No. 24-473

In The
Supreme Court of the United States

KAREN JIMERSON, *et al.*,

Petitioners,

v.

MIKE LEWIS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF THE RUTHERFORD INSTITUTE AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus The Rutherford Institute, a nonprofit civil-liberties organization, is committed to protecting the constitutional freedoms of every American and the fundamental human rights of all people. The Rutherford Institute advocates for civil liberties and human rights through both *pro bono* legal representation and public education on a wide spectrum of issues affecting individual freedom in the United States and around the world. As a central part of its mission, The Rutherford Institute opposes unreasonable government invasions of privacy and supports both the redress of injuries suffered through police misconduct and the robust protection of Fourth Amendment rights, especially as to the sanctity of the home.

SUMMARY OF THE ARGUMENT

The Framers would have been outraged by the idea that an officer could invade a home without a warrant covering that particular address and then escape liability for such an egregious trespass. Having endured the British government's rampant abuse of "writs of assistance" and other "general warrants" as a means to ransack colonists' homes, the Framers

[1] Pursuant to Rule 37.2, counsel for *amicus* provided notice to all parties of its intention to file this brief and did so at least ten days before its due date. Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

enshrined in the Fourth Amendment the constitutional requirement not only that a government official obtain a warrant before entering a home, but also that the warrant "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

This Court has consistently reaffirmed the Founding principle that specific authorization is required to enter someone's home. If the claimed authorization is a warrant, the warrant must cover the particular home an officer enters. This Court has never strayed from this clear principle, elaborating in *Maryland v. Garrison* that an officer executing a warrant must follow its clear command and ensure proper identification of "the place intended to be searched." 480 U.S. 79, 88 (1987). When officers fail to do so and invade an innocent third party's home without authorization, those officers violate clearly established Fourth Amendment law. Permitting officers to escape liability when they deviate from a warrant's clear command and enter an entirely different property, as the Fifth Circuit did below, effectively allows execution of a "general warrant"—the very evil the Fourth Amendment was intended to prevent.

The clearly established rule that intrusions into a home not covered by a warrant violate the Fourth Amendment does not require factual analogues to define its contours: The Warrant Clause of the Fourth Amendment itself provides all the notice a reasonable officer needs to stay within the bounds of the

Constitution. *See*, *e.g.*, *Taylor v. Riojas*, 141 S. Ct. 52, 54 (2020). By holding otherwise, the Fifth Circuit condones the same unauthorized government intrusions the Framers deliberately crafted the Fourth Amendment to prohibit. This Court should grant the petition for certiorari and reverse, or summarily reverse, the judgment of the Fifth Circuit, which grievously underprotects "[t]he right of the people to be secure in their . . . houses," U.S. CONST. amend. IV, while overprotecting an unreasonably careless officer like respondent who had no authority to invade petitioners' home.

ARGUMENT

I. AS THE HISTORY OF THE FOURTH AMENDMENT AND CENTURIES OF THIS COURT'S PRECEDENT CONFIRM, STRICT LIMITS ON GOVERNMENT INTRUSIONS INTO THE HOME HAVE BEEN AN ESSENTIAL AND ENDURING FEATURE OF AMERICAN DEMOCRACY.

A. Outrage At Government Intrusions Into Homes Motivated The Fourth Amendment's Warrant Clause And Its Particularity Requirement.

British intrusions into colonists' homes drove the Framers' desire for independence and the Fourth Amendment guarantee of "[t]he right of the people to be secure" in their homes, for which "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. The Framers were familiar with the common-law practice of requiring warrants for government intrusions. As early as the mid-17th century, Sir Edward Coke had stated that entering a home to conduct a search required a warrant, and allowing warrants that were too broad or unrestrained was "against Magna Carta." 4 EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND 176-77 (John Streater et al. eds., 5th ed. 1671).[2] The Framers also knew of the availability of a trespass suit at common law to remedy a warrantless search. *See*, *e.g.*, Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 MICH. L. REV. 547, 643-50 (1999); *see infra* p. 12.

At the same time, the Framers understood that protections against government intrusions into the home were precarious. They had seen England struggle to preserve the sanctity of the home against officials' unbridled use of vague and unspecified general warrants. The common law evolved to curb that practice in England, but British officials' abuses of general warrants in the form of "writs of assistance" remained rampant in the

[2] Coke's writings eventually led England to outlaw the use of "general warrants" to search unspecified British homes, and England's failure to do the same in the colonies loomed large in the Framers' minds, as discussed *infra* pp. 7-8. *See* WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING 602–1791, at 109-21, 128 (2009).

colonies.[3] And it was the colonists' experience with British officials' outrageous home invasions that fueled the Revolution and culminated in the Fourth Amendment right to be secure in one's home—free from government intrusion absent a warrant that described the place to be entered with particularity. *See* U.S. CONST. amend. IV; JACOB W. LANDYNSKI, SEARCH AND SEIZURE AND THE SUPREME COURT: A STUDY IN CONSTITUTIONAL INTERPRETATION 19-20, 30-34 (1966) (explaining that the Fourth Amendment was "the one procedural safeguard in the Constitution that grew directly out of the events which immediately preceded the revolutionary struggle with England").

The general warrants that outraged the Founding generation did not confine searches to specified locations but allowed the official who held them "to search wherever and seize whomever or whatever he desires," giving great power to the officials and little protection to homes. WILLIAM J. CUDDIHY, THE FOURTH AMENDMENT: ORIGINS AND ORIGINAL MEANING 602–1791, at lxv (2009). And this practice would be—in the words of John Adams—"the commencement of this controversy between Great Britain and America." Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979, 1004 (2011) (quoting Letter from John Adams to Abigail Adams (July 3,

[3] Writs of assistance empowered customs officers to enter and inspect homes without a property-specific warrant and, in that way, functioned as a type of general warrant. CUDDIHY, *supra*, at 377-84.

1776), *in* 9 THE WORKS OF JOHN ADAMS 418 (Charles Francis Adams ed., 1851)). In fact, John Adams traced the birth of "the child Independence" to the moment James Otis, a Boston lawyer, renounced his post as Advocate General for the British to challenge the legality of general warrants. Richard Samuelson, *Introduction* to JAMES OTIS, THE COLLECTED POLITICAL WRITINGS OF JAMES OTIS vii, x (Richard Samuelson ed., 2015).

Otis's argument exemplified the American refusal to accept general warrants as proper authority for government intrusions into the home. He chronicled abuses by British customs agents using writs of assistance "*to* ENTER FORCEABLY *into a* DWELLING HOUSE, *and rifle every part of it, where he shall* PLEASE," even though it was against the "rights of [E]nglishmen." James Otis, *Essay on the* Writs of Assistance *Case*, BOS. GAZ.*,* Jan. 4, 1762, *reprinted in* OTIS, *supra*, at 15, 15-16.

The same searches that prompted Otis to challenge the legality of writs of assistance so infuriated Massachusetts colonists that they gathered in Boston to revolt against not only the customs agent invading their homes, but also the judge who had issued that agent a general warrant. *See* Daniel Woislaw, *This Unknown Colonial Lawyer Helped Spark the American Revolution and Paved the Way for American Property Rights*, PAC. LEGAL FOUND. (Mar. 18, 2020), https://pacificlegal.org/james-otis-american-property-rights/. Several years later, in an event called "the most famous search in colonial America,"

one Massachusetts merchant barricaded himself inside his home rather than submit to a search he thought unjust; the crowd outside refused to help the British officers—some out of fear, but others in sympathy with the merchant. CUDDIHY, *supra*, at 496-501.

The colonists' anger was stoked by their awareness that search practice was notably more protective of the home in England, where general warrants had lost legal legitimacy. *See id.* at 105, 109-21, 128. At the same time pre-Revolution frustrations swelled, English courts had recently held officers liable for searches made pursuant to general warrants in two prominent cases: *Entick v. Carrington* (1765), 95 Eng. Rep. 807; 2 Wils. K.B. 275, and *Wilkes v. Wood* (1763), 98 Eng. Rep. 489; Lofft 1.[4] In *Entick,* the court explicitly precluded the use of a general warrant to authorize a search, as "our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave." 95 Eng. Rep. at 817; 2 Wils. K.B. at 291. Allowing intrusion based on a vague and broad warrant "would destroy all the comforts of society." *Id.* The colonial press coverage of these cases was "intense, prolonged, and overwhelmingly sympathetic," providing "relentless inducement to reject general warrants" as

[4] When these cases issued, it was an accepted rule that officers who entered a home without a warrant were subject to liability. *E.g.*, *Money v. Leach* (1765), 97 Eng. Rep. 1075, 1088; 3 Burr. 1742, 1768; *Huckle v. Money* (1765), 95 Eng. Rep. 768, 769; 2 Wils. K.B. 205, 207.

legitimate authorization to enter a home in the colonies as well. CUDDIHY, *supra*, at 537, 538-39.

Additional events accentuated the differences in the rights accorded citizens in England as opposed to colonists. As this Court noted, "[t]here can be no doubt that" the statement of British Prime Minister William Pitt in 1763 "echoed and re-echoed through the Colonies: 'The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!'" *Payton v. New York*, 445 U.S. 573, 601 n.54 (1980) (quoting *Miller v. United States*, 357 U.S. 301, 307 (1958)). Yet searches of colonists' homes pursuant to general warrants continued, placing "the liberty of every man in the hands of every petty officer" who wielded what this Court, quoting James Otis, described as "the worst instrument of arbitrary power." *Boyd v. United States*, 116 U.S. 616, 625 (1886) (citation omitted).

It is no surprise, then, that the disparities in protections against government intrusions into the home loomed large "in the minds of those who framed the Fourth Amendment." *Id.* at 626-27. Indeed, well before the Constitution was drafted, the Framers began to include protections against unreasonable searches in state law. The Virginia Declaration of Rights—adopted less than a month before America declared independence—outlawed the use of general warrants in the state. VA. CONST. of 1776,

DECLARATION OF RIGHTS, § 10. And the Constitution of Pennsylvania, adopted in September 1776, declared that general warrants violated the people's "right to hold themselves, their houses, papers, and possessions free from search and seizure." PA. CONST. of 1776, DECLARATION OF RIGHTS, art. X.

Similar provisions also appeared in the state constitutions of Massachusetts, New Hampshire, and Vermont. Laura K. Donohue, *The Original Fourth Amendment*, 83 U. CHI. L. REV. 1181, 1277 (2016). And the judiciary, too, pushed back against the use of general warrants: Despite the Townshend Acts of 1767—which granted authority for the highest court in each colony to issue customs officers general warrants in the form of writs of assistance—those courts resisted pressure from English authorities to do so. Leonard W. Levy, *Origins of the Fourth Amendment*, 114 POL. SCI. Q. 79, 90-91 (1999); O.M. Dickerson, *Writs of Assistance as a Cause of the Revolution, in* THE ERA OF THE AMERICAN REVOLUTION 40, 74 (Richard B. Morris ed., 1939).

Legal treatises of the post-Revolution, pre-Constitution era—as well as a number of state statutes—went even further in rejecting general warrants, demanding the type of particularity requirement the Framers ultimately adopted in the Fourth Amendment. Those sources stated that each warrant must be for a single location, such as one "dwelling house or store." CUDDIHY, *supra*, at 740 (collecting treatises and statutes).

After the Revolution, when the Constitution was drafted without language specifically addressing searches, many Framers believed that additional protection against governmental intrusions was necessary even without British abuses in the mix. Patrick Henry—then a Virginia legislator—argued that government agents could, "unless the general government be restrained by a bill of rights, or some similar restriction, go into your cellars and rooms, and search, ransack, and measure, every thing you eat, drink, and wear." 3 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 448-49 (2d ed. 1836).

Similarly, Richard Henry Lee, writing as "the Federal Farmer," was deeply concerned with the potential for government overreach in the absence of a Bill of Rights. He viewed protections against searches as "essential rights, which we have justly understood to be the rights of freemen." Richard Henry Lee, *Letters from the Federal Farmer*, *reprinted in* EMPIRE AND NATION 87, 123 (Forrest McDonald ed., Liberty Fund, 2d ed. 1999) (1962). In his view, these rights required not only a prohibition on unreasonable searches, but also that the warrant justifying a search contain "a special designation of persons or objects of search, arrest, or seizure." *Id.* at 158. Lee was joined by an outpouring of authors writing about the risks of general warrants and the necessity of including protection against such evils in a bill of rights—with at least fifteen Antifederalist authors expressing concern that, without more, the Constitution would

allow for promiscuous searches by the government. CUDDIHY, *supra*, at 673-76.

It was not only individual Antifederalists who called for a provision explicitly limiting government intrusions: The States themselves pushed for more protection. Virginia, New York, and Rhode Island submitted proposed constitutional text prohibiting unreasonable searches and seizures, with both New York and Rhode Island conditioning ratification on the enactment of a federal declaration of rights. Donohue, *supra*, at 1287 (Virginia), 1288-89 (New York), 1290 (Rhode Island); 3 ELLIOT, *supra*, at 658, 661 (Virginia); 1 ELLIOT, *supra*, at 327-29 (New York). And North Carolina and Maryland submitted text condemning general warrants and reaffirming the importance of the home. Donohue, *supra*, at 1290-91 (Maryland), 1292 (North Carolina). The notes of Maryland's state convention stated that an amendment "was considered indispensable by many of the committee; for, Congress having the power of laying excises, (the horror of a free people,) by which our dwelling-houses, those castles considered so sacred by the English law, will be laid open to the insolence and oppression of office." *Id.* at 1291 (quoting 2 ELLIOT, *supra*, at 551). And, like the other states that requested an amendment limiting searches, North Carolina pointed to general warrants as the predominant source of the danger: "[A]ll warrants, therefore, to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are

dangerous, and ought not to be granted." *Id.* at 1292 (quoting 4 ELLIOT, *supra*, at 244).

In crafting the Fourth Amendment, the Framers operated against an assumption that an officer could not enter a home without a warrant and that a violating officer would be required to pay damages for a trespass. *See* Davies, *supra*, at 648-49, 648 n.279 ("The Framers of the Fourth Amendment understood that the common law already specified that many sorts of arrests or searches could only be justified by a valid warrant—especially when 'houses, papers, and effects' were involved."); CUDDIHY, *supra*, at 760. Indeed, as one advocate for the Fourth Amendment wrote, "It has become a[n] invaluable maxim of English juries to give ruinous damages when a[n] officer has deviated from the rigid letter of the law." CUDDIHY, *supra*, at 760 (quoting *A Farmer*, MD. GAZETTE, OR, BALT. ADVERTISER, Feb. 15, 1788, at 2).[5]

Because the Framers "took the importance of warrant authority for granted, they perceived the task for the constitutional text solely as banning the legalization of general warrants—and the warrant standards of sworn-to probable cause and particularity sufficed to accomplish that." Davies, *supra*, at 649-50. Thus, the Fourth Amendment, when adopted as part of the Bill of Rights, incorporated the Framers' and

[5] By contrast, when trespass was justified by a lawful warrant, the officer maintained a complete defense against suit. 3 WILLIAM BLACKSTONE, COMMENTARIES *212; *see Sandford v. Nichols*, 13 Mass. 286, 288 (1816).

States' insistance on particularity. It not only prohibited "unreasonable searches and seizures," but also required that warrants "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV.

The Framers would have been outraged by the idea that an officer could invade a home without a warrant authorizing entry at a particular address for the particular purpose of seizing particular persons or things—and then escape liability for such an egregious trespass. Respondent's unauthorized invasion of petitioners' home accordingly violated constitutional principles that have been clearly established since the Founding and in fact drove the creation of the Fourth Amendment. The court below impermissibly thwarted the Framers' vision by shielding respondent from liability for his obvious constitutional violation. *See infra* Part II.B.

B. This Court Has Repeatedly Affirmed Founding Principles That Protect The Home From Unwarranted Government Intrusions.

In the two centuries since the enactment of the Fourth Amendment, this Court has never wavered from "the proposition that '[a]t the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.'" *Payton*, 445 U.S. at 589-90 (quoting *Silverman v. United States*, 365 U.S. 505, 511 (1961)). This means "that searches

and seizures inside a home without a warrant are presumptively unreasonable." *Id.* at 586. Any search must be judged in light of the "overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." *Id.* at 601.

Government intrusion into the home is the "chief evil" the Fourth Amendment was designed to protect against, and thus there must be "a firm line at the entrance to the house." *Id.* at 585, 590. Exceptions to the warrant requirement "are 'jealously and carefully drawn,' in keeping with the 'centuries-old principle' that the 'home is entitled to special protection.'" *Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (quoting *Georgia v. Randolph*, 547 U.S. 103, 109, 115 (2006)). Police officers may enter a home without a warrant to render emergency assistance to an injured occupant, to protect an occupant from injury, or to ensure the officers' own safety. *Id.* at 2017. An officer may also enter to prevent the imminent destruction of evidence or a suspect's escape. *Id.* And officers may search anything within an arrestee's reach. *Chimel v. California*, 395 U.S. 752, 763 (1969). Beyond such limited exceptions, this Court has repeatedly declined to relax the otherwise bright-line warrant requirement for homes. *See Caniglia v. Strom*, 141 S. Ct. 1596, 1600 (2021).

This Court has warned against allowing even small departures from the constitutional requirements for searching homes because "illegitimate and unconstitutional practices get their first footing in that

way, namely, by silent approaches and slight deviations from legal modes of procedure." *Boyd*, 116 U.S. at 635. As Justice Scalia emphasized in *Kyllo v. United States*, "any physical invasion of the structure of the home, 'by even a fraction of an inch,' was too much" and withdrawal of "this minim[al] expectation" would erode the Fourth Amendment. 533 U.S. 27, 34, 37 (2001) (quoting *Silverman*, 365 U.S. at 512). "It bears repeating that it is a serious matter if law enforcement officers violate the sanctity of the home by ignoring the requisites of lawful entry. Security must not be subject to erosion by indifference or contempt." *Hudson v. Michigan*, 547 U.S. 586, 603 (2006) (Kennedy, J., concurring). And "[n]o reasonable officer could claim to be unaware of the basic rule, well established by our cases, that, absent consent or exigency, a warrantless search of the home is presumptively unconstitutional." *Groh v. Ramirez*, 540 U.S. 551, 564 (2004).

This rule has long been clearly established, as has the need for a warrant to cover the particular premises an officer enters. Indeed, the warrant-particularity requirement has roots dating back "before the creation of our government," with general searches long "hav[ing] been deemed obnoxious to fundamental principles of liberty." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931). The Framers wrote the Fourth Amendment against that backdrop, and this Court's jurisprudence expressly connects warrant-particularity requirements to Founding-era principles. As this Court emphasized in *Maryland v. Garrison*, the

"manifest purpose" of the Fourth Amendment's requirement that any warrant "particularly describ[e] the place to be searched and the persons or things to be seized" was to "prevent general searches" from "tak[ing] on the character of the wide-ranging exploratory searches the Framers intended to prohibit." 480 U.S. at 84. The decision below immunizing respondent from liability for invading premises he had no authority to enter cannot be squared with this Court's steadfast affirmation of the Fourth Amendment right to be secure in one's home.

II. CIRCUITS' MISUNDERSTANDINGS OF *GARRISON* AND MISAPPLICATIONS OF QUALIFIED IMMUNITY IN WRONG-HOUSE CASES CONDONE UNAUTHORIZED GOVERNMENT INTRUSIONS INTO HOMES OF INNOCENT THIRD PARTIES—CONTRARY TO HISTORY, TRADITION, AND THIS COURT'S PRECEDENT.

The Court should grant the petition to reaffirm that an officer who fails to follow the clear command of a warrant and invades a third party's home without authorization violates clearly established Fourth Amendment law and cannot be awarded qualified immunity. It has been clearly established since the Founding that entering someone's home requires authorization, and if the claimed authorization is a warrant, the warrant must cover the particular home an officer enters. *See* Part I.A; *see also*, *e.g.*, *Groh*, 540 U.S. at 564. Accordingly, this Court elaborated in *Garrison* that an officer executing a warrant must make reasonable efforts to confirm the address and

physical characteristics specified in a warrant before intruding into a home. 480 U.S. at 88.

As petitioners explain, the Fifth Circuit has split from other courts of appeals in twisting *Garrison*'s clear rule into a license to immunize officers who unlawfully invade homes unless past cases involve similar—if not identical—failures by other officers to follow other warrants' commands. *See* Pet. 13-20. The clearly established rule from *Garrison* needs no such factual analogues to define its contours. To the contrary, *Garrison* manifested Fourth Amendment authorization-to-enter requirements that have been obvious since the Founding and that, when violated, necessarily defeat qualified immunity. Indeed, the obviousness of respondent's unconstitutional invasion of petitioners' home and importance of reaffirming the right at stake not only merit granting the petition but also make this case an excellent candidate for summary reversal, as petitioners suggest. *See* Pet. 20-22.

A. The Clear Split Petitioners Identify Reflects Lower Courts' Improper Extension Of *Garrison* In Ways That Tolerate The Sort Of Home Intrusions The Framers Wrote The Fourth Amendment To Forbid.

Underlying the split detailed in the petition is a pervasive misperception of *Garrison* as a case about excusable Fourth Amendment violations by officers who execute a warrant on a house other than the house

covered by the warrant. That is not what happened in *Garrison*. *Garrison* involved officers who entered precisely the premises identified in the warrant—the third floor of 2036 Park Avenue (480 U.S. at 85)—but the warrant turned out to authorize a search broader than expected when the warrant was procured. *See id.* at 86 ("We have no difficulty concluding that the officers' entry into the third-floor common area was legal" and that "they carried a warrant for those premises," even if the warrant "authorized a search that turned out to be ambiguous in scope" because the third floor unexpectedly contained two apartments.).

Nothing in *Garrison* suggests that the Fourth Amendment allows a warrant-dependent search to be conducted on premises that are not covered by the warrant. To the contrary, this Court emphasized in *Garrison* that "the officers properly responded to the command contained in a valid warrant" when they searched the third-floor apartments, and therefore "the officers' conduct was consistent with a reasonable effort to ascertain and identify the place intended to be searched within the meaning of the Fourth Amendment." *Id.* at 88-89.

Lower courts tend to lose sight of the context for *Garrison*'s "reasonable effort" language, *id.* at 88—even when applying *Garrison* as clearly established law to deprive officers of qualified immunity when they unreasonably fail to confirm the address and physical properties of premises targeted by a warrant. *See* Pet. 13-16 (describing cases in conflict with the Fifth Circuit's insistence on factual analogues to defeat

qualified immunity for wrong-house searches). But *Garrison*'s warrant-command focus matters; indeed, it is critical to preventing erosion of the bright-line protections of the home that the Framers enshrined in the Fourth Amendment. It was the *warrant* that provided authorization for the officers in *Garrison* to enter the third floor of 2036 Park Avenue. *See* 480 U.S. at 85-89, 89 n.14 (reaffirming "the bedrock requirement that, with the exceptions we have traced in our cases, the police may conduct searches only pursuant to a reasonably detailed warrant"); *see also* Part I.B. *Garrison* did not involve—and certainly did not excuse—unauthorized entry into premises to which the warrant did not apply. *See* 480 U.S. at 88-89. Lower courts' misuse of *Garrison* in the wrong-house context not only lacks support in this Court's precedent, but also conflicts with the Fourth Amendment's history and guarantees.

The Court should make clear that the Fourth Amendment forbids warrant-dependent entries into a home not covered by the particularized command of the warrant an officer executes. In those instances, when there is no warrant covering the particular property entered, the government lacks authority to invade that home and thus violates the Fourth Amendment by doing so. *See* Part I.B. That should be the end of the inquiry, as the Framers intended. *See* Part I.A.

If courts fail to recognize a violation when officers invade a home not covered by a warrant, one of two intolerable outcomes occurs: Courts either condone a

warrantless search—because no warrant covers the searched premises—or courts effectively approve a general warrant to search properties beyond those described in the warrant. *See Garrison*, 480 U.S. at 84 ("The manifest purpose of [the Warrant Clause's] particularity requirement was to prevent general searches" that "take on the character of the wide-ranging exploratory searches the Framers intended to prohibit."). The Fourth Amendment has never tolerated either result.

B. It Has Been Clearly Established Since The Founding That Entering A Home Without Authorization Is An Obvious Fourth Amendment Violation, And *Garrison* Does Not Necessitate Case Analogues To Defeat Qualified Immunity In The Wrong-House Context.

In concluding that respondent's admittedly unauthorized invasion of petitioners' home did not violate clearly established Fourth Amendment law, the Fifth Circuit made two critical errors in its qualified-immunity analysis. First, it characterized *Garrison* as offering merely a "general principle" regarding wrong-house searches, Pet. App. 11a, rather than the clearly established rule other circuits enforce: A Fourth Amendment violation occurs when an officer invades a home without confirming that the address and physical characteristics of the premises match those described in the warrant. *Compare* Pet. App. 11a-14a, *with* Pet. 13-16 (collecting cases in conflict

with the court below). Second, the Fifth Circuit ignored a bright-line rule that has been obvious since the Founding: An officer cannot enter a home without authorization. *See* Part I.A. Accordingly, when an officer relies on a warrant for authorization but fails to follow the command of that warrant and enters the wrong home, an obvious Fourth Amendment violation occurs. That suffices to overcome qualified immunity.

No factually analogous cases are required to define the "contours of the right," *Anderson v. Creighton*, 483 U.S. 635, 640 (1987), at stake when an officer disregards the command of a valid warrant and invades a home the warrant does not cover. The Warrant Clause of the Fourth Amendment itself—especially with this Court's elaboration in *Garrison*—provides all the notice a reasonable officer needs to stay within the bounds of the Constitution. *See Taylor*, 141 S. Ct. at 53-54 (reiterating that "a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question" (quoting *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (quoting *United States v. Lanier*, 520 U. S. 259, 271 (1997)))); *Hope*, 536 U.S. at 741 (reaffirming that "general statements of the law are not inherently incapable of giving fair and clear warning" (quoting *Lanier*, 520 U.S. at 270-71) and that "officials can still be on notice that their conduct violates established law even in novel factual circumstances").

Of course, nothing prevents a court from consulting other decisions in assessing the constitutionality of a wrong-house search, and petitioners discuss circuits on both sides of the split that have done so. *See* Pet. 13-20. But the existence of factually analogous—or factually distinct—cases is not what clearly establishes law in this context. The Fourth Amendment and *Garrison* already make clear that officers cannot fail to follow the command of a valid warrant—neglecting even to match the address and physical characteristics of a home with the warrant's target, *see* 480 U.S. at 88-89—and then enjoy qualified immunity when sued for an unauthorized entry.

The Framers envisioned the warrant requirement in bright-line terms. *See* Part I.A. In this context, there is no factually dependent "hazy border," *Saucier v. Katz*, 533 U.S. 194, 206 (2001), that demands analogical reasoning to ensure that officers have fair notice, as the Fifth Circuit wrongly required. Pet. App. 8a-11a. Unlike other contexts in which officers may violate the Fourth Amendment but reasonably believe their unreasonable conduct complies with a multifactor or fluid benchmark like that for excessive force (*see Saucier,* 533 U.S. at 205-06) or exigent circumstances (*see Anderson*, 483 U.S. at 641), the warrant requirement is clear-cut.

At the same time, it may be possible for officers to argue for qualified immunity when, as in *Garrison*, the officers follow the command of a valid warrant that nonetheless leads to a different search than expected when the warrant was obtained. Had the officers in *Garrison* been sued under § 1983 for what turned out to be an overbroad search of the third floor at 2036 Park Avenue, their actions would not have violated clearly established law and caused them to forfeit qualified immunity because this Court determined that the warrant they faithfully executed covered the entire third floor of that address—even if the intended target was just one of the two third-floor apartments. *See Garrison*, 480 U.S. at 88-89, 89 n.14 (rejecting arguments that "would brand as illegal the execution of any warrant in which, due to a mistake in fact, the premises intended to be searched vary from their description in the warrant" because, in that circumstance, "the police cannot reasonably know prior to their search that the warrant rests on a mistake in fact" and thus does not cover the premises entered). The officers in *Garrison* did not enter a home without authorization or disregard a warrant's particularized description of the premises to be entered. *Id.* at 88. They reasonably went where the warrant authorized them to go. *Id.*

Qualified immunity also may be arguable for officers who search an incorrect home when the home's characteristics match those described in the warrant and the address *appears* (albeit erroneously) to be the same address the warrant lists. Suppose, for example,

that officers follow the command of a warrant that covers "12 Main Street," a single-story home with a blue porch, and they in fact enter a single-story home with a blue porch on Main Street that has "12" on the curb. If that home actually is "123 Main Street," but the "3" has worn away—and nothing else suggests the officers are not at the property listed on the warrant—those officers might argue that, consistent with *Garrison*, 480 U.S. at 88-89, they faithfully followed the command of the warrant at the time of entry.

In other words, not every wrong-house search will necessarily result in liability for officers who match the home's address and physical characteristics with those particularized in the warrant, *see id.* at 88, even if officers nonetheless enter a home that was not the warrant's intended target. That is a far cry from the unreasonably deficient measures taken in this case by respondent, who did not come close to following the command of the warrant when he invaded petitioners' home without authorization.

* * *

The Fourth Amendment and *Garrison* provide fair notice of the reasonable parameters of a warrant-based home intrusion. Every reasonable officer since the Founding knows that entering a home without authorization violates the Fourth Amendment, and if the claimed authorization is a warrant, the warrant must cover the home entered. *Garrison* manifests that clear principle by confirming that the officers in that case made a "reasonable effort to ascertain and

identify the place intended to be searched," faithful to a valid warrant that covered the premises the officers entered. 480 U.S. at 88.

But the Fifth Circuit took that "reasonable effort" confirmation and flipped it on its head—spinning *Garrison* as somehow unraveling rather than applying clearly established warrant requirements. *See* Pet. App. 11a, 14a. By deploying *Garrison*'s "reasonable effort" language as a tool for immunizing respondent's undisputedly unconstitutional invasion of petitioners' home—even when respondent failed to perform the most basic task of matching the address and physical characteristics with those in the warrant—the Fifth Circuit egregiously departed from this Court's Fourth Amendment and qualified-immunity jurisprudence and condoned precisely the type of unauthorized government intrusion into the home that the Framers crafted the Fourth Amendment to prohibit.

CONCLUSION

The Court should grant the petition and reverse, or summarily reverse, the judgment of the Fifth Circuit.

Respectfully submitted,

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