No. 1788-850191

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 2022

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

NICK NADAULD,

Respondent.

On Writ of Certiorari to the

California Supreme Court

BRIEF FOR RESPONDENT

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the aggregation of Nick Nadauld's past location information, using an Automatic License Plate Recognition database, qualified as a search and required a warrant and whether all evidence procured from the aggregation of Nick's location data should be suppressed as fruit of the poisonous tree.

II. Whether, under the Fourth Amendment, there was probable cause and exigent circumstances to justify a warrantless search of Nick Nadauld's home.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case is about the government's warrantless aggregation of Nick Nadauld's location information using an Advanced License Plate Recognition system and, subsequently, the government's warrantless search of Nick's home. R. at 3–4.

Advanced License Plate Recognition Database ("ALPR") Systems. ALPRs function by indiscriminately capturing images of vehicle's license plates, and storing the geospatial location where the image was taken, as the operators of those vehicles travel to their daily destinations. R. at 38–39. The cameras that capture these images are placed throughout the cities in public locations such as roadways, public property, and on vehicles. R. at 39. Law enforcement does not disclose the location of the cameras because they are "investigative tools." R. at 39. The photographed license plate is immediately compared against law enforcement databases to determine whether the vehicle is on a "hot list." R. at 38. The captured license plate and geospatial location are stored in a database for a time period ranging anywhere from sixty days to five years. R. at 40. Working as a pointer system, ALPR technology allows law enforcement officers to "conduct searches with limited information." R. at 38.

The Shooting. Frank McKennery ("Frank") went to Balboa Park, with a plot to murder a woman he had a vendetta against, and shot into an open crowd. R. at 2–3. He killed nine people and wounded six more. R. at 2. The weapon that Frank used was an M16 that he borrowed from Nick Nadauld ("Nick"). R. at 2. The bullets that Frank used during the shooting were of a caliber that is common to many assault rifles. R. at 2. Frank fled the scene without being caught. R. at 2. He left behind a "manifesto" indicating that he had an accomplice and professing that there would be other shootings in the future. R. at 36. The police did not identify Frank as the shooter

until two weeks later when he was found dead, from a suicide, lying next to a confession letter. R. at 4.

Nick Nadauld. Nick worked with Frank at a construction company for about a year prior to the Balboa Park shooting. R. at 2. Nick owned the gun that Frank used at the shooting. R. at 4. Nick inherited the gun five years prior to the shooting. R. at 2. Nick lent Frank the gun under the pretext that Frank wanted to use the gun for shooting practice. R. at 2.

The Aggregation of Nick's Past Location Data. On the day of the shooting, around forty pedestrians and fifty cars fled the scene without being identified. R. at 3. The police were never able to identify the forty pedestrians, due to the low quality of the video that came from the cameras at the park. R. at 3. Beginning their investigation, police ran a criminal history check on the owners of all fifty vehicles that left the scene. R. at 3. Frank was on that list. R. at 3. Next, the police pulled a list of registered assault rifle owners in the area. R. at 3. While Frank was not on the that list, Nick was. R. at 3. Then the police cross-referenced the fifty vehicle owners with the list of local assault rifle owners. R. at 3. None of the vehicle owners were on the assault rifle owning list. R. at 3. Next, using the Automatic License Plate Recognition database, the police searched and aggregated the geographical location information of everyone on the two lists. R. at 3. Tracking the past movements of everyone on these two lists, the police cross-referenced both groups and found that there were pairings of people whose location's overlapped. R. at 3. One of these pairings was Nick and Frank. R. at 3–4. The police placed cameras on utility poles outside of the residences of the people whose geographical locations overlapped the most, including Nick's. R. at 4. The Police also mailed out a letter to all people on the assault rifle list to let them know that the police would be coming in one month to verify that their rifles were inoperable,

which is necessary under California Penal Code 30915. R. at 4. Nick received this letter two days after the police mailed it. R. at 4

The Warrantless Search of Nick's Home. Fourteen days after the shooting, the police received a call from an anonymous caller stating, "This is the Balboa Park shooter. This time, it's gonna be a school." R. at 4. More than 24 hours later, the police, through their surveillance camera at Nick's house, saw Frank hand over, to Nick, a large duffel bag, which had Nick's gun that Frank had borrowed. R. at 4. Thirty minutes later the police showed up to Nick's house. R. at 4. They asked Nick to see his rifle and Nick offered to get the gun while the officers waited outside. R. at 23. Without Nick's permission, and without a warrant, the police officers entered Nick's home, searched the rooms in the home, and found the gun on Nick's bed. R. at 24. After finding the gun, Nick told the police that he had lent the gun to Frank and informed the police about a picture Frank sent Nick claiming to be in Arizona on the day of the shooting. R. at 24. The officers informed Nick that he was the prime suspect for the Balboa Park shooting and arrested him. R. at 24. Afterwards, the officers went to Frank's house and found Frank inside, dead, next to a note confessing to the Balboa Park Shooting. R. at 4.

II. PROCEDURAL HISTORY

On October 1, 2021, Nick was charged with nine counts of second-degree murder under California Penal Code § 187, nine counts of involuntary manslaughter under California Penal Code § 192, one count of lending an assault weapon under California Penal Code § 30600, and one count of failing to comply with California Penal Code § 30915, for having an operable assault rifle when the police warrantlessly searched his home. R. at 1. Nick's attorney timely filed a Rule 12 pretrial motion to suppress evidence, alleging that Nick's Fourth Amendment rights were violated when the police warrantlessly compiled and aggregated Nick's past

geographical locations using the ALPR system, when the police warrantlessly mounted a pole camera outside of Nick's home, and when the police warrantlessly searched Nick's home. R. at 1.

The Superior Court of the State of California denied Nick's motion to suppress. R. at 1. Nick appealed the Trial Court's denial of his motion to suppress the evidence. R. at 13. The California Fourth District Court of Appeal reversed the Superior Court of the State of California's decision and remanded for further proceedings. R. at 14. The United States Government appealed to the California Supreme Court, and they denied certiorari in the matter. This Court granted certiorari.

SUMMARY OF THE ARGUMENT

This Court should affirm the California Fourth District Court of Appeal's decision to suppress all evidence in connection with this case. The aggregation of Nick's location data, using ALPRs, constituted a search because Nick had a reasonable expectation of privacy in his physical movements that society was willing to accept and, therefore, required a warrant. No exigent circumstances or probable cause justified a warrantless search of Nick's home. Moreover, because the aggregation of the ALPR data required a warrant, and the police did not obtain one, all evidence stemming from that illegal search must be suppressed as fruit of the poisonous tree.

The aggregation of Nick's location data via ALPR databases constituted a search because Nick had an objectively reasonable expectation of privacy in his physical movements and, therefore, it required a warrant. Nick travels on public roads as a necessity of his daily life. As he traveled on those public roads, images of his license plate were taken by ALPRs and stored into databases that police accessed simply because Nick happened to own a rifle and live in an area

where a shooting occurred. Nick has no way of knowing where these cameras are placed, or when images of his license plate are being taken. The police, without a warrant, aggregated a substantial series of Nick's pinpointed location information and created a historical map of his movements. This accumulation of Nick's past location information requires a warrant because it is unreasonable for society to expect that their every move on public roads is being documented by the government for the government to aggregate at their will.

As to the warrantless search of Nick's home, the search required a warrant because there was not probable cause and exigent circumstances. Probable cause did not exist because Nick was not at the scene of the crime, the connection between Nick and the shooter was coincidental, and Nick requesting that the officers not search his home without a warrant did not create probable cause. There were not exigent circumstances present at the time of the warrantless entry, either. No one within the home was within imminent risk of being harmed, the evidence recovered from the search was not in immediate danger of being destroyed because Nick offered to get the rifle for the officers, and there was not a fleeing suspect.

Lastly, even if this Court finds that the officers had probable cause and exigent circumstances to warrantlessly search Nick's home, the aggregation of Nick's location data required a warrant because it was a search, and all evidence resulting from that illegal search must be suppressed as fruit of the poisonous tree.

STANDARD OF REVIEW

This Court reviews the legal conclusions, of a denial for a motion to suppress, de novo and reviews factual findings for clear error. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

ARGUMENT AND AUTHORITIES

I. THE CALIFORNIA FOURTH DISTRICT COURT OF APPEAL CORRECTLY GRANTED NICK'S MOTION TO SUPPRESS BECAUSE THE AGGREGATION OF NICK'S LOCATION DATA CONSTITUTED AS A SEARCH.

This Court should affirm the appellate court's judgment. The aggregation of location data, from ALPRs, is fundamentally the same as data aggregated using cell-site location. Nick had an objectively reasonable expectation of privacy in his physical movements. And allowing the warrantless aggregation of location data does not serve the purpose of the Fourth Amendment: "to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) (quoting *Camara v. Mun. Ct. of S.F.*, 387 U.S. 523, 528 (1967)).

The Fourth Amendment extends to individuals the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," and ensures that this right will not be infringed upon without issuance of a warrant that is supported by probable cause. U.S. Const. amend. IV. This Court has determined that the Fourth Amendment was designed to protect people, as well as places, and that the Amendment does not "turn upon the presence or absence of a physical intrusion." *Katz v. United States*, 389 U.S. 347, 353 (1967). Instead, a search occurs, and the Fourth Amendment applies, when the government encroaches on conduct where an individual exhibits an expectation of privacy and that expectation is one that society is "prepared to recognize as reasonable." *Smith v. Maryland*, 442 U.S. 735, 740 (1979). This Court has made clear that just because someone is in a place where they "might be seen" does not mean that they simply shed their right to the Fourth Amendment. *Katz*, 389 U.S. at 352. Moreover, the "fruit of the poisonous tree" doctrine requires that evidence obtained by way of an illegal search be excluded. *Wong Sun v. United States*, 371 U.S. 471, 492 (1963).

Here, the government tracked, stored, and then aggregated Nick's past geolocation data without obtaining a warrant. R. at. 3. Finding that Nick crossed physical paths with someone who the police would later identify as the Balboa Park Shooter, the police put cameras on Nick's house. R. at 4. When they surveyed Nick having his legally owned gun returned in a duffel bag, by Frank McKennery, the police went to Nick's home. R. at 4. They entered it, and searched it, without consent and without a warrant. R. at 4. During this warrantless search, the police found Nick's gun. R. at 4. The California Fourth District Court of Appeal held that all evidence resulting from the warrantless search of Nick's location information must be suppressed because the evidence was obtained illegally. R. at 21. This Court should affirm that judgment.

A. The Aggregation of Location Data Using ALPRs Is Essentially the Same as the Aggregation of Location Data Using Cell-Site Location in *Carpenter*.

The recovery and aggregation of Nick's location data, using the ALPR database, constituted as a search because compiling past location information is a search whether it is done by using cell-site location data or data captured by ALPRs. In *Carpenter*, this Court held that "official intrusion into the private sphere generally qualifies as a search and requires a warrant." 138 S. Ct. at 2213. Here, the aggregation of Nick's location data constituted as a search because the government intruded into Nick's private location information and tracked his past physical movements.

In *Carpenter v. United States*, this Court held that the aggregation of cell-site location data was a search and required a warrant because cell phone user's location information is arbitrarily captured and stored, so that it pinpoints the locations of individuals as they move about their daily lives. *Id.* at 2218–19. This data can be comprehensively combined so that a person's past movements may be clearly charted. *Id.* at 2218. Similarly, an undisclosed number of ALPRs are distributed throughout the city, and they indiscriminately take photos of everyone's license plate

who drives by them. R. at 38. These photos are stored in databases, for a period of anywhere between sixty days and five years. R. at 40. The police may access the pinpointed, past geolocations of any individual for any purpose that they deem "legitimate." R. at 38. And may recover a map of their routes by aggregating the pinpointed locations. R. at 3. In *Carpenter*, this Court reasoned that the aggregation of past location data certainly constituted as a search and was under the protection of the Fourth Amendment because, "whoever the suspect turned out to be, he has effectively been tailed every moment of every day for five years." 138 S. Ct. at 2218. This Court should apply the same reasoning to ALPRs because they function the same as cell-site location data. An image is secretly taken of a person's license plate as they travel to personal locations. R. at 38–40. That image is then stamped with the geolocation of that person and stored in a database. R. at 38. The police may effortlessly access and aggregate that data so that they are able to stitch together a comprehensive map of someone's whereabouts for up to five years. R. at 38–40. The aggregation of this data should require a warrant, just as the cell-site location data in *Carpenter* required a warrant, because it is a search. 138 S. Ct. at 2221.

B. The Aggregation of Location Information Is a Search Because There Is a Reasonable Expectation of Privacy in One's Physical Movements.

This Court should affirm the appellate court's judgment because Nick had a reasonable expectation of privacy in his physical movements. Nick's expectation is reasonable because the public does not anticipate that, when they leave their home in the morning, their movements are being captured and catalogued for the arbitrary use of the government. While there are certain affirmative actions that show a subjective waiving of an expectation of privacy, Nick did nothing to vitiate his expectation of privacy in his physical movements. Moreover, the aggregation of Nick's past location information is not parallel to the active tracking of a vehicle with aid of a GPS device. And Nick did not knowingly or voluntarily provide the government with his

location information. Because Nick took no affirmative action to waive his expectation of privacy, his past location information is not something that police would otherwise have access to and Nick did not voluntarily and knowingly provide his past geolocation information to the police, Nick had a reasonable expectation of privacy in his physical movements.

1. Nick had no expectation that his movements were being monitored and catalogued.

The aggregation of Nick's past location data constituted a search because Nick had a reasonable expectation of privacy when he drove to and from his personal destinations throughout the day. There is a reasonable expectation of privacy in one's physical movements even when a person is moving about in the public sphere. *Id.* at 2217. In *Carpenter*, this Court reasoned that society does not expect that government agencies can monitor and catalogue every movement throughout their day. *Id.* Here, as Nick was driving on public roads, images of his license plate were being captured and that information catalogued. R. at 38–40. Police officers, at the drop of a hat, aggregated that data and created a map of Nick's past movements so that they were able to see when and where Nick was from the moment he left his house, until the time he got home at night. R. at 3. These circumstances do not differ from those in *Carpenter* where cell-site location data was aggregated to retroactively track the movements of an individual. 138 S. Ct. at 2217 (holding that aggregation of movements captured by cell-site location information is inherently private and requires a warrant). Aggregating someone's past location data using ALPRs should require a warrant because there is an objectively reasonable expectation that when we leave our home in the morning, the places that we go, and the people that we see, are private affairs. Society does not expect that the government is creating an inventory of that information that they are able to pull out of a virtual filing cabinet whenever they see fit without the

interference of a neutral magistrate. *See generally id.* (reasoning that society does not expect that government can secretly monitor and catalogue movements over long period of time); R. at 38.

It has been held that affirmative actions by individuals may result in waiving one's reasonable expectation of privacy; however, Nick did nothing to negate his reasonable expectation of privacy. The Ninth Circuit recently held that an individual did not have a reasonable expectation of privacy in his movements, as collected and stored by ALPRs, while he was in a rental car that he failed to return past its due date. *United States v. Yang*, 958 F.3d 851, 858–59 (9th Cir. 2020). The court concluded that this was a result of the affirmative action that the rental company had taken to repossess the car and the lack of expectation of privacy that a renter has after they have kept a car past the expiration of the rental period. *Id.* at 859. This case is not applicable here because Nick was not in a rental car that he had kept past an expiration date. Nick was driving his own vehicle and had a reasonable expectation of privacy in his physical movements. The California Fourth District Court of Appeal was correct in holding that "unlike the defendant in [*Yang*]," Nick has done nothing to "vitiate a subjective expectation of privacy." R. at 15.

2. Aggregation of location data is not the same as tracking a vehicle using GPS because it gives the police insight into what they would otherwise not know.

Nick's past location data is under the protection of the Fourth Amendment because, even though he was driving in the public sphere, it is not something that the government would have knowledge of and aggregating his location data did not simply aid them in an active pursuit. The courts have held that GPS tracking, that merely aids in, or replaces the visual tracking of a vehicle, does not require a warrant. *See, e.g.*, *United States v. Knotts*, 460 U.S. 276, 285 (1983) (holding that the tracking of a vehicle by way of a GPS device inside of chloroform barrel did

not require a warrant); *see also United States v. Hufford*, 539 F.2d 32, 33–34 (9th Cir. 1976) (holding that there is no reasonable expectation of privacy on public road where GPS device aided in visual pursuit of vehicle). The aggregation of ALPR data is distinct from GPS tracking devices. *See generally Carpenter*, 138 S. Ct. at 2215 (explaining that GPS allows for surveillance of a single automotive journey). Accumulation of ALPR data provides the police with past location information that they would not otherwise have access to; it is not an aid in, or replacement of, a visual pursuit. R. at 38. The aggregation of Nick's past location data was in stark contrast with the use of a GPS device. The police were not in active pursuit of Nick. The police did not even consider Nick a suspect when they aggregated his location data. R. at 3. Instead, the police decided to formulate a list of every rifle owner in the area and then arbitrarily run the past location data of all of them. R. at 3. In *Carpenter*, this Court held that the "retrospective quality" of cell-site data differentiated it from aiding in, or replacing, visual tracking. 138 S. Ct. at 2218. Instead, it allows the police to track every individual before they even know who they want to track, and then, once they have a person of interest, reconstruct their past movements. *Id.* ALPRs work in the same way that cell-site location data does. Essentially, ALPRs, like cell-site data, create a time machine that allows officers to retroactively follow everyone and store that data until someone comes under investigation. This is exactly what the police did to Nick. Undisclosed ALPR cameras were placed throughout the city that Nick lives in. R. at 39. As Nick drove throughout the day, the cameras photographed and stored Nick's location information. R. at 38. Then, when the police decided that they wanted to see where Nick had been, for anywhere from sixty days to five years, they simply reconstructed his past movements. R. at 3, 40. This Court reasoned in *Carpenter* that this type of surveillance is beyond the scope of what a reasonable person would expect and should be under the constraints

of the Fourth Amendment. 138 S. Ct. at 2218. As ALPRs provide the government with the same geolocation data of individuals, store it in the same manner, and allow for an aggregation of one's past physical movements, so too, should ALPR surveillance be under the constraints of the Fourth Amendment and require a warrant.

3. Nick did not waive his Fourth Amendment right because he did not knowingly or voluntarily provide his location data to the government.

In the past, the government has been successful in claiming that someone waives their reasonable expectation of privacy when they knowingly and voluntarily provide information to a third party. *See Smith v. Maryland*, 442 U.S. at 742 (holding that person waived right to privacy when they knowingly and voluntarily conveyed phone numbers to phone company); *see also United States v. Miller*, 425 U.S. 435, 443 (1976) (holding that bank records were not protected by the Fourth Amendment because they were voluntarily given to a third party).[1] Nick did not knowingly or voluntarily turn over his location data to the government when he drove on public roads.

First, Nick did not knowingly provide the government with his location data because he did not know where location data was being obtained from. In *Smith*, a telephone company allowed the police to install a pen register in their office which recorded the phone numbers being dialed from the suspect's home. 442 U.S. at 735. The Court reasoned that telephone users knowingly convey the phone numbers they are dialing to the phone company, and because of this, cannot have a reasonable expectation of privacy that would constitute the pen register as being a search. *Id.* Nick, on the other hand, did not know that he was providing the government with his location information. Nick leaves his home in the morning and drives down the same public roads as the

[1] In response to *Miller*, Congress subsequently enacted the Right to Financial Privacy Act, creating a statutory right to privacy regarding certain financial documents. *See* 12 U.S.C. § 3401.

rest of his community. The number of ALPR cameras is not known by the public and the location of the cameras is undisclosed. R. at 39. Nick, a construction worker, is unfamiliar with the advancing technology and ways by which the government can track his daily routes. R. at 2. Without knowledge of when and where his data is being obtained, it cannot be said that Nick knowingly gave over his location data to the police. *See generally Carpenter*, 138 S. Ct. at 2217 (reasoning that speed at which technology is advancing has left public unable to imagine when and where movements are recorded). Moreover, it is a stretch to assume that Nick would knowingly provide the government with his whereabouts every time he wanted to drive on a public road.

Second, Nick did not voluntarily provide the government with his location information because he took no affirmative action to do so and has no option but to drive on public roads. In *Carpenter*, this Court held that the defendant did not voluntarily provide his location information via cell-site because there was no affirmative action on the defendant's part and cell phones are such a pertinent part of daily life that carrying one is "indispensable to participation in modern society. *Id.* at 2220. Even more pervasive than cell phones in our daily lives, the use of public roads are indispensable. Using public roads is not a choice, it is a necessity. The third-party doctrine does not apply to this case because Nick cannot knowingly give his location information to the police without first knowing where the cameras are that provide the police with that information. And Nick did not voluntarily give his location data to the police because driving on public roads is not a choice that Nick makes, it is a necessity of life that Nick must endure.

C. The Use of ALPRs to Aggregate Nick's Data Thwarts the Purpose of the Fourth Amendment Because It Was an Arbitrary Invasion of Government Power.

The purpose of the Fourth Amendment is "to safeguard the privacy and security of individuals against arbitrary" governmental intrusions. *Id.* at 2213. In determining which expectations of privacy that the Fourth Amendment is meant to protect, this Court has provided two guideposts: first, the Fourth Amendment "seeks to secure the privacies of life"; second, the aim of the Framers of the Amendment was to "place obstacles in the way of a too permeating police surveillance." *Id.* at 2213–14. Allowing the government to aggregate location data via ALPRs without a warrant thwarts the purpose of the Fourth Amendment because the past location of an individual is a privacy of life and because, without the interference of a neutral magistrate, the police force is too permeating.

First, the public has a perfectly reasonable expectation that where they travel during the day, whether that be to church, to their doctors, to their friends, to their lovers, that it is a private affair that the government does not keep track of. The aggregation of Nick's data intruded on a private part of his life that he cannot give up. For Nick to leave his home and get to the places that he needs to be, he must drive on public roads. Because he must drive on public roads, the government is not provided with complete authority to gather location data on Nick, store it, and then secretly map out his routes without any oversight. Yash Dattani, *Big Brother Is Scanning: The Widespread Implementation of ALPR Technology in America's Police Forces*, 24 Vand. J. Ent. & Tech. L. 749, 774 (2022) (explaining that the daily travel of a person is not something that can be given up). The private parts of our lives that are necessary should be protected under the Fourth Amendment. To hold otherwise, allows us to be held captive by the government as they may intrude where we are left with no choice but to allow them.

Second, in *Carpenter*, this Court opined that, with the quickly growing capacities of technology, it is necessary to ensure the same level of privacy that existed when the Framers adopted the Fourth Amendment. 138 S. Ct. at 2213–14. To do this, this Court must determine that a warrant is absolutely necessary for the aggregation of past location data using ALPRs because it is difficult to imagine that the Framers would have intended for the government to have the unrestrained ability to create invasive technology and use that technology to retroactively track citizens without a warrant. Dattani, *supra*, at 774. To allow the police to arbitrarily track and store the location data of every individual on the road and recover and aggregate that data for any reason that they see necessary, without a neutral, third-party obstacle, is basically saying that a person leaves their Fourth Amendment right to privacy in their home. *See generally Carpenter*, 138 S. Ct. at 2217 (holding a person does not surrender their right to the Fourth Amendment when they step into public sphere). This cannot be the intent of the Framers of the Fourth Amendment. *See id.* at 2213–14 (reasoning that the intent of the Framers was not to allow government to capitalize on advancing technology to warrantlessly search). This Court should adopt their reasoning in *Carpenter* and affirm the California Fourth District Court of Appeal decision that the aggregation of ALPR location data requires a warrant to safeguard the right to privacy and uphold the purpose of the Fourth Amendment.

D. Because the Aggregation of Nick's Location Data Was Illegal, All Evidence Procured from That Information Should Be Suppressed as Fruit of the Poisonous Tree.

The California Fourth District Court of Appeal was correct in holding that all evidence stemming from the illegal aggregation of Nick's location data, using ALPR, must be suppressed because evidence resulting from illegal searches cannot be used against the victim of the search. The fruit of the poisonous tree doctrine, an extension of the exclusionary rule, gives weight to the

Fourth Amendment because without it the "Fourth Amendment is . . . of no value . . . and might as well be stricken from the Constitution." *Weeks v. United States*, 232 U.S. 383, 393 (1914). Its goal is to deter law enforcement from performing illegal searches by not rewarding their behavior for violating someone's Fourth Amendment right. Alyson M. Cox, *Does It Stay, or Does It Go?: Application of the Good-Faith Exception When the Warrant Relied Upon Is Fruit of the Poisonous Tree*, 72 Wash. & Lee L. Rev. 1505, 1510 (2015) (discussing the history of the fruit of the poisonous tree doctrine). Holding that evidence, procured from the illegal aggregation of Nick's location data, should not be suppressed would result in devaluing the Fourth Amendment. Nick had a reasonable expectation of privacy when he moved about his daily life, unaware that the government was tracking his every move, storing that information, and able to aggregate it on a whim to be used as a means of acquiring evidence. Without having any leads to the identity of the Balboa Shooter, the police arbitrarily accumulated a list of rifle owners in the area, and then, without even the low bar of probable cause, aggregated the location data of everyone on that list, including Nick. R. at 3. This was a clear violation of Nick's Fourth Amendment rights because it intruded on the privacies of Nick's life where he had an objectively reasonable expectation of privacy and any evidence that was gathered, whether direct or indirect, should be suppressed. *Wong Sun*, 371 U.S. at 484–85 (citing *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920)) (holding that any evidence obtained as "products of an invasion," whether direct or indirect, "shall not be used at all"). The heart of the doctrine is that evidence procured from an illegal search can "not constitute proof against the victim of the search." *Id.* at 484. Nick is the victim of an illegal search and any evidence resulting from this violation must be suppressed.

II. THE CALIFORNIA FOURTH DISTRICT COURT OF APPEAL CORRECTLY HELD THAT THE SEARCH OF NICK'S HOME REQUIRED A WARRANT BECAUSE THERE WAS NO PROBABLE CAUSE OR EXIGENT CIRCUMSTANCES.

This Court should affirm the California Fourth District Court of Appeal's holding that the search of Nick's home required a warrant because the probable cause and exigent circumstances that would permit warrantless entry did not exist in this case. Tracing back to the common law, the privacy one is entitled to in their own home, is held to a higher regard than what he is entitled to in public, so much so that it "stiles it his castle and will never suffer it to be violated with impunity." 4 William Blackstone, *Commentaries on the Laws of England* 223 (1769 ed.). For this reason, the lenient standards for a warrantless arrest in a public place do not apply to the warrantless search of a residence. *Kirk v. Louisiana*, 536 U.S. 635, 637–38 (2002). The Fourth Amendment draws a firm line at the entrance of a home. *Id.* at 638. That line requires that police must have a warrant or have probable cause and exigent circumstances to enter a home. *Id.* Even where there could be probable cause, it is still required that the police have exigent circumstances. *Id.* A reasonable police officer would not find probable cause because Nick was not at the scene of the crime, the mere coincidental nature of Nick crossing paths with someone who was at the scene of the crime is not grounds for probable cause, and Nick asking the police not to enter his home without a warrant did not create probable cause. Additionally, exigent circumstances did not exist because there was not a fleeing suspect, the police did not need to render emergency aid to someone in the home and evidence was not in immediate danger of being destroyed. The warrantless entry of Nick's home was unlawful and circumvented the requirements of the Fourth Amendment because there was not probable cause and the exigent circumstances required for a warrantless entry did not exist.

A. The Police Did Not Have Probable Cause to Warrantlessly Search Nick's Home.

This Court should affirm the appellate court's judgment that the warrantless search of Nick's home violated Nick's Fourth Amendment rights because probable cause did not exist in these circumstances. Probable cause, while not capable of being technically defined, amounts to a "reasonable ground for belief of guilt." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003). It is "less than evidence would justify . . . for conviction" but still requires "more than bare suspicion." *Brinegar v. United States*, 338 U.S. 160, 175 (1949). The police lacked probable cause to enter Nick's home.

First, Nick was not at the scene of the crime, nor was his vehicle identified as being at the scene of the crime. R. at 4. This alone should have led a reasonable police officer to understand that probable cause did not exist and that to overcome this presumption there would need to be additional circumstances. *Kentucky v. King*, 563 U.S. 452, 459 (2011) (citing *Brigham City v. Stuart*, 547 U.S. 398, 412 (2006)) (holding that a warrantless search of a home is "presumptively unreasonable," and requires additional circumstances to overcome this presumption). Frank, on the other hand, was at the scene of the crime. R. at 3. The police witnessed Frank hand Nick a duffel bag. R. at 4. The police assumed that this duffel bag contained a weapon. R. at 4. However, instead of stopping Frank, or heading to Frank's home, which is what a reasonable police officer would do under these circumstances, considering that they knew that Frank was at the scene of the crime, the police wasted time and effort illegally searching Nick's home. R. at 4; *see generally Pringle*, 540 U.S. at 371 (explaining that determining probable cause to arrest is taken from the standpoint of an objectively reasonable police officer); *see also Illinois v. Gates*, 462 U.S. 213, 238–39 (1983) (explaining that probable cause does not require a "prima facie showing of criminal activity" but does require a substantial chance). The circumstances in this

case do not even meet the low bar of probable cause because there was nothing to indicate that Nick committed the Balboa Park Shooting; the only thing that Nick did was legally own a firearm.

Second, the limited information that the police had when they arrived at Nick's home would not have led a reasonable police officer to warrantlessly search his residence because the connection between Nick and the Balboa Park Shooter was arbitrary and coincidental. The police simultaneously tracked the location data of fifty rifle owners and fifty cars that were at Balboa Park. R. at 3. They found that there were multiple pairings of people whose locations overlapped. R. at 3. One of these pairings happened to be Nick and Frank, whom the police did not even know was the Balboa Shooter until after Nick told the police that he had lent Frank his gun. R. at 24. Finding that, after running 100 people's location data, two people's locations overlap is not reasonable grounds for probable cause. *See generally Pringle*, 540 U.S. at 371 (explaining that probable cause requires a reasonable ground for belief of guilt). This location data overlap is nothing more than coincidental, just as the other pairings of people whose location data overlapped was coincidental. Certainly, if any more than coincidental, it did not show a substantial chance for criminal activity. *See Gates*, 462 U.S. at 238–39 (explaining that courts should look for substantial chance for criminal activity when reviewing the probable cause of magistrate orders for warrants). The coincidental overlap of Frank's and Nick's location information did not create additional circumstances that would have overcome the presumption that a warrantless search of Nick's home was unreasonable.

Third, Nick asking the police to not enter his house without a warrant did not create probable cause for a warrantless entry. Two days prior to the police showing up to Nick's home, Nick received a letter stating that police would be there in a month to check the status of his

firearm. R. at 4. Instead, they showed up forty-eight hours later. R. at 4. Nick was apprehensive about the police showing up to his home unannounced and told the police that he did not want them to enter. R. at 23. Immediately after Nick's request, the officers entered Nick's home without consent and without a warrant. R. at 24. The trial court contends that this request constituted probable cause. R. at 10. If the request of a citizen for the police not to enter without a warrant creates probable cause for a warrantless entry, then citizens would never be able to ask the police to not enter without a warrant. *See generally New York v. Belton*, 453 U.S. 454, 459–60 (1981) (explaining that a person cannot know the scope of his constitutional protection when they do not know how a court will apply a settled principle). More to the point, people deserve precision in the law and requiring a warrant to enter a person's home is a truth that laymen understand. Nick is a layman and was simply trying to exercise his Fourth Amendment right, as he understood it; this exercise did not create probable cause for the officer to enter his home. *See generally Kyllo v. United States*, 533 U.S. 27, 40 (2001) (holding that the Fourth Amendment line drawn to enter a home must be firm, bright, and specific).

B. Exigent Circumstances Did Not Exist That Would Justify the Warrantless Search of Nick's Home.

Even if this Court concludes that the lower bar of probable cause was met, it was still required for the police to have exigent circumstances to enter Nick's house without a warrant, which they did not have. If a search has occurred without a warrant, the state must show that they performed the search due to one or more of "a few specifically established and well-delineated exceptions." *Katz*, 389 U.S. at 357. This Court has held that exigent circumstances are limited to the need to assist those who are being threatened with imminent harm, if the police are in "hot pursuit" of a fleeing suspect, or if there is a danger that evidence will be immediately destroyed.

See Brigham City, 547 U.S. at 403. In Nick's case, exigent circumstances did not exist so that a warrantless search was merited.

First, there was no evidence of someone being threatened with imminent harm so that the "emergency aid" exception would apply. *See King*, 563 U.S. at 460 (explaining that under this exception a police officer may enter to render emergency assistance to injured person). This Court has held that an exigency that dissolves the need for a warrant is "the need to assist persons who are seriously injured or threatened with such injury." *Brigham City*, 547 U.S. at 403 (holding exigent circumstance where police witnessed person bleeding from mouth through screen door). There are no facts to indicate that this exigent circumstance applies in this case. The police had no reason to believe, and did not witness, that there was an injured person or one who was threatened with injury in the home. The police received an anonymous call, more than twenty-four hours prior to warrantlessly entering Nick's home, that there was a planned school shooting. R. at 4. While the gravity of this is noteworthy, this does not qualify as an imminent threat under the "emergency aid" exception. *See King*, 563 U.S. at 460.

Second, there was no immediate danger of evidence being destroyed because Nick offered to bring the gun to the officers when they asked for it. R. at 23. When the police arrived at Nick's house, after a moment's apprehension, Nick offered to bring the gun to the officers. R. at 23. A gun is not an item that is easily destroyed and the contention that Nick could have destroyed it in time for the officers to obtain a warrant is unreasonable. *See generally Ker v. California*, 374 U.S. 23, 40 (1963) (holding that exigent circumstances existed where narcotics can be easily destroyed). Moreover, the police sent out letters to all rifle owners in the area to let them know that the police would be there in one month to check the status of their rifles. R. at 4. If the police believed that the evidence was in immediate danger of being destroyed, the sending of the letters

stands contradictory to that belief. The trial court contends that exigent circumstances existed because the public was scared and that no one knew when their loved ones would be shot down. R. at 11. However concerning this may be, these fears do not create exigent circumstances where there are none.

The courts have held that the warrantless seizure of property in plain view, assuming that the property was involved in the furtherance of a crime, involves no invasion. *Payton v. New York*, 445 U.S. 573, 587 (1980). But this is not true where the seizure occurs on private property. *Id.* The seizing of Nick's rifle as evidence in this case was an invasion. First, the rifle was on private property. R. at 24. It was in Nick's home, in his bedroom, on his bed. R. at 24. Second, it was not in plain view. The officers had to warrantlessly enter Nick's home, walk through his home, and search rooms before the evidence was in sight. R. at 24. Because of these two reasons, the officers needed probable cause and exigent circumstances to enter Nick's home, search his home, and obtain the rifle that is being used as evidence. *Id.* at 603 (holding that the police required a warrant or probable cause to search a man's home even when a shell casing was in plain view).

Third, there is nothing to support the idea that the police were in "hot pursuit" of a suspect. Nick was at his home, cooperating with the police. R. at 4. The police required a warrant to enter Nick's home because they lacked probable cause and exigent circumstances to enter it warrantlessly.

CONCLUSION

This Court should **AFFIRM** the California Fourth District Court of Appeal's holding that all evidence must suppressed that resulted from the illegal aggregation of Nick's location data.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT