. Doing this allows police not only to form a suspect list, but also to locate witnesses to the crime. Here, law enforcement officials properly deployed the use of ALPR in the wake of the Balboa Park shooting by using it for its intended purpose: to aid in the investigation of a major crime. R. at 3.

Law enforcement was not required to get a warrant to retrieve the ALPR data because Respondent did not have an expectation of privacy in his physical movements. "When electronic monitoring does not invade a legitimate expectation of privacy, no search has occurred." *Knotts,* 460 U.S at 285 (1983).

The Court of Appeal heavily relied on *Carpenter* in holding that the historical use of ALPR is unconstitutional. R. at 17-18. However, its analysis is flawed for two reasons. First, the *Carpenter* court explicitly stated that its decision did not call into question other surveillance techniques. *Carpenter,* 138 S. Ct. at 2220. Therefore, ALPR cannot automatically be held to the same standard as cell-site location information. In fact, ALPR is not as "detailed in its surveillance" as the cell-site location information data or as the GPS considered in *Jones*. *Commonwealth v. McCarthy,* 484 Mass. 493, 507 (2020); *See also United States v. Yang,* 858 F. 3d 851, 862 (9th Cir. 2020)(Bea, J., concurring) (explaining that the use of ALPR is not a search where there was no evidence that the database revealed the whole of a person's physical movements). Critical in an analysis of the constitutionality of ALPR technology are considerations of how many cameras there are in a given area and where they are located. *McCarthy,* 484 Mass. at 493, 507.

Second*, Carpenter* reinforced the notion that a person has an expectation of privacy in the "whole" of their movements. *Carpenter,* 138 S. Ct. At 2219. There is nothing in the record that indicates how much of Respondent's movements were captured by ALPR or the time frame that law enforcement used when they cross referenced the assault rifle owners to the owners of the fifty vehicles. Contrary to what the Court of Appeal held, a "substantial history" of a person's movements does not inherently mean the whole of those movements. R. at 17. Without evidence that the "whole of [Respondent's] physical movements," were exposed, Respondent cannot avail

himself of the protections guaranteed in *Carpenter*. *Carpenter,* 138 S. Ct. at 2219; s*ee also McCarthy,* 484 Mass. at 507.

Respondent may argue that based on the Mosaic Theory, the retrieval of his ALPR data required a search warrant. Under the Mosaic Theory, courts look to whether a series of acts which are not considered searches individually, amount to a search when considered as a whole. *See United States of America v. Maynard,* 392 F. 3d 544, 562 (D.C. Cir. 2010). There are insufficient facts in the record that would indicate that law enforcement uncovered Respondent's "familial, political, professional, religious, and sexual associations." *Jones,* 565 U.S. at 415. Because this Court has never held that "potential, as opposed to actual, invasions of privacy constitute searches for purposes of the Fourth Amendment," this case cannot be decided using the Mosaic Theory. *United States v. Karo,* 468 U.S. 705, 712 (1984).

When the Court is tasked with making a decision on the Fourth Amendment, a case must be decided on its facts, not by "extravagant generalizations." *Dow Chem. Co. v. United States,* 476 U.S. 227, 238 (1986). Without any evidence that the whole of Respondent's movements were uncovered, the Court of Appeal's ruling that warrantless usage of ALPR is unconstitutional should be reversed because Respondent does not have a recognized expectation of privacy when he is traveling through public thoroughfares. *Knotts,* 460 U.S. at 276.

3. Any Intrusion on Respondent's Privacy Was Minimal In Light Of The Danger To Public Safety Posed By An Armed Shooter Who Threatened To Strike Again.

Public safety is the paramount concern of law enforcement. ALPR serves public safety because it allows police officers to identify vehicles that are associated with Amber Alerts and missing persons, stolen vehicles, and stolen license plates. R. at 38. The use of ALPR is especially

useful in a case such as this, where there is a shooting in a large area and police were unable to respond to the scene fast enough to arrest the perpetrator.

In the immediate aftermath of the shooting, police were faced with fifty vehicles, any of which could have been used by the shooter to flee the scene. R. at 3. They already knew that the perpetrator used some sort of assault rifle to commit the crime. R. at 2. They also knew that there were forty unidentified people who fled the scene on foot. *Id.* It was reasonable that one of the people who fled on foot was the shooter, that the shooter stole the assault rifle from a registered owner, or that an owner lent their assault rifle to the shooter. Although the ALPR data did not show that Respondent was at the park at the time of the shooting, it did show that he had significant overlap with someone who was. R. at 4.

Lastly, California recognizes that the use of ALPR has the potential to infringe individual privacy. *See generally* Cal. Stat. §1798.90.51 (2022). This is why the state has multiple safeguards to protect individuals if an officer decides to abuse ALPR data. To avoid this abuse in the first place, officers are trained in how to use ALPR and a record is kept of which officers accesses ALPR information and when they do so. San Diego Manual at 4. In the event that an officer uses ALPR for personal or unauthorized reasons, California law provides the individual with a civil remedy. Cal Stat. §1798.90.54 (2022).

The use of ALPR in this case did not intrude on any recognized expectation of privacy. Law enforcements accessed ALPR data in accordance with police practice in the state. Consequently, the Court of Appeal erred in finding that the use of ALPR required a search warrant. Therefore, this Court should reverse the decision of the Court of Appeal and remand the case for further proceedings.

C. THE PLACING OF THE POLE CAMERA DID NOT CONSTITUTE AN UNREASONABLE SEARCH WITHIN THE MEANING OF THE FOURTH

AMENDMENT BECAUSE IT ONLY CAPTURED WHAT WAS EXPOSED TO THE PUBLIC FROM THE STREET LEVEL.

Police are not required to obtain a warrant to observe something that is visible to the naked eye. *California v. Ciraolo,* 476 U.S. 207 (1986). Here, police were able to watch Respondent's driveway through their use of a camera that was placed on a utility pole. R. at 4, 7. Unlike the inside of a house, the expectation of privacy associated with a driveway depends on the visibility from the street. *United States v. Magana,* 512 F.2d 1169, 1171 (9th Cir. 1975).

Respondent may argue that the two-week surveillance of his home with the camera was an unreasonable search. However, it has long been established that law enforcement can enhance their natural senses with technology without violating a person's Fourth Amendment rights. *Knotts,* 460 U.S at 283. Under the 'general public use' standard that was set out in *Kyllo*, it would be improper to find that the placing of a camera to surveil the front of Respondent's home was an unconstitutional search. *Kyllo*, 533 U.S. at 35. Security cameras are in general public use. People are recorded virtually everywhere that they go: businesses, libraries,

Two weeks is also significantly less time than the long-term surveillance that federal courts have upheld. *See United States v. Tuggle*, 4 F. 4th 505 (7th Cir. 2021)(holding that the warrantless eighteen month surveillance of the front of a home did not violate the Fourth Amendment because it only provides a limited view of a person's life); *United States v. Houston,* 813 F. 3d 282 (6th Cir. 2016)(holding that the warrantless ten-week monitoring of the front of a trailer home because law enforcement has the right to access utility poles and the only images captured were those that were plainly visible to any passersby); *United States v. Bucci*, 582 F. 3d 108 (1st Cir. 2009)(upholding the warrantless eight month surveillance of the front of a home because there is no expectation of privacy was established).

Nothing in the record indicates that police were able to see more with the camera than they would have been able to if officers had been stationed in front of Respondent's home. Thus, the Court of Appeal erred in finding that the short-term surveillance of Respondent's home in reference to an ongoing investigation should have been excluded as evidence.

II. THE ENTRY AND SEARCH OF RESPONDENT'S HOME DID NOT VIOLATE HIS FOURTH AMENDMENT RIGHTS BECAUSE POLICE HAD PROBABLE CAUSE AND ACTED IN ACCORDANCE WITH THE EXIGENT CIRCUMSTANCES EXCEPTION.

The Fourth Amendment of the United States Constitution protects "[t]he right of the people to be secure … against unreasonable searches and seizures." U.S. Const. amend. IV. Warrantless searches are per se unreasonable in the absence of well delineated exceptions. *Katz*, 389 U.S. at 357. One such exception is a search conducted pursuant to an exigency. *Kentucky v. King*, 563 U.S. 452, 455 (2011). Under exigent circumstances, police are justified in searching otherwise constitutionally protected areas where probable cause exists to conduct the search. *Id*. at 459. Probable cause has often been defined as facts that would cause a reasonable person to believe that a crime has been or is being committed by the person to be arrested. *Payton v. New York*, 445 U.S. 573, 602 (1980). It is the government's burden to prove that the intrusion is justified. *Id*. at 587. If the government fails to establish probable cause or exigent circumstances, the evidence must be suppressed. *Id*.

A. OFFICERS HAWKINS AND MALDONADO HAD PROBABLE CAUSE TO ENTER AND SEARCH THE RESPONDENT'S HOME BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

On September 29, 2021, at approximately 6:00 p.m., an estimated thirty minutes after McKenney left Respondent's home, Officers Hawkins and Maldonado were dispatched to Respondent's home to investigate. R. at 4. Upon arriving at the home, the Officers questioned the

Respondent outside of the front door about his rifle. *Id*. The Officers entered the Respondent's home only after they established probable cause which first began as reasonable suspicion.

1. The Officers Had Reasonable Suspicion Prior To Their Arrival At Respondent's Home Based On The Evidence Gathered Through Their Investigation.

The Court has established that probable cause is the only acceptable standard to create a reasonable search or seizure; however, officers can begin with reasonable suspicion, a lesser standard, and rise to the probable cause standard. In *Alabama v. White*, the Court stated that reasonable suspicion is a less demanding standard than probable cause because it "arises from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990). Further, the Court recognized that both standards are "dependent upon both the content of information possessed by police and its degree of reliability. Both factors, quantity and quality, are considered in the totality of the circumstances." *Id*.

This Court has long held that both the reasonable suspicion and probable cause standards do not have a set legal definition as they are "commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act." *Ornelas,* 517 U.S. at 695 (citing *Illinois v. Gates*, 462 U.S. 213, 231 (1983)). Further, "these two legal principles are not "finely-tuned standards," [t]hey are instead fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed." *Ornelas,* 517 U.S. at 696 (citing *Gates*, 462 U.S. at 235).

In this case, law enforcement officers had reasonable suspicion to believe that Respondent had a significant role in the Balboa Park shooting and was more than likely armed and dangerous based on the evidence discovered through their extensive investigation. Following the Balboa Park shooting on September 14, 2021, law enforcement dispatched numerous methods to find the

shooter. R. at 3. Law enforcement began with surveillance footage within and surrounding the Balboa Park which provided two important pieces of evidence. *Id*. First, forty individuals fled the scene on foot; none of which were identifiable by police. *Id*. Second, fifty vehicles, one of which was owned and driven by McKennery, were seen leaving Balboa Park before police arrived. *Id*. None of the fifty vehicle owners had a criminal record. *Id*. Next, police obtained the list of the fifty assault rifle owners within the area. Although none of the fifty vehicle owners appeared on the list of fifty assault rifle owners, Respondent did. *Id*.

At this point in time, all fifty assault rifle owners, including Respondent, are reasonably considered to be possible suspects of interest as they owned the same or similar weapon used in the Balboa shooting. With this evidence and reasonable inferences in mind, law enforcement made no invasion of privacy of any individual, and instead continued their investigation. Next, "police accessed the Automatic License Plate Recognition ("ALPR") database to investigate the movements" of the fifty vehicle owners who fled the Balboa Park shooting (including McKennery) and the fifty individuals on the assault rifle list (including Respondent). *Id*. Police cross-referenced both groups of individuals and discovered that Respondent and McKennery were in the same location at similar times a substantial number of occurrences. *Id*. This evidentiary discovery heightens law enforcement's reasonable suspicion that Respondent was involved in the shooting because it demonstrates that McKennery, the owner of one of the fifty vehicles that fled the scene, had been in the same locations at the same times as the Respondent, who was owner of an M16; the same weapon used in the Balboa Park shooting.

Police continued to narrow down the list of possible suspects and leads by identifying ten residences on the assault rifle list "that corresponded the most to the driving location data of the fifty vehicles." *Id*. On September 24, 2021, police started monitoring the ten homes for any

suspicious behavior. *Id*. This information also supports law enforcement's reasonable suspicion as it demonstrates that McKennery has a direct connection to the Respondent's home, where a known M16 resides. Finally, on September 29, 2021, police captured footage of McKennery entering the Respondent's driveway, handing Respondent a large duffle bag, and then leaving. *Id*. This evidence is enough to provide a reasonable and prudent police officer a well-founded belief that Respondent and McKennery played a significant role in the Balboa shooting as McKennery was confirmed fleeing the Balboa Park shooting, Respondent owned an M16, the make and model of the weapon used at the shooting, and Respondent knew McKennery well enough as to invite him to his home. Furthermore, police had reason to believe, based on their experience and evidence already collected, that the duffel bag most likely contained contraband due to its size and the parties conducting the trade.

2. The Officers' Reasonable Suspicion Rose to Probable Cause Based On the Totality of the Circumstances Once Officers Arrived to the Respondent's Home

In *Brinegar v. United States*, the Court reiterated the probable cause standard as "exist[ing] where 'the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed." *Brinegar v. United States*, 338 U.S. 160, 175 (citing *Carroll v. United States*, 167 U.S. 132, 162 (1925)). Here, Officers Hawkins and Maldonado, were dispatched to the Respondent's home for further investigation following the camera surveillance footage of McKennery trading the duffel bag with the Respondent on the afternoon of September 29, 2021. R. at 4. Officers Hawkins and Maldonado arrived at the Respondent's home approximately 30 minutes after McKennery left the premises. *Id*.

At this time point, the Officers had reasonable suspicion to believe that Respondent most likely participated in the Balboa Park massacre because of his substantial personal connection to McKennery, the suspicious transaction of the large duffel bag, and the undeniable fact that Respondent owned an M16, the same weapon used in the Balboa Park shooting. Upon their arrival to the home, the officers questioned Respondent outside his front door about his M16. *Id*. Officer Hawkins and officer Maldonado had personal knowledge of facts and evidence obtained prior to their arrival: Respondent owned an M16 assault rifle that should have been disabled, and maintained a substantial connection to an individual who fled the Balboa Park shooting.

Further, their conversation with Respondent reasonably led them to believe that his inherited M16 assault rifle was not disabled as required by California law. During their conversations, Respondent admitted to still being in possession of the weapon and when Officer Hawkins asked, "[y]ou were required to render it inoperable within ninety days of receiving it. Didn't your father pass away, what, five years ago? You should have nothing to worry about then." R. at 23. Respondent immediately began to exhibit strange and suspicious behavior. His response to Officer Hawkins was, "I suppose," to which Officer Hawkins followed with, "[w]ell, do you have nothing to worry about?" *Id*. Instead of answering in a normal fashion, respondent stared at the officers for five seconds, with no response. *Id*. Respondent provided several excuses for the officers not to see the weapon before finally offering to bring it to the officers' himself. This conversation, coupled with the factual evidence obtained prior to their arrival to the home, warranted the officers the reasonable belief that two possible offenses were committed. First, that the weapon that should have been made inoperable more than four years ago was not. Second, Respondent played a significant role in the Balboa Park shooting. This is derived from the fact that

the exact weapon that Respondent owned has not been confirmed as inoperable and is the same weapon used in the massacre.

The *Brinegar* Court recognized that the Fourth Amendment strikes a balance between public safety and the protection of individual rights and liberties as it seeks to "give fair leeway for enforcing the law in the community's protection." *Brinegar,* 338 U.S. at 176. On duty officers are allowed to make mistakes, as they are often confronted with ambiguous situations, however those mistakes must be from "reasonable men, acting on facts leading sensibly to their conclusions of probability." *Id*. In this case, officers Hawkins and Maldonado did not make a mistake. The officers did not act on reasonable suspicion alone; instead, they obtained the necessary probable cause before entering the home to search and retrieve Respondent's nondisabled M16; the exact same weapon used to massacre nine unexpecting individuals and the exact same weapon Respondent intended to step into the house to retrieve.

In *Illinois v. Gates*, the Supreme Court restored the probable cause standard to its intended totality of the circumstances analysis. The Court stated that the totality of the circumstances approach is more consistent with probable cause precedent. Most importantly, the probable cause standard deals with probabilities which "are the factual and practical considerations at every life on which reasonable and prudent men, not legal technicians, act." *Gates*, 462 U.S. at 231.

In the case at hand, the evidence collected must be viewed and considered, not under formal legal analysis, but as understood by officer Hawkins and Officer Maldonado as they obtained the information during the investigation, and when they were at Respondent's home. Both officers knew, based on the evidence, that McKennery and Respondent were connected, and confirmed such when they witnessed first-hand the transaction of a large duffle bag between them. When sent to investigate, Respondent exhibited strange behavior. Respondent offered to retrieve his weapon

that the officers had reason to believe was usable and capable of extreme danger and harm. Officers Hawkins and Maldonado obtained probable cause, under the totality of the circumstances, to reasonably believe that Respondent intended to retrieve a potentially dangerous weapon that was most likely used at the Balboa shooting.

B. OFFICERS HAWKINS AND MALDONADO DID NOT VIOLATE RESPONDENT'S RIGHTS BECAUSE THEY ENTERED AND SEARCHED HIS HOME UNDER EXIGENT CIRCUMSTANCES.

In this case, Officers Hawkins and Maldonado had reason to believe that Respondent was a danger to them, and others. Acting under the exigent circumstances exception, the officers entered and searched Respondent's home. In *Brigham City, Utah v. Stuart,* the Supreme Court recognized its precedent that generally, warrants are required to search an individual's person, home, or effects unless 'the exigencies of the situation' makes the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006)(citing *Mincey v. Arizona,* 437 U.S. 385, 393 (1978)). An example of an exigency of this caliber is law enforcement's immediate need to provide aid to the seriously injured, those threatened with injury, and the need to protect life.

1. Based on the Totality of the Circumstances, Respondent Was An Immediate Danger to All Individuals Associated With The Local Schools As Targets Of A Second Shooting.

Before fleeing the scene of the Balboa Park shooting, McKennery left behind a "Manifesto" in which he explained, "my friends and I are going to show this world there's nothing. Nothing but despair. We're going to do this again. Get ready. Soon." R. 2-3. Although the Manifesto's threats were false and only intended to mislead law enforcement, that was unbeknownst to law enforcement upon its discovery. Law enforcement was entitled to assume the Manifesto's threats were a legitimate danger to the greater public for two reasons. First, the shooter

already demonstrated his willingness to partake in violence and a severe reckless indifference to the value of human life when he intentionally gunned down nine innocent individuals. Second, neither the shooter nor the M16 were apprehended at the Balboa Park shooting. This demonstrates that this dangerous and violent individual was free in the general public; capable of causing harm to any number of individuals at any given time with an automatic assault rifle.

Law enforcement's concern of a second massacre was legitimized on September 28 when police received an anonymous call from a telephone booth in which the caller provided, "[t]his is the Balboa Park shooter. This time, it's gonna be a school." R. at 4. As demonstrated in *Gates*, when considering the weight to give to an informant tip in a probable cause analysis, law enforcement will use the totality of the circumstances approach, while taking into consideration the veracity, reliability, and basis of knowledge of the informant's tip. *Gates*, 462 U.S. at 238. Further, "a deficiency in one may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id*. In this case, the anonymous phone call was the second threat that law enforcement received confirming the imminence of another shooting. Addressing the reliability of the anonymous phone call, there is a high probability that the anonymous caller was in fact the Balboa Park shooter, who was never apprehended, because the Manifesto was not released to the public at the time and only law enforcement and the actual shooter knew of a possible second threat.

The exigent circumstances in this call fall under the emergency aid doctrine as law enforcement had to prevent the further loss and injury to all individuals associated with local schools as they were directly targeted by. Based on the severe threats provided by the Manifesto and anonymous phone call; law enforcement had reason to believe that a second shooting was going to be carried out soon. Law enforcement was responsible for responding as efficiently and

as quickly as possible to prevent more serious injuries and deaths to the innocent public, especially all individuals in local schools which were considered potential targets.

The Ninth Circuit Court of Appeals also recognized the significance of the emergency aid by adopting a two-step analysis to decide whether there was a legitimate need for law enforcement to protect themselves and others; thereby allowing them to act under the exigent circumstances analysis. In *United States v. Snipe*, the Ninth Circuit stated the test which first asks, under the totality of the circumstances, "whether law enforcement had an objectively reasonable basis for concluding that there was an immediate need to protect others or themselves from serious harm." *United States v. Snipe,* 515 F. 3d 947, 951 (9th Cir. 2008). And second, "whether the search's scope and manner were reasonable to meet the mind." *Id*.

In this case, law enforcement had a reasonable basis for concluding that there was an immediate need to protect others, because there were two separate threats provided to law enforcement that only the shooter and his accomplices would be aware of. Based on these threats, police had reason to believe that the Balboa Park shooter was not working alone, and was going to target a school next. Police were entitled to take reasonable measures to protect the lives of their own law enforcement officers who would be investigating and responding to threats, and the general public at any local school who were now threats. Under the second prong of the analysis, the search's scope and manner were reasonable because Officers and Maldonado entered the home only when they had probable cause to believe that Respondent was connected to the Balboa Park shooting, and maintained the same make and model of the weapon used in the massacre, and it was unknown whether the assault rifle was rendered inoperable as required by law. In their execution of the search, the officers discovered the rifle on the bed in Respondent's bedroom. Under the Ninth Circuit's two prong-test, Officers Hawkins and Maldonado were privileged to

enter and search Respondent's home under the exigent circumstance exception to protect themselves and the threatened general public.

2. Based on the Totality of the Circumstances, Respondent was an Immediate Danger to Officer Hawkins and Officer Maldonado.

Officers Hawkins and Maldonado had reason to believe that Respondent and McKennery were connected to the Balboa Shooting, based on the totality of the circumstances, for several reasons. First, the car location data of both McKennery and the Respondent demonstrated that they were often in the same place at the same time. Further, McKennery was confirmed fleeing the scene by vehicle on the day of the Balboa Park shooting. The Respondent was a confirmed owner of an M16, the same assault rifle used in the Balboa Park shooting. Next, McKennery was seen on surveillance footage driving into the Respondent's driving and handing him a large duffle bag before leaving the premises. Finally, when conversing with the Respondent outside his front door, the Respondent began exhibiting strange behavior and offered to retrieve the weapon for law enforcement; however, this was a proven dangerous situation for the officers as they had reason to believe the weapon was not rendered inoperable as required by California law.

C. THE FRUIT OF THE POISONOUS TREE DOCTRINE IS INAPPLICABLE IN THIS CASE BECAUSE ALL SEARCHES CONDUCTED WERE LAWFUL.

The Court of Appeals argues that under the fruit of the poisonous tree doctrine, the Respondent's M16 assault rifle and confession of lending the weapon to McKennery should be suppressed because they were derived from illegal searches conducted by the ALPR and pole-mount cameras. Further, the Court of Appeals argues that the officers could not establish probable cause for their search of the home without the illegal searches conducted by the ALPR and the pole-mount camera. The Court of Appeals erred in its analysis and ruling against the Petitioner because all searches conducted in this case satisfied Fourth Amendment requirements.

In *Wong Sun v. United States*, this Court stated, "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" Wong Sun v. United States, 437 U.S. 371, 488 (1963)).

Officer Hawkins and Officer Maldonado had probable cause to enter the home, and act under the Fourth Amendment's exigent circumstances exception. Thus, the warrantless search of the Respondent's home was constitutional, and any evidence derived from it is admissible and is not barred by the fruit of the poisonous tree doctrine.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this court reverse the California Court of Appeal's holding that the use of ALPR to locate a mass shooter and the entry and search into Respondent's home under exigent circumstances was unconstitutional.