Team 33

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

Fourth Appellate District

BRIEF FOR THE PETITIONER

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ISSUES PRESENTED

I. Individuals do not have a reasonable expectation of privacy, under the Fourth Amendment, in information they knowingly expose to the public. Nadauld voluntarily conveyed his license plate and vehicle location information when he traveled through public thoroughfares; and the ALPR's system only captured and stored this limited publicly observable information. Did accessing that information convert lawful public observation into an unlawful search, violating Nadauld's Fourth Amendment rights?

II. Officers may enter and search an individual's home without a warrant if they have an objectively reasonable basis for believing that there is an imminent threat to their safety or the safety of others. The San Diego community was in a state of peril since the Balboa Park shooter was at large and issued threats of future shootings; and officers had reason to believe Nadauld was connected to this crime because he owned an automatic assault rifle, was associated with another potential suspect, and gave officers reason to believe he was not complying with state gun laws. Did officers' have an objectively reasonable basis for believing there was an imminent threat to the city of San Diego and themselves, justifying their warrantless entry and search of Nadauld's home?

STATEMENT OF THE CASE

A. Police Are Left with Few Leads Following the Balboa Park Shooting.

On September 14, 2021, nine people were killed and another six were injured in a mass shooting that took place in Balboa Park. R. at. 2. Unbeknownst to the crowd gathered in the plaza, there was a masked shooter atop a nearby rooftop ready to open fire with a M16A1 ("M16") automatic assault rifle. *Id.* After two weeks of investigating, police identified Frank McKennery ("McKennery") as the "Balboa Park shooter." *Id.*

Police were unable to identify the shooter before he fled the scene, but they were able to confirm he used an assault rifle, based on the ammunition fired. *Id.* Additionally, a bystander provided police with a "Manifesto" he found on the rooftop, which concluded with: "[m]y friends and I are going to show this world that there's nothing," and, "[w]e're going to do this again." R. at 1, 36. Police began investigating the crime but were left with limited leads because surveillance footage was too blurry to identify the forty individuals fleeing the park on foot. R. at 3. The manifesto also did not provide the police with any leads. *Id.* However, police were able to investigate the fifty vehicles that fled the scene, one of which belonged to McKennery. *Id.* Police also reviewed a list of registered assault rifle owners in the area, which included Respondent Nick Nadauld ("Nadauld" or "Respondent"), who owned the M16 used by the shooter. R. at 2–3.

B. Police Cross-Reference License Plate Scans to Detect Respondent's Association with McKennery.

Still lacking viable leads, police turned to the Automatic License Plate Recognition ("ALPR") system. *Id.* This system, which is typically used to verify vehicle registration, is also useful in canvasing license plates around crime scenes to assist in identifying suspects. R. at 38. ALPR cameras are attached to law enforcement vehicles or deployed at fixed locations, where they collect license plate information from vehicles on public roadways, public property, and

vehicles that are within public view. R. at 39. The cameras are not designed to see into the vehicles, as the purpose of the ALPR system is to identify the vehicle, not the occupants. R. at 40. The database only contains license plate numbers, photos of the vehicles, and the locations where the images were captured; it does not contain any personal identifying information. R. at 38–39. There is no connection to registration or driver's license information. *Id*. The ALPR data resides in a secure facility and is only re-accessible by law enforcement given a legitimate purpose. R. at 38. The data is regularly purged between every sixty days to five years unless it includes evidence in a criminal or civil action or is subject to a discovery request. R. at 38, 40.

Police used this database to investigate the fifty car owners that fled the park, as well as the fifty individuals on the registered assault rifle list. R. at 3. Since the location data alone was insufficient to establish a lead, police cross-referenced the list of car owners with the list of assault rifle owners, to see if anyone who was at the park may have had any connection to a local gun-owner. *Id.* Amongst other pairings, police found substantial overlap between Nadauld and McKennery—frequently placing them at the same location at similar times. R. at 3–4.

Police then surveilled the ten residences belonging to registered assault rifle owners that corresponded the most with location data of the fifty vehicles that fled the shooting. R. at 4. One of these was Nadauld's home. *Id.* Additionally, police sent out notice to those ten residences that police would be coming to their homes to assess whether their assault rifles were compliant with state law that required them to be rendered inoperable. (PEN § 30915). *Id.* Nadauld received his letter on September 27, 2021.

C. Police Receive a Threat of an Additional Shooting and Observe McKennery Drop a Bag Off at Respondent's Residence.

The following day, police received a call from someone who claimed to be the Balboa Park shooter—they threatened that "this time" it would be a school shooting. *Id.* While police

still did not have enough evidence to act on this threat, the next day, September 29, they saw McKennery go to Nadauld's home, hand over a large duffel bag, and leave. *Id.* Officer Hawkins and Maldonado were immediately dispatched to Nadauld's home. *Id.*

D. Officers Discover the Murder Weapon in Respondent's Home, And Nadauld Confesses to Lending it to McKennery.

Officer Hawkins questioned Nadauld about the operability of his gun pursuant to California Penal Code § 30915, which requires inherited assault weapons to be rendered permanently inoperable within ninety days of obtaining title. *Id.* Nadauld hesitated to answer questions and was unwilling to show officers his gun, even though his gun should have been rendered inoperable nearly five years ago when he inherited it. R. at 1, 4, 23. Finally, Nadauld agreed to get the gun, but wanted to go inside his home alone to do so. R. at 4, 23. Fearing Nadauld's unpredictability and the likely possibility that the gun was operable, Officer Hawkins went inside Nadauld's home to retrieve the dangerous weapon himself. *Id.* Officer Hawkins found the gun, questioned Nadauld further, and Nadauld admitted to lending McKennery his gun. *Id.* Police brought him into custody. *Id.*

Police then went to McKennery's home to arrest him, but upon arrival heard a gunshot, and ultimately found McKennery dead inside, appearing to have committed suicide. R. at 4. McKennery left behind a suicide note, where he confessed to the shooting, admitted that he got the gun from a friend, and expressed guilt for what he had done. *Id.* Later, police found a conversation in McKennery's phone records between him and Nadauld, further confirming that Nadauld had lent McKennery his M16. R. at 26–28.

E. Procedural History

Nadauld was indicted with nine counts of second-degree murder, nine counts of involuntary manslaughter, one count of lending an assault weapon under California Penal Code §

30600, and one count of failing to comply with California Penal Code § 30915. R. at 5. Nadauld filed a motion to suppress evidence from the day of his arrest. *Id.* Nadauld claimed that officers violated his Fourth Amendment rights by searching the ALPR database information and his home without warrants. *Id.* The California Superior Court denied that motion, and the Court of Appeal reversed and remanded that judgment. R. at 12, 21. Nadauld filed a petition for writ of certiorari to the California Supreme Court, which was denied. Nadauld then filed a petition for writ of certiorari to the United States Supreme Court, which was granted on September 23, 2022.

SUMMARY OF ARGUMENT

This court should hold that retrieving the license plate and vehicle location information from the ALPR database did not constitute a Fourth Amendment search. Nadauld did not have a reasonable expectation of privacy in the ALPR data because the cameras used only collect publicly visible information and did not physically encroach on Nadauld's private property to collect that information.

Retrieving this data in which Nadauld did not have a reasonable expectation of privacy did not convert the police's lawful observation of public roads into an unlawful search. Storing and accessing the data merely augmented the police's physical observation, and Nadauld cannot assert an expectation of privacy in the database because he does not own it.

Finally, the ALPR database is a substantially more limited tool than surveillance methods which do constitute a search, such as dragnet practices, GPS trackers, and tools that capture information from inside a suspect's home.

This Court should also hold that the officers' warrantless entry and search of Nadauld's home was constitutional. In emergency circumstances, officers may search an individual's home

without a warrant so long as they possess an objectively reasonable basis for believing that there is a threat to their safety or the safety of others. Officers Hawkins and Maldonado had clear reason to believe there was an imminent threat of danger, given that the Balboa Park shooter remained at large and had issued multiple threats of future shootings. They also had an objectively reasonable basis to connect Nadauld to the shooting: Nadauld was a registered automatic assault rifle owner, he was associated with McKennery, an individual who fled from the scene of the crime, and he displayed nervous and evasive behavior when questioned by Officer Hawkins. Police also had reason to fear for their own safety, since Nadauld could have returned to the door with his illegally operable gun and harmed the officers. In the alternative, police were justified in searching Nadauld's home under the traditional exigency analysis, because the facts also support a finding of probable cause.

Thus, this Court should reverse the lower court's decision and deny Nadauld's motion to suppress since his constitutional rights were not violated. But even if this Court disagrees with the above positions, Nadauld's motion to suppress should still be denied since officers would have inevitably discovered Nadauld's connection to the shooting through his text messages with the late McKennery.

STANDARD OF REVIEW

This Court reviews the California Court of Appeal's denial of Respondent's motion to suppress evidence. Since the facts are not at issue in this case, the proper standard for reviewing the legal conclusions regarding the Fourth Amendment is *de novo*. *Ornelas v. United States*, 517 U.S. 690, 691 (1996).

ARGUMENT

I. RETRIEVING PUBLICLY OBSERVABLE INFORMATION FROM THE ALPR DATABASE DID NOT CONSTITUTE A SEARCH UNDER THE FOURTH AMENDMENT.

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. The touchstone of Fourth Amendment analysis is whether a person has a reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 360 (1967). Fourth Amendment protections apply in situations where an individual has a subjective expectation of privacy that society is prepared to recognize as reasonable. *Id.* at 361.

A. Respondent Had No Reasonable Expectation of Privacy in the Information Collected by ALPR.

1. The ALPR Cameras Only Collect Publicly Visible Information.

A person has no reasonable expectation of privacy in what he "knowingly exposes to the public." *Id.* at 351. Therefore, a person cannot have a reasonable expectation of privacy in his publicly exposed vehicle information or his public movements. *See New York v. Class*, 475 U.S. 106, 112–13 (finding no reasonable expectation of privacy in a publicly displayed vehicle identification number); *United States v. Knotts*, 460 U.S. 276, 281 (1983) (finding no reasonable expectation of privacy in a vehicle's public movements). Every circuit that has considered the issue has found that reading license plate numbers does not constitute a Fourth Amendment search.[1]

[1] *See, e.g., United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006) ("The very purpose of a license plate number . . . is to provide identifying information to law enforcement and others."); *United States v. Sanchez*, 612 F.3d 1, 3 n.1 (1st Cir. 2010) ("This initial check of a plainly visible license plate number through public records is not itself a search . . . because there is no reasonable expectation of privacy in such a number."); *Olabisiomotosho v. City of Houston*, 185 F.3d 521, 529 (5th Cir. 1999) ("A motorist has no privacy interest in her license plate number.");

"A person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *Knotts*, 460 U.S. at 281. In *Knotts*, the defendant moved to suppress evidence from the warrantless monitoring of a beeper placed in a chemical container that was transported to his cabin. *Id.* at 277–78. When the driver traveled over 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." *Id.* at 281–82. Monitoring the signal of the beeper thus did not invade any legitimate expectation of privacy, and there was neither a "search" nor a "seizure" within the contemplation of the Fourth Amendment. *Id.* at 285; *see also Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) ("One has a lesser expectation of privacy in a motor vehicle because . . . [i]t travels public thoroughfares where both its occupants and its contents are in plain view.").

Automobiles are also subject to lesser Fourth Amendment protections because they are pervasively regulated by the state. *See Class*, 475 U.S. at 112–13. *Class* established that a person has no reasonable expectation of privacy in a Vehicle Identification Number—the number manufacturers must place on a car's windshield. *Id.* at 113. This Court held it would be unreasonable to expect privacy in an object that by law must be kept visible. *Id.* Anything visible from the exterior of a vehicle "is thrust into the public eye, and thus to examine it does not

United States v. Diaz-Castaneda, 494 F.3d 1146, 1151 (9th Cir. 2007) ("No one can reasonably think that his expectation of privacy has been violated when a police officer sees what is readily visible and uses the license plate to verify the status of the car and its registered owner."); *United States v. Matthews*, 615 F.2d 1279, 1285 (10th Cir. 1980) (finding a license plate in public view subject to seizure); *see also South Dakota v. Opperman*, 428 U.S. 364, 368 (1976) (approving of officers examining license plates as "an everyday occurrence").

constitute a search." *Id.* Thus, no search occurred when officers reached into an unoccupied vehicle to remove papers obstructing the VIN display during a traffic stop. *Id.* at 119.

Here, the ALPR system only captured information that was voluntarily conveyed on public thoroughfares. ALPR cameras are attached to law enforcement vehicles or deployed at fixed locations, "where they collect license plate information from vehicles *on public roadways*, *public property*, and *vehicles that are within public view*." R. at 39 (emphasis added). The cameras are not equipped with red light technology, and "do not have illumination to aid in identifying [drivers]." R. at 40. The database does not contain any personally identifying information associated with these public images, documenting only license plate numbers, vehicle photos, and geospatial locations from the public places where the images were captured. R. at 39. Thus, as in *Knotts* and *Class*, Nadauld did not have a reasonable expectation of privacy in his publicly observable license plate and vehicle location information.

2. The ALPR Cameras Did Not Physically Encroach on Respondent's Private Property to Collect Information.

The court below incorrectly relied on *Jones*, where the warrantless installation of a GPS device onto a target's vehicle constituted a search. *United States v. Jones*, 565 U.S. 400, 404 (2012). The "public thoroughfares" reasoning from *Knotts* did not apply because the officers "did *more* than conduct a visual inspection" of the suspect's vehicle and encroached on a protected area when they reached into the car to attach the GPS device. *Id.* at 410 (emphasis in original). "[T]he Government physically occupied private property for the purpose of obtaining information." *Id.* at 404.

The physical encroachment that *Jones* hinged on is not present here. ALPR scans and stores license plate and vehicle location information without officials physically occupying private property. R. at 38. The cameras are in public locations, not attached to any individual's vehicle,

and are not designed to aid in viewing the interior of vehicles. R. at 39–40. The ALPR system is thus less intrusive than installing a GPS device.

Therefore, Nadauld did not have a reasonable expectation of privacy in the information captured, stored, and referenced in the ALPR system.

B. Retrieving ALPR Database Information in Which Respondent Did Not Have a Reasonable Expectation of Privacy Did Not Convert Lawful Observation into an Unlawful Search.

1. Accessing ALPR Data Merely Augmented Officer's Physical Observation.

In *Knotts*, no search occurred when officers used technology to simply "augment [their] sensory faculties" to track a suspect on public motorways. 460 U.S. 276 (1983). Police could have gathered the same relevant information with visual surveillance from public places along the vehicle's route or near the destination. *Id.* at 282. The fact that officers also relied on the beeper technology to track the defendant's vehicle did not alter the analysis. *Id.* "[S]cientific enhancement of this sort raises no constitutional issues which visual surveillance would not also raise." *Id.* at 285. This Court refused to "equate[] police efficiency with unconstitutionality," reasoning that "[n]othing in the Fourth Amendment prohibit[s] the police from augmenting the sensory faculties bestowed upon them at birth with such enhancement as science and technology afforded them." *Id.* at 284, 282; *see also United States v. Garcia*, 747 F.3d 994, 998 (7th Cir. 2007) (Posner, J.) ("Of course the [Fourth Amendment] cannot sensibly be read to mean that police shall be no more efficient in the twenty-first century than they were in the eighteenth.").

Similarly, *Hufford* held location tracking that augmented physical observation was not a search. *United States v. Hufford*, 539 F.2d 32 (9th Cir. 1976). There, officials suspected the defendant was using caffeine purchased from a chemical company to create illegal methamphetamines. *Id.* at 33. With the chemical company's consent, officials placed an electronic

tracker in a drum of caffeine that the defendant purchased and transported in his truck. *Id.* Officials also placed a second tracking beeper directly inside Hufford's truck pursuant to a court order after officials discovered incriminating evidence. *Id.* at 33–34. Officials could have reasonably observed the vehicle's public movements, so the first device was "merely a more reliable means of ascertaining where Hufford was going as he drove along the public road." *Id.* at 34–35. Thus, Hufford did not have a reasonable expectation of privacy as he drove along the public road, and using the first beeper did not constitute a search. *Id.* at 33. The court below improperly likened ALPR to the second beeper used in *Hufford*, noting that officers did not obtain a court order to access ALPR information. R. at 15. But no court order was necessary because the ALPR system is like the first beeper, merely augmenting public observation.

The court below also incorrectly relied on *Carpenter v. United States*, 138 S. Ct. 2206 (2018) in concluding that using the ALPR database is comparable to accessing a defendant's cell-site location information (CSLI), which constitutes a Fourth Amendment search. R. at 17–18. In *Carpenter*, law enforcement should have obtained a warrant before accessing CSLI from cell phone carriers because such data continually and precisely documents a person's physical location and movements. *Carpenter*, 138 S.Ct. at 2217. There, the location data concerned thousands of location points cataloging the defendant's every move. *Id.* at 2212. Society expects that law enforcement will not "secretly monitor and catalogue every single movement of an individual's car for a very long period." *Id.* at 2217. But this Court also acknowledged that cell phone tracking capability is manifestly different and more precise than license plate tracking capabilities: "[A] cell phone—almost a 'feature of human anatomy'—tracks nearly exactly the movements of its owner. While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time." *Id.* at 2218 (internal citation omitted). Further, "[a] cell phone faithfully follows

its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales." *Id.* "The time-stamped data provides an intimate window into a person's life," revealing "'familial, political, professional, religious, and sexual associations.'" *Id.* at 2217 (quoting *United States v. Jones*, 565 U.S. 400, 415 (2012)).

Here, the ALPR system merely augments public police observation. Using cameras and a database to capture and store publicly-observable information "raises no constitutional issues which visual surveillance would not also raise." *Knotts*, 460 U.S. at 285. The ALPR cameras are stationed in public places, and cannot see or report more than officers observing on the street could. R. at 39–40. The ALPR database may record this information more efficiently than a filing cabinet of physical observations, but the data is still limited. Unlike the extensive cell phone data surveillance in *Carpenter*, the ALPR database is substantially limited to information captured at the discrete points where cameras are located and only contains vehicle information. R. at 38–39. Unlike a cell phone, a license plate does not typically follow its owner beyond public thoroughfares—and if it ever does, it would not be tracked by the public ALPR camera locations. R. at 39. Further, the ALPR data is more limited because it is regularly purged as often as every sixty days. R. at 40. Thus, although efficient, the ALPR system is far more restricted than cell phone surveillance, so searching the database did not constitute a search.

2. Respondent Had No Expectation of Privacy in the Accessed ALPR Data Because He Did Not Own the Database.

This Court has twice held that individuals have no Fourth Amendment interests in records they do not possess, own, or control, even if they contain personal and sensitive information. In *Miller*, the Government subpoenaed a suspect's banks to produce his records while investigating him for tax evasion. *United States v. Miller*, 425 U.S. 435 (1976). This Court rejected Miller's Fourth Amendment challenge because the documents were the banks' business records, and he

could "assert neither ownership nor possession" of them. *Id.* at 440. Additionally, because the records were not confidential and were exposed to bank employees in the ordinary course of business, the nature of the records confirmed Miller's limited expectation of privacy. *Id.* at 442. Miller had thus taken the risk, in revealing his affairs, that the information would be conveyed to the Government. *Id.* at 443.

Smith applied the same principles to information conveyed to a telephone company. *Smith v. Maryland*, 442 U.S. 735 (1979). There, the Government used a pen register—a device that records outgoing phone numbers dialed on a landline telephone. *Id.* at 736. Given the device's limited capacities, the Court doubted that people entertain any actual expectation of privacy in the numbers they dial. *Id.* at 742. When Smith placed a call, he voluntarily conveyed the dialed numbers to the phone company by exposing that information to its equipment. *Id.* at 744. Smith thus assumed the risk that the company's records would be divulged to police, and he retained no Fourth Amendment interests in the information. *Id.* at 745.

Here, Nadauld can assert neither ownership nor possession over the ALPR database. The ALPR data is maintained in a secure facility, and members of the public are unable to access the information. R. at 38, 39. Like the pen register device in *Smith*, the ALPR system has limited capabilities: Data is regularly purged and only re-accessible by law enforcement given a legitimate law enforcement purpose. R. at 38. The system contains no personal identifying information, and scans are limited to public locations. R. at 38, 39. As such, members of the public do not have any actual expectation of privacy in the license plate and location information in the system. Further, like the bank records in *Miller*, the nature of the ALPR data confirms Nadauld's limited expectation of privacy because the information consists purely of publicly-observable data. When people drive in public, they voluntarily convey their license plate and location information to

public observers like the ALPR cameras. Thus, as in *Miller* and *Smith*, Nadauld assumed the risk that his license plate and location information would be divulged to police.

Carpenter considered *Smith* and *Miller*, but did not extend their reasoning to cell phone data because of the "unique nature of cell-site records," reasoning that "there is a world of difference between the limited types of personal information addressed in *Smith* and *Miller* and the exhaustive chronicle of location information casually collected by wireless carriers." *Carpenter*, 138 S.Ct. at 2219–20. *Carpenter* was a narrow holding that did not call into question conventional surveillance techniques, such as security cameras, or address other records that incidentally reveal location information. *Id.* at 2220–21. Justice Kennedy posited in dissent that an individual has no Fourth Amendment interests when the property at hand does not belong to the individual. *Id.* at 2227. "[T]he Fourth Amendment's protections must remain tethered to the text of that Amendment, which, again, protects only a person's own 'persons, houses, papers, and effects.'" *Id.*

Here, the court below applied *Carpenter*'s majority holding beyond the specific scope it was designed to cover. The ALPR data is more akin to the limited information in *Smith* and *Miller* than the extensive CSLI in *Carpenter*. To apply privacy interests here where the searched data did not belong to Nadauld would be to untether the Fourth Amendment from its text and purpose.

C. The ALPR Database is Substantially More Limited Than Surveillance Methods Which Do Constitute a Fourth Amendment Search.

1. The ALPR Database is Substantially More Limited than Dragnet Practices.

The court below improperly likened ALPR to the "dragnet type law enforcement" mentioned in *Knotts*, 460 U.S. at 284. But in *Knotts*, this Court was concerned with "twenty-four-hour surveillance of any citizen," not a limited technique like the ALPR system. *Id.* at 283. As

discussed above, the ALPR database is far more limited than the abuse contemplated in *Knotts*. The *Knotts* Court set forth no standard for "mass surveillance," it merely hypothesized that one day, advanced technology may be abused to violate Fourth Amendment rights. *Id.* The court below broadened this with an uncited standard to characterize "any system of coordinated measures for apprehending criminals" as dragnet practices and concluded that "different constitutional principles" apply. R. at 16. But this conclusion is unfounded and overly broad. Such a standard would impose unworkable restrictions on basic police work.

In *Jones*, the GPS device tracked the precise location of a suspect's vehicle within 50 to 100 feet, generating over 2,000 pages of data over four weeks. 565 U.S. at 403. ALPR does not act as a continuous location indicator. R. at 16. Unlike the extensive and targeted GPS data in *Jones*, ALPR data is sporadic, regularly purged, and substantially limited to vehicles that happen to pass in front of cameras. R. at 6, 38, 40. As the trial court observed, ALPR "creates a sparse collection of datapoints on public roads which reveals little about a person's life." R. at 6. The ALPR system is thus too limited to be analyzed alongside GPS tracking under a dragnet standard.

2. The ALPR Database Did Not Contain Information from Within Respondent's Home.

The court below also incorrectly extended *Kyllo v. United States*, which considered a thermal-imaging device that detected heat from inside a suspect's private home. 533 U.S. 27, 29 (2001). The court below concluded that ALPR, like the thermal imager, is not in general public use, heightening Nadauld's expectation of privacy. R. at 16. But the court neglected to apply the operative point from *Kyllo*: that the technology was used to surveil the interior of a private home. *Id.* at 34. "'At the very core' of the Fourth Amendment 'stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion'" *Id.* at 31 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961). *Kyllo*'s holding was thus expressly limited

to technology obtaining information "regarding the interior of the home." *Id.* at 34. On this narrow basis, this Court concluded the information obtained by the thermal imager was the product of a search. *Kyllo*, 533 U.S. at 34–35.

Unlike the thermal imager in *Kyllo,* which collected data from within a private home, the ALPR database is limited to license plate and location information from vehicles on public roadways and does not store any private information. R. at 39. It is thus irrelevant to weigh whether the ALPR scanning and database technology are in general public use.

In any event, the proper inquiry is not whether the technology carries the potential for any abuse, but whether the Defendant's rights were actually violated. *See United States v. Karo*, 468 U.S. 705, 712 (1984) (holding that a tracking beeper did not inherently constitute a search simply because of the "potential for an invasion of privacy").[2] Any technique can be used to violate a suspect's reasonable expectation of privacy: from a simple pat down using nothing but an officer's hands to the thermal imaging in *Kyllo*. "It is the exploitation of technological advances that implicates the Fourth Amendment, not their mere existence." *Id.* In light of this, this Court has instructed that "Fourth Amendment cases must be decided on the facts of each case, not by extravagant generalizations." *Dow Chemical Co. v. United States*, 476 U.S. 227, 239 (1986). Here, although the court below concerned itself with hypothetical abuses of government surveillance systems, the case must be decided on the particular facts. Ultimately, the ALPR system was used here to access limited, publicly-observable information, and Nadauld's Fourth Amendment rights were not implicated.

[2] *Karo* ultimately held that the way police monitored the tracking beeper in that particular case constituted a search, but only because it was used within a private residence, "a location not open to visual surveillance." *Karo*, 468 U.S. at 713–18.

II. THE OFFICER'S SEARCH OF RESPONDENT'S HOME WAS CONSTITUTIONAL UNDER RELEVANT SUPREME COURT PRECEDENT.

The Fourth Amendment prohibits searches and seizures which are deemed *unreasonable*. U.S. Const. amend. IV. While a warrant is generally required for the search of a home, "the Fourth Amendment's ultimate touchstone is 'reasonableness,'" and therefore provides for certain exceptions to the warrant requirement. *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006). In emergency circumstances, officers may lawfully enter an individual's home without a warrant if they have an "'objectively reasonable basis'" for believing there is "an imminent threat to their safety and to the safety of others." *Ryburn v. Huff*, 565 U.S. 469, 474 (2012) (citing *Brigham City* v. *Stuart*, 547 U.S. 398, 400 (2006)). The court assesses the reasonableness of an officer's actions by viewing them objectively, "without regard to his underlying intent or motive." *Scott v. United States*, 436 U.S. 128, 130 (1978). Most importantly, when reviewing officers' reasonableness, "judges should be cautious about second-guessing a police officer's assessment, made on the scene, of the danger presented by a particular situation." *Ryburn*, 565 U.S. at 477.

A. The Ongoing State of Emergency Resulting from the Balboa Park Shooting Provided Officers an Objectively Reasonable Basis for Officers to Enter Respondent's Home.

1. This Court's Holdings in *Brigham City* and *Ryburn* Require Only an "Objectively Reasonable" Belief that Danger is Imminent to Justify a Warrantless Search.

Officers may lawfully and reasonably search an individual's home without a warrant if both probable cause and exigent circumstances justify doing so. *Kirk v. Louisiana*, 536 U.S. 635, 638 (2002). But in emergencies, officers need only an "objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such injury" to make a warrantless entry. *Brigham City v. Stuart*. 547 U.S. at 403. In *Brigham City*, this Court reviewed conflicting standards with respect to warrantless searches in emergency situations. 547 U.S. at 403. Both

"exigent circumstances" and the "emergency aid doctrine" provided a basis for officers to conduct warrantless searches amid emergency, but the former required an objective finding of probable cause, and the later considered only the subjective motivation behind providing emergency aid. *Id.* at 402. Because of the overlap in where these exceptions to the warrant requirement may apply, (i.e. that a certain type of exigency *is* the need to assist those who are threatened with injury) the Court decided to merge the standards into one for the purposes of emergencies.

Ryburn broadened the scope of *Brigham City's* standard by applying it more generally to circumstances obviating a threat to safety of the officers or to others, as opposed to only occupants of the home. *Ryburn v. Huff*, 565 U.S. at 475. So, the resulting standard, which is applicable here, is such that: an officer may conduct a warrantless search if they have an objectively reasonable basis for believing there is an imminent threat to the safety of themselves or others. *Id.* at 474.

2. Officers Hawkins and Maldonado Possessed the Requisite Objectively Reasonable Belief That Danger was Imminent, Justifying the Warrantless Search.

i. Threats of Future Shootings from the Balboa Park Shooter Put the City of San Diego in Imminent Danger.

In the first six months of 2022 alone, "there have been 277 reported mass shootings—an average of more than one per day." *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2163 (2022) (Justice Breyer *dissenting*).[3] The frequency of mass shootings leaves a constant fear in Americans' minds—this fear is brought to the forefront in the immediate wake of a shooting and is highest when the culprit is at large. The Balboa Park shooting left San Diegans distraught and

[3] The statistic presented by Justice Breyer reflects the number of mass shootings in America from January 1, 2022, through June 20, 2022. *N.Y. State Rifle & Pistol Ass'n*, 142 S. Ct. at 2163 (citing Gun Violence Archive, https://www.gunviolencearchive.org).

fearing for their lives; one survivor noted that "it was something out of my worst nightmares." R. at 29. The nature of this emergency required police to act quickly to restore safety to San Diego.

This Court demonstrated in *Ryburn* that it takes threats of mass shootings seriously. 565 U.S. at 470. In *Ryburn*, the officers' warrantless entry into the Huff's home was reasonable following their son Vincent's threat to "shoot up" his school. *Id.* The officers discovered that Vincent had been bullied at school and that his classmates believed he was capable of shooting up the school. *Id.* His mother displayed unusual behavior by denying the officers permission to see her son and running inside when they asked about guns. *Id.* at 471. The officers were met with sufficient facts to constitute a reasonable belief that danger was imminent. *Id.* at 472. Given the "rapidly evolving incident…courts should be especially reluctant to fault the police for not obtaining a warrant," especially given that an officer does not have the benefit of 20/20 hindsight and calm deliberation that a reviewing court enjoys. *Id.* at 473–74.

Like the officers in *Ryburn*, Officer Hawkins and Maldonado were acting under the belief that outstanding threats of mass shootings were putting the community at risk. R. at 4, 36. In his manifesto, the shooter specifically stated: "We're going to do this again. Get ready. ***Soon***." (emphasis added). R. at 36. And then again, on September 27, 2021—*the day before* police entered Nadauld's home, police received a threat from the shooter, that he was planning on targeting a school. R. at 4. Police therefore had reason to believe that emergency circumstances were ongoing and *imminent*. Further, while the officers in *Ryburn* first had to consider whether the son could even carry out a school shooting, here, there already *had been* a shooting that left nine dead, proving the Balboa Park shooter was completely capable of mass murder. R. at 2. Viewing these circumstances without the luxury of 20/20 hindsight, officers were justified in believing imminent danger threatened the city.

The court below reasoned the investigation at Nadauld's home "was no longer immediate" because it took place two weeks after the shooting. R. at 20. However, this argument completely overlooks that the additional school shooting threat was received the *day before* the police visited Nadauld's home. R. at 4. This threat surely renewed any immediacy that may have waned. And when the officers witnessed two potential suspects exchange a large duffel bag–their opportunity to act on this threat grew and justified immediate police intervention. *Id.*

ii. Respondent's Gun Ownership and Hesitant Demeanor Gave Officers Reason to Fear for Their Safety.

This Court gives great deference to police officers, recognizing that they often submit themselves to particularly dangerous circumstances and may need to act outside the scope of the Fourth Amendment to keep themselves safe. Because of this, there are several carve-outs in the law to protect officers.[4] These carve-outs are the logical response to the reality of police work: officers often act under dangerous circumstances that require them to make "split-second decisions." *Ryburn*, 565 U.S. at 477.

In *Ryburn*, officers had a legitimate reason to fear for their personal safety and thus were justified in entering the Huff's home without a warrant. *Id.* at 475. Because they were investigating the threat of a shooting, and Mrs. Huff's reaction to the question about guns in the home was concerning, police had reason to believe that there were weapons in the home that could harm them. *Id.* Similarly, Officer Hawkins was met with potentially alarming responses when inquiring about Nadauld's assault rifle. R. at 23. Nadauld was evasive and expressed that he did *not* want to

[4] *See, e.g., Kisela v. Hughes*, 138 S. Ct. 1148 (2018) (holding that officers may use deadly force to prevent the escape of a suspect they believe poses a threat of physical harm); *Michigan v. Summers*, 452 U.S. 692 (1981) (noting that officers do not have to have particularized suspicion that a person poses danger to detain them incident to an arrest); *Arizona v. Johnson*, 555 U.S. 323, 330 (2009) (recognizing that even traffic stops are "especially fraught with danger" and that officers may conduct a pat down of someone they believe might be harmed).

show officers his gun. *Id.* This gave the officers reason to believe Nadauld had not rendered his gun inoperable as required by law, which raised particular concern when he finally decided to go back into the house alone to get the gun. *Id.* For all the officers knew, the individual they believed to be connected to a deadly shooting could have returned to the door with a fully operable automatic assault rifle. To prevent this threat, it was reasonable that officers accompany Nadauld to locate the gun, and not stand by like sitting ducks.

B. In the Alternative, Officers Had Probable Cause to Connect Nadauld to the Balboa Park Shooting, Which Justifies a Warrantless Search of His Home in Connection with Exigent Circumstances.

As discussed *supra*, a finding of probable cause is not necessary to justify a warrantless search in emergencies where there is an imminent threat of danger. *Brigham City*, 547 U.S. at 403; *Ryburn*, 565 U.S. at 474. However, where these particular emergency circumstances do not exist, the traditional exigency analysis applies and thus a finding of probable cause is required;[5] for example, where officers need to prevent the imminent destruction of evidence. *See Kentucky v. King,* 563 U.S. 452, 461 (2011).

"A police officer has probable cause to conduct a search when the facts available to him would warrant a person of reasonable caution in the belief that contraband or evidence of a crime is present." *Florida v. Harris*, 568 U.S. 237, 237 (2013). The standard for determining probable cause is based on a totality of the circumstances. *Massachusetts v. Upton*, 466 U.S. 727, 728 (1984). This fluid concept requires only "fair probability on which reasonable and prudent people, not legal technicians, act." *Harris*, 568 U.S. at 237. Probable cause "is not a high bar," and it is one that the officers here clearly meet. *Kaley v. United States*, 571 U.S. 320, 338 (2014).

[5] In the event that this Court declines to apply the "objectively reasonable basis" standard for emergencies set forward by *Brigham City* and *Ryburn*, this finding of probable cause also supports the warrantless search of Nadauld's home under the traditional exigency analysis.

The court below improperly overlooks a key aspect of the probable cause analysis: namely, that it is an assessment of the totality of the circumstances.[6] There is no merit to dismissing facts one-by-one, as the court below did; courts must view "the whole picture" because "the whole is often greater than the sum of its parts—especially when the parts are viewed in isolation." *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018). *See also Ryburn*, 565 U.S. at 476–77 ("[I]t is a matter of common sense that a combination of events each of which is mundane when viewed in isolation may paint an alarming picture."). When viewed together, the following facts all contribute to a reasonable finding of probable cause.

1. Respondent's Known Ownership of an Automatic Assault Rifle, the Same Gun Used in the Shooting, Contributes to Officers' Finding of Probable Cause.

Nadauld was one of fifty registrants in the area who owned the type of gun used to carry out the shooting. R. at 3. Since surveillance footage could not capture the shooter's identity and was too blurry to identify the other forty individuals who fled the park, this list provided police with one of the few concrete leads they had in investigating the egregious crime. *Id.* The court below takes issue with this list—arguing that it is underinclusive since it does not consider assault rifle owners across the state or country, off-duty military or law enforcement, and individuals who illegally converted semi-automatic weapons. R. at 19. However, police should not be limited in developing probable cause until they exhaust all possible investigatory alternatives (especially ones that would be impossible to find, or extremely time consuming); this would create an unworkable standard that would ultimately inhibit the efficiency and success of law enforcement.

[6] The court below makes only one mention of the "totality of the circumstances" standard, at the very end of its probable cause analysis: "Considering the totality of the circumstances regarding Appellant and the action of Officer Hawkins, we find that law enforcement did not have probable cause to enter and search Appellant's home." R. at 20. Neither this sentence, nor the rest of the court's analysis lends itself to meaningfully consider the interaction of the facts at issue, and how together, they could establish probable cause.

2. Respondent's Association and Recent Interaction with McKennery Further Tied Him to the Balboa Park Shooting.

ALPR information confirmed that Nadauld was associated with McKennery, an individual whose car was identified as fleeing the scene of the shooting. R. at 3–4. This data showed that McKennery and Nadauld were frequently in the same location at the same time and led police to surveil Nadauld's home. *Id.* Most notably, police witnessed McKennery deliver a duffle bag, large enough to hold an assault rifle, to Nadauld's home the day after there had been another mass shooting threat. R. at 4. Witnessing this motivated the police to go straight to Nadauld's home. *Id.* The mere fact that Nadauld and McKennery's interactions are "susceptible of innocent explanation" does not require the officers to rule out the plausible explanation they had reached—that McKennery and Nadauld were working together. *Wesby*, 138 S. Ct. at 588; *see also Illinois v. Gates,* 462 U.S. 213, 243 n.13 (1983) ("In making a determination of probable cause the relevant inquiry is not whether particular conduct is 'innocent' or 'guilty,' but the degree of suspicion that attaches to particular types of noncriminal acts."). On top of this, police had reason to suspect the shooter was not working alone—as evidenced by the language in the shooter's manifesto, which a bystander found left behind at the scene. R. at 29–30, 36. The manifesto suggested multiple people were involved, stating: "my friends and I are going to show the world that there's nothing," and "we're going to do this again." R. at 36. This language provides police reason to look for multiple individuals—and McKennery and Nadauld fit the bill. Police knew Nadauld owned an automatic assault rifle and that McKennery was present during the mass shooting, so witnessing them exchange a bag large enough to hold an assault rifle weighed in favor of finding probable cause.

3. Respondent's Reluctant Responses to Officer's Questioning Also Supported Probable Cause.

A suspect's nervous and evasive behavior when speaking to police also contributes to a finding of probable cause. *Wesby*, 138 S. Ct. at 587–88 (2018). *See also Ryburn*, 565 U.S. at 476 (disagreeing with lower court's position that "conduct cannot be regarded as a matter of concern so long as it is lawful," when considering the defendant's decision to run into her home mid-discussion with police). Nadauld's responses throughout the conversation with Officer Hawkins were evasive, demonstrated a hesitance to comply, and made it apparent that he was nervous about being caught for something.

Nadauld's first response to Officer Hawkins was, "[d]id I do something wrong?" R. at 23. When Officer Hawkins asked if he still owned the M16, Nadauld replied, "um…," and then when asked to show officers his gun, Nadauld replied, "I don't want to show you that now." *Id.* While Officers arrived at Nadauld's home before the date specified in the letter, his refusal to retrieve his gun still warranted concern—especially considering his gun should have been rendered inoperable five years ago anyway. R. at 2, 4. The court below deemed these responses "perfectly reasonable" since Nadauld did not expect officers to come for a month, but this Court's holding in *Ryburn* makes clear that even seemingly "reasonable" responses can raise suspicion. R. at 19.

Officer Hawkins also reminded Nadauld, that these questions were of particular interest given the Balboa Park shooting. R. at 23. Nadauld's knee-jerk response was that he "didn't have anything to do with that." *Id.* Someone who truly had nothing to do with a crime of this nature, would likely be even more willing to comply with officers' requests—especially if doing so would exculpate them. And conversely, hesitation to comply lends itself to the assumption that the individual has something to hide.

Considering the *entire picture*, as precedent requires this Court to do, officers were justified in believing that Nadauld's home contained evidence related to the Balboa Park shooting.

4. The Officers' Entry Was Justified by the Need to Prevent the Imminent Destruction of Evidence.

Officers may conduct warrantless searches to prevent the immediate destruction of evidence, so long as the police do not "manufacture" such exigency. *Missouri v. McNeely*, 569 U.S. 141, 149 (2013); *King*, 563 U.S. at 461, 131 S. Ct. 1849, 1857 (2011) (finding police did not "manufacture" exigency by knocking and announcing their presence).

As discussed *supra*, officers had sufficient reason to believe Nadauld and McKennery were working together, and that Nadauld may have lent McKennery his assault rifle. R. at 3–4. This suspicion was compounded when McKennery delivered a duffel bag large enough to hold an assault rifle to Nadauld's home. R. at 4. After witnessing this exchange, police immediately dispatched to Nadauld's home to investigate his weapon, since a major aspect of the officers' theory depended on their belief that Nadauld was in violation of California law that required him to have rendered his gun *permanently inoperable* years ago. *Id.*; (PEN § 30915). Officer Hawkins asked Nadauld simple questions about his gun and whether it was compliant with state law—but his evasive answers raised concern. R. at 23. His hesitant responses supported what the officers already believed—his gun was still fully operable. So, when he finally agreed to retrieve the weapon, Officer Hawkins could have reasonably feared that he could go back into his home, render his gun inoperable, and erase the potential evidence that he was in violation of section 30915. *Id.* It was therefore reasonable that Officer Hawkins entered Nadauld's home for the limited purpose of retrieving and confirming the identity of the potential murder weapon.

C. Even if this Court Finds the Search was Unconstitutional, Suppression of Nadauld's Confession Under the Fourth Amendment is Not Warranted Since Police Would Have Inevitably Discovered Respondent's Connection to the Shooting.

To deter violations of the Fourth Amendment, evidence obtained as a result of unconstitutional police conduct ("fruit of the poisonous tree") may sometimes be excluded. *Utah*

v. Strieff, 579 U.S. 232, 235 (2016). However, there are exceptions to this doctrine: for example, the inevitable discovery doctrine allows for evidence to be admitted if it "would have been discovered even without the unconstitutional source." *Id.* at 238. *See also Nix v. Williams*, 467 U.S. 431, 444 (1984) (finding defendant's incriminating testimony about the location of his victim's body obtained in violation of his Sixth Amendment rights admissible because it would have been inevitably discovered by the search party).

Police would have inevitably discovered that McKennery had borrowed the assault rifle from Nadauld. McKennery's death note, which police would have inevitably found,[7] explicitly stated that he "got the rifle from another guy." R. at 37. This would have created an even greater need for police to examine McKennery's phone, email, and any forms of social media, to see who he might have acquired the gun from. In McKennery's text messages officers would have seen, as FBI forensics did in fact find, a conversation between McKennery and Nadauld where McKennery confessed to loaning the gun, despite knowing he was not legally allowed to do so. R. at 26–28. It would therefore be unreasonable, as it was in *Nix*, to exclude Nadauld's confession–since the text messages would have inevitably led police to the exact same conclusion.

CONCLUSION

For these foregoing reasons, this Could should REVERSE the ruling of the California Court of Appeal.

Dated: October 18, 2022

Respectfully Submitted,
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[7] McKennery, at the time he shot himself, was not aware that police had interacted with Nadauld; additionally, since the police heard the gunshot as they approached McKennery's home, it can be confidently said that McKennery intended to kill himself regardless of whether he thought he would be caught, because of the deep remorse he felt. R. at 4, 37.