Team 6

Docket No. 1788-850191

In The

Supreme Court of the United States

United States of America,

Petitioner,

v.

Nick Nadauld,

Respondent.

On Writ of Certiorari to the Supreme Court of the United States

BRIEF FOR RESPONDENT

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

ISSUES PRESENTED

I. The Fourth Amendment's purpose is to safeguard individual's privacy against arbitrary government invasion. The Supreme Court held that record of an individual's physical movements is private information that requires a warrant. Here, California Law Enforcement retrieved Nadauld's location information from the Automatic License Plate Recognition database to track his physical movements over time. Did California Law Enforcement need a warrant to access the database?

II. The Fourth Amendment protects an individual's right to be secure in their home by requiring a warrant. This requirement is subject to a few closely guarded exceptions, including exigent circumstances and special needs beyond typical needs of law enforcement. The officers here burst into Nadauld's home and searched it, without a warrant, when exigency did not exist solely for the purpose of investigating the shooting. Is this entry and search proper under the Fourth Amendment?

STATEMENT OF FACTS

On September 14th, law enforcement responded to a shooting at Balboa Park in San Diego. R at 2. The police began an investigation after they failed to apprehend the shooter. *Id.* The investigation began by reviewing forty images of individuals who left on foot and fifty images of the vehicle license plates whose drivers fled the scene. R at 3. The shooter, Frank McKennery, was one of the individuals reviewed from his license plate information. R at 2-3. As part of the investigation, police also reviewed the list of individuals who legally possessed assault rifles in San Diego. R at 3. That list included the Defendant, Nick Nadauld. *Id.*

After police narrowed their leads, they used the Automatic License Plate Recognition (ALPR) database to track McKennery's and Nadauld's movements. R at 3. ALPR cameras are placed at fixed locations and attached to law enforcement vehicles. R at 38-39. These cameras automatically capture the vehicle's image and license plate information. R at 38. The system marks the image with time and location information, revealing the driver's precise location. R at 3. The ALPR system then transforms that plate image into a code and compares that plate number to other databases. R at 38-39. These other databases have information related to active investigations and canvassing of suspects, victims, and witnesses. R at 38.

While the ALPR systems itself only contains location data, the other databases that ALPR systems are compared against include their own data sets supplementing ALPR's data sets. R at 38. The State does not regulate how long these ALPR records are maintained. R at 40. In California, jurisdictions can retain this location information anywhere from sixty day to five years. *Id.*

Law enforcement used the ALPR to retrieve Nadauld's time-stamped location information. R at 3. This location information was then used to track Nadauld's movements from the time of

the shooting until September 24th. *Id.* After examining Nadauld's collective movements, law enforcment determined that Nadauld's location overlapped with McKennery's location. R at 4. Law enforcement then installed pole-mount cameras outside Nadauld's home. *Id.* These cameras were installed ten days after the shooting. *Id.*

One day after setting up the pole-mount camera, law enforcement mailed a letter to Nadauld. R at 4. The letter stated that officers would arrive at his home in one month to verify his compliance with California Penal Code 30915. *Id.* This section applied to Nadauld because he had legally inherited his father's assault rifle in 2020. R at 2.

Almost two weeks after the shooting, on September 28th, police received an anonymous phone call stating "This is the Balboa Park shooter. This time, it's gonna be a school." R at 4. Police traced the call to a telephone booth. *Id.* This call came after the San Diego Times had published two articles related to the shooting. R at 29-32. These articles included information about the off-duty Marine officer who was first on the scene, the location of the shooting, and other related facts. *Id.*

A day after the call, and exactly two weeks after the shooting, the pole-mount camera recorded McKennery arriving at Nadauld's home. R at 4. The pole-mount camera captured an exchange between the two men. *Id.* McKennery was returning Nadauld's assault rifle in a duffel bad. *Id.* Nadauld had loaned McKennery the assault rifle a few weeks prior because of McKennery's interest in target shooting. R at 24. After grabbing the duffel bag, Nadauld went back inside his home. R at 4.

Law enforcement dispatched FBI Officers Hawkins and Maldonado to Nadauld's home immediately after the exchange. R at 4. When the officers arrived, they knocked on the door asked him questions about his assault rifle. R at 23. Nadauld answered these questions cautiously because

the letter he received stated the officers would arrive in one month – not two days. *Id.* The officers quickly shifted their questions from § 30915 to questions about the Balboa Park shooting. *Id.* Nadauld stated that he did not commit the crime and offered to bring the officers the assault rifle. R at 28.

Displeased with Nadauld's offer, the officers requested to be let inside the house. R at 23-24. Nadauld asked them twice not to come inside. *Id.* The officers ignored this and entered anyway. R at 24. Upon entry, despite Nadauld's third assertion that he did not want them in his home, Officer Maldonado searched the home. *Id.* Nadauld then made his fourth and final assertion that he did not want the officers in his home. *Id.* This assertion was met with insinuations that he committed the Balboa Park shooting. *Id.* Officer Maldonado then entered the living room holding Nadauld's assault rifle. *Id.* As a result of this chaos, Nadauld admitted that he had loaned the gun to McKennery before the shooting. R at 24. Officer Hawkins then placed him under arrest. *Id.*

SUMMARY OF THE ARGUMENT

Warrantless search of Automatic License Plate Recognition database

The State needed to get a warrant before searching the Automatic License Plate Recognition (ALPR) database for Nadauld's physical movements. Nadauld has a reasonable expectation of privacy in his location information under both *Carpenter* and the *Katz* analysis. Because the State failed to obtain a warrant, and Nadauld did not give the State consent to search the ALPR database, the State's search of the ALPR database is unconstitutional.

Under *Carpenter*, the Supreme Court explicitly held that individuals have a reasonable expectation of privacy in the whole of their physical movements. Because ALPR location data tracks and plots the whole of Nadauld's physical movements, the State violated Nadauld's reasonable expectation of privacy when it retrieved Nadauld's location information from the ALPR system.

Even if the Court declines to apply *Carpenter*, Nadauld has a reasonable expectation of privacy under the *Katz* analysis. Under *Katz*, Nadauld maintains a subjective expectation of privacy in the aggregate of his multiple journeys. The aggregate of multiple journeys reveals privacies of life only Nadauld knows. Here, the objective expectation of privacy is also met. Society is prepared to recognize Nadauld's expectation of privacy as reasonable because both modern technologies and traditional police practice cannot replicate ALPR's extrasensory capabilities.

Because the third-party doctrine does not apply, the State needed to get a warrant. The State's search of the ALPR database is unconstitutional under the Fourth Amendment. This Court must affirm the lower court's holding.

Warrantless entry and search of Nadauld's home

This Court should affirm the lower court by holding that the warrantless entry and search violated Nadauld's Fourth Amendment rights and suppress the evidence of the search

The officers showed a complete lack of regard for the Fourth Amendment and existing caselaw when they entered Nadauld's home without a warrant. Not only did they enter without a warrant, but they also failed to show that any circumstances existed to establish an exception or that they had probable cause. Without probable cause and exigency, a warrantless entry and search will not survive the Fourth Amendment. Likewise, without circumstances to establish a special needs exception the search cannot be upheld under the Fourth Amendment. This is exactly what happened here, the entry and search cannot survive a Fourth Amendment analysis. The search cannot even survive the less exacting standard of the reasonableness requirement.

Additionally, the admission and rifle seized as a result of the warrantless entry and search must be suppressed by this Court in order to deter further illegal actions by other law enforcement officers. The officers' complete disregard for Nadauld's constitutional rights while in his home require exclusion.

The lower court was right in its determination that the warrantless entry and search violated the Fourth Amendment and that the search's "fruits" must be suppressed, this Court must affirm the lower court.

STANDARD OF REVIEW

Before this Court is a motion to suppress. This typically presents questions of law and fact. Because the facts are not at issue before the Court, the appropriate standard of review is *de novo*. *See Ornelas v.United States*, 517 U.S. 690, 699 (1996).

ARGUMENT

I. The retrieval of Nadauld's information from the Automatic License Plate Recognition database is a search that requires a warrant under the Fourth Amendment.

The Fourth Amendment protects "[t]he rights of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Its purpose "is to safeguard the privacy and security of individuals against arbitrary invasions of government officials." *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018) (quoting *Camara v. Municipal Court of City and County of San Francisco*, 387 U.S. 523, 528 (1967)). To safeguard against intrusion, the Fourth Amendment requires that police obtain a warrant prior to conducting a search. *See Franks v. Delaware*, 438 U.S. 154, 164 (1978).

The State needed to get a warrant before searching the Automatic License Plate Recognition (ALPR) database for Nadauld's physical movements. Nadauld has a reasonable expectation of privacy in his physical movements. Because the State failed to get a warrant, and Nadauld did not give the State consent to search the ALPR database, the State's search of the ALPR database is unconstitutional.

A. The State violated Nadauld's reasonable expectation of privacy when it searched the Automatic License Plate Recognition database.

A search occurs when the State violates a person's reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 361 (1967). When the State violates this expectation, the search is unconstitutional under the Fourth Amendment. *Id*. While determination of what constitutes as a reasonable expectation of privacy is fact specific, the Supreme Court has already acknowledged that there is a "legitimate expectation of privacy in the record of [an individual's] physical movements." *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018).

The State's ALPR database search is unconstitutional under the Fourth Amendment. Nadauld has a reasonable expectation of privacy in the whole of his physical movements. The ALPR system's ability to track and record "time and location information" allows the State to aggregate and plot Nadauld's physical movements. R at 3. This aggregate reveals the privacies of Nadauld's life. Under the modern *Carpenter* approach or the *Katz* framework, Nadauld has a reasonable expectation of privacy in the whole of his physical movements.

1. Nadauld has a reasonable expectation of privacy in the whole of his physical movements under *Carpenter*.

Nadauld has a reasonable expectation of privacy in his location records. This Court should use the *Carpenter* Court's framework to analyze Nadauld's reasonable expectation of privacy. Under *Carpenter*, the State violated Nadauld's reasonable expectation of privacy when it warrantlessly searched the ALPR database for Nadauld's historic vehicle location data.

The Supreme Court recognized that "individuals have a reasonable expectation of privacy in the whole of their physical movements." *Carpenter*, 138 S. Ct. at 2217. The State violates that reasonable expectation when location records provide "an all-encompassing record of the holder's whereabouts." *Id.* The Court explained that "time-stamped data provides an intimate window into a person's life, revealing not only his particular movements, but through them his "familial, political, professional, religious, and sexual associations." *Carpenter* 138 S. Ct. at 2217 (quoting *United States v. Jones*, 565 U.S. 400, 415 (2012) (Sotomayor, J., concurring)). The Court considers these "privacies of life" protected under the Fourth Amendment. *Riley v. California*, 573 U.S. 373, 403 (2014).

In *Carpenter*, Chief Justice Roberts isolated three factors that help courts determine if the Fourth Amendment protects data. These factors include: (1) "the deeply revealing nature" of the information; (2) "it's depth, breadth, and comprehensive reach"; and (3) "the inescapable and

automatic nature of its collection." *Carpenter*, 138 S. Ct. at 2223. Like the cell site location information in *Carpenter*, the Fourth Amendment protects Nadauld's location data.

Just as in *Carpenter*, the ALPR data is deeply revealing in nature. The ALPR system automatically captures a license plate image and corresponding vehicle location information. R at 38. It then automatically uploads this information into its database. The aggregate location information can then plot a vehicle's movements or identify the vehicle at a certain location. The aggregated location information reveals both sensitive and intimate details. The location information is sensitive because it reveals Nadauld's familial interactions, political gatherings, religious exercise, and intimate associations. Put in the wrong hands, an individual with knowledge of Nadauld's family, political identity, religious background, or intimate partners could harm Nadauld. These privacies of life are intimate details Nadauld may conceal from others. Because the State stores this information up to five years, this information is vulnerable to data breaches and hacking. While the State argues that it takes measures to secure ALPR data, the State lists no policies explaining how it protects data when it is shared or preventative measures the State implemented against hacking. For these reasons, the ALPR system is deeply revealing in nature.

The ALPR data also has "depth, breadth, and [a] comprehensive reach." "Depth refers to the detail and precision of the information stored." Paul Ohm, *The Many Revolutions of Carpenter*, 32 Harv. J.L. & Tech. 357, 372 (2019). The ALPR is both detailed and precise. The database stores "data sets of license plate numbers, photos of the vehicles, and geospatial locations from where the images were captured." R at 38-39. This time-stamped information can conveniently create a plotted map that details an individual's movement overtime. Although the State argues that the ALPR system does not have personal identifying information, that argument ignores that California Law Enforcement Agencies supplement the ALPR database with other law enforcement

databases. R at 38. These other databases have detailed information about active investigations and include personal identifying information. This detailed information supplements the ALPR's plotted movements and creates a more detailed chronicle of the person's physical presence. Additionally, the State boasts that the ALPR system is accurate with only a "small error rate." R at 39. The ALPR's level of detail precision meets *Carpetner's* depth factor.

Breadth refers to "how frequently the data is collected, and how long it has been recorded." Ohm, *supra* at 372. Here, the ALPR system stores data anywhere from sixty days to five years. R at 40. While the camera only collects location data when a car passes by, cameras are "attached to law enforcement vehicles" and "deployed at a fixed location." R at 39. The attached cameras allow the State to broadly track people's movement over a large area. California is already collecting a significant amount of data. In 2014, the Los Angeles Police Department and Sherriff's Department collected data on nearly 3 million cars per week – amounting to nearly half of all vehicles registered in Los Angeles.[1] This, in combination with the ALPR system's ability to scan up to 1,800 plates per minute, creates a situation similar to *Carpenter* – ALPR technology can and will track nearly everyone.[2]

Comprehensive reach "refers to the number of people tracked in the database." Ohm, *supra* at 373. Similar to cell site location information, ALPR systems collects data on everyone. This broad surveillance includes mostly individuals under no suspicion of criminal activity. Such broad surveillance increases the potential ALPR data will be used against innocent people and allows the government to monitor individual's behavior for non-law enforcement purposes.

---

[1] *See* Jennifer Lynch & Peter Bibring, *Secrecy Trumps Public Debate in New Ruling On LA's License Plate Readers*, EFF (Sept. 3, 2014), https://www.eff.org/deeplinks/2014/09/secrecy-trumps-public-debate-new-ruling-las-license-plate-readers.

[2] *See* ELSAG North America, Mobile Plate Hunter--900, DuraTech USA https://www.duratechusa.com/Products/MPH900.htm.

ALPR's monitoring is inescapable and automatic. Most Americans need to drive on public roads to participate in modern society. ALPR systems monitor these public spaces and collect drivers' location data. Because travel is an inherent part of daily life, ALPR systems are unavoidable. The State completes this automatic collection without any affirmative act from the driver. Because drivers are not voluntarily disclosing their information, the ALPR's monitoring is inescapable and automatic.

Under the factors set out in *Carpenter,* Nadauld has a reasonable expectation of privacy in his location information stored in the ALPR database. Because Nadauld has a reasonable expectation of privacy, the Court needed a warrant before searching the ALPR.

2. Even if this Court declines to apply *Carpenter*, under *Katz* Nadauld has a reasonable expectation of privacy in his public location data collected by ALPR.

Even if the Court declines to apply *Carpenter*, Nadauld has a reasonable expectation of privacy under the two-prong *Katz* privacy analysis. The two-prong analysis requires: (1) that Nadauld "exhibited an actual (subjective) expectation of privacy" and (2) that the expectation Nadauld exhibited is one that "society is prepared to recognize as 'reasonable.'" *Katz v. United States*, 389 U.S. 347, 361 (1967).

When analyzing Nadauld's subjective expectation of privacy, the Court should follow the *United States v. Maynard* framework. *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010), *aff'd in part sub nom. United States v. Jones*, 565 U.S. 400 (2012). While the Supreme Court affirmed *Maynard sub nom.* in *Jones* under the trespass test, property law is unworkable in cases that involve technological surveillance without physical contact. *United States v. Jones*, 565 U.S. 400 (2012) (Alito, J., concurring). *Maynard* appropriately considers whether individuals have a reasonable expectation of privacy in the whole of their movements. *Maynard*, 615 F.3d at 563.

The *Maynard* Court concluded that the Fourth Amendment protects the whole of a person's movement because a reasonable person "expects each of those movements to remain disconnected and anonymous." *Id.* The Court explained that "prolonged GPS monitoring reveals an intimate picture of the subject's life that he expects no one to have." *Id.* The court explained that while a single journey is already observable to the public, "prolonged [surveillance] reveals information not exposed to the public." *Id.* at 565.

Justices Alito's and Sotomayor's concurrences in *Jones* support that Nadauld has a reasonable expectation of privacy. Justice Alito agrees that a reasonable person does not expect others to "monitor and catalogue every single movement of an individual's car for a very long period." *Jones*, 565 U.S. at 430 (Alito, J., concurring). Justice Sotomayor emphasized that even short-term monitoring "generates a precise, comprehensive record of a person's public movements" that is protected. *Id.* at 415 (Sotomayor, J., concurring).

Under the *Maynard* framework and *Jones* concurrences, Nadauld has a subjective expectation of privacy. While Nadauld has no reasonable expectation of privacy in single journeys, Nadauld expects the aggregate his multiple journeys to be private. Although the State argues it only used the ALPR system for a short period to monitor Nadauld, that short period revealed a wealth of personal details – who he associated with, when he came and went to work, whether he participated in any religious or political gatherings. Only Nadauld knows these details as a collective and only he can choose who he shares that collective with. For that reason, Nadauld has a subjective expectation of privacy.

Because ALPR data reveals so much about an individual's private life, there is also an objective reasonable expectation of privacy. It is unlikely that society expects the State to know intimate details about everyone's physical movements. The State argues that under *Knotts* there is

no expectation of privacy in an individual's movements. However, this argument ignores that *Knotts* required that the Court reconsider if "dragnet type law enforcement practices…eventually occur." *United States v. Knotts*, 460 U.S. 276, 284 (1983). Here, the State uses ALPR to apprehend criminals and suspects. The State admits it compares its ALPR database against "hot lists" to help in various active investigations, including AMBER Alerts, missing persons, stolen vehicles, and stolen license plates. R at 38. Additionally, the State uses ALPR technology to "canvas license plates around any crime scene to assist in the identification of suspects, victims, and witnesses." R at 38. Because these are "dragnet" practices, the Court must reconsider *Knotts's* holding as it relates to surveillance.

Nadauld's expectation of privacy regarding ALPR systems data collection is one that society is prepared to recognize as reasonable. ALPR's simultaneous information collection abilities is unlike other modern technologies. Other modern technologies, like GPS tracking, only monitor one targeted individual. ALPR systems collect data on the entire driving population, indiscriminately. Traditional police practices cannot replicate this mass collection. While officers can write down license plate numbers they surveil, an officer could not collect the volume of plates ALPR does not accurately plot each plate's movements like ALPR. Because both modern technologies and traditional police practice cannot replicate ALPR's extrasensory capabilities, society is prepared to recognize Nadauld's expectation of privacy as reasonable.

Because Nadauld displayed a subjective expectation of privacy and that expectation is one society considers reasonable, Nadauld satisfies the two-prong *Katz* analysis. Nadauld has a reasonable expectation of privacy in his public location data collected by ALPR. For this reason, even under *Katz*, the Court needed a warrant before searching the ALPR database.

3. The third-party doctrine does not apply to the information stored in the Automatic License Plate Recognition database.

Under either analysis, the third-party doctrine does not apply. The *Carpenter* Court explicitly "decline[d] to extend" the doctrine to cell site location information because "[t]here is a world of difference between the limited types of personal information addressed in *Smith* and *Miller*" and exhaustive cell site location information. *Carpenter*, 138 S. Ct. at 2219. As explained, ALPR systems also provide exhaustive details of personal location information similar to cell site location information. For this reason, this Court should also decline to extend the third-party doctrine to ALPR data.

Even under pre-*Carpenter* jurisprudence, the third-party doctrine does not apply. The Court cannot extend *Smith* or *Miller* because Nadauld's location information is private. Both *Smith* and *Miller* considered "the nature of the particular documents sought" to determine whether "there is a legitimate 'expectation of privacy' concerning their contents." *United States v. Miller*, 425 U.S. 435, 442 (1976), *Smith v. Maryland*, 442 U.S. 735, 742 (1979). As explained above, individuals have a legitimate expectation of privacy in the detailed chronicle of their physical presence – a chronicle that, by nature, implicates a privacy concern beyond pen registers. Any argument that claims Nadauld voluntarily turned over his location information ignores that the ALPR system indiscriminately collects information from everyone on public roads. Even the State would agree that Nadauld did not "share" his information. Rather, the State collected it without any affirmative act from Nadauld. Because Nadauld's disclosure is not voluntary and his location information is private, the third-party doctrine does not apply.

B. The Supreme Court's Fourth Amendment jurisprudence must evolve to address databases that store aggregate location information.

This Court should not apply older legal doctrine that allow warrantless searches in an era of unprecedented technology. The Court has an obligation to remain vigilant and "ensure that the 'progress of science' does not erode Fourth Amendment protections." *Carpenter*, 138 S. Ct. at 2223 (citing *Olmstead v. United States*, 277 U.S. 438, 473–474 (1928)). With modern technology, police can surveil and aggregate private information to a degree much different than when the Court decided *Katz*. Given the low cost of powerful modern technology, it is only more likely surveillance will become part of everyday life.

If the Court chooses to follow pre-*Carpenter* Fourth Amendment doctrine, the Fourth Amendment will erode. Pre-*Carpenter* jurisprudence narrowly focuses on the State's invasion. Ohm, *supra* at 363. However, as technology becomes more pervasive in everyday life, the State's technology invasions will soon be deemed objectively reasonable. To ensure technology's progression does not erode Fourth Amendment rights, the Court must shift its analysis to protect the information obtained. Doing so will ensure that modern technologies will not shrink Fourth Amendment protections.

Failure to shift Fourth Amendment jurisprudence risks erosion of other constitutional freedoms. For instance, ALPR data can also monitor First Amendment protected activity. Because there are no judicial limits on database retention, ALPR systems can catalogue protected activities such as religious practice or political gatherings. The State can then share this information with third parties who can exploit it. The International Association of Chiefs of Police has already expressed that ALPR systems cause citizens to "become more cautious in the exercise of their protected rights of expression, protest, association, and political participation because they

consider themselves under constant surveillance."[3] By shifting the Fourth Amendment reasonable expectation analysis to focus on the information obtained, the Court protects constitutional rights beyond the Fourth Amendment.

Nadauld asks this Court to affirm the lower court's decision that the warrantless usage of the ALPR database is unconstitutional. Because Nadauld has a reasonable expectation of privacy in his physical movements as a whole, the State needed probable cause determined by a judge issuing a warrant.

II. The warrantless entry and search violated Nadauld's Fourth Amendment rights.

The lower court did not err in holding that the warrantless entry and search of Nadauld's home violated the Fourth Amendment. The Fourth Amendment protects an individual's right to be secure "in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend IV. At the core of the Fourth Amendment, stands the home. *See Florida v. Jardines*, 569 U.S. 1, 6 (2013) ("But when it comes to the Fourth Amendment, the home is first among equals.") To protect the home, the amendment requires a warrant before law enforcement may search. *See Riley v. California*, 573 U.S. 373, 382 (2014). The exceptions to the warrant requirement "are 'jealously and carefully drawn,'" and include exigent circumstances and the special needs of law enforcement. *Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (citing *Georgia v. Randolph*, 547 U.S. 103, 109 (2006)).

The officers' behavior does not comport with either of these exceptions. When the officers entered and searched Nadauld's home, they did so without a warrant, probable cause, exigent circumstances, or special needs. This illegal behavior produced evidence used to later convict

[3]International Association of Chiefs of Police, *Privacy Impact Assessment Report for the Utilization of License Plate Readers*, https://www.theiacp.org/sites/default/files/all/k-m/LPR_Privacy_Impact_Assessment.pdf .

Nadauld. Due to their failure to follow the Fourth Amendment, this Court must affirm the lower court and exclude the evidence obtained.

A. The officers lack of probable cause violates the Fourth Amendment.

Probable cause "is a precondition" to any entry into a home. *See LaLonde v. County of Riverside*, 204 F.3d 947, 954 (9th Cir. 2000) (citing *Welsh v. Wisconsin*, 466 U.S. 740, 749-50 (1984)). Probable cause is a fluid concept that turns "on the assessment of probabilities in particular factual contexts." *Illinois v. Gates*, 462 U.S. 213, 231 (1983). To determine if there was probable cause, the court will "examine the events leading up to the [search]" from "the standpoint of an objectively reasonable police officer." *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (citing *Ornelas v. United States*, 517 U.S. 690, 696 (1996)). The events must be more than mere hunches, because hunches are "insufficient to establish . . . probable cause." *United States v. Johnson*, 256 F.3d 895, 905 (9th Cir. 2001) (citing *Illinois v. Wardlow*, 528 U.S. 119, 123-24 (2000)).

An objectively reasonable officer would not have probable cause to enter and search Naduald's home. The investigation is laden with hunches beginning with the exclusion of the forty individuals who fled the scene on foot, due to some determination that they likely did not commit the crime. R at 3. The police then limited their investigation to only the fifty vehicle owners. R at 3. On a whim, they did not investigate the conveniently present off-duty Marine who appeared on the rooftop before the police did. R at 29. Instead, they arbitrarily narrowed their suspects to a few overlapping individuals on the vehicle list and assault rifle list who happened to have been in the same location previously R at 3. These hunches led them to focus on Nadauld, who was not even present in the park on the day of the shooting but did possess a legally obtained assault rifle R at 3. Any inference that Nadauld committed the crime simply because of this overlap is no more than a hunch. These hunches cannot sustain probable cause.

The anonymous phone call is also insufficient to sustain probable cause. Anonymous tips rarely create probable cause, because these tips "seldom demonstrate[] the informant's basis of knowledge. . . and [their] veracity . . . is largely unknown, and unknowable." *Alabama v. White*, 496 U.S. 325, 329 (1990) (citing *Illinois v. Gates*, 462 U.S. 213, 237 (1983)). Without any information as to the informant's veracity, reliability, and basis of knowledge, the value of the tip is low. *Id.* at 328.

The States' reliance on the anonymous phone call cannot sustain probable cause. This thirteen-word call provides no insight into the informant's basis of knowledge, veracity, or reliability. The use of "Balboa Park shooter" is not something that only the shooter would have known. R at 4. The press used a similar phrase in the two articles released in the weeks between the shooting and the phone call. R at 30 and 31. The phone call only proves that the caller read the local news. The police did not verify the information or identity of the caller, without this any verification the phone call cannot sustain probable cause.

Even if these circumstances may have sustained probable cause, the probable cause ended when the officers observed McKennery at Nadauld's home. When McKennery dropped the duffel bag at Nadauld's home, the probable cause for Nadauld ceased to exist because any objectively reasonable officer would shift their suspicion to McKennery. R at 4. In that moment, it became clear that not only did Nadauld not have the assault rifle in his possession, but McKennery, who was at the park the day of the shooting, likely committed the crime. R. at 4. This post-hoc attempt to create probable cause for Nadauld is insufficient to establish this necessary precondition to enter his home. There simply was not probable case in the case before the Court today, this Court must affirm.

B. The Fourth Amendment's warrant exceptions do not insulate the officers' actions.

The circumstances do not fall under either exception to the Fourth Amendment's warrant requirement. Because the officers did not have probable cause or exigent circumstances, they cannot meet the exigent circumstances exception. *See Lange v. California*, 141 S. Ct. at 2017. Likewise, even though the officers did not have probable cause they do not meet the requirements for the special needs exception. *See Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000). The administrative search exception is inapplicable here because the search was not conducted "pursuant to a regulatory scheme." *United States v. Grey*, 959 F.3d 1166, 1177 (9th Cir. 2020). Because the State failed to prove an exception, the lower court did not err in holding that the warrantless entry violated Nadauld's Fourth Amendment rights

1. No exigent circumstances existed to justify the warrantless entry and search.

Warrantless home searches are permissible when "the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment." *Kentucky v. King*, 563 U.S. 452, 460 (2011). The Supreme Court has consistently recognized three types of exigent circumstances: hot pursuit, destruction of evidence, and imminent physical danger to others or officers. *See Lange v. California*, 141 S. Ct. at 2017. The State must point to "specific and articulable facts" to establish any exigent circumstances. *United States v. Ojeda*, 276 F.3d 486, 488 (9th Cir. 2002).

Specific facts can show that exigent circumstances develop during permissible police interactions, such as conversations at the door of a home. *See King*, 563 U.S. at 470. Police officers are allowed to knock on a door and seek to speak with the occupants of the home, just like any other private citizen. *Id.* The occupant then has the right to limit this interaction. *Id.* Upon that limit, the police should realize "the investigation [is at] a conspicuously low point." *Id.* If the

occupant does not choose to limit this interaction, and exigent circumstances develop, he only has himself "to blame for the warrantless . . . search that may ensue." *Id.*

When the officers arrived at Nadauld's home they had no reason to believe that he would flee, destroy evidence, or pose a danger to himself or the officers. The officers had pole cameras to monitor his home and movements for five days before they entered his home, it was evident that Nadauld was not attempting to flee. R at 4.

Additionally, there are no "specific or articulable facts" to demonstrate that exigency developed during the officers conversation with Nadauld. When the officers arrived, Nadauld promptly answered the door. R at 23. He politely answered their questions and went as far as to offer to bring them the weapon they requested, even after they aggressively questioned him. R. at 23. When the officers' sought to take advantage of Nadauld's compliance, he asserted his constitutional right to prevent their warrantless entry into his home. R at 24. Instead of recognizing that the investigation had reached its low point, the officers forced their way into his home, searched his bedroom, seized his legally owned assault rifle, and arrested him. R at 24-25. Neither before or during the entry, did Nadauld act in a way that would have led the officers to believe that he was going to destroy the weapon or harm himself or them. His assertion of his constitutional right did not create exigency. The lack of exigency to support the entry and search violates the Fourth Amendment.

2. No special needs existed to justify the warrantless entry and search.

The Fourth Amendment's warrant and probable cause requirement is unnecessary when there is a special needs exception. These special needs must go "beyond the normal need [of] law enforcement." *Bd. Of Educ. v. Earls*, 536 U.S. 822, 829 (2002) (discussing cases where special needs were found when a probation officers searched a probationer's home, *Griffin v Wisconsin*,

483 U.S. 868 (1987), and in public schools, *New Jersey v. T.L.O.*, 469 U.S. 325 (1985)). The exception weighs "the nature and extent of the privacy interest at hand against the nature and immediacy of the government's [interests]." *Al Haramain Islamic Found., Inc. v. U.S. Dep't. of Treasury*, 686 F.3d 965, 991 (9th Cir. 2012). The government's interest, no matter how weighty, is never a reason to ignore an individual's constitutional rights when securing a warrant can still achieve that interest. *Id.* at 993 (finding that the government's interest in "preventing terrorism" is "no excuse for the dispensing altogether with . . . constitutional rights."). When the constitutional right is the home, the individuals' privacy interest is "especially strong." *Payton v. New York*, 445 U.S. 573, 589-90 (1980)).

The warrantless entry and search only served law enforcement's quintessential need of crime control. The officers claimed to be at the home to investigate Nadauld's compliance with § 30915. Cal. Penal Code § 30915. Yet the circumstances tell a different story. A compliance check of a local state statute does not require two FBI officers, aggressive questioning, or the entry and search Nadauld's home without consent or warrant. R at 24. Nadauld's home had already been under surveillance for five days before the officers entered the home R at 4. Presumably, the officers had failed to establish probable cause in those five days or they would have already obtained a warrant. The questioning at Nadauld's home was solely focused on the shooting and became aggressive as soon as he showed a hint of "noncompliance." R at 23. These actions are not similar to those officers charged with enforcing a probation program or protecting children in schools. These are the actions of officers who decided that the Fourth Amendment was merely a suggestion and they could enter the home without probable cause or an exception. These actions are in plan violation of the Fourth Amendment.

Even if the actual interest was in solving the Balboa Park shooting, instead of § 30915 compliance, that interest is not a special need to justify entering the *home* without a warrant or probable cause. As the Ninth Circuit has developed this principle, and this Court should uphold, if terrorism is insufficient to become a special need, then so is the Balboa Park shooting. Nadauld's Fourth Amendment rights were at their height as he stood in his home. His rights do not cease to exist simply because the police were incapable of finding the shooter. The interest in solving the crime, is a quintessential law enforcement interest in crime control and is not a special need. Also, this need is still served if the officers can obtain a warrant. Because the actual need was instead crime control, the search is not a special need and violated the Fourth Amendment.

C. The warrantless entry and search violates even the Fourth Amendment's less exacting reasonableness requirement.

The Fourth Amendment's reasonableness requirement would not uphold this warrantless entry and search. The Fourth Amendment's "touchstone" is "reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977). The modern doctrine sometimes applies only the reasonableness test, which balances the degree of intrusion against the promotion of the government's legitimate interests. *Al Haramain Islamic Found., Inc.*, 686 F.3d at 994 (citing *Samson v. California,* 547 U.S. 843 (2006)).This Court has applied this test in narrow circumstances which involve "diminished privacy interests." *Id.* (discussing *Samson v. California,* 547 U.S. 843 (2006)). In *Samson*, the search of a probationer's home was reasonably balanced against the government interest in reducing recidivism and integrating probationers into the community. *See Samson v. California,* 547 U.S. 843, 853 (2006).

The warrantless entry and search into Nadauld's home is unreasonable under the Fourth Amendment. The circumstances here are not narrow, they are the same circumstances that exist every time the State investigates a crime. And as opposed to *Samson*, Nadauld had full privacy interests in his home. Unlike someone on probation, he had no expectation the police could arrive at his home at any moment to search it without a warrant. The intent and intrusion are not properly balanced and the Fourth Amendment cannot sustain this even under its reasonableness requirement.

D. The Fourth Amendment's history, purpose, and principles require this Court to suppress the fruits of the warrantless entry and search.

This Court must exclude the seizure of the assault rifle and Nadauld's admission. The founders wrote the Fourth Amendment in response to the "writs of assistance of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity." *Riley v. California*, 573 U.S. 373, 403 (2014). The right to retreat home and "be free from unreasonable governmental intrusion, stands at the center of the Fourth Amendment. *Silverman v. United States*, 365 U.S. 505, 511 (1961).

When the government violates the Fourth Amendment, the court can exclude evidence discovered as a result of that violation. *See Wong Sun v. United States*, 371 U.S. 471, 485 (1963). This principle, known as the exclusionary rule, applies to both "statements and evidence." *See Wong Sun* at 484-88. The application of the rule is fact specific and depends on whether the twin aims of deterrence and judicial integrity are served. *See Brown v. Illinois,* 422 U.S. 590, 603 (1975).

The Fourth Amendment requires this Court to exclude Nadauld's admission because the officers obtained it illegally. The officers' warrantless entry and search is not sustained by probable cause or an exception to the warrant requirement, making it an illegal search in violation of the

Fourth Amendment. The use of the exclusionary rule in this case would support its twin aims. By excluding the admission, the Court ensures that other officers are deterred before engaging in similar behavior and that convictions are not based on illegally obtained evidence.

Additionally, this Court must exclude the assault rifle because the officers did not properly seize it. The plain view doctrine validates any "warrantless seizure of incriminating evidence" so long as the officer has "a lawful right of access to the object itself." *Collins v. Virginia*, 138 S. Ct. 1663, 1672 (2018) (citing *Horton v. California*, 496 U.S. 128 (1990)). As mentioned, the officers did not have a lawful right of access to Nadauld's home. The lack of lawful access invalidates the seizure of the assault rifle because they had no right to be there.

The evidence is not subject to any exceptions to the exclusionary rule. The attenuation doctrine is an exception to the exclusionary rule. *See Utah v. Streif*, 579 U.S. 232, 238 (2016) This exception excuses suppression only "when the connection between the illegality and the challenged evidence has become so attenuated as to dissipate the taint caused by the illegality." *Id*. The exception has three factors first, the "temporal proximity" between the illegality and the evidence, second, any intervening circumstances, and third, the "purpose and flagrancy of the official misconduct." *Id.*

The closely succeeding illegality and evidence fulfill the first two factors and support exclusion. When the illegality and the evidence are close in time, that favors suppression. *See Garcia*, 974 F.3d 1071, 1077 (9th Cir. 2020) (citing *Utah v. Streif*, 579 U.S. 232 (2016)) . When the evidence is a "direct result" of the illegality, there is no existence of intervening circumstances to favor suppression. *See Id.* at 1078. The illegality, the warrantless entry and search, is close in time to the evidence, the admission and seizure of the assault rifle. This weighs in favor of

suppression. The seizure of the assault rifle and the admission are a direct result of the warrantless entry and search. The lack of intervening circumstances also weigh in favor of suppression.

The officers' purposeful and egregious acts fulfill the third factor and support exclusion. When an officer's misconduct is purposeful and egregious that weighs in favor of suppression. *See Garcia*, 974 F.3d at 1076-77 (citing Utah v. Streif, 579 U.S. 232 (2016)). The officers' actions here were purposeful. They tried to get into the home two separate times before they decided to enter over Nadauld's objections R at 23. Once inside the home, Officer Hawkins gave Officer Maldanoda orders to search the rooms R at 23. They knew exactly what they were doing, and they did it on purpose. This purposeful behavior is especially egregious in light of the underlying violation, the entry into the home. This purposeful and flagrant behavior requires suppression.

The Fourth Amendment's history, purpose, and principles require this Court to exclude the seizure of the assault rifle and the admission. This Court must affirm the lower court's suppression.

CONCLUSION

Nadauld asks this Court to affirm the lower court's holding that the retrieval of his information from the ALPR database required a warrant and that the warrantless entry and search violated his Fourth Amendment rights.