No. 16-___

IN THE

Supreme Court of the United States

CHARLES V. MATALONIS,

*Petitioner,*

V.

STATE OF WISCONSIN,

*Respondent.*

On Petition For Writ Of Certiorari
to the Wisconsin Supreme Court

# PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

This Court established the community caretaking exception for automobile searches in *Cady v. Dombrowski*, 413 U.S. 433 (1973). Since then, the federal courts of appeals have split over whether the community caretaking exception extends to warrantless searches of homes. The Third, Seventh, Ninth, and Tenth Circuits have held that the community caretaking exception does not permit warrantless searches of homes. The Eighth and Sixth Circuits have held that the community caretaking exception does permit warrantless searches of homes. The Wisconsin Supreme Court has applied the community caretaking exception to uphold warrantless searches of homes—including Matalonis' home.

The question presented is whether the community caretaking exception permits a warrantless search of a home under the Fourth Amendment?

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles V. Matalonis, respectfully petitions for a writ of certiorari to the Wisconsin Supreme Court in *State of Wisconsin v. Matalonis*, 2014 AP 108 – CR.

## OPINIONS BELOW

The opinion of the Wisconsin Supreme Court is published at 2016 WI 7, 366 Wis. 2d 443, 875 N.W.2d 567. The opinion of the Wisconsin Court of Appeals is unpublished but available at Wisconsin's Public Domain 2015 WI App 13U, 359 Wis. 2d 675, 859 N.W.2d 628. The Kenosha County Circuit Court's bench decision denying Matalonis' motion to suppress evidence is not published, nor is the same court's judgment of conviction.

## JURISDICTION

The Wisconsin Supreme Court entered judgment on February 16, 2016. Matalonis filed a timely motion for reconsideration, which the court denied on April 12, 2016. This court has jurisdiction pursuant to 28 U.S.C. § 1257. Additionally, *Stone v. Powell*, 428 U.S. 465 (1976), precludes federal habeas consideration of Matalonis' question presented.

## RELEVANT CONSTITUTIONAL PROVISION

In its entirety, the Fourth Amendment reads:

> "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

### A. Matalonis' motion to suppress and evidentiary hearing.

Petitioner, Charles Matalonis, moved to suppress evidence seized during a warrantless, non-consented search of his home—a single marijuana plant. Three witnesses testified at the trial court motion hearing—Officers Brian Ruha and David Yandel, as well as Matalonis.

Prior to searching Matalonis' home, Officers Ruha and Yandel had responded to a "med call" at a different, nearby residence. They encountered Matalonis' brother, Antony, who appeared intoxicated as well as battered and bloodied. Antony stated that four people or groups of people beat him up outside of

a bar. The responding rescue squad took Antony to the hospital.

After meeting with Antony, the officers followed a blood trial on the snow to Matlonis' nearby home. Upon arriving at Matalonis' home, the officers observed blood on the side door and heard bangs or noises coming from inside. Yandel admitted that the noises inside the house sounded like "things being shuffled around in the house." They called for backup and then proceeded to the front door of the home.

The officers knocked on the front door, and Matalonis opened it. Matalonis informed the officers that he had fought his brother, Antony, who had left the home. Specifically, Matalonis stated, "Yeah, my brother left already. It was just me and my brother fighting. I just had to do what I had to do to defend myself but he's gone now . . . ." Although Matalonis was "out of breath," he did not appear injured. The officers insisted they enter the home over Matalonis' objections "to make sure no one was injured." Matalonis had been cleaning up—the officers acknowledged seeing a bucket and mop in the home. The officers could see blood on the floor of the foyer and inside the home. Instead of allowing Matalonis to continue cleaning, the officers entered the residence and ordered Matalonis to remain on the couch in the living room. They did not handcuff him or advise him he was "under arrest."

While Officer Yandel stayed next to Matalonis, Officer Ruha conducted a warrantless search of the home, "to make sure that no one else was inside the

house or even injured in the house that needed medical attention." Both Ruha and Yandel acknowledged that the only reported injured person was Matalonis' brother, Antony, who they knew was not inside the house. When pressed on his "concerns regarding people possibly in the home," Ruha responded, "I don't know if anyone is injured inside the house or if there's an aggressor in the house. We have no idea." Neither Yandel nor Ruha testified that Matalonis consented to them conducting the search of the home.

Ruha began by searching the main floor of Matalonis' home. He located "a couple drops of blood" in the living room, kitchen, and the stairs to the second floor. A tenant living in the basement-level of the home came up and spoke with the officers, but the tenant was uninjured and required no attention or assistance. Ruha located no other persons, injured or otherwise, on the main floor of Matalonis' home.

Next, Ruha headed to the stairway to search the upstairs living area of Matalonis' home. Ruha testified that he observed some blood on the stairs' handrail as well as on the upstairs wall, a broken mirror, and two little drops of blood on a locked door. Here too, Ruha did not locate anyone in the upstairs living area or the bathroom, nor did he hear any noises or cries for help. When Ruha approached the locked door, he "could not hear anyone inside, but . . . did smell a strong odor of marijuana coming through the door and . . . heard a fan running." Ruha admitted he had no information that anybody was "bleeding out" behind the locked door. Ruha's search took him about ten to fifteen minutes. Moreover, Ruha recognized

that two drops of blood on the door was "the least amount of blood anywhere in the house."

Rather than immediately force open the locked door, Ruha returned downstairs to confront Matalonis about what was inside the room. Ruha threatened Matalonis to either provide him the key to the locked door or they would "kick the door in." Matalonis told Ruha that the room was full of security cameras for his house, but Ruha insisted that he either provide the key or they would "kick in the door." Matalonis did not consent to Ruha entering the room, but Ruha eventually found the key and entered the locked room.

When Officer Ruha entered the locked room, he did not locate any persons, injured or otherwise. Instead, Ruha unsurprisingly located the source of the marijuana odor coming within the locked room: "a large marijuana plant." Ruha had noted that he observed other drug paraphernalia on the second-floor living room area, such as pipes, smoking utensils, and a water bong. When Ruha finished searching the now-unlocked room, he returned to further interview Matalonis about the altercation with his brother Antony. Ruha attempted to obtain a search warrant only after they entered the locked upstairs room. *The search warrant was denied.*

### B. Wisconsin courts' decisions regarding Matalonis' motion to suppress.

After listening to the witnesses' testimony and parties' arguments, the trial court denied Matalonis' motion to suppress. The range of "issues" could justify

the officers' search of Matalonis' home: consent, community caretaking, hot pursuit, and emergency pursuit. The court summarized its reasoning as follows:

> So there's a legitimate concern as a community caretaker for the safety of citizens who may be injured and bleeding as well as the fresh pursuit concerns here following this blood trail in the snow back to a house that may very well have victims or aggressors in that house, and of particular importance, victims who may be bleeding and in need of emergency care such as Antony was.

The court went on to say that "I think they would have been justified given those circumstances to search for other people who may be bleeding inside that home as the origin of this blood trail."

On appeal,[1] Matalonis argued that neither the community caretaking exception nor the other post-hoc justifications discussed by the circuit court permitted the officers to search his house without a warrant. The Wisconsin Court of Appeals focused the issue to whether the community caretaking exception provided a lawful basis for the officers' search of Matalonis' home. *Matalonis*, 2015 WI App 13U, ¶¶ 1,

[1] Matalonis subsequently entered a no contest plea to delivering/manufacturing fewer than four (one) plants of marijuana, a felony. The court sentenced Matalonis to 18 months' probation. Matalonis filed a timely notice of intent to seek post-conviction relief and a timely notice of appeal.

9-10, 359 Wis. 2d 675, 859 N.W.2d 628. The court of appeals, in deciding whether the officers exercised a "bona fide community caretaker function," held that "the officers did not have an objectively reasonable basis to believe that anyone was injured inside the home." *Id.* ¶¶ 22, 30. Moreover, in balancing the "public interest versus intrusion upon privacy," the court of appeals recognized the lack of exigency or reasonable concern for the welfare of another individual, especially by the time the officers reached the locked, upstairs door, behind which they located the one marijuana plant. *Id.* ¶¶ 31-32. Finally, the court of appeals recognized the "substantial intrusion upon Matalonis' privacy interest in his home." *Id.* ¶¶ 33-36.

The Wisconsin Supreme Court accepted the State's petition for review and adopted the court of appeal's framing of the question presented: "[W]hether a warrantless search by police of Matalonis's home, including, importantly, of a room secured by a locked, blood-spattered door, was reasonable under the Fourth Amendment of the United States Constitution and Article I, § 11 of the Wisconsin Constitution." *State v. Matalonis*, 2016 WI 7, ¶ 2, 366 Wis. 2d 443, 875 N.W.2d 567. The Wisconsin Supreme Court reversed the court of appeals and held that "the officers in this case reasonably exercised a bona fide community caretaker function when they searched Matalonis's home." *Id.* ¶ 3.

The Wisconsin Supreme Court noted that the community caretaking exception derived from *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). *Matalonis*,

2016 WI 7, ¶¶ 30-32, 44, 366 Wis. 2d 443, 875 N.W.2d 567. Further, the court relied upon *Cady* to establish that a "bona fide community caretaker function" could be "directed toward the welfare of unknown individuals." *Id.* ¶ 44. Consequently, the court rejected the court of appeals' approach requiring an "objectively reasonable basis to believe there was a member of the public who was in need of assistance." *Id.* ¶ 48 n. 25 (internal quotations omitted). Additionally, the court deemed irrelevant the officers' "subjective, enforcement-related interests at this time." *Id.* ¶ 54. Ultimately, the court found the following facts established the "bona fide community caretaker function": a blood trail going from where the officers' found Matalonis' brother Antony a few houses away from Matalonis' home, noises heard from outside the home prior to entry, Matalonis' appearance when he first encountered the officers at the front door, the blood observed inside the house, and the inconsistent statements about the physical altercation earlier that evening. ¶ 49 n. 26.

Beyond finding that the officers had a "bona fide community caretaker function," the Wisconsin Supreme Court held that the officers reasonably exercised this function in searching Matalonis' home. The court declared that: "[t]he public has a significant interest in ensuring the safety of a home's occupants when officers cannot ascertain the occupants' physical condition and reasonably conclude that assistance is needed." *Id.* ¶ 59 (citing sources omitted). While the court conceded that the officers' search was non-consensual, during nighttime, and conducted with "considerable" force and authority, the court found that the public interest outweighed Matalonis'

constitutional privacy interest in his home. *Id.* ¶¶ 60-66.

Three Wisconsin Supreme Court justices dissented from the majority opinion, for they contended that "the scope of the community caretaker exception is being substantially expanded in this case, without any compelling justification." *Id.* ¶ 87 (Prosser, J., dissenting). The dissent recognized that no other exception to the Fourth Amendment's warrant requirement applied to permit the officers' search of Matalonis' home. *Id.* ¶¶ 93-95, 111 (Prosser, J., dissenting). The dissenters highlighted that Wisconsin's community caretaking exception has moved (1) from automobiles to locked rooms inside people's homes and (2) to situations where traditional law enforcement concerns predominate. *Id.* ¶ 98 (Prosser, J., dissenting). The dissenters distinguished *Cady v. Dombrowski* from Matalonis' case. *Id.* ¶¶ 103-04, 112 (Prosser, J., dissenting). Ultimately, the dissenters expressed concern that "embrace of a broad, ever-expanding version of the exception risks transforming a shield for evidence encountered incidental to community caretaking into an investigatory sword." *Id.* ¶ 112 (Prosser, J., dissenting).

Matalonis filed a motion for reconsideration because Justice Rebecca Bradley had cast the deciding vote with the majority despite not being a Wisconsin Supreme Court justice at the time when Matalonis' case was argued. Matalonis contended that Justice Bradley should have either refrained from casting a vote or that the court should order a rehearing where

she and the other six justices were present. The court denied Matalonis' motion on April 12, 2016.

*Matalonis v. Wisconsin* provides this Court the opportunity to resolve the Federal Courts of Appeals' split over whether the community caretaking exception permits warrantless searches of homes under the Fourth Amendment. Additionally, because *Stone v. Powell*, 428 U.S. 465 (1976), precludes federal habeas consideration of Fourth Amendment searches and seizures challenges, where states had provided opportunity for full and fair litigation of the claim, the only court that can provide federal review and relief to Matalonis is the Supreme Court of the United States.

## REASONS FOR GRANTING THE WRIT

### I. Matalonis squarely provides this Court an opportunity to resolve the Courts of Appeals split over whether the community caretaking exception extends to warrantless searches of homes.

#### A. *Cady*'s community caretaking exception.

*Cady v. Dombrowski*, 413 U.S. 433 (1973), established the community caretaking exception to the Fourth Amendment warrant requirement. In *Cady*, the Court considered whether a warrantless search of a vehicle for a possible firearm was reasonable under the Fourth Amendment. The Court identified specific "community caretaking functions totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a

criminal statute." *Id*. at 441. The Court held that the following justification was "immediate and constitutionally reasonable": "concern for the safety of the general public who might be endangered if an intruder removed a revolver from the trunk of the vehicle." *Id*. at 447. The Court repeatedly emphasized "[t]he constitutional difference between searches of and seizures from houses and similar structures and from vehicles . . . ." *Id*. at 442. In particular:

> Because of the extensive regulation of motor vehicles and traffic, and also because of the frequency with which a vehicle can become disabled or involved in an accident on public highways, the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office.

*Id*. at 441. The Court ultimately held, "Where, as here, the trunk of an automobile, which the officer reasonably believed to contain a gun, was vulnerable to intrusion by vandals, we hold that the search was not 'unreasonable' within the meaning of the Fourth and Fourteenth Amendments." *Id*. at 448.

The Court has upheld its holding and reasoning from *Cady* in two other cases: *South Dakota v. Opperman*, 428 U.S. 364 (1976), and *Colorado v. Bertine*, 479 U.S. 367 (1987). Both of these cases aligned with *Cady* in upholding warrantless searches of automobiles. Both cases confirmed the distinction between automobiles and homes. *Opperman*, 428 U.S.

at 367; *Bertine*, 479 U.S. at 372. Both cases involved the community caretaking function of "inventorying" property inside a vehicle. *Opperman*, 428 U.S. at 372-73; *Bertine*, 479 U.S. at 372. Since these cases, this Court "has yet to endorse the elimination of the 'totally divorced' standard or the expansion from automobiles to private homes." *See* Gregory T. Helding, *Stop Hammering Fourth Amendment Rights: Reshaping the Community Caretaking Exception With the Physical Intrusion Standard*, 97 Marq. L. Rev. 123, 148, (2013) (citing Wisconsin Justice Ann Walsh Bradley's dissent in *State v. Pinkard*, 2010 WI 81, ¶ 98, 327 Wis. 2d 346, 785 N.W.2d 592).

### B. The Courts of Appeals have split on whether the community caretaking exception extends to warrantless searches of buildings or homes.

Without guidance from this Court, federal Courts of Appeal (as well as state courts) have differed on whether the exception extends to warrantless searches of homes. Four circuits have limited the community caretaking exception to automobile searches—the Third, Seventh, Ninth, and Tenth circuits. Meanwhile, the Sixth and Eighth circuits have extended the exception to warrantless searches of buildings and homes. Finally, the Fourth Circuit has twice confronted the issue but did not clearly resolve the issue.[2]

[2] *See Phillips v. Peddle*, 7 F. App'x 175, 176-77 (4th Cir. 2001); *Hunsberger v. Wood*, 570 F.3d 546, 554 (4th Cir. 2009).

The majority of circuits agree that the community caretaking exception does not extend to permit warrantless searches of homes. The Seventh Circuit was the first to confront the question in *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982). The *Pichany* court asked "whether the 'community caretaking' exception to the Fourth Amendment warrant requirement first established in *Cady v. Dombrowski*, 413 U.S. 433, and previously applied only to automobiles extends to the search of an unlocked warehouse during a burglary investigation." *Id*. at 205. As no other grounds permitting the search were raised on appeal, the *Pichany* court provided a detailed analysis of *Cady* and its community caretaking exception before refusing to extend it beyond automobiles. Specifically:

> Consequently, the plain import from the language of the *Cady* decision is that the Supreme Court did not intend to create a broad exception to the Fourth Amendment warrant requirement to apply whenever the police are acting in an "investigative," rather than a "criminal" function. *Cady*, 413 U.S. at 453 (Brennan, J., dissenting). The Court intended to confine the holding to the automobile exception and to foreclose an expansive construction of the decision allowing warrantless searches of private homes or businesses. The defendant has cited-and we have found-no cases extending *Cady* or the "community caretaking" exception beyond the automobile search context. We cannot

> justify adding a warehouse exception to the automobile exception.

*Pichany*, 687 F.2d at 208-09.

The Ninth Circuit was the next circuit to confront the question of whether the community caretaking exception extended to homes in *United States v. Erickson*, 991 F.2d 529 (9th Cir. 1993). The *Erickson* court asked "whether the probable cause and warrant requirement of the Fourth Amendment apply when a police officer pulls back a plastic sheet covering a window and looks inside a basement during a burglary investigation." Again, the Government did not raise any alternative grounds justifying the officers' actions other than "performing one of his 'community caretaking functions.'" *Id.* at 531. The Ninth Circuit joined the Seventh Circuit, holding:

> The fact that a police officer is performing a community caretaking function, however, cannot itself justify a warrantless search of a private residence. In determining whether a search is reasonable within the meaning of the Fourth Amendment, the governmental interest motivating the search must be balanced against the intrusion on the individual's Fourth Amendment interests. *Maryland v. Buie*, 494 U.S. 325, 331 (1990). 'Under this test, a search of the house or office is generally not reasonable without a warrant issued on probable cause.' *Id.*

*Erickson*, 991 F.2d at 531. Again, the *Erickson* court recognized "the 'constitutional difference' between searching a house and searching an automobile. *Id.* at 532. Even though the Government did not raise an "exigent circumstances" argument, the *Erickson* court distinguished that such cases involve police confronting criminal activity in-progress, rather than after-the-fact. *Id.* at 533.

The Tenth Circuit next rejected extending the community caretaking exception to homes in *United States v. Bute*, 43 F.3d 531 (10th Cir. 1994). The *Bute* court considered whether the community caretaking exception where an officer suspects a building had been either burgled or vandalized. *Id.* at 533. The *Bute* court rejected the lower court's notion that mere "reasonableness" could justify a warrantless search under the Fourth Amendment. *Id.* at 534. The *Bute* court also rejected the notion that either the protection of property (i.e. a "security check") or the emergency doctrine applied here. Id. at 535-40. Most importantly, the *Bute* court held: "[T]he principle of *Cady* is inapplicable here." *Id.* at 535. The court thus followed both the Seventh and Ninth Circuits' decisions restricting the community caretaking exception to automobile searches. *Id.*

Despite these decisions, the Sixth and Eighth Circuits have taken the opposite position and extended the community caretaking exception to uphold warrantless searches of homes. The Sixth Circuit was the first court of appeals to extend the community caretaking exception to homes in *United*

*States v. Rohrig*, 98 F.3d 1506 (6th Cir. 1996).[3] The *Rohrig* court asked "whether police officers violated the Fourth Amendment by entering a private home without a warrant in the early hours of the morning in response to a neighbor's complaint about loud music emanating from that home." *Id.* at 1509. The *Rohrig* court applied a "standard of reasonableness" to answer the question. *Id.* Moreover, the *Rohrig* court blended together community caretaking functions and exigent circumstances to hold that "the governmental interest in immediately abating an ongoing nuisance by quelling loud and disruptive noise in a residential neighborhood is sufficiently compelling to justify warrantless intrusions under some circumstances." *Id.* at 1521-22. Notably, *Rohrig* does not confront the Seventh, Ninth, or Tenth circuits' decisions limiting the community caretaking exception to automobiles.

The Eighth Circuit, blending emergency aid and community caretaking, followed the Third Circuit in extending the community caretaking exception to homes in *United States v. Quezada*, 448 F.3d 1005 (8th Cir. 2006). The *Quezada* court distinguished between "the standards that apply when an officer makes a warrantless entry when acting as a so-called community caretaker and when he or she makes a warrantless entry to investigate a crime." *Id.* at 1007. The *Quezada* court recognized that responding to

[3] The Wisconsin Supreme Court cited *Rohrig* in its earlier decision extending the community caretaking exception to permit warrantless searches of homes. *See State v. Pinkard*, 2010 WI 81, ¶ 20, 327 Wis. 2d 346, 785 N.W.2d 592. Interestingly, *Rohrig* cited the first Wisconsin community caretaking exception case in its decision. *See Rohrig*, 98 F.3d at 1522 (citing *Bies v. State*, 76 Wis. 2d 457, 251 N.W.2d 461, 468 (1977)).

emergencies is a community caretaking function. *Id*. then held "[a] police officer may enter a residence without a warrant as a community caretaker where the officer has a reasonable belief that an emergency exists requiring his or her attention. *Id*. (citing *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978) and *United States v. Nord*, 586 F.2d 1288, 1291 n. 5 (8th Cir. 1978)).

More recently in *Ray v. Warren*, 626 F.3d 170, 176 (2010), the Third Circuit recognized the "confusion" between the circuits over whether the community caretaking exception applies to warrantless searches of homes. *Ray* concerned a 42 U.S.C. § 1983 claim that officers "violated [Ray's] Fourth Amendment right against unlawful searches when they entered his home while investigating concerns expressed by his estranged wife about Ray's daughter." *Id*. at 171. The officers justified their actions on the "'community caretaking' exception to the Fourth Amendment's warrant requirement." *Id*. at 174.

The *Ray* court stated, "There is some confusion among the circuits as to whether the community caretaking exception set forth in *Cady* applies to warrantless searches of the home." *Id*. at 176. The *Ray* court recognized that the *Rohrig* and *Quezada* courts did "not simply rely on the community caretaking doctrine established in *Cady*. They instead applied what appears to be a modified exigent circumstances test, with perhaps a lower threshold for exigency if the officer is acting in a community caretaking role." *Id*. at 176 (citing *Quezada*, 448 F.3d at 1007 and *Rohrig*, 98 F.3d at 1521-22). The court sided with the Seventh,

Ninth, and Tenth Circuits and held that "[t]he community caretaking doctrine cannot be used to justify warrantless searches of a home." *Id*. at 177. Nonetheless, given the "conflicting precedents," the court ruled that the officers' conduct was protected by qualified immunity. *Id*. at 177.

As one commentator has recognized, "the Supreme Court may need to wade into the troubled waters of community caretaking to explain the concept it identified 40 years ago."[4] Six Courts of Appeals have split over the issue of whether *Cady* and its progeny extends to warrantless searches of homes or buildings. Further, both the *Quezada* and *Rohrig* courts have confused the community caretaking exception with other established exceptions—like exigent circumstances or the emergency aid doctrine. *Ray*, 626 F.3d at 176 (citing *Quezada*, 448 F.3d at 1007 and *Rohrig*, 98 F.3d at 1521-22). State courts have also split on the question of whether the community caretaker exception applies to homes.[5] Greater confusion and frustration exists in states like

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[4] David L. Hudson, *Courts In a Muddle Over 4th Amendment's Community Caretaking Exception*, ABA Journal (Aug. 1, 2013, 3:09 AM), http://www.abajournal.com/magazine/article/courts_in_a_muddle_over_4th_amendments_community_caretaking_exception/.

[5] *Compare People v. Slaughter*, 803 N.W.2d 171 (Mich. 2011), *State v. Deneui*, 2009 SD 99, 775 N.W.2d 221, *People v. Ray*, 981 P.2d 928 (Cal. 1999), *and State v. Alexander*, 721 A.2d 275 (Md. Ct. Spec. App. 1998) (extending the community caretaking exception to homes), *with State v. Wilson*, 350 P.3d 800 (Ariz. 2015), *State v. Vargas*, 63 A.3d 175 (N.J. 2013), *and State v. Gill*, 2008 ND 152, 755 N.W.2d 454 (refusing to extend the community caretaking exception to homes).

Wisconsin, where the state and federal (Seventh Circuit) law fall on opposite sides of the split. This court has been called upon to provide clarity and guidance to the federal circuits and states.[6]

### C. *Matalonis* squarely confronts the question of whether the community caretaking exception extends to warrantless searches of homes.

This Court can provide clarity and resolve the above-discussed Courts of Appeals split because the only justification for searching Matalonis' home was the community caretaking exception. "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Payton*, 445 U.S. at 586; *Michigan v. Tyler*, 436 U.S. 499, 506 (1978); *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971); *Katz v. U.S.*, 389 U.S. 347, 357 (1967); *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1966). "The exceptions to the rule that a search must rest upon a search warrant have been jealously and carefully drawn . . . ." *Jones v. United States*, 357 U.S. 493, 499 (1958). The primary exceptions to warrantless searches of homes are consented-to searches and searches conducted during "exigent circumstances."

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[6] *See* Helding, *supra*, at 149, 161 (citing Hudson, *supra* note 4; Nicholas J. Wagoner, *New Exception Allowing Warrantless Home Entries Headed to the High Court?*, Circuit Splits (Jan. 6, 2012, 7:00 AM), http://www.circuitsplits.com/2012/01/anew-exception-to-warrantless-searches-of-the-home.html).

This Court has identified only a few "exigent circumstances" where the Fourth Amendment permits a warrantless and unconsented entry and search of a home. *Warden v. Hayden*, 387 U.S. 294 (1967), and *United States v. Santana*, 427 U.S. 38 (1976), permitted entry into a home while in "hot pursuit" of a fleeing felon. *Schmerber v. California*, 384 U.S. 757, 770-71 (1966), permitted entry into a home to prevent the destruction of evidence. Finally, the Court has recognized emergency aid situations demanding immediate action as an exigent circumstance. *Mincey v. Arizona*, 437 U.S. 385, 393 (1978); *Michigan v. Tyler*, 436 U.S. 499, 509 (1978).

*Brigham City v. Stuart*, 547 U.S. 398 (2006), detailed the emergency aid exigency exception. In *Stuart*, officers responded to a "loud party" call and observed a physical altercation occurring inside the home. *Id.* at 401. The Court reiterated 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." *Id.* at 403 (citing *Mincy*, 437 U.S. at 393-94). "Accordingly, law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." *Id.* The Court held that "the officers had an *objectively reasonable basis* for believing that the injured adult might need help and that the violence in the kitchen was just beginning." *Id.* at 406 (emphasis added).

None of these already established and carefully delineated exceptions to the Fourth Amendment warrant requirement permitted the officers' search of Matalonis' home, much less the upstairs, locked room. Matalonis did not freely consent to the officers' search of his home or the upstairs locked room. The dissent correctly stated, "[E]veryone understands that threats and duress are inconsistent with voluntary consent. There is no claim in this case that Charles Matalonis freely consented to the search of the locked room." *Matalonis*, 2016 WI 7, ¶ 94, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting).

Beyond consent, none of the other "exigent circumstances" exceptions to the Fourth Amendment warrant requirement permitted the officers' search. The officers were not in "hot pursuit" of Matalonis, nor was he a "fleeing felon," hence neither *Warden v. Hayden*, 387 U.S. 294 (1967) nor *United States v. Santana*, 427 U.S. 38 (1976), apply here. The officers were similarly not preventing the destruction of evidence, so *Schmerber v. California*, 384 U.S. 757, 770-71 (1966), does not apply here.

At first blush, the only exception that might apply is the emergency aid exception. Contrasting the facts here in Matalonis' case with *Stuart* confirms that the emergency aid doctrine does not apply here. In *Stuart*, the officers arrived to find a fight-in-progress. *Stuart*, 547 U.S. at 406. The officers observed yelling, "thumping and crashing," fist-clenched juveniles, and eventual fist-swinging and blood-spitting. *Id.* The Court rightly concluded that the officers should intervene in that situation: "The role of a peace officer includes preventing violence and restoring order, not

simply rendering first aid to casualties; an officer is not like a boxing (or hockey) referee, poised to stop a bout only if it becomes too one-sided." *Id*.

In Matalonis' case, the emergency doctrine was only raised, in passing, by the trial court. Neither the parties nor the court of appeals or Wisconsin Supreme Court raised this argument on appeal. No emergency existed, like in *Stuart*, requiring a reasonable officer to enter Matalonis residence and intervene. In Matalonis' case, the "bout" was long over—the players (Matalonis and his brother) accounted for. The officers in Matalonis' case had no such "objectively reasonable basis." The officers had provided rescue for Matalonis' brother, Antony, who had been badly bleeding—explaining the blood inside Matalonis' home. The officers had spoken to Matalonis, who was uninjured and cleaning up the home after Anthony left. The officers encountered Matalonis' basement tenant, who was uninjured. Aside from the blood inside the home, the officers heard or saw no other person requiring emergency attention. By the time the officers confronted the locked, upstairs room, they only had an objectively reasonable basis to believe that marijuana was inside that room—not a "seriously injured or imminently threated" person.

Without these other limited exceptions to the Fourth Amendment warrant requirement, the State of Wisconsin has but one potential justification for the officers' search of Matalonis' home: the community caretaking exception.

## II. Following *Stone v. Powell*, this Court is the only federal court with jurisdiction to hear Matalonis' appeal.

As mentioned earlier, *Stone v. Powell*, 428 U.S. 465 (1976), precludes Matalonis from raising this challenge to the warrantless search of his home by filing a writ of habeas corpus in Wisconsin's Federal District Courts. The *Stone* court asked, "whether a federal court should consider, in ruling on a petition for habeas corpus relief filed by a state prisoner, a claim that evidence obtained by an unconstitutional search or seizure was introduced at his trial, when he has previously been afforded an opportunity for full and fair litigation of his claim in the state courts." *Id.* at 469. The *Stone* court answered this question in the negative. *Id.* at 494. Consequently, even though the Seventh Circuit, Wisconsin's federal court of appeals, holds[7] that the community caretaking exception does not extend to warrantless searches of homes, he cannot appeal his case to that court. Wisconsin's expansive interpretation of the community caretaking exception beckons for this Court's immediate certiorari review.

### A. Wisconsin's expansive interpretation of the community caretaking exception swallows the Fourth Amendment.

"[P]hysical entry of the home is the *chief evil* against which the wording of the Fourth Amendment is directed." *United States v. U.S. Dist. Court*, 407 U.S.

[7] See *United States v. Pichany*, 687 F.2d 204 (7th Cir. 1982).

297, 313 (1972) (emphasis added). "[N]either history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic." *Payton v. New York*, 445 U.S. 573, 601 (1980). "When it comes to the Fourth Amendment, the home is first among equals." *Florida v. Jardines*, 133 S. Ct. 1409, 1414 (2013). "[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Payton*, 445 U.S. at 586; *Michigan v. Tyler*, 436 U.S. 499 506 (1978); *Coolidge v. New Hampshire*, 403 U.S. 443, 455 (1971); *Katz v. U.S.*, 389 U.S. 347, 357 (1967); *Camara v. Municipal Court*, 387 U.S. 523, 528-29 (1966).

Wisconsin's community caretaking exception has been "stretched and extended" too far from *Cady*'s limited search of automobiles. *State v. Gracia*, 2013 WI 15, ¶ 70, 345 Wis. 2d 488, 826 N.W.2d 87 (Prosser, J., dissenting). "This [Wisconsin's] expansive conception of community caretaking transforms community caretaking from a narrow exception into a *powerful investigatory tool*." *State v. Matalonis*, 2016 WI 7, ¶ 106, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting) (emphasis added). The scope of Wisconsin's community caretaking exception, which extends to warrantless searches of homes, is unconstitutionally expansive for two reasons. First, Wisconsin has created an open-ended, speculative concept of "community caretaking functions." Second, Wisconsin has permitted community caretaking functions to completely intertwine with law enforcement/investigation functions.

*1. Wisconsin has created an open-ended, theory-based concept of "community caretaking functions."*

The *Matalonis* majority cemented Wisconsin's open-ended and speculative concept of "community caretaking functions" in two ways. On one hand, the Matalonis majority upheld a notion of "community caretaking functions" that could encompass entry into *any* home. In articulating the "public interest" in community caretaking, the majority wrote, "The public has a significant interest in ensuring the safety of a home's occupants when officers cannot ascertain the occupants' physical condition and reasonably conclude that assistance is needed." *Matalonis*, 2016 WI 7, ¶ 59, 366 Wis. 2d 443, 875 N.W.2d 567. Specifically, the *Matalonis* majority identified searching for possible injured parties as "an objectively reasonable basis for the community caretaker function." *Id.* ¶¶ 41-42.

Unless one literally lives in a glass house, where the officers can see the occupants' physical condition without entering, Wisconsin's boundless theory of community caretaking amounts to a Fourth Amendment work-around. The *Matalonis* dissent worried that "Officers can now easily conduct a warrantless search in the name of 'community caretaking'; they must merely articulate a hypothetical community need—here, checking to see whether an injured person was trapped in the closet—based on circumstances that they observe." *Id.* ¶ 106 (Prosser, J., dissenting). Indeed, as one commentator

on community caretaking wrote, "Allowing searches whenever officer assistance might reasonably be thought helpful would permit police to interfere with all aspects of citizens' lives—from unloading groceries to dealing with a crying baby." Michael R. Dimino, Sr., *Police Paternalism: Community Caretaking, Assistance Searches, and Fourth Amendment Reasonableness*, 66 Wash. & Lee L. Rev. 1485, 1529 (2009). Consequently, "[w]hat began as a reasonable and limited exception has become a mechanism that allows police officers . . . to use false concern for citizens' welfare as a subterfuge to enter their homes at will to investigate crimes." *See* Helding, *supra*, at 123.

On the other hand, the *Matalonis* majority rejected a requirement that the officers have concrete or even objectively reasonable proof of an actual person needing/wanting assistance or caretaking. *Id.* ¶ 48 n. 25. The majority reasoned, "Here, it is true, the officers did not know that there was an injured individual in any of the home's rooms. But the Fourth Amendment does not inflexibly require that officers be concerned about specific, 'known' individuals in order to be acting as community caretakers." *Matalonis*, 2016 WI 7, ¶ 43, 366 Wis. 2d 443, 875 N.W.2d 567. The majority cites *Cady* for this point. *Id.* ¶ 44.

Not requiring proof of an actual person needing assistance leads to further uncertainty and open-ended application of Wisconsin's community caretaking exception. Specifically, "the majority opinion is unclear on what degree of certainty an officer must possess to initiate the community caretaker function and then to maintain it as

circumstances change." *Id.* ¶ 101 (Prosser, J., dissenting). "Consequently, with Matalonis, his brother, and his tenant accounted for, Officer Ruha searched the house *not for a particular person* suspected of needing care but to determine *whether any other person was present*." *Id.* ¶ 109 (Prosser, J., dissenting) (emphasis added). "[T]his theory was pursued to extreme lengths when an officer postulated that a deceased or injured person might be found behind a locked door, knowing that marijuana would almost certainly be found beyond the locked door." *Id.* ¶ 104 (Prosser, J., dissenting). As one Wisconsin commentator similarly warned: "If mere silence can reasonably indicate a person in need of medical attention, whether one knows someone is present or not, then a simple unanswered knock on the door by police becomes an exception to the Fourth Amendment warrant requirement." Helding, *supra*, at 160-61.

The *Matalonis* dissent best summarizes the danger of such an expansive community caretaking doctrine:

> An *open-ended search for occupants* illustrates the danger that results when the majority's description of the community caretaker function combines with its statement of the public interest present in this case. As occurred here, officers could point to facts and—without demonstrating probable cause or even reasonable suspicion—use those facts to set forth a theory that a person in a building requires immediate police

> assistance. Given that the public would then have an interest in the officers *assisting the theoretical person* inside the building, officers could enter the building and search it to determine whether there is in fact a person in need of assistance. Once officers enter the building, the plain view doctrine allows them to seize evidence of unrelated criminal activity that they encounter—even if the search ultimately reveals that the person to whom they attempted to provide care remains purely theoretical.

*Matalonis*, 2016 WI 7, ¶ 110, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting) (emphasis added).

*2. Wisconsin permits community caretaking functions to completely intertwine with law enforcement/investigation functions.*

Besides creating an unconstitutionally broad exception to the Fourth Amendment warrant requirement for homes searches, Wisconsin's community caretaking exception ignores the "total divorce" between community caretaking functions and other law enforcement functions established in *Cady*. *Cady*'s distinction between community caretaking functions and law enforcement functions was crucial to permitting the search of Dombrowski's vehicle. 413 U.S. at 441. Specifically, *Cady* Court recognized:

> Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

*Id*. (emphasis added). As *Cady* established, the community caretaking exception *should not apply* where law enforcement intentions predominate. *Matalonis*, 2016 WI 7, ¶ 98, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting).

The *Matalonis* majority tactfully paid lip service to this distinction, stating, "An officer's community caretaker function is 'totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.'" *Matalonis*, 2016 WI 7, ¶ 30, 366 Wis. 2d 443, 875 N.W.2d 567 (citing *Cady*, 413 U.S. at 441). Subsequently, the majority opinion turned this distinction on its head:

> [T]he 'totally divorced' language from *Cady* does not mean that if the police officer has any subjective law enforcement concerns, he cannot be engaging in a valid community caretaker function. Rather, . . . in a community caretaker context, when under the totality of the circumstances an objectively reasonable basis

> for the community caretaker function is shown, that determination is not negated by the officer's subjective law enforcement concerns.

*Id*. ¶ 32 (citations omitted).

In Wisconsin after *Matalonis*, officers may exercise law enforcement and investigation functions under the obvious pretext of community caretaking. "Police officers who suspect a crime has taken place may now search without a warrant as long as those officers . . . can articulate an objectively reasonable basis for community caretaking after the fact." Helding, *supra*, at 124. Moreover, given the Wisconsin Supreme Court's broad and open-ended concept of community caretaking functions, "[h]ow do we determine when a police officer steps out of his 'caretaking role' to focus on the investigation of criminal activity?" *Matalonis*, 2016 WI 7, ¶ 102, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting). Frankly, when searching for possible crime victims becomes a community caretaking function, does any difference even exist between law enforcement and caretaking functions? *Id*. ¶ 104 (Prosser, J., dissenting).

Two prior Wisconsin community caretaking exception (home search) cases demonstrate how the community caretaking doctrine has been used to further law enforcement and investigation rather than simply community caretaking with incidental evidence-gathering. Prior to *Matalonis*, the Wisconsin Supreme Court last confronted a community caretaking home search in *State v. Gracia*, 2013 WI

15, 345 Wis. 2d 488, 826 N.W.2d 87. In *Gracia*, officers entered Gracia's bedroom, despite his objections, after tracking him there from a single-car accident. *Id.* ¶ 8. The *Gracia* court reiterated:

> [T]o interpret the "totally divorced" language in *Cady* to mean that an officer could not engage in a community caretaker function if he or she had any law enforcement concerns would, for practical purposes, preclude police officers from engaging in any community caretaker functions at all. This result is neither sensible nor desirable.

*Id.* ¶ 19 (citing source omitted). Despite the fact that Gracia told the officers he needed no assistance, the court held that the officers had an objectively reasonable basis to believe Gracia needed assistance, which allowed them to "shoulder through the door," and make contact with Gracia in his bedroom. *Id.* ¶ 21.

Similarly, in *State v. Pinkard*, 2010 WI 81, 327 Wis. 2d 346, 785 N.W.2d 592, the Wisconsin Supreme Court upheld a blatant drug investigation into a home under the community caretaking exception. The officers received an "anonymous tip that two individuals in Pinkard's house appeared to be sleeping next to drugs, money and drug paraphernalia and that the door to the residence was standing open." *Id.* ¶ 1. The court identified "two legitimate community caretaker functions underlying the warrantless entry into Pinkard's residence: to ensure that the occupants

were not the 'victims of any type of crime' and to safeguard any life or property in the residence." *Id.* ¶ 34. As the dissent in *Pinkard* noted, it was the majority, not the officers, who expressed concern for that the individuals had overdosed on drugs. *Id.* ¶¶90-91 (Ann Walsh Bradley, J., dissenting). "Ensuring that the occupants were not the victims of any type of crime," unquestionably and directly ties to law enforcement and investigation. Moreover, the *Pinkard* court's analysis again ignores the obvious investigation and law enforcement interests that officers would have after receiving a tip about drugs and paraphernalia and money inside the defendant's home. *Id.* ¶ 40. Accordingly, the court authorizes officers to enter "nothing more than a drug house, given the multifaceted nature of police work." *Id.*

In Matalonis' case, the officers believed a crime might have been committed from the outset. By the time the officers reached the upstairs, locked door, they had much more evidence that marijuana and not a body would be inside that room. *Matalonis*, 2016 WI 7, ¶ 104, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, P., dissenting). By contrast, in *Cady*, the officers were not investigating a crime and came upon evidence of criminal activity by surprise. 413 U.S. at 436-37. The dissent in *Matalonis* best sums up how Wisconsin's lack of divorce between law enforcement functions and community caretaker functions swallows not only *Cady*, but the entire Fourth Amendment:

> No longer limited to the purpose of allowing the State to rely upon evidence obtained by law enforcement officers *incidental* to their provision of valuable

> services to the public, *community caretaking becomes an end in itself*. Officers can now easily conduct a warrantless search in the name of "community caretaking"; they must merely articulate a hypothetical community need—here, checking to see whether an injured person was trapped in the closet—based on circumstances that they observe. Conveniently, they may then retain any evidence of criminal activity that comes into their plain view as they conduct their community caretaking search.

*Matalonis*, 2016 WI 7, ¶ 106, 366 Wis. 2d 443, 875 N.W.2d 567 (emphasis added) (Prosser, J., dissenting).

Ultimately, if this Court refuses to grant Matalonis' petition, then "people's homes, in which they once had their strongest Fourth Amendment protections, will offer no greater refuge than their automobiles." Helding, *supra*, at 164. Wisconsin's ever-expanding community caretaking exception goes against the limited and "jealously drawn"[8] exceptions to the Fourth Amendment warrant requirement for searching homes. Officers can easily articulate a community caretaking function to permit entry into a home—whether or not a specific person exists who even needs caretaking. Worse yet, law enforcement interests and crime investigating can predominate community caretaking interests from the outset, yet fall under the community caretaking exception. Truth

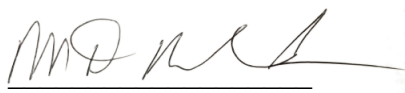
[8] *Jones v. United States*, 357 U.S. 493, 499 (1958).

be told, Wisconsin's Supreme Court would theoretically allow warrantless searches anytime a crime occurred—where other "crime victims" might exist and might need assistance. The *Matalonis* dissent sums it up best, "Allowing law enforcement officers to conduct warrantless searches based on a mere theory of community need—and without making a showing of probable cause or even reasonable suspicion—completely undermines the Fourth Amendment's warrant requirement." *Matalonis,* 2016 WI 7, ¶ 112, 366 Wis. 2d 443, 875 N.W.2d 567 (Prosser, J., dissenting).

## CONCLUSION

For the reasons stated above, the Court should grant Matalonis' petition for writ of certiorari.

Respectfully Submitted,



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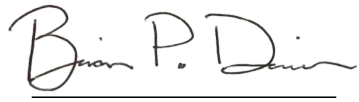

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