No. 1788-850191

In the Supreme Court of the United States

People Of The State of California,
Petitioner,

v.

Nick Nadauld,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE CALIFORNIA FOURTH DISTRICT
COURT OF APPEALS

BRIEF FOR RESPONDENT

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I. Whether police use of location information in an automatic license plate recognition database violated respondent's Fourth Amendment expectations of privacy.

II. Whether law enforcement had probable cause and exigent circumstances to enter respondent's home and conduct a search.

STATEMENT OF FACTS

On September 14, 2021, Frank McKennery ("McKennery") fired an M16A1 ("M16") automatic assault rifle into a crowd at Balboa Park leaving nine dead and six wounded. R. at 2. McKennery shot down into the crowd from a rooftop near the park. *Id.* McKennery's primary goal was to kill Jane Bezel and her fiancé because he had become obsessed with her. *Id.* Mckennery targeted the other victims to cover his trail. R. at 2-3. After the shooting, McKennery fled the rooftop leaving behind a manifesto in a further attempt to mislead the investigation. R. at 2-3.

Before the shooting, McKennery told respondent Nick Nadauld ("Nadauld") that he was a shooting enthusiast and wanted to try out an automatic assault rifle. R. at 2. At McKennery's request Nadauld lent his father's M16 to McKennery so he could try it out. *Id.* To Nadauld's knowledge McKennery was in Arizona trying out the M16 at the time of the shooting. R. at 26. McKennery even went as far as sending a photo of himself in Arizona using the gun to Nadauld. *Id.* Unbeknownst to Nadauld, Mckennery took the photo on September 11, 2021, three days before the shooting occurred. R. at 28.

After the shooting occurred the police promptly began investigating the matter. R. at 3. Police initially attempted to identify individuals who fled the scene by foot, but were thwarted by blurry surveillance footage. *Id.* Due to their failure to identify the individuals who fled by foot they shifted their focus to individuals who fled by car. *Id.* They identified the owners of fifty cars that fled the scene the day of the shooting. *Id.* None of these fifty individuals, one of which was McKennery, had a prior criminal record. *Id.* Police compared a list of the fifty vehicle owners with a list of registered assault rifle owners in the area. *Id.* The assault rifle list identified respondent Nadauld. *Id.*

Officers then accessed the Automatic License Plate Recognition ("ALPR"). R. at 3. ALPR works by using cameras to capture the license plates of passing vehicles. R. at 38. Police typically use ALPR to check if a vehicle is legally registered and licensed. R. at 3. The police also use ALPR to identify suspects at crime scenes. R. at 38. In this case, the police had already identified both McKennery and Nadauld. R. at 3. The police instead used ALPR to track the movements of the vehicle owners at the scene of the crime and the movements of the area individuals who owned assault rifles. R. at 3. Cross-referencing each list, police found that Nadauld's vehicle and McKennery's vehicle were at the same locations at the same times a "considerable" amount. R. at 3-4.

On September 24, 2021, law enforcement placed cameras on utility poles outside the homes of ten of fifty suspects including Nadauld's. R. at 4. On September 28, 2021, the police received an anonymous call stating that it was the Balboa Park shooter and that they were going to shoot up a school next. *Id.* The police were unable to identify the caller at this time. *Id.*

On September 25, 2021, law enforcement sent out letters to the fifty local individuals who owned automatic assault rifles stating that in a month they would verify that the weapon was rendered inoperable. R. at 4. Two days later Nadauld received his letter in the mail. On September 29, 2021, Nadauld went to McKennery's home and retrieved his rifle. *Id.* Shortly after Nadauld arrived home Officer Hawkins and Maldonado arrived. *Id.* Officer Hawkins's primary goal of the visit was to determine if Nadauld's rifle was rendered inoperable. Officer Hawkins asked Nadauld if he could see the gun. R. at 23. Nadauld was initially reluctant because he was told that he would have a month until officers would come. *Id.* However, Nadauld said that he would bring the gun to the officers. *Id.* Officer Hawkins was adamant that he needed to go inside Nadauld's home and see the gun. *Id.* Officer Hawkins blatantly ignored Nadauld's

protest to the officers entering his home and entered anyways. *Id.* After a search Officer Hawkins found the M16 that was not rendered inoperable and placed Nadauld under arrest. *Id.*

SUMMARY OF THE ARGUMENT

This Court should affirm the holding of the California Fourth District Court of Appeal. Police use of ALPR location data violated a reasonable expectation of privacy. This Court has held previously that people have a right to privacy in the whole of their movements. ALPR is sufficiently similar to cell site location information for this Court to categorically require a warrant when officers access location data. Alternatively, the unique facts of this case required officers to obtain warrant because the unprecedented use of ALPR to determine with whom respondent was associating. Furthermore, when the police use ALPR to surveil firearm owners, a class of people who have specific protections under the Constitution, this Court should impose a heightened degree of scrutiny.

In this case, the facts and circumstances known to officers were not enough to warrant a man of reasonable caution to suspect that a crime was or will be committed. This case poses the following question: under the Fourth Amendment, which prohibits warrantless searches and seizures, does the warrantless entry and search of a suspect home violate his right? To answer this question the court must look at the circumstances in this case. The circumstances in this case do not indicate that probable cause was present. First, officers failed to pursue several avenues to apprehend the true shooter. Furthermore, the probability that Nadauld was the shooter was small because he was not known to be at the scene and no eyewitnesses observed him at the park. Exigent circumstances were also not established. Officers Hawkins and Maldonado were not in hot pursuit of Nadauld, it was highly improbable that Nadauld could have destroyed the gun, and

the presence of a gun does not automatically equate to a risk of death or injury. Therefore, this court should affirm the holding of the California Fourth District Court of Appeal.

STANDARD OF REVIEW

For a motion to suppress, this Court reviews legal conclusions *de novo* and factual findings for clear error. *Ornelas v. United States*, 517 U.S. 690, 691 (1996).

ARGUMENT

I. ACCESSING ALPR DATA WITHOUT A WARRANT VIOLATED RESPONDENT'S FOURTH AMENDMENT RIGHTS.

The right to privacy founded in the Fourth Amendment is among the most cherished protections in the Constitution. With the advent of new technology, citizens are exposed to invasive examination hitherto uncontemplated. Pervasive electronic surveillance "enables the government to ascertain, more or less at will, their political and religious beliefs, sexual habits, and so on." *United States v Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring). This Court has thus held that citizens have a reasonable expectation of privacy in the whole of their movements. *Carpenter v. United States*, 138 S. Ct. 2206, 2218 (2018); *See Jones*, 565 U.S. at 430 (Alito, J., concurring in judgement); *Id.* at 415 (Sotomayor, J., concurring). The aggregation of ALPR location data created not as much a snapshot as a portrait, detailing the proclivities, destinations, and associates of respondent Nadauld. The access and use of this data without a warrant constituted an unreasonable search. This Court should therefore reassert the protections of the Fourth Amendment and uphold the ruling below.

A. Individuals have a reasonable expectation of privacy in the whole of their movement.

The Fourth Amendment protects "the right of the people to be secure in their persons, houses, papers, and effects." U.S. CONST. amend. IV. This protection applies to people not places. *Katz v. United States*, 389 U.S. 347, 350 (1967). A person is protected when he has a subjective expectation of privacy and when it is an expectation society is prepared to recognize as reasonable. *Id.* at 361 (Harlan, J., concurring).

As surveillance technology has increased in effectiveness and prevalence, this Court has continued to update Fourth Amendment jurisprudence to protect the right to privacy. Indeed, the Court has sought to preserve "that degree of privacy against government that existed when the Fourth Amendment was adopted." *Jones*, 565 U.S. at 406, citing *Kyllo v. United States*, 533 U.S. 27, 34 (2001). A person does not surrender all Fourth Amendment protection by venturing into the public sphere. *Carpenter*, 138 S. Ct. at 2217. For the forgoing reasons, a person has an expectation of privacy in the whole of his movements. *Id.* at 2218; *See Jones*, 565 U.S. at 430 (Alito, J., concurring in judgement); *Id.* at 415 (Sotomayor, J., concurring).

B. Police access of ALPR location data without a warrant violated respondent's expectation of privacy in the whole of his movements.

The police search of the ALPR database in this case revealed enough of the defendant's movements that it constituted a violation of his Fourth Amendment rights. First, ALPR searches have sufficient similarity to the use of cell-site location information (CSLI) in *Carpenter* which this Court ruled required a warrant. This Court should extend the protections in *Carpenter* to searches of ALPR location data. Second, even if the Court does not categorically extend *Carpenter*, the use of ALPR in this instance was particularly egregious and required a warrant. The database offered far more information on Respondent's private behavior than it did in other

cases involving ALPR technology. Also, the police used ALPR in an unprecedented manner: tracking who Respondent was meeting and seeing. This factor weighs in favor of requiring a warrant. Third, police used the ALPR database to procure sensitive information on firearm owners for which a heightened level of scrutiny is necessary. Accessing the ALPR location data without a warrant supported by probable cause violated respondent's reasonable expectation of privacy.

1. ALPR provides substantially similar information as CSLI.

Given ALPR's similarity to CSLI, this Court should categorically extend its ruling in *Carpenter* and require warrants for searches of ALPR location data. In that case, the Court held that the use of CSLI without a warrant violated a reasonable expectation of privacy. *Carpenter*, 128 S. Ct. at 2221. When a cellphone connects with a wireless network, the carrier records the time and location. *Id.* at 2212. The technology is accurate enough to pinpoint a phone's location within 50 meters. *Id.* at 2219. The government used CSLI data to confirm the defendant was in relevant the area at the same time as a series of robberies. *Id.* at 2212. The court found that such a search violated defendant's right to privacy in the whole of his movements. *Id.* at 2221. "The retrospective quality of the data here," the Court noted "gives police access to a category of information otherwise unknowable." *Id.* at 2218. The Court also thought critical that "because location information is continually logged…this newfound tracking capacity runs against everyone" not just individuals under investigation. *Id.*

ALPR tracking bares significant similarities to CSLI surveillance. Both allow the police to retroactively track subjects in an investigation, which, as the Court noted in *Carpenter*, is not information obtainable by plain eye observation or even GPS tracking. ALPR actually provides more precise location data than CSLI because it captures cars on camera, thus eliminating the 50

meter radius of uncertainty present when using CSLI. R. at 38. Finally, ALPR cameras, like cell phone towers, are continuously collecting information. R. at 38-39. They subject every member of society who chooses to use an automobile to rigorous scrutiny. The ease with which the government can access information on a huge amount of people is a factor weighing in favor of requiring a warrant.

Based on the similarity between CSLI and ALPR, this Court should categorically extend *Carpenter* to the latter technology to preserve a reasonable expectation of privacy in the whole of one's movements.

2. ALPR data offered a clear picture into the life of Respondent.

Even if this Court does not extend *Carpenter* categorically, the unique circumstances present here required police to obtain a warrant before searching the database. Given the right set of facts, courts have acknowledged that accessing an ALPR database without a warrant could be an unreasonable search. *See United States v. Yang*, 958 F.3d 851, 863 (9th Cir. 2020) (Bea, J., concurring) ("ALPRs may in time present many of the same issues the Supreme Court highlighted in C*arpenter"*); *Commonwealth v. McCarthy*, 142 N.E.3d 1090, 1104 (Mass. 2020) ("With enough cameras in enough locations, the historic location data from an ALPR system in Massachusetts would invade a reasonable expectation of privacy"). Courts have sustained warrantless searches of ALPR databases, but only in cases where the actual data was very limited. *Yang*, 958 F.3d at 863-64 (Bea, J., concurring); *McCarthy*, 142 N.E.3d at 1105-1106 (Photographing defendant's car by ALPR cameras overlooking bridges did not invade a reasonable expectation of privacy). The case before the court now presents different circumstances. The information law enforcement obtained from the database was "considerable." ALPR cameras captured the respondent in multiple places at multiple times. Furthermore, the

police also used the ALPR data to monitor people respondent met. This unprecedented use of ALPR data violates a reasonable expectation of privacy in the whole of one's movements.

In *Yang*, the 9th Circuit sustained a warrantless search of the ALPR database, but the holding in that decision rested on the defendant's lack of standing. *Yang*, 958 F.3d at 853. In that case, defendant used a rental car to rob postal boxes. *Id.* Law enforcement searched the ALPR database and found a single capture of the defendant's car. *Id.* at 863. The search occurred after the expiration of the rental agreement and after the rental car company had attempted to repossess the vehicle. *Id.* at 859. When a rental agreement has expired and the owner has attempted to repossess the property a former lessee has no reasonable expectation of privacy. *Id.* at 860, citing *United States v. Dorais*, 241 F.3d 1124, 1127-30 (9th Cir. 2001). The Court duly found that the defendant had no expectation of privacy in the historical location of the rental car. *Id.* at 861. The majority in Yang thus did not hold on the privacy implications of the ALPR search. *Id.* at 853-54.

The concurring opinion in *Yang* did analyze the facts under the *Carpenter* holding that a person has a reasonable expectation of privacy in the whole of his movements. *Yang*, 958 F.3d at 862 (Bea, J., concurring). Judge Bea would have held that the law enforcement use of the ALPR database did not expose the whole of defendant's movements because the ALPR cameras captured the car a single time. *Id.* at 863. He acknowledged, however, that a different set of facts may yield a different result regarding ALPR and a reasonable expectation of privacy. *Id.* at 864. Given the evolution of technology, "in the future a warrant may be required for the government to access" the ALPR database. *Id.*

The unique use of ALPR in the case before the Court threatens respondent's right to privacy in the whole of his movements. Respondent owned the car that was the subject of the

ALPR search so the majority's reasoning in *Yang* does not apply. R. at 3. ALPR cameras captured Respondent's car a "considerable" amount at multiple locations at multiple times. R. at 4. Furthermore, law enforcement used the ALPR database not just to determine Respondent's location, but to ascertain with whom he was associating. R. at 3. The government actually cross-referenced ALPR data on multiple individuals to see if they were ever in the same location at the same time. R. at 3. This use of ALPR is far outside the traditional uses of the database. R. at 38. To systematically examine a person's relationships is a gross breach of society's expectation of privacy. It is likely to expose the very type of information the right to privacy is designed to protect: political and religious affiliation, embarrassing relatives, and intimate partners. Respondent's right to privacy in the whole of his movements is therefore at stake in this case not only because of the considerable amount of location data ALPR offered, but also because the manner in which law enforcement used the data to reveal typically private details.

3. Law enforcement used ALPR data to target firearm owners.

An analysis of privacy rights should give special consideration to the Constitution's other protections. When the government employs ALPR in constitutionally sensitive areas, a higher degree of scrutiny is due. *See Commonwealth v. McCarthy*, 142 N.E.3d 1090, 1104 (Mass. 2020). The Second Amendment protects an individual's right to bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). Law enforcement in this case used ALPR to track firearm owners including respondent. R. at 3. Asserting the arbitrary power of the state against an entire class of people who are specifically protected in the Constitution should be treated with the utmost skepticism. This same policy would also protect, for instance, journalists or imams, should they be faced with a similar attempt at blanket surveillance. Given the threat posed to

other Constitutional rights, this Court should rule that law enforcement required a warrant to search ALPR data in this case.

C. The whole of respondent's movements is not public information.

In general, a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties. *Smith v. Maryland*, 442 U.S. 735, 742-43 (1979). That is true "even if the information is revealed on the assumption that it will be used only for a limited purpose. *United States v. Miller*, 425 U.S. 435, 443 (1976). In *Carpenter*, however, the Court declined to extend the third-party doctrine to CSLI. *Carpenter*, 138 S. Ct. at 2217. It also declined to apply the doctrine when the government possesses the data as opposed to a third party. *Id.* ("Whether the government employs its own surveillance technology as in *Jones* or leverages the technology of a wireless carrier, we hold that an individual maintains a legitimate expectation of privacy in the record of his physical movements"). In this case, the government used its own surveillance technology to reveal the whole of respondent's movements, but according to this Court, that does not defeat his expectation of privacy.

Additionally, though people may have seen some portion of respondent's public behavior, the whole of his movements was never public. In a case involving the GPS tracking of a vehicle, the Court of Appeals for the D.C. Circuit noted "unlike one's movements during a single journey, the whole of one's movements… is not *actually* exposed to the public because the likelihood anyone will observe all those movements is effectively nil." *United States v. Maynard*, 615 F.3d 544, 558 (D.C. Cir. 2010). The court further expounded, "the whole of one's movements is not exposed constructively even though each individual movement is exposed, because that whole reveals more—sometimes a great deal more—than does the sum of its parts."

Id. The right to privacy in the whole of one's movements is therefore not defeated because those movements were in public.

A record of a person's movements has genuine law enforcement applications. Respondent does not argue that the violation of his privacy occurred when the government created those records. Rather, he argues it was when law enforcement accessed the records—and specifically the location records—without a warrant. If police want access to a database that contains accurate movement records of every person with a car, they should be required to obtain a warrant.

II. PETITIONERS FAILED TO ESTABLISH PROBABLE CAUSE AND EXIGENT CIRCUMSTANCES TO SEARCH RESPONDENT'S HOME VIOLATING HIS FOURTH AMENDMENT RIGHTS.

The search of the defendant's home was a violation of his Fourth Amendment rights because probable cause and exigent circumstances were not present. The Fourth Amendment protects individuals from unreasonable searches and seizures. *Utah v. Strieff*, 579 U.S. 232, 237 (2016). Furthermore, "[The] physical entry of a home is the chief evil against which the Fourth Amendment is directed." *Payton v. New York*, 445 U.S. 573, 585 (1980). Thus, warrantless searches of a home are presumed to be unreasonable. *Id.* at 586. There are very few exceptions for warrantless searches that do not violate one's Fourth Amendment rights. Probable cause exists when the facts aware to the officers were reasonably trustworthy and would warrant a man of reasonable caution to believe that a crime was or will be committed. *Carroll v. United States*, 267 U.S. 132, 161 (1925).

It is well established that probable cause alone cannot justify a search and seizure of items within one's home without a warrant. *Jones v. United States*, 357 U.S. 493, 497 (1958). The exigent circumstances coupled with probable cause allows for warrantless searches to occur.

To satisfy the exigent circumstance exception probable cause must be present and one of the following circumstances must be present 1) an imminent risk of death or serious injury 2) that evidence will immediately be destroyed; or 3) the suspect will escape. *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006).

In this case, petitioners contend that Officer Hawkins had probable cause to suspect that the respondent was the Balboa Park Shooter. They further claim that the search of respondent's home was justifiable under exigent circumstances. However, as explained below, the facts establish that neither probable cause nor exigent circumstances were present. Therefore, the California Fourth District Court of Appeal did not err in holding that respondent's Fourth Amendment Rights were violated warranting suppression.

A. Probable cause was not established

Probable cause exists when the facts and circumstances aware to the officers were reasonably trustworthy and would warrant a man of reasonable caution to believe that a crime was or will be committed. *Brinegar v. United States*, 338 U.S. 160, 175 (1949). Determining probable cause is therefore not a technical analysis but rather an analysis of the factual and practical circumstances seen from a reasonably prudent person. *Illinois v. Gates*, 462 U.S. 213, 231 (1983). Good faith alone cannot constitute or supplement probable cause. *Director General of Railroad v. Kastenbaum*, 263 U.S. 25, 28 (1923). Furthermore, probable cause alone, however, does not permit officers to conduct a warrantless search. The Fourth Amendment draws a clear line across the threshold of one's home and therefore prevents warrantless search even when probable cause is present. *Kentucky v. King*, 563 U.S. 452, 460 (2011).

To determine whether probable cause was established the circumstances together must warrant further investigation. *United States v. Sokolow*, 490 U.S. 1, 10 (1989). Furthermore, a

specific inquiry into the noncriminal acts must be done to determine the degree of suspicion. *Id.* For example, in *United States v. Martin*, 613 F.3d 1295, 1298 (10th Cir. 2010), an individual had been shot and witnesses gave a description of the suspect as well as his street name to officers. Through the officer's research through police databases, they found more information on the suspect and went to find him. *Id.* However, the officers through their attempts to find the suspect ended up arresting another man who fit all the descriptions of the true shooter. *Id.* The defendant was with a known associate of the shooter, had the same first name, lived in the same building, fit the description, and was wearing similar clothing. *Id.* at 1302. Additionally, the defendant notified police that he had a gun on him leading police to believe that he was the shooter. *Id.* at 1298. The court determined that since there were seven factors leading the police to believe the defendant was the shooter a reasonable man of caution would also determine probable cause. *Id.* at 1302.

Unlike *Martin*, in this case, there was no eyewitness identification that described a suspect that looked like the respondent. R. at 30. Additionally, petitioners may contend that only 50 people in the area have an automatic assault rifle, but they failed to account for law enforcement and military officials who could have as easily committed the shooting. R. at 3. Furthermore, there are a multitude of unidentified individuals who fled the park after the shooting that officers have failed to ascertain the identity of and could very well be the shooter and Naduald was not at the park. *Id.* Lastly, although the respondent picked up a bag from McKennery that could conceal a weapon, that probability is slim. Therefore, petitioners failed to establish probable cause.

B. Exigent circumstances were not present

Exigent circumstances coupled with probable cause allows for a warrantless search of a home to occur. Exigent circumstances are present when there is an imminent risk of death, serious injury, that evidence will immediately be destroyed, or the suspect will escape. *Brigham City*, 547 U.S. at 403; *See Birchfield v. North Dakota*, 579 U.S. 438, 456 (2016) (stating that the suspect will escape circumstance also refers to a hot pursuit); *Groh v. Ramirez*, 540 U.S. 551, 559 (2004) (reiterating that absent exigent circumstances warrantless entry to search for weapons even when a felony has been committed and there is probable cause that evidence will be found is still unconstitutional).

The situation and circumstance themselves must make the need for law enforcement imperative therefore justifying the warrantless search as objectively reasonable under the Fourth Amendment. *Kentucky*, 563 U.S. at 460. This exception is only applicable in circumstances where police do not gain entry by means of actual or threatened violations of the Fourth Amendment. *Id.* at 469. Only one of the aforementioned events is needed to establish exigent circumstances. The heart of the question is whether the facts that appeared at the moment of entry would lead a reasonable officer to believe that there was an urgent need to take action. *Harris v. O'Hare*, 770 F.3d 224, 235 (2d Cir. 2014).

Furthermore, the search must be strictly limited to exigency that initiated and justified the warrantless search. *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). When an officer undertakes acts as their own magistrate they must justify the action by pointing to some immediate consequence that would have occurred if they would have waited for a warrant instead of acting. *Welsh v. Wisconsin*, 466 U.S. 740, 751 (1984). Absent hot pursuit it must be established that there was at least probable cause that one of the other factors were present. *Minnesota v. Oleson*,

945 U.S. 91, 100 (1990). When assisting the danger considering the gravity of the crime and likelihood that the suspect is armed may be considered. *Id.*

1. Risk of death or serious injury was not satisfied

To determine whether there is a risk of death or serious injury which requires swift actions, courts must look at inherent necessities of the situation at that moment. *United States v. Huffman*, 461 F.3d 777, 783 (6th Cir. 2006). Courts have consistently held that the mere presence of firearms in itself does not create exigent circumstances. *Harris*, 770 F.3d at 236; *United States v. Johnson*, 22 F.3d 674, 680 (6th Cir. 1994). In *United States v. Huddleson*, 593 F.3d 596, 600 (7th Cir. 2010), the defendant had previously threatened to kill his girlfriend and had an extensive criminal history involving firearms. *Id.* Not only was there a 911 call made but also the defendant had a gun on his person. *Id.* Although the defendant was asleep, he still had the gun on his person and could have woken up at any moment and harmed not only his girlfriend but also the officers. *Id.* at 601. The court concluded that there was a threat of immediate death or injury. *Id.*

Unlike *Huddleson*, respondent here has no definitively known criminal history. Moreover, a 911 call did not lead the officers to the home. As courts have consistently held, the mere presence of a firearm does not create an exigency. No credible threat was made by the respondent, and he remained cooperative and stated that he would bring the gun to the officer because they requested to see it. R. at 23-25. These factors would lead a reasonable officer to determine that in that specific moment there was not a credible risk of imminent death or injury.

2. Risk that evidence will immediately be destroyed was not satisfied

To determine whether there is a risk that the evidence will immediately be destroyed you must look at particular circumstances at play. The mere possibility that evidence will be

destroyed is insufficient. *United States v. Radka*, 904 F.2d 357, 362 (6th Cir. 1990). For example, in *United States v. Keys*, 145 Fed. Appx. 528, 530 (6th Cir. 2005) the defendant had his grandmother hide a firearm in her freezer from the police. Defendant's grandmother told police officers that the gun was in the freezer but did not give officers permission to enter the home. *Id.* at 531. Police officers decided they could not wait for a search warrant fearing that the gun would be destroyed. *Id.* at 532. The court determined that it is very unlikely that a firearm could be destroyed while police secured the area and obtained a search warrant. *Id.* at 534.

In this case, the evidence that Officer Hawkins was afraid would have been destroyed is a firearm. Like in *Keys*, the firearm was within a home therefore a search warrant would be required unless exigent circumstances were present. Respondent indicated that he would prefer for the Officers to come another time. R. at 23. However, respondent indicated that he would retrieve the firearm so the officers could see it. *Id.* Instead of waiting Officer Hawkins deliberately entered the respondent's home. R. at 24. It is clear that there would not have been enough time for the respondent to destroy the firearm during the time it would take to retrieve the gun. Furthermore, like in *Key*, it would be highly improbable that the firearm would be destroyed before a search warrant could be secured. Therefore, there was not a risk that the evidence would be destroyed.

3. Hot pursuit or suspect will escape was not satisfied

To determine whether the defendant will escape, courts should look at whether there is some sort of chase. *United States v. Santana*, 247 U.S. 38, 42-43 (1976). Under the hot pursuit doctrine officers may enter a dwelling to capture a suspect. *United States v. Fuller*, 574 Fed. Appx. 819, 821 (11th Cir. 2014). In *United States v. Fuller*, officers were pursuing multiple individuals who had stolen a car. *Id.* at 820. While officers were able to apprehend two of the

suspects, one had retreated into their home. *Id.* The court emphasized that since the pursuit was continuous even though time had passed, officers were permitted to enter the home to apprehend the suspect under hot pursuit. *Id.* at 821.

Unlike *Fuller*, respondent here was not fleeing from the police and there was no sort of chase. R. at 23-25. Officer Hawkins and Officer Maldonado instead approached the defendant's home to see his firearm. *Id.* Respondent did not attempt to flee or even make sudden movements. *Id.* Respondent only wished to retrieve the firearm himself rather than let the officers into his home. *Id.* This request cannot be taken as the respondent's attempt to flee therefore this circumstance has not been met.

For the reasons stated above none of the exigent circumstances were met. Therefore, petitioners violated respondent's Fourth Amendment rights and cannot claim that they were permitted to search respondent's home under this exception.

CONCLUSION

For the foregoing reasons, respondents respectfully request that this Court affirm the ruling of the California Fourth District Court of Appeal.