Team 9

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 CALIFORNIA FOURTH DISTRICT
COURT OF APPEAL

BRIEF FOR PETITIONER

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ISSUES PRESENTED

I. Does accessing data from an automatic license plate recognition system, which only records the time and place where a license plate is captured by one of its cameras, require a warrant under the Fourth Amendment?

II. Under the Fourth Amendment, does a violation occur when law enforcement conducts a warrantless entry and search of a house when the occupant is suspected of engaging in imminent mass violence against the public?

STATEMENT OF FACTS

On September 14, 2021, a masked man—armed with a fully automatic M16A1 assault rifle ("M16")—opened fire on a crowd of people at Balboa Park. R. at 2. The shooting left nine people dead and an additional six people with injuries. R. at 2. Police learned that the suspect had climbed to the top of the roof of the San Diego Museum of Art and opened fire on the plaza below. R. at 2, 36. Although the suspect fled the scene before law enforcement was able to identify him, police recovered a Manifesto that the shooter had left behind. R. at 2. In the Manifesto, the shooter promised further acts of violence in the near future from him and his "friends." R. at 2, 36. After two weeks of investigation, law enforcement determined that the man responsible for the horrific shooting was Frank McKennery ("McKennery"). R. at 2. They determined that Nick Nadauld ("Respondent") had loaned his assault rifle to McKennery, who was a former co-worker. R. at 2.

Law enforcement began their investigation by viewing surveillance footage from Balboa Park and the surrounding areas. R. at 3. From that, they determined there were about forty unidentified individuals who the police did not get a chance to talk to. R. at 3. The surveillance video also showed about fifty vehicles driving away before police were able to secure the scene. R. at 3. Next, law enforcement ran background checks on the registered owners of the fifty vehicles. R. at 3. McKennery was among the list of drivers leaving the scene. R. at 3. Law enforcement also cross-referenced the drivers against a list of local residents with registered assault rifles. R. at 3. Although there were no matches, law enforcement noticed that Respondent was on the list of people who had an assault rifle similar to the one used in the shooting. R. at 3. Law enforcement learned that Respondent had inherited the M16 assault rifle when his father, who was a former military member, passed away. R. at 2.

From there, law enforcement turned to the Automatic License Plate Recognition ("ALPR") database to aid in their investigation. R. at 3. ALPR systems compile data from special cameras that scan license plate information as cars are driving by. R. at 3. The cameras are usually mounted on police vehicles or affixed to poles at an intersection. R. at. 3. The license plates are then converted into alphanumeric characters which allows law enforcement to search the database for a particular license plate. R. at 38. However, ALPR systems only give law enforcement information related to the time and location where a vehicle passes by the ALPR camera. R. at 38. The systems do not contain any personal identifying information. R. at 38.

Law enforcement used the ALPR system to monitor the movements of the fifty vehicles they identified in the surveillance videos as well as the individuals on the assault rifle registry list. R. at 3. By cross-referencing the two groups, law enforcement noticed that Respondent and McKennery had a suspicious amount of overlap in their movements. R. at 3, 4. They appeared to consistently pass the same ALPR cameras around the same times as one another. R. at 4.

Law enforcement was able to narrow their list of suspects to ten individuals on the assault rifle registry list who corresponded the most to the driving location data of the fifty vehicles. R. at 4. On September 24, 2021, law enforcement placed cameras on top of utility poles near the ten suspects' residences. R. at 4. The cameras faced towards the outside of the residences allowing law enforcement to monitor suspicious activity. R. at 4. On September 25, 2021, law enforcement mailed letters to each of the ten residences informing them that in a month, law enforcement would be checking to confirm that their assault rifles have been rendered inoperable as required under California Penal Code section 30915. R. at 4. Respondent received law enforcement's letter on September 27, 2021. R. at 4.

On September 28, 2021, at approximately 10:37 a.m., law enforcement received an anonymous call. R. at 4. The anonymous caller stated, "This is the Balboa Park shooter. This time, it's gonna be a school." R. at 4. Law enforcement was able to determine that the call was made from a phone booth. R. at 4.

On September 29, 2021, at approximately 5:23 p.m., surveillance video from a pole-mounted camera showed McKennery pull into Respondent's driveway, give him a large duffel bag, and then leave. R. at 4. FBI Officers Jack Hawkins and Jennifer Maldonado were immediately sent to Respondent's house to investigate. R. at 4. When the two arrived at his house thirty minutes later, they questioned Respondent on his front porch. R. at 4. The officers asked to see Respondent's rifle to ensure that it had been rendered inoperable, but Respondent refused to show it to them, stating "I don't want to show you that now." R. at 4, 23. Eventually, Respondent told the officers, "Fine. Why don't you wait here while I go get it?" R. at 23. The two officers then decided to enter Respondent's house to look for the assault rifle. R. at 4. Once inside, the officers found the M16 rifle in plain view and confirmed that it had not been rendered inoperable as required by California law. R. at 4.

Respondent admitted to the officers that he had loaned the M16 rifle to McKennery prior to the Balboa Park shooting. R. at 4. Respondent was then taken into custody. R. at 4. When law enforcement went to place McKennery under arrest, they discovered that he had taken his own life with a single gunshot. R. at 4. Law enforcement found a letter next to McKennery confessing to the Balboa Park shooting. R. at 4.

On October 1, 2021, Respondent was indicted on the following: nine counts of second-degree murder, nine counts of involuntary manslaughter, one count of lending an assault weapon, and one count for failure to comply with assault rifle requirements under California Penal Codes

187, 192, 30600, and 30915, respectively. R. at 1, 5. Respondent filed a timely motion to suppress under California Penal Code § 1538.5 challenging the retrieval of his information from the Automatic License Plate Recognition Database, the evidence from the pole mounted camera, and the entry and search of his house. R. at 1, 3, 4. The California Superior Court found in favor of the government and denied Respondent's motion, holding that law enforcement was justified under the Fourth Amendment. R. at 12. The California Fourth District Court of Appeal reversed. R. at 21. This Court granted the State's Petition for a Writ of Certiorari.

SUMMARY OF ARGUMENT

The Fourth Amendment protects individuals from unreasonable searches absent a warrant based on probable cause. However, if the government's actions do not amount to a search within the meaning of the Fourth Amendment, then no warrant is required. Since individuals do not have a reasonable expectation of privacy while driving on public roads, accessing ALPR data does not constitute a search. The data collected by ALPR systems is within plain view, so access to the database does not reveal any information law enforcement would not otherwise be able to gather on their own. Moreover, ALPR data serves an important investigative function, so requiring a warrant every time law enforcement accesses the database would cause serious consequences.

The touchstone of the Fourth Amendment is reasonableness. When responding to threats of imminent mass violence, law enforcement should be entitled to deference in bypassing the warrant requirement because preventing such violence is reasonable. The actions of Officers Hawkins and Maldonado were reasonable because they had probable cause to suspect that Respondent was involved in the Balboa Park shooting from his association with McKennery, his ownership of the same type of assault rifle, and his unusual demeanor in response to questioning. Moreover, the imminent harm posed to the public by another possible shooting constituted exigent

circumstances, allowing Officers Hawkins and Maldonado to bypass the warrant requirement to enter and search Respondent's house. As such, Petitioner respectfully requests that this Court *reverse* the decision of the California Fourth District Court of Appeal.

STANDARD OF REVIEW

The issues presented in this case relate to the Fourth Amendment and the constitutionality of warrantless searches of ALPR data and an individual's house. Thus, these issues present questions of law and are reviewed by this Court *de novo*. *Pierce v. Underwood*, 487 U.S. 552, 558 (1988).

ARGUMENT

I. RETRIEVAL OF INFORMATION FROM AN AUTOMATIC LICENSE PLATE RECOGNITION DATABASE DOES NOT CONSTITUTE A SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT AND THUS NO WARRANT IS REQUIRED.

The Fourth Amendment guarantees "[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. Since the amendment only applies to "searches" and "seizures," investigative techniques that do not fall within either category do not require a warrant. A search, within the meaning of the Fourth Amendment, occurs when law enforcement physically trespasses on a constitutionally protected area or invades an individual's reasonable expectation of privacy. *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). It is evident that ALPR systems do not physically trespass on a constitutionally protected area, thus this Court must determine whether the data collected by ALPR systems violates a person's reasonable expectation of privacy. In making this determination, courts consider "personal and societal values" of privacy. *Oliver v. United States*, 466 U.S. 170, 173 (1984).

ALPR systems are an effective investigative tool that (1) immediately alerts officers when stolen or wanted vehicles are located, and (2) allows officers to access time and location data from license plate scans to aid in identifying potential suspects, victims, and witnesses. R. at 38. At issue is the second use of ALPR systems—the warrantless access of ALPR data to aid in critical investigations. However, since there is no reasonable expectation of privacy in a vehicle's movements along public roads, access to ALPR databases does not constitute a Fourth Amendment search. If this Court were to hold otherwise, law enforcement investigations would be significantly hindered. Therefore, this Court should *reverse* the decision of the California Fourth District Court of Appeal and hold that a warrant is not required to access ALPR data.

A. There is No Reasonable Expectation of Privacy in One's Location While Driving on a Public Road.

This Court has consistently held that there is no Fourth Amendment protection for what a person knowingly exposes to the public. *Katz v. United States*, 389 U.S. 347, 351 (1967); *see also Lewis v. United States*, 385 U.S. 206, 210 (1966); *United States v. Lee*, 274 U.S. 559, 563 (1927). Although a person does not give up all Fourth Amendment protections simply by venturing into the public, it is well established that visual observations with the naked eye do not constitute a search. *Kyllo v. United States*, 533 U.S. 27, 31-32 (2001). While the interior of a vehicle falls within the Fourth Amendment's broad protection of "effects," the exterior is exposed to the public eye. *United States v. Chadwick*, 433 U.S. 1, 12 (1977); *Cardwell v. Lewis*, 417 U.S. 583, 588-589 (1986). Once exposed to the public eye, surveillance technology may capture what is in plain view without raising a Fourth Amendment issue. *See Dow Chemical Co. v. United States*, 476 U.S. 227, 239 (1986). Data related to a car's location at a particular time may then be accessed without a warrant because, "[a] person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another." *United States v. Knotts*, 460

U.S. 276, 281-82 (1983). At no stage in the process does ALPR technology invade a person's reasonable expectation of privacy.

1. License plates are required by law to be in plain view where there is no expectation of privacy.

It is well-established that cars have a diminished expectation of privacy. *See Cardwell*, 417 U.S. at 590 (explaining that cars enjoy a lesser expectation of privacy because they travel on public roads where their occupants and contents are in plain view); *New York v. Class*, 475 U.S. 106, 113 (1986) (stating that pervasive government regulation of vehicles puts drivers on notice that they enjoy a lesser expectation of privacy). While the interior of a car enjoys some degree of privacy, the exterior is subject to plain view. This Court has previously recognized that "[t]he exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a 'search.'" *Class*, 475 U.S. at 114. Consequently, there is no reasonable expectation of privacy in an object that is required by law to be placed on the exterior of a car in plain view. *Id.*

Although *Class* dealt with the car's vehicle identification number ("VIN"), the analysis extends to license plates. In *United States v. Diaz-Casteneda*, the Ninth Circuit stated:

> We agree that people do not have a subjective expectation of privacy in their license plates, and that even if they did, this expectation would not be one that society is prepared to recognize as reasonable. [L]icense plates are located on a vehicle's exterior, in plain view of all passersby, and are specifically intended to convey information about a vehicle to law enforcement authorities.

494 F.3d 1146, 1151 (9th Cir. 2007); *see also United States v. Miranda-Stolongo*, 827 F.3d 663, 667-68 (7th Cir. 2016); *United States v. Ellison*, 462 F.3d 557, 561 (6th Cir. 2006). In California, license plates are required by law to be placed on both the front and back of vehicles where they are visible to the public. Cal. Veh. Code § 5200.

The central focus of ALPR systems is license plates. R. at 38. Unlike other law enforcement technology, ALPR systems only collect data about the vehicle, not the driver. R. at 40. The systems

operate by automatically capturing the license plates of vehicles if they happen to drive by an ALPR camera. R. at 38. Since license plates are required by law to be placed on the exterior of a vehicle, within plain view, there can be no valid claim of privacy in one's license plate information.

2. It is lawful for ALPR systems to take pictures of license plates that are within plain view.

Using a camera to capture a picture or video of an object in plain view does not constitute a Fourth Amendment search. *See Dow Chemical Co*, 476 U.S. at 239 (holding that aerial photos of a chemical plant that was hidden from public view on the ground-level did not constitute a search). "Nothing 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." *Knotts*, 460 U.S. at 282. Photos of license plates are no different.

This Court has made a sharp distinction between constitutional technology that helps improve police efficiency and unconstitutional "sense-enhancing" technology. *Compare Knotts*, 460 U.S. at 284 (noting that police efficiency does not equate to unconstitutionality) *with Kyllo*, 533 U.S. at 29 (holding that information gathered by sense-enhancing technology not generally available to the public constitutes an unlawful search under the Fourth Amendment). In *Kyllo*, this Court addressed the constitutionality of thermal imaging technology that allowed law enforcement to see heat images not visible to the naked eye. 533 U.S. at 29. Central to the analysis was the fact that the technology provided details of the interior of a home not otherwise knowable to law enforcement without physical intrusion. *Id*. at 40; *but see Dow Chemical Co.*, 476 U.S. at 238 (stating that even if the aerial photos somewhat enhanced human vision, it did not rise to an unconstitutional level). Thus, in determining whether ALPR technology is constitutional, the central concern is whether it enables law enforcement to do things they otherwise would not be able to do absent the technology—it does not.

The fact that ALPR systems can automatically capture images of multiple cars as they pass by is of no consequence. Such technology is no different than a surveillance camera recording public spaces or automatically snapping a photo for red light violations. *See United States v. May-Shaw*, 955 F.3d 563, 569 (6th Cir. 2020) (twenty-three days of surveillance video from a pole-mounted camera aimed at a parking lot did not violate the Fourth Amendment); *United States v. Bucci*, 582 F.3d 108, 116-117 (1st Cir. 2009) (video camera placed across from the defendant's home for eight months was not an unconstitutional search); *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991) ("the police may record what they normally may view with the naked eye"). The common theme of these cases is the fact that the cameras only capture images within the public sphere where people have a diminished expectation of privacy.

ALPR cameras do not enhance ordinary human senses—they merely capture what is publicly available to the naked eye. Unlike red light cameras, ALPR cameras are not capable of identifying the driver of a vehicle. R. at 40. Rather, they capture images of passing cars and automatically transform the license plate into alphanumeric characters, capable of recognition. R. at 38. Once a license plate is captured, ALPR systems record the time and place where the photo is taken. R. at 39. Unlike *Kyllo* where the technology was not available to the public, this process would be akin to police officers personally snapping pictures of passing cars and recording the time and place where they see the car. ALPR cameras simply make it a more efficient process. As such, ALPR systems do not fall within this Court's prohibition against extrasensory technology.

3. Access to ALPR databases does not constitute a search because the data does not reveal any information that is intended to be private.

ALPR systems combine the use of surveillance cameras with a searchable police database. Since the data collected by ALPR systems does not create a constitutional problem, access to the system's database is likewise constitutional. Neither the act of searching the database for a

particular license plate nor the viewing of a car's location data constitute a search under the Fourth Amendment.

First, courts have held that running a vehicle's license plate through police databases is not an unconstitutional search. *See Kansas v. Glover*, 140 S. Ct. 1183, 1186 (2020) (holding that there is no Fourth Amendment violation when police initiate "an investigative traffic stop after running a vehicle's license plate and learning the registered owner has a revoked driver's license"); *see also 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"); *Diaz-Castaneda*, 494 F.3d at 1150 (holding that license plate checks do not qualify as a search under the Fourth Amendment); *Ellison*, 462 F.3d at 562 (holding the same). Given the regulatory nature of license plates, drivers are put on notice that their license plate may be used by law enforcement to conduct administrative tasks, such as running their license plate through a law enforcement database. This diminished sense of privacy in the use of one's license plate information extends to ALPR systems.

In California, law enforcement obtains information from databases like CLETS.[1] Police simply input a vehicle's license plate and receive information about the registered owner, including their name, address and vehicle information. *See People v. Gutierrez*, 78 Cal.App.4th 170, 173 (2000). Unlike other police databases that give law enforcement access to an individual's personal information, ALPR systems only provide police with "data sets of license plate numbers, photos of the vehicles, and geospatial locations from where the images were captured." R. at 38, 39. If

[1] CLETS is an acronym used for the California Law Enforcement Telecommunications System. *CLETS Policies, Practices and Procedures* (Dec. 2019), https://oag.ca.gov/sites/default/files/clets-ppp%2012-2019.pdf

running a license plate through a database like CLETS has been upheld, then doing the same for ALPR databases, which reveal far less personal information, should as well.

Second, the location data provided by ALPR systems does not transform the use of a license plate into an unconstitutional search. ALPR databases only give law enforcement information that would otherwise be available to them had they used traditional methods of surveillance. *See United States v. Houston*, 813 F.3d 282, 289 (6th Cir. 2016) (noting that "it is only the possibility that a member of the public may observe activity from a public vantage—not the practicability of law enforcement's doing so without technology—that is relevant for Fourth Amendment purposes."). Thus, the data accessed by law enforcement through ALPR systems falls within this Court's constitutional bounds of non-private information.

ALPR systems are similar to electronic monitoring beepers, which have been upheld as constitutional by this Court. *See Knotts*, 460 U.S. at 278; *United States v. Karo*, 468 U.S. 705, 712 (1984). In *Knotts*, police placed a beeper inside a five-gallon drum of chloroform that was purchased by the defendant. 460 U.S. at 277. The beeper emitted periodic signals, allowing officers to trace the chloroform's movement from the place of purchase in Minneapolis to the defendant's residence in Wisconsin. *Id*. This Court noted that the use of a beeper for surveillance measures amounts in principal to the following of a car on a public roadway. *Id*. at 281. Since the defendant had no reasonable expectation of privacy while driving on public roads, the government's actions did not constitute a search. *Id*. at 282, 285.

Although in *Knotts*, this Court warned of the potential for "dragnet-type law enforcement practices," the California Fourth District Court of Appeal erred in finding that ALPR systems fall within this category. 460 U.S. at 284; R. at 16. The location data provided by ALPR systems is highly distinguishable from the dragnet practice this Court addressed in *United States v. Jones*,

565 U.S. 400 (2012). There, law enforcement placed a GPS device on the defendant's vehicle. *Id*. at 404. For twenty-eight days, police were able to track the vehicle's every move within 50-100 feet. *Id*. at 403. This Court found that under common-law trespass, the physical intrusion of placing a beeper on the suspect's vehicle to track his every move, constituted a search under the Fourth Amendment. *Id*. at 405.

Unlike GPS devices that provide law enforcement with constant surveillance, ALPR systems act as a pointer system, showing law enforcement a vehicle's location at a single moment in time. R. at 38. Since ALPR cameras are limited to public roadways and public property, law enforcement cannot create a digital footprint of a vehicle's whereabouts the way a GPS device can. R. at 39. Moreover, there is no encroachment on an individual's property interest—the ALPR system merely conducts a visual inspection of the car's exterior. R. at 38; *see Jones*, 565 U.S. at 410 (explaining that the officers "did *more* than conduct a visual inspection" of the defendant's vehicle) (emphasis in original). While GPS devices unquestionably constitute a dragnet police practice, use of ALPR systems does not amount to the same violations of one's privacy.

The holding in *Carpenter v. United States* 138 S. Ct. 2206 (2018) is also distinguishable from the use of ALPR systems. In *Carpenter*, this Court concluded that a search had occurred when law enforcement accessed the defendant's historical cell phone records to get a comprehensive overview of his movements. *Id*. at 2223. This holding was based on the idea that individuals have a "reasonable expectation of privacy in the *whole* of [their] movements." *Id*. at 2219 (emphasis added). However, this Court deliberately pointed out that its decision does not "call into question conventional surveillance techniques and tools, such as security cameras." *Id*. at 2220.

ALPR systems are not like cell phones because they do not provide an "all-encompassing record of the holder's whereabouts." *Carpenter*, 138 S. Ct. at 2220. This Court explicitly recognized that tracking cars on public roadways does not raise the same privacy concerns because "individuals regularly leave their vehicles." *Id*. 2218. Cell phones, on the other hand, go beyond the public sphere, following its holder into private places and revealing intimate details about a person's life. *Id*. The data collected by ALPR systems does not come anywhere close to the invasion of privacy presented by cellphone data.

Overall, ALPR data does not reveal anything private about the driver. ALPR systems give law enforcement a sporadic view of a vehicle's location since the data is only available if the particular vehicle happens to drive by an ALPR camera. Here, law enforcement's use of ALPR technology primarily captured Respondent driving to and from work. R. at 7. When doing so, Respondent was driving on public roads where there was no expectation that his movements would be kept secret. R. at 7. As such, this Court's holding in *Knotts* is most applicable to ALPR systems.

Each and every step of the ALPR system is rooted in constitutional principles. ALPR systems capture license plates that are in plain view with technology that is similar to what law enforcement already uses to aid in the investigation of crimes. Access to the database is similarly constitutional because it does not reveal anything private about the driver. By breaking down how ALPR systems work, it is evident there is no Fourth Amendment search.

B. Police Investigations Would be Hindered if Law Enforcement was Required to Get a Warrant Every Time They Access ALPR Data.

When it comes to police investigations, time is often the greatest enemy. The longer police take to find a suspect, the harder it becomes to track down witnesses, follow up on leads, and prevent the perpetrator from committing more crimes. The use of ALPR systems has become integral in aiding law enforcement in solving crimes. Flock Safety—an ALPR company—noted

that "from kidnappings to homicides to recovering illegal firearms, police report that Flock is helping communities solve more than 500 crimes every day." *How We Strive to Eliminate Crime Within a Principled Framework*, FLOCK SAFETY (Apr. 4, 2022), https://www.flocksafety.com/articles/-eliminate-crime-principled-framework. The company's mission to reduce crime is done "within a principled framework that protects privacy and promotes objectivity." *Id.*

Moreover, any concerns about inaccuracies in the ALPR system's technology is of no merit. ALPR systems operate with only a slight error rate when translating alphanumeric characters that look similar. R. at 39. However, this is easily remedied by human oversight. When it comes to using ALPR data, law enforcement is encouraged to visually confirm whether the ALPR systems correctly translated a license plate's characters. R. at 39. In doing so, law enforcement can avoid being misled by any inaccuracies in the information. R. at 39.

Finally, the data stored on ALPR systems does not give law enforcement unbridled access to a person's whereabouts. Like all other law enforcement databases, police are only permitted to access ALPR databases for a lawful purpose and must have both a need and right to know the information. Northern California Regional Intelligence Center, *California ALPR FAQs*, NCRIC.ORG, https://ncric.org/html/California%20Law%20Enforcement%20ALPR%20FAQ_.pdf (last visited Oct. 4, 2022). A lawful purpose in this context is limited to: (1) locating suspect vehicles, (2) locating suspects of criminal investigations, (3) locating witnesses or victims of violent crimes; (4) locating the subjects of an Amber/Silver Alert; (5) protecting the public during special events or (6) protecting critical infrastructure. *Id.* A need to know means the information sought is necessary to further the performance of the official's duties. *Id.* Similarly, a right to know means the official requesting the information has the authority to seek such information. *Id.* To ensure compliance with these requirements, ALPR systems are routinely audited. *Id.* ALPR

systems automatically record each user's activity, including which agency ran the search, the user's name, date, time and purpose of the search. NCRIC.ORG, *supra*. With these safety measures in place, there is little room for law enforcement to abuse the ALPR data.

ALPR systems are an important investigative tool that allow law enforcement to quickly and efficiently apprehend suspects who commit crimes against society. Given that ALPR systems only track a vehicle's sporadic movements while traveling along public roads, Respondent had no reasonable expectation of privacy in the data that was retained. None of the ALPR system's functions fall within the purview of the Fourth Amendment's protections, thus this Court should hold that a warrant is not required to access ALPR data.

II. THE WARRANTLESS ENTRY AND SEARCH OF RESPONDENT'S HOUSE DID NOT VIOLATE THE FOURTH AMENDMENT BECAUSE LAW ENFORCEMENT HAD PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES EXISTED TO BYPASS THE WARRANT REQUIREMENT.

The California Fourth District Court of Appeal erred in holding that the warrantless search of Respondent's house violated the Fourth Amendment because the exigencies presented to Officers Hawkins and Maldonado, coupled with law enforcement's investigation establishing probable cause required a rapid response. This Court has affirmatively held throughout its history that the Fourth Amendment's "central requirement" is one of reasonableness. *Illinois v. McArthur*, 531 U.S. 326, 330 (2001); *see also United States v. Rubin*, 474 F.2d 262, 268 (3d Cir. 1973) (holding that the Fourth Amendment does not forbid all searches and seizures, but only those that are *unreasonable*) (emphasis added). Moreover, what is reasonable depends on the context within which a search takes place. *New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985).

Thus, when faced with special law enforcement needs, general or individual contexts may render a warrantless search as reasonable. *McArthur*, 531 U.S. at 330. In order to assess the needs of law enforcement, the permissibility of a particular action is judged by balancing its intrusion on

an individual's Fourth Amendment interest against its promotion of a legitimate governmental interest. *Delaware v. Prouse*, 440 U.S. 648, 654 (1979). However, respecting the interests of individuals has never required running a risk of mass death. *Mora v. The City Of Gaithersburg, MD*, 519 F.3d 216, 224 (4th Cir. 2008). To bypass the warrant requirement, a warrantless search of one's house requires both probable cause and exigent circumstances to justify the intrusion. *Steagald v. United States*, 451 U.S. 204, 211 (1981); *Payton v. New York*, 445 U.S. 573, 586 (1980); *see United States v. Ogden*, 485 F.2d 536, 539 (9th Cir. 1973).

Respondent asks this court to find that law enforcement did not have probable cause to enter and search his house, and that exigent circumstances did not exist to justify a warrantless entry and search of his house. However, the circumstances at bar prove that this was not the case. This Court should *reverse* the California Fourth District Court of Appeal because Officers Hawkins and Maldonado were justified in their warrantless search of Respondent's house, first, because law enforcement had probable cause based on its investigatory evidence, and second, because the looming threat of imminent mass violence constituted exigent circumstances.

A. Officers Hawkins and Maldonado Had Probable Cause to Enter and Search Respondent's House Because the Evidence Indicated a Strong Likelihood That Respondent Was Involved in the Balboa Park Shooting.

Officers Hawkins and Maldonado had probable cause to suspect that Respondent was involved in the Balboa Park shooting because the investigative findings of law enforcement provided reasonable grounds for suspicion. The requirement of probable cause has roots that are deep in this country's history. *Henry v. United States*, 361 U.S. 98, 100 (1959). Since 1878, probable cause plainly exists where the known facts and circumstances of a situation are sufficient to warrant a man of reasonable prudence to believe that evidence of a crime will be found. *Stacey v. Emery*, 97 U.S. 642, 645 (1878); *see Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994).

However, to meet such a threshold, evidence required to establish guilt is not necessary. *Henry*, 361 U.S. at 102.

Probable cause does not demand any showing that such a belief be correct or more likely true than false. *Texas v. Brown*, 460 U.S. 730, 742 (1983). All that probable cause requires is a reasonable ground for *belief* of guilt, rather than guilt itself. *Brinegar v. United States*, 338 U.S. 160, 175 (1949); *see Beck v. Ohio*, 379 U.S. 89, 91 (1964) (holding that probable cause only requires "reasonably trustworthy information"). Hence, probable cause is not a high bar to meet. *Kaley v. United States*, 571 U.S. 320, 338 (2014). The principal components of determining probable cause are the events leading up to the search, and whether the historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause. *Ornelas v. United States*, 517 U.S. 690, 696 (1996); *see also Scott v. United States*, 436 U.S. 128, 138 (1978) (searches must be examined "under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved").

Likewise, probable cause is not technical, it depends on the factual and practical considerations of everyday life on which reasonable and prudent persons act. *Illinois v. Gates*, 462 U.S. 213, 235 (1983). For instance, in *Gates*, police received an anonymous letter detailing that the defendant was conducting drug sales. *Id*. at 225. Despite the letter being anonymous, investigation by law enforcement provided corroboration to the alleged criminal activity by verifying that its contents were true. *Id*. at 243. As a result, this Court adopted the totality of the circumstances approach, holding that the anonymous letter did provide a basis for probable cause because of the corroboration provided by law enforcement's investigation. *Id*. at 245.

Here, the totality of the circumstances, viewed from the standpoint of an objectively reasonable police officer, establish that Officers Hawkins and Maldonado had probable cause to

enter and search Respondent's house. Like *Gates*, law enforcement obtained evidence that provided reasonable grounds to suspect that Respondent was involved in the Balboa Park shooting through an anonymous tip, amongst other evidence. Just as the anonymous letter in *Gates* was corroborated through investigation, law enforcement's investigatory evidence linked Respondent to McKennery and was corroborated by surveillance of the two exchanging a large duffel bag. R. at 4. Even if the duffel bag did not contain the assault rifle used in the shooting, this Court has established that certainty of guilt is not required for probable cause to be met. *Henry*, 361 U.S. at 102. Thus, the anonymous call about continued shootings is analogous to the anonymous letter about continued drug sales.

Additionally, Respondent's behavior in response to questioning from Officers Hawkins and Maldonado provided a reasonable basis for probable cause because the questions were only regarding his compliance with California Penal Code section 30915. R. at 10. Respondent was particularly apprehensive to questions regarding the whereabouts of his assault rifle, telling officers that he didn't want to show them and eventually stating, "Fine. Why don't you wait here while I go get [the rifle]." R. at 4; *see United States v. Meyer*, 19 F.4th 1028, 1032–33 (8th Cir. 2021) (explaining that the [defendant's] suspicious answers, including his insistence that he have time alone with his electronic devices before the agents could see them, is what led to a sense of "now or never" urgency). Such demeanor, along with law enforcement's evidence of Respondent's association with McKennery, provided reasonable grounds for suspicion in the minds of Officers Hawkins and Maldonado, and also would have to an objectively reasonable officer.

Overall, law enforcement had probable cause to suspect Respondent was involved in the Balboa Park shooting. Respondent's ownership of the same type of weapon, suspicious behavior,

and association with McKennery would have caused a reasonably prudent officer to conclude that the low threshold that probable cause requires was satisfied.

B. There Were Exigent Circumstances at the Time That Officers Hawkins and Maldonado Entered and Searched Respondent's House Because There Was a Serious Threat of Imminent Societal Harm.

Officers Hawkins and Maldonado were justified in conducting a warrantless search of Respondent's house because there were credible, exigent circumstances created by the threat of further shootings from the Balboa Park shooter and his "friends." R. at 36. Warrants are generally required to search a person's house, unless "the exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment. *Mincey v. Arizona*, 437 U.S. 385, 393–94 (1978). Exigent circumstances are situations where "real, immediate, and serious consequences" will occur if a police officer postpones action to obtain a warrant. *United States v. Ponder*, 240 F. App'x 17, 20 (6th Cir. 2007).

Such exigencies include the need to prevent a suspect's escape, to prevent the imminent destruction of evidence, or as most applicable here, to protect individuals who are threatened with imminent harm. *Brigham City, Utah v. Stuart*, 547 U.S. 398, 403 (2006); *see Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (when officers have reason to believe that an occupant is dangerous and may gain immediate control of weapons). The common theme of these cases is the existence of a true emergency. *United States v. Simmons*, 661 F.3d 151, 157 (2d Cir. 2011). Therefore, if law enforcement is facing an urgent situation, such fact-specific threats are likely to justify a warrantless search when officers have a reasonable belief of guilt. *Brigham City*, 546 U.S. at 403. In determining exigency, this Court assesses the totality of the circumstances leading up to the warrantless search. *Missouri v. McNeely*, 569 U.S. 141, 143 (2013). Here, the totality of the circumstances provided exigency from threats of continued mass violence, the gravity of such violence, and the need to act swiftly to prevent such violence.

1. The phone call placed by the Balboa Park shooter provided law enforcement with reason to suspect imminent harm to the public.

Imminent harm to the public existed because law enforcement had knowledge that another mass shooting was going to occur in the San Diego area from a shooter who had proven he had no regard for human life.[2] Protecting the physical security of its people is the primary job of any government, and the threat of mass murder implicates that interest in the most compelling way. *Mora*, 519 F.3d at 223. Law enforcement must be able to take effective preventive action when evidence surfaces that an individual intends to slaughter others. *Id.*; *see also Fletcher v. Town of Clinton*, 196 F.3d 41, 49 (1st Cir. 1999) ("evidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists").

The role of a peace officer is to prevent violence, not to simply render aid to casualties. *Brigham City*, 546 U.S. at 406. Accordingly, if "reasonable minds may differ" then courts should not second-guess the judgment of experienced law enforcement officers concerning the risks of a particular situation. *United States v. Blount*, 123 F.3d 831, 838 (5th Cir. 1997). This Court should defer to the preventative measures taken by law enforcement to ensure that the citizens of San Diego, particularly children, were not put in harm's way.

Accordingly, the authority to defuse a threat in an emergency necessarily includes the authority to conduct searches aimed at uncovering the threat's scope. *Mora*, 519 F.3d at 226 (4th Cir. 2008); *see United States v. Hobbs*, 24 F.4th 965, 972 (4th Cir. 2022) (holding that officers reasonably concluded that use of the exigency exception was necessary to obtain a prompt response from the defendant's cell phone provider when he was armed and dangerous, at large,

[2] The Balboa Park shooter's Manifesto, found on the rooftop of the San Diego Art Museum, stated, "My friends and I are going to show this world that there's nothing. Nothing but despair. We're going to do this again. Get ready. Soon." R. at 36.

and threatening to kill citizens). In *Mora*, Maryland police received a phone call from a hotline operator explaining that the defendant was suicidal, had weapons in his apartment, and wanted to shoot people at work because he "might as well die at work." *Mora*, 519 F.3d at 220. The Fourth Circuit held that a warrantless search of the defendant's luggage, van, and apartment was reasonable based on the overwhelming need to prevent harm to the public, given the threat of mass homicide. *Id.*

Similarly, in *United States v. Caraballo*, the Second Circuit concluded that exigent circumstances justified officers' failure to obtain a warrant for access to the defendant's cell phone pings. 831 F.3d 95, 101 (2d Cir. 2016). The court observed that the officers (1) had "good reason to believe" that the defendant was armed, (2) were aware that he was the primary suspect in a brutal murder, and (3) most importantly, had "specific reasons to think" that he would act to kill those who interfered with his drug operation. *Id.* at 104-05.

Like *Mora* and *Caraballo*, law enforcement had reasonable belief that Respondent was armed and dangerous. One day prior to the search of Respondent's house, law enforcement received the anonymous call from the Balboa Park shooter indicating that his next shooting would be at a school. R. at 4. Not only did law enforcement have to search and prevent the Balboa Park shooter from striking again, but they also had to search for his "friends" mentioned in his manifesto, expanding the range of danger posed to citizens. R. at 36. When law enforcement discovered that Respondent owned the same type of assault rifle as the one used in the Balboa Park shooting, they obtained reasonable grounds to believe that Respondent was armed and could be a suspect in the shooting or further shootings. R. at 2. Given that two weeks had passed, the threat of an impending mass shooting qualifies as exigent because the investigation provided officers with specific reasons to believe that Respondent would imminently kill citizens, like the

defendants in *Mora* and *Caraballo*. R. at 31. Thus, law enforcement needed to utilize all measures to prevent the imminent mass shooting and apprehend the Balboa Park shooter and any accomplices. The need to protect the public from imminent violence is an interest that substantially outweighs the Respondent's Fourth Amendment interest.

Even if law enforcement was incorrect about their suspicion that Respondent was involved in the Balboa Park shooting, they were still within the scope of their duty to prevent a mass casualty event that they reasonably believed would occur. The exigency exception permits warrantless house entries when officers *reasonably believe* that some actor or object in a house may immediately cause harm to persons or property not in or near the house. *Armijo ex rel. Armijo Sanchez v. Peterson*, 601 F.3d 1065, 1071 (10th Cir. 2010) (emphasis added).

In *Armijo*, officers received reports indicating that a bombing and shooting at a local high school was imminent. *Id*. at 1068. Acting on plausible investigatory evidence, officers searched and detained the plaintiff's son in his house. *Id*. at 1069. The Tenth Circuit found the search to be constitutional, holding that the officers acted not to protect the house's occupants, but to protect the students and staff at a nearby high school, thus stretching the emergency-aid doctrine to a place where the emergency had not yet gone. *Id*. at 1071. Here, similarly to *Armijo*, Officers Hawkins and Maldonado entered and searched Respondent's house, acting on investigatory evidence, in order to prevent imminent mass violence. R. at 4. Law enforcement was not required to have absolute certainty that Respondent was involved with the Balboa Park shooting or would soon engage in another shooting. Therefore, this Court should adopt the reasoning of the Tenth Circuit—that the emergency aid doctrine applies to locations where the emergency has not yet taken place.

2. The gravity of a second mass shooting was a critical factor that resulted in reasonable necessity of a warrantless search.

The imminent threat of a mass shooting at a school provides exigency unlike any other because of the gravity behind the severity of such a threat. Whether there is reasonable necessity for a search without waiting to obtain a warrant depends largely upon the gravity of the underlying offense. *Welsh v. Wisconsin*, 466 U.S. 740, 750 (1984); *see United States v. Aquino*, 836 F.2d 1268, 1271–72 (10th Cir. 1988) (holding that independent exigent circumstances can justify Fourth Amendment intrusions when the police are investigating grave crimes). In *Welsh*, the defendant was arrested in his house for refusing to consent to a breathalyzer after he arrived home from a car accident. *Id*. at 753. This Court reasoned that because the petitioner had already arrived home and his vehicle had been abandoned, there was little remaining threat to public safety. *Welsh*, 466 U.S. at 750. Refusing a breathalyzer with no remaining danger to the public did not meet the Fourth Amendment's threshold to justify a warrantless search of a house because the threat was minor. *Id*. at 754.

Unlike *Welsh*, this offense was not minor. The gravity of an imminent mass shooting is of the highest concern to law enforcement due to the incredible threat to public safety. Refusing to consent to a breathalyzer does not hold the same magnitude of danger as an outstanding mass shooter. Law enforcement was under immense pressure to apprehend the suspect because of the imminent threat of continued mass shootings that he posed to the public. R. at 3, 31. A shooter on the loose with an automatic assault rifle is capable of killing a large group of people within a short span of time.[3] Moreover, the Balboa Park shooter noted that he originally only targeted two

[3] In one analysis of 340 mass shootings occurring between 1966 and 2016, it was found that in mass shootings carried out using at least one assault-style rifle, an average of 5.2 people were killed, and 7.6 others were injured. Jaclyn Schildkraut & Collin M. Carr, *Mass Shootings, Legislative Responses, and Public Policy: An Endless Cycle of Inaction*, 69 Emory L.J. 1043, 1048 (2020).

individuals but decided to shoot sixteen individuals instead to "play it off." R. at 37. Thus, the danger posed by the Balboa Park shooter—armed with an automatic assault rifle—is above all else. In seconds an individual may go from enjoying their day to serious injury or death.[4] With the intelligence that law enforcement had at the time of the entry and search, all they knew was that a shooter or shooters were on the loose, threatening to kill again, and could strike at a moment's notice. R. at 36. Law enforcement used the means necessary to ensure that additional massacres did not occur.

3. Delaying the response of law enforcement in preventing a potential mass shooting would have compounded the danger to citizens.

Had law enforcement delayed their search of Respondent's house, they would have only increased the likelihood that harm would be brought upon citizens in the area. The Fourth Amendment does not require law enforcement to delay their investigations if doing so would gravely endanger their lives or the lives of others. *Warden v. Hayden*, 387 U.S. 294, 298–99 (1967). In *Warden*, police were informed that the suspect of an armed robbery had entered a house minutes before they reached it. *Id*. at 298. Holding that the search was constitutional, this Court reasoned that speed was essential in searching the house to ensure that the defendant was the only person in the house and that all weapons which could be used against law enforcement or to affect an escape had been secured. *Id*. at 299.

Delaying the response of law enforcement here would have created a high likelihood that the lives of citizens would be put at risk. With minimal leads in tracking down the Balboa Park shooter, time was of the essence and law enforcement knew that delaying the search of Respondent's house could lead to another shooting, destruction of the murder weapon, or flight by

[4] Survivor Rafael Espinoza told the San Diego Times, "One moment I was walking in the park with my family, the next thing I know, I hear gunshots, my arm explodes in pain and my wife is lying face down on the ground not moving." R. at 30.

the Respondent. R. at 3. Like the officers in *Warden*, Officers Hawkins and Maldonado responded rapidly to Respondent's house. R. at 4. As far as law enforcement knew, as soon as Respondent received the large duffel bag from McKennery, he could have left his house to commit the school shooting. Respondent knew that he was not supposed to loan out his rifle and also knew that he could get into trouble with law enforcement given that it was the same type of rifle as the one used in the Balboa Park shooting.[5] R. at 26. Hence, Respondent could have utilized means of escape had he discovered that he was being investigated by law enforcement. Therefore, because exigent circumstances existed, law enforcement could not afford to delay their investigation further without putting the lives of those throughout the San Diego area at risk.

Ultimately, Officers Hawkins and Maldonado's entry and search of Respondent's house did not violate the Fourth Amendment because the entry and search were constitutional. Under the circumstances at the time, the Balboa Park shooter could have killed again on a moment's notice. Such danger provided sufficient exigency to bypass the warrant requirement when law enforcement gathered enough evidence for probable cause linking Respondent to the shooting. Thus, this Court should *reverse* the holding of the California Fourth District Court of Appeal.

CONCLUSION

Petitioner respectfully requests that this Court *reverse* the California Fourth District Court of Appeal's decision and hold that (1) law enforcement does not need a warrant to access ALPR data, and (2) the entry and search of Respondent's house did not violate the Fourth Amendment because there was an imminent threat of harm to the public.

[5] California Penal Code section 30600(a) makes it is a felony to lend an assault weapon and is punishable with prison time. R. at 34.