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 CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Clark M. Neily III
Counsel of Record
Matthew P. Cavedon
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(202) 425-7499
cneily@cato.org

November 29, 2024

QUESTION PRESENTED

Does an officer violate clearly established law when he searches the wrong house without ascertaining the address or conspicuous features of the house to be searched? *See Maryland v. Garrison*, 480 U.S. 79, 88 (1987).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

Constitutional Provisions

INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a non-partisan public-policy research foundation established in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. The Cato Institute's Project on Criminal Justice was founded in 1999 and focuses on the proper role of the criminal sanction in a free society, the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

This case concerns *amicus* because it involves core questions of individual liberty protected by the Constitution and presents an opportunity to improve the administration of the Fourth Amendment and maintain that provision's protections.

SUMMARY OF THE ARGUMENT

Petitioners Karen Jimerson and her family challenge the Fifth Circuit's holding that SWAT officers were entitled to qualified immunity when they proceeded to "break and rake" her home in a military-

[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

style no-knock raid—even though the address on the house did not match the search warrant and the raided house had a massive wheelchair ramp out front, instead of the target house's front porch and chain-link fence. Ms. Jimerson's petition reflects the Fourth Amendment's function in protecting human life. When officers do not check addresses, they needlessly endanger homeowners and law enforcement officers. The petition also challenges yet another instance of the Fifth Circuit disregarding this Court's instruction that a court should not grant qualified immunity simply because there is no prior case involving the same facts.

ARGUMENT

I. ADDRESS CHECKS PROTECT HUMAN LIFE.

This Court has observed that officers are constitutionally "required" not to enter a residence when they are "put on notice of the risk" that they "might" lack warrant authorization to search it. *Maryland v. Garrison*, 480 U.S. 79, 87 (1987). Officers must undertake "a reasonable effort to ascertain and identify the place intended to be searched." *Id.* at 88.

The *Garrison* rule protects human life. The constitutional guarantee of security in one's house was inspired by overbroad "general warrants" issued by British colonial authorities.[2] Nothing is nearer to the

[2] U.S. CONST. amend. IV; *Payton v. New York*, 445 U.S. 573, 583 (1980).

Fourth Amendment's essence than preventing "the danger of needless intrusions."[3]

Needless intrusions threaten multiple constitutional interests. First, they imperil the privacy of the home.[4] After all, police officers searching a home may encounter people undressed or in bed, *Hudson v. Michigan*, 547 U.S. 586, 594 (2006)—indeed, during the search of Ms. Jimerson's home, officers encountered her emerging from the shower half-naked and the father of her children awaking from sleep.[5]

Needless intrusions also put property at risk. Long before American Independence, judges foresaw that entries could entail "destruction or breaking"—as did

---

[3] *Payton*, 445 U.S. at 585–86; *cf. id.* at 588–89 (noting "the sanctity of the home" as an important Fourth Amendment value).

[4] *See id.* at 589 ("In [no setting] is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . ."); *Hudson v. Michigan*, 547 U.S. 586, 594 (2006) ("[E]lements of privacy and dignity . . . can be destroyed by a sudden entrance . . . ."); *Ker v. California*, 374 U.S. 23, 57 (1963) (Brennan, J., concurring in part and dissenting in part, joined by three other justices) (noting the "shock, fright or embarrassment attendant upon an unannounced police intrusion"); *Johnson v. United States*, 333 U.S. 10, 14 (1948) (saying entries threaten "a society which chooses to dwell in reasonable security and freedom from surveillance.").

[5] *See* Cert. Pet. App'x at 5a–6a, 63a–64a.

the "break and rake" operation here.[6] Ms. Jimerson's home was damaged when officers smashed in her windows, exploded a flashbang grenade, and kicked down her door.[7] Several of Ms. Jimerson's children had broken glass enter their eyes.[8] This is not the first time in recent memory that Texas officers executing a warrant have busted down the door of the wrong house—as recently as 2020, they did so at the home of a retired officer, who called their actions "unprofessional and intimidating."[9]

Needless intrusions put privacy and property at risk. Even more importantly, they can lead to the needless loss of human life. Fortunately, no one was killed at Ms. Jimerson's house. To quote Justice Robert Jackson, this was a matter of "luck more than [of] foresight."[10] He wrote those words in a concurrence to *McDonald v. United States*, where a police officer illegally jimmied open a woman's bedroom window and

---

[6] *Wilson v. Arkansas*, 514 U.S. 927, 935–36 (1995) (quoting *Semayne's Case*, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 196 (K.B. 1603)).

[7] *See* Cert. Pet. App'x at 5a–6a, 63a–64a.

[8] *See id.* at 64a.

[9] Mayra Moreno, *Retired Officer, Family Startled by Deputies Serving Arrest Warrant at Wrong Home*, 6 ABC ACTION NEWS (Sept. 10, 2020), https://6abc.com/harris-county-deputies-serve-warrant-at-wrong-house-retired-police-officer-home-case-under-investigation-louis-rodriguez/6416554/.

[10] *McDonald v. United States*, 335 U.S. 451, 460 (1948) (Jackson, J., concurring).

crawled inside to investigate a lottery scheme operated from her boarding house.[11] Justice Jackson foresaw "grave troubles" arising from needless home entries.[12] Innocent armed homeowners, having no reason to expect a police raid, could well think officers were criminal intruders. In such cases, their "natural impulse would be to shoot."[13] Or an officer "seeing a gun being drawn on him might shoot first"—though Justice Jackson thought the officer's lethal response could well be deemed murder.[14]

Justice Jackson hoped constitutional warrant requirements for home entries would curb operations that were "reckless" and "fraught with danger and discredit."[15] But warrants amount to nothing if police need not check addresses before entering homes.

Later justices have also expressed concern about the dangers of needless home entries, warning that "practical hazards of law enforcement militate strongly against any relaxation" of constitutional rules.[16] The possibility that police are mistaken as to residential addresses is "a good reason for holding a

---

[11] *See id.* at 452–56 (majority opinion).

[12] *See id.* at 459 (Jackson, J., concurring).

[13] *Id.* at 460–61.

[14] *Id.* at 461.

[15] *Id.*

[16] *Ker*, 374 U.S. at 57 (Brennan, J., concurring in part and dissenting in part).

tight rein against judicial approval of unannounced police entries into private homes."[17]

II. ADDRESS CHECKS PROTECT HOMEOWNERS.

Homeowners have died because officers did not check addresses. Police shot and killed 41-year-old father Ismael Lopez after seeing him holding a gun, only to realize that their actual target lived next door. They had failed to check the externally displayed street numbers or take note of the massive letter "P" on their target Samuel Pearlman's wall.[18]

Recent retiree John Adams of Lebanon, Tennessee was watching television, his cane resting against his recliner, before seven officers burst into his home.[19] They manhandled his wife, then shot John repeatedly and killed him.[20] Lebanon police chief Bill Weeks admitted that the incident was "absolutely the

---

[17] *Id.*

[18] *See* Kalhan Rosenblatt, *Mississippi Police Fatally Shoot Man at Wrong House While Serving Warrant*, NBC NEWS (July 26, 2017, 4:53 PM), https://www.nbcnews.com/news/us-news/mississippi-police-fatally-shoot-man-wrong-house-while-serving-warrant-n786681.

[19] Ashley Fantz, *Fatal Mistake*, SALON (Oct. 19, 2000), https://www.salon.com/2000/10/19/shooting_3/.

[20] *Id.*

stupidest move I've ever seen in law enforcement"—his officers had gone to the wrong house.[21]

Officers raiding the wrong residence killed "a 7-year-old girl in Detroit."[22]

Officers shot Iyanna Davis of Hempstead, New York when they went to serve a warrant for the other unit in her two-family residence.[23]

Non-fatal intrusions have happened as well. Officers detained Raleigh school bus driver Yolanda Irving at gunpoint—she lived two doors over from the house their warrant targeted.[24] The City of Chicago paid nearly $3 million to social worker Anjanette Young after she was handcuffed while naked—similarly to how Ms. Jimerson here was forced to lie on the ground for fifteen minutes with nothing covering her lower half, Cert. Pet. App'x at 63a—by officers who were supposed to search her neighbor's home.[25]

---

[21] *Id.*

[22] Kevin Sack, *Door-Busting Drug Raids Leave a Trail of Blood*, N.Y. TIMES (Mar. 18, 2017), https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html [hereinafter "*Door-Busting Raids*"].

[23] *See id.*

[24] *See, e.g.*, Joel Brown, *'I Never Got an Apology': Raleigh Mom Still Devastated after RPD Tactical Team Raids Wrong Home*, ABC11 (Feb. 1, 2022), https://abc11.com/raleigh-police-raid-wrong-house-drug-botched-poilice-family-terrified/11531039/.

[25] Minyvonne Burke, *Black Woman Handcuffed Naked in Raid at Wrong Home Set to Get $2.9 Million from Chicago*, NBC NEWS (Dec. 14, 2021), https://www.nbcnews.com/news/us-news/black-

Officers raided the Georgia home of Onree Davis, a 78-year-old man, when they had a warrant for his neighbor's house, even though a captain "later testified he 'wasn't sure' [Mr. Davis's] house was actually their target and just assumed his subordinates 'acquired information'" to that effect.[26]

Errors in executing drug search warrants inherently endanger human life. Between 2010 and 2014, over 90 percent of Maryland SWAT deployments were to serve search warrants, and two-thirds of these involved forcible entries.[27] "Firearms were discharged in 99 operations, civilians were killed in nine and injured in 95 . . . and animals were killed in 14."[28] Between January 2011 and March 2013, the Little Rock, Arkansas SWAT team "broke down doors and detonated flash-bangs in more than 90 percent of 147 narcotics search warrant raids."[29] A nationwide survey of cases from the early and mid-2010s found that at least "47 civilians and five officers died as a result of the execution of knock-and-announce searches, while

---

woman-handcuffed-naked-raid-wrong-home-set-get-29-million-chicag-rcna8701.

[26] Nick Sibilla, *Cop Who Wrongly Led No-Knock Raid Against 78-Year-Old Grandfather Can't Be Sued, Court Rules*, FORBES (June 8, 2021), https://www.forbes.com/sites/nicksibilla/2021/06/08/cop-who-led-accidental-no-knock-raid-against-78-year-old-grandfather-cant-be-sued-court-rules/.

[27] *See Door-Busting Raids*, *supra*.

[28] *Id.*

[29] *Id.*

31 civilians and eight officers died in the execution of no-knock warrants."[30]

Dangerous raids are concentrated in low-income and minority neighborhoods. Nearly half of SWAT search-warrant home entries target Black subjects.[31] Non-whites account for nearly half of civilians killed in police home entries.[32] The ruling below imperils homeowners' lives—and does so in disparate ways.

III. ADDRESS CHECKS PROTECT OFFICERS.

Home entries put officers in harm's way, too. Recall that Justice Jackson thought a homeowner might kill a police officer thinking she was acting in self-defense.[33] The knock-and-announce rule is meant "to protect the arresting officers from being shot as trespassers."[34] But no-knock warrants—like the one here—leave officers without whatever protection warnings might provide, if homeowners even hear them.

This leads to harm. Records show that "officers were injured in at least 30" Maryland SWAT raids

---

[30] *Id.*

[31] *See id.*

[32] *See id.*

[33] *McDonald*, 335 U.S. at 461 (Jackson, J., concurring); *see also Ker*, 374 U.S. at 58 (op. of Brennan, J.) (citing *Launock v. Brown*, 2 B. & Ald. 592, 594, 106 Eng. Rep. 482, 483 (1819)).

[34] *Ker*, 374 U.S. at 58 (op. of Brennan, J.).

between 2010 and 2014.[35] Officers also said that before they killed John Adams, the Tennessee man discussed above, he fired a shotgun at them.[36]

Consider as well a 2018 search-warrant execution from Prince George's County, Maryland. Unlike the officers in Ms. Jimerson's case, the Prince George's officers did knock and shout a warning, but the sleeping homeowner did not hear them. After they entered, the man fired a shotgun, worried for his daughter' safety. Once he realized he had shot two officers—wounding one of them severely—he surrendered, "devastated" by what had happened. The officers' warrant had been based on bad information, and their chief imposed a moratorium on serving warrants until he was sure each had been properly vetted.[37] Like Ms. Jimerson, he wanted to be sure his officers were safe from needless home entries.

---

[35] *Door-Busting Raids*, *supra*.

[36] Fantz, *supra*.

[37] *See* Jack Pointer, *2 Prince George's Co. Officers Shot after Warrant Served at Wrong Home: Police Chief*, WTOPNEWS (Sept. 20, 2018, 11:59 PM), https://wtop.com/prince-georges-county/2018/09/prince-georges-chief-on-shooting-warrant-was-served-at-wrong-address/; Nahal Amouzadeh, *2 Prince George's Co. Officers Shot While Executing Warrant*, WTOPNEWS (Sept. 20, 2018, 1:00 AM), https://wtop.com/prince-georges-county/2018/09/2-prince-georges-co-officers-shot-in-district-heights/.

IV. THIS COURT HAS REAFFIRMED AND CLARIFIED THAT THE FIFTH CIRCUIT SHOULD NOT GRANT QUALIFIED IMMUNITY SIMPLY BECAUSE THERE IS NO PRIOR CASE INVOLVING THE SAME FACTS.

Under the doctrine of qualified immunity, public officials can be held liable under Section 1983 only if they "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982). However, this Court has not always spoken with clarity on how lower courts should decide whether a right was "clearly established." It has instructed lower courts "not to define clearly established law at a high level of generality," *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011), and stated that "clearly established law must be 'particularized' to the facts of the case." *White v. Pauly*, 580 U.S. 73, 79 (2017) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). But the Court has also emphasized that its case law "does not require a case directly on point for a right to be clearly established," *Kisela v. Hughes*, 584 U.S. 100, 104 (2018) (quoting *White*, 580 U.S. at 79), and that "'general statements of the law are not inherently incapable of giving fair and clear warning.'" *White*, 580 U.S. at 79 (quoting *United States v. Lanier*, 520 U.S. 259, 271 (1997)). While "earlier cases involving 'fundamentally similar' facts can provide especially strong support for a conclusion that the law

is clearly established, they are not necessary to such a finding." *Hope v. Pelzer*, 536 U.S. 730, 741 (2002).

Despite these conflicting statements of principle, for decades the Court *did* send a clear message to lower courts through the outcomes in actual qualified immunity cases. From 1982 through the 2018–19 term, the Court issued 32 substantive qualified immunity decisions,[38] and only twice did it find that defendants' conduct violated clearly established law.[39] Moreover, in all but two of the 27 cases explicitly granting immunity, the Court *reversed* the lower court's denial of immunity below.[40] The takeaway was clear: lower courts should ratchet up the difficulty of demonstrating "clearly established law."

Lower courts received this message. A Reuters investigation examined hundreds of circuit court opinions from 2005 to 2019 on appeals of cases in which police officers accused of excessive force raised a qualified immunity defense. The report revealed that the rate of qualified immunity grants has been steadily rising over time—in the 2005–07 period,

---

[38] *See* William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45, 82, 88–90 (2018) (identifying all qualified immunity decisions between 1982 and the end of 2017); *see also Sause v. Bauer*, 585 U.S. 957 (2018); *Kisela*, 584 U.S. at 100; *District of Columbia v. Wesby,* 583 U.S. 48 (2018).

[39] *See Groh v. Ramirez*, 540 U.S. 551 (2004); *Hope*, 536 U.S. at 730.

[40] *Lane v. Franks*, 573 U.S. 228 (2014), and *Wilson v. Layne*, 526 U.S. 603 (1999), were the two cases affirming grants of immunity.

courts granted immunity in only 44% of cases, but in the 2017–19 period, courts granted immunity in 57% of cases.[41]

But in 2020, this Court began to change course. In light of recent scholarship undermining the purported legal rationales for qualified immunity[42] and explicit calls to reevaluate the doctrine from justices[43] and other judges,[44] the Court has faced the question of whether the doctrine of qualified immunity should be reconsidered.[45] And while it has yet to grant a petition on this fundamental, underlying issue, the Court did issue an opinion in *Taylor v. Riojas*, 592 U.S. 7 (2020),

---

[41] Andrew Chung et al., *Shielded*, REUTERS (May 8, 2020), https://www.reuters.com/investigates/special-report/usa-police-immunity-scotus/.

[42] *See* Baude, *supra*; Joanna C. Schwartz, *The Case Against Qualified Immunity*, 93 NOTRE DAME L. REV. 1797 (2018).

[43] *See Kisela*, 584 U.S. at 121 (Sotomayor, J., dissenting) (qualified immunity has become "an absolute shield for law enforcement officers" that has "gutt[ed] the deterrent effect of the Fourth Amendment"); *Ziglar v. Abbasi*, 582 U.S. 120, 160 (2017) (Thomas, J., concurring in part and concurring in the judgment) ("In an appropriate case, we should reconsider our qualified immunity jurisprudence.").

[44] *See Zadeh v. Robinson*, 902 F.3d 483, 498 (5th Cir. 2018) (Willett, J., concurring) ("I add my voice to a growing, cross-ideological chorus of jurists urging recalibration of contemporary immunity jurisprudence . . . .").

[45] *See, e.g.*, *Baxter v. Bracey*, 140 S. Ct. 1862, 1865 (2020) (Thomas, J., dissenting from the denial of certiorari) ("I continue to have strong doubts about our §1983 qualified immunity doctrine. Given the importance of this question, I would grant the petition.").

which provides crucial clarity as to how lower courts should apply the doctrine.

In *Taylor*, the Fifth Circuit granted qualified immunity to corrections officers who held an inmate in inhumane conditions—in one cell that was covered floor-to-ceiling in human feces, and in another kept at freezing temperatures with sewage coming out of a drain in the floor—for six days. *See Taylor v. Stevens*, 946 F.3d 211, 222 (5th Cir. 2019). The panel reasoned that, "[t]hough the law was clear that prisoners couldn't be housed in cells teeming with human waste for months on end," the law "wasn't clearly established" enough for the inmate to receive relief because he "stayed in his extremely dirty cell for only six days." *Id.*

But this Court summarily reversed. In its per curiam opinion, the Court explained that even though no prior case had addressed the exact circumstances at issue, "no reasonable correctional officer could have concluded that, under the extreme circumstances of this case, it was constitutionally permissible to house Taylor in such deplorably unsanitary conditions for such an extended period of time." *Riojas*, 592 U.S. at 8–9. The Court also reaffirmed the basic principle that "'a general constitutional rule already identified in the decisional law may apply with obvious clarity to the specific conduct in question.'" *Id.* at 9 (quoting *Lanier*, 520 U.S. at 271).

Despite its brevity, and notwithstanding that the opinion did not formally alter black-letter law, the

Taylor decision marks a clear change in the trajectory of qualified-immunity jurisprudence. Indeed, this Court soon thereafter vacated and remanded another Fifth Circuit decision granting qualified immunity "for reconsideration in light of *Taylor v. Riojas*." *McCoy v. Alamu*, No. 20-31, 2021 U.S. LEXIS 768 (Feb. 22, 2021). In *McCoy*, a prison guard had allegedly assaulted an inmate with pepper spray because he had "grown frustrated" with *another* inmate and "arbitrarily took out his anger on McCoy by spraying him 'for no reason at all.'" *McCoy v. Alamu*, 950 F.3d 226, 231 (5th Cir. 2020). But the Fifth Circuit affirmed immunity because no prior case had specifically held that "an isolated, single use of pepper spray" was more than a *de minimis* use of force. *Id.* at 233.

The Fifth Circuit's error in *McCoy* was the same sort of error as in *Taylor*, and the same sort of error it committed yet again below: requiring a prior case with nearly identical facts before denying immunity, even though application of clearly established law to the particular conduct at issue would have been obvious to any reasonable person in the defendant's position.

By vacating the *McCoy* order and remanding for reconsideration in light of *Taylor*, this Court signaled that courts should stop granting immunity simply because there is no prior case with identical facts and ask instead whether the unlawfulness of the relevant conduct would have been obvious to a reasonable defendant. Reversal of the remand with instructions to

dismiss below is necessary in this case to ensure that the Fifth Circuit ceases to make this same mistake.

CONCLUSION

Officers decide when to execute search warrants. They have time to check addresses before entering homes. When they do not, homeowners and officers are endangered.

This Court should grant Ms. Jimerson's petition, reverse the judgment below, hold the Respondent accountable for deciding to "break and rake" without checking the address, and protect human life by upholding the *Garrison* rule.

Respectfully submitted,

Clark M. Neily III
Counsel of Record
Matthew Cavedon
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(202) 425-7499
cneily@cato.org

November 29, 2024