RISA GOLUBOFF: Good afternoon, I'm Risa Goluboff. I'm the dean of the law school. I'm glad you all tuned in to watch this moot court. I'm thrilled to be part of today's event and I want to thank the entire Lile Moot Court board and especially Saddiq Abdul and Almas Abdulla for organizing today's competition and for inviting me to be a part of it.

The William Minor Lyle Moot Court Competition is now in its 93 year and it is the primary intramural moot court competition at the University of Virginia. It is one of our great traditions and it encapsulates a lot of what makes this law school so special. The hard work and pursuit of excellence that is a part of moot court, the thinking creatively, learning how to apply existing laws in novel circumstances to take the next step in legal reasoning and advocacy, the cooperation among our students, both the students who work in the teams in the competition, and the students who organize these events, and the show of support within our community and the students who have helped their friends prepare for today by mooting their arguments. The faculty and administrators who are watching today to cheer on their students, and who have helped them get to this day.

So the Lile Moot Court also demonstrates another wonderful aspect of our institution, which is how much we learn from having leaders in the profession join us for events such as these. So I have the privilege of introducing our three judges this afternoon.

Judge Jerome A. Holmes was appointed to the US Court of Appeals for the Tenth Circuit in 2006. He received his law degree from Georgetown University Law Center in 1988, where he served as editor in chief of the Georgetown Immigration Law Journal. He received a bachelor's degree in history from Wake Forrest University graduating Cum Laude. And he began his legal career as a law clerk for the Honorable Wayne E. Ali of the US district court for the Western District of Oklahoma, and for the Honorable William J. Holloway, Jr. On the Tenth Circuit. So his roots there go deep. He then practiced for three years at

Steptoe and Johnson in D.C. before joining the US Attorney's office for the Western District of Oklahoma.

As an AUSA, Judge Holmes worked on the prosecution team for the Oklahoma City bombing, helping to secure the convictions of both Timothy McVeigh and Terry Nichols. He then worked in private practice at one of Oklahoma's oldest law firms, Krot and Donlevy, before joining the bench.

A lifelong learner, Judge Holmes also earned a master's degree in public administration from Harvard University's John F Kennedy School of Government in 2000, where he was a John B. Pickett fellow in criminal justice policy and management. Judge Holmes is also committed to a life of service, not only in his work but outside of it as well. He has served on the Board of Governors of the Oklahoma Bar Association, including a term as its vice president. He is the past president of the William J Holloway Jr. American in a court, and a former commissioner of the American Bar Association's commission on homelessness and poverty. So, welcome to Judge Holmes.

JUDGE HOLMES:

Thank you, delighted to be here.

- So happy to have you. Judge Lewis A. Bledsoe, III, is Chief Judge of the North Carolina Business Court. He was appointed Special Superior Court Judge for Complex Business Cases by Governor Pat McCrory in 2014. He has served in the role of Chief Judge since 2018, and he was nominated for and unanimously confirmed for a second term on the Business Court in July 2019.

A native of Charlotte, North Carolina, Judge Bledsoe attended

UNC Chapel Hill as a Morehead, now Morehead-Kaine scholar. He graduated Phi Beta Kappa in 1981, and received the William P. Jaycox award as the outstanding man in UNCAS graduating class. He graduated Cum Laude from Harvard Law School in 1984 and began his legal career as a judicial law clerk to the Honorable Sam J Urban, III, on the United States Court of Appeals for the Fourth Circuit.

He practiced commercial and business litigation at Robinson, Bradshaw, & Henson in Charlotte for nearly 29 years until his appointment to the bench. He is a member of the American College of Business Court Judges and currently serves as one of the college's representatives to the ABA Business Law Section. Welcome.

JUDGE BLEDSOE: Very much.

RISA GOLUBOFF: Thank you for being here. Finally, our third judge today is Megan Barbera. She is Deputy General Counsel of the US House of Representatives, where she manages strategic litigation and provides advice and counsel for House members and committees. She joined the House Office of General Counsel in 2019. She has raised and argued cases involving historic questions around the separation of powers and the enforcement of congressional subpoenas seeking the president's information. She's also briefed for the house managers in both recent presidential impeachment trials.

Ms. Barbera previously served for five years as a career attorney with the appellate staff of the Civil Division of the United States Department of Justice. While there, she represented the United States as lead attorney in the Federal Courts of Appeals in a diverse range of civil litigation.

Miss Barbera earned her Magna Cum Laude from Harvard College in 2001, and graduated Order of the Coif from Stanford

Law School in 2005. She clerked for the Honorable Pamela Ann Rimer of the Ninth Circuit Court of Appeals, and she practiced at Wilmer-Hail in Boston and D.C. for seven years as a member of the firm's appellate and Supreme Court and intellectual property litigation teams, before joining the Department of Justice. Welcome, Judge Barbera.

JUSTICE BARBERO: Thank you.

- We are so honored to have all three of these knowledgeable and accomplished judges and lawyers join us today. I think you can all see how wonderful they are going to be, given their incredibly widespread experience and backgrounds. Thank you so much to all three of you for taking the time to judge our moot court competition. I still look forward to watching you work and to learning all that I know that we will learn from you.

I will now hand things over to Henry Lee and Logan Leonard, who will share the description of the problem. Thank you.

- Thank you.

SADIK: Everyone, before we pass it off to Henry and Logan, we are facing site difficulties with the competition in terms of tech issues. So it seems like the last three months on a-- has created a separate one than what was sent to law school. So fortunately this meeting is being recorded. But I ask if we can all just wait five minutes while I disconnect the YouTube and try to ameliorate the issue. If within five minutes, I can't fix the issue let's proceed with tonight's competition using a separate link

and I'll send that to the law school to send out to the rest of the community. I apologize. Technical difficulties, given the Zoom world. So if you can go out and just give us just five minutes.

- OK, we'll get started back up in about a minute or so. I apologize for that. So just to give you an update on our technical issue, we unfortunately tried to reach-- to connect it to the original link we sent out to the local community, and unfortunately, it's not working. Even though we're connected on my end, it's not broadcasting. So what we'll do in just a minute is, we're currently live on YouTube, and I'll send that YouTube link, a new YouTube link that we're streaming on to the original. The link that was sent out to the community, so that appears on their page, and they can just click on a new link to see our program. So bear with me for just a minute or so. And so I can make that happen.

Thank you for your patience. I alerted the poll center in our description of the original website of the YouTube video so that people can be redirected to the new video. So apologies for the tech issues. Hopefully nothing like this will happen later on in the call. So, let me pass it off to Henry and Logan so that they can describe our problem.

HENRY LEE: Thank you, Sadik, and thank you, Dean Goluboff, for the introductions. I'll be talking about the facts, and then my co-

author Logan will be talking about the law in this case. This is a criminal case from the state of Lile. The defendant, Mr. James Donovan, has been charged with possession of methamphetamine with intent to distribute, a felony under state law. The US Supreme Court has certified the following questions on appeal, whether the community caretaking exception to the warrant requirement extends to residential homes, and whether the prosecution may use as substantive evidence of guilt in its case in chief, the silence of a criminal defendant after he was arrested, but before he was given a round of warnings.

In April 2018, Lile City local police received a warning about the mental health of the defendant. When they arrived at his apartment to conduct a wellness check, they found the front door wide open. Worried about the well-being of the defendant and apart from any criminal investigation, local police entered the apartment without a warrant. Inside they found small patches of crystal methamphetamine in a fish tank on the floor.

When the defendant returned, Lile Police immediately told him he was under arrest for possession of methamphetamine. The defendant reacted to the arrest and charge only with silence. At trial, the state presented the defendant's silence after arrest but before questioning as evidence implying lack of surprise and knowledge, an element of the possession offense under Lile state law.

LOGAN LEONARD: On appeal, the Supreme Court affirmed. It held that because Miranda rights were originally designed to combat coercive police interrogation tactics, they are triggered only when police begin questioning a defendant. Thus, in the court's view, there is no right to silence in the absence of police questioning. The court also held that because police officers have special caretaking roles in society, totally separate from criminal

investigation, they may enter homes without a warrant in furtherance of those roles.

These two questions of law are both subjects of live Federal Circuit splits. On the question of post-arrest, pre-Miranda silence, the courts of appeal are currently divided in three ways. The First, Second, Sixth, and Seventh Circuits prohibit the use of even prearrest silence as substantive evidence of guilt. The Ninth, Tenth, and D.C. circuits prohibit the use of post-arrest pre-Miranda silence. And the Eleventh, Fourth, and Eighth Circuits permit the use of post-arrest, pre-Miranda silence.

At the heart of this debate are two different visions of what Miranda means. Whether it is narrow, and only covers police interrogations, or whether it provides a general right to silence, automatic upon arrest. As often portrayed in popular media, the Supreme Court announced the community caretaking exception to the rule requirement in Katie v Dombrowski. The court in that case held that police could search an automobile without a warrant when carrying out functions totally divorced from the investigation of crime.

Some courts of appeal including the First, Fifth, Sixth and Eighth Circuits have extended this rationale from the automobile, to the home. Others, including the Third, and Ninth Circuits have highlighted the express distinction the court made between automobiles and homes. Unlike the Miranda question, however, warrantless home intrusion for the purpose of community caretaking will be addressed by the real Supreme Court tomorrow. In the case Coniglia v Strong, so please tune in for that as well.

With that, I will pass it off to Almas.

ALMAS ABDULLA: Thank you, Henry and Logan. We will proceed to the oral argument stage of the competition now

Oh ye, oh ye, oh ye. Those persons having business before the Honorable Supreme Court are admonished to draw near and give your attention, for the Court is now sitting. God save the United States and this Honorable Court. Now calling case number 18732. Mitchell James Donovan v the state of Lile, and I'll pass it off to Chief Justice Holmes.

JUDGE HOLMES: Counsel, would you make your appearance and proceed?

NINA: Thanks to you, Your Honor and may it please the court. Mr. Chief Justice, with your permission, we'd like to request to reserve two minutes for rebuttal.

- Yes.

NINA: Thank you. My name is Nina, and together with my co-counsel, Mihir Khetarpal, represent the petitioner, Mitchell Donovan. Petitioner seeks reversal of the Supreme Court's decision in full. I'll be addressing the first issue of home entries under the community caretaking exception to the Fourth Amendment's warrant requirement, while my co-counsel will be addressing the use of post-arrest, pre-Miranda silence as evidence of guilt.

The community caretaking exception to the Fourth Amendment warrant requirement is a narrow exception that this court has exclusively applied to the search of automobiles. This court should reverse the Supreme Court's extension of that exception to residential homes for three reasons. First, the community caretaking exception doctrine is rooted in the diminished protection that vehicles are afforded under the Fourth Amendment. Second, extending the exception to residential homes would invalidate the deeply rooted understanding that houses receive the most rigorous of constitutional protections.

JUDGE BLEDSOE: Now, so let me interrupt you there and ask about Katie. I mean, did Katie limit the community caretaking doctrine to vehicles or instead, did it focus on the fact that the search and seizure was

on a car in assessing the reasonableness of the search?

NINA: The latter, Your Honor. While the Supreme Court-- while this court did not expressly limit the exception to cars, the reasoning was based exclusively on cases that came before it that address the diminished level of protection that cars receive under the Fourth Amendment. It's also noteworthy that in the two cases that this court has applied, and since then, those two cases also were about the searches of impounded automobiles.

JUDGE BLEDSOE: But if the focus of the search-- excuse me, if the focus of the inquiry is on the reasonableness of the search, why wasn't the search here reasonable? The defendant was reported to be suicidal, he had guns in his house. The front door was open. The lights were on. The TV was playing. All things suggesting someone was unresponsive. Why wasn't it reasonable for the officers to enter the home to check on the defendant's well-being?

NINA: There is a per se rule that warrantless entries into the home are unreasonable unless a law enforcement officer is entering the home under one of the existing exceptions that this court has crafted to that warrant requirement. And so if we look to the cases where this court has held that warrantless entries can be reasonable-- so the cases that have acknowledged these exceptions to the warrant requirement-- the common thread is that obtaining a warrant in that moment would be impractical to achieve the government's interest, and most of these exceptions make warrantless entries reasonable because there's a situation in which time is absolutely of the essence.

Respondants, however-- to apply their test--

JUSTICE BARBERO: There's already an exception though, that covers that situation. Where you have time is of the essence, there's an immediate

danger. But police officers are often wearing multiple hats and here we have police officers who were called to the home, who had a concern about the defendant's well-being. Had they sought a warrant, my understanding is they likely wouldn't have been able to get a warrant. But they needed to go into the home to check on the defendant given the evidence that they had from his girlfriend.

So, to Judge Bledsoe's question on the facts here, why isn't it; one, reasonable for them to do that, and two, don't we need that kind of exception to allow police officers to perform these important caretaking functions?

NINA: There's a few answers to your question and I'll try to take them in turn. The first is that we do not know for sure at all that they would not have been able to obtain a warrant given the fact that police officers are able to very quickly obtain a warrant, both through medical-- not medical, I apologize-- modern technology, and through the criminal rules of federal procedure which permit them to to get a warrant over the phone, they would have been able to get a warrant had they arrived at the home and realized that they needed to enter the home in order to carry out the welfare check that they had been asked to perform by the girlfriend.

JUDGE HOLMES: What would have been the basis for a warrant? A warrant is predicated on criminal activity, that's not what's going on here. I mean to Judge Barbero's point I mean, this is addressing the welfare concerns related to the defendant. I mean, what basis would there be for a warrant?

NINA: Your Honor, this court held in Kamara that the warrant requirement is not limited to criminal investigatory entries so long--

JUDGE HOLMES: Is that an administrative search?

NINA: I apologize Your Honor, could you repeat the question?

JUDGE HOLMES: Is that an administrative search case?

NINA: Yes, Your Honor.

JUDGE HOLMES: Hold on a second, how does that have anything to do with this situation?

NINA: Because administrative searches, Your Honor, are part of the caretaking duties that police engage in when they're wearing one of their many hats, as Justice Barbero acknowledged. The reason in *Kamara* was that the privacy of the home is not predicated on the reason that the law enforcement is entering the home. And so, as this court recognized, the warrant requirement thus then cannot be limited to criminal investigatory entries.

Kamara also tells us that while, of course, the facts that are relevant to probable cause will look very different than those for an investigatory search, probable cause can take into account the nature of what is being sought. This, of course, is based on the understanding that the privacy of the home is not relative to the reason that the state intrudes upon it.

So here, the girlfriend came to the police and said, I am afraid based on a comment that my boyfriend made the day before, and they arrive at the home and the door's open and from one knock, they don't get a response. At which point they would have the option to call to get a warrant. The girlfriend's comment and the lack of response when they arrived would almost certainly rise to the level of probable cause such that they could--

JUDGE HOLMES: Probable cause? Probable cause of what? I mean, and remind me what is Kamara, what is the factual setting? My recollection of it was that it was a search that was-- well, tell me, what was

Kamara about?

NINA: So in Kamara, the issue was law enforcement had entered a home without a warrant in order to ensure that a house was following health and safety regulations. So yes, it was about an administrative search related to ensuring regulatory compliance. But in the court's reasoning, they looked at that as a public health and safety government interest. Which in a case like this would be the same interest, which is that the government has an interest in public health and safety. That's why they have this very broad amount of duties.

We are in no way saying that they should not have those duties, nor that they're not important, but rather that those duties do not allow us to toss out this long held rule that an entry without a warrant is per se unreasonable unless it fits one of the exceptions.

Again, Kamara focused its reasoning on the fact that the reason that they were entering was not related to the level of the privacy of the home. And so Kamara, that reasoning applies in full force here because whether or not they were entering to engage in a criminal investigatory search or engaging in a welfare check, they were intruding on the privacy of the home which maintains the same, no matter why the State is intruding upon it.

JUDGE BLEDSOE: Now, so you suggest in your brief that extending the community care-- Excuse me, the community caretaking exception to the home will gut the Fourth Amendment, but six Federal Circuit courts and a number of State Supreme courts have done that very thing. Where is the evidence of the widespread abuse, the parade of horribles that you're forecasting if we are to rule against you here? But where is the evidence of that, given that this is already widely the rule in much of the United States?

NINA: First, Your Honor, I'd like to turn to those lower court cases that have extended the caretaking exception to homes, because many of those courts, including the Eighth Circuit, applied the caretaking exception to the home, but they did so on the reasoning of the emergency aid exception. So they cited both Katie and Mincy v Arizona, which is the case that we get the emergency aid exception from. But this court has considered those two cases and their progeny to be two completely different lines of cases. Katie and its progeny, and Mincy and it's progeny do not cite each other at all. For--

JUSTICE BARBERO: Could I ask, I was also a little confused about the line of argument in your brief. Is your argument that those cases, although they purport to be applying the caretaking exception, in fact are not applying that exception and only stand for the emergency exception? Is that what we should take from those cases and that line of argument?

NINA: We should take from those cases that there is a confusion between the emergency aid exception and the community caretaking function exception, and the reason that that's important is because the emergency aid exception was considered and crafted by this court with the same policy concerns that the lower court and respondants are concerned about here. Which is the idea that law enforcement have to have the ability to go into a home and to aid someone who is inside that is in need of their help. And in the emergency aid exception, the court engaged in a balancing test which is; how do we balance the need for law enforcement to help people who may be in danger and the stringent privacy of the home? And in Mincy, the court decided that line has to be immediacy. It has to be imminent risk that requires their immediate entry.

JUDGE HOLMES: So, is it-- Sorry, go ahead, Justice, please.

JUSTICE BARBERO: I was just going to ask. The exercise we're engaged in today,

though, is figuring out whether we need another exception balancing or to extend that exception balancing these same interests. And so, it's not the case that if there's no immediate aid needed the police officers don't still have an interest in entering the home. So aren't we weighing that need to go into the home?

For example, somebody calls the police because they haven't seen an elderly neighbor in some period of time and they're concerned and they call the police. And there's no emergency per se, but there's a need to enter. And so, isn't that what we're balancing today and figuring out whether to apply a caretaking exception?

NINA: No, Your Honor, because in the situation that you just described, the answer to how would they be able to get into the house if there's not an emergency is that they would get a warrant. And so what we're really asking is, is it so impractical for the police to be able to get a warrant in a non-emergency caretaking situation? The reason that the emergency aid exception is relevant here is because it's the same considerations. There are certainly times when there will not be an emergency but they need to be able to enter in order to help someone, and that's when they get a warrant. This court has never permitted a exception to the warrant.

JUSTICE BARBERO: If that's true with respect to homes, wouldn't it also be true with respect to automobiles? In Katie, taking your reasoning, the police could have gotten a warrant, but we said they didn't need to because there was a concern about securing a gun that they understood to be in the automobile and therefore whether they could have gotten a warrant to search the automobile or not, we said they didn't need to. Under the Fourth Amendment, they could search the automobile to secure that weapon.

NINA: Yes, Your Honor, and that was in fact the reasoning. But that

reasoning was based on the idea that cars have a diminished level of protection as compared to homes. So with cars, they already had a rule under the automobile exception that it was not per se unreasonable to search a car without a warrant. The community caretaking exception was to simply account for the fact that whether police are entering a car to search for criminal investigatory purposes or for caretaking purposes that they did not-- it was not unreasonable to do so without a warrant. The home, however, has this rule that it is per se unreasonable to enter without a warrant, and so if we were to apply that here, essentially, we would be taking that rule away and only applying it to situations in which officers would be entering the home. In order to do a community-- I'm sorry, a criminal investigatory task any time they were doing anything else, they wouldn't need a warrant and as--

JUSTICE BARBERO: But they would still be limited by the test of objective reasonableness, right? That doesn't go away even if we adopt the exception. Is that right?

NINA: Your Honor, I see my time is about to expire, may I have leave to answer your question?

JUSTICE BARBERO: Yes, please.

NINA: Your Honor, the answer to that question is answered by looking at the cases where this court has already held these other exceptions. Because reasonableness was, of course, a factor in those analysis. It didn't change the fact that this court has still carefully drawn exceptions that require very specific criteria to be occurring. They apply to very specific situations. They have very high, strict, requirements because the privacy of the home is so stringent. This exception would look so different than those other exceptions and so to say that we can just allow this exception here based on reasonableness would negate this court's approach to creating new exceptions, which is that even

though reasonableness is absolutely in the calculus, the exceptions still have to be narrow because the protection of the home is the highest under the Fourth Amendment and that just looks so very different than cars.

JUDGE HOLMES: Thank you, Counsel.

NINA: Thank you.

JUDGE HOLMES: Counsel, if you would proceed, please?

AVERY RASMUSSEN: Mr. Chief Justice, and may it please the court, Avery Rasmussen, for respondants. The Supreme Court of Lile correctly applied the community caretaking function to residential homes for three reasons.

First, as this court held in Katie that in the absence of this doctrine, officers would be unable to fulfill a vital societal role. Nothing about their caretaking duties is limited to automobiles.

JUDGE HOLMES: Miss Rasmussen, talk to me about Kamara, why-- is your opponent right? That Kamara explains why one should have been able to seek a warrant here, and therefore there was an inappropriate search that took place? What does that case tell us? And why is it applicable here?

AVERY RASMUSSEN: No, Justice Holmes, Kamara's not applicable here for two reasons. First, as our friends on the other side recognized, that case involved entry into the home to check compliance with home safety regulations. If someone was found to have violated those regulations, they could be penalized and therefore it resembles the investigative context that are sharply distinguished from those activities totally divorced from criminal investigation as this court discussed in the Katie case. And second, in that case, it's important to note that the public safety reason for entering the home was not merely was found

to be not nearly enough to justify entry into the home.

This court has said that in assessing the reasonableness, the court must weigh the intrusion on privacy, which for a home is quite high, versus the State's need to enter. And in that case, the State was conducting random searches of homes to determine whether or not they were compliant with code, and the court determined that interest was not enough to justify entry into the home.

JUDGE HOLMES: Well is-- In Kamara, you say they were conducting random searches of the homes?

AVERY RASMUSSEN: They were conducting searches in homes, I apologize, with the word random. They were conducting searches of homes that were not connected to-- in my memory of that case-- whether or not there is probable cause to believe that a particular homeowner was not compliant with the code.

JUDGE HOLMES: So it was just area in which they were searching, they weren't focused on any particular individual. Is that your recollection?

AVERY RASMUSSEN: That's my recollection, Justice Holmes. But to return to the point, in that case, as I mentioned before, there was some element of investigation involved. And in these cases, community caretaking cases, this court said in *Caddy* that these functions of police officers are completely and totally divorced from criminal investigation.

Historically, warrants were not required in non-crime related cases. The function and design of the warrant requirement in the Fourth Amendment was explicitly to deal with overzealousness of police officers when investigating crime. This court has called it-- in the Johnson case-- the often competitive enterprise of ferreting out crime.

JUDGE HOLMES: I've always liked that language, but this is the point, though.

Why couldn't one say that this is just another situation of, I'm the government and I'm here to help you? I mean, why does that show your privacy interest in your home? I mean, the fact that you had good intentions, why should that allow you to have a license to rummage around in my home?

AVERY RASMUSSEN: Well, Justice Holmes, I will give you two answers to that question. One is that the community caretaking doctrine is still constrained by reasonableness warrants as this court has recognized are not required in all circumstances by the Fourth Amendment. And where they are not required, the reasonableness inquiry of the Fourth Amendment comes into play. So the intrusion on privacy that, as you mentioned, will only be allowed where a sufficiently weighty public interest comes into play that will justify that intrusion on privacy. This court has--

JUDGE BLEDSOE: Counsel, let me ask something. Doesn't the expansion of the exemption into the home risk substantial abuse? I mean, we feel that officers are jacks of all trades and wouldn't the extension under the home present a temptation that might be too much for an officer to resist to fabricate a caretaking duty in order to excuse a warrantless search?

AVERY RASMUSSEN: No, Justice Bledsoe, and the reason is because courts will be required in every case to assess the factual circumstances of that case to determine if a search was reasonable, both in its inception, and in its scope. These were the guidelines given for reasonableness in the emergency exigent context, and they would apply just as forcefully here. So the court would be able to look at whether there was any indication of pretext into ulterior motive to search for evidence of a crime or any other kind of foul play going on the part of police.

JUSTICE BARBERO: Bledsoe, do you agree, though, that this would be a significant extension of the exceptions to the warrant requirement? And,

I'd also like, if you could, for you to address the Katie case, because we were so focused on the difference between automobiles and homes there. And to take this leap as a significant step, I understand objective reasonableness, but this is the sanctity of the home. So can you address that please?

AVERY RASMUSSEN: Yes, Justice Barbero, to answer your first question, we do not believe that this is any kind of significant expansion of the current Fourth Amendment doctrine. In fact, we think that the conclusion in this case flows naturally from the combination of Katie and Brigham City, a case mentioned also by our friends on the other side. There is no principled reason to limit Katie's recognition of the non-investigative caretaking function to cars.

As we've noted, many of police roles in protecting health and safety, especially in cases of suicide, or other mental health issues do occur in the home. And this court in Brigham City has already recognized that police officers may enter a home when they have an objectively reasonable basis to believe that someone is in need of aid within the home.

JUDGE HOLMES: But Brigham City was not relying on the community caretaker exception, was it?

NINA: It was not, Justice Holmes.

JUDGE HOLMES: Aren't you introducing the same confusion that your opponent said underlies these cases? I mean, why would the combination of these two justify the search? Why wouldn't the community caretaker exception? That's what we're here to talk about, right?

AVERY RASMUSSEN: Justice Holmes, respectfully, I don't believe that bringing those two cases together would cause any undue confusion. And the reason is because there is not, nor cannot can there be a strict and sharp line between the community caretaking function and the emergency exigency function. In fact, in many cases, those

two doctrines will overlap.

JUDGE HOLMES: Let me give you a line. If you had seen Mr. Donovan trying to put a gun to his head and shoot himself, you could have gone into his home. Absent that, why couldn't you just wait outside on his porch until he got there as opposed to entering his home? There's a line for you. Why would you need to under a community caretaker exception go into his home when there was no exigency?

AVERY RASMUSSEN: Justice Holmes, the reason is because, as this court has recognized in Brigham City and Randolph v Georgia, it would be unreasonable to suggest that police officers need to wait outside until harm has already materialized before taking action, if they have an objectively reasonable basis to believe that aid is needed within the home.

JUDGE HOLMES: But there is an immanency in both of those cases that was not present here, right? You have no reason to believe that he was going to do anything harm to himself right then and there, or even within the next 15 minutes because he wasn't there, right?

AVERY RASMUSSEN: That's correct, Justice Holmes. I think that the important thing to keep in mind here is that officers when acting in a non-investigative function need to be given elbow room to act in a reasonable manner to protect public safety. This court has called public safety of the utmost government interest in a case called Scott, and therefore limiting Brigham City to instances where the punch has already been thrown. In that case, they observed ongoing violence going on inside the home. And restricting warrantless entries to cases where the exigence will necessarily reach its climax within moments, would restrict police officers from providing aid in a wide variety of serious situations in which society would expect swift intervention--

JUSTICE BARBERO: But, on the facts here, we're not even close to that. I mean,

that's one of the challenges is that if we accept that the caretaking function-- or caretaking exception applies on these facts where there there's no one in a fight in the home that they can see, there's no immediate expectation that somebody will be injured, his girlfriend had waited some period of time before calling the police, there were delays in getting to the house, there was no one there as far as they could tell. How do we draw any line and if this is objectively reasonable and the exception applies here, wouldn't it apply anytime anyone called the police for any reason and some come to anyone's home and the police would say, we're performing our caretaking function, we're looking out for the well-being of people in the community. We get to come into your home and search it from top to bottom.

AVERY RASMUSSEN: Justice Barbero, I'll answer your question first by pointing out that we are asking for two distinct holdings here. One is that the concept of community caretaking from Katie is not logically limited to cars, but extends to residences. And the second holding, to the point of your question that you just asked, is that we are also asking this court to recognize that the facts of this case was a reasonable entry into the home, and the reason why this particular case presents a reasonable entry under the community caretaking doctrine is that all of the facts taken together gave rise to an objectively reasonable belief by the police at the time that they held those facts in their hands, that someone was in need of help inside.

They had both a report from petitioner's girlfriend that the petitioner was mentally unstable, had given credible threats of suicide, had access to guns, and when they arrived at the home, they found circumstances to suggest that somebody was home but unresponsive inside. It is the confluence of all of those factors together that gave rise to the objective reasonable belief of need of assistance.

JUSTICE BARBERO: If they thought somebody was unresponsive inside and in need of emergency assistance, will the emergency exception apply if they thought that there was somebody they might need to call an ambulance, there is somebody who could be unresponsive, why aren't you asking for the other exception? Why go to the extension to the community caretaking exception.

AVERY RASMUSSEN: Yes, Justice Barbero, this returns to my earlier point that it is impossible to draw a strict and bright line between the emergency exigency doctrine and the community caretaking doctrine. Often they will converge, and the Brigham City case illustrates that as does this case.

JUDGE HOLMES: Was there an articulable basis to believe that he was in harm at the time? Could you have made a reasonable articulable basis to believe he was in harm at the time or threat of harm at the time?

AVERY RASMUSSEN: Yes, Justice Holmes.

JUDGE HOLMES: Based on what?

AVERY RASMUSSEN: At the time that police officers stepped inside the home--

JUDGE HOLMES: No, before they stepped inside the home. We're talking about reasonable at the inception. At the inception, when they cross that threshold, they had to have a reason to cross the threshold. Otherwise there is a Fourth Amendment violation, right?

AVERY RASMUSSEN: That's correct.

JUDGE HOLMES: OK, then. Right, then, what was the basis?

AVERY RASMUSSEN: Before they crossed the threshold, police officers knew that someone resided at the home who had made credible threats of suicide, had the means to carry out that suicide, and they called into the home several times and--

JUDGE HOLMES: Once, once, I think the facts indicate. Once, they called into the house. They didn't get a response. So what did that-- where did that leave them?

AVERY RASMUSSEN: They called into the home. They did not get a response, and yet other indicators suggested that somebody was home and unable to respond. Therefore all of those things taken together suggest that someone had either tried to commit suicide or had successfully committed suicide. And so officers stepped right inside the door to look around and see whether or not one of those two things was true.

JUDGE HOLMES: Well, to Justice Barbero's point. Oh, I'm sorry, go ahead.

JUDGE BLEDSOE: No, go ahead.

JUDGE HOLMES: To her point, then why aren't you defending this under the emergency exception if the facts are so clear in that regard?

AVERY RASMUSSEN: Justice Holmes, other courts have limited the emergency exigency circumstance to only cases where, as in Brigham City, officers observed ongoing violence or cases where officers have not only an exigency but also probable cause to suspect wrongdoing, because exigency exceptions have traditionally only been applied in the context of criminal investigations. Justice Holmes, I see I'm out of time, may I briefly sum up?

JUDGE HOLMES: Yes, sum up please.

AVERY RASMUSSEN: Thank you.

JUDGE HOLMES: Sum it up quickly, go ahead.

AVERY RASMUSSEN: For these reasons, we believe that any time there is an objectively reasonable basis to believe that someone is in need of aid inside the home and officers are acting pursuant to their non investigative community caretaking function, they must be allowed to enter. Thank you.

JUDGE HOLMES: Thank you, counsel.

JUDGE HOLMES: Counsel, we're ready to hear you when you are ready.

MIHIR KHETARPAL: Mr. Chief Justice, and may it please the court. My name is Mihir Khetarpal, counsel for petitioner Mitchell Donovan, asking this court to reverse the decision below. The Supreme Court of Lile failed to recognize the petitioner's Fifth Amendment privilege against self incrimination was violated when the prosecution used his post-arrest, pre-Miranda silence against him at trial.

That decision is wrong for three reasons. First, this court's precedence and the purpose of the Fifth Amendment instructed the decision below is wrong. Second, the decision below offers police officers perverse incentives to delay reading Miranda warnings, a practice this court has refused to allow. And finally, with the facts--

JUDGE HOLMES: Let's talk about number two. You cited Sievert in your brief, to suggest that this delay is prohibited, and therefore, we don't have to worry about some of that. Well, I'm sorry, go ahead, go ahead, I didn't mean to cut you off. Go ahead, please.

MIHIR KHETARPAL: The third point I was going to make, Your Honor, was simply that petitioner silence in this case was sufficient to invoke his privilege. As to the incentives under Seivert, the reasonable decision below delays officers, or incentivizes officers to delay reading Miranda warnings, is because it treats silence before those Miranda warnings are given as more valuable in terms of evidence than silence after the Miranda warnings are given. Because officers can introduce under the holding below silence before Miranda warnings are given, they will have an incentive to at least delay reading the Miranda warnings for a little bit of time to get silence in situations like this case where knowledge is an element of the crime and the arrest occurs at the scene where the drugs are located.

JUDGE HOLMES: What do you do with Scolinos v Texas? I mean, how does that impact your argument?

MIHIR KHETARPAL: I'm not sure if I heard the full case.

JUDGE HOLMES: Yes, I'm sorry, what do you do with Salinas v Texas? How does that impact your argument?

MIHIR KHETARPAL: Salinas versus Texas doesn't necessarily have a full bearing on this case, the question that the court answered there was simply whether a person had to invoke their Fifth Amendment privilege. And in that case, the court held that they had to expressly invoke their privilege because none of the exceptions to the invocation rule applied, but here there are exceptions, which do apply.

JUDGE HOLMES: Well, didn't the State try to use the silence of the defendant in that case against him? And in that situation he had not been arrested, and they were questioning him, and then he dropped off into silence, and they used that against him, isn't that right?

MIHIR KHETARPAL: That is right, Your Honor, but the court didn't answer the question as to whether the Fifth Amendment actually protects that silence pre-arrest or not. It reserved that question for a different day and answered it on more narrow grounds of invocation. And even though there is a general rule that a person has to invoke their Fifth Amendment privilege where it does exist, that doesn't apply here. Because as the court and Salinas against Texas recognize, there are exceptions. And there are two exceptions that apply here.

First, in Salinas againt Texas, the court recognized people don't need to invoke their privilege when there is some form of official compulsion which would compel them to speak. The reason it wasn't--

JUSTICE BARBERO: But what was the compulsion here? He stepped into his home, he was immediately placed under arrest, and then he was silent. He didn't say, why are you arresting me? Or, what's going on? None of those things. He was just silent. No one had asked him a question at that point. So how was he under compulsion to speak or to stay silent, then?

MIHIR KHETARPAL: Compulsion necessarily exists at the time of arrest, and the facts in this case illustrate how the petitioner in this case was under compulsion. Petitioner, when he stepped into the home, had a couple of choices he could make, especially after he heard that he was under arrest. After hearing he was under arrest, he couldn't run or he couldn't ask the police to leave his house. He could remain silent, which he did. And that was used against him at trial. He could say something to the effect of, let me explain, or that's not mine, or you've got this all wrong, and all of those could have been used against him in court. Or he could have lied and that lie could have been used against him at court because he was under arrest. And he didn't have the option to tell the officers that he would like them to leave his apartment or in some other facts that he would leave the officers questioning or discussion with the officers. Because he had to do what the officer said, there was nothing he could say or nothing he could not say to avoid incriminating himself, which leads to the compulsion that existed to try to explain to officers why they should let him remain in the apartment.

So in facts like this, a person might be compelled to speak to officers to convince them, especially if they're innocent, that they are innocent and that they should be allowed to remain at home and not whisked away to the station and remain there for several nights and be asked questions later on just to resolve the matter. So there is compulsion to speak because he was not free to leave.

JUSTICE BARBERO: What is your view about where the right line is? I know the circuit-- some of the circuits have even held this applies to pre-arrest. Some have held post-arrest. Some have held post-Miranda warnings. What is your view about where the right place for us to draw that line is?

MIHIR KHETARPAL: It has to apply the Fifth Amendment. Privilege has to apply every time, post-arrest. It would not apply as a similar blanket rule pre-arrest. If it were to apply in situations prior arrest it would be in narrow situations such as if a person is testifying before a grand jury or if there are really compelling interrogation and coercive interrogation of pressures that may make those close cases.

But the difference in all of those cases versus at the time of arrest is that even if a person is being asked very hard questions before arrest, they can say, I'm going to leave right now and go back home. Or if they're in their house, they can ask officers to leave. But because here you cannot do that, you cannot ask the officers to leave, the Fifth Amendment privilege has to apply to protect a person's choice to remain silent and not to punish them for choosing to remain silent.

JUDGE BLEDSOE: Isn't it the questioning that causes the governmental coercion? To Justice Barbero's earlier question, I mean, how does arrest alone create a government compulsion to speak such that silence can be seen as evidence of guilt?

MIHIR KHETARPAL: Well, questioning is sufficient to cause the compelling pressures under the Fifth Amendment jurisprudence of this court. It is not necessary to cause those compelling pressures. Arrest causes those compelling pressures because the general inquiry of compelling pressures that this court focused on was not about whether there were really hard line interrogation tactics, but just the general feeling that you are in police custody and have to do what the police are talking about. Which is why one of the

key components of Miranda is being in police custody, because you therefore have no ability to leave, no ability to end interaction with police.

JUSTICE BARBERO: But to be clear, we've never said being in police custody is itself sufficient, right?

MIHIR KHETARPAL: This court has never held that being an arrest is sufficient.

JUSTICE BARBERO: And I am part of the reason, looking at the cases, that I think we haven't said that is because we believe we're balancing interests. And we also have recognize there is an interest in police obtaining confessions. If a defendant wants to confess or if somebody who's been arrested wants to confess. And so, if we draw the line immediately at arrest, we are really tipping the ledger here. So that it's quite protective on the one hand, but we're also not acknowledging the interest on the other side that we previously acknowledged are important.

MIHIR KHETARPAL: Your Honor, the police certainly have important interest to be able to conduct their law enforcement inquiry, but nothing about reversing the decision below, what impaired the police in order to be able to conduct their law enforcement inquiry because of several reasons.

First, as Your Honor noted, one of the ways officers try to get evidence is by asking for confessions. And of course, they have to read Miranda rights before asking for confessions. And that hasn't led to an inability to obtain confessions, so nothing about this would lead to an inability to obtain evidence of knowledge. Second, there are other ways to go about obtaining information, including the fact of knowledge which is elements in many drug cases.

So given the facts at hand, officers could have interrogated our client for a little longer to ask him truly whether he knew about the drugs in the fish tank. If the petitioner, as he did in this case,

said that he bought the fish tank and the drugs were already there, they could go ask the people that sold him the fish tank to find out if those drugs were actually there, to find out if that was the case or if the petitioner was making that up and that wasn't the case. And all of those--

JUSTICE BARBERO: Just a question came to mind as you were talking if he had instead of being silent said something incriminating like, oh no, you found the drugs in the fish tank, for example, I knew they were there. Would your position be that the prosecution could not use that evidence in its case in chief either? Or is it just his silence?

MIHIR KHETARPAL: The prosecution would be able to use that, so long as they later read Miranda warnings and there were no Miranda violations later on in the chain. And the reason is because the Fifth Amendment protects a person's choice to remain silent in the face of compelling pressures, not their ability to confess without that being used against them at trial. That's the balance that the Fifth Amendment draws is to make sure that if a person chooses to confess one way or another, that confession can be used to prove their guilt, but if they choose to remain silent and to not incriminate themselves, then the prosecution cannot penalize a person for choosing to remain silent in that face.

So in situations where a person did arrive back to their house and saw the officers going to the drugs and said something like that, yeah, those are my drugs, but let's work this out so I can stay here, that would be a time where they could use that evidence against him at trial, as long as there were no Miranda violations later down the line.

JUDGE HOLMES: Well, your argument hinges strongly then on the question of arrest being compulsion and compulsion to produce this cruel trilemma that you alluded to earlier. What's your best authority to suggest that, in fact, is the case?

MIHIR KHETARPAL: There are a couple of points here. First Salinas against Texas actually supports this notion, even though that case was about invocation and not about whether the Fifth Amendment applied. It reasoned that the exception to the invocation rule of some form of official compulsion didn't apply in that case because the person wasn't under arrest. Which supports the proposition that arrest is sufficient to create compulsion.

But, second, even beyond that, this court has recognized that at the time of--

JUDGE HOLMES: He was at a official facility though, right? I mean, if he had been arrested he would have been in custody, right?

MIHIR KHETARPAL: Yes, Your Honor, he would have been in custody if he was arrested. But so too, was defendant here in custody as he was arrested.

JUDGE HOLMES: Yes, go ahead please.

MIHIR KHETARPAL: So there's nothing about the location of the facility that changes when the Fifth Amendment rights apply or that gives rise to coercive pressures when they might not exist, and in Miranda this court didn't suggest that the Fifth Amendment only applies when they are at the police station and not when they're arrested and having conversation outside of the police station.

So the inquiry is really about whether a person faces these compelling pressures and they do when they're under arrest because they are no longer free to leave and go about their business, and that really is the important line as to where the compulsion exists. And as this court has recognized, the time of arrest will be a sharp change for a person, especially when the arrest is sudden like it is here, which is why that gives rise to the compelling pressures.

Finally, I want to talk about invocation for a brief moment, because, with the facts on hand here, petitioner was not required to expressly invoke his Fifth Amendment privilege. While there is a general rule as Your Honor pointed out in Salinas against Texas, that invocation is required.

It doesn't apply here because there were two exceptions. The first is that there was some form of official compulsion which Salinas recognized as being an exception to the invocation rule. And the second was, it just made no sense and this court has never held that a person needs to invoke the requirement-- revoke their privilege-- in a situation where they are not being asked questions by a police officer.

The rationale for the invocation rule is that the government has a right to information unless the privilege applies. But they don't have a right to information unless they ask for that information, which is why when this court considered silence without prompting, and Davis against the United States. This court didn't suggest that the silence was admissible because the defendant failed to invoke his privilege. It would be ridiculous to say that a person has to expressly invoke their privilege at the time of arrest without facing any question or any prompting and this court has never suggested that is needed.

JUSTICE BARBERO: You have an alternative argument that by staying silent he did invoke-- expressly invoke that privilege or is your argument solely that it's not required.

MIHIR KHETARPAL: Your Honor, I see my time may expire in answering the question, may I have leave to answer?

JUDGE HOLMES: Please.

MIHIR KHETARPAL: The two are somewhat similar and this court has discussed

them both in similar ways as to whether silence is sufficient to invoke, or whether they don't or whether there was an exception to the invocation requirement. The argument we were making here is simply that his silence alone here was sufficient and he didn't need to say anything else to invoke his privilege, so we're not asking for a general rule that silence is sufficient to invoke the privilege, just that here there was no need for express invocation because of the exceptions in Salinas, and because of the way this court's case law has been limited.

JUDGE HOLMES: Thanks you, counsel.

MIHIR KHETARPAL: Thank you.

JUDGE HOLMES: Mr. West, proceed.

MATT WEST: Mr. Chief Justice, and may it please the court, Matt West on behalf of respondent in the State of Lile. The Fifth Amendment self incrimination clause does not protectable defendant's silence in all circumstances. Rather, the amendments text makes clear that silence is privileged only if it was compelled by government officials for two reasons. Petitioner's silent reaction to his arrest was not compelled in violation of the Fifth Amendment or Miranda's prophylactic protections.

First, the compulsion the Fifth Amendment prohibits necessarily involves government questioning. The Amendment purposes do not support extending the privilege to the narrow window between the arrest and the onset of custodial interrogation. Second, even assuming the privilege can extend to the setting, a defendant in petitioner's position must expressly invoke the privilege to get its protections. Additional silence did not qualify as an indication here.

JUDGE HOLMES: We'll deal with the first point and then deal with, in particular, this cool trilemma argument that your opponent makes. Why

isn't arrest custody? Well it is, custody but why isn't it compelling incrimination of some sort. Other words, it compels him and puts him in a situation where he is, either way, he responds, he's-- you could use it against him. Why shouldn't that be a safe zone as a consequence under the Fifth Amendment?

MATT WEST: Justice Holmes, the court has made very clear that the Fifth Amendment privilege exists to prevent government officials from using some form of compulsive questioning methods to extract self incriminating information from a defendant. The cruel trilemma exist to protect a defendant against first, self-accusation, second, perjury, and third, contempt for failure to answer questions. The second and third prongs of the trilemma expressly are only implicated by questioning. Those prongs are not implicated by mere custody itself.

Now, Miranda does establish a prophylactic rule that a defendant's silence or statements during unwarned questioning are presumptively coerced and thus inadmissible at trial. And thus extends the scope of compulsion to government questioning that does not necessarily place a defendant under penalty of perjury for false answers. However, the court has been very clear what the scope of Miranda's protection is.

Not only has the court never addressed or not only has the court never said that arrest is sufficient to trigger compulsion, the court has expressly said that arrest is insufficient to trigger compulsion, and thus Miranda's prophylactic protections--

JUDGE HOLMES: Because there needs to be interrogation.

MATT WEST: Yes, Your Honor.

JUDGE HOLMES: OK.

MATT WEST: The court said, and I quote, the special procedural safeguards

outlined in Miranda are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subject to interrogation. The court further stated that that interrogation, in order to trigger Miranda protections, must reflect a measure of compulsion above and beyond that inherent in custody itself.

JUDGE HOLMES: Yes, but the question that we granted cert on extends beyond Miranda, right? It extended to whether he had a Fifth Amendment right to not have that evidence used against him, his silence used against him as substantive evidence, isn't that correct?

MATT WEST: That is correct, Justice Holmes and one reason we focused more on the Fifth Amendment on its own terms in our brief was that the case law makes the scope of Miranda pretty clear, so that the scope doesn't extend to the setting. But the court has noted that the prophylactic protections that Miranda provides necessarily sweep beyond the scope of the Fifth Amendment, and thus any further extension of Miranda rules, which is in effect what petitioners arguing for here. Any extension must be supported by the underlying principles in the Fifth Amendment. And again, the Fifth Amendment necessarily requires some government questioning in order to trigger the type of compulsion that it protects against even a broad reading of the hold--

JUDGE BLEDSOE: Counsel, counsel, if you mean if you permit post-arrest, pre-Miranda silence to be introduced as evidence of guilt at trial, isn't the defendant being placed in an untenable position? I mean, doesn't that put intense pressure on him to have to or her to have to come up with some explanation for the silence? And doesn't that have doesn't that run afoul of the Fifth Amendment where you're pushing the defendant to have to testify? That's a coerced testimony, in that way, is it not?

MATT WEST: Justice Bledsoe, I would answer your question, no. And the important fact here is that the compulsion-- and I think you recognize this-- has to occur at the moment of the interaction itself. So at the outset, it's insufficient that defendant's silence or statements in the setting might later be introduced as evidence against them at trial, but you're correct that one can make an argument that the mere possibility of that does create some pressure for a defendant to speak. But that is not the type of compulsion that the Fifth Amendment protects against, because there is no questioning provoking a defendant to respond.

The court has been very clear that not every difficult choice that a defendant faces in the course of a criminal case is protected by the Fifth Amendment. The only protections the Fifth Amendment provides exist where the government is using coercive techniques to extract information from defendant. A mere evidentiary rule is insufficent.

JUSTICE BARBERO: The dissent below, though, recognized-- and I think correctly-- that Miranda was, as you said, it extends beyond because there was a concern about police using sophisticated tactics to extract confessions. The concern that somebody may be compelled as Justice Bledsoe said in his or her home to answer, you may end up in a regime where police are being instructed to delay Miranda warnings to see if they can-- what happens? Is there silence? Is there like a guilty look to the side? Can we later use that? Because that's very effective for our prosecutors at trial. So how do we grapple with the legitimate concerns that the dissent has raised about the incentive structure here for police in particular, when they're faced with these situations.

MATT WEST: Justice Barbero-- excuse me-- can I answer your question in three parts? First and foremost one thing, very clear that there was no such delay in this case. The police promptly took the

defendant to the police car and gave him his Miranda warnings. But secondly, I understand the concern, but would argue that in the mind run of cases, because statements provide stronger incriminating evidence as a general matter than your silence, police will continue to have an incentive to promptly provide the defendant with Miranda warnings in order to proceed to question them with the hopes that a defendant will cooperate. And also, that as the doctrine currently stands, the-- no case law requires Miranda warnings to be given immediately.

Indeed, Ennis counsels the opposite result, but distinguishing between the communication intended upon arrest and the further compulsion needed for interrogation to further Miranda, and the statements as it stands.

Currently statements given between arrest and receipt of Miranda warnings are not protected by Miranda, and I would argue that the existing doctrine creates, as it is, far more of an incentive for such delays than petitioners concerned about here. And finally, I'll note that there is an option the court can take if it is concerned with such drastic delays as the dissent below mentioned. And that lies in the principle that the plurality established in Seivert there, the court did not permit the prosecution to introduce evidence where statements have been or where the police officers interrogating a defendant had strategically delayed the provision of Miranda warnings in order to gain a strategic advantage over a defendant.

JUDGE HOLMES: Yes but the Seivet was an elaborate effort to do that. I mean, short of that, I mean, I was puzzled by your citation in Seivert because it doesn't seem to map on to these facts at all. I mean, how would we determine that faith in this situation? Is that five minutes? Is that 10 minutes? What would be-- how can we establish a principle to foreclose bad faith in this situation?

MATT WEST: Justice Holmes, I agree that providing or extending Sievert to

protect defendants in this situation will, in fact, indeed require an extension of that holding. However, our argument is extending that holding is far more consistent with the existing scope of Miranda than extending the Miranda protections wholesale, beyond the very clear limit that the court has already recognized that is the beginning of custodial interrogation. And so it would be more consistent with the current case law to simply apply the reasoning that the plurality adopted in Seivert, given its concern with the leas to this scenario, to protect defendants rather than scrapping the existing scope in *Miranda* altogether.

JUDGE BLEDSOE: Well, wouldn't it be simpler-- I mean, counsel, wouldn't it simply be easier for application all the way around to do what the your opponent suggests and that's simply to have Miranda attach at the time of arrest? To the extent people are aware of Miranda in the country, they think it attaches then because they watch television.

MATT WEST: Justice Bledsoe, if I may, I'd like to answer your question by transitioning to our second argument, which involves invocation. And the first point I'll make here is that officers and courts cannot assume that defendants are indeed invoking the privilege against compelled self incrimination by remaining silent in this setting. The court and Fletcher distinguished pre-Miranda silence from post-Miranda silence in the sense that unlike silence from a defendant in the wake of the Miranda warning, which the court found is insoluble, ambiguous, in other words, sufficiently likely to be an invocation.

In Fletcher, the court held that pre-Miranda silence did not suffer from similar, you know, insoluble ambiguity, and in other words, officers cannot assume that the defendant is intending to invoke the remaining silent in that situation. And further, the court has consistently held in Garner and Murphy and most

recently the Plurality and Salinas, that forfeiture of the privilege by a defendant need not be knowing. In other words, a defendant is not excused from the invocation requirement simply because he's unaware of the precise contours of that requirement.

Our friends in the other side suggest that the coercion exception to invocation applies here, but the case law forecloses that possibility. The court has made very clear that there are three limited exceptions to the invocation requirement. The first is at trial, which Griffin recognized, and the second two do deal with coercion. One involves situations where the actual act of invoking the privilege would subject the defendant to some penalty. In Garretty v New Jersey, for instance, the court held that police officers under investigation weren't required--

JUDGE BLEDSOE: Those cases-- are those cases cases in which there's no intent, there's no interrogation, there are no questions? I mean, here your position assumes that the defendant knows that they-- or the arrested individual knows that they have a Fifth Amendment right to invoke. I mean, when you see surveys out there that show that no more than half the public knows that we have three branches of government, a sizable percentage that can't even name a branch of government. How should we-- why is it that we should assume that an arrested individual would know that they have a Fifth Amendment right in this situation to invoke?

MATT WEST: Justice Bledsoe, so I'd answer this question in two parts. First and foremost, I would argue that the purpose behind the Fifth Amendment, again, protecting a defendant from coercive questioning, are implicated far more strongly in Salinas. A case which involved pre-arrest interrogation, and there the court held that silence did not qualify as an indication. I think it's far

more likely that a defendant, by remaining silent in that situation, does in fact intend to invoke his Fifth Amendment privilege by not responding to a question here upon arrest.

On the other hand, a defendant could be remaining silent for one of many reasons he potentially could be invoking, but he also could be remaining silent in an effort to invent an excuse or most importantly because he's conscious of his guilt and he recognizes that he's been caught. To the extent that this court is concerned with defendants in this situation not knowing to invoke the proper means of protecting those defendants. Our State and potentially federal evidentiary rules, there certainly are many probative explanations of a defendant's silence in this situation and that alone under the Fifth Amendment gives law enforcement an important reason to require information here, and law enforcement needs to know that a defendant upon arrest is invoking, so that they can either attempt to make the privilege inapplicable by offering the defendant immunity, or, most importantly, that courts, as well as prosecutors, will later know that the defendant's responses will be privileged after that.

So there are important reasons to require invocation here, and except in addition to the fact that none of the three exceptions to the express invocation requirement apply. I'd like to briefly address the final of those three exceptions to the invocation requirement, which I didn't have a chance to mention before, and that is that a defendant during an unwarned custodial interrogation-- that is the period during which Miranda's prophylactic rules apply-- a defendant in that situation is not required to expressly invoke because of the uniquely coercive pressures of that particular environment.

The court and Roberts expressly declined to extend that exception beyond the scope of custodial interrogation and thus

that provides no barrier to, or provides no reason rather, for excusing invocation here. All that matters is that a defendant has a free choice to invoke, he need not necessarily know that he is required to do so. I see that my time has expired so I would respectfully ask this court to affirm the judgment below. Thank you.

JUDGE HOLMES: Thank you counsel, case is submitted. Oh, I'm sorry, we have rebuttal. I can't deny that, I apologize. Please go ahead.

MIHIR KHETARPAL: Thank you your honor. Two points on rebuttal, Your Honor. First, on the Fourth Amendment question. At its core, the question here is whether to apply an exception that this court has already recognized in the car context to the home. And when that same question came up in the criminal investigation search context IN Collins against Virginia, this court declined to do so. There, the question was whether the automobile exception to the word requirement extends when the automobile is parked on the curtilage of the home, and this court held that it does not apply, invoking the rationales that the home has given the strongest protection than a stronger protection than the car.

And that same rationale holds true here. Even though the community caretaker exception makes perfect sense when applied to cars which receive a lesser level of protection, that has to stop when you enter the house doors because it cannot outweigh the important nature of the house, the scope of protection. Second, on the Fifth Amendment issue, the respondent notes that the decision below doesn't offer perverse incentives because the silence has little to no value. But silence has more value than nothing at all, and officers don't have to choose between trying to get silence and try to interrogate a person later. They can do both as they did in this case.

JUDGE HOLMES: Well, I'm going to take a run at Salinas again. Didn't Salinas allow the use of silence in that situation?

MIHIR KHETARPAL: Salinas allowed the use of silence in a situation where the silence was pre-arrest and in a situation where there were no exceptions to the invocation requirement. The issue here is that at arrest, there are incentives to delay reading Miranda because the silence before Miranda, even though it's after arrest, will be more valued than silence after Miranda. And that same rationale doesn't apply pre-arrest because officers don't have incentives to delay arresting a person when they need to get a person placed in custody. So there will be no incentive to stop arresting people with the holding in Salinas. Thank you, Your Honor.

JUDGE HOLMES: Thank you, appreciate your arguments, counsel.

JUSTICE BARBERO: Well, first of all, congratulations to all of you, really. I'm sure it's a relief to have the competition over, and you were all phenomenal. It was an absolute pleasure to read your briefs and listen to your arguments, so congratulations to all of you. We'll be providing some brief feedback and then Justice Holmes will announce the results of the competition after that.

So I thought-- I actually was thinking back to when I was in law school doing the competition and it is a real challenge to stand up and be able to present your arguments and not-- you don't know what questions you're going to get and being able to think on your feet on the spot and engage in conversation about these difficult legal issues is a real challenge, and you all did a tremendous job with that. So, congratulations. I think I'll just if it's OK with my other justices, I'll just go in the order that people presented in and since that's the order in which I have some of my notes.

Nina, I thought you were terrific. Very easy to understand, very

clear presentation. You have a really great grasp of the law and under some intense questioning, I think you really held up, and held your own, held your ground. You knew where your lines were and so we were all very impressed with that. I think I'll make this comment for you but really, it applies to everyone. There's a tendency to say in response to the question that you have three reasons or three answers. I think you may have done that a couple of times, others did as well, and it's almost inevitable you're not going to get to reason number three. You'll be lucky if you get to reason number two. And so I think for all of you being able to say, yes or no, and here's why. Or, yes/no, there's two reasons and reason one, reason two very quickly, and then let me explain is always good. Because otherwise the justices/M judges are left wondering what was reason number three that we never got to do.

So, I mean, we had some substantive questions. Like you actually provoked some discussion about whether, in fact they could get a warrant. And so we were all very engaged with your argument and really enjoyed hearing your presentation and I think that that's what I have in my notes, so wonderful job.

Avery, I thought you also did a tremendous job. Your presentation, very good, very clear, as well. I think the same feedback with the number of reasons and trying to really start-- which you did, you did do well. In particular, in a few instances with a yes or no in answer to the questions. I think one thing to do and think about is, when you're going second, when you have a prepared introduction, whether to use that or pivot into wherever the questioning was and that's always a struggle when you're respondent, or [INAUDIBLE] and you stand up and sort of what to do and where to jump in. But you also did a really good job, very impressive knowledge, both you and Nina, on the case law and under Justice Holmes' questions. We were very impressed with your knowledge of the cases and I thought you

had a good conversational tone and you did a good job at various points clarifying and answering the questions by making clear where we're-- here's what we're asking you to do extend the doctrine or not extend the doctrine. Here the tying it into the facts of the case. So that was all very well done.

Mihir, I think you were up next and I thought you did at least once one of the things that's very hard to do in an oral argument, which is to ask for clarification of a question, because you want to know-- you feel like you should know what the judges are asking and so your instinct is to respond but you can get yourself into trouble doing that. And so you did a really nice job asking for clarification when you needed it, and also just maintaining a really conversational tone throughout, engaging with the judges.

That was all very nicely done and I thought you had thought about the answers too on the line drawing question, and where you're usually going to get ask those kind of questions, where would you draw the line? And we thought you had good answers there, good answers on the authority. Very good familiarity with the facts. And so overall, really impressive. I think one constructive note on the rebuttal, which is again similar to when you're going up second, kind of where do I jump in and I have a prepared rebuttal but maybe the points didn't come up as much. And I think one note would be, what is if you definitely did the right thing try and make only two points in your two minutes and just figuring out which the right points are, I think it's a good note.

And finally Matt, also, as with all of you-- all of your classmates-- here, incredibly impressive job. Very good answers to the question and clearly you have a sophisticated understanding of the doctrine of what you were asking the court to do. And I think in particular, there were a couple instances where you

gave the options for the off ramp, like if you saw the question wasn't heading in the direction you wanted, knowing how to say, well, yes, of course, you should hold what we've asked for. But if you don't want to do that, another way for us to win is this alternative. So you did it. You did a really nice job of giving that middle ground or those off ramps. And I also thought at one point in your transition from the first argument to the second argument, I think in response to Judge Bledsoe's question, you did a really nice job pivoting.

And this is something that you all did very well. You knew the points you needed to get out. But I think that in particular there you knew you hadn't gotten to that second argument and you wanted to be responsive to the Justice's question. But being able to do that while wrapping in your pivot to the other points you want to make is a challenge and you did it very artfully there. So, you know, congratulations again all of you. I just was incredibly impressed.

Also, the briefing was very well done. In particular, when the respondent's brief I thought could have been filed in a court of Appeals with very few changes, so that was really excellent. But both briefs were terrific. Very thorough, well researched, just incredible use of the case law. So very well done on that front as well. And I'll turn it over to Justice Holmes and Bledsoe.

JUDGE BLEDSOE: I believe the Chief Justice has asked me to go next I certainly can't improve upon or really even add to what Judge Barbaro has said other than to echo the fact that I thought everybody did a fantastic job of quality of advocacy here today. Would have been right at home in the highest courts of the country. I think you all have a lot to be proud of and you've got great futures ahead of yourselves. You are outstanding oral advocates and I thank you.

The watchword here is to continue to do what you do and refine

what you're doing. And you're going to have quite a successful future path. I think the individual comments that Judge Barbaro made are all right on point I'm not going to try to duplicate those. I will say, as to the briefing, I thought both briefs were excellent.

I was reminded when I was reading your briefs of a professor back when I was in law school, quite prominent at the time, and I think still today, Archibald Cox, who had been a long time professor at Harvard. And he had served as the Watergate prosecutor back in the early 1970s. And I remember attending a lecture that he gave when I was in law school where he made the observation that a good brief marches and a great brief sings while it marches. And I have always remembered that because I thought it was really a great succinct way of stating that and to give a marker every time I wrote a brief when I was in practice, and to then, now, evaluate briefs when I receive them as a judge. And what I'll say as both of you, both teams submitted good briefs and they marched.

I will say, in my view, the winning team submitted a brief that sang while it marched. Justice Holmes?

JUDGE HOLMES: Oh, you tee it up. Judge Bledsoe, thank you for doing that. I don't really have anything to add to the individual comments. I think that you all did a great job. I think that I know it was the product of a lot of hard work and a lot of thought and often it can be gratifying to have it both come to an end, but also come to an end in a way that that you can feel proud of.

And so, I think the future generations of lawyers are, if you're any example of what's coming out, then we're all going to be in a good place. And so I congratulate you all for your individual performances and for the performances as they relate to briefs. And the only point I would make pivoting off of both of the comments about the briefing is that, particularly at the

appellate level your brief has got to-- is really going to do the yeoman's labor. I mean, the reality is you can be the most articulate advocate that you can be but if your brief does not convince, if your brief does not persuade, if your brief does not preserve the issues that you need to preserve, then you're in a world of hurt.

And so I think that finding those who can put together a very persuasive brief and then come in both with the knowledge of the case and the ability to address the issues that the judges or justices are concerned about. And it's a unique skill set and a very valuable one. And so, I will stop my comments because I know you don't want to hear me but you want to hear what the results are. So I will cut to the bottom line here.

I don't know whether they told me there was any particular order in which I was supposed to announce these, so I will announce the, I think I have two charges, to announce the best oralist, and to announce the winning team, and I will go in that order.

The best oralist is-- we have-- let me find my notes here. Mihir Khetarpal will receive the best oralist award. And the winning team is team seven. All of these things were close, I assure you, but as evident by the individual comments that were made, we really appreciated your arguments all around, and also the opportunity to consider your briefs. That is it.

SADDIQ ABDUL: Great. Congratulations to the competitors and all the winners of this particular competition. Thank you, whoever's watching this. If this was in person, we would bring up the trophies for our winners, but imagine an imaginary trophy I'm holding right now, and I'm giving it to the best winning team and the best oral advocates.

But just let me reiterate once more competitors, you've done a

wonderful job. You represented UVA proudly, and we're all so proud of all the work that you've made. Yes, and I want to give you round of applause.

[APPLAUSE]

JUDGE HOLMES: We can do that, virtually anyway.

SADDIQ ABDUL: It really is an incredible accomplishment.