In the Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,

v.

NICK NADAULD,
Respondent.

No. 1788-850191

BRIEF FOR PETITIONER

COUNSEL FOR PETITIONER

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STATEMENT OF THE ISSUES

I. A Fourth Amendment search occurs whenever there is a governmental invasion of a reasonable expectation of privacy. A person traveling in an automobile does not have a reasonable expectation of privacy in their movement on public roads. Police accessed an Automatic License Plate Recognition database to identify Defendant's movements. The database gave police limited information about where Defendant's automobile had been. Did accessing the database constitute a search under the Fourth Amendment?

II. The Fourth Amendment protects an individual's person, houses, papers, and effects from unreasonable searches. The government must generally obtain a warrant supported by probable cause, although various exigent circumstances allow the warrantless, nonconsensual entry and search of a home. The police entered Defendant's home to retrieve a gun used in a mass shooting after receiving a school shooting threat. Did the entry and search of Defendant's home violate his Fourth Amendment rights?

STATEMENT OF THE CASE

Statement of the Facts

On September 14th, 2021, a masked shooter with an M16A1 opened fire from a rooftop in Balboa Park. R. at 2. The shooter left nine dead and six injured. R. at 2. The unidentified shooter escaped from the scene leaving two pieces of evidence behind: bullet cases from the shots fired and a "Manifesto." R. at 2.

The bullet rounds, 5.56x45mm NATO cartridges, are used with automatic rifles. R. at 2. The "Manifesto" stated the motive behind the shooting. R. at 2-3. The shooter indicated that they hated the world due to their upbringing and current life. R. at 36. In the "Manifesto," the shooter claimed that he and his friends were "going to show the world that there's nothing but despair." R. at 36. The "Manifesto" threatened future shootings by stating that they "will do this again." R. at 36.

The shooting led to a two-week-long investigation by law enforcement. R. at 2. Law enforcement began by analyzing surveillance footage from security cameras at Balboa Park. R. at 3. Security cameras showed people fleeing the scene. R. at 3. Forty people left by foot and fifty by vehicle. R. at 3. The blurriness of the camera footage made it impossible for law enforcement to identify the people who fled by foot. R. at 3. Without many additional options, R. at 31, law enforcement retrieved information from the Automatic License Plate Recognition ("ALPR") database for the vehicles on the scene. R. at 3.

ALPR systems, used by law enforcement agencies, catch images of license plates and compile them in a database. R. at 38. The system shows license plate numbers, photos of the vehicles, and geospatial locations. R. at 38-39. They do not have illumination to identify the driver

on the inside of the vehicle, because their purpose is only to identify the vehicle, not the occupants. R. at 40.

In addition to the ALPR database, law enforcement accessed the list of non-law enforcement registered assault rifle owners. R. at 3. Nick Nadauld ("Defendant") appeared on the list of registered assault rifle owners. R. at 3. Defendant inherited the rifle through a notarized will and testament. R. at 2. Police cross-referenced the vehicle movements of both groups. R. at 3. This analysis demonstrated an overlap of locations by various pairings, which included Defendant and McKennery. R. at 3-4. The locations were narrowed down to ten residences, which included Defendant's home. R. at 4.

On September 24, 2021, police placed cameras facing the ten residences to track any suspicious activity. R. at 4. Additionally, police sent letters informing the residents of those homes that in a month, officers would be arriving to their homes to verify that the assault rifles had been rendered inoperable pursuant to California Penal Code 30915. R. at 4.

On September 28, 2021, police received an anonymous call from an individual claiming to be the Balboa Park shooter. R. at 4. The caller stated, "this time, it's gonna be a school." R. at 4.

A day later, on September 29, 2021, the cameras near Defendant's residence recorded McKennery pulling into the driveway and handing Defendant a large duffel bag. R. at 4. FBI Officers Jack Hawking and Jennifer Maldonado were dispatched to the house to investigate and arrived thirty minutes after McKennery left. R. at 4.

While outside of his home, Officers Hawking and Maldonado questioned Defendant about the assault rifle. R. at 4. Initially, Defendant did not answer the questions about the assault rifle, alleging confusion that the letter indicated that the officers would come in a month. R. at 23. The officers expressed that due to the Balboa Park shooting, they wanted to make sure that all of the

assault weapons were accounted for. R. at 23. Dissatisfied with Defendant's answers and lack of cooperation, the officers non-consensually entered the residence. R. at 4. The officers found in plain view an operable M16 rifle, which is a violation of California Law. R. at 4. Forensic ballistic experts affirmatively identified the weapon found at Defendant's home as the weapon used by the Balboa Park shooter. R. at 33.

After finding the rifle, the officers questioned Defendant about the weapon. R. at 23. During questioning, Defendant revealed McKennery had borrowed the rifle before the shooting. R. at 4. Following questioning, officers brought Defendant into custody. R. at 4. Officers arrived at McKennery's home to arrest him and heard gunshots from inside. R. at 4. Police found McKennery inside, lying dead on the floor with a letter next to his body. R. at 4. The letter confessed to the Balboa Park shooting and explained McKennery's actual motive, which was contrary to the "Manifesto." R. at 4. The reason was a personal vendetta against a woman named Jane Bezel, whom he had followed on Instagram for years. R. at 37. McKennery became upset when he saw Jane was engaged and claimed he couldn't live with Jane being with another man. R. at 37. The letter also confessed to him leaving the "Manifesto" to lead the cops on a wild goose chase. R. at 37.

Procedural History

On October 1, 2021, Defendant was charged with nine counts of second-degree murder under California Penal Code Section 187, nine counts of involuntary manslaughter under California Penal Code Section 192, one count of lending an assault weapon under California Penal Code Section 30600, and one count for failure to comply with the assault rifle requirements under California Penal Code Section 30915. R. at 1. Defendant filed a motion to suppress evidence pursuant to Rule 12(b)(3)(c) of the Federal Rules of Criminal Procedure. R. at

1. The Superior Court for the State of California denied the motion to suppress on November 21, 2021. R. at 1. Defendant appealed and on June 3, 2022, the Fourth Appellate District, Division One Court of Appeal of the State of California granted the motion to suppress and remanded the case for further proceedings. R. at 13; R. at 21. United States of America filed a writ of certiorari with this Court.

SUMMARY OF THE ARGUMENT

This Court should reverse the lower court's holding that the retrieval of Defendant's information from the ALPR database required a warrant under the Fourth Amendment. The Fourth Amendment protects against unreasonable searches. A Fourth Amendment search requires either a governmental trespass of a constitutionally protected area or a governmental invasion into a reasonable expectation of privacy. A reasonable expectation of privacy must include both a subjective expectation of privacy and an expectation of privacy that society is prepared to accept as reasonable. Without both these components, there cannot have been a reasonable expectation of privacy. A Fourth Amendment search is still reasonable when the governmental interest outweighs the invasion the search causes.

Generally, people in vehicles do not have a reasonable expectation of privacy in their movements on public roads. This Court has ruled differently on Fourth Amendment violations concerning technology. The outcome often hinges on the different characteristics of the technology used. Courts have found use of a beeper to be constitutional because the police could have followed the vehicle themselves. The beeper only made their job more efficient. However, Courts have found use of cell site location information to be a violation of the Fourth Amendment. This is because it provides a complete picture of an individual's movements, even when they are in their own residence or away from their vehicle.

In this case, the police accessed an ALPR database, cross-referenced with a list of registered assault rifle owners, to identify the Balboa Park shooter. This also led them to the weapon used in the shooting, which Defendant owned. The information compiled by the database did not provide a comprehensive picture of Defendant's movements, but simply captured the license plate when he drove past the system's cameras. The limited nature of the database makes it more like the use of a beeper and is therefore not a search under the Fourth Amendment. Additionally, the government had a compelling state interest in preventing further gun violence after the mass shooting. Utilizing the information from the database was minimally intrusive because they could have easily obtained the same information by following Defendant's vehicle. Balancing the governmental interest against the intrusion of the alleged search still weighs in favor of the government. The use of the database was not a search under the Fourth Amendment and, even if it had been, it would still have been reasonable under the circumstances. Therefore, the lower court erred in holding that a warrant was required to access the database under the Fourth Amendment.

This Court should reverse the lower court's holding that the warrantless entry and search of Defendant's home was a violation of the Fourth Amendment. The Fourth Amendment protects an individual's person, houses, papers, and effects against unreasonable searches and seizures. For a search to be reasonable, the government must usually obtain a warrant supported by probable cause. Probable cause exists when the totality of circumstances known to the arresting officer would lead a prudent person to conclude that there was a fair probability that a crime was or is being committed. The assessment of the totality of circumstances deals with mere probabilities, not hard certainties. The standard of probable cause is set as a compromise to accommodate opposing interests.

A well-recognized exception for the warrant requirement is the existence of exigent circumstances that make the need of law enforcement so compelling that a search or seizure is objectively reasonable under the Fourth Amendment. Exigent circumstances include the entry of a home, without a warrant, to render emergency assistance to an injured occupant, protect an occupant from imminent injury, or prevent the imminent destruction of evidence. The gravity of the underlying offense is important in determining the existence of an exigency.

Lower courts have yet to agree on the test to determine whether an exigent circumstance existed at the time of entry. However, this Court has repeatedly rejected applying a subjective approach in determining whether an exigency existed. An action is reasonable if the circumstances, viewed objectively, justify the action. The police officer's state of mind and subjective motivations do not matter in the analysis of the circumstances. This Court has reasoned that a rule that precludes police from making a warrantless entry to prevent destruction of evidence would unreasonably shrink the reach of this well-established exception to the warrant requirement.

In this case, the evidence gathered by police prior to the arrival at Defendant's home suggested a high probability that Defendant was involved in the Balboa Park shooting. Defendant was one of fifty people in San Diego who possessed an automatic assault rifle, the type of weapon used in the shooting. Police confirmed close association between Defendant and McKennery, the likely shooter. Evidence suggested at least one crime had been committed: the lending of an assault rifle. Additionally, the warrantless entry was made to prevent the imminent destruction of evidence. Defendant was uncooperative in providing the weapon to police when asked about it by the officers. The contents of the "Manifesto" and an anonymous school shooting threat increased the severity of the circumstances. The evidence gathered prior to the arrival to Defendant's home and the totality of circumstances justify the warrantless,

nonconsensual entry of Defendant's home. Therefore, the lower court erred in holding that the warrantless entry and search of Defendant's home was a violation of the Fourth Amendment.

STANDARD OF REVIEW

A district court's denial of a motion to suppress is reviewed *de novo*, while the factual findings underlying the denial of the motion are reviewed for clear error. *United States v. Gust,* 405 F.3d 797, 799 (9th Cir. 2005). Clear error review is "significantly deferential, and we must accept the district court's factual findings absent a definite and firm conviction that a mistake has been committed." *Id.* If the district court's view of the evidence is plausible when the record is viewed entirely, it cannot be clearly erroneous even if the reviewing court would have outweighed the evidence differently. *Id.*

The issue of whether a defendant has a standing to challenge a search is also reviewed *de novo*. *United States v. Silva,* 247 F.3d 1051, 1054 (9th Cir. 2001). The defendant has the burden of establishing that, under the totality of circumstances, the search violated their legitimate expectation of privacy. *United States v. Sarkisian*, 197 F.3d 966, 986 (9th Cir. 1999).

ARGUMENT

I. DEFENDANT DID NOT HAVE A REASONABLE EXPECTATION OF PRIVACY AND THE GOVERNMENT HAD A COMPELLING INTEREST IN PROTECTING PUBLIC SAFETY

The Fourth Amendment guarantees protection against unreasonable searches of an individual's "persons, houses, papers, and effects." U.S. Const. amend. IV. This Court has held that a search can occur when there is a government trespass into a constitutionally protected area, *Olmstead v. United States*, 277 U.S. 438, 466 (1928), or a governmental invasion of a reasonable expectation of privacy, *Katz v. United States*, 389 U.S. 347, 353 (1967). Determining

a reasonable expectation of privacy depends on whether the individual had a subjective expectation of privacy in "the object of the challenged search" and whether "society is willing to recognize that expectation as reasonable." *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (citing *Katz*, 389 U.S. at 360).

An individual must have an actual privacy interest in the object of the search to claim a Fourth Amendment violation. *See Bond v. United States*, 529 U.S. 334, 337 (2000). When the searched records belong to a third party, an individual cannot automatically claim a privacy interest. *United States v. Miller*, 425 U.S. 435, 440-41 (1976). In these situations, a court must "examine the nature of the particular documents sought to be protected in order to determine whether there is a legitimate 'expectation of privacy' concerning their contents." *Id.* at 335. This Court has held that bank records do not provide a privacy interest, but cell site location information does. *Carpenter v. United States*, 138 S. Ct. 2206, 2220 (2018).

Even if a search has occurred, it may still be reasonable under the Constitution. *New York v. Class*, 475 U.S. 106, 116-17 (1986). When there are special governmental interests, a balancing test determines the reasonableness of the search or seizure. *Mich. Dep't of State Police v. Sitz*, 496 U.S. 444, 448-49 (1990). This Court created a three-prong balancing test in *Brown v. Texas* to determine the constitutionality of sobriety checkpoints that technically, although shortly, seized each motorist that passed through. 443 U.S. 47, 50-51 (1979). The test requires balancing the state's interests, the effectiveness of the action in achieving that interest, and the privacy intrusion caused by the action. *Id.* If the state has a compelling interest, the action is effective in achieving that interest, and there is minimal intrusion of privacy, the search or seizure is still constitutional and not a Fourth Amendment violation. *Class*, 475 U.S. at 117.

This Court should reverse the lower court's decision because Defendant did not have a reasonable expectation of privacy in his license plate image, Defendant did not have a privacy interest in the information collected in the database, and the government had a compelling interest in protecting the public safety.

A. Defendant Did Not Have a Reasonable Expectation of Privacy in His License Plate Location Data When Driving on Public Roads

To have a reasonable expectation of privacy, an individual must exhibit a subjective expectation of privacy, and the expectation of privacy must be one that society recognizes as reasonable. *Ciraolo*, 476 U.S. at 211. A subjective interest depends on the actions that the individual takes to maintain their privacy. *Katz*, 389 U.S. at 351-52. This may include actions like closing the door of a phone booth, *Id.* at 352, or building tall fences around one's property, *Ciraolo*, 476 U.S. at 213. Whether the expectation of privacy is one that society is willing to recognize as reasonable is often determined by examining how society perceives the expectation. *Smith v. Maryland*, 442 U.S. 735, 743 (1979) (Society does not recognize privacy expectation in *who* you call as reasonable because "telephone users, in sum, typically know that they must convey numerical information to the phone company. . . it is too much to believe that telephone subscribers. . . harbor any general expectation that the numbers they dial will remain secret.")

The Fourth Amendment does not protect information that "a person knowingly exposes to the public." *Katz*, 389 U.S. at 351. A person traveling in an automobile in public does not have a "reasonable expectation of privacy in his movements from one place to another." *United States v. Knotts*, 460 U.S. 276, 281-82 (1983). In fact, this Court has noted that "one has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. A car has little capacity for escaping public scrutiny." *Id*. at 281.

The use of technology to track someone's movements, however, may be a Fourth Amendment search, depending on the circumstances. *Compare Knotts*, 460 U.S. at 281 (use of a beeper does not constitute a search, because it only does what an officer would be able to do by following the vehicle) *with Carpenter*, 138 S. Ct. at 2220 (use of cell site location information is a search because it provides "intimate details" of an individual's life). This Court has considered both the information the technology provides, *Carpenter*, 138 S. Ct. at 2220, and how commonly the technology is used, *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (thermal imaging technology is not widely used); *Dow Chem. Co. v. United States*, 476 U.S. 227, 238 (1986) (the camera used for aerial imaging was technology readily accessible to the public). This Court has not yet addressed Automatic License Plate Recognition ("ALPR") data, but the Supreme Court of Massachusetts has applied precedent from this Court in the context of ALPR use. *Commonwealth v. McCarthy*, 142 N.E.3d 1090 (Mass. 2020). The Supreme Court of Massachusetts concluded that, consistent with the precedent in *Carpenter*, the appropriate analysis is the "extent to which a substantial picture of the defendant's public movements are revealed by the surveillance." *Id.* at 506. This requires an analysis of both the number of cameras and their locations. *Id.* Cameras located closer to residential areas create more constitutional concerns than those located on interstate highways. *Id.*

In *Knotts*, this Court determined that the use of a beeper to track an individual's movements was not a search under the Fourth Amendment. 460 U.S. at 281. There, the police placed a beeper in a drum containing chloroform that was subsequently purchased by one of the codefendants in the case. *Id.* at 277. The police used this beeper to follow the codefendants and used it to locate a cabin, which they later surveilled. *Id.* at 278-79. The Court held that this was not a search, because the codefendant had no reasonable expectation of privacy in his public

movements. *Id.* at 281. Further, the Court emphasized that police efficiency has never been equated with unconstitutionality and the device was simply a mechanism for enhancing police efficiency. *Id.* at 284.

Defendant has not manifested a subjective expectation of privacy, as required by the first component of the *Katz* test. By registering as an assault rifle owner, R. at 3, Defendant has explicitly indicated that he does not have an expectation of privacy in the ownership of his assault rifle. This information first led the police to access his ALPR data. R. at 3. There is no evidence in the record to support that Defendant had a subjective expectation that police would not access his ALPR data.

Additionally, the expectation of privacy in ALPR data is not one that society is willing to accept as reasonable. As in *Knotts*, this information would have been accessible in plain view, because Defendant was driving on public roads. The use of the ALPR database only increased the efficiency of the police, rather than giving them any "intimate details" about Defendant's life. Unlike in *Carpenter*, the ALPR information only provides the police with intermittent records of a vehicle's location, R. at 38, rather than a comprehensive picture of Defendant's movements. The ALPR cameras provide limited information and only log information when a vehicle passes them. R. at 38-39. Information regarding public movement's is largely available to the public. This is significantly less intrusive than cell site location information, which is not available to the public and records virtually every moment of a person's movements. Therefore, ALPR information is factually closer to the use of a beeper to track a vehicle's movements.

A vehicle's public movements generally have a reduced expectation of privacy and Defendant's movements were on public roads. Simply collecting the data and utilizing it does not increase the expectation of privacy in a vehicle's public movements. The use of technology

may determine whether there is a violation of a "reasonable expectation of privacy." However, ALPR data is easily distinguishable from the cell site location information used in *Carpenter*. The ALPR technology only provides limited information to police. R. at 38. Rather than providing any "intimate details" of Defendant's life, the ALPR database only provided information about the location of his vehicle as he drove on public roads. ALPR information is limited to the license plate numbers, photos of the vehicles, and geospatial locations. R. at 39. They do not even have illumination to help identify the driver. R. at 40. Given all these reasons, ALPR data is more like an intermittent beeper than cell site location information.

Defendant had no expectation of privacy in the location of his vehicle on public roads. He drove his vehicle in plain view and the ALPR data simply increased police efficiency. Since the technology used is more like the technology in *Knotts* than the technology in *Carpenter*, Defendant's Fourth Amendment rights were not violated. For these reasons, Defendant did not have a reasonable expectation of privacy in the ALPR data.

B. Defendant Did Not Have a Privacy Interest in the Information Collected in the Database

To claim a Fourth Amendment violation, an individual must have a privacy interest in the collected information. *Miller*, 425 U.S. at 441. Records of a third party may not provide an individual with a privacy interest. *Id.* Analyzing the nature of the information serves to identify whether the individual actually has a privacy interest in data compiled by a third party. *Id.* at 442.

In *Miller*, this Court determined that bank records did not provide the defendant with a privacy interest. *Id.* at 437. The Court emphasized the *Katz* concept rejecting Fourth Amendment protection of "what a person knowingly exposes to the public." *Id.* at 442 (quoting *Katz*, 389 U.S. at 351). Ultimately, the Court determined that accessing a third party's records, so long as

there is no reasonable expectation of privacy, is not a Fourth Amendment violation. *Miller*, 425 U.S. at 444.

Conversely, this Court held that in *Carpenter*, the third-party concept did not extend to the cell phone company which provided the cell site location information. *Carpenter*, 138 S. Ct. at 2220. This was due to the "unique nature of cell phone location information." *Id.* However, the Court emphasized that they intended for the decision in *Carpenter* to be "a narrow one" and that it was not intended to disturb the holding in *Miller*. *Id.*

Law enforcement agencies collected the ALPR data. R. at 38. This made the database the property of the agencies, not Defendant. Defendant willingly provided the information collected by the ALPR system by driving on public roads. Cell site location information provides a comprehensive picture of an individual's movement; ALPR data provides only limited information about an individual's movement. The information provided by ALPR is far less comprehensive than cell site location information and is even less intrusive than financial records. Given these factors, the ALPR data is closer to the information obtained in *Miller*.

Law enforcement agencies collected the ALPR data and the nature of the information is minimally intrusive. ALPR data does not provide a comprehensive picture of Defendant's movements or even provide the same level of intimate detail provided by financial records. For these reasons, Defendant did not have a privacy interest in the data compiled by the ALPR system.

C. The Government's Compelling Interest in Protecting Public Safety Outweighs Any Intrusiveness of the Alleged Search

Even when a governmental search occurs, it complies with the Fourth Amendment if it is reasonable. *Class*, 475 U.S. at 116. Generally, determining "reasonableness" revolves around a balancing test. *Id.* The appropriate balancing test depends on the circumstances of the specific

case. *Compare Class*, 475 U.S. at 116 (determining reasonableness requires balancing the need to search against the invasion caused by the search) *with Sitz*, 496 U.S. at 449 (a three-factor test can determine whether a DUI checkpoint is reasonable). All the "reasonableness" tests require comparing the governmental need with the level of intrusion. *Class*, 475 U.S. at 116; *Sitz*, 496 U.S. at 449. In *Class*, the Court stated that when the immediate object of a search is for a weapon, there is a "weighty interest in the safety of police officers to justify warrantless searches based only on a reasonable suspicion of criminal activity." 475 U.S. at 117.

In *Sitz*, the Court determined that a DUI checkpoint, which is technically a seizure, was constitutional because the three-factor test rendered it reasonable. 496 U.S. at 449. This test required balancing the state's interest in preventing drunk driving accidents, the checkpoint's effectiveness in preventing those accidents, and the level of intrusion that the checkpoints caused. *Id.* at 448.

If this Court disagrees with the above reasoning, any alleged search was still reasonable. This case involved a search for a weapon which was already used to harm people once and could have easily been used to harm people again. R. at 33. Due to this, the government had a particularly compelling interest in finding the weapon and ensuring the safety of the public. Any balancing test, whether the three-factor test outlined in *Sitz* or the general balance of the need against the invasion from *Class*, weighs in the government's favor. Gun violence is a serious problem in our society. The government has a compelling interest in limiting gun violence and holding people accountable for their violent actions. Accessing a database that provides limited information about a vehicle's location on a public road is minimally intrusive. Gathering this same information would require simply following a vehicle as it drives around, which would not

be a Fourth Amendment search. Finally, the database was one of the only available avenues for the police to identify the shooter and the weapon used in the shooting. R. at 31.

The government has a particularly compelling interest in preventing gun violence. Accessing the ALPR database is minimally intrusive and was one of the only ways in which the police could identify the Balboa Park shooter. For these reasons, even if accessing the database was a search, it was still reasonable under the Fourth Amendment.

Defendant did not have a reasonable expectation of privacy in either his license plate image or the information collected in the ALPR database. With no reasonable expectation of privacy, Defendant was not searched and, therefore, the police did not need a warrant to access the database. Even if this Court were to disagree, the government had a compelling interest in preventing further gun violence and the alleged search was minimally intrusive. Therefore, the search was reasonable and not a Fourth Amendment violation. For all these reasons, this Court should reverse the lower court's holding that the retrieval of Defendant's information from the ALPR database required a warrant under the Fourth Amendment.

II. THE WARANTLESS ENTRY AND SEARCH OF DEFENDANT'S HOUSE IS NOT A VIOLATION OF THE FOURTH AMENDMENT DUE TO THE EXISTENCE OF PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES

Under the Fourth Amendment, the people are to be "secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. . . and no Warrants shall issue, but upon probable cause." *United States v. Watson*, 423 U.S. 411, 415 (1976). The Fourth Amendment is intended to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials. *Carpenter*, 138 S. Ct. at 2213. A Fourth Amendment search focuses on whether the government obtains information "by physically intruding on a constitutionally

protected area" or invading a reasonable expectation of privacy. *Id.* For a search to be reasonable, the government usually must obtain a warrant supported by probable cause. *Id.* at 2221.

The touchstone of the Fourth Amendment is reasonableness and therefore the court recognizes that the presumption may be overcome by certain circumstances. *Kentucky v. King*, 563 U.S. 452, 460 (2011). Warrantless searches are typically unreasonable unless they fall within a specific exception to the warrant requirement. *Carpenter*, 138 S. Ct. at 2221. A well-recognized exception is "when exigent circumstances make the need of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment." *King*, 563 U.S. at 460.

A. Office Hawkins Had Probable Cause to Suspect Defendant of Criminal Activity Because of the Evidence Collected Prior to the Entry of Defendant's Home

The rule of probable cause is a practical, nontechnical concept set as a compromise to accommodate opposing interests. *Brinegar v. United* States, 338 U.S. 160, 176 (1949). It has been determined that probable cause is a "fluid concept" that cannot be reduced to a neat set of legal rules. *Florida v. Harris*, 568 U.S. 237, 244 (2013). Probable cause is more than bare suspicion, *Brinegar*, 338 U.S. at 175, and exists when "under the totality of circumstances known to the arresting officers, a prudent person would have concluded there was a fair probability" that a crime was or is being committed, *United States v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986).

The assessment of the totality of circumstances does not deal with hard certainties, but probabilities. *United States v. Cortez*, 449 U.S. 411, 418 (1981). Due to the situations police face while executing their duties, there must be room for them to make mistakes. *Brinegar*, 338 U.S. at 176. The mistakes must be reasonable, and police must act on facts that sensibly lead to a conclusion of probability. *Id.* A higher standard for probable cause would unduly hamper law enforcement. *Id.* A lower standard would leave law-abiding citizens at the mercy of an officers' whim or caprice. *Id*.

In *Illinois v. Gates*, this Court analyzed the probable cause standard in the setting of searches and seizures. 462 U.S. 213, 234 (1983). For probable cause to be satisfied, only the probability of criminal activity is required, not a *prima facie* showing of criminal activity. *Id.* at 235. To successfully accomplish the goal of private and public interest required by the Fourth Amendment, this Court concluded that a totality of the circumstances analysis is most appropriate in probable cause determinations. *Id.* at 239.

Gates set the probable cause standard. Probable cause requires a "totality of circumstances" analysis. The evidence gathered by police prior to the arrival to Defendant's home suggested that Defendant was involved in the Balboa Park shooting. First, Defendant was one of fifty people in San Diego who possessed an automatic assault rifle. R. at 3. The reason why the police even looked at the list was because of the bullets left at the crime scene**.** R. at 2. The police found that the shooter used 5.56x45mm NATO cartridges, leading to the conclusion that an assault rifle was used. R. at 2.

Second, McKennery was the owner of one of fifty vehicles that fled Balboa Park after the shooting. R. at 3. The ALPR database confirmed close association between McKennery and Defendant. R. at 3-4. The association was further confirmed when McKennery appeared at Defendant's residence with a large duffel bag. R. at 4. This evidence alone increases the probability that Defendant was involved in the Balboa Park shooting.

As determined in *Gates*, only a probability of criminal activity was required to meet the standard of probable cause. 462 U.S. at 234. The evidence discussed above reaches the standard of probable cause. Concluding that the evidence does not meet the standard of probable cause would contradict this Court's precedent, as it would suggest that a *prima facie* showing of criminal activity is required.

Furthermore, the police were certain that a crime had been committed: the mass shooting. They could have also reasonably concluded that another crime had already been committed when McKennery arrived with a duffel bag large enough to hold an assault rifle. R. at 4. Cal. Penal Code § 30600 states that "[a]ny person who, within this state. . . gives or lends any assault weapon or any .50 BMG rifle, except as provided by this chapter, is guilty of a felony. . . ." McKennery was not a registered assault rifle owner, but Defendant was. R. at 3. The association between the parties was established by the evidence in the ALPR database. R. at 3-4. Under the totality of circumstances known to Officers Hawking and Maldonado, a reasonably prudent person would conclude that Defendant had lent McKennery his assault rifle and, therefore, a crime was committed. This conclusion goes beyond mere reasonable suspicion.

Finally, the probable cause standard is set as a compromise and is intended to accommodate both the interests of the petitioner and respondent. If the Court finds that the standard of probable cause was not met in the present case, a harmful precedent will be set for future Fourth Amendment cases concerning probable cause issues. Not only would the standard set by this precedent be impossible for police to reach, but it would ultimately impede the ability of police to do their job. In *Gates,* this Court emphasized the importance of respecting the Fourth Amendment goal of accommodating private and public interests. Ruling otherwise would contradict past precedent of this Court. The burden set by this would have a harmful effect on the criminal justice system and society as a whole.

The Court should continue to apply the standard of probable cause set in their precedents, specifically *Gates*. The police officers gathered enough evidence suggesting the probability of criminal activity by Defendant, and therefore, this Court should hold that the police had the probable cause necessary for the entry of Defendant's home.

B. Fear of Imminent Destruction of Evidence Supported the Warrantless Entry and Search of Defendant's Home

The Fourth Amendment has drawn a firm line at the entrance of a home. *Payton v. New York*, 445 U.S. 573, 590 (1980). This Court has long concluded that "warrants are generally required to search a person's home unless the exigencies of the situation make the police's needs so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." *Mincey v. Arizona*, 437 U.S. 385, 393-394 (1978). The Court has identified several exigencies that may justify a warrantless search of a home. *King*, 563 U.S. at 460. Police officers are permitted to enter a home without a warrant to render emergency assistance to an injured occupant, protect an occupant from imminent injury, or prevent the imminent destruction of evidence. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). These exceptions are based on the need to preserve life or avoid serious injury in an exigency or emergency. *Mincey*, 437 U.S. at 392. However, destruction of evidence issues occur most frequently in drug cases. *King*, 563 U.S. at 461. In these cases, the Court has reasoned that a rule that precludes police from making a warrantless entry to prevent destruction of evidence would "unreasonably shrink the reach of this well-established exception to the warrant requirement." *Id.* at 461-462.

An important factor in determining whether an exigency exists is the gravity of the underlying offense for which the arrest is being made. *Welsh v. Wis*., 466 U.S 740, 751 (1984). The Court has had difficulty justifying warrantless home arrests and entries when the underlying offense is extremely minor. *Id.* at 753. For major felonies, this Court has permitted warrantless home arrests if identifiable exigencies, independent of the gravity of the offense, existed at the time of the arrest. *Id.* at 752. Police officers are permitted to seize evidence in plain view, as long as they have not violated the Fourth Amendment in arriving at the spot from which the observation of the evidence is made. *King*, 563 U.S. at 462-463.

Lower courts have developed an exception to the exigent circumstances rule, the so-called "police-created exigency" doctrine. *Id*. at 461. Under this doctrine, police are not allowed to rely on destruction of evidence when they created or manufactured the need through their conduct. *Id*. at 467. However, the Eighth Circuit has recognized that "in some sense the police always create exigent circumstances." *Id.* at 461. Lower courts have not agreed on the test to determine whether the police created the exigency. *Id*. at 462. Some courts analyze whether police officers deliberately created the exigent circumstances in bad faith to avoid the warrant requirement. *Id.* at 464. Other courts believe that police officers "do not impermissibly create exigent circumstances" when they "act in an entirely lawful manner." *Id.* at 463-64 (quoting *United States v. MacDonald*, 916 F.2d 766, 722 (2d Cir. 1990)).

This Court has repeatedly rejected a subjective approach on Fourth Amendment issues concerning exigent circumstances. *Id.* at 464. An action is reasonable under the Fourth Amendment if the circumstances, viewed objectively, justify the action. *Brigham*, 547 U.S. at 404. The police officer's subjective motivations are not considered in the analysis of reasonableness. *Whren v. United States*, 517 U.S. 806, 813 (1996). This Court has been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers. *Id*. Reasonableness depends on whether a circumstance at the time of entry, would lead a reasonable person to believe that, unless an entry was made immediately, the suspect may escape, destroy essential evidence, or continue the commission of an on-going crime. *United States v. Campbell*, 581 F.2d 22, 26 (2d Cir. 1978).

In *Kentucky v. King,* this Court explored the scope of exigent circumstances that allow the warrantless, nonconsensual entry of a property. *King*, 563 U.S. at 455. There, police officers followed a suspected drug dealer to an apartment complex. *Id.* at 457. The officers knocked and

announced their presence after noticing the smell of marijuana outside of the apartment door. *Id.* at 458. After hearing a commotion, which they assumed to be destruction of evidence, the officers entered and searched the apartment. *Id.* at 457. The officers found drugs in plain view. *Id.* Reasoning that the officers did not violate or threaten to violate the Fourth Amendment, this Court held that the exigency justified the warrantless search of the apartment. *Id.* at 472.

This Court has identified the imminent destruction of evidence as an exigent circumstance. The assault rifle owned by Defendant matched the weapon used by the Balboa Park Shooter. Additionally, the officers had confirmed the connection between Defendant and McKennery when they saw McKennery arrive at the residence with a duffle bag big enough to contain an assault rifle. R. at 4.

Similar to *King,* Officer Hawkins and Officer Maldonado entered Defendant's home to seize evidence of a crime: the weapon potentially used in the Balboa Park Shooting. R. at 4. The police simply acted on the situation, without violating the Fourth Amendment. Officer Hawkins explained to Defendant that he wanted to see the gun because of the recent shooting at Balboa Park. R. at 23. Defendant, previously uncooperative when asked about the weapon, told the police officers to wait outside as he got the weapon because his house was messy. R. at 23. The excuse provided and the fact that Defendant never answered whether the weapon was inoperable, as required by law, created the assumption that the assault rifle would be destroyed. R. at 23-24.

Furthermore, the gravity of the offense for which the arrest was being made was severe. The offense, at minimum, involves lending McKennery the assault rifle, which led to the completion of the Balboa Park Shooting. This offense is a felony under California Penal Code Section 30600, and given the result of the action, would be considered severe by an objective person. The most severe offense is the aiding in a mass shooting that led to nine deaths and multiple

wounded. R. at 2. The offense, no matter how it is seen, is severe even viewed by an objective reasonable person. The severity of the offense increases the likelihood of an exigent circumstance.

The Manifesto further increased the exigency of the circumstances, as it threatened future shootings by the shooter and his friends. R. at 36. The shooter states that he and his friends are "going to show this world that there's nothing," making it very probable that the shooter was not working alone. R. at 36. At the time of the entry of Defendant's home, the police did not have any other evidence that would discredit the Manifesto. The police learned from McKennery's death note that the Manifesto was a lie, but the note was not recovered until September 29th, the same day as the entry. R. at 37.

Finally, mass shootings and gun violence have become an increasing problem in the United States, further increasing the exigency of the circumstances. The Federal Bureau of Investigations found that from 2017 to 2021, active shooter incident data reveals an upward trend. FBI Office of Partner Engagement et. al., *FBI Active Shooter Incidents in the United States 2021*, 3 FBI (2022), https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2021-052422.pdf/view. This data labels the number of active shooter incidents as one of the biggest problems within the United States. *Id.* The active shooter incidents identified in 2021 represent a 52.5% increase from the previous year. *Id.* The day before the entry of Defendant's home, the police received an anonymous call from an individual claiming to be the Balboa Park shooter. R. at 4. The caller threatened that this time, it was going to be a school. R. at 4. The threat of another mass shooting, especially at a school, makes the situation even more exigent, as it could have severe consequences. If the prevention of imminent destruction of evidence and prevention of another mass shooting do not rise to the standard of exigent circumstances, then nothing will ever reach this standard.

The shooting, the crime of lending the rifle, the Manifesto, and the call all accumulate and make the circumstances exigent, allowing the warrantless and non-consensual entry and search of Defendant's home.

All of the evidence the officers accumulated prior to the entry of Defendant's home elevated their suspicion to a level of probable cause. Additionally, the various circumstances and serious threat of gun violence rendered the circumstances exigent, making the entry of the home necessary and reasonable under the circumstances. For all these reasons, this Court should reverse the lower court's holding that the warrantless entry and search of Defendant's home violated Defendant's Fourth Amendment rights.

CONCLUSION

There is not a reasonable expectation of privacy in ALPR database information and, even if there was, the government had a compelling state interest in preventing future gun violence. Therefore, a warrant was not necessary to access Defendant's ALPR database information. Additionally, the police had probable cause to suspect Defendant of criminal activity and the exigent circumstances of the situation supported the warrantless entry into Defendant's home. For these reasons, this Court should reverse the lower court's decision and deny the motion to suppress evidence.

Dated: October 18, 2022

Respectfully submitted,

Team 34

Counsel for Petitioner