No. 14-329

In the Supreme Court of the United States

THE STATE OF NEW YORK,

Petitioner,

v.

RASHID THEODORE,

Respondent.

On Petition for a Writ of Certiorari to the New York State Supreme Court, Appellate Division, Second Judicial Department

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court below correctly held that a police officer "did not have a reasonable basis to believe that there was a fire at" respondent's home when the fire was reported to be at a different address and the officer "found no evidence of smoke or a fire" at respondent's residence. Pet. App. 6a.

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STATEMENT

The petition in this case urges the Court to grant review so that it can clarify the Fourth Amendment law governing emergency searches. Even were there confusion regarding the controlling constitutional standards, however, review would be improper because the New York Appellate Division's decision rested on *state* law. And in any event, there is in fact no conflict or uncertainty regarding the governing rules, at least as they apply to circumstances such as those in this case: *every* court would hold a search like the one challenged here to be unconstitutional. The petition, accordingly, should be denied.

1. On September 29, 2011, a child made a 911 call to report a fire at 123-06 Rockaway Boulevard in Queens, New York. Pet. App. 2a-3a. The first responders who were dispatched to that location found no fire. Pet. App. 3a. The dispatcher then sent Detective Gregory Anderson of the New York Police Department (NYPD) to search for the reported fire at 123-06 Sutphin Boulevard. Pet. App. 3a. The two locations are 1.6 miles apart,[1] and the record does not reveal why Detective Anderson was sent to that location. Nevertheless, Detective Anderson and a police sergeant responded to the rerouted call, finding "neither a residence nor a fire, but only a vacant lot along the entire side of that block where even-numbered addresses would have been situated." Pet. App. 3a. After "circl[ing] the block once or twice," Detective Anderson "determined that 123-09 Sutphin

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[1] Google Maps, http://www.google.com/maps (last visited Nov. 11, 2014) (type in "123-06 Rockaway Boulevard, Queens, NY," click "Directions," and type in "123-06 Sutphin Boulevard, Jamaica, NY" as the destination).

Boulevard was the [house] closest" to the address he had been given. Pet. App. 3a. He saw no sign of smoke or fire at that address. See Pet. App. 3a, 23a.

Despite the absence of any visible sign of an emergency at 123-09 Sutphin Boulevard, Detective Anderson did not ring the doorbell at that house. Pet. App. 3a. Instead, "he walked along a walkway at the left side of the house for about 30 feet [before] reaching the rear yard," where he turned right. Pet. App. 3a. There, he saw respondent sitting in his car parked in his driveway on the other side of the backyard. Pet. App. 15a. Detective Anderson asked respondent to exit the car and then searched the vehicle, seizing a firearm on the driver's seat and a small container in the backseat containing marijuana. Pet. App. 3a, 16a-19a. At no point during this interaction did Detective Anderson ask whether there was a fire at the property, and respondent never indicated that a fire or other emergency had occurred at 123-09 Sutphin Boulevard. Pet. App. 31a.

Respondent, who was charged with unlawful possession of a weapon and of marijuana, moved to suppress the physical evidence seized by Detective Anderson, arguing that the items were obtained in violation of both the New York and the U.S. Constitutions. After the trial court denied the motion,[2] respondent appealed.

2. The Appellate Division reversed. Pet. App. 2a-7a. The court began by explaining that respondent's rear yard was within the curtilage of his home and

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[2] The motion also sought to suppress statements respondent had given to the police without first being provided a *Miranda* warning. The trial court granted that part of the motion.

was not visible from the street, meaning that the State was "required to demonstrate that [Detective Anderson's] entry was justified under some exception to the warrant requirement." Pet. App. 4a-5a. Citing the New York Court of Appeals' decision in *People* v. *Mitchell*, 347 N.E.2d 607 (N.Y. 1976), the Appellate Division then explained:

> Under the emergency exception [to the warrant requirement], the police may make a warrantless entry into a protected area if (1) they have reasonable grounds to believe there was an emergency at hand and an immediate need for their assistance for the protection of life or liberty; (2) the search was not primarily motivated by an intent to arrest and seize evidence; (3) and there was some reasonable basis, approximating proximate cause, to associate the emergency with the area or place to be searched.

Pet. App. 5a.

The Appellate Division noted that this Court "has determined that the second prong [of *Mitchell*] regarding the subjective intent of the police is no longer relevant under the Fourth Amendment" (Pet. App. 5a (citing *Brigham City* v. *Stuart*, 547 U.S. 398, 404-405 (2006)), but continued: "we need not decide whether the second prong of *Mitchell* is still viable under the New York Constitution because we conclude that the People did not satisfy the third prong of *Mitchell*." *Ibid*. (citing *People* v. *Doll,* 998 N.E.2d 384 (N.Y. 2013); *People* v. *Dallas,* 865 N.E.2d 1 (N.Y. 2007); *People* v. *Rodriguez,* 77 A.D.3d 280 (N.Y. App. Div. 2010)). This was so, the court added, because "[t]here was no basis for believing that there was any 'direct relationship' or 'nexus' between the report of

the fire and 123-09 Sutphin Boulevard." In particular, the court explained that "the two street names [of the reported location of the fire and of the address to which Detective Anderson was dispatched] were not similar"; that "[a]t that location, Detective Anderson did not find a fire or even a residence, only a vacant lot"; and that at respondent's home, the officer "found no evidence of smoke or fire." Pet. App. 6a. Thus, "Detective Anderson did not have a reasonable basis to believe that there was a fire at 12-309 Sutphin Boulevard." Accordingly, the court held that evidence seized as a result of the search of respondent's home should have been suppressed and the indictment dismissed. *Ibid.*

3. The New York Court of Appeals denied the State's motion for leave to appeal. Pet. App. 6a.

ARGUMENT

The decision below is unexceptional and plainly correct. Detective Anderson had no reasonable basis on which to search respondent's home—which was not at the address reported to authorities as the location of the fire; which was not even at the address to which Detective Anderson had been dispatched; and at which the officer saw no sign of a fire or of any other emergency. In these circumstances, the search could not be upheld under *any* standard.

New York nevertheless urges the Court to grant review so that it can clarify the law in this area. On examination, however, there is no meaningful confusion or disagreement among the lower courts on the standards that govern in this area. Even if there were any uncertainty, it could not have affected the outcome in this case, given the utter lack of justification for the challenged search. And the holding below

in any event rested on New York state law, which would make intervention by this Court wholly inappropriate even if courts were confused about the meaning of the emergency aid doctrine. There is no basis for review.

A. The Appellate Division Decided This Case On Independent And Adequate State Law Grounds.

At the outset, the Court should deny review because there is every reason to believe that the court below decided this case on state-law grounds. The *Mitchell* test, which dictated the outcome in the Appellate Division, has been adopted under New York's constitution and operates as a state-law inquiry separate from the federal standard governing warrantless searches; the Appellate Division thus relied almost exclusively on New York precedent in assessing the validity of the contested search. And if there is any ambiguity on that point, the Court should decline review because the state-law ruling neither is interwoven with federal law nor based "primarily on federal law." *Michigan* v. *Long*, 463 U.S. 1032, 1044 (1983). In these circumstances, review by this Court would be inappropriate.

1. The decision below is premised on state law.

The principle applied by the Appellate Division in this case is one of New York law. Although the New York Court of Appeals originally articulated the *Mitchell* test applied below as a holding premised on the Fourth Amendment (347 N.E.2d at 609 (noting that the criminal defendant alleged that the search "violated the Fourth Amendment of the United States Constitution")), in *Brigham City* this Court

concluded that an officer's subjective motivation—*i.e.*, *Mitchell*'s second prong—was irrelevant to assessing the reasonableness of a search under the U.S. Constitution.[3] Both before and after *Brigham City*, however, several state supreme courts adopted all three elements of *Mitchell*'s test under their *state* constitutions. See, e.g., *State* v. *Mountford*, 769 A.2d 639 (Vt. 2000); *State* v. *Macelman*, 834 A.2d 322 (N.H. 2003); *State* v. *Gibson*, 267 P.3d 645 (Alaska 2012).

After *Brigham City* was decided, New York's courts, too, characterized the *Mitchell* test as a state-law inquiry that is independent of the federal standard governing warrantless searches. See, *e.g.*, *People* v. *Stanislaus-Blache*, 93 A.D.3d 740, 742 (N.Y. App. Div. 2012) (citation omitted) ("[W]e conclude that the police entry into the basement was permissible under both *Brigham City* and *Mitchell*."); *People* v. *Dillon*, 44 A.D.3d 1068, 1070, (N.Y. App. Div. 2007) ("We find that the firefighters were presented with an emergency which permitted their warrantless entry and search under both the *Mitchell* test and the rule adopted by the United States Supreme Court in *Brigham City v. Stuart* * * *.").

New York's courts, therefore, have indicated that the State's constitution contains greater protection against warrantless searches than is found in the U.S. Constitution; otherwise, state courts would have abandoned at least some elements of the *Mitchell* rule. See generally *People* v. *Torres*, 543 N.E.2d 61,

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[3] Specifically, *Brigham City* held that an officer's actions need only be objectively reasonable to justify a warrantless search under the exigent circumstances exception to the Fourth Amendment's warrant requirement. 547 U.S. at 404-405.

63 (N.Y. 1989) (citation and internal quotation marks omitted) ("[T]his court has demonstrated its willingness to adopt more protective standards under the State Constitution 'when doing so best promotes predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens.'"). There can be no serious doubt on this point: New York courts have continued to apply the second prong of the *Mitchell* test—necessarily as a matter of state law—even after it was disapproved by this Court in *Brigham City*. See, *e.g.*, *People* v. *Stevens*, 57 A.D.3d 1515 (N.Y. App. Div. 2008) (finding warrantless search to be justified, in part because search not primarily motivated by an intent to arrest and seize evidence); *People* v. *DeSusa*, 977 N.Y.S.2d 668 (N.Y. Sup. Ct. 2013) (same).[4]

In this case, the Appellate Division declined to consider the validity of *Mitchell*'s second prong under the New York constitution, stating: "[W]e need not decide whether the second prong of *Mitchell* is still viable under the New York Constitution because we conclude that the People did not satisfy the third prong of *Mitchell*." Pet. App. 5a. Read most naturally, this language indicates that the court regarded *Mitchell*'s third prong as resting on New York law. Had the Appellate Division instead meant to rely on federal law, it likely would have taken pains to survey whether and to what extent federal courts modi-

[4] In contrast to what New York courts have done, courts in some other states have abandoned the second prong of the *Mitchell* test, concluding that their state constitutions extend no further than the limits of the Fourth Amendment. See, *e.g.*, *State* v. *Edmonds*, 47 A.3d 737, 745-747 (N.J. 2012); *Pitonyak* v. *State*, 253 S.W.3d 834, 852-853 (Tex. Ct. App. 2008).

fied the third prong of the *Mitchell* test in the wake of *Brigham City*. But the Appellate Division conducted no such inquiry.

2. Any ambiguity should be resolved against the exercise of federal jurisdiction.

Review would be inappropriate even were there any ambiguity concerning the basis for the Appellate Division's ruling. *Michigan* v. *Long* makes clear that the presumption in favor of federal jurisdiction is not triggered unless a state court opinion "fairly appears to rest primarily on federal law, or to be interwoven with federal law." 463 U.S. at 1032-33. For the reasons expressed above, that is not the case here.

The point is confirmed by contrasting this case with decisions in which this Court has found sufficient ambiguity to presume jurisdiction. Thus, in *Long* itself, the Michigan Supreme Court cited *no* state-law cases to support its conclusion, relying entirely on this Court's precedent in analyzing the legality of the warrantless search there at issue. The decision below, however, relies overwhelmingly on New York state decisions, and the three cases cited by the Appellate Division directly after its holding all are grounded on state law. Pet. App. 5a (citing *People* v. *Doll,* 998 N.E.2d 384 (N.Y. 2013); *People* v. *Dallas,* 865 N.E.2d 1 (N.Y. 2007); *People* v. *Rodriguez,* 77 A.D.3d 280 (N.Y. App. Div. 2010)). That is unsurprising, as the State's brief below rested principally on state decisions. See *People* v. *McBride*, 928 N.E.2d 1027 (N.Y. 2010); *People* v. *Knapp*, 422 N.E.2d 531 (N.Y. 1981); *People* v. *Green*, 480 N.Y.S.2d 220 (App. Div. 1984).

Likewise, the Appellate Division's holding does not fall within the principle addressed in *Kentucky* v.

Stincer, where this Court found sufficient ambiguity in the legal basis of the state-court decision to trigger review. 482 U.S. 730, 735 n.7 (1987). In that case, the Kentucky Supreme Court had given "no indication that respondents' rights under the Kentucky Constitution were distinct from, or broader than, respondent's rights under the Sixth Amendment." *Id.* at 735 n.7. By contrast, the New York courts have expressly "demonstrated [their] willingness to adopt more protective standards under the State Constitution 'when doing so best promotes predictability and precision in judicial review of search and seizure cases and the protection of the individual rights of our citizens.'" *People* v. *Torres*, 543 N.E.2d 61, 63 (N.Y. 1989) (quotation omitted). Thus, the court below expressly acknowledged that New York law may indeed depart from the rule of *Brigham City*. In these circumstances, any ambiguity should be resolved against the assertion of federal jurisdiction—and the petition should be denied for that reason alone.

B. There Is No Circuit Split On The Question Whether *Brigham City* Substantially Modified The Third Prong of *Mitchell*.

In any event, review would be unwarranted even if the decision below were not one of state law. New York's central contention is that this Court's decision in *Brigham City* generated a conflict in the lower courts on whether first responders must satisfy *Mitchell*'s "approximating probable cause" standard (*i.e.*, the third element of the *Mitchell* test) rather than a general reasonableness standard. Pet. 9-13. The State thus correctly concedes that many courts

continue to adhere to *Mitchell*'s third prong,[5] but insists that several courts have abandoned that aspect of the *Mitchell* test. This contention is incorrect: there is no actual conflict on the point.

1. Petitioner's assertion of a conflict focuses initially on the Ninth and Tenth Circuits. The Ninth Circuit, however, has not abandoned the "approximating probable cause" standard. Although that court did criticize *Mitchell*'s third prong in *United States* v. *Snipe*, 515 F.3d 947, 952 (9th Cir. 2008), it subsequently reaffirmed its adherence to *Mitchell*'s third prong, stating explicitly that the *Snipe* test, "when combined with the third prong of [*Mitchell*], *which was unaffected* by either *Brigham* or *Snipe,* states [the] circuit's current law governing the emergency exception." *Hopkins* v. *Bonvicino*, 573 F.3d 752, 763 n.5 (9th Cir. 2009) (emphasis added). Accord *Huff* v. *City of Burbank*, 632 F.3d 539, 547 (9th Cir. 2011), rev'd on other grounds sub nom. *Ryburn* v. *Huff*, 132 S. Ct. 987 (2012).

As for the Tenth Circuit, although it has expressly rejected the *second*, subjective prong of *Mitchell*, its approach to *Mitchell*'s third prong is considerably murkier. In *United States* v. *Najar*, the court adopted a test that asks whether "the manner and scope of

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[5] See Pet. 9 (citing *United States* v. *Infante*, 701 F.3d 386 (1st Cir. 2012), cert. denied, 133 S. Ct. 2841 (2013)); *United States* v. *Thompson*, 357 Fed. Appx. 406, 410 (3d Cir. 2009). See also Pet. 9 n.17 (citing *In re Tiffany O.*, 174 P.3d 282, 293 (Ariz. Ct. App. 2007); *Hall* v. *State*, 14 A.3d 512 (Del. 2011); *Guererri* v. *State*, 922 A.2d 403 (Del. 2007); *People* v. *Lomax*, 975 N.E.2d 115 (Ill. App. Ct. 2012); *State* v. *Lemieux*, 726 N.W.2d 783 (Minn. 2007); *State* v. *Trudelle*, 162 P.3d 173, 184 (N.M. Ct. App. 2007); *State* v. *Huber*, 793 N.W.2d 781 (N.D. 2011)).

the search is reasonable." 451 F.3d 710, 718 (10th Cir. 2006). But this new standard does not seem to be meaningfully different from the Tenth Circuit's pre-*Brigham City* approach. The *Najar* court thus noted that the "test [it] now appl[ies] was included in [its] prior analyses." *Id.* at 718 n.6.

In addition, the Tenth Circuit closely hues to this Court's requirement that an emergency search "be 'strictly circumscribed by the exigencies which justify its initiation.'" *Armijo* v. *Peterson*, 601 F.3d 1065, 1073 (10th Cir. 2010) (quoting *Mincey* v. *Arizona*, 437 U.S. 385, 393 (1978)). Under this approach, officers may not search locations that lack a meaningful relationship to the emergency—which is, again, a key component of *Mitchell*'s third prong. Moreover, to show that "the manner and scope of the search was reasonable"—as required under the Tenth Circuit's current approach (451 F.3d at 718)—"the government must show the officers 'confined the search to only those places *inside the home* where an emergency would reasonably be associated.'" *United States* v. *Gambino-Zavala*, 539 F.3d 1221, 1226 (10th Cir. 2008) (emphasis added) (quoting *Najar*, 451 F.3d at 720). This test would not operate differently from the "approximating probable cause" standard if an officer expanded a search beyond the home in which the emergency existed, as Detective Anderson did here.

2. New York also is incorrect in contending that state courts in Kansas and Kentucky "noted the difference" between the *Mitchell* test and this Court's approach in *Brigham City* "and either repudiated their prior adoption of the *Mitchell* test * * * or refused to apply it in the first place." Pet. 13.

In *State* v. *Neighbors*, 328 P.3d 1081 (Kan. 2014), the Kansas Supreme Court acknowledged that "*Brigham City* * * * explicitly overruled the second [*Mitchell*] factor and called into question the [emergency] exception as articulated under the three-part test." *Id.* at 1090. But that court did not *reject* the third prong of the *Mitchell* test; instead, it maintained a strict standard for the scope of emergency searches, explaining that officers must be "limited in the areas of the premises that can be searched" and emphasizing that "the right of entry dissipates once an officer confirms no one needs assistance or the assistance has been provided." *Ibid.* (internal citations and quotation marks omitted). In *Neighbors* itself, where police officers dealt with the relevant emergency—a man who was passed out, unresponsive, on an apartment couch—and began searching the rest of the apartment to investigate the landlord's claim that the man was trespassing (*ibid.*), the court determined that the officers' search *exceeded* the locational scope of the emergency. *Ibid.*

New York gets no further with its invocation of *Mundy* v. *Commonwealth*, 342 S.W.3d 878 (Ky. Ct. App. 2011), a decision of an intermediate Kentucky appellate court. *Mundy* considered only "whether the emergency aid exception applies to automobiles." *Id.* at 882. The decision did not add to or detract anything from Kentucky's general test for the emergency aid doctrine, which recognizes that "a warrantless intrusion * * * must not exceed the exigency that permits it" (*id.* at 884 n.1); it merely applied the "law in th[at] Commonwealth" to vehicles. See *id.* at 884. In any event, *Mundy* neither stated that *Brigham City* abrogated the third prong of *Mitchell* nor "refuse[d] to apply" the third prong. Pet. 13. Rather,

Kentucky has followed its current standard since at least 1986—a standard that was lifted in its entirety from this Court's holding in *Mincey*. See *Todd* v. *Commonwealth*, 716 S.W.2d 242, 247-248 (Ky. 1986) (citing *Mincey,* 437 U.S. at 392). The Supreme Court of Kentucky has never directly considered the *Mitchell* test, and so has had no occasion to affirm or reject it. See *ibid.*; *Hughes* v. *Commonwealth*, 87 S.W.3d 850, 852 (Ky. 2002); *Mills* v. *Commonwealth*, 996 S.W.2d 473, 480 (Ky. 1999). Like the Kansas Supreme Court's standard in *Neighbors* and the Tenth Circuit's in *Najar*, Kentucky's test essentially is just a different articulation of New York's test. No split exists.

3. This last point highlights a final flaw in the State's contention: whatever the rhetorical differences (if any) in the standards articulated by different courts, the "reasonableness" and "approximating probable cause" standards will be quite similar in practice and, in fact, often are described interchangeably.[6] That may be because courts have recognized that the phrase "approximating probable

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[6] See, *e.g.*, *United States* v. *Wood*, 542 Fed. App'x 208, 212 (3d Cir. 2013) (unpublished) (stating that officers must "have probable cause," then holding that facts "provided a reasonable basis * * * [for] the search of the home without a warrant"); *United States* v. *Wolfe*, 452 Fed. App'x 180, 183 (3d Cir. 2011) (unpublished) ("[T]here must be probable cause * * *. [The officer] must have held an objectively reasonable basis for believing * * * that a person within [was] in need of immediate aid." (internal citations and quotation marks omitted)); *United States* v. *Holloway*, 290 F.3d 1331, 1337-1338 (11th Cir. 2002) ("[T]he Government must demonstrate * * * probable cause. * * * [T]he probable cause element may be satisfied where officers reasonably believe a person is in danger.").

cause" means something quite different from "probable cause" as used in its ordinary and technical sense. "In general, '[p]robable cause means a fair probability that contraband or evidence of a crime will be found * * *.'" *Salt Lake City* v. *Davidson*, 994 P.2d 1283, 1287 (Utah Ct. App. 2000) (internal citations and quotation marks omitted). But "[t]he third prong of the emergency aid doctrine, on the other hand, asks whether there was some reasonable basis to associate the place searched with the emergency." *Ibid.*; accord, *Huff*, 632 F.3d at 547.

As a result, the "reasonableness" and "approximating probable cause" tests come to the same conclusions under similar factual circumstances. Compare, *e.g.*, *Hall* v. *State*, 14 A.3d 512, 518 (Del. 2011) (holding, under *Mitchell* test, that officers were justified in sweeping first floor of home to search for injured persons), with *Hunsberger* v. *Wood*, 570 F.3d 546, 555-556 (4th Cir. 2009) (holding, under reasonableness test, that officers were justified in searching second floor and basement of house for signs of vandalism or potential missing person). Thus, contrary to New York's suggestion, *Brigham City* did not change how courts have applied the locational prong of the emergency doctrine—*i.e.*, the third element of the *Mitchell* test and the basis of the holding below.

C. There Is No Confusion Among The Emergency Aid, Community Caretaking, And Exigent Circumstances Doctrines That Warrants Resolution By This Court.

New York also is incorrect in its related contention that there is confusion and inconsistency in how lower courts have approached the emergency aid,

community caretaking, and exigent circumstances doctrines. Pet. 17-21. In fact, these doctrines relate to each other in clear and reasonably well-understood ways, and use a similar reasonableness standard to evaluate warrantless searches. There is, accordingly, no need "to address the extent to which the community caretaking rationale is relevant to the emergency aid doctrine." Pet. 19.

1. Each of the three doctrines discussed by New York may provide an independent and sufficient justification for a warrantless search under the Fourth Amendment.

First, the community caretaking doctrine applies when police "engage in what * * * may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973). As New York recognizes (Pet. 6-7, 18), this Court has applied the doctrine only to warrantless searches of automobiles under police custody. See *Colorado* v. *Bertine*, 479 U.S. 367, 372 (1987) (emphasizing that this line of cases reflects "deference to police caretaking procedures designed to secure and protect vehicles and their contents within police custody"); *South Dakota* v. *Opperman*, 428 U.S. 364, 369 (1976).[7]

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[7] The courts of appeals are divided on the question whether the community caretaking doctrine applies outside the automobile context. *Sutterfield* v. *City of Milwaukee*, 751 F.3d 542, 556-57 (7th Cir. 2014). But that conflict is not material to any issue in this case because New York did not argue below that the community caretaking doctrine applies here and the Appellate Division did not address the doctrine at all.

Second, the emergency aid doctrine—the doctrine actually addressed by the court below—justifies warrantless searches based on a "need to protect or preserve life or avoid serious injury." *Mincey*, 437 U.S. at 392.

Third, courts apply the exigent circumstances doctrine when "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Brigham City*, 547 U.S. at 403 (citing *Mincey*, 437 U.S. at 393-94). See *Missouri* v. *McNeely*, 133 S. Ct. 1552, 1558-59 (2013). The need to provide emergency aid *is* one type of exigent circumstance. *Brigham City*, 547 U.S. at 403 ("One exigency obviating the requirement of a warrant is the need to assist persons who are seriously injured or threatened with such injury." (quoting *Mincey*, 437 U.S. at 392). That makes the emergency aid doctrine a "subset" of the more general exigent circumstances principle. *Sutterfield*, 751 F.3d at 553, 558.[8]

The Court's formulation of these three doctrines establishes a clear relationship among them. The exigent circumstances and emergency aid doctrines re-

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[8] There is, however, an arguable practical distinction between the two doctrines. Courts and commentators have recognized that exigent circumstances decisions "typically speak either of there being probable cause to believe a crime is being or has been committed or of the need to act in order to fulfill the probable cause requirement, as by preventing a suspect from fleeing or preserving evidence that might be destroyed." *Sutterfield*, 751 F.3d at 560 (citing cases decisions and commentary). But the "defining characteristic" of the emergency aid doctrine is "urgency," "and there is no logical need [in applying the doctrine] to additionally consider probable cause and the availability of a warrant." *Ibid*.

fer to the *circumstances* triggering the warrantless search, while the community caretaking doctrine refers to the police *function* performed in conducting the search. See *Hunsberger*, 570 F.3d at 554 (outlining this relationship based on this Court's case law).

2. Disregarding this clear relationship, New York cites a baker's dozen lower-court decisions as reflecting a supposed confusion among the doctrines (Pet. 17-21), noting occasional observations by judges that there is "lack of clarity in judicial articulation and application of the three doctrines." *Sutterfield*, 751 F.3d at 553 n.5 (quoted on Pet. 21). But this supposed confusion simply reflects the reality that "there is some degree of overlap between the doctrines" (*Sutterfield*, 751 F.3d at 553) and that different facts call for the application of different doctrines. For example, the emergency aid and exigent circumstances doctrines presume an emergency and the need for immediate action, while the community caretaking doctrine does not. *E.g.*, *State* v. *Deneui*, 775 N.W.2d 221, 235 (S.D. 2009). The community caretaking doctrine applies only to automobile searches, whereas the other two doctrines extend to searches more broadly—and, in any event, "its primary focus is on the purpose of police action rather than on its urgency." *Sutterfield*, 751 F.3d at 561; see also *State* v. *Pinkard*, 785 N.W.2d 592, 600 n.8 (Wis. 2010). And the exigent circumstances doctrine extends to criminal investigations, while community caretaking functions are "totally unrelated" to law enforcement. See *Hunsberger*, 570 F.3d at 554; see also *United States* v. *Huffman*, 461 F.3d 777, 782 (6th Cir. 2006).

Of particular relevance here, under all three doctrines courts perform the same exercise: assessing whether a warrantless search was reasonable. *Cady*, 413 U.S. at 448 (addressing community caretaking; "[w]here, as here, the trunk of an automobile, which the officer *reasonably believed* to contain a gun, was vulnerable to intrusion by vandals, we hold that the search was not 'unreasonable.'"); *Kentucky* v. *King*, 131 S. Ct. 1849, 1856 (2011) (addressing exigent circumstances: doctrine "applies 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"); *Brigham City*, 547 U.S. at 403 (addressing emergency aid; citing *Mincey*, 437 U.S. at 393-394, and asking whether search was "objectively reasonable"). Whether the standard for emergency searches is "reasonableness" or something "approximating probable cause," the test applies in the same way for all three doctrines.

The only relevant difference is that each doctrine involves its own *factual* determination: the existence of exigent circumstances, the need for emergency aid, or the performance of community caretaking rather than law enforcement functions, respectively. Because the three doctrines apply the same standard and because each is a sufficient justification for a warrantless search, combining them or substituting one for the other would be principally a rhetorical exercise—and could not affect the outcome here.

3. In addition, even if there were doctrinal confusion that warranted intervention by this Court, the facts of this case present no opportunity for clarification. Because the search in this case involved entry into the curtilage of respondent's home and was not

conducted "as part of a standardized procedure" (*Hunsberger*, 570 F.3d at 554) or as a matter of "routine" (*Sutterfield*, 751 F.3d at 555), it does not implicate the community caretaking doctrine—a doctrine that, in any event, was not argued to or addressed by the court below.[9] At most, then, the case implicates the relationship between the exigent circumstances and emergency aid doctrines, which the Court has already clarified in *Mincey* and *Brigham City*.

But, even assuming that the Court wished to depart abruptly from its case law and extend the community caretaking doctrine to home (and to nonroutine) searches, this case would implicate all three doctrines in the exact same way and offer no opportunity to clarify their relationship. The reported fire in this case potentially presented both exigent circumstances and the need for emergency aid, the response to which triggered the community caretaking function. All three doctrines thus rise and fall on the same question: was it reasonable for Detective Anderson to enter the curtilage of respondent's home without a warrant to investigate the reported fire?

To parse the relationship among the three doctrines, this Court would need a case in which the facts fall within one or more of the doctrines and outside of one or more of the others. That is not this case—and New York does not contend otherwise.

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[9] Only the home search is at issue here: the police could not have searched respondent's vehicle without first entering the curtilage of his home. Accordingly, the court below did not review the vehicle search or mention the community caretaking doctrine. Pet. App. 2a-7a.

D. The Unusual Factual Circumstances Of This Case Make It A Poor Vehicle In Which To Consider The Questions Presented In The Petition.

Finally, and for similar reasons, this case would not be suitable for review even were the Court inclined to revisit the particulars of the emergency aid doctrine. The facts of the case—in particular, the obvious lack of connection between the reported emergency and respondent's home—make it dissimilar from the vast majority of emergency search cases, with the consequence that any guidance the Court might give by deciding this case would do little to clarify the law that applies to emergency searches generally. Moreover, Detective Anderson's actions were so blatantly unreasonable that they would fail *either* the "approximating probable cause" or the reasonableness test. The decision below plainly was correct, and should not be disturbed, no matter how the governing test is defined.

1. This case is quite unlike the usual emergency search case. The vast majority of such cases involve searches inside the residence where the emergency exists. To illustrate the relevance of this fact, consider a case like *Tierney* v. *Davidson*, 133 F.3d 189 (2d Cir. 1998). There, an officer was dispatched to a home after a woman reported "that a 'bad' domestic dispute was in progress." *Id.* at 192. The officer arrived to find Tierney, the apparent victim. Her "face was red and she seemed upset and shaken." *Id.* at 193. After arguing with Tierney, the officer searched Tierney's son's bedroom. *Ibid.* Tierney's live-in boyfriend scuffled with police during the search and was arrested for impeding the investigation. *Ibid.* The

court ultimately determined that "[i]t was reasonable for [the officer] to believe that someone inside had been injured or was in danger" (*id.* at 197) and found that the need to determine whether anyone else was injured justified the search of the bedroom. *Id.* at 198. *Tierney* is a typical emergency search case: an officer was called to a house, encountered clear signs of an emergency, and searched within that house for further potential victims. There were similar circumstances in each of the cases cited by New York as having rejected the third prong of *Mitchell*; in each, police either were called to or observed an emergency in a particular place, confining their search to that place. See *Snipe*, 515 F.3d at 949-950; *Najar*, 451 F.3d at 715-716, 720; *Neighbors*, 328 P.3d at 1084-1085, 1093; *Mundy*, 342 S.W.3d at 880.

As these cases suggest, courts have generally limited the emergency doctrine's application to searches of the place where the emergency actually exists. Cases within the doctrine "have in common the indicia of an urgent, ongoing emergency, in which officers have received emergency reports of an ongoing disturbance, arrived to find a chaotic scene, and observed violent behavior, or at least evidence of violent behavior." *United States* v. *Timmann*, 741 F.3d 1170, 1179 (11th Cir. 2013).

In contrast, the most attenuated type of emergency search—and by far the most unusual—is one that takes first responders to places other than the original source of the emergency. Such cases, even those that have *invalidated* searches, have involved closer links between the area searched and the

emergency than existed in this case.[10] These cases include:

State v. *Ford*, in which an emergency call brought police to a site where the defendant was supposedly trapped in a vehicle. After the defendant was not found at the site of the emergency, the police conducted a search of the defendant's last known place of residence. 998 A.2d 684, 686-687 (Vt. 2010).

People v. *Hebert*, in which police were called to the scene of a potential homicide, concluded that the body was likely transported from another crime scene, and eventually staked out and conducted a warrantless search of the victim's (and the defendant's) home. 46 P.3d 473, 476-477 (Colo. 2002) (en banc).

United States v. *Troop*, in which border patrol officers saw a car drop people off at a location used for smuggling undocumented immigrants. The officers followed the immigrants for five miles before breaking into the house in which they were staying. 514 F.3d 405, 407-408 (5th Cir. 2008).

Sims v. *Stanton*, in which officers responded to an emergency call about a disturbance in a street.

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[10] Unsurprisingly, the cases in which courts *upheld* such searches involved circumstances markedly different from those in this case. See, *e.g.*, *Ryburn* v. *Huff*, 132 S. Ct. 987 (2012) (police directed to school regarding school shooting threat, redirected to potential shooter's home); *Armijo* v. *Peterson*, 601 F.3d 1065 (10th Cir. 2010) (same); *People* v. *Doll*, 998 N.E.2d 384 (N.Y. 2013), reargument denied, 981 N.Y.S.2d 359 (N.Y. 2014), cert. denied, 134 S. Ct. 1552 (2014) (police dispatched to find suspicious person on roadway, found defendant covered in blood and questioned him, drove him to his van at his request, questioned him again).

The police saw three men walking down the street, with no visible weapons. One man, the defendant, crossed the street and walked toward a house. An officer kicked open the gate to the house, harming the woman who owned the home. 706 F.3d 954 (9th Cir.), rev'd on other grounds, 134 S. Ct. 3 (2013).

The police officers' actions in all of these cases involving searches held to be unlawful were *more* reasonable than those of the officer here, because their actions arose out of suspicions or knowledge that linked the places being searched to the original emergency. Detective Anderson, by contrast, had no information that tied respondent's house to the reported fire. In fact, as New York recognizes, Detective Anderson had (1) been directed to an address far from the original location given as the site of the fire; (2) "discovered that [the] address [given] corresponded to only a vacant lot"; (3) "circl[ed] around the block"; and (4) unsuccessfully "look[ed] for signs of a fire" in the front and along the entire side of respondent's house before searching and arresting respondent for matters wholly unrelated to the purported emergency. Pet. 3-4.

Given these highly unusual circumstances, this case would be a strikingly poor vehicle for determining the scope of the emergency doctrine.

2. Moreover, revisiting the relationship between the *Brigham City* and *Mitchell* standards, even were that otherwise warranted and even assuming that there is a meaningful distinction between them, would make no difference in this case: the police entry here violated both. Detective Anderson's determination that the reported fire could be at the location he ultimately searched (123-09 Sutphin Boulevard) was not "objectively reasonable" under *Brig-*

ham City and lacked a "reasonable basis[] approximating probable cause" under *Mitchell*.

In cases where the emergency occurred at the location searched, which as noted above is true of the vast majority of emergency search cases, courts have looked to multiple indicia in holding the search justified. In *Brigham City* itself, this Court noted that police officers heard an altercation inside a house and saw a struggle and assault through a window before entering. *Brigham City*, 547 U.S. at 406. Similarly, in *Michigan* v. *Fisher*, police entered a house only after seeing disarray and blood outside the house, as well as an injured Fisher screaming and throwing objects inside. 558 U.S. 45, 45-46 (2009). Here, by contrast, respondent's property had no evident connection to the reported fire at all.

In rare cases like this one, where the emergency did not take place at the location searched, courts have required clear and articulable indicia to infer that the location searched was related to the emergency. For example, the search of the murderer-defendant's home in *People* v. *Hebert*, described above, was deemed not reasonable because police observed "no broken glass, blood, commotion or other signs of an immediate crisis" at the home. 46 P.3d at 481. Likewise, in *State* v. *Ford*, "insubstantial evidence" that anyone was home rendered the search of an injured person's last known address unreasonable. 998 A.2d at 692.

This case offered even less evidence connecting the location searched to the emergency. The Appellate Division highlighted the obvious difference between the street name where the emergency was reported to have occurred (Rockaway Boulevard) and the street name where the search occurred (Sutphin

Boulevard). Pet. App. 6a. The court further emphasized that Detective Anderson found no fire or residence, only a vacant lot, when he arrived at 123-06 Sutphin Blvd. Pet App. 6a. He then simply circled around the block "maybe once or twice" before crossing the street to one of four houses facing the vacant lot. Pet. App. 14a, 24a. There, Detective Anderson also saw no sign of smoke, fire, or anything out of the ordinary. Pet. App. 14a, 24a. Yet rather than ring the doorbell to inquire about a fire, he walked approximately thirty feet to the rear of the house and across the backyard to the driveway. Pet. App. 25a-26a. Because this search fell far short of the reasonableness standard in either *Brigham City* or *Mitchell*, this case is an unsuitable vehicle for considering their relationship.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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