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**In the United States Court of Appeals for the Fourth Circuit**

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FAREED N. HAYAT,

*Plaintiff-Appellant,*

v.

SGT. CASEY DIAZ, *et al.*,

*Defendants-Appellees.*

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*On Appeal from the United States  
District Court for the District of Maryland*

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**BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER  
AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REHEARING**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the Constitution applies as robustly as its text and history require and accordingly has an interest in this case.

### INTRODUCTION

“Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment.” *Dunaway v. New York*, 442 U.S. 200, 213 (1979). And the Framers viewed “the freedom of one’s house” as “one of the most essential branches of English liberty.” James Otis, *Against Writs of Assistance* (Feb. 24, 1761). With only “jealously and carefully drawn” exceptions, therefore, the Amendment prohibits warrantless home entries as “unreasonable *per se*.” *Georgia v. Randolph*, 547 U.S. 103, 109 (2006).

The panel’s rule allowing forcible home entry on reasonable suspicion alone is anything but “jealously and carefully drawn.” Instead, it fashions a broad new

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<sup>1</sup> No party’s counsel authored this brief in whole or in part, and no person other than *amicus* or its counsel made a monetary contribution to its preparation or submission. Counsel for all parties have consented to the filing of this brief.

exception to the Fourth Amendment’s warrant requirement that directly conflicts with binding Supreme Court precedent. It also sets this Court apart from other circuits, none of which allow warrantless seizures under *Terry v. Ohio*, 392 U.S. 1 (1968), to take place in the constitutionally protected area of the home’s surrounding curtilage—much less allow those seizures to proceed into the interior of the home itself.

In addition, the panel’s new rule would have been unrecognizable to the generation that ratified the Bill of Rights, because it is grossly at odds with the protections for the home under Founding-era common law that the Fourth Amendment was designed to preserve. For all these reasons, the *en banc* Court should step in and correct the panel’s errors.

## **ARGUMENT**

### **I. The Panel’s Decision Flouts Clear Supreme Court Precedent on Warrantless Home Intrusions.**

The panel’s decision contradicts multiple strands of Supreme Court precedent enforcing the Fourth Amendment’s protections against warrantless home entries. That alone calls for rehearing *en banc*.

#### **A. Forcible entry requires more than suspicion.**

According to the panel, “reasonable suspicion” of criminal activity involving risk of injury allows a police officer to “extend” a *Terry* stop into the home without a warrant. Op. 23. That violates the Supreme Court’s clear instruction that only

“‘an objectively reasonable basis for believing’ that an occupant is seriously injured or imminently threatened with such harm” can justify warrantless home entries to render aid. *Case v. Montana*, 607 U.S. 107, 116 (2026) (quoting *Brigham City v. Stuart*, 547 U.S. 398, 400 (2006)). The “objectively reasonable” standard—as the Court explicitly clarified just months ago—is more demanding than “*Terry*’s reasonable-suspicion standard,” which governs only “brief, investigative street stops.” *Id.* The panel decision cannot be reconciled with *Case*.

*Case* is not the Supreme Court’s only recent rejection of an attempt—like the panel’s—to allow warrantless home entry under standards governing less intrusive searches outside the home. In *Caniglia v. Strom*, 593 U.S. 194 (2021), the decision below had sanctioned entry under the “community caretaking” doctrine, which was meant for searches of “an impounded vehicle—not a home.” *Id.* at 199. By ignoring the “constitutional difference” in “the location of th[e] search,” that decision erroneously went “beyond anything [the Supreme] Court has recognized.” *Id.* at 198-99. So too here. The panel decision allows forcible home entries without a warrant or probable cause based on a standard crafted for “narrowly defined” and “less intrusive” searches in public spaces. *Dunaway*, 442 U.S. at 210 (rejecting extension of *Terry* standard to custodial interrogations).

Similarly, in *Collins v. Virginia*, 584 U.S. 586 (2018), a state supreme court permitted warrantless entry onto a homeowner’s property to look for a vehicle,

relying on a doctrine allowing warrantless searches of automobiles on the roads. Rejecting this doctrinal extension, the Supreme Court explained that “[e]xpanding the scope of the automobile exception in this way would ... undervalue the core Fourth Amendment protection afforded to the home and its curtilage.” *Id.* at 595. The Court stressed that it has repeatedly “declined” to do what the panel did here: “expand the scope of other exceptions to the warrant requirement to permit warrantless entry into the home.” *Id.*

**B. *Terry* seizures cannot occur on a homeowner’s front porch.**

The panel decision is also in deep tension (at a minimum) with *Florida v. Jardines*, 569 U.S. 1 (2013). The panel treated the front porch of the Hayats’ home just like any other “public place” in which officers could make a *Terry* stop based on suspicion alone. Op. 18. But *Jardines* and other cases have firmly established that “the area ‘immediately surrounding and associated with the home,’” known as the “curtilage,” is “part of the home itself for Fourth Amendment purposes.” *Jardines*, 569 U.S. at 6 (quoting *Oliver v. United States*, 466 U.S. 170, 180 (1984)). And “[t]he front porch is the classic exemplar” of the curtilage. *Id.* at 7. Unlike an officer’s authority “on public thoroughfares,” therefore, his authority “is sharply circumscribed when he steps off those thoroughfares and enters the Fourth Amendment’s protected areas,” like a front porch. *Id.* (quotation marks omitted).

By allowing an ostensible *Terry* stop to begin in the home’s protected curtilage and then escalate into the home itself, the panel undermined the rule that “[w]hen a law enforcement officer physically intrudes on the curtilage” without consent, the intrusion “is presumptively unreasonable absent a warrant.” *Collins*, 584 U.S. at 593. Because suspicion alone cannot justify intrusion on the home’s curtilage, an officer lacking probable cause cannot make a warrantless seizure there—much less force his way into the home itself to prevent its owner from leaving the curtilage to take refuge there.

The panel’s cursory citation to *United States v. Santana*, 427 U.S. 38 (1976), does not support its holding. *See* Op. 18. *Santana* permitted a warrantless entry after an individual fled into her home to thwart the completion of “an otherwise proper arrest.” 427 U.S. at 42. But valid arrests require probable cause, a standard that reflects “the accumulated wisdom of precedent and experience as to the *minimum justification necessary* to make the kind of intrusion involved in an arrest ‘reasonable.’” *Dunaway*, 442 U.S. at 208 (emphasis added). Allowing officers to enter homes to complete an arrest backed by probable cause, as in *Santana*, does not imply that they may do so based only on reasonable suspicion—a diluted standard fashioned for “brief, investigative street stops.” *Case*, 607 U.S. at 116.

Moreover, the Supreme Court has rejected the type of “broad understanding of *Santana*” reflected in the panel decision, treating that case as relevant only to

hot pursuit—not as an invitation to allow new kinds of warrantless arrests within the home’s protected surroundings. *See Lange v. California*, 594 U.S. 295, 303-04 (2021); *Missouri v. McNeely*, 569 U.S. 141, 149 (2013); *Kentucky v. King*, 563 U.S. 452, 460 (2011); *Stuart*, 547 U.S. at 403 (2006) (all citing *Santana* only for the “hot pursuit” exception). In *Lange*, for example, the Court rejected the notion that *Santana* provides a “flat rule permitting warrantless home entry when police officers (with probable cause) are pursuing any suspect.” 594 U.S. at 304. While acknowledging that *Santana* spoke “in broad[] terms,” the Court rejected a mechanical extension of its holding beyond the facts involved. *Id.* at 304-05. The panel made precisely that mistake: by overreading *Santana*’s conclusion that officers who “concededly had probable cause” could arrest a suspect at the threshold of her home, 427 U.S. at 42, the panel greatly expanded the scope of a previously narrow warrant exception.

**C. The panel’s mistakes have made the Fourth Circuit an outlier.**

As described above, the Supreme Court has consistently rejected efforts to convert outside-the-home warrant exceptions into new licenses for forcible home entry. Because the panel decision is flatly inconsistent with that precedent, rehearing is essential.

Rehearing is also merited because the panel split from other circuits on the question of whether a *Terry* seizure may take place in the home’s protected

curtilage, making this Court the lone circuit embracing a rule that at least four others have rejected. Every other circuit to reach the question has prohibited *Terry* seizures in the curtilage. See *United States v. Alexander*, 888 F.3d 628, 637 (2d Cir. 2018); *United States v. Banks*, 60 F.4th 386, 390 (7th Cir. 2023); *United States v. Perea-Rey*, 680 F.3d 1179, 1188-89 (9th Cir. 2012); *Moore v. Pederson*, 806 F.3d 1036, 1045 (11th Cir. 2015) (no *Terry* stop in the home); *O’Kelley v. Craig*, 781 F. App’x 888, 894 (11th Cir. 2019) (applying *Moore* to the curtilage). This Circuit alone has given a green light to these seizures, and has exacerbated that mistake by permitting them to proceed into the home itself.<sup>2</sup>

The circuits on the other side of this split rightly hold that reasonable suspicion alone can never justify seizing a person on their own front porch, just as it could never justify entering their home for that purpose. As discussed above, “the notion that reasonable suspicion might permit intrusions into curtilage that would not be justified inside the home is foreclosed by governing precedent.” *Alexander*, 888 F.3d at 637 (citing, *inter alia*, *Jardines*, 569 U.S. at 6). And holdings like the panel’s that allow such intrusions “impermissibly expand

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<sup>2</sup> The Seventh Circuit previously appeared to allow *Terry* searches of the curtilage, see *United States v. Richmond*, 924 F.3d 404, 413-14 (7th Cir. 2019), but has since clarified that the officers’ actions in that case rested on consent, not *Terry* authority, see *Banks*, 60 F.4th at 390; see also *Robinson v. City of Milwaukee*, No. 24-264, 2026 WL 836940, at \*9 (E.D. Wis. Mar. 26, 2026).

exceptions to the warrant requirement,” *Banks*, 60 F.4th at 390, leading those exceptions to “swallow the rule that the curtilage is the home,” *Perea-Rey*, 680 F.3d at 1189.

The panel departed from this well-reasoned consensus rejecting *Terry* seizures on the curtilage. That provides an independent reason to reconsider the panel’s ruling, which not only permits such seizures but dramatically heightens their harms by allowing them to justify invasion of the home’s interior.

## **II. Warrantless Entry Based on Reasonable Suspicion Alone Is at Odds with the Common Law Safeguards that the Fourth Amendment Was Meant to Preserve.**

“[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” *Welsh v. Wisconsin*, 466 U.S. 740, 748 (1984) (quotation marks omitted). That emphasis traces back to the robust protections for the home secured by Founding-era common law, which the Amendment was designed to preserve. The common law sharply limited home entry to make arrests or provide aid, and it never permitted such entry based on mere suspicion.

Courts adjudicating Fourth Amendment challenges should “inquire first whether the action was regarded as an unlawful search or seizure under the common law.” *Wyoming v. Houghton*, 526 U.S. 295, 299 (1999); accord *Virginia v. Moore*, 553 U.S. 164, 168 (2008) (“In determining whether a search or seizure is unreasonable, we begin with history.”). Because the common law is “instructive in

determining what sorts of searches the Framers of the Fourth Amendment regarded as reasonable,” *Steagald v. United States*, 451 U.S. 204, 217 (1981), courts “are guided by the traditional protections against unreasonable searches and seizures afforded by the common law,” *Atwater v. City of Lago Vista*, 532 U.S. 318, 326 (2001) (quotation marks omitted). In particular, the Supreme Court has “long recognized the relevance of the common law’s special regard for the home to the development of Fourth Amendment jurisprudence.” *Payton v. New York*, 445 U.S. 573, 597 n.45 (1980); *see, e.g., Lange*, 594 U.S. at 309 (construing home-entry authority by reference to common law rules); *Wilson v. Arkansas*, 514 U.S. 927, 929 (1995) (same).

“From earliest days, the common law drastically limited the authority of law officers to break the door of a house to effect an arrest.” *Miller v. United States*, 357 U.S. 301, 306-07 (1958); *see Lange*, 594 U.S. at 309 (“Like our modern precedents, the common law afforded the home strong protection from government intrusion.”). Warrants generally were required “before a government official could enter a house,” *id.* at 310, “[f]or every man’s house [was] looked upon by the law to be his castle of defense and asylum,” 3 William Blackstone, *Commentaries on the Laws of England* 288 (1768).

While exceptions to the warrant requirement existed for a few narrowly defined exigencies, none allowed entry based on suspicion alone. Officers could

forcibly enter homes only to arrest felons, recapture escaped arrestees, or stop violent affrays. *See Lange*, 594 U.S. at 311-13. And each exception required officers to have probable cause (indeed, near-certainty) that immediate entry was essential—a standard far higher than the bare reasonable suspicion the panel accepted here.

If a felon took refuge in a home, officers could “break open doors to take the felon.” 2 Matthew Hale, *The History of the Pleas of the Crown* 90 (1736). But warrantless entry required both that a felony was “in fact done” and that there were “probable grounds” to believe the arrestee was the culprit. *Id.* at 91-92; *accord* 4 Blackstone, *supra*, at 289 (1769) (requiring both a “felony actually committed” and “probable suspicion” of a particular person); 1 Edward Hyde East, *A Treatise of the Pleas of the Crown* 322 (1803) (requiring a felony “actually committed” and a “reasonable ground of suspicion”); 2 William Hawkins, *A Treatise of the Pleas of the Crown* 139 (6th ed. 1787) (requiring even more strictly that the arrestee was “known to have committed” a felony).

The same high standards governed entry to recapture arrestees. *See* Hawkins, *supra*, at 139 (permitting warrantless entry for recapture but not on mere suspicion). Officers who believed a home harbored a fugitive received no legal protection if they turned out to be wrong. Instead, mistaken officers were liable for trespass, despite reasonably believing an escapee had been present. *See* East,

*supra*, at 324 (“[W]here the doors of strangers are broken open upon supposition of the person sought being there, it must be at the peril of finding him there.”). This rule effectively imposed a test of *certainty* even higher than probable cause.

So too when an officer entered a home to prevent violence. If there were “likely to be manslaughter or bloodshed committed” during “an affray in a house,” officers could enter “to keep the peace and prevent the danger.” Hale, *supra*, at 95. But the standard for these entries was certainty (not reasonable suspicion), confirmed by an officer’s own senses (not tips). Entry was permitted only when an “affray [was] made in a house *in the view or hearing of a constable*.” Hawkins, *supra*, at 139 (emphasis added); accord 1 Joseph Chitty, *A Practical Treatise on the Criminal Law* 35 (1819); Richard Burn, *The Justice of the Peace, and Parish Officer* 9 (5th ed. 1758). Mere suspicion of imminent violence, reasonable or not, was inadequate.

In sum, under the common law that informs the Fourth Amendment’s meaning, officers could not forcibly enter homes with only suspicion of a crime or an emergency. The panel decision is just as contrary to these Founding-era safeguards as it is to modern precedent.

## CONCLUSION

For the foregoing reasons, the petition for rehearing should be granted.

Respectfully submitted,

Dated: October 13, 2026

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(b)(4) because it contains 2,587 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that the attached *amicus curiae* brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Times New Roman font.

Executed this 13th day of October, 2026.

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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system on October 13, 2026.

I certify that all parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Executed this 13th day of October, 2026.

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