No. 17-1320

IN THE

Supreme Court of the United States

SEAN GARVIN,

Petitioner,

v.

NEW YORK,

Respondent.

On Petition for a Writ of Certiorari to the New York Court of Appeals

BRIEF OF *AMICI CURIAE* ARIZONA ATTORNEYS FOR CRIMINAL JUSTICE, BROOKLYN DEFENDER SERVICES, CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE, THE FLORIDA ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND THE NEW MEXICO CRIMINAL DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Does the Fourth Amendment allow a police officer who lacks an arrest warrant to arrest a person standing inside the doorway of his home?

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INTEREST OF AMICI CURIAE[1]

Amici are five non-profit, voluntary professional bar associations working to ensure justice and due process for those accused of crime or misconduct. Four *amici* — Arizona Attorneys for Criminal Justice, California Attorneys for Criminal Justice, the Florida Association of Criminal Defense Lawyers, and the New Mexico Criminal Defense Lawyers Association — are state affiliates of the National Association of Criminal Defense Lawyers. They represent the criminal defense bars in some of this country's largest, fastest-growing, and most ethnically and culturally diverse States. The remaining *amicus* — Brooklyn Defender Services — provides criminal defense services to thousands of low-income people in Brooklyn, New York each year. All five *amici* have a common purpose of protecting the constitutional rights of all persons, including those facing criminal charges.

Amici file this brief in support of certiorari on the first question presented in this case.[2] *Amici*'s members are well acquainted with that question: Do law enforcement officers need a warrant to arrest a

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[1] Pursuant to Supreme Court Rule 37.2, *amici* have timely notified the parties of their intent to file an *amicus curiae* brief. The parties have consented. No part of this brief was authored, in whole or in part, by counsel for any party, and no person or entity has made any monetary contribution to the preparation or submission of the brief other than *amici curiae* and their counsel.

[2] *Amici* take no position on whether the second question merits a grant of certiorari at this time.

suspect who stands at the door of his home but who remains inside? In the places served by *amici* and their members, federal or state courts have held that the answer is no. As a result, each year, *amici*'s members represent many persons charged with crimes who are the subjects of such "doorway arrests."

Amici's members regularly address the constitutional validity of doorway arrests through the procedures in their States' courts, as well as in federal courts. They have a direct understanding of how those arrests affect police practices and comport with private citizens' understanding of their Fourth Amendment rights. And they have seen disputes concerning these policing practices play out in trial courts and on appeal. For all these reasons, *amici*'s members have particular expertise and interest in the Fourth Amendment issue presented here, and their views may be of considerable benefit to the Court as it considers the Petition.

SUMMARY OF ARGUMENT

Where this Court can state a Fourth Amendment rule with clarity, consistent with the Constitution's text and with the privacy and other interests underlying the Fourth Amendment, it should do so. Clear rules, producing predictable outcomes, consistent with the text, function, and interests underlying the Fourth Amendment, are useful and beneficial. Clarity in the statement of a constitutional principle, and adherence to such statements of principle by law enforcement personnel and the courts, promotes respect for law, respect for the courts, and respect for the

Constitution itself. Stating a legal rule or principle in a way that the citizenry — those accused of crimes, and those not accused — can understand and embrace furthers the rule of law.

That necessary clarity is lacking now. The decision below compounds an already unacceptable level of uncertainty over whether the Fourth Amendment's protection of the home is real or illusory. This case will allow this Court to dispel that uncertainty and replace it with a clear Fourth Amendment rule.

The straightforward rule described in *Payton v, New York,* 445 U.S. 573 (1980), requiring a warrant to enter a home for either a search or an arrest, is easily understood and embraced — by courts, by law enforcement, and by citizens. It resonates with our fundamental understanding that the home is sacrosanct, protected space. It mirrors the Fourth Amendment's text. If a citizen is inside his or her home, that citizen enjoys the security of that home, except upon an exigency, or on the authority of a warrant issued on proper justification. Outside the home, a warrant is usually not required. The home makes the difference. Whether the person is in her home or outside it makes a difference.

The decision below, and others like it, positing a threshold or doorway exception to *Payton*'s view of the home as protected space, blurs the "firm line" established by *Payton*. It does so metaphorically, literally, and as a matter of principle. The notion of some marginal space that is neither inside nor outside the home — a "threshold" where one is treated as if outside the home, even though one is

inside it — rests on an unstable conceptual foundation and is neither helpful nor necessary to the proper application of the Fourth Amendment. The opening of a household door, and the fortuity of who in the household answers when the police knock, should not determine whether it is permissible to arrest someone inside the home without a warrant. Nor should the necessity for a warrant revolve around whether the front door has a peephole, a screen, a camera, or is set up as a Dutch door. The sanctity of the home ought not turn on whether one is answering the door or speaking through an opened window. Consistent with this Court's precedents, a warrant is required to arrest a person within the sanctity of his home.

Clarity is not achievable in every Fourth Amendment context. It should, however, be achievable here. Moreover, the reaffirmation of *Payton*'s principles and the adoption of a simple "in or out" rule will best reflect the constitutional text, this Court's precedents, and the considerations that support those precedents. It will provide a workable and understandable rule that both officers of the law and ordinary citizens can apply and embrace.

ARGUMENT

I. THE LACK OF CLARITY IN CURRENT LAW IS EVIDENT FROM THE CONFLICT IN THE COURTS ON THE FIRST QUESTION PRESENTED.

As demonstrated in the Petition, state and federal courts are deeply divided over the constitutionality of warrantless doorway arrests. *See* Pet. 11–18. The split is entrenched and mature.

Because the arguments on both sides are well-developed, there is nothing to be gained from further postponing the Court's resolution of the issue. That the sources of the confusion over the existence of a "threshold exception" are other decisions of this Court makes it especially appropriate that the Court take this case to settle the question.

The split of authority is especially troubling in States like New York and Washington, where federal courts are on one side and state courts are on the other. *Compare People v. Garvin*, 88 N.E.3d 319 (N.Y. 2017) (holding that doorway arrests do not require a warrant), *and United States v. Vaneaton*, 49 F.3d 1423 (9th Cir. 1995) (same), *with United States v. Allen*, 813 F.3d 76 (2d Cir. 2016) (holding that doorway arrests require a warrant), *and State v. Holeman*, 693 P.2d 89 (Wash. 1985) (same). In those States, because of the split, state and federal officers operate under different Fourth Amendment strictures. And the outcome of a variety of Fourth Amendment challenges will turn on whether a defendant is charged federally or at the state level. How the police are to proceed in the moment, with the person of interest at the door, may turn on whether the charges will ultimately be prosecuted federally or at the state level. Those predictions cannot always be made with accuracy while standing at that doorway.

Consider the plight of the average citizen, securely at home, trying to decide whether to answer the police officer's knock at the door. An innocent man, sitting in his home, knowing he may be suspected of a crime, and hearing the police knock, must decide whether to come to the door. Perhaps he

would like to do so, to answer questions or to persuade the officer of his innocence. The police also might want him simply to answer some questions, face-to-face, at the door before reaching a conclusion about whether an arrest is merited. Yet in some States he cannot do so without risking immediate arrest upon opening that door.

This Court should grant certiorari to resolve the conflict and provide a consistent rule that law enforcement officers can follow and citizens can understand. *See New York v. Belton*, 453 U.S. 454, 458 (1981) (explaining that Fourth Amendment rules "ought to be expressed in terms that are readily applicable by the police in the context of the law enforcement activities in which they are necessarily engaged").

II. THE DECISION BELOW, AND THOSE LIKE IT, UNDERMINE *PAYTON* AND REST ON AN UNSTABLE FOUNDATION.

This Court's Fourth Amendment precedents "have given great weight to the essential interest in readily administrable rules." *Virginia v. Moore*, 553 U.S. 164, 175 (2008) (quotation marks omitted). Such rules make it possible for police, lawyers, courts, and citizens to understand and apply the Fourth Amendment in a way that is consistent and predictable. *See Atwater v. City of Lago Vista*, 532 U.S. 318, 347 (2001) (noting imperative of "draw[ing] standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made").

This Court has said that "the Fourth Amendment has drawn *a firm line* at the entrance to the house." *Payton*, 445 U.S. at 590 (emphasis added). It is a firm line that echoes the text of the Amendment and its explicit statement that people are entitled to be "secure in their … houses." U.S. Const. amend. IV. It is also a rule that reflects this Court's expressed "strong preference for warrants." *United States v. Leon*, 468 U.S. 897, 914 (1984).

The decision below blurs that firm line and replaces it with a rule that subverts the Fourth Amendment's warrant requirement and the significance of the home as a place of personal sanctuary, all based on a confusing rationale that only a law professor could love.

The desirability of a clear line is particularly plain with respect to the home, an explicit Fourth Amendment concern and "first among equals" in the pantheon of Fourth Amendment protection. *Florida v. Jardines*, 569 U.S. 1, 6 (2013). The public, too, understands the home as a special place of protection. *See Georgia v. Randolph*, 547 U.S. 103, 115 (2006) ("Since we hold to the centuries-old principle of respect for the privacy of the home, it is beyond dispute that the home is entitled to special protection as the center of the private lives of our people.") (quotation marks and citations omitted). But to enjoy the home's unique constitutional protections, citizens must be able to know what those protections are.

The foundations for a doorway exception of the kind endorsed by the court below are anything but strong. Such an exception substitutes for the

simple "in or out" rule the vague concept of a marginal space that is neither quite in nor quite out, where supposedly lessened expectations of privacy ostensibly result in a stark change in the level of constitutional protection afforded. Although the reference point is the "threshold," what this means in practice is that if a person answers the door by opening it, that person is subject to warrantless arrest; but if that person instead talks through the closed door, or over the intercom, or sends someone else to open the door, he is not subject to arrest.

The rationale can only be that, by answering, the occupant sheds the protection of his home because his expectation of privacy has been diminished. Nothing about that rationale, however, is limited to open doorways. If law enforcement officers may make a warrantless arrest of a person standing in the doorway, what rule applies to the person standing in the doorway behind a closed screen door? The officer and the person can see each other just as plainly as if there were no screen door. Is it constitutionally significant if, instead of a screen door, the door is glass? Or what if the suspect is behind a Dutch door with the top half open? Or what if, instead of opening her door, she opens a large window abutting the stoop where the officers stand? The text of the Fourth Amendment nowhere suggests that its protections should turn on such trivial distinctions.

The rule from the decision below would also yield absurd results. If a crucial piece of evidence is sitting on a table just inside the doorway to a home, law enforcement officers ordinarily may not seize it without a warrant (absent an exigency). That is so

even if an occupant of the home opens the door to the officers, so that they stand mere inches from the exposed piece of evidence. According to the decision below, though, a person standing in the exact same doorway, next to the exact same piece of evidence, may be seized without a warrant, even as the piece of evidence remains off limits. No reasonable reading of the Fourth Amendment would authorize an outcome that privileges a piece of evidence over a person.

Certainly nothing in the Fourth Amendment's text compels, or even allows for, such distinctions. It speaks of "the right of the people to be secure in their … houses"; there is no exception for entryways, doorways, open windows, screen doors, or any other part of what is commonly understood to be one's "house." "In or out" follows from the Fourth Amendment's text because it is binary: one can be in one's house or out of it. "On the threshold" does not follow, because a person "on the threshold" is still in her house so long as she has not stepped outside.

III. THIS COURT SHOULD GRANT CERTIORARI TO BRING CLARITY TO THIS AREA OF LAW; AN "IN OR OUT" RULE WOULD BENEFIT ALL CONCERNED.

Granting certiorari will, of course, resolve the conflict in the state and federal courts over this issue. Although the conflict among and between many states and federal courts on this issue is already well-developed, there are jurisdictions in which the issue has not yet been resolved definitively, even at a local level. Resolution of the

issue at this time would aid everyone in those jurisdictions.

But stating a clear rule of law on the basic issue presented here would also provide broader benefits, particularly if that rule takes the form of a clear reaffirmation of the "firm line" drawn at the entrance to the house by *Payton*. As described above, a clear "in or out" rule — if found to be supported by the Fourth Amendment, as it should be — is easily administered by the courts. It rests on a fact issue of the kind courts readily address. It can be readily understood by police officers. And, as suggested above, it is a rule that follows the text of the Fourth Amendment and can be understood and embraced by citizens. Indeed, it is a rule that in common understanding is likely already embraced and understood by citizens. *See Randolph*, 547 U.S. at 115 ("We have, after all, lived our whole national history with an understanding of the ancient adage that a man's house is his castle to the point that the poorest man may in his cottage bid defiance to all the forces of the Crown.") (brackets and quotation marks omitted).

It could be argued that a clear statement by this Court that there is, in fact, a threshold or doorway exception to the "in or out" requirement might itself provide beneficial clarity — and would likewise resolve the conflict among and between the state and federal courts on this issue. That is true to an extent, and to the extent it is true, it further supports a decision to grant certiorari to clear up the answer to this question.

But endorsement of a doorway exception is not likely to produce stability and predictability in the law, let alone contribute usefully to any lay understanding of the Fourth Amendment. As described above, the theoretical foundations for a threshold or doorway exception to the protections ordinarily afforded a person in his own house are amorphous. And once exceptions are allowed, there will invariably be reasons to expand those exceptions. A "doorway" or "threshold" exception, particularly one based on visibility, is easily expanded to an open window exception, or a screen door exception, or a glass door exception, or a "near the threshold" exception. Such an exception, resting on a diminished expectation of privacy from answering the door and showing oneself to the visitor, leads most readily to a wide range of law school hypotheticals, rather than a coherent rule of law. Unless there is a sound constitutional reason to create an exception, courts are better served by a clear, more-easily administered "in or out" rule.

Law enforcement is also better served by having a clearly stated rule. *See Atwater*, 532 U.S. at 347 (crediting governments with "an essential interest in readily administrable rules"). On this point too, a doorway exception provides no obvious benefit.

The court below suggested otherwise, asserting that there was benefit in a threshold exception as a means of relieving police officers of the burden of obtaining arrest warrants in advance. See App. 15a, (quoting 3 Wayne R. LaFave, *Search and Seizure* § 6.1(e) (5th ed. 2012)) ("[T]he police are quite properly relieved from having to obtain arrest

warrants in a large number of cases in advance, and the warrant process is thereby not overtaxed ….”). In fact, law enforcement training materials routinely remind officers of the exception for doorway arrests.[3] But “the mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment.” *Mincey v. Arizona*, 437 U.S. 385, 393 (1978). And, in *amici*’s collective experience, law enforcement officers are well aware of other existing exceptions to the warrant requirement outside the home and know how to take advantage of them.

The notion that a doorway exception to the warrant requirement will provide a significant benefit to law enforcement rests on the police officer’s gamble that knocking on the door will result in the suspect opening the door — as opposed to the suspect asking “who is there” through the door, or sending someone else to answer the door. It assumes that the door does not have a peephole, or that the suspect does not have a video doorbell — now ubiquitous in many communities — that allows him to see who is knocking at the door by glancing at his television or looking at his smartphone, and to

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[3] *See, e.g.*, Robert C. Phillips, San Diego District Attorney’s Office, *The Fourth Amendment and Search & Seizure: An Update* 160 (10th ed. 2010), *available at* http://www.sdsheriff.net/legalupdates/docs/search2010.pdf; John W. Bizzack, Kentucky Department of Criminal Justice Training, *Search and Seizure Casebook* 66 (2009), *available at* https://docjt.ky.gov/legal/documents/CasebookSS-0709090827.pdf.

converse with someone at the door by using the smartphone.[4]

Nothing about strict adherence to an "in or out" rule would preclude police officers from coming to the suspect's home without a warrant or change the legal standard under which courts evaluate a police officer's request that an occupant of a home step outside, or that the occupant accompany the officer to the station house. What the "in or out" approach does is take away the possibility that a person will naively surrender an important right — the right to have a neutral magistrate determine probable cause — by the simple act of answering the door.

This Court has been skeptical in the past about assertions that vigorous Fourth Amendment protections for the home would interfere with law enforcement. *See Payton*, 445 U.S. at 602. Such skepticism is even more justified today, when officers can use smartphones to obtain telephonic or email warrants in minutes, all without leaving a suspect's door. *See Missouri v. McNeely*, 569 U.S. 141, 154–55 (2013) (discussing technological advances in warrant application process); *id.* at 172–73 (Roberts, C.J., concurring in part and dissenting

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[4] Of course, other considerations may perversely influence the decision whether to obtain an arrest warrant. In New York, where this case originated, the right to counsel attaches as soon as an arrest warrant issues. *See People v. Jones*, 810 N.E.2d 415, 419 (N.Y. 2004). Thus, police officers seeking to circumvent the right to counsel may find it expedient to try for a doorway arrest, rather than obtain a warrant.

in part) (same). Far from hamstringing law enforcement officers, a clear, "in or out" rule would give everyone involved in an arrest — including the officers — a manageable and textually-supported standard for applying the Fourth Amendment in a consistent and predictable way.

Indeed, the court below also appears to have overlooked the practical harms flowing from a rule allowing warrantless doorway arrests. If citizens forfeit important constitutional rights simply by opening the door to law enforcement officers, the obvious thing to do is to not open the door when law enforcement officers knock. No one, least of all law enforcement officers, benefits from a rule that discourages citizens from interacting with law enforcement personnel.

CONCLUSION

This Court should grant the petition for certiorari, at a minimum on the first question presented.

Respectfully submitted,

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