Team 30 - Counsel for Respondent

In The

Supreme Court of the United States

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

NICK NADAULD.

Respondent.

No. 1788-850191

On Writ of Certiorari to
the United States Court of Appeals
for the Ninth Circuit

BRIEF FOR RESPONDENT

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II. Whether the California Fourth District Court of Appeal correctly held that the warrantless entry and search of defendant's home violated defendant's Fourth Amendment rights under our precedents.

STATEMENT OF FACTS

The Defendant, Nick Nadauld ("Nadauld"), and Frank McKennery ("McKennery") worked together at a construction company for about a year. R. at 2. Nadauld legally acquired and owned his M16 assault rifle when his father, a former member of the military, died five years earlier. *Id.* McKennery had expressed interest in borrowing Nadauld's M16 for an outdoor shooting excursion. *Id*. Nadauld eventually assented to McKennery's request and lent the weapon to him. However, unbeknownst to Nadauld, McKennery had other plans for the rifle. *Id.*

On September 14, 2021, McKennery arrived in Balboa Park wearing a mask and non-descript clothing. *Id.* He climbed to the top of a rooftop and discharged an M16 automatic assault rifle, killing nine people and injuring six others. *Id.* In an effort to locate McKennery, law enforcement analyzed the surveillance footage from security cameras around Balboa Park and identified fifty vehicles leaving the scene before the police arrived, including McKennery's vehicle. *Id.* Police then cross-referenced the fifty vehicles' owners with a list of registered assault rifle owners in the area. *Id.* One of these individuals was the Defendant, Nadauld who had legal ownership of his rifle. *Id.*

Next, police retrieved information from the Automatic License Plate Recognition ("ALPR") database about the movements of these fifty vehicles. *Id.* ALPR is commonly used to check if a vehicle is licensed or registered, a special camera usually mounted on police vehicles or poles at intersections scans passing cars for their license plate information and instantly compares the information with a police database. *Id.* The time and location information for each license plate scan is stored in this database from sixty (60) days to five (5) years. *Id.;* R. at 40. As part of the police investigation, they accessed the database to investigate the movements of all fifty vehicles that were seen leaving Balboa Park and cross-reference them with the individuals on the assault

rifle list. *Id.* at 3-4. All police could find was that Nadauld's vehicle and McKennery's vehicle had a considerable overlap of being at the same locations at the same times. *Id.* at 4. On September 24, 2021, officers placed cameras on utility poles near the ten residences that corresponded the most to the driving location data of the fifty vehicles. *Id.* Specifically, the cameras were placed facing the residences so law enforcement could surveillance the residents. *Id.* The next day, letters were sent out to the riffle owners, including Nadauld, stating that in one-month officers would be arriving at their homes to verify whether their assault rifle had been rendered inoperable. *Id.*

During the days following the arrest, police received an anonymous call from a telephone booth, which a voice was heard saying "This is the Balboa Shooter. This time, it's going to be a school." *Id.* The following day, McKennery pulled into Nadauld's driveway and handed Nadauld a large duffel bag; this transaction was recorded by the pole-mounted camera that was facing Nadauld's house. *Id.* FBI Officers Jack Hawkins and Jennifer Maldonado, without obtaining a warrant to search or arrest, rushed to Nadauld's home to investigate. *Id.*

Upon arriving at Nadauld's residence, the officers questioned him in the doorway of his home. Upon denial of Nadauld's consent and still, without a warrant, Officers Hawkins and Maldonado entered his home and began searching for the assault rifle. *Id.* They found the legally owned rifle and began intensely questioning Nadauld. *Id.* During the questioning, Nadauld told the officers that McKennery had borrowed the weapon. *Id.* However, after hearing about the shooting, Nadauld texted McKennery, who informed Nadauld that he was in Arizona by sending a selfie that depicted him holding the M16 in the desert with a target in the background. *Id.* Following the questioning, Nadauld was taken into custody. *Id.* at 26. Upon arrival at McKennery's house, officers heard a gunshot and found McKennery lying dead on the floor with a letter next to his body confessing to the crime of shooting the victims at Balboa Park. *Id.* at 37.

A federal grand jury indicted Nadauld with nine counts of second-degree murder, involuntary manslaughter, one count of lending an assault weapon, and one count of failing to comply with California Penal Code. *Id.* at 5; Cal. Penal Code § 30600; Cal. Penal Code § 30915. Nadauld filed a motion to suppress the evidence obtained during the Officer's warrantless search of the ALPR data, the pole-mounted camera, and a motion to suppress the warrantless search of his house. *Id.* Both motions were denied at the trial level. *Id.* On appeal, the California Fourth District Court of Appeals granted Respondent's motion to suppress the evidence and remanded the issue for review consistent with the holding. *Id.* at 21.

SUMMARY OF THE ARGUMENT

The holding of the California Fourth District Court of Appeal should be upheld under both issues presented for argument. First, the information obtained by the ALPR database and surveillance footage from the pole-mounted camera constituted a search under the Fourth Amendment. This Court has recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. *United States v. Jones*, 565 U.S. 400, 430 (2012).The ALPR data at issue in the instant case fits squarely within the reasonable expectation of privacy identified by the Court in *Jones* and reaffirmed by the Court's decision in *Carpenter v. United States*, 138 S.Ct. 2206 (2018). Nadauld garnered a reasonable expectation of privacy in the ALPR data acquired by the Government, which provided a record of Nadauld's public movements in his vehicle over the course of two weeks. By upholding the denial of Nadauld's motion to suppress, this Court would be diminishing the effectiveness of the Fourth Amendment and granting the Government unfettered discretion to access the historical data location of millions of individuals who, like Nadauld, utilize this form of transportation for their daily activities.

Furthermore, the pole-mounted cameras facing Nadauld's residence also constituted a search under the Fourth Amendment. Nadauld had a reasonable expectation of privacy in the driveway of his house, as this Court has already recognized that a driveway is part of the curtilage of the home and is thus protected by the Fourth Amendment. *Collins v. Virginia*, 138 U.S. 1663 (2018). The use of technology should not surpass the reasonable expectation of privacy individuals have in their own homes. This Court has also already held that persons have a reasonable expectation of privacy in certain exterior areas of residential property. *Oliver v. United States*, 466 U.S. 170, 178-180 (1984). Specifically, in *Collins*, the Court held the driveway is part of the curtilage of the home and it is protected under the Fourth Amendment. 138 U.S. at 1663. Thus, the trial court erred in denying Nadauld's motion to suppress because the surveillance footage from the pole-mounted camera constituted a search which required a warrant under the Fourth Amendment.

Regarding the second issue on appeal, The California Fourth District Court of Appeals correctly held that Nadauld's Fourth Amendment rights were violated under this Court's precedent upon the warrantless search and entry of his home. Therefore, evidence obtained from that entry and search should have been excluded. *Segura v. United States*, 468 U.S. 796, 804 (1984). This Court has consistently stressed the importance of the right to privacy and the ability to retreat from unreasonable government intrusions into one's home. *Jones*, U.S. at 498; *McDonald v. United States*, 335 U.S. 451, 456 (1948); *Florida v. Jardines*, 569 U.S. 1, 6 (2013). A warrantless search of the home is *per se* unreasonable under the Constitution; however, the Courts have carved "well-delineated" and specific exceptions, for example, exigent circumstances. *Id.* Absent exigent circumstances and probable cause, a warrantless entry into one's home is presumably unlawful and violative of the Fourth Amendment. *Id.* Law enforcement gained entry to Nadauld's home by

actual and threatened violation of the Fourth Amendment; thus, the exigent circumstances doctrine does not apply. Even if this Court concluded that officers gained entry lawfully, officers could not reasonably conclude that exigent circumstances and probable cause were present to justify their warrantless entry and search of the residence. Thus, it is Nadauld's position that this Court respectfully affirms the decision of the California Fourth District Court of Appeals as it is consistent with this Court's precedent. Respondent prays that this Court **AFFIRM** the holding of the California Fourth District Court of Appeal and **REMAND** for further proceedings consistent with this Court's precedent.

STANDARD OF REVIEW

A *de novo* standard of review is applied where a motion to suppress presents legal issues and does not involve any factual dispute. *U.S. v. Gbemisola*, 225 F.3d 753,757 (D.C. Cir. 2000). A *de novo* standard of review is also applied in the ultimate determination of whether probable cause existed in a warrantless search or seizure. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

ARGUMENT

I. THE ACQUISITION OF THE LOCATION DATA FROM ALPR AND THE SURVEILLANCE FOOTAGE FROM THE POLE-MOUNTED CAMERA CONSTITUTED AN ILLEGAL SEARCH WITHIN THE MEANING OF THE FOURTH AMENDMENT.

The Fourth Amendment of the United States Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and 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. Where the Government obtains information by physically

intruding on a constitutionally protected area, a search within the meaning of the Fourth Amendment has occurred. *Id.*

Courts have found Fourth Amendment standing to be "subsumed under substantive Fourth Amendment doctrine." *Byrd v. United States,* 138 S.Ct. 1518, 1530 (2018). This means a "person must have a cognizable Fourth Amendment interest in the place searched before seeking relief for an unconstitutional search." *Id.* One's capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place. *Rakas v. Illinois*, 429 U.S. 128, 143 (1978); *Minnesota v. Carter,* 525 U.S. 83, 88 (1998).

To prevail on a motion to suppress, a defendant challenging the constitutionality of a search or seizure must have a legitimate expectation of privacy in the invaded place. *People v. Lieng*, 119 Cal. Rptr. 3d 200 (Cal. App. 1st Dist. 2010). In his concurring opinion in *Katz*, Justice Harlan set out the elements which constitute a "legitimate expectation of privacy" under the Fourth Amendment: (i) the individual has manifested a subjective expectation of privacy in the object of the search, and (ii) society is willing to recognize that expectation as reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

In relying on the aforementioned cases, Naudald has standing to challenge the government's warrantless usage of the ALPR database and the surveillance footage from the pole-mounted cameras because he exhibited a reasonable expectation of privacy in the ALPR data and in his driveway, and the expectation of privacy in both is one that society recognizes as reasonable.

A. Nadauld Had a Reasonable Expectation of Privacy in the ALPR data

This Court has already recognized that individuals have a reasonable expectation of privacy in the whole of their physical movements. *Jones*, 565 U.S. at 430. Prior to the digital age, law

enforcement may have pursued a suspect for a brief stretch but doing so "for any extended period of time was difficult and costly and therefore rarely undertaken." *Id*. at 429. For that reason, "society's expectation has been that law enforcement agents and others would not—and indeed, in the main, simply could not—secretly monitor and catalog every movement of an individual's car for a very long period." *Id.* at 430.

The operation of an automobile does not warrant the loss of reasonable expectations of privacy simply because the automobile and its use are subject to government regulation. *Delaware v. Prouse,* 440 U.S. 648 (1979). Automobile travel is a basic, pervasive, and often necessary mode of transportation to and from one's home, workplace, and leisure activities. *Id.* People are not stripped of all Fourth Amendment protection when they step from their home to their automobile or public sidewalks. *Id.* at 663 *(*citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). If individuals were subjected to unrestricted governmental intrusion every time they entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed. *Id.*

The two guideposts for expectations of privacy that are entitled to protection are "the privacies of life" against "arbitrary power" and that the framers intended "to place obstacles in the way of a too permeating police surveillance." *Carpenter*, 138 S.Ct. at 2214. As technology has enhanced the Government's capacity to encroach upon areas normally guarded against inquisitive eyes, this Court has sought to "assure [] preservation of that degree of privacy against government that existed where the Fourth Amendment was adopted." *Id.* (citing *Kyllo v. United States*, 533 U.S.27,31(2001)).

In *Katz*, the Government had attached an electronic listening and recording device outside the public telephone booth from which the Defendant had placed his calls. 389 U.S. at 352. This Court analyzed whether the public telephone booth is constitutionally protected and whether

physical penetration of a constitutionally protected area is necessary before search and seizure can violate the Fourth Amendment. *Id.* at 354. The Government's activities in electronically listening to and recording the defendant's words spoken into a telephone receiver in a public telephone booth violated the privacy upon which the defendant justifiably relied while using the telephone booth and thus constituted a "search and seizure" within Fourth Amendment, per the Court's reasoning. *Id*.

Similar to *Katz*, here, the Officers did not physically intrude a protected area, but the acquisition of the ALPR data constituted a search because Nadauld had a reasonable expectation of privacy in his physical movement. In the present case, the investigation lasted two weeks, and just like in *Katz*, the surveillance was limited both in scope and duration. As the Court reasoned in *Katz*, there was ample time to properly notify an authorized magistrate of the need for such investigation and obtain an order. *Id.* Here, too, a similar judicial order could have accommodated the legitimate needs of law enforcement by authorizing the carefully limited use of electronic surveillance.

In *Carpenter*, the Government accessed historical cell phone records that provided a comprehensive chronicle of the user's past movement. 138 S.Ct. at 2214. Cell-Site Location Information ("CSLI") is time-stamped location information data produced by an individual's cell phone that wireless carriers collect and store for business purposes. *Id.* The CSLI revealed the location of Carpenter's cell phone whenever it made or received calls, and the Government used these records at trial to show that Carpenter's phone was near four robbery locations when the robberies occurred. *Id.* This Court held that Carpenter had a reasonable expectation of privacy in the record of his physical movements as captured by the CSLI. *Id.* at 2217.

Similar to the facts in *Carpenter*, where CSLI was material to prosecuting the defendant by placing him near the scene of various robberies, here, the Government relies on mapping data via its

ALPR feature to circumstantially connect Nadauld to the shooting. As noted in California ALPR FAQS – NCRIC, ALPR "automatically" captures the image and the vehicle's license plate and geospatial locations of the vehicle. R. at 38. The ALPR database maintains information from vehicles on public roadways, public property, and vehicles that are within public view for up to five (5) years. *Id.* Although the District Court stated ALPR is not 24/7 surveillance and it only logs information when the vehicle passes through the lens of an ALPR camera, the ALPR data is still stored in a way that law enforcement can track and surveil an individual 24/7 retroactively. R. at 6.

In *Jones*, FBI agents installed a GPS tracking device on Jones's vehicle and remotely monitored the vehicle's movements for 28 days. *Jones*, 565 U.S. at 404–05. The Court decided the case based on the Government's physical trespass of the vehicle. *Id*. at 405. At the same time, five Justices agreed that related privacy concerns would be raised by, for example, "surreptitiously activating a stolen vehicle detection system" in Jones's car to track Jones himself or conducting GPS tracking of his cell phone. *Id.* at 426, 428 (ALITO, J., concurring in judgment); *Id.* at 415 (SOTOMAYOR, J., concurring). Because GPS monitoring of a vehicle tracks "every movement" a person makes in that vehicle, the concurring Justices concluded that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy"—regardless of whether those movements were disclosed to the public at large. *Id.* at 430; *Id.* at 415.

The GPS data in the instant case fits squarely within the reasonable expectation of privacy identified by the Court in Jones and reaffirmed by the Court's decision in *Carpenter*. Here, the ALPR data is maintained from sixty (60) days to five (5) years. R. at 40. The retrospective quality of the data here is even more concerning from a privacy perspective when compared to *Jones* because such data compilation allows the Government to "travel back in time" to retrace Nadauld's whereabouts. Unlike with the GPS device in Jones, police need not even know in advance whether

to follow a particular individual, or when, in circumstances such as Nadauld's. Hence, whereas the Government tactic used in Jones of attaching a GPS device to a vehicle required the police to "know in advance" whether they wanted to track a particular individual, the tactic used here of accessing a database complied with GPS information as provided by ALPR means that whoever the suspect turns out to be, he has effectively been tailed for the time period covered by the database.

In relying in *Jones*' and *Carpenter's* holding, this Court will find that the usage of ALPR constituted a search under the Fourth Amendment. Here, Nadauld did nothing to vitiate a subjective expectation of privacy. No court order was obtained for the tracking of Nadauld's vehicle and his only action to merit the tracking of his vehicle was legally owning an assault rifle. The legal ownership of an assault rifle among fifty others should not permit the government to track their vehicle movements by accessing the ALPR database without obtaining a warrant. The tracking of fifty individuals who only have a slight possibility of involvement with the crime is too "permeating" of police surveillance. *Carpenter*, 138 S.Ct. at 2214.

Further, ALPR allows the police to reconstruct people's past movements without knowing, in advance, who the police are looking for, thus granting police access to "a category of information otherwise [and previously] unknowable." *Id.* at 2218. Like CSLI and GPS data, ALPRs circumvent traditional constraints on police surveillance power by being cheap (relative to human surveillance) and surreptitious.

B. Nadauld's Driveway Was Within His Curtilage, and Therefore the Surveillance Footage from The Pole-Mounted Camera Constituted an Illegal Search

The zone of Fourth Amendment protection afforded to a person's home does not necessarily extend to his or her property line; only the "curtilage," i.e., the land immediately

surrounding and associated with the home, is shielded from unreasonable searches and seizures. U.S. Const. Amend. 4. Curtilage has been defined "as the area to which extends the intimate activity associated with the sanctity of a [person's] home and the privacies of life." *Jardines*, 569 U.S. at 7. This Court, in *Jardines,* held that the front porch is the classic exemplar of an area adjacent to the home and "to which the activity of home life extends." *Id.*

Nonetheless, in *Dunn*, this Court identified four factors (the *Dunn* factors) that are relevant to this determination: (1) "the proximity of the area claimed to be curtilage to the home"; (2) "whether the area is included within an enclosure surrounding the home"; (3) "the nature of the uses to which the area is put"; and (4) "the steps taken by the resident to protect the area from observation by people passing by." *United States v. Dunn*, 480 U.S. 294 (1987). The *Dunn* court cautioned that "these factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration—whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id.* at 301.

Under this Court's "reasonable expectation of privacy" test, police use of sense-enhancing technology to obtain information regarding the interior of a person's home intrudes into a constitutionally protected area requiring a warrant. *Kyllo*, 533 U.S. at 34. This Court has also held that persons have a reasonable expectation of privacy in certain exterior areas of residential property. See *Oliver,* 466 U.S. at 178-180.

In *Kyllo*, this Court held that police engaged in unlawful "search" when they used thermal imaging devices without a warrant to scan a home in determining whether heat emanating from home was consistent with the use of high-intensity lamps employed in indoor marijuana growing operations. *Id.* at 2044. The Court reasoned that the use of sense-enhancing technology to obtain

any information regarding the interior of a home that could not otherwise have been obtained without physical intrusion into a constitutionally protected area constitutes a "search"—at least where the technology in question is not in general public use. *Id.*

Similar to the facts in *Kyllo*, here, the Government also uses a device that is not in general public use to explore details of the home that would previously have been unknowable without physical intrusion. The general public does not have access to the ALPR data or the surveillance footage from the pole-mounted cameras. Here, law enforcement placed cameras on utility poles near the ten residences who were on the ALPR list that corresponded the most to the driving location data of fifty vehicles investigated by police, including Nadauld's residence. R. at 4. The cameras were placed facing the homes for surveillance of any suspicious activity. *Id.* Accordingly, this Court should conclude that the use of such technology constituted a 'search' and is presumptively unreasonable without a warrant.

In *Jardines*, this Court held that law enforcement officers' use of a drug-sniffing dog on the front porch of a home to investigate an unverified tip that marijuana was being grown inside the residence was a trespassory invasion of the curtilage which constituted a "search" for Fourth Amendment purposes. 569 U.S. at 1. Accordingly, officers did not have an implied license for the physical invasion of the curtilage.

In the case of *Collins v. Virginia*, a law enforcement officer saw the driver of an orange and black motorcycle commit a traffic infraction, but he was unable to stop the driver as he evaded. 138 U.S. at 1663. A few weeks later, another officer spotted an orange and black motorcycle traveling over the speed limit, but the driver got away from him too. *Id*. at 1664. The officers decided to investigate and found the motorcycle was stolen and in the possession of Collins. *Id.* They found his address, and one of the officers, without a warrant walked onto the residential

property and up to the top of the driveway to where the motorcycle was parked. *Id*. The officer then ran a search of the license plate and vehicle identification number, which confirmed the motorcycle was stolen. *Id.* The Court was then left to decide whether the officer's actions violated the Fourth Amendment, and the answer was yes. *Id.* This Court held that a partially enclosed top portion of driveway of home, in which defendant's motorcycle was parked, was "curtilage," for purposes of Fourth Amendment analysis of police officer's warrantless search of motorcycle. *Id.*; *See also State v. Calabrese*, 2021 VT 76A, 268 A.3d 565 (Vt. 2021) (holding that the driveway area of defendant's girlfriend's home was within the curtilage and thus protected against warrantless intrusions under the Federal and State Constitutions, even though driveway provided ingress to and egress from home.)

Similar to *Jardines* and *Collins*, where the Court understood that the front porch and driveway of a home was part of the curtilage and qualifies as a constitutionally protected area for Fourth Amendment purposes, the same applies here; as Naudald's driveway is part of his curtilage and is protected by the Fourth Amendment. Therefore the pole-mounted camera facing his residence constituted as search, especially because the use of technology does not compare to an in-person surveillance. If law enforcement were to surveil Nadauld's residence 24/7 not only it would be costly and burdensome but also it wouldn't be comparable to electronic surveillance. To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment. *People v. Lieng*, 119 Cal. Rptr. 3d at 207.

i. <u>Any Evidence Acquired from An Illegal Search Should Have Been Excluded Under the Fruits of the Poisonous Tree Doctrine</u>

The principal judicial remedy to deter Fourth Amendment violations is the exclusionary rule, which is a rule that often requires trial courts to exclude unlawfully seized evidence in a criminal trial. *Segura*, 468 U.S. at 804. Under the Court's precedents, the

exclusionary rule encompasses both the "primary evidence obtained as a direct result of an illegal search or seizure" and, relevant here, "evidence later discovered and found to be derivative of an illegality," the so-called "'fruit of the poisonous tree.'" *Id.* Here, the direct result of the ALPR data constituted an illegal search and as such, the pole-mounted cameras were only conducted by cause of the information retrieved from ALPR. Therefore, any evidence obtained from these illegal searches would be considered the fruit of the poisonous tree and would be excluded under the exclusionary rule. *Id.*

ii. As a Matter of Public Policy, The Government Should Not Be Allowed to Violate Fourth Amendment Rights by The Use of Technology.

Allowing Government officials to access pervasive information such as the ALPR data, without the use of a warrant, sets a dangerous precedent inviting abuse. This Court should continue to adapt with modern technologies and curtail historical monitoring and intrusion by the Government into the day-to-day lives of the citizens of this country. Although technology also heightens the crime rate and how criminals perform crimes, the debate here is not whether law enforcement should be using electronic surveillance to stop crime, but rather that they should be required to get a warrant as to prevent infringing on individual's Fourth Amendment rights. A law-abiding citizen does not expect to be surveilled by law enforcement 24/7 nor do citizens expect that law enforcement would purposely mount a camera facing their house for monitoring and surveillance. Such unchecked executive authority and unfettered discretion runs afoul with this Court's previous precedent and reaffirms the invasiveness of granting the Government access to such intrusive data without a judicial check. Further, surveillance can create chilling effects on free speech, free association, and other First Amendment rights essential for democracy. Daniel J. Solove, *"I've Got Nothing to Hide" and Other Misunderstandings of Privacy*, 44 San Diego L. Rev, 745, 765 (2007).

II. THE FOURTH APPELLATE DISTRICT COURT OF CALIFORNIA CORRECTLY HELD THAT DEFENDANT'S FOURTH AMENDMENT RIGHTS WERE VIOLATED UPON OFFICERS' WARRANTLESS ENTRY AND SEARCH OF HIS HOME ABSENT AN APPLICABLE EXCEPTION.

Nadauld's constitutional rights were violated when officers entered and searched his home in a manner inconsistent with the principles of the Fourth Amendment. The Fourth Amendment to the United States Constitution guarantees "[t]he right of people to be secure in their… houses… against unreasonable searches and seizures." U.S. Const. amend. IV. At the "very core" of the Amendment is the unassailable ability to escape unreasonable government invasion in the sanctity of one's home. *Jardines*, 569 U.S. at 6. In accordance with ideals long supported by this court, officers must obtain a search warrant or an arrest warrant before entering a suspect's home to search for or seize weapons or contraband. *Payton v. United States*, 445 U.S. 573, 577-78 (1980). The touchstone of the Fourth Amendment is reasonableness; accordingly, the warrant requirement is subject to few "specifically established and well-delineated exceptions." *See Texas v. Brown*, 460 U.S. 730, 739 (1983); *Katz*, 389 U.S. at 357.

In relying on this Court's precedent, Nadauld maintains that the California Court of Appeal, Fourth Appellate District Court did not err in determining that his rights were violated under the Fourth Amendment when officers conducted a warrantless entry and search absent exigent circumstances and probable cause. Accordingly, Respondent prays this court **AFFIRM** the decision of the Fourth Appellate District Court.

A. The Exigent Circumstances Doctrine is Inapplicable Where Law Enforcement Gains Entry to the Home by Threat of or in Violation of the Fourth Amendment

Law enforcement's entry and search of Respondent's home violated his Fourth Amendment rights because Officers Hawkins and Maldonaldo gained entry to the premises in by threatening to enter and entering despite Respondent's denial of consent. "[T]he exigent

circumstances rule applies when the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment." *Kentucky v. King* 563 U.S. 452, 469 (2011).

In *Kentucky v. King*, the Court considered whether police-created exigencies preclude law enforcement from entering a home absent a warrant. 563 U.S. at 455. In *King*, officers entered and searched an apartment they believed to be inhabited by a suspected drug dealer after witnessing events that indicated his participation in illegal drug trafficking. *Id*. at 456. After knocking and announcing their presence, law enforcement heard shuffling and suspicious noises from inside the apartment, causing them to enter and find individuals smoking marijuana. *Id*. at 456-57. This Court, in *King*, concluded that law enforcement did not impermissibly create an exigency because their conduct of knocking and announcing was consistent with the requirements of the Fourth Amendment and entry did not occur by actual or threatened violation of such. *Id*. at 471.

In stark contrast to the *King* case, where lawful behavior created the exigent circumstances, the officers, in this case, acted in a manner inconsistent with this Court's interpretation of the Fourth Amendment by threatening to and actually violating it to gain entry to Nadauld's home; thus, any exigency created as a result was done so impermissibly. Government will argue that an exigency was created when Nadauld exhibited "suspicious behavior" upon being asked to furnish his gun to officers for inspection purposes, giving officers no choice but to enter. However, even if an exigency were present because law enforcement believed Nadauld would destroy the evidence or cause harm to himself or others, it was the officers' repeated demands and threats to enter the home in violation of the Fourth Amendment that created such circumstances. This warrantless invasion is the core of what the Fourth Amendment aims to protect.

The officers' conduct in the present case is in direct contrast with that of the officers in *King*, whose mere knock-and-announce, a practice permitted under the Fourth Amendment, was

the event that gave rise to the exigency. *Id*. at 456. Thus, applying the exigent circumstances doctrine to the facts of the present case would be contrary to this Court's precedent because officers, by demanding entry and refusing to honor Respondent's denial of consent to gain entry to his home by threat or actual violation of the Fourth Amendment.

Furthermore, Nadauld had no duty to let the officers into his home absent a warrant. This Court in *King* states, "When law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak." *Id*. at 470. The Court here further notes that occupants who elect instead to destroy evidence instead of asserting their rights under the constitution and denying entry "have only themselves to blame for the warrantless exigent-circumstances search that may ensue." *Id*. The occupants in *King* did not open the door upon law enforcement's knock-and-announce; instead, they attempted to get rid of the evidence inside the apartment, making noises that gave officers no choice but to enter on the assumption that material evidence was being destroyed. *Id*. at 456.

Contrary to the occupants in *King*, Nadauld stood on his Fourth Amendment rights by opening the door for the officers and denying their requests to enter upon seeing no warrant. Here, officers Maldonaldo and Hawkins did what they could do without a warrant by approaching Nadauld's home, knocking on his door, and requesting to speak. However, the interaction should have ended when Nadauld told officers that he did not want to show them the gun at the moment, as their letter indicated they would be inspecting his gun in a month. Nadauld acted according to the Fourth Amendment when he asserted his rights, as there was no indication of shuffling or

suspicious noises from inside the house to lead officers to believe evidence related to the crime would be destroyed, such as there was in *King*.

Officers Hawkins and Maldonaldo had no right to enter Nadauld's home without a warrant upon Nadauld's assertion of his Fourth Amendment rights. Accordingly, Nadauld urges this Court to hold that his Fourth Amendment rights were violated upon law enforcement's entry and search of his home. Furthermore, the decision of the Fourth Appellate District Court of the State of California should be affirmed in accordance with this Court's precedent.

B. The Situation's Circumstances Did Not Give Rise to Exigencies That Made the Warrantless Entry and Search of the Respondent's Home Objectively Reasonable

The warrantless entry and search of Respondent's home was unreasonable under the Fourth Amendment because exigent circumstances were not present; accordingly, the Fourth Appellate District of the State of California correctly determined that the superior court erred in admitting evidence obtained pursuant to that entry. This Court recognizes exigent circumstances as one of the well-delineated exceptions to the warrant requirement, ruling that a warrantless search of one's home is constitutional where "the exigencies of the situation" make the needs of law enforcement so compelling to render the search objectively reasonable. *Mincey v. Arizona*, 437 U.S. 385, 393-94, (1978). "[It is a] long-settled premise that, absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed, and there is probable cause to believe that incriminating evidence will be found." *Payton*, 445 U.S. at 577-78.

This Court has recognized exigencies in the following situations: (1) when law enforcement must enter a home to prevent the imminent destruction of evidence; (2) when law enforcement must enter a home to prevent the escape of a suspect; and (3) when law enforcement must enter a home to prevent imminent harm to an individual. *King*, 563 U.S. at 460. This Court

maintains that those who seek exemption from the constitutional warrant requirement must show that the exigencies of the situation made that course imperative. *McDonald*, 335 U.S. at 456.

Here, the facts and circumstances surrounding the entry of Nadauld's house do not indicate the existence of any of these exigencies. Nadauld asserts that the Fourth Appellate District of the State of California did not err when they found that exigent circumstances were not present to justify officers' warrantless, unreasonable, and unconstitutional invasion of his home.

i. Officers' entry into Nadauld's home was not necessary to prevent the imminent destruction of evidence

Evidence was not at risk of imminent destruction when officers entered Respondent's home to search for a weapon. Destruction of evidence typically occurs with drug searches because they are easily destroyable. *King*, 563 U.S. at 461. For this exception to be applicable, police must garner a reasonable belief that evidence is in imminent danger of being removed or destroyed. *See Illinois v. McArthur*, 531 U.S. 326, 331-32 (2001). Here, law enforcement cannot reasonably say that the entry to Nadauld's home was done according to a reasonable belief that the M16 would be destroyed or otherwise disposed of.

First, it would be unreasonable for law enforcement to believe that Nadauld would destroy an otherwise irreplaceable heirloom bequeathed to him by his deceased father. Additionally, the present case is unlike other cases involving imminent destruction of evidence because it involves an M16 automatic assault rifle, which is much harder than drugs to immediately dispose of because you cannot flush it down the toilet or dissolve it in water. *Id.* at 331-32; *see also Ker v. California*, 374 U.S. 23, 40-42 (1963). Due to the nature of the evidence and the circumstances surrounding the facts, law enforcement has failed to meet their burden of showing that they were not able to secure a warrant due to a reasonable belief that evidence would be destroyed or disposed of.

ii. Officers' entry into Nadauld's home was not necessary to prevent the escape of a suspect

The Government has also failed to prove that law enforcement's expedited entry into Nadauld's home was necessary to prevent a suspect from escaping. This Court affirmed a Minnesota Supreme Court decision that held no exigent circumstances were found where the suspect was known not to be the murderer in the case and could not have left the premises without being apprehended. *Minnesota v. Olsen*, 495 U.S. 91, 101 (1990). In *Olsen*, this Court reasoned that because the suspect was located in a home as an overnight guest and was not armed when law enforcement entered at 3:00 PM on a Sunday afternoon, exigent circumstances were not present. *Id*. The Court notes, "…although a grave crime was involved, respondent 'was known not to be the murderer but thought to be the driver of the getaway car.'" *Id*.

Similar to the respondent in *Olsen*, there was no risk of Nadauld leaving the premises without being apprehended, for he was in his own home. R. at 19. Additionally, officers knew Nadauld was not the murderer in this case, as Hawkins's exclaimed to Nadauld after his wrongful entry, "You want to help us catch the guy, then! Then tell me where the gun is!" R. at 24, 16. Finally, like the suspect in *Olsen*, Nadauld was not armed when he answered the door, he answered the officers' questions, and he gave no indication of being a flight risk, such that officers' efforts to get a warrant would have been thwarted by Nadauld's escape. Thus, the government failed to prove the existence of risk that the suspect would escape such that their warrantless entry was justified.

iii. Officers' entry into Nadauld's home was not necessary to prevent imminent risk of death or serious injury

Lastly, there was no imminent risk of death or serious injury such that law enforcement's warrantless entry and search of Nadauld's house was justified under this Court's precedent

regarding the Fourth Amendment. This Court has held that where a police officer can establish a reasonably objective basis for fear of imminent violence based on the facts in front of them, such that any reasonable officer in that position would come to the same conclusion, entry without a warrant is justified. *Ryburn v. Huff*, 565 U.S. 469, 477 (2012). In *Huff*, this Court found exigent circumstances present when law enforcement followed a suspect's mother into her home upon her suspicious conduct following police's questions about her son's threats to shoot up a school two days prior. *Id*. at 471-72. This Court reasoned that any officer in the same position would have reasonably concluded that there was an imminent and immediate threat to themselves, or others based on the mother's refusal to cooperate. *Id*. at 476.

The facts of the case at hand are fundamentally distinguishable. Contrary to *Huff*, where officers visited the suspect's home after *two days*, law enforcement began investigating Nadauld *two weeks* following the initial incident. *Id*. at 470; R. at 20. No reasonable officer could have concluded that imminent harm was present after two weeks. Furthermore, the suspect's mother's suspicious conduct of refusing to speak with officers and running away from them in *Huff* differs from Nadauld's appropriate and calm behavior of answering Officer Hawkins' questions and politely declining consent. *Huff*, 565 U.S. at 471; R. at 23. Finally, at the point in the investigation where they visited Nadauld, officers already had a reason to suspect McKennery, not Nadauld, as the shooter. R. at 21. A reasonable officer in the position of Hawkins or Maldonaldo could not have reasonably concluded that the risk of imminent death or injury was present. Thus, this Court should hold, consistent with its precedent, that officers' entry into Nadauld's home without a warrant violated his Fourth Amendment rights.

C. Law Enforcement Did Not Have the Requisite Probable Cause to Enter and Search the Respondent's Home Without a Warrant

Even if exigent circumstances were present and came about by lawful means, officers did not have the requisite probable cause to enter Nadauld's home. This Court defines probable cause to search as "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). Probable cause should be determined on a totality of the circumstances and cannot be defined by a neat set of rules. *Id*. at 232, 238. Probable cause alone is insufficient to justify a warrantless search of one's home, and warrantless arrests within the home are presumptively unreasonable. *King*, 563 at 459. ("It is a 'basic principle of Fourth Amendment law . . . that searches and seizures inside a home without a warrant are presumptively unreasonable.'") (quoting *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006)).

"The principal components of a determination of… probable cause will be the events which occurred leading up to the… search, and then the decision whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to… probable cause." *Ornelas*, 517 U.S. at 696. The events leading up to law enforcement's entry into Nadauld's home do not amount to probable cause to believe that contraband or evidence of a crime would be found in Nadauld's home. Law enforcement visited Nadauld upon gathering surveillance footage of McKennery visiting Nadauld's home and dropping off a duffle bag, the contents of which could have been anything, including work supplies. R. at 4. Petitioner will contend that a warrant was not obtained due to the exigencies of the situation; however, officers cannot reasonably argue that they had the requisite probable cause to obtain one in the first place, hence the warrantless appearance at Nadauld's home.

Accordingly, these events, in conjunction with the gathering of ALPR data which excluded non-residents of San Diego and individuals who may have altered their gun to make it an assault weapon, could not have led any reasonable officer to a finding of probable cause under these facts

in circumstances. Thus, any entry and search of Nadauld's home were contrary to his rights under this Court's interpretation of the Fourth Amendment.

i. Probable cause *alone* is not enough to justify a warrantless entry into the home

Should this Court find probable cause did exist, it alone is insufficient to justify a warrantless search or seizure within the home. *See Payton*, 445 U.S. at 590. In *McDonald*, this Court reversed the denial of a defendant's motion to suppress evidence on the grounds that the evidence was unlawfully seized pursuant to a wrongful entry into premises where officers reasonably believed illegal "numbers" game operations were being run. 335 U.S. at 454-55.

In *McDonald*, law enforcement surveilled a suspect at his rooming house for two months because of his past involvement with illegal "numbers" game operations. *Id.* at 453. Officers, in that case, stated that probable cause arose upon hearing the sounds of adding machines outside of the suspect's home. *Id*. at 454. This Court held that solely establishing the basis of probable cause was not enough to justify officers' entry, and suggested that upon obtaining such information, any reasonable officer would have left the premises to obtain a warrant because exigent circumstances were not present. *Id*. at 455.

Similarly, police surveilled Nadauld for several days before physically visiting him at his home. R. at 4. Nadauld contends that if the government had a reasonable belief that there was a fair probability of the weapon being in his home, it would have arisen upon law enforcement's viewing of the surveillance footage from the pole-mount camera on September 29, 2021, at 5:23 PM. R. at 4. Accordingly, upon obtaining such information, any reasonable officer would not have visited Nadauld's home without a warrant but would have instead gotten formal approval from a neutral magistrate, consistent with the requirements of the Constitution. Thus, the Fourth Appellate District of California's holding that Nadauld's rights were infringed upon by officers' warrantless

entry into his home absent exigent circumstances and probable cause is consistent with this Court's interpretation of the Fourth Amendment and should be upheld.

ii. This Court Has Never Held Unlawful a Temporary Seizure While Police Obtained a Warrant in a Reasonable Period of Time

Reasonable officers in a similar position as Hawkins and Maldonaldo would have mirrored the conduct elicited in *McArthur*, where one officer restrained the suspect on his porch while the other officer fetched a warrant pursuant to the reasonable belief contraband was located within the home based on information obtained upon visiting the property. 531 U.S. at 328-29. The Court held that the conduct was consistent with this Court's precedent regarding the Fourth Amendment due to the public nature of one's doorway such that arrests are permitted there without a warrant, unlike arrests which cross the line of sanctity into one's home. *See United States v. Santana*, 427 U.S. 38, 42 (1976). This Court reasoned that in various other instances, temporary restraints in light of exigent circumstances have never been held unlawful; in fact, such practices have been encouraged by this Court to uphold the values of privacy in the sanctity of the home guaranteed by the Fourth Amendment. *McArthur*, 531 U.S. at 334.

Officers Hawkins and Maldonaldo were capable of handling these circumstances correctly. Firstly, there were two of them, one to hold Nadauld on his porch while the other obtained a warrant. Instead, the officers forced their way into Nadauld's home, both against his wishes and without a warrant, and used their strength in numbers to keep Nadauld in the living room while Officer Maldonaldo searched the premises for evidence. R. at 24. This is the exact abuse of power the Fourth Amendment aims to prevent. Law enforcement had multiple opportunities throughout this investigation to act in a manner consistent with the values of the Fourth Amendment upheld by this Court time and time again; however, each opportunity was squandered in the name of convenience—an excuse this Court has never found valid to by-pass constitutional requirements.

Johnson v. United States, 333 U.S. 10, 15 (1948). This Court should ultimately uphold the determination that Nadauld's Fourth Amendment rights were violated upon officers' warrantless entry and search of his home, the nexus of privacy.

CONCLUSION

Respondent respectfully requests that this Court **AFFIRM** the holding of the California Fourth District Court of Appeals on the following two grounds: (1) the acquisition of the location data from ALPR and the surveillance footage from the pole-mounted camera constituted an illegal search within the meaning of the Fourth Amendment; and (2) Nadauld's Fourth Amendment rights were violated upon law enforcement's warrantless entry and search of his home absent exigent circumstances and probable cause.

Regarding the first issue, Nadauld not only had a reasonable expectation of privacy in the data collected by the ALPR technology, but also in his curtilage, where law enforcement conducted a wrongful search by collecting license plate data and surveillance footage of Nadauld's home and driveway via pole-mounted camera. To the second issue, law enforcement violated Nadauld's Fourth Amendment rights further when they entered and searched his house without a warrant, exigent circumstances, or probable cause.

Pursuant to this Court's precedent and the ideals of the Fourth Amendment, Respondent urges this Court to consider the sanctity of the home, and the protections our Constitution affords individuals behind the line drawn at the door. Allowing the safeguards of the Fourth Amendment to be overcome by condoning the invasion of privacy seen in this case would be to diminish its protective purposes.