

No. 05-502

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In The  
**Supreme Court of the United States**

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BRIGHAM CITY,

*Petitioner,*

vs.

CHARLES W. STUART, SHAYNE R. TAYLOR,  
AND SANDRA TAYLOR,

*Respondents.*

—◆—  
**On Writ Of Certiorari  
To The Utah Supreme Court**

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**BRIEF FOR PETITIONER**

—◆—  
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## QUESTIONS PRESENTED

From outside a home at 3:00 a.m., officers witnessed a tumultuous struggle inside a kitchen between four adults and a juvenile. Upon seeing the juvenile punch one of the adults in the face, the officers entered the home to quell the violence. The questions presented are:

1. Does the “emergency aid exception” to the warrant requirement recognized in *Mincey v. Arizona*, 437 U.S. 385 (1978), turn on an officer’s subjective motivation for entering the home?

2. Was the gravity of the “emergency” or “exigency” sufficient to justify, under the Fourth Amendment, the officers’ entry into the home to stop the fight?

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**BRIEF FOR PETITIONER**  
**OPINIONS AND ORDER**

The opinion of the Utah Supreme Court is reported at 2005 UT 13, 122 P.3d 506 (Pet. App. 1-33). An order of the court denying rehearing is unreported (Pet. App. 49). The opinion of the Utah Court of Appeals is reported at 2002 UT App 317, 57 P.3d 1111 (Pet. App. 34-45). The order of the First Judicial District Court of Utah, Box Elder County, granting respondents' motion to suppress is unreported (Pet. App. 46-48).

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**JURISDICTION**

The decision of the Utah Supreme Court was entered February 18, 2005. A petition for rehearing was denied on July 18, 2005 (Pet. App. 49). The petition for a writ of certiorari was filed October 17, 2005 and granted January 6, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a) (2000).

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**CONSTITUTIONAL PROVISION INVOLVED**

**U.S. Const. amend. IV**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

## STATEMENT OF THE CASE

1. **Summary of Facts.**<sup>1</sup> At 3:00 a.m. on July 23, 2000, four Brigham City police officers responded to a local residence in response to a complaint about a loud party. J.A. 24-25 (Pet. App. 2-3). When the officers converged at the curb in front of the residence, they did not hear a party, but a commotion that “sounded like . . . an altercation occurring, some kind of fight.” J.A. 25-29. They heard “thumping,” people yelling “stop, stop,” and someone saying, “get off me.” J.A. 28, 46.

The officers walked up to the house and looked through the front window to “ascertain what was going on.” J.A. 30. They observed a beer bottle on the ledge of the front window, but could see nothing inside. J.A. 32. Leaving one officer to guard the front door, the other three walked to the corner of the house and down the driveway to the backyard fence “to investigate where [the fight] was coming from.” J.A. 32-34. Peering into the backyard through the fence, the officers saw two teenage males drinking beer. J.A. 34-35 (Pet. App. 2-3). They heard one of them say, “he’s had too much to drink.” J.A. 35. The officers saw no fight in the backyard but “could still hear it,” and “[i]t was just as severe as when [they] arrived and was still ongoing.” J.A. 35-36.

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<sup>1</sup> The trial court’s factual findings are supplemented with undisputed evidence from the suppression hearing. *See Ker v. California*, 374 U.S. 23, 34 (1963) (explaining that while the Court “does not sit as inquisitor to appraise contradictory factual questions, it will, where necessary to the determination of constitutional rights, make an independent examination of the facts, the findings, and the record so that it can determine for itself whether in the decision as to reasonableness the fundamental – i.e., constitutional – criteria established by this Court have been respected”).

“[C]oncerned about the ongoing fight,” the officers entered the backyard; while one of them secured the two teenagers, the other two officers walked to the back of the house to investigate. J.A. 36-38 (Pet. App. 2-3). Through a window, the officers saw four adults trying to restrain a teenager against a refrigerator. J.A. 39 (Pet. App. 3). The teenager’s hands were doubled into fists and he was “twisting and turning and writhing” in an effort to break free from the grasp of the adults. J.A. 39, 58. The adults were yelling at him to “calm down”; “obscenities [were] flying” and threats were being made. J.A. 39, 58, 71-72.

The two officers walked past a second window to an open back door. J.A. 39-40. The screen door was shut. J.A. 38. After reaching the door, Officer Jeff Johnson saw the teenager wrest a hand free and “land a punch squarely on the face” of one of the adults, drawing blood. J.A. 58-59, 73 (Pet. App. 2-3). At that point, and in the midst of a flurry of activity that ensued, Officer Johnson opened the screen door and yelled, “police,” but it “was so loud [and] tumultuous, that nobody heard a word.” J.A. 40, 60, 62 (Pet. App. 2, 18). The officers then entered the kitchen and again Officer Johnson yelled as loudly as he could. J.A. 41 (Pet. App. 2). At that point, “some of [the occupants] began to realize” the police were there, and “[o]ne by one, as they became aware,” the fight “dissipated.” J.A. 41, 62 (Pet. App. 2). To “save anybody else from getting punched,” the officers stepped between the combatants and handcuffed the teenager. J.A. 41.

Officer Johnson asked the adult assault victim if he needed assistance, J.A. 73, 79, but the occupants “immediately turned and became verbally hostile,” demanding that the officers leave, J.A. 42, 73, 79 (Pet. App. 2). The situation deteriorated from there and the adult occupants were

consequently arrested for disorderly conduct, intoxication, and contributing to the delinquency of a minor. J.A. 42, 79-81 (Pet. App. 3).

**2. Motion to Suppress.** Respondents moved to suppress the evidence of alcohol consumption found inside the home, arguing that the officers' entry violated their Fourth Amendment rights. The trial court granted the motion, ruling that there were "no exigent circumstances sufficient to justify the officer's entry into the residence." Pet. App. 47. The court ruled that what the officers "should have done, as required under the 4th Amendment, was knock on the door," even though "the evidence [was] that the occupants probably would not have heard [it]." Pet. App. 47.

**3. Utah Court of Appeals.** The City appealed and, in a 2-1 decision, the Utah Court of Appeals affirmed. Pet. App. 34-45. The majority held that nothing in the findings indicated that "the altercation posed an immediate serious threat or created a threat of escalating violence." Pet. App. 40. In dissent, Judge Bench observed that "[i]t is nonsensical to require officers, charged with keeping the peace, to witness this degree of violence and take no action until they see it escalate further." Pet. App. 44.

**4. Utah Supreme Court.** On certiorari, the Utah Supreme Court affirmed. Pet. App. 25. The court held that the officers' entry was not justified under either "emergency aid" recognized in *Mincey v. Arizona*, 437 U.S. 385, 392 (1978), or under "exigent circumstances." Pet. App. 11-25. The court distinguished the two exceptions, reasoning that emergency aid applies when officers are motivated by a "caretaking" function and that the exigent circumstances

exception applies when officers “pursu[e] a law enforcement mission.” Pet. App. 16.

***Emergency Aid.*** The court held that emergency aid is justified if: “(1) [p]olice have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life”; “(2) [t]he search is not primarily motivated by intent to arrest and seize evidence”; and “(3) [t]here is some reasonable basis to associate the emergency with the area or place to be searched.” Pet. App. 12-13 (citation omitted). The court held that the officers failed part one of the test because the fight had not yet resulted in “serious bodily injury.” Pet. App. 14. The court also held that the officers failed part two of the test because they were not subjectively motivated by the need to render medical assistance. Pet. App. 13-15.

***Exigent Circumstances.*** A 3-2 majority held that the harm which had thus far been inflicted was also insufficient to apply the exigent circumstances exception. Pet. App. 18-19. Having thus held, the majority concluded that the officers should have knocked if they desired to enter. Pet. App. 19-20.

***Dissent.*** Joined by Justice Wilkins, Justice Durrant dissented from the majority’s exigent circumstances opinion, concluding that the majority’s standard of risk “consigns law enforcement to the porch steps until it is too late to prevent the very injury the majority concedes officers are entitled to prevent.” Pet. App. 31.



## SUMMARY OF ARGUMENT

**I. *Subjective Motivation Test.*** In examining the police officers' entry into the home to break up the fight, the Utah Supreme Court applied a three-part test that required an examination of the officers' motives for entering. The court then concluded that because the officers did not render medical assistance to the victim of the assault, they were improperly motivated by a desire to arrest, rather than to render medical aid. The court's examination of the officers' subjective motives is contrary to this Court's repeated command that subjective motivation should play no role in ordinary Fourth Amendment analysis.

This Court has recognized that a warrantless intrusion does not violate the Fourth Amendment when "the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable." *Mincey v. Arizona*, 437 U.S. 385, 393-94 (1978) (citation omitted). The Court has identified several exigencies justifying warrantless intrusion. Some exigencies, like "hot pursuit" and "imminent destruction of evidence," are justified by the government's interest in bringing criminals to justice. Other exigencies, like "protective sweeps" and "weapons frisks," are justified by the government's interest in ensuring officer safety. "Emergency aid" is yet another exigency recognized by the Court. Emergency aid is justified by the government's interest in protecting members of the public from harm.

Like other exigent circumstances, emergency aid exigencies should be judged against an objective standard of reasonableness. Under the objective standard, an officer's subjective motives are irrelevant to the inquiry. The objective standard reflects the Fourth Amendment

principle that “evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.” *Horton v. California*, 496 U.S. 128, 138 (1990).

This Court has examined the purpose behind a particular search only in the context of suspicionless searches conducted pursuant to a general scheme or policy. Inquiry into purpose in such programmatic searches operates as a substitute for individualized suspicion to ensure that the scope of the search is circumscribed by its justification. Emergency aid entries are not programmatic, but arise from, and must be justified by, individualized suspicion. The Utah court’s subjective motivation test is therefore inappropriate and should be reversed.

**II. Gravity of harm or offense.** The Utah Supreme Court held that even though someone had been punched in the face and the fight was still in progress, the seriousness of the harm occasioned by the fight and the gravity of the offense were not sufficient to justify police intervention. The court held, in effect, that emergency aid entries are justified only if the risk of harm appears to be life-threatening. It held that “exigent circumstances” entries may be justified by a lower threshold of harm or risk thereof, but concluded that an ongoing fight, where a punch to the face had thus far been landed, was insufficient. The Utah court’s standard of harm ignores the inherent risks associated with physical altercations and is contrary to this Court’s Fourth Amendment jurisprudence.

Under *Mincey*, emergency aid intervention is justified in three circumstances: (1) when the risk to safety or health is life-threatening; (2) when someone has suffered a

serious injury and is in need of immediate aid; and (3) when necessary to prevent serious injury. 437 U.S. at 392-93. The Court has not defined “serious injury,” but the term is widely understood to mean an injury that results in protracted loss or impairment of the function of any body member or organ, and may include broken noses, broken jaws, dangerous eye injuries, and knocked-out teeth. Human experience teaches that fist fights may lead to these very injuries, or worse. While they do not inevitably result, the risk is real and substantial and justifies emergency aid intervention to prevent them.

Because all crimes of violence entail a real and substantial risk of serious injury, they can never be treated as minor offenses. This Court recognized as much in *Welsh v. Wisconsin*, 466 U.S. 740 (1984). The State of Utah likewise treats crimes of violence seriously and imposes heightened duties upon officers responding to domestic violence. The right of officers to intervene in such circumstances has been entrenched in the common law since the framing of our Constitution.

**III. Reasonableness of entry.** Contrary to the Utah Supreme Court’s holding, the Brigham City officers’ warrantless entry to quell the violence was objectively reasonable. As observed by the dissent, the officers “were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury.” Pet. App. 30 (Durrant, J., concurring and dissenting). Under these circumstances, the officers’ intervention to quell the violence was objectively reasonable.



**ARGUMENT****I.****“EMERGENCY AID” INTERVENTION IS  
JUDGED AGAINST AN OBJECTIVE  
STANDARD WITHOUT REGARD TO THE  
OFFICER’S SUBJECTIVE MOTIVES.**

Police officers entered a Brigham City home after witnessing a teenager land a punch to the face of an adult during a 3:00 a.m. affray involving four adults and a teenager. The Utah Supreme Court recognized that “[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen.” Pet. App. 18. The court nevertheless concluded that the officers’ entry was unreasonable. Pet. App. 11-25.

In examining the reasonableness of the entry, the Utah court applied two different tests, depending upon the officers’ purpose in entering. Pet. App. 11-16. The court held that if the officers entered in pursuit of a “caretaking” function, the entry is examined under the “emergency aid doctrine,” requiring an examination of the officers’ subjective motives. Pet. App. 11-15. The court held that emergency aid is justified if three requirements are met:

- (1) Police have an objectively reasonable basis to believe that an emergency exists and believe there is an immediate need for their assistance for the protection of life.
- (2) The search is not primarily motivated by intent to arrest and seize evidence.

(3) There is some reasonable basis to associate the emergency with the area or place to be searched.

Pet. App. 12-13 (quotation and citation omitted). In contrast, the court held that if the officers were “pursuing a law enforcement mission,” the entry is examined against the objective standard traditionally applied under the “exigent circumstances” exception, i.e., whether “a reasonable person [would] believe that the entry ‘was necessary to prevent physical harm to the officers or other persons.’” Pet. App. 16 (citation omitted).

The Utah court’s bifurcated standard is confusing, impracticable, and contrary to this Court’s Fourth Amendment jurisprudence.

**A. Emergency aid is a subcategory of the exigent circumstances exception.**

The touchstone of the Fourth Amendment is, and always has been, reasonableness. *Pennsylvania v. Mimms*, 434 U.S. 106, 108-09 (1977). This Court has recognized that a warrantless entry does not violate the Fourth Amendment when “‘the exigencies of the situation’ make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” *Mincey*, 437 U.S. at 393-94 (quoting *McDonald v. United States*, 335 U.S. 451, 456 (1948)).

Over the years, the Court has identified several circumstances that justify warrantless searches or entries under the “exigent circumstances” exception. Some exigencies are justified by the government’s interest in bringing criminals to justice. For example, the Court has held that exigent circumstances exist when police are in hot pursuit

of a fleeing felon, *Warden, Maryland Penitentiary v. Hayden*, 387 U.S. 294, 298-99 (1967) (hot pursuit), or when there is an imminent risk that evidence will be destroyed or lost. *Ker v. California*, 374 U.S. 23, 39-40 (1963) (imminent destruction of evidence); *California v. Carney*, 471 U.S. 386, 390-91 (1985) (automobile exception).

Other exigencies are justified by the government's interest in protecting officers from harm. For example, the Court has held that exigent circumstances exist when there is reason to believe that the home of an arrestee "harbors an individual posing a danger to those on the arrest scene," *Maryland v. Buie*, 494 U.S. 325, 334 (1990) (protective sweep); when there is reason to believe a suspect is armed and dangerous, *Terry v. Ohio*, 392 U.S. 1, 30 (1968) (weapons frisk); and when there is reason to believe that an occupant of a vehicle "is dangerous and . . . may gain immediate control of weapons," *Michigan v. Long*, 463 U.S. 1032, 1049 (1983) (protective search of automobile).

The Court has likewise recognized that exigent circumstances exist when there is a "'risk of danger to . . . persons inside or outside [a] dwelling.'" *Minnesota v. Olson*, 495 U.S. 91, 100 (1990) (citation omitted). Under this "emergency aid" exigency, "[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.'" 437 U.S. at 392-93 (quoting *Wayne v. United States*, 318 F.2d 205, 212 (D.C. Cir. 1963) (opinion of Burger, J.)).

**B. As in other cases involving exigent circumstances, emergency aid entries should be judged against an objective standard of reasonableness.**

This Court has consistently examined cases involving exigent circumstances under an objective standard based on the totality of the circumstances. In *Hayden*, the Court examined “the circumstances of [the] case” to determine whether the officers “acted reasonably” when they entered a house in search of a fleeing suspect. 387 U.S. at 298-99. In *Ker*, the Court determined whether the officers’ unannounced entry was “unreasonable” in light of the suspect’s furtive conduct in eluding police after he purchased marijuana. 374 U.S. at 40-41. In *Buie*, the Court held that a protective sweep is justified when supported “by a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene.” 494 U.S. at 336. And in *Terry*, the Court emphasized that “it is imperative that the facts be judged against an objective standard.” 392 U.S. at 21-22.

*Mincey* also applied an objective standard. There, an undercover officer was fatally shot in the home of a suspected drug dealer. 437 U.S. at 387. Backup officers promptly entered the home to provide medical aid, search for additional victims, and secure the scene. *Id.* at 387-88. Homicide detectives arrived ten minutes later and conducted a warrantless search that lasted four days. *Id.* at 388-89. The Arizona Supreme Court upheld the four-day search for evidence under a so-called “murder scene exception,” an exception to the warrant requirement based on the seriousness of the offense alone. *Id.* at 389-90, 392.

On certiorari, this Court rejected Arizona’s murder scene exception as “inconsistent with the Fourth and

Fourteenth Amendments.” *Id.* at 395. The Court held that the seriousness of the offense alone does not create exigent circumstances. *Id.* at 394. Rather, the search must be judged “under established Fourth Amendment standards,” i.e., whether the exigencies rendered the search reasonable. *See id.* at 393-95 & n.9. In doing so, the Court applied the objective standard traditionally applied in Fourth Amendment cases to determine whether the search was justified by either a need to protect others from harm or by a need to preserve evidence.

The backup officers’ initial entry immediately following the shooting was not at issue. *See id.* at 389-90. The Court nevertheless recognized that “[t]he need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency” and that officers “may seize any evidence that is in plain view during the course of their legitimate emergency activities.” *Id.* at 392-93 (citation omitted). The Court further observed that a warrantless intrusion “must be ‘strictly circumscribed by the exigencies which justify its initiation.’” *Id.* at 393 (quoting *Terry*, 392 U.S. at 25-26). The Court concluded that because everyone in *Mincey*’s apartment had already been located by the backup officers, the subsequent search “simply [could not] be . . . justified by any emergency threatening life or limb.” *Id.*

The Court next considered whether the need to preserve evidence rendered the search “objectively reasonable.” *Id.* at 393-94. The Court concluded that where the scene had already been secured, the need to preserve evidence did not justify a warrantless entry. “There was no indication that evidence would be lost, destroyed, or removed during the time required [for the homicide officers] to obtain a search warrant.” *Id.* at 394.

The *Mincey* analysis provides the model by which intrusions involving exigent circumstances should be judged – whether justified by the government’s interests in bringing criminals to justice or in protecting the safety of officers and members of the public.

**C. An officer’s subjective motives are irrelevant in determining whether emergency aid is objectively reasonable.**

The Utah Supreme Court’s examination of an officer’s subjective motives for making an emergency aid entry flatly contradicts this Court’s repeated command that searches be examined “under a standard of objective reasonableness *without regard to the underlying intent or motivation of the officers involved.*” *Scott v. United States*, 436 U.S. 128, 138 (1978) (emphasis added). This Court has “never held, outside the context of inventory search or administrative inspection . . . , that an officer’s motive invalidates objectively justifiable behavior under the Fourth Amendment.” *Whren v. United States*, 517 U.S. 806, 812 (1996). It should not do so now.

As in other Fourth Amendment contexts, the reasonableness inquiry in an emergency aid case is an objective one: “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); *accord Ohio v. Robinette*, 519 U.S. 33, 39 (1996) (holding that “[r]easonableness . . . is measured in objective terms by examining the totality of the circumstances”). And as in other Fourth Amendment cases, emergency aid “must be ‘strictly circumscribed by the

exigencies which justify its initiation.’” *Mincey*, 437 U.S. at 393 (quoting *Terry*, 392 U.S. at 25-26).

As observed by the Court in *Whren*, “the Fourth Amendment’s concern with ‘reasonableness’ allows certain actions to be taken in certain circumstances, *whatever* the subjective intent.” *Whren*, 517 U.S. at 814. The problem with a test that turns on an officer’s subjective motives is that “the constitutionality of an [action] under a given set of known facts will ‘vary from place to place and from time to time,’” depending on the officer involved. *Devenpeck v. Alford*, 543 U.S. 146, 154 (2004) (quoting *Whren*, 517 U.S. at 815). An entry “made by a knowledgeable, veteran officer would be valid, whereas [an entry] made by a rookie *in precisely the same circumstances* would not.” *Id.* There is simply “no reason to ascribe to the Fourth Amendment such arbitrarily variable protection.” *Id.*

The subjective motivation test also suffers from a practical problem, i.e., the “evidentiary difficulty” associated with discerning an officer’s motives for pursuing a particular course of action. *Whren*, 517 U.S. at 814. As recognized by the Court in another context, police officers frequently “act out of a host of different, instinctive, and largely unverifiable motives.” *New York v. Quarles*, 467 U.S. 649, 656 (1984) (holding that public safety exception to the *Miranda* warning requirement does not turn on officer motive). Indeed, “police have ‘complex and multiple tasks to perform,’ which include not only the apprehension of persons committing crimes, but also the protection of persons ‘who are in danger of physical harm.’” 3 Wayne R. LaFare, *Search and Seizure* § 6.6 (4th ed. 2004) (citations omitted). These duties often converge, as was the case here. Yet, the subjective motivation test imposes upon courts the impracticable task of disentangling the various

motives of one or more officers and identifying which motive predominated. Reasonableness should not turn on such untenable “post hoc findings at a suppression hearing.” *Quarles*, 467 U.S. at 656.

In sum, “evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.” *Horton v. California*, 496 U.S. 128, 138 (1990). “[T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer’s action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.” *Scott*, 436 U.S. at 138.

**D. The Court has examined purpose only in suspicionless programmatic searches, not searches that arise from, and must be justified by, individualized suspicion.**

The Utah Supreme Court reasoned that examination of purpose is appropriate in an emergency aid case because, like administrative inspections and inventories, it serves “caretaking” interests rather than criminal justice goals and does not require a showing of probable cause. Pet. App. 13; *accord United States v. Cervantes*, 219 F.3d 882, 888-90 (9th Cir. 2000), *cert. denied*, 532 U.S. 912 (2001); *State v. Ryon*, 108 P.3d 1032, 1038-41 (N.M. 2005); *State v. Mountford*, 769 A.2d 639, 645 (Vt. 2000).

The City agrees that the justification for rendering emergency aid stems from the government’s interest in protecting the public from harm and does not require a

showing of probable cause. But these similarities are incidental, not dispositive.

Administrative inspections and inventories, like “special needs” searches and traffic checkpoints, are programmatic searches, conducted pursuant to a general scheme or policy that requires no showing of individualized suspicion. See *City of Indianapolis v. Edmond*, 531 U.S. 32, 45-46 (2000); *Whren*, 517 U.S. at 811-12 & nn.1-2. In contrast, emergency aid intrusions “are not programmatic but are responsive to individual events,” *Michigan v. Tyler*, 436 U.S. 499, 507 (1978), and must be justified by those events, Pet. App. 12-13. Like investigative detentions and other “field” decisions, they entail “an entire rubric of police conduct” that “necessarily [requires] swift action predicated upon the on-the-spot observations of the officer on the beat.” *Terry*, 392 U.S. at 20; accord *Buie*, 494 U.S. at 331-32.

The distinction is important. As noted, this Court has been willing to examine purpose in cases involving programmatic searches. See *Edmond*, 531 U.S. at 45-48; *Whren*, 517 U.S. at 812. It has not been willing to do so in cases involving non-programmatic searches. In non-programmatic searches, reasonableness “rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search.” *United States v. Knights*, 534 U.S. 112, 122 (2001). Accordingly, the reasonableness of a non-programmatic search “turns on an objective assessment of the officer’s actions in light of the facts and circumstances confronting him at the time, and not on the officer’s actual state of mind at the time the challenged action was taken.” *Maryland v. Macon*, 472 U.S. 463, 470-71 (1985) (quoting *Scott*, 436 U.S. at 136).

In such cases, “the issue is not [the officer’s] state of mind, but the objective effect of his actions.” *Bond v. United States*, 529 U.S. 334, 338-39 n.2 (2000). A test that turns on an officer’s subjective motives is simply “incompatible with a proper Fourth Amendment analysis.” *Graham*, 490 U.S. at 397. Because emergency aid intrusions are non-programmatic, subjective motives are irrelevant in assessing their reasonableness.

A few courts have reasoned that because emergency aid intrusions are justified upon a showing of reasonable suspicion, rather than probable cause, examination of an officer’s subjective motives is appropriate to safeguard against pretextual searches. *Cervantes*, 219 F.3d at 889-90; *Ryon*, 108 P.3d at 1046; *Mountford*, 769 A.2d at 645. It is true that police intervention to render emergency aid is justified upon a showing of individualized suspicion, akin to reasonable suspicion, rather than probable cause. *See* Pet. App. 12-13 (Utah Supreme Court holding that police must show “an objectively reasonable basis to believe that an emergency exists” rather than probable cause).<sup>2</sup> However, this Court has only examined purpose in the context

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<sup>2</sup> The reasonable suspicion standard for emergency aid intrusions is consistent with the standard applied by this Court to other exigent circumstances that are justified by the need to protect the safety of officers or others. *See, e.g., Buie*, 494 U.S. at 334 (holding that protective sweep is justified upon a showing of “a reasonable, articulable suspicion that the house is harboring a person posing a danger to those on the arrest scene”); *Long*, 463 U.S. at (1983) (holding that a protective automobile search is justified upon a showing of a reasonable “belief that [the officer’s] safety or that of others was in danger”); *Terry*, 392 U.S. at 27 (holding that a weapons frisk is justified upon a showing that “a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger”).

of searches requiring no individualized suspicion. *Edmond*, 531 U.S. at 45-46.

The Court settled this issue in *Knights*, where it refused to consider the officer's motives in conducting a search supported only by reasonable suspicion. There, a detective from the sheriff's department searched a probationer's apartment for evidence of vandalism against a power company. *Id.* at 114-15. The detective did not obtain a warrant, but relied instead on the probation agreement permitting searches based on reasonable suspicion alone. *Id.* at 115. After weighing the government's interests in protecting society from probationers against probationers' reduced privacy interests, the Court concluded that "the balance of these considerations requires no more than reasonable suspicion to conduct a search of [the] probationer's house." *Id.* at 118-21.

The probationer argued that the search nevertheless violated the Fourth Amendment because it was conducted for an investigatory, rather than probationary, purpose. *Id.* at 116-18. The Court refused to consider his claim, holding that there was no basis for examining the purpose of the search because the reasonableness of the search "rests on ordinary Fourth Amendment analysis that considers all the circumstances of a search." *Id.* at 122.

In sum, examination of an officer's subjective motives is inappropriate and unnecessary in examining emergency aid entries. Like other intrusions involving exigent circumstances, the requirement of individualized suspicion is the safeguard against unreasonable police conduct. A showing of individualized suspicion "ensure[s] that police discretion is sufficiently constrained." *Whren*, 517 U.S. at 817-18 (quotations and citations omitted). The court has

examined purpose in programmatic searches only because no such safeguard exists. Examination of purpose in programmatic searches operates as a substitute for individualized suspicion to ensure that the scope of the search is circumscribed by its justification. Even then, the Court has since suggested that “inquiry into purpose is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.” *Edmond*, 531 U.S. at 48.

\* \* \*

This Court should reverse the Utah Supreme Court’s holding that an emergency aid entry violates the Fourth Amendment if the officer was “primarily motivated by intent to arrest and seize evidence.” Pet. App. 12.

## II.

### **A WARRANTLESS ENTRY TO STOP A FIGHT IN PROGRESS IS JUSTIFIED BY THE GOVERNMENT’S LEGITIMATE AND SUBSTANTIAL INTERESTS IN PROTECTING THE PUBLIC FROM HARM AND IN PREVENTING CRIMES OF VIOLENCE.**

In addressing the circumstances under which a warrantless home intrusion is justified, the Utah Supreme Court asked what it characterized as “the nub of the matter: how grave must the impending harm be to create an exigent circumstance?” Pet. App. 10. The court concluded that the answer depends on both the officer’s motive and whose safety is at issue.

The court held that officers motivated primarily by the desire to protect others from harm (“emergency aid doctrine”) may enter if necessary “for the protection of

life.” Pet. App. 12. The court explained that under this standard, police may only enter to administer medical assistance to a person they have reason to believe “is *suffering* from a *serious* physical injury.” Pet. App. 13 (first emphasis added). The court further held that such an entry is restricted to those circumstances where police have “‘an objectively reasonable belief that an unconscious, semi-conscious, or missing person feared injured or dead’ is in the home.” Pet. App. 13 (citation omitted).

If, on the other hand, officers are pursuing a “law enforcement mission” (exigent circumstances exception) and act to protect themselves or others, the court held that the necessary degree of harm is not as great. Pet. App. 15. However, the court applied different “threshold[s] of harm,” depending on whose safety is at issue. Pet. App. 17-18. The court held that a “reduced quantum of harm” applies if officer safety is at issue. Pet. App. 17. On the other hand, the court held that “the license extended to law enforcement to [ensure officer safety] does not apply” when the intrusion is made to protect occupants of a home. Pet. App. 17. The court reasoned that a higher threshold of harm is required in the latter case because occupants of a home “may well choose to expose themselves to greater actual or potential harm to preserve their right to be left alone” and “may even engage in acts that meet the legal definition of assault.” Pet. App. 18. The court did not identify the quantum of harm it deemed necessary to justify entry to protect others in the course of a law enforcement mission, but concluded that an ongoing fight where one person had already been punched was not enough. Pet. App. 19.

The Utah court's trifurcated standard of harm is not only confusing and unmanageable, but contrary to this Court's jurisprudence.

**A. Emergency aid is justified by the need to protect and preserve life, to administer medical aid for a serious injury, and to prevent serious injury.**

The question of what degree of harm or impending harm will justify a warrantless intrusion to protect others was answered in *Mincey*. The Court first observed that both federal and state courts have recognized that an emergency aid entry is justified when there is reason to believe "that a person within [a home] is in need of immediate aid," *Mincey*, 437 U.S. at 392. The Court concluded that police are justified in making a warrantless intrusion when there is a "'need to protect or preserve life or avoid serious injury.'" *Mincey*, 437 U.S. at 392-93 (citation omitted). The *Mincey* standard thus permits warrantless intervention in three circumstances.

First, a warrantless intrusion by police is warranted whenever the risk to health or safety is life-threatening. It may thus be reasonably understood that police may enter in such medical emergencies as heart attack, organ failure, stroke, seizure, unconsciousness, or massive hemorrhaging. A warrantless intrusion would likewise be justified in response to shots fired or threats made with weapons. *See, e.g., McDonald*, 335 U.S. at 454 (recognizing that officers may enter a home upon "hear[ing] a shot and a cry for help").

Second, police may intervene when someone has suffered a "serious injury" and is in need of "immediate

aid.” *Mincey*, 437 U.S. at 392. This Court has not defined serious injury. However, “serious bodily injury” and equivalent terms have been widely understood to include injuries that result in “protracted loss or impairment of the function of any bodily member or organ.”<sup>3</sup> The term is also often understood to include injuries that cause extreme physical pain.<sup>4</sup> One state has aptly defined serious injury as an injury that requires medical treatment by a physician, other than first aid (defined as “one-time treatment or subsequent observation of scratches, cuts not requiring stitches, minor burns, splinters, and contusions or a diagnostic procedure, including examinations and x-rays, which do not ordinarily require medical treatment

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<sup>3</sup> See, e.g., 18 U.S.C. § 1365(h)(3); Ala. Code § 12-15-65; Ark. Code Ann. § 12-12-503; Cal. Penal Code § 417.6; Col. Rev. Stat. Ann. § 18-1-901; D.C. Code § 2-1542; Fla. Stat. Ann. § 316.192; Haw. Rev. Stat. § 707-700; 415 Ill. Comp. Stat. Ann. 5/44; Ind. Code Ann. § 35-41-1-25; Iowa Code Ann. § 321J.1; Ky. Rev. Stat. Ann. § 500.080; La. Rev. Stat. Ann. § 14:34.1; Me. Rev. Stat. Ann. tit. 17-A, § 2; Md. Code Ann., Criminal Law § 8-508; Mich. Comp. Laws Ann. § 324.20139; Minn. Stat. Ann. § 609.02; Mont. Code Ann. § 45-2-101; Neb. Rev. Stat. § 28-109; N.H. Rev. Stat. Ann. § 625:11; N.J. Stat. Ann. § 2C:38-2; N.Y. Penal Law § 10.00; N.C. Gen. Stat. Ann. § 20-160.1; N.D. Stat. § 12.1-01-04; Okla. Stat. Ann. tit. 10, § 7001-1.3; 18 Pa. Cons. Stat. Ann. § 2301; R.I. Stat. § 11-5-2; S.C. Code Ann. § 23-31-400; Tenn. Code Ann. § 39-11-106; Tex. Penal Code Ann. § 1.07; Utah Code Ann. § 76-1-601; Vt. Stat. Ann. tit. 13, § 1021; Va. Code Ann. § 16.1-283; Wash. Rev. Code Ann. § 79A.60.060; W. Va. Code, § 61-8B-1; Wis. Stat. Ann. § 939.22; Wyo. Stat. § 6-1-104. (The statutes cited above are the most recent version as set forth in Westlaw).

<sup>4</sup> See, e.g., 18 U.S.C. § 1365(h)(3); Ala. Code § 12-15-65; Ark. Code Ann. § 12-12-503; 415 Ill. Comp. Stat. Ann. 5/44; Ind. Code Ann. § 35-41-1-25; La. Rev. Stat. Ann. § 14:34.1; Mich. Comp. Laws Ann. § 324.20139; N.C. Gen. Stat. Ann. § 20-160.1; N.D. Stat. § 12.1-01-04; Okla. Stat. Ann. tit. 10, § 7001-1.3; Tenn. Code Ann. § 39-11-106; Va. Code Ann. § 16.1-283.

even though provided by a physician or other licensed professional”). S.C. Code Ann. § 52-19-50(52).

A survey of cases reveals that courts have found serious bodily injury (justifying aggravated assault charges) “where the victim suffered a broken ankle, arm, back, cheek bone, collarbone, finger, hand, jaw, leg, nose, rib, shoulder, and skull.” Tracy A. Bateman, Annotation, *Sufficiency of Bodily Injury to Support Charge of Aggravated Assault*, 5 A.L.R. 5th 243, 276 § 2(a) (1992 & Aug. 2005 Supp.) (references omitted). Courts have also found serious injury where a victim’s teeth have been dislodged or knocked out. *Id.* at 329-30, 343 §§ 28, 44.

And finally, the *Mincey* standard permits police to intervene when necessary to “avoid,” or prevent, “serious injury.” *Id.* The question of whether the circumstances create a risk of serious injury justifying police intervention, like any other Fourth Amendment issue, depends upon the totality of the circumstances confronting the officer at the time. The Fourth Amendment thus permits emergency aid intervention if supported by “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing” that serious injury may result absent intervention. *Buie*, 494 U.S. at 334.

Under this standard, any physical altercation involving adults, or even teenagers, creates a real and substantial risk that serious injury may result. Human experience teaches that fist fights may lead to broken noses, broken jaws, dangerous eye injuries, concussions, or worse. While these injuries do not inevitably result, the risk is real and substantial. In the face of these inherent risks, the Fourth Amendment does not require an officer “to simply shrug

his shoulders” and allow the violence to continue. *Adams v. Williams*, 407 U.S. 143, 145 (1972). The Utah Supreme Court was wrong in holding otherwise.

**B. Police are justified in entering a home to stop ongoing crimes of violence.**

For the same reason, any crime of violence is of sufficient gravity to justify immediate police intervention. In these cases, the government’s interest in protecting others from harm converges with its interest in stopping and preventing crime. This Court’s decision in *Welsh v. Wisconsin*, recognized as much. 466 U.S. 740 (1984).

In *Welsh*, the Court held that a non-criminal offense for driving while intoxicated (DWI) was too minor to justify a warrantless entry to preserve evidence under the exigent circumstances exception. *Id.* at 752-54. The Court did not, however, treat crimes of violence as minor. Quoting verbatim from Justice Jackson’s concurrence in *McDonald*, the Court recognized that offenses involving ongoing “violence or threats of it” may be immediately acted upon by police:

“Whether there is reasonable necessity for a search without waiting to obtain a warrant certainly depends somewhat upon the gravity of the offense thought to be in progress as well as the hazards of the method of attempting to reach it. . . . It is to me a shocking proposition that private homes, even quarters in a tenement, may be indiscriminately invaded at the discretion of any suspicious police officer engaged in following up offenses that involve no violence or threats of it. While I should be human enough to apply the letter of the law with some indulgence to officers

acting to deal with threats or crimes of violence which endanger life or security, it is notable that few of the searches found by this Court to be unlawful dealt with that category of crime. . . .”

*Id.* at 750-51 (quoting *McDonald*, 335 U.S. at 459-60 (Jackson, J., concurring)).

The State of Utah has also demonstrated a substantial interest in deterring and punishing crimes of violence. Even a simple assault, involving no serious injury, is punishable by up to six months in jail. Utah Code Ann. § 76-3-204(2) (1999); Utah Code Ann. § 76-5-102(2) (1999). And in cases involving domestic violence, as this case reasonably appeared to be, Pet. App. 22 n.7, Utah law imposes an affirmative duty on law enforcement officers “to use all reasonable means to protect the victim and prevent further violence,” including assisting the victim and other affected family members in removing essential personal effects from the home, obtaining medical treatment, and obtaining emergency housing or shelter. Utah Code Ann. § 77-36-2.1(1) (1999). In short, the State of Utah does not treat crimes of violence as minor.

Moreover, the right and duty of police to intervene in the face of violence was well entrenched in the common law at the time of the framing of our Constitution. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 326 (2001) (observing that the Court’s interpretation of the Fourth Amendment “is guided by ‘the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing’”). In this regard, Burn observed that “[t]here are some cases in which a constable may and ought to break into a house, although no felony has been committed, when the necessity of the case will not admit of delay, as when persons are fighting furiously in a house.” 1

Richard Burn, *The Justice of the Peace and Parrish Officer* 1062 (30th ed. 1869). Hale explained that “[i]f there be an affray in a house, where the doors are shut, whereby there is likely to be manslaughter or bloodshed committed, the constable of the vill having notice thereof and demanding entrance, if they within refuse to do it but continue the affray, the constable may break open the doors to keep the peace and prevent danger.” 2 Matthew Hale, *The History of the Pleas of the Crown* 95 (1736). Chitty noted that “when an affray is made in a house, in the view or hearing of a constable, he may break open the outer door in order to suppress it.” 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 52 (1816). And Hawkins agreed that “if an affray be in a House, the Constable may break open the Doors to preserve the peace.” 1 William Hawkins, *A Treatise of the Pleas of the Crown* 137 (1716); see also 1 Edward East, *Pleas of the Crown* 322 (1806).

In light of the common law at the time of the framing, the State’s demonstrable interest in deterring and punishing crimes of violence, and this Court’s discussion in *Welsh*, the Utah Supreme Court erred in holding that the ongoing assault in the Brigham City residence was an exigency of insufficient gravity to justify a warrantless entry.

### III.

#### **THE OFFICERS’ ENTRY INTO THE HOME TO STOP THE FIGHT WAS REASONABLE UNDER THE FOURTH AMENDMENT.**

Applying the appropriate standards, the Brigham City officers’ entry into the home was “objectively reasonable.” *Mincey*, 437 U.S. at 394. Arriving at the front curb, the officers heard “an altercation occurring, some kind of

fight.” J.A. 25-29. They heard “some thumping,” people yelling, “stop, stop,” and someone say “get off me.” J.A. 28, 46. The altercation continued with no drop in intensity as the officers investigated first from the front window, then from the driveway, and finally from the back door. J.A. 32-36. Even as the officers watched the four adults fight to restrain the juvenile from the back, they did not enter. J.A. 39-40, 58. But when the teenager wrested a hand free and punched one of the men in the face, the officers acted. They pulled open the screen door, and without crossing the threshold, shouted into the house in an attempt to identify themselves. *See* J.A. 40-41. But the altercation “was so loud [and] tumultuous, that nobody heard a word.” J.A. 40-41. The officers then entered the kitchen and Officer Johnson again shouted as loudly as he could. J.A. 41. Only then did the “altercation abate[.]” Pet. App. 18.

The officers’ warrantless entry into the home was justified by the need to quell the ongoing violence and prevent further harm to those inside. As observed by the dissent, the officers “were certain that a fight was in progress, that the participants had likely been consuming alcohol, and that at least one individual had already sustained an injury.” Pet. App. 30 (Durrant, J., concurring and dissenting). The tumultuous and violent circumstances confronting the officers at the time would “warrant a reasonably prudent officer in believing,” *Buie*, 494 U.S. at 334, that entry was necessary to “avoid serious injury,” *Mincey*, 437 U.S. at 392.

Moreover, because the altercation was in the kitchen, an officer could reasonably believe that “a knife [could be] pulled from a nearby kitchen drawer, elevating [further] the potential severity of physical harm that a participant in the fight – or an innocent bystander – could suffer.” *See*

App. 31 (Durrant, J., concurring and dissenting); J.A. 63. As observed by the First Circuit Court of Appeals, “[e]vidence of extreme danger in the form of shots fired, screaming, or blood is not required for there to be some reason to believe that a safety risk exists.” *Fletcher v. Town of Clinton*, 196 F.3d 41, 49 (1st Cir. 1999). The officers here were confronted with all but the shots fired.

In concluding that the officers’ entry was not justified, the Utah Supreme Court asserted that the officers should have known that the fight would have eventually ended without escalated violence. Pet. App. 19. But where the court recognized that “[i]t was the acknowledged presence of the authority of the police that quenched the heat in the kitchen,” Pet. App. 18, its assertion is pure speculation. Neither it, nor the officers, possessed the clairvoyance to know how the fight would play out. Neither the court nor the officers could know whether the violence would abate or escalate. Nor could they know “which of the parties to the melee were victims and which were instigators.” Pet. App. 29 (Durrant, J., concurring and dissenting).

Moreover, the court’s judgment of the officers’ actions against this speculative conclusion – rendered eight months after oral argument in what the court characterized as “a close and difficult call,” Pet. App. 19 – contravenes this Court’s teaching that searches “be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight.” *Graham*, 490 U.S. at 396 (addressing reasonableness in use of force case). “[T]he question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them” at the time of the intrusion. *Graham*, 490 U.S. at 397 (applying objective test in use of force case). The “calculus of reasonableness must embody allowance for the fact that police officers are often forced to make

split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.” *Id.* at 396-97. The Utah Supreme Court failed to make this allowance.

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In sum, the officers’ entry to quell the violence and prevent further injury was objectively reasonable. Just as “it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze,” *Tyler*, 436 U.S. at 509, so too would it defy reason to suppose that police officers must secure a warrant or consent before entering a home to put down an ongoing fight.



### CONCLUSION

For the reasons stated above, this Court should reverse the decision of the Utah Supreme Court.

Respectfully submitted,

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