No. 11-770

In the Supreme Court of the United States

CHUNON L. BAILEY, AKA POLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
LANNY A. BREUER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General
DEBORAH WATSON
Attorney
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the Fourth Amendment permitted police officers, incident to the execution of a valid search warrant for a deadly weapon at a private residence, to detain an occupant who left the immediate vicinity of the premises, when the detention was conducted as soon as reasonably practicable.

TABLE OF CONTENTS

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases: Page

Cases—Continued: Page

Cases—Continued: Page

Constitution and statutes:

Miscellaneous: Page

In the Supreme Court of the United States

No. 11-770

CHUNON L. BAILEY, AKA POLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 652 F.3d 197. The order of the district court denying petitioner's motion to suppress (Pet. App. 22a-57a) is reported at 468 F. Supp. 2d 373.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 2011. A petition for rehearing was denied on September 20, 2011 (Pet. App. 21a). The petition for a writ of certiorari was filed on December 16, 2011. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

> 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

Following a jury trial in the United States District Court for the Eastern District of New York, petitioner was found guilty of possessing at least five grams of cocaine base with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(iii); possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2); and possessing a firearm in furtherance of a drug-trafficking offense, in violation of 18 U.S.C. 924(c)(1)(A)(i). He was sentenced to 360 months of imprisonment, to be followed by five years of supervised release. The court of appeals affirmed. Pet. App. 1a-20a.

1. On Thursday, July 28, 2005, a reliable confidential informant told Detective Richard Sneider of the Suffolk County Police Department about a recent drug deal involving a firearm. Specifically, the informant told Detective Sneider that the previous weekend he had purchased six grams of crack cocaine at the basement apartment of a house located at 103 Lake Drive, Wyandanch, New York. The informant stated that he had purchased the drugs from a "heavy set black male

with short hair" known as "Polo." The informant further stated that while inside Polo's apartment he had seen a chrome .380-caliber handgun on the kitchen counter with the drugs and that he had seen the same gun during several drug buys at Polo's previous residence in Bay Shore, New York. See Pet. App. 3a; J.A. 21-22, 26, 186-191.

Based on that information, at 8:45 p.m. that evening, Detective Sneider obtained a warrant to search the Lake Drive basement apartment for a .380-caliber handgun and any ammunition. Because of the possible presence of a deadly weapon, the "no-knock" warrant authorized officers to enter the apartment without first giving notice of their authority. While Detective Sneider was obtaining that warrant, at approximately 8:30 p.m., Detectives Daniel Fischer and Richard Gorbecki arrived at the house in an unmarked car and began surveilling the property. That way officers might know, when executing the warrant, whether and how many occupants were inside the apartment and what they were doing. After obtaining the warrant, Detective Sneider arrived on the scene and switched places with Detective Fischer. See J.A. 16-18, 83-84, 122, 191-192.

At 9:56 p.m., as other officers were preparing to execute the warrant, Detectives Sneider and Gorbecki observed two heavyset black males with short hair—both of whom thus fit the description of Polo—exit a gate at the top of the basement steps. The two men were petitioner and another individual, Bryant Middleton. The detectives decided not to detain petitioner and Middleton in the driveway, because of the possibility that it could alert others in the apartment to the presence of law enforcement (and thus vitiate the purpose of the no-knock warrant). Instead, the detectives watched as the

men got into a black Lexus and drove away from the house, with petitioner behind the wheel and Middleton in the front passenger's seat. The detectives waited a few seconds to allow some distance between the vehicles, and then they followed petitioner's car west on Lake Drive. See J.A. 45-49, 67-71, 84-86, 102-104, 193-195.

As a map of the area illustrates (see J.A. 117), that part of Lake Drive proceeds almost straight west for several short blocks to the intersection of Mount Avenue and Straight Path. Detectives Sneider and Gorbecki caught up with petitioner's car at that intersection, as petitioner was turning to the northeast onto Straight Path. That portion of Straight Path, however, is a busy five-lane highway, so Detectives Sneider and Gorbecki stopped petitioner's car approximately two blocks later when petitioner turned from Straight Path onto South 18th Street. At that point, the detectives pulled over petitioner's car in the well-lit parking lot of the Wyandanch fire station. From start to finish, the detectives followed petitioner's car for no more than five minutes and for a total distance of approximately seven-tenths of a mile. See Pet. App. 3a-4a & n.3; J.A. 48-51, 69-73, 85-87, 102-106, 194.

The detectives then asked petitioner and Middleton to exit the car and conducted pat-down searches of both men. Officer Sneider found a set of keys, including the key to the Lexus, in petitioner's front pocket. At Officer Sneider's request, petitioner identified himself and said that he was coming from his house at 103 Lake Drive. Petitioner also produced a driver's license with an address in Bay Shore, New York, which was consistent with the informant's report that Polo previously lived and sold drugs in Bay Shore. Middleton identified himself as well and said that petitioner was driving him

home so that he could comply with a 10 p.m. curfew imposed as a condition of his parole. Middleton also stated that petitioner's residence was 103 Lake Drive. At that point, the detectives placed petitioner and Middleton in handcuffs. When petitioner asked why he was being handcuffed, the detectives informed both men that they were being detained (but not arrested) incident to the execution of a search warrant at the basement apartment of 103 Lake Drive. In response, petitioner said: "I don't live there. Anything you find there ain't mine, and I'm not cooperating with your investigation." Pet. App. 4a-5a; J.A. 52-56, 87-90, 107-111, 195-201.

Detectives Sneider and Gorbecki called a patrol car to return petitioner and Middleton to 103 Lake Drive; Detective Sneider drove the unmarked police car back to that location; and Detective Gorbecki drove petitioner's car. By the time they arrived back at the scene, officers had entered and secured the apartment and observed a gun and drugs in plain view. Petitioner and Middleton were arrested, and petitioner's keys were seized incident to his arrest. In total, no more than 10 to 12 minutes elapsed between when petitioner's car was stopped and when he was arrested. During their subsequent search of the apartment, officers found two additional guns (a loaded semiautomatic pistol and a rifle), many rounds of ammunition, a bulletproof vest, 40 grams of crack cocaine, 39 grams of powder cocaine, drug paraphernalia, and several documents with petitioner's name on them. Several boxes of personal items indicated someone had recently moved into the apartment. An officer also discovered that one of petitioner's keys opened the door of the apartment. See Pet. App. 4a-5a; J.A. 28-29, 59-60, 91-93, 115, 127-138, 151-168, 180-181, 201-205; C.A. App. A355.

2. In April 2006, a grand jury indicted petitioner on one count of possessing at least five grams of cocaine base with the intent to distribute it, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B)(iii); one count of possessing a firearm as a felon, in violation of 18 U.S.C. 922(g)(1) and 924(a)(2); and one count of possessing a firearm in furtherance of a drug-trafficking offense, in violation of 18 U.S.C. 924(c)(1)(A)(i). C.A. App. A28-A29. Petitioner moved to suppress his house key and statements to Detectives Sneider and Gorbecki on the ground, *inter alia*, that they constituted the fruits of an unlawful detention under the Fourth Amendment. *Id.* at A52-A62.

The district court denied petitioner's motion to suppress. Pet. App. 22a-57a. As relevant here, the court first rejected petitioner's argument that his detention was unlawful under *Michigan* v. *Summers*, 452 U.S. 692 (1981), because he was detained shortly after leaving the premises to be searched. Pet. App. 27a-35a. According to the court, "[t]here is no basis for drawing a 'bright line' test under *Summers* at the residence's curb and finding that the authority to detain under *Summers* always dissipates once the occupant of the residence drives away." *Id.* at 30a. The court noted that in *Summers* itself, this Court "[did] not view the fact that [the defendant] was leaving his house when the officers arrived to be of constitutional significance." *Id.* at 29a (second set of brackets in original) (quoting *Summers*, 452 U.S. at 702 n.16). In addition, the court explained that "[a]t least two of the law enforcement interests articulated in *Summers* appl[y] here—namely, prevention of flight should incriminating evidence be found during the search and minimizing the risk of harm to the officers." *Id.* at 30a.

With respect to the interest in officer safety, the district court further explained that petitioner's bright-line rule would require police officers "to effectuate the detention in open view outside the residence that was about to be searched, thereby subjecting them to additional dangers during the execution of the search, and potentially frustrating the whole purpose of the search due to destruction of evidence in the residence." Pet. App. 30a. "Specifically," the court observed,

> such an action could jeopardize the search or endanger the lives of the officers * * * by allowing any other occupants inside the residence, who might see or hear the detention of the individual outside the residence as he was leaving, to have some time to (1) destroy or hide incriminating evidence just before the police are about to enter for the search; (2) flee through a back door or window; or (3) arm themselves in preparation for a violent confrontation with the police when they entered to conduct the search.

Id. at 30a-31a. The court therefore upheld petitioner's detention, which it found had taken place "at the earliest practicable location that was consistent with the safety and security of the officers and the public." *Id.* at 31a.

In the alternative, the district court upheld petitioner's detention under *Terry* v. *Ohio*, 392 U.S. 1 (1968). Pet. App. 36a-42a. The court found that the detectives had reasonable suspicion to conduct an investigative stop because "[petitioner] exited the search location and matched the general description provided by the confidential informant." *Id.* at 36a. "[T]hat initial information," the court reasoned, "was bolstered by [petitioner's] statement during the stop that 103 Lake Drive was his residence, [Middleton's] statement con-

firming that, and the information on his driver's license." *Ibid.* Those facts together, the court concluded, provided "more than a sufficient factual basis under *Terry* to transport [petitioner] a short distance back to his residence and briefly detain him during the search." *Ibid.*; see *id.* at 38a-41a & n.7.

3. Petitioner proceeded to trial on the theory that he had not possessed the guns and drugs found in the Lake Drive apartment. The government presented extensive evidence linking petitioner to the apartment that was unrelated to the fruits of the detention (*i.e.*, petitioner's statements and apartment key). For instance, Middleton testified that he also knew petitioner by the name Polo; he had been to petitioner's previous residence in Bay Shore; and he was under the impression at the time they were arrested that petitioner recently had moved into the Lake Drive apartment. See J.A. 231-234; C.A. App. A231, A238; Trial Tr. 658-659. The informant testified and identified petitioner as Polo. See C.A. App. A176. The informant also testified that he observed petitioner moving into the Lake Drive apartment; the furniture in the apartment was the same as in petitioner's previous Bay Shore residence; and he saw a chrome handgun in the apartment like the one that the police recovered during the search. See *id.* at A178-179, A181. Detective Sneider testified that he saw petitioner exiting the Lake Drive apartment on the evening in question. See J.A. 192-193. And Detective Fischer testified that there were several boxes of personal items in the apartment indicating that someone had recently moved there. See J.A. 171-173, 181; C.A. App. A165. In those boxes, officers found documents with petitioner's name on them, including pay stubs and a Resorts International

club card. See J.A. 167-168, 171-180. They did not find documents containing anyone else's name. See J.A. 180.

After deliberating for a total of approximately seven hours over three days, the jury found petitioner guilty on all three counts. See C.A. App. A267-A280, A283-A310; 11/6/06 Trial Tr. 845-852. In August 2007, the district court sentenced petitioner to 360 months of imprisonment, to be followed by five years of supervised release. Pet. App. 1a.

4. The court of appeals unanimously affirmed. Pet. App. 1a-20a.[1] The court agreed with the district court that petitioner's detention during the search of his residence was reasonable under *Summers*. Specifically, the court of appeals agreed that "[t]here is no basis for drawing a 'bright line' test under *Summers* at the residence's curb and finding that the authority to detain under *Summers* always dissipates once the occupant of the residence drives away." *Id.* at 13a (brackets in original) (quoting *id.* at 30a). The court explained that "[t]he guiding principle behind the requirement of reasonableness for detention in such circumstances is the *de minimis* intrusion characterized by a brief detention in order to protect the interests of law enforcement in the safety of the officers and the preservation of evidence." *Ibid.* In that regard, the court recognized that "the very interests at stake in *Summers*"—*i.e.*, "prevention of

---

[1] In December 2008, petitioner filed a motion to vacate his sentence pursuant to 28 U.S.C. 2255 (Supp. II 2008), raising a claim of ineffective assistance of trial counsel. The district court denied that motion, and petitioner appealed. The court of appeals consolidated that appeal with petitioner's direct appeal and, in the decision below, affirmed the denial of petitioner's Section 2255 motion. See Pet. App. 17a-19a. Before this Court, petitioner no longer presses his ineffective assistance claim. See Pet. Br. 7 n.1.

flight" and "minimizing the risk of harm to the officers"—justify "detention of an occupant nearby, but outside of[,] the premises" to be searched. *Id.* at 14a & n.6 (quoting *id.* at 30a).

The court of appeals observed that petitioner's contrary approach "would put police officers executing a warrant in an impossible position: when they observe a person of interest leaving a residence for which they have a search warrant, they would be required either to detain him immediately (risking officer safety and the destruction of evidence) or to permit him to leave the scene (risking the inability to detain him if incriminating evidence was discovered)." Pet. App. 14a. "*Summers* does not necessitate that Hobson's choice," the court reasoned, "particularly when '[a] judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime.'" *Ibid.* (brackets in original) (quoting *Summers*, 452 U.S. at 703). "Indeed, to accept that argument," the court noted, "would be to strip law enforcement of the capacity to 'exercise unquestioned command of the situation,' at precisely the moment when *Summers* recognizes they most need it." *Ibid.* (quoting *Summers*, 452 U.S. at 703).

The court of appeals emphasized, however, that under its approach not every detention incident to the execution of a search warrant would be reasonable for Fourth Amendment purposes. The court explained that "*Summers* imposes upon police a duty based on both geographic *and* temporal proximity; police must identify an individual *in the process of leaving* the premises subject to search and detain him *as soon as practicable* during the execution of the search." Pet. App. 15a. Applying that standard to this case, the court had "no trouble concluding that [petitioner's] detention was lawful under

the Fourth Amendment." *Ibid.* The court noted that petitioner "was detained for less than ten minutes before he was taken back to 103 Lake Drive" and "officers did not attempt to exploit the detention by trying to obtain additional evidence from [petitioner] during execution of the search warrant." *Id.* at 16a. Having upheld petitioner's detention as reasonable under *Summers*, the court did not decide whether the detention was also reasonable under *Terry*. *Id.* at 16a n.7.

SUMMARY OF ARGUMENT

In a pair of thoughtful opinions, the courts below explained why, under *Michigan* v. *Summers*, 452 U.S. 692 (1981), police officers executing a search warrant for contraband at a private residence may detain an occupant who has recently departed the immediate vicinity of the premises, provided that the detention is conducted as soon as reasonably practicable.

A. The reasonableness of a warrantless seizure is determined by balancing its promotion of law enforcement interests against its intrusion on personal liberty. Weighing those concerns in *Summers*, this Court held as a categorical rule that police officers executing a valid search warrant for contraband may detain occupants who leave the premises. Both *Summers* itself and later cases confirm that the manner in which officers conduct such a detention, including whether they detain the departing occupant in the immediate vicinity of the premises or a short distance away, is subject to the Fourth Amendment's requirement of reasonableness. Accordingly, no federal court of appeals has imposed an inflexible geographic limit on the *Summers* rule.

B. A strict geographic limit on detention would be inconsistent with *Summers*' reasoning and its facts. The

Court explained that when an occupant leaves a home subject to a warrant, "articulable and individualized suspicion" justifies detention. 452 U.S. at 703. Thus, although the defendant in *Summers* was detained "on the sidewalk outside" the house, the Court viewed that fact as without "constitutional significance." *Id.* at 702 n.16. As with similar types of seizures that are based on special law enforcement interests and that may be made on less than probable cause, the manner in which officers detain a departing occupant must be reasonable under the circumstances. That is why the *Summers* Court rejected the occupant's location as constitutionally significant in the face of the same arguments that petitioner advances here.

C. The Court in *Summers* pointed to three legitimate law enforcement interests that are served by detention: "preventing flight in the event that incriminating evidence is found"; "minimizing the risk of harm to the officers"; and "the orderly completion of the search," which "may be facilitated if the occupants of the premises are present." 452 U.S. at 702-703. Each of those interests applies with similar force when an occupant is detained a short distance away from the premises. In addition, two other substantial law enforcement interests can be served by detention away from the premises: officers' interest in avoiding detection by those inside the premises before they execute the warrant, and their interest in executing the warrant only once they are fully prepared to do so.

D. Detaining an occupant outside the immediate vicinity of the premises does not represent a greater intrusion on his personal liberty than detaining him inside the premises. Wherever he is initially detained—inside the residence, at the threshold, or a short distance away

—the restraint on his liberty is the same. The Court in *Summers* rejected the notion that a seizure is necessarily more intrusive merely because it occurs in public view, see 452 U.S. at 702 n.16, but in any event detaining someone away from the premises in front of strangers will often be less intrusive than detaining him in the immediate vicinity of the premises in front of loved ones, friends, or neighbors. An occupant may prefer, for instance, that his children do not see him in handcuffs. See *United States* v. *Montieth*, 662 F.3d 660, 663 (4th Cir. 2011). Nor does detention away from the premises present any greater opportunity for exploitation, and accordingly petitioner does not point to a single case that bears out his concern. Of course, if that did occur in some case (unlike this one), courts could find the particular detention unreasonable.

E. Finally, an ironclad geographic limit is artificial, unnecessary, and impractical. The justifications for detention do not suddenly disappear when an occupant leaves the "immediate vicinity" of the premises and drives a short distance down the street. An occupant outside the "immediate vicinity" can flee from police, return to the scene to harm or interfere with officers, or be returned to assist those officers. And whatever petitioner means by the "immediate vicinity," courts will have to make fact-intensive judgments on either his approach or the government's. Far better then that courts undertake the familiar Fourth Amendment inquiry of reasonableness rather than enforce a geographic limit that bears no relation to the interests underlying the *Summers* rule.

Petitioner incorrectly contends that without such a limit, police will detain former occupants wherever they may be found. Three decades of experience since *Sum-*

mers—during which no federal court of appeals has adopted petitioner's proposed limit—provide no evidence of such action. Time and again, officers have witnessed an occupant leaving the premises and conducted a traffic stop a short distance away. Quite simply, petitioner's geographic limit is a solution in search of a problem. Even worse, it would create an entirely new problem by hamstringing officers in their performance of an already difficult task: the safe and efficient execution of search warrants.

ARGUMENT

PETITIONER'S DETENTION INCIDENT TO THE EXECUTION OF A SEARCH WARRANT WAS VALID UNDER THE FOURTH AMENDMENT

In *Michigan* v. *Summers*, 452 U.S. 692 (1981), this Court held that officers executing a search warrant may detain the occupants of the premises while the search is conducted. The Court did not, however, purport to dictate the manner in which such a detention must occur. Consistent with the Fourth Amendment's touchstone of reasonableness, the court of appeals correctly held that officers may detain an occupant who leaves the immediate vicinity of the premises, provided that the detention is conducted as soon as reasonably practicable. That type of detention serves all of the interests identified in *Summers*: it prevents the occupant's flight in the event that incriminating evidence is found, it protects the safety of officers executing the warrant, and it facilitates the orderly completion of the search. Nor is such a detention necessarily more intrusive than detaining the occupant at the premises. Indeed, in many cases detaining the occupant a short distance from the premises will

be substantially less intrusive than detaining him within view of his children or neighbors.

Here, officers were preparing to execute a no-knock warrant for a handgun at the apartment of an alleged drug dealer, when petitioner and a friend—both of whom fit the dealer's description—exited the apartment. Rather than risk detaining petitioner on the scene and alerting others inside the apartment to their presence (and thus vitiating the purpose of the no-knock warrant), officers detained petitioner less than a mile from the apartment, for approximately ten minutes, out of sight of his neighbors. That was a textbook example of a reasonable detention incident to the execution of a search warrant, particularly a warrant for a gun at an unfamiliar residence. Petitioner's strict geographic limit—*i.e.*, officers must detain an occupant in the immediate vicinity of the premises or allow him to leave altogether—bears no logical relation to the *Summers* rule and would frustrate the ability of officers to safely and effectively execute search warrants.

A. Under *Michigan* v. *Summers*, Police Officers Executing A Search Warrant For Contraband May Detain Departing Occupants A Short Distance From The Premises When Reasonably Necessary

This Court held in *Summers* that police officers executing a valid search warrant for contraband may detain occupants who leave the premises. Both *Summers* itself and later cases confirm that the manner in which officers conduct such a detention, including whether they detain an occupant in the immediate vicinity of the premises or a short distance away, is subject to the Fourth Amendment's requirement of reasonableness. Accord-

ingly, no federal court of appeals has adopted petitioner's proposed geographic limit on detention.

1. The reasonableness of a warrantless seizure is determined by balancing the law enforcement interests against the intrusion on personal liberty

The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. As this Court often has recognized, "[t]he ultimate touchstone of the Fourth Amendment is 'reasonableness.'" *Kentucky* v. *King*, 131 S. Ct. 1849, 1856 (2011) (brackets in original) (quoting *Brigham City* v. *Stuart*, 547 U.S. 398, 403 (2006)); see, *e.g.*, *New Jersey* v. *T.L.O.*, 469 U.S. 325, 340 (1985) ("The fundamental command of the Fourth Amendment is that searches and seizures be reasonable."); *Pennsylvania* v. *Mimms*, 434 U.S. 106, 108-109 (1977) (per curiam) ("The touchstone of our analysis under the Fourth Amendment is always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'") (quoting *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968)).

The reasonableness of a search or seizure is measured by balancing "the degree to which it intrudes upon an individual's privacy" against "the degree to which it is needed for the promotion of legitimate governmental interests." *Samson* v. *California*, 547 U.S. 843, 848 (2006) (quoting *United States* v. *Knights*, 534 U.S. 112, 119 (2001)); see *Illinois* v. *McArthur*, 531 U.S. 326, 331 (2001) (determining the reasonableness of a warrantless seizure by "balanc[ing] the privacy-related and law enforcement-related concerns to determine if the intrusion was reasonable"); *Maryland* v. *Wilson*, 519 U.S.

408, 411 (1997) ("[R]easonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers.") (internal quotation marks and citation omitted).

That general Fourth Amendment balancing test applies to the manner in which police officer execute a search warrant. See, *e.g.*, *United States* v. *Ramirez*, 523 U.S. 65, 71 (1998) ("The general touchstone of reasonableness which governs Fourth Amendment analysis governs the method of execution of the warrant.") (citation omitted); see also *Los Angeles Cnty.* v. *Rettele*, 550 U.S. 609, 614 (2007) (per curiam) ("In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search."); *Dalia* v. *United States*, 441 U.S. 238, 257 (1979) ("[I]t is generally left to the discretion of the executing officers to determine the details of how best to proceed with the performance of a search authorized by warrant—subject of course to the general Fourth Amendment protection 'against unreasonable searches and seizures.'") (footnote omitted).

2. Balancing those concerns,* Summers *held as a categorical rule that officers executing a search warrant may detain occupants who leave the premises

Applying those principles, in *Summers*, *supra*, this Court held that officers executing a search warrant for contraband may detain occupants who are inside or who are leaving the premises to be searched. In *Summers*, police officers encountered an individual leaving a house as they were preparing to execute a warrant to search the house for narcotics, and they detained him inside for the duration of the search. The Court upheld the deten-

tion. 452 U.S. at 705. At the outset, the Court reiterated the "general rule" that the seizure of a person ordinarily must be supported by probable cause. *Id.* at 696. The Court recognized, however, that "some seizures admittedly covered by the Fourth Amendment constitute such limited intrusions on the personal security of those detained and are justified by such substantial law enforcement interests that they may be made on less than probable cause." *Id.* at 699.

The *Summers* Court then weighed "the character of the official intrusion and its justification" in the case of a detention incident to execution of a valid warrant to search for contraband. 452 U.S. at 701. Concerning the intrusion, the Court noted that the officers' acquisition of the warrant was "[o]f prime importance." *Ibid.* The Court observed that "[a] neutral and detached magistrate had found probable cause to believe that the law was being violated in that house and had authorized a substantial invasion of the privacy of the persons who resided there." *Ibid.* Therefore, "[t]he detention of one of the residents while the premises were searched, although admittedly a significant restraint on his liberty, was surely less intrusive than the search itself." *Ibid.* Moreover, the Court observed that detention incident to the execution of a warrant "is not likely to be exploited by the officer or unduly prolonged in order to gain more information, because the information the officers seek normally will be obtained through the search and not through the detention." *Ibid.*

Having concluded that the intrusion resulting from a detention was slight, the Court proceeded to find that the justifications for a detention were substantial. See *Summers*, 452 U.S. at 702-703. "Most obvious," the Court noted, "is the legitimate law enforcement interest

in preventing flight in the event that incriminating evidence is found." *Id.* at 702. "Less obvious, but sometimes of greater importance," the Court added, "is the interest in minimizing the risk of harm to the officers." *Ibid.* The Court observed that "the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence." *Ibid.* Therefore, "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Id.* at 702-703. In addition, the Court explained that "the orderly completion of the search may be facilitated if the occupants of the premises are present," because the occupants could assist the police by opening locked doors or containers. *Id.* at 703.

The Court also considered the role of the search warrant in "provid[ing] an objective justification for the detention" in the form of "articulable and individualized suspicion." *Summers*, 452 U.S. at 703. The Court reasoned that, when a search warrant for contraband has been issued, "[a] judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime." *Ibid.* When someone in the home then departs in the presence of an officer executing the warrant, "[t]he connection of [the] occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal activity justifies a detention of that occupant." *Id.* at 703-704.

Of particular relevance here, the Court squarely rejected the notion that the defendant could not be detained because he was not inside the home at the time police executed the warrant. *Summers*, 452 U.S. at 702

n.16. The Court "[did] not view the fact that [the defendant] was leaving his house when the officers arrived to be of constitutional significance." *Ibid.* The Court noted that "[t]he seizure of [the defendant] on the sidewalk outside was no more intrusive than the detention of those residents of the house whom the police found inside." *Ibid.* With respect to either occupants inside or outside the premises to be searched, the Court held in *Summers* that "a warrant to search for contraband founded on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Id.* at 705 (footnote omitted).

3. **Summers** ***and later cases confirm that the manner in which officers conduct such a detention must be objectively reasonable under the circumstances***

In the thirty-plus years since this Court's decision in *Summers,* the rule that *Summers* announced has proven to be both prudent and workable. Professor LaFave has described *Summers* as the "most significant" of the cases in which this Court has "opted for a standardized procedure to avoid the necessity of case-by-case decisionmaking by police and courts," and has concluded that the *Summers* rule "makes eminently good sense." 2 Wayne R. LaFave, *Search and Seizure* § 4.9(e), at 649, 651-652 (3d ed. 1996) (LaFave). This Court has frequently relied on *Summers* in later Fourth Amendment decisions, without suggesting that the *Summers* rule has been difficult to apply in the field or has given rise to abuse by law enforcement officers. See, *e.g.*, *McArthur*, 531 U.S. at 331; *Wilson* v. *Layne*, 526 U.S. 603, 611 (1999); *United States* v. *Sharpe*, 470 U.S. 675, 685-686

(1985); *United States* v. *Place*, 462 U.S. 696, 703, 704 (1983).

Indeed, since *Summers* was decided, this Court has directly addressed the application of the *Summers* rule only twice. In *Muehler* v. *Mena*, 544 U.S. 93 (2005), police officers executing a search warrant at a suspected gang house detained an individual inside the house, Iris Mena, in handcuffs for two to three hours. *Id.* at 96, 100. In upholding Mena's detention as constitutional, the Court first reaffirmed that, under *Summers*, the detention for the duration of the search was "plainly permissible," because "[a]n officer's authority to detain incident to a search is categorical; it does not depend on the 'quantum of proof justifying detention or the extent of the intrusion to be imposed by the seizure.'" *Id.* at 98 (quoting *Summers*, 452 U.S. at 705 n.19). The Court then held that, as a matter of general balancing under the Fourth Amendment, "[t]he officers' use of force in the form of handcuffs to effectuate Mena's detention * * * was reasonable because the governmental interests outweigh[ed] the marginal intrusion." *Id.* at 99.

Two Terms later, the Court decided *Rettele*, in which officers executing a search warrant at a house found in a bedroom two occupants who were of a different race than the suspects sought by police. 550 U.S. at 609-610. The officers ordered the occupants, who had been sleeping unclothed, to stand while the officers secured the room—an action that this Court upheld as reasonable because "[b]lankets and bedding can conceal a weapon, and one of the suspects was known to own a firearm." *Id.* at 614. The Court emphasized that "'special circumstances, or possibly a prolonged detention,' might render a [seizure] unreasonable," but the Court noted that the detention at issue had not been unnecessarily pro-

longed and the officers had "act[ed] in a reasonable manner." *Id.* at 615, 616 (quoting *Summers*, 452 U.S. at 705 n.21).

Taken together, *Muehler* and *Rettele* confirm that when officers executing a search warrant at a residence encounter an occupant of the home, their authority to detain him incident to the search is categorical. But *how* they detain him—whether they restrain him with force (as in *Muehler*), whether they make him remain place or move somewhere else (as in *Rettele*), or whether they stop him in the immediate vicinity of the premises or a short distance away (as in this case)—is a question subject to the Fourth Amendment's ultimate touchstone of objective reasonableness. See, *e.g.*, *United States* v. *Montieth*, 662 F.3d 660, 666 (4th Cir. 2011) ("Montieth counters that any detention incident to the execution of a search warrant must take place inside the residence itself, or at most on the premises. * * * [S]uch an inflexible rule would contravene the ultimate Fourth Amendment touchstone of objective reasonableness.").

4. Accordingly, no federal court of appeals has adopted petitioner's strict geographic limit on detention

In addition to the court below, six other federal courts of appeals—the Fourth, Fifth, Sixth, Seventh, Tenth, and Eleventh Circuits—have expressly declined to impose an inflexible geographic limit on the *Summers* rule. See *Montieth*, 662 F.3d at 666-669; *United States* v. *Cavazos*, 288 F.3d 706, 711-712 (5th Cir.), cert. denied, 537 U.S. 910 (2002); *United States* v. *Cochran*, 939 F.2d 337, 338-339 (6th Cir. 1991), cert. denied, 502 U.S. 1093 (1992); *United States* v. *Bullock*, 632 F.3d 1004, 1018-1021 (7th Cir. 2011); *United States* v. *Castro-Portillo*, 211 Fed. Appx. 715, 720-724 (10th Cir.) (unpublished),

cert. denied, 552 U.S. 829 (2007); *United States* v. *Sears*, 139 Fed. Appx. 162, 166 (11th Cir.) (per curiam), cert. denied, 546 U.S. 971 (2005). Those courts have consistently recognized that such a limit would be at odds with the reasoning and facts of *Summers*.

At the certiorari stage, petitioner pointed (Pet. 9-10) to older decisions from the Eighth, Ninth, and Tenth Circuits holding unlawful the detention of occupants who had left the premises. See *United States* v. *Sherrill*, 27 F.3d 344 (8th Cir.), cert. denied, 513 U.S. 1048 (1994); *United States* v. *Taylor*, 716 F.2d 701 (9th Cir. 1983); *United States* v. *Edwards*, 103 F.3d 90 (10th Cir. 1996). But none of those decisions did so on the ground that off-premises detention of an occupant is *never* permissible. Rather, each decision examined the particular facts of the case and concluded that the off-premises detention at issue had not served the three interests identified in *Summers*: preventing flight, protecting officers, and facilitating the search. See, *e.g.*, *Edwards*, 103 F.3d at 94 ("Neither of the latter two *Summers* interests were served in any way by Edwards's extended detention."); see also *Sherrill*, 27 F.3d at 346; *Taylor*, 716 F.2d at 707.

Each of those decisions thus applied *Summers* in a way that this Court has since made clear in *Muehler* is incorrect. "An officer's authority to detain incident to a search is *categorical*," *Muehler*, 544 U.S. at 98 (emphasis added), and does not depend on a case-by-case weighing of whether—with the benefit of hindsight—the detention at issue was in fact necessary. In any event, whatever the vitality of those decisions after *Muehler*, not one adopts petitioner's proposed geographic limit on detention. Indeed, petitioner has not pointed to any decision by a federal appellate court holding that occupants outside the "immediate vicinity" of the premises

may never be detained incident to the execution of a valid search warrant. For reasons set forth below, this Court should not be the first so to hold.

B. A Strict Geographic Limit On Detention Would Be Inconsistent With *Summers*

Petitioner rests much of his case on his contention that the *Summers* rule is "an exception to the default mode of Fourth Amendment analysis," because it permits the detention of an individual "without any degree of individualized suspicion." Br. 14-15; see NACDL Br. 5. Because he views *Summers* as a narrow exception to usual Fourth Amendment doctrine, he further contends that "the court of appeals extended the *Summers* rule" by permitting detention a short distance away from the premises. Br. 18 (capitalization and emphasis omitted). Neither contention is correct, and both are squarely at odds with what this Court plainly said in *Summers*.

1. When officers observe an occupant depart premises subject to a search warrant, they have an identifiable and individualized basis to detain him

Petitioner incorrectly contends that the *Summers* rule is unique because it permits "the detention of an individual * * * without any degree of individualized suspicion." Br. 15. As the Court explained in *Summers*, "[t]he existence of a search warrant * * * provides an objective justification for the detention," because "[a] judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime." 452 U.S. at 703. When someone in the home then departs in the presence of an officer executing the warrant, "[t]he connection of [the] occupant to that home gives the police officer an easily identifiable and certain basis for determining that suspicion of criminal

activity justifies a detention of that occupant." *Id.* at 703-704. As a result, the Court observed, there is "*articulable and individualized suspicion* on which the police base the detention of the occupant of a home subject to a search warrant." *Id.* at 703 (emphasis added).

The Court recognized that *Terry* and other cases permit certain types of seizures "on less than probable cause, so long as police have an articulable basis for suspecting criminal activity." *Summers*, 452 U.S. at 699. The Court reasoned that, like those other types of seizures, detention incident to the execution of a search warrant constitutes a "limited intrusion[] on the personal security of those detained" and is justified by "substantial law enforcement interests." *Ibid.* Specifically, the Court found that the limited intrusion from detention is outweighed by "both the law enforcement interest[s] and the nature of the 'articulable facts' supporting the detention." *Id.* at 702. It is therefore incorrect to view the *Summers* rule as an exception to usual Fourth Amendment analysis. See Pet. Br. 14-15. To the contrary, *Summers* permits a seizure based on less than probable cause in the context of executing search warrants, based on the "special law enforcement interests" present in that context. *Summers*, 452 U.S. at 700; see 2 LaFave § 4.9(e), at 649.

Accordingly, detention under *Summers* should not be treated differently from other types of seizures, like a *Terry* stop, that may occur on less than probable cause. See 2 LaFave § 4.9(e), at 644-648 (explaining parallels between *Summers* and *Terry*). As with those other types of seizures, the manner in which officers detain an occupant, including whether they detain him in the immediate vicinity of the premises or a short distance away, should be subject to the Fourth Amendment's

requirement of reasonableness. By analogy in the *Terry* context, "some movement of the suspect in the general vicinity of the stop is permissible without converting what would otherwise be a temporary seizure into an arrest," but "police do not have unlimited power to move a suspect subjected to a *Terry*-type stop." 4 LaFave § 9.2(g), at 348 (4th ed. 2004); see *id.* § 9.2(g), at 351 n.245 (citing decisions that have upheld the transportation of suspects a short distance for identification purposes). So too here, officers have some authority to detain an occupant and return him to the scene, but that authority is not unlimited.

The appropriate inquiry is thus whether officers detain an occupant in a location "reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20. Here, petitioner exited the Lake Drive apartment as officers were preparing to execute a no-knock warrant for a handgun. The officers therefore detained petitioner as soon as practicable a short distance from the apartment, in order to avoid alerting any others inside the apartment to their presence. That is a textbook example of a detention reasonably related to the underlying warrant. It is *petitioner's* request for a strict geographic limit on detention that would set aside "the default mode of Fourth Amendment analysis," Br. 14, by requiring courts to ignore whether a particular detention was conducted reasonably under the circumstances.

2. Summers *rejected a strict geographic limit on where an occupant may be detained*

a. Petitioner recognizes (Br. 20) that in *Summers* this Court viewed "the fact that [the defendant] was leaving his house" as lacking any "constitutional significance." 452 U.S. at 702 n.16. In so doing, the Court necessarily rejected petitioner's core argument: that the rationales for detaining an occupant incident to the execution of a warrant suddenly evaporate once the occupant leaves the premises to be searched. Petitioner attempts to explain away the Court's statement, however, as a *de minimis* exception to a more general rule. According to petitioner, *Summers* generally requires that officers detain an occupant "inside the premises," but this Court recognized an exception "when the initial seizure occurs on the doorstep" because "the rationales supporting a detention * * * operate[] with similar force" in that circumstance. Pet. Br. 20.

Petitioner is entirely correct: the rationales supporting a detention do apply with similar force to an occupant who has recently left the premises. Because that remains true whether the occupant is detained on the threshold of the premises or a short distance away, see *infra*, pp. 31-44, 49-50, petitioner's concession undercuts his case. But as an initial matter, petitioner's reading of *Summers* cannot be squared with the language of the Court's opinion. The Court did not announce a general rule that detention must occur "inside the premises." Pet. Br. 20. Rather, the Court repeatedly referred to detention of "the occupants of the premises," 452 U.S. at 705; see *id.* at 703, by which the Court meant all "eight occupants of the house": the defendant (who was outside the house) and seven other individuals (who were inside the house). *Id.* at 693 n.1. Throughout its opin-

ion, the Court treated those occupants as an undifferentiated group, attaching no "constitutional significance" to whether an occupant was inside or outside the house when officers executed the warrant. *Id.* at 702 n.16.

That makes sense in light of the Court's reasoning. As the Court explained, when a warrant has been issued to search for contraband in a residence, "[a] judicial officer has determined that police have probable cause to believe that someone in the home is committing a crime." 452 U.S. at 703. Whether an occupant is inside the home or recently has been seen leaving by officers, he has a "connection * * * to that home" which gives officers "an easily identifiable and certain basis for determining that suspicion of criminal activity justifies" the occupant's detention. *Id.* at 703-704. It is the occupant's observed "connection" to a home subject to a valid warrant—not his physical location at the time he is detained—that makes him subject to detention, and the question then becomes whether officers effect the detention in a reasonable manner. See *id.* at 705 n.21 ("[S]pecial circumstances, or possibly a prolonged detention, might lead to a different conclusion in an unusual case.").

Nor is petitioner's reading of *Summers* consistent with this Court's description of the facts. According to the Court, the detention in *Summers* did not occur "on the doorstep," Pet. Br. 20, but instead "on the sidewalk outside" the house, 452 U.S. at 702 n.16. That factual distinction, of course, was not important to the Court, which viewed as irrelevant the precise location where officers catch up to a departing occupant. But that sort of factual distinction makes all the difference to petitioner. He repeatedly characterizes detention as constitutional only if it occurs in "the immediate vicinity of the

premises." Pet. Br. 20; see, *e.g.*, *id.* at I, 9-12, 22, 27-29, 31. Petitioner does not explain what he includes within the "immediate vicinity," but whatever he means, he is drawing the kind of geographic limit on detention that the Court rejected in *Summers*.[2]

Moreover, the *Summers* Court was well aware of the arguments for a geographic limit on detention. The American Civil Liberties Union (ACLU) filed a brief as amicus curiae and participated in the oral argument in support of respondent (who was the defendant in the case). That brief advances the same arguments as petitioner (and the ACLU as his amicus) in this case. Specifically, it argues at length that the detention of an occupant who already has departed the premises is a severe intrusion on liberty and cannot be justified by the interests in protecting officer safety or preventing interference with the search. See ACLU Br. at 37-47, *Summers*, *supra* (No. 79-1794). In the face of those argu-

[2] Petitioner suggests that in referring to detention of "occupants of the premises," *e.g.*, 452 U.S. at 705, the *Summers* Court meant "persons who are presently occupying the premises" and not "persons who have formerly occupied them and since departed," Br. 19. That is at odds with the facts of *Summers*, in which the Court used the term "occupant" to refer to the defendant, who was stopped by officers "on the sidewalk outside" the house. 452 U.S. at 702 n.16. It is also at odds with ordinary usage of the term "occupant," as the source quoted by petitioner (Br. 19) recognizes: "[I]f you are confirming your address over the phone and the person on the other end asks, 'And you are still an occupant of 45 Ames Street?' it would be quite ordinary to answer, 'Yes' if that is your address even if you are making the call from outside your home, or as you are driving." Amir Hatem Ali, Note, *Following the Bright Line of* Michigan v. Summers*: A Cause for Concern for Advocates of Bright-Line Fourth Amendment Rules*, 45 Harv. C.R.-C.L. L. Rev. 483, 500 (2010). This case does not present the question of how to apply the *Summers* rule to former or current occupants of a nonresidential building (like a concert hall, see Pet. Br. 19).

ments, the Court stated that whether an occupant had departed the premises was not "of constitutional significance." 452 U.S. at 702 n.16. The Court's statement thus was neither unconsidered nor a silent recognition of some *de minimis* exception. Rather, it was a simple rejection of the geographic limit that this Court is again urged to adopt.

b. Petitioner asserts that the *Summers* Court "did not meaningfully elaborate" on its rejection of a geographic limit, but he does not address what the Court did have to say. Pet. Br. 20. The Court's stated reason for rejecting a geographic limit was that "[t]he seizure of [the defendant] on the sidewalk outside was no more intrusive than the detention of those residents of the house whom the police found inside." 452 U.S. at 702 n.16. To be sure, the Court did not proceed to discuss whether the rationales for detention (*e.g.*, preventing flight, protecting officer safety, and facilitating orderly completion of the search) apply equally whether occupants are inside or outside the premises, but the necessary implication of *Summers* is that they do: if the Court had believed that the rationales for detention applied with any less force to a departing occupant, it would have addressed and redrawn the Fourth Amendment balance—not deemed the occupant's location at the time of detention constitutionally insignificant.

The reason why the Court quickly dispatched with a geographic limit is not difficult to surmise. Accepting such a limit would have undermined *Summers* itself. If petitioner were correct (Br. 22-28) that an occupant, once outside the immediate vicinity of the premises, is no longer a threat to officers and is likely to be a hindrance if returned to the scene, the *Summers* Court should have declared that an occupant may choose to

stay and be detained or leave and go free. The Court recognized instead that important interests are served when an occupant is compelled to remain rather than permitted to leave, and that remains true no matter whether officers initially encounter the occupant inside or outside the premises.

C. Substantial Law Enforcement Interests Justify Detaining An Occupant Away From The Premises As Soon As Reasonably Practicable

The Court in *Summers* pointed to three legitimate and substantial law enforcement interests: "preventing flight in the event that incriminating evidence is found"; "minimizing the risk of harm to the officers"; and "the orderly completion of the search," which "may be facilitated if the occupants of the premises are present." 452 U.S. at 702-703. Each of those interests applies with similar force when an occupant is detained a short distance away from the premises. Two other relevant interests, which the Court in *Summers* had no reason to discuss on the facts of that case, can support detaining a departing occupant a short distance from the residence to be searched: officers' interest in avoiding detection by those inside the premises before they execute the warrant, and their interest in executing the warrant only once they are fully prepared.

1. An occupant who has departed the premises may flee from officers

a. In assessing the justifications for detention incident to the execution of a search warrant, the *Summers* Court stated that "[m]ost obvious is the legitimate law enforcement interest in preventing flight in the event that incriminating evidence is found." 452 U.S. at 702. Despite the Court's statement that the interest in pre-

venting flight is both "obvious" and "legitimate," petitioner contends that it is of lesser importance than the other interests in protecting officers and facilitating orderly searches, which petitioner asserts are "the primary justifications for the *Summers* rule." Br. 17-18. At most, petitioner argues, the interest in preventing flight "overlap[s] with, and thereby reinforc[es]," those other interests. *Id.* at 18.

Petitioner's desire to downplay the governmental interest in preventing flight is understandable, for it is "obvious" that an occupant who fears what a search will reveal may attempt to flee from officers, regardless of whether the occupant is inside or outside the premises. That is why in *Summers* the Court deemed the interest in preventing flight a "legitimate" one, and why in later cases the Court repeatedly has recognized that *Summers* treated the prevention of flight as an important interest in its own right. See *Muehler*, 544 U.S. at 98 ("Against this incremental intrusion [in *Summers*], we posited three legitimate law enforcement interests that provide substantial justification for detaining an occupant," among them "preventing flight in the event that incriminating evidence is found.") (quoting *Summers*, 452 U.S. at 702); *Rettele*, 550 U.S. at 614 (same); see also *McArthur*, 531 U.S. at 331 (noting that *Summers* upheld "temporary detention of [a] suspect without [an] arrest warrant to prevent flight and protect officers while executing search warrant").

Petitioner responds (Br. 17-18) that the prevention of flight cannot be an independent interest, because that would allow officers to detain occupants in the hope that an ensuing search would produce probable cause. Petitioner cites only the dissent in *Summers* for that point. See 452 U.S. at 709 (Stewart, J., dissenting) ("If the po-

lice, acting without probable cause, can seize a person to make him available for arrest in case probable cause is later developed to arrest him, the requirement of probable cause for arrest has been turned upside down."). The Court itself squarely rejected the argument. See *id.* at 705 ("Because it was lawful to require [the defendant] to re-enter and remain in the house until evidence establishing probable cause to arrest him was found, his arrest and the search incident thereto were constitutionally permissible.").

As the Court recognized, there is no reason to treat detention under *Summers* differently from other types of seizures justified by special law enforcement interests, such as an investigative stop under *Terry*. One of the reasons for a *Terry* stop is to ensure the suspect's "continued presence so that he can be readily arrested if other investigation in the immediate area further implicates him." 2 LaFave § 4.9(e), at 645. This Court has acknowledged that as a legitimate law enforcement objective. See *Adams* v. *Williams*, 407 U.S. 143, 146 (1972) ("A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."). As a result, the law enforcement interest in preventing flight, "even standing alone, suffices to support a brief detention in the search warrant context." 2 LaFave, § 4.9(e), at 645 (footnote omitted).

b. Petitioner argues that the interest in preventing flight "is served here only slightly, if at all," because "an individual who has left the scene will ordinarily have no reason to know that a search is imminent—and will therefore have no reason to flee." Br. 29. What petitioner overlooks is that the individual has left the scene

in the presence of officers. An individual is subject to detention only if he has a "connection" to "a home subject to a search warrant," *Summers*, 452 U.S. at 703, and that "connection" typically arises either because officers enter the home and find the occupant inside or they see the occupant leave the home in the process of executing the warrant. In the latter situation, nothing prevents the occupant from seeing the officers, too. Pre-search surveillance is common (so that officers executing the warrant have a sense for the risks they will face), and as petitioner notes (Br. 23-24 nn.7-8), warrants may be executed by groups of officers or a tactical unit. A departing occupant who spots a team of officers is likely to infer that something is afoot and flee the scene.

Petitioner asserts (Br. 23 n.6) that he was not aware of officers' presence here, but the officers had no reliable way of knowing that. Indeed, the *Summers* rule is "categorical" in part precisely so that officers do not have to guess whether a departing occupant has spotted them. *Muehler*, 544 U.S. at 98. And regardless of whether it happened here, it happens in other cases. See *Cavazos*, 288 F.3d at 711 ("[W]hen Cavazos approached the police car and peered at the officers, it would be reasonable to think that he was performing a type of counter-surveillance, after which he drove his truck toward the officers' vehicle in a threatening manner. This conduct warranted the belief that Cavazos would have fled or alerted the other occupants of the residence about the agents."); cf. *State* v. *Madsen*, 5 P.3d 573, 577 (N.M. Ct. App.) ("[B]ecause Defendant was standing only 50 to 100 yards from the motel room, he might have been in a position to observe the officers executing the search warrant."), cert. denied, 4 P.3d 1240 (N.M. 2000) (Table). Occupants engaged in unlaw-

ful activity typically will be sensitive to, and on the lookout for, the presence of police.

Petitioner also ignores the ubiquity of cellular telephones. Even if a departing occupant does not see officers, anyone on the premises or nearby could readily alert him to the search by calling him or sending him a text message. See, *e.g.*, *United States* v. *Young*, 609 F.3d 348, 355 (4th Cir. 2010) ("[D]rug dealers frequently use different cell phones to make and receive calls from their supplier, their customers, and their families."). Here, for instance, officers found several cell phones inside the Lake Drive apartment, in addition to the weapons, body armor, drugs, and drug paraphernalia. See J.A. 181, 202-204, 207-209, 211-212, 215-218. In addition, the confidential informant testified at trial that petitioner owned a cell phone. See C.A. App. A193. Officers could not assume then that petitioner would not learn of the search and attempt to elude them in the future, thus consuming additional law enforcement resources and potentially endangering officers and the public in the process.

2. An occupant who has departed the premises may return to harm officers or interfere with the search

a. The concern for officer safety also justifies detention of a departing occupant away from the premises as soon as reasonably practicable. Executing a search warrant for contraband at a residence is an inherently dangerous task.[3] Where, as here, the warrant authorizes a

[3] Most warrants for residences are issued to search for weapons, drugs, or both. See William J. Dinkin & Cullen D. Seltzer, *Criminal Law and Procedure*, 35 Univ. of Richmond L. Rev. 537, 539 n.10 (2001) (finding that 80% of search warrants for Richmond in August 2001 involved weapons or drugs); Laurence A. Benner & Charles T. Smar-

search for deadly weapons, those dangers are substantially increased. As the Court therefore has held in its post-*Summers* cases, officers executing a search warrant are entitled to take reasonable precautions to ensure their safety, including the use of coercive force. See *Muehler*, 544 U.S. at 100 (governmental interests are "at their maximum" when "a warrant authorizes a search for weapons"); *ibid.* ("In such inherently dangerous situations, the use of handcuffs minimizes the risk of harm to both officers and occupants."); see also *Rettele*, 550 U.S. at 614. Indeed, *Summers* itself "stressed that the risk of harm to officers and occupants is minimized 'if the officers routinely exercise unquestioned command of the situation.'" *Muehler*, 544 U.S. at 99 (quoting *Summers*, 452 U.S. at 703).

In other contexts as well, the Court has noted the "weighty interest in officer safety," *Wilson*, 519 U.S. at 413, and upheld limited intrusions on individuals' liberty or privacy as necessary to protect the safety of officers. See, *e.g.*, *Arizona* v. *Johnson*, 555 U.S. 323, 332 (2009) (officers may frisk a passenger during a lawful traffic stop upon reasonable suspicion that he is armed and dangerous); *Ramirez*, 523 U.S. at 71-72 (officers broke a garage window and pointed a gun through the opening to dissuade occupants from rushing toward weapons believed to be in the garage); *Maryland* v.

---

kos, *Searching for Narcotics in San Diego: Preliminary Findings from the San Diego Search Warrant Project*, 36 Cal. W. L. Rev. 221, 224 (2000) (finding from a representative sample that approximately 50% of search warrants in San Diego are for drugs). The dangers associated with executing residential search warrants (and searching for weapons or drugs) underscore the importance of permitting officers to detain occupants away from the premises when reasonably necessary to protect officers' safety.

Buie, 494 U.S. 325, 336 (1990) ("protective sweep" of house justifiable based on "reasonable suspicion of danger"); *Michigan* v. *Long*, 463 U.S. 1032, 1049 (1983) ("[P]rotection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger."); *Mimms*, 434 U.S. at 110 (officers may require the driver to exit the vehicle during a traffic stop because of "the inordinate risk confronting an officer" in that situation).

The lesson of those cases is that when officers have the requisite level of suspicion to justify a search or seizure—as they do when they observe an occupant departing a home subject to a search warrant for contraband—the Fourth Amendment does not generally dictate the particulars of police procedure for officers in the field. Officers on the scene may conduct the search or seizure in a way that in their professional judgment lessens the risk of violence to themselves and the public, provided that they remain within the bounds of reasonableness. To be sure, officers might decide in specific circumstances that an occupant beyond the immediate vicinity of the premises is not likely to return and become violent. But where officers decide that a departing occupant is a continuing threat, or where they foresee the potential for a confrontation, "it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Terry*, 392 U.S. at 23.

b. Petitioner's argument to the contrary (Br. 22-25) rests on an unsupported factual assertion: that once an occupant has left the premises, he is unlikely to return and confront officers. Occupants, however, often return to the premises while a search is ongoing. Here, for instance, petitioner was giving Middleton a ride home so

that Middleton could comply with a court-imposed curfew. Officers followed petitioner for no more than five minutes before they stopped him approximately two blocks from Middleton's home. See J.A. 48, 54, 117. Had the officers not stopped petitioner, it is virtually certain that he would have returned to the Lake Drive apartment while officers were conducting the search. As petitioner observes (Br. 15), completing a search can take up to several hours, which only increases the chances that an occupant will return to the premises while the search is in progress.

Petitioner's argument thus depends on his prediction that an occupant who arrives on the scene will not accost officers or interfere with the search. Unsurprisingly, petitioner's prediction places too much faith in those suspected of criminal activity. Individuals who come upon police searching their residence may threaten violence against, assault, or even kill officers on the scene. See, *e.g.*, Nat'l Ass'n of Fed. Defenders (NAFD) Amicus Br. 13 (describing a case in which "an officer was shot and killed by an individual who arrived at his residence as the police waited to execute the search warrant"); *Jones* v. *State*, 622 S.E.2d 425, 426 (Ga. Ct. App. 2005) (defendant arrived at her brother's house while officers were executing a search warrant, pushed an officer twice in an attempt to get into the house, and began fighting with the officers, necessitating the use of a Taser to subdue her); *State* v. *Batchelor*, 606 S.E.2d 422, 423 (N.C. Ct. App. 2005) (defendant arrived home after officers served a search warrant on his wife, struck an officer with his car, and then led officers on a high speed chase); Dane Schiller & John MacCormack, *Two Border Agents Killed in Ambush*, San Antonio Express-News, July 8, 1998, at 1A (suspect emerged from a cornfield

and fired on officers preparing to conduct a search, killing two of them).

Beyond threatening the safety of officers, individuals who come upon police searching their residence may also interfere with the orderly completion of the search. That requires officers to divert attention and resources away from completing the search in a timely and thorough manner. See, *e.g.*, *Avery* v. *King*, 110 F.3d 12, 13 (6th Cir. 1997) (property owner arrived while officers were executing a search warrant, acted aggressively, and refused to leave despite multiple requests); *Valdez* v. *State*, No. 01-05-821-CR, 2006 WL 3317653, at *1-*2 (Tex. App. Nov. 16, 2006) (defendant arrived mid-search; acted "very belligerent, cursing at officers"; and interfered with an officer's efforts to make an arrest, "striking, kicking, and pulling at [the officer's] arm in an attempt to release [another defendant] from [the officer's] hold"); *State* v. *Seabury*, 985 P.2d 1162, 1163 (Kan. 1999) (defendant arrived mid-search, became "irate," "told police he was not going to allow them to search the house," and "demanded that he be allowed to accompany the police on their search of [the] home"); *Williams* v. *McNeil*, 432 So. 2d 950, 852 (La. Ct. App.) (property owner arrived while officers were searching his home for drugs "and allegedly became boisterous and interfered with the search"), writ denied, 437 So. 2d 1151 (La. 1983).

Individuals arriving at the scene may also attempt to prevent officers from gathering contraband or other evidence. See, *e.g.*, *Poole* v. *State*, No. 12-06-290-CR, 2007 WL 2782746, at *1 (Tex. App. Sept. 26, 2007) (defendant arrived mid-search, began "hollering and cussing" at the officers, and moved "quickly and aggressively" toward an officer who was carrying firearms out

of the residence, telling the officer he "was not going to take [the] gun[s]"); *Commonwealth* v. *Yesilciman*, 550 N.E.2d 378, 382 (Mass. 1990) (defendant arrived mid-search and "attempted to prevent the police officers from gathering certain items of his clothing and attempted to impede the search of his automobile").[4]

c. Petitioner recognizes that "[w]here an individual returns to (or arrives at) the premises while the search is ongoing, lower courts have consistently held that the individual can be detained under the rule of *Summers*." Br. 24 n.9 (citing cases). Petitioner does not appear to take issue with those decisions, but it is hard to see why. If officers may detain a returning occupant who arrives mid-search because of the risk that he will harm officers or interfere with the search, the same analysis should govern at an earlier point in time, when officers know that a departing occupant may return and threaten their safety or impede the search. See, *e.g.*, *People* v. *Glaser*, 902 P.2d 729, 739 (Cal. 1995) ("[P]olice are not required

[4] One of petitioner's amici purports to rely on empirical data, but its selected data are largely irrelevant. See NAFD Br. 8-19. For instance, it cites recent crime reports by the Federal Bureau of Investigation, but the vast majority of search warrants for contraband are executed by state and local officers. Nor should amicus even expect to find recent federal incidents in which officers failed to detain a departing occupant (on the ground that he was outside the immediate vicinity of the premises) and the occupant returned to harm officers—as the vast majority of circuits expressly permit detention a reasonable distance from the premises and no circuit has forbidden it across the board. See pp. 22-23, *supra*. Amicus points to state laws granting authority to search individuals present at the premises, but the question here is whether officers were permitted to detain petitioner for a brief period, not whether they could search him during that time. As for the police manuals to which amicus points, they generally counsel officers to secure the premises when executing warrants, without addressing in any way the application of the *Summers* rule.

to ignore the danger that persons possibly involved in crime, who leave the premises, may return during the search, with potentially fatal consequences for themselves or the officers."). Officers should not be required to roll the dice that when occupants leave, they will not come back—or that if they do, they will meekly submit to officers' authority.

Perhaps petitioner means that once a returning occupant crosses into the "immediate vicinity" of the premises, he is subject to detention. But that proposition is not clearly supported by all of the decisions he cites (Br. 24 n.9). In *United States* v. *Jennings*, 544 F.3d 815 (7th Cir. 2008), for instance, the defendant "entered the security perimeter surrounding the apartment where the narcotics search was underway," but he "never stepped onto the property being searched." *Id.* at 818. In any event, whatever geographic threshold petitioner has in mind, officers watching an occupant return should not be required to stand idly by until he crosses some imaginary line to detain him. Cf. *Brendlin* v. *California*, 551 U.S. 249, 258 (2007) ("It is also reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety.").

Petitioner argues that rather than detain occupants outside the immediate vicinity of the premises, officers could protect their safety simply by "erecting barricades or posting someone on the perimeter." Br. 24. The reasonableness of officers' conduct, however, "does not turn on the availability of less intrusive investigatory techniques." *United States* v. *Sokolow*, 490 U.S. 1, 11 (1989). Defendants "engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have

been accomplished." *Sharpe*, 470 U.S. at 686-687. For that reason, courts "must be careful not to use hindsight in limiting the ability of police officers to protect themselves as they carry out their missions which routinely incorporate danger." *United States* v. *Coates*, 495 F.2d 160, 165 (D.C. Cir. 1974). Moreover, even assuming that the protection of officers "might, in the abstract, have been accomplished by 'less intrusive' means does not, itself, render [petitioner's seizure] unreasonable." *Sharpe*, 470 U.S. at 687 (quoting *Cady* v. *Dombrowski*, 413 U.S. 433, 447 (1973)).

In any event, stationing officers around the premises may be neither practicable nor effective depending on the circumstances. Petitioner assumes that search teams will have sufficient personnel to post sentries; posted sentries always will see returning occupants; occupants will not fire on officers before they can be detained; and occupants will be alone rather than accompanied by others (who may themselves be armed and dangerous). No doubt in many cases those conditions will hold, but the Fourth Amendment does not require officers to take that dangerous gamble. The officers in this case were searching for a semi-automatic weapon, and they could not assume petitioner and Middleton were unarmed. In that situation, it was far more sensible for officers to "exercise unquestioned command of the situation" by detaining petitioner, rather than waiting to see whether he and Middleton would return while the search was in progress. *Summers*, 452 U.S. at 703. Briefly detaining petitioner a short distance from the apartment was an eminently reasonable decision.

3. An occupant who has departed the premises may be returned to assist in the orderly completion of the search

Petitioner argues that detaining an individual who has left the immediate vicinity of the premises "does not materially advance the interest in facilitating the orderly completion of the search," because "the seizure of such an individual will necessarily divert officers" from conducting the search or "creat[e] a distraction" at the scene. Br. 28. The same argument could have been made about detaining all of the occupants in *Summers*. In any event, officers can reasonably decide that the usefulness of detaining an occupant outweighs any diversion or distraction. Although officers will not need assistance opening locked doors or containers during all searches, see *Summers*, 452 U.S. at 703, they will during some searches and it is usually impossible to anticipate in advance which searches those will be. Nor is an occupant returned to the scene likely to prove much of a distraction in light of the fact that, if necessary, he may be placed in appropriate restraints. See *Muehler*, 544 U.S. at 100. Indeed, petitioner does not cite a single case in which his concerns have come to pass.

There are cases, however, in which an occupant detained away from the premises has provided valuable assistance to police. In *Montieth*, for example, officers obtained a search warrant for drugs at a residence occupied by the defendant, Kwan Montieth, as well as his wife and two young children. 662 F.3d at 662-663. "In an effort to minimize trauma to Montieth's family as well as the safety risks of a search," the officers waited for Montieth to drive away from his home, stopped him less than a mile away, and secured his cooperation to execute the warrant. *Id.* at 663. In agreeing to cooperate, Mon-

tieth "asked especially that his children not see him in handcuffs." *Ibid.* Officers then returned Montieth to the home and kept him in their police car while his wife and children departed (without seeing him in handcuffs). *Ibid.* Montieth entered the residence with officers, and after waiving his *Miranda* rights, told them where to locate drugs, firearms, and cash. *Ibid.* As that case demonstrates, detaining an occupant away from the premises can "materially advance the interest in facilitating the orderly completion of the search." Pet. Br. 28.

4. Detaining an occupant away from the premises avoids alerting others inside to the police presence

An additional interest can be served by allowing officers to detain departing occupants outside the immediate vicinity of the premises: the police may avoid alerting anyone still inside the premises to their presence. That is particularly true when circumstances on the scene justify an unannounced entry or where, as here, the police are executing a no-knock warrant that authorizes them to enter the premises without notice. In either situation, officers may execute the warrant without notice to prevent individuals inside the premises from arming themselves, destroying evidence, or attempting to flee. See *United States* v. *Banks*, 540 U.S. 31, 36-37 (2003); *Richards* v. *Wisconsin*, 520 U.S. 385, 394-395 (1997); *Wilson* v. *Arkansas*, 514 U.S. 927, 935-936 (1995). Those important objectives all would be substantially undermined if officers were forced to detain departing occupants immediately outside the premises rather than a short distance away.

Petitioner does not dispute that detaining an occupant on the threshold may alert others inside, giving them the opportunity to arm themselves, destroy evi-

dence, or flee. Petitioner says simply (Br. 27) that if police do not want to run those risks, they should forgo detention altogether. That approach would put officers executing a warrant in an "impossible position." Pet. App. 14a. When officers observed a person of interest leaving a residence subject to a search warrant, they would be required either to detain him immediately (risking that his confederates would harm officers, destroy evidence, or flee) or to allow him to leave altogether (risking that he would flee, return to harm officers or interfere with the search, or at least fail to assist in the search). *Ibid.* As the court of appeals correctly observed, "*Summers* does not necessitate that Hobson's choice." *Ibid.* Because (as even petitioner concedes) officers can detain a departing occupant in the immediate vicinity of the premises, they should be able to detain him a short distance away in order to avoid giving away their presence before executing the warrant.

5. Detaining an occupant away from the premises avoids forcing officers to commence the search prematurely

Similarly, when an occupant leaves the premises as officers are preparing to execute a warrant, petitioner's now-or-never rule would force officers to commence the search before they are ready or forgo the substantial benefits of detention. Executing a warrant requires careful and thorough planning, and if the entire search team is not familiar with relevant details, it increases the chances that officers could damage property, contaminate or overlook evidence, or be injured. See, *e.g.*, Paul B. Weston & Kenneth M. Wells, *Criminal Investigation: Basic Perspectives* 31-51 (3d ed. 1980); Andrew P. Sutor, *Police Operations: Tactical Approaches to*

Crimes in Progress 179 (1976). Here, officers were preparing to execute the warrant when petitioner and Middleton left the apartment. Detectives Sneider and Gorbecki therefore detained the pair a short distance from the apartment, and in the meantime other officers finished their preparations and entered the apartment. That reasonable approach allowed officers to execute the warrant when they were fully prepared.

D. Detaining An Occupant A Short Distance From The Premises Is Not Substantially More Intrusive And May Be Less Intrusive Than Detaining Him In The Immediate Vicinity Of The Premises

1. Whether an occupant of the premises is detained inside the residence, at the threshold, or a short distance away before being returned to the residence, the restraint on his liberty is the same. That restraint on an occupant's liberty for the duration of the search is admittedly a significant one, but it is "surely less intrusive than the search itself." *Summers*, 452 U.S. at 701. Moreover, regardless of where officers detain an occupant, the information they seek "normally will be obtained through the search and not through the detention." *Ibid.* As a result, detaining the occupant a short distance from the premises and returning him to the scene is no more likely to be exploited by officers than is detention inside the premises. And because the occupant is returned to a familiar place, his detention "add[s] only minimally to the public stigma associated with the search itself" and "involve[s] neither the inconvenience nor the indignity associated with a compelled visit to the police station." *Id.* at 702. The reasoning of *Summers* thus applies equally whether a departing occupant is

stopped in the immediate vicinity of the premises or a short distance away.

2. Petitioner argues (Br. 32) that detaining an individual in a public place away from the premises increases the intrusiveness of the seizure. As an initial matter, the Court in *Summers* rejected the notion that a seizure is necessarily more intrusive merely because it occurs in public view. See 452 U.S. at 702 n.16 ("The seizure of respondent on the sidewalk outside was no more intrusive than the detention of those residents of the house whom police found inside."). But assuming that a detention in public view can be more intrusive, it is quite odd to think that detaining someone away from the premises *in front of probable strangers* would be more intrusive than detaining him at the premises *in front of loved ones, friends, or neighbors*. If anything, the latter seems likely to pose a greater indignity.

Indeed, in some cases, detaining an occupant a short distance from the premises will be far less intrusive and far more respectful of personal dignity. In *Montieth*, for example, the defendant "asked especially that his children not see him in handcuffs." 662 F.3d at 663. By detaining the defendant a short distance from his home in that case, "[t]he officers minimized the threat to their safety, [the defendant] spared his children the sight of their father in handcuffs, and his family was protected from the consequences of an unanticipated police entry by force." *Id.* at 668. According to petitioner, however, that entire course of events was unconstitutional from the outset: officers lacked any authority to detain the defendant once he left the immediate vicinity of his home. Petitioner's approach would seriously impair the ability of police to isolate suspects in situations where third parties could be placed in harm's way. At the

least, petitioner's approach is not necessarily less intrusive or more respectful of personal dignity than the government's.

3. Petitioner claims (Br. 33-34) that the incentive for exploitative questioning is greater when the detention occurs away from the premises. Officers did not exploit the detention here. See Pet. App. 16a.[5] Although officers asked petitioner a few basic questions, this Court has expressly held that type of questioning permissible during detention incident to the execution of a search warrant. See *Muehler*, 544 U.S. at 101. Nor does petitioner point to a single case in which officers were found to have exploited the detention. See, *e.g.*, *Bullock*, 632 F.3d at 1021 (finding that officers did not attempt to obtain additional evidence from the defendant during execution of the warrant). Even assuming petitioner could locate such a case, it would hardly prove any widespread abuse. As far as this and other cases reveal, officers detain occupants away from the premises for the legitimate reasons identified in *Summers*.

---

[5] Petitioner suggests that, contrary to the findings of the lower courts, Detectives Sneider and Gorecki exploited his detention by asking questions "designed to elicit responses connecting him with the premises being searched." Br. 33. Detective Sneider asked petitioner his name, where he was coming from, and whether he had identification. J.A. 88-89. That type of questioning, which petitioner does not argue prolonged his detention, is expressly permitted by *Muehler*. See 544 U.S. at 101. In any event, in asking where petitioner was coming from, Detective Sneider was confirming that in fact petitioner was a former occupant of the Lake Shore apartment. He was not attempting to elicit additional information, because he and other officers already had seen petitioner exit the apartment. The fact that petitioner answered, "My house," is evidence of his culpability for the charged offenses, not of any impermissible questioning by the officers. J.A. 88.

Petitioner's alarmist prediction fares no better in theory than in practice. It is true that the officers who detain the occupant and return him to the premises will not be the officers who execute the search warrant in the meantime. See Pet. Br. 33. But even when an occupant is detained on the premises, the officers who oversee the detention are often different from those who conduct the search. See, *e.g.*, *Muehler*, 544 U.S. at 96 ("While the search proceeded, one or two officers guarded the four detainees."). Wherever an occupant initially is detained, some officers typically will be able to focus on him—so the absence of exploitation is based not on where the detention commences but on officers' use of detention as a legitimate law enforcement practice. And needless to say, if officers did prolong detention off-site unnecessarily in order to conduct questioning, courts could find the detention unreasonable for Fourth Amendment purposes. See *Montieth*, 662 F.3d at 667 ("Our holding should not be overread. We do not suggest that any detention away from the home to be searched is invariably a reasonable one.").

E. Petitioner's Geographic Limit Is Artificial, Unnecessary, And Impractical

1. By conceding that detention is permissible so long as it occurs within the "immediate vicinity" of the premises, petitioner effectively undercuts his case. Just as the Court in *Summers* recognized that the justifications for detention do not instantly dissipate when an occupant steps out of a house or apartment into the "immediate vicinity," the courts below recognized that the justifications for detention do not disappear when an occupant leaves that "immediate vicinity" and drives a short distance down the street. An occupant outside the "im-

mediate vicinity" can flee from police, return to the scene to harm or interfere with officers, or be returned to assist those officers. See pp. 31-44, *infra*. Petitioner's approach is thus severely underinclusive: it excludes a large number of cases (like this one) that implicate precisely the same interests as his "immediate vicinity" test. Petitioner's geographic game is simply not worth the candle.

Moreover, although petitioner claims (Br. 34-36) the virtues of a rule-based approach, his lines are anything but bright ones. Petitioner does not explain whether, for a house, the "immediate vicinity" extends to the curtilage, grounds, physical boundaries of the property, or any adjoining sidewalk or street; or whether, for an apartment building or housing complex, the "immediate vicinity" extends to a hallway, walkway, stairs, lobby, or other public area. But whatever petitioner intends to include, courts will have to make case-specific, fact-intensive judgments on either his approach or the government's. The difference is that on the government's approach, courts are tasked with a familiar inquiry: reasonableness under the Fourth Amendment. On petitioner's approach, they would be asked to enforce an artificial geographic limit on detention that bears no relation to the interests underlying the *Summers* rule. The constitutionality of detention thus would turn on whether officers caught up to an occupant on his porch, driveway, sidewalk, or city block, rather than whether officers acted reasonably under the circumstances.

2. Petitioner contends (Br. 25) that without an iron-clad geographic limit on the *Summers* rule, it will become an entitlement to detain former occupants of the premises wherever they may be found. But in the three decades since *Summers* was decided—during which no

federal court of appeals has adopted petitioner's proposed limit—there is no evidence that officers have administered *Summers* in that way. Time and again, officers have witnessed an occupant leaving the premises and conducted a traffic stop a short distance away. See, *e.g.*, *Montieth*, 662 F.3d at 663 (eight-tenths of a mile); *Bullock*, 632 F.3d at 1009 (10 to 15 blocks); *Cavazos*, 288 F.3d at 711 (two blocks); *Cochran*, 939 F.2d at 339 ("[a] short distance"); see also *United States* v. *Head*, 216 Fed. Appx. 543, 546 (6th Cir. 2007) (approximately one mile); *Castro-Portillo*, 211 Fed. Appx. at 717 (two blocks); *Sears*, 139 Fed. Appx. at 164 (100 feet). That is true even in cases that have held the detention at issue impermissible. See *Edwards*, 103 F.3d at 94 (three blocks); *Sherrill*, 27 F.3d at 345 (one block).[6] Quite simply, petitioner's geographic limit is a solution in search of a problem.

That is because, as the court of appeals explained, "*Summers* imposes upon police a duty based on both geographic *and* temporal proximity; police must identify an individual *in the process of leaving* the premises subject to search and detain him *as soon as practicable* during the execution of the search." Pet. App. 15a. Those limits are both logically related to the *Summers* rule and meaningful. The former ensures that the individual has the requisite "connection" to the residence to justify detention in the first place. 452 U.S. at 703. And the

---

[6] One of petitioner's amici points to *United States* v. *Reinholz*, 245 F.3d 765 (8th Cir.), cert. denied, 534 U.S. 896 and 534 U.S. 933 (2001). See ACLU Br. 7 n.2. In that case, the warrant authorized searching a residence *and* the defendant's person. See *Reinholz*, 245 F.3d at 771. The defendant happened to be at work when officers executed the warrant on him personally, but that does not demonstrate any abuse of the *Summers* rule.

latter ensures that the location of the detention is reasonable for Fourth Amendment purposes. For detention to serve at least some of the interests identified in *Summers*, the occupant typically must be returned to the premises in a timely manner. Detention may therefore be unreasonable if officers wait longer than is necessary or practicable to detain a departing occupant. Here, of course, petitioner does not dispute that officers stopped him at the earliest safe opportunity once he had left the Lake Drive apartment.

3. Petitioner's now-or-never approach suffers from a final flaw: it assumes that officers have the choice of detaining an occupant in the immediate vicinity of the premises (so long as officers are willing to risk alerting others inside to their presence). The circumstances at the scene, however, are often not so simple. The occupant may drive out of a garage attached to the residence without warning, see *Cochran*, 939 F.2d at 339 n.4, or police may be in unmarked cars and, "because of officer safety concerns, it is not the practice of [that police department] to stop vehicles in unmarked police cars," *Head*, 216 Fed. Appx. at 546. For any number of reasons, officers may catch up to a departing occupant outside the immediate vicinity of the premises but close enough that valuable law enforcement interests still would be served by detention. In those situations, petitioner's geographic limit on the *Summers* rule would unnecessarily hamstring the ability of officers on the scene to perform an already difficult task: the safe and efficient execution of search warrants.[7]

[7] In the lower courts, the government argued that petitioner's detention was permissible under *Terry* and that in any event any error in admitting the fruits of petitioner's detention was harmless in light of other extensive evidence linking him to the apartment. See Gov't C.A.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
LANNY A. BREUER
Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General
DEBORAH WATSON
Attorney

SEPTEMBER 2012

Br. 31-35; see pp. 7-8, *supra*. As petitioner notes (Br. 39 n.17), if this Court reverses the judgment and remands for further proceedings, the government remains free to renew those arguments on remand.