No. 1788-850191

IN THE
SUPREME COURT OF THE UNITED STATES

THE UNITED STATES OF AMERICA,
PETITIONER,

v.

NICK NADAULD,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENT

Respectfully submitted,
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. A search conducted without a warrant is presumptively unreasonable, and a search occurs when an officer violates an individual's reasonable expectation of privacy, such as by monitoring long-term physical movements through cell site location information (CSLI) or global positioning system (GPS). Here, officers tracked Nadauld's past physical movements through the use of the Automatic Licensing Plate Recognition (ALPR) system which scans and catalogs the license plates of all vehicles passing by for up to five years. Did the officers violate Nadauld's reasonable expectation of privacy and thereby, conduct a search in violation of his Fourth Amendment rights?

II. If an officer does not have enough evidence to amount to probable cause and there are no exigent circumstances, they may not enter a residence without first obtaining a warrant. Here, the Officers used illegally obtained evidence to create probable cause. The only three facts that were not obtained illegally do not amount to probable cause. The officers also had no urgency requiring them to push past Nadauld in his doorway and enter his house. Did the Officers violate Nadauld's Fourth Amendment right by entering his house without his consent, without probable cause, without exigent circumstance, and without a warrant?

STATEMENT OF THE CASE

I. STATEMENT OF THE FACTS

A mass shooting occurred on September 14, 2021, in San Diego, killing nine people and injuring six. R. at 2. The masked shooter opened fire from a rooftop onto a crowd in Balboa Park with a M16A1 ("M16"). *Id.* Frank McKennery ("McKennery"), a San Diego resident, was identified by law enforcement as the "Balboa Park shooter" after a two-week long investigation. *Id.* McKenney was found deceased in his residence next to a letter confessing to the shooting. R. at 2,4. While the police were investigating the incident, law enforcement uncovered that Nick Nadauld ("Nadauld") legally owned the same type of weapon used in the Balboa Park shooting. *Id.* One week prior to the Balboa Park shooting, Nadauld had loaned his registered M16 to his co-worker McKennery who wanted to try out the M16 on an outdoor target shooting excursion. *Id.* Nadauld was unaware of Mckennery's true intention for borrowing the weapon which was to target a woman and her fiancé. *Id.* During the two-week investigation period, law enforcement used several investigative techniques to identify the shooter. R. at 3. They first examined the security camera surveillance footage in Balboa Park and the surrounding areas, capturing up to forty unidentified individuals who fled on foot. *Id.* Additionally, fifty cars were recorded leaving the Park before the police had arrived. *Id.* Law enforcement further checked the criminal records of the owners of the fifty vehicles, which revealed no prior violent crimes. *Id.* Next, the police cross-referenced the list with registered assault rifle owners in the area, which again produced no leads. *Id.* Nadauld was identified on the list of registered assault rifle owners in the area. *Id.*

Law enforcement's next step was gathering data about the past movements of the fifty vehicles using the Automatic License Plate Recognition ("ALPR") database that Mckennery's vehicle was in. *Id.* They also traced the past movements of vehicle owners through ALPR who

were on the list of registered assault rifle owners, which included Nadauld's vehicle. *Id.* Through cross-referencing the collected ALPR data, they discovered that Mckennery's vehicle and Nadauld's vehicle had been at the same locations during similar times. R. at 4. To further search for suspicious behavior, Officers installed cameras on utility poles to monitor ten of the residences on the list, including Nadauld. *Id.*

On September 25, 2021, officers mailed letters to the ten residents notifying them that they will visit in one month to ensure their M16s were rendered inoperable following California Penal Code 30915. *Id.* Four days after the notice was sent, Officer Hawkins and Officer Maldonado were dispatched to Nadauld's residence after video surveillance showed McKennery pulling into Nadauld's driveway and handing him a large duffle bag. *Id.* The officers questioned Nadauld outside of his front door regarding his M16 and asking to see it. *Id.* Nadauld denied the Officer's entry into his home because he was not expecting them for a month. *Id.* Without Nadauld's permission, the Officers walked right past him into his home to search for his M16. *Id.* The Officers found the M16 in Nadauld's bedroom, which had not yet been rendered inoperable. *Id.* They continued to interrogate Nadauld about the M16 until he revealed that he had let McKenney borrow the rifle for target shooting in the desert. *Id.* The officers brought Nadauld into custody. *Id.*

II. PROCEDURAL HISTORY

On October 1, 2021, Nadauld was indicted for nine counts of second-degree murder and involuntary manslaughter, one count of lending an assault weapon and one count of failure to render his M16 inoperable. R. at 5. Nadauld filed an instant motion to suppress the evidence that the Officers gathered while searching his residence. *Id.* Nadauld asserts the evidence obtained through the warrantless usage of the ALPR database, the warrantless mounting of cameras, and

the warrantless entry of his home violated his Fourth Amendment rights. *Id.* The District Court for the Southern District of California denied Naduald's motion to suppress the evidence. *Id.* Nadauld appealed to the Ninth Circuit Court of Appeals which granted his motion to suppress and remanded for further proceedings. *Id.* The Supreme Court now grants certiorari limited to the questions of the warrantless usage of the ALPR database and the warrantless entry into his home.

SUMMARY OF THE ARGUMENT

I. This Court should affirm the Ninth Circuit Court of Appeals' holding that accessing Nadauld's physical movements using the ALPR system was a search requiring a warrant under the Fourth Amendment. First, a line of precedent Supreme Court cases established a reasonable expectation of privacy in the whole of one's physical movements, especially from sense-enhancing technologies that collect and store information beyond what is humanly possible. Here, accessing the ALPR database was a search because it would be humanly impossible for any law enforcement personnel to routinely monitor all car movements in real time and keep a log of past movements for up to five years without the aid of sense-enhancing technology not available to the public. Further, tracking a person's past movements through ALPR is detailed, encyclopedic, and effortlessly compiled, similar to data collected via GPS and CSLI technologies. Similarly, the principle that public movements are voluntarily conveyed to the public and third parties is not relevant here because license plates are mandatory and driving a vehicle in San Diego is vital in modern-day life. Second, the ALPR technology contravenes the historical intent of the Fourth Amendment which was to secure the privacies of life against arbitrary power and to curb permeating police surveillance. Here, the ALPR cameras may be installed, without judicial constraint, at every pole-mount camera to collect personal information about every passing car, such as their trips to the AIDs treatment center, abortion clinic, or the mosque. Such data can easily be abused and used as a pretext to stop innocent individuals merely because their vehicle happened to drive past a particular location. Accordingly, accessing the ALPR database was a search and requires a warrant under the Fourth Amendment.

II. This Court should affirm the Ninth Circuit Court of Appeals' holding because the Officers violated Nadauld's Fourth Amendment rights by entering his house without a warrant

and without an exception to the warrant requirement. In requiring a warrant, this Court has constantly afforded the most stringent protections to the sanctity of one's home. On occasion, this Court has allowed officers to warrantlessly enter a residence when there are both probable cause and exigent circumstances requiring them to expedite the warrant process.

Here, the Officers did not have enough facts to amount to probable cause without using the illegally obtained ALPR and pole-mount camera data. The only three pieces of evidence they could use to create probable cause were Nadauld's name on the list of fifty M16 registered owners, his nervous behavior during police questioning, and the surveillance video footage of fifty vehicles leaving Balboa Park after the incident. First, because gun ownership is constitutionally protected in the home, it cannot be seen as criminal and is not relevant to probable cause. Second, nervous answers to police questioning alone does not amount to the lower standard of reasonable suspicion and cannot create probable cause. Finally, the fact that Nadauld's vehicle was not leaving the scene after the shooting undermines the Officers probable cause totality of the circumstances test. None of these three facts amount to probable cause to suspect a crime has or is going to occur.

Even if this Court finds there was probable cause, there are no exigent circumstances, which would allow the Officers to warrantlessly enter Naduald's home. This Court has recognized the few instances where exigency allows officers to enter a home without consent or a warrant. None of these situations exist here. The record is devoid of any evidence to support a finding of hot pursuit, destruction of evidence, or requirement of emergency aid. The Officers were not in continuous pursuit of Nadauld from the scene of the crime because the investigation had been occurring for two-weeks when they arrived at his house. The evidence in question was a large assault rifle, which could not have easily been destroyed by Nadauld in the time he

realized Officers were at his door. Lastly, Nadauld was alone in his home; no one inside was in need of aid or being threatened. There is no reason the Officers could not have obtained a search warrant before showing up to Nadauld's home. Therefore, because Nadauld's legally owned M16 and his statements to the Officers were obtained as a direct result of an illegal search, they are Fruit of the Poisonous Tree and should be suppressed.

STANDARD OF REVIEW

This Court granted certiorari for consideration of Nadauld's motion to suppress on the merits. In reviewing a motion to suppress, this Court reviews factual findings for clear error and legal conclusions *de novo*. *Ornelas v. United States*, 517 U.S. 690, 691 (1996). Here, the factual findings are not at dispute.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE NINTH CIRCUIT COURT OF APPEAL'S HOLDING BECAUSE ACCESSING HISTORICAL ALPR RECORDS CONTAINING INTIMATE DETAILS ABOUT NADAULD'S LONG-TERM MOVEMENTS CONSTITUTED A SEARCH AND REQUIRED A WARRANT.

The Fourth Amendment safeguards citizens' "right to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV. Accordingly, warrantless searches are unreasonable where "a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652-656 (1995). A search occurs when a government official violates an individual's reasonable expectation of privacy. *United States v. Jones*, 132, S.Ct. 945, 950 (2012). Here, the police accessed the ALPR database to investigate Nadauld's past movements; whether accessing this data qualifies as a search is in question. Although there is no single criteria that definitively determines which privacy expectations are entitled to protection, the analysis is informed by historical perspectives. First, a line of preceding Supreme Court cases reveals that while short-term monitoring of public movements is permissible, long-term tracking of an individual's past movements using new technologies violates an individual's reasonable expectation of privacy. Second, the historical purpose of the Fourth Amendment was to secure the privacies of life against arbitrary power and to limit permeating police surveillance. Accordingly, accessing the ALPR database is a search because it involves the use of non-public technology to secretly catalog an individual's long-term movements and allows for mass surveillance and arbitrary enforcement. Thereby, this Court should affirm the Ninth Circuit Court of Appeal's holding because a search requiring a warrant occurred.

A. ALPR Technology Monitors and Stores Detailed Information About One's Long-Term Physical Movements Beyond What Would Have Been Humanly Possible, Similar to GPS And CSLI Data.

This Court first stated in 1979 that "People are not shorn of all Fourth Amendment protection when they step from their homes onto the public sidewalk; nor are they shorn of those interests when they step from the sidewalks into their automobiles." *Delaware v. Prouse*, 440 U.S. 648, 662-663 (1979). In *Prouse*, this Court emphasized that a person traveling in a motor vehicle does not lose all reasonable expectation of privacy just because the vehicle is subject to government regulation. *Id.* Since then, this Court has used several cases to expand on this idea, distinguishing between the limited tracking of individual trips and the long-term tracking of innocent individuals' physical movements. In *United States v. Knotts*, it was not a search when the officers used visual surveillance and a beeper signal to follow a car as it passed through public thoroughfares because its movements could have theoretically been observed by the naked eye. 103 S.Ct. 1081, 1085 (1983). In coming to this decision, this Court made it clear that it was a narrow ruling to the "limited use which the government made from this particular beeper during a discrete automotive journey." *Id.* at 1086-87. Notably, this court acknowledged that different constitutional principles may apply if twenty-four-hour dragnet-like surveillance of any citizen of this country were possible. *Id.* at 1085. Next, in *Kyllo v. U.S.*, this Court acknowledges the dangers of using emerging, sense-enhancing technologies, even when used from a public vantage point. 533 U.S 27, 35, 39 (2001). There, it was a search when the Officers used a thermal imaging device to monitor one's home because it allowed the Officers to obtain information they could not have otherwise gathered, especially when that technology was not in general public use. *Id.* There, this Court emphasized that the rule adopted "must take account of more sophisticated systems that are already in use or in development." *Id.* at 36. Further, this

Court revisits the question of monitoring of public movements in *U.S. v Jones*, where it was a search when Officers attached a GPS device to a car to track its movement. 132 S.Ct. 945, 954 (2012). Even though the ruling was based on a different test, five of the nine Justices agreed, saying it would still be a search under the reasonable expectation of privacy test. *Id*. at 955, 960. The Justices held that while relatively short-term monitoring of public movements may be reasonable, longer term GPS monitoring impinges on expectations of privacy. *Id*. at 964. This is because GPS technology is able to do what agents and others physically and practically cannot: secretly monitor and record every single movement of a person's car over an extended period of time. *Id*. at 963. Even though the court did not rely on *Kyllo*, a similar theme emerged: it is a search when officers use advanced technology to collect and store information beyond what a human could do, even if it was in a public place. In *Carpenter v. United States*, the court expanded on this line of reasoning, ruling that it was a search when officers accessed an individual's past movement through CSLI - a type of tracking similar to GPS monitoring because it is ". . . . detailed, encyclopedic, and effortlessly compiled." 138 S.Ct. 2206, 2216 (2018). This Court ruled that it was a search, despite a previously held principle that information that one voluntarily conveys to the public is not protected. *Id.* at 2220. Notably in *Carpenter*, the court brings us full circle back to its initial holding in *Delaware v. Prouse* - that a person does not surrender all Fourth Amendment protections by venturing into the public sphere. *Id.* at 2217. As Justice Sotomayor stated in her *Jones* concurrence, there is still a reasonable expectation of privacy that an all-encompassing record of one's whereabouts is not created. Such a record reveals intimate details of one's life that contravenes the historical intent of the Fourth Amendment. 132 S.Ct. at 954.

Here, a search has occurred because the ALPR database catalogs an individual's long-term physical movements to a level of specificity comparable to this Court's concerns with GPS and CSLI data. In this case, police obtained information about Nadauld's vehicle movements from the ALPR database. The ALPR technology consists of two major components: the special camera mounted on police vehicles or intersection poles that scans passing cars for license plate information and the databases that collect, compile, and analyze this data for officers to access and cross-reference. This database stores the time and location information for each license plate scan for a 'fixed retention period,' which can range from 60 days to 5 years. *Exhibit* K. First, this was a search because like in *Kyllo* and *Jones*, it would be humanly impossible for officers to routinely track all car movements for up to five years, without the aid of sense-enhancing technology not available to the public. It would be impractical and physically impossible for any number of officers to scan, memorize, or log the license plate and precise location of every vehicle passing by their car for six months to five years. Nor would it be possible to capture such data at the same frequency, heights, and angles as the pole-mounted cameras. Second, this was a search because tracking a person's past movements through ALPR is detailed, encyclopedic, and effortlessly compiled, just as CSLI data was in *Carpenter* and GPS monitoring was in *Jones.* A record of one's automobile movements allows the government to easily monitor the whereabouts of every driver, regardless of whether they are visiting an AIDS treatment center, abortion clinic, or the mosque. Third, the principle that public movements are voluntarily conveyed and not considered a search, is not applicable here because license plates are mandated and driving a car in San Diego is essential. Like the court reasoned for cellphones in *Carpenter*, the majority of Americans depend on driving to fully participate in society. Individual movements are logged by ALPRs simply by driving and parking on public roads, potentially including one's driveway. The

only way to evade ALPR detection would be to not own a car or to keep the vehicle out of the camera - both of which are impossible in a sprawling city like San Diego. Thus, like in *Carpenter*, the third-party doctrine does not apply to the historical location data that ALPR devices collect.

B. ALPR Technology Allows Permeating Police Surveillance into The Privacies of Life and Poses Risks of Arbitrary Enforcement, Both of Which Contravenes the Historical Purpose of The Fourth Amendment.

Although no single criteria definitively determines which privacy expectations are entitled to protection, the analysis is informed by historical understandings of "what was deemed an unreasonable search and seizure when [the Fourth Amendment] was adopted." *Carroll v. United States*, 267 U.S. 132, 149 (1925). Courts have recognized two basic guideposts. First, the Fourth Amendment seeks to secure ''the privacies of life'' against ''arbitrary power.'' *Boyd v. United States*, 116 U.S. 616, 630 (1886). Second, a central aim of the Framers was ''to place obstacles in the way of too permeating police surveillance.'' *United States v. Di Re*, 332 U.S. 581, 595 (1948). Courts have kept their attention to Founding-era understandings in mind when applying the Fourth Amendment to innovations in surveillance tools. "As technology has enhanced the government's capacity to encroach upon areas normally guarded from inquisitive eyes," this Court has sought to preserve the degree of privacy that existed when the Fourth Amendment was adopted. *Kyllo*, 533 U.S. at 34. Courts are concerned about dragnet-like surveillance, where officers have the ability to travel back in time and retrace a person's whereabouts to compile a detailed chronicle of a person's physical presence for several years. *Carpenter*, 138 S.Ct. at 2218. In such a world, innocent Americans can never be confident that they are free from around-the-clock surveillance by law enforcement of their activities. As Justice Sotomayor emphasized in her concurrence in *U.S. v. Jones*, mass surveillance chills

associational and expressive freedoms and the government's unrestrained power to assemble personal data is susceptible to abuse. 132 S.Ct. at 956. She explains that allowing the government to use to collect a large quantity of personal information with low-cost technology could alter the relationship between citizens and the government in a manner that is detrimental to a democratic society. *Id*. Such a privacy invasion is multiplied many times over when law enforcement agents obtain geolocation information for prolonged periods of time.

Allowing officers to access ALPR databases without a warrant gives them permeating surveillance power into the privacies of life and allows them to make arbitrary, discriminatory or pretextual decisions. Here, tracking every innocent person's individual movements with the ability to cross-reference with other individuals creates a very intricate detail of a person's life. In this case, Nadauld's vehicle was not even identified as one of the fifty vehicles at Balboa Park. Yet, the Officers decided to track Nadauld's vehicle and determine his associations with McKennery - all without a warrant. There is no judicial limitation that would prevent governments from abusing the ALPR data for other reasons - to determine political and religious affiliations or to determine who was traveling across states to obtain abortions. Similarly, there is no judicial limitation that would prevent governments from enacting a camera at every street pole or even worse, at street poles in just minority communities. Again, as this court stated in *Kyllo*, decisions involving ALPR technology must take into account future developments and use-cases of the technology, as mentioned above. Further, the ALPR system keeps a record of every individual passing by, whether or not they have engaged in any criminal activity. Here, Nadauld was targeted despite having engaged in no criminal activity; he owned a gun legally and had it registered. Once the data is collected, officers can use any pretextual or arbitrary reason to implicate one to a crime simply based on their proximity to a certain location, just as they did for

Nadauld This violates the fundamental purpose of the Fourth Amendment. As the Ninth Circuit correctly determined, any evidence obtained as a result of the pole mount camera should be suppressed as fruit of the poisonous tree.

II. THIS COURT SHOULD AFFIRM THE NINTH CIRCUIT COURT OF APPEAL'S HOLDING BECAUSE THE OFFICERS' WARRANTLESS SEARCH AND SEIZURE VIOLATED NADUALD'S FOURTH AMENDMENT RIGHTS.

Alongside unreasonable searches and seizures, the Fourth Amendment grants "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV. At the heart of this Amendment lies, "the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Kyllo v. U.S.*, at 31. The Fourth Amendment has painted a stark line at the entrance of a dwelling and this Court's precedent has constantly afforded the most stringent protections to the sanctity of one's dwelling. *Payton v. New York*, 445 U.S. 573 (1980). Searches and seizures inside one's home without a warrant are therefore, per se unreasonable. Absent consent, police officers "need either a warrant or probable cause [coupled with] exigent circumstances in order to make a lawful entry into a home." *Kirk v Louisiana*, 536 U.S. 635, 638 (2002). Here, the officers entered Nadauld's home without a warrant, without probable cause, and without exigent circumstances violating his Fourth Amendment rights and therefore, this Court should affirm the Ninth Circuit Court of Appeals holding.

A. The Officers' Entry into Nadauld's Residence Violated His Fourth Amendment Rights Because the Facts Available to The Officers Did Not Amount to Probable Cause.

Probable Cause exists when there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Illinois v. Gates*, 462 U.S. 213, 238 (1983). This is essentially a totality of the circumstances test gathered from officers' personal observations. Because of the sanctity of a dwelling, officers must have objective circumstances and evidence, opposed to just an inclination of wrongdoing to justify infringing on one's Fourth Amendment

rights. Probable cause alone does not permit an officer to enter a home without a warrant unless there are also exigent circumstances. *Kirk*, 536 U.S. 635 (2002). Here, the facts available to the Officers that were not illegally obtained through ALPR and the pole-mount cameras do not amount to enough probable cause to grant a warrantless search. Because the ALPR and pole-mounted camera evidence was illegally obtained, only three facts remained for a probable cause analysis: the list of fifty registered M-16 owners, Nadauld's nervous behavior when the officers came to his house, and the surveillance video footage of fifty vehicles leaving Balboa Park after the incident.

1. The List of Fifty Gun Owners Did Not Create Probable Cause.

Our nation has established the Second Amendment's "right to bear arms" as a core liberty afforded to its people. Since this Court's holdings in the *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), gun ownership is lawful and constitutionally protected conduct. This Court in *New York State Rifle & Pistol Ass'n. v. Brue*n even extended those constitutional protections to carry a gun outside of one's home. 142 S.Ct. 2111 (2022). Before the holdings of *Heller*, *McDonald*, and *Bruen*, this court in *Florida v. J.L.*, determined that a tip about an individual possessing a gun without more, did not give rise to the lower standard of reasonable suspicion to justify the officers' Fourth Amendment intrusion. 529 U.S. 266, 268, 274 (2000). "Since carrying a gun is not per se illegal . . . the fact that respondent carried a gun is no more relevant to probable cause than the fact that his shirt may have been blue, or that he was wearing a jacket." *Adams v. Williams*, 407 U.S. 143, n.9 (1972). Gun ownership alone is not inherently criminal and cannot give rise to probable cause.

Nadauld, being one of the fifty M16 registered owners in the city of San Diego, did not give Officers knowledge of any illegal activity to amount to probable cause. Because of the

holdings of *Heller, McDonald,* and *Bruen*, Naduald's firearm possession is constitutionally protected and cannot be viewed as criminal evidence giving the Officers' probable cause. Similar to how J.L. having a gun did not alone create reasonable suspicion, here Nadauld's ownership of his M16 did not give officers probable cause to infringe on his Fourth Amendment rights. Like in *Adams*, Nadauld's M16 ownership is not per se illegal and his name on the fifty-person registration list is not relevant to probable cause. As the Court of Appeals mentioned the Officers also failed to consider if the Balboa Park shooter was not a San Diego resident or was a law enforcement officer or off-duty military. R. at 19. Therefore, this fact alone cannot amount to probable cause to allow the officers to warrantlessly enter Nadauld's home.

2. Nadauld's Nervous Behavior Did Not Amount to Probable Cause.

Answering police questions nervously also does not amount to probable cause justifying a warrantless intrusion into a residence. In *Illinois v. Wardlow,* this Court held that the evasive behavior of flight after seeing officers patrolling a known drug area, was a factor to determine reasonable suspicion for an investigative stop. 528 U.S. 119, 125 (2000). This Court's cases have recognized that although "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion," it alone does not amount to reasonable suspicion. *Id.* at 123. Further, this Court in *Kentucky v. King* determined that the occupant is not required to open the door or to speak with the officer when law enforcement officers show up at their door. 563 U.S. 452, 469 (2011). Even if the occupant of the home opens the door to speak with the officers, they are not required to allow the officers in, and can "refuse any questions at any time." *Id.*

Here, Nadauld's nervous behavior during the Officer's questioning does not create a reasonable belief that a crime is, has, or is going to occur to establish probable cause. Like in *Wardlow,* where the evasive and nervous behavior alone did not amount to an inclination of

wrongdoing, Naduald's nervous answers to the Officer's interrogation did not amount to reasonable suspicion. Because this behavior alone would not reach the lower standard of reasonable suspicion, it cannot equate to the objective evidence needed to reach probable cause. There are many reasons why an individual would act nervously or evasively when two armed officers show up at their house, even if they have nothing to hide. When the Officers showed up at Naduald's door, they were a month early and he was not expecting them before the date that was on the notice. Relying on *Kentucky's* comment, Nadauld opened the door to the Officer's knock and cooperated with their questioning until they demanded they come into his private residence. Nadauld could have asserted his Fourth Amendment right and not answered the door or talked with the officers. Instead, he complied, and his shaky answers cannot be seen as trying to conceal anything incriminating or amount to probable cause.

3. The Surveillance Footage of the Fifty Vehicles Leaving Balboa Park Undermined Officers' Probable Cause Analysis.

The last piece of evidence the Officers' can rely on to create probable cause, is the video surveillance of the fifty vehicles leaving Balboa Park immediately after the shooting. Nadauld's name was not included on the list of the fifty vehicle owners leaving the park. This fact that his vehicle was not at the scene essentially ruled Nadauld out of being the shooter and undermines the officer's probable cause argument. Compiling the list of M16 registered owners in San Diego, Naduald's nervous behavior, and the fact his car was not at Balboa Park does not amount to probable cause. Therefore, the Officers did not have enough evidence to create a probable conclusion that Nadauld was or was associated with the Balboa Park shooter to enter his private residence without obtaining a warrant.

B. No Exigent Circumstances Were Present to Amount to the Urgency Officers Need for a Warrantless Intrusion.

The exceptions to the warrant requirement are "few in number and carefully delineated." *Welsh v. Wisconsin*, 466 U.S. 740, 749 (1984). "[T]he burden is on the government to demonstrate exigent circumstances that overcome the presumption of unreasonableness that attaches to all warrantless home entries." *Id.* at 750. Circumstances are only exigent when there is not enough time for officers to obtain a warrant. *Missouri* v. *McNeely*, 569 U. S. 141, 149 (2013). Few circumstances have been defined as "exigent": in hot pursuit of a fleeing suspect, when police officers must act urgently to prevent the destruction of evidence, and to assist persons who are seriously injured or threatened with imminent injury. *Riley v. California*, 573 U.S. 373, 402 (2014). Without one of these exigent situations, "warrantless entry to search for weapons . . . is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within." *Payton*, 445 U.S. at 587 (quoting Angello v. United States, 269 U.S. 20, 33 (1925)). If officers enter for any legitimate emergency activity, they may seize evidence that is in plain view. *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) Here, the officers did not have probable cause nor exigent circumstances to conduct a warrantless search of Nadauld's home.

To qualify as a "hot pursuit" under the exigency exception of the warrant requirement, the officers must be in "immediate or continuous pursuit" of the individual leaving the scene of the crime. *Welsh*, 466 U.S. at 753. This Court in *Welsh* held that the facts of the case did not amount to exigent circumstances excusing the need for a warrant where officers entered Welsh's house to arrest him for driving under the influence. *Id.* at 754. There, this Court reasoned that the officers were not in "hot pursuit" because " [Welsh] had already arrived home, [] abandoned his

car at the scene of the accident, [and] there was little remaining threat to the public safety." *Id.* at 753.

Officers can also justify a warrantless search if they need to urgently enter a residence to prevent the imminent destruction of evidence. This emergency "occur[s] most frequently in drug cases because drugs may be easily destroyed". *King*, 563 U.S. at 461. In *King*, this Court held that warrantless entry is permitted to prevent the destruction of evidence when ". . . police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." *Id.* at 469. The officers were permitted to kick the door down when they heard noises coming from the apartment of a suspected drug dealer after knocking and announcing themselves. *Id.* at 455.

The last exception exists to allow officers to assist persons who are seriously injured or threatened with impending injury. In *Brigham City, Utah v. Stuart*, this Court found exigency existed when officers entered a house to break up an altercation after observing a juvenile punch a man causing him to spit blood into a sink. 547 U.S. 398, 406 (2006). Because these officers needed to restore order, prevent future imminent injury, and render aid, they did not violate Stuart's Fourth Amendment rights by entering. In *Mincey*, this Court held that the search of his residence after a shooting of an officer could not be justified by this exception because all the occupants were located and there was no longer an emergency when the investigating officers arrived to search. 437 U.S. at 393. There was also no "suggestion that a search warrant could not easily and conveniently [] been obtained." *Id.* at 394.

Here, the record is devoid of evidence to support any finding of exigent circumstances. This case is comparable to *Welsh*, where hot pursuit could not be established because the Officers were not in continuous pursuit from the scene of the crime. Nadauld had been home for

two-weeks before the Officers came to his house, and he was not an owner of one of the fifty vehicles that left the scene. Petitioner may argue that there was a remaining threat to public safety because of the anonymous phone call saying "[t]his is the Balboa Park shooter. [t]his time, it's gonna be a school." R. at 4. But there is no evidence to corroborate that Nadauld made that call; it could have been a prank call, and the officers still had over a day to get a warrant before they showed up to Naduald's house. Unlike in *King*, after the Officers knocked on Nadauld's front door, he opened it and spoke with the Officers. Also, the evidence in question here is an M16 assault rifle which would be impossible to manually destroy, unlike drugs that can be easily flushed down the toilet. *Stuart* is materially different from our case because there, the officer needed to break up a brawl to avoid future injury and administer aid. Here, Nadauld was alone in his home and the Officers asked him multiple questions before pushing past him to search for his M16, not to administer aid or protect a civilian. Like in *Mincey*, the emergency aid exception does not apply and there is no reason that the Officers could not have simply obtained a search warrant before going to Naduald's residence.

C. Fruit of The Poisonous Tree Requires Suppression of The Evidence.

The Fruit of the Poisonous Tree doctrine requires courts to suppress any evidence that is the "fruit of" unlawful government conduct. *Nix v. Williams*, 467 U.S. 431, 441 (1984). "[P]rimary evidence obtained as a direct result of an illegal search or seizure" and "evidence later discovered and found to be derivative of an illegality," shall be suppressed. *Utah v. Strieff*, 579 U.S. 232, 237, (2016). This court in *Wong Sun v. United States* extended this protection to verbal evidence that was derived from an unlawful entry. 371 U.S. 471, 485 (1963). In *Wong Sun*, narcotics, declarations, and witnesses were excluded from evidence because they were discovered through the agents' illegal search. *Id.* at 488, 492.

Here, all of the evidence that was gathered would not have come to light, but for the Officers' constitutional violation. The Officers could not establish probable cause without the illegally obtained ALPR data and pole-mount camera. They also did not have exigent circumstances but pushed past Nadauld in his doorway intruding into his sacred space. All the "fruits" the Officers obtained through the ALPR and pole-mount camera should be excluded. Therefore, like in *Wong Sun*, Naduald's statements during the Officers' illegal search should be suppressed as well as the operable M16 rifle that was in his bedroom.

CONCLUSION

For the foregoing reasons, the evidence obtained through the ALPR system and the home invasion was obtained in violation of the Fourth Amendment and must be suppressed. The Court should affirm the Ninth Circuit Court of Appeal's holding in favor of Respondent Nick Nadauld.